

The Path to Citation Reform

By the spring of 1994, it was apparent to some librarians, attorneys, and judges that legal citation was "broke" and needed "fixing." As more and more case law was published in electronic form, and the electronic forms began to proliferate, legal writers began to desire a simpler way to cite cases: one citation, good from the beginning, and good across both paper and electronic forms. Since the 1980s, West Publishing Company, the sole print publisher of the opinions of many jurisdictions, had claimed copyright to the actual citation form of cases it published. The Bible of legal citation, the Harvard *Bluebook*, simply did not instruct writers on how to cite statutes or legal periodical articles that they found in an electronic source, without print dates or page numbers.

In January 1994, Louisiana's Supreme Court adopted a vendor-neutral citation form for its decisions, to enable increased competition for publication of the decisions. Meanwhile, a committee of the bar in Wisconsin was debating the idea of a vendor- and medium-neutral citation form and the establishment of an electronic archive of opinions. In March, concerned about the "Balkanization" of legal citation form, and convinced of the potential leadership that law librarians could display in this area, American Association of Law Libraries President Kay Todd (Paul Hastings et al., Atlanta, Georgia) appointed a Task Force on Citation Formats, chaired by Lynn Foster (University of Arkansas at Little Rock). Todd's concerns were proved justified in

June when the Wisconsin bar committee recommended a new citation form completely different from that of Louisiana.

AALL Takes the First Step

Following months of study and debate, the AALL Task Force—comprised of law librarians, publishers' representatives, and a reporter of decisions—issued its recommendations in March 1995. The most important were:

- Those jurisdictions considering change to a medium-neutral form should use case name, year of decision, court, opinion number, and, where a pinpoint citation is needed, paragraph number.
- Jurisdictions should begin to number all paragraphs within their decisions.

After open discussion within the membership, the AALL Executive Board adopted these recommendations, resolving that the Association would embrace the citation reform issue and support the adoption of vendor- and medium-neutral citations. The Board agreed to continue the dialog with legal publishers and the bench and bar, and to work toward the goal of better citation forms. Since the Task Force had completed its charge, the Board established the standing Committee on Citation Formats (the Committee).

The ABA Acts

Shortly after the AALL Executive Board formally adopted the recommendations

continued on page 15

"The seemingly insignificant legal citation is a linchpin of the law," reads the introduction to the *Universal Citation Guide*. A tentative draft of the *Guide*, to be distributed by AALL for review by law librarians and legal community leaders this summer, is the culmination of more than three years' work by AALL's Committee on Citation Formats. In 1995, the Committee took up the important challenge of creating a new system of legal citation that would effectively bridge the gap between the print-based citation forms of yesterday and the technology-based future of legal information.

It is most fitting that law librarians and the American Association of Law Libraries introduce and pursue citation reform for the legal profession. Law librarians deal most closely with people seeking legal information in any format or medium. We work every day to navigate and manage the vast frontier of electronic legal information. And as managers of the legal information budgets of countless institutions, we understand the importance and cost-effectiveness of vendor-neutral and medium-neutral citation.

On behalf of the AALL Executive Board and the entire profession, I extend heartfelt thanks and congratulations to Committee members Carol Bannen, Carol Billings, Lynn Foster, Paul George, James Hambleton, Bruce Kennedy, Kent McKeever, Mary Persyn, and Frank Houdek—under the capable leadership of Chair Marcia Koslov and previous Chair Rita Reusch—on a job well done.

They have demonstrated how law librarians serve and lead the legal profession, and have enabled AALL to lead the way with a tool that will help us all.

