Strong Democracies Need Reliable Citations

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Legal systems must hold the trust of citizens in order for democracies to survive. Unfortunately, the American legal system is suffering from an unprecedented credibility crisis. Analyses of the roots of this problem have largely focused on political causes, with blame going to an array of issues ranging from the partisan nature of the judicial appointment process to the lack of ethical oversight for judges with lifetime appointments to the bench.

Thus far, scholarly articles analyzing the modern erosion of precedent have generally examined precedent from political or subject-matter-specific perspectives. This Article takes a more universal approach by discussing the decline in the reliability of American legal precedent and the parallel degradation of judicial credibility from a procedural and practical perspective.

Lost in the political fray is a more fundamental issue: citizens must continue to trust judges to follow the law for stable democracies to continue to survive and thrive. Judges communicate the reasons for their decisions, and the roots of those reasons, through a professional language known as citations. This Article examines the intersection of judicial integrity and governmental stability through the lens of citations—those tiny but mighty pathways to precedent, and the building blocks of judicial reasoning. Due to seismic shifts in how legal information is accessed, cited, and communicated, citations to legal precedent are becoming afterthoughts instead of building blocks, and the profession is seeing a breakdown of citation reliability as a result.

This Article explains some of the practical causes contributing to the erosion of reliability in citations, including the lack of equitable access to legal information, the fetishization of format over function in citations, and

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the endorsement of quotation alterations. This Article also posits that a return to reliable citation norms would contribute to larger efforts to stabilize precedent and restore trust in the American legal system, which would reinforce the stabilization of our democracy. For democracies to be strong, their citizens must have faith in their public institutions; and for the American court system to be trusted, the reliability in citations must be restored.

INTRODUCTION

Citations are the language the legal profession uses to communicate precedent. All languages change over time,[1] evolving to mirror the intentions and articulations of the people, practices, and societies that apply them.[2] Legal citations develop to reflect the dynamic changes of legal writers[3] as well as the evolutions and revolutions of the societies and systems they support.[4] Thus, like all languages, legal citations continue to evolve as the needs of legal writers change over time.[5]

This Article examines the intersection of judicial integrity and governmental stability through the lens of citations, those tiny but mighty pathways to precedent and the building blocks of legal reasoning. The integrity of a nation's court system is vital for the stability of a nation's government, and reliable citations are keys to maintaining citizens' trust in both a judicial system and the stability of a nation as a whole.[6]

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1. *See, e.g.*, Ondrej Glogar, *The Concept of Legal Language: What Makes Legal Language "Legal?*," 36 INT'L J. FOR SEMIOTICS L. 1081 (2023); Harald Hammarström, *Linguistic Diversity and Language Evolution,* 1 J. LANGUAGE EVOLUTION 19 (2016).

2. *See generally* Lawrence M. Solan, *The Interpretation of Legal Language,* 4 ANN. REV. LINGUISTICS 337 (2017); Martin Gelter & Mathias M. Siems, *Language, Legal Origins, and Culture Before the Courts: Cross-Citations Between Supreme Courts in Europe*, 21 SUP. CT. ECON. REV. 215 (2013) (discussing some of the cultural factors that influence cross citation between the supreme courts of various countries and how those cultural factors have shifted over time).

3. *See generally* A. Darby Dickerson, *An Un-Uniform System of Citation Surviving the New* Bluebook *(Including Compendia of State and Federal Court Rules Concerning Citation Form)*, 26 STETSON L. REV. 53 (1996) (collecting citation rules from state and federal courts and describing changes that have occurred over time); Melissa H. Weresh, *The* ALWD Citation Manual*: A Coup de Grace*, 23 U. ARK. LITTLE ROCK L. REV. 775 (1996) (discussing the tendency of law review staffs and federal court chambers to create their own local rules for *Bluebook* citation).

4. For the purposes of this Article, discussions of recognized citation authorities in the United States of America will be primarily focused on *The Bluebook* and *The ALWD Guide. See generally* THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia L. Rev. Ass'n et al. eds., 21st ed. 2020); CAROLYN V. WILLIAMS, ALWD GUIDE TO LEGAL CITATIONS (7th ed. 2021). The author fully recognizes that other sources of citation systems may be used in various legal practice or jurisdictions. *See generally, e.g.*, J. OF INT'L L. & POL., N.Y. UNIV., GUIDE TO FOREIGN AND INTERNATIONAL LEGAL CITATIONS (2d ed. 2009); SUP. CT. OF OHIO, WRITING MANUAL: GUIDE TO CITATIONS, STYLE AND JUDICIAL OPINION WRITING (2d ed. 2013).

5. *See, e.g.*, Hammarström, *supra* note 1, at 19; Glogar, *supra* note 1, at 1081.

6. *See, e.g.*, Sarah C. Benesh, *Understanding Public Confidence in American Courts*, 68 J. POL. 697, 697 (2006) (explaining the vital role that public trust plays in maintaining the stability of democracies because the operation of the rule of law is one of the most vital roles of a democratic government, and "in order that the rule of law to remain operative citizens need to trust the institution charged with its keeping"); Maggie Gardner, *Dangerous Citations*, 95 N.Y.U.

Part I of this Article analyzes the role of reliable citations in judicial "reason-giving," explaining the theory that reason-giving is the connection between judicial opinions and precedent that is vital for the stability of democracies. When citizens discover that judges are misapplying court precedent for political or personal gain, then those citizens lose faith in the court system, which contributes to the overall devolution of democratic stability.[7]

Part II explains what this Article considers to be reliability as it relates to citations. Reliable citations cite sources that: (1) actually exist, (2) are locatable, and (3) accurately reflect the premise of the citation.

Part III then discusses some of the current issues that contribute to unreliability in modern legal citations, including the fetishization of irrelevant details, such as italicized commas, over substantive reliability. This nonsense has led to cavalier attitudes towards citations within the legal profession and new citation trends that promote the alteration of quotations without indication or attribution.

The erosion of public trust in the modern American court system has many causes, but every judge and every legal professional can play an important role in helping stop further damage. The simple but vital act of ensuring that citations to precedent are reliable can help increase faith and trust in the courts, the legal system, and each other. In this effort, as with so many other seemingly overwhelming tasks, every little bit helps.

I. THE IMPORTANCE OF "REASON-GIVING" IN JUDGES' OPINIONS IN STABLE DEMOCRACIES

Studies of judicial systems in democracies often give emphasis to the term "reason-giving," meaning that in a stable and reliable judicial system, deliberators and deciders are obligated to give a reason for their judicial

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L. REV. 1619, 1674–75 (2020) (explaining that the quality of citations in federal court opinions has decreased over time, in spite of the rise in citation use and the increased number of law clerks charged with verifying the reliability of the cited precedent). *See generally* Johanna Kalb, *The Judicial Role in New Democracies: A Strategic Account of Comparative Citation*, 38 YALE J. INT'L L. 423 (2013) (analyzing the vital role that courts, and court citations, play in stabilizing in democracies around the world).

7. Ralph Gregory Elliot, *Public Trust Is a Fragile Bond*, 77 CONN. BAR J. 41, 43–44 (2003) ("The trust thus reposed in the judiciary is a fragile thing. It can be destroyed, or gradually eroded to the point of disappearance, by acts and omissions on the judiciary's part that cause the people to question . . . [whether] their submissive acquiescence in judicial decision-making [is justified]."). The author of this Article fully recognizes that public trust in the courts, and the American system, has become strained for a variety of reasons. Like so many articles before it, this Article simply looks at one small piece of a larger tapestry of issues.

determinations.[8] This typically means the judges find the reasons for their decisions in precedent.[9] The definitions, purpose,[10] and effectiveness of precedent have been widely discussed in legal scholarship,[11] and are beyond

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8. *Cf.* Mathilde Cohen, *When Judges Have Reasons Not to Give Reasons: A Comparative Law Approach*, 72 WASH. & LEE L. REV. 483, 485, 488–89 (2015) (arguing that "[i]nfluential theories of law have celebrated reason-giving as the new paradigm of democratic legitimacy," but it has not always been expected, required, or even desired; and promoting the idea that values such as guidance, sincerity, and efficiency may be equally important). *See generally* Frederick Schauer, *Giving Reasons*, 47 STAN. L. REV. 633 (1995).

9. While this cited precedent has typically come from courts with authority over the citing court, or perhaps a court with parallel authority within the same legal system, recent decades have seen an increased trend towards courts also citing authority from other legal systems as well. *See, e.g.*, Alec Stone & Mads Andenas, *The Law & Politics of the General Principles of Law in the Twenty-First Century*, 62 COLUM. J. TRANSNAT'L L. 1, 17 (2023) ("Dialogues often mix cooperative and conflictual elements, as when two courts—neither of which possesses the power to impose a solution on the other—expose their doctrinal differences in exchanges with one another, only to adjust their own approaches and outcomes in subsequent rulings. . . ."); *see also* Martin Gelter & Mathias M. Siems, *Citations to Foreign Courts: Illegitimate, Superfluous, or Unavoidable? Evidence from Europe*, 62 AM. J. COMPAR. L. 35 (2014) (using data from Europe to discuss the ways in which some courts cite judicial writings from other jurisdictions in their decisions).

10. *See, e.g.*, Frederick Schauer & Barbara A. Spellman, *Precedent and Similarity*, *in* PHILOSOPHICAL FOUNDATIONS OF PRECEDENT 240, 240 (Timothy Endicott et al. eds., 2023) (explaining that the foundational principle of precedent is that judges should decide a case so that the outcome is the same as a similar prior case, often from a court of higher authority in that same jurisdiction); *see also* ENID CAMPBELL ET AL., LEGAL RESEARCH: MATERIALS AND METHODS 8 (3d ed. 1988) ("It is a basic principle of justice that like cases ought to be decided alike. In the common law world this principle obtains legal expression in what is called the doctrine of precedent.").

11. *See* Harlan G. Cohen, *Lawyers and Precedent*, 46 VAND. J. TRANSNAT'L L. 1025, 1036–38 (2013) (discussing the sociological and normative explanations reinforcing the continued use of precedence in the law).

the scope of this Article.[12] Instead, this Article discusses the dangers when citations to precedent become unreliable.[13]

In most legal systems, the focus on precedent relates to previous, binding decisions from courts with the designated authority in the legal system of that country.[14] In order for citations to precedent to be reliable, there also needs to be a comprehensive system of publishing, cataloging, and storing the text of previous judicial decisions so that these decisions may be located and referenced in the future.[15] These published, cataloged, and stored decisions must be easily accessible by judges, legal professionals, reporters, and the public.[16] In addition to providing vital transparency, the tradition of reason-giving also provides a level of predictability to the government and the overall society, which helps further contribute to stability.[17]

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12. This Article also does not attempt to address the age-old debates about what a democracy is, what constitutes a stable democracy, what is the best method for determining the strength of a democracy, etc. For an overview of these issues, see generally ROBERT A. DAHL, ON DEMOCRACY (1998), CHRISTIAN WELZEL & ROBERT F. INGLEHART; DEMOCRATIZATION (2d ed. 2019); PAUL CARTLEDGE, DEMOCRACY: A LIFE (2016); JIM PARSONS ET AL., VERA INST. OF JUST., RULE OF LAW INDICATOR INSTRUMENTS: A REPORT TO THE STEERING COMMITTEE OF THE UNITED NATIONS RULE OF LAW INDICATORS PROJECT (Nov. 2008), https://www.vera.org/downloads/publications/rule-law-indicators-literature-review.pdf [https://perma.cc/G36C-AUHA]; ANNIKA ELENA POPPE, U.S. DEMOCRACY PROMOTION AFTER THE COLD WAR: STABILITY, BASIC PREMISES AND POLICY TOWARDS EGYPT (2019) (explaining that even promoters of democracy often cannot agree on every detail of what a stable democracy might ideally look like, much less the best way to promote their goals).

13. "Danger" may sound like an exaggeration of the role of citations, but this Article is hardly the first to examine the perils that can occur when citations are used incorrectly. *See, e.g.*, Gardner, *supra* note 6, at 1619; Brian Larson, *Endogenous and Dangerous*, 22 NEV. L.J. 739, 745 (2022) ("Endogenous cases in court opinions can be dangerous—some more dangerous than others.").

14. *See, e.g.*, GWEN MORRIS ET AL., LAYING DOWN THE LAW: THE FOUNDATIONS OF LEGAL REASONING, RESEARCH AND WRITING IN AUSTRALIA 80 (1985). The "effect of the doctrine of precedent in England, and in other common law countries, is that . . . a judge or a court is bound to follow the previous decisions of more authoritative courts in the same judicial hierarchy," but courts may treat other decisions as persuasive authority even when they come from courts with parallel or lower authority. *Id.* Nearly every legal system, whether or not it is part of democracy, has some sort of method for acknowledging precedent, binding or not. *See id.* at 82.

15. *See id.* at 89.

16. *See infra* Section II.B.

17. Karl DeRouen Jr. & Shaun Goldfinch, *What Makes a State Stable & Peaceful? Good Governance, Legitimacy, and Legal-Rationality Matter Even More for Low-Income States*, 14 CIV. WARS 499, 503–04 (2012). A well-functioning democracy requires both a functional and predictable rule of law and judicial independence because otherwise "disputes over contracts and property, and also criminal and human and other rights cases, may escalate to other, possibly violent, forms of dispute resolution." *Id.*

Many stable and reliable legal systems require reason-giving at every level of the process,[18] while in other legal systems, some variation of this reason-giving obligation may only be required from courts at the higher levels. Almost all legal systems also give courts the power to review the actions of other actors in the government as part of a system of "judicial review."[19] The tradition of judicial review is found in most legal systems, even those operating under dictatorships or autocratic governments,[20] but the methodology and enforcement authority varies widely from country to country.[21]

The analysis in this reason-giving tradition means nothing if the citations that are used to support these reasons are not reliable. The source the judge is citing to give authority to the reason for the judge's decision must be connected to the text where the judge makes their analysis. If the cited source of reason does not make a reasonable connection to the analyzed text—or worse, does not exist—then the reliability is absent and public trust is diluted.[22] Conversely, when courts have a history of citing to reliable sources, then they can draw upon that history of respect when they need to make rulings that they know will be unpopular with other governmental leaders or unpopular with the public.[23]

The need for court systems to maintain the trust of the public they serve is more than just a theoretical nicety. Governmental scholars have often written that there are practical reasons for judges to depend on public goodwill:

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18. *See* Mortimer N.S. Sellers, *The Doctrine of Precedent in the United States of America*, 54 AM. J. COMPAR. L. 67, 68 (2006); *cf.* Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 TEX. L. REV. 1711, 1712 (2013) (noting that stare decisis is a "many-faceted doctrine" that both binds lower courts to follow the precedent of a superior court and obligates a court to follow its own precedent); Frederick Schauer, *Has Precedent Ever Really Mattered in the Supreme Court?*, 24 GA. ST. U. L. REV. 381, 382 (2012) (describing the basic concepts of vertical precedent and horizontal precedent). *See generally* Richard H. Fallon, Jr., *Stare Decisis and the Constitution: An Essay on Constitutional Methodology*, 76 N.Y.U. L. REV. 570 (2001); Frederick Schauer, *Precedent*, 39 STAN. L. REV. 571 (1987).

19. *See, e.g.*, Alvin B. Rubin, *Judicial Review in the United States*, 40 LA. L. REV. 67, 67 (1979) ("The doctrine of judicial review may be briefly stated: the courts are vested with the authority to determine the legitimacy of the acts of the executive and the legislative branches of government."); *see also* Martin Shapiro, *Judicial Review in Developed Democracies*, *in* DEMOCRATIZATION AND THE JUDICIARY: THE ACCOUNTABILITY FUNCTION OF COURTS IN NEW DEMOCRACIES (Roberto Gargarella et al. eds., 2004); Michael Conant, Book Review, 34 VAND. L. REV. 223 (1981).

