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Revising the California Style Manual

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Revising the *California Style Manual*

By Curtis E.A. Karnow¹

There *are* bigger fish to fry. The interplay between judicial and executive power, for example. Civil rights. Privacy rights in environments dominated by the internet. The impact of the budget on the delivery of judicial services. Access to the courts by the poor. But the 'style' of legal citation in opinion writing looms high in the pantheon of some judges' concerns.

The issue, generally obscure to the public and recondite, should take on new importance in light of a December 2011 report of the Bench-Bar-Media Committee.² The committee was formed to better relations between the media and the courts, and to explore the means by which the courts might be better understood by the general public. Whatever the merits of its other findings (a subject best left for another day), the committee also focused on making judges' orders more understandable, suggesting among other things plain English summaries.

The work product of the courts might be better explained in many ways. One of them is to re-examine the traditional style of judicial writing, pushing closer to the sort of narrative and flow we expect from good writing generally. The California Style Manual,³ in particular, should be re-examined, because it creates unnecessary obstruction in the reading of an opinion.

Compare the following examples, one from the Ninth Circuit which follows Bluebook style, and then one from a state court of appeal. Attend to the number of unnecessary symbols and letters in the latter. In each case, I begin with a citation to a statute, and then to citation of cases and propositions for which they stand.

First, *Bluebook*:

We have jurisdiction pursuant to 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291.

...

Typically, sentencing entrapment occurs when a government agent convinces a drug dealer to purchase or sell more drugs than he is otherwise inclined to deal in. *See, e.g.*, *United States v. Mejia*, 559 F.3d 1113, 1118 (9th Cir.2009); *United States v. Riewe*, 165 F.3d 727, 728-29 (9th Cir.1999) (per curiam); *Naranjo*, 52 F.3d at 249-50; *Staufer*, 38 F.3d at 1104-08; *see also* *United States v. Parrilla*, 114 F.3d 124, 126-29 (9th Cir.1997) (finding that the defendant may have been entrapped into possessing a gun during a drug trafficking crime where government agent proposed trading the gun for drugs). Briggs does not argue that the stash house contained more drugs than he wanted....

U.S. v. Briggs, 623 F.3d 724 (9th Cir. 2010).

¹ Judge of The Superior Court, County of San Francisco. Full disclosure: the author confesses his darkest secret. He was one of the gnomes who worked on the 12th edition of the Bluebook.

² <http://www.courts.ca.gov/documents/jc-121311-itemL.pdf>

³ <http://www.sdap.org/downloads/Style-Manual.pdf>

Second, *California Style*:

The statutory definition of all murder is “the unlawful killing of a human being, or a fetus, with malice aforethought.” (Pen.Code, § 187, subd. (a).)

...

In *People v. Anderson* (1968) 70 Cal.2d 15, 73 Cal.Rptr. 550, 447 P.2d 942, our Supreme Court distilled three basic “categories” of evidence for analyzing premeditation and deliberation. These categories are planning activity, motive, and manner of killing. (See *id.* at p. 27, 73 Cal.Rptr. 550, 447 P.2d 942.) *Anderson* was the first case to analyze first degree murder by analyzing these three categories of evidence, which the court developed as a gloss on the previous case of *People v. Thomas* (1945) 25 Cal.2d 880, 898, 900, 901, 156 P.2d 7. (See *Anderson*, *supra*, 70 Cal.2d at pp. 26-27, 73 Cal.Rptr. 550, 447 P.2d 942 [“The type of evidence which this court has found sufficient to sustain a finding of premeditation and deliberation falls into three basic categories: ...” (*People v. Thomas*, *supra*, 25 Cal.2d 880, at pp. 898, 900, 901, 156 P.2d 7); (3) facts about the nature of the killing from which the jury could infer ... facts of type (1) or (2).”].)

People v. Nazeri, 187 Cal.App.4th 1101 (2010).

The California style requires indicia of “subd.” when it is perfectly obvious that a subsection or subdivision of a statute is referred to. It requires at least two unnecessary parentheses for every case cited, wrapping the citation in a protective cocoon that stops the reader cold. It requires “p.” or “pp.” to indicate that a page number is meant, although that much is painfully obvious in e.g., “70 Cal.2d at pp.26-17”. California opinions use the entire word ‘section’ (except inside parentheses) where federal courts are content with “§”. Even the placement of the case’s date, just after the case name but before the citation--that is, in the center of the overall citation--is unpleasant, for (with its parentheses--see?) it too stops the reading eye mid-stream. The state case uses the signal “*supra*” to indicate the case has been previously cited—but of course, we know that already. As the federal form shows, ‘supra’ is gratuitous: the form “*Stauffer*, 38 F.3d at 1104-08” is enough to tell the reader that the case is fully cited above and provides enough information to obviate confusion. The end of the citation -- (2).”].), -- uses multiple periods, brackets and parentheses, and is unpleasant. Where a case has already been cited, Bluebook style approves of “Plaintiffs rely on *Waller* for reversal,” where the California Style Manual requires, “Plaintiffs rely on *Waller*, *supra*, 11 Cal.4th at page 23, for reversal”.⁴

