

2012

Checking Up on Court Citation Standards: How Neutral Citation Improves Public Access to Case Law

Michael Umberger

Follow this and additional works at: https://digitalcommons.law.uw.edu/law-lib_borgeson

Recommended Citation

Michael Umberger, *Checking Up on Court Citation Standards: How Neutral Citation Improves Public Access to Case Law* (2012), https://digitalcommons.law.uw.edu/law-lib_borgeson/111

This Article is brought to you for free and open access by the Law Librarianship Program at UW Law Digital Commons. It has been accepted for inclusion in Borgeson Paper Archive by an authorized administrator of UW Law Digital Commons. For more information, please contact jafrank@uw.edu.

Neutral Citation, Law Librarians, and the Future of Public Access to Case Law

Michael Umberger

Submitted to
Professor Penny A. Hazelton

To fulfill the course requirements for Current Issues in Law Librarianship, LIS 595,
and to fulfill the graduation requirement of the
Culminating Experience Project for MLIS
University of Washington Information School
Seattle, Washington

May 29, 2012

Table of Contents

I. Introduction	1
II. What Is Neutral Citation?	2
A. Format	3
B. Professional Recommendations	4
III. The Wild West & A New Citation Format in Town	5
A. West & Company	6
IV. Neutral Citation in State Appellate Courts	9
A. Early Adopters & Outliers	9
1. Louisiana	9
2. Ohio	11
3. Federal Courts	11
B. Best Adopters	12
1. Oklahoma	13
2. North Dakota	15
C. Recent Adopters	16
1. Arkansas	17
2. Illinois	17
3. Colorado	18
V. Issues Unique to the Format	19
A. What Is a Paragraph?	19
B. Parallel Citation	20
C. Authentication & Final Versions	21
D. Electronic Format	21

VI. Future Problems?.....	22
A. Trends Among the States.....	23
B. Market Conditions	24
1. Contracts with Publishers	24
2. Copyright Claims.....	25
3. The Rise of Smaller Legal Information Providers.....	26
VII. Law Librarians & The Future of Access to the Law.....	27
Appendix A: Do States with Neutral Citation Publish Their Own Reports?	29
Appendix B: Map of States That Have Adopted Neutral Citation	30

INTRODUCTION

The story of the neutral citation movement is a history of legal publishers, their relations to legal professionals, and the mediating effects of law librarians. First conceived in the early 1990s, the movement has gone through several phases, ranging from the early years of excitement among states and librarians through a period of complacency to a possible recent resurgence in interest among legal and library professionals. With the publication of a white paper on the movement's roots and future in the *Law Library Journal* in 2011¹ and the recent monetary stresses placed on law libraries by state budget cuts, perhaps now is an appropriate time not just to look to the movement's potential but also its actual viability.

There have been many eloquent calls for reform and change among professionals in the movement's nearly twenty years, but it would be difficult to say that neutral citation has firmly taken hold of legal citation and left traditional, print-based formats in the past. At this point, it is necessary to consider whether, given the current publishing landscape and the state of law libraries, the movement can progress beyond being more than a good idea.

Neutral citation has been termed vendor-neutral, medium-neutral, and public domain-citation, but no matter the name the basic idea underpinning the format is that access to the law should not be predicated on a format tethered to the constraints of private publishing companies.² Over the past two decades, it has frequently been law librarians who have pushed for this format, and they have often worked hard to encourage adoption of a universal neutral citation format in the hopes of increasing access and making equitable the legal publishing world.

With this paper I intend to trace the history of the universal citation movement—how fissures in the legal landscape in the 1990s allowed the format to poke through the cracks to create a temporary groundswell of support in legal thought and how corporate interests have tried to quell the movement to force it underground once more. The movement is notable for having coincided with the rise of widespread Internet access in this country and the appearance of the law in electronic formats.

An integral aspect of the movement has been the question of who owns the law.³ By handing control over the content and format of decisions to publishers, courts relinquish their power and authority over their own law. As a matter of policy, if

¹ *Universal Citation and the American Association of Law Libraries: A White Paper*, 103 L. LIBRARY J. 331 (Timothy L. Coggins, John Cannan, & Jennifer Laws eds., 2012).

² That said, the decision to term the movement “universal citation” originated with the American Bar Association and reflected a desire to be inclusive of the ideas of vendor and medium neutrality. See SPECIAL COMMITTEE ON CITATION ISSUES, AMERICAN BAR ASSOCIATION, REPORT AND RECOMMENDATIONS (May 23, 1996).

³ Peter W. Martin, *Neutral Citation, Court Web Sites, and Access to Authoritative Case Law*, 99 L. LIBRARY J. 329, 343 (2007).

not right, citizens should enjoy the greatest access to the pronouncements of their government.⁴ In the words of John Cannan in the American Association of Law Libraries (AALL) White Paper on universal citation, “[v]endor-neutral citation reduces the inefficiencies of the current paper-based system and liberates legal information so that it may be used more freely.”⁵ The Obama Administration has recently made clear the government’s interest in increasing citizens’ access to government information so that citizens can have an increased presence in their government.⁶ This directive should be a priority among courts, law librarians, and legal professionals alike.

While it is arguable that the need for a neutral citation format will diminish over time, as more and better publishers enter the market and electronic formats become more universally accepted, a unique problem is predicted to arise that should give opponents of universal citation pause. As case law, and indeed the entire publishing industry, moves forward with electronic formats, the demand for print materials will slacken considerably.

As a consequence, in a world with fewer print materials but continued reliance on print-based formats for citation, people who do not have access to print collections of case law will be placed in increasingly worse standing with respect to access to the law, despite the increased availability of the law in digital formats.⁷ As a result, there is a seemingly counterintuitive but burgeoning need for a universal neutral citation system despite the widespread availability of legal materials online. This problem will only worsen as law libraries continue to trim their collections of print materials available to all who use the libraries.

With these concerns in mind, this paper aims to explore both the development of the neutral citation movement and the ways that the goal of increased public access to the law can be achieved.

WHAT IS NEUTRAL CITATION?

Before reaching the history of neutral citation, it is important to explain the idea behind the format and how it operates in practice. As mentioned, the basic underlying idea is that access to the law should not be predicated primarily on access to formats provided or shaped by legal publishing companies. Although neutral citation has taken a few different forms, certain state courts have developed exemplary schemes that work well and have provided tests of the guidelines developed by AALL’s Citation Formats Committee.⁸ The current

⁴ Digital Access to Legal Info. Comm., *Reintroducing Universal Citation*, 103 L. LIBRARY J. 335, 335 (2012) [hereinafter *Reintroducing Universal Citation*].

⁵ John Cannan, *Whither Citation Reform?*, 103 L. LIBRARY J. 353, 356.

⁶ See Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009); Transparency and Open Government, 74 Fed. Reg. 4685 (Jan. 21, 2009).

⁷ Cannan, *supra* note 5, at 354.

⁸ AM. ASS’N OF LAW LIBRARIES, UNIVERSAL CITATION GUIDE ¶ 19 (2d ed. 2004) [hereinafter *UCG*].

neutral citation systems adopted by many jurisdictions embody the guidelines of the second edition of AALL's Universal Citation Guide.

Format

Any explanation of neutral citation format requires first knowledge of the alternative format that has been widely established as standard in the legal scholarly and publishing world.⁹ The official versions of most court opinions under current conventions, especially those of the Bluebook,¹⁰ “are labeled according to their placement in reporters.”¹¹ The citation to a particular opinion thus includes the title of the reporter in which it is included, the reporter's volume number, and the page number in that volume on which the opinion appears.¹²

Because a given opinion may appear in multiple reporters, say both in a regional reporter and a state-specific reporter, citations for opinions may include references to multiple reporters.¹³ As an example, here is what a citation to a recent Washington Supreme Court opinion published in multiple reporters would look like:

State v. Schultz, 170 Wash.2d 746, 248 P.3d 484 (2011).

In this particular citation, “Wash.2d” refers to the *Washington Reports*, Second Series, which is published by the Washington State Law Reports Office, and “P.3d” refers to West's *Pacific Reporter*, Third Series. Using the page numbers that refer to West's reporters requires a licensing agreement with the publishing company,¹⁴ a practice that relates to West's claims of copyright over the page numbers.

What distinguishes a neutral citation format is that it does not make reference to reporters at all but instead “labels government decrees or pronouncements, with legal force, such as court opinions, statutes, and regulations, using a uniform set of symbols.”¹⁵ This system has the effect of untethering legal citations from references to particular formats, such as print reporters, or proprietary information, such as reporter titles or page numbers. These aspects of neutral

⁹ Richard A. Posner, *Goodbye to the Bluebook*, 53 U. CHI. L. REV. 1343, 1343 (1986) [hereinafter *Goodbye to the Bluebook*] (discussing the Bluebook's “hegemony” over legal citation even in 1986).

¹⁰ While the Bluebook has a section on neutral citation, the section is cautious in calling the format either “public domain” or “medium-neutral,” making no references to vendor neutrality. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 10.3.3, at 96 (Columbia Law Review Ass'n et al. eds., 19th ed. 2010).

