The HyperLaw Report Volume 1 Issue 1 July 16, 1995
American Association of Law Libraries Convention - Special Edition

The HyperLaw Report

The AALL Citation Task Force Report: Consensus on Paragraph Numbering

HyperLaw and West Publishing Company Agree: "Docket Numbers are an important element of citation" But West's "Nowhere Cite" is the "Nowhere Fallacy"

Amidst complaint from friend and foe alike about the participation and process of the Report of the AALL Task Force on Citation Formats, the Report has still brought a needed focal point for the debate on the reform of citation systems and the development of a so-called medium- and vendor-neutral citation, an essential element in the electronic dissemination by courts of authentic and citable opinions.

¶2 The task force recommendation that "all jurisdictions begin to number their decisions by paragraphs, and encourage citation to paragraph numbers" met with general approval and endorsed the consensus reached by public interest groups and some private publishers at the Taxpayer Assets Poject (TAP) hosted meetings of October 19, 1994 and December 12, 1994.

¶3 Paragraph numbering as a method of pin-point citation is now inn use by courts in the EEC, Canada, and Colorado and by the United States Court of Appeals for the Armed Forces, and has been in use by a number of independent publishers of CD-ROM caselaw for years. In addition, an organization of reporters of opinions, although not seeing the need of paragraph numbering existing official reporters, endorsed the concept that where there was no official reporter, "paragraph numbers may be added by the court in the opinion."

¶4 Less consensus appears to exist as to the means of citation to the opinion itself, and, in a dissent, the Reporter of Decisions of the State of New York pointed to the problems of implementing the sequential numbering scheme in a state with complex multi-layered courts. West Publishing Company, which some have pointed out does not always speak with one consistent voice, appears to wish to maintain its dominant position by having its initial page citations from the National Reporter System remain the official and semi-official citation.

¶5 The West position ignores the fact that a volume and page citation must await the release of the printed volumes, creating a delay in availability of the citation and providing in addition a market preference to whoever provides the volume and page initial citation.

Continued on page 2

AALL– Citations Citations Citations

The 1995 Annual Convention of the American Association of Law Libraries presents a number sessions relating to citation reform and dissemination of the law by the courts–to be capped by a general session discussion on the Citation Task Force Report. On the last page is a calendar of sessions that relate to these issues.

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HyperLaw™

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The HyperLaw Report
is published by
HyperLaw, Inc.
P.O. Box 1176 New York, NY 10023

info@hyperlaw.com
212-787-2812
212-496-4138 (fax)

Quarterly (8-16 pages)
$250 a year ($100 to AALL individual members with not-for-profit libraries)

Publisher/Editor
Alan D. Sugarman

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HyperLaw is also Publisher of Federal Appeals on Disc™ CD-ROM, containing opinions of federal appellate courts 1993 forward. $650 for quarterly ($450 for small firms) and $200 for intro, with Supreme Court to 1990 and US Code bonus.

¶6 Although West is deservingly proud of its illustrious history, its 1995 position is inconsistent with the views of its founder John B. West, who wrote in a 1909 article that the citation should be available at the time of issuance of the opinion [see Multiplicity of Reports, by John B. West, page 4 herein]. Indeed, Mr. West himself proposed a sequential numbering system. Thus, to an extent, all those who are saying there is no problem if West lets others use its first page citation miss the point–the West citation does not appear for months and imposes costs on those who wish to use the cite during that period of delay, and in general, acts to delay the appearance of annotations and explanatory material.

¶7 West has stated, and HyperLaw agrees, that docket numbers convey important information, are an existing identification system, and should be included in any new citation method. The docket number has always been included in the Bluebook citation format for unpublished and yet reported opinions, for good reason. HyperLaw suggests, however, that where someone is prepared to maintain sequential lists of opinions issued by a court, that a sequence number may be included as well.

¶8 The sequence number scheme proposed by the Task Force, indeed, does not meet many of the Axel-Lute criteria–although providing uniqueness, it provides no redundancy, is not informative, and has little similarity to the original. In building a system that will work through a transition period of perhaps a decade, docket numbers are essential.

¶9 However, we do not agree with West's reasoning in support of the primacy of volume and page citation. That reasoning can be described as The Nowhere Fallacy and is nothing more than an effort for West to maintain its hegemony.

The Nowhere Fallacy

¶10 The Task Report apparently suggests the purpose of a citation, that is then distorted by West. The Task Force states at Paragraph 20 that: *"The primary purpose of legal citation form is to direct the reader to a source of the information referred to by the author."*

¶11 West, in its dissent at page 34, distorts this statement so as to apply the term "Nowhere Cite" to the sequential numbering system, reasoning that because the sequential cite does not point to a specific location, it points to nowhere. This is The Nowhere Fallacy.

Citations to Data Sets

¶12 A legal citation form needs only provide the minimal information needed to locate a, not the, source of the information. In other words, a citation is a citation to information, not to a particular book, database, or CD-ROM. A citation does not need to point to a single physical source. A citation only needs to identify the "sets" of data to which the information belongs. To the extent that citation to a physical source provides a measure of authenticity, we suggest that authenticity will in the future be provided by electronic signatures by the court.

¶13 For example, the case *Courtney v. Bisound*, No. 93-3733, Dec. 13, 1994, 42 F.3d 414 (USCA 7th Cir.) belongs to the following overlapping sets of decisions:

- *All decisions ever of the Seventh Circuit*
- *All opinions of the United States Court of Appeals issued in 1990-1994.*
- *All published opinions of federal appellate and district courts in 1994.*
- *Volume 42 of West Federal Reporter 3rd.*
- *The West CD-ROM containing Volume 42.*
- *The ALLFEDS Westlaw database.*
- *The 7CIR File of the GENFED Library of Lexis.*

Continued on page 12

Litigation Update-Is West Folding its Tent?

In a significant concession by West President Vance Opperman in an affidavit of June 22 , 1995, filed in *Bender & HyperLaw v. West*, West stated that it will not and will never sue Matthew Bender & Company for the use of West internal page numbers in Matthew Bender's prototype CD-ROM containing opinions from the New York federal courts. This CD-ROM was described by Bender in its original complaint filed in February, 1994. After 18 months of litigation, and just as West's motion to dismiss Bender and HyperLaw was about to be placed on the calendar, West, in the words of Bender's Counsel, **Elliot Brown** "folded its tent" (*Information Law Alert*, July 7, 1995) and told the Court that since it would never sue Bender on that product, there was no case or controversy, and there was no reason for the Court to even hear West's motion to dismiss Bender.

¶2 However, West has yet to concede that it would not sue HyperLaw were HyperLaw to include West internal page numbers in the published federal appeals opinions found amongst the 25,000 opinions on HyperLaw's CD-ROM or were HyperLaw to key-in or scan-in the decision only portions of a West "case report," so it does not look like a folding of tents to HyperLaw.

¶3 The concession came in the form of a four-page affidavit from **Vance Opperman**. Amongst the factors cited by Opperman was that "Matthew Bender independently collected and selected the judicial decisions on the disk" and that "there has not been any use or any copying by Matthew Bender of any material from any West case report . . . whether by photocopying, computer scanning or manual keying." Opperman specifically noted that many of the opinions contained West internal pagination.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTHEW BENDER & COMPANY, INC., : 94 Civ. 0589 (LAP)

Plaintiff,

and

HYPERLAW, INC., : SUPPLEMENTAL AFFIDAVIT OF VANCE K. OPPERMAN

Intervenor-Plaintiff,

v.

WEST PUBLISHING COMPANY,

Defendant.

