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Universal Citation and the American Association of Law Libraries: A White Paper

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This white paper is a collaborative endeavor of many individuals, including members of the American Association of Law Libraries and its Digital Access to Legal Information Committee (DALIC), formerly the Electronic Legal Information Access & Citation (ELIAC) Committee. First, Justice Yvonne Kauger introduces the topic by identifying the groundbreaking steps taken by the Oklahoma Supreme Court. Law librarians Carol Billings and Kathy Carlson next provide a detailed and comprehensive history of citation reform and the American Association of Law Libraries' leadership and involvement in the issue. They also summarize the citation reform steps taken in selected jurisdictions. Finally, John Cannan, current DALIC member, provides a look to the future, identifying reasons to advance needed citation reform now.

* Timothy L. Coggins, Chair of the Digital Access to Legal Information Committee (DALIC) (2010–2011), John Cannan, and Jennifer Laws, current DALIC members, served as the general editors of the white paper and wish to thank the current members of DALIC and the members of the earlier ELIAC committees for authoring portions of the white paper, as well as their editing advice and help.

Foreword*

Yvonne Kauger**

¶1 It is with a sense of both history and promise that I commend to you this white paper devoted to the issue of public-domain citation to the opinions of our nation's courts. My support for accessible citation also stems from professional experience. In 1997, we at the Oklahoma Supreme Court promulgated a rule requiring that citations to decisions issued after May 1 of that year use neutral citation principles and recommending neutral citation for earlier decisions as well. Thirteen years later, our citation rule remains in effect, with the strong support of both bench and bar.[1]

¶2 Readers are no doubt familiar with the aphorism that necessity is the mother of invention. The adage proved true in our court, where financial necessity prompted us to initiate citation reform—our county law libraries could no longer effectively manage the costs of commercial electronic resources. Our commitment to providing access to our decisions for the bar and the public led us to consider publishing our own citable opinions.

¶3 We had other reasons for change as well. The World Wide Web was just coming into its own, and the justices believed our court should maintain a web site. To establish the site and to resolve other technical problems, we employed our first information systems director, the talented and innovative Kevin King. Together with Greg Lambert, then the court's library and information services director, Kevin worked with me and Justice Joseph Watt to institute and implement a new case numbering system and to publish our decisions on the web. In the five years that followed, we were able not only to post all new opinions using neutral citation, but also to format and enter every earlier Oklahoma Supreme Court decision since the first ones issued in 1890. In addition, our neutrally cited collection includes the past decisions of the Oklahoma Court of Criminal Appeals and the published decisions of the Court of Civil Appeals from 1968 forward. We have also been able to create our own "citationizer" feature that lists citing references for retrieved documents and even translates reporter volume and page numbers to corresponding neutral citations.

¶4 We did not achieve these benchmarks without some costs, but neither financial outlays nor personnel burdens were excessive. We are pleased with our system and how it has been embraced by the practitioners before our bench. Nevertheless, when the editors of this paper asked me to contribute words of encouragement to judges in other jurisdictions, I hesitated to assent. While our court systems all strive to interpret the law expeditiously and impartially for their constituents, each court does so with a unique set of constraints. I do not presume to instruct other courts in the business of citation and publication. I do, however, warmly endorse neutral citation as a tool for the judiciary, practitioners, and the public to access our decisions at modest cost. The paragraph citation form, issuing from the court, ensures

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** Justice, Oklahoma Supreme Court, Oklahoma City, Oklahoma.

1. Okla. S. Ct. R. 1.200.

that pinpoint citation is quick and easy. Because our citation format is official, we burden neither ourselves nor others with the costs of commercially published, official versions.

¶5 In this time of fiscal contraction, courts and their libraries seek new ways to economize. If your jurisdiction is considering a move toward a neutral citation rule, I invite you to review this white paper and to take the matter under consideration.

Reintroducing Universal Citation

Digital Access to Legal Information Committee*

¶6 It has been more than fifteen years since Judy Meadows, director of the State Law Library of Montana and then president of the American Association of Law Libraries (AALL), strongly stated our association's support for universal citation in a column introducing AALL's *Universal Citation Guide*.[2] This white paper reaffirms AALL's support for universal citation as applied to court opinions, honors those who first articulated its benefits, and urges its adoption by courts nationwide.

¶7 For democracy to flourish, citizens must have ready access to information produced by their government. Government pronouncements inform the citizens of government actions. Certain pronouncements, such as court opinions and statutes, identify the rights and duties of the populace. As a matter of policy, these pronouncements should be freely and easily accessible to the people, and practices and policies that support accessibility should be adopted. Unfortunately, current citation standards serve to limit access to government information. These standards require the reference to a book to identify individual court opinions. Furthermore, more often than not, the book is published and owned by a private company, not the government entity that produced the opinion. In the past, such practices probably made the law more accessible to the people. However, with changing technologies, such standards no longer adequately address the objective of improving access to government information. A physical book as the unit of citation no longer best meets the goals of increased access. As a result of new technologies, public entities no longer need to rely on private entities to provide effective organization of their documents. Therefore, new citation standards that do not require citation to a specific format or that do not require citation to a privately owned item should be adopted. Universal citation practices promote accessibility because they are vendor- and medium-neutral.

¶8 Universal (or public-domain or neutral) citation can best be understood by comparing it with current legal citation conventions. According to current citation standards, the official versions of most court opinions are labeled according to their placement in reporters. A specific opinion is labeled with the title of the reporter series in which the opinion appears, the volume number of the reporter, and the page number on which the opinion appears. The same opinion may appear in multiple reporter series and will, therefore, have multiple labels. When an opinion is reproduced in a digital format, the database provider will include the page numbers of the corresponding print reporter.[3] Obtaining permission to post these numbers likely means arriving at a licensing agreement with the publisher of each version.[4]

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* Digital Access to Legal Information Committee (formerly the Electronic Legal Information Access & Citation Committee): Linda Defendeifer, Chair (2008–2009); Emily M. Janoski-Haehlen, Chair (2009–2010); Timothy L. Coggins, Chair (2010–2011).

2. Judy Meadows, *President's Briefing: Citation Reform*, AALL Spectrum, July 1998, at 13, 14.

3. An example of the difficulties that can arise for a novice trying to navigate the existing citation system appears *infra* in the section on citation reform in selected jurisdictions.

4. For a brief discussion of the legal issues surrounding the ownership of electronic page numbering in published opinions, see Peter W. Martin, *Neutral Citation, Court Web Sites, and Access to Authoritative Case Law*, 99 Law Libr. J. 329, 355–57, 2007 Law Libr. J. 19, ¶¶ 59–66.

¶9 By contrast, universal citation does not identify a specific court opinion by referencing the reporter series title and page number on which the opinion appears. It labels government decrees or pronouncements with legal force, such as court opinions, statutes, and regulations, using a uniform set of symbols. A specific pronouncement is identified by the same label, regardless of the format in which it appears. Furthermore, the label is not based on a book. In its *Universal Citation Guide*, AALL recommends that courts number their own opinions.[5] AALL believes that the citation of each opinion should flow naturally from the year in which it was issued and its order among other opinions issued that year. So, for example, in the fictional state of AALL, the first AALL Supreme Court opinion issue in 2010 would be *Jones v. Lie*, 2010 AALL 1, the second, *Mahmoud v. Miller*, would be 2010 AALL 2, and so on. This citation format gives the reader and researcher information about the case itself (the court of origination, the year, and sequence of issuance), rather than the vehicle in which it is published. In fact, universal citation effectively decouples a judicial opinion text from its appearance in any particular publication, print or electronic.

¶10 While universal citation serves the goal of improving the accessibility of government pronouncements, it has other benefits as well. For example, the traditional form of citation is to the page on which a particular piece of text occurred. Page numbers correspond to a physical entity. In a time when most cases, statutes, regulations, and other government pronouncements are born digital (i.e., electronic), the notion of a page has little relevance. Paragraphs, though, are clearly delineated in all published formats, print and electronic. Paragraphs also provide the advantage of relative brevity, making cited material easier to find. Paragraphs, unlike pages, represent units of thought showing the span of an idea, rather than the length of a sheet of paper. As more and more organizations enter the legal publishing game, the adoption of universal citation principles clears the way for these publishers to enter the fray on an even footing. No one entity can lay claim to the citation methodology that all others have to pay to use.

