Universal Citation: The Fullest Possible Dissemination of Judgments

Jol A. Silversmith

Originally written as part of a team project on the future of online legal publishing for an interdisciplinary Harvard University class on Business and the Internet (April 1997); subsequently published in the (now defunct) Internet Legal Practice Newsletter (May 1997).

Introduction

The United States Supreme Court unanimously held, early in its history, that judicial opinions could not be protected by copyright:[1] "The Court could allow no impediment to the fullest possible dissemination of its judgments."[2] This ruling, however, did not prevent the standard form of legal citation, as later formalized in the "Bluebook" published by the Harvard Law Review Association,[3] from requiring that virtually all case citations include a pinpoint citation to a page number in a case reporter published by the West Publishing Company.[4]

West publishes the National Reporter System, federal court reports, some official state reports, jurisdictional digests, as well as provides an online system that offers access to all this and other legal information, Westlaw.[5] When the reporter system was established by John B. West in 1879, it enhanced access to court opinions; previously no centralized and comprehensive compilation of opinions existed for most courts.[6] But even before the dramatic growth of the Internet and the World Wide Web in the mid-1990s, many parties had begun to assert that legal citations should be made to case reports in the public domain if the law's public-domain status was itself to be meaningful.[7] Access to opinions has been described as part of the "common" to which the public is entitled; without a commonly usable system of case citation, a court opinion's "voice is silent, and its teachings are unheeded."[8] Indeed, John B. West wrote in 1909 that:

---

[1] *See* Wheaton v. Peters, 8 Pet. (33 U.S.) 591, 668 (1834). Ironically, the decision contributed to the current dilemma. Before then, state-appointed official reporters were prevelant, compensated for by sales of their reports. Afterwards, the commercial publishers were so much more efficient that by the early twentieth century many states discontinued the official reporters and insisted on citation to a reliable commercial publisher. *See* Kelly Browne, *Battle Erupts Over Citation Format,* **N.L.J.,** July 17, 1995, at C5.

[2] Craig Joyce, *The Rise of the Supreme Court Reporter: An Institutional Perspective on Marshall Court Ascendance,* 83 **Mich. L. Rev.** 1291, 1390 (1985), *quoted in* West Publishing Co. v. Mead Data Central, Inc., 799 F.2d 1219, 1240 (8th Cir. 1986) (Oliver, J., concurring in part and dissenting in part).

[3] Harvard Law Review Association, **The Bluebook: A Uniform System of Citation** (16th ed. 1996); *see* Kelly Browne, *Battle Erupts Over Citation Format,* **N.L.J.,** July 17, 1995, at C5.

[4] *See* Margie Wylie, *Court paper monopoly challenged* (last modified March 10, 1997) (http://www.news.com/News/Item/0,4,8627,00.html?dtn.head).

[5] *See* Kathy Shimpock-Vieweg, *Citation Reform: The Time Is Now,* **Ariz. Law.,** Aug./Sept. 1996, at 10.

[6] *See* Robert Berring, *On Not Throwing Out the Baby: Planning the Future of Legal Information,* 83 **Calif. L. Rev.** 615, 623-24 (1995).

[7] *See* Wendy J. Gordon, *A Property Right In Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property,* 102 **Yale L.J.** 1533, 1600 (1993).

[8] West Publishing Co. v. Mead Data Central, Inc., 616 F.Supp. 1571 at 1578 (D.Minn. 1985), *affirmed* 799 F.2d 1219 (8th Cir. 1986), *cert. denied* 479 U.S. 1070 (1987)

> The importance of an official citation for immediate use in text-books, digests, encyclopedias, etc., is perhaps not sufficiently realized . . . . The reporting number or universal citation being made a part of the title when the decision is filed, will attach and appear in any and all copies and all publications thereof. This makes the case easily found and permanently identified. All that is necessary is that all decision shall be consecutively numbered in the order in which them are rendered, and shall be reported and published in their numerical order . . . . In short, each case would be marked and identified unchangeably and unmistakably by one citation, authentic, universal and immediately available.[9]

But West currently has a de facto monopoly on the print and electronic databases of most United States court opinions, with correspondingly high prices.[10] The company has shielded the very page numbering system that makes its editions of opinions useful to lawyers and judges: West claims a copyright on the "selection, coordination and arrangement" of its reporters, in addition to the editorial enhancements it provides (e.g., synopses, headnotes, and key numbers).[11] The validity of West's copyright is currently under challenge. Based upon its preliminary holdings, a district court is expected to rule against West.[12] But the decision is certain to be appealed, and other courts have upheld the copyright.[13] Until recently only one company, Lexis-Nexis, ever was granted a license by West to use its page numbering system throughout opinions.[14]

In contrast, a public domain system of legal citation would not depend on West's page numbers, and thus, its proponents assert, facilitate the wider dissemination and publication of opinions. Because the state expects its citizens to act in accordance with its judicial opinions, the proper dissemination of case law is not only desirable but necessary.[15] The uniform citation system recommended by the American Bar Association (ABA) and many other parties instead would use sequential decision numbers, and internal paragraph numbers within each decision to identify pinpoint citations. The numbers would be assigned by the courts and included in a decision at the time it is made publicly available by the court. A public domain system of legal citation would thus, proponents argue, be equally adaptable to printed and electronic case reports.[16]

---

9 John B. West, *Multiplicity of Reports,* 2 **L. Libr. J.** 4, 4 (1909).

10 *See* James H. Wyman, *Freeing the Law: Case Reporter Copyright and the Universal Citation System,* 24 **Fla. St. U. L. Rev.** 217, 221 (1996).

11 *See* Kathy Shimpock-Vieweg, *Citation Reform: The Time Is Now,* **Ariz. Law.,** Aug./Sept. 1996, at 10.

12 *See* Matthew Bender & Co. and HyperLaw v. West Publishing Co., No. 94 CIV. 0589 (S.D.N.Y.), and Matthew Bender & Co. v. West Publishing Co., No. 95 CIV. 4496 (S.D.N.Y. March 12, 1997) (order granting summary judgment on pagination issue only), *available at* 1997 WL 117034.

13 *See, e.g.* Oasis Publishing Co., Inc. v. West Publishing Co., 924 F.Supp. 918 (D.Minn. 1996).

14 *See* John J. Oslund, *Debate rages over who owns the law,* **Minneapolis Star-Trib.,** Mar. 6, 1995, at 8A.

15 *See* Kelly Browne, *Battle Erupts Over Citation Format,* **N.L.J.,** July 17, 1995, at C5.

16 *See* American Bar Association, *American Bar Association Official Citation Resolutions* (visited April 12, 1997) (http://www.abanet.org/citation).

A Public Domain System of Legal Citation

The ABA committee assigned to evaluate a public domain system of legal citation recommended that every court number its decisions sequentially within each year, and that they number the paragraphs in each decision. A decision would be cited by stating the year, a designator of the court, and the sequential number of the decision. If pinpoint citation is required to specific material in the decision, the cite would include the paragraph number.[17]

Thus the citation for a (hypothetical) decision of a federal court of appeals would be:

<CENTER>Smith v. Jones, 1996 5Cir 15, para. 18, 22 F.3d 955. </CENTER>

where 1996 is the year of the decision; 5Cir refers to the United States Court of Appeals for the 5th Circuit; 15 indicates that this citation is to the 15th decision released by the court in the year; 18 is the paragraph number where the material referred to is located, and the remainder is the parallel citation to the volume, series, and first page in the printed West case report where the decision may also be found.[18]

By not relying upon West volume and page numbers, citations would not only be available the instant an opinion was released from the court, but also be more precise than current citations, and usable by any publisher in any format.[19] A public domain system of legal citation, proponents say, would be both vendor neutral, allowing smaller publishers to include citations on CD-ROMs or on the Internet,[20] and medium neutral, facilitating pinpoint citations to material in an electronic case report; it would rely not on its parallel location on printed pages in a bound volume but remain constant regardless of the format.[21] Thus, the system would be easy to use by the researcher, and provide a reader with certainty.[22]

Advocacy for a Uniform Citation System

Advocacy for a public domain system of legal citation first gained public attention in 1994, through parallel endeavors by various parties. On May 16, 1994, the Working Group On Government Information of the government's Information Policy Committee discussed a uniform citation system with representatives of the branches of the federal government, state courts, the information industry, and public interest groups.[23] The committee identified three needs for a uniform citation system: (1) an unambiguous way of locating decisions online, given that in the future market structures for disseminating legal information

---

[17] *See* Robert J. Ambrogi, *Internet Use Creates Call for New Citation System,* **Res Gestae,** April 1996, at 35-36.

