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# Citation Literacy

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## CITATION LITERACY

Alexa Z. Chew\*

### ABSTRACT

New lawyers and law students spend a lot of time worrying about legal citation. But most of that time is spent worrying about the wrong thing—formatting. The primary purpose of legal citation is to communicate information to the reader. Thus, legal citations are integral parts of the legal documents that lawyers read and write. But rather than viewing citation as communication, law students, and the new lawyers they become, tend to view it as a formatting sideshow dictated by the *Bluebook* or other citation style guides. This view is both inaccurate and counterproductive.

I argue that the reason for this detrimental and misplaced focus on citation form is because law schools do not teach what I call citation literacy: the ability to both read and write legal citations. Despite the pervasive presence of citations in judicial opinions, which first-year law students spend most of their time reading, pondering, and discussing, law schools teach students only how to write citations. This “write-first” approach to teaching citation deprives legal novices of opportunities to learn to make meaning from citations *as readers*. Were students able to understand as readers how legal citations operate as communication, the tedious task of writing legal citations would be grounded in an intrinsic purpose rather than a seemingly arbitrary style guide. As things stand now, students must be prodded to follow citation norms for extrinsic gains, which satisfies neither student nor professor.

The citation literacy pedagogy I propose would first teach law students to study the citations in the documents they read—the edited judicial opinions they find in casebooks, the unedited judicial opinions they read in legal writing courses, and sample memoranda or briefs. To teach students to make meaning from citations, citation should be introduced concurrently with foundational lessons in legal authority. Once students understand what citations mean, they can more easily write the citation forms set forth in citation style guides and adapt that knowledge to the heterogeneity of citation forms they will encounter in practice.

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## I. INTRODUCTION

Citation literacy is the ability to read and write citations.<sup>1</sup> That’s it. The rest of this article will unpack what’s in those ten words and why they matter.

Law students and legal educators (and lawyers, for that matter) devote a lot of attention to writing legal citations<sup>2</sup> and not much to reading them. Law students are not introduced to legal citations as functional parts of the legal arguments that they spend so much time reading.<sup>3</sup> Instead, legal citations are mostly left out of the arguments they read or, worse, presented as impediments to understanding legal arguments.<sup>4</sup> Arguably, this viewpoint causes a whole host of non-positive feelings about legal citation among law students<sup>5</sup> and the lawyers they

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<sup>1</sup> ALEXA Z. CHEW & KATIE ROSE GUEST PRYAL, THE COMPLETE LEGAL WRITER 11 (2016) (“Citation literacy simply means the ability to fluently read and write legal citations.”). The term “citation literacy” is a coinage first published in *The Complete Legal Writer*.

<sup>2</sup> See, e.g., 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, 494 (2007) (describing legal citation as a skill primarily taught in the legal writing curriculum).

<sup>3</sup> See Part III.A, *infra*.

<sup>4</sup> See, e.g., BRYAN A. GARNER, LEGAL WRITING IN PLAIN ENGLISH: A TEXT WITH EXERCISES 77 (2001) [hereinafter GARNER, PLAIN ENGLISH] (describing in-line citations as “thought-interrupters” and comparing reading them to driving over speed bumps on a highway).

<sup>5</sup> See, e.g., ROBERT BERRING, INTRODUCTION TO THE BLUEBOOK: A SIXTY-FIVE YEAR RETROSPECTIVE, at v (1998) (observing that the *Bluebook* “has inflicted more pain on more law students than any other publication in legal history”).

later become.<sup>6</sup> But feelings aside, this viewpoint obscures the importance of legal citation in legal writing, diminishing a core convention of formal written legal analysis and uncoupling it from the communicative purpose<sup>7</sup> that the convention serves.<sup>8</sup> The connection between citation and its communicative purpose having been severed, students are left to focus on producing “properly” formatted citations,<sup>9</sup> a task made more challenging by lack of exposure to those citations in the texts they read.

The “signature pedagogy” of law school is the case method, by which students read excerpts of cases in case books and then, through Socratic questioning about those cases, learn to “think like lawyers.”<sup>10</sup> As the authors of the *Carnegie Report* noted, learning by the case method involves a “single-minded focus on the close reading of texts, analytical reasoning, and a discourse of rapid exchanges and responses.”<sup>11</sup> At the foundation of the case method are cases, usually opinions written by appellate courts that have been edited to help students focus on particular aspects of legal doctrine.<sup>12</sup> However, citations are commonly excised from casebooks.<sup>13</sup> So even though law students are reading hundreds of judicial opinions during their first year of study, and even though judicial opinions usually contain numerous legal citations, students do not see them. Moreover, because students do not see legal citations in the texts

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<sup>6</sup> Articles in bar journals, which are written primarily for practitioners, display little enthusiasm for citation. See Maureen B. Collins, *Bluebook Blues: Changes in the Seventeenth Edition*, 88 ILL. B.J. 663, 663 (2000) (“I hate the *Bluebook*. I view it as a necessary evil in a cruel world.”); Suzanne E. Rowe, *Perfect Proofing 10 Steps Towards Error-Free Documents*, OR. ST. B. BULL., Dec. 2006, at 33, 35 (“Everyone hates the *Bluebook* . . .”). More inclusive statements of distaste also abound. See, e.g., Kris Franklin, “. . . See *Erie*.”: *Critical Study of Legal Authority*, 31 U. ARK. LITTLE ROCK L. REV. 109, 109 (2008) (“[E]verybody knows that everybody hates bluebooking. Law students hate to learn it, lawyers hate to do it, and law faculty hate to teach it.”). But see Bret D. Asbury & Thomas J.B. Cole, *Why the Bluebook Matters: The Virtues Judge Posner and Other Critics Overlook*, 79 TENN. L. REV. 95, 97 (2011) (“[T]he *Bluebook*’s much-maligned strictures and level of detail are both meaningful and useful for fledgling lawyers in at least two ways.”).

<sup>7</sup> Mary Whisner, *The Dreaded Bluebook*, 100 LAW LIBR. J. 393, 394 (2008) (describing “the core purposes of citation” as enabling the reader to evaluate the cited authority and locate the cited authority).

<sup>8</sup> See Frederick Schauer, *Authority and Authorities*, 94 VA. L. REV. 1931, 1955, n.75 (2008) (“Citation is not just a pathway to precedent; it is the language the law uses to embody its precedential character.”).

<sup>9</sup> See Robert Berring, *On Not Throwing Out the Baby: Planning the Future of Legal Information*, 83 CAL. L. REV. 615, 629 (1995) (“The Uniform System of Citation has assumed such significance in law that, for some, proper citation form is almost a fetish.”).

<sup>10</sup> WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 47 (2007).

<sup>11</sup> *Id.* at 50.

<sup>12</sup> Andrew E. Taslitz, *Exorcising Langdell’s Ghost: Structuring A Criminal Procedure Casebook for How Lawyers Really Think*, 43 HASTINGS L.J. 143, 149 (1991).

<sup>13</sup> Judith Welch Wegner, *Reframing Legal Education’s “Wicked Problems,”* 61 RUTGERS L. REV. 867, 906 (2009).

they use to learn how to “think like a lawyer,” there are few opportunities to teach students that legal citation is part of thinking like a lawyer.

But legal citation *is* part of thinking like a lawyer.<sup>14</sup> Legal citation is an important feature of legal discourse, even if legal educators do not always treat it that way.<sup>15</sup> Instead, law students are introduced to legal citation via the unpleasant act of writing legal citations using a decontextualized list of conventions.<sup>16</sup> First-year legal writing courses generally get this unenviable job<sup>17</sup> because they require their students to write practical legal documents like memoranda and briefs, and those kinds of documents conventionally include legal citations supporting every statement of law. To complete their writing assignments, law students need to know how to write legal citations.

The way this is usually accomplished is through what this Article calls a “write-first” citation pedagogy: First, students are told that they must write legal citations to support their statements of law.<sup>18</sup> Second, students are shown how to use a legal citation style guide to write those citations in a form that legal readers expect to see.<sup>19</sup> Although it seems like a simple two-step process, anybody who has been on the giving or receiving end of it will agree that both steps require a lot of effort. Students tend to resist the instruction that they must support every statement of law with a citation, and this Article hypothesizes that the reason for that resistance is that students are unfamiliar with the norm. Students also struggle with learning to use legal citation style guides, most commonly *The Bluebook: A Uniform System of Citation*,<sup>20</sup> which in its twentieth edition is 560 pages long and composed of rules and short examples that seem arbitrary as presented.<sup>21</sup> This Article hypothesizes

<sup>14</sup> Schauer, *supra* note 8, at 1934.

<sup>15</sup> *See id.* at 1934 (describing the “dismissive attitude towards legal citation” that characterizes citation as “scarcely more than decoration”).

<sup>16</sup> *See, e.g.*, ANDREW J. MCCLURG, 1L OF A RIDE: A WELL-TRAVELED PROFESSOR’S MAP TO SUCCESS IN THE FIRST YEAR OF LAW SCHOOL 34 (2d ed. 2013) (“Another component of legal writing courses that students find frustrating is learning legal citation style.”).

<sup>17</sup> Franklin, *supra* note 6, at 109 (“[C]onveniently enough for nearly everyone else associated with legal education, it is usually covered in legal writing programs, . . . allowing others not to have to worry about it.”).

<sup>18</sup> CHRISTINE COUGHLIN ET AL., A LAWYER WRITES: A PRACTICAL GUIDE TO LEGAL ANALYSIS 121 (2d ed. 2013).

<sup>19</sup> *Id.* at 122–27.

<sup>20</sup> THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 20th ed. 2015) [hereinafter BLUEBOOK].

<sup>21</sup> *See* Richard K. Neumann, Jr., *Legislation’s Culture*, 119 W. VA. L. REV. 397, 434 (2016) (describing the twentieth edition of the Bluebook as “the crown of fussiness,” which strips authors and editors of their discretion to make decisions about spacing, italics, and other matters). *But see* David J.S. Ziff, *The Worst System of Citation Except for All the Others*, 66 J. LEGAL EDUC. 668, 682 (2017) (observing that the *Bluebook* is “a stack of paper and a spiral binder” that “has no enforcement power”). On the other hand, some rules really do seem to be arbitrary, as legal writers see them change between *Bluebook* editions for no discernable reason. *See* Bryan A. Garner, *Singing the Bluebook Blues*, ABA

that citation style rules seem more arbitrary because students are asked to learn them before they understand what purposes the citations (and their forms) serve.<sup>22</sup>

As a result, law students do not develop a substantive understanding of the work that legal citations do in legal documents,<sup>23</sup> which is to help readers make meaning from the text.<sup>24</sup> In a legal document that uses in-line (or textual) legal citations, the citations transfer information about the cited authority to the reader, at the reader's point of need.<sup>25</sup> As explained more fully in Part II, the key information that a legal citation transfers to its reader relates to the weight of the cited authority. The information coded in the citations enables the reader to instantly assess the quality of the authority used to support the claim.<sup>26</sup> If legal writing essentially consists of "claims supported by reasons," then legal citations are part of "the reasons," and understanding a claim—and a string of claims that forms an argument—requires understanding the information conveyed by legal citations.<sup>27</sup> Developing this understanding is difficult because it relies on a significant knowledge of legal precedent, including common sources of U.S. law, jurisdiction, and court hierarchies across jurisdictions.<sup>28</sup>

Expert legal readers have connected all of these pieces, so when they see a legal citation in a judicial opinion, they can instantly assess whether the court is citing a recent case from the highest court in that jurisdiction or a statute or a trial court opinion from a different jurisdiction.<sup>29</sup> Similarly, expert legal writers understand that the legal citations they write are intended to communicate valuable information to their readers

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J., Aug. 2015, at 24 (describing the changes to citation rules between Bluebook editions as "planned obsolescence").

<sup>22</sup> See Franklin, *supra* note 6, at 130 ("Teaching students the significance of citation might also have the added bonus of helping them learn to execute the formal elements of bluebooking more successfully because what they are doing feels that much more important and comprehensible.").

<sup>23</sup> See *id.* at 112.

<sup>24</sup> Whisner, *supra* note 7, at 396 ("Citation rules facilitate a reader's evaluations in many ways: the court and the year help a reader evaluate the authority of a case, parentheticals explain why the author has cited something, subsequent history notations indicate whether a case has been upheld or reversed on appeal, signals tell how the author thinks that a source supports or doesn't support a proposition.").

<sup>25</sup> See Part II.B, *infra*.

<sup>26</sup> See Susie Salmon, *Shedding the Uniform: Beyond a "Uniform System of Citation" to a More Efficient Fit*, 99 MARQUETTE L. REV. 763, 770 (2016) ("At a glance, a trained legal reader learns whether the source cited is law at all, whether it is binding authority in a given jurisdiction, when a case was decided, and whether the cited authority remains good law.").

<sup>27</sup> CHEW & PRYAL, *supra* note 1, at 9.

<sup>28</sup> *Id.* at 12–26, 59–67.

<sup>29</sup> Whisner, *supra* note 7, at 394 (noting that the court and date parenthetical in a case citation "is needed for the reader to tell where the case fits in a line of precedent and whether it is mandatory or persuasive in the jurisdiction").

about the precedent they've used to build their arguments.<sup>30</sup> However, not every legal reader possesses the requisite level of expertise to make meaning from the citations they encounter.<sup>31</sup> In other words, they lack citation literacy. This Article argues that legal educators should help first-year students develop a citation literacy schema that connects the content of legal citations with the U.S. system of precedent.<sup>32</sup>

The prevailing paradigm of learning legal citation obscures the more important question of “what to cite” with the more urgent question of “how to cite.” It does so by characterizing legal citations as simultaneously unimportant to the substance of written legal analysis and yet hyper important to the credibility of the writer.<sup>33</sup> Unlike proofreading standard prose, which isn't particularly taxing to writers who have completed enough education to be enrolled in law school, writing citations to conform to a style guide like the *Bluebook* is taxing. And so the result is that new legal writers are introduced to citation in an unappealing light: trivial, superficial, and difficult.