¶11 In the mid-1990s, the value of universal citation seemed evident to many in the legal and government communities. AALL enthusiastically supported the principles of universal citation and penned its *Universal Citation Guide*[6] to promote it. Similarly, the American Bar Association (ABA) issued a report favorable to universal citation.[7] AALL identified eleven states that had adopted or permitted citation reform by 1998 and ten other states that were considering such a change.[8]

¶12 Unfortunately, the wave of citation reform crested in 1998. Courts in Arizona, Louisiana, Maine, Mississippi, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Wisconsin, and Wyoming, as well as Guam, the Northern Mariana Islands, and the U.S. Court of Appeals for the Sixth Circuit, adopted elements of universal citation.[9]

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5. *See* Am. Ass'n of Law Libraries, Universal Citation Guide ¶ 58 (2d ed. 2004).
6. *Id.*
7. Am. Bar Ass'n, *Report of the Special Committee on Citation Issues*, *in* Am. Bar Ass'n, Ann. Rep., 1996, no. 2, at 427.
8. Meadows, *supra* note 2, at 13.
9. *See id.* at 15.

However, no jurisdictions, other than Arkansas in 2009 and Illinois in 2011,[10] have moved to do so since the early 1990s. The ABA has regularly reaffirmed its support for universal citation in a resolution,[11] but no other major organization has joined AALL's efforts with additional support.

¶13 While past efforts to implement citation reform stalled, several recent efforts to enhance citizen access to government information have begun. The Obama administration early on expressed a commitment to transparent government and citizen participation, including access to agency information.[12] In the early part of his administration, President Barack Obama wrote, "Government should be participatory. Public engagement enhances the Government's effectiveness and improves the quality of its decisions."[13] Participation and engagement require access to accurate and citable government information.

¶14 In another recent development, the National Conference of Commissioners on Uniform State Laws (NCCUSL) named a Study Committee on Authentication of Online State Legal Materials at its 2008 midyear meeting to address another important aspect of public access to legal documents—the reliability of the texts themselves.[14] The study committee's report and recommendations called for the creation of a Drafting Committee for the Authentication and Preservation of State Electronic Legal Materials Act.[15] The drafting committee submitted the uniform act for a first reading at the NCCUSL's annual meeting in July 2010, and at the time of writing, a second reading of the draft uniform act is scheduled for NCCUSL's annual meeting in July 2011.[16] Authentication and citation are two sides of the public access coin. Paired with universal citation labeling, authentic texts can provide the bench, the bar, and the public with reliable, permanent texts that can be referred to in unambiguous terms so that all may locate them.

¶15 Commenting on decisions by New York and California not to adopt universal citation, Peter Martin analyzed the fiscal and other benefits to both states of remaining within the print reporter system of citation. He observed that New York's contract with a commercial publisher gives the state free computer equipment and other goods, while its Law Reporting Bureau retains editorial control of texts pub-

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10. *In Re: Arkansas Supreme Court and Court of Appeals Rule 5-2*, No. 09-540, slip op. at 6 (Ark., May 28, 2009), *available at* http://courts.arkansas.gov/court_opinions/sc/2009a/20090528/published/09-540.pdf). Press Release, Ill. Sup. Ct., Illinois Supreme Court Announces New Public Domain Citation System, Ending Era of Printed Volumes (May 31, 2011), http://www.state.il.us/court/media/PressRel/2011/053111.pdf.

11. *See, e.g.*, Am. Bar Ass'n, Resolution [About a Universal American Citation Standard] (adopted Feb. 10–11, 2003), *available at* http://www2.americanbar.org/sdl/Documents/2003_MY_101.pdf.

12. *See Freedom of Information Act*, 74 Fed. Reg. 4683 (Jan. 21, 2009); *Transparency and Open Government*, 74 Fed. Reg. 4685 (Jan. 21, 2009).

13. *Transparency and Open Government*, 74 Fed. Reg. at 4685 (emphasis omitted).

14. The committee's reports and drafts of proposed legislation are available at *Committees: Electronic Legal Materials Act*, Uniform Law Comm'n, http://www.nccusl.org/Committee.aspx?title=Electronic Legal Materials Act (last visited Apr. 23, 2011).

15. Memorandum to Committee on Scope and Program from Study Committee on Authentication of Online State Legal Materials 1 (Apr. 30, 2009), *available at* http://www.law.upenn.edu/bll/archives/ulc/apselm/2009apr30_report.pdf.

16. Unif. Law Comm'n, Final 2011 Annual Meeting Agenda (2011), *available at* http://uniformlaws.org/Shared/Annual%20Meeting/2011BusinessAgenda.pdf.

lished in the reports.[17] In contrast, California receives fewer goods, but outsources editorial work to the publisher, thus saving the costs of performing that work.[18] If states as large and influential as New York and California take such divergent positions on the importance of editorial control, what is the citizen to believe about the level of text authentication as part of the operations of the government entity that promulgates the document? In the same way, if a citizen cannot determine how to refer to a court opinion when discussing it, how is he or she to proceed convincingly in a court action?

¶16 It is the hope of AALL and others that the recent movement to enhance citizen access to information will renew interest in universal citation standards and that earlier opposition to the adoption of universal citation will diminish. The jurisdictions that have adopted their own case numbering systems still make their texts available to commercial publishers, and those publishers continue to provide opinions in print and online versions, with many valuable enhancements. But the natural constituents of the courts—citizens, lawyers, and librarians—can easily find, read, and work with the court-provided texts as a public good. Should they require more sophisticated tools, value-added commercial content is available. Every day, legal researchers use tools, such as indexes, classification systems, cross-references, analysis, and commentary, fashioned by publishers like the Bureau of National Affairs, CCH, LexisNexis, Thomson/West, and Wolters Kluwer. We do not believe the value those tools provide would be diminished if every court in the land were to begin today to follow universal citation formatting practices. Public and private sectors must work together to ensure that citizens have choice in their selection of legal materials, including robust collections of universally citable authentic legal documents.

¶17 AALL is committed to supporting universal citation. If you are a judge, bar association or nonprofit officer, law faculty member, law librarian, or member of the public interested in promoting universal citation in your own jurisdiction, we encourage you to work with us.

17. Martin, *supra* note 4, at 351, ¶ 48.
18. *Id.* at 351, ¶ 49.

AALL and the Dawn of Citation Reform*

Carol Billings** and Kathy Carlson***

¶18 That a democratic society should afford all of its citizens complete and equitable access to the laws that govern them is central to the tenets of AALL.[19] Prior to the 1970s, law libraries sought to fulfill their mission by acquiring comprehensive print and microform collections and by employing competent staff to assist researchers who came in search of information. The information technology revolution offered dramatic new options for the delivery of legal information.

¶19 In 1971, the United States Department of Justice created the Justice Retrieval and Inquiry System (JURIS), a system of computer-assisted legal research tools to access records from an experimental Air Force system. Shortly thereafter, a private company, Mead Data Central, introduced the electronic legal research system LexisNexis, and soon the West Publishing Company marketed Westlaw to attorneys and the courts. Smaller publishers developed CD-ROM collections of court decisions. LexisNexis and Westlaw offered the promise of faster, wider-reaching access to legal research materials for the far-flung legal community, regardless of the user's proximity to a law library.

¶20 Both federal and state courts, seeing the potential to save time and money, employed information technology experts to develop their own computer networks to exchange and disseminate opinions electronically. Users of electronic opinions who referred to court opinions in briefs, subsequent opinions, and other legal communications needed a standard citation method that could be understood by anyone reading their work. At the time, the only universally accepted citation standards were those that relied on the physical volumes and page numbers of printed books. Those standards, set forth by the editors of *The Bluebook*, mandated reference to either the official reports published by government agencies or to the volumes in the National Reporter System published by the West Publishing Company.[20] Both government entities and commercial publishers recognized the advantages that the digital revolution offered. However, when they sought to market subscriptions to compilations of court opinions in online and CD-ROM formats, they immediately ran up against the copyright claims of the West Publishing Company to the page numbering of opinions in its reporters.