[18] *See* American Bar Association, *American Bar Association Official Citation Resolutions* (visited April 12, 1997) (http://www.abanet.org/citation).

[19] *See* Kathy Shimpock-Vieweg, *Citation Reform: The Time Is Now,* **Ariz. Law.,** Aug./Sept. 1996, at 11.

[20] *See* Robert J. Ambrogi, *Internet Use Creates Call for New Citation System,* **Res Gestae,** April 1996, at 35.

[21] *See* Rita Reusch, *AALL Recommends New Citation Format* (visited April 12, 1997) (http:law.wuacc.edu/aallnet/citation.htm).

[22] *See* Gary Sherman, *A Simplified System of Citation,* **Missouri Law Bulletin,** March 1996, at 8-9.

[23] *See* Henry H. Perritt, Jr., *Public Information in the National Information Infrastructure: Report to the Regulatory Information Service Center, General Services Administration, and to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget* (visited April 12, 1997) (http://www.law.vill.edu/Fed-Agency/OMB/pub.info.NII/omb78.htm).

might be so competitive that citations to private forms would be unworkable;[24] (2) a uniform way of representing the substantive elements of a citation so that it easily could be processed by computers;[25] and (3) an internal citation system so that a person citing an opinion could, without invading proprietary interests, make pinpoint references to portions of a decisions.[26] The committee concluded that although previously the natural way to do this was to refer to page breaks and page numbers, in an electronic era this was an unsuitable means; page breaks, for example, depend on the output device.[27]

At the urging of the Center for Study of Responsive Law (CSRL) and the Taxpayers Assets Program (TAP), Ralph Nader organizations, a number of legal publishers, librarians, lawyers, and consumer groups met in Washington, DC on October 19, 1994, to determine if a consensus could be reached regarding a vendor neutral public domain citation for court opinions.[28] Using an e-mail list and two meetings in Washington several publishers agreed upon a system that uses paragraph numbers as the pinpoint citation, rather than the page breaks in the West paper volumes. West allegedly tried to disrupt the meeting, inviting dozens of people to attend at West's expense and object to the meeting and the agenda. West also took out four large ads in Washington Post to complain about the meeting. The West activities drew attention to the effort, however, and gave the then-obscure issue visibility.[29]

One of the most active advocates of citation reform, and the first party to resolve to call for a uniform system of citation, has been the State Bar of Wisconsin. On June 22, 1994, its Board of Governors adopted the report of its Technology Resource Committee, advocating a public domain system of legal citation.[30] The report held, as later did the ABA, that citations should be vendor and media neutral, neither favoring any particular private publisher, nor any particular medium.[31] Likewise, the report noted that the issue was of increasing importance as problems revolving around official citation, authoritative copies, and copyright claims in page numbers impeded the availability of legal materials on the Internet.[32] New computer technologies, the committee noted, make it practical to provide case law to the courts, the Bar, and the public more effectively and less expensively than from books alone;[33] the report held that "[o]ur

---

[24] *See id.*

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] *See* James Love, *Public Domain Cite Letter from UPD* (visited April 12, 1997) (http://www.essential.org/listproc/info-policy-notes/0249.html).

[29] *See* James Love, *Free the Law Struggles - a background* (visited April 12, 1997) (http://www.essential.org/listproc/info-policy-notes/0148.html).

[30] *See* State Bar of Wisconsin, *Technology: Citation Reform* (visited April 12, 1997) (http://www.wisbar.org/trci.htm).

[31] *See id.*

[32] *See id.*

[33] *See* State Bar of Wisconsin Technology Resource Committee, *Proposed Citation System: Report to Board of Bar Governors* (last modified June 30, 1994) (http://www.law.cornell.edu/papers/wiscite/wiscite.overview.html).

goal is to establish a foundation that will allow the adoption of new technologies, but still support present technologies such as books."[34]

The American Association of Law Libraries (AALL), an organization of 5000 court, academic, firm and corporate librarians, also saw the rising need for a uniform system of citation. A Task Force on Citation Reform was appointed by AALL President Kay Todd in the Spring of 1994, prompted by the accelerating pace of electronic legal research and electronic dissemination of court opinions. After soliciting comments from the membership and outside organizations and individuals, it issued its report and recommendations to the Executive Board on March 1, 1995.[35] The task force concluded that a requirement of citation to physical volumes and page numbers was anomalous for researchers who access court opinions through online, CD-ROM database services, or the Internet.[36]

To pre-empt a proliferation of alternative citation formats that at best would be chaotic, the AALL Executive Board proposed its own uniform citation system on July 18, 1995,[37] as well as established a standing Committee on Citation Formats to monitor developments and serve as a liaison to other parties, such as the ABA, the United States Department of Justice (DOJ), states, and the editors of the "Bluebook."[38] As did the Wisconsin Bar,[39] the AALL proposed the national use of a vendor neutral, media neutral system, specifically recommending that: (1) citation forms should include case name, year of decision, court, opinion number and, where a pinpoint citation is needed, paragraph number;[40] and (2) all jurisdictions should number their decisions by paragraphs and allow citations of paragraph numbers.[41] The AALL system has been the model for many of the systems developed by state courts.[42]

The American Bar Association was a relatively late arrival to the issue, but its influence as the national professional association for lawyers is profound. The ABA first took up this issue at its 1995 annual meeting. But rather than decide it, the Board of Governors appointed a committee to consider how to bring citation in line with the growing availability of cases on the Internet and computer bulletin boards.[43] The ABA's Special Committee on Citation Issues released its draft report on March 18, 1996, and Final Report

---

[34] *Id.*

[35] The report also included dissenting opinions by Donna M. Bergsgaard and William H. Lindberg on behalf of the West Publishing Company and by Frederick A. Muller. An adaptation of Bergsgaard and Lindberg's opinion was published as *Case Citation Formats in the United States: Is a Radical New Approach Needed?,* 23 **Int'l J. Legal Info.** 53 (Spring 1995).

[36] *See* Rita Reusch, *AALL Recommends New Citation Format* (visited April 12, 1997) (http:law.wuacc.edu/aallnet/citation.htm).

[37] *See Proceedings of the 88th Annual Meeting of the American Association of Law Libraries Held in Pittsburgh, Pennsylvania, July 18-19, 1995*, 87 **Law Libr. J.** 694, 700-08 (Fall 1995).

[38] *See* Rita Reusch, *AALL Recommends New Citation Format* (visited April 12, 1997) (http:law.wuacc.edu/aallnet/citation.htm).

[39] *See id.*

[40] *See Law Library Group Airs Citation Changes*, **N.Y.L.J.,** Aug. 29, 1995, at 2.

[41] *See id.*

[42] *See* Kathy Shimpock-Vieweg, *Citation Reform: The Time Is Now,* **Ariz. Law.,** Aug./Sept. 1996, at 11.

