

# BEYOND THE BLUEBOOK: TEACHING FIRST-YEAR LAW STUDENTS WHAT THEY NEED TO KNOW ABOUT LEGAL CITATION

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*There are several disadvantages to the traditional, Bluebook-centered approach to teaching legal citation. First, it ignores the reality that many federal and state jurisdictions have adopted other systems of citation, while very few have adopted the Bluebook. Second, it suggests to students that obscure Bluebook requirements like Table 6 are important and widely followed in practice, when in fact they are neither. Third, it consumes valuable time both inside and outside class that could be better spent mastering legal research, writing, and analysis.*

*This Article introduces a system of legal citation that is heavily focused on the types of authorities practicing lawyers cite most—cases and statutes—and that allows for flexibility in spacing and abbreviations. This goal-oriented approach to legal citation—in which citations must enable the reader to locate easily the source cited but need not do more—helps law students learn what they need to know about citations to succeed as practicing attorneys while not getting bogged down by the Bluebook’s minutiae.*

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### INTRODUCTION

In January 2011, the *Yale Law Journal* published a review of the 19th Edition of the Bluebook written by Judge Richard A. Posner. In his review, Judge Posner laments the “monstrous” growth of the Bluebook and questions the need for a single, “uniform” system of legal citation.<sup>1</sup>

When Judge Posner’s article was published, I was beginning my second semester teaching legal research and writing at the University of Miami School of Law. Like most first-year legal writing courses, including the one I took in 1999 and 2000 at the University of Michigan, the class I teach—Legal Communication and Research Skills—includes a substantial bluebooking component. Students are introduced to the Bluebook early in the first semester and are required to complete weekly citation exercises. Students’ mastery of the Bluebook is tested in two ways: first, there are several bluebooking questions on the Comprehensive Skills Test, a graded multiple-choice exam that students take near the end of the Fall semester; and second, the quality of the citations in the students’ graded writing assignments helps determine their grades on those assignments.

After dutifully teaching the Bluebook for four semesters, and scrutinizing citations in student writings for unnecessary spaces, incorrect abbreviations, and other bluebooking sins, I began to wonder whether this component of the course was really helping my students. For one thing, I was not having great success. No matter how many times I told my students to put a space between “So.” and “2d” when citing the Southern Reporter, Second Edition, a good number of them still neglected (or refused) to do so, even on graded assignments.

In addition, it occurred to me that, if Judge Posner is right that the Bluebook should be deemphasized or altogether abandoned,<sup>2</sup> and that we do not need a uniform system of citation,<sup>3</sup> then those of us who teach legal writing have an important role to play in making this change. After all, I am the person initially responsible for bringing the Bluebook into my students’ lives. So in the summer of 2012, I set out to find a better way of teaching legal citation. My goal was to teach

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1. Richard A. Posner, *The Bluebook Blues*, 120 YALE L.J. 850, 851–52 (2011).

2. Judge Posner has largely given up on convincing the legal profession to abandon the Bluebook, but he used to think that was a realistic goal. See Richard A. Posner, *Goodbye to the Bluebook*, 53 U. CHI. L. REV. 1343, 1343 (1986) (“The legal profession needs a new approach to legal citations . . .”).

3. Posner, *supra* note 1, at 853 (“across documents, slight differences in citation form are untroublesome”).

my students what they need to know about citations without focusing so heavily on the Bluebook. The larger goal, and the overriding goal of the course I teach, was to prepare my students to practice law.

To achieve these goals, I wrote a citation guide for my students to use instead of the Bluebook. My citation guide, which is attached to this Article as Appendix 1, conforms to the Bluebook where the Bluebook makes sense. For example, like the Bluebook, my citation guide requires that case citations include the reporter volume number, an abbreviation for the reporter, the first page of the opinion, and a pinpoint citation, in that order. My citation guide departs from the Bluebook where the Bluebook is ridiculous: I do not share the Bluebook's obsession with abbreviations, and my rules on spacing are not nearly as complex as the Bluebook's. Finally, my citation guide does not purport to be comprehensive. To the contrary, it encourages users to come up with their own citations to less-frequently-cited authorities, as long as those citations enable the reader to locate the cited source.

This Article summarizes my efforts to find a better way of teaching legal citation to first-year law students. Part I attempts to explain why the Bluebook is still taught in most law schools despite decades of withering criticism. In Part II, I describe my efforts to determine empirically what law students need to know about legal citation in order to succeed as practicing attorneys. Finally, Part III discusses the development and implementation of my citation guide.

### I. HOW DID WE GET HERE?

Criticism of the Bluebook is nothing new. Judge Posner first advocated abandoning the Bluebook back in 1986, when the Bluebook was only 255 pages long.<sup>4</sup> (The most recent edition is 511 pages.)<sup>5</sup> Other commentators have taken their shots over the years.<sup>6</sup> And yet, the Bluebook endures. Of 177 U.S. law schools surveyed by the Association of Legal Writing Directors in 2014, 126, or 71%, reported that they only teach the Bluebook method of citation.<sup>7</sup> Of the remaining schools, most only use the Association of Legal Writing Directors

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4. Posner, *supra* note 2, at 1343.

5. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 19th ed. 2010).

6. See, e.g., Mark Garibyan, Comment, *Old Habits Die Hard: Disengaging From the Bluebook*, 2 U. MICH. J.L. REFORM ONLINE 71 (2012); Wayne Schiess, *Meet ALWD: The New Citation Manual*, 64 TEX. B.J. 911 (2001); Pamela Lysaght & Grace Tonner, *Bye-Bye Bluebook?*, 79 MICH. B.J. 1058 (2000); A. Darby Dickerson, *An Un-Uniform System of Citation: Surviving With the New Bluebook*, 26 STETSON L. REV. 53 (1996); James D. Gordon III, *Oh No! A New Bluebook!*, 90 MICH. L. REV. 1698 (1992) (reviewing the fifteenth edition of the Bluebook); Jim C. Chen, *Something Old, Something New, Something Borrowed, Something Blue*, 58 U. CHI. L. REV. 1527 (1991) (also reviewing the fifteenth edition); Ilya Somin, *The Case For Abolishing the Blue Book*, VOLOKH CONSPIRACY (May 2, 2006, 4:19 PM), [http://www.volokh.com/archives/archive\\_2006\\_04\\_30-2006\\_05\\_06.shtml](http://www.volokh.com/archives/archive_2006_04_30-2006_05_06.shtml).

7. Association of Legal Writing Directors & Legal Writing Institute, Report of the Annual Legal Writing Survey 19, available at <http://lwionline.org/uploads/FileUpload/2014SurveyReportFinal.pdf>.

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(“ALWD”) Citation Manual (15 schools, or 8%) or some combination of ALWD and the Bluebook (25 schools, or 14%).<sup>8</sup> Only 11 schools (6%) answered “other.”<sup>9</sup>

Why has the Bluebook remained a staple of legal education in the United States?

### A. *The Vicious Cycle*

One theory holds that we are trapped in a kind of vicious cycle, where legal writing professors teach their students the Bluebook because it is widely used in practice, and practitioners use the Bluebook because they were taught to in law school. Surely there is some truth to this. However, if the Bluebook is widely followed in practice—and I doubt, for example, that most litigators actually abbreviate all the words in Table 6, or that most judges require them to—it is not because practitioners are required to. Appendix 2 to the ALWD Citation Manual “contains local citation rules or preferences promulgated by state and federal courts.”<sup>10</sup> Only five states—Delaware, Indiana, North Carolina, Texas, and Wisconsin—require citations in court filings to conform to the Bluebook.<sup>11</sup> Several other states, in setting out their unique citation rules, refer attorneys to the Bluebook for “additional guidance”<sup>12</sup> or require that citations to authorities not covered in their state-specific rules conform to the Bluebook.<sup>13</sup> Washington’s rules include seventeen enumerated “Exceptions to *Bluebook*.”<sup>14</sup>

As noted by Professor Darby Dickerson, many more states “have enacted rules requiring attorneys to cite sources in ways that deviate from pure Bluebook form.”<sup>15</sup> Indeed, this was true of the two states where I practiced law—California<sup>16</sup> and Florida<sup>17</sup>—and of Michigan,<sup>18</sup> where I attended law school. It is also true of several other states with large legal markets, including New Jersey,<sup>19</sup> New York,<sup>20</sup> and Ohio.<sup>21</sup>

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8. *Id.*

9. *Id.*

10. ALWD GUIDE TO LEGAL CITATION 443 (5th ed. 2014).

11. *See* Dickerson, *supra* note 6, at app. B-1; DEL. SUP. CT. R. 14(g); IND. R. APP. P. 22; N.C. R. APP. P. app. B; TEX. LOC. R. 8TH CT. APP. 38.1(b); WIS. R. APP. P. 809.19(1)(e).

