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HIERARCHIES OF ELITISM AND GENDER: THE BLUEBOOK AND THE ALWD GUIDE

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HIERARCHIES OF ELITISM AND GENDER: *THE BLUEBOOK AND THE ALWD GUIDE*

Steven K. Homer*¹

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1. Editors' Note: *Pace Law Review* uses *The Bluebook* as its citation guide to edit all articles.

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Abstract

Hierarchies persist in legal academia. Some of these, while in plain view, are not so obvious because they manifest in seemingly small, mundane choices. Synecdoche is a rhetorical device used to show how one detail in a story tells the story of the whole. This Article examines hierarchies of elitism and gender through a lens of synecdoche. The focus is on the choice of citation guide. Even something as seemingly benign and neutral as choosing a citation guide can reveal hierarchies of elitism and gender bias in legal education and the legal profession. Put another way, the choice of citation guide exists in—is inextricably embedded in—structural hierarchies of the legal profession.

*This Article examines the ways the choice of a citation guide reinforces elitism and gender bias by examining the use of two common citation guides, *The Bluebook* and the *ALWD Guide*. *The Bluebook* was developed by law students engaged in prestige activities at top-ranked law schools and retains the traits of its birth. This is in contrast to the *ALWD Guide*, which was written by experienced, professional legal writing professors who have dedicated their careers to teaching lawyers how to practice law. The Article describes the *ALWD Guide*'s focus on educating students to be practitioners, and the role of elitism and gender bias in keeping the *ALWD Guide* from displacing *The Bluebook*, despite *The Bluebook*'s well-documented deficiencies in training attorneys.*

This Article describes how learning citation gives students a kind of social capital through explicit and implicit messages they

receive about the relationship of citation to their aptitude for the study of law, the connections between citation and prestige activities like law reviews, and the rhetoric of citation as a proxy for “good lawyering.” It explains how the elevation of *The Bluebook* elevates and perpetuates elitism as a substitute for quality over the expertise of women—in this case, women working in lower-status, lower-paying positions.

It ultimately uses the example of the choice of a citation guide to examine the distribution of authority, power, and resources along gender lines in society in general and in legal education. The choice of citation guide is a locus of power, and resistance to small choices that shift power accumulates into the perpetuation of the hierarchical status quo. It concludes that by using this example of synecdoche, we can examine and perhaps shift our awareness of who has power, authority, and expertise within the legal profession and move toward rebalancing this power and authority based upon real expertise.

I. INTRODUCTION

This is an extended exercise in synecdoche. Synecdoche is a rhetorical device through which a detail tells the story of the whole.² Synecdoche as an analytical mode is premised on the fractal quality of the hierarchies I am discussing here. Hierarchies reproduce themselves at every level, and at every level the hierarchy is visible in its entirety. Here, the detail is the choice of citation guide, a choice that tells a story about hierarchies of elitism and gender in legal education and the legal profession. Put another way, the choice of citation guide exists in—is inextricably embedded in—structural hierarchies of the legal profession. In this Article, I examine the intersecting contexts of elitism and gender bias within which the choice of citation guide is made. That choice reinforces and perpetuates hierarchies of elitism and gender.

I focus on two citation guides: *The Bluebook*³ and the *ALWD*

2. Synecdoche “takes the whole for a part, or a part for the whole; the year for any of the seasons, or any of these for a year; a General for his Army; the Orator for his language or eloquence, &c.” THOMAS BROWNE, *THE BRITISH CICERO; OR, A SELECTION OF THE MOST ADMIRABLE SPEECHES IN THE ENGLISH LANGUAGE* 46–47 (1810).

3. *THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION* (Columbia L. Rev.

Guide.⁴ *The Bluebook* is the product of law review students at top-ranked law schools.⁵ These students, in general, have neither practice nor teaching experience, but the citation guide they produce is treated as “the ‘Bible’ of legal citation.”⁶ The *ALWD Guide* is the product of the collective expertise of the field of legal writing instruction. Legal writing, as a field, is comprised of experienced teachers with practice backgrounds—people who have used citation in practice and have taught it to students. Their collective expertise includes knowledge of the citation forms practitioners are most likely to use and the challenges of teaching citation to law students. This expertise arises from a female-gendered field; that is, legal writing, as a field, bears the indicia of the ways in which women and their expertise are devalued within the legal academy and the legal profession. Among my main purposes here is a critique of the gendered devaluation of legal writing, while embracing the gendered origins of its expertise, with an eye towards increasing the each of the authority grounded in that expertise. Women have overwhelmingly created the expertise of this field,⁷ and the *ALWD Guide* is the product of this expertise.

Thus, the preference for *The Bluebook* over the *ALWD Guide* is a preference for, and gives further effect to, the hierarchy of law school rankings and the ranking of law students, within which higher-ranked or “elite” law schools are given greater authority by virtue of their higher rankings. It is an example of the perpetuation of the legal academy’s devotion to “elitism for

Ass’n et al. eds., 21st ed. 2020). I will refer to all editions of this book as “*The Bluebook*,” unless I am discussing a particular edition.

4. COLEEN M. BARGER, ASS’N OF LEGAL WRITING DIRS, *ALWD GUIDE TO LEGAL CITATION* (6th ed. 2017). Earlier editions of this book called it a “manual,” but the most recent edition calls it a “guide.” I will refer to all editions of this book as “the *ALWD Guide*,” unless I am discussing a particular edition.

5. Susie Salmon, *Shedding the Uniform: Beyond a “Uniform System of Citation” to a More Efficient Fit*, 99 MARQ. L. REV. 763, 785 (2016).

6. Ian Gallacher, *Cite Unseen: How Neutral Citation and America’s Law Schools Can Cure Our Strange Devotion to Bibliographical Orthodoxy and the Constriction of Open and Equal Access to the Law*, 70 ALB. L. REV. 491, 496–99 (2007).

7. Clearly, men teach in the field as well. I teach in the field. Men have obviously contributed to the total expertise of the field in general, and specifically to the *ALWD Guide* itself. A field, and its related expertise, can be gendered even though the people within the field do not uniformly identify with one gender, as I discuss below.

the sake of elitism.”⁸ It also is a preference for, and gives further effect to, the hierarchy of gender within the legal academy and the profession, within which women and their expertise are devalued.

I am mindful that synecdoche, as an analytical style, has its limits, that the part cannot stand in for the whole in every circumstance or for every purpose.⁹ I focus on the choice of citation manual because of the role of citation in first-year instruction: it is part of students’ acculturation into the legal profession. In this context, the choice of citation manual sends parallel messages about who belongs, how much they belong, and where they belong. More fundamentally, the choice of *The Bluebook* communicates that certain hierarchies are natural or inevitable, and that they truly rest on (perceived) merit, and merit alone. Choosing the *ALWD Guide* over *The Bluebook*, without more, would not be a death blow to any of this. Yet the choice of citation guide is an example of one of the many small places in which choices that perhaps seem to be of little consequence are the exact moments in which hierarchies recreate and perpetuate themselves in ways that are unseen, precisely because they are so small. In this way, this one choice has a synecdochical relationship to the whole of the profession.

Section II of this Article explores the ways in which legal citation, in any form, is part of the early formation of students’ identities as lawyers. Citation, whether it is from *The Bluebook* or the *ALWD Guide*, or one of *The Bluebook*’s other competitors, like the *Maroonbook*¹⁰ or the *Indigo Book*,¹¹ is part of the arcana of learning to practice the law. It gives students a kind of social capital through explicit and implicit messages they receive about the relationship of citation to their aptitude for the study of law, the connections between citation and prestige activities

8. Gerald P. López, *Transform—Don’t Just Tinker With—Legal Education (Part II)*, 24 CLINICAL L. REV. 247, 432 (2018).

9. See Gerald Torres, *Synecdoche*, 14 HARV. LATINO L. REV. 263, 275 (2011).

10. THE MAROONBOOK: THE UNIVERSITY OF CHICAGO MANUAL OF LEGAL CITATION (U. Chi. L. Rev. ed., 2019), <https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/v87%20Maroonbook.pdf>.

11. THE INDIGO BOOK: AN OPEN AND COMPATIBLE IMPLEMENTATION OF A UNIFORM SYSTEM OF CITATION (Christopher Jon Sprigman et al. eds., 2016), <https://law.resource.org/pub/us/code/blue/IndigoBook.pdf>.

like law reviews, and the rhetoric of citation as a proxy for “good lawyering.”

Section III explores the elitist origins of *The Bluebook*, both in relation to the moment and place of its birth and in relation to the culture in which it is produced. *The Bluebook* was developed at a moment in which the legal profession was grappling with the idea of rankings and hierarchies of law schools; it is still the product of elite law schools and still reflects in its very organization its orientation towards scholarly work rather than the practice of law or the teaching of law students.

Section IV discusses the purposes of the *ALWD Guide*, and its origins in the expertise of a female-gendered field. Although the *ALWD Guide* has had specific authors, and its early development included several men, it rests on the expertise of a female-gendered field: that is, a field that is both overwhelmingly populated by people who identify as women and also treated in a way that reflects the distribution of authority, power, and resources along gender lines in society in general. The rejection of the expertise of a female-gendered field, in the form of choosing *The Bluebook* instead of the *ALWD Guide*, is consistent with, and gives further effect to, a more general devaluation of women, women’s expertise, and expertise about women in the legal academy and the legal profession.

Section V discusses the intersection of these two hierarchies in the choice of citation guide. The elevation of *The Bluebook*, and the elite students who produce it, is simultaneously the elevation of elitism as a substitute for quality and the rejection of the expertise of women—in this case, women working in lower-status, lower-pay positions, the kinds of positions that the law review students who produce *The Bluebook* are unlikely to hold in their careers.

Finally, Section VI discusses what might follow from this. Despite the rhetoric around *The Bluebook* that makes it seem both necessary and valuable, the truth of citation practices is likely to be more complex. *The Bluebook* is widely criticized, and likely largely honored in the breach. Adopting the *ALWD Guide* would not necessarily dismantle the hierarchies of elitism and gender bias, but it would represent a choice in favor of shifting authority to women.

The Bluebook persists despite the confusing system it creates and its flawed organization. It persists because of the

institutional weight of the law schools and academic activities that gave birth to it, and the inertial force of the hierarchies of elitism and gender hierarchies within which it exists. The preference for *The Bluebook* contributes “to producing a student habitus that sees the pre-existing organizational structure as the natural way that things are.”¹² The *ALWD Guide* is superior to *The Bluebook*. It is superior to *The Bluebook* because of who produces it. By “produces it,” I do not mean simply the individuals who write it. Rather, I mean the field from whose expertise the *ALWD Guide* came: the people who teach legal writing and citation to future practitioners. The choice of citation guide is a moment that allocates power and authority within the legal profession. There need not be an intention to reproduce any hierarchy: hierarchy has many tiny footprints, each of which is a synecdoche for the whole.

II. LEGAL CITATION ACCULTURATES LAW STUDENTS INTO THE VALUES AND HABITS OF THE LEGAL PROFESSION

Legal citation is part of the culture of lawyers, and, because it is a lower-level skill typically taught in the first year, it is an early example of acculturation as a member of the legal profession that begins as soon as the first semester of law school.¹³ For many law students, this acculturation through citation comes through *The Bluebook*; ultimately, then, *The Bluebook* comes with its own messages about who belongs in the profession, as I will discuss below. Here, I will begin by briefly defining substantive citation and formal citation. Throughout this Article, when I refer to “citation” I generally mean formal citation because it is formal citation that is most germane to the choice of citation guide.¹⁴ Citation, as an early form of legal

12. Lucille A. Jewel, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 BUFF. L. REV. 1155, 1165–66 (2008).

13. Shane Tintle, *Citing the Elite: The Burden of Authorial Anxiety*, 57 DUKE L.J. 487, 502 (2007).

14. The question of what counts as substantive authority in a citation, and who decides, is a different question. Interesting work exists on substantive citation practices. *E.g.*, Kris Franklin, “. . . See Erie.”: *Critical Study of Legal Authority*, 31 U. ARK. LITTLE ROCK L. REV. 109 (2008); Gallacher, *supra* note 6; Jeffrey L. Harrison & Amy R. Mashburn, *Citations, Justifications, and the Troubled State of Legal Scholarship: An Empirical Study*, 3 TEX. A&M L. REV. 45 (2015); Tintle, *supra* note 13.

culture, is a way in which law students acquire social capital. Citation has the power to generate social capital because of three messages students receive about themselves and the profession through citation: first, messages about ability that students generate among themselves; second, messages about citation's connection to prestigious law school activities; and, third, messages about citation's connections to "good" lawyering. Collectively, these begin to form students' idea of who "belongs" in the profession, and the choice of citation manual aggregates that with its own messages about hierarchies of prestige and gender.

A. Substantive and Formal Citation

Legal citation has both a substantive and a formal aspect.¹⁵ By "substantive citation," I mean the existence of any kind of reference to authority without regard to the form of the reference. Such a reference allows the reader to see that there is authority for a proposition, to make some determination about the nature and quality of the authority that supports a proposition, and to find the authority.¹⁶ Substantive citation errors take many forms, and all are disastrous for legal analysis. For example, the lack of any citation, or citations only to secondary or persuasive primary authority suggest that no binding authority exists. A citation to an authority that does not actually support the proposition asserted misrepresents what the law is. Inadequate substantive citations can be a proper basis for sanctions.¹⁷

By "formal citation," then, I mean the formatting of the citation itself: things like the placement of the citation, the components of a citation, their sequence, and typeface. There

15. Paul Axel-Lute, *Legal Citation Form: Theory and Practice*, 75 LAW LIBR. J. 148, 148 (1982).

16. Jennifer L. Cordle, ALWD Citation Manual: *A Grammar Guide to the Language of Legal Citation*, 26 U. ARK. LITTLE ROCK L. REV. 573, 581 (2004); M.H. Sam Jacobson, *The ALWD Citation Manual: A Clear Improvement over The Bluebook*, 3 J. APP. PRAC. & PROCESS 139, 140 (2001).

17. See, e.g., *Tyler v. Alaska*, 47 P.3d 1095 (Alaska Ct. App. 2001); *Young v. Kitchens*, 492 S.E.2d 898 (Ga. Ct. App. 1997); *People v. Rosenfeld*, 304 N.Y.S.2d 977 (N.Y. Sup. Ct. 1969); *Board of Professional Responsibility v. Richard*, 335 P.3d 1036 (Wyo. 2014). See generally Judith D. Fischer, *Bareheaded and Barefaced Counsel: Courts React to Unprofessionalism in Lawyers' Papers*, 31 SUFFOLK U. L. REV. 1, 5-17 (1997).

are many ways to format this information for a reader. The citation forms set out in *The Bluebook* constitute only one possibility.¹⁸ The citation formatting we use could have been anything, but for reasons having to do with the historical development of *The Bluebook*, which looks to English and even Roman forms,¹⁹ they are what they are. These choices should, ideally, communicate the substantive information about the citation with clarity and brevity.²⁰ Errors of formal citation may bespeak inattention to detail, but as long as the authority is identifiable and locatable, they do not affect the analysis.²¹

B. Citation Is a Form of Social Capital for Law Students

Substantive and formal citation together constitute a cultural practice for the legal profession, and particularly for law students. Within American legal culture, citation has been described as “fetishized,”²² and this is precisely because, in part, of the early role it plays among law students in determining who “is” a lawyer. Knowledge of legal citation practices is an early marker of belonging to the culture of lawyers. In truth, of course, 1Ls learn many new things that turn them into lawyers, not only citation; later, most students will be officially “admitted” to the profession at some point in their careers.

