



1999

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Recommended Citation

Coleen M. Barger, *The Uncertain Status of Citation Reform: An Update for the Undecided*, 1 *J. App. Prac. & Process* 59 (1999).

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THE UNCERTAIN STATUS OF CITATION REFORM: AN UPDATE FOR THE UNDECIDED

Coleen M. Barger*

INTRODUCTION

Most judges, lawyers, and academicians take legal citations for granted. When we encounter a citation, what matters most to us is that the writer provide an accurate citation, so that we can easily locate the cited material. Secondly, we value the information the citation conveys about the weight we should accord the authority: Where did it come from? How long ago? If from a court, which one? If from a law review, was it written by an expert or a student? If a case, has it ever been affirmed, reversed, or overruled? As readers of a citation, we demand that its composition be logical and standardized, so that we can easily understand the information it furnishes and retrieve the legal authority, no matter where it originated.

When we compose citations to support our own writings, our concerns are somewhat different: What structural rules should we follow? What abbreviations are necessary? Must we provide parallel citations? As writers of citations, we crave simplicity and convenience.

These basic premises are in the process of reexamination, brought on by multiple external forces, including copyright litigation among legal publishers, the development of new

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electronic tools for information storage and retrieval, and the exertion of marketplace forces on the costs of legal research. In the years since West Publishing Company first argued its claim of copyright protection for the page numbers in its National Reporter System,¹ many have wondered about the future of legal publishing. Technological advances have given those who are computer-literate a wide array of options for legal research, although these options vary in quality, accessibility, cost, and comprehensiveness. The proliferation of electronic sites devoted to publishing both the written decisions of American courts and the enactments of our legislatures² has created many new perplexities for the researcher who wants and needs low-cost, easy-access, high-quality information.

The choice of citation format directly relates to the way legal researchers work and the places they look for information. Established modes of citation direct researchers to the traditional systems developed for reference to print sources. Thus, researchers whose preferred approach is tangible and paper-based prefer not to change the *status quo*. Those who primarily use their computers for legal research, however, are buoyed by the willingness of some jurisdictions to adopt new citation

1. See *West Publishing Co. v. Mead Data Central, Inc.*, 616 F. Supp. 1571 (D. Minn. 1985), *aff'd*, 799 F.2d 1219 (8th Cir. 1986), *cert. denied*, 479 U.S. 1070 (1987) (affirming West's preliminary injunction against competitor's use of reporters' page numbers). Whether the Eighth Circuit's grant of copyright protection to West remains good law, however, is uncertain. See *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991) (holding that a telephone company has no copyright in the arrangement of its pages); compare *Oasis Publishing Co. v. West Publishing Co.*, 924 F. Supp. 918, 931 (D. Minn. 1996) (holding that West's arrangement of the contents of the Southern Reporter, including its internal pagination, satisfies the originality and creativity requirements of *Feist* and thus is entitled to copyright protection) with *Matthew Bender & Co. v. West Publishing Co.*, No. 94 Civ. 0589, 1997 WL 266972 (S.D.N.Y. May 19, 1997), *aff'd*, 158 F.3d 674 (2d Cir. 1998) (affirming declaratory judgment in favor of intervenor that West's copyright interest in judicial opinions is limited to the syllabi, headnotes, and key numbers it provides and finding insufficient originality to grant West copyright protection for arrangement of information within the case, insertion of attorneys' names, subsequent procedural history (e.g., denial of rehearing), or editing of citations); see also *Matthew Bender & Co. v. West Publ'g Co.*, 158 F.3d 693 (2d Cir. 1998) (affirming summary judgment that publishers' use of star pagination does not infringe copyright).

2. For helpful links to free and fee-based legal research sites on the Internet, see *The National Center for State Courts* <<http://www.ncsc.dni.us/court/sites/courts.htm>>; *The Virtual Chase: A Research Site for Legal Professionals* (revised Nov. 3, 1998) <<http://www.virtualchase.com/index.htm>>; and the *Meta-Index for U.S. Legal Research* (revised Jan. 30, 1997) <<http://gsulaw.gsu.edu/metaindex>>.

systems, as well as by the efforts of groups such as the American Bar Association and the American Association of Law Libraries to develop neutral citation systems³ that will retrieve cited sources no matter where, or in what format, they were originally published.

Debate on the future of citation format has already begun, and it centers on whether traditional systems, such as the *Bluebook*, should continue to be the norm, or whether some sort of non-proprietary, non-medium-specific citation format should be universally adopted.⁴ The issues in the debate are many, and they have elicited strong, and sometimes emotional, opinions on all sides:

‣ Have legal writers and researchers so changed their actual research methods that new systems are necessary,

3. I use “neutral citation system” as a catch-all term for the new citation proposals, which are known by various monikers and which vary from one another in distinct ways. A “vendor-neutral citation” avoids directing the researcher to a particular publisher’s product. Thus, 66 U.S.L.W. 4468 is *not* a vendor-neutral citation to the United States Supreme Court’s recent decision on IOLTA accounts, as this citation references *United States Law Week*, a publication of the Bureau of National Affairs. A “public domain citation” refers to a jurisdiction’s official citation that can be found in a non-proprietary source; the term may be synonymous with vendor-neutral citation. See AALL Citation Formats Committee, THE UNIVERSAL CITATION GUIDE 4 n.12 (Tentative Draft 1998) [hereinafter AALL UNIVERSAL CITATION GUIDE]. “Medium-neutral citation” can retrieve a citation in any medium, whether print or electronic in nature. For example, *In re O’Carroll*, 1998 OK 6, is cited in a medium-neutral fashion, as the authority can theoretically be retrieved in any format, whether electronic or print. The American Association of Law Libraries calls its system one of “Universal Citation.” See AALL UNIVERSAL CITATION GUIDE, at 3. West Publishing Company’s pejorative term is the “nowhere cite.” Donna M. Bergsgaard & William H. Lindberg, *The Final Report of the Task Force on Citation Formats, March 1, 1995: A Dissenting View*, 87 L. LIBR. J. 607, 613 (1995) [hereinafter Bergsgaard & Lindberg, *Dissent*]. The ABA Proposal refers to citations that are “medium-neutral,” “generic,” “uniform,” and “universal.” See American Bar Association Special Committee on Citation Issues, *Report and Recommendations*, at ¶¶ 10-11, 22-23, 26 (visited June 23, 1998) <<http://www.abanet.org/ftp/pub/citation/report.txt>> [hereinafter *ABA Report*]. Ironically, the concept of neutral citation formats cannot be reduced to a single, agreed-upon name.

4. See, e.g., Donna M. Bergsgaard & William H. Lindberg, *Case Citation Formats in the United States: Is a Radical New Approach Needed?*, 23 INT’L J. LEGAL INFO. 53 (1995); Robert Berring, *On Not Throwing Out the Baby: Planning the Future of Legal Information*, 83 CAL. L. REV. 615 (1995); Lynn Foster, *Electronic Legal Research, Access to the Law, and Citation Form for Case Law: Comparisons, Contrasts, and Suggestions for Arkansas Practitioners*, 16 U. ARK. LITTLE ROCK L.J. 233 (1994); James H. Wyman, Comment, *Freeing the Law: Case Reporter Copyright and the Universal Citation System*, 24 FLA. ST. U. L. REV. 217 (1996); *The Cite Fight*, NAT’L L.J., Oct. 24, 1994, at A20 (editorial).

whether for ease of retrieval, improved or alternative forms of access, lower costs, or some combination of factors?

▸ Can an ideal citation method be devised to retrieve authority interchangeably from any kind of source or medium, be it slip opinion, paper compilation (e.g., reporter or looseleaf service), CD-ROM, Internet, electronic bulletin board, or on-line database?

▸ Is adoption of a neutral citation system a desirable or even an achievable goal, in light of some state courts' initiative in adopting new, but differing, citation systems as their official formats,⁵ when at the same time the federal courts have explicitly rejected change?⁶

▸ Have we already begun to see a proliferation of new formats, a development that threatens to complicate the construction, retrieval, and interpretation of citations to authority?

▸ Are the costs of changing citation systems—whether measured in an investment of dollars, convenience, or training—too high to justify making the switch?

▸ Are the costs of *not* changing systems—whether measured in monetary terms of overhead and subscriptions, or in the less easily quantified terms of being able to freely choose among competing publishers—too high to be ignored?

I suggest that the answers to the first four questions are “yes.” The answers to the latter two questions of cost are more difficult to assess, because there are so many variables, but for many (and perhaps, most) jurisdictions, the answers are also “yes.” I reached these conclusions after a great deal of internal debate. First, as a writer and researcher who likes paper (I must

5. Louisiana was the first, in 1994. Louisiana's official format requires citation of the case's appellate docket number, but still uses West's Southern Reporter for the source. Other states that have adopted citation formats significantly different from standard *Bluebook* format are Maine, Montana, New Mexico, North Dakota, Oklahoma, and South Dakota. Minor changes (*i.e.*, numbering each paragraph of the opinion) have been instituted in Arizona, Colorado, Mississippi, Missouri, and Wisconsin. *See infra* section IV and text accompanying notes 125 through 144.

6. In the fall of 1997, the Judicial Conference of the United States declined to adopt the uniform citation system proposed by the American Bar Association. Administrative Office of the U.S. Courts, *Press Release* (Sept. 23, 1997) <http://www.uscourts.gov/Press_Release/jc997.htm>; *see also* text accompanying notes 80 to 89, *infra*. This action echoed the Judicial Conference's 1991 decision to similarly forego adoption of a new system.

print out the results of my electronic searches; I hate to read from the screen), I'm uncomfortable with change, even if it's inevitable. Moreover, the prospect of personally re-learning and juggling different systems of citation format is daunting to me, and I am a person who teaches the topic to law students. But the shapes and methodologies of legal research are changing rapidly, and decisions must be made, not postponed indefinitely. While I remain unsatisfied that any of the existing or proposed systems are perfect, my research persuades me that, when accompanied by a traditional parallel citation, a neutral citation can accommodate the needs of both researchers and writers.

After a great flurry of attention between 1994 and 1997, the rhetoric on citation issues has quieted, or perhaps, the energies have simply been diverted into related projects.⁷ Still, the overall question whether to change citation systems has not been resolved for the majority of American courts, and it deserves attention and action. Because a number of courts have not yet confronted or made final decisions on whether to adopt new citation systems, this article will explain the impetus behind creation of neutral citation formats; describe an existing theoretical model that may be used to evaluate competing proposals; present summaries of those competing systems, noting both their advocates' claims and their critics' objections; and update the reader on the present status of the movement toward neutral citation.

