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Bluebooks, Filled Milk, and Infield Flies: Deconstruction, the Footnote, and a Uniform System of Citation

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BOOK REVIEW¹

BLUEBOOKS,² FILLED MILK,³ AND INFIELD FLIES:⁴ DECONSTRUCTION, THE FOOTNOTE, AND A UNIFORM SYSTEM OF CITATION⁵

CHRISTOPHER W. LANE[†]

I would have liked to have written an essay about the relationship of law to literature—to deconstruct the opposition between them and, in the process, to say a few words about deconstructive techniques in general. . . . [B]ut as I began to write, I was irresistibly drawn to another problem—different and yet not so different: the problem of the footnote.

J.M. Balkin⁶

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1. It was Professor Fred Rodell of Yale Law School who first noted: [w]hen it comes to the book reviews, company manners are not so strictly enforced and it is occasionally possible to talk out loud or crack a joke. As a result, the book reviews are stuck away in the back like country cousins and anyone who wants to take off his shoes and feel at home in a law review will do well to come in by way of the kitchen.

Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 44 (1936) [hereinafter *Goodbye*], quoted in Mary I. Coombs, *Lowering One's Cites: A (Sort of) Review of the University of Chicago Manual of Legal Citation* (book review), 76 VA. L. REV. 1099 n.1 (1990) [hereinafter *Sort Of*] (what the hell, all law review articles are derivative). For an explanation of unconventional signals you really should see now *infra* notes 113, 121-125 and accompanying text.

2. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia L. Rev. et al. eds., 15th ed. 1991) [hereinafter *The Bluebook*]. *The Bluebook* is so named from the color of the cover. See Edmond Cahn, *The Editor's Secret*, 28 N.Y.U. L. REV. 922, 925 n.6 (1953) [hereinafter *Secret*] (highlighting a perfect example of the use of a footnote to make an obvious and unnecessary point). See also Scott M. Martin, *The Law Review Citadel: Rodell Revisited*, 71 IOWA L. REV. 1093, 1097 n.18 (1986) [hereinafter *Law Review Citadel*] (criticizing Cahn's footnote 6 as "an unnecessary explanatory footnote").

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3. This is a reference to the famous (or infamous) footnote four in *United States v. Carolene Products Co.*, 304 U.S. 144 (1938). This opinion, written by Justice Harlan Fiske Stone, has been the subject of reams of critical commentary and grist for the law review mill. See JOHN H. ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* 75-77 (1980); LOUIS LUSKY, *BY WHAT RIGHT?: A COMMENTARY ON THE SUPREME COURT'S POWER TO REVISE THE CONSTITUTION* 108-12 (1975); Bruce A. Ackerman, *Beyond Carolene Products*, 98 HARV. L. REV. 713 (1985); J. M. Balkin, *The Footnote*, 83 NW. U.L. REV. 275 (1989) [hereinafter *The Footnote*] (deconstructing footnotes in general, and particularly footnote four of *Carolene Products*); Milner S. Ball, *Judicial Protection of Powerless Minorities*, 59 IOWA L. REV. 1059 (1974); Lea Brilmayer, *Carolene, Conflicts and the Fate of the "Insider-Outsider"*, 134 U. PA. L. REV. 1291 (1986); Robert M. Cover, *The Origins of Judicial Activism in the Protection of Minorities*, 91 YALE L. J. 1287 (1982); Louis Lusky, *Footnote Redux: A Carolene Products Reminiscence*, 82 COLUM. L. REV. 1093 (1982); Lewis F. Powell Jr., *Carolene Products Revisited*, 82 COLUM. L. REV. 1087 (1982).

Responses to Ely's commentary on footnote four of *Carolene Products* alone have generated a small library. See, e.g., James E. Meeks, *Symposium: Judicial Review versus Democracy*, 42 OHIO ST. L.J. 1 (1981); Laurence H. Tribe, *The Puzzling Persistence of Process-Based Constitutional Theories*, 89 YALE L.J. 1063 (1980); Samuel Estreicher, *Platonic Guardians of Democracy: John Hart Ely's Role for the Supreme Court in the Constitution's Open Texture* (book review), 56 N.Y.U. L. REV. 547 (1981); Douglas Laycock, *Taking Constitutions Seriously: A Theory of Judicial Review* (book review), 59 TEX. L. REV. 343 (1981). See also (please) Aside, *Don't Cry Over Filled Milk: The Neglected Footnote Three to Carolene Products*, 136 U. PA. L. REV. 1553 (1988) [hereinafter *Don't Cry*] (a tongue-firmly-in-cheek commentary on footnote three to *Carolene Products* and a discussion of "the law of dairy products, and of barnyard animals in general"). *Don't Cry* also includes an exhaustive (exhausting) listing of commentary on footnote four. *Id.* at 1553-54 n.3 (listing forty-three sources stating that "footnote four is important").

4. See Aside, *The Common Law Origins of the Infield Fly Rule*, 123 U. PA. L. REV. 1474 (1975) [hereinafter *Infield Fly*] (discussing (sort of) the common law origins of the Infield Fly Rule in baseball).

Professor Mary I. Coombs of the University of Miami has noted that the "University of Pennsylvania Law Review guerrillas-in-training have twice attacked [the contents, use, and existence of footnotes in legal writing] with the weapon of heavy-handed (or heavy-footed) irony." *Sort Of*, *supra* note 1, at 1101.

5. Do I really have to footnote this again?

6. *The Footnote*, *supra* note 3, at 275. For a discussion of importance (indeed necessity) of the "lead-in" quotation in differentiating law review articles, see Arthur D. Austin, *Footnotes as Product Differentiation*, 40 VAND. L. REV. 1131, 1143 (1987) [hereinafter *Footnote Products*]. Professor Austin suggests using something obscure, or something in Latin, from Shakespeare or *The Bible*. *Id.* at 1144. I prefer Professor Balkin. Professor Austin also notes that "[i]t is important that the lead-in quote be used without citation." *Id.* I respectfully disagree but note that Professor Balkin has used an unfootnoted quote from *Psalms* as the lead-in quotation to *The Footnote*. See *The Footnote*, *supra* note 3, at 275.

I. INTRODUCTION⁷

Lawyers,⁸ law professors,⁹ law review editors¹⁰ and law students¹¹ are a feisty lot. The majority of the time they happily pursue zealous representation within the adversary system. Occasionally, however, they turn on those august¹² institutions which gave them birth. Law reviews, in particular, have been the subject of a great deal of scholarly (and not so scholarly) criticism.¹³ The focus of this article is much narrower. What

7. The propriety of using headings in an article critical of law review convention is, at best, questionable, and, at worst, a sell-out for the sake of publication. Note, however, that "transitions" (why not call them headings?) are believed to aid the reader. See LYNN B. SQUIRES & MARJORIE ROMBAUER, *LEGAL WRITING IN A NUTSHELL* 49 (1982). In contrast, at least one author has seen fit to refer to a heading in the text of the article and omit that section entirely. See *Don't Cry*, *supra* note 3, at 1555. The author writes: "Part I of this Aside describes. . . . Part II does not exist. Part III discusses . . ." *Id.*

8. There is no support for this proposition other than it takes one to know one.

9. If you don't believe me, take a look at Professor Rodell's article wherein he refers to law reviews as "spinach." *Goodbye*, *supra* note 1, at 45. Professor Fred Rodell has offered a few choice words regarding footnotes:

The footnote foible breeds nothing but sloppy thinking, clumsy writing, and bad eyes. Any article that has to be explained or proved by being cluttered up with little numbers until it looks like the Acrosses and Downs of a crossword puzzle has no business being written. And if a writer does not really need footnotes and tacks them on just because they look pretty or because it is the thing to do, then he ought to be tried for willful murder of his reader's (all three of them) eyesight and patience.

Id. at 41. *Goodbye* is without a doubt the most notorious and most cited article on the subject. See, e.g., *Law Review Citadel*, *supra* note 2, at 1093 n.3 (citing articles citing *Goodbye*); see also Fred Rodell, *Goodbye to Law Reviews—Revisited*, 48 VA. L. REV. 279 (1962) [hereinafter *Goodbye-Revisited*].

10. See *Secret*, *supra* note 2 (pointing out the law review editor's special pedantry and devotion to form).

11. See generally *Don't Cry*, *supra* note 3.

12. Mayan or Julian? See *Sort Of*, *supra* note 1, at 1105.

13. Critiques of law reviews generally are numerous. See, e.g., W. Lawrence Church, *A Plea for Readable Law Review Articles*, 1989 WIS. L. REV. 739 [hereinafter *Readable Articles*] (self explanatory); Michael L. Closten, *A Proposed Code of Professional Responsibility for Law Reviews*, 63 NOTRE DAME L. REV. 55 (1988) (p.r. for l.r.); Roger C. Cramton, "The Most Remarkable Institution": *The American Law Review*, 36 J. LEGAL EDUC. 1 (1986) (discussing history of the law review article); Afton Dekanal, *Faculty-Edited Law Reviews: Should the Law Schools Join the Rest of Academe?*, 57 UMKC L. REV. 233 (1989) (suggesting that faculty edit law reviews); William O. Douglas, *Law Reviews and Full Disclosure*, 40 WASH. L. REV. 227 (1965) (Justice Douglas' plea for disclosure); Stanley H. Fuld, *A Judge Looks at the Law Review*, 28 N.Y.U. L. REV. 915 (1953) (the influence of law review on practitioners and judges); Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926 (1990) [hereinafter *Amok*] (scholars amok); Richard A. Mann, *The Use of Legal Periodicals by Courts and Journals*, 26 JURIMETRICS J. 400 (1986) (interesting tables showing how many times certain law reviews are cited); *Law Review Citadel*, *supra* note 2 (reply to Professor Fred Rodell's criticisms); Arthur Selwyn Miller, *The Myth of Objectivity in Legal Research and*

particularly concerns us here is the use of footnotes in legal writing and the jurisprudence of *The Bluebook: A Uniform System of Citation*¹⁴ (*The Bluebook*). Of somewhat lesser interest is the process known as “bluebooking” or, in its infinitive form, “to bluebook”.¹⁵

