



“THE MOUS[E] THAT ROARED”

THE *MANUAL ON USAGE AND STYLE* (PUBLISHED BY
TEXAS LAW REVIEW) AFTER A HALF CENTURY

Josiah M. Daniel, III

IN 1955 IRISH-AMERICAN NOVELIST Leonard Wibberley published *The Mouse That Roared*,¹ a satire about a mythical, tiny “Duchy of Grand Fenwick” that declares war on the United States and sends a squad of archers to New York City. The U.S. does not notice being invaded, but the two dozen Fenwickians manage to capture the “Quadium Bomb” and take it home. Now all the superpowers must subject their lesser, atomic bombs to inspection by Fenwick. Even after its scientist accidentally discovers that the Q-bomb is a dud, the worldwide hegemony of Fenwick continues. Is the *Manual on Usage & Style* (*MoUS*²), published by the *Texas Law Review* (TLR) for a half century, a *mouse that roared*?³ Does the ostensibly

Josiah Daniel is a Visiting Scholar in the Department of History at The University of Texas at Austin and a Retired Partner in Residence, in the Dallas, Texas office of Vinson & Elkins LLP. Copyright 2022 Josiah M. Daniel, III.

¹ LEONARD PATRICK O’CONNOR WIBBERLEY, *THE MOUSE THAT ROARED* (1955). Peter Sellers starred in its 1959 screen adaption. See ANDREW HORTON, *LAUGHING OUT LOUD: WRITING THE COMEDY-CENTERED SCREENPLAY* 81 (2000) (In *The Mouse That Roared*, Peter Sellers “plays three roles. . . . [His] eccentric anarchist trait is clearly in view: how dare a nowhere country invade America!”).

² This is the initialism the *Texas Law Review* has always used for the booklet.

³ The “mouse that roared” is a “set phrase” and perhaps a “catchphrase.” BRYAN A. GARNER, *GARNER’S MODERN ENGLISH USAGE*, set phrase 1029 (4th ed. 2016) (hereinafter “GARNER’S ENGLISH USAGE”). While I cannot find any literary guide or dictionary that has recognized

meek and insignificant *MoUS* actually enjoy domination of the legal world? Does life imitate art here?

During law school at the University of Texas, after gaining membership on the TLR via the writing competition, I became well acquainted with and appreciated the *MoUS* as a writing and editing tool, but thought of it strictly within the circumscribed bounds of the TLR offices and the Tarleton Library of the law school. After graduation in 1978 and for the first two of the four decades of my law practice, I continued to use it because of its diminutive size – convenient for desk drawer, briefcase and, later, computer bag, or bookshelf within arm’s reach – and its easy-to-find-and-apply answers. Other guides were and are more authoritative, of course, but also vastly larger and heavier, such as TLR-alum Bryan Garner’s superb suite of full-scale reference books,⁴ not to mention the 1,146-page, 3.7-pound *Chicago Manual of Style*.⁵ Yet the idea that anyone other than TLR editors, staffers, and alums were using the *MoUS* never entered my mind.

Unbeknown to me, however, the *MoUS* had jumped the wall around Townes Hall, home of the UT Law School, and had been steadily acquiring a certain suzerainty in the larger world of the law. It was 1997 when, representing a client in the *In re Payless Cashways* Chapter 11 case in Kansas City, I first learned that the *MoUS*’s reach had expanded far beyond its home base. To resolve a classification-of-claims issue, Judge Arthur B. Federman applied the *MoUS* in an exegesis of an indenture’s definition of senior indebtedness. To understand the grammar – “participial phrases acting as adjectives . . . must modify either a noun or a pronoun” – the court’s published opinion relied on the *MoUS*.⁶ Surprised, I notified the TLR’s then-editor that the *MoUS* was reigning in a *bankruptcy* case!

