Shedding the Uniform: Beyond a "Uniform System of Citation" to a More Efficient Fit

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

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ABSTRACT

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 offer 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.

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\(^2\), 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

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1 Assistant Director of Legal Writing and Clinical Professor of Law, The University of Arizona, James E. Rogers College of Law. I owe a giant debt of gratitude to Professor Ian Gallacher, who provided mentoring and encouragement as well as thoughtful, detailed feedback. Professor Suzanne Rabe’s suggestions made this a significantly better piece. Thanks also to Janet Howe for her research and citation assistance.

2 In its very title, The Bluebook styles itself as a uniform system of citation. See, e.g., THE BLUEBOOK, A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 20th ed. 2015).
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 of a “uniform system of legal 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. 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 student to Bluebook the citations, confident that she will 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 in the party name in each case name. Everyone knows that the first word in a case name is never abbreviated! 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

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done a 180. Now it not only permits but requires abbreviation of the first word in a party name.

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 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 attack4, we should avoid the appearance that law school simply grants its graduates some

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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, we should avoid diverting time better spent developing those skills. Particularly at a time when the need for affordable legal services significantly exceeds their availability, 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, we should shy away from legal education crisis to move away from traditional educational models and instead focuses on more apprentice style learning and classes that train students to be advocates, counselors, negotiators, and deal

5 See Susan Stuart and Ruth Vance, Bringing a Knife to a Gunfight: The Academically Underprepared Law Student & Legal Education Reform, 48 VAL. U. L. REV. 41, 41 (2013) (“today’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.”); id. at 64 (noting that “in the digital age, law schools cannot assume students arrive with basic writing skills on which to build.”) See also, sources infra note 167.

6 See infra Section VI.B.

7 Criticisms of lawyers and the legal profession existed well before Shakespeare’s “The first thing we do, let’s kill all the lawyers.” See 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?, ABA JOURNAL 1053 (July 1979) (noting that lawyers face critics “up to
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. 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. 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. In academic writing, the

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.”); Andy Mergendahl, Why Lawyers Lie (To Themselves and Their Clients), LAWYERIST.COM, JULY 19, 2015, https://lawyerist.com/45560/lawyers-who-lie-to-themselves-and-their-clients/(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...); Keith Lee, All Lawyers Lie, Depending on Your Point of View, ABOVE THE LAW, May 2 2014, http://abovethelaw.com/2014/05/all-lawyers-lie-depending-on-your-point-of-view/ (Lawyers role in society fuels society’s perception of them as liars, individuals who misrepresent the truth, and “squash the little guy.” People don’t meet lawyers until they need them, and then 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”); Jim Olsztynski, 42 Reasons Why I Hate Lawyers, FAMILY GUARDIAN.ORG, March 28, 2009, http://famguardian.org/subjects/LawAndGovt/LegalEthics/42ReasonsHateLawyers.htm (Among the reasons: Lawyers are responsible for 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; Lawyers appeal to our worst instincts).

citation may also communicate the prestige of the publication and the stature of the author. And, as with any form of citation, legal citation affords due credit to the authors of 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 Bluebook and beyond—share certain common values: accuracy, brevity, and clarity. First, citations must be accurate. 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, 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.” 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.

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. All citation forms represent a shorthand and strive to convey all of the necessary information about the location of support in the shortest form possible. This means, in part, that many citation formats eschew unnecessary repetition. If the reporter name conveys everything that the reader needs to know about the court issuing the decision, for example, there is no

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9 See infra Section III.a.
10 See e.g., BLUEBOOK, supra note 2 at 102-10 (20th ed. 2015).
11 Id. at 94.
12 See infra notes 12-15.
need for the author to identify that jurisdiction again in the date parenthetical.  

This also means that effective citations employ clear, easily understandable abbreviations to reduce the amount of space the citation consumes. 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.

Finally, citation formats value clarity. 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. No one abbreviation should serve for several different words. 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. Accurate, brief, clear citations communicate efficiently and effectively.

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. Peter W. Martin, in his Introduction to Basic Legal Citation, recognizes that effective citation balances two competing interests: “providing full information about the referenced work and keeping the text as uncluttered as possible.” And The Bluebook agrees that citation forms should “provide sufficient information to allow the reader to find the cited material quickly and easily.”

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 citation brief?

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13 See BLUEBOOK, supra note 2, at 105 (Rule 10.4(b)) (“omit the jurisdiction and the court abbreviation if unambiguously conveyed by the reporter title”); ALWD, supra note 8, at 81 (Rule 12.6(d)) (”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.”). See also BLUEBOOK, supra note 2, at 96-99 (Rules 10.2.1(a), (d), (e), (f), (g), and (h)) (listing terms that should be omitted from case names) ALWD, supra note 8, at 63-66 (Rules 12.2(c), (d), (e)(1), (f) - (j), (l) – (r) (listing terms that should be omitted from case names).

14 BLUEBOOK, supra note 2, at 78-81;ALWD, supra note 8, at 48-56.


16 Peter W. Martin, INTRODUCTION TO BASIC LEGAL CITATION sec. 1-200 (2003).

17 BLUEBOOK, supra note 2, at 1 (19th ed. 2010).
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? 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 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. In fact, some form of legal citation has existed since ancient Rome. Those citing Justinian’s Corpus Juris Civilis developed a common practice of citing sections of that compilation by number. 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. 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. 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. 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.