Law review articles have traditionally focused on substance rather than form.¹⁶ Of late, there has been a significant shift in focus.¹⁷ Through the efforts of the deconstruction movement,¹⁸ serious attention is now being paid to once seemingly peripheral or esoteric matters.¹⁹ The once lowly footnote has

Writing, 18 CATH. U. L. REV. 290 (1969) (the myth); Gerald L. Neuman, *Law Review Articles that Backfire*, 21 U. MICH. L. REV. 697 (1988) (self explanatory); John E. Nowak, *Woe Unto You, Law Reviews!*, 27 ARIZ. L. REV. 317 (1985) [hereinafter *Woe*] (again, self explanatory); Robert E. Riggs, *The Law Review Experience: The Participant View*, 31 J. LEGAL EDUC. 646 (1981) (dissatisfied law review members speak out); Joshua Rosenkranz, *Law Review's Empire*, 39 HASTINGS L. J. 859 (1988) (highly critical, believe me); Ronald D. Rotunda, *Law Reviews—The Extreme Centrist Position*, 62 IND. L. J. 1 (1986) (views); Michael I. Swygert & Jon W. Bruce, *The Historical Origins, Founding, and Early Developments of Student-Edited Law Reviews*, 36 HASTINGS L. J. 739 (1985) [hereinafter *Origins*] (clinical); Michael Vitiello, *In Defense of Student-Run Law Reviews*, 17 CUMB L. REV. 859 (1986-87) (a defender of the faith); Phil Nicols, Note, *A Student Defense of Student Edited Journals: In Response to Professor Roger Cramton*, 1987 DUKE L.J. 1122 (a student defender of the faith); Mike Antoline, *The New Law Reviews*, 17 STUDENT LAWYER 26 (May 1989) (survey of criticism); Chris Goodrich, *Professor, Edit Thyself*, 6 CAL. LAW. 49 (July 1986) (plea for faculty edited reviews).

14. *The Bluebook*, *supra* note 2.

15. See *Secret*, *supra* note 2, at 925 (finding that “we have invented an important new verb, ‘to bluebook.’”); Jim C. Chen, *Something Old, Something New, Something Borrowed, Something Blue*, 58 U. CHI. L. REV. 152 (1991) (book review) [hereinafter *Something Old*] (stating that “Bluebook has become a verb”).

16. *Sort Of*, *supra* note 1, at 1099 (noting that “[t]raditionally, law review articles have grappled with the substance of the law, embodied in the texts of either judicial opinions or other law review articles.”).

17. *Sort Of*, *supra* note 1, at 1099-1100. Professor Coombs describes this shift: More recently, serious attention has been paid to matters that might once have seemed peripheral—the style in which ideas are expressed (or hidden) and the marginalia of prior writings. . . . The shift in emphasis to form and fringe is not restricted to a single field but obtains in most academic disciplines. In particular, I suggest, there has been a general revolution in which commentary has become subject matter and footnote has become text.

Id.

18. See *id.* at 1100. Deconstruction is a movement which insists that the words not chosen are as important to interpretation and meaning as “central ideas”. The leading guerrilla of this revolution is Jacques Derrida. *Id.* But really should see J. M. Balkin, *Deconstructive Practice and Legal Theory*, 96 YALE L. J. 743 (1987) [hereinafter *Deconstruction*] (introducing the ideas of the French philosopher Jacques Derrida and the Idea of Derrida). See also *infra* note 28 and accompanying text.

19. See *Sort Of*, *supra* note 1, at 1099. Professor Coombs observes that while “[f]ootnotes may be low . . . they are frequently not least.” *Id.* at 1099-1100 n.4. See also *Footnote Products*, *supra* note 6; Ira Mark Ellman, *A Comparison of Law Faculty Produc-*

been elevated to the subject of scholarship, although one writer has observed this “trend as one of descending to the lowest common denominator”.²⁰

Taking aim at the “overwritten, over-footnoted style of legal writing”²¹ has grown in popularity since Professor Fred Rodell published *Goodbye to Law Reviews* in 1936.²² *The Bluebook* has also been the subject of some vehement criticism.²³ As a re-

tion in *Leading Law Reviews*, 33 J. LEGAL EDUC. 681, 688 Table 4 (1983) (ranking productivity by the total number of footnotes in published articles); Scott Finet, *The Most Frequently Cited Law Reviews and Legal Periodicals*, 9 LEGAL REFERENCE SERV. Q. 227 (1989) (compiling a list of who is cited most frequently); Milton Handler, *The Supreme Court's Footnote Addiction*, 58 N.Y. ST. B. J. 18 (Dec. 1986) [hereinafter *Addiction*] (ranking the Justices in terms of number of footnotes per opinion); Charles A. Johnson, *Citations to Authority in Supreme Court Opinions*, 7 LAW & POLICY 509 (1985) (systematic analysis of the citations used in majority opinions); James Leonard, *Seein' the Cites: A Guided Tour of Citation Patterns in Recent American Law Review Articles*, 34 ST. LOUIS U.L.J. 181 (1990) [hereinafter *Seein'*] (containing a ranking of citation frequencies by law review); Charles R. Maher, *The Infernal Footnote*, 70 A.B.A. J. 92 (April 1984) (heavily footnoted); Fred R. Shapiro, *The Most-Cited Law Review Articles*, 73 CAL. L. REV. 1540 (1985) (listing the most-cited law review articles of the last forty years); Louis J. Sirico, Jr. & Jeffrey B. Marquies, *The Citing of Law Reviews by the Supreme Court: An Empirical Study*, 34 UCLA L. REV. 131 (1986) (the citing of law reviews by the Supreme Court); William R. Slomanson, *The Bottom Line: Footnote Logic in Law Review Writing*, 7 LEGAL REFERENCE SERV. Q. 47 (1987) [hereinafter *Bottom Line*] (history and function of footnoting and *The Bluebook*); Edd D. Wheeler, *The Bottom Lines: Fifty Years of Legal Footnoting in Review*, 72 LAW LIBR. J. 245 (1979) [hereinafter *Legal Footnoting*] (footnote logic).

20. *Sort Of*, *supra* note 1, at 1099.

21. *Id.* at 1100.

22. *Goodbye*, *supra* note 1; see also *Sort Of*, *supra* note 1, at 1100 (noting that “[a] tradition of sniping at the . . . style . . . can be traced back at least as far as the Legal Realists”).

23. Readers may find the classic critique of *The Bluebook* contained in Judge Richard Posner's 1986 essay introducing *The University of Chicago Manual of Legal Citation*. See Richard A. Posner, *Goodbye to the Bluebook*, 53 U. CHI. L. REV. 1343 (1986) [hereinafter *Goodbye Bluebook*]. See also Paul Axel-Lute, *Legal Citation Form: Theory and Practice*, 75 LAW LIBR. J. 148 (1982) [hereinafter *Legal Citation Form*] (analyzing *The Bluebook* rules); Byron D. Cooper, *Anglo-American Legal Citation: Historical Development and Library Implications*, 75 LAW LIBR. J. 3 (1982) [hereinafter *Legal Citation*] (history of legal citation); Jonathan Pratter, *Pace the Blue Book*, 7 LEGAL REFERENCE SERV. Q. 311 (1987) (critiquing rule 19.2.5(a) of *The Bluebook's* fourteenth edition); *Don't Cry*, *supra* note 3, at 1558 (how life imitates *The Bluebook*); W. Duane Benton, *Developments in the Law-Legal Citation*, 86 YALE L. J. 197 (1976) [hereinafter *Developments in the Law*] (reviewing twelfth edition of *The Bluebook*); *Sort Of*, *supra* note 1 (reviewing (ostensibly) the *University of Chicago Manual of Legal Citation*); Gene W. Teitelbaum, *The Periodical Section of the "Uniform System of Citation," Thirteenth Edition: A Review and Some Suggestions*, 76 LAW LIBR. J. 264 (1983) [hereinafter *Some Suggestions*] (a critique); Ray DeLong, *Will the Bluebook be Marooned?*, 5 COMPLETE LAW. 13 (Winter 1988) [hereinafter *Marooned*] (analyzing the *University of Chicago Manual of Legal Citation*).

In addition, Alan L. Dworsky has published a panacea for “The Bluebook

sult, these two subjects have become seemingly separate fields of jurisprudence.²⁴ Over the years, alternatives to footnoting and *The Bluebook* have been proposed,²⁵ however, none has gained widespread acceptance. Law review articles and judicial opinions continue to be over-written and over-footnoted.²⁶ Thus, I feel compelled to add an additional voice to the chorus

Blues." See ALAN DWORSKY, *USER'S GUIDE TO A UNIFORM SYSTEM OF CITATION: A CURE FOR THE BLUEBOOK BLUES* (1988) [hereinafter *Bluebook Blues*].

24. I do not take the term "jurisprudence" lightly. One only has to witness such pieces as Gene Teitelbaum's article to realize that *The Bluebook* has developed into a separate branch of jurisprudence. See *Some Suggestions*, *supra* note 23.

25. Insofar as footnoting is concerned, the most revolutionary (and simple) alternative is to do away with it entirely. Judge Mikva suggested this solution in his 1985 article. See Abner J. Mikva, *Goodbye to Footnotes*, 56 U. COLO. L. REV. 647 (1985) [hereinafter *Goodbye Footnotes*]. Judge Mikva's article contains two footnotes: an asterisk at the beginning to identify the author and a cryptic and final "fn.4" at the end, undoubtedly referring to footnote four of *Carolene Products*. See *supra* note 3; *Sort Of*, *supra* note 1, at 1101 n.9.

Mikva, however, was only following in Rodell's footsteps. Rodell's first article was entirely devoid of footnotes. See generally *Goodbye*, *supra* note 1. Rodell's second article contained only one footnote: the obligatory identity asterisk. See *Goodbye-Revisited*, *supra* note 9. Professor Coombs has commented that, for this feature, Rodell's articles "may well be little noted, but long remembered." *Sort Of*, *supra* note 1, at 1101 n.9.

Likewise, Professor John Nowak's article provides another well-regarded critique, containing only four footnotes: two asterisks (one copyright and one identity) and two numbers. See *Woe*, *supra* note 13. Nowak pointed out, however, that footnote two was "a *propos* of nothing." *Id.* at 321 n.2.

