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Citation Abuse and Legal Writing: A Note on the *Treaty of Fort Laramie with Sioux, etc., 1851* and 11 Stat. 749

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Abstract

The *Treaty of Fort Laramie with Sioux, etc., 1851* was an important transaction between a number of American Indian tribes and the federal government. However, because of administrative mishandling by the latter, there has been sustained but unwarranted confusion over whether the treaty was a valid one. Uncertainty led to the use of a brief note in the *Statutes at Large*, at 11 Stat. 749, instead of the treaty's full text as the law of the land. The *Statutes* cue, however, has been misused frequently in the opinions of various jurisdictions, even to the point of deploying it to reference specific quotations from the full document—that is, to material certainly taken from an alternative source. This article investigates the most significant citation errors to 11 Stat. 749, and uses them to discuss improvements to applications of legal writing.

Keywords: legal bibliography, legal citation, legal history, legal writing, Native American law

Lawyers cannot afford to hurt their clients' cases because the citations are sloppy.¹

On a purely physical scale, the circumstances surrounding these treaty negotiations in 1851 were immense. Ten thousand to 12,000 American Indians and almost 300 federal representatives and soldiers assembled in what is now western Nebraska to create a document that has forever affected federal Indian law.² The text of this instrument, the *Treaty of Fort Laramie with Sioux, etc., 1851* (henceforth *Fort Laramie*)³ is one of only four Indian treaties, crafted by the federal govern-

ment and recognized by the Department of State, which does not appear in the *Statutes at Large*.⁴

Fort Laramie has the added distinction of almost endless confusion regarding whether it was ratified and/or formally proclaimed.⁵ Under these circumstances, the publishers of the *Statutes at Large* employed in 1859 a replacement note to fulfill their responsibilities. An entry at 11 *Stat.* 749 declares only:

This treaty was concluded September 17, 1851. When it was before the Senate for ratification, certain amendments were made which require the assent of the Tribes, parties to it, before it can be considered a complete instrument. This assent of all the Tribes has not been obtained, and, consequently, although Congress appropriates money for the fulfillment of its stipulations, it is not yet in a proper form for publication. This note is added for the purpose of making the references from the Public Laws complete, and as an explanation why the Treaty is not published.

This absence of “proper form” thus precluded the insertion of the treaty into the *Statutes*, even though it was later demonstrated that assent had been secured at the time from all tribes.⁶ Although two other earlier federal efforts contained the text, Charles J. Kappler’s *Indian Affairs: Laws and Treaties* compilations from 1903, and especially 1904,⁷ have served for more than a century as the main source for the language of this specific example and of other pertinent transactions with the tribes. The *Treaties* portion has been especially handy because it brought together into just one volume the texts of 366 of the 375 recognized treaties located in ten volumes of the *Statutes*.⁸ Following the publication of this resource, many case briefs and court opinions began to use pairs of citations that linked the appropriate *Statutes at Large* entry with the pertinent Kappler one.

Citation to the *Statutes at Large*

The fluctuation during the last two centuries of the rules for *Statutes at Large* identification underscores the difficulties associated with referring to this authority. Prince⁹ has *Stat.*, *Stat. at L.*, and *St. at Large* as three possible abbreviations found in traditional legal materials. The *Bluebook*¹⁰ defines *Stat.* as the current acceptable abbreviation for this federal session law compilation, with “volume no. Stat. page no. (year)” as the citation prototype.¹¹ The *Association of Legal Writing Directors (ALWD) Citation Manual* concurs,¹² and both handbooks encourage public law data to precede the *Statutes* segment, if available.

American Indian treaties, though, were created long ago, and none have been negotiated since March 3, 1871 (16 *Stat.* 544, 566). As the law of the land, they were included in the *Statutes at Large*, but the hard rules offered by style manu-

als today did not seem to be present during the nineteenth century. Thus, citation variations occurred, in those forms—and in others—illuminated by Prince. Indeed, Charles J. Kappler provided a margin note for *Fort Laramie* that stated “11 Stats., p. 749.”¹³ The employment of the page abbreviation *p.* was a clear departure from the other *Statutes* citations in his *Treaties* volume. However, the addition of an *s* to yield *Stats.* occurred more than 80 times, beginning with his text for the *Treaty with the Miami, 1818*;¹⁴ this was a reflection of legal writing practice at the turn of the twentieth century.¹⁵

Variability notwithstanding, these forms of *Statutes* referencing—and the accepted regulations for their use—have served researchers and the courts well. Legal databases permit *Statutes* searching, and *Shepard’s Federal Statute Citations*, for example, pivots upon the ability to categorize cases through such identification.¹⁶ However, difficulty arises when citing to *Fort Laramie*, because the frequently employed *Statutes* entry at 11 *Stat. 749* does not contain the text related to the instrument, other than the actual date of consummation. Thus, it is an error to employ the 11 *Stat. 749* reference as the authority for virtually any aspect of the document. This is especially so when material, acquired from other non-*Statutes at Large* sources, is employed but made to look as if it was taken directly from that authority through the application of this inappropriate 11 *Stat. 749* notation.

