

The Worst System of Citation Except for All the Others

The Bluebook: A Uniform System of Citation, Columbia Law Review Ass'n et al. eds., Cambridge: Gannett House, 20th ed. 2015, pp. 560, \$38.50

Reviewed by David J.S. Ziff

Introduction

“*The Bluebook* must have its defenders—let them defend their precious tome from me.”¹

—RICHARD A. POSNER, *What Is Obviously Wrong with the Federal Judiciary, Yet Eminently Curable: Part II*, 19 GREEN BAG 2D 257, 268 (2016)

Everybody hates *The Bluebook*²—the generally adopted and generally reviled system of citation for lawyers, judges, law students, professors, and everyone else who writes about the law. Like most people who've used *The Bluebook*, I have a personal list of least-favorite rules.³ Others have gone further, authoring lengthy articles cataloging *The Bluebook*'s faults and missteps over the decades.⁴

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1. Richard A. Posner, *What Is Obviously Wrong with the Federal Judiciary, Yet Eminently Curable: Part II*, 19 GREEN BAG 2D 257, 268 (2016).
2. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 20th ed. 2015) [hereinafter BLUEBOOK (20th ed.)]. And yes, this is the proper *Bluebook* citation for *The Bluebook*. See *id.* at 151 (providing itself as a meta-example for how to reference a book with an institutional author).
3. For example, do I *really* have to cite the publication date of the bound code volume when I cite a federal statute? See BLUEBOOK (20th ed.), *supra* note 2, at 18 (setting out rule B12.1.1 for the citation of statutes).
4. See, e.g., Richard A. Posner, Essay, *Goodbye to the Bluebook*, 53 U. CHI. L. REV. 1343 (1986) [hereinafter Posner, *Goodbye*]; Richard A. Posner, *The Bluebook Blues*, 120 YALE L.J. 850 (2011) [hereinafter Posner, *Blues*]; Louis J. Sirico, Jr., *Fiddling with Footnotes*, 60 CIN. L. REV. 1273 (1992); A. Darby Dickerson, *An Un-Uniform System of Citation: Surviving with the New Bluebook*, 26 STETSON L. REV. 53 (1996).

And yet, here we are. Now in its twentieth edition, *The Bluebook* continues to cast its shadow over the legal profession just as it has for almost 100 years, helping legal writers format their references to authorities in briefs, memoranda, opinions, and law review articles.⁵ Previous critiques have offered various theories for why, despite its problems, *The Bluebook* remains the standard for legal citation. Ivy League elitism,⁶ the first-mover advantage,⁷ and lawyers' conservative preference for the status quo⁸ have all been offered to explain the seemingly inexplicable: If this system is so terrible, then why are we still stuck with it?

One potential answer to that question has remained largely unexplored by previous scholarship, because previous scholarship has accepted the question's underlying premise. This essay challenges that premise by offering a novel explanation for *The Bluebook's* continued existence: Perhaps *The Bluebook* survives because it's not so terrible after all.⁹ Perhaps *The Bluebook* works quite well for the task it was designed to perform.¹⁰

Part I begins with an examination of *The Bluebook's* primary task: providing citation rules for student-run law journals.¹¹ Previous authors have noted that *The Bluebook's* rules provide the benefit of certainty that comes with clear answers

5. If you'd prefer, feel free to imagine I'd written "helping" in scare quotes earlier in this sentence.
6. See, e.g., Susie Salmon, *Shedding the Uniform: Beyond a "Uniform System of Citation" to a More Efficient Fit*, 99 MARQ. L. REV. 763, 778 (2016) ("Critics persistently highlight *The Bluebook's* elitism."); *id.* at 795-96 (proposing that "fetishization" of proper *Bluebook* citation "may . . . reveal the dismayingly intractable grip that elitism still holds on legal education and the legal profession").
7. See, e.g., Christine Hurt, *Network Effects and Legal Citation: How Antitrust Theory Predicts Who Will Build a Better Bluebook Mousetrap in the Age of Electronic Mice*, 87 IOWA L. REV. 1257, 1260 (2002).
8. *Id.* at 1280 ("Lawyers have internalized this conservative principle of stare decisis to the detriment of innovations in citation form . . .").
9. Others have praised *The Bluebook*, but that praise is often indirect. For example, Mary Whisner has compared knowledge of *The Bluebook* with knowledge of social norms, like using the proper fork when eating a salad. See Mary Whisner, *The Dreaded Bluebook*, 100 LAW LIBR. J. 393, 394 (2008). Relatedly, some have praised *The Bluebook's* "instructive function" of teaching meticulousness. See David Kemp, *In Defense of the Bluebook*, JUSTICIA LAW BLOG (June 8, 2011), <https://lawblog.justia.com/2011/06/08/in-defense-of-the-bluebook/> [<https://perma.cc/BRS6-B9KD>]; see also Bret D. Asbury & Thomas J.B. Cole, *Why The Bluebook Matters: The Virtues Judge Posner and Other Critics Overlook*, 79 TENN. L. REV. 95, 96 (2011) ("[W]e have yet to discover a single commentator who has seriously considered whether its 'labyrinthine rules' which annually plague a fresh crop of future lawyers might serve a purpose other than some form of ritualistic hazing.").
10. Or, as Sherlock Holmes might put it: "[W]hen you have eliminated the impossible, whatever remains, HOWEVER IMPROBABLE, must be the truth." Arthur Conan Doyle, *The Sign of the Four*, Lippincott's Monthly Magazine (Feb. 1890).
11. See discussion *infra* text accompanying notes 18-19 (explaining that "the heart" of *The Bluebook* is the litany of rules designed for law-journal editors).

to citation questions, even if obtaining that certainty takes a bit of work.¹² Part I argues that, in the context of student-run law journals with dozens of editors collectively working on dozens of separate articles over a two-year period, this rule-based certainty also increases efficiency, even if individual editors initially waste time looking up picayune rules.¹³ Adopting a looser, standard-based system of citation might actually *increase* the time wasted by journal editors on footnote revisions.

Of course, most of us are not editors of student-run law journals. We don't need hundreds of detailed citation rules. But we still need to provide legal citations in briefs, memoranda, and other practice-focused documents. Part II explains how *The Bluebook's* two-part structure—the Whitepages for journal editors and the Bluepages for practitioners—allows flexibility for practitioners, if that's what a practitioner wants. This selective flexibility allows *The Bluebook* to continue to serve lawyers even after they've left law school. Part II also addresses some practice-based criticisms of *The Bluebook* and explains how these criticisms both understate the benefits of *The Bluebook's* rules and vastly overstate the benefits of alternative systems based on loose standards. Even *The Bluebook's* harshest critics, such as Judge Richard Posner, rely on *The Bluebook's* system of rules much more than they like to admit.¹⁴

Part III then looks into the future, through the lens of *The Bluebook's* newest competitor: *The Indigo Book*, a freely available, open-source expression of *The Bluebook's* system of citation. As a static publication, *The Indigo Book* breaks no new ground. But as a continuing project, *The Indigo Book* might be revolutionary, since the project seeks to wrest control of legal citation from Ivy League law students and give it back to you, the people. What does this mean for *The Bluebook* and legal citation in the coming decade? Part III engages in wild speculation. Thanks to *The Indigo Book*, the law's citation rules may become a free, open, and collaboratively edited system—much like Wikipedia. Part III concludes by suggesting that, also like Wikipedia, this new online system may have benefits, but it may also grow more complicated and labyrinthine than its student-created counterpart.

I. *The Bluebook*: What Is It Good For?¹⁵

The Bluebook's primary task is to provide an effective citation guide for law journal editors. The guide originated at student-run law journals.¹⁶ And even today, though *The Bluebook* asserts itself more broadly as “the definitive style guide for . . . law students, lawyers, scholars, judges, and other legal

12. See discussion *infra* text accompanying notes 40–44.

13. See discussion *infra* text accompanying notes 46–56.

14. See discussion *infra* text accompanying notes 98–111.

15. But see Edwin Starr, *War (Original Video—1969)*, YOUTUBE (Dec. 6, 2007), <https://www.youtube.com/watch?v=01-2pNCZiNk> (responding with “Absolutely nothing”).

16. See generally Fred R. Shapiro & Julie Graves Krishnaswami, *The Secret History of the Bluebook*, 100 MINN. L. REV. 1563 (2016).

professionals,”¹⁷ it clearly declares that the “heart of the *Bluebook* system”¹⁸ continues to be the 175 pages of detailed rules “designed in a style and at a level of complexity commensurate with the needs of the law journal publication process.”¹⁹ When critics rail against *The Bluebook*, the prolixity and complexity of these rules are common targets.²⁰ After all, 175 pages of rules is a lot of rules, not to mention the additional pages of abbreviations and jurisdiction-specific information.

The *Bluebook* system—or at least the “heart” of the system—is designed for an editing and publication process quite divorced from the normal everyday work of lawyers and judges. Though law journals’ publication processes differ across schools and journals, I’ll use the *Columbia Law Review* (where I was the Executive Managing Editor long ago) as an example.²¹ The *Review* publishes eight issues a year, with each issue usually containing two full-length articles, a shorter essay, and two student-written notes. The recently published April 2016 and May 2016 issues followed this structure.²² The April issue spanned about 300 pages and contained 1518 footnotes. The May issue: 258 pages and 1253 footnotes.

In a normal year, therefore, the *Columbia Law Review* might publish around forty pieces comprising over 2000 pages and more than 10,000 footnotes.²³ When I was a law student, the *Review* edited this content by assigning portions of pieces to 2L editors, who would then submit their work to a 3L supervising editor with responsibility for the individual piece. After finishing that assignment, a 2L editor would then receive another portion of a different piece, edit that portion, submit it to a different 3L editor, and so on and so on. The idea was to produce a consistent and professional volume of scholarship. Currently, forty-five 2Ls on the *Columbia Law Review* participate in this process,

17. BLUEBOOK (20th ed.), *supra* note 2, at 1.

18. *Id.*

19. *Id.*

20. See, e.g., RICHARD A. POSNER, REFLECTIONS ON JUDGING 96–97 (2013) [hereinafter POSNER, REFLECTIONS] (noting the complexity of *The Bluebook* and explaining “there are declining marginal returns to complexity”); Carol M. Bast & Susan Harrell, *Has the Bluebook Met Its Match? The ALWD Citation Manual*, 92 LAW LIBR. J. 337, 342 (2000) (“The rules concerning case names are overly complex.”); see also pretty much every other source cited in this essay.