Thus, legal citation surely recedes in prominence as a cultural marker of belonging as law students, and lawyers develop more complex legal skills, and therefore more complex and robust professional identities. Still, legal citation is among the first forms of “insider” knowledge that law students receive: it is a kind of threshold knowledge.²³ As it is a distinctly

18. In addition to various local rules that set out citation systems, *The Bluebook* has at least two other competitors, other than the *ALWD Guide*, that have national aspirations: THE MAROONBOOK, *supra* note 10, and THE INDIGO BOOK, *supra* note 11.

19. Nancy A. Wanderer, *Citation Anxiety: A Curable Condition*, 31 ME. B.J. 46, 46 (2016).

20. See Salmon, *supra* note 5, at 770.

21. There is overlap: formal errors that affect the reader’s ability to identify or find the authority, such as transposed or missing characters, are also substantive errors.

22. Penelope Pether, *Discipline and Punish: Despatches from the Citation Manual Wars and Other (Literally) Unspeakable Stories*, 10 GRIFFITH L. REV. 101, 106 (2001); Gallacher, *supra* note 6, at 497.

23. See Melissa H. Weresh, *Stargate: Malleability as a Threshold Concept*

lawyerly activity, it has deep and formative significance for law students: once students learn the meaning of citation's abbreviations and the sequence of its components, they know something that few people outside the legal profession are likely to know.

More importantly, through citation instruction, including the choice of citation guide, students will have been exposed to some important values of the legal profession, or at least important rhetoric about values of the legal profession. By this I mean explicit values like professionalism, attention to detail, and thoroughness, but also implicit values like rankings, hierarchies, and the generally male-gendered nature of the legal profession.²⁴ It is in this context that I explore the further context of the choice of citation guide.

One way to think of formal citation is as a kind of taste or etiquette. Taste and etiquette identify those who belong, that is, those who *really* belong.²⁵ Like all matters of taste and etiquette, citation demarcates social strata among law students. Because citation, and in particular, *The Bluebook*, is strongly connected to both elite law school and legal activities (law review membership, judicial clerkships, academia) and also to “good” lawyering, students who have a knack for citation or master it early identify themselves as members of an elite within law schools: an elite group of students who “get it.” In doing so, they participate in and re-inscribe the elitism and clubbiness of much of legal academia.²⁶ Put another way, citation—particularly the use of *The Bluebook*—becomes, like taste or etiquette, a form of social or cultural capital for law students,²⁷ precisely because it simultaneously crystallizes or synthesizes three important things: a mysterious knowledge that is primarily available only

in Legal Education, 63 J. LEGAL EDUC. 689, 690–92 (2014).

24. See generally Justin D. Levinson & Danielle Young, *Implicit Gender Bias in the Legal Profession: An Empirical Study*, 18 DUKE J. GENDER L. & POL'Y 1, 4–13 (2010); Kristy D'Angelo-Corker, *Don't Call Me Sweetheart! Why the ABA's New Rule Addressing Harassment and Discrimination Is so Important for Women Working in the Legal Profession Today*, 23 LEWIS & CLARK L. REV. 263 (2019); Samuel Rosario, *Gender Bias in the Legal Profession*, 54 U.S.F. L. REV. F. 23 (2020).

25. See Jewel, *supra* note 12, at 1170; Salmon, *supra* note 5, at 795; Mary Whisner, *The Dreaded Bluebook*, 100 LAW LIBR. J. 393, 393–94 (2008).

26. See Salmon, *supra* note 5, at 795–96.

27. Jewel, *supra* note 12, at 1198.

to insiders, a connection to prestigious law school activities, and the discourse of “good” lawyering.

In other words, there are at least three ways citation can function as a social gate-keeping mechanism for who belongs. One is generated among law students themselves: the social capital of being seen to be “good at being a law student” by one’s peers. The others are generated by us: implicit messages about prestige based on citation’s connections to prestigious law school activities and, through *The Bluebook*, citation’s connections to prestigious institutions, and explicit, normative messages about “good” lawyering and the qualities of “good” lawyers. All of these are mutually reinforcing and collectively communicate who belongs in the law and the profession, and what their place within those will be.

Coming to law school with a “fixed mindset” (that is, a belief that basic ability is unchangeable²⁸), as many law students do,²⁹ law students are primed to be sorted into categories of ability. They have generally benefited from this sorting over their prior academic lives because they tend to be the kinds of students who have done well, and who have “gotten the right answer.” Many of them come to law school eager to demonstrate to themselves, their professors, and their fellow students that they can get “the right answer” in law school too. For 1Ls studying common citation forms like cases and statutes, citation has the virtue of generating a right answer. Much of law school, certainly much of the first year, could be described as “mysterious,”³⁰ but for those law students with the right bent, citation has the virtue of being knowable—it yields the kind of “right answer” through the formalistic rule-based reasoning that 1Ls yearn for.

Of course, not every 1L has an appetite for arcana, especially not the arcana of citation forms. Many surely intuit early on that legal citation must have secondary importance in the bigger scheme of things, if only because of the small space it occupies across their syllabi. However, for students with an

28. Sue Shapcott, Sarah Davis & Lane Hanson, *The Jury Is in: Law Schools Foster Students’ Fixed Mindsets*, 42 LAW & PSYCH. REV. 1, 10 (2017–2018).

29. See Carrie Sperling & Susan Shapcott, *Fixing Students’ Fixed Mindsets: Paving the Way for Meaningful Assessment*, 18 J. LEGAL WRITING INST. 39, 58–59 (2012).

30. See DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM 17–29 (1983).

aptitude and the stamina for it, citation is one early way to distinguish themselves: it is hard for any of us not to let it slip when we have mastered a skill or, better yet, when we have an aptitude for a skill. There will eventually be an in-class exercise about citation at which some students excel, or a question of citation will come up informally in a study group that some students can readily answer. Some students will have a heavily-tabbed copy of whatever citation guide they are using. Law school, after all, is a kind of panopticon, and students engage in a constant and constantly visible sorting into categories of ability: if legal study is “like learning a new language,” it will not be long before one’s fellow students can tell who is developing mastery.

Implicitly, one way in which legal education communicates to students that citation is a marker of belonging is through its connection to a prestigious law school activity: service on a law review, and by extension, prestigious career paths like judicial clerkships, academia, and big-firm practice. At some point in their first year, high-performing students will be told, often initially by legal writing faculty, that they are law review material. Service on a law review, they are told, will teach them skills, like “research, writing, editing, critical thinking, and even just working together on a project that carries professional expectations.”³¹ This is certainly true. Students will also learn that service on a law review is itself a mechanism by which hierarchy recreates itself among students within law schools.

Participants in law review have traditionally been regarded as the better students because of competitive selection and the training law reviews provide. Knowing who is on law review helps law firms and judges decide who to interview and hire as associates and clerks. An empirical study of attorneys, professors, and judges has found that all regard law review participation as an important factor in hiring.³²

31. James W. Harper, *Why Student-Run Law Reviews?*, 82 MINN. L. REV. 1261, 1272 (1998).

32. *Id.* at 1274.

Flagship law reviews typically select students on the basis of first-year grades, a writing competition, or some combination of these. There is almost always a citation exercise or test (a “Bluebooking” exercise). Citation—and *The Bluebook*—are explicitly a key to belonging to this prestigious activity. Students are well aware of elitism in legal education generally,³³ and, as discussed above, they arrive at law school ready and willing to be sorted by ability. So, they are attuned to the social meaning of being sorted into rankings and the use of those rankings to confer significant advantages on certain students; many of them thus willingly participate with faculty in replicating pre-existing hierarchies.³⁴

Students also know that citation indicates who “belongs” in the profession because legal writing faculty, again, very often, explicitly tell them that it does: we tell them that it indicates lawyerly virtues like attention to detail and thoroughness, and that lawyers who possess these virtues are “good” lawyers.³⁵ Citation, and particularly knowledge of *The Bluebook*, are said to indicate attention to detail.³⁶ These attributes are in turn taken to be indicators of intelligence and the quality of the writing in general.³⁷ Students, of course, are already aware of who among them is good at citation when they hear us say these things, so this also reaffirms the hierarchy they have created for

33. See Lisa T. McElroy, Christine N. Coughlin & Deborah S. Gordon, *The Carnegie Report and Legal Writing: Does the Report Go Far Enough?*, 17 J. LEGAL WRITING INST. 279, 305 (2011); Paula Gaber, “Just Trying to be Human in This Place”: *The Legal Education of Twenty Women*, 10 YALE J.L. & FEMINISM 165, 179 (1998).

34. Jewel, *supra* note 12, at 1185 (“Ranking students within a law school, based on grades they receive through the case-book law school examination system also replicates pre-existing structures. Class rank and a competitive selection process for law review membership began in earnest in 1887, when Harvard established its law review and selected members based on their academic rank. Most of the other university-centered law schools followed Harvard’s lead and established their own student-edited law reviews that invited members based on academic performance. The class rank system grew further when newly-emerging corporate law firms began basing hiring decisions on a student’s class rank and law review membership.”).

35. Timothy D. Blevins, *A Hallmark of Professional Writing Citation Form*, 29 T. MARSHALL L. REV. 89, 89 (2003).

36. In fact, *The Bluebook* has its defenders, who point out that it can be useful in teaching this exact skill. *E.g.*, Bret D. Asbury & Thomas J.B. Cole, *Why The Bluebook Matters: The Virtues Judge Posner and Other Critics Overlook*, 79 TENN. L. REV. 95, 97–99 (2011).

37. See Salmon, *supra* note 5, at 795.

themselves. In particular, legal writing classes tell students explicitly that citation, and specifically learning the rules of *The Bluebook*, are necessary “to be a part of the legal culture.”³⁸

In this telling, the gatekeepers of legal culture are senior attorneys and judges, whom we depict as hyper-critical readers who will notice citation errors at a glance, and who will assume the worst about them as attorneys, their analysis, and the merits of their clients’ cases.³⁹ Many legal writing texts underscore and re-emphasize this view of a reader who is highly attuned to errors of minutiae, the better to judge the writer.

Many popular first-year legal writing textbooks speak quite directly about the personal characteristics of members of the law-trained audience. Three purported lawyer characteristics in particular emerge from the descriptions of the law-trained audience in these tests, namely that lawyers are (1) extraordinarily busy and impatient; (2) hyper-critical and aggressive in their criticism; and (3) bent on a conservative, strict application of formal rules.⁴⁰

The minutiae of formal citation are distinct from the merits of the client’s case and the strength of the attorney’s analysis, but in eliding the distinction, we tell students that attention to minutiae is a valid proxy for the quality of the analysis.⁴¹

We paint a picture of a profession in which “elite law students, law firms, law clerks, and law schools claim to judge a lawyer’s merit in part on whether the ‘th’ in ‘9th Circuit’ appears in superscript.”⁴² It is hard to know what part of such a profession is meant to generate passion and enthusiasm among students, or inspire them to believe the profession is reliably capable of generating ever greater justice in society. Getting

38. Stephen R. Heifetz, *Blue in the Face: The Bluebook, the Bar Exam, and the Paradox of Our Legal Culture*, 51 RUTGERS L. REV. 695, 703 (1999).

39. See generally Jessica E. Price, *Imagining the Law-Trained Reader: The Faulty Description of the Audience in Legal Writing Textbooks*, 16 WIDENER L.J. 983 (2007).

40. *Id.* at 990–91.

41. Salmon, *supra* note 5, at 795.

42. *Id.* at 772.

students to accept that formal citation errors validly stand in for their ability as a lawyer amplifies the social meaning of citation.

All of this communicates something further, something relating to class: when we tell the story of the stern, impatient, hypercritical attorney or judge who must be satisfied, we paint a picture of a practice setting in which there is ample time to perfect citations, and a client who wants perfect citations and is willing to pay for them. This sends a subtle message about the value of attorneys who work in settings with fewer resources, the work they do, and the clients they serve. Flawless citations are not just markers of having qualities useful to lawyers; they also indicate lawyers and clients with the resources to devote to perfecting citations.

Many of our students will have clients who cannot pay for ferreting out italicized periods no one can see.⁴³ The emphasis on citation, and on “mastering” *The Bluebook* takes on an interesting valence when we consider it in practical context: some lawyers and judges, large firm attorneys working on high-dollar cases, for example, or justices of the United States Supreme Court, may have significant support for the writing they do and significant control over their caseloads, so they can delegate citation correction to other professionals such as associates or clerks. Where the client or the institution is willing and able to bear the cost, this can obviously produce technically perfect citations. Many other lawyers and judges, however, do not have either the personnel or the control over their caseloads to allocate significant resources to citations. More importantly, many lawyers’ clients cannot easily absorb the cost of significant time spent on correcting citations. These are likely to be the settings in which judicial activity and legal representation happen for a majority of people accessing legal services. For those people, lawyer and judge time is almost certainly better spent on other aspects of the case.⁴⁴

Law students are told they “must know” *The Bluebook*, because it is an insider text established by elites among the initiated and the knowledge of this text distinguishes them as promising initiates themselves. They also “must know” *The*

43. See Richard K. Neumann, Jr., *Legislation’s Culture*, 119 W. VA. L. REV. 397, 436 (2016) (quoting RICHARD A. POSNER, *DIVERGENT PATHS: THE ACADEMY AND THE JUDICIARY* 126–27 (2016)).

44. See Salmon, *supra* note 5, at 798–801.

Bluebook because demonstrating a command of citation will be an easy way for an observer to determine their “merit” or “quality.” But by communicating to law students that lawyers whose citations are perfect are the best lawyers, we communicate something deeper and unspoken about how values with regard to different settings in which legal services are provided—and about the people who need those services. Citation and *The Bluebook* contribute to a deeper function: preparing students to accept hierarchies within hierarchies in the legal profession. It is in this context that the choice of citation manual communicates further a deeper message about these hierarchies—messages about elitism and gender.

III. THE BLUEBOOK AND THE HISTORY OF ELITISM IN LEGAL EDUCATION

At the time of its creation, *The Bluebook* was not intended to be used by anyone other than law review editors at a small number of Ivy League law schools. A conversation about hierarchy in legal education had been underway at that time, and law schools were beginning to appreciate the value of law reviews, both to serve the bar and to enhance their reputations. *The Bluebook* arose in this world, and its production and organization still reflect its origins here. The culture of the top-ranked law reviews, which includes the law reviews that produce *The Bluebook*, evinces a culture in which elite credentials and prestige activities occupy the foreground. The law students who produce *The Bluebook* represent an elite within an elite, but they collectively are likely to have little experience teaching citation or practicing law. The preference for *The Bluebook*, then, is ultimately a preference for a product of elite law students who do not have experience with citation as either a course topic or a practice tool, a product that is primarily for—and reinforces the primacy of—a small minority of the legal profession.

A. A Brief History of Hierarchies of Elitism in Legal Education

It is useful to examine a brief history of some of the structural elements of hierarchy and elitism in legal education

because the transformation of legal education from the late 19th century into the early 20th century coincides with *The Bluebook's* birth.