The slip decisions of the two United States Court of Claims cases that led to the acknowledgement of the validity of the treaty—*Moore v. United States*, 32 Ct. Cl. 593 (1897) and *Roy v. United States and the Ogallala Tribe of Sioux Indians*, 45 Ct. Cl. 177 (1910)—exhibit the correct manner of referring to the treaty’s text found in a source other than in the *Statutes*.¹⁷ In *Moore*, reference was made to “(Revision Indian Treaties, p. 1048),” i.e., to the *Fort Laramie* document found in *A Compilation of All the Treaties between the United States and the Indian Tribes Now in Force as Laws*,¹⁸ a review of the laws of the United States ordered by Congress in 1873 (17 *Stat. 579*). The *Roy* result, addressed a few years after the publication of *Indian Affairs: Laws and Treaties*, cited that source: “(Kappler’s Indian Treaties, Vol. II, p. 594).” That case engaged the same Sioux territory paragraph that appeared almost sixty years later in the *Sioux Tribe v. United States*, 21 Ind. Cl. Comm. 371 (1969) proceedings before the Indian Claims Commission. *Roy*, however, referred correctly to the *text* of the treaty for its land specifications, whereas the Indian Claims Commission incorrectly employed the empty substitute found in the *Statutes*.¹⁹

Sioux Tribe v. United States as an Exemplar

In *Sioux Tribe v. United States*, 21 Ind. Cl. Comm. 371, 371–372 (1969), the Indian Claims Commission opinion begins with the statement:

On August 27, 1965, the Commission determined that plaintiffs had recognized title to the territory described as follows in the Fort Laramie Treaty of September 16, 1851:

The territory of the Sioux or Dahcotah Nation, commencing the mouth of the White Earth River, on the Missouri River; thence in a southwesterly direction to the forks of the Platte River; thence up the north fork of the Platte River to a point known as the Red Bute, or where the road leaves the river; thence along the range of mountains known as the Black Hills, to the headwaters of Heart River; thence down Heart River to its mouth; and thence down the Missouri River to the place of beginning. (11 *Stat.* 749)

These boundary parameters for the Sioux territory are not available at the cited *Statutes* location. Rather, this information was most likely gathered from one of six federal sources: *Articles of a Treaty*,²⁰ the Senate Confidential Executive Document used as the treaty transcript during ratification; *A Compilation of All the Treaties between the United States and the Indian Tribes Now in Force as Laws*;²¹ *Laws of the United States Relating to Indian Affairs*;²² either of Kappler's *Treaties* volumes;²³ or a later volume of his that had a special entry for the accord.²⁴ Differences do exist among the texts of these six resources, but in general, it is precarious to predict which source was consulted for any application. There is no guarantee that the Indian Claims Commission opinion, in this *Sioux Tribe v. United States* situation, reliably reproduced the exact text from *any* of these options. Kappler's second edition of *Treaties* from 1904, however, remains the soundest candidate, given the September 10, 1969, decision date for *Sioux Tribe* and the overall unavailability of the remaining items.

To be fair, Kappler also cited 11 *Stat.* 749 in his margin notes for this instrument in both editions of *Treaties*. It is conceivable that those who examined his version of *Fort Laramie* for insertion into the *Sioux Tribe* opinion expected that the treaty would be in the *Statutes* at the place that Kappler had declared but did not confirm this by actually checking the *Statutes* themselves. This default strategy works for every other document in his suite with a *Statutes* address.

An Examination of the Incorrect Use of 11 *Stat.* 749

The data for the present analysis were collected in three steps. First, the law review sections of the LexisNexis Academic, Westlaw, and HeinOnline collections were searched for the term "11 *Stat.* 749." Second, the first two databases were interrogated for federal and state cases that cited 11 *Stat.* 749; no state examples were found. Finally, the Indian Claims Commission digital gathering at the Oklahoma State University (<http://digital.library.okstate.edu/icc/index.html>) was considered with the 11 *Stat.* 749 target.

Final selection from the returned items was based on the use of 11 *Stat.* 749 as the primary source for the quoted material. Any citation that paired 11 *Stat.* 749 with an alternative collection, such as Kappler's *Treaties* volume, eliminated that law review or case from the following error list. An example of such convergence may be found in *United States v. Finch*, before the United States District Court in Montana. The opinion states: "The title of the Crow Tribe to a large area (which now includes their present-day reservation) was recognized by the Treaty of Fort Laramie, signed in 1851. **11 Stat. 749**, II Kapp. 594. Article 5 of that treaty reads in pertinent part: 'The aforesaid Indian nations do hereby recognize and acknowledge the following tracts of country, included within the metes and boundaries hereinafter designated, as their respective territories, viz: ...'" (395 F. Supp. 205, 207 [1975]). Here, Kappler's 1904 volume was apparently used in parallel to the *Statutes* to derive the exact wording, thereby providing some evidence that the quoted land data in *United States v. Finch* were acquired from that alternative publication.

There were frequent instances in the search results in which an opinion provided a general, nonquoting statement about *Fort Laramie* and to which an 11 *Stat.* 749 indicator was attached. Footnote 1 from *United States v. Sioux Nation of Indians* (448 U.S. 371, 374 [1980]) is an appropriate illustration of this approach: "The Sioux territory recognized under the Treaty of September 17, 1851, see **11 Stat. 749**, included all of the present State of South Dakota, and parts of what is now Nebraska, Wyoming, North Dakota, and Montana." Similarly, footnote 8 in *United States v. Dion* (752 F.2d 1261, 1264 [1985]) remarks: "Likewise, an earlier treaty to which the Yankton Sioux Tribe was a party reserved hunting and fishing rights in the tribes of the Sioux Nation. Treaty of Fort Laramie, Sept. 17, 1851, **11 Stat. 749**." That specific page of volume 11 of the *Statutes at Large* does not contain supporting data for either instance.

Analogous difficulties are apparent in the selected law reviews. In the Belis report,²⁵ there is the statement that, "In 1851, the United States and the Crow Tribe entered into a treaty," that in turn cites, in its footnote 4, the "Treaty of Fort Laramie, **11 Stat. 749** (1851)." Fairbanks' analysis²⁶ mixed the inappropriate *Statutes* citation with Kappler's compilation in footnote 65 when he stated that, "White pressure grew stronger, and in 1851, the Treaty of Fort Laramie with Sioux, Etc., 1851, **11 Stat. 749**, recognized the title of the Cheyenne and Arapaho to the land between the North Platte and Arkansas Rivers." Kappler was the only one who allocated this precise title to this transaction, and then only to the document's appearance in the 1903 and the 1904 editions of *Treaties*, so it is fairly clear where Fairbanks must have looked.