[43] *See* Robert J. Ambrogi, *Internet Use Creates Call for New Citation System,* **Res Gestae,** April 1996, at 35.

and Recommendation on May 23, 1996.[44] As described previously, it recommended a system similar to that proposed in Wisconsin and by other parties. A notable difference, however, was that it adopted a more middle ground position,[45] recommending the use of parallel cites to West volumes and pages during the transition to electronic court decisions.[46]

On August 6, 1996, the House of Delegates adopted the committee's resolution, co-sponsored by the Section on Litigation, the Tort and Insurance Practice Section, the Section on Science and Technology, the Massachusetts Bar Association, the State Bar of South Dakota, the State Bar of Wisconsin, the Atlanta Bar Association, the Milwaukee Bar Association, and the ABA Coordinating Commission on Legal Technology. The margin was approximately 85% in favor of the motion to 15% opposed.[47]

The Implementation of a Uniform Citation System

Today, only a handful of American courts use a public domain system of citation. The United States Court of Appeals for the Armed Forces, formerly the Court of Military Appeals, now numbers its paragraphs; the military's highest court is known for its technological innovation, having been was one of the first courts to permit cameras in the courtroom.[48] The 6th United States Circuit Court of Appeals in 1994 adopted an "electronic citation" system to be used as a parallel citation to West's Federal Reporter in its online case reports.[49] Foreign courts also have experience with such a system, such as in British Columbia and the Court of Justice of the European Communities.[50]

A number of states have their own uniform citation systems, although how they are implemented varies considerably, according to Pat Brumfield Fry, a member of the ABA's Special Committee on Citation Issues.[51] In Louisiana, the Supreme Court in 1993 issued an order requiring the use of a public domain

---

[44] *See* American Bar Association, *History of ABA Special Committee on Citation Issues* (visited April 12, 1997) (http://www.abanet.org/citation/history.html).

[45] *See* Robert J. Ambrogi, *Internet Use Creates Call for New Citation System,* **Res Gestae,** April 1996, at 35.

[46] *See* Kathy Shimpock-Vieweg, *Citation Reform: The Time Is Now,* **Ariz. Law.,** Aug./Sept. 1996, at 11. The ABA proposal would "strongly urge" courts to require parallel citations to commonly used printed case reports, until such time as "electronic publications of case reports become generally available to and commonly relied upon by courts and lawyers." The parallel cite should not include a pinpoint citation to the exact page of the quoted material, however. *See* Edward W. Adams, *ABA Urges Uniform Case Citation System for States*, **N.Y.L.J.,** Mar. 29, 1996, at 1.

[47] *See* State Bar of Wisconsin, *Technology: Citation Reform* (visited April 12, 1997) (http://www.wisbar.org/trci.htm).

[48] *See* Wendy R. Liebowitz, *Matthew Bender Wins A Battle, But Who'll Win Case-Cite War?*, **N.L.J.,** Dec. 9, 1996, at B18.

[49] *See* Robert J. Ambrogi, *Internet Use Creates Call for New Citation System,* **Res Gestae,** April 1996, at 35.

[50] *See* HyperLaw, Inc., *Meeting With Harvard Law Review Association, American Association of Legal Publishers, November 9, 1995, Suggested Revisions to the Sixteenth Edition, The Bluebook - A Uniform System of Citations* (last modified November 8, 1995) (http://www.hyperlaw.com/bluebk.htm).

[51] *See* Wendy R. Liebowitz, *Matthew Bender Wins A Battle, But Who'll Win Case-Cite War?*, **N.L.J.,** Dec. 9, 1996, at B18.

citation form, based on docket numbers, as a parallel to citations to Southern Reporter.[52] In South Dakota, the Supreme Court in 1995 adopted a rule, based on the work of the Wisconsin Bar, that requires citation to both a generic citation and the North Western Reporter.[53] Maine also implemented a neutral citation requirement as of January 1997.[54]

Others states have considered or will consider uniform citation systems. In Colorado, the Chief Justice of the Supreme Court issued a notice in 1994 that all appellate decisions would include paragraph numbering. The court later stopped numbering paragraphs itself, but continues to permit private publishers to do so.[55] In Wisconsin, the Supreme Court in 1995 declined to adopt the rule proposed by the state bar that would have required a uniform citation system, but decided to begin releasing opinions in electronic format and later re-evaluate the issue.[56] In November 1996 the general council of the New Jersey State Bar Association unanimously voted to recommend that its state Supreme Court adopt a uniform citation system. The Arizona and Tennessee bars are also petitioning their Supreme Courts to implement a uniform citation system, and Georgia's Committee on Automation and Technology to the state bar may present its recommendations this spring.[57] Other states have taken steps that would facilitate the introduction of a uniform citation system; Frederick A. Muller, New York's state reporter, has noted that the state has since 1991 had an electronic citation system that numbers every published decision in the state sequentially.[58]

A major step towards a public domain system of legal citation has been the updates in the sixteenth edition of the "Bluebook," the standard guide to legal citation,[59] that acknowledge the growing importance of the Internet and other electronic media. Rule 10.3.1 has been updated to provide and preference a public domain format of citation for cases.[60] Rule 12.5 also has been updated to provide a format for citing electronic databases as secondary sources,[61] and a new rule, rule 17.3.3, has been created for citing World Wide Web pages and other documents on the Internet.[62] These rules, however, do not solve all of the current problems of citation and introduce new ones. Rule 10.3.1, for example, mandates the use

---

[52] *See* Robert J. Ambrogi, *Internet Use Creates Call for New Citation System,* **Res Gestae,** April 1996, at 35.

[53] *See id.*

[54] *See* Wendy R. Leibowitz, *Watch Cost of Law Library Drop with CD-ROMs, Web and Online*, **N.L.J.,** Dec. 16, 1996, at B19.

[55] *See* Robert J. Ambrogi, *Internet Use Creates Call for New Citation System,* **Res Gestae,** April 1996, at 35.

[56] *See id.; In the Matter of the Amendment of the Supreme Court Rules: Electronic Archives of Appellate Opinions, Rules and Orders; Citation of Wisconsin Appellate Opinions - SCR 80.01 and 80.02,* Order #95-01, at 1.

[57] *See* Wendy R. Leibowitz, *Watch Cost of Law Library Drop with CD-ROMs, Web and Online*, **N.L.J.,** Dec. 16, 1996, at B19.

[58] Edward W. Adams, *ABA Urges Uniform Case Citation System for States*, **N.Y.L.J.,** Mar. 29, 1996, at 1.

[59] Harvard Law Review Association, **The Bluebook: A Uniform System of Citation** (16th ed. 1996).

[60] *See id.* at 61-62.

[61] *See id.* at 80-81.

[62] *See id.* at 124.

of a public domain citation only if it is "official" and "available." Rule 12.5 does not define an "electronic database." Rule 17.3.3 *cannot* be followed if a document is published on the World Wide Web; the rule instructs that web addresses should be enclosed between the symbols "<" and ">" - a style of notation that web browsers interpret as a Uniform Resource Locator (URL) address instruction and will not display on screen. Further, although recognizing the "transient nature of many Internet sources," rule 17.3.3 does not provide an adequate means to identify exactly what is being cited, nor does it actually provide any means of compensating for the transient nature of electronic documents.[63]

In addition, the development of a uniform citation systems that can be used for citing cases online is just the beginning, not the end, of the reforms necessary for citation to be adapted to an electronic era. Legal resources of all types are now or are becoming available online. The Supreme Court's decision in *ACLU v. Reno* is the first case in which a brief (from an *amicus* party) was submitted in an online style, on a CD-ROM.[64] A "Coalition of E-Journals" has created a system of citation for electronic law journals. This system would apply not only to online-only journals but also to text journals published online in parallel.[65] A handful of traditional law journals, such as the Cornell Law Review and the Florida State University Law Review, have embraced online publication.[66] Indeed, scholars have begun to question whether the physical law journal has a future. Associate Dean for Communications and Information Technology and Professor of Law Bernard J. Hibbitts of the University of Pittsburgh School of Law published "Last Writes? Re-assessing the Law Review in the Age of Cyberspace," an article considering such issues, online.[67]

As this essay is being written, the Judicial Conference of the United States Committee on Automation and Technology has begun to study whether the federal courts should adopt the form of official citation for court decisions recommended by the ABA, and what the costs and benefits of such a decision would be for the courts, the bar, and the public. After soliciting public input in March, a public hearing was held before a subcommittee on April 3, 1997.[68] Its recommendation will be heard by the full committee, and its recommendation in turn by the Conference.[69]

---

[63] Barry D. Bayer and Benjamin H. Cohen, *Pot Pourri: Desktop Notes, Custody Software, the Latest Bluebook, and the Death Of WLN*, **Law Office Technology Review,** Jan. 22, 1997.

