

Star Tribune

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U.S. justices took trips from West Publishing

U.S. Supreme Court justices and federal judges accepted luxurious trips and other benefits from West Publishing Co. during a period when they made decisions, on and off the bench, worth millions to the Twin Cities company.

In the last decade, West has been drawn into bitter battles with competitors and public-interest advocates who are challenging its control over key elements of legal publishing. An examination of court records and judges' papers from this period shows a range of gifts accepted by federal judges from a company that is both a major contractor and a litigant in the courts:

■ Seven Supreme Court justices took trips at West's expense to help select the winner of a \$15,000 cash award that West bestows on a federal judge each year. The meetings sometimes were held at locations recommended by the justices, including the Virgin Islands, Florida and California. Since 1983, the court declined to review five cases that lower courts had decided in West's favor — including two copyright matters of high importance to the company.

WHO OWNS THE LAW?



West Publishing
and the courts

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Today's report

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Monday

Disputes are raging over rules and policy in legal publishing. In these battles, West has sought the support of officials in high positions — officials who sometimes received valuable contributions from the company.

■ One appeals court judge accepted the \$15,000 award while serving on a panel that was preparing to issue an opinion in a West copyright case from Texas. Other federal judges with jurisdiction over West cases accepted VIP golf tournament tickets or attended receptions paid for by the publisher.

■ Outside the courtroom, judges who received benefits from West participated in deliberations over spending millions in government money for the publisher's products. And they helped set policies affecting the legal publishing industry in which West is fighting to hold its position.

The justices and judges who were willing to discuss the matter with the Star Tribune said there was nothing illegal or improper about anything they received from West.

But some leading legal ethicists questioned whether the jurists adhered to ethics codes and a federal law requiring judges to disqualify themselves in cases where their impartiality might reasonably be questioned. Other ethicists saw no violation of the law or the codes but said it was ill-advised for judges to accept expensive trips and cash awards from a company with so much at stake before the courts.

West clearly broke no laws in making the gifts. And West officials said that the company has done nothing wrong and that its practices are no different from those of its competitors.

Ethicists said, however, that West's century-old status as virtually an unof-

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ficial arm of the federal courts demands new scrutiny in this time of growing competition and heated debate over its business practices.

And several of West's opponents in the courts said their trust in the impartiality of the courts has been shaken.

The justices made the trips in the last decade to help select the winner of a judicial award West established in 1982 in honor of Judge Edward Devitt, the since-deceased chief of Minnesota's federal bench.

Since the award program's inception, seven justices — four still on the high court — have participated, accepting travel provided by West. They are Justices Sandra Day O'Connor, John Paul Stevens, Antonin Scalia and Anthony Kennedy and now-retired Justices Lewis Powell, Byron White and William Brennan.

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West Publishing
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Devitt's correspondence with the justices, reviewed at the Minnesota Historical Society, shows that the settings were luxurious and that much of the meeting time was devoted to golf, tennis and other socializing for the committee members, West executives, spouses and friends. One judge who attended a meeting held this year at New York's Four Seasons hotel reported spending just six hours on substantive committee business during a three-night stay.

All seven justices declined repeated requests for interviews, but Scalia said in a letter to the Star Tribune: "The Devitt Award has been presented for a number of years to an individual who has brought honor and distinction to the federal bench. A member of this Court has, I believe, always been one of the members of the selection panel; at least six of my colleagues or predecessors have served in that capacity. I do not believe, nor to my knowledge has any of them believed, that that service requires disqualification from matters involving West Publishing Co."

Powell also wrote a letter, saying: "That company [West] has been of great importance to the legal profession and to legal scholars. I was proud to serve on the Devitt Award Committee."

West President Vance Opperman gave the Star Tribune a one-hour interview in November, but he and other West executives have declined to discuss the newspaper's more recent findings except in written answers to written questions. Chairman Dwight Opperman also sent a letter to West employees and retirees on Feb. 23, warning them that the company has become a focus of "attack journalism" and promising "helpful tips" on rebutting the newspaper's report with letters to the editor or "among your contacts in the community."

Impartiality

The American system of justice gives federal judges their jobs for life to help assure their impartiality. Yet these judges accepted gifts of a type that have caused scandals for members of Congress and the Cabinet.

"It seems that they went to high-priced resort areas at an optimum time of year, first class," said Stephen Gillers, a law professor at New York University and an expert in judicial ethics who was asked to comment on the Star Tribune findings.

"I put myself in the position of the opponent of the sponsor of those trips. A judge has to say, 'Suppose a case comes before me in which my benefactor is a party. Will its opponent be concerned?' I believe the answer will often be 'yes.'"

The justices went courtesy of West to exclusive resorts: Caneel Bay on St. John, Virgin Islands; the Ritz-Carlton in Naples, Fla.; the Paradise Island Resort & Casino in the Bahamas; the Marriott's Rancho Las Palmas in Palm Springs, Calif.; the Breakers in Palm Beach, Fla., and other locations in Hawaii, California and New York City.

In a letter to the Star Tribune, spokeswoman Ruth Stanoch said West is not alone in providing recognition for the judiciary and named 21 other awards judges receive. Of the organizations responsible for the awards that were listed, the Star Tribune was able to contact 19 and found none that included a direct cash prize to the recipient and none that was directly administered by a corporate sponsor.

Federal rules allow judges to accept awards recognizing their achievements. West said its award "complies with all applicable laws, regulations and codes. Were this not true, questions as to its propriety would have been raised years ago by the judiciary itself."

When the Star Tribune inquired, some members of the judiciary questioned whether they would accept the award or trips associated with the award while considering cases or administrative questions involving West.

"It's something I need to think about," said Chief Judge Richard Arnold of the Eighth Circuit Court of Appeals, chair of the budget committee for the judicial branch. Arnold served this year on the Devitt panel, which met at the Four Seasons hotel in New York.

If a West case came to his court after his service on the Devitt committee, Arnold said, he would consider disqualifying himself from the case or disclosing his relationship to the company.

Members of the Supreme Court who accepted trips more expensive than that accorded Arnold neither disqualified themselves nor notified the litigants of the travel.

West and some of the federal judges involved cite rules that permit judges to accept reasonable travel expenses for themselves and their spouses to attend activities that improve the

law.

But ethics experts said that holding these meetings at exclusive lodgings paid for by a court contractor and litigant goes too far. Gillers poses this analogy: The rules also allow judges to accept complimentary law books from publishers, but that doesn't mean they can accept books that are bound in gold.

"Imagine someone coming along and offering you a dream vacation. It seems to me that a judge has to be suspicious when the donor has business in or with the court," Gillers said.

Federal law requires that judges safeguard the appearance of impartiality. Justice Stevens, who accepted West-paid trips to the Bahamas and Florida, declined to comment for this article. But in a 1987 decision, he interpreted a section of the U.S. Code that prohibits judges from hearing cases in which they may be partial.

"... People who have not served on the bench are often all too willing to indulge suspicions and doubts concerning the integrity of judges. The very purpose of [the prohibition] is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible."

Once judges accept gifts, ethics rules say they have an obligation to consider disqualifying themselves from cases involving their benefactor. The overarching standard in the Code of Judicial Conduct says a judge should disqualify himself or herself in cases in which the judge's impartiality "might reasonably be questioned."

"Looking at the standard set by the disqualification statute, I think the judges probably should not have participated in a significant decision involving West at a time when the planning for a resort trip was in process," said Steven Lubet, a professor of law at Northwestern University.

On the other hand, Geoffrey Hazard Jr., law professor at the University of Pennsylvania, said: "I don't think the judges violated a rule. I'm sure they don't think they violated a rule."

In the mid-1980s, U.S. District Judge Harry MacLaughlin disqualified himself from a copyright case involving West in Minnesota's federal courts. He did so because he had "become acquainted with some of the officers of the company at various events over the years," he said through a secretary.

Yet Supreme Court justices who accepted travel that included socializing with West's executives did not disqualify themselves.

And a justice who accepted benefits from West failed to meet another ethics obligation: Federal rules require them to disclose gifts, travel reimbursement and entertainment they and their spouses receive from anyone outside the government.

Justice O'Connor did not disclose anything about one of the West-funded trips she took to a meeting in California. When the Star Tribune inquired about it last week, a court spokeswoman said: "The justice and her staff were horrified that the 1990 trip had been omitted from her financial disclosure form. It should have been included. They try to be conscientious about reporting everything and she is immediately sending an amendment to the proper authorities to correct the oversight."

Several federal judges revealed only sketchy details on their annual disclosure forms, saying that they accepted trips involving the Devitt selection committee or the Devitt award but not naming West as the sponsor.

A glimpse inside

Unlike the executive branch, where inspectors general review conduct in Cabinet agencies, the federal courts run themselves with little oversight. The hallowed concept of separation of powers keeps Congress at a distance. The Freedom of Information Act, which permits public access to a wide range of government records, specifically exempts the judicial branch. And reporters rarely inquire beyond the cases before the courts.

But a peek behind the curtain — made possible through a review of Devitt's papers — reveals an eagerness of justices and judges to accept benefits offered by West.

"As to where the next meeting of your Committee is held, Caneel Bay is a place my wife Jo and I always have hoped to visit," Justice Powell wrote in a March 1984 letter to Devitt. Within weeks, West put such plans in motion.

The Powells, the Devitts and another judge and his wife joined West's president and CEO at the time, Dwight Opperman, and his wife for a trip to the exclusive resort in the Virgin Islands the following autumn.

A guidebook describes the resort as "a cross between that of an exclusive country club and a genteel island plantation ... where privacy and peace prevail, crowds are unheard of and the hassles of civilization are left outside the front gate." Today, double-occupancy rooms range up to \$615 per night at Caneel Bay.

When urging Justice Stevens to become a selection-committee member in 1990, Devitt wrote: "I feel sure you will enjoy it. In the past we have met for several days in late January or early February. We have met in Palm Springs, the Virgin Islands, Palm Beach [and] Naples, Florida and this month we met in Bel Air, California. It makes a nice break and the responsibilities are not too burdensome."

Often, Opperman wrote to the justices directly to remind them that Devitt committee members traveled first-class.

Courting the courts

Judges throughout the country have come to view West as an unofficial arm of the courts as it prints some 60 million books and pamphlets each year. The company is highly respected not only for the volume of its presses but also for the quality of its work as it prints the laws and selects and edits the court opinions that lawyers and judges rely upon to argue and decide cases.

West and its major competitors have funded judicial branch activities through the years. But West stands apart in its generosity. The Eagan-based company has bestowed \$5,000 annual awards on law librarians and sponsored all-expense-paid conferences in San Francisco and New Orleans for court information officers. Like its major competitors, West has underwritten legal seminars that are attended by judges.

Sometimes West's gifts have been individual acts of kindness: The company provided limousine service and an escort for a judge from South Carolina who needed to travel from the Twin Cities to the Mayo Clinic in Rochester, Minn. Sometimes the gifts have been parties, such as the reception West has sponsored for several years at the judicial conferences in the U.S. Eighth Circuit Court of Appeals, which includes Minnesota and six other states.

There is art work the company has commissioned, such as bronze busts honoring retired Chief Justice Warren Burger. There is the gratis printing of histories of the courts in Minnesota and South Dakota.

Add to that small gifts the company provides to judges. Many of them, such as personalized law books and calendars, aren't considered a problem by ethicists contacted by the Star Tribune.

The Devitt award was established while West was under the command of Dwight Opperman. Now West's chief executive officer and board chairman, he declined to be interviewed by the Star Tribune.

In 1993, his son Vance, a prominent Minneapolis attorney, replaced him as president.

Vance Opperman agreed to a one-hour interview in November, but declined recent requests for interviews.

The company tries "to be responsive to judges" in the same way its competitors are, he said in November. "Let me put it this way for you: I'm a trial lawyer. I spent 25 years trying cases, generally in federal court. I'm the last person in the world, maybe by training or even by genetics, to antagonize a judge... My dad's a lawyer. Most of our people here are lawyers. We'd be the last people in the world that would not want to have good, respectful relationships with the courts."

Indeed, ethics experts said it is the judges themselves who are responsible for monitoring the propriety of accepting gifts from a legal publisher or other donor.

West's spokeswoman said the company's activities are intended "to educate people about our company and our products and about legal issues, to promote the legal profession, and to honor excellence."

Its behavior is no different from that of its rivals in the competitive world of legal publishing, she said. "... you should be very clear on the point that our competitors do the same things that you ascribe to us."

West's competitors have funded activities for law librarians who are government employees. And they have underwritten events for professional groups, such as bar associations, that are attended by judges. But West's largest competitors, LEXIS-NEXIS and Thomson Publishing, say they do not provide any direct benefits to judges.

LEXIS-NEXIS endows an award that judges are eligible to receive but keeps the selection process at arms length by giving administrative responsibilities to a nonprofit professional organization, the American Inns of Court Foundation.

In the dark

Since the Devitt award was established in 1982, many of West's battles, business and otherwise, have ended up in court. Since 1985, two individuals, a city, a state and a company have asked the Supreme Court to review decisions lower courts had made in West's favor. All those requests were denied, leaving West the winner.

The decisions may have been in keeping with the merits of each case. Still, the selection-committee trips "disturb our sense of confidence in the result," said Gillers, the ethics expert.

West's opponents chose stronger words. "That just breaks my heart. That's awful," said Donna Nelson, a former Texas assistant attorney general who asked federal courts all the way up to the Supreme Court to rule that the state of Texas — not West — owned rights to the arrangement of the state's laws. Texas lost.

One judge on the three-member appeals panel that ruled against Texas was John Minor Wisdom, who accepted the \$15,000 award after hearing Nelson's arguments and before the panel issued its ruling. Asked about that, Judge Wisdom said that "any judge worth his salt wouldn't be influenced by the fact that it was West Publishing Co."

After losing at the appellate level, the state appealed to the U.S. Supreme Court. There, three justices who received Texas' petition had taken trips at West's expense.

The Texas case was one of several copyright suits West fought in federal courts after judges and justices took trips and other benefits from the company.

The electronic market

West's most significant victory was a landmark copyright case against Ohio-based Mead Data Central Inc.

West had long been the leading publisher of the bound books that had been the stock of the industry for more than a century. But Mead surged forward in 1973 by launching LEXIS, a computerized legal research system. West followed with WESTLAW. By the mid-1980s, the electronic market for which they competed was estimated at \$200 million and rising rapidly.

The court battle started in 1985 after Mead announced that LEXIS would include numbers linking information on the computer screen with pages in law books published by West. The numbers are important because legal researchers are required to support their writings by citing cases and West's books are frequently cited.

West filed its lawsuit against Mead in Minnesota and it was assigned to the newest member of the bench, Judge James Rosenbaum. Because of their ties to West and its executives, Rosenbaum said, "each judge who had been on the court for some time recalls that they would have [disqualified] themselves" from hearing the case.

Eventually, the companies negotiated a secret settlement in Rosenbaum's chambers. Mead reportedly agreed to pay West a fee for using the page-numbering system over which West claimed to hold a copyright. Since then, no other company has successfully challenged West's copyright claim.

After the agreement, Rosenbaum retained jurisdiction over settlement of the Mead case. Meanwhile, another dispute between West and one of its competitors, Bancroft-Whitney Co., was transferred from Texas to Minnesota and assigned to Rosenbaum.

In 1991, with both cases under his jurisdiction, Rosenbaum accepted West's offer of VIP tickets to the U.S. Open golf tournament in Chaska that also were good for meals in West's hospitality tent, transportation and related golfing activities.

"The golf tickets aren't likely to be seen as influential, but when a judge is actually sitting on a case he needs to be scrupulous about not accepting gifts that would be permissible at other times," Gillers said.

Judges can accept ordinary social hospitality, said Leslie Abramson, a law professor at the University of Louisville. But "to me, the golf tickets are not ordinary social hospitality," he said. In accepting the tickets, Rosenbaum "may well be giving an objective observer some reason to question his impartiality."

Rosenbaum said the parties in the lawsuit had advised him before he took the tickets that the Bancroft-Whitney case was likely to be settled. (It was, a month after the tournament.) And he pointed out that he had listed the tickets on his disclosure report for that year. "I took my mother-in-law to this event. I hate golf," Rosenbaum said.

Behind closed doors

What concerns ethicists more is the behavior of the Supreme Court in the case of Mead and four other litigants who sought review of cases they had lost to West.

At a critical juncture of the Mead lawsuit, Rosenbaum issued a preliminary ruling favoring West. Mead failed to get the ruling reversed at the Eighth Circuit Court of Appeals and then petitioned the Supreme Court.

On Jan. 23, 1987, the justices considered the Mead petition at their weekly closed-door conference. There are no public records of these meetings. And the court accepts fewer than 200 of the 5,000 petitions it receives each year. But at least one justice thought the Mead case warranted a hearing and it was placed on the "discuss list" for the conference, according to papers of the late Justice Thurgood Marshall.

While actively considered, it did not draw the four votes needed to bring the case before the full court. On Jan. 27, the court announced that the Mead petition was rejected.

One week after the decision was announced, Justice White was off to a Devitt selection-committee meeting with Devitt, Dwight Opperman and other West executives and their wives at a resort in California. And Justice Brennan was making plans to travel with his wife to Hawaii courtesy of West the week after that. A few years before, Justice Powell had been to Caneel Bay with his wife courtesy of West.

"This strikes me as excessive for judges or any other public official," said Jeffrey Shaman, an expert in judicial ethics at DePaul University. "But I trust that the judges would disqualify themselves if West was litigating in front of them."