These episodes are not included in the error list, even though they are considered as models of this citation style misuse. As a result of this culling process, only three law reviews, seven federal cases, and five Indian Claims Commission

decisions are identified here. The only exception to this filtering process is the opinion from *United States ex rel. Cook v. Parkinson* (396 F. Supp. 473, 477 [1975]) that erred in declaring that *Fort Laramie* was “proclaimed by President Fillmore.” Each of these fifteen items demonstrates the mishandling of 11 Stat. 749 to quoted text from the *Fort Laramie* instrument. In some examples, multiple quoted phrases are included.

Errors in Law Review Materials (N = 3)

- In footnote 850 of the *2006 Ninth Circuit Environmental Review: Case Summaries*²⁷: “Treaty of Fort Laramie, Sept. 17, 1851, **11 Stat. 749** (providing that seven Indian nations, including the Gros Ventre and Assiniboine had ‘assembled for the purpose of establishing and confirming peaceful relations amongst themselves’ and ‘agreed to abstain in future from all hostilities whatever against each other, to maintain good faith and friendship in all their mutual intercourse, and to make an effective and lasting peace,’ while recognizing ‘the right of the United States Government to establish roads, military and other posts, within their respective territories.’ The United States agreed in return to ‘protect the ... Indian nations against the commission of all depredations by the people of the said United States.’).”
- In footnote 110 of Newton²⁸: “In the Fort Laramie Treaty, the Indians ‘recognize[d] and acknowledge[d] the following tracts of country.’ Treaty of Fort Laramie, Sept. 7, 1851, **11 Stat. 749**.” The treaty date is also incorrect.
- In footnote 47 of Morrison²⁹: “An example of such a claim was that of the Blackfeet articulated in the Treaty of Fort Laramie of 1851, **11 Stat. 749** (1851). The territory ... commenced ‘at the mouth of the Musselshell River; thence up the Missouri River to its source; then along ...’” Note that Morrison adjusted the spelling of the first river to its current form. Moulton³⁰ provided a journal entry of Captain Meriwether Lewis for May 20, 1805 for this waterway that speaks of this “stream we take to be that called by the Minnetares the [blank] or Muscleshell River.” A footnote declares that the “Musselshell River ... still bears the name the captains gave it, translating the Hidatsa name.”³¹ Swanton confirmed the interchangeability of Minnetares (now Minitari) and Hidatsa for tribe identification.³²

Errors in Federal Opinions (N = 7)

- In *Gros Ventre Tribe v. United States* (469 F.3d 801, 804 [2006]): “The Indian nations had ‘assembled for the purpose of establishing and confirming peaceful relations amongst themselves,’ and, by signing the treaty, they ‘agree[d] to abstain in future from all hostilities whatever against each other, to maintain

good faith and friendship in all their mutual intercourse, and to make an effective and lasting peace.’ Treaty of Fort Laramie art. 1, Sept. 17, 1851, **11 Stat. 749**. The Tribes also formally recognized ‘the right of the United States Government to establish roads, military, and other posts within their respective territories.’ *Id.* at art. 2. In return, the United States agreed to ‘protect the ... Indian nations against the commission of all depredations by the people of the said United States.’ *Id.* at art. 3.”

- In *United States ex rel. Cook v. Parkinson* (396 F. Supp. 473, 477 [1975]): “The resulting agreement was signed on September 17, 1851 and proclaimed by President Millard Fillmore at **11 Stat. 749**.” This transaction was never proclaimed.
- In *Sioux Tribe v. United States* (205 Ct. Cl. 148, 192 [1974]): “The Tetons (eight named tribes which did not include the Yanktonais or the Yanktons) alleged in their original petition that under the terms of the Treaty of Fort Laramie of September 17, 1851 (**11 Stat. 749**), they were given recognized title by the Government to the following described land: ‘The territory of the Sioux or Dahcotah Nation, commencing the mouth of the White Earth River. ...’”
- In *Sioux Tribe of Indians v. United States* (97 Ct. Cl. 613, 617 [1942]): “As a result of this western travel, a treaty was negotiated with the Sioux Indians and other Indian tribes of the Northwest, known as the Fort Laramie Treaty of September 17, 1851, **11 Stat. 749**. Articles 5, 7, and 8 of this treaty follow: ‘Article 5. The aforesaid Indian nations do hereby recognize and acknowledge ...’”
- In *Kansas or Kaw Tribe of Indians v. United States* (80 Ct. Cl. 264, 269 [1934]): “This region was successively claimed by the Utes, the Comanches, the Kiowas, the Cheyennes, and Arapahoes. In the treaty of Fort Laramie of 1851 (**11 Stat. 749**), the United States recognized the Indian title to this region to be in the Cheyenne and Arapahoe Tribes, their territory being delimited in the treaty as follows: ‘Commencing at the Red Bute, or the place where the road leaves the north fork of the Platte River; thence ...’”
- In *Assiniboine Indian Tribe v. United States*, 77 Ct. Cl. 347, 351 (1933), there is a virtual reproduction of the text from the earlier *Indians of the Fort Berthold Indian Reservation v. United States*, 71 Ct. Cl. 308 (1930) that follows this example — “II. The treaty of Fort Laramie, dated September 17, 1851 (**11 Stat. 749**), is as follows: ‘Treaty of Fort Laramie with Sioux, etc., 1851. Articles of a treaty made and concluded at Fort Laramie, in the Indian Territory, between D. D. Mitchell, Superintendent of Indian Affairs, and Thomas Fitzpatrick, Indian agent ...’”
- In *Indians of the Fort Berthold Indian Reservation v. United States*, 71 Ct. Cl. 308, 314 (1930) — “V. The treaty of Fort Laramie, dated September 17, 1851 (**11 Stat. 749**), is as follows: ‘Treaty of Fort Laramie with Sioux, etc., 1851. Articles of a treaty made and concluded at Fort Laramie, in the Indian Territory, between D. D. Mitchell, superintendent of Indian affairs, and Thomas Fitzpatrick, In-

dian agent ...” The *with Sioux, etc.* element of the treaty title used in both of the *Assiniboine Indian Tribe v. United States* and the *Indians of the Fort Berthold Indian Reservation v. United States* opinions suggests the use of one of Kappler’s *Treaties* volumes from 1903 or 1904.