¹¹ *Reintroducing Universal Citation*, *supra* note 4, at 335.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 336.

citation are termed, respectively, “medium neutrality”¹⁶ and “vendor neutrality.”¹⁷ In this manner, there is no need for a person who wishes to view a particular court opinion to seek out a volume printed by any specific publisher.¹⁸

Under the citation format outlined in the second edition of AALL’s Universal Citation Guide, the above case would appear as:

State v. Schultz, 2011 WA 2.

Here, the digit (“2”) that follows the state designation indicates the decision is sequentially the second opinion issued by the court during that year; in this case, this opinion was the second opinion released in 2011. Additionally, if this citation required a pinpoint cite to a particular section of the opinion, it would involve not a page number from a reporter but a paragraph number that, in most cases, would be provided by the court issuing the opinion.¹⁹ The following example demonstrates a pinpoint citation to the fourth paragraph in the above opinion:

State v. Schultz, 2011 WA 2 ¶ 4.

This citation format provides a reader with information as to the parties, the court issuing the opinion, its year, its sequential placement in that year, and a pinpoint citation, “effectively decouple[ing] a judicial opinion text from its appearance in any particular publication, print or electronic.”²⁰

Professional Recommendations

The format as presented in the second edition of the Universal Citation Guide was the result of many recommendations developed over the previous decade. The format was first suggested by the State Bar of Wisconsin Technology Resources Committee as a way to allow retrieval of both print volumes and electronic versions of opinions.²¹ The Wisconsin Committee proposal involved four components: (1) year of the decision, (2) an abbreviation of the court issuing the opinion, (3) a number indicating the sequential release of the opinion, and (4) a paragraph number for pinpoint citations.²² Many law librarians began to fear that

¹⁶ The Citation Formats Committee of AALL defines medium neutrality in a citation as involving “data elements which have intellectual or location relevance without regard to the physical medium in which a document is fixed.” Citation Formats Comm., Am. Ass’n of Law Libraries, *The Universal Legal Citation Project: A Draft User Guide to the AALL Universal Case Citation*, 89 L. LIBRARY J. 7, 8, n.4 (1997).

¹⁷ According to the Citation Formats Committee, “[a] vendor-neutral citation contains no proprietary data elements and makes no reference to a proprietary publication.” *Id.* at n.3.

¹⁸ That said, the person may have good reason to seek out such a volume for the value-added editorial content provided by the publishing company.

¹⁹ *Reintroducing Universal Citation*, *supra* note 4, at 336. *See also UCG*, *supra* note 8, at ¶ 58.

²⁰ *Reintroducing Universal Citation*, *supra* note 4, at 336.

²¹ *UCG*, *supra* note 8, at ¶42; *see also* Martin, *supra* note 3, at 1-2. (discussing the so-called “Wisconsin Report.”)

²² *UCG*, *supra* note 8, at ¶42.

citation requirements could quickly become Balkanized if multiple organizations developed their own neutral citation formats, and AALL accordingly spearheaded attempts to promote uniformity in this area by forming the Task Force on Citation Formats in April 1994.²³ This committee added inclusion of the case name to the Wisconsin Report’s proposal, subsequently presenting its neutral citation format to a national audience in 1995.²⁴

The following year, the American Bar Association (ABA) developed its own neutral citation guidelines, some of which the AALL Task Force on Citation Format included in its updated edition of the Universal Citation Guide in 2004.²⁵ Among the adopted guidelines was a change in how state courts were designated in the citation.²⁶ Previously, the Universal Citation Guide had used the state abbreviations as recommended by the Bluebook, but the ABA’s proposed use of the two-letter postal abbreviations to indicate each state court reflected a more standardized and recognizable format and was thus incorporated.²⁷

The major difference between the ABA’s proposal and the AALL’s format rested with a fundamental dispute as to how to designate certain courts, including federal courts and non-unified state appellate courts.²⁸ Whereas the ABA recommendations are intuitive and easily recognizable, they fail to accommodate the full complexity of court organization. On the other hand, the AALL model follows a “simple algorithm which builds a court identifier from a logical progression of abbreviations.”²⁹

In the past decade, the Bluebook and other citation guides such as ALWD began to include provisions accommodating neutral citation. In the Bluebook, Rule 10.3.3 sets out guidelines for a “public domain citation” format similar to the Universal Citation Guide’s, as does Rule 12.6 in ALWD.³⁰ Although the various models involve minor conceptual differences, they are overall similar in goal and format and reflect an established if not widespread acceptance of universal citation in the legal scholarly community.

In summary, neutral citation is best defined in contrast to the traditional citation system formerly embraced nearly universally by academics, courts, and librarians. This older system remains tied to the products of established legal publishers, while neutral citation allows newer legal publishing companies to enter the

²³ Carol Billings & Kathy Carlson, *AALL and the Dawn of Citation Reform*, 103 L. LIBRARY J. 339, 341 (2012) [hereinafter *AALL and the Dawn of Citation Reform*].

²⁴ *UCG*, *supra* note 8, at ¶42.

²⁵ *Id.* at ¶44.

²⁶ *Id.* at n.19. The chief adoptions include use of the term “universal citation,” use of state postal abbreviations, and adoption of the pilcrow, or paragraph symbol, which publishers had persuaded AALL would be impossible to implement.

²⁷ *Id.*

²⁸ *Id.* at ¶45 n.20.

²⁹ *Id.* For the Universal Citation Guide’s algorithm, *see generally UCG*, *supra* note 8, at ¶¶ 48-61.

³⁰ *Id.* at ¶46.

market on equal terms so that “[n]o one entity can lay claim to the citation methodology that all others have to pay to use.”³¹

THE WILD WEST & A NEW CITATION FORMAT IN TOWN

The neutral citation movement largely arose in reaction to the business practices and reorganizations of a limited number of large corporations in the legal publishing world.³² Chief among these international publishing conglomerations is the Thomson-Reuters Corporation of Canada, which counts the West Publishing Company as one of its acquisitions.³³ The West Publishing Company has been instrumental in the rise of the universal citation movement due to its status as the foremost provider of reported decisions of case law, its practices of licensing out its star pagination system to other publishers, and the legal consequences of its sale to the Thomson Corporation in 1996.³⁴

West & Company

John West began the legal publishing company bearing his name in 1876 in response to the “inability of governmental entities to respond to the needs of attorneys in a timely fashion.”³⁵ In the 1870s, John West and his brother Horatio developed West’s National Reporter System, a case reporting service that between 1879 and 1896 became “universally embraced by the legal community.”³⁶ Another significant innovation in the legal publishing world was the introduction in 1973 of Mead Data Central’s computer-assisted legal research system, LexisNexis, which West matched in 1975 with the introduction of a competing service called Westlaw.³⁷ In 1986 Mead sued West to dispute its claims to copyright over the addition of page numbers to decisions but lost, allowing West to use its pagination system to preserve its leading market position.³⁸ In 1994 Reed Elsevier, the other major international publishing company besides Thomson-Reuters and Wolters-Kluwer, bought LexisNexis, outbidding the Thomson Corporation in the process.³⁹

After the State Bar of Wisconsin Technology Resources Committee presented its report on neutral citation, the West Publishing Company, “viewing Wisconsin as a critical front in a much broader assault on the market dominance of its

³¹ *Reintroducing Universal Citation*, *supra* note 4, at 336.

³² “While there are totally independent grounds for citation reform, there seems little doubt that much of the energy behind the drive for ‘vendor neutral’ or ‘public domain’ citation during the 1990s came from a desire to break through the barrier to competition posed by West’s refusal to allow others to incorporate National Reporter System pagination.” Martin, *supra* note 3, at 356.

³³ Kendall Svengalis, *Legal Information Buyers’ Guide & Reference Manual 2011* 8.

³⁴ *Id.* at 9-10.

³⁵ *Id.* at 697.

³⁶ *Id.* at 10.

³⁷ *Id.*

³⁸ *West Publishing Company v. Mead Data Center, Inc.*, 799 F.2d 1219 (8th Cir. 1986).

³⁹ *Id.*

comprehensive and integrated system of U.S. case reports, committed major resources to defeating the plan.”⁴⁰ After a hearing on the matter, the Wisconsin Supreme Court in May 1995 found West’s arguments against the new citation format convincing enough to defer a decision on implementing a change for a number of years, eventually adopting a citation scheme that required neutral citation in parallel with citations to proprietary print formats.⁴¹

During the debate in Wisconsin, the West Publishing Company presented itself “as a true partner with the nation’s courts and legislatures, serving the public interest in the timely and accurate dissemination of law—being uniquely suited for this role by virtue of the company’s long history and U.S. ownership.”⁴² After the British-Dutch conglomerate Reed Elsevier purchased LexisNexis in 1994, West’s president proclaimed that “[t]his American-owned company is not for sale,”⁴³ mere months before it did just that and hired an investment company to search for potential purchasers.⁴⁴

The Thomson Corporation of Canada was interested in purchasing West because of its electronic database platform, Westlaw, and its standing as the major publisher of legal materials. Thomson announced its intention to purchase West on February 26, 1996, for \$3.425 billion, pending the Department of Justice’s approval with respect to antitrust concerns.⁴⁵ The Department of Justice’s Antitrust Division approved a consent decree for the sale on June 19, despite the vocal protest of law librarians, many of whom were wary of the sale, given the price escalation that had resulted from previous mergers involving Thomson.⁴⁶

As Kendall Svengalis irreverently points out, the Department of Justice proved itself either willfully ignorant or entirely clueless by publicly proclaiming the merger “a victory for all of us.”⁴⁷ Looking at the actual terms of the consent decree, it is clear that Thomson-West received the better end of the bargain, as the requirements mandated merely divestiture of 51 print titles, an electronic citation verification service, a number of state-specific titles, and six national treatises.⁴⁸ It appears that the Antitrust Division was persuaded to accept the consent decree by Thomson-West’s agreeing to “openly license” West’s star-pagination system.⁴⁹

⁴⁰ West’s tactics included mailing Wisconsin attorneys information packets about the alleged expenses and dangers of universal citation, conducting a phone survey to confirm that Wisconsin legal professions strongly preferred print materials, commissioning a study that asserted the high costs of implementing the new citation format, and bringing a known opponent of the format to testify at a hearing before the Wisconsin Supreme Court. Martin, *supra* note 3, at 2.

