AALL CITATION FORMATS COMMITTEE REPORT
AALL Task Force on Citation Formats

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AALL Task Force on Citation Formats Report March 1, 1995

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Table of Contents

Letter from the Chair

The AALL Task Force on Citation Formats submitted its report to the Executive Board on March 1, 1995. The Task Force vote was 13 in favor of the report and 3 opposed. Donna Bergsgaard and Bill Lindberg of West Publishing Co., and Frederick Muller, New York State Reporter of Decisions, were opposed, and submitted a total of two dissenting opinions. Myrna Bennett of Shepard's voted in favor but asked that a statement from Shepard's be included with the report. It should be noted that the librarians on the task force were unanimous in voting for the report.

The AALL Executive Board considered the report at its meeting on March 11, 1995, and voted to accept it, issuing the following statement:

> The AALL Executive Board accepts the report of the Task Force on Citation Formats. The report represents a nearly year-long effort to address the problems of citation in an electronic environment.
>
> The Board believes that the Task Force's recommendations present practical, reasonable solutions that further the goals of access to public legal information and uniformity of citation, consistent with the Board's 1994 resolution on these issues.
>
> The Board invites members to study and comment on the report's recommendations. The Board will review all written comments received by June 30 and anticipates taking final action on the report at its July 14 meeting.
>
> The Board commends the Task Force for its dedication to these issues and for the thoroughness of its report.

Lynn Foster
Chair, Task Force on Citation Formats
University of Arkansas at Little Rock/
Pulaski County Law Library
Little Rock, Arkansas
American Association of Law Libraries

[Endnotes for this portion]

AALL Task Force on Citation Formats

Report March 1, 1995

Introduction

¶ 1 **Formation of the Task Force.** American Association of Law Libraries (AALL) President Kay Todd appointed the Task Force on Citation Formats in the spring of 1994. The impetus for the creation of the Task Force was a renewed interest in the question of citation formats, given the recent action of Louisiana in adopting a new citation format, and of the Sixth Circuit of the U.S. Court of Appeals in adopting an alternative citation format. It was hoped that AALL could add its voice to the national dialogue on this issue, speaking for uniformity and against the "Balkanization" of new citation forms. [1]

¶ 2 Members consisted of law librarians, a lecturer at Harvard, and, for their diverse viewpoints, vendor representatives and a state reporter of decisions. [2] Librarians on the Task Force had been selected for their interest in and expertise with citation issues. Task Force members also had concurrent involvement with a number of other important groups, such as

Robert Oakley in his capacity as AALL's Washington Affairs Representative and as a liaison to the AALL Government Relations Committee; Rita Reusch with the AALL Copyright Committee; Marcia Koslov with the Wisconsin State Bar Technology Resource Committee and the ABA Judicial Administrative Division; Virginia Wise with the *Bluebook*; and Frederick Muller with the Association of Reporters of Judicial Decisions.

¶ 3 **Charge.** The Task Force was given a threefold charge:

- To consider and develop non-medium-dependent [3] citation forms for legal materials;
- To work with the judiciary, the bar, the American Bar Association's Judicial Electronic Data Interchange (ABA JEDI) committee, the *Bluebook* [4] editors, and other groups to promote uniformity of citation reform; and
- To serve as both a clearinghouse for information on citation reform and a resource for jurisdictions considering citation reform. [5]

In January 1995 this charge was revised by AALL President Carol Billings to accelerate the timetable and require the submission of a report to the Executive Board at its March 1995 meeting. [6]

¶ 4 **Methodology.** The Task Force met for over three hours in Seattle at the AALL Annual Meeting in July 1994. Robert Oakley set up a private listserv for Task Force members. Lynn Foster sent a first draft of the report to Task Force members in September. In addition, a significant portion of the Task Force subscribed to the law-lib listserv, which was the site of extensive debate of many citation issues during the term of the Task Force. Task Force members also engaged in a variety of activities to obtain input. In May 1994, Robert Oakley attended a meeting on information policy sponsored by the Office of Management and Budget. Lynn Foster and Robert Oakley joined the Taxpayers' Assets Project's (TAP) [7] October 19 listserv, set up in advance of TAP's October meeting, [8] which also debated citation format issues.

¶ 5 A second, revised draft was issued in October and was sent to not only Task Force members but also to any others upon their request. [9] Because citation formats were the subject of a two-hour program at the October Mid-America Association of Law Libraries (MAALL) Annual Meeting [10] approximately 75 attendees of the citation program received a copy of the draft. Robert Oakley attended the TAP October 19 meeting as a representative of AALL. Task Force members Bill Lindberg and Donna Bergsgaard issued a response in October, which was disseminated by the Chair to the same individuals and groups that received the second draft. In November, both the draft and the West response were posted on AALLNET. The Executive Board received a copy of the draft and the response prior to its November meeting. On December 12 Marcia Koslov attended the second TAP meeting [11] as a representative of the Task Force. Myrna Bennett, Michael Schwartz, and Monica Yunag of the Task Force also attended the meeting.

¶ 6 On January 6, 1995, the Task Force met in New Orleans for over two hours. The Chair distributed a copy of the second draft, which included annotations from all who had commented specifically on the report. A revised charge was also shared with Task Force members. Third and fourth drafts were issued by the Chair in January and February. Each draft of the report was sent via fax and listserv to all Task Force members. Given the short time frame of the Task Force members communicated extensively via phone, e-mail, faxes and letters directly with the Chair. She in turn worked closely and constantly with both AALL members and interested non-AALL participants.[12]

¶ 7 **Structure and Scope of this Report.** This report contains a discussion of the purposes and principles of legal citation form; sources of authority for legal citation form; changes that online databases, CD-ROM format, bulletin board systems, and the Internet have produced in the publication of the law and subsequent implications for traditional legal citation form; jurisdictional responses to these changes; and the Task Force's recommendations.

¶ 8 Citation form is connected to three issues: (1) the intellectual property issue of ownership of published law, (2) the issue of public access to the law, and (3) the concept of a public domain

database (see ¶ 15, *infra*). This report will discuss those issues in the context of their interaction with citation form. However, the issue of a federal public domain database was not within the scope of the Task Force's charge. Therefore, that issue was not discussed nor was a position taken. The citation proposals contained herein are in no way contingent on the establishment of a federal public domain database.

¶ 9 It should also be emphasized that a medium-*neutral* citation system should not disadvantage print publications. The Task Force took pains to examine citation forms not only in terms of electronic and CD-ROM formats, but also in terms of existing book products.

¶ 10 Because of the rapidly changing nature of the state of technology and of the law, and the short time frame available for producing this report, it cannot be conclusive. Rather, it is a "snapshot" of the current state of affairs, and a guide for the future. The Task Force hopes these recommendations will be useful to the various courts, offices, departments, bar associations, style manual editors, publishers, database managers, and others considering alternative citation forms for dealing with the increasing amount of legal information being published in alternative forms, especially electronic forms. The Task Force realizes the pitfalls of highly detailed recommendations in such a volatile, rapidly changing environment. Nonetheless, the Task Force sees some clear trends affecting access to the law.

Summary

¶ 11 The advent of electronic publication and dissemination of the law has implications for the way the law should be cited. Traditional legal publication form necessitates the use of physical characteristics of books: volume and page numbers, and dates of volumes and supplements. These elements are not naturally a part of electronic publications. In addition, vendors' proprietary claims to internal page numbers limit access to them. Several jurisdictions, as well as other individuals, have proposed solutions to these problems. In this *Report*, the Task Force discusses the pros and cons of these proposals. The Task Force recommends a form based on case name, year, court, opinion number, and paragraph number, although not unreservedly for all jurisdictions at this time. The Task Force recommends the immediate numbering of paragraphs in judicial decisions, and use of paragraph numbers for pinpoint citations. In this *Report*, the Task Force sets out issues for jurisdictions considering citation change and also, much more briefly, touches on some of the problems concerning citation to statutory and administrative law, and secondary authority in the electronic environment.

¶ 12 The Task Force also recommends its own dissolution and the establishment of an AALL standing committee. As technology continues to cause change in legal publishing and in court procedures, problems, issues, and concerns will need to be addressed. A standing committee is the appropriate means for AALL to continue to monitor, investigate, and study the issues; report and advise the Executive Board; and ultimately to speak out, if necessary.

AALL's Positions

¶ 13 Access to the law and citation form are critical issues to law librarians. The AALL Code of Ethics, adopted in 1978, states that "law librarians...have a duty actively to promote free and effective access to legal information."[13] In the last few decades, librarians have expressed increasing concerns about rising prices, restrictive licensing agreements, and citation form issues impeding effective access to legal information.

¶ 14 The AALL Government Relations Policy, revised in 1992, states that:

> Federal, state and local governments have a duty to disseminate government information to their citizens. Government information should be available to the public at no or low cost in both traditional and electronic formats. Any revenue garnered by government from the sale of public information should be reinvested in the infrastructure which delivers government information to the public.
>
> The commercial sector plays an important secondary role in the dissemination of government information. The American public is served by a diversity of information providers. No public or private entity should enjoy a monopoly over any body of government information. Nor should any entity limit the dissemination of

government information through exclusive contracts, resale restrictions or other restrictive trade practices.[14]

¶ 15 AALL has publicly taken positions on these issues five times:

- In 1991, when Bruce Kennedy, then a member of the Government Relations Committee, testified before the Library Program Subcommittee of the Automation and Technology Committee of the Judicial Conference of the U.S., in favor of user-friendly citation forms for electronic opinions on BBSs;
- In 1992, when Laura Gasaway, representing AALL, testified before Congress on behalf of H.R. 4426,[15] a bill which would remove copyright claims to legal citation of primary authority;
- In September 1994, when Robert Oakley, AALL's Washington Representative, wrote to Attorney General Janet Reno advocating (1) an unenhanced, low-cost database of federal case law for the public; and (2) vendor agreement to use any public domain citation systems in use;[16]
- In November 1994, when the AALL Executive Board passed a resolution supporting:
  1. A system of citation that permits reference to legal or law-related information in any medium, print or electronic, without requiring reference to the proprietary products of any particular publisher, and
  2. Free or low-cost public databases that provide access to public domain legal and law-related information.[17]

- In February 1995, when Robert Oakley wrote Congress to oppose Section 3518(f) of H.R. 830, the Paperwork Reduction Act of 1995. This section would have limited access to government information when, under contract, value was added by a private contractor. AALL opposed the section on the grounds that it would defeat the purposes of both the Freedom of Information Act and the Copyright Act.[18]

Definitions

¶ 16 The following are definitions for terms used throughout this report. The definitions are the Task Force's own, except where noted.

