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The University of Chicago Manual of Legal Citation ("The Maroon Book"), 21 J. Marshall L. Rev. 233 (1987)

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BOOK REVIEW

THE UNIVERSITY OF CHICAGO MANUAL OF LEGAL CITATION ("THE MAROON BOOK"), UNIVERSITY OF CHICAGO PRESS, 1986, 25 PAGES, PAPERBACK: \$3.50

Reviewed by Joel R. Cornwell*

When human endeavors become dysfunctional on account of form, the form must be reworked to serve the end of function. One can point to many revolutions in human thought which have been compelled by this end, among them the rise of analytical philosophy and legal realism in the early twentieth century.¹ One can also make too much over a citation manual. Nevertheless, the emergence of the *University of Chicago Manual of Legal Citation* marks a functional revolution in an admittedly narrow field and, at a minimum, sends an overdue message to the Harvard Law Review Association, which has heretofore monopolized legal citation form with its manual, *A Uniform System of Citation*, a.k.a. "the *Bluebook*." Fledgling revolutions, however sound in spirit, are often flawed in their execution to the point that the prudent soul is hesitant to abandon the familiar regime, despite its corruption. So it is with the functional revolution heralded by the *Chicago Manual*. The encouraging news is that the *Manual's* flaws are corrigible and, if one accepts the editors' characterization of the *Manual* as a "working draft," probably temporary.

The *Chicago Manual* has been published in two forms. It was first published in the Fall 1986 issue of *The University of Chicago Law Review*.² Photocopying this original text is the cost-efficient alternative to procuring the second publication, a maroon-covered reprint available from The University of Chicago Law Review for

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1. For an appreciation of the phenomenon across cultural disciplines in early twentieth century Europe, see A. JANIK AND S. TOULMIN, *WITTGENSTEIN'S VIENNA* (1973).

2. 53 U. CHI. L. REV. 1353 (1986).

§3.50. Although the original text refers at several points to Appendix 3, a table of American and foreign authorities which the editors tell the reader is omitted from this text, the maroon reprint never mentions Appendix 3. Instead, all references to Appendix 3 are transformed into admonitions to abbreviate American and foreign authorities in accordance with Appendix 2, which does appear in the original text and contains little more than common sense directives and abbreviations of the fifty states.

Both texts of the *Chicago Manual* appear as appendices to an intelligent apologia by Judge Richard A. Posner,³ who criticizes the many instances in which the *Bluebook* requires useless elaborations of citation forms. These elaborations, Posner points out, not only fail to provide useful information to the reader, but distract the writer with petty technicalities, which in turn take up valuable space. The end result is that at least three of the four rationales for having a citation manual are undermined.⁴

Accordingly, Posner praises the *Chicago Manual* for allowing the writer to utilize his or her prudential judgment regarding the appropriate order of authorities in a string citation, and for requiring the writer to indicate that *certiorari* was sought and denied in a case *only* when the indication is of a recent case and would help the reader determine its finality.⁵ Other useless elaborations are also eradicated. For example, titles of books, law review articles, and statutory codifications are cited in ordinary Roman type, as opposed the large and small capital letters mandated by the *Bluebook*. In similar fashion, the basic *Bluebook* form for citing cases is preserved, but names of parties are not italicized since italics serve no function. The reader, seeing the citation, knows immediately that the names refer to parties to the case that is cited. On the other hand, since a reader might be momentarily confused when the names of parties are not followed by citation information, but merely indicate within a text a particular case, the names are italicized: "Justice Rehnquist's majority opinion in *National League of Cities v. Usery*, 426 U.S. 833 (1976), reinvigorating the Tenth Amendment, was overturned in *Garcia*."⁶

These simplifications are entirely sensible. A more problematic simplification involves the editors' decision to give up on the aforementioned Appendix 3. Without it, the writer must make up his or

3. Posner, *Goodbye to the Bluebook*, 53 U. CHI. L. REV. 1343 (1986).

4. The four purposes stated by Posner are (1) "to spare the writer or editor from having to think about citation form," (2) "to economize on space and the reader's time," (3) "to provide information to the reader," and (4) "to minimize distraction." *Id.* at 1344.

5. *Id.* at 1345-47.

6. UNIVERSITY OF CHICAGO MANUAL OF LEGAL CITATION, Rule 3.2.

her own abbreviations for official reporters of states, intermediate appellate courts of states, and state codes. Perhaps state codes could be left to writer's imagination without risking unnecessary confusion, but leaving the writer to his or her own devices for the rest presents too many distractions for writer and reader alike.

Citation manuals must be used by an extremely wide range of persons, from the erudite legal scholar to the novice legal secretary. They exist, as Posner says, to save both the writer and the reader from thinking too much about form. The writer at any point in the spectrum should not be bothered with the decision of whether to abbreviate the Kentucky Court of Appeals as "Ky. App." or "Ky. Ct. App.," or, regardless of which form is chosen, whether he or she should use the exact same form for all intermediate state appellate courts even when the proper name of the court, like that of the Florida District Court of Appeals, interjects an additional word, or, like that of the Texas Court of Appeals, once interjected an additional word (Civil). Neither should the reader be required to draw the inference that the court cited as "Fla. App." by one writer following the *Chicago Manual* is the same court cited as "Fla. Dist. Ct. App." by another following the same manual, or whether the court that decided a 1980 case cited by one writer as "Tex. Ct. App." is the same court that decided as 1978 case cited by another as "Tex. Civ. App."