When regarding alternatives to *The Bluebook*, Judge Posner's article (which contains only seven footnotes) is essential. See *Goodbye Bluebook*, *supra* note 23. The most prominent alternative to *The Bluebook* is *The University of Chicago Manual of Legal Citation* (U. Chi. L. Rev. & U. Chi. Legal F. eds., 1989) [hereinafter *Maroon Book*]. It should be noted that alternatives other than the *Maroon Book* exist. See *Florida Style Manual*, 15 FLA. ST. U. L. REV. 137 (1987) [hereinafter *Green Book*]; *Louisiana Law Review Streamlined Citation Manual*, 50 LA. L. REV. 197 (1989) [hereinafter *Red Book*].

26. See *Footnote Products*, *supra* note 6, at 1141 n.45. In 1987, Professor Arthur Austin calculated that the most footnotes in a law review article was 1247. *Id.* (citing Arnold S. Jacobs, *The Meaning of "Security" Under Rule 10b-5*, 29 N.Y.L. SCH. L. REV. 211 (1984) (containing 1247 footnotes)); *Should also see* David A. Kaplan, *The Article in a Law Review That Included the Most Footnotes Is . . .*, NAT'L L.J., Mar. 18, 1985, at 4. Further, Professor Austin found that the record holder for judicial opinions was *United States v. E. I. DuPont de Nemours & Co.*, 118 F. Supp. 41 (1953) (counting 1715 footnotes). *Footnote Products*, *supra* note 6, at 1141 n.45. Professor Coombs has done Professor Austin one better—only proving how bad things have really gotten. Coombs managed to locate two additional footnote laden articles. See *Sort Of*, *supra* note 1, at 1099 n.4. Coombs' quest uncovered an article with 1611 footnotes and an article with 4824 footnotes! *Id.* (citations omitted).

Incidentally, Professor Austin's article contains a modest 107 footnotes (although he admits the ideal number is in the 290 range). *Footnote Products*, *supra* note 6, at 1142. Professor Coombs' article, (allegedly a book review), contains slightly less than half that number at sixty. *Sort Of*, *supra* note 1, at 1111.

demanding a kinder, gentler, and saner system.²⁷

II. THREE WORDS ABOUT DECONSTRUCTION

Deconstruction is beautiful.²⁸

III. THE LONG AND WINDING ROAD²⁹

Judge Richard Posner has observed that *The Bluebook* is the “hypertrophy of law” as the pyramids are the “hypertrophy of burial”.³⁰ This observation led at least one author to speculate that *The Bluebook* was the product of extraterrestrial intelligence.³¹ While this may be a plausible explanation it is simply

27. Apologies to former President George H.W. Bush.

28. If you don't believe me, *only have to see generally The Footnote, supra* note 3. See also Lisa Green Markoff, *Deconstructionist Article Finds Enthusiastic Academic Following*, NAT'L L. J., Mar. 19, 1990, at 4 (praising *The Footnote*).

In an earlier article, Professor Balkin observed that many regard “deconstruction” as “no more than another expression for ‘trashing’, that is, showing why legal doctrines are self-contradictory, ideologically biased, or indeterminate. [Deconstruction] is not simply a fancy way of sticking out your tongue . . .” *Deconstruction, supra* note 18, at 743-44.

Deconstruction is based on the ideas of the French philosopher Jacques Derrida and first arose in the field of literary criticism. *Id.* at 774. Derrida and his followers regard deconstruction as a practice in which that left unsaid is of equal importance as a text's central theme. *Id.* at 744-45. See also JONATHAN CULLER, ON DECONSTRUCTION (1982); *Deconstruction, supra* note 18, at 743 n.1; *Sort Of, supra* note 1, at 1100. See generally JACQUES DERRIDA, DISSEMINATION (Barbara Johnson trans., 1981); JACQUES DERRIDA, MARGINS OF PHILOSOPHY (Alan Bass trans., 1982); JACQUES DERRIDA, OF GRAMMATOLOGY (Gayatri Chakravorty Spivek trans., 1976); JACQUES DERRIDA, POSITIONS (Alan Bass trans., 1981); JACQUES DERRIDA, SPURS: NIETZSCHE'S STYLE (Barbara Harlow trans., 1979); JACQUES DERRIDA, SPEECH AND PHENOMENA (David B. Allison trans., 1973); JACQUES DERRIDA, WRITING AND DIFFERENCE (Alan Bass trans., 1978); Jacques Derrida, *The Law of Genre*, 7 GLYPH 202 (1980); Jacques Derrida, *Limited Inc. abc . . .*, 2 GLYPH 162 (1977).

29. THE BEATLES, *The Long and Winding Road*, on LET IT BE (EMI Records 1970). But see *Don't Cry, supra* note 3, at 1566 n.77 (comparing the citation of song titles in two articles, neither of which are in the same form and both of which vary from the foregoing form). The fourteenth edition of *The Bluebook*, despite Rule 15.5.3 (Films and Broadcasts), did not specify exactly how to cite a song title. However, “[t]he mere failure to account for every possibility does not make the *Bluebook* suspect.” *Don't Cry, supra* note 3, at 1566 n.77. After all, “[e]very document, except perhaps the Ten Commandments, has its flaws, and maybe if you worked at it you could find flaws in that too.” *Id.*; Burger on Constitution: “It Isn't Perfect”, U.S.A. TODAY, May 14, 1987, at 1A. The newest edition of *The Bluebook* now provides a proper citation form for song titles. See *The Bluebook, supra* note 2, at Rule 17.6.1.

30. *Goodbye Bluebook, supra* note 23, at 1343. The word “hypertrophy” is used by anthropologists to describe the “tendency of human beings to mindless elaboration of social practice.” *Id.* at 1343.

31. *Don't Cry, supra* note 3, at 1565. The author notes:

The *Bluebook* almost certainly came from such a source. Like the technol-

untrue.³² *The Bluebook* is a cooperative venture of the *Columbia Law Review*, the *Harvard Law Review*, the *University of Pennsylvania Law Review*, and the *Yale Law Journal*³³ and, as such, is the brainchild of pedantic—but nonetheless human—minds.³⁴

How then to approach deconstruction of this monument to pedantic excess? Professor Balkin suggests beginning deconstruction “by focusing on an especially marginal element” of the book—the cover.³⁵ So be it. The cover of *The Bluebook* is blue (with the exception of the lettering, which is white).³⁶ For one edition, the eleventh, the cover was white (with the exception of the lettering, which was blue).³⁷ This has, understandably, given rise to the expression “the Bluebook blues.”³⁸ While no writer has yet dared to explore the link between the color of the cover and the mental state of the user, many can attest that the link does in fact exist.

The Bluebook was first published in 1926³⁹ and, over the years,

ogy of the ancient astronauts, the Bluebook is puzzling to all but an anointed few who are probably not entirely human—to whom its mysteries are revealed. Who but a truly advanced race would have taken for granted that the title of the Journal of College and University Law would be abbreviated “J.C. & U.L.?” Only a population with an intelligence far greater than our own would have produced a citation manual that requires its own instructional guide.

Id. at 1565 (footnotes omitted).

32. *The Bluebook* is published by The Harvard Law Review Association, headquartered in Cambridge, Massachusetts. *The Bluebook*, *supra* note 2, at page opposite title page.

33. *The Bluebook*, *supra* note 2, at title page.

34. *See generally Secret*, *supra* note 2, at 925. According to law review editors, “we exemplify one of the supreme beauties of pedantry, for we care not even whether the conventions themselves make sense. It is enough for us that they constitute the prescribed pattern of our work.” *Secret*, *supra* note 2, at 926.

35. J. M. Balkin, *The Domestication of Law and Literature* 14 L. & SOC. INQUIRY 787 (1989) (reviewing RICHARD A. POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION? (1988)).

36. *The Bluebook*, *supra* note 2, at cover. *See also Secret*, *supra* note 2, at 925 n.6 (*The Bluebook* cover is blue). The cover, with its block letters, is definitely uninviting, perhaps a harbinger of what awaits the reader inside.

37. *Legal Citation Form*, *supra* note 23, at 148. *See also A UNIFORM SYSTEM OF CITATION* (Columbia L. Rev. et al. eds., 11th ed. 1967); Peter Lushing, Book Review, 67 COLUM. L. REV. 599 n.1 (1967) (now white).

38. *See, e.g., Bluebook Blues*, *supra* note 23.

39. *Legal Citation*, *supra* note 23, at 21. *See also Don't Cry*, *supra* note 3, at 1558-59 (noting that 1926 was a period of “unprecedented national prosperity” and that “it cannot be mere coincidence that the ultimate citation manual originated at such a salubrious moment in history”).

has been referred to as the “pioneer manual,”⁴⁰ the “Bible,”⁴¹ and the “Kama Sutra”⁴² of legal citation. Yet, *The Bluebook* was not an immediate success.⁴³ In fact, relations between *The Bluebook* publisher and the law reviews have on occasion been stormy.⁴⁴ Additionally, *The Bluebook* tends to have holes,⁴⁵ internal inconsistencies,⁴⁶ and errors⁴⁷ which belie its lofty repu-

40. *Legal Citation*, *supra* note 23, at 21 (quoting MILES O. PRICE, A PRACTICAL MANUAL OF STANDARD LEGAL CITATIONS iv (1st ed. 1950)).

41. *Id.* (quoting Jonathan Jacobson, Book Review, 43 BROOKLYN L. REV. 826 (1977)) (reviewing A UNIFORM SYSTEM OF CITATION (Columbia L. Rev. et al. eds., 12th ed. 1976)).

42. *Id.* (quoting Peter Lushing, Book Review, 67 COLUM. L. REV. 599 (1967)) (reviewing A UNIFORM SYSTEM OF CITATION (Columbia L. Rev. et al. eds., 11th ed. 1967)).

43. *The Bluebook* “was not widely adopted [by academic journals] until the 1930’s.” *Don’t Cry*, *supra* note 3, at 1559. See also *Legal Citation*, *supra* note 23, at 21. The Library of Congress did not have a copy until 1936 and that was the fourth edition, published in 1934. *Id.* (citing internal serial records at the Library of Congress).