⁴¹ *Id.* at 3.

⁴² *Id.* at 3.

⁴³ Daniel B. Kennedy, *A Strategic Fit for Foreign Publishers*, 81 A.B.A. J., Jan. 1995 at 32, 32 (quoting Vance Opperman).

⁴⁴ Svengalis, *supra* note 33, at 697.

⁴⁵ *Id.* at 10.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 10-11.

Perhaps another reason the consent decree was permitted was that “the Justice Department was convinced that weaknesses in West’s star pagination copyright claims, together with the momentum of vendor-neutral case citation, were sufficient to protect the public interest.”⁵⁰ In hindsight, it is apparent that neutral citation alone was not enough to justify allowing Thomson-West to form.

At the time of the Department of Justice’s statement, it perhaps did seem as though the specter of a neutral citation format had a legitimate chance to temper West’s practices. Beyond the support of professional organizations such as AALL, the ABA, and the National Conference of Commissioners on Uniform State Law (NCCUSL), neutral citation was gaining momentum at the state level, with eleven states having adopted a variation of universal citation by 1998.⁵¹ But, as the AALL White Paper points out, the movement appeared to crest in 1998.⁵² Recently, the adoption of neutral citation in the past three years by Arkansas, Illinois, and Colorado may indicate that states are becoming more willing to look to uniform citation as an alternate citation format, especially in times of budgetary constraints.

The Department of Justice should have recognized that West’s agreement to openly license its star pagination was ultimately of dubious value, as the legitimacy of West’s copyright claim over these page breaks was in doubt after the Supreme Court’s decision in *Feist v. Rural* that “a work must show creative spark and originality to warrant copyright protection.”⁵³ The doubtful worth of the concession to license the star pagination was echoed by Judge Paul Friedman of the U.S. District Court for the District of Columbia, charged with deciding whether to approve the Thomson-West merger, who expressed concern over both the legitimacy of West’s copyright claims and the possible appearance of endorsement by the court of those claims.⁵⁴

The merger was allowed to proceed after Thomson-West agreed to grant other publishers free use of the star pagination system until the matter was resolved.⁵⁵ In the intervening years, Thomson-West, subsequently known as Thomson-Reuters after another merger in 2008,⁵⁶ continued to hold out the threat of litigation over its alleged copyright claims over the star pagination system, forcing competing publishers to license them from Thomson-Reuters or else face the

⁵⁰ *Id.* at 4.

⁵¹ Judy Meadows, *President’s Briefing: Citation Reform*, AALL SPECTRUM, July 1998, at 13, 14 (displaying the eleven states in a shaded map as Arizona, Colorado, Louisiana, Maine, Missouri, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Wisconsin).

⁵² *Reintroducing Uniform Citation*, *supra* note 4, at 336.

⁵³ *AALL and the Dawn of Citation Reform*, *supra* note 23, at 340.

⁵⁴ *U.S. v. Thomson Corp.*, 42 U.S.P.Q.2d (BNA) 1867 (D.D.C. 1997).

⁵⁵ Svengalis, *supra* note 33, at 695.

⁵⁶ *Id.* at 696.

threat of legal action.⁵⁷ Smaller publishers have largely complied with Thomson-Reuters's licensing scheme rather than direct energy at citation reform efforts.⁵⁸

With an understanding of how universal citation rose to prominence as a consequence of publishers' practices, it will be instructive to examine how particular jurisdictions have adopted neutral citation and what the impact has been in each of these court systems. The manner and effect of the early adopters' implementation of a neutral citation format may present strong arguments for more widespread use or perhaps signal that even the most efficient and cost-effective use of the citation format cannot persuade the vast majority of jurisdictions in this country to adopt it. After analyzing each jurisdiction, I will attempt to explain why a universal neutral citation system has not caught on, how it could be implemented better and more widely, and what realities the movement faces going forward.

NEUTRAL CITATION IN STATE APPELLATE COURTS

As of this writing, sixteen states have adopted some form of neutral citation. This number includes both jurisdictions that adopted the format during its initial heyday of widespread interest plus a few states that have more recently turned to neutral citation as a potential cost-saving measure. In looking at these jurisdictions, a number of trends become apparent that will aid in shaping the movement's future.

Early Adopters & Outliers

Louisiana, the first state to adopt a vendor-neutral citation format, is instructive as an initial point of example because it represents a transitional variant that bridges the divide between print-based and medium-neutral formats and because it has adopted the new format with success. Among the rest of the states, which have largely adopted a vendor- and medium-neutral format similar to AALL's recommendations, a few states, namely Oklahoma and North Dakota, will be singled out as successful models of implementation. Finally, the three states that have most recently adopted the format, Arkansas in 2009, Illinois in 2011, and Colorado in 2012, will be examined with an eye toward any distinguishing features these states represent and whether their adoption reflects a larger trend toward greater acceptance of neutral citation.

Louisiana

While the 1994 suggestions of the State Bar of Wisconsin Technology Resources Committee represent the most unified early approach to adopting a universal citation format, Wisconsin was not the first state to develop and attempt to implement universal citation. That honor belongs to Louisiana, which instituted a

⁵⁷ Martin, *supra* note 3, at 357.

⁵⁸ *Id.* at 356.

modified form of universal citation in December 1993 per an order of its Supreme Court.⁵⁹ The change in format was brought about by a belief that “opening the legal publishing marketplace to competition might save the courts money while improving their access to legal information.”⁶⁰

Additionally, a vendor-neutral format would increase access to legal information not just for courts but also members of the bar and the public.⁶¹ In 1973, Louisiana appellate courts stopped publishing their official decisions,⁶² after which West’s *Southern Reporter* became the sole and official reporter for the state’s courts.⁶³ Multiple smaller publishers desired to publish Louisiana opinions but were cautious because of the threat of copyright claims from West over its pagination system. Carol Billings, the librarian of the Louisiana Supreme Court, urged that “allowing competing publishers to enter the market could lower prices and make legal information more affordable.”⁶⁴ With increasing Internet access, the Louisiana Supreme Court saw an opportunity for more affordable and widespread access to its opinions for smaller publishers and the public without having to use a vendor-based citation system.

Starting July 1, 1994, filings made in Louisiana’s appellate courts had to adhere to the new public domain citation format.⁶⁵ As an early adopter predating the suggestions of organizations such as AALL and the ABA, Louisiana’s format is unique among states with universal citation.⁶⁶ Citations in filings made in Louisiana appellate courts must contain a case name, docket number, slip opinion pagination for pinpoint citation, court abbreviation, date of decision, and parallel citation to West’s *Southern Reporter*:

Smith v. Jones, 94-2345, p. 7 (La. 7/15/94); 650 So.2d 500, 504.⁶⁷

The incorporation of docket numbers and slip opinion pagination was the result of a compromise between advocates of the change and the Supreme Court, which was concerned about the potential costs of a full transition.⁶⁸ Louisiana is surprisingly not alone in utilizing the docket number rather than a sequentially assigned number in tandem with a year to identify opinions. To date, two other states have incorporated the same numbering system in their citation format:

⁵⁹ *AALL and the Dawn of Citation Reform*, *supra* note 23, at 340.

⁶⁰ *Id.* at 341.

⁶¹ *Id.* at 348.

⁶² Many other states that adopted neutral citation had long abandoned printing their own official reporters, although a few states that use neutral citation continue to publish their own decisions. It is difficult to draw any conclusions from this characteristic, but it is possible that the lack of an official, state-published reporter made the transition to a neutral format an easier decision. See the chart at Appendix A for more information.

⁶³ *AALL and the Dawn of Citation Reform*, *supra* note 23, at 348.

⁶⁴ *Id.*

⁶⁵ LA. SUP. CT. R. pt. G, § 8.

⁶⁶ *AALL and the Dawn of Citation Reform*, *supra* note 23, at 348.

⁶⁷ LA. SUP. CT. R. pt. G, § 8A(1)(b).

⁶⁸ *AALL and the Dawn of Citation Reform*, *supra* note 23, at 348.