¶4 In essence, Matthew Bender has shown how to obtain a royalty-free license to use internal pagination from West: be a part of a multi billion dollar media empire, hire top lawyers, start a litigation, take months of discovery, pay enormous legal fees, and wait a year and a half. Just before the judge can make a ruling that may be adverse to West, West will fold its tents.

¶5 In a letter dated June 27, 1995 to Law Librarians, Opperman stated: *"West has never refused a reasonable offer to license its pagination to anyone. The folks who complain that we will not, or that we charge unfairly, have never asked us."*

¶6 Interestingly, in a recent letter to the Wisconsin Supreme Court (see page 11 herein), **Professor Peter Martin of Cornell** notes that his compilation of Social Security cases published by Clark Boardman does not include the West internal page citations because of copyright claims by West. It is puzzling why Matthew Bender may obtain a royalty-free license for its compilation but Martin could not obtain one for his compilation.

¶7 The next question raised is how West's new position impacts Lexis' ability to produce CD-ROM compilations with West's internal pagination. It appears that the West-Lexis 1988 settlement prohibits Lexis from including West internal pagination on CD-ROM. Now what: Matthew Bender can do it but Lexis cannot?

¶8 Finally, we note that Opperman listed as one of the factors that Bender had not used West books as source material. What does this mean? That West is using its claimed copyright monopoly over citations as a tie-in to prohibit the copying of uncopyrightable court opinion text from West books (which, HyperLaw in the same litigation claims it has the right to do).?

¶9 Perhaps these issues will come up in the status hearing before Judge Preska scheduled to be held on Monday, July 17, 1995. #

HyperLaw is represented in the New York action by **Paul Ruskin** of New York and **Carl Hartmann**, a member of the New Mexico and Virgin Islands bar. Both are sole practitioners, graduates of Antioch Law School, and veteran computer users. Carl wrote one of the first computer litigation support retail products in 1983 and also while working at the US Supreme Court assisted implementing some of its initial systems. Paul was a designer of computer litigation systems at a major Philadelphia firm before he decided to return to litigation.

John B. West on Citations–1909

2 Law Library Journal 4 (1909)

MULTIPLICITY OF REPORTS.

By John B. West

(founder, West Publishing Company)

Reprinted by HyperLaw, Inc. 1995. Emphasis and paragraph numbering added by HyperLaw.

¶1 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 lack 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 increase.

¶2 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.

¶3 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.

¶4 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.

¶5 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.

¶6 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.

¶7 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.

¶8 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.

¶9 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 prompt and cheaply as to save his buying certified copies. The publication was changed to book form in 1876; 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.

¶10 Except for the delayed publication of the official reports, none of the 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.

¶11 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.

¶12 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 shuld be needed.

¶13 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 lawbook man this does not seem difficult.

¶14 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.

¶15 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.

¶16 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.

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

¶18 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.

¶19 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.

¶20 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. 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.

¶21 When no opinion is filed or the opinion is withheld or withdrawn because rehearing 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.

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

¶23 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.

¶24 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.

¶25 Nor will the cost of advance sheets prove an obstacle. For it must be remembered that the chief item of cost is that of typesetting. 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.

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.

¶26 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 complied 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 cost of not to exceed $1.00 for advance sheets and permanent volume.

¶27 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.

¶28 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.

¶29 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.

. . . . unchangeably and unmistakably . . . one citation, authentic, universal and immediately available

¶30 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.

¶31 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.

¶32 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 Streets Railways, Electricity, Telegraphs and Telephones, etc., etc.

¶33 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.

¶34 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.

¶35 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 canceled 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.

¶36 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.

¶37 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.

HL

To Paragraphos or Not

What are the respective advantanges and disadvantages of paragraph numbering opinions for internal pin-point citation as compared to the use of page numbers?

ADVANTAGES OF PARAGRAPH NUMBERING

- √ May be assigned at the time an opinion is issued, whatever the form or format of dissemination, thereby providing a permanent citation immediately.
- √ The location of the paragraph number break is not affected by the initial format of dissemination.
- √ Is easily handled by print and electronic media (medium-neutral).
- √ Does not break words or citations.
- √ Citation may be as precise as desired by the writer, thereby making citation more efficient (granularity).
- √ Indexing in full text databases is simplified.
- √ Creates opportunities for advanced computer research.

  See writings of **Marcia Koslov**, **John Lederer**, **Prof. J.C. Smith**, The Task Force Report, Curtis Hill Publishing and many others on the Internet.

PROBLEMS WITH PARAGRAPH NUMBERING AS CITED BY OPPONENTS (also see opposite):

- √ Unfamiliar to lawyers.
- √ The paragraph numbers may confuse the reader.
- √ Judges may change the way they write opinions if there are paragraph numbers.
- √ Readers may not read the preceding and following paragraphs to the cited paragraph (This is the "contextual" argument).
- √ The paragraph number may imply meaning.
- √ Why change?

A PROBLEM CITED BY OPPONENTS OF PARAGRAPH NUMBERING THAT IS NOT UNIQUE TO PAGE NUMBERING

While automated processes can number both pages and paragraphs, both paragraph numbering and page numbering processes benefit from human/ subjective intervention. For example, according to the *Chicago Manual of Style*, a "widow" should not appear at the top of a page , a subhead falling at the foot of a page should be followed by at least two lines of text, and a footnote should begin on the same page as its reference (20.36). Anyone preparing a word-processed document for distribution verifies the location of page breaks assigned automatically by the word-processing program.

NEW STYLE FOR QUOTATIONS?

While we are on the subject, the *Chicago Manual of Style* dictates that quotation marks not be included in block quotes. While this makes sense on the printed page, when unquoted quotes are converted to electronic text, it frequently becomes difficult to identify the quotations. We say that any text that may be destined for electronic delivery should include quotation marks.

How To Number Paragraphs According to West's Whetstone:

1. The Wisconsin Supreme Court and Court of Appeals should number the opinion paragraphs, not an outside source. As a result the numbering will be consistent.

2. Number each paragraph beginning with the text of the opinion, but do not number the title, appeal line or attorney's names.

3. Subindented quoted matter should not be separately numbered but should be considered a portion of the greater paragraph in which it is contained. This differs from the approach in the Anderson Opinion.

4. Footnotes should not be numbered separately for reasons similar to 3 above.

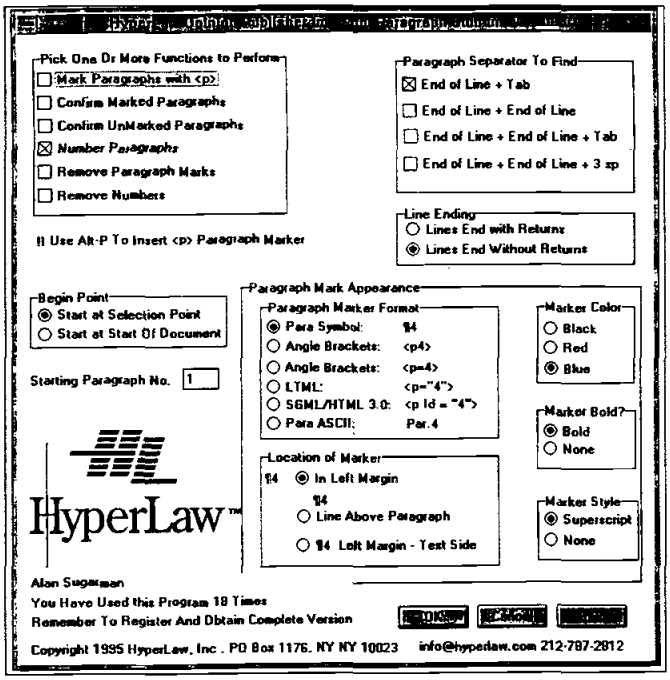
5. The mandate and judges lines at the end of the opinion can be separately numbered.

