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January 1966

## A Survey of Federal District Court Opinions: West Publishing Company Reports

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### Recommended Citation

Allan D. Vestal, *A Survey of Federal District Court Opinions: West Publishing Company Reports*, 20 Sw L.J. 63 (1966)

<https://scholar.smu.edu/smulr/vol20/iss1/4>

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# A SURVEY OF FEDERAL DISTRICT COURT OPINIONS: WEST PUBLISHING COMPANY REPORTS

by

*Allan D. Vestal\**

"We must be candid in appraising the day-to-day operations of our legal institutions. We must be imaginative in constructing new solutions and determined to carry them through, whatever self-interested opposition may be encountered."

Final Report of the Twenty-seventh  
American Assembly, April 29-May 2, 1965<sup>1</sup>

## I. ROLE OF FEDERAL DISTRICT COURTS

IT is difficult to overestimate the role played by the courts in the creation and development of the law of the United States. Although some law is made by the various legislatures, much the greater share of law is judge-made. A primary purpose of the courts at the appellate level is the creation of the law for the future, apart from the decision of the case then before the court.<sup>2</sup> A single case involves only a limited number of litigants and only a limited amount of money. The impact of a decision rendered, however, reaches far beyond the particular case and may be of vital importance to a great number of persons over a very long period of time.

At the level of the trial court the future impact of a decision may not be quite as great. In the case of state trial courts the fact that the opinions are not generally reported<sup>3</sup> tends to minimize the law-making function of such courts. In the case of the federal district courts, however, two factors tend to emphasize the law-creating aspect of their decisions, apart from the deciding of specific cases. First, the courts are manned by an exceptionally able group of indi-

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The author wishes to express a special word of appreciation for the work done by Mr. David Cox, now a member of the Iowa bar, and Mr. John Coughenour and Mr. Norman McClaskey, seniors in the College of Law, who assisted in the tabulation of information. Moreover, this type of research requires major material support which was generously granted by the University Computer Center and the Graduate College of the University of Iowa.

<sup>1</sup> Taken from the report of the Twenty-seventh American Assembly held at Arden House, Harriman, New York on April 29-May 2, 1965. The topic under consideration was "The Courts, The Public and the Law Explosion."

<sup>2</sup> This is obviously only one of several reasons for appellate courts. See Vestal, *Sua Sponte Consideration in Appellate Review*, 27 *FORDHAM L. REV.* 477, 483-486 (1959).

<sup>3</sup> Exceptions to this rule are found in numerous states, such as Connecticut, Florida, New Jersey, New York, Ohio and Pennsylvania. PRICE & BITNER, *EFFECTIVE LEGAL RESEARCH* 387-409 (1953).

viduals, and secondly, the decisions of these courts have traditionally been collected in a series of reports and have been widely disseminated.<sup>4</sup> Although some persons question the value of the reports of federal district court decisions,<sup>5</sup> the legal profession is accustomed to the extensive use of such decisions as an important element in the creation of the law.

Since these decisions are an important part of the growing corpus juris,<sup>6</sup> it would seem to follow that each federal district court judge should contribute a share to the total body of the law. Each judge should, through his writings, take part in the ongoing development of the law.

Superficial examination of the law being applied by the federal courts will reveal situations in which various courts and circuits have developed aberrational, tentative or deviational lines of authority.<sup>7</sup> Only when the differences are clearly revealed can the law develop soundly. Certainly it would be a mistake to have such controlling but conflicting lines of authority unrevealed to the legal profession generally. Through the publishing of all opinions, in cases of this nature, the conflicts can be identified and resolved with the law the stronger for it. If the opinions of the district courts are to be reported, the growth and uniformity of the law demand that the courts assume their full obligations in reporting opinions in areas of the law where there is uncertainty or conflict.

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<sup>4</sup> The series of reports including the decisions of the federal district courts are listed in PRICE & BITNER, *EFFECTIVE LEGAL RESEARCH* 384-86 (1953). The oldest of these go back to the end of the eighteenth century.

<sup>5</sup> At least one court of appeals judge no longer has the Federal Supplement in his library and more than one court of appeals judge has suggested that district court opinions not be published.

<sup>6</sup> In certain situations the opinion of the district court is extremely important. A number of circuits have adopted the position that on matters of state law the court of appeals will not overturn the decision of the trial judge unless convinced of error. *Rudd-Melikian, Inc. v. Merritt*, 282 F.2d 924 (6th Cir. 1960); *Kansas City Operating Company v. Durwood*, 278 F.2d 354 (8th Cir. 1960); *Cranford v. Farnsworth & Chambers Co.*, 261 F.2d 8 (10th Cir. 1958); *Citrigno v. Williams*, 255 F.2d 675 (9th Cir. 1958).

<sup>7</sup> Examples of this come readily to mind. The attitude of the Court of Appeals for the Third Circuit on the motion for a summary judgment is a classic. 6 MOORE, *FEDERAL PRACTICE* §§56.04[1] and 56.11[3] (1965). This difficulty has been resolved by the amendment of rule 56(e) which became effective on July 1, 1963. See MOORE, *FEDERAL PRACTICE* § 56.01[14] for advisory committee's note to amended subdivision.

The Court of Appeals for the Fifth Circuit created a special rule in *NLRB v. Tex-O-Kan Flour Mills Co.*, 122 F.2d 433 (5th Cir. 1941). This was applied time and time again by that court until the aberrational lines were terminated in *NLRB v. Walton Mfg. Co.*, 369 U.S. 404 (1962).

The Court of Appeals for the Ninth Circuit has created a line of authority which is somewhat deviational concerning the review of discovery proceedings by the use of the prerogative writs. See *Hartley Pen Co. v. United States District Court for the So. Dist. of Cal., Central Division*, 287 F.2d 324 (9th Cir. 1961), noted in 75 *HARV. L. REV.* 632 (1962).

Almost every practitioner will run across examples of such aberrational lines of authority in the practice in the federal courts.

Not every opinion has equal impact on the growth of the law. Some decisions are landmarks which vitally affect the law in a particular area. Other opinions are of only minimal worth either because they are merely cumulative or because of their quality. But all opinions reported, by the very fact of being written and reported, do contribute to the totality of the law. On the other hand, if a judge does not write opinions or does not have his opinions reported, he is not making any lasting contribution. Deciding cases without writing opinions may settle the pending controversy and so fulfill the first duty which a judge has, but this does not meet the second obligation, which is equally important, of adding to the corpus juris.

A reported statement of the law is not required or even desirable in every case. In some cases the judge may feel, and rightly so, that there is no reason to write an opinion. Because of the nature of the problem, the existence of outstanding authority in the area, the press of work, or other reasons, the judge may decide that the results would not be worth the time spent. Generally, the appellate courts will not comment on the failure of the trial judge to express himself. Occasionally, however, an appellate court will critically note the failure of a trial judge to explain his action. An example is *Kent v. United States*, wherein the District of Columbia Court of Appeals stated in a footnote,

No opinion accompanied the decision. Although none is required by the statute, a useful purpose might be served in some cases at least by a discussion of the reasons motivating the determination. Unaided by such a discussion, our task remains the one of weighing the decision in the light of what the record discloses.<sup>8</sup>

The importance of the opinions of the district courts in assisting the courts of appeals can hardly be over-emphasized. Almost every circuit judge would, I imagine, acknowledge the assistance received. The Court of Appeals for the Sixth Circuit for example, has adopted a policy of referring to and relying on a district court opinion when it covers the matter. As stated in *Patrol Valve Co. v. Robertshaw-Fulton Controls Co.*:

It is not the policy or practice of this court, in reviewing cases on appeal where a district court has rendered a comprehensive opinion with which we find ourselves in full agreement, to rewrite such an opinion and, in a sense, to deprive the trial court of the credit of its careful consideration of the issues and arguments, and complete determination of the clause. . . .<sup>9</sup>

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<sup>8</sup> Docket No. 17,935 (D.C. Cir. Oct. 26, 1964).

<sup>9</sup> 210 F.2d 146, 147-48 (6th Cir. 1954).

In spite of the acknowledged importance of district court opinions, it is obvious that the present writing and reporting of such opinions is haphazard and confusing. To get a completely accurate picture of the situation it is necessary to note that there are a number of outstanding district court opinions of precedential value which are not published in any form. These decisions or opinions are lost to the general legal profession, although available to select members of the bar through the fortuitous circumstance of participating in the suit or of knowing someone who did. When the number of publishers and series of reports are considered, it is rather surprising that these opinions go unreported.

Unreported writings are not easy to find but some examples are given. In *Rinaldi v. United States Rubber Co.* (Civil No. 7466, Conn. 1958) Judge Charles E. Clark, sitting as a district judge, handed down a ruling on a motion to intervene made by an employer and a compensation insurer of the decedent of plaintiff-administratrix. Judge Clark held that intervention was a matter of right. The ruling is an interesting one in a rather complex field.

Another example of an important but unreported opinion is a three-page memorandum opinion by Chief Judge Stephenson in *Federal National Mortgage Association v. Sande Constr. Co.* (Civil No. 2-447, S. D., Iowa, Dec. 17, 1962), wherein the court applied the doctrine of pendent jurisdiction to authorize a joinder of parties which otherwise would not have met the jurisdictional requirements of the federal courts. The unusual nature of the ruling is noteworthy, but the opinion is not generally available.<sup>10</sup> Other unreported opinions have been noted from time to time.<sup>11</sup>

The failure of these opinions to appear in the various reporters can probably be attributed to the informal and unofficial methods used in obtaining opinions from the courts. Moreover, it is entirely

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<sup>10</sup> Considered at length in Note, 51 IOWA L. REV. 151, 161 (1965).

<sup>11</sup> Another unpublished opinion which would have added something to the general corpus juris had it been published is *Greene v. Revyuk*, Civil No. 3-793, S.D. Iowa, May 26, 1961, a comprehensive review of a complicated factual situation with the legal consequences flowing from the facts. The opinion was so succinct and comprehensible that the court of appeals when it faced the problem stated that, "We shall let the *unreported* Memorandum and Order of Judge Stephenson . . . of which the appellants complain, speak for itself." (Emphasis in original.) *Newport v. Revyuk*, 303 F.2d 23, 24, 5 F.R. SERV. 2d 41B.11, case 6 (8th Cir. 1962), where the district court opinion can be found in its entirety.

An unreported case "that merits attention and remembrance," *Sekelik v. Ford Motor Co.*, Civil No. 61-464, W.D. Pa., April 1963, is mentioned in 8 *American Trial Lawyers Ass'n News Letter* 103 (1965).