For much of their early history, American law schools had fundamentally different and far more diverse business models than law schools do today. Until the early twentieth century, almost all law schools primarily focused on training lawyers for local markets, did not require prior undergraduate study, emphasized practical training, and were largely staffed by practicing lawyers teaching part time. The majority were independent trade schools and the curriculum reflected the then-dominant apprenticeship model. What became the dominant twentieth-century law school model rejected most of these characteristic features of nineteenth-century law schools and transformed legal education into an academic enterprise.⁴⁵

In the late 19th century until the 1920s, roughly contemporaneous with the creation of what would become *The Bluebook*, the legal profession and the ABA were engaged in an ongoing discussion about standards of legal education, admissions standards, the role of non-elite law schools in legal education, and how, whether, and to what extent non-Protestants, ethnic immigrants, people of color, poor people, and women might be admitted to law school.⁴⁶

One strain of thought held that legal education should accept and formalize a two-tiered approach: one for people destined to become judges and academics and lawyers representing moneyed interests, and one for people destined to represent ordinary people.⁴⁷ Although this approach never

45. Olufunmilayo B. Arewa et al., *Enduring Hierarchies in American Legal Education*, 89 IND. L.J. 941, 945–46 (2014).

46. Rebecca Roiphe, *Tilting at Stratification: Against a Divide in Legal Education*, 16 NEV. L.J. 227, 234 (2015).

47. See *id.* at 232–44; Arewa et al., *supra* note 45, at 948–54; Lucille A. Jewel, *Tales of a Fourth Tier Nothing, A Response to Brian Tamanaha's Failing Law Schools*, 38 J. LEGAL PRO. 125, 129–31 (2013).

officially took hold, the idea that some law schools served more elite interests certainly did. This is still the case. Law schools are sorted into tiers and ranked within those tiers: the higher the rank of the law school one attends, the greater one's access to a prestigious career. The higher one's class origins before law school, the greater the chances one can attend a highly ranked law school.⁴⁸ Thus, "American legal education replicates existing class structures."⁴⁹

B. The Bluebook Was Not Created by Professionals Who Teach Legal Writing

In the same period, and perceiving a need to do some reputation-building, law schools took advantage of new, cheaper printing technology and began developing law reviews in the late 19th century.⁵⁰ Harvard Law School led the way, so the story goes,⁵¹ and its early entry in the field and the prestige of Harvard University generally contributed to the prestige of the Harvard Law Review.⁵² A generation later, what would become *The Bluebook* was created both there and at a few other elite law

48. Jewel, *supra* note 12, at 1174 ("[A] look at the history of American legal education reveals that class exclusion was the explicit goal behind the adoption of many of these ranking procedures. Although law schools and the legal profession no longer practice exclusion based on social origin, recent studies indicate that the structure wrought by our recent history remains—socio-economic status still plays a substantial role in the structure of legal education and the legal profession. Recent studies of the legal profession support the following premises. First, the types of law practice that law graduates will enter into are given varying levels of prestige, from high-level corporate work at large law firms to low-level work representing individual clients in a solo practice setting. Second, the law school attended and how well a graduate did at that law school has a bearing on the status level of the legal work a law graduate will end up doing. Third, students who come to legal education with amassed cultural and social capital are more likely to attend better law schools and achieve higher grades in law school than students who lack the same amount of cultural and social capital. Thus, the level of status and prestige that one can attain in the practice of law is related to law school status and law school performance, which are, in turn, related to cultural capital advantages.").

49. *Id.* at 1173.

50. Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 621 (1996).

51. But then again, maybe not—the first student-run law review was the short-lived Albany Law School Journal, followed by the also short-lived Columbia Jurist. Harper, *supra* note 31, at 1263–64.

52. Hibbitts, *supra* note 50, at 617–18.

school law reviews. The history of *The Bluebook* is well-documented elsewhere,⁵³ but legend has it that Erwin Griswold, then a law student at Harvard Law School, was the first author of what is now *The Bluebook*, though scholars have disputed whether this is an accurate telling of events.⁵⁴ *The Bluebook* likely arose from citation guidance developed by Karl Llewellyn and William Murray Field at Yale, not Harvard, in 1920.⁵⁵ In any case, it was the product of top law students at top law schools, born at a time when legal education was establishing hierarchies that still exist and at places that sat atop those hierarchies, and still do. From its very first days, then, *The Bluebook* has been the product of elitism.⁵⁶

The Bluebook was created to regularize citations in scholarly work for certain law reviews,⁵⁷ and at the time of its creation, no one thought of it being for general use. *The Bluebook* was not an immediate hit,⁵⁸ and it did not aspire to be used across all forms of legal writing until its Twelfth Edition, in 1976.⁵⁹ It was not until the Fifteenth and Sixteenth Editions that *The Bluebook* wholeheartedly committed to its claim to set citation forms for all forms of legal writing.⁶⁰

Certainly no one who developed *The Bluebook* thought about teaching all law students any particular kind of citation form. The field of legal writing, as such, did not yet exist (the field did not begin to exist until the late 1940s and early 1950s,⁶¹

53. See generally Fred R. Shapiro & Julie Graves Krishnaswami, *The Secret History of the Bluebook*, 100 MINN. L. REV. 1563 (2016).

54. See *id.* at 1565–66.

55. See *id.* at 1569–74. For a short discussion of citation guides that preceded *The Bluebook*, see Charlotte Stichter, *Rethinking Legal Citation: A Bibliographic Essay*, 44 INT'L J. LEGAL INFO. 274, 275 (2016).

56. Even some of the specific forms proposed by *The Bluebook* have been criticized as elitist. See Eric Shimamoto, Comment, *To Take Arms Against a Sea of Trouble: Legal Citation and the Reassertion of Hierarchy*, 73 UMKC L. REV. 443, 456 n.142 (2004).

57. See Darby Dickerson, *An Un-Uniform System of Citation: Surviving with the New Bluebook (Including Compendia of State and Federal Court Rules Concerning Citation Form)*, 26 STETSON L. REV. 53, 89 (1996); Vickie Rainwater, *Citation Form in Transition: The ALWD Citation Manual*, 7 TEX. WESLEYAN L. REV. 21, 22–23 (2000).

58. Dickerson, *supra* note 57, at 63.

59. *Id.* at 64; Wanderer, *supra* note 19, at 46–47.

60. Dickerson, *supra* note 57, at 64.

61. Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117, 131–33 (1997). The early

well after *The Bluebook* already existed), so if any impulse towards teaching citation form to all students (and therefore, any thought about how to make citation forms accessible and learnable by students) existed, it would not have been part of a legal writing course anyway. Similarly, at the time of, and given the reasons for, *The Bluebook's* creation, no one thought about practitioners using a particular citation form, or needing to have guidance about how to format their citations.

I do not fault the early authors for not considering or speaking to the needs of non-law review students and practitioners: those audiences simply were not part of their project. Nevertheless, this set *The Bluebook* on a particular trajectory, and led to two fundamental flaws at *The Bluebook's* birth that are with us today; namely, it was not originally designed for student learners or practitioners, and it was not designed by people who teach students to become practitioners. It does mean that, although *The Bluebook* now purports to be for general use by all legal professionals, practitioners and students as learners were not, and have never been, foremost among its purposes.

C. The World in which The Bluebook Originated Is a Culture of Elitism that Subordinates Practitioners

Unsurprisingly, then, for much of *The Bluebook's* life, practitioners have been indifferent to it.⁶² The feeling was mutual. For much of *The Bluebook's* life, it ignored practitioners: *The Bluebook* was not much concerned with practitioners for its first fifty years.⁶³ Practitioner forms were segregated from scholarly citation forms⁶⁴ (and still are), as if to say that practitioner citation forms are of secondary importance

development of the field of legal writing was prompted, in part, by concern about the writing abilities of a new generation of law students, some of whom were entering law school as a result of the GI Bill. Marjorie Dick Rombauer, *First-Year Legal Research and Writing: Then and Now*, 25 J. LEGAL EDUC., 538, 540 (1973); see also David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. KAN. L. REV. 105, 128 n.143 (2003).

62. Salmon, *supra* note 5, at 776.

63. *Id.* at 776–77.

64. Rainwater, *supra* note 57, at 22.

to the legal profession.⁶⁵ There is a long history of criticism of *The Bluebook* for ignoring practitioner forms.⁶⁶ At a certain level, it is unsurprising that *The Bluebook* still gives short shrift to practitioners and is not designed for students. After all, its authors, as students, will generally have had little, if any, experience in either practice or teaching citation.⁶⁷

What is more surprising is that *The Bluebook* should not have attained its current level of dominance. But what its authors lack in experience, they more than compensate for with power. To begin with, the law schools that house these law reviews are some of the wealthiest educational institutions in the United States. These law reviews are also among the highest-ranked law reviews in the United States.⁶⁸ They are, collectively, among the most powerful and influential law schools in the legal profession, dominating academia, the judiciary, and the partnerships of major law firms.⁶⁹ They are certainly among the highest-ranked law schools in the United States.⁷⁰ Indeed, the prevalence of *The Bluebook* is, of itself, an index of these institutions' power, and royalties from the annual mandatory purchase of *The Bluebook* contribute to their wealth.

And, of course, these students are themselves not without power, given the role of law review students in the tenure process,⁷¹ and the importance of securing a high-ranking placement for one's article. The way in which law review students at top law reviews (which include those at *The Bluebook* law reviews) exercise their power reveals something

65. Salmon, *supra* note 5, at 798.

66. See, e.g., *id.* at 778.

67. Some of these law schools have used student-taught classes for their legal writing requirements. It is not inconceivable that some law review students at these law schools will also have taught a section of legal writing. I contend that teaching a single section of legal writing, one time, is not the same as teaching many sections of the subject over an entire career.

68. Bradley A. Areheart, *The Top 100 Law Reviews: A Reference Guide Based on Historical USNWR Data* (Apr. 29, 2020) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3026293; *W&L Law Journal Rankings*, WASH. & LEE U. SCH. L., <http://go.wlu.edu/lawjournals> (last visited Dec. 8, 2020).

69. See Nancy B. Rapoport, *Changing the Modal Law School: Rethinking U.S. Legal Education in (Most) Schools*, 122 DICK. L. REV. 189, 202 (2017).

70. *2021 Best Law Schools*, U.S. NEWS & WORLD REP., <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings> (last visited Dec. 8, 2020).

71. Harrison & Mashburn, *supra* note 14, at 51–52.

about the culture within which *The Bluebook* is produced. Specifically, it is a culture that, through these students' publication preferences and practices, re-inscribes the power and privilege of those elite institutions. And it reflects a strong preference for theory and academic inquiry over practice.

Due to the volume of submissions that top law reviews receive, law review editors on these journals must rely on proxies about an article's quality in making decisions about which articles to accept.⁷² The most significant proxy is an author's elite law school credentials. Data suggest that law review editors, particularly law review editors at top-25 law reviews, are influenced by where an author teaches and where an author attended law school.⁷³ Making the circle of elitism more self-reinforcing, these same law review editors are also influenced by where else and how often an author has already published.⁷⁴ "Survey after survey makes clear that student editors pick articles based on the credentials of the authors. This includes the school at which the author teaches and the author's prior publication record. Ample anecdotal evidence backs up this survey data."⁷⁵ "If you look at all the articles published in the top ten law reviews, it is very difficult to find an author who did not graduate from, or who does not work in, a top-ten law school."⁷⁶ Indeed, "the vast majority of authors in the top ten law reviews for 2017 graduated from top-ten law schools."⁷⁷

What influences law review editors less is an author's

72. Michael J. Higdon, *Beyond the Metatheoretical: Implicit Bias in Law Review Article Selection*, 51 WAKE FOREST L. REV. 339, 342 (2016).

73. See Leah M. Christensen & Julie A. Oseid, *Navigating the Law Review Article Selection Process: An Empirical Study of Those with All the Power—Student Editors*, 59 S.C. L. REV. 175, 190–92 (2007); Higdon, *supra* note 72, at 344–45; Dan Subotnik & Glen Lazar, *Deconstructing the Rejection Letter: A Look at Elitism in Article Selection*, 49 J. LEGAL EDUC. 601, 605–09 (1999); cf. Higdon, *supra* note 72, at 352 (arguing that the rank of an article's placement will become a proxy for its quality).

74. Christensen & Oseid, *supra* note 73, at 193.

75. Barry Friedman, *Fixing Law Reviews*, 67 DUKE L.J. 1297, 1315 (2018).

76. Lawprofblawg & Darren Bush, *Law Reviews, Citation Counts, and Twitter (Oh My!): Behind the Curtains of the Law Professor's Search for Meaning*, 50 LOY. U. CHI. L.J. 327, 335 (2018).

77. *Id.* at 336 ("Yale accounts for 27% and Harvard accounts for 22%. No other school comes close. NYU accounts for the next highest level, at 6.7%, Stanford at 6.3%, and University of Chicago at 5.46%. Thus, the graduates of five schools account for nearly 70% of the publications in the top ten law reviews in 2017.").

practice experience, with top-15 law review editors reporting they are not at all influenced by it.⁷⁸ These law reviews tend not to select practitioner-oriented articles, and tend not to select articles written by practitioners (except, possibly, for articles by high-profile practitioners): “the current system [of law review article selection] marginalizes practical skills scholarship.”⁷⁹ Top law reviews tend (or at least have tended) to focus much more on theory than on practical issues, and their articles are rated “the least useful to practitioners.”⁸⁰ It is likely that the prior academic experience of these students likely leads them to prefer “trend[ier]” theoretical articles over more practically-oriented articles,⁸¹ and their lack of practice experience may also make it hard for them to appreciate what practitioners would find useful.

More generally, law review students at top-ranked law reviews operate within a world of self-reinforcing elitism. Having used an author’s elite credentials (the law school from which the author graduated and the law school at which the author teaches) as a proxy for the article’s quality, they end up favoring future versions of themselves:

The faculty of American law schools remains dominated by graduates of a few law schools. Fifteen law schools during the 2007-2008 academic year provided 52.9% of the faculty listed by the AALS member schools and fee-paying schools. In the same time frame, fifteen of the 200 law schools accredited by the ABA provided one out of every two law professors in the United States, while two law schools, Harvard and Yale, provided over 20% of the law professors in the United States during the 2007-2008 academic

78. See Christensen & Oseid, *supra* note 73, at 193–94.

79. Higdon, *supra* note 72, at 351.

80. Mitchell Nathanson, *Taking the Road Less Traveled: Why Practical Scholarship Makes Sense for the Legal Writing Professor*, 11 J. LEGAL WRITING INST. 329, 345 (2005); *cf.* Christensen & Oseid, *supra* note 73, at 193–94 (noting that third- and fourth-tier law reviews indicate a preference for practitioner-oriented and practitioner-authored articles).

81. Carl Tobias, *Manuscript Selection Anti-Manifesto*, 80 CORNELL L. REV. 529, 530 (1995).

year.⁸²

In this way, students on these law reviews are likely to have a disproportionate effect on shaping the doctrinal faculty of all law schools. While students on these law reviews will be disproportionately represented among all law faculty, they are disproportionately underrepresented in the teaching of legal writing.⁸³ Indeed, candidates with more prestigious credentials are encouraged to pursue something other than legal writing.⁸⁴ The hierarchy of elite institutions contributes directly to the hierarchy of law faculties between doctrinal and skills faculty.

Many doctrinal law professors have come to the academy with similar backgrounds. To that end, many doctrinal faculty members went to the same handful of elite law schools. Following graduation, many went on to federal clerkships, followed by brief stints at prestigious corporate law firms, before transitioning into academia. This particular phenomenon has been referred to as the ‘institutional glide path.’⁸⁵

This is a continuation of the historical development of legal education: as law schools became more prevalent as a way in which people trained to become lawyers in the late nineteenth

82. Daniel Gordon, *Hiring Law Professors: Breaking the Back of an American Plutocratic Oligarchy*, 19 WIDENER L.J. 137, 149 (2009).