12. *E.g.*, S.C. APP. CT. R. 268 (“Additional guidance on citation of authority may be found in *A Uniform System of Citation* published by the Harvard Law Review Association . . .”).

13. *E.g.*, FLA. R. APP. P. 9.800(o) (“All other citations shall be in the form prescribed by the latest edition of *The Bluebook: A Uniform System of Citation* . . .”).

14. WASHINGTON COURTS, OFFICE OF REPORTER OF DECISIONS, STYLE SHEET, *available at* [http://www.courts.wa.gov/appellate\\_trial\\_courts/supreme/?fa=atc\\_supreme.style](http://www.courts.wa.gov/appellate_trial_courts/supreme/?fa=atc_supreme.style).

15. Dickerson, *supra* note 6, at 90.

16. *See* CAL. STYLE MANUAL § 1:13.

17. *See* FLA. R. APP. P. 9.800(b).

18. *See* MICH. UNIFORM SYSTEM OF CITATION § I.A, *available at* <http://courts.mi.gov/Courts/MichiganSupremeCourt/CurrentCourtRules/9MichiganUniformSystemOfCitation.pdf>.

19. *See* N.J. R. APP. PRAC. 2:6-2(a)(5).

On the federal side, only a few courts require citations to conform to the Bluebook,<sup>22</sup> or to either the Bluebook or the ALWD Manual.<sup>23</sup>

Dickerson thus concludes that “if practitioners blindly follow Bluebook rules, they may find themselves incurring a judge’s wrath.”<sup>24</sup> It follows that legal writing professors should not teach our students blindly to follow Bluebook rules. Instead, we should tell our students up front that there is no “uniform system of citation.” Rather than teach my students how to cite state appellate opinions in accordance with the Bluebook, I teach them how to cite Florida appellate opinions in accordance with Rule 9.800 of the Florida Rules of Appellate Procedure. Those students who go on to practice in Florida state courts will know how to cite appellate opinions; those who practice in other jurisdictions at least will have gone through the process of locating and following a state’s unique citation rules.

### *B. The Uniformity Theory*

Another theory holds that we need *some* uniform system of citation for documents drafted by multiple attorneys. While it might not matter if one document uses “So. 2d” for the Southern Reporter, Second Edition, and another document uses “So.2d” (without a space), an individual document should be internally consistent.

I have three responses to this. First, while I agree that documents should be internally consistent, inconsistency in citation form is really no different from, and no greater problem than, other inconsistencies that are inevitable when multiple attorneys draft a document. The attorney drafting Section I of a document might refer to the defendant as “Defendant” while the attorney drafting Section II calls him “Smith.” One attorney’s major point headings might be indented and in capital letters, while another attorney’s headings are boldface, lower-case, and not indented. There are a lot of things that must be cleaned up before a document prepared by multiple attorneys is filed with a court; in that context, making the citations consistent with one another is not all that burdensome.

Second, even if this were a huge problem, surely the solution is not a 500-page monstrosity like the Bluebook. An attorney or professor concerned about uniformity could easily prepare and use a more uniform version of the citation guide attached to this Article.

Third, it must be noted that, in spite of the words on the cover, the Bluebook itself is not, technically, “uniform.”<sup>25</sup> In a single string citation, one

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20. See N.Y. OFFICIAL REPORTS STYLE MANUAL, available at [http://www.courts.state.ny.us/reporter/new\\_styman.htm#2.0](http://www.courts.state.ny.us/reporter/new_styman.htm#2.0).

21. See SUPREME COURT OF OHIO, WRITING MANUAL: A GUIDE TO CITATIONS, STYLE, AND JUDICIAL OPINION WRITING 5–20 (2d ed. 2013), available at <http://www.supremecourt.ohio.gov/ROD/manual.pdf>.

22. See D. DEL. R. 7.1.3(a)(5).

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

24. Dickerson, *supra* note 6, at 89.

25. Gordon, *supra* note 6, at 1698 (“The system is hardly uniform . . . .”); *id.* at 1702 (noting that, while Texas and Idaho are both five letters long, Texas is abbreviated “Tex.” while Idaho is not abbreviated at all).

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might refer to the Southern Reporter, Second Edition, which is abbreviated “So. 2d” in the Bluebook, and the Southern District of Florida, which is abbreviated “S.D. Fla.” Thus you have two different abbreviations for the word “Southern” in a single string citation.

### *C. The Brown M&M Theory*<sup>26</sup>

Perhaps the Bluebook endures because, despite its flaws, it enables a legal writer to communicate to her reader that she “gets it.” A brief digression illustrates this theory. When the band Van Halen played concerts in the 1980s, its contract with local promotion companies included a clause requiring that there be no brown M&Ms in the backstage area.<sup>27</sup> As lead singer David Lee Roth explained years later, when he arrived at a concert venue, he would immediately walk backstage and inspect the M&M bowl.<sup>28</sup> If it contained brown M&Ms, he would order an immediate review of the entire production because the promoters had not read the contract carefully.<sup>29</sup>

It is possible that the Bluebook serves a function similar to Van Halen’s Brown M&M clause. A supervising attorney reviewing a document drafted by a junior attorney can make certain informed assumptions based on the quality of the bluebooking. If the bluebooking is thorough and correct, then the junior attorney probably made sure all the cases cited are good law.<sup>30</sup> If the bluebooking is thorough and correct, then the junior attorney probably did not forget to address one of the causes of action in the complaint, or one of the adversary’s arguments. If the bluebooking is thorough and correct, then the junior attorney probably made sure the document complies with the court’s local rules. And so on.

A similar argument could be made that the Bluebook endures because it functions as a signaling device. By following the Bluebook, the author of a legal document signals to the reader that the author was paying attention in law school. In their new legal writing textbook, Professors Rachel Smith and Jill Barton warn law students about their inevitable encounters with Bluebook sticklers: “You will encounter judges, supervisors, professors, and colleagues who are exacting about legal citation. For them, a writer’s ability to format citations correctly demonstrates that writer’s credibility, attention to detail, and professionalism.”<sup>31</sup>

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26. My colleague, Professor Andres Sawicki, first suggested this theory to me.

27. ImBigOnReddit, *David Lee Roth Tells the Story Behind the “No Brown M&Ms” Legend*, YOUTUBE (Feb. 14, 2012) [https://www.youtube.com/watch?v=\\_IxqdAgNJck](https://www.youtube.com/watch?v=_IxqdAgNJck).

28. *Id.*

29. *Id.*

30. Ian Gallacher, *Cite Unseen: How Neutral Citation and America’s Law Schools Can Cure Our Strange Devotion to Bibliographical Orthodoxy and the Construction of Open and Equal Access to the Law*, 70 ALB. L. REV. 491, 492 (2007) (“an ability to generate accurate citations is viewed as a proxy for a lawyer’s attention to detail”).

31. JILL BARTON & RACHEL H. SMITH, *THE HANDBOOK FOR THE NEW LEGAL WRITER* 282 (2014).

To these “exacting” audiences, the Bluebook is esoteric, arcane, and even ridiculous . . . and we would not have it any other way. There is probably something to this. However, if the Bluebook is a signaling device, it is an awfully expensive one, both in terms of the time it takes a law student or attorney to master the Bluebook, and the time it takes an attorney to conform a document to the Bluebook’s many rules.<sup>32</sup>

Moreover, it is absurd to presume that just because a legal document has flawless bluebooking, everything else must be fine. Accurate bluebooking shows that a writer can master detailed instructions but tells the reader nothing about the writer’s capacity for rigorous legal analysis and creative thought.

**D. “A Grim Capitalist Logic”**

Judge Posner concludes his article as follows:

The growth in the size and complexity of The Bluebook may also reflect the reflex desire of every profession to convince the laity of the inscrutable rigor of its methods. The essence of “profession” as a type of service provider is that it employs esoteric methods that its customers must take on faith; it is on that basis that a profession can claim such privileges as licensure requirements that restrict entry and thus competition. But unlike the genuinely professional methods used by the modern medical profession to diagnose and treat disease, the core method of the lawyer and the judge is “legal reasoning,” and it lacks scientific rigor; indeed, at its best, it is uncomfortably close to careful reading, to rhetoric, and to common sense. An unconscious awareness of the limitations of legal “science” drives the search for rigor into unlikely places, such as the form of citations, and has given the profession a 511-page book that it does not need.

A grim capitalist logic thus drives the malignant growth of The Bluebook.<sup>33</sup>

As the Bluebook has grown over the years, so has its self-importance. The 10th Edition of the Bluebook, which was published in 1959, stated that “[t]he rules set forth in this booklet should not be considered invariable. Whenever clarity will be served, the citation form should be altered without hesitation.”<sup>34</sup> A half-century later, the Bluebook now claims to provide “a systematic method by which members of the profession communicate important information about the sources and authorities upon which they rely,” and invites readers to begin “a lifelong relationship with the *Bluebook*.”<sup>35</sup>

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32. See Gordon, *supra* note 6, at 1704 (estimating that if just one third of the lawyers in the United States spend just one hour per month looking up *Bluebook* rules, the cost to clients would be \$300 million per year).

