

Legal Communication & Rhetoric: JALWD

Fall 2017 / Volume 14

BOOK REVIEW

Edited by Jack Metzler

The Solicitor General's Style Guide (Second Edition)

Joe Fore, reviewer

Style Secrets from America's Litigator-in-Chief

The Solicitor General's Style Guide (Second Edition)

Edited by Jack Metzler (interAlias Press 2015), 88 pages

Joe Fore, rev'r*

What if you could learn the top-secret style tips that some of America's very best lawyers use in preparing briefs for the Supreme Court? That's exactly what *The Solicitor General's Style Guide*¹ offers: an edited version of the official, in-house style manual used by attorneys and paralegals at the Office of the Solicitor General. The book even carries the government's original, tantalizing disclaimer—making you feel like you're holding something you're not supposed to have:

Office Work Product of the Office of the Solicitor General
Please Do Not Remove this Copy from the Office

The story of how this book came to be is almost as intriguing as its subject matter. Several years ago, an unnamed source passed along a copy to DC attorney Theodore "Jack" Metzler.² And after confirming with the Solicitor General's office that the manual was not subject to copyright protection, Metzler decided to edit the information and repackage it for the general public.³ Metzler first edited and published *The Style Guide* in 2013, then published this second edition after DOJ revised the manual in

* Assistant Professor of Law, General Faculty & Co-Director, Legal Research and Writing Program, University of Virginia School of Law. The author thanks David Ziff for his helpful comments during the drafting process.

¹ THE SOLICITOR GENERAL'S STYLE GUIDE (Jack Metzler ed., 2d ed. 2015) [hereinafter *Style Guide*].

² See Tony Mauro, *Now Everybody Can Write Like the Solicitor General*, NAT'L L.J. (ONLINE) (Nov. 18, 2013).

³ *Id.*

2014.⁴ With this background, perhaps it's no surprise that *The Style Guide's* public release generated considerable buzz in the legal writing community.⁵

But before getting too excited about the book, a couple of caveats are in order. First, reading *The Style Guide* won't turn you into Paul Clement or Elena Kagan overnight. Even the author recognizes that although "this manual may help you *cite* like the Solicitor General, it cannot help you *write* like the Solicitor General."⁶ Second, this "secret" document isn't all that secret anymore. When Metzger published the first edition of *The Style Guide*, its contents may have been available "only to the handful of attorneys and paralegals working in the Office of the Solicitor General."⁷ Today, however, a simple Google search for "Solicitor General Style Manual" immediately turns up a PDF of the government's version of the manual, freely downloadable from DOJ's own website.⁸

Nonetheless, Metzler's edition of *The Style Guide* is a worthwhile read and a terrific, supplemental reference for those looking to emulate the stylistic and citation practices of some of the best legal writers around.⁹ Particularly interesting are the four pages of "writing preferences," which show the Solicitor General's approach to several common, much-debated usage issues, including

- Preferring "attorney's fees" over "attorneys' fees" ("unless the governing statute uses another variant");¹⁰
- Preferring "pleaded" over "pled";¹¹ and
- Preferring "case law" over "caselaw."¹²

4 See *Style Guide*, *supra* note 1, at iii.

5 See Jonathan R. Tung, *Writing Advice From the Solicitor General's Style Guide*, FINDLAW (Nov. 4, 2015), <http://blogs.findlaw.com/strategist/2015/11/writing-advice-from-the-solicitor-generals-style-guide.html>; Brendan Kenny, *How the Solicitor General's Style Guide Calls Out Bad Legal Writing*, LAWYERIST.COM (Nov. 4, 2015), <https://lawyerist.com/92287/solicitor-generals-style-guide-calls-bad-legal-writing/>; Ross Guberman, *Secrets of the Solicitor's Style: Ten Takeaways*, LEGAL WRITING PRO BLOG (Dec. 10, 2013), <http://www.legalwritingpro.com/articles/H79-solicitors-style.php>; Tony Mauro, *How to Write Briefs Like the Solicitor General*, SUPREME COURT BRIEF (ONLINE) (Oct. 7, 2015), www.nationalallawjournal.com/supremecourtbrief/id=120239248759/How-to-Write-Briefs-Like-the-Solicitor-General.