6. Concurring and dissenting opinions need special attention. We recommend they be numbered consecutively and be treated as a portion of the entire case. We do understand they are separate opinions, but confusion may result with the multiple paragraphs containing the same number.

7. Appendices and Exhibits should not be numbered but should be continued to be referred to as App. A, Ex. 1, and the like.

8. Insertions also require special attention. It is not unusual after an opinion is filed that changes are made, including adding paragraphs. Rather than renumbering all paragraphs to accommodate such a change, we suggest that insertions be accommodated through separate numbering such as Para. 3.1, Para. 3a, or the like. Renumbering would likely result in slip, advance sheet and bound volume paragraphs being numbered differently, confusing as to which paragraph was being changed, and it would be confusing for readers.

Page 5 of letter dated April 28, 1994. from **Michael J. Whetstone** of West Publishing Co., Editorial Counsel, to Wisconsin Court of Appeals



HyperLaw Opinion Publisher tm Kool Paragraph Stuff.

WordForWindows 6.0 Program which paragraph numbers documents for publications including electronic publishing. Email ~~info@hyperlaw.com~~ for a demonstration copy.

How To Number Paragraph

Of all the reasons suggested against paragraph numbers, and surely the most silly, is that it is difficult to accomplish. **Bruce Munson**, State Revisor of Statutes told the Wisconsin Supreme Court, after hearing this statement in the hearing, that his staff had programmed a macro while the hearing was going on.

HyperLaw has developed a slightly more elaborate program for Word For Windows (it will work on Word Perfect files) that may be customized to work with different methods of paragraphing and to present the output in a variety of formats.

Because paragraph number locations may need to be adjusted (similar to ajdusting page breaks to eliminate widows, etc.), HyperLaw suggests that a marker first be inserted until the location of each mark is approved, and, then insert the numbers. HyperLaw advises against using automatic paragraph numbering offered by word processors when permanently numbering an opinion. Why? . . . inadvertantly delete a single auto-number code and all the subsequent paragraph numbers change.

John A. Cutts, III, Reporter of Decisions of the United States Court of Appeals for the Armed Forces has another method–he does it by hand. As he told the Wisconsin Supreme Court "I can say WITHOUT HESITATION that it is VERY EASY FOR ME TO INSERT PARAGRAPH NUMBERS IN OPINIONS." ~~HL~~

Another West Perspecitve:

[FROM WEST DISSENT TO AALL TASK FORCE REPORT]

Paragraph Numbering Raises Numerous Questions that Still Require Answers

We believe it is unwise to make a blanket recommendation that courts begin numbering paragraphs in their opinions at this time. To date, there has been no empirical investigation of the potential costs, no direct communication with the judiciary as to their willingness to accept the additional burdens, and no convincing evidence that page citations are insufficiently specific for the needs of the profession.

What are the potential costs of numbering paragraphs in judicial opinions? While paragraph numbers are attractive in concept, they may be costly in practice. AALL is recommending that clerk's offices add paragraph numbers to official opinions after those opinions have left the hands of the judges who penned them. If clerks' offices (or, more likely, software employed in clerks' offices, which the majority admits has yet to be perfected) will be authorized to make certain changes to judicial opinions, there exists the very real possibility that unintentional changes will be made to the substance of the opinions themselves. Characters, lines, or paragraphs may be deleted. Original formatting may be lost or altered. Publication delays may result when clerks' offices fail to receive needed funding to staff the function. In any event, if someone alters an opinion after a judge has signed it, there will have to be procedures devised for comparing the modified opinion against the original to ensure that a judge's work has not been changed in any way. West knows from long experience that comparing work such as this is tedious and expensive. In tight economic times a government agency charged with the task might be tempted to circumvent it.

If it is expensive to use clerks' offices to modify judicial opinions, it may be even more burdensome for judges themselves to apply paragraph numbers to opinions. Judges would either have to be trained to use a set of rules for determining what to number (headings? bulleted items in a list?), or they would have to be trained in the use of software that achieves the task for them. Judges and law clerks are already familiar with word processing programs that provide built-in reliable means for numbering pages in the opinion. But standard word processing programs do not have uniform techniques of adding paragraph numbers to opinions. The fact that Colorado has yet to implement the May 5, 1994 order requesting that judges add paragraph numbers to opinions suggests that there are serious problems with paragraph numbering that will require further study. West is concerned about any additional burden that the majority's recommendation might impose on an already-beleaguered judiciary.

In summary, we believe it premature to recommend paragraph numbering until costs have been quantified, the judiciary has been consulted, the experience in Colorado has been reviewed, and members of the practicing bar have been polled to determine whether they find pinpoint page references are not sufficiently specific to meet their needs.

Des Moines Sund

LECTURE SERIES DRAWN INTO FRAY

Justices' ties to Drake alum scrutinized

www.hotwired.com issue 2/5/95

And you thought you'd heard all the outrageous copyright stories.

WHO OWNS THE LAW?

by Gary Wolf

Going Undercover with Starr Paging

What's so hard about a vendor-neutral, universal electronic citation system?

COMMENTARY
By Barry B. Boyer

The Washington Times, Washington, DC, March 9, 1995, Page A6

Justices defend free trips

By Mary Orlbc

Two Supreme Court justices said yesterday that nothing was improper about trips justices took at the expense of West Publishing Co. while the firm was fighting in court to hold key aspects of its legal publishing business.

"I can absolutely tell you that there is no substance in any suggestion that West might have gotten some special consideration."

Justice David Souter says the trips had no effect on cases.

THE WALL STREET JOURNAL MONDAY, OCTOBER 3, 1994

Computer-Aided Legal Research Subject of Probe

By Timothy L. O'Brien
Staff Reporter of The Wall Street Journal
The Justice Department said ...

TAX NOTES, April 3, 1995

NEWS ANALYSIS

The Tax Treatment of the Brethren's Fun in the Sun

gopher://essential.essential.org

Before Watergate, journalism was generally regarded as disreputable. The press were widely

Judges for Sale

Federal judges and Supreme Court justices get gifts and perks from vested interests that would cause outrage in any other branch of government.

by Jeremy A. Rabkin

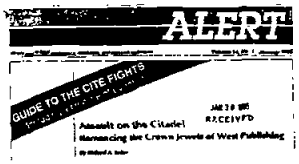
The American Spectator June 1995

Star Tribune

SUNDAY, March 5, 1995 NEWSPAPER OF THE TWIN CITIES

http://www.startribune.com/westpub

U.S. justices took trips from West Publishing



National Public Radio:

"We retracted anything that West asked us to retract" [parody]

The California Lawyer:

*"Stop the presses and pull that **** article by Robert Dreyfuss."* [parody]

The New York Times

"Not a story for us" [parody]

THE SUN
BALTIMORE, MARYLAND

Junkets to resorts to end for justices

WEST: Trips for justices likely to end

Star Trib Addenda.

The *Minnesota Star Tribune* series by **Sharon Schmickle** and **Tom Hamburger** looked like it had been through a virtual lawyer's sieve–accurate to a fault. So fearful of appearing biased, the series, which deserves a Pulitzer, still appeared to pull a few punches. What was not in the article:

- Judge Richard Arnold, quoted at length and a member of the 1995 Devitt Award Committee and the Chair of the Judicial Conference budget committee, wrote the Eighth Circuit opinion in West v. Mead.
- The winner of the Devitt Award in 1995 was a federal judge sitting on the same court where Matthew Bender & HyperLaw v. West is now pending.
- The spouse of a senior officer in the federal courts was hired to work for a law firm closely identified with West, and, indeed, reportedly has been working on research relating to citation issues (did the spouse write all those footnotes in recent West reports?). I guess we are pulling punches too.