33. Posner, *supra* note 1, at 860–61.

34. A UNIFORM SYSTEM OF CITATION: FORMS OF CITATION AND ABBREVIATIONS iv (Columbia Law Review et al. eds., 10th ed. 1959).

35. *Supra* note 5, at 1.

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The “grim capitalist logic” to which Judge Posner refers explains not only the growth of the Bluebook, but also its prevalence among practitioners. The existence of a comprehensive, detailed, and rigorous citation manual enables attorneys to bill clients for time spent perfecting the citations in a legal document. This may be good for lawyers in the short run, but it is not something we should celebrate, or even continue.

A useful analogy can be drawn to the plain English movement, which advocates the use of clear, plain language in legal writing. It is generally agreed that the modern plain English movement began with the 1963 writing of Professor David Mellinkoff’s book, *The Language of the Law* (1965).<sup>36</sup> Since then, numerous commentators and scholars have urged the bar to eschew legalese in favor of plain English that is accessible to non-attorney readers.<sup>37</sup> While there is much debate over whether and to what extent the plain English movement has succeeded,<sup>38</sup> it is generally agreed that legal writing professors should teach their students to write in plain English.<sup>39</sup>

There are many reasons that lawyers should write in plain English. For example, one study concluded that “judges prefer Plain English to traditional Legalese 66 percent to 34 percent.”<sup>40</sup> One important reason is that legalese drives an unnecessary wedge between attorneys, on the one hand, and clients and other non-attorneys, who for various reasons have occasion to read legal documents, on the other. Legalese is a regrettable part of the legal profession’s desire, in Judge Posner’s words, to “convince the laity of the inscrutable rigor of its methods.”<sup>41</sup>

If there is something approaching a consensus among those of us who teach legal writing that we should reject legalese in favor of plain English, then there should be a similar consensus that we should reject the Bluebook in favor of a more sensible, and less esoteric—and of course shorter—system of citation. Such a system is attached to this Article as Appendix 1. Judge Posner’s own citation

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36. See George H. Hathaway, *The Plain English Movement in the Law—A 1994 Update*, 50 J. MO. B. 19, 19 (1994) (“The plain English movement in the law is four hundred years old. . . . But nothing really ever happened until 1963 . . .”).

37. See, e.g., BRYAN A. GARNER, *LEGAL WRITING IN PLAIN ENGLISH* (2d ed. 2013); RICHARD C. WYDICK, *PLAIN ENGLISH FOR LAWYERS* (5th ed. 2005).

38. See Ian Gallacher, “When Numbers Get Serious”: *A Study of Plain English Usage in Briefs Filed Before the New York Court of Appeals*, 46 SUFFOLK U. L. REV. 451, 457 (2013) (“the present survey suggests that the trend is actually moving away from plainer writing”); Brady Coleman & Quy Phung, *The Language of Supreme Court Briefs: A Large-Scale Quantitative Investigation*, 11 J. APP. PRAC. & PROCESS 75, 103 (2010) (“If our most important assumptions are accepted—that readability offers reliable evidence of plainness, and that Supreme Court briefs provide an acceptable representation of legal writing—then the following conclusion is warranted: A gradual historical trend towards plainer legal writing is revealed over recent decades.”).

39. Gallacher, *supra* note 38, at 460 (“That Plain English is something to be desired in legal writing—at least legal writing intended to be filed with courts—is something taken almost as an article of faith in legal writing circles.”).

40. Sean Flammer, *Persuading Judges: An Empirical Analysis of Writing Style, Persuasion, and the Use of Plain English*, 16 J. LEGAL WRITING INST. 183, 199 (2010).

41. Posner, *supra* note 1, at 860.

manual is included in his article.<sup>42</sup> The University of Chicago Law Review's Maroonbook is another good option.<sup>43</sup> These three manuals have the added virtue of being available to anyone free of charge.

***E. The Bluebook Is Actually Great!***

While the Bluebook has many critics,<sup>44</sup> it also has its defenders. In a 2011 *Tennessee Law Review* article, Bret Asbury and Thomas Cole responded to Judge Posner's *Yale Law Journal* article with a full-throated defense of the Bluebook.<sup>45</sup> Asbury and Cole argue that the Bluebook "serves as a pedagogical tool that reinforces the mode of legal reasoning and analysis taught in law school and used by lawyers each and every day."<sup>46</sup>

Asbury and Cole contend that the "process of reasoning" used to construct a Bluebook-compliant citation "mirrors advanced legal analysis."<sup>47</sup> To illustrate this point, they consider how one would construct a citation to a hearing on a bill before the Philadelphia City Council. This example enables us to contrast my approach to legal citation to the Bluebook-centered approach advocated by Asbury and Cole.

If I were citing such a hearing in a court document, I would definitely attach a copy of the hearing transcript—assuming there is one—as an exhibit to the filing. It would not occur to me to consult the Bluebook in writing my citation. Rather, I would simply make up a citation, probably something like this: "Transcript of Philadelphia City Council Hearing on PCC Bill 842.23(a), April 13, 2010 (attached as Exhibit A)." It is difficult to imagine any judge objecting to this citation format, especially when the authority cited is attached to the filing.

Not surprisingly, Asbury and Cole take a different approach. First, they confirm that there is no Bluebook rule or example directly on point, presumably by reviewing the Bluebook's index.<sup>48</sup> Next, they consult Rule 13.3(b), which relates to state committee hearings.<sup>49</sup> From that rule, they extrapolate that "the relevant city, state, and year should appear in parentheses."<sup>50</sup> Next, they "harmonize" that conclusion with "The Bluebook's other rules," in particular Rule 12.9.2, which states that ordinances are cited like statutes.<sup>51</sup> Extrapolating from Rules 12 and 13, Asbury and Cole conclude that "hearings relating to a bill before city council

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42. See Posner, *supra* note 1, at 854.

43. THE MAROONBOOK: THE UNIVERSITY OF CHICAGO MANUAL OF LEGAL CITATION (University of Chicago Law Review ed., 2013), available at <http://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/v80%20MB.pdf>.

44. See *supra* note 6.

45. Bret D. Asbury & Thomas J.B. Cole, *Why The Bluebook Matters: The Virtues Judge Posner and Other Critics Overlook*, 79 TENN. L. REV. 95 (2011).

46. *Id.* at 97.

47. *Id.* at 101.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

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should be cited by listing both the city and the state, plus the year, all in parentheses.”<sup>52</sup>

It is true that Asbury and Cole’s citation would look a little different from the one I made up. For one thing, theirs has the added virtue of including the state, which will help readers who do not know that Philadelphia is in Pennsylvania. Their citation puts the city and the year in parentheses; mine does not. But if one agrees that my made-up citation will get the job done in this instance, then the time—and the client’s money—that Asbury and Cole spent “reasoning” their way to a Bluebook-like citation was not well spent.

To be fair, Asbury and Cole are talking about the Bluebook as a pedagogical tool and are not necessarily describing what they would do in practice. However, I think Asbury and Cole overstate the Bluebook’s value as a pedagogical tool. They offer no empirical evidence that a law student’s mastery of the Bluebook correlates with improved reasoning and analysis skills. Moreover, their fundamental premise that the process of reasoning to a “correct” Bluebook citation mirrors advanced legal analysis is questionable. Unlike just about everything else in law school, the question of how to cite a case or statute in accordance with the Bluebook has a “right” answer.

Here, the Bluebook’s spacing rules for federal and regional reporters provide an instructive example. Students often struggle to understand why “F. Supp. 2d” has a space before the “2d” while “F.2d” does not, or why “So. 2d” has a space while “P.2d” does not. Even when I explain the “answer”—that any abbreviation with more than one letter requires a space on the left and the right, whereas single letters and ordinals do not—students have a hard time getting this right. This may be because they cannot imagine that such minutiae could actually be important, so they do not put in the time needed to master these rules.

I have no doubt that if a student, even a weak student, dedicated himself to mastering this rule, he eventually would. But so what? The student would be no better at advanced legal analysis than he was before he devoted hours of his life to mastering a spacing rule.

If the Bluebook is a pedagogical tool, it is a limited one. While complying with certain Bluebook rules, such as choosing the correct introductory signal in Rule 1.2, is intellectually demanding, complying with many others—such as the requirement that ordinal numbers be abbreviated “1st,” “5th,” etc., and not “1<sup>st</sup>,” “5<sup>th</sup>,” etc.—is just tedious.