Criticizing the *Bluebook's* preoccupation with unnecessary rules, Posner notes that if a writer were to cite the Kentucky Administrative Regulations Service as "Ky. Admin. Regs. Serv." instead of the *Bluebook* mandated "Ky. Admin. Regs.," the reader would not be at all confused about the reference.⁷ Posner nevertheless acknowledges that certain bibliographical information about Kentucky provided by the *Bluebook* is useful—*e.g.*, that there are two versions of the Kentucky Revised Statutes Annotated and that the Kentucky Reports ended in 1951.⁸ "There is a place for a treatise on legal bibliography," writes Posner, "which will for example inform the reader about the history of judicial reports in Kentucky; but it does not follow that the treatise writer should tell the reader how to cite these reports."⁹ The problem with the *Chicago Manual* is that it omits *all* of the *Bluebook's* useful bibliographical information and, in doing so, opens the door to confusion.

A first semester law student in Idaho who cites a 1975 case from the Kentucky Court of Appeals should be able to tell from the face of his or her citation manual that this was the highest court in the

7. Posner, *supra*, at 1348.

8. *Id.*

9. *Id.*

state at the time the decision was rendered. Otherwise, the student would, quite logically, assume that the case was decided by the same Kentucky Court of Appeals that decided a similar case in 1987, designate both as "Ky. Ct. App.," and choose the latter case to precede the former in a string citation. In fact, the former Kentucky Court of Appeals became, in 1976, the Supreme Court of Kentucky, and a new intermediate appellate court, the present Kentucky Court of Appeals, was subsequently created. Of course the writer could avoid such dilemmas by engaging in a little precitation research. But this is one of the distractions citation manuals exist to alleviate. If either the writer or the reader must consult a separate bibliographical source in order to understand the cited authorities, there is no functional gain when a citation manual economizes on space. The *Bluebook*, as Posner contends, has intermingled the tasks of citation and bibliography to an unhealthy degree. The cure, however, is not the radical amputation performed by the *Chicago Manual*. One can infer that the editors initially foresaw problems similar to the ones I have illustrated. Otherwise, there is no sensible explanation for the references in the original law review text to the mysterious Appendix 3.

A second questionable editorial decision was to republish the manual as an appendix to Judge Posner's apologia. Again, one can only speculate on the editors' reasons for choosing this format. Perhaps the decision reflects the timidity that naturally attends one who challenges a venerable opponent who has held an unquestioned monopoly for as long as anyone can remember. It is also possible that the decision reflects a covert attempt to rectify some of Posner's criticisms. For example, Posner considers it a flaw that the *Chicago Manual*, like the *Bluebook*, does not discuss writing style.¹⁰ Observing that the *Bluebook's* excessive preoccupation with non-functional conformity in citation forms engenders (or at least complements) a writing style that is equally nonfunctional, Posner asserts that the "ideal" replacement for the *Bluebook* would contain rules of writing style, and offers nineteen "anti-lessons" as examples.¹¹ By including Posner's critique in the reprint, complete with the anti-lessons, this alleged defect is remedied, more or less, but the price of the remedy is considerable. Not only is the reader distracted by information (rules of writing style) which is only tangentially related to citation form, but the reader can discover this tangential information only by overcoming the greater distraction of less pertinent information which seeks to justify the citation manual.

10. Posner, *supra*, at 1351.

11. *Id.* at 1349.

If the primary goal of a citation manual is to be functional, the reader should not be required to reflect on the rationale behind the citation forms except insofar as the rationale might aid the reader in choosing an appropriate form. It would, then, make sense to begin the manual, as Posner suggests, with a brief statement of the purposes for having a citation manual, together with a directive to interpret all subsequent rules in accordance with these purposes. But it would not make sense to say more than this.

Rules of writing style, unlike rules of citation form, are inherently tendentious, and are easily misunderstood unless accompanied by examples. One can easily imagine misinterpretations of some of Posner's apparently uncontroversial anti-lessons. One can further imagine people arguing about the anti-lessons after they have been misinterpreted. The task of a citation manual is to save people from thinking too much about citation form, not to provoke people into thinking about grammar and syntax, notwithstanding the importance of these subjects. A clear writing style is of inestimable worth. But this, not elementary legal bibliography, is a subject properly left to books other than citation manuals.

"The Manual," writes Posner, "is a breath of fresh air; may it swiftly conquer the world of legal publishing."¹² Make no mistake. Insofar as the *Chicago Manual* replaces the useless reiteration of complex convention with the functional simplicity of common sense, it engenders a sense not only of practical economy, but of aesthetic satisfaction. It is a thing of beauty. But its beauty is obscured by a decidedly dysfunctional incompleteness. In its present form, the *Chicago Manual* is not about to conquer, or seriously threaten, such a formidable adversary as the *Bluebook*.

12. *Id.* at 1352.