21. I have not undertaken a survey of publication processes across all journals, but I know that the *Washington Law Review* follows a somewhat similar process, which is the same in all respects relevant to my analysis here.

22. You can browse recent issues of the *Columbia Law Review* at its website. See *Issue Archives*, COLUM. L. REV., <http://columbialawreview.org/content/> (last visited Sept. 28, 2016).

23. Perhaps law professors should write shorter articles, or fewer articles, or no articles at all. But that’s not the world we live in, and *The Bluebook* certainly can’t be blamed for the publication requirements of law schools’ promotion and tenure committees. But see Posner, *Goodbye*, *supra* note 4, at 1349–50 (blaming *The Bluebook* for legal writers’ use of the passive voice, vagueness, long sentences, and many other problems).

along with sixteen 3L supervising piece editors and six managing editors, who have additional line-editing responsibilities.²⁴

I explain all this not because I think you're interested in the details of a student-run law journal's publication process, but because *The Bluebook* and its 560 pages of specific rules, examples, and tables were designed for that process.²⁵ When a journal's editorial staff must complete such an immense volume of work through the cooperation of such a large group of people, *The Bluebook's* specificity and prescriptivism—the traits for which it is most criticized—are *features* of the system, not bugs. Those rules increase the efficiency of the journal-editing process.²⁶

Student-run law journals are perhaps the ideal setting for a complex system of citation rules, because once those rules are implemented, they can be applied over and over again with little additional cost.²⁷ A system of commands (such as a system of citation) can take the form of either numerous precise rules or fewer general standards.²⁸ A benefit of rules, as Professor Louis Kaplow has explained, is that they give specific content to a command *before* an actor applies that command to a particular situation.²⁹ Rules provide an answer in each individual case. They are therefore more costly than standards to develop because rules must provide *ex ante* the specific content of a command.³⁰ In other words, a rule-based system requires upfront investment—both to design the system and to learn the system.

24. See *Current Masthead*, COLUM. L. REV., <http://columbialawreview.org/current-masthead-2/> (last visited Sept. 11, 2016).

25. In other words, the question “Is this thing any good?” requires a follow-up question, “Good for *what*?” I should, I suppose, cite Aristotle’s *Nicomachean Ethics* for this point about function and goodness. But I never read *Nicomachean Ethics*. Instead, I’ll credit my freshman year philosophy professor, Jeremy Fantl, who asked our class about good knives, good thieves, and good people more generally. See David J.S. Ziff, Notes from Freshman Year Philosophy Class (1997) (unpublished) (no longer on file with author).

26. Lest you suspect I’m bootstrapping here, the process would likely not be simplified by eliminating the task of checking (and correcting) citation format. The bulk of the students’ work is locating the source, reading the relevant portion—or, more likely, *finding* the relevant portion because the author has neglected to provide a pinpoint citation—and then ensuring that the source actually stands for the proposition for which it was cited. Checking and correcting the citation format is then a relatively simple add-on task.

27. Louis Kaplow, *Rules Versus Standards: An Economic Analysis*, 42 DUKE L.J. 557, 563 (1992).

28. I’m simplifying here, since one could also adopt simple general rules, or hyperspecific multipart standards. See *id.* at 565–67 (highlighting the often-overlooked “conceptual distinction between questions of how complex a law should be and whether any aspect of its detail is best determined *ex ante* or *ex post*”). But when discussing legal citation systems, the terms of the debate are complex rules versus simple general standards, so I use that framework.

29. *Id.* at 560.

30. See *id.* at 569 (“Because of this [*ex ante*] cost, rules are more expensive to promulgate than standards.”).

In contrast, a command in the form of a standard does not provide specific content before application. Instead, the content of a standard must be determined case-by-case each time the command is applied.³¹ For both rules and standards, the command must provide an answer. But in the case of a standard, the cost of determining that answer can be postponed until the need arises to apply the command.

As a result of this difference between rules and standards, rules are generally preferable to standards if a set of commands will be applied in many similar, repeated situations. Take speed limits, for example.³² A standard like “Drive at a reasonable speed” is simple to adopt and easy to learn. Adopting and learning speed-limit *rules* requires much more work: examining specific sections of road, individually determining the proper limit for each section, posting costly signs to indicate the different limits, etc.³³ These formulation costs, however, are incurred only once. After implementation the rule can be applied again and again without further investment of resources.³⁴

Moreover, individuals guided by such a rule are “spared the expense” of determining the optimal content of the command in specific situations.³⁵ When applying a standard, however, the content of the command must be determined separately with each application.³⁶ Drivers would need to constantly evaluate their surroundings, contemplating and adjusting their speed accordingly. And imagine the burden of litigating whether a speed was “reasonable” each time an officer wrote a ticket.³⁷

31. *Id.* at 560.

32. *Id.* at 560, 565.

33. *Id.*

34. *Id.* at 573. For law journals employing *The Bluebook*, new editors must learn the system each year—certainly an investment in implementation. But after learning the system, the editors can repeatedly apply the same rules for two years without having to learn additional systems. See discussion *infra* text preceding note 51 (discussing benefits of not needing to learn separate idiosyncratic systems for each individual author).

35. Kaplow, *supra* note 27, at 585. Bryan Garner has made this point when comparing *The Bluebook*'s rules to the looser standards of *The Maroonbook*. See Bryan A. Garner, *An Uninformed System of Citation: The Maroonbook Blues*, 1 SCRIBES J. LEGAL WRITING 191 (1990) [hereinafter Garner, *Uninformed*]; see also discussion *infra* text accompanying notes 39–40.

36. Kaplow, *supra* note 27, at 585. Prof. Kaplow also addresses the situation in which a command starts as a standard, but is refined and given further detail through the creation of binding precedent at the application stage. Since *The Bluebook* itself has no formal process for creating precedent, I'm going to ignore that situation here. See *id.* at 583 for further discussion of precedent. However, one could conceptualize *The Bluebook*'s regular updates as a sort of slow precedent creation from a short simple pamphlet that grows with additional rules as repeated applications create informal precedents that become formalized with each new edition.

37. “Do you know how fast you were going back there?” “A reasonable speed, Officer.”

Accordingly, even in instances with high *ex ante* costs, adoption of a rule may be preferable if the command will be applied to many individuals and many similar circumstances.³⁸ Indeed, “[t]he central factor influencing the desirability of rules and standards is the frequency with which a [command] will govern conduct.”³⁹ When the command will be applied frequently, “the additional costs of designing rules—which are borne once—are likely to be exceeded by the savings realized each time the rule is applied.”⁴⁰

Furthermore, in situations where repeated application makes rules preferable to general standards, *complex* rules are often preferable to simple ones. As Professor Kaplow explains: “[W]hen rules are to be applicable to frequent behavior with recurring characteristics, there is a systematic tendency for rule systems to be more complex than the content that would actually be given to standards covering the same activity.”⁴¹ Only “when the behavior to be regulated . . . is infrequent, or when each instance (no one very likely to occur) is unique in important ways, [would] substantial *ex ante* analysis for each conceivable contingency . . . be a poor investment.”⁴²

With a general understanding of the law journal publication process, Professor Kaplow’s framework illuminates the potential benefits of *The Bluebook*’s complex rule-based system. For a single law journal, one year’s worth of publication will include thousands of citations to cases, journal articles, statutes, legislative materials, books, and all other manner of sources. Any citation-formatting command, therefore, will be applied frequently to sources having certain recurring characteristics—precisely the sort of system that favors complex rules.

In previous discussions of legal citation, others have observed that *The Bluebook*’s complex system of rules has the benefit of clear answers. For example, Bryan Garner has praised *The Bluebook*’s rules⁴³ as compared to the

38. Kaplow, *supra* note 27, at 585; *see also id.* at 579 (“The value of effort in designing a rule depends on the frequency of behavior subject to the rule . . .”).

39. *Id.* at 621.

40. *Id.*

41. *Id.* at 595. In many ways, the debate between rules and standards for legal citation reflects another of Professor Kaplow’s observations. He notes that many commentators combine or confuse the debate of rule versus standard with the debate about the appropriate level of complexity whatever the form of the command. *Id.* at 588-89. The *Bluebook* debate is no exception to this observation, with critics seeking to replace complex rules not just with standards—but with *simple* standards based on general reasonableness. *Id.* Even when standards are adopted, however, “it is worthwhile to undertake greater investigation into the relevance of additional factors and to expend more effort fine-tuning the weight accorded to each” if the command at issue constitutes “a single pronouncement that will govern many (perhaps millions) of cases.” *Id.* at 595.

42. *Id.*

43. In addition to being an authority on legal writing, Mr. Garner is also a proponent of textualism in the interpretation of legal rules. *See* ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* xxvii-xxx (2012) (setting out the

standards favored by The University of Chicago's *Maroonbook*: "The *Maroonbook* would unsettle us all by replacing our old standards with new illusory ones, these based on individual discretion."⁴⁴ Mr. Garner suspected that a superficially simple standard-based system would cause a writer to waste time by "consciously consider[ing] what before had been the merest matter of form, too insignificant to require thought."⁴⁵

These prior commentaries on the "rule versus standard" debate have focused on the benefits to individual lawyers working on an isolated brief or memorandum.⁴⁶ For an individual lawyer, even a simple citation standard will require her to think—at least a little bit—about how the standard should be applied in a particular instance. That mental effort likely could be better spent thinking about the substance of the writer's message.⁴⁷

But the individual lawyer is just the tip of the iceberg. An individual lawyer working on a discrete project might easily and quickly apply a simple citation standard, because the individual lawyer might be apathetic regarding the final citation format.⁴⁸ After all, thinking about a problem is easy if you don't think too hard.

benefits of textualism). Two benefits of textualism, as advanced by Mr. Garner and Justice Scalia, are "greater certainty" and "hence greater predictability" in the law. *Id.* at xxix. *The Bluebook's* detailed prescriptive rules provide similar benefits. As Mr. Garner's co-author explained, admittedly in a different context: "[An] obvious advantage of establishing as soon as possible a clear, general principle of decision . . . [is] predictability." Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV. 1175, 1179 (1989).