I. WHY CONSIDER A NEW CITATION SYSTEM?

The movement to promote neutral citation has a complicated history. It has been propelled in large part by (1) efforts to encourage general competition in the marketplace to

7. For example, in the fall of 1998, the AALL Committee on Citation Formats published the Tentative Draft of its UNIVERSAL CITATION GUIDE. The Tentative Draft was preceded by three "draft user guides" to neutral citation for case law, statutes, and administrative authorities. See AALL Citation Format Committee, *The Universal Legal Citation Project: A Draft User Guide to the AALL Regulatory Citation: Administrative Codes and Regulations* (revised July 31, 1998) <<http://www.aallnet.org/committee/citation/regulatory.html>>; AALL Citation Formats Committee, *The Universal Legal Citation Project: A Draft User Guide to the AALL Universal Case Citation*, 89 L. LIBR. J. 7 (1997); AALL Citation Format Committee, *The Universal Legal Citation Project: A Draft User Guide to the AALL Universal Statutory Citation*, 90 L. LIBR. J. 91 (1998).

lower the costs of legal research; (2) the discovery by some states that they were not the proprietors of their own law; (3) an interest in facilitating new modes of electronic legal research, particularly as more jurisdictions put their laws on the Internet; (4) a dissatisfaction with the *Bluebook*; and (5) a growing concern that the activities of individual states in developing their own citation formats will lead to a break-up of standardized citation systems.

*A. By Facilitating Increased Competition Among
Legal Publishers, a Neutral Citation System May Reduce the
Costs of Legal Research*

Since the *Bluebook* mandates citation to West regional reporters if the decision is available there,⁸ all researchers have historically been obligated to provide West's internal page numbers in their citations, regardless of where they may have originally found the cited material. Not surprisingly, West's competitors would like to provide these West page references in their own publications, as a service to their customers. West has not been shy about defending its turf.⁹ For example, in protecting its publications from those it views as infringing upon its product, West asserts a copyright claim for its page numbers.¹⁰ West will license these page numbers to its

8. See THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 61 (Columbia Law Review Ass'n et al., eds., 16th ed. 1996) (Rule 10.3.1(b)) [hereinafter BLUEBOOK].

9. See, e.g., Bruce Rubenstein, *Competitors Eager to See if West Will Loosen Its Grip: Legal Publishing Company under Fire and under Scrutiny*, CORP. LEGAL TIMES, Jan. 1995, at 24 ("West placed an ad in the [November 1994] Washington Post . . . accusing other legal publishers and TAP [the Ralph Nader-affiliated Taxpayer Assets Project] of masquerading as public interest advocates, but in reality promoting a giant boondoggle by advocating a taxpayer-supported legal citation system. Such a system is precisely what TAP and other interested parties have in mind, but they claim it would be cost effective, foster a healthy competition in the legal publishing industry and better serve the attorneys and law librarians who are its clients.").

10. See, e.g., *United States v. Thomson Corp.*, 949 F. Supp. 907, 910 (D.D.C. 1996) (in reviewing consent decree to approve the merger of West Publishing Company and Thomson Corporation, the court remarked that "West maintains that anyone who uses or copies its 'star pagination' is infringing its copyright. Thus, existing or potential participants in the market for primary law products cannot offer products with star pagination without the threat of costly copyright litigation.").

competitors, but at a stiff price.¹¹ Thus any publisher who pays this license fee must pass on the cost to its customers.

Law librarians, not surprisingly, care greatly about reducing the monetary costs of maintaining collections and performing research,¹² as do practitioners who maintain some sort of “law library” within their offices.¹³ Typically, these are the costs associated with acquiring, maintaining, and updating research materials. It is less expensive to connect on-line than to pay subscription prices to keep book collections current. In addition, increased competition has tended to bring down the price of research materials that are available in CD-ROM format.¹⁴ Despite these savings, however, others point to the major capital investment required to develop adequate electronic infrastructures to publish, archive, and enable searching of a jurisdiction’s laws.¹⁵ Costs to a court system may also include the hiring of additional personnel, or the acquisition of new

11. See Kelly Browne, *Battle Erupts over Citation Format*, NAT’L L.J., July 17, 1995, at C5.

12. *President’s Briefing: The Path to Citation Reform*, AALL SPECTRUM, July 1998, at 14, 16 (arguing that “all of the jurisdictions that have changed their citation form seem to have done so without incurring any of the enormous costs [of establishing an electronic infrastructure for collecting and archiving the law] predicted by critics”).

13. The earliest proposal to create a national system of neutral citation came in 1992, supported by such groups as the New York Bar’s General Practice Section and its Law Office Economics Management Committee, largely because “[i]ts potential for reducing the high cost of computer legal research was . . . of particular importance to solo and small firm practitioners.” Eric L. Brown, *Inexpensive Computer Research Plan Dealt Death Blow by Judicial Conference of the United States*, N.Y. ST. B.J., Feb. 1993, at 57.

14. AALL points to Louisiana as an example: “[B]efore Louisiana changed its citation form, researchers paid \$3500 as a one-time cost for the only available CD-ROM version of Louisiana law. Quarterly updates cost \$720 per year. Once the court changed its citation form, other publishers were able to produce competing CD-ROM products, and the basic cost of Louisiana law on CD-ROM dropped to zero, with only an updating cost of \$720 per year.” *President’s Briefing: The Path to Citation Reform*, *supra* note 12, at 14, 16.

15. Editors of the *National Law Journal* cautioned governmental entities against getting into the business of collecting, publishing and archiving the law: “[S]hould . . . government undertake a major and costly program to perform a function that has been handled well by the private sector? . . . [M]any of the changes that [neutral citation’s] advocates seek appear to be evolving naturally within the rapidly growing environment of electronic publishing.” *The Cite Fight*, NAT’L L.J., Oct. 24, 1994, at A20 (editorial). West has cited an Arthur Andersen & Co. study that projected the cost to Wisconsin taxpayers of archiving and maintaining an electronic archive of that state’s case law at \$195,000 for the first year and approximately \$155,000 per year thereafter. Donna M. Bergsgaard & Andrew R. Desmond, *Keep Government Out of the Citation Business*, JUDICATURE, Sept.-Oct. 1995, at 61 n.1.

software, to number paragraphs and assign sequential opinion numbers. The cost of re-training lawyers to use a new system must also be considered, some argue.¹⁶ Thus, in making the decision whether to move to a neutral citation format, a court should commission its own study to determine both costs and savings, and in making its decision, balance its own needs with the needs of its constituents—the lawyers, the academics, the other courts, the lay public—who will be constrained to use the citation format mandated by that court.

B. A Neutral Citation Format May Facilitate a State's Decision to "Own" Its Laws by Maintaining Publication Rights in its Primary Law Materials

Some have argued that a major reason for pursuing citation reform lies in the question of "ownership" of a state's laws. For example, in jurisdictions that have no official reporters, or whose official reporters are published by private companies like West, the contention is that the publisher's assertion of copyright in its product results in the state's loss of ownership of the law once the publisher prints the opinion in its reporter.¹⁷ As one commentator argues, "In the case of statutory and judicially declared legal decisions, the content of the law belongs properly in the public domain as an information asset belonging to the body politic."¹⁸ West counter-argues that governmental proprietorship will act as a disincentive to legal publishers to collect, compile, and disseminate the law.¹⁹

A neutral citation format is ideally suited to retrieval of materials from an electronic source, since the citation can be used "as is" to get the information. If the researcher wishes to

16. See, e.g., Julius J. Marke, *Impact of Technology on Legal Citation Form*, N.Y. L.J., July 16, 1996, at 5 (agreeing with Berkeley librarian Robert Berring that switching systems will entail huge costs and risk chaos).

17. See Jeffrey Nelson, *Bar Petitions Court to Make Changes in Citation System*, ARIZ. BUS. GAZETTE, June 5, 1997, at 19 (quoting author of then-pending petition to Arizona Supreme Court: "Uniform citation can lower the cost of citing the case law and court opinions by restoring ownership of such information to the public and eliminating single vendor ownership of the law.").

18. Anne Wells Branscomb, *Lessons from the Past: Legal and Medical Databases*, 35 JURIMETRICS J. 417, 421 (1995).

19. See, e.g., Bergsgaard & Desmond, *supra* note 15, at 65-66.

find the authority in a private publisher's product, however, he may need to use a table to "translate" the citation, much as one presently consults Shepard's or a like product to "translate" a state's official reporter citation to the West regional reporter equivalent. Given researchers' familiarity with this kind of cross-referencing and given that this kind of translation has not been much of an impediment to West in the past, the publisher's disincentive argument is not convincing. Beginning with a neutral citation may require the researcher to perform an extra step to obtain the source of his choice, but it does not prevent the researcher from ever getting it.

C. A Neutral Citation Format May Assist Legal Researchers in Utilizing Legal Information Sites on the Internet

The Internet offers legal researchers a convenient way to access legal information sites, and more sites are coming on line every day.²⁰ Even with this proliferation of information on the Internet, however, there are some impediments to its becoming a predominant source for finding primary law.²¹ One problem is the "ephemeral nature" of the Internet.²² The ease of electronic publishing means that a document can be instantly posted to a site, but it is also true that it can just as easily vanish: "[G]iven the fluid nature of the Internet, the electronic document may or may not be there for later examination."²³

A second problem is quality control. As one reviewer explained, "Anyone can publish anything, and claim it is the direct word of God or, for that matter, the Court of Appeals for the Federal Circuit. There are no watchdogs on the Internet, so researchers must beware."²⁴

20. See *supra* note 2.

21. See Peter B. Maggs, *The Impact of the Internet on Legal Bibliography*, 46 AM. J. COMP. L. 665, 666 (1998).

22. *Id.* at 668-69.

23. Law librarian Mark Giangrande, quoted in *Law Librarians Become Tech Sleuths: Panelists from All Strata Agree: Keeping Up with Changes Means Being Even More Resourceful*, NAT'L L.J., July 22, 1996, at B11.

24. Cary Griffith, *Three Hot Web Sites Attorneys Should Check Out*, CORP. LEGAL TIMES, Oct. 1997, at 18 (third in a series of reviews of legal publishers with products on the Internet, including West).

A third difficulty concerns the use and retrieval capabilities of the search mechanisms employed by the various sites. If a researcher is armed with a neutral citation to the information he's seeking, most Internet research sites will let him type in the citation and instantly retrieve the requested authority. Some are ill-equipped to handle a subject-matter search, however, and even if they do, they typically do not offer the researcher a way to limit or refine the search results.

Finally, if legal research on the Internet is destined to become the norm, one may question whether it is necessary to devise a new citation system. After all, we already have a standard for referring to resources on the World Wide Web, courtesy of the *Bluebook*.²⁵

None of these concerns apply, of course, to established on-line databases such as Westlaw and LEXIS, both of whom are now accessible, for a fee, on the Internet. These companies are already committed to maintaining and preserving a permanent on-line database of the law, to exercising quality control over the primary source materials that are added to the database, and to providing logical and easy-to-use search and retrieval methods.²⁶ Moreover, it is already possible to retrieve authority with a truncated citation;²⁷ would it be that difficult to add a neutral citation as well? As other publishers establish an Internet presence, and as new publishers establish trustworthy reputations, these concerns may dissipate for them as well.

*D. Widespread Adoption of a Neutral Citation Format May
Make the Bluebook Obsolete, or at Least,
More Amenable to Change*

Although the local rules and customs of American jurisdictions have always produced some minor variations in

25. See BLUEBOOK, *supra* note 8, at 124 (Rule 17.3.3). The *Bluebook* establishes this model: <http://www.domainname/sitename/pagename>. See also Bergsgaard & Desmond, *supra* note 15, at 61, 65 (suggesting that the marketplace may well the adopt the "www" citation form, thus rendering "obsolete" the neutral formats being propounded).

