

Legal Citation Form: Theory and Practice

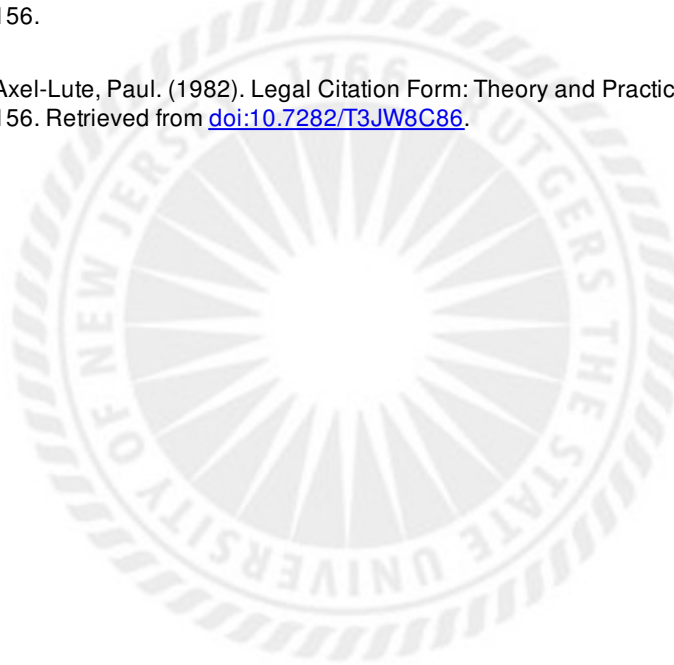
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LEGAL CITATION FORM: THEORY AND PRACTICE

Paul Axel-Lute*

The editions of *A Uniform System of Citation* are customarily identified by their physical characteristics. After several editions of "Bluebooks," so called because of the color of their covers, there was the infamous white cover of the eleventh edition. Just when most of us had learned to say "Whitebook" instead of "Bluebook," out came the twelfth edition—blue again.

The distinguishing feature of the thirteenth edition is that it does not fit in your hip pocket. The earlier editions were so compact because their citation examples were embedded in the text of the rules. The editors of the thirteenth have opted for readability: they set off their examples from the text with plenty of space.

As to the rules themselves, there are some improvements and some preservation of previous defects. I shall discuss some of the rules in the light of theoretical and practical considerations. References to rule numbers are to the thirteenth edition (advance copy, 1981) unless otherwise noted.

PRINCIPLES OF CITATION FORM

A legal citation serves two purposes. First, it indicates the nature of the authority upon which a statement is based. Second, it contains the information necessary to find and read the cited material.

A number of principles are here set forth as a basis for a system of legal citation forms. Such a system may be seen as an attempt to achieve a balance among these principles, some of which must inevitably conflict.

Uniqueness. A citation should contain sufficient information to identify unambiguously the material cited.

Brevity. In order to save labor, time, and materials, a citation form should not be longer than necessary. No element should be included which does not serve some useful purpose. Corollaries: The most commonly cited sources should have the briefest forms. For the materials of a given jurisdiction, the forms used within that jurisdiction may be briefer than those used outside it.

Redundancy. Two kinds of redundancy are desirable: (1) A citation form should contain enough information to enable the cited material to be identified correctly even if there is an error in the transmission or transcription of the citation. (2) A citation should, if possible, include parallel references to two or more different sources for the same material to enable the reader to find it in the most convenient source.

Informativeness. A citation should contain the information that is most likely to be useful to the reader in understanding and evaluating the authority behind the statement supported by the citation.



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Dissimilarity among forms. The dissimilarity among citation forms of material likely to be cited in the same context should be maximized to minimize the possibility of confusion between similar forms.

Similarity to original. A citation form should be as close as possible to the full identifying information on the cited material. The writer should be able to determine easily the proper form having the material in hand. The reader should be able to recognize the meaning of the citation easily. A citation form should minimize the need to refer to tables or other tools in order to cite or to interpret a citation.

Logic. The elements of the citation should be in an arrangement which reflects the logical relationships of the attributes of the cited material.

Permanence. The information in a citation should be as permanent as possible, minimizing the need to revise the citation at a later time.

Readability/Transcribability. A citation should be expressible in different media: handwriting, typing, voice, machine-readable file.

Tradition ("stare citatis"?). Authority should be cited the way it has been cited previously, in order to avoid a confusing multiplicity of forms. Citation forms found on the cited material itself should be followed unless they are defective with respect to other principles.