A case study:

Traveling on West's tab — deciding its legal fate

West Publishing Co. is a \$600 million enterprise that has dominated parts of the legal publishing industry for decades. With matters before them that could affect West's bottom line, numerous federal judges — including seven U.S. Supreme Court justices — have accepted the Minnesota-based firm's largesse, including lavish trips to exclusive resorts and cash awards. Here's a look at West's dealings with one justice:



from Los Angeles... airport
closest to the hotel (about one half hour).

The only negative about Hawaii is that we would be away for a half-a-dozen days. With advance notice, I could fit this into our 1986 February break — preferably the first week of it. An alternative that I would recommend unless we meet in Hawaii is the Breakers Hotel at Palm Beach — on the water, superior facilities, and affording many interesting things to do and places to see — particularly for our ladies.

I have conveyed your good wishes to...

The invitation

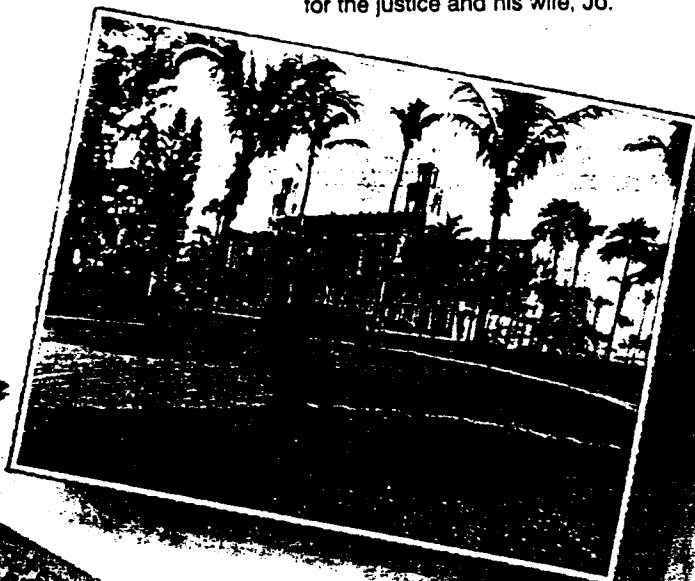
Lewis Powell, who served on the Supreme Court until 1987, accepted an offer in 1984 to help choose the winner of the Edward J. Devitt Distinguished Service to Justice Award, a \$15,000 prize sponsored by West. At Powell's suggestion, West held the meeting at Caneel Bay, an exclusive resort in the Virgin Islands, and picked up the tab for the justice and his wife, Jo.

A suggestion

Soon after the Caneel Bay trip, Powell recommended where the committee should meet next. In an October 1984 letter to Devitt (excerpted above) Powell suggested a hotel in Palm Beach, Fla.

The second trip

In January 1986 Powell and his wife headed to Palm Beach; West paid their travel and lodging expenses. After the trip, Powell wrote West's chief executive, Dwight Opperman: "It was obvious that Jo and I enjoyed the gathering."



The cases

During this period Powell participated in three decisions involving West. In each instance, the justices, meeting behind closed doors, declined to review lower-court rulings that favored the company.

A profile of West Publishing

Headquarters: Eagan, with editorial offices and training centers around the United States.

Ownership: Privately held.

Employees: About 4,500 in the Twin Cities area and 1,500 elsewhere in the United States.

Origins: Started in the 1870s in St. Paul by brothers John and Horatio West, who published a weekly newspaper of court opinions.

Business: West says it prints nearly 60 million books and pamphlets yearly, as well as CD-ROM electronic legal libraries. Its WESTLAW service is one of the nation's leading sources for computer legal research.



Dwight Opperman

Chairman and chief executive



Vance Opperman

President

The West Publishing building in Eagan.



West and the Supreme Court

Members accepted gifts and perks while acting on appeals worth millions to Minnesota firm

"Equal Justice Under Law." These words, chiseled above the huge bronze doors of the Supreme Court, promise that its justices will be impartial.

Yet some parties who asked the court to review their claims against West Publishing Co. now wonder if they received equal treatment. The reason: Since 1983, West has treated seven Supreme Court justices to luxurious trips at posh resorts or hotels.

None of them saw the trips as reason to disqualify themselves from considering whether

to hear five cases involving their host. In each of the five instances, the justices declined to review a lower court's decision, leaving intact a decision in favor of West.

The odds already were against West's opponents, because the high court each year agrees to hear fewer than 200 of the 5,000 or so requests for review.

Two of the West cases involved key copyright issues. And two cases were placed on lists indicating they were actively discussed at the justices' weekly conference.

All justices refused interviews, but two — Antonin Scalia and Lewis Powell, who's now retired — said in written responses that they saw nothing wrong with accepting expense-paid trips to attend meetings for what they regard as a worthy purpose. "That company [West] has been of great importance to the legal profession and to legal scholars," Powell wrote in response to the Star Tribune's inquiry.

Here's a review of the justices' trips and the West-related cases the Supreme Court considered:

By Sharon
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WHO OWNS
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1983

Byron White set the pattern for other justices. He accepted an invitation to serve on a committee to select the winner of the Edward J. Devitt Distinguished Service to Justice Award, a prize sponsored by West Publishing Co. The other committee members were Devitt and Judge Gerald Tjoflat of the 11th Circuit Court of Appeals. Each committee member was to serve for two years.

The committee could have reviewed candidates in St. Paul, where Devitt lived, or on the East Coast, where White and Tjoflat worked. Instead, they conducted their February meeting at Marriott's Rancho Las Palmas in Palm Springs, Calif. It's an appealing place — a four-star resort with tennis courts and 27 holes of golf — and West picked up the tab. The trip gave White, a former All-America halfback, a chance to have a reunion with his old football coach, Johnny (Blood) McNally, who lived nearby. Spouses were invited.

West's CEO, Dwight Opperman, also attended the retreat, although he did not sit in on selection-committee meetings.

1984

The group considered going to Florida for its second meeting. But after consulting White, Devitt wrote to Opperman: "He said his wife was not too enthused about Florida. We discussed San Diego, but I pointed out to him that that place is not a warm spot in January or February."

California was selected. "Dwight Opperman has made a reservation for the 1984 meeting at Marriott's Las Palmas Hotel in Palm Springs (same as last year)," Devitt wrote to White. In

the same letter, he said, "Dwight wants to have Johnny Blood McNally and his wife join us for recreation as before."

McNally, a graduate of St. John's in Collegeville, Minn., coached White when he played for the Pittsburgh Steelers. Devitt wrote McNally, inviting him and his wife to join the group for "social affairs."

A couple of weeks after the trip, paid for by West, White wrote to Devitt: "As usual, it was a pleasure to be with you even if your golf was intolerably good."

Another Supreme Court justice also benefited that year. Chief Justice Warren Burger was chosen to receive a special award from the Devitt committee. He donated his \$10,000 prize to an organization that promotes interest in the law.

Lewis Powell succeeded White on the Devitt panel. "Caneel Bay is a place my wife Jo and I always have hoped to visit," Powell wrote in a 1984 letter to Devitt.

Opperman began scheduling a fall meeting at the exclusive resort on St. John in the Virgin Islands.

Within weeks of the suggestion, Opperman wrote to the justice, saying the meeting would take place at Caneel Bay. He promised to send resort brochures and invited the Powells to stay overnight in Miami the day before the committee was to meet. The letter reminded Powell: "The Devitt Committee travels first class, of course." And it said, "I will send you a check for the air fares right away and will reimburse you for incidental expenses as you advise me."

After the trip, Powell wrote to Devitt, sending a copy to Opperman, suggesting the next meeting be held at the Breakers Hotel in Palm Beach, Fla. He said it is "on the water, superior facilities, and affording many interesting things to do and places to see — particularly for our ladies."

1985

Back in Washington, Powell and White received a list of cases that included the name "West Publishing Co." during their closed-door conference meetings at the Supreme Court.

Patrick Beary, who ran a one-man law office in Queens, N.Y., had decided to press a libel complaint against West to the nation's highest court. Beary wrote his own briefs for the case that had been thrown out by judges in lower courts. A federal appeals panel ruled that West had accurately published a court decision involving Beary and that such activity was protected by law. Beary claimed his libel case raised constitutional questions requiring the high court's review.

Beary's petition was placed on the list of requests the justices decided to discuss, suggesting that at least one justice wanted to consider it. However, it was rejected for reasons that aren't known because the court's conferences are secret.

At the time, Beary understood the rejection. Now that he knows about the trips, he's not so sure. "The justices who went on these trips may have swayed their fellows on the court not to hear the case, you know. I am entitled to my day in court and I didn't get it," he said.

1986

Three months after the court rejected Beary's petition, it was time for Powell and his wife to head to the next Devitt committee meeting, at the Breakers Hotel in Palm Beach, a hotel where double-occupancy rooms currently go for \$290 to \$455. They joined the Devitts, Ninth Circuit Judge James Browning and two West executives and their wives.

After the January meeting, Powell wrote Opperman: "It was obvious that Jo and I enjoyed the gathering last week of the Devitt Award Committee group." He went on to praise the work of the committee, then added, "I was most favorably impressed by [West vice president] Gerry Cafesjian." In June, Powell wrote Devitt telling how much he enjoyed photos taken by Cafesjian and mailed to him after the trip. "We had several chuckles and the pictures brought back the warmest memories," the justice wrote.

Less than three weeks later, West's name again surfaced before the court.

West had resisted paying more than \$160,000 in back taxes, interest and penalties that the city of Phoenix was trying to collect. It was a "business-privilege" tax that the city routinely imposed on business activity

conducted within its limits. A West employee assigned to represent the company in Arizona worked out of his Phoenix home, seeking orders and answering questions about West's products. West argued that most of its business in Arizona was conducted by direct mail and that it did not actually operate an office in the city.

An Arizona appeals court agreed with West and the Supreme Court declined to hear the case. Only Justice Sandra Day O'Connor, an Arizona native, removed herself from the vote on the city's petition.

A few weeks later, Powell and White received an unexpected invitation from West. Although their two-year terms on the Devitt committee had expired, Opperman invited the justices to attend a special "advisory committee meeting."

Through an exchange of letters, they decided to meet in January at the Ritz-Carlton in Laguna Niguel, Calif. The resort, which sits on a 200-foot bluff overlooking the Pacific Ocean, has an 18-hole golf course.

A handwritten note by Devitt indicates that during the Saturday-through-Tuesday gathering, only Monday morning was devoted to committee meetings. The rest of the schedule listed "free" time, golf and dining.

1987

On Jan. 23, only days before Powell and White departed for the California resort, the court met to consider another request that it hear a case against West. It is a case that has meant more to West than any other in recent history.

The dispute involved Mead Data Central Inc., an Ohio company that had jumped into electronic publishing and threatened West's standing as a leading legal publisher. The court opinions in Mead's computerized databases referred to page numbers in West's law books. West had gone to court claiming copyright infringement and a federal judge in Minnesota had ordered Mead to stop using the numbers until the lawsuit was settled. Though preliminary, the order signaled that West's chances of winning the dispute were good.

After losing an appeal in the Eighth Circuit, Mead turned to the high court. For West and Mead, millions of dollars were riding on the decision. But the potential impact reached further. If the court decided to hear the case, it also could lay the groundwork for other publishers who were rushing into electronics.

Neither White nor Powell disqualified himself from participating in the decision, though Powell apparently thought about it. The papers of the late Justice Thurgood Marshall, on file at the Library of Congress, show that Powell apparently considered disqualifying himself, telling the clerk of the court in a letter: "Following discussion of this case at Conference today, I concluded it was unnecessary for me to remain 'out'. Therefore please disregard my letter to you of January 22."

On Jan. 27, the court refused to hear Mead's appeal and ultimately the companies negotiated a secret settlement, reportedly requiring Mead to pay fees to West.

One week after that decision, Powell and White joined Opperman, another West executive and former committee members for the "advisory" session at the California resort. And as they departed, Justice William Brennan, who had also participated in discussions of Mead vs. West, prepared for his own trip at West expense.

William Brennan and his wife, Mary, flew to Hawaii for the next Devitt committee gathering. They were greeted on Feb. 7, 1987, by the Oppermans, Devitt and Fifth Circuit Judge Charles Clark at the Kahala Hilton in Honolulu.

Brennan's first encounter with the Devitt panel had come in early 1986, in the form of a letter of invitation from Devitt.

"We would very much like to have you serve on the committee," Devitt had written. "I feel sure you will enjoy it. In the past we have met for several days at the time of the Supreme Court mid-winter break in late January or early February. We have met in Palm Springs on two occasions [and] in the Virgin Islands ... It makes for a nice break from the routine, and the responsibilities are not too burdensome ... The ten of us make for a small congenial group. The arrangements are made and cared for by Mr. Opperman."

After Brennan's trip to the Kahala Hilton, Powell wrote to Devitt: "Bill Brennan returned from your recent meeting with great enthusiasm and approval of the work of the committee. His delightful wife Mary was equally enthusiastic." And Mary Brennan wrote Devitt on Supreme Court notepaper saying: "Bill and I wanted you to know how very much we enjoyed being with you in Hawaii. We had a great time, didn't we."

That summer, the Brennans and Oppermans had dinner together in Rochester, Minn., while the justice was getting a checkup at the Mayo Clinic. While in Rochester, they discussed plans for the next Devitt panel meeting. Brennan wrote Devitt shortly afterward: "February 6-9 is open for Mary and me and we can't wait."

1988

The Brennans traveled to Naples, Fla., in February for the next Devitt committee meeting, staying at the Ritz-Carlton.

Brennan apparently was asked to recruit Chief Justice William Rehnquist to serve on the panel the following year. But Rehnquist declined, Brennan reported, calling it "wonderful duty but in his special relationship with the judges of the district courts and the court of appeals he thinks his service might be regarded as inappropriate." Brennan concluded his letter to Opperman saying: "Have you anyone else in mind?"

Sandra Day O'Connor was invited to join the Devitt committee after three of the five recent West-related petitions came before the court.

She accepted the invitation in a letter to Devitt saying: "My colleagues have reported that it is a most pleasant task carried out in a delightful setting." She declined Devitt's invitation to suggest a



Justice Sandra Day O'Connor and her husband traveled in 1990 to the Bel Air Hotel near Beverly Hills, Calif., a famous celebrity resort, for her second West-financed trip.

meeting place.

California was chosen and Opperman wrote to O'Connor saying he would enclose "a brochure about the hotel which is one of the nation's finest." He reminded her that "the Devitt Committee travels first class" and that he would meet the justice and her husband, John, when they disembarked from their

flight to the West Coast.

1989

The Ritz-Carlton hotel in Rancho Mirage offers luxurious accommodations near some of the country's finest golf courses and the Devitt committee met there from Jan. 28-31. Devitt had set up advance golf reservations — with 10 a.m. tee times — for himself and the O'Connors, Sunday at the Mission Hills Resort and Monday at the Desert Island Country Club.

At the Ritz-Carlton, Devitt received a handwritten note from a member of West's team outlining the plans: The group would meet at the Club Lounge each evening at 5:30. At about 6, a limo would take them to dinner. The business meetings were listed as "Time to be determined." On Sunday and Monday mornings, O'Connor and Devitt were scheduled to depart for the golf course at 9:30.

After the California meeting, O'Connor wrote to Devitt on Feb. 14: "The Devitt Awards Committee meeting was such a pleasant experience. I truly enjoyed the break from my routine and the chance to join you on the links."

Before long, it was time to start planning the next meeting, to be held at the Bel Air Hotel in Los Angeles, described in a promotional brochure as "DISCREET. UNHURRIED. PRICELESS."

"I re-read the brochure about the fancy hotel," Devitt wrote to O'Connor in December. "I'm sure we will have a good time there. Dwight Opperman and I talked about it at lunch yesterday."

About the time he wrote the letter, Donna Nelson, an assistant state attorney general in Austin, Texas, was writing the next petition the high court would receive asking it to hear a case against West.

For decades, West had published the statutes of Texas and some two dozen other states under an arrangement that was welcomed by state officials. But the harmonious relationship ended in 1985, when West tried to use copyright claims to block a competitor. Texas Attorney General Jim Mattox set out to challenge West's copyright claims in court. Nelson was assigned to write the briefs arguing that access to the law belonged to the people of Texas, not to a private company.

West didn't claim it owned the words in the law. But it claimed rights to the arrangement, numbers and titles of the various sections in the law. Without those elements, the law would be inaccessible, Texas argued.

Federal judges at the Fifth Circuit Court of Appeals agreed with a Texas judge who had granted West's request that the case be dismissed. When Nelson argued the case, one of the appeals court judges asked her, "Did West do something to make you mad?" Texas wasn't planning to publish the laws commercially and didn't have an "actual controversy" with West, the appeals judges ruled.

What was never disclosed to Nelson was that one of the three appeals court judges, John Minor Wisdom, had been a co-winner of the Devitt award four months before the panel issued its ruling against Texas. West had presented him with \$15,000 at a ceremony in New Orleans.

Nelson wasn't surprised when the Supreme Court rejected her petition for an appeal. But five years later — after learning from the Star Tribune that a circuit judge had accepted the cash award and justices had accepted expensive trips from the state's opponent — Nelson said: "That just breaks my heart. That's awful."

1990

Five days after the court rejected the Texas petition (apparently without disqualification by any member), O'Connor flew to Los Angeles to meet Opperman, Devitt and the others at the Bel Air Hotel.