These negative initial experiences with legal citation carry over beyond the first year of law school. Student-run journals are breeding grounds for bad feelings about citation<sup>34</sup>—academic citation forms tend to be more intricate than the practical citation forms covered during the first year, and there is a new pressure of working with a group of other people to produce a consistent, professional-looking publication on deadline.<sup>35</sup> Tales from practice do not seem to present citation in a better light.<sup>36</sup>

Within the academy, the scholarly discourse about legal citations tends to focus on all of the ways that the “citation system” doesn't work

<sup>30</sup> See Salmon, *supra* note 26, at 770 (describing legal citation as “an incredibly effective shorthand” that “is so effective, in fact, that those fluent in the language of citation often forget how impenetrable it can be to those untrained in its vagaries”).

<sup>31</sup> *E.g.*, GARNER, *PLAIN ENGLISH*, *supra* note 4, at 77 (“[O]ver time, the pages of judicial opinions, briefs, and memos have become increasingly cluttered. Some have become unreadable. Others are readable only by those mentally and emotionally hardy enough to cut through the underbrush.”).

<sup>32</sup> Professor Kris Franklin also advocated for a new approach to teaching legal citation that she termed a “critical authorities” curriculum, which would frame legal citation as “a crucial connection between legal argument and the grounding upon which it rests.” Franklin, *supra* note 6, at 111, 132. “[I]f legal educators collectively decided that teaching students to understand the nuances of legal authority, and to cite it correctly and thoughtfully, was central to the mission of legal education in a common law system,” then every legal educator, “[n]o matter where we sit in the law school, all of us can, at least in some small way, decide that it is part of our jobs to teach legal authority well.” *Id.* at 132–33.

<sup>33</sup> Franklin, *supra* note 6, at 110–11.

<sup>34</sup> See, e.g., J.C. Oleson, *You Make Me (Sic): Confessions of A Sadistic Law Review Editor*, 37 U.C. DAVIS L. REV. 1135, 1139 (2004) (describing “line editing for hours at a time with a copy of the infamous and opaque Bluebook in hand” as “mindless scut work” that is not time “spent studying, socializing, or earning money”).

<sup>35</sup> Ziff, *supra* note 21, at 672.

<sup>36</sup> See, e.g., Salmon, *supra* note 26, at 765–66 (describing two unpleasant *Bluebook*-related incidents that happened to Professor Salmon when she was in practice)

well, is nonsensical, wastes time, and makes its users miserable. There have been a few notable attempts to replace the predominant *Bluebook* “citation system” with a different “citation system,” including the *Maroonbook*,<sup>37</sup> the *ALWD Guide*,<sup>38</sup> and the *Indigo Book*.<sup>39</sup> Each of these new approaches improved on some problematic aspects of the prevailing *Bluebook* approach,<sup>40</sup> but all of them seemed to accept the premise that legal citation is a necessary evil.<sup>41</sup>

This Article argues that this view of legal citation as a necessary evil is not only unhelpful to users of legal citation but also inaccurate. Instead, legal citation is a core convention of practical legal writing in the United States.<sup>42</sup> And it is a core convention that addresses the need in a common law system to show the provenances of statements of law and balances that need with the competing one of brevity.<sup>43</sup> Thus citations provide important information to legal readers using far fewer words than prose would to describe the provenance of each statement of law. Citation manuals, legal educators, citation teaching materials, and citation-related scholarship all agree that citations are meaningful to readers.<sup>44</sup> And yet

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<sup>37</sup> THE UNIVERSITY OF CHICAGO MANUAL OF LEGAL CITATION (The University of Chicago Law Review et al. eds. 1989) [hereinafter “MAROONBOOK”].

<sup>38</sup> ASS’N OF LEGAL WRITING DIRECTORS & COLEEN M. BARGER, *ALWD GUIDE TO LEGAL CITATION* (5th ed. 2014) [hereinafter “ALWD GUIDE”].

<sup>39</sup> CHRISTOPHER JON SPRIGMAN ET AL., *THE INDIGO BOOK: A MANUAL OF LEGAL CITATION* 6 (Public.Resource.Org 2016), <https://law.resource.org/pub/us/code/blue/IndigoBook.pdf> [hereinafter “INDIGO BOOK”].

<sup>40</sup> The *Maroonbook* brought flexibility to scholarly citation. Richard A. Posner, *Goodbye to the Bluebook*, Essay, 53 U. Chi. L. Rev. 1343–1352 (1986) [hereinafter Posner, *Goodbye*]. However, not everybody saw that as an improvement. *E.g.*, Bryan A. Garner, *An Uninformed System of Citation: The Maroonbook Blues*, 1 SCRIBES J. LEGAL WRITING 191, 192 (1990) (describing the *Maroonbook* as “seat-of-your-pants,” and not in a good way). The *ALWD Guide* brought clarity. K.K. DuVivier, *The Bluebook No. 18—“Thank God for Competition ....”*, COLO. LAW., November 2005, at 111, 112. And the *Indigo Book* brought an accessible price point of zero dollars. Ziff, *supra* note 21, at 688.

<sup>41</sup> *See, e.g.*, WAYNE SCHIESS, *WRITING FOR THE LEGAL AUDIENCE* 9 (2003) (“Authority is crucial, but citing it correctly is often tedious and difficult. Plus the citations make our writing clogged and disjointed. But we cannot avoid relying on authority, and we must cite that authority correctly.”).

<sup>42</sup> *See* Christine Hurt, *Network Effects and Legal Citation: How Antitrust Theory Predicts Who Will Build A Better Bluebook Mousetrap in the Age of Electronic Mice*, 87 IOWA L. REV. 1257, 1282 (2002) (noting that citation is a “creature of common law,” that “the Harvard Law Review did not create legal citation,” and that “[c]itation has been around for a long, long time”).

<sup>43</sup> RICHARD K. NEUMANN, JR., & SHEILA SIMON, *LEGAL WRITING* 173 (2d ed. 2011) (“A reader needs specific information about each authority you cite and needs it expressed precisely and succinctly in ‘citation language’ that can be quickly skimmed and understood. A properly constructed citation conveys a large amount of information in a very small space.”); Whisner, *supra* note 7, at 396 (“Citation rules balance these purposes—providing paths to the sources and providing information to help evaluate the authority and argument—with the goal of streamlining.”).

<sup>44</sup> *See, e.g.*, INDIGO BOOK, *supra* note 39, at 6 (“By clearly and precisely referring to primary legal materials, we are able to communicate our legal reasoning to others,



law students are not taught the skill of reading legal citations in context, as legal readers.

Part II describes the convention of in-line legal citations, the communicative purpose of the convention, how that purpose is subverted by viewing citation as an interruption, and why citation literacy is needed. Part III explains how the prevailing citation pedagogy, which this Article calls a “write-first” citation pedagogy, fails to teach students the communicative purpose of legal citations. Part III suggests replacing the prevailing write-first citation pedagogy with a citation literacy pedagogy that teaches students how to read citations before asking them to write citations. Part IV describes how legal educators of every stripe—including casebook professors and legal writing professors—can teach citation literacy to their students.

## II. LEGAL CITATION AS COMMUNICATION

Legal citations pervade legal documents, particularly those associated with litigation, like judicial opinions, memoranda, and briefs. Good advocates are thoughtful about which authorities they choose to cite and how they cite them because they know that their audiences will use the information coded in those citations to assess the merits of their legal analyses.<sup>45</sup>

### A. The Convention of In-Line Citations

Legal citations typically appear in legal documents in one of two places: in the same lines as the text of the document (in-line citations) or in footnotes below the text of the document (footnoted citations).<sup>46</sup> Here is an example of text with in-line citations, excerpted from a judicial opinion. The text of the document is bolded and the in-line citations are not bolded:

**The employer has a “plain and substantial burden” to persuade the court that its failure was in good faith and that it would be unfair to impose liquidated damages.** *Mayherw v. Wells*, 125 F.3d 216, 220 (4th Cir. 1997) (quotation omitted) (interpreting liquidated damages provision of the Fair Labor Standards Act). **The employer must show objective good faith.** *See id.* (citing *Clifton D. Mayherw, Inc. v. Wirtz*, 413 F.2d 658, 661–62 (4th Cir. 1969)).<sup>47</sup>

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including pleading a case in the courts, advocating changes in legal policy in our legislatures or law reviews, or simply communicating the law to our fellow citizens so that we may be better informed.”)

<sup>45</sup> See ANTONIN SCALIA & BRYAN A. GARNER, MAKING YOUR CASE: THE ART OF PERSUADING JUDGES 125–29 (2008) (describing how to choose which authorities to cite and how those choices impact the reader).

<sup>46</sup> DIONNE E. ANTHON, THE BLUEBOOK UNCOVERED: A PRACTICAL GUIDE TO MASTERING LEGAL CITATION 9 (2015).

<sup>47</sup> *Dotson v. Pfizer, Inc.*, 558 F.3d 284, 302 (4th Cir. 2009).

Each sentence of text, which is a statement of law, is followed by a citation to the legal authority that supports the preceding sentence. In the context of citation, the sentence of text is typically referred to as the “proposition.”<sup>48</sup> Propositions—and thus in-line citations—usually fill long passages in judicial opinions and other legal genres that use in-line citations, like briefs and memoranda. In those passages, citations typically follow nearly every sentence of text in the parts of those documents that describe the law.<sup>49</sup>

By contrast, footnoted citations are demarcated by a small marker in the text of the document,<sup>50</sup> like the little superscript number at the end of the word “document” in the preceding clause. The citation itself appears at the bottom of the page in a footnote, often below a horizontal line that separates the text from the footnotes, like the one at the bottom of this page.

Usually, in-line citations are used in practical legal writing<sup>51</sup> and footnoted citations are used in scholarly legal writing.<sup>52</sup> The difference

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<sup>48</sup> E.g., BLUEBOOK, *supra* note 20, at 4.

<sup>49</sup> MARY BETH BEAZLEY & MONTE SMITH, LEGAL WRITING FOR LEGAL READERS 213 (2014).

<sup>50</sup> In his taxonomy of citation systems in the biosciences, R.B. Williams posited that “[a] citation system comprises two basic elements.” R.B. Williams, *Citation Systems in the Biosciences*, 66 J. DOCUMENTATION 995, 999 (2011). The first element is a marker to indicate that the writer has moved from claim to support. The second element is a bibliographic summary, which usually includes the cited authority’s author, title, publication year, and publication information. Different citation systems treat these elements differently. One major choice concerns relative placement of the elements. They may appear together or separately. Williams thus created two rough categories of citation systems: direct and indirect. In a direct system, the marker and bibliographic summary appear together in a citation, as in in-line citations. In an indirect system, the marker and bibliographic summary are separated, as in footnoted citations or endnotes. One system is not inherently better than the other—each system has benefits and drawbacks, and it seems sensible for writers to use the system that best meets the needs of their particular audience. At its core, the in-line/footnote debate in practical legal writing is a debate about audience needs and how best to meet them.

<sup>51</sup> Some judges do place citations to legal authority in footnotes, and the practice has the constant support of Bryan Garner, legal writing’s most ubiquitous expert and the late Justice Scalia’s co-author. See SCALIA & GARNER, *supra* note 45, at 132–35 (arguing for footnoting). However, the dominant convention is to place citations to legal authorities in line with the text of the legal document. See *id.* Justice Scalia disagreed with Mr. Garner on this point: “You cannot make your product more readable to the careful lawyer by putting the entire citation material . . . in a footnote—because the careful lawyer wants to know, while reading along, what the authority is for what you say.” *Id.* A recent survey of judges found that seventy-eight percent of respondents preferred to see citations in line with the text. Ross Guberman, *Judges Speak Out Behind Closed Doors: How Your Briefs Might Bug Them, and How You Can Make Them Smile Instead*, LEGAL WRITING PRO (June 26, 2017), <https://www.legalwritingpro.com/blog/judges-speak-out/>.

<sup>52</sup> While the lines between what is “practical” and what is “scholarly” can sometimes blur (for example, when a court cites a law review article), for the purposes of this Article “practical genres” are the genres that lawyers write in practice. Scholarly genres are ones written by legal scholars. Any further examination of the difference is beyond the scope of this article.

results from the different purposes of practical legal writing and scholarly legal writing and the different ways that readers interact with in-line citations and footnoted citations. As Justice Scalia put it, “lawyers must evaluate statements not on the basis of whether they make sense but on the basis of whether some governing authority said so.”<sup>53</sup> This is much easier to do with in-line citations, which allow “the reader’s eyes to run smoothly across a text,” conveying information “almost subliminally.”<sup>54</sup> By contrast, footnotes “force the eyes to bounce repeatedly from text to footnote.”<sup>55</sup>

In-line citations can transfer a lot of information from the text to the reader because the reader does not have to leave the text to learn more about the cited authority. The citation is right next to the proposition on the page—at the reader’s point of need (or curiosity). However, this high degree of information transfer is balanced by lower “readability.”<sup>56</sup> In-line citations intersperse bibliographic passages in the text, while footnoted citations do not.<sup>57</sup> These bibliographic passages can be minimized by paring down the amount of information included in the citation and using abbreviations, which is precisely the approach taken by the prevailing systems of legal citation.<sup>58</sup>

Although novice readers of direct citations might initially experience the citations as unwelcome interruptions, instruction and experience will help them become more adept at reading the citations and incorporating the citations’ conceptual content into their understanding of the text.<sup>59</sup> This is how expert readers like those described by Justice Scalia engage with in-line legal citations: the citations are a substantive part of the text rather than bibliographic interruptions to be skipped over.<sup>60</sup>

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<sup>53</sup> SCALIA & GARNER, *supra* note 45, at 134.

<sup>54</sup> *Id.* at 134.

<sup>55</sup> *Id.*

<sup>56</sup> Williams, *supra* note 50, at 1000.