Standardization. Given previous variation in forms, the writer should follow *A Uniform System of Citation* or, at least, some uniform system of citation.

Simplicity of system. The system should minimize the number of separate rules to be learned and employ analogous forms for analogous types of material.

Honesty. The writer should cite the source that was actually used, rather than another source for the same material. This rule conflicts with rules establishing preferred sources, such as the rule to cite official sources in preference to unofficial.

BASIC PATTERNS

The basic pattern of most legal citations is a volume number and a page number separated by the abbreviation of a set. This pattern might be justified by the principle of brevity, since the alphabetic characters of the set abbreviation separate the two numerals without the need for spaces or punctuation, while any other order requires a punctuation mark or space to separate the volume and page numbers. However, the striving for brevity is not usually carried to such a typographic extreme, except in the columns of *Shepard's Citations*. The volume-set-page pattern violates the logic principle since it does not proceed from the most general to the most particular (set-volume-page). For case citations, the pattern is amply justified simply by tradition. However, when applied to monographs, it becomes awkward because of the length of the author's name and the title separating the volume from the page (or, as here, the section number):

21 C. Wright & K. Graham, *Federal Practice and Procedure* § 5023 (1977).

Are C. Wright and K. Graham perchance divided into volumes? For readability and logic, the preferable form would be

C. Wright & K. Graham, *Federal Practice and Procedure*, v. 21, § 5023 (1977).

with only a negligible increase in length.

Citation to the initial page only, as opposed to both first and last pages, also obviously serves the brevity principle. Presumably, the length of a case report or an article has little bearing on the strength of the case or article as authority. However, extremes of length can be indicative of extremes of detail of treatment, and length is

useful information for someone considering reading or photocopying the cited material.

CITATION OF STATUTES AND RELATED MATERIAL

Citing statutory law presents relatively complex problems—at least as compared to case law. A court opinion, once it is published in a bound volume, or even in the usual advance sheets, has a permanent citation. There may be parallel citations and subsequent history of the case to be added, usually not more than a few years later. After that, though the rule of the case may be modified, overruled, or superseded, the case report itself is never amended or repealed. The reports remain on the shelves (or perhaps in ultrafiche or, eventually, on magnetic tape), and the citation of the case remains unchanged.

In contrast, most statutes, at least most public general statutes, are published in two different forms: chronological session laws and subject-matter codes. (“Code” is used here in the broad sense, including both compilations and enacted revisions.) A session law citation, like a case citation, is essentially permanent. The codes, however, are continually updated by various means including looseleaf page replacement, annual cumulative supplements, replacement of individual volumes, and new editions of whole sets. Statutory sections are added, amended, revised, renumbered, and repealed. All of these changes make a difference in the citation.

The fundamental rule in citing statutes, according to rule 12.2.1, is to cite to the current subject-matter code rather than to the original session law publication. Official editions are preferred to unofficial, but no distinction is drawn between conclusive-evidence codes (enacted revisions) and merely prima-facie-evidence compilations—so long as there is no material difference between the latter and the conclusive-evidence session laws with respect to the language of the cited sections. (A different rule—always to cite to the conclusive-evidence source—has been espoused elsewhere.¹)

To cite to the current code makes sense, since the code is more widely available and more useful than the session laws. The routine exclusion of the session law citation, however, denies the reader a possible alternate source for the material.

The inclusion of the year of the code (rule 12.3.1), though it satisfies the honesty principle, is not very useful, especially when the citation is to an annual cumulative supplement. In 1982, the typical reader of an article written in 1977 will not be able to find the 1977 code pocket parts cited by the author because most holders of the set will have discarded them. The fact that a section was in a pocket part in 1977 does not assure that it will be in a pocket part in 1982. It may be in a 1981 replacement volume.

By comparing the cited supplement date with the dates of amendments as given in the current supplement or volume, the reader can figure out the last amendment that was taken into account by the writer. The same purpose could be served more directly by giving the session law citation of the last amendment parenthetically to the code citation, instead of the year of the code. When the amending law actually “revises” the section—that is, gives the full new text of the section (rather than mere instructions to add or change language)—giving such a parenthetical citation will also give the reader an alternate source for the cited material. The form used should be briefer than the form for an independent session law citation:

N.J. Stat. Ann. § 39:4-64 (as am. by L. 1981, ch. 143).

