Network Effects and Legal Citation: How Antitrust Theory Predicts Who Will Build a Better Bluebook Mousetrap in the Age of Electronic Mice

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Network Effects and Legal Citation: How Antitrust Theory Predicts Who Will Build a Better Bluebook Mousetrap in the Age of Electronic Mice

Christine Hurt

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I. INTRODUCTION

Depending on your scientific bent, the year 2000 was either the final year of an era or the dawn of a new millennium. For some legal writers, the year 2000 was definitely a landmark year for legal citation. Within months of one another, the Seventeenth Edition of The Bluebook: A Uniform System of Citation (the “Bluebook”) and the inaugural edition of the ALWD Citation Manual: A Professional System of Citation (the “ALWD Manual”) were published. The (current) penultimate edition of the Bluebook, the Sixteenth Edition, incited greater than usual criticism. Perhaps for this reason, the Seventeenth Edition was published a year earlier than its scheduled revision. Or, perhaps the editors of the Seventeenth Edition felt the hot breath of the ALWD Manual on their necks. Or, maybe sales were down, and the Harvard Law Review needed a new sofa. For whatever reason, legal writers now have the opportunity to ask and answer the question: Who will inherit citation? The legal community has the option to upgrade the old Bluebook for a new version, to convert to a new upstart citation manual, or perhaps to take this opportunity to rethink how the legal profession moved down this tortuous citation road in the first place.

The current technological climate has given rise to a new antitrust model that proves useful for predicting the future of the legal citation industry: the theory of network effects. Using this new antitrust theory, the
legal citation industry can be characterized as a network industry, and the dynamic that has kept the Bluebook on the throne for so long is the "network effect" of that industry. In layman’s terms, a network effect exists when the value of a product to a user increases with each new user of that product. In network industries, one firm, usually the first one on the market with a product, can quickly and easily become the dominant firm. In the legal citation industry, the Bluebook is the dominant product. Once this dominance is established, any would-be challenger in a network industry will have significantly high barriers to entry, as evidenced by the ephemeral glory of the Maroonbook. Interestingly, the authors and the publisher of the ALWD Manual, consciously or unconsciously, have taken the exact steps required in a network market to challenge the dominant product successfully.

Although network effects alarmists tend to argue that even substantially superior products cannot gain market entry once a product has achieved the market dominance of the Bluebook, a clever upstart can emerge if the product is innovative, yet similar enough to the dominant product. The ALWD Manual is the quintessential interoperable competitor. This newcomer has a high probability of dethroning the resident monopolist. So much has been written about the necessary and unnecessary evils of the Bluebook that I could not hope to add to the distinguished body of both humorous and serious scholarship and commentary. The Bluebook is an easy lightning rod for both satire and strident criticism. Not only is its mind-numbing detail familiar to any current or former law student, but it is

10. Microsoft Corp., 253 F.3d at 49 (citing Michael L. Katz & Carl Shapiro, Network Externalities, Competition, and Compatibility, 75 AM. ECON. REV. 424, 424 (1985)).
11. See Robinson, supra note 9, at 522 ("[T]ipping can also increase the monopoly power of the dominant firm by creating significant barriers to entry.").
12. See discussion infra, Part IV (tracing the history of the Maroonbook).
14. See Stephen R. Heifetz, Blue in the Face: The Bluebook, the Bar Exam, and the Paradox of Our Legal Culture, 51 RUTGERS L. REV. 695, 703 (1999) ("The Bluebook hammers law students with the notion that the law is simply an intricate set of rules that, although tedious to learn, contains determinate answers decipherable by anyone willing to spend sufficient time staring at all of the possibly relevant rules."); Louis J. Sirico, Jr., Fiddling with Footnotes, 60 U. CIN. L. REV. 1273, 1273 (1992) (reviewing the Fifteenth Edition and determining that, as to content, the volume was not "worth the effort").
15. See Peter Phillips, Book Note, 32 N.Y.L. SCH. L. REV. 199, 199 (1987) ("No modern law school graduate can summon up memories of his first year of law school without painful recollections of hours in Legal Writing class, trying to master weird rules, counting spaces, or checking periods and abbreviations.").
also written by law students. Moreover, the Bluebook is inherently suspect in the academic world because it is a commercial success. Like death and taxes, the Bluebook incites law students, lawyers, judges, and academics to rail against it, but in the end all succumb passively to its authority.

This Article first explains how the Bluebook became the current dominant product in the legal citation industry by analyzing the history of the Bluebook and how the Seventeenth Edition revisions will take their place in that history. Then, this Article reviews the short-lived heyday of the previously hopeful Bluebook challenger, the Maroonbook, and the meteoric rise of the latest challenger, the ALWD Manual. The Article will then theorize as to why the Maroonbook failed in the legal citation network industry and what the ALWD Manual's editors may have learned from the Maroonbook's failure. The Article will then compare the Seventeenth Edition with the ALWD Manual to determine if the new market entrant is truly a superior product. Finally, the Article will close with a prediction as to who will emerge victorious as the dominant citation system in this network industry.

II. THE LEGAL CITATION INDUSTRY

A. THE CURRENT MARKET

In the legal citation industry, the Bluebook is the dominant product. Network effects theory explains that this dominance is due in part to the "historical accident" of the Bluebook's being the first citation manual to be used by a significant number of users. The continued dominance of the Bluebook is less a result of the Bluebook's superiority but of the nature of being in a networked industry. In a network industry, a product is more valuable to a consumer in proportion to the number of other consumers that own the product, or a complementary product. This effect is seen in

16. See Seventeenth Edition, supra note 1, at iii; Phillips, supra note 15, at 202 ("I shudder to think that we are all kowtowing to a group of law students who apparently really do get out of bed in the morning and say to themselves, 'I think I'll set down an arbitrary rule and change American jurisprudence—and actually proceed to do so!").

17. See James W. Paulsen, An Uninformed System of Citation, 105 Harv. L. Rev. 1780, 1784 (1992) (noting that at least by 1976, the Bluebook had become "a very profitable enterprise," as evidenced by the various law review authors fighting over those profits).

18. At this point, I will admit that I like legal citation, and I have a soft spot in my heart for the Bluebook. Then again, I have always liked crossword puzzles and enjoyed writing my "senior theme" using 3 x 5 index cards and a "works cited" list. I shirk not from rules; like most lawyers, I embrace them. I even learned to love baseball when I discovered what a great set of rules baseball has. However, the infield fly rule does not change every five years.

19. Heifetz, supra note 14, at 702 (calculating that "most, if not all law schools" teach the Bluebook citation system).

20. See Robinson, supra note 9, at 524 ("If the attractiveness of a network increases as it enlarges, consumers will tend to choose the larger network, which in turn will make it larger and even more attractive.").
both “real” networks, in which users communicate with one another, such as networks of telephones or fax machines, and also in “virtual” networks, such as computer and home entertainment products. In a virtual network, my DVD player may not seem more valuable to me just because other consumers purchase a DVD player; however, with each purchase, more complementary products, e.g., movies recorded in a DVD format, will become available for me to own, thus making my initial investment seem more worthwhile. Likewise, as more consumers buy and use a type of computer operating system, more software that is compatible with that operating system will become available.

Legal citation is also a network industry wherein the number of people who use a particular citation system increases the value for others to choose that same citation system. Like other network industries, legal citation may also be susceptible to dominance by a single firm or product. As the value of a product, in this case a citation system, increases with each new user, the market may “tip” toward a single company or standard. Thus far, the legal market has tipped in favor of the Bluebook. This tipping effect may be the result of the Bluebook’s early entry into the market, the superiority of its product, or a combination of both. Whatever the case, this monopolizing phenomenon tends to create barriers to entry for new products, even if they are superior or more cost-effective.

B. The Uniform Citation Code

A citation system is a unique type of product because it has quasi-official status in the United States legal system. No citation system is wholly promulgated by a state or federal legislature; instead, most courts require court documents to be submitted in a certain citation form, and these courts often base their citation requirements in whole or in part on an existing commercial publication. This publication is almost always the Bluebook. Unlike most users of consumer products, Bluebook users do not have complete freedom to choose what citation system to use. Once a citation system has been adopted by the courts, legal periodicals, and law schools, practitioners must adhere to that system or face penalties. This dynamic is

21. See id. at 522-23 (giving as examples of network goods the telephone, the fax machine, the video tape recorder, and computer operating systems).

22. See id. at 523 (describing how operating systems become more useful as programmers write for that operating system).

23. See id. at 524. But see William J. Kolasky, Network Effects: A Contrarian View, 7 GEO. MASON L. REV. 577, 578 ("Network effects alone do not necessarily make a market prone to single-firm monopoly and do not always create high barriers to entry.").

24. See Robinson, supra note 9, at 524.

25. See id. at 525. But see Kolasky, supra note 23, at 578 ("Fears that network effects may cause a market to lock into an inferior technology are almost certainly exaggerated.").

26. See Richard A. Posner, Goodbye to the Bluebook, 53 U. CHI. L. REV. 1343, 1349 (1986) (referring to the Bluebook as the "Uniform Citation Code").
more analogous to the relationship between laws and the voting populace than the relationship between private industry and the consumer.

The Bluebook is the de facto codification of the current legal citation rules. Like statutes, some of its provisions are simply codifications of the “common law” of citation—what lawyers and academics are doing anyway. Other provisions are merely products of the imaginations of the “legislature”: in this case, the editors of the Columbia Law Review, the Harvard Law Review, the University of Pennsylvania Law Review, and the Yale Law Journal. To be sure, some of the more jarring provisions must be compromises made in committee, movements spawned by interest groups, or the student version of “pork.” The main problem with this legislative scheme is that no true constituency exists. The users of the Bluebook do not elect or re-elect the authors of the Bluebook. More importantly, these authors do not have to face their constituents. Each citation legislator will enter the legal profession anonymously, leaving behind only an editorial shadow, often times a self-indulgent use of a name or note in a Bluebook example, as a clue to the lawmaker’s identity. In


28. Compare Sixteenth Edition, supra note 3, at 62 (including for the first time in its rule on parallel citations—Rule 10.3.1—references to public domain citation), with Seventeenth Edition, supra note 1, at 64 (including new Rule 10.3.3 on public domain format, reflecting the growth in this citation form from 1996 to 2000).

29. For example, Rule 10.9 in the Fifteenth Edition allowed writers of law review articles to use a short form for a case if that case had been cited in “a manner such that it can be readily found in one of the preceding four footnotes . . . .” The Bluebook: A Uniform System of Citation (Columbia Law Review Ass’n et al. eds., 15th ed. 2d prtg. 1991) [hereinafter Fifteenth Edition]. The Sixteenth Edition incomprehensibly changed the rule to read “in a manner such that it can be readily found in one of the preceding five footnotes . . . .” Sixteenth Edition, supra note 3, at 70. One can almost imagine a meeting at which one law review editor wanted to abolish the limitation altogether, but someone else wanted to keep it. Perhaps another editor wanted to abolish short forms for cases altogether. Perhaps this was the compromise that was reached.

30. See Chen, supra note 7, at 1539 (describing the change in Rule 10.3.1 that parallel citations should be used in state court documents, but not in law reviews, as spurred by a “citecheckers’ lobby”).

31. For example, the authors of the Fifteenth Edition decided to change Rule 16.6.2, a rule that had survived fourteen earlier editions, and to require that student-written articles be cited like other periodical articles, with the author’s full name. See James D. Gordon III, Oh No! A New Bluebook!, 90 Mich. L. Rev. 1698, 1700 (1992) (discussing these changes). This change now gives Bluebook authors the ability to live on in infamy in the examples to Rule 16.6.2, much like putting one’s initials on a restroom wall, at least until the edition, or the wall, is refurbished.

