

7-1999

The West Digest System: The Ninth Circuit and the Montana Supreme Court

Fritz Snyder

University of Montana School of Law, fritz.snyder@umontana.edu

Follow this and additional works at: <https://scholarship.law.umt.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Fritz Snyder, *The West Digest System: The Ninth Circuit and the Montana Supreme Court*, 60 Mont. L. Rev. (1999).

Available at: <https://scholarship.law.umt.edu/mlr/vol60/iss2/7>

This Article is brought to you for free and open access by The Scholarly Forum @ Montana Law. It has been accepted for inclusion in Montana Law Review by an authorized editor of The Scholarly Forum @ Montana Law.

THE WEST DIGEST SYSTEM: THE NINTH CIRCUIT AND THE MONTANA SUPREME COURT

Fritz Snyder*

I. INTRODUCTION

Published judicial decisions express the doctrines of the law which are built from “findable pieces of hard data.”¹ The idea of case research is to locate the nuggets of authority that are available and use them in constructing one’s argument.² What made the West Publishing Company dominant as a publisher of legal decisions a hundred years ago was its standardization of court reports and its comprehensive reporting.³

All West reporters were designed according to the same formula. West produced a sterile court reporting system that guaranteed reliability through similarity. Caption, syllabus and headnotes appeared in the same form in all jurisdictions. They were produced by a centralized staff and were drafted to fit into the pre-existing structure [T]he West digests created a subject structure and fit all new cases into it.⁴

As each case is prepared for publication, a West editor prepares headnotes for the decision. Each headnote represents a point of law or legal rule and each headnote is assigned a key number. Two locations (digest topics/key numbers) are assigned

*Law Librarian and Associate Professor, The University of Montana School of Law.

I wish to thank Peter Schanck, Professor of Law, Marquette University School of Law, and Kathleen Magone, Visiting Professor, The University of Montana School of Law, for reading my manuscript and for their valuable suggestions.

I also wish to thank Charlotte Wilmerton, Faculty Secretary, The University of Montana School of Law, for her excellent help in preparing the manuscript.

I also wish to thank my research assistant, Nick Weilhammer, for his excellent assistance.

1. Robert C. Berring, *Collapse of the Structure of the Legal Research Universe: The Imperative of Digital Information*, 69 WASH. L. REV. 9, 11 (1994) [hereinafter Berring, *Collapse*].

2. See *id.*

3. See Robert C. Berring, *Legal Research and Legal Concepts: Where Form Molds Substance*, 75 CAL. L. REV. 15, 21 (1987) [hereinafter Berring, *Legal Research*].

4. *Id.*

to some headnotes, but every headnote has to have at least one.⁵

When one considers that the United States has over three million reported cases, with about 100,000 new reported cases each year, the need for systematic case-searching techniques is clear.⁶ Until the advent of Lexis and Westlaw, the most important tool to locate cases was the digest. Digests consist of headnotes from cases arranged by topic.⁷ Over 275,000 headnotes are written each year.⁸ West editors place these headnotes into specific digest topics. Editors' initial choice of digest topics for particular headnotes is extremely important. "This initial placement had a tremendous import on any subsequent manipulation of the data."⁹

In 1887, West acquired the property rights to the UNITED STATES DIGEST, including its classification scheme, and began publication of a new annual AMERICAN DIGEST, which developed into the set of West digests known as the American Digest System.¹⁰ The American Digest System includes the headnotes from the published cases of all federal courts and the published cases of the appellate courts of every state. The American Digest System is the tool one uses to find federal and state cases from throughout the country.¹¹ The West system divides all legal situations into seven major categories: Persons, Property, Contracts, Torts, Crimes, Remedies, and Government. These seven areas are now subdivided into 404 individual digest topics, and each of these topics is further subdivided into narrower subtopics, to each of which West assigns a key number. A particular point of law, then, is known by its digest topic name

5. See *id.* at 25. The mean number of digest topic/key number postings per headnote is about 1.13. Letter from Dan Dabney, Associate Editor, New Products Research and Development, West Group, to Fritz Snyder (April 23, 1997) (on file with author).

6. See MORRIS L. COHEN ET AL., *HOW TO FIND THE LAW* 82 (9th ed. 1989). West estimates that about 60,000 cases are entered into its printed reporters each year. Another 40,000 appear exclusively in an electronic format. See Berring, *Collapse*, *supra* note 1, at 27. The American Digest System was designed in an era when less than a thousand cases a year were published. See *id.* at 28.

7. "A legal digest is a compilation of paragraphs containing concise summaries of points in cases, grouped under appropriate headings the chief of which are alphabetically arranged." FREDERICK C. HICKS, *MATERIALS AND METHODS OF LEGAL RESEARCH* 276 (3d rev. ed. 1942).

8. See J. MYRON JACOBSTEIN ET AL., *FUNDAMENTALS OF LEGAL RESEARCH* 85 (6th ed. 1994).

9. Robert C. Berring, *Full-Text Databases and Legal Research: Backing into the Future*, 1 *HIGH TECH. L.J.* 27, 32 (1986) [hereinafter Berring, *Full-Text Databases*].

10. See COHEN, *supra* note 6, at 83.

11. See COHEN, *supra* note 6, at 94.

and by its key number within that topic.¹² The number of digest topics has remained fairly constant: 100 years ago the number of topics was also about 400. The number of key numbers within topics, however, has increased significantly.¹³

Researchers using the printed digest have, as subject-retrieval tools, a topical arrangement by digest topic (including topical cross-references), a scope note for each digest topic showing subject inclusions and related topics, a subdivision analysis for each topic by key number, and a descriptive word index.¹⁴ "Almost none of this manual browsing and indexing capacity is available in Westlaw."¹⁵ The Key Number¹⁶ System allows researchers to fit every legal issue into a certain conceptual framework and allows all of the cases appearing in the National Reporter System to be arranged by subject according to their headnotes.¹⁷ The Key Number System also "provided a paradigm for thinking about the law itself. Lawyers began to think according to the West categories."¹⁸ The comprehensive scope of the West digests makes the digests one of the most important case-finding tools, even in this age of computers.¹⁹ "The key number system spans all federal and state jurisdictions, and every point of law treated in a published case fits somewhere and somehow into the classification scheme."²⁰ However, Professor Schanck notes:

[W]hen conducting their research, attorneys tend to use more than

12. See COHEN, *supra* note 6, at 84.

13. See Michele G. Falkow, *The West Key Number System: Its Uses in an Online Environment*, in MANAGING THE PRIVATE LAW LIBRARY 129, 136 (PLI Course Handbook, 1994).

14. See John Doyle, *WESTLAW and the American Digest Classification Scheme*, 84 L. LIBR. J. 229, 256 (1992).

15. *Id.*

16. The key symbol was introduced in the AMERICAN DIGEST published between 1907 and 1916. EDWIN C. SURRENCY, A HISTORY OF AMERICAN LAW PUBLISHING 122 (1990).

17. See Berring, *Full-Text Databases*, *supra* note 9, at 32.

18. *Id.* at 33. *But cf.* Peter C. Schanck, *Taking Up Barkan's Challenge: Looking at the Judicial Process and Legal Research*, 82 L. LIBR. J. 1, 19 (1990) ("[M]y impression is that key number classifications have minimal influence over the way lawyers perceive the law, even in instances when they use digests exclusively. They will tend to scan all or most of the cases under several key numbers and, in the process, pay little attention to the designations assigned to the categories. They then organize the precedents according to the particularities of their own cases and develop arguments based on those precedents. By this final stage, the West structure is long forgotten and its effects negligible.")

19. See COHEN, *supra* note 6, at 108.

20. *Id.*

one system, and often use several (e.g., annotated codes, ALR, looseleaf services, Shepard's Citations, encyclopedias, legal periodicals, treatises). This approach tends to produce a broader base of cases and to expose the researcher to a variety of nondigest classifications.²¹

West created a highly effective case-finding mechanism by providing uniform editorial treatment for each jurisdiction's opinions and having the points of law in each published decision classified into the same subject scheme.²²

[T]he entire West digest system was the product of the end of the nineteenth century, and it met the needs of the lawyers of that era. The system also dovetailed neatly with the model of legal education that Dean Langdell had installed at Harvard Law School in the 1870's. The major divisions of the digest system's topics mirror the first-year courses at Harvard, indeed the first-year curriculum at most law schools today. Thus, the stamp of the nineteenth century was indelibly placed on American law.²³ "In 1898 the American Bar Association endorsed the Digest, reinforcing West's central role in indexing and reporting United States case law."²⁴

It is important to recognize the theory behind the West digest structure: law as a rational and discrete body that can be divided into separate, non-overlapping subject categories.²⁵ Every legal issue in a case can, theoretically, be assigned a pre-existing location in the digest-topic and key-number scheme.²⁶ Because categories do overlap, because legal concepts do not always fit neatly into key numbers, and because the editorial process adds layers of interpretation, the researcher must research along as many branches of the key number hierarchy as seem relevant.²⁷ "Given the special nature of the role of authority in the law, one can see why the systems used to locate relevant materials in legal research take on such urgency."²⁸ The user of the hard copy digest learns something about the

21. Schanck, *supra* note 18, at 17-18.

22. See COHEN, *supra* note 6, at 90.

23. See Berring, *Collapse*, *supra* note 1, at 22.

24. Richard Delgado & Jean Stefancic, *Why Do We Tell the Same Stories?: Law Reform, Critical Librarianship, and the Triple Helix Dilemma*, 42 STAN. L. REV. 207, 215 (1989).

25. See Falkow, *supra* note 13, at 132.

26. See *id.*

27. See *id.*

28. Berring, *Collapse*, *supra* note 1, at 13.

organization of the field that is being researched.²⁹ “As one looks for legal material in the print environment, one acquires a framework for understanding law, a framework that is reinforced and built upon as one moves from one step of the process to the next.”³⁰

Perhaps the most important characteristic of the West digest system with its digest topics and key numbers was that the West editorial staff acted as a fixed point of reference and provided consistent nomenclature for legal researchers seeking case law.³¹ The editors normalized judicial opinions that used “strange language or strange analysis or otherwise appeared to be anomalous, to bring them back into the orthodox mainstream to make them fit past cases and present expectations.”³² To “normalize” meant that opinions should fit appropriately into the West analytic scheme,³³ and also that in the West-prepared headnotes normal, common, and consistent terminology would be used to describe legal points of law.

The traditional center of law, case law, with its common law underpinnings, continued as part of the twentieth-century legal corpus despite the inroads of the legal realist movement and despite the continued deterioration of the central core of legal principle. Perhaps one reason the myth of a coherent, underlying common law continued was the case reporting system itself.³⁴

The West system classifies all cases into digest topics and key numbers. “The digest’s premise is that a subject structure can be devised to encompass every possible legal problem.”³⁵ To introduce new digest topics meant locating all relevant digest topics and key numbers and rearranging them.³⁶ “The difficulty and expensiveness of this process caused West to be fairly reserved in its introduction of topical modifications.”³⁷

29. See M. ETHAN KATSH, *LAW IN A DIGITAL WORLD* 70 (1995).

30. *Id.* However, we cannot overlook the importance of facts in the research process. “[L]awyers tend to concentrate more on the facts of their cases than on abstract volumes. In so doing, they prefer searching descriptive word indexes [of the digests] over topical analyses, and they search the indexes as much for factual terms as for legal concepts.” Schanck, *supra* note 18, at 18-19.