In Bicks, *A Federal Outlook*, 18 *The Record of the Ass'n of the Bar of the City of New York* 189-191 (1963), several unreported opinions of district courts are discussed.

Other unreported opinions are noted in *Jarman v. United States*, 219 F. Supp. 108, 113 n.6 (D.Md. 1963); *Arkansas v. Howard*, 218 F. Supp. 626, 628 n.3 (E.D. Ark. 1963); *City of Burlington v. Westinghouse Elec. Corp.*, 215 F. Supp. 497, 507 n.16 (D.D.C. 1963).

possible that some courts have decided on a policy of restricting the number of their reported opinions or have decided that a specific opinion should not be published.

Everything considered, it is obvious that there is a need for an examination of the entire matter of writing and reporting opinions, which might then lead to a methodical and rational treatment of these materials.

## II. RESEARCH UNDERTAKEN

### A. *Problem Considered*

There is a vast amount of excellent information concerning the mechanics of the operation of the federal courts, but this does not extend to opinion writing and reporting practices of the courts. No study has been made to determine which district courts are writing the reported opinions, and thus creating the law. The assumption is made that the opinions available properly create the law without any consideration of the source of these opinions. It is the purpose of this research to give some insight into the opinion writing and reporting habits of the federal district court judges. At the present time there are conflicting attitudes about opinion writing and reporting. On one hand, there is the feeling, expressed vigorously and with some justification, that there are too many opinions being reported. It has been urged that the federal courts are writing an excessive number of opinions and opinions too long, and that some attempt should be made to limit the volume of materials being turned out by such courts. On the other hand, there is a feeling abroad that the federal law is being created at the trial level by a limited number of courts and that a number of the federal district courts are not assuming the responsibility which falls on them of helping to create the corpus juris. This research will present some facts which may be helpful in ascertaining the true nature of the situation. This may then allow some suggestions or recommendations to be made which might improve the administration of justice in the federal courts.

The opinions of the federal district courts are only one facet of the precedents created by the federal courts. Well known and much publicized are the decisions of the United States Supreme Court. These are adequately reported officially and unofficially.<sup>12</sup> The

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<sup>12</sup> The actions of the United States Supreme Court are reported in the official reports (United States Reports), the West publication (Supreme Court Reporter), the Lawyers Cooperative Publishing Co. publication (United States Supreme Court Reports Lawyers Edition), the United States Law Week published by the Bureau of National Affairs, and C.C.H. United States Supreme Court Bulletin. All of these unofficial series may contain materials

opinions of the courts of appeals are reported with some thoroughness, although it must be noted that not all opinions handed down by the courts of appeals are reported in the Federal Reporter.<sup>13</sup> By deliberate choice of the courts in some instances,<sup>14</sup> and perhaps by inadvertence in others,<sup>15</sup> courts of appeals' opinions occasionally are not made available through this medium. This research, however, is to examine only the actions taken by the district courts and the reporting of those actions. In terms of total volume of opinions, the district courts' reports represent a sizable share of the total created by the federal courts.

### B. Breadth Of Research

In order to get a complete picture of the reported opinions of the federal district courts, it was necessary to examine not only the Federal Supplement and the Federal Rules Decisions, both published by the West Publishing Company, but also a number of other series

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concerning the action taken by the Supreme Court not found in the official series. PRICE & BITNER, *EFFECTIVE LEGAL RESEARCH* 128-9 (Student ed. rev. 1962).

Other reporter series include selected Supreme Court decisions. Examples are the Federal Rules Service and the American Law Reports.

<sup>13</sup> Each of the ten circuits of the Courts of Appeals, the Court of Appeals for the District of Columbia . . . prints and distributes its slip decisions. Unfortunately, these decisions for the numbered circuit of the Courts of Appeals are not bound for distribution and few libraries have them. Reversing the usual practice—that the unofficial reports print decisions not officially reported—the above slip decisions may print per curiam decisions not printed in the unofficial Federal Reporter.

PRICE & BITNER, *EFFECTIVE LEGAL RESEARCH* 130 (Student ed. rev. 1962).

<sup>14</sup> The Court of Appeals for the Fourth Circuit has issued memorandum orders in a number of cases. These orders have not been published. It should be noted that these orders often include a discussion of the relevant law. See, for example, the memorandum orders of the Court of Appeals for the Fourth Circuit in *Bowman v. United States* (No. 9239, Nov. 1, 1963); *Reed v. Cunningham* (No. 9123, Aug. 21, 1963) ("The application for leave to file a notice of appeal in forma pauperis will be granted. However the appeal being frivolous, no certificate of probable cause will issue and the appeal will be docketed and dismissed.") *Alber v. Boles* (No. 9121, Aug. 21, 1963) (same holding); *Harding v. Warden* (No. 9026, May 16, 1963) (appeal frivolous; case docketed and dismissed); *Bullock v. Maryland* (No. 9007, April 25, 1963) (same).

See also per curiam opinions in *Hilsamer v. Gideon*, Civil No. 18654, D.C. Cir., June 24, 1965, and *Beazley v. Orsinger*, Civil No. 19,035, D.C. Cir., June 24, 1965, in which the court stated, "By Direction of the Sitting Division of the Court This Opinion Will Not Be Published in U.S. App. D.C. or F.2d." Moreover, the Court of Appeals for the District of Columbia in *Woykovsky v. Chappell*, 336 F.2d 927 (D.C. Cir. 1964), cited and relied on an unreported order.

The Ninth Circuit Court of Appeals sometime prior to December, 1962, adopted a resolution that should a panel determine that an opinion had no precedential value that it should not be made available for publication. In only a very few cases has such a notation been made.

<sup>15</sup> *In re Application of Wyckoff*, 6 RACE REL. L. REP. 793 (5th Cir. 1961), is an important court of appeals decision which is not reported in the West publications. See *Chaffee v. Johnson*, 229 F. Supp. 445, 448 (S.D. Miss. 1964) (discussing the *Wyckoff* case); *Brown v. Rayfield*, 320 F.2d 96, 98 (5th Cir. 1963) (citing *Wyckoff*). For the district court opinion on the application for writ of habeas corpus in the *Wyckoff* case, prior to the court of appeals decision, see 196 F. Supp. 515 (S.D. Miss. 1961).

of reports which duplicate, in part, the opinions contained in the West publications but which also contain opinions not found in the latter publications.<sup>16</sup> Although there is a great deal of duplication between the various series of reports, many cases are found in only one series, due to the different methods used by the various publishers to get opinions.<sup>17</sup> Nevertheless, an examination of the various reporters shows that sufficient material is available from the West system to justify an initial compilation of statistics dealing only with the West Reporters. Furthermore, the amount of information to be found in all reporter systems is too large to be presented in one article. For these reasons, the instant Article deals only with the Federal Supplement and Federal Rules Decision Reporters. Later articles will complete the picture.

### C. Research Methods

An attempt was made to get information about every reported

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<sup>16</sup> The following list is probably not complete, but the reports not covered should be *de minimis*.

- (1) Trade Regulation Reporter, published by Commerce Clearing House;
- (2) Pike & Fischer, Radio Report;
- (3) Race Relations Law Reporter, published by Vanderbilt University School of Law;
- (4) American Federal Tax Report (2d), published by Prentice-Hall;
- (5) Tax Court Reporter, published by Commerce Clearing House;
- (6) Pike & Fischer, Administrative Law;
- (7) Federal Rules Service (2d), published by Callaghan & Co.;
- (8) United States Patent Quarterly;
- (9) Labor Relations Reference Manual, published by the Bureau of National Affairs;
- (10) Copyright Decisions, published by the Copyright Office of Library of Congress;
- (11) Labor Relations Reporter, published by Commerce Clearing House;
- (12) Life (Health and Accident) Cases (2d), published by Commerce Clearing House;
- (13) Public Utilities Report (3d), published by Public Utilities Reports, Inc.;
- (14) Automobile Cases (2d), published by Commerce Clearing House;
- (15) Fire and Casualty Cases, published by Commerce Clearing House;
- (16) Negligence Cases, published by Commerce Clearing House;
- (17) Bankruptcy Law Reporter, published by Commerce Clearing House;
- (18) United States Aviation Reports;
- (19) Federal Securities Law Reporter, published by Commerce Clearing House;

See also the list of law reports in PRICE & BITNER, *EFFECTIVE LEGAL RESEARCH* 413-4 (1953).

It must be noted that a number of these reports include materials other than opinions written by federal district court judges. In some topical series of reports relevant state decisions are included; many include federal court of appeals' decisions or pertinent decisions by the Supreme Court of the United States. Federal Rules Decisions and the Federal Rules Service (2d) include articles written by experts.

<sup>17</sup> For the practice of the West Publishing Company, see text accompanying notes 36-38 *infra*. Some courts do mail copies as requested by the various publishers; the competition is scanned for decisions to be included, but this is not enough. Hard work is required to get all of the opinions which are relevant. Some courts when mailing in opinions will mark them "not for publication." This means that further communication with the judge is required if the opinion is to be used. It seems that publishers other than the West Company are somewhat more aggressive than West in getting opinions. Many of the opinions reported are obtained only through the most diligent effort on the part of employees of the various companies.



opinion written by a federal district court judge during fiscal 1962.<sup>18</sup> For each of these cases the following information was encoded on IBM cards and then stored on a magnetic tape for use in the IBM 7044/1401 computer system:<sup>19</sup>

- (1) the citation or citations where the opinion is found,
- (2) the date of the opinion,
- (3) the court in which the case was pending,
- (4) the judge writing the opinion,
- (5) the docket number (for identification),
- (6) the page length of the opinion,
- (7) the subject matter of the opinion,
- (8) whether handed down on a final or interlocutory ruling,
- (9) whether the opinion involved (a) discovery, (b) instructions to a jury, or (c) findings of facts and conclusions of law,
- (10) whether more than ten authorities were cited by the judge writing the opinion,
- (11) whether any of the reports was not the full text.

Since all of the materials are included on tapes, it is possible to examine the materials in a number of different ways. Examinations have been made in terms of courts, judges, types of cases (for example, whether government or private litigation). The possibilities are almost unlimited.<sup>20</sup>

#### D. *Ultimate Goals*

It is hoped that a thorough examination of the opinion writing and reporting practices of the district court judges may give sufficient information so that suggestions can be made for the improvement of the system. An initial examination of the area has suggested (1) that some judges are not contributing to the corpus juris, (2) that some judges are writing an inordinately large number of opinions, and (3) that the present screening or selection process leaves much to be desired.