32. See Seventeenth Edition, supra note 1, at 122-23 (giving as examples of unsigned student-written materials three pieces from volumes of Harvard Law Review published in 1999, the year the bulk of the editing for the Seventeenth Edition was conducted). Compare Seventeenth Edition, supra note 1, at 122 (providing an example of a signed student work written by Andrew D. Morton of the University of Pennsylvania Law Review), with 147 U. Pa. L. Rev. ix (1999) (showing in the masthead that Mr. Morton was a member of the Editorial Board).
addition, the authors have set term limits of two years, a dynamic that has never allowed a single author to contribute to two editions of the Bluebook. Thus, we have no career, experienced citation legislators.

Our citation legislators are also students, mere neophytes to the world they are regulating. Although very intelligent and capable, these students have, at most, a summer or two of clerking with a legal employer. Yet, these students provide the rules that will govern the most experienced lawyers, judges and law professors. As a result, often times the rules that appear in new editions are shunned and ignored by the profession as technical details ignorant of the workings of legal practice.33

Another twist is that the audience being regulated treats the Bluebook more like a model code than a statute.34 Courts that adopt the Bluebook usually do so with some exceptions or additions.35 Some states create their own citation systems that supplement, and, in some cases, amend and restate, the Bluebook.36 Even law reviews, including the law reviews that promulgate the Bluebook, develop their own internal citation systems that are based on the Bluebook, but deviate from it according to their own preferences.37 These examples reflect conscious decisions to disregard the Bluebook; hundreds if not thousands of additional attorneys unknowingly ignore the Bluebook every day, due either to a casual citation attitude38 or to referencing an outdated edition.39 On any given day, a large percentage of

33. See Colonel William S. Fulton, Jr., Book Review, 97 MIL. L. REV. 127, 131 (1982) (noting that the Thirteenth Edition’s rules prohibiting parallel citation for U.S. Supreme Court cases and mandating parallel citation for state cases did not reflect the reality that most practitioners’ libraries will contain an unofficial Supreme Court reporter, but no official state reporters).

34. See id. at 130 (noting that, like the Model Code of Professional Responsibility, the Bluebook is not binding until an authority adopts it and suggesting some specific modifications that an adopter could choose to make).

35. See, e.g., S.C. App. Ct. R. 209 (stating that “guidance on citation of authority may be found in A Uniform System of Citation published by the Harvard Law Review Association, A Guide to South Carolina Legal Research and Citation published by the S.C. Bar C.L.E. Division, or other publications” and providing citation forms for various state-specific sources, including this rule, which should be cited as Rule 239, S.C.A.C.R.); IND. R. APP. P. 22 (providing citation forms to Indiana cases, statutes, regulations, and court rules and stating, “[u]nless otherwise provided, a current edition of a Uniform System of Citation (Bluebook) shall be followed”).


37. See Chen, supra note 7, at 1531 (confessing, as of 1991, that even Harvard Law Review provided its editors with an Executive Editor Handbook that interpreted some of the ambiguous rules in the Bluebook).

I remember, as one of about ten law students who founded the Texas Journal of Women and the Law, having many impromptu meetings about what our official interpretation of several Bluebook rules would be. We also voted on whether to use the “serial comma.” I voted “yes.” Older and wiser, I would vote differently now.

38. See Sirico, supra note 14, at 1275-76 (giving anecdotal evidence that practicing lawyers “roughly follow the Bluebook format” for citing cases, but craft their own cites for other sources, including only relevant information).

the legal community violates the provisions of the Bluebook without penalty, and probably without remorse.40

However, most members of the legal community would agree that a positive citation law is necessary. Many would say that to facilitate communication and regulate order, only one form of citation should be the official citation law.41 But what law should that be and who should provide it? The answer to these questions may be informed by noting that the Bluebook gained market dominance more by happenstance than by market choice.

C. King? I Didn’t Vote for Ye!42

Like other citation manuals, the Bluebook had a humble beginning.43 The Bluebook was born during spring semester break of 1926 when Harvard Law Review (HLR) Editor-in-Chief Erwin Griswold transformed the HLR "Instructions for Editorial Work" into a 26-page pamphlet entitled "A Uniform System of Citation."44 The pamphlet seems to have been intended to regulate only the editing of the members of HLR, and the next three editions of the ever-growing pamphlet did not venture beyond those ivy covered walls.45 However, by the fourth edition, three other law reviews, the Columbia Law Review, University of Pennsylvania Law Review, and Yale Law Journal, had become co-authors of the citation manual.46 In 1949, at the first
national conference of law review editors, the students proposed a national system of citation. A Uniform System of Citation, now known as the Bluebook, was the unanimous choice.

Even after the Bluebook's national adoption by law reviews, the jurisdiction of the Bluebook remained within the academic world. Law reviews adopted the Bluebook for editing scholarly papers, generally written by law professors. However, in 1976, the Twelfth Edition began its expansion to become the citation system for practitioners. This edition contained a new section of rules purporting to be applicable to appellate briefs and "other legal materials." At this point, the Bluebook was officially marketed as the citation manual for both judges and attorneys. Keeping with this trend, the Bluebook began to compile typeface conventions and rule differences for court documents and legal memoranda into light blue pages at the beginning of the volume, called “Practitioners’ Notes.” In addition to widening the range of venues in which it reigns, the Bluebook has also enlarged its subject matter jurisdiction. The 1926 pamphlet stated, “[t]his pamphlet does not pretend to include a complete list of abbreviations or all the necessary data as to form.” Not quite seventy-five years later, the Seventeenth Edition bears no such disclaimer, but instead claims, as it has for several editions, that within its 391 pages are “general standards of citation and style to be used throughout legal writing.”

Today, not only do most law reviews use the Bluebook, but most courts, and consequently law firms, do as well. The Bluebook has, until recently, also had a natural monopoly among citation manuals required and taught in first-year legal research and writing classes. However, the
Bluebook has obtained this monopoly not due to its ease of use and inherent value but because of its early incumbency in a network industry. Nor has the legal community chosen the Bluebook because of trust and appreciation for its editors. As more law schools began using the Bluebook, more students learned it. As more Bluebook students became Bluebook lawyers, other lawyers had to learn the Bluebook to be able to communicate with those lawyers. Courts then officially adopted the Bluebook so that all counsel could communicate with each other and the bench. Consequently, not all users are ardent fans of the dominant product.

III. THE BLUEBOOK’S ACHILLES HEEL

A. BLUEBOOK DETRACTORS

Although widely used, the Bluebook has also been widely criticized. Perhaps the problem lies in the nature of citation itself; users bristle at the focus on form over substance and the mandate to put various types of “square” source information into “round” holes. With every new edition, users retaliate with varying reviews. Some reviews count proofreading errors; others set their angst to verse. Some have even used the exercise as catharsis for old law school injuries inflicted by professors, law review editors, and competitive colleagues. But even the most battle-scarred reviewers feel compelled to applaud corrections and changes to previously criticized rules. Thus, these cyclical reviews fulfill a legitimate legislative purpose. The newly elected lawmakers can look to the mistakes of their predecessors, hear the clamor of the public, and attempt to take each new edition closer to citation perfection.
However, with every tinkering of an old rule and every promulgation of a new rule, the Bluebook only gets longer and more complex. Each new example regarding some source or detail that the editors of an earlier edition did not contemplate only prods the public to think of more sources or details that are not covered in the examples. The more that the Bluebook strives to be thorough, the more reviewers have realized that true thoroughness is an illusion. More flexible rules, like those in the Maroonbook, may solve this problem before the Bluebook implodes due to its sheer weight. The more exhaustive the Bluebook attempts to become, the more exhausted its users become.

B. SIXTEENTH EDITION

If a reviewer could point to the one moment in time that turned the tide against the Bluebook and opened the door for challengers, that moment would be the publication of the Sixteenth Edition in 1996. In addition to rule changes that seemed to have no purpose, such as the changing of the “four footnote” rule for short forms to a “five footnote” rule, the Sixteenth Edition fundamentally changed the meaning of the signals found in Rule 1.2. This “improvement” was the “New Coke” that left the Coca-Cola of citation vulnerable to the “Pepsi Challenge.”

“Uniform System of Citation,” Thirteenth Edition: A Review and Some Suggestions, 76 LAW LIBR. J. 264, 266 (1983). The Tenth Edition allowed a first name initial for authors of books, but not articles, if necessary for identification purposes. Id. The Eleventh Edition made this first initial rule mandatory for authors of books. Id. In the Fifteenth Edition, the rule was changed to require the use of any type of author’s full name, although middle names were required to be shortened to an initial. See Chen, supra note 7, at 1536 (noting that the change to allow first names was made to appease feminist authors). Dickerson notes that this rule was changed again in the Sixteenth Edition, as a result of public outcry that many authors are known by all three of their names. Dickerson, supra note 1, at 79-80. The second printing of the Fifteenth Edition also includes the changed rule. FIFTEENTH EDITION, supra note 29, at 101.

62. See Dickerson, supra note 1, at 59-62 (showing the evolution of the Bluebook from 26 pages in 1926 to 365 pages in 1996); see also SEVENTEENTH EDITION, supra note 1 (391 pages).

63. For example, Table 14, which purports to give “abbreviations for the names of English language periodicals that are commonly cited,” is updated in each edition to reflect the creation of new periodicals. See SEVENTEENTH EDITION, supra note 1, at 317-41 (filling twenty-four pages with abbreviations for commonly cited periodicals).

64. See Gordon, supra note 31, at 1703-04 (stating that the Bluebook’s goal of addressing every type of source is illusory and has caused it to expand beyond the needs of common practice).

65. Compare FIFTEENTH EDITION, supra note 29, R. 10.9, at 69 (stating that “a short form for a case may be used if it clearly identifies a case that is... cited (in either full or short form) in a manner such that it can be readily found in one of the preceding four footnotes”), with SIXTEENTH EDITION, supra note 3, R. 10.9, at 70 (stating that “a short form for a case may be used if it clearly identifies a case that is... cited (in either full or short form, including “id”) in a manner such that it can be readily found in one of the preceding five footnotes”).

66. See SIXTEENTH EDITION, supra note 3, at 22-24 (changing most notably the substantive meanings of “[no signal]” and “see”).

67. Cf. ROGER ENRICO & JESSE KORNBLUTH, THE OTHER GUY BLINKED: HOW PEPsi WON
The rule for signals in the Bluebook, Rule 1.2, is not a rule of form, but a rule of substance.68 Signals express in shorthand to the reader the authority of the citation and the relationship between the citation and the proposition it supports.69 Signals are legal writing synapses that link legal precedents and reflect the weight and connection of those precedents.70 However substantive these rules are, the editors of the Bluebook love to tinker with the signals with each new edition.71 No amount of tinkering has made the signals easier to understand,72 and any tinkering at all makes the use of signals before that edition obsolete or, at best, confusing.73 Each time the meaning of a signal is changed, the meaning of previous legal writing is thrown into doubt.74 With each edition and change in Rule 1.2, these substantive changes did not go unnoticed by reviewers.75 The changes found in the Sixteenth Edition were even more substantial—and more annoying.

The Sixteenth Edition changed the meanings of the two most frequently used signals: "[no signal]" and "see." Despite years of tinkering,
the distinction between the two had never been quite clear. The previous permutation of Rule 1.2(a) in the Fifteenth Edition mandated the use of "[no signal]" when the cited authority "clearly states the proposition" and the use of "see" when the "cited authority clearly supports the proposition." The rule attempted to illustrate the difference by stating that "[no signal]" was appropriate when the proposition was "directly stated by the cited authority" and that "see" was appropriate when the proposition was not directly stated by the citation but "obviously follow[ed] from it." The Sixteenth Edition, announcing that "the distinction between signals has been simplified," simply changed the rule so that regardless of whether the "cited authority directly states or clearly supports the proposition," the writer must use "see." Now, a writer could use "[no signal]" only if the cited authority identified a source of a quotation in her proposition or merely identified an authority she was referring to in her preceding sentence. This change, although a very easy one for the Bluebook authors to make, was probably not the one that critics of the Fifteenth Edition rule were anticipating.