44. The matter of profits from *The Bluebook* has been the subject of some dispute. In 1974, the editors of the *Pennsylvania Law Review*, the *Columbia Law Review*, and the *Yale Law Journal* claimed that Harvard was illegally keeping the profits, estimated at over \$20,000 per year, from the first eleven editions. *Developments in the Law*, *supra* note 23, at 202 n.30 (citing Crock, *Blue Book Turns Crimson Green*, COLUM. L. SCH. NEWS, Oct. 28, 1974, at 1. See also *Legal Citation*, *supra* note 23, at 21 n.151. The dispute was ultimately settled by an Agreement resulting in Harvard receiving twice the profits of the other three schools. *Developments in the Law*, *supra* note 23, at 202 n.30.

45. Witness the perils of citing to *The Bluebook* itself. *Compare Sort Of*, *supra* note 1, at 1100 n.4 (citing *The Bluebook* as A UNIFORM SYSTEM OF CITATION (14th ed. 1986)) with *Don’t Cry*, *supra* note 3, at 1558 n.23 (citing *The Bluebook* as “COLUMBIA LAW REVIEW, HARVARD LAW REVIEW ASSOC, UNIVERSITY OF PENNSYLVANIA LAW REVIEW, YALE LAW JOURNAL, A UNIFORM SYSTEM OF CITATION” (14th ed. 1986)) and with *Some Suggestions*, *supra* note 23, at 264 n.2 (citing *The Bluebook* as “A UNIFORM SYSTEM OF CITATION (13th ed. 1981) (Harvard Law Review Association, Gannett House, Cambridge, Massachusetts 02138”).

The correct citation form for a book lacking a listed author or editor is uncertain. According to Rule 15.1.2, “[i]f a work has no named author, editor, or translators, it may be necessary to designate an edition by the name of the publisher.” (emphasis added). See also *supra* note 29 (discussing the hazards of citing to popular songs).

46. *Compare The Bluebook*, *supra* note 2, at Rule 14.1 (instructing the user to cite an executive order as “Executive Order No.”) with *id.* at Rule 14.7(a) (instructing the user to cite an executive order as “Exec. Order No.”). This particular inconsistency was discovered by the author during the course of researching this piece and has not, as yet, been brought to the attention of *The Bluebook* editors.

47. *Don’t you wish you could see* Letter from Kenneth W. Mack, former Executive Edition, *Harvard Law Review*, to Christopher W. Lane, author, (August 29, 1990) (copy on file with author) (discussing an error in the Illinois Section on page 186 of the fourteenth edition); Letter from Kenneth W. Mack to Steve Reitenour, Editor, *William Mitchell Law Review* (1990-91), (August 29, 1990) (copy on file with author)

tation.⁴⁸ However, despite these flaws and drawbacks, *The Bluebook* is used by “nearly all academic law reviews and has been adopted by at least four state courts.”⁴⁹ The question then becomes: why has a work so difficult to use that it requires its own guidebook⁵⁰ remained the standard in the field?

Legal citation serves several purposes.⁵¹ Ultimately, however, any legal citation serves only one basic purpose and that is to guide the reader to the work cited.⁵² Legal citation systems are purportedly designed to achieve this basic purpose.⁵³ However, in order to find a case in the *Federal Reporter, Second*

(discussing error in the second “aff’d” on page 2 of the fourteenth edition in the Metropolitan Edition example which should have been italicized).

48. See *Developments in the Law*, *supra* note 23, at 198 (commenting on the twelfth edition’s “palpably beneficent innovations”); Donald H. Gjerdingen, 4 WM. MITCHELL L. REV. 499, 500 (1978) (reviewing A UNIFORM SYSTEM OF CITATION (Columbia L. Rev. et al. eds., 12th ed. 1976)) (“acknowledging that a single publication has begun to take prominence”); Jonathan Jacobson, 43 BROOKLYN L. REV. 826, 826 (1977) (reviewing A UNIFORM SYSTEM OF CITATION (Columbia L. Rev. et al. eds., 11th ed. 1967)) (finding the 12th edition “more comprehensive and useful than ever before”); Peter Lushing, 67 COLUM. L. REV. 599 (1967) (book note) (noting “the *Blue Book* is the ‘Kama Sutra’ of legal citation”); Alan Strasser, *Technical Due Process* 12 HARV. C.R.-C.L. L. REV. 507 (1977) (book note) (commenting that *The Bluebook* is the “final arbiter of legal style”); Book Note, 32 N.Y.L. SCH. L. REV. 199, 200 (1987) (*The Bluebook* has “grown into a legal institution of its own”).

49. *Legal Citation*, *supra* note 23, at 21 n.152 (adopted by the following state courts at DEL. SUP. CT. R. 14(g); FLA. R. APP. P. 9.800(m); IND. R. APP. P. 8.2(B)(2); ORE. R. APP. P. 7.22, app. G).

50. See ALAN L. DWORSKY, A USER’S GUIDE TO A UNIFORM SYSTEM OF CITATION: A CURE FOR THE BLUEBOOK BLUES (1988).

51. A legal citation “indicates the nature of the authority upon which the statement is based . . . [and] contains the information necessary to find and read the cited material.” *Legal Citation Form*, *supra* note 23, at 148. Miles Price asserts that legal citation had only one purpose: “to lead its reader to the work cited . . .” *Id.* at 3 (quoting MILES O. PRICE, A PRACTICAL MANUAL OF STANDARD LEGAL CITATIONS iii (2d ed. 1958)). A legal citation, like *The Bluebook* itself, “has three parts: bibliographic description, location designation, and parenthetical information . . .” *Id.* at 3; see also *Developments in the Law*, *supra* note 23, at 197 (noting that the 12th edition, like the *Commentaries of Julius Caesar* “commences with the observation that its subject matter is ‘divided into three parts’”).

52. *Legal Citation*, *supra* note 23, at 3 (quoting the purpose of legal citation as proposed by Miles Price). Note that most legal citations go far beyond this one basic purpose. For example, a legal citation also indicates the nature of the authority. *Id.* at 148. Of late, some have insisted that a citation provide useful information to aid the reader in understanding the material cited to. *Id.* at 3. For example, it has been suggested that citations to cases should indicate who is bound by them or that citations to the *Federal Register* should assist the reader in understanding the article. *Id.* at 3 n.5. Legal citations also serve less straight-forward purposes such as citing a friend’s article, article differentiation, and sometimes even humor. See *Footnotes Products*, *supra* note 6, at 1136-37.

53. See *Legal Citation Form*, *supra* note 23, at 3.

Series, it is irrelevant whether the source is cited as “F.2d” or “Fed. 2d”.⁵⁴ As Judge Posner has pointed out, “It doesn’t matter a fig which of these forms is used.”⁵⁵ So why not have a free-for-all?

Having a system of citation should serve four basic purposes. First, the system should be easy to remember so the user may simply memorize the citation forms, thus saving valuable mental time and energy. Second, the system should economize space. Third, the system should provide basic information for the reader, which also saves the reader time. Finally, any system should minimize distraction.⁵⁶ Admittedly, there is a certain tension between these purposes. The underlying goal however is efficiency. Therefore, any system which subverts these four basic purposes compromises efficiency and is *a fortiori* inefficient.

The system of citation set out originally in *The Bluebook* served these purposes well. It was brief, self-explanatory,⁵⁷ and internally and externally consistent. Over the course of time,⁵⁸ *The Bluebook* has mutated and is now so complex that

54. See *Goodbye Bluebook*, *supra* note 23, at 1344.

55. *Id.* at 1344.

56. Paul Axel-Lute asserts that a system of citation is guided by thirteen principles, many of which conflict. These principles are uniqueness, brevity, redundancy, informativeness, dissimilarity among forms, similarity to original, logic, permanence, readability/transcribability, tradition, standardization, simplicity and honesty. *Legal Citation Form*, *supra* note 23, at 148-49.

57. See A UNIFORM SYSTEM OF CITATION (Columbia L. Rev. et al. eds., 1st ed. 1926). The first edition was only 30 pages long and contained simple directives. See *Sort Of*, *supra* note 1, at 1102 n.16. The eighth edition of *The Bluebook* was 84 pages long and measured 4 x 6 inches, small enough to fit in one’s pocket. See A UNIFORM SYSTEM OF CITATION (Columbia L. Rev. et al. eds., 8th ed. 1949). The fifteenth edition is 343 pages long, and, at 6 x 8-1/2 inches, is hardly small enough to fit into any but the largest pocket. Some cynics have observed that *The Bluebook*, like other products of the bureaucratic process, is the victim of inevitable metastasization. *Sort Of*, *supra* note 1, at 1102 n.16 (citing comments of Christina Uhrick at panel on proper citation form at National Conference of Law Reviews (University of Toledo, 1989)) (tape supposedly on file with author).

58. The history of legal citation can be traced back to the ancient Romans, who employed a format of citation using abbreviations and numbers. See generally *Legal Citation*, *supra* note 23 (discussing the historical development of Anglo-American legal citation). The Roman system was neglected and nearly lost until its rediscovery in the eleventh century by members of the law school at Bologna known as the Glossators who reworked the *Institutes of Justinian* and the *Code of Justinian*. *Id.* at 4. The Glossators, however, believed that numbers were too hard to remember. *Id.* at 5. This led to the early English practice of referring to a legal document by quoting the opening words. *Id.* at 6.

American citation practice dates back to 1647. *Id.* at 17. The earliest citation

“considerable time is spent studying, consulting, extrapolating from and resolving contradictions in it.”⁵⁹ This in turn has led to the overuse and misuse of legal citation in the footnotes contained in law review articles and court opinions.

IV. FOOTNOTE LOGIC

Linking footnote proliferation directly to the increasing complexity of *The Bluebook* may seem specious at first blush. Witness the facts however. *The Bluebook* was initially published in 1926.⁶⁰ A brief review of United States Supreme Court decisions for the October 1926 term indicates the use of few, if any, footnotes.⁶¹ A glance at the articles published in the *Harvard Law Review* for the same period is also telling. Out of approximately sixty articles published, the total number of footnotes used was 3748, equalling an average of sixty-two footnotes per article.⁶² The sum total of footnotes contained in each of these two sources would hardly make for a publishable law review article these days.