### II. WHAT AUTHORITIES DO LAWYERS ACTUALLY CITE?

In 2012, I decided to write a citation guide that I could use, occasionally in conjunction with the Bluebook, to teach my students about legal citation. As I began this project, I asked myself what students need to know about legal citation in order to succeed as practicing lawyers. My tentative answer, based on my own practice experience, was that students need to know how to cite cases and statutes, and a few other categories of authorities like the Federal Rules of Civil Procedure and the Restatements.

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52. *Id.*

More recently, I attempted to verify empirically that cases and statutes are the most commonly cited authorities in court documents, and that many authorities covered in the Bluebook—podcasts, letters, and so on—simply are not relevant to the everyday practice of law. I reviewed the tables of authorities in recent court filings in ten courts (or groups of courts) around the country to see what authorities were cited. I attempted to capture a variety of courts—state and federal, trial and appellate, and large and small legal markets.<sup>53</sup>

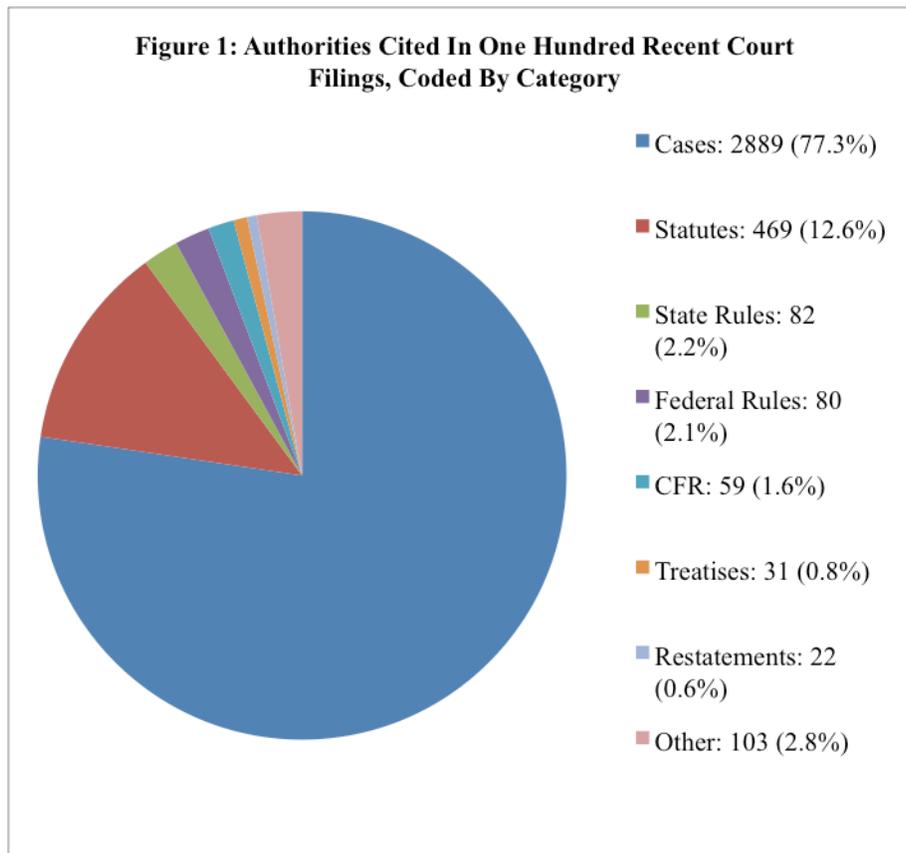
I then reviewed the ten most recent filings available on Westlaw for each jurisdiction.<sup>54</sup> For each document, I reviewed the Table of Authorities and “coded” each authority listed, classifying it as a case, statute, rule, local ordinance, etc. In total, I reviewed 100 filings and coded 3,735 authorities. The results are shown in Table 1, which includes the seven categories of authorities that appeared most often: cases, statutes, state rules, federal rules, the Code of Federal Regulations (“CFR”), treatises, and restatements. The 103 authorities classified as “other” include both traditional legal authorities such as the United States Constitution, law review articles, and jury instructions, and non-traditional ones like YouTube videos, the International Property Maintenance Code, and articles from interest group websites.

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53. The courts selected were as follows: (1) The United States Court of Appeals for the Third Circuit; (2) all federal district courts in the First Circuit; (3) all federal district courts in the Ninth Circuit; (4) all federal district courts in the Eleventh Circuit; (5) The Court of Appeal of Texas; (6) The Kansas Court of Appeals; (7) The Superior Court of Arizona; (8) The Circuit Court of Michigan; (9) The District Court of Minnesota; and (10) The Superior Court of North Carolina.

54. In some cases, I excluded certain types of filings. When searching trial court filings, I excluded documents like Complaints and Answers, which typically do not rely on any legal authorities. When searching appellate court filings, I excluded Reply and Sur-Reply briefs, which tend to be very short. I excluded all pro se filings. When the ten most recent filings included multiple filings in the same case, I reviewed the most recent filing and skipped the others. For ease of coding, I reviewed only filings containing Tables of Authorities.

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What this figure shows is that cases and statutes make up a large majority—89.9%, in my study—of the authorities cited in court filings. This is not surprising, of course.<sup>55</sup> The implication is that those of us who teach legal citation should spend most of our time teaching students how to cite cases and statutes.

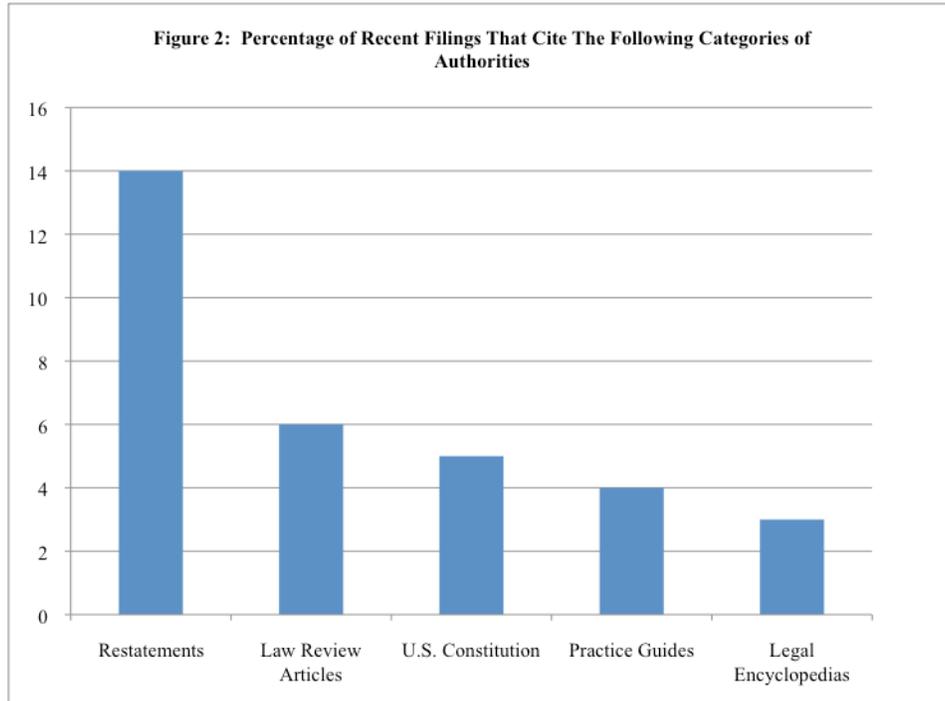
I was somewhat surprised by the numbers on the CFR, treatises, and restatements. There were enough citations to these authorities in my sample that I decided to include them in my citation guide.

There is another way to look at the data. Instead of asking how many cases, statutes, etc. were cited in the 100 filings, one might ask how many of the 100 filings cited each type of authority. Not surprisingly, all 100 filings cited at least one case, and nearly all cited at least one statute. But, as Figure 2 shows, the results are more interesting with respect to some less-frequently-cited authorities. For instance, although restatements account for only 0.6% of the authorities cited

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55. See BARTON & SMITH, *supra* note 31, at 283 (“*The Bluebook* has rules for how to cite every imaginable type of authority. But most practicing attorneys cite two types regularly: cases and statutes.”).

in the 100 filings, 14 of the 100 filings included at least one citation to a restatement. Thus, even though practicing attorneys cite cases and statutes far more than they cite restatements, restatements are cited frequently enough that law students should learn how to cite them.



As the table figure above shows, six 6 of the 100 filings reviewed cited law review articles. Thus, whereas law review articles accounted for only 0.16% of all authorities cited in the 100 filings (six 6 out of 3,735), a law review article was cited in six percent of the filings.

The implications of these data are less clear. If restatements are cited in 14% of all court filings, then my students probably need to know how to cite them. And because the U.S. Constitution is both very important and very easy to cite—the Bluebook explains it in less than one page<sup>56</sup>—spending a few minutes to teach students how to cite it is probably a good idea.