If writing on a clean slate, how might we generate rules for citation? We would, I think, listen carefully to Edward Tufte, emeritus at Yale and among the best teachers of analytical design and transparency in publications. He tells us to ask, “Do the prominent visual effects convey relevant content?” E. Tufte, *BEAUTIFUL EVIDENCE* at 62 (2006). If not, distraction ensues. We should strive to eliminate every word or symbol consistent with the provision of an unambiguous citation to the relevant material. We should think of our audience as more than lawyers and other judges, that is, as including the lay audience. For them, we might sacrifice “supra” and infra” and “hereinafter” as well as *ibid.* (*id.* is half the length). We might revisit parallel citation, and determine whether it is necessary to ensure the reader has prompt access to the reference. Consider that opinions are in the public domain, and generally available at zero cost online from e.g. Google Scholar or Fastcase, where inputting the official citation alone (i.e., 25 Cal.2d 880) is enough to pull up the opinion. After all, is this really

⁴ <http://libguides.law.ucla.edu/content.php?pid=43631&sid=353827> (comparing examples of the two styles).

necessary:

Although *Gilmer, supra*, 500 U.S. 20, 111 S.Ct. 1647, 114 L.Ed.2d 26, as discussed above, had held that statutory employment rights outside of the collective bargaining context are arbitrable....

when this does the same work:

Although *Gilmer*, 500 U.S. 20, had held that statutory employment rights outside of the collective bargaining context are arbitrable....



Other states simply use the Bluebook form,⁵ but I confess that authority too has come in for its share of blistering criticism. The redoubtable judge Richard Posner doesn't like it very much.⁶ He objects to the bizarre rules for abbreviations and the hierarchies by which authorities must be cited, among other things, and prefers (but will not use) his local *University of Chicago Manual of Legal Citation* now known as the Maroon Book⁷ in place of the Bluebook.⁸ The Maroon Book captures the four essentials for citation:

- (1) *Sufficiency*: The citation should give the reader enough information to locate the cited material without further assistance.
- (2) *Clarity*: The citation should be comprehensible to the reader, using plain English and following a well-recognized form whenever possible, and avoiding the use of confusing words.
- (3) *Consistency*: Citations should be consistent within a piece, though they need not be uniform across all legal materials.
- (4) *Simplicity*: Citations should contain only as much information as is necessary to meet the goals of sufficiency, clarity, and consistency

The Maroon Book does a nice job too in its elimination of unnecessary punctuation, parentheses, extra letters (F2d, not F.2nd), dates (don't cite a date when citing to the most recent version of a statute), numbers (885 F2d 332, 340-42, not: 340-342), and it kills off "supra," "infra," and "hereinafter". The

⁵ E.g., New York- http://www.courts.state.ny.us/reporter/new_styman.htm (close to Bluebook); New Jersey- <http://www.judiciary.state.nj.us/appdiv/manualonstyle.pdf> (Bluebook). Actually, New York may be an amalgam of the Bluebook and California style. Gerald Lebovits, "New Edition Of State's 'Tanbook' Implements Extensive Revisions In Quest For Greater Clarity," *New York State Bar Journal* 8, 9 (March/April, 2002).

⁶ Richard Posner, "Goodbye To The Bluebook," 53 *U. Chi. L. Rev.* 1343 (1986). "*The Bluebook: A Uniform System of Citation* 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." Richard Posner, "The *Bluebook* Blues," 120 *Yale L. J.* 850, 851 (2011). In his Yale article, Posner reprints his own citation manual which obviously he thinks is better than the Maroon Book.

⁷ http://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/79%20Maroonbook_0.pdf

⁸ See also, J. Chen, "Something Old, Something New, Something Borrowed, Something Blue," 58 *Univ. Chi. L. Rev.* 1527 (1991).

Maroon Book also endorses the cleanest form for subsequent cites of cases, for example, *Iowa Elec*, 834 F2d at 1429 (which doesn't even have a period after *Elec*).

At this rate, if we were to let loose the dogs of war, we might end up with “CRC” for the California Rules of court, “CC” for the Civil Code, “CCP” for the Code of Civil Procedure, and “B&P” for the Business and Professions Code. Not, however, with “PC” for the Penal Code, which must be distinguished from the Probate Code. But all that may be a bridge too far. As Posner notes, many abbreviations make the text more, not less, obscure.⁹ We might consider writing out the statute once and thereafter referring to it by its initials.

The appellate division of the San Francisco Superior Court, where I am for the time being presiding judge, is looking into the matter. To date we have usually left questions of form to the lead judge on each opinion, which leads to inconsistency. One of my colleagues rightly suggests this looks sloppy, although the adverse effect is ameliorated by the fact that, aside from the parties involved, no one reads our stuff. We are evaluating a style based on the California Style Manual,¹⁰ perhaps including even its shocking intermediate parenthetical date, but dispensing with all other unnecessary letters and symbols, reducing “section” to §, bidding fond adieu to “subds.,” and leaving much of the Latin to other sorts of scholars. Perhaps the California Style Manual, due for an update in the next few years,¹¹ might consider a similar endeavor, and save me the heartburn of straying too far from orthodoxy.

⁹ “Bluebook Blues,” above n.6 at 853.

¹⁰ True, the state’s rules of court require either Bluebook *or* the California Style Manual, CRC 1.200; hybrids and modifications are not contemplated. A parsimonious reading of the rule, however, suggests it applies to the *parties*, although in fairness most judges understand it to govern their work, too.

¹¹ There have been four editions, with fourteen years between the third and the (current) fourth edition dated 2000.