<sup>57</sup> GARNER, *PLAIN ENGLISH*, *supra* note 4, at 77.

<sup>58</sup> Salmon, *supra* note 26, at 770.

<sup>59</sup> R.B. Williams noted a similar phenomenon in the use of the Harvard marker, which contains the conceptual content of the author’s surname and date of publication: “As a researcher becomes more familiar with the literature in a particular field, the conceptual content of each Harvard referens is reinforced by repeated use.” Williams, *supra* note 52, at 110. An example of the Harvard marker can be found a little later in this article. Professor Ziff’s “Cardozo example” at footnote 67tk uses the Harvard marker.

<sup>60</sup> By contrast, indirect citation systems require readers to leave the text and go elsewhere in the document to see the citation’s bibliographic summary. Think of flicking your eyes from the text to the bottom of the page to read a footnote or flipping (or scrolling) to the back of a document to read an endnote. Thus indirect citation systems transfer less information at the reader’s point of need.

However, indirect systems have the potential to transfer much more information elsewhere in the document, if the reader chooses to look for it. When a reader follows the marker in a document using an indirect citation system, she makes the decision to leave the text because she is motivated to learn additional information. And the writer can then meet that need because she is less constrained by space than when using a

If the reader has the requisite knowledge of legal citation, each citation communicates to the reader essential information about the cited authority, which in turn allows the reader to judge the strength of the writer's propositions without first looking at the cited authority—an essential part of reading legal texts and assessing the arguments they contain. However, as described in the next Part of this Article the knowledge required to effectively read citations and make meaning from them is considerable.

## B. The Communicative Purpose of In-Line Citations

Legal citation guides describe two purposes of legal citation: (1) to locate the cited source and (2) to convey to the reader information about the weight of the cited authority.<sup>61</sup> In addition, practitioners and legal educators often identify two additional purposes: (3) to demonstrate the writer's credibility through impeccably formatted citations<sup>62</sup> and (4) to avoid plagiarism through proper attribution.<sup>63</sup>

Of those four commonly described purposes of legal citation, two are common to citation across many academic disciplines: the location purpose and the attribution purpose. Formal citations across disciplines usually include bibliographic information that is detailed enough to help the reader locate the cited source, if desired, and to attribute words to their authors and ideas to their creators.<sup>64</sup> The other two purposes seem specific to practical legal writing, although this Article argues that the communicative purpose is primary,<sup>65</sup> with the credibility purpose flowing mostly as a consequence of the communicative purpose.

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direct system: because the writer doesn't have to squeeze the bibliographic summary into the text, she is free to elaborate on that bibliographic summary without worrying about interrupting the flow of the text. The reader has already chosen to be interrupted.

<sup>61</sup> ALWD GUIDE, *supra* note 38, at 42; BLUEBOOK, *supra* note 20, at 1 (“In a diverse and rapidly changing legal profession, *The Bluebook* continues to provide a systematic method by which members of the profession communicate important information to one another about the sources and legal authorities upon which they rely in their work. . . . The central function of a legal citation is to allow the reader to efficiently locate the cited source.”).

<sup>62</sup> *See, e.g.*, CHEW & PRYAL, *supra* note 1, at 366 (“Citations affect how credible you appear to your audience.”); Jonathan Su, *Thoughts on the Law School Experience*, 80 U. DET. MERCY L. REV. 535, 537 (2003) (“You will achieve credibility with your reader by adhering to the basic rules of ‘Bluebooking’ and grammar. You will almost certainly lose that credibility if you fail to do so.”); *see also* BRYAN A. GARNER, THE REDBOOK, A MANUAL ON LEGAL STYLE 147 (3d ed.) [hereinafter “THE REDBOOK”] (“[I]ncorrect citations can impair your credibility and call an argument’s validity into question—they may even lead to sanctions. Correct citations, on the other hand, can enhance your credibility by reflecting the care and attention to detail that went into preparing the document.”).

<sup>63</sup> *See, e.g.*, COUGHLIN, *supra* note 18, at 127–28.

<sup>64</sup> *See* Ziff, *supra* note 683, at 19 n.91–92 (explaining how the MLA Handbook focuses on attribution rather than authority) (citing THE MODERN LANGUAGE ASS'N OF AM., MLA HANDBOOK 5 (8th ed. 2016)).

<sup>65</sup> This is not a given. Many declarations of the purpose of legal citation focus only on the locating purpose. *See, e.g.*, Donna M. Bergsgaard & William H. Lindberg, *Case*

“Weight of authority” is a legal concept, and a central one to the discipline of law. As Professor David J.S. Ziff recently explained, “the weight of authority matters in the law, which means legal citations must include specific source-related details that other fields can simplify away.”<sup>66</sup> His example is instructive:

A citation to (Cardozo 1928) just doesn’t do the job for a lawyer. The audience needs to know whether Judge Cardozo was writing a book or an opinion. If an opinion, we need to know whether he wrote for the New York Court of Appeals or the Supreme Court, and whether he was concurring, dissenting, or writing for the majority. And is (Taft 1911) a Supreme Court opinion or an executive order?<sup>67</sup>

All of these details matter to lawyers because they affect how authoritative (or weighty or persuasive, depending on one’s preferred descriptor) the reader will find the cited source.<sup>68</sup> Ziff’s example addresses some of the key decisions that legal readers make when encountering a citation:<sup>69</sup> Is the cited source primary or secondary? How recent is it? If it’s primary, what kind of primary authority is it? If it’s a judicial opinion, which court decided it? A state court? Which state? Federal? Which circuit? Which level of court? (There are even more questions to ask when assessing the weight of a cited authority, but you get the picture.)

In-line citations give legal readers ready access to that information because the information appears right next to the text it supports, removing physical barriers to information transfer.<sup>70</sup> As Ziff points out, “the reader could find this information by locating the relevant source,”<sup>71</sup> perhaps even by following a hyperlink embedded in the document. “But

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*Citation Formats in the United States: Is A Radical New Approach Needed?*, 23 INT’L J. LEGAL INFO. 53, 56 (1995) (“Legal citations serve one overriding purpose: to lead the reader directly to the cited source accurately and efficiently, without enforced recourse to any other source of information.”). Others cast the locating purpose as the primary purpose and the communicative purpose as a secondary purpose. The locating purpose is often listed first even when the author recognizes that the communicative purpose is more important. *See, e.g.*, Salmon, *supra* note 26, at 769 (“The second purpose is often equally or more important: effective legal citation efficiently communicates to the reader the weight and vintage of that support.”). However, the shift away from the primacy of the locating purpose might be explained by the shift away from bound books to digital research. Locating legal authorities is much easier now than it used to be.

<sup>66</sup> Ziff, *supra* note 21, at 683.

<sup>67</sup> *Id.*

<sup>68</sup> *See* Schauer, *supra* note 8, at 1934 (“[S]omething as seemingly trivial as citation practice turns out to be the surface manifestation of a deeply important facet of the nature of the law itself.”).

<sup>69</sup> For a list of criteria used to assess the weight of a cited authority, see CHEW & PRYAL, *supra* note 1, at 61–66.

<sup>70</sup> In a classification of scholarly citation systems used in the biosciences, R.B. Williams described “information transfer” in the context of citation as the “effectiveness in published texts of citation systems in transferring information to the reader.” Williams, *supra* note 50, at 1000.

<sup>71</sup> Ziff, *supra* note 21, at 683.

*legal* readers need to evaluate the weight of authority on the fly without flipping to a bibliography or taking a trip to the library.”<sup>72</sup>

Extracting information about the weight of a cited authority requires a good deal of domain-specific knowledge that non-lawyers tend not to possess and that affects how readers interpret legal texts.<sup>73</sup> For example, consider the knowledge necessary to assess the relative weights of propositions supported by respective citations to the Federal Appendix, the Federal Reporter, and the Atlantic Reporter.<sup>74</sup> To sort through *only* the reporter information, the reader needs to know the distinction between federal and state jurisdictions, the distinction between published and unpublished opinions, and the further distinction between reported and unreported opinions. Once we add in citation information such as the deciding court and year, assessing weight requires additional knowledge about court hierarchies and the role of recency.<sup>75</sup>

Legal readers rely on legal citations to transfer information to them about the weight of authority, but the act of assessing the authority happens in the reader’s mind and requires deciphering whatever abbreviations are used, attaching those abbreviations to fairly detailed knowledge of the U.S. legal system, and then comparing the information about the cited authority with both the proposition it supports and the context of the document in which the proposition and citation appear. This is a complex set of mental transactions to be engaging in between lines of text. But citation style rules can help.<sup>76</sup> For example, the *Bluebook* rule for ordering authorities within a string cite reinforces the general

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<sup>72</sup> *Id.*

<sup>73</sup> See, e.g., TERRILL POLLMAN ET AL., EXAMPLES & EXPLANATIONS: LEGAL WRITING 18 (2011) (“Sometimes, students misinterpret the applicable legal rules because they don’t yet understand weight of authority.”).

<sup>74</sup> All three are reporters, which are “set[s] of books containing judicial opinions from a particular court or group of courts.” CHEW & PRYAL, *supra* note 1, at 444. All three of these reporters are published by the West Publishing Group. The Federal Appendix contains only unpublished opinions of the federal circuit courts. *Id.* at 435. The Federal Reporter contains only published opinions of the federal circuit courts. *Id.* And the Atlantic Reporter is a regional (or national) reporter containing published opinions from the state appellate courts of Connecticut, Delaware, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont. *Id.* at 24.

<sup>75</sup> More recent cases tend to be more authoritative than older cases. *Id.* at 63–64. And the level of issuing court affects whether one state’s court must follow a case issued by another of the state’s courts. The most straightforward explanation is that courts “are only bound by opinions issued by courts above them in the court hierarchy.” *Id.* at 64. But to figure that out, the reader needs to know the relative positions of the two courts being considered. Adding in additional complications such as the *Erie* Doctrine or geographic proximity only proves the point that domain-specific knowledge is a prerequisite for understanding the role of legal citations in analysis. For more on the geographic proximity hypothesis, see Kevin Bennardo, *Testing the Geographical Proximity Hypothesis: An Empirical Study of Citations to Nonbinding Precedent by Indiana Appellate Courts*, 90 NOTRE DAME L. REV. ONLINE 125, 149 (2015).

<sup>76</sup> See Franklin, *supra* note 6, at 117–18 (describing *Bluebook* rules that help the reader making meaning from the relationship between a cited authority and the proposition it supports).

hierarchy of legal authorities by providing a default order that matches that hierarchy: constitutions, statutes, federal cases, state cases, and so on.<sup>77</sup> And within the categories of cases, the default order is “in order of descending authority” within jurisdictions.<sup>78</sup>

Legal readers use the content of in-line citations to inform themselves about the quality of the writer’s support. Readers extract information from legal citations to inform their understandings of the texts containing those citations.<sup>79</sup> And experienced legal readers *expect* to see citations. As Professor Mary Beth Beazley put it,

Legal writing is referenced writing, and readers expect frequent citation. You can use short citation forms and effective sentence structures to keep your writing readable, but you must include citation whenever you state a legal proposition . . . This means that . . . every sentence may have a citation after it. Many of the citations may be in the “*Id.*” form, but the reader will still expect and need citations.<sup>80</sup>

All of this suggests that the convention of in-line citation persists, despite some drawbacks, in order to communicate information to the reader.<sup>81</sup> Communication is the only purpose that the very strong convention of in-line citations is reasonably serving. First, locating cited sources is often as easy as clicking a hyperlink or typing (or copy-and-pasting) the words of a citation into a search bar. Footnotes serve the locating purpose as well as in-line citations do. Second, the credibility purpose is no more served by in-line citations than footnoted citations—indeed, it might be better served by footnoted citations because they’re all grouped together on the page for judgment. And finally, the attribution purpose overlaps somewhat with the communicative purpose,

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<sup>77</sup> See BLUEBOOK, *supra* note 20, at 5.

<sup>78</sup> *Id.* The corresponding Whitepages rule for academic footnotes leans away from the more subjective advice of “in order of descending authority.” *Id.* at 61. Rule 1.4(d) instead specifies that “whether the opinion is published or unpublished” is “irrelevant to the order of citation,” and instead all “[c]ases decided by the same court are arranged in reverse chronological order; for this purpose, all United States circuit courts of appeals are treated as one court . . . , and all federal district courts are treated as one court.” *Id.*

<sup>79</sup> CHEW & PRYAL, *supra* note 1, at 12–13 (“[To] an expert legal reader, the citations provide useful information about the legal authorities—like the type of legal authority and who created it—that helps the reader assess how strongly the cited legal authority supports the writer’s argument.”).

<sup>80</sup> MARY BETH BEAZLEY, A PRACTICAL GUIDE TO APPELLATE ADVOCACY 124 (3d ed. 2010).

<sup>81</sup> See NEUMANN & SIMON, *supra* note 43, at 173 (“A reader needs specific information about each authority you cite and needs it expressed precisely and succinctly in ‘citation language’ that can be quickly skimmed and understood. A properly constructed citation conveys a large amount of information in a very small space.”)

but it seems to be concerned mainly with avoiding plagiarism,<sup>82</sup> which can be done without in-line citations.