83. Susan P. Liemer & Hollee S. Temple, *Did Your Legal Writing Professor Go to Harvard?: The Credentials of Legal Writing Faculty at Hiring Time*, 46 U. LOUISVILLE L. REV. 383, 418–20 (2008).

84. Nantiya Ruan, *Papercuts: Hierarchical Microaggressions in Law Schools*, 31 HASTINGS WOMEN'S L.J. 3, 23–24 (2020). At the beginning of my career, I was told by a well-intentioned colleague that, having gone to Harvard Law School, I should get out of legal writing “as soon as possible,” lest I be “trapped.” See also Ann C. McGinley, *Reproducing Gender on Law School Faculties*, 2009 BYU L. REV. 99, 133 (2009) (“[E]vidence suggests that tenure track faculty more frequently consider male legal writing faculty members than females to be in the job temporarily as a means to an end.”).

85. Todd A. Berger, *Three Generations and Two Tiers: How Participation in Law School Clinics and the Demand for “Practice-Ready” Graduates Will Impact the Faculty Status of Clinical Law Professors*, 43 WASH. U. J.L. & POL'Y 129, 139 (2013).

and early twentieth centuries,⁸⁶ they also became more focused on “thinking like a lawyer,” as opposed to practical training (particularly elite law schools⁸⁷), with the result that it became conceivable to hire law faculty with little practical experience.⁸⁸

This is still the case.

Several empirical studies of the prior practice experience of tenure-track law professors hired during the past thirty years consistently show that ‘the typical professor practiced law for only a relatively short time before becoming a full-time member of the legal academy.’ The average length of time spent in legal practice prior to becoming a doctrinal law professor is 3.7 years. The data reflecting the fact that tenure-track law professors hired during the last thirty years have a limited amount of practical experience is largely consistent with Professor Alan Watson’s assertion ‘that most of them entered the academy because they had ‘a strong distaste for the practice of law.’⁸⁹

In general, legal academia has been hostile towards practice-related education,⁹⁰ and extensive practice experience may be a negative in doctrinal hiring.⁹¹ It is worth observing here that legal writing faculty have, on average, twice as much practice experience before beginning their teaching careers.⁹²

The Bluebook derives from a world that has had little respect for legal writing, and the people who work on it belong

86. Arewa et al., *supra* note 45, at 946.

87. See Peter Toll Hoffman, *Teaching Theory Versus Practice: Are We Training Lawyers or Plumbers?*, 2012 MICH. ST. L. REV. 625, 626 (2012); Arewa et al., *supra* note 45, at 947.

88. See Hoffman, *supra* note 87, at 629–30; George Critchlow, *Beyond Elitism: Legal Education for the Public Good*, 46 U. TOL. L. REV. 311, 319–29 (2015).

89. Berger, *supra* note 85, at 139.

90. Philip L. Merkel, *Scholar or Practitioner? Rethinking Qualifications for Entry-Level Tenure-Track Professors at Fourth-Tier Law Schools*, 44 CAP. U. L. REV. 507, 522 (2016).

91. Cody J. Jacobs, *The “Other” Market*, 92 TEMP. L. REV. 765, 775 (2020).

92. Nathanson, *supra* note 80, at 338–39; Price, *supra* note 39, at 1007.

to a class of people who will go on to be disproportionately represented among tenure-track, doctrinal faculty—who will be the enforcers of the use of *The Bluebook* because the status and power of legal writing faculty at law schools across the country is within their faculty governance powers. That hierarchy originates in elite law schools and maps directly onto gendered hierarchies within legal academia—gendered hierarchies of both status and pay as well as hierarchies of respect and authority.

It is unsurprising that the citation guide coming out of this world is one that gives primacy to citation forms most practitioners will never need and therefore forms that most students do not need to learn. When *The Bluebook* subordinates practitioner forms, and therefore students learning to be practitioners, it comes to that position honestly.

IV. THE ALWD GUIDE IS THE PRODUCT OF THE EXPERTISE OF A FEMALE-GENDERED FIELD, AN EXPERTISE THAT THE LEGAL ACADEMY DEVALUES

This Section begins with some of the purposes and intentions and history of the *ALWD Guide*. It then discusses the (female) gendering of the field from which it originates, as well as the legal academy's devaluation of work by and about women. The *ALWD Guide* is the product of the collective expertise of legal writing faculty, and legal writing is a female-gendered field. Obviously, the *ALWD Guide* has been written by particular people, working under the auspices of the Association of Legal Writing Directors, after several years of development.⁹³ First and foremost, then, it is equally obviously the product of those individuals' expertise.⁹⁴ But more generally, the *ALWD*

93. See Melissa H. Weresh, *The ALWD Citation Manual: A Coup de Grace*, 23 U. ARK. LITTLE ROCK L. REV. 775, 776 (2001).

94. The main named authors of the *ALWD Guide* have been Darby Dickerson (First through Fourth Editions) and Colleen M. Barger (Fifth and Sixth Editions). To be clear, men have worked on the *ALWD Guide*. The ALWD Citation Manual Oversight Committee, which was formed by the ALWD board of directors to supervise the creation of the first *ALWD Guide*, included several male members: co-chair Steven D. Jamar, and members Eric B. Easton, Jan M. Levine, Richard K. Neumann, and Craig T. Smith. Steven D. Jamar, *The ALWD Citation Manual—A Professional Citation System for the Law*, 8 PERSP: TEACHING LEGAL RSCH. & WRITING 65, 67 & n.9 (2000). The *ALWD Guide* appears to have been first suggested by Richard K. Neumann, Jr., and Jan M. Levine. *Id.*

Guide was explicitly intended to be a product of and reflect the expertise of the faculty charged with and experienced in teaching citation.⁹⁵

A. The ALWD Guide Is the Product of the Expertise of a Female-Gendered Field

The expertise from which the *ALWD Guide* came is based in the collective knowledge of the field of legal writing (citation being a common topic in legal writing courses, and probably the only or main place in the curriculum where most students learn it). In preparing the *ALWD Guide*, the Association of Legal Writing Directors surveyed legal writing directors across the country for their input about how citation systems are used and taught, and how they should work.⁹⁶ It came out of a series of conversations among legal writing faculty about, among other things, the problems they had encountered with teaching *The Bluebook*.⁹⁷

The *ALWD Guide* was first published in March 2000,⁹⁸ and authored by Darby Dickerson, at that time on the faculty at Stetson University College of Law and currently Dean of the University of Illinois at Chicago John Marshall Law School and President of AALS. Broadly speaking, it had three main purposes. First, it was a direct response to the fiasco that was the Sixteenth Edition of *The Bluebook*. Second, it sought to put practitioner forms and student learners in the foreground. Third, it was intended to be a kind of “restatement of the rules of citation based on the citation form actually used by experts.”⁹⁹ It was successful in achieving these aims. When the First Edition was published, in 2000, the reviews were positive.¹⁰⁰

95. Weresh, *supra* note 93, at 787.

96. *Id.* at 787–89.

97. *Id.* at 783–92.

98. *Id.* at 791–92.

99. Jamar, *supra* note 94, at 65; see Christine Hurt, *Network Effects and Legal Citation: How Antitrust Theory Predicts Who Will Build a Better Bluebook Mousetrap in the Age of Electronic Mice*, 87 IOWA L. REV. 1257, 1282–83 (2002).

100. *E.g.*, Carol M. Bast & Susan Harrell, *Has the Bluebook Met Its Match? The ALWD Citation Manual*, 92 LAW LIBR. J. 337 (2000); K.K. DuVivier, *Legal Citations for the Twenty-First Century*, 29 COLO. LAW. 45 (2000); Jacobson, *supra* note 16; Jamar, *supra* note 94; Ruth Piller, *ALWD Citation Manual by the Association of Legal Writing Directors & Darby*

One review of the First Edition of the *ALWD Guide* compared it to *The Bluebook* and declared the *ALWD Guide* “the winner.”¹⁰¹ It is still well received as recently as the Fifth¹⁰² and Sixth Editions.¹⁰³ The *ALWD Guide* has been praised for its simplicity¹⁰⁴ and stability,¹⁰⁵ while *The Bluebook*’s rules have been described as “unnecessarily intricate, arbitrary, and inconsistent,” with confusing examples, making it “hard to learn and hard to teach.”¹⁰⁶

The *ALWD Guide* was, among other things, a reaction to the Sixteenth Edition of *The Bluebook*,¹⁰⁷ and this is a good example of why expertise matters in this area. The Sixteenth Edition of *The Bluebook* changed the meaning of the *see* signal from “the proposition is not directly stated by the cited authority but obviously follows from it” to the “authority directly states and clearly supports the proposition.”¹⁰⁸ This change was so

Dickerson (Aspen Law & Business 2000), 40 HOUS. LAW. 49 (2003); Ursula Weigold, *A New Approach to Legal Citation Form*, 13 APP. ADVOC. 17 (2000); Melissa H. Weresh, *The ALWD Citation Manual: A Truly Uniform System of Citation*, 6 J. LEGAL WRITING INST. 257 (2000) (book review); James T.R. Jones, *ALWD Citation Manual: A Professional System of Citation*, 73 TEMP. L. REV. 219, 219 (2000) (book review) (calling the First Edition a “worthy competitor,” but noting certain gaps in its coverage).

101. C. Edward Good, *Will the ALWD Citation Manual v. The Bluebook Be the Trial of the Century?*, TRIAL MAG., Sept. 2001, at 79.

102. See Stephen Paskey, *Conveying Titles Clearly: Thoughts on the Fifth Edition of the ALWD Guide to Legal Citation*, 15 J. APP. PRAC. & PROCESS 273, 280 (2014) (“[I]f you find *The Bluebook* difficult to use, if you are ready to replace an outdated edition of either the *Bluebook* or the [*ALWD*] *Manual*, or if you simply want to strike a blow for clarity and ease of use, the *ALWD Guide* is the unmistakably superior choice.”).

103. See Abigail Patthoff, *Thinking Thursdays: ALWD Guide to Legal Citation—the Sixth Edition Is Better than Ever*, APP. ADVOC. BLOG (Sept. 13, 2018), https://lawprofessors.typepad.com/appellate_advocacy/2018/09/thinking-thursdays-alwd-guide-to-legal-citation-the-sixth-edition-is-better-than-ever.html.

104. See Pamela Wilkins, *The ALWD Citation Manual Grows Up: A Guide to the Second Edition*, 83 MICH. B.J. 48, 48 (2004).

105. See Stacey L. Gordon, *A Better Tradition: Why Law Reviews Should Adopt a New Citation Format*, 68 MONT. L. REV. 175, 176–77 (2007).

106. Pamela Lysaght & Grace Tonner, *Bye-bye Bluebook?*, 79 MICH. B.J. 1058, 1058 (2000).

107. See Hurt, *supra* note 99, at 1283; Shimamoto, *supra* note 56, at 447.

108. Kristen K. Davis & Tamara Herrera, *The ALWD Citation Manual: A Practice-Driven Improvement*, 40 ARIZ. ATT’Y 24, 24 (2004). It also eliminated the *contra* signal, which, while ultimately less controversial, still provoked critical commentary. See Gil Grantmore, *The Death of Contra*, 52 STAN. L. REV.

controversial that the House of Representatives of the American Association of Law Schools passed a resolution asking the editors of *The Bluebook* to reverse themselves.¹⁰⁹ Later editions of *The Bluebook* restored the earlier meaning of *see*.¹¹⁰ Expertise and experience matter here; this is not the kind of change that professionals teaching in the field, many of whom also have significant practice experience, would have made, but it is the kind of change that law students, not fully appreciating how citation language has been used, might (and did) make.

The most significant purpose of the *ALWD Guide* was to put practitioners and student learners first; this was an important shift in the basic philosophical approach to providing citation guidance. By occupying a space largely ignored by *The Bluebook*—practitioner citation forms¹¹¹—the *ALWD Guide* sends a clear message about the primacy of practice, not academia, as the goal of legal education for most law schools and law students.¹¹² The *ALWD Guide* was designed to make sense of citation forms by putting practitioners in the foreground of its choices by, inter alia, omitting citation forms that were not in common use among practitioners.¹¹³ Moreover, the *ALWD Guide* presents practitioner forms as the “main” form, with scholarly forms presented as the variant form. This puts practitioners, and students learning to become practitioners, in the foreground. Centering practitioner forms as the primary form of citation, and devoting substantial space to those forms, rather than scholarly or academic forms, communicates to students that the practice of law is the primary aim of legal education, and the primary purpose of using legal authority.

Equally important, the *ALWD Guide* communicates to students that their learning is of chief importance. For example, the *ALWD Guide* uses learner-friendly features like clear English, explicit explanations of the application of its rules, and

889 (2000).

109. Weresh, *supra* note 100, at 261; Lysaght & Tonner, *supra* note 106, at 1058.

110. Weresh, *supra* note 100, at 261.

111. See Salmon, *supra* note 5, at 785.

112. In addition, at least one writer has suggested that because *The Bluebook* focuses heavily on scholarly forms, it may “send the subtle but elitist message that law reviews prefer article submissions from legal academics over those from legal practitioners.” Gordon, *supra* note 105, at 177.

113. See Salmon, *supra* note 5, at 785–86; Weresh, *supra* note 93, at 787.

color-coding to make elements of the citation form more visually obvious.¹¹⁴ As one scholar observed,

[t]here is no doubt that the *ALWD Citation Manual* is an exemplary teaching tool. . . . It is not only straightforward and user-friendly, but it provides the novice researcher with generous information regarding the content of sources, where and when to provide attribution, and specifically how and what information is communicated through legal citation. . . . First-year law students in particular will be better served by a citation manual that attempts to provide a more comprehensive understanding of the relationship between written legal analysis and citation form.¹¹⁵

The primacy of practitioner forms and the student-centered design are connected in that most law students are training to become practitioners. A design that makes it easier to learn citation in the first place and gives more space and prominence to the practitioners they will become, reflects an intention to value the practice of law over scholarship about it.

More broadly, the *ALWD Guide* was intended to give weight to the accumulated expertise of legal writing faculty with regard to citation, and through that, to make citation practices easier, more rational, and simpler. The *ALWD Guide* was intended to be a kind of “restatement of the rules of citation based on the citation form actually used by experts,”¹¹⁶ and it was designed to simplify and reconcile citation rules.¹¹⁷ The idea of a restatement, in general, is of itself an assertion of accumulated authority and expertise. A few examples illustrate the point that the *ALWD Guide*, as originally conceived, sought to simplify citation forms for all members of the legal profession.¹¹⁸

114. See Suzanne E. Rowe, *The Bluebook Blues: ALWD Introduces a Superior Citation Reference Book for Lawyers*, 64 OR. ST. B. BULL. 31, 31 (2004); Jamar, *supra* note 94, at 65–66; Weresh, *supra* note 100, at 264.

115. Weresh, *supra* note 100, at 271.

116. Jamar, *supra* note 94, at 65.

117. *Id.* at 66.

118. Other scholars have documented the various differences between *The*

The most relevant citation reform the *ALWD Guide* proposed was to eliminate *The Bluebook's* dual citation systems: one for scholarly work (which is the bulk of its focus), and another for practitioners.¹¹⁹ This may be the most necessary change in legal citation practices, as it would communicate that all members of the legal profession are engaged in a common endeavor. It also makes teaching and using citations vastly simpler. Related to this, the *ALWD Guide* originally did not create different citation forms for citations to case law depending on the rhetorical setting and location of the citation.¹²⁰ If widely adopted, this one change would also help clarify and streamline citation practices for all members of the legal profession. There are several examples of small changes that the *ALWD Guide* originally proposed, and together they point to the value of allowing those with greater expertise to have authority over the subject.