Errors in Indian Claims Commission Opinions (N = 5)

- In *Three Affiliated Tribes of Fort Berthold Reservation v. United States* (25 Ind. Cl. Comm. 179, 193 [1971]): “On September 17, 1851, the Arikara, Mandan, and Hidatsa Tribes, together with the Sioux of the Missouri River, the Assiniboines, Crows, Cheyennes, and Arapahoes, gathered at Fort Laramie and executed a treaty of peace with the United States (**11 Stat. 749**). . . . Under the provisions of Article 5 of the Fort Laramie Treaty, the territory of the Arikara, Mandan, and Hidatsa was defined as follows: ‘... commencing at the mouth of the Heart River; thence up the Missouri River to the mouth of the Yellowstone River ...’”
- Again, in this case (25 Ind. Cl. Comm. 179, 193): “All of the above area lies west and south of the Missouri River. However, the Fort Laramie Treaty specifically provided that the Indian nations involved did not ‘abandon any rights or claims they may have to other lands’ (**11 Stat. 749**).”
- In *Sioux Tribe v. United States* (24 Ind. Cl. Comm. 147, 161 [1970]): “The Treaty of Fort Laramie of 1851 (**11 Stat. 749**) was entered into by the United States and ‘the chiefs, headmen, and braves of the following Indian nations, residing south of the Missouri River, east of the Rocky Mountains, and north of the lines of Texas and New Mexico ...’”
- As previously noted, in *Sioux Tribe v. United States* (21 Ind. Cl. Comm. 371, 371–372 [1969]): “On August 27, 1965, the Commission determined that plaintiffs had recognized title to the territory described as follows in the Fort Laramie Treaty of September 16, 1851: ‘The territory of the Sioux or Dahcotah Nation, commencing ...’ (**11 Stat. 749**).” Note the date error as well: September 17 is the recognized day of the transaction, and this date is part of the substitute text at that specific *Statutes* entry.
- In *Sioux Tribe of Indians v. United States* (15 Ind. Cl. Comm. 577, 577 [1965]): “In pursuance of the motion and upon oral agreement made by the parties in open hearing, the Commission will make a preliminary determination of the location of the western boundary of the ‘Territory of the Sioux or Dahcotah Nation’ as defined in the Treaty of Fort Laramie of September 17, 1851 (**11 Stat. 749**).”
- Also in this case (15 Ind. Cl. Comm. 577, 597): “In the light of this finding as to the proper location of the disputed portion of the Sioux western boundary, it is the conclusion of this Commission that the proper description of the area which was recognized as Sioux Territory under the Fort Laramie Treaty (**11 Stat. 749**)

should read as follows: “The territory of the Sioux or Dahcotah Nation, commencing the mouth of the White Earth River, on the Missouri River ...”

- In *Sioux Tribe v. United States* (2 Ind. Cl. Comm. 646, 646–647 [1954]): “As a result of this western travel, a treaty was negotiated with the Sioux Indians and other Indian tribes of the Northwest, known as the Fort Laramie Treaty of September 17, 1851 (**11 Stat. 749**). Article 5 of this treaty follows: ‘Article 5. The aforesaid Indian nations do hereby recognize and acknowledge ...’”

Analysis of the citation errors, found in these law reviews and cases that refer to *Fort Laramie* through a citation to 11 *Stat.* 749, centers almost exclusively on the land specifications defined in Article 5;³³ nothing appears in this sample regarding the annuity parameters in Article 7 that so profoundly affected the effective life of this instrument. Of the twenty-three quoted portions derived from these fifteen identified reviews or federal cases, *United States ex rel. Cook v. Parkinson* (396 F. Supp. 473, 477 [1975]) falsely declared that the treaty was proclaimed by President Fillmore; three cases made reference to the preamble; one law review and one case each cited Article 1 twice and Articles 2 and 3 once; and two journal articles and seven proceedings cited Article 5 eleven times. Article 5 was engaged within discussions about the Sioux in two out of the seven federal court cases and in four out of five Indian Claims Commission proceedings.

This preponderance exactly mirrors the central concern before the courts for several cases involving the Sioux, that is, the true definition of lands reserved to them through *Fort Laramie* and in particular the state of the ownership of the Black Hills, later guaranteed through the *Treaty with the Sioux – Brulé, Oglala, Miniconjou, Yanktonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, Sans Arcs, and Santee – and Arapaho, 1868*.³⁴ Article 2 of the 1868 instrument affirmed that such lands would be henceforth “set apart for the absolute and undisturbed use and occupation of the Indians herein named” and that “the United States ... solemnly agrees that no persons except those herein designated and authorized so to do ... shall ever be permitted to pass over, settle upon, or reside in the territory.”³⁵ Those lands were taken subsequently by the federal government through *An Act to Ratify an Agreement with Certain Bands of the Sioux Nation of Indians and Also with the Northern Arapaho and Cheyenne Indians* (19 *Stat.* 254). Article 1 of the agreement declared that “... the said Indians do hereby relinquish and cede to the United States all the territory lying outside the said reservation, as herein modified and described, including all privileges of hunting ...” (19 *Stat.* 254, 255). This initiated a number of court appearances, with this judicial process leading eventually to the outcome declared in *United States v. Sioux Nation of Indians* (448 U.S. 371 [1980]), where the United States Supreme Court affirmed a Court of Claims award to the Sioux of more than \$17 million plus interest dating from 1877.³⁶