1. M. PRICE, H. BITNER & S. BYSIEWICZ, *EFFECTIVE LEGAL RESEARCH* § 32.5 (4th ed. 1979).

When the amending law does not include the full text of the cited material, it may still be possible to cite to a complete alternate source by including the session law citation to the original enactment or to an earlier amending law which did give full revised text:

14 U.S.C. § 211 (Pub. L. 88-130, § 1(10)(C), 1963, 77 Stat. 177, as am. by Pub. L. 89-444, § 1(11), 1966, 80 Stat. 196).

When there has been no amendment, one would simply cite the original enactment parenthetically:

N.J. Stat. Ann. § 39:4-66.1 (L. 1951, ch. 23, § 48).

If the section being cited is part of an enacted revision which was not published in the session laws and which is not in the current compilation, then a citation to the enacted revision would take the place of an original session law citation:

Iowa Code Ann. § 8.37 (Code 1924, § 129, as am. by Acts 1941, ch. 62, § 3).

Even a revision that did appear in the session laws may be cited as a separate source if it is widely available and known as such:

46 U.S.C. § 705 (R.S. § 4603).

The *Revised Statutes of 1873* did appear in the *Statutes at Large* as volume 18, part 1. The second edition, the *Revised Statutes of 1878*, is not properly part of the *Statutes at Large* but does appear in place of the first edition in at least one reprint set of the *Statutes at Large*. For any section which is identical in the two editions, it would seem simplest to omit the edition and year. If desired, an additional parenthetical citing the original source prior to the revision may be added:

46 U.S.C. § 705 (R.S. § 4603) (source: 1872, ch. 322, § 56, 17 Stat. 275).

The thirteenth edition has improved upon the twelfth in the rule for citing particular sections in session laws. While the twelfth edition (rule 12:3:3) called only for the page on which the act begins, the thirteenth (rule 12.4) calls for the initial page of the act and the specific pages of the cited sections:

National Environmental Policy Act of 1969, Pub. L. No. 91-190, § 102, 83 Stat. 852, 853-54 (1970).

The thirteenth edition has, however, preserved an illogical form for a session law amending a prior act. Rule 3.4 distinguishes the amending act's sections from the amended act's sections by use of the abbreviation (sec.) and the symbol (§) respectively:

Labor-Management Relations Act, ch. 120, sec. 101, § 8(a)(3), 61 Stat. 136, 140-41 (1947).

Although this form follows the physical sequence of section numbers in the amending law, it is not true to the logical relationship between the numbers, which would be made clear by either of the following forms:

National Labor Relations Act, § 8(a)(3), as amended by Labor-Management Relations Act, 1947, ch. 120, § 101, 61 Stat. 136, 140-41;

or

Labor-Management Relations Act, 1947, ch. 120, § 101, 61 Stat. 136, 140-41 (amending National Labor Relations Act, § 8(a)(3)).

(In both cases, the year 1947 has been moved because it appears as part of the official short title.)

The use of the symbol § in any citation decreases its transcribability since not all typewriters have that symbol and not all persons are adept at handwriting it. Although one can make the symbol with a typewriter by superimposing upon a lower case *s* another lower case *s* raised slightly above the line, it would be simpler to adopt the British practice of using *s* as the abbreviation for section.

The inclusion of the publisher or editor of an unofficial current code (rule 12.3(d)) is one of those luxuries of citation affordable only in writing done outside the jurisdiction of the cited code—except possibly in those jurisdictions with two or more competing unofficial codes. Thus, it may make sense to specify West or Deering in California and McKinney or Consol. in New York, but no one in New Jersey should bother to add West to an N.J.S.A. citation—nor should they, or do they, bother to write it as N.J. Stat. Ann. And there is not much point anywhere in the United States in adding West to a U.S.C.A. citation or Law. Co-op. to U.S.C.S.

Current court rules, according to rule 12.8.3, are to be cited without any date and without any source:

Fed. R. Civ. P. 12.

The rationale for this rule, one may surmise, is that the current rules are found in a multiplicity of sources and that current rules are generally cited “in briefs and memoranda intended to be used for a very short time” (the words of rule 12.8.1 allowing citation to the Internal Revenue Code without year or publisher, in such briefs and memoranda only). This does not seem like an adequate form of citation for inclusion in a law review article, the reader of which a few years hence may wish to know just what version of the rules was being cited. A court rule citation, like a statutory citation, should indicate its latest amendment:

Fed. R. Civ. P. 12 (as am. Feb. 28, 1966).