All of these are worthwhile purposes. Given how widely *The Bluebook* is criticized, it seems like letting experts have a chance to improve it is desirable. Obviously, legal writing faculty working on the *ALWD Guide* could, theoretically, make the same kinds of mistakes that law review students made in the Sixteenth Edition of *The Bluebook*. It seems far less likely that law faculty with experience both in practice and teaching law students to become practitioners would make such a fundamental error.

The history of the *ALWD Guide* is set out in more detail elsewhere,¹²¹ but it is worth mentioning an important moment in its history: the capitulation to *The Bluebook*, at least in terms of the citation forms it proposes.¹²² Because there were a few improvements in the citation forms the *ALWD Guide* proposed as part of its “restatement” project, and because of its practitioner and student-oriented focus, which it still retains, it was perceived to be very different from *The Bluebook*. This created resistance and marketing difficulties. With the Fifth Edition, the *ALWD Guide* relented, and the citation rules it set

Bluebook and the *ALWD Guide* more extensively. See, e.g., Jacobson, *supra* note 16; Jamar, *supra* note 94; Weresh, *supra* note 100, at 264–70.

119. Jamar, *supra* note 94, at 65.

120. See Weresh, *supra* note 100, at 264; Jamar, *supra* note 94, at 66.

121. E.g., Weresh, *supra* note 93.

122. See Salmon, *supra* note 5, at 786.

out produced formal citations identical to those required by *The Bluebook*.¹²³ It still retains its practitioner and student-oriented focus.

There is little literature documenting the specific reasons legal professionals do not use the *ALWD Guide*. Many have probably never seen it. Surely many will have been told that *The Bluebook* “is” legal citation and have absorbed the messages about its centrality to “belonging” to the profession. Some work in jurisdictions that have their own citation systems. Whatever the reasons are, they are not using a superior product originating not among elite law students, but among a female-gendered field with expertise in the relevant subject matter. I have already discussed above the elitist, anti-practitioner, and anti-student learner origins and world of *The Bluebook*; here, I turn to the female-gendered field from whose expertise the *ALWD Guide* originates and the context within which the rejection of the product of the expertise of this field is of a piece with both the gender hierarchy within legal academia and its rejection of women’s expertise and authority more generally.

B. Legal Writing Is a Female-Gendered Field

In broad terms, a field is “gendered” when the boundaries of the respect for, and the authority of, the field, as well as for the people within it, reflect the uneven distribution of these along gender lines in society generally. This phenomenon is observable across the legal academy. Fields are gendered “male” or “female,” with a corresponding enhancement or diminution in the perceived value not just of the subject, but of the people who teach it and their scholarly contributions.¹²⁴ Many subjects within legal education are gendered, both by demographics of the faculty who teach them and by stereotypes about the subject matter itself.¹²⁵

123. See Paskey, *supra* note 102, at 274.

124. Teri A. McMurtry-Chubb, *On Writing Wrongs: Legal Writing Professors of Color and the Curious Case of 405(c)*, 66 J. LEGAL EDUC. 575, 578 (2017). For want of a better way to frame it (and mindful of the important work that needs to be done with regard to understanding gendering in a more fully non-binary way), I will refer to fields within legal academia as “male-gendered” and “female-gendered.”

125. See Marjorie E. Kornhauser, *Rooms of Their Own: An Empirical Study of Occupational Segregation by Gender Among Law Professors*, 73

There are several ways to think about this gendering. For example, a course that is male-gendered might be one that

1) deals with core legal subject matter, such as Evidence or Corporations, 2) is a traditionally prestigious area of the law within the legal academy, such as Constitutional Law, 3) is a prestigious area of the law in practice because it commands high fees, has high intellectual content, high status clients, and/or is in high demand, such as Intellectual Property, and/or 4) involves a lot of scientific and/or regulatory aspects, such as Corporate Finance, Federal Taxation, and Antitrust.¹²⁶

Another course might be gendered female if it

1) involves topics traditionally of interest to women involving relationships among people, such as Family or Juvenile Law, 2) is softer law, such as Poverty or Immigration Law, as opposed to traditional, more doctrinal or hard core subjects such as Contracts, Conflicts of Laws, or Federal Courts, 3) is a traditionally less prestigious area of the law within the legal academy such as Legal Writing and Research or Clinical Law, and/or 4) deals with a less prestigious area of practice, such as Immigration or Poverty Law.¹²⁷

Most significantly here, “[t]he skills professoriate is . . . segmented by gender.”¹²⁸ In particular, “[l]ike the positions of

UMKC L. REV. 293, 307–08 (2005).

126. *Id.* at 307.

127. *Id.*

128. Lucille A. Jewel, *Oil and Water: How Legal Education’s Doctrine and Skills Divide Reproduces Toxic Hierarchies*, 31 COLUM. J. GENDER & L. 111, 119–20 (2015) (“According to the most recent statistics from the Legal Writing Institute, 71% of legal writing teachers are women, 29% are men. Using 405(c) status as a rough baseline for clinical faculty, recent ABA statistics indicate that 62.6% of law teachers holding 405(c) status are female and 37.3% are male. These same statistics indicate that 67.2% of tenured professors are male and 32.7% are female.”).

paralegals and secretaries, the jobs of legal writing professors are gendered female.”¹²⁹ The systematic marginalization of skills faculty, and writing faculty in particular, even “as law schools are strongly encouraged to provide more experiential learning opportunities for their students,”¹³⁰ is the mechanism by which a double hierarchy of gender and elitist attitudes towards practice is created.

Perhaps the best way to understand it more concretely is through a lens of “demographics plus attributes.”¹³¹ A field is gendered when some combination of these is true: first, the demographics of the people teaching in the field indicate a disproportionate number of people who identify with a particular gender. Second, the terms of employment reflect society’s allocation of power and authority along gender lines, and in particular the ways in which society values and devalues workers who identify with a particular gender and the gendered attributes that are thought to “belong to” a particular gender. And third, the field is imagined to require activities, abilities, or personality traits that, by stereotype, “naturally” appeal to or “naturally” inhere in a particular gender (or it is thought to require qualities that another gender is perceived to lack). Legal writing is a female-gendered field because of the way in which all of these things coalesce within it. Put another way,

[t]eaching skills, and especially legal writing, has long been placed within a feminized frame, because of the intensive student interaction required, the undesirable grading work, and low status, and because writing and skills have historically been excluded from the masculinized conception of the traditional law teacher. This is similar to the feminized category that writing instruction has been placed in at the undergraduate level.¹³²

Thus, legal writing operates as “women’s work.”¹³³

129. McGinley, *supra* note 84, at 128.

130. Ruan, *supra* note 84, at 15.

131. *See generally* Kornhauser, *supra* note 125, at 307–08.

132. Jewel, *supra* note 128, at 120–21.

133. *See* Pamela Edwards, *Teaching Legal Writing as Women’s Work: Life*

Legal writing is a female-gendered field because demographically it is and has historically been disproportionately taught by people who as women.¹³⁴ It is a field into which women have historically been tracked.¹³⁵ In 2000, seventy-two percent of respondents to a survey conducted by Jo Anne Durako in association with the Association of Legal Writing Directors and the Legal Writing Institute were women.¹³⁶ As recently as 2014, between seventy and seventy-five percent of all legal writing faculty were women.¹³⁷ White women and women of color are much more likely than men of any race to teach skills courses like legal writing in the first year.¹³⁸ In many law schools, legal writing may be one of the

on the Fringes of the Academy, 4 CARDOZO WOMEN'S L.J. 75, 75 (1997).

134. See Lorraine K. Bannai, *Challenged X 3: The Stories of Women of Color Who Teach Legal Writing*, 29 BERKELEY J. GENDER L. & JUST. 275, 279 (2014) (“Legal Writing are overwhelmingly white. In 2013, 89% of Legal Writing faculty were identified as Caucasian.”); McMurtry-Chubb, *supra* note 124, at 575 (reporting just under ten percent of legal writing professors identifying racially as something other than Caucasian). Skills instruction tends to be whiter than the law faculty as a whole. See Jewel, *supra* note 128, at 121–23. This dynamic is complex, as it may arise, at least in part, precisely from the lower status of legal writing generally: people of color looking for academic appointments may be advised to avoid legal writing, rather than experience additional forms of discrimination. See Ruan, *supra* note 84, at 26–27. Nevertheless, this raises questions about the extent to which the *ALWD Guide* itself is, in turn, a rejection (or exclusion) of the expertise of men and women of color.

135. Edwards, *supra* note 133, at 90–91; see Renee Nicole Allen, Alicia Jackson & DeShun Harris, *The “Pink Ghetto” Pipeline: Challenges and Opportunities for Women in Legal Education*, 96 U. DET. MERCY L. REV. 525, 536 (2019).

136. Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J. LEGAL EDUC. 562, 562 (2000); see also Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 326 (2000) (reporting findings that in the Fall of 1998, seventy percent of legal writing teachers were women).

137. See Kristen Konrad Tiscione, “Best Practices”: A Giant Step Toward Ensuring Compliance with ABA Standard 405(c), a Small Yet Important Step Toward Addressing Gender Discrimination in the Legal Academy, 66 J. LEGAL EDUC. 566, 571 (2017); *Report of the Annual Legal Writing Survey 2015*, ASS'N LEGAL WRITING DIRS., [https://www.alwd.org/images/resources/2015%20Survey%20Report%20\(AY%202014-2015\).pdf](https://www.alwd.org/images/resources/2015%20Survey%20Report%20(AY%202014-2015).pdf) (last visited Dec. 8, 2020) (finding that in the 2014–2015 academic year nearly seventy-five percent of all legal writing faculty were women).

138. Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 263 (1997).

only courses in which a first-year student has a female instructor.¹³⁹

To speak of a field as “gendered” does not mean that it is entirely dominated by one gender, to the exclusion of any other. Legal writing certainly includes many men who teach in the field.¹⁴⁰ For example, men teach legal writing, have held leadership positions in its professional organizations and in legal writing programs, have published legal writing scholarship, and have written important legal writing textbooks.¹⁴¹ Indeed, as I have mentioned, men were involved in the early discussions of the *ALWD Guide* itself. Furthermore, a field is gendered even if employment practices within the field vary from one institution to another. Legal writing faculty at some institutions enjoy some or all of the benefits of things like pay equity, membership on a unified tenure track, and equal voting rights. This is why gender demographics tell an important story about a field, but they do not tell the whole story.

The status, pay, and institutional power of legal writing faculty are typical of a female-gendered field. Female-gendered fields are often regarded as having less prestige or significance,¹⁴² and are typically compensated at lower levels¹⁴³ with less power or authority within an organization or industry.¹⁴⁴

The lower pay, and lesser status and power of legal writing faculty, have been typically justified by treating legal writing as an inferior subject, characterized as “less intellectual than, and therefore, inferior to the work of the doctrinal faculty

139. Kornhauser, *supra* note 125, at 314.

140. There is evidence that men who teach legal writing are treated differently (that is, better) than their female colleagues, even within the often generally lower status and pay of legal writing. See generally Durako, *supra* note 136; McGinley, *supra* note 84, at 132–34.

141. See Carl Tobias, *Engendering Law Faculties*, 44 U. MIAMI L. REV. 1143.

142. Katie Manley, *The BFOQ Defense: Title VII's Concession to Gender Discrimination*, 16 DUKE J. GENDER L. & POL'Y 169, 206 (2009).

143. Satoris S. Howes, Jaime Henning, Maura J. Mills & Ann Hergatt Huffman, *Yes Virginia, There Is a Gender Disparity Problem—and It Goes Beyond STEM*, 11 INDUS. & ORGANIZATIONAL PSYCH. 318, 319 (2018).

144. Mohamad G. Alkadry & Leslie E. Tower, *Covert Pay Discrimination: How Authority Predicts Pay Differences between Women and Men*, 71 PUB. ADMIN. REV. 740, 747–48 (2011).

member.”¹⁴⁵ In one framing, it is necessary in the way that janitors are necessary,¹⁴⁶ but not of high-level importance: as a law school subject, it is often viewed by non-legal writing faculty as tedious to teach, and lacking in intellectual challenge.¹⁴⁷ Consequently, “those who teach writing in law schools are regarded as anti-intellectuals who should be excluded from the academy,”¹⁴⁸ but “[t]here is a serious question . . . whether the teaching performed by legal writing faculty is necessarily less intellectual or whether is it [sic] has been defined as less intellectual because it involves teaching styles and requirements that are gendered female.”¹⁴⁹

Legal writing faculty generally receive lower pay, lower status or rank, less power and authority within their institutions, and less job security. The terms of employment for many legal writing faculty have been, and often still are, inferior to those of doctrinal faculty: among law faculty, “no other group has been so status-denied as legal research and writing faculty.”¹⁵⁰ Legal writing faculty, at most American law schools, are commonly employed with lesser status and job titles.¹⁵¹

145. McGinley, *supra* note 84, at 134–35.

146. See, e.g., Kathryn M. Stanichi, *Who Next, The Janitors? A Socio-Feminist Critique of the Status Hierarchy of Law Professors*, 73 UMKC L. REV. 467, 467 (2004).

147. See Arrigo, *supra* note 61, at 148; Mary Ellen Gale, *Legal Writing: The Impossible Takes a Little Longer*, 44 ALB. L. REV. 298, 317–18 (1980). Certainly, the law schools from which *The Bluebook* comes think something like this, treating legal writing as something “anyone” can teach by assigning it to upper-level students or entry-level fellows. They have been criticized in the past for their “institutional contempt” for legal writing. Edwards, *supra* note 133, at 79.

148. J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 47 (1994).

149. McGinley, *supra* note 84, at 135.

150. Julie Cheslik, *The Battle over Citation Form Brings Notice to LRW Faculty: Will Power Follow?*, 73 UMKC L. REV. 237, 237 (2004); see Durako, *supra* note 136, at 562; Marina Angel, *The Modern University and Its Law School: Hierarchical, Bureaucratic Structures Replace Coarchival, Collegial Ones; Women Disappear from Tenure Track and Reemerge as Caregivers: Tenure Disappears or Becomes Unrecognizable*, 38 AKRON L. REV. 789, 797 n.54 (2005); cf. Berger, *supra* note 85, at 135–37 (finding that clinical faculty, another field that is taught disproportionately by women, also face status inequalities).

151. See Cheslik, *supra* note 150, at 238; Christine Haight Farley, *Confronting Expectations: Women in the Legal Academy*, 8 YALE J.L. & FEMINISM 333, 356 (1996); Nancy Levit, *Keeping Feminism in Its Place: Sex Segregation and the Domestication of Female Academics*, 49 U. KAN. L. REV.

Although progress has been made, the most recent *ALWD/LWI Annual Legal Writing Survey* reveals that only just over a third of the respondents (thirty-six percent) teach at law schools where at least some legal writing faculty are on either a traditional tenure track or a programmatic tenure track.¹⁵² The survey also reveals that legal writing faculty who are not on the tenure track (which, again, is most legal writing faculty) are paid a lower entry-level salary compared to doctrinal and clinical faculty who do not teach legal writing, at least according to those survey respondents who were able to say what their law schools' compensation is like.¹⁵³ Similarly, most legal writing faculty do not vote on all matters in faculty meetings, and some do not vote at all.¹⁵⁴ Other legal writing faculty even find their offices located away from those of doctrinal faculty.¹⁵⁵ The segregation of women in legal writing has created a circular dynamic of low status and low pay.¹⁵⁶

Within legal writing, teaching, as such, is prized as a primary value of the field.¹⁵⁷ This is a complex phenomenon, likely arising in part from legal writing faculty's non-tenure track status, which makes teaching the primary basis for evaluation and retention purposes,¹⁵⁸ and from the overall gendering of the field because of the way high-touch teaching is itself female-gendered. The value of teaching itself is often gendered, and then devalued, within the legal academy, which has a particularly negative effect on those who teach legal writing because of its intensely student-oriented and labor-

775, 781 (2001).