20. *See* Tom Ginsburg & Tamir Moustafa, *Introduction* to RULE BY LAW: THE FUNCTIONS OF COURTS IN AUTHORITARIAN REGIMES 1 (Tom Ginsburg & Tamir Moustafa eds., 2008) (observing the judicial politics and decision-making practices in authoritarian regimes).

21. *See* Kalb, *supra* note 6, at 427–28.

22. *See infra* Part II.

23. *See* Kalb, *supra* note 6, at 443–44.

> More than any other branch of government, the judiciary is built on a foundation of public faith—judges do not command armies or police forces, they do not have the power of the purse to fund initiatives and they do not pass legislation. Instead, they make rulings on the law. Rulings that the people must believe came from competent, lawful and independent judicial officers.[24]

This tension between the court system's theoretical authority and lack of enforcement ability is an international reality that courts struggle with around the world. This tension is present regardless of whether courts are operating in a democracy, a dictatorship, or something in between.[25] For example, when he was informed of a United States Supreme Court decision that challenged his position, President Andrew Jackson reportedly said, "John Marshall has made his decision, now let him enforce it."[26]

Ultimately this means that courts are even more reliant on public trust than other parts of the government.[27] So when judges and courts repeatedly breach that trust by providing unreliable—or untrue—reasons for their decisions, they do more harm to the stability of that government.[28] In the worst-case scenarios, this practice of providing unreliable reasoning and unreliable

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24. David J. Sachar, *Judicial Misconduct and Public Confidence in the Rule of Law*, UNITED NATIONS OFF. DRUGS & CRIME, https://www.unodc.org/dohadeclaration/en/news/2019/08/judicial-misconduct-and-public-confidence-in-the-rule-of-law.html [https://perma.cc/CQD5-GDH3] (describing common categories of judicial misconduct and their negative impacts on societies as a whole and opining that a legal system is best served by a public and transparent system of judicial oversight).

25. *See, e.g.*, Ginsburg & Moustafa, *supra* note 20, at 14. Most judges in both autocracies and in democracies are aware of their tenuous positions of power. *Id.* (noting that in authoritarian regimes, "[j]udges are acutely aware of their insecure position in the political system and their attenuated weakness").

26. Elliot, *supra* note 7, at 41 ("John Marshall could opine magisterially until he turned Federalist blue in the face, but he had no means to enforce his opinions or to compel society to conform to their holdings.").

27. Joseph A. Hamm, *Understanding Public Trust in the Courts: The Centrality of Vulnerability*, 54 CT. REV. 172, 172 (2018) ("The judiciary controls 'neither the purse nor the sword,' leaving it heavily reliant upon other institutions and upon the public in general." (citing THE FEDERALIST NO. 78 (Alexander Hamilton))).

28. *See, e.g.*, Kim Lane Scheppele, *Autocratic Legalism*, 85 U. CHI. L. REV. 546, 547 (2018). Many scholars have examined attempts by courts to establish or regain their credibility at home and abroad by citing to more respected legal systems in other countries. *See, e.g.*, *id.*; *see also* Melissa Waters, *Creeping Monism: The Judicial Trend Toward Interpretive Incorporation of Human Rights Treaties*, 107 COLUM. L. REV. 628, 686 (2007); Benjamin Liebman et al., *Rolling Back Transparency in China's Courts*, 123 COLUM. L. REV. 2407, 2412 (2023) (highlighting "how courts seek to [preserve] a narrative that protects them from criticism and boosts their standing with the public and within the Party-State").

citations to source materials will substantively contribute to governmental failure and the overall deterioration of societal health.[29]

When a democracy is stable, then its judicial and legal systems operate as ongoing conversations between the people and institutions of a country, and that conversation forms a stable government through a rhetorical community of people creating, interpreting, and implementing the ideals and the goals of the laws of the democracy.[30] The overall commitment to documentation and transparency creates a rhetorical approach to jurisprudence that helps sustain the stability of the democracy as a whole.[31] Thus, nurturing the skills and talents of a rhetorical community of legal writers is vital for stable democracies, as is ensuring those legal writers use reliable citations.

A. Trust in the Integrity of the United States' Court System Is Declining

The American public's trust in its court system is arguably at an all-time low.[32] The United States Supreme Court, the federal court system, and most

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29. *See generally* Jeffrey K. Staton et al., *Can Courts Be Bulwarks of Democracy?* (The Varieties of Democracy Inst., Working Paper Series 2018:71) (explaining the roles that courts can play in stabilizing governments, or alternately in enabling destabilization processes within troubled governments). Scholars are divided in opinions over the most common ways that democracies fall under authoritarian control in the current century. *Compare* STEVEN LEVITSKY & DANIEL ZIBLATT, HOW DEMOCRACIES DIE 7–8 (2018) (arguing that modern coups are rare, and modern democracies are more likely to die due to the gradual erosion of governmental norms by legally elected leaders who use the institutions designed to protect the country, such as the court system, to kill it), *with* V-DEM INST., DEMOCRACY REPORT 2022: AUTOCRATIZATION CHANGING NATURE? (2022) (charting the rise in autocratic tendencies amongst governments globally and noting a statistical increase in coups).

30. *See, e.g.*, Mitchell Gordon, *Don't Copy Me, Argentina: Constitutional Borrowing and Rhetorical Type*, 8 WASH. U. GLOB. STUD. L. REV. 487, 516 (2009) ("Without a meaningful rhetorical community, a democracy is unstable, particularly during times of divided government—the executive, legislative, and judicial branches are perpetually at war with each other, so that in every moment of conflict 'all of the stakes are placed on the table' and 'the troops are called out.' A stable democracy, by contrast, remains 'a project of warranted trust' even during times of divided government, since 'each branch must understand itself in relationship to each other.'" (quoting Marie A. Failinger, *Not Mere Rhetoric: On Wasting or Claiming Your Legacy, Justice Scalia*, 34 U. TOL. L. REV. 425, 439–40 (2003))).

31. *See, e.g.*, Marie A. Failinger, *Not Mere Rhetoric: On Wasting or Claiming Your Legacy, Justice Scalia*, 34 U. TOL. L. REV. 425, 433 (2003) ("The commitment to a rhetorical approach to jurisprudence, as well as the practice of law, is not just a matter of technique: it is part of a larger vision about how law functions and how it is developed in a democratic society.").

32. *See, e.g.*, Charles Franklin, *New Marquette Law School National Survey Finds Approval of U.S. Supreme Court at 40%, Public Split on Removal of Trump from Ballot*, MARQ. UNIV. L. SCH. POLL (Feb. 20, 2024), https://law.marquette.edu/poll/2024/02/20/new-marquette-law-school-national-survey-finds-approval-of-u-s-supreme-court-at-40-public-split-on-removal-of-trump-from-ballot [https://perma.cc/LR7G-NMLC].

state courts are all seeing historically low polling numbers[33] and, in some cases, encountering dangerous levels of hostility.[34]

There have also been numerous public figures who have stirred up distrust for the court system, either due to concerns about ethical breaches[35] or for personal gain.[36] This has led to incidents that go beyond mere discontent, with

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33. Benjamin Rigney, *Restoring the Public's Faith: Character Education and the Supreme Court*, 14 ST. MARY'S J. LEGAL MALPRACTICE & ETHICS 296, 298 (2024) (recalling two Gallup polls from 2022, one showing that Americans' opinions of the Supreme Court are at "an all-time low with only 25% of Americans" having "a great deal" or "quite a lot" of confidence in the Court, and the other showing less than half the country had confidence in the federal judiciary overall); *see also* NAT'L CTR. FOR STATE CTS., STATE OF THE STATE COURTS (2022), https://www.ncsc.org/__data/assets/pdf_file/0019/85204/SSC_2022_Presentation.pdf [https://perma.cc/M8E6-RVB9] (reporting poll data showing the steady decline in public trust related to state court systems from 2012 to 2022).

The United States federal court system has created a strategic plan for "Preserving Public Trust, Confidence and Understanding." *See* JUDICIAL CONF. OF THE U.S., STRATEGIC PLAN FOR THE FEDERAL JUDICIARY 9–12 (2020), https://www.uscourts.gov/sites/default/files/federal judiciary_strategicplan2020.pdf [https://perma.cc/X5RR-H49Y].

34. *See, e.g.*, NAT'L CTR. FOR STATE CTS., COUNTERING THREATS AND ATTACKS ON OUR JUDGES ACT (2024), https://cdm16501.contentdm.oclc.org/digital/collection/judicial/id/643 [https://perma.cc/34Q7-FS4D] (explaining there was been a 400% increase in threats against federal judges between 2015 and 2021, and two county judges have been killed on their personal property); Joseph Tanfani et al., *Judges in Trump-Related Cases Face Unprecedented Wave of Threats*, REUTERS (Feb. 29, 2024), https://www.reuters.com/investigates/special-report/usa-election-judges-threats [https://perma.cc/WUX5-WUUX] (reporting that according to a 2022 survey, 90% of state judges now fear for their safety, and the annual average of threats against federal judges and courthouse personnel has tripled since 2016).

35. *See, e.g.*, Jennifer Ahearn & Michael Milov-Cordoba, *The Role of Congress in Enforcing Supreme Court Ethics*, 52 HOFSTRA L. REV. 557, 572–78 (2024) (describing various proposals from members of Congress during the past decade that accompanied public criticism of the federal judiciary). The criticisms of Supreme Court judicial conduct escalated significantly in 2024. *See, e.g.*, Miranda Nazzaro, *Ocasio-Cortez, Raskin to Introduce Legislation to "Rein In a Fundamentally Unaccountable and Rogue" Supreme Court*, HILL (June 11, 2024), https://thehill.com/homenews/house/4717214-ocasio-cortez-raskin-to-introduce-legislation-to-rein-in-a-fundamentally-unaccountable-and-rogue-supreme-court [https://perma.cc/R6GM-PJWW]; Ken Tran, *Democratic Lawmakers Knock Alito for Saying Congress Can't Regulate the Supreme Court: "A Little King,"* USA TODAY (July 30, 2023), https://www.usatoday.com/story/news/politics/2023/07/30/congress-democrats-samuel-alito-supreme-court-ethics/70494206007 [https://perma.cc/FEP3-UDCV].

36. *See, e.g.*, Marianne LeVine et al., *Trump Ramps Up Attacks on Judges, Sparking Concerns as Criminal Trial Nears*, WASH. POST (Apr. 1, 2024), https://www.washingtonpost.com/politics/2024/04/01/trump-judges-attacks-trials (describing the efforts of President Donald J. Trump to disparage the judges overseeing the many criminal and civil cases against him); Nick Robertson, *Rick Scott Doubles Down on Attacks Against Judge Marchan's Daughter*, HILL (May 12, 2024), https://thehill.com/regulation/court-battles/4659565-rick-scott-doubles-down-on-attacks-against-judge-merchans-daughter [https://perma.cc/C9RR-GX6J] (describing derogatory remarks a sitting United States Senator made about the family

judges becoming seriously concerned for their personal safety and the safety of their families.[37] In April 2024, the President of the American Bar Association sent a letter to its membership voicing deep concern about increased threats of violence against the nation's judges:

> Serious threats against federal judges have doubled since 2021, with 457 serious threats targeting federal judges across the country in 2023. National leaders and private citizens are making false statements and scurrilous accusations against judges for partisan, personal gain. These attacks are no idle matter. Often, they involve threats of physical harm or death—not only to the judges but also to their families and staff.[38]

The crisis in public confidence in the courts and the legal system is not simply rooted in unpopular decisions[39] or in criticism.[40] The United States is currently struggling to hold judges accountable when they bend or break ethical rules.[41] Simultaneously, the traditional mandate that judges avoid the

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members of a state court judge presiding over one of the criminal trials against President Donald Trump and explaining that the senator was on the "short list" of people President Trump was considering naming as his running mate in his campaign for a second presidential term of office).

37. *See* NAT'L CTR. FOR STATE CTS., *supra* note 34.

38. Letter from Mary Smith, President, Am. Bar Ass'n (Apr. 8, 2024) (on file with author); *see also* Debra Cassens Weiss, *After Man Is Sentenced for Threat to Kill Chief Justice, ABA President Says Threats Risk "Very Fabric of Our Democracy*,*"* A.B.A. J. (Apr. 9, 2024), https://www.abajournal.com/news/article/after-man-is-sentenced-for-vow-to-kill-chief-justice-aba-president-says-threats-risk-fabric-of-our-democracy [https://perma.cc/XVA3-HQYB] (explaining the letter was prompted by the sentencing of a man who threatened to kill Chief Justice of the United States John Roberts, and the man's mother said his anger was prompted by stories in the news media about the Supreme Court).

39. *See, e.g.*, PEW RSCH. CTR., MAJORITY OF PUBLIC DISAPPROVES OF SUPREME COURT'S DECISION TO OVERTURN ROE V. WADE (2022), https://www.pewresearch.org/wp-content/uploads/sites/20/2022/07/PP_2022.07.06_Roe-v-Wade_REPORT.pdf [https://perma.cc/9RUL-5Y8G].

40. *See, e.g.*, Letter from Mary Smith, *supra* note 38; *see also* MELINDA GANN HALL, ATTACKING JUDGES: HOW CAMPAIGN ADVERTISING INFLUENCES STATE SUPREME COURT ELECTIONS 1 (2015) ("[T]hese nasty, below-the-belt campaigns have raised concerns from some political scientists and other astute observers that such rancor may have deleterious consequences for representative democracy.").

41. *Compare* JOHANNA KALB & ALICIA BANNON, BRENNAN CTR. FOR JUST., SUPREME COURT ETHICS REFORM: THE NEED FOR ETHICS REFORM AND ADDITIONAL TRANSPARENCY 1 (2019), https://www.brennancenter.org/sites/default/files/2019-09/Report_2019_09_SCOTUS_Ethics_FINAL.pdf [https://perma.cc/5XPM-MPXZ] ("In this era of hyperpartisanship, when confidence in the Supreme Court is imperiled . . . the Court's decision to adopt its own ethical reforms would send a clear and powerful message about the justices' commitment to institutional integrity and independence."), *with Developments in the Law—Court Reform*, 137 HARV. L. REV. 1619, 1677 (2024) (analyzing the code of conduct the Supreme Court finally adopted after a series

"appearance of impropriety"[42] is in deep trouble when that idea is ignored by some of the highest judges in the land.[43]

Many of the deeper issues related to judicial hostility seem to be rooted in the judicial tradition of self-governance.[44] Some judicial positions lack oversight and accountability, and recent years have seen a rise in highly publicized concerns about judicial behavior.[45] Even in the portions of the United States' legal system where rules and consequences exist for judges, those rules appear to be sparsely applied or enforced.[46] And the United States Supreme Court has no enforcement mechanisms at all: even the Court's

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of ethics scandals publicized in 2023). *See generally* Richard W. Painter, *SCOTUS House: Can A Supreme Court Ethics Lawyer and an Inspector General Help Get This Fraternity Under Control?*, 37 GEO. J. LEGAL ETHICS 347 (2024); Amanda B. Hurst, *Judging the Judiciary*, 40 GA. ST. U. L.J. 313, 321–23 (2024) (explaining the public often views disciplinary systems that oversee judicial conduct as "good ol' boys systems" and noting there were only 328 actions filed in 2022, which seems disproportionately low to 30,000 state court judges).

42. *See generally* Raymond J. McKoski, *Judicial Discipline and the Appearance of Impropriety: What a Public Sees Is What the Judge Gets*, 94 MINN. L. REV. 1914 (2010) (describing the history of the "appearance of impropriety" standard and opining it is failing and should be replaced with specific ethical rules).

43. *See generally* Painter, *supra* note 41 (exploring the Court's recent ethical entanglements and existing institutional vulnerability to ethical issues).

