1992

Turning Online Time into Quality Time: Searching Ohio Case Law on LEXIS and WESTLAW

Randy J. Diamond

Turning Online Time into ''Quality Time'': Searching Ohio Case Law on LEXIS and WESTLAW

Rand J. Diamond

ABSTRACT. This article discusses some of the lesser known complexities of LEXIS and WESTLAW and the necessity for evaluating these systems critically. Sample searches highlight the major differences between WESTLAW's and LEXIS's search protocols. Comparable features of each system are examined to show how users can improve the quality of their search results and to warn of unintended consequences when users misapply them.

Strategies for formulating searches that retrieve relevant cases and prevent the exclusion of potentially relevant cases are considered, along with the economics of online searching.

Although the searches presented are limited to Ohio case law, they are adaptable for exploring the nuances of online searching in other state and federal jurisdictions.

INTRODUCTION

WESTLAW and LEXIS users need to understand the strengths and weaknesses of each system in researching Ohio case law. As full-text online retrieval systems, they offer powerful document delivery capabili-

Rand J. Diamond is Public Services Librarian, Cleveland Law Library Association, 404 Cuyahoga County Courthouse, 1 Lakeside Avenue, Cleveland, OH 44113-1023. He received his BA from Bowdoin College, JD from Fordham University School of Law, and MLS from Kent State University.

77

ties. As information systems, they are limited by the searching skills of individual users.

Although this article focuses exclusively on cases from Ohio state courts, its analysis is adaptable to researching other state and federal court cases. Since most Ohio courts of appeals opinions are unpublished, there is a dearth of reported case law at the intermediate appellate level.[1] Coupled with the fact that Ohio allows attorneys to cite unreported appellate decisions, their availability on LEXIS and WESTLAW virtually mandates online research for Ohio cases.[2] Unless otherwise specified, searches in this study were performed in WESTLAW's Ohio Case Law database (OH-CS) and in LEXIS's Ohio COURTS file.[3] Except where noted, all searches were conducted in May 1991.

SEARCH PROTOCOLS

WESTLAW's and LEXIS's search commands share the lack of standardization found in other rival online systems. The problem lies not only in the difference between the two systems' search commands, but also in their similarity. Many commands are just enough alike to tantalize users into thinking they know how to construct searches that will work in either system. A search for "slip and fall" cases involving injuries suffered on ice or snow laden surfaces illustrates an inexperienced searcher's dilemma. The best strategy for retrieving slip and fall cases uses a numerical connector, e.g., SLIP! w/5 (FALL *** or FELL). An overly restrictive search for the phrase "slip and fall" shows how minor protocol omissions skew search results.

WESTLAW: "SLIP AND FALL" 243 cases
LEXIS: SLIP AND FALL 5000+ cases

Phrase searches in WESTLAW must be enclosed in quotation marks. The quotation marks treat "AND" (a non-searchable WESTLAW "stop word") as a placeholder retrieving cases in which slip precedes fall by two words. Without quotation marks, "AND" would operate as a connector retrieving many irrelevant opinions.

LEXIS does not use quotation marks for phrase searching. "AND" is treated as a non-searchable "noise word." In the LEXIS search, "AND" operates as a connector. Because thousands of unreported Ohio appellate decisions in LEXIS contain the phrase "slip opinion," this search retrieves irrelevant cases in which the word "fall" happens to appear in the same case as "slip opinion." Compare these search results with:

WESTLAW: SLIP FALL 15,000+ cases
LEXIS: SLIP FALL 260 cases

WESTLAW reads spaces between words as an "OR" connector. Here
it searches for slip or fall, retrieving mostly irrelevant cases. LEXIS
searches consecutive words separated by a space as a phrase. Although
LEXIS does not search noise words, the system retrieves them when they
occur between consecutive searchable words. The LEXIS search above
retrieves cases containing "slip fall" or any occurrence of noise words
sandwiched between slip and fall. Accordingly, the correct searches for
the phrase "slip and fall" would be "SLIP AND FALL" in WESTLAW,
but SLIP FALL in LEXIS.

WESTLAW's "Edit Query" and LEXIS's "Modification" commands
narrow the results to slip and fall cases involving ice or snow.

WESTLAW: "SLIP AND FALL" & (IC* SNOW!)
LEXIS: AND (IC* OR SNOW!)

Additional editing or modification finds approximately 30 cases in each
system.

WESTLAW: "SLIP AND FALL" & (IC* SNOW!)
& (SURFACE PAVEMENT)
LEXIS: AND (SURFACE OR PAVEMENT)

Relevant cases not containing the phrase "slip and fall" were missed
in these searches. The following WESTLAW search excludes "slip" but
still finds 47 additional cases.

