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# ESSAY

## A BETTER TRADITION: WHY LAW REVIEWS SHOULD ADOPT A NEW CITATION FORMAT\*

Stacey L. Gordon\*\*

*For lawyers and law students alike, using the ALWD Manual means producing clear citations with less work.*<sup>1</sup>

### I. INTRODUCTION

I admit it: I tend to agree with grumpy law review staff members when they mumble, “I hate *The Bluebook*.”<sup>2</sup> I have heard it often, and every time I have said, “Next year, when you’re an editor, you can adopt the *ALWD Citation Manual*<sup>3</sup> instead.” Finally,

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\* Editors’ Note: The *Montana Law Review* adopted the *ALWD Citation Manual* as its citation guide in August 2006. The following Essay highlights some of the reasons behind the *Law Review*’s decision to depart from *The Bluebook*.

\*\* Associate Law Librarian for Public Services and Adjunct Associate Professor of Law Librarianship, University of Montana. Although I do strongly believe in the thesis—that the *ALWD Citation Manual* is a viable system of citation for law reviews, and law review editors should consider adopting the new manual—and definitely stand by the content of this Essay, the presentation of these ideas in the format of a law review article was intended to be somewhat tongue-in-cheek. Admittedly, I have done no formal research and little traditional legal research for this Essay. The argument I present is based mostly on my experience teaching citation to students (and sometimes lawyers) and working with law review staffs. Nevertheless, like all good law review authors, I would like to thank Dean Fritz Snyder for humoring and encouraging my interest in citation, and *Montana Law Review* Co-Editor-in-Chief Dan Browder, “for inspiring me with the idea in the first place.” *Anne of Avonlea* (Canadian Broad. Corp. 1987) (TV movie).

1. Suzanne E. Rowe, *The Bluebook Blues: ALWD Introduces a Superior Citation Reference Book for Lawyers*, 64 Or. St. B. Bull. 31, 34 (June 2004).

2. *The Bluebook: A Uniform System of Citation* (Colum. L. Rev. Assn. et al. eds., Harvard L. Rev. Assn. 2005) [hereinafter *The Bluebook*].

3. ALWD & Darby Dickerson, *ALWD Citation Manual* xxiii (3d ed., Aspen Publishers 2006) [hereinafter *ALWD*].

last spring, one of the new Co-Editors-in-Chief of the *Montana Law Review* decided he was going to explore the possibility of doing just that. Tradition is hard to argue against, especially when that tradition has served well, and our intrepid editor knew he would have to build a strong argument. The methodology was balanced: *Law Review* editors collected arguments and comments from various faculty members who supported one citation system or the other, and presented them to the faculty as a whole and to the *Law Review* editorial board for discussion. In the end, the editors voted to adopt *ALWD*.<sup>4</sup>

When the new Co-Editor-in-Chief contacted me about representing the pro-*ALWD* side of the issue, I promised a list of reasons why *ALWD* is the better choice for law review citation. But as I started constructing it, the list seemed an inadequate format to make my argument. What I really wanted to do was demonstrate that *ALWD* is a flexible and detailed enough system for law review citation: a version of this Essay addressed specifically to the *Law Review* editors was the result. Because *ALWD* is a good citation system for most law reviews, the arguments can be easily translated and tailored to other law reviews. This Essay is a more generalized discussion of the arguments.

By way of a roadmap for this Essay, here is the list I originally promised: (1) *ALWD* rules are more stable and change less often than *Bluebook* rules; (2) *ALWD* presents one set of rules that applies to all types of legal writing; (3) *ALWD* rules reflect the standard of citation practice among the legal community; (4) *ALWD* provides more flexibility; and (5) *ALWD* is easier to use and promotes law review staff efficiency.

## II. THE REASONS EXPLAINED

*ALWD* rules are more stable. *ALWD* was published partly to respond to *The Bluebook*'s sometimes random rule changes and frequent new editions.<sup>5</sup> This is not to say *ALWD* does not change at all; it is currently in its third edition. However, the goal of new *ALWD* editions is not to change citation rules, but to clarify, ex-

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4. *Montana Law Review* officially adopted *ALWD* citation form in 2006. Mont. L. Rev., Handbook § 3.2 (rev. 2006). However, recognizing that some authors still prefer *The Bluebook* format (or are unfamiliar with *ALWD* format), *Montana Law Review* accepts submissions with citations in either *ALWD* or *The Bluebook* format. Mont. L. Rev., Article Submission Procedure, <http://www.umt.edu/mlr/Submissions.htm> (accessed Oct. 24, 2006).