6 *Style Guide*, *supra* note 1, at xi.

7 THE SOLICITOR GENERAL'S STYLE GUIDE i (Jack Metzler ed., 2013).

8 UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF THE SOLICITOR GENERAL CITATION MANUAL (2014), <https://www.justice.gov/sites/default/files/osg/legacy/2014/04/21/osg-citation-manual-2014.pdf>.

9 See Guberman, *supra* note 5 (calling briefs from the Solicitor General's office "peerless").

10 *Style Guide*, *supra* note 1, at 87.

11 *Id.* at 88.

12 *Id.* at 87. In support of its stance, *The Style Guide* cites an October 1987 Memorandum from then-Solicitor General Charles Fried to the agency's attorneys about the use of "caselaw" and "calling for 'total extirpation' of this 'barbarism.'" Sadly, it appears that the referenced memo has gone missing, as a 2015 Freedom of Information Act request to the Department of Justice filed by attorney Brendan Kenny yielded no responsive documents. See Letter from U.S. Department of Justice to Brendan Kenny (July 25, 2016), <https://www.muckrock.com/foi/united-states-of-america-10/memorandum-from-solicitor->

The book also features a very interesting three-page document explaining the uses and misuses of the terms “plurality,” “principal,” “lead,” and “controlling” to describe Supreme Court opinions.¹³

But most of the book is taken up with issues of citation and related stylistic issues of punctuation, capitalization, and typography. Like many other organization-specific citation guides, *The Style Guide* “supplements” the conventions of the *Bluebook*; it doesn’t replace them.¹⁴ And like the *Bluebook* rules on which it is based, these “supplements” can be maddeningly trivial. For example, *The Style Guide* calls for italicizing case names but not the “v.” between the party names—unless in a quote or the caption of a brief.¹⁵ *The Style Guide* also breaks from the *Bluebook* by retaining all digits when citing page ranges.¹⁶ And *The Style Guide* sides with the Supreme Court over the *Bluebook* on the issue of indenting quotes of *precisely* 50 words.¹⁷

Thankfully, though, *The Style Guide* does more than simply add another layer of fussy rules on top of the *Bluebook*’s idiosyncrasies. Indeed, many of the Solicitor General’s rules shed the frustrating formality of the *Bluebook*’s Whitepages and adopt the more flexible, practical approach of the Bluepages.¹⁸

Any citation system must, at a minimum, provide enough information to let the reader (1) evaluate the type and weight of the authority, and (2) locate the source.¹⁹ But in addition to these basics, other principles are desirable, such as concision, a logical ordering of the citation’s elements, readability, and simplicity.²⁰ Noted *Bluebook* critic Judge Richard Posner

general-charles-fried-to-office-of-the-solicitor-general-attorneys-dated-october-2-1987-22118/#file-96856. Regardless of its origins, this particular stylistic preference generated perhaps the most heated controversy surrounding *The Style Guide*’s publication—or, as Kenny dubbed it, a “Legal Writing Nerd War.” See Brendan M. Kenny, *Legal Writing Nerd War: “Case Law” vs. “Caselaw,”* STORIFY, <https://storify.com/KennyBrendan/legal-writing-nerd-war-case-law-vs-caselaw>.

¹³ *Style Guide*, *supra* note 1, at 70-72.

¹⁴ *See id.* at 1; David J.S. Ziff, *Book Review: The Worst System of Citation Except for All the Others*, 66 J. LEGAL EDUC. 668, 678 (2017) (noting that “law journals often adopt internal style guides that *add to The Bluebook*’s citation rules”); *see also* VIRGINIA LAW REVIEW, SLATEBOOK 2016–2017, at 2, <http://virginialawreview.org/sites/virginialawreview.org/files/Slatebook%202016-2017%20%28Final%29.pdf> (noting that the *Virginia Law Review*’s style guide “modifies and adds to the *Bluebook*’s rules” and that members of the journal “must be familiar with [the *Slatebook*’s] stylistic conventions, as well as the entire *Bluebook*”). DOJ revised its style manual in 2014 to bring it in line with the 19th Edition of *The Bluebook*. DOJ states that the manual “will be periodically updated.” *Style Guide*, *supra* note 1, at 1, but the Department has yet to publicly release an update to bring the manual in line with the 20th Edition of *The Bluebook*, which was released in 2015.