The changes in the meanings of "[no signal]" and "see" had the curious and unwanted result of requiring a signal—usually "see"—for almost every legal citation. No supervising attorney or judge wants to see a legal document sprinkled with "see." Ultimately, the uproar among law professors regarding the changes was so vehement that the House of Representatives of the Association of American Law Schools (AALS) passed a resolution at its January 1997 meeting condemning changes to Rule 1.2 in

76. The Fourteenth Edition required the use of "[no signal]" when the cited authority stated the proposition and the use of "see" when the authority supported the proposition. Gordon, supra note 31, at 1701. In response to criticism that these rules were confusing, the Fifteenth Edition inserted the word "clearly" before both "states" and "supports." FIFTEENTH EDITION, supra note 29, R. 1.2(a), at 22-23. This addition did not "clear" up the confusion.

77. FIFTEENTH EDITION, supra note 29, R. 1.2(a), at 22-23.

78. Id.

79. SIXTEENTH EDITION, supra note 3, at v.

80. Id. R. 1.2(a), at 22.


82. See Dickerson, Ten Changes, supra note 71, at 78 ("[I]n briefs and office memos, when the primary purpose is to identify sources that directly state or clearly support a proposition, the "see" signal will be used before almost every citation that does not identify the source of a quotation.").

83. See Good, supra note 5, at 78-80 (calling the Sixteenth Edition signal changes "crazy" and stating that "few lawyers could see the logic in requiring "see" before a case citation that directly supports the stated proposition of law").
the Sixteenth Edition and encouraging its members, and law reviews, to use the signal rules in the Fifteenth Edition.84

What were the Sixteenth Edition editors thinking? The signal rules changes in the Sixteenth Edition can undoubtedly be characterized not as a codification of the common practice of *lawyers*, but as a codification of the common practice of most *law reviews*.85 Glance at a volume of any prestigious law review, even one published before 1996, the publication date of the Sixteenth Edition, and you will find that almost every citation is preceded by a signal and followed by an explanatory parenthetical, even if the relevance of the citation is clear to the reader. However, judges and supervising attorneys do not want straightforward legal citations that clearly support an argument cluttered with confusing signals and explanatory parentheticals.86 They want the actual text of the document to tell the reader why the writer is citing this particular authority. This change reflects the insularity of the authors of the Bluebook and the lack of experience the authors have with the actual practice of law.87

C. NEW SEVENTEENTH EDITION

The Seventeenth Edition marks a new era in the editing and publication of the Bluebook. This edition, probably as a response to criticism over the years,88 was the first to have a professional Coordinating Editor, Mary Miles Prince, Associate Director of the Vanderbilt University Law School Library, and was the first to request advice and comment via its new website before adoption and publication.89 These two improvements to the revision process must have been instrumental in creating an edition that was not as vulnerable to criticism as earlier editions. The edition definitely

85. The other, less controversial signal change made in the Sixteenth Edition was the deletion of the signal “contra.” This change is not surprising, given that a former executive editor had already divulged in a review of the Fifteenth Edition that neither “contra” nor “accord” were ever used by the *Harvard Law Review*. See Chen, supra note 7, at 1531.
86. See C. Edward Good, *Will the Bluebook Sing the Blues*, TRIAL, Jan. 2001, at 78, 80 (stating that few attorneys agree with requiring a signal before a case citation that provides direct support for a proposition).
87. In fact, as early as the Ninth Edition, a reviewer remarking on the signal rule changes then noted that “the law reviews in important respects turned their backs on professional tradition, and marched off in a different direction all their own.” Gjerdingen, supra note 57, at 510 (quoting FREDERICK BERNAYS WEINER, BRIEFING & ARGUING FEDERAL APPEALS 223 (1967)).
88. The AALS, in conjunction with its resolution condemning the Sixteenth Edition signal changes, urged the editors of the Bluebook “to involve legal professionals in the revision process and to publish advance notice of proposed changes.” See Dickerson, *Ten Changes*, supra note 71, at 79 (citing ASS’N OF AM. LAW SCH., RESOLUTION CONCERNING PROMULGATION OF RULES OF CITATION 2 (Jan. 4, 1997)).
has fewer proofreading errors and fewer internal inconsistencies, a popular sticking point for reviewers.

1. Laudable Changes

Among the notable changes in the latest edition is a reinstitution of the Fifteenth Edition's Rule 1.2. "See" and "[no signal]" have been restored to pre-Sixteenth Edition glory, and "contra" has been brought out of retirement. The wording and placement of the rule regarding "e.g." has also been restored to its Fifteenth Edition appearance to calm those who feared that "e.g." could no longer be used alone as a signal. Reviewers have welcomed these old friends back with open arms.

The Seventeenth Edition also includes a number of less groundbreaking changes. Some of these changes seem to be the direct result of responses either to the web-solicited advice or possibly to various legal articles criticizing the Sixteenth Edition. In Dean Dickerson's 1996 Stetson Law Review article, she offered thirteen "thoughts for the Seventeenth Edition." At least four of these thoughts were taken seriously. Among the suggestions was a request for the Bluebook to show how the Bluebook should be cited. This omission was corrected in a new Rule 15.7(f). Furthermore, the article suggested that the Bluebook "follow the Maroonbook's lead" and include a rule advising students on how to show ordinal numbers in citations, such as "2d Cir." Most English writers would use "2nd," not "2d," and "3rd," not "3d." However, prior editions of the Bluebook used these unfamiliar contractions freely in the examples without any warning or commentary. The Seventeenth Edition's new Rule 6.2(b) reads: "If part of a citation, figures are used for all ordinal numbers." The rule then gives three examples: "82d Cong.," "41st Leg.," and "4th ed."
Students will still require divine inspiration to formulate the abbreviation for "3d," but the new rule is an improvement over the status quo.

Dean Dickerson's first suggestion was for the Bluebook to include or reference the citation requirements of state courts. The Seventeenth Edition begins the state portion of T.1 with the warning: "Practitioners should adhere to the local court rules." T.1 also gives the website for each state where a reader could find these local court rules. Realistically, this is the most that any citation manual meant for a nationwide audience can do. Any citation manual that attempts to list each state's local court rules would be unworkably long and in danger of being obsolete a month after printing. The article also suggested improving the proofing of the edition, which appears to have happened at the hands of the new Coordinating Editor.

Still other changes eerily mirror new ALWD Manual rules. Although some reviewers have suggested these similarities are actual responses, they are more likely coincidental. Rule 10.2.2 changed a long-standing Bluebook rule; for the first time, the Seventeenth Edition requires legal writers to abbreviate any word in a party's name that is found in T.6, even if the word is the first word in the party's name. The only exception is that the names of geographical units, such as states, that are named parties are not abbreviated, including the "United States." The ALWD Manual likewise provides for abbreviation of any and all words in a party's name found in its Appendix 3. The revival of the signal rules from the Fifteenth Edition's Rule 1.2 is also similar to the ALWD Manual's signal rule, Rule 45. But the authors of the Bluebook certainly had enough evidence of audience disapproval of the changed signal rules even before the publication of the ALWD Manual. The Seventeenth Edition also continues

101. Dickerson, supra note 1, at 95.
102. SEVENTEENTH EDITION, supra note 1, at 188 tbl.T.1.
103. See, e.g., id. at 233 tbl.T.1 (giving the website for Texas state courts as http://www.courts.state.tx.us).
104. Dickerson, supra note 1, at 102.
105. I reviewed a draft of the Seventeenth Edition during winter break of the 1999-2000 year. The changes that reviewers have pointed to were already in that draft. The ALWD Manual was not published and distributed until the spring of 2000. Although drafts were being circulated earlier among various legal writing directors, but not myself, I always had the distinct impression that the students working on the Seventeenth Edition had not seen it.
106. SEVENTEENTH EDITION, supra note 1, at 62.
107. I specifically believe that this similarity is coincidental. While reviewing the draft of the Seventeenth Edition, I asked one of the student editors why this rule was changed. The response was that no one knew why the exception for first words in a party's name existed in the first place.
108. SEVENTEENTH EDITION, supra note 1, R. 10.2.2, at 62.
109. ALWD MANUAL, supra note 2, Rule 12.2(e)(3), at 61 ("You may abbreviate any word in the party's name included in Appendix 3.").
110. Id. R. 45, at 301-04.
111. See discussion supra Part III.B.
its mission to restrict the use of parallel citations only to documents submitted to state courts that require parallel citations in their local rules.\textsuperscript{112} This rule, which is remarkably similar to Rule 12.4(c)(2) of the ALWD Manual,\textsuperscript{113} may be the product of imitation as the sincerest form of flattery, or it may just be the next step in simplifying the Bluebook parallel citation rule.\textsuperscript{114}

Overall, the Seventeenth Edition is a welcome improvement to the Sixteenth Edition. Bluebook detractors should rejoice in the return of “classic” Rule 1.2 and the other changes. This edition is also rare in that fewer changes seem to have been made merely for the sake of change itself. But, as one reviewer has stated, “one quickly realizes the Bluebook is still the Bluebook. If you liked it before, you will love the new version; but if you resented or even despised it, you will probably feel much the same.”\textsuperscript{115}

2. New Rule 18, Electronic Media and Other Nonprint Resources

Another big change in the Seventeenth Edition is a new Rule 18, which governs citation to electronic resources, including the Internet.\textsuperscript{116} This rule is much welcomed, but it does read as a preliminary attempt to address this burgeoning issue. This rule even provides a disclaimer, which reads like a red “DRAFT” stamp: “Due to the characteristics of and attitudes toward electronic and nonprint sources, this rule offers guidelines for citation to these sources while leaving room for change.”\textsuperscript{117}

At the outset, this rule is problematic. First, the guidelines for when a writer may cite to an electronic database or the Internet are unclear. (This should be a decision of the writer anyway, but any requirement should be clear.) Rule 18.2.2 tells users that “[a] case must be cited first to a traditional source or electronic database, except that an Internet source may be cited instead where the information is not available in a traditional source or electronic database.”\textsuperscript{118} If this is the rule, then for any given case a writer might be able to cite to an Internet source only for the few hours that a case requires to be copied onto an electronic database. In fact, most cases are available on electronic databases as quickly as they are on government-sponsored websites.

\textsuperscript{112} \textit{SEVENTEENTH EDITION}, supra note 1, R. P.3, at 14.
\textsuperscript{113} \textit{SEVENTEENTH EDITION}, supra note 1, at 129-44.
\textsuperscript{114} \textit{SEVENTEENTH EDITION}, supra note 1, R. 10.3.1, at 61 (first appearance of rule that parallel citation should not be given in ordinary legal memoranda and law reviews, but only in state court documents); see also \textit{Chen}, supra note 7, at 1539 (stating that the rule change in Rule 10.3.1 “arose solely from sloth”).
\textsuperscript{115} Warren D. Rees, \textit{The Bluebook in the New Millennium—Same Old Story?}, 93 LAW LIBR. J. 335, 336 (2001).
\textsuperscript{116} \textit{SEVENTEENTH EDITION}, supra note 1, at 129-44.
\textsuperscript{117} \textit{Id.} at 129.
\textsuperscript{118} Id. at 137-38.
The rules for statutes and constitutions (Rule 18.2.3), administrative and executive materials (Rule 18.2.5), and books, journals, and magazines (Rule 18.2.6) say the same thing and are even less likely to ever be used. However, both the introduction to Rule 18 and Rule 18.2.1 state a slightly different rule. Each of these sections tell users that

[t]his rule requires the use and citation of traditional printed sources, except when the information is not available in a printed source, or if the traditional source is obscure or hard to find and when the citation to an Internet source will substantially improve access to the same information contained in the traditional source.\textsuperscript{119}

According to Rules 18 and 18.2.1, a user can give a citation to a source on the Internet if the source is "obscure or hard to find." However, the actual wording of the individual rules of 18.2 do not reflect this general rule, stating to cite "first to a traditional source or electronic database, unless the information is not available in a traditional source or electronic database."\textsuperscript{120} Mysteriously, Rule 18.2.4 does not even include the exception "unless the information is not available in a traditional source or electronic database."\textsuperscript{121} Given that these sources will be accessible almost always on an electronic database, the only use for Rule 18.2 arises when, according to the individual rules of 18.2, "the Internet source will substantially improve access to the same information contained in the traditional source."\textsuperscript{122}

Why should "obscure or hard to find" be the determining factor? Is a source "hard to find" if it is expensive to find? If a case is relatively recent or from a jurisdiction different than the writer or reader, or if a statute is from a different jurisdiction, a writer would serve her readers better by giving an Internet citation with which a reader can view the statute for free than by giving a citation to a "traditional source" only available at the nearest law library or on an electronic database for a fee. Although giving the reader a parallel citation to an Internet source will greatly enhance convenience for the reader, it doubles the work for the writer, erasing any benefit that Internet research could provide. Surely an author can use some judgment

\textsuperscript{119.} \textit{Id.} R. 18.2.1, at 132-33; \textit{see also id.} R. 18, at 129 (outlining the same rule for "electronic" sources in general).