Mississippi in 1997⁶⁹ and Illinois in 2011.⁷⁰ The use of the docket number rather than a sequentially assigned number is likely intended to reduce additional labor costs by utilizing extant information already associated with each opinion.

Despite initial concerns over costs, Louisiana appellate courts began posting their opinions on the Internet and requiring neutral citations, allowing smaller publishers to enter the marketplace, lowering the purchase price for access significantly.⁷¹ Neutral citation in Louisiana has reportedly achieved its goal of moderating costs and increasing access.

Ohio

Ohio presents a unique case among states with universal citation provisions, in that it “diverg[es] from the model recommended by the AALL and ABA [but] fully qualifies as neutral.”⁷² The Supreme Court of Ohio’s revised *Manual of Citations* specifies that citations for opinions decided on or after May 1, 2002, should include the case name, a citation to the *Ohio Reports*, a WebCite, a parallel citation to West’s *North Eastern Reporter*, and a paragraph number for pinpoint citation.⁷³

Bonacorsi v. Wheeling & Lake Erie Ry. Co., 95 Ohio St.3d 314, 2002-Ohio-2220, 767 N.E.2d 707, ¶ 15.⁷⁴

The most notable feature of this citation is the WebCite component, “2002-Ohio-2220.” Here, “2002” is the year of the decision and “2220” is the decision’s unique identifying number.⁷⁵ Rather than being a sequential number corresponding to a particular court, the WebCite “operates across the entire state court system rather than court by court.”⁷⁶ Thus, the WebCite number for sequential opinions of the Ohio Supreme Court may not bear numbers that follow in direct sequence, as from six to seven. This variation is minor and does not interfere at all with the medium- or vendor-neutrality of Ohio’s citation system.

Federal Courts

It is worth noting as well that a couple federal jurisdictions have adopted neutral citation principles, although neither court ever required this format under its court rules. First, the U.S. Court of Appeals for the Sixth Circuit began using vendor-

⁶⁹ MISS. R. APP. P. 28(e)(2)(ii).

⁷⁰ ILL. SUP. CT. R. 23(h); *see also* ILL. SUP. CT. M.R. No. 10343 (Oct. 4, 2011).

⁷¹ *Id.* at 348-349.

⁷² Martin, *supra* note 3, at 348.

⁷³ OHIO MANUAL OF CITATIONS, § 1.1(C)(1).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Peter W. Martin, *Introduction to Basic Legal Citation*, § 2-230 (online ed. 2011) [hereinafter *Introduction to Basic Legal Citation*].

neutral citations for its opinions in 1994⁷⁷ as part of a one-year trial⁷⁸ without ever requiring attorneys to use them or applying the format to its prior reported decisions.⁷⁹ Additionally, per a standing order, the U.S. District Court for the District of South Dakota for a time required a vendor- and medium-neutral citation for any citation to decisions of the Court from after October 1, 1996, in court filings.⁸⁰ According to Martin, only some of the court's judges applied the neutral format to their decisions or the citations to them.⁸¹ In 2009, the District of South Dakota formally abandoned the format in an order,⁸² and by 2010 the Sixth Circuit had stopped using neutral citation principles in its opinions.⁸³

Neutral citation has not achieved widespread acceptance among the federal courts and appears to have been only utilized in a limited capacity in the courts that did recognize universal citation principles. The movement never received the necessary momentum to take hold because of a lack of interest among federal judges and clerks, who essentially expressed their desire to maintain the status quo in a survey conducted by the Administrative Office of the Courts in 1997.⁸⁴ This indifference may be attributable to the federal courts' ready access to print materials and the perception that any change would bring a perceived aesthetic and financial burden.⁸⁵ Despite the change in circumstances in the legal publishing world since that time, there has been no further push among federal courts to move to the neutral citation format. Much more success has been achieved at the state level, where the movement has steadily gained interest and support over the years.

Best Adopters

While the above state jurisdictions have adopted neutral citation principles in some capacity, implementation in these jurisdictions has diverged somewhat from the recommendations of the major organizations supporting the movement. Far more typical is a universal citation format that adheres to the guidelines of the AALL Task Force on Citation Formats as embodied in its *Universal Citation*

⁷⁷ AM. ASS'N OF LAW LIBRARIES, *Sixth Circuit Electronic Opinion Distribution and Citation Policy Changes*, <http://www.aallnet.org/main-menu/Advocacy/access/citation/neutralrules/rules-6th.html> (last visited May 17, 2012).

⁷⁸ *AALL and the Dawn of Citation Reform*, *supra* note 23, at 341.

⁷⁹ *Introduction to Basic Legal Citation*, *supra* note 76, at § 2-230.

⁸⁰ AM. ASS'N OF LAW LIBRARIES, *In Re: The Citation of District Court Opinions*, <http://www.aallnet.org/main-menu/Advocacy/access/citation/neutralrules/rules-6.html> (last visited May 17, 2012).

⁸¹ *Introduction to Basic Legal Citation*, *supra* note 76, at § 2-230.

⁸² *See Change in Citation of Opinions for the District of South Dakota*, LIBRARY NEWSLETTER (Eighth Circuit Courts Library), November/December 2009, *available at* <http://www.lb8.uscourts.gov/pubsandservices/publications/novdec09.sdcitations.html> (last visited May 17, 2012).

⁸³ Cannan, *supra* note 5, at 353.

⁸⁴ Martin, *supra* note 3, at 352.

⁸⁵ *Id.* at 352-353.

Guide.⁸⁶ This format includes five elements: (1) a case name, (2) the year of decision, (3) a court abbreviation, (4) the decision’s sequential number, and (5) a paragraph number for pinpoint citations. To this date, twelve of the sixteen state jurisdictions that have adopted universal citation principles utilize this typical format.⁸⁷ The most successful adopters of neutral citation, including Oklahoma and North Dakota, have used this format to effect an efficient, cost-effective transition to vendor- and medium-neutral citations.

Oklahoma

In many ways, the Oklahoma Supreme Court’s implementation of universal citation stands as the exemplar of a resourceful transition between the world of print legal publishing and court-controlled and -owned digital provision of case law. By the evaluation of commentators⁸⁸ as well as the court’s own professionals who oversaw the changes,⁸⁹ the Oklahoma Supreme Court’s efforts to transition to a neutral citation format have been highly successful in lowering expenses paid to publishing companies and augmenting public access to legal information.

Citations to decisions of Oklahoma appellate courts include the case name, the year of decision, the state abbreviation OK, the sequential number of the decision, a paragraph number for pinpoint citations, and a parallel citation to West’s *Pacific Reporter*:⁹⁰

Skinner v. Braum's Ice Cream Store, 1995 OK 11, ¶9, 890 P.2d 922.⁹¹

This citation format resembles the *Universal Citation Guide*’s recommended format, with the exception of the inclusion of a parallel citation to West’s *Pacific Reporter*. Although this parallel citation feature appears to diminish the vendor-neutrality of the format, the court’s web site provides a free service called QuickCase⁹² that allows users to convert neutral citations such as “1995 OK 11” to parallel citations such as “890 P.2d 922,” so that access to a print reporter is not required.

According to Yvonne Kauger, at the time the Chief Justice on the Oklahoma Supreme Court, the court in developing this neutral citation format was committed to providing access to its decisions, but “financial necessity prompted

⁸⁶ See *supra* pp. 2-3 (comparing the neutral citation with the traditional, print-based citation format).

⁸⁷ The state courts that follow this format are: Arkansas, Colorado, Maine, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, Vermont, Wisconsin, Wyoming.

⁸⁸ Martin, *supra* note 3, at 338-340.

⁸⁹ Yvonne Kauger, *Foreword*, 103 L. LIBRARY J. 333, 333-334 (2012); see also Martin, *supra* note 3, at 353-354.

⁹⁰ O.S. § 1.200(e)(2).

⁹¹ *Id.*

⁹² QuickCase, OKLAHOMA SUPREME COURT NETWORK, <http://www.oscn.net/applications/oscn/Quickcase.asp> (last visited May 28, 2012).

[them] to initiate citation reform.”⁹³ The court’s library and information services director, Greg Lambert, and a newly hired information systems director, Kevin King, were enlisted to create a web site for the court and to devise a new case numbering system and way to publish the court’s decision on the Internet.⁹⁴ The story of Oklahoma’s application of neutral citation demonstrates that costs accompany a transition to a new system but that these costs are not overly burdensome and become cost-savings measures in time.

West’s *Pacific Reporter* had become the official reports of Oklahoma after the state stopped publishing its own reporter in 1953.⁹⁵ The creation in 1997 of the Oklahoma State Court Network (OSCN)—“without dispute the most comprehensive court-based legal information site in the United States”⁹⁶—was precipitated by the fact that Oklahoma county law libraries had unpaid bills to the West Publishing Company and sought independence from the publisher’s costs for access to citable versions of the state’s own case law.⁹⁷ In order to achieve its desired independence from the vendor, the Court decided to attempt to apply neutral citation rules not just to prospective case law but also to past opinions that were previously reported by West.⁹⁸ Internal citations to prior case law in the text of opinions within OSCN were hyperlinked to the full opinions so that there was no need to convert these in-text citations to a neutral format.