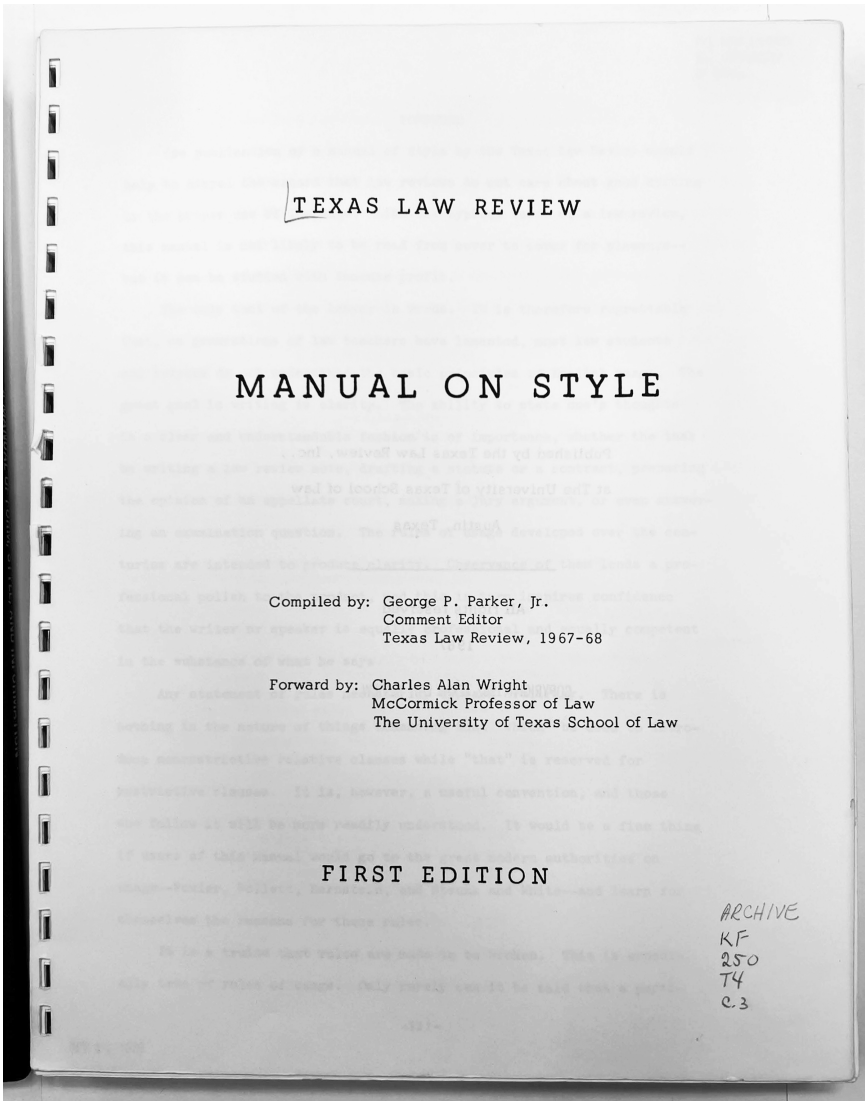
it as such, based on its widespread usage, “mouse that roared” seems to be an idiom today. See, e.g., HENRY A. GIROUX & GRACE POLLOCK, *THE MOUSE THAT ROARED: DISNEY AND THE END OF INNOCENCE* (rev’d ed. 2010) (per the publisher’s blurb, “Disney, while hiding behind a cloak of innocence and entertainment, strives to dominate global media”); Dan Hanfling & John L. Hick, *Hospitals and the Novel H1N1 Outbreak: The Mouse That Roared?*, 3 *DISASTER MEDICINE AND PUBLIC HEALTH PREPAREDNESS* S100 (2009).

⁴ GARNER’S ENGLISH USAGE; BRYAN A. GARNER, *THE REDBOOK: A MANUAL ON LEGAL STYLE* (4th ed. 2018); BRYAN A. GARNER, *DICTIONARY OF LEGAL USAGE* (3d ed. 2011).