¶ 17 **Medium Neutral Citation Form** --- any citation form that may be employed to refer to information in either book or electronic form, without additional information needing to be added to either. It may not refer to volumes or pages, for these exist naturally only in the book medium. Wisconsin's proposed form is medium neutral (e.g., 1994 Wis 35, where 1994 is the year of the decision and 35 stands for the 35th decision released by the Wisconsin Supreme Court).

¶ 18 **Vendor Neutral Citation Form** --- a citation form which may contain medium-specific information, but not vendor-specific information. For example, 366 Ark. 1 is a vendor neutral citation; the vendor that publishes Ark. is the lowest bidder, and changes over time. However, 366 Ark. 1 is not medium neutral. 1995 Wis 46 is both vendor and medium neutral. It should be noted that all official reporter citations are vendor neutral. The Task Force applauds this fact.

¶ 19 **Public Domain Citation Form ---** a citation form that can be used by any publisher, without requiring reference to the proprietary products of any publisher. (This definition is based on one promulgated by the AALL Executive Board.) Strictly speaking, this type of citation form need not be medium or vendor neutral. Citations to official reporters (Ill. and U.S., for example) are in the public domain. Louisiana's scheme, and Wisconsin's proposed scheme, are in the public domain.

Background of Legal Citation Form

¶ 20 **Its Purposes and Principles.** The primary purpose of legal citation form is to direct the reader to a source of the information referred to by the author.[19] Multiple versions of primary authority are a longstanding characteristic of legal publishing. Both parallel case citations and the form of statutory citations reflect that tradition. Two issues occasionally arise: (1) whether different versions of information are equally reliable; and (2) whether the author wants to direct

the reader to a particular version. The conventions of the parallel citation form for cases, and the structure and citation forms for statutory codes, assume the existence of multiple, reliable versions of the same information.

¶ 21 Paul Axel-Lute has identified a list of principles of legal citation form.[20] They are:

- Uniqueness [21]
- Brevity [22]
- Redundancy [23]
- Informativeness [24]
- Dissimilarity among forms [25]
- Similarity to original [26]
- Logic [27]
- Permanence [28]
- Readability/Transcribability [29]
- Tradition [30]
- Standardization [31]
- Simplicity of system [32]
- Honesty[33]

There is no doubt that the Axel-Lute principles are a starting point for any discussion of legal citation form. However, Axel-Lute's article was published in 1982, and does not address electronic publication, CD-ROMs, bulletin board services, or the Internet in any way. Nor does it address the issue of copyright to internal paging of cases, which arose subsequent to 1982.

¶ 22 The Wisconsin State Bar Technology Resource Committee, after extensive discussion of the Axel-Lute principles, added four additional principles:

- Precision [34]
- Public Domain [35]
- Longevity [36]
- Universality [37]

¶ 23 First, it should be emphasized, as Axel-Lute himself noted [38], that there are conflicts among some of the principles. Brevity conflicts with redundancy. Tradition conflicts with longevity. Second, it is clear that the current system of legal citation, as reflected by the *Bluebook*, conflicts with many, if not most, of these principles, and not just in the arena of case citation. Finally, there is no guide as to which applies, and when. The very act of choosing one may conflict with another.

¶ 24 **Its Sources of Authority.** In 1991, John Doyle surveyed state courts to determine sources of authority for the legal citation forms used by counsel in documents submitted to the courts and by judges when writing decisions. Doyle found that *The Bluebook: A Uniform System of Citation* was expected to be used by counsel and/or judges in 33 jurisdictions.[39]

¶ 25 Other sources of authority used were style manuals of particular states, which were expected to be used by counsel and/or judges in 15 jurisdictions; style sheets or memoranda, which were required in 5 jurisdictions; and court rules or statutes, which were expected to be followed in 15 jurisdictions. Only six jurisdictions had no expectation of use of any citation authority by either counsel or judges.[40]

¶ 26 The Bluebook is the overwhelming source of authority for legal citation form in academe. Virtually all academic law reviews currently published require citation form to follow *The Bluebook*.[41] Problems with **Bluebook** rules are discussed *infra*, at ¶¶ 37-39, 42, and 65-66.

The Problem of Legal Citation in the Electronic Age

¶ 27 **The Current State of Legal Citation Form.** Legal publications fall into two general types: first, compilations of *unrelated documents* in serial order (reporters, session laws,

administrative registers, law reviews); and second, *topical* compilations, whose internal sections are related to each other and whose sequential order is *essential* (codes and treatises fall into this category). Virtually all citation forms to the first type of legal publications currently use volumes and page numbers. Treatises are divided between those which contain only page numbers, and those which contain paragraph or section numbers as well.

¶ 28 Traditional legal citation form is dependent on the book medium, and has changed little since the invention of the printing press.[42] Traditional case citation form typically requires the use of case names, volume numbers and page numbers to both of the first page of the case and its internal paging, the date of the case, and the citing of one or more reporters, depending on the jurisdiction. (For example: Smith v. Jones, 458 U.S. 307 (1973)).

¶ 29 For federal cases, the *Bluebook* prefers certain sets over others. For example, United States Supreme Court cases are published in three bound sets: *United States Reports* (U.S.), *West's Supreme Court Reporter* (S. Ct.), and *United States Supreme Court Reports - Lawyers' Edition* (L. Ed.). The *Bluebook* requires citation to U.S., the official reports. If the case is too recent to have a U.S. citation, writers must cite S. Ct. If the case is too recent to have a S. Ct. citation, then writers must cite L. Ed.[43] Lower federal courts have no official reports; the *Bluebook* requires authors citing cases from these courts to cite to the *Federal Reporter*, *Federal Supplement*, and *Federal Rules Decisions*, even if the case can be found in another print reporter.[44]

¶ 30 On the other hand, citations to state court decisions have long required the practice of "parallel citation." This practice arose because of the multiple publication of primary authority, and the recognition that readers usually had only one of several possible sets. Authors were thus required or encouraged to cite parallel versions of state decisions for the convenience of the reader. (For example: Smith v. Jones, 300 Ill. 2d 423, 425, 799 N.E.2d 801, 802 (1993) where 300 is the volume of the *Illinois Reports*, second series, 423 is the first page of the case, 425 is the page that is specifically being referred to, 799 is the volume of the *North Eastern Reporter*, second series, 801 is the first page, and 802 is the page that is specifically being referred to.) Finding parallel citations, however, required authors to perform additional research steps. A few print publications contained "star paging," which eased this process. However, providing star paging is a labor-intensive process.

¶ 31 In 1991, the 15th edition of the *Bluebook* restricted the requirements for parallel citation from what they had been. Previously, writers had been required to use parallel citations for any state opinion that possessed parallel citations, i.e., any state opinion that appeared in both an official reporter and a regional reporter. The 15th edition required parallel citations to be used only for opinions of a state court cited in a document being submitted to a court in that state.[45] This exempted writers of secondary authority, and attorneys citing persuasive authority, from having to use official reports. They need use only the unofficial National Reporter System.

¶ 32 Traditionally, there has always been a delay between the original issuance of the opinion in slip form and its publication in advance sheets, which contain final citations. The *Bluebook* rule for citing slip opinions requires a different citation form.[46] Slip opinion citations are cumbersome, both for authors, who must change the slip opinion citation to the reporter citation if it appears before the written piece is published, and for researchers who encounter slip opinion citations in a document and must perform additional research steps to find the opinion in bound form.

¶ 33 Citation to statutory codes is more contextual, but also requires a reference to the date on the book or book supplement in which the statute appears. (For example: 7 U.S.C. 1105 (1988), where 1988 is the date on the spine of the code.)[47] Citation to session laws and administrative law also, in most cases, depends on the book arrangement.[48] Thus, traditional citation form, as embodied in the *Bluebook*, and accepted by general convention, is heavily dependent on the book, and requires use of such features as volume numbers, page numbers, book publication dates and titles of particular book serials.

¶ 34 **The Advent of Electronic Publication of Legal Authority.** Much of the law now

appears first in electronic form.

- Most opinions and draft legislation are created using word processing software, on disk.
- More and more primary authority is being transmitted to publishers in electronic form.
- Courts and legislatures are releasing their decisions and statutes to the public in electronic form, via bulletin boards or the Internet.[49]
- Electronic publication of the law can be seen in commercial online databases (which contain both primary and secondary authority), the Internet (which contains increasing amounts of primary authority), electronic bulletin boards (which may contain the full text of recent statutes and decisions of a particular jurisdiction), and various CD-ROM products (which contain both primary and secondary authority).

¶ 35 For example, 20 years ago Arkansas Supreme Court opinions were available in:

- print as official slip opinions (without final citation forms).
- print as advance sheets and reporters of the official *Arkansas Reports* (without S.W.2d citations).
- print as advance sheets and reporters of the unofficial *South Western Reporter 2d*.
- print as advance sheets and reporters of the *South Western Reporter 2d --- Arkansas Cases*.

¶ 36 Today, the following additional forms are available:

- electronic form online on the commercial electronic bulletin board LawNet (without final citations).
- electronic form on the court electronic database for weekly downloading (without final citation forms).
- electronic form on the Law Office Information Systems electronic bulletin board for downloading (without final citation forms).
- electronic form on the Law Office Information Systems CD-ROM (without S.W. internal paging).
- electronic form on the West Arkansas CD-ROM.
- electronic form on the Lawyers' Co-op CaseBase CD-ROM.
- electronic form on the Michie CD-ROM (soon to be released).
- electronic form online on LEXIS.
- electronic form online on WESTLAW.

¶ 37 **Problems with Electronic Publication and Traditional Legal Citation Elements.** The volume number, page number, and date of the physical book or its supplement are all parts of traditional legal citations. However, these elements do not naturally appear in electronic publications. Volume numbers are unnecessary in the electronic format. Whether to insert page numbers is a decision made either by a programmer or the author, depending on the software used. Downloading pages into another font or word processing application, or using another printer, can destroy original page numbers. Revised documents can simply be reloaded in the electronic environment, thus eliminating the need for the date on the spine, pocket part, or supplement of the physical book.

¶ 38 These elements must be added in order for electronic publications to conform to current citation convention. In addition, these elements are usually not available at the time the information first appears electronically; if not, they must be added at a later point. Internal pagination of decisions may or may not be in the public domain; if not, vendors may be required to license them, or choose to sell a highly uncompetitive product.

