

Citations

Out of the Box

Frank G. Bennett

2013

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for Mieko

In memoriam

*Marion Clarice Bennett
née Springer*

*Teacher, life-counsellor
and beloved mother*

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Foreword

by Lawrence Lessig^{*}

Law is expensive. And inefficient. And too often, an embarrassment. Literally — embarrassing. As a law professor and licensed attorney, I cringe when I start my Prius, and am told that I need to click “I Agree” in order to use my navigation system. Agree to what, I have no idea. Who has time to read such junk? Likewise with my iPhone, which in its latest incarnation instructs me to confirm that I have read and agreed to 68 pages of terms before I am permitted to make a telephone call. Obviously, no one does what everyone affirms they have done. Yet the law marches on, not really caring much that the world does not conform to the fictions it creates.

I don’t know why the obligation of efficiency has been lost in modern American law. I don’t know when we lost the Holmesian instinct to throw silliness away. But in domain after domain, lawyers tolerate the most ridiculous waste, because no one within the law seems tasked with the job of eliminating it.

Legal citation is a perfect instance of this more general flaw. The dominant citation manual, *The Bluebook*, is a brilliant embarrassment. Hundreds of pages long, with thousands of abbreviations, and convoluted rules specifying, among other things, typeface variations — the system seems designed to punish paralegals, or first year associates. Of course, it was not designed with those purposes. And it is maintained by smart and decent souls aiming to do the best they can. But whatever its virtues when invented, the system is an embarrassment in the 21st century. As anyone remotely familiar with the capabilities of modern information technology recognizes, the idea that humans spin brain cycles conforming to these rules is simply absurd. In 1974, things may have been different. In the days before computers, a complex reference manual may have made sense. But everything these citation manuals do computers could do better. The human brain was not invented/evolved/created (you pick) to waste its time with silliness like this.

This book launches a platform that could help end this injustice. By building and implementing an open source uniform citation method, Frank Bennett radically simplifies the process of citation, and encourages a generation of innovation on top of his own. With these tools, one can cite more simply today. And with the platform launched today, this process will only get simpler still. There will be a day when lawyers will no longer even remember that their legal education included memorizing when small caps versus italics was required, or how “legal” gets abbreviated.

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Getting to that day will not be simple. No doubt, there will be some who fight to preserve their particular bit of the inefficiency of today's system — sometimes because they can't imagine a better system, sometimes to preserve the rents the existing system gives them. We created uniform citation, these souls insist. We should have the right to control it.

But progress is the story of great innovations displaced. There was a time when credit card companies distributed weekly printed lists of stolen credit card numbers, and merchants compared a credit card to the pages on that booklet. Brilliant — for the time. But “common sense revolts at the idea,” to borrow from Justice Douglas, that the creator of that idea might have the right to block the same task being performed by computers. George Eastman's company, Kodak, delivered a high quality and inexpensive technology for capturing images on film. That innovation was destroyed by digital imaging. I'm sure there's a legal memo in the archives of Kodak exploring ways to block (or control) the technology that eventually killed that great company. I'm sure the authors of that memo are hopeful history never finds it.

The law is expensive. It should be cheaper. The law is inefficient. It should feel the obligation that every competitive business does to change, and become more efficient. No doubt citation is a small bit of the inefficiency of law generally. But if we can't fix this, then the enterprise has indeed become hopeless.

I am not convinced it is hopeless. To the contrary, I am very hopeful that lawyers everywhere will embrace the platform Frank Bennett has launched, and extend it in ways that improve the work it is intended to achieve: a simple and practically costless way to point at the source that provides authority for your claim. His is not the only effort. Others are trying as well. But that is precisely the competition this system needs, so that someday, this completely mindless task might be done by something other than human minds.