44. Garner, *Uninformed*, *supra* note 35, at 191; *see also* Dickerson, *supra* note 4, at 94 (comparing *The Bluebook* favorably to *The Maroonbook*, in an otherwise unflattering review, by positing that "the *Bluebook* is the book that ends arguments, the *Maroonbook* may be the book that perpetuates them"). Others have taken a different view. *See* POSNER, REFLECTIONS, *supra* note 20, at 96 (decrying the "hypertrophy" of *The Bluebook's* citation rules); Posner, *Goodbye*, *supra* note 4, at 1343 (decrying the "hypertrophy" of *The Bluebook's* citation rules); Posner, *Blues*, *supra* note 4, at 851 (decrying the "hypertrophy" of *The Bluebook's* citation rules); Sirico, *supra* note 4, at 1279 (calling for a "shift from rules to flexible standards").
45. Garner, *Uninformed*, *supra* note 35, at 194.
46. *Id.*, ("Users of the *Maroonbook* must now decide what before had been decided for them. Do I use *infra* and *supra*? The *Bluebook* tells me when to use them, but the *Maroonbook* says merely that I 'need not.'"). For a lawyer writing a brief for a specific jurisdiction, the jurisdiction itself likely has its own rules that may deviate from *The Bluebook*. *See infra* text accompanying notes 75-79, discussing deviations from *Bluebook* format.
47. Garner, *Uninformed*, *supra* note 35, at 194-95 ("That is precisely the problem with the *Maroonbook*. You must consciously consider what before had been the merest matter of form, too insignificant to require thought."). Of course, lawyers likely assign junior associates the task of *Bluebook* compliance, much as law professors leave the task to research assistants or law review editors.
48. Shocking, I know; but if you're reading this essay, then there are people out there who likely don't care about citation format as much as you do.

For example, suppose an individual apathetic lawyer adopted a simple citation standard regarding case names, something like: *Provide a reasonable name to identify the case based on the case's caption*. Now suppose the lawyer needs to reference a case with the following caption:

The United States of America, Plaintiff-Appellee,
v.
Daniel Kaffee, Defendant-Appellant.

The apathetic lawyer has a variety of options. His only command, recall, is to provide a reasonable identification. He could choose: *United States v. Daniel Kaffee*, or *The United States v. D. Kaffee*, or *United States of America v. Daniel Kaffee*, or *U.S. v. Kaffee*, or *United States v. Kaffee*, or myriad other combinations. Readers may disagree on which options are reasonable.⁴⁹ But assuming the apathetic lawyer chooses something reasonable, he can choose whatever he wants without much thought.

One thing our apathetic lawyer should not do, however, is oscillate wildly among different options. He should not, in other words, refer to *U.S. v. Kaffee* in one paragraph and then *United States v. Daniel Kaffee* in the next. Such inconsistencies would be distracting and might understandably cause a reader to wonder if the citations refer to different cases. But this prohibition shouldn't cause our apathetic lawyer much distress. Once he makes a decision, the apathetic lawyer should manage to stick to it without an excessive expenditure of effort. He is unlikely to waste time reopening the internal dialogue each time he cites *America v. Daniel K.* in his brief. Once the issue is resolved, he can forget about citation formatting and refocus his mental energies on important substantive matters.

A law journal has no such luxury. With multiple editors simultaneously reviewing separate parts of separate pieces, a lone editor's independent decision regarding a "reasonable" name cannot effortlessly be adopted as the universal decision for the piece, the issue, or the volume. The journal wants to publish a consistent and professional volume, with all editors working together toward that goal. The journal must therefore adopt some system to move from myriad reasonable citations to a consistent reasonable citation.

Unlike the apathetic lawyer, law journal editors implementing a simple standard would likely employ a time-intensive two-step process. Returning to the *Kaffee* example: First, each individual editor would expend some mental energy coming up with a reasonable case name. At this point the law journal and the individual lawyer are in the same boat.⁵⁰ But second, the editors would then need to decide collectively which of the various case names should be *the*

49. See *infra* notes 104–05 and accompanying text.

50. Though each individual editor resolving the question would separately expend energy, resulting in repetitive work even at this first stage of the process.

case name throughout. The initial editor-level decision would be followed by a multiparty discussion and collaborative decision. What a waste of time.

In one of his many critiques of *The Bluebook*, Judge Posner observed that “there are declining marginal returns to complexity.”⁵¹ He is, of course, correct. But Judge Posner’s observation doesn’t resolve the question of optimal complexity.⁵² Prior critiques of *The Bluebook*’s complex system of rules fail to grapple with the system’s application in its natural habitat. On a law journal with forty-five members, even a small return multiplied over 10,000 footnotes might be worth the investment in another rule—an investment that admittedly becomes less attractive to Judge Posner when writing individual opinions or to a lawyer working on a single brief.

This is where the “Uniform” in *The Bluebook*’s “uniform system of citation” provides the most benefit. Its uniform system allows journal editors to learn one set of rules and apply them repeatedly to each piece the journal publishes and the thousands of sources in those pieces.⁵³ An editor need not learn one set of citation standards for the piece published by Professor A, another set for Professor B, yet another set preferred by some persnickety supervising editor, and so on.⁵⁴ Law journals are not unique in this regard. The Associated Press has a stylebook.⁵⁵ *The New York Times* does as well.⁵⁶ The Council of Science Editors produces an 722-page style guide for science writing!⁵⁷ Clear, uniform answers to oft-repeated questions provide efficiency.⁵⁸

51. POSNER, REFLECTIONS, *supra* note 20, at 96–97.
52. All sorts of investments have diminishing marginal returns. That does not mean the optimal investment is zero.
53. Moreover, today’s students can quickly determine whether *The Bluebook* contains a rule on point, since *The Bluebook*’s online database allows for quick and easy searching.
54. When I was a law review editor, individual pieces often came with short memos describing specific word choices or citation formats used consistently within the piece. These memos were annoying. Our goal was to keep them as short as possible.
55. THOMAS KENT ET AL., STYLEBOOK 2016 AND BRIEFING ON MEDIA LAW (2016).
56. ALLAN M. SIEGAL & WILLIAM G. CONNOLLY, THE NEW YORK TIMES MANUAL OF STYLE AND USAGE (5th ed. 2015).
57. COUNCIL OF SCIENCE EDITORS, SCIENTIFIC STYLE AND FORMAT: THE CSE MANUAL FOR AUTHORS, EDITORS, AND PUBLISHERS (8th ed. 2014). *The Bluebook* is not (solely) a style guide; but like these other guides for other fields, it provides a uniform set of rules for publication in a particular outlet.
58. Arguing against this efficiency rationale for *The Bluebook*, Douglas Laycock proclaimed: “This is the same defense that Big Brother offered for totalitarianism; freedom imposes responsibility.” Douglas Laycock, *The Maroonbook v. The Bluebook: A Comparative Review*, 1 SCRIBES J. LEGAL WRITING 181, 184 (1990). Orwell’s novel likely would have suffered if, instead of Oceania, he had focused on a dystopic state in which the Department of Citation required abbreviation of *Department* as *Dep’t* instead of *Dept.* Some things just don’t matter that much. And all else being equal, I imagine the citizens of Oceania would gladly let law review editors perfect their footnotes if, in exchange, they could have a nice afternoon at the beach free from perpetual war and surveillance. Cf. Scalia, *supra* note 43, at 1179 (“There are times when even a bad rule is better than no rule at all.”).

Have the editors of *The Bluebook* found the precise point at which complexity's declining marginal returns are outweighed by the marginal costs of learning an additional rule? I doubt it. Though if the editors have missed, we can't be certain that they've overshot the mark. After all, law journals often adopt internal style guides that *add to The Bluebook's* citation rules—a measure they likely wouldn't take if the additional rules decreased the efficiency of their operations. But in any event, critics of *The Bluebook* should at least acknowledge the benefits of its complex rules, and then balance those benefits against the accompanying costs. Otherwise, criticism devolves into an unhelpful list of complaints.

II. What About the Lawyers? Won't Somebody Please Think of the Lawyers!

The preceding discussion of law journals and student editors raises an obvious objection: *The Bluebook* might work for forty-five law students cite-checking thousands of pages and tens of thousands of footnotes in a volume, but that doesn't make the system suitable for the everyday legal writing of lawyers and judges.⁵⁹ If anything, the strange characteristics of academic publishing would render a system designed for that purpose a *terrible* fit for practical, discrete writing projects.⁶⁰

59. See, e.g., Peter Lushing, Book Review, 67 COLUM. L. REV. 599, 599 (1967) (noting that *The Bluebook* left practitioners behind with the publication of the ninth edition); Salmon, *supra* note 6, at 766 (lamenting a law firm that almost missed a filing deadline because they were re-Bluebooking a brief). *But see id.* (the law firm didn't miss the deadline). See also Sirico, *supra* note 4, at 1275 (noting that many practitioners have rejected the details of *The Bluebook*).
60. One might also object that if our system of student-edited journals justifies *The Bluebook's* existence, that's just another reason to eliminate our system of student-edited journals—throwing out the baby and bath water together. But criticizing *The Bluebook* won't eliminate student-edited journals. We already had student-edited journals when *The Bluebook* was born. See generally Shapiro & Krishnaswami, *supra* note 16. The debate about who publishes legal scholarship goes beyond the scope of this essay, but I can't blame a spiral-bound book for our discipline's scholarly practices. When a handful of law students meet every five years to revise *The Bluebook*, they do not set the work plans for our nation's law professors, nor do they set the evaluation criteria for law schools' promotion and tenure committees. If law professors want to write fewer, shorter, and less-footnoted scholarship, we are free to do so. We can self-publish on SSRN, on a blog, or through our home institution. We can write books. We can publish in peer-reviewed journals. We can publish with *The University of Chicago Law Review*. None of these alternative outlets has adopted *The Bluebook*. If, for some reason, you're interested in my thoughts on the student-edited publication process, see David Ziff, *In Defense of Law Reviews: The Students' Perspective*, ZIFFBLOG (Oct. 22, 2013), <https://ziffblog.wordpress.com/2013/10/22/in-defense-of-law-reviews-the-students-perspective/> [https://perma.cc/DBD6-TS6R], and perhaps see David Ziff, *Law Reviews, Peer Review, and Cheese Knives*, ZIFFBLOG (Oct. 23, 2013), <https://ziffblog.wordpress.com/2013/10/23/law-reviews-peer-review-and-cheese-knives/> [https://perma.cc/U58N-96CS]. If you're interested in more erudite views on the student-edited publication process, see Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936) (providing pithy, entertaining, and thought-provoking views on the matter).