\textsuperscript{120.} \textit{Id.} R. 18.2.3, at 138 (Constitutions and Statutes); \textit{see also id.} R. 18.2.2, at 137-38 (stating the same rule for cases); \textit{Id.} R. 18.2.4, at 138-39 (same for legislative material); \textit{id.} R. 18.2.5, at 139 (same for administrative and executive material); \textit{id.} R. 18.2.6, at 139 (same for books, journals and magazines).

\textsuperscript{121.} \textit{See Seventeenth Edition, supra note 1, R. 18.2.4, at 138 (Legislative Material).}

\textsuperscript{122.} \textit{Id.} R. 18.2.2, at 137-38 (Cases); \textit{see also id.} R. 18.2.3, at 138 (stating the same rule for constitutions and statutes); \textit{id.} R. 18.2.4, at 138-39 (same for legislative material); \textit{id.} R. 18.2.5, at 139 (same for administrative and executive material); \textit{id.} R. 18.2.6, at 139 (same for books, journals and magazines).
about whether a citation to a certain medium is more convenient both for the writer and the reader.

Another troubling aspect of Rule 18 is that it mandates different citations depending on whether the writer accessed the source in print or on the Internet. This distinction without a difference begins: "Information should be cited in a manner that indicates clearly which source actually was used or accessed by the author." For example, if a writer is citing to *Yellow v. Green*, a case decided August 30, 2001 by the Western District of Texas, docket number No. CIV-01-1234, then the correct citation to this case if the writer read the case from an advance sheet, but wants the reader to know the case is available on-line, would be:


If the writer only accessed the online version, then the citation does not contain the word "available":


Why the difference? If a writer reads a newspaper article on microfiche, should that writer cite it differently than if she had read an original copy? If a writer reads a photocopy of a law review article that a research assistant made, would the writer cite it differently than if he had read the bound volume or a complimentary reprint copy? Why does the reader need to know what medium was used? Many practitioners read a published case on Westlaw, then cite to that case using the reporter information, not the Westlaw information, even though the practitioner never opened the reporter. Does a writer need to let the reader know that the case was read in electronic format? Hopefully, this distinction will be reconsidered in the next "draft" of Rule 18.

Rule 18 also does not address how to cite to a website per se, only how to cite standard sources such as cases, statutes, and secondary sources, that appear on a website. Rule 17.3.3 of the Sixteenth Edition, used to supply this information. For example, I was unsure of how to cite to information about the ALWD Manual that is published on the Association of Legal Writing Directors' webpage. The information was not in the form of an article, just information that appeared on the webpage. Although how to cite this was clear under the Sixteenth Edition, how to cite it under the new Rule 18 is a mystery. Perhaps the editors of the Eighteenth Edition will reinstate and elaborate on this repealed rule.

123. Id. R. 18, at 129.
124. SIXTEENTH EDITION, supra note 3, at 124.
IV. CITATION ALSO-RANS: THE MAROONBOOK

Notwithstanding the Bluebook's ubiquitous presence in the legal community, the Bluebook has had challengers. The most notable challenger prior to the publication of the ALWD Manual was the University of Chicago Manual of Legal Citation (the Maroonbook).

A. MAROONBOOK HISTORY

In 1986, this venerable challenger, published by the University of Chicago Press and edited by the student editors of the University of Chicago Law Review and the University of Chicago Legal Forum, attempted to enter into the legal citation market and grab market share away from the Bluebook's monopoly. The much-heralded birth of what became known as the "Maroonbook" was very auspicious. After all, the University of Chicago Press was already known for The Chicago Manual of Style, which governs style and citation form in the nonlegal publishing world. In addition, the contents of the manual were debuted as an appendix to a laudatory introductory essay, prematurely entitled "Goodbye to the Bluebook," by one of the most respected circuit court judges and scholars: Judge Richard A. Posner. Yet, fifteen years after that essay, the Maroonbook is only taught at the University of Chicago Law School and has been adopted by only a handful of law reviews. So, what went awry?

The beauty of the Maroonbook lies in its simplicity. However, therein also lies its downfall. The Maroonbook does not attempt to duplicate the Bluebook's efforts to create a citation rule for every possible citation need. Instead, the Maroonbook expounds a brief guideline of how to create a citation and leaves the minutia of citing to the author's discretion.

125. See Lushing, supra note 68, at 599 (citing two other systems of legal citation contemporaneous with the Eleventh Edition: M. PRICE & H. BITNER, EFFECTIVE LEGAL RESEARCH 322-80 (1953) and FREDERICK BERNAYS WEINER, BRIEFING AND ARGUING FEDERAL APPEALS 222-41 (1961)).

126. THE UNIVERSITY OF CHICAGO MANUAL OF LEGAL CITATION (Univ. of Chi. Law Review & Univ. of Chi. Legal Fellows eds., 1989), in Posner, supra note 26, app. at 1353-68 [hereinafter MAROONBOOK].

127. Reviewers much wittier than I am have used all the great metaphors to describe the prestigious "Law & Economics" school's entry into the commercial marketplace. See, e.g., Coombs, supra note 69, at 1103 ("The determination by University of Chicago students to compete, and thereby allow the market to decide which is the more efficient guide to legal citation, seems entirely apt . . . ."). See generally Chen, supra note 7, at 1392 ("When the market eventually adjusts, consumers of citation rules will be able to choose the type of regime under which they draft footnotes . . . ."). I feel silly even trying to compete.


129. See Posner, supra note 26, at 1343.


131. See Coombs, supra note 69, at 1104 (describing how the "Maroon Book" gives only
Maroonbook sets out the legislative policy behind its provisions:

These rules provide a basic framework: they suggest the essential elements of any citation and how they most clearly can be presented. However, because it is neither possible nor desirable to write a particular rule for every sort of citation problem that might arise the rules leave a fair amount of discretion to practitioners, authors, and editors. Users of this manual are encouraged, where no specific rule covers a situation, to cite authority in a clear, sensible manner.132

The rationale behind the policy, according to the Maroonbook, is that legal writing should be consistent within an individual brief or a publication, but that mandating complete and excessive uniformity among the legal community is "unhealthy" and "unnecessary."134

The Maroonbook defines a certain formula for every type of citation and leaves to the author the modification of this formula to sources that deviate from the standard. Even typeface is simplified. Under the First Edition, authors no longer had to race for a manual to know whether to italicize or use large and small capitals. In Maroonbook citations under the First Edition, all information appears in ordinary roman type. The Second Edition, available on the University of Chicago Law School's website, now requires that case names, titles of articles, and titles of books be italicized. Additionally, the Maroonbook does not attempt to be exhaustive in including the innumerable types of sources available to cite; the First Edition gave basic rules for citing commonly used sources only: cases, periodical articles, books and treatises, constitutions, statutes, legislative materials, executive and administrative materials, and rules of practice. The Second

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133. Id. ("We believe that consistency within a brief, opinion, or law journal is important, but that uniformity across all legal materials is not.").
134. See Posner, supra note 26, at 1349.
135. See, e.g., MAROONBOOK SECOND EDITION, supra note 132, R. 4.2, at 16 (providing that the form for reported cases is "[case name], [volume number] [reporter] {1st page}, [cited page] ({court} {year})").
136. For example, if a case was decided by the Fifth Circuit of the United States Court of Appeals during 1981, when the court was divided into units prior to the permanent division of that court into the Fifth and Eleventh Circuits, then an author might want to indicate to the reader which unit of the circuit decided that case. The Bluebook contains a specific rule to govern this situation. SEVENTEENTH EDITION, supra note 1, R. 10.8.2, at 71. A Maroonbook user would make a decision as to whether and how to include this information.
137. MAROONBOOK, supra note 126, R. 1, at 1353.
138. MAROONBOOK SECOND EDITION, supra note 132, R. 1, at 10.
139. MAROONBOOK, supra note 126, R. 4.2 (Cases), R. 4.3 (Periodical Articles), R. 4.4
Edition recognized that this exhaustive list had some gaps as the legal practice evolved in the next decade or so and added Internet sources, foreign materials, and international materials. The occasional author needing to cite to a foreign film, however, still must craft a citation from the basic forms given for these sources. Finally, the Maroonbook does not mimic the Bluebook’s rules regarding stylistic conventions. The Maroonbook merely cross references the Chicago Style Manual and gives some illustrative rules on quotations and capitalization. In adopting this nonformalistic policy, the First Edition of the Maroonbook attempted to do in a mere sixty-three pages what the Fourteenth Edition of the Bluebook attempted to do in 255 pages.

How novel! How extraordinary! But, could lawyers, presumably an intelligent segment of the human population, handle this amount of discretion and control?

B. CONSUMER REACTIONS

The Scribes Journal of Legal Writing published two competing reviews of the Maroonbook in 1990. Professor Douglas Laycock extolled the virtues of the Maroonbook and decried as “pedagogical malpractice” the teaching of the Bluebook to first-year law students now that a worthy competitor had arrived. Bryan Garner, on the other hand, denounced the “seat-of-your-pants” Maroonbook and alleged that the true malpractice would be for legal writing instructors to graduate students without knowledge of the “ubiquitously authoritative” Bluebook. In spite of their differences, both authors realized that the Maroonbook would have a very difficult time competing with the Bluebook. Despite his support of the Maroonbook, Professor Laycock recognized that the Bluebook’s entrenched monopoly position would be difficult to overcome. Garner recognized the second, more subtle obstacle: lawyers love—no, lawyers need—rules.

(Books and Treatises), R. 4.5 (Constitutions), R. 4.6 (Statutes), R. 4.7 (Legislative Materials), R. 4.8 (Executive and Administrative Materials), R. 4.9 (Rules of Practice).

140. See MAROONBOOK SECOND EDITION, supra note 132, at 9.

141. See SEVENTEENTH EDITION, supra note 1, at 30-53 (providing rules on such stylistic matters as capitalization, quotations, abbreviations, and numerals).

142. See MAROONBOOK SECOND EDITION, supra note 132, app. 1, at 32.


145. See Laycock, supra note 143, at 190 (implying that the marketplace for legal citation, with law review editors making the decisions, is not a competitive economy); see also Chen, supra note 7, at 1500-31 (discussing the history of the Bluebook’s “publishing cartel”); Coombs, supra note 69, at 1103 n.19 (proposing that the Bluebook is more like a cartel than a monopoly).

146. See Garner, supra note 144, at 191-93 (insisting that citation rules must be uniform and permanent, not “illusory” rules based on user discretion).
C. YOU'VE GOT TO HAVE RULES

The second factor probably was not anticipated. Who would have known that the legal community would prefer a system of detailed rules to standard guidelines requiring authors to use personal judgments? The reason is probably, as Garner points out, that the core of our legal system craves finality, not perfection. This craving leads to a search for stability, not truth. The United States legal system functions according to the doctrine of stare decisis: courts decide legal issues presented to them based on earlier decisions of the same legal issues in similar cases. A lawyer, law firm, or judge has used the Bluebook in the past, so that lawyer, law firm, or judge must apply the same citation system to the legal writing at hand. This doctrine does not strive for perfection, or even accuracy. This doctrine strives for predictability.

Lawyers have internalized this conservative principle of stare decisis to the detriment of innovations in citation form and have become great defenders of the status quo. As a result, a challenger to the Bluebook faces a monumental battle because the psychological barriers to entry are so high.