Law review articles present a greater challenge. The Bluebook devotes 23 pages to periodical abbreviations, which are just one component of a citation to a law review article.

In the end, I decided to leave law review articles out of my citation guide. I prefer that my students focus on primary authorities when researching and writing papers for my class. When I introduce secondary sources in class, I emphasize their value in leading students to primary authorities that they can cite

56. *Supra* note 5, at 110.

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in their papers. When reading student papers early in the first semester, I often find myself crossing out citations to secondary sources such as legal encyclopedias because binding authority exists for the proposition. The task of finding, incorporating, and citing cases is quite difficult for a first-year law student, and if my students master that process, I consider my course a success.

### III. A PRACTICE-ORIENTED CITATION GUIDE FOR FIRST-YEAR STUDENTS

#### A. My Citation Guide: What It Is, and What It Is Not

My citation guide is designed to teach first-year law students what they need to know about legal citation in order to succeed as practicing attorneys. It begins with the following “General Rule”: “The goal of any system of citation, and any individual citation in a legal document, should be to enable the reader to locate, quickly and easily, the source cited, and the precise location within the source that supports the proposition.” This is not a controversial proposition,<sup>57</sup> and even the Bluebook purports to agree.<sup>58</sup>

My citation guide is not some radical new system that contradicts the Bluebook at every turn. To the contrary, the basic format for citations to cases and statutes is the same in my citation guide and the Bluebook. That said, there are some Bluebook rules that make no sense to me, and I refuse to require my students to follow such rules simply because they are in the Bluebook. For example, I have never understood why the month and date—as opposed to just the year—and docket number of a judicial opinion suddenly become important just because a case is unreported.<sup>59</sup> Therefore, I do not require my students to include this information when citing reported or unreported cases. Similarly, many of the abbreviations in Table 6 do more harm than good.<sup>60</sup> For example, “Tr.” could mean “trust,” “trustee,” “trade,” or “transcript,” and legal writers should not confuse their readers just to save four keystrokes.<sup>61</sup> Unlike the Bluebook, my citation guide does not require students to include the “date of [the] code edition cited” when citing a statute.<sup>62</sup> In general, though, the citations in my guide are

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57. See Paul Axel-Lute, *Legal Citation Form: Theory and Practice*, 75 LAW LIBR. J. 148, 148 (1982) (“A legal citation serves two purposes. First, it indicates the nature of the authority upon which a statement is based. Second, it contains the information necessary to find and read the cited material.”).

58. See *supra* note 5, at 1 (“the citation forms in *The Bluebook* are designed to provide the information necessary to lead the reader directly to the specific items cited”).

59. See *supra* note 5, at 171. If someone can explain the reason for this requirement in Rule 18.3.1, I will revise my citation guide accordingly.

60. See Stephen M. Darrow & Jonathan J. Darrow, *Beating the Bluebook Blues: A Response to Judge Posner*, 109 MICH. L. REV. FIRST IMPRESSIONS 92, 94 (2011) (arguing that because of the Bluebook’s “confounding abbreviations,” “[l]arge costs in clarity are traded for small savings in space”).

61. See *supra* note 5, at 430 (Table 6 abbreviates “trustee,” but not “trust,” as “Tr.”).

62. *Supra* note 5, at 111. This may be the most commonly ignored rule in the entire Bluebook. I do not know any attorneys who, when citing 28 U.S.C. § 1331, will take the time to locate that statute in the most recent edition of the United States Code and

similar to those in the Bluebook, albeit with less emphasis on spacing and abbreviations.

My citation guide, unlike the ALWD Manual or the Maroonbook, is not intended to compete with the Bluebook. Like Judge Posner, I do not think we need a uniform system of citation, even if I got to write it. As discussed below, my system works well as a tool for teaching first-year law students what they need to know about legal citation in order to succeed as practicing attorneys.

Finally, my citation guide is not intended to be used by journals and law reviews, or by students writing articles that they hope to publish in journals and law reviews. Undoubtedly some of my students will work on journals during their law school careers, and perhaps a few of them will even publish legal scholarship someday. In my view, it is the responsibility of those journals to train students in the journals' preferred citation methods. My job is to prepare my students for the practice of law.

### ***B. My Citation Guide: Implementation and Preliminary Results***

I began using my citation guide in my Legal Communication and Research Skills classes in the fall of 2012. I required students to read the entire guide (it is eighteen pages long) in short installments and to complete weekly exercises.

Right away I noticed that my students and I were devoting much less time—both inside class and outside class—to legal citation than in past years. Before I wrote my citation guide, a typical citation assignment would require students to read a chapter in the *Interactive Citation Workbook* and a dozen or so rules and tables in the Bluebook before completing several exercises. Students now complete the exercises after reading just a few pages in the citation guide. We go over the exercises in class, and those discussions are now much shorter than they were in years past. Spending less time on citation enables me to spend more time helping students with their writing and legal analysis, which is the most important part of my class.

Comments in my evaluations suggest that the guide was a hit with students:

- “I appreciated the professor having a practical and detailed citation guide; anything I had to cite was right there in a clear format.”
- “I found your citation guide very useful and much better than the stressful [B]luebook.”
- “Professor Nemerovski’s Citation Guide was great—helped me understand citations.”

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include the year in the citation. This is probably obvious to anyone who has ever practiced law, but just in case it is not, on September 18, 2013, I reviewed the twenty most recent filings in federal courts in Florida that cited section 1331. Not surprisingly, not a single one of them included a year in its citation to section 1331.

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- “I found the Bluebook to be way too long and confusing compared to Professor Nemerovski’s Citation Guide.”

Students also appreciate the transparency that my citation guide offers when it comes to grading. For example, the guide instructs students not to agonize over whether to use “see” or no introduction before a particular citation because I rarely deduct points for choosing the “wrong” signal. The guide recommends that students memorize and follow Florida’s Rule of Appellate Procedure 9.800 guidelines for citing opinions from the Florida District Court of Appeal, with the clear implication that I will deduct points if they do not.

Despite the success of my citation guide, I continue to teach my students some of the Bluebook’s minutiae to prepare them for their inevitable encounters with Bluebook aficionados. I explain the ways in which my citation guide differs from the Bluebook, and the students work on exercises that require them to write Bluebook-compliant citations for certain authorities not covered in my guide. I explain to the students that at some point in their careers—perhaps as early as spring semester, when they get a different legal writing professor—they will likely encounter a professor, judge, or supervising attorney who will check every word of every case name to make sure each word in Table 6 is abbreviated, and will think less of you if you write “F.Supp.2d” instead of “F. Supp. 2d.” My students will be ready for those people, but hopefully they will never *be* those people.

### CONCLUSION

There is plenty of room for disagreement about how best to teach legal citation to law students. I hope we can agree, however, that we should at least put some serious thought into *what* types of authorities students should know how to cite and *how* those authorities should be cited. Are we teaching our students how to cite books and law review articles? If so, we should have a good reason for doing so. Are we requiring students to include case numbers, months, and dates when citing unreported cases but not when citing reported ones? If so, why? “That’s how the Bluebook does it” is not a satisfactory answer. Are we requiring students to locate statutes in books so they can include the year of publication in their citations? If so, we are not preparing our students for the practice of law, but rather for some kind of Bluebook Jeopardy quiz show.

Legal writing professors are on the front lines in the battle over legal citation. If we choose just to follow the Bluebook blindly, simply because it is there, or because it offers a “right” answer, we do our students a disservice. Instead, we should teach students an efficient, manageable system of citation that meets the needs of clients, courts, and other readers of legal documents.

**APPENDIX 1: PROFESSOR NEMEROVSKI'S CITATION GUIDE**

General Rule 1: The goal of any system of citation, and any individual citation in a legal document, should be to enable the reader to locate, quickly and easily, the source cited, and the precise location within the source that supports the proposition.

General Rule 2: When writing for a court you've never practiced in, you must research whether that court has its own citation rules. The court's website is a good place to start. If the court has its own rules, you must follow them.

**I. Case Names**

A. Use *italics* for case names.

B. Avoid using abbreviations in case names, with the following exceptions: Co., Corp., Inc., Ass'n, Ins. You may abbreviate other words as well if you are confident that the reader will know what you're talking about, but do not abbreviate "United States" in case names.

C. Always use only the first party on each side of the "v." in the case name. For example, the case of Jennifer Simmons and Harold King, Individually, and as Co-Special Administrators of the Estate of LaTonya King, Deceased, versus Rolando M. Garces, M.D. should be written *Simmons v. Garces*. Whether you are viewing the case in a book—books of cases are called "reporters"—or online, the words you need for your citation will be written in ALL CAPS.