Citation Errors: Past, Present, Future

Overall, one of the explicit tasks of a review or of an opinion is to “provide citations to authorities so that readers may identify and find those authorities for future research,”³⁷ because “[r]eaders often want to review the cited source, either to verify what the source says or to learn additional details from the source.”³⁸ The *Publication Manual of the American Psychological Association*,³⁹ which serves as one of the most widely used style standards, presents a similar directive and rationale for appropriate citation inclusion: “When paraphrasing or referring to an idea contained in another work, authors are not required to provide a location reference (e.g., a page or paragraph number). Nevertheless, authors are encouraged to do so, especially when it would help an interested reader locate the relevant passage in a long or complex text.”⁴⁰ Appendix D of that publication addresses “References to Legal Materials” and points to *The Bluebook* as the authority for style questions when preparing manuscripts under *Publication Manual* rules.⁴¹ The final paragraph of the introduction to this section states, “Authors should ensure that their legal references are accurate and contain all of the information necessary to enable a reader to locate the material being referenced. Authors are encouraged to consult law librarians to verify that their legal references (a) contain the information necessary for retrieval and (b) reflect the current status of the legal authority cited, to avoid the possibility of relying on a case that has been overturned on appeal or on legislation that has been significantly amended or repealed.”⁴²

These three style formats offer sound suggestions to students of legal writing because citation errors undercut the strength of briefs and opinions. Unfortunately, these problems have occurred at all levels of the judicial universe and the literature makes note of a number of substantial demonstrations. Glashausser⁴³ spoke of “English courts in colonial times [that] dealt harshly with citation errors.” He pointed out that, in *Rann v. Green* (98 Eng. Rep. 1194 [K.B. 1776]), a mistaken citation by the plaintiff was severely criticized when it was declared, “The Court will always incline against the niceties in matters of variance. But where it is in the description of a statute or record, it is fatal ... The statute ... is the only ground of action” (98 Eng. Rep. 1194, 1195).⁴⁴ Fischer,⁴⁵ in an article laced with examples of error-filled legal writing, devoted a section to citation errors. Schiess⁴⁶ observed, “the authors of a 95-page brief were sanctioned \$750 for various citation problems in *Hurlbert v. Gordon*, 824 P.2d 1238 (1992), handed down by the Washington Court of Appeals in 1992. The problems included citation to clerks’ papers that were nonexistent, typographical errors in citations, reference to 20–100 pages of material for a single point (no pinpoints), lack of citation to the record, and case citations with numerous form errors.” The court considered this behavior as “‘laissez-faire’ legal briefing” (824 P.2d 1238, 1245 [1992]). In another commentary, Schiess⁴⁷ used the response of the California

Court of Appeals in *Howard v. Oakland Tribune* (199 Cal. App. 3d 1124 [1988]) to demonstrate the Court's anger with the absence of pinpointing. In that case, the Court stated that, "We were not aided in our resolution of this appeal by the appellants' opening brief, which was riddled with inaccurate and incomplete case citations." This tribunal went to the extent of suggesting that the offending attorney "see Cal. Style Manual (3d ed. 1986) § 99," the recognized style manual in the state.⁴⁸ In Vermont, the Supreme Court concurred with the state's Professional Conduct Board that an attorney "disserved his clients by preparing inadequate and incomprehensible legal briefs" (*In re Shepperson*, 164 Vt. 636, 636 [1996]). Similarly, the Supreme Court of Montana sanctioned the John Deere Insurance Company for "its inaccurate citations to authority and the lack of support for its claims on appeal" (*Federated Mutual Insurance Co. v. Anderson*, 277 Mont. 134, 141 [1996]).

While these examples involve attorneys, courts too have made citation errors. Bogen,⁴⁹ in reference to *Plessey v. Ferguson* (163 U.S. 537 [1896]) before the United States Supreme Court, contended that the Court's opinion by Justice Henry Billings Brown contained a string citation of a dozen previous cases (see 163 U.S. 537, 548) "purporting to hold statutes for racial separation on public conveyances constitutional."⁵⁰ He concluded though that "[m]ost of the cases did not even involve the government except insofar as a court decided the case. Only four cases involved a statute, and most of those statutes prohibited discrimination. Only one case involved a statute that even arguably required segregation, and the constitutionality of that statute was not an issue in the case."⁵¹

Citing the wrong resource or defaulting to an inappropriate document distracts and saps the strength of a presentation. Silecchia, in an analysis of first-year legal skills training published more than a decade ago, was especially concerned that "statutes [have] become even more important" but that statutory research has taken a backseat to common law-oriented legal education.⁵² In this setting, the comments by Schiess⁵³ are particularly relevant because his demand for more pinpointing within legal writing is the precise answer to the underlying faults exhibited by all those *Fort Laramie* citation errors, as well as a remedy to Silecchia's concern. If the writers of these inaccurate citations had taken the time to pinpoint the specific phrases within the actual text of the *Treaty of Fort Laramie with Sioux, etc., 1851*, they would have been forced by that empty *Statutes at Large* statement to look beyond it to cite to a correct source.