Gudy Meadows

AALL's Universal* Citation

Smith v Jones, 1998 WI 453 ¶82

- Case Name _____
- Year of Decision _____
- Court Designator _____
- Opinion Number _____
- Paragraph Number _____

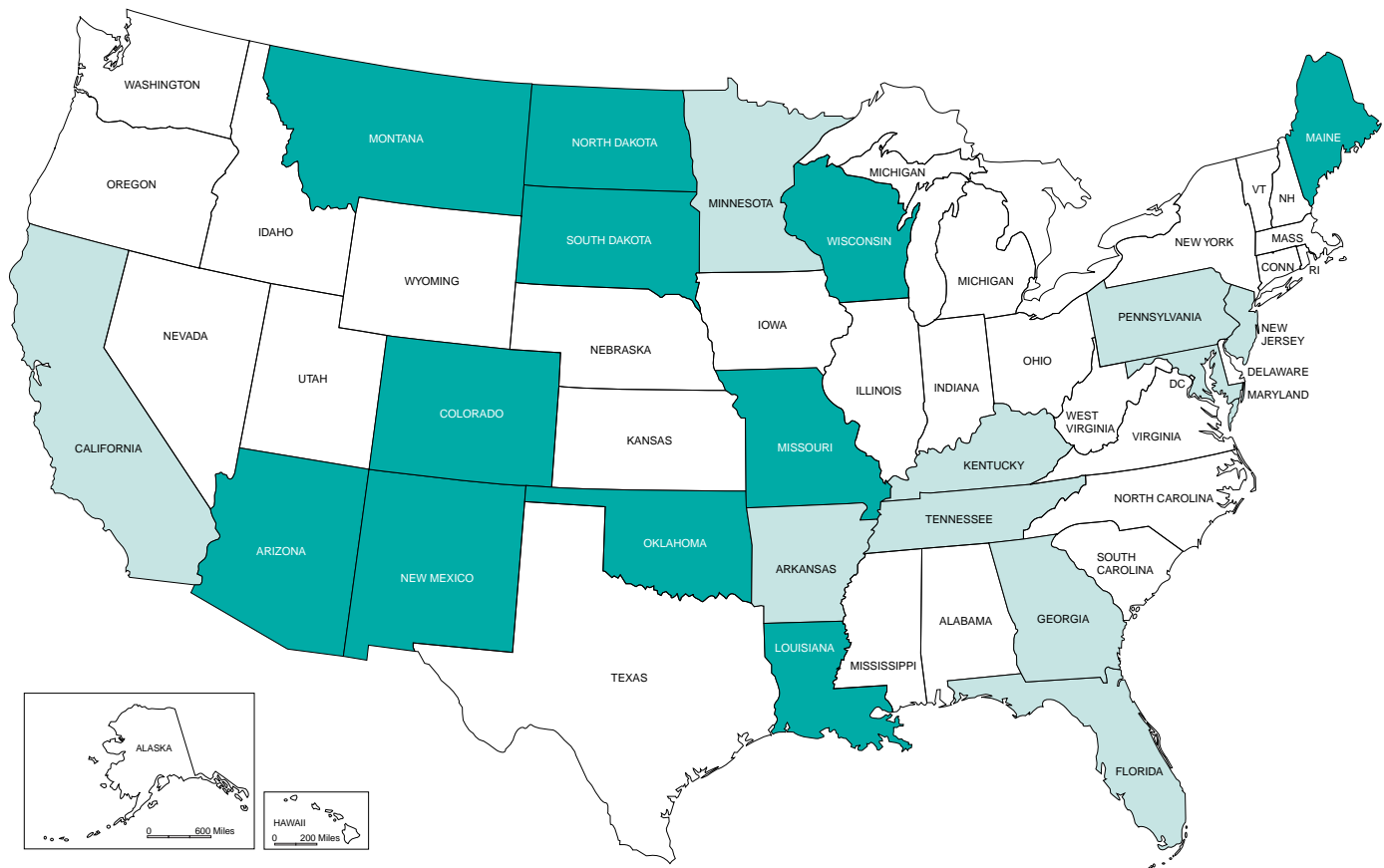
* *Universal* refers to a citation that is medium-neutral (applicable to book or electronic form), vendor-neutral (contains no vendor-specific information), and in the public domain (usable by any publisher without reference to products of any other publisher).

