

West Publishing Company Edits the Opinions of the Minnesota Supreme Court

By

Douglas A. Hedin

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West's Paragraph Reduction Policy

West Publishing Company began publishing the regional Northwestern Reporter in 1879.¹ Each “permanent” volume, according to its title page, contains “all the decisions of the Supreme Courts of Minnesota, Wisconsin, Iowa, Michigan, Nebraska, and Dakota” issued during a specific period.² For example, volume 28 covers May 15—July 24, 1886; volume 55 covers May 27—September 2, 1893; and volume 84 covers November 24, 1900—February 16, 1901.

The first forty volumes of the Northwestern Reporter include opinions issued from April 26, 1879 through January 12, 1889. They are nearly identical in size and shape to the official Minnesota Reports, edited and published by the Supreme Court Reporter.³ Each volume is 8 7/8” x 6” and has about 1,000 pages.⁴ Although the type size was reduced after volume 4, the books are easy to hold and the opinions easy to read.

¹ See generally, Michael H. Hoeflich, “Preface” and William E. Butler, “Introduction: John Briggs West and the Transformation of American Law Reports” to *The Syllabi: Genesis of the National Reporter System* (Lawbook Exchange, Ltd., 2011).

² “Dakota” was replaced by “North Dakota, South Dakota” after they were admitted to the Union on November 2, 1889.

³ For a thumbnail history of the Minnesota Reports, see Arlette M. Soderberg & Barbara L. Golden, *Minnesota Legal Research Guide* §421.1, at 98-100 (Wm. Hein, 1985).

⁴ This is not how the first 40 volumes of the Northwestern Reporter look on the shelves of libraries of law schools and law firms today (if they are still stocked). When the need for the Northwestern Reporter grew, West published a new edition, and the first 40 volumes were printed with the rest of the set in a uniform, oversized format. The original, smaller first 40 volumes are scarce relics of the start of a transformation in law book publishing in the late nineteenth century that was led by West.

Beginning with Volume 41, covering January 19—April 27, 1889, West enlarged the size of the Northwestern Reporter. Now each volume is 10" x 6 1/2" and thicker. When the number of pages reached 1,200-1,250, a new volume was started. Each page now has two narrow columns, 2 1/2" in width, and narrow margins. These books are heavier and not as easy to read. In a "Publishers' Preface" to volume 41, West heralded the "new method of publication" and boasted that the new "typography is much improved, the shorter lines rendering the matter more easily legible."⁵

The most striking feature of the decisions of the various state supreme courts in the oversized, reformatted Northwestern Reporter is the sheer length of the paragraphs. It is not uncommon to find a paragraph that takes up an entire column, and continues onto the next column or page. Some opinions consist of only two or three long paragraphs. The justices seem to have been allergic to short, readable paragraphs. Why did they write this way? In fact, they did not.

As it prepared the decisions for publication, West combined separate paragraphs of the original decision into one. Used occasionally before 1889, this policy was implemented with zeal with volume 41. Contrary to West's claims, this editorial change actually made the opinions harder to read and they definitely altered the appearance of a justice's style of writing. The Reporter of the official Minnesota Reports, not surprisingly, faithfully printed the rulings in the form released by the court.

Quotations in the post-1889 Northwestern Reporter are slightly harder to identify than those in Minnesota Reports. Lengthy quotations in opinions in the Minnesota Reports, while not indented, still are very distinct because they appear in smaller type and the spaces between the lines are narrower than the surrounding text, but in the Northwestern Reporter the quotations are the same size type as the text and may be buried in a paragraph running over most of a column or two.

The following two tables illustrate how West's paragraph compression practice reduced the number of paragraphs in decisions of the Minnesota

⁵ It is posted in the Appendix, below at 8-9.

Supreme Court issued on May 19, 1893 and May 16, 1902, dates selected at random.

Table 1

On May 19, 1893, the Court issued seven opinions, each written by Associate Justice Loren W. Collins. They were published in Volume 53 of the Minnesota Reports and Volume 55 of the Northwestern Reporter. At this time, West adhered so strictly to its paragraph compression policy that the traditional, one-sentence, final paragraph announcing the court’s ruling — i.e., “Order affirmed” or “Order reversed” or “Judgment reversed” — was grafted onto the previous paragraph. Here is the paragraph tally:

Case Name	Paragraphs	
	Minnesota	Northwestern
<i>Lee v. Clark</i> 53 Minn. 315 55 N.W. 127	5	2
<i>Easton v. Sorenson</i> 53 Minn. 309 55 N.W. 128	5	1
<i>Lancoure v. Dupre</i> 53 Minn. 301 55 N.W. 129	8	3
<i>Merchant v. Howell</i> 53 Minn. 295 55 N.W. 131	5	2
<i>Seeley v. Killoran</i> 53 Minn. 290 55 N.W. 132	6	1
<i>Temple v. Norris</i> 53 Minn. 286 55 N.W. 133	5	1