[64] *See* Brief of Amici Curiae American Association of University Professors, et al. in Support of Appellees, Reno v. American Civil Liberties Union, 117 S.Ct. 554 (No. 96-511, 1997 WL 74396).

[65] *See* Coalition of E-Journals, *Citation Proposal: How to Cite to Electronic Journals* (visited April 12, 1997) (http://www.richmond.edu/~jolt/e-journals/citation_proposal.html).

[66] One article available online, James H. Wyman, *Freeing the Law: Case Reporter Copyright and the Universal Citation System,* 24 **Fla. St. U. L. Rev.** 217 (1996) addresses many of the same issues discussed in this essay.

[67] *See* Bernard J. Hibbitts, *Last Writes? Re-assessing the Law Review in the Age of Cyberspace* (last modified March 10, 1997) (http://www.law.pitt.edu/hibbitts/lastrev.htm).

[68] *See* Notice of opportunity to comment and of public hearing on the ABA Citation Resolution, 62 Fed. Reg. 8037 (1997).

[69] *See Transcript - Hearing, Automation Committee U.S. Judicial Conference re ABA Citation Proposal, April 3, 1997,* (last modified April 11, 1997) (http://www.hyperlaw.com/jctrans.htm). For up-to-date information on these proceedings, go to the HyperLaw Report (http://www.hyperlaw.com/hlreport.htm), an archive regularly updated with information and commentary about citation reform from HyperLaw, the federal government, and other parties.

Opposition to a Uniform Citation System

Despite the advantages of a public domain system of legal citation, it has not been immediately embraced, for a number of reasons. One is simply the Herculean task of convincing researchers, scholars, and practitioners that it would be an acceptable alternative to West. What lawyer would be so bold, one commentator asks, as to be the first to refer to the (hypothetical) 18th paragraph of the 15th decision of the 5th United States Circuit Court of Appeals as Smith v. Jones, "1996 5Cir 15, para. 18" rather than the familiar style of "22 F.3d 955 (5th Cir. 1996)"?[70]

Ingrained attitudes play a major role. Federal judges and their law clerks are provided with unlimited access to Westlaw and Lexis-Nexis at taxpayer expense, so the problems caused by the West monopoly on citations are not as evident; some judges think that there is no need at all for change from the status quo, and that it would be a costly burden to number opinions and paragraphs.[71] Indeed, some commentators have described the counting of paragraphs from the beginning of a case as "highly onerous," although admitting to a belief that "market forces will inexorably lead to this foolish consequence."[72] Many judges also do not believe that anyone but lawyers are interested in reading court opinions.[73]

Habit also plays a major role. One school of thought holds that lawyers' buying patterns are so established that practitioners will continue to buy and cite to West reporters, regardless of the availability of other publishers; some are still adjusting, shakily, to the third series of the Federal Reporter, F.3d.[74] In fact, as of 1995, 19 states had no official reporters, relying by law or in practice upon West to archive their decisions.[75] United States District Judge J. Owen Forrester, chair of the Georgia Bar's Committee on Automation and Technology as well as chair of Judicial Conference's Committee on Automation and Technology, expressed his concern as that the citations would not be "really a medium neutral system. . . . Can you imagine those cites on the spine of a book?"[76] But this resistance is not insurmountable; Forrester also has said that he is impressed with the populist argument that "the common law ought to be available to the common man," from pro se litigants to lawyers on tight budgets.[77]

A related argument is that the citation issue is moot, given the number of courts that are now posting their decisions online. All United States circuit court decisions are now available, as are a growing number of

---

[70] *See* Wendy R. Liebowitz, *Matthew Bender Wins A Battle, But Who'll Win Case-Cite War?*, **N.L.J.,** Dec. 9, 1996, at B18.

[71] *See*Wendy R. Leibowitz, *Watch Cost of Law Library Drop with CD-ROMs, Web and Online*, **N.L.J.,** Dec. 16, 1996, at B19.

[72] *See id.*

[73] *See id.*

[74] *See* Wendy R. Liebowitz, *Matthew Bender Wins A Battle, But Who'll Win Case-Cite War?*, **N.L.J.,** Dec. 9, 1996, at B18.

[75] *See* Robert Berring, *On Not Throwing Out the Baby: Planning the Future of Legal Information,* 83 **Cal. L. Rev.** 615, 633 n.66 (1995).

[76] Wendy R. Leibowitz, *Watch Cost of Law Library Drop with CD-ROMs, Web and Online*, **N.L.J.,** Dec. 16, 1996, at B19.

[77] *See id.*

other federal and state court decisions.[78] If lawyers come to rely mainly on electronic resources, so the argument goes, page numbers are just an on-screen distraction; why bother with the number West slaps on days after the case appears online?[79] But this does not explain what lawyers are to do so long as courts continue to in fact or in effect *require* West page numbers. Alan Sugarman, CEO of HyperLaw, Inc., further warns that opinions posted on the Internet are not to be trusted.[80] Some circuits, such as the 2d, 5th, and 8th, have not indicated if an opinion has been subsequently amended, and use the same file name for a separate opinion rendered in the case after remand.[81] "While pretty good privacy may be alright for encryption, it is insufficient to achieve 'pretty good accuracy' in the publication of a court opinion."[82]

Bills have been unsuccessfully introduced in Congress to require the acceptance of public domain citations. In 1992, Representative Barney Frank (D-MA) introduced H.R. 4426, which would have denied copyright protection to names and numbers used to identify judicial opinions and statutes.[83] The bill's supporters cited public policy concerns, contending that bill would result in inexpensive access to legal materials, but its opponents asserted that, in the long run, this could diminish the incentive of private publishers to produce compilations of legal materials, particularly materials with limited markets.[84] A hearing was held on the bill on May 14, 1992 but it did not emerge from the Judiciary Committee. In 1995, Frank introduced H.R. 1822,[85] which would have prohibited federal and state courts from requiring the use of copyrighted citations in court documents if alternatives exist.[86] Although a more moderate approach to reducing West's market advantage, this bill also failed to emerge from committee.[87]

---

78 *See* Legal Information Institute, Cornell Law School, *Judicial Opinions* (last modified Feb. 1, 1997) (http://www.law.cornell.edu/opinions.html).

79 *See* Wendy R. Liebowitz, *Matthew Bender Wins A Battle, But Who'll Win Case-Cite War?*, **N.L.J.,** Dec. 9, 1996, at B18.

80 Wendy R. Leibowitz, *Watch Cost of Law Library Drop with CD-ROMs, Web and Online*, **N.L.J.,** Dec. 16, 1996, at B19.

81 *Id.*

82 Bradley J. Hillis, *Considerations When Placing Court Opinions on the Internet* (June 4, 1996) (http://ming.law.vill.edu/vill.info.l.chron/hillis.html). This article also contains a review of the technical problems of placing court decisions online; *see also* Candace Elliott Person, Citation of Legal and Non-legal Electronic Database Information (last modified Oct. 21, 1996) (http://www.michbar.org/publications/citation.htm).