5. See Kirsten K. Davis & Tamara Herrera, *The ALWD Citation Manual: A Practice-Driven Improvement*, 40 Ariz. Atty. 24, 25 (June 2004).

plain, and fill gaps in the existing rules.<sup>6</sup> Format stability provides stylistic consistency from volume to volume, which is important for citation purposes and aesthetics. Citations serve four functions: they give credit to the original sources of ideas; they assure the reader that the author has done careful and complete research; they communicate the type and persuasiveness of the authority cited; and they provide the information the reader needs to find the original sources.<sup>7</sup> Citations convey all this information in very few words because they are highly formalized and use standardized formats, abbreviations, and punctuation. New and amended citation rules that add or subtract elements, change abbreviations or move things around not only look different, they force the reader to stop and decipher the citation to dig out the information he or she needs. This effect is compounded by rules that change frequently and without obvious reason.

*There is only one set of ALWD rules.* The goal of ALWD is to establish “a single citation system that can be used to develop citations for any type of legal document.”<sup>8</sup> *The Bluebook’s* system requires legal practitioners to use one set of rules in their daily practices and another set when they submit law review articles; this can hardly encourage submissions from practitioners and may even send the subtle but elitist message that law reviews prefer article submissions from legal academics over those from legal practitioners. Law reviews are where tough and interesting legal issues are discussed, analyzed, followed, and developed. Editors should encourage diverse voices—students, faculty, judges, and practitioners. Law reviews provide a neutral space for legal conversation, and lawyers and judges have much to add to that conversation. What practitioners do not have are research assistants to format their citations. It would be a shame to lose diverse perspectives because of citation rules that distinguish between academics and practitioners. The bias is subtle, and I do not believe it is conscious, but that could be said of many forms of discrimination.

*ALWD reflects standard practice.* *The Bluebook* claims to be the “definitive style guide for legal citation in the United States.”<sup>9</sup> I am inclined to disagree with that boast. In fact, the pervasive belief that courts require proper *Bluebook* citation is, for the most

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6. ALWD, *supra* n. 3, at xxiii.

7. *Id.* at 3.

8. *Id.* at 4.

9. *The Bluebook*, *supra* n. 2, at 1.

part, false.<sup>10</sup> In Montana, for example, the opposite is true: the Montana Supreme Court has recently adopted *ALWD*.<sup>11</sup> *ALWD* does not change rules that have become the standard of practice because of *The Bluebook's* longevity and virtual monopoly in the citation arena.<sup>12</sup> *ALWD* has instead “codified the most commonly followed rules for legal citation”<sup>13</sup> in a format that makes them clearer and easier to interpret. Where there are substantial differences between *The Bluebook* and *ALWD* rules, they are largely cosmetic.<sup>14</sup>

Adopting the *ALWD* citation system does not reflect a reverse-bias because it is already the standard for both academics and practitioners. The fears of law review editors who feel that adopting a “new” citation format would frustrate the current law faculty from whom they want to solicit articles can, at most, be only partially substantiated. In most cases, only those faculty members who format their own citations (often the job of research assistants) and who graduated from law school before 2003<sup>15</sup> will have

10. See Stacey L. Gordon, *Teaching Lawyers How to Perform Legal Citation in Montana*, 28 Mont. Law. 7, 8 (Sept. 2002) (an updated copy of this article is available from the author).

11. E-mail from Kristin Gerdy, Assoc. Prof., J. Reuben Clark L. Sch., Brigham Young U., to LRWPROF listserv, *Montana Supreme Court Adopts ALWD!* (Apr. 7, 2006) (copy on file with the author). The Montana Supreme Court is currently studying other aspects of its citation rules and has not yet issued an order regarding its adoption of *ALWD*. E-mail from Judy Meadows, Mont. St. L. Libr., to the author, *RE: Montana Supreme Court Adopts ALWD!* (Apr. 10, 2006) (copy on file with the author).

12. Rowe, *supra* n. 1, at 33.

13. *ALWD*, *supra* n. 3, at 4. Just as I disagreed with *The Bluebook's* boast above, I also disagree here with *ALWD's* use of the word “codified.” I believe a more accurate analogy would be that *ALWD* is a restatement of established citation rules. “Among [*ALWD's*] attributes [is] . . . a set of rules that reflects a consensus in the legal profession about how citations should function.” *Id.* at xxiii.

14. See Darby Dickerson, *ALWD-Bluebook Conversion Chart for Research Assistants*, <http://www.alwd.org>; *path* *ALWD Citation Manual*, *select* Instructional Resources for Teachers, *select* *ALWD2d Bluebook 17 Conversion Chart for Research Assistants* (2003). The most obvious cosmetic difference is typeface.