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18 See infra note 173 for examples of this.
19 Byron D. Cooper, Anglo-American Legal Citation: Historical Development and Library Implications, 75 LAW. LIBR. J. 3, 4 (1982).
20 Id.
21 Id. at 6.
22 Id.
23 Id. at 7-8.
24 Id. at 8.
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.\(^{25}\) 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.\(^{26}\) Before Tottell’s reforms, the only reference points for citing cases from the *Year Books* were the regnal year and the term.\(^{27}\) 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.\(^{28}\) Tottell began numbering the cases within a term.\(^{29}\) He also tried to maintain consistent pagination across *Year Book* editions, facilitating even more precise citation.\(^{30}\)

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,\(^{31}\) such guides were far from commonplace before *The Bluebook* appeared in the late 1920s.\(^{32}\) 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.\(^{33}\) Instead, they set forth custom, guidelines, and principles.\(^{34}\) How ever did the legal profession survive?

1. **Bluebook**

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\(^{25}\) *Id*

\(^{26}\) *Id.* at 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 century, for example, judges would only accept citations to certain reports. *Id.* at 15. 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 Mt. B.J. 42, 43 (2005).

\(^{27}\) Cooper, *supra* note 19, at 10.

\(^{28}\) *Id.* at 9.

\(^{29}\) *Id.* at 10.

\(^{30}\) *Id.*

\(^{31}\) *Id.* at 20.

\(^{32}\) *Id.* at 20.

\(^{33}\) *Id.* at 20-21.

\(^{34}\) *Id.*
Although no central authority dictates nationwide norms for legal citation,\(^{35}\) one might not realize that from the way much of legal academia and the legal profession talk about *The Bluebook*,\(^{36}\) *Bluebook* is an imposing brand. “Bluebooking” has long been the generic term for checking citation form. 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.\(^{37}\)

In reality, almost no court or jurisdiction requires pure Bluebook citation format.\(^{38}\) In reality, almost no practitioner, judge, or academic executes perfect current *Bluebook* citation format from memory. And, in reality, it seems doubtful that most practitioners, judges, or academics can recognize a *Bluebook*-compliant citation at a glance.\(^{39}\) Nonetheless, the barriers to challenging *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 as a slight, olive-covered\(^{40}\)

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\(^{35}\) Almost as long as Bluebook has existed, competitive citation systems have existed as well. *See infra* Section c..\(^{36}\) “*The Bluebook* is still firmly entrenched in its ‘authoritative position,’ particularly in the academic world.” Michael Bacchus, *Strung Out: Legal Citation, The Bluebook, and the Anxiety of Authority*, 151 U. PA. L. REV. 245, 246 (2002). 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, 93 (1997).\(^{37}\) *See* 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, 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 world of legal citation, dominated (in the students’ eyes, at least) by *The Bluebook*. Rumors that these protests might have caused some legal writing professors 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: Guide to Legal Citation , 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.”)\(^{38}\) *See infra* Section III.d.iii.\(^{39}\) That may be a fruitful topic for another article.\(^{40}\) Perhaps the editors of *The Bluebook* anticipated early on the criticism that they were “citation Nazis”: in 1936, they changed the cover from brown to a more “patriotic” blue to avoid comparisons with Adolf Hitler’s
pamphlet of rules, prepared by a second-year law student home for summer break in Cleveland, and designed solely for the use of the editorial staff of *Harvard Law Review*. 41 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. 42

For its first three editions, *The Bluebook* remained simply a short guide for *Harvard Law Review*’s own editors.43 By the fourth edition, published in 1934, however, the law reviews of Yale, Columbia, and Pennsylvania had joined as authors and compilers.44 Over the 1930s and 1940s, more and more law reviews and journals adopted Bluebook, and by 1949, the National Conference of Law Review Editors identified Bluebook as the standard for legal citation. 45

Legal practitioners were slower to jump on the blue bandwagon, and *The Bluebook* itself didn’t purport to dictate the rules for practice documents until fifty years after its first publication.46 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.47 That ambition aside, *The 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 “basic citation forms” for “briefs and memoranda” on the inside front and back covers. 48 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.\textsuperscript{49}

In response to the advent in 2000 of the \textit{ALWD Manual} and its explicit focus on the citation form used in law practice, \textit{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.\textsuperscript{50}

Even with these concessions, however, \textit{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 \textit{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.\textsuperscript{51}

In 2008, \textit{The Bluebook} joined the digital age through an online subscription service\textsuperscript{52}, and it launched a mobile app in 2012.\textsuperscript{53} But although, superficially it seems to adapt to the changing times, the citation system put forth in \textit{The Bluebook} is essentially an unduly complex and insular one, and it has come under fire for these very traits multiple times and from multiple sectors over the years.

b. Attacks on \textit{Bluebook}

\textit{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. Indeed, \textit{Bluebook} has had its detractors from the beginning. As noted, it took years for other law reviews to

\textsuperscript{49} See \textit{Bluebook}, supra note 2 (16th ed. 1996); See also, Christine Hurt, \textit{Network Effects and Legal Citation: How Antitrust Theory Predicts Who Will Build a Better Bluebook Mousetrap in the Age of Electronic Mice}, \textit{87 Iowa L. Rev.} 1257, 1266 (2002).

\textsuperscript{50} See \textit{Bluebook}, supra note 2 (18th ed. 2005); See also DuVivier, \textit{supra} note 48, at 112.

\textsuperscript{51} DuVivier, \textit{supra} note 48, at 111.


adopt the citation system. Justice Frankfurter refused to follow *Bluebook* format when he authored an article published in *Harvard Law Review* in 1955. Practitioners and first-year law students began railing against *Bluebook’s* labyrinthine dictates as early as the late 1940s.

Critics persistently highlight *Bluebook’s* elitism. For example, although it expanded its practitioner-focused section over the years, *Bluebook* persistently gave short shrift to the local rules of citation by which practitioners are actually bound. 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.” Similarly, critics perennially note *Bluebook’s* “federal parochialism” and its seemingly deliberate ignorance of state-specific rules and reporters. Indeed, a mere perusal of the titles of citation hornbooks—variously labeled “survival guides” or handbooks for “beating” the citation or *Bluebook* “blues”—gives a sense of the general feelings *Bluebook* provokes in students and practitioners alike.