The full text of the series may be found at http://www.startribune.com/westpub.

COURTSIDE

Judges Moving Away From West

The Hill

Vol. 2, No. 8 — Price $2.50

The Capitol Newspaper — Wednesday, February 22, 1995

West: A study in special interest lobbying

Archives at gopher://liberty.uc.wlu.edu
law-lib_archive/lawlib.9502 No. 687

UPDATA

The Washington Post Date 03 06 95 Page A7

Justices, Judges Took Favors From Publisher With Pending Cases

Hell Hath No Fury Like a Monopolist Scorned

It's been a bad year for West Publishing. The ernment from

The Washington Times Date 03:07 95

NATION

Publishing firm goes on offensive

Accuses paper in judges' trips story

Fending Off the Future

As case law goes electronic, West Publishing Company faces mounting pressure from competitors, consumer advocates, and the courts to loosen its grip on legal libraries. True to form, West has counterattacked, but the old order is fading fast. **By Susan Hansen**

Antitrust Probe Focusing on Case Citations

10-6-95

West, Mead Targeted

By Terry Carter
Daily Journal Staff Writer

WASHINGTON — For a week of the Justices swirling around the future of

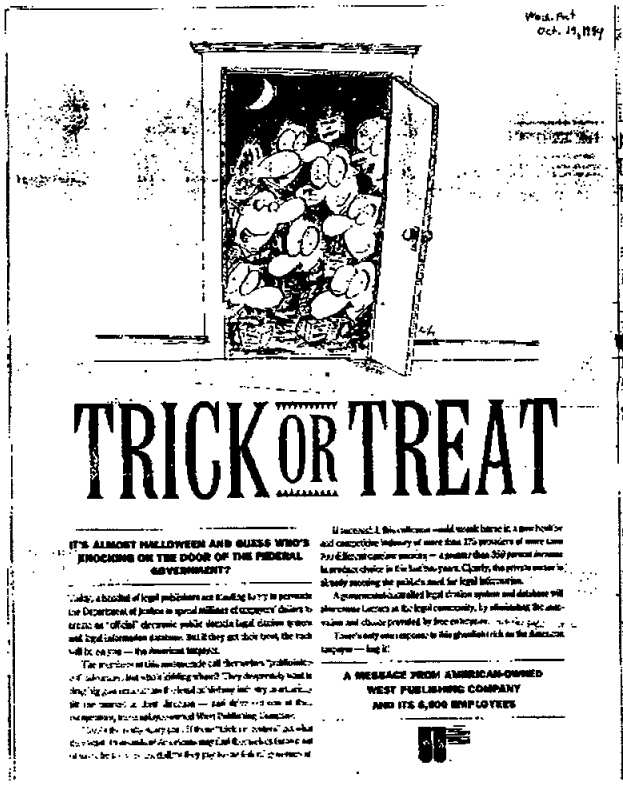
36 ABA JOURNAL / MAY 1995

West-Financed Judicial Award Under Fire

Legal publishing giant defends integrity of Devitt selection process

THE NATIONAL LAW JOURNAL

The Cite Fight



TRICK OR TREAT

IT'S ALMOST HALLOWEEN AND GUESS WHO'S KNOCKING ON THE DOOR OF THE FEDERAL GOVERNMENT?

A MESSAGE FROM AMERICAN-OWNED WEST PUBLISHING COMPANY AND ITS 6,800 EMPLOYEES

NETWORK

Letting a Thousand Citation Systems Bloom

Judicial ethics panel to discuss gifts in wake of West

LEGAL TIMES • WEEK OF FEBRUARY 20, 1995

LOBBY TALK

INSIDE THE FIRMS AND ASSOCIATIONS

West Loses Round in Cite Fight

When Law Professors Testify

Everybody is entitled to an opinion. But when a law professor testifies or submits a statements to a legislative body and the professor is also receiving funds and/or expenses from a significant party in interest, what obligations of disclosure are there?

This issue faced then Congressman William J. Hughes in the 1992 hearing before the House of Representatives.

"A law professor has a responsibility to preserve the integrity and independence of legal scholarship. Sponsored or remunerated research should always be acknowledged with full disclosure of the interests of the parties. If views expressed in an article were espoused in the course of representation of a client or in consulting, this should be acknowledged."

As Congressman Hughes wrote to a professor submitting a statement to the subcommittee:

"I believe you are aware that West Publishing Company had requested that an academic testify on its own behalf at the hearing on H.R. 4426. The Subcommittee informed West that any professor testifying as an academic witness could not be paid for the preparation of his or her remarks. A professor's paid written remarks implicate the same concerns as paid oral remarks."

Congressman Hughes then referred to the American Association of Law Schools "Statement of Good Practices by Law Professors" which states as follows:

"A law professor has a responsibility to preserve the integrity and independence of legal scholarship. Sponsored or remunerated research should always be acknowledged with full disclosure of the interests of the parties. If views expressed in an article were espoused in the course of representation of a client or in consulting, this should be acknowledged."

In another letter to the Chairman, Intellectual Property Committee, Association of American Law Schools, Congressman Hughes wrote:

"If the appearance or written submission is at the request of another party, the Subcommittee should be informed of that facts and whether the person is being compensated. The Subcommittee should also be informed whether the person has been compensated in the past by any party with an interest in the legislation. Where a law professor is receiving compensation through a law firm with which he or she is affiliated, this facts should be revealed, and all submissions should be on the law firm's letterhead."

At least one publisher makes it a practice to offer law professors "expenses" to travel to Washington and other cities to testify before committees, panels, and courts, and some of the same have other financial connections with said publisher including being an author, consultant, or member of an advisory or selection committee for the publisher where the publisher pays fees and expenses. In most situations, the law professors have made no disclosure of what many would consider a material fact. True, many insiders know the facts, but this is not always known to those outside the law school profession.

Some professors claim they never say anything they do not believe: but equally important is what they do not say . . . anything inconsistent with the theme of the day of their paying sponsor. HL

Where did 800,000 opinions go?

West has stated that it selects 8000 or so federal district court opinions from the 800,000 district court opinions every year. Balderdash. In the first instance, it is the district court judges that ask West to publish the opinions. And, West, itself, says that each day it receives 500 to 600 decisions from all courts, federal and state. That is only 186,000 a year.

The Press Accepts Free Gifts Too . . . And Tom Field Didn't Like It

It is not only law professors who have been proferred free trips. In Feburary, 1995, West hosted a "legal" press bash in Washington, DC, complete with a private reception at the United States Supreme Court. We have a list of the attendees at the West press bash, most of whom accepted free trips, hotels, etc.–and over a holiday weekend. Odd, not one (to our knowledge) has acknowledged in their columns or papers that they accepted such largesse.

In the meantime, **Tom Field** of Tax Analysts was just organizing the **American Association of Legal Publishers (AALP)** (of which HyperLaw is a founding member). No shrinking violet was Tom–he led the **picketing of the US Supreme Court**, which refused to let other publishers attend the event. We heard criticism from some of the West press invitees, and we admit initially to having had a little anxiety from Tom's move. But we support him 100% . . . that is what leadership is for, to lead us on to the next step. Thanks, Tom. And the West press invitees . . . we are still waiting for the first disclosure.

Then energized, Tom forged ahead, and made sure that all federal judges received a copy of the *Minnesota Star Tribune* series, over a 2000 copies mailed out under the aegis of AALP. What's next Tom? Ask him at the Tax Analysts' booth. HL

Excerpts from Testimony, Statements, and Submissions to the Wisconsin State Supreme Court re Citation Proposal 3/21/95

Prof. Roy M. Mersky–U. Texas
Written Submission
"The point to be empahsized here is that the only authoritative version of the opinion is in electronic format on a bulletin board that is not expected to be used as an online search service . . . What happens when the system goes down on the eve of a crucial court appearance?"