83 *See Copyright Legislation Debated*, 4 no. 7 **J. Proprietary Rts.,** July 1992, at 33.

84 *See id.*

85 "No State or Federal court, agency, or department, or other authority of a State or the Federal Government may require that, in documents submitted to such court, agency, department, or authority, a system of citation to State or Federal laws, regulations, judicial opinions, or administrative decisions be used in which copyright subsists, unless no other system of citation to such laws, regulations, opinions, or decisions exists." H.R. 1822, 104th Cong. (1995).

86 *See Proposed Bill Prohibits Use Of Copyrighted Legal Citations,* 7 no. 8 **J. Proprietary Rts.,** Aug. 1995, at 27.

87 *See id.*

Inherent Problems of a Uniform Citation System

Opponents of a public domain system of legal citation argue that it has inherent flaws that work against its adoption: For example: (1) cases would be difficult to find, because citations would not identify the source of the case report; (2) the conversion of cases and reporting systems would be costly; (3) case reports would lack integrity and reliability, in part because there would be no easy way for courts to revise or "de-publish" decisions; and (4) with each state free to adopt its own system, citations would become Balkanized.[88]

Not surprisingly, one of the strongest opponents of a public domain system of legal citation has been West.[89] West has made additional arguments against adopting a uniform citation system such as: (5) designing a new citation system would be a waste of taxpayer dollars;[90] (6) West has been providing uniform access to case law for over 100 years;[91] (7) the current citation system works well and is familiar to all legal researchers;[92] (8) free access to court opinions is available to the public at law libraries;[93] (9) a public domain system would result in less product innovation from the private sector, ultimately hurting the consumer;[94] (10) sufficient competition already exists in legal publishing;[95] and (11) the change will create the possibility of government censorship.[96]

Some opposition arguments have resonance - the process of assigning opinions paragraph numbers could be a burden on the courts, as likewise would be the conversion of old case law necessary to create a truly uniform citation system.[97] Indeed, publishers other than West have expressed concern about the costs of such an endeavor.[98] But some, such as West's argument that controversial cases could be removed from case law databases or from the citation process by extremists in Congress[99] seem

---

88 *See* Robert J. Ambrogi, *Internet Use Creates Call for New Citation System,* **Res Gestae,** April 1996, at 35.

89 In 1995, however, West assembled a surprisingly balanced bibliography of articles discussing case law citation issues. *See* Lori A. Hedstrom and Linda S. Feist, An Annotated Bibliography of Selected Articles Discussing Case Law Citation Issues (May 1995) (on file with author). *But see supra* text accompanying note 138.

90 *See* Kathy Shimpock-Vieweg, *Citation Reform: The Time Is Now,* **Ariz. Law.,** Aug./Sept. 1996, at 10-11.

91 *See id.*

92 *See id.*

93 *See id.*

94 *See id.*

95 *See id.*

96 *See id.*

97 *See* Kelly Browne, *Battle Erupts Over Citation Format,* **N.L.J.,** July 17, 1995, at C5.

98 *See* Myrna Barnet, *AALL Task Force on Citations Formats Final Report: Position Statement of Shepard's/McGraw-Hill,* March 1995, *available at* at 1995 WL 227833. But in practice, such fears have proved unfounded. In the 6th Circuit, inserting slip opinion page numbers or sequential case identification numbers has added little to the work of the court. *See* Susan Hansen, *Fending Off the Future,* **Am. Law.,** Sept. 1994, at 78.

99 *See* Kathy Shimpock-Vieweg, *Citation Reform: The Time Is Now,* **Ariz. Law.,** Aug./Sept. 1996, at 10-11.

implausible at best, as well as ironic given that West's misconduct has created just as if not more valid a concern that West might edit opinions unfavorable to itself out of its reporters.[100] While a uniform citation system should not be adopted without due consideration of the inherent problems that do exist in such a system, most of the depictions of these problems have made bogeymen out of stumbling blocks.

For example, in regard to finding cases, in an electronic age, locational citations are not inherent. While it is true that a universal citation system does not refer to an actual, physical source - what West calls a "nowhere cite" - this does not mean that users will not know where to look for it, nor will not be clear which source an author used.[101] The currently proposed system imagines the courts being the official repositories, a task made easy by he use of word processors and other relatively new technology; the definitive version of a case would originate from a court archive, to which all would have access. To create a different version, a provider would have to actively alter the opinion.[102] Even critics of reform have said that if a competitive market did develop the inability of a uniform citation system to point a reader to a specific source would not be objectionable.[103] And, in fact, even in states such as Arkansas and Washington - which still have official reporters and, therefore, non-proprietary citation systems - CD-ROM publishers are flourishing, and sole practitioners and small law firms are enjoying easier and less expensive access to case law than ever before.[104]

Furthermore, there is no inherent reason why information cannot reside in multiple locations; the challenge simply is to establish accuracy and authenticity. In the end, it will be up to those publishing legal decisions to provide the finding aids to assist in locating decisions based upon the inherent citation information.[105] That an appropriate source would be difficult to locate with the proposed citation system is not a fault of the citation form but rather of the current use of volume numbers that only signify how many volumes of a print reporter a publisher has released. The publishers could at least mitigate this problem by translation tables - as West provides tables today, for translating citation forms from those jurisdictions with official reporters to West's National Reporter System.[106] James Love, director of TAP as well as the Consumer

---

[100] For a series of articles on West misconduct, see Minneapolis Star-Tribune, West Publishing and the courts (visited April 12, 1997) (http://www.startribune.com/westpub/).

[101] *See* Kelly Browne, *Battle Erupts Over Citation Format,* **N.L.J.,** July 17, 1995, at C5.

[102] *See* James H. Wyman, *Freeing the Law: Case Reporter Copyright and the Universal Citation System,* 24 **Fla. St. U. L. Rev.** 217, 270 (1996).

[103] *See* Paul Axel-Lute, *Legal Citation Form: Theory and Practice,* 75 **Law Libr. J.** 148, 152 (1982).

[104] *See* Kelly Browne, *Battle Erupts Over Citation Format,* **N.L.J.,** July 17, 1995, at C5.

[105] *See* Alan D. Sugarman, *The AALL Citation Task Force Report: Consensus on Paragraph Numbering* (last modified July 16, 1995) (http://www.hyperlaw.com/cite1a.htm).

[106] *See* AALL Task Force on Citation Formats Final Report, at 58 (March 1, 1995), *available at* 1995 WL 227835. This line of reasoning, however, is in conflict with the proposition that a uniform citation system would be medium-neutral. Cases now are printed in the order in which edited versions are approved by judges, not in the order in which they were decided. If opinions are published in the order in which they are decided, however, print publishing could be delayed for weeks or months because opinion 10 could not be published until after opinion 9, which could be held up in editing by a judge. Alternatively, complex tables or binder notations would be necessary in order to locate a case in a printed volume. This would increase the cost of legal education and advice and discourage print publishing opponents argue - and would result in a reduction, not an increase, of public access to judicial opinions. *See* Kelly Browne, *Battle Erupts Over Citation Format,* **N.L.J.,** July 17, 1995, at C5.