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.” Acknowledging that “not every lawyer can memorize *The Bluebook,”* Posner took particular issue with *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). 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

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54 Dickerson, *Un-Uniform, supra* note 40, at 60
55 Cooper, *supra* note 19, at 21.
56 Id. at 22..
57 Dickerson, *Un-Uniform, supra* note 40, at 89-90.
58 Cooper, *supra* note 19, at 22.
59 Paulsen, *supra* note 40, at 1788-91. In one particularly egregious example, a review of one edition of *The Bluebook* catalogued state-specific errors in that edition; nonetheless, those errors remained uncorrected in the following edition. *Id.* at 1790.
62 *Id.* at 1346.
flourishes.” 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.

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

*The 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 dominate the substantive. The vacuity and tendentiousness of so much legal reasoning are concealed by the awesome scrupulousness by which a set of intricate rules governing the form of citations is observed.

But the editors of *The Bluebook* brought the most devastating criticism on themselves. The now-notorious Sixteenth Edition of *The Bluebook* 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.

Published in 1996, the Sixteenth Edition completely overhauled the existing rules on signals. 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. 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. 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. 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. The Sixteenth Edition
also eradicated the “Contra” signal and required the use of another signal with the “E.g.” signal.\textsuperscript{71}

As Darby Dickerson noted in her criticisms of the Sixteenth Edition, by so altering the meaning of signals, Bluebook’s student editors had stepped over a line that they might not have recognized at the time.\textsuperscript{72} Rather than simply tweaking citation form, they had wrought a substantive change. Because signals inform the reader of the weight and persuasive value of the cited authority, “changing what signals mean effectively changes the substance of our common law.”\textsuperscript{73} 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.\textsuperscript{74} 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.\textsuperscript{75} 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.\textsuperscript{76} No one seemed to speak in favor of the change.\textsuperscript{77} Most strikingly, at its 1997 meeting, the House of Representatives of the American Association of Law Schools 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...

\textsuperscript{71} Id.
\textsuperscript{72} Id. at 69-70.
\textsuperscript{73} Id. at 69.
\textsuperscript{74} Id. See also, Hurt, supra note 49, at 1269 (“tinkering” with the meaning of signals “makes the use of signals before that edition obsolete or, at best, confusing.”); Jennifer L. Cordle, ALWD Citation Manual: A Grammar Guide to the Language of Citation, 26 U. ARK. LITTLE ROCK L. REV. 573, 588 (2004) (“by 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.”)
\textsuperscript{75} As the AALS resolution noted, the Sixteenth Edition’s definition of “see” “leaves no useful middle signal between direct support and the weakly analogous signaled by cf.” Dickerson, Seeing Blue, supra note 36, at 80. (quoting ASSN. OF AM. L. SCHS., RESOLUTION CONCERNING PROMULGATION OF RULES OF CITATION (Jan. 4, 1997).
\textsuperscript{76} Glashauser, supra note 45, at 69.
\textsuperscript{77} Id. (professors “universally condemned the fiat; no dissenters took the “see” side.”)
reviews to rebel against the Sixteenth Edition’s new rules in that area and to instead fall back to the Fifteenth Edition’s rules.\textsuperscript{78}

Although \textit{The Bluebook} reverted to its previous rules regarding signals in the Seventeenth Edition,\textsuperscript{79} the damage was done, creating an opening for a new competitor.\textsuperscript{80}

c. Alternatives to \textit{The Bluebook}

\textit{Bluebook} has never been the only citation game in town, and the first alternatives to \textit{The Bluebook} emerged back when \textit{The Bluebook’s} editors weren’t seriously marketing the manual to practitioners. Allegedly widely employed by practitioners and taught in writing classes, Miles Price’s \textit{Practical Manual of Standard Legal Citations} was first published in 1950.\textsuperscript{81} Price’s text attempted to codify the dominant citation practices he saw in briefs.\textsuperscript{82} Although it did fill the void that \textit{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 \textit{Effective Legal Research} text as late as 1979.\textsuperscript{83} Similarly, Bieber’s \textit{Current American Legal Citations}—a sort of citation hornbook intended to supplement, rather than supplant, \textit{The Bluebook} for practitioners—followed in the 1980s,\textsuperscript{84} 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, \textit{The Bluebook’s} preeminence—particularly as a citation guide for scholarly publications. The University of Chicago’s \textit{Maroonbook}, however, championed by one of \textit{The Bluebook’s} most frequent and vociferous critics, Seventh Circuit Judge Richard Posner, represented one of the earliest and most

\textsuperscript{78}Dickerson, \textit{Seeing Blue}, supra note 36, at 79; Bacchus, \textit{supra} note 36, at 252; Glashusser, \textit{supra} note 45, at 70-71 (quoting ASSN. OF AM. L. SCHS., \textit{supra} note 75, (“We urge the compilers of the Bluebook to restore the previous rule governing signals . . . . In addition, reviews and journals should respect the right of an author to use another system of rules governing citation of authorities.”)).

\textsuperscript{79}BLUEBOOK, \textit{supra} note 2, at Rule 1.2 (17th ed. 2000).

\textsuperscript{80} See infra Section III.ii.

\textsuperscript{81} Cooper, \textit{supra} note 19, at 22.

\textsuperscript{82} \textit{Id.} at 22.

