

Lexis And Westlaw: Recent Developments

BY ROGER T. MAMWEARING



The Red Sox and Yankees, the Hatfields and McCoy's, Godzilla versus Megalon: great rivalries all, but mere child's play compared to the epic struggle between Lexis/Nexis (www.lexis.com) and Westlaw (www.westlaw.com) for online legal research supremacy.

Fortunately, unlike the others, the intense Lexis/Westlaw competition benefits attorneys and others who do legal research, beyond just sheer entertainment.

In 2003, these providers of fee-based computer assisted legal research introduced important new services and enhanced existing ones. Each added features that make searching easier and more powerful. Both novice and expert researchers can take advantage of these improvements.

Caselaw

Both Westlaw and Lexis have upgraded their caselaw searching capabilities.

Westlaw's "Results Plus" automatically suggests additional potentially relevant sources. Westlaw presents caselaw search results in a two frame split screen. The primary frame shows the list of citations retrieved by the search, while the smaller, Results Plus frame lists American Law Reports ("ALR") annotations, American Jurisprudence 2d ("Am. Jur.") titles and additional West topics and Key Numbers.

In doing so, Results Plus suggests valuable additional avenues of investigation that the researcher may not have thought of.

For example, when I searched federal databases for cases discussing the standard for obtaining punitive damages in a civil rights case, ResultsPlus was helpful. Using the terms "civil rights" and "punitive damages," Results Plus automatically provided links to three ALR annotations, two of which were relevant, two Am. Jur. titles, one of which was on point, and two relevant West Key Numbers.

Had I clicked on one of the Key Number references, Westlaw would have provided a "Custom Digest" showing all headnotes digested under that Key Number. Although ResultsPlus suggestions will not always be relevant, the identification of even a few additional sources can be very useful.

Lexis has also been busy, adding "Retrieve All Headnotes" and "More Like This Headnote" features in August 2003. Both the West National Reporter System, used by Westlaw, and the Lexis "Search Advisor" divide the law into discreet topics and then subdivide those topics into increasingly more specific issues.

In both systems, legal points are extracted from cases and incorporated into headnotes that are grouped in appropriate issue categories. Each Lexis headnote has its own Search Advisor "path," showing its general legal topic and the issues and sub-issues under which that headnote is categorized.

If a researcher viewing a case on Lexis determines that a particular Lexis headnote is on point, he can locate other headnotes that discuss the same issues by using the Retrieve All Headnotes function. When the researcher clicks the "All" icon, which appears at the end of each headnote's Search Advisor path, Lexis will provide a list of all other headnotes within the chosen jurisdiction that have been digested under the same issue (i.e., the same Search Advisor path).

In addition, the Retrieve All Headnotes function will retrieve certain "best paragraphs" from the text of cases that are relevant to the issue but have no headnote assigned to that issue. In this respect, Lexis' Retrieve All Headnotes goes beyond what Westlaw provides. While Westlaw will retrieve all headnotes with the same Key Number, its custom digest function does not retrieve text not included in headnotes.

A researcher using Lexis can choose to have the Retrieve All Headnotes results list organized to display the most frequently cit-

Technology

ed cases first. This feature is similar to Westlaw's "most cited cases" option. In addition, Lexis provides the option to display up to 15 cases that discuss the legal topic in the greatest detail.

A good researcher will approach a legal issue from more than one angle, using multiple search methods in the expectation that relevant cases missed by one search may be snared by a different type of search. Retrieve All Headnotes and More Like This Headnote are a useful combination because they enable a researcher to use different approaches to a single issue.

While the Retrieve All Headnotes function retrieves primarily other headnotes in the

and opposing counsel involved in his case. Knowing the approximate value of a case is also very useful, not least for purposes of settlement negotiations or alternative dispute resolution. In 2003, both Westlaw and Lexis made such information easier to obtain.

Westlaw introduced "Profiler" and "Quick Valuation." Using Profiler, an attorney can enter the name of a judge, expert or attorney and obtain information about articles they have written and cases in which they have been involved.

Profiler can also be activated by clicking on the name of a judge, attorney or expert in the display of any case on Westlaw. Profiler offers an "Alert" feature through which the

made aware if there are in-house briefs or memoranda addressing the issue. Of course, the attorney can elect to search only in-house.

In addition, Total Search provides cross-referencing from in-house work product to Lexis documents on the same subject and vice versa. When an attorney examines a case on Lexis, Total Search presents a list of firm documents citing that case. Likewise, when the attorney views a firm document, Total Search provides links to the full text on Lexis of cases and statutes cited that document. It even provides links to other in-house documents, which cite the same cases as are cited by the internal document being viewed.

Total Search also adds value to the firm's work product by incorporating Shepard's citation signal icons into firm documents. Using those signals, an attorney can determine whether the cases cited in a firm brief or memorandum remains good law and can link directly to Shepard's to update those cases. West's KM offers a similar integration of its KeyCite citator.

Other Improvements

Other worthwhile changes during 2003 include the efforts of both Westlaw and Lexis to provide users with convenient, centralized access to groups of sources related to particular areas of law or types of tasks.

Westlaw introduced a number of new "pages," including its Litigation and Investigations pages. The Litigation Page brings together, in a single location, access to caselaw, statutes, briefs, verdict and settlement reporters, jury instructions, dockets, court rules and other materials. In addition, the Profiler and Quick Valuation functions previously discussed reside on the Litigation Page.

The Investigations Page gives access to tools for locating people, verifying their licenses or credentials, investigating companies and searching public records, among other things.

Westlaw has also added special pages for news and business, company information, industry information, and both general and global news.