15. *ALWD* was first published in 2000. Although the current number of law schools to have adopted *ALWD* is not available on *ALWD's* website, as of December 2002, ninety-one law schools were either exclusively teaching *ALWD* citation, or were teaching both *ALWD* and *The Bluebook*. Association of Legal Writing Directors, *ALWD Citation Manual Adoptions*, <http://www.alwd.org>; *path* *ALWD Citation Manual*, *select* Information about adoptions (accessed Apr. 6, 2006) [hereinafter *ALWD, Adoptions*]. It is safe to assume that over half of the 194 law schools accredited by the American Bar Association have now adopted or teach *ALWD*. American Bar Association, *ABA-Approved Law Schools*, <http://www.abanet.org/legaled/approvedlawschools/approved.html> (accessed Nov. 2, 2006). Note also that several other law reviews have also adopted *ALWD*. *ALWD, Adoptions*, *supra* n. 15. Unfortunately, the list is not current and it is unclear at this time how many law reviews have adopted *ALWD*. E-mail from Eric Easton, Chair, *ALWD Citation Manual Adoptions*

to learn anything new about citation before submitting an article. I suspect those authors who fall in this category will quickly discover that, for the most part, nothing important has changed and the new manual is easier to use. For new lawyers and faculty, and for current law students, the change is welcome since many are familiar with *ALWD* and using *The Bluebook* is difficult.

*ALWD is flexible.* Despite being a system of rules, *ALWD* is flexible enough to accommodate variation based on local rule and practice. *Montana Law Review's* citation practices are a good example of the need for flexibility. The *Review's* old submission rules state, "Footnotes *must* be in *Bluebook* format."<sup>16</sup> However, a cursory glance through issues of the *Montana Law Review* shows that in many volumes the editors deferred to the Montana Supreme Court's "local rule" for citing Montana cases, a common practice in Montana even when not citing to the Court. Other editors, however, strictly adhered to *Bluebook* rules. *The Bluebook* forbids variation for local tradition,<sup>17</sup> forcing editors to choose between academic compliance and the readers' convenience, and creating inconsistency. On the other hand, the *ALWD* rule, which applies to all legal writing, allows editors to defer to local rules,<sup>18</sup> including those created by tradition.<sup>19</sup>

*ALWD's style is easy and clear.* The authors of *The Bluebook* admit it is intimidating.<sup>20</sup> In contrast, Darby Dickerson's guiding principle is that *ALWD* should be clear and easy to use.<sup>21</sup> Law review staff members and editors are busy people.<sup>22</sup> Requiring staff members to both learn a new citation system and fix citations for authors who either do not understand *The Bluebook* or do

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Committee, to the author, *RE: ALWD Adoptions* (Aug. 30, 2006) (copy on file with the author).

16. Mont. L. Rev., *Article Submission Procedure*, <http://www.umt.edu/mlr/submissions.htm> (accessed Apr. 6, 2006).

17. "In all other documents, including *ordinary legal memoranda* and *law review pieces*, cite the relevant regional reporter, if the decision is found therein." *The Bluebook*, *supra* n. 2, at R. 10.3.1(b).

18. See *ALWD*, *supra* n. 3, at R. 12.4(c).

19. Gordon, *supra* n. 10, at 8.

20. *The Bluebook*, *supra* n. 2, at 1.

21. *ALWD*, *supra* n. 3, at xxiii.

22. In the interest of full disclosure, I will admit that librarians are busy people too and it often falls upon library staff to try to figure out how to format particularly troublesome *Bluebook* citations. Library staff are always glad to assist, but would be just as glad to assist with locating esoteric sources, figuring out the spelling of an equally esoteric word, or editing early drafts of student submissions.

not feel like wading through its intricacies is inefficient. Cite-checking becomes a bit like hazing or an initiation.

### III. CONCLUSION

It is true that *The Bluebook* was developed by law review editors for use by law reviews.<sup>23</sup> Because it has long been the standard for law review citation, law reviews have developed a “*Bluebook* look.” The fact that the most noticeable differences between *ALWD* and *The Bluebook* are cosmetic (e.g., typeface), would certainly make a law review look different if it chooses to replace *The Bluebook*. It would not make the law review less legitimate nor would it diminish the high quality of the articles published in the law review. The Montana Supreme Court has more than once refused to “march lock-step”<sup>24</sup> with authority when there is a better way. I challenged *Montana Law Review* editors to follow the spirit of the Court and consider stepping out with the few other law reviews that have abandoned *The Bluebook* in favor of *ALWD*. I now challenge other law reviews to step out with them.

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23. Carol M. Bast & Susan Harrell, *Has The Bluebook Met Its Match? The ALWD Citation Manual*, 92 L. Lib. J. 337, 339 (2000).

24. *E.g. State v. Zabawa*, 928 P.2d 151, 158 (Mont. 1996) (“This Court has historically evidenced its willingness not to ‘march lock-step’ with federal authority in the interpretation of our own Constitution. That is necessary and proper.”).