Project on Technology (CPT) notes that "Congress numbers its own records, as do many other agencies. Why can't the courts? They're public documents."[107]

In regard to the costs of conversion, a public domain system of legal citation offers benefits for the public in the form of better and cheaper access to legal information. It is very expensive to buy high priced services like Westlaw, and a public domain citation would promote competition; the public likely would save even if the judiciary was required to invest additional time into drafting opinions and maintaining repositories of them.[108] Law libraries may not be a reasonable alternative; simply stated, there is a cost in traveling to law libraries, particularly if there isn't one close by, or one with unrestricted access, and even if there is time is still a premium.[109] Further, the federal judiciary and indeed all branches of government are large consumers of legal information. The prices they pay for these services also would be much less if the courts did a better job of disseminating court opinions.[110] Public archives need not provide a sophisticated search engine, leaving such value-added services to companies like West. [111]

In regard to West's historical performance and the reliability of the current citation system, even if the current system is not broken yet, it soon will be. Because printed reporters are the official cites, the electronic versions of a case have no official cite until the reporter is published, weeks or months later.[112] Already, only about 70% of decided cases are ever published in print.[113] Furthermore, the increasing number of parallel cites required not just by technology but the proliferation of reporters is cumbersome; even to the extent that competition exists, it is not a panacea.[114] In contrast, nothing about the new system is very cumbersome - the learning curve for the new style of citation is not steep.[115] As noted above, here would be costs involved, such as the courts maintaining authoritative archives. But many already have begun to do so.[116]

In regard to concerns that law would be "Balkanized," public domain systems of legal citation are already in common use, both in law and in other fields, and the format of such systems has been generally consistent. For two centuries, for example, there has been a widespread public domain citation system of

---

107 *See* Margie Wylie, *Court paper monopoly challenged* (last modified March 10, 1997) (http://www.news.com/News/Item/0,4,8627,00.html?dtn.head). West notes that the government is a notoriously slow and inefficient provider of information. *See* Kelly Browne, *Battle Erupts Over Citation Format,* **N.L.J.,** July 17, 1995, at C5. But if a public archive is implemented, the government might not be as slow in publishing cases; online cases would be "published" as soon as they were released. *See id.*

108 James Love, *History of ABA Special Committee on Citation Issues* (visited April 12, 1997) (http://www.essential.org/listproc/info-policy-notes/0249.html).

109 *See id.*

110 James Love, *Public Domain Cite Letter from UPD* (visited April 12, 1997) (http://www.essential.org/listproc/info-policy-notes/0249.html).

111 *See* Kelly Browne, *Battle Erupts Over Citation Format,* **N.L.J.,** July 17, 1995, at C5.

112 *See* Gary Sherman, *A Simplified System of Citation,* **Missouri Law Bulletin,** March 1996, at 8.

113 Lexis-Nexis, Marketing Positioning Statement Lexis-Nexis: Court Assigned Citation System (last modified February 9, 1995) (http://www.lexis-nexis.com/lncc/products/bulletins/020995.html).

114 *See* Gary Sherman, *A Simplified System of Citation,* **Missouri Law Bulletin,** March 1996, at 9.

115 *See id.*

116 *See id.*

legal citation: the citation systems for United States Supreme Court decisions and federal statutes. The federal government publishes relatively inexpensive public domain versions of those authorities United States Reports and United States Code); nevertheless, lawyers purchase comparatively expensive private-sector versions available from Lawyers Cooperative and West.[117] Furthermore, the use of paragraph numbering is a well-established citation technique. Paragraph numbering is used by lawyers to identify the text in court pleadings; appeals court judges often number the paragraphs of draft opinions, which go through several revisions.[118] Paragraph citation is used in references to the Bible, allowing great precision in citing chapter and verse, yet distinctive annotations.[119] The citation forms used in print reporters, in contrast, are products of nineteenth-century technology and ways of thinking; pages do not exist in cyberspace. The nearest analogy between the Internet and other forms of information dissemination are pre-printing press era scrolls.[120] Citations to scrolls took a simple form: the number of the scroll and the paragraph number of the material being cited.[121]

In regard to innovation, the current system in fact can be stifling. West initially resisted the creation of electronic databases. West did not introduce Westlaw until two years after the launch of Lexis-Nexis, and throughout the 1970s the online system was plagued with deficiencies such as prolonged search times and frequent interruptions.[122] Further, West's inertia bleeds over into the courts. Love asserts that "West has a lot of judges on its side. They've convinced them that numbering their own court opinions will create too much work for them."[123] But the paper-based legal publishing market is shrinking. The risk for West, some commentators say, is for West not to so recognize and change; like the last manufacturer of the buggy whip, the quickest way to go out of business is to have an increasing share of a decreasing market.[124]

In regard to competition, the outcome of a uniform citation system would likely not be confusion but rather the denial to West of its current broad advantage over any publisher at issuing, compiling, reformatting, and enhancing decisions for a profit.[125] The market did indeed anoint West as the favored resource for case law. Courts and the "Bluebook" followed suit. But these requirements, together with West's assertion

---

[117] *See* Christopher G. Wren and Jill Robinson Wren, *Letting a Thousand Citation Systems Bloom* (visited April 17, 1997) (http://www.abanet.org/lpm/newsletters/netwren.html).

[118] *See* American Bar Association, *Public Domain Cite Letter from UPD* (visited April 12, 1997) (http://www.abanet.org/citation/history.html)

[119] *See* Wendy R. Liebowitz, *Matthew Bender Wins A Battle, But Who'll Win Case-Cite War?*, **N.L.J.,** Dec. 9, 1996, at B18.

[120] *See* State Bar of Wisconsin Technology Resource Committee, *Proposed Citation System: Report to Board of Bar Governors* (last modified June 30, 1994).

[121] *See id.*

[122] *See* James H. Wyman, *Freeing the Law: Case Reporter Copyright and the Universal Citation System,* 24 **Fla. St. U. L. Rev.** 217, 232 (1996).

[123] *See* Margie Wylie, *Court paper monopoly challenged* (last modified March 10, 1997) (http://www.news.com/News/Item/0,4,8627,00.html?dtn.head).

[124] *See* Erik J. Heels, *The shakeout among online providers of legal information begins as more lawyers inevitably access the Internet* (visited April 12, 1997) (http://www.abanet.org/lsd/stulawyer/2-96online.html).

[125] *See* Kathy Shimpock-Vieweg, *Citation Reform: The Time Is Now,* **Ariz. Law.,** Aug./Sept. 1996, at 10.

of copyright in its reporter pagination, have skewed any "natural" market response to new citation forms.[126] If a market is to provide access to court opinions cheaply and easily to the public and attorneys, it should not set limits as to which format or version to cite.[127] In Louisiana, since the adoption of a public domain system, competition has increased, with new products such as CD-ROMs.[128]

In regard to censorship, one of the advantages (as well as disadvantages) of the Internet is that information cannot be so easily controlled as under a monopoly. Recently, New York lawyer Eugene R. Anderson launched a "vacatur center" on the web site of his firm, Anderson Kill & Olick, featuring "disappearing judgments" that have been in effect erased from law books and online services. Unfavorable rulings are frequently erased, Anderson charges, by generous settlements and the routine agreement of judges to vacate decisions. Even if judges continue to do so, however, the Internet will now provides a means by which to prevent such decisions from being forgotten, even if they will no longer be good law.[129]

An additional concern, raised by academics rather than businesses, however, is how a uniform citation system would influence legal thought. Professor Donald Dunn, law librarian at Western New England College School of Law, claims that citing to paragraphs could cause lawyers to lose their legal reasoning abilities: "It takes greater analysis to find the court's ruling in the traditional reporters."[130] Alternatively, if propositions in cases were cited by paragraph rather than by page number, the individual paragraph would take on a whole new importance in relation to the rest of the case; if authors knew that their work would be cited by paragraph number, they would write so that no one paragraph could be construed as being any more important than another.[131] Proponents counter that paragraphs are natural units of thought, and that it is more accurate to cite to a paragraph or series of paragraphs that contain a thought than to a page or pages; greater accuracy in the citation of case law would increase, rather than decrease, legal reasoning ability.[132] One would expect, proponents add, that attorneys would continue to analyze cases in their entirety when they cite to individual paragraphs, rather than merely matching smaller units of thought to the particular situation at hand.[133]

West Publishing and a Uniform Citation System

West should be concerned that citation reform might result in a significant loss of revenues.[134] Sugarman has asserted that the adoption of a uniform citation system would make HyperLaw and other vendors

---

126 *See* James H. Wyman, *Freeing the Law: Case Reporter Copyright and the Universal Citation System,* 24 **Fla. St. U. L. Rev.** 217, 271 (1996).