As a result of Court’s initiative, the OSCN became a full retrospective archive of past Oklahoma Supreme Court opinions that was available to the public.⁹⁹ The end result of the retrospective case law project was a database that included neutrally cited versions of every Oklahoma Supreme Court decision, every opinion of the Oklahoma Court of Criminal Appeals, and decisions of the Oklahoma Court of Civil Appeals from 1968.¹⁰⁰

This large collection of neutrally cited case law was created through cost-effective use of available technology at minimal expense to the Court.¹⁰¹ Lambert and King constructed the Court’s database using existing technologies, initially populating the database through the assistance of local law students, who input the opinions to the database after an automated program converted the texts from WordPerfect,

⁹³ Kauger, *supra* note 89, at 333.

⁹⁴ *Id.*

⁹⁵ THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 261 tbl.T.1, Oklahoma (Columbia Law Review Ass’n et al. eds., 19th ed. 2010).

⁹⁶ Martin, *supra* note 3, at 338.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.* at 338-339.

¹⁰⁰ Kauger, *supra* note 89, at 333. The decisions of the Oklahoma Supreme Court date to its first opinions from 1890. The collection of the Oklahoma Court of Criminal Appeals dates to 1908, the year of its first decision. Finally, the decisions of the Oklahoma Court of Civil Appeals date to 1960 because that was the first year the court’s opinions appeared in West’s *Pacific Reporter*.

¹⁰¹ Billings & Carlson, *Implementing Citation Reform in Selected Jurisdictions*, 103 L. LIBRARY J. 348, 350 (2012) [hereinafter *Implementing Citation Reform in Selected Jurisdictions*].

which the judges used, to Microsoft Word.¹⁰² The Court was assisted as well by its new vendor, Loislaw, which enabled it to obtain its own cases back to 1950, after which the Court added paragraph numbers and uploaded the documents to the database.¹⁰³

One of the best features of Oklahoma's database is its searching capability, as references to prior legal information, such as statutory provisions, were indexed and linked so that a researcher could easily look at that information from the citing opinion.¹⁰⁴ The database was greatly improved through the implementation of a tool the team termed the "citationizer" that "lists citing references for retrieved documents and even translates reporter volume and page numbers to corresponding neutral citations."¹⁰⁵ Accordingly, the OSCN's features gave researchers and professionals access not just to current law in a neutral format but to prior decisions and materials in a similarly neutral format.

This efficient use of resources is instructive to other states looking to adopt the universal citation format and rebuffs the arguments of the concept's antagonists, who often complain that the expense of moving to the new format would be cost-prohibitive. This transition was born of necessity, but the end result has actually increased the level of access that the public has to Oklahoma's legal materials while freeing the courts from recurring financial burdens and granting them the power to own and control the products of their court system.

North Dakota

The story of North Dakota's transition to universal citation is similar to Oklahoma's, as the court issued an order in January 1997 that summarily mandated a vendor- and medium-neutral format based on AALL's model recommendations.¹⁰⁶ Shortly thereafter, the North Dakota Supreme Court issued a rule that required submissions to the court to use universal citations when citing decisions issued on or after January 1, 1997.¹⁰⁷ The citation format requires inclusion of the case name, the year of decision, the state abbreviation ND, the sequential number of release, a paragraph number for pinpoint citation, and a parallel citation to West's *North Western Reporter*.¹⁰⁸

Smith v. Jones, 1997 ND 15, ¶ 21, 600 N.W.2d 900.¹⁰⁹

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Martin, *supra* note 3, at 339.

¹⁰⁵ Kauger, *supra* note 89, at 333; *see also* Martin, *supra* note 3, at 339; *see also Implementing Citation Reform in Selected Jurisdictions*, *supra* note 101, at 350.

¹⁰⁶ AALL and the Dawn of Citation Reform, *supra* note 23, at 344.

¹⁰⁷ N.D. SUP. CT. R. 11.6.

¹⁰⁸ N.D. SUP. CT. R. 11.6(b).

¹⁰⁹ Explanatory Note, N.D. SUP. CT. R. 11.6.

Ted Smith, librarian at the North Dakota Supreme Court Law Library, authored a persuasive memorandum to Chief Justice Gerald W. VandeWalle that was instrumental in prompting change in the way the state handled publication of decisions.¹¹⁰ North Dakota's implementation of universal citation is perhaps less notable for its format, which is typical, than for its concomitant creation of an advanced online repository of North Dakota Supreme Court opinions.¹¹¹ The database initially offered decisions in neutral citation format dating back to 1995 but has incrementally increased the scope of its collection dating back to December 1965.¹¹² The site automatically associates decisions released online with the volume and page numbers from West's *North Western Reporter*, so that researchers may search the database using either the traditional format or the new neutral citation format.¹¹³ Unlike states such as Wisconsin and South Dakota, North Dakota's court web site does not direct users to an "official" version of the opinions that would be more accurate or official, such as a print reporter from a vendor.¹¹⁴

What is even more remarkable is that the site allows commercial searching services, like Google, to fully index its database. Accordingly, searches on the Internet for North Dakota Supreme Court cases will direct the user to the Court's website, making the database "an open public resource in the contemporary sense."¹¹⁵ Retrieving opinions on the Court's site also provides the user with additional materials related to the case, such as audio files of oral arguments and parties' briefs.¹¹⁶ The site was recognized as the best judicial site by AALL in 1997 and "has, ever since, set a standard for 'best practices,' offering excellent search capability and a regularly expanding collection of retrospective opinions.¹¹⁷ The North Dakota Supreme Court's web site remains an exemplary service that increases public access to the law, a practice that is made possible by the Court's implementation of neutral citation.

Recent Adopters

Peter W. Martin's extensive exploration of the history and implementation of the universal citation movement was published in 2007. In the intervening five years, three states have adopted a universal citation format: Arkansas in 2009,¹¹⁸ Illinois in 2011,¹¹⁹ and Colorado in 2012.¹²⁰

¹¹⁰ Martin, *supra* note 3, at 335-336.

¹¹¹ *Id.* at 338.

¹¹² *Implementing Citation Reform in Selected Jurisdictions*, *supra* note 101, at 350.

¹¹³ Martin, *supra* note 3, at 337.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 338.

¹¹⁶ *Id.*

¹¹⁷ *AALL and the Dawn of Citation Reform*, *supra* note 23, at 344.

¹¹⁸ ARK. SUP. CT. R. 5-2.

¹¹⁹ ILL. SUP. CT. R. 6, 23(h).

¹²⁰ *Public Domain Citation Format for Colorado Supreme Court and Colorado Court of Appeals Cases*, Chief Justice Directive 12-01 (January 3, 2012), available at http://www.courts.state.co.us/Courts/Supreme_Court/Directives/CJD%2012-01.pdf.

Arkansas

The Supreme Court of Arkansas has varied the traditional neutral citation format slightly by requiring the pinpoint citation be a page number from the officially released PDFs of court opinions rather than paragraph number.¹²¹

Smith v. Hickman, 2009 Ark. 12, at 1, 273 S.W.3d 340, 343.¹²²

Here, “at 1” refers to the first page of the official electronic file of the decision as released by the Arkansas Judiciary.¹²³ This implementation of a print-based format unfortunately ignores the realities of legal scholarship and prevents its neutral citation system from being fully compatible with the movement’s desire not just for vendor-neutrality but also for medium-neutrality.

Illinois

The adoption of neutral citation by the Supreme Court of Illinois in 2011 marked an important development in the history of the movement, as Illinois joined Ohio as the only two among the ten most populous states to incorporate the new format.¹²⁴ While this is perhaps indicative of a potential trend among the larger states, the problem is that both these states have implemented variations on the suggestions by AALL that could give rise to a lack of unity among universal citation formats. To wit, Ohio’s application of sequential numbers across the entire Ohio court system creates unnecessary confusion as to the source of a court document.

In a similar threat to uniformity and simplicity, Illinois’s adoption of the format involves the use of docket numbers rather than sequential numbers that represent the order of publication of the Supreme Court’s opinions:¹²⁵

People v. Doe, 2011 IL 102345, ¶ 15.

Using the docket number, here “102345,” unnecessarily creates a longer and potentially more complex citation, especially when, as the Supreme Court of Illinois has recognized, subsequent opinions are filed under identical docket numbers, as when there is reconsideration of the cause after remand.¹²⁶ In this

¹²¹ *Introduction to Basic Legal Citation*, *supra* note 76, at § 2-230.

¹²² ARK. SUP. CT. R. 5-2(d)(2).

¹²³ *Id.*

¹²⁴ U.S. CENSUS BUREAU, *2010 Resident Population Data*, available at <http://2010.census.gov/2010census/data/apportionment-pop-text.php> (last visited May 17, 2012) [hereinafter *2010 Resident Population Data*].

¹²⁵ *Introduction to Basic Legal Citation*, *supra* note 76, at § 2-230.

¹²⁶ ILL. SUP. CT. R. 6, Commentary (May 6, 2011).

situation, a sequential capital letter is added to the docket number,¹²⁷ adding an additional layer to an already lengthy identifying number.

