MULTIPLICITY OF REPORTS.

By John B. West.

No one who has to do with the profession in connection with the purchase or use of books, can fail to notice the continual complaint of increasing cost, of of shelf room, of confusing citations and other complications arising from multiplicity of reports. The problem presents itself in an increasingly serious way from year to year as the number of courts and the number of decisions continually increase.

It is said that the annual expenditure for current decisions is $500,000 more than it would be if the libraries and lawyers were not obliged to purchase the same case again and again.

Every unnecessary book or page of a book which is purchased and used must be shelved and preserved, and in many libraries, especially in the large cities, the question of shelf room is so important that anything which unnecessarily increases it is to be avoided.

When the same decisions are published in different form, at different times, and with different citations—the same case being cited in one book by one and in another by a different citation, and sometimes by different titles, the uncertainty as to whether the same case is referred to, and if the case is the same in the different publications, causes an immense amount of trouble and extra labor for the user. Sooner or later these conditions must change.

In 1874, when I began dealing with lawyers, there were no publications of all the current decisions except the official reports. Now in every state there are at least two; in many states there are three, and in at least one state there are four.

Only the official publication has the sanction of the state, and represents the court. All others are private enterprises, and only some of them claim to be substitutes for the official reports.

If the unofficial publications sought but temporary existence, perhaps no great harm would result. But, starting to furnish merely a copy of as yet unreported opinions, the publishers soon learn that by holding the type and printing the matter in book form they can manufacture, at low cost, an independent set to become a candidate for shelf space, use, and separate citation.

The daily records or journals which under various names are springing up in all our large cities develop into publishing all current local decisions with by-product weekly and permanent reporters.

Indeed this is practically the history of the so-called reporter system which at first did not claim to be a set of reports. The Northwestern Reporter (first called "The Syllabi"), was started by John B. West & Co., in 1876, as a means of furnishing the local practitioner with copies of all new decisions so promptly and cheaply as to save his buying certified copies. The publication was changed to book form in 1879; the original four volumes ignored, and the publication offered as supplying the need of an immediate publication of the decisions, and also as being a permanent substitute for the official reports.

Except for the delayed publication of the official reports, none of the unofficial publications would have come into existence. And where, as in some states, the official reports are as prompt as the unofficial publications, the latter have practically no sale.

It is unnecessary to inform you that nearly every practitioner in your state

keeps up his set of state reports. Although he may have purchased the unofficial publication for temporary use, he buys the official volumes as they appear because he knows he must have the authentic and permanent record of his local court. He knows that whenever the publications differ, the court will recognize the official and not the other. That there are such differences we all know. Their extent and frequency is a matter not to be considered at this time.

Prior to the appearance of the official volume the unofficial citation has been used and printed to such an extent as to make it seem desirable to keep the duplicate publication also. Consequently one has upon his shelves two or more publications of the same case where but one should be needed.

So far as the problem of the multiplicity of reports is caused by duplication of decisions in different publications, the solution seems to lie in making the publication of the official reports as prompt as the unofficial. That done, the unofficial publications will have fulfilled their chief mission. From the standpoint of a law-book man this does not seem difficult.

Advance sheets of the official reports are now published in some states, but with certain exceptions they are not sufficiently prompt because delayed to allow the reporter to finish his work. This is not necessary. The advance sheets need contain only the opinions with brief head-notes or indexes of the points decided. This will allow the reporter to take the time necessary to thoroughly prepare the permanent edition without preventing the use of official advance sheets in the interim.

There are two means of obviating this difficulty. One is, to supply the additional matter for the permanent edition in the form of an appendix in each volume. This would allow of the decisions being printed in the advance sheets with permanent paging. But users object to the necessity of turning to two parts of a book in studying a single case.

The alternative is to print the advance sheets with no paging, having first given each case a number available for citation purposes. This plan is simple, effective and does not even necessitate the discontinuance of the volume and page citation.

The importance of an official citation for immediate use in text-books, digests, encyclopedias, etc., is perhaps not sufficiently realized. These works must omit the cases not yet officially reported, or publish them without their official citations. In certain localities the profession demands that the unofficial citations shall be given. In the East the demand for the official citation is imperative, and in some states the use of others is absolutely forbidden.