When statistics are collected concerning the opinions made avail-

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<sup>18</sup> When reference is made to fiscal 1962 cases this means those cases decided in the period from July 1, 1961, to June 30, 1962, and found in volumes 28 to 32 of Federal Rules Decisions and volumes 195-214 of Federal Supplements. This period of the fiscal year was chosen, rather than the calendar year, to allow comparisons with the information collected by the Administrative Office of the United States Courts which is reported in terms of fiscal years. See ADMINISTRATIVE OFFICE OF U.S. COURTS, ANNUAL REPORT (Annual Report of the Director, hereinafter ANNUAL REPORT) 192-241 (1962).

<sup>19</sup> Note, 50 IOWA L. REV. 1114 (1965).

<sup>20</sup> In subsequent articles it is planned to cover (1) the total picture, West publications and all the other reports, (2) a comparison of the reporting practices of the various reports, (3) the opinion writing practices of the various judges, and finally (4) an appraisal of the opinion writing and reporting practices of the federal trial courts with some suggestions for possible improvement.

able to the legal profession by all of the various publishers, it should be possible to articulate some definite conclusions concerning possible improvements. Up until the present time we simply have not had adequate information to allow us to make sound decisions in the matter. It is hoped that the research presented here and that still in process may help to fill this void.

### III. BACKGROUND IN FISCAL 1962

In order to understand the opinion-writing practices of the federal district courts during fiscal 1962 it is necessary to examine the general operation of these courts during the period. Fortunately, much very valuable information is available from the Director of the Administrative Office of the United States Courts.<sup>21</sup> This information covers the gross totals decided by districts, the types of cases started and terminated, the criminal work load, and much other data which paints an accurate picture of the federal district courts.

On the civil side, for example, the Office reported that 54,486 cases (omitting land condemnation cases) were terminated in the various district courts in fiscal 1962. More than half of these were terminated with no court action at all. On the other hand, 25,489 terminated cases did involve some action on the part of the courts.

More than nineteen thousand of this latter group were settled short of trial. 6,202 cases were terminated during or after trial, 2,025 (almost four per cent) being in trial to a jury and 3,277 (six per cent) in trial to the court.<sup>22</sup>

To ascertain which of the district courts are busiest it is possible to consolidate the civil cases terminated in fiscal 1962 and the defendants in criminal cases terminated by final disposition in that same fiscal year.<sup>23</sup> The totals obtained give some rough measure of the work done by the various district courts. This information is found in Table I. It can be seen that the totals of these two figures in each state vary from a high of 10,605 in New York to a low of 183 in Delaware. The other states are spread between these two extremes. Obviously, this is not an exact measure of the work load of the various federal courts, but one would assume that the inequalities among the various cases would balance out, so that these figures would be a fair measure of the burden carried by the various courts. This, of course, is a gross figure and becomes meaningful only when

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<sup>21</sup> ANNUAL REPORT 192-241 (1962).

<sup>22</sup> ANNUAL REPORT 204-05 (1962).

<sup>23</sup> ANNUAL REPORT 192-95, 223-25 (1962).

considered with the number of judges available to handle the work load.

		TABLE I		
		TOTAL CIVIL CASES	DEF. IN CRIMINAL CASES	
		<i>Cases Terminated</i>	<i>Terminated by Final Disposition</i>	<i>Total</i>
1	Ala.	950	928	1878
2	Alaska	166	130	296
3	Ariz.	647	762	1409
4	Ark.	487	436	923
5	Cal.	2933	2998	5931
6	Colo.	390	333	723
7	Conn.	568	263	831
8	Del.	116	67	183
9	D. C.	7180	1282	8462
10	Fla.	1872	1736	3608
11	Ga.	1023	1478	2501
12	Hawaii	124	108	232
13	Idaho	154	151	305
14	Ill.	2782	949	3731
15	Ind.	1052	479	1531
16	Iowa	354	171	525
17	Kan.	678	340	1018
18	Ky.	629	1120	1749
19	La.	2008	944	2952
20	Me.	223	78	301
21	Md.	851	458	1309
22	Mass.	990	415	1405
23	Mich.	1468	880	2348
24	Minn.	697	318	1015
25	Miss.	696	486	1182
26	Mo.	1255	733	1988
27	Mont.	190	193	383
28	Neb.	318	125	443
29	Nev.	100	241	341
30	N. H.	74	53	127
31	N. J.	1042	514	1556
32	N. M.	182	398	580
33	N. Y.	8235	2370	10,605
34	N. C.	608	1815	2423
35	N. D.	107	122	229
36	Ohio	1714	1106	2820
37	Okla.	750	680	1430
38	Ore.	594	253	847
39	Pa.	3670	842	4512
40	R. I.	147	80	227
41	S. C.	792	858	1650
42	S. D.	145	121	266
43	Tenn.	1130	1204	2334
44	Texas	3092	2925	6017
45	Utah	189	230	419
46	Vt.	251	43	294
47	Va.	1174	809	1983
48	Wash.	703	416	1119
49	W. Va.	413	465	878
50	Wis.	507	202	709
51	Wyo.	100	144	244
52	Canal Zone	323	87	410
53	Guam	188	59	247
54	Puerto Rico	451	140	591
55	Virgin Is.	514	100	614
	Total	57,996	34,638	92,634

Surprisingly enough, it is rather difficult to ascertain the number of judges available in the various district courts during a given period. Using the material available in the Federal Supplement,<sup>24</sup> it is possible to determine the judges serving during the entire period and the judges appointed during the period. Then the judges sitting by assignment and those absent from a court because sitting by assignment elsewhere can be found in the materials prepared by the Administrative Office of the United States Courts.<sup>25</sup> Using these sources, it was possible to establish roughly the judicial manpower available in each district in fiscal 1962.<sup>26</sup> When the information from Table I

TABLE II  
TERMINATION PER JUDGE, FISCAL 1962

1 Kan.	679	18 Iowa	350	35 Mass.	281
2 D. C.	627	19 N. Y.	348	36 Conn.	277
3 S. C.	550	20 Ore.	339	37 Pa.	265
4 La.	537	21 Minn.	338	38 Wyo.	244
5 Fla.	515	22 Cal.	321	39 Colo.	241
6 Ga.	500	23 Wash.	319	40 Wis.	236
7 Mo.	497	24 Okla.	317	41 Nev.	227
8 Va.	496	25 Ohio	313	42 R. I.	227
9 N. C.	485	26 N. J.	311	43 Utah	210
10 Ariz.	470	27 Ill.	311	44 Mont.	192
11 Texas	446	28 Ark.	308	45 Hawaii	155
12 Ky.	437	29 Me.	301	46 Idaho	153
13 Md.	436	30 Neb.	295	47 Alaska	148
14 Miss.	394	31 Vt.	294	48 S. D.	133
15 Tenn.	389	32 Mich.	294	49 N. H.	127
16 Ind.	383	33 W. Va.	293	50 N. D.	115
17 Ala.	376	34 N. M.	290	51 Del.	61

<sup>24</sup> Each Federal Supplement indicates new judges appointed and deaths and change to senior status occurring since last volume.

<sup>25</sup> ANNUAL REPORT 279-87 (1962).

<sup>26</sup> Judicial Manpower Available 1962

State	Judges	State	Judges	State	Judges
1—Ala.	5	20—Me.	1	38—Ore.	2½
2—Alaska	2	21—Md.	3	39—Pa.	17
3—Ariz.	3	22—Mass.	5	40—R. I.	1
4—Ark.	3	23—Mich.	8	41—S. C.	3
5—Cal.	18½	24—Minn.	3	42—S. D.	2
6—Colo.	3	25—Miss.	3	43—Tenn.	6
7—Conn.	3½	26—Mo.	4	44—Texas	13½
8—Del.	3	27—Mont.	2	45—Utah	2
9—D. C.	13½	28—Neb.	1½	46—Vt.	1
10—Fla.	7	29—Nev.	1½	47—Va.	4
11—Ga.	5	30—N. H.	1	48—Wash.	3½
12—Hawaii	1½	31—N. J.	5	49—W. Va.	3
13—Idaho	2	32—N. M.	2	50—Wis.	3
14—Ill.	12	33—N. Y.	30½	51—Wyo.	1
15—Ind.	4	34—N. C.	5	52—Canal Zone	1
16—Iowa	1½	35—N. D.	2	53—Guam	
17—Kan.	1½	36—Ohio	9	54—Puerto Rico	1½
18—Ky.	4	37—Okla.	4½	55—Virgin IIs.	1
19—La.	5½				

is considered with the number of judges available in the various states during fiscal 1962, it is possible to determine the number of cases terminated per judge in this period of time. This will give us at least a rough measure of the work load per judge in the federal courts in the various states.

Table II indicates that there is a great disparity between the extremes in terminations per judge in the various jurisdictions. The district court in Delaware concluded only sixty-one per judge; North Dakota ranked next, terminating 115 per sitting judge. Using this measure, the busiest district courts were those in Kansas and the District of Columbia, then South Carolina, Louisiana, Florida, Georgia, Missouri, Virginia, North Carolina, Arizona, and Texas. Of the states with more than 400 terminations per sitting judge only three, Kansas, Arizona, and the District of Columbia, are outside the states of the South. One might assume that this factor might be some index of the opinion-writing habits of the judges. It might well be that the busiest judges simply do not have time to write opinions for publication. In light of the information which we have about the opinions for fiscal 1962 it is easy to check this hypothesis.

#### IV. WEST REPORTS

An independent analysis of the West publication opinions would seem to be justified on several grounds. First, the West publications have a pre-eminence in the field which cannot be questioned. Secondly, the West Publications have a semi-official status. Thirdly, the opinions included in these publications are there, almost in every case, because the judge writing the opinion felt that it deserved publication. These three factors are so important that they deserve further explanation.

##### A. *Pre-eminence In The Field*

When the average practitioner considers the actions taken by the federal district courts he thinks of the West publications—first the Federal Supplement,<sup>27</sup> and then on a moment's reflection he will probably recall the Federal Rules Decisions.<sup>28</sup> These two series are considered generally as the means by which the opinions of the district courts are made available to the legal profession.<sup>29</sup>

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<sup>27</sup> First published in 1924, the current volume is number 240.

<sup>28</sup> Federal Rules Decisions first appeared in 1939.

