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Supraman's Kryptonite

Using Bluebook style in state court is like talking with a foreign accent: you will be understood and accepted, but it's not home style.



BENJAMIN G. SHATZ

Partner, Manatt, Phelps & Phillips LLP

Blue and yellow go great together. They're the colors on the Ukrainian flag and the team colors of the Rams and the Bruins. They're also colors with special meaning to legal writers (i.e., all litigators) in California. In law school or early in practice we learned that the Bluebook isn't just for looking up automotive resale figures and that the Yellowbook isn't just a place to find phone numbers. At least we should have learned that.

Presumably in a first-year research and writing class, you met *The Bluebook: A Uniform System of Citation*. This is the style guide used in most law schools, law reviews and federal courts. The Bluebook's origins are disputed by camps seeking to trace it to either Harvard or Yale in the 1920s. Either way, the official first edition came out in 1926 as part of a Harvard, Yale, Columbia and Penn law review coalition. Its cover was, of course ... a grayish olive. The covers for the second (1928) through the fifth editions (1936) were brown. Only with the sixth edition (1939) did the cover finally become a "more patriotic blue," apocryphally to contrast with the brown associated with Nazi Germany. See Dickerson, *An Un-Uniform System of Citation: Surviving with the New Bluebook*, 26 *Stetson L. Rev.* 53 (1996). The Bluebook's 21st edition came out in September 2020.

The Bluebook is not universally beloved. Indeed, it probably ranks as one of the world's most despised books. (Non-practicing lawyers get the willies upon mention of this dreaded tome.) As law students learn, to their horror, it is incredibly detailed and filled with meaningless rules. Judge Richard Posner, considered a founding father of Bluebook "abolitionism," railed against it for decades, starting with his legendary *Goodbye to the Bluebook*, 53 *Chi. L. Rev.* 1343 (1986) and leading to *The Bluebook Blues*, 120 *Yale L.J.* 850 (2011), in which he lamented that the Bluebook "exemplifies hypertrophy in the anthropological sense. It is a monstrous growth, remote from the functional need for legal citation forms, that serves obscure needs of the legal culture and its student subculture." In a word, it's terrible. And yet it is useful, because legal writing does need some standardized form of citation. (Or does it?)

Given its long history and adoption by law schools, the Bluebook is considered the national standard, used not just in federal courts but by many states as well. And given that law review editors often go on to federal clerkships, those practicing in federal court would be wise to abide by it closely, or else face the unstated scorn of courthouse readers.

Why is following citation style important? Well, it's really not important in any fundamental objective way (provided that citations enable the reader to locate what is cited). But it is extremely important to the extent that an effective brief should not annoy, alienate or distract the reader. (Law Clerk, musing: "I may not understand the legal arguments in this brief, but the Bluebooking is awful!")

Assuming that point resonates, we're now at the beginning of where we're headed. Does the foregoing mean that California litigators should brush up on their Bluebooking skills? Actually, no. As in so many areas, California likes to go its own way, with its own style. This mindset extends to legal citation. If you attended law school outside the Golden State, you may be surprised to learn that California has its own legal citation style. Litigators, of course, see it every time they read a California opinion.

California's style manual is titled, aptly enough, the California Style Manual: A Handbook of Legal Style for California Courts and Lawyers. None other than the legendary Bernie Witkin in his role as Reporter of Decisions, authored the CSM's first edition in 1942. (Not familiar with "The Reporter of Decisions of the Supreme Court and the Courts of Appeal"? See Govt. Code 68900-68905.) Although originally intended as a guide for the courts, Bernie hoped that law offices would follow the CSM too.

By the time of the second edition (1961) and revised second edition (1976), it appeared that the CSM had succeeded in being accepted and adopted by both bench and bar. The CSM was, and still is, colloquially called the Yellowbook, to contrast it with the Bluebook, and also because, well, the cover really was yellow – at least through the third edition (1986). But just to keep life interesting, the cover for the current fourth edition (2000) is red on the top-third and a yellowy-orange on the bottom two-thirds. Presumably this stylish shift in cover appearance was done simply to puzzle younger lawyers who'd heard about the Yellowbook and expected it to have a yellow cover. As always, history is important.