31. See Berring, *Full-Text Databases*, *supra* note , at 33-34.

32. *Id.*

33. See Berring, *Full-Text Databases*, *supra* note 9, at 33 n.26.

34. See Berring, *Legal Research*, *supra* note 3, at 24.

35. *Id.*

36. See Berring, *Full-Text Databases*, *supra* note 9, at 36.

37. *Id.*

The effect of the natural rigidity of the West System on the legal system is unclear. Nevertheless, it is interesting that American legal literature of the last century was controlled by a paradigm that was naturally both conservative and orthodox during a time when many ascribed these characteristics to the law itself. The West System was conservative in the sense that it self-consciously attempted to maintain internal consistency and coherence in American law. The instrument of conservatism was the rigid index [digest topics/key numbers]. The instrument of orthodoxy was the editorial staff placing new cases in the national index.³⁸

The grand theory of the common law posited that the law was “out there” or independently existing in cases and was only waiting to be uncovered. Under this theory, judges were like scientists: they did not make law; they discovered it. This notion has long been under attack by movements such as legal realism, critical legal studies, and critical race theory, which argue that judges do make law.³⁹ “But the system of legal research, of finding primary sources and interpreting them as if they were nuggets of absolute authority and truth, survives and flourishes.”⁴⁰ The vast majority of attorneys have continued to use the digest research system with its structure of organization derived from the myth of the “common law.”⁴¹

This probably continues to be so even though Lexis, Westlaw, CD-ROM technology, and the internet have been increasingly used for legal research.

The West Digest System and how it has divided cases by subject in the last fifty-two years provides one measure of jurisprudence. I chose one particular circuit, the Ninth Circuit Court of Appeals, and the Montana Supreme Court to compare. In the period 1945-1997, the West Company editors analyzed 86,473 cases for Montana and for the Ninth Circuit. Although I have only analyzed cases for the last fifty-three years, the West Digest System has had a major impact on American jurisprudence for the last century.

First I have described the Digest System. Second, I will note things my numerical analysis tells us about the jurisprudence of Montana (though, for the purposes of this

38. See Berring, *Full-Text Databases*, *supra* note 9, at 36.

39. See Berring, *Collapse*, *supra* note 1, at 15.

40. *Id.*

41. See *id.*

A. Coverage of the Topics

First, one should pay attention to the scope note of the various digest topics. Thus the digest topic "Appeal and Error" is used for 18.4% of the Montana Supreme Court cases, and yet is rarely used for Ninth Circuit cases. Subjects included under "Appeal and Error" are "[r]eviewed by superior tribunals of judicial action of inferior tribunals in general, and, more particularly, such review of decisions of court of record in civil actions, by removal of the cause to the higher court by appeal"⁴³ Explicitly excluded from coverage are federal appellate courts, jurisdiction and procedure, which are under the digest topic "Federal Courts."⁴⁴ In fact, section VIII, "Courts of Appeals," which includes key numbers 521-970, under the digest topic "Federal Courts" appears the most analogous to the topic "Appeal and Error." Key numbers under section VIII show up in 5,782 cases, 7.8% of the Ninth Circuit total.⁴⁵

Another area of possible confusion is the area of taxation. The digest topic "Internal Revenue" has to do with taxes imposed by Congress. The 2,216 cases indexed under this topic put it fifth highest on the Ninth Circuit list. The Ninth Circuit Court of Appeals would hear appeals from federal district courts and federal tax courts within the Ninth Circuit but it would not hear appeals from the U.S. Court of Claims. Montana state tax questions are found under the digest topic "Taxation." The 299 cases under that topic put it seventeenth highest on the Montana list.

Second, one must realize that digest topics do not necessarily include all the cases under one particular digest topic. Some digest topics so closely shade into one another that the researcher would simply have to check more than one topic. Civil rights actions provide a good example. Both the digest topics "Civil Rights" and "Constitutional Law" would have to be checked. Thus for discrimination actions of various sorts, one would have to check the following:

"Civil Rights" Digest Topic

I. Rights Protected and Discrimination Prohibited.

(A) In General.

43. WEST'S ANALYSIS OF AMERICAN LAW WITH KEY NUMBER CLASSIFICATIONS 38-39 (1994 ed.) [hereinafter WEST'S ANALYSIS].

44. See *id.* at 39.

45. The Westlaw search to check this in the Ninth Circuit (CTA9) databases is: "TO(170BVIII) & date (after 1944 & before 1998)."

Key #105 Sex [1 state case; 7 9th Circuit cases].

Key #106 Age [no cases].

Key #107 Handicap, Disability,, or Illness [2 state cases; 20 9th Circuit cases].

[Note that no specific key number is given for race discrimination.]

(B) Employment Practices.

Key #142 Discrimination by Reason of Race, Color, or National Origin [no state cases; 13 9th Circuit cases].

Key #145 Work environment; harassment; constructive discharge [3 state cases; 3 9th Circuit cases].

Key #158—Key #167 Sex Discrimination [5 state cases; 71 9th Circuit cases].

Key #168—Key #172 Age Discrimination [6 state cases; 45 9th Circuit cases].

Key #173—Key #175 Discrimination by Reason of Handicap, Disability or Illness [3 state cases; 29 9th Circuit cases].

None of the cases pre-date 1974, reflecting the fact that the Civil Rights Act of 1964 spawned them all.

“Constitutional Law” digest topic

XI. Equal Protection of Laws.

Key #214—Key #223 Discrimination by Reason of Race, Color, or Condition [3 state cases; 60 9th Circuit cases].

Key #224 Sex Discrimination [5 state cases; 33 9th Circuit cases].

These cases date from the 1940’s, reflecting traditional equal rights analysis under the Constitution.

B. Problems With Classifying Cases

The digest system simply does a poor job of classifying cases in certain areas. For example, the West Digest deals with the Uniform Commercial Code in a peculiar fashion. It chops up the UCC by subject area rather than by treating it section by section. One expert in UCC research noted:

A search for cases by subject through the . . . digests can be cumbersome in the commercial law field The inconvenience of West’s reporter system is caused to some extent by the stubborn adherence of West’s digests (the West’s Key system) to a subject classification that is at odds with the arrangement of the Code. Even the major topic headings of the digest system sometimes depart from UCC terminology. Thus, for example, cases on checks (UCC Articles 3 and 4) appear in the digest either under “banks” or “bills and notes,” and on occasion even under other topic headings. Considering such limitations, a search for cases in the

Callaghan, Matthew Bender, and Warren Gorham Lamont specialized reporting services is more convenient and efficient. Of course, the problem is completely obviated now by both LEXIS and WESTLAW. They offer a complete search procedure which is immeasurably more expeditious than the laborious task of plowing through . . . digests.⁴⁶

The digest topic "Commerce" is of little use. Although it covers the promotion and regulation of commerce in general and, more particularly, the power to regulate commerce,⁴⁷ this digest topic does not cover UCC areas such as sales, commercial paper, bank deposits, and secured transactions. These areas are covered by other digest topics. Thus, according to a Westlaw search for Montana cases in the UCC-cases database, there are 318 cases (Montana Supreme Court cases, Montana federal district court cases, Montana federal court bankruptcy court cases, Ninth Circuit court cases originating in Montana⁴⁸). From 1945-1997, under the "Banks and Banking" digest topic, there are 63 Montana cases; 66 Montana cases have headnotes under the "Bills and Notes" digest topic; 59 cases have headnotes under the "Secured Transactions" digest topic; 111 cases have headnotes under the "Sales" digest topic; and 404 cases have headnotes under the "Contracts" digest topic.

Similar to the Uniform Commercial Code, the West Digest System, because it does not follow the Federal Rules of Evidence rule by rule, does not do a particularly good indexing job of cases dealing with evidentiary questions.⁴⁹ The FEDERAL RULES OF EVIDENCE DIGEST (published by West Group) does index cases by rule and by subject matter within each rule. Also, the UNITED STATES CODE ANNOTATED, Title 28, Federal Rules of Evidence, and the UNITED STATES CODE SERVICE, Title 28-Appendix, index cases by rule and by subject matter within each rule. When a researcher has a particular rule to research, these three resources are more efficient to use. Of course, for Montana, one would do best using the Montana Code Annotated Annotations.⁵⁰

46. Igor I. Kavass, *The Uniform Commercial Code*, in SPECIALIZED LEGAL RESEARCH § 2.8.6, at 2-58 (Leah F. Chanin ed. 1996).

47. See WEST'S ANALYSIS, *supra* note 43, at 240.

48. When searching the UCC-cases database on Westlaw, one automatically gets state and federal cases (including bankruptcy cases).

49. Thirty-one states follow the Federal Rules of Evidence and another four use a combination of the Federal Rules with something else. See ROBERT C. CASAD, JURISDICTION AND FORUM SELECTION, app. a (1996) (State Variation Tables).

50. The case annotations for MONT. CODE ANN., Tit. 26, Chap. 10.

As with evidence, the best way, usually, to find cases dealing with civil procedure is to search by rule, which is not possible using the West digest system. Thus, one would do better using the FEDERAL RULES DIGEST (West Group); UNITED STATES CODE ANNOTATED, title 28, "Federal Rules of Civil Procedure"; and UNITED STATES CODE SERVICE, "Federal Rules of Civil Procedure" volumes to search for federal cases. These three all allow searching by rule. For Montana cases, one would do better using the rules of civil procedure in the Montana Code Annotated Annotations.⁵¹

C. Both Broad and Narrow Topics

The digest topics range from the very broad to the extremely narrow. "Criminal Law," of course, is a huge digest topic. It is the second most-used topic for Montana cases, and the most-used digest topic for Ninth Circuit cases: 15.7% of all Montana cases have a headnote under this topic, and 10.8% of all Ninth Circuit cases have a headnote under this topic. This digest topic is broad to the point of being ridiculous. It has 1,322 different key numbers and twenty-nine subdivisions. Subdivision XVII, "Evidence," however, is particularly big. Of the 1,880 Montana cases having a "Criminal Law" digest topic headnote, 718 have one under the "Evidence" subdivision. Of the 8,078 Ninth Circuit cases having a "Criminal Law" digest topic headnote, 2,899 have one under the "Evidence" subdivision. Moreover, to some large degree, this digest topic does not cover criminal procedure. Although no separate digest topic exists for criminal procedure, West provides separate digest topics for "Arrest," "Bail," "Indictment and Information," and "Search and Seizure."