D. Party names are often shortened to save space. For example, only the last name of a human party is used. The case of Michael Attilio Mangarella versus Alton Benes III should be written *Mangarella v. Benes*. Again, the words "Mangarella" and "Benes" are capitalized in the reporter and on Lexis and Westlaw, so you know those are the only words you need.

E. States are frequent litigants. When citing a *state court* case in which the state was a party, do not include the state in the case name. Instead, the case name should look like this: *State v. Nemerovski* or *People v. Nemerovski*. This is because the state (or "people") involved in the case will be clear from the rest of the citation.

F. When citing a *federal court* case in which a state was a party, include the name of the state only. Thus, The People of the State of Michigan versus Pete Nemerovski is written *Michigan v. Nemerovski*.

G. Try to avoid ambiguity. For example, you should include "City of" or "County of" if it's needed to avoid confusion among New York state and city, San Francisco city and county, etc.

**II. Case Citations, Long Form**

A. Federal

1. Reporters

Here are the most common federal reporters and their abbreviations:

United States Reports

U.S.

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Supreme Court Reporter	S. Ct.
Federal Reporter	F.
Federal Reporter, Second Edition	F. 2d
Federal Reporter, Third Edition	F. 3d
Federal Supplement	F. Supp.
Federal Supplement, Second Edition	F. Supp. 2d
Federal Rules Decisions	F.R.D.
Federal Appendix	F. App'x

The Bluebook sets forth a hopelessly complicated system of spacing. “F.2d” has no space, while “F. Supp. 2d” has spaces before and after the “Supp.” part. You can include spaces always, never, or when the Bluebook says to include spaces. The only thing I will deduct points for is inconsistency, such as “F. Supp.” on one page and “F.Supp.” elsewhere in the same document. I generally used spaces in the abbreviations above because I find them more readable that way. However, spaces between single capital letters look odd to me, so I have not included spaces in “U.S.” or “F.R.D.”

### 2. United States Supreme Court Opinions

Citations to United States Supreme Court opinions should look like this:

*Bush v. Gore*, 531 U.S. 98, 103 (2000).

In this example, the first number means the opinion is found in volume 531 of the United States Reports. The second number means the opinion begins on page 98 of volume 531. The third number means that the relevant portion of the opinion can be found on page 103 of volume 531. The “103” is called a pinpoint citation, or “pincite.”

### 3. Federal Appellate Court Opinions

For citations to federal appellate court opinions, the parenthetical at the end should include “1st Cir.,” “2d Cir.,” “3d Cir.,” “4th Cir.,” etc. Here is an example of a correct citation to a federal appellate opinion:

*Lee v. Hughes*, 145 F. 3d 1272, 1274 (11th Cir. 1998).

Consistent with the General Rule above, I will accept most variations of these parentheticals, such as “2nd” instead of “2d,” and superscripts (1<sup>st</sup>, 4<sup>th</sup>, etc.), as long as you are consistent.

### 4. Federal District Court Opinions

For states with only one district court, the parenthetical should follow this format: (D. [state abbreviation] YEAR). The state abbreviations are listed later in this guide. Here is an example:

*Eagle Creek Software Services, Inc. v. Paradise*, 826 F. Supp. 2d 1139, 1142 (D. Minn. 2011).

States with multiple district courts are more complicated. The Bluebook uses a single letter for the “direction” of the court: the Southern District of New York is S.D.N.Y., the Middle District of Tennessee is M.D. Tenn., and the Central District of California is C.D. Cal. This system is OK with me, even though the word “Southern” is abbreviated “So.” when referring to the Southern Reporter (see subsection II.B below). You may use any abbreviations that make sense to you, or you may choose not to abbreviate words like Southern, Northern, Middle, Central, etc. I do recommend abbreviating “District” and the state; your citation will be too long if you write out something like “Eastern District of North Carolina.” Long citations clutter the document and make it harder to read.

Here is another example of a federal district court opinion citation:

*White v. Purdue Pharma, Inc.*, 369 F. Supp. 2d 1335, 1339 (M.D. Fla. 2005).

B. State

1. Always cite to the regional reporter—Pacific Reporter, Southern Reporter, Northwestern Reporter, etc.—if the case can be found in one. Do not cite to the state reporter—Kansas Reporter, California Reports, etc.—unless the case cannot be found in a regional reporter. Here are the most common regional reporters and their abbreviations:

Atlantic Reporter	A.
Atlantic Reporter, Second Edition	A. 2d
Northeastern Reporter	N.E.
Northeastern Reporter, Second Edition	N.E. 2d
Northwestern Reporter	N.W.
Northwestern Reporter, Second Edition	N.W. 2d
Pacific Reporter	P.
Pacific Reporter, Second Edition	P. 2d
Southern Reporter	So.
Southern Reporter, Second Edition	So. 2d
Southeastern Reporter	S.E.
Southeastern Reporter, Second Edition	S.E. 2d

Again, in abbreviating these reporters, you may use whatever spacing makes sense to you, as long as your document is internally consistent. For example, do not write “N.W.2d” in one citation and “N.W. 2<sup>nd</sup>” in another.

2. Use the following abbreviations—but for Alaska, Idaho, Iowa, Ohio, and Utah, do not use abbreviations—for the 50 states and the District of Columbia:

Ala., Alaska, Ariz., Ark., Cal., Colo., Conn., Del., D.C., Fla., Ga., Haw., Idaho, Ill., Ind., Iowa, Kan., Ky., La., Me., Md., Mass., Mich., Minn., Miss., Mo., Mont., Neb., Nev., N.H., N.J.,

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N.M., N.Y., N.C., N.D., Ohio, Okla., Or., Pa., R.I., S.C., S.D., Tenn., Tex., Utah, Vt., Va., Wash., W.V., Wis., Wyo.

A citation to the highest court in a state—usually called the supreme court of the state—looks like this:

*People v. Armour*, 590 N.W. 2d 61, 63 (Mich. 1999).

I will not deduct points for other abbreviations that make just as much sense as those above—such as “Col.” instead of “Colo.” or “Penn.” instead of “Pa.”—as long as you are consistent. However, I will not accept postal abbreviations (AL, AK, AR, etc.) because too many states begin with A, M, and N, and I can never keep the abbreviations straight.

3. For intermediate appellate courts, use “Ill. App.,” “Cal. App.,” “Iowa App.,” etc. For New York, use “N.Y. App. Div.” Here is an example of a citation to an intermediate appellate court:

*Adams v. Cargill Meat Solutions*, 493 N.W. 2d 761, 763 (Neb. App. 2009).

4. Special Rules for Florida District Court of Appeal cases: Under Florida Rule of Appellate Procedure 9.800, Florida District Court of Appeal opinions should be cited as follows when practicing in Florida state court:

*Buncayo v. Dribin*, 533 So. 2d 935 (Fla. 3d DCA 1988).

Note that the First District is abbreviated “Fla. 1st DCA,” the Second is “Fla. 2d DCA,” the Third is “Fla. 3d DCA,” the Fourth is “Fla. 4th DCA,” and the Fifth is “Fla. 5th DCA.” **I recommend that you memorize this part of Rule 9.800 and try to follow it.** However, for purposes of this course, and consistent with the General Rule above, I will not deduct points for “So.2d” (with no space), “Fla. 2nd DCA,” “Fla. 3rd DCA,” or any superscripts (1<sup>st</sup> DCA, 4<sup>th</sup> DCA, etc.).

### C. Lexis and Westlaw

When a state or federal case is unreported but available on Lexis or Westlaw, cite to the Lexis or Westlaw version as follows:

*Gibbs v. Frank*, 2004 U.S. Lexis 21357, at \*18 (3d Cir. 2004).

*Shelton v. City of Manhattan Beach*, 2004 WL 2163741, at \*1 (Cal. App. 2004).

Note: In the above examples, \*18 and \*1 are pincites.

### D. Pinpoint Citations

Pinpoint citations are very important. The vast majority of case citations—I would say over 95%—should be to a specific page (or pages) of the opinion. If you are making a very general point about a case, and you cannot identify a specific portion of the opinion that supports your point, you may omit the pincite. Here is an example of a situation in which a pinpoint citation is not needed:

The so-called Madoff “feeder fund” cases were brought by investors in hedge funds that had in turn invested in Madoff’s fund, alleging

fraud against the feeder funds. *E.g.*, *Newman v. Family Management Corp.*, 748 F. Supp. 2d 299 (S.D.N.Y. 2010).

Here, the writer is simply citing *Newman* as an example of a “feeder fund” case. The writer is not referring to any specific portion of the *Newman* case, and is not concerned with the facts, holding, or reasoning of *Newman*. Therefore, no pincite is needed.

If the portion of the case you’re relying on is more than one page, your citation should look like this:

*Adams v. Cargill Meat Solutions*, 493 N.W. 2d 761, 762-64 (Neb. App. 2009).