Common experience has fixed upon the numerical system as perhaps the best and simplest method of keeping impersonal data. Viewed thus, does it not seem strange that courts which file and docket their pending cases numerically should not record their precedents in a similar way? Especially since this will enable any one having studied a case in any publication, or indeed in manuscript, to cite it as though it had already appeared in the official volume. 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 decisions shall be consecutively numbered in the order in which they are rendered, and shall be reported and published in their numerical order. The bound volumes of reports should bear appropriate labels showing the number of the first and last cases therein contained. The volumes may be paged according to the present method of paging, but the number of the case should also appear on each page.

When no opinion is filed or the opinion is withheld or withdrawn because re-

hearing is granted or for any other reason, the title of the case with its number should be printed in the reports in its proper numerical order, with a statement of why no opinion appears in connection therewith, and the subsequent decision when filed should receive a new serial number.

The result of this would be that every decision of the court would be accounted for and the searcher would know if there is anything in the files which is not in his reports.

This numbering system would make possible the use of an official citation in all those works of permanent character which must now either leave out the official citations or leave out the new cases not yet published in the official series. In short, each case would be marked and identified unchangeably and unmistakably by one citation, authentic, universal and immediately available.

The advent of the type-setting machine has made the matter of prompt printing a simple one. It is safe to say that in every Capitol there are several printing offices that could set up all the opinions filed at any one time, in less than 24 hours. The decisions of the Supreme Court of the United States are set and printed before they are filed.

Nor will the cost of advance sheets prove an obstacle. For it must be remembered that the chief item of cost is that of type-setting. But one setting of type is needed for both advance sheets and permanent edition. The cost of paper and press work for one thousand copies of 16 pages each would not exceed $7.00, and if the opinions were sent through the mail as a continuous publication at second-class rates, the postage would be only one cent per pound.

Within the limits of this article it is impossible to deal at length with the question of cost of reports. Usually the laws enacted by each session of the legislature are published by the State and either given away or supplied at cost. Even compiled laws and codes are sold in many states at nominal prices. It is hard to see why the State should be thus careful to place its statute law easily within the reach of all, yet permit the equally important law as laid down by the courts to become the source of large private gain. In passing it may be said that instances have not been wanting where the publication of this important law has been delayed that private interests might profit thereby. I have no hesitancy in saying it is possible for the decisions of all the courts to be placed on the desks of all interested therein within forty-eight hours, plus the time of carriage by mail, at a cost of not to exceed $1.00 for advance sheets and permanent volume.

The multiplicity of reports has naturally resulted in a corresponding increase in the number of digests necessary to be purchased. Thus to the expense and burden of two or more publications of the same decisions is added as many or more separate digests purporting to cover the same cases. For each publication and group of publications, official or unofficial, has its own digests and succession of digests, supplement being added to supplement until recompilation becomes necessary —or profitable.

The necessity of index or digest is apparent. "The reporters must have an index" was the initial announcement of the American Digest, and from it resulted the concrete paragraph, the pud system, the one point one place idea, and the fixed classification. Indeed many of the so-called text-books and encyclopedias owe their existence to the recognition of this need.

With few exceptions the law books of the past have been constructed, if not with eventual recompilation actually in mind, at least on a plan which makes recompilation absolutely unavoidable.

A digest to become permanent must not be a mere by-product of case heading.

I once visited a putty factory where, behind closed doors, they were grinding broken marble into powder to be used instead of whiting. On inquiring if it made good putty, the answer was, "It makes —— good money." To hold the type set for syllabus paragraphs and use it six times in different digests, makes good money.

A correctly written head-note paragraph may sometimes be used as a digest paragraph, but every digest, the paragraphs for which have been properly made from an original study of the cases, will contain much that can be found in no syllabus digest. And on the recompilation of digests made from head-notes, the publishers themselves will be found admitting that their former digests were not complete though sold as such. In a recent recompilation the first topic contains 20 cases, of which 13 are within the period covered, and 7 are cases omitted from the previous compilation, "found by checking and re-checking the reports." It follows that when this "extra syllabus" matter has accumulated, a recompilation becomes necessary.

Perhaps nothing has done more to prevent the permanency of digests than the false theory that cases and propositions dealing with changing conditions may be made to fit a rigid classification instead of permitting the classification to change gradually with the growth of the case law. The classification of today will be as inadequate in the future as the classification of the past is at this time. We no longer need such titles as Piracy, and our forefathers did not require such titles as Street Railways, Electricity, Telegraphs and Telephones, etc., etc.