After the trip, Devitt wrote to O'Connor: "We were all very happy to have John [her husband] with us at Bel-Air. He is a wonderful Irishman."

Later, O'Connor wrote to Devitt telling him "it was a great treat" to serve on the award committee and sent him photographs of the visit to California.

When she filed the financial disclosure forms judges are required to complete each year, she didn't report the West-paid trip. When the Star Tribune inquired about the form, she said through a court spokeswoman that it was an oversight and that it will be corrected.

John Paul Stevens got his invitation to serve on the Devitt committee in February. "I feel sure you will enjoy it," Devitt wrote to Stevens. Stevens responded by telephone, according to Devitt's handwritten notes, saying he wanted to meet in Florida.

That spring, Opperman wrote Stevens asking whether the justice and his wife, Maryan, preferred golf or tennis. Stevens wrote back: "It was most thoughtful of you to accommodate us. In response to your inquiry, we are both interested in tennis and golf."

1991

Stevens, his wife and other committee members met with the West executives in January at the Ritz-Carlton in Naples. Judge William J. Holloway Jr., who also attended, said judges were provided with suite accommodations courtesy of West. A receipt shows that Devitt's room charge was \$700 a night.

Meanwhile, in Washington, the court had received a fifth request to hear a case against West. Arthur D'Amario, a photographer from Rhode Island, had an altercation with security guards outside a rock concert at the Providence Civic Center and was convicted of simple assault. When his appeal was denied by the Rhode Island Supreme Court, West received a copy of the opinion as part of the material it routinely gathers for its books.

D'Amario tried to stop West from publishing the opinion, alleging it was libelous and would infringe on his privacy rights. Lower courts had ruled that they could not enjoin West from publishing an official court decision. D'Amario petitioned the Supreme Court to hear the case.

D'Amario did not know until last month that justices considering his case had been entertained by West. "I think they have a duty to notify the petitioner of a conflict of interest like this whether or not they think that the potential conflict affects their judgment," he said. "If I had known this, I might have raised an ethics complaint at the time."

D'Amario's petition came before the court's conference two months after Stevens returned from the Florida trip. The justices denied the petition on March 18.

D'Amario's petition marks "the end of the requests the court has received since 1982 to hear cases against West. But the trips continued."

In May, Devitt wrote Stevens about plans for the January 1992 meeting of the committee. "We will probably meet either in some Caribbean spot or on a boat trip out of some Florida port."

1992

Indeed, they did find a warm port. Stevens and his wife joined the committee for a January meeting in Nassau, the Bahamas, at Paradise Island Resort & Casino.

Another judge on the committee, Holloway of the 10th Circuit Court of Appeals in Oklahoma City, reported on his disclosure form that West provided "lodging, food, entertainment and miscellaneous courtesies."

Devitt died March 2. Few records about the committee meetings after his death are available.

1993

Antonin Scalia was the next justice to make a West-paid trip.

In January 1993, Scalia and his wife attended a Devitt committee meeting in Los Angeles, according to his financial disclosure form. Scalia had written to Devitt in August 1991 that he and his wife, Maureen, "look forward to a warm meeting place — though we will leave the selection to you."

Scalia did not list a value for the trip. However, another judge attending that session, Seventh Circuit Court Judge William Bauer, listed the value of the

three days of West-sponsored lodging and travel at \$7,700.

1994

The Star Tribune was unable to determine where the Devitt committee met to make its decisions in 1994.

1995

Anthony Kennedy is the newest justice to join the Devitt committee. He attended his first meeting as a panelist in January at the posh Four Seasons hotel in New York City.

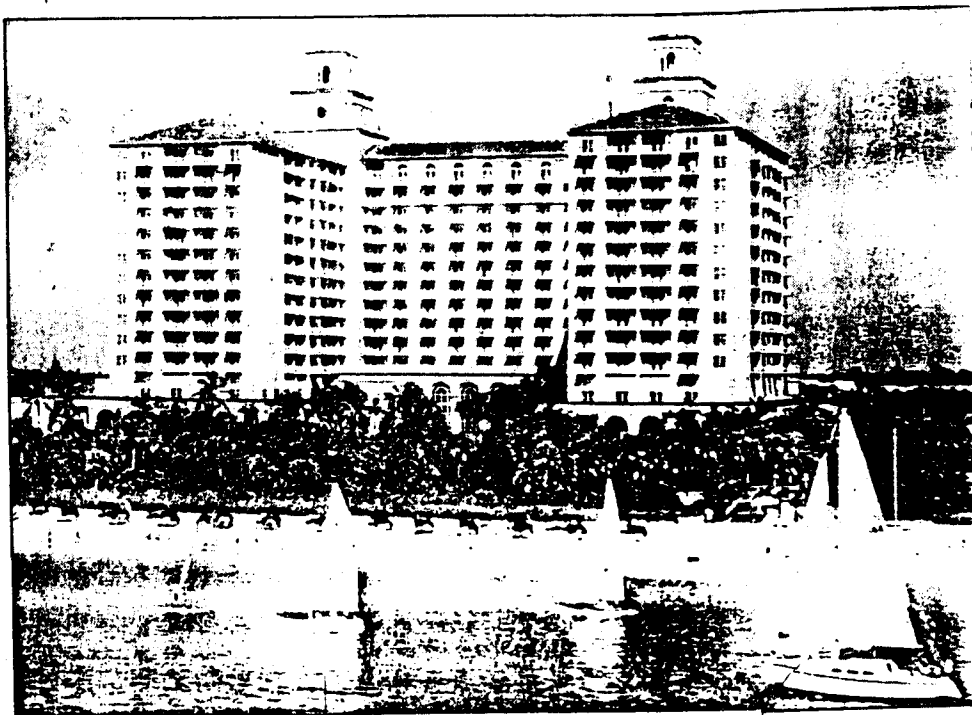
Kennedy joined the group after the court decided against hearing appeals in the Texas and D'A-mario cases, and no West cases have come before the court since then.

Kennedy declined to release his correspondence concerning the Devitt committee. But Richard Arnold, chief judge of the Eighth Circuit, released letters he received from Opperman describing arrangements for the meeting:

"The committee and spouses usually eat dinner as a group. If there is some restaurant you especially want to try let me know," Opperman wrote to Arnold in October.

"There will be time for the theater and museums. I would like to know your interests so we can accommodate them."

The official business of the committee was taken care of in two three-hour meetings during the trip that lasted Jan. 22-25, Arnold said.



The Ritz-Carlton Hotel in Naples, Fla., was the site of Justice William Brennan's second trip paid by West on behalf of the Devitt award committee.

White receives trip to Palm Springs, Calif.

1983

White receives another trip to Palm Springs.

1984

Chief Justice Warren Burger receives special \$10,000 award.

Powell receives trip to U.S. Virgin Islands.

1985

Supreme Court rejects appeal in Patrick Beary's libel case against West.

Powell receives trip to Palm Beach, Fla.

1986

Supreme Court rejects appeal of Phoenix tax case against West.

O'Connor receives trip to a hotel near Beverly Hills, Calif.

1990

Supreme Court rejects appeal in Texas' challenge of West copyright claim.

Stevens receives trip to Naples, Fla.

1991

Supreme Court rejects appeal in photographer's libel suit against West.

Stevens receives trip to Nassau in the Bahamas.

1992

Scalia receives trip to Los Angeles.

1993

1994

Kennedy receives trip to New York City.

1995

Powell and White receive trip to Laguna Niguel, Calif.

1987

Supreme Court rejects appeal in Mead Data Central case challenging West's copyright.

Brennan receives trip to Honolulu, Hawaii.

Brennan receives trip to Naples, Fla.

1988

O'Connor receives trip to Rancho Mirage, Calif.

1989

March 16, 1984

From Powell to
Federal District
Judge Edward
Devitt.

As to where the next meeting of your Committee is held, Caneel Bay is a place my wife Jo and I always have hoped to visit. This would have our warm approval. As for dates, if you wish to meet in the fall - a lovely time of the year - we would be available throughout the period October 13-21. We will have completed the October arguments, but I will not be "up to my neck" on opinion work. If you preferred, we would join you happily during the week commencing January 27, 1985.

Nov. 26, 1986

To White from
Dwight Opperman,
then president of
West Publishing.

Everybody on the Devitt Advisory Board has cleared the dates of January 31 to February 3 and we are all set for a good meeting at the Ritz-Carlton Hotel in Laguna Niguel, California. I enclose a brochure about the hotel. You will notice that they have a Robert Trent Jones golf course. Judge Devitt is making reservations for Sunday and Monday rounds. Check in time on Saturday is 3:00 P.M. and check out time on Tuesday is Noon.

We will reimburse you for your first class airplane tickets, or will advance the fares to you, as soon as you let me know. Also, please let me know your flight number so that I can arrange for a car to meet you and Marie.

With

St. Paul, Minnesota 55101

Dear Ed:

It's Mary and I who owe you deep thanks for a wonderful trip. We'll not ever forget it. I have just written Marty to thank her for the lovely note she wrote us. She's a great lady.

Our affectionate best.

Feb. 17, 1987

To Devitt from
Brennan.

We would very much like to have you serve on the committee the next two years. I feel sure you will enjoy it. In the past we have met for several days at the time of the Supreme Court mid-winter break in late January or early February. We have met in Palm Springs on two occasions, in the Virgin Islands, and in Palm Beach and in Naples, Florida. It makes for a nice break from the routine, and the responsibilities are not too burdensome. In addition to the three committee members and their wives, the group includes Dwight Opperman and his wife and one of his vice presidents (Gerard Cafesjian) and his wife. The ten of us make for a congenial group. The arrangements are made and cared for by Mr. Opperman.

I hope you will be able to serve with us. We will welcome you and your husband with warm hearts.

March 16, 1988

To O'Connor from
Devitt.

P.O.
St. Paul, 664-0526

Dear Mr. Opperman:

Many thanks for your recent letter conveying the good news that you have arranged for the Devitt Committee Meeting to be held in Naples on January 19-22. Both the time and place are most convenient for Maryann and me and it was most thoughtful of you to accommodate us. In response to your inquiry, we are both interested in tennis and golf; if we have to choose between the two, it would be a particular treat to play one of the courses in Naples.

We are looking forward to being with you and will let you know when our precise travel plans have been made. Thanks again for your courtesy.

Best regards.

May 2, 1990

To Dwight
Opperman from
Stevens.



**Justice John
Paul Stevens**

Term: 1975-present
Traveled to Florida, the
Bahamas



**Justice Antonin
Scalia**

Term: 1986-present
Traveled to California



**Justice Anthony
Kennedy**

Term: 1988-present
Traveled to New York

**WHO OWNS
THE LAW?**



West Publishing
and the courts



**Justice Byron
White**

Term: 1962-93
Traveled to California
three times



**Justice Lewis
Powell**

Term: 1972-87
Traveled to U.S. Virgin
Islands, Florida, California



**Justice William
Brennan**

Term: 1956-90
Traveled to Hawaii,
Florida



**Justice Sandra
Day O'Connor**

Term: 1981-present
Traveled to California
two times

Devitt Award is prestigious – and unusual

Close involvement of corporate
sponsor sets it apart

The Edward J. Devitt Distinguished Service to Justice Award

- The award was created in 1982 to recognize outstanding federal judges.
- A three-member panel, usually made up of a Supreme Court justice, a U.S. Court of Appeals judge and a U.S. district judge, selects the recipient. Judge Devitt chaired the panel until he died in 1992.
- The winner receives \$15,000 and a crystal obelisk.



Judge Edward J. Devitt



- Elected municipal judge in East Grand Forks, Minn., in 1935, right out of University of North Dakota Law School. Devitt passed the bar exam while serving in that post.
- Elected to Congress from Ramsey County in 1946; lost his seat to Eugene McCarthy in 1948.
- Became chief U.S. district judge from Minnesota in 1957.
- Coauthor of the three-volume "Federal Jury Practice," published by West, which sets the basic rules of how federal trial courts are to be run.
- Presided over many high-profile trials including the 1961 racketeering trial of Minneapolis gangster Isadore (Kid Cann) Blumenfeld, the 1963 fraud trial of former Minneapolis Mayor Marvin Kline, and the Reserve Mining Co. environmental trial in the 1970s.
- After sitting on the federal bench for 38 years, Devitt died in St. Paul in 1992, at age 80.

17
It was to be the Nobel Prize for the federal judiciary, an award named for Edward Devitt, longtime chief judge of the federal courts in Minnesota.

Originally \$10,000 and later \$15,000, it was created by West Publishing Co. in 1982. And recipients chosen over the years have been worthy of honor. They include judges who have shown courage in handling civil rights matters and creativity in improving the administration of justice.

Several recipients did not accept the company's check: "I don't like to take anything of value from anybody," said Senior Judge Jack Weinstein of the Eastern District of New York, who asked West to donate the money to charity when he received the award in 1994.

The award complies with all laws and ethics codes, but the close involvement of its corporate sponsor makes it unusual among commendations given to judges. And it has raised questions with some judicial ethics experts.

In a letter to the Star Tribune, a West official defended the award program. "Our sponsorship of and involvement in the Devitt Award have been fully open and public from the outset," said spokeswoman Ruth Stanoch. "Nominations can be made by anyone, and the recipient is selected by an independent panel comprised of a U.S. Supreme Court Justice, a U.S. Court of Appeals Judge and a U.S. District court judge. We do not select the recipient..."

Although West didn't choose the Devitt winners, the company was directly involved in every other part of the selection and award process, according to Devitt's papers, which are on file at the Minnesota Historical Society. As a result, the arrangement made West a benefactor to federal judges, whether they were winners or selection-committee

members.

West's executives played host to the committee members at expensive resorts and hotels, attending to the entertainment and comfort of the judges and their spouses. Ethics experts said West would have been better advised to donate funds for the award and separate the company from the award and the selection process.

Steven Lubet, a law professor at Northwestern University, suggests an endowment, such as awards offered by law firms wishing to give money to a law school to pay for a visiting lecturer.

"The donor that pays for it is a law firm," he said. "But the law school runs the program completely and there is a complete separation from the firm. Once the money is donated, it becomes the law school's to spend."

West is not alone in providing recognition for the judiciary. The company provided the Star Tribune with the names of 21 other award programs that have honored judges.

But the Devitt award stands out from the others. The Star Tribune was able to contact 19 of the organizations responsible for the awards on West's list and found they are bar associations, a university or professional organization. Some of the awards are privately funded; however, the funding went through professional organizations. For example, West and one of its competitors, LEXIS-NEXIS, each endow an award through the American Inns of Court Foundation. LEXIS officials said that they have a policy forbidding directly providing travel or lodging to judges.

None of the other award programs had a budget that exceeded \$5,000 a year, including prizes and administrative costs. And typically the committee that selected the winners conferred by telephone, piggy-

backed its meetings onto a bar association conference or arranged for a low-budget get-together.

"They meet in our living room here," said Bonnie Sashin of the Boston Bar Association, which sponsors the Haskell Cohn Distinguished Judicial Service Award. "We buy them each a muffin worth maybe a dollar each and maybe we will give them coffee."

By contrast, one judge reported that his transportation, food and lodging for a Devitt selection-committee meeting cost \$7,700.

Until his death in 1992, Devitt invited the other members who were to serve with him on the selection committees.

It was possible for Devitt to recruit the nation's most prestigious judges. After nearly 30 years on the federal bench, he had friends on the Supreme Court and throughout the federal judiciary. He was chief judge of the Minnesota District from 1957 to 1981 and he continued to hear cases as a senior judge through the 1980s.

Devitt was the perfect catalyst for the sociable quality that was to characterize the committee meetings. Gregarious and courtly, he enjoyed playing golf and traveling. News clippings and his own correspondence show that he was a favorite among many other judges.

The correspondence shows that Devitt and Dwight Opperman, now CEO and chairman of the board at West, were close friends. They often traveled together, sometimes visiting the nation's highest offices.

On March 13, 1984, Devitt wrote to William Webster, then director of the FBI: "Just a note to thank you for your warm hospitality last week. You received Dwight Opperman and myself with your usual generous courtesy."

Devitt's papers show three occasions when he alerted Opperman regarding West competitors. In 1988, for example, a court official circulated a memo telling court librarians that government contracts required them to do more of their computer-assisted legal research on a system that competes with West. Devitt's correspondence indicates that he sent a copy to Opperman.

Each year, West put out the call for nominations for the award that was named after Devitt and the nation's most esteemed judges and legal scholars submitted nominations.

Nominations were to be sent to a West post office box. But at least one nominator bypassed that formality and went directly to Opperman. Devitt's papers include a copy of a letter then-Chief Justice Warren Burger sent to Opperman in 1984 to submit a nomination.

And, on at least one occasion, Opperman was consulted on naming the selection committee and on the pool of nominees. Devitt's papers also include a June 22, 1989, draft letter to Opperman saying, in part: "As we figured out in our conversation, the Sixth and Tenth Circuits are the only ones which have not had a recipient or a panel member. ... After we figure out the next appointee from the Supreme Court (I think we agreed that John Paul Stevens would logically be the next one), we might settle on a name from the five circuit judges listed above."

Devitt usually corresponded with the selection-committee member to set up meetings to consider the nominations, indicating that Opperman was handling the details on expenses.

But Opperman often stepped into the chain of correspondence, writing the panelists to remind them West expected them to fly first class or to invite them for extra activities.

WHO OWNS THE LAW?