Where possible, one should usually confine a topic search to the most specific topic possible. Many more digest topics deal with specific kinds of crimes. For example:

- Arson Escape Larceny
- Assault and Battery Extortion and Threats
- Malicious Mischief
- Bribery False Pretenses Mayhem
- Burglary Forgery Perjury
- Conspiracy Fraud Rape
- Counterfeiting Homicide Receiving Stolen Goods
- Drugs and Narcotics Kidnaping Robbery

51. The case annotations for MONT. CODE ANN., Tit. 25, Chap. 20.

Embezzlement

However, digest topics are not exclusive. One case may have headnotes which fall under several digest topics. Thus, 160 Montana cases have headnotes under the digest topic "Homicide." An additional 191 Montana cases dealing with murder or homicide have headnotes under the digest topic "Criminal Law," but not under the topic "Homicide."

D. Topics Covering Primarily Federal Law

The ratio of federal-to-state cases allows some insight as to which matters are peculiarly federal in nature; e.g., the digest topics "Conspiracy" and "Fraud." Conspiracy requires: "(1) an agreement between two or more persons, which constitutes the act; and (2) an intent thereby to achieve a certain objective which . . . is the doing of either an unlawful act or a lawful act by unlawful means."⁵² The number of Ninth Circuit cases (860) having the digest topic "Conspiracy" as a headnote is much higher than Montana cases (17). In fact, "Conspiracy" is eighteenth on the list for most-used federal digest topics by Ninth Circuit cases. The only specific digest topic for a specific crime which is higher is "Drugs and Narcotics," which is twelfth-highest on the list. The primary conspiracy statute is often used to prosecute offenders: "If two or more persons conspire either to commit any offense against the United States . . . in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined . . ."⁵³ Drug offenders are often charged with conspiracy in connection with the following statute: "[I]t shall be unlawful for any person knowingly or intentionally— (1) to manufacture, distribute, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or (2) to create, distribute, or dispense, or possess with intent to distribute or dispense a counterfeit substance."⁵⁴ Also, a specific drug statute incorporates conspiracy: "Any person who attempts or conspires to commit any offense defined in this title shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy."⁵⁵ In addition

52. 2 WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., *SUBSTANTIVE CRIMINAL LAW* § 6.4 (1986).

53. 18 U.S.C. § 371 (1994).

54. 21 U.S.C. § 841 (1994).

55. 21 U.S.C. § 846 (1994).

to criminal law, the concept of conspiracy also plays a significant role in the areas of federal antitrust law, federal civil rights law,⁵⁶ and RICO.⁵⁷

The Ninth Circuit has also decided a much higher percentage of cases digested under the digest topic "Fraud" than has the Montana Supreme Court. The mail fraud statute makes it a federal crime to use the mails to carry out a scheme to defraud a victim of his money or other property.⁵⁸ Under this statute it is only necessary that a scheme involves the making of a false promise. "Unlike the crime of false pretenses it is not required that the scheme succeed in defrauding the victim; it is enough that the defendant devise the scheme and make use of the mails to carry it out."⁵⁹ The digest topic "Postal Service" also has key number 35, "Use of Mails to Defraud," under which eighty-four cases are digested.

III. CHANGES OVER TIME

In contrast to the digest topics discussed above, forty-one digest topics were never used at all by the Montana Supreme Court or by the Ninth Circuit in the time period covered. These digest topics demonstrate how the law has changed, how areas once considered important are no longer considered so, and how terminology has changed: Action on the Case:

Actions of trespass on the case, as distinguished from other forms of action.⁶⁰

56. See Sarah N. Welling, *Intracorporate Plurality in Criminal Conspiracy Law*, 33 HASTINGS L.J. 1155, 1157 (1982).

57. See Racketeer Influence and Corrupt Organizations Act, 18 U.S.C. § 1962(d) (1994) (cited in 75 9th Circuit cases). See also 2 LaFave & Scott, *supra* note 52, at § 6.5(3).

58. Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined . . . 18 U.S.C. § 1341 (1994).

59. 2 LAFAVE & SCOTT, *supra* note 52, at § 8.7(3).

60. WEST'S ANALYSIS, *supra* note 43, at 14.

Beneficial Associations: Bodies incorporated or unincorporated, frequently as fraternal lodges, formed for the purpose of mutual pecuniary aid to members or to persons dependent on members, by means of contributions or assessments.⁶¹

Breach of Marriage Promise: Mutual agreements to marry.⁶²

Canals: Construction, maintenance, regulation and use of artificial water courses for purposes of navigation, whether constructed under franchises granted therefor or directly by the government, and whether or not the use be subject to payment of tolls.⁶³

Cemeteries: Lands used for burial of the dead, whether in churchyards or other places, and regulations relating thereto.⁶⁴

Common Lands: Lands held by numerous proprietors or by bodies corporate or politic for the general use of themselves or the public.⁶⁵

Action of Covenant: "One of the common-law forms of act . . . instituted for the recovery of damages for the breach of a covenant ; or contract in writing and under seal."⁶⁶

Action of Debt: Actions of debt as distinguished from other forms of action.⁶⁷

Detinue: Actions for recovery of specific personal property wrongfully detained, or the value thereof as damages where it cannot be delivered, founded on the right of property and not merely on the right of possession.⁶⁸

Actions for damages for injuring, taking, converting or detaining personal property are found under the digest topics "Trespass" and "Trover and Conversion."⁶⁹

Disturbance of Public Assemblage: Acts or conduct interfering with the peace or order of a lawful assemblage of persons for religious or other purposes.⁷⁰

Writ of Entry: Actions for recovery of specific real property, founded on mere right of possession thereof, with or without

61. *Id.* at 174.

62. *Id.* at 190.

63. *Id.* at 202.

64. *Id.* at 213.

65. *Id.* at 247.

66. 2 WILLIAM WAIT, A TREATISE UPON SOME OF THE GENERAL PRINCIPLES OF THE LAW WHETHER OF A LEGAL, OR OF AN EQUITABLE NATURE, INCLUDING THEIR RELATIONS AND APPLICATION TO ACTIONS AND DEFENSES . . . 353 (1885). WEST'S ANALYSIS, *supra* note 43, at 341 gives a nebulous and tautological definition. BLACK'S LAW DICTIONARY (6th ed. 1990) does not define "Action of Covenant."

67. WEST'S ANALYSIS, *supra* note 43, at 428.

68. WEST'S ANALYSIS, *supra* note 43, at 445.

69. *Id.*

70. WEST'S ANALYSIS, *supra* note 43, at 449-50.

incidental recovery of damages.⁷¹ (The more common digest topic now would be “Ejectment”).

Hawkers and Peddlers: Regulation of persons going from place to place selling or exchanging goods which they carry with them or themselves deliver.⁷²

Joint-Stock Companies and Business Trusts: Unincorporated companies formed for purposes of profit and having a capital stock divided into transferable shares.⁷³

Lost Instruments: Instruments in writing lost or destroyed.⁷⁴

Manufactures: Promotion and regulation of manufacturing industries in general.⁷⁵ (The more common digest topic now would be “Corporations”).

Mayhem: Infliction of personal injuries which deprive one of any member or organ of his body or cause other permanent disability or disfigurement.⁷⁶

Military Justice: The system of justice for the government of the armed forces of the United States and persons under their control as determined by decisions of military courts.⁷⁷

Ne Exeat: Proceedings to prevent defendants in actions on demands of an equitable nature from departing or removing their property from the jurisdiction of the court, and to obtain equitable bail.⁷⁸

Neutrality Laws: Breach of neutrality or of other international obligations by hostile acts of private persons against a foreign nation at peace with the United States.⁷⁹

Notaries: Notaries public.⁸⁰

Parliamentary Law: Rules and usages governing the proceedings of deliberative bodies.⁸¹

Party Walls: Walls built partly on the land of each of two adjoining proprietors, for the common benefit of both.⁸²

Possessory Warrant: Summary proceedings to determine the fact of previous peaceable possession of personal property and to

71. WEST'S ANALYSIS, *supra* note 43, at 499.

72. WEST'S ANALYSIS, *supra* note 43, at 677.

73. WEST'S ANALYSIS, *supra* note 43, at 812.

74. WEST'S ANALYSIS, *supra* note 43, at 919.

75. WEST'S ANALYSIS, *supra* note 43, at 928.

76. WEST'S ANALYSIS, *supra* note 43, at 936.

77. WEST'S ANALYSIS, *supra* note 43, at 951.

78. WEST'S ANALYSIS, *supra* note 43, at 1024.

79. WEST'S ANALYSIS, *supra* note 43, at 1031.

80. WEST'S ANALYSIS, *supra* note 43, at 1038.

81. WEST'S ANALYSIS, *supra* note 43, at 1051-52.

82. WEST'S ANALYSIS, *supra* note 43, at 1066.

restore it to such previous possessor.⁸³ (The more common digest topics now would be "Replevin" and "Trover and Conversion").

Real Actions: Actions for recovery of specific real property, founded on right of property therein, without or with incidental recovery of damages for detention or profits, etc., thereof.⁸⁴ (The more common digest topics now would be "Quieting Title," "Forcible Entry and Detainer," and "Ejectment").

Recognizances: Obligations of record, entered into before a court or officer duly authorized, as security for performance of some particular act required in a judicial proceeding.⁸⁵

Register of Deeds: Public officers authorized to keep records of instruments in writing.⁸⁶

Review: Review by superior courts of judicial action of inferior tribunals or officers, or of their own decisions, for causes which arise subsequently or otherwise not ground of appeal, etc., or in proceedings not reviewable by appeal, writ of error, etc., or certiorari.⁸⁷ (The more common digest topics now would be "Appeal and Error" (for state courts) and "Federal Courts," "subdivision VIII "Courts of Appeals").

Rewards: Offers, by private persons or by the government, of a premium or compensation for a special or extraordinary service, not limited to any particular person or persons.⁸⁸

Scire Facias: Writs for enforcement of obligations of record.⁸⁹ (The more common digest topic now would be "Judgment.")

Seals: Signs and devices, representing parties to instruments in writing, attached or affixed to such instruments to attest their genuineness or their formal execution.⁹⁰

Seduction: Enticement of an unmarried woman by a man to commit unlawful sexual intercourse with him.⁹¹

Sequestration: Taking and keeping in legal custody specific property as subject to conflicting claims of ownership, or to liens or other special rights, to preserve it during litigation; or so taking and disposing of property of defendants in civil actions, to compel them to appear and answer or perform any other act therein, or to preserve the property, or to enforce performance of the judgment.⁹²

83. WEST'S ANALYSIS, *supra* note 43, at 1110.

84. WEST'S ANALYSIS, *supra* note 43, at 1182.

85. WEST'S ANALYSIS, *supra* note 43, at 1188.

86. WEST'S ANALYSIS, *supra* note 43, at 1194.

87. WEST'S ANALYSIS, *supra* note 43, at 1205.

88. WEST'S ANALYSIS, *supra* note 43, at 1206.

89. WEST'S ANALYSIS, *supra* note 43, at 1231.

90. WEST'S ANALYSIS, *supra* note 43, at 1231.

91. WEST'S ANALYSIS, *supra* note 43, at 1250.

92. WEST'S ANALYSIS, *supra* note 43, at 1251.

Spendthrifts: Persons incapacitated by their wastefulness. Their rights and disabilities in general.⁹³ (The more common digest topics now would be “Trusts” and “Guardian and Ward”).