26. After all, if Boolean term and connector searches were all that easy to master, no one would have seen a need to develop natural language search engines.

27. For example, on Westlaw I can presently use either the command FI 280ark142 or FI 655sw2d415, neither of which would satisfy the editors of the *Bluebook* as proper, to retrieve *Superior Seeds, Inc. v. Crain*, 280 Ark. 142, 655 S.W.2d 415 (1983).

basic citation form, in recent decades the gold standard for citations has been the *Bluebook*, a citation manual produced by the law review editors of Harvard, Columbia, Pennsylvania, and Yale.²⁸ The *Bluebook* has been in existence for most of this century, and yet its venerable status has not rendered it immune to criticism.²⁹

If West has been the 800-pound gorilla of legal publishing, its counterpart in citation circles has been the *Bluebook*.³⁰ Although recent editions have acknowledged the existence of a few electronic sources,³¹ the *Bluebook's* preference is that the researcher cite to print, and it rigidly insists, for citation to cases, that West's regional reporters be the sole print source.³²

28. See BLUEBOOK, *supra* note 8. For a detailed study of the development and coverage of the *Bluebook*, see A. Darby Dickerson, *An Un-Uniform System of Citation: Surviving with the New BLUEBOOK*, 26 STETSON L. REV. 55 (1996). Professor Dickerson explains that until publication of the Twelfth Edition of the *Bluebook* in 1976, the *Bluebook* was intended solely as a guide for citing authorities in law review footnotes. *Id.* at 62 n.49.

29. Each new edition of the *Bluebook*, particularly in recent years, inspires a vigorous round of critique. See, e.g., Paul Axel-Lute, *Legal Citation Form: Theory and Practice*, 75 L. LIBR. J. 148 (1982) (critiquing the 13th edition of the *Bluebook*); Barry D. Bayer & Benjamin H. Cohen, *Pot Pourri: Desktop Notes, Custody Software, the Latest Bluebook, and the Death of WLN*, L. OFFICE TECH. REV., Jan. 22, 1997, available in 1997 WL 53469 (critiquing the 16th edition); Dickerson, *supra* note 28, at 57 (critiquing not only the 16th edition, but covering "seventy years of *Bluebook* history"); James W. Paulsen, *An Uninformed System of Citation*, 105 HARV. L. REV. 1780 (1992) (book review of the 15th edition).

30. As a law professor who teaches legal writing, I frequently receive examination copies of new texts on legal writing, all of whom refer to the *Bluebook*, as well as new workbooks and guides to using the *Bluebook*. Cornell Law School features a web site devoted to learning the *Bluebook: Introduction to Basic Legal Citation*, at <<http://www.law.cornell.edu/citation/citation.table.html>> (visited Aug. 10, 1998). In 1991 John Doyle surveyed state courts to determine which ones required adherence to the *Bluebook*; he found thirty-three who did. See AALL Task Force on Citation Formats, *The Final Report of the Task Force on Citation Formats, March 1, 1995*, 87 L. LIBR. J. 580, 589-90 ¶ 24 & n.39 (1995).

The *Bluebook's* continued dominance in the law schools may be in jeopardy, however. In a survey taken by the Association of Legal Writing Directors ("ALWD") in early 1998, out of seventy-eight legal writing professors responding, one hundred per cent reported using the *Bluebook* in basic legal writing courses. Answering a question whether these professors would be willing to switch to a new citation system, almost 40% responded "yes," and 50% responded "maybe." Association of Legal Writing Directors, *1998 Citation Project Survey* [hereinafter *ALWD Survey*] (materials on file with the author).

31. See BLUEBOOK, *supra* note 8, at 68 (Rule 10.8.1(a)), 123-24 (Rule 17.3). Over 80% of the ALWD survey respondents agreed that one of the features of critical importance in a citation manual is "detailed coverage of electronic sources." *ALWD Survey, supra* note 30.

32. See BLUEBOOK, *supra* note 8, at 61, 68 (Rules 10.3.1(b), 10.8.1(a)).

As some of its critics have pointed out, the traditional *Bluebook* method is complicated, internally inconsistent, and unsuitable for many kinds of research sources, including CD-ROM and electronic bulletin board systems.³³ It has been criticized for being the work product of law students with little or no experience in the real world of law practice.³⁴

It has the advantage, however, of long years of primacy. One question is whether courts are willing to let the student editors decide, in the Seventeenth Edition of the *Bluebook* (due about 2001), that they should adopt a neutral citation format. Other questions are whether the *Bluebook* will maintain a version of its present rule that mandates neutral citation only for those jurisdictions that have gone to a public domain system, and whether it will modify that rule to match what the jurisdictions have actually developed. Pending developments in citation reform may greatly influence the eventual answers to these questions.

E. Wide-Spread Adoption of a Neutral Citation Format May Halt Further "Balkanization" of Citation Systems

The term "balkanization," when used in the citation reform discussion, refers to the potential chaos that would result from the break-up of a standardized citation system into a multitude of jurisdiction-specific formats.³⁵ The obvious advantage of having a widely accepted citation standard (such as the *Bluebook*) is that it simplifies the process for researchers and

33. See *infra* note 65.

34. See Dickerson, *supra* note 28, at 89-90; Hope Viner Samborn, *What's New in Blue: Citation Guidelines Change Along with Times*, A.B.A. J., Dec. 1996, at 16.

35. The first to use the term was Kay Todd, the AALL president who appointed the AALL Task Force on Citation Formats. See *AALL Task Force Report*, *supra* note 30, at 582 ¶ 1 ("It was hoped that AALL could add its voice to the national dialogue on this issue, speaking for uniformity and against the 'Balkanization' of new citation forms."). Perhaps because "balkanization" so aptly describes the situation of multiple co-existing rules and formats, other commentators soon incorporated it into their works. See, e.g., Robert J. Ambrogi, *Internet Use Creates Call for New Citation System*, RES GESTAE, Apr. 1996, at 35 ("With each state free to adopt its own system, citations would become Balkanized."); Gregory C. Sisk, *The Balkanization of Appellate Justice: The Proliferation of Local Rules in the Federal Circuits*, 68 U. COLO. L. REV. 1, 12-13 (1997) (discussing, among other inconsistent rules of appellate procedure, the practice of some circuit courts of appeal to mandate their own rules of citation format).

readers who work with authorities from more than one jurisdiction. With a single pattern to follow, it is much easier to compose a citation. For readers, a standardized format enhances comprehension of the citation and retrieval of the authority it references.

It is therefore puzzling why, as courts continue to join the modest, yet growing ranks of jurisdictions converting to neutral citation formats, some feel obliged to craft maverick citation formats.³⁶ Such action not only creates a double citation standard for attorneys and judges within those states—one rule for home laws, another rule for foreign laws—but it contributes to a bewildering melange of formats for attorneys, judges, and legal academicians who work outside those states, yet would like to study and use their laws.

Someone defending these jurisdictions might argue that it is too early to settle on the one true form of neutral citation; that experimentation is healthy; that we do not yet know which of the new research and archive technologies will survive or which will become predominant. We do not know how well the purported models of national citation will work for evolving technology.

In my opinion, however, we need to find a national standard, and quickly. It can always be modified as technology or other developments require (even the *Bluebook* mutates every few years). Unique formats are the citation equivalent of the 8-track tape, the Betamax, and the 5¼" floppy disk.

II. A THEORETICAL EVALUATION OF CITATION FORMAT

Conceived as the theoretical framework for a 1982 critique of the *Bluebook*,³⁷ Paul Axel-Lute's thirteen principles of citation nonetheless furnish a valuable method of evaluating

36. Courts presently using unique systems include the Sixth Circuit Court of Appeals, Louisiana, Mississippi, and New Mexico. See *infra* text accompanying notes 121, 131, 135, 139, and Figure 2, Federal and State Neutral Citation Formats. The Sixth Circuit and Louisiana may be partially excused because they adopted their systems before any of the national models for neutral citation were developed. Moreover, the Sixth Circuit's form is used only when its opinions are initially posted to its electronic bulletin board; once the cases are published in the Federal Reporter, the citation to the reporter is used. No plausible excuse exists for the other courts.

37. Axel-Lute, *supra* note 29.

existing and proposed citation formats.³⁸ Axel-Lute possessed an almost clairvoyant view of the issues presently confronting citation format, as demonstrated by the fact that each side in the present debate has invoked his principles.³⁹

The first of Axel-Lute's principles is "uniqueness." While Axel-Lute explains simply that "[a] citation should contain sufficient information to identify unambiguously the material cited,"⁴⁰ he surely also contemplates that a given citation should distinctively refer to its authority and should lead the reader straight to the cited authority and no other. Perhaps conceptually related to the "uniqueness" principle is Axel-Lute's "dissimilarity among forms" principle. He would maximize "[t]he dissimilarity among citation forms of material likely to be cited in the same context" in order "to minimize the possibility of confusion among similar forms."⁴¹ In like manner, his "informativeness" principle seeks to provide the reader with "the information that is most likely to be useful . . . in understanding and evaluating the authority."⁴²

The "brevity" principle is highly relevant to the issues of citation reform. This principle cautions against a citation being

38. Axel-Lute, *supra* note 29, at 148.

39. See *AALL Task Force Report*, *supra* note 30, at 588-89 (describing Axel-Lute's principles as "a starting point for any discussion of legal citation form"); Bergsgaard & Lindberg, *Dissent*, *supra* note 3, at 618 (emphasizing Axel-Lute's endorsement of parallel citations); Berring, *supra* note 4, at 631 n.62 (calling Axel-Lute's article "the touchstone for citation discussion"); Wyman, *supra* note 4, at 271-74 (comparing traditional and neutral citation systems under the Axel-Lute principles).

Perhaps recognizing that Axel-Lute's principles do not firmly support the case for a new citation system, AALL and the Wisconsin State Bar Technology Resource Committee argue the addition of four more items to the list: "precision, public domain, longevity, and universality." See *AALL Task Force Report*, *supra* note 30, at 589 ¶ 22 & nn. 34-37 (citing Wisconsin State Bar Technology Resource Committee, *Proposed Citation System for Wisconsin: Report to the Board of Governors* (1994) <<http://www.law.cornell.edu/papers/wiscite.overview.htm>>. In my mind, three of the four are unneeded. The "precision" principle addresses the same qualities as Axel-Lute's "uniqueness" principle, as both seem aimed at directing the researcher to a particular authority and no other. "Public domain" describes a form of citation, not a theoretical principle. "Longevity" is the same thing as "permanence." Although "universality" has some overlap with "standardization," it also addresses a facet that Axel-Lute could not have contemplated in 1982, that authorities would become accessible in a wide array of formats, whether print, CD-ROM, on-line, or web-based.

40. Axel-Lute, *supra* note 29, at 148.

41. *Id.* at 149.

42. *Id.* at 148.