West Publishing
and the courts

By Sharon
Schmickle
and Tom
Hamburger
Washington Bureau
Correspondents

Texas ruling favored West after judge received prize

Was case's integrity compromised? Views differ

When Donna Nelson went to federal appeals court to argue the state of Texas' case against West Publishing Co., a judge asked: "Why have you got a bee in your bonnet on this case? ... Did West do something to make you mad?"

West claimed it had a copyright over the arrangements of the state's laws and Nelson, an assistant attorney general, opposed the Minnesota company in court.

Another of the three judges on the Fifth Circuit panel was John Minor Wisdom. The hearing was held Dec. 6, 1988. The following May, Wisdom received a \$15,000 prize from West, the Edward J. Devitt Distinguished Service to Justice Award. He was presented the award at a ceremony in New Orleans attended by West's then-president, Dwight Opperman.

"I appreciate deeply the honor conferred upon me," Wisdom said at the ceremony. "I thank the Devitt committee ... and, of course, Mr. Opperman of West Publishing Company."



"As I think about it now, I think there might have been some question, but nobody would seriously think that was being used to gain favor for West."

— Judge John
Minor Wisdom
speaking about a
\$15,000 award he
received from West
Publishing.

MONDAY

▼ Legal publishers are battling over a share of the judiciary's \$2.7 billion annual budget and over policies that may determine the future of the industry. Some government employees making decisions on those issues received benefits from major contenders in the battles.

▼ There's a rising chorus of critics charging that West Publishing enjoys a de facto monopoly on federal case law that keeps costs for legal information high and competitors out of the market. It's come down to a debate over who owns the law, and West outlines its perspective on this and other issues.

▼ Ethics experts and others make suggestions to address a general lack of scrutiny, clear standards and oversight of the judiciary.

Four months later, in September 1989, the Fifth Circuit judges — including Wisdom — issued a ruling in the Texas case in West's favor.

Texas appealed to the U.S. Supreme Court. But there was something that Nelson and the state's other lawyers didn't know: Three of the justices — Byron White, William Brennan and Sandra Day O'Connor — had taken lavish trips at West's expense to meetings in California, Hawaii and Florida.

The high court declined to hear the case, leaving West the winner.

West may have won in any event. And company executives didn't select Wisdom. They solicited nominations for the award, then accompanied a committee of judges to a retreat in Rancho Mirage, Calif. — paid for by West — where the judges chose Wisdom and one other judge who won the Devitt award that year. Wisdom said he used the money to buy a painting for his home.

There is little argument that Wisdom is worthy of the highest honors. One of the nation's most esteemed judges, his opinions on civil rights cases have been the guideposts for desegregating schools, public facilities and the workplace.

Wisdom said this month of the award: "As I think about it now, I think there might have been some question, but nobody would seriously think that was being used to gain favor for West. Nor did it make a difference . . . Any judge worth his salt wouldn't be influenced by

the fact that it was West Publishing Company."

Wisdom added that "there wasn't any thought in the mind of anybody" that he should disqualify himself from the Texas vs. West case.

Judge Will Garwood of Austin, Texas, who wrote the circuit court opinion, said it is "silly" to think Wisdom might have been influenced by the award, that "it does not raise a shadow of a question."

But Jeffrey Shaman, an expert on judicial ethics at DePaul University in Chicago, said "at a minimum, the judge should have disclosed this [receipt of \$15,000] and given parties in the case an opportunity to make a motion for his disqualification."

And for Nelson, a special trust was violated. "It's incredible," she said upon hearing of the award and trips from the Star Tribune. "It's very disappointing."

The integrity of the courts is compromised when judges have accepted benefits from one party in a case or a petition they are considering, she said. "It sets up a conflict, clearly a conflict," she said.

Asked whether giving benefits to judges might make West's opponents in court feel uneasy, the company's spokeswoman issued a written response: "Apparently, in the Star Tribune's odd view, litigants are to act in ways that take into account the 'feelings' of their oppo-

nents. This strikes us as a completely unrealistic standard. We question whether the Star Tribune directs its litigation counsel to bear in mind the 'feelings' of its opponents, such as unease by Star Tribune litigation opponents that the Star Tribune may be a news source providing a supposedly impartial report on the litigation. We suspect not."

Texas contracted with West to print the state's laws in 1941. The dispute started when another publisher, Bancroft-Whitney Co., tried to market an electronic version of the laws in 1985 using the arrangements West had printed. West claimed copyright and the Texas' attorney general at the time, Jim Mattox, objected, saying the state should have control over its own laws.

West didn't claim it owned the actual words in the laws. But it said it had rights to the arrangement, numbers and titles of the various sections.

The state maintained that the laws are inaccessible without those elements, that West in essence controlled the "gates" to the law. The concern was that consumers and taxpayers ultimately would be hurt if one company was allowed to hold such control, Nelson said. "When there is no competition, prices are artificially high," she said.

A District Court judge dismissed the state's case without directly addressing the issue of access to public law. Texas wasn't planning to publish the laws commercially and therefore didn't have an "actual controversy" with West, he said. The appeals court judges agreed.

What the ethicists say

The Star Tribune asked prominent ethics experts to review the travel and other benefits that West Publishing offered to judges serving on the the Devitt Award selection committee over the past 12 years.

Geoffrey Hazard Jr.

Professor of law, University of Pennsylvania

"In today's world the judges and justices would have been better advised not to go to a fancy place unless there was an institutional barrier between them and West. I can understand how the litigants feel about it.

"On the other hand, I don't think the judges violated a rule. I'm sure they don't think they violated a rule. But as so happens in the modern world it's only experience that tells us there is a better way to do it or to set it up in a different kind of way."

Nearly all of the judicial ethicists contacted by the Star Tribune had some kind of relationship with legal publishers. West provides marketing assistance to the American Law Institute, of which Hazard is director. And Hazard sits on the advisory board of Little Brown Co. Gillers moderates an on-line ethics forum for Lexis Counsel Connect, a partnership of American Lawyer Media and LEXIS. He is the author of two law school texts published by Little Brown & Co. Lubet is co-author of a book published by a subsidiary of LEXIS-NEXIS and another book published by the National Institute for Trial Advocacy. Abramson has had several books published by West.

Steven Lubet

Professor of law, Northwestern University

"While I don't have any doubt that everyone's motives are completely pure, and the goals are worthy, there is an inevitable appearance that this relationship has gone too far.

"A predictable litigant and significant vendor should not be directly providing opulent perks to neutral decision makers. I would say ordinarily that participation on a committee of this nature would not require recusal of a justice, but in the cases you've described, with the receipt of the benefit so close in time [to the court decision] and so extraordinary in its level of luxury, I think that recusal might be necessary.

"But because this involves the Supreme Court, it's a real conundrum. Usually a judge can cure an appearance of partiality by declining to participate in a case. But it takes four justices to accept a cert petition [a request to review a lower court ruling]. So when a justice considers cert, the decision not to sit is identical to a vote against taking the case. That tells me that Supreme Court justices, much of whose work consists of deciding which cases to hear, ought to be especially careful about involving themselves with parties whose interests may come before the court."

Stephen Gillers

Professor of law, New York University

"It's a bad idea for a federal judge to accept expensive travel and entertainment from any corporation or business entity that is likely to be before that judge's court. And large companies are especially likely to have matters at the Supreme Court. The trips that you have shown me are what most Americans would call lavish. They were to high-priced resort areas at the optimum time of the year. They were first class. They were more than comfortable. I put myself in the position of an opponent of the sponsor of those trips. A judge has to say, 'Suppose a case comes before me in which my benefactor is a party. Will its opponent be concerned?' I think the answer will often be 'yes'.

"I want to make it clear that I think the idea for the Devitt committee is laudable. I don't doubt anyone's good intentions. It is perfectly legitimate for a law book publisher to sponsor such an award — I've nominated someone myself — and to enlist the aid of judges in selecting the recipients and to pay their reasonable expenses in fulfilling that selection obligation."

Leslie Abramson

Professor of law, University of Louisville

"I don't see any problem with justices being involved in the selection process for such an award if they did it for a few hours in Washington, D.C., or some place nearby, perhaps at a dinner meeting.

"But the idea of taking your spouse and going off to a remote vacation spot where a small percentage of your time is going to be taken in the selection process is what creates the appearance that this is a gift. As long as the process includes a stay at a luxurious locale for the selection committee, the Supreme Court shouldn't be involved in it.

"... The more judges who have taken these trips, arguably, the more serious the appearance problems would be, the more quantitatively tainted would be the process of considering a case in which the donor was a party."

WHO OWNS THE LAW?



West Publishing
and the courts

West has a long publishing history

Company has come to enjoy special standing with courts

The Founding Fathers didn't say who should publish the opinions of the courts they created. England had a tradition of leaving that business to the private sector. America followed suit.

Court fights over publishers' rights started almost as soon as the first comprehensive volume of legal opinions was produced, in Connecticut in 1789.

Flash forward to the 1870s. Minnesota has been a state for more than a decade. Here comes John B. West, 20, selling office supplies, dictionaries, legal forms and law treatises.

The St. Paul lawyers who buy West's wares complain that it takes too long to get published court proceedings. So John and his brother, Horatio, launch a weekly newspaper containing court opinions. By 1879, the West brothers are publishing the output of courts from Iowa, Michigan, Nebraska, Wisconsin and the Dakota Territory as well.

By the turn of the century, the company formed by the West brothers is publishing regional reports nationwide as well as Supreme Court decisions.

West does more than simply regurgitate the output of the courts. It screens court opinions, selecting those considered most important for publication. It edits them, cleaning up the judges' grammar and spelling.

Most important, West organizes the material it publishes, setting up numbering systems that give each opinion the equivalent of an address of a house on a city street. Hand judges and lawyers the map and they can easily find what they need.

The benefits of the relationship flow both ways. The courts provide the raw material — opinions — for a profitable publishing business. The resulting law books facilitate the work of the courts.

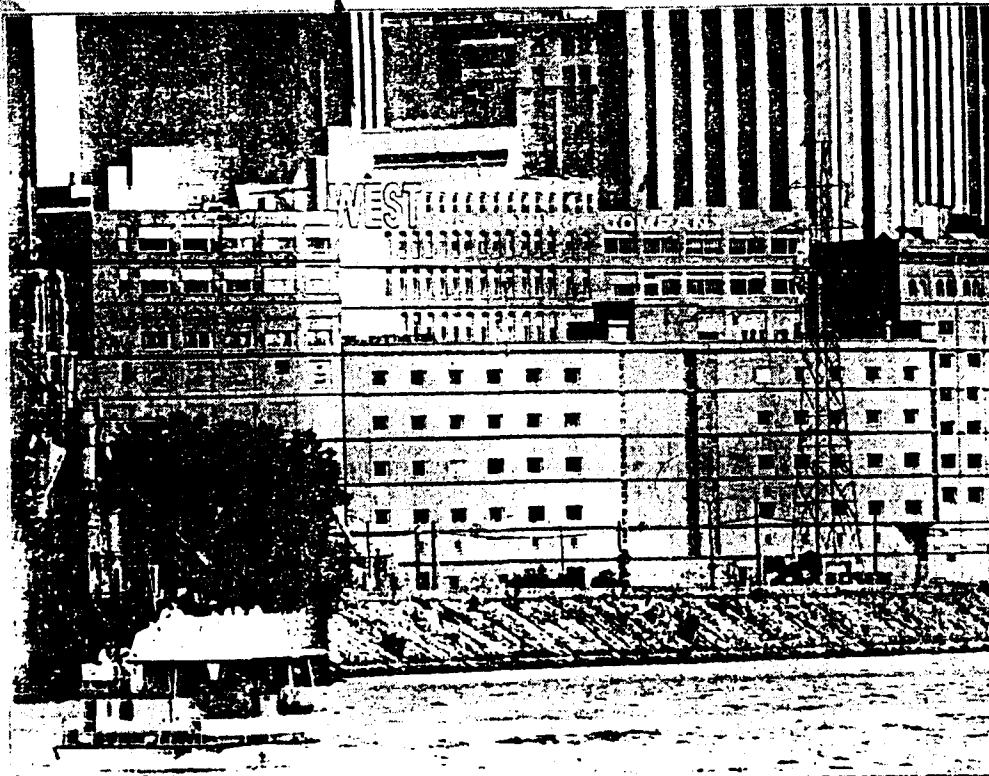
Fast forward to the 1970s. West is now run by Dwight Opperman, an Iowan who started working for the company in 1951.

Over the decades, West has come to enjoy a special standing with lawyers and judges. The company's representatives are welcomed by judges and provide free law books, calendars and appointment books to them.

Officially, West and a few competitors are private companies. Practically, they function almost as an arm of the court. They find frequent opportunities to assist judges and court officials with legal seminars, court historical projects and receptions at conferences.

The American Bar Association issues its Codes of Judicial Conduct in 1972, suggesting restrictions in the gifts judges should take. But so accepted is the relationship with West and the other pub-

West Publishing Co.'s old headquarters near the Mississippi River in St. Paul. The company completed moving its headquarters from St. Paul to its 264-acre Eagan site in 1992.



lishers, that complimentary books supplied by publishers are exempted.

Now, move ahead to the 1980s. Computer bytes and on-line databases have begun to replace the handsomely bound volumes that adorn nearly every law office. The electronic revolution fosters new competition in the legal publishing industry. And West aggressively defends its position, often in the courts.

In a prepared statement to the Star Tribune, West's spokeswoman Ruth Stanoch emphasized the competition the company now faces: "American le-

gal publishing is a highly competitive business. There are more and bigger players, and exploding numbers of legal products and services."

Can West's adversaries expect fairness in the courts given the close relationship that the judges have allowed — even invited — for more than a century?

"For so long it was assumed, with good reason, that West was — if not part of the judiciary — at least essential to its function. And a good citizen thereof, even if it made a lot of money," said

Stephen Gillers, a law professor at New York University and an expert in judicial ethics. "American law would be poorer today without West's contribution."

But we have edged into a new age, Gillers said. "Events have altered the map," he said. "We have to think about a company like West in an information age in a new way. The symbiosis that might previously have been acceptable to some extent now must be reexamined."

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West's response to questions asked by the paper.

Editors' note: Although executives of West Publishing Co. declined to be interviewed in depth for today's articles, the company issued a 6,000-word letter on Feb. 22 in response to written questions prepared by the Star Tribune. While West's responses are reflected in today's articles, we wanted to make these fuller excerpts available to our readers.

On West as an employer/

Today, we employ over 4,500 people in Minnesota alone. . . . We have never laid off employees, and continue to provide a strong benefits package. . . . In fact, in a Nov. 28, 1994, article the Star Tribune noted that West "has a reputation of talking care of its employees in ways that today are regarded as exceptional for a large corporation." . . .

We began recycling in 1906 and today we are a leader in environmental programs and in using environmentally sound technology. We are a good corporate citizen. We have donated over \$10 million worth of facilities to Ramsey County, provided over \$1 million in support for the development of the Southwest YMCA, provided ongoing financial support for the arts, and given major support for the United Way.

On competition in legal publishing/

...[I]n 1922, there were some 65 competing publishers of case reports providing at least 190 case law sources. At the end of 1994, there were over 170 competing providers providing over 700 different sources of case law. Now, in early 1995, the number of competing case law providers exceeds 190 entities producing over 750 case law sources. This amounts to increases of about 300 percent in each category over just the past two years.

The industry is not only attracting more competitors, it is attracting multi-billion dollar, multinational conglomerates headquartered in foreign countries. Reed Elsevier, an Anglo-Dutch compa-

ny with 1993 sales in excess of \$4.1 billion, acquired Lexis Nexis, a major competitor of ours, in 1994 for \$1.5 billion. Thomson Corporation, a Toronto-based, Anglo-Canadian company controlled by Lord Thompson, with worldwide sales in 1993 in excess of \$5.8 billion, has acquired various legal publishing companies to the tune of \$1.3 billion in the last decade. These vast, worldwide conglomerates dwarf American-owned West in size.

On the Star Tribune's inquiries/

Your letter purports to pose several "questions." In fact, a fairer characterization of the "questions" is that each is an attempt to artfully link truths, half-truths and innuendos to concoct circumstances in which perfectly legal activities "might appear improper." The level to which you have stooped in an attempt to discredit us is perhaps best demonstrated by your question which asks whether we "recognize . . . that the provision of those benefits might nonetheless make opponents feel uneasy?" Apparently, in the Star Tribune's odd view, litigants are to act in ways that take into account the "feelings" of their opponents. This strikes us as a completely unrealistic standard. We question whether the Star Tribune directs its litigation counsel to bear in mind the "feelings" of its opponents, such as unease by Star Tribune litigation opponents that the Star Tribune may be a news source providing a supposedly impartial report on the litigation. We suspect not.

As you well know, the laws and regulations regarding activities with public officials and political contributions are in a continuous process of change. We have assiduously attempted to follow such changes and abide by them. Nowhere in your letter do you allege that we have violated any law or regulation, nor can you.

On the Devitt Award/

The recipients of the Devitt Award have been judges who have consistently distinguished them-

selves ... each recipient has been a "judge's judge."

Our sponsorship of and involvement in the Devitt Award have been fully open and public from the outset. Nominations can be made by anyone, and the recipient is selected by an independent panel comprised of a U.S. Supreme Court Justice, a U.S. Court of Appeals Judge and a U.S. District Court Judge...

