Universal Citation Systems - Will Tinkering with the Future be the End of Reliable, Standardized Opinions

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Universal Citation Systems

Will tinkering with the future be the end of reliable, standardized opinions?

Several states have replaced the current case citation format, which pinpoints facts and reasoning within judicial opinions by page numbers, with one that locates them by paragraph. The shift is part of the change in how information is delivered—there are no page numbers on a computer screen.

The ABA Special Committee on Citation Issues is investigating the feasibility of a universal system, and, in a preliminary report, has endorsed adopting a paragraph-numbering format, while recommending parallel citations to print reporters until electronic case reports are in wider use.

Some predict that if page citations are no longer required, lawyers will be more likely to take opinions directly from electronic court bulletin boards than from print reporters.

That, however, would eliminate the benefits of having opinions edited by major publishers before they are widely disseminated, argues Robert C. Berring, a law professor and librarian at Boalt Hall Law School at the University of California at Berkeley, who has worked as a consultant for West Publishing.

Gary Sherman, a lawyer in Port Wing, Wisc., and former president of the State Bar of Wisconsin, which has its own proposal for a citation system that works for either electronic or print publication, says the quality issue is overstated.

Yes: Keep committees out and let market forces work

Good citation systems follow good information systems. When one develops a reliable, useful source of information, folks develop ways to cite to it. The information system comes first, the citation system follows. What is being urged here is the reverse. It is retrograde thinking applied to a time of fluidity and change. It is a bad idea.

For the past several hundred years, the printed page has defined our standard of information. It was especially good at doing so. The printed page of a book is a fixed, reproducible medium. Gutenberg's innovation of movable type allowed multiple reproductions from an original. Perfect copies of information could be distributed. Once one decided that a particular copy was authoritative, one could cite to it in any medium.

Producing an authoritative copy, however, is not easy. Why aren't there more official court reports? Because they are hard to produce. If you visit a publisher of high quality information—West or Lawyer's Co-op or LEXIS—you will see that getting it right is hard work.

Material is gathered, edited, cleaned up, standardized and vetted, and this is before editorial enhancements. These publishers earn our respect, we rely on them. Most states, and almost all of the federal courts, are not up to the effort and cost entailed.

Format-neutral citation is designed to benefit small publishers who can publish information quickly. They can pull down information off bulletin boards, repackage it with search engines and sell it cheaply. What will they be selling? Raw output of the courts.

Unless courts are willing to take responsibility for editing and quality control, the content can vary enormously. Who will clean it up? If the only citation is to the paragraph number and the court, then there will be no one, reliable copy to turn to. Variants may multiply. There will be good providers and poor providers. Information can no longer be taken for granted.

There is also the Tower of Babel danger. Today a lawyer can find a citation from any state. Format-neutral systems are growing in a variety of ways. Different systems for different places are already operating. We may lose the beauty of standardization that has made it possible for a Vermont lawyer to use Wyoming cites.

And if all of this brings down the West National Reporter System, as some have stated as a goal, we will lose our best centralized repository of information.

There is no doubt that we are in the midst of a revolution in legal information. A profound shift to electronic information is taking place. With calm and clear heads, we could allow the old world to evolve into the new. Electronic tools that will serve us better will develop and mature. Or we can stick our hand in the blender and mess up everything.

For me, this boils down to letting the forces of creativity and the market work, or asking committees to decide how change should come. There is always risk in following the first course, but there is almost certain disaster in embarking on the second. Change is coming, but let it come on its own terms.
No: Court bulletin boards pose no threat to quality

The objection to modernized citation on quality grounds would appear to be another red herring. The claim is that the print publishers act as final quality-control officers; also, that changing the process to attaching a citation at the time the opinion is issued would lead to a noticeable decrease in the authoritativeness of opinions.

Even if judges didn’t generally deny that the print publishers make significant editorial contributions to the final opinion, this argument does not hold up under examination.

Wisconsin, like many other states, already issues its opinions on an electronic bulletin board. These opinions are available to the public, along with the publishers, on the date of issuance. All that they lack is a citation. Once issued, they do not change significantly, except in rare cases. Even the publishers confirm that most of their suggestions are technical, concerning issues like the form of footnotes. These types of changes would not affect the paragraph numbers.

In the rare case where paragraphs need to be renumbered, the opinion could be reissued with a totally new citation, just as occasionally occurs now where major change is made after publication.

The real value that the publishers add to the product is in their editorial enhancements. In the print versions, these are the headnotes, references to other authorities, and other aspects of the finding aids necessitated by the print format. In electronic publication, the quality of the search engine is the source of value, since full-text searching obviates the necessity for relying on the editors for assistance in finding what is needed.

The Wisconsin proposal to modernize case citation has received almost universal praise and endorsement. Answering opposition to it, however, has been like trying to hit a moving target. Now that it is clear that the costs of implementation of an archive are insubstantial, we have this newly raised “quality” issue.

The Wisconsin proposal is very simple and straightforward: One, opinions are numbered by the clerk sequentially as issued, like session laws. Thus, the 16th Wisconsin Supreme Court case in 1997 would be 1997 Wis 16.

Two, pinpoint citations would be to paragraph numbers instead of page numbers. The paragraph numbers would be part of the opinion, embedded electronically by a computer program at the time of issuance. A citation to information in the 156th paragraph of the above case would read 1997 Wis 16, 156.

Three, an electronic archive of all cases issued after the effective date would be maintained by the court. This has been done, and the archive is duplicated on the State Bar of Wisconsin’s Internet home page at www.wisbar.org, with a good search engine for public access.

When change occurs in how legal materials are produced and published, the profession must respond appropriately in the best interest of bench, bar and public. Of what use is it to provide citations to opinions on the day of issue if the opinions will not have a citation for months afterward?