



THE BLUEBOOK NODS

Robert A. James

LATE IN MY CAREER as a private transactional lawyer, I have written some scholarly articles. Throughout my career I have rarely been involved in court filings, so have been blissfully independent of *A Uniform System of Citation* since law school. On finally opening the bulging new 21st edition (2020) and comparing it with the tiny 12th edition (1976) I used in law school, I had some strong reactions.

I.

BLUEBOOK VARIANCES IN THE BLUEBOOK

The first set of reactions represents pure *Schadenfreude*: there are Bluebook variances in the Bluebook itself. I call them “variances” rather than “errors” because any system of citation is and should be aspirational. Agreed forms, no matter how persnickety, are goals to strive for, not unforgiving measures of legal talent or aptitude. As we wrote in the *Journal of Attenuated Subtleties* when I was in law school, the standard can be harmless error, not strict scrutiny.¹ That being said, I have the following comments on the 21st edition.

First, at the very beginning, the inside front cover examples include “forthcoming in Jan 2005,” which should read “forthcoming Jan. 2005.”²

Robert A. James is a partner in Pillsbury Winthrop Shaw Pittman LLP, and editor-in-chief of the *Journal of Attenuated Subtleties*.

¹ See *Special Project: A System of Citation for Phonograph Records*, 1 J. ATTEN. SUBT. 40 (1982), reprinted in 9 J.L. PERIODICAL LABORATORY OF LEGAL SCHOLARSHIP (1 J. ATTEN. SUBT.) 119 (2019).

² Rule 17.1, Rule 17.3, Table T12.

Second, Rule 9(a) seems to say that only “Justice” can be abbreviated “J.” – as in “Stevens, J.” Judges in lower courts should always be called “Judge.” But Table T11 still abbreviates Judge as “J.” Thanks, Rule 9, but I will still refer to Friendly, J. and Posner, J. in my footnote parentheticals.

Third, South Sudan has been an independent country since 2011, but there is no “S. Sudan” (note the separating space) in Table T10. That table bravely makes difficult political decisions such as “China” versus “Taiwan,” “Congo” versus “Dem. Rep. Congo,” and “Macedonia.” “Ir.” for Ireland, possibly confusing given the existence of Iran and Iraq, reminds me of Gary Gulman’s hilarious comedy routine on two-letter state abbreviations.

Fourth, in 1982, we at the *Journal of Attenuated Subtleties* launched a system of citation of audio recordings, and of course I am pleased to see the forms in Rule 18.6 and Rule 18.7 on video and audio sources.³ Alternative pinpoint citation forms are offered in Rule 18.7: one may either use time markers or refer to “the title of the shorter work,”⁴ namely an individual song on an album.

This comment may be chalked up as a boomer observation. In the early ’80s we listened to vinyl records, and therefore referred in our system to “sides” and “tracks.” It appears that album tracks are still in a fixed order when distributed in online forums like Apple Music. References to numbered tracks may still be useful as a third citation option, because, contrary to the assumption in Rule 15.5.1, sometimes there is more than one song with the exact same name. For example, Modest Mussorgsky’s *Pictures at an Exhibition* has five different movements all entitled “Promenade.”

Fifth, the Bluebook records that Cass Sunstein wrote an article entitled “Lochner’s Legacy,” and David Bernstein wrote an article entitled “Lochner’s Legacy’s Legacy.” Exemplifying a rule that article titles are generally italicized, but words that are italicized in those titles (e.g., the name of a case or another article) are romanized instead,⁵ they are cited in Bluebook examples thus:

³ See *Special Project*, *supra* note 1; Vaughan Black & David Fraser, *Cites for Sore Ears (A Paper Moon)*, 16 DALHOUSIE L.J. 217, 222 n.27 (1993) (“The editors of *The Journal of Attenuated Subtleties* were the real pathbreakers in the field of musical legal citation.”).

⁴ Rule 15.5.1.

⁵ Rule 16.3.

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Cass R. Sunstein, *Lochner's Legacy*, 87 COLUM. L. REV. 873 (1987).

David E. Bernstein, *Lochner's Legacy's Legacy*, 92 TEX. L. REV. 1 (2003).⁶

I was going to object that if Bernstein's title is quoting Sunstein's title, it should follow the ping-ponging italicization rule, so it should be "*Lochner's Legacy's Legacy*" (note the suddenly italicized final "s"). But then I went back to the originals. Sunstein's article is simply romanized "*Lochner's Legacy*" in the *Columbia Law Review*, without alternation between roman and italic type both on its title page and in the (italicized) running heads. Ever after, though, it has been cited as "*Lochner's Legacy*" or even as "*Lochner's Legacy*" (note the running italicized final "s"), because everyone knows that one italicizes shorthand case references. The Bluebook's Bernstein citation is incorrect – it is in volume 82, not 92. (Query whether a numerical error in an *example* is still an error.) For his part, Bernstein titles his article "*Lochner's Legacy's Legacy*," the same as the running head (note the suddenly romanized final "s"). The Bluebook changes the author's and the law review's style. Bernstein himself cites the prior article as *Lochner's Legacy*, all in the same typeface, entirely faithful to Sunstein's own usage. Thus, neither article title is what the Bluebook says it is. The typeface of the article title should be "a matter of style which must be left to the writer."⁷ A system of citation should not modify the usage of an author or publisher absent a typographic error.