Our role in the Devitt Award is simply as follows: First, we make the Award available (i.e. we established the Award, underwrite the cost of the obelisk and cash component of the Award). Second, we provide or pay for printing and mailing the correspondence soliciting nominations and announcing the recipient, the program for the presentation ceremony and the post-ceremony brochure which contains the remarks of the presenters and recipient. Third, we arrange for and pay the expenses associated with the selection panel's meeting to review the nominations and select a recipient. While we host the selection panel's meeting, neither West nor our executives are involved in the selection process itself. Fourth, we maintain a post office box where the nominations are sent and we collect and present the nominations to the selection panel. Our role is thus that of sponsor and organizer of the Devitt Award.

The Devitt Award itself and our involvement in the Award comply with all applicable laws, regulations and codes of professional conduct and responsibility...

...[M]any organizations sponsor awards which are given to members of the judiciary for particularly distinguished service. It is simple-minded to suggest that there is something improper about such awards per se (as your questions imply) and equally simple-minded to conclude that any judge worthy of such an award would in any way allow it to affect his or her judgment in a particu-

lar case or matter.

On relations with judges/

Our relations with members of the federal judiciary in the Eighth Circuit are entirely proper, as are our relations with all members of the federal judiciary. ... There was and is nothing improper in our providing complimentary tickets to a golf tournament to a judge or in the fact that the son of a judge is employed by us.

With respect to the first issue, you are apparently referring to the 1992 U.S. Open. We did have a corporate tent at the U.S. Open, so did the Star Tribune. So did some 45 other local and national companies. We viewed our involvement as an opportunity to be a good corporate citizen and to promote our company. We suspect every corporate sponsor — the Star Tribune included — viewed it the same way. Perhaps you would care to share your invitation list so that others can determine whether anything "might appear improper".

On cases heard in Minnesota/

Where a case is to be heard is strictly governed by the venue statutes contained in the United States Code. These laws specify where a case may be properly venued and under what circumstances a party may seek to have a case transferred to another judicial district. The statutes identify objective criteria, such as convenience to witnesses, location of evidence, and relative burden of the current location to the parties, which must be weighed by the court in the district where the case was initially filed before a case may be transferred to another venue.

On occasion, we have made motions to transfer litigation out of a venue which we feel improper under the venue rules. Similarly, in other cases we have not made such motions when we felt that a case was appropriately venued. ...

About the staff

The articles in today's installment of the series were reported and written by Tom Hamburger and Sharon Schmickie.

Hamburger, 42, joined the Star Tribune as a reporter in 1983. He became chief of the newspaper's Washington bureau in 1993.

Schmickie, 52, has been a Star Tribune reporter since 1981. Since October 1994, she has worked in the Washington bureau covering Congress.

Research assistance was provided by Star Tribune librarians Sylvia Frisch and Roberta Hovde and also by Janet Reid, Jennifer Corbett, Caron Carlson, Scott Carlson and John Ferguson.

Graphics were designed by artist Gregory Branson, and supervised by graphics editor Tim Campbell with assistance from photo editor Peter Koeleman. Pages were designed by assistant news editor Terry Sauer.

Assistant national editor Mike Pashalek and national editor Roger Buoen supervised and edited the series. Articles were also edited by Mike Cooney. The project was coordinated by Ron Meador, assistant managing editor for special projects.

Star Tribune

NEWSPAPER OF THE TWIN CITIES

MONDAY/March 6/1995

**High stakes and
hot competition**

WHO OWNS THE LAW?



West Publishing
and the courts

By Tom
Hamburger
and Sharon
Schmickie

Washington Bureau
Correspondents
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Today's report

■ West responds. 5A,
6A

■ Changes are recommended to address a general lack of oversight of the judiciary. 7A

■ The battle over "who owns the law" is hardly an academic exercise. 8A

In face of change, West Publishing fights to maintain its lead in legal publishing

Washington, D.C.
The once-sedate world of legal publishing is at war.

You could see it last month at the U.S. Supreme Court, where a few fledgling legal publishers wishing to compete with an industry giant chanted at guests attending a reception: "Ho, ho! Hey, hey! West Publishing pays your way!"

You could see it the previous week at a hearing of a congressional committee, where panel members argued over an amendment that would have limited the free distribution of government information to which the private sector (i.e., West Publishing Co. and other commercial providers of government data) has "added value."

And you could see it at West's Eagan headquarters last fall, when the company stopped the presses for a speech by President Vance Opperman: "We will win this battle. . . . If they take us on, they're taking on a handful."

He was talking about a skirmish at the Justice Department in a larger

war, a fight over who owns the law — who should control the systems for citing federal court opinions.

Opperman's battle cry was no idle boast. As it has in the judiciary, the company has cultivated valuable allies in other branches of the federal government and in the states.

Many government employees deliberating the future of the industry have accepted expensive trips and other benefits from West and some of its major competitors.

Officials at West and other publishing houses say their behavior and that of government employees comports fully with legal and ethical codes. While ethics experts consulted by the Star Tribune don't dispute that, some say that the pattern of judicial branch employees accepting largesse from these companies is disconcerting.

Chief federal appeals court Judges Gerald Tjoflat and William Bauer, for instance, attended meetings underwritten by West that were held in luxurious locations. They opposed rule changes that would have threat-

ened West's dominance in publishing federal court opinions.

Another judge — Richard Arnold, chief of the Eighth Circuit Court of Appeals — accepted three nights' stay at New York's posh Four Seasons hotel courtesy of West while helping to choose the recipient of a West-sponsored award for judicial excellence. He made the trip while heading the judiciary's budget committee, where policy decisions over spending \$34 million in legal research contracts are made.

Arnold said in an interview that now, after taking the trip, he will consider disqualifying himself from votes on budget matters affecting legal publishing.

Further, lower-level judges and court employees who help shape court information policy accepted benefits from leading legal publishers, such as lavish parties or cash awards at national conventions for law librarians.

Continued on page 6A

West's battlefield has many fronts

As West Publishing fights against an ever-growing host of competitors, it has bestowed gifts upon government employees who will help determine the battle's outcome. Some of West's competitors have given gifts, too.

Judges

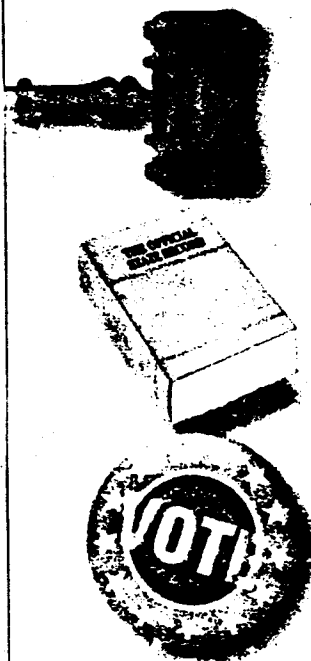
West has provided benefits to federal judges who help set administrative rules that could affect the company's financial position. While serving on an awards committee, chief federal appeals court Judges Gerald Tjoflat and William Bauer attended meetings underwritten by West that were held in luxurious locations. The judges opposed rule changes that threatened West's dominance in publishing federal court opinions.

Court employees

Lower-level judges and staffers at courts around the country have received benefits from West and other legal publishers — including parties and cash awards at national conventions for law librarians — while helping to shape court information policy.

Politicians

West executives, employees and a law firm that represents the company have invested at least \$848,000 in political campaigns since 1988. West's nearest competitor gave far less. Among those who got money from West were all 16 members of a House subcommittee considering key legislation relating to West. Every member of the Minnesota congressional delegation received contributions linked to West. And every member of the delegation waded into legal publishing disputes to fight legislation or rules opposed by West.



WHO OWNS THE LAW?



West Publishing
and the courts

A profile of West Publishing

Headquarters: In Eagan, with editorial and training centers around the United States.

Ownership: Privately held.

Leadership: Dwight Opperman, chairman and chief executive. Vance Opperman, president.

Employees: About 4,500 in the Twin Cities area and 1,500 elsewhere in the United States.

Origins: Started in the 1870s in St. Paul by brothers John and Horatio West, who published a weekly newspaper of court opinions.

Business: West says it prints nearly 60 million books and pamphlets yearly, as well as CD-ROM electronic legal libraries. Its WESTLAW service is one of the nation's leading sources for computer legal research.

New technology is changing the competition

Continued from page 1A

And Congress has not been overlooked. Lawmakers, including the entire Minnesota congressional delegation, received campaign contributions linked to West — and then waded into legal publishing disputes to support the company.

West executives, employees and a law firm that represents the company invested at least \$848,000 in the political campaign process between Jan. 1, 1989, and June 30, 1994, according to research done for the Star Tribune by the National Library on Money & Politics.

West's large competitors, such as LEXIS-NEXIS, also invest in the political process. But the National Library study showed that the political action committee (PAC) affiliated with LEXIS' former parent company, Mead Corp., gave far less than the PACs associated with West during the same period.

The Minnesota recipients of West's political contributions say there are good reasons to help the company on Capitol Hill. West employs 4,500 people in the Twin Cities area, is a good corporate citizen and produces superb products.

West officials note that their company is one of the few remaining American-owned companies in the legal information industry. LEXIS-NEXIS was purchased recently by European-based Reed Elsevier Co. and the other big rivals are now owned by Canadian-based Thomson Corp.

And West's competitors are not lying down. Owners of LEXIS-NEXIS, for example, have employed aggressive Washington lobbyists to further their interests.

For years, West's chief advantage lay in the close relationship it had earned with the federal judiciary through decades of reliable and high-quality work. Now, however, even that relationship is being shaken by a competitive war that broke out with the advent of new technology.

The winds of war

In April 1984, Justice Byron White wrote a memo to then-Chief Justice Warren Burger asking for a WESTLAW terminal in his Supreme Court office. "It would save my time and clerks' time," White wrote in asking for the computerized legal research service developed by West.

The memo signaled a change that was sweeping through the centuries-old way of doing legal research.

Since the 19th century, West has published court opinions in heavy bound volumes, and the organization of those opinions became the citation system favored in many jurisdictions. Through the years, West earned an unrivaled reputation for accuracy and thoroughness — and with this reputation West received an unofficial seat in the courts' inner circles.

In the 1970s, however, West was challenged from a new direction by Mead Data Central Inc., which offered a new way of researching court cases by computer. Mead called it LEXIS.

Now, in the age of the Internet, West is further threatened. Would-be legal publishers have been springing up like weeds. From St. Cloud to Seattle, small publishers are selling court opinions in CD-ROM sets or online to consumers with modems. The number of competing legal publishers has tripled in the past two years, according to West.

These entrepreneurs say they could compete effectively but for one factor: They do not have full access to West's citation system.

Right now, anyone with a computer and a modem wanting to read a federal court opinion can call up cases from Timeline Publishing Co. of Bellevue, Wash., which charges up to \$10 an hour to use its electronic database.

But if you want to use that research in a brief to be submitted to a federal court, lawyers will suggest you go elsewhere.

You'll want to fully cite the specific page numbers courts prefer from books published by West and other longstanding publishers. In computers, those are generally available only on WESTLAW or the LEXIS system (which uses West numbers under an exclusive licensing arrangement) — and computer charges on those data bases often run more than \$200 an hour. West notes that its books are available to citizens free at libraries.

At first, these electronic competitors took their battle to the courts, challenging West's claim of copyright over the citation system. West prevailed in most cases, though some are pending.

Now, its competitors have adopted a new tactic: They are calling for the establishment of a new citation system that would not be owned by any private company.

The story of West's battles begins in the rarely seen operations of the judicial branch.

Judicial branch

Come inside the Federal Judicial Building on Capitol Hill. There, the administrators of the Judicial Conference oversee the third branch of government with its \$2.7 billion budget and its 27,000 employees.

In decades past, the conference — 26 federal judges and the Supreme Court chief justice — had little to say about legal publishing.

In 1992, however, a conference committee recommended a new public citation policy that would provide equal, low-cost access to an organized database of court decisions — a serious threat to West's position.

Although the idea had been backed by some law librarians and West's rivals, many judges didn't like it. And the committee's proposal was shelved by the full conference.

In correspondence and Judicial Conference hearings, the idea was opposed aggressively by one judge with a longstanding relationship with West: Gerald Tjoflat of Jacksonville, Fla., chief of the 11th Circuit Court of Appeals.

In previous years, Tjoflat had been a member of a committee that selected the annual recipient of the Edward J. Devitt Distinguished Service to Justice Award, a West-sponsored prize. In that capacity, Tjoflat traveled to plush resorts for gatherings paid for by West.

Devitt was the chief of Minnesota's federal bench. He died in 1992, and his papers are on file at the Minnesota Historical Society. Among the corre-

spondence is a December 1983 letter from Devitt to Tjoflat saying that then-West President Dwight Opperman "will be happy to advance you first class airfare for you and Sarah ... and will reimburse you for all other expenses later on or handle it in any other way you find more suitable."

A letter from Tjoflat to Devitt describes his feelings after a Devitt selection committee meeting at the Marriott Las Palmas hotel in California in 1984: "It has been an honor to have worked with you and [Supreme Court Justice] Byron [White], and Dwight. The association and experience are cherished moments of my life."

The correspondence shows Tjoflat attended two other Devitt committee meetings, in 1983 and 1987, both in California.

Tjoflat declined repeated requests for comment. But when asked about his travel in writing, Tjoflat wrote back that some of the Star Tribune's assumptions were wrong. "A more thorough investigation on your part would reveal this," he said. He declined invitations to elaborate further.

In 1991, Tjoflat came to Washington and opposed the citation-system change at a hearing of a Judicial Conference subcommittee. He testified at one point: "If I appear a little bit testy, it's not personal ... it's simply that we have lots to do, and we don't want to have any red tape in what we do." Dwight Opperman also testified against the proposal that day.

In addition to his testimony, Tjoflat wrote letters to judicial branch administrators opposing the change in the citation system. Neither in his letters nor the published transcript of his testimony did he disclose his relationship with West.

Tjoflat was not the only person associated with the Devitt award to weigh in on the matter. In August 1991, Devitt wrote to Judge William Bauer, chief of the Seventh Circuit Court of Appeals, welcoming him as a member of the award committee.

"We normally meet for several days at the time of the Supreme Court's mid-winter break in late January," Devitt wrote. "We have met in Palm Springs, the Virgin Islands, Palm Beach, Naples, Florida and Bel Air, California. It makes for a nice break from the routine, and the responsibilities are not too burdensome."

Devitt wrote that the group would include Dwight Opperman, one of West's vice presidents and their wives.

"The arrangements are made and cared for by Mr. Opperman," he wrote. Five days after that letter was written, Bauer wrote to an official of the Judicial Conference opposing the citation-system change. "Although the idea for a standard electronic citation system has an obvious appeal," he wrote, "there is a question as to whether it is necessary. Our circuit executive, clerk, senior staff attorney and librarian met and saw no need at present for such a system."

Bauer did not respond to requests for comment by the Star Tribune.

Ethics experts say that if Bauer or Tjoflat accepted luxurious travel from West and then heard cases involving the company in their courtrooms, they would have to consider disqualifying themselves. But in administrative matters, the rules are less clear.

"We certainly would hope that judges have a good degree of impartiality in their administrative functions," said Jeffrey Shaman, a law professor at DePaul University and coauthor of "Judicial Conduct and Ethics," a guide for judges and judicial branch employees. "But the rules aren't as clear on the administrative side. ... I certainly would say that a judge should be above reproach in all functions of the office — even in administrative functions. The judges should want to avoid even the appearance of impropriety."

In addition to Bauer and Tjoflat, other judges wrote in opposition to the plan, including Senior Judge Donald Lay, who at the time was chief judge of the Eighth Circuit Court of Appeals. Lay said in his letter that "there is no present need that a new citation system be adopted," and he forwarded West's comments on the issue.

In 1992, the full Judicial Conference — of which Bauer and Tjoflat were members — decided not to adopt a new citation system. The conference meetings are closed, and there was no recorded vote.

But the issue would return later in 1992 — this time in Congress. At the request of a rival publisher, Rep. Barney Frank, D-Mass., introduced a bill that would have prohibited copyright of the citation and numbering systems for federal and state laws and court opinions.

Congress

When West's lawyers appeared before a House Judiciary subcommittee in 1992 to argue against Frank's bill, members of the panel had good reason to recognize West's name.

All 16 subcommittee members had received campaign contributions from people or PACs linked to West. In all, those members had collected more than \$39,000 during the three years before they heard the bill, according to Federal Election Commission (FEC) records.

The bill, which would have diminished West's copyright hold on citations, died in the subcommittee without a vote. Within the next six months, 10 of the subcommittee members received more than \$23,000 in additional contributions from West-affiliated donors.

West's political giving goes well beyond those contributions. Members of the Opperman family gave \$165,000 to the Democratic National Committee between Jan. 1, 1991, and June 30, 1994, according to an analysis of FEC records done for the Star Tribune by the National Library on Money & Politics. Add contributions from West and a law firm that represented the company and the sum donated to the party is more \$205,000.

Vance Opperman attributes the contributions to a sense of civic duty that also is reflected by three decades of his own political activism. "People should be involved in the political process in a variety of ways," he said in an interview in November. "Financial involvement is the least of it."

And he downplays the size of West's contributions and their influence. "We are a very, very small financial actor," he said.

However, Common Cause, a government watchdog group, ranks West high on a list of "soft" money donors to the Democratic Party between July 1992 and June 1994 — ahead of the United Auto Workers and the International Association of Machinists & Aerospace Workers. (Soft money goes to political parties rather than to candidates. Such contributions are not subject to the limits imposed on individual donations.)