152. See *ALWD/LWI Annual Legal Writing Survey: Report of the 2017-2018 Institutional Survey*, ASS'N LEGAL WRITING DIRS. 58, <https://www.alwd.org/images/resources/ALWD-LWI-2017-18-Institutional-Survey-Report.pdf> (last visited Dec. 8, 2020). The Survey Committee solicited responses from 203 law schools; of those, 182 law schools responded. *Id.* at v.

153. *Id.* at 143; see Jan M. Levine & Kathryn M. Stanchi, *Women, Writing & Wages: Breaking the Last Taboo*, 7 WM. & MARY J. WOMEN & L. 551, 575–78 (2001).

154. Susan P. Liemer, *The Hierarchy of Law School Faculty Meetings: Who Votes?*, 73 UMKC L. REV. 351, 359 (2004).

155. Bannai, *supra* note 134, at 289–90.

156. Stanchi, *supra* note 146, at 479.

157. See John A. Lynch, Jr., *The New Legal Writing Pedagogy: Is Our Pride and Joy a Hobble?*, 61 J. LEGAL EDUC. 231, 232–33 (2011).

158. Melissa H. Weresh, *Form and Substance: Standards for Promotion and Retention of Legal Writing Faculty on Clinical Tenure Track*, 37 GOLDEN GATE U. L. REV. 281, 296–97 (2007).

intensive teaching. Legal writing faculty are thus “penalized by the general devaluation of the art of teaching within the legal academy,” which reflects “the devaluation of what has come to be ‘women’s work’ in society at large.”¹⁵⁹

Legal writing faculty often teach smaller sections relative to other first-year subjects. With this comes an expectation that legal writing faculty will spend more time, more than doctrinal faculty spend, one-on-one with their students and, through that contact, they are expected to provide more emotional support.¹⁶⁰ Legal writing faculty generally embrace the requirement of individual attention,¹⁶¹ and may be selected in the first instance in part because of their aptitude for that work (though it is highly likely that gender substitutes for evidence of that aptitude).¹⁶² More specifically, the expectations for a highly involved style of teaching translates into high demands for emotional labor.¹⁶³ Female-gendered work often entails a much higher expectation of emotional labor.¹⁶⁴

The expectation of emotional labor as a component of teaching legal writing has some troubling implications. First, in fields with an emotional labor component, this work is often under or uncompensated.¹⁶⁵ The expectation of emotional labor may replace scholarship in the annual evaluation of legal writing faculty, but it does not replace it in the compensation of legal writing faculty. As discussed above, legal writing faculty typically receive lower compensation.

Although it would be difficult to quantify the exact amount

159. Stanchi, *supra* note 146, at 481.

160. McGinley, *supra* note 84, at 128–29.

161. This expectation is arguably embedded in ABA Standard 303(a)(2). See ABA STANDARDS & RULES PROC. FOR APPROVAL L. SCHS. § 303(a)(2) (AM. BAR ASS’N 2020–2021) (“A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following . . . one writing experience in the first year. . . .”); Jan M. Levine, *Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing*, 26 FLA. ST. U. L. REV. 1067, 1068 (1999); Lynch, *supra* note 157, at 236.

162. For a discussion of some of the effects of workplace preferences that do or do not align with gender, see Patricia Cortes & Jessica Pan, *Occupation and Gender*, in THE OXFORD HANDBOOK OF WOMEN AND THE ECONOMY 425 (Susan L. Averett et al. eds., 2018).

163. McGinley, *supra* note 84, at 128–29.

164. *Id.* at 125.

165. See Mary Ellen Guy & Meredith A. Newman, *Women’s Jobs, Men’s Jobs: Sex Segregation and Emotional Labor*, 64 PUB. ADMIN. REV. 289, 296 (2004).

by which legal writing faculty's emotional labor is undercompensated, the fact that the expectation exists much more strongly for legal writing faculty, who are paid less, shows that, at least for legal writing faculty, this component of the teaching is undercompensated.

To some extent, the emotional labor demand is said to be the natural effect of the reality, in many law schools, that legal writing is the place where 1Ls receive almost all of their formative feedback.¹⁶⁶ Thus, legal writing faculty have to tend disproportionately to students' larger anxiety about their overall aptitude for law school and whether they belong. The displacement of this feedback onto legal writing faculty, and the nurturing of students that goes with it, often has the effect of freeing up time for other members of the faculty for other, "more important" work¹⁶⁷—in much the same way that all gendered occupations work. But being highly available to students and their emotional needs has the effect of interrupting the work of legal writing faculty, hindering, for example, their ability to produce scholarship.¹⁶⁸ In fact, a common aspect of female-gendered work is that it is considered to be much more interruptible.¹⁶⁹

An expectation of emotional labor definitely re-inscribes the gendered aspect of legal writing by imposing on women who teach legal writing the highly-gendered role of "mother."¹⁷⁰ "Legal writing faculty are expected to act as mini-psychologists and emotional soothers for their troubled students," a role that "resembles the behavior of a mother in a traditional family."¹⁷¹ This is particularly coercive in law schools where legal writing faculty do not have the protections of tenure or long-term contracts and are vulnerable to student evaluations of their

166. Jessica L. Clark, *Grades Matter; Legal Writing Grades Matter Most*, 32 MISS. C. L. REV. 375, 414 (2014); McElroy, *supra* note 33, at 303–04.

167. McGinley, *supra* note 84, at 132, n.165. The expectation of this kind of nurturing is generally non-reciprocal—the institution does not expect some other class of people to tend to the feelings of women engaged in emotional labor—and may come at the cost of female employees' abilities to tend to their own feelings. See Ann C. McGinley, *Masculinities at Work*, 83 OR. L. REV. 359, 391–92 (2004).

168. Lynch, *supra* note 157, at 237–38.

169. McGinley, *supra* note 84, at 131; see McGinley, *supra* note 167, at 391.

170. Farley, *supra* note 151, at 356.

171. McGinley, *supra* note 84, at 129.

teaching (where female faculty may be punished for not conforming to the gendered expectations that law schools have encouraged students to have).

C. The Rejection of the ALWD Guide Is Consistent with and Perpetuates the Legal Academy's Rejection of Women's Expertise Generally

Legal writing has one other characteristic of a female-gendered field: the rejection of its expertise, particularly outside the field. No one who has studied sex and gender discrimination in legal academy, even in passing, will be surprised to learn that it generally devalues women, their work, work about them, and their expertise.¹⁷² Women are generally underrepresented in law faculties,¹⁷³ despite gender parity in law school enrollment.¹⁷⁴ Women are certainly underrepresented in publications, at least in top law reviews: “only 32% of law review

172. See generally MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* (2019); Constance Z. Wagner, *Change from Within: Using Task Forces and Best Practices to Achieve Gender Equity for University Faculty*, 47 J.L. & EDUC. 295, 303 (2018). Law schools reflect the universities of which they are a part. Women are underrepresented in university faculties, underrepresented among the ranks of faculty with tenure, and underrepresented among university faculty who hold the rank of full professor. Unsurprisingly, given the gaps in tenure and higher academic rank, women's average salary is lower than the average salary of male full-time faculty. Women are also underrepresented in high-ranking leadership positions within universities and on university boards. Many of the features that characterize the gendering of legal writing as a field within legal education are more generally true across academia: women are underrepresented in many fields (like STEM fields and philosophy). See Jennifer Saul, *Implicit Bias, Stereotype Threat, and Women in Philosophy*, in *WOMEN IN PHILOSOPHY: WHAT NEEDS TO CHANGE* 39 (Katrina Hutchison & Fiona Jenkins eds., 2013). There continue to be gendered stereotypes about natural aptitudes for some fields and not for others. Moreover, women report the devaluing of scholarship about them and difficulty, even hostility, in the tenure process across all fields. See *PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA* (Gabriella Gutiérrez Y Muhs et al. eds., 2012).

173. See *Legal Education at a Glance: 2019*, ASS'N AM. L. SCHS. (Feb. 10, 2020), <https://www.aals.org/wp-content/uploads/2020/02/2019-Legal-Education-At-a-Glance.pdf> (finding that sixty percent of law faculty are men); Meera E. Deo, *Looking Forward to Diversity in Legal Academia*, 29 BERKELEY J. GENDER L. & JUST. 352, 357 (2014) (reporting statistics from the AALS from 2008–09 showing that approximately sixty-two percent of law faculty are men).

174. See *Legal Education at a Glance: 2019*, *supra* note 173 (finding that female law school enrollment in Fall 2019 was over fifty-three percent).

articles are by women, and the disparity is even more significant at the ‘most prestigious’ law reviews, with women publishing 20.4% of articles in those venues.”¹⁷⁵ The same study found a similar problem with rates of publication among student notes: over a ten-year period, student notes written by women represented only about a third of all student notes published by law reviews at the top fifty law schools.¹⁷⁶ Similarly, women are underrepresented on scholarly panels.¹⁷⁷ In general, women have encountered skepticism with regard to their scholarship in the legal academy, particularly if their scholarship is thought to be “too feminist or too feminine.”¹⁷⁸

Although a significant number of legal writing and legal method textbooks are written or co-written by women,¹⁷⁹ the

175. Nancy Leong, *Discursive Disparities*, 8 FIU L. REV. 369, 373 (2013); see Jennifer C. Mullins & Nancy Leong, *The Persistent Gender Disparity in Student Note Publication*, 23 YALE J.L. & FEMINISM 385 (2011); Minna J. Kotkin, *Of Authorship and Audacity: An Empirical Study of Gender Disparity and Privilege in the “Top Ten” Law Reviews*, 31 WOMEN’S RTS. L. REP. 385 (2010).

176. Leong, *supra* note 175, at 373.

177. Robin West, *Women in the Legal Academy: A Brief History of Feminist Legal Theory*, 87 FORDHAM L. REV. 977, 979 (2018).

178. Tobias, *supra* note 141, at 1148–49.

179. For example, Wolters Kluwer and Carolina Academic Press, two of the major publishers of law school textbooks, list dozens of legal writing textbooks, nearly all of which are authored or co-authored by women. *E.g.*, JOAN AMES MAGAT, *THE LAWYER’S EDITING MANUAL* (2009); ANGELA C. AREY & NANCY A. WANDERER, *OFF AND RUNNING: A PRACTICAL GUIDE TO LEGAL RESEARCH, ANALYSIS, AND WRITING* (2014); JOEL ATLAS ET AL., *A GUIDE TO TEACHING LAWYERING SKILLS* (2012); DANIEL L. BARNETT & JANE KENT GIONFRIDDO, *LEGAL REASONING & OBJECTIVE WRITING* (2016); LINDA J. BARRIS, *UNDERSTANDING AND MASTERING THE BLUEBOOK: A GUIDE FOR STUDENTS AND PRACTITIONERS* (3d ed. 2015); JILL BARTON, *SO ORDERED: THE WRITER’S GUIDE FOR ASPIRING JUDGES, JUDICIAL CLERKS, AND INTERNS* (2017); JILL BARTON & RACHEL H. SMITH, *THE HANDBOOK FOR THE NEW LEGAL WRITER* (2d ed. 2019); MARY BETH BEAZLEY, *A PRACTICAL GUIDE TO APPELLATE ADVOCACY* (5th ed. 2019); MARY BETH BEAZLEY & MONTE SMITH, *LEGAL WRITING FOR LEGAL READERS: PREDICTIVE WRITING FOR FIRST-YEAR STUDENTS* (2d ed. 2019); SONYA G. BONNEAU & SUSAN A. MCMAHON, *LEGAL WRITING IN CONTEXT* (2017); DEBORAH E. BOUCHOUX, *ASPEN HANDBOOK FOR LEGAL WRITERS: A PRACTICAL REFERENCE* (4th ed. 2017); ROBIN BOYLE-LAISURE ET AL., *BECOMING A LEGAL WRITER: A WORKBOOK WITH EXPLANATIONS TO DEVELOP OBJECTIVE LEGAL ANALYSIS AND WRITING SKILLS* (2019); KAMELA BRIDGES & WAYNE SCHIESS, *WRITING FOR LITIGATION* (2011); SUSAN L. BRODY ET AL., *LEGAL DRAFTING* (1994); HEIDI K. BROWN, *THE MINDFUL LEGAL WRITER: MASTERING PREDICTIVE AND PERSUASIVE WRITING* (2016); ANNE M. BURR & HOWARD BROMBERG, *U.S. LEGAL PRACTICE SKILLS FOR INTERNATIONAL LAW STUDENTS* (2014); CHARLES R. CALLEROS & KIMBERLY Y.W. HOLST, *LEGAL METHOD AND WRITING II: TRIAL AND*