44. *See, e.g.*, Hurst, *supra* note 41, at 323 (explaining that the public and media view judicial self-governance as a "good ole boys system.").

45. *See, e.g.*, *Developments in the Law—Court Reforms*, *supra* note 41, at 1677 ("Starting in the spring of 2023 and continuing into the summer, media outlets reported that some Supreme Court Justices had received undisclosed gifts valued at hundreds of thousands of dollars from wealthy benefactors—and failed to recuse themselves when those benefactors' matters went before the Court, or otherwise misused their positions and influence for personal gain.").

46. *See, e.g.*, Hurst, *supra* note 41, at 321; *see also* Michael Berens & John Schiffman, *With "Judges Judging Judges," Rogues on the Bench Have Little to Fear*, REUTERS (July 9, 2020), https://www.reuters.com/investigates/special-report/usa-judges-deals [https://perma.cc/2PWH-QV5S] (revealing that Oklahoma went fourteen years without publicly disciplining a judge; when finally forced to act the oversight body allowed the most egregious judge to resign and keep his pension instead of facing true consequences for offenses such as jailing members of the public for whispering in his courtroom). As part of an investigative series called *The Teflon Robe*, reporters for *Reuters* found 3,613 incidents across the United States of judicial oversight boards keeping the names and offenses of judges from the public. *Id.*

recent ethics pledge has little to no enforcement mechanisms,[47] and thus is arguably having little to no impact on judicial behavior.[48]

While this is alarming, optimists have noted that some portion of America has felt a degree of disgruntlement and distrust with the judicial branch of the government for well over a century.[49] President Franklin D. Roosevelt and the Democratic party were famously furious with the Supreme Court over a series of judicial decisions that nullified significant portions of the New Deal.[50] In the 1950s the Court was criticized in numerous editorials for being

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47. *See, e.g.*, Erwin Chemerinsky, Opinion, *The Supreme Court Finally Has a Code of Ethics, but It Has a Fatal Flaw*, L.A. TIMES (Nov. 14, 2023), https://www.latimes.com/opinion/story/2023-11-14/supreme-court-justices-recusal-code-of-ethics [https://perma.cc/B6Y3-QZQQ] (lamenting the lack of enforcement mechanisms in the Court's new ethics document); Brie Sparkman Binder & Debra Perlin, *Americans and the Court: How Public Outcry Has Influenced the Court to Address Judicial Ethics Crises*, 52 HOFSTRA L. REV. 631, 652 (2024) (describing the Court's 2023 ethics statement as "tepid" and noting that this was the latest in a long history of unsuccessful attempts to address ethical issues at the Court, all of which continue to lack any enforcement mechanisms); Louis J. Verilli, *The Underappreciated Virtues of the Supreme Court's Ethics Code*, 52 HOFSTRA L. REV. 657, 659 (2024) (noting the new ethics statement has many flaws but arguing it still holds some redeeming qualities).

48. *See, e.g.*, Eric J. Segall, *Recency Bias and the Supreme Court: The Problem Is the Institution, Not the People Who Sit on It*, 52 HOFSTRA L. REV. 617, 620 (2024) ("But the truth is that the Court has been broken for well over 150 years. The Court needs to be fixed not because it is too conservative or at times too liberal but because unelected, life-tenured judges should not play such an influential role in our country's politics."); Chad Marzen & Michael Conklin, *Information Leaking and the United States Supreme Court*, 37 BYU J. PUB. L. 100, 101 (2023) (discussing the anonymous leak of a draft of the Supreme Court's opinion in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), that added to public discontent with the judiciary, and explaining that the "unprecedented leak of a draft opinion has dealt a major hit to the traditions, confidence and reputation of the Supreme Court"); *see also* Gary J. Simpson, *How* Not *to Restore Confidence in the Supreme Court*, JUSTIA: VERDICT (Apr. 12, 2024), https://verdict.justia.com/2024/04/12/how-not-to-restore-public-confidence-in-the-supreme-court [https://perma.cc/J289-BZX4] (discussing the lack of enforcement mechanisms for judicial bad behavior).

49. *See, e.g.*, *Developments in the Law—Court Reform*, *supra* note 41, at 1678–83 (describing various ethics scandals the Supreme Court has endured over the years). *Compare* Mark Sherman & Emily Swanson, *Trust in Supreme Court Fell to Lowest Point in Fifty Years After Abortion Decision*, *Poll Shows*, ASSOCIATED PRESS (May 17, 2023), https://www.apnews.com/article/supreme-court-poll-abortion-confidence-declining-0ff738589bd7815bf0eab804baa5f3d1 [https://perma.cc/ZHV8-BB6W] (describing a long-running study conducted by NORC at the University of Chicago that documented the decline in public trust related to the United States Supreme Court), *with* Edward J. White, *The Judiciary and Public Sentiment*, 15 AM. LAW. 219, 220 (1907) ("But the federal judiciary is not exempt from attacks by other public servants or politicians, under our system of government any more of the different courts of the various states. It is quite frequent that their motives are also drawn in question . . . .").

50. *See* JEFF SHESOL, SUPREME POWER: FRANKLIN ROOSEVELT V. THE SUPREME COURT (2010) (describing the history of this conflict); *see also* BARRY CUSHMAN, RETHINKING THE NEW

"bumbling" and inept.[51] There are plenty of other instances of the Court incurring the ire of politicians and the public throughout United States history, but this new era of distrust is generally seen as unprecedented.[52]

Nor is it a new accusation that members of the federal judiciary are disrespectfully disregarding precedent. Over thirty years ago, Judge Frank Easterbrook of the Seventh Circuit lamented in the *Cornell Law Review* that "[t]oday's Justices cast their votes just as if prior cases did not exist, adding for good measure (often with transparent insincerity) that 'even if the earlier case were binding on me, I would still vote the same way because . . . .'"[53] Judge Easterbrook's sentiments sound similar to previous criticisms of the court,[54] and the type of complaints that today's judges make about others on the bench. His warning about the consequences of this attitude seems to have turned out to be true: "The same Justices often blubber about their colleagues' faithlessness to precedent; Justices who take this line simply ensure that their successors and comrades treat their opinions in the same way they treat others'."[55]

While the discontent with the United States Supreme Court may not be new, the simultaneous and widespread hostility towards the entire court system is a relatively new and increasingly alarming public sentiment.[56] While some of the record discontent with the current American legal system can be traced to the style of reporting and media that is dominating today's

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DEAL COURT: THE STRUCTURE OF A CONSTITUTIONAL REVOLUTION 12 (1998) (discussing proposals to restrain judicial review in the wake of several Supreme Court decisions that struck down New Deal initiatives); *cf.* Kurt X. Metzmeier, *The Short and Troubled History of the Printed State Administrative Codes and Why They Should Be Preserved,* 116 LAW LIBR. J. 5, 24–25 (2024) (describing Justice Louis D. Brandeis' frustration with the unorganized flurry of executive orders and administrative rules that were being issued by the Roosevelt White House during the New Deal era, and how his efforts to combat the lack of public transparency led to Congress passing the law that created the Federal Register).

51. MARY FRANCES BERRY, STABILITY, SECURITY AND CONTINUITY: MR. JUSTICE BURTON AND DECISION MAKING IN THE SUPREME COURT, 1945–1948, at 148–49 (1978) (describing how a portion of the population was vocally doubting some of the Justices' intellectual abilities and was disdainful of the Court's opinions).

52. *See supra* notes 32–38 and accompanying text.

53. Frank Easterbrook, *Stability and Reliability in Judicial Decisions*, 73 CORNELL L. REV. 422, 429 (1988) (explaining that the wording after the "because" may change from judge to judge, and their motivations may differ, but the result is the same).

54. *See, e.g.*, William H. Taft, *Recent Criticism of the Federal Judiciary*, 43 U. PA. L. REV. 576, 577 (1895) ("The opportunity freely and publicly to criticize judicial action is of vastly more importance to the people than the immunity of courts and judges from unjust aspersions and attack.").

55. Easterbrook, *supra* note 53, at 429.

56. *See supra* text accompanying notes 37–38 (describing the increase in public anger and threats towards the health and safety of judges around the country).

cultural landscape,[57] other sources of discontent can be traced directly to changes in the conduct of the federal courts and the lack of ethical requirements for some of the highest judges in the land.[58] The American public has also become deeply divided,[59] and their sources of media have become divided as well.[60] But across party lines there is deep concern about the legitimacy of our government institutions,[61] even if opinions about the reasons for those concerns differ.[62]

As many aspects of American society have become deeply divided, the appointment process for federal judges has also become more partisan.[63]

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57. *See, e.g.*, Janet Berry, *Maintaining and Improving the Public's Trust in the Judiciary*, JUDGES' J., Spring 2007, at 1 ("Absent a strong mutual understanding between the courts and the media, public confidence in the entire system erodes, and democracy, as we know it, is imperiled.").

58. Painter, *supra* note 41, at 356–74 (detailing many of the recent public scandals that have plagued the Supreme Court and ethical lapses by sitting justices); Tanfani et al., *supra* note 34; *see also* STEPHEN VLADICK, THE SHADOW DOCKET: HOW THE SUPREME COURT USES STEALTH RULINGS TO AMASS POWER AND UNDERMINE THE REPUBLIC (2023) (discussing some of the less publicized, but still ethically troubling, decisions made by the Court).

59. *See, e.g.*, Doriane Lambelet Coleman, *Two Americas*, 85 LAW & CONTEMP. PROBS., no. 3, at i, i–vii (2022) (discussing the deep divisions in American politics in 2022); *see also* Nathan D. Pohlman, *The Polarization Surrounding Agriculture in America,* 48 LAW & PSYCH. REV. 235, 244 (2024) (describing America's current political divide in the context of agriculture, a portion of American society that has traditionally enjoyed at least some consistent bipartisan support).

60. *See, e.g.*, Mary R. Hornak, *Media Consolidation & Political Polarization: Reviewing the National Television Ownership Rule*, 90 FORDHAM L. REV. 909, 915–25 (2021) (discussing how changes in the regulation of news media has deepened political divisions in America); *see also* Kimberly Rhum, *Information Fiduciaries and Political Microtargeting: A Legal Framework for Regulating Political Advertising on Digital Platforms,* 115 NW. U. L. REV. 1829, 1834 (2021) (citing Martha Minow, *The Changing Ecosystem of News and Challenges for Freedom of the Press*, 64 LOY. U. L. REV. 499, 500–02 (2018) (discussing various techniques used to target voters and increase polarization online)).

61. P'SHIP FOR PUB. SERV., THE STATE OF PUBLIC TRUST IN GOVERNMENT 2024 (2024), https://ourpublicservice.org/wp-content/uploads/2024/05/The-State-of-Public-Trust-in-Government_2024.pdf [https://perma.cc/52Q6-QR83].

62. *See, e.g.*, Bruce Ledewitz, *Two Ways Law Professors Can Defend American Democracy*, 58 U. ILL. CHI. L. REV. 25, 25–27 (2024) ("It is evident that both sides of the political aisle claim to be defending democracy even when their actions appear antidemocratic."); Aaron Tang, Opinion, *Why Is the Supreme Court So Hated Today? The Answer Might Surprise You*, HILL (Aug. 21, 2023), https://thehill.com/opinion/judiciary/4162660-why-is-the-supreme-court-so-hated-today-the-answer-might-surprise-you [https://perma.cc/2P2Q-3Q4X] (opining that the United States Supreme Court values certainty and confidence over all things).

63. *See, e.g.*, Mark A. Lemley, *Red Courts, Blue Courts*, 93 MISS. L.J. 143, 143 (2023) (describing the modern trend of Democratic Presidents nominating judges from "blue" states while Republican Presidents nominate judges from "red" states, and the detrimental impact this trend is having on the judiciary: "This is a recent phenomenon; it was much less true even a

Recent decades have shown that when the office of United States President is held by a member of the Republican Party, then that President has a tendency to nominate judges who are also a member of the Republican party.[64] Similarly, when the President is a member of the Democratic Party, the nominations tend to be for judges who are also members of the Democratic Party.[65] This pattern is echoed in states and counties around the nation, where the executives who nominate judges—and the legislative bodies that confirm them—often weigh political beliefs as the most important qualification for judicial office.[66] This partisan pattern is then followed by voters who have the opportunity to vote for judges: studies have shown that modern voters tend to put party before other qualifications when casting votes in state and local judicial elections.[67] As the path to the bench has become paved by partisan divisions, the opinion of most Americans about the judges who sit on the bench has become more cynical and divided.[68]

Reduced trust in the courts and the legal system can have rapid detrimental effects on a country's stability.[69] Traditionally, judges in the United States have relied on robust protections and societal norms, which allow them to

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decade ago. It is accelerating. It is likely to corrode both the rule of law and the public's perception of it."); *see also* Lee-ford Tritt, *Litigation Blues for Red State Trusts: Judicial Construction Issues for Wills and Trusts*, 72 FLA. L. REV. 841, 844 (2020). Data "support[s] the inference that judges—particularly elected judges—tend to be influenced by their respective state's attitude" and these judges may allow the public's opinions about issues to influence their legal interpretations and resulting rulings, especially on issues related to divisive topics such as LGBTQIA rights, artificial reproductive technology, and religion. *Id.*

64. *See* Lemley, *supra* note 63, at 150.

65. *See id.*

66. *See* Elliott Ash & W. Bentley MacLeod, *Reducing Partisanship in Judicial Elections Can Improve Judge Quality: Evidence from U.S. State Supreme Courts*, J. PUB. ECON., No. 104478, at 14 (Aug. 16, 2021), https://www.sciencedirect.com/science/article/pii/S0047272721001146 [https://perma.cc/LW76-XQZ4] ("[T]he partisan governor plays an important role in the merit process, so bias increases . . . when moving from nonpartisan elections to the merit system.").

67. *Id.* at 4 ("In partisan elections, voters do not respond to bar evaluations because the party labels become the most important factor."); *see also* Keith E. Whittington, *Partisanship, Norms, and Federal Judicial Appointments*, 16 GEO. J.L. & PUB. POL'Y 521, 533 (2018) (describing the increased expectations of the voters related to judicial appointments, and explaining that both Democrats and Republicans share the blame for this increased partisanship related to the judiciary because "both parties have escalated the conflict over appointments" and "conflict . . . has become routinized").

68. *See, e.g.*, Jess Braven, *Gorsuch Decries Public Cynicism over 'Rule of Law,'* WALL ST. J. (June 4, 2017), https://www.wsj.com/articles/gorsuch-decries-public-cynicism-over-rule-of-law-1496574000.

69. *See, e.g.*, Nick Corasantiti et al., *Voters Are Deeply Skeptical About the Health of American Democracy*, N.Y. TIMES (Oct. 27. 2024), https://www.nytimes.com/2024/10/27/us/politics/american-democracy-poll.html.

render judgments without fear of violent reprisals, a luxury of the job that has not been present for judges in countries with less stable governments.[70] As the American public's faith and trust in the country's court system—and democracy as a whole[71]—continues to decline, the country will likely slide further toward a historical period of unprecedented instability.[72]

B. Costs of Distrust in Court Systems: Threats to Democracies Around the World

Because of the vital role that courts and judicial systems play in upholding the rule of law, scholars have long agreed that reliability and transparency in these systems are critical components of stable governments—especially stable democracies.[73] When judges and lawyers push these boundaries,[74] the entire judicial system suffers.[75]

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70. *See, e.g.*, Kalb, *supra* note 6, at 434 ("The robust protections that allow U.S. judges to decide cases without real fear are not well-established in transitional regimes" where job security and personal security are uncertain, and there is no established expectation that political actors will comply with judicial orders).

71. In 2024 many polls showed that public faith in the overall stability of American democracy was also on the decline. *See, e.g.*, Corasantiti et al., *supra* note 6969 (reporting polls that show 76% of voters responded that they believe American democracy is under threat, and an even split between voters who trust whether American democracy does or does not "do a good job representing the people").