In all, the political contributions from those affiliated with West are substantially greater than the sums given by donors affiliated with West's chief rivals.

Between Jan. 1, 1989, and June 30, 1994, donors affiliated with West contributed at least \$848,000 to the political process, the National Library found. Those affiliated with the conglomerate that owned LEXIS-NEXIS gave \$218,275 in soft money and contributions to candidates, the National Library found.

Before the recent sale to the European conglomerate, LEXIS was owned by a

Continued on next page

subsidiary of Mead Corp., which also makes paper, container board and other products. A PAC funded by Mead employees gave \$174,125 during the period, compared with \$428,321 from PACs associated with West.

The National Library found less than \$5,000 in contributions from employees of publishing companies owned by Thomson Corp., another major West rival.

All 10 members of the Minnesota congressional delegation — Democrats and Republicans — received contributions from those affiliated with West between Jan. 1, 1989, and June 30, 1994. The top recipient was Rep. Martin Sabo, a Democrat, who received \$21,095. Rep. Jim Ramstad, a Republican, received \$10,700. Sen. Paul Wellstone, a Democrat, collected \$500. The incumbent whom Wellstone defeated, Rudy Boschwitz, collected \$35,999.

After Wellstone's victory in 1990, he called Vance Opperman, among others, asking for contributions to a soft-money account run by the Minnesota DFL Party. Wellstone said he has no idea how much or whether Opperman contributed. Records at the state Ethical Practices Board show that Opperman has written checks for more than \$100,000 to party accounts since Wellstone's election.

Until he took over the presidency of West in 1993, Vance Opperman worked as a partner in a Minneapolis law firm that often represented West. In a written statement to the Star Tribune, West's spokeswoman said that Opperman's "career as a private attorney and political activist are separate from his recent work as our president. It is ludicrous to imply that his political involvement over the past 27 years was an orchestrated effort to build an influential network prior to becoming our President. This insinuation only aims to demonize our company and the Opperman family."

Much of the money given by those affiliated with West went to races outside Minnesota, including California. Vance Opperman worked personally on the campaign for the reelection of Sen. Dianne Feinstein, D-Calif.

Opperman and those associated with West donated at least \$31,000 to Feinstein's campaign in 1992-93. At the time, she was a member of two Senate Judiciary subcommittees with jurisdiction over issues important to West: Patents, copyrights and technology and the law.

In the November interview, Opperman said he admired Feinstein because she is tough-minded, competent and a "nifty person."

West has deployed former Minnesota Reps. Gerry Sikorski and Vin Weber as lobbyists. Its spokeswoman, Ruth Stanoch, formerly chaired the Minnesota DFL Party.

Most recently, the company turned out its lobbying forces to push a provision that would prohibit government agencies from distributing information to which a private company had "added value." Such a change might prevent the Justice Department, for example, from distributing its database of federal case law because West claims proprietary rights to that database.

West met fierce opposition in its attempt to insert the provision in the Paperwork Reduction Act before the House Government Reform and Oversight Committee. Open-records advocates and industry competitors alerted their allies and the ensuing uproar carried into an angry committee meeting last month. No member of the panel would acknowledge sponsoring the amendment, and it was dropped from the bill.

Those opposed to the provision included the Justice Department. An assistant attorney general wrote to the committee chairman on behalf of the department asking that the provision be deleted. In the letter, she said that West had advocated the amendment "to allay unfounded concerns about steps West fears the Department of Justice may be contemplating that would adversely affect its proprietary products."

The next day, West issued a press release with the headline: "Justice Department Drops Plans for Government-run Legal Citation System Database." West's claims of a victory on the issue were carried in news reports.

But the Justice Department now says there were no plans for a government-run database.

Justice Department

West's dispute with the Justice Department started in September 1994, when Attorney General Janet Reno said the department would explore ways to improve public access to federal court opinions, especially by computer. The department also said it would evaluate "nonproprietary" systems for citing legal opinions.

The state of Wisconsin and the American Association of Law Libraries were looking into nonproprietary systems, and the department wanted to assess those and others that might be proposed, justice officials said.

Members of the legal community had petitioned the department to develop a public domain citation system. Public-interest advocates, some states and many law librarians joined the call, arguing that private companies should not control access to the public's laws.

They also contended that consumers and taxpayers spend more than they should for legal services because of lack of competition in the legal publishing industry. West insists that there is plenty of competition in the industry. "There are more and bigger players and exploding numbers of legal products and services," said West's spokeswoman.

Minnesota's congressional delegation rushed to help West in its fight with the Justice Department.

Reno hadn't said in her announcement that the Justice Department would create a government-run database. But Ramstad rose on the House floor to denounce the department's "ridiculous venture into government information policy," saying it constituted a "threat to tens of thousands of well-paying private sector American jobs."

Ramstad joined eight other members of the Minnesota delegation in a letter to President Clinton expressing outrage. The other signers were Sen. Dave Durenberger and Reps. Jim Oberstar, Tim Penny, Collin Peterson, David Minge, Bruce Vento, Rod Grams and Sabo.

Vance Opperman said West "brought the matter to their attention."

Sabo went a step further than the delegation's letter. Then chairman of the House Budget Committee, he joined Rep. John Conyers, D-Mich., then chairman of the House Government Operations Committee, in notifying Reno that their committees wanted to review any course of action the department decided to take in the matter.

The Sabo-Conyers letter signaled that Reno's proposal would get a chilly reception in their committees. The reasons for revamping the system "have not been persuasively established," they wrote.

Sabo and Ramstad said their eagerness to help West had nothing to do with campaign contributions. "We try to look out for all Minnesota interests on the Hill... that's part of our job," Sabo said. "Some of the people we help have been supportive [of campaigns]. Some have not."

Wellstone didn't sign the delegation's

letter, but he sent his own letters to Clinton and Reno, expressing concern for West and also calling for congressional review of any policy changes the Justice Department might make.

West also asked federal judges to write to Reno. At least one judge wrote Reno opposing the citation change and attached letters sent to him by West urging opposition.

Minnesota-based U.S. District Judge David Doty also wrote to Reno opposing the change. He released copies of his correspondence at the Star Tribune's request.

The correspondence indicates that Dwight Opperman and another West executive wrote to Doty asking the judge to help oppose the change. But Doty said he wrote to Reno before he received their letters. "I did not write the letter on West's behalf," he said.

According to the correspondence, Doty and Dwight Opperman had met at a reception for retired Chief Justice Warren Burger the week before Doty wrote the letter.

On Sept. 28, 1994, Opperman wrote to Doty: "It was good to see you at the festivities this week. ... I appreciate your offer to help in our situation with the Department of Justice. ... We would be grateful for any help you can give us in this matter."

On Sept. 29, on his court letterhead, Doty wrote to Reno saying that he was writing "not as a member of the Third Branch, but as a fellow citizen."

He wrote that the cost would be onerous if the government established a new system and said: "We now have in this country excellent legal citation systems that do provide access to anyone interested."

Then he wrote: "I should admit to some chauvinism inasmuch as one of the most efficient and excellent providers of legal citations, West Publishing Corporation, is a Minnesota citizen. We are justifiably proud that West brings to Minnesota admiration, tax revenues and many fine jobs (including one for my son)."

The Supreme Court.

For years, electronic publishers and news organizations had asked the courts to establish a system to disseminate opinions and briefs electronically.

After continued requests, the Supreme Court in the late 1980s established a committee to study the issue. It met for a couple of years and experimented with electronic dissemination before disbanding at the end of 1992. One member of the committee, Supreme Court librarian Shelly Dowling, reported receiving travel expenses from Mead Data Central to a conference at Wake Forest University.

Shortly before it finished its work, another committee member, Toni House, the court's public information officer, asked West's chief public relations officer at the time, Dorothy Molstad, to help sponsor a convention of court information officers.

West subsequently provided money to a nonprofit organization for a 1993 meeting in New Orleans and a 1994 meeting in San Francisco that included airfare, meals and lodging for all attendees. Neither West nor the group that organized the conference would say how many attended or what the cost was.

House said the request to Molstad came while House was a guest speaker at West's Eagan headquarters. "They had a meeting in Minnesota in January. And I said to [Molstad], 'Geez, the poor little PIOs [public information officers] need something like this, and so she said, 'Gee, maybe we can be helpful.'"

House said court lawyers advised her that West could not contribute the money directly. Instead, she said, West went to the National Center for State Courts, a nonprofit organization that provides training to court employees and judges. A grant from West then paid for all transportation, food and lodging for the two conventions. Both House and Molstad were speakers at at least one of the conventions. House said the meetings had been set up in accord with advice from judicial branch ethics experts. Her activity fell well within the code of conduct for judicial employees, she said.

A judicial ethicist at Northwestern University, Steven Lubet, agrees, saying House's activities in organizing the information officers should be applauded and encouraged.

At the Ralph Nader-sponsored Taxpayer Assets Project, James Love is irate that House — the court's liaison to the outside world — had accepted benefits, even indirectly from West.

"I find it astounding that while I had depended on her to tell members of the Supreme Court we had objected to their accepting gratuities from West, she had been accepting gratuities from the same company for herself and her colleagues," he said.

The states

Last spring, West threw a party for some 1,000 law librarians during which the company honored Marcia Koslov, the Wisconsin state law librarian, with a \$5,000 award. Instead of accepting the money, Koslov dedicated it to an art fund for her library. And other librarians, not West, chose her to receive the award. But the award stirred controversy because it was given while she served on a task force that was expected to propose a new citation system for Wisconsin court opinions. West and one of its competitors, Lawyers Cooperative Inc., had a large stake in the proposal.

Wisconsin is one of several states where small-scale publishers and some officials argue that large legal publishers have become too embedded in the operation of state courts. They contend that those relationships are impeding the efficient movement of the courts into the information age.

In Wisconsin, Koslov urged that West and Lawyers Cooperative be included in the decision-making process. But then she opposed West on the issue and helped write a report recommending that the state adopt a citation system that would be determined by the courts, not private publishers.

The annual West awards are one of many benefits law librarians accept from legal publishers, often through the American Association of Law Libraries. The organization includes about 800 law librarians who work for courts or other government entities and who often play an important role in deciding which products of legal publishers will be purchased and used.

West routinely sponsors parties at the organization's national conventions. Other legal publishers also sponsor social events or provide travel expenses for librarians who attend the conventions. And they award scholarships for the librarians.

West defends actions, cites list of accomplishments

Editors' note: Although executives of West Publishing Co. declined to be interviewed in depth for today's articles, the company issued a 6,000-word letter on Feb. 22 in response to written questions prepared by the Star Tribune. While West's responses are reflected in today's articles, we wanted to make these fuller excerpts available to our readers.

Court personnel

We have been, and continue to be, involved in programs regarding legal matters for the benefit of lawyers, legal writers, the judiciary, court personnel, law librarians, law students and others associated with the law. We sponsor speakers, scholarships, receptions, art exhibits, events, conferences and awards. We do so to educate people about our company and our products and about legal issues, to promote the legal profession, and to honor excellence. Your suggestion that we engage in activities which are not of a kind provided by our competitors is simply not true. Our competitors have similar programs for their own purposes...

An example of another organization which receives funds from legal publishers is the National Center for State Courts (NCSC), which West helped to establish. NCSC received approximately 5% of its 1993 operating revenue from private sources. NCSC, which has a Board of Directors consisting principally of state and local judges, identified 90 corporate and foundation contributors (not including

law firms) in its 1993 Annual Report. Among them are numerous companies which are or have been litigants or contractors with the courts, including Compaq Computer Corp., Dow Chemical Co., Electronic Data Systems Corp., Exxon and IBM, to name only a few. Organizations affiliated with publishing are also included in the list. In addition to us, contributors include the McGraw-Hill Foundation, Mead Data Central, Inc., The Michie Company, the Oakleigh L. Thorne Foundation and Time Warner, Inc.

Political action

As you note, our personnel and PAC, and the personnel and PAC of our main outside counsel, have been active politically, including making substantial contributions to political parties and campaigns. This is their right as American citizens. We note that you allege no illegalities or improprieties in this regard. Rather, your concern seems to be with the overall levels of political activity. However, within the strictures of the law, the level of political activity is for each citizen to decide. It appears that you believe the laws regarding these matters should be changed. If so, the proper thing for you to do is to seek to change these laws rather than criticize those who carefully comply with existing law.

Turning to the specifics you have raised, once again the Star Tribune is digging up the same old tired story about campaign contributions by the Oppermans. Yes, the Oppermans give

Sunday's report

■ Seven U.S. Supreme Court justices took luxurious trips at West Publishing's expense to help select the winner of a \$15,000 cash award that the company bestows on a federal judge each year. During that time, the court declined to review five cases that lower courts had decided in West's favor — including two copyright matters of high importance to the company.

■ One appeals court judge accepted the \$15,000 award while serving on a panel that was preparing to issue an opinion in a West copyright case.

■ Other federal judges with jurisdiction over West cases accepted VIP golf tournament tickets and attended receptions paid for by the publisher.

to political candidates. We also operate a PAC that has existed since 1987, and our main outside counsel, the Schatz Paquin Lockridge Grindal & Holstein law firm, has a PAC that has contributed to political candidates and causes. All of these contributions are made in full compliance with Federal Election Commission ("FEC") regulations and are a matter of public record.

Under existing law, all Americans have open access to information regarding contributions to political candidates. Your ability to locate information regarding campaign contributions is proof that our system of disclosing contributions works well. While our PAC has supported candidates whose positions on issues enhance our ability to grow, generate jobs and pay taxes, we expect all public officials to act only in what they believe to be are the best interest of all Americans.

It is no surprise that contributions by our PAC, employees and representatives have increased in the last several years. Overall contributions by individuals and PACs have also risen steadily. Your apparent conclusion that campaign contributions have increased because we have issues "before Congress, the administration and the judiciary" is just plain wrong. Our PAC, employees and counsel all have long histories of being active in the political process. It is inaccurate to tie their donations over the past 20 years to any specific issue or legislation pending before a government body.

Your inference that such donations have been made as one collective effort is also totally untrue . . .

Advances in technology at West have highlighted the importance of sound telecommunications policy. By actively engaging in telecommunication policy discussions, we find ourselves working with corporations that direct some of the largest PACs in the country. For example, AT&T has given over \$5 million to federal candidates in the last four years alone. In addition, US West has given almost \$1.4 million and Ameritech nearly \$1.9 million. These enormous amounts of money dwarf our West PAC efforts. Spending by telecommunication company PACs alone is almost 25 times more than that of the West PAC. Yes, we have a presence, but your effort to paint our PAC as a major corporate PAC is wholly inaccurate and irresponsible.

In Minnesota, there are approximately 25 corporate PACs registered with the FEC. If you review the ten most prominent corporate PACs, ours ranks as the fifth largest PAC in the Minnesota corporate community. This "top ten" group of Minnesota business PACs has contributed \$5,680,568 to candidates for federal office since 1987. During that period, the fifth place West PAC contributed \$475,448. The West PAC share of that total thus amounts to only eight percent. The West PAC eight percent share drops considerably when you include all 25 corporate PACS.

Lobbying activities

In addition to PAC contributions, other legal publishers have retained some of the most expensive and high profile lobbyists in Washington D.C. Patton, Boggs & Blow, Piper & Marbury, and Andrews and Associates have represented two of our major competitors, foreign conglomerates Reed Elsevier and Thomson Corporation. Thomas Boggs, a federal lobbyist for Thomson Corporation, has personally contributed in excess of \$150,000 to candidates for federal office. We also have a fine example in Minnesota, where the lobbying team at Fagre & Benson represents Cowles Media and as noted above, has been local counsel to Mead Data Central. The Fagre & Benson lobbying team has contributed over \$100,000 to candidates for federal office in personal and PAC contributions.

It is perplexing to us that you continue to raise the issue of campaign contributions when it is clear that our competitors, their outside counsel and lobbyists, and the board of directors of Cowles Media are politically active and extremely well connected. Is it fair to criticize our motives when we follow the same campaign finance laws and operate under the same rules as our competitors, your board of directors, and your outside counsel and lobbyists?

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Reforms suggested in practice of taking gifts

By Tom Hamburger
and Sharon Schmickle
Washington Bureau Correspondents

Mike Espy was forced to resign as secretary of agriculture last year because he accepted gifts from companies his department regulated. In 1989, House Speaker Jim Wright resigned because he had improperly received funds from groups interested in legislation.

Yet, judicial officials routinely accept gifts and favors from legal publishers with an interest in court decisions — and the public usually knows nothing of it.

This practice is legal and West Publishing Co. maintains that its activities and those of its competitors fall well within the bounds of ethical guidelines. Yet it is occurring as legal publishing becomes more competitive and publishers fight many of their battles in the courts. The issues decided by judges in their administrative capacities are now worth tens of millions of dollars to the industry.

"Things have to change," said Steven Lubet, a law professor at Northwestern University. "The norms of conduct that developed over the centuries need to be modified and updated."

The changes recommended by Lubet and others go beyond legal publishing to address a general lack of scrutiny, clear standards and oversight of the judiciary. Their recommendations include greater sensitivity and care governing interactions with court contractors and litigants, a stronger commitment by judges

to the financial disclosure provisions now on the books and more active scrutiny by the press.