The converse is true if one looks at contemporary material. A recent volume of the *Harvard Law Review* contains thirty-

manual appears to have been *Modus Legendi Abbreviaturas in Utroque Iure*, a popular guide to legal citation published in the fifteenth and sixteenth centuries. *Id.* at 20. It is curious to note that the Library of Congress copy of *Modus Legendi Abbreviaturas in Utroque Iure* is bound with *Ouestiones de Potentia Dei* by Thomas Aquinas. *Id.* at 20 n.140.

59. *Goodbye Bluebook*, *supra* note 23, at 1344. Judge Posner notes that the “principal vices of the Bluebook are requiring the useless elaboration of citations and requiring useless uniformity.” *Id.* at 1345. He also points out that “the Bluebook’s aspiration . . . to be a treatise on legal bibliography as well as a manual of legal citation forms [along with useless elaboration and uniformity] explain the excessive length of the Bluebook and the excessive time that legal writers and editors spend learning and applying its rules.” *Id.* One may well prefer the extraterrestrial theory posited in *Don’t Cry Over Filled Milk*. See *Don’t Cry*, *supra* note 3, at 1565.

60. See A UNIFORM SYSTEM OF CITATION (Columbia L. Rev. et al. eds., 1st ed. 1926).

61. Of the cases decided during the 1926 term, the vast majority contain five or fewer footnotes. Most contain only one, and many have no footnotes at all. The high is eighty-seven footnotes in Justice Brandeis’ dissenting opinion in *Myers v. United States*, 272 U.S. 52, 94-113 (1926). Bear in mind that Justice Brandeis was notorious for his use of citation and something of an oddity in his day. The entire opinion in *United States v. One Ford Coupe Automobile*, 272 U.S. 321, 325-30 (1926), contains only five footnotes; however, the footnote appearing in Justice Butler’s dissent is five pages long. *Id.* at 343-47.

62. 40 HARV. L. REV. 1-1147 (1926-27). For the purposes of this survey, only lead articles and student notes were included. The number of footnotes per article ranged from a low of seventeen to a high of 225. *Id.*

three articles.⁶³ The minimum number of footnotes used in any article was sixty-two.⁶⁴ The maximum number used was 557.⁶⁵ The average number is in the 100 to 150 range. By modern standards, this is typical of the use of footnotes in law review articles. The record holder⁶⁶ for a law review article is 4824 footnotes! Published by the *New York Law School Law Review*, the editors certainly deserve kudos for their tenacity (if not sanity) in seeing this article to print.

Review of recent United States Supreme Court decisions is nearly as disheartening. The October 1989 term is typical. While certain memoranda decisions contain no footnotes⁶⁷ and the minimum number used in any decision is still zero,⁶⁸ the average number of footnotes per opinion has risen to ten.⁶⁹ The most footnotes used in any decision is fifty-two.⁷⁰ It should be noted that the current Justices are exercising admirable judicial restraint. The alleged record holder for a judi-

63. 103 HARV. L. REV. 1-2088 (1989-1990). For the purposes of this survey only essays, lead articles, notes, comments and commentary were included. Book reviews, book notes and a colloquy appearing at 103 HARV. L. REV. 1844 were not counted. The survey also includes the Forward and Comment to the annual Supreme Court issue of the *Harvard Law Review* but excludes *Developments in the Law—Medical Technology and the Law*, 103 HARV. L. REV. 1519 (1990), a collection where the author has separately footnoted each major section. Thus, while each section has minimal footnoting, *in toto*, the collection contains 842 footnotes. *Id.* See also *Sort Of*, *supra* note 1, at 1100 n.4.

64. See Herbert Hovenkamp, *The Indirect-Purchaser Rule and Cost-Plus Sales*, 103 HARV. L. REV. 1717, 1730 (1990).

65. See Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 HARV. L. REV. 1410, 1517 (1990). But see *supra* note 63 (noting that the *Developments in the Law—Medical Technology and the Law* collection contains 842 footnotes).

66. Arnold S. Jacobs, *An Analysis of Section 16 of the Securities Exchange Act of 1934*, 32 N.Y.L. SCH. L. REV. 209, 700 (1987), cited in *Sort Of*, *supra* note 1, at 1100 n.4.

67. See *McMonagle v. Northeast Women's Ctr., Inc.*, 493 U.S. 901 (1989). In contrast, even some memoranda decisions contain footnotes. See *Florida v. Burr*, 496 U.S. 914 (1990) (containing eight footnotes); *Schiro v. Indiana*, 493 U.S. 910 (1989) (containing ten footnotes).

68. *Franchise Tax Bd. v. Alcan Aluminum Ltd.*, 493 U.S. 331 (1990); *Jimmy Swaggart Ministries v. Board of Equalization*, 493 U.S. 378 (1990); *Demosthenes v. Baal*, 495 U.S. 731 (1990).

69. This average is not exact but rather an estimate made after review of the October 1989 term decisions.

70. See *Metro Broadcasting, Inc. v. FCC*, 110 S. Ct. 2997, 3027 (1990). See also *Hodgson v. Minnesota*, 110 S. Ct. 2926, 2947 (1990) (containing 38 footnotes). Footnote three of *Rutan v. Republican Party*, 110 S. Ct. 2729, 2751 (1990) is nearly one page long, as is footnote three of *Burnham v. Superior Court*, 495 U.S. 604, 614-15 (1990).

cial opinion contains 1715 footnotes.⁷¹

Any focus on one particular court, law review or set of opinions or articles is deceptive and misleading. A small sample may fail to present a true picture of reality.⁷² However, the fact remains that many scholars believe footnote abuse is rampant.⁷³ This abuse has led to poorly written and unreadable judicial opinions and law review articles.⁷⁴ *The Bluebook* is undoubtedly one source of this abuse because it contains “the byzantine rules we need to govern the style of footnotes”⁷⁵ Judge Abner Mikva and others have suggested ridding ourselves of the footnote.⁷⁶ Judge Posner has said “goodbye” to *The Bluebook*.⁷⁷ Admittedly, mere elimination is not a valid solution.⁷⁸ Prior to jettison of the present system, a suitable replacement must be found.

V. BOOKS OF A DIFFERENT COLOR

Whither a suitable replacement to the Kama Sutra of legal citation?⁷⁹ Those friendly folks at the University of Chicago would propose *The University of Chicago Manual of Legal Citation* affectionately known as the “Maroon Book”.⁸⁰ They are not

71. See *United States v. E. I. DuPont de Nemours & Co.*, 118 F. Supp. 41 (D. Del. 1953), cited in *Footnote Products*, *supra* note 6, at 1141 n.45.

72. Just ask Louis Harris, George Gallup, or any other political pollster.

73. See generally *Footnote Products*, *supra* note 6; *Addiction*, *supra* note 19; *Amok*, *supra* note 13; *Legal Footnoting*, *supra* note 19, at 245.

74. See *Readable Articles*, *supra* note 13; *Legal Footnoting*, *supra* note 19, at 245 (commenting that footnotes are “an interruption to the flow of the text”). In addition to unreadability, Judge Mikva notes typesetting problems, the high cost of footnote software, pagination problems, excessively lengthy footnotes and concludes that “[t]he tail overwhelms the tale.” *Goodbye Footnotes*, *supra* note 25, at 648.

75. *Goodbye Footnotes*, *supra* note 25, at 648. See also *Goodbye Bluebook*, *supra* note 23.

76. *Goodbye Footnotes*, *supra* note 25. See also Arthur J. Goldberg, *The Rise and Fall (We Hope) of Footnotes*, 69 A.B.A. J. 255 (1983) (noting that Judge Breyer of the First Circuit eliminated footnotes entirely from some of his opinions). Chief Justice Warren Burger has also pointed out that “[i]t is simply impossible for [the] Court to give adequate consideration to an opinion of a court of appeals so replete with footnotes as to defy adequate review.” *Id.* In contrast, Professor Balkin wrote an entire lead article as a footnote. See *The Footnote*, *supra* note 3, at 275. The article is in the form of footnote four, which is a reference to the much discussed footnote four of *Carolene Products*. See *United States v. Carolene Products*, 304 U.S. 144 (1938).

77. *Goodbye Bluebook*, *supra* note 23.

78. *Id.* at 1344 (setting forth the purposes served by having a system rather than a free-for-all).

79. See *supra* note 42 and accompanying text (noting *The Bluebook* has been referred to by at least one reviewer as the “Kama Sutra” of legal citation).

80. The *Maroon Book* may be ordered from the editors of the University of Chi-

alone. The editors of the Florida State University Law Review have produced the *Florida Style Manual*, affectionately known as the “Green Book”.⁸¹ Those who edit the *Louisiana Law Review* have come up with the *Louisiana Law Review Stream-lined Citation Manual*, affectionately known as the “Red Book”.⁸² It is clear that both writer and practitioner have alternatives to *The Bluebook*.

What is unclear is which of these alternatives (or any others one cares to examine) is the cure for *The Bluebook* blues. Neither the Louisiana nor the Florida publications presents itself as a substitute for *The Bluebook*. The introduction to the *Red Book* clearly states that it is supplementary to *The Bluebook*,⁸³ so anyone using this source is confounded by having not one, but two, citators to consult. So much for “streamlining”. The *Green Book* suffers from the same affliction as the *Red Book* insofar as it is also supplementary to *The Bluebook*.⁸⁴ Additionally, it is specifically aimed at the particular problems of citation forms for Florida materials.⁸⁵ Therefore, neither the *Green Book*, nor the *Red Book* is a true alternative. The only publication that presents itself as an alternative to, rather than a supplement for, *The Bluebook* is the *Maroon Book*.⁸⁶

The *Maroon Book* was first published in the fall of 1986 as an

cago Law Review but is also found as an addendum to Judge Posner’s article. *Goodbye Bluebook*, *supra* note 23, at 1353.

81. *Green Book*, *supra* note 25.

82. *Red Book*, *supra* note 25.

83. “Exclusive of the Streamlined Citation Manual (SCM) rules, the format provided in *A Uniform System of Citation* (14th ed. 1986) (sic), the *Bluebook*, will govern the correct citation format.” *Red Book*, *supra* note 25, at 197.

84. “The *Florida Style Manual* supplements the standard citation authority for American legal journals, *A Uniform System of Citation* (Bluebook).” *Green Book*, *supra* note 25, at 138.