### C. Recognizing Citation Literacy

Although legal citations' most important purpose is to communicate substantive information *about the surrounding text* to the reader, they are not usually described that way. Instead, they are framed as obstacles between the reader and the text.<sup>83</sup> Bryan Garner is the most visible proponent of the view that citations are obstacles between the reader and the text.<sup>84</sup> For example, in *The Redbook, A Manual on Legal Style*, he advises writers to “[o]verride *The Bluebook* on a few key points,” although specifically the number is four.<sup>85</sup> Three of those are minor items: when to spell out numbers, when to use a section symbol, and when to underline (never).<sup>86</sup> The fourth, though, is pretty major:

*Citations in footnotes.* Ignore any suggestion or prescription about placing citations in text in court papers. If court rules otherwise allow footnoting citations, you may and probably should do so. Doing so eliminates the clutter of numerical pollution.<sup>87</sup>

A few things are going on here that unnecessarily demean in-line citations. First, placing citations in footnotes rather than in-line is not only a deviation from *The Bluebook*, which is just a style guide, it is also a deviation from the very strong convention to use in-line citations in briefs, memos, and other practical legal documents. Second, Garner advises breaking this convention for the purpose of “eliminate[ing] the clutter of numerical pollution,” which assumes that legal readers don’t appreciate or make sense of the content of citations.<sup>88</sup>

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<sup>82</sup> See, e.g., M. C. Mirow, *Confronting Inadvertent Plagiarism*, 2 PERSP: TEACHING LEGAL RES. & WRITING 61, 62 (1998).

<sup>83</sup> See, e.g., SCHIESS, *supra* note 41, at 7–8 (“But often, including a lot of authority means the text won’t flow; instead, the reader can get bogged down in citations. That’s typical of legal writing – we lawyers often insert long, hard-to-read legal citations into our text, unintentionally creating ‘hiccups’ for our readers.”); *id.* at 45–51 (suggesting reduced citations in writings to clients); Mary Beth Beazley, *Better Writing, Better Thinking: Using Legal Writing Pedagogy in the “Casebook” Classroom (Without Grading Papers)*, 10 LEGAL WRITING: J. LEGAL WRITING INST. 23, 50 (2004) (“[L]egal writers are usually “constrained” by their readers’ expectations about format requirements and rules of grammar and citation . . .”).

<sup>84</sup> Joseph Kimble, *Where Should the Citations Go?*, MICH. B.J., July 2010, at 56, 56 (describing Garner as “the most forceful proponent of footnoted citations” and “America’s preeminent authority on legal language and writing”).

<sup>85</sup> GARNER, *THE REDBOOK*, *supra* note 62, at 149.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> Garner has suggested that readers lack citation-reading skills. GARNER, *PLAIN ENGLISH*, *supra* note 4, at 77.



Garner is not alone in framing citations this way, although perhaps others use more tempered language.<sup>89</sup> This framework is typical in first-year legal research and writing texts and citation supplements. For example, Professor Linda Edwards, in her popular legal writing textbook, explains that in-line citations “can make the text hard to read” because the reader must “jump over” the contents of the citation, find where the text restarts, and “pick back up the message of the text.”<sup>90</sup> This approach is consistent with her later statement that “citations are devoid of discussion.”<sup>91</sup> A description like Edwards’s is hard to square with citations being an integral part of legal texts. Instead, a novice law student would get the impression that citations are the words that keep you from the text and contribute nothing to the substance.

The impression that citations do not “have very much to do with the substance of legal argument or the determination of legal outcomes”<sup>92</sup> is compounded by the common advice to new legal writers to minimize citations *because* they detract from the reader’s ability to make meaning. Indeed, common advice to new legal *writers* is that they should “minimiz[e] the disruption caused by citations” by avoiding mid-sentence case citations, avoiding beginning a sentence with a citation, and avoiding long string citations.<sup>93</sup> These are all generally recognized as effective techniques for writing in-line citations, but characterizing the citations as disruptions diminishes the work that the citations do in the legal analysis.

This Article argues for a different approach to legal citation, one that explicitly recognizes the communicative purpose of legal citation in practical legal texts. Citation literacy—the ability to *read and* write citations—has been unrecognized as a discrete lawyering skill, one that lawyers deploy when reading judicial opinions and other genres that use in-line citations, like briefs and memoranda, and when writing in those genres. As described in Part III, the prevailing citation pedagogy does not cultivate citation literacy, but it should.

### III. HOW WE GOT HERE: WRITE-FIRST CITATION PEDAGOGY

The practical genre that first-year law students read most often is the judicial opinion, which conventionally uses in-line citations. Similarly, the practical genres that law students most often write in their first-year

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<sup>89</sup> See note 86, *supra*. But see Mark E. Steiner, *Without Precedent: Footnotes in Judicial Opinions*, 12 APP. ADVOC. 3, 3 (1999) (“Put simply, footnotes are interruptions.”)

<sup>90</sup> LINDA H. EDWARDS, *LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION* 196 (5th ed. 2010).

<sup>91</sup> *Id.* at 197.

<sup>92</sup> Schauer, *supra* note 8, at 1932.

<sup>93</sup> EDWARDS, *supra* note 90, at 196. Edwards’s advice on how to cite “with style and grace” is wise. My quibble is only that it is based on the premise that “citations are devoid of discussion” and thus the writer’s focus should be on minimizing their disruption rather than employing them as tools of communication.

courses—office memos and briefs<sup>94</sup>—also conventionally use in-line citations.<sup>95</sup> However, despite the prevalence of in-line citations in the genres that students encounter during their first year of law school, current citation pedagogy does not teach students to read citations or conceive of them primarily as communicative elements of legal documents.<sup>96</sup>

Instead, the prevailing citation pedagogy ignores the communicative function that legal citations serve in the documents that students read,<sup>97</sup> or it frames legal citations as unwelcome interruptions to the text that must be tolerated in the name of tradition.<sup>98</sup> By deemphasizing the communicative purpose of legal citation while simultaneously requiring students to learn to write legal citations, legal educators strip legal citation of its meaning-making function.<sup>99</sup> And what's left is simply the tedious skill of producing “properly” formatted legal citations—an exercise in obedience that is not particularly meaningful.

Deemphasizing the communicative purpose of legal citation, which Part II asserts is the main purpose of legal citation, also makes prominent the other purpose of citation that is usually new to law students: proving the writer's credibility to the reader via how compliantly the citations are formatted.<sup>100</sup> Law students likely encountered the locating purpose and the attribution purposes of citation in their pre-law-school writing careers. Students can easily match these purposes with their prior knowledge, and thus less instruction is needed to convince students of the roles that citations play in locating sources and attributing authorship.

The credibility purpose is not just new to law students but also salient.<sup>101</sup> One obvious difference between first-year law students' prior

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<sup>94</sup> Association of Legal Writing Directors/Legal Writing Institute, 2015 Survey Results xi (on file with author) [hereinafter “ALWD Survey”].

<sup>95</sup> Schauer, *supra* note 8, at 1934.

<sup>96</sup> See Franklin, *supra* note 6, at 110–11.

<sup>97</sup> *Id.* at 112.

<sup>98</sup> See note 86, *supra*.

<sup>99</sup> See Franklin, *supra* note 6, at 112.

<sup>100</sup> See, e.g., Salmon, *supra* note 26, at 795 (“Under this theory, flawless Bluebooking becomes a proxy for flawless research, analysis, and writing.”).

<sup>101</sup> And not just by being more visible. The credibility purpose can invoke emotional responses. For example, law librarian and law professor Mary Whisner compared the anxiety provoked by producing *Bluebook*-compliant citations to “certain social anxieties.” Whisner, *supra* note 7, at 393. As she explained, even small failures in the realm of citation form can sting:

You know what it's like to go to a formal dinner, hoping to impress your hosts, and worrying that you'll be judged on your misuse of a fork? Or to be the new kid in school discovering too late that clothes you used to wear at your old school are considered uncool? Those feelings are similar to what students (and others) feel when their papers are marked up for violations of fussy little citation rules they were only vaguely aware of. In each case there is a code of rules—etiquette, teenage fashion, or citation format—but the newcomer does

citation experience and law school citation experience is how much more visible in-line citations are to the reader (and the writer) than footnoted or endnoted citations, which can easily be ignored by not reading past the line at the bottom of the page (footnotes) or not reading the last few pages of the document (endnotes). By contrast, in-line citations surround the writer's text, and so unexpected formatting choices stand out more than when the citations are sequestered away in a different part of the document.

This enhanced visibility—coupled with the substantive knowledge required to make meaning from citations—has contributed to the emphasis that legal writing experts place on the credibility purpose of citations. Law students are often advised that their credibility hinges on how impeccably their citations are formatted.<sup>102</sup> Some readers do use citations as a proxy for quality—assessing the writer's credibility on all matters based on how well the citations are formatted.<sup>103</sup> This happens and students should know that some audiences will read their work this way.<sup>104</sup> However, as Professor Peter Nemerovski bluntly put it: “[I]t is absurd to presume that just because a legal document has flawless

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not fully understand the rules, and the social stakes are high. A novice who blows it, even on a detail that seems very insignificant to the uninitiated, faces rejection by the high prestige group. With Bluebook citation, the rejection takes the form of a lower score on a writing assignment or instructions from a journal editor to fix a draft, but it's rejection nonetheless.

*Id.* at 393–94.

<sup>102</sup> *See, e.g.*, NEUMANN & SIMON, *supra* note 43, at 173 (“If your citation form is faulty, readers quickly notice that and might doubt the quality of your work in other ways.”); SCHIESS, *supra* note 41, at 55 (“If your letter contains faulty legal citation, opposing counsel might consider you inept.”); MCCLURG, *supra* note 16, at 328 (“If you are not precise with your typing, your proofreading, your citation, your punctuation, how then will your reader have confidence in your work?”). However, there is an important distinction between “all of your citations must be perfect always” and “you must follow court rules about citation.” Despite the many court filings that do not follow court rules about citation, figuring out those local rules and trying to get them right is important and a good match to reader needs and expectations. *See, e.g.*, Joe Fore, *Encourage Students to Eliminate the Brown M&Ms from Their Legal Writing*, 25 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 18, 19 (2016) (“Overlooking or flouting [court rules] sends the message that the lawyer isn't committed to finding or following the rules—hardly a desirable reputation for an attorney.”).

<sup>103</sup> Professors Jill Barton and Rachel Smith hit the balance well in their admonition to first-year students learning to write legal citations: “You will encounter judges, supervisors, professors, and colleagues who are exacting about legal citation. For them, a writer's ability to format citations correctly demonstrates that writer's credibility, attention to detail, and professionalism.” JILL BARTON & RACHEL H. SMITH, *THE HANDBOOK FOR THE NEW LEGAL WRITER* 282 (2014).

<sup>104</sup> For example, one hiring attorney included cite-checking in a screening test because it is a task that her firm “ask[s] an office manager or a legal secretary to do routinely.” Lori Andrus, *Finding the Right Staff: One Firm's Approach*, TRIAL, January 2013, at 36. She noted both that “familiarity with the *Bluebook* rules is an important skill.” *Id.* “The first question on the screening test asks the applicant to correct five citations, followed by a list of case cites that contain minor errors. It's a good way to measure a person's attention to detail.” *Id.*

bluebooking, everything else must be fine. Accurate bluebooking shows that a writer can master detailed instructions but tells the reader nothing about the writer's capacity for rigorous legal analysis and creative thought."<sup>105</sup>

Moreover, the citations-as-proxy-for-quality might not be as widely held a belief as some legal writing texts suggest.<sup>106</sup> The emphasis on "properly styled citations" is belied by the "improper" citation that fills court filings and experiences like that of legal writing professor Jessica E. Price (Slavin), who wrote of having "had the experience of inviting practitioners to speak to my legal writing classes to give a 'real-world' perspective and then standing by as some speakers offer a much more laid-back, dare I say sloppy, approach to matters such as grammar, punctuation, and citation form than I take myself."<sup>107</sup>

The current overemphasis on citation form has been soundly criticized from various perspectives,<sup>108</sup> and this Article agrees with the general consensus in citation scholarship that the "legal profession needs a new approach to legal citations and legal style."<sup>109</sup> However, the novel approach this Article advances is not a new style guide<sup>110</sup> or a technological solution.<sup>111</sup> Instead it's a pedagogical one: teach citation *literacy*, not citation formatting, and the rest will follow.

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<sup>105</sup> Peter Nemerovski, *Beyond the Bluebook: Teaching First-year Law Students What They Need to Know About Legal Citation*, 56:4 ARIZ. L.R. SYLLABUS 81, 87 (2014). *But see* DIANA R. DONAHOE, EXPERIENTIAL LEGAL WRITING: ANALYSIS, PROCESS & DOCUMENTS 400 (2011) ("Using correct citation adds credibility to your writing; if a judge can trust your citations, she can also trust your analysis."). Also, just the term "bluebooking" suggests that the writer's focus is on complying with the *Bluebook* rather than communicating information to the reader. It's a ubiquitous term and Professor Nemerovski's use of it helps underscore the misapplication of attention on the *Bluebook* rather than communicating with the reader.

<sup>106</sup> "Judges, it turns out, are indifferent to the Bluebook's elaborate requirements. In a legal memorandum, a citation is adequate so long as the judge can discern what document is being cited and where to find it." Jonathan Mermin, *Remaking Law Review*, 56 RUTGERS L. REV. 603, 613 (2004). Dr. Mermin's experiences notwithstanding, my experience is that your mileage may vary when it comes to judges and citations.

<sup>107</sup> Jessica E. Price, *Imagining the Law-Trained Reader: The Faulty Description of the Audience in Legal Writing Textbooks*, 16 WIDENER L.J. 983, 1022 (2007).

<sup>108</sup> For a sampling of these criticisms, see Nemerovski, *supra* note 105, at 83 n.6.

<sup>109</sup> Posner, *Goodbye*, *supra* note 40, at 1343.

<sup>110</sup> *E.g.*, ALWD GUIDE, *supra* note 38; INDIGO BOOK, *supra* note 39; MAROONBOOK, *supra* note 37; Gallacher, *supra* note 2, at 530 (proposing that law schools take up the neutral citation cause by "working together to find, edit, and publish American common law for the benefit of all"); Posner, *Goodbye*, *supra* note 40, at 854; Nemerovski, *supra* note 105.

<sup>111</sup> Stephen M. Darrow & Jonathan J. Darrow, *Beating the Bluebook Blues: A Response to Judge Posner*, 109 MICH. L. REV. FIRST IMPRESSIONS 92, 92 (2011) ("[W]e suggest citation-formatting software as a means of maximizing the utility of citations while minimizing the burden of creating them.").