<sup>29</sup> It is difficult to see the line drawn by the West Company between the Federal Supplement and the Federal Rules Decisions. Not all cases interpreting the federal rules are included in the F.R.D. When a case involves procedural problems and other matters, the case is normally included in the Federal Supplement Series. Since there is no duplication between

The West publications have nurtured the idea of exclusiveness and pre-eminence in the reporting field by refusing generally to acknowledge the existence of the other series of reports.<sup>30</sup> Parallel citations of cases in non-West publications have been deleted from opinions in the West publications. One district court judge has noted that when he included a source other than a West publication, the case not being available in the latter, West deleted the citation and included an asterisk and a footnote indicating that the opinion was not available. *Hanson v. Birmingham*<sup>31</sup> is a case apparently in point. It appears that in the judge's original opinion he cited four cases<sup>32</sup> and after the name of each inserted first, "—F. Supp.—," and then a citation in U.S.T.C., the Commerce Clearing House reporter. When the *Hanson* opinion appeared in the Federal Supplement, the U.S.T.C. citation was deleted along with the blank for the Federal Supplement, and in its place was an asterisk and a footnote, "No opinion for publication." Other examples of this can be found with

the two series, this means the case will not appear in F.R.D. Some cases put into the F.R.D., however, involve substantive law points of real significance. See, for example, *Alfarone v. Fairchild Engine and Airplane Corp.*, 32 F.R.D. 19 (E.D.N.Y. 1963). This case was considered significant enough to be included in 46 CCH LAB. L. REP. § 18022 (1963). *Black v. Board of Education of Amityville, New York*, 31 F.R.D. 44 (E.D.N.Y. 1962), involved school segregation in New York and was considered significant enough to be included in 7 RACE REL. L. REP. 1058 (1962).

<sup>30</sup> The West Publishing Company publishes many of the legal casebooks, and it is not surprising to find that only West reporters are cited for lower federal court cases in these casebooks. See, for example, BRUTON & BRADLEY, CASES ON FEDERAL TAXATION (1953), especially the note at 59. In the treatises published by West only the West series of reports are cited for such courts. See also Wechstein's review of WRIGHT, FEDERAL COURTS (17 L.J. ed. 349, 353 1965), noting that Wright does not refer to or cite MOORE, FEDERAL PRACTICE (1962). Professor Wechstein states:

This absence of citation to the Moore treatise, which is consistent throughout the Wright text, is explainable but not excusable. The publisher of the Wright text also publishes the Baron and Holtzoff treatise, recently revised by Wright, and the primary competitor of the Moore treatise published by another company. Nevertheless, a hornbook which purports to be an authoritative guide to the subject of Federal Courts is misleading if it fails to make reference to the leading work in the field, Moore's *Federal Practice*, which has been called the "most used textbook in the law."

Unthinkingly, this idea of exclusiveness has spread to other publications. For example, A UNIFORM SYSTEM OF CITATION 16 (1963) states that in the case of appeals and district courts only the West reports should be cited even though the case appears in another reporter. Only if the case is not available in a West publication, it is stated, should a non-West citation be used.

This same unthinking attitude of exclusiveness is found in the series of judicial decisions compiled by the Office of the General Counsel, Securities and Exchange Commission (cited as S.E.C. Jud. Dec.), wherein frequently in the headnote to an opinion it is noted "[Unreported]" with a footnote "Except as reported in CCH Fed. Sec. L. Rep." with a citation. See, for example, *Dottenheim v. Emerson Electric Mfg. Co.*, 5 S.E.C. Jud. Dec. 1 (E.D.N.Y. 1946); *Standard Gas and Electric Co. v. SEC.*, 5 S.E.C. Jud. Dec. 370 (D.C. Cir. 1947).

<sup>31</sup> 92 F. Supp. 33, 39 A.F.T.R. 904,50-2 O.S.T.C. 9417 (N.D. Iowa 1950).

<sup>32</sup> *Mallory v. Allen*, 38 Am. Fed. Tax R. 1957, 47-2 U.S. Tax Cas. ¶ 9399 (M.D. Ga. 1947); *Hager v. Kavanagh*, 38 Am. Fed. Tax R. 1650, 48-1 U.S. Tax. Cas. ¶ 9119 (W.D. Mich. 1947); *Stanback v. Robertson*, 42 Am. Fed. Tax. R. 1174, 50-1 U.S. Tax. Cas. ¶ 9236 (N.C. 1949); *Riggs v. Thompson*, 38 Am. Fed. Tax R. 1599, 48-2 U.S. Tax Cas. ¶ 9353 (E.D. Ark. 1948).

little difficulty.<sup>33</sup> This idea of exclusiveness or pre-eminence, nurtured in a number of ways,<sup>34</sup> is not accurate in the case of district court opinions since many of these are found in a number of series of reports published by companies other than West. In addition, a number of published opinions are found only in non-West publications.<sup>35</sup>

### B. Semi-Official Position

The West Reporters occupy a rather unique position. They are published by a private corporation over which the federal courts have, technically, no control. In fact, however, the federal courts individually, and collectively in the Judicial Conference, have a great deal of control over them. Authorities have noted the quasi-official character of the West publications. For example, one has stated:

With the exception of the reports designated as official by those courts, there are no technically official reports for the lower federal courts today. The distinction is only technical, however, and perhaps not even that, since the Judicial Conference of the United States, which regulates administrative matters concerning the federal courts, by its requests to the West Publishing Company concerning the content of its

<sup>33</sup> For example, *Robert Rogers, Inc. v. United States*, 118 Ct. Cls. 126, 93 F. Supp. 1014 (1950). In the official reporter, in the dissenting opinion on page 146, is found "To the same effect is the holding in *Charles E. Smith & Sons Co. v. Commissioner of Internal Revenue*, CCH ¶ 9470, (C.A. 6, October 20, 1950). (Per curiam opinion)." On page 1018 of the Federal Supplement this reads, "To the same effect is the holding in *Charles E. Smith & Sons Co. v. Commissioner of Internal Revenue*, 6 Cir., 184 F.2d 1011 per curiam opinion."

Another example is *Rogers v. United States*, 123 Ct. Cls. 779, 108 F. Supp. 727 (1952), at page 786 in the official report, it is stated, "Our holding that plaintiff is not entitled to recover is in accord with the decisions in *DeSoto Hardwood Flooring Co. v. United States*, ¶ 72, 371 P-H Fed. 1951 (W.D. Tenn. 1950). . . ." In the Federal Supplement (page 730) this was changed to read, ". . . in *DeSoto Hardwood Flooring Co. v. United States*, D.C.W.D. Tenn. 1950. . ." Then a footnote was supplied stating, "No opinion for publication."

See also *Pan American World Airways v. Division of Labor, Law Enforcement of the Dept. of Industrial Relations of the State of California*, 203 F. Supp. 324 (N.D. Cal. 1962) and compare same case in 45 L.C. ¶ 17.62 (1962) (wherein citation of L.R.R.M. is included although not found in Federal Supplement report) and 50 L.R.R.M. 2135 (1962).

Compare also the citation of the case of *Retail Clerks International Association, Local 1357 v. Food Fair Stores, Inc.* in *International Chemical Workers Union, Local No. 6 v. Olin Mathieson Chemical Corp.*, 202 F. Supp. 363 (S.D. Ill. 1962) with that in 12 PIKE & FISCHER, ADMINISTRATIVE LAW (2d) 93, 49 L.R.R.M. 2646 and 44 CCH Lab. Cas. ¶ 17,432.

To be fair to the West Publishing Company, it must be noted that occasionally the citations of the reporters of other companies have appeared in the West publications. See *Pitcairn Co. v. United States*, 148 Ct. Cls. 713, 180 F. Supp. 582 (1960); *Bookwalter v. Centropolis Crusher Co.*, 305 F.2d 27 (8th Cir. 1962); *Mitchell v. Barbee Lumber Co.* 35 F.R.D. 544, 546 n. 1 (S.D. Miss. 1964) (citing CCH Lab. Cas.); *Quinn v. Hook*, 231 F. Supp. 718, 723 (E.D. Pa. 1964) (in n. 16 a U.S. Tax Cas. citation is given).

<sup>34</sup> See note 30 *supra*.

<sup>35</sup> It has been noted that opinions are "occasionally" available only in non-West publications. PRICE & BITNER, EFFECTIVE LEGAL RESEARCH 154 (Student ed. rev. 1962).

The research shows that there were 733 opinions from fiscal 1962 found exclusively in non-West sources. This means that the West publications include 2279 of the total of 3012 reported opinions from this fiscal year. So that the West publications include three out of every four reported opinions.

Reporters of federal courts, may be said to have conferred at least semi-official status. For example, on March 11, 1960, the Conference approved the following resolution: "Resolved, that the Judicial Conference of the United States approve a request by the United States Court of Claims that its opinions be published hereafter in the Federal Reporter, 2d Series."<sup>36</sup>

Moreover, apparently each federal judge is sent a copy of his opinion as it is to be printed by West. Although there is no set pattern in the matter, it seems that most judges skim or read such opinions, while some judges even check the accompanying headnotes prepared by the West Publishing Company for content and then correct them if not satisfactory. This, then, has the effect of putting the court's imprimatur on the opinion and the headnotes.

### C. Selection By Judges

The methods used in obtaining cases for the West publications are not as definite and clear as might be hoped. It seems that the West company contacts each federal district court judge when he is appointed and notifies him that the company is interested in publishing opinions which he wishes to have included in the West publications. Although the West Publishing Company makes the final decision, it is hard to imagine that the company would refuse to publish an opinion sent in by a judge.<sup>37</sup>

On the other hand, it seems that occasionally West Publishing Company may become aware of an opinion not sent in by the writing judge.<sup>38</sup> The West company may then contact the district court judge, asking for a copy of the opinion for inclusion in the Federal Supplement or Federal Rules Decisions. This apparently happens infrequently. On occasion, one of the litigants may indicate to the judge that the opinion, not sent in for publication, deserves to be readily available to the legal profession. The litigant may urge that the opinions be sent to West. This has happened in the case of the Department of Justice where a noteworthy case would otherwise be generally unavailable. Nevertheless, the overwhelming number of opinions appearing in the West series are obtained through the action of the writing judges. The opinions are those which the judges wish to have included because of their inherent worth.

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<sup>36</sup> PRICE & BITNER, *EFFECTIVE LEGAL RESEARCH* 131, 132 (Student ed. rev. 1962). This change became effective with 276 F.2d. The last Court of Claims opinions found in the Federal Supplement are at volume 181. See 149 Ct. Cls. xix (1960).

<sup>37</sup> It has been reported that the company will confer with any judge who sends in opinions of no precedential value or opinions that are overly prolix.

<sup>38</sup> Letter From United States District Judge, June 15, 1964.



## V. STATISTICAL INFORMATION ON FISCAL 1962 OPINIONS IN WEST PUBLICATIONS

### A. *General Information*

Table III shows the opinions written in fiscal 1962<sup>39</sup> by the federal district courts and reported in the two West publications, the Federal Supplement and the Federal Rules Decisions. In addition the comparable information is given for fiscal 1963. This later information is presented to allow some assurance of validity of conclusions which might be derived from the fiscal 1962 information. An examination of the table will show that there is a common pattern in the two years of the opinion-reporting by the district courts.