¶ 39 Technology has reached the point where it is anomalous to continue to tie citation form to books. The *Bluebook* instructs authors in how to cite to opinions available on LEXIS or WESTLAW,[50] *but only until the opinion is available in book form*.[51] Nowhere in the *Bluebook* is there mention of bulletin boards, the Internet, or CD-ROM products. The modern proliferation of legal publications makes the idea of parallel citations more and more burdensome. The Task Force believes that *Bluebook* rules, and convention, are such that, although a court would accept a citation to one decision from, e.g., a bulletin board service, that same court would reject the

brief if it contained citations *only* to bulletin board services or the Internet or other "unrecognized" citation forms.

¶ 40 **Problems with Copyright and Traditional Legal Citation Form.** Developments in copyright law, and proprietary claims of vendors, also affect the future of traditional citation form. The law has long been settled that judicial opinions are in the public domain.[52] By "judicial opinions," what is meant is the text of the decision itself. Similarly, there is no dispute that publishers can and do hold copyright over synopses, headnotes, etc., that are written by them.[53] However, the law is not so clear in the area of unofficial citations to the volume, reporter, and page number. Publishers allow other publishers to use the volume, reporter and *initial* page of a case under the fair use exception to copyright.[54]

¶ 41 The question of whether vendors can take internal page numbers from unofficial reporter cases to add to their own products has been decided only by the Eighth Circuit.[55] The Eighth Circuit held that publishers of unofficial reports owned copyright to the internal paging, although, since the litigation concerned only an injunction, the Court noted that its opinion could only be "tentative and provisional."[56] Subsequently, the case was settled out of court. In 1991, the U.S. Supreme Court arguably cast doubt on the Eighth Circuit decision by holding that telephone book "white pages" could not be copyrighted, because they lacked sufficient originality.[57]

¶ 42 In jurisdictions with no official reporter,[58] the *Bluebook* rule is clear; if the decision appears in a West print reporter, the author must cite the reporter.[59] However, because of West's copyright claims, electronic products cannot contain the internal page numbers of the West print reporter for those jurisdictions, unless licensing has been obtained from West. The Task Force believes that this state of affairs impedes low-cost access to the law.

¶ 43 In 1992, Representative Barney Frank (D.-Mass.) introduced H.R. 4426. This bill would have amended Section 105 of the Copyright Act to exclude copyright protection for names, numbers, citations, volumes, or page numbers of state or federal statutes, regulations, or judicial opinions. The Subcommittee on Intellectual Property and Judicial Administration of the House Committee on the Judiciary held hearings on the bill,[60] but it never left committee.

¶ 44 Statutory compilations have presented copyright problems in some states as well. Georgia and Illinois recodified their statutes because vendors claimed copyright to the structure of the code itself, and Texas, which had the same problem, is in the process of recodifying its statutes.[61]

How Jurisdictions Are Responding to These Problems

¶ 45 While many have argued that there is no need for change, the following jurisdictions have either considered or adopted new citation forms.

¶ 46 **Federal Court of Appeals.** In 1992, the Judicial Conference of the United States considered changing the citation form of the Federal Court of Appeals' decisions. The new citation form would have been: Smith v. Jones, 1990 FED App. 0322P (5th Cir.), where 1990 is the year, 322 is the 322d opinion issued during 1990, and P designates a published opinion. The new form would have only been used until a West reporter citation became available. The Judicial Conference refused to mandate the proposal;[62] however, it left federal courts free to adopt it on their own. Currently the Sixth Circuit is using it.[63]

¶ 47 Task Force criticisms of this form are that it uses page numbers (the slip opinion page numbers, which were not final); and that the entire form was final only for unpublished opinions. (Published opinions were to be cited as they are currently.)

¶ 48 **Louisiana.** On January 1, 1994, a new "public domain" citation form went into effect in Louisiana. The new citation forms are: Smith v. Jones, 93-2345 (La. 7/15/94); 650 So. 2d 500; or Smith v. Jones, 93-2334 (La. App. 1 Cir. 7/15/94); 660 So. 2d 400, where 93-2345 and 93-2334 are docket numbers. Internal paging is required to the official slip opinion pages, and optionally to

the *Southern Reporter*; for example, Smith v. Jones, 94-2345, p. 7 (La. 7/15/94); 650 So. 2d 500, 504.[64]

¶ 49 Louisiana had an official reporter until 1972. After that time, when no official reporter was printed, Louisiana decisions could be found in the *Southern Reporter* (and *Southern Reporter --- Louisiana Cases*). Additionally, they were available on WESTLAW and LEXIS, and most recently, on the West CD-ROM product for Louisiana. Now, one year later, and as a direct result of the change in citation format, Louisiana decisions can also be found on two new CD-ROM products, one published by Michie and the other by Law Office Information Systems (LOIS). It is important to note that neither the Michie nor the LOIS CD-ROM products are licensed to use the page numbers of the only print Louisiana reporter. Only the new citation format enabled them to offer their products in Louisiana. In addition, the two new entrants in the CD-ROM field have successfully reduced the cost of obtaining case law and statutory law. "[B]ecause of recent actions by the Louisiana Supreme Court to provide all Louisiana court opinions in non-proprietary format and new competition entering the field, there has been a considerable lowering of prices."[65] Access has improved via lower prices.

¶ 50 Criticisms of the Louisiana form are that it uses page numbers (of the official slip opinion); that it is lengthy; that it is not medium neutral; and that it is not permanent until the *Southern* citation appears.

¶ 51 **Colorado.** On May 5, 1994, the Colorado Supreme Court approved citation to paragraph numbers, which now appear in Colorado decisions, as an acceptable alternative to use of pinpoint pages from the *Pacific Reporter*.[66]

¶ 52 Criticisms of this form are that it is not permanent until the *Pacific* citation appears; and that it is not medium neutral.

¶ 53 **Wisconsin.** On June 22, 1994, the Wisconsin Bar Board of Governors approved a new form for Wisconsin citations.[67] The State Bar of Wisconsin and the Wisconsin Judicial Council have since submitted a petition for a rules change to the Wisconsin Supreme Court. A public hearing is scheduled for March 21, 1995, with a decision expected before the end of the term.

¶ 54 Citations to Wisconsin Supreme Court decisions would take this form:

Smith v. Jones, 1996 Wis 235

where 1996 is the year of decision, Wis is the court, and 235 is the 235th decision released by the court in 1996.

¶ 55 Pinpoint citations are indicated by paragraph numbers:

Jones v. Smith, 1996 Wis App 123, 15

where 15 is the 15th paragraph in the case.

¶ 56 This citation form is medium-neutral, vendor-neutral, and in the public domain. *It eliminates the need for parallel citations.* It also serves as the citation from the date the case is released, eliminating the need for interim citations to databases and slip opinions. *All forms of publication of an opinion could carry this citation.*

¶ 57 **Concerns about the Wisconsin form.** Several concerns have been raised about the Wisconsin proposal.

¶ 58 **This citation form severs the connection between the citation and a physical book.**[68] This concern is groundless in the case of official reports, since their spines would indicate the year and the numbers of opinions printed therein. In a state with no official reporter, but where West published a reporter of that state's cases only, that reporter could list the year and case numbers on its spine. The concern is valid in the case of the West National Reporter System (NRS), which is made up of multi-jurisdictional sets. However, the NRS could continue to

be published just as it is now, and West could use the tables in the NRS *Blue Books* to refer readers from the official citation to the NRS citation, just as they do now.

¶ 59 **It does not indicate the version of the opinion that the author used.** This is true. However, current citation practice already often leaves the reader unaware of which version of a case was used by the author. If an author includes parallel citations to two or more different reporters, there is no indication of which version was actually used by the author. Likewise, using Arkansas as an example, because both the LOIS and CaseBase CD-ROM products include the official *Arkansas Reports* citations and internal pages, the reader has no way of knowing which version of the text was used, the CD-ROM products or the print product. In fact, this issue arises only if the versions of the case law differ. Although there have been no empirical studies, in actual practice this is not a common occurence and may be easily remedied by obtaining a different version of the case, from one's own office, another practitioner, a library, or the court. The Wisconsin proposal would provide yet another source, an "electronic archive" of the authoritative text. Finally, in theory, in a competitive market products containing unreliable information will fail, and those that are accurate and current will succeed. Changing from one CD-ROM system to another is a simple matter of inserting the CD-ROM in one's computer and installing the program.

¶ 60 **The Wisconsin form is "exclusive."**[69] The Task Force contends that this argument misunderstands the true nature of a medium-, vendor-neutral citation form. All forms of the published case would carry this citation. The Wisconsin form is truly "non-exclusive," because any vendor can use it in its products. Similarly, some have argued that the Wisconsin form "adds yet another citation." This argument also misconstrues the concept that the Wisconsin form eliminates the *need* for additional parallel citations. Attorneys who download a Wisconsin case from a BBS or a CD-ROM product would be able to cite it immediately, without additional research time invested in updating the citation or finding a parallel source.

¶ 61 **The Wisconsin form will change the nature of case law.**[70] This argument runs on two levels. One contends that if paragraphs are individually numbered, they somehow become more important than the whole of the opinion. A second, tangential argument is that opinions will be drafted in a different manner than they are today, because numbering the paragraphs will have a chilling effect on the author of the opinion, particularly in editing a released opinion. The Task Force believes that both of these arguments are exaggerated. Paragraphs represent units of thought. Since paragraphs are usually shorter than pages, citing to paragraphs allows writers to pinpoint more accurately their source, although it certainly would be permissible to cite more than one paragraph at a time. Pages are individually numbered, yet they have not become more important than the whole of the opinion. As to the second argument, the Wisconsin proposal recommends (as does the Task Force) that paragraph numbers not be added until the end of the writing process, when the final, to-be-released opinion is complete. Changes made subsequent to this stage are generally minor, consisting primarily of single words, citation corrections, and typos.

¶ 62 **Alternatives to the Wisconsin form.** The Task Force considered the following alternative proposals to the Wisconsin form.

¶ 63 **The Wisconsin form with a parallel citation to a print form.**[71] This proposal was made to provide a transitional "safety net" for those attorneys and libraries which depend on books. However, if the Wisconsin approach is adopted, the official print form itself would use the new format. Again, in jurisdictions which rely solely on the National Reporter System, the NRS Blue Book could be used (see ¶ 58 *supra*).