Historically, California practitioners were encouraged and supposed to use the Yellowbook. But in 2008, Rule of Court 1.200 was changed to allow practitioners the option of using either the Yellowbook or the Bluebook. Thus, the key question for every California litigator is, blue or yellow?

Many lawyers choose to stick with the Bluebook. It's allowed by the rule, it's what they learned in law school, and they may still have a copy (albeit an outdated edition) lying around. With so much to learn in the law, and so little time, the incentive to learn a new citation format is rather unappealing. This slothful inclination, however, is strenuously resisted by lawyers who take legal writing seriously, especially appellate lawyers. (The Advisory Committee Comment to Rule 8.204(b) on appellate brief format "encourage[s]" brief writers to follow Yellowbook citation form.)

Their explanation runs like this: While the rules of court certainly allow for Bluebook format, that's really for federal courts. California's appellate courts are themselves required to use the Yellowbook. Thus, following the theory that one should "write for the audience," using the Yellowbook makes strong sense. Doing so telegraphs, "I know that you have to cite this way, and I'm letting you know that I speak your tongue too!" Using Bluebook style in state court is like talking with a foreign accent: you will be understood and accepted, but it's not home style. Also, good Yellowbooking makes it easier for the court to copy what you've written into the draft opinion – always a worthy goal.

But there's always a catch. Here are a couple that jump out. First, did you notice that the "current" edition of the Yellowbook came out in Y2K? It's a bit long in the tooth. The Internet was still in its infancy, as was the idea of word-count limits on briefing. The Yellowbook is not going to tell you how to cite Google, YouTube, or other modern sources. Unlike past editions, there's no handy pocket-part (remember those?) for periodic updates. So current California legal citation style essentially ossified at the turn of the last century (December 21, 1999, to be precise, when Chief Justice Ron George, under the authority conferred on the Supreme Court by Government Code section 68902, approved and adopted the Fourth Edition "as the official organ for the styles to be used in the publication of the Official Reports").

Second, Yellowbook style can be very annoying. (Yeah, Bluebook style too.) What are some of the Yellowbook's most obvious shortcomings? Let's look at an actual Yellowbook short-form example citation: "(*Silacci v. Abramson*, supra, 45 Cal.App.4th at p. 562.)" This is the required format for citing *Silacci* in any subsequent paragraph after its full cite has already appeared.

What's disturbing about this format? Some are upset by the use of parentheses to house the citation. Others like that approach, since it clearly

indicates a citation rather than a sentence starting with a citation. So we'll ignore that. Some are irked by having to use the full case name rather than just *Silacci*. Most people can live with that too.

No, what's really bothersome is the darned "p." to indicate the pinpoint page. Um, isn't it obvious that 562 is the page? Does adding "p." have any meaning or help in any way? No way. (The Bluebook wisely does not require this.) And what's supremely irritating is the "supra." That's the fancy academic Latin term for "above." But isn't it obvious that if a short-form citation is being used, it necessarily means the case has been cited previously? Like the use of "p." for page, this is an insulting redundancy. And the Latin peeves the many plain-English advocates out there.

Wouldn't it be just as effective to cite "(*Silacci*, 45 Cal.App.4th at 562.)" There's an elegance, intelligence, and efficiency to this approach. And this counts as only five words, as opposed to the nine-word Yellowbook format. A four-word difference adds. Assuming a brief with 30 short-form citations, that's an extra 120 words of pure nothing – enough for a decent-sized substantive paragraph (such as the eighth paragraph above, which has exactly 120 words).

A lawyer who fetishizes picayune Yellowbook rules is a Supraman. Supramen and Suprawomen may take enormous pride in having mastered the CSM. Maybe they're required to do this because they work for the court, in which case, we say "Good job!" But many mere mortals degenerate to using a modified Yellowbook approach, dropping infuriating and senseless requirements, like *supra*, *infra*, p., and pp. Briefs that do not slavishly follow every detail of citation style (Blue or Yellow) are filed every day – without discernible consequence. Common sense is Supraman's kryptonite.