

**From:** Peter W. Martin peter.martin@cornell.edu  
**Subject:** Re: Pre-Release Review (Confidential)  
**Date:** January 13, 2016 at 1:20 PM  
**To:** Carl Malamud carl@media.org



Carl -

Thank you for letting me have a look at the Baby Blue manuscript.  
If I had a clearer understanding of the goals of the project, I could be more helpful in my review.

- \* (1) Is its aim to instruct people on how to cite U.S. legal materials in complete conformity with the 20th edition of *The Bluebook* (BB)?
- \* (2) Is its aim to separate a widely used system of citation from the copyrightable material in the BB, forcing the BB proprietors to acknowledge the limits of their copyright and removing the threat of infringement from others who would innovate in this space?
- \* (3) Is its aim to provide a useful citation manual for those who are the subjects of expressed concern "pro se litigants, prisoners, and others seeking justice"?

As you know one concern I have about the project is the risk that it will reinforce the BB's implicit claim to specifying a "universal system of citation" in the sense of its rules setting out the citation format applied universally and essentially throughout the courts and administrative agencies of the fifty states and the federal government. It may be universal in its ambition and near universal in its implementation in the nation's student-edited law journals but anyone can advance legal arguments to a New York court without citing in accordance with BB. A lawyer presenting a brief to a court in New Mexico had better not cite following BB rules other than the one that tells users to follow individual court rules. For more examples see my most recent post: <http://citeblog.access-to-law.com/?p=517>

If the aim of Baby Blue is #1 above then its authors need to attend to some of the dumb changes contained in the 20th edition. Here are two examples about which I have written:

a) Baby Blue, like BB prior to the 20th edition, instructs a user to cite a provision of the Uniform Commercial Code in the following manner: U.C.C § 9 (1977). BTW I know of no U.C.C § 9 so let's make that U.C.C § 9-105 (2010). The 20th edition would change that to: U.C.C § 9-105 (Am. Law Inst. & Unif. Law Comm'n 2010). It also makes parallel changes in the citation of restatements and model rules not picked up by Baby Blue. See <http://citeblog.access-to-law.com/?p=461>

b) R38.4 includes among the parentheticals to use indicating that the author has made change in a quoted passage one that BB no longer authorizes: "(internal quotation marks omitted)". See <http://citeblog.access-to-law.com/?p=481>

One reason I'm unclear about Baby Blue's relationship with the 20th edition is that its list of abbreviations for case names does slavishly follow the latest BB in changing the abbreviation for "Advertising" from "Adver." to "Advert." and that for "County" from "Cnty." to "Cty." See <http://citeblog.access-to-law.com/?p=472> In the first case the change was utterly arbitrary and without foundation in professional practice. Do a search on the competing abbreviations for "Advertising" on Courtlistener or Google Scholar. In both cases the prior abbreviation was widely employed and changing to a different one put those seeking to conform case data or citation software to BB in a quandary. Follow it in making this arbitrary change and one is clearly copying the BB rather than drawing upon a consensus standard exhibited in the writing of lawyers and judges. Why did the BB authors do it? My hunch is that they wanted to jerk the chain of the authors of the competing ALWD citation guide which had just the year before conformed its abbreviation list to the BB's. See <http://citeblog.access-to-law.com/?p=185>

If the aim of Baby Blue is #3 above, it needs to be current. This means among other things breaking loose of the dated attachment to bound volumes, which seems even more pronounced than in BB. Here's a simple example. Only in the rarest research environments will one have access to the bound volumes of the United States Code and their supplements. How should one cite section 102(b) of title 17 of the U.S. Code if one has accessed its text via a Google search which has led to the version offered by L.I.I. or by the U.S. Copyright Office? Does one need to press on to the "virtual" and "authenticated" version placed online by GPO. Baby Blue is confusing on this point. It discusses four print versions of the code (the official and three unofficial - namely, U.S.C.A., U.S.C.S., and U.S.C.U.). It says that of the latter set U.S.C.A. is preferred. Why? By whom? Is Gould's unannotated code published any more? I can't find a trace of it. Gould Publications was acquired by LexisNexis over a decade ago.

The dominant professional practice today is to use to "U.S.C." as a generic citation, analogous to "U.S. Const." there being no need to identify which of the myriad compilations one has consulted (or its date of the compilation so long as one is referring to the provision as currently in effect). In addition it seems strange for a guide with Baby Blue's origins to mirror the influence of Thomson Reuters on BB such as in the stated preference for U.S.C.A. On generic cites see <http://citeblog.access-to-law.com/?p=53>

If the aim of Baby Blue is #2 then it seems to me it should exercise more independence of BB, as in the treatment of statute and case citations, including case name abbreviations. It should also deal more satisfactorily with the non-trivial phenomenon of public domain or media neutral citation of cases. By my count sixteen states have adopted some form of non-print dependent case citation. Two of them have applied it retrospectively. One insists that it be

some form of non-print dependent case citation. Two of them have applied it retrospectively. One insists that it be used for all state decisions back to the beginning. Yet Baby Blue directs that case citation be by volume and page number (no mention of what to do with paragraph numbers when part of a public domain scheme). To simply note of individual states that they have adopted public domain formats without explaining the approach or addressing it in general terms in R11 strikes me as too little, too late. Being more independent of BB also means acknowledging that those outside of law schools and large firms are likely to be relying on electronic sources other than Lexis and Westlaw. No surprise – Thomson Reuters and to a lesser degree LexisNexis have been furnishing "helpful advice" to BB for a long time. I find no trace or mention of Bloomberg Law, Casemaker, Fastcase, or Google Scholar in Baby Blue.

Not sure this is much help. Here's what I see in the space Baby Blue might occupy.

- There is the ALWD Guide. It does a better job than BB of teaching BB's rules. Don't know its share of the legal education market.
- The major electronic sources do a decent job of wrapping their content in BB conforming citations. Sadly, to too great an extent, that means wrapping them in citations derived from the Thomson Reuters National Reporter System but that's another subject.
- There are countless "how to cite in accordance with BB" student study materials.
- There is my own reference, now over two decades old and fairly heavily used both online and in the three ebook versions (all free).

Does Thomson Reuters pay copyright tribute to BB's proprietors for a "license" to use the BB system of case citation? I don't know but I doubt it. I would be pretty confident Google and LexisNexis do not. Frank's mistake was to ask.

Baby Blue would be a useful addition especially if it achieves #2 above.

Those are my thoughts,

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