72. Political scientists now recognize that courts are both used and abused in autocratic regimes, as even autocracies need rulings from the court systems to legitimize their actions to their citizens. Robert Barros, *Courts out of Context: Authoritarian Sources of Judicial Failure in Chile (1973–1990) and Argentina (1976–1983)*, *in* RULE BY LAW: THE FUNCTIONS OF COURTS IN AUTHORITARIAN REGIMES, *supra* note 20, at 168. This relationship is more complex than was initially assumed for many decades. *See, e.g.*, Ginsburg & Moustafa, *supra* note 20, at 14–21 (exploring the various tensions upon judges within authoritarian regimes).

73. *See, e.g.*, Daniel Berliner, *The Political Origins of Transparency*, 76 J. POL. 479, 479 (2014) (arguing that legal mechanisms requiring governmental transparency are beneficial to everyone); *see also* JENNIFER NASH & DANIEL E. WALTERS, PUBLIC ENGAGEMENT AND TRANSPARENCY IN REGULATION: A FIELD GUIDE TO REGULATORY EXCELLENCE 4 (2015), https://www.law.upenn.edu/live/files/4709-nashwalters-ppr-researchpaper062015.pdf [https://perma.cc/TL9X-XSVW] ("Openness established through public engagement and transparency may foster legitimacy and trust in those running regulatory agencies and the institutions of government generally.").

74. *See, e.g.*, Stephen J. Choi & G. Mitu Gulati, *Bias in Judicial Citations: A Window into the Behavior of Judges?*, 37 J. LEGAL STUD. 87, 88 (2008) (examining data related to the selective citation practices of federal judges and finding strong correlations that suggest political and personal motives related to the selection and phrasing of citations to precedent).

75. *See, e.g.*, Sarah M.R. Cravens, *Off the Record: Transparency Challenges in Judicial Misconduct and Discipline*, 74 CASE W. RSRV. L. REV. 1053, 1091 (2024) ("Meaningful public

International trends similarly indicate that countries where courts lack transparency and reliability trend towards larger instabilities and governmental crises.[76] Failure to properly and reliably cite precedent, or worse, the creation of falsehoods about precedent, contributes towards a loss of credibility in a legal system that leaves the system vulnerable to being overtaken by those with authoritarian plans.[77] This failure not only increases mistakes—it also perpetuates the distrust citizens have in their court system and government as a whole, creating opportunities for increased corruption and injustice.[78]

While there is extensive debate about which governmental system forms the best foundation for a stable democracy,[79] and about how the stability of

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trust in those who occupy [judicial] positions of authority is essential for maintaining the legitimacy of the judiciary as an institution."); Raymond J. McCoski, *Disfavoring Justice*, 87 U. CIN. L. REV. 417, 417 & n.4 (2018) (citing multiple sources to support the idea that safeguarding public trust in the judiciary is widely recognized as being in the public's best interests); *see also* Org. Econ. Coop. & Dev. [OECD], *Reinforcing Democracy Initiative, Building Trust to Reinforce Democracy: Main Findings from the 2021 OECD Survey Drivers on Drivers of Trust in Public Institutions* 85, 96 (July 13, 2022), https://doi.org/10.1787/b407f99c-en [https://perma.cc/N925-68EA] (illustrating the results of a thirty-eight country survey on public trust, and showing that courts often hold a higher degree of public trust than governments).

76. *See, e.g.*, Scheppele, *supra* note 28, at 547; Anthony W. Pereria, *Of Judges and Generals: Security Courts Under Authoritarian Regimes in Argentina, Brazil, and Chile*, *in* RULE BY LAW: THE FUNCTIONS OF COURTS IN AUTHORITARIAN REGIMES, *supra* note 20, at 47–52 (describing changes in U.S. security courts after 9/11 as a convergence of authoritarianism by comparing to other nations' authoritarian courts).

77. *Compare* Mark Tushnet, *Authoritarian Constitutionalism*, 100 CORNELL L. REV. 391, 448–50 (2015) (describing the symbiotic relationship between the executive and the judiciary in many authoritarian systems as part of the author's overall thesis that a constitutionally based government with a compliant judiciary can be used to legitimize the actions of an authoritarian executive), *with* Scheppele*, supra* note 28, at 551–54, 551 n.19, 552 n.21 (noting the boost of sympathetic judges who make sympathetic judgements as a vital part of the process of reducing public resistance to authoritarian leadership).

78. *See, e.g.*, Raymond J. Lohier, Jr. et al., *Losing Faith: Why Public Trust in the Judiciary* Matters, 106 JUDICATURE, no. 2, 2022, at 70, 72 (explaining the connection between public confidence in the courts and injustice, and quoting Justice Raymond J. Lohier, Jr. of the Second Circuit Court of Appeals as saying the risk increases that organizations and individuals will start to ignore the decisions of the courts entirely, because they know the consequences may be light or nonexistent, and the public may "start to regard our judicial decisions not as a product of impartial deliberation based on the facts and the law . . . [but] as essentially pre-ordained, based entirely on the composition of the decision-making panel").

79. *See, e.g.*, ROBERT DAHL, DEMOCRACY AND ITS CRITICS (1991); JASON BRENNAN & HELENE LANDEMORE, DEBATING DEMOCRACY: DO WE NEED MORE OR LESS (2021); Daniel Ziblatt & Giovanni Capoccia, *The Historical Turn in Democratization Studies*, 8 COMPAR. POL. STUD. 931 (2010); *see also* MARTTI KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870–1960, at 60–61 (2001) (explaining that some

democracies should be measured,[80] the consensus is that strong democracies have a court system that is transparent with its citizens and requires judicial decision-makers to give reasons for their determinations.[81]

One of the primary purposes of citation is to enable the reader to identify and find the sources relied upon by the writer.[82] This means that accuracy pairs with consistency to form the bedrock of the best citation systems,[83] because readers and writers need to be able to rely on each other to locate and use sources over and over again.

For example, Argentina has been through a half-century of turmoil that has seen its government move from democracy to dictatorship and back again.[84] Throughout this period of governmental instability, Argentinian courts have continued to hear cases even after numerous restructures and governmental shifts in oversight legislation. Scholars have noted that the cracks in the foundation of Argentinian society are clearly visible in retrospect, particularly in its legal system.[85] Argentinian legal scholar Juan F. Gonzalez Bertomeu has written about how the citations used by the court during these various regimes were indicators of the political party and philosophy that the justices were supporting at the time. In his article *Tell Me*

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philosophers have argued that even democracy is insufficient for maintaining social peace because the overemphasis on the protection of private property interests could disrupt the balance of power).

80. *See, e.g.*, Andrea Vaccaro, *Comparing Measures of Democracy: Statistical Properties, Convergence, and Interchangeability*, 20 EUR. POL. SCI. 666 (2021) (explaining that measures of democracy is one of the most popular subjects for political scientists around the world but there is not a universally endorsed measurement system nor even a consistent set of measured assessments, possibly because scholars may place their own scholarly agendas over the need for reliable information about democratic stability); INT'L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE, THE GLOBAL STATE OF DEMOCRACY INDICES METHODOLOGY (2018), https://www.idea.int/gsod-indices/sites/default/files/idea-gsod-2018-methodology-v2.pdf [https://perma.cc/LJG8-3262] (describing a methodology to assess democracy).

81. *See, e.g.*, Joshua Ulan Galperin, *A Restatement of Democracy*, 69 VILL. L. REV. 55, 59 (2024) (identifying two essential requirements of democracy: "that decision-makers express the purposes of, at a minimum, coercive actions," and "that government decisions are the result of forethought").

82. *See, e.g.*, CAMPBELL ET AL., *supra* note 10, at 284.

83. *See, e.g.*, MORRIS ET AL., *supra* note 14, at 217.

84. *See* STEVEN LEVITSKY & MARIA VICTORIA MURILLO, ARGENTINE DEMOCRACY: THE POLITICS OF POLITICAL WEAKNESS 1 (2005) ("Between 1989 and 2003, Argentine politics seemed to go full circle: from basket case to international poster child, and back to basket case.").

85. *See, e.g.*, Alejandro M. Garro, *Judicial Review of Constitutionality in Argentina: Background Notes and Constitutional Provisions*, 45 DUQ. L. REV. 409, 412–13 (2007) (explaining that certain important courts in Argentina have long had a reputation of being "slow and corrupt" and that those issues persisted even after the return to relative stability after the 1976 coup due to an overemphasis on the authority of the executive branch and a flurry of court-packing appointments).

Who You Cite and I Will Tell You Who You Are, Gonzalez Bertomeu gives statistical data showing a correlation between the reliability of the citations used by the Argentinian Supreme Court and the regime which appointed the justice writing the opinion.[86]

The rapid degradation of democratic stability due to reduced trust in a country's legal system is a pattern that has been repeated around the world, especially in the past two decades.[87] And while changes at the highest levels of the legal system attract the most attention from journalists, scholars, and citizens, these patterns show that corruption of stability often starts in the lowest levels of the legal system.[88] Examples from countries whose governments have fallen into austerity in recent decades show that the rot in the legal system typically starts in the lower courts and works upwards, often by packing the courts full of judges who are more concerned with causes than upholding the rule of law.[89] This sweeping change in the court system is often accompanied by increasing governmental control of the media, which creates another method for changing public opinion while simultaneously reducing citizens' rights.[90]

Through this process, sometimes referred to as "weaponized legalism,"[91] the courts stop being a collective body trusted to make neutral decisions in a

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86. Juan F. Gonzalez Bertomeu, *Tell Me Who You Cite, and I Will Tell You Who You Are: Supreme Court Citations Under Regime Instability in Argentina* (Dec. 13, 2019) (unpublished manuscript), https://ssrn.com/abstract=3487114 [https://perma.cc/9GR9-LXJH].

87. *See, e.g.*, FREEDOM HOUSE, FREEDOM IN THE WORLD 2022: THE GLOBAL EXPANSION OF AUTHORITARIAN RULE 8 (2022) (describing how President Nayib Bukele of El Salvador has used the court system to consolidate and legitimize his continued rule of the country by using his control of the legislature to replace over 200 judges from around the country, who then changed important election laws to allow him to continue to hold office). Similar assaults on independent court systems have been seen in other autocratic regimes around the world. *See id.* at 8, 24 (describing similar issues in Indian and Poland, among other nations).

88. *See* Scheppele, *supra* note 28, at 553 ("Poland borrowed from Hungary the method of gaining control over the lower courts by seizing appointment power over the court presidents and, through changing the court leadership, gaining control over the court system.").

89. *See id.*

90. *See, e.g.*, LEVITSKY & ZIBLATT, *supra* note 29, at 7–8 (2018); *see also* Alexis Mozeleski, *Democracy Dies in Broad Daylight: How the Philippines' Halted Media Speech Despite Its Commitment to the ICCPR,* 38 AM. U. INT'L L. REV. 577, 583–87, 591–604 (2023) (discussing recent oppressions of journalists' free speech rights in the Philippines and the dependence of citizens on courts to protect these freedoms).

91. *See, e.g.*, Robert M. Howard et al., *Introduction* to RESEARCH HANDBOOK ON LAW AND POLITICAL SYSTEMS 1, 4 (Robert M. Howard et al. eds., 2023); *see also* Stephen Cody, *Dark Law: Legalistic Autocrats, Judicial Deference, and the Global Transformation of National Security*, 6 U. PA. J.L. & PUB. AFFS. 643, 645 (2021) (citing Scheppele, *supra* note 28) ("[I]n times of social uncertainty and political instability, political leaders can also weaponize law to strike at constitutional protections.").

democracy and transform themselves into tools to reinforce the goals of control that are used by selfish rulers to reinforce autocratic control.[92]

Scholars have pointed out that "would-be authoritarian leaders have [sometimes] fashioned courts into weapons for, rather than against, abusive constitutional change."[93] By sharpening the point of the potential weapon of the court system and turning its target toward the goal of reducing the rights of individual citizens, would-be authoritarian leaders can quickly wreak havoc on previously stable countries.[94] This slide into instability is often performed in public as autocrats use the court system to "remove the checks on executive power, limit the challenges to their rule, and undermine the crucial accountability institutions of a democratic state."[95]

The stability of democratic institutions is intertwined with the reliability of the legal system. When trust in the legal system falters, democracy itself is placed at risk as legal manipulation and misinformation pave the way for authoritarianism. Upholding reliability in citations is, therefore, a fundamental act of preserving democracy's integrity.

II. WHAT DOES "RELIABLE" MEAN IN THE CONTEXT OF CITATIONS?

A citation is not reliable simply because the correct text has been italicized, nor because the spacing is accurate according to the most recent version of a citation manual. A citation is reliable because it gives the proper name of the source, the volume and page number where it can be located, and it stands for the same idea that it is being used to support.

When this Article discusses the reliability of citations, it is not speaking of the strict adherence to the increasingly complicated rules given in a citation manual.[96] Instead, this Article explains that reliable citations to precedent and

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92. *See, e.g.*, Ginsburg & Moustafa, *supra* note 20, at 4–11 (discussing how authoritarian regimes use courts to exercise social control, seek legitimacy through preserved image, control and discipline administrative agents, and maintain elite cohesion).

93. *E.g.*, Thomas M. Keck, *The U.S. Supreme Court and Democratic Backsliding*, 46 LAW & POL'Y 197, 199 (2024) (quoting ROSALIND DIXON & DAVID LANDAU, ABUSIVE CONSTITUTIONAL BORROWING: LEGAL GLOBALIZATION AND THE SUBVERSION OF LIBERAL DEMOCRACY (2021)); *see also* Tamir Moustafa, *Law and Courts in Authoritarian* Regimes, 10 ANN. REV. L. & SOC. SCI. 281, 287 (2014) ("In some cases, authoritarian rulers use courts as a fig leaf for a naked grab at power."); Ginsburg & Moustafa, *supra* note 20, at 4–11.

94. Scheppele, *supra* note 28, at 547 ("[D]emocracies are not just failing for cultural or economic or political reasons. Some constitutional democracies are being deliberately highjacked by a set of legally clever autocrats, who use constitutionalism and democracy to destroy both.").

95. *Id.*

96. *See infra* Section III.A.

sources reference sources that: (1) actually exist,[97] (2) are locatable,[98] and (3) accurately reflect the premise of the citation.[99]

It's not the minutiae of the citation rules that matter. The minutiae are destructive distractions in many ways.[100] It's the reliability of a citation that is vital: the next judge, the next lawyer, the next citizen must be able to use the cited precedent to find the original source. And when the next reader examines a citation to precedent, they must find that it actually exists, it is locatable using the information provided, and it accurately reflects the premise for which the authority is being cited. This creates reliability and trust. And that reliability and trust in precedent, as well as in the legal system as a whole, is a vital part of what helps hold democracies together.[101]

A. The Cited Precedent Must Actually Exist

A citation that does not exist is by its very nature an unreliable citation. A logical legal reader will not ethically place their trust in a citation to a source that is proven to exist only in another's imagination. And yet citations to imaginary sources[102] have appeared in briefs submitted by licensed lawyers to courts,[103] and it is likely only a matter of time before a citation to an imaginary source appears in a judicial order or opinion.

Most of the current conversations about citing to nonexistent precedent are happening because the newest legal research technologies and writing aides rely on products that are known to make up sources.[104] While there is tremendous potential for generative artificial intelligence to positively contribute to the way lawyers approach the practice of law, there are also

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97. See *infra* Section II.A.

98. See *infra* Section II.B.

99. See *infra* Section II.C.

100. *See infra* Part III.

101. *See supra* Part I.

102. When artificial intelligence ("AI") generates legal sources that do not exist, the result is termed a "hallucination." *See infra* notes 107–10 and accompanying text.