¶21 West's strongest competitor, LexisNexis, then owned by Mead Data Central, began to include West reporter page numbers in its electronic versions of reports to

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 "A Vendor and Medium-Neutral Citation Events Time Line," compiled in 1994 by Hazel L. Johnson, then AALL's Public Relations Coordinator, greatly assisted in the reconstruction of the citation-related events between 1971 and 1994 (on file with authors).

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19. Access to Elec. Info. Comm., Am. Ass'n of Law Libraries, Principles and Core Values Concerning Public Information on Government Web Sites (approved by AALL Exec. Board Mar. 24, 2007), *available at* http://www.aallnet.org/committee/eliac/Aeliccorevalues.pdf.

20. At that time, the case citation rule was A Uniform System of Citation R. 1:2 (11th ed. 1967) ("A case . . . should be cited to both the official and the West reports . . . ."). The current version is The Bluebook: A Uniform System of Citation R. 10.3.1(b) & tbl.1 (19th ed. 2010).

render them citable under *Bluebook* standards. A series of lawsuits and countersuits by the two companies ended in a confidential settlement whereby Mead paid West large licensing fees to insert the numbers in its LexisNexis opinions.[21] Smaller would-be publishers faced the same obstacle, because they were not part of the settlement.

¶22 Federal courts, not content to allow private publishers to limit access to their work product, began issuing opinions on electronic bulletin boards, known collectively as EDOS (Electronic Dissemination of Opinions System). To secure the advantages of interchanging court and government-generated information electronically, a broad-based consortium of groups and individuals within the legal community formed JEDDI (Judicial Electronic Data and Document Interchange) in 1990. That same year, AALL adopted a resolution supporting "Public Access to Government Information in Electronic Format."[22] Following the U.S. Supreme Court decision in *Feist Publications, Inc. v. Rural Telephone Service Co.*, stating that a work must show creative spark and originality to warrant copyright protection,[23] the Judicial Conference of the United States and Administrative Office of the U.S. Courts prepared proposals for electronic citation systems.[24] Law librarian representatives of AALL contributed copyright expertise at congressional and Judicial Conference hearings on the proposals.[25]

¶23 After both congressional and Judicial Conference citation reform attempts failed, the Justice Department issued a Request For Proposal (RFP) to acquire database content for its JURIS system, but only the West Publishing Company met the requirements of the RFP. Advocating that the Justice Department provide for online public access to noncopyrighted materials through JURIS, both AALL and the advocacy organization Taxpayer Asserts Project petitioned Attorney General Reno on July 7, 1993, to amend the request. When West withdrew data that it had leased to JURIS since 1983, the Attorney General shut down JURIS.

¶24 In that same month, December 1993, Louisiana became the first state to adopt a public domain citation format through an order of its Supreme Court.[26]

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21. *See, e.g.*, West Publishing Co. v. Mead Data Central, Inc., 616 F. Supp. 1571 (D. Minn. 1985), *aff'd*, 799 F.2d 1219 (8th Cir. 1986); Mead Data Central, Inc. v. West Publishing Co., 679 F. Supp. 1455 (S.D. Ohio, 1987); Confidential Settlement and Caselaw License Agreement and Confidential Statutes License Agreement, No. 4-85-931 (D. Minn. July 21, 1988). *See also* L. Ray Patterson & Craig Joyce, *Monopolizing the Law: The Scope of Copyright Protection for Law Reports and Statutory Compilations*, 36 UCLA L. Rev. 719, 720–22 & nn.1–2 (1989).

22. Resolution on Public Access to Government Information in Electronic Format (June 20, 1990), *reprinted in Proceedings of the 83rd Annual Meeting of the American Association of Law Libraries Held in Minneapolis, Minnesota, Business Sessions June 18–20, 1990*, 82 Law Libr. J. 811, 834–35 (1990).

23. 499 U.S. 340, 345 (1991).

24. Draft Report on Proposed Electronic Citation System, 56 Fed. Reg. 38457 (Aug. 13, 1991).

25. *Exclusion of Copyright Protection for Certain Legal Compilations: Hearings on H.R. 4426 Before the Subcomm. on Intellectual Property and Judicial Administration of the House Comm. on the Judiciary,* 102d Cong., 2d Sess. 194 (1992) (statement of Laura Gasaway, member, AALL); *The Final Report of the Task Force on Citation Formats*, 87 Law Libr. J. 577, 586 (1995) (noting Bruce Kennedy's testimony before the Library Program Subcommittee of the Automation and Technology Committee of the Judicial Conference of the United States).

26. Carol D. Billings, *Adoption of New Public Domain Citation Format Promotes Access to Legal Information*, 41 La. B.J. 557 (1994).

The format proposal grew out of the Taskforce on the Cost-Effective Provision of Information Resources for Louisiana Courts, appointed by Chief Justice Pascal F. Calogero, Jr. Chief Calogero, having been encouraged by the state law librarian, realized that opening the legal publishing marketplace to competition might save the courts money while improving their access to legal information. Prior to the mandatory application of the new citation format for all post-1993 opinions in July 1994, the West Publishing Company vigorously opposed the change, attempting to arouse concerns among the bar and lower courts.

¶25 Louisiana's action focused attention on the benefits derived from facilitating the transmission and use of legal information in electronic form. In January 1994, the U.S. Court of Appeals for the Sixth Circuit initiated a one-year trial of a new nonproprietary parallel citation for electronically disseminated opinions.[27] A month later, at the ABA meeting in Kansas City, the bylaws of the JEDDI Committee of the Science and Technology Section were officially adopted "to secure the advantages of electronic interchange of information for state and federal courts, agencies at all levels of government, lawyers in private practice, and other persons and organizations involved in the American judicial system . . . ."[28] Other publishers of digital information asserted the right to make their products citable. On February 1, 1994, the Matthew Bender Company filed suit for a declaratory judgment in U.S. District Court in Manhattan, seeking the right to insert the page numbers of West reporters in CD-ROM publications of New York–based federal court cases. The court granted the judgment, which the Second Circuit would eventually affirm on appeal.[29] That spring, the Colorado Supreme Court announced that the state's appellate opinions would carry paragraph numbers, which could be used for pinpoint citations as an alternative to West page numbers.[30]

¶26 Law librarians were anxious to join the ABA's JEDDI committee in its effort to facilitate the interchange of electronic legal information and were concerned that decentralized efforts could result in Balkanization of citation requirements. AALL assumed a leadership role in promoting uniformity of public domain citation formats. In April 1994, AALL president Kay Todd appointed the Task Force on Citation Formats, comprising law librarians, several legal publishers, and a state reporter of decisions "to consider and develop non-medium citation forms" in cooperation with other groups in the legal community.[31]

¶27 Bruce McConnell, chief of the Information Policy Branch of the Office of Information and Regulatory Affairs of the U.S. Office of Management and Budget, invited AALL, represented by Robert Oakley, director of the law library and professor of law at Georgetown, to a meeting to discuss issues related to government information policy, including citation systems. Other participants were the Government Information Working Group of the Information Infrastructure Task Force's Information Policy Committee, the Department of Justice, the Library of

27. Susan Hansen, *Fending Off the Future*, Am. Law., Sept. 1994, at 75, 78.
28. Billings, *supra* note 26, at 558.
29. Matthew Bender & Co. v. West Publishing Co., 158 F.3d 693 (2d Cir. 1998).
30. Hansen, *supra* note 27, at 79.
31. *See The Final Report of the Task Force on Citation Formats*, *supra* note 25, at 577.

Congress, the Administrative Office of the U.S. Courts, and the National Center for State Courts.