The Bluebook offers a strong response to this objection: It agrees. With the publication of the Eighteenth Edition in 2005, *The Bluebook* instituted a clear delineation between its guidance for practitioners and its rules for student editors. It eliminated the skimpy “Practitioner’s Notes” in favor of the Bluepages, “a how-to guide providing easy-to-comprehend instruction for the everyday citation needs of the first-year law students, summer associates, law clerks, practicing lawyers, and other legal professionals.”⁶¹ That first version of the Bluepages contained simplified guidance for signals, cases, statutes, regulations, legislative materials, constitutions, books, journals, newspapers, and litigation documents, all in a tidy twenty-two pages.⁶² The Nineteenth Edition added guidance on Internet sources⁶³ (useful!) and Electronic Case File (ECF) filings⁶⁴ (not so useful).

The Twentieth Edition offers two improvements to the Bluepages. First, it helpfully renumbers the Bluepages rules to coincide with the related “Whitepages” rules in the body of *The Bluebook* designed for law journal editors.⁶⁵ Now, sensibly, the Bluepages rule for cases is B10,⁶⁶ just as the Whitepages rule for cases is R10.⁶⁷ Second, the Bluepages now contain two short sections, totaling about a page, with guidance on foreign and international materials.⁶⁸ These sections don’t contain the clarity, simplicity, and guidance of the rest of the Bluepages, but perhaps they will provide the American lawyer with, at the least, a starting point when faced with a one-off citation to foreign or international materials.

The current Bluepages rules—all twenty-seven pages of them—offer precisely the sort of simpler, standard-based, efficiency-minded system many practice-focused critics have clamored for. Take, for example, *The Bluebook*’s dreaded “five-footnote rule,” which governs when to cite a case using a shortened case name: “In 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 . . .

61. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION v (Columbia Law Review Ass’n et al. eds., 18th ed. 2005).

62. *Id.* at 3-24.

63. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 25 (Columbia Law Review Ass’n et al. eds., 19th ed. 2010).

64. *Id.* at 21. When I practiced in federal court I never included “ECF No. 16” as part of my citation to a previously filed document. I don’t recall ever seeing anyone else do it either. I would, however, sometimes provide the number of the document, but never with that “ECF” notation, which refers simply to the court’s electronic docketing system.

65. BLUEBOOK (20th ed.), *supra* note 2, at vii.

66. *Id.* at 10.

67. *Id.* at 94. I have no idea why the two systems diverge at lower numbering levels. For example, the Bluepages rule for case names is B10.1.1. *Id.* at 11. The coinciding rule in the Whitepages: R10.2.1. *Id.* at 96. The 0.1.0 difference seems unnecessary.

68. *Id.* at 28-29.

in *one of the preceding five footnotes*. Otherwise, a full citation is required.”⁶⁹ This is a simple (though arbitrary) rule for a student editor to apply. What form of citation is required? Just count and you have your answer. Easy.

Judge Posner, perhaps *The Bluebook’s* harshest contemporary critic, has mocked the punctiliousness of the rule: “This reads like parody,” he writes, after quoting the rule, “but is not. There are more than 150 pages of such ‘rules.’”⁷⁰

Judge Posner likely does not follow the five-footnote rule, and for good reason. Like most judges and lawyers, Judge Posner does not place his citations in footnotes, so the rule makes no sense applied to his judicial writing.⁷¹ But more to the point, *The Bluebook’s* practitioner-focused Bluepages *do not include the five-footnote rule*. For practitioners, *The Bluebook* simply says you may shorten a case citation if (1) the reference is clear, (2) the full citation is available somewhere in the same general discussion, and (3) the reader can easily locate the full citation.⁷² In other words: Practitioners, just apply a general standard and use your judgment.

The Bluepages contain many such delegations of judgment to practitioner authors and editors. For the five-footnote rule, the Bluepages’ command expressly replaces a rule with a standard. But at only twenty-seven pages—compared with 175 detailed pages for the law-journal-focused Whitepages—the Bluepages also contain *fewer* commands. Those gaps in the citation system can be filled with whatever the author thinks reasonable. If the Bluepages are silent, the practitioner “*may* use a Whitepage Rule to supplement a corresponding Bluepage Rule.”⁷³ That critical “*may*” is the key to the Bluepages’ success. A rule-follower like, for example, Bryan Garner can save time by quickly applying the relevant Whitepages rule.⁷⁴ A free spirit like Judge Posner (or

69. *Id.* at 115.

70. Posner, *Blues*, *supra* note 4, at 853 (reviewing the nineteenth edition of *The Bluebook*).

71. *See, e.g.*, *Schmidt v. McCulloch*, 823 F.3d 1135 (7th Cir. 2016) (Posner, J.) (providing case citations within the text of the opinion); *see also* BLUEBOOK (20th ed.), *supra* note 2, at 3 (“In non-academic legal documents, such as briefs and opinions, citations generally appear within the text of the document. . . .”). *But see* BRYAN A. GARNER, *THE WINNING BRIEF* 176–99 (3d ed. 2015) (making “the most controversial” recommendation in his text, that citations should go in footnotes).

72. *See* BLUEBOOK (20th ed.), *supra* note 2, at 16, 61. Another example is the much-maligned rule regarding order of authorities. *See id.* at 61. But there, too, even in the Whitepages, *The Bluebook* allows wiggle room: “If one authority or several authorities together are considerably more helpful or authoritative than the other authorities cited within a signal, they should precede the others.” *Id.* (R1.4).

73. *Id.* at 3 (emphasis added); *see also id.* (“Where the Bluepages and local court rules are silent regarding the citation of a particular document, you *may* use the other rules in *The Bluebook*, referred to as the ‘Whitepages,’ to supplement the Bluepages.” (emphasis added)). Even the Whitepages can’t provide all the answers, so they too include delegations of judgment. Perhaps that’s one reason law reviews sometimes promulgate additional rules. *See supra* text following note 58.

74. *See* discussion *supra* notes 43–45 (describing Mr. Garner’s preference for a rule-based system).

the hypothetical citation-apatetic lawyer from Part I) can fill the gap with whatever citation format he prefers. Practitioners have flexibility.⁷⁵

Instead of applauding this flexibility, many *Bluebook* critics view it as just another target for disdain. On one hand, *The Bluebook*'s litany of prescriptive rules imposes a “totalitarian”⁷⁶ “monopoly”⁷⁷ with a “stranglehold on legal culture.”⁷⁸ On the other hand, to demonstrate *The Bluebook*'s supposed ineffectiveness, critics point to institutions that have adopted modifications to *The Bluebook*'s rules.⁷⁹ The United States Supreme Court has its own style

75. An unfortunate exception is Bluepages Rule B10.1(v), which requires practitioners to use Table T6 when abbreviating case names. See BLUEBOOK (20th ed.), *supra* note 2, at 11. Much practitioner distress would disappear if Rule B10.1(v) were changed to: “Words listed in table T6 *may* be abbreviated to save space, as long as abbreviations are used consistently.” As a practical matter, however, lawyers are free to opt out of T6 abbreviations. A Westlaw search for cases discussing *Bluebook* abbreviations produced zero instances of a court chiding counsel for failing to properly abbreviate according to T6.

In two cases courts have expressed frustration at counsel's use of nonstandard abbreviations for references to documents in the record, because the court could not determine what the abbreviations actually referenced. See *Doe v. HRH Prince Abdulaziz Bin Fahd Al Saud*, No. 13 Civ. 571 (RWS), 2016 WL 2689290, at *5 n.3 (S.D.N.Y. May 9, 2016) (asking what “D.E. 10” stands for); *U.S. ex rel. Crenshaw v. Degayner Ass'n Mgmt., Inc.*, 622 F. Supp. 2d 1258, 1262 n.3 (M.D. Fla. 2008) (asking what the “C” in “(C @ 93-94)” stands for). The Bluepages helpfully provide abbreviations for litigation documents. See BLUEBOOK (20th ed.), *supra* note 2, at 29-30. Legal writers can use these abbreviations, or they can use their own, provided they explain the abbreviations to the reader. *The Bluebook* can't be blamed for a writer's inability to write clearly. *But see* Posner, *Goodbye*, *supra* note 4 (blaming *The Bluebook* for all that ails legal writing, including the passive voice, vagueness, long sentences, nominalizations, and numerous other atrocities).

76. Laycock, *supra* note 58, at 184.

77. Hurt, *supra* note 7, at 1280. Judge Posner has also expressed concern about *The Bluebook*'s possible monopolization of legal citation: “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.” POSNER, REFLECTIONS, *supra* note 20, at 98; *see also* Posner, *Goodbye*, *supra* note 4, at 1347 (critiquing *The Bluebook*'s “unhealthy preoccupation with uniformity”). The focus on the word “Uniform” in *The Bluebook*'s title ignores the word that precedes it: the indefinite article “A” as opposed to the definite article “The.” *The Bluebook* is not *The Highlander*. See (likely on cable at 2:00 a.m.) *HIGHLANDER* (Cannon Films 1986). When it comes to systems of citation, there can be more than one.