D. NETWORK EFFECTS AT WORK

The monopoly position of the Bluebook will be difficult for any would-be competitor to surmount, however superior that challenger may be. This difficulty is especially pronounced because of the network industry nature of the market for citation rules. If Professor Laycock had been writing about the Maroonbook in today's technological climate, he might have described the obstacle the Maroonbook was facing as a result of "network effects." The barrier to entry is not just customers' loyalty to the Bluebook; in fact, most users would gladly throw their dog-eared copies in the trash. The true barrier lies in the fact that all lawyers must speak the same language. At

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148. See Paulsen, supra note 17, at 1791 (stating that users of a citation system "want rules, not generic guidelines").

149. See Garner, supra note 144, at 191 (quoting Gilman v. Philadelphia, 70 U.S. (3 Wall.) 713, 724 (1865) as saying, "[i]t is almost as important that the law should be settled permanently, as that it should be settled correctly").

150. WILLIAM BLACKSTONE, COMMENTARIES *69.

151. Id.

152. The first federal cases to discuss the theory of network effects all revolve around the federal government's antitrust actions against Microsoft Corporation. See, e.g., United States v. Microsoft Corp., 253 F.3d 34 (D.C. Cir. 2001).
present, all lawyers speak the Bluebook, so according to the network effects theory, the Bluebook is the most valuable citation system.

Because almost all lawyers, law reviews, and judges at least nominally follow the Bluebook, the first customers of a new competitor risk not being able to communicate well with the rest of the legal community. The communication problems might be real—as in a reader not being able to decipher the citation—or perceived—as in a reader believing a non-Bluebook writer to be an ignorant or sloppy writer. Only the truly brave will flock to the new product and risk not being able to communicate or “network” with others. And, like computer users who have invested time learning one operating system or word processing software, Bluebook users may not feel like investing additional time learning another citation system.

One factor that sometimes allows competitors to compete in network industries is to make their products interoperable with the dominant product. However, the Maroonbook was too different from the Bluebook to be considered interoperable in any way. Thus, the challenger went the way of the obsolete Betamax, or at best the Macintosh computer, relegated to interfacing only with compatible software and other Macintosh hardware. But just as the existing computer elite incorporate what is best about the MacWrite into each new version of Microsoft Word or WordPerfect, so too have the last two versions of the Bluebook adopted the best rules of the Maroonbook.

The Maroonbook faced the battle of the network effects and lost. But did the Maroonbook prime the pump for a new, formidable Bluebook challenger? The failure of the Maroonbook to shake the Bluebook’s hold on legal citation is rich with cautionary tales for new challengers. The early bird gets the worm, but can the second mouse get the cheese?

154. See Robinson, supra note 9, at 525 (indicating users that will not want to be among the first users to switch to a new technology for fear other users will not follow).
155. See Carol M. Bast & Susan Harrell, Has the Bluebook Met Its Match? The ALWD Citation Manual, 92 LAW LIBR. J. 337, 338 (2000) (“[F]ailure to conform [to a legal citation manual] may signal lack of knowledge or attention to detail on the part of the writer.... Sloppiness in citation form may mean the loss of credibility.”).
156. See Robinson, supra note 9, at 527 (“[O]ne of the ways that entry barriers can be overcome is by making products compatible or interoperable [so that both products] share in the economies of scale.”).
157. See Paulsen, supra note 17, at 1781 (describing the Maroonbook and the Bluebook, respectively, as the “gestalt” and “Gestapo” approaches to citation).
158. See Dickerson, supra note 1, at 78-79 (noting that the more logical Maroonbook rules regarding citing authors’ full names and omitting subsequent history except in certain cases influenced changes in Sixteenth Edition Bluebook rules 15.1.1 and 10.7). But see Chen, supra note 7, at 1532 (remarking that changes in the Fifteenth Edition unfortunately did not reflect any Maroonbook influence).
V. THE NEW, NEW THING: THE ALWD MANUAL

In the spring of 2000, the ALWD Manual staked its claim to the citation throne. The authors of the ALWD Manual have attempted to depose the Bluebook not by creating a “rump” legislature\(^\text{159}\) that promulgates a new citation statutory scheme, but by declaring that citation is not a creature of statute at all. Citation is a creature of common law, and the ALWD Manual is the “restatement of citation.”\(^\text{160}\) This nicety is a distinction with a difference. In other words, the Harvard Law Review did not create legal citation. Citation has been around for a long, long time, and the “uniform system of citation” has no more binding effect than a commercial outline has. The time has come for a group of learned professionals to write an authoritative “restatement” that courts, practitioners, and legal academics can refer to with confidence.

A. ALWD MANUAL HISTORY

The ALWD Manual is the product of the ALWD Citation Manual Advisory Committee of the Association of Legal Writing Directors and the herculean efforts of Associate Dean Darby Dickerson of Stetson Law School.\(^\text{161}\) The fact that the ALWD Manual is written by experienced legal writing professors is very positive. Although law review editors and legal writing professors (many, if not most, former law review editors themselves) are presumably equal in natural intelligence, work ethic and attention to detail, legal writing professors have the added advantage of possessing a familiarity with legal citation in practice and complex legal citation in scholarship and of having embraced the daunting task of teaching legal citation to first-year law students.\(^\text{162}\) With the cumulative practice and teaching experience of the ALWD\(^\text{163}\) and the editorial support of a major legal publisher, Aspen Law & Business, the ALWD Manual has an inherent advantage over the Bluebook and other student-authored challengers, such as the Maroonbook.

The professional status of its authors also makes this citation manual

\(^{159}\) A “rump” legislature occurs when a small portion of an elected body carries out the business of the state after the larger portion walk out or are ejected. For example, Missouri seceded from the Union on October 31, 1861 by act of a rump legislature.

\(^{160}\) See Lysaght & Tonner, supra note 84, at 1058 (outlining the historical development of the Bluebook and the Maroonbook).

\(^{161}\) ALWD MANUAL, supra note 2, at xxiii.

\(^{162}\) Bast & Harrell, supra note 155, at 348 ("The ALWD Citation Manual was written, designed, and edited by professional legal writing instructors based on the knowledge gained from teaching this material to others.").

\(^{163}\) See ASS’N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., 2001 SURVEY RESULTS 2 (2001), http://www.alwd.org/downloads/surveys/2001/sections_1-4.pdf [hereinafter SURVEY RESULTS] (on file with the Iowa Law Review) (stating that in 2001, the average director graduated from law school seventeen years ago, had taught at the law school level for eleven years, and had been the director at the same law school for six years).
more like similar manuals in other disciplines. Most systems of documenting sources are promulgated by experienced persons in positions of leadership in that discipline. For example, one citation system used for term papers and scholarly writing in arts and sciences, the *MLA Handbook for Writers of Research Papers*, is published by a collaboration of members of the Modern Language Association.\(^{164}\) Another citation system, primarily used in the social sciences, is published by a committee of the American Psychological Association.\(^{165}\) Although the University of Chicago Press lists no individual author for the Chicago Style Manual, one reviewer attributes its “unrivaled eminence” in the field of manuscript publishing to the experience of the principal authors, Catharine Seybold and Bruce Young, who presided over both the twelfth and thirteenth editions.\(^{166}\) Even the Maroonbook was aided by an Advisory Committee made up of practitioners and librarians.\(^{167}\)

The impetus behind the ALWD Manual probably stemmed in part from legal writing professors’ collective frustration at teaching the increasingly complex Bluebook to law students. Anyone who teaches a “uniform” system each year would be particularly sensitive to changes in that system, especially changes for the sake of change. The Sixteenth Edition, with its unpopular and seemingly meaningless changes, may have been the last straw. A co-chair of the Oversight Committee has written that “[o]ne of the main forces giving impetus to the creation of a professionally crafted manual was, ironically, the 16th edition of *The Bluebook* itself.”\(^{168}\) Aside from the common complaints about the Bluebook, legal writing teachers have complained that the presentation of its rules is not conducive to teaching those rules.\(^{169}\) In addition, the process of having a law school text published by students and not a professional publisher created some chaos and disruption in classes using that text and depending on publication deadlines.\(^{170}\)

Another possible motivation, possibly subconscious, was to move law teaching another step away from academic theory to practical skill. The Bluebook is obviously biased toward academic writing, a type of writing that only a small percentage of law students, and even smaller percentage of lawyers, do. Nine pages out of the Bluebook’s 391 numbered pages focus on

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167. See *MAROONBOOK SECOND EDITION*, supra note 132, at 3 (acknowledgments page).
169. See Sirico, supra note 14, at 1275 ("Learning citation form from the Bluebook is like learning a language from a bilingual dictionary.").
170. See Jamar, supra note 168, at *4 (indicating that commercially published texts predictably arrive prior to the beginning of the academic year, but the Bluebook has missed that deadline in the past, frustrating professors teaching the tardy edition).
“the simpler style used in court documents and memoranda.” The remaining 382 pages are written in the typeface conventions for law review footnotes. Therefore, a practitioner or first-year law student writing an appellate brief must first consult the rules in the main body, then go to the slim Practitioners’ Notes to see how to translate the law review footnote style into the style for court documents. In the ALWD Manual, no distinction is made between academic writing and other types of legal writing. The ALWD is a great proponent of introducing practical skills into law teaching, and the ALWD Manual definitely is more conducive to achieving that objective. The ALWD Manual also seems to reverse the Bluebook’s subtextual bias that favors federal materials over state materials, and case law over statutory law.

B. COMPARISON OF ALWD AND THE SEVENTEENTH EDITION

The authors of the ALWD Manual had to make the same difficult decisions that any entrant into a network industry must make. First, to overcome the network effects in the citation industry, the ALWD Manual had to be “interoperable.” If the ALWD Manual was too different than the Bluebook, no one would adopt it because it would require an entire relearning process. In addition, if a brief conforming to the ALWD Manual appeared in the chambers of a court clerk schooled in the Bluebook, that brief could not look too foreign. On the other hand, if the ALWD Manual were not significantly better, then why would anyone adopt it? So, how can a citation manual be significantly better, but not very different?

The ALWD Manual comes very close to walking this line perfectly. In keeping with its “restatement” policy, most of the citation forms will seem eerily familiar to Bluebook users. However, the authors strived to package

171. SEVENTEENTH EDITION, supra note 1, at 11.
172. The 2001 ALWD conference held July 27–28, 2001, in Minneapolis, Minnesota was entitled “Erasing Lines: Integrating the Law School Curriculum” and focused on the integration of skill and doctrine in law teaching.
173. See Paulsen, supra note 17, at 1788 (discussing the Bluebook’s bias for federal courts over state courts and its impact on the parallel citation rule and other rules, including the capitalization rules).
174. See Robinson, supra note 9, at 527-28 (discussing the dilemma of competitors in choosing whether to be interoperable with the dominant system or to be very different, but hopefully, superior, and take the chance that the market may “tip” their way).
175. See Kolasky, supra note 23, at 580 (discussing whether in knowledge-based industries, users of the first dominant product “lock-in through learning”).
176. Compare the basic citation form for cases in Rule 10 of the Bluebook with Rule 12 of the ALWD Manual and the basic citation form for statutes in Rule 12 of the Bluebook with Rule 14 of the ALWD Manual. For example, the case citation given as an example in Rule 10 of the Bluebook, Meritor Sav. Bank v. Vinson, 477 U.S. 57, 60 (1986), would be almost identical under Rule 12 of the ALWD, Meritor Sav. Bank v. Vinson, 477 U.S. 57, 60 (1986). See also Darby Dickerson, Professionalizing Legal Citation: The ALWD Citation Manual, 47 FED. LAW. Nov./Dec.
the information in a much more user-friendly and teacher-friendly way.