“longer than necessary,” and urges that “[t]he most commonly cited sources should have the briefest forms.”⁴³ In harmony with this principle are the principles of “simplicity of system,” urging that citation rules be kept few in number and that analogous materials employ analogous forms, and “standardization,” relying upon, if not the *Bluebook*, “some uniform system of citation.”⁴⁴

The “similarity-to-original” principle is also relevant to citation reform:

A citation form should be as close as possible to the full identifying information on the cited material. The writer should be able to determine easily the proper form having the material in hand. The reader should be able to recognize the meaning of the citation easily. A citation form should minimize the need to refer to tables or other tools in order to cite or to interpret a citation.⁴⁵

This principle speaks loudly for creation of user-friendly systems. The more tables, abbreviations, and cross-references needed to create or decipher a citation, the harder the system is to use and to apply.

Axel-Lute also stresses the importance of logically arranging the internal elements of a citation (the “logic” principle), of providing stable information in a citation (the “permanence” principle), and of devising a format that can be easily expressed in handwriting, typing, or voice, and that is machine-readable (the “readability/transcribability” principle).⁴⁶

Axel-Lute acknowledges that some of his principles are contradictory, such as his preference for “redundancy,” insisting that not only should a citation “contain enough information to enable the cited material to be identified correctly even if” the citation contains an error, but also that it should contain parallel references, in order that the reader can “find it in the most convenient source.”⁴⁷ Despite his emphasis on simplicity and logic, he also values “tradition,” stressing that

43. *Id.*

44. *Id.* at 149.

45. *Id.*

46. *Id.*

47. *Id.* at 148.

“[a]uthority should be cited the way it has been cited previously, in order to avoid a confusing multiplicity of forms.”⁴⁸

The last of his named principles, “honesty,” when applied to the present debate, highlights the clash between the needs and goals of traditional and electronic researchers: “The writer should cite the source that was actually used, rather than another source for the same material.”⁴⁹

We should consider these criteria when evaluating the potential of each of the national contenders for neutral citation. While no citation system will satisfy all thirteen, any which addresses a significant majority of Axel-Lute’s principles deserves our serious consideration.

III. THE CONTENDERS

Although several states have adopted some form of neutral citation,⁵⁰ generally speaking, no state-developed system has been touted as an ideal for the nation to follow. Indeed, the development of unique neutral citation formats in the states of Louisiana, Mississippi, and New Mexico is the best evidence that the nation would be better served if courts adhered to a national standard. Among the standards presently vying for acceptance as the national model, with varying levels of success, are the *Bluebook*, the American Bar Association (“ABA”) uniform citation, and the American Association of Law Libraries (“AALL”) universal citation. Despite the *Bluebook*’s head start on the other systems, no state’s court rules make explicit reference to its neutral citation alternative. The ABA model has been adopted by Maine, Montana, North Dakota, Oklahoma, and South Dakota. No state has yet adopted the AALL format, but it has only just begun to be widely disseminated or publicized outside the milieu of law librarians.

48. *Id.* at 149.

49. *Id.*

50. See *infra* section IV and notes 125 to 144.

A. The *Bluebook*

Whether one slavishly follows its dictates or not, every law-trained writer in the United States is familiar with the *Bluebook*.⁵¹ As its authors proclaim, “[t]he basic purpose of a legal citation is to allow the reader to locate a cited source accurately and efficiently.”⁵² The citation forms prescribed by the *Bluebook* “seek to provide the minimum amount of information necessary to lead the reader directly to the specific items cited.”⁵³

The traditional *Bluebook* citation to case authority mandates inclusion of several elements: “the name of the case; the published sources in which it may be found, if any; a parenthetical that indicates the court and jurisdiction and the year or date of decision; and the subsequent history of the case, if any.”⁵⁴ Despite the reference to “published sources in which [the authority] may be found,” the *Bluebook* strictly regulates *which* published sources are acceptable. Official reporter citations, including public domain citations, are used only in documents submitted to the court whose official reporter or public domain form is implicated.⁵⁵ In other words, unless the citation appears in some sort of document that will be filed in a state court, the writer should not use a parallel citation to that state’s official reporter. Instead, the only permissible citation is to the “relevant regional reporter,” provided that it contains the cited authority.⁵⁶ Only where the case is not available in one of the regional reporters may the writer cite an alternate source. Even in this situation, however, the *Bluebook* does not permit the writer to choose the alternative source, but rather sets out a strict hierarchy of the alternatives: “If a case is not available in an official or preferred unofficial reporter or as a public domain citation, cite to another unofficial reporter, to a widely used

51. See BLUEBOOK, *supra* note 8.

52. *Id.* at 4.

53. *Id.*

54. *Id.* at 55 (Rule 10.1, Basic Citation Forms).

55. *Id.* at 14 (Rule P.3, Parallel Citations for State Court Cases).

56. *Id.* at 61 (Rule 10.3.1(b), Case Citations in All Other Documents).

computer database,⁵⁷ to a service, to a slip opinion, or to a newspaper, in that order of preference.”⁵⁸

The *Bluebook*'s acknowledgment and acceptance of public domain citations is a recent innovation, available for the first time in the Sixteenth Edition.⁵⁹ However, since few experienced legal writers are likely to consult the *Bluebook* rules for basic questions of case citation, it may be that a great many lawyers (and some courts) do not know that the *Bluebook* now mandates a specific public domain citation format for those jurisdictions that use them.⁶⁰ Because the *Bluebook* editors had to devise a format for public domain citations at a time when very few such creatures existed, the *Bluebook*'s sample citations are to fictitious cases.⁶¹

Here's an illustration. A writer trained in the classic *Bluebook* tradition might expect the citation to a recent real case from Maine to be:

Alley v. Parker, 707 A.2d 77 (Me. 1998).

That citation is, however, incorrect according to the new *Bluebook* mandate. Maine is in fact one of the states with a

57. Despite the neutral-sounding language, the *Bluebook* does not define what it means by “widely used electronic database.” One can infer, however, that it is referring solely to Westlaw and LEXIS, since only these databases are used in the *Bluebook*'s examples. *See id.* at 68 (Rule 10.8.1(a), Cases Available on Electronic Databases).

58. *Id.* at 62 (Rule 10.3.1(b), Case Citations in All Other Documents) (internal rule cross-references omitted).

59. *Bluebook* rule 10.3.1(b) explains that

[i]f the decision is available as an official public domain citation (also referred to as a medium neutral citation), that citation should be provided instead [of a sole citation to the regional reporter]. A parallel citation to the regional reporter may be provided as well. When citing a decision available in public domain format, provide the case name, the year of decision, the name of the court issuing the decision, and the sequential number of the decision. When referencing specific material within the decision, a pinpoint citation should be made to the paragraph number at which the material appears in the public domain citation.

Id. at 61-62.

60. As Figure 2, *infra*, illustrates, what the *Bluebook* requires and what the state appellate courts require are not at all the same.

61. BLUEBOOK, *supra* note 8, at 62 (Rule 10.3.1(b), Case Citations in All Other Documents). The *Bluebook* created fictitious citations as illustrations, one of which is a case hypothetically decided by the Wisconsin Court of Appeals:

Jenkins v. Patterson, 1997 Wis. Ct. App. 45, ¶ 157, 600 N.W.2d 435.

Id. (not italicizing the case name because the *Bluebook*'s example illustrates law review footnote style).

public domain system.⁶² Proper *Bluebook* citation to the *Alley* decision is:

Alley v. Parker, 1998 Me. 33, 707 A.2d 77.

The *Bluebook's* neutral citation rule, because it uses a parallel citation, easily satisfies the Axel-Lute principles of uniqueness, informativeness, logic, similarity-to-original, redundancy, tradition, and honesty. Presence of the parallel citation promotes the quality of dissimilarity among forms. Since the neutral format gives an indication both of the deciding court and the year of decision, the *Bluebook* wisely eliminates the parenthetical that would otherwise follow the regional reporter information, thus achieving brevity. Moreover, since the citation indicates both the permanent sequential number and the final print publication data, it demonstrates permanence.

Use of a traditional geographical abbreviation affects both the readability/transcribability and logic principles, but this criticism can be applied to any of the *Bluebook's* rules, not just the neutral citation rule. In fact, the complexity of the *Bluebook's* general approach to abbreviations weakens it under the principle of simplicity of system. Finally, the *Bluebook* arguably fails the standardization principle, since to date, no court has chosen to follow its model.

Public criticism of the *Bluebook* has not, however, dwelt on its failure to provide a model of neutral citation for every jurisdiction. In fact, one of the *Bluebook's* leading critics has lauded its decision to provide a format for public domain citations for the handful of jurisdictions that use them.⁶³ Criticism of the current *Bluebook's* treatment of electronic media has instead centered on its dependence on National Reporter System products,⁶⁴ on the absence of rules pertaining to citation of bulletin board systems and CD-ROM products,⁶⁵ and

62. See *infra* text accompanying note 134.

63. Dickerson, *supra* note 28, at 70-71 ("Fortunately, the *Bluebook* editors had the good sense to include a new section on public domain citations.").

64. See *AALL Task Force Report*, *supra* note 30, at 590-91 ¶¶ 29-31.

65. See Bayer & Cohen, *supra* note 29. See also *AALL Task Force Report*, *supra* note 30, at 594 ¶ 39 (remarking that "*Bluebook* rules, and convention, are such that, although a court would accept a citation to one decision from, e.g., a bulletin board service, that same court would reject the brief if it contained citations *only* to bulletin board services or the Internet or other 'unrecognized' citation forms."). *AALL* also criticized the *Bluebook* for not mentioning citation to the Internet, *id.*, but the *Bluebook's* Sixteenth Edition rectified

on the student editors' insensitivity to practitioners' obligation to follow court-mandated citation rules.⁶⁶ One might also question whether the *Bluebook* acted too hastily—or without sufficient foresight of the limitations of a neutral citation—in dropping the general parallel citation requirement (even though it kept it for public domain citations).⁶⁷ And yet at least one commentator sees the *Bluebook's* neutral format rule as “the preferable approach,” given his opinion that the *Bluebook* is so firmly entrenched as citation authority that no would-be competitor can take its place in the market.⁶⁸

Although the neutral citation rule of the Sixteenth Edition has not been officially adopted anywhere, the *Bluebook's* acknowledgment of public domain resources indicates its willingness to change with the times. Further, because so many courts require brief writers to follow *Bluebook* rules in drafting their citations,⁶⁹ we arguably already have a widespread form of neutral citation applicable to the jurisdictions whose opinions are available in the public domain, if courts will give it their imprimatur. Moreover, the upcoming Seventeenth Edition may, and most likely will, devote significant attention to the neutral citation. The student editors of the *Bluebook* should, however, seek input from both bench and bar in determining the format of any neutral citation rule they devise.

the omission by adding rule 17.3.3, “Internet Sources.” This article’s citations to Internet sources follow rule 17.3.3.

66. See Samborn, *supra* note 34, at 16.

67. The parallel citation requirement was changed in the Fifteenth Edition of the *Bluebook*, the first edition to feature special citation modification for practitioners. See THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review *et al.* eds., 15th ed. 1991) at 14 (Rule P.3, Parallel Citations for State Court Cases; Rule 10.3.1(b), Case Citations in All Other Documents).