"What if the U.S. Supreme Court implemented a similar proposal? Assume that U.S. Reports ceased publication and that the only citable versions of U.S. Supreme Court opinions resided on a central server located in Washington, D.C. This server, however, merely contains the opinions and does not have any searching capabilities."

Prof. Robert Berring–U. Calif.
Oral Statement at 83 and 89
"Although the proffered docket number date system (sic) appears simple, it will be a major change. At the same time it is going to be accompanied by a continuance of the old system. You will not be able to get rid of any sets of bound reporters because previous to the change you will still have to cite the old way."

"And if you put out a system in the State of Wisconsin and you say this will be our official state system and we will have read only and it will have good security so nobody can get in here, that will be throwing down the gauntlet to every hacker and computer science student at the U who will be dedicated to going in and rearranging your opinions."

Prof. Donald J. Dunn–W. New Eng.
Oral Statement at 77
"Even if you find by luck, it's the 300th case within the volume, if it's a three-page case, you're still going to have to flip through 800 pages to find it. And it is going to be very difficult to do. And it's going to be annoying."

Christopher J. Wren, Esq.
Oral Testimony at 217
"[W]e've expressed our view that [there] is another consideration–that if you go to the intent-specific kind of pinpoint citation that numbering every paragraph provides you, you run the risk of changing the way not how judges write the decision but how lawyers will read them, how judges will read them and how cases get litigated. We phrase it in terms of new–the importation of statutory type waiver arguments into common law decision making, and we've laid that out in our article I hope it's clear."

Prof. Peter Martin–Cornell
Written Submission, February 28, 1995
"I write in enthusiastic support of the proposed amendments of the Wisconsin rules.

> *[quoting from Martin 1991 article, 83 Law Library Journal 419, 426] 'Each court decision should carry a unique identifier. Ideally, this should be one that provides the date and court and a link to all other actions involving the same litigation . . . Units of decisions, like so much other law writing, should be designated by paragraph numbers.'"*

"Since 1988, I have worked as author/ designer/ builder of a CD-ROM covering the field of Social Security Law ("Social Security Plus," just published by Clark Boardman Callaghan). The disk includes a full collection of the thousands of Social Security decisions rendered by the Federal courts. However, because of the copyright claim by the print publisher of those decisions the disk does not include pinpoint cites."

Cleveland Thornton, Virginia Bar
Written Submission, March 30, 1995
"West falsely concludes that the only source of official case law would be on the state computers. This is clearly not true . . . A publisher would obtain the electronic from of the opinion and either publish it in one of many available electronic formats or publish a book-type publication of the opinion."

Prof. Christopher Simoni - Marquette
Written Submission
"The proposed database of judicial opinions would provide an authoritative archive of judicial opinions (something the state does not currently have); the proposed citation system offers a public domain citation format is well-suited for use with the electronic database of judicial opinions and easily can be incorporated into [printed versions]."

Joe Acton, TimeLine Publishing
"Lawyers Legal Research OnLine already uses a citation system very similar to that proposed by the Wisconsin State Bar. . . . We find that such a system is both intuitive and more precise than page numbers, largely because the usage of a paragraph number does not leave the reader wondering where the cited passage occurs on the given "page" . . . adding a unique citation number to each opinion and numbering the paragraphs of those opinions is accomplished through the use of relatively simple computer program called a 'macro'"

Russ Armstrong, Geronimo Development Corporation, American Association of Legal Publishers
Written Submission, April 3, 1995
"[B]ecause the opponents' characterization of the electronic archive is so far removed from what was set forth in the proposal and described by its proponents, to give the opponents' characterization any credence, this Court would have to conclude that the proponents have testified falsely. "
Continued on page 12

Wisconsin Testimony Continued from page 11

"[The lack of specificity in the proposed rule] has allowed opponents to characterize the electronic archive as something far more complicated and grandiose than what is intended by the proponents, enabling the opponents to paint a lurid picture of horrors that would accompany their imaginary monster."

Prof. J.C Smith, University of B.C. Written Submission, March 28th, 1995

"Putting paragraph numbers on cases is no big deal. The BC Courts have developed a set of Word Perfect macros which makes the process relatively painless."

Morris A. Miller, Curtis Hill Publishing Co.
Written Submission, March 30, 1995.

"All of the cases on our CD-ROM (70,000+) [of Texas cases] contain paragraph numbers . . . It is very easy to implement a paragraph numbering scheme. It will require little effort of the court. In fact, a WordPerfect Macro can automatically place paragraph numbers into your opinions."

Cindy Chick, Law Librarian
Written Submission, March 6, 1995

"For example, numbering paragraphs seems to be an eminently simple concept. But some of the issues that arose in our discussion include:

"How are footnotes handled? Quotes? Variations in style?

"Will using paragraph require a stricter structure for judges to follow when writing opinions.

"Will later corrections to a case, such as adding a paragraph, provide a source of unintended judicial intent, since the addition at a later date will be obvious by the break in the numbering system.

"Can a macro be easily developed that can handle paragraph numbering in an automated fashion."

James A. Sprowl, Esq., Law and Computers Expert
Written Submission, March 4, 1995.

"In the Westlaw system, the paragraphs are numbered internally to the system, and these numbers could be brought out and made available to legal researchers. But Westlaw did not wish to undermine its proprietary page number case citation system, so it chose not to implement paragraph numbering. Lexis could have numbered paragraphs when it introduced its own proprietary citation system, and it came close to doing so. But since paragraph numbering is not a part of the Lexis database structure, Lexis felt that Westlaw could implement paragraph numbering much faster than Lexis could. Not wishing to give Westlaw an advantage, Lexis adopted instead a strange citation scheme that arbitrarily breaks Lexis cases into "pages" of which contain a fixed number of characters.

"Clearly, only the courts are in a position to stand above competitive pressures and introduce paragraph numberless into legal research."

Federal Judiciary Budget 1996:

Lawbooks:	$35.5 million
CALR (WEXIS)	$ 6.9 million
Computer Staff	$20.4 million
Automation Program	$82.2 million
Electronic Dissemination of District Court Cases	zero

Source:
Eleanor Lewis
Exec. Director, AALP

For comparison:
Cost of 500 MB drive to store one year of federal court opinions: $200

Cost of 1900 fully loaded Dell 90MB Pentium computers with 16MB, network card, CD-ROM, software and printer (i.e., one for each federal judge and magistrate):
$5.7 million

Hyperlaw Comments Continued from page 2

- *All ADEA opinions (if one knows the general subject matter of the case).*

¶14 Given the inherent citation information, that is the name, docket number, court, and date of decision, the reader is able to identify which sets of information should have the decisions, and then locate that information in the appropriate set.

¶15 Indeed, it is HyperLaw's view that this inherent citation information uniquely identifies the decision, and, indeed, should be a part of any citation system. (It is for that reason that HyperLaw has proposed a general set of SGML/HTML tags for that citation information—to be generally identified as the LTML™, Legal Text Markup Language.)

¶16 We think that West is wrong, and self-serving as well, to attempt to imply that locational citations are inherent—certainly, they are less so as we move into the cyber age. Information will reside in multiple locations and the challenge 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 decision based upon the inherent citation information.

¶17 Thus, we feel that West's "nowhere citation" is merely an illustration of the "Nowhere Fallacy"–appealing on first impression, but devoid of merit after thought.