¶ 64 **The docket number.**[72] Advantages of the docket number are that it is an already-existing number and that all cases already have it. Disadvantages are that docket numbers have no connection with whether a case is published or not; they do not indicate the sequence of publication; they are often quite long numbers, with more possibility for error; in some jurisdictions they are not unique; and they require adding the date to the citation. Using docket numbers would not only require continual revision of the each issue of the National Reporter Blue Book, but also official reports and print versions of Shepard's as well. Further, many electronic

case law validation and research tools do not work with docket numbers.

¶ 65 **The percentage point system.** "Percentage" systems have been proposed to solve the pinpoint citation problem.[73] These would require the pinpoint citation to be a percentage of the document length. For example, if the pinpointed material lay at a distance 25.3% from the beginning of the opinion, the citation would be Smith v. Jones, 513 N.W.2d 723, 24.3 (Iowa 1968); or Smith v. Jones, 1996 Wis 353, 24.3. The advantages of percentage systems are that they are easy to calculate with computers and that they solve the copyright problem. The disadvantages are that they do not work easily with print publications, and would be quite foreign to both attorneys and publishers.

Task Force Recommendations for Case Citation Form

¶ 66 **Recommendation 1.** For those jurisdictions considering change to a medium neutral citation form, the Task Force recommends the use of the following case citation form: case name, year of decision, court, opinion number, and, where a pinpoint citation is needed, paragraph number.

¶ 67 Paragraph numbers should begin with the first paragraph of the decision, unless official headnotes or syllabi are citable (as in Ohio Supreme Court decisions), in which case numbering should begin with the headnotes or syllabi. Indented quotations and footnotes should not be numbered. Paragraph numbering should be consecutive from beginning to end of the decision, including concurrences and dissents.

¶ 68 Each court should have its own abbreviation. Periods should be left off, as they are superfluous. Intermediate appellate court circuits or districts which are not bound by each other's law should state the circuit or district number in parentheses, e.g., La App (5th), US App (8th). Lower courts should use their standard abbreviations, minus Ct., which is superfluous, e.g., Del Fam, Ill Cl, Mass Dist, NY Sup, NY Cl, NY Civ, etc., with any important information following in parentheses.

¶ 69 **Recommendation 2.** Regardless of whether or when jurisdictions adopt the Wisconsin model, the Task Force recommends that all jurisdictions begin to number their decisions by paragraphs, and encourages citation to paragraph numbers.

Issues for Jurisdictions Considering Change

¶ 70 The Wisconsin form was the result of four years of discussion by Wisconsin attorneys and was developed based on the court structure of that state. Other states with radically different court structures might find the Wisconsin form difficult if not impossible to use given their current structure and procedures. Below are some issues for jurisdictions considering changing their citation form.

¶ 71 **Release numbers.** The Wisconsin system hinges on a release number being assigned by a central office. Many courts (for example, the Texas and Federal Courts of Appeals) currently have no central office which could assign a release number to new decisions. The courts, and not publishers, should assign the release number. The most logical office to take on this responsibility is the court clerk's office.

¶ 72 **Paragraph numbers.** At the present time, Colorado, the U.S. Court of Military Appeals, and some Canadian and Australian courts assign paragraph numbers to their decisions. Significant debate has been devoted to whether paragraph numbering can be completely automated. Currently, it seems clear that use of certain software enables virtually complete automation of the assignment of paragraph numbers, with minimal checking required; but not all courts use such software. Debate has also concerned whether opinion drafts should have paragraph numbers. It seems to the Task Force that the numbering should be added once the opinion is ready for release. Other questions have arisen, such as how exactly to number paragraphs.[74] It should be noted that using paragraph numbers instead of page numbers solves the copyright problems discussed *supra* in ¶¶ 40-42.

¶ 73 **Date of decision.** When a decision becomes final varies from jurisdiction to jurisdiction. Some jurisdictions set time limits; others do not. If the change is serious enough, a court might send out an errata to be pasted into a written reporter. Many courts do not post subsequent changes on their bulletin boards, or distribute them to all publishers. We recommend that courts and publishers prominently note that an opinion is not "final" until it is considered so, and that if any change is made after that date, that it is noted in the header to the opinion.[75] Authors citing the opinion should refer to the revised date in a parenthetical.

¶ 74 **Archive of opinions.** Wisconsin discovered that it did not "own" its own copy of its judicial decisions. The bar has recommended that Wisconsin establish an archive. This archive would be the definitive source of the exact wording of opinions, and would belong to the state. Any state in a similar situation should consider establishing an archive, either print or electronic, so that an authoritative version would exist. Wisconsin plans an electronic archive, with opinions easily accessible by the public in paper or electronic form (but without any search engine).

¶ 75 **Unpublished opinions.** In its report, the Wisconsin Bar's Technology Resource Committee recommended leaving unpublished opinions unnumbered. Since then, the Committee has informally decided to simply number all opinions and place "U" after those which are not published. Again, different jurisdictions have different rules regarding unpublished opinions. Some jurisdictions actually sanction attorneys who cite them, while others permit their citation under certain conditions. If a jurisdiction decides to number its unpublished opinions as well, we recommend one numbering sequence, and indicating the fact of nonpublication with a notation, as follows:

1996 Wis 208U

¶ 76 **The Past.** If the motive of jurisdictions considering change in citation form is to increase competition (as it was in Louisiana), the issue of citation to decisions issued before the change will arise. There are two good alternatives - (1) to go back and renumber old cases with the Wisconsin approach, and include a required parallel citation to a print reporter; or (2) to use a print reporter citation and number the paragraphs of each decision (not numbering any copyrighted material). Either approach is easily accomplished with electronic or CD-ROM products.

Statutory Codes

¶ 77 **Current Form and Problems.** The shift to electronic publishing of statutory codes creates a different set of problems. Citation to them requires neither volume nor page numbering. The general conventions for citing statutory codes include the code name, title and section, and date on the book or pocket part.[76] The date is the problematic element. The *Bluebook* requires using the date on the spine, the title page, or the copyright page in that order of preference. Code sections in supplements must use the date of the supplement.[77] The purpose of these date requirements is to direct the reader to the correct code volume or supplement. However, the Task Force finds these date requirements too restrictive. The author who uses an electronic form of the code does not have access to these dates; they are not naturally found in either the online or CD-ROM formats.

¶ 78 Citing federal statutes according to the *Bluebook* is cumbersome because of the requirement to cite the physical books of the official code,[78] which lag over a year behind the date of enactment. The fact that U.S.C.A. and U.S.C.S. have identical title and section numbering does make citing the *U.S. Code* more convenient and the use of parallels unnecessary (much like the Wisconsin form would do for case law).

¶ 79 Another problem that has arisen in a few jurisdictions is publisher claims to copyright on the arrangement, or portions of the arrangement, of the code.[79] Presumably this claim is made to the titles of U.S.C.S. and U.S.C.A. which are not positive law, if they deviate in wording from the U.S.C.

Task Force Recommendation for Statutory Citation Form

¶ 80 **Recommendation 3.** The Task Force recommends that the actual date of the latest amendment to the statutory section cited should be the one listed in parentheses, for example:

42 U.S.C. 1006 (1/31/94)

This would serve both electronic and print readers. A reader using a 1993 pocket part would realize that he or she must consult a later supplement. This solution would also relieve authors of the complicated process of using the yearly supplements to the U.S. Code.

Citation Form for Other Types of Authority

¶ 81 The short time available to the Task Force prohibited it from more than a cursory look at session laws, administrative law, and secondary authority. The Task Force therefore makes no recommendations regarding medium neutral citation form and these areas of legal publishing. However, the Task Force notes generally that *Bluebook* requirements to cite volume numbers, page numbers, and/or dates which appear on printed materials but which would not naturally appear in online versions are elements of citation form that are problematic with electronic media.

¶ 82 **Session Laws.** Like case citation form, citations to session laws require page numbers and in some cases (e.g., Stat.) volume numbers as well.[80]

¶ 83 To meet vendor- and medium-independent requirements, citations to session laws must contain years (or legislative sessions) and sequential numbers for laws. At the federal level, Public Law numbers meet this requirement, but not citations to *Statutes at Large*, which contain volume and page numbers. Generally, session laws are internally numbered by section numbers, so citations to pages are not necessary.

¶ 84 **Administrative Law.** Just as administrative law is similar in form and publication to either case law or statutory law, so deficiencies in current citation practices mirror deficiencies in case and statutory citation form.

¶ 85 Administrative decisions and orders can be analogized to cases. Administrative agencies could number their decisions sequentially; some already do. Internally, paragraph numbers should be inserted to end dependence on pages.

¶ 86 Administrative rules and regulations can be analogized to statutes. Registers are similar to session laws, in that adjacent material is essentially unrelated. Registers are different in that material is emanating from many different agencies, as opposed to one legislature, and also in that registers contain proposed rules, and other types of material such as notices, guidelines, etc., so that they contain a much greater variety of information, and not just the text of laws. The *Federal Register* is the most-used of all administrative registers. It assigns each item published an "FR Doc." number, listed at the end of each item. A citation to the *Federal Register* could thus include this document number and the date of the *Register* and be unique and complete enough to find either in print or online. Each submitting agency, or the *Federal Register*, could number paragraphs of the documents. State registers could work the same way.

¶ 87 Administrative codes represent the same problems as statutory codes. Using the dating method discussed *supra* in ¶ 80 would work for administrative codes as well.

¶ 88 Generally, requirements to cite volume numbers, page numbers, or dates which appear on printed materials but which will not appear on online versions are the specific elements of citation form which are problematic with the electronic medium.

¶ 89 **Secondary Authority.** This type of authority, encompassing treatises, periodical articles, A.L.R. annotations, encyclopedias, and like material, is different from primary authority in some important respects. Clearly, all secondary authority is copyrighted by someone, and since none of it is law, the right-of-access issues do not apply. Rather than being issued by governmental agencies, secondary authority is written by individuals and published by private publishers.

Nonetheless, secondary authority is being produced and published in electronic form and thus the same problems with citation form arise. For example, researchers who obtain periodical articles from online services do not have internal page numbers to include in their citations.

¶ 90 The Task Force makes no recommendations regarding medium neutral citation form to session laws, administrative law, or secondary authority. In the short time allotted to it, its members concentrated chiefly on case law. However, the issues identified elsewhere in this report should point the way to appropriate solutions.

