

**FEDERAL PRACTICE AND PROCEDURE**  
(aka “Wright & Miller,” “The Treatise,” or “FPP”)

1. Introducing

- a. One of the largest, least costly, and most cited treatises in legal publishing.
- b. What you’ll learn
  - A. Who are the authors and why do we care?
  - B. How is the print set organized.
  - C. Why does the lawyer (and all federal judges) need the Treatise?
  - D. Who is our “target” market? Competition?
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2. The authors of *Wright & Miller*

If “content is king” then this Treatise is truly, as we have characterized it for many years, “the jewel in the crown” of our U.S. Commentary catalog.

“It’s the authors, stupid,” one might rightly hear if asking what sets “Wright & Miller” apart as an analytical resource. For over 40 years, until his sudden death in 2000, Charles Alan Wright devoted himself to the writing, revision and senior-author oversight of the treatise that bears his name. Late in his life Wright and the Treatise were put into perspective by Ruth Bader Ginsburg, Associate Justice of the U.S. Supreme Court: “Professor Wright’s career is crowned with signal achievements, but *Federal Practice and Procedure* merits placement at the top of the list. That monumental work is Professor Wright’s creation; he, and the excellent co-authors he has attracted to compose and maintain the over fifty-volume treatise, daily affect the substance and style of federal judging and judgments across the country. *Federal Practice and Procedure* is by far the most cited treatise in the United States Reports; it has been called the procedural Bible for federal judges and those who practice in our federal courts.”

Arthur Miller (the other half of the shorthand identifier, “Wright & Miller”) has co-authored the Treatise for over 50 years, and has been joined over time by over seventeen expert co-authors. In a 1996 letter to his West editor remarking on the impending revision of the competitive Moore’s work, Charlie Wright wrote: “People turn to our books and they know that they will find not merely answers to their questions, but thoughtful answers reflecting the best views of the leading scholars in the field.” Unlike with the competition, there are no ghost writers or contract writers at work behind the FPP scenes. That is why we invite subscribers to acquaint themselves with an ABOUT THE AUTHORS page at the front of each volume’s annual pocket part.

Wright repeatedly reminded his co-authors that, in their writing, they should constantly have before them “the lawyer with a large problem, a small library, and time as her major asset.” That is their abiding goal.

### 3. The Treatise in Print

81 bound volumes, updated by annual pocket parts (and annual Criminal, Civil, Jurisdiction & Related Matters, and Judicial Review of Administrative Action Appendices pamphlets, together with a comprehensive full-set Tables & Index pamphlet). Monthly (12 per year) cumulative “Supplemental Service” pamphlets are also a part of the Treatise subscription.

### 4. Contents/Organization

Wright & Miller is conceptually organized into four large blocks, analyzing: the Federal Rules of Criminal Procedure; the Federal Rules of Civil Procedure; Jurisdiction and Related Matters; the Federal Rules of Evidence; and Judicial Review of Administrative Action.

Within the Treatise also is the Federal Practice Deskbook (denominated Volume 20), which condenses the non-criminal elements of the Treatise into a one-volume-portable-quick-answer package for one’s office or briefcase. Each of the Deskbook’s sections refers the reader to specific sections within the larger work for more detailed analysis.

The Treatise analysis is segmented for ready and fine-tuned reference into over 8000 individual topical sections. Each section carefully maintains the same subject matter between editions, so that the user encountering a reference in a 1972 federal opinion to Section 1689 of the Treatise can confidently find on his shelf (two editions later) in 2004 the same coverage in the same section. Because a relatively small cadre of a dozen authors tend to this large work, revising on average 3-5 volumes per year, a handful of volumes are still in their first edition, while some are in the Second, Third, or Fourth. Volumes are revised as their content demands it.

An Index of over 1000 double-column pages ensures quick access to any topic, by reference to section number.

Three large pamphlets, updated and delivered each year with the pocket parts comprise, respectively, the CRIMINAL Appendices/Tables/Index, the CIVIL Appendices, the JURISDICTION & RELATED MATTERS Appendices and the JUDICIAL REVIEW OF ADMINISTRATIVE ACTION Appendices. These Appendices contain Rules, Advisory Committee Notes, federal statutes, and other material that is ancillary to the authored text and is susceptible to annual changes.

A monthly, cumulative, SUPPLEMENTAL SERVICE pamphlet, a seamless part of the subscription, timely alerts subscribers to new case

law, legislation, Rule amendments, journal articles and other substantive developments affecting the subject matter of the Treatise.

## 5. Benefits/Use

Why do attorneys (and almost all federal judges) use FP&P?

*“Federal Practice and Procedure is cited so often in part because it deals with procedure, and every litigated case potentially raises procedural issues. But the work is also cited so often because its persuasive authority is accepted, and because its explanations of complicated matters are so lucid.”* [32 TX Int’l L.J. 373 (1997)]

Courts give great weight to the analysis contained in FPP (to date, cited in published judicial opinion well over 80,000 times; only one other authored resource, the Restatements [which we also sell, yes!] has been cited more often by the courts).

The benefits of FP&P can be reduced to several two-word phrases:

MORE CURRENT (Annual pocket parts to each volume are further updated by the monthly Supplemental Service)

MOST CITED. (Hands down the most turned-to analysis of federal procedure on any shelf. When judges speak [or cite], attorneys listen.)

How do attorneys use it?

By reference to a topical section or series of related sections on very specifically-identified issues.

Most often employed in the library, in the law office, or in judicial chambers, where there is room to shelve a full set, but any question will usually be answered by consulting a single volume, having been directed there by reference to the index.