Since there are so many sources in which to find the federal rules (including West pamphlet editions, *U.S.C.A.*, *U.S.C.S.*, *Moore's Federal Practice*, *Wright & Miller*, and the *Cyclopedia of Federal Procedure*), it does seem unnecessary to provide a source in the citation (just as one provides no source for the Constitution), unless perhaps when citing to a recent amendment not yet found in all the sources or a District Court's local rule found only in a couple of sources. However, those court rules which are legislative enactments should have a parenthetical session law citation, both to make the reader aware of their legislative nature and to give the reader an alternate source:

Fed. R. Evid. 612 (Pub. L. 93-595, 1975, 88 Stat. 1936).

N.J. R. Evid. 28 (L. 1960, ch. 52, § 22, codified at N.J. Stat. Ann. § 2A:84A-22).

The rules for citing the *Code of Federal Regulations* and the *Federal Register* are basically and appropriately analogous to those for the *United States Code* and the *Statutes at Large*. However, the various kinds of material appearing in the *Federal Register* require distinctions more precise than those offered by rule 14.2. The parenthetical phrase “to be codified at . . .” should be used only for final rules in the *Federal Register* which add new sections to the *Code of Federal Regulations*:

46 Fed. Reg. 48910 (Oct. 5, 1981) (to be codified at 16 C.F.R. §§ 3.81-.83).

Final rules which amend or revise existing C.F.R. sections should say “amending” or “revising” in the parentheses:

46 Fed. Reg. 48910 (Oct. 5, 1981) (revising 16 C.F.R. § 1.21).

A proposed new part or section should be indicated thus:

46 Fed. Reg. 48943, 48948-50 (Oct. 5, 1981) (proposed rules 12 C.F.R. §§ 210.11-01 to -03).

The form suggested by rule 14.2,

45 Fed. Reg. 45,303 (1980) (to be codified at 10 C.F.R. pt. 20) (proposed June 23, 1980),

gives the false impression that the cited text will definitely be codified and that the proposal date is mere background information. A proposed revision of an existing section would be cited:

46 Fed. Reg. 48940 (Oct. 5, 1981) (proposed revision of 12 C.F.R. § 701.2).

Four- or five-digit page numbers are clearer without a comma between the thousands digit and the hundreds digit, because such commas may be confused with the comma between the page numbers in a pinpoint cite. This pertains to *Congressional Record* citations as well as to *Federal Register* citations.

Because of the great length of the *Federal Register*, it makes sense to include the full date in citing it, not just the year, as a redundancy insuring against page number error and as a simple aid in locating the material. This reasoning also pertains to the *Congressional Record*, even in the bound edition.

For the sake of brevity, it would make sense to follow the official practice of using F.R. instead of Fed. Reg. for the *Federal Register*.

Since regulations change on the average faster than statutes and since the whole *Code of Federal Regulations* is revised annually, a parenthetical *Federal Register* citation for the latest revision would be more useful than the year of the *C.F.R.* edition, for the same reasons that a parenthetical session law citation is preferable to the year of a statutory code:

24 C.F.R. § 201.4(a) (as revised by 46 F.R. 44444, Sept. 4, 1981).

This form is very similar to that which one would use under *A Uniform System of Citation* if the latest edition of 24 *C.F.R.* were the April 1, 1981, revision:

24 C.F.R. § 201.4(a) (1981), *as amended by* 46 Fed. Reg. 44,444 (1981).

Why not use the first form above in both cases—that is, whether or not the latest amendment has been incorporated in the latest edition of the code?

The rule for citing Presidential documents (rule 14.5.1) is not based on the way these materials are presently published. The example given under that rule is:

Exec. Order No. 11,609, 3 C.F.R. 308 (1974), *reprinted in* 3 U.S.C. § 301 app. at 272-74 (1976).

The 3 C.F.R. 308 (1974) refers to an obsolete "Chapter IV—Codified Text of Selected Presidential Documents" in the edition of Title 3 of the *Code of Federal Regulations* (revised as of January 1, 1974). Since 1976, the annual editions of 3 C.F.R. have not included any "codified text of selected Presidential documents." Instead, each edition includes a compilation of all Presidential documents issued during the previous year. There are also five-year compilations. The texts in the annual and five-year compilations are not amended texts. The Office of the Federal Register has published two editions of a separate *Codification of Presidential Proclamations and Executive Orders*, in which the amended texts of documents are ar-

ranged in subject-matter chapters. In the first edition, in 1977, the Office indicated a plan for annual publication, but the second edition did not appear until 1981. In the foreword it is stated that this publication "is an editorial codification . . . and is not intended to be used as a definitive legal authority."