Sixth, at the very ending, the inside back cover examples include "(Am. Law Inst. 1965)" and "(Am. Law Inst. & Unif. Law Comm'n 1977)," which should read "(Am. L. Inst. 1965)" and "(Am. L. Inst. & Unif. L. Comm'n 1977)."⁸

I go to the trouble of spotting variances for two reasons only: (1) to demonstrate the basis for my *Schadenfreude*, of course, and (2) to show that no one – no law review staff, no professor, no employer, no court – should expect complete conformity to the Bluebook if the Bluebook itself nods.⁹ Let us all strive for, and hold others to, a standard of good faith.

⁶ Rule 2.1(c).

⁷ *Phillips v. Osborne*, 444 F.2d 778 (9th Cir. 1971) (discussing placement of holdings in judicial footnotes rather than in text). A better example would have been Bruce A. Ackerman, *Beyond Carolene Products*, 98 HARV. L. REV. 713 (1985) (so styled with both roman and italic in the original).

⁸ Rule 12.9.4, Table T6.

⁹ Cf. HORACE, *ARS POETICA* line 359 ("quandoque bonus dormitat Homerus") ("even good

II. CITATION AND NUMERACY

My second reaction is impassioned. I quote Rule 7(e) in its entirety:
(e) **Mathematical expressions.** Italicize mathematical formulas and variables:

$$E = mc^2$$
$$a > 2b$$

This blanket rule is symptomatic of a larger concern, that law and science have an uneasy relationship.¹⁰ Editors, like other lawyers, tend to choose their profession because they are uncomfortable with math. “[I]t is not unusual for law students to explain their decision to attend law school as related to an aversion to numbers.”¹¹

Mathematical style goes to great pains to distinguish among *italic*, roman, and **boldface** to convey thought. The use of different faces is thoroughly substantive, not æsthetic.¹² It is true that italics are used in mathematics for variables. They are also used for physical quantities and fundamental physical constants. So in the above examples these characters – *E*, *m*, *c*, *a*, and *b* – are correctly italicized. But roman face is used for units, labels, numbers, chemical elements, atomic particles, operators and relations. Functions (sin, cos, ln, and many others) are also romanized. So in the above examples

old Homer nods”) (relating to the appearance of a character whom Homer had killed off earlier). As an aside, I hope the next Bluebook edition incorporates the “[cleaned up]” innovation advocated in these pages (see Michael S. Kwun, *The New Parentheticals*, 22 GREEN BAG 2D 13 (2018) (crediting Jack Metzler for its genesis)), and the signal “see, well” when one cites oneself as the leading authority (see *Seila Law LLC v. CFPB*, 591 U.S. ____ (2020) (Kagan, J., dissenting) (“See, well, Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245, 2331-2346 (2001)”).

¹⁰ Cf. C.P. SNOW, *THE TWO CULTURES* (1959) (literature and science).

¹¹ Carole Silver & Louis Rocconi, *Learning From and About the Numbers*, 5 J.L.: PERIODICAL LABORATORY OF LEGAL SCHOLARSHIP (4 J. LEGAL METRICS) 53, 55 (2015).

¹² See INTERNATIONAL ORGANIZATION FOR STANDARDIZATION (ISO), ISO STANDARD 31 (1992); CHICAGO MANUAL OF STYLE ch. 12 (17th ed. 2017); STEVEN G. KRANTZ, *HANDBOOK OF TYPOGRAPHY FOR THE MATHEMATICAL SCIENCES* (2000); ELLEN SWANSON, ARLENE ANN O’SEAN & ANTOINETTE TINGLEY SCHLEYER, *MATHEMATICS INTO TYPE* (2d ed. 1999); Donald E. Knuth, *Mathematical Typography*, 1 BULL. AM. MATH. SOC’Y (N.S.) 337 (1979); cf. Don Knuth, *The Potrzebie System of Weights and Measures*, MAD, June 1957, at 36.

these characters $=$, $>$, and $2 -$ are incorrectly italicized. Greek letters follow the same rules. And for vectors, boldface roman, or an arrow placed over an italicized variable or line segment, is used. The distinction between vectors and scalars is an important landmark in the history of science and should not be overruled by Bluebook Rule 7(e).

None of this may matter in simple applications. Judge Learned Hand probably did not care whether his famous negligence formula in *United States v. Carroll Towing Co.*¹³ appeared as $B < PL$ with an italicized “lesser than” sign in the West Law Reports.

In any work with serious application of mathematics to legal issues, though, the Bluebook should defer to the standards of the relevant discipline. The formula option in word processing applications automatically applies the above italic and roman rules, and can be used to notate vectors; at a minimum, articles certainly should not disturb what these programs produce. If this means that law review editors lacking mathematical numeracy must defer to other experts or (horrors) to the authors who have such skills, so be it. They and we should not simply italicize an entire formula to appear vaguely scientific.

More broadly, we should not be dilettantes. If you are going to provide a citation from a cultural community, whether scientific, linguistic, or musical, then you should observe the norms of that community. Baseball has embraced the concept of *Ponle Acento*, finally including accent marks on uniforms and other player references. The law should be no less respectful of other cultures.

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¹³ 159 F.2d 169 (2d Cir. 1947).