127 *See id.*

128 *See* AALL Task Force on Citation Formats Final Report, at 50 (March 1, 1995), *available at* 1995 WL 227835, *quoting* Thorne D. Harris III, *CD-ROMs--The New Basic Research Tool,* **La. B.J.,** Dec. 1994, at 381.

129 *See* Saundra Torry, *It's a Magical History Tour at 'Vacatur Center,'* **Wash. Post,** Mar. 10, 1997, at F7.

130 Anthony Aarons, *A Whole New Cite,* **Res Ipsa,** Feb. 8, 1995 at 4.

131 *See* Kelly Browne, *Battle Erupts Over Citation Format,* **N.L.J.,** July 17, 1995, at C5.

132 *See id.*

133 *See id.*

134 *See* Kathy Shimpock-Vieweg, *Citation Reform: The Time Is Now,* **Ariz. Law.,** Aug./Sept. 1996, at 10.

more competitive.[135] But commentators also have argued that West's protests and litigation betrays a lack of faith in the value of its other features, such as its summaries, keynote research system and editing, and underestimates the strength of the West trademark.[136] West does not appear to be in danger of going out of business, unless it entirely fails to adapt to the new electronic era.[137] Perhaps the largest stumbling block to the adoption of a public domain system of legal citation then is whether West decides that it is in its best interest to fight it or shape it.

West, however, seems to have adopted the worst possible course for both itself and the public: it has not spoken with one consistent voice.[138] West has stated that it supports an open rule, allowing the citation of any reliable source, and that the best medium neutral and vendor neutral citation is the docket number. West further has stated that it has "no objection to the exploration or suggestion of such schemes as alternative, but [opposes] exclusive citation forms."[139] Donna Bergsgaard, speaking as the manager of West's national reporter system, has said that even if a uniform citation system was adopted, her company "will be competitive, no matter what happens to citations";[140] lawyers will continue to rely on sources of case law that are corrected, updated and augmented with elements like headnotes that summarize the case.[141]

But West has also bitterly opposed even hints at the adoption of a uniform citation system. Following an announcement by Attorney General Janet Reno on September 14, 1994 that the DOJ would explore ways to improve public access to legal information, including the development of a non-proprietary system of citation and a public domain database of federal and state judicial opinions, Dwight Opperman, Chairman of West, sent out 6000 "Dear Fellow West Publishing Employee/Retiree" letters, asking them to write letters opposing the plan.[142] West also lobbied Congress intensely; one Senate staff member said that lobbyists claimed that a public domain system of legal citation would destroy West, and allow the Japanese to take over the legal publishing market.[143] West also opposed Wisconsin adopting a public domain system of citation.[144] Donna Bergsgaard here argued that in the first year such a system would

---

135 *See* Edward W. Adams, *ABA Urges Uniform Case Citation System for States*, **N.Y.L.J.,** Mar. 29, 1996, at 1. For more information on the business case for HyperLaw, see The Business Case for HyperLaw, Inc. (last modified April 16, 1997) (http://pw2.netcom.com/~jasilver/business.html).

136 *See* Wendy R. Liebowitz, *Matthew Bender Wins A Battle, But Who'll Win Case-Cite War?*, **N.L.J.,** Dec. 9, 1996, at B18.

137 *See* Kelly Browne, *Battle Erupts Over Citation Format,* **N.L.J.,** July 17, 1995, at C5.

138 *See* Alan D. Sugarman, *The AALL Citation Task Force Report: Consensus on Paragraph Numbering* (last modified July 16, 1995) (http://www.hyperlaw.com/cite1a.htm).

139 *See* West's Citation Policy Statement (October 10, 1994) (on file with author).

140 *See id.*

141 *See id.*

142 *See* James Love, *DOJ Antitrust Investigation of West Publishing* (visited April 12, 1997) (http://www.essential.org/listproc/info-policy-notes/0105.html).

143 *See id.*

144*See Attached is the brief West submitted to the Wisconsin Supreme Court at their hearing on March 21 concerning the public citation system* (gopher:essential.essential.org/00/pub/tap/Legal/westbrief) (last modified March 15, 1995).

impose costs of $195,000 on the state, and $155,000 for each subsequent year.[145] She also suggested that numbering by the courts would rush opinions into publication, or confuse slip opinions and final opinions, and discourage creative compilations.[146]

Again, some of the issues raised by West are legitimate. But the arguments it has put forward are rife with contradictions, and at times cross over into the realm of paranoia. "They are going to outlaw the West citation system because it is too accurate, too reliable and too efficient," Opperman has said.[147] He further has claimed that "[a]ny system that a court finds is reasonable, accurate or reliable ought to be allowed."[148] But the current proposals would not prohibit West cites - and indeed would require the courts to accept a wider variety of styles of citation than they do today.

TAP noted that it had no comment on "West's dire predictions of the impact of a 'campaign to nationalize legal information,' since the idea of nationalizing something as public as the law seems baffling."[149] The market is not the best means to establish a system of citation:

> T]he citation system is inherently monopolistic. If every publisher used its own citation system, everyone would have to subscribe to every publisher's products to locate case law. . . . A single authoritative citation has many obvious advantages, and in the absence of a public domain system of citations, whichever firm has the dominate market share will become the de facto standard

The Minneapolis Star-Tribune - a persistent critic of West - similarly denounced it for putting forward a "conspiratorial notion." West pioneered computer-assisted legal research, the paper recalled, but now wants to prevent the inevitable use of these new technologies, it said. "If West were smart, it would suspend its paranoid attacks on the Justice Department and continue to grow by maintaining and adding to the services that have become the industry standard."[150]

Indeed, West is likely to endure, and even prosper, under a public domain system of legal citation. West provides an important filter to correct errors and verify content. Cases, as well as other legal materials, are typically are rich with source cites and that have been checked for continued validity. If uniform citation system emerges, there may will be an explosion of inexpensive legal materials; some might be "Joe's Law Buks," filled with spelling and citation errors.[151] In such an environment, West would be a reassuring safe harbor.

---

[145] *See* Donna M. Bergsgaard and Andrew R. Desmond, *Keep Government Out of the Citation Business,* **Missouri Law Bulletin,** March 1996, at 5, *citing* Arthur Andersen, *Cost Study: Proposed Wisconsin Case Law Citation System* (March 1995).

[146] *See id.* at 1, *citing* Frederick A. Muller, AALL Task Force on Citation Formats Final Report, Dissenting Opinion, at 1 (March 1, 1995), *available at* 1995 WL 227835.

[147] *See* John J. Oslund, *Debate rages over who owns the law,* **Minneapolis Star-Trib.,** Mar. 6, 1995, at 8A.

[148] *See id.*

[149] James Love, *TAP responds to July 28 West letter* (visited April 12, 1997) (http://www.essential.org/listproc/info-policy-notes0093.html).

[150] *Cyber-justice; West fear of on-line changes groundless,* **Minneapolis Star-Trib.,** Oct. 16, 1994, at 26A.

[151] *See* Wendy R. Liebowitz, *Matthew Bender Wins A Battle, But Who'll Win Case-Cite War?*, **N.L.J.,** Dec. 9, 1996, at B18.