Conclusion

¶ 91 Some are opposed to the ideas presented in this report on the grounds that they represent more work, or are impossible given current procedures. The Task Force believes that the increasing automation of government agencies, courts, and legislatures has already altered many job tasks. Automation in the legislature has provided immediate access to bills and new legislation via online and CD-ROM services. Automation of court procedures, from electronic filing to case management, has brought about significant change to court systems throughout the United States. The continued development of technology in both government and legal publishing cannot be ignored. The growth of the Internet heralds a revolution in the publication, dissemination, and retrieval of information. We cannot predict the future. But we can plan to be ready when it arrives. The Task Force encourages AALL members and representatives of the bench, bar, and legal publishing to continue the dialogue and to work toward the common goal of simple, uniform citations for legal information in the 21st century.

Recommendations

¶ 92 **Recommendation 1.** For those jurisdictions considering change to a medium neutral citation form, the Task Force recommends the use of the following case citation form: case name, year of decision, court, opinion number, and, where a pinpoint citation is needed, paragraph number.

¶ 93 **Recommendation 2.** Regardless of whether or when jurisdictions adopt Recommendation 1, the Task Force encourages all jurisdictions begin to number their decisions by paragraphs, and to allow citation to paragraph numbers.

¶ 94 **Recommendation 3.** The date of the latest amendment to the section of a statute should be used, e.g. 42 U.S.C. 1006 (1/31/94).

¶ 95 **Recommendation 4.** That the Task Force be disbanded, and in its place an AALL Committee be established, with the following charge:

- To study the impact of electronic publication on legal citation formats, and to make recommendations where appropriate;
- To work with the judiciary, the bar, the American Bar Association, the Bluebook editors, and other groups to promote uniformity of citation reform; and
- To serve as both a clearinghouse for information on citation reform, and a resource for jurisdictions and other groups considering citation reform.

This Committee would be authorized to speak on behalf of AALL in areas where there was already clear AALL policy, similar to the role played by the Government Relations Committee.

Position Statement of Shepard's/McGraw-Hill

By Myrna Bennett

Thank you for the opportunity to make a statement concerning proposals for the development of a nonproprietary legal citation system.

Shepard's supports the goal of improving access to legal information. For more than 120 years, Shepard's has pursued that goal by creating products which compile and track essentially every citation to every court decision published in the United States.

We do not see ourselves as the arbiter of citation practices. Rather, we take the citations world as we find it and seek to make it more understandable. We believe that it is the prerogative of the courts to determine the form in which cases may be cited in briefs or legal memoranda submitted to them or in opinions which they issue and that it is the right of information providers to publish case reports under any system of organization they choose, to create their own proprietary system of citation and to provide parallel citations to any other system of reports in which the same cases can be found. Without signifying either approval or disapproval, we will reflect in our publications any new citation formats which emerge and in which the marketplace demonstrates a sufficient interest.

In our view, any perceived need for the creation of new public domain citations systems should be balanced against the cost of providing such new systems. We believe that those costs can be substantial. For example, adoption of new citation formats can have an enormous impact upon Shepard's costs and the cost to the public of Shepard's products. Shepard's editorial processes require an editorial staff of some 280 persons and substantial computer resources to identify, verify, analyze and cross-reference every citation in essentially every American case. The addition of new citation formats requires that these processes be performed for such new citations as well as for all already-existing citation formats. The cumulative effect is to drive up Shepard's costs, which must be passed on to Shepard's customers in terms of increased prices. Where such new citation formats are represented in Shepard's products, the effect is to increase the size of the products and to force more frequent revisions, at substantial additional cost to the buying public.

We have worked with the American Association of Law Libraries and others to insure that any new citation conventions proposed by such groups are technically sound and intelligible and that any perceived need for the creation of new public domain citations systems is balanced against the cost of providing such new systems. We hope you will find our experience and observations helpful in the development of a position on this important issue.

A Dissenting View

Donna M. Bergsgaard and William H. Lindberg
West Publishing Company

March 2, 1995

[Endnotes for this portion]

Preface

Let us say, at the outset, there is no easy way to disagree with the earnestly-held beliefs of our valued and longtime friends at AALL who crafted the "majority report"[1] on behalf of the Task Force. We do not doubt the sincerity of their convictions, but we firmly believe that the majority's radical proposals would cause serious disruption to the legal profession and reduce access to the law in printed form. Accordingly, we must dissent from the majority's report.

West Publishing Company and AALL have had a long history of cooperation, collegial relations, and mutual respect. Notwithstanding our differences with the Task Force chair and some of its members on copyright, citation, and competitive issues,[2] West Publishing looks forward to carrying on our tradition of providing the highest quality service to each and every member of AALL. We will continue acting as partners in the quest to provide first-rate legal information services to the bench and bar.

We appreciate the opportunity AALL has afforded us to serve on this Task Force. Without

question, "citation reform" has become a very divisive issue within AALL.[3] We note that many prominent members of AALL have encouraged fellow librarians to evaluate drastic citation proposals with a very critical eye.[4] Clearly, there are many ponderous questions, numerous differences of opinion, and no simple answers.

In Defense of the Print Medium

We must confess we are mystified at the Task Force majority's anti-print disposition.[5] The Task Force report states that "[i]t should also be emphasized that a medium-*neutral* citation system should not disadvantage print publications."[6] But the majority has turned right around and recommended a system that would cause serious inefficiencies for users of print publications. Disadvantages to print publication users include:

- Citations that fail to properly identify the printed compilations where citations appear, thus making the proper compilation very difficult to locate;[7]
- Additional research steps for National Reporter System users, such as required use of citation translation tables;[8]
- The addition of confusing spine labels to volumes that now carry easily understood and easily transcribed volume numbers; and [9]
- Significant new learning tasks for every attorney who currently knows how to find printed publications.[10]

According to research conducted by an independent firm,[11] 98% of all attorneys in Wisconsin use printed publications for their legal research. While slightly more than half of the bar now use computers to some extent in legal research, the remaining 45% are using printed sources *exclusively*. Results may vary slightly from one state to another, but we suspect that these figures are representative. If so many attorneys conduct their legal research and analysis using printed publications, does it make sense to disadvantage them through government intervention in citation practice?

While electronic products are becoming a popular means of *searching* the law, printed products remain, by far, the preferred medium for *legal study and analysis*. West has conducted extensive research with attorneys who have advised us they prefer studying and working intensively with case law, statutes, and treatises in the printed medium. They complain that reading cases from a screen is tiring, inconvenient, confining, and unnatural. We have urged the Task Force leadership to **consider the needs of attorneys and judges first**. Yet nowhere in the majority report do we find discussion of the fact that attorneys and judges prefer reading and analyzing the law in the print medium.

In addition, let us not lose sight of the fact that *absolutely every document with legal effect originates in the print medium*. Judges affix their signatures on opinions printed on paper. Governors also press their pens to paper in approving new legislation. Heads of state sign treaties on ornate printed documents. These practices have persisted since paper replaced papyrus. And we firmly believe that paper will continue to be the medium of choice for the origination of authentic legal documents for the indefinite future. We might add that ever since books replaced scrolls as the preferred printed format, legal documents have been paginated. There is absolutely no reason to believe that documents with legal effect will cease carrying page numbers, at their inception, anytime in the foreseeable future. The physical characteristics of the print medium still serve as the best possible assurance that an original document is authentic.

We thus find we must disagree completely with the majority's contrived definition of "medium-neutral," as well as the majority's insistence that future citation systems must follow that definition. The majority defines medium-neutral as "any citation form that may be employed in either book or electronic form, *without additional information needing to be added to either ... It may not refer to volumes or pages, for these exist naturally only in the book medium*."[12] The majority has unfortunately failed to discuss West's proposed definition of medium-neutral: "**any citation form that may be used in either books or electronic databases**." Under this very practical definition, pages are clearly medium-independent. In fact, it has become a common

practice for CD-ROM and online publishers to include references to printed page numbers in legal databases.[13]

We deeply appreciate the support of those members of the law library community who have discerned the value of West Publishing Company's commitment to public access to the law in the print medium. It bears repeating that West is the only company that has dedicated itself to building a national system for reporting and indexing cases in all American jurisdictions in all of the principal media: print, CD-ROM, and online. West's corporate commitment and success story has assured the greatest possible level of access to the law for every citizen. AALL would be doing the American public a terrible disservice if it were to turn its back on printed access to the law, and encouraged an electro-centric future[14] where the National Reporter System, or critical components of it, were no longer economically viable, whether as a service of West Publishing, the United States government, or of any other publishing entity.

Uniformity Need Not Be Achieved Through Government Intervention

We firmly believe that any change in citation practice should be based on the needs of the legal profession - not for the purpose of manipulating markets for caselaw compilations. A completely free and fair marketplace will result in more creative publications. West firmly believes that courts should permit lawyers and judges to cite any reliable source of the law. Thus, the only official citation rule should be a completely vendor-neutral, open rule. Some would argue that the disadvantage of such a rule is that it promotes lack of uniformity. But academic institutions have long done a superb job of providing *guidance* as to standard citation formats that provide the needed measure of uniformity. Style guides might certainly *suggest* that attorneys and judges cite to widely-used sources, but courts should not **mandate** that attorneys cite those recommended sources to the exclusion of all others.

Efforts to *dictate* radical new citation formats[15] or to legislate citation practice[16] have been rejected for sound public policy reasons. Those that have been authorized have apparently failed to gain widespread acceptance.[17] The much better approach is to provide *guidance* as to formats that *describe* sources of the law.[18] The *Bluebook*[19] has succeeded (it is now in its 15th edition) because its editors have set forth useful recommendations that follow common sense principles of good citation practice. Through the years, the *Bluebook* editors have wisely steered clear of advocating adoption of its rules as positive law. To the extent the *Bluebook* has been accepted in many courts as a guide, it is because legal writers have found it useful. On a national basis, it does a fine job of helping writers help readers locate authorities. It also promotes a degree of national uniformity.

West Responses to Majority Recommendations

We now address the specific recommendations set forth in the majority's report.

* * *

Majority Recommendation 1. The basic [proposed] Wisconsin form should be followed, in those jurisdictions considering change, where it is feasible at the present time.

The Recommended Citation Format Fails to Advise Readers How to Locate the Cited Case ("Nowhere Cites")

As the Task Force majority has correctly noted, "[t]he primary purpose of legal citation form is to **direct the reader to a source of the information referred to by the author**" (emphasis added).[20] And yet, the majority curiously goes on to recommend a citation format that fails to identify the specific compilation where the case may be found. This recommendation is in direct violation of an applicable common-sense American national standard [21] adopted in 1977:

References to works at the analytic level *[i.e., individual cases]* must *always* include bibliographic elements that describe the next higher bibliographic level of which it forms a part (monographic or collective level) *[i.e. volume of reports, CD-ROM, etc.]*. (Italics, bracketed material added.)