Law is at all times an approximation of the ideals of justice then predominant. Each year has its peculiar public problems, and the current law is the solution which each year finds thereto. The next year finds new problems and new solutions of the old ones. A rigid permanent classification scheme is as impossible of attainment as the universal code.

The digester bound to a fixed classification soon finds himself sorely pressed to make certain cases "fit the classification." I remember three excellent digesters who spent an entire day in disagreeing as to whether seal fishery cases should be classified under the topic "Fish" or that of "Game" in the Digest Scheme. It is the old story of the camel's head in the tent. What seems at first a plausible pretext for forcing some novel case or new principle into a topic or subdivision to which it does not naturally belong, leads to hopeless confusion. The only remedy has been recompilation.

Given properly constructed original digest paragraphs, compiled by the man who wrote them, and an elastic scheme, supplements thereof can be readily produced, each of which will be complete within itself as to the new cases. I have myself published such digests. If any of you will call at our establishment at St. Paul, I will be pleased to show you a set of reports cancelled out line by line, showing how each case was written up topic by topic, examined by sometimes as many as five editors, proceeding from the last volume back to the first, and following up every citation made by the court. When you have examined this you will not need to be told that lawyers and judges alike say that the digest so produced is the best they ever saw. In that state there is now little multiplicity of digests.

Your desire as librarians is for the greatest economy consistent with the efficiency of your libraries. It is with reluctance that you purchase books of purely temporary utility, and the conditions by which you are compelled to do so cannot be of long duration. For the past thirty odd years I have been actively engaged in the publishing business, and I sincerely hope that the views which I have in that time formulated as to the needs of the profession are not entirely based on my personal interests.

Although invited to do so, I did not come here to discuss the merits of my own publication, but it is needless to say that being convinced of the deficiencies which I have pointed out, I have endeavored as a publisher to fill the need which is to me so apparent.

THE USE OF THE LAW LIBRARY.

By James De Witt Andrews.

In the discussions which we have listened to, we have heard a good deal about how the *average lawyer* goes about his task of looking up the law. This at once suggests that there are classes of lawyers—average lawyers, above the average, and less proficient than the average. It is plain also that the average is but mediocre, and I take it, that in our endeavors to point out the way to use the library, we should not be satisfied with the methods of the average man, but point out the method or system of the most proficient.

The value of suggestions of this kind depends largely on the observation and experience of the person making them, for there is nothing which so tests a theory as to put it into practice.

The views which I shall submit to you are the results of my experience as a student, practitioner and law writer, extending now over a period of thirty years, as well as my observation of the methods of the best class of lawyers with whom I have exchanged views. It has been my fortune to become quite familiar with several great libraries and on many occasions to make what we call exhaustive research. I went through this process first nearly thirty years ago under the guidance of Mr. Griswold, the librarian of the library of New York at Albany. I believed that the method pursued was the best, and experience in the preparation and trial of hundreds of cases has confirmed the early impression. The very wide range of subjects embraced in my work as a legal author required the study of methods, and what I shall say here will be the result of this study, observation and experience.

The object of my remarks will be to give those who wish to familiarize themselves with the law in general, or to examine any specific question, a clear conception of what a law library is, whether large or small, and the most economical method or system of legal research. The increase in the volume of matter put forth requires a constantly increasing need for improvement in statement, and more system in research. The great body of book users do not use law books for pleasure, but for business, and economy demands that practical results be obtained in the shortest possible time. It is therefore of the highest importance that the investigation pursues the line of least resistance, and proceeds in such a manner that each step taken shall discover all that is to be found along the line of search.

The late Austin Abbott, whose many-sided culture and exerience made him proficient in both the practical working of the law and the theories of its formation and exposition, says "the two chief processes in legal research into the state of the authorities on a given question are discrimination to separate cases which may be distinguishable and recollation to bring together those that bear precisely on the question, arranging them so that they will justly support or qualify or contrast with each other. The immense multiplicity of authorities require thorough analysis and classification lest we be lost in a labyrinth of contrasts. *Imperfect classification is not merely a defect in the result of research, it is a hindrance in the process of research.*"