This requirement, however, reveals another of the *Bluebook's* inconsistencies. Where a state has an official reporter, it has a public domain source, even though decisions are published on paper. Only where the public domain source is electronic does the *Bluebook* require parallel citation. The rule should be the same for each.

68. Maggs, *supra* note 21, at 667.

69. See *supra* note 30 (discussing John Doyle’s 1991 survey of state courts requiring citation to the *Bluebook*).

B. The American Bar Association Proposal

Developing a national citation format was a natural goal and project for the ABA. The genesis of the ABA Proposal came in 1993 from a proposed resolution by the ABA's Judicial Electronic Document Interchange ("JEDI") Committee, recommending study of the feasibility of neutral citations.⁷⁰ In 1995, a Special Committee on Citation Issues was appointed to study and recommend a policy on citation formats. Part of the impetus for the Committee's formation was concern that the various approaches being considered by the states were too different from one another: "The thought was that since none of the states was doing the same thing, we needed national cooperation."⁷¹ The Committee's May 23, 1996 Report called for "all jurisdictions to adopt a system for citation to case reports that would be equally effective for printed case reports and for case reports electronically published on computer discs or network services."⁷² The Committee devised a standardized format for case citations,⁷³ and on August 6, 1996, the ABA's House of Delegates approved a motion recommending the ABA Proposal to the courts.⁷⁴

The arrangement of elements in the ABA citation format begins with the case name, followed by year of decision, court abbreviation (using postal codes for geographical abbreviations), sequential opinion number, and specific paragraph reference if needed for pinpoint citation.⁷⁵ The ABA format also counsels addition of a parallel citation to a print version of the case. Justifying inclusion of the parallel citation, the Special Committee observed that courts and lawyers needed a format

70. See Foster, *supra* note 4, at 252.

71. Jill Schachner Chanen, *In the Matter of Cites: ABA Committee Studies Pros, Cons of Current West System*, A.B.A. J., Feb. 1996, at 87 (quoting Committee Chair J.D. Fleming).

72. *ABA Report*, *supra* note 3.

73. See *infra* text accompanying notes 75 through 76.

74. American Bar Association, *Official Citation Resolution, History* (visited June 25, 1998) <<http://www.abanet.org/citation/history.html>>. See also James Podgers, *Changing Cites: House Endorses Universal System with Multimedia Compatibility*, A.B.A. J., Oct. 1996, at 108.

75. *ABA Report*, *supra* note 3. Note that the ABA Proposal does not mandate which print source should be used if more than one is "commonly used" in the jurisdiction; presumably, the author may choose. *Id.* at app. A.

rule that would ease the transition from traditional paper-based sources to electronic databases.⁷⁶

Using the *Bluebook's* fictitious case, the ABA's citation would be:

Jenkins v. Patterson, 1997 WI App 45, ¶ 157, 600 N.W.2d 435.

Even though the ABA House of Delegates recommended adoption of this proposal by courts across the nation, the proposal soon ran into a significant wall. The Conference of Chief Justices passed a resolution opposing the ABA Proposal, claiming that it was "premature to adopt any particular plan for change in prevailing systems before the [Conference of Chief Justices] has further opportunity to obtain reliable answers about the manner in which any changed system would operate and the costs that such a changed system would entail."⁷⁷ Despite this action, proponents of the ABA Proposal went forward with their efforts to convince the federal judiciary to adopt it.

While one circuit court of appeals has adopted a form of neutral citation,⁷⁸ the federal system as a whole has, to date, rejected proposals for change. In 1991, the Judicial Conference first considered, then rejected, the question whether a "standard electronic citation" should be added as a parallel citation to the traditional format.⁷⁹ In 1997, after a survey of every federal judge in the country⁸⁰ demonstrated overwhelming opposition to

76.

Any new citation system must be designed to ease, not impede, the access of courts and lawyers to case reports. . . . The committee is convinced that over time, primary reliance on printed case reports will shift to primary reliance on electronic case reports. The duration of this transition period is likely to be determined by the reaction of the legal market. During the transition period, the committee recommends that in addition to the universal citation, all jurisdictions strongly encourage parallel citation to a print source, if there is one that is commonly used in the jurisdiction.

Id. at ¶¶ 37-38.

77. M.A. Stapleton, *ABA Body Backs Universal System for Legal Cites*, CHI. DAILY L. BULL., Aug. 2, 1996, at 1.

78. *See infra* note 121.

79. *See* Judicial Conference of the United States, *Draft Report on Proposed Standard Electronic Citation System*, 56 Fed. Reg. 38457-02 (1991), available in 1991 WL 152723; Brown, *supra* note 13, at 57.

80. The Administrative Office of the United States Courts asked these questions:

1. Should the clerk of your court be required to add an official citation number beyond the case number to each opinion?

sequential decision and paragraph numbering, the Judicial Conference declined to adopt the ABA Proposal.

The comments that many federal judges added to their survey responses reveal much about their reasons for rejecting neutral citation generally. Among their concerns were whether assigning a sequential number to unpublished opinions will induce researchers to rely upon or use such opinions; whether inserting paragraph numbers will be too burdensome for the courts or their clerks; whether having to be concerned with paragraph numbering will adversely affect a judge's writing style; whether readers will give undue emphasis to paragraphs within an opinion; whether the costs associated with changing to an electronic-based research system are too high for many small firm practitioners; and more than anything, whether the existing systems for citation are so flawed as to need replacement.⁸¹

District Judge Leonie Brinkema emphasized that "efforts to homogenize the federal courts . . . are shortsighted," and that "it is highly inappropriate for a group outside the judicial branch to suggest that judges conform their work to certain standards."⁸² Chief Judge Procter Hug, Jr. of the Ninth Circuit Court of Appeals was particularly opposed to the ABA's requirement that the court issue a sequential decision number. Judge Hug explained that although he favors the court's electronic posting of its opinions, "a citation which does not include the docket number is of little value."⁸³ Judge Richard A. Posner, chief of

2. Should the federal judiciary require the use of the official citation? permit it?

3. Should federal judges number the paragraphs in an opinion so that there may be pinpoint citations in which no private sector company can have a copyright?

The survey responses were obtained by one of the private electronic publishers and are available on the Internet at <<http://www.hyperlaw.com/jconf.htm>> (visited July 30, 1998).

81. *See id.*

82. Letter from Leonie M. Brinkema, United States District Judge for the Eastern District of Virginia, to Joan Countryman, Appellate Court and Circuit Administration Division, Administrative Office of the U.S. Courts (Mar. 5, 1997), available at <<http://www.hyperlaw.com/jccite/006.txt>> (visited July 30, 1998).

83. Letter from Procter Hug, Jr., Chief Judge, United States Court of Appeals for the Ninth Circuit, to Administrative Office of the United States Courts (Mar. 14, 1997) <<http://www.hyperlaw.com/jccite/400.txt>>. As one of the electronic publishers pointed out, however, the docket number is not part of the traditional *Bluebook* citation, either. HyperLaw Report—Judicial Conference Public Comments (visited July 30, 1998) <<http://www.hyperlaw.com/hlreport.htm>>.

the Seventh Circuit, argued that paragraph numbering “would disfigure and bureaucratize the opinion-writing process.”⁸⁴

The federal judges were not alone in their concerns. The Appellate Court Clerks’ Advisory Committee echoed many of the judges’ concerns and added others. First, the clerks argued that the present citation system does not hinder the attorneys or judges who use it, characterizing the sequential numbering suggestion as “a solution in search of a problem.”⁸⁵ The court clerks strongly objected to using any electronic citation without the case file number, pointing out that researchers would “have to take an additional step to determine the case number” in order to access the case file or docket information.⁸⁶ The clerks cited their limited resources, in time and staff, as further reason to refrain from having to assign numbers to the opinions and the paragraphs within those opinions.⁸⁷

Not all of the federal response to the ABA Proposal was negative, however. For instance, one bankruptcy judge grounded his comments on his belief that “[t]he courts of this country ought not be ‘hostage’ to a private publisher, which can claim copyright protection for pagination, format, and the like.”⁸⁸ Most

84. Letter from Richard A. Posner, Chief Judge, United States Court of Appeals for the Seventh Circuit, to J. Owen Forrester, Chairman, Automation & Technology Committee of the Judicial Conference of the United States (Mar. 3, 1997) <<http://www.hyperlaw.com/jccite/015.txt>>. AALL counters Judge Posner’s argument by recommending that paragraph numbers not be added until the judge has finished writing, as part of the editing process. *AALL Task Force Report, supra* note 30, at 598 ¶ 61. In addition, one of the electronic publishers has provided the federal courts with a WordBasic program to automatically insert paragraph numbering, and it has offered to prepare custom software for any court who needs it. Written Comments of HyperLaw to the United States Judicial Conference re Citation ¶¶ 20-24 (Mar. 14, 1997) <<http://www.hyperlaw.com/jude97b.htm>>.

85. Letter from Michael E. Gans, Chair, Appellate Court Clerks’ Advisory Committee, to John Hehman, Chief, Appellate Court and Circuit Court Administration Division, Administrative Office of the U.S. Courts (Mar. 14, 1997) <<http://www.hyperlaw.com/jccite/020.txt>>.

86. *Id.* This concern more properly addresses issues connected with electronic filing than with research of judges’ written opinions intended for publication.

87. *Id.*

88. Letter from Leif M. Clark, United States Bankruptcy Judge for the Western District of Texas, to Appellate Court and Circuit Administration Division, Administrative Office of the U.S. Courts (undated) (visited July 30, 1998) <<http://www.hyperlaw.com/jccite/013.txt>>. Judge Clark also expressed his concerns that the survey materials furnished to the federal judges were “woefully inadequate” in fully exploring the issues of citation reform and that the “tenor of the questions” was biased against the ABA Proposal. *Id.*

of the positive comments were appended to the judges' anonymous survey answers:

“This seems to be a sensible solution arrived after much deliberation by knowledgeable and concerned practitioners.”

“[I s]ee no objection to numbering paragraphs. That should make it an even playing field.”

“Sequential numbering of paragraphs would not place an undue burden on the judiciary.”

“We can do that.”⁸⁹

While the ABA Proposal may have been wounded by the federal courts' action, it wasn't killed. Five of the states that have instituted citation reform have adopted the ABA format.⁹⁰ Both Canadian and Australian groups have indicated serious interest in adapting the ABA Proposal to citations in their countries.⁹¹

Because it includes a parallel citation with its straightforward neutral citation, the ABA rule satisfies the Axel-Lute principles of uniqueness, informativeness, similarity-to-original, redundancy, honesty, and dissimilarity among forms. Like the *Bluebook*, the ABA format is streamlined, eschewing a court/date parenthetical, a choice that underscores its commitment to brevity. Also similar to the *Bluebook*, the ABA citation satisfies the permanence principle by including the sequential number and regional reporter information. Its adoption by some states also favors it under the standardization principle.