Steam: Regulation of the production and use of steam and of steam boilers, engines, and machinery in general.⁹⁴

Submission of Controversy: Submission of controversies to courts for determination upon a statement of facts agreed to by the parties, without action.⁹⁵ (The more common digest topics now would be “Judgment” and “Stipulations”).

Subscriptions: Promises in writing by one or more persons to contribute money or other property absolutely or conditionally, for purposes of a charitable, educational, religious, or other public nature.⁹⁶

Sunday: The first day of the week as a day of rest.⁹⁷

Supersedeas: Express suspension, by writ or other mandate or order of court, of enforcement of judgments or orders, or of execution of writs or other process, or of other judicial proceedings.⁹⁸

Trespass to Try Title: Actions for recovery of specific real property, founded on right to damages for trespass, thereon, where the ownership is disputed.⁹⁹ (The more common digest topics now would be “Trespass,” “Forcible Entry and Detainer,” and “Ejectment”).

Undertakings: Promises in writing, not under seal, given as security for performance of some particular act required in a judicial proceeding.¹⁰⁰

Urban Railroads: Construction, maintenance, regulation, and operation of all fixed rail transit systems in cities on the surface or elevated, depressed, or underground.¹⁰¹

A few other digest topics, while still in active use, have anachronistic names. Thus the digest topic “Monopolies”¹⁰² (fourteen Montana state cases and 552 Ninth Circuit cases) would be much more understandable as “Antitrust.”¹⁰³ The digest

93. WEST’S ANALYSIS, *supra* note 43, at 1275.

94. WEST’S ANALYSIS, *supra* note 43, at 1292.

95. WEST’S ANALYSIS, *supra* note 43, at 1293.

96. WEST’S ANALYSIS, *supra* note 43, at 1295.

97. WEST’S ANALYSIS, *supra* note 43, at 1296.

98. WEST’S ANALYSIS, *supra* note 43, at 1297.

99. WEST’S ANALYSIS, *supra* note , at 1355.

100. WEST’S ANALYSIS, *supra* note , at 1384.

101. WEST’S ANALYSIS, *supra* note , at 1395.

102. “Grants of exclusive or special privileges or immunities in respect of any occupation or business. Monopolizing or combining or attempting to monopolize trade or commerce.” WEST’S ANALYSIS, *supra* note 43, at 970.

103. Although, curiously, antitrust key numbers show up in various places: digest

topic "Master and Servant"¹⁰⁴ (144 Montana cases and 275 Ninth Circuit cases) would be more understandable (and palatable) as "Employer-Employee Relationship."¹⁰⁵ The digest topic "Trade Regulation" is partly misleading. Although it covers unfair competition and unfair trade practices, it also covers trademarks,¹⁰⁶ which much more commonly is found under the rubric of "Intellectual Property." Adding to the confusion is the separate digest topic of "Copyrights and Intellectual Property" (which, however, does not cover trademarks).

IV. HISTORY OF DIGEST TOPIC CHANGES

The West digest topics, attempting as they do to categorize all published cases, have changed over time. While sometimes slow in coming, the changes have mirrored American society as it has evolved.¹⁰⁷

1907 - 1916 "Automobiles" digest topic created.¹⁰⁸

1946 - 1956 "Aviation" digest topic created.¹⁰⁹

"Social Security and Public Welfare" created.

1948 "Declaratory Judgment" topic created.

1950 "Trade Unions" topic deleted and case digests transferred to topic "Labor Relations."

1954 "Insane Persons" topic deleted and case digests moved

topic "Federal Courts," key # 208 in the Ninth Circuit: "Antitrust Laws and Trade Regulation" (eleven cases); digest topic "Commerce," key # 62.10: "Monopolies and Anti-Trust Laws in General" (thirty-four cases); digest topic "Federal Civil Procedure," key # 1784: "Antitrust and Price Discrimination Actions" (five cases); digest topic "Compromise and Settlement," key # 64: "Antitrust and Trade Regulation Actions" (two cases). There is also a topical database in Westlaw titled "Federal Antitrust & Trade Regulation." (The numbers are current as of February 23, 1999).

104. "The relation created by contracts of employment. . . . Rights, powers, duties, and liabilities of the parties as between themselves and as to others, incident to the relation." WEST'S ANALYSIS, *supra* note , at 932. This does not include union activities and disputes which comes under the digest topic "Labor Relations."

105. CORPUS JURIS SECUNDUM adopted this terminology in 1992 in place of "Master and Servant." See 30 C.J.S. *Employer-Employee Relationship* §§ 1-267 (1992).

106. WEST'S ANALYSIS, *supra* note , at 1340.

107. Most of the following information comes from a letter from Jeffrey A. Locke, Associate Editor, *West Group*, with attachment "Key Numbers: History of Changes" to Fritz Snyder (Apr. 29, 1997) (on file with author).

108. However, 3 DECENNIAL EDITION OF THE AMERICAN DIGEST: A COMPLETE DIGEST OF ALL REPORTED CASES FROM 1897 TO 1906 17 (1908) listed "Automobiles" but cross referenced to the digest topics of "Highways," "Street Railroads," "Criminal Law," "Nuisance," and "Licenses."

109. However, 3 AMERICAN DIGEST 682 (1907-1916 2d Decennial Ed.) listed "Aviation" but cross-referenced to the topics "Agriculture" and "Contracts."

to “Mental Health.”

Topic “Telephones and Telegraphs” changed to “Telecommunications.”

1972 “Securities Regulation” topic created from sections of topics “Corporations” and “Licenses.”

Topic “United States Commissioners” changed to “United States Magistrates.”

1973 “Products Liability” topic created from sections of topics “Negligence” and “Torts.”

Topic “Public Contracts” created from sections of topics “Assignments,” “Counties,” “Highways,” “Municipal Corporations,” and “Schools.”

1978 “Workmen’s Compensation” changed to “Workers’ Compensation.”

Topic “Consumer Credit” and “Consumer Protection” topics created from topic “Pawnbrokers and Money Lenders.”

Topic “Insolvency” topic deleted and case digests transferred to “Debtor and Creditor” topic.

Topic “Credit Reporting Agencies” topic created from “Mercantile Agencies.”

Topic “Livery Stable Keepers” deleted and case digests transferred to key numbers 111-113 of topic “Livery, Boarding and Riding Stables.”

Topic “Dueling” demoted to key number 45.30 (but no cases in Montana or in the Ninth Circuit under this topic or key number since 1945) under the subdivision “Miscellaneous Crimes” under the topic “Criminal Law.”

Topic “Chemical Dependents” created from topic “Drunkards” and from sections of topic “Drugs and Narcotics.”

Topic “Condominium” created from parts of topic “Estates.”

1979 “Bastards” topic renamed “Illegitimate Children.”

Topic “Employers’ Liability” created from parts of topic “Master and Servant.”

Topic “Secured Transactions” created. Topic “Street Railroads” renamed “Urban Railroads.”

Topic “Apprentice” demoted to key number 9.1 under the subdivision “Creation and Existence” in the topic “Master and Servant”.

Topic “Miscegenation” (no cases) demoted to key number 45.45 under the subdivision “miscellaneous Crimes,” in the topic “Criminal Law.”

Topic “Zoning and Planning” created from parts of topics “Counties,” “Health and Environment,” “Municipal

Corporations," "Towns," and "Zoning."

1980 "Paupers" topic deleted.

Topic "Reformatories" transferred to topic "Infants," Part IX
"Agencies and Institutions for Correction or Rehabilitation."

1976 - 1981 New and revised topics:¹¹⁰

Abandoned and Lost Property

Abortion and Birth Control

Accountants

Administrative Law and Procedure

Bankruptcy

Copyrights and Intellectual Property

Deposits and Escrows

Dower and Curtesy

Employers' Liability

Extortion and Threats

Extradition and Detainers

Implied and Constructive Contracts

Internal Revenue

Public Utilities

1983 "Illegitimate Children" topic renamed "Children Out-of-Wedlock."

1989 Topics demoted to key numbers under subdivision
"Miscellaneous Crimes" in topic "Criminal Law":

Abduction: key # 45.10 (no cases).

Affray: key # 45.15 (no case).

Blasphemy: key # 45.20 (no cases).

Common Scold¹¹¹: key # 45.25 (no cases).

Embracery¹¹²: key # 45.35 (two cases¹¹³).

Fornication: key # 45.40 (no cases).

Piracy: key # 45.50 (no cases).

Prize Fighting: key # 45.55 (no cases).

1990 "Racketeer Influenced and Corrupt Organizations"
topic created from parts of topic "Commerce" and from sections

110. See 1 WEST'S NINTH DECENNIAL DIGEST III (Part I, 1976 - 1981).

111. "At common law, a troublesome and angry person who, by brawling and wrangling among his or her neighbors, breaks the public peace, increases discord, and becomes a public nuisance to the neighborhood. A quarrelsome, brawling, vituperative person." BLACK'S LAW DICTIONARY 1346 (6th ed. 1990).

112. "The crime of attempting to influence a jury corruptly to one side or the other, by promises, persuasions, entreaties, entertainments, douceurs, and the like. . . . This is both a state and federal crime, and is commonly included under the offense of "obstructing justice." BLACK'S LAW DICTIONARY 522 (6th ed. 1990).

113. State v. Porter, 125 Mont. 503, 242 P.2d 984 (1952); Kong v. United States, 216 F.2d 665 (9th Cir. 1954).

of topics “Disorderly Conduct” and “Extortion and Threats.”

1997 “Militia” topic continues to deal with issues relating to the National Guard—and not with anti-government protesters.

From the above, one can note how conservative the West Digest System has been. Thus the topic “Aviation” was created a good 30 years after aviation became important in American society. Other topics, once in common usage, would be considered offensive today: Insane Persons, Drunkards, Paupers, Bastards, and Illegitimate Children. Former topics, although obviously out of date, have been relegated to key numbers of other topics: Livery Stable Keeper, Dueling, Miscegenation, Affray, Blasphemy, Common Scold, and Embracery (although Common Scold is also still offensive).