In order to refer to two official sources for the complete amended text of Executive Order 11,609, while otherwise following the patterns of *A Uniform System of Citation*, one could cite as follows:

Exec. Order No. 11,609, Codif. Pres. Proc. & Exec. Ord. 659 (1961-1981),
reprinted in 3 U.S.C. § 301 app. at 272-74 (1976) & 113 (Supp. IV 1980).

Writers who are not familiar with the *Codification* might assume that rule 14.5.1 means they should cite to the annual and five-year C.F.R. compilations of Title 3. In order to refer to two sources for the complete amended text, one might try:

Exec. Order No. 11,609, as amended by Exec. Orders Nos. 11,713, 11,779,
12,215, 3 C.F.R. 586, 763, 863 (1971-1975 Compilation) & 257 (1980 Compila-
tion), reprinted in 3 U.S.C. § 301 app. at 272-74 (1976) & 113 (Supp. IV 1980).

Considering the uncertain revision schedule of the *Codification*, its nondefinitive character, the unfamiliarity of the legal community with the *Codification*, and the fact that the amended texts of most executive orders appear not only in *U.S.C.* but also under the same sections in *U.S.C.A.* and *U.S.C.S.*, perhaps one would do best to cite first to *U.S.C.*, leading the reader to the amended text. To provide some redundancy while avoiding the confusion of the compilation dates, one could add a parallel citation to the original *Federal Register* publication. In keeping with the suggestion already given for citing codes, one should give the latest amendment rather than the code date. In the interest of brevity, "Exec. Order No." should be shortened to "E.O." or at least to "Ex. Ord." Also, "note" is better than "app." because it avoids confusion with the actual "Appendices" of some titles of *U.S.C.*:

E.O. 11609, 3 U.S.C. § 301 note, 36 F.R. 13747 (1971), as am. thru E.O. 12215,
45 F.R. 36043 (1980).

This form does leave some burden on the reader to find the exact page at which the order appears among others following the given code section. A page citation, however, would be good only for a particular edition of the code.

What is really needed is not just a better citation rule but a better form of promulgating and publishing Presidential documents. The *Codification of Presidential Proclamations and Executive Orders* (1961-1980) should be transformed, with the help of the White House staff, into a true *Code of Presidential Orders (C.P.O.)*, which could contain the amended texts of *all* proclamations and executive orders of continuing effect still in force. The *C.P.O.* could be arranged in titles and sections like the *U.S.C.* and the *C.F.R.* and would be cited analogously to those codes. The *C.P.O.* could be promulgated by the President as a revision, revoking all the earlier documents from which it was compiled. From that point on, any new Presidential order which was to be of continuing effect would be phrased as an amendment of or addition to the *C.P.O.*

The administrative codes and registers of the various states are not specifically mentioned in the text of the thirteenth edition but do show up in the appended jurisdictional tables. It appears that the general rule is to use the uniform abbreviations "Admin. Code" and "Admin. Reg." regardless of the actual title of the publication. For example, the *New Jersey Register* is cited as "N.J. Admin. Reg."

and the *Missouri Code of State Regulations* is cited as "Mo. Admin. Code." This rule is presumably intended to make clear the administrative nature of the material being cited. However, it violates the basic principle of similarity to original title and increases the divergence of the national standard from local citation practice.

The thirteenth edition has unfortunately preserved one of the most misleading and confusing rule statements of the twelfth: that on United States treaties (13th ed. rule 19.2.4, 12th ed. rule 15:1:2). *Statutes at Large* (Stat.) and *United States Treaties and Other International Agreements* (U.S.T.) are characterized as "official sources." *Treaties and Other International Acts Series* (T.I.A.S.), *Treaty Series* (T.S.), and *Executive Agreement Series* (E.A.S.) are referred to as "State Department sources." The rule is to cite one of each. Actually, T.I.A.S., T.S., and E.A.S. are just as official as Stat. and U.S.T., and U.S.T. is a State Department publication. The T.I.A.S., T.S., and E.A.S. designations are similar to Public Law numbers. The current series, T.I.A.S., appears in slip form, as do the Public Laws. The bound version, U.S.T., retains the T.I.A.S. numbers, just as Stat. retains the Pub. L. numbers. (Unfortunately, the T.I.A.S. slip treaties do not include their ultimate U.S.T. pagination, in the way that slip Public Laws include Stat. pagination.) Moreover, most libraries will not have any separately bound sets called T.I.A.S. or T.S. or E.A.S. The citation pattern for treaties should therefore be similar to that for session laws:

Partial Revision of Radio Regulations, Nov. 8, 1963, Additional Protocol,
T.I.A.S. 5603, 15 U.S.T. 887.