State ex rel. Shissler v. Porter 18 4
 53 Minn. 279
 55 N.W. 134

Table 2

On May 16, 1902, the court issued nine opinions, written by four justices. They were published in their original form in Volume 86 of the Minnesota Reports and in truncated form in Volume 90 of the Northwestern Reporter. By this time, West permitted the final dispositional sentence (i.e., “Order affirmed”) to remain as a separate paragraph, resulting sometimes in an odd looking opinion. In *Holden v. Turrell*, for example, the original decision was squashed into two paragraphs: the first flows over three pages and the second is simply “Order affirmed.” Here is the paragraph comparison for the nine opinions released on May 16th:

Case Name	Paragraphs	
	Minnesota	Northwestern
<i>Benedict v. Minneapolis & St. L. R. Co.</i> (John Lovely) 86 Minn. 224 90 N.W. 360	12	6
<i>May v. Grawert</i> (Loren Collins) 86 Minn. 210 90 N.W. 383	7	5
<i>Austin v. March</i> (Calvin Brown) 86 Minn. 232 90 N.W. 384	7	4
<i>Clark v. Clark</i> (Calvin Brown) 86 Minn. 249 90 N.W. 391	11	3

<i>J. G. Shaw Blank Book Co. v. Maybell</i> (Loren Collins) 86 Minn. 241 90 N.W. 392	7	4
<i>Pfaender v. Chicago & N. W. Ry. Co.</i> (Calvin Brown) 86 Minn. 218 90 N.W. 394	9	6
		(order denying a petition for rehearing in two paragraphs, each one sentence)
<i>Holden v. Turrell</i> (Loren Collins) 86 Minn. 214 90 N.W. 395	7	2
<i>Blom v. Yellowstone Park Ass'n.</i> (Chief Justice Charles M. Start) 86 Minn. 237 90 N.W. 397	8	4
<i>State v. Golden</i> (C. J. Start) 86 Minn. 206 90 N.W. 399	12	4
<i>Schreiner v. Great Northern Ry. Co.</i> (John Lovely) 86 Minn. 245 90 N.W. 400	5	3

Table 3

On rare occasions, West even changed the text of the opinion itself. The following passage from Justice Collins' opinion in *State ex rel. Shissler v.*

Porter, an 1893 decision resolving a municipal election dispute, is an example:⁶

From 53 Minnesota Reports, at 281:

By the original enactment, Sp. Laws 1885, ch. 119, §2, it was provided that the qualified electors of the city of Mankato, at the city election to be holden on the first Tuesday in April of that year, and on the day of the city election every third year thereafter, should elect a judge of the court, who should hold his office for the term of three years, and until his successor was elected and qualified.

From 55 Northwestern Reporter, at 135:

By section 2 of the original enactment, it was provided that the qualified electors of the city of Mankato, at the city election to be holden on the first Tuesday in April of that year, and on the day of the city election every third year thereafter, should elect a judge of the court, who should hold his office for the term of three years, and until his successor was elected and qualified.

Later, in the same opinion, West changed Collins' citation of a subdivision of a section of a statute:

From 53 Minnesota Reports, at 281:

We find no reference to the municipal court, or the judges thereof, except in subch. 2, § 2, where it is provided that the elective officers of the city shall be a mayor, a municipal judge, treasurer and city recorder.

From 55 Northwestern Reporter, at 135:

We find no reference to the municipal court, or the judges thereof, except in section 2, subc. 2, where it is provided that the elective officers of the city shall be a mayor, a municipal judge, treasurer and city recorder.

⁶ The court's opinion in this case, as found in the Minnesota Reports, is posted in the Appendix, Part B, to "Jerome E. Porter (1843-1910)" 23-13 (MLHP, 2013).

For reasons long forgotten, West sometimes changed the name of a case. Thus a dispute over an unpaid sewer assessment between St. Paul and homeowners that included Daniel Mullen, published in Minnesota Reports as *City of St. Paul v. Mullen*, 27 Minn. 78 (1880), emerged in the Northwestern Reporter as *St. Paul v. Lots 6, 7, etc.*, 6 N. W. 424.

West expected errors because the Reporter system was a novel way of producing and distributing quickly the decisions of the highest courts of multiple jurisdictions. Some mistakes drew the attention of its subscribers, according to its “Publisher’s Preface” to volume 41, but a few slipped through. *Jenkinson v. Koester*, 86 Minn. 155, 90 N.W. 382 (1902), was issued by the court on May 9, 1902, but the release date in the Northwestern Reporter is May 13, 1902. This particular error likely was made because a court’s opinions were not published in chronological order, rather by where West’s printer believed they could best fit in the volume under preparation.⁷

Nevertheless, some of West’s changes can be attributed only to the whim of the printer. Thus in the initial ruling in *McDermott v. Union Credit Co.*, 76 Minn. 84, 78 N. W. 697, reversed after re-argument, 79 N.W. 673 (1899), the attorneys for the plaintiff-respondent were listed as “S. L. Pierce, John H. Ives and Thos. J. McDermott” in the Minnesota Reports. In the Northwestern Reporter, the names of these attorneys are transposed and McDermott’s is omitted altogether (i.e., “John H. Ives & S. L. Pierce”).⁸

One of West’s changes appears in every opinion that cites a chapter of a session law. The Reporter of the Minnesota Reports used “ch.” to designate “chapter” but West shortened it to the abbreviation used today, “c.”