¹⁵ *Style Guide*, *supra* note 1, at 3.

¹⁶ *Id.* at 16.

¹⁷ *See id.* at 26. Supreme Court Rule 33.1(b) requires that “[q]uotations *in excess of 50 words* shall be indented,” while *Bluebook* Rule R5.1 calls for indentation of “[q]uotations of *fifty or more words*.” (Emphasis added to both.)

¹⁸ *Style Guide*, *supra* note 1, at 2 (noting that the Bluepages are “generally good guidelines for the preparation of briefs for the Supreme Court”); Ziff, *supra* note 14, at 679 (arguing that Bluepages “offer precisely the sort of simpler, standard-based, efficiency-minded system many critics have clamored for”).

¹⁹ *See, e.g.*, Paul Axel-Lute, *Legal Citation Form: Theory and Practice*, 75 LAW LIBR. J. 148, 148 (1982).

²⁰ *Id.*

has suggested that in addition to being easy-to-use and providing information about the cited source, citation systems should (1) “economize on space and the reader’s time,” and (2) “minimize distraction.”²¹ *The Style Guide’s* rules do much to promote these principles of convenience and clarity. And in doing so, *The Style Guide* embraces concision, readability, and common sense over legalistic stiffness—and even offers a few lessons about good legal writing that go beyond the basics of simple citation form.²²

Many of *The Style Guide’s* rules “economize on space and the reader’s time” by giving writers the flexibility to declutter citations and reduce redundancy where appropriate. For example, *The Style Guide* allows writers to omit the year or the court from a citation if “the surrounding text clearly indicates” either of those pieces of information.²³ And, thankfully, *The Style Guide* simplifies one of the most frustrating parts of the *Bluebook*: citing to statutes. In an eminently reasonable move, *The Style Guide* assumes that citations to a federal statute refer to the most recent published version of the U.S. Code and, therefore, the year generally is not needed.²⁴ And no more worrying about trying to remember the keyboard shortcut for that pesky § symbol²⁵—it’s not used to cite the U.S. Code or the Code of Federal Regulations.²⁶

The Style Guide also works to “minimize distraction” by promoting readability over unnecessary—and distracting—formalism. Take, for example, many lawyers’ habit of gumming up their writing with capitalized nouns and awkwardly defined terms:

Plaintiff, ABC Corp. (hereinafter “ABC” or “Plaintiff”), entered into a contract with Defendant, XYZ Co. (hereinafter “XYZ” or “Defendant”), . . .

The Style Guide simplifies things by refusing to capitalize generic party descriptors like plaintiff, defendant, appellee, and petitioner;²⁷ the

21 Richard A. Posner, *Goodbye to the Bluebook*, 53 U. CHI. L. REV. 1343, 1344 (1986).

22 Kenny, *supra* note 5 (noting that *The Style Guide* “makes some important recommendations in favor of active voice, plain language, and better typography”).

23 *Style Guide*, *supra* note 1, at 40, 41. The *Style Guide* provides the following example:

In 1977, the Second Circuit held * * *. *British Am. Commodity Options Corp. v. Bagley*, 552 F.2d 482.

Because the court and year are obvious from the sentence, including “(2d Cir. 1977)” would be superfluous.

24 See *Style Guide*, *supra* note 1, at 54–55; see also Ziff, *supra* note 14, at 668 n.3 (noting that the date requirement for federal statutes is on his “personal list of least-favorite [*Bluebook*] rules”); Posner, *supra* note 21, at 1346 (listing the date requirement for statutes currently in force “[a]mong the *Bluebook’s* other useless elaborations of citation form”); Axel-Lute, *supra* note 19, at 150 (arguing that including the year in a citation to a codified statute is “not very useful”).

25 See Axel-Lute, *supra* note 19, at 152 (“The use of the symbol § in any citation decreases its transcribability . . .”).

26 *Style Guide*, *supra* note 1, at 32.

27 *Id.* at 9.

