

# Shedding the Uniform: Beyond a “Uniform System Of Citation” to a More Efficient Fit

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# SHEDDING THE UNIFORM: BEYOND A “UNIFORM SYSTEM OF CITATION” TO A MORE EFFICIENT FIT

SUSIE SALMON\*

*This Article brings a fresh perspective to the ongoing conversation about legal citation format; by highlighting the costs that the fetishization of “perfect” citation format imposes on legal education, the legal profession, and our system of justice, this Article encourages us to seize the opportunity that technology presents to implement a more just, sane philosophy of legal citation. Tracing the history of legal citation from its origins in Rome, this Article thoroughly debunks any notions of one citation manual’s inherent superiority as a citation tool and instead suggests a return to first principles: an approach to citation that ensures accuracy, brevity, clarity, and efficiency.*

*This Article does not simply criticize The Bluebook; many have trod that ground before. Nor does it advocate for a particular alternative citation manual. Rather, it urges that educators and the profession adopt a real-world approach to citation that embraces the opportunities technology offers. It then goes on to suggest concrete steps that law schools, the legal profession, and The Bluebook’s editors themselves can take to create a saner, more cost-effective philosophy of legal citation.*

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## I. INTRODUCTION

Legal-writing professors spend hundreds of hours teaching legal citation format. Law firms record countless hours checking and perfecting the citations in their documents. Is it worth it? To what extent do the details of citation format really matter? Is there really a

“uniform” system,<sup>1</sup> and what are the costs of attempted uniformity? How does the insistence that perfect *Bluebook* citation form reflects professionalism, reliable legal analysis, and an attorney’s overall quality exacerbate the existing inequities in our justice system, including the extent to which the system favors the litigant with greater financial resources? How does it frame how brand-new law students think about what it means to be a lawyer? How does it affect the role that lawyers are perceived to play in the legal system?

In this Article, I will argue that a “uniform system of citation” does little to serve the underlying purposes of legal citation, and that the costs—including troubling issues of access to equal justice regardless of income—outweigh any potential benefits. Moreover, I predict that, within ten years, technology will make at least one of the underlying purposes<sup>2</sup> of a “uniform system of citation” obsolete.

Three incidents, spanning almost fifteen years, provide the impetus for this Article. Each illustrates what I perceive to be a victory of rote form over reason. Each demonstrates how elite elements of legal academia and the legal profession have come to value conforming to the last, non-italicized period of a citation system compiled by second- and third-year law students over serving clients. And each shows how some in the profession have come to prize the signals of membership in the lawyer club over enabling access to the same justice—and the same respect—for all those appearing before the courts of this nation, not just for those who can afford to hire the big law firms that can devote the resources required to ensure that no stray periods or spaces mar the *Bluebook*-dictated perfection of their citations.

Picture it: Los Angeles, 2003.<sup>3</sup> Three years out of law school, I am a mid-level associate in the litigation group of a large law firm. The team is pulling yet another all-nighter on yet another massive brief due in federal court the next day. The end is in sight; all legal arguments have been drafted, compiled, revised, and proofread. I send the brief to a first-year law associate to Bluebook the citations, confident that she will

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1. In its very title, *The Bluebook* styles itself as a uniform system of citation. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 20th ed. 2015) [hereinafter THE BLUEBOOK, 20th ed.].

2. See *infra* Part II.

3. I also recount this story in one of my monthly “The Legal Word” columns in *Arizona Attorney Magazine*. Susie Salmon, *The Legal Word: The Rules, They Are A-Changin’*, ARIZ. ATT’Y MAG., Mar. 2014, at 10, 10.

make few changes. After all, I composed most of the citations myself, and I was on law review!

An hour later, the brief lands on my desk, drenched in red ink. I'm livid. This careless associate has mucked up my beautiful citations by abbreviating the first word of the party name in each case name. Everyone knows that the first word in a case name is *never* abbreviated!<sup>4</sup> Fortunately, some semblance of good judgment prevails, and I run down to the library to grab a copy of the most recent edition of *The Bluebook*. Much to my chagrin, the first-year associate is right and I am wrong. In the three years since I graduated from law school, *The Bluebook* has done a 180. Now it not only permits but *requires* abbreviation of the first word in a party name.<sup>5</sup>

Pan to Arizona, 2007. I am working at a mid-sized national law firm, and after countless weeks of research, writing, and revision and innumerable back-and-forths with the client and the supervising partner, by late morning, I finally email the finished brief to our local counsel for filing. Local counsel is an associate at a large national law firm in a major metropolitan area in another state. The brief must be filed by 5 p.m., and I have instructed local counsel to call me as soon as the messenger returns from the courthouse. Hours pass with no call. I email local counsel. He replies that they are re-Bluebooking the brief. His firm has a reputation to preserve in the local federal court, he informs me, and he cannot risk having any brief bearing his firm's name filed with a misplaced period or stray comma in a citation. Although we ultimately make the filing deadline with seconds to spare, this attorney and his firm were willing to risk missing that deadline—and perhaps compromising our client's rights and interests—and gamble on having the court reject a brief that took tens of thousands of dollars' worth of attorney time to prepare all because once or twice we might have added an improper space between the "F." and "2d" in a citation to the Federal Reporter.

The last scene takes place at a conference. A number of legal-writing professors discuss the then-forthcoming fifth edition of *The ALWD Guide to Legal Citation* and debate which workbook to use in teaching that guide. One professor criticizes one citation workbook for not including enough exercises and not covering a sufficiently diverse

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4. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 10.2.2, at 61 (Columbia Law Review Ass'n et al. eds., 16th ed. 1996) [hereinafter THE BLUEBOOK, 16th ed.].

5. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 10.1.2(c), at 59 (Columbia Law Review Ass'n et al. eds., 17th ed. 2000) [hereinafter THE BLUEBOOK, 17th ed.].

range of the arcane nuances of citing non-law sources. In fact, she brags, even with the more robust workbook, she often writes additional citation exercises of her own because she drills her first-year students with at least a thousand citation exercises. Meanwhile, at every other session at the same conference, I listen as my colleagues from across the country bemoan the fact that they have far too little time to teach all of the skills and techniques their students require to become proficient legal writers.

Particularly at a time when the value of a legal education is under attack,<sup>6</sup> we should avoid the appearance that law school simply grants its

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6. It's no secret that law schools and the value of legal education have faced intensified scrutiny and, in some cases, attack. From the informed and constructive criticisms in The Carnegie Report, *Best Practices for Legal Education*, and The MacCrate Report, to thoughtful assessments from those inside and outside the academy, to editorials in the national media, the criticisms are as wide-ranging as they are many. See, e.g., ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007); WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007) (colloquially known as "The Carnegie Report"); BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS*, at ix–xii (2012) (assailing law schools for inflating employment statistics, the "significant proportion of law graduates nationwide [who] find themselves in financial hardship," increasing enrollment despite a declining job market, and tuition that far outpaces the ability of the average law graduate to repay, among other concerns); THE TASK FORCE ON LAW SCHS. & THE PROFESSION: *NARROWING THE GAP, AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM* (1992) (colloquially known as "The MacCrate Report"); ROBIN L. WEST, *TEACHING LAW: JUSTICE, POLITICS, AND THE DEMANDS OF PROFESSIONALISM* 7–8 (2014) ("[L]aw schools now are facing a precipitous drop in the perceived *intrinsic* value of their main product: legal education itself. . . . Prominent judges and members of the bar have argued for decades that there is an unacceptable gulf between the education students are receiving in law school and the skills they will need to perform as practicing lawyers. . . . Law faculty produce an extraordinary amount of [legal scholarship], but it is of little value either to the rest of the university or to the practicing bar . . ."); David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at BU1, <http://www.nytimes.com/2011/01/09/business/09law.html> [<https://perma.cc/RV7X-FE8J>] (criticizing law schools for misleading students about employment and salaries to expect after graduation and noting the enormous amounts of debt many students have after law school graduation without being able to find jobs); Jennifer Smith, *Identifying the Problems with Law Schools*, WALL ST. J.L. BLOG (Sept. 20, 2013, 2:00 AM), <http://blogs.wsj.com/law/2013/09/20/aba-task-force-weighs-in-on-legal-education-crisis> [<https://perma.cc/G96K-ST6Q>] (discussing the need for change in the legal profession because employment is down and many employers do not want to pay new lawyers who cannot draft documents or perform other basic legal tasks and noting that others weighing-in argue that law schools should not lose their academic focus to educate practice-ready lawyers); Editorial, *Legal Education Reform*, N.Y. TIMES, Nov. 26, 2011, at A18, [http://www.nytimes.com/2011/11/26/opinion/legal-education-reform.html?\\_r=0](http://www.nytimes.com/2011/11/26/opinion/legal-education-reform.html?_r=0) [<https://perma.cc/UP86-WLKF>] (imploring law schools to use the time of legal education crisis to move away from traditional educational models and instead focus on more apprentice-style learning and classes that train students to be advocates, counselors, negotiators, and deal-shapers); Michael I. Krauss, *Legal Education:*

graduates some insider passwords that signal membership. Particularly at a time when our students come to us with what many say are weaker writing, analytical, and critical-thinking skills than ever before,<sup>7</sup> we should avoid diverting time better spent developing those skills, and at a time when the need for affordable legal services significantly exceeds their availability,<sup>8</sup> we should be reducing the costs of access rather than championing adherence to an arbitrary “uniform” system of citation that increases costs. And particularly when the legal profession perennially faces sharp criticism from multiple sides,<sup>9</sup> we should shy

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*What's Wrong with It, and How Do We Fix It?*, FORBES (Mar. 10, 2015), <http://www.forbes.com/sites/michaelkrauss/2015/03/10/legal-education-whats-wrong-with-it-and-how-do-we-fix-it/#aaffed85476c> [<https://perma.cc/NE5Y-LHVC>] (noting over enrollment and a resulting surplus of lawyers looking for high-paying work, lack of practice experience among law faculty, low faculty teaching loads, scholarship that is “esoteric and, frankly, read by vanishingly small numbers of people,” and misrepresenting their post-graduation employment numbers, among other criticisms).

7. E.g., Susan Stuart & Ruth Vance, *Bringing a Knife to the Gunfight: The Academically Underprepared Law Student & Legal Education Reform*, 48 VAL. U. L. REV. 41, 41 (2013) (“[T]oday’s entering law students are demonstrably less prepared for law school because their critical-thinking and problem-solving skills are significantly lower than those of students in the 1970s and 1980s.”). “In the digital age, law schools cannot assume students arrive with basic writing skills on which to build.” *Id.* at 64; see also *infra* Part IV.A.

8. See *infra* Part IV.B.

9. Criticisms of lawyers and the legal profession existed well before Shakespeare’s words “[t]he first thing we do, let’s kill all the lawyers.” WILLIAM SHAKESPEARE, THE SECOND PART OF KING HENRY THE SIXTH act 4, sc. 2; see also James A. Brundage, *Vultures, Whores, and Hypocrites: Images of Lawyers in Medieval Literature*, 1 ROMAN LEGAL TRADITION 56, 56–57 (2002) (cataloging numerous instances of high-profile individuals disparaging lawyers and noting that “[c]riticism of lawyers is neither peculiarly American nor particularly new. It is in fact very old and very widespread. Resentment of lawyers has a long history both in popular discourse and in literature.”). But the crisis seems to come to a head every couple of decades or so and has surged recently. See, e.g., John D. Ayer, *Do Lawyers Do More Harm Than Good?*, 65 A.B.A. J. 1053, 1053 (1979) (noting that lawyers face critics, “up to and including the president and chief justice of the United States” primarily on grounds that lawyers lack competence and that there are “too many lawyers”); Keith Lee, *All Lawyers Lie, Depending on Your Point of View*, ABOVE THE LAW (May 2, 2014, 3:36 PM), <http://abovethelaw.com/2014/05/all-lawyers-lie-depending-on-your-point-of-view/> [<https://perma.cc/8BN8-C3HY>] (positing that the lawyers’ role in society fuels society’s perception of them as liars, individuals who misrepresent the truth, and “squash ‘the little guy’” because people do not meet lawyers until they need them and then, when they do meet lawyers, they want the lawyer to fight ruthlessly for them, they don’t want the lawyer to be nice and when they are faced with the opposing counsel being just as ruthless they think “what a jerk”); Andy Mergendahl, *Why Lawyers Lie (To Themselves and Their Clients)*, LAWYERIST.COM (July 19, 2012), <https://lawyerist.com/45560/lawyers-who-lie-to-themselves-and-their-clients/> [<https://perma.cc/PJ5Z-AY6M>] (acting in self-interest, lawyers are designed to do what is best for them, which is often not best for the client, like in billing extra hours or taking a settlement when a case could have gone to trial or filing ridiculous claims); Jim Olsztyński, *42 Reasons Why I Hate Lawyers*, FAM. GUARDIAN FELLOWSHIP, <http://famguardian.org/subject>

away from practices that suggest that attorneys are nothing more than gatekeepers to the system, armed not with knowledge and skills but simply with forms and rituals that we jealously guard from outsiders.

## II. THE PURPOSES OF LEGAL CITATION AND OF CONSISTENT FORMAT

Certainly accurate and effective legal citation is important, and this Article does not argue otherwise. Law schools should teach students to become fluent in reading and executing legal citation. Lawyers must provide attribution for their assertions when appropriate, and they should ensure that their citations communicate that attribution clearly and accurately. And courts have the right to demand that citations be accurate, brief, and clear.

Why is the form of legal citation important at all? To be effective, a citation must fulfill two fundamental purposes. First, it must communicate how to find the legal authority that supports a legal argument.<sup>10</sup> A reader should be able to quickly locate the constitution, statute, case, or treatise that contains the support and then should be able to quickly pinpoint the precise page or pages on which the key discussion appears.

The second purpose is often equally or more important: effective legal citation efficiently communicates to the reader the weight and vintage of that support.<sup>11</sup> At a glance, a trained legal reader learns whether the source cited is law at all, whether it is binding authority in a given jurisdiction, when a case was decided, and whether the cited authority remains good law. Legal citations use signals to help demonstrate the degree of support a particular source offers, including whether the source supports an assertion directly or only by inference.<sup>12</sup> In academic legal writing, the citation may also communicate the prestige of the publication and the stature of the author.<sup>13</sup> And, as with any form of citation, legal citation affords due credit to the authors of

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s/LawAndGovt/LegalEthics/42ReasonsHateLawyers.htm [https://perma.cc/3H5H-MLM7] (last revised Mar. 28, 2009) (asserting that lawyers are responsible for the country's economic troubles, the best lawyers represent the worst criminals, lawyers achieve success only at the expense of someone else, lawyers lie and character assassinate in order to defend their clients, and lawyers "appeal to our worst instincts").

10. See ASS'N OF LEGAL WRITING DIRS. & COLEEN M. BARGER, *ALWD: GUIDE TO LEGAL CITATION 2* (Wolters Kluwer Law & Bus. 5th ed. 2014) [hereinafter *ALWD*, 5th ed.].

11. See *id.*

12. *Id.* at R. 35, at 312–19; *THE BLUEBOOK*, 20th ed., *supra* note 1, at R. 1.2, at 58–59.

13. See Byron D. Cooper, *Anglo-American Legal Citation: Historical Development and Library Implications*, 75 *LAW LIBR. J.* 3, 3–4 (1982).

quotations, thoughts, and ideas. When done right, and when viewed by an audience versed in its nuances, legal citation is an incredibly effective shorthand. It is so effective, in fact, that those fluent in the language of citation often forget how impenetrable it can be to those untrained in its vagaries.

Moreover, most citation formats—from the first ones developed to cite ancient Roman legal texts through *The Bluebook* and beyond—share certain common values: accuracy, brevity, and clarity.<sup>14</sup> First, citations must be accurate.<sup>15</sup> A legal citation must accurately identify the text that contains the support for the proposition asserted, whether that text be a case reporter, a statutory or regulatory compilation, a law review or journal, a treatise, a website, or any other source. For example, if the cited material appears in a case in the eighth volume of the *Federal Reporter Third Series* beginning at page 200, the citation should set forth the correct reporter name or abbreviation, the correct volume number, the correct number of the first page on which that case appears, the correct date of decision, and perhaps additional information about the court that decided the case and any subsequent history of the case that affects whether the decision represents “good law.”<sup>16</sup> A case citation should also pinpoint the precise page or paragraph that contains the support for a given assertion to make it easier for the reader to locate that support, particularly where a source is long.<sup>17</sup>

A bad citation, then, would be one that either omitted some of the information necessary to locate that support or provided inaccurate information about the location of that support, such as the wrong reporter name or volume number or the wrong (or no) pinpoint citation. A bad citation might also omit or convey misleading information about the court issuing the decision, the vintage of the decision, whether the decision had been overruled, or the extent to which language in the decision supports the proposition offered.

Second, citation formats value brevity.<sup>18</sup> All citation forms represent a shorthand and strive to convey all of the necessary information about

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14. See *infra* Part III.