APPELLATE ADVOCACY, CONTRACTS, AND CORRESPONDENCE (8th ed. 2018); CATHERINE J. CAMERON & LANCE N. LONG, *THE SCIENCE BEHIND THE ART OF LEGAL WRITING* (2d ed. 2019); CAMILLE LAMAR CAMPBELL & OLYMPIA R. DUHART, *PERSUASIVE LEGAL WRITING: A STORYTELLING APPROACH* (2017); VEDA R. CHARROW ET AL., *CLEAR AND EFFECTIVE LEGAL WRITING* (5th ed. 2013); ALEXA Z. CHEW & KATIE ROSE GUEST PRYAL, *THE COMPLETE LEGAL WRITER* (2016); MARIA L. CIAMPI & WILLIAM H. MANZ, *THE QUESTION PRESENTED: MODEL APPELLATE BRIEFS* (2000); CHRISTINE COUGHLIN ET AL., *A LAWYER WRITES: A PRACTICAL GUIDE TO LEGAL ANALYSIS* (3d ed. 2018); JOHN C. DERNBACH, RICHARD V. SINGLETON II ET AL., *A PRACTICAL GUIDE TO LEGAL WRITING AND LEGAL METHOD* (6th ed. 2017); DIANA R. DONAHOE, *EXPERIENTIAL LEGAL WRITING: ANALYSIS, PROCESS & DOCUMENTS* (Vicki Been et al. eds., 2011); MARY L. DUNNEWOLD ET AL., *JUDICIAL CLERKSHIPS: A PRACTICE GUIDE* (2010); LINDA H. EDWARDS, *LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION* (7th ed. 2018); LINDA H. EDWARDS, *LEGAL WRITING AND ANALYSIS* (5th ed. 2019); ANNE ENQUIST ET AL., *JUST WRITING: GRAMMAR, PUNCTUATION, AND STYLE FOR THE LEGAL WRITER* (5th ed. 2017); JUDITH D. FISCHER, *PLEASING THE COURT: WRITING ETHICAL AND EFFECTIVE BRIEFS* (2d ed. 2011); CATHY GLASER ET AL., *THE LAWYER'S CRAFT: AN INTRODUCTION TO LEGAL ANALYSIS, WRITING, RESEARCH, AND ADVOCACY* (2002); LAURA P. GRAHAM & MIRIAM E. FELSENBURG, *THE PRE-WRITING HANDBOOK FOR LAW STUDENTS: A STEP-BY-STEP GUIDE* (2d ed. 2019); CASSANDRA L. HILL & KATHERINE T. VUKADIN, *LEGAL ANALYSIS: 100 EXERCISES FOR MASTERY, PRACTICE FOR EVERY STUDENT* (2d ed. 2017); MARGARET Z. JOHNS & CLAYTON S. TANAKA, *PROFESSIONAL WRITING FOR LAWYERS: SKILLS AND RESPONSIBILITIES* (2d ed. 2014); GEORGE W. KUNEY & DONNA C. LOOPER, *MASTING LEGAL ANALYSIS AND DRAFTING* (2009); ADAM LAMPARELLO & MEGAN E. BOYD, *SHOW, DON'T TELL: LEGAL WRITING FOR THE REAL WORLD* (2014); TERRI LECLERCQ & KARIN MIKA, *GUIDE TO LEGAL WRITING STYLE* (5th ed. 2011); JOAN M. ROCKLIN ET AL., *AN ADVOCATE PERSUADES* (2016); MEGAN MCALPIN, *BEYOND THE FIRST DRAFT: EDITING STRATEGIES FOR POWERFUL LEGAL WRITING* (2014); RUTH ANN MCKINNEY & KATIE ROSE GUEST PRYAL, *CORE GRAMMAR FOR LAWYERS* (2011); TERI A. MCMURTRY-CHUBB, *LEGAL WRITING IN THE DISCIPLINES: A GUIDE TO LEGAL WRITING MASTERY* (2012); KRISTEN E. MURRAY & JESSICA LYNN WHERRY, *THE LEGAL WRITING COMPANION: PROBLEMS, SOLUTIONS, AND SAMPLES* (2d ed. 2019); RICHARD K. NEUMANN JR. ET AL., *LEGAL REASONING AND LEGAL WRITING* (8th ed. 2017); RICHARD K. NEUMANN JR. ET AL., *LEGAL WRITING* (4th ed. 2019); LAUREL CURRIE OATES & ANNE ENQUIST, *JUST MEMOS: PREPARING FOR PRACTICE* (5th ed. 2018); LAUREL CURRIE OATES ET AL., *THE LEGAL WRITING HANDBOOK: ANALYSIS, RESEARCH, AND WRITING* (7th ed. 2018); LAUREL CURRIE OATES ET AL., *JUST BRIEFS* (3d ed. 2013); JILL J. RAMSFIELD, *CULTURE TO CULTURE: A GUIDE TO U.S. LEGAL WRITING* (2005); TERESA J. REID RAMBO & LEANNE J. PFLAUM, *LEGAL WRITING BY DESIGN: A GUIDE TO GREAT BRIEFS AND MEMOS* (2d ed. 2013); RUTH ANNE ROBBINS ET AL., *YOUR CLIENT'S STORY: PERSUASIVE LEGAL WRITING* (2d ed. 2019); DAVID S. ROMANTZ & KATHLEEN ELLIOTT VINSON, *LEGAL ANALYSIS: THE FUNDAMENTAL SKILL* (2d ed. 2009); JENNIFER MURPHY ROMIG & MARK EDWIN BURGE, *LEGAL LITERACY AND COMMUNICATION SKILLS: WORKING WITH LAW AND LAWYERS* (2020); DEBORAH A. SCHMEDEMANN & CHRISTINA L. KUNZ, *SYNTHESIS: LEGAL READING, REASONING, AND COMMUNICATION* (5th ed. 2017); NANCY L. SCHULTZ & LOUIS J. SIRICO, JR., *LEGAL WRITING AND OTHER LAWYERING SKILLS* (6th ed. 2014); LOUIS J. SIRICO, JR. & NANCY L. SCHULTZ, *PERSUASIVE LEGAL WRITING* (4th ed. 2015); ROBIN W. SLOCUM, *LEGAL REASONING, WRITING, AND OTHER LAWYERING SKILLS* (3d ed. 2011); RACHEL H. SMITH, *THE LEGAL WRITING*

picture is less positive when considering casebooks written for other subjects. It appears that a majority of doctrinal casebooks are written entirely by men; women have co-authored many casebooks with male authors, but very few casebooks are written entirely by women.¹⁸⁰ Further, within these books, the experiences of women as actors and subjects within the law are often excluded.¹⁸¹ Students experience a legal education in which “men’s views are more audible, more pervasive, and more influential than women’s.”¹⁸²

These practices are, collectively, institutional sexism, if institutional sexism is understood to be:

- a) observable actions, which b) involve one community acting against another community, which c) are grounded in the way the institution functions (that is, are ‘business as usual’ for that institution) and d) which are not, and would not, be publicly condemned by most people because of a lack of general awareness or agreement that the action involves racism or sexism.¹⁸³

SURVIVAL GUIDE (2014); JUDITH M. STINSON, *THE TAO OF LEGAL WRITING* (2009); KATHLEEN ELLIOTT VINSON ET AL., *MINDFUL LAWYERING: THE KEY TO CREATIVE PROBLEM SOLVING* (2018); AMY VORENBERG, *PREPARING FOR PRACTICE: LEGAL ANALYSIS AND WRITING IN LAW SCHOOL’S FIRST YEAR* (2014); MELISSA H. WERESH, *LEGAL WRITING: ETHICAL AND PROFESSIONAL CONSIDERATIONS* (2d ed. 2009); JESSICA LYNN WHERRY & KRISTEN E. MURRAY, *SCHOLARLY WRITING: IDEAS, EXAMPLES, AND EXECUTION* (3d ed. 2019). Any reader familiar with the field of legal writing will immediately recognize many of the most important teachers and scholars in the field in this list.

180. Out of approximately 680 non-legal writing casebooks and textbooks offered by Wolters Kluwer and West, two of the largest legal textbook publishers, more than fifty-six percent of them were written or edited only by men. The balance include at least one female author or editor, but only eight percent were written or edited entirely by women. (Materials on file with author.)

181. Levit, *supra* note 151, at 782–83.

182. Leong, *supra* note 175, at 376; see Sari Bashi & Maryana Iskander, *Why Legal Education Is Failing Women*, 18 *YALE J.L. & FEMINISM* 389, 403 (2006) (noting that this extends to the classroom itself, where female students’ voices are less often heard).

183. Jane Byeff Korn, *Institutional Sexism: Responsibility and Intent*, 4 *TEX. J. WOMEN & L.* 83, 90–91 (1995). Korn points out, however, that the label “institutional sexism” is used “as a way to avoid responsibility for eliminating discrimination.” *Id.* at 94; see Ann E. Freedman, *Feminist Legal Method in Action: Challenging Racism, Sexism and Homophobia in Law School*, 25 *GA. L. REV.* 849, 878 (1990).

All of this, then, is context for the use or non-use of the *ALWD Guide*. A decision not to use the *AWLD Guide* particularly implicates the third and fourth prongs of this definition, and thereby extends the general effect of circumscribing or limiting the authority of women, and the authority that women have developed, within the legal academy. In particular, it circumscribes and devalues the expertise that has developed in a gendered field, and in that way actually further contributes to the gendering of that field by limiting its authority to its “proper” sphere (and maybe not even there). This has the effect of further creating institutional bias, in the form of a gender hierarchy, in a way that is inseparable from legal education’s elitist attitudes about practice, practitioners, and skills faculty.

V. THE INTERSECTION OF HIERARCHIES OF ELITISM AND GENDER AT WHICH CITATION GUIDES ARE SITUATED IS A LOCUS OF POWER

The choice of a citation guide thus exists at the intersection of at least two hierarchies: one of elitism within legal education, and one of gender. The preference for *The Bluebook* is a preference for the product of students engaged in prestige activities at elite institutions over the product of professionals with practice experience who are disproportionately women working in lower-status, lower-pay jobs with terms of employment stereotypical of jobs treated as “women’s work.” Placed in context, it is hard to avoid seeing the net effect of a preference for *The Bluebook*: a female-gendered field is not allowed to have authority over a field in which it, collectively, has amassed considerable teaching expertise.

In effect, this elevates the work product of law students with little experience teaching citation over the expertise of professionals who have accumulated decades of expertise in the area. “Which authorities should decide how lawyers, judges, and scholars use citations? The inexperienced student editors of student-run journals? Or the highly experienced lawyers who

are themselves both scholars and teachers?”¹⁸⁴ To ask the question another way, “[w]hat does it say . . . if we require students to use a citation manual—*The Bluebook*—that is neither clear, nor concise, nor precise, and that is poorly organized to boot?”¹⁸⁵ In particular, what does it say if we prefer *The Bluebook*, with its origins in legal academia’s elitism, over the *ALWD Guide*, the product of the expertise of a female-gendered field?

A. The Institutional Contempt for Legal Writing Enlists Students in the Perpetuation of Hierarchies of Elitism and Gender in Legal Education

This preference for elite non-expertise over expertise says something about what one scholar has called “institutionalized contempt for legal writing.”¹⁸⁶ This maps directly onto the contempt for the ordinary practitioner careers that almost all of our students will have and contempt for the women who teach legal writing. And students sense this. The darker side of student expectations about legal writing faculty fulfilling a maternal role for them is that students have been more likely to complain about their legal writing courses and their legal writing faculty.¹⁸⁷ Presumably they have felt empowered to do so both because of ambient institutional sexism that exposes all female faculty to greater student criticism¹⁸⁸ and because of the messages they receive from their law schools about the place and importance of legal writing faculty. Legal writing faculty often report receiving lower evaluations than their doctrinal peers, no doubt because of a confluence of gender bias and implicitly disparaging messages about legal writing as a field.¹⁸⁹ More specifically,

184. Paskey, *supra* note 102, at 279.

185. *Id.*

186. Gale, *supra* note 147, at 320.

187. See Edwards, *supra* note 133, at 97–99.

188. Robert Steinbuch, *Finding Female Faculty: Empirically Assessing the Current State of Women in the Legal Academy*, 36 WOMEN’S RTS. L. REP. 375, 376–77 (2015); see Farley, *supra* note 151, at 336–37.

189. Melissa Marlow-Shafer, *Student Evaluation of Teacher Performance and the “Legal Writing Pathology:” Diagnosis Confirmed*, 5 CUNY L. REV. 115, 127–28 (2002).

[l]egal writing professors who dare to use a text other than *The Bluebook* to teach legal citation receive significant pushback from their administrations, other faculty, and students, all of whom protest that ‘everyone uses *The Bluebook*,’ and many of whom seem to believe that teaching from any other source amounts to a form of educational malpractice.¹⁹⁰

In this way, when students are enlisted as allies in support of the preference for *The Bluebook* over the *ALWD Guide*, they are indoctrinated with a particular view of both the legitimacy of certain students and certain institutions having disproportionate power *and* the legitimacy of gender imbalances in the profession generally. Justifying this preference in terms of tradition or habit (or even the burden of making a different choice) is not a denial so much as it is a description of the mechanism of “neutrality” by which the larger implications of this choice are masked: telling students that they will be unemployable or will be unable to find clerkships if they use the *ALWD Guide*, or that the *ALWD Guide* is not “real” citation, reinforces both institutional gender bias and the legal academy’s general tendency towards elitism while also making students into allies with entrenched hierarchies against their legal writing instructors.¹⁹¹ It is at once an example of “the dismayingly intractable grip that elitism still holds on legal education and the legal profession”¹⁹² and a powerful grip of institutional sexism.

B. The Intersectional Effect of Elitism and Institutional Sexism on Women in Legal Academia

The subordination of the expertise of a female-gendered field in favor of the non-expertise of elite law students contributes to a larger effect on women in legal academia, as

190. Salmon, *supra* note 5, at 775.

191. See Gallacher, *supra* note 6, at 497 n.37 (“In many schools, the introduction of the *ALWD Manual* led to student protests that they would be unprepared for entry into the real world of legal citation, dominated (in the students’ eyes, at least) by *The Bluebook*.”).

192. Salmon, *supra* note 5, at 796.

students and as faculty, by telling them that they do not belong in the legal profession.¹⁹³ It sends a message to all students about the place of women in legal academia and the value of expertise developed by a female-gendered field. “Law schools do not merely reflect social reality; they construct it.”¹⁹⁴ When women’s expertise is devalued, either because it is by or about women, or because it arises from a female-gendered field that holds second-class status, the academy withholds “scholarly cachet,” which “has its ramifications at absolutely every turn in an academic career.”¹⁹⁵ The situation is not better for women in the federal judiciary¹⁹⁶ or in partnerships of large law firms.¹⁹⁷ All of this is bound to have a negative effect on law students’ perceptions of women as authority figures in the law.¹⁹⁸

There is a constellation of topics clustered around law reviews, the academy’s treatment of skills education, and the career paths of most law students that all reinforce a fundamentally elitist approach to legal education—and citation is at the heart of it. Rejecting the *ALWD Guide* in favor of *The Bluebook* contributes to a perception that certain people and their expertise are less important.¹⁹⁹

C. Hierarchies Are Perpetuated in Small Ways and Without the Intention to Do So

Neither a lack of intent nor the presence of other explanations for any given choice means there is neither gender

193. See Allen, Jackson & Harris, *supra* note 135, at 530.

194. Levit, *supra* note 151, at 781.

195. Annalise E. Acorn, *Discrimination in Academia and the Cultural Production of Intellectual Cachet*, 10 UCLA WOMEN’S L.J. 359, 362 (2000).

196. Alaina Purvis, Note, *Women in the Legal Profession: How Gender Barriers and Attrition Are Keeping Women out of the Judiciary*, 43 J. LEGAL PRO. 283, 286–92 (2019).

197. Nicole E. Nicoletta, *Implicit Bias and the Legal Profession’s “Diversity Crisis”: A Call for Self-Reflection*, 15 NEV. L.J. 930, 935 (2015).

198. See Abigail Perdue, *Man Up or Go Home: Exploring Perceptions of Women in Leadership*, 100 MARQ. L. REV. 1233, 1298 (2017); Joni Hersch & Erin E. Meyers, *Why Are Seemingly Satisfied Female Lawyers Running for the Exits? Resolving the Paradox Using National Data*, 102 MARQ. L. REV. 915 (2019).

199. See Meera E. Deo, Maria Woodruff & Rican Vue, *Paint by Number? How the Race and Gender of Law School Faculty Affect the First-Year Curriculum*, 29 CHICANA/O-LATINA/O L. REV. 1, 36–37 (2010).

bias nor elitism. It is important to point out that although institutional bias can be explicit and intentional, it need not be—and often it is not because institutions are often propelled by mechanisms that were set in place a long time ago, and typically act in diffuse ways through multiple actors.²⁰⁰ This kind of bias can occur even—or especially—in contexts in which other explanations for the behavior may be available (for example, *The Bluebook* is traditional or more widely accepted).²⁰¹ Thus, a conversation about the relative merits of *The Bluebook* and the *ALWD Guide* is “business as usual”²⁰² only insofar as it is divorced from the social and historical contexts of those two citation manuals and the question of women’s authority within the academy. Put another way, the status hierarchy that minimizes the expertise of legal writing faculty is gendered along many axes, but it is that same hierarchy that, in part, is used to justify a preference against the *ALWD Guide* on the “merits.” This purported meritocratic justification is, as one scholar puts it, “suspect.”²⁰³

VI. CONCLUSION

Whatever the reason is for *The Bluebook*’s continued dominance, it cannot be because *The Bluebook* is designed for students, nor can it be because *The Bluebook* emphasizes the importance of law practice, or because it is well-designed or easy to use. It would be hard to make the case that *The Bluebook* is better than the *ALWD Guide*.²⁰⁴ As one teacher put it, “there

200. See Korn, *supra* note 183, at 114–15.

201. See Lu-in Wang, *At the Tipping Point: Race and Gender Discrimination in a Common Economic Transaction*, 21 VA. J. SOC. POL’Y & L. 101, 127 (2014) (“‘Situational discrimination’ describes a paradox of modern day discrimination. Its emergence is highly dependent on the situation, but it is more likely to occur when racial issues are obscured than when they are apparent.”); Stanchi, *supra* note 146, at 472–73. This also has more than a passing similarity to what Kathryn Stanchi calls “credentialism”: “[c]redentialism is the inflated use of certain credentials for the purpose of restricting entry into a position to enhance its market value and monopolize social rewards,” and this practice operates to obscure the gender issues that are operating and thus permits the situational or institutional discrimination against women. Stanchi, *supra* note 146, at 472–73.