Docket Numbers v. Sequence Numbers

¶18 The Report is dismissive of alternatives to the sequential number citation for identifying cases and in particular the use of docket number in an alternative citation format. The report exaggerates disadvantages to the use of docket numbers, and ignores the problems with sequential numbering in jurisdictions with multiple levels and multiple courts per level.

¶19 Partly the question is what is the problem to be solved: certainly,

Continued on page 13

HyperLaw Comments on Task Force Report continued from previous page

high among the problems is the absence of official citations for the decisions of the 94 (sic) district courts, bankruptcy courts, and courts of appeals. In terms of size, the largest state without an official citation is Texas. To a certain extent, the practicality and usefulness of a proposed citation alternative should, we argue, be judged to the extent that it resolves the largest known problem, i.e., decisions of the United States district courts. In addition, given practical realities, the system must also accommodate to the extent possible known accepted publications such as the West Federal Supplement.

¶20 In all due respect, we are having a difficult time visualizing a Federal Supplement with ninety-three separate entries on the spine to account for the sequential numbering of each of the district courts. This would then argue for a central entity to assign the sequential numbering for all of the courts, i.e., the Administrative Office of the United States Courts. Moreover, this would then require federal district court judges and clerks to designate in an open and official way which decisions were to be published, something that does not occur today.

¶21 Of course, it should occur, and perhaps we believe it will occur some day . . . but not in the immediate foreseeable future. So, the quest of sequence number identification is not practical until other issues are resolved such as Federal District Court opinion bulletin boards, on or off the Internet.

¶22 In the shorter term, and, perhaps as part of the long term, the use of docket numbers as part of an alternative citation would seem to be most useful for the following reasons:

- It is a unique number (as to a court) already assigned by the court.
- No additional action by the court is required in order to create the case identifier.
- Citation to older cases is possible.
- Redundancy is provided.
- Citation to unpublished cases is possible.
- It provides an immediate indicator of a relationship amongst orders, rehearings, etc. in the same case.

¶23 We note that the new Louisiana Citation includes the docket number, and we have been advised that one of the major reasons for the demise of the 1991-1992 U.S. Judicial Conference proposal was its eschewal of docket numbers as part of the citation.

¶24 What are the disadvantages to docket numbers according to the Task Force Report:

¶25 **AALL: Docket numbers have no connection with whether a case is published or not.**

We do not understand this objection. A citation system should work equally well for published and upublished opinions. One problem with sequence number is that in most courts they will only be assigned to published opinions.

¶26 **AALL: They do not indicate the sequence of publication.**

If this means that there is no way to identify a complete "set" of opinions, the Report is correct.

¶27 **AALL: They are often quite long numbers.**

But in general they are not, and then again, so what. Also, examples of the long numbers creating this problem would have been useful.

¶28 **AALL: In some jurisdictions they are not unique.**

True, if jurisdiction means "federal district courts," the Report is correct. Not true if "jurisdiction" means "The United States District Court for the Southern District of New York." Surely, the Task Force is not suggesting a citation to federal district court cases that does not somewhere indicate the court.

¶29 **AALL: They require adding the date to the citation.**

True, for precision. However, the report itself already suggests that the addition of a date to amended and corrected versions for sequence number identified opinions. (We believe where a sequence number is used, the version of the opinion should be indicated by an additional suffix—otherwise, there is no way to establish what version of the document is being cited.)

¶30 **AALL: [Docket Numbers] would not only require continual revision of the each issue of the National Reporter Blue Book, but also official reports and print versions of Shepard's as well.**

There is already continual revision of these products, which is what supplements are. In any event, CD-ROM is to be sure the best method of presenting accessing this type of citator information.

¶31 **AALL: Many electronic case law validation and research tools do not work with docket numbers.**

This is, in our view, not true if "do not work" means "could not be made to work for future opinions or in the future." It is our understanding that the usefulness of accessing case information by docket number was well understood in the legal electronic publishing industry by 1990.

¶32 Westlaw elected to allocate resources to make its decisions accessible by docket number, and announced that at the October 19, 1994 TAP meeting. Shepherd's CD-ROM products include docket numbers for slip opinions and are considering maintaining the docket numbers of opinions after the availability of citations to printed sources. It appears that Lexis has not addressed this problem known to it for years and it is not known whether it is now taking steps to correct the problem for the future.

¶33 When HyperLaw released it's Federal Appellate CD-ROM, it made certain that opinions could be precisely and quickly located by using the docket number and the court (and also to locate the opinion by the Federal Reporter citation where one is

Continued on page 14

HyperLaw Comments on Task Force Report continued from page 13

available, and of course, these cites are not available for unpublished opinions). There is nothing about a docket number that makes it inherently non-searchable. In considering what citation format is most sensible, the particular concern of Lexis should not be a determinative factor. Were Lexis to lose out to Westlaw because of the technical superiority of Westlaw, then, that is the way the market is supposed to work. The AALL should not meddle in the market in this respect.

The 8-3 File Name Fallacy

¶34 There is, we believe, another unexpressed basis for objection to docket numbers in citations and preference for a sequence number: a perceived need to be able to include all citation information in the 11 character "8 dot 3" file names of MS-DOS. We suggest that for some one of the attractions of the Wisconsin-style sequence number system is the ease of using that number as the file name on the bulletin boards to be set-up by the proponents of the scheme.

¶35 It appears that 8-3 was part of the reason that sequence numbers to the exclusion of docket numbers was the basis of the 1991-1992 Judicial Conference scheme. This was discussed in 1991, and West, to its credit, pointed out the foolishness of designing a citation system around computer file name length limitations that may not continue to exist.

¶36 Indeed, on August 24, 1995, with the official release by Microsoft of Windows 95, the 11 character limit for all intents and purposes will be on its way out. Thus, one could easily have a computer file name/citation such as

USDCSDNY.94-9393.050295.PUB.Seq496

or whatever else one desires.

HyperLaw Partially Agrees with West

¶37 Accordingly, HyperLaw is in partial agreement with the statement made by West Publishing Company in "Case Citation Formats: The Need For a Goal-Oriented, Principled Approach," Donna Bergsgaard and Bill Lindberg, October 19, 1994:

"West believes that the best medium and vendor-neutral citation is the docket number. It has been reliably used for over a century and has the greatest potential for use with new technology such as electronic filing."

¶38 In addition, HyperLaw is in agreement with the following statement made by West in the same Bergsgaard/Lindberg statement:

"Docket numbers serve as fundamentally sound units for citation because they are assigned when a case is filed (not at the end of the judicial process, when an opinion is filed). Docket numbers are used in both trial and appellate courts. In virtually every system for caseload management, electronic filing, and electronic dissemination of opinions, the docket number serves as the one key for access to all information about the case. Thus, docket numbers permit citation to a complaint, answer, deposition, motion, brief, or any non-final disposition of the case, regardless of court level[14]. On the other hand, systems such as the one proposed in Wisconsin fail to account for the need to cite documents associated with a case from filing to final disposition, whether at trial or on appeal. Moreover, they make sense only where opinions are routinely reported."

¶39 Where HyperLaw departs slightly from West is the desirability of using sequence numbers where such are available and have been assigned by the court. An example is the United States Supreme Court, which internally assigns a sequence or "R" number to each opinion published at the time the opinion is disseminated. That sequence number should be released by the Court, included on the slip opinions, and made a part of a permanent alternative citation. As another example, the Louisiana scheme presently uses the docket number—it is highly recommended that the court assign a sequence number that would also be included in the official citation.