78. Shapiro & Krishnaswami, *supra* note 16, at 1566 n.21.

79. Sirico, *supra* note 4, at 1274 (“In my experience, most practitioners have their own systems that loosely approximate the *Bluebook*'s rules.”); Dickerson, *supra* note 4, at 57 (noting that even the law reviews that publish *The Bluebook* deviate from its prescribed format); Laycock, *supra* note 58, at 184 (“Many judges ignore it; the Supreme Court of the United States regularly departs from it; and the California courts have their own citation practice.”); Salmon, *supra* note 6, at 790 (asserting that despite “reverence for *The Bluebook*, few jurisdictions actually follow *The Bluebook*'s myriad rules in full”).

guide.⁸⁰ As does the Solicitor General's Office.⁸¹ Many state courts, including my home state of Washington, employ modifications to *Bluebook* citations.⁸² The U.S. Court of Appeals for the District of Columbia Circuit has specific citation requirements.⁸³ And of course some judges decline to follow *Bluebook* style, perhaps none more vocally than Judge Posner.⁸⁴

For some reason, critics fail to praise this citation heterogeneity as “freedom of citation” for practitioners—a form of the very freedom they claim *The Bluebook* denies. We are, after all, talking about a stack of paper and a spiral binder. It has no enforcement power.⁸⁵ So to the extent its prescriptivism inhibits practitioners, the ability to opt out—as endorsed by the Bluepages—should be applauded as a solution.⁸⁶ And yet the criticisms remain, echoing Yogi Berra's complaint about a restaurant: “[N]obody goes there anymore. It's too crowded.”⁸⁷

80. THE SUPREME COURT'S STYLE GUIDE (Jack Metzler ed., 2016), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2758862.
81. OFFICE OF THE SOLICITOR GEN., U.S. DEP'T OF JUSTICE, THE SOLICITOR GENERAL'S STYLE GUIDE (Jack Metzler ed. 2d ed., 2015).
82. See Wash. Office of Reporter of Decisions, *Style Sheet*, WASH. COURTS (Dec. 8, 2015), https://www.courts.wa.gov/appellate_trial_courts/supreme/?fa=atc_supreme.style [<https://perma.cc/7SVL-57BK>] [hereinafter *Wash. Style Sheet*] (providing exceptions to various *Bluebook* rules for Washington practitioners and courts). *But don't see* Supreme Court of N.J., *New Jersey Manual on Style for Judicial Opinions*, N.J. COURTS (Apr. 22, 2004), <https://www.judiciary.state.nj.us/appdiv/manualonstyle.pdf> [<https://perma.cc/6KTH-SQBQ>] (providing exceptions to *The Bluebook*, but doing so using Comic Sans and Courier fonts, which renders me unable to cite it approvingly).
83. See D.C. Cir. R. 32.1(a) (providing citation rules for federal statutes and published opinions).
84. See, e.g., the citations in any opinion written by Judge Posner; see also POSNER, REFLECTIONS, *supra* note 20, at 97 (renouncing *The Bluebook* and “every other manual of citation form”).
85. Of course, people will occasionally volunteer for the task. For example, a federal district court judge recently chided an attorney for purportedly violating *The Bluebook* by putting citations in footnotes, instead of within the text, see David Lat, *Benchslap of the Day: Don't You Dare Put Citations in the Footnotes*, ABOVE THE LAW (Aug. 30, 2016, 3:57 PM), <http://abovethelaw.com/2016/08/benchslap-of-the-day-dont-you-dare-put-citations-in-the-footnotes/> [<https://perma.cc/LA43-F6GR>], despite the fact that the district court had not actually adopted *The Bluebook* in its local rules. D. Md. Local Rules, U.S. DISTRICT COURT FOR THE DISTRICT OF MD. (July 1, 2016), <http://www.mdd.uscourts.gov/publications/forms/LocalRules.pdf> [<https://perma.cc/4N6S-RSW3>]. But generally, smaller deviations from *Bluebook* rules pass without comment. During my first two years in practice I did not italicize the “v.” in case names, since that was my firm's in-house style. I lived to tell the tale.
86. Small deviations from strict *Bluebook* compliance are rarely punished. See, e.g., discussion *supra* notes 75 (noting lack of punishment for failure to comply with T6 abbreviations) and 85 (noting my own youthful indiscretions), and *infra* note 144 (noting the complete lack of *Bluebook* enforcement against pro se litigants).
87. YOGI BERRA, THE YOGI BOOK 171 (Workman Pub. Co., 2010).

A wide gulf exists, however, between the “*Bluebook-lite*” systems adopted by various practitioners, and the more radical proposals to eliminate *The Bluebook*’s rules in favor of loose citation standards.⁸⁸ Such proposals often look to other fields with simpler, more flexible citation conventions.⁸⁹ But the simplicity of these other systems does not serve the law’s needs.

The law differs from other fields in two important respects that prevent the adoption of simpler citation formats. First, the weight of authority matters in the law, which means legal citations must include specific source-related details that other fields can simplify away.⁹⁰ A citation to (Cardozo 1928) just doesn’t do the job for a lawyer. The audience needs to know whether Judge Cardozo was writing a book or an opinion. If an opinion, we need to know whether he wrote for the New York Court of Appeals or the Supreme Court, and whether he was concurring, dissenting, or writing for the majority. And is (Taft 1911) a Supreme Court opinion or an executive order?⁹¹ Of course, the reader could find this information by locating the relevant source. But *legal* readers need to evaluate the weight of authority on the fly without flipping to a bibliography or taking a trip to the library.⁹²

Second, a legal citation must direct the reader to an official source of law. Unfortunately, primary legal materials in the United States are difficult to identify by source, which further complicates our citation system. Other fields append metadata and unique identifiers to their materials.⁹³ This information

88. Judge Posner’s two-page citation guide is likely the most famous of such proposals. See Posner, *Blues*, *supra* note 4, at 854–57. For a discussion of Judge Posner’s guide, see *infra* text accompanying notes 107–17.
89. See, e.g., Bast & Harrell, *supra* note 20, at 339 (“The citation systems of other disciplines are far less complex.”); see also *Episode 88: The Blue Line*, ORAL ARGUMENT (Feb. 13, 2016), <http://oralargument.org/88> (lamenting that other fields supply the author’s name and date in the text, leaving the rest for a bibliography).
90. For example, the *MLA Handbook* focuses on attribution and “conversation” as the reasons to document sources: “[R]eferences enable [authors] to give credit to the precursors whose ideas they borrow, build on, or contradict and allow future researchers interested in the history of the conversation to trace it back to its beginning.” THE MODERN LANGUAGE ASS’N OF AM., *MLA HANDBOOK* 5 (8th ed. 2016). But when a lawyer cites a case or statute in a brief, she isn’t doing so to inform future lawyers regarding the history of her conversations with the court; she’s providing information about binding authority.
91. A focus on attribution instead of authority is the reason the *MLA Handbook* can advise authors simply to “refer to a law case by the first nongovernmental party” and offer no additional guidance. *Id.* at 70.
92. Even Bryan Garner, a longtime advocate of placing citations in footnotes, draws the line at endnotes because “endnotes simply aren’t handy.” GARNER, *supra* note 72, at 180. “For the reader who really wants to see the citation, it’s annoying to have to flip back and find the relevant note.” *Id.* Careful judges and lawyers want to see the citation.
93. Frank G. Bennett, *Citations Out of the Box*, CITATIONSTYLIST 13–15 (2013), <http://citationstylist.org/public/mlzbook.pdf> [<https://perma.cc/CAE6-LBJF>] [hereinafter Bennett, *Out of the Box*].

creates a direct relationship between reference information and the referenced source.⁹⁴ Each book, for example, has a unique ISBN.⁹⁵ You can describe a book however you'd like; as long as you provide the ISBN a reader can access the proper book.⁹⁶ “The problem . . . is that we *don't have* structured metadata or unique identifiers for U.S. legal materials.”⁹⁷

Therefore, legal citations must perform double duty: (1) provide useful substantive information about the source, such as the court, the jurisdiction, the parties' names, and perhaps the date; and (2) provide sufficient reference information to locate the proper source.⁹⁸ That's why *United States v. Kaffee* (S.D.N.Y. 2015) can't do the job. That citation format provides sufficient information for the reader to understand the significance of the opinion, but not enough to actually locate the document itself. Multiple cases with the same caption might exist in a given jurisdiction. And even within the same case, multiple *opinions* might be issued, perhaps even on the same day.⁹⁹ Without a unique identifier, we're stuck with those clunky reporter abbreviations, volumes, and page numbers.¹⁰⁰

Even if we could overcome those problems, however, I suspect the complete abandonment of *The Bluebook* would not be quite as seamless as some imagine. Judge Posner, for example, has suggested that “[a] week after all the copies of

94. *Id.* at 14-15.

95. *Id.* at 13.

96. Westlaw and Lexis provide unique identifiers for the “unpublished” opinions available on their systems, but that information is not inherent to the opinion itself, so each system assigns a different proprietary identifier to its own version. For example, the slip opinion for *Saldana v. Colvin* in the Western District of Washington is assigned “2016 WL 5349406” by Westlaw. But you can't enter that number into Lexis or any other system to access the case. Lexis has assigned the same opinion “2016 U.S. Dist. LEXIS 131598.” See *Saldana v. Colvin*, No. 2:16-cv-00508-RBL, 2016 WL 5349406 (W.D. Wash. Sept. 26, 2016), or if you don't have Westlaw access, see *Saldana v. Colvin*, No. 2:16-cv-00508-RBL, 2016 U.S. Dist. LEXIS 131598 (W.D. Wash. Sep. 26, 2016), and if you don't have either, then good luck finding it on PACER.

97. See Bennett, *Out of the Box*, *supra* note 93, at 14-15.

98. *Id.* at 14-16.

99. Unfortunately, a system of citation can't expand and contract the level of detail depending on whether additional detail is required in a specific case. Even if party names, year, and jurisdiction would be sufficient in ninety-five percent of opinions, an author would still need to ensure that each citation isn't one of the five percent that requires more.

100. Professor Bennett explains that because other fields are “rich in metadata, [they] have the freedom to choose how they want their cites to appear. In U.S. law, without publicly accessible metadata, we have not enjoyed that freedom.” Bennett, *Out of the Box*, *supra* note 93, at 16. One answer would be a “public domain” format, in which the lawmaking entity provides a cross-platform unique identifier for the law and (this is the critical part) makes that law freely and publicly available. See, e.g., Salmon, *supra* note 6, at 807. *The Bluebook* endorses public domain citations. See BLUEBOOK (20th ed.), *supra* note 2, at 104 (Rule 10.3.3). But until more jurisdictions adopt a public domain system, the published reporters are the best we've got.

the *Bluebook* were burned, their absence would not be noticed.”¹⁰¹ Provocative. But let’s play the hypothetical forward. To the extent lawyers, judges, students, and academics in a post-*Bluebook* world endeavored to communicate their references in a reasonable and clear manner, *The Bluebook* would still exert its influence, because efficient communication requires a baseline of shared understanding among writers and readers.¹⁰² Of course, that shared understanding could be based on a system of rules *other* than *The Bluebook*. But some baseline is necessary.¹⁰³

As an example, under a *Bluebook*-less system in which the author must simply provide a reasonable citation, she might cite *United States v. Kaffee* like this: *U.S. v. Kaffee*, 182 F.Supp. 748, 750 (D.C. Dist. Ct. 1960). Alternatively, she might do this: *U.S.A. v. D. Kaffee*, 1960 *Federal Suppl.* CLXXXII 750.

Neither citation is correct under *The Bluebook*. But the first citation, despite its errors, is reasonable. The second citation—based on Bryan Garner’s example of the format preferred by the *Oxford English Dictionary*—is not.¹⁰⁴ Regarding the *OED* format, Mr. Garner explained: “If I were to use such forms in the *Oxford Law Dictionary*, the profession might justifiably ride me out of town on a rail.”¹⁰⁵ The Roman-numeral-laden citation would result in a rail ride for Mr. Garner because, though it seemed reasonable to the editors of the *Oxford English Dictionary*, it most certainly is not reasonable to lawyers in the United States.