202. Korn, *supra* note 183, at 90.

203. Stanchi, *supra* note 146, at 473.

204. See Salmon, *supra* note 5, at 793.

are only two things wrong with the [Bluebook]: the rules and the way they're presented."²⁰⁵ Commentators have noted that *The Bluebook* does not always clearly explain its requirements, and students learning citation struggle with the changes in each new edition.²⁰⁶ Others have noted that "*The Bluebook* is "difficult to read, use, and understand."²⁰⁷ Users find it "fussy,"²⁰⁸ complex,²⁰⁹ arbitrary,²¹⁰ and anxiety-provoking.²¹¹ Using it is tantamount to a hazing ritual, like much of the first year of law school,²¹² and like any hazing ritual, it is an ordeal of belonging. It would not surprise me to learn some fondness for *The Bluebook* has to do with having survived and conquered it.

What *The Bluebook* has going for it, besides being the first real entrant in the field, is the inertial force of tradition, buoyed by prestige, and its utility to the unspoken project of furthering hierarchy. Susie Salmon discusses the "network effects" that help perpetuate the dominance of *The Bluebook*, and how its early and "enduring dominance" has translated into "entrenchment."²¹³ Others have noted its "prestigious sponsors," and its "first mover" advantage.²¹⁴ These give *The Bluebook* an inevitability that makes it seem like students must use it. This combines with skepticism about legal writing generally,²¹⁵ and veneration for law reviews and particularly for those that produce *The Bluebook*. All of this makes *The Bluebook* appear to be "real" citation and makes the *ALWD Guide* seem a mere invention of legal writing faculty.

205. Paskey, *supra* note 102, at 273.

206. Cordle, *supra* note 16, at 583–84.

207. Wayne Schiess, *Meet ALWD: The New Citation Manual*, 64 TEX. B.J. 911, 912 (2001); see Wendy S. Loquasto, *Legal Citation: Which Guide Should You Use and What Is the Difference?*, 91 FLA. B.J. 39, 40 (2017).

208. Neumann, *supra* note 43, at 423–424.

209. Whisner, *supra* note 25, at 393–94.

210. Alexa Z. Chew, *Citation Literacy*, 70 ARK. L. REV. 869, 872 (2018).

211. Wanderer, *supra* note 19, at 46.

212. See, e.g., Scott A. Westfahl & David B. Wilkins, *The Leadership Imperative: A Collaborative Approach to Professional Development in the Global Age of More for Less*, 69 STAN. L. REV. 1667, 1704 (2017); Morrison Torrey, *You Call That Education?*, 19 WIS. WOMEN'S L.J. 93, 104 (2004).

213. Salmon, *supra* note 5, at, 794–95.

214. Cathy Roberts, *The Dark Side of The Bluebook*, 24 UTAH B.J. 22, 22 (2011) (reviewing Richard A. Posner, *The Bluebook Blues*, 120 YALE L.J. 850 (2011)).

215. See, e.g., McGinley, *supra* note 84, at 134–35.

There is surprisingly little literature on who does or does not use the *ALWD Guide*, and why.²¹⁶ It would be difficult to determine how many practicing attorneys and appellate judges have adopted it. Presumably, they could have been persuaded by the various positive reviews the *ALWD Guide* has received or their own, possibly negative, experience with the various editions of *The Bluebook*. Assuming, however, that practicing attorneys and appellate judges have not adopted it in numbers greater than law reviews and first-year legal writing programs,²¹⁷ the *ALWD Guide* has not been widely adopted at least, not as widely as *The Bluebook*.

Suppose it was possible to switch to the *ALWD Guide* overnight. This might create a hardship for some in the legal profession (judicial clerks, legal academics, and the student law review editors who edit their work, most notably); others might find life easier, given the *ALWD Guide*'s more user-friendly design.²¹⁸ Would such a change lead to a utopia free of elitism and gender bias? Hardly. Gender bias and elitism have many tentacles. Adopting the *ALWD Guide* would certainly not dislodge the hegemony of the law schools at Harvard, Yale, Columbia, and University of Pennsylvania.²¹⁹ Certainly, the *ALWD Guide* is just as complex as *The Bluebook* at the level of rules and circumstances it covers. After all, in its quest to be comprehensive, it has created the same complexity that has been

216. In its early years, it appeared that at least some faculty at more than seventy law schools had dropped *The Bluebook* in favor of the *ALWD Guide*, along with some paralegal programs and law journals. See Darby Dickerson, *Professionalizing Legal Citation: The ALWD Citation Manual*, 47 *FED. LAW.* 20, 21 (2000).

217. In fact, there is reason to believe that some students who were exposed to the *ALWD Guide* in their first year drop it as soon as their second year; anecdotally, I can say that many of my own students are told that the *ALWD Guide* is not "real" citation, or that they will be "unemployable" if they use it. These students are often said to be unable to cite correctly, and the finger is pointed at the *ALWD Guide*, or at the faculty who teach from it. I suspect there are two real culprits. First, disparaging the *ALWD Guide* in the way I have described surely reduces student confidence in what they are learning, which suppresses their enthusiasm for working to retain it, and student enthusiasm for learning citation forms is, for most students, not particularly robust to begin with. Second, I suspect that in many law schools most students take very few classes requiring them to use, and therefore practice, any citation forms from any citation manual after their first year.

218. See Gordon, *supra* note 105, at 178–79.

219. See, e.g., Pether, *supra* note 22, at 125.

criticized in *The Bluebook*.²²⁰ Indeed, the *ALWD Guide* has been criticized as being an elitist product itself.²²¹ And given the disproportionately white demographics of legal writing, such a change certainly could not do much to alter or increase the voice or authority of people of color within legal writing or the legal academy as a whole.

Some people would not notice the change at all, except maybe to complain about the state of legal education these days, because many lawyers learn, even in the first year of law school and certainly in practice, that there are far more important lawyering skills and that at least some lawyers do not care that much about citation or do not do it right anyway. The reality of legal citation as a cultural practice is more uneven than the mythology about it suggests. It is not clear that actual use and knowledge of *The Bluebook* is nearly as mandatory or ubiquitous in practice as students are told it is. I suspect we are demanding of them a fealty to *The Bluebook* that, for most of them, the practice of law does not actually require.

Once they are past this indoctrination, students and new attorneys are likely to discover this themselves. First, they are likely to observe the inutility of citation, and *The Bluebook*, in first-year and upper-level exam courses. It is hard to imagine many timed exams in casebook courses would require students to also provide perfect legal citation forms. Even in writing

220. Judge Richard Posner, who served on the United States Circuit Court for the Seventh Circuit from 1981 until 2017, is perhaps the most famous critic of *The Bluebook*. He described it as a “hypertrophy of law,” and called it “vacuous” and “tendentious.” Richard A. Posner, *Goodbye to The Bluebook*, 53 U. CHI. L. REV. 1343, 1343–44 (1986); Richard A. Posner, *The Bluebook Blues*, 120 YALE L.J. 850 (2011) [hereinafter *Bluebook Blues*]. Judge Posner was writing to promote the University of Chicago’s *Maroonbook*. It is doubtful that Judge Posner would appreciate the complexity of the *ALWD Guide* any more than he appreciates *The Bluebook*. It is not just *The Bluebook* itself that has grown in length; citations themselves have also grown. See *Don’t* Cry** Over Filled Milk: The Neglected Footnote Three to Carolene Products****, 136 U. PA. L. REV. 1553, 1558–59 (1988) (describing how much longer footnote three to *United States v. Carolene Products, Co.*, 304 U.S. 144 (1938), would be if the statutory citations in it were formatted according to current Bluebook standards, and noting that at the time of the decision, *The Bluebook* did not even provide citation forms for statutes). A detailed description of the growth of *The Bluebook*, both in content and physical size, can be found in Dickerson, *supra* note 57, at 57–65.

221. See Shimamoto, *supra* note 56, at 456–57 (suggesting that *The Bluebook* is less of an elitist product precisely because it is student-produced).

classes they may notice this. Although citation is an important topic—certainly substantive citation, as opposed to formal citation—within a typical legal writing sequence citation, it is but one of several concepts and skills that must be taught.²²² Legal citation beyond the first year is likely to be largely limited to a law review, which is an experience of a small number of students at most law schools, or a seminar, which is a kind of writing few practitioners will do, or a moot court. Students who take a clinical class will likely need to use some practitioner forms, likely the most common forms, like cases and statutes, and possibly some administrative materials.

Second, once in practice, they are likely to realize that representation demands many other more important skills²²³ that are not citation-related and for which *The Bluebook* is irrelevant. Furthermore, although the discourse around *The Bluebook* suggests it is required in a fundamental way, there is no uniform requirement that *The Bluebook* be used, and hardly any jurisdiction requires pure Bluebook form,²²⁴ and some have adopted their own citation requirements that deviate to some extent from what is required by *The Bluebook*.²²⁵

They are also likely to notice, in many settings, no one knows or cares how they arrive at their citation forms. For the most part, to the extent there is consensus on what a citation form should be, it will be largely uninteresting and unimportant how a writer—let us say a small-firm or legal services attorney writing a brief for a client—arrived at her citation forms. There may be practice settings in which lawyers “need to know” the specific contents of a Bluebook rule by rule number; that is, to

222. See Salmon, *supra* note 5, at 796–98.

223. See Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOC. INQUIRY 620 (2011).

224. See Salmon, *supra* note 5, at 774–75.

225. For example, California—home to 12.5% of the nation’s lawyers—requires its own citation form, which is quite different from Bluebook form. EDWARD W. JESSEN, CALIFORNIA STYLE MANUAL: A HANDBOOK OF LEGAL STYLE FOR CALIFORNIA COURTS AND LAWYERS (4th ed. 2000). Similarly, New Jersey has created a Manual on Style for judicial opinions that mandates Bluebook form except when it deviates from that form. NEW JERSEY MANUAL ON STYLE FOR JUDICIAL OPINIONS (2017). The *ALWD Citation Guide*, at Appendix 2, lists local citation rules for all fifty states, plus the District of Columbia, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands.

know what Rule 18.7.3 governs,²²⁶ or to know the rule number associated with particular requirements, such as, which rule governs cases decided by the International Tribunal for the Law of the Sea,²²⁷ but these must be rare.

Third, and relatedly, they will realize that many attorneys do citations “wrong” anyway, because they are relying on memory, because they have their own preferences or “house style,” because a local rule requires a different form, because they are copying the citation forms they see in other writing, because they are using the wrong forms in *The Bluebook*, the scholarly forms instead of the practitioner forms, or because they have an outdated edition of *The Bluebook*.²²⁸ In practice, it is likely many attorneys rely on their memory of the rules, or they draw on whatever happens to be handy, like appellate opinions: “[i]f I have a citation question, I simply use other appellate opinions in my jurisdiction as a guide to citation.”²²⁹

Or perhaps more accurately, it is likely that practitioners use the citation forms they think they know: changes in requirements among different editions of *The Bluebook*, local citation rules that vary from *The Bluebook*, the impulse to copy citation forms found in legal databases, which vary from Bluebook citation forms, and the probability that lawyers are referencing Bluebook rules intended for use in scholarly articles all likely mean that the citation forms working attorneys actually use do not truly reflect a “knowledge” of *The Bluebook* in the way we are told is important.²³⁰ Or, they simply invent the citation form.²³¹ The citation forms in opinions may

226. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION, *supra* note 3, at 184 (Rule 18.7.3).

227. *Id.* at 208 (Rule 21.5.6). One commentator noted that changes to the 15th edition of *The Bluebook*, which focused more heavily on rule numbers alone as an organizing method, “resist[ed] the cold truth that its rule numbers are meaningless.” Jim C. Chen, *Something Old, Something New, Something Borrowed, Something Blue*, 58 U. CHI. L. REV. 1527, 1529 (1991). That is, practitioners who actually use *The Bluebook* are unlikely to access the rules they need by their knowledge of the rule numbers alone.

228. See Salmon, *supra* note 5, at 786–93.

229. Roberts, *supra* note 214, at 22.

230. Jeffrey D. Jackson, *Thoughts on the Future of Citation: Bluebook, ALWD, and ?*, 82 J. KAN. B. ASS’N 14, 14 (2013); see Roberts, *supra* note 214, at 22; Schiess, *supra* note 207, at 912.

231. The *ALWD Guide* acknowledges this is necessary for those sources for which it does not provide a citation form. COLEEN M. BARGER, ASS’N OF

themselves be inventions, perhaps intentionally so:

I have put my money where my mouth is, metaphorically speaking. I don't use *The Bluebook* or any other form book in either my judicial opinions or my academic writings. Journals, and not only law journals, do sometimes impose citation forms on me. But the Federal Reporter does not; nor do the publishers of most of my books. My judicial and academic writings receive their share of criticism, but no one to my knowledge has criticized them for citation form.²³²

Furthermore, the law reviews that produce and publish *The Bluebook* have had their own deviances from the practices they themselves require.²³³

More precisely, someone who is correcting the citations in a piece of legal writing may well have learned that in a particular citation manual, particular citation requirements are found at a particular rule, or vice versa, but it is unlikely that many people are expected to demonstrate that knowledge independently of its use. If I italicize the name of a case, no reader will know (or ask) if I did that because ALWD Rule 12.2(a) required it, or Bluebook Rule 2.1(a) required it, or a state citation rule required it, or, for that matter, because I thought it looked better and never consulted any rule at all. It is likely few judges, practitioners, or academics can produce perfect Bluebook citations from memory in all cases, or recognize, in every instance, whether a citation conforms with *The Bluebook*.²³⁴

In the end, if many in the legal profession do not actually give much attention to citation, and the most obvious change would not make much difference, the question may be whether this is all a tempest in a teapot. In a sense, yes. I said as much at the beginning. I am focused here on a detail. This is because of the fractal quality of hierarchy, gender bias, and elitism, through which they reproduce themselves at every level, and at

LEGAL WRITING DIRS, ALWD GUIDE TO LEGAL CITATION 6 (6th ed. 2017).

232. *Bluebook Blues*, *supra* note 220, at 853.

233. Chen, *supra* note 227, at 1531.

234. *See* Salmon, *supra* note 5, at 775.

every level they produce the entire structure all over again. The change ultimately is not simply choosing a different citation guide, though switching to the *ALWD Guide* would be a step in the right direction; it would make life easier for many law students and lawyers precisely because the *ALWD Guide* is designed for them and designed to make their lives easier. *The Bluebook* could adopt all of the formatting and organizational choices of the *ALWD Guide*, and it could radically reorganize itself to put student learners and practitioners into the foreground. These would be salutary changes for *The Bluebook*, and for those who use it. It would not, however, shift the locus of authority, and it is this locus that has concerned me here. The important change is shifting our fundamental sense of who has authority and expertise within the legal profession; it would be a step in the direction of less elitism and greater respect for the authority and expertise that women have accumulated within the legal profession and the legal academy. Fundamental changes manifest in small choices.