

To the Bag

That's apparently the conclusion that the experts at the conference in Schaumburg, IL, reached. The baffling thing is, if paper is such a good medium for preserving information, why all the hassle of creating an electronic version of digital information that's "as good as paper"? Sounds like paper is the paradigm Oh yeah, paper is a drag.

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YET MORE ON READING STATUTES

To the *Bag*:

John Townsend Rich is quite right (10 GREEN BAG 2D 419) to correct my footnote 9. To be sure, 24 of 49 titles, as he says (and not "a few", as I said), have been enacted into positive law. And yet they are mostly the smaller titles. Consider: You can download text files from uscode.house.gov. The files for the positive-law titles take up about 75 megabytes; the non-positive-law titles, about 225. And it's worse than that, because even in the positive-law files much space is taken up, in notes and appendices, by provisions that are not part of the positive-law titles. The actual ratio of positive-law text to non-positive-law text in the Code is probably something like 50:250. Nonetheless, I regret my error and welcome the correction. I also have no quarrel with most of Mr. Rich's other reflections, and thank him for adding them. (As for the Revised Statutes: They, too – the session law that enacted them, and the later session laws that have amended them – are in the Statutes at Large.)

But I disagree with the position that "For the enacted titles, unlike the unenacted titles, the Code language 'is' the enacted language" – not so, in the article I, section 7 sense (and for that reason it is a bit much to call them "enacted titles"). Scores of session laws have attempted to amend a positive-law title but failed to do so cleanly, requiring Law Revision Counsel to make a judgment about what Congress intended. Go to the search engine at uscode.house.gov and search for "probable intent of Congress": You

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will turn them up. (For more fun, search for “could not be executed”.) Title 5 has about forty; title 18 about sixty; title 28 about twenty; and so on. My statement – “the Statutes at Large is still the source from which these titles are prepared, so the Stat. text must still prevail over the U.S.C. text” – applies to these situations, does it not? (If not, then by what theory is Law Revision Counsel’s judgment not subject to judicial review? Does some novel extension of *Chevron* apply?) And I submit that if it applies there, it applies everywhere. The session laws always prevail; reading the session laws is always appropriate. But for *Lamie*, that is.

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