⁷ Two random examples of the curious result of this printing practice: on November 8, 1887, the Minnesota Supreme Court issued five decisions, two of which appeared in Volume 34 of the Northwestern Reporter and the other three in Volume 35, which supposedly contained decisions of the highest state courts between December 3, 1887-February 11, 1888. In Volume 90, eight of the nine cases issued by the court on May 16, 1902, follow the cases decided on March 23rd. The exception is *Benedict v. Minneapolis St L. Ry. Co.*, also decided on May 16th, but which appears 30 pages before the others of that date.

Lawyers practicing at the time probably learned quickly to cope with West’s printing peculiarities, and they surely were grateful to have speedy access to many courts’ rulings.

⁸ The Supreme Court’s opinions in this case, as found in the Minnesota Reports, are posted in the Appendix to “Thomas Jefferson McDermott (1861-1939)” (MLHP, 2013).

Conclusion

The justices of the Minnesota Supreme Court were better writers and better stylists than their opinions appear in West Publishing Company's Northwestern Reporter.

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APPENDIX

In the following "Publisher's Preface" to volume 41, West boasts that the "enlarged form" of the Northwestern Reporter will result in "shelf-room" savings, many more opinions, and so on. But one reason for the change is not mentioned: money. West knew that by compressing the courts' opinions into fewer paragraphs and onto fewer pages, it could save a few pennies printing one book, and a few dollars printing the run of each new volume, beginning with volume 41.

PUBLISHERS' PREFACE.

THE publishers take pleasure in making public acknowledgement of their indebtedness, first, to the judges of the several courts reported in the NORTHWESTERN REPORTER, and, second, to the attorneys directly interested, for assistance in securing the accurate reporting of the cases contained in this volume. The judges have very generally availed themselves of the opportunity now afforded them for revising their opinions as printed in the advance sheets, and securing the incorporation of desired corrections and emendations in the permanent or bound-volume edition. Many of the attorneys of record in the cases reported, and others of our subscribers, have also kindly interested themselves in examining the cases as published, and advising us of typographical and other inaccuracies. This investigation has brought out many testimonies to the remarkable accuracy of our work, but the new method of publication furnishes an additional safeguard

against mistake. The subscribers for the NORTHWESTERN are to be congratulated on the added value which will be given to the set, as a permanent series of reports, by this judicial and professional supervision, which will prevent the perpetuation of errors such as may sometimes creep in under the most careful system of publication.

Volume 41, herewith submitted, is the first volume of the State Reporters issued in the enlarged form, and on the plan of publishing two separate editions,—one for temporary use and the other for permanent preservation. It contains the reports of 709 cases,—nearly double the number in volume 40 and the preceding volumes in the smaller form. This represents a saving in shelf-room of nearly 50 per cent., while the convenience of reference is increased twofold by putting twice as much matter under a single index. The typography is much improved, the shorter lines rendering the matter more easily legible. As the edition is printed especially for the bound volumes, it is trimmed but once, (instead of twice, as when the weekly pamphlets had to be rebound,) and this gives much better margins to the books.

The publishers have no doubt that a little practical experience will be sufficient to demonstrate to the subscribers the many advantages incident to the new plan of publication. If the NORTHWESTERN and the other Reporters are made more convenient to the use of the profession, and more permanently valuable as a set of law reports, the objects for which the new departure was made will be fully accomplished.

St. Paul, Minn., May, 1889.

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AFTERWORD

Anyone who counts numbers of paragraphs in a publication while writing an article on book publishing, as I have done here, recalls at some point a famous essay by Edmund Wilson, the great literary critic. In *The Fruits of the MLA*, published in 1968, he criticized a team of English professors who prepared “approved” texts of novels of American writers by comparing early editions of them for inconsistencies in spelling and punctuation (i.e., a missing hyphen or a verb ending in *-ize* or *-ise*).⁹ Wilson scoffed at this endeavor, calling it “scholarship squandered...a waste of time and money.” “What is important,” he reminded readers, “is the finished work by which the author wishes to stand.”¹⁰ It is possible, therefore, that Wilson would not dismiss this article once he saw how a supreme court justice’s original opinion, the one he intended to be read by the public, was mangled and severely deformed by the paragraph compression machinery of the West Publishing Company.

Regardless, it can be said with absolute certainty that Wilson would have preferred the Minnesota Reports to West’s door stoppers. He famously preferred small books that could be held in one hand, such as those in The Library of America series that he inspired, to heavy, oversized tomes. He would have admired the Minnesota Reports, which are easily held, have large and clear type, wide margins and taut binding.

This idea for this article originated while I have been researching the “citationless opinions” of the Minnesota Supreme Court in which the ubiquitous West Publishing Company also plays a role, and that article in turn is part of a larger project on the business of the Minnesota Supreme Court in the nineteenth century. Someday, they too will be posted on the MLHP. ■

⁹ Edmund Wilson, *The Fruits of the MLA* (New York Review Book, 1968).

¹⁰ *Id.* at 13.