The ABA's treatment of court abbreviations uses both the familiar postal abbreviation and traditional designations for courts, such as “App” and “Cir.” Curiously, though, it omits periods from the neutral half of the citation, while retaining

89. Judicial Conference Public Comments (visited July 30, 1998) <<http://www.hyperlaw.com/hlreport.htm>>.

90. See *infra* section IV and notes 134, 137, 140, 141, and 142.

91. See *Society Asked to Support Standardised Citation System for Judgements* (visited Aug. 20, 1998) <http://lawsocnsw.asn.au/resources/lcj/archive/aug1997/80_1.html> (Australian bar group announces support for adopting ABA Proposal); *Development of a Case Law Neutral Citation Standard for Canada* (visited Aug. 20, 1998) <<http://www.droit.umontreal.ca/citation/draft4.html>> (fourth draft of Canadian Citation Committee's work on neutral case law citation standard).

them for the regional reporter side, decidedly a violation of the logic principle. Further, while normally the simplicity of system is a positive characteristic, the ABA proposal is too simplistic: it fails to give the researcher any guidance in citing any kind of law apart from judicial decisions or for handling abbreviations for unusual court names.

C. *The American Association of Law Libraries Proposal*

In 1994, partly in reaction to Louisiana's adoption of a new, docket-number-based citation system⁹² and the Sixth Circuit's decision to assign neutral reference numbers to its opinions and to permit parallel electronic citations,⁹³ the American Association of Law Librarians ("AALL") formed a Task Force on Citation Formats, whose charge was to develop a new citation system, to promote citation uniformity, and to serve as both clearinghouse and resource for courts considering change.⁹⁴ Even at this early stage, AALL had already taken a stance in favor of uniformity.⁹⁵ The AALL Task Force submitted its Citation Formats Report on March 1, 1995, recommending not only a new form of case citation, but new citation forms for statutory and other kinds of authority.⁹⁶

The Task Force recommended that citations provide simply the name of the case, the year of decision, a sequential opinion number, and paragraph reference for pinpoint citation.⁹⁷ The Task Force's only explanation for omitting parallel citations to print sources was that the "official print form itself would use the new format"; for jurisdictions "which rely solely on the National Reporter System, the NRS Blue Book could be used."⁹⁸

92. See *infra* text accompanying notes 131 to 133.

93. See *infra* note 121.

94. AALL Task Force Report, *supra* note 30, at 582 ¶ 1.

95. *Id.*

96. *Id.* at 602-604. The Task Force was not unanimous; thirteen members voted in favor of the proposal and three members opposed it, submitting "dissenting opinions." See Bergsgaard & Lindberg, *Dissent*, *supra* note 3, at 607; Frederick A. Muller, *The Final Report of the Task Force on Citation Formats, March 1, 1995: Dissenting Opinion*, 87 L. LIBR. J. 624 (1995).

97. AALL Task Force Report, *supra* note 30, at 599 ¶ 66.

98. *Id.* at 599 ¶ 63. The "NRS Blue Book" (or *National Reporter Blue Book*) refers to a volume of tables providing parallel West National Reporter System citations to the

The Task Force's recommendations encountered strong opposition even before their release. Two members of the Task Force team (and employees of West Publishing Company) argued that "the majority's radical proposals would cause serious disruption to the legal profession and reduce access to the law in printed form."⁹⁹ The West dissenters took specific issue with the Task Force over whether the new format was truly neutral, and whether it would actually work a disservice to researchers handling traditional print resources. Among the disadvantages and difficulties, the West dissenters noted that the Task Force format fails to "identify the printed compilations where citations appear"; that it forces users of the National Reporter System to take additional steps to locate parallel citations to West reporters; that labels on the spines of print resources would become more confusing as additional information is added; and that the learning curve for lawyers would be significant.¹⁰⁰ The West dissenters also pointed out the preferences of many legal researchers and readers: "[T]hey have advised us they prefer studying and working intensively with case law, statutes, and treatises in the printed medium. They complain that reading cases from a screen is tiring, inconvenient, confining, and unnatural."¹⁰¹

Another dissenter, representing the Association of Reporters of Judicial Decisions, objected to the Task Force Report because it embodies

an untried and unproven generic citation form which excludes parallel citations, prohibits use of volume and page numbers in case reports which causes the recommended citation form to be incompatible with continued production of print case reports in many jurisdictions, and is likely to "balkanize" and fragment the present established citation system.¹⁰²

official citations of states with non-West reporters. For example, the state of Arkansas publishes its supreme court opinions in the non-West *Arkansas Reports*; the NRS Blue Book provides Arkansas's parallel citations to the South Western Reporter.

99. Bergsgaard & Lindberg, *Dissent, supra* note 3, at 607.

100. *Id.* at 608-09.

101. *Id.* at 609.

102. Muller, *supra* note 96, at 624. The Association of Reporters of Judicial Decisions is comprised of those individuals who draft the official syllabi, synopses, and headnotes for state court opinions and who see to the publication of official reporters. Unlike the other

Although she voted with the majority, a representative of Shepard's/McGraw-Hill appended that company's "position statement" to the Task Force Report, pointing out that while Shepard's would "reflect in [its] publications any new citation formats which emerge and in which the marketplace demonstrates a sufficient interest," the costs of changing to a new citation system would substantially increase the price of Shepard's products for researchers.¹⁰³

The work of the Task Force was concluded in 1995, but AALL's work to promulgate citation reform has continued. AALL's Standing Committee on Citation Formats has produced an extensive set of citation rules (the "Universal Citation Guide") for varied types of authority—case law, statutes, and administrative materials.¹⁰⁴ In contrast to a traditional citation format's focus on the external shape of the law (as represented by the tangible publications the cases, statutes, and regulations appear in), the Universal Citation directs attention to identifying features of the individual units of law themselves:

[T]he Universal Citation form focuses on data intrinsic to the text cited. This means that if this form is adopted, the institution responsible for promulgating a particular text will be required to follow certain standards. For case law, it asks courts to number their released opinions and to number the paragraphs within those opinions. . . . [I]n any secondary version of the text, a publisher of case law must preserve all of the data provided by the court including the citation.¹⁰⁵

According to the Universal Citation Guide's rules for judicial decisions, a full citation will reference the case name; the year of decision; an abbreviation for the court; the opinion number; the notation U (if the case is not designated for publication); and, if a pinpoint citation is warranted, a specific paragraph number.¹⁰⁶ Our fictitious citation, under the AALL rule, takes this form:

opponents of the Task Force Report, this member was not affiliated with a commercial enterprise whose interests are at stake in the question of citation reform.

103. Myrna Bennett, *Position Statement of Shepard's/McGraw-Hill*, 87 L. LIBR. J. 606, 606 (1995).

104. *See supra* note 7.

105. AALL UNIVERSAL CITATION GUIDE, *supra* note 3, at 5 ¶ 12.

106. *Id.* at 12 ¶ 25 (Rule 100, Basic Citation Form).

Jenkins v. Patterson, 1997 WI App 45U ¶ 157.¹⁰⁷

The Universal Citation Guide apparently does not intend to entirely supplant the *Bluebook* as a citation manual,¹⁰⁸ although it differs dramatically from *Bluebook* format in significant ways. Although the user is directed to Rule 10.2 and other rules of the *Bluebook* for rendition of case names,¹⁰⁹ the Guide furnishes its own unique set of abbreviations for geographic entities,¹¹⁰ statutory and legislative terms,¹¹¹ and court names.¹¹² In addition, none of the abbreviations employ periods. It is unclear whether this decision was a matter of practicality to facilitate electronic research or a matter of style.

Apart from punctuation, the court name abbreviations differ in other dramatic ways from the *Bluebook*, particularly for intermediate appellate courts and for trial courts. This aspect of the Universal Citation Guide may initially confuse some researchers. For example, the letters US serve not only the abbreviation for the United States Supreme Court, but also as an indicator of *any* federal court (e.g., US App (8th); US Dist (W MI)).¹¹³ A second source of potential confusion concerns abbreviations for the lower court. Although the general rule for court names says to omit the abbreviation “Ct”—unless its omission would make things ambiguous¹¹⁴—the Appendix for court name abbreviations contains numerous examples using that abbreviation: “Child Ct” for Children’s Court, “Civ Ct Rec” for Civil Court of Record, “Cl Ct” for Claims Court and

107. Since this citation is fictitious, I am treating it as unpublished.

108. The Guide expressly defers to the *Bluebook* on matters of typeface, style, and signals. AALL UNIVERSAL CITATION GUIDE, *supra* note 3, at 7 ¶ 22.

109. *Id.* at 13 (Rule 101, Case Name).

110. *Id.* at 49-50 (app. A: Geographic Abbreviations) (using two-letter postal abbreviations, e.g., AR, CT, HI, MA); *cf.* BLUEBOOK, *supra* note 8, at 293 (Table 10, Geographical Terms) (e.g., Ark., Conn., Haw., Mass.).

111. AALL UNIVERSAL CITATION GUIDE, *supra* note 3, at 59 (app. C: Statutory and Legislative Abbreviations). Although the *Bluebook*’s statutory and legislative examples contain a number of abbreviations, the *Bluebook* does not collect them all in a single table. Jurisdiction-specific abbreviations are set out in Table 1. *See* BLUEBOOK, *supra* note 8, at 165-228.

112. AALL UNIVERSAL CITATION GUIDE, *supra* note 3, at 51-59 (app. B: Court Name Abbreviations).

113. *Id.* at 14-17 (Rules 103.1, 103.2.1, and 103.3); *cf.* BLUEBOOK, *supra* note 8, at 287-89 (Table 7).

114. AALL UNIVERSAL CITATION GUIDE, *supra* note 3, at 13 (Rule 103).

for Court of Claims, “Commw Ct” for Commonwealth Court, “Ct Err & App” for Court of Errors and Appeals, and “Sup Ct Err” for Supreme Court of Errors, just to name a few.¹¹⁵ Even more puzzling, however, are these abbreviations, not using “Ct” but another form altogether: “CCPA” for Court of Customs and Patent Appeals, “CMA” for Court of Military Appeals, and “CMR” for Court of Military Review.¹¹⁶ The letter “J” stands for Judicial, but so does the abbreviation “Jud.”¹¹⁷ “J” also stands for Judges and Justice.¹¹⁸

The AALL neutral citation scores well under the Axel-Lute categories of uniqueness, informativeness, brevity, standardization, logic, permanence, and readability/transcribability. Since it is used alone, however, without parallel traditional citation, it fails the similarity-to-original, redundancy, tradition, and honesty principles. Furthermore, with as little as one digit separating one citation from another, it fails the principle promoting dissimilarity among forms. Inconsistencies in the abbreviation tables adversely affect its score under the simplicity-of-system principle.

Although the *Bluebook* is also full of these kinds of internal inconsistencies,¹¹⁹ a new citation system should eradicate, not perpetuate, these kinds of problems. However, despite these imperfections, the AALL universal citation format has strengths that commend it to courts considering change, including the thoroughness of its coverage (including not only cases, but statutes and regulations),¹²⁰ its recognition of the amazing variety of courts in this country, and most of all, the research expertise of its librarian drafters.

115. *Id.* at 51-52, 54 (app. B).

116. *Id.* at 52.

117. *See id.* at 53.

