

# The Bluebook Blues

By *Lawrence Savell* SPECIAL TO THE NATIONAL LAW JOURNAL

**T**O THE AVERAGE person (defined as someone who actually goes home during daylight hours and whose annual antacid consumption does not exceed his or her body weight), the term "citation" triggers a variety of associations. These range from the favorable memory of the legendary 1948 Triple-Crown-winning racehorse to the unpleasant (and costly) experience of being stopped for a moving violation.

To us lawyers, however, the term "citation" simply means pain—the pain of having to follow what are often arcane, confusing and nitpicking rules when referring to authorities in briefs and memoranda.

These rules are collected in "A Uniform System of Citation," known to us affectionately (and aptly) as "the Bluebook." Currently in its 15th edition, the Bluebook was created and is maintained

by students at four leading law schools to ensure that, when they and their peers take their places at the bottom of the food chain of some prestigious firm, they will be regarded as competent in at least some small aspect of the practice of the law.

Don't get me wrong—I'm not saying that there is no need for some guidelines on how to refer to sources of information. I certainly do not advocate going back to the days when *Pennoyer v. Neff* was cited by saying, "Look in that brown book, the second from the end of the shelf near the lamp in the Bar Library, about two-thirds of the way through, just after the coffee stain."

What I am saying is that this tome, which now runs 343 pages (including its index), could be dramatically shortened, and the rules it contains could be significantly simplified and made easier to intuit.

For one thing, we could do away with all the Latin. While I recognize the bene-  
[SEE 'BLUEBOOK' PAGE A20]

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# What's Blue, White and Full of Rules?

[ 'BLUEBOOK' FROM PAGE A19 ]

fit of making lawyers sound as unintelligible as doctors, and while I appreciate the sacrifice many lawyers endured taking seven or eight years of Latin in prep school, you have to admit that Latin is not as common as it once was in ordinary conversation and writing. How many television commercials are in Latin? Very few. Can you recall a single sound bite in Latin from the 1992 presidential campaign? I doubt it.

## Latin Lovers

Legal citations composed of Latin words are very confusing. "Op. cit." sounds more like a reference to a 1960s retro designer chair than a mention of a work already cited. (And, by the way, the English "work cited" would hardly be wordier.)

I have even less regard for "passim," which I used to think was merely what wealthy alumni say to a professor dealing with their less-than-star-quality son. Now I realize it is the "couch potato" of citations, telling the reader, "It's in there a bunch of times, and I'm not going to exert myself to find out where."

But even English-language citations can be counterintuitive. Take the word "see." When used as a signal, this word takes on a whole new meaning, whereby—literally—seeing is believing that the author actually has read the case.

If you're not so sure that what you are seeing says what you want it to, however, you can always call on its "fudging" cousin, "cf." "Cf.," of course, is another sofa spud, as it lethargically tells the reader, "This may have some tangential relevance to something, but you'll have to figure out how." The use of "cf." allows those advocating untenable positions to

"bulk up" briefs with authorities of, at best, remote relevance. I have little doubt that a future edition of the Bluebook will contain an even more vacuous (albeit honest) option, such as "see for no apparent reason."

Requiring very little effort at all, by contrast, is the ever-popular parenthetical, the "Opti-Fast" of legal citation, by which one can reduce a 30-page court opinion to a short phrase or clause—conveniently omitting the 99.99 percent of the decision that does not support the writer's position. Enthusiasts have even been known to exercise the parenthetical in their resumes, explaining in a few well-chosen words how circumstances led to a widespread, although temporary, drop in grade-point average, confined to the three years in which they attended their law school.

## Target Audience

I am troubled by the fact that the Bluebook, like an increasing number of movies and television shows, apparently has become yet another repository for subliminal product advertising, as well as references to esoteric philosophy and current affairs. Enterprising marketers and propagandists appear to have inserted references to automobile models ("Accord"), political groups ("Contra"), Freudian psychotherapy concepts ("Id.") and eschatological constructs ("Hereinafter"). There should be absolutely no place for the hawking of wares in the pages of an objective rule book. Where will it all end?

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**Latin is not as popular as it once was in ordinary life. How many commercials in Latin do you see on television?**

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One last gripe. Despite the mass of turgid precepts contained in its pages, there are many sources of valuable information for which the Bluebook fails to provide a cite form.

What about facial expressions? What about hand gestures and body language? What about odors? Any experienced courtroom lawyer or legal researcher would agree that these are significant

areas for which there should be Latin words and abbreviations. Maybe in the 16th edition.

Those who would argue that, despite its faults, the legal citation system should remain unchanged must be aware that the system is in fact changing, despite their opposition. This trend can be noted in the opening pages of the current Bluebook.

In the past, for example, authors of articles were cited by their last names only, whereas authors of books were entitled to a first initial. (No doubt this was in recognition of the increased number of billable hours sacrificed by the book authors in order to pursue their lengthier scholarship.) Now, however, all authors get their full names (including middle initial)—presumably to make them more identifiable to talk-show or news-analysis producers in search of "experts."

In my judgment (but see Annual Review of Performance, Dec. 31, 1994, *passim*), and in my heart (see *infra*; see also *id.*), I feel that it may be time to make some repairs (see *supra*) to the "Uniform (cf. *contra*) System of Citation" (compare, e.g., Secretariat). **END**