In evaluating the contribution to the corpus juris, the gross number, 2,279, should be compared with the 2,895 cases disposed of by the courts of appeals after hearing or submission during fiscal 1962<sup>40</sup> and the 195 appeals and writs of certiorari disposed of on the merits by the Supreme Court during the 1961 term.<sup>41</sup>

Some outstanding facts are apparent in an examination of these tables. First, New York federal district courts provided eighteen per cent of the opinions, while Pennsylvania courts were the source of fifteen per cent and California courts four per cent of the total. On the other hand, the federal courts in fourteen states contributed fewer than ten opinions each in fiscal 1962.

The number of opinions alone would not seem to be a valid criterion from which to draw conclusions. If the information on number of opinions is complemented by total length of opinions written, the figures become more meaningful.

In the two West company publications there were 8958 pages of opinions written by district court judges in fiscal 1962. In gross total pages of opinions (as in number of opinions) New York federal courts led by a wide margin. About one sixth of the volume of pages was produced by the district court judges from New York. One-ninth of the pages was the product of the Pennsylvania district courts. Third ranked was Maryland with 399 pages. Eight of the states provided about one half of the total volume of pages in fiscal 1962. The federal courts in the other forty-two states, the District

<sup>39</sup> This included all cases from fiscal 1962 found in Federal Rules Decisions Volume 28 through Volume 32 and in the Federal Supplement Volume 195 through volume 214. Both of the final volumes were published well after the end of fiscal 1962 so that the only reported cases which would be omitted would be aberrational ones appearing well out of order.

<sup>40</sup> ANNUAL REPORT 180 (1962). This figure represents cases disposed of, which is not the same as opinions reported. A case may be decided without a reported decision, note 14 *supra*, and an opinion may be reported which may not terminate the case.

<sup>41</sup> ANNUAL REPORT 100 (1962). In addition 665 petitions for certiorari were denied or dismissed.

TABLE III  
DISTRICT COURT OPINIONS AVAILABLE IN WEST PUBLICATIONS

State	1962			1963		
	Supp.	FRD	TOTAL	Supp.	FRD	TOTAL
Ala.	31		31	37	1	38
Alaska	9	1	10	10	1	11
Ariz.	5		5	6		6
Ark.	43		43	37	3	40
Cal.	87	2	89	71	4	75
Colo.	23	2	25	29	2	31
Conn.	46	9	55	21		21
Del.	32	3	35	24	5	29
D. C.	40	1	41	55		55
Fla.	32		32	25		25
Ga.	33	1	34	21	2	23
Hawaii	8		8	5	1	6
Idaho	4		4	6		6
Ill.	65	1	66	55	7	62
Ind.	20		20	23		23
Iowa	22	1	23	14	1	15
Kan.	15		15	21	2	23
Ky.	45		45	29		29
La.	75	1	76	126	2	128
Maine	7		7	9		9
Md.	67	3	70	70	8	78
Mass.	78	5	83	50	2	52
Mich.	42	5	47	38	3	41
Minn.	25	1	26	37	3	40
Miss.	21		21	15	1	16
Mo.	38	5	43	84	12	96
Mont.	19	1	20	10	1	11
Neb.	9		9	5		5
Nev.	4		4	2		2
N. H.	5		5	3		3
N. J.	40	4	44	53		53
N. M.				2		2
N. Y.	396	28	424	322	51	373
N. C.	37	1	38	37	3	40
N. D.	10		10	3	1	4
Ohio	43	3	46	24	3	27
Okla.	6		6	10		10
Ore.	37	1	38	27	2	29
Penn.	286	51	337	225	46	271
R. I.	14	1	15	5		5
S. C.	39	2	41	26	3	29
S. D.	7		7	7	2	9
Tenn.	53	7	60	49	5	54
Texas	62	2	64	59	4	63
Utah	5		5	5		5
Vt.	6		6	2		2
Va.	57		57	57	1	58
Wash.	3		3	10		10
W. Va.	31		31	44		44
Wis.	28		28	24	1	25
Wyo.	9		9	6		6
Canal Zone	1		1			
Guam	1		1			
Puerto Rico	16		16	14		14
Virgin Is.	0		0	1		1
Total	2137	142	2279	1950	183	2133

TABLE IV  
DISTRICT COURT OPINIONS FISCAL 1962

<i>States</i>	<i>Number of Opinions</i>	<i>Rank</i>	<i>Pages of Opinions</i>	<i>Rank</i>
1 Ala.	31	25	201	14
2 Alaska	10	37	33	41
3 Ariz.	5	46	15	49
4 Ark.	43	16	304	7
5 Cal.	89	3	346	4
6 Colo.	25	29	88	32
7 Conn.	55	11	208	13
8 Del.	35	22	196	15
9 D. C.	41	18	121	26
10 Fla.	32	24	135	22
11 Ga.	34	23	143	21
12 Hawaii	8	41	75	34
13 Idaho	4	49	11	50
14 Ill.	66	7	310	6
15 Ind.	20	32	115	28
16 Iowa	23	30	177	17
17 Kan.	15	35	32	42
18 Ky.	45	14	132	24
19 La.	76	5	322	5
20 Me.	7	42	23	48
21 Md.	70	6	399	3
22 Mass.	83	4	226	10
23 Mich.	47	12	192	16
24 Minn.	26	28	83	33
25 Miss.	21	31	95	31
26 Mo.	43	16	147	20
27 Mont.	20	32	100	29
28 Neb.	9	39	49	37
29 Nev.	4	49	29	44
30 N. H.	5	46	49	37
31 N. J.	44	15	217	11
32 N. M.	0	54	0	54
33 N. Y.	424	1	1524	1
34 N. C.	38	20	164	18
35 N. D.	10	37	35	39
36 Ohio	46	13	158	19
37 Okla.	6	44	34	40
38 Ore.	38	20	134	23
39 Pa.	337	2	1018	2
40 R. I.	15	35	50	36
41 S. C.	41	18	130	25
42 S. D.	7	42	26	47
43 Tenn.	60	9	271	8
44 Texas	64	8	207	12
45 Utah	5	46	31	43
46 Vr.	6	44	66	35
47 Va.	57	10	245	9
48 Wash.	3	51	11	50
49 W. Va.	31	25	100	29
50 Wis.	28	27	120	27
51 Wyo.	9	39	28	45
52 Canal Zone	1	52	2	53
53 Guam	1	52	3	52
54 Puerto Rico	16	34	27	46
55 Virgin Is.	0	54	0	54
Total	2279		8957	

of Columbia, and the territories provide the other fifty per cent.

At the lower extreme were Virgin Islands, Guam, Canal Zone, New Mexico, Idaho, and Washington, each with fewer than fifteen pages of opinions written.

When the 2279 opinions from fiscal 1962 available in the West publications are viewed against the total work of the courts, some meaningful conclusions can be drawn. It would appear that there is a rough ratio of one opinion in a West publication for each forty cases terminated after some court action. Determining the number of opinions reported in West publications compared to terminations in each state will allow us to see if there is a great deviation from the ordinary pattern of conduct.

It would be logical to assume that there would be some range within which the court would normally fall in such a ratio. In fact, in the table it seems that an acceptable range might be between 1:20 and 1:60. The only states which depart widely from this range on the low side are Delaware, Pennsylvania, Connecticut, and Rhode Island. The departures on the high side, excluding New Mexico with no opinions at all, are Canal Zone (1:410), Washington (1:373), Arizona (1:282), District of Columbia (1:206), Florida (1:113), Texas (1:94), Nevada (1:85) and Utah (1:84).

TABLE V  
RATIO: 1962 WEST OPINIONS/TERMINATIONS

1 Ala.	1:60	29 Nev.	1:85
2 Alaska	1:30	30 N. H.	1:25
3 Ariz.	1:282	31 N. J.	1:35
4 Ark.	1:21	32 N. M.	
5 Cal.	1:66	33 N. Y.	1:25
6 Colo.	1:29	34 N. C.	1:62
7 Conn. (3)	1:15	35 N. D.	1:23
8 Del. (1)	1:5	36 Ohio	1:61
9 D. C.	1:206	37 Okla.	1:24
10 Fla.	1:113	38 Ore.	1:22
11 Ga.	1:74	39 Pa. (2)	1:13
12 Hawaii	1:72	40 R. I. (3)	1:15
13 Idaho	1:76	41 S. C.	1:40
14 Ill.	1:57	42 S. D.	1:38
15 Ind.	1:77	43 Tenn.	1:39
16 Iowa	1:23	44 Texas	1:94
17 Kan.	1:68	45 Utah	1:84
18 Ky.	1:39	46 Vt.	1:49
19 La.	1:39	47 Va.	1:35
20 Me.	1:43	48 Wash.	1:373
21 Md.	1:19	49 W. Va.	1:28
22 Mass.	1:17	50 Wis.	1:25
23 Mich.	1:52	51 Wyo.	1:29
24 Minn.	1:39	52 Canal Zone	1:410
25 Miss.	1:56	53 Guam	1:25
26 Mo.	1:45	54 Puerto Rico	1:37
27 Mont.	1:19	55 Virgin Is.	
28 Neb.	1:49		

To refine the figures another way the gross number of opinions can be divided by the number of judges in the federal courts of the state. This latter figure, which represents the total judicial manpower available during the fiscal year, includes judges sitting by assignment, judges who sat for only part of the year, and judges sitting for the entire year.<sup>42</sup> The resulting figure will represent the number of opinions produced per available judge.

This table shows a great range of productivity from twenty-three per judge in Maryland to a total lack of opinions in New Mexico and some of the territories. Pennsylvania is second most productive with twenty; Massachusetts is third.