¶28 Meanwhile, the State Bar of Wisconsin's Technology Resource Committee had begun studying citation reform and the possibility of establishing a digital archive of that state's judicial opinions. The committee's report and its recommendation of a public domain citation format were approved by the Wisconsin State Bar Board of Governors on June 22, 1994.[32] Within a few months, a petition requesting adoption of a medium-neutral and vendor-neutral citation format had been sent to the Wisconsin Supreme Court. West vigorously opposed the change. Not until 1999 did the court adopt a rule implementing the new system, which required parallel citations to the *Wisconsin Reports* and West's *North Western Reporter*.[33] Nevertheless, the Wisconsin State Bar and then state law librarian Marcia Koslov deserve special recognition for creating and championing the format that has served as the elegant model for subsequent formats adopted by AALL, the ABA, and other jurisdictions: case name, year of decision, court designation, opinion number, and paragraph number—for example, *Smith v. Jones*, 1998 WI 453 ¶ 82.

¶29 The autumn of 1994 was a period of intense interest in citation reform. In September, AALL wrote to Attorney General Reno, requesting that the Department of Justice, in its RFP for a contract for computer-assisted research services, require the provision of an unenhanced compilation of court opinions and the use of a public domain citation format.[34] The department issued such a request on September 27. Both the Taxpayer Assets Project and the Department of Justice sponsored meetings of publishers and other parties interested in adopting public domain citation systems. Following the issuance of a first draft of the report of the AALL Task Force on Citation Formats on September 4, and a second discussion draft on October 4, AALL's executive board adopted and disseminated a resolution in November supporting the concept of a vendor- and medium-neutral system of citation and "free or low-cost public databases that provide access to public domain legal and law-related information."[35]

¶30 The "citation war of words" that was waged in the mid-1990s between advocates for reform and supporters of the West Publishing Company's position was heavily reported in the legal press.[36] Heated arguments filled government, bar, and law librarians' bulletin boards, Internet discussion lists, and the conference programs of law-related organizations. The controversy generated a great deal of interest throughout the legal community, and many judges and bar association

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32. Proposed Citation System for Wisconsin (June 22, 1994), *available at* http://www.law.cornell.edu/papers/wiscite.overview.htm.

33. Wis. Sup. Ct. R. 80.02.

34. Robert L. Oakley, *Letter to the Attorney General*, 26 AALL Newsl. 130, 132 (1994).

35. Carol D. Billings, *Viewpoints: Advantages* [*of the Establishment of a Public Domain Database of Court Decisions*], Legal Info. Alert, Jan. 1995, at 6, 8.

36. *See, e.g.*, Richard C. Reuben, *Numbers to Live By: As Data Bases Challenge Books, States Are Weighing New Ways to Cite Cases*, A.B.A. J., Oct. 1994, at 22; *Universal Citation Systems: Will Tinkering with the Future Be the End of Reliable, Standardized Opinions?*, A.B.A. J., July 1996, at 74; Kenneth Jost, *Split Decisions on Citations: Judges Consider Pros and Cons of ABA Proposal for Universal System*, A.B.A. J., June 1997, at 102.

leaders were eager to become involved in citation reform efforts or at least to find out what advantages their jurisdictions might derive. This facilitated the objective of AALL's Task Force on Citation Formats:

> - To consider and develop non-medium-dependent 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* 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.[37]

Throughout its deliberations, the task force corresponded and shared information with advocates for reform and with judges and bar association leaders considering involvement.

¶31 The task force completed its charge in early 1995,[38] and AALL held a National Conference on Legal Information Issues in conjunction with its annual meeting in July in Pittsburgh. It was the goal of conference planners to focus the national legal community's attention on the opportunities and challenges presented by the electronic information revolution, including issues such as citation reform. Many judges, government officials, and bar leaders participated as speakers and delegates in the conference sessions, and most of them participated in a formal introduction session and dinner with selected AALL members the night before the annual meeting began. The AALL business meetings featured vigorous debates about the task force majority's recommendation that a public domain citation system be endorsed by the association. Dissenting statements were issued by task force members representing publishers and reporters of decisions.[39]

¶32 At the end of the annual meeting, AALL's executive board voted to approve the suggested format for judicial opinions, but deferred action on a format for statutes. Because the task force had completed its work, the executive board disbanded the task force, created a new standing Committee on Citation Formats, and charged the new committee with creating a set of universal citation rules for American law.

¶33 Only a few weeks later, the ABA established its Special Committee on Citation Issues. Professor Rita Reusch, the chair of AALL's Committee on Citation Formats, was invited to serve as liaison to the ABA committee. The ABA committee's report, recommending that all jurisdictions adopt a medium-neutral citation format similar to the AALL and Wisconsin models, was issued in May 1996.[40] It evoked a mixed response from the Conference of Chief Justices. Although the ABA committee had solicited views from all of the chief justices individually, the Conference was clearly displeased that it had not been consulted as an entity during the committee's deliberations. Consequently, although deeming it "appropriate for state courts to plan for improvements in state citation systems that will recognize

37. *The Final Report of the Task Force on Citation Formats*, *supra* note 25, at 583.

38. *Id.*

39. *Proceedings of the 88th Annual Meeting of the American Association of Law Libraries Held in Pittsburgh, Pennsylvania, July 18–19, 1995*, 87 Law Libr. J. 694, 700–08 (1995).

40. Am. Bar Ass'n, *supra* note 7.

the importance of the electronic media and establish a level playing field between print and electronic reporting of state court decisions," the Conference resolved that it was "premature to adopt any particular plan for change in citation systems before [it could] obtain reliable answers about the manner in which any changed system would operate and the costs that such a changed system would entail . . . ."[41]

¶34 Assisted by the National Center for State Courts, the chiefs would undertake their own study. Nevertheless, in August 1996 both the Board of Governors and the House of Delegates of the ABA approved the special committee's resolution that all jurisdictions adopt a medium-neutral citation format similar to the AALL and Wisconsin models.[42] In January 1999, the Committee on Opinions Citation of the Conference of Chief Justices, chaired by Chief Justice Shirley Abrahamson of Wisconsin, issued its report.[43] While the report did not include a recommendation, it set forth detailed practical information about the process of instituting a medium-neutral citation system. The advantages being enjoyed by the Oklahoma judiciary as a result of its establishment of an electronic database of opinions and adoption of a universal citation format were described favorably in the report.[44]

¶35 Advocacy for the new universal citation format endorsed by AALL, the ABA, and Wisconsin soon spurred other states to move quickly to undertake reforms. North Dakota, whose state librarian, Ted Smith, took the initiative to encourage the Supreme Court to consider action, launched a web site offering its decisions by August 1996. The court soon mandated use of a new citation system for application on all documents filed in North Dakota courts.[45] Their citation format was based on AALL's model, which had already been adopted by South Dakota. North Dakota's web site, created and maintained by Supreme Court Justice Dale Sandstrom, has set a standard for "best practices," offering excellent search capability and a regularly expanding collection of retrospective opinions.

¶36 The other state that warrants special mention is Oklahoma. Like North Dakota's Supreme Court, Oklahoma's justices, led by then Chief Justice Yvonne Kauger and future Chief Justice Joseph Watt, took the bull by the horns and moved quickly to implement neutral citation. Effective May 1, 1997, their new rule encouraged use of the "official paragraph citation form" on past as well as prospective decisions.[46] Within five years, the Oklahoma Supreme Court Network (OSCN) database, masterminded by staff members Kevin King and Greg Lambert, encompassed all Oklahoma opinions back to their beginning in 1890. All were tagged with neutral citations, thus rendering the Oklahoma legal community independent of commercial providers of the state's opinions and other primary legal documents.

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41. Conference of Chief Justices, Resolution IX: Development by the Conference of Protocols for Citation Systems (Jan. 26, 1996), *available at* http://www.hyperlaw.com/jccite/029.txt.

42. Am. Bar Ass'n, *Proceedings for the Annual Meeting of the House of Delegates*, *in* Am. Bar Ass'n, *supra* note 7, at 1, 18.