15. See ALWD, 5th ed., *supra* note 10, at 2–3.

16. See, e.g., THE BLUEBOOK, 20th ed., *supra* note 1, at R. 10.3–7, at 102–10.

17. See *id.* at R. 10, at 94.

18. See ALWD, 5th ed., *supra* note 10, at 2; Michael Bacchus, *Strung Out: Legal Citation, The Bluebook, and the Anxiety of Authority*, 151 U. PA. L. REV. 245, 253 (2002).

the location of support in the shortest form possible.<sup>19</sup> This means, in part, that many citation formats eschew unnecessary repetition.<sup>20</sup> If the reporter name conveys everything that the reader needs to know about the court issuing the decision, for example, there is no need for the author to identify that jurisdiction again in the date parenthetical.<sup>21</sup> This also means that effective citations employ clear, easily understandable abbreviations to reduce the amount of space the citation consumes.<sup>22</sup> Short forms for citing cases and statutes conserve space still further, requiring just enough information for the reader to identify and orient herself in a previously cited source.<sup>23</sup>

Finally, citation formats value clarity.<sup>24</sup> This means that abbreviations must not only be short but also obvious; an effective citation should not force the reader to consult a guide (at least not repeatedly) to decode it.<sup>25</sup> No one abbreviation should serve for several different words.<sup>26</sup> Arcane abbreviations for case names, reporters, courts, and other elements of a legal citation reduce the fluency with which even a legally trained audience reads a citation and makes it that much more difficult for a novice or untrained audience to understand.<sup>27</sup> Accurate, brief, clear citations communicate efficiently and effectively.

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19. See *infra* Part III.A.

20. See ALWD, 5th ed., *supra* note 10, at R. 11.2, at 48.

21. See *id.* at R. 12.6(d), at 83 (“In parallel citations, omit all or part of the court abbreviation in the court/date parenthetical if the name of any cited reporter or database clearly indicates the state or court of decision.”); THE BLUEBOOK, 20th ed., *supra* note 1, at R. 10.4(b), at 106 (“Omit the jurisdiction and the court abbreviation if unambiguously conveyed by the reporter title[.]”); see also ALWD, 5th ed., *supra* note 10, at R. 12.2(c)–(d), (e)(1), (f), (h)–(j), (m)–(r), at 63–74 (listing terms that should be omitted from case names); THE BLUEBOOK, 20th ed., *supra* note 1, at R. 10.2.1(a), (d)–(g), (h), at 96–99 (listing terms that should be omitted from case names).

22. See, e.g., THE BLUEBOOK, 20th ed., *supra* note 1, at 496 tbl.T.6.

23. ALWD, 5th ed., *supra* note 10, at R. 11.2 to .5, at 48–56; THE BLUEBOOK, 20th ed., *supra* note 1, at R. 10.9, at 115–18, R. 12.10, at 133–34.

24. THE MAROONBOOK: THE UNIVERSITY OF CHICAGO MANUAL OF LEGAL CITATION, at iv (The University of Chicago Law Review ed., 2016) [hereinafter THE MAROONBOOK], <https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/83%20MB.pdf> [<https://perma.cc/MW2B-MMTR>].

25. PETER W. MARTIN, INTRODUCTION TO BASIC LEGAL CITATION § 1-400, at 6 (2015), [http://www.access-to-law.com/citation/basic\\_legal\\_citation.pdf](http://www.access-to-law.com/citation/basic_legal_citation.pdf) [<https://perma.cc/T3AA-7AW4>].

26. See, e.g., THE BLUEBOOK, 20th ed., *supra* note 1, at 496 tbl.T.6, 498 tbl.T.7, 510 tbl.T.13.

27. See Stephen R. Heifetz, *Blue in the Face: The Bluebook, the Bar Exam, and the Paradox of Our Legal Culture*, 51 RUTGERS L. REV. 695, 705 (1999).

Although authors may use different vocabulary to describe them, these values echo through various citation formats with remarkable consistency. The authors of *The University of Chicago Manual of Legal Citation*—colloquially known as *The Maroonbook*—identify sufficiency, clarity, consistency, and simplicity as governing principles behind the system they espouse.<sup>28</sup> Peter W. Martin, in his *Introduction to Basic Legal Citation*, recognizes that effective citation balances two competing interests: “[P]roviding full information about the referenced work and keeping the text as uncluttered as possible.”<sup>29</sup> And *The Bluebook* agrees that citation forms should “provide sufficient information to allow the reader to find the cited material quickly and easily.”<sup>30</sup>

These, then, are the values by which a citation—and the lawyer or law student composing the citation—should be judged. Is the citation accurate? Is the citation brief? Is the citation clear? And these are the values that legal educators should emphasize in citation instruction, regardless of which tool they use to teach citation.

### III. THE STATUS QUO

If the values of accuracy, brevity, and clarity underlie all citation and citation systems, how have we arrived at a place where elite law students, law firms, law clerks, and law schools claim to judge a lawyer’s merit in part on whether the “th” in “9th Circuit” appears in superscript?<sup>31</sup> How have the less substantive—and more clerical— aspects of citation come to be elevated to this point? And how has adherence to a citation system created and maintained by law students at a few elite law schools<sup>32</sup> come to be the signal of a well-trained, detail-oriented lawyer? Examining the history of legal citation provides some clues.

#### A. A Brief History of Legal Citation

Lawyers and others who use legal sources have long used a shorthand to provide attribution to the legal documents that justify their assertions.<sup>33</sup> In fact, some form of legal citation has existed since ancient

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28. THE MAROONBOOK, *supra* note 24, at iv.

29. MARTIN, *supra* note 25, § 1-200, at 3.

30. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 1 (Columbia Law Review Ass’n et al. eds., 19th ed. 2010) [hereinafter THE BLUEBOOK, 19th ed.].

31. *See infra* note 209 for examples of this.

32. *See* Cooper, *supra* note 13, at 21.

33. *Id.* at 4.

Rome.<sup>34</sup> Those citing Justinian's *Corpus Juris Civilis* developed a common practice of citing sections of that compilation by number.<sup>35</sup> Legal scholars—called Glossators—who studied and interpreted Justinian's *Digest* in the eleventh century evolved a citation system over the years that reflected the values of accuracy, brevity, and clarity; they developed consistent abbreviations for source names, then provided the first few words of each portion of the cited source to orient the reader within the proper text.<sup>36</sup> Canon lawyers mimicked this system, often substituting volume numbers and other numerical locators for the “first few words” technique the Glossators (and later English lawyers) favored.<sup>37</sup> Similarly, English lawyers in the Middle Ages appear to have striven to be precise in their citations to “plea rolls,” which were the official records kept by the clerks of English courts.<sup>38</sup> These citations generally provided the court term and the regnal year with a margin notation specifying the county and the first name of the first party or all parties.<sup>39</sup>

As case reports came to be collected and foliated in what were called *Year Books*, it became easier to implement a method for citing those sources that reliably led the reader to the correct location.<sup>40</sup> In the sixteenth century, Richard Tottell, a printer who printed the *Year Books* and all other compilations of non-statutory legal sources, even seemed to have effective citation in mind when he modified those compilations.<sup>41</sup> Before Tottell's reforms, the only reference points for

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34. *Id.*

35. *Id.*

36. *Id.* at 4–5.

37. *Id.* 5–6.

38. *Id.* at 7–8.

39. *Id.* at 8.

40. *See id.*

41. *Id.* at 9–10. It is no surprise that the printer of a case reporter would be among the first to develop a uniform citation system. In fact, citation policies have long been inextricably intertwined with the politics of who “the power-that-be” want compiling and publishing reports of judicial opinions. In England in the late eighteenth and early nineteenth centuries, for example, judges would only accept citations to certain reports. *Id.* at 15–16. The official reporters took advantage of this, engaging in monopoly pricing and providing poor quality work product. *Id.* at 16. In the 1830s, after the United States Supreme Court held that “reporters could have no copyright in the written opinions of a court,” courts began to insist that attorneys cite the reports compiled by official state officers, which, of course, boosted sales of those reports. *Id.* at 18 (citing *Wheaton v. Peters*, 33 U.S. (8 Pet.) 591 (1834)); see also Nancy A. Wanderer, *Citation Excitement: Two Recent Citation Manuals Burst on the Scene*, 20 ME. B.J. 42, 43 (2005).

citing cases from the *Year Books* were the regnal year and the term.<sup>42</sup> If a lawyer wanted to point his reader to a particular case within a term—much less a particular portion of a case—there was no way to do so.<sup>43</sup> Tottell began numbering the cases within a term.<sup>44</sup> He also tried to maintain consistent pagination across *Year Book* editions, facilitating even more precise citation.<sup>45</sup>

From the beginning, then, citations needed to be straightforward enough for the reader to compose and decode them without assistance. Although the first citation manual may date back to the sixteenth century,<sup>46</sup> such manuals were far from commonplace before *The Bluebook* appeared in the late 1920s.<sup>47</sup> Even those guides that did exist—including one from the Nebraska Supreme Court and another from the Judge Advocate General's office—stopped far short of purporting to dictate a uniform system for all academics and attorneys.<sup>48</sup> Instead, they set forth custom, guidelines, and principles.<sup>49</sup> How ever did the legal profession survive?

### 1. *The Bluebook*

Although no central authority dictates nationwide norms for legal citation,<sup>50</sup> one might not realize that from the way much of legal academia and the legal profession talk about *The Bluebook*.<sup>51</sup>

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42. Cooper, *supra* note 13, at 9–10.

43. *See id.*

44. *Id.* at 10.

45. *Id.*

46. *Id.* at 20.

47. *See id.* at 20–21; *see also* A UNIFORM SYSTEM OF CITATION: ABBREVIATIONS AND FORM CITATION (Harvard Law Review Ass'n ed., 1st ed. 1926) [THE BLUEBOOK, 1st ed.].

48. *See* Cooper, *supra* note 13, at 20–21; *see also* D.A. Campbell, *Rules for Citation*, 30 AM. L. REV. 107 (1896); J.C. Ruppenthal, *Methods of Citing Statute Law*, 12 LAW LIBR. J. 1 (1919).

49. *See* Cooper, *supra* note 13, at 20–21.

50. Almost as long as *The Bluebook* has existed, competitive citation systems have existed as well. *See infra* Part III.A.1.c.

51. “*The Bluebook* is still firmly entrenched in its ‘authoritative position,’ particularly in the academic world.” Bacchus, *supra* note 18, at 246 (quoting Melissa H. Weresh, *The ALWD Citation Manual: A Coup de Grace*, 23 U. ARK. LITTLE ROCK L. REV. 775, 781 (2001)). Even its critics recognize its dominance. In one of her articles criticizing the sixteenth edition, Darby Dickerson acknowledged that, despite its serious flaws, “the *Bluebook* is still our most authoritative guide to legal citation” and “prudent lawyers have no choice but to master” it, even those rules that are arbitrary or contrary to common sense. A. Darby Dickerson, *Seeing Blue: Ten Notable Changes in the New Bluebook*, 6 SCRIBES J. LEGAL WRITING 75, 94 (1996–1997).

“Bluebook” is an imposing brand; “Bluebooking” has long been the generic term for checking citation form.<sup>52</sup> Legal writing professors who dare to use a text other than *The Bluebook* to teach legal citation receive significant pushback from their administrations, other faculty, and students, all of whom protest that “everyone uses *The Bluebook*,” and many of whom seem to believe that teaching from any other source amounts to a form of educational malpractice.<sup>53</sup>

In reality, almost no court or jurisdiction requires pure *Bluebook* citation format.<sup>54</sup> In reality, almost no practitioner, judge, or academic executes perfect current *Bluebook* citation format from memory.<sup>55</sup> And, in reality, it seems doubtful that most practitioners, judges, or academics can recognize a *Bluebook*-compliant citation at a glance.<sup>56</sup> Nonetheless, the barriers to challenging *The Bluebook*’s dominance—not just in the marketplace but also in the minds of those in the legal profession—seem virtually insurmountable.

a. *History of The Bluebook*

That *The Bluebook* would so dominate legal citation form—or at least people’s perceptions of what legal citation form should be—was not obvious at its modest beginnings. *The Bluebook*’s first edition emerged in 1926<sup>57</sup> as a slight, olive-covered<sup>58</sup> pamphlet of rules prepared

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52. See, e.g., MARTIN, *supra* note 25, § 1-100, at 1.

53. Ian Gallacher, *Cite Unseen: How Neutral Citation and America’s Law Schools Can Cure Our Strange Devotion to Bibliographical Orthodoxy and the Constriction of Open and Equal Access to the Law*, 70 ALB. L. REV. 491, 497 n.37 (2007) (“In many schools, the introduction of the *ALWD Manual* led to student protests that they would be unprepared for entry into the real world of legal citation, dominated (in the students’ eyes, at least) by *The Bluebook*. Rumors that these protests might have caused some legal writing teachers to lose their positions have circulated in legal writing circles but are, as with most rumors, unverifiable.”); Penelope Pether, *Negotiating the Structures of Violence; Or, on Not Inventing “The Sullivans,”* 15 SOC. SEMIOTICS 5, 25 (2005) (“A legal writing director in contract employment who provides the sole income support for a disabled spouse and three children was bullied by her law school’s administration to abandon using a textbook, as it happens, the *ALWD Manual*, the pretender to the hegemony of *The Bluebook*, after a candidate for the law school’s student bar association presidency campaigned successfully on the platform that she would be forced to do so.” (footnotes omitted)).

54. See *infra* Part III.A.1.d.iii.

55. See *infra* note 140.

56. That may be a fruitful topic for another article.

57. THE BLUEBOOK, 1st ed., *supra* note 47.

58. Perhaps the editors of *The Bluebook* anticipated early on the criticism that they were “citation Nazis”: in 1939, they changed the cover from brown to a more “patriotic” blue to avoid comparisons with Adolf Hitler’s Brownshirts. A. Darby Dickerson, *An Un-Uniform System of Citation: Surviving with the New Bluebook (Including Compendia of State and*

by a second-year law student home for summer break in Cleveland and designed solely for the use of the editorial staff of the *Harvard Law Review*.<sup>59</sup> Although it primarily codified citation conventions long in common use, it also introduced some innovations, like the use of large and small capital letters for book and journal titles.<sup>60</sup>

For its first three editions, *The Bluebook* remained simply a short guide for the *Harvard Law Review*'s own editors.<sup>61</sup> By the fourth edition, published in 1934,<sup>62</sup> however, the law reviews of Yale, Columbia, and Pennsylvania had joined as authors and compilers.<sup>63</sup> Over the 1930s and 1940s, more and more law reviews and journals adopted *The Bluebook*, and by 1949, the National Conference of Law Review Editors identified *The Bluebook* as the standard for legal citation.<sup>64</sup>

Legal practitioners were slower to jump on *The Bluebook* bandwagon, and *The Bluebook* itself did not purport to dictate the rules for practice documents until fifty years after its first publication.<sup>65</sup> With the twelfth edition in 1976, however, *The Bluebook* set its "cites" on dominating legal citation form for "all forms of legal writing," including both scholarly work and practice documents.<sup>66</sup> That ambition aside, *The*

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*Federal Court Rules Concerning Citation Form*), 26 STETSON L. REV. 53, 58 (1996); see also James W. Paulsen, *An Uninformed System of Citation*, 105 HARV. L. REV. 1780, 1782 (1992) (reviewing THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 15th ed. 1991) [hereinafter THE BLUEBOOK, 15th ed.]) (citing Alan Strasser, *Technical Due Process*: ?, 12 HARV. C.R.-C.L. L. REV. 507, 507-09 (1977)).

59. Dickerson, *supra* note 58, at 57-60.

60. Cooper, *supra* note 13, at 21. What was once an innovation is now a relic that confounds junior legal writers transitioning from the world of law-review editing to the world of law practice. In a carry-over from the days when lowly practitioners lacked access to the typesetting resources of academic publications, the practitioner rules *The Bluebook* prescribed did not use small caps, whereas the forms for academic writing dictate the use of small caps to cite many statutes and secondary sources. Although *The Bluebook*'s editors changed the rule to permit—but not require—the use of large and small caps in non-academic citations, THE BLUEBOOK, 20th ed., *supra* note 1, at B. 2, at 7, in the age where word-processing tools are standard, that there is a distinction at all seems arbitrary and antiquated. See discussion *infra* Part III.A.1.d.i.

61. Dickerson, *supra* note 58, at 59-61.

62. A UNIFORM SYSTEM OF CITATION: FORM CITATION AND ABBREVIATIONS (Columbia Law Review Ass'n et al. eds., 4th ed. 1934).

63. Dickerson, *supra* note 58, at 60.

64. Alex Glashauser, *Citation and Representation*, 55 VAND. L. REV. 59, 62-63 (2002).

65. See Dickerson, *supra* note 58, at 64.

66. A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 12th ed. 1976) [hereinafter THE BLUEBOOK, 12th ed.] (stating that *The Bluebook* was "designed for use in all forms of legal writing"); see also Dickerson, *supra* note 58, at 64.