### A. The Untaught Skill of Reading Citations

Citation is rarely introduced as a central part of legal analysis. Instead, it is introduced as an add-on to legal analysis—setting up a dichotomy between legal analysis (important) and the citations that disrupt that legal analysis (unimportant). Professor Judith Welch Wegner captured this view well by using citation to explain why introductory legal research courses tend to exist at the margins of the law school curriculum:

courses that introduce legal research to first year students may be marginalized because they are seen as a venue for introducing very detailed information about sources (what sources exist, what is their value for diverse purposes, how should they be cited), rather than valued as emphasizing the exercise of professional judgment regarding what information is needed, how its quality is best assessed, and how diverse forms of knowledge should best be integrated and employed to accomplish important tasks.<sup>112</sup>

In other words, “information about sources,” including how to cite those sources, is viewed separately from the considerable professional judgment required to assess the merits of the sources and incorporate them in legal analysis (or assess their use in *others’* legal analysis). This uncoupling<sup>113</sup> of citation from analysis is inconsistent with both the communicative purpose of citation and even, to some degree, what legal citation experts collectively purport to believe about the importance of legal citation.<sup>114</sup> The primary agents of uncoupling citation from legal analysis are first-year casebook courses and first-year legal research and writing courses. As a general matter, neither type of first-year class teaches law students to read citations.<sup>115</sup>

The traditional first-year law school curriculum is composed of casebook classes (like Contracts and Torts) and legal research and

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<sup>112</sup> Wegner, *supra* note 13, at 888.

<sup>113</sup> The uncoupling metaphor is deliberate and refers to uncoupling train cars from the locomotive that actually powers the train. This portion of the Article could be conceived of as describing an unconscious uncoupling. Cf. Michael Fleeman, *Gwyneth Paltrow Explains “Conscious Uncoupling,”* PEOPLE (Sept. 23, 2016).

<sup>114</sup> See, e.g., Salmon, *supra* note 26, at 769 (“[A]ccurate and effective legal citation is important . . .”).

<sup>115</sup> One theory of why this particular skill has been overlooked is the “skills deployment assumption” described by Professor James F. Stratman as an assumption that “[n]ew [law] students are expected to somehow deploy the reading skills they have already developed, as if the transfer of these skills to legal reading tasks is not difficult enough to require direct instruction.” James F. Stratman, *The Emergence of Legal Composition as a Field of Inquiry: Evaluating the Prospects*, 60 REV. OF EDUC. RES. 153, 172 (1990). Professor McClurg counters this assumption when explaining the difference between previous writing experience and a first-year legal writing course: “Students may also assume that they can use the same processes they used for college papers on their legal writing assignments. This will not work. The research is different, the citation style is different, and the analysis is new.” MCCLURG, *supra* note 16, at 311.

writing classes.<sup>116</sup> Reading cases is a large component of both sets of classes.<sup>117</sup> However, given that first-year students spend on average five credit hours in legal writing classes<sup>118</sup> and the remaining credit hours (twenty-five or so) in casebook classes, the vast majority of cases that students read are in casebooks. The emphasis placed on legal citations in the cases that comprise casebooks, which is to say no emphasis at all, is the dominant message sent by the first-year law school curriculum about legal citation.

Cases in casebooks are often stripped of most if not all of their in-line citations.<sup>119</sup> Casebook authors might do this to keep the overall length of their books down,<sup>120</sup> or because the citations don't serve the authors' pedagogical purposes,<sup>121</sup> or a combination of both.<sup>122</sup> Whatever the reasons, the result is that first-year students spend most of their time reading cases in which statements of law are not followed by citations. The law is simply pronounced, without provenance, even if the authoring court did build its arguments from legal authorities. These are the

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<sup>116</sup> For brevity this Article generally refers to these classes just as “legal writing” classes, although the legal research component of legal research and writing classes—if it can even be separated out as a separate component—is very important to developing and using citation literacy.

<sup>117</sup> See, e.g., MICHAEL HUNTER SCHWARTZ, EXPERT LEARNING FOR LAW STUDENTS 85 (2d ed. 2008) (“[C]ases are not only one of the four main units of instruction, but they are also often the axis around which the other three units revolve.”).

<sup>118</sup> ALWD Survey, *supra* note 94, at 7 (noting average credits for legal research and writing courses during the first year of law school in 2015 was 5.04).

<sup>119</sup> Casebook authors “heavily edit and redact” the opinions in casebooks to limit the scope of the remaining excerpt to the “single issue” being considered in the casebook. In addition to editing out portions of opinions relating to extraneous issues, “[o]ther extraneous content may also be trimmed or summarized, including case citations [and] analysis of case precedent . . . .” MCCLURG, *supra* note 16, at 179. *But see* A. JAMES CASNER ET AL., CASES AND TEXT ON PROPERTY (5th ed. 2004) (adding parallel citations to citations and indicating the additions with square brackets).

<sup>120</sup> E.g., ERWIN CHERMERINSKY, CONSTITUTIONAL LAW xxxv (2d ed. 2005) (“I discovered that producing a text of reasonable length necessitates far more editing than I wish were necessary. . . . I generally omitted the Court’s citations, except where they seemed important to communicate something specific about the authority relied upon.”).

<sup>121</sup> E.g., BRIAN A. BLUM & AMY C. BUSHAW, CONTRACTS: CASES, DISCUSSION, AND PROBLEMS xxxvii (2003) (“We have eliminated all citations which we feel are not needed for teaching purposes.”); JOSHUA DRESSLER & STEPHEN P. GARVEY, CASES AND MATERIALS ON CRIMINAL LAW ix (6th ed. 2007) (“Footnotes and citations have been omitted, unless there was a sound pedagogical reason for their retention.”); *see also* ROBERT H. KLONOFF, INTRODUCTION TO THE STUDY OF U.S. LAW vi (2016) (“I have deleted citations contained within cases unless those citations serve a pedagogical purpose (such as allowing a student to read the cited case as background or for edification.”); GERALD PAUL MCALINN ET AL., AN INTRODUCTION TO AMERICAN LAW xxi–xxii (2d ed. 2010) (noting in a prefatory “note on reading cases” that “the reader will develop the greatest sense and feel for the American legal process through reading the excerpted cases” and that the casebook authors had “deleted virtually all references to governing authority”).

<sup>122</sup> E.g., CHERMERINSKY, *supra* note 120, at xxxv.

examples of long-form legal analysis that law students see over and over again, and the convention they reasonably could take away from those examples is that in-line citations occur only sometimes, and certainly not after every statement of law. That takeaway is contrary to the prevailing convention of supporting statements of law with citations to appropriate legal authorities.

Nevertheless, casebooks do retain some in-line citations.<sup>123</sup> And so casebooks do provide some opportunity to practice reading citations for meaning. However, the skill of reading citations has been overlooked in the literature about how to teach students to read cases. In the past twenty-five years or so, legal educators have endeavored to teach students how to read cases<sup>124</sup> rather than relying on the traditional “immersion” technique of making students figure it out on their own.<sup>125</sup> Many excellent teaching materials now exist that advise students that reading cases is an essential skill and teach students how to do so.<sup>126</sup> As effective as these teaching materials are at teaching students to read the text of a case, they don’t tell students what to do with the in-line citations that “interrupt” the already challenging texts they are trying to decipher.<sup>127</sup>

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<sup>123</sup> *E.g.*, SHELDON F. KURTZ ET AL., *CASES AND MATERIALS ON AMERICAN PROPERTY LAW* (6th ed. 2012).

<sup>124</sup> *E.g.*, TRACEY E. GEORGE & SUZANNA SHERRY, *WHAT EVERY LAW STUDENT REALLY NEEDS TO KNOW* 65–80 (2009); HUNTER SCHWARTZ, *supra* note 117, at 85–123; RUTH ANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT* (2d ed. 2012); Orin Kerr, *How to Read a Legal Opinion: A Guide for Law Students*, 11 *GREEN BAG 2D* 52 (Autumn 2007). Some casebooks even include instruction on reading cases. *E.g.*, BLUM & BUSHAW, *supra* note 121, at 6–8 (providing a primer on reading and briefing cases).

<sup>125</sup> “Immersion” is probably a euphemism for “drowning.” *See, e.g.*, Mary A. Lundeberg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 *READING RES. QUARTERLY* 407, 409 (1987) (“One law school dean that I interviewed . . . said there is no special way to read a case; law students must suffer to learn.”); SCOTT TUROW, *ONE L: THE TURBULENT TRUE STORY OF A FIRST YEAR AT HARVARD LAW SCHOOL* 16 (1977) (“Tried tonight to read a case for the first time. It is harder than hell. . . . It was nine o’clock when I started reading. The case is four pages long and at 10:35 I finally finished. It was something like stirring concrete with eyelashes. I had no idea what half the words meant. I must have opened *Black’s Law Dictionary* twenty-five times and I still can’t understand many of the definitions. There are notations and numbers throughout the case whose purpose baffles me. And even now I’m not crystal-clear on what the court finally decided to do.”). Lundeberg, writing in 1987, framed her study of how experts and novices read legal texts by describing the conundrum of the novice legal reader: “Analyzing a legal case is a complex task for a beginning law student. Not only are legal texts largely incomprehensible to beginners, but students are rarely given instruction in case reading. Thus, case reading is often fraught with distress.” LUNDEBERG, *supra* note 125, at 409.

<sup>126</sup> *See supra* note 124.

<sup>127</sup> *See* GEORGE & SHERRY, *supra* note 124, at 65–80 (describing how to read a case without mentioning in-line citations and providing three case excerpts to read, two of which contain in-line citations); MCKINNEY, *supra* note 124 (no mention of in-line citations); Kerr, *supra* note 124, at 52 (explaining in plain language the content of legal opinions and what a reader should get out of reading an opinion, but without any

Some teaching materials do get part of the way there by advising students to read the case caption—which usually includes a citation—before the text of the opinion, as a way of getting context for the opinion.<sup>128</sup> This advice implements a reading skill possessed by expert legal readers.<sup>129</sup> For example, experts use the citation in the caption to identify the parties, the date of the decision, the court, and perhaps the type of decision.<sup>130</sup>

Even when advice about legal reading describes reading the citation in a case caption as a necessary step to learning important contextual information about the case, that same advice doesn't extend to reading the in-line citations that most judicial opinions use.<sup>131</sup> This lack of guidance makes some sense in the context of reading cases to learn

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mention of the citations in the text of the opinion); *see also* LAUREL CURRIE OATES & ANNE ENQUIST, *JUST MEMOS 27-36* (2003) (explaining that “[p]art of learning how to think like a lawyer is learning how to read like a lawyer,” offering advice for reading statutes and cases without mentioning in-line citation, and including several excerpts to read, none of which contains in-line citations); KIMM ALAYNE WALTON & LAZAR EMANUEL, *STRATEGIES & TACTICS FOR THE FIRST YEAR LAW STUDENT 26-40* (2010) (offering advice about reading and briefing cases without mentioning in-line citation). This trend generally continues in teaching materials designed for foreign-trained lawyers who are studying U.S. law. *See, e.g.*, DEBORAH B. MCGREGOR & CYNTHIA M. ADAMS, *THE INTERNATIONAL LAWYER'S GUIDE TO LEGAL ANALYSIS AND COMMUNICATION IN THE UNITED STATES 53-66* (2008) (presenting a case excerpt to read followed by an explanation of how to read the case and extract key information that aligns with the categories of a traditional case brief, but without mentioning in-line citations in the excerpt, of which there are five). *But see* WILLIAM BURNHAM, *INTRODUCTION TO THE LAW AND LEGAL SYSTEM OF THE UNITED STATES A7-A8, A12, A13* (5th ed. 2011) (annotating a fourteen-page-long state court case containing in-line citations with several footnotes commenting on the cited legal authorities, including two annotations flagging citations demonstrating that the majority and dissent relied on “scholarly commentary to support [their] positions” and one annotation explaining that a three-case string citation was used to “set[] out the limited view of Florida courts’ power to make common law based on the state constitutional separation of powers principles”).

<sup>128</sup> MCKINNEY, *supra* note 124, at 110; Kerr, *supra* note 124, at 52 (listing “the case citation” as one of the items in a judicial opinion, and explaining that the “letters and numbers” below the case name “are the legal citation for the case” and “tells [the reader] the name of the court that decided the case, the law book in which the opinion was published, and the year in which the court decided the case”).

<sup>129</sup> *See* Lundeberg, *supra* note 125, at 413 (“The experts usually circled the court and the date.”); Leah M. Christensen, *The Paradox of Legal Expertise: A Study of Experts and Novices Reading the Law*, 2008 B.Y.U. EDUC. & L.J. 53, 76-77 (2008); *see also* Linda L. Berger, *Applying New Rhetoric to Legal Discourse: The Ebb and Flow of Reader and Writer, Text and Context*, 49 J. LEGAL EDUC. 155, 170 (1999) (“The expert first seeks background information—what court decided the case (citation); what the case is about (the summary and headnotes); who won (the decision at the end).”).

<sup>130</sup> *See, e.g.*, Christensen, *supra* note 130, at 76-77 (2008) (“All of the experts in this study began their reading noting the context of the case, i.e., the date of the decision, the parties, the court, and the type of decision.”); Lundeberg, *supra* note 125, at 430 (advising students to use the citation to provide context by identifying the opinion’s date, the deciding state or federal court, and whether the parties are individuals or corporations).

<sup>131</sup> *E.g.*, MCKINNEY, *supra* note 124, at 110.



doctrine generally, as is the case in typical first-year casebook classes.<sup>132</sup> Casebooks tend to incorporate cases from many jurisdictions to illustrate general legal principles, and the exams used to assess the learning in those classes also tend to be jurisdiction-neutral or, at most, to differentiate only between majority- and minority-rule jurisdictions. But to the extent podium classes profess to be teaching the skill of *reading cases*<sup>133</sup> rather than just learning doctrine, then reading in-line citations is a more important skill. After all, understanding a case's citations and how the information they encode informs the surrounding text is an essential part of reading a case in the first place. A case that cites solely binding precedents and a case that cites no binding precedents will likely rely on different types of argument to support their outcomes.<sup>134</sup> Seeing the difference between them is necessary to becoming an expert legal reader in a common law system.

