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Introduction

Bryan A. Garner

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INTRODUCTION

Bryan A. Garner*

SINCE 1967, the *Annual Survey of Texas Law* has become something of an event. It's not the Oscars, but it's the closest thing there is in Texas law: a symposium devoted to the most important developments in cases that our courts have decided in the past year.

In reporting on these developments, *SMU Law Review* performs a signal service to the legal community: it chronicles recent case law in a succinct, accessible way. And there's a good deal of critical analysis as well. The result is eminently practical. This is what more law reviews ought to be doing.

Although these pages will tell you much about what's happening in judicial writing, they won't tell you everything. So perhaps I might say something here about an important little change. To some, it's an important big change.

Give me a moment before saying what it is. I write this introduction having just completed my eighth judicial-writing seminar for Texas judges since 1991. Whether Texas judges' writing is any better today than it was a decade ago I wouldn't presume to say. Maybe there's a sharper presentation of the issues, a little less passive voice, a better sense of continuity and transition. Then again, maybe not.

But in one very tangible way, judicial writing is getting more cogent and more readable to ordinary people. I refer to the quiet revolution that is going on in law reports throughout the country: texts are gradually being purged of the pernicious names and numbers that lawyers are accustomed to sprinkling within and between their sentences. I refer, of course, to textual citations. These were unavoidable in the days of typewriters, but computers have made them an unnecessary evil. More judges are liberating their pages of these mind-numbing citations—barnacles, really—by relegating them to footnotes. It's happening in Texas and elsewhere.

At first, you might think this is a bad thing. But consider: how would you like it if this law review moved all citations up into the text? You probably wouldn't read much of it. What if the West Group told Professors Wright and Miller that all citations in *Federal Practice and Procedure*

* President of LawProse, Inc., and Adjunct Professor of Law at Southern Methodist University. His most recent books are *A Dictionary of Modern American Usage* (1998), *The Winning Brief* (1999), and *Securities Disclosure in Plain English* (1999).

must be moved into the text? West would never do such a crazy thing, and if it did, Wright and Miller would probably switch publishers.

Does this mean that readers won't know what authority legal writers are relying on? It certainly shouldn't: that should be part of the story line. Keep an open mind and look into the current pages of *Southwest 2d*. Notice how Justices Hecht and Enoch are writing. Compare the lengths of their paragraphs with those in opinions larded with textual citations. Compare the structure of sentences. You might even try reading the two types aloud. And if you think again about this *Review*, you'll surely be grateful that the editors aren't stuffing citations into the text.

But they deserve our gratitude for much more. All the editors—and authors—merit an ovation for working long and hard to produce this *Survey*.

Dedications