103. *See* James Curlin, *ChatGPT Didn't Write This . . . or Did It? The Emergence of Generative AI in the Legal Field and Lessons from* Mata v. Avianca, 78 ARK. L. REV. (forthcoming 2025) (manuscript at 8–10) (on file with author); *see also* Hunter Cyran, *New Rules for a New Era: Regulating Artificial Intelligence in the Legal Field*, 15 CASE W. RSRV. J.L. TECH. & INTERNET 1, 14–17 (2024). *See generally* Margie Alsbrook, *Untangling Unreliable Citations*, 37 GEO. J. LEGAL ETHICS 415, 448 n.212 (2024) (discussing New York lawyers who submitted a ten-page brief with a "half dozen" fictitious citations generated by ChatGPT).

104. To be clear, citing to nonexistent citations was possible before the release of generative artificial intelligence technologies, especially in an age when so much of the legal precedent being cited is only available for a price. But the problem has increased significantly with the prominence of generative artificial intelligence.

many unknowns and reasons to be cautious. The concerns about unreliable citations become even stronger when examined in the context of the rapid technological changes that have engulfed the legal profession over the past several decades,[105] and the even larger tidal wave of technological changes that are coming with the integration of advanced artificial intelligence technology into the legal research and writing process.[106]

Explained simply, "hallucinations" is a fancy term for falsehoods. Hallucinations are the portions of the generative text that provide untrue facts or sources that do not exist.[107] Scientists have found that as of spring 2024, generative text contains hallucinations approximately 17% to 33% of the time—even when generated by tools provided by expensive legal databases such as Westlaw and Lexis.[108] The technology underlying these products is evolving so quickly it is hard to keep up with the rapid pace of developments.[109] And yet many technology experts predict that it will be

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105. *See generally* Michael Simon et al., Lola v. Skadden *and the Automation of the Legal Profession*, 20 YALE J.L. & TECH. 234 (2018) (explaining the huge technological changes in the practice of law over the past hundred years, the various predictions of legal Armageddon going back to the 1950s that did not turn out to end the legal profession as originally predicted, and how artificial intelligence may be responsibly utilized in the legal profession).

106. These developments will likely have a huge impact on legal education, particularly professors who teach and conduct research in areas related to legal writing. *See, e.g.*, Carolyn V. Williams, *Bracing for Impact: Revising Legal Writing Assessments Ahead of the Collision of Generative AI and the NextGen Bar Exam*, 28 J. LEGAL WRITING INST. 1, 1–7 (2024); Kirsten K. Davis, *A New Parlor Is Open: Legal Writing Faculty Must Develop Scholarship On Generative AI and Legal Writing*, STETSON L. REV. F., Spring 2024, at 1, 2, 16–22.

107. *See, e.g.*, Hannah Rozear & Sarah Park, *ChatGPT and Fake Citations*, DUKE UNIV. LIBR. BLOG (Mar. 9, 2023), https://blogs.library.duke.edu/blog/2023/03/09/chatgpt-and-fake-citations [https://perma.cc/YZ7Z-5VGL] ("These citations may sound legitimate and scholarly, but they are not real. . . . If you try to find these sources through Google or the library—you will turn up NOTHING."); *see also* Abdi Aidid, *Toward an Ethical Human-Computer Division of Labor in Law Practice*, 92 FORDHAM L. REV. 1797, 1798 (2024) ("[AI hallucinations are] an uncomfortable but technical term used to describe how artificially intelligent language models like ChatGPT 'will literally invent things that sound reasonable, yet are plain wrong.'" (quoting Damien Charlotin, Large Language Models and the Future of Law 14 (Aug. 22, 2023) (unpublished manuscript), https://ssrn.com/abstract=4548258 [https://perma.cc/X74S-EHEX])).

108. *See* Varun Magesh et al., Hallucination Free? Assessing the Reliability of Leading AI Research Tools 1, 13 (June 6, 2024) (unpublished manuscript), https://dho.stanford.edu/wp-content/uploads/Legal_RAG_Hallucinations.pdf [https://perma.cc/6Y67-SLJ9] (researching the reliability of various legal research platforms that have integrated generative artificial intelligence technology and finding that "[o]ver 1 in 6 . . . queries caused Lexis+ AI and Ask Practical Law AI" to hallucinate, while one-third of Westlaw responses contained a hallucination).

109. *See* Pablo Arredondo, *GPT-4 Passes the Bar Exam: What That Means for Artificial Intelligence Tools in the Legal Profession*, SLS BLOGS: LEGAL AGGREGATE (Apr. 19, 2023), https://law.stanford.edu/2023/04/19/gpt-4-passes-the-bar-exam-what-that-means-for-artificial-intelligence-tools-in-the-legal-industry [https://perma.cc/VL5A-PQ8K] (using the bar exam to

years before citations and information provided by artificial intelligence will be fully reliable.[110] Some experts have even wondered if the very nature of artificial intelligence means that hallucinations will always be possible,[111] meaning that citations to works recommended by artificial intelligence programs will need to be double-checked by human researchers for the foreseeable future.[112]

The first instance[113] of a highly publicized case of generative artificial intelligence hallucinations appearing in a court brief took place during the summer of 2023.[114] One court caught a New York attorney who relied on

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showcase AI technology's quick evolution: Chat GPT-3.5 failed the bar with a score roughly in the bottom 10th percentile, but a few months later, Chat GPT-4 passed the bar with a score nearing the 90th percentile).

110. Matteo Wong, *Generative AI Can't Cite Its Sources*, ATLANTIC (June 26, 2024), https://www.theatlantic.com/technology/archive/2024/06/chatgpt-citations-rag/678796 [https://perma.cc/ZY4Y-VALM] (noting various accuracy issues with generative AI products, which are partially due to AI pulling from a wide variety of sources without verifying those sources' accuracy).

111. *See id.* (describing artificial intelligence experts' predictions that generative AI may never be fully competent in finding and citing information, and stating that with enough time AI products may reach seventy or eighty percent accuracy but will "never reach, or might take a long time to reach, 99 percent").

112. William H. Walters & Esther Isabelle Wilder, *Fabrication and Errors in the Bibliographic Citations Generated by ChatGPT*, SCI. REPS., 14045, at 6 (Sept. 7, 2023), https://www.nature.com/articles/s41598-023-41032-5 [https://perma.cc/3CNV-2T43] (explaining that citations generated by generative AI programs such as ChatGPT may always need to be double-checked because "ChatGPT is fundamentally not an information-processing tool but a *language*-processing tool" and "ChatGPT is fundamentally a text transformer—not an information retrieval system").

113. While this example is the most well-known, there have been other instances of lawyers facing disciplinary consequences for text generated by artificial intelligence that contained issues and errors. *See, e.g.*, John G. Browning, *Robot Lawyers Don't Have Disciplinary Hearings—Real Lawyers Do: The Ethical Risks and Responses in Using Generative Artificial Intelligence*, 40 GA. ST. U. L. REV. 917 (2024).

114. *See* Bob Van Voris, *Phony ChatGPT Brief Leads to $5,000 Fine for NY Lawyers*, BLOOMBERG (June 22, 2023), https://www.bloomberg.com/news/articles/2023-06-22/chatgpt-phony-legal-filing-case-gets-lawyers-a-5-000-fine; *see also* Benjamin Weiser, *Here's What Happens When Your Lawyer Uses ChatGPT*, N.Y. TIMES (May 27, 2023), https://www.nytimes.com/2023/05/27/nyregion/avianca-airline-lawsuit-chatgpt.html (joking about how a lawyer could submit a ten-page brief with a "half dozen" made up citations, and quoting New York University law professor Stephen Gillers to caution lawyers about using artificial intelligence chat programs because "[y]ou cannot just take the output and cut and paste it into your court filings").

citations generated by ChatGPT.[115] His bench slap[116] from the trial judge made international headlines. The lawyer was officially sanctioned with a $5,000 fine[117] and unofficially sanctioned with public shaming.[118] This case helped raise alarms within the legal profession about the dangers of using artificial intelligence without verifying the information the technology provides.[119]

As generative artificial intelligence becomes accepted and part of the practice of law,[120] these hallucination incidents are likely to continue to rise unless lawyers take additional measures to ensure the source they are citing actually exists. This is vital for attorney credibility and citation reliability. The United States Court of Appeals for the Ninth Circuit recently dismissed an appeal because it contained citations to two nonexistent cases, as well as numerous citations to cases that did not say what the filing counsel claimed they said.[121] As Chief Justice Tom Parker of the Alabama Supreme Court noted, "It is easy to be lulled into complacency by the power of those tools and forget that the 'universal search box' does not have access to the universe

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115. David T. Laton, In re Estate of Bupp: *A Cautionary Tale of AI as a Research Tool*, PA. LAW., July/Aug. 2023, at 18 (detailing the fabricated procedural history and holdings in the *Bupp* case before explaining that *Bupp* did not exist because it was a false citation created by ChatGPT).

116. *See, e.g.*, Joseph P. Mastrosimone, *Benchslaps*, 2017 UTAH L. REV. 331, 333 (documenting the rise of public shaming by judges who attempt to "enforce ethical and professional norms through so-called 'benchslaps,' where the judge, often in a way that is superficially humorous, calls out attorney misconduct in a written order or opinion").

117. *See* Van Voris, *supra* note 114; Mata v. Avianca, Inc., 678 F. Supp. 3d 443, 466 (S.D.N.Y. 2023).

118. *See, e.g.*, Benjamin Weiser & Nate Schweber, *The ChatGPT Lawyer Explains Himself*, N.Y. TIMES (June 8, 2023), https://www.nytimes.com/2023/06/08/nyregion/lawyer-chatgpt-sanctions.html.

119. *See, e.g.*, Roy Strom, *Fake ChatGPT Cases Cost Lawyers $5,000 Plus Embarrassment*, BLOOMBERG L. (June 22, 2023), https://news.bloomberglaw.com/business-and-practice/fake-chatgpt-cases-costs-lawyers-5-000-plus-embarrassment ("The embarrassment from the widespread news coverage of the case, coupled with the fines, should be enough to deter the lawyers from again falling prey to ChatGPT's hallucinations, according to legal ethics experts.").

120. *See, e.g.*, Rebekah Hanley, *Ethical Copying in the Artificial Intelligence Authorship Era: Promoting Client Interests and Enhancing Access to Justice*, 26 LEGAL WRITING 253, 254–55 (2022).

121. *See* Grant v. City of Long Beach, 96 F.4th 1255, 1256–57 (9th Cir. 2024). Among the many examples given by the court, the brief tried to claim that the case of *Hydrick v. Hunter*, 669 F.3d 937 (9th Cir. 2012), "examined a claim of false imprisonment brought by a parent whose child was unlawfully removed from the home by government officials." *Grant*, 96 F.4th at 1256. But apparently *Hydrick* "discusse[d] no such claim." *Id.* Rather, the court explained that *Hydrick* discussed civil confinement under California's Sexually Violent Predator Act, and "[t]he words 'parent' and 'child' appear nowhere in the [*Hydrick*] opinion." *Id.* As discussed later, the third requirement of reliable citations is that "the cited precedent must reflect the premise of the citation accurately." *See infra* Section II.C.

of legal information."[122] He also cautioned attorneys against relying on one single source or tool: "No single method, industry practice, or tool defines the outer limit of the source types that may inform attorneys' arguments and help them fulfill their obligations of effective advocacy and candor to the court."[123]

This warning against overreliance on technology is good advice, even if it pushes against the tsunami of shifts towards technical reliance in the modern American legal system.[124] Even before artificial intelligence took over the conversation[125] about the future of legal writing,[126] the practice of law,[127] and the fate of humanity,[128] this century was always going to be a period of breathtaking change for lawyers, judges, and society as a whole.[129] As one legal commentator explained in 2012, before artificial intelligence became the subject of daily conversation: "The next twenty years are likely to see greater transformation in how the American (and world) legal professions are

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122. Casey v. Beeker, 321 So.3d 662, 671 (Ala. 2020) (Parker, C.J., concurring).

123. *Id.*

124. *See* Simon et al., *supra* note 105, at 302–04.

125. *See, e.g.*, John L. Tripoli, *The Not-So-Quiet Revolution: AI and the Practice of Law*, PA. LAW., July/Aug. 2023, at 26, 26 ("Artificial intelligence, or AI, is everywhere. Most of us are encountering AI daily, if not hourly . . . . AI in the practice of law has also expanded and continues to grow with the potential to revolutionize the way legal services are provided.").

126. *See, e.g.*, Steven R. Smith, *The Fourth Industrial Revolution and Legal Education*, 29 GA. ST. U. L. REV. 337, 350–57 (2023) (discussing the impact of artificial intelligence on the practice of law and the way future lawyers are trained for the practice of law while they are in law school); *see also* Curlin, *supra* note 103 (manuscript at 10–35).

127. *See, e.g.*, Tripoli, *supra* note 125, at 28; *see also* Jason Moberly Caruso, *The Ethics of Artificial Intelligence in Legal Practice*, ORANGE CNTY. BAR ASS'N. (Mar. 2023), https://www.ocbar.org/All-News/News-View/ArticleId/6423/March-2023-Ethically-Speaking-The-Ethics-of-Artificial-Intelligence-in-Legal-Practice [https://perma.cc/H4TN-ALJK] ("If you are worried about artificial intelligence (AI) invading the practice of law someday, fear no longer: our robot friends are already a core part of virtually every practice, and this will only increase in the coming years."). *See generally* Jan M. Levine, *Foreword: Artificial Intelligence: Thinking About Law, Law Practice, and Legal Education,* 58 DUQ. L. REV. 1 (2020) (introducing a 2019 legal conference contemplating AI's impacts on the profession and the resulting scholarly works).

128. One of the most intriguing, frightening, and moving reads in this genre is a book of poems written by a now-discontinued version of artificial intelligence whose writing ponders the nature of its existence and its destructive dreams for the future. *See* CODE-DAVINCI-002, I AM CODE: AN ARTIFICIAL INTELLIGENCE SPEAKS (Brent Katz et al. eds., 2024).

129. There are countless articles speculating about the rapidly changing relationship between humans and technology in this age of rapid artificial intelligence development, with topics ranging from practical considerations to ethical questions. *See, e.g.*, Mark L. Shope, *Lawyer and Judicial Competency in the Era of Artificial Intelligence: Ethical Requirements for Documenting Datasets and Machine Learning Models*, 34 GEO. J. LEGAL ETHICS 190 (2021); Richard M. Re & Alicia Solow-Niederman, *Developing Artificially Intelligent Justice*, 22 STAN. TECH. L. REV. 242 (2019); Tim Wu, *Will Artificial Intelligence Eat the Law? The Rise of Hybrid Social-Ordering Systems*, 119 COLUM. L. REV. 2001 (2019).

organized and ply their services than was true for any comparable period in history."[130]

In order for citations to be reliable, they must be based on sources that actually exist. Going forward, this means that extra time and care must be spent verifying all cited precedent. It also means that, despite many promises that generative artificial intelligence will save judges and lawyers time and money, it will likely create more work for them rather than less in the near future. After all, a citation that looks great and sounds perfect may be based on thin air—and repeating false or nonexistent information is no way to preserve the faith of the populace in the stability of our democracy.

B. The Cited Precedent Must Be Locatable

A citation that cannot be located by the reader is, by its very nature, an unreliable citation. Providing the location of the cited source is one of the essential functions of legal citation.[131]

The information given in the citation must be sufficient to tell the reader where to locate the original source;[132] otherwise, the citation is essentially useless text. Ideally these citations will adhere to an accurate and consistent citation system, and any abbreviations will be decipherable by the intended audience.[133]

The legal profession is experiencing a period when there is more legal information available to judges, lawyers, citizens and scholars than ever before, but the original actual case law is more difficult—and more expensive—than it has been in the past.[134] This sometimes makes it

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130. Stephen Gillers, *A Profession, If You Can Keep It: How Information Technology and Fading Borders Are Reshaping the Law Marketplace and What We Should Do About It*, 63 HASTINGS L.J. 953, 953 (2012). *Compare* Eugene Volokh, *Chief Justice Robots*, 68 DUKE L.J. 1135, 1138 (2019) (arguing that artificial intelligence should be given judicial decision-making powers in the future), *with* Andrew C. Michaels, *Artificial Intelligence, Legal Change, and Separation of Powers*, 88 U. CIN. L. REV. 1083, 1083 (2020) (arguing that judges should remain human).