⁵ *THE CHICAGO MANUAL OF STYLE* (17th ed. 2017).

⁶ *In re Payless Cashways, Inc.*, 215 B.R. 409, 414 nn. 10-11 (Bankr. W.D. Mo. 1997).

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The original MoUS, then simply the Manual on Style (1967).

I opened a personal research folder about the *MoUS* at that time because I also discovered and recurrently noticed that the *MoUS* had not only been utilized by many *other law reviews*⁷ but also had made a rather robust incursion into the sphere of *decision-making by courts*, both state – Texas,⁸ Louisiana,⁹ Iowa,¹⁰ and Pennsylvania¹¹ – and federal – the Eleventh Circuit and several district courts.¹² It was *as if the TLR held a Q-bomb*. The *MoUS* had achieved a sort of dominion over the world of both legal writing and judicial decision-making, with not only law students and legal scholars but also jurists subjecting their work to inspection under the rules established by the TLR!

Now, with the TLR celebrating its centennial,¹³ I dusted off my research folder and revisited my 1997 discovery. When I researched and examined

⁷ See, e.g., M. Todd Scott, *Kidnapping Federalism: United States v. Wills and the Constitutionality of Extending Federal Criminal Law into the States*, 93 J. CRIM. L. & CRIMINOLOGY 753 (2003) (citing 8th ed. of the *MoUS* on passive voice).

⁸ In *Sayre v. Mullins*, 681 S.W.2d 25, 27 (Tex. 1984) (citing 4th ed. on usage of “which”); *England v. State*, 887 S.W.2d 902, 920 Tex. Crim. App. 1994) (citing 7th ed.: “active voice is preferred”). See also *In re United Scaffolding, Inc.*, 377 S.W.3d 685, 689 (Tex. 2012) (citing 12th ed. for avoiding “and/or” in legal writing); *Crawford Services v. Skillman Intern. Firm*, 444 S.W.3d 265, 270 (Tex. App. 2014) (citing 11th ed. on use of passive voice); and other Texas intermediate appellate decisions.

⁹ *Rousset v. Smith*, 176 So.3d 632, 635 n. 1 (La. App. 2015) (citing 10th ed. on pluralizing proper nouns ending in “s”).

¹⁰ *State v. Downey*, 893 N.W.2d 603, 607 (Iowa 2017) (citing 12th ed. on use of “only” as a modifier).

¹¹ *Tooev v. AK Steel Corp.*, 81 A.3d 851, 870 n. 9 (Pa. 2013) (citing 9th ed. on nonrestrictive clauses);

¹² *Kidd v. Equitable Life Assur. Soc.*, 32 F. 3d 516, 519 (11th Cir. 1994) (citing 4th ed. for “A colon functions primarily to introduce material promised”); *Comcast Cable Commc’n v. Sprint Commc’n*, 38 F. Supp. 3d 589, 626 (E.D. Pa. 2014) (citing 8th ed. for “plac[ing] subordinate clauses . . . immediately after their antecedents”); *Turrentine v. United Parcel Service, Inc.*, 645 F. Supp. 2d 976, 986 n. 9 (D. Kan. 2009) (citing 8th ed. on construction of “since”).

¹³ The TLR was founded in 1922. Title page, 1 TEX. L. REV. I (1922). See TLR, *Centennial*, Commemorative Articles, texaslawreview.org/centennial/#content-5 (2022); John Robert Anthony, *The Missing First Chapter: A History Of The Formation Of The Texas Law Review*, texaslawreview.org/wp-content/uploads/2015/07/The-Missing-First-Chapter.pdf (1974). In a forthcoming article, I will delineate how the leading lawyers of the then-voluntary Texas Bar Association nurtured the TLR in its early period by financially supporting it.