V. TOPICS BY SPECIALTY

Although West now uses 404 digest topics, many of these topics are very closely related. Another way to look at these topics is to group them by specialty, and West has done that.¹¹⁴ It is also interesting to compare these thirty-three specialty areas with the thirty-eight topical areas of practice on Westlaw:

West Specialty Areas	Westlaw Topical Areas
Antitrust	Antitrust & Trade Regulation
Bankruptcy	Art, Entertainment & Sports Law
Bankruptcy	Bankruptcy
Business Organizations (includes Non-Profits)	Business Organizations Law
Civil Procedure—Federal Cases	
Civil Procedure—State Cases	
	Civil Rights
Commercial Law	Commercial Law & Contracts
Communications	Communications
Criminal Justice	Criminal Justice
Education	Education
Employment	
Energy	Energy
Environmental Law	Environmental Law
Estate Planning	Estate Planning & Probate

114. WEST’S ANALYSIS, *supra* note 43, at 1521-1525.

Family Law	Family Law
Financial Institutions	Finance & Banking
	First Amendment
	Government Benefits
Government Contracts	Government Contracts
Health	Health & Medicine
Immigration	Immigration
Insurance	Insurance
Intellectual Property	Intellectual Property
	International & Foreign Law
Juvenile Justice	
	Labor & Employment
Legal Services	Legal Ethics & Professional Responsibility
	Litigation
Maritime Law	Maritime Law
Medicare	
Medicaid	
Military Law	Military Law
	Native Americans Law
	Pension & Retirement Benefits
Products Liability	Products Liability
	Professional Malpractice
Real Property	Real Property
	Science & Computer Technologies Law
Securities and Commodities Regulation	Securities Regulation
Taxation	Taxation
Torts	Tort Law
Transportation	Transportation
Unemployment Compensation	Workers' Compensation

On Westlaw the communications databases contain documents that relate to the regulation and operation of publicly and privately owned media. "Among the subjects included are regulation of the data transmission, newspaper, radio, telegraph, and television industries, and the operations of the United States Postal Service."¹¹⁵ Included are documents and decisions of the Federal Communications Commission. The

115. Westlaw scope note of Federal Communications - Cases (FCOM-CS).

Government Benefits materials on Westlaw includes BNA's MEDICARE REPORT and the SOCIAL SECURITY BULLETIN. The International and Foreign Law materials on Westlaw include international treaties and International Court of Justice decisions. The Legal Ethics and Professional Responsibility materials include American Bar Association ethics opinions, state ethics opinions, and the excellent ABA/BNA LAWYERS' MANUAL ON PROFESSIONAL CONDUCT. The Litigation materials include records of lawsuits filed, litigation preparation records, and litigation reports in various subject areas. The Science and Computer Technologies Law databases consist only of law reviews, legal texts, and periodicals.¹¹⁶ The West Specialty Areas are each composed of one or more digest topics and hence only include cases (the number before each digest topic is its numerical designation for Westlaw searching¹¹⁷):

ANTI-TRUST

265 Monopolies

382 Trade Regulation

BANKRUPTCY

52 Bankruptcy

117T Debtor and Creditor

163 Exemptions

202 Homestead

**BUSINESS ORGANIZATIONS (INCLUDES
NONPROFITS)**

41 Associations

52 Banks and Banking

54 Beneficial Associations

65 Brokers

66 Building and Loan Associations

70 Carriers

71 Cemeteries

116. Albany Law Journal of Science & Technology, Andrews Computer & Online Industry Litigation Reporter, Andrews Intellectual Property Litigation Reporter, Berkeley Technology Law Journal, Computer Counsel, Computer Law Strategist, Harvard Journal of Law & Technology, IDEA: The Journal of Law & Technology, John Marshall Journal of Computer & Information Law, Journal of Law & Technology, Legal Tech Newsletter, Multimedia Strategist, Richmond Journal of Law & Technology, Rutgers Computer & High Technology Law Journal, Software Law Bulletin, Temple Environmental Law & Technology Journal.

117. Although there are only 404 current digest topics, some digest topics have numerical designations higher than 404; e.g., the digest topic "Weapons" is 406 and the topic "Wills" is 409. This can be so because some numbers are not used; e.g., numbers 3 and 22.

75	Charities
80	Clubs
81	Colleges and Universities
101	Corporations
108A	Credit Reporting Agencies
145	Electricity
167	Factors
190	Gas
204	Hospitals
213	Innkeepers
224	Joint Adventures
225	Joint-Stock Companies and Business Trusts
289	Partnership
317A	Public Utilities
320	Railroads
332	Religious Societies
345	Schools
372	Telecommunications
396A	Urban Railroads
CIVIL PROCEDURE— FEDERAL CASES	
1	Abatement and Revival
13	Action
33	Arbitration
48	Audita Querela
96	Contribution
106	Courts
115	Damages
118A	Declaratory Judgment
135	Domicile
143	Election of Remedies
156	Estoppel
157	Evidence
158	Exceptions, Bill of
170A	Federal Courts
197	Habeas Corpus
212	Injunction
222	Interpleader
227	Judges
228	Judgment
230	Jury
241	Limitation of Actions
250	Mandamus
314	Prohibition

319 Quo Warranto
334 Removal of Cases
378 Time
394 United States Magistrates
410 Witnesses
CIVIL PROCEDURE—STATE CASES
1 Abatement and Revival
13 Action
21 Affidavits
30 Appeal and Error
31 Appearance
33 Arbitration
48 Audita Querela
73 Certiorari
96 Contribution
102 Costs
105 Court Commissioners
106 Courts
115 Damages
118A Declaratory Judgment
123 Deposits in Court
135 Domicile
143 Election of Remedies
150 Equity
156 Estoppel
157 Evidence
158 Exceptions, Bill of
161 Execution
189 Garnishment
197 Habeas Corpus
212 Injunction
222 Interpleader
227 Judges
228 Judgment
230 Jury
231 Justices of the Peace
241 Limitation of Actions
242 Lis Pendens
250 Mandamus
267 Motions
271 Ne Exeat
275 New Trial
288 Notice

287 Parties
307 Pleading
307A Pretrial Procedure
313 Process
314 Prohibition
319 Quo Warranto
322 Real Actions
327 Reference
334 Removal of Cases
339 Review
346 Scire Facias
351 Sequestration
352 Set-Off and Counterclaim
363 Stipulations
370 Supersedeas
378 Time
388 Trial
401 Venue
410 Witnesses
COMMERCIAL LAW
38 Assignments
51 Bankruptcy
52 Banks and Banking
56 Bills and Notes
70 Carriers
76 Chattel Mortgages
92B Consumer Credit
92H Consumer Protection
95 Contracts
117T Debtor and Creditor
186 Fraudulent Conveyances
219 Interest
278 Novation
294 Payment
343 Sales
349A Secured Transactions
382 Trade Regulation
403 Warehousemen
COMMUNICATIONS
92 Constitutional Law
99 Copyrights and Intellectual Property
237 Libel and Slander
306 Postal Service

372 Telecommunications
CRIMINAL JUSTICE
18 Adulteration
19 Adultery
35 Arrest
36 Arson
37 Assault and Battery
55 Bigamy
62 Breach of the Peace
63 Bribery
67 Burglary
88 Compounding Offenses
91 Conspiracy
98 Convicts
103 Counterfeiting
110 Criminal Law
129 Disorderly Conduct
130 Disorderly House
131 District and Prosecuting Attorneys
133 Disturbance of Public Assemblage
135H Double Jeopardy
138 Drugs and Narcotics
146 Embezzlement
151 Escape
165 Extortion and Threats
166 Extradition and Detainers
169 False Personation
170 False Pretenses
174 Fines
175 Fires
180 Forfeitures
181 Forgery
184 Fraud
193 Grand Jury
197 Habeas Corpus
203 Homicide
207 Incest
210 Indictment and Information
218 Insurrection and Sedition
232 Kidnaping
234 Larceny
236 Lewdness
248 Malicious Mischief

256	Mayhem
273	Neutrality Laws
281	Obscenity
282	Obstructing Justice
284	Pardon and Parole
297	Perjury
310	Prisons
316	Prostitution
319H	Racketeer Influenced and Corrupt Organizations
321	Rape
324	Receiving Stolen Goods
337	Rescue
341	Riot
342	Robbery
349	Searches and Seizures
357	Sodomy
368	Treason
396	Unlawful Assembly
399	Vagrancy
406	Weapons
410	Witnesses
	EDUCATION
81	Colleges and Universities
345	Schools
	EMPLOYMENT LAW
78	Civil Rights
81	Colleges and Universities
104	Counties
148A	Employers' Liability
232A	Labor Relations
255	Master and Servant
268	Municipal Corporations
283	Officers and Public Employees
345	Schools
356A	Social Security and Public Welfare
361	States
381	Towns
393	United States
413	Workers' Compensation
	ENERGY
145	Electricity
190	Gas
260	Mines and Minerals

317A Public Utilities
362 Steam
402 War and National Emergency
ENVIRONMENTAL LAW
23 Agriculture
145 Electricity
178 Fish
187 Game
199 Health and Environment
260 Mines and Minerals
270 Navigable Waters
279 Nuisance
405 Waters and Water Courses
414 Zoning and Planning
ESTATE PLANNING
17 Adoption
75 Charities
76H Children Out-of-Wedlock
124 Descent and Distribution
136 Dower and Curtesy
162 Executors and Administrators
191 Gifts
220 Internal Revenue
226 Joint Tenancy
240 Life Estates
296 Pensions
298 Perpetuities
307 Powers
333 Remainders
371 Taxation
373 Tenancy in Common
390 Trusts
409 Wills
FAMILY LAW
4 Abortion and Birth Control
17 Adoption
76H Children Out-of-Wedlock
134 Divorce
205 Husband and Wife
207 Incest
211 Infants
253 Marriage
285 Parent and Child

FINANCIAL INSTITUTIONS

- 52 Banks and Banking
- 66 Building and Loan Associations
- 92B Consumer Credit
- 108A Credit Reporting Agencies
- 217 Insurance
- 296 Pensions

GOVERNMENT CONTRACTS

- 64 Bridges
- 68 Canals
- 81 Colleges and Universities
- 104 Counties
- 132 District of Columbia
- 137 Drains
- 200 Highways
- 235 Levees and Flood Control
- 268 Municipal Corporations
- 316A Public Contracts
- 345 Schools
- 360 States
- 375 Territories
- 381 Towns
- 393 United States
- 405 Waters and Water Courses

HEALTH

- 43 Asylums
- 76A Chemical Dependents
- 138 Drugs and Narcotics
- 199 Health and Environment
- 204 Hospitals
- 257A Mental Health
- 299 Physicians and Surgeons
- 356A Social Security and Public Welfare

IMMIGRATION

- 24 Aliens

INSURANCE

- 217 Insurance
- 356A Social Security and Public Welfare
- 413 Workers' Compensation