We were dismayed to find that the Task Force's majority report fails to even *mention* this standard, much less argue persuasively for departing from it. Anomalously, we did note that the majority report cites the very same Byron Cooper article which discusses this standard for the majority's reference to the purpose of legal citation form![22]

Let's depart now from theory and approach the problem from a practical perspective. To set the stage, let's assume that Minnesota Tax Court opinions may be reported in slip copy, in legal newspapers, in national looseleaf services, on CD-ROMs containing cases from all Minnesota courts (including specialized ones), on WESTLAW, on LEXIS, and on an Internet "gopher server" maintained by a local law school. Let's further suppose that Minnesota has adopted the citation scheme recommended by the Task Force majority and that the Minnesota rule change affects all courts.

Now suppose an attorney obtains a cite to *Homart Development Co. v. County of Hennepin* [23] from another opinion or a treatise pertaining to state taxation. The attorney now wishes to read *Homart*. But now that the citation rule in Minnesota follows the majority's recommendation, it requires that the case be cited as *Homart Development Co. v. County of Hennepin*, 1995 Minn Tax 18 - with no indication of the specific reporter, looseleaf service, CD-ROM, or online database where the case may be found.[24]

Where does the attorney now turn to locate the case? The citation accurately identifies the specialized court issuing the opinion, but provides absolutely no clue that helps the researcher to identify the publication, CD-ROM, or online service where she can *actually find* the opinion. It is truly a citation to nowhere (hereinafter "Nowhere Cite"). The majority is thus recommending a citation format that fails to meet the very first test of usability --- *whether it helps readers locate the cited authority*.

The Nowhere Cite Format Promotes Lack of Uniformity

The Nowhere Cite contravenes one of the three stated purposes of the Task Force. The Task Force was charged with responsibility "[t]o work with the judiciary, the bar, the ABA JEDI committee, the *Bluebook* editors, and other groups to promote **uniformity** of citation reform." But the absolutely predictable result of the majority's recommendation will be to encourage *lack of uniformity* in the way cases are cited in various jurisdictions.

The majority report itself concedes that the proposed Wisconsin approach to citation reform may make sense in only some jurisdictions.[25] The majority further concedes that the State Bar and Judicial Council in Wisconsin are unique in their apparent willingness to fund a centralized electronic archive of judicial opinions (though we question the **taxpayers'** willingness to do so, both in Wisconsin and elsewhere).[26] Wisconsin is the only state where two "official" publishers of caselaw co-exist and the state publishes neither one, thus resulting in a very atypical legal publishing environment. The proposed system in Wisconsin is *guaranteed* to be poorly received in the influential and populous states of California and New York,[27] and in smaller states that have already adopted completely different approaches, such as Louisiana and Colorado.[28] There has been absolutely no research, discussion, or analysis on how such a system would work for the federal system. In fact, a similar, but much less drastic "system" has already been turned down by the Judicial Conference of the United States.[29]

The Task Force representative from the Association of Reporters of Judicial Decisions has contributed valuable insight into the difficulties of recommending the proposed Wisconsin citations in those jurisdictions that have official reports. In 29 states, public domain citations are available in state reports, including full pinpoint citations.[30] As a result, it is the official position of the Association of Reporters of Judicial Decisions that:

As to those jurisdictions that publish their opinions in official reports, creation of a vendor-neutral form of electronic citation is unnecessary.

The California Reporter of Decisions has stated without reservation that the proposed Wisconsin model is "completely impractical as to California law and practice."[31] The proposed system is also completely unworkable in the state of New York.[32] If the Task Force goal is to recommend new citation formats that promote uniformity, the decision to recommend the most radical possible approach to citation reform will surely frustrate achievement of that goal.

The Nowhere Citation Format is Impractical When Applied to Regional Reporters

Ask any judge or lawyer - anywhere in America - what P.2d or N.E.2d signify. The great majority can easily locate the National Reporter System shelves in their alma mater's library, and find a case cited simply as "50 P.2d 297" or "83 N.E.2d 108." The *Pacific Second* and *North Eastern Second* reporters are familiar to virtually every member of the bench and bar because they form part of a simple, coordinated National Reporter System. Now suggest to any judge or lawyer that this system is no longer relevant; or propose that they'll have to perform costly extra "translation" steps for *every single case* they pull from the shelf.[33] We think the 98% of the legal profession that uses books for research[34] and legal analysis will be outraged.

The majority report is a direct assault on a familiar and well-established component of the American system of legal research. This system, it has been noted, is "the envy of the Western world."[35] We vehemently object to the majority's cavalier suggestion that the proposed citation format can be accommodated by forcing users of this simple, understandable system to engage in complicated "lookups" before they can pull cases from the National Reporter System shelves.

The Majority Report Fails to Include Any Needs Assessment From the Bench and Bar Perspective

We believe that proposals for citation reform should be grounded in thorough needs assessments, not in theory and speculation.[36] The first rule of good system design is to take into account needs of the users of the system.[37] Of course, the most frequent users of case citations are attorneys and judges. If there have been significant insights offered on behalf of practicing lawyers and active judges in favor of the majority's report, we have seen no evidence of it. Members of the bench and bar deserve a thorough needs assessment and fact-finding effort that addresses the supposed problems with familiar citation formats. The majority provides no analysis of the costs of its proposal, and engages in pure speculation as to its potential benefits.

At the outset, West raised numerous questions of fact relating to electronic citations and formats.[38] As to the practice of publishing opinions on bulletin boards, we asked:

- *What percentage of cases cited in briefs or court opinions actually lack permanent citations?*

The majority *assumed* that lack of permanent citations is a serious problem that plagues the profession. We have seen no evidence of it, and strongly suspect that a small percentage of cases are currently cited to non-permanent sources.

- *Do attorneys frequently encounter problems with courts rejecting citations to cases downloaded from bulletin board systems? If so, how frequently?*

The majority has *assumed* that a brief containing citations to "unauthorized" sources will be rejected, but offers nothing but conjecture to back it up.

- *Do courts have difficulty accepting the Bluebook recommendation that attorneys cite recently-decided cases to the case name, court, docket number, and date?*

The majority has *assumed* that courts frown upon docket number citations, or that the composition of such citations imposes undue burdens on attorneys. Not a shred of evidence supports it.

- *Do courts fail to include pagination on opinions that are disseminated electronically, thus making it difficult for attorneys to include pinpoint page citations based on the slip copy?*

The majority *never addressed* this factual issue. As far as we are aware, no member of the Task Force was ever asked to investigate it.

- *Does electronic dissemination of opinions through bulletin board systems present a compelling need for a new system of citation, or can the most serious problems be addressed by recommending minor modifications to existing practice?*

The majority *assumes* that radical change is needed, even though it has failed to address any of the foregoing factual matters.

We also asked similar empirical questions pertaining to the supposed problems with proliferation of electronic citations, and issues relating to *Bluebook* or court rule favoritism (or despotism). To our knowledge, no member of the Task Force was ever assigned responsibility for investigating these factual issues. We are thus deeply concerned that the majority report reflects little more than the personal opinions of its authors relating to the aesthetics of the Wisconsin citation proposal.

In fact, the only empirical study we know about is one that West Publishing commissioned. In that study, conducted by an independent research firm, we learned that 98% of all lawyers conduct research in books; that 45% of Wisconsin lawyers use no computers at all to perform legal research; and that 89% think the current system of citation works well. We also learned that the majority of Wisconsin lawyers oppose the State Bar's citation reform plan.[39] If there is a true need for radical citation reform, and if there are reasons why the 98% of attorneys who use books in their research should be disadvantaged, we have seen no persuasive evidence of it.

The Nowhere Cite Would Require Radical and Costly Changes in Judicial Administration in Many States

The dissent of the State Reporter for New York eloquently points to serious difficulties with the proposed Wisconsin citation plan from the perspective of appellate judges. By suggesting a plan that places artificial time constraints on the judiciary's freedom to modify its opinions, the Task Force virtually guarantees an orphaned plan.

In many states, the Nowhere Cite would also require significant changes in the state's judicial system, particularly changes that would force the states to adopt centralized Clerk of Court offices. While Wisconsin has a centralized Clerk of Court for the state's appellate courts, the majority concedes that this is not the case in Texas and in the Federal Courts of Appeal.[40] And how about the other 48 states? There has been no investigation, no survey, no objective data to determine the extent to which the majority's proposal would require the modification of judicial administration in the various states and in the federal government.

We are further troubled by the majority's apparent assumption that only the opinions of appellate courts will be reported in a given state. Selected trial court opinions are already reported routinely in New York and in the federal courts. The trend in recent years has been toward greater availability of trial court opinions to the public. Also, a great many trial court opinions are published in topical looseleaf services, which clearly adds to the impracticality of the proposed Wisconsin citation format.

We believe it is irresponsible to recommend drastic changes in judicial administration without having given the matter extensive study - including significant input from the judiciary itself. It is truly unfortunate that the Task Force majority has chosen to take a firm stand before thoroughly investigating the facts.

The Nowhere Cite is Unworkable for Locating Cases in Looseleaf Topical Reporting Services, Legal Newspapers, and Many Other Compilations

The Nowhere Cite recommendation begins with the naive assumption that all legal publications fall into two mutually-exclusive classifications: (1) compilations of "unrelated" cases or other authorities that are organized by jurisdiction in a publication devoted exclusively to reporting the authorities of that jurisdiction; and (2) compilations organized by subject, without regard to jurisdiction.[41] Such characterizations are inappropriate for many publications that contain both chronological and subject-classified legal authorities, or publications that report authorities related to one another in other ways. Further, there are additional ways of linking related cases other than by legal subject (e.g., reporting cases in "precede and follow" order, because they involve the same parties, as editorially determined by the publisher).

The majority's false dichotomy is perhaps best illustrated in the case of topical looseleaf services and legal newspapers. Both of these publication types strive to report cases soon after they are decided, but such services may also contain digests, texts, and full-text cases arranged by subject. A citation format that requires all cases to be reported and arranged according to jurisdiction and chronological date of decision would completely tie the hands of publishers who wish to add value to their publications in looseleaf services, legal newspapers, and other reporting services by linking related cases or reporting cases shortly after they are decided.