At the same time, a uniform citation system "would level the playing field, so people can compete on a value-added basis," says Cleveland Thornton, a Washington, D.C.-based sole practitioner. Many lawyers work with limited resources, especially the small firms and sole practitioners who provide more than half of legal services.[152] "I can see a market developing for high-end and low-end" court documents, similarly comments Charles R. Merrill, a partner at Newark's McCarter & English, and chair of the firm's computer and high-technology law practice group. "[T]here might be people who want more than what they can read in the newspapers" but who wouldn't mind the spelling and citation errors that West corrects before publication.[153]

An interesting overall contrast to West is provided by the position of Lexis-Nexis, long West's only licensee, on the desirability of a uniform citation system; Lexis-Nexis is on record as supporting a public domain system of legal citation. No doubt Lexis-Nexis would profit from no longer needing to pay license fees from West, but it would also have to make a substantial investment in updating its databases and, lacking many of West's value-added features, would be more vulnerable to competition. Nevertheless, in 1989 Lexis-Nexis told the Judicial Improvements Committee of the Judicial Conference of the United States that "[i]t is important for the future of legal publishing that permanent, unique identifying numbers be given to cases as they are decided by the courts."[154] A uniform citation system would, for example, Lexis-Nexis asserted, assist judges and court staff in performing their tasks because it would provide a means of initially, rather than post hoc, identifying opinions issued by the courts.[155]

West may be beginning to realize what its new role should be. West initially allowed the issue to be framed by its competitors and, when given opportunities to redeem itself in the court of public opinion, took a damn-the-public-opinion,-full-speed-ahead approach, defending its copyright and refusing to license.[156] But since its recent acquisition by Thomson, a Toronto-based publishing giant, West has agreed to license citations to its competitors, for fees which scale up to 9 cents per 1000 characters per opinion, per year.[157] After West issued a license to Juris for its Black Lung Reporter, Juris President Chuck Kitzen reportedly said that he was surprised at how affordable the West license was.[158] But this is only a first step; the licenses are worth a great deal to West, and were all but imposed on West as a condition of its merger by the DOJ. [159] CPT calculates that the present value of a license to cite a single year of federal opinions is approximately $500,000 - a high price to pay to simply avoid numbering opinions and

---

[152] *See id.*

[153] *Id.*

[154] Lexis-Nexis, Marketing Positioning Statement Lexis-Nexis: Court Assigned Citation System (last modified February 9, 1995) (http://www.lexis-nexis.com/lncc/products/bulletins/020995.html).

[155] *See id.*

[156] *See* Erik J. Heels, *The shakeout among online providers of legal information begins as more lawyers inevitably access the Internet* (visited April 12, 1997) (http://www.abanet.org/lsd/stulawyer/2-96online.html).

[157] *See* James Love, *Cost of the West Monopoly for Citing Federal Courts* (visited April 12, 1997) (http://www.essential.org/listproc/info-policy-notes0093.html).

[158] *See* Erik J. Heels, *The shakeout among online providers of legal information begins as more lawyers inevitably access the Internet* (visited April 12, 1997) (http://www.abanet.org/lsd/stulawyer/2-96online.html).

[159] *See* Harvey Berkman, *DOJ Files Brief that Supports Bender,* **N.L.J.,** Sept. 2, 1996, at A10.

paragraphs.[160] Further, commentators have suggetsed that West licenses in practice may not be available to vendors who make court opinions available on the Internet, in part because end users must sign licenses whose format is approved by West.[161] West also appears to be unsure at what pace change will occur (although in this it is by no means alone): Brady C. Williamson, a partner with LaFollette & Sinykin of Madison, Wisconsin, stated that West has no objection to a generic form of citation, as long as it directs researchers to an established citation also, as "[i]t could be a year, it could be 10 years" before electronic publications become so common that parallel citations are no longer necessary.[162]

Conclusion

Various proposals have been put forward as to how best to increase access to legal information and competition in the legal publishing industry. But the crux is this: So long as West has the power to prohibit other publishers from publishing without a license cases that provide West's internal page numbers, yet its page numbers remain the standard form of citation, there will be few if any successful new entrants to the market. If, however, the courts issue opinions utilizing a uniform citation system, any publisher will be able to release court opinions in any format. Public domain databases will provide legal researchers with a cheap, "no frills" version of case law, while publishers will be able to take this same material and provide all the "bells and whistles" possible and expected of value-added products.[163]

It may be true that the United States has the best legal information system in the world, so we should be wary of change.[164] But the current state of legal citation ignores the effects of the new electronic era.[165] Change must occur.[166] There are unknown quantities to any public domain system of legal citation. For example, if courts are to assume the responsibility for being the definitive source of case law, issues such as in what format they will provide the decisions, and what data search and manipulation capabilities they will provide, must be addressed.[167] But the merits of a uniform citation system have been subjected to inertia and even outright scare-mongering. Franz Kafka wrote that "the Law . . . should be accessible to every man and at all times."[168] Its citation system should not hinder this goal, unless in so doing the adjudication process would be compromised. In the beginning, West's system was crucial for the

---

160 James Love, *Public Domain Cite Letter from UPD* (visited April 12, 1997) (http:www.essential.org/listproc/info-policy-notes/0249.html).

161 *See id.*

162 Edward W. Adams, *ABA Urges Uniform Case Citation System for States*, **N.Y.L.J.,** Mar. 29, 1996, at 1.

163 *See, e.g.,* Kathy Shimpock-Vieweg, *Citation Reform: The Time Is Now,* **Ariz. Law.,** Aug./Sept. 1996, at 11.

164 *See* Robert Berring, On Not Throwing Out the Baby: Planning the Future of Legal Information, 83 **Calif. L. Rev.** 615 (Mar. 1995).

165 *See* Julius J. Marke, *Impact of Technology on Legal Citation Form,* **N.Y.L.J**., July 16, 1996, at 5.

166 An invaluable resource for tracking such change, such as the current proceedings before the Judicial Conference, is the HyperLaw Report (http://www.hyperlaw.com/hlreport.htm); the archive is regularly updated with information about and commentary about citation reform from HyperLaw, the federal government, and other parties.

167 *See* Christopher G. Wren and Jill Robinson Wren, *Letting a Thousand Citation Systems Bloom* (visited April 17, 1997) (http://www.abanet.org/lpm/newsletters/netwren.html).

168 Franz Kafka, **The Trial** 213 (Willa & Edwin Muir trans. 1988).

dissemination of the law. But that long ago ceased to be the case, even before the dawn of the Internet and the World Wide Web.

New technologies now provide an opportunity to break the cycle of dependence. West, like King Canute, cannot stop the tides; court opinions are quickly finding their way onto the Internet and CD-ROMs.[169] It seems inevitable that the print medium will cease to be the dominant medium for legal research. A new uniform citation system, vendor and medium neutral, would serve both mediums. But its success ultimately depends on the courts; not only would they have to assume a new duty, being the authoritative source for case law, but their acceptance of public domain citations is requisite for them to flourish. To date, the crucial actors have been entrepreneurs, like HyperLaw and the Wisconsin Bar. But now a crossroads has been reached, in the form of the Judicial Conference. Perhaps the best call to arms was provided by Love: "Now the ABA, the American Association of Law Libraries, the American Association of Legal Publishers, several state bar associations, TAP, and most independent experts agree - paragraph number plus a sequential number for opinions is the format for a new public domain citation system. We know what needs to be done. Now lets do it."[170]

---

[169] *See* James H. Wyman, *Freeing the Law: Case Reporter Copyright and the Universal Citation System,* 24 **Fla. St. U. L. Rev.** 217, 279-80 (1996).

[170] *See* Robert J. Ambrogi, *Internet Use Creates Call for New Citation System,* **Res Gestae,** April 1996, at 36.