inside:



AALL's Universal Citation Guide..... 14

Case in Point: Oklahoma..... 15



States that have adopted universal citation or allowed citation change

- Arizona
- Colorado
- Louisiana
- Maine
- Missouri
- Montana
- New Mexico
- North Dakota
- Oklahoma
- South Dakota
- Wisconsin

States considering change

- Arkansas
- California
- Florida
- Georgia
- Kentucky
- Maryland
- Minnesota
- New Jersey
- Pennsylvania
- Tennessee

AALL's Universal Citation Guide

The AALL Committee on Citation Formats has completed the tentative draft of the *Universal Citation Guide*, after three years of intense research, discussion, and debate of all aspects of citation reform. The draft *Guide*, which contains AALL's recommendations for universal citation rules for case law, statutory law, and administrative law, will be distributed in summer 1998 to selected members of the legal and law library communities for review.

In the words of the Committee, "The *Guide* provides a roadmap for constructing actual citations for those jurisdictions which have adopted the

universal citation form. For those jurisdictions that are still debating the issue of citation reform, it serves as a model for adoption."

The Committee on Citation Formats anticipates that the first edition of the *Universal Citation Guide* will be published in early 1999. This edition will incorporate comments on the tentative draft, as well as suggestions from law librarians and others who have reviewed sections of the *Guide* published in the *Law Library Journal*.

"The AALL *Guide* is designed to complement the Harvard *Bluebook*,

the legal community's main resource for legal citation," says Marcia Koslov, Committee on Citation Formats Chair and State Law Librarian of Wisconsin. "Our *Guide* includes model universal citations for each state based on their current primary source materials. The members of the Committee on Citation Formats—law librarians representing all areas of the profession—have contributed an enormous number of hours of expertise and careful analysis to produce what we think will be an indispensable tool for all those involved with legal information."

The Path to Citation Reform continued from page 13

of the Task Force, the American Bar Association (ABA) established its own task force in 1995. Rita Reusch (University of Utah College of Law in Salt Lake City), a member of both the AALL Task Force and the new Committee on Citation Formats, assisted the ABA Task Force in its deliberations. After a year of study, the ABA Task Force presented its recommendations to the House of Delegates, which adopted a resolution recommending that all jurisdictions adopt a citation form similar to the Wisconsin and AALL forms.

Since the ABA's resolution, the AALL Committee on Citation Formats has incorporated suggestions found in the ABA report and renamed the vendor- and medium-neutral form the *Universal Citation*. It has drafted rules for the universal citation of case law, statutory law, and administrative law and published these drafts in the *Law Library Journal* for comment. Under AALL's authorization, these rules are being published as the *Universal Citation Guide*. The *Guide* is intended as the latest word in citation reform, an aid to jurisdictions which have already changed their citation form, and a blueprint for those jurisdictions which are considering change. The *Guide* also takes reform beyond case law into other areas of primary authority.

The Current Status of Citation Reform

Today, only four years after AALL initiated its study of citation reform, courts at all levels appear to be moving in the direction of a citation form that will work equally well for electronic and print sources. As of June 1, 1998, 11 states have adopted or allowed some form of vendor- and medium-neutral citation form:

- ARIZONA has begun numbering paragraphs.
- COLORADO has allowed vendors to number paragraphs.

- LOUISIANA has changed its citation form to require docket numbers and slip opinion page numbers.
- MAINE has begun numbering decisions and paragraphs.
- MISSOURI has allowed vendors to number paragraphs.
- MONTANA has begun numbering decisions and paragraphs.
- NEW MEXICO has begun numbering decisions and paragraphs.
- NORTH DAKOTA has begun numbering decisions and paragraphs.
- OKLAHOMA has begun numbering decisions and paragraphs, retroactively, and has placed them on the Web (see box at right).
- SOUTH DAKOTA has begun numbering decisions and paragraphs.
- WISCONSIN has begun numbering paragraphs in Supreme Court decisions.