\textsuperscript{83} \textit{Id.} at 22-23.

serious attempts to unseat *Bluebook* altogether as the dominant citation format. 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.” Primarily targeted at scholarly publications—the preface refers to “authors and editors,” not to “practitioners” or “attorneys”—the *Maroonbook* nonetheless promised a more flexible and relaxed system of citation, guided more by overarching principles than nitpicky rules. 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. Further, its explicit recognition that providing a rule for every conceivable citation issue 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. By the mid-1990s, it was itself a footnote in the narrative of *The Bluebook*’s inexorable march to dominance.

**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. Arbitrary and capricious changes to the meanings of signals in the Sixteenth Edition had alienated professors and practitioners alike. The lead author of *The ALWD Manual*, Darby Dickerson, had written several pieces criticizing the Sixteenth Edition and outlining her proposed solutions for a

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86 *The University of Chicago Law Review*, *supra* note 15.
87 *Id.*
88 *Id.*
89 *Id.*
90 Posner, *supra* note 59, at Appendix ) (quoting introduction to first edition of the *Maroonbook*) (“because 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.”).
91 See Hurt, *Network Effects*, *supra* note 49, at 1279-80. See also, Paulsen, *supra* note 40, at 1785 (n. 42) (listing seven law reviews, other than the Chicago Law Review, that had adopted Maroonbook as of 1992). Reportedly, one of Posner’s own clerks used Bluebook citation form in preparing legal memoranda for the judge. See id.
92 See Glasshauser, *supra* note 45, at 65.
93 *See supra* Section III.b.ii.
Seventeenth Edition. 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. 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. 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.

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. 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. It generated citations that largely mimicked those prescribed by *Bluebook’s* “blue pages,” and it omitted citation forms designed solely for scholarly writing.

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

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94 See, e.g., Dickerson, *Un-Uniform*, supra note 40; Dickerson, *Seeing Blue*, supra note 36.
96 Id. at 8, xxiv.
97 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.).
98 See also Pether, supra note 37, 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. LEGAL WRITING INSTITUTE, 2014 ALWD/LWI SURVEY, 64, http://lwionline.org/uploads/FileUpload/2014SurveyReportFinal.pdf (42 out of 178 schools reported that some of their legal-writing faculty are tenured or tenure track), 35 (32 of 178 schools reported that the director of legal writing is tenured or on the tenure track).
99 DuVivier, supra note 48, at 111.
100 ALWD, supra note 95, at back cover.
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.” 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 *Bluebook*, *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. True to its mission to “omit the rules that lawyers and students hardly ever use,” the *Manual* chose the common-law practitioner versions of citations over those used solely in law-review footnotes: it used no small caps in any citations, and it minimized the differences between abbreviations for cases and abbreviations for other sources. It also counseled a little sanity and good sense, advising, “Do not spend hours agonizing over how to cite the source. Select a logical format and be consistent.”

Sadly, what Alex Glashauser once called *The ALWD Manual*’s “revolutionary” “declaration of independence” 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 fewer than forty. Only fifteen schools planned to teach *ALWD* exclusively for the 2014–15 academic year. Most tellingly, in its fifth edition, published in 2014, *ALWD* capitulated to *Bluebook*’s dominance over citation form, seeking to distinguish itself less as a sensible and streamlined citation system for practitioners, but rather as a more user-friendly method of achieving – and teaching students to achieve – citations that conform to

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102 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*.”)

103 See *e.g.*, *ALWD*, *supra* note 8, 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”).

104 *Weresh*, *supra* note 60, at, 787 (quoting E-mail from Richard K. Neumann, Jr., Professor of L., Hofstra University School of L., to Darby Dickerson (Jan 8, 1977)).

105 Id. at 794–95.

106 *ALWD*, *supra* note 95, at 7.

107 *Glashausser*, *supra* note 45, at 78.

108 2014 *ALWD/LWI SURVEY*, *supra* note 97, at vii, 19.

109 Id. at 19.
Bluebook's uniform system. 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 “The ALWD Guide to Legal Citation.” Although this new “declaration of allegiance” to The Bluebook's system may regain ALWD some market share, it also may require ALWD's editors to release a new edition shortly after The Bluebook does, in order to keep in step with any changes.

d. The uniformity lie

ALWD’s call for sanity is still worth heeding because, notwithstanding Bluebook’s title assertion, “[t]he U.S. citation system itself is un-uniform.” For a number of reasons, it is highly doubtful that the majority of U.S. lawyers execute perfect Bluebook format in most—much less all—of their court submissions.

   i. 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. Unsurprisingly, because 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), its primary focus is on the law-review format. Of the 511 pages in the Nineteenth Edition of Bluebook, over 450 are devoted to law-review citations. A student who learns citation format primarily by using Bluebook's

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110 See ALWD, supra note 8, at xxiii-xxiv.
111 Id. at 13, Front cover. 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.
112 Dickerson, supra note 40, at 56.
113 Although I present no empirical or even anecdotal data to support this assertion, I do note that a number of commentators share my suspicions. See, e.g., Jeffrey D. Jackson, Thoughts on the Future of Citation: Bluebook, ALWD, and?, JOURNAL OF THE KANSAS BAR ASSOCIATION 14 (2013) 14. (“in real life, almost no one actually uses the current prescribed method of Bluebook citation.”); REGENTS OF THE UNIVERSITY OF CALIFORNIA, CALIFORNIA CRIMINAL LAW FORMS MANUAL 1.16 (Sarah H. Ruddy, ed., Nancy Yuenger, ed., 2nd ed. September 2014) (noting that many attorneys deliberately deviate from the prescribed citation format, including citing to fewer reporters than mandated); Hurt, supra note 49, at 1264 (“often times the rules that appear in new editions are 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, 56:4 ARIZ. L. REV. SYLLABUS 82, 84 (2004) (“I doubt, for example, that most litigators actually abbreviate all the words in Table 6, or that most judges require them to.”)
114 See BLUEBOOK, supra note 2. Although the Twentieth Edition boasts “considerably overhauled” Bluepages, the proportions are no better: Of 560 total pages, 504 are now devoted to law-review format.
“white pages” on law review will cite many documents incorrectly for practice. For example, many of the citation forms in 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. By contrast, practice documents never use small caps in citation.

ii. 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. 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. 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 have changed dramatically.

