

TRUE BLUE

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Constitutional Commentary's decision to abandon *The Chicago Manual of Legal Citation* in favor of *The Bluebook: A Uniform System of Citation* should not be construed as a wholesale endorsement of the *Bluebook*. The editors of *Constitutional Commentary* feel no obligation to defer to the law reviews at Harvard, Yale, Columbia, and Penn on any subject, least of all on questions of legal citation. For the convenience of our authors, we have chosen to identify specific *Bluebook* rules that we will ignore, modify, or clarify. In the spirit of norm entrepreneurship, we invite other journals to adopt any of our rules. Acknowledgement is appreciated but not necessary.

First, a few general principles. All rules of legal citation, including those outlined here, may be suspended when common sense so dictates. Where *Bluebook* rules have proved undesirable, unworkable, or ugly in the experience of *Constitutional Commentary's* editors, they will be broken without hesitation or regret. The supplemental rules outlined here are intended to minimize opportunities for editorial mischief. Discretion in the application of these rules and of the *Bluebook* shall favor our authors. Whenever possible, we will endeavor to err in favor of more information rather than less. This presumption favoring inclusion affects, at a minimum, abbreviations, names of authors, dates, and the subsequent histories of judicial decisions.

Herewith exceptions to and modifications of specific *Bluebook* rules. All rule and page numbers refer to the seventeenth edition of the *Bluebook*, published in 2000.¹

Rule 1.3 states that “it is common to include a short parenthetical explanation of a particular authority after the citation to the authority if it will help the reader understand how the source

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1. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (17th ed. 2000).

supports or relates to the author's assertion" (p. 5). This admonition is not an inexorable command. "Common" does not mean "mandatory." When a parenthetical is not helpful, or at least when the effort needed to write a parenthetical is greater than any benefit that would be realized, the author need not provide a parenthetical.

Apropos of parentheticals, **Rule 1.5** prescribes rules on their design (p. 28). Misled by earlier editions of the *Bluebook*, some student-edited law reviews have developed a horrid practice of omitting definite and indefinite articles from parentheticals as though they were telegraphs or newspaper headlines. Some clarification is therefore in order. Parentheticals should use definite and indefinite articles as in ordinary English sentences. The examples provided in **Rule 1.5** support this clarification. Moreover, the rule explicitly provides that "[e]xplanatory parenthetical phrases begin with a present participle and should not begin with a capital letter" (p. 23). *Expressio unius est exclusio alterius*: this provision exhausts the *Bluebook's* departure from the rules of English for parentheticals, and all other conventions of the language therefore apply. "The," "a," and "an" are valid words and should assume their rightful places within parentheticals.

Rule 1.2 describes introductory signals used in citation sentences and clauses (pp. 22-24). The *Bluebook's* line between [no signal] and *see* has proved unworkable in many circumstances. There is no coherent distinction between "directly stat[ing]" a proposition and "clearly support[ing]" a proposition (p. 22). The *Bluebook's* attempted clarification—that "there is an inferential step between [an] authority cited" with the signal *see* "and the proposition it supports"—is less than fully helpful (p. 28). Generally speaking, *Constitutional Commentary* will use [no signal] when an authority is quoted or is merely being identified. In all other circumstances, we will use the signal *see*. There is no reason to insert parentheticals systematically after any authority introduced by the signal *see*.

E.g. is not so much a signal as it is a signal modifier (p. 22). It may be combined with any signal, including [no signal]. "*Cf., e.g.*" and "*see generally, e.g.*" are perfectly good clauses.

The signal *contra* will always remain available for use in *Constitutional Commentary*, no matter what any particular version of the *Bluebook* may provide.²

2. See Gil Grantmore, *The Death of Contra*, 52 STAN. L. REV. 889 (2000).

The *Bluebook* “encourage[s]” the use of parenthetical explanations in connection with the signals *see also* and *see generally* (pp. 23-24). It “strongly recommend[s]” the use of parentheticals in connection with the signals *cf.*, *compare . . . with*, and *but cf.* (p. 23). Neither of these verb phrases is synonymous with “requires,” and a parenthetical may be omitted after any signal if the author has a good reason for proceeding without one.

Rule 1.4 prescribes the order of authorities within each signal (pp. 25-27). This order is merely presumptive rather than mandatory. It may be changed whenever appropriate.

Rule 2.2(b)(i) directs legal writers to italicize a case name whenever it “is grammatically part of the sentence in which it appears,” but to leave case names in roman type when they are “used in a citation clause embedded in the footnote text” (p. 32).

Rule 10(c) draws a similar distinction between citation sentences and “textual sentences . . . in footnote[s]” (p. 59). That rule limits abbreviation of words in case names to “widely known acronyms” and eight specified words—&, Ass’n, Bros., Co., Corp., Inc., Ltd., and No. (p. 59). Though logically sound, these rules are virtually unworkable in practice. Extremely few authors understand the distinction between a case named within a citation sentence and a case named in footnote text. Therefore, *Constitutional Commentary* will modify these rules according to the physical placement of a case name. A case name placed “above the line”—that is, in the main text of an article—will be italicized according to Rule 2.2(b)(i) and lightly abbreviated according to Rule 10(c). By contrast, a case name placed “below the line”—that is, in footnotes, without regard to whether the name appears within a citation sentence or within footnote text—will appear in roman type and will be abbreviated according to the *Bluebook*’s rules (as otherwise modified here) for case names in citation sentences.