85. *Id.* at 138. In the introduction, the Florida State University Law Review editors state that they

realized that citations to many Florida-specific sources—particularly those generated by the Florida Legislature—would be rendered almost meaningless if conventional Bluebook citation forms were followed. Other Florida sources were not addressed at all by the Bluebook. This *Florida Style Manual* is the product of [a] struggle to develop meaningful citation forms for Florida materials.

Id.

86. *Maroon Book*, *supra* note 25. In his article Judge Posner states that the *Maroon Book* is a replacement for the *Bluebook*. *Goodbye Bluebook*, *supra* note 23, at 1351. Judge Posner also notes “[t]he Bluebook will and should survive - but as a treatise on legal bibliography, not a manual of citation form.” *Id.* at 1352. See also *Marooned*, *supra* note 23. Judge Posner “urges that [the *Bluebook*] be replaced by something called the . . . *Maroon Book*.” *Goodbye Bluebook*, *supra* note 23, at 1351.

appendix to Judge Posner's essay *Goodbye to the Bluebook*.⁸⁷ A maroon-covered reprint is also available from the *University of Chicago Law Review* for \$3.50.⁸⁸ Since its publication, the *Maroon Book* has been called "a functional revolution,"⁸⁹ "an overdue message to the Harvard Law Review Association,"⁹⁰ "the Citation Manual of the Big Shoulders,"⁹¹ and "the Baby Bell of citation form."⁹² The most obvious advantage of the *Maroon Book* is its brevity. The original appendix to Posner's article is sixteen pages long.⁹³ The reprint totals sixty-three pages.⁹⁴ The *Maroon Book* rules contain significant departures from traditional *Bluebook* form. Many useless elaborations contained in *The Bluebook* have been eliminated. For example, under Rule 1, all material is to appear in Roman typeface, as opposed to large and small capital letters or, (with certain limited exceptions), italics.⁹⁵ Additionally, the *Maroon Book* requires citation to the author's full name,⁹⁶ ostensibly to avoid confusion be-

87. *Goodbye Bluebook*, *supra* note 23, at 1353.

88. At least one reviewer has pointed out that photocopying the *Maroon Book* from the original text of the Posner essay is a cost-efficient alternative to buying the reprint. Joel R. Cornwell, 21 J. MARSHALL L. REV. 233 (1987) (book review) [hereinafter *Book Review*]. The author did not comment on the copyright ramifications of this practice.

89. *Id.*

90. *Id.*

91. Book Note, *Manual Labor, Chicago Style*, 101 HARV. L. REV. 1323 (1988) [hereinafter *Manual Labor*] (discussing why users of the *Maroon Book* are hopelessly marooned).

92. *Id.*

93. *Goodbye Bluebook*, *supra* note 23, at 1353-68.

94. *Maroon Book*, *supra* note 25.

95. *Id.* at 9. Rule 1 provides:

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

- (a) case names;
- (b) titles of periodical articles and articles in edited books;
- (c) book and treatise titles;
- (d) uncommon foreign words;
- (e) words to be emphasized in text or notes. Common legal phrases, such as *ex parte* or *de facto*, need not be italicized.

Id. See also *Book Review*, *supra* note 88, at 234 (discussing the first edition of the *Maroon Book*).

96. *Maroon Book*, *supra* note 25, at 14. Rule 4.1(b) provides:

- (b) *Authors and Editors Names.* Cite to the author's or editor's full name as given on the first page or the title page of the source cited. . . . Where there are two or three authors, list them all in the same fashion; if there are more than three it is adequate to list the first author and then "et al. . . ." For student written works in law journals, the author's name should be replaced by the designation used in the journal, such as "Note," "Comment," or "Case Note".

tween the “multiple Ackermans, Dworkins, Epsteins, Whites, Schwartzes, etc. writing law review articles”⁹⁷ Overall, the *Maroon Book* is more informal, contains fewer rules, and is easier to use than its predecessors.⁹⁸

However, the *Maroon Book* has not been without its critics.⁹⁹ One reviewer has observed that the *Maroon Book* “opens the door to confusion.”¹⁰⁰ In attempting to replace “the useless reiteration of complex convention with the functional simplicity of common sense,” the *Maroon Book* is “a thing of beauty . . . but its beauty is obscured by a decidedly dysfunctional incompleteness.”¹⁰¹ The reviewer further notes that “[i]n its present form, the [*Maroon Book*] is not about to conquer, or seriously threaten, such a formidable adversary as the *Bluebook*.”¹⁰²

Laying all of this nit-picking aside, the *Maroon Book* is clearly superior to other citation manuals in one important respect. Allowing the writer to use prudential judgment¹⁰³ tends to foster creativity.¹⁰⁴ The *Maroon Book* is significantly more per-

Id. The fifteenth edition of *The Bluebook*, however, has adopted the practice of supplying full names both for author and for student written pieces. *The Bluebook*, *supra* note 2, at Rule 16.1.

97. *Goodbye Bluebook*, *supra* note 23, at 1345. See also *Manual Labor*, *supra* note 91, at 1325.

98. See *Marooned*, *supra* note 23, at 13 (comparing certain *Maroon Book* rules with *Bluebook* rules).

99. The *Maroon Book* has been reviewed three times. The review which appeared in the *Harvard Law Review* is unsurprisingly, on the whole, unfavorable. See *Manual Labor*, *supra* note 91. Another review by Professor Cornwell in the *John Marshall Law Review* (a disinterested publication) suggested that the *Maroon Book*'s radical surgery may have gone too far. *Book Review*, *supra* note 88, at 236. See also *Sort Of*, *supra* note 1, at 1104 n.24. Professor Coombs' review in the *Virginia Law Review* is much more upbeat and actually conforms to *Maroon Book* convention. See *Sort Of*, *supra* note 1. For this reason alone (among numerous others) the reader is directed first to Professor Coombs' review.

100. *Book Review*, *supra* note 88, at 235. The author was referring to the fact that the *Maroon Book* tends to omit “all of the *Bluebook*'s useful biographical information.” *Id.* Even Judge Posner has admitted that “[t]here is a place for a treatise on legal bibliography, which will . . . inform the reader about the history of judicial reports. . . . [I]t does not follow that the treatise writer should tell the reader how to cite those reports.” *Goodbye Bluebook*, *supra* note 23, at 1348.

101. *Book Review*, *supra* note 88, at 237. The reviewer admits that the *Maroon Book* “engenders a sense not only of practical economy, but of aesthetic satisfaction.” *Id.*

102. *Id.*

103. See *id.* at 234; see also *Marooned*, *supra* note 23, at 13.

104. Even the authors of *Manual Labor* admit that the *Maroon Book* has “brought to citation form an unstructured creativity that most would have thought impossible, or at least improbable.” *Manual Labor*, *supra* note 91, at 1323.

missive than its predecessors.¹⁰⁵ This permissive attitude directly contrasts with *The Bluebook* and, as it has been observed, “recapitulates a tension existing throughout law: that between rules and standards.”¹⁰⁶ Clearly, *The Bluebook* opts for rules.¹⁰⁷ By contrast, the *Maroon Book* sets standards.¹⁰⁸ While these standards may prove unhelpful to some writers and beneficial to others,¹⁰⁹ the entire genre of legal writing could certainly benefit from the “looser style of the *Maroon Book*.”¹¹⁰ Nowhere will the benefit be more evident than in the use of “those pesky little signals at the beginning of most footnotes.”¹¹¹

VI. TURN SIGNALS

As previously noted, the purpose of legal citation is “to lead the reader to the work cited.”¹¹² It has been observed that “[i]f footnotes are indeed intended to serve this bibliographic function, then we should desire accurate signals, indicating precisely the relationship between the statement in the text and the contents of the cited materials.”¹¹³ Undoubtedly, some among you have fought with an editor over the meaningless and oftentimes metaphysical distinctions contained in Rule 1.2 of *The Bluebook*.¹¹⁴ Additionally, the rules contained in Rule 1.2 depend on temporal consistency for any usefulness or pre-

105. *Id.* at 1326. *Maroon Book* rules tend to use directives such as “if desired” (Rule 3.1), “if it is helpful” (Rule 2.4) and “it is permissible” (Rules 3.2(a)(iii) and 3.6(e)). *Maroon Book*, *supra* note 25, at 10-13; *see also Sort Of*, *supra* note 1, at 1105 (finding the Chicago Manual to be far more permissive). The *Maroon Book* itself states that “because it is neither possible nor desirable to write a particular rule for every sort of citation problem that might arise, the rules leave a fair amount of discretion to practitioners, authors and editors.” *Maroon Book*, *supra* note 25, at 1353.

106. *Sort Of*, *supra* note 1, at 1104.

107. *Id.*

108. *See id.* at 1105.

109. Professor Coombs observes that “[t]he discretion provided by the *Maroon Book* will no doubt be exercised by Judge Posner in any of his published works . . . [but] is unlikely to benefit the poor schlemiel from some second-ranked law school whose submission is being edited by the student editors of the Chicago Law Review.” *Id.*

110. *Id.*

111. *Id.*

112. *See supra* notes 51-52 and accompanying text.

113. *Sort Of*, *supra* note 1, at 1106. As to unconventional signals *see infra* notes 124-28 and accompanying text. Trust me.