INTELLECTUAL PROPERTY

- 99 Copyrights and Intellectual Property
- 291 Patents
- 382 Trade Regulation

JUVENILE JUSTICE

211 Infants

LEGAL SERVICES

33 Arbitration

45 Attorney and Client

46 Attorney General

79 Clerks of Courts

105 Court Commissioners

106 Courts

131 District and Prosecuting Attorneys

227 Judges

231 Justices of the Peace

276 Notaries

327 Reference

394 United States Magistrates

MARITIME LAW

16 Admiralty

82 Collision

172 Ferries

252 Maritime Liens

270 Navigable Waters

300 Pilots

344 Salvage

348 Seaman

354 Shipping

408 Wharves

MEDICARE

356A Social Security and Public Welfare

MEDICAID

356A Social Security and Public Welfare

MILITARY LAW

34 Armed Forces

258A Military Justice

259 Militia

402 War and National Emergency

PRODUCTS LIABILITY

23 Agriculture

138 Drugs and Narcotics

145 Electricity

164 Explosives

190 Gas

304 Poisons

313A Products Liability

406	Weapons
	REAL PROPERTY
6	Abstracts of Title
15	Adjoining Landowners
20	Adverse Possession
59	Boundaries
65	Brokers
66	Building and Loan Associations
84	Common Lands
89A	Condominium
92H	Consumer Protection
97	Conversion
108	Covenants
119	Dedication
120	Deeds
142	Ejectment
148	Eminent Domain
149	Entry, Writ of
154	Estates Property
171	Fences
177	Fixtures
179	Forcible Entry and Detainer
206	Improvements
233	Landlord and Tenant
238	Licenses
239	Liens
242	Lis Pendens
257	Mechanics' Liens
266	Mortgages
288	Petition
290	Party Walls
311	Private Roads
315	Property
317	Public Lands
318	Quieting Title
322	Real Actions
330	Registers of Deeds
338	Reversions
358	Specific Performance
386	Trespass
387	Trespass to Try Title
400	Vendor and Purchaser
414	Zoning and Planning

SECURITIES AND COMMODITIES REGULATION

83H Commodity Futures Trading Regulation

160 Exchanges

349B Securities Regulation

TAXATION

83 Commerce

104 Counties

220 Internal Revenue

238 Licenses

268 Municipal Corporations

345 Schools

371 Taxation

381 Towns

TORTS

37 Assault and Battery

48A Automobiles

78 Civil Rights

82 Collision

91 Conspiracy

117 Death

168 False Imprisonment

179 Forcible Entry and Detainer

184 Fraud

237 Libel and Slander

249 Malicious Prosecution

272 Negligence

279 Nuisance

313A Products Liability

320 Railroads

350 Seduction

354 Shipping

379 Torts

386 Trespass

389 Trover and Conversion

404 Waste

TRANSPORTATION

16 Admiralty

48A Automobiles

48B Aviation

64 Bridges

68 Canals

70 Carriers

82 Collision

83	Commerce
172	Ferries
200	Highways
320	Railroads
348	Seamen
354	Shipping
391	Turnpikes and Toll Roads
	UNEMPLOYMENT COMPENSATION
356A	Social Security and Public Welfare

The digest topic "Civil Rights" comes under the specialty areas of Employment Law and Torts. The digest topic "Workers Compensation" comes under the specialty areas of Employment Law and Insurance. The digest topic "Indians" comes under no specialty area. The printed digest system would perhaps function better if many of the subclasses that have been split out as digest topics were pulled back into one topic analysis: Physical separation makes subject relationships less clear.¹¹⁸ The digest topic "Torts" is really "Torts—In General."¹¹⁹ Other digest topics, such as "Assault and Battery," "Negligence," and "Trespass," are subtopics in fact of the broader topic of torts—but not in the West digest scheme. This is confusing. "[T]he . . . topic of 'Torts' is not superior to 'Assault and Battery,' 'Negligence,' or 'Trespass,' but is a generality class at the same level."¹²⁰

However, to find topics of a similar kind, the researcher should be aware of the West Specialty Areas which are made up of individual digest topics. When searching on Westlaw by digest topic, if the searcher wants to be extremely thorough, she might want to include in her search all the digest topics underneath the Specialty Area. Thus for cases on education, one would want to search the digest topics "Colleges and Universities" and "Schools."

VI. LEXIS AND WESTLAW

What Lexis and Westlaw can do that the key number system cannot do is create an infinite number of subgroups and combinations.¹²¹ However, the key numbers are clearly useful even while doing electronic searching.

118. See Doyle, *supra* note 14, at 241.

119. See Doyle, *supra* note 14, at 242.

120. *Id.*

121. See Katsh, *supra* note 29, at 72.

The use of West Key Numbers is a valuable corrective to the inherent limitations of full-text searching which requires that you anticipate the same words as those found in the desired documents. Doing both a key word search and a key number search will help to obtain a higher percentage of relevant documents.¹²²

The digest gives a substantive context that tells the searcher the meaning of the case as much as does the opinion itself: "Full-text searching in legal databases, however, deprives the researcher of context."¹²³

Given the weaknesses of manual indexing, the advent of [Lexis and Westlaw] . . . should have been meant with unequivocal enthusiasm. But this has not been the case. One study suggests a fundamental weakness in all large, full-text retrieval systems that results from their extraordinary capacity to store documents. The need to narrow searches so that they retrieve a manageable number of documents may seriously reduce the number of relevant documents retrieved Other concerns have been raised as well: the inability of isolated words to express general ideas; the need for expertise if one is searching without editorial guidance¹²⁴

Thus, although Westlaw and Lexis can be tremendous time savers in finding cases on point, they by themselves are not the entire answer to finding cases. The key number system is Westlaw's biggest advantage over Lexis. Because of the normalizing functions of the key numbers and their associated headnotes, it is often possible to find cases that a computer search of the text alone would simply not uncover.¹²⁵ Nor is natural language searching a noticeable improvement over boolean (terms-and-connectors) searching. In fact, the twenty or

122. See Kendall F. Svengalis, *LEGAL INFORMATION BUYER'S GUIDE & REFERENCE MANUAL* 125-26 (1997).

123. Berring, *Full-Text Databases*, *supra* note 9, at 54.

124. Marilyn R. Walter, *Retaking Control Over Teaching Research*, 43 *J. LEGAL EDUC.* 569, 573-74 (1993).

125. Thus for reported cases in all jurisdictions from April 1973 through December 1994 there were 3959 cases involving landlord/tenant issues without the terms "landlord" or "lessor" and "tenant" or "lessee" appearing anywhere in the opinion; 4283 cases on creditor-debtor issues without using "creditor" and "debtor" in the opinion; 3312 cases covering jurisdiction over a nonresident entity without "jurisdiction" and "nonresident" or "foreign" in the opinion; 10,912 cases involving a seller and a buyer without "seller" or "vendor" and "buyer" or "purchaser" in the opinion; 2299 cases involving a driver and a passenger or pedestrian without using "driver" and "pedestrian" or "passenger"; and 4844 cases involving employer and employee without the words "employment" or "employer" or "worker" or "employee" in the opinion. Theodor Herman, *HOW TO RESEARCH LESS AND FIND MORE: THE ESSENTIAL GUIDE TO COMPUTER-ASSISTED LEGAL RESEARCH* 12 (1996).

twenty-five cases automatically retrieved with natural language searching can mislead the unwary into thinking he has exactly the right cases when, in fact, many of those retrieved are irrelevant and many not retrieved are relevant.

VII. THE WEST DIGESTS AND AMERICAN JURISPRUDENCE

Based on the great number of cases for certain topics (Appendix B), it is easy to see why certain courses are either required in law school or considered to be very important electives: Criminal Law (with perhaps a particular emphasis needed on Homicide), Evidence (along with Witnesses), Constitutional Law (although third-highest on the Montana list, it appears that many of these cases are dealing with federal—as opposed to state—constitutional issues), Workers Compensation, Insurance, Municipal Corporations (Local Government), Torts (with a particular emphasis on Negligence), Contracts, Administrative Law, Wills (Decedent Estates), Federal Courts, Federal Civil Procedure. In addition, based on the numbers in Table B, other courses might well be offered (and, perhaps, in some schools are): Automobile Law (although negligence is part of a torts course, perhaps a specialty course on Automobile Law¹²⁶ makes sense); School Law; Searches and Seizures; Habeas Corpus; Drugs and Narcotics; Civil Rights (as a broader course than simply Race Discrimination or Sexual Discrimination or Employment Discrimination); Divorce (included in any Family Law course but perhaps Divorce¹²⁷ deserves its own course); Eminent Domain. Finally, some courses taught now, based on the figures in Appendix A, arguably need not be taught at all, at least in law schools that do not have some sort of specialty in the area: Agriculture, Intellectual Property, Products Liability, Public Lands, Secured Transactions. However, two areas are not accurately represented in the figures in the table in Appendix A and obviously need to be taught: Real Property (in fact, this includes

126. An Automobile Law course would deal both with civil liability and criminal offenses (including driving under the influence); in addition, it could well deal with insurance, accident reconstruction, products liability, the “lemon” law, recall issues, and conflicts/choice of law questions.

127. A divorce course would deal with the divorce proceedings themselves; alimony, maintenance, disposition of property; custody and change of custody; cases on appeal; counseling/mediation; child support guidelines; and conflicts/choice of law issues.

forty-one different topics¹²⁸) and Torts (this includes twenty-one different topics¹²⁹).

Some of the 404 digest topics are confusing. Some are extremely broad and, in fact, include other, narrower topics. Some are very narrow. Some include only state cases although the researcher would not necessarily know that. Some areas of case law are best researched without using the digests at all: the Uniform Commercial Code, rules of civil procedure, rules of evidence. Sometimes, the digest topics can help verify emerging trends; e.g., the Ninth Circuit heard 601 appeals concerning the Sentencing guidelines starting only from 1989.¹³⁰

Those digest topics no longer used should be removed from the scheme. Although not a major problem, they can cause confusion because of their very obscurity. Also, the topic "Monopolies" should be changed to "Antitrust," and "Master and Servant" should be changed to "Employer-Employee Relations." The West Specialty Areas are little known,¹³¹ which is perhaps too bad, because they provide some coherence to the whole scheme. These areas should be publicized more.

Computer-assisted research is threatening the digest system, but this system with 404 digest topics and its thousands of key numbers remains. By its categorization and classification, the system has helped shape American law. However, great treatise writers like Williston, Wigmore, Scott, and Prosser have also had a great impact on the content and structuring of legal rules and categories.¹³² What can be said is that "our legal research systems meet the basic needs of the legal profession, whether attorneys approach their research from narrow, formalist assumptions or from a broad understanding of the complexity of our legal system."¹³³

Legal research tools and the concepts and terminology used in the research tools play a great role in the way we look at legal problems. "[L]egal resources can reinforce and reify dominant ideologies, can narrow perspectives, and can make contingent results seem inevitable. . . . Key numbers, indexes,

128. See *supra* West Specialty Areas, p. 123.

129. See *id.*

130. "Sentencing Guidelines" is subdivision XXIX of the "Criminal Law" digest topic.