Lawyers don’t determine the reasonableness of citation formats in a vacuum. Rather, reasonableness is judged (at least in part) in reference to *The Bluebook*, which provides the foundation for the generally shared citation customs that govern legal professionals in the United States. Many students serve as editors on law journals, where they learn the rule-laden Whitepages. And their understanding of that system informs their judgment regarding what looks “right,” even after they enter practice. Any concept of citation reasonableness therefore cannot easily be divorced from *The Bluebook*, because without *The Bluebook*’s foundation, the notion of “reasonableness” becomes detached from any shared understanding among writers and readers.¹⁰⁶

101. POSNER, REFLECTIONS, *supra* note 20, at 104.

102. See *infra* note 106 and accompanying text.

103. I’m assuming here that when people clamor to eliminate *The Bluebook*, they are not seeking to replace it with an equally complex yet substantively different system of citation. My point here, therefore, is not that we need *The Bluebook*’s rules, but that we need *some* rules. And rules of any kind are likely to make some critics unhappy. As Professor Joe Miller helpfully observed, an alternative title for this essay could be “If *The Bluebook* Didn’t Exist We’d Have to Invent It.” See *Episode 118: Harmonization Costs*, ORAL ARGUMENT (Nov. 19, 2016), <http://oralargument.org/118>.

104. Garner, *Uninformed*, *supra* note 35, at 194.

105. *Id.*

106. The question of whether one can define “reasonableness” without reference to some collective understanding is (fortunately) beyond the scope of this essay. But consider *The Restatement (Second) of Torts*, which provides that when determining whether a party’s conduct was reasonable, “the customs of the community, or of others under like circumstances, are

Notably, even Judge Posner implicitly adopts *The Bluebook* as a necessary foundation for legal citation. Of course, on the surface he renounces “the *Bluebook* and every other manual of citation form.”¹⁰⁷ His “handbook tells the clerks not to use the *Bluebook* or any other citation-form manual, but instead to follow the handbook’s very brief instructions on citation form”¹⁰⁸ But despite his assertions, Judge Posner’s handbook does not actually replace *The Bluebook*. Instead, the instructions are about fifty percent *Bluebook* supplement, and fifty percent advice on how to free-ride on others’ Bluebooking.

Judge Posner shared his personal “citation system” in 2011, as part of his review of the Nineteenth Edition of *The Bluebook*.¹⁰⁹ This five-page guide does not constitute a separate, independent, or revolutionary set of citation instructions, because the guide would make no sense to someone unfamiliar with *The Bluebook*. For example, here are Judge Posner’s complete instructions for naming cases:

- 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*.¹¹⁰

These three points do not compose a citation system; rather, they constitute a short list of idiosyncratic departures from a more complete system. Taken at face value, Judge Posner’s guide would permit *The United States of America v. Danny Kaffee* as the citation for a case the rest of us would call *United States v. Kaffee*. But of course, Judge Posner’s decisions don’t contain those strange sorts of citations, because Judge Posner’s guide contains an unwritten but understood instruction to his law clerks: “First, know *The Bluebook* rules. Then make the following changes”¹¹¹

factors to be taken into account.” RESTATEMENT (SECOND) OF TORTS § 295A (1965). Or to go another way, with apologies to Ludwig Wittgenstein: You cannot have a private system of citation.

107. POSNER, REFLECTIONS, *supra* note 20, at 97.

108. RICHARD A. POSNER, DIVERGENT PATHS: THE ACADEMY AND THE JUDICIARY 298 n.1 (2016); Posner, *Blues*, *supra* note 4, at 854.

109. Posner, *Blues*, *supra* note 4, at 854-57.

110. *Id.* at 855.

111. Judge Posner is not alone here. The previously discussed departures from *The Bluebook* are often structured as modifications rather than wholesale replacements. See, e.g., *Wash. Style Sheet*, *supra* note 83 (providing exceptions to various *Bluebook* rules for Washington practitioners and courts). I have no quarrel with those other jurisdictions’ modifications, just like I have no quarrel with Judge Posner’s citations. They are perfectly fine; his system works for him. But the system that produces Judge Posner’s citations likely would not work in a more complex writing and editing environment. Nor would it work without the implicit foundation of *The Bluebook*, which his law clerks have no doubt already learned.

For this nonsystem system to work, Judge Posner must necessarily free-ride on the citation work of others. In part, he asks his law clerks to rely on the reasoned decisions of previous law clerks: “When in doubt, check old opinions.”¹¹² This system creates a kind of common law of citation, which could be just as complex as *The Bluebook*’s system of specific rules.¹¹³ But unlike *The Bluebook*—in which the rules are written, explained, and organized—this common-law system is hidden away within decades of old opinions.¹¹⁴

And if previous opinions don’t provide a citation precedent, what then? Until recently, Judge Posner’s guide instructed his clerks to “check the D.C. Circuit—they’re the real sticklers.”¹¹⁵ Here the game is up. Instead of using *The Bluebook*, which is a waste of time, Judge Posner’s law clerks were instructed to free-ride on the citation work of *other* chambers, in which law clerks presumably used *The Bluebook* to create proper citations.¹¹⁶ If all the copies of *The Bluebook* were burned, soon the D.C. Circuit clerks would stop churning out citation formats for others to follow.¹¹⁷ It turns out we actually rely on all those rules a bit more than we might like to admit.

III. The New Kid on the Block: *The Indigo Book*

The great irony here is that *The Bluebook*’s strict and numerous rules, which have survived and expanded despite decades of criticism, may soon lead to its downfall. If *The Bluebook* were based on a system of standards requiring the exercise of reasonable judgments, then the system would likely not be capable of embodiment in a computer program. As a system of clear rules, however, *The Bluebook* represents a tempting target for replacement via automation.

The targeting has begun. In 2009, Professor Frank Bennett began working on a software program called “Multilingual Zotero,” which would allow legal writers to automate the citation process.¹¹⁸ His goal was to “improve the

112. Posner, *Blues*, *supra* note 4, at 855.

113. See Kaplow, *supra* note 27, at 577-79, 583-84 (describing the complexity of a system of standards that, over time, adopts applications as general rules to apply going forward).

114. If there were truly no value in uniformity, there would be no need to look up how previous opinions had referenced a source.

115. Posner, *Blues*, *supra* note 4, at 855.

116. Judge Posner was kind enough to email me his comments on an earlier draft of his essay. See e-mail from Richard Posner to author (Nov. 21, 2016) (on file with author). He attached the current version of the citation guide he’d previously published in the *Yale Law Journal* in 2011. See Posner, *Blues*, *supra* note 4, at 854-57. Unlike the 2011 version, which instructed clerks to “check the D.C. Circuit—they’re the real sticklers,” *id.* at 855, the new guide merely instructs clerks to “ask” Judge Posner himself if “old opinions” are not helpful, see e-mail from Richard Posner to author (Nov. 21, 2016).

117. The simplicity of Judge Posner’s citation system reminds me of Steve Martin’s bit: You can be a millionaire and never pay taxes. First, get a million dollars. See Steve Martin, *You Can Be a Millionaire*, YOUTUBE (Mar. 17, 2015), https://www.youtube.com/watch?v=zXmQW_aqBks.

118. See Carl Malamud, Opinion, *The Blue Wars: A Report from the Front*, HARV. L. REC. (Mar. 21, 2016), <http://hlrecord.org/2016/03/the-blue-wars-a-report-from-the-front/> [https://perma.

quality of our research lives by allowing us, as a community, to spend less time assembling documents and more time thinking about what should go into them.”¹¹⁹ To achieve this goal, Professor Bennett needed to incorporate *The Bluebook*’s citation system into his program.¹²⁰

This seemingly simple need turned into a lengthy battle over intellectual property, a full analysis of which is beyond the scope of this essay.¹²¹ The short version: When Professor Bennett read the terms of use for *The Bluebook Online*, he encountered language that, if interpreted broadly, might prohibit the writing of software that implemented the *Bluebook* system.¹²² Instead of just writing the software anyway, Professor Bennett asked for permission; the editors of *The Bluebook* said no.¹²³ And then the lawyers got involved.¹²⁴

The Bluebook lost the battle with Professor Bennett; his Zotero software implements *The Bluebook* style.¹²⁵ Not only that, but in the process *The Bluebook* managed to start a new, much more important battle—and then lost that one as well. When Carl Malamud of Public.Resource.Org and Christopher Sprigman of NYU School of Law heard about Professor Bennett’s troubles, they had a realization: The system of citation at the heart of *The Bluebook* is not copyrightable. Rather, the “collection of rules, abbreviations, [and] algorithms” expressed in *The Bluebook* is a system that can be expressed only one way, and is therefore incapable of copyright protection.¹²⁶

So Mr. Malamud and Professor Sprigman went about creating a new, copyright-free, “no rights reserved” implementation of the *Bluebook* system, now known as *The Indigo Book*. It’s available free online, in HTML and PDF formats, at <https://law.resource.org/pub/us/code/blue/IndigoBook.html>. “*The Indigo Book* isn’t the same as *The Bluebook*, but it does implement the same Uniform

cc/CY4B-Q9FM]; see also Bennett, *Out of the Box*, *supra* note 93, at 1.

119. Bennett, *Out of the Box*, *supra* note 93, at 1.

120. *Id.* at 9-11.

121. It’s also well beyond the scope of my expertise, so I’m staying out of it. For a concise rundown, see Malamud, *supra* note 118 (explaining the IP dispute with helpful links to primary documents). For Professor Bennett’s own recounting of the story, see Frank G. Bennett (as FGBJR), *The Bluebook: A Plot Summary*, CITATIONSTYLIST (May 16, 2014), <http://citationstylist.org/2014/05/16/the-bluebook-a-plot-summary/> [<https://perma.cc/XF7L-X7CE>] [hereinafter Bennett, *Plot Summary*] (“clos[ing] a chapter in the tale of legal style support in Multilingual Zotero”).

122. *Id.*

123. *Id.*

124. *Id.*; see also Malamud, *supra* note 118 (providing links to letters written to and from The Harvard Law Review Association and its lawyers at Ropes & Gray LLP).