FALL! FELL /P IC* SNOW! /P PAVEMENT SURFACE % SLIP

Inclusion of alternatives to ice or snow (frost, freeze, frozen, slick, etc.)
and to surface or pavement (road, sidewalk, bridge, etc.) finds still more
cases.

FULL-TEXT SEARCHING

The prospect of full-text searching generates high expectations in new
searchers. CALR's potential time and cost savings are real, but the obsta-
cles to accessing relevant opinions must also be factored into the equation.
The searcher has to anticipate judges' choices of words, style, and organi-

zation. Search queries must be specific to retrieve cases that meet the searcher's legal and factual information needs, yet flexible to account for the vagaries of language and usage.

When searching opinion text only, the system offers no conceptual support; it retrieves each case containing the requested search terms, regardless of whether the court squarely addresses the issue the search terms represent or buries it meaninglessly in a dissenting judge's footnote. The computer does not recognize multiple meanings or uses of the same word. For example, unaided by system features or editorial enhancements, a full-text search is incapable of distinguishing an opinion which assesses the jurisdictional ramifications of a corporation's permanent "address" from an opinion which states "the court will now 'address' defendant corporations objection to jurisdiction."[4]

System features can improve the quality of full-text searching.

WESTLAW: "BREACH OF CONTRACT"
/S "PUN*TIVE DAMAGE"

This search finds more than 120 cases. WESTLAW, unlike LEXIS, allows you to rank search results so that cases containing the greatest number of search terms are displayed first. Under this ranking, *Digital & Analog Design Corporation v. North Supply Company*, 44 Ohio St.3rd 36, 540 N.E.2d 1358 (1989), appears as the first case in the citation list. *Digital* contains two headnotes under the topic "Damages" and key number 89(2) "Breach of Contract" and analyzes in detail why punitive damages are not recoverable in Ohio for breach of contract. The last ranked case is *First Federal S & L v. Cheton & Rabe*, 57 Ohio App.3rd 137, 567 N.E.2d 298 (Summit 1989). Although *First Federal* necessarily contains "breach of contract" in the same sentence as "punitive damages" (making it indistinguishable from *Digital* for purposes of a full-text search), the punitive damages claim in *First Federal* relates to a tort theory of recovery ("breach of duty of good faith") rather than the breach of contract claim. Ranking cases by occurrences of search terms increases the likelihood of viewing the most relevant cases first and removes some of the sting of WESTLAW's high online browsing costs.

The next example applies a LEXIS system feature to improve full-text searching. An attorney trying a bad faith insurance case wants to draft jury instructions that will withstand appellate review. A LEXIS search for

DAMAGE W/15 INSTRUCT! W/5 JURY

finds more than 500 cases. Despite the following modification,

W/5 (ERR! OR IMPROPER! OR INCORRECT!
OR CORRECT! OR PROPER! OR REFUS!)

there are still more than 200 cases.

LEXIS's traditional per search usage charges are more conducive to browsing results online than WESTLAW's flat per minute rate.[5] Neither reviewing 200-plus citations online using KWIC, however, nor reviewing each of these cases in books is as economical or efficient as using LEXIS's FOCUS command. FOCUS performs searches within the existing search results at no extra charge. Separate cite lists identifying those cases containing FOCUS terms within the search results index the results. Examples of separately executed FOCUS commands indexing the original search results by type of claim or conduct include:

1. (GROSS! OR WANTON! OR WILLFUL! OR INTENT!) W/25 (PUN*TIVE OR EXEMPLARY)
2. BAD FAITH W/25 INSTRUCT!
3. FRAUD! W/25 INSTRUCT!
4. (LOST PROFIT AND SPECULAT!) W/25 INSTRUCT!
5. (EMOTIONAL! OR MENTAL!) W/25 INSTRUCT! W/5 REFUS!

Additional searches or modifications would have been necessary if the original search had attempted but failed to account for every type of claim or conduct relevant to jury instruction preparation in a bad faith insurance case. Because LEXIS is not as economical as WESTLAW when searching multiple issues, a single broad LEXIS search refined with several FOCUS searches avoids new search charges. Additionally, flawed FOCUS searches are easier to correct than modification errors. When modifying through several search levels, misapplied connectors and parentheses mask distorted search results.

SEARCHING SELECTED PORTIONS OF DOCUMENTS

WESTLAW fields and LEXIS segments can be searched as alternatives to, or in conjunction with, full text searching.

(A) Names of Parties

A LEXIS NAME segment search or a WESTLAW TITLE field search retrieves cases where only the parties' names are known.

LEXIS: NAME(STATE FARM)
WESTLAW: TITLE("STATE FARM")

If this search had been run without the appropriate segment or field restrictions, it would have searched the full-text, retrieving not only cases in which State Farm Insurance Company is a party, but also cases in which the courts cite previous decisions involving State Farm.