131. See *supra* pp. 561-62.

132. See Schanck, *supra* note 18, at 18.

133. See *id.* at 1.

annotations . . . set the limits of inquiry . . .”¹³⁴ Innovative jurisprudence may require entirely new legal research tools or nomenclature, which may be difficult because our attention is absorbed with manipulating the conventional tools, such as the digests with their key numbers.¹³⁵ “West’s editors, in their role as mediators between researcher and opinion, infuse their own judgment into the system which is patterned by the key number system and which is more attuned to finding conformity in judicial opinions than originality or subtlety.”¹³⁶ The search alone for cases and precedent can create the impression that law is “exact and deterministic” with a single correct answer to a legal question.¹³⁷

The conservative nature of the West system comes into play here. For example, the Tenth Decennial Digest, Part 1 (1986-1991) Descriptive Word Index under the entry “slums” has only a reference to the digest topic “Municipal Corporations,” key #267, “Nature and Purposes of Improvements in General,” with respect to public improvements. The Descriptive Word Index contains only a reference to “miscegenation” under the digest topic “Criminal Law,” and it makes no reference to “ghettoes” at all. A researcher who confined herself to the cases listed under the “Civil Rights” digest topic would be unlikely to come in contact with these ideas. Nor would computerized research necessarily help in this respect: “[C]omputerized research can ‘freeze’ the law by limiting the search to cases containing particular words or expressions. Research should encourage browsing and analogical reasoning. Paradoxically, computer-assisted research can discourage innovation . . .”¹³⁸ The digests with their topics and key numbers reward the researcher for staying in familiar territory with pre-existing ideas, arguments, and strategies: “Striking out on one’s own is . . . inefficient. Courts . . . will . . . frame the problem in common terms; the temptation is almost irresistible.”¹³⁹

[A] skeptical examination of what exists may sometimes prompt a researcher to ask why something else does not exist. For example, a feminist study group recently explored a legal issue affecting

134. Steven M. Barkan, *Deconstructing Legal Research: A Law Librarian’s Commentary on Critical Legal Studies*, 79 L. LIB. J. 617, 632 (1987).

135. See Delgado & Stefancic, *supra* note 24, at 208.

136. See Delgado & Stefancic, *supra* note 24, at 215 n.56.

137. See Delgado & Stefancic, *supra* note 24, at 216.

138. See Delgado & Stefancic, *supra* note 24, at 221.

139. Delgado & Stefancic, *supra* note 24, at 222.

women. Although the members knew of several cases that dealt with the problem, West indexers had created no category for it The feminists, sophisticated in ways of patriarchy and mindset, concluded from their experience that the oversight was not merely inadvertent, but rooted in the structure of male-dominated law.¹⁴⁰

Even without plunging into the thickets of critical race theory and feminist jurisprudence, it is clear that new areas of the law give the digest problems. New torts are a particularly good example. The case of *McClellan v. Tottenhoff*¹⁴¹ dealt with injuries arising from negligence in furnishing liquor to minors and intoxicated adults. It is digested under the topics "Negligence" and "Intoxicating Liquors," but the specific key numbers under these two topics, particularly the latter one, are not very specific or helpful. The case of *Yost v. Torok*¹⁴² dealt with abusive litigation as a replacement for malicious use of process and malicious abuse of process, but neither of the digest topics used for the case, "Malicious Prosecution" or "Torts," fits very well. The case of *Falcon v. Memorial Hospital*¹⁴³ dealt with a patient's loss of opportunity to survive in the context of medical malpractice. However, the digest topic "Physicians and Surgeons" only covers this broadly under key number #18, "Actions for Negligence or Malpractice." Other new torts¹⁴⁴ deal with lack of informed consent in legal matters,¹⁴⁵ wrongful life,¹⁴⁶ wrongful employment termination in violation of public policy,¹⁴⁷ spoliation of evidence,¹⁴⁸ computer malpractice,¹⁴⁹ and loss of consortium as a tort.¹⁵⁰ The digest system has problems categorizing these.

140. See Delgado & Stefancic, *supra* note 24, at 224.

141. 666 P.2d 408 (Wyo. 1983).

142. 344 S.E.2d 414 (Ga. 1986).

143. 462 N.W.2d 44 (Mich. 1990).

144. See Robert F. Blomquist, "New Torts": A Critical history, Taxonomy, and Appraisal, 95 DICK. L. REV. 23 (1990).

145. See Cornelius J. Peck, *A New Tort Liability for Lack of Informed Consent in Legal Matters*, 44 LA. L. REV. 1289 (1984).

146. See Christina C. Duddy, Note, *Wrongful Life: Exploring the Development of a New Tort*, 21 NEW ENG. L. REV. 635 (1985-86).

147. See Rodney A. Max, *A New Tort in Alabama: Wrongful Employment Termination in Violation of Public Policy*, 12 AM. J. TRIAL ADVOC. 39 (Summer 1988).

148. See James F. Thompson, *Spoliation of Evidence: A Troubling New Tort*, 37 U. KAN. L. REV. 563 (1989).

149. See Sue Ganske Graziano, *Computer Malpractice—A New Tort on the Horizon?*, 17 RUTGERS COMPUTER & TECH. L.J. 177 (1991).

150. See Johnny Parker, *Parental Consortium: Assessing the Contours of the New Tort in Town*, 64 MISS. L.J. 37 (1994).

Law, and the concepts to describe it, continues to change. The West digest system reflects the law and does not lead it. Moreover, the digest system has always had a conservative tone to it and has simply tried to describe the law. Even in 1939, one commentator remarked: “[C]lassification has not yet reached its full stature, significant and important as it now is.”¹⁵¹

New statutes, e.g., Americans with Disabilities Act, Family Leave Act, are bound to open new areas of litigation, but West editors will not change the key number and digest topics outline until the opinions start coming out of the courts. . . . Editors are now very careful to have general key numbers to assign when doctrine is changing.¹⁵²

VIII. CONCLUSION

The influence of the West digest system on legal researchers, and the law in general, is “purely speculative.”¹⁵³ However, by intervening in the research process and by inserting their own interpretations, i.e., using specific digest topics and key numbers to index a case in the digest, the editors have foreclosed other potential classifications of the case.¹⁵⁴ Subsequent researchers feel the mediating presence of the editor from their placing the case in the digest scheme in the first place.¹⁵⁵ “[T]he interpretive range of the West editors was bounded by the intellectual universe of the Digest. Subtle shifts and deflections in the attitudes and language of judges under pressure from new social or legal forces were treated exactly like idiosyncrasy and anomaly.”¹⁵⁶ West produced

a universe of thinkable thoughts No judge could determine a point that did not have a location in the West system; it was complete. The conservative aspects of this are obvious. New ideas and theories are classified back into existing categories. New fields like civil rights law or feminist jurisprudence are broken apart and dropped into pre-existing categories. West would add new topics, but only when absolutely compelled to do so by major changes, and only after the passage of many years. The system was premised on its stability.¹⁵⁷

151. Urban A. Lavery, *Finding the Law: Legal Classification in America—1880-1940*, 25 A.B.A. J. 383, 383 (1939).

152. Falkow, *supra* note 13, at 137.

153. Schanck, *supra* note 18, at 18 n.69.

154. See Berring, *Full-Text Databases*, *supra* note , at 36.

155. See *id.*

156. Berring, *Full-Text Databases*, *supra* note 9, at 37.

157. Berring, *Full-Text Databases*, *supra* note 9, at 21.

Only a rudimentary knowledge of the federal nature of American law is required to recognize how bizarre it is to think that one subject classification system could serve all the states and the federal system as well. To apply a uniform subject arrangement to California, Delaware, and New York is marvelously crazy, and it only grew crazier as the jurisdictions grew more complex and law played a larger role. But the digest system prospered and the only explanation can be that the power or the system sustained it.¹⁵⁸

The West digest system functions like DNA; it enables “the current system to replicate itself endlessly, easily, and painlessly.”¹⁵⁹ The West Digest System continues to play an important role as the bedrock of classification of the American legal system.

APPENDIX A
WEST DIGEST TOPICS AND NUMBER OF CASES DIGESTED

WEST TOPIC #	Number of Cases Using Specific West Digest Topics	1945-1997	
		Mont. S. Ct.	9th Cir.
1	Abandoned and Lost Property	5	2
2	Abatement and Revival	10	25
4	Abortion and Birth Control	0	5
5	Absentees	3	1
6	Abstracts of Title	3	0
7	Accession	2	0
8	Accord and Satisfaction	12	10
9	Account	7	1
10	Account, Action On	6	3

158. See Berring, *Full-Text Databases*, *supra* note 9, at 21-22.

159. Delgado & Stefansic, *supra* note 24, at 208.

11	Account Stated	10	8
11a	Accountants	2	8
12	Acknowledgment	4	3
13	Action	101	233
14	Action on the Case	0	0
15	Adjoining Landowners	1	0
15a	Administrative Law and Procedure	211	1,228
16	Admiralty	0	302
17	Adoption	54	2
18	Adulteration	0	1
19	Adultery	0	1
20	Adverse Possession	70	14
21	Affidavits	5	7
23	Agriculture	13	67
24	Aliens	10	1,100
25	Alteration of Instruments	5	1
26	Ambassadors and Consuls	1	7
27	Amicus curiae	7	13
28	Animals	60	8
29	Annuities	2	2
30	Appeal and Error	2,219	85
31	Appearance	15	0
33	Arbitration	27	169
34	Armed Services	6	753
35	Arrest	116	651
36	Arson	8	6

37	Assault and Battery	152	85
38	Assignments	18	48
40	Assistance, Writ of	2	1
41	Associations	3	41
42	Assumpsit, Action of	1	3
43	Asylums	2	4
44	Attachment	25	17
45	Attorney and Client	203	286
46	Attorney General	11	19
47	Auctions and Auctioneers	1	4
48	Audita Querela	0	3
48a	Automobiles	434	295
48b	Aviation	12	193
49	Bail	37	132
50	Bailment	25	25
51	Bankruptcy	24	1,343
52	Banks and Banking	63	200
54	Beneficial Associations	0	0
55	Bigamy	1	1
56	Bills and Notes	66	47
58	Bonds	3	1
59	Boundaries	33	13
60	Bounties	1	0
61	Breach of Marriage Promise	0	0
62	Breach of the Peace	3	1
63	Bribery	1	29
64	Bridges	3	3

65	Brokers	76	44
66	Building and Loan Associations	6	54
67	Burglary	77	19
68	Canals	0	0
69	Cancellation of Instruments	10	7
70	Carriers	25	143
71	Cemeteries	0	0
72	Census	0	1
73	Certiorari	24	1
74	Champerty and Maintenance	2	0
75	Charities	4	2
76	Chattel Mortgages	8	30
76a	Chemical Dependents	2	10
76h	Children Out-of-Wedlock	29	5
77	Citizens	0	99
78	Civil Rights	80	1,529
79	Clerks of Court	3	3
80	Clubs	1	0
81	Colleges and Universities	34	51
82	Collision	1	40
83	Commerce	29	405
83h	Commodity Futures Trading Regulation	0	24
84	Common Lands	0	0
85	Common Law	8	5
88	Compounding Offenses	0	10
89	Compromise and Settlement	31	109

89a	Condominium	4	0
90	Confusion of Goods	1	0
91	Conspiracy	17	860
92	Constitutional Law	933	3,493
92b	Consumer Credit	6	48
92h	Consumer Protection	12	41
93	Contempt	59	169
95	Contracts	404	531
96	Contribution	15	28
97	Conversion	4	2
98	Convicts	7	33
99	Copyrights and Intellectual Property	0	196
100	Coroners	0	1
101	Corporations	123	342
102	Costs	350	105
103	Counterfeiting	0	37
104	Counties	103	35
105	Court Commissioners	0	1
106	Courts (see also Topic 170b, Federal Courts)	491	939
107	Covenant, Action of	0	0
108	Covenants	36	6
108a	Credit Reporting Agencies	0	11
110	Criminal Law	1,880	8,078
111	Crops	4	1
113	Customs and Usages	10	25
114	Customs Duties	0	368