It is interesting to check the productivity against the work load of the various courts to see if the busy courts are, or are not, writing opinions. It might be argued that the busy courts simply do not have the time to turn out published opinions. On the other hand, it might be claimed that the busy courts are the very ones dealing with problems which should be reported in published opinions. When the information in Table II is compared with that in Table VI, some interesting facts are revealed. Of the ten busiest courts, only two are

TABLE VI  
OPINIONS PER JUDGE AVAILABLE  
FISCAL 1962

	<i>Opinions/Judge</i>	<i>Ranking</i>		<i>Opinions/Judge</i>	<i>Ranking</i>
1 Ala.	6	30	29 Nev.	26	46
2 Alaska	5	35	30 N. H.	5	35
3 Ariz.	1.6	49	31 N. J.	9	21
4 Ark.	15	6	32 N. M.	0	53
5 Cal.	5	35	33 N. Y.	14	9
6 Colo.	8	25	34 N. C.	8	25
7 Conn.	16	4	35 N. D.	5	35
8 Del.	12	13	36 Ohio	5	35
9 D. C.	3	45	37 Okla.	1	50
10 Fla.	4.6	43	38 Ore.	16	4
11 Ga.	7	27	39 Pa.	20	2
12 Hawaii	5	35	40 R. I.	15	6
13 Idaho	2	48	41 S. C.	13.6	12
14 Ill.	5.5	34	42 S. D.	3.5	44
15 Ind.	5	35	43 Tenn.	10	16
16 Iowa	15	6	44 Texas	5	35
17 Kan.	10	16	45 Utah	2.5	47
18 Ky.	11	14	46 Vt.	6	30
19 La.	14	9	47 Va.	14	9
20 Me.	7	27	48 Wash.	1	50
21 Md.	23	1	49 W. Va.	10	16
22 Mass.	17	3	50 Wis.	9	21
23 Mich.	6	30	51 Wyo.	9	21
24 Minn.	9	21	52 Canal Zone	1	50
25 Miss.	7	27	53 Guam	0	53
26 Mo.	11	14	54 Puerto Rico	10	16
27 Mont.	10	16	55 Virgin Is.	0	53
28 Neb.	6	30			

<sup>42</sup> See note 26 *supra*.

listed among the most productive—Virginia (eighth busiest; ninth in productivity) and Louisiana (fourth busiest; also ninth in productivity). When a check is run on the correlation between the workloads of the various courts and the productivity in terms of numbers of opinions appearing in the West publications, it is apparent that there is very little correlation at all. In fact, the degree of correlation is not statistically significant.<sup>43</sup>

Although there may be some question about the validity of examining the production of opinions by broad groups of judges, there would seem to be some reason for such measuring. One can determine whether there is some group attitude toward writing of opinions. Without a doubt, a single judge can affect the picture presented by an analysis by groups. This was true in fiscal 1962 in the case of

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<sup>43</sup> A number of computerized simple correlations were run on selected data to determine if there was any relation between the following variables; the average number of cases terminated per judge or the populations of the states in which the courts are located and the average number of opinions published per judge.

A simple correlation is a statistical method of quantitatively measuring the relationship between two variables. The degree of correlation is indicated by the coefficient of correlation which will always have a value in the interval  $-1$  to  $+1$ .

If the coefficient of correlation is a  $-1$  then there is a negative correlation between the two variables. This is an inverse relationship whereas one variable increases the other decreases. When the coefficient of correlation is  $+1$  then the two variables are said to be perfectly correlated. This is a direct relationship whereas one variable increases the other also increases. If the coefficient of correlation is  $0$  it indicates that there is no relationship between the two variables and they are uncorrelated.

The first three simple correlations were run on the set of data consisting of the variables; average cases terminated per judge and average number of opinions published per judge for each state. The resultant coefficient of correlation, when the variables from all the states were considered in one group, was .073598. This is close enough to  $0$  to say these variables are uncorrelated.

The same data was then divided into two groups according to judicial circuits and correlations obtained. One group consisted of that part of the data representing the states located in the First through the Sixth Circuits and the District of Columbia Circuit, roughly those east of the Mississippi River; the other group contained the data representing the states in the Seventh through the Tenth Circuits. When the correlation was run on each of these groups the coefficient of correlation was found to be .128097 for the data representing the Seventh through the Tenth Circuits and .135340 for data representing the First through the Sixth Circuits and the D.C. Circuit. Although these coefficients of correlation are somewhat larger than the one obtained when all the data was analyzed in one group, neither of them indicates a significant correlation.

Consequently, there does not appear to be a meaningful simple correlation between the average number of terminations per judge and the average number of opinions published per judge. This implies that it is not possible to accurately predict the number of opinions a judge will publish from the number of cases he terminates in a given period; or conversely, the number of cases a judge terminated cannot be accurately predicted from the number of opinions he published in a given period.

The fourth correlation was run on data consisting of the variables; the population of each state and the average number of opinions published per judge for each state. The coefficient of correlation for these variables was .07154 which again indicates that the degree of correlation between them is insignificant.

Apparently, according to the results of the above analyses, the number of opinions published by a federal district court judge depends upon his personal appraisal of the value of writing or submitting such opinions for publication. As a result of this, the number of opinions published by the various federal district court judges vary at random.

South Carolina. In that state the broad picture is, in fact, the façade presented by an individual judge who wrote thirty-five of the forty-four opinions reported. On the other hand, it would seem safe to conclude that in certain states there are attitudes and feelings that affect the actions of the group. New York, Pennsylvania and Massachusetts would seem to be examples of this. Apparently, there it is considered proper to write opinions. On the other hand, in those jurisdictions where there were two or fewer opinions per judge sitting published by West, it seems that the group pressure was probably against the reporting of opinions; certainly there was no effective pressure *for* the publishing of opinions. The western states included in this group were Arizona, Idaho, New Mexico, Oklahoma, and Washington. The outlying territories of Canal Zone, Guam and Virgin Islands also fall within this grouping, although this may be explainable on other grounds.

#### B. *Information On Specific Judges*

An examination of the materials from fiscal 1962 by judges sitting rather than by general grouping by courts would seem to be very valuable. Initially, it must be recognized that fiscal 1962 was a period of transition for the federal courts. President Kennedy was appointing new members to the federal bench in great numbers. Obviously, it would not be reasonable to examine all judges regardless of period served; therefore, the following information covers only those judges who served the entire fiscal year of 1962. Those judges appointed during the period, although some served the major portion of the year, have not been included in the table.

The names of the judges are not included, but rather a number has been arbitrarily assigned to each district court judge. It is this figure which is found on the left in the following table. Although the columns would seem to be self-explanatory, it might be desirable to indicate that the fourth column tabulates those cases in which are cited more than ten case authorities, while columns five and six indicate whether the opinion was a final one or one written on an interlocutory ruling.

TABLE VII  
DISTRICT COURT JUDGES SITTING  
DURING ENTIRE FISCAL 1962

<i>Judge Number</i>	<i>State</i>	<i>Opinions in West Publi.</i>	<i>With More Than 10 Auth. Cited</i>	<i>Final</i>	<i>Interlocutory</i>	<i>Total Length of Opinions</i>
<b>District of Columbia</b>						
150	Wash. D. C.	1		1		1
151	Wash. D. C.					
152	Wash. D. C.	23	3	15	8	65
153	Wash. D. C.					
154	Wash. D. C.					
155	Wash. D. C.					
156	Wash. D. C.	4	1	1	3	8
157	Wash. D. C.	1	1		1	5
158	Wash. D. C.	3		2	1	10
159	Wash. D. C.	1		1		6
160	Wash. D. C.	5	1	3	2	10
161	Wash. D. C.					
162	Wash. D. C.	2	1	2		12
<b>First Circuit</b>						
101	Maine	6	4	5	1	19
102	Massachusetts	5	1	5		16
103	Massachusetts	10	2	5	5	15
104	Massachusetts	14	5	8	5 <sup>44</sup>	57
105	Massachusetts	9	4	7	2	46
106	Massachusetts	42	3	28	14	81
107	New Hampshire	5	2	2	3	14
108	Puerto Rico	14		10	4	24
109	Rhode Island	14	8	9	5	45
<b>Second Circuit</b>						
201	Connecticut	11	4	6	5	55
202	Connecticut	11	4	5	6	75
205	New York	9	7	5	4	61
206	New York	4	1	4		16
207	New York	29	1	21	8	64
208	New York	13	2	7	6	27
209	New York	24	11	15	9	56
210	New York	7	3	3	4	19
213	New York	7	6	5	2	22
214	New York	16	6	9	7	119
215	New York	14	4	7	7	40
216	New York	1			1	2
217	New York	16	3	8	8	47
218	New York	17	14	9	8	77
219	New York	10	3	4	6	36
220	New York	5	4		5	14
221	New York	28	10	16	12	96
222	New York	13	4	8	5	56
223	New York	13	4	6	7	34
224	New York	28	19	16	12	188
225	New York	28	4	15	13	107
226	New York	5	4	4	1	46
227	New York	33	10	17	16	72
228	New York	11	2	6	5	23

<sup>44</sup> The sum of the "Final" and "Interlocutory" columns in this instance is not equal to the figure in the "Opinions" column, for one of judge 104's opinions was a charge to the jury.



<i>Judge Number</i>	<i>State</i>	<i>Opinions in West Publi.</i>	<i>With More Than 10 Auth. Cited</i>	<i>Final</i>	<i>Interlocutory</i>	<i>Total Length of Opinions</i>
<b>Second Circuit (Cont.)</b>						
238	New York	1		1		2
239	New York	7	2	4	3	8
245	New York	6	1	6		25
254	New York					
240	Vermont	5	3	5		13
<b>Third Circuit</b>						
301	Delaware	5	5	5		65
302	Delaware	11	5	7	4	47
303	Delaware	3	1	1	2	6
304	New Jersey	4	3	3	1	23
305	New Jersey	5		4	1	9
306	New Jersey	22	8	15	7	118
307	New Jersey	6	1	5	1	33
312	Pennsylvania	7	1	6	1	39
313	Pennsylvania	14	8	8	6	42
314	Pennsylvania	47	23	21	26	153
315	Pennsylvania	19	6	8	11	75
316	Pennsylvania	51	2	30	21	113
324	Pennsylvania	15	2	10	5	46
326	Pennsylvania	18	5	12	6	50
327	Pennsylvania	23	10	17	6	62
328	Pennsylvania	15	2	10	5	53
329	Pennsylvania	3	1	3		16
330	Pennsylvania	2				10
343	Pennsylvania	6				10
333	Virgin Islands					
<b>Fourth Circuit</b>						
401	Maryland	31	20	21	10	177
402	Maryland	12	9	9	3	100
405	North Carolina	1	1	1		4
407	North Carolina	8	2	7	1	59
409	North Carolina	12	3	10	2	42
411	South Carolina	35	9	28	7	95
423	South Carolina	2		2		9
412	Virginia	23	11	17	6	94
413	Virginia	6	3	6		29
415	Virginia	6	2	6		20
416	Virginia	18	6	18		92
417	West Virginia	8	2	7	1	22
418	West Virginia	3	1	3		11
425	West Virginia	21	3	20	1	71
<b>Fifth Circuit</b>						
501	Alabama	5	3	4	1	24
502	Alabama	11	7	9	2	94
503	Alabama	4	4	4		37
505	Alabama	6	3	6		34
506	Canal Zone	1			1	2
507	Florida	9	1	6	3	28
508	Florida	2	0	2	0	10
509	Florida	8	4	6	2	42