*Bluebook* failed to acknowledge differences between law review citation form and the form courts and practicing attorneys used until 1981, and even then it simply listed a few “[b]asic [c]itation [f]orms” for “[b]riefs and [m]emoranda” on the inside front and back covers.<sup>67</sup> In the sixteenth edition, released in 1996, *The Bluebook* added what it called “Practitioners’ Notes,” ten pages at the front of the book that set forth the different rules and typeface conventions that practitioners traditionally followed.<sup>68</sup>

In response to the advent in 2000 of the *ALWD Manual*<sup>69</sup> and its explicit focus on the citation form used in law practice, *The Bluebook* expanded its practitioner-focused section, called the “Bluepages,” with its eighteenth edition in 2005, more than doubling the percentage of the text devoted to the needs of practicing lawyers.<sup>70</sup> Even with these concessions, however, *The Bluebook* remains more cumbersome to use for practitioners than it is for those writing for publication in law reviews. To devise the correct citation for practice, the user must first consult the Bluepages for the basic format, then flip forward to the white pages to consult any overarching rules found there, then flip back to the Bluepages to make sure that there are no additional caveats for practice documents. Although those using *The Bluebook* for law-review citations still must flip back and forth between the white pages and the appendices and between different rules in the white pages, they still enjoy a relatively more streamlined and user-friendly process. This makes a certain amount of sense; after all, the book was designed for them.<sup>71</sup>

In 2008, *The Bluebook* joined the digital age through an online subscription service,<sup>72</sup> and it launched a mobile app in 2012.<sup>73</sup> But

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67. K.K. DuVivier, *The Bluebook No. 18—“Thank God for Competition. . . .”*, COLO. LAW., Nov. 2005, at 111, 111 (citing A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 13th ed. 1981)).

68. See THE BLUEBOOK, 16th ed., *supra* note 4, at 10–19; see also Christine Hurt, *Network Effects and Legal Citation: How Antitrust Theory Predicts Who Will Build a Better Bluebook Mousetrap in the Age of Electronic Mice*, 87 IOWA L. REV. 1257, 1266 (2002).

69. ASS’N OF LEGAL WRITING DIRS. & DARBY DICKERSON, ALWD CITATION MANUAL: A PROFESSIONAL SYSTEM OF CITATION (Aspen Law & Bus. 1st ed. 2000) [hereinafter ALWD, 1st ed.].

70. DuVivier, *supra* note 67, at 111–12 (citing THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 18th ed. 2005)).

71. *Id.* at 111.

72. Press Release, Columbia Law School, *Bluebook Goes Online* (Mar. 22, 2008), [https://www.law.columbia.edu/media\\_inquiries/news\\_events/2008/march2008/bluebook](https://www.law.columbia.edu/media_inquiries/news_events/2008/march2008/bluebook) [<https://perma.cc/QTC9-WAHR>]; Columbia Law Review Ass’n, Inc. et al., *Purchase Bluebook*

although superficially it seems to adapt to the changing times, the citation system put forth in *The Bluebook* is essentially an unduly complex and insular one, and it has come under fire over the years for these very traits multiple times and from multiple sectors.

*b. Attacks on The Bluebook*

*The Bluebook* has retained its dominance despite years of criticism and calls for its demise, including some eloquent and well-reasoned exhortations from prominent members of the judiciary, academy, and legal profession.<sup>74</sup> Indeed, *The Bluebook* has had its detractors from the beginning.<sup>75</sup> As noted, it took years for other law reviews to adopt the citation system.<sup>76</sup> Justice Frankfurter refused to follow *Bluebook* format when he authored an article published in the *Harvard Law Review* in 1955.<sup>77</sup> Practitioners and first-year law students began railing against *The Bluebook*'s labyrinthine dictates as early as the late 1940s.<sup>78</sup>

Critics persistently highlight *The Bluebook*'s elitism. For example, although it expanded its practitioner-focused section over the years, *The Bluebook* persistently gave short shrift to the local rules of citation that actually bind practitioners.<sup>79</sup> As early as 1955, prominent attorney and Supreme Court practitioner Frederick Bernays Wiener railed against the editors of the ninth edition for "turn[ing] their backs on professional tradition."<sup>80</sup> Similarly, critics perennially note *The Bluebook*'s "federal parochialism" and its seemingly deliberate ignorance of state-specific rules and reporters.<sup>81</sup> Indeed, a mere perusal of the titles of citation

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*Products*, BLUEBOOK, <https://www.legalbluebook.com/Purchase/Products.aspx?op=Subscription> [<https://perma.cc/UKH5-EQW9>] (last visited July 30, 2015).

73. See Gabriella Khorasanee, *There's an App for That: Top 10 Apps for Law Students*, FINDLAW: LEGAL TECH. BLOG (Aug. 23, 2013, 9:55 AM), [http://blogs.findlaw.com/technologist/2013/08/theres-an-app-for-that-top-10-apps-for-law-students.html?DCMP=NWL-pro\\_top](http://blogs.findlaw.com/technologist/2013/08/theres-an-app-for-that-top-10-apps-for-law-students.html?DCMP=NWL-pro_top) [<https://perma.cc/H726-WXRV>]. *The Bluebook* is an in-app purchase in the Rulebook app. Ready Reference Apps, LLC, *Rulebook*, APPLE STORE, <https://itunes.apple.com/us/app/rulebook/id454619081?mt=8> [<https://perma.cc/NU7U-FHS6>] (last visited July 30, 2015).

74. See, e.g., Dickerson, *supra* note 58; Glashauser, *supra* note 64, at 63; Paulsen, *supra* note 58.

75. See, e.g., FREDERICK BERNAYS WIENER, BRIEFING AND ARGUING FEDERAL APPEALS 223 (1967).

76. Dickerson, *supra* note 58, at 59–63.

77. Cooper, *supra* note 13, at 21.

78. *Id.* at 22.

79. Dickerson, *supra* note 58, at 89–90.

80. Cooper, *supra* note 13, at 22 (quoting WEINER, *supra* note 75, at 223).

81. Paulsen, *supra* note 58, at 1788–91. In one particularly egregious example, a review

hornbooks—variously labeled as “survival guides” or handbooks for “beating” the citation or *The Bluebook* “blues”—gives a sense of the general feelings *The Bluebook* provokes in students and practitioners alike.<sup>82</sup>

Seventh Circuit Judge Richard Posner has probably been *The Bluebook*'s most voluble and visible opponent. In his essay *Goodbye to the Bluebook*, which accompanied the first publication of the University of Chicago's *Maroonbook* in the *University of Chicago Law Review* in 1986, Posner railed against legal academia's and the legal profession's “slavish” adherence to *The Bluebook*'s “complex and intricate directives” and its “useless uniformity.”<sup>83</sup> Acknowledging that “not every lawyer can memorize *The Bluebook*,” Posner took particular issue with *The Bluebook*'s proliferation of abbreviations, most of which were so “nonobvious” that a reader would have to consult *The Bluebook* itself to translate the citation (which hardly furthers clarity).<sup>84</sup> He also decried the culture that he believed *The Bluebook* creates, one characterized by “a dismal sameness of style” and “an atmosphere of formality and redundancy in which [a] drab, Latinate, . . . euphemistic style . . . flourishes.”<sup>85</sup> Posner even goes so far as to blame legal prose infected with passive voice, nominalizations, excessive adjectives and adverbs, and qualifications on the “heavily student-influenced legal culture” that *The Bluebook* bolsters.<sup>86</sup>

Posner also observed that *The Bluebook*'s impenetrability and complexity defeat the very uniformity it claims to impose:

[T]he *Bluebook* is elaborate but not purposive. Form is prescribed for the sake of form, not of function; a large structure is built up, all unconsciously, by accretion; the superficial dominates the substantive. The vacuity and tendentiousness of so much legal reasoning are concealed by the awesome

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of one edition of *The Bluebook* catalogued state-specific errors in that edition, *id.* at 1790–91; nonetheless, those errors remained uncorrected in the following edition.

82. Weresh, *supra* note 51, at 778–79 (citing MARIA L. CIAMPI ET AL., *THE CITATION WORKBOOK: HOW TO BEAT THE CITATION BLUES* (1993); J. REID MOWRER, *A BLUEBOOK SURVIVAL GUIDE FOR STUDENTS, EDITORS, INSTRUCTORS, AND PRACTITIONERS* (1997)).

83. Richard A. Posner, *Goodbye to the Bluebook*, 53 U. CHI. L. REV. 1343, 1343, 1345 (1986).

84. *Id.* at 1346 (emphasis added).

85. *Id.* at 1349.

86. *Id.* at 1349–51.

scrupulousness with which a set of intricate rules governing the form of citations is observed.<sup>87</sup>

But the editors of *The Bluebook* brought the most devastating criticism on themselves. The now-notorious sixteenth edition of *The Bluebook*<sup>88</sup> provoked the most widespread and organized rebellion among academics and practitioners and ultimately inspired *The Bluebook*'s most recent and most successful challenger to date.<sup>89</sup>

Published in 1996, the sixteenth edition completely overhauled the existing rules on signals.<sup>90</sup> The most troubling changes affected the use of the signal "See." Previous editions required no signal before a citation so long as the source "directly supported" the writer's assertion.<sup>91</sup> A "See" signal before a citation let the reader know that, although the source did not directly support a proposition, it supported it implicitly or through dicta.<sup>92</sup> The sixteenth edition turned this well-worn principle on its head, now requiring a signal unless the author either quoted from or named the cited source in the text.<sup>93</sup> Where the cited source "directly supported" the writer's assertion, but the writer neither quoted from nor named the cited source in the sentence, the "See" signal had to precede the citation.<sup>94</sup> The sixteenth edition also eradicated the "Contra" signal and required the use of another signal with the "E.g." signal.<sup>95</sup>

As Darby Dickerson noted in her criticisms of the sixteenth edition, by so altering the meaning of signals, *The Bluebook*'s student editors had stepped over a line that they might not have recognized at the time.<sup>96</sup> Rather than simply tweaking citation form, they had wrought a

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87. *Id.* at 1343–44 (emphasis added).

88. THE BLUEBOOK, 16th ed., *supra* note 4.

89. See Gallacher, *supra* note 53, at 508–10; Wanderer, *supra* note 41, at 44–45.

90. Dickerson, *supra* note 58, at 66–70 (citing THE BLUEBOOK, 16th ed., *supra* note 4, at R. 1.2(a), at 22).

91. Glashauser, *supra* note 64, at 68 (citing A UNIFORM SYSTEM OF CITATION: FORMS OF CITATION AND ABBREVIATIONS R. 27:2:1, at 85 (Columbia Law Review Ass'n et al. eds., 10th ed. 1958); BLUEBOOK, 12th ed., *supra* note 66, at R. 2:3(a), at 6; A UNIFORM SYSTEM OF CITATION R. 2.2(a), at 8 (Columbia Law Review Ass'n et al. eds., 14th ed. 1986); THE BLUEBOOK, 15th ed., *supra* note 58, at R.1.2(a), at 22–23).

92. See, e.g., THE BLUEBOOK, 15th ed., *supra* note 58, at R. 1.2(a), at 23; Hurt, *supra* note 68, at 1270.

93. Dickerson, *supra* note 58, at 66–70.

94. *Id.* (comparing THE BLUEBOOK, 15th ed., *supra* note 58, at R. 1.2(a), at 22–23, with THE BLUEBOOK, 16th ed., *supra* note 4, at R. 1.2(a), at 22).

95. *Id.* at 66.

96. See *id.* at 69–70.

substantive change. Because signals inform the reader of the weight and persuasive value of the cited authority, “[c]hanging what signals mean effectively changes the substance of our common law.”<sup>97</sup> Legal readers would have to check the date of an article or brief to know what the absence of the “*See*” signal meant, which could lead to misunderstanding and misinterpretation.<sup>98</sup> Moreover, attorneys and academics using the sixteenth edition’s version of “*See*” lost a powerful shorthand tool used to communicate that a case or source supported a proposition only by inference or that the proposition, although not directly stated in the case, obviously followed from its reasoning.<sup>99</sup> Where the sixteenth edition’s editors chose to draw the line made no sense. A reader can see at a glance whether a sentence contains a quotation or a case name. On the other hand, without the pre-sixteenth-edition version of the “*See*” signal, a reader cannot so easily see the difference between a case that directly supports a proposition and a case that supports that proposition only indirectly, which could be a significant distinction in our common law system.

*Bluebook* backlash became the order of the day. Many academics took to the newly booming Internet to rail against the new rule and rally opposition.<sup>100</sup> No one seemed to speak in favor of the change.<sup>101</sup> Most strikingly, at its 1997 meeting, the House of Representatives of the American Association of Law Schools (AALS) passed a resolution that not only formally opposed the changes and urged *The Bluebook*’s editors to restore the previous meanings of introductory signals but also encouraged law reviews to rebel against the sixteenth edition’s new rules in that area and to instead fall back to the fifteenth edition’s rules.<sup>102</sup>

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97. *Id.* at 69.

98. *Id.*; see also Jennifer L. Cordle, ALWD Citation Manual: *A Grammar Guide to the Language of Legal Citation*, 26 U. ARK. LITTLE ROCK L. REV. 573, 588 (2004) (“[B]y changing the meaning of signals, the editors of the *Bluebook* prevent past and present attorneys from effectively communicating through citations and muddy the path of the law.”); Hurt, *supra* note 68, at 1269 (arguing that “tinkering” with the meaning of signals “makes the use of signals before that edition obsolete or, at best, confusing”).

99. As the AALS resolution noted, the sixteenth edition’s “definition of ‘*See*’ ‘leaves no useful middle signal between direct statement support and the weakly analogous signaled by [*Cf.*].” Dickerson, *supra* note 51, at 80 (quoting ASS’N AM. LAW SCHS., RESOLUTION CONCERNING PROMULGATION OF RULES OF CITATION 1 (1997)).

100. Glashausser, *supra* note 64, at 69.

101. *Id.* (“[Professors] universally condemned the fiat; no dissenters took the “*see*” side.”).

102. Bacchus, *supra* note 18, at 252; Dickerson, *supra* note 51, at 79; Glashausser, *supra* note 64, at 70–71 (“We urge the compilers of *The Bluebook* to restore the previous rule

Although *The Bluebook* reverted to its previous rules regarding signals in the seventeenth edition,<sup>103</sup> the damage was done, creating an opening for a new competitor.<sup>104</sup>

c. *Alternatives to The Bluebook*

*The Bluebook* has never been the only citation game in town, and the first alternatives to *The Bluebook* emerged back when its editors weren't seriously marketing the manual to practitioners.<sup>105</sup> Allegedly widely employed by practitioners and taught in writing classes, Miles Price's *Practical Manual of Standard Legal Citations* was first published in 1950.<sup>106</sup> Price's text attempted to codify the dominant citation practices he saw in briefs.<sup>107</sup> Although it did fill the void that *The Bluebook* left in terms of citation standards for practitioners, likely few currently practicing attorneys have heard of it and probably few legal-writing professors as well. The second and last edition of the text was published in 1958, although an abridged version of that edition (by then somewhat dated) was incorporated into Price's *Effective Legal Research* text as late as 1979.<sup>108</sup> Similarly, *Bieber's Current American Legal Citations*—a sort of citation hornbook intended to supplement, rather than supplant, *The Bluebook* for practitioners—followed in the 1980s,<sup>109</sup> but few in practice or academia recall it today.

i. The First Serious Challenger: The University of Chicago's *Maroonbook*

Although these other citation manuals certainly had a market, none seriously challenged, or sought to challenge, *The Bluebook's* preeminence—particularly as a citation guide for scholarly

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governing signals. . . . In addition, reviews and journals should respect the right of an author to use another system of rules governing citation of authorities." (quoting ASS'N OF AM. L. SCHS., *supra* note 99, at 2)).

103. See THE BLUEBOOK, 17th ed., *supra* note 5, at R. 1.2, at 22–24.

104. See *infra* Part III.A.1.c.ii.

105. See Dickerson, *supra* note 58, at 61–65.

106. Cooper, *supra* note 13, at 22; see also MILES O. PRICE, A PRACTICAL MANUAL OF STANDARD LEGAL CITATIONS (1950).

107. Cooper, *supra* note 13, at 22.

108. *Id.* at 22–23; see also MILES O. PRICE, A PRACTICAL MANUAL OF STANDARD LEGAL CITATIONS (2d ed. 1958); MILES O. PRICE ET AL., EFFECTIVE LEGAL RESEARCH § 32 (4th ed. 1979).