115	Damages	311	339
116	Dead Bodies	1	2
117	Death	41	91
117g	Debt, Action of	0	0
117t	Debtor and Creditor	1	12
118a	Declaratory Judgment	96	334
119	Dedication	11	3
120	Deeds	61	14
122a	Deposits and Escrows	10	7
123	Deposits in Court	1	7
124	Descent and Distribution	33	7
125	Detectives	0	1
126	Detinue	0	0
129	Disorderly Conduct	10	1
130	Disorderly House	0	3
131	District and Prosecuting Attorneys	23	72
132	District of Columbia	0	1
133	Disturbance of Public Assemblage	0	0
134	Divorce	899	24
135	Domicile	6	10
135h	Double Jeopardy	104	440
136	Dower and Curtesy	5	0
137	Drains	2	0
138	Drugs and Narcotics	135	1,122
141	Easements	117	16
142	Ejectment	1	6

143	Election of Remedies	10	20
144	Elections	27	58
145	Electricity	47	120
146	Embezzlement	7	41
148	Eminent Domain	150	275
148a	Employers' Liability	44	69
149	Entry, Writ of	0	0
150	Equity	80	92
151	Escape	13	29
152	Escheat	5	0
154	Estates in Property	4	1
156	Estoppel	169	300
157	Evidence	661	847
158	Exceptions, Bill of	13	0
159	Exchange of Property	3	3
160	Exchanges	7	42
161	Execution	32	11
162	Executors and Administrators	136	31
163	Exemptions	7	22
164	Explosives	11	29
165	Extortion and Threats	11	67
166	Extradition and Detainers	12	79
167	Factors	7	16
168	False Imprisonment	12	17
169	False Personation	0	5
170	False Pretenses	23	24
170a	Federal Civil Procedure	1	4,069

170b	Federal Courts	11	7,351
171	Fences	8	0
172	Ferries	0	3
174	Fines	3	28
175	Fires	5	8
176	Fish	9	85
177	Fixtures	8	4
178	Food	16	30
179	Forcible Entry and Detainer	7	1
180	Forfeitures	5	104
181	Forgery	10	35
183	Franchises	3	0
184	Fraud	141	326
185	Frauds, Statute of	63	69
186	Fraudulent Conveyances	15	31
187	Game	31	83
188	Gaming	23	44
189	Garnishment	1	10
190	Gas	20	16
191	Gifts	28	12
192	Good Will	6	4
193	Grand Jury	9	206
195	Guaranty	18	35
196	Guardian and Ward	25	4
197	Habeas Corpus	178	1,547
198	Hawkers and Peddlers	0	0
199	Health and Environment	30	370

200	Highways	101	38
201	Holidays	2	1
202	Homestead	3	28
203	Homicide	160	177
204	Hospitals	20	20
205	Husband and Wife	136	87
205h	Implied and Constructive Contracts	40	51
206	Improvements	7	1
207	Incest	9	0
208	Indemnity	40	109
209	Indians	81	435
210	Indictment and Information	170	755
211	Infants	344	151
212	Injunction	119	419
213	Innkeepers	8	12
216	Inspection	1	2
217	Insurance	264	653
218	Insurrection and Sedition	0	3
219	Interest	95	193
220	Internal Revenue	10	2,216
221	International Law	0	91
222	Interpleader	3	24
223	Intoxicating Liquors	58	28
224	Joint Adventures	23	31
225	Joint-Stock Companies and Business Trusts	0	0
226	Joint Tenancy	30	5

227	Judges	119	235
228	Judgment	873	657
229	Judicial Sales	1	4
230	Jury	143	541
231	Justices of the Peace	15	2
232	Kidnapping	23	28
232a	Labor Relations	130	2,135
233	Landlord and Tenant	142	83
234	Larceny	80	75
235	Levees and Flood Control	3	12
236	Lewdness	0	1
237	Libel and Slander	46	96
238	Licenses	53	42
239	Liens	12	27
240	Life Estates	5	0
241	Limitation of Actions	211	540
242	Lis Pendens	7	9
245	Logs and Logging	12	10
246	Lost Instruments	0	0
247	Lotteries	8	2
248	Malicious Mischief	11	10
249	Malicious Prosecution	23	25
250	Mandamus	164	232
251	Manufactures	0	0
252	Maritime Liens	0	29
253	Marriage	25	15
255	Master and Servant	144	275

256	Mayhem	0	0
257	Mechanics' Liens	64	18
257a	Mental Health	95	86
258a	Military Justice	0	0
259	Militia	4	10
260	Mines and Minerals	129	169
265	Monopolies	14	552
266	Mortgages	94	92
267	Motions	24	4
268	Municipal Corporations	249	180
269	Names	5	6
270	Navigable Waters	10	91
271	Ne Exeat	0	0
272	Negligence	346	261
273	Neutrality Laws	0	0
274	Newspapers	0	1
275	New Trial	196	4
276	Notaries	0	0
277	Notice	8	7
278	Novation	7	15
279	Nuisance	27	14
280	Oath	0	2
281	Obscenity	3	58
282	Obstructing Justice	12	52
283	Officers and Public Employees	70	155
284	Pardon and Parole	80	168
285	Parent and Child	217	14

286	Parliamentary Law	0	0
287	Parties	76	8
288	Partition	20	4
289	Partnership	65	54
290	Party Walls	0	0
291	Patents	0	387
292	Paupers	1	0
294	Payment	10	16
295	Penalties	4	4
296	Pensions	9	358
297	Perjury	4	80
298	Perpetuities	10	5
299	Physicians and Surgeons	60	38
300	Pilots	0	11
302	Pleading	216	26
303	Pledges	1	3
304	Poisons	10	351
305	Possessory Warrant	0	0
306	Postal Service	0	281
307	Powers	0	1
307a	Pretrial Procedure	298	7
308	Principal and Agent	60	116
309	Principal and Surety	23	38
310	Prisons	34	216
311	Private Roads	1	0
313	Process	42	18
313a	Products Liability	49	88

314	Prohibition	65	23
315	Property	13	16
316	Prostitution	3	38
316a	Public Contracts	9	8
317	Public Lands	28	149
317a	Public Utilities	34	20
318	Quieting Title	64	22
319	Quo Warranto	5	2
319h	Racketeer Influenced and Corrupt Organizations	1	87
320	Railroads	28	45
321	Rape	62	29
322	Real Actions	0	0
323	Receivers	5	30
324	Receiving Stolen Goods	13	143
325	Recognizances	0	0
326	Records	33	159
327	Reference	6	1
328	Reformation of Instruments	24	30
330	Registers of Deeds	0	0
331	Release	17	60
332	Religious Societies	3	3
333	Remainders	1	1
334	Removal of Cases	3	241
335	Replevin	6	4
336	Reports	0	1
337	Rescue	0	2

338	Reversions	1	0
339	Review	0	0
340	Rewards	0	0
341	Riot	1	0
342	Robbery	29	187
343	Sales	111	157
344	Salvage	0	8
345	Schools	141	126
346	Scire Facias	0	0
347	Seals	0	0
348	Seamen	0	205
349	Searches and Seizures	171	1,053
349a	Secured Transactions	59	94
349b	Securities Regulation	4	358
350	Seduction	0	0
351	Sequestration	0	0
352	Set-Off and Counterclaim	11	11
353	Sheriffs and Constables	22	9
354	Shipping	1	337
355	Signatures	1	0
356	Slaves	0	4
356a	Social Security and Public Welfare	76	546
357	Sodomy	12	6
358	Specific Performance	88	26
359	Spendthrifts	0	0
360	States	202	576

361	Statutes	504	988
362	Steam	0	0
363	Stipulations	40	148
365	Submission of Controversy	0	0
366	Subrogation	12	34
367	Subscriptions	0	0
368	Suicide	0	1
369	Sunday	0	0
370	Supersedeas	0	0
371	Taxation	299	126
372	Telecommunications	28	280
373	Tenancy in Common	27	13
374	Tender	6	2
375	Territories	0	69
376	Theaters and Shows	11	10
378	Time	18	18
379	Torts	67	165
380	Towage	0	9
381	Towns	4	0
382	Trade Regulation	16	443
384	Treason	0	2
385	Treaties	1	49
386	Trespass	24	17
387	Trespass to Try Title	0	0
388	Trial	546	49
389	Trover and Conversion	27	33
390	Trusts	86	101

391	Turnpikes and Toll Roads	1	1
392	Undertakings	0	0
393	United States	12	1,436
394	United States Magistrates	0	80
395	United States Marshals	0	5
396	Unlawful Assembly	0	1
396a	Urban Railroads	0	0
398	Usury	14	21
399	Vagrancy	0	3
400	Vendor and Purchaser	209	50
401	Venue	99	2
402	War and National Emergency	5	163
403	Warehousemen	5	8
404	Waste	0	2
405	Waters and Water Courses	151	97
406	Weapons	11	268
407	Weights and Measures	1	2
408	Wharves	1	13
409	Wills	137	22
410	Witnesses	295	1,116
411	Woods and Forests	3	75
413	Workers' Compensation	662	279
414	Zoning and Planning	75	76
450	Merit Systems Protection (Merit Systems Protection Board Report)	0	0

APPENDIX B
THE TWENTY DIGEST TOPICS USED MOST FREQUENTLY

<u>MONTANA</u> : SUPREME COURT	<u>FEDERAL</u> : 9TH CIRCUIT COURT OF APPEALS
1. 2,219: Appeal & Error	1. 18,078: Criminal Law
2. 1,880: Criminal Law	2. 7,351: Federal Courts
3. 933: Constitutional Law	3. 4,069: Federal Civil Procedure
4. 899: Divorce	4. 3,493: Constitutional Law
5. 873: Judgment	5. 2,216: Internal Revenue
6. 662: Workers' Compensation	6. 2,135: Labor Relations
7. 661: Evidence	7. 1,547: Habeas Corpus
8. 546: Trial	8. 1,529: Civil Rights
9. 504: Statutes	9. 1,436: United States
10. 491: Courts	10. 1,343: Bankruptcy
11. 434: Automobiles	11. 1,228: Administrative Law & Procedure
12. 404: Contracts	12. 1,122: Drugs & Narcotics
13. 350: Costs	13. 1,116: Witnesses
14. 346: Negligence	14. 1,100: Aliens
15. 344: Infants	15. 1,053: Searches & Seizures
16. 311: Damages	16. 988: Statutes
17. 299: Taxation	17. 939: Courts
18. 298: Pretrial Procedure	18. 860: Conspiracy
19. 295: Witnesses	19. 847: Evidence
20. 264: Insurance	20. 753: Armed Services