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the matter more purposefully through *HeinOnline* and *Westlaw*, I unearthed a brutal – but unsuccessful – revolt that I had not previously seen, a 1990 review essay denouncing the *MoUS* in the *California Law Review*.¹⁴ Wielding all the weaponry he could muster, James Lindgren, a law professor and former law-review editor, had mounted a frontal assault on the 6th edition of the *MoUS*.

Lindgren had rebelled against the masterdom of the *MoUS* after student editors of a variety of journals repeatedly cited the *MoUS* to him as mandating their unwelcomed edits to his article submissions.¹⁵ By telephoning – this was 1990, so no email yet – a number of student editors, he had found that the *MoUS* was not only in widespread use but also “gaining ground with the [best] law reviews.”¹⁶

Beginning in his authorial footnote, he condemned “the superstitions” of the *MoUS*,¹⁷ and he titled his first section “An Introduction to Life in Hell.” The *MoUS*, he averred,

is a bad book in the same sense that *The Total Woman* and *Das Kapital* are bad books. Although the motives . . . may have been good, these books have worked evil. In each an author painted a warped vision of a better world that distorted human expression and ultimately tended to enslave the human spirit.¹⁸

¹⁴ James Lindgren, *Fear of Writing*, 78 CALIF. L. REV. 1677 (1990).

¹⁵ He wrote:

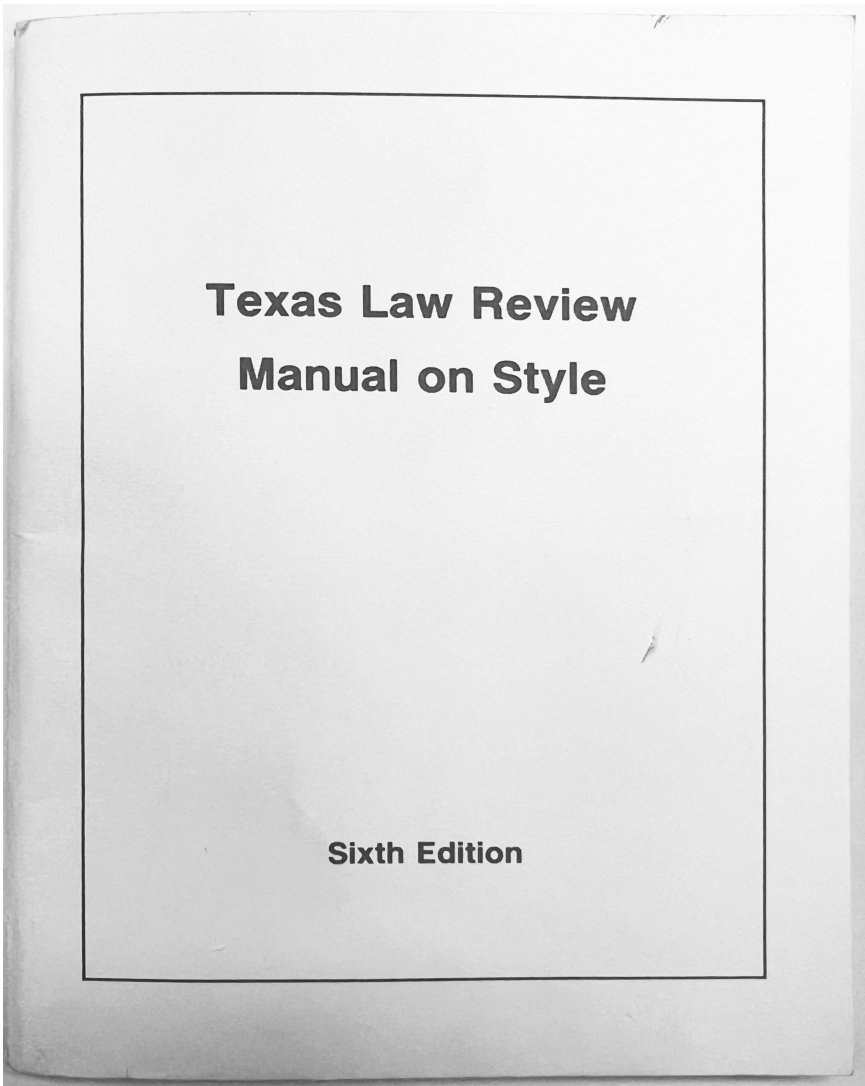
[w]hen [law-journal] texts conflict with a bogus authority such as the *Texas Manual on Style*, as they often do, it is sometimes impossible to keep my prose from sounding as if it were written by an above-average third-year law student. It may be all right for something trivial like President Reagan’s schedule to be run by Nancy Reagan’s astrologer, but for something important – legal scholarship – rule by astrology is intolerable.