109. BIEBER'S CURRENT AMERICAN LEGAL CITATIONS (Mary Miles Prince ed., 2d ed. 1986); see also William R. Slomanson, *Book Review*, 52 FORDHAM L. REV. 428 (1983) (reviewing DORIS BIEBER, CURRENT AMERICAN LEGAL CITATIONS (1983)).

publications.<sup>110</sup> The University of Chicago's *Maroonbook*, however, championed by one of *The Bluebook's* most frequent and vociferous critics, Seventh Circuit Judge Richard Posner, represented one of the earliest and most serious attempts to unseat *The Bluebook* altogether as the dominant citation format.<sup>111</sup> First published in 1986, *The University of Chicago Manual of Legal Citation* purported to respond to the "cries for a simpler system of legal citation" with a "simple, malleable framework."<sup>112</sup> Primarily targeted at scholarly publications—the preface refers to "authors and editors," not to practitioners or attorneys<sup>113</sup>—*The Maroonbook* nonetheless promised a more flexible and relaxed system of citation, guided more by overarching principles than nitpicky rules.<sup>114</sup> Those governing principles—sufficiency, clarity, consistency, and simplicity—aimed to generate citations that accurately conveyed the nature and location of support with a minimum of fuss.<sup>115</sup> Further, its explicit recognition that providing a rule for every conceivable citation issue<sup>116</sup> was an endeavor bound to fail not only made good common sense, it seemed to promise a minimum of changes in new editions and a continued modest length.

Unfortunately, despite Posner's endorsement, and despite the simplicity of the system it proposed, *The Maroonbook* was only adopted by a few scholarly publications, and it never really gained traction among notoriously conservative and change-averse legal practitioners.<sup>117</sup> By the mid-1990s, it was itself a footnote in the narrative of *The Bluebook's* inexorable march to dominance.<sup>118</sup>

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110. See Glashauser, *supra* note 64, at 64–65.

111. *Id.* at 64–65; Hurt, *supra* note 68, at 1277.

112. THE MAROONBOOK, *supra* note 24, at iv; see also THE UNIVERSITY OF CHICAGO MANUAL OF LEGAL CITATION (The University of Chicago Law Review ed., 1986), reprinted in Posner, *supra* note 83, at app.

113. THE MAROONBOOK, *supra* note 24, at iv.

114. See *id.*

115. See *id.*

116. THE UNIVERSITY OF CHICAGO MANUAL OF LEGAL CITATION, *supra* note 112, at 1353 ("[B]ecause it is neither possible nor desirable to write a particular rule for every sort of citation problem that might arise, the rules leave a fair amount of discretion to practitioners, authors, and editors.").

117. See Hurt, *supra* note 68, at 1279–80; see also Paulsen, *supra* note 58, at 1785 n.42 (listing seven law reviews, other than the *Chicago Law Review*, that had adopted *The Maroonbook* as of 1992). Reportedly, one of Posner's own clerks used *Bluebook* citation form in preparing legal memoranda for the judge. Paulsen, *supra* note 58, at 1785 n.42.

118. See Glashauser, *supra* note 64, at 65.

ii. The *ALWD Manual*: A “Restatement of Citation”

*The Bluebook*'s next serious challenger enjoyed an even more auspicious beginning, and many factors seemed to position it ideally for success. When the *ALWD Citation Manual* first appeared in 2000, *The Bluebook* had just endured its most vulnerable period in years.<sup>119</sup> Arbitrary and capricious changes to the meanings of signals in the sixteenth edition had alienated professors and practitioners alike.<sup>120</sup> The lead author of the *ALWD Manual*, Darby Dickerson, had written several pieces criticizing the sixteenth edition and outlining her proposed solutions for a seventeenth edition.<sup>121</sup> The promotional materials for *ALWD* essentially acknowledged that it existed, in large part, as a response to the many grievances that practitioners and academics alike had nursed against *The Bluebook* over the years.<sup>122</sup> It promised, for example, that “[t]he rules in this book will not be changed arbitrarily” and that it contained “many more examples” than the unnamed—but hardly invisible—competitor.<sup>123</sup> Further, the *ALWD Manual* had an advantage in that it was authored and compiled by the Association of Legal Writing Directors, the people who most often oversaw citation instruction in law schools and, one might assume, had the academic freedom to choose the method and the text they used to teach that skill.<sup>124</sup>

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119. See *supra* Part III.A.1.b.

120. See *supra* Part III.A.1.b.

121. E.g., Dickerson, *supra* note 58; Dickerson, *supra* note 51.

122. *ALWD*, 1st ed., *supra* note 69.

123. *Id.* at xxiv, 8.

124. That was sarcasm. At many institutions, legal-writing faculty often are accorded limited, if any, academic freedom. Legal-writing faculty—and even directors of legal writing—often lack power at their institutions, even over their own curriculum. As a result, writing faculty, and even directors of legal writing, often must bow to faculty and student pressure regarding curricular choices, including which text they use to teach legal citation. Jo Anne Durako, *Dismantling Hierarchies: Occupational Segregation of Legal Writing Faculty in Law Schools: Separate and Unequal*, 73 UMKC L. REV. 253, 263 (2004) (noting that student or faculty vote has dictated the choice of citation manual for at least two law schools and that faculty or deans “micromanage” legal-writing curriculum); see also Pether, *supra* note 53, at 25–26 (detailing anecdotes of what can only be called bullying and demeaning of legal-writing professors by administrators and other professors). This is unlikely to change anytime soon: as of 2014, the majority of legal-writing professors and directors still are not tenured or on the tenure track. ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY 35 (2014), <http://lwionline.org/uploads/FileUpload/2014SurveyReportFinal.pdf> [<https://perma.cc/7LG6-DZTD>] (reporting that 42 out of 178 schools reported that some of their legal-writing faculty are tenured or tenure track and that 32 of 178 schools reported that the director of legal writing is tenured or on the tenure track).

Moreover, *ALWD* cannily positioned itself as the practitioner's alternative, titling itself a "Professional System of Citation," and thereby aligning itself with law practice rather than law reviews.<sup>125</sup> Created to "fill a niche that *The Bluebook* ignored," it was designed to be friendly to the needs not just of practitioners and judges but also of law students and their teachers.<sup>126</sup> It generated citations that largely mimicked those prescribed by *The Bluebook*'s "Bluepages," and it omitted citation forms designed solely for scholarly writing.<sup>127</sup>

To the extent that it struck many as odd that seasoned practitioners bowed to a citation system devised largely by second- and third-year law students at elite law schools, most of whom had never drafted a legal document filed in a court of law, the *ALWD Manual* represented at least an incremental improvement; although currently in academia, the people crafting the citation formats and abbreviations in the *ALWD Manual* had practiced law. In promotional materials and on its back cover, the *ALWD Manual* bragged that it was "written, designed, and edited by professionals."<sup>128</sup> Early editions of the manual seemed to bear out that promise: although the citations the *ALWD Manual* prescribed largely—and quite intentionally—mirrored those from *The Bluebook*,<sup>129</sup> *ALWD* did introduce some innovations designed to make its system more useful to those who actually practice law on a regular basis. For example, the *ALWD Citation Manual* used icons to indicate clearly where a space should be inserted between words, abbreviations, numbers, or punctuation.<sup>130</sup> True to its mission to "omit the rules that lawyers and students hardly ever use,"<sup>131</sup> the *Manual* chose the common law practitioner versions of citations over those used solely in law-

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125. Cordle, *supra* note 98, at 575.

126. DuVivier, *supra* note 67, at 111.

127. *ALWD*, 1st ed., *supra* note 69, at back cover.

128. *Id.*

129. See Cordle, *supra* note 98, at 580 ("While it is true that the editors of the *ALWD Manual* made some changes to citation forms, it is important to note that such changes are relatively few and insignificant in the overall scheme of legal citation. . . . 'Generally, most practitioners and judges will not be able to tell whether a document as a whole, much less a particular citation, was done under [*The*] *Bluebook* or the *ALWD Manual*.'" (footnotes omitted) (quoting Wayne Schiess, *Meet ALWD: The New Citation Manual*, 64 TEX. B. J. 911, 915 (2001))).

130. *ALWD*, 5th ed., *supra* note 10, at R. 2.2(a), at 15 ("Many of the examples in the *ALWD Guide* and all of the abbreviations in Appendices 1, 3, 4, 5, and 7 illustrate required spaces with a triangle.")

131. Weresh, *supra* note 51, at 787 (quoting E-mail from Richard K. Neumann, Jr., Professor of Law, Hofstra Univ. Sch. of Law, to Darby Dickerson (Jan. 8, 1997)).

review footnotes; it used no small caps in any citations, and it minimized the differences between abbreviations for cases and abbreviations for other sources.<sup>132</sup> It also counseled a little sanity and good sense; it advised, “Do not spend hours agonizing over how to cite the source. Select a logical format and be consistent.”<sup>133</sup>

Sadly, what Alex Glashausser once called the *ALWD Manual*'s revolutionary “declaration of independence”<sup>134</sup> from *The Bluebook*'s “uniform system of citation” was short-lived. Although at one point more than ninety law schools used the *ALWD Manual*, by 2014, the number of legal-writing programs teaching citation using the *ALWD Manual* plummeted to about forty.<sup>135</sup> Only fifteen schools planned to teach *ALWD* exclusively for the 2014–2015 academic year.<sup>136</sup> Most tellingly, in its fifth edition, published in 2014, *ALWD* capitulated to *The Bluebook*'s dominance over citation form, seeking to distinguish itself less as a sensible and streamlined citation system for practitioners and more as a user-friendly method of achieving—and teaching students to achieve—citations that conform to *The Bluebook*'s uniform system.<sup>137</sup> Not only does *ALWD* now include the law-review variations on citation form alongside the versions for practitioners, it even changed its title to drop the reference to “a professional system of citation,” now calling itself simply *ALWD Guide to Legal Citation*.<sup>138</sup> Although this new “declaration of allegiance” to *The Bluebook*'s system may regain *ALWD* some market share, it also may require its editors to release a new edition shortly after *The Bluebook* does to keep in step with any changes.

#### d. *The Uniformity Lie*

*ALWD*'s call for sanity is still worth heeding because, notwithstanding *The Bluebook*'s title assertion, “[t]he U.S. citation system is un-uniform.”<sup>139</sup> For a number of reasons, it is highly doubtful

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132. *Id.* at 794–95.

133. *ALWD*, 1st ed., *supra* note 69, at 7.

134. Glashausser, *supra* note 64, at 78.

135. ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., *supra* note 124, at vii, 19.

136. *Id.* at 19.

137. *See* *ALWD*, 5th ed., *supra* note 10, at xxiii–xxiv.

138. *Id.* *ALWD* remains a more practitioner-focused tool, however, setting forth practitioner-style citation forms first and providing both the practitioner and law-review formats under the same rule and in the same location.

139. Dickerson, *supra* note 58, at 56.

that the majority of U.S. lawyers execute perfect *Bluebook* format in most—much less all—of their court submissions.<sup>140</sup>

i. *The Bluebook*: Practitioner Format vs. Law Review Format

First, many junior practitioners—particularly those who shone on law review—may be using the wrong section of *The Bluebook*. *The Bluebook* sets forth two different, if overlapping, systems of citation: one for law practice and one for law reviews and other academic writing.<sup>141</sup> Unsurprisingly, because *The Bluebook* began as a guide for law-review editors (and did not even start marketing itself to practitioners until it had existed for fifty years),<sup>142</sup> its primary focus is on the law-review format. Of the 511 pages in the nineteenth edition of *The Bluebook*, over 420 are devoted to law-review citations.<sup>143</sup> A student who learns citation format primarily by using *The Bluebook*'s “white pages” on law review will cite many documents incorrectly for practice. For example, many of the citation forms in *The Bluebook*'s white pages dictate the use of small caps, including the forms for citing many statutory compilations as well as most treatises and other secondary sources.<sup>144</sup> By contrast, practice documents never use small caps in citation.<sup>145</sup>

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140. Although I present no empirical or even anecdotal data to support this assertion, I do note that a number of commenters share my suspicions. See, e.g., REGENTS OF THE UNIV. OF CAL., CALIFORNIA CRIMINAL LAW FORMS MANUAL § 1.16 (Sarah H. Ruddy & Nancy Yuenger eds., 2d ed. 2014 & Supp. 2014) (noting that many attorneys deliberately deviate from the prescribed citation format, including citing to fewer reporters than mandated); Hurt, *supra* note 68, at 1264 (“[O]ften times the rules that appear in new editions are shunned and ignored by the profession as technical details ignorant of the workings of legal practice.”); Peter Nemerovski, *Beyond The Bluebook: Teaching First-Year Students What They Need to Know About Legal Citation*, 56 ARIZ. L. REV. SYLLABUS 81, 84 (2004) (“I doubt, for example, that most litigators actually abbreviate all the words in Table 6, or that most judges require them to . . .”); Jeffrey D. Jackson, *Thoughts on the Future of Citation: Bluebook, ALWD, and ?*, J. KAN. B. ASS'N, Jan. 2013, at 14, 14 (“[I]n real life, almost no one actually uses the current prescribed method of *Bluebook* citation.” (emphasis added)).

141. THE BLUEBOOK, 20th ed., *supra* note 1, at 3–56, 57–231. The Bluepages, or practitioner section, is located on pages 3–56; the law review section is located on pages 57–232.

142. Paulsen, *supra* note 58, at 1784.

143. THE BLUEBOOK, 19th ed., *supra* note 30. Although the twentieth edition boasts “considerably overhauled” Bluepages, THE BLUEBOOK, 20th ed., *supra* note 1, at vii, the proportions are no better: of 560 total pages, 466 are devoted to law-review format. *Id.*

144. See, e.g., THE BLUEBOOK, 19th ed., *supra* note 30, at 228 tbl.T.1.3 (showing how to provide the names of various state codes); see also *id.* at 444 tbl.T.13 (abbreviations for periodical names).

145. *Id.* at B. 2, at 4. For non-academic citations, “LARGE AND SMALL CAPS are never

ii. *The Bluebook*: Different Editions

Second, many practitioners—and law professors—cling to the version of *Bluebook* citation that they learned in law school, which, for any lawyer practicing more than a few years, will be outmoded.<sup>146</sup> Normally, we think of professionals becoming more expert in all of their responsibilities as they advance in their careers. Paradoxically, it seems that practitioners and academics become less expert in citation form as their careers advance. This is true for several reasons. First, larger law offices often delegate citation tasks to junior attorneys, law clerks, and support staff, leaving senior attorneys with less recent hands-on practice in citation form.<sup>147</sup> Legal academics similarly have research assistants, usually second- and third-year law students, vet their citation form. Second, newer attorneys usually just finished being drilled in citation form in legal-writing classes and on law review. As a result, their facility with legal-citation rules far outpaces that of their supervising attorneys.

Finally—and most significantly—newer attorneys likely learned citation using the most recent edition of *The Bluebook*. A few years after graduation, the citation form an attorney learned in law school could change dramatically.

*The Bluebook* just released its twentieth edition.<sup>148</sup> An attorney who graduated from law school when I did—in 2000—learned citation in first-year legal-writing class and on law review using the much-maligned sixteenth edition.<sup>149</sup> No sooner did we receive our diplomas than at least part of the citation system we learned, practiced, and internalized was obsolete when the seventeenth edition hit shelves in 2000.<sup>150</sup> Some of the principles handed down as truths were now upended: pre-existing rules regarding signals were restored, rendering our habit of inserting the “*See*” signal before virtually every citation inappropriate.<sup>151</sup>

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used.” *Id.* The twentieth edition now permits practitioners to use small caps, which is a step toward consistency, but it does not require them as it does for academic citations. THE BLUEBOOK, 20th ed., *supra* note 1, at B. 2, at 7.

146. See Pamela Lysaght & Grace Tonner, *Bye-Bye Bluebook?*, 79 MICH. B.J. 1058, 1058 (2000).

147. See Cathy Roberts, *The Dark Side of The Bluebook*, 24 UTAH B.J. 22, 22 (2011) (reviewing THE BLUEBOOK, 19th ed., *supra* note 30) (“Many attorneys depend on law student interns or recent law graduates to use correct citations . . .”). Moreover, what client would pay senior-partner rates for checking citation form?

148. THE BLUEBOOK, 20th ed., *supra* note 1.

149. See THE BLUEBOOK, 16th ed., *supra* note 4.

150. THE BLUEBOOK, 17th ed., *supra* note 5.

151. Compare *id.* at R 1.2(a), at 22, with THE BLUEBOOK, 16th ed., *supra* note 4, at R.

Similarly, whereas for years *The Bluebook* prohibited abbreviating the first word in a party name in a case name, now it mandated abbreviating that word where a *Bluebook*-sanctioned abbreviation was available.<sup>152</sup>

*The Bluebook* releases a new edition approximately every five years and with each new edition comes changes.<sup>153</sup> Although not all changes are as earth-shattering as those in the sixteenth edition, often those changes affect fundamental citation rules that practitioners use every day.<sup>154</sup> Instead of simply adding to or modifying rules to address new citation issues, such as new sources that must be cited, the editors “tinker with other rules that many have committed to memory, used, and relied upon.”<sup>155</sup> Indeed, memorizing *Bluebook* rules is a fool’s errand.