Additionally, 10 states are in the process of considering citation reform. Both the federal Judicial Conference and the Conference of Chief Justices have appointed internal committees to study the issue of citation reform.

Opposition to Change

Today it is easy to forget the debate that raged on law-lib during the life of the Task Force, and the media attention devoted to this question between 1994 and 1996. The Task Force Report itself was not unanimous, but contained dissenting opinions written by the two West Publishing Company representatives, and by New York's Reporter of Decisions.

In general, those who opposed changing current legal citation form raised two arguments: cost to courts and decreased access to law. Those arguing for change

continued on page 16

Case In Point: Oklahoma Shows the Way of the Future

Oklahoma's Supreme Court, under the leadership of Chief Justice Yvonne Kauger, has pioneered in creating a system which will expand electronic access to Oklahoma's law throughout the world.

The first step in Oklahoma's quick rise to the top tier of electronic publishing was to hire attorney Kevin King (who also has an MBA degree in Management Information Systems) as MIS director in January, 1997. The court adopted public domain citation on April 29, 1997; its Web site went live May 1, 1997; it's been full steam ahead ever since.

Oklahoma now requires use of public domain citation for all decisions posted after May 1, 1997. The goal, King says, is to have available electronically all of the state's case law from 1890 to present, including Oklahoma and Indian Territory cases, as well as all statutes and administrative codes, on the Web site by mid 1999. Formerly with the state's Court of Criminal Appeals, King says the most important factor in the success of such a project, "past the commitments and the thick skin that are required," is good Web site and database development.

Hundreds of hours of intern time have gone into building the database of more than 130,000 documents, and eight full-time law students currently are on staff to add to the current body of case law that is online.

Just 13 months after adopting citation reform, Oklahoma has:

- a search engine patterned after the online services that makes information searchable by free word, judge, case name and citation;
- a citation converter online that provides full text of cases based on input of either *Pacific Reporter* or public domain citations;
- cases from 1959 to present currently online;
- hyperlinks between cases, and to US Supreme Court decisions online; and
- citation checking for Oklahoma cases.

For more information, contact kingk@oscn.net or visit <http://oscn.net>

Statutory and Administrative Law

Until now, public attention has focused on case law. Meanwhile, following the original Task Force recommendations, the AALL Committee on Citation Formats moved to develop accurate, clear universal citations for statutory and administrative law. The tentative draft of the *Universal Citation Guide*, published in July 1998, contains its recommendations for universal citation rules for statutory and administrative law.

The Path to Citation Reform *continued from page 15*

countered with the arguments of reduced costs to researchers, and increased access due to the citation form being once and for all in the public domain.

Cost

Those opposed to change cited the cost courts would have to pay to change their systems, since they would now be responsible for numbering decisions and paragraphs. However, all of the jurisdictions that have changed their citation form seem to have done so without incurring any of the enormous costs predicted by critics. Even Oklahoma, which has invested in additional staff in order to put the entire body of its case and statutory law on the Internet, saved significant amounts that it was paying book publishers to buy multiple sets of Oklahoma law for county collections. It should be noted that no jurisdictions that have changed their citation form have changed back.

Moreover, prices paid by researchers have dropped significantly. For example, before Louisiana changed its citation form, researchers paid \$3500 as a one-time cost for the only available CD-ROM version of Louisiana law. Quarterly updates cost \$720 per year. Once the court changed its citation form, other publishers were able to produce competing CD-ROM products, and the basic cost of Louisiana law on CD-ROM dropped to zero, with only an updating cost of \$720 per year.