An additional problem is that the Supreme Court of Illinois, like the Supreme Court of Arkansas, releases its opinions in PDF format rather than a native, more versatile format such as HTML or Word.¹²⁸ The utilization of PDFs represents a conservative approach and prevents the courts' opinions from being able to be indexed and searched, either by users or other publishers, using metadata.¹²⁹ As commentators have noted, it would be more practical and useful for the Supreme Court of Illinois to issue its opinions in additional formats, as it did from 1996 through 2005.¹³⁰

Colorado

Unlike Illinois and Arkansas, Colorado has instituted a neutral citation format that essentially adopts AALL's recommendations in full.¹³¹ While Colorado had allowed publishers in 1994-1995 to include paragraph numbers in published opinions, no formal step was taken until 2012 to institute a court policy mandating neutral citation, which represents an encouraging step for the movement.¹³² A press release proclaims that the application of neutral citation to opinions "is part of a broader effort by the Colorado Supreme Court to improve access to justice by integrating court resources and electronic technology."¹³³

The format used by Colorado perhaps most directly, among all the states that have adopted neutral citation, reflects the recommendations of the *Universal Citation Guide*:

Smith v. Jones, 2012 CO 22, ¶ 13.¹³⁴

This format is simple and directly satisfies the requirements of both vendor- and medium-neutrality by using paragraph numbers and not requiring a parallel citation to any print reporter.

¹²⁷ *Id.*

¹²⁸ Elmer Masters, *Illinois Courts Drop Print, Stick With Proprietary PDF, Adopt Public Domain Citations*, <CONTENT /> v.5 (June 1, 2011), <http://www.symphora.com/?p=2484> (last visited May 17, 2012).

¹²⁹ Martin, *supra* note 3, at 346.

¹³⁰ Masters, *supra* note 116.

¹³¹ *Public Domain Citation Format for Colorado Supreme Court and Colorado Court of Appeals Cases*, Chief Justice Directive 12-01 (January 3, 2012), available at http://www.courts.state.co.us/Courts/Supreme_Court/Directives/CJD%2012-01.pdf [hereinafter Chief Justice Directive 12-01].

¹³² *Id.*

¹³³ Press Release, Colorado Judicial Branch, Colorado Appellate Courts Adopt New Case-Citation Format (Jan. 4, 2012), available at http://www.courts.state.co.us/Media/Press_Docs/public%20domain%20citation%20FINAL.pdf (last visited May 17, 2012).

¹³⁴ Chief Justice Directive 12-01, *supra* note 131.

While Colorado’s application of neutral citation is encouraging, the non-standard features of other recent implementations of universal citation are worrisome because they perhaps indicate a departure from the standardization proposed by AALL. The possibility of Balkanization of the format could threaten the movement’s momentum just as interest seems to be waxing. More optimistically, the freedom to adopt neutral citation in a variety of configurations could empower other states to adopt the format according to their own needs and terms.

ISSUES UNIQUE TO THE FORMAT

While it is promising for the movement that Arkansas, Illinois, and Colorado have recently adopted neutral citation principles—and perhaps this marks a developing trend as state budgets become tighter—but the diversity of features in their implementation brings to the fore the fact that neutral citation has its own unique set of problems. These difficulties nearly all reflect neutral citation’s development at the transitional period between the older, print-based format and the newer electronic format. Unlike the traditional citation paradigm, neutral citation is a format in full conformity with the modern trends in legal publishing and scholarship when implemented smartly and efficiently; however, many legal professionals remain entrenched in the older, print-based paradigm.

The adoption of neutral citation, even in jurisdictions amenable to its principles and benefits, has often been compromised by attachment to past methods and priorities. In this section, I will examine some of the unique problems that have arisen, often using Oklahoma and North Dakota as counterexamples of ways to implement neutral citation without compromising its aims.

What Is a Paragraph?

Under the recommendations of AALL for universal neutral citation, the paragraph is considered to be the most meaningful indication of location of content within a judicial opinion, as it stays consistent between formats, does not refer to a particular publisher’s products, and tends to reflect an author’s consistent thought or idea.¹³⁵ Although the concept of a paragraph seems intuitively self-evident, there has been some consternation among advocates of the movement as to how exactly to define a paragraph.¹³⁶

Being able to distinguish among paragraphs is a threshold requirement for a system that uses paragraphs for pinpoint citation. Unless a pilcrow (¶), the symbol representing a paragraph break, is manually inserted at the correct place, an automated system will have to be developed that can recognize the breaks and differentiate them from block quotes and various other breaks for the purpose of retrospective application of neutral citations. Additionally, the paragraph only carries meaning so long as the judicial author uses it discriminately; it is

¹³⁵ *Reintroducing Universal Citation*, *supra* note 4, at 336.

¹³⁶ Cannan, *supra* note 5, at 357.

conceivable that an opinion with virtually no paragraph breaks would serve to undermine the purpose of using paragraph breaks as a pinpoint utility, although this possibility would likely only arise in the case of decisions written in a more archaic style.

Parallel Citation

A major issue is the lingering requirement among some state courts that citations include a parallel citation to print reporters in addition to a neutral citation. In jurisdictions besides North Dakota and Oklahoma, which have retrospectively applied neutral citations to older case law, a parallel citation is needed in order to use conversion tables to locate non-neutrally cited material. The 1996 guidelines of the ABA contemplated parallel citation to print reporters as a consequence of the transition between the print medium and the new electronic formats: “Until electronic publications of case reports become generally available to and commonly relied upon by courts and lawyers in the jurisdiction, the court should strongly encourage parallel citations, in addition to the [neutral] primary citation . . . , to commonly used printed case reports.”¹³⁷ As indicated in the ABA’s resolution, the inclusion of parallel citations was intended to be transitional, and the plan did not contemplate the use of pinpoint citations from print reports.¹³⁸

Unfortunately, certain states have required in their court rules that a researcher must include both a paragraph number and a pinpoint page from the print reporter when crafting citations for opinions.¹³⁹ While having a parallel citation to a print reporter itself does not compromise the neutrality of a citation, the requirement of a pinpoint page in the print reporter does so by requiring a person to have access to the print version or an electronic version that includes traditional page numbers as provided by Thomson-West.¹⁴⁰

States like Mississippi,¹⁴¹ Wyoming,¹⁴² and, most recently, Colorado¹⁴³ have crafted neutral citation systems that do not require parallel citation to reporters. Additionally, while both Oklahoma and North Dakota require parallel citations to print reports, their digital case law archives automatically provide that information to the researcher so that no access to the traditional print-based information is required. In automatically providing that information in their case

¹³⁷ American Bar Association, *Universal Citation Resolution* (1996), quoted in Martin, *supra* note 3, at 340.

¹³⁸ Martin, *supra* note 3, at 340.

¹³⁹ See, e.g., WIS. SUP. CT. R. 80.02(1)(c); see also Me. Supreme Judicial Court, Order SJC-216 (Aug. 20, 1996).

¹⁴⁰ Martin, *supra* note 3, at 341.

¹⁴¹ MISS. R. APP. P. 28(e).

¹⁴² Wyoming Supreme Court, *Order Adopting a Public Domain or Neutral-Format Citation* (October 2, 2000), available at http://www.courts.state.wy.us/LawLibrary/univ_cit.pdf (requiring no parallel citation to print reporters for cases decided after December 31, 2003).

¹⁴³ *Public Domain Citation Format for Colorado Supreme Court and Colorado Court of Appeals Cases*, *supra* note 118.

law archives, North Dakota and Oklahoma’s systems “[place] users of the public site and collections derived from it in parity with those working from print reports and their electronic counterparts.”¹⁴⁴

Authentication & Final Versions

As many courts have developed a system for releasing their opinions in electronic format, a problem has arisen with regard to how accurate and official these versions are. Even though a state may issue its opinions to the public online, by not expressing assurance that these versions are final or official, the courts both discourage users dependent on this access from relying on the electronic decisions¹⁴⁵ and surrender ultimate control over their opinions to publishers.¹⁴⁶ This problem of not having authenticated electronic legal materials is being addressed at the national level by the Uniform Law Commission through the Uniform Electronic Legal Material Act (UELMA),¹⁴⁷ which Colorado recently became the first state to adopt.¹⁴⁸

In the absence of adoption of UELMA, some states, including South Dakota, New Hampshire, and Wisconsin, have attached a disclaimer to the opinions released on their web site, alerting researchers that the version is subject to revision and may contain errors.¹⁴⁹ Both Oklahoma and North Dakota contract with Thomson-West to publish their opinions, but neither state directs the user of their archives to the published version as being more authoritative or official than the state-provided electronic version.¹⁵⁰ Both these states incorporate revisions made later in the editorial process into their electronically released opinions,¹⁵¹ and a few others draw attention to later revisions by flagging amended sections.¹⁵²

In order to maintain not just medium-neutrality but also vendor-neutrality, courts that release their opinions electronically should carefully consider during the editorial process whether their electronic publishing system is undermining citation neutrality.

Electronic Format

¹⁴⁴ Martin, *supra* note 3, at 341-342.

¹⁴⁵ Martin, *supra* note 3, at 342-343.

¹⁴⁶ *Id.* at 343.

¹⁴⁷ UNIFORM LAW COMMISSION, *Electronic Legal Materials Act*, <http://www.uniformlaws.org/ActSummary.aspx?title=Electronic%20Legal%20Material%20Act> (last visited May 17, 2012).

