



## ARTICLE

# The Folly of the Embedded Full Citation: How the Bluebook and ALWD manuals Encourage Weak Legal Writing

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The two most prominent citation manuals for legal writing, the Bluebook and the ALWD Guide to Legal Citation, tell us that we may place full citations to legal authority in a separate citation sentence<sup>1</sup> or citation clause,<sup>2</sup> or that we may embed them as a grammatical element of a textual sentence.<sup>3</sup> In addition, we may sometimes refer to an authority by name in the text of a sentence without a citation, typically deferring the citation to a citation sentence that follows.<sup>4</sup>

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<sup>1</sup> THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. B1.1, at 4 (Columbia L. Rev. Ass'n et al. eds., 21st ed. 2020) [hereinafter BLUEBOOK]; ALWD GUIDE TO LEGAL CITATION R. 34.1(a), at 294 (Ass'n of Legal Writing Dirs. & Colleen M. Barger, eds., 6th ed. 2017) [hereinafter ALWD].

<sup>2</sup> BLUEBOOK R. B1.1, at 4; ALWD R. 34.1(b), at 295.

<sup>3</sup> BLUEBOOK R. B10.1.1(vi), at 12; ALWD R. 34.1(c), at 295.

<sup>4</sup> ALWD R. 34.1(d), at 295. The Bluebook does not by rule provide for textual reference to case names with a deferred citation, but it does include examples of this practice. *See, e.g.*, BLUEBOOK R. 2, at 68 (“In Guth v. Loft, the court held that directors also owe a duty of loyalty to the shareholders. 5 A.2d 503, 510 (Del. 1939) . . .”).

For a writer's first and full citation to authority, the third option—the embedded citation—is a dubious choice at best, and beginning legal writers would benefit greatly from never embedding full citations into textual sentences. That's right—*never*. The folly of the embedded citation shows up in examples in both the Bluebook and ALWD, and both manuals would do legal writers, especially beginning legal writers, a big favor by expressly discouraging its use for full citations.<sup>5</sup> Moreover, each manual should remove or revise its examples of embedded full citations and textual case references that open with the clunky “In [full case name]” phrasing.

Consider first this example from ALWD Rule 34.1(c), the embedded citation rule:

In *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), the Court held that if the defendant was not present in the forum, due process required that he have certain minimum contacts with that forum.<sup>6</sup>

Often, a writer relies on a case for the first time (thereby requiring a full citation) in the topic sentence of a paragraph introducing a new idea—here, the minimum-contacts rule. However, as legal-writing textbooks appropriately point out, paragraphs should be organized around legal principles, not cases.<sup>7</sup> As a topic sentence, the ALWD example fails this tenet of organization. The point of this topic sentence should not be the case as much as the legal principle: where a defendant is not present in the forum, due process requires minimum contacts. The embedded full citation distracts from the legal principle and requires adding the excess words “the Court held that.” Hence, a more concise and effective version would defer the full citation to a citation sentence, as follows:

Where a defendant is not present in the forum, due process requires that he have certain minimum contacts with that forum. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).<sup>8</sup>

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<sup>5</sup> To the credit of its authors, ALWD does provide that because embedded citations are “necessary to the grammatical sense of the text, . . . you may prefer to edit sentences to avoid using embedded citations.” ALWD R. 34.1(c), at 295. The Bluebook includes no comparable statement.

<sup>6</sup> *Id.*

<sup>7</sup> See, e.g., CHRISTINE COUGHLIN ET AL., A LAWYER WRITES 127-29 (3d ed. 2018); JOHN C. DERNBACH ET AL., A PRACTICAL GUIDE TO LEGAL WRITING AND LEGAL METHOD 222-23 (6th ed. 2017). To the author's knowledge, all legal writing textbooks endorse this fundamental tenet of organization.