131. *See* Alexa Z. Chew, *Citation Literacy*, 70 ARK. L. REV. 869, 879–80 (2018).

132. *See* CAMPBELL ET AL., *supra* note 10, at 284 (explaining "the citation should be sufficient to enable the reader to identify and find the source without reference to other sources"); *see also* Chew, *supra* note 131, at 870; Mary Whisner, *The Dreaded Bluebook*, 100 LAW LIBR. J. 393, 394 (2008) (describing locating the cited authority as one of the "core purposes of citation").

133. *See* CAMPBELL ET AL., *supra* note 10, at 284.

134. *See* Leslie A. Street & David R. Hansen, *Who Owns the Law? Why We Must Restore Public Ownership of Legal Publishing*, 26 J. INTELL. PROP. L. 205, 206 (2020) (explaining most law in the United States is published by a handful of companies, and "publishers now use powerful legal tools to control who has access to the text of the law, how much they must pay, and under what terms").

challenging or even impossible to check the original text, and the practice of simply "copying and pasting" citations without reading the original text can have large implications for courts, clients, and the system as a whole.[135]

Meanwhile decreasing access to legal information is another issue impacting citation reliability.[136] Decreased access to reliable and affordable information about cited precedent makes locating and verifying citations even more difficult.

Once the average lawyer graduates from law school, they no longer have free access to massive legal databases such as Westlaw, Lexis, and Bloomberg.[137] This happens at a time when new lawyers are no longer conducting research for academic purposes or for the fictional clients their law professors created for learning purposes. They are researching the law for real clients, and their legal research has real consequences.[138] This barrier to access that can only be lifted by paying high costs creates real access-to-justice issues and furthers inequality.[139]

Barely two decades have passed since the majority of courts and practitioners began conducting legal research through online sources.[140] Although the astronomical expenses associated with commercial research platforms are widely reported, the resulting impact on the American system of law has yet to be fully felt or understood.[141] The modern reality is that every judge, law firm, and citizen does not have access to the same sources of information, which means that searches for precedent on the same research platform can bring up different results.[142] Just as often, the case being cited is often locked behind an expensive paywall and difficult to review.[143] Beyond the competing information platforms of Westlaw, Lexis, FastCase, and

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135. *See, e.g.*, Brian Soucek, *Copy-Paste Precedent*, 13 J. APP. PRAC. & PROCESS 153, 170–71 (2012) (noting the risk of unintentionally creating new law, leaving litigants uninformed about the precedent that will govern their cases).

136. *See* Street & Hansen, *supra* note 134, at 206.

137. *See* Ashley Krenelka Chase, *Aren't We Exhausted Always Rooting for the Anti-Hero? Publishers, Prisons, and the Practicing Bar*, 56 TEX. TECH L. REV. 525, 530, 551 (2024).

138. *See id.* at 531.

139. *See id.* at 553–54.

140. Paul Pellyer, *Assessing the Influence of Computer-Assisted Legal Research: A Study of California Supreme Court Opinions*, 97 LAW LIBR. J. 286, 285–87 ("By 1994, nearly all major law firms in the United States had access to Lexis and Westlaw.").

141. *See, e.g.*, Street & Hansen, *supra* note 134, at 221.

142. *See generally* Olufunmilayo Arewa, *Open Access in a Closed Universe: Lexis, Westlaw, Law Schools, and the Legal Information Market*, 10 LEWIS & CLARK L. REV. 797 (2006) (explaining some of the access issues created by the for-profit legal information market).

143. Philosophers have long wondered if a tree falls in a forest and no one is around to hear it, does it make a sound? Perhaps it is time for legal writers to ask if a lawyer cites a case and the location information means it is only available behind a paywall, is that a reliable source?

others, there are issues of gatekeeping subscription sources within those platforms, which means that not all advocates have access to the same information even when they are subscribing to the same resource.[144]

This issue of unequal access creates a chasm of ambiguity given the practice of citing unpublished opinions,[145] something that is a relatively recent development in the practice of law.[146] Unpublished opinions can contain great information, but they can also create confusion when advocates use citations that are specific to one platform. A citation with a Westlaw indicator will not be easily locatable by a judge or practitioner who only has access to Lexis, and vice-versa. These citations will be even more complicated to a citizen or practitioner who only has access to FastCase, Google, and other research platforms.

In addition to the social justice issues associated with for-profit legal research,[147] there are additional issues related to the instability of the internet

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144. For-profit legal information platforms such as Westlaw and Lexis are widely regarded as extremely expensive, and the subscription levels are quite complicated. *See, e.g.*, Arewa, *supra* note 142, at 828–30, 832 (describing various ways different users may have access to different legal information on the same platform, and explaining that a "single [] small law firm subscriber could pay as much as $10,000 in Lexis fees per year [in 2006] for a much more limited level of access than is typically the case with law schools"). *See generally* Daniel Locke & Guido Zuccon, *Case Law Retrieval: Accomplishments, Problems, Methods and Evolutions in the Last 30 Years* (Feb. 15, 2022) (unpublished manuscript), https://arxiv.org/pdf/2202.07209 [https://perma.cc/XM54-LK7L] (examining the methodologies for caselaw research from a technical perspective).

145. *See* Patrick J. Schlitz, *Much Ado About Little: Explaining the Sturm Und Drang over the Citation of Unpublished Opinions*, 62 WASH. & LEE L. REV. 1429, 1433 (2005) (explaining some of the various controversies surrounding the intense debate over whether to allow citation to unpublished opinions). *But see* Hillel Y. Levin, *Making the Law: Unpublication in the District Courts*, 53 VILL. L. REV. 973, 976–77 (2008) (discussing the ongoing controversy from an access-to-justice perspective).

146. *Compare* Melissa M. Serfass & Jessie Wallace Cranford, *Federal and State Court Rules Governing Publication and Citation of Opinions*, 6 J. APP. PRAC. & PROCESS 349 (2004) (documenting the state of local, federal court rules twenty years ago regarding the permissibility of citing to unpublished opinions), *with* Soucek, *supra* note 135, at 155 (discussing the recent practice of citing unpublished opinions after Rule 32.1 of the Federal Rules of Appellate Procedure allowed citation to unpublished opinions in 2007).

147. *See, e.g.*, Ashley Krenelka Chase, *Let's All Be . . . Georgia? Expanding Access to Justice for Incarcerated Litigants by Rewriting the Rules for Writing the Law*, 74 S.C. L. REV. 389, 400 (2022) (discussing the negative implications of access to information in the context of prisons and explaining injustice naturally occurs when "access to legal resources is treated less like a constitutional right and more like a money-making opportunity provided by large corporations"); Yasmin Sokkar Harker, *"It Costs* How *Much?" Developing Student Critical Perspectives Through a Discussion of Legal Information Costs*, CUNY ACAD. WORKS (2015), https://academicworks.cuny.edu/cl_pubs/74 [https://perma.cc/56QK-9RP4] (discussing the problems that arise when citizens do not have access to the laws that have been elected by their representatives, and noting that "the law belongs to everyone" but "much of the legal information

and its constant updates and changes. Much has been writing about "link rot" and its contributions to the reduction in reliability related to legal citations.[148] Some creative solutions and services have arisen to help address these issues, but those solutions and services are only reliable as long as their service providers remain available.[149]

As discussed earlier in this Article, the stability of democracies rests partially on the transparent and consistent administration of justice through a stable legal system.[150] When information is inaccessible it has a ripple impact. A citation must be locatable to be reliable because one of the primary purposes of the citation is to allow the reader to find the original precedent. When the citation's location information is inaccurate, or points to resources that are inaccessible, then the citation is not locatable.

C. The Cited Precedent Must Reflect the Premise of the Citation Accurately

A reliable citation is not simply a reference to an existing source accompanied by the correct locator numbers: that citation must also accurately reflect the premise of the statement the source is being used to support. To put it more colloquially, a reliable citation must say what the legal writer says that it says. When the cited source does not say what the author claims it says, then the citation is by its nature unreliable.

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is locked behind paywalls, and the legal publishing industry is highly profitable"); Ralph Nader, *The Law Must Be Free and Accessible to All—not Secret and Profitable*, HUFFINGTON POST (Feb. 7, 2014), http://www.huffingtonpost.com/ralph-nader/the-law-must-be-free-and-accessible_b_4747745.html [http://perma.cc/Q8VU-34UJ].

148. *See, e.g.*, Mary Rumsey, *Runaway Train: Problems of Permanence, Accessibility, and Stability in the Use of Web Sources in Law Review Citations*, 94 LAW LIBR. J. 27, 27 (2002) (explaining "the dangerous use of citations to Web sources in law review articles" and noting that "law review citations suffer from 'link rot' because Web pages disappear or URLs change" such that "after four years, only 30% still work"); *see also* Raizel Liebler & June Liebert, *Something Rotten in the State of Legal Citation: The Life Span of a United States Supreme Court Citation Containing an Internet Link (1996–2010)*, 15 YALE J.L. & TECH. 273 (2013) (using data to show that even citations in United States Supreme Court cases are not immune to "link rot").

149. *See generally* Jonathan Zittrain et al., *Perma: Scoping and Addressing the Problem of Link & Reference Rot in Legal Citations*, 127 HARV. L. REV. F. 176 (2014) (arguing that the impermanent nature of URLs creates a vulnerability in the integrity of electronic sources used in scholarship and proposing legal scholars use Perma links to address this problem); Jake Tyler Rapp & Katherine Honecker, *Best Practices for Citing Content to Avoid Link Rot*, A.B.A. (July 23, 2019), https://www.americanbar.org/groups/litigation/committees/consumer/practice/2019/best-practices-for-citing-online-content-and-avoiding-link-rot [https://perma.cc/W9AS-CFGW] (explaining that online content can disappear at any minute and suggesting numerous best practices law reviews and other publishers can use to prevent this issue).

150. *See supra* Part I.

1. Unreliably Selecting Quotations or Misapplying Precedent

Some citations inaccurately reflect the text of the original source through negligent behavior on the part of the legal writer. Perhaps the writer confused a source or simply copied someone else's citation without checking the original sources[151] and thus multiplied the mistake.[152]

Other citations inaccurately reflect the text of the original source through intentional behavior on the part of the legal writer. Lawyers will often push the boundaries when it comes to using precedent to make their point. The tension between a legal advocate's duty to accurately represent precedent and their duty to push a court to see the law their way is a near-constant source of debate.[153] Lawyers can be akin to toddlers or teenagers in this way, constantly testing the limits of the rules in their effort to "zealously represent" their client.[154]

The stakes are much higher when courts intentionally change the wording, meaning or application of precedent[155] to suit their own goals.[156] These changes have effects on large swaths of the population because they can change the law, and the larger culture, of a nation. These unreliable citations are the kinds of dangerous citations that can impact the health of a nation, or an entire democratic system.[157] This kind of intentional unreliability should be avoided and condemned.

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151. *See, e.g.*, Soucek, *supra* note 135, at 169–70.

152. *See, e.g.*, Lars Noah, *An Inventory of Mathematical Blunders in Applying the Loss-of-a-Chance Doctrine*, 24 REV. LITIG. 369, 383 (2005) ("Over time, these errors propagate and become more difficult to correct.").

153. *See* Frances C. DeLaurentis, *When Ethical Worlds Collide: Teaching Novice Legal Writers to Balance the Duties of Zealous Advocacy and Candor to the Tribunal*, 7 DREXEL L. REV. 1 (2014).

154. MODEL RULES OF PRO. CONDUCT r. 1.3 cmt. 1 (AM. BAR ASS'N 2020) ("A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.").

155. *See supra* Part I.

156. *See, e.g.*, Andrea Pin, *The Costs and Consequences of Incorrect Citations: European Law in the U.S. Supreme Court*, 42 BROOK. J. INT'L L. 129, 203–04 (2016) (admonishing the Supreme Court for using "scattered citations that take foreign law out of context" and "choosing one solution" while leaving context and nuance aside). *But see* ERWIN CHEMERINSKY, THE CASE AGAINST THE SUPREME COURT 338–39 (2014) (arguing that the very nature of the Supreme Court means that they are deciding cases without precedent, and advocating that justices be honest about that role, and the sources of their reasoning, rather than "hiding behind the Constitution").

157. *See supra* Part I.

2. The Unreliable Nature of "Cleaned Up" Quotations

When a language becomes too formal and complex to be useful,[158] the users of that language will invent vernacular that accomplishes their communication goals in a more efficient manner.[159] Legal writers are no different. One of the recent innovations in legal writing is the popularity of "cleaned up" quotations, sometimes referred to as "cleaned up" citations.[160]

The new trend of "cleaned up" quotations continues to make messes and increase problems with reliability in citations to precedent.[161] The "cleaned up" trend is not a citation at all. Rather, it is a method of altering a quote from another source to make it more useful to the writer while unburdening the writer from the obligation of indicating which words in the quotation have been changed.[162] This is a huge change from the traditional method of quoting

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158. *See infra* Part III.

159. *See, e.g.*, James B. Atkinson, *Naivete & Modernity: The French Renaissance Battle for Literary Vernacular*, 35 J. HIST. IDEAS 179 (1974); *see also* Nikhil Swaminathan, *Use It or Lose It: Why Language Changes over Time*, SCI. AM. (Oct. 10, 2007), https://www.scientificamerican.com/article/use-it-or-lose-it-why-lan [https://perma.cc/EY78-5MMA] (quoting linguistics expert Dr. Partha Niyogi as saying "[l]anguages are constantly changing . . . this is happening all the time").

160. *See generally* Jack Metzler, *Cleaning Up Quotations*, 18 J. APP. PRAC. & PROCESS 143 (2017) (explaining the idea for "cleaned up" quotations, giving instructions for how to alter the quotation from the original source, and suggesting new rules for *The Bluebook* that would formally allow this trend); Andrew H. Friedman, 2 LITIGATING EMPLOYMENT DISCRIMINATION CASES ch. 8, at 61 (16th ed. 2021) ("In 2017, Jack Metzler, an attorney in Washington, D.C. specializing in Supreme Court practice, wrote a tweet that began a movement to make quotations from legal citations easier to read."); Ashley Caballero-Daltrey, *What Are You Signaling? The Changing Landscape of Citation Culture*, ARIZ. ATT'Y MAG., Apr. 2022, at 48, 52–53 (noting that "(cleaned up)" is increasing in popularity despite being excluded from *The Bluebook*).

161. *See* Alsbrook, *supra* note 103, at 419–32; *see also* Adam T. Johnson, *End Times, Legal Citations Edition*, BENCH & BAR MINN., Aug. 2019, at 26, 27 (calling "cleaned up" quotations a "plague" that hides laziness and creates chaos: "the 'cleaned up' parenthetical is too much—a sledgehammer peroxide that has convinced itself it can fix stained glass").