This constant revision—and the ever-increasing volume of *The Bluebook* itself—make it impossible for lawyers to rely on the citation format they learned in law school once they have been two or three years in practice. To be confident that her citations comport with the latest edition of *The Bluebook*, a lawyer generally must consult the manual itself,<sup>156</sup> especially when it comes to new sources or unfamiliar abbreviations, which undermines the clarity of the citation system.

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1.2(a), at 22.

152. Compare THE BLUEBOOK, 17th ed., *supra* note 5, at R. 10.2.1(c), at 59, and Hurt, *supra* note 68, at 1273, with THE BLUEBOOK, 16th ed., *supra* note 4, at R. 10.2.2, at 61.

153. Dickerson, *supra* note 58, at 55 n.1 (providing a list showing that *The Bluebook* has released a new edition every five years since the thirteenth edition in 1981).

154. *Id.* at 56–57.

155. *Id.* For example, in the twentieth edition, the compilers have tinkered with various abbreviations for little apparent reason, other than perhaps to undermine its main competitor, the *ALWD Guide*. Compare THE BLUEBOOK, 19th ed., *supra* note 30, at tbl.T.6, 430 (designating the abbreviation for “Advertising” as “Adver.” and “County” as “Cnty.”), with THE BLUEBOOK, 20th ed., *supra* note 1, at tbl.T.6, 496 (designating the abbreviation for “Advertising” as “Advert.” and “County” as “Cty.”). As Bryan Garner notes, with *The Bluebook*, “[t]hings shift from edition to edition—every five years or so—in response to nothing but the itch of a new crop of law students to leave their mark on their venerated citation guide.” Bryan Garner, *The Bluebook’s 20th Edition Prompts Many Musings from Bryan Garner*, A.B.A. J. (Aug. 1, 2015, 6:45 AM) [www.abajournal.com/magazine/article/the\\_bluebooks\\_20th\\_edition\\_prompts\\_many\\_musings\\_from\\_bryan\\_garner](http://www.abajournal.com/magazine/article/the_bluebooks_20th_edition_prompts_many_musings_from_bryan_garner) [https://perma.cc/Y74B-MPQT].

156. I can cite no better example than the twentieth edition of *The Bluebook*. See THE BLUEBOOK, 20th ed., *supra* note 1.

### iii. Different Citation Rules in Different Jurisdictions, Courts, and Courtrooms

Despite this reverence for *The Bluebook*, few jurisdictions actually follow *The Bluebook*'s myriad rules in full.<sup>157</sup> Many courts address preferred citation formats in their local rules.<sup>158</sup> Although many refer to *The Bluebook*,<sup>159</sup> few mandate *The Bluebook* exclusively,<sup>160</sup> and most deviate from that "uniform system" in at least a few ways.<sup>161</sup> Arizona, for example, requires pinpoint references to paragraph numbers for cases decided after January 1, 1998,<sup>162</sup> and the *Arizona Revised Statutes* offers a different abbreviation for citing its name than do either *The Bluebook* or *ALWD*.<sup>163</sup> Many courts permit several options regarding citation. Alabama, for instance, provides that citations can comply with *The Bluebook*, *ALWD*, or "the style and form used in opinions of the Supreme Court of Alabama."<sup>164</sup> Similarly, federal jurisdictions including the District of Montana and the Eleventh Circuit explicitly permit attorneys to use the latest version of either *The Bluebook* or *ALWD*.<sup>165</sup> Some courts are very flexible, allowing attorneys to use any recognized citation form.<sup>166</sup>

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157. Indeed, only five do: Delaware, Indiana, North Carolina, Texas, and Wisconsin. See Dickerson, *supra* note 58, at app. B-1, at 167-96; see also DEL. SUP. CT. R. 14(g)(i); IND. R. APP. P. R. 22; N.C. R. APP. P. APP. B; TEX. LOC. R. CT. APP. 4TH DIST. R. 8; WIS. R. APP. P. R. 809.19.

158. See *infra* note 163.

159. E.g., AL. R. APP. P. R. 28(a)(10).

160. See, e.g., ILL. S. CT. R. 6 (Illinois Compiled Statutes may be cited to as ILCS).

161. See Dickerson, *supra* note 58, at 90.

162. SUPREME COURT OF THE STATE OF ARIZ., ADMIN. ORDER NO. 97-67, PARAGRAPH NUMBERING OF OPINIONS OF THE ARIZONA SUPREME COURT AND ARIZONA COURT OF APPEALS (1997), <http://www.azcourts.gov/portals/22/admorder/orders99/pdf97/9767.pdf> [<https://perma.cc/NS2B-6KMH>].

163. ARIZ. REV. STAT. ANN. § 1-101 (2016) (may be cited as "A.R.S"). In fact, many statutory compilations suggest different abbreviations for their own titles than do *The Bluebook* or the *ALWD Guide*. See, e.g., ALASKA STAT. § 01.05.011 (2015) (Alaska statutes may be cited as "A.S."); ARK. CODE ANN. § 1-2-113(c) (2015) (recommending abbreviation "A.C.A."); ILL. S. CT. R. 6 (Illinois Compiled Statutes may be cited to as ILCS); Office of Reporter of Decisions, *Style Sheet*, WASH. CTS. (Dec. 28, 2010), [http://www.courts.wa.gov/appellate\\_trial\\_courts/supreme/?fa=atc\\_supreme.style](http://www.courts.wa.gov/appellate_trial_courts/supreme/?fa=atc_supreme.style) [<https://perma.cc/6E9N-EF96>] (cite Revised Code of Washington as "RCW").

164. AL. R. APP. P. R. 28(a)(10).

165. 11TH CIR. R. 28-1(k); D. MONT. L.R. 1.5(c).

166. See, e.g., BANKR. D. MONT. L.R. 5005-2(a)(7) (filings must "use a nationally recognized citation form, (i.e., The Harvard Citator or the Association of Legal Writing Directors (ALWD) Citation Manual"); NEB. CT. R. § 6-1505(C) ("Citation to authorities should conform to generally accepted uniform standards of citation."); OHIO SUP. CT. R.

Many jurisdictions also publish their own citation guides, most of which bear little resemblance to *The Bluebook's* “uniform system,” and many of which were or continue to be mandatory in their respective jurisdictions. For example, although since January 2008, California permits attorneys to cite using the format from its own *California Style Manual* (also known as the *Yellow Book*)<sup>167</sup> or *The Bluebook*,<sup>168</sup> many practitioners and courts continue to recommend that attorneys follow the *California Style Manual* (which, after all, is the manual the courts themselves follow).<sup>169</sup> The New York State Unified Court System publishes its *New York Official Reports Style Manual* (also known as the *Tanbook*), which it suggests lawyers might “find the Manual useful in

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apps. (“[C]onformance to the Reporter’s style manual is not required provided citations conform to another generally recognized and accepted style manual. See, for example, [*The Bluebook*] . . . [*Maroonbook*] . . . [*ALWD*] . . . [*ABA Manual*].”).

167. See, e.g., Brad Pauley, *Style Matters*, HORVITZ & LEVY LLP: AT LECTERN: PRACTICING BEFORE CAL. SUP. CT. (Nov. 2, 2010, 3:57 PM), <http://www.atthelectern.com/style-matters/> [<https://perma.cc/S3CH-AQPH>].

168. CAL. CT. R. 1.200. Citations generated using the *California Style Manual*—particularly case citations—differ visibly from those generated using *The Bluebook*. For example, under the rules of the *California Style Manual*, the court/date parenthetical comes in the middle of the citation, right after the case name, instead of at the end of the citation. Compare EDWARD W. JESSEN, CALIFORNIA STYLE MANUAL: A HANDBOOK OF LEGAL STYLE FOR CALIFORNIA COURTS AND LAWYER § 1:1(D) (4th ed. 2000), with THE BLUEBOOK, 19th ed., *supra* note 30, at B. 4, at 7–15. The *California Style Manual* also dictates placing all citations in parentheses, whereas *The Bluebook* does not. JESSEN, *supra*, § 4.57. Therefore, a citation to *Bush v. Gore* would look like this using the *California Style Manual*: (*Bush v. Gore* (2000) 531 U.S. 98) whereas the same citation would look like this using *The Bluebook's* practitioners’ notes: Bush v. Gore, 531 U.S. 98 (2000). In addition, the *California Style Manual* prescribes the use of signals *supra* and *ibid.* in place of *The Bluebook's* short citation format and *id.* § 3.1(D). A motion written using the *California Style Manual* citation format, then, will end up looking quite different from one written using *The Bluebook*.

169. In fact, the Advisory Committee Comments for California Court Rules section 8.204 cite to Rule 1.200 for citation form but then admonishes that “[b]rief writers are encouraged to follow the citation form of the *California Style Manual*.” CAL. CT. R. 8.204 cmt.; see also APPELLATE COURTS COMM. OF THE L.A. CTY. BAR ASSOC., BASIC CIVIL PRACTICE IN THE COURT OF APPEAL FOR THE SECOND CIRCUIT (2003), <http://www.courts.ca.gov/partners/documents/BasicPractice.pdf> [<https://perma.cc/EFM6-ZULC>] (“Although no rule requires a particular citation style, it is useful to follow the *California Style Manual* (4th ed. 2000). California state courts generally follow this manual.” (emphasis added)); Pauley, *supra* note 167. Although the Conference of California Bar Associations briefly entertained a proposal to abolish the *Yellow Book* at its 2011 meeting, that idea was quickly abandoned. Nate Scott, *The Style Manual Survives*, S. CAL. APP. NEWS (Sept. 19, 2011, 2:11 PM), <http://socal-appellate.blogspot.com/2011/09/style-manual-survives.html> [<https://perma.cc/GH3G-LK3E>].

preparing papers to New York courts,” but it recommends that readers supplement with *The Bluebook* and the *ALWD Citation Manual*.<sup>170</sup>

Still other jurisdictions, including the United States Supreme Court, remain silent on citation, leaving lawyers to default to *The Bluebook*, *ALWD*, or other resources.<sup>171</sup>

#### iv. Citations Within Other Cases and in Law Review Articles

Many an unwary student or time-strapped practitioner has simply followed the citation format used in a case. But courts themselves do not always follow *The Bluebook*, and many have their own systems that deviate from *Bluebook* form.<sup>172</sup> The highest court in the land does not even heed this “uniform system of citation.” The Supreme Court of the United States follows its own citation manual, and the citation format generated by the manual differs from *Bluebook*-sanctioned citation in a number of ways.<sup>173</sup> In fact, in an amusing echo of the flipped hierarchy that *The Bluebook* and the power of student-edited law reviews impose, the Fifth Circuit once labeled a citation from a Supreme Court opinion with “[sic]” because it included a comma unsanctioned by *The Bluebook*.<sup>174</sup>

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170. LAW REPORTING BUREAU, NEW YORK LAW REPORTS STYLE MANUAL (Kathleen B. Hughes et al. eds., 2015), [http://www.courts.state.ny.us/reporter/new\\_styman.htm](http://www.courts.state.ny.us/reporter/new_styman.htm) [<https://perma.cc/9LDW-HNJY>]; see also Gerald Lebovits, *New Edition of State’s “Tanbook” Implements Extensive Revisions in Quest for Greater Clarity*, N.Y. ST. B. ASS’N J., Mar./Apr. 2002, at 8.

171. See SUP. CT. R., <http://www.supremecourt.gov/ctrules/2013RulesoftheCourt.pdf> [<https://perma.cc/VD4T-5ZGW>]; see also Shon R. Hopwood, *Matters of Practice: Citations and Quotations in U.S. Supreme Court Briefs*, COCKLE LEGAL BRIEFS: COCKLE BUR BLOG (June 28, 2011), <http://www.cocklelegalbriefs.com/blog/supreme-court/matters-of-practice-citations-and-quotations-in-u-s-supreme-court-briefs/> [<https://perma.cc/2B5Q-69ZV>] (“The Supreme Court rules do not speak to any particular method for citing cases.”). For examples of state courts’ rules, see ALASKA R. APP. P.; ARIZ. R. CIV. A.P.; ARK. SUP. CT. R.; IOWA R. APP. P.; ME. R. APP. P.; MONT. R. APP. P.; OKLA. SUP. CT. R.; TENN. R. APP. P.

172. See, e.g., THE OFFICE OF THE REPORTER OF THE JUDICIAL DECISIONS, THE MANUAL OF STYLE FOR CONNECTICUT COURTS (3d ed. 2013), [http://www.jud.ct.gov/Publications/Manual\\_of\\_style.pdf](http://www.jud.ct.gov/Publications/Manual_of_style.pdf) [<https://perma.cc/JFU6-MNKS>]; KAN. JUDICIAL COUNCIL, KANSAS APPELLATE PRACTICE HANDBOOK app. C (5th ed. 2013), <http://www.kscourts.org/pdf/KAPH.pdf> [<https://perma.cc/EH5Q-F25W>]; THE SUPREME COURT OF OHIO, WRITING MANUAL: A GUIDE TO CITATIONS, STYLE, AND JUDICIAL OPINION WRITING (2d ed. 2013), <https://www.supremecourt.ohio.gov/ROD/manual.pdf> [<https://perma.cc/8GZH-PX7S>]; *Court Style Manual*, ARIZ. CT. APPEALS DIVISION TWO, <http://www.appeals2.az.gov/ODSPlusNotesFiles/StyleManual/index.html> [<https://perma.cc/G8Z8-NETZ>] (last visited Feb. 10, 2016).

173. See Glashausser, *supra* note 64, at 61–62. Apparently the Court’s manual is no less complex than *The Bluebook*, though. See *id.* at 62 n.11.

174. *Thorne v. Jones*, 765 F.2d 1270, 1274 (5th Cir. 1985); see also Glashausser, *supra*

Similarly, one cannot simply follow the citations in a law-review article, either. First, depending on the vintage of the article, citation rules may have changed.<sup>175</sup> Second, many law reviews impose their own citation formatting rules that differ from *The Bluebook*.<sup>176</sup> Finally, there is a remarkable lack of consistency in citation across law reviews.<sup>177</sup>

Nor can a time-strapped student or practitioner simply rely on Westlaw or Lexis citations. Westlaw and Lexis follow their own citation systems, and those systems often deviate from *The Bluebook*'s.<sup>178</sup> For example, Westlaw's abbreviations for source names often differ from those prescribed by *The Bluebook*'s tables.<sup>179</sup>

*e. So Why Has The Bluebook Won?*

In the face of all this criticism and competition, does not *The Bluebook*'s continued dominance of the legal citation market demonstrate its superiority? In short: no. A number of other factors contribute to *The Bluebook*'s stature, including the conservatism of the

note 64, at 61; Paulsen, *supra* note 58, at 1784.

175. See *supra* Part III.A.1.d.ii.

176. See Jim C. Chen, *Something Old, Something New, Something Borrowed, Something Blue*, 58 U. CHI. L. REV. 1527, 1531 (1991) (reviewing THE BLUEBOOK, 15th ed., *supra* note 58) (confessing that Columbia deviates from *The Bluebook*'s typeface dictates, Harvard publishes its own gloss on *The Bluebook*'s more confounding rules in its Executive Editor Handbook, and *Harvard Law Review* ignores many of *The Bluebook*'s rules); Paulsen, *supra* note 58, at 1792–93, 1793 n.86 (noting that the *Harvard Law Review* failed to follow author rules set forth in the fifteenth edition).

177. Stephen M. Darrow and Jonathan J. Darrow provide the following example of the lack of uniformity in citation, even among rigorously edited law reviews:

[C]itations to the “Harvard Business Review” exhibit variety in punctuation, abbreviation, and order of information. See, e.g., Jeffrey M. Lipshaw, *The Venn Diagram of Business Lawyering Judgments: Toward a Theory of Practical Metadisciplinarity*, 41 SETON HALL L. REV. 1, 26 n.77 (2011) (“88 HARV. BUS. REV. 44 (Sept. 2010)”); Scott J. Davis, *Would Changes in the Rules for Director Selection and Liability Help Public Companies Gain Some of Private Equity's Advantages?*, 76 U. CHI. L. REV. 83, 90 n.30 (2009) (“85 Harv Bus Rev 18, 19 (July/Aug 2007)”); Kenneth M. Siegel, *Protecting the Most Valuable Corporate Asset: Electronic Data, Identity Theft, Personal Information, and the Role of Data Security in the Information Age*, 111 PENN ST. L. REV. 779, 814 n.379 (2007) (“HARVARD BUS. REV., Oct. 2005, at 96”).

Stephen M. Darrow & Jonathan J. Darrow, *Beating The Bluebook Blues: A Response to Judge Posner*, 109 MICH. L. REV. FIRST IMPRESSIONS 92, 98 n.17 (2011); see also, Mary Whisner, *The Dreaded Bluebook*, 100 LAW LIBR. J. 393, 398 (2008) (“Sometimes what you find is that the journals are inconsistent.”).