(B) Court

Search LEXIS's COURT segment to retrieve cases from one or any combination of the twelve Ohio courts of appeals (Ohio's intermediate courts, between the Ohio Supreme Court and the common pleas trial courts). The following search retrieves Tenth District (Franklin County) trade secret cases.

COURT(TEN OR TENTH OR FRANKLIN) AND TRADE SECRET

More than one LEXIS segment or WESTLAW field can be combined in a search. The following search finds Eighth District (Cuyahoga County) Court of Appeals decisions in which State Farm is a party.

LEXIS: NAME(STATE FARM) AND COURT
(EIGHT OR EIGHTH OR CUYAHOGA)

In LEXIS (and WESTLAW), "eight" and "8" are equivalent, as are "eighth" and "8th," but "eight" and "eighth" are not equivalents.

LEXIS: COURT(EIGHTH)

This search finds over 14,000 Eighth District cases. It does not include, however, cases that misidentify the court as the "Eight District."

LEXIS: COURT(EIGHT)

This second search locates 39 cases. Searching for Cuyahoga appellate cases by COURT(EIGHTH) will not find these cases. Searches to see if Pacific Chemical Products Company has been a litigant in the Eighth District illustrate this problem.

1. NAME(PACIFIC CHEMICAL) AND COURT(EIGHTH)
2. NAME(PACIFIC CHEMICAL) AND COURT(EIGHT)
3. NAME(PACIFIC CHEMICAL) AND COURT(CUYAHOGA)

The first search finds no cases. The second search finds *Pacific Chemical Products Co. v. Teletronics Services*, 29 Ohio App.3d 45, 502 N.E.2d 669 (Cuyahoga 1985). This case is one of the 39 cases from Cuyahoga County that is incorrectly styled "Eight Appellate District" rather than "Eighth Appellate District."[5a] The third search finds this case because both county names and appellate district numbers are included in LEXIS's COURT segment.

To restrict searches in LEXIS to Ohio Supreme Court decisions since 1940, search the OHIO file in the Ohio library. The Ohio COURTS file contains both Supreme Court and courts of appeals opinions since 1940. If searching only for courts of appeals opinions, search the APP file in the Ohio Library. For cases prior to 1940, search OSUP or OAPP.

WESTLAW's OH-CS database and COURT field differ from their LEXIS counterparts. OH-CS combines courts of appeals and Supreme Court opinions (similar to LEXIS's Ohio CASES, which combines all Ohio state court files). Unlike LEXIS, WESTLAW does not provide separate databases segregating the different court levels. WESTLAW's COURT field distinguishes between court levels, but only recently has begun to distinguish between districts within the courts of appeals.

COURT(HIGH) & ABORTION

This search finds Ohio Supreme Court abortion decisions. To retrieve only courts of appeals decisions, search

COURT(OHIO.APP) AND ABORTION

To limit searches to a particular court of appeals (e.g., Cuyahoga County) on WESTLAW, run the following full-text search:

"COURT OF APPEAL OF OHIO CUYAHOGA"

Beginning in 1992, you can search by appellate district number in WESTLAW's OH-CS Court field as follows:

COURT ("8 DIST")

This search, performed in May 1992, retrieved Cuyahoga County unreported appellate decisions since September 1991, and reported decisions

since April 1991. County names, e.g., "Cuyahoga," however, are not searchable in WESTLAW's Court field.

(C) WESTLAW Editorial Enhancements

West adds editorial enhancements to the full-text of opinions to be reported. The additional material is contained in four fields, described below, which are automatically searched with a full-text search.[6]

>   SYNOPSIS–A summary of a case
>   HEADNOTE–Abstracts of each point of law in a case
>   TOPIC–Index and classification information
>   DIGEST–Combination of Topic and Headnote fields

Editorial enhancements create additional entry points to opinions when they contain terms that do not appear in the opinion. These enhancements reflect an editor's judgment as to what a case is about and how it fits into West's topical and key number classification scheme.