By recommending a citation format that fails to identify the looseleaf or newspaper publisher of a recently-decided case, the majority will make it exceedingly difficult to locate such cases.

The Nowhere Cite Does Not Eliminate The Need For Parallel Citations

An oft-repeated fallacy holds that Nowhere Cites will somehow eliminate the need for parallel citations.[42] This quixotic notion assumes, first, that the eradication of parallel citations is an achievable and desired goal of citation reform. But the majority itself quotes Paul Axel-Lute for the proposition that parallel citations "are *desirable* ... to enable the reader to find [the cited material] in the most convenient source."[43] Axel-Lute also notes that the parallel citation safeguards the reader against the possibility of errors in transmission or transcription of the citation.[44]

We will assume, for the moment, that the quest to eliminate parallel citations is a reasonable goal. Will the majority's recommended use of the proposed Wisconsin system achieve it? We think not. As we have indicated, citations that point to nowhere will be virtually useless if they fail to provide a physical location where the authority may be found. Let's assume that a very recent decision is available only in a legal newspaper and on WESTLAW, and the writer is aware of these facts. If the writer citing the case does not make the reader aware of *at least one* of these locations, the writer has clearly done the reader a disservice. But by providing parallel citations to both of these compilations, the writer helps the reader locate the authority in the source most convenient to the reader (either print or electronic). Parallel citations will always be a feature of legal writing so long as there are top-notch writers who wish to provide readers specific guidance, and so long as there are multiple physical locations (legal newspapers, printed reporters, online databases, CD-ROMs, and Internet addresses) where a given legal authority may be found.

Majority Recommendation 2. The Task Force recommends that jurisdictions begin to number their decisions by paragraphs, and encourage citation to paragraph numbers.

Paragraph Numbering Raises Numerous Questions that Still Require Answers

We believe it is unwise to make a blanket recommendation that courts begin numbering paragraphs in their opinions at this time. To date, there has been no empirical investigation of the potential costs, no direct communication with the judiciary as to their willingness to accept the additional burdens, and no convincing evidence that page citations are insufficiently specific for the needs of the profession.

What are the potential costs of numbering paragraphs in judicial opinions? While paragraph numbers are attractive in concept, they may be costly in practice. AALL is recommending that clerk's offices add paragraph numbers to official opinions after those opinions have left the hands of the judges who penned them. If clerks' offices (or, more likely, *software* employed in clerks' offices, which the majority admits has yet to be perfected) will be authorized to make *certain* changes to judicial opinions, there exists the very real possibility that unintentional changes will be made to the substance of the opinions themselves. Characters, lines, or paragraphs may be deleted. Original formatting may be lost or altered. Publication delays may result when clerks' offices fail to receive needed funding to staff the function. In any event, if someone alters an opinion after a judge has signed it, there will have to be procedures devised for comparing the modified opinion against the original to ensure that a judge's work has not been changed in any way. West knows from long experience that comparing work such as this is tedious and expensive. In tight economic times a government agency charged with the task might be tempted to circumvent it.

If it is expensive to use clerks' offices to modify judicial opinions, it may be even more burdensome for judges themselves to apply paragraph numbers to opinions. Judges would either have to be trained to use a set of rules for determining *what* to number (headings? bulleted items in a list?), or they would have to be trained in the use of software that achieves the task for them. Judges and law clerks are already familiar with word processing programs that provide built-in reliable means for numbering pages in the opinion. But standard word processing programs do not have uniform techniques of adding paragraph numbers to opinions. The fact that Colorado has yet to implement the May 5, 1994 order requesting that judges add paragraph numbers to opinions suggests that there are serious problems with paragraph numbering that will require further study. West is concerned about **any** additional burden that the majority's recommendation might impose on an already-beleaguered judiciary.

In summary, we believe it premature to recommend paragraph numbering until costs have been quantified, the judiciary has been consulted, the experience in Colorado has been reviewed, and members of the practicing bar have been polled to determine whether they find pinpoint page references are not sufficiently specific to meet their needs.

Majority Recommendation 3. The date of the latest amendment to the section should be used, e.g., 42 U.S.C. Sec. 1006 (1/31/94).

As the majority has correctly observed, substantially all of the energies of the Task Force have been focused on formats for **case** citations. So far as we are aware, there has been no significant exchange of information on statute citation formats at either of the two Task Force meetings, by phone, or via electronic communications. Thus, we believe it is unwise for the Task Force to attempt speaking with authority to the legal community on matters concerning statute citations without having first studied the matter.

On the merits, Task Force Recommendation 3 is totally unworkable for several rather obvious reasons. To begin with, there are various dates that may apply to the enactment of legislation. There is the date of the enactment, the date of the governor's signature, and the *effective date* provided in the statute itself. As a result, the date parenthetical that the majority recommends is very likely to confuse researchers. When a researcher reads the recommended citation format, 42 U.S.C. 1006 (1/31/94),[45] what does the date parenthetical signify? The Task Force should not recommend ambiguous citation formats.[46]

Equally troubling, the "date of the latest amendment" to a statute is not consistently accessible in electronic databases or print sources. If researchers are expected to cite the date of the latest amendment, this information would have to be available from the cited source itself. This assumes that "credits" (the technical term for references to amendments that are often appended to statute sections) are present in the source publication or database. Statutory credits are editorial work product and do not appear in all vendors' databases or CD-ROM products. Moreover, some vendors do not style statute credits to include dates for every statutory section.

For example, some statute products may have amending credits but not enacting credits; or dates may be provided only for special effective dates, but not general effective dates. If credits are not consistently available to attorneys and judges, and if they do not consistently represent the same data, it is completely unrealistic to expect writers to cite "dates of amendment." It is unfortunate that the Task Force majority has chosen to speak before studying these complex issues.

Because the majority's suggestion is completely untenable and the whole matter deserves further study, we do not feel it appropriate for the Task Force to make any recommendation at this time.

Majority Recommendation 4. That the Task Force be disbanded, and in its place an AALL Committee be established, with the following charge:
** To study the impact of electronic publication on legal citation formats;*
** To continue to work with the judiciary, the bar, the ABA JEDI committee, the Bluebook editors, and other groups to promote uniformity of citation reform;*
** And to serve as both a clearinghouse for information on citation reform, and a resource for jurisdictions considering citation reform.*

We do not oppose the notion of disbanding the Task Force and replacing it with a permanent AALL Committee. The immediate impact, of course, will be to remove non-voting members of AALL (legal publishers and state reporters of judicial decisions) from the group of active participants. Although the Committee will need to find alternatives to direct participation and input of the legal publishing community, we cannot help but observe that the Task Force has become a political battleground where commercial disputes have entangled the AALL membership. We trust that future members of the Committee will be drawn fairly from those taking both sides of the citation debate within the AALL membership.[47]

We must say we have been disappointed with the manner in which the Task Force accomplished its work. From the start, these dissenters sought to introduce a modest framework for due process into the workings of the Task Force.[48] We urged the leadership of the Task Force to clearly state a set of vendor-neutral goals and objectives rather than engaging in direct attacks on the property rights of West Publishing Company (as those rights have been determined through the federal courts).[49] Regrettably, the final report still consists of a thinly-veiled attack on West Publishing and its National Reporter System[50] - the one system that American lawyers, judges, and law librarians have trusted and relied upon for more than century. Of course, members of AALL, like attorneys representing clients across the land, have every right to argue in good faith for changes in the law that AALL believes will advance public access to the law. But because more than a century of experience suggests that the majority is arguing against the interests of AALL's membership - and the entire legal profession - we cannot join in the majority's Task Force report.

Finally, we emphasize that we have urged the chair of the Task Force to engage in rigorous factfinding pertaining to the actual needs of the legal community with respect to citing electronic compilations. But to date, there have been no public hearings for AALL members on this issue, virtually no open discussion among Task Force members on the Task Force listserv, and no discernable attempt to actually determine the needs, interests, and preferences of the bench and bar, the two groups that would be affected most by the recommendations of the Task Force. Virtually all "discussion" that has taken place to date has consisted of private exchanges of opinion. We are still waiting for answers to serious questions concerning the effect of the proposed "reforms" on the legal profession. To date, we have seen absolutely no evidence that individuals who seek access to the law have been unable to obtain that access.

Conclusion

We dissent from the majority report of the Task Force because we firmly believe that the majority's radical proposals would cause serious disruption to the legal profession and will reduce

access to the law in printed form by making books unnecessarily cumbersome to use. If uniformity in electronic citation practice is what the Task Force seeks, its radical recommendations are virtually certain to frustrate that goal. The Task Force majority unwisely recommends that courts adopt new citation formats as a means of influencing markets for legal information. We believe that uniformity will be achieved, as it always has been achieved, through market acceptance of outstanding contributions to the organization of the law. Citations to products such as the *United States Code Annotated*, the National Reporter System, and WESTLAW are all widely accepted in courts because they provide quick, convenient access to the law. The market has accepted them.

To the extent that national uniformity is needed, style guides such as the *Bluebook* will continue to provide adequate guidance, without imposing slavish adherence. From the perspective of both the bench and bar, the best citation rule is no mandatory rule at all. Attorneys should be free to cite to any reliable source of the law. Application of this rule throughout the land would encourage competition, minimize costs, result in artificial preferences for no legal publisher, and would be the simplest citation approach to adopt uniformly in all jurisdictions.

With respect to the Task Force recommendation that state courts *mandate* use of the proposed Wisconsin citation format, we strenuously disagree. The Nowhere Cite is completely unworkable in practice because it fails to help readers actually locate authorities cited. Implementation of the Nowhere Cite would require major changes in court administration in many states. It would severely disadvantage users of standard sources such as legal newspapers, looseleaf services, and regional reporters. There is little to commend the Nowhere Cite as an exclusive citation format.

Let us emphasize that West is not opposed to exploring genuine improvements in methods for citing electronic sources of the law, such as CD-ROM databases and electronic bulletin board systems. But there is no reason to disadvantage users of print publications in doing so. An electronic citation should never be *required* as the exclusive means of citing a case. Attorneys should always have the option of citing a *concrete*, reliable source of the law in print.

To date, there has been far too little empirical study to propose any specific plan for introducing paragraph numbering of opinions or for uniform new approaches to the manner in which statutes are cited. It is premature for the Task Force to make recommendations on matters that have not been seriously studied.

We agree, however, that the Task Force should be disbanded. It has become a political battleground that has entangled the AALL membership in matters pertaining to competition among legal publishers. We do thank the entire AALL membership for the opportunity to express our views on these important matters, and we look forward to continuing working with all of you in providing outstanding service to the bench and bar.