178. See Ross E. Davies, *Cite Club*, 2 J.L. 483, 484 (2012).

179. *Id.*; Jackson, *supra* note 140, at 14.

U.S. legal culture, *The Bluebook's* early incumbency in a network industry, the so-called “brown M&M theory,”<sup>180</sup> and some even less attractive aspects of legal and law-school culture.

No doubt the American legal culture clings to *The Bluebook* in part for the same reason we follow precedent: that is the way we've always done it. In our common law system, lawyers and judges make decisions by researching what was done in the past and by applying those past decisions to present or future facts. This “backward-looking, Burkean conservatism” and slavish adherence to form following, however, risks discouraging students and lawyers from examining the values underlying those forms,<sup>181</sup> much as rigid adherence to *The Bluebook* obscures the value of communicating the source of support for legal arguments efficiently and with accuracy, brevity, and clarity. Indeed, *The Bluebook* itself contributes to the “paradox of legal culture” by “helping to generate a conservatism that is at once essential to liberty and equality but also, at times, an obstacle to the promotion of those virtues.”<sup>182</sup>

Network-effects theory provides a particularly compelling—and somewhat overlapping—explanation for *The Bluebook's* enduring dominance.<sup>183</sup> Because the purpose of legal citation is communication, the value of a system of citation increases with the number of people who converse using that system.<sup>184</sup> The legal-citation industry meets the definition of a network industry.<sup>185</sup> This makes legal citation ripe for domination by a single product, like *The Bluebook*, which had the advantage of being a very early—and virtually lone—entrant into the legal-citation marketplace.<sup>186</sup> In short, because so many lawyers used *The Bluebook* in the past, more lawyers use it now. And because so many lawyers use *The Bluebook* now, more lawyers will use it in the future. Indeed, the value of *The Bluebook* increases with each new user.<sup>187</sup> This entrenchment makes it incredibly difficult—if not impossible—for a new citation tool, no matter how superior, to find a

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180. Nemerovski, *supra* note 140, at 86–87.

181. Heifetz, *supra* note 27, at 695–96.

182. *Id.* at 707.

183. See, e.g., Hurt, *supra* note 68, at 1267 (“[T]he *Bluebook* has obtained this monopoly not due to its ease of use and inherent value but because of its early incumbency in a network industry.”).

184. *Id.* at 1260.

185. *Id.* at 1262.

186. *Id.*

187. *Id.*

foothold, particularly in an industry so fond of doing what it's always done.<sup>188</sup>

This entrenchment, then, perpetuates itself and makes it increasingly likely that attorneys will cling to *The Bluebook* because it “enables a legal writer to communicate to her reader that she ‘gets it.’”<sup>189</sup> Like the provisions of Van Halen’s Brown M&M clause,<sup>190</sup> the picayune standards set forth in the *The Bluebook* serve as a test of an attorney’s thoroughness and attention to detail.<sup>191</sup> Under this theory, flawless Bluebooking becomes a proxy for flawless research, analysis, and writing.<sup>192</sup>

In large part, though, *Bluebook* skills simply signal membership in an elite club.<sup>193</sup> Much as the rules of etiquette could serve as a proxy for education and social class, adherence to the intricacies of *Bluebook* form signals that you went to the “right” law school, made it onto the “right” law review, and paid attention to the “right” ways to practice law.<sup>194</sup> *Bluebook* or blue blood—either way, this continued

188. *Id.*

189. Nemerovski, *supra* note 140, at 86.

190. The band Van Halen famously had a 53-page rider in its performance contracts, containing both detailed technical requirements and the band’s food-and-beverage needs. Buried in this rider was a requirement that M&M’s be provided but that there be no brown ones in the bowl. As David Lee Roth—the band’s lead singer at the time—explains it, rather than an example of rock-star arrogance and excess, this “Brown M&M clause” had an important purpose. The contract rider contained innumerable details vital to the band’s safety and the quality of the live performance. If Roth visited the dressing room and found brown M&Ms in the bowl, he would know that the band would need to double-check all of the more vital details as well. Steven D. Levitt & Stephen J. Dubner, *Traponomics*, WALL ST. J., May 10–11, 2014, at C1, <http://www.wsj.com/articles/how-to-trick-the-guilty-and-gullible-into-revealing-themselves-1399680248> [<https://perma.cc/6LW2-QQYC>]; see also Nemerovski, *supra* note 140, at 86.

191. Nemerovski, *supra* note 140, at 86.

192. *Id.*

193. See Heifetz, *supra* note 27, at 703 (“If I wanted to show my membership in the legal culture, I would read these detailed [*Bluebook*] rules until I could understand and apply them.”).

194. I’m certainly not the first to note this similarity.

[T]he *Bluebook* evokes an anxiety akin to certain social anxieties. You know what it’s like to go to a formal dinner, hoping to impress your hosts, and worrying that you’ll be judged on your misuse of a fork? . . . In each case there is a code of rules—etiquette, teenage fashion, or citation format—but the newcomer does not fully understand the rules, and the social stakes are high. A novice who blows it, even on a detail that seems very insignificant to the uninitiated, faces rejection by the high prestige group.

Whisner, *supra* note 177, at 393–94.

“fetishization”<sup>195</sup> of *Bluebook* skills may, in part, simply reveal the dismayingly intractable grip that elitism still holds on legal education and the legal profession.<sup>196</sup>

#### IV. THE COSTS OF “UNIFORMITY”

Many readers may ask, “So what?”<sup>197</sup> So *The Bluebook* is not the ideal citation system. So it owes its dominance less to its inherent superiority than to some of the less savory traits of capitalism and the legal profession. What does it matter? To the extent that we claim to value efficiency, quality, and access to justice, it matters a great deal. The current outsized valuation of Bluebooking skills imposes costs to legal education, the legal profession, and our system of justice.

##### A. Costs in Legal Education

Most attorneys learn legal citation in their first-year legal-writing classes.<sup>198</sup> If professors teach citation exclusively in class, that endeavor can consume a significant amount of class time.<sup>199</sup> Even where professors primarily teach citation using out-of-class tools like Lexis’s *Interactive Citation Workbook*<sup>200</sup> or other online or text platforms,<sup>201</sup> the

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195. Gallacher, *supra* note 53, at 497–98 (citing Penelope Pether, *Discipline and Punish: Dispatches from the Citation Manual Wars and Other (Literally) Unspeakable Stories*, 10 GRIFFITH L. REV. 101, 101–02 (2001)).

196. To risk stating the obvious, the fact that *The Bluebook*’s editors attend four of the most elite law schools in the country is no coincidence. See, e.g., Cathy Roberts, *supra* note 147, at 22 (crediting *The Bluebook*’s “prestigious sponsors,” at least in part, for its enduring dominance).

197. Indeed, one of my Arizona Law colleagues asked just that after reading the three anecdotes that begin this Article.

198. Lysaght & Tonner, *supra* note 146, at 1058.

199. Gallacher, *supra* note 53, at 494 n.18 (listing the responses to the author’s query regarding the amount of classroom time “devoted to a study of legal citation ranged from twenty minutes to eight hours” (citation omitted)).

200. LexisNexis publishes citation workbooks for both *The Bluebook* and the *ALWD Guide*. TRACY MCGAUGH NORTON ET AL., INTERACTIVE CITATION WORKBOOK FOR *ALWD GUIDE TO LEGAL CITATION* (LexisNexis 2014) [hereinafter INTERACTIVE WORKBOOK FOR *ALWD*]; TRACY MCGAUGH NORTON ET AL., INTERACTIVE CITATION WORKBOOK FOR *THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION* (LexisNexis 2014) [hereinafter INTERACTIVE WORKBOOK FOR *BLUEBOOK*]. Students can complete citation exercises in the workbook or on LexisNexis’s online workstation where students receive immediate feedback on their correct and incorrect answers. See LEXISNEXIS, INTERACTIVE CITATION WORKSTATION (2010), [http://www.lexisnexis.com/documents/pdf/20110118091338\\_large.pdf](http://www.lexisnexis.com/documents/pdf/20110118091338_large.pdf) [<https://perma.cc/M6HA-86A7>].

201. See, e.g., MARTIN, *supra* note 25; WESTLAW, GUIDE TO USING CITESTATION (2009), <http://lscontent.westlaw.com/images/banner/documentation/2009/citestationtwen09.pdf>

amount of time students spend on citation exercises necessarily decreases the amount of time they can focus on writing assignments and exercises designed to teach and reinforce other legal-writing, analytical, and practical lawyering skills.

Even in an era when law schools devote an average of 5.71 units—and up to 13 units—to mandatory legal-writing and lawyering-skills courses,<sup>202</sup> professors struggle to cover all of the material and, most importantly, devote the time they believe students need to hit the ground running as solid legal writers and practitioners.<sup>203</sup> Most good writers agree that the best writing results not from an instantaneous moment of brilliance but from repeated rounds of revision and fine-tuning.<sup>204</sup> Further, research suggests that students develop and retain skills best through repetition.<sup>205</sup> More time spent learning the specific nuances of a citation system means fewer writing assignments and therefore less repetition of those key skills.

Moreover, current law students arrive on our doorsteps with arguably worse writing, analytical, and critical-thinking skills than ever

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f [<https://perma.cc/M7WM-UX4S>].

202. ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., *supra* note 124, at 7–8.

203. See Lorne Sossin, *Discourse Politics: Legal Research and Writing's Search for a Pedagogy of Its Own*, 29 NEW ENG. L. REV. 883 (1995); Gerald Lebovits, *The Legal Writer: Legal Writing in the Practice-Ready Law School*, N.Y. ST. B.J., Sept. 2013, at 72 (“A legal writing class isn’t simply an isolated class in training skills. . . . Legal writing teaches legal method, citing, organization, rhetoric, ethics, and professionalism. Legal writing teaches substantive law. Legal writing puts into practice what other professors teach.”); see also Elizabeth Fajans, *Legal Writing in the Time of Recession: Developing Cognitive Skills for Complex Legal Tasks*, 49 DUQ. L. REV. 613 (2011) (discussing how firms and jobs now demand students to graduate with stronger analytical and writing skills and be prepared to take on more complex projects earlier).

204. See Wayne Scheiss, *Legal Writing Is Not What It Should Be*, 37 S.U. L. REV. 1 (2009) (“Revision, editing, and rewriting are what make mediocre writing good and good writing great.”); see also MARK P. PAINTER, LEGAL WRITING 201: 30 SUGGESTIONS TO IMPROVE READABILITY OR HOW TO WRITE FOR JUDGES, NOT LIKE JUDGES (2002), <http://jweinsteinlaw.com/pdfs/legalwriting.pdf> [<https://perma.cc/5T5T-RKP9>] (listing Rule 14 as “Edit, Edit, Edit”).

205. See Bimali Indrathne, *Effects of Task Repetition on Written Language Production in Task Based Language Teaching*, 9 LANCASTER U. POSTGRADUATE CONF. LINGUISTICS & LANGUAGE TEACHING 41, 59 (2014) (“[T]he repetition of a written narrative task could increase accuracy, fluency and complexity of written language production.”); see also Jeffrey D. Karpicke & Henry L. Roediger III, *Repeated Retrieval During Learning Is the Key to Long-Term Retention*, 57 J. MEMORY & LANGUAGE 151 (2007); Diane Larsen-Freeman, *On the Roles of Repetition in Language Teaching and Learning*, 3 APPLIED LINGUISTICS R. 195 (2012); Dolores Perin, *Repetition and the Informational Writing of Developmental Students*, 26 J. DEVELOPMENTAL EDUC. 2 (2002); Nancy C. Waugh, *Immediate Memory as a Function of Repetition*, 2 J. VERBAL LEARNING & VERBAL BEHAV. 107 (1963).

before.<sup>206</sup> This means that first-year legal-writing professors not only have to introduce new law students to a new type of writing and analysis, we often need to “make up for deficiencies in our students’ earlier education.”<sup>207</sup>

### B. *Financial Costs to Attorneys, Clients, and the Legal System*

Placing value on the flawless execution of *Bluebook*-specified citation format also costs attorneys—and clients, donors, and taxpayers—time and resources better spent elsewhere.<sup>208</sup> Yet authority figures in the legal profession, from law professors to senior attorneys to judges, continue to insist that a lawyer’s professionalism—and even the quality and validity of her argument—can be judged by the flawless format (specifically the flawless *Bluebook* format) of her citations.<sup>209</sup>

Imperfect citations could be a proxy for lack of attention to detail, but imperfect citations could also suggest that the writer has different priorities and prefers to spend her limited time (and the client’s limited

206. See RICHARD ARUM & JOSIPA ROKSA, *ACADEMICALLY ADRIFT: LIMITED LEARNING ON COLLEGE CAMPUSES* 21 (2011) (exploring the failure of four-year colleges and universities to deliver “core outcomes espoused by all of higher education—critical thinking, analytical reasoning, problem solving and writing” (quoting Richard H. Hersh, “*Going Naked*,” *PEER REV.*, Spring 2007, at 4, 6)); Stuart & Vance, *supra* note 7, at 41, 55–61 (detailing the evidence—and hypothesizing as to the reasons—that entering law students have poorer analytical, critical-thinking, and writing skills than ever before).

207. Stuart & Vance, *supra* note 7, at 43–44.

208. See Darrow & Darrow, *supra* note 177, at 93 (noting that lawyers “absorb the financial costs of time spent formatting citations or pass them on to clients, benefactors, taxpayers, or others”). One creative calculation estimates that legal citation costs the U.S. legal system \$740,000 per day, and even that calculation is based on the conservative assumption of 1% of lawyers citing one case per day at ten seconds per citation. Joseph Mornin, *BestLaw, a Robot for Legal Research*, STAN. CTR. FOR LEGAL INFORMATICS: CODEX BLOG (Nov. 18, 2014), <https://law.stanford.edu/2014/11/17/bestlaw-robot-legal-research/> [<https://perma.cc/V4M9-TXKN>]. I’d wager it takes most lawyers more than ten seconds just to type a citation without consulting a single *Bluebook* rule.

209. See, e.g., Heifetz, *supra* note 27, at 703 (“The members of the legal culture have emerged from an indoctrination process that teaches that...inconsistent citation is fundamentally wrong.”); Susan W. Fox, *Citation Form: Getting It Right*, FLA. B.J., Mar. 2000, at 84, 84 (“Every lawyer needs to know proper citation form. Sloppy or inaccurate form suggests inattention to detail or ignorance of the correct form.”); Scott Moise, *Red, White, and Bluebook: Citation Rules That Matter*, S.C. LAW., July 2009, at 44, 50 (“[L]awyers who follow the citation rules show respect to the court by caring enough to turn in their best work.”). A smattering of judges have also called out lawyers for bad *Bluebooking*. See Judith D. Fischer, *Bareheaded and Barefaced Counsel: Courts React to Unprofessionalism in Lawyers’ Papers*, 31 SUFFOLK U. L. REV. 1 (1997). Fischer notes, however, that judges may be more forgiving of citation errors when the citation nonetheless directs the reader to the correct location. *Id.* at 31.

money) on impeccable research, logically organized legal arguments, and repeated rounds of revision to ensure accurate, clear, concise, and persuasive writing. Imperfect citations could also be a function of the economic realities of law practice, realities from which “elite” elements of the profession and academia have been insulated until relatively recently.

Although law is still a profession, and attorneys sell, in part, their expertise and judgment, they also sell their time. Most private attorneys still bill by the hour.<sup>210</sup> Private attorneys have a few options for recovering the costs of perfecting their citation format (or having a junior attorney, paralegal, or secretary handle the task). One option is to bill that time to the client. But clients are—and should be—increasingly unwilling to pay for tasks like perfecting small formatting issues with legal citation.<sup>211</sup>

Lawyers who work for the government, for nonprofits, or on *pro bono* matters must absorb the cost of that time themselves. Lawyers who bill by the task feel this pressure perhaps even more acutely than do those who bill by the hour—the more tasks they can accomplish in a given day, the more money they make. For some, this may mean longer work hours. For others, it may mean less time to devote to *pro bono* service, service to the community, or service to the profession. For others, this may mean taking on fewer clients. For still others, this may mean devoting less time and attention to some or all clients and projects. For most, it means a combination of these things.

None of these outcomes is good. These costs to attorneys and clients translate to costs to the system and create barriers to access to justice. It’s no secret that lack of access to legal representation has reached crisis

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210. *How, and How Much, Do Lawyers Charge?*, LAWYERS.COM, <http://research.lawyers.com/how-and-how-much-do-lawyers-charge.html> [<https://perma.cc/AH5L-L7SV>] (last visited Jan. 18, 2016) (“Hourly rates are the most common arrangement.”).