The Bluebook just released its Twentieth Edition. 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. No sooner did we receive our diplomas than at least part of the citation system we learned, practiced, and internalized was obsolete: the Seventeenth Edition hit shelves in

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115 See, e.g., BLUEBOOK, supra note 2, at T.1.3 (19th ed. 2010)(showing how to provide the names of various state codes); T13 (abbreviations for periodical names).

116 Id. at 4 (Rule B2)(for non-academic citations, “large and small caps are never used.” 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. BLUEBOOK, supra note 2, at 6 (Rule B2)).


118 See Cathy Roberts, Book Review: The Dark Side of the Bluebook, 24-JUN UTAH B.J. 2222 (2011) (“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?

119 BLUEBOOK, supra note 2.

120 Id. (16th ed. 1996)
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. 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.

The Bluebook releases a new edition approximately every five years, and with each revision come changes. Although not all revisions are as earth-shattering as the Sixteenth Edition, often those changes affect fundamental citation rules that practitioners use every day. 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.” 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 The Bluebook citation format they learned in law school once they’ve 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, especially when it comes to new sources or unfamiliar abbreviations, which undermines the clarity of the citation system.

iii. Different citation rules in different jurisdictions, courts, and courtrooms

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121 Id. (17th ed. 2000).
122 Id. at Rule 1.2 (17th ed. 2000); (16th ed. 1996).
123 Id. at Rule 10.2.2. (17th ed. 2000); (16th ed. 1996); See also, Hurt, supra note 49, at 1273.
124 Dickerson, Un-Uniform, supra note 40, at 55-56, n.1 (Bluebook has released a new edition every five years since the Thirteenth edition in 1981).
125 Id. at 57.
127 I can cite no better example than the Twentieth Edition of the Bluebook. See Bluebook, supra note 2.
Despite this reverence for *The Bluebook*, few jurisdictions actually follow *The Bluebook’s* myriad rules in full. Many courts address preferred citation formats in their local rules. Although many refer to *The Bluebook*, few mandate *The Bluebook* exclusively, and most deviate from that “uniform system” in at least a few ways. Arizona, for example, requires pinpoint references to paragraph numbers for cases decided after January 1, 1998, and the Arizona Revised Statutes offers a different abbreviation for citing its name than do either *Bluebook* or *ALWD*. Many courts permit several options regarding citation. Alabama, for instance, provides that citations can comply with *Bluebook*, *ALWD*, or “the style and form used in the opinions of the Supreme Court of Alabama.” Similarly, federal jurisdictions including the District of Montana and the Eleventh Circuit explicitly permit attorneys to use the latest version of either *Bluebook* or *ALWD*. Some courts are very flexible, allowing attorneys to use any recognized citation form.

Many jurisdictions also publish their own citation guides, most of which bear little resemblance to *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”) or *Bluebook*, many

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133 Compare Edward Jessen, California Style Manual (4th ed. 2000) secs. 1:1 – 1:37 with Bluebook, supra note 2, rules B4-B4.2. The *California Style Manual* also dictates placing all citations in parentheses, whereas *Bluebook* does not. *California Style Manual*, supra, at 4.57. Therefore, a citation to *Bush v. Gore* would
practitioners and courts continue to recommend that attorneys follow the *California Style Manual* (which, after all, is the manual the courts themselves follow).\(^{136}\) 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 useful in preparing submission to New York courts,” but it recommends that readers supplement with *The Bluebook* and *The ALWD Citation Manual*.\(^ {137}\)

Still other jurisdictions, including the United States Supreme Court, remain silent on citation, leaving lawyers to default to *Bluebook*, *ALWD*, or other resources.\(^ {138}\)

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 *Bluebook*, and many have their own systems that deviate from *Bluebook* form.\(^ {139}\) The highest court in the land doesn’t even heed this “uniform system of citation.” The Supreme

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\(^{136}\) In fact, the Advisory Committee Comments for CA. CT. R. 8.204(b) cite to Rule 1.200 for citation form, but then admonishes that “Brief writers are encouraged to follow the citation form of the *California Style Manual.*” See also *Style Matters, supra* note 134.; Appellate Courts Committee of the Los Angeles County Bar Association, *Basic Civil Practice in the Court of Appeals for the Second Circuit* http://www.lacba.org/Files/Main%20Folder/Areas%20of%20Practice/AppellateCourts/Files/070522_Appellate%20Courts%20Committeeprimer.pdf (last visited May 21, 2015) (“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.”) 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, SOUTHERN CALIFORNIA APPELLATE NEWS*, (September 19 2011) http://socal-appellate.blogspot.com/2011/09/style-manual-survives.html.

\(^{137}\) *NEW YORK OFFICIAL REPORTS STYLE MANUAL* (Kathleen B. Hughes et al., eds., 2012) (available at http://www.courts.state.ny.us/reporter/new_styman.htm).


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. 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.

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. Second, many law reviews impose their own citation formatting rules that differ from Bluebook. Finally, there is a remarkable lack of consistency in citation across law reviews.

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 Bluebook’s. For example, West’s abbreviations for source names often differ from those prescribed by Bluebook’s tables.

e. So why has Bluebook won?