Disclosure

Public knowledge is a check on tyranny and corruption. Knowing this, legislators responded to the Watergate scandal of the 1970s by adopting the Ethics in Government Act, which requires public officials to disclose a broad accounting of their financial holdings, including a list of any gifts, lecture fees or other outside income.

This way, the public could learn if judges, members of Congress or Cabinet officers had potential conflicts in their public dealings. But the disclosure information about judges is difficult to obtain. The information is only available in Washington at the Administrative Office of the U.S. Judicial Conference. And the material can only be examined between the hours of 1 and 3 p.m. on the days that a court worker is available to pull the files.

In addition, the system is so loose that a judge can receive, say, a luxurious trip and not be required to report a dollar value for the travel or specify the source beyond a general description.

On at least one occasion, a U.S. Supreme Court justice failed to report expensive travel she received from West Publishing Co. In her 1990 disclosure report, Justice Sandra Day O'Connor

neglected to list a trip to California's pricey Bel-Air Hotel that was provided by West.

In addition to the hurdles of distance, sloppy reporting and limited availability, individuals are further discouraged from checking these reports by the fact that judges are informed of the name and affiliation of each person requesting to see their forms.

What lawyer would want a judge hearing a case to know he or she had checked the judge's disclosure form for potential conflicts of interest? The situation is made worse by the fact that under existing federal procedures, judges generally rule personally on requests that they be disqualified because of partiality or the appearance of partiality.

"That doesn't seem right," said Leslie Abramson, professor of law at the University of Louisville. He suggests that the federal courts adopt a new system for reviewing disqualification that uses an independent panel of senior appellate judges.

Role of the press

Reporters are accustomed to examining the financial disclosure forms of Cabinet nominees and members of Congress. Yet this newspaper, like most others, doesn't routinely run reports on the disclosure forms of Minnesota federal judges.

The judiciary is, by authority of the Constitution, an independent branch of government. There is no inspector general, the built-in check on executive branch agencies. Nor is the judiciary subject to the Freedom of Information Act, which entitles citizens to obtain copies of government documents. There is none of the partisan cross-checking that occurs in the legislative branch. Separation of powers and lifetime terms for judges shield the judiciary from close scrutiny by the other branches or by political parties.

"But ultimately judges are simply government officials in a robe," said Stephen Gillers, a New York University law professor, "and it's up to the press to watch them."

Some judges contacted for this series of articles took umbrage at the newspaper's inquiries, viewing them as insulting or a ridiculous distraction. But others — such as James Rosenbaum, David Doty and Michael Davis of the U.S. District Court for Minnesota, and Richard Arnold, Donald Lay and Diana Murphy of the U.S. Eighth Circuit Court of Appeals — responded readily to the newspaper's request for correspondence and financial information.

Most Supreme Court justices declined to respond to questions. But members of that court have acknowledged the value of forcing judiciary branch activities before the public eye.

As Warren Burger said months before being named chief justice: "A court which is final and unreviewable needs more careful scrutiny than any other. Unreviewable power is the most likely to self-indulge itself and the least likely to engage in dispassionate self analysis ... In a country like ours, no public institution or the people who operate it can be above the public debate."

Greater sensitivity

Years ago, a symbiotic relationship grew among legal publishers and judges. It made sense that the publishers, who were providing a service to the court and making a profit, would also give something back to the judges whose editorial product they sold. Indeed, rules that govern judicial conduct specifically allow gifts of law books to judges.

While the book exemption makes continued good sense to many experts, the old relationship no longer seems appropriate to some judges and ethicists.

"The vast majority of judges I deal with have no idea of the amount of money that's involved with these decisions," said Richard Bilby, former chief federal judge of the Arizona district, speaking of the publishing-related issues that have come before the courts in recent years.

Because of these questions and the potential for conflict, Bilby and other judges have urged their colleagues to stop accepting benefits, such as cocktail receptions, from publishers.

The project reporters

■ **Torp**
Hamburger, 42, joined the Star Tribune as a reporter in 1983. He became chief of the newspaper's Washington bureau in 1993.

■ **Sharon Schmickle**, 52, has been a Star Tribune reporter since 1981. Since October 1994, she has worked in the Washington bureau covering Congress.

■ **John Oslund**, 42, has been an assistant business editor/reporter at the Star Tribune since 1992. He joined the newspaper in 1977 and has been assigned to its business department since 1982.



A case study:

Judge Gerald Tjoflat

Chief of the 11th Circuit Court of Appeals

What West did:

Tjoflat served on a judicial awards panel sponsored by West and, in that role, attended meetings underwritten by the company that were held in luxurious locations.

What he did:

Tjoflat testified and wrote letters in opposition to a judicial proposal that would have created a new public domain citation system, a move that would have been disadvantageous to West.

Dec. 7, 1983

From Federal District Judge Edward Devitt to Tjoflat.

are planning our 1984 meeting at the Marriott Las Palmas Hotel in Palm Springs on February 9-12, 1984 (arrive Thursday, the 9th, depart Sunday, the 12th).

I visited with Dwight Opperman the other night and he asked me to tell you that he will be happy to advance you first class airfare for you and Sarah upon your request and will reimburse you for all other expenses later on or handle it in any other way you find more suitable. My sister-in-law will be on hand again so that you can get to the right church on Sunday.

Dwight tells me that [redacted] plans have already been made.
A little later on Dwight [redacted]

Debate rages over who owns the law

Tens of millions of dollars are riding on the outcome

By John J. Osland
Staff Writer

Madison, Wis.

A contentious and sometimes bitter debate among legal professionals has raged over the Internet for more than a year.

The issue: Who owns the law?

The answer, according to those who ignited the discussion, is West Publishing Co. And that, they say, is outrageous.

WHO OWNS THE LAW?



West Publishing
and the courts

West, meanwhile, vigorously rejects the notion and ponders how a company that has been revered by generations of legal scholars has suddenly been cast as a villain by information activists and competitors.

"We do not have a monopoly," said Vance Opperman, West's president and chief operating officer. "We do not control the law. It is available to anyone who wants it."

Yet, from the San Francisco newsroom of Wired magazine to the Washington, D.C., offices of Ralph Nader lobbyists, to the Wisconsin state law library, West's critics call the company's grip on legal publishing indefensibly tight and suffocating.

"Courts decide controversies and develop the law," said John Lederer, a Madison attorney who leads a Wisconsin Bar Association task force on public access to the law. "There is something just outrageous about the fact that this has become a public function whose access is controlled by a private company."

Lederer's voice is among a rising chorus charging that West enjoys a stranglehold on federal case law that keeps costs for legal information high and competitors out of the market.

Although its vocabulary is arcane and its issues remote from most people, the battle over "who owns the law" is hardly an academic exercise: Tens of millions of dollars — perhaps hundreds of millions — are riding on the outcome.

Some of the world's largest and richest publishers are attacking West head-on in its major markets while a handful of tiny CD-ROM publishers is carving out smaller niches in the \$3 billion legal information market.

West is the target of federal lawsuits in New York and Washington, D.C., filed by competitors hoping to crack the market for federal case law.

Last month, West lost a bare-knuckled lobbying fight in Congress to protect its franchise when opponents, rallied by siren calls broadcast on the Internet, defeated a West-backed amendment to the Paperwork Reduction Act of 1995.

But for some of those on the front lines, the battle is about much more than money. Cutting through all the arguments, here is the bottom line:

Lederer, among others, believes the law is too important to be left in the hands of private-sector publishers such as West. And Opperman, among others, believes the law is too important to be left in the hands of government.

That's the philosophical backdrop for a fight that pits the state of Wisconsin against West Publishing in what likely will be a pivotal chapter in American law.

A legal compass

Precedent is the cornerstone of U.S. jurisprudence. Attorneys reach back to yesterday's court cases for decisions that support the case they're arguing today.

The practice of citing precedent requires a shorthand language called a "citation system." That system has to be reliable and accurate so that judges and opposing counsel can locate the cited cases.

As common to the profession as the doctor's stethoscope, a citation system serves as the legal compass by which attorneys navigate the vast sea of court decisions.

Among the hundreds of legal compasses available today, West Publishing owns perhaps the most powerful. Indeed, when it comes to citing federal case law, West's citation system is by far the most widely used.

No one disputes the accuracy and reliability of West's system. On the contrary, critics argue, West's system is so good — and so jealously guarded by the company — that it has kept competitors at bay for decades.

Opperman contends that anti-West forces in Wisconsin and elsewhere that cannot compete with West's system in the marketplace are instead trying to cripple the company by other means.

"They are going to outlaw the West citation system because it is too accurate, too reliable and too efficient," Opperman said. "They would like to see a citation system which the government approves. And that will allow them to put us out of business because their proposal, of necessity, requires a court rule or law that says, 'You must use this system. You may not use the West system.'"

Lederer insists that the state of Wisconsin has no intention of outlawing the West system. Rather, the proposal before the Wisconsin Supreme Court would pry open the market by giving other publishers a court-approved "public-domain" citation system that anyone, including West, could use, he said.

Here it becomes important to understand a subtle but crucial distinction. West does not claim ownership of the decisions themselves. Decades ago, the Supreme Court ruled that judicial opinions are public property and therefore are not entitled to copyright protection.

But without a quick and reliable compass to locate them, the cases have little practical value. For that, you need a citation system. And for that, you pay.

"A citation system has a lot of importance on an economic level," Lederer said, "because what citation system you use can be linked with what books you have in the library."

Not close enough

West's citation system is designed to mesh with the law books it publishes. Citations on the company's electronic database, WESTLAW, also refer to the pages of its books.

Here is the citation for the West Publishing vs. Mead Data Central case: 799 F.2d 1219 (8th Cir 1986)

Translation? That case begins on page 1,219 of Volume 799 of West's Federal Reporter, Second Series. The parenthesis means the U.S. Eighth Circuit Court of Appeals rendered its decision in 1986.

West does not object if others cite to the first page of that decision. However, the company will not permit, except under terms of a licensing agreement, others to cite pages beyond the first page.

Called "pinpoint" or "jump" cites, these citations take the reader to the exact page in a lengthy opinion. West's critics draw this analogy: Without pinpoint cites, they can only get to the city block — not to the individual address and, therefore, not close enough for legal work.

In the case cited above, the Eighth Circuit ruled in favor of West, which had sued Mead after the Ohio-based competitor began publishing West's internal page numbers. The judges ruled 2-1 that Mead, which owned the LEXIS-NEXIS electronic database, violated West's copyrighted citation system by unlawfully appropriating West's internal page numbers.

The court concluded that West was entitled to protection because the editorial arrangement of cases in West's law books "is the result of considerable labor, talent and judgment" and that access to those page numbers "would give LEXIS a large part of what West has spent so much labor and industry in compiling..."

After more fruitless litigation, Mead in 1988 agreed to pay West an undisclosed royalty for the right to use internal page citations. (Last year, Mead sold LEXIS-NEXIS to Reed Elsevier, a large Anglo-Dutch publisher, for \$1.5 billion.)

But far from dousing the "who owns the law debate," the West vs. Mead decision only fueled the controversy. In 1989, an article in the UCLA Law Review harshly criticized the Eighth Circuit decision. In the article, titled "Monopolizing the Law," two law school professors argued that the decision "in theory gives one publisher veto power over whether the profession, and thus the public, shall enjoy the full benefits of enhanced access to the law..."

Two years later, in a case involving telephone company white pages, the U.S. Supreme Court appears to have sided with the law professors. The justices unanimously ruled that the original publisher's "sweat-of-the-brow" effort to compile the names and phone numbers did not entitle the company to copyright protection when a competitor, Feist Publications, lifted the information for its own directory.

Saying the "primary objective of

copyright is not to reward the labor of authors but to promote the progress of science and useful arts," Justice Sandra Day O'Connor concluded that "copyright rewards originality, not effort." O'Connor repeatedly cited the law review article in her reasoning.

Copyright experts regard that as a signal that West's copyright claims may not survive a Supreme Court test.

Emboldened by the Feist decision, Matthew Bender, a legal publisher owned by Times Mirror Co. of Los Angeles, last year launched a frontal assault on West's citations. According to David Nimmer, a copyright attorney who represents Bender, the company plans to publish — probably on CD-ROM — legal products and compilations of federal case law for which it plans to use West's citation system.

Nimmer has asked a federal judge in New York for a "declaratory judgment," saying, in effect, that in light of the Feist decision, Bender can use West's page numbers without paying any royalties. A small CD-ROM publisher, Hyperlaw, has intervened in that suit for similar competitive reasons.

In Washington, meanwhile, another West competitor has gone to court hoping to obtain the keys to what it calls the "Crown Jewels" — an electronic database of federal case law dating to 1789.

West had provided the information to the Justice Department as part of what was called the Juris Project, a U.S. government-developed legal research tool used by federal prosecutors. West declined to renew its contract to operate the Juris system in August 1993. And when West pulled out of the contract, it tried to take the database with it.

But Tax Analysts, an Arlington, Va.-based publisher of legal and tax information, successfully blocked return of the database to West. Tax Analysts is seeking release of the database under the federal Freedom of Information Act.

For now, the "Crown Jewels" reside on magnetic tapes in the custody of the Justice Department while U.S. District Judge Gladys Kessler ponders whether to order the database released to the public.

William Dobrovir, an attorney representing Tax Analysts, said the database his client seeks does not contain West-style pinpoint page numbers. Rather, the database contains formatting designed to operate the government-developed Juris system.

If Tax Analysts obtains the database, it has pledged to make it available at nominal cost to any one who wants it.

Last month, Dobrovir and Tom Fields, president of Tax Analysts, rallied their supporters to defeat a West-backed amendment to the Paperwork Reduction Act before Congress. They told lawmakers that the amendment would have insulated the Justice Department from having to release the Juris database under the Freedom of Information Act.

The Justice Department also opposed the West-backed amendment, which lawmakers dropped from the bill.

If Tax Analysts prevails in court, Dobrovir said, "then some kind of a uniform citation system becomes extremely important because all these potential competitors would have the text but not the cite system."

A legal split

And that's what makes the battle over Wisconsin's proposed citation system so important. Although it would only affect Wisconsin cases, if the system proves successful, it could spread to other states and possibly to the federal courts.

West President Opperman staunchly opposes government-mandated citation systems as a matter of principle. "Any system that a court finds is reasonable, accurate or reliable ought to be allowed," Opperman said. "That has been our rallying cry for 100 years, and it is our rallying cry today."

Legal scholars are split over public-vs.-private citations. The president of the American Association of Law Libraries, Carol Billings, is an ardent supporter of "public-domain" citations and spearheaded the adoption of one in Louisiana, where she is the state law librarian.

But Robert Berring, law professor and director of the law library at the University of California, Berkeley, argues its would be a mistake to abandon the proven West system and mandate the use of an untested replacement.

In Wisconsin, as in most courts across the country, the final, corrected versions of court decisions are not kept in a permanent state-owned repository. Historically, that task has fallen to private publishers such as West.

But Lederer argues that new and relatively cheap computer technology means that for a few thousand dollars, Wisconsin cases could be permanently archived on state-owned computers and made available to the public via modems.

As the cases were decided, the clerk of court would assign them a number beginning with the year they were issued. The proposal also calls for each paragraph of every decision to be numbered, which would allow "pinpoint" cites to the paragraph rather than to the page number. For example: 1996 WIS 186,54.

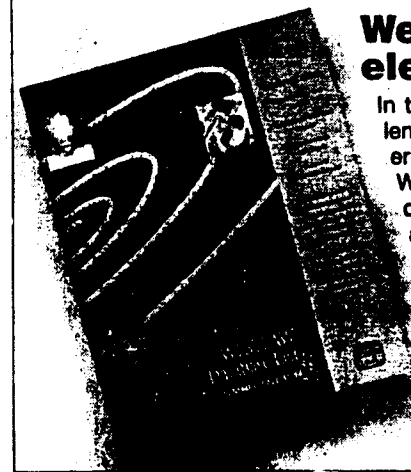
Translation? The sample cite refers to the 186th decision of 1996 by the Wisconsin Supreme Court, paragraph number 54.

Marcia Koslov, Wisconsin state law librarian, said adoption would foster competition in the market for Wisconsin case law that's now dominated by West and Lawyers Cooperative Publishing, a Thomson Corp. subsidiary. "Anybody who wants to play can play," Koslov said. "They have to use this citation system. But anybody can play."

The Wisconsin Supreme Court will hold hearings on the citation plan March 21.

"I do not see anything wrong at all with the private sector publishing our law," said Rex Ewald, an attorney from Monroe, Wis., who worked on the proposal.

But the public, he said, "has to have control over the law and custody of it. I think the proposal we make protects against our ever finding ourselves in the position where we lost the law."



West and the electronic revolution

In the 1970s, Mead Data Central challenged West by introducing a computerized research system called LEXIS. West responded with WESTLAW, a computer database organized around the page-numbering system in the company's law books. That system is the most widely used method of citing legal opinions. LEXIS uses that citation system, too, but it must pay for that right after West won a lawsuit in 1988 claiming copyright protection.

West calls stories 'tabloid journalism'

WHO OWNS THE LAW?



West Publishing and the courts

By Chris Ison
Staff Writer

West Publishing Co. said Sunday that the Star Tribune used reprehensible tactics and engaged in "tabloid journalism of the worst kind" in a published report about the company's practice of giving luxurious trips to U.S. Supreme Court justices and federal judges who made decisions important to the company.

In a news conference at company headquarters in Eagan, a West spokeswoman said the report was "just plain wrong," though she failed to cite inaccuracies when asked.