<i>Judge Number</i>	<i>State</i>	<i>Opinions in West Publi.</i>	<i>With More Than 10 Auth. Cited</i>	<i>Final</i>	<i>Interlocutory</i>	<i>Total Length of Opinions</i>
<b>Fifth Circuit (Cont.)</b>						
510	Florida	3	2	3		25
512	Florida	4		3	1	18
515	Georgia	6	4	4	2	27
517	Georgia	8	2	6	2	20
518	Georgia					
520	Georgia					
521	Louisiana	2		2		2
525	Louisiana	13	8	11	2	75
526	Louisiana	4	1	3	1	45
528	Mississippi	5	2	4	1	25
529	Mississippi	4		3	1	7
530	Mississippi	9	6	7	2	57
531	Texas	3	1	3		16
532	Texas	7		6	1	30
533	Texas	3	1	3		10
534	Texas	3	1	2	1	6
538	Texas	2		2		12
539	Texas	2		1	1	3
540	Texas	16	5	13	3	63
541	Texas	17		9	8	34
535	Texas					
544	Texas					
551	Texas					
<b>Sixth Circuit</b>						
601	Kentucky	14	6	13	1	38
603	Kentucky	7	3	7		21
604	Kentucky	14	4	14		52
632	Kentucky	10	1	9	1	21
605	Michigan	8	1	4	4	27
606	Michigan	7	2	7	0	29
607	Michigan	4	4	1	3	20
608	Michigan	7		6	1	17
613	Michigan	3	2	2	1	17
615	Ohio	6		6		15
616	Ohio	3		3		4
617	Ohio	3	1	3		14
618	Ohio	4	2	3	1	22
619	Ohio	13	1	9	4	54
622	Ohio	4	1	4		14
623	Ohio					
625	Tennessee	16	3	8	8	88
626	Tennessee	13	8	9	4	63
628	Tennessee	4	3	4		30
629	Tennessee	3	3	3		18
<b>Seventh Circuit</b>						
701	Illinois	1	1	1		3
702	Illinois	9		7	2	33
703	Illinois	4	2	2	2	14
705	Illinois	7	2	5	2	50
706	Illinois	1	1	1		14
707	Illinois	11	6	5	6	48
713	Illinois	10	3	8	2	48

<i>Judge Number</i>	<i>State</i>	<i>Opinions in West Publi.</i>	<i>With More Than 10 Auth. Cited</i>	<i>Final</i>	<i>Interlocutory</i>	<i>Total Length of Opinions</i>
<b>Seventh Circuit (Cont.)</b>						
714	Illinois	3	3	3		32
704	Illinois					
729	Illinois	2	2	2		7
728	Wisconsin	6		5	1	28
721	Wisconsin	7	1	4	3	26
722	Wisconsin	18	11	15	3	84
715	Indiana	4	1	3	1	22
718	Indiana	8	4	4	4	60
719	Indiana					
<b>Eighth Circuit</b>						
801	Arkansas	10	6	9	1	51
802	Arkansas	4	3	2	2	24
803	Arkansas	29	21	26	3	231
805	Iowa	12	6	12		67
807	Minnesota	10	2	5	5	30
808	Minnesota	6		1	5	25
809	Minnesota	10	4	8	2	28
811	Missouri	8		8		28
812	Missouri	7	1	4	3	32
818	Nebraska	3	2	3		9
819	Nebraska	9	5	7	2	75
820	North Dakota	1		1		7
821	North Dakota	7		4	3	16
822	South Dakota	5	2	5		20
823	South Dakota	2	2	1	1	6
<b>Ninth Circuit</b>						
901	Alaska	8	5	5	3	23
905	California	10	1	9	1	22
906	California	11	7	7	4	58
907	California	10	8	9	1	46
908	California	5	1	5		15
910	California	4	3	3	2	19
914	California	4	1	2	2	15
915	California	7	2	5	2	24
916	California	2	2	2		15
917	California	1			1	1
919	California	4	1	3	1	18
920	California	8	5	2	6	24
921	California	2	0	2	0	3
922	California	5	1	3	2	21
909	California					
918	California					
929	Hawaii	7	4	5	2	66
931	Idaho	4	1	4		11
930	Idaho					
932	Montana	7	4	4	3	24
933	Montana	13	12	10	3	80
936	Oregon	5	1	5		15
937	Oregon	15	3	10	5	48
938	Oregon	16	12	14	2	66
939	Washington	3	3	3		12
940	Washington					

Judge Number	State	Opinions in West Publi.	With More Than 10 Auth. Cited	Final	Interlocutory	Total Length of Opinions
Ninth Circuit (Cont.)						
941	Washington					
948	Nevada	3	3	3		24
903	Arizona					
904	Arizona					
Tenth Circuit						
1001	Colorado	8	5	6	2	24
1002	Colorado	1		1		3
1004	Kansas	12	2	9	3	23
1010	Oklahoma	3	1	3		12
1016	Oklahoma	1		1		1
1009	Oklahoma					
1013	Utah	1	1	1		4
1014	Utah	4	2	4		27
1015	Wyoming	10	2	9	1	34
1021	New Mexico					
1023	New Mexico					

The information contained in Table VII reveals a number of interesting facts. However, before examining the statistics, one caveat is in order—it must be recognized that the information covers but a single year. Although it would seem reasonable to conclude that this would give a fair sampling of the work of the various judges, there is a possibility that the picture is not accurate because of events happening during this period of time. It is possible that a judge was assigned a case for trial that required most of his time during the year; perhaps a judge had the position of motion judge so that his work was different from that of the other judges; perhaps a judge was ill and so unable to write opinions; perhaps a judge simply did not have any noteworthy cases. Any of these might cause a distortion of the statistics being presented. On the other hand, the sample is a large one, and the information which we have obtained from fiscal 1963 suggests that the 1962 information is not patently aberrational.<sup>45</sup>

It is noteworthy that eleven judges<sup>46</sup> sent in a total of 377 opinions or sixteen per cent of the total volume. Five of these productive judges were from New York, two from Pennsylvania, one from Massachusetts, and one each from Maryland and South Carolina. The only one of the eleven from west of the Allegheny Mountains was from Arkansas.

<sup>45</sup> See Table III, *supra* and comparison of 1962 and 1963 statistics therein.

<sup>46</sup> These judges were No. 106 from Massachusetts with 42 opinions, No. 207 from New York (29 opinions), No. 224 from New York (28 opinions), No. 225 from New York (28 opinions), No. 227 from New York (33 opinions), No. 314 from Pennsylvania (47 opinions), No. 316 from Pennsylvania (51 opinions), No. 401 from Maryland (31 opinions), No. 411 from South Carolina (35 opinions), No. 209 from New York (24 opinions) and No. 803 from Arkansas (29 opinions).

Another measure of productivity might be in terms of the total number of pages of opinions found in the two West publications. As might be expected, several of the top judges in numbers of opinions written are also found in the top nine in number of pages produced.<sup>47</sup> This list includes two Pennsylvania judges (one with 51 opinions and the other with 47 opinions; one with 153 pages and the other with 113); two New York judges (28 opinions and 188 pages for one; 28 opinions and 107 pages for the other); one Maryland judge and one from Arkansas. Among the nine most productive judges in terms of pages, a total of 1306 pages was turned out. Again every top judge was from the Atlantic coast with the single exception of the judge from Arkansas.

In fiscal 1962 there were 23 opinions of twenty or more pages in length. One judge from New York wrote three of these; two were written by a judge from Delaware; two were by an Indiana judge; the remainder were written singly by various judges. Six of the 23 came from New York. The longest was 53 pages.

Six of the 23 long opinions were copyright, patent or trademark opinions; three were anti-trust opinions; four were handed down in personal injury cases. Other suits involved taxation (2), government contracts (2), and private labor litigation (2); the remainder were criminal, habeas corpus, private contract and civil rights suits.

At the other extreme, there were twenty-five judges<sup>48</sup> sitting the full year who did not have a single opinion published in the West reporters. These included five from the District of Columbia, three from Texas, two each from Georgia, Washington, Arizona and New Mexico, and one each from New York, Virgin Islands and Oklahoma. Fourteen judges had but a single opinion published,<sup>49</sup> while eleven judges had only two opinions published.<sup>50</sup> These fifty judges

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<sup>47</sup> These judges were No. 214 from New York (119 pages), No. 224 from New York (188 pages), No. 225 from New York (107 pages), No. 306 from New Jersey (118 pages), No. 314 from Pennsylvania (153 pages), No. 316 from Pennsylvania (113 pages), No. 401 from Maryland (177 pages), No. 402 from Maryland (100 pages) and No. 803 from Arkansas (231 pages).

<sup>48</sup> These were Nos. 150, 153, 154, 155 and 161 from District of Columbia; No. 254 from New York; No. 333 from the Virgin Islands; Nos. 518 and 520 from Georgia; Nos. 535, 544, and 551 from Texas; No. 623 from Ohio; No. 704 from Illinois; No. 719 from Indiana; Nos. 909 and 918 from California; No. 930 from Idaho; Nos. 940 and 941 from Washington; Nos. 903 and 904 from Arizona; No. 1009 from Oklahoma, and Nos. 1021 and 1023 from New Mexico.

<sup>49</sup> These were Nos. 150, 157 and 159 from the District of Columbia, Nos. 216 and 238 from New York, No. 405 from North Carolina, No. 506 from the Canal Zone, Nos. 701 and 706 from Illinois, No. 820 from North Dakota, No. 917 from California, No. 1002 from Colorado, No. 1016 from Oklahoma, and No. 1013 from Utah.

<sup>50</sup> These were No. 162 from the District of Columbia, No. 330 from Pennsylvania, No. 423 from South Carolina, No. 508 from Florida, No. 521 from Louisiana, Nos. 538 and 539 from Texas, No. 729 from Illinois, No. 823 from South Dakota, and Nos. 916 and 921 from California.

then, for fiscal 1962, had only 36 opinions (1.5 per cent of the total) published by the West Publishing Company. It should be recalled that three judges had each published more opinions than these fifty together. One judge in Pennsylvania topped the list with fifty-one opinions.

### C. *Information On Specific Types Of Cases*

The information collected on the opinions from fiscal 1962 published by the West Publishing Company makes possible an analysis in terms of the types of cases involved.

The major classifications of the 2279 cases included in the Federal Supplement and Federal Rules Decisions are:

Contracts		427
Private	237	
United States	190	
Torts		407
Maritime-		
Personal Injury	93	
Motor Vehicle	84	
Other Personal Injury	108	
Other Torts	122	
Tax Cases		223
Labor		180
Private	115	
Government	65	
Private Copyright, Etc.		153
Criminal		123
Social Security		109
	Total	<u>1622</u>

This means that more than seventy per cent of the reported opinions from fiscal 1962 were in these categories.