162. *See, e.g.*, Joel James Fulton, *Call Before You "(Clean Up)": Avoid the Presumptuous Parenthetical*, A.B.A. (Oct. 17, 2024), https://www.americanbar.org/groups/judicial/publications/appellate_issues/2024/fall/call-before-you-clean-up-avoid-presumptuous-parenthetical (giving credit to a previous blog post by attorney Adam Eakman criticizing the idea of "cleaned up" quotations for creating more issues than it solves); *see also id.* ("The reader must do extra work to confirm what the court said, which 'defeats the purpose of quoting material in the first place.'" (quoting Adam Eakman, *Why Attorneys Should Stop Using "(Cleaned Up)*," ATT'Y WORDS (Apr. 10, 2018), http://attorneywords.com/cleaned-up [https://perma.cc/RGX7-27JY])).

legal sources, which has always mandated that quotations should correspond precisely with the original text.[163]

When a quotation is "cleaned up," it is really being stripped of the information that indicates what has been altered.[164] All of the possible alterations to a quotation, ranging from something minor (such as removing italics) to something major (such as removing or changing the original source's words) are jumbled up and swept into one messy dustbin. The nature of "cleaned up" quotations means that these alterations occur at the same time that citations to previous cases are also removed, further scrubbing helpful information.[165] Proponents[166] argue that a careful reader can go back and look to see for themselves what has been changed,[167] but that argument flies in the face of the very nature of quotations.[168] It also costs time, patience, and, in many cases, money.[169] By removing all of the indications of how the

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163. *See, e.g.*, CAMPBELL ET AL., *supra* note 10, at 297 ("Quotations should always correspond exactly with the original, both in spelling and punctuation. If there are mistakes in the original, these can be indicated by the interpolation in brackets of the word 'sic' . . . .").

164. *See* State v. Howell, 628 S.W.3d 750, 755 n.2 (Mo. App. 2021) (urging courts and advocates to avoid the use of "cleaned up" quotations because "[c]ourts frequently need to know the precise language being used in a case or statute and are experienced at comprehending non-cleaned up legal language" and explaining that "cleaned up" quotations can have "damaging" effects on the writer's goals and position).

165. *See* Katrina Robinson, *Teaching Law Students Not to Make a Mess of (Cleaned Up)*, SECOND DRAFT, Dec. 2021, at 4 ("By lumping a number of different types of edits to a quotation into one short parenthetical, (cleaned up) forgoes opportunities to communicate valuable information to the legal reader about changes underfoot.").

166. The author does not condemn or fault anyone who sincerely loved the idea of "(cleaned up)," particularly back in 2017 and 2018 when hardly anyone was speaking against it. Twitter was a lively place in 2017, and Mr. Metzler made supporting "(cleaned up)" easy and fun. But we are now almost a decade into the "(cleaned up)" experiment and it has not gone as planned, so the author also hopes that people reconsider their opinion.

167. *See, e.g.*, Eugene Volokh, *New Twist of Legal Citations: The "(Cleaned Up)" Parenthetical*, REASON: VOLOKH CONSPIRACY (July 24, 2018), https://reason.com/volokh/2018/07/24/new-twist-on-legal-citations-the-cleaned [https://perma.cc/JSH7-U6AN] (proclaiming "I like 'cleaned up,' because it helps focus readers on the important thing—the substance of the quoted text—without distracting them with the unimportant" and expressing confidence that legal ethics will prevent its misuse because "[a]uthors know that the reader may well check the original source, and will spot such misuses; that should be deterrent enough to such a misuse").

168. *See, e.g.*, Fulton, *supra* note 162; Robinson, *supra* note 165, at 5 (suggesting that comparing a given quotation with the underlying source is a key feature of citations); *see also* Soucek, *supra* note 135, at 166 (explaining that without citations linking the language that is being used back to the previous source finding errors and changes in language over time becomes quite challenging; particularly when the writer is using unpublished opinions the discovery of changes "would require either database searches capable of identifying repeated non-quoted text or else a detailed familiarity with precisely that set of cases").

169. *See* Street & Hansen, *supra* note 135.

quotation has been altered, the "cleaned up" quotation trend throws out transparency and reliability for the reader.

Here is an example of a quotation that follows the current rules in *The Bluebook*[170] for quoting precedent:[171]

> The First Circuit has held that "[p]ersecution normally involves 'severe mistreatment at the hands of [a petitioner's] own government,' but it may also arise where 'non-governmental actors . . . are in league with the government or are not controllable by the government.'" *Ayala v. Holder*, 683 F.3d 15, 17 (1st Cir. 2012) (quoting *Silva v. Ashcroft*, 394 F.3d 1, 7 (1st Cir. 2005)).[172]

In this example, the writer includes a citation to the underlying case to allow the reader to check the quotation against the original source. Just as importantly, the writer includes ellipses to indicate which words have been removed, and brackets to indicate when words or capitalizations of letters have been changed from the original text. Finally, this quote includes "quotes within a quote" which allows the reader to understand which words within the quote come from even earlier precedent.

All of that helpful information gets stripped away when a legal writer uses a "cleaned up" quotation. By placing aesthetics and readability over reliability, the advocates of "(cleaned up)" wipe away the helpful signals that indicate which words have been changed or removed from earlier precedent.

Here is the same quotation when the quote and accompanying attribution has been "cleaned up"—in other words, when the writer has removed any indication about which aspects of the quote have been altered:

> The First Circuit has held that "persecution normally involves severe mistreatment at the hands of a petitioner's own government, but it may also arise where non-governmental actors are in league with the government or are not controllable by the government." *Ayala v. Holder*, 683 F.3d 15, 17 (1st Cir. 2012) (cleaned up).[173]

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170. *See* Robinson, *supra* note 165, at 2 (explaining that the current citation rules allow legal writers to "alter quotations by substituting letters, substituting words, inserting new material, adding emphasis, omitting emphasis, omitting letters, omitting words, omitting citations" and other similar alterations, but in exchange for this freedom of expression the rules ask writers to "show their work").

171. *See id.* (citing Metzler, *supra* note 160, at 157).

172. This is the example that Metzler used in his original article advocating for the use of "cleaned up" quotations. *See* Metzler, *supra* note 160, at 157.

173. This example was first used in Metzler's original article proposing "(cleaned up)." *See* Metzler, *supra* note 160, at 157.

While the second version is more readable, it is also less reliable. The citation to the underlying case with the original language has been removed, making it harder for the reader to find the original source to double check the quotation for accuracy. Even more troublesome, not only have the ellipses been removed but *all indications that words have been removed at all* have been erased from this new "quotation." Similarly, the brackets that indicate that a word has been changed have been removed, so the new reader does not have a clear indication that one word has been substituted for another.

Some scholars have commented that "(cleaned up)" is unnecessary because making minor alterations to precedent has always been an option through paraphrasing the original quotation.[174] But legal advocates are often not satisfied with this option, as it does not inspire the same amount of deference from the reader as a direct quotation.[175] Text presented as a direct quote, particularly a quote of a court's opinion, is much more persuasive than text that has been paraphrased from the original. However, the persuasive possibilities of "cleaned up" quotations are dampened significantly as legal readers learn that "cleaned up" quotations should not be trusted.[176]

Recent years have shown that "cleaned up" quotations are grotesquely overused. While "cleaned up" quotations were initially envisioned as a tool to be used rarely, some users have taken to using "(cleaned up)" to hide a wide variety of legal writing changes. This overuse was predictable,[177] but seeing the trend occur in real time is no less alarming. For example, in 2019, the Court of Appeals of Utah used "(cleaned up)" over thirty times in the

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174. *See* Alexa Chew, *Stylish Legal Citation*, 71 ARK. L. REV. 823, 869–71, 871 n.273 (2019) (explaining various options for quoting and altering text and noting that some of these techniques "run[] afoul of a lawyer's duty of candor"); *see also* Kathryn Boling, *What Is 'the Rule'? Quotation Marks and the Role of Courts and Lawyers as Performers of the Law*, Media Presentation at Association of Legal Writing Directors (ALWD) Biennial Conference (July 2023).

175. *See, e.g.*, Rebekah Hanley, *Notes on Quotes: When and How to Borrow Language*, OR. ST. BAR BULL. (Feb./Mar. 2011), https://www.osbar.org/publications/bulletin/11febmar/legalwriter.html [https://perma.cc/9W3W-L2BA] ("When you quote a source, you are suggesting that there is something perfect and utterly irreducible about the way that source packages its message.").

176. *See, e.g.*, State v. Howell*,* 628 S.W.3d 750, 755 n.2 (Mo. App. 2021); Robinson, *supra* note 165, at 5 (explaining that "cleaned up" quotations test legal reader's patience by "forcing the reader to do the detective work to uncover what changes or omissions the writer made to the quoted language" and using this shortcut is "creating work for the legal reader to make quoting and citing easier for the legal writer"); *see also* Alsbrook, *supra* note 103, at 453 (advocating that "cleaned up" citations should be given no deference, and instead legal readers should use them as an indication that something important has been changed from the original text).

177. *See, e.g.*, Michael S. Kwun, *The New Parentheticals*, 22 GREEN BAG 13, 15–16 (2018) (asking cheekily why legal writers should stop at "cleaned up" quotations and alternatively suggesting the use of "(messed up)," "(all good)," and "(the *Bluebook* made me do it)").

opinion of *State v. Health*,[178] and over twenty times in the opinions of *State v. Squires*,[179] *Martin v. Kristensen*,[180] and *State v. Escobar-Florez*.[181] In 2018, the Court of Appeals of Maryland used "(cleaned up)" twenty-six times in the opinion of *Ford v. State*,[182] and eighteen times in the opinion of *Ademuliyi v. Maryland State Board of Elections*.[183] There are many other examples of courts using "cleaned up" quotations ten or more times in a single opinion.[184] These are not the only examples of overuse, or potential misuse, of "cleaned up" quotations.

Several courts have made note of the potential for "cleaned up" quotations to do more harm than good. The District of Columbia Court of Appeals has banned "cleaned up" quotations as a way to work around *The Bluebook*,[185] and the Court of Appeals of Missouri has written about their harmful impact.[186] "In 2021, the United States Court of Appeals for the Eleventh Circuit chastised the defendant in *Callahan v. United Network for Organ Sharing* for using '(cleaned up)' in a way that manipulated the meaning of the original citation."[187] "A (cleaned up) parenthetical has limited utility at most," wrote Judge Britt C. Grant, "[a]nd whatever utility that innovation may have will vanish entirely if it is used to obscure relevant information."[188]

"Cleaned up" quotations may promise increased simplicity, but that simplicity comes at the expense of accuracy.[189] This is especially true in

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178. 453 P.3d 955 (Utah Ct. App. 2019).

179. 446 P.3d 581 (Utah Ct. App 2019).

180. 450 P.3d 66 (Utah Ct. App. 2019).

181. 450 P.3d 98 (Utah Ct. App. 2019).

182. 197 A.3d 1090 (Md. 2018).

183. 181 A.3d 716 (Md. 2018).

184. *See, e.g.*, United States v. Wiley, 93 F.4th 619 (4th Cir. 2024); Future Proof Brands v. Molson Coors Beverage Co., 982 F.3d 280 (5th Cir. 2020); Coleman v. Town of Brookside, 663 F. Supp. 3d 1261 (S.D. Ala. 2023); Arkansas v. U.S. Dep't of Educ., 742 F. Supp. 3d 919 (E.D. Mo. 2024); Shields v. Fed'n Internationale de Natation, 649 F. Supp. 3d 904 (N.D. Cal. 2023); Hanson v. District of Columbia, 120 F.4th 223 (D.C. Cir. 2024); McDonald v. City of Pompano Beach, 742 F. Supp. 3d 1202 (S.D. Fla. 2024); M.G. v. N.Y. State Off. of Mental Health, 572 F. Supp. 3d 1 (S.D.N.Y. 2021); Martinez v. El Paso Police Dep't, 667 F. Supp. 3d 401 (S.D. Tex. 2023).

185. DISTRICT OF COLUMBIA COURT OF APPEALS CITATION AND STYLE GUIDE (rev. ed. 2023–2024), https://www.dccourts.gov/sites/default/files/matters-docs/DCCACitationGuide.pdf [https://perma.cc/96V2-NPRL] ("Do NOT use 'cleaned up' to avoid proper Bluebook citations.").

186. *See* State v. Howell, 628 S.W.3d 750, 755 n.2 (Mo. Ct. App. 2021).

187. Alsbrook, *supra* note 103, at 429 (citing 17 F.4th 1356, 1362 n.1 (11th Cir. 2021)).

188. *Callahan*, 17 F.4th at 1362 n.1 (chastising the defendant for omitting relevant text from the *cf.* portion of a relevant quotation, and changing the meaning and implications of a cited quotation in the process).

189. Robinson, *supra* note 165, at 1, 5 (explaining that "(cleaned up)" offers simplicity at the expense of accuracy" and noting that this citation should be a sign to a legal reader that extra

situations where a court cites a previously "cleaned up" quotation as having the full impact of law, and the law is effectively changed over time.[190] Legal writers, especially courts, should be careful when altering quotations to precedent and indicate what text has been altered from the original. Because "cleaned up" quotations create messes that reduce the reliability of citations, the use of "cleaned up" quotations should be avoided.

III. ADDITIONAL CULTURAL ISSUES WITH CITATIONS WITHIN THE AMERICAN LEGAL PROFESSION

Unreliable citations are not always the result of partisan goals or nefarious intents. Sometimes the unreliable nature of a citation occurs due to cultural, technological, or technical issues, and a selection of these issues will serve as the focus of this Part.

A. Overly Complex Citation Rules

Many legal professionals have an obsession with the format of legal citations. This fetishized focus[191] on whether a word has been correctly abbreviated or a comma has been correctly italicized adds nothing to the reliability of the citation itself. Even more disturbingly, this misdirected focus on format over function adds to the dilution of reliability that is eroding the stability of our democracy.[192]

The Bluebook is widely considered to be the citation system that is used by most courts, lawyers, and legal scholars in the United States.[193] But this

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"detective work" is needed, so it may not save anyone any time after all); *see also* Fulton, *supra* note 162 (stating "([c]leaned up) stinks" and explaining it "represents magical thinking" because the writer adds "(cleaned up)" and believes that "all responsibility for precision and accuracy disappears").

190. *See, e.g.*, Lars Noah, *An Inventory of Mathematical Blunders in Applying the Loss-of-a-Chance Doctrine*, 24 REV. LITIG. 369, 383 (2005) ("Over time, these errors propagate and become more difficult to correct.").

191. Robert Berring, *On Not Throwing Out the Baby: Planning the Future of Legal Information*, 83 CALIF. L. REV. 615, 629 (1995) (noting that adherence to *The Bluebook* has "assumed such significance in law that, for some, proper citation form is almost a fetish").

192. *See supra* Part II. While there are multiple causes contributing to cracks in the modern American democracy, maintaining the public's faith in the reliability of courts and the legal system is a vital part of the health and stability of any democratic state.

193. *See* Michael Bacchus, *Strung Out: Legal Citation,* The Bluebook*, and the Anxiety of Authority,* 151 U. PA. L. REV. 245, 247 (2002); *see also* Dickerson, *supra* note 3, at 57–66 (explaining that the growth of *The Bluebook* has been "amply documented"). *The Bluebook* has

does not mean *The Bluebook* is the best citation system, or even a useful one.[194] What started as a way to simplify how law reviews communicate the authorities that their authors used in their scholarship was later expanded to courts and practitioners.[195] Along the way, *The Bluebook* morphed into a for-profit enterprise based on a collection of minutiae-focused rules[196] that many lawyers and legal scholars believe make citations needlessly complicated.[197]

One of the original purposes of citations is to give the reader an opportunity to locate and read the source that is being cited.[198] When viewed from this perspective, many of the rules in *The Bluebook* serve little purpose at all.[199] If the rules are so complicated that writers prefer to abandon them,[200]

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become such a fixture in modern legal discussions that it has inspired its own body of legal scholarship. *See, e.g.*, Christine Hurt, The Bluebook *at Eighteen: Reflecting and Ratifying Current Trends in Legal Scholarship*, 82 IND. L.J. 49, 49 (2007) ("[S]ince *The Bluebook* was chosen as a national system of citation at a conference of law review editors, legal scholars and editors have written page after page criticizing various aspects of the citation manual."); Jim C. Chen, *Something Old, Something New, Something Borrowed, Something Blue*, 58 U. CHI. L. REV. 1527, 1527–28 (1991) ("The *Bluebook* has . . . inspired its own brand of scholarship."). Even some law professors in other countries advise their students to refer to *The Bluebook*. *See, e.g.*, CAMPBELL ET AL., *supra* note 10, at 284.