211. See, e.g., John S. Dzienkowski, *The Future of Big Law: Alternative Legal Service Providers to Corporate Clients*, 82 FORDHAM L. REV. 2995, 2999–3000 (2014) (detailing decrease in corporate-client willingness to pay for Lexis and Westlaw surcharges, clerical services, and even the work of less-experienced attorneys); Jennifer Smith, *Law Firms Face Fresh Backlash over Fees*, WALL ST. J., Oct. 22, 2012, at A1, <http://www.wsj.com/articles/SB10001424052970203400604578070611725856952> [<https://perma.cc/RA5P-7UPR>] (noting that corporate clients increasingly balk at paying for legal research, travel, photocopies, and even the work of junior associates); Martha Neil, *As Summer Classes Plummet By 80% at Some BigLaw Firms, Clients Balk at Paying for Law Student Work*, A.B.A. J. (June 7, 2010), [http://www.abajournal.com/news/article/as\\_summer\\_classes\\_plumm et\\_by\\_80\\_at\\_some\\_biglaw\\_firms\\_clients\\_balk\\_at\\_paying](http://www.abajournal.com/news/article/as_summer_classes_plumm et_by_80_at_some_biglaw_firms_clients_balk_at_paying) [<https://perma.cc/KHH4-AN4G>].

proportions in the U.S. legal system.<sup>212</sup> By some estimates, two-thirds of civil litigants are unrepresented, and anywhere between 70% and 98% of some types of civil cases involve at least one unrepresented litigant.<sup>213</sup> Some civil legal-aid organizations must turn away as many as two-thirds of those seeking assistance.<sup>214</sup> And data suggests that unrepresented litigants face worse outcomes than represented ones.<sup>215</sup> It is true that efficiencies in legal citation alone will not cure these ills.<sup>216</sup> But why add one more arbitrary cost on top of exorbitant student-loan debt, overhead, increasing bar dues, malpractice insurance, and all of the

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212. See generally LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2009), <http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/JusticeGapInAmerica2009.authcheckdam.pdf> [https://perma.cc/2BSY-KSKQ] (documenting significant unmet need for legal representation among low-income individuals); Deborah L. Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL ED. 531, 531 (2013) (“For decades, bar studies have consistently estimated that more than four-fifths of the individual legal needs of the poor and the majority of the needs of middle-income Americans remain unmet.”); Martha Bergmark, *We Don’t Need Fewer Lawyers. We Need Cheaper Ones.*, WASH. POST (Jun. 2, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/06/02/we-dont-need-fewer-lawyers-we-need-cheaper-ones/> [https://perma.cc/6K3B-796H] (“Rather than a shortage of people who need lawyers, what we are seeing is a disgraceful failure of our legal system to meet the serious legal needs of most Americans, who are increasingly priced out of the market for legal services.”); Michael Zuckerman, *Is There Such a Thing as an Affordable Lawyer?*, ATLANTIC (May 30, 2014), <http://www.theatlantic.com/business/archive/2014/05/is-there-such-a-thing-as-an-affordable-lawyer/371746/> [https://perma.cc/794Y-D5WE] (noting the persistent access-to-justice issues).

213. Jessica K. Steinberg, *Demand Side Reform in the Poor People’s Court*, 47 CONN. L. REV. 741, 743 (2015).

214. *Study Reveals Majority of Those in Need of Civil Legal Aid in Mass. Are Turned Away as Funding Plummets*, BOS. B. ASS’N (Oct. 15, 2014), <http://www.bostonbar.org/membership/publications/news-release?ID=285> [https://perma.cc/6AQJ-67PM].

215. See, e.g., U.S. Dep’t of Justice, *Civil Legal Aid 101*, JUSTICE.GOV., <http://www.justice.gov/atj/civil-legal-aid-101> [https://perma.cc/D3XT-X7RF] (last updated Oct. 21, 2014) (“While there is still a need for further research on the impact of having access to civil legal aid, many studies show that people who get legal help, across a range of problems, receive better outcomes than people who do not. For example, in housing cases, a randomized control trial found that 51% of tenants in eviction proceedings without lawyers lost their homes, while only 21% of tenants with lawyers lost possession; and, the research of two economists indicates that the only public service that reduces domestic abuse in the long term is women’s access to legal assistance.”); see also Steinberg, *supra* note 213, at 744 (“It is well documented that unrepresented litigants secure far fewer victories in court than their represented counterparts.”).

216. See, e.g., Necessary Condition: Access to Justice, U.S. INST. PEACE, <http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/7-rule-law/access-justice> [https://perma.cc/H9Z7-BX4G] (last visited Jan. 17, 2016) (explaining that ensuring access to justice for individuals includes making the system more accessible and less “alien” as well as educating people of their rights and maintaining a strong legal system).

other expenses that increase the burdens of practice and make it financially infeasible for some attorneys to take on additional low-paying or *pro bono* legal work?

Moreover, only a small percentage of even those clients who can obtain an attorney can afford to hire a large, blue-chip law firm to represent them.<sup>217</sup> Most of those clients are large corporations.<sup>218</sup> The remaining consumers either hire a smaller firm or a solo practitioner or rely on legal services provided by non-profits, government entities, or other sources.<sup>219</sup> Many of those attorneys and legal-service entities cannot afford the time or resources necessary to execute and ensure perfect *Bluebook* citation form (or have to make time-allocation choices that are not beneficial to clients, to the legal system, or to the image of the profession).<sup>220</sup>

Moreover, as Ian Gallacher and others note, insisting that attorneys follow either *The Bluebook* or *ALWD* reinforces West's stranglehold on the legal publishing market and thereby impinges free and open access to the law.<sup>221</sup> West is the dominant publisher of case law in the United States.<sup>222</sup> In some jurisdictions—twenty-nine states and the District of Columbia—it is the only publisher of state cases.<sup>223</sup> It also holds copyrights over its key-numbering system and over the pagination of its reporters.<sup>224</sup> Even Westlaw's chief competitor LexisNexis relies on West page numbers and pays a hefty license fee for the privilege.<sup>225</sup>

Both *The Bluebook* and *ALWD* require citation to the West regional reporters where possible.<sup>226</sup> As a result, even if one can find legal sources through free resources like PACER,<sup>227</sup> a court website, or elsewhere, often those sources provide only a PDF of the slip opinion or

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217. Cf. LEGAL SERVS. CORP., *supra* note 212.

218. Dzienkowski, *supra* note 211, at 2998.

219. See *id.* at 2998–3000.

220. Cf. *id.* at 3015.

221. Gallacher, *supra* note 53, at 499.

222. *Id.* at 510.

223. *Id.* 510–11.

224. *Id.* at 511–12; see also Deborah Tussey, *Owning the Law: Intellectual Property Rights in Primary Law*, 9 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 173, 186 & n.31 (1998).

225. Gallacher, *supra* note 53, at 511–12, 512 n.112; Tussey, *supra* note 224, at 186 n.31 (citing Thomas Scheffey, *Raiders of the West Ark*, CONN. L. TRIB., Aug. 12, 1996, at 1 (reporting an initial license fee of \$ 10 million)).

226. See *ALWD*, 5th ed., *supra* note 10, at R. 12.4(b)(3), at 77–78; *THE BLUEBOOK*, 20th ed., *supra* note 1, at R. 10.3.1(b), at 102.

227. Gallacher, *supra* note 53, at 516–17.

another format that omits the indicia of publication, reporter information, and West-sanctioned pagination required to compose a citation in accurate *Bluebook* format.<sup>228</sup> This means that it is risky, at best, for a lawyer or unrepresented litigant to rely solely on free legal-research resources if she wishes to comply with *Bluebook* citation form.

## V. IMMINENT OBSOLESCENCE

In light of recent and rapidly evolving developments in technology and the economics of law practice, the ability to generate perfect *Bluebook*-compliant citations from memory is becoming a skill with declining value. Seemingly imminent changes in court rules—or at least court practices—as well as emerging technological options make it seem eminently plausible that *The Bluebook* and other traditional citation manuals could become obsolete within this lawyer's lifetime.

### A. Hyperlinks Are the Future

Soon one of legal citation's key purposes may be accomplished by another mechanism: hyperlinks in electronic briefs that take the reader directly to the first relevant page or section of the cited authority. Although hyperlinking does not replace legal citation, it doubtless will reduce a court's need to rely on the text of a legal citation to locate the referenced authority, especially as more and more court documents are viewed and reviewed on computers and other electronic devices.<sup>229</sup>

Many state courts—and most federal courts—now require that briefs filed by attorneys be submitted electronically.<sup>230</sup> And many courts also now counsel parties to include hyperlinks to the cited authorities in

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228. *Id.* at 518–19. Ravel and Casetext are relatively new online sources that provide the full text of cases at no charge to the user. It appears that the cases on Ravel use West pagination, but it is unclear where Ravel obtains the materials on its site. *See* RAVEL LAW, INC., <https://www.ravellaw.com/> [<https://perma.cc/AXB7-4VB8>] (last visited Jan. 18, 2016); *see also* Katrina June Lee et al., *A New Era: Integrating Today's "Next Gen" Research Tools Ravel and Casetext in the Law School Classroom*, 41 RUTGERS COMPUTER & TECH. L.J. 31, 49–53 (2015) (discussing Ravel and Casetext).

229. *See infra* notes 230–39 and accompanying text.

230. *See, e.g.*, U.S. COURT OF APPEALS FOR THE FIRST CIRCUIT, ADMINISTRATIVE ORDER REGARDING CASE MANAGEMENT/ELECTRONIC CASE FILES SYSTEM (“CM/EDF”) & RULES GOVERNING ELECTRONIC FILING (Sept. 2009), <http://www.ca1.uscourts.gov/sites/ca1/files/AdministrativeOrder.pdf> [<https://perma.cc/E26R-ZP26>] (electronic filing system mandatory for all attorneys unless granted an exception and voluntary for non-incarcerated pro se litigants); 4TH CIR. R. 25(a)(1) (electronic filing system mandatory for all attorneys unless granted exception for good cause).

those electronically filed briefs.<sup>231</sup> The Texas Appellate Courts' *Guide to Creating Electronic Appellate Briefs*, for example, recommends that filers "[c]onsider including cases and other authorities in your appendix and creating hyperlinks in the body of the brief to those authorities. Or you can hyperlink your citations to online resources like Westlaw, Lexis, and the legislature's website."<sup>232</sup> Although the court rules do not currently require such hyperlinks, the Guide notes that "justices and their staff frequently comment that they like hyperlinked briefs."<sup>233</sup> Several federal courts and judges even have PowerPoints, webinars, and step-by-step written instructions on how to create hyperlinks in electronically filed documents.<sup>234</sup>

District of Nebraska Senior District Judge Richard Kopf goes so far as to predict that "fairly soon lawyers who practice in at least some of the federal district courts will be required to hyperlink to both cases and documents."<sup>235</sup> "The requirement that lawyers use hyperlinks will not happen overnight, but it will happen," Kopf insists.<sup>236</sup> And not without reason: as the *Texas Guide* notes, many judges and clerks appreciate hyperlinked briefs.<sup>237</sup> This is true in large part because judges and clerks now read most submissions on electronic devices like computers and

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231. See *infra* notes 235–39 and accompanying text.

232. BLAKE A. HAWTHORNE, SUPREME COURT OF TEX., GUIDE TO CREATING ELECTRONIC APPELLATE BRIEFS 1–2 (2014), <http://www.txcourts.gov/media/124903/guidetocreatingelectronicappellatebriefs.pdf> [<https://perma.cc/R9KU-LHXH>].

233. *Id.* at 2.

234. E.g., Luta Pleiss, U.S. Dist. Court of Neb., *Webinar on Hyperlinking in the Federal Courts*, U.S. CTS. (Feb. 2014), <http://www.ned.uscourts.gov/internetDocs/captive/cmeect/Hyperlinking.mp4>. What's more, some courts now recommend hyperlinking to the record. E.g., ARIZ. R. CIV. APP. P. 13.1(3) ("Each item in the appendix table of contents must include a bookmark or hyperlink to the item in the appendix. If feasible, a combined brief and appendix must contain bookmarks or hyperlinks to items in the appendix whenever these items are cited in the brief."); U.S. BANKR. COURT FOR D.C., ADMINISTRATIVE ORDER RELATING TO ELECTRONIC CASE FILING (2013), <http://www.dcb.uscourts.gov/dcb/sites/dcb/files/AdmOrderSigned.pdf> [<https://perma.cc/AER6-HPS6>] (electronic filing mandatory for all active members in good standing of the United States District Court for the District of Columbia bar and all attorneys from the U.S. Trustee Office filing and practicing in the U.S. Bankruptcy Court for the District of Columbia).

235. Richard G. Kopf, *Resistance Is Futile—More About Hyperlinks*, HERCULES & UMPIRE. (May 8, 2013), <http://herculesandtheumpire.com/2013/05/08/resistance-is-futile-more-about-hyperlinks/> [<https://perma.cc/6QHU-4ZFY>].

236. Richard Kopf, *A Word to the Wise on Hyperlinks*, HERCULES & UMPIRE. (MAY 7, 2013), <http://wednesdaywiththedecentlyprofane.me/2013/05/07/a-word-to-the-wise-on-hyperlinks/> [<https://perma.cc/QS3L-U4ZM>].

237. HAWTHORNE, *supra* note 232, at 2.

tablets.<sup>238</sup> Judges like the portability and convenience of electronic briefs, and hyperlinks to cited materials enhance that benefit still further,<sup>239</sup> making it that much more likely that courts will soon see fit to require them.

### B. Citation Apps and Online Citation Generators

Even if courts delay decades before requiring hyperlinked sources in briefs, other technology has already started eroding the importance of the traditional citation manual. The Apple-trademarked slogan “There’s an app for that!”<sup>240</sup> resonates for a reason. As of October 2013, the iTunes app store alone included more than a million mobile apps.<sup>241</sup> The Android store sells over a million more.<sup>242</sup>

And there are, indeed, a plethora of mobile apps for generating citations. EasyBib advertises that it can generate accurate citations in the user’s choice from among 7,000 citation formats if the user simply enters the name of the book or scans the book’s bar code and selects the format.<sup>243</sup> RefME advertises 7,500 citation formats and will also generate accurate citations for web content.<sup>244</sup> Although attorneys and law students currently cannot rely on any of these apps to create perfect legal citations, based on recent developments in online citation tools, there is good reason to hope that a reliable mobile app for legal citation may be on the horizon.

A number of web-based citation tools created by and for academics working in the sciences claim to create accurate citations in *Bluebook*

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238. See David Nuffer, Suggestions for Creating a Really Accessible Document (Mar. 2015), [http://www.utd.uscourts.gov/judges/Creating\\_A\\_Really\\_Accessible\\_Document.pdf](http://www.utd.uscourts.gov/judges/Creating_A_Really_Accessible_Document.pdf) [https://perma.cc/7MXM-Z74L].

239. STEVEN D. STARK, WRITING TO WIN: THE LEGAL WRITER 61 (2012).

240. Jennifer Van Grove, *Apple Trademarks “There’s an App for That,”* MASHABLE (Oct. 11, 2010), <http://mashable.com/2010/10/11/apple-trademark/#6fJ1QFjhHiq> [https://perma.cc/D9HY-LGGX].

241. Nathan Ingraham, *Apple Announces 1 Million Apps in the App Store, More Than 1 Billion Songs on i-tunes Radio*, VERGE (Oct. 2, 2013, 1:12 PM), <http://www.theverge.com/2013/10/22/4866302/apple-announces-1-million-apps-in-the-app-store> [https://perma.cc/PM7T-PWAB].

242. See *id.*

243. Imagine Easy Sols., *Easy Bib: Automatic Bibliography Generator and Citation Machine*, APP STORE, <https://itunes.apple.com/us/app/easybib/id436768184?mt=8> [https://perma.cc/98WL-K8GX] (last visited Mar. 22, 2016).

244. REFME, <https://www.refme.com/i/#/> [https://perma.cc/YWA9-8VNT] (last visited Mar. 22, 2016).

citation format, but none appears to fulfill that promise. Zotero,<sup>245</sup> RefWorks,<sup>246</sup> and EndNote,<sup>247</sup> for example, all list *Bluebook* among the citation formats they claim to support, but none appears to generate citations that comply with every aspect of *The Bluebook's* rules (although Zotero seems to come the closest, it only offers citations in academic format, not following the practitioners' notes).<sup>248</sup>

The most promising prospects, unsurprisingly, are the tech tools created specifically with legal citation in mind. CiteGenie, for example, is a browser plug-in that its developer claims creates accurate citations—with pinpoint citations—in proper *Bluebook* format when the user cuts-and-pastes text from a case on Lexis or Westlaw.<sup>249</sup> It even offers limited options to format the citations following the *California Style Manual* and other state-specific citation requirements.<sup>250</sup> Reviews suggest that, although it is not perfect—for example, the original version failed to follow *Bluebook* rule 10.2.1(i), which requires dropping craft or industry designations following the first one—CiteGenie does an admirable job implementing the vast majority of even *The Bluebook's* pickiest rules to generate accurate citations.<sup>251</sup> Similarly, Westlaw's new WestlawNext service advertises that its “copy with reference” feature allows the user to paste text into her work product in correct citation format using *The Bluebook*, *ALWD*, Westlaw, or a handful of state-

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245. ZOTERO, <https://www.zotero.org/> [<http://perma.cc/W74N-EURZ>] (last visited Mar. 22, 2016).