For two-digit numbers, the correct form is “62-64.” For four-digit numbers, the correct form is “1062-64.” As you can see, for the page after the dash, only the last two digits are used. This is one area where I (uncharacteristically) require uniformity: I will take off points for things like “762-764,” “1062-4,” “62-4,” etc.

### III. Case Citations, Short Form

In legal citations, the word “id.” is used to refer to the immediately preceding authority cited in the document. The purpose of “id.” is to save space. “Id.” is a word. Like most other words, the first letter of “id.” should be capitalized if “id.” is the first word of your citation sentence, and it should not be capitalized if it is not.

Do not use “id.” unless the reader will quickly and easily see which authority you are referring to. Do not make the reader flip back several pages to find the previous authority. Also, do not use “id.” if the previous citation contained more than one authority, because the reader will not know which one you mean when you write “id.”

There are only two short forms that I accept for cases. Using the example of page 100 of the case of *Palsgraf v. Long Island Railroad Co.*, 162 N.E. 99 (N.Y. 1928), here are the acceptable short forms:

(1) *Palsgraf*, 162 N.E. at 100.

(2) *Id.* at 100.

Again, the second short form should be used only if it is clear that you are referring to *Palsgraf*.

In general, use the first party name in your short form. However, if the case is something like *State v. Nemerovski*, 162 So. 2d 541 (Fla. 2012), you should use the second party for reasons that should be obvious: *Nemerovski*, 162 So. 2d at 543.

Never write a short citation like “*Palsgraf* at 100” or “*Nemerovski* at 543.” I will take off points for short citations like those. Those citations blend (1) and (2) above and are incorrect. The reader will not be able to look this up because you have not provided a volume and reporter. If the volume and reporter are obvious because they were in the previous citation, then you should use “id.”

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### IV. Introducing Authorities

This section discusses different ways to introduce authorities. The authority or authorities on which you rely should be introduced at the beginning of your citation sentence.

#### A. No Introduction

1. Use no introductory words when summarizing or quoting a portion of an opinion. Here is an example of summarizing:

The Third District held that the trial court should have directed a verdict in favor of the manufacturer because slipping off a nine-foot-high voltage regulator is an obvious danger. *Siemens Energy and Automation, Inc. v. Medina*, 719 So. 2d 312, 314 (Fla. 3d DCA 1998).

2. Use no introductory words when the citation merely identifies a source mentioned in the text. Example:

The court in *Marzullo* applied an objective standard, focusing on the potential risk, not the severity of the injury. *Marzullo v. Crosman Corp.*, 289 F. Supp. 2d 1337, 1343 (M.D. Fla. 2003).

#### B. “See” and “see also”

1. Use “see” if the cited authority provides indirect but obvious support for the proposition in the text. Example:

The issue of proximate cause can be determined by the court on summary judgment. *See Kwoka v. Campbell*, 296 So. 2d 629, 631 (Fla. 3d DCA 1974). [Note: *Kwoka* does not actually say that proximate cause can be determined on summary judgment; however, proximate cause was decided on summary judgment in *Kwoka*.]

- a. Do not agonize over whether to use “See” or no introduction. Just remember to use no introduction when quoting; beyond that, just use your best judgment. I rarely deduct points in this area.

2. Use “see also” if the cited authority provides additional support for the proposition in the text, beyond that provided by previous cited authorities. When you use “see also,” include a parenthetical explanation of the source’s relevance. Example:

”Where the person to whom the manufacturer owed a duty to warn . . . has not read the label, an inadequate warning cannot be the proximate cause of the plaintiff’s injuries.” *Lopez v. Southern Coatings, Inc.*, 580 So. 2d 864, 865 (Fla. 3d DCA 1991); *see also Pinchinat v. Graco Children’s Products, Inc.*, 390 F. Supp. 2d 1141, 1148 (M.D. Fla. 2005) (holding that even if a factual dispute exists as to the adequacy of the warning, summary judgment for the defendant is still appropriate if the user of the product failed to read the label).

For more on parenthetical explanations of authorities, see section VIII of this Citation Guide.

C. Other Signals

The Bluebook and the Maroonbook include several additional introductory signals, including E.g., Accord, Cf., Compare/Contrast, See generally, Contra, and But see. These signals are not very common in practice, and I do not expect you to use them in your writing for this class.

V. Statutes, Regulations, and Rules, Long Form

Citations for statutes and rules are fairly straightforward. Here are some examples:

<u>Authority</u>	<u>Citation</u>
Section 35-48-4-1(a) of the Indiana Code	Ind. Code § 35-48-4-1(a)
Rule 408 of the Federal Rules of Evidence	Fed. R. Evid. 408
Sections 1396a(a)(1), 1396a(a)(3), and 1396a(a)(8) of Title 42 of the United States Code	42 U.S.C. §§ 1396a(a)(1), (3), (8)
Section 319.76 of Title 7 of the Code of Federal Regulations	7 C.F.R. § 319.76
Rule 12(b)(6) of the Federal Rules of Civil Procedure	Fed. R. Civ. P. 12(b)(6)

Because the third example refers to multiple sections of the statute, two section symbols are required. There should be a space between the section symbol(s) and the first number, but this is not something I would deduct points for.

Consistent with this Citation Guide's overall approach, the abbreviations used above are not mandatory. "P." is not a very helpful abbreviation for the word "procedure"; if you use something like "Proc." instead, I will not deduct points. Similarly, you might use "Ev." instead of "Evid.," and any legally trained reader will know what you're talking about.

Do not include the year the statute or rule was enacted unless it is relevant for some reason (and it usually is not). Do not include the name of the publisher (LexisNexis, West, etc.), and do not indicate whether the statute appears in the main volume or a supplement.

VI. Statutes, Regulations, and Rules, Short Form

Generally speaking, it is not necessary to use short forms for statutes, regulations, and rules, and I almost never deduct points in this area. To see why,

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consider the following statutory citation: 36 U.S.C. § 301 (2006). According to the Bluebook, the short form of this statute is 36 U.S.C. § 301. As you can see, for this statute, using the short form does not save substantial space. Moreover, because I do not require dates for statutory citations, long or short, there would be no difference between the long and short forms under my system anyway.

There are some instances in which I would deduct points for failure to utilize the short form of a statute. For example, suppose you write a paragraph that is five sentences long, and each sentence is followed by a citation. The citations are:

- (1) Okla. Stat. Ann. title 21, § 692(a)
- (2) Okla. Stat. Ann. title 21, § 692(a)(1)(B)
- (3) Okla. Stat. Ann. title 21, § 692(c)
- (4) Okla. Stat. Ann. title 21, § 692(c)
- (5) Okla. Stat. Ann. title 21, § 694.

It would be redundant, and potentially distracting to the reader, to continue repeating the words “Okla. Stat. Ann. title 21.” Instead, you should use short forms as follows:

- (1) Okla. Stat. Ann. title 21, § 692(a)
- (2) *Id.* § 692(a)(1)(B)
- (3) *Id.* § 692(c)
- (4) *Id.*
- (5) *Id.* § 694.

You are welcome to use short forms for statutes and regulations whenever you think it is appropriate. Just make sure the reader will be able to tell, quickly and easily, what statute you’re referring to. To that end, you should generally retain everything that comes after the section symbol. For example, if the long form was Iowa Code Ann. § 725.3(2), and now you want to cite section 725.3(3), the correct short form is *Id.* § 725.3(3), not *Id.* § (3). You could also avoid the short form altogether and write Iowa Code Ann. § 725.3(3).

For rules of civil procedure, evidence, etc., do not use any short forms.

### VII. Secondary Sources

Secondary sources are not cited nearly as often as primary sources. In a recent study, secondary sources accounted for approximately four percent of all authorities cited in court filings. However, certain secondary sources are cited quite often in certain jurisdictions and practice areas. Therefore, you should know how to cite the following secondary sources:

#### A. Restatements

Restatements of the law should be cited as follows:

- Restatement (First) of Conflict of Laws § 377.

- Restatement (Second) of Torts § 552(1)-(2).
- Restatement (Third) of Foreign Relations Law of the United States § 487(2).
- Restatement (First) of Restitution §§ 172-73.

Include the year in which the Restatement was published if (a) the Restatement you are citing is not the most recent one in that subject area, or (2) the year is otherwise relevant.

#### B. Treatises

Treatises should be cited as follows:

- 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2905 (3d ed. 2012).
- George G. Bogert & George T. Bogert, *Trusts & Trustees* § 998 (2d ed. 1983).

In the first example above, the first number indicates that the cited material comes from Volume 11.

### VIII. Court and Litigation Documents

Citations to court and litigation documents must be enclosed in parentheses. This alerts the reader that you are citing a litigation document and not a case, statute, or other legal authority. Here is an example:

Defendant admitted that she drank two martinis before leaving the restaurant. (Def.'s Response to Pl.'s Interrogatory No. 3.)