1. Format

Instead of adopting the Bluebook's almost Socratic use of examples to teach unstated citation rules, the ALWD Manual strives to give the rule and all exceptions in its text, then illustrate with examples. The ALWD Manual has "sidebars" within the main text explaining certain rules, and handy charts within the main text for things like "Common Reporter Abbreviations" to minimize flipping back and forth from main text to appendices. The best part from a perfectionist professor's standpoint is that spaces are shown in citations with green triangles. So, students never have to wonder, "Is that a space between "F." and "Supp."?

2. Minor, Welcome Improvements

Aside from the format of the manual, the ALWD Manual does make some minor changes that should be applauded. As stated before, the ALWD Manual abolishes any distinction between citations in law reviews and citations in court documents and legal memoranda. In doing so, the ALWD Manual dispenses with large and small capitals, a change not as necessary in the age of word processing as it was twenty years ago, but definitely welcomed.

Another logical change is the citation of periodicals. In the Bluebook, citations to a legal periodical, a magazine, or a newspaper are illogically different. The ALWD Manual has created a more consistent "grammar,"
with all citations having the same basic parts and being in the same order, regardless of the type of source cited.  

The ALWD Manual also purports to provide a scheme for signals in citations, but does so in the context of a helpfully detailed “Part 5” on “Incorporating Citations into Documents.” This section also covers “Citation Placement and Use,” “Order of Citing Authorities,” and “Explanatory Parentheticals.” Rule 45 focuses on signals and generally “restates” the signal regime of the Fifteenth Edition, and now the Seventeenth Edition.

Some of the best ALWD Manual features are small, but important. Appendix 4 provides an abbreviation for each federal court, whether district, circuit, or specialized court. Appendix 2 gives some local court rules by jurisdiction that are handy for state court practitioners. Appendix 6 even provides a sample office memorandum to show students how and where to place citations.

3. Minor, Unwelcome Changes

For every small victory that one ALWD Manual user perceives, another user may feel a small loss. Some small changes that the ALWD Manual has made may have a disproportionate reaction among current Bluebook users. For instance, “United States” is now abbreviated to “U.S.” when the federal government is a party in a case name. The opposite has long been the rule in the Bluebook. Although abbreviating “United States” may be more consistent given that both the ALWD Manual and the Bluebook abbreviate titles such as “United States Reports” and “United States Law Week,” the change is one that will catch citation veterans off-guard. Another small, but noticeable change is one that the Maroonbook also made, according to

181. Rule 23.1 gives a standard format for journals, law reviews, newspapers, newsletters, and other periodicals (Author, Title, Volume Number, if any, Periodical, Page, (Date)). ALWD MANUAL, supra note 2, at 200.
182. Id. at 291.
183. Id. R. 44, at 293.
184. Id. R. 46, at 305.
185. Id. R. 47, at 311.
186. ALWD MANUAL, supra note 2, at 301-04.
187. Id. app. 4, at 415-18.
188. Id. app. 2, at 379-406.
189. Id. app. 6, at 443-45.
190. Id. R. 12.2(g), at 62.
191. SEVENTEENTH EDITION, supra note 1, R. 10.2.2, at 62.
192. MAROONBOOK, supra note 126, app. 2 (allowing for either abbreviation); see Book Note, 101 HARV. L. REV. 1523, 1526 (1988) (noting with surprise that the Maroonbook allowed either “So.” or “S.” as an abbreviation for the Southern Reporter). But see MAROONBOOK SECOND EDITION, supra note 132, at 37 (providing only one abbreviation for the Southern Reporter: “S.”).
the ALWD Manual, the “Southern Reporter” should be abbreviated as “S.,” not “So.”193 Again, this change makes the “Southern Reporter” abbreviation consistent with other abbreviations in the ALWD Manual and the Bluebook that contain the word “South” or “Southern,”194 but it will be jarring to a practitioner who has used the abbreviation “So.” since law school.195

Another small change that is more uncomfortable than the authors may have thought is a change in citation of books, treatises, and other monographs. Rule 22.1(i) requires a writer to include the name of the publisher in the date parenthetical of a book citation, even if the book was published in only one edition by one publisher.196 The Bluebook Rule 15.4(a)(iii) requires providing the publisher information if the writer is citing to an edition published by someone other than the original publisher.197 That information is necessary for the reader to be able to match up the writer’s page number references to the appropriate volume. But in most cases, the publisher information is not necessary at all and only makes a citation longer. One review mentioned that this change was to make legal citation more consistent with citation systems in other fields and to facilitate locating sources.198 However, other citation systems require different publisher information,199 and the purpose behind including the information concerns copyright issues.200

4. No Improvement Over the Standard

With some rules, the ALWD Manual seems quite content to ride the tide of the status quo. In making this decision for interoperability, the ALWD Manual “restates” what may be errors in the current citation regime.

For instance, the ALWD Manual rules on electronic sources and the Internet, similar to the Bluebook’s new Rule 18, are equally misdirected.

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193. ALWD MANUAL, supra note 2, chart 12.1, at 68.
194. Id. app. 3, at 413; SEVENTEENTH EDITION, supra note 1, tbl.T.6, at 503.
195. This Bluebook inconsistency is a pet peeve of the main author, Professor Dickerson. In her 1996 article, When Reoising Strive for Consistency, she lists the “Southern” abbreviation inconsistency as an example of one of her “Thoughts for the Seventeenth Edition.” Dickerson, supra note 1, at 97. Interestingly, of the other examples of Bluebook inconsistencies in that suggestion, some were corrected in the ALWD Manual (“Pacific” is usually abbreviated “Pac.” except in “P.2d”); “Supreme Court” is abbreviated as “S. Ct.” for the reporter, but not in “Sup. Ct. Rev.”), but some were not (the difference in the abbreviations of “Supplement” in “F. Supp.” and “N.Y.S.2d”; “Federal” in “F. Supp.” and “Fed. Reg.”; “Bankruptcy” in “Bankr.” for the court and “B.R.” for the reporter). Id. at 97-98.
196. ALWD MANUAL, supra note 2, R. 22.1(i), at 193.
197. SEVENTEENTH EDITION, supra note 1, at 111.
198. See Lysaght & Tonner, supra note 84, at 1059.
199. See CHICAGO STYLE MANUAL, supra note 128, at 554 (allowing as acceptable form including (i) place of publication, publisher’s name, and date; (ii) place of publication and date; or (iii) date).
200. See id. at 555 (indicating that the name of the publisher is optional, except in cases in which the writer is quoting and has obtained permission to reprint by the publisher).
Perhaps the “common law” on citing these materials has not developed sufficiently for either a “codification” or a “restatement.” A throw-away Rule 38 speaks generally about “Online and Electronic Citation Formats” before Rule 39 speaks specifically on “Westlaw and LEXIS” and Rule 40 speaks specifically on “World Wide Web.” Then, rule 39.1(b) abruptly refers the reader back to Rule 12.12 if the reader is citing a case. For all other sources, a user is presumably to look to Rule 39, but the guidance of that rule is questionable as well. Rule 38 states, “if a source is available in print and electronic formats, cite the print source if the document is readily available in that format. Types of material that are readily available in print include most cases, statutes, federal administrative materials, and law reviews.” Indeed, neither Rule 39 nor 40 give examples of any of these materials, leaving a writer wishing to cite to these electronic formats without any guidance. If a rebellious writer wanted to cite a statute or law review article found in an electronic database or on the Internet, she would be left to her own creative interstitial intuition.

These decisions are lamentable for the same reasons they are in the Bluebook. Many sources are found more easily and cheaply on either the Internet or an electronic database. For instance, few legal writers copy a law review out of a bound volume. Not many legal practitioners have a full copy of even one law review, much less copies of all law reviews. If a reader is given the print citation of a law review, that person will undoubtedly access it via an electronic database.

Also, Rule 39 on electronic databases is titled “Westlaw and LEXIS.” Other electronic databases do exist, and I am sure that more will be created in the future, requiring constant renaming of this rule. Also, different divisions and subsidiaries of West Publishing (or is it Thompson?) and LEXIS-Nexis (or is it Reed Elsevier?) change names almost daily.

Besides the rule that writers should refer to print over electronic databases, the rule that writers should refer to print or electronic databases over the Internet disturbs me. Rule 39 refers writers to Rule 12.15, which states “do not cite the Internet if the case is available in a reporter, an online database such as Westlaw or LEXIS, or a looseleaf service.” (Again, the ALWD Manual gives no examples, even in Rule 40, for citing cases found on the Internet.) In other words, please cite to a paid subscription service rather than a free, publicly-accessible service. If the United States Supreme Court decides a case today, I would rather access it for free from the

201. ALWD MANUAL, supra note 2, at 271-72.
202. Id. at 274-77.
203. Id. at 279-82.
204. Id. at 274.
205. Id. at 271.
206. ALWD MANUAL, supra note 2, at 274.
207. Id. at 87.
Supreme Court's website than either trek down to the library to wait for the advance sheets to come in or pay to check Westlaw or LEXIS periodically over the next 24 hours to see when it appears, typos and all. I understand that many, mostly commercial, websites are ephemeral in nature. However, I do not believe that government-owned websites for state and federal courts are inherently unreliable. I would trust these sources more so than an electronic database, whose fees are reliably expensive.

These rules mirror the policies of the Bluebook on electronic databases and the Internet. Like these rules, other rules in the ALWD Manual remain consistent with the Bluebook, and so retain the basic problems in those rules.

The ALWD Manual also repeats some of the Bluebook's past mistakes as well. For example, the ALWD Manual elevates the status of Puerto Rico to that of a state. The first printing of the ALWD Manual also contained its share of other errors, something that reviewers have been criticizing in the Bluebook for years. Some of these errors were caught and changed in subsequent printings, but that action does not warn those using the first printing that some information is wrong. Moreover, although the ALWD publishes corrections on its website, the web listing does not warn an unsuspecting user of the print volume of errors in a specific rule. The only way such a web listing would be useful is if a user checked it regularly and made corrections in the print copy.

Another omission of the ALWD Manual that has been mentioned by reviewers is that it does not have rules governing citation of foreign or international materials. Apparently, the editors intend to include this
information in a second edition.\textsuperscript{214} Interestingly, the first edition of the Maroonbook also did not include citation form of foreign or international materials,\textsuperscript{215} and almost fifteen years passed until this was corrected in the second edition.\textsuperscript{216}

Despite these concerns, as a whole, the ALWD Manual is definitely something for legal writing instructors to cheer about and rally around. The new manual is definitely easier to teach and easier to learn. And, after users have the chance to comment on specific rules, the now-veteran authors will be able to create a second edition using their institutional knowledge; something that Bluebook editors never get the chance to do.

So, does this mean that the entire legal community of academics and practitioners will, or should, adopt the ALWD Manual? Before answering this question, note that a separate movement is afoot in the legal citation industry: universal citation. Universal citation may be seen as a new technology, and the citation competitor who adapts to this new technology will hold a market advantage.

VI. Universal, Vendor-Neutral, Medium-Neutral, Public Domain Citation

The struggle to inherit legal citation is not a two-person fight between ivy league law students and plebeian legal writing professors. A third party waits to be formed in the background, a party based on the platform of universal citation. A universal legal citation identifies a case or other authority in a way that a reader can locate it without going to a specific commercial publication or even a specific medium. The citation serves as an equally effective map for the reader whether the reader heads for the Internet, an electronic database, or to a commercial reporter or statutory code. Although various players wave the banner of universal citation, no large player has mounted a campaign to supplant all other citation systems in favor of this simplified, de-politicized form of citation. Instead, for now, most of its supporters are content to propose universal citation as a companion to the Bluebook, and possibly in the future, the ALWD Manual.

A. What's Broken?

You may be asking yourself why using citations that are neither vendor-nor medium-specific is important. Until a few years ago, confusion existed as to who, if anyone, owned the law. West Publishing Company had argued successfully in court that once a court hands over an opinion to West

\textsuperscript{214} See Lysaght & Tonner, supra note 84, at 1059 (stating that citation formats for foreign and international materials would appear on the ALWD website in summer or fall of 2001).

\textsuperscript{215} See Posner, supra note 26, at 1351 (noting that the Maroonbook covered all the essential bases of citation form, except for foreign materials).