125. See Bennett, *Plot Summary*, *supra* note 121.

126. Malamud, *supra* note 118 (citing 17 U.S.C. § 102(b) (2012), which limits copyright protection). For a much more in-depth discussion of *The Bluebook*’s copyrightability, listen to the discussion in *Episode 88: The Blue Line*, *supra* note 90 (including a discussion of how *The Bluebook* is like and unlike a cookbook and sheet music).

System of Citation that *The Bluebook* does.”¹²⁷ The authors promise that “[f]or the materials that it covers, anyone using *The Indigo Book* will produce briefs, memoranda, law review articles, and other legal documents with citations that are compatible with the Uniform System of Citation.”¹²⁸

The Indigo Book's attack is simple and ingenious. Unlike previous competitors that offered alternative (and purportedly better) citation systems to dethrone *The Bluebook*,¹²⁹ *The Indigo Book* makes the decision easier for consumers. We don't have to choose between citation systems; we get the same familiar citation system, but we now get it for free. Professor Sprigman explains this strategic choice:

[O]ur decision to make *The Indigo Book* compatible with *The Bluebook*'s Uniform System of Citation was mostly self-interested and strategic—we want people to adopt *The Indigo Book*, and the best way to achieve that goal, we reasoned, was to give people a citation guide that they could use to produce documents that look as if they used *The Bluebook*.¹³⁰

The Indigo Book's future is intriguing. I've assigned it this year as a permissible alternative to *The Bluebook*, though its potential benefits for students seem more financial than pedagogical. I suppose students may enjoy *The Indigo Book*'s more-entertaining illustrative examples. Here's one: *The Indigo Book* demonstrates its rule regarding procedural phrases in case names with *Affleck ex rel. Damon v. Kimmel*¹³¹ instead of *The Bluebook*'s boring *Massachusetts ex rel. Kennedy v. Armbruster*.¹³² But even a late-night TV host, the new Batman, and a math genius from the

127. Originally, the project was called “Baby Blue,” but that title ran into intellectual property problems as well, so the name was changed. See Mike Masnick, *Public Domain Citation Book, Baby Blue, Renamed to Indigo Book, Following Harvard Law Review Threats*, TECHDIRT (Apr. 20, 2016, 11:25 PM), <https://www.techdirt.com/articles/20160420/17072634229/public-domain-citation-book-baby-blue-renamed-to-indigo-book-following-harvard-law-review-threats.shtml> [<https://perma.cc/ZF4FVHGG>]. For a more sympathetic view of *The Bluebook*'s claim against a “blue” competitor, see David Post, Opinion, *Mood Indigo*, WASH. POST: THE VOLOKH CONSPIRACY (Apr. 21, 2016), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/04/21/mood-indigo/?utm_term=.7a00c132ed68.

128. *Id.*

129. See, e.g., Hurt, *supra* note 7, at 1280 (noting that *The Bluebook*'s “monopoly position” creates strong barriers to entry for competitors like *The Maroonbook*). Professor Hurt was writing in 2002, just two years after the Association of Legal Writing Directors published the *ALWD Citation Manual: A Professional System of Citation* and its alternative system of citation. See *id.* at 1259. She predicted that the institutional power of legal writing directors and instructors would be sufficient to overcome *The Bluebook*'s dominance. *Id.* at 1299. Twelve years later, *ALWD*'s fifth edition represented a “complete surrender” to *The Bluebook*'s system. See Peter W. Martin, *The ALWD Guide Capitulates*, CITING LEGALLY (May 13, 2014, 6:34 PM), <http://citeblog.access-to-law.com/?p=185> [<https://perma.cc/6ACW-6L6G>]. As Professor Martin explains: “In the fifth edition, the publication's ambition appears reduced to doing a better job than *The Bluebook* of delivering *Bluebook* content.” *Id.*

130. THE INDIGO BOOK, *supra* note 127, at 9.

131. *Id.* at 24.

132. BLUEBOOK (20th ed.), *supra* note 2, at 98.

rough side of town can do only so much to spark student interest in a rule about *In re* and *ex rel*. The substantive explanations of the rule are essentially the same—equally helpful or confusing, depending on your point of view.¹³³

But quibbling about the clarity of *The Indigo Book*'s explanations is beside the point, because the project's primary goal is not to improve rule explanations. For improved explanations, you'd be better off looking to Peter Martin's excellent (and also freely available) *Introduction to Basic Legal Citation*, which teaches citation principles with a pedagogical focus, including instructional videos and robust explanations.¹³⁴ And of course Coleen M. Barger's *ALWD Citation Manual: A Professional System of Citation*, published under the auspices of the Association of Legal Writing Directors, prides itself as a teaching book,¹³⁵ as opposed to *The Bluebook*'s more reference-like approach.

No, *The Indigo Book* has slightly different goals. As Professor Sprigman explains, the project frees *The Bluebook* system "in two different ways that are equally important."¹³⁶ First, *The Indigo Book* is literally free. Students, academics, and practitioners alike can now access a citation guide without lining the pockets of Ivy League law journal editors.¹³⁷ Second, *The Indigo Book* is "free of the restrictions of copyright" so everyone is "free to copy and distribute this work, and—most importantly—to improve on it."¹³⁸

On the first point, *The Indigo Book* has already succeeded. It's available, and it's free. Huzzah. But we should not overstate the benefits of this accomplishment.

133. *The Indigo Book* explains the rule this way:

When you see "on the relation of," "on behalf of," and similar expressions, replace with "*ex rel.*" . . . When you see "in the matter of," "petition of," and similar expressions, replace with "*In re*", except do not use "*In re*", or any procedural phrases besides "*ex rel.*" when the case name contains the name of an adversary.

THE INDIGO BOOK, *supra* note 127, at 24. In contrast, *The Bluebook* rule reads:

Abbreviate "on the relation of," "for the use of," "on behalf of," "as next friend of," and similar expressions to "*ex rel.*" Abbreviate "in the matter of," "petition of," "application of," and similar expressions to "*In re.*" Omit all procedural phrases except the first. When adversary parties are named, omit all procedural phrases except "*ex rel.*"

BLUEBOOK (20th ed.), *supra* note 2, at 97. Reasonable minds can disagree. *The Bluebook* version is more detailed. *The Indigo Book* version is more concise. Because the two books explain the same rules, the explanations themselves have a limited potential for divergence.

134. See generally Peter W. Martin, *Introduction to Basic Legal Citation* (online ed. 2016), LEGAL INFO. INST., <https://www.law.cornell.edu/citation/> [hereinafter Martin, *Basic Legal Citation*]. Links to Professor Martin's videos are available on the introductory page of his online guide. For an example involving judicial opinions, see Peter W. Martin, *Citing Judicial Opinions*, ACCESS TO L., http://www.access-to-law.com/citation/videos/citing_judicial_opinions.html.

135. ASS'N OF LEGAL WRITING DIRECTORS & COLEEN M. BERGER, *ALWD GUIDE TO LEGAL CITATION* xxiii (5th ed. 2014) (describing the guide's goals to provide a "text that was easy to use, easy to teach from, and easy to learn from").

136. THE INDIGO BOOK, *supra* note 127, at 8.

137. *Id.*

138. *Id.* (emphasis added).

In the lead-up to *The Indigo Book's* release, law schools across the country began circulating petitions in support of *The Indigo Book* as a mission of social justice. Here's a sample from Stanford Law School:

Open and unimpeded access to the law and legal rules is critical to public engagement in democratic institutions. As members of the Stanford Law Community, we believe that no private institution should have the right to monopolize and control access to a system of citation necessary to practice the law in this country. The ability of all members of the public to obtain, read, and understand legal rules is essential to both the effective administration of justice and to the core principles of democracy: participation, transparency, and accountability. Everyone, regardless of wealth or status, should be able to cite the law. As such, we support the efforts . . . to make the basic system of Bluebook citation available to the public.¹³⁹

This is a bit much. *The law* should, of course, be freely available to the public.¹⁴⁰ Detailed systems of citation designed for law journal editors, however, rank somewhat lower in importance. For one thing, citation guides are already freely available on the Internet.¹⁴¹ For another, the law itself is the critical ingredient for justice and democracy. People with access to the law—whether online, through a library, or otherwise—can likely use that method of access to find a citation guide, if they so desire. For yet another, as a practical matter, pro se litigants just aren't "required to follow proper legal citation form."¹⁴² Courts might be tough on lawyers for improper citation format,¹⁴³ but pro se litigants rightfully get a pass.¹⁴⁴

139. *Stanford Law Petition in Support of Baby Blue*, GOOGLE DOCS, https://docs.google.com/forms/d/e/1FAIpQLSfKfGJKojSWKq2ZoUxJzscIJPOX-YC_4Y2STyAMg65XQ6G_4Q/viewform [<https://perma.cc/5779-5PDE>] (last visited Sept. 27, 2016); *see also NYU Law Supports Baby Blue*, GOOGLE DOCS, https://docs.google.com/forms/d/e/1FAIpQLSekUsUMFhs_rpnUFHNDz_Fcd-xMKyx_-EV84LdKwCmm2krGA/viewform [<https://perma.cc/47HU-PCPH>] (last visited Sept. 27, 2016); Harvard Baby Blue Support Letter (on file with author), In Support of Baby Blue (on file with author) (providing signatures and support from "members of the Yale Law School community").
140. *See, e.g.*, 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 L. REV. 491, 519–20 (2007) (describing the difficulty searching for historical legal materials on government-operated web services); John Schwartz, *An Effort to Upgrade a Court Archive System to Free and Easy*, N.Y. TIMES (Feb. 12, 2009), http://www.nytimes.com/2009/02/13/us/13records.html?pagewanted=all&_r=0 [<https://perma.cc/7A57-C8YY>] (describing Carl Malamud's efforts to create a free, publicly accessible, PACER-like service).
141. *See, e.g.*, Martin, *Basic Legal Citation*, *supra* note 134; COLUMBIA HUMAN RIGHTS LAW REVIEW, A JAILHOUSE LAWYER'S MANUAL 18–20 (10th ed. 2014), <http://blogs2.law.columbia.edu/jlm/current-edition/> (providing citation advice to pro se prison litigants).
142. *Abassi v. I.N.S.*, 305 F.3d 1028, 1031–32 (9th Cir. 2002).
143. *See, e.g., supra* note 85 (providing an example of a judge chiding counsel for not following *The Bluebook*).
144. To research this point, I read every case in Westlaw's database that included the term "pro se" and "Bluebook." Many involved disputes over the value of cars. Many involved helpful