114. *Sort Of*, *supra* note 1, at 1106. Professor Coombs notes that after one of these struggles one “feels fully prepared to dispute just how many angels can dance on the head of a pin.” *Id.*

cision.¹¹⁵ Unfortunately, the existence of any temporal consistency is questionable at best.¹¹⁶

When it comes to signals, the *Maroon Book* takes a decidedly different tack. According to Rule 2.1, an authority directly supporting the statement in the text may be introduced without any words of introduction.¹¹⁷ Other authorities are to be “[p]receded by an ordinary English phrase explaining its force and or purpose.”¹¹⁸ Under Rule 2.1 “citations might be introduced by ‘See,’ ‘But see,’ ‘See, for example,’ ‘For general background, see,’ or other descriptive language.”¹¹⁹ This form of signal has been dubbed the “non-signal signal”.¹²⁰

Signal or non-signal, Rule 2.1 definitely opens the doors for some much-needed creativity and humor on the part of those writing for otherwise formalistic journals. Law review authors unwilling to follow the dictates of *The Bluebook* now have a powerful counter-weapon in their unpublished battles with student editors over issues such as the correct parenthetical or introductory signal.¹²¹

Now that the door to creativity has opened, the question remains: Who will walk through it? One author who has is Professor Mary I. Coombs of the University of Miami. In her alleged book review of the *Maroon Book*,¹²² Professor Coombs proposed seven new signals “to capture the range of responses

115. *Id.* The prescriptions contained in *The Bluebook* depend on consistency across time and space. *Id.*

116. Professor Coombs points out, quite correctly, that the meaning of the signals contained in *The Bluebook* has changed from edition to edition thus requiring “a researcher seeking to comprehend the precise meaning of a source introduced by . . . [a] signal . . . [to] compare the date of publication of the article within which the citation appears to the date of publication of . . . the *Bluebook*.” *Id.* at 1106-07. The example the professor uses is *see also* which, in the twelfth edition, indicated authority that “provides background to a question analogous to that examined in text.” *Id.* at 1106 (citing to Arnold B. Kanter, *Putting Your Best Footnote Forward*, 9 BARRISTER 42, 52 (1982)). *See also* A UNIFORM SYSTEM OF CITATION (Columbia L. Rev. et al. eds., 12th ed. 1976). By the thirteenth edition the meaning of *see also* had changed to “constitutes additional source material that supports the proposition.” A UNIFORM SYSTEM OF CITATION (Columbia L. Rev. et al. eds., 13th ed. 1981); *see also Sort of, supra* note 1, at 1106.

117. *Maroon Book, supra* note 25, at 10.

118. *Id.*

119. *Id.*; *see also Marooned, supra* note 23, at 13.

120. *See Manual Labor, supra* note 91, at 1328.

121. *See Sort Of, supra* note 1, at 1101-03. Professor Coombs notes that “the battlefield has been altered by the publication of [the *Maroon Book*].” *Sort of, supra* note 1, at 1103.

122. *Id.*

we have to the sources we cite."¹²³

Her listing includes such unconventional signals as *Will not see in*, *Really should see*, and *Pretend to have seen*.¹²⁴ Fortunately, the Coombs listing is not exhaustive, and I believe that future authors should feel free, within the dictates of Rule 2.1, to expand upon it. Therefore, I would offer two additions to Professor Coombs' modest proposal:

1. *See now*: Too often readers ignore source material cited in footnotes or fail to refer to cited material at the appropriate time. This signal is a more forceful variation of the traditional *See* in that it directs the reader to refer to the cited material immediately, prior to proceeding further. A variation might be *See it now*. This signal may also be combined with the *Really should see* signal suggested by Professor Coombs to form *Really should see now*.

2. *Only have to see*: This signal is useful, when, in the words of *The Bluebook* "citation to [other sources] would not be helpful."¹²⁵ In other words, *See this and that's all you need to see* or *See this and you've seen it all*.

Whether or not the discussion of nonconventional signals is largely nonsense, transcendental, immanent or otherwise,¹²⁶ not one of the signals I have discussed to this point adequately captures the responses I have had to some of the sources I have cited.¹²⁷ Therefore, I feel compelled to conclude this section with a signal proposed in 76 *VIRGINIA LAW REVIEW* 1099 (1990).¹²⁸

123. *Id.* at 1111.

124. *Id.* at 1108-10. The seven signals are *Will not see in*; *See e.g.*, [future volume] F.2d [future page]; *See, sort of*; *See randomly*; *Really should see*; *Pretend to have seen*; and *Don't you wish you could see. Id.*

125. *The Bluebook*, *supra* note 2, at Rule 1.2(a).

126. *See Sort Of*, *supra* note 1, at 1110.

127. A colleague of Professor Coombs, Fred Rosen, pointed out that "the signals provided to us by the *Bluebook* fail to capture the range of responses we have to the sources we cite." *See id.* at 1110-11.

128. *See and feel now* Christopher W. Lane, *Bluebooks, Filled Milk, and Infield Flies: Deconstruction, the Footnote and a Uniform System of Citation*, 19 *WM. MITCHELL L. REV.* 161 (1993) (book review). Professor Coombs describes her response to the *Feel* signal as "complex, textured and emotive. . . . It is an imagined relation with the author as well as the text" *Sort of*, *supra* note 1, at 1111 n.60.

VII. A BLUER SHADE OF BLUE: RECENT DEVELOPMENTS¹²⁹

In a recent article,¹³⁰ Professor Arthur Austin¹³¹ postulates two causes of footnote proliferation or "citation motivation".¹³² In the article he only alludes to the role of *The Bluebook* as the cause of this phenomenon.¹³³ The only criticism that can be leveled at his approach is that he fails to give credit where credit is due. Although it is true that "[t]he *Bluebook* fails to provide education and warning,"¹³⁴ *The Bluebook's* role has been far more positivist.

Recently the compilers¹³⁵ of *The Bluebook* have bestowed upon us the fifteenth edition.¹³⁶ Although Judge Posner may have bid *The Bluebook* "goodbye",¹³⁷ the editors of *The Bluebook* would have us say "hello"¹³⁸ to the new and improved fifteenth edition. This weighty,¹³⁹ but lightly reviewed,¹⁴⁰ edition has

129. PROCOL HAREM, *A Whiter Shade of Pale*, on PROCOL HAREM (Essex Music, Inc. 1967). See also James D. Gordon III, *A Dialogue About the Doctrine of Consideration*, 75 CORNELL L. REV. 987, 993 n.48 (1990) (discussing bagpipe music and comparing same to the sound made by 300 cats and a blowtorch).

130. Arthur Austin, *Footnote Skulduggery and Other Bad Habits*, 44 U. MIAMI L. REV. 1009 (1990) [hereinafter *Skulduggery*].

131. Edgar A. Hahn, Professor of Jurisprudence, Case Western Reserve University School of Law, Cleveland, Ohio. Professor Austin notes that he was once erroneously and ironically referred to as "Hahn." *Id.* at 1012 n.20 (citing Timothy R. Rice, *In Defense of Footnotes*, NAT'L L.J., June 20, 1988, at 14 & nn. 13-15 & 25).

132. *Skulduggery*, *supra* note 130, at 1013. The two causes are the evolution in law journals which has created pressure for more, more, more and the publish or perish syndrome which motivates footnote differentiation. *Id.* at 1014-15. See also *Footnote Products*, *supra* note 6, at 1136.

133. The author states:

The *Bluebook* fails to provide education and warning. Footnote steroids like *supra*, *cf.*, and *infra* can cross-reference a single source into infinity. *Id.* is the ultimate footnote steroid, seducing one author into using 444 *id.s* out of a total of 574 footnotes. Posner cannot be ignored: "The *Bluebook* creates an atmosphere of formality and redundancy in which the drab, Latinate, plethoric, euphemistic style of law reviews and judicial opinions flourishes." It imposed "uniformity on more mundane spheres of human activity." The parallel between the inflation of the *Bluebook*—from 26 pages to 225—and footnote inflation is no accident. The "best and brightest" of four of our "tier one" law schools exalt gamesmanship over substance.

Skulduggery, *supra* note 130, at 1030 (footnotes omitted).

134. *Id.* at 1030.

135. See *The Bluebook*, *supra* note 2, at title page. *The Bluebook* is written by the editors of the *Columbia Law Review*, the *Harvard Law Review*, the *University of Pennsylvania Law Review*, and the *Yale Law Journal*. *Id.*

136. See *The Bluebook*, *supra* note 2.

137. See *Goodbye Bluebook*, *supra* note 23.

138. *Cf.* THE BEATLES, *Hello Goodbye*, on MAGICAL MYSTERY TOUR (EMI Records 1967).

139. Compare *The Bluebook* (14th ed. 1986) (weighing 10.9 oz.) with *The Bluebook*

already been compared favorably with Bunyan's *Pilgrims Progress*.¹⁴¹ Unfortunately, the fifteenth edition does little to dispel the notion that *The Bluebook* has been far more responsible for footnote proliferation and other bad legal writing than Professor Austin would have us believe.

The fifteenth edition is readily distinguishable from its predecessors,¹⁴² whether self-consciously¹⁴³ or by accident.¹⁴⁴ There are several visual and stylistic differences from prior editions. The cover is now several shades darker in color, although the block lettering is still white.¹⁴⁵ The "blue" theme now pervades the work, as the new "Practitioners' Notes" section and the "Tables and Abbreviations" section are on distinct light blue pages.¹⁴⁶ The work itself is now formally titled *The Bluebook*, although *A Uniform System of Citation* is retained as a subtitle.¹⁴⁷ Taken together these are all striking, although at times befuddling, design changes. The larger issue is whether the substance contained within *The Bluebook's* whopping 343 pages is a significant departure from previous editions.¹⁴⁸

(15th ed. 1991) (weighing in at a hefty 13.8 oz.). For additional comments regarding the size of *The Bluebook*, see *supra* note 57.

140. The fifteenth edition was reviewed once in 1991. See *Something Old*, *supra* note 15. This generally unfavorable review, however, is facially suspect as it appears in *The University of Chicago Law Review* which, coincidentally, publishes the *Maroon Book*. The review itself takes a somewhat legal-economic approach to its analysis, focusing in particular on the profit-making aspects of *The Bluebook*. *Something Old*, *supra* note 15, at 1528, 1540. It is useful, however, to note that Mr. Chen, the review's author, was a former executive editor of the *Harvard Law Review* from 1990 to 1991 and a self-professed expert in *Bluebook* form and lore, for better or for worse. *Something Old*, *supra* note 15, at 1527 n.†. As such, he brings a unique perspective to the subject. The review contains a fascinating discussion of the little-known early history and origins of *The Bluebook*. *Something Old*, *supra* note 15, at 1529-31; see also *supra* note 44 regarding the profits issue.

141. See *Something Old*, *supra* note 15, at 1527 (expressing a preference to consider *The Bluebook* as a legal "PILGRIMS PROGRESS" rather than as *The Bible* of legal citation).

142. See *id.* at 1528.

143. See *id.* (asserting that "[t]he editors of the new edition have self-consciously tried to distinguish the new *Bluebook* from it's predecessors").