246. See *RefWorks*, PROQUEST, <http://www.proquest.com/products-services/refworks.html> [<https://perma.cc/4FQC-QNEX>] (last visited Mar. 22, 2016).

247. *Endnote*, THOMAS REUTERS, <http://endnote.com/> [<https://perma.cc/637Q-HV6N>] (last visited Mar. 22, 2016).

248. Georgetown Law Library, *Bluebook Citation Resources*, GEO. L., <https://www.law.georgetown.edu/library/research/citation-tools/bluebook.cfm> [<https://perma.cc/6NNB-2MAJ>] (last visited Mar. 22, 2016).

249. *Features in Current Release*, CITEGENIE, <http://www.citegenie.com/features.html> [<https://perma.cc/ZCQ2-GHTG>] (last visited Mar. 22, 2016).

250. *FAQ*, CITEGENIE, <http://www.citegenie.com/faq.htm#1> [<https://perma.cc/JRM3-KDC2>] (last visited Mar. 22, 2016).

251. Mark Hershovitz, *Review of CiteGenie—Automatic Bluebook Citations When Using Westlaw*, LLRX.COM (Oct. 13, 2008), <http://www.llrx.com/features/citegenie.htm> [<https://perma.cc/37XH-Z2VE>].

specific styles.<sup>252</sup> Lexis Advance and Bloomberg Law offer similar options.<sup>253</sup>

More recently, a Boalt Law 3L created Bestlaw, a browser extension for Google Chrome that works with WestlawNext to add a toolbar that, among other functions, generates *Bluebook*-compliant case citations.<sup>254</sup> Although Bestlaw has only been around since the fall of 2014, and in the first version, the citation feature only worked for reported federal cases, early reviews suggest that the citation results are accurate.<sup>255</sup>

Although none of these applications is perfect, and none completely substitutes in every instance for consulting a citation manual or other reference, a few—especially CiteGenie, WestlawNext, and Bestlaw—seem to do a better job than many attorneys do on their own,<sup>256</sup> and I suspect that each will only become more effective in future iterations. And even many of the more imperfect options generate accurate, brief, clear citations quickly,<sup>257</sup> which saves costs and preserves attorney time better spent on more substantive legal matters.

*The Bluebook* itself now sells a mobile app, but this “Rulebook” app is just an app version of *Bluebook*; it does not generate legal citations on demand.<sup>258</sup> *The Bluebook*’s editors would be wise to consider partnering with one of the more promising apps or services that does.

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252. Jessica Nelson, *Westlaw Next Tip of the Week: Copy with Reference—Copying and Pasting Text from a Document with a Citation*, THOMPSON REUTERS: LEGAL SOLUTIONS BLOG (Apr. 29, 2013), <http://blog.legalsolutions.thomsonreuters.com/legal-research/reference-attorney-tips/04-29-13/> [<https://perma.cc/PTU9-QUHN>].

253. Judith Kaul, *Copy with Citation Reference Features on Bloomberg Law, Lexis Advance, & Westlaw Next*, CASE W. RES. U.: JUDGE BEN C. GREEN L. LIBR. (Oct. 18, 2013), <http://lawlibrary.case.edu/2013/10/18/copy-with-citation-reference-features-on-bloomberg-law-lexis-advance-westlawnext/> [<https://perma.cc/2KUQ-UU4V>].

254. BESTLAW, <http://www.bestlaw.io/> [<https://perma.cc/C6WZ-K6LL>] (last visited Mar. 22, 2016); see also Mornin, *supra* note 208.

255. Ashley Ahlbrand, *Research Makeover: Updating Your (Research) Look with (Browser) Extensions*, MS. J.D.: BLOG (Oct. 6, 2014), <http://ms-jd.org/blog/article/research-makeover-updating-your-research-look-with-browser-extensions> [<https://perma.cc/S3G5-SHYQ>]; Carli Spina, *Bestlaw—A New Tool That Aims to Make Westlaw Better*, ET SEQ.: HARV. L. SCH. LIBR. BLOG (Oct. 9, 2014), <http://etseq.law.harvard.edu/2014/10/bestlaw/> [<https://perma.cc/4DSD-J3FM>].

256. Hershovitz, *supra* note 252.

257. See *id.*; see also Ahlbrand, *supra* note 255.

258. Ready Reference Apps, LLC, *supra* note 73.

## VI. SO WHAT DO WE DO?

In light of the costs of this devotion to perfect *Bluebook* citation, and in light of what seems to be the coming obsolescence of the traditional methods of generating legal citations, how should we as lawyers, judges, and law professors change what we do?

## A. Options

Coleen Barger, Ian Gallacher, and others have posited that adopting neutral citation format may address many of the access issues.<sup>259</sup> Endorsed by the American Association of Law Librarians and the American Bar Association,<sup>260</sup> neutral citation—sometimes known as public-domain citation—identifies a citation regardless of where it is reported, using party names, court, date of decision, a sequential number assigned by the court, and paragraph numbers as identifiers and locators.<sup>261</sup> This would allow courts, rather than law students, to dictate the format of citations and, not incidentally, allow courts, rather than private publishers, like West, to control pagination or paragraph numbering. It could also lower the costs of legal research and therefore the costs of practicing law.<sup>262</sup>

Nonetheless, this notion faces persistent resistance from courts themselves.<sup>263</sup> And neutral citation only tackles one aspect of the problem: it does not eliminate the other costs of perpetuating a nitpickiness about citation format.

*The Maroonbook* remains as an attractive option, guided more by principles that enhance accuracy, brevity, and clarity than by detailed

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259. Coleen Barger, *The Uncertain Status of Citation Reform: An Update for the Undecided*, 1 J. APP. PRAC. & PROCESS 59, 63–64, 66 (1999) (suggesting that a neutral citation system will reduce costs of legal research and restore “ownership” of laws to the states rather than dominant legal publishers); Gallacher, *supra* note 53, at 499–500 (proposing neutral citation as a solution to the current citation system’s deleterious effects on free and open access to the law). Barger also muses, hopefully, that neutral citation “[m]ay [m]ake the [B]luebook [o]bsolete.” Barger, *supra*, at 68 (emphasis removed).

260. Barger, *supra* note 259, at 60–61. Both AALL and the ABA have floated neutral-citation proposals over the years. The ABA developed its system in the early 1990s and ABA House of Delegates recommended its adoption in August 1996. *Id.* at 79–80. The Conference of Chief Justices, however, responded with a resolution opposing that proposal. *Id.* at 80. AALL’s standing Committee on Citation Formats developed its “Universal Citation Guide,” which provides citation rules for case law, statutes, and administrative materials. *Id.* at 63 n.7.

261. THE BLUEBOOK, 20th ed., *supra* note 1, at R. 10.3.3, at 104.

262. See Barger, *supra* note 259, at 64–66.

263. See Gallacher, *supra* note 53, at 492–94.

and cumbersome rules.<sup>264</sup> Having been resoundingly rejected, however, by law reviews and the practicing bar, it seems unlikely that *The Maroonbook* will rise again.

### B. My Recommendations:

All of these options have considerable merit and each attacks different aspects of the problem. My own recommendations are simpler, although perhaps just as challenging to implement considering the persistence of *The Bluebook* myth in our legal culture. Nonetheless, I offer them here.

#### 1. Courts and the Profession

First, courts and members of the profession should acknowledge that *The Bluebook* was not ever really designed for practitioners. Let the law reviews have it. Each jurisdiction should adopt local rules that permit attorneys filing documents in their courts to follow any citation system—*ALWD*, *The Bluebook*, *The Maroonbook*, or any other system—so long as it results in accurate, brief, clear citations. Courts also should follow the lead of the District of Nebraska and accelerate toward requiring attorneys with means to file briefs with hyperlinked sources, thus facilitating the court's access to the sources for key assertions. And local rules should encourage attorneys and *pro se* litigants alike to take advantage of free and low-cost apps and other solutions to generate accurate citations more efficiently.

To better serve the needs of *pro se* litigants, court websites should provide a brief explanation of legal citation,<sup>265</sup> along with simple and accessible citation rules for the most commonly cited materials—cases,

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264. See *supra* Part III.A.1.c.i.

265. This could be an excellent project for law-school classes. And, in fact, it appears that one law school has done something similar, creating a free online resource that seeks to make Bluebook's "uniform system" accessible to the masses. See SPRIGMAN ET AL., *BABY BLUE'S MANUAL OF LEGAL CITATION* (Mar. 21, 2016), <https://law.resource.org/pub/us/code/blue/BabyBlue.20160205.pdf> [http://perma.cc/B3WN-597K]. Professor Christopher Jon Sprigman directed a team of students at New York University School of Law in developing *Baby Blue*, which makes citation rules for the most commonly cited documents available in an 198-page online text. *Id.* at 8. Consistent with the themes and observations of this Article, *Baby Blue's* introduction notes that "the Uniform System of Citation has become a basic piece of infrastructure for the American system of justice, it is vital that *pro se* litigants, prisoners, and others seeking justice but who lack resources are given effective access to the system lawyers use to cite to the law." *Id.* Professor Sprigman also expresses the hope that *Baby Blue* will return us to "a more sensible, flexible system of legal citation." *Id.* at 9. I hope so, too.

statutes, rules, regulations, and the occasional secondary source.<sup>266</sup> This will not only assist the likely small population of such litigants who actually cite a significant number of legal sources, it will also help *pro se* litigants decode—or at least somewhat demystify—the citations in court orders and in briefs prepared by attorneys.

## 2. In Legal Education

To some extent, value systems in the legal profession begin in law school. Legal educators and administrators should change their approach to teaching and valuing citation skills, and eventually those values should penetrate the profession.

First-year legal-writing professors should focus on teaching fluency in legal citation, the basic components of legal citation for the sources most commonly cited in law practice, and the values of accuracy, brevity, and clarity. Irrespective of which manual or system the school uses as the vehicle, law schools should strive to teach citation less as rote memorization of precise forms and abbreviations and more as issue spotting. The *ALWD Guide* is more user-friendly and a better teaching tool than *The Bluebook*, and its organization is more intuitive; for example, it puts the law-review citation form for a given source in the same section of the text as the practitioner's form for the same source. That said, it shares some of *The Bluebook's* failings in terms of complexity and level of detail. Peter Martin's text (available for free online) takes more of a holistic, principle-based, issue-spotting approach and might be best suited to this teaching philosophy.<sup>267</sup> A particularly intrepid (and probably tenured) legal-writing director might even resurrect the principle-based approach of *The Maroonbook*. Better yet, the citation guide that Miami Law professor Peter Nemerovski created for his first-year students<sup>268</sup> is streamlined, purpose-focused, and

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266. See Nemerovski, *supra* note 140, at 91–92 (listing the sources most commonly cited in a collection of briefs from courts across the country, as found on Westlaw). Nemerovski found that state and federal cases are overwhelmingly the most commonly cited sources, making up over 77% of the sources cited in the briefs he reviewed. Statutes were next at 12.6%, followed by state rules (at 2.2%), federal rules (at 2.1%), and the Code of Federal Regulations (at 1.6%). Treatises and Restatements make up another 1.4%, and all remaining sources make up a mere 2.8%. See *id.* at 92 fig.1. Or there's always this option: rumor has it that Bryan Garner and Darby Dickerson may collaborate on yet another citation manual. Bryan A. Garner, *The Case for Streamlining Citations*, STUDENT LAW., Nov. 2014, at 16 [http://www.americanbar.org/publications/student\\_lawyer/2014-15/november/the\\_case\\_streamlining\\_citations.html](http://www.americanbar.org/publications/student_lawyer/2014-15/november/the_case_streamlining_citations.html) [<https://perma.cc/3T3N-6A8B>].

267. MARTIN, *supra* note 25.

268. Nemerovski, *supra* note 140, at app. 1.

organized in a way that progresses logically through the key aspects of citations for the sources most frequently cited in practice. Nemerovski's manual provides exactly what a first-year law student needs to learn the basics of legal citation for practice and nothing more. And the brand-new, free, online resource *Baby Blue* presents another option that merits further investigation.<sup>269</sup>

Legal-writing and other law professors should dedicate little class time to teaching citation. Lexis's two interactive citation workbooks,<sup>270</sup> the *ALWD Online Companion*,<sup>271</sup> and the *Mastering the Bluebook Interactive Exercises*<sup>272</sup> all make it relatively easy for students to learn and practice citation format outside the classroom. The citation forms we teach should focus on the sources most commonly used in law practice: cases, statutes, constitutions, and rules.<sup>273</sup> Very little (if any) of the grade in legal writing or any other course should be based on citation form—as opposed to substance—and things like abbreviations, fonts, and spacing. Instead, to the extent that any portion of the grade on an assignment is based on citation form, the accuracy and substance of a legal citation should count for more than its form; a student who omits or misstates a pinpoint citation, for example, or who misrepresents the weight of legal authority through a misused signal, should be penalized substantially more than one who erroneously inserts a space between “F.” and “2d” or accidentally puts the “th” in superscript. After all, the former represent the types of substantive judgments that attorneys are paid to make.

Law professors and administrators—particularly those who advise the editorial boards of a law school's scholarly publications—should strive to shift the culture on those publications away from a focus on the arcane nuances of *Bluebook* format and toward an appreciation of the accuracy and substance of the scholarship they publish. Advisors should discourage law reviews from placing so much emphasis on the intricacies

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269. See Sprigman, *supra* note 265.

270. See INTERACTIVE WORKBOOK FOR *ALWD*, *supra* note 200; INTERACTIVE WORKBOOK FOR *BLUEBOOK*, *supra* note 200.

271. See *ALWD Guide to Legal Citation*, ALWD ASS'N LEGAL WRITING DIRECTORS, <http://www.alwd.org/publications/citation-manual/> [<https://perma.cc/QB9X-6CHG>] (last visited Mar. 22, 2016).

272. Linda J. Barris, *Mastering the Bluebook Interactive Exercises*, CAROLINA ACAD. PRESS, <http://www.cap-press.com/books/isbn/9781611637823/Mastering-The-Bluebook-Interactive-Exercises> [<https://perma.cc/GKB9-F5JE>] (last visited Mar. 22, 2016).

273. See Nemerovski, *supra* note 140, at 91–92.

of academic *Bluebook* citation form in their selection procedures.<sup>274</sup> Instead, publications should emphasize vetting the accuracy of assertions and how well they are supported by the cited text and on selecting high-quality, groundbreaking scholarship.

### 3. *The Bluebook's* Editors

Finally, *The Bluebook's* editors can make several constructive changes that will serve the legal community and the justice system, and perhaps they will do so in coming editions. First, increase accuracy and efficiency by making the system truly uniform. Technology long ago eliminated any reason for a distinction between academic and practitioner's citation forms. Choose one system—or take the best elements from each system—and create one truly consistent one. Replace the practitioners' notes with a short overview of the most important legal citation forms and advice on which rules and principles are most crucial to crafting a citation that communicates accurately, briefly, and clearly.

Second, the editors can enhance citation clarity by paring down the number of abbreviations. Eliminate those that are cryptic or unclear and encourage attorneys to employ abbreviations likely to be accessible to most readers. Third, make many of the more nitpicky formatting provisions—fonts, typefaces, and superscripts—optional or, better yet, direct users to the local rules for their jurisdictions.

Last, *The Bluebook's* editors—who, after all, are part of the future of the legal profession—can and should embrace that future. Provide *The Bluebook's* readers with guides to citation-generating apps and software. Or partner with a software creator to develop a proprietary *Bluebook* app that actually generates legal citations in *Bluebook* format; it need not cover every rule, but it should enable busy practitioners to generate correct citations for the most commonly cited sources. Provide instructions on hyperlinking and other technological solutions.

Embracing the coming change—rather than fighting it—can not only make the system more efficient and accessible, it can generate profits. A savvy and entrepreneurial law student or lawyer (perhaps Joe Mornin, the creator of Bestlaw)<sup>275</sup> might develop software that combines generating accurate legal citations with hyperlinking.

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274. Many law reviews select members based, in part, on a competition that judges them largely on their *Bluebook* skills. See Bacchus, *supra* note 18, at 245.

275. Mornin, *supra* note 208.

## VII.CONCLUSION

Although legal citations play an indispensable role in effective legal communication, the elevation of citation form—not to mention the perpetuation of *The Bluebook* myth—imposes unacceptable costs on legal education, the practice of law, and the fair administration of justice. Instead of demanding and celebrating perfect Bluebooking (or endorsing one citation manual or another), lawyers, law professors, and judges should encourage accurate, brief, clear, and efficient legal citations. And law schools, lawyers, and courts should embrace technological innovations as the time- and cost-saving devices they are, rather than clinging to snobbish relics of their glory days on law review.