The pedagogical importance of reading in-line citations in judicial opinions is less equivocal in experiential courses like first-year legal writing courses.<sup>135</sup> First, teaching students to assess the weight of the authorities cited in the cases they're reading can reinforce the judgment that professors ask their students to deploy in their own writing. In those courses, professors ask their students to produce long-form legal analysis—that is, an explanation of law and an application of that law to some set of facts, for use in a genre like an office memorandum or appellate brief. Citing to supporting legal authority is a core convention in those genres, and legal research and writing professors care about *which* authorities are cited: Are they binding? Recent? Primary or secondary?

Second, reading the in-line citations is a critical legal research step. Sound advice offered by legal research experts is to find “one good case” and then mine it for citations to other authorities.<sup>136</sup> To do this efficiently,

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<sup>132</sup> Some casebook authors are quite clear about their pedagogical goals, which might not align with reading citations. For example Professor Dressler identified six “general principles” that have guided his teaching; none is learning to read cases. DRESSLER & GARVEY, *supra* note 121, at vii–viii. However, the casebook *authors'* pedagogical goals might differ from the casebook *instructors'* pedagogical goals. *Id.* at viii.

<sup>133</sup> In the chapter of *The Bramble Bush* called “This Case System: What to Do with the Cases,” Karl N. Llewellyn advised novice law students that “the first thing” they should do with the cases is learn to read them: “It is a pity, but you must learn to *read*. To read each word. To understand *each* word. You are outlanders in this country of the law. You do not know the speech. It must be learned. Like any other foreign tongue, it must be learned: by seeing words, by using them until they are familiar; meantime, by constant reference to the dictionary.” KARL N. LLEWELLYN, *THE BRAMBLE BUSH: THE CLASSIC LECTURES ON THE LAW AND LAW SCHOOL* 37 (Oxford University Press 2008). Llewellyn offers more advice about reading cases and how to learn from them in law school. He does not mention citations.

<sup>134</sup> See Schauer, *supra* note 8, at 1934.

<sup>135</sup> See Franklin, *supra* note 6, at 117.

<sup>136</sup> Susan Nevelow Mart, *Research Strategies Using Headnotes: Citators and Relevance*, COLO. LAW., July 2015, at 123

though, requires knowing what makes a case “good.”<sup>137</sup> Researchers need to know what kind of legal authority is lurking behind those internet links embedded in the case as it appears on the computer screen.<sup>138</sup>

To sum up, law students are not taught to read citations—either at the basic level of extracting encoded information from citations or at a more advanced level of connecting that information to the proposition supported by the citation. Not teaching these citation-reading skills contributes to the subversion of legal citation’s primary purpose: communication. It also increases the difficulty of teaching students to write citations.

## B. Write-First Citation Pedagogy

Casebook classes and legal writing classes don’t teach novice law students how to read citations, but students do learn about how readers interact with in-line citations, and eventually most teach themselves how to read the citations. Rather than teaching students to read citations, law schools take what this Article calls a “write-first” approach to teaching citation. The write-first citation pedagogy teaches students to write citations, with a particular focus on writing citations that conform to a particular legal citation style guide like the *Bluebook*.

Although not much attention is paid to teaching the skill of *reading* citations, a lot of attention is paid to teaching the skill of *writing* citations.<sup>139</sup> Indeed, any references to reading legal citations are typically made in the context of writing for a hypothetical “reader” who has certain expectations about how citations will appear in a legal document.<sup>140</sup> Typically first-year legal writing courses introduce students to writing citations,<sup>141</sup> and student journal boards take the next shift.<sup>142</sup> Based on the literature, it appears that teaching citation brings joy to neither legal writing professors<sup>143</sup> nor student journal editors.<sup>144</sup>

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<sup>137</sup> Information literacy is at the heart of this question and beyond the scope of this Article. For ideas about centering legal research pedagogy in information literacy, see Ellie Margolis & Kristen E. Murray, *Using Information Literacy to Prepare Practice-Ready Graduates*, 39 UNIV. OF HAW. L. REV. tk, tk (forthcoming 2016).

<sup>138</sup> Katrina June Lee et al., *A New Era: Integrating Today’s “Next Gen” Research Tools Ravel and Casetext in the Law School Classroom*, 41 Rutgers Computer & Tech. L.J. 31, 39 (2015).

<sup>139</sup> See, e.g., Salmon, *supra* note 26, at 764 (“Legal-writing professors spend hundreds of hours teaching legal citation format. Law firms record countless hours checking and perfecting the citations in their documents.”)

<sup>140</sup> See, e.g., BARTON & SMITH, *supra* note 103, at 282.

<sup>141</sup> Salmon, *supra* note 26, at 796 (“Most attorneys learn legal citation in their first-year legal-writing classes.”)

<sup>142</sup> Nathan H. Saunders, *Student-Edited Law Reviews: Reflections and Responses of an Inmate*, Note, 49 DUKE L.J. 1663, 1670 (2000) (“For student editors, participation in law review hones skills of legal argument and legal writing, teaches familiarity with Bluebook citation style, and indoctrinates the student with a general attention to detail that is extremely valuable in legal practice.”).

<sup>143</sup> See, e.g., Sheila Simon, *Top 10 Ways to Use Humor in Teaching Legal Writing*, 11 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 125 (2003) (“What’s more exciting

Nevertheless, first-year legal writing professors persevere, year after year, and teach their students how to place and form citations.<sup>145</sup> Most first-year courses use the *Bluebook*, and a minority use the more user-friendly *ALWD Manual*.<sup>146</sup> At least one professor, finding the *Bluebook* overmatched for his students' needs, came up with his own streamlined citation system.<sup>147</sup> Others cope by doing citation games in class.<sup>148</sup>

The authors of legal research and writing texts value the principle that citation is a means by which legal readers will assess how well they've supported their claims with legal authority,<sup>149</sup> but most of the attention (if there is any) is directed at writing citations to conform to a style guide, usually the *Bluebook*.<sup>150</sup> Rarely are citations *introduced* as

than learning the citation manual? Just about anything.”); Marci Smith & Naomi Harlin Goodno, *Bluebook Madness: How to Have Fun Teaching Citation*, 16 PERSP: TEACHING LEGAL RES. & WRITING 40 (2016) (“During the fall semester, as we prepared for a *Bluebook* lecture, even we were bored to tears.”).

<sup>144</sup> On the student editor side, most of the misery seems to come from “cite-checking,” which generally requires checking the proposition against the supporting authority to see if the latter truly supports the former *and* revising the citation's form to comply with the *Bluebook's* style. *See, e.g.*, Mermin, *supra* note 106, at 612 (“Because of its elaborate, non-intuitive rules, proofing is an onerous and time-consuming task.”); Darrow & Darrow, *supra* note 111, at 93 (“Like hundreds of Bob Cratchits slaving away for an ungrateful master, at *The Bluebook's* command they pour over such menial issues as whether Alaska should be abbreviated AK, Alas., or not at all, or whether the period in “*id.*” should or should not be italicized.”). *But see* Saunders, *supra* note 142, at 167 (“As a staff editor, I often found myself in deep discussions with an article editor, a research editor, or another staff editor about the best way an author could use a source to support his assertion or about the clearest and most logical form for a unique citation . . .”).

<sup>145</sup> Salmon, *supra* note 26, at 796–97.

<sup>146</sup> ALWD Survey, *supra* note 94, at 19.

<sup>147</sup> Nemerovski, *supra* note 105, at 94.

<sup>148</sup> Sheila Simon, *Top 10 Ways to Use Humor in Teaching Legal Writing*, 11 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 125 (2003) (describing a citation version of the game show “Who Wants to be a Millionaire?” called “Who Wants to be a Citationaire?”); Smith & Goodno, *supra* note 143, at 40 (describing how to teach citation using game show formats and prizes like soda and candy).

<sup>149</sup> *See, e.g.*, AMY E. SLOAN, BASIC LEGAL RESEARCH: TOOLS AND STRATEGIES 124 (5th ed. 2012) (“[A]ny time you report the results of your research in written form, you must cite your sources properly. This is especially important for cases because the information in the citation can help the reader assess the weight of the authority you are citing.”); MARK OSBECK, IMPECCABLE RESEARCH: A CONCISE GUIDE TO MASTERING LEGAL RESEARCH SKILLS 72 (2010) (cautioning writers not to “overwhelm the reader with a lot of lengthy string citations, as this needlessly disrupting the flow of your writing,” and instead advising them to prioritize citing mandatory cases and perhaps sometimes including a nonbinding case that is “more on par factually with your case”).

<sup>150</sup> For example, the first mention of citations in Laurel Oates and Anne Enquist's introductory legal writing text, *The Legal Writing Handbook*, is on the 206th page, in a section about editing and proofreading a memorandum. The focus is on how to ensure that citations conform to a style guide. The only other mentions of citation in the book are geared towards international students rather than the entire audience of new legal writers. *See* LAUREL CURRIE OATES & ANNE ENQUIST, THE LEGAL WRITING HANDBOOK: ANALYSIS, RESEARCH, AND WRITING 206 (6th ed. 2014); *see also* Coughlin, *supra* note 18, at 121 (“Two manuals explain how to cite properly. Those are the *ALWD Citation Manual* and *The Bluebook*.”); NEUMANN & SIMON, *supra* note 43, at 173 (“Two

integral parts of the legal texts in which they appear, even though one could infer their role in making meaning from the descriptions of the “legal reader.”<sup>151</sup>

Legal writing textbooks cover the topic of legal citation in one way or another, and thus their approach to legal citation is apparent. Other types of instructional law books say nothing at all about either reading or writing citations. Casebooks tend not to address in-line citations except to note that many have been edited out of the case excerpts,<sup>152</sup> and nor do study aids that help students read and understand those casebooks.<sup>153</sup> Some professional legal style books do,<sup>154</sup> and others don’t. Setting aside the Bryan Garner canon and the *Bluebook*, perhaps the best-known legal style book is Richard Wydick’s *Plain English for Lawyers*, now in its fifth edition, which doesn’t address citation at all.<sup>155</sup> Ross Guberman’s popular *Point Made, How to Write Like the Nation’s Top Advocates*, includes a short interlude advising writers about how to place in-line citations: “[J]ust because you put your citations in the text doesn’t mean that you should stick them in the middle of your sentences.”<sup>156</sup> Instead, he advises writers to put citations at the end of sentences.

An exception to this general observation are explanations in introductory textbooks designed for foreign-trained lawyers who are studying U.S. law.<sup>157</sup> The text by Professors Deborah B. McGregor and Cynthia M. Adams, for example, explicitly connects the act of writing legal citations with the U.S. system of precedent:

The U.S. legal system’s reliance on primary authority (constitutional and statutory provisions, case law, and

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manuals codify the most commonly followed rules of legal citation—the ALWD Citation Manual and the *Bluebook*.”).

<sup>151</sup> One introductory textbook that does use this approach is the one I co-authored. See CHEW & PRYAL, *supra* note 1, at xviii (“The Complete Legal Writer presents research and citation as integrated components of the writing process by helping students develop ‘citation literacy’ early in their law school careers.”).

<sup>152</sup> See Part III.A, *supra*.

<sup>153</sup> *Id.*

<sup>154</sup> THE REDBOOK, *supra* note 62.

<sup>155</sup> RICHARD C. WYDICK, *PLAIN ENGLISH FOR LAWYERS* (5th ed. 2005).

<sup>156</sup> ROSS GUBERMAN, *POINT MADE* 181 (2d ed. 2014). Guberman’s book includes “hundreds of short examples from interesting cases in nearly all areas of practice,” written by advocates who “figure among the brightest lights in the profession.” *Id.* at xxxi. And Guberman acknowledges that “most judges still want citations the old-fashioned way—in the text—and nearly all the top advocates in th[e] book still put them there.” *Id.* at 181. Nevertheless, he “cut most of the citations and definitions and have made other changes for readability.” *Id.* at xxxi–xxxii. Given the intended scope of his book, this decision makes sense. But it does raise the question of whether legal writers might more effectively use citations in their writing if they more frequently saw effective and eloquent uses of in-line citation in the legal documents they read.

<sup>157</sup> See, e.g., MCGREGOR & ADAMS, *supra* note 127, at 232; MARY-BETH MOYLAN & STEPHANIE J. THOMPSON, *GLOBAL LAWYERING SKILLS* 297 (2013). *But see* BURNHAM, *supra* note 127 (not explicitly assigning any purpose to legal citation in its 735 pages); MCALINN, *supra* note 121 (using a modest number of legal citations without mentioning their purpose or how to read them).

administrative regulations) requires you to refer to the source of the information you include in a legal document. This is especially important when that information comes from a source that is binding on your case and is included in an office memorandum or a brief to the court. . . . If you do not cite where required, you give the impression that your ideas or words form the basis for the information. This is a mistake . . . [because] relevant material that comes from a primary source of law offers the most persuasive and effective support for your argument.<sup>158</sup>

A similar textbook by Professors Mary-Beth Moylan and Stephanie J. Thompson goes one step further, explicitly stating that “[c]itations are a form of legal analysis.”<sup>159</sup> Moylan and Thompson explain that legal citations

show that the analysis legally supported, identify if the authority is binding on the court, and demonstrate where the particular authority sits in the hierarchy of all authority. Furthermore, they inform whether the analysis is grounded in legal tradition dating back to the 1900s, or maybe that the analysis is a new trend in the law. Recognizing the importance of citation as more than a research reference tool is the first step to using citation effectively.<sup>160</sup>

And finally, Professor Nadia E. Nedzel’s textbook, *Legal Reasoning, Research, and Writing for International Graduate Students*, now in its third edition, introduces students to citation in its second chapter, which is an introduction to American legal research and the federal system.<sup>161</sup> She identifies the “first research and interpretive skills” for lawyers to be “finding a given legal authority and understanding its relative weight.”<sup>162</sup> And the paragraph that describes the strong convention of “giv[ing] a citation after every sentence that quotes, refers to, or relies on another source” begins with this explanation: “Because the United States has so many primary and secondary legal sources, attorneys and judges are obsessive about identifying the exact source on which they are relying.”<sup>163</sup>

The different framework used by the books for audiences trained outside the United States could result from any number of things. But one hypothesis is that, when writing for an audience whom the author expects to have little knowledge of the U.S. legal system and perhaps less patience for the many quirks of case law, the need to explain the

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<sup>158</sup> MCGREGOR & ADAMS, *supra* note 128, at 232.

