

NOTES ON THE STYLE OF THE LAW

Justice Alito's Big Mistake

by

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≈ SCOTUS ≈ citations ≈ newspapers ≈ United
States ≈ Bluebook ≈ popular writing ≈ journalism
≈ writing for laypeople ≈ context ≈ knowing your
audience ≈



THE VACATIONS of justices of the Supreme Court of the United States (SCOTUS) seem to be as exciting as the Court's decisions these days. First, Thomas J's judgment and ethics were called into serious question by reporting from *Pro Publica*.¹ Now, *Pro Publica* has also investigated the alleged ethical lapses of Alito J, who appears from their reporting to have accepted a startling amount of hospitality from a wealthy man with business before SCOTUS.² In response to a request for comment in advance of *Pro Publica*'s story, Alito J decided to launch a preëemptive strike. In a rather unusual move, His Honour wrote directly in the *Wall Street Journal*, in an attempt to refute the allegations in the as yet unpublished article.³ In doing so, the justice made a grave mistake, a grievous error which, with the greatest of respect, must be said to call His Honour's judgment into question.⁴

Namely, in this article, the learned justice repeatedly used legal citation style and formatting, implementing what appears to be the unique SCOTUS citation style (a *sui generis* format

- 1 That publication has written several articles on the topic over the past number of months, but a good place to start is J Kaplan, J Elliott, & A Mierjeski, 'Clarence Thomas and the Billionaire' (6 April 2023).
- 2 J Kaplan, J Elliott, & A Mierjeski, 'Justice Samuel Alito Took Luxury Fishing Vacation With GOP Billionaire Who Later Had Cases Before the Court' (20 June 2023)
- 3 The Hon. Samuel A Alito, Jr, 'ProPublica Misleads Its Readers' (20 June 2023)
- 4 Or, into question by legal style enthusiasts, anyway.

similar but not identical to the American *Bluebook*). As this was a newspaper article, the citations were inline,⁵ and become a confusing mess. Observe (without modification for house style) this tangled excerpt:

See Sup. Ct. R. 10. To ensure that I am not required to recuse, multiple members of my staff carefully check the names of the parties in each case and any other entities listed in the corporate disclosure statement required by our rules. See Supreme Court Rule 29.6.

[...]

Federal statutory law is similar. See, e.g., 18 U.S.C §1958(b) (“ ‘facility of interstate commerce’ includes means of transportation”); 18 U.S.C §2251(a) (referring to an item that has been “transported using any means or facility of interstate commerce”); Kevin F. O’Malley, Jay E. Grenig, Hon. William C. Lee, *Federal Jury Practice and Instructions* §54.04 (February 2023) (“the term ‘uses any facility in interstate commerce’ means employing or utilizing any method of... transportation between one state and another”).

Leaving side the problems even within the citations,⁶ Alito J’s use of legal citations and abbreviations indicates that His Honour has violated the cardinal commandment of style: know your audience. This article, which will be very widely read not only by the *Journal’s* usual readers (most of whom are not lawyers) but also more generally by anyone interested in the very prominent debate of SCOTUS ethics. To such a general audience, this kind of writing is bizarre and difficult to navigate.

The insertion of citations, without any discursive introduction, into the next sentence, is not a natural form of writing. Such inline citations are natural to lawyers, but seem to interrupt the text for a layperson. The use of parenthetical descriptors after the cited provision seems even more knotted.

Writing about the law for a general audience requires formatting and shaping one’s arguments for that audience. Citations should be introduced within sentences, and discursively raised. One could say ‘I always complied with Supreme Court Rule 29.6, which requires that we check parties against names in our disclosure statement’. Statutory citations can be put in parentheses, to help those who know what ‘USC’ means, but the explanation should come first. In many cases, it is acceptable to lose some precision of citation in order to achieve greater clarity, since this is not a court case or law review article where there is an intellectual obligation to have every point made.

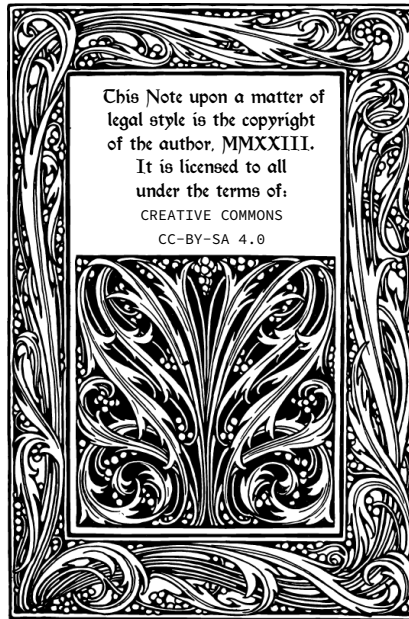
⁵ The *Wall Street Journal* does not have the web-footnote skills of certain publications...

⁶ For instance, the justice first uses an abbreviated citation fr ‘Supreme Court Rule’ and then spells it out.

If Alito J had wanted to make a legal argument that His Honour had always complied with the letter of the rules, delving into the minutiae of ethics guidance, then the best place to do that would be a long statement on the Court's website. That could have, in turn, been paired with a more palatable and accessible article in the *Journal*.

However, it is too easy for those of us, like both your correspondent and Alito J, who immerse ourselves in the world of the law, to forget that other people do not know the little heuristics which allow our brains to turn legal writing from a mess of numbers and abbreviations into comprehensible text. This is not a matter of intelligence, but of culture, and familiarity with the arcane rituals and rites of writing like a lawyer. When we, as legal writers, enter the space of general writing, we must show respect as courteous guests. This means writing to the audience there: an intelligent, discerning audience in the case of many quality publications, which is used to reading things written in ordinary literary English. Alito J made a terrible mistake by forgetting to do this.





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