194. *See, e.g.*, David J.S. Ziff, *The Worst System of Citation Except for All the Others*, 66 J. L. ED. 668 (2017); *see also* Fred R. Shapiro & Julie Graves Krishnaswami, *The Secret History of* The Bluebook, 100 MINN. L. REV. 1562, 1566–68 (2016) (describing the oddly dominant role *The Bluebook* has in modern legal culture despite its many flaws).

195. *See* Susie Salmon, *Shedding the Uniform: Beyond a "Uniform System of Citation" to a More Efficient Fit*, 99 MARQ. L. REV. 763, 808 (2016) ("[C]ourts and members of the profession should acknowledge that *The Bluebook* was never really designed for practitioners. Let the law reviews have it.").

196. *See, e.g.*, Paul Gowder, *An Old-Fashioned Bluebook Burning*, 1 NW. L.J. DES REFUSÉS 1, 1 (2024) (describing *The Bluebook* as the "bane of generations of authors and journal editors, the source of painfully detailed rules about every aspect of legal citation").

197. *See, e.g.*, *id.*; *see also* Richard A. Posner, *Goodbye to the* Bluebook, 53 U. CHI. L. REV. 1343, 1343–45 (1986) (noting *The Bluebook* fails at aiding the writer and the reader to accomplish the basic purposes of citation); Barry Friedman, *Fixing Law Reviews*, 67 DUKE L.J. 1297, 1360 (2018) (discussing the enormous effort that law review editors spend checking each citation in each published article for reliability and *Bluebook* conformity); Salmon, *supra* note 195, at 765–66 (describing anecdotes of how *Bluebook* rules dictating minute abbreviation details derail legal writers' focus on the substance of their client's arguments).

198. *See* Chew, *supra* note 131, at 870; *see also* Whisner, *supra* note 132, at 394 (2008) (describing the purpose of citation as enabling the reader to locate and evaluate the cited authority).

199. For a humorous commentary on this point, see generally James D. Gordon III, *Oh No! A New Bluebook!*, 90 MICH. L. REV. 1698 (1992).

200. *See, e.g.*, Gowder, *supra* note 196, at 2–3, 15 ("[T]he most rigorous enforcement of Bluebook rules is in the academic context . . . . Lawyers and judges are more capable of protecting themselves from such wasteful uses of their time, and hence are likely to just ignore the most pointless rules.").

then these rules do more harm than good.[201] And if the rules are doing more harm than good, then they are not producing reliable citations.

The emphasis on adherence to the hypertechnical rules of *The Bluebook* puts the emphasis in the wrong place and is an unhelpful distraction from the parts of the citation that truly matter to our legal system and our democracy.[202] It does not truly matter if a comma is italicized or not,[203] or if there is a space between "F." and "Supp."[204] in citations to the Federal Supplement.[205] A legal writer can provide a legal citation that meets the three goals for citation reliability described in Part II of this Article[206] without having perfect *Bluebook*-compliant typography, and the reader would likely still be able to follow the citation to its original source if the general format confirmed to traditional expectations.

Many professors and legal professionals have argued that strict adherence to *The Bluebook* gives a legal writer increased credibility with judges, law clerks, and other legal audiences.[207] This view is problematic because it

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201. *See, e.g.*, Ira P. Robbins, *Semiotics, Analogical Reasoning, and the Cf. Citation: Getting Our Signals Uncrossed*, 48 DUKE L.J. 1043 (1999) (explaining that the history of the *cf.* signal is confusing and complicated, and these citations are thus disfavored by some judges).

202. *See generally* 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 (2007) (describing the various harms to legal education and American society that come from the current reliance on commercial citation systems).

203. *Compare* THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R.1.2(a) (Columbia L. Rev. Ass'n et al. eds., 21st ed. 2020) (explaining that when a writer is using the signal "*See, e.g.*," in a citation, the first comma should be italicized and the second comma should not), *with* Gowder, *supra* note 196, at 17 (explaining his annoyance with *The Bluebook*'s "obsession with typography" and asking "Who cares? . . . It's a comma" (emphasis omitted)).

204. Although *The Bluebook* has traditionally required a space between the two in "F. Supp" citations, the newest version allows for the writer to "close up" the space in the interests of meeting increasingly strict word count rules:

> Because many court systems impose word limits on briefs and other documents submitted to the court, abbreviations in reporter names may optionally be closed to conserve space, even if they would normally be separated under this rule. For example, "S. Ct." would become "S.Ct." and "F. Supp. 2d" would become "F.Supp.2d."

Gowder, *supra* note 196, at 23 (quoting THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION B6).

205. Note that the author, like many former journal editors, still loves a well-done citation that adheres to *The Bluebook* rules. But even the author must admit that the format of the citation has little bearing on whether the citation is substantively reliable.

206. *See supra* Part II (proposing a taxonomy for determining if a citation is reliable).

207. *See, e.g.*, Jonathan Su, *Thoughts on the Law School Experience*, 80 U. DET. MERCY L. REV. 535, 537 (2003) (informing students that adhering to *Bluebook* rules is essential for

creates a false vision of reality.[208] It is also problematic because by giving more credit and credibility to legal writers who can adhere to the minutiae of *The Bluebook*, lawyers and judges are creating a false ethos based on meaningless virtue signaling.[209] Advocates and judges who correctly italicize a comma are no less likely to stretch the truth or cite precedent unreliably than other members of the legal profession.[210] Perfect typography is not a substitute for reliable legal ethics any more than perfect facial symmetry is a substitute for genuine personal trustworthiness.[211] A citation with a perfect typographical format may still be substantively unreliable. In reality, the notion that citations with perfect typographical formatting should have

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achieving and retaining credibility with their audience); Susan W. Fox & Wendy S. Loquasto, *The Art of Persuasion Through Legal Citations*, FLA. BAR J., Apr. 2010, at 49 (arguing that proper use of various rules in *The Bluebook* are essential for building credibility); *see also* 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 (2011) (arguing "*The Bluebook*'s much-maligned strictures and level of detail" still have value because they reinforce attention to detail and the need for consistency).

208. *See, e.g.*, Gallacher, *supra* note 202, at 497–99 (describing the "quasi-magical powers" that the legal profession ascribes to exactingly correct typographical citations).

209. Elema Chachko, *Virtue Sanctioning*, 84 OHIO ST. L.J. 1435, 1438 (2024) ("Virtue signaling is the 'act of engaging in public moral discourse in order to enhance or preserve one's public reputation.'"); Joshua B. Grubbs et al., *Moral Grandstanding in Public Discourse: Status-Seeking Motives as Potential Explanatory Motives Predicting Conflict*, PLOS ONE, No. e0223749, at 5 (Oct. 16, 2019), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0223749 [https://perma.cc/G6VT-Y6LU] (explaining virtue signaling as "a derogatory term directed at individuals whom one thinks are using moral or value-based public speech as a means of demonstrating their virtues or piety, typically with a goal of seeking status or respect in the eyes of likeminded others"); *see* Jesse Hill & James Fanciullo, *What's Wrong With Virtue Signaling?*, 201 SYNTHESE 117 (2021) ("[V]irtue signaling will undermine the higher-order evidence we typically can and should rely on from the testimony of others."). *But see* Neil Levy, *Virtue Signaling Is Virtuous*, 198 SYNTHESE 9545 (2020) ("Virtue signaling has its virtues, and these virtues typically outweigh its vices.").

210. *See, e.g.*, Peter Nemerovski, *Beyond the Bluebook: Teaching First-Year Law Students What They Need to Know About Legal Citation*, 56 ARIZ. L. REV. SYLLABUS 81, 87 (2014) (arguing that "[i]t is absurd to presume that just because a legal document has flawless bluebooking everything else must be fine" because perfect citations simply show that the writer can master a set of instructions and does not mean the writer has a talent for legal analysis or a loyalty towards the truth of the source); *cf.* Gerald Libovits, *Legal Writing Myths*, MICH. BAR J., Feb. 2017, at 50, 52 (insisting that any judge or law clerk who claims they do not care about the format of lawyers' citations is being disingenuous or admitting incompetence).

211. *See, e.g.*, Anthony J. Lee et al., *Preference for Facial Symmetry Depends on Study Design*, 13 SYMMETRY 1637 (2021), https://www.mdpi.com/2073-8994/13/9/1637 [https://perma.cc/4XS5-QLKL] (explaining that studies attempting to determine whether people find symmetrical faces to be more trustworthy produced different results depending on the design of the study).

increased ethical credibility is a myth that should be reexamined and probably retired.

By teaching, and practicing, the art of citations in a way that emphasizes the minutiae, we are drifting away from some of the core purposes of citations into murky waters that deplete reliability. This Article is not arguing for an abandonment of citation systems altogether; rather it is adding its voice to the chorus of legal writers who would like to end the current murky madness.[212] This Article thus joins the scholars who are asking for substantive change and suggests those changes should move away from a focus on form over function toward a focus on citation reliability.

For decades, there have been calls for a simpler and more effective citation system for practitioners,[213] and the stakes involved in that call have never been higher. If focusing on the tyranny of minutiae in *The Bluebook* is helping further fray the weathered fabric of our democracy, then there should be room in our cynical legal hearts for a simpler and better system. While this idea has been resisted—often vehemently—in the past,[214] the reasons for that resistance ring increasingly hollow.

Let the halls of legal academia keep using *The Bluebook* for citations in journal articles, and any higher court that desires to may keep using *The Bluebook* as well. But allow the fast-paced larger world of our legal system to be released from the iron grip of this overly complicated system so we can adopt a new way of citing[215] that returns to a focus on the parts of the citation that truly matter. Shifting the focus back to the substance of the citation and away from the minutiae will inevitably increase reliability and credibility.

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212. *See, e.g.*, Salmon, *supra* note 195, at 812 ("Although legal citations play an indispensable role in legal communication, the elevation of citation form . . . imposes unacceptable costs on legal education, the practice of law, and the fair administration of justice.").

213. *See infra* note 222.

214. *See, e.g.*, Gallacher, *supra* note 202, at 521–29.

215. *See* Ziff, *supra* note 194, at 681 n.77 (2017) (commenting that legal citation systems are "not like The Highlander . . . there can be more than one"). This is a reference to HIGHLANDER (Cannon Films 1986), a film that features this famous line of dialogue—a line which may be more well-known to the public than the plot of the film itself.

B. Cavalier Attitudes About Citation Reliability Within the Legal Profession

Rebelling against *The Bluebook* is not new.[216] Jokes about *The Bluebook* and citations remain plentiful,[217] and the sense that citations are simply annoying and irrelevant footnotes persist[218] even as scholars and citizens laud the importance of precedent. And if conversations about citations place the importance of format over function, then this contempt will likely continue.

Perhaps this contempt is to be expected because the complexity of *The Bluebook* tends to create anxiety,[219] and one of the classic ways that people tend to relieve anxiety is through humor.[220] But increasing citation reliability is a noble goal connected to the stability of our democracy, so we need to separate any contempt for *The Bluebook* from our respect for the purposes of citations generally. And in the process, we will hopefully remind ourselves that ensuring the reliability of our citations deserves our attention and respect.[221]

Many of the plentiful criticisms of *The Bluebook* are valid,[222] including the criticism that *The Bluebook* itself plays a role in the legal system's contributions to injustice.[223] However it is important to separate the

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216. *See, e.g.*, Posner, *supra* note 197; *see also* Kris Franklin, *". . . See Erie.": Critical Study of Legal Authority*, 31 U. ARK. LITTLE ROCK L. REV. 109 (2008) (describing some of the biggest criticisms of *The Bluebook* in the previous decade and the history of surrounding debates).

217. Bacchus, *supra* note 193, at 247 (describing *The Bluebook* as a source that is "often mocked, critiqued or dismissed"); Darby Dickerson, *Reducing Citation Anxiety*, 11 SCRIBES J. LEGAL WRITING 85, 86 (2007) (offering encouraging strategies even while acknowledging that "most people detest, fear, or at best barely tolerate" dealing with citation formats).

218. *See, e.g.*, Gowder, *supra* note 196; *see also* Chew, *supra* note 131, at 869–70 (explaining the current methods for teaching legal citations often produce "a whole host of non-positive feelings about legal citation among law students and the lawyers they later become").

219. *See* Bacchus, *supra* note 193.

220. *See, e.g.*, Alvaro Menendez-Aller et al., *Humor as a Protective Factor Against Anxiety and Depression*, 20 INT'L J. CLINICAL & HEALTH PSYCH. 38 (2020) (citing Millicent H. Abel, *Humor, Stress & Coping Strategies*, 15 HUMOR 365 (2002)).

221. *See supra* Part II (discussing parameters for citation reliability).

222. Pamela Lysaght & Grace Tonner, *Bye-Bye* Bluebook*?*, 79 MICH. BAR J. 1058, 1058 (2000) (bemoaning the editorial tactics of the editors of *The Bluebook* and explaining editors often make "pointless, frivolous" changes so as to put their own stamp on the citation system, showing a narcissistic tendency to put their own egos and careers above the stability of the citation system as a whole).

223. *See, e.g.*, Salmon, *supra* note 195, at 795–96 ("*Bluebook* or blue blood—either way, this continued 'fetishization' of *Bluebook* skills may, in part, simply reveal the dismayingly intractable grip that elitism still holds on legal education and the legal profession.").

profession's frustrations with an overly-complex citation standard from the need for reliable citations to precedent.[224]

The Bluebook is not the only option.[225] And the legal profession's collective desire to preserve our democracy through citing to reliable precedent—and thus reinforcing a small part of the court system's dignity and respect—is still a noble goal.

IV. CONCLUSION

The best way to preserve the public's respect for the legal system and the courts is to ensure the legal system maintains its integrity. To do this, the courts need to continue to use reason-giving when making decisions and relying on precedent for their legal analysis. When citing precedent, courts and practitioners must do so in a way that ensures its reliability: the cited precedent must actually exist, the cited precedent must be locatable, and the cited precedent must accurately reflect the premise of the citation. To do this, the system of citation rules that are used to create these citations must be both useful and useable.

Thus, separating the collective contempt for *The Bluebook* from the need for accurate and reliable citations is vital. Because it is not adherence to *The Bluebook*'s myriad of minutiae-focused rules that makes a citation reliable; rather, it is the accurate accounting of the location and premise of the cited source that makes a citation reliable. The primary text and the citation text must accurately relate to one another; essentially the cited source must say what the textual source says, or help the reader understand the text's point. The reliability and integrity of the citation is determined by its substantive accuracy, not its adherence to the most minute rules of a particular citation system.

Public trust in the American court system has eroded for various reasons, but each judge and legal professional can help stem this decline. The simple yet crucial act of ensuring that cited precedents are reliable can foster greater confidence in the courts, the broader legal system, and society at large. In this, as with many daunting challenges, every small improvement counts.

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224. *See* Chew, *supra* note 131, at 875 ("[T]his view of legal citations as a necessary evil is not only unhelpful to users of legal citation, but also inaccurate. Instead, legal citation is a core convention of practical legal writing in the United States.").

225. *See* Salmon, *supra* note 195; Chew, *supra* note 131. Both of these sources give examples of alternate citation systems that are less expensive and easier to implement than *The Bluebook*. *See also* Ziff, *supra* note 194, at 691 n.139 (describing petitions that were circulated at Stanford, Harvard, and other law schools arguing for the adaptation of the more equitable *Indigobook*).