43. Conf. of Chief Justices, Report of the Committee on Opinions Citation (1999), *available at* http://ccj.ncsc.dni.us/finalrpt.pdf.

44. *Id.* at 11.

45. Martin, *supra* note 4, at 337, ¶ 14.

46. *Id.* at 338–40.

To this day, Oklahoma enjoys the benefits of this country's most comprehensive legal information system provided by a state judiciary.

¶37 From 1995 forward, AALL actively encouraged other states to adopt citation reform. Following its creation that year, AALL's Committee on Citation Formats met regularly to develop a guide for the neutral citation of all types of government-issued legal documents. Drafts of rules for judicial decisions, constitutions, statutes, and administrative regulations were published in *Law Library Journal* for review and comment by AALL members and other interested parties.[47] Throughout the process, committee members communicated and consulted with others interested in citation issues, including the Conference of Chief Justices, various state courts, the ABA and state bar associations, law school legal writing instructors, and law librarians abroad. In 1999, the State Bar of Wisconsin published the AALL committee's *Universal Citation Guide*, whose lead author was Lynn Foster, the committee chair. Drafts of guides for citing law reviews, court rules, and administrative decisions subsequently appeared in *Law Library Journal*.[48] By the end of 2007, seventeen states had adopted vendor-neutral citation rules.

¶38 The question remains why other states have not acted to gain the independence of their primary documents from commercial publishers by creating digital archives and adopting neutral citations. Early opposition to public domain citation adoption had much to do with projected costs. Some of the warnings were quite daunting. One writer, dissenting from the conclusions of the AALL Task Force, wrote: "Governments cannot afford to restructure court operations, adopt costly new procedures, purchase expensive new computer equipment, hire additional staff and establish new computer databases to accommodate an untried and unproven new vendor and so-called medium neutral citation system intended to facilitate the distribution and marketing of court opinions . . . ."[49] In the same vein, coauthors Bergsgaard and Desmond urged that government be kept out of the citation business, on the authority of a cost study done by Arthur Andersen & Company estimating direct costs to Wisconsin taxpayers of at least $195,000 the first year, and at least $155,000 each subsequent year, to institute a public domain citation system.[50] The study posited additional, indirect costs from lost productivity because of the "imprecise nature" of a new citation format.[51]

¶39 However, as early as 1999, it was reported by jurisdictions that were adding sequential opinion numbers or paragraph numbers that no additional costs were associated with these activities, that the numbering of opinions and paragraphs was

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47. *The Universal Legal Citation Project: A Draft User Guide to the AALL Universal Case Citation,* 89 Law Libr. J. 7 (1997); *The Universal Legal Citation Project: A Draft User Guide to the AALL Universal Statutory Citation*, 90 Law Libr. J. 91 (1998); *The Universal Legal Citation Project: A Draft User Guide to the AALL Universal Regulatory Citation*, 90 Law Libr. J. 509 (1998).

48. *The* Universal Citation Guide*: Tentative Drafts for Law Reviews and Court Rules*, 92 Law Libr. J. 363, 2000 Law Libr. J. 31; *The* Universal Citation Guide*: Tentative Draft for Administrative Decisions*, 94 Law Libr. J. 509, 2002 Law Libr. J. 30.

49. *The Final Report of the Task Force on Citation Formats*, *supra* note 25, at 631 (dissenting opinion of Frederick A. Muller).

50. Donna M. Bergsgaard & Andrew R. Desmond, *Keep Government out of the Citation Business*, 79 Judicature 61, 61 n.1 (1995).

51. *Id.* at 61.

a mechanical process, and that several states had developed macros or software techniques for adding the necessary numbers and were willing to share these tools with other jurisdictions.[52] Adopting jurisdictions generally found that they could customize citation with commonly used commercial software products. Some jurisdictions also found that adoption brought unexpected benefits in the form of price breaks on vendor subscriptions.

¶40 In an insightful article, Peter Martin also noted other reasons for opposition to neutral citation.[53] A number of states, notably several large ones with complex judicial systems and numerous bar members, still judge it financially advantageous to contract with a private publisher for their "official" case reports, and publishers have provided them with perquisites to retain their business.[54] Martin also identified "institutional resistance" and judges' insensitivity "to the issues of cost and inconvenience pressed by the lawyers, librarians, and small publishers who favored the reform."[55] Major changes within the legal information marketplace have lessened pressure for reform. Some major publishers have lowered prices and offered customers advantageous flat-rate subscriptions, and a number of smaller publishers have devised favorable products and discounts to attract the practicing bar. Several state bar associations have teamed with publishers to offer online research services as a privilege of membership. Ironically, the very multiplicity of electronic case law sources accessible at reasonable prices has dampened the enthusiasm of judges and lawyers for reform.

¶41 So why should we care whether efforts move forward to establish public archives of case law and neutral citation formats for citing their contents? Martin's *Law Library Journal* article supplies some answers to this question as well. With the decline of reliance on print case reports and the prevalence of computer-assisted research, it makes no sense to cling to a citation system that depends on print volume and page numbers. Commercial publishers acquire case reports from court web sites, and the necessity of inserting page breaks into "born digital" texts to avoid the risk of West's copyright infringement claims is unnecessarily costly and time-consuming.[56]

¶42 Unfortunately, the copyright issue has never disappeared. The U.S. Supreme Court has denied certiorari on the Second Circuit's decisions regarding West's copyright claims,[57] and thus other publishers either continue to license *National Reporter System* pagination or exclude it completely, making their reports difficult for users to cite.[58] Although the cost of contracting for computer-assisted research service has become less burdensome, discerning which product is best to use remains confusing even for large law firms, let alone small practitioners and libraries that serve the public. With so many versions of case reports offered by multiple publishers, who may or may not be verifying the accuracy of their texts with the

52. Conf. of Chief Justices, *supra* note 43, at 6.
53. Martin, *supra* note 4, at 348–61, ¶¶ 44–78.
54. *Id.* at 349–52, ¶¶ 45–51.
55. *Id.* at 352, ¶ 52.
56. *See id.* at 362, ¶ 80.
57. *Id.* at 357, ¶ 65.
58. *See id.* at 362, ¶ 80.

issuing courts, how is a user to know if the text before him is authentic? The risk of discrepancy is especially worrisome in instances where post release revisions have been made to a case report.[59]

¶43 In short, the status quo is unacceptable. Court systems that continue to rely on commercial publishers to archive and disseminate their decisions are taking a chance on the permanence and authenticity of their recorded case law. Failure to adopt uniform citation rules that can be universally understood by anyone conducting legal research makes finding the law more difficult. The law belongs to the people. Access to the law should not be hindered either by cost or by outdated citation standards that favor particular publishers. All American appellate courts owe it to the public to disseminate their opinions without charge via easily searchable government web sites. Oklahoma and North Dakota have demonstrated that state court systems can establish and maintain complete, continuing digital archives of their case law without undue cost or burden on staff. They and numerous other states have successfully adopted public domain citation formats that judges, lawyers, court staff, and the public understand and use without difficulty. AALL eagerly anticipates continued work with its partners in the legal community to reform the way legal information is disseminated and to improve the quality of justice for all people.

59. *Id.* at 363, ¶ 82.

Implementing Citation Reform in Selected Jurisdictions*

Carol Billings** and Kathy Carlson***

¶44 This section presents more details about citation reform in selected jurisdictions, including citation reform history in those jurisdictions.

Louisiana[60]

¶45 It was the goal of the creators of the vendor-neutral format to ensure fair competition in the legal publishing marketplace and to promote cost-effective access to legal information by the courts, the bar, and the public. In Louisiana, this idea was put to the test. Multiple would-be publishers of Louisiana opinions in CD-ROM format had sought to introduce their products to the legal community but were stymied by West's copyright claims to the pagination of its reporters. Since Louisiana's official reports ceased publication in 1972, the only method for citing a state court opinion was to refer to West's *Southern Reporter*. The Louisiana Supreme Court, at the urging of Carol Billings, its librarian, surmised that allowing competing publishers to enter the market could lower prices and make legal information more affordable.