118. *See id.*

119. *See* Dickerson, *supra* note 28, at 97-99.

120. Other than AALL, no one has developed a neutral citation format for statutory, legislative, and administrative materials. The UNIVERSAL CITATION GUIDE is presently almost one hundred pages in length. The present edition of the *Bluebook* is 365 pages in length (counting its index), but in addition to covering these basics, it also sets out citation rules, short forms, and tables for materials as diverse as court rules, books, treatises, periodicals, looseleaf services, foreign, and international materials.

IV. INDIVIDUAL COURTS' APPROACHES TO CITATION REFORM

The United States Court of Appeals for the Sixth Circuit was one of the first American courts to permit the option of neutral citation.¹²¹ The United States Court of Appeals for the Armed Forces (formerly the Court of Military Appeals) similarly permits such citations.¹²² No other federal courts have adopted rules relating to neutral citation, and in view of the action taken by the Judicial Conference in 1997, none is likely to take this step.

In the state courts, a form of neutral citation first appeared in 1994. As of the fall of 1998, however, only twelve states have actually made any changes in their citation systems, and of these, only eight have adopted what could be characterized as an exclusively neutral citation format.¹²³ For the states who have made these changes, however, there is little consistency in format among them.¹²⁴

In **Arizona**, the state bar association proposed that lawyers be required to use a neutral citation for references to decisions of the Arizona Supreme Court and Court of Appeals, and that the courts assign a chronological number to each opinion and number their paragraphs.¹²⁵ The supreme court denied the

121. Sixth Circuit Electronic Opinion Distribution and Citation Policy Changes (visited July 3, 1998) <http://www.aallnet.org/committee/citations/rules_6th.html>. The Sixth Circuit's format is assigned by the court at the time it posts its opinions to its electronic bulletin board system. The citation format provides the year of decision, the abbreviation "FED App," a sequential number, a designation whether the opinion is published (P) or unpublished (U), and the circuit's abbreviation in parentheses. AALL criticizes the Sixth Circuit's format because it inserts page numbers from the slip opinion (rather than paragraph numbering) and because its "entire form [is] final only for unpublished opinions." *AALL Task Force Report, supra* note 30, at 595-96 ¶ 47.

122. The military appeals court numbered its paragraphs for a brief period in the mid-1990s. For unexplained reasons, beginning with volume 44 of the Military Justice Reporter, paragraph numbering no longer is being used.

123. See Figure 1, *infra*, Map, Jurisdictions Presently Using or Permitting Neutral Citation; Figure 2, *infra*, Federal and State Neutral Citation Formats. States whose citations can be characterized as exclusively public domain or neutral in format are Louisiana, Maine, Mississippi, Montana, New Mexico, North Dakota, Oklahoma, and South Dakota.

124. See Figure 2, *infra*.

125. See Kathy E. Shimpock, *State Bar Proposes Citation Reform*, ARIZ. ATT'Y, Mar. 1997, at 12; Kathy Shimpock-Vieweg, *Citation Reform: The Time Is Now*, ARIZ. ATT'Y, Aug.-Sept. 1996, at 10.

proposal for opinion numbering but did adopt the paragraph numbering concept, effective January 1, 1998.¹²⁶

Since 1994, **Colorado** lawyers and judges have had the option of using either the West page number or a paragraph number.¹²⁷ The Colorado Supreme Court itself no longer numbers the paragraphs, but it does permit publishers to add such numbering.¹²⁸ (West does not.)

Although **Florida** is featured on the ABA's citation reform web site and on the AALL web site under the heading "Vendor-Neutral Citation Rules," it is still studying whether to adopt a new citation system.¹²⁹ Under Florida's present rule, although the West cites are "preferred," the practice of providing pinpoint citations to the West Southern Reporter is optional when writers cite Florida case law.¹³⁰

Louisiana was the first state to require a "uniform public domain citation form," although its form also mandates a parallel citation to West's Southern Reporter.¹³¹ Proper Louisiana form requires the "case name, docket number excluding letters, court abbreviation, and month, day and year of issue, [to] be followed by" parallel citation to West; pinpoint reference must follow the docket number and refer to page.¹³² Louisiana's format has been criticized for using a docket

126. Per Curiam Order, R-97-0001 (Oct. 1, 1997) <<http://www.abanet.org/citation/>> (effective Jan. 1, 1998; to be codified at ARIZ. R. SUP. CT. 112): "The Court is not opposed to the concept of such a system but first wants an opportunity to participate in the growing national discussion of this subject, in the hope of achieving some uniformity and consistency with other jurisdictions. The national movement is clearly still in the investigative and exploratory stages."

127. Memorandum from Chief Justice Rovira (May 5, 1994) <<http://www.cobar.org/coappcts/courtmemo.gif>> (directing citation to West reporter, but establishing paragraph numbers for elective "pin point" citations as alternative to West pinpoint page number).

128. Memorandum from Mac V. Danford, Clerk of Court/Court Administrator (May 25, 1995) <http://www.aallnet.org/committee/citation/rules_co.html> (letting publishers design their own numbering system, subject to court's guidelines).

129. *Citation System Won't Change Yet* (visited Dec. 15, 1998), <<http://www.flabar.org/newflabar/publicmediainfor/news/whatsnew/correx.html>> (correcting erroneous report in *Fla. B. News*, Sept. 1, 1998, that Florida's new case numbering system would be used for citations to cases).

130. Per Curiam Order No. 85,746 (June 15, 1995) <<http://www.aallnet.org/committee/citation/>> (to be codified as FLA. R. APP. P. 9.800(n)).

131. LA. GEN. ADMIN. R., Part G, § 8, Citation of Louisiana Appellate Decisions (effective Jan. 1, 1994).

132. *See id.*

number rather than a sequential number (as this could confuse researchers encountering a case with multiple opinions) and for retaining a required reference to page numbering.¹³³

In **Maine**, which has required a sequential decision number since January 1, 1997, the citation sets out the year of decision, the state's postal abbreviation, and the decision number; pinpoint citations must be made to a paragraph number.¹³⁴

Effective July 1, 1997, **Mississippi** permits the researcher a choice between citing to the Southern Reporter (with pinpoint references to page number) or to a neutral citation format using case numbers assigned by the court clerk (with pinpoint references to paragraph number).¹³⁵ The neutral format consists of the case number (which looks suspiciously like a docket number), the court abbreviation, and the year of decision.

The state of **Missouri** permits paragraph numbering by vendors, even though its court rules remain silent about this development.¹³⁶

Since January 1, 1998, **Montana** has assigned a sequential number to every opinion and substantive order, and it has numbered paragraphs in those opinions and orders.¹³⁷ Unpublished opinions are marked by the letter N (*e.g.*, 1998 MT 1N). The neutral citation format sets out the year of decision, Montana's postal abbreviation, and the sequential number. The citation must also contain parallel citations to Montana's official reporter and to West's Pacific Reporter.¹³⁸

New Mexico began assigning sequential numbers to its opinions on January 1, 1996. New Mexico's neutral format consists of the year of decision, an abbreviation for the court, and the sequential number, all joined by hyphens. Courts and attorneys must provide parallel reference, for as long as official

133. See *AALL Task Force Report*, *supra* note 30, at 596 ¶ 50; Wyman, *supra* note 4, at 261.

134. Order No. SJC-216 (Aug. 20, 1996) <http://www.aallnet.org/committee/citation/rules_me.html>.

135. MISS. R. APP. P. 28(e), References in Briefs to the Record and Citations (effective July 1, 1997).

136. Interview with Lynn Foster, September 11, 1998.

137. In re Opinion Forms and Citation Standards of the Supreme Court of Montana; and the Adoption of a Form of Public Domain and Neutral-Format Citation (Dec. 16, 1997) <http://www.aallnet.org/committee/citation/rules_mt.html>.

138. *Id.*

and West reporters are published, to “vendor neutral citations.” New Mexico has gone a bit further than other states in also establishing neutral citation for its statutes, court rules, and jury instructions.¹³⁹

In **North Dakota**, sequential opinion numbers and paragraphs have been assigned since early 1997. Proper neutral format gives the year of decision, the postal abbreviation for the state, and the sequential number. Full citations must include both the neutral format and parallel citation to West’s North Western Reporter, as soon as it is available.¹⁴⁰

Oklahoma began paragraph numbering in 1997. For cases decided since May 1, 1997, citations must now include both the “official paragraph citation form” (year, postal abbreviation, and sequential number) and a parallel citation to West’s Pacific Reporter (which may include a pinpoint page reference).¹⁴¹

Since 1996, **South Dakota** has required a neutral citation made up of the year, postal abbreviation, and sequential opinion number, with paragraph numbering and parallel citation to the North Western Reporter version of the opinion as soon as it is available.¹⁴²

Despite the activity of its state bar association in urging adoption of neutral citation,¹⁴³ the **Wisconsin** courts have so far declined to assign sequential numbers to their decisions. The Wisconsin Supreme Court has, however, begun to number its paragraphs.¹⁴⁴

139. In re the Adoption of Vendor Neutral Citations for Appellate Opinions, New Mexico Statutes, Court Rules, and Uniform Jury Instructions for Pleadings and Other Papers Filed in the Courts of the State of New Mexico, No. 98-8500 (Jan. 12, 1998) <<http://www.fscll.org/Cite98.htm>>.

140. N.D. R. CT. 11.6, Medium-Neutral Case Citations (effective Mar. 5, 1997).

141. OKLA. SUP. CT. R. 1.200(e), Citation to Designation by Supreme Court and Reporters (effective Jan. 1, 1998).

142. S.D. R. 15-26A-69.1, Citation of Official Opinions of the Supreme Court (effective Jan. 1, 1996).

143. In 1994, after four years of study, the Technology Resource Committee of the Wisconsin State Bar Association presented its recommendations to the bar’s Board of Governors, urging creation of both an electronically-archived database of court opinions and a “universal citation” system for their retrieval. The Wisconsin Supreme Court held public hearings on the proposal in the spring of 1995, but so far, has taken no action to formally adopt it.

144. See Comments of the State Bar of Wisconsin to U.S. Judicial Conference in Support of Implementation of Proposal Adopted by ABA for Federal Courts (visited June 30, 1998) <<http://www.abanet.org/citation/wis.html>>.

While the actions of these courts may be laudable insofar as the result of their switch to neutral citation has eased access to their opinions and lowered the costs of legal research, the iconoclastic forms adopted by some have precipitated efforts by groups such as the ABA and AALL to develop a standardized format. While no state's needs are precisely alike, there is no justification for choosing a radically different citation form, particularly when so many good alternatives are now available.

V. THE CONSIDERATIONS AND CHOICES

As I see it, we're still waiting for the ideal citation system to come along. The best reason to overhaul the existing traditional system of citation is to better accommodate the needs of both the researcher and the reader. We should welcome a system that will reduce costs and facilitate access to the researcher's preferred sources, but only if it will also enhance the reader's ability to retrieve the cited information by the research method of his choice, whether that is print-based or electronic. Adoption of a neutral citation, coupled with a traditional parallel citation, gives researchers and readers the best of both worlds. Yes, it is more cumbersome to construct a parallel citation, but I submit that every writer has an obligation to simplify matters for his readers wherever possible. The challenge to each jurisdiction is to make the citation user-friendly, so that the method benefits both the writer and the reader.