Effective pinpointing demands constant engagement by an attorney with the desired materials, as a pathway through the documents is created to sustain an effective written presentation. The *ALWD Citation Manual*⁵⁴ defines "pinpoint page" under Rule 5.2 as "the page on which a quotation or other relevant passage appears," and its index offers numerous examples of the application of this precision.⁵⁵ An additional sidebar drives home the need: "The importance of includ-

ing pinpoint references whenever possible cannot be overstated.”⁵⁶ Of particular importance here, the *Manual* has a section devoted to treaties and conventions⁵⁷ that states in part: “For an official or unofficial treaty source citation, include the volume number (if any), the abbreviation for the source, the initial page number on which the treaty begins, and any pinpoint pages or other subdivisions (Rule 5.2).”⁵⁸ Thus, any of the problem cases listed above could have used, under these provisions, Kappler’s resource as an “unofficial treaty source” to offer their points more accurately. Schiess’ views of legal writing would also advocate this style. He observed that “probably eighty to ninety percent of all citations should have pinpoints. . . . Yet in my experience, probably only half the citations that need pinpoints have them.”⁵⁹

In the expanding world of electronic publication, the American Bar Association has developed an alternative method for pinpointing, because normal page numbers disappear in digital presentations. The *Conference of Chief Justices Committee on Opinions Citation Report*⁶⁰ proposed a model that entails the use of paragraph numbers affixed to documents prior to their publication. In this scenario, the “universal citation elements” are defined as Name of Case, Year of Opinion, Court Abbreviation, Opinion Number, and Paragraph Number. The *Report*’s prototypic example was “Smith v. Jones, 1997 WI 85 ¶ 14.” The system requires unique court and case identifiers; the paragraph numbers are developed during the preparation of each opinion. The *American Association of Law Libraries Universal Citation Guide, Edition 2.1* is available online at <http://www.aallnet.org/committee/citation/ucg/index.html>, and Rule 106, Pinpoint Citation by Paragraph Number, stipulates that, “Courts implementing the universal case citation will number each paragraph of text within an opinion. After the opinion number, a researcher may cite to particular text by use of a ¶ symbol followed by the appropriate paragraph number” (see ¶ 39 of the *Guide*).⁶¹ Thus, these bibliographic suggestions make sure that the benefits of pinpointing have not been lost in the migration to digital texts.

Conclusion

The *Treaty of Fort Laramie with Sioux, etc., 1851* was a significant transaction between the tribes and the federal government, entailing substantial amounts of land. According to *Montana v. United States* (450 U.S. 544, 548 [1981]), “[t]he treaty identified approximately 38.5 million acres as Crow territory” alone. Thus, the need under these judicial circumstances to present the strongest possible case *and* to deliver the clearest possible opinion requires all involved to identify accurately the foundations of their remarks. Schiess’ observation at the beginning of this note regarding “sloppy” citations carries more weight in this setting than just

serving as a remark about legal writing. Such citation abuse diminishes the authority reserved for the *Statutes at Large* and ultimately confers far less weight to an argument or an opinion than the accurate use of an appropriate alternative resource. In this specific instance, where the text of *Fort Laramie* is entirely absent from the *Statutes*, citing to Kappler's compilation would have been the correct path, especially because that ensemble was in all likelihood the probable source for the text of the material in the first place.

The court actions enumerated here are a subset of the total array of cases citing this instrument. It is unfortunate that more care was not taken in correctly identifying the quoted sources of the treaty's text in these actions or in the law reviews that examined federal Indian law through this contract. Schiess added that students and faculty should be concerned about the proper application of citations for three reasons: the creation of journal articles, the presentation of seminar papers, and the responsibilities adhering to the role of an attorney.⁶² It is also clear from these fifteen demonstrations that any one of them could have been submitted to satisfy at least one of these three circumstances. Student preparation therefore must be exacting, because the learned styles, rules, and applications will be employed throughout an entire career.

It is abundantly apparent that another interested party may be added to these students and faculty. Law librarians have been and should be a source of encouragement, as well as promoters of better law student writing skills, because—ultimately—they will be responsible for helping future patrons (including the next wave of students) decipher case documents and law reviews that might contain these misleading notations. Traditionally, librarians have enthusiastically striven to teach bibliographic skills, including the use of style guides and their defined rules. In one exhibition of this commitment, Mills wrote three decades ago about the history of legal writing instruction for law students during the twentieth century. Prior to that time, there was little if any coordinated tutoring: "In the late nineteenth century when law schools were young, students were not provided with any training at all in the techniques of legal research," primarily because the use of case analysis had not yet come into fashion.⁶³ Legal bibliography education grew, especially by the mid-1920s. These courses were sustained in part by enlisting law librarians to assist law students, and by the arrival of Frederick C. Hicks' *Materials and Methods of Legal Research* handbook in 1923.⁶⁴ Hicks, as the law librarian at Columbia University, had written half a decade earlier on the subject of teaching legal bibliography, commenting that less than half of the 117 law schools "provided such instruction" at that time.⁶⁵ In *Materials*, Hicks reiterated the need for training and observed that "[s]ince 1917, the number of such schools has increased from twenty-nine to sixty-three," but that "methods of instruction have not yet been standardized."⁶⁶ In both presentations, Hicks reached back to the be-

ginning of the seventeenth century to identify significant legal professionals who “told the student how, when, where, by what method, and in what books to seek knowledge.”⁶⁷ From an historical perspective, then, it makes sense that the coordination of writing classes at law schools should continue to forge strong ties among their faculty, their library’s reference team, and their students. This synchronization will expedite enhanced learning and sharper expertise—and perhaps efficacious use of pinpointing—that will in turn benefit real-world clients who deserve far better representation than that furnished by “‘laissez-faire’ legal briefing.”