<sup>8</sup> When used in a citation sentence and not in an embedded citation, *International* is abbreviated to *Int'l*. ALWD R. 12.2(e)(2), at 64 & app. 3(E), at 446; BLUEBOOK R. B10.1.1(v), at 12 & tbl. T6, at 306.

A rule-based topic sentence without an embedded citation works well precisely because of, not in spite of, the absence of the case name and citation from the textual sentence. The transition to the new paragraph is much smoother without the clunky “In [case name]” opening,<sup>9</sup> and any trained legal reader would know from the separate citation sentence following the textual sentence that the stated proposition is supported by a Supreme Court opinion.

While textual references to full case names without citations avoid the distraction of the embedded citation, they still present the risk of the misguided “In [case name]” sentence opening. ALWD provides this dubious example in Rule 2.3, which governs references to cases in textual sentences:

In *Performance Coal Co. v. Federal Mine & Health Review Commission*, the court disagreed with the government’s interpretation of the statute.<sup>10</sup>

The stronger option would be to lead with the actor (the court) and its action (disagreed):

The court has disagreed with the government’s interpretation of the statute. *Performance Coal Co. v. Federal Mine & Health Review Comm’n* [with citation].<sup>11</sup>

In some circumstances, an experienced writer might want to highlight the identity of the deciding court and the name of the case—for example, in referencing well-known Supreme Court authority in a brief. The writer should still avoid a fully embedded citation, which hinders the flow of the sentence, and instead open the sentence with the actor and action—“The Court held.” Returning to the earlier example citing *International Shoe*, the following use of a textual case reference would suffice:

The Court held in *International Shoe Co. v. Washington* that, if the defendant was not present in the forum, due process requires that he have certain minimum contacts with that forum. 326 U.S. 310, 316 (1945).

Shifting to the Bluebook, here is an example of a dubiously embedded full citation appearing in the Bluepages:

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<sup>9</sup> See Kenneth F. Oettle, *Begin Paragraphs with Ideas Rather Than Case Names; “In Smith v. Jones” Is A Tempting but Weak Transition*, N.J. L.J., at 21 (Mar. 24, 2003).

<sup>10</sup> ALWD R. 2.3, at 16.

<sup>11</sup> When used in a citation sentence and not in a textual sentence, “Commission” is abbreviated to “Comm’n.” ALWD, R. 12.2(e)(2), at 64 & app. 3(E), at 445; BLUEBOOK R. B10.1.1(v), at 12 & tbl. T6, at 304.

In Penn Central Transportation Co. v. City of New York, 366 N.E.2d 1271 (N.Y. 1977), the court applied the diminution in value rule.<sup>12</sup>

The citation reveals that Penn Central is a case from New York's highest court, the Court of Appeals.<sup>13</sup> Let's presume that this is the writer's first reference to the diminution in value rule, and the writer is pointing out in an inter-office memo that this is the rule a lower court will apply. The sentence needs to be restructured to focus on that rule and not on the case.

The court will apply the diminution in value rule. See Penn Central Transp. Co. v. City of New York, 366 N.E.2d 1271 (N.Y. 1977).<sup>14</sup>

A writer wishing to focus on the identity of the decisional court could choose phrasing like the following:

The Court of Appeals has applied the diminution in value rule. Penn Central Transp. Co. v. City of New York, 366 N.E.2d 1271 (N.Y. 1977).

Unfortunately, by endorsing the embedded full citation and presenting clunky and wordy examples of its use, both ALWD and the Bluebook are encouraging inexperienced legal writers to do what is already their wont: embrace the safety of the immediate case reference in the textual sentence and avoid firmly asserting a rule. While ALWD does suggest that writers "may prefer to edit sentences to avoid using embedded citations,"<sup>15</sup> it still endorses their use. The Bluebook does an even greater disservice in this realm by establishing through rules 10.2.1 and 10.2.2 a sort of false equivalence between full case citations embedded in textual sentences (where, as argued in this article, they almost always do *not* belong) and in citation

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<sup>12</sup> BLUEBOOK R. B10.1.1(vi), at 12.