¹⁴⁸ Press Release, Uniform Law Commission, Colorado 1st State to Enact Uniform Electronic Legal Material Act (Apr. 27, 2012), *available at* <http://uniformlaws.org/NewsDetail.aspx?title=Colorado%201st%20State%20to%20Enact%20Uniform%20Electronic%20Legal%20Material%20Act>.

¹⁴⁹ Martin, *supra* note 3, at 342.

¹⁵⁰ *Id.* at 343.

¹⁵¹ *Id.*

¹⁵² *Id.* at n. 74.

As mentioned previously, some courts that release their opinions electronically have made these decisions available in print-replicating formats that do not take advantage of the benefits of the digital format and prolong the attachment to and dependence on print-based legal research. Most often released in PDF format, opinions from these courts' websites are intended to be similar in appearance and format to printed slip opinions, which was the format such releases formerly took.¹⁵³ This practice encourages readers to think of the opinion in terms of a passage from a print-based collection and does not support the features of electronic formats that significantly enhance access to the law such as full-text searching. Moreover, formats such as PDF, while prevalent today, may not be the format of tomorrow.

As paragons of effective distribution of case law in an age dominated by Internet use and digital access, Oklahoma and North Dakota have established themselves as exemplary users of the electronic format. Their case law archives have been designed with the Internet and electronic format in mind so that they are effectively online databases rather than imitations of print collections.¹⁵⁴

Cases in these archives have been tagged with essential metadata that allow users to efficiently search through the archives by fields such as author, party name, title, date, and traditional or neutral citation.¹⁵⁵ The electronic format also allows for the linking of related documents, such as briefs or oral argument audio files.¹⁵⁶ Both the North Dakota Supreme Court and the Oklahoma Supreme Court allow commercial search engines to index their collections, allowing users to locate these states' opinions not just through the courts' web sites but also through widely used search engines such as Google.¹⁵⁷

FUTURE PROBLEMS?

Although sixteen states currently have neutral citation systems in place, that number means thirty-four states still employ the traditional citation style. While it is comforting for the movement that Arkansas, Illinois, and Colorado have recently adopted neutral citation principles, there remain many problems and misconceptions with the implementation of a neutral citation system.

Peter W. Martin in *Neutral Citation, Court Web Sites, and Access to Authoritative Case Law* addressed the issue of why more states, as of 2007, had not adopted universal citation. Many of the problems he identified involve perceptions that have persisted from the first days of the movement to the present. Some of these actually remain difficulties the movement must face, while others no longer reflect the realities of the legal publishing market or the legal research paradigm.

¹⁵³ *Id.* at 346.

¹⁵⁴ Martin, *supra* note 3, at 346.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

In this section I will address these problems, both perceived and actual, and attempt to address the arguments other have made, updating and countering them with more current information. After responding to arguments for and against a more widespread implementation of universal citation, I will address the role legal and law library professionals can and must play in the movement if it is to have a future in this country.

Trends Among the States

The location and characteristics of the states whose court systems have adopted a universal citation scheme is hardly inconsequential. As can be seen from the map at Appendix B, the state court jurisdictions that have adopted neutral citation have been overwhelmingly located in less heavily populated states in the heart of the country, although the adoption by Ohio in 2002 and Illinois in 2011 has partly bucked this trend. That said, the simple fact of the matter is that smaller states produce fewer reported opinions not only because of their smaller populations but also because they tend to have a smaller population of attorneys and legal systems with fewer appellate court levels or divisions.

As Martin points out, most of the states with neutral citation systems resemble North Dakota far more than New York or California, both of which were ranked in the top three states in terms of population in the 2010 U.S. Census,¹⁵⁸ and both of which rank in the top four states in terms of total incoming appellate cases in 2009.¹⁵⁹ Often it appears much more difficult to institute such an impactful change as a transition to a new citation format “[i]n jurisdictions with greater scale and institutional complexity, thousands of decisions, and an intermediate appellate court with multiple districts or departments.”¹⁶⁰

On the other hand, while the states that have switched to universal citation have tended to be in the bottom half of the nation in terms of population and scale of their judicial systems, both Ohio and Illinois ranked in the top ten in terms of population in the 2010 census¹⁶¹ and these states are joined in the ten by Louisiana in terms of total cases.¹⁶² Furthermore, as one of the most effective adopters of universal citation and maintenance of a court web site amenable to public access, Oklahoma, ranked twenty-third in terms of cases¹⁶³ and twenty-ninth in terms of 2010 population rank,¹⁶⁴ has fully digitized its case law going

¹⁵⁸ 2010 Resident Population Data, *supra* note 124.

¹⁵⁹ COURT STATISTICS PROJECT, *Population Contributes to the Size of a State's Appellate Caseload*, available at <http://www.courtstatistics.org/FlashMicrosites/CSP/images/CSP2009.pdf> (last visited May 17, 2012) [hereinafter *Population Contributes to the Size of a State's Appellate Caseload*].

¹⁶⁰ Martin, *supra* note 3, at 354.

¹⁶¹ 2010 Resident Population Data, *supra* note 124.

¹⁶² *Population Contributes to the Size of a State's Appellate Caseload*, *supra* note 159.

¹⁶³ *Id.*

¹⁶⁴ 2010 Resident Population Data, *supra* note 124.

back to the beginning of its court system and implemented neutral citation at minimal cost and effort through judicial oversight and efficient use of resources.¹⁶⁵

Market Conditions

Because neutral citation developed as a reaction to the changes in the legal publishing world in the 1990s and is posed as a movement in opposition to the less equitable practices of publishers, the status of universal citation is largely dependent on the costs and demands of the legal publishing market. The decision to transition to a neutral system must reflect not just a desire to increase public access to legal information but also a desire to free this information from the constricting fetters of outside forces. In the cases of certain more populous and influential states, there is the perception that a movement to neutral citation would run counter to the state courts' interests, and it is not difficult to understand why.

Contracts with Publishers

Both California and New York, each heavily populated and lawyered, continued to receive a substantial benefit from having their opinions reported by commercial publishers under contracts to print the states' "official reports."¹⁶⁶ While states such as Oklahoma and North Dakota benefitted through reduced expenses from commercial publishers on account of the increased competition that releasing their opinions in a publicly accessible format yielded, for states such as New York and California that generate substantial revenue from exclusive contracts with publishing companies, "shifting to a pro-competitive scheme that affords all publishers equal access to citable, final decisions in digital format has limited appeal."¹⁶⁷

California and New York have contracts with publishers that grant these companies the exclusive right to publish the courts' case law. Not coincidentally, both New York and California were strongly against the neutral citation format, lobbying heavily against the idea during discussions of the AALL Task Force for Citation Formats in 1995.¹⁶⁸ Their reasons for opposing the changes came down to the benefits they derived under their contracts with Thomson-Reuters and LexisNexis, respectively.

New York's Law Reporting Bureau enjoys a contractual deal with Thomson-Reuters that requires no payment at all from the state.¹⁶⁹ In fact, Thomson-Reuters gives the state the hardware, software, support, and training necessary for the

¹⁶⁵ See Martin, *supra* note 3, at 354; see also Kauger, *supra* note 89, at 333.

¹⁶⁶ Martin, *supra* note 3, at 349-350.

¹⁶⁷ *Id.* at 350.

¹⁶⁸ *Id.* (noting that New York and California's arguments amounted to a defense that they did not need neutrality because they each had beneficial relations with publishers already).

¹⁶⁹ *Id.* at 351.

editing of New York’s case law, in addition to numerous other tangible benefits to the office and the judiciary¹⁷⁰—all simply for the right to produce and sell New York’s case law in print and electronic format.¹⁷¹ California’s contractual relationship with LexisNexis involves fewer tangible benefits but shifts the burden of editorial work to the publisher, which is furnished to the state free of charge in exchange for the right to publish California’s case law.¹⁷²

While not all states have publishing contracts as beneficial as New York and California’s,¹⁷³ “few state offices that contract for and oversee production of ‘official reports’ are likely to favor creation of a public case law archive with neutral citation.”¹⁷⁴ The benefit of the proposed model of having a state’s own digital archive of case law, which, again, can be accessed by publishers just as by users, is that as the demand for print resources decreases and the cost increases, those states that have created their own “official reports” will be able to move their collection of case law easily to a digital format without fear of claims of copyright in the reported material from publishers.¹⁷⁵ As print continues to be in less demand and electronic formats prove more popular, publishing companies with these contracts will likely seek more from the states obligated to them and will possibly use the threat of litigation as a way to maintain the status quo.

Copyright Claims

While it is not possible to copyright the opinions of federal or state courts,¹⁷⁶ the Thomson-Reuters company has a history of trying to enforce its copyright claims in the pagination system it uses in editing case law.¹⁷⁷ While it is unnecessary to recount the arguments in detail, it is worth reviewing West’s claims to determine if they have merit and whether they could continue to pose a threat to other publishers.

West in 1986 won a lawsuit over whether it could copyright the star pagination system it developed in litigation against Mead Data,¹⁷⁸ the company that developed LexisNexis before it was bought by Reed Elsevier in 1994. In unrelated litigation in 1991, the U.S. Supreme Court rejected the argument of a company that it was entitled to copyright in compiling the information of

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* at n. 112 (discussing Illinois’s then-current contract with Thomson-West).