¶46 On December 17, 1993, endorsing the recommendation of a subcommittee of the Task Force on the Cost-Effective Provision of Information Resources for Louisiana Courts appointed by its chief justice, the Louisiana Supreme Court adopted a public domain citation format for citing all of the state's post-1993 appellate decisions. On July 1, 1994, the rule, Section VIII of the General Administration Rules, became mandatory for filings in Louisiana appellate courts.[61]

¶47 The format adopted by the court consists of case name, docket number, court abbreviation, decision date, and slip opinion pagination for pinpoint citing. This format represented a compromise between the devising subcommittee, which advocated numbering the opinions and the paragraphs within them, and the court, which was concerned that changing procedures in clerks' offices might incur additional costs and labor. Later efforts to amend the format met with continued resistance, and thus Louisiana's format is unique in its reliance on docket numbers and page breaks. Nevertheless, the vendor-independent system has operated satisfactorily for fifteen years. When the Supreme Court and Courts of Appeal began posting their opinions on the Internet upon release, it was possible to cite them immediately.

¶48 The desired goal of making published decisions more affordable was met soon after the new court rule was adopted. Prior to its issuance, West and LexisNexis were the only providers of Louisiana opinions. When West had been the sole CD-ROM publisher, its price was $3500 for cases from 1945. Soon Michie and Loislaw released CD-ROM opinions, and West lowered its price significantly, thus

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60. Information in this section is based on the recollections of Carol Billings.
61. La. Sup. Ct. R. pt. G, § 8.

giving buyers a choice of three products in the range of $600 to $1200 for an annual subscription, complete with updates. Louisiana lawyers and judges eagerly embraced electronic legal research in their offices, and the Supreme Court and Courts of Appeal soon began issuing their opinions electronically, making them available and citable quickly and at no cost to anyone with Internet access.

Montana[62]

¶49 Montana court personnel did not have the luxury of a long lead time to implement citation reform. State Law Librarian Judy Meadows had informal conversations with Justice James C. Nelson about adopting the universal citation format. Justice Nelson drafted a proposed order mandating reform, and the court adopted it and held public hearings within approximately two weeks. A copy of the adoption order was disseminated to interested publishers, who immediately began implementing the court's requirements. Court support personnel were tasked with putting the order into effect. Initially, judicial assistants had trouble finding the word-processing code for adding the paragraph numbers to the opinions, but the process soon became routine. The court did not invest in new software or incur any other incremental expense to implement its system.

New Mexico[63]

¶50 The New Mexico Supreme Court, after the filing of an order mandating citation reform, asked the state law library to number its opinions in the same order as they were found in the *New Mexico Reports*. Further, the court requires citation to paragraphs rather than page numbers. Paragraph numbers are inserted as the opinions are written. The library prepares a parallel table showing the official citation along with the *New Mexico Reports*, the *Pacific Reporter*, and the *Bar Bulletin* citations. Over time, the workload of posting and indexing the opinions has proven to average approximately four hours a week. It is shared by the New Mexico Compilation Commission and the court library. The New Mexico Supreme Court considers this a "no-brainer" and an obligation in order to give the public access to the law, according to current state law librarian Robert Mead.

North Dakota

¶51 The North Dakota Supreme Court embraced neutral citation in early 1997 by issuing an adoption order and a citation rule.[64] In rough parallel with its implementation of neutral citation, the North Dakota Supreme Court launched a web site where it began to post its opinions. The site initially offered decisions dating back to 1993, but they now go back as far as December 1965.[65] The court's decisions

62. Information in this section is based on E-mail from Judy Meadows, State Law Librarian of Montana, to Kathy Carlson (Aug. 12, 2008) (on file with authors).

63. Information in this section is based on E-mail from Robert Mead, State Law Librarian of New Mexico, to Kathy Carlson (Aug. 12, 2008) (on file with authors).

64. N.D. R. Ct. 11.6: *Medium-Neutral Case Citations*; *In the Matter of Uniform Medium-Neutral Case Citations*, Order No. 970023 (Mar. 5, 1997), *available at* http://www.ndcourts.gov/court/notices/970023.htm.

65. *Opinions*, N.D. Sup. Ct., http://www.ndcourts.gov/Search/Opinions.asp (last visited Apr. 23, 2011).

from the neutral-citation era, 1997 to present, can be retrieved with equal ease by any and all redistributors. As a consequence, even low-cost and free law sites can offer post-1996 North Dakota decisions with full citation information.

¶52 North Dakota's system allows wide dissemination of its Supreme Court opinions. Its web site is an open public resource. Because the site does not block indexing by Internet search engines, a search on Google for **"Sandberg v. American Family Ins."** retrieves the decision, as does a search on that decision's neutral citation **"2006 ND 198."** The same search additionally leads the researcher to the case docket, which provides links to an audio file of the oral argument and the parties' briefs.

Oklahoma[66]

¶53 The story of Oklahoma's adoption of neutral citation, in the face of mounting unpaid charges for vendor legal materials, has been well recounted both by its implementers[67] and by third parties.[68] However, the details of implementation are less well known. According to Greg Lambert, who was the Oklahoma state law librarian, the court built its opinions database from scratch using Microsoft products, illustrating that exotic products or custom-built software are not required for self-publication. The Oklahoma experience also shows that the determination of judges and the boldness and perseverance of court administrators can revolutionize the publication of a state court's opinions.

¶54 Oklahoma Supreme Court opinions are stored on a SQL Server database. In initially populating the database, the proximity of Oklahoma City University proved fortuitous. At the inception, the court hired law students for a few hours per week to input old cases and help add current ones. The texts were authenticated by double entry. At the front end, the opinions appeared in Microsoft Word. Although the justices used WordPerfect, their versions were converted, with particular attention to footnotes and numbering to resolve differences between the two software products.

¶55 Also fortuitous for Oklahoma was the new vendor Loislaw. The court worked with Loislaw to obtain its own cases back as far as 1950. It then added paragraph numbers and uploaded the texts.

¶56 Thanks to court personnel, notably Greg Lambert, the state law librarian, and Kevin King, who was the MIS director for the court, as many processes as possible were automated, including the conversion from WordPerfect to Word. Eventually, the court added links within decisions to its own cases and statutes in connecting databases, using macros to find citations. King dubbed this homegrown citation system the "citationizer." The court built an index that included older cases.

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66. Information in this section is based on Telephone Interview with Greg Lambert, Info. Serv. Dir. & Records Mgr., King & Spalding LLP, Houston, Tex. (Jan. 28, 2009) (notes on file with authors).

67. "Let's Make a Deal—Strategies to Avoid Paying List Price," presentation at the 2004 Annual Meeting of the American Association of Law Libraries, Boston, Mass., July 2004, *summary available in* The CRIV Sheet, Nov. 2004, at 7.

68. Martin, *supra* note 4, at 338–40, ¶¶ 16–20.

Utah[69]

¶57 In Utah, which implemented its own citation form via a standing order,[70] universal citation case numbers are assigned to the opinions by a list kept in the secretaries' main directory. The number is assigned when the opinion is ready for final review before publication. The directory in turn is managed by the Clerk of the Supreme Court and a designated secretary. Paragraph numbers are entered by WordPerfect macros used by all of the legal secretaries.

> My memory is that it was fairly simple. . . . We did have to refer many calls to the actual language of the standing order. However, the order was quite clear and easy to implement once read by those who needed it. We did have some time for a year or so when it wasn't used by all. The courts were patient with this adjustment time until it became the practice. In addition, the Bar has always been good to help us advertise this kind [of] change with notices and publications they may do. I think these changes are best if training and advertisement of the change [are] provided to counsel and the public.[71]

Wisconsin[72]

¶58 Like Oklahoma, Wisconsin invested some programmer time in customizing its citation form. Once the universal citation format was adopted, the court's IT staff made additions and changes to several internal databases that store the court's docket data and case search engines. The costs amounted to programmers' time to make the changes, with no new software or hardware purchases required. IT staff also created a program that both assigns and tracks case numbers. The use of paragraph numbering pre-dated the adoption of the new case numbering system.