Generally speaking, authors should reserve footnotes for citation material. There should be minimal amounts, if any, of narrative text “below the line.” When this admonition is heeded, the “above the line”/“below the line” distinction developed here will rarely arise.

Rule 5.2 directs: “Do not indicate that emphasis in [a] quotation appears in the original” (p. 45). In practice this rule has led to great ambiguity. To avoid confusion, *Constitutional Commentary* will clearly indicate whether any emphasis in a quotation appears in the original or has been added.

Rule 5.3 provides theoretically sound rules governing the use of ellipses to indicate omissions from quotations. In the field, however, neither authors nor law review editors seem to understand this rule. Blame for the state of affairs must be laid at the feet of the *Bluebook*'s editors. Two rules of thumb should address most of the problems. First, never use ellipses at the *beginning* of any quotation. Second, never use ellipses at the *end* of any quotation that covers less than a full sentence. Four-period ellipses appear only in quotations spanning at least a full sentence.

Rule 8 provides that names of "parts of the U.S. Constitution" should be capitalized whenever they appear "in textual sentences" (p. 52). This rule leads to aesthetic atrocities such as the Republican Guarantee Clause and the Necessary and Proper Clause. *Constitutional Commentary* will capitalize the names of articles and amendments of the Constitution, but not the names of clauses. The Bill of Rights as a unit will be capitalized, but the names of other informal divisions of the Constitution will not be. Examples:

First Amendment
free exercise clause
an Article III court
section 5 of the Fourteenth Amendment
equal protection clause
Bill of Rights
preamble

Rule 10.2.1(c) and **Rule 10.2.2** operate together to require that the first word of a case name in a citation be abbreviated (pp. 59, 62). The seventeenth edition's preface goes so far as to command that the first "word is abbreviated even if it is the only word in the party's name" (p. v). This is an exceedingly ugly and frequently confusing rule. Ugliness alone dictates that it be ignored. Therefore, *Constitutional Commentary* will never abbreviate the first word of a case name, whether in citations or in text.

Rule 10.3.1 directs law review authors to "cite the relevant regional reporter" for state court decisions, but not the official reporter (p. 62). This is a supremely arrogant rule that befits student editors at Ivy League law schools. We will not follow it. If a state goes to the trouble of paying for its own official reporter and requiring its lawyers and judges to cite that reporter, law

journals should respect that choice (however frivolous it may seem in an age of electronic publishing and public domain citations). It is obnoxious for second-year law students to second-guess state courts. Nor should law journals enter the business of enhancing the West Publishing Company's profits beyond the unwarranted boost it received from the Eighth Circuit's parochial and erroneous holding that the largest legal publisher in Eagan, Minnesota, enjoys a copyright in the case arrangements and resulting page numbers of its regional reporters.³

We therefore clarify: If a state court case appears in an official state reporter, cite that reporter as well as the appropriate regional reporter. Thus: ___ Md. ___, ___ A.2d ___ (*date*). But: ___ N.W.2d ___ (*Minn. date*).

Rule 10.7 directs the provision of a judicial decision's "entire *subsequent* history," but commands editors to "omit denials or certiorari or denials of similar discretionary appeals, unless the decision is less than two years old or the denial is particularly relevant" (p. 68) (emphasis in original). The exceptions are unmanageable. The temporal line is hard to gauge in a law review writing and editing process that often spans many months, and we have no confidence in student editors' ability to judge the "particular[] relevan[ce]" of a denial of certiorari. Therefore, *Constitutional Commentary* will provide the entire subsequent history of a decision, including denials of certiorari and denials of similar discretionary appeals.

Rule 12.9, in prescribing the proper handling of the word "section" and the symbol "§," provides a bizarre distinction between provisions in the *United States Code* and other statutes. We prefer this rule: the word "section" should be spelled out except in citations, where it may be replaced by the symbol "§."

Rule 14.2(a) apparently directs that citations to the *Federal Register* include the exact date (pp. 97-98). The examples given in **Rule 14.1** confirms this suggestion (p. 96). This is a good rule. The *Federal Register*, at least when found as a weekly pamphlet, is very hard to use without an exact date.

Rule 15.1.1 provides: "If a work has more than two authors, use the first author's name followed by "ET AL." unless the inclusion of other authors is particularly relevant" (p. 108). **Rule 16.1** adopts the same convention for authors of works in periodicals. Again, we find "particular relevance" to be less than a satis-

3. West Publishing Co. v. Mead Data Cent., Inc., 799 F.2d 1219 (8th Cir. 1986).

factory guide. As a rule of thumb, we believe that three authors' names are more manageable than the *Bluebook* evidently thinks, while four or more can get unwieldy. In any event, the writer of an article in *Constitutional Commentary* retains the discretion to include all authors' names of a work with more than two authors or, alternatively, to use the abbreviation "et al."