<sup>13</sup> See BLUEBOOK tbl. T1, at 271.

<sup>14</sup> When used in a citation sentence and not in a textual sentence, "Transportation" is abbreviated to "Transp." ALWD, R. 12.2(e)(2), at 64 & app. 3(E), at 447; BLUEBOOK R. B10.1.1(v), at 12 & tbl. T6, at 307.

<sup>15</sup> ALWD R. 34.1(c), at 295.

sentences or clauses (where they almost always do belong).<sup>16</sup> The Bluepages for practitioners similarly advance this false equivalence.<sup>17</sup>

To be clear, subsequent references to a case, where a short-form citation would be appropriate, can usually appear in a textual sentence without a problem. By way of example, the second sentence after the topic sentence introducing the minimum contacts rule could appropriately begin with “In *International Shoe*, the Court . . .,” and then provide more specifics of the application of the minimum contacts rule in that case. A citation sentence with a short-form citation (326 U.S. at 316) would follow.

Embedded full citations to statutes and other non-case authorities are also problematic, albeit less so when the citation is shorter than a typical case citation.<sup>18</sup> Consider the following example from the fifth edition of the ALWD Guide:

The statute of limitations for such actions is one year as provided by 49 U.S.C. § 16(3)(f).<sup>19</sup>

The better and less wordy alternative would be—

The statute of limitations for such actions is one year. 49 U.S.C. § 16(3)(f).

In the sixth edition, the ALWD authors provide the following option, which, in an appropriate context, would be acceptable:

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<sup>16</sup> See BLUEBOOK R. 10.2, at 96 (“The only significant differences between case names in textual sentences and case names in citations are the italicization . . . and the extent to which the case name is abbreviated.”) ALWD does something similar, though in a less pronounced fashion, providing in a chart specific words that should be abbreviated in textual sentences and embedded citations (and therefore not in citation sentences or clauses). ALWD, R. 2.3, Chart 2.1, at 17. Citation clauses, though technically not embedded citations, present their own problems, sometimes producing needlessly long and clunky sentences—especially when used for full citations. Consider, for example, this sentence using a citation clause: “Due process requires that a defendant not present in the forum have minimum contacts with that forum, *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), and, therefore, XYZ Corporation cannot be sued in Michigan.” Accordingly, beginning legal writers should be wary of using citation clauses, particularly for full citations.

<sup>17</sup> BLUEBOOK R. B10.1.1(v), at 12 & B10.1.1(vi), at 12 (identifying key distinctions between rules for citation sentences and rules for textual sentences, distinctions described in greater detail in Rules 10.2.1 and 10.2.2).

<sup>18</sup> Full citations for some non-case authorities—for example, periodicals and internet sources—could be significantly longer than those for cases and hence even more problematic if embedded in the writer’s sentence. See, e.g., BLUEBOOK R. 16.1, at 157-58 (Periodical Materials) & R. 18.1, at 174-75 (The Internet, Electronic Media, and Other Nonprint Resources).

<sup>19</sup> ALWD R. 34.1(c), at 307.

The court's opinion quoted 49 U.S.C. § 16(3)(f) (2012) as authority for the one-year statute of limitations.<sup>20</sup>

Beginning and experienced legal writers often overlook the ways in which embedded full citations—especially embedded full case citations—lead to wordy sentences that highlight legal authority instead of the legal principle for which that authority is being cited. Many legal writing professors actively discourage their students from cluttering their textual sentences with unnecessary citation information, but these lessons are undercut by each citation manual's seeming endorsement of these embedded citations. To better complement legal writing instruction and good practice, the Bluebook and ALWD should revise their manuals to discourage the use of embedded full citations and to exclude example sentences beginning with "In [full case name]."

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<sup>20</sup> *Id.* at 295.