¹⁷⁴ *Id.* at 352.

¹⁷⁵ *Id.*

¹⁷⁶ *Banks v. Manchester*, 128 U.S. 244, 253-254 (1888).

¹⁷⁷ *West Publishing Company v. Mead Data Center, Inc.*, 799 F.2d 1219 (8th Cir. 1986); *Oasis Publishing Co. v. West Publishing Co.*, 924 F. Supp. 918, 923 (D. Minn. 1996) (clarifying *Feist*); *Matthew Bender & Co. v. West Publishing Co.*, 158 F.3d 674, 689 (2d Cir. 1998) (holding that the district court had not erred in concluding that the material was not copyrightable), *cert. denied sub nom.*, *West Publishing Co. v. HyperLaw Inc.*, 526 U.S. 1154 (1999).

¹⁷⁸ *West Publishing Company v. Mead Data Center, Inc.*, 799 F.2d 1219 (8th Cir. 1986).

telephone numbers in a directory.¹⁷⁹ This decision, *Feist v. Rural*, established that a work must have a minimum of original creativity in order to be copyrighted.¹⁸⁰

In light of *Feist*, there was some dispute as to the validity of West's copyright claim over the star pagination system until the District Court for the District of Minnesota stated that *Feist* did not preclude West from claiming copyright in the pagination system because of the effort it took to institute it.¹⁸¹ However, the Second Circuit ruled in 1998 against West in deciding the question of the merit of West's copyright claim over the star pagination system yet again.¹⁸² The Supreme Court denied review of this determination,¹⁸³ but West has never renounced its claims to copyright in the star pagination system.¹⁸⁴ Because the validity of the copyright claim has been left unchallenged over time, "publishers either continue to license *National Reporter System* pagination or exclude it completely, making their reporters difficult for users to cite."¹⁸⁵

The risk of being litigated against by a large international corporation, while no longer blocking access to the case law market by smaller publishers,¹⁸⁶ continues to direct the actions of smaller publishing companies. While it appears that the threat has greatly diminished over time, it is possible that as print becomes less prevalent and more publishers offer case law in affordable packages that West might become aggressive in enforcing its copyright claims. That said, a neutral citation system would allow publishers to market themselves as providers of value-added services rather than of the case law itself. This change would obviate any need for concern over the constant possibility of litigation that smaller publishers face.

The Rise of Smaller Legal Information Providers

While the threat of copyright litigation does direct the actions of smaller publishers to this day, there are many more of these smaller companies that are able to offer similar services as the international corporations at a much lower price. The market has altered substantially since the 1990s when neutral citation emerged and has even changed appreciably since Peter W. Martin published his evaluation of the format in 2007.

Martin mentions smaller companies such as Loislaw and VersusLaw, which offer low-cost research packages that Westlaw and LexisNexis have come to mimic in

¹⁷⁹ *Feist v. Rural*, 499 U.S. 340 (1991).

¹⁸⁰ *Id.* at 363 ("As a constitutional matter, copyright protects only those constituent elements of a work that possess more than a de minimis quantum of creativity.")

¹⁸¹ *Oasis*, 924 F. Supp. at 924.

¹⁸² *Matthew Bender & Co. v. West Publishing Co.*, 158 F.3d 674, 689 (2d Cir. 1998).

¹⁸³ *West Publishing Co. v. HyperLaw Inc.*, 526 U.S. 1154 (1999).

¹⁸⁴ Martin, *supra* note 3, at 357.

¹⁸⁵ *AALL and the Dawn of Citation Reform*, *supra* note 23, at 346.

¹⁸⁶ Martin, *supra* note 3, at 362.

their pricing options.¹⁸⁷ Now there are even more options with the introduction of free legal research services such as Casemaker, Law.com, Justia, Findlaw, Fastcase's Public Library of the Law, and Cornell Law School's Legal Information Institute.¹⁸⁸ Google Scholar's legal opinion search feature, which was introduced in November 2009,¹⁸⁹ has quickly become a reliable source of free case law, with wide coverage of state and federal opinions and a newly instituted citator service.¹⁹⁰

As Cannan points out, even though there are now many ways to access the law online, judicial systems may require access to physical reporters if they continue to rely on traditional, print-based citation, even as law libraries continue to jettison these materials from their collections.¹⁹¹ Consequently, neutral citation remains a vital concern in the legal research world in terms of public access to the law.

LAW LIBRARIANS & THE FUTURE OF ACCESS TO THE LAW

As the legal publishing paradigm continues to shift steadily toward a predominantly electronic-based model, the demand for print materials has decreased, as it will continue to do. If citation formats continue to be tied to print-based materials within this new paradigm, those researchers who cannot find print collections to use will encounter less access to the law despite the seeming surplus of readily available electronic legal materials. This problem is one that the law librarianship profession needs to continue to confront directly if it intends to promote access to the law as an important guiding principle of the profession.

Martin's survey of the legal landscape with regard to universal citation somewhat pessimistically concluded that legal professionals, especially law librarians, seem no longer interested in neutral citation despite the increasing limitations on access in light of disappearing print collections. That said, the adoption of the format by Arkansas, Illinois, and Colorado, and the recent collaborative effort undertaken in the creation of a white paper by AALL may indicate that the conditions could be improving for the neutral citation movement.

It seems evident to nearly all interested parties, excepting possibly the large publishing companies, that neutral citation results in a net benefit for courts, the public, and professionals alike. On the other hand, it appears that a kind of complacency or equilibrium has been reached with respect to neutral citation. Perhaps the movement needs to feed on general dissatisfaction with accepted

¹⁸⁷ *Id.* at 358-359.

¹⁸⁸ Cannan, *supra* note 5, at 355.

¹⁸⁹ Anurag Acharya, *Finding the Laws that Govern Us*, GOOGLE OFFICIAL BLOG (Nov. 17, 2009, 9:05 AM), <http://googleblog.blogspot.com/2009/11/finding-laws-that-govern-us.html>.

¹⁹⁰ Alex Verstak, *Finding Significant Citations for Legal Opinions*, GOOGLE SCHOLAR BLOG (Mar. 8, 2012, 1:29 PM), <http://googlescholar.blogspot.com/2012/03/finding-significant-citations-for-legal.html>.

¹⁹¹ Cannan, *supra* note 5, at 355.

conventions, such as those in the Bluebook, which Judge Richard Posner continues to roundly trounce as “hypertrophic.”¹⁹² Another novel but unlikely solution to the problem has been the creation of a consortium of law schools that would “find, edit, and publish American common law for the benefit of all.”¹⁹³ This idea is obviously outlandish, but it reflects the type of thinking the movement may need in order to progress.

While the professional organizations remain committed to citation reform—“AALL eagerly anticipates continued work with its partners in the legal community to reform the way legal information is disseminated and to improve the quality of justice for all people”¹⁹⁴—satisfaction with the status quo cannot be enough to effect citation reform. Despite near-universal recognition as a positive step toward increased access to the law, neutral citation may not have a future unless it becomes necessary.

It is worth iterating that the aim of the universal citation movement is not to eradicate legal publishers but merely to provide more equitable access to the law in a way that promotes competitive fairness. Courts and publishers large and small alike will be better able to participate in the provision of legal information to the citizenry under a neutral citation system. Finally, I think law librarians must play an integral role in spreading awareness of the necessity and benefits of neutral citation principles, as law librarians “have a great professional stake in successful citation reform.”¹⁹⁵ Law librarians have been the leaders of successful change in citation format reform and continue to have a duty to rally behind neutral citation, remembering both its past and the risks for the future if we do not work to improve the state of public access to the law.

¹⁹² Richard A. Posner, *The Bluebook Blues*, 120 YALE L.J. 850 (2011); see also *Goodbye to the Bluebook*, *supra* note 9.

¹⁹³ Ian Gallacher, *Cite Unseen: How Neutral Citation and Americas Law Schools Can Cure Our Strange Devotion to Bibliographical Orthodoxy and the Constriction of Open and Equal Access to the Law*, 70 ALBANY L. REV. 491, 531 (2007).

¹⁹⁴ *AALL and the Dawn of Citation Reform*, *supra* note 23, at 347.

¹⁹⁵ *UCG*, *supra* note 8, at ¶18.

Appendix A: Do States with Neutral Citation Publish Their Own Reports?

STATE	YEAR NEUTRAL CITATION ADOPTED	STATE THE OFFICIAL PUBLISHER?	LAST YEAR AS PUBLISHER
Arkansas	2009	No	2009
Colorado	2012	No	1980
Illinois	2011	No	2011
Louisiana	1994	No	1973
Maine	1997	No	1965
Mississippi	1997	No	1966
Montana	1998	Yes	N/A
New Mexico	1996	Yes	N/A
North Dakota	1997	No	1953
Ohio	2002	Yes	N/A
Oklahoma	1997	No	1953
South Dakota	1997	No	1976
Utah	1999	No	1974
Vermont	2003	Yes	N/A
Wisconsin	2000	Yes	N/A
Wyoming	2004	No	1959