Solicitor General doesn't even capitalize the name of its own client—the federal government.²⁸ *The Style Guide* also streamlines the process of defining terms by ditching “hereinafter” and by using simple parentheses without quotation marks to define terms.²⁹

The Style Guide further promotes readability by allowing numerals for numbers over ten³⁰ and by eliminating the need to italicize commonly used foreign phrases like *per curiam*, *pro se*, *habeas*, and *en banc*.³¹ And although not expressly addressed as a separate rule, *The Style Guide* offers a hint about writing in a more readable tone. By including several examples that use “we” and “our” to refer to the government's own filings,³² *The Style Guide* breaks from traditional warnings against using personal pronouns³³ in favor of what Bryan Garner calls a “natural, spoken style.”³⁴

Practitioners can learn much from the Solicitor General's guidance—in terms of both citation mechanics and broader principles of good legal writing. And as a book, *The Style Guide* is easy to use. Each rule corresponds to its *Bluebook* counterpart, and like the *Bluebook*, the manual is teeming with examples that illustrate how to apply its rules.

Still, there remains one final question: whether to purchase Metzler's edited version, or simply print the official government version from the Internet. While the substance of both versions is largely identical, Metzler's version isn't merely a cut-and-paste job from the government original. Metzler's first edition included more than 200 typographical and stylistic edits to enhance readability and reduce confusion.³⁵ And Metzler has made several aesthetic upgrades that make his version more user-friendly than the government's publication. In a nod to the Supreme

²⁸ *Id.* at 34.

²⁹ *Id.* at 24, 85.

³⁰ *Id.* at 31.

³¹ *Id.* at 33. See Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 LEGAL COMM. & RHETORIC: JALWD 108, 118 (2014) (noting that overuse of italics can slow reading speed).

³² *Style Guide*, *supra* note 1, at 3–4, 15.

³³ See CATHY GLASER, ET AL., THE LAWYER'S CRAFT: AN INTRODUCTION TO LEGAL ANALYSIS, WRITING, RESEARCH, AND ADVOCACY 202 (2002) (“In a brief or formal memorandum, omit references to yourself as the writer. Do not use *I*, *we*, *us*, or *our*.”).

³⁴ See BRYAN A. GARNER, LEGAL WRITING IN PLAIN ENGLISH 50 (2001). A cursory review of government briefs from the Supreme Court's 2015 and 2016 October Terms suggests that the Solicitor General does use first-person pronouns on occasion in its briefs, but only sparingly. See, e.g., Brief for the United States as Amicus Curiae Supporting Neither Party at 10, *Samsung Electronics Co. v. Apple Inc.* (2016) (No. 15-777) (“As we explain below”); Brief for the United States in Opposition at 12, *Beckles v. United States* (2016) (No. 15-8544) (“We have served petitioner with a copy of that brief.”); Brief for the United States as Amicus Curiae at 18, *Dollar General Corp. v. Miss. Board of Choctaw Indians*, 579 U.S. ____ (2016) (No. 13-1496) (“We do not presume to tell the Court But we note”).

³⁵ *Style Guide*, *supra* note 1, at xv.

Court's rules, Metzler's edition approximates the 6.125" x 9.25" size of high-court filing booklets³⁶—creating a more desk-friendly reference than a simple 8.5" x 11" print-out of the DOJ original. And while the Solicitor General's version uses monospaced, Courier New font in its examples, Metzler uses the far more readable, proportionally spaced Century.³⁷ Metzler should be commended for making this information widely available and for taking the time to put it into such a convenient and aesthetically pleasing format.

Ultimately, *The Style Guide* is a handy and practical resource both for its guidance on the nuts-and-bolts of citation and for its bigger-picture lessons about the elements of clear, concise, and readable legal writing—making it a worthwhile read for legal writers of all stripes. The decision whether to download the original straight from the Department of Justice or pay for Metzler's smartly designed and keenly edited reproduction is left to you.

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36 *Id.* at xiii.

37 *Id.* at xiv (citing the Seventh Circuit's admonition against using monospaced fonts, particularly when coupled with full justification); see also Kenny, *supra* note 5 (noting that Metzler's use of Century font "represents another step toward removing Courier fonts from polite society").