Notes

1. Wayne Schiess, *Common Student Citation Errors*, 10 *Persps.*: Teaching Leg. Research Writing 119–123 (2002), at 119.
2. Leroy R. Hafen & Francis M. Young, *Fort Laramie and the Pageant of the West, 1834–1890* (Arthur H. Clark 1938), and Burton S. Hill, *The Great Indian Treaty Council of 1851*, 47 *Neb. History* 85–110 (1966).
3. Charles J. Kappler, *Indian Affairs: Laws and Treaties* vol. 2. Senate, 58th Congress, 2nd session, Senate Document No. 319, part 2 (Govt. Printing Off. 1904), 594–596, and <http://digital.library.okstate.edu/kappler/Vol2/treaties/sio0594.htm>
4. The other three transactions—the *Agreement with the Five Nations of Indians*, 1792; the *Convention between the State of New York and the Oneida Indians*, June 1, 1798; and *A Treaty between the United States of America and the Sachems, Chiefs, and Warriors, of the Wyandot, Ottawa, Chippewa, Munsee, and Delaware, Shawnee, and Pattawatamy Nations, Holden at Fort Industry, on the Miami of the Lake, on the 4th day of July, A.D. One Thousand Eight Hundred and Five*—only appear in the first volume of the *Indian Affairs* subset of the *American State Papers* (Gales and Seaton, 1832), 232, 641, and 696, respectively.
5. See Harry Anderson, *The Controversial Sioux Amendment to the Fort Laramie Treaty of 1851*, 37 *Neb. History* 201–220 (1956).
6. Charles J. Kappler, *Indian Affairs: Laws and Treaties*, vol. 4. Senate, 70th Congress, 1st session, Senate Document No. 53 (Govt. Printing Off. 1929), 1065–1081, and <http://digital.library.okstate.edu/kappler/Vol4/htmlfiles/v4p1065b.html>
7. Charles J. Kappler, *Indian Affairs: Laws and Treaties*, vol. 2. Senate, 57th Congress, 1st session, Senate Document No. 452, part 2 (Govt. Printing Off. 1903), and *supra* n. 3.
8. The remaining nine treaties are composed of the latter two *American State Papers* instruments (See Note 4) and seven contracts negotiated by the British before independence but recognized nonetheless by the federal government (see Charles D. Bernholz, Brian L. Pytlik Zillig, Laura K. Weakly & Zacharia A. Bajaber, *The Last Few American Indian Treaties – An Extension of the Charles J. Kappler Indian Affairs: Laws and Treaties Internet Site at the Oklahoma State University*, 30 *Lib. Collections Acq. Technical Serv.* (2006), 47–54.
9. Mary Miles Prince, *Beiber’s Dictionary of Legal Abbreviations: A Reference Guide for Attorneys, Legal Secretaries, Paralegals, and Law Students* (5th ed., William S. Hein & Co. 2001), 542.
10. *The Bluebook: A Uniform System of Citation* (18th ed., Harv. L. Rev. Assoc. 2005), 14.
11. *Id.* at 196.
12. ALWD & Darby Dickerson, *ALWD Citation Manual* (3d ed., Aspen 2006), 117–122.
13. Kappler, *supra* n. 7, at 440; *supra* n. 3, at 594; and <http://digital.library.okstate.edu/kappler/Vol2/treaties/sio0594.htm>
14. Kappler, *supra* n. 3, at 171–174, and <http://digital.library.okstate.edu/kappler/Vol2/treaties/mia0171.htm>
15. “Stats.” was an acceptable abbreviation for the *Statutes at Large*, according to the 1908 Government Printing Office’s *Manual of Style* (Govt. Printing Off. 1908), at 15: “Statutes. In references in parentheses,

- footnotes, cut-in notes, side notes, and tables: Rev. Stat. for Revised Statutes; Supp. Rev. Stat. for Supplement to the Revised Statutes; Stat. L for Statutes at Large (but R. S., Stat., or Stats. if so written) ...”
16. See Charles D. Bernholz, *American Indian Treaties and the Supreme Court: A Guide to Treaty Citations from Opinions of the United States Supreme Court*, 30 J. Govt. Info. 318–431 (2004) for Indian treaties referenced in the opinions of the United States Supreme Court, or Bernholz & Robert J. Weiner, *American Indian Treaties in the Courts of Claims: A Guide to Treaty Citations from Opinions of the United States Courts of Claims*, 25 Govt. Info. Q. 313–327 (2008) for those of the United States Courts of Claims, as direct applications of this approach.
 17. These materials are available at the National Archives. I thank Sara Berndt for her research assistance at the Archives and for providing digital images of these cases.
 18. *A Compilation of All the Treaties between the United States and the Indian Tribes Now in Force as Laws* (Govt. Printing Off. 1873).
 19. Note that the Court of Claims used in its opinions yet another abbreviation for the *Statutes* – “Stat. L.” – for such references as “... the treaty of February 18, 1861, with the Cheyenne Indians (12 Stat. L., 1163)” in *Moore* (32 Ct. Cl. 593, 595 [1897]). There are examples in *Roy* as well, including “(15 Stat. L., 635, art. 16)” that identified the specifications for unceded Indian territory and for the exclusion of whites from this area found in Article 16 of the 1868 treaty with the Sioux (45 Ct. Cl. 177, 184 [1910]). Article 16 of the treaty, in fact, appears at 15 *Stat.* 635, 640. As noted earlier, “Stat. L.” was regarded in 1908 as an appropriate cue for the *Statutes* by the government’s *Manual of Style* at 15. This specification is maintained in § 9.43 of the most recent edition of the *Style Manual* (Govt. Printing Off. 2008), 233.
 20. Articles of a treaty, Sen. Con. Exec. Doc. 32–11 (1852).
 21. *Supra* n. 18, at 1047–1050.
 22. *Laws of the United States Relating to Indian Affairs: Compiled from the Revised Statutes of the United States Enacted June 22, 1874, and from Statutes at Large from that Date to March 4, 1883: Also, Special Acts and Resolutions Previous to the Enactment of the Revised Statutes, Not Embraced in or Repealed by the Revision: Also, List of All Ratified Treaties and Agreements Made with the Several Indian Tribes* (3d ed., Govt. Printing Off. 1884), 317–320.
 23. Kappler, *supra* n. 7, at 440–442, and *supra* n. 3, at 594–596.
 24. Kappler, *supra* n. 6, at 1065–1067.
 25. James R. Bellis, *Crow Tribe v. Montana: New Limits on State Intrusion into Reservation Rights, New Lessons for State and Tribal Cooperation*, 50 Mont. L. Rev. 133–163 (1989), at 134.
 26. Robert A. Fairbanks, *Cheyenne-Arapaho and Alcoholism: Does the Tribe Have a Legal Right to a Medical Remedy?* 1 Am. Indian L. Rev. 55–77 (1973), at 73.
 27. 2006 *Ninth Circuit Environmental Review: Case Summaries*. 37 *Envtl. L.* 671–805 (2007), at 795.
 28. Nell Jessup Newton, *At the Whim of the Sovereign: Aboriginal Title Reconsidered*, 31 *Hastings L.J.* 1215–1285 (1980), at 1233.
 29. Sharon M. Morrison, *Comments on Indian Water Rights*, 41 *Mont. L. Rev.* 39–72 (1980), at 47.
 30. *The Journals of the Lewis & Clark Expedition*, vol. 4: April 7– July 27, 1805 (Gary E. Moulton ed., U. Neb. Press 1987) at 170.
 31. *Id.* at 175, n. 3.
 32. John R. Swanton, *The Indian Tribes of North America*, H.R. Doc. 81–383 (1952), at 275.
 33. Kappler, *supra* n. 3, at 594–595, and <http://digital.library.okstate.edu/kappler/Vol2/treaties/sio0594.htm>
 34. *Id.* at 998–1007, and <http://digital.library.okstate.edu/kappler/Vol2/treaties/sio0998.htm>
 35. *Id.* at 998.
 36. Edward Lazarus, *Black Hills/White Justice: The Sioux Nation versus the United States: 1775 to the Present* (U. Neb. Press 1999), provides a full account of all these activities.
 37. *Supra* n. 10, at 45.
 38. *Supra* n. 12, at 3; emphasis added.
 39. *Publication Manual of the American Psychological Association* (5th ed., Am. Psychol. Assn. 2001).
 40. *Id.* at 121.