Access

Opponents to citation change argued that the vendor- and medium-neutral citation for case law limited access to the law. They claimed that it was a "nowhere" citation, and that since it was not anchored to a specific source, researchers would not be able to find it. The issue of source specificity has generated the most debate on the Task Force and subsequently on the Committee. The Committee has tried to make citations to primary authority as "virtual" as the nature of the material and current publishing practices will allow.

Today, in those six jurisdictions that have adopted full universal citations, the legal system works much as it always has. Judges, law clerks and attorneys find the law much as they always have, but with the added benefits of new technology. This supports the contention that access to the law would actually be improved by moving citation form into the public domain.

Another issue involving access is copyright. Case law is not clear whether some legal citations are in the public domain, even though, paradoxically, the text of the law is. Beginning in the 1980s, West Publishing began to raise the claim of copyright for citations to case law, and in some jurisdictions, statutory codes that it published. A pivotal case was decided in favor of West by the Eighth Circuit. Mead Data Central, the defendant and then-publisher of LEXIS, settled rather than appeal to the U.S. Supreme Court. This result left other publishers in the position of either using West citations and defending litigation, paying West licensing fees to use its internal page numbers, or pressing for a new type of citation form.

After West Publishing was purchased by Thomson Corporation, some in the library world hoped for a change in West policy. However, West Group still asks for payment of licensing fees by other publishers, and currently another lawsuit, originally involving Matthew Bender, Hyperlaw, and West, is before the Second Circuit. AALL has participated in this case as an *amicus curiae*.

AALL, of course, strongly supports maximum access to the law. Retaining public ownership of the text of the law is not enough. The public must also own the method of citing the law. In fact, public domain search engines are also desirable, as implied by the 1994 AALL Executive Board resolution urging the formation of public domain databases of law.

The Next Step

While concerns remain in some jurisdictions, it is clear that institutions are moving in the direction of access to the law in an electronic form that is no longer dependent on any form in print. Nevertheless, questions remain. Some courts issue initial electronic versions of opinions that are later changed, and thus must wrestle with how to clearly label their electronic opinions so that their readers know whether or not they are final. Other courts, which issue opinions from many locations, are concerned about the centrality of electronic distribution. Another concern is the security of electronic opinions. However, the trend is clear: toward the universal citation.

In the words of the Committee,

Successive layers of information technology are amassing an electronic legal record which remains tied to

the citation of printed materials. As information managers, law librarians have a great professional stake in the success of citation reform. With the law librarian's patience, interest, and expertise to craft and test endless iterations of citations for the varied legal materials issued by American jurisdictions, it is only natural that law librarians assume a leadership role in framing a new set of citation standards for the American legal community.

The American Association of Law Libraries is proud of its leadership role in the area of citation reform. While we can't claim to have predicted the future, we can be certain that the *Universal Citation Guide* will ease the transition to it, not only for law librarians, but also for jurisdictions, attorneys, and all other users of legal information.

Resources

AALL Committee on Citation Formats Home Page

<http://www.aallnet.org/committee/citation/>
Page includes:

- drafts of user guides for case law, statutory law, and administrative law
- Task Force Report: link to ABA Special Committee on Citation Issues Web page; links to states that have changed their citation forms.

The Universal Citation Guide: A Tentative Draft (American Association of Law Libraries, 1998) published in cooperation with the State Bar of Wisconsin (copies available on the Committee Web site. Single copies will be made available to individuals willing to review and provide comments by October 1, 1998).

Reports:

- The Universal Legal Citation Project: A Draft User Guide to the AALL Universal Case Citation [89 L. Libr. J. 7 (1997)]
- The Universal Legal Citation Project: A Draft User Guide to the AALL Universal Statutory Citation [90 L. Libr. J. 91 (1998)]
- The Universal Legal Citation Project: A Draft User Guide to the AALL Universal Regulatory Citation [90 L. Libr. J. (summer 1998)(forthcoming)]
- AALL Task Force on Citation Formats Report [87 L. Libr. J. 581 (1995)]



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