Wyoming[73]

¶59 Wyoming State Law Librarian Kathy Carlson approached then Chief Justice Larry Lehman with a proposal for Wyoming to act as the beta site for the Oklahoma State Courts Network (OSCN) case database to make Wyoming Supreme Court decisions from 1990 to the present freely available to the public through the Internet. However, the ability to undertake the project was conditional upon the adoption of the universal citation format, given the proprietary dispute regarding page numbering in *West's Pacific Reporter*. Justice Lehman took the proposal to the Wyoming Board of Judicial Policy and Administration (the judicial branch administrative decision-making body in Wyoming), who decided to embrace the new citation format. The chief justice drafted and signed an order adopting the format.[74]

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69. Information in this section is based on E-mail from Jessica Van Buren, State Law Librarian of Utah, to Kathy Carlson (June 23, 2008) (on file with authors).

70. Utah Sup. Ct. Standing Order No. 4 (eff. Jan. 18, 2000), *available at* http://www.utcourts.gov/resources/rules/urap/Supctso.htm#4

71. E-mail from Jessica Van Buren, *supra* note 69 (quoting Pat Bartholomew, Clerk of the Utah Supreme Court).

72. Information in this section is based on E-mail from Jane Colwin, State Law Librarian of Wis., to Kathy Carlson (June 23, 2008) (on file with authors).

73. Information in this section is based on the recollections of Kathy Carlson.

74. *In the Matter of Adopting a Public Domain, Neutral-Format Citation Format* (Wyo. Oct. 2, 2000), *available at* http://www.courts.state.wy.us/LawLibrary/univ_cit.pdf.

¶60 Implementation was simple and straightforward. A paragraph-numbering macro was loaded onto each judicial assistant's computer, and paragraph numbers were added as opinions were written. A log of case numbers was established in the Supreme Court Clerk's office and posted in the court's shared files. This process continues in effect. Immediately prior to publication, the judicial assistant accesses the number file and claims the next available case number. The law library posts the decision into the OSCN database, through which the decisions are freely accessible to all.

Whither Citation Reform?*

John Cannan**

¶61 Abraham Lincoln began his "House Divided" speech, during his unsuccessful 1856 campaign for the U.S. Senate, with this proposition: "If we could first know where we are, and whither we are tending, we could then better judge what to do, and how to do it."[75] The same could be said for the state of vendor-neutral citation—where are we now and whither are we tending?

¶62 Unfortunately, the answer to where we are now with vendor-neutral citation is: not much further along than we were back in the mid-1990s during the citation war of words and the introduction of AALL's *Universal Citation Guide*. In fact, there has been some recent backsliding. In 2009, the U.S. District Court for the District of South Dakota abandoned its form of public domain citation,[76] and the U.S. Court of Appeals for the Sixth Circuit has abandoned its vendor-neutral citation requirement.[77] An exception is Arkansas, where the Supreme Court adopted a new neutral citation system. For all published decisions issued between February 14, 2009, and July 1, 2009, and all decisions issued after July 1, 2009, the citation shall reference the case name, the year of the decision, the abbreviated court name, and the appellate decision number. Parallel citations to the regional reporter, *Southwestern Reporter, Third Series*, if available, are required. If the regional reporter citation is not available, then parallel citations to unofficial sources, including unofficial electronic databases, may be provided.[78]

¶63 As to whither vendor-neutral citation is tending, it appears to be in a holding pattern. But there has been at least one encouraging sign as well. Just before this article went to press, the Illinois Supreme Court announced it was implementing a new public domain citation system to go into effect in July 2011.[79] The need for the system is still recognized. The ABA continues to urge state judiciaries, bar associations, academic institutions, professional organizations, and interested individuals and entities to implement vendor-neutral citation.[80] AALL's DALIC committee meets regularly to discuss the advocacy of such a system. But there have been few concrete steps in other jurisdictions toward adopting and implementing such a

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75. *"A House Divided Speech" at Springfield, Illinois*, *in* THE ESSENTIAL LINCOLN: SPEECHES AND CORRESPONDENCE 39 (Orville Vernon Burton ed., 2009).

76. *See Change in Citation of Opinions for the District of South Dakota*, LIBR. NEWSL. (Eighth Cir. Cts. Libr.), Nov./Dec. 2009, *available at* http://www.lb8.uscourts.gov/pubsandservices/publications/novdec09.sdcitations.html. A LexisNexis search showed that the public domain format was used by certain judges but appears to have fallen into disuse after its leading proponent, Judge Charles B. Kormann, obtained senior status in 2008.

77. E-mail from Barb Overshiner, Sixth Cir. Libr. for the U.S. Courts, to Barbara Fritschel, Librarian, U.S. Courts Libr. for the Seventh Cir. (Aug. 12, 2010) (on file with author).

78. *In Re: Arkansas Supreme Court and Court of Appeals Rule 5-2*, 2009 Ark. 330 (May 28, 2009).

79. Press Release, Ill. Sup. Ct., *supra* note 10.

80. *See* Am. Bar Ass'n, *supra* note 11.

system. Other stakeholders are looking for AALL to lead in pushing vendor-neutral citation to the next level.

¶64 In the meantime, the need for a vendor-neutral system has grown more urgent. The legal information field continues a steady transition from paper to electronic resources on all levels. Yet there is not a concurrent movement to implement a modern citation system that can accommodate digital resources and how they are used. As a result, while the information revolution has been fruitful for legal research, it has not been completely beneficial for legal information access.

¶65 The legal information access problem occurs as paper resources are increasingly being replaced with digital versions. In the past, any patron who had access to a law library had access to the information in print legal information materials. Increasingly, however, these volumes are disappearing from libraries. Digests and citators are rarely used, and many institutions no longer subscribe to them. Even the familiar sight of West reporters on law library bookshelves may be a thing of the past as they are moved into on-site or remote storage. Inevitably, money and space, the traditional challenges of any law library, necessitate the cancellation of more and more subscriptions to paper materials in favor of digital versions. Even the end of the print law review has been advocated.[81] Of course, many of these materials are still available electronically. However, commercial databases are often not accessible to all library patrons as paper resources are.

¶66 This erosion of access should be countered by the emergence of freely available legal information produced by legislatures, executive agencies, and judiciaries. New information sources do present new forms of access, but their full impact is impeded by traditional citation formats.

¶67 Many jurisdictions have web sites for their own legal information, providing online versions of bills and laws. In some cases, digital copies of government documents are a parallel official form to the print versions. Some jurisdictions have stopped publishing print publications of certain government materials altogether. Maryland contemplated making its *Maryland Register*, the periodical for notice of the state's executive, judicial, and legislative actions, available solely online in PDF format. This proposal was later repudiated, thanks to the efforts of local law librarians,[82] but other states are leaning toward reducing print access to government information in favor of digital versions.[83] All states and many federal appellate courts publish their opinions online. The federal judiciary's Public Access to Court Electronic Records (PACER) service provides online access to most U.S. appellate, district, and bankruptcy court records and documents for a modest fee (and there has been a strong movement to make PACER materials freely available).[84]

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81. *See* Richard A. Danner, Kelly Leong & Wayne V. Miller, *The Durham Statement Two Years Later: Open Access in the Law School Journal Environment*, 103 LAW LIBR. J. 39, 45–52, 2011 LAW LIBR. J. 2, ¶¶ 20–42.

82. AALL Case Study: Maryland Working Group Stops Elimination of Print Register (Mar. 2010), http://www.aallnet.org/aallwash/toolkit/CaseStudy_MD2010.pdf.

83. For example, Pennsylvania just added a definition of the term "copy" to its regulations, defining it as a "print or electronic version." 1 PA. CODE § 1.4 (2011).

84. *See* Susan Lyons, *Free Pacer: Balancing Access and Privacy*, AALL SPECTRUM, July 2009, at 30, 31–32.