In the example above, "Def." stands for Defendant, and "Pl." stands for Plaintiff. These abbreviations make sense, as do certain other abbreviations set forth in the Bluebook ("Compl." for Complaint, "Aff." for Affidavit, "Ex." for Exhibit, and others). These words are very common in litigation, and it makes sense to abbreviate to save some space. However, many of the abbreviations in the Bluebook are either vague ("J." for Judgment) or unnecessary ("Br." for Brief, which saves just two characters). As with case names, use your judgment, and abbreviate only when you are confident that the reader will know what you mean.

Whenever possible, use pinpoint citations when citing litigation documents. Here are some good examples from Section B7 of the Bluebook:

- Friedberg Aff. ¶ 6.
- Rodriguez Decl. Ex. B, at 3.
- Pls.' Amended Answer to Def.'s Counterclaim, pp. 3-4.
- Petitioner's Brief at 6.

For page numbers, you can use either "at" or "p.", but try to be consistent.

In appellate matters, it is common practice to refer to the Record on Appeal as "R." Normally, "R." is not a very helpful abbreviation, but this practice is so common that it is not a problem: anyone reading an appellate brief will know that "R. at 142-44" refers to pages 142 through 144 of the Record on Appeal.

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### IX. “String” Citations and Order of Authorities<sup>63</sup>

#### A. String Citations

When you list more than one legal authority in support of the same proposition, it is called a “string” citation (or “string cite”). String citations disrupt the flow of your writing and should generally be avoided. However, there are circumstances in which it makes sense to use a string citation. String citations may be used when:

- It is essential, or at least important, to show that more than one case supports your proposition;
- You want to show that a number of jurisdictions have recognized a particular rule; or
- You want to establish that a certain proposition is well settled or widely recognized within a jurisdiction.

Here is an example of an effective string cite:

Several federal courts have extended *Michigan v. Summers* to permit the detention of individuals who have left the immediate vicinity of the property. See *United States v. Monteith*, 662 F. 3d 660, 666-67 (4th Cir. 2011); *Bullock*, 632 F. 3d at 1011; *United States v. Cavazos*, 288 F. 3d 706, 712 (5th Cir. 2002); *United States v. Cochran*, 939 F. 2d 337, 339 (6th Cir. 1991).

#### B. Order of Authorities

In a string citation, the authorities should be arranged according to the following rules:

- (1) Primary authority comes before secondary.
- (2) Statutes come before cases.
- (3) Federal cases come before state cases.
- (4) Cases from higher “ranked” courts come first. For example, federal appellate cases come before federal district court cases.
- (5) If several cases appear to be “equal”—for example, three cases from federal district courts in three different states—arrange them in reverse chronological order.

### X. Parentheticals

#### A. Explanatory Parentheticals

As the Bluebook states on page 26, “it is often helpful to include additional information to explain the relevance of the cited authority.” These “explanatory parentheticals” “should take the form of a phrase that begins with a present participle, a quoted sentence, or a short statement that is appropriate in context.” Note that the normal rules of punctuation apply to explanatory

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63. This section draws heavily on the K.K. DuVivier article cited in the Bibliography below.

parentheticals: if the parenthetical is a complete sentence, it should begin with a capital letter and end with a period.

Here are some examples from the Bluebook of explanatory parentheticals:

- *See Flanagan v. United States*, 465 U.S. 259, 264 (1989) (explaining that final judgment rule reduces potential for parties to “clog the courts” with time-consuming appeals).
- *Atlantic Richfield Co. v. Federal Energy Administration*, 429 F. Supp. 1052, 1061-62 (N.D. Cal. 1976) (“Not every person aggrieved by administrative action is necessarily entitled to due process.”).
- 5 U.S.C. § 553(b) (requiring agencies to publish notice of proposed rulemaking in the *Federal Register*).

#### B. Weight of Authority Parentheticals

Parentheticals are also used to indicate the weight of a cited authority. You will not use these kinds of parentheticals very often in this class or in practice. However, when citing to a dissenting or concurring opinion, you should indicate this parenthetically as follows:

- *O’Connor v. Board of Education*, 449 U.S. 1301, 1306 (1980) (Stevens, J., concurring).
- *TXO Products Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 473 (1993) (O’Connor, J., dissenting).

In addition, you should indicate parenthetically that an opinion is unpublished if (1) that is not already apparent from the citation, and (2) it matters that the opinion is unpublished (e.g., the relevant jurisdiction gives less weight to unpublished opinions).

#### C. Quoting/Citing Parentheticals

Finally, parentheticals are used to indicate that the authority cited quotes or cites another authority. Because most cases contain numerous citations to other authorities, you generally do not need to tell the reader that the case you are citing cites another case, but you are welcome to do so if you think it’s relevant. Here are some examples of “quoting” and “citing” parentheticals:

- *Zadvydas v. Davis*, 533 U.S. 678, 719 (2001) (Kennedy, J., dissenting) (citing *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953)).
- *Kansas v. Crane*, 534 U.S. 407, 409 (2002) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).
- *Fullilove v. Klutznick*, 448 U.S. 448, 519 (1980) (Marshall, J., concurring) (noting that conventional strict scrutiny is “strict in theory, but fatal in fact” (citing *Regents of the University of California v. Bakke*, 438 U.S. 265, 362 (1978))).

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Note that the third example above contains all three types of parentheticals—explanatory, weight of authority, and citing. You must be careful to close every parenthetical that you open. If a student wrote the third citation but only included one or two “close-parens” at the end (instead of the necessary three), I would take off points.

### XI. When To Cite

When discussing the law—for example, in the Explanation section of your CREAC—it is best to include a citation at the end of each sentence. Let’s start by looking at an example of how not to do it:

A non-compete agreement is breached when a former employee’s new job involves similar services as his previous job. *See Urologix, Inc. v. Wood*, 2008 WL 2790230 (M.D. Fla. 2008). In *Urologix*, a medical manufacturer that specialized in urological treatment devices won an injunction against former employees who started a new company that sold similar devices dealing with urological disorders. The former employee argued that he did not breach the non-compete provision because the term “competitive product” was ambiguous. The court disagreed, finding that the products that the former employees had sold “represent products, processes or services that . . . compete with, are used for the same purposes, or are intended for the same application as Urologix products.” *Id.*

This paragraph contains no pincites. The message to the reader is, “It’s all in there somewhere, and you can probably find it if you really want to.” This is unacceptable, and the reader will resent you for making her read the entire case to check a single quotation.

Here is another version of the same paragraph:

A non-compete agreement is breached when a former employee’s new job involves similar services as his previous job. *See Urologix, Inc. v. Wood*, 2008 WL 2790230 (M.D. Fla. 2008). In *Urologix*, a medical manufacturer that specialized in urological treatment devices won an injunction against former employees who started a new company that sold similar devices dealing with urological disorders. The former employee argued that he did not breach the non-compete provision because the term “competitive product” was ambiguous. The court disagreed, finding that the products that the former employees had sold “represent products, processes or services that . . . compete with, are used for the same purposes, or are intended for the same application as Urologix products.” *Id.* at \*4-\*5.

This is better. Now we at least know that the cited and quoted portions of the case can be found on pages \*4 and \*5. However, the reader still does not know what’s on page \*4 and what’s on page \*5.

Here is how the paragraph would look with citations after each sentence:

A non-compete agreement is breached when a former employee’s new job involves similar services as his previous job. *See Urologix, Inc. v. Wood*, 2008 WL 2790230 (M.D. Fla. 2008). In *Urologix*, a

medical manufacturer that specialized in urological treatment devices won an injunction against former employees who started a new company that sold similar devices dealing with urological disorders. *Id.* at \*4. The former employee argued that he did not breach the non-compete provision because the term “competitive product” was ambiguous. *Id.* The court disagreed, finding that the products that the former employees had sold “represent products, processes or services that . . . compete with, are used for the same purposes, or are intended for the same application as Urologix products.” *Id.* at \*5.

This is the best way to cite when describing a case. Now, if the reader wishes to check the quotation in the last sentence of the paragraph, or see what words were omitted between “that” and “compete,” she knows right where to look—page \*5 of the opinion. Note that the first sentence does not require a pincite because it merely states the general proposition for which the case stands.

## **XII. Bibliography**

1. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 19th ed. 2010).
2. THE MAROONBOOK: THE UNIVERSITY OF CHICAGO MANUAL OF LEGAL CITATION (University of Chicago Law Review ed., 2012 ed.).
3. Tracy L. McGaugh & Christine Hurt, *Interactive Citation Workbook for The Bluebook* (rev. 2011 ed. ).
4. Richard A. Posner, *The Bluebook Blues*, 120 YALE L.J. 850 (2011).
5. K. K. DuVivier, *String Citations—Part I*, COLO. LAWYER, July 2000, at 83–84.