<sup>159</sup> MOYLAN & THOMPSON, *supra* note 157, at 297 (emphasis added).

<sup>160</sup> *Id.*

<sup>161</sup> Nadia E. Nedzel, *Legal Reasoning, Research, and Writing for International Graduate Students* 55 (3d ed. 2014).

<sup>162</sup> *Id.* at 54.

<sup>163</sup> *Id.*

connection between legal citation and legal analysis is more obvious.<sup>164</sup> Because it's unlikely that students educated in the United States enter law school with any more knowledge of the role of legal citations in legal texts than students educated abroad, perhaps the textbooks written for a U.S.-trained audience should take a page from the textbooks written for internationally-trained audiences.

### C. Citation as Decontextualized Lists of Conventions

One effect of the write-first approach is that it introduces legal citations as a decontextualized list of conventions.<sup>165</sup> The lists of conventions—in the form of citation rules—that appear in the citation guides and the texts are long on prescriptive specifics but short on reasons for those prescriptions.<sup>166</sup> No wonder so few people enjoy teaching or learning to write citations if the effort of following citation rules only serves the purpose of proving that you can follow citation rules—rather than actually communicating meaningfully with your reader.<sup>167</sup>

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<sup>164</sup> I have taught international LL.M. students in both a “casebook” introduction to U.S. law course and a legal research and writing course. My experience was that my international students, all of whom had already completed their legal training elsewhere, asked many more questions than my J.D. students about legal authorities, precedent generally, and the role of legal authorities—and legal citations—in the texts they were reading.

<sup>165</sup> The concept of a “decontextualized list of conventions” is borrowed from Katie Rose Guest Pryal's article introducing the genre discovery approach to legal writing. Katie Rose Guest Pryal, *The Genre Discovery Approach*, 59 WAYNE L. REV. 351, 371 (2014). In her article, Pryal describes the “inoculation” method in legal writing pedagogy, by which “[s]tudents are exposed to a fixed list of genres with a fixed list of conventions.” *Id.* at 370. Pryal identifies some problems with the inoculation method, including that it introduces students to new genres via lists of conventions that have been separated from the rhetorical situations in which those conventions arose. *Id.* at 366, 370–71; see also Lloyd Bitzer, *The Rhetorical Situation*, 1 PHIL. & RHETORIC 1, 2 (1968) (defining the rhetorical situation as “a natural context of persons, events, objects, relations, and an exigence which strongly invites utterance”).

<sup>166</sup> Aside from the broad statement in its introduction that the “central function of a legal citation is to allow the reader to efficiently locate the cited source,” BLUEBOOK, *supra* note 20, at 1, the *Bluebook* does not offer any reasons for its rules, see generally *id.* This has not gone unnoticed. Thirty years ago, for example, Judge Posner opined that “the Bluebook is elaborate but not purposive. Form is prescribed for the sake of form, not of function.” Posner, *Goodbye*, *supra* note 40, at 1344; see also Neumann, *supra* note 21, at 43 (comparing American adherence to citation manuals unfavorably with a more reader-driven English approach: English lawyers “observe the most basic citation customs gracefully out of kindness for the reader rather than out of obedience to hundreds of rules, most of which readers do not care about”). Nevertheless, style guides are intended to facilitate communication. And there are circumstances where following them rigidly makes good sense. See, e.g., Ziff, *supra* note 21, at 677 (explaining how following the *Bluebook's* uniform rules uniformly benefits law journals). But, when possible, legal writers should understand *why* style guides advocate for certain rules so they can decide whether and how to follow the rules.

<sup>167</sup> Professor Whisner, for example, acknowledged the arbitrary nature of some rules, like using one typeface for the authors of books and a different for the authors of articles, and concluded that “it's worth learning even the silly rules.” Whisner, *supra*

Moreover, teaching citation as a decontextualized list of conventions doesn't work particularly well. At least one legal writing professor has documented this shortcoming:

After dutifully teaching the *Bluebook* for four semesters, and scrutinizing citations in student writings for unnecessary spaces, incorrect abbreviations, and other bluebooking sins, I began to wonder whether this component of the course was really helping my students. For one thing, I was not having great success. No matter how many times I told my students to put a space between "So." and "2d" when citing the Southern Reporter, Second Edition, a good number of them still neglected (or refused) to do so, even on graded assignments.<sup>168</sup>

Although this is just one first-person teaching account, the frustrations that legal writing faculty have with the prevailing modes of teaching legal citation are evident in other ways. For example, two legal writing professors improved their students' citation formatting skills by switching from lecture-based *Bluebook* instruction to a "*Bluebook* game show" that included competition and "campy prizes."<sup>169</sup> One explanation they gave for the success of this method was that it gave students a meaningful reason to learn citation formatting: "Offering an immediate reward—even a small one, such as a candy bar, a soda, or a rubber duck, or a purely psychological one, such as the glory of being crowned Section

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note 7, at 394–95. Continuing a running table manners analogy, she compared the "silly" rules to social customs that smooth over interpersonal interactions: "If you are taking young friends or your children to a fancy dinner, you do them a service by first explaining different forks, bread plates, and so on. You don't have to say that the customs are inherently important. But they *are* customs, and we humans form our social networks in part by shared observance of customs. Keeping this in mind helps me explain the arbitrary rules to students without being totally embarrassed by the minutiae." *Id.* at 394–95. Viewing arbitrary citation formatting rules as social custom makes sense and is probably accurate, but as others have pointed out, it's also a view that can reinforce unegalitarian power structures—not so universally appealing. *See, e.g.*, Salmon, *supra* note 26, at 795 ("Much as the rules of etiquette could serve as a proxy for education and social class, adherence to the intricacies of *Bluebook* form signals that you went to the "right" law school, made it onto the "right" law review, and paid attention to the "right" ways to practice law.").

There's also a bit of hypocrisy that becomes evident to students once they become journal editors:

The usual rationale for the long hours law students are required to spend proofing their professors' work is that this teaches students to pay meticulous attention to detail in their own writing. This proposition is suspect, however, as the same professors who submit manuscripts riddled with *Bluebook* errors were once law review editors themselves. Perhaps what law review teaches is that authors need not sweat the details, because getting the details right is someone else's job.

Mermin, *supra* note 106, at 612–13.

<sup>168</sup> Nemerovski, *supra* note 105, at 82.

<sup>169</sup> Smith & Goodno, *supra* note 143, at 41.

Citation Wizard—motivated the students to learn the material.”<sup>170</sup> Candy and competition might get the immediate job done (improving citation formatting in the appellate briefs that students submitted) but arguably it also transforms any “reward for mastering the material,” which students “often perceive . . . as tedious and boring,” into instant gratification with learning as a byproduct.

Besides the unpleasantness and ineffectiveness of teaching legal citation as a decontextualized list of conventions, it also makes it more difficult to address the non-uniform nature of legal citation. The considerable literature detailing problems with legal citation, and particularly the *Bluebook’s* dominance, has noted that the form (or style) of legal citation is not uniform.<sup>171</sup> This seems obvious given the frequency with which the *Bluebook* changes its rules (about every five years),<sup>172</sup> states’ adoptions of their own public-domain citation forms,<sup>173</sup> courts’ adoptions of court-specific citation rules,<sup>174</sup> and the sheer number of legal documents that don’t comply in one respect or another with the prescriptions set forth in any of the foregoing sources of citation guidance.<sup>175</sup>

This lack of uniformity can become problematic if the reader is expecting to see or write citations that conform to a familiar style (i.e., *Bluebook* style) and isn’t able to adapt to the new citation style. When citation is learned as a decontextualized list of conventions to execute when writing a document, it’s harder to see the common principles that connect all of the legal citation styles (and probably a lot of the

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<sup>170</sup> *Id.* at 45.

<sup>171</sup> See, e.g., Salmon, *supra* note 26, at 786–93 (describing “the uniformity lie”). Professor Ziff lists a number of non-uniform citation styles in his recent review of the twentieth edition of the *Bluebook*, and they include The United States Supreme Court, the Solicitor General’s Office, and numerous state courts. See Ziff, *supra* note 21, at 682. He accurately describes the reality of legal citation styles as “citation heterogeneity.” He also convincingly deconstructs the straw man claims that the *Bluebook* itself demands uniformity. For example, he critiques Judge Posner’s characterization of the *Bluebook’s* subtitle as “a bid for monopoly”: “The focus on the word ‘Uniform’ in *The Bluebook’s* title ignores the word that precedes it: the indefinite article ‘A’ as opposed to the definite article ‘The.’ *The Bluebook* is not *The Highlander*. When it comes to systems of citation, there can be more than one.” *Id.* at 17 (quoting Posner, *Goodbye*, *supra* note 40, at 1347).

<sup>172</sup> See Salmon, *supra* note 26, at 788–89 (“This constant revision—and the ever-increasing volume of *The Bluebook* itself—make it impossible for lawyers to rely on the citation format they learned in law school once they have been two or three years in practice.”).

<sup>173</sup> Gallacher, *supra* note 2, at 521.

<sup>174</sup> See *supra* note 171.

<sup>175</sup> These even include judicial opinions that were drafted to conform to *Bluebook* citation rules and published by the courts with those conforming citations and whose citations were then systematically altered from the *Bluebook* form by the West Publishing Company before being reported in one of the West reporters. The most obvious alterations appear in the loss of spaces between abbreviated words. For example, “N.C. App.” in the court’s slip opinion becomes “N.C.App.” in West’s reporter.



“deviant”<sup>176</sup> documents that lawyers produce). A deeper knowledge of the purposes of legal citation and how readers make meaning from them also allows them to easily assimilate new styles of legal citation into their existing knowledge.<sup>177</sup> Without the conviction that citations are trying to communicate useful information, readers can be distracted by a citation’s “deviant” appearance and think, “this doesn’t look right.” Without a larger citation theory within which new information about citation will fit—that legal citations are mainly communicative and help readers make meaning—reading or executing new citation styles requires learning a new decontextualized list of conventions.

In addition to the diversity of citation styles (e.g., *Bluebook*, California) that a writer might deploy to meet the expectations of particular legal audiences,<sup>178</sup> there are legal audiences who don’t expect *or want* writers to follow the *Bluebook* or any other particular citation style.<sup>179</sup> Instead, those legal audiences simply expect the writer to use her judgment and include only the information that the particular reader needs in that circumstance. For those readers, the writer is wasting time (and thus not meeting expectations) if she conforms her citations to the *Bluebook* or another style guide.

This heterogeneity of citation styles and expectations demands adaptable writers who can exercise judgment about how to render their citations.<sup>180</sup> That judgment, in turn, requires a deeper knowledge of legal citation’s function in legal documents than a decontextualized list of conventions can supply.

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<sup>176</sup> Legal citations that do not conform with the *Bluebook* are sometimes referred to as deviations from the *Bluebook*, even when referring to coherent legal citation styles. See, e.g., A. Darby Dickerson, *An Un-Uniform System of Citation: Surviving With the New Bluebook*, 26 STETSON L. REV. 53, appB-1 (1996) (noting that many states that “have enacted rules requiring attorneys to cite sources in ways that deviate from pure *Bluebook* form”).

<sup>177</sup> For example, open-domain or vendor-neutral citation formats have an unfamiliar look to them because they don’t use the West reporter abbreviations (hence vendor-neutral). Gallacher, *supra* note 2, at 529. A number of states use these citation formats and have for some time. The *Bluebook* has advised citation writers on these less familiar citation formats since at least the sixteenth edition. See Alex Glashauser, *Citation and Representation*, 55 VAND. L. REV. 59, 89 (2002). In 2002, neutral citation forms were unfamiliar: “Many lawyers still do not know what they are, how to find them, or what jurisdictions have them.” *Id.* In 2017, the same might be said. But learning the new formats, which can vary by jurisdiction, would be easier if built upon pre-existing knowledge of citation that went deeper than the rules set forth in citation style guides.

<sup>178</sup> A concise list of citation styles appears in MOYLAN & THOMPSON, *supra* note 157, at 298–301.

<sup>179</sup> These people do exist, and they really do get annoyed when people they’ve asked to produce some legal writing spend the time to “Bluebook” it rather than just incorporating the “relevant” information.

<sup>180</sup> See Ziff, *supra* note 21, at 682.

#### **D. A Solution: Reframe Citation as Communication**

Instead of learning legal citation by writing citations from the decontextualized lists of conventions provided by the *Bluebook* and other citation style guides, which uncouples legal citation from legal analysis and strips students of any intrinsic motivation to learn legal citation, law students should be introduced to legal citation as a means of communicating important information from reader to writer. Rather than ignoring the communicative role that legal citation plays in judges' legal reasoning, casebook professors should explain what the citations are doing in the cases that their students study. Doing so would make the work of teaching students to write legal citation easier by providing context for the conventions that govern legal citation form. Legal writing professors can do their part, too, by grounding legal citation in legal reasoning and legal precedent rather than the *Bluebook* or other citation style guides. Part IV describes how to move towards a citation literacy pedagogy.

A deeper knowledge of the purposes of legal citation and how readers make meaning from them also allows them to easily assimilate new styles of legal citation into their existing knowledge.