Despite the *Bluebook's* heritage as the citation leader, its format neutral rules have failed to take a dominant place in citation systems. Although the *Bluebook's* neutral citation rule mandates its use when court decisions are released under an official public domain system, the format-neutral rules in the Sixteenth Edition have received little attention and have had no influence on courts who have adopted neutral citations since its publication.

The ABA Proposal has the advantage of compromise; inclusion of a parallel citation form lets researchers who prefer West's (or other publishers') print products easily find the authority. However, the proposal lacks depth of treatment. The ABA drafters did not attempt to address citation forms for any

other kind of authority, nor does the ABA Proposal give the citation-writer any hint how to handle abbreviations for some of the more unusual court names, whose decisions seem destined for publication in some electronic forum. Perhaps the ABA intends its rule pamphlet to live on the researcher's bookshelf alongside the *Bluebook*. Or perhaps it will have no objection to use of the AALL Universal Citation Guide's appendices for this kind of information. The problem is, the ABA has not told us what it intends.

The AALL Universal Citation Guide is the most promising guide for neutral citation. It has the advantage of wide acceptance by law librarians, and AALL's Standing Committee on Citation Formats has even universalized citations to statutes and administrative law. To the uninitiated, though, the AALL Universal Citation Guide looks just as complicated as the *Bluebook*, and, paradoxically, it references the *Bluebook* as an adjunct to certain rules. If the Guide's final version will permit parallel citation (and if the abbreviation tables are repaired), it deserves to become the new standard for citation to legal authority.

For states that have an immediate issue concerning ownership of their laws, and for states that have already begun to make their laws available in an electronic format, I urge swift adoption of a standardized citation format coupled with a traditional parallel citation. I recommend that other courts—both state and federal—implement studies to determine the present cost of performing legal research in their jurisdictions, as well as the actual costs that would be incident to making a change. If the results of such studies reveal that substantial savings are possible, these courts should give full consideration to adopting a neutral citation rule, with parallel citation to the traditional print sources.

Will the courts of this country work together to introduce and approve electronic legal sources? The position of the Judicial Conference of the United States and the Conference of Chief Justices so far has been "not now." Fortunately, this is not the same thing as "not ever." The judges should balance their concerns about the problematic areas of neutral citation with the benefits that adopting such a system will bring, factoring in the activity of individual state courts in adopting unique and varied

neutral citation rules. Let the decisions be made on the basis of cost savings, utility, function, workableness, and informativeness, not on personal feelings for (or against) West Publishing Company, the Internet, paper, or electronic screens. And let the decisions honor and respect the choices of all readers, not only those whose work habits are similar to our own, but those whose preferred research tools are different.

FIGURE 1. Jurisdictions Presently Using or Permitting Neutral Citation

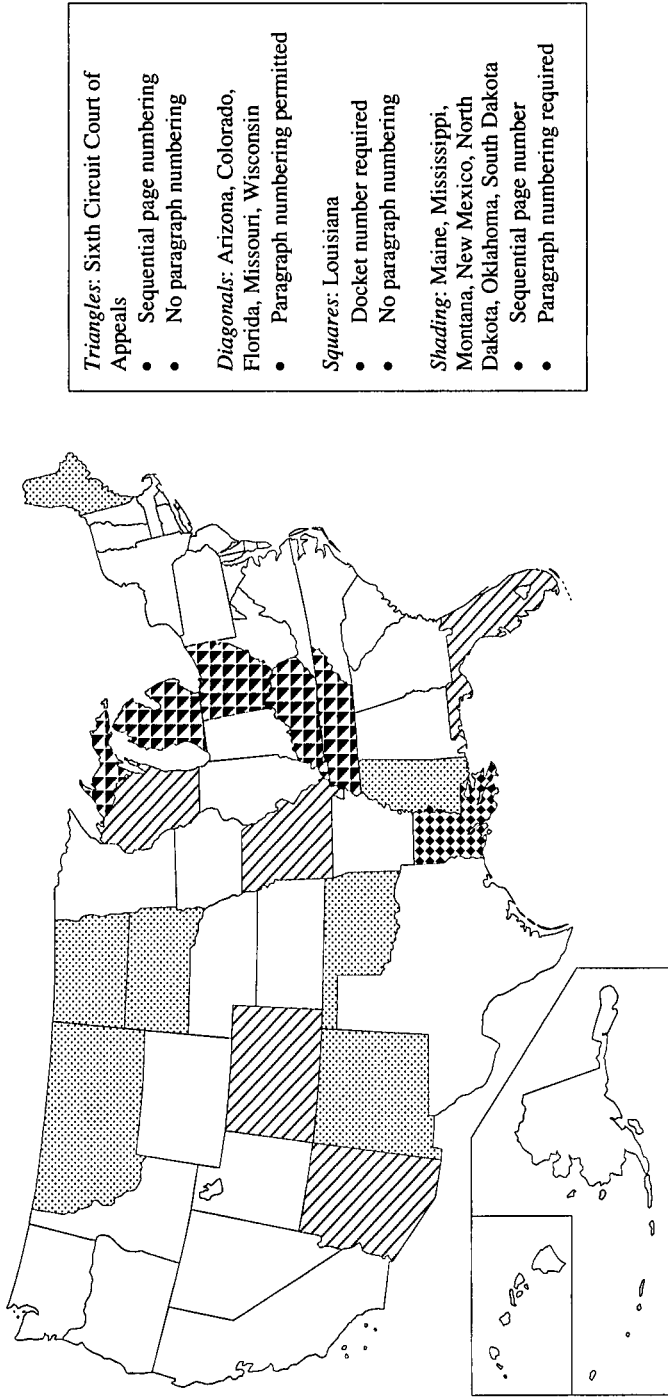


FIGURE 2. Federal and State Neutral Citation Formats

Court (effective date)	Sequential number?	Neutral citation format?	¶ numbers?	Representative Citation and Comments
U.S. Court of Appeals for the Sixth Circuit	Yes	Public domain, parallel citation to West's Federal Reporter	No	Mattingly v. Farmers State Bank, 1998 FED App 0262P (6th Cir.).
Arizona Supreme Court (1/1/98)	No	Arizona Reports (official reporter), parallel citation to West's Pacific Reporter	Yes	State v. McDonald, 191 Ariz. 118, 952 P.2d 1188 (Cl. App. 1998)
Colorado Supreme Court (5/4/94)	No	West's Pacific Reporter (no official reporter)	Optional	People v. Greymountain, 952 P.2d 829 (Colo. Ct. App. 1997). Opinions published in Pacific Reporter do not bear ¶.
Florida Supreme Court (6/15/95)	No	West's Southern Reporter (no official reporter); <i>Bluebook</i>	Optional	Merritt v. State, 712 So. 2d 384 (Fla. 1998). Opinions published in Southern Reporter do not bear ¶.
Louisiana Supreme Court (1/1/94)	No (uses docket #)	Public domain, parallel citation to West's Southern Reporter (no official reporter)	No	Sampson v. Dorfi, 97-858 (La. App. 5 Cir. 1/14/98); 707 So.2d 78. Court rule does not include internal space in Southern Second citation.
Maine Supreme Judicial Court (1/1/97)	Yes	Public domain, parallel citation to West's Atlantic Reporter (no official reporter)	Yes	Alley v. Parker, 1998 ME 33, 707 A.2d 77.
Mississippi Supreme Court (7/1/97)	Yes	Choice of public domain or West's Southern Reporter (no official reporter)	Yes	Scott v. State, 95-CA-01088-SCT (Miss. 1997). -or- Scott v. State, 707 So.2d 182 (Miss. 1997). Court rule does not include internal space in Southern Second citation.
Missouri	No	West's South Western Reporter	Yes	Williams v. Walls, 964 S.W.2d 839 (Mo. Ct. App. 1998).

FIGURE 2. Federal and State Neutral Citation Formats, cont.

Court (effective date)	Sequential number?	Neutral citation format?	1 numbers?	Representative Citation and Comments
Montana Supreme Court (1/1/98)	Yes	Public domain, parallel citations to Montana Reports (official reporter) and West's Pacific Reporter	Yes	Rhode v. Adams, 1998 MT 73, ___ Mont. ___, 957 P.2d 1124.
New Mexico Supreme Court (1/1/96)	Yes	Public domain, parallel citation to New Mexico Reports (official reporter) and to West's Pacific Reporter	Yes	Duncan v. Campbell, 1997-NMCA-028, 123 N.M. 181, 936 P.2d 863.
North Dakota Supreme Court (3/5/97)	Yes	Public domain, parallel citation to West's North Western Reporter	Yes	Johnson v. Traynor, 1998 ND 115, 579 NW2d 184. Periods are omitted from West reporter abbreviation.
Oklahoma Supreme Court (1/1/98)	Yes	Public domain, parallel citation to West's Pacific Reporter	Yes	Goodwin v. Durant Bank & Trust Co., 1998 OK 3, 952 P.2d 41.
South Dakota Supreme Court (1/1/96)	Yes	Public domain, parallel to West's North Western Reporter	Yes	Schleuter Co. v. Sevigny, 1997 SD 68, 564 NW2d 309. Periods are omitted from West reporter abbreviation.
Wisconsin Supreme Court (1/3/97)	No	Two official reporters, parallel to West's North Western Reporter	Yes	State v. Meyer, 216 Wis. 2d 729, 576 N.W.2d 260 (Wis. 1998).

FIGURE 3. Fictitious Citations Using Various Format Rules

<p>Rule Source</p>	<p>First example is the <i>Bluebook</i> Sixteenth Edition's fictitious public domain citation, adapted to each set of format rules. Second example assumes case is unpublished, although available on WESTLAW and LEXIS, and is the 102nd opinion issued in 1999 by the Second Circuit Court of Appeals, with pinpoint reference to paragraph 12.</p>
<p>ABA (applies to all citations)</p>	<p>Jenkins v. Patterson, 1997 WI App 45, ¶ 157, 600 N.W.2d 435. Buffett v. Taylor, 1999 2Cir 102 U, ¶ 12.</p>
<p>AALL (applies to all citations)</p>	<p>Jenkins v. Patterson, 1997 WI App 45 ¶ 157. Buffett v. Taylor, 1999 US App (2d) 102U ¶ 12.</p>
<p><i>Bluebook</i>, Rule 10.3.1(b) (applies only to courts having adopted a public domain format; second example follows regular <i>Bluebook</i> rule for WESTLAW)</p>	<p>Jenkins v. Patterson, 1997 Wis. Ct. App. 45, ¶ 157, 600 N.W.2d 435. Buffett v. Taylor, No. 98-743, 1999 WL 35976, [at ¶ 12?] (2d Cir. Feb. 24, 1999). (<i>Note:</i> For electronic databases, the <i>Bluebook</i> provides examples of pinpoint reference to internal page numbers, preceded by *, but provides no examples for paragraph references. With paragraph references, however, the * would be superfluous. See <i>Bluebook</i> rule 10.8.1(a)).</p>