[One Commerce Plaza, 17th Fl. Albany, N. Y. 12210 518-473-4597 March 1, 1995]

AALL Task Force on Citation Formats
Final Report

Dissenting Opinion

[Endnotes for this portion]

Frederick A. Muller, dissenting:
Because the basic Wisconsin form recommended by the Task Force majority is an untried and unproven generic citation form which excludes parallel citations, prohibits use of volume and page numbers in case reports which causes the recommended citation form to be incompatible with continued production of print case reports in many jurisdictions, and is likely to "balkanize" and fragment the present established citation system, thereby complicating, confusing, and making legal research and verification of citations more costly and time consuming, I am

compelled to dissent from the majority report.[1] The comments stated in this dissenting opinion are my personal views expressed as an individual member of this Task Force and as the representative of the Association of Reporters of Judicial Decisions[2] to this Task Force, and should not be interpreted as representing the views of the New York State Unified Court System.

The Association of Reporters of Judicial Decisions consists of those responsible at various courts for writing headnotes, summaries and syllabuses, editing opinions, preparing opinions for publication, and supervising the official publication of those opinions for the courts. The purposes of the Association are to improve the accuracy and efficiency of reporting judicial decisions, and, to that end, to serve as a forum for communication and cooperation among official reporters of judicial decisions.[3] As the public officials responsible for implementing changes in citation forms, reporters of judicial decisions are directly affected by the majority's recommendations.

On August 5, 1994, the Association of Reporters of Judicial Decisions unanimously adopted the following policy statement concerning proposals to replace the current system of official and proprietary citations with a new co-called medium and vendor neutral citation system:

> The Association of Reporters of Judicial Decisions consists of those responsible at various courts for writing syllabuses, editing opinions, preparing opinions for publication, and having those opinions published officially for the courts. The goal of each member is to provide easy access to opinions at a reasonable cost. We are always open to ideas to improve the system. The members believe that, as to those jurisdictions that publish their opinions in official reports, creation of a vendor-neutral form of electronic citation is unnecessary. There is no evidence that citation to the present official reports does not adequately serve the needs of all users. Pagination in those reports is now easily accessible and not copyrighted. Any problems can be dealt with by reporters of decisions or other responsible personnel in the respective jurisdictions. Where there is no official report, citation can be to the regional reporter system with the addition of paragraph numbers being provided by the court in the opinion. Those numbers could be used in lieu of pinpoint citations. As for unpublished opinions, the fact that they are unpublished suggests the court does not want them cited; desires of users cannot override the intent of the issuing court.

The basic Wisconsin form recommended by the Task Force majority uses four elements: year of decision, court, sequential opinion number, and paragraph number, e.g., Smith v Jones, 1996 Wis 235, 15, where 1996 is the year of decision, Wis is the abbreviation for the Wisconsin Supreme Court, 235 is the 235th decision released by that court in 1996, and 15 is the 15th paragraph in the opinion. Each court would possess a separate sequential numbering system, e.g., Wisconsin Court of Appeals opinions would be cited as People v Smith, 1996 Wis App 142, 18. The recommended citation form excludes parallel citations - only the generic so-called vendor and medium neutral citation is permitted. Volume and page numbers are prohibited. Books would be identified on the spine with year and case numbers, e.g., 1996 Wis Cases 200-399.[4]

The Axel-Lute[5] honesty principle requires that writers be permitted to cite to the specific source they actually use. The basic Wisconsin citation form recommended by the majority is a generic citation form which *excludes* parallel citation to the specific source actually used. Often, the slip opinions initially released by the courts to the public are substantially edited and corrected by reporters' offices before the final text is officially published in Advance Sheets, bound volumes, CD-ROM, and online. Courts also amend, clarify, vacate, and depublish slip opinions. These changes are an integral part of the judicial decision-making process; they are essential to the integrity of the judicial process and are reflected in the timetables of finalization of the officially published text.

My reporter's office corrects several thousand errors of a substantive nature each year, and makes many thousands of corrections of a stylistic nature. Thus, the final edited text which is officially reported may be significantly different than the unedited slip opinions initially released by the courts. In the meantime, while reporters' offices are editing the slip opinions and preparing them for official publication, the unedited slip opinions obtained from court electronic bulletin boards or in print slip form are being widely distributed by various publishers, and libraries, law firms and others are adding the unedited slip opinions to their files and electronic databases.

Because hundreds, and perhaps thousands of copies of each unedited slip opinion are

distributed, and sometimes intermediate versions of opinions are distributed which do not contain all of the final textual changes, it is essential that the traditional official reports citations be preserved to distinguish between different versions of the text of a cited opinion and to permit people to cite to the specific official report of a case which not only includes the final edited text, but also may include headnotes, summaries, syllabuses, and other editorial enhancements approved by the court that authored the opinion.

Concerns regarding proliferation of parallel citations could be resolved by permitting citation to *any* reliable source, with one parallel reference to a public domain citation if a proprietary citation is used as the primary citation. No parallel citation would be required if the primary citation was in the public domain. For example, reporters would cite to the official reports in their jurisdictions and no parallel citation would be required since official reports are in the public domain.

The basic Wisconsin citation form recommended by the majority eliminates volume numbers and page numbers; books would be identified on the spine with year and case numbers rather than volume numbers, e.g., 1996 Wis Cases 200-399. Since the Wisconsin citation form eliminates page numbers, print volumes necessarily would have to be organized by sequential opinion numbers so that readers could locate opinions within the print volumes. As a practical matter, this proposal would be incompatible with continued book production in jurisdictions where unedited slip opinions are released to the public followed by editing by the reporter's office which must be approved by the authoring Judges. Sometimes Judges and courts will withhold final approval of opinions for official publication for several weeks, or even months. This does not delay print publication using traditional page numbers since the edited opinions are not published in the order of sequential opinion numbers, but are assigned page numbers for publication as soon as the Judges approve them for official publication. On the other hand, print publications must be organized by sequential opinion numbers if page numbers are eliminated. Thus, under the Wisconsin citation form, print publications could be delayed for weeks or months if a court or Judge were to delay approval of editorial changes to one opinion, since all subsequently (higher) numbered opinions could not be published until all of the previously (lower) numbered opinions were printed in numerical order. For example, if a Judge delayed approval of editorial work concerning Opinion No. 10, and Opinions Nos. 11-191 were edited and approved for official publication, Opinions Nos. 11-191 could not be printed until Opinion No. 10 was approved for official publication. Given the fact that delays in approval of editorial work by Judges and courts are common and inherent in the judicial process, I believe that the Wisconsin citation form is incompatible with timely production of print weekly Advance Sheets and bound volumes. Indeed, I believe that the delays would be significant enough to make continued book production impractical in many jurisdictions; these delays take on added significance where print case reports are competing against CD-ROM and on-line products.

Because the Wisconsin citation form eliminates volume and page numbers and each court utilizes its separate sequential numbering system, the recommended citation form is incompatible with the continued publication of multiple courts in a single print case reporter. Multiple courts would each have separate numbering systems and there would not be sufficient space on the spines of books for several different numbering systems. For example, in its official Miscellaneous Reports, New York State publishes the opinions of the Appellate Terms of Supreme Court, Supreme Court (State-wide trial court of general jurisdiction), Court of Claims, Family Court, Surrogate's Court, Criminal Court of City of New York, Civil Court of City of New York, County Courts, District Courts, 61 different City Courts, 932 Town Justice Courts, and 552 Village Courts. Obviously, there would be insufficient space on the spines of the printed Miscellaneous Reports bound volumes to list all of the various courts and opinion numbers printed in the particular print volumes, and it would be difficult to locate particular opinions in a volume with many different numbering systems--one for each court whose opinions are published in that volume. *A fortiori*, it would be even more difficult to publish opinions in the weekly official New York Advance Sheets which combine opinions from the Court of Appeals and the Appellate Divisions of Supreme Court with all lower court opinions in a single weekly Advance Sheet containing more courts and less space on the spine than the bound volumes. Also, under the Wisconsin citation form, the printing of multiple courts in a single print reporter would require cumbersome cross-reference tables and

blue and white books which would make print research more complicated, time consuming and costly.

If unpublished and published opinions are sequentially numbered according to one numbering sequence, with the unpublished opinions being designated with a "U" following the citation (e.g., 1996 Wis 208 [U]), the resulting discontinuity of published opinion numbers would be incompatible with continued book production in jurisdictions with large numbers of unpublished opinions because of gaps in published opinion numbers and insufficient space on the spine of a volume to list all of the numbers of the opinions published in a particular volume, e.g., 1996 (*court*) Cases 4,296-4,298, [numbering gap] 5,423, [numbering gap] 5,842, [numbering gap] 6,901-6,905, [numbering gap] 10,164-10,165, [numbering gap] 11,201, etc. Assuming that 300-400 opinions were published in a particular volume, it is likely there would not be sufficient space on the spine to list all the published opinion numbers. This is particularly true in large jurisdictions with hundreds of thousands of unpublished decisions each year.

Thus, I conclude that the recommended Wisconsin citation form would be incompatible with continued case report book production in many jurisdictions, and that it would result in print production delays and be so cumbersome for researchers to use that it would hasten the demise of print publications in other jurisdictions.

The unspoken premise which appears to underlie the majority's recommended Wisconsin citation form is that books will be replaced by electronic publications in a short time and, thus, objections related to difficulties of continued book production are insignificant. Ironically, by making book production and research cumbersome and impractical in many jurisdictions, the Wisconsin citation form would restrict low cost access to the law because a majority of people still do not have access to computer assisted legal research; books are today, and will be for some years to come, the lowest cost and most widely available source of legal opinions for the public.

The Task Force's recommended Wisconsin citation form cannot appropriately be characterized as "medium neutral" unless it is fully compatible with continued book production in all jurisdictions. As presently proposed, the Task Force's recommended citation form is more accurately characterized as a vendor neutral electronic citation form which its proponents are attempting to force on print publications, but it would be incompatible with book production in many jurisdictions.

In response to an earlier draft of the Task Force's Report, which proposed that the same Wisconsin citation form be adopted, California State Reporter of Decisions Edward W. Jessen wrote:

> The AALL Task Force proposal for a nonproprietary, medium-neutral citation system imposes significant new citation burdens, complexities, and expense on the bench, bar, and public for reasons that, as a practical matter, fall far short of providing a correlative public benefit.
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> . . . .