Ruth Stanoch, West's manager of government and media relations, charged that the newspaper failed to disclose its own conflict of interest. Stanoch said the Star Tribune plans to launch an online computer news service and "stands to gain by diminishing the reputation and the good standing of West."

West is planning an online service to cover news relating to legal affairs.

The Star Tribune's editor, Tim McGuire, called Stanoch's statement a "red herring." He said the newspaper doesn't see West's online service as a competitor, adding that Star Tribune reporters were working on the story long before West announced plans to go online.

"I find this attack public relations," said McGuire. "We made it very clear to West

we are not going to be in competition with them... We are not going to become a legal service.

"However, the most important point here," said McGuire, "is that this is a story driven by the actions of the U.S. Supreme Court justices and members of the federal judiciary accepting trips and gifts from a corporation while they were reviewing cases pertaining to that corporation."

The newspaper reported Sunday that seven justices and other federal judges accepted trips paid for by West to expensive resorts and hotels. The judges took the trips while serving on a committee to select the winners of the Edward J. Devitt Distinguished Service to Justice Award, a \$15,000 West-sponsored prize given each year to a federal judge for outstanding judicial service.

The trips occurred over a 13-year period in which the justices and judges were in a position to consider lawsuits involving West and make policy decisions regarding court business with the company.

The company, which employs about 4,500 in the Twin Cities area and 1,500 elsewhere, is the leading publisher of federal court decisions.

In a written statement provided at the news conference, West stated that it is "proud of its sponsorship of the Devitt Award. We take great pains to maintain its integrity and independence."

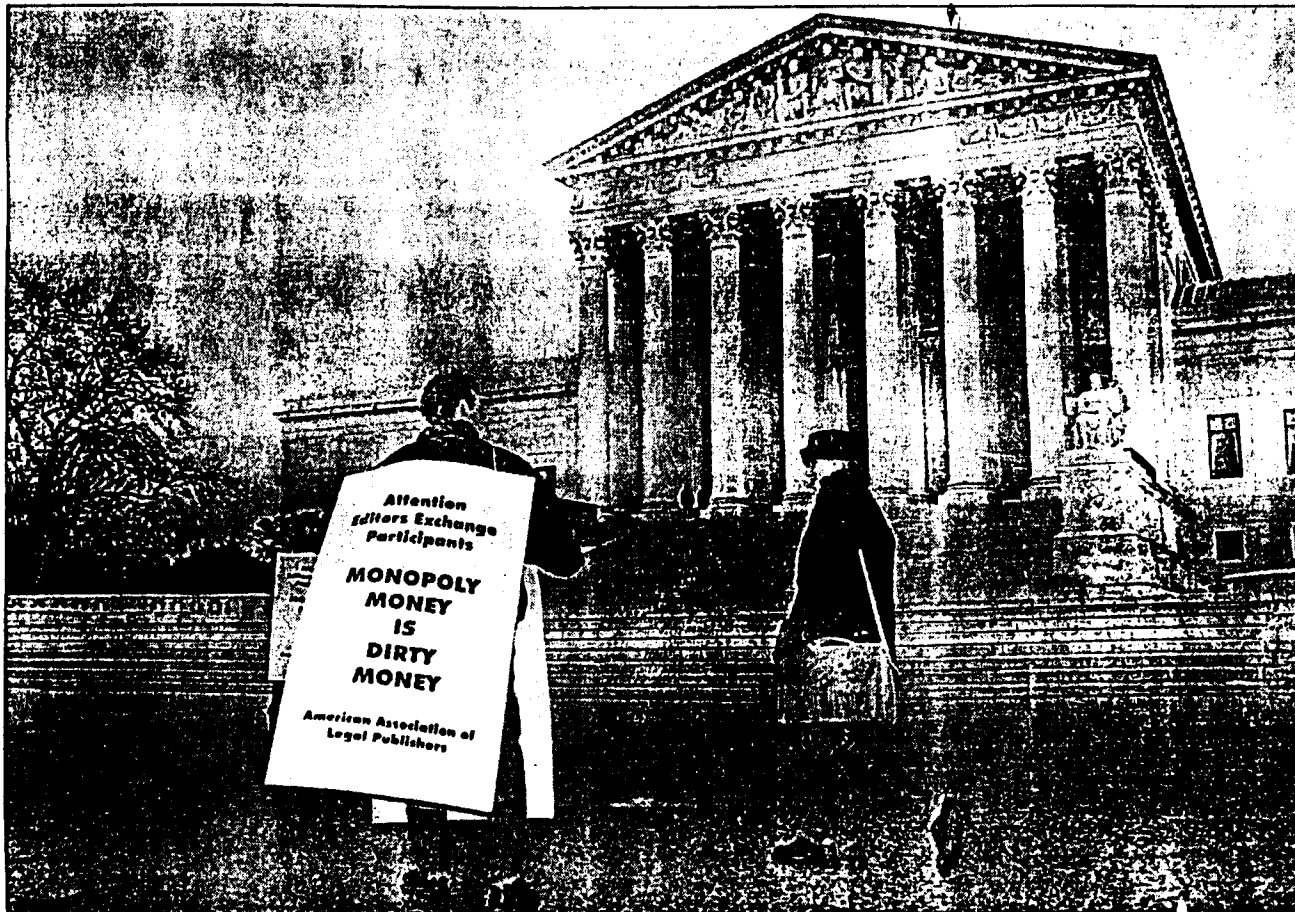
Stanoch said the Star Tribune acted "without regard for the integrity of the judiciary and the reputations of distinguished public servants" and "cynically exploits public mistrust of government."

She said West today will deliver a letter to the Minnesota News Council "highlighting the Star Tribune's repeated unwillingness to divulge to their readers that it is now in an online information services business in direct competition with West. This is vital information that even the most casual ethical observer would say goes to the heart of the newspaper's motive in pursuing this story in the first place."

Stanoch pointed out that the newspaper article acknowledged that West did nothing illegal in sponsoring the trips. But the newspaper quoted several leading ethics experts who questioned the propriety of judges accepting benefits from West when in a position to rule on legal issues involving the company.

"We made it clear that what they did is legal," McGuire said of West Publishing's sponsorship of the trips. "But our readers need to decide whether it's right."

He said he welcomed the appeal to the news council and believed the council would find the Star Tribune acted properly. The council hears complaints made against news organizations by individuals and organizations, though its ultimate rulings carry no legal weight.



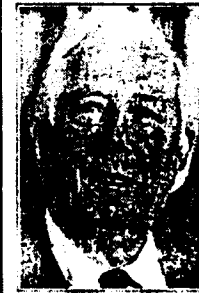
Associated Press

Representatives from the American Association of Legal Publishers, an organization of small firms seeking to compete with West Publishing, demonstrated outside the U.S. Supreme Court building in Washington, D.C., last month to protest a reception at the court for legal editors that was sponsored by West.

WHO OWNS THE LAW?

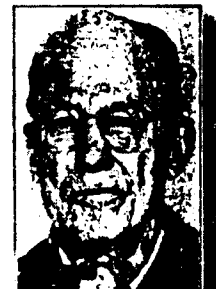


West Publishing and the courts



"A court which is final and unreviewable needs more careful scrutiny than any other. Unreviewable power is the most likely to self-indulge itself and the least likely to engage in dispassionate self analysis . . . In a country like ours, no public institution or the people who operate it can be above the public debate."

— Warren Burger, months before being named chief justice



Justice Byron White wrote a memo in April 1984 to Burger asking for a WESTLAW terminal in his Supreme Court office. "It would save my time and clerks' time," White wrote of the computerized legal research service developed by West. White's memo is symbolic of the change sweeping through the methodology of legal research.

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West: A study in special interest lobbying

By Doug Obey and Albert Elsele

It was an obscure 96-word provision buried deep inside a bill to reauthorize the Paperwork Reduction Act of 1980. But its seemingly innocuous language, inserted by a congressional aide, would have changed the rules of the game in the decade-long struggle over who controls access to hundreds of millions of dollars worth of information spawned by

a vast array of government agencies.

Most surprising of all, in a city where taking credit for authoring important legislation is an art form, no one was willing to claim responsibility for fathering what has become a legislative bastard. But it's clear that two former House members who are lobbyists, one of whom is one of Newt Gingrich's closest friends, played a leading role in persuading the aide to insert the provision into the bill.

By the time the din of the first information industry battle of the 104th Congress subsided last week, subsection 3518(f) of H.R. 830 had become a textbook example of how Congress sometimes operates to serve private interests.

The legislative contretemps in the House Government Reform and Oversight Committee was triggered when a special interest provision favoring America's largest legal publisher was quietly

inserted into a popular part of the Contract with America at the behest of its corporate lobbyists.

Discovered at the last minute, it provoked a firestorm of outrage that has had widespread and varied effects. They include:

- New committee chairman William Clinger (R-Pa.) lost one of the first tests of his leadership, after a dramatic and at

■ CONTINUED ON PAGE 12

How the West was lost: a lobbying saga

■ CONTINUED FROM PAGE 1

times angry debate that included Republican charges that Democrat committee members were practicing "McCarthyism";

- West Publishing Co., of Eagan, Minn., headed by a major Democratic contributor and friend of President Clinton, saw its virtual monopoly over adding value to the huge storehouse of data generated by America's legal system threatened by public scrutiny it had brought on itself;

- A battalion of well-connected lawyers, lobbyists and corporate retainers, including a former Minnesota congressman who is one of Speaker Newt Gingrich's closest friends, were given black eyes in the media and forced to forgo hundreds of thousands of dollars in consulting fees.

- A group of giant companies in the information industry nearly succeeded in cementing their effective control of information created at public expense by rewriting copyright law in a few sentences — something they have been trying to do in the courts for years.

- An ad hoc coalition of smaller competitors, consumer groups and information industry trade associations favoring greater public access to government data were galvanized into action by an electronic Paul Revere, who used the Internet to create an E-mail lobbying juggernaut.

That it was not merely a special interest provision for one company was clear — many other comparable large companies stood to gain along with West. They include the Washington Post's LEGISLATE, which provides some information now available of the Library of Congress' THOMAS system, DIALOG, Dun and Bradstreet, and LEXIS, who manages the Security and Exchange Commission's EDGAR database.

Understandably, there are many conflicting accounts of what actually happened, but the one point on which everyone agrees is that the saga of subsection 3518(f) of the Paperwork Reduction Act is the biggest political and public policy fiasco of the 104th Congress.

"I've been a legislator here for 10 years and I've never been embarrassed to own up to a provision I sponsored," declared Rep. Ron Kanjorski (D-Pa.), who with Rep. John Spratt (D-S.C.) angered committee Republicans by calling attention to the issue. They also scoffed at GOP claims that majority counsel Kevin Sabo was able to act alone in writing the offending language and inserting it into the bill.

Sabo tried to put the best face on his involvement. "I lost the public relations battle," he said last week, after he was singled out at the Feb. 10 markup as the staffer who had inserted the provision into the Paperwork Reduction Act.

However, Sabo told the Bureau of National Affairs that he was approached on behalf of West Publishing by two former Minnesota Congressmen, Republican Vin Weber and Democrat Gerry Sikorski, with the suggested language. The provision was designed to prevent government from expropriating the "value added" products of information companies.

And although Sabo said he consulted with Clinton administration officials at the Office of Management and Budget about the West provision, sources said the inclusion of the language in the bill was a surprise.



PHOTO COURTESY OF CONGRESSIONAL QUARTERLY
Former Rep. Gerry Sikorski (D-Minn.) lobbied for West Publishing.

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"The person you need to talk to is Gerry Sikorski," a lobbyist who said he was present at the committee markup of H.R. 830. "I don't want to be thrown into this," added the lobbyist, who like most people interviewed for this story refused to go on the record.

Weber, who retired in 1988 after four terms in Congress, denied that he was involved in lobbying on behalf of West. "It sure was a good lobbying job, but I didn't have anything to do with it," said Weber, who is a close personal friend of Speaker Gingrich. "[Former Rep] Gerry Sikorski and his Republican partner did it."

Sikorski, a partner in the Washington office of ~~Scut~~ Paquin Lockridge Grindal & Holstein, a Minneapolis law firm that represents West Publishing, could not be reached for comment, nor could West president Vance Opperman.

However, Sikorski's assistant Steve Johnson did not deny Sabo's comment that West had spearheaded the lobbying effort. "I would not take issue with the chairman's counsel in terms of his characterization," Johnson said, "[but] a number of other information companies [besides West] have supported the intent of the legislation ... that's part of the democratic process."

The culmination of that process began in late January, shortly after the Senate Committee on Governmental Affairs reported out a similar bill (S. 244). Then, on Feb. 3, a Senate staffer faxed a copy of the bill to a public interest group, which in turn faxed it the same day to Jamie Love, executive director of the Ralph Nader-backed Taxpayer Assets Project, who discovered that a new subsection (f) had been added. That's when things began to get interesting.

"It had the effect of completely eliminating the public's rights under the Freedom of Information Act to any government information produced by a private contractor," says Love, who immediately embarked on an Internet crusade to notify West's competitors and public information advocates. Committee staffers and lobbyists alike agree that the resulting barrage of e-mail and fax messages was ultimately crucial in defeating the amendment.

"They had 19,000 people on their internet," said one lobbyist who was tracking the motion of the bill through committee.

By Wednesday, Feb. 8, the bill was reported out of Rep. David McIntosh's (R-Ind.) subcommittee on National Economic Growth, Natural Resources



Former Rep. Vin Weber (R-Minn.) helped make case for home state firm.

and Regulatory affairs with the soon-to-be controversial provision intact.

But in the markup on Feb. 10, Chairman Clinger referred to the bill as "the West provision." Democrats Kanjorski and Spratt demanded to know who was responsible and Spratt demanded that the matter should be referred to the Judiciary committee, which has jurisdiction over copyright matters.

Rep. Tom Davis (R-Va.), a former general counsel with the data company PRC Inc., offered a substitute amendment, which would have made clear that the bill was not intended to affect any pending lawsuits. "It was a favor to Chairman Clinger," said a Davis spokesman. "We never spoke to anybody who had anything to do with West."

Although Democrats tired to portray the proposal as a Republican special interest boondoggle, Republicans pointed out that West's president, Vance Opperman, is a major Democratic fundraiser and personal friend of President Bill Clinton, and has even been an overnight guest at the White House.

According to Federal Election Commission records, Opperman gave \$20,000 to the Democratic National Committee and \$1,000 to the Clinton campaign in 1992. At the same time, his father Dwight gave \$100,000 to the DNC and \$500 to Clinton in 1992.

Nevertheless, it was the Republicans who were feeling the heat. Tom Field of Tax Analysts claims that Rep. Collin Peterson (D-Minn.) told him that Rep. Gil Gutknecht (R-Minn.) deserved credit for getting the provision inserted into the bill. "It looks as though the West publishing provision is a homeless waif without a parent," Field said.

Gutknecht, who was also singled out as the member who asked Sabo to put the provision in the bill by Love's group (TAP), denied any involvement through his spokesman last Friday. "If I had a stack of Bibles under my arm I'd say Gil knew absolutely nothing," a Gutknecht aide said. "He is almost ready to go after TAP for slander."

And a spokesman for McIntosh, whose subcommittee had handled the bill just a few days earlier, was similarly unhelpful in clearing the confusion about the provision's authorship. "I couldn't help you with any information on that," he said. "It was in his committee, that is the extent of it. So go home and enjoy the weekend, pal."

On Feb. 10, Clinger made a final attempt to save the provision by scheduling a hearing the following week, but the hearing was never held.

"It's been dropped like a dead weight," said Davis' spokesman. "It doesn't have the support of the government committee, to put it mildly," said Davis' office.

Love, gleeful at what he saw as a major victory for his side, offered a final word: "There's a lot of lying going on about who did what, who lobbied whom."

Why West is Fighting Hard

Even the critics of the Minnesota-based West Publishing have high praise for its information products — annotated court opinions organized according to a citation system that has become the standard, and available in hard copy or on West's on-line database, Westlaw.

"People will pay good money for what West sells," says Jamie Love, the executive director of the Taxpayer Assets project. "But they are still monopolizing an industry."

For a century West has held a de facto monopoly on the legal information field, and was so authoritative that the Department of Justice paid them to help maintain JURIS, its electronic database. But in recent years, West has been fighting a series of legal battles in the face of increasing competition from a series of smaller, cut-rate electronic competitors intent on breaking West's monopoly by establishing a public domain citation system for legal documents.

"They're the people who want to do a quick hit ... who want to add nothing but frankly leech off others," Vance Opperman, President of West publishing, told The American Lawyer's Hansen in September 1994. "[They are] the people who want to go into a room, take our books ... rip the covers off ... copy everything ... and pocket the dough."

Hyperlaw, a New York CD-ROM company, is suing West over its claim to copyrights on its page numbers, which courts require in legal citations.

"When an electronic version is available, and if the competition sets up a better notation system, then West is in trouble," said one House staffer. "They are trying to forestall that day."

"We are so small and West is so big," says Tom Field of Tax Analysts, a group seeking access to JURIS under the Freedom of Information Act. Field is also secretary of The American Association of Legal Publishers — a consortium pushing to open the legal information field up to smaller private vendors.

West has been fighting hard to stop the competition from gaining an advantage. Last fall, a proposal for a public database run by the Department of Justice was dropped after a letter from nine members of the Minnesota congressional delegation to President Clinton voicing objections to the plan.