¶68 Private information entities are also making an unprecedented amount of legal information freely available. Google Scholar has a search function for federal and state case law and legal journal articles. Other free services making cases available online include Justia, Findlaw, lexisONE, Fastcase's Public Library of the Law, and Cornell Law School's indispensible Legal Information Institute.

¶69 Despite this wealth of information, citations to digital sources are still paper-based, and this fact ironically limits their accessibility. Current citation forms are wedded to material found in the print, usually commercially produced, volumes. They present those using the information for legal research and writing with inefficient extra steps in their work. To cite a reference in a digital source, the researcher must obtain the physical reporter volume to find the correct page in the print version. Many new information services do not provide pagination at all. While Google's legal search contains commercial reporter pagination, it does not provide the same for official state reporters. This creates a bizarre citation situation if the cite to the reporter page is not yet available. For example, a blogger writing about recent court decisions that would eventually appear in *West's Federal Reporter* has to resort to "—F.3d—" to cite to cases. While a reader could probably piece together enough information to find the case, such a citation does not promote ease of access or efficient research.

¶70 Those trying to create their own information resources face the problem in reverse. If they want to craft a citation not related to paper, they must also go to the physical reporter volume to collect the necessary information (e.g., the date the opinion was released and a docket number). Both researchers and database developers must still refer to print sources just as they are becoming less and less accessible.

¶71 In a recent article, Ian Gallacher describes how this legal research "two-step" inefficiency hampers research and the creation of new legal information resources.[85] Gallacher uses an invaluable database such as PACER as an example of how traditional citation thwarts the innovation of free legal products. Because federal law citations are based on paper-based reporter volumes, rather than the docket numbers used in PACER, the recovery of a case from PACER necessitates the additional effort of locating the print reporter citation.

> [I]f a researcher must conduct two separate searches to find usable citations for cases to support a legal proposition—one search on a public access site to find the case and one using conventional legal research tools to find the case's citation—then the researcher has saved no time or money by using the public access site. And if there is no justification for using a public access legal information site, except to waste time, energy, and money, it is unlikely that such sites will prosper.[86]

¶72 This inefficient process only works at all if there is a case in print form that can be cited. Some federal district court cases may not be published in case reporters, and therefore are particularly difficult to cite. For example, a researcher using a

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85. Ian Gallacher, *Cite Unseen: How Neutral Citation and America's Law Schools Can Cure Our Strange Devotion to Bibliographical Orthodoxy and the Constriction of Open and Equal Access to the Law,* 70 ALB. L. REV. 491 (2007).

86. *Id.* at 519 (footnote omitted).

PACER decision must use an inelegant and confusing *Bluebook* slip opinion citation. Meanwhile those with access to commercial databases will use their source's database identifiers for their citations. This situation could create a citation Tower of Babel, with researchers citing their own information-source identifiers instead of using a single citation form.

¶73 A vendor-neutral system has the potential to answer many of these challenges and can serve as a starting point for answering other questions facing the legal information community today. Vendor-neutral citation reduces the inefficiencies of the current paper-based system and liberates legal information so that it may be used more freely. The growing limitations to access disappear because decisions are identifiable as soon as they are issued and can be used from any source: government, commercial, or open access. The source is also identifiable no matter what medium is used to present the data. A researcher will have the tools from a vendor-neutral citation to locate information in any database, whether it is in PDF or HTML format. Further technological opportunities will emerge as well, because there will be one standardized format linking all opinions.

¶74 If the potential of vendor-neutral citation seems far-fetched, consider how some jurisdictions that have implemented it are using it to provide free information products. Vendor-neutral citation for cases is now being used by Australian, Hong Kong, Irish, British, and Canadian courts. Because these jurisdictions use vendor-neutral citation, entities from the free access to law movement, the legal information institutes (LIIs) or private nonprofit institutions dedicated to legal information access, have been able to more easily construct databases of legal information.

¶75 The Australasian Legal Information Institute (AustLII: www.austlii.edu.au), British and Irish Legal Information Institute (BAILII: www.bailii.org), Canadian Legal Information Institute (CanLII: www.canlii.org), and Hong Kong Legal Information Institute (HKLII: www.hklii.org) all have databases of case and, sometimes, statutory law. The Pacific Islands Legal Information Institute (PacLII: www.paclii.org), a "prototype system" of legal information from several South Pacific islands created by the University of the South Pacific School of Law and AustLII, has also fashioned such a database. It collects court decisions from its covered jurisdictions and assigns them vendor-neutral citations. Even better, the systematization provided by vendor-neutral citations—case name, court abbreviation, unique numerical identifier, and year of decision—has helped these LIIs create a means to search all their databases simultaneously, a single search facility found at the World Legal Information Institute (WorldLII: www.worldlii.org).

¶76 Ivan Mokanov, deputy director of LexUM, an information technology company that supports CanLII, believes a broader use of vendor-neutral citation would make dissemination of freely available legal products even easier. For instance, CanLII created Reflex, an online, vendor-neutral-citation-based citator with hyperlinks to cases cited, cases relied on, related cases, and cited legislation.[87] According to Mokanov, a broader use of vendor-neutral citation could make the web itself a citator. "Basically, if all cases were identified with a neutral citation, there would be no need for a citator, such as Reflex. If this was the case, all citations

87. *See Reflex*, CANLII, http://www.canlii.org/en/info/reflex.html (last visited May 3, 2011).

would be parsed, processed and resolved automatically at a cost which would be even more affordable for free law publishers."[88]

¶77 Mokanov's point is crucial. A vendor-neutral system, such as the one in the *Universal Citation Guide*, is better suited for online information access and dissemination than its traditional paper-based forebears. Because AALL's vendor-neutral system systematizes citation and gives each case a unique identifier, it better lends itself to computer processing and online publication. Its format resembles database identifiers and formats such as XML. Traditional citation was not designed to function outside of print materials. For example, a reporter volume and page number could refer to several court orders or opinions found on the same printed page, thus making the use of these automated processes much more difficult, if not impossible.

¶78 Vendor-neutral citation not only can spur the creation and development of legal information products, such as those pioneered by the LIIs, but also has the potential to support other digital initiatives, such as online reference and the effort to make law reviews available digitally. Paper-based citation does little to advance digital reference. A law librarian citing a page in a print reporter can do little to help a patron who does not have access to that reporter. A vendor-neutral citation reduces the need for the print reporter in that reference transaction. Furthermore, vendor-neutral citation supports other open government/open law activities such as authentication. Two principles behind authentication are that (1) government authorities should provide access to verified complete and unaltered legal information; and (2) legal information should be preserved for future use. Even if government legal information is authenticated properly, what use is it if a researcher does not have the basic tools to cite to it? It stands to reason that if state legislatures, executive authorities, and agencies want their information in electronic legal information environments they have to ensure it will be usable as well as authentic.

¶79 This is not to say that a vendor-neutral system is a silver bullet. There will still have to be a fine-tuning of any citation system. Editors of *The Bluebook*, now in its nineteenth edition, can attest to that. One item that AALL might have to grapple with soon is a deceptively simple question—what is and is not a paragraph? According to Tom Bruce from Cornell Law School's Legal Information Institute:

> This is harmful if the goal is to be able to machine process back files or indeed prospective material—it takes something that is computationally as easy as identifying two carriage returns separating a couple of chunks of text, and instead turns it into a fifth-generation artificial-intelligence project involving natural-language understanding.[89]

¶80 Returning to the question of whither we are tending: we are at a crossroads. We can stay on the path we are on now and continue to use a paper-based citation system that is ill-suited to the modern age, or we can adhere to and continue to develop a vendor-neutral citation system that provides access to and aids the development of online legal information. The time to decide which path to take is now.

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88. E-mail from Ivan Mokanov, Deputy Dir., LexUM, to author (Apr. 28, 2010) (on file with author).

89. E-mail from Tom Bruce, Research Assoc. & Dir., Legal Info. Inst., to author (Apr. 14, 2010) (on file with author).