¶40 This is not to say that sequential numbering of opinions is not meritorious, especially because sequential numbering permits compilers of opinions (whether in book, on-line, Internet, CD-ROM) to ascertain completeness of a set of opinions. Of course there are other ways to describe completeness, including maintaining a log of opinions released, but there can be no doubt of the utility of sequence numbers in that regard.

James A. Sprowl Describes Purpose of Sequence Numbers - Not for Cite

¶41 James A. Sprowl, noted expert since the 1970's in the field of the law and computer, in his recent comments to the Wisconsin Supreme Court, wrote:

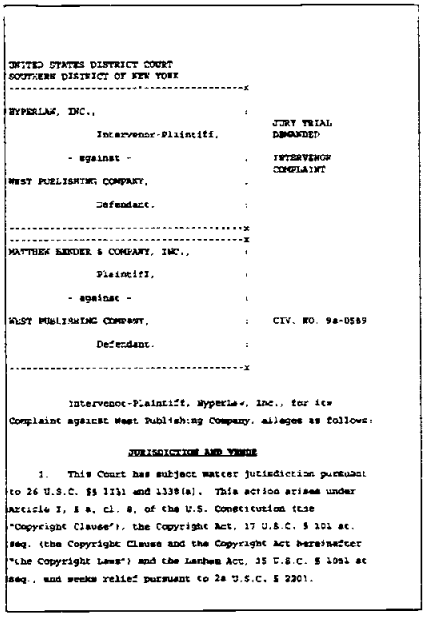
"Accordingly, I suggest that you number your decisions sequentially. You do this not for the purpose of creating a uniform system of citations, but rather to make it possible for an attorney, judge, or auditor to review and audit the completeness of any published collection of cases."

¶42 Thus to provide a basis for establishing authenticity and completeness, sequence numbers are invaluable–for redundancy, cross-reference, and informativeness, the docket number should be included as well, permitting a public domain citation even where a court is not cooperative or unwilling to assign responsibility for sequencing of opinions.

AALL Should Adopt Focused Goals

¶43 HyperLaw believes that the AALL should, in addition to pursuing broader proposals, make specific recommendations and should focus on specific problems. West complains of the lack of empirical investigation: we agree. The AALL should look into the

Continued on page 16



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HYPERLAW, INC.,
Intervenor-Plaintiff,
- against -
WEST PUBLISHING COMPANY,
Defendant.

JURY TRIAL DEMANDED

INTERVENOR COMPLAINT

MATTHEW BENDER & COMPANY, INC.,
Plaintiff,
- against -
WEST PUBLISHING COMPANY,
Defendant.

CIV. NO. 94-0589

Intervenor-Plaintiff, HyperLaw, Inc., for its Complaint against West Publishing Company, alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 26 U.S.C. §§ 1331 and 1338(a). This action arises under Article I, § 8, cl. 8, of the U.S. Constitution (the "Copyright Clause"), the Copyright Act, 17 U.S.C. § 101 et. seq. (the Copyright Clause and the Copyright Act hereinafter "the Copyright Laws") and the Lanham Act, 15 U.S.C. § 1051 et seq., and seeks relief pursuant to 28 U.S.C. § 2201.

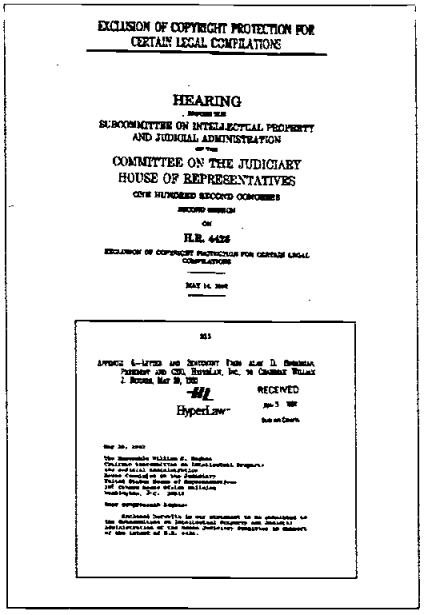
Litigation 1994–HyperLaw v. West

- *First CD-ROM Reporters of United States Supreme Court Opinions (1992)*
- *First CD-ROM Reporter of United States Court of Appeals Opinions (1993)*
- *Statement to House Judiciary Committee objecting to Devitt Award (1992)*

HyperLaw™

Since 1991, HyperLaw has been active in encouraging courts to disseminate opinions in a fair manner and to establish public domain citations.

- *Statements to Wisconsin Supreme Court in Support of Citation Proposal, (1994-1995)*
- *Statement to Washington State Supreme Court (1995)*
- *Active Internet Participant*



EXCLUSION OF COPYRIGHT PROTECTION FOR CERTAIN LEGAL COMPILATIONS

HEARING

SUBCOMMITTEE ON INTELLECTUAL PROPERTY AND JUDICIAL ADMINISTRATION

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

ON

H.R. 4426

EXCLUSION OF COPYRIGHT PROTECTION FOR CERTAIN LEGAL COMPILATIONS

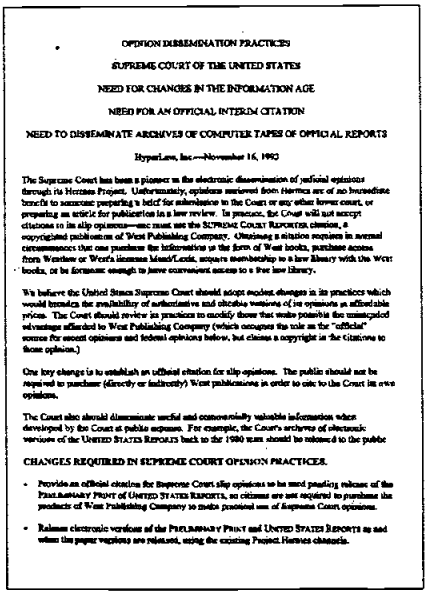
MAY 14, 1992

HyperLaw™

RECEIVED

Written comments in Record of Congressional Hearing 1992

- *Founding Member–American Association of Legal Publishers*
- *TAP–Justice Department October 19, 1995 Meetings*
- *OMB Meeting June (1994)*
- *Statement to Judicial Conference (1992)*



OPINION DISSEMINATION PRACTICES

SUPREME COURT OF THE UNITED STATES

NEED FOR CHANGES IN THE INFORMATION AGE

NEED FOR AN OFFICIAL INTERIM CITATION

NEED TO DISSEMINATE ARCHIVES OF COMPUTER TAPES OF OFFICIAL REPORTS

HyperLaw, Inc.—November 16, 1992

The Supreme Court has been a pioneer in the electronic dissemination of judicial opinions through its Hermes Project. Unfortunately, opinions received from Hermes are of no immediate benefit to someone preparing a brief for submission to the Court or any other lower court, or preparing an article for publication in a law review. In practice, the Court will not accept citations to its slip opinions—one must use the SUPREME COURT REPORTER citation, a copyrighted publication of West Publishing Company. Obtaining a citation requires in several circumstances that one purchase the information in the form of West books, purchase access from Westlaw or West's licensee Mead/Lexis, acquire membership to a law library with the West books, or be fortunate enough to have convenient access to a free law library.

We believe the United States Supreme Court should accept modest changes in its practices which would broaden the availability of authoritative and citable versions of its opinions at affordable prices. The Court should review its practices to modify those that make possible the unmerited advantage afforded to West Publishing Company (which occupies the role as the "official" source for recent opinions and federal opinions below, but claims a copyright in the citations to those opinions.)