For pre-1950 treaties, a parallel citation should be given to Bevans,² the definitive reprint:

Treaty on Commerce & Navigation, Dec. 3, 1938, United States-Iraq, T.S. 960,
art. III, para. 2, 54 Stat. 1790, 1792, 9 Bevans 7, 9.

The *Consolidated Treaty Series*, edited by Clive Parry, is the most comprehensive source for treaties of the period 1648 to 1918. As such, it should have an abbreviation more akin to its title than the "Parry's T.S." contained in rule 19.2.4—obvious possibilities being "C.T.S." and "Consol. T.S."—unless we accord Parry the same honor as Bevans and cite by his surname only.

The form for citing federal bills (rule 13.2) fails to provide for different versions with the same bill number in the same Congress. An easy way to distinguish most such different versions would be to include in full the latest date given on the face of the bill. It would also be informative to add an explanatory parenthetical if the cited version is other than the version originally introduced. If the date of the action referred to in the parenthetical is different from the latest date on the face of the bill, the date of the action should be included in the parenthetical:

H.R. 8336, 95th Cong., 1st Sess., § 101 (July 14, 1977);
H.R. 8336, 95th Cong., 1st Sess., § 101 (Sept. 8, 1977) (as reported by House
Comm. on Interior & Insular Affairs);
H.R. 8336, 95th Cong., 1st Sess., § 101 (Feb. 20, 1978) (as passed by House
Feb. 14);
H.R. 8336, 95th Cong., 2d Sess., § 1 (May 12, 1978) (as reported by Senate
Comm. on Energy & Natural Resources).

2. C. BEVANS, TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE U.S. OF AMERICA, 1776-1949 (U.S. Dept. of State 1968-76).

It should be noted that a bill passed by one house of Congress appears as an "Act" print when read and referred in the other house. The latest date on the face is different from the passage date, which is found at the end of the bill. The reported prints also bear on their faces the committee report numbers. It might be useful to include these in the parentheticals to the bill citations, but one must be careful not to mislead by seeming to say that the bill texts could be found in the reports.

For House resolutions, it would be less confusing to use the abbreviations found on the resolutions themselves (H. Res., H. Con. Res., and H.J. Res.) than those given by rule 13.2 (H.R. Res., H.R. Con. Res., and H.R.J. Res.). Similarly, House reports and House documents would be better cited "H. Rept." and "H. Doc." than "H.R. Rep. No." and "H.R. Doc. No." Conference reports should be identified as such and cited to the *Congressional Record*, if possible:

Conf. Rept. on S. 305, H. Rept. 95-831, 123 Cong. Rec. 38466 (Dec. 6, 1977).

The traditional (though no longer necessary) practice of including the Congress and session in the citations of all Congressional materials is continued in rule 13.4. But a repetition of the Congress number is avoided by dropping the Congress number from the report number, thus:

S. Rep. No. 797, 95th Cong., 2d Sess.

It would be simpler to cite by the official number:

S. Rept. 95-797.

In some contexts it might be useful to add the date and, possibly, the bill number:

H. Rept. 95-598, Sept. 8, 1977 (to accompany H.R. 8336).

CITATION OF CASES AND RELATED MATERIAL

Since case law is essentially simpler than statutory law in its forms of publication, and since the tradition behind case law citation rules is longer than that for statutory law, only a few suggestions are in order.

One suggestion is that a parallel citation to *American Decisions* (Am. Dec.) or *American Reports* (Am. Rep.) be given for any case therein that does not have a West regional citation. Even cases with an official citation and a West regional citation should also be cited to *American Law Reports* (A.L.R.) if found therein, not only because this may be a convenient source for some readers, but also because the reader is informed by this citation that there exists an annotation on the major point of the case, following the case in A.L.R., and because the selection of the case for inclusion in A.L.R. gives some indication of its more-than-local interest, at least in the judgment of Lawyers' Co-op. editors.

It would be useful to some readers to have the name of the judge included in the citation of a trial court opinion.

Since archival collections of briefs and records are often organized by docket number, that number should be included in citing such material.