\textsuperscript{216} Maroonbook Second Edition, supra note 132, R. 4.11, at 27 (Foreign Materials); id. R.4.12, at 28 (International Materials).
NETWORK EFFECTS AND LEGAL CITATION

Publishing Company and West edits and releases that opinion, then West owns that opinion. Not the words to that opinion, but the page numbers.

Scenario #1: The Texas Supreme Court, which has West's South Western Reporter as its "official" reporter, wants to begin to put its archived state court opinions on its state court website. Because Texas attorneys follow the Bluebook, and Bluebook Rule 10 requires a case citation to have a page number, the court wants to include the page numbers for these cases as they appear in the South Western Reporter. But, unfortunately, Texas does not own those page numbers. West does. And, West does not let any entity, private or public, use those page numbers without paying a very large licensing fee. If the court does put the cases on its website, the cases will not have page numbers. Any attorney reading those cases for free on-line, if she wanted to cite to these cases in Bluebook format, would then have to find a copy of the applicable South Western Reporter either at a library or by accessing Westlaw or LEXIS-Nexis (a licensee of West), for a fee.

Scenario #2: A fledgling company determines that many solo practitioners and small law firms would like to have access to the entire set of cases in Texas. Unfortunately, owning an entire set of the South Western Reporter is very costly, and accessing this data at Westlaw or LEXIS-Nexis is also expensive. So, the company proposes to put all of these cases on a CD-ROM, with CD-ROM supplements available. Unfortunately, these cases are not in the public domain, or at least the page numbers are not. Therefore, this company cannot scan the South Western Reporter. This company would have to get each case from the courthouse and scan them in without any page numbers. Furthermore, the company would not be able to use any South Western Reporter volume or page numbers to identify the cases. An attorney using this product would also have the same problem of not being able to cite these cases without looking them up in another, more expensive, source. As long as the Bluebook, or the ALWD Manual, mandates citation to West reporters and mandates citation to print reporters or electronic databases over the Internet, then the question of ownership of legal opinions and page numbers is very significant. In other words, ownership of those page numbers would lose significance if legal writers used a citation system that did not revolve around a certain commercial publisher or even a print medium.

Although West won the first court battle over the ownership of "its"
West did not win the second round. Furthermore, the interim between decisions was long enough to spark a lot of interest in creating a vendor-neutral citation form. The use of such a citation form has other benefits besides freeing legal writers from the West regime. Universal citation frees legal writers from any commercial publisher's regime. With universal citation, used without reference to the Bluebook or the ALWD Manual's bias for West, Westlaw and LEXIS-Nexis, legal researchers can use free or low-cost websites, some sponsored by courts and other governmental entities, then cite those sources without going to an expensive reporter set or electronic database to get any commercial publisher's page numbers. Thus, universal citation could eliminate the copyright issue altogether, while providing a cost effective mode of legal research for all legal practitioners.

Originally, the impetus behind universal citation was not simplicity, but freedom from commercial vendors and concern over escalating legal costs. However, what was created is remarkably simple and useful. On their own, different courts began adopting universal citation systems, each with its own characteristics. As these systems were evolving, two mainstream legal organizations each proposed a universal citation system. The American Bar Association (ABA) first proposed that its members embrace universal citation. Then, the American Association of Law Librarians proposed its own system, which has evolved into the Uniform Citation Guide.

**B. Universal Citation History**

In 1995, the ABA formed a Special Committee on Citation Issues. This committee was charged with researching whether the ABA should urge jurisdictions to adopt a universal citation system. On May 23, 1996, the committee concluded that all jurisdictions should adopt a system for citation to cases that would identify a case regardless of whether the case was read or

217. West Publ'g Co. v. Mead Data Cent., Inc., 799 F.2d 1219, 1227 (8th Cir. 1986) (holding that West's arranging of judicial opinions, including pagination, was worthy of copyright protection).

218. Matthew Bender & Co. v. West Publ'g Co., 158 F.3d 693, 699 (2d Cir. 1998) (holding that a publisher using West's pagination would not infringe on any copyright).

219. See AALL Task Force Report, supra note 54, at 582 (citing as impetus for the AALL Task Force on Citation Formats the development of different citation forms in various courts, including the Louisiana courts and the Sixth Circuit Court of Appeals).


222. COMM. ON CITATION FORMATS, AM. ASS'N OF LAW LIBRARIES, UNIVERSAL CITATION GUIDE (1999).

223. ABA Resolution, supra note 220; Colleen M. Barger, The Uncertain Status of Citation Reform: An Update for the Undecided, 1 J. APP. FRAC. & PROCESS 59, 79 (1999).

224. Barger, supra note 223, at 79.
found in print, on CD-ROM, or online. Finally, on August 6, 1996, the ABA House of Delegates recommended a standard format for courts to follow in mandating universal citation. A citation in ABA format would include in the following order: the Case Name, Year, Court, Sequential Number, and Paragraph Number. An example would look like this:

Smith v. Jones, 1999 TX 423, ¶ 56.

The ABA gave no advice on formulating the “Case Name,” but practitioners would probably adhere to the Bluebook rule 10.2. The “Year” would be the year of decision, i.e., 1999. The “Court” information would be a simple abbreviation for the court. All state courts would be formulated by using the postal code abbreviation for the state and, if necessary, an abbreviation for the specific court. The Supreme Court of Missouri would simply be “MO,” but the Missouri Court of Appeals would be “MO APP.” “Sequential Number” would identify a number given to the court opinion by the clerk of the court. The court would begin numbering opinions starting with the first opinion rendered on January 1 of a particular year and number sequentially until the last opinion rendered on December 31 of that year. “Paragraph Number” would identify the paragraph in the court opinion to which the writer is referring. Courts would necessarily have to number each paragraph of an opinion before the opinion was uploaded to the court’s website or given to a commercial publisher.

Purportedly to ease transition from print citations to universal citations, the ABA Special Committee encouraged users to include a parallel citation to a print (West) source, such as Smith v. Jones, 1999 TX 423, ¶ 56, 22 S.W.3d 555.

Almost simultaneously, in the spring of 1994, the AALL formed the AALL Task Force on Citation Formats. The Task Force comprised a very diverse membership, even including employees of Shepard’s McGraw-Hill, West Publishing Co., and LEXIS-Nexis. The Task Force quickly, but not unanimously, recommended a universal citation format on March 1, 1995. The format for cases was virtually identical to the system adopted by the Wisconsin Bar Board of Governors, which is similar to the ABA Proposal,

225. Id.
226. Id.
227. ABA Resolution, supra note 220.
228. Id.
229. Id.
230. Id.
231. Id.
232. ABA Resolution, supra note 220, at 79.
233. See AALL Task Force Report, supra note 54, at 582.
234. Id. at 582 n.2.
235. Id.
236. Id. at 596-600.
except that it does not recommend or suggest a parallel print citation. The Task Force also urged jurisdictions that chose not to mandate universal citation to begin numbering decisions by paragraphs, to facilitate universal citation.237

Unlike the ABA Proposal, the AALL Task Force also proposed universal citation forms for statutes, session laws, administrative law, and secondary authority.238 The first edition of the UCG was published in the summer of 1999 and contained rules for citing case law, constitutions, statutes, and administrative regulations.239 Drafts of these rules were printed in the Law Library Journal, and the AALL entertained comments on these drafts before final inclusion in the UCG240

Like the AALL format for cases, the format for other legal sources is also simple and cost-effective. Statutes by their nature do not need vendor information, as they are not paginated and as section, chapter, and title numbers for most remain the same from publisher to publisher.241 Universal format to a statute is simple and must only convey to the reader the dates for which the statute is current.242 This method of dating statutes is similar to

237. Id. at 600.
238. AALL Task Force Report, supra note 54, at 602-04.
239. See generally The Universal Citation Guide: Tentative Drafts for Law Reviews and Court Rules, 92 LAW LIBR. J. 365 (2000) (reviewing the status of citation rules adopted and published to date and presenting rules for citing law reviews and court rules for comment).
240. Id. at 363.
241. See Bruce M. Kennedy, Design Principles for Universal Legal Citations, 30 U. TOL. L. REV. 531, 538-39 (1999) (stating that most of the data elements in a statutory citation are already medium-neutral because the numbering system is equally effective in any publisher's codification or on an electronic database, except for the case of Michigan).

I do not begin to understand the rationale in the Bluebook and the ALWD Manual requiring publisher information for some statutory compilations, but not others. Surely the name of the statutory compilation should be enough to highlight to the reader which compilation to consult; however, except in the case of Michigan, that is not even necessary given that different state compilations use the same title and section numbers.

Neither manual communicates a general rule, such as: “Give publisher information for any other codification besides the official compilation.” Sometimes, even if the state has only one statutory compilation, one of the citation manuals requires publisher information. See SEVENTEENTH EDITION, supra note 1, at 190 (requiring publisher information for the only compilation in Alaska, Alaska Statutes); ALWD MANUAL, supra note 2, at 336 (requiring publisher information for Alaska Statutes). See also id., at 371 (requiring publisher information for Vernon’s Revised Texas Statutes Annotated, but not Vernon’s Texas Codes Annotated, which are part of the same set and indistinguishable from one another).

Moreover, the manuals do not agree on which statutory compilations need additional publisher information. Compare SEVENTEENTH EDITION, supra note 1, at 206 (requiring publisher information for the only compilation in Maine, Maine Revised Statutes Annotated), with ALWD MANUAL, supra note 2, at 351 (not requiring publisher information for Maine Revised Statutes Annotated).

242. See Kennedy, supra note 241, at 539-40 (discussing the unknown origins of the Bluebook rule for dating statutes by the copyright date of the print volume, which has no logical counterpart in an electronic medium).
that element in the Bluebook rule for citing a statute from an electronic source, which creates much longer, vendor-specific citations. The rules for other legal sources are similarly succinct.

Courts in at least thirteen states have adopted some sort of universal citation system. Most of these states require a parallel citation to a print reporter, at least for a transition period.

C. WHY YOU'RE PROBABLY NOT USING UNIVERSAL CITATION RIGHT NOW

As learned from the nasty, brutish, and short life of the Maroonbook, the network effects of the legal citation industry favor the dominant product and discourage market entrants. Like the Maroonbook, universal citation is very different from the Bluebook and creates more risk of citation confusion. Beginning in 1997, certain groups spoke out against universal citation. Although the Sixth Circuit Court of Appeals has adopted a form of neutral citation, the Judicial Conference of the United States, composed of federal judges, criticized and declined to adopt the relatively painless ABA Proposal. The rationale behind the rejection was unexpected. The main complaint was that numbering opinions and paragraphs in opinions would be burdensome, would negatively affect an individual judge's writing style, and would give undue emphasis to paragraphs. In addition, some judges felt that the current citation system was working. As each year passes, more courts are maintaining opinions on publicly accessible websites, indicating that the mere numbering of opinions and paragraphs is becoming neither expensive nor burdensome.

Moreover, a very big player has a very big dog in this fight. The entity that has the most to lose from a movement away from the Bluebook is not the Bluebook editors, but West. With no legal requirement for lawyers to cite to a West product, more vendors or institutions could put legal sources on the Internet and on an affordable CD-ROM. To compete, West would have to begin numbering its reporters in a manner compatible with universal citation or provide a conversion table.

Network effects theory predicts that the dominant firm in legal citation

243. SEVENTEENTH EDITION, supra note 1, R. 18.1.2, at 131 (requiring a writer to identify both the commercial publisher of the statutory compilation and the commercial provider of the electronic database).

244. Kathy Carlson, Wyoming Supreme Court Adopts Public Domain, Format-Neutral Citation Form, Wyo. Law., Oct. 2000, at 27 (stating that the Wyoming Supreme Court will require a parallel citation to the Pacific Reporter from Jan. 1, 2001 to Jan. 1, 2004).