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140 See Glasshauser, supra note 45, at 61-62, n.11. Apparently the Court’s manual is no less complex than The Bluebook, though.
141 Thorne v. Jones, 765 F.2d 1270, 75 (5th Cir. 1985); see Paulsen, supra note 40 at 1784; Glasshauser, supra note 45, at 61.
143 Stephen M. Darrow and Jonathan J. Darrow provide the following example of the lack of uniformity in citation, even among rigorously edited law reviews:


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 (April, 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.”);
In the face of all this criticism and competition, doesn’t Bluebook’s continued dominance of the legal citation market demonstrate its superiority? In short: no. A number of other factors contribute to Bluebook’s stature, including the conservatism of the U.S. legal culture, Bluebook’s early incumbency in a network industry, the so-called “brown M&M theory,” and some even less attractive aspects of legal and law-school culture.

No doubt the American legal culture clings to 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 we’ve 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, much as rigid adherence to Bluebook obscures the value of communicating the source of support for legal arguments efficiently and with accuracy, brevity, and clarity. Indeed, 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.”

Network-effects theory provides a particularly compelling—and somewhat overlapping—explanation for Bluebook’s enduring dominance. 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. The legal-citation industry meets the definition of a network industry. 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. In short, because so many lawyers used Bluebook in the past, more lawyers use Bluebook now. And because so many lawyers use Bluebook now, more lawyers will use Bluebook in the future. Indeed, the value of The Bluebook increases with each new user. This entrenchment makes it incredibly difficult—if

147 Id. at 707.
148 See, e.g. Hurt, supra note 49, at 1267 (“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.”);
149 Id. at 1260.
150 Id. at 1262.
151 Id.
152 Id.
not impossible—for a new citation tool, no matter how superior, to find a foothold, particularly in an industry so fond of doing what it’s always done.\(^{153}\)

This entrenchment, then, perpetuates itself, and makes it increasingly likely that attorneys will cling to *Bluebook* because it “enables a legal writer to communicate to her reader that she ‘gets it.’”\(^{154}\) Like the provisions of Van Halen’s Brown M&M clause,\(^{155}\) the picayune standards set forth in the *Bluebook* serve as a test of an attorney’s thoroughness and attention to detail.\(^{156}\) Under this theory, flawless Bluebooking becomes a proxy for flawless research, analysis, and writing.\(^{157}\)

In large part, though, *Bluebook* skills simply signal membership in an elite club.\(^{158}\) 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.\(^{159}\) *Bluebook* or blue blood—either way, this continued fetishization\(^{160}\) of *Bluebook* skills may, in part, simply reveal the dismaying intractable grip that elitism still holds on legal education and the legal profession.\(^{161}\)

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\(^{153}\)Id. \(^{1260}.\)

\(^{154}\) Nemerovski, supra note 113, at 81.

\(^{155}\) 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. Leavitt & Stephen J. Dubner, *How to Trick the Guilty and Gullible into Revealing Themselves*, WALL ST. J., May 9, 2014, http://www.wsj.com/articles/how-to-trick-the-guilty-and-gullible-into-revealing-themselves-1399680248. See also Nemerovski, supra note 113, at 86.

\(^{156}\) Nemerovski, supra note 113, at 86.

\(^{157}\) Id.

\(^{158}\) See Heifetz, supra note 146, 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.”).

\(^{159}\) 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.” Mary Whisner, supra note 143, at 393-94.

\(^{160}\) See Gallacher, supra note 37, 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)).

\(^{161}\) To risk stating the obvious, the fact that *Bluebook*’s editors attend four of the most elite law schools in the country is no coincidence. See, e.g., Cathy Roberts, supra note 118, at22 (crediting *Bluebook*’s “prestigious sponsors,” at least in part, for its enduring dominance).
IV. THE COSTS OF “UNIFORMITY”

Many readers may ask, “so what?” So 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. If professors teach citation exclusively in class, that endeavor can consume a significant amount of class time. Even where professors primarily teach citation using out-of-class tools like the Lexis’ Interactive Citation Workbook or other online or text platforms, the 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, 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. Most good writers agree that the best writing results not from an

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162 Indeed, one of my Arizona Law colleagues asked just that after reading the three anecdotes that begin this article.
163 Lysaght, supra note 117, at 1058.
164 See Gallacher, supra note 37, at 494, n.18 (responses to author’s query regarding the amount of classroom time “devoted to a study of legal citation ranged from twenty minutes to eight hours.”)
165 LexisNexis publishes citation workbooks for both Bluebook and The ALWD Guide. See TRACY McGAUGH NORTON, CHRISTINE HURT & JEFFREY D. JACKSON, INTERACTIVE CITATION WORKBOOK FOR ALWD CITATION MANUAL (LexisNexis 2014); TRACY McGaugh Norton, Christine Hurt & Jeffrey D. Jackson, Interactive Citation Workbook for The Bluebook: A Uniform System of Citation (LexisNexis 2014). 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), LEXISNEXIS.COMhttp://www.lexisnexis.com/documents/pdf/20110118091338_large.pdf.
166 2014 ALWD/LWI SURVEY, supra note 97, at 7.
167 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, Legal Writing in the Practice Ready Law School, 85 N.Y ST. B.J 72 (2013) (A legal writing class isn’t simply an isolated class in training skills. Legal writing teaches legal method, citing, professionalism, ethics, organization and rhetoric. Legal writing teaches substantive law and 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. 616 (2011) (Discussing how firms and jobs now demand
instantaneous moment of brilliance but from repeated rounds of revision and fine-tuning.\textsuperscript{168} Further, research suggests that students develop and retain skills best through repetition.\textsuperscript{169} 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 before.\textsuperscript{170} 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.”\textsuperscript{171}

\textbf{B. Financial costs to attorneys, clients, and the legal system.}

Placing value on the flawless execution of \textit{Bluebook}-specified citation format also costs attorneys—and clients, and donors, and taxpayers—time and resources better spent elsewhere.\textsuperscript{172} Yet authority figures in the legal profession, from law professors to senior attorneys to judges, continue to insist that a lawyer’s


\textsuperscript{170} See Stuart and Vance, \textit{supra} note 5, at 41. \textit{See also, id.} at 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); Richard Arum & Josipa Roksa, \textit{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”).