Id. at 1678.

¹⁶ *Id.* at 1699 & n. 124.

¹⁷ *Id.* at 1677 n. †.

¹⁸ *Id.* at 1677-78.



The 6th edition of the MoUS (1990).

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Lindgren arraigned the TLR staff. The *MoUS*, he asserted,

was originally written in the 1960s by a committee of law students, presumably now so rich and powerful as practicing attorneys that they pay other people (called associates) to read law reviews for them. In any event, their guilt is collective – and thus perhaps less sharply felt.¹⁹

And still his attack continued.

In all, Lindgren assailed 51 of 92 *MoUS* entries regarding dummy subjects, split verbs, verbosity, prepositions at the end of a clause beginning with “that,” dangling modifiers, and other fine points.²⁰ He charged that “what would be harmless incompetence in any other book becomes a real menace in the hands of law review editors The Invasion of the Body Snatchers has succeeded.” He rejoiced that his review essay “broke the Texas rules over eighty times” and exulted that the *Northwestern Law Journal* had just jettisoned the *MoUS*. Then he personalized his strike:

Texans like to boast that everything is just a little bigger in Texas – whether it’s steaks or egos, successes or failures. Yet even by Texas standards for failure, the *Texas Manual on Style* fails big. Most of its usage advice is false or misleading. . . . [I]f you are just trying to write better English, don’t buy the *Texas Manual*.²¹

His parting shot was an appendix of “Errata . . . [t]o be stapled inside the front cover” of the *MoUS*, with the command “Delete Sections” and listing the 51 rules he had savaged.

Lindgren must have thought he had revealed the *MoUS* to be a “dud” of a Q-bomb, but only one other academic followed his lead to fire a shot at the *MoUS*.²² And while I have not traced Lindgren’s challenges through the

¹⁹ *Id.* at 1678.

²⁰ *Id.* at 1681-94.

²¹ *Id.* at 1700.

²² Reinhard Zimmermann, *Law Reviews: A Foray Through a Strange World*, 47 EMORY L.J. 659, 674 (1998) (“the [*MoUS*] plays a sinister role” in legal publishing). While a distinguished TLR alum once dismissed it, Bryan A. Garner, *A Legal Lexicographer Looks at Law Reviews**, 16 GREEN BAG 2D 281, 290 (2013) (“All editorial-board members. . . . need usage guides that are . . . more reliable than [the *MoUS*]”), he also has cited the *MoUS* as authoritative on a fine point. Bryan A. Garner, *Don’t Know Much About Punctuation: Notes on a Stickler Wannabe*, 83 TEX. L. REV. 1443, 1448 n. 55 (the rule about pluralizing numbers).

revisions contained in the succeeding nine editions,²³ certainly the *MoUS* has only improved over the past 32 years. Now in its 15th edition, the *MoUS* sells briskly and is forthrightly relied upon by a wide variety of law reviews,²⁴ bar journals,²⁵ legal writing texts,²⁶ CLE courses,²⁷ legislative-drafting guides,²⁸ and authors,²⁹ not to mention courts and judges. Even the *Northwestern Law Journal* came back into the *MoUS*'s orbit.³⁰

But the TLR is not a Duchy of Fenwick, and allegiance to the *MoUS* is not from fear of a Q-bomb, but *because it fills a real need*.