An examination of the various categories will show that occasionally a judge will produce an inordinately large number of opinions within a particular category. For example, 13 social security opinions published came from West Virginia during fiscal 1962. Twelve of these were written by one judge—so that this single judge wrote more than ten per cent of the social security opinions of 1962 published in the West publications.<sup>51</sup>

<sup>51</sup> From our preliminary investigation done for fiscal 1963, it appears that there were 151 social security decisions rendered by the federal courts during the period. Fifty-seven of these came from West Virginia and 33 of these were written by a single judge. So that in this fiscal year, more than one fifth of the social security opinions reported came from a single judge.

Within the various categories some interesting facts can be derived from the information. Of the 223 tax opinions in fiscal 1962, 27 came from New York, 11 from Pennsylvania, 16 from California, 14 from Kentucky, 15 from Ohio, 12 from Texas, and 10 from Wisconsin.

In the case of social security opinions West Virginia had 13, South Carolina had 10, Pennsylvania had 12, New York had 10, Kentucky produced 7, Virginia had 6. This suggests a rather interesting grouping of states producing the bulk of reported opinions in this area.

The 70 reported bankruptcy opinions came primarily from New York (21), Pennsylvania (7), Virginia (7) and Connecticut (5). The remainder of the opinions were scattered among the remaining states. An examination of the judges writing these opinions suggests that there was no specialization in this field. No single judge dominated the writing of bankruptcy opinions in these states.

The domination of the New York and Pennsylvania federal district courts in the matter of practice and procedure perhaps has always been recognized. The information from fiscal 1962 would seem to establish this beyond any possible doubt. Of the 133 opinions reported in the Federal Rules Decision, 70 of them came from New York and Pennsylvania. (This domination of the Federal Rules Decisions, is borne out by the information for fiscal 1963 in which Pennsylvania provided 46 and New York furnished 51 of a total of 183).

Specifically, when one looks at the discovery opinions written, it is revealed that of the total of 74<sup>52</sup>, eighteen came from New York and 16 from Pennsylvania. Ohio and Connecticut each produced 5 discovery opinions; Tennessee, Maryland and Massachusetts each furnished four. No other state provided more than three. This is some indication of the fact that this body of law is being developed by the federal district courts of two states. In the area of discovery this is extremely important because of the general inability to get appellate review of the actions of trial courts in discovery matters.<sup>53</sup> Here, perhaps more than in any other part of the law, the district courts are making the law, and it is being made primarily by the federal district courts of only two states.

Table VIII presents information about anti-trust litigation in the federal courts. Taking the information which is available from the Administrative Office of the United States Courts, it is possible to

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<sup>52</sup> Twenty-six from the Federal Supplement and 48 from Federal Rules Decision.

<sup>53</sup> MOORE & VESTAL, MOORE, FEDERAL PRACTICE MANUAL, § 15.02 [7] (1964).

TABLE VIII  
ANTI-TRUST LITIGATION  
FISCAL 1962

	FISCAL 1961 ANTI-TRUST CASES STARTED	FISCAL 1962 ANTI-TRUST CASES STARTED		ANTI-TRUST OPINIONS	
		Gov't	Private	Gov't	Private
1 Alabama	1		3		
2 Alaska	1				1
3 Arizona	8		24		
4 Arkansas					
5 California	47	5	164	1	3
6 Colorado	3		40		1
7 Connecticut	1	2	7		1
8 Delaware	3		1		2
9 Wash. D. C.		1	41	4	
10 Florida	14		55		
11 Georgia			4		
12 Hawaii		1	1		
13 Idaho	1				
14 Illinois	28	2	247	1	3
15 Indiana	6		2	1	1
16 Iowa			4		
17 Kansas	4		25		1
18 Kentucky	1		39		
19 Louisiana	3		16		
20 Maine	16		1		
21 Maryland	8		5	1	4
22 Massachusetts	70	1	27		
23 Michigan	7	2	10		2
24 Minnesota	4	1	4		2
25 Mississippi	1		1		
26 Missouri	35	1	91	1	2
27 Montana					
28 Nebraska			13		
29 Nevada					1
30 New Hampshire	1				
31 New Jersey	7	1	31	1	2
32 New Mexico	2		29		
33 New York	60	10	465	3	16
34 North Carolina	2		2		2
35 North Dakota			14		
36 Ohio	6	1	90		2
37 Oklahoma	2		1		
38 Oregon	2		1		1
39 Pennsylvania	33	7	167	2	7
40 Rhode Island	2		1	1	1
41 South Carolina			9		
42 South Dakota	1		1		
43 Tennessee	6		84	1	2
44 Texas	13	2	125		
45 Utah	4		18	1	
46 Vermont					
47 Virginia	1		3		
48 Washington	8		129		
49 West Virginia					
50 Wisconsin	2	4	9	2	
51 Wyoming					
52 Canal Zone					
53 Guam					
54 Puerto Rico	2		1		
55 Virgin Islands					
Total			2005		



ascertain the courts which had a heavy load of anti-trust cases during the period under consideration. An examination of the table shows that New York, Illinois, California, Pennsylvania, Washington and Texas had the great bulk of anti-trust cases which were started during this period of time. At the same time, the federal district courts had only 78 anti-trust opinions in the West publications. Nineteen of these were from New York, nine were from Pennsylvania, and five were from Maryland. The rest of the opinions were from diverse states, with not more than four from any one state. It is noteworthy that vast numbers of anti-trust cases seem to be handled in some federal courts with no reported opinions appearing in the West publications.

When the fiscal 1962 opinions are broken down according to generic classifications, government civil, private civil, and criminal, some interesting information is revealed. First, in gross terms, it is noteworthy that there are ten times as many private civil opinions as there are opinions in criminal cases. The three to two ratio between private civil and government civil opinions is also noteworthy.

Marked deviations from the general pattern which seem to be significant are Delaware, Louisiana, New York, Pennsylvania, Oregon and Texas, all of which have an unusually large per cent of private civil opinions. On the other hand, the states having an unusually large number of government civil opinions—at least three more such opinions than private civil opinions—are Oklahoma, Nebraska, South Dakota, North Dakota, Washington, Georgia, Kentucky, District of Columbia, Alabama, West Virginia and Wisconsin.

Of the 123 criminal opinions reported from 1962 New York (33), Pennsylvania (18), Massachusetts (11) and California (7) are the only states producing more than five. Twenty-six of the jurisdictions had no 1962 criminal opinions reported while thirteen had only a single such opinion appearing in the West publications. Although there is no apparent specialization by judges in this field generally, one judge in the Massachusetts district court wrote seven reported criminal opinions during fiscal 1962. This is more than was produced by any but four states.

## VI. CONCLUSION

An examination of the fiscal 1962 opinions published by the West Publishing Company makes possible the drawing of certain conclusions.

TABLE IX  
WEST OPINIONS—FISCAL 1962

	<i>Civil Government Cases</i>	<i>Civil Private Cases</i>	<i>Criminal Cases</i>	<i>Total</i>
1 Alabama	17	13	1	31
2 Alaska	5	5	0	10
3 Arizona	2	2	1	5
4 Arkansas	16	24	3	43
5 California	42	40	7	89
6 Colorado	6	18	1	25
7 Connecticut	14	37	4	55
8 Delaware	7	28	0	35
9 Wash. D. C.	22	15	4	41
10 Florida	13	14	5	32
11 Georgia	18	15	1	34
12 Hawaii	1	6	1	8
13 Idaho	3	1	0	4
14 Illinois	22	43	1	66
15 Indiana	7	13	0	20
16 Iowa	9	14	0	23
17 Kansas	6	9	0	15
18 Kentucky	24	20	1	45
19 Louisiana	19	56	1	76
20 Maine	3	4	0	7
21 Maryland	28	39	3	70
22 Massachusetts	36	36	11	83
23 Michigan	12	31	4	47
24 Minnesota	6	18	2	26
25 Mississippi	8	13	0	21
26 Missouri	20	21	2	43
27 Montana	9	11	0	20
28 Nebraska	6	3	0	9
29 Nevada	2	2	0	4
30 New Hampshire	2	3	0	5
31 New Jersey	20	20	4	44
32 New Mexico	0	0	0	0
33 New York	155	236	33	424
34 North Carolina	9	28	1	38
35 North Dakota	6	3	1	10
36 Ohio	22	22	2	46
37 Oklahoma	5	1	0	6
38 Oregon	11	26	1	38
39 Pennsylvania	81	238	18	337
40 Rhode Island	7	8	0	15
41 South Carolina	22	19	0	41
42 South Dakota	6	1	0	7
43 Tennessee	19	36	5	60
44 Texas	25	39	0	64
45 Utah	3	2	0	5
46 Vermont	4	2	0	6
47 Virginia	28	26	3	57
48 Washington	3	0	0	3
49 West Virginia	22	8	1	31
50 Wisconsin	17	10	1	28
51 Wyoming	3	6	0	9
52 Canal Zone	0	1	0	1
53 Guam	0	1	0	1
54 Puerto Rico	6	10	0	16
55 Virgin Islands	0	0	0	0
Total	859	1297	123	2279

First, there seem to be certain district courts in some states which are contributing more than their pro rata share of opinions to the West publications. The reason for this is not apparent; it may be an attitude adopted; it might be the nature of cases heard.

Second, there is great inequality in the number of contributions being made to West publications by the various district court judges.

Third, it is quite clear that the contributions made are essentially a personal matter decided by each federal judge.

Fourth, there is some specialization in opinions reported, apparently on an informal basis, by some judges in the federal system.

Fifth, certain of the federal district courts completely dominate some areas of the law, in that they produce the great majority of opinions on a particular subject.

Sixth, there are some federal judges that in fiscal 1962 made no contribution to the body of law found in the West publications. A serious question might be raised whether several courts can in fact speak for all of the courts, that is, whether a limited number of courts should be allowed to create the law for all the courts. Certainly the law is soundest if all courts participate in its creation. The law is better if all courts present their ideas to the crucible of examination by the entire legal profession. It is extremely difficult to force such judges to write opinions and have them published. Perhaps the publication of this Article may have some effect on such recalcitrant judges. Perhaps the disclosure of the facts may suggest to such judges that they have been somewhat remiss in their total judicial duties.

Seventh, there seems to be no nation-wide, rational basis for the selection of opinions to be published by West. An examination of the volumes of the Federal Supplement and the Federal Rules Decisions, and an examination of opinions not included, forces one to the conclusion that the present selection method is random and haphazard at best, and that something better should be devised.