### **IV. DEVELOPING A CITATION LITERACY PEDAGOGY**

This Part proposes a foundation for developing a citation literacy pedagogy that encompasses all of legal education and gives students an appropriately deep appreciation of citation's communicative purpose in legal texts. The proposed pedagogical foundation focuses on the first year of law school, but a robust pedagogy would extend throughout all years of law school and perhaps beyond.

Citations are a core convention of the most-read and most-written genres in the first year of law school, and they are central to written legal analysis. As explained in Part III of this Article, prevailing pedagogical choices do not present citations as central to written legal analysis. Instead, the prevailing pedagogical choices are either to ignore citations completely or teach students to write citations via a list of decontextualized conventions. The end result of these pedagogical choices is that citation *feels* like it takes a disproportionate amount of time to teach and learn. If teachers and students see citation as tangential to legal analysis—to thinking like a lawyer—then any time spent on citation will seem to be too much.

By replacing the write-first approach to citation instruction with a citation literacy approach, legal educators can teach students to view citations as part of legal communication, prioritize meaning over form, and reduce the frustration of teaching citation formatting. A citation literacy pedagogy would also create more opportunities to spread citation instruction across the first-year curriculum, incorporating it into the first-year casebook classes that purport to teach the skills of reading cases and composing legal arguments based on precedent. Citation literacy is fertile ground for a variety of creative teaching strategies, and

this Part suggests three starting points for developing a citation literacy pedagogy.

### A. Teach Students How to Read Citations

Legal educators expect law students to teach themselves how to read legal citations, extract meaning from them, incorporate that meaning into legal texts, recognize which citation conventions apply in different situations, and—perhaps most unfairly—compose legal texts by putting themselves in the shoes of “legal readers” before they themselves are legal readers.<sup>181</sup> Instead, first-year law courses should teach students how to read citations and make meaning from them.

Teaching students to read citations allows them to generate their own knowledge about the role that citations play in legal texts.<sup>182</sup> And then when they are taught to write citations—a complicated process whose difficulty level is heightened by “labyrinthine”<sup>183</sup> citation guides—students have context for the admonishments to write their citations in a way that helps their readers. They know what it’s like to not be able to tell if a statement of law is supported by binding authority, non-binding authority, or nothing. They also will be more able to recognize when they write citations that lack details that contribute necessary meaning—because they’ve first learned to attach meaning to citations. They might even see the merits of writing citations that are relatively uniform in appearance.

Here are two specific ideas that casebook and legal writing professors can use to teach their students to read legal citations: First, ask students to extract key information from citations<sup>184</sup> and determine whether the

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<sup>181</sup> Arguably, this problem is part of another pedagogical problem in which legal writing courses teach students to write legal genres without first teaching them to read those genres—all the while admonishing students to view their writing as an expert legal reader would. One proposed solution to this problem is using a genre discovery approach, which has students read many samples of a genre before writing the genre. See generally Pryal, *supra* note 165; see also Alexa Z. Chew & Craig T. Smith, *Border-Crossing: Genre Discovery and the Portability of Legal Writing Instruction*, 25 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 8 (2016) (arguing that legal educators should help students learn to read genres as a necessary step in learning to write those genres).

<sup>182</sup> Professor Julie Oseid illustrated how well students can translate coded information in the form of a baseball box score, a clever entrée she has used to introduce her students to how legal readers can extract information from legal citations. Julie A. Oseid, *Take Me Out to the Ball Game: Using the Seventh-Inning Stretch to Teach Law Students*, 82 N.D. L. REV. 465, 479 (2006).

<sup>183</sup> “Labyrinthine” is a favorite adjective in journal articles about the *Bluebook*. See Darrow & Darrow, *supra* note 111, at 92 (using “labyrinthine” to describe the *Bluebook*); James T. R. Jones, *A Review of the ALWD Citation Manual: A Professional System of Citation*, 73 TEMP. L. REV. 219, 220 (2000) (same); Salmon, *supra* note 26, at 778 (same); see also Asbury & Cole, *supra* note 6, at 96 (citing Darrow and Darrow’s use of “labyrinthine” to describe the *Bluebook*).

<sup>184</sup> Here’s one technique I’ve used to have students practice extracting information from citations: As homework for the second class of the semester, I assign to my legal writing students the chapter in their textbook that covers legal authorities and which

authority is binding. Second, when discussing the reasoning in a case, ask students to hypothesize about why the court cited a particular legal authority.

### **B. Choose Teaching Materials that Connect Legal Citation and Legal Analysis**

Faculty who teach in the first-year could choose teaching materials that allow students to focus on the communicative, meaning-making role of legal citations.

Most casebooks contain *some* in-line legal citations, and so casebook professors can probably ask students about in-line citations using whatever casebook they are already teaching from. But some casebooks retain more of the original citations than others,<sup>185</sup> and one benefit to using such casebooks is that they display the strong convention of supporting statements of law with citations to appropriate authorities rather than the apparent convention in casebooks of simply declaring rules without provenances. A middle ground is to choose one or two cases from the casebook and *also* ask students to read the unabridged versions. Compare the two versions and discuss why the court might have chosen to cite the authorities that it did.<sup>186</sup>

All legal writing textbooks address citation in some way, but consider choosing one that grounds citation in legal authority and precedent rather than a style guide or “polish.”<sup>187</sup> Or, if you’re committed to a legal

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includes examples of common citations to those authorities. Then, in class, I give students a list of legal citations and ask them to identify the type of legal authority (e.g., statute, regulation, case, article), whether the cited authority is primary or secondary, and the author. If the authority is primary, students must name the branch of government that created it, whether the branch is part of the federal government or a state (and they must specify the state), and, if the authority is a case, the level of the deciding court (e.g., trial, intermediate appellate, high court). An example of this exercise is included in the teacher’s manual for *The Complete Legal Writer*. ALEXA Z. CHEW & KATIE ROSE GUEST PRYAL, *TEACHER’S MANUAL FOR THE COMPLETE LEGAL WRITER* 6 (Spring 2016).

<sup>185</sup> E.g., West’s Interactive Casebook Series.

<sup>186</sup> If you teach Contracts, the Harrier Jet case provides outstanding material for this sort of discussion. *See Leonard v. Pepsico, Inc.*, 88 F. Supp. 2d 116 (S.D.N.Y. 1999).

<sup>187</sup> Two recent comers to the first-year legal writing textbook market do just this. The first is *Legal Writing for Legal Readers*, by Mary Beth Beazley and Monte Smith, *supra* note 49. Their chapter on “using citations effectively” begins by observing that a writer’s legal analysis “is no better than the authority on which it is based. For that reason, we cannot overstate the important role that effective citation plays in the presentation of a legal analysis.” *Id.* at 213. The chapter then sets aside for later the “mechanics” question of “how to cite authority” and focuses first on “which authorities to cite, where to place citations, and when a citation is necessary.” *Id.* It devotes *ten pages* to answering the communication questions that underlie legal citation before directing students on how to cite. *Id.* at 213–23. The second book is the textbook that I co-authored, *The Complete Legal Writer*, *supra* note 1, which explicitly promotes citation literacy and introduces students to citations as part of legal reasoning in the first chapter of the book. The second chapter introduces students to the various legal authorities in the United States and explains how to recognize citations to those authorities in the texts that they read. *The Complete Legal Writer* also contains numerous

writing textbook that doesn't address citation's communicative role as deeply as it could, cover that ground in class or with supplemental reading.

### C. Assess Citation as Communication, Not Polish

Citation is typically a graded component of most first-year legal writing courses. It might be assessed in standalone tests, in graded writing assignments, or both.<sup>188</sup> Rather than weighting all components of a legal citation equally, legal writing professors should weight the meaning-making components more heavily than the style components.

For example, Professor Susie Salmon described a “bad citation” as one that doesn't accurately convey key information to the reader: “A bad citation might also omit or convey misleading information about the court issuing the decision, the vintage of the decision, whether the decision had been overruled, or the extent to which language in the decision supports the proposition offered.”<sup>189</sup> Professor Salmon also suggests that, “to the extent that any portion of the grade on an assignment is based on citation form, the accuracy and substance of a legal citation should count for more than its form.”<sup>190</sup> I agree. However, I disagree with her more specific pedagogical prescription, which is to “dedicate little class time to teaching citation” and offload citation instruction to online programs like Lexis's Interactive Citation Workbook or the ALWD Online Companion.<sup>191</sup> Those programs, as Professor Salmon notes, are dedicated to teaching citation *format*, which means that the lessons that the programs reinforce are *formatting* lessons, not substantive lessons. The bulk of the feedback students receive from the Interactive Citation Workbook, for example, relates to noncompliant spacing, abbreviation, or typeface. This feedback then directs students' attention to making their responses comply with the citation style guide, reinforcing the primacy of style over substance (and maybe also reinforcing any bad feelings about legal citation). These resources are appropriate and helpful only after students understand the point of legal citation and its relationship to legal authority and legal analysis.<sup>192</sup>

To teach and assess the substantive portions of legal citation—those portions serving the communicative purpose—requires instruction and

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samples for students to study, all of which cite real propositions of law from real legal authorities.

<sup>188</sup> *E.g.*, Nemerovski, *supra* note 105.

<sup>189</sup> Salmon, *supra* note 26, at 770.

<sup>190</sup> *Id.* at 810.

<sup>191</sup> *Id.*

<sup>192</sup> This potential downside of automating legal citation instruction is related to one of the concerns of automating citation generally. *See* Asbury & Cole, *supra* note 6, at 101 (“[W]e cannot help but think that, should [citation-formatting software] come to pass, one of *The Bluebook's* great contributions—that it teaches and reinforces skills that are essential to legal analysis—would be lost.”).

assessment focused on communication, not formatting.<sup>193</sup> There are surely myriad ways to assess students on how well they can communicate using legal citation, but here are two techniques that I have used in the courses I teach.

First, to assess students' abilities to read citations and make meaning from them, I have asked students to read a citation in a judicial opinion and tell me why they think the court included that citation. As part of final exam I gave to international LL.M. students in my Foundations in U.S. Common Law course, I asked students to read a case—*St. Joseph's Hospital v. Cowart*, a Florida appellate court opinion—before the exam and then answer questions about that case. Here's one question from that exam, asking students to explain why the Florida court cited a particular case:<sup>194</sup>

Why did the court cite *Nicholson v. Smith*? In other words, how does that authority help the court prove its conclusion? (See line 64.)<sup>195</sup>

Strong answers included the rule that the *Nicholson* citation supports and the gap in the court's logical progression that *Nicholson* covered. For example, *Nicholson* is a Texas case included by a Florida court support the rule that a landowner *could* owe a duty with respect to wild animals found inside an artificial structure, like a hospital.<sup>196</sup> This rule differs from the general rule in Florida that landowners don't have a duty to protect invitees from wild animals.<sup>197</sup> Because Florida hadn't yet decided a case in which wild animals inside an artificial structure harmed a user of that artificial structure, the Florida court used the Texas case to fill in that gap.

Second, the scoring system I use to grade my legal writing students' citation quiz prioritizes the meaning-making components of the citations they must write over the stylistic components. Part of the assessment asks students to write legal citations. When I grade that portion of the quiz, I allocate points to the meaning-making portions of the citation: Did the student choose the appropriate signal? Indicate the correct year? If a case, identify the right court? Provide a pincite to direct the reader's attention to the particular portion of the authority that actually contains the support for the proposition? I then subtract points for style errors,

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<sup>193</sup> Even if legal writing professors do value substance over style when it comes to citation and citation formatting, the perception is that the style is more important. *See, e.g.,* MCCLURG, *supra* note 16, at 304 (“I had to laugh when reading a comment from one of my student consultants advising new students to pay attention to the *Bluebook* because an entire letter grade can be lost on a writing assignment ‘if you leave off just one comma!’”).

<sup>194</sup> One of my course goals was for students to learn to read judicial opinions and recognize the legal arguments contained therein, and so the course's final assessment gave students judicial opinions to read and then asked students to describe the legal arguments contained therein and apply them to new factual situations.

<sup>195</sup> *St. Joseph's Hospital v. Cowart*, 891 So. 2d 1039 (Fla. Dist. Ct. App. 2004).

<sup>196</sup> *See Nicholson v. Smith*, 986 S.W.2d 54, 60–61 (Tex. Ct. App. 1999).

<sup>197</sup> *St. Joseph's Hospital*, 891 So. 2d at 1041.

but those points are capped at no more than one-third of the total available points. Thus a citation that contains all of the information I need as a reader to assess the cited authority but that is riddled with formatting problems will receive at least two-thirds of the available points. I admit that sometimes I have the urge to dock more points because I find wacky-looking citations to be aesthetically unpleasant. But I put my points where I say my priorities are.<sup>198</sup>

## V. CONCLUSION

Legal citations play an integral role in legal analysis and legal documents, communicating important information from writer to reader about the support for the writer's claims. Skilled legal readers incorporate that information into their understanding of the legal texts they read, making meaning from them and using them to assess the quality of legal arguments. However, the prevailing write-first citation pedagogy subverts this communicative purpose, focusing almost solely on teaching students to write citations without first teaching them to read citations. Lawyers need to be able to both read and write legal citations—to be citation literate—and law schools can advance this goal by upending the write-first citation pedagogy, which cabins citation instruction into legal writing courses and deprives students of opportunities to practice making meaning from the citations in the legal documents they read. By promoting citation literacy over citation formatting, law schools might even reduce the misery associated with legal citation and produce graduates who can adapt to whatever the future of legal citation holds.

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<sup>198</sup> To be clear, I do teach the *Bluebook* in my legal writing classes, and I do give feedback to students when their citations don't comply with *Bluebook* style. Ideally all of my students will finish their first year of law school being citation literate, including being able to write citations that comply with the citation style guide that I use in my classes. But I both profess and believe that formatting compliance follows meaning making, and I try to grade accordingly.