²³ See Texas Law Review, *Manual on Usage & Style* (15th ed. 2020). Note to TLR editors and staff: consider doing for the *MoUS* what Hall of Fame law librarian (and scholar) Bob Berring did, with help from William S. Hein & Co., for the *Bluebook*. He compiled and published all the editions. See ROBERT BERRING, *THE BLUEBOOK: A SIXTY-FIVE YEAR RETROSPECTIVE* (2 vols. 1998). See also AM. ASSN. L. LIBRARIES, *Hall of Fame Induction: 2014*, www.aallnet.org/inductee/robertberring/. Berring served as Associate Librarian and Lecturer in the UT Law School during my years there.

²⁴ See, e.g., ed. note, 65 ST. LOUIS U. L.J. at vi (2021) (The Law Journal is published utilizing the latest edition of the [*MoUS*]); ed. note, 1 SEATTLE J. SOC. JUSTICE n.p. (2019) (“The [*MoUS*] is the authority for punctuation and style matters not covered by *The Bluebook*.”).

²⁵ Donna S. Pate, *Top Five Traits of Legal Professionals*, 82 ALA. LAW. 318 (2021) (the *MoUS* “provides clear and simple direction regarding punctuation, use of numbers and symbols, capitalization, grammar, and word choice”); Scott Moise, *Veni, Vedi, Vici: Conquering Legal Latin*, 28 S.C. LAW. 52 (2017) (citing the *MoUS* for avoiding foreign words).

²⁶ THANE JOSEF MESSINGER, *THE YOUNG LAWYER’S JUNGLE BOOK: A SURVIVAL GUIDE* 71 (1996) (get a good manual on style . . . and use it. I unabashedly recommend the [*MoUS*]); KAMELA BRIDGES & WAYNE SCHIESS, *WRITING FOR LITIGATION* 5 (2020) (a “good legal-writing reference [is] the [*MoUS*]”).

²⁷ John F. Murphy, *A Sense Of Style: Learning to Love the MOUSe (Manual on Usage & Style)*, in STATE BAR OF TEXAS, *EXCEPTIONAL LEGAL WRITING* (2013) (“the best stylebook for lawyers is the [sic] MOUSe”).

²⁸ ILLINOIS LEGISLATIVE REFERENCE BUREAU, *ILLINOIS BILL DRAFTING MANUAL* 266 (2007) (recommending the *MoUS*); Kristina M. Lagasse, *Language, Gender, and Louisiana Law: Removing Gender Bias from the Louisiana Civil Code*, 64 LOY. L. REV. 187, 199 n. 75 (2018) (citing the *MoUS* on eliminating gender bias in legislation).

²⁹ Jessica Ronay, *A Mother Goose Guide to Legal Writing*, 36 U. LA VERNE L. REV. 119, 136 n. 45 (2014) (citing the *MoUS* as authoritative on quotation marking).

³⁰ Correspondence, 93 NW. U. L. REV. x (1999) (“we will only make minor edits . . . to guarantee that all published pieces comply with . . . the [*MoUS*]”).

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A pair of articles in a recent issue of the TLR limn the journal’s national and international impact on substantive legal scholarship,³¹ and the history of the TLR’s *other* aid to legal writing, *The Texas Rules of Form*, appeared three years ago.³² Hopefully my contribution, highlighting the “roar” of the *MoUS[e]*, may commemorate a facet of the history of the TLR in the year of its centennial as well as foster a greater appreciation of the *MoUS* for all who care about good legal writing.



³¹ Gregg Costa, *A Century of TLR and the Courts*, 100 TEX. L. REV. No. 3 (2022), texaslawreview.org/a-century-of-tlr-and-the-courts/; John S. Dzienkowski, *A Century of Texas Law Review Scholarship*, id.

³² Jane O’Connell, *The Development and Evolution of The Greenbook: The First Fifty Years*, 97 TEX. L. REV. ONLINE 171 (2019).