A “cookbook” on the Rules FPP is not (if you want a quick and reliable guide to the procedural kitchen, turn to the reputable *Federal Civil Rules Handbook*); you will find the quick answer in FPP, too, but the gnawing and difficult procedural question is what brings most attorneys (and particularly judges, who are not asked to wrestle in written opinion with the “everyday” questions) to the Treatise.

The seven volumes in FP&P’s Criminal Rules unit represent the most thorough analysis of practice under the Criminal Rules in the

Company's catalog (and the most thorough in legal publishing).  
One can subscribe not only to the full set Wright & Miller, but also to only the Criminal volumes, if one's practice suggests that ... or to an "excluding Criminal" subscription subset.

#### Features/Benefits:

*Every paragraph of text written by a named, expert author (who brings a consistency of background, thought and judgment to every section).*

*Organized by familiar outline of the Federal Rules and litigation issues.*

*Topics detailed to a level reflected in approx 8000 analytical sections.*

*More case references than any other analytical title in the Company.*

*Comprehensive, annually revised Index of over 1000 double-column pages ensures pinpoint access to any topic, by reference to section number.*

*Tables of all Statutes, Regulations and Court Rules cited.*

*Monthly cumulative Supplemental Service updates between annual pocket parts (forget the burdensome, expensive upkeep of a looseleaf service!).*

#### Target Market

Remember ... "the lawyer with a large problem, a small library, and time as her major asset."

Judges

Attorneys who practice before the federal courts

Larger law libraries

This is the hub around which any law library for one who gets into federal court should build its collection. Its pricing allows even the smaller practitioner to afford purchase and maintenance. Demographics show consistent subscription levels in all market segments.

#### Competition

For decades the only recognized competition for Wright & Miller has been Moore's Federal Practice, published by Matthew Bender. The legendary Professor Moore died of great age a decade before the Bender treatise that still bears his name was revised entirely, in 1997. By that time, Moore's work had fallen into a questionable state; what Bender had been turning out under the Moore's name had become primarily an in-house product rather than the work of leading scholars. The 1997 revision, in fact, was built largely upon

ghost-written first chapter drafts that were ultimately reviewed and variously revised or adopted by the authors whose names are now attached to those chapters. Annual maintenance of Moore's 31 volumes is shared by unnamed Bender contractors and named authors. Nevertheless, the Moore's title continues to be widely cited by the courts, many of whose judges came to appreciate the work when it was more vigorous.

Apart from the uneven quality of writing that comes from application of a legion of ghost writers and dozens of named authors, Moore's work is burdened by its looseleaf format, the bane of librarians. And it is competitively brought to its knees by pricing (for both initial purchase and annual maintenance) that is literally several times that of our Wright & Miller, in either print or CD-ROM.

Svengalis' annual LEGAL INFORMATION BUYER'S GUIDE & REFERENCE MANUAL, considered to be the consumer's Bible for many librarians, holds this advice regarding Moore's: "If the hefty purchase price is more than you care to spend, the set should be available on the used book market for [immensely less]. ... Since cost of supplementation is also very high, you may choose to forego purchasing current supplements and buy new sets at periodic intervals. ... If you appreciate the historical coverage of Moore's, you can obtain your current information from a competitive product, such as Federal Practice and Procedure, which is far less costly to maintain." Touche! So ... if one wants federal procedural coverage, Moore's will offer it, at three times the cost and half of the volume count of Wright & Miller.

Frequently asked questions???

What if a customer asks for a checklist for this large set?

In the front matter of the monthly Supplemental Service (immediately following the Table of Contents) we display a chart delineating just "What Your Library Should Contain." That checklist is updated whenever new volumes or supplements are produced, so it is always accurate as of that month. Every subscriber, then, should already have this checklist immediately at hand.

How does the Supplemental Service work?

The Supplemental Service commences its cumulative life each year with publication of the May edition, immediately following the April publication of annual Treatise pocket parts. In order to present an uninterrupted coverage between the pocket parts and the Supplemental Service, the opening issue of the latter each year also contains material relating to the previous three months of update. About 20 new pages of updating material are added each month to the Supplemental Service. The new material is highlighted in each month's issue by italicized text, so at a glance the user can tell what is new. The contents are organized by Treatise section number. The Supplemental Service also is added to Westlaw, invariably some days before print publication.

What is the Federal Practice Deskbook?

The Deskbook is an integral volume within the Treatise (Volume 20) and, as such, can act as a quick-answer finding tool for the much more extensive analysis of an issue that will be found in Wright & Miller at large (each section of the Deskbook identifies the sections of the full Treatise that deal in much greater length with the matter). More importantly, the Deskbook is designed to be kept handily at an attorney's fingertips (ideally, of course, each litigator's office within a firm would be supplied with one), while the full-blown Treatise would remain in the central library. "Wright & Miller in one volume" is the idea. One reviewer described the Deskbook as "... the best one-volume treatment on the law and practice of the federal courts that exists. Anyone who litigates in the federal courts regularly should have it close by ... a work of great distinction..."

What do users have to say of Wright & Miller?

Other than continuing to quietly cite it in thousands of briefs and judicial opinions each year, some have observed as follows:

"Federal Practice and Procedure continues to be the definitive, scholarly work on the practice of law in our system of federal courts." (Reagan Wm Simpson, of Fulbright & Jaworski)

"Wright & Miller is the first place I turn to answer questions about federal practice – from the most basic to the most complicated." (Harvey J. Safferstein, of Chadbourne & Parke)

"The best comprehensive set in the procedural field. It is a must for teachers, judges, practitioners and students." (Professor Minnette Massey, of the University of Miami School of Law)

"Wright & Miller *Federal Practice and Procedure* is the alpha and omega of federal procedure, and it definitely covers everything in between. It is the 'answer book' for federal practice." (Kenneth W. Starr, former special prosecutor)