Lexis introduced special "Task Pages" for federal litigation, tax and patent law. Additional Task Pages will gradually replace the "Practice Area" pages that Lexis already offered. Lexis also added new pages geared to the needs of corporate counsel, focusing on such tasks as due diligence and regulatory compliance.

Also worth noting are:

(1) the new ability to save a search query (though not its results) on Lexis for up to 30 days. Note, however, that rerunning a search within that time period is still charged as a new search;

(2) the new availability on Lexis of a searchable table of contents ("TOC") for statutes, treatises and other sources that use TOCs. The results of a TOC search show the search terms in context; and

(3) the increase in the Lexis limit on documents that may be retrieved from 1,000 to 3,000.

Coming Soon

Westlaw plans to roll out "StatutesPlus" in February. It will offer new ways to locate statutes, including a searchable popular name table. A feature likely to be particularly useful is the inclusion of an option to view prior and subsequent versions of any statute without having to run a search in a different database.

In addition, StatutesPlus will enable the researcher viewing a particular section to open, with one click, the entire statutory chapter or sub-chapter in which the viewed section is located.

The results page for any statutory search will be reorganized to provide access to both a citations list showing all documents retrieved by the search and a list of links for the particular statute being viewed. Those links will be separated into categories such as case annotations, legislative history and analysis of the statute by ALR and treatises.

The ongoing competition benefits us all. The rivalry between Westlaw and Lexis spurred many useful innovations in 2003, enabling attorneys to offer their clients quality legal research.

Luckily for users of Westlaw and Lexis, there is no reason to expect that the competition will be any less intense in 2004. We can look forward to further enhancements making legal research easier and more powerful. RMW

A good litigator wants to know as much as possible about the judge, expert witnesses and opposing counsel involved in his case. Knowing the approximate value of a case is also very useful. In 2003, both Westlaw and Lexis made such information easier to obtain.

same Lexis Search Advisor category (having the same path) as the headnote already located, the More Like This Headnote function ignores Search Advisor categories. It may not retrieve all headnotes from the same category as the headnote already located, but will retrieve relevant headnotes and "best paragraphs" from other cases, regardless of how they are digested by Search Advisor.

Lexis also offers a More Like Selected Text function through which a researcher can locate cases addressing the same issue as any highlighted block of text.

Statutes

Westlaw has improved the functionality statute searches. A search of a Westlaw statutory database will generate a list of citations to the statutes retrieved. Until recently, only the citations appeared, giving limited information about the statutes' relevance to the issue being researched.

In 2003, however, Westlaw began offering an enhanced cite list for statutory searches, showing search terms with surrounding text. By looking at the search terms in context, the researcher can now more efficiently determine the relevance of the retrieved documents.

News & Business

Both Lexis and Westlaw added useful news and business features in 2003. Lexis introduced "Industry Dossier," which generates reports providing overviews of more than 1,000 United States industries. The reports may include information about industry economic and sales reports, pending legislation, industry news and merger activity. Researchers can use key words or Standard Industrial Codes.

Westlaw improved its news and business features. Searching news sources, especially for relatively common words, is difficult because of the high number of irrelevant documents likely to be retrieved. To help users target only relevant news and business documents, Westlaw now enables the researcher to limit a search by requiring either that a search term appear in the document a minimum number of times, or by limiting the search to only text appearing in the title or lead paragraph of a news story. Either restriction is likely to result in searches that retrieve fewer but more relevant documents.

In addition, as it did for statutory searches, Westlaw now provides an enhanced, terms in context citations list for news and business searches.

Litigation Support

A good litigator wants to know as much as possible about the judge, expert witnesses

researcher can stay current by ordering periodic updates of the Profiler search results.

Westlaw's Quick Valuation feature enables a researcher to search jury verdict and settlement reporters for information about the potential value of a particular type of legal claim.

In July 2003, Lexis introduced its "CourtLink Strategic Profiles" feature. A litigant can obtain information about the litigation history of a company, an attorney's experience in a particular type of case, or litigation trends affecting a type of claim. The information is generated by a search of CourtLink, the Lexis docket service, and covers both cases that went to trial and those that settled. CourtLink generates a report that includes graphs and charts.

Citators

Lexis polished its Shepard's citator last year, improving navigation and ease of use. New features include a summary of citations retrieved, categorized by type of treatment (e.g., positive, cautionary, neutral) with information about the number of citations falling into each category.

In addition, Shepard's now offers a navigation bar that facilitates movement within the Shepard's citation list, and a "Shepard's Trail," which keeps a record of each Shepard's search and makes it easier to move between the unrestricted Shepard's citation list and citation lists generated by restricting Shepard's results (e.g., limiting results to cases following the primary case).

Knowledge Management

Any law firm's most important asset is the knowledge and expertise represented by its accumulated work product. Maximizing the efficiency with which that institutional knowledge is utilized is the goal of legal research knowledge management.

Lexis introduced its "Total Search" product in July 2003. West had released its knowledge management product, called "KM," in 2002. The two products are, in fact, very similar.

While most law firms employ some type of searchable document management system, Lexis Total Search, like West KM, takes knowledge management a step further. It allows an attorney to search both Lexis databases and the law firm's own documents simultaneously. The researcher will obtain two sets of results, one from Lexis and one listing in-house documents, with the in-house documents distinguished from Lexis documents by appropriate icons.

Thus, Total Search ensures that an attorney using Lexis for legal questions will be

Roger T. Mamwearing is an attorney at Barron & Stadfeld in Boston and senior research for the Barron & Stadfeld Legal Research and Writing Service, offering legal research and writing to attorneys in private and corporate practice throughout the United States.