144. Cf. *Palsgraf v. Long Island R.R. Co.*, 162 N.E. 99 (N.Y. 1928) (parenthetical unnecessary).

145. See *The Bluebook*, *supra* note 2, at cover.

146. See *id.* at 10-20, 164-305. The Tables and Abbreviations section of *The Bluebook* was previously printed on white pages. See *A UNIFORM SYSTEM OF CITATION* (Columbia L. Rev. et al. eds., 14th ed. 1986). The Practitioners' Notes section was previously nonexistent. Try to see in *id.*

147. See *The Bluebook*, *supra* note 2. The fifteenth edition is apparently titled THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION. See *Something Old*, *supra* note 15, at 1527.

148. See *Something Old*, *supra* note 15, at 1529. The fourteenth edition of *The Blue-*

The editors would have us believe that the new work is a significant departure from previous editions. The preface lists no less than twenty-four variations from *Bluebook* tradition.¹⁴⁹ Some are significant, some are not. Initially, it appears that the broad use of internal cross-references in *The Bluebook* seems intentionally contrived to confound and confuse the user.¹⁵⁰ And, while it may be comforting to some that the “Practitioners’ Notes” now make it clear that the period in *id.* is to be underlined,¹⁵¹ this is hardly a breakthrough. Other changes range from including an author’s full name in citations, to signed student works,¹⁵² to the rule on capitalizing portions of the United States Constitution.¹⁵³

Two innovations are worthy of special mention. First, the list of periodical abbreviations has been greatly expanded.¹⁵⁴ This change was not internally wrought but resulted instead from external pressures.¹⁵⁵ Inasmuch as inclusion on the list is felt by some to confer legitimacy, this modification is noteworthy as much for what it says about law review editors, as for what it says about *The Bluebook*.¹⁵⁶ Notwithstanding the fact

book contained 255 pages. A UNIFORM SYSTEM OF CITATION (Columbia L. Rev. et al. eds., 14th ed. 1986). Professor Austin notes that *The Bluebook* has been subject to inflation over the years—from 26 pages to 225. See *Skulduggery*, *supra* note 130, at 1030 n.157 (citing David Margolick, *At the Bar*, N.Y. Times, Nov. 4, 1988, at B7 (noting that “The Bluebook has swollen over the years, much like the law itself”). Austin asserts that “[t]he parallel between the inflation of the *Bluebook* . . . and footnote inflation is no accident.” *Skulduggery*, *supra* note 130, at 1030. The professor, however, wisely avoids examining this cause and effect relationship any further.

149. See *The Bluebook*, *supra* note 2, at v-viii; see also *Something Old*, *supra* note 15, at 1529.

150. The editors do not provide cross-references to pages but, instead, direct the user to rules and table numbers, which have very little meaning to the users. See *Something Old*, *supra* note 15, at 1529 (criticizing internal cross-references generally).

151. See *The Bluebook*, *supra* note 2, at P.4 (a) (showing explicitly that the period following “*Id.*” is underlined). But see *id.* at Rule 2.2 (c) (noting that one should “italicize commas, semicolons, etc., only when they fall within italicized material, and not when they merely follow it”) (emphasis added).

152. See *The Bluebook*, *supra* note 2, at Rule 16.5.1; see also *Something Old*, *supra* note 15, at 1536.

153. See *The Bluebook*, *supra* note 2 at Rule 8; see also *Something Old*, *supra* note 15, at 1536.

154. See *The Bluebook*, *supra* note 2, at T.13; see also *Something Old*, *supra* note 15, at 1538.

155. See *id.* at 1538. The author notes that the “[s]heer volume of letters that Harvard received from law reviews not listed in the fourteenth edition suggests that this table confers some sort of legitimacy. At least one law review insisted that its funding depended on being listed.” *Id.*

156. *Id.*

that *The Bluebook* is at the forefront in listing specialty journals, the list still contains some “glaring omissions”.¹⁵⁷ Presumably, this is due to mere oversight, as the revisers were intent on accommodation,¹⁵⁸ rather than any overt attempt to slight particular journals.

The second change—perhaps the most stunning change—is of utmost import to the practitioner. The fifteenth edition of *The Bluebook* abandons the requirement of parallel citation to state reporters.¹⁵⁹ While parallel citations have long been the bane of law review editors and citecheckers, many practitioners depended on this useful information.¹⁶⁰ Sacrificing such information at the law review altar is too dear a price to pay to satisfy the more slothful impulses of law review editors.¹⁶¹ While the new parallel citation rule will not have much impact on documents filed in court¹⁶² and some will refuse to follow the rule out of necessity or otherwise,¹⁶³ this development does

157. “Among the more glaring omissions: *Energy Law Journal*, *Journal of Law and Economics*, *Journal of Law and Policy*, *Journal of Legal Education*, and *Journal of Legal Studies*.” *Id.*

158. “Though . . . [the] revisers graciously accommodated every law review that requested to be listed, they somehow overlooked some of the more prominent publications in legal academia.” *Id.*

159. See *The Bluebook*, *supra* note 2, at Rule 10.3.1(b) (opining that “[i]n all other documents including *ordinary legal memoranda* and *law reviews*, cite *only* to the relevant region reporter, if the decision is found therein”) (example omitted) (emphasis in original). See also *Something Old*, *supra* note 15, at 1538-39.

160. See *Something Old*, *supra* note 15, at 1539 (“A citecheckers’ lobby seems to have persuaded the revisers to alleviate the burden of tracking down pesky state reporters. . . . Practitioners often refer to law review articles for case citations rather than legal analysis. If adopted widely, this *Bluebook* rule would substantially diminish law reviews’ value”).

161. Sometimes you win; sometimes you lose. With sympathy to practitioners, the author, Mr. Chen, notes:

Relieving law review editors of the duty to cite state reporters arose solely from sloth. For law reviews, this sin is unforgivable. . . . As between law review editors and law review readers, the burden to supply parallel citations should fall upon editors. In appeasing their multiple constituencies, the editors of [*The Bluebook*] apparently placed state court practitioners at the bottom of their list.

Id.

162. See *Something Old*, *supra* note 15, at 1539 (“[T]he new rule on parallel citations will have little real impact on documents that practicing lawyers file in the courts.”).

163. See *The Bluebook*, *supra* note 2, at Rule 10.3.1(a). See also *Something Old*, *supra* note 15, at 1539 (“Whereas lowly legal practitioners must follow state court rules, which formally or informally require citation to state reporters . . .”). But note 18 Wm. Mitchell L. Rev. 1-1178 (1992) (indicating first volume setting policy not to follow the new rule). The *William Mitchell Law Review* has chosen not to follow this new rule with respect to Minnesota cases. Thus, parallel citation to the Minnesota

nothing to bridge the chasm between legal academia and legal practice.¹⁶⁴

In truth, even with these changes, the majority of the rules contained in *The Bluebook* are just as “inconsistent and vague as before.”¹⁶⁵ In general, the fifteenth edition departs not one wit from the practices that gave rise to the current footnote frenzy and other bad habits.¹⁶⁶ So we are left, then, with a chicken and egg sort of dilemma.¹⁶⁷ As Enoch begat Irad, who begot Mehujael, who begot Methusael,¹⁶⁸ so *The Bluebook* gave rise to pedantic excess¹⁶⁹ on the part of everyone. Or vice versa. However one views it, the legacies of this incestuous relationship are articles that contain 4824 footnotes,¹⁷⁰ 343 page citation manuals,¹⁷¹ self citation,¹⁷² and the diversion of intellectual energy on a massive scale.¹⁷³ *The Bluebook* may be here to stay,¹⁷⁴ but it has also been observed that footnotes are

Reports will, notwithstanding the new rule, be provided. Telephone Interview with Julie Swedback, Editor-in-Chief, *William Mitchell Law Review* (Sept. 11, 1992).

164. See *Something Old*, *supra* note 15, at 1539 (noting that rather than narrowing the chasm the new rule “threaten[s] to widen the gap between legal academia and legal practice”).

165. See *id.* at 1537. The author lists several examples supporting this contention. *Id.* at 1537-38.

166. See generally *Skulduggery*, *supra* note 130. Professor Austin quotes Professor Bowersock in support of the proposition that “[l]unacy in small print is lunacy nonetheless, and it is particularly reprehensible when it is not even amusing.” *Id.* at 1009 n.† (quoting G. W. Bowersock, *The Art of the Footnote*, 53 AM. SCHOLAR 54, 61 (1983-84)).

167. Which came first? (support unnecessary).

168. *Genesis* 4:18 (King James).

169. See *supra* note 34 and accompanying text.

170. See *supra* note 66 and accompanying text. The article in question is packed with cross-references and contains 16 consecutive *see infras*.

171. See *The Bluebook*, *supra* note 2.

172. Cf. *Something Old*, *supra* note 15, at 1538 n.43 (citing Jim C. Chen, *Code, Custom, and Contract: The Uniform Commercial Code as Law Merchant*, 27 TEX. INT’L L.J. 91 (1992)). Additionally, Professor Austin has made several observations regarding self-citation:

Self-citation, like venereal disease or rejection slips from publishers, is rarely discussed in polite academic circles. Yet, it is estimated that “eight to ten percent of all citations are self-citations to one’s own previous work.” It is done for ego and for the very practical reason that it pads the author’s citation count, thereby increasing reputation and status. . . . Thus, the use of self-citings to pad their cite index will not escape shrewd writers.

Skulduggery, *supra* note 130, at 1026-27 (footnotes omitted). See also *supra* note 128 (jumpstarting this article’s author on the road to self-citation).

173. Cf. *Something Old*, *supra* note 15, at 1540 (commenting on the diversion of scarce intellectual energy from thinking and writing in legal scholarship).

174. See *Something Old*, *supra* note 15, at 1527.

the straw that stirs the drink.¹⁷⁵ If that is the case, make mine something maroon.¹⁷⁶

175. See *Skulduggery*, *supra* note 130, at 1029 n.149 (quoting Reggie Jackson: "I'm the straw that stirs the drink. It all comes back to me. Maybe I should say me and Munson. But really he doesn't enter into it. . . . Munson thinks he can be the straw that stirs the drink, but he can only stir it bad"). But see Steve Wulf, *In the Hall, He'll Need a Wall*, *SPORTS ILLUSTRATED*, Jan. 18, 1993, at 68 (quoting pitcher Darold Knowles: "There isn't enough mustard in the world to cover Reggie Jackson.").

176. Cf. *supra* notes 86-111 and accompanying text.