41. *Id.* at 397–410.
42. *Id.* at 397.
43. Alex Glashausser, *Citation and Representation*, 55 Vand. L. Rev. 59–126 (2002), at 83.
44. A substantial part of Glashausser’s paper was devoted to a useful comparison between the approaches proposed by *The Bluebook* and the *ALWD Citation Manual*. A subsequent analysis of the latter may be seen in Jennifer L. Cordle, *ALWD Citation Manual: A Grammar Guide to the Language of Legal Citation*, 26 UALR L. Rev. 573–598 (2004).
45. Judith D. Fischer, *Bareheaded and Barefaced Counsel: Courts React to Unprofessionalism in Lawyers’ Papers*, 31 Suffolk U. L. Rev. 1–37 (1997), 30–31.
46. Schiess, *supra* n. 1, at 123.
47. Schiess, *Ethical Legal Writing*, 21 Rev. Litig. 527–550 (2002).
48. The 1986 edition of the *California Style Manual* specifies in § 99 that “[t]he preferred practice, except when referring to an opinion as a whole or a very brief opinion, is to give the inception page of each case and also the page or pages of the Official Report on which the holding, dictum, or discussion appears” (Robert E. Formichi & B. E. Witkin, *California Style Manual: A Handbook of Legal Style for California Courts and Lawyers* [3d ed., Supreme Court of California, 1986], at 67; emphasis original).
49. David S. Bogen, *Why the Supreme Court Lied in Plessy*, 52 Vill. L. Rev. 411–470 (2007).
50. *Id.* at 412, n. 6.
51. *Id.* at 411.
52. Lucia Ann Silecchia, *Legal Skills Training in the First Year of Law School: Research? Writing? Analysis? Or More?* 100 Dick. L. Rev. 245–301 (1996), at 272–273. See her earlier discussion as well on the need to develop strong writing skills: *Designing and Teaching Advanced Legal Research and Writing Courses*, 33 Duq. L. Rev. 203–248 (1995).
53. Schiess is especially active in legal writing. Terrill Pollman & Linda H. Edwards, *Scholarship by Legal Writing Professors: New Voices in the Legal Academy*, 11 Leg. Writing 3–212 (2005), at 177–178 noted his contributions, along with those of more than 300 other authors who have been concerned with, and have written about, legal writing. Approximately 25% of the enumerated publications involve this particular skill.
54. *Supra* n. 12, at 33.
55. *Id.* at 561–562.
56. *Id.* at 35.
57. *Id.* at 187–200.
58. *Id.* at 188–189.
59. Schiess, *supra* n. 47, at 536.
60. *Conference of Chief Justices Committee on Opinions Citation Report* (National Center for State Courts, 1999). Accessed on February 25, 2010 at <http://ccj.ncsc.dni.us/finalrpt.pdf>
61. The full reference for an article in a law review makes use of this model by placing the author’s name and article title before the citation. The *Bluebook* is used as the standard for any topic not addressed in the *Guide*.
62. Schiess, *supra* n. 1, at 119.
63. Robin K. Mills, *Legal Research Instruction in Law Schools, The State of the Art or, Why Law School Graduates Do Not Know How to Find the Law*, 70 L. Lib. J. 343–348 (1977), at 343. Roger W. Cooley, “*Manual Training for Lawyers*,” 2 Am. L. Sch. Rev. 261–265 (1909), at 264, proposed that “[a] ten- or twelve-hour course given to the first-year students during the first month of a school year would be of incalculable benefit to them.”
64. Frederick C. Hicks, *Materials and Methods of Legal Research with Bibliographic Manual* (Law. Coop. 1923). *Materials and Methods* provided remarks, in more than 600 pages, upon “Law books and their use” and “Law libraries.” Hicks also offered a third section reserved for a “Bibliographical manual.”
65. Hicks, *The Teaching of Legal Bibliography*, 11 L. Lib. J. 1–8 (1918), at 2.
66. Hicks, *supra* n. 64, at 14–15.
67. Hicks, *supra* n. 65, at 1, and *supra* n. 64, at 13.