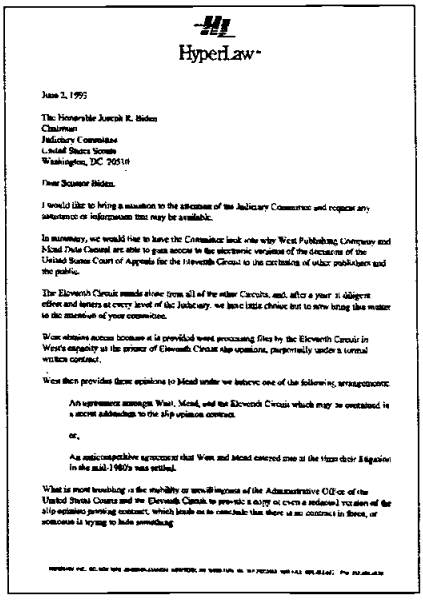
One key change is to establish an official citation for slip opinions. The public should not be required to purchase (directly or indirectly) West publications in order to cite to the Court its own opinions.

The Court also should disseminate useful and commercially valuable information when developed by the Court at public expense. For example, the Court's archives of electronic versions of the UNITED STATES REPORTS back to the 1980 term should be released to the public

CHANGES REQUIRED IN SUPREME COURT OPINION PRACTICES.

- Provide an official citation for Supreme Court slip opinions to be used pending release of the PRELIMINARY PRINT of UNITED STATES REPORTS, so citizens are not required to purchase the products of West Publishing Company to make practical use of Supreme Court opinions.
- Release electronic versions of the PRELIMINARY PRINT and UNITED STATES REPORTS as and when the paper versions are released, using the existing Project Hermes channels.

Proposals to Courts 1993



HyperLaw™

June 2, 1995

The Honorable Joseph R. Biden
Chairman
Judiciary Committee
United States Senate
Washington, DC 20510

Dear Senator Biden,

I would like to bring a situation to the attention of the Judiciary Committee and request any assistance or information that may be available.

In summary, we would like to have the Committee look into why West Publishing Company and Mead Data Central are able to gain access to the electronic versions of the decisions of the United States Court of Appeals for the Eleventh Circuit to the exclusion of other publishers and the public.

The Eleventh Circuit stands alone from all of the other Circuits, and, after a year of diligent efforts and letters at every level of the Judiciary, we have little choice but to now bring this matter to the attention of your committee.

West obtains access because it is provided word processing files by the Eleventh Circuit in West's capacity as the printer of Eleventh Circuit slip opinions, purportedly under a formal written contract.

West then provides these opinions to Mead under we believe one of the following arrangements:

An agreement amongst West, Mead, and the Eleventh Circuit which may be contained in a secret addendum to the slip opinion contract.

or,

An anticompetitive agreement that West and Mead entered into at the time their litigation in the mid-1980's was settled.

What is most troubling is the inability or unwillingness of the Administrative Office of the United States Courts and the Eleventh Circuit to provide a copy or even a redacted version of the slip opinions' governing contract, which leads us to conclude that there is no contract in force, or someone is trying to hide something.

Advocacy For Public Access 1992

N.Y. LAW JOURNAL Tuesday, July 28, 1992

LEGAL RESEARCH

Another View of Copyright of Case Reporters

Register of Copyrights

Professor Craig Joyce

Articles–New York Law Journal 1992

Jamie Love and the Taxpayer Assets Project

The Taxpayer Assets Project, a Ralph Nader affilliated group, and its director James (Jamie) Love have played an important and influential role in the effort to broaden access to judicial opinions and citation reform.

Since his entry into the fray in 1993, Jamie has energized the debate, brought needed press attention, and most importantly, has underscored that the general public has a right to reasonable access to the law, and not just lawyers, law professors, and courts.

And Jamie rolls up his sleaves and works. One need only gopher into *essential.essential.org* to see the well researched and written papers and letters from Jamie and TAP, including an important article on the Devitt Award in 1993. An economist with investment industry experience and a graduate of the Kennedy School, Love is also Internet and computer savvy, a veteran on Capitol Hill, and a quick study on complex issues. In between working on the citation and law access projects, Love spends equal time on issues such as telecommunications and drug pricing policy and other information issues. It was through Love's efforts that the EDGAR files became available.

Love (and TAP and Nader), unlike many other public interest groups in DC, have been willing to take the heat and pressure on these issues.

At times, the press in its attempt to create drama and West in an attempt to create a bogeyman has called this the "TAP v. West" debate. Of course, in 1988, it was "West v. Lexis," in 1991, it was "West and Lexis" again on the ECS fight, in 1992 it was "Thomson v. West," then it was a few "wannabe CD-ROM publishers v. West," and then "Matthew Bender v. West," etc. But, the "TAP v. West" label has not led to a swelled head, and he remains as courteous and cooperative as ever.

Through it all, Jamie has been a most gracious, intense, and formidable colleague, and has clearly shown that he is in this effort to the end. Everyone confides in Jamie and he keeps everyone's confidence. He is flexible and non-dogmatic.

He has just moved to the Washington DC area from Philadelphia, and will now have more time to frustrate his adversaries.

And, he does not take any . . .
Cheers to Jamie Love. HL

Internet and Citation Reform

LAW-LIB Archives
The archives of law-lib list containing 1994-95 debate concerning citations. *gopher://liberty.uc/wlu.edu.* Law-Lib archives may also be found at *www.kentlaw.edu* and *gopher.law.cornell.edu.*

Taxpayer Assets Project
Gopher containing TAP statements, articles and primary source material, and pointers to other sites. One pointer is to the *Minnesota Star Tribune* article and another to Chicago-Kent's version of Law-Lib.
gopher://essential.essential.org

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Continued from page 14
deplorable situation relating to the method in which federal district court opinions are disseminated and the way in which existing practices provide favoritism to a single publisher. In addition, the AALL should make a specific focused recommendation to the nation's highest court to reform its practices to begin immediately to insert paragraph numbers, to provide publicly its sequence number to use in citation, and to electronically disseminate the existing versions of the Preliminary Print of US Reports.

HL

Citation/Opinion Sessions AALL 1995 Convention

Saturday 1:00-3:00 PM
AALL Task Force on Citations Meeting (by invitation only)
Sunday 2:45-3:45 PM
B-2 International Justice: How Courts Worldwide Disseminate Information
Marci Hoffman, J. Michael Greenwood, Renate Wedinger
B-3 The SEC's Edgar System: Policy Issues and Future Directions
Douglas Lind, William L. Taylor, Ajit Kambil, George Pospolita
Monday 8:30-10:00 AM
C-1 Who Owns the Law
James Heller, Laura Gasaway, Trotter Hardy, Jamie Love, James Schatz.
C-2 Judicial Information Policy
Robert Oakley, Hon. George Nicholson, Hank Peritt, Tom Field (Michael Greenwood, from the Administrative Office of US Courts has cancelled).
Monday 10:15-11:45 AM
D-5 The Redlining of Legal Information
Timothy Coggins, Rhonda Oziel, Gary Bass, Cheryl Rae Nyberg, Hank Perritt, Jeanne Hurley Simon
Monday 1:45-3:15 PM
E-2 Benchmarks in Court Automation (Part 1):
Cyber Clerks and Digital Documents.
Michelle Finerty, Cheryl Nyberg, Hon. Peter A. Greenlee, J. Michael Greenwood, Marcia Koslov
Monday 3:30-5:30 PM
F-1 Medium and Vendor Neutral Citation Formats
Lynn Foster, Hon. Pascal F. Calogero, Jr., Clyde Christofferson, John Lederer
Tuesday 8:30-11:00 AM
G-6 Legislative and Regulatory Update
Susan E. Tulis, Mark Bernstein, Mary Alice Baish, Robert L. Oakley
Tuesday 1:00-2:30
General Business Meeting (?)

Wednesday 3:00-4:30
General Business Meeting (?)