\textsuperscript{171} See Stuart and Vance, supra note 5, at 44.

\textsuperscript{172} See Darrow, \textit{supra} note 143, 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 one percent of lawyers citing one case per day at ten seconds per citation. See Joseph Mornin, \textit{BestLaw a Robot for Legal Research}, CODEX: THE STANFORD CENTER FOR LEGAL INFORMATICS, November 17, 2014, http://codex.stanford.edu/bestlaw-a-robot-for-legal-research/. I’d wager it takes most lawyers more than ten seconds just to type a citation without consulting a single \textit{Bluebook} rule.
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.173

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 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.174 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.175

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,

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173 See, e.g., Scott Moise, *Red, White, and Bluebook: Citation Rules that Matter*, 21 JUL S.C. LAW. 44, 44 (2009) (“[L]awyers who follow the citation rules show respect to the court by caring enough to turn in their best work.”); 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.”); Heifetz, *supra* note 146, at 703 (“The members of the legal profession have emerged from an indoctrination process that teaches that . . . inconsistent citation is fundamentally wrong.”) A smattering of judges have also called out lawyers for bad Bluebooking. See Judith D. Fischer, *Bareheaded and Barefaced Counsel: Judges 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.

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 proportions in the U.S. legal system. 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. Some civil legal-aid organizations must turn away as many as two-thirds of those seeking assistance. And data suggests that unrepresented litigants face worse outcomes than represented ones. It is true that efficiencies in legal citation alone will not cure these ills. But why add one more arbitrary cost on top of exorbitant student-loan debt, overhead, increasing bar dues, malpractice insurance, and all of the 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?

176 See LEGAL SERVICES CORP, THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (September 2009) (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. OF LEG. ED. 531, 531 (May 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.”); Michael Zuckerman, Is There Such a Thing as an Affordable Lawyer?, The ATLANTIC, May 30, 2014, http://www.theatlantic.com/business/archive/2014/05/is-there-such-a-thing-as-an-affordable-lawyer/371746/ (noting the persistent access-to-justice issues); Martha Bergmark, We Don’t Need Fewer Lawyers. We Need Cheaper Ones., Wash. Post, Jun. 2, 2015, http://www.washingtonpost.com/posteverything/wp/2015/06/02/we-dont-need-fewer-lawyers-we-need-cheaper-ones/?tid=sm_tw (“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.”)
177 Jessica K. Steinberg, Demand Side Reform in the Poor People’s Court, 47 CONN. L. REV. 741, 743 (2015).
179 See, e.g., U.S. Dep’t of Justice, Civil Legal Aid 101, JUSTICE.GOV, http://www.justice.gov/ati/civil-legal-aid-101 (Last Visited 8/3/2015) (“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 177 at 744 (It is well documented that unrepresented litigants secure far fewer victories in court than their represented counterparts).
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. Most of those clients are large corporations. 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. 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).

Moreover, as Ian Gallacher and others note, insisting that attorneys follow either Bluebook or ALWD reinforces West’s stranglehold on the legal publishing market and thereby impinges free and open access to the law.180 West is the dominant publisher of caselaw in the United States. In some jurisdictions—twenty-nine states and the District of Columbia—it is the only publisher of state cases.181 It also holds copyrights over its key-numbering system and over the pagination of its reporters.182 Even Westlaw’s chief competitor, LexisNexis, relies on West page numbers and pays a hefty license fee for the privilege.183

Both Bluebook and ALWD require citation to the West regional reporters where possible.184 As a result, even if one can find legal sources through free resources like PACER, a court website, or elsewhere, often those sources provide only a PDF of the slip opinion or another format that omits the indicia of publication, reporter information, and West-sanctioned pagination required to compose a citation in accurate Bluebook format.185 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

180 Gallacher, supra note 137, at 499.
181 Id. at 510.
182 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).
183 Gallacher, supra note 37, at 511-12,n.112; Tussey, supra note 182, at 186 n.31 (citing Thomas Scheffey, Raiders of the West Ark, CONN. LAW TRIBUNE, Aug. 12, 1996 at 1 (reporting an initial license fee of 10 million)).
184 See BLUEBOOK, supra note 2, at 102-03 (Rule 10.3.1 (b)); ALWD, supra note 8, at 77 (Rule 12.4(b)(3))
185 Gallacher, supra note 37, 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 RAVELLAW, INC., https://www.ravellaw.com/ (Last Visited August 3, 2015). See also, Katrina June Lee, Susan Aznyder & Ingrid Mattson, 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, 49-52 (2015) (discussing Ravel and Casetext).
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 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.186

Many state courts – and most federal courts – now require that briefs filed by attorneys be submitted electronically.187 And many courts also now counsel parties to include hyperlinks to the cited authorities in those electronically filed briefs. The Texas Appellate Courts’ Guide to Creating Electronic Appellate Briefs, for example, recommends that filers “[c]onsider using 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.”188 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.”189 Several federal courts and judges even have PowerPoints, webinars, and step-by-step written instructions on how to create hyperlinks in electronically files documents.190