246. Barger, supra note 223, at 80-81.

247. Id. at 81.

248. Id.
would downgrade the market entrant's interoperability and deny compatibility. Naturally, West became an adversary of the universal citation system and waged a campaign to convince judges and practitioners that only chaos would ensue from adopting universal citation. Unfortunately, librarians and grassroots campaigns do not have the resources to fight the marketing power of West and this unexpected barrier to entry. No one stands to profit from universal citation, so no one has an incentive to invest in its nationwide adoption. Unlike the ALWD, which is published and heavily marketed by Aspen, the UCG, which is published by the State Bar of Wisconsin, does not have a well-funded knight to carry its flag into battle. Its only asset is its simplicity and its inherent logic, which do not fare as well as one might think in the strange legal citation market.

Although, as mentioned earlier, courts in thirteen states and Puerto Rico have adopted some type of universal citation rule, many more have considered or are considering adoption. Realistically, the AALL proposal and the ABA Proposal probably were a little too early on the technological scale to garner much momentum from the outset. In 1994 and 1995, the number of court opinions available on the Internet was much smaller than it is now. Even by 1996, only opinions of the United States Supreme Court, the United States Courts of Appeals, and one-third of state supreme courts were available on the Internet. These

249. See Robinson, supra note 9, at 526 (describing this type of predatory behavior as anticompetitive).

250. See Richard C. Reuben, Numbers to Live By, ABA J., Oct. 1994, at 22 (describing how West Publishing Co. sent letters to each state supreme court that was considering adopting universal citation and warned those courts of the dangers inherent in such a system); see also Court Paper Monopoly Challenged, at http://news.com.com/2100-1023-277946.html (on file with the Iowa Law Review) (quoting James Love, director of the Consumer Project on Technology, as saying: "West has a lot of judges on its side. They've convinced them that numbering their own court opinions will create too much work for them.").

A Member of the AALL Task Force on Citation Formats who was an employee of Shepard's/McGraw-Hill (now owned by Reed Elsevier, the parent of LEXIS-Nexis) published a position statement in which she articulated Shepard's negative position, stating that the costs for Shepard's to conform to a universal citation system would be substantial and that Shepard's would necessarily have to pass that cost on to the customer. See Myrna Bennett, Position Statement of Shepard's/McGraw-Hill, 87 Law Libr. J. 606, 606 (1995).

251. See ALWD MANUAL, supra note 2, at app. 2 (listing Colorado, Florida, Illinois, Maine, Mississippi, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Wisconsin, Wyoming, and Utah as having adopted universal citation).

252. See AALL Citation Formats Committee, Supreme Court of Arizona, at http://www.aallnet.org/committee/citation/rules_az.html (last visited Mar. 12, 2002) (on file with the Iowa Law Review) (reprinting an Order of the Supreme Court of Arizona, stating that the Court has considered universal citation "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"); ALWD MANUAL, supra note 2, at 385 ("Illinois does not currently have a neutral citation format, but is considering the possibility of adopting one.").

253. James H. Wyman, Freeing the Law: Case Reporter Copyright and the Universal Citation System,
opinions were usually only available through partnership with a law school. Today, all federal courts post judicial opinions on the Internet, as do most state supreme and appellate courts. Indeed, most courts have their own websites for this purpose. Perhaps if the AALL proposal could have garnered its momentum in the current Internet environment, it could have rolled through the court system with ease.

**D. ADOPTION OF THE UNIVERSAL CITATION PLATFORM**

Even though universal citation may not be a contender to dominate the citation industry, enough courts are adopting elements of universal citation to challenge the Bluebook and the ALWD Manual to respond. Both the Seventeenth Edition and the ALWD Manual incorporate universal citation into their respective citation rules. Rule 12.16 of the ALWD Manual addresses “neutral citations” and advises legal writers to “[u]se neutral citations when required by local rule . . . . If a court does not require the use of neutral citations, you may still include a neutral citation as a parallel citation . . . .” Rule 12.16(c) tells readers to use the format adopted by that court for neutral citation if available. Appendix 2 attempts to list all local court citation rules for each state, including whether the courts of that state require or recommend neutral citation format. This appendix is periodically updated on the ALWD website.

The Seventeenth Edition treats “public domain format” in Rule 10.3.3. It prescribes a recommended format, which includes a parallel citation to a regional reporter. However, Rule 10.3.3 then allows for the use of a jurisdiction’s adopted format if different. The Bluebook does not require or restrict the use of universal citation format. Like the ALWD

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254. See id. at 219 (giving as an example Emory Law School).

255. See Federal Judiciary Homepage, at http://www.uscourts.gov/allinks.html (last visited Mar. 12, 2002) (on file with the Iowa Law Review) (providing links to each federal court, from which recent opinions may be viewed and downloaded).


257. ALWD Manual, supra note 2, at 88.

258. Id.

259. Id. at 379-405.

260. Id. at 379.

261. SEVENTEENTH EDITION, supra note 1, at 64.

262. Id.

263. Id.

264. Id.
Manual, the Bluebook also contains a statement that updated information on states adopting universal citation will appear on a Bluebook website, http://www.legalbluebook.com, but the website still does not currently contain that information, two years after the publication of the Seventeenth Edition. Perhaps the editors who oversaw the Seventeenth Edition forgot to tell the incoming editors about this promise before they graduated.

Currently, neither the Bluebook nor the ALWD Manual has assumed the platform of universal citation beyond acknowledging that some state courts require it and recognizing the need for reference to it in the respective manuals. As the number of courts requiring universal citation grows, each manual's rules will have to adapt. Given this eventuality, the ALWD Manual is much better suited to capitalize on this citation innovation. The ALWD website is maintained by the same group of professors who are responsible for the Manual; the website reflects the current status of universal citation adoptions. In addition, the authors of the ALWD Manual stay abreast of movements in appellate rules as part of their jobs as legal writing professors. Finally, the ability to publish new editions quickly through a commercial publisher will be a key advantage to staying in line with new trends in citation.

VII. WHO WILL INHERIT CITATION?

The two publications poised to dictate legal citation in this new millennium are the Bluebook, which has held the monopoly for the last part of the century, and the ALWD Manual. The editors of the ALWD Manual have intelligently positioned themselves to conquer the incumbent. ALWD and Aspen were aware of the untimely marginalization of the Maroonbook and so undertook a large marketing campaign. Complimentary copies were sent to law professors around the country. Aspen representatives came calling on legal writing directors to extol the virtues of the ALWD Manual. In addition, members of the ALWD committee gave presentations at conferences for legal writing professors and at conferences for law review editors. By making the ALWD Manual as interoperable with the Bluebook as possible, hesitant consumers may be won over by the Aspen marketing campaign. The publisher and authors of the ALWD Manual have been doing everything possible to overcome the barriers of entry into the legal citation market and use the network effects dynamic to its own benefit.

265. Id.


267. But see Good, supra note 5, at 79-80 (declaring the differences in the two systems significant).
A. THE HAND THAT ROCKS THE CRADLE

The ALWD Manual has a distinct advantage over the Maroonbook regarding adoption of its system by law students. The ALWD Manual was conceived of and reviewed by legal writing directors. Legal writing directors and instructors are also usually the persons at a law school who decide what texts will be used in the first-year legal writing program.\(^{268}\) Included in that decision is whether to require students to purchase and learn the Bluebook or an alternative manual, such as the ALWD Manual. Therefore, at any given law school, maybe 50 or 500 first-year law students will "adopt" the ALWD Manual. These law students will all then "grow up" in the law as ALWD Manual users.

Of course, the stumbling block in this scenario is the school's law review\(^{269}\) and, to some extent, the moot court competitions. If a student learns the ALWD Manual in a first-year legal research and writing class, but is forced to use the Bluebook as an editor on a law review, then that student will probably be converted. Most former law review editors will admit that they really learned the Bluebook doing journal work, not in their first-year legal research and writing class. However, the ALWD will not give up so easily. First, ALWD members are lobbying the law reviews at their law schools to adopt the ALWD Manual.\(^{270}\) This may not be a particularly difficult task, especially where legal writing directors are law review advisors or have previously taught the law review editors. Also, law reviews may be convinced to make the change once they see that the upcoming ranks all know the ALWD.\(^{271}\)

Moot court participants also may be required to write briefs using the Bluebook. Therefore, another war is being waged with the national moot court competitions.\(^{272}\) Because many legal writing directors and instructors also coach moot court teams or participate in the staging and judging of these events, perhaps this will not be a difficult battle either.

\(^{268}\) See Survey Results, supra note 163, at 1 (defining 115 of its 138 respondents as directors of a required legal writing program that all law students at that law school must complete to graduate and explaining that general required legal writing courses are first-year courses).

\(^{269}\) See Gjerdingen, supra note 57, at 501 (reminding the reader in a review of the Twelfth Edition that law reviews are the "stronghold" of the Bluebook).

\(^{270}\) See ALWD website, supra note 55 (providing downloadable PowerPoint presentations for training law review staff and listing sixteen legal publications as having adopted the ALWD Manual).

\(^{271}\) See C. Edward Good, Will the ALWD Citation Manual v. The Bluebook Be the Trial of the Century?, TRIAL, Sept. 2001, at 76, WL 37-SEP JILATRIAL 76 (retelling the question posed to him by a law review editor facing an incoming group of first-year editorial candidates that learned the ALWD Manual in their first-year LRW classes).

\(^{272}\) See id. (listing the prestigious Jessup Moot Court Competition and the Stetson International Environmental Law Competition as permitting citations that conform to the ALWD Manual).
B. **The Real World**

The final frontier for the ALWD Manual will be the court system and law firms.273 Even if Acme Law School is persuaded to adopt the ALWD Manual for its first-year legal research and writing program, law journals, and moot court competitions, the law school may be pressured to switch back if, in three years, its alumni call complaining because their employers expect them to know the Bluebook and the courts require documents to conform to the Bluebook.274 No matter how easily an ALWD Manual student might learn the Bluebook, learning the ALWD Manual in law school would be a fruitless exercise if every graduate had to convert to a different system upon graduation.

The ALWD is very conscious of this obstacle. Upon the publication of the ALWD Manual, Aspen sent complimentary copies to members of the judiciary. In addition, some ALWD members have actively lobbied their state courts to allow court documents to conform to the ALWD Manual. Once the courts are converted, the law firms will follow. If the authors and publishers succeed in knocking down this very high hurdle, then it may very well win its claim to inherit the future of legal citation.

VIII. **Conclusion**

As between the ALWD Manual and the venerable Bluebook, the ALWD Manual has a great chance of succeeding. Learning from the mistakes of the Maroonbook, the authors and publishers of the ALWD Manual have made some difficult decisions regarding interoperability that, according to network effects theory, has helped them gain entrance into the once closed legal citation industry. But what about universal citation? As more and more states upload court decisions onto web-based databases and number the opinions and paragraphs, universal citation will become more ubiquitous. However, it will first become familiar to users as a parallel citation used with either a Bluebook citation, or perhaps an ALWD Manual citation. Responding to this development, the Bluebook and the ALWD Manual, or the survivor of the two, will incorporate universal citation into its complex citation system. The complete eradication of other citation systems in favor of universal citation will occur very slowly and only after almost all judges and lawyers in the United States have rejected the paper library completely in favor of constant electronic research.

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273. *See id.* (stating rather obliquely that "the manual is being considered for adoption by a number of courts in jurisdictions around the U.S.," but not listing any U.S. court adoptions).


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At that time, one citation system will emerge that has internalized and adopted universal citation. Will it be a codification of the evolved citation system, i.e., the Bluebook, or a restatement, i.e., the ALWD Manual? Network effects theory and common sense predict that the ALWD Manual should win the fight in a rapidly evolving citation network because, as a citation manual developed and serviced by legal writing professionals, it is better suited to responding quickly and intelligently to the needs of the legal discourse community. These authors are both more attuned to the needs of legal scholars and legal practitioners and also more likely to participate in multiple editions of the citation manual.

This debate is not the legal community’s analog to the theological question of “How many angels can dance on the head of a pin?” The ultimate outcome of this competition between the ALWD Manual and the Bluebook affects each legal practitioner. In a profession in which all costs are ultimately passed on to the consumer, the client, the silent voice in the debate, has the most to gain or lose from the verdict.
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