The Indigo Book's second freedom, however—freedom from copyright protection—is a big deal.¹⁴⁵ The copyright protection enjoyed by *The Bluebook* means that the editor law reviews have complete control over its content. They control what changes are made and, more importantly, they control *when* changes are made, which then triggers the need for everyone to purchase a new *Bluebook*. You can imagine that this ability to tweak some rules, issue a new edition, and magically create an avalanche of new revenue might be viewed skeptically by the purchasing public.¹⁴⁶

Under *The Indigo Book's* open-access system, changes can be made whenever deemed necessary. And those changes can instantly be distributed for free without the need to buy a new “edition” of *The Indigo Book*. The problem of version obsolescence disappears.¹⁴⁷

You may have noticed I used the passive voice in the previous paragraph. I had no other option. As of now, who controls development of *The Indigo Book* remains an open question. Its preface asserts that we, the readers and users of

judges explaining citation conventions to pro se litigants. Many chided practicing lawyers for violating *The Bluebook* in cases that just happened to otherwise include a pro se litigant. See, e.g., *Garrett v. Miller*, No. 02 C 5437, 2003 WL 1790954, at *1 n.2 (N.D. Ill. Apr. 1, 2003) (“A few mistakes may be tolerable, but his blatant failure to follow proper citation format is inexcusable.”). And many more, hilariously (at least to me in this context), noted a pro se litigant’s proper Bluebooking as evidence that a practicing lawyer was ghostwriting the litigant’s briefs. See, e.g., *Freije v. Clinton*, No. 5:11-CV-0685 GTS/RFT, 2012 WL 5930628, at *6 n.6 (N.D.N.Y. Nov. 27, 2012) (noting the plaintiff’s papers were “organized, typewritten, and contain citations to dozens of instructive legal authorities in proper *BlueBook* [sic] format” and therefore “suspect[ing] that Plaintiff has been aided by an attorney in this action, despite his sworn statement to the contrary”).

In a single outlier case, the court chided a pro se litigant for not following *The Bluebook*. But the complaint was not one of citation form. In *Ramsey v. Review Board of Indiana Department of Workforce Development*, the court remarked on the litigant’s failure to provide pinpoint citations “to help [the court] determine where, within a decision, support for his contentions may be found.” 789 N.E.2d 486, 490 (Ind. Ct. App. 2003). But that’s less a matter of form than substance, which should be provided under any system.

145. Cf. John Dickerson, *WTF Did Biden Just Say?*, SLATE (Mar. 23, 2010, 7:43 PM), http://www.slate.com/articles/news_and_politics/politics/2010/03/wtf_did_biden_just_say.html [<https://perma.cc/M2QJ-XK2S>] (quoting Vice President Biden speaking to President Obama regarding the signing of the Affordable Care Act).

146. See, e.g., Jim C. Chen, *Something Old, Something New, Something Borrowed, Something Blue*, 58 U. CHI. L. REV. 1527, 1530 (1991) (“New editions appear not when the revisionist spirit grips law review editors in Cambridge, New Haven, New York, and Philadelphia, but when revenues from *Bluebook* sales dip unacceptably.”). Recently, however, *The Bluebook* seems to have settled into an every-five-year cycle.

Even without the profit motive, however, small changes can be annoying for those who have memorized the rules from a previous edition. Citations to “CA2” must be changed to “2d Cir.”; “Southeastern” goes from “S.E.” to “Se.” See Bryan A. Garner, *The Bluebook's 20th Edition Prompts Many Musings from Bryan Garner*, ABA J. (Aug. 1, 2015, 6:45 AM), http://www.abajournal.com/magazine/article/the_bluebooks_20th_edition_prompts_many_musings_from_bryan_garner [<https://perma.cc/Y7ZA-gLPZ>].

147. Cf. Garner, *supra* note 146 (“What I’ve come to realize is that when it comes to *The Bluebook*, small changes are made for the sake of making small changes.”).

the citation system, should “use it, copy it, distribute it, and—we hope—*improve it*.”¹⁴⁸ After we have made improvements, *The Indigo Book* encourages us to “give [our improvements to the world].”¹⁴⁹ In other words, *The Indigo Book* is not a new citation system; it is an invitation down a path toward a new citation system.

But where does this path lead? If *The Indigo Book*’s goal is “a more sensible, flexible system of legal citation,”¹⁵⁰ then spawning thousands of individually hand-crafted artisanal citation guides doesn’t seem a step in the right direction. Perhaps the invisible hand of the market will somehow sort competing revisions. Or perhaps, like Wikipedia, an open community of volunteer editors and citation experts will review and update *The Indigo Book*’s system.¹⁵¹ Even Wikipedia, however, includes individuals who exercise editorial “oversight and control” over content.¹⁵² Who will fill that role for *The Indigo Book*?

Once a system of control is established, that control must be exercised. How? Though *The Bluebook*’s about-every-five-years cycle has problems,¹⁵³ its regularity and predictability are also advantages. Unlike a Wikipedia article, you don’t have to worry that a *Bluebook* rule will change in the middle of the night on a random Tuesday. Will changes to *The Indigo Book* follow a regular schedule? Will users be alerted? Will a public “notice and comment” process be adopted?

These questions are not criticisms of *The Indigo Book*. Its project is so unlike previous citation guides that we are truly in uncharted territory. And as *The Indigo Book* diverges from its initial *Bluebook* path, an understanding of this new territory’s rulers (or lack of rulers) might provide a better understanding about the project’s future. For better or for worse, *The Bluebook* is controlled by a group of law review editors, with the assistance and guidance of many library professionals.¹⁵⁴ *The Maroonbook* was created by a different set of law

148. THE INDIGO BOOK, *supra* note 127, at 9 (emphasis added).

149. *Id.*

150. *Id.*

151. Professor Sprigman was kind enough to respond to my request for comment on this point. He envisions a system similar to that of open-source software, in which a core group of interested users organize and manage an ongoing improvement process. But like the rest of us, Professor Sprigman must wait to see how the broader legal community organizes in response to *The Indigo Book*. See e-mail from Christopher Sprigman to author (Oct. 29, 2016) (on file with author).

152. *Wikipedia: Editorial Oversight and Control*, WIKIPEDIA: THE FREE ENCYCLOPEDIA, https://en.wikipedia.org/wiki/Wikipedia:Editorial_oversight_and_control (last visited Sept. 28, 2016).

153. See discussion *supra* text accompanying notes 146–47.

154. See BLUEBOOK (20th ed.), *supra* note 2, at viii–ix (thanking, among others, the American Society of International Law; various “experts in foreign legal citation”; Mary Miles Prince, who serves as the Coordinating Editor of *The Bluebook* and the Associate Director for Library Services at Vanderbilt University Law School Library; the Directorate of Legal Research of the Law Library of Congress; and “the law journal editors, law librarians, and practitioners who responded to [*The Bluebook*’s] call for suggestions with helpful advice and comments”).

review editors with a different concept of editorial efficiency. And *The ALWD Manual* was created to wrest control from the students and into the hands of legal writing professionals.¹⁵⁵ The differing characteristics of those controlling entities shaped their respective projects.

If, as with Wikipedia, legal citation is left to a loosely regulated group of volunteer editors, I'm skeptical that a simpler citation system will result. Wikipedia, after all, is a vast and sprawling web, which has given us a forty-two-page article on canonical *Star Wars* characters,¹⁵⁶ along with a twenty-nine-page article listing noncanonical characters.¹⁵⁷ Simplicity and concision are not always Wikipedia's strong suits.¹⁵⁸ And though many people prefer Wikipedia to old-fashioned paper encyclopedias, a shorter, simpler structure is not a point in Wikipedia's favor. We'll know soon enough if *The Indigo Book* will follow a similar path.

Conclusion

Despite this essay's best efforts, I predict everybody will continue to hate *The Bluebook*. If your particular hatred is based on cost, then perhaps *The Indigo Book* will ease your aggravation. But I suspect that for most people, the real problem is this: They don't like looking up or memorizing seemingly arbitrary rules. Unfortunately, we are not authors of free-form creative fiction. When lawyers write, we must communicate clearly and precisely to other members of the legal community. And we must work with other lawyers to draft our motions, memoranda, and articles. That communication and collaboration requires shared rules.¹⁵⁹

If you are a student law-journal editor, then familiarity with the full *Bluebook* is a price you pay for working with a group of dedicated peers on a massive project—editing and publishing multiple volumes of legal scholarship over two years. Compared with the benefits of journal membership, it's a small price.¹⁶⁰ And if you're a lawyer writing for practice, then take comfort in the fact that

155. Hurt, *supra* note 7, at 1282 (celebrating the replacement of law students with “a group of learned professionals” as the authoritative curators of citation rules).

156. *List of Star Wars Characters*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_Star_Wars_characters (last visited Sept. 28, 2016).

157. *List of Star Wars Legends Characters*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_Star_Wars_Legends_characters (last visited Sept. 28, 2016).

158. Moreover, current gripes about *The Bluebook* play out on Twitter, around the water cooler, and on legal writing blogs or Listservs. See, e.g., *Another Stupid Bluebook Rule*, LEGAL WRITING PROF BLOG (Sept. 28, 2016), <http://lawprofessors.typepad.com/legalwriting/2016/09/another-stupid-bluebook-rule.html> [<https://perma.cc/HD9B-DMQH>]. Imagine if instead those arguments played out with competing edits to a publicly available rule?

159. Cf. Scalia, *supra* note 43, at 1179 (“There are times when even a bad rule is better than no rule at all.”).

160. See Garner, *Uninformed*, *supra* note 35, at 195 (“How difficult is the *Bluebook* to learn? A run-of-the-mill law student, I had mastered the essentials within my first two weeks of law school, without any special effort.”).

you've graduated from law school and are therefore free from the dense tyranny of the Whitepages' 175 pages of detailed rules.¹⁶¹ Sure, you're still expected to comply with the Bluepages' simplified and flexible system. And you'll have to deal with recently graduated law-review editors "correcting" your citations. And you'll also have to talk to your colleagues about how to consistently cite sources within a brief. No book can eliminate the need to cite authorities and work with other lawyers. This is the business we've chosen.¹⁶²

161. Cf. Sirico, *supra* note 4, at 1275 (noting that many practitioners have rejected the details of *The Bluebook*).

162. Cf. *THE GODFATHER PART II* (Paramount Pictures 1974).