186 See infra notes 188-194.
187 See, e.g., 1ST CIR. ADMIN. ORDER, Regarding Case Management/Electronic Case Files System, Rules Governing Electronic Filing (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);
189 Id. at 2.
190 DISTRICT OF NEBRASKA WEBINAR http://www.ned.uscourts.gov/internetDocs/captivate/cmecf/Hyperlinking.mp4 (last visited August 6, 2014). What’s more, some courts now recommend hyperlinking to the record. See, e.g., Ariz. R. Civ. App. Proc. 13.1(3) (requiring “[e]ach 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.”); D.C. FED. CT., BANKR., ADMIN. ORDER, Related Electronic Case Filing (electronic filing mandatory for all active members in good standing of the
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.” The requirement that lawyers use hyperlinks will not happen overnight, but it will happen,” Kopf insists. And not without reason: As the Texas Guide notes, many judges and clerks appreciate hyperlinked briefs. This is true in large part because judges and clerks now read most submissions on electronic devices like computers and tablets. Judges like the portability and convenience of electronic briefs, and hyperlinks to cited materials enhance that benefit still further, 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!” resonates for a reason. As of October 2013, the iTunes app store alone included more than a million mobile apps. The Android store sells over a million more.

And there are, indeed, a plethora of mobile apps for generating citations. QuickCite emails the user accurate book citations in APA, MLA, Chicago, IEEE or Harvard styles if the user simply takes a photograph of the book’s barcode. EasyBib advertises that it can generate accurate citations in the user’s choice from among 7000 citation formats if the user simply enters the name of the book or scans the book’s bar code and selects the format. RefME advertises 6500 citation formats, and will also generate accurate citations for web content. Although attorneys and

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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.

192 Id.
193 Hawthorne, supra note 188, at 1.-
197 Id.
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* citation format, but none appears to fulfill that promise. *Zotero, RefWorks,* and *EndNote,* 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 *Bluebook*’s rules (although *Zotero* seems to come the closest, it only offers citations in academic format, not following the practitioners’ notes).

The most promising prospects, unsurprisingly, are the tech tools created specifically with legal citation in mind. *CiteGenie,* for example, is a browser plugin that its developer claims creates accurate citations—with pinpoint citations—in proper *Bluebook* format when the user cut-and-pastes text from a case on Lexis or Westlaw. It even offers limited options to format the citations following the *California Style Manual* and other state-specific citation requirements. 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 *Bluebook*’s pickiest rules to generate accurate citations. 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 *Bluebook,* *ALWD,* Westlaw, or a handful of state-specific styles. Lexis Advance and Bloomberg Law offer similar options.

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,

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generates *Bluebook*-compliant case citations.\textsuperscript{207} 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.\textsuperscript{208} 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, and I suspect that each will only become more effective in future iterations.\textsuperscript{209} And even many of the more imperfect options generate accurate, brief, clear citations quickly, 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. *The Bluebook*’s editors would be wise to consider partnering with one of the more promising apps or services that does.

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.\textsuperscript{210} Endorsed by the American Association of Law Librarians and the American Bar Association\textsuperscript{211},

\textsuperscript{207} *BESTLAW*, http://www.bestlaw.io/ (last visited August 4, 2015); Mornin, *supra* note 172.


\textsuperscript{209} Hershovitz, *supra* note 204.

\textsuperscript{210} Gallacher, *supra* note 37, 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); Coleen Barger, *The Uncertain Status of Citation Reform: An Update for the Undecided*, 1 J. APP. PRAC. & PROCESS 59, 63- (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). Barger also muses, hopefully, that neutral citation “may make the Bluebook obsolete.” *Id.* at 69.

\textsuperscript{211} Barger, *supra* note 210 at 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.
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. 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.\textsuperscript{212}

Nonetheless, this notion faces persistent resistance from courts themselves.\textsuperscript{213} 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 and cumbersome rules. 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 *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, Bluebook, 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.

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\textsuperscript{212} See Barger, *supra* note 210, at 64-66.

\textsuperscript{213} See Gallacher, *supra* note 37, at 494-95.
To better serve the needs of pro se litigants, court websites should provide a brief explanation of legal citation, along with simple and accessible citation rules for the most commonly cited materials—cases, statutes, rules, regulations, and the occasional secondary source. 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 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 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. 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 is streamlined, purpose-focused, and organized in a way that progresses logically through the key aspects of citations for the sources most frequently cited in practice. Nemerovski’s

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214 This could be an excellent project for law-school classes.
215 See Nemerovski, supra note 113, 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 22.6%, 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 Garner, The Case for Streamlining Citations, STUDENT LAWYER, (Nov. 2014) http://www.americanbar.org/publications/student_lawyer/2014-15/november/the_case_streamlining_citations.html
manual provides exactly what a first-year law student needs to learn the basics of legal citation for practice and nothing more.

Legal-writing and other law professors should dedicate little class time to teaching citation. *The Interactive Citation Workbook*\(^{217}\), the *ALWD Online Companion*\(^{218}\), and the *Mastering the Bluebook Interactive Exercises*\(^{219}\) 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.\(^{220}\) 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 “9th Cir.” 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 of academic Bluebook citation form in their selection procedures.\(^{221}\) 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. *Bluebook’s Editors*

\(^{217}\) *See* McGaugh, ICW FOR ALWD, *supra* note 165; McGaugh, ICW FOR BLUEBOOK, *supra* note 165.


\(^{220}\) *See* Nemerovski, *supra* note 113, at 91-92.

\(^{221}\) Many law reviews select members based, in part, on a competition that judges them largely on their Bluebook skills. *See* Bacchus, *supra* note 36, at 245.
Finally, 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, Bluebook’s editors—who, after all, are part of the future of the legal profession—can and should embrace that future. Provide 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) might develop software that combines generating accurate legal citations with hyperlinking.

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.