West does not add the editorial features discussed in this section to unreported opinions included in WESTLAW. Since most Ohio courts of appeals decisions are not reported, a WESTLAW search limited to key number, digest, topic, etc., excludes the vast majority of appellate level cases. Rule 2(G) of the Ohio Supreme Court Rules for the Reporting of Opinions specifically allows the citation of "unofficially published opinions and unpublished opinions."[7]

Although WESTLAW's and LEXIS's coverage of unreported Ohio appellate opinions are similar from 1981 to the present, LEXIS includes more than 22,000 unreported Ohio appellate opinions prior to 1981 that are not available on WESTLAW.[8] Statistics from recent years highlight the disparity between the number of reported and unreported appellate opinions. For 1988, WESTLAW contains 5,387 Ohio courts of appeals decisions (LEXIS 5,334), but only 575 of these had been reported as of May 1991.[9] For 1990, WESTLAW has 5,651 appellate cases (LEXIS 5,700), but only 20 of these had been reported as of May 1991.[9a] When researching issues, a full-text search is the only way to access this substantial body of material, as well as slip opinions that will eventually be reported in West's print volumes.[10]

Compare the results of a full-text search and a search limited to WESTLAW's editorial material. The issue is recovery of damages for emotional distress in Ohio.[11] The following WESTLAW full-text search retrieves more than 550 cases, over 220 of which are reported.

DAMAGE /P MENTAL! EMOTION! /S SUFFER! DISTRESS!
ANGUISH! ANXI!

Many of the cases refer to the emotional distress concept only within a
laundry list of allegations in the complaint. A full-text search alone does
not distinguish cases in which emotional distress is a significant issue
from cases in which it occurs only in the procedural narrative.

Searching key numbers increases precision.

(115K149 115K178 115K192 115K208(6) 115K216(10)) /P MENTAL!
EMOTION! /S SUFFER! DISTRESS! ANGUISH! ANXI!

This search looks for the requested keywords in all key numbers titled
"Mental Suffering" under the topic "Damages." It finds 19 cases, but
misses relevant opinions indexed under key numbers 49.10, "Nature of
Action or Wrongful Act in General," and 50.10, "Intentional Reckless or
Outrageous Conduct." Searching the topic and keywords without specify-
ing a key number eliminates guessing which key numbers will provide the
most relevant information.

TO(115 DAMAGES) /P MENTAL! EMOTION! /S SUFFER! DISTRESS!
ANGUISH! ANXI!

By searching for occurrences of keywords under any key number under
the topic "Damages," rather than just occurrences under key numbers
titled "Mental Suffering," the additional relevant cases under 49.10 and
50.10 are also retrieved.

The optimum strategy is to search multiple fields simultaneously.

SY,DI(DAMAGE /P MENTAL! EMOTION! /S SUFFER! DISTRESS!
ANGUISH! ANXI!)

This search finds additional relevant cases, including *Hunter v. City of
Cleveland*, 56 Ohio App.3d 33, 564 N.E.2d 718 (Cuyahoga 1988). This
is because *Hunter's* discussion of the emotional distress/damages issue
appears only in the court syllabus (part of the synopsis) and the opinion.

Using WESTLAW's LOCATE command (similar to LEXIS's FOCUS)
to search within search results improves precision in the absence of edito-
rial enhancements for unreported and slip opinions. Cases in which dog
owners have been assessed punitive damages for injuries to third parties
illustrate how the LOCATE feature works.

WESTLAW: DOG & "PUN*TIVE DAMAGE"

This search finds 25 cases. In addition to the primary punitive damages issue, you may want to know whether a photograph of the dog would be admissible in evidence.

WESTLAW: LOC PHOTO! /S DOG

LIST LOCATE (LLOC) tells you which 2 of the 25 cases contain the requested LOCATE terms. The second case, *Schmakel v. Sattler*, No. WD-85-75 (6th Dist. Ct. App., June 13, 1986), directly addresses the canine photograph admissibility issue. If the original search had been framed to include, but not require, photograph, i.e.,

(DOG & "PUN*TIVE DAMAGE") (DOG /S PHOTO! & "PUN*TIVE DAMAGE")

term mode reviewing in WESTLAW would not have found *Schmakel* until the first nine cases in the original search had been reviewed.

(1) *Comparison of WESTLAW SYNOPSIS Field with LEXIS SYLLABUS and HEADNOTE Segments*

Although LEXIS partitions cases into searchable segments, it does not create textual enhancements similar to WESTLAW's. Nevertheless, for some jurisdictions, including Ohio, LEXIS cases contain official syllabi and headnotes prepared under the court's direction.[12] These additions serve a legal purpose for Ohio Supreme Court opinions and an editorial purpose for courts of appeals decisions. As explained in the Ohio Supreme Court Rules for the Reporting of Opinions, "the syllabus of a Supreme Court opinion states the controlling point or points of law decided in and necessarily arising from the facts of the specific case before the Court for adjudication." Rep. R. 1(B).[13] Contrast this with the treatment of a syllabus of a court of appeals opinion which "shall not be considered the controlling statement of either the point or points of law decided, or law of the case, but rather a summary for the convenience of the public and the Bar as a research and indexing aid." Rep. R. 2(F).

For Ohio Supreme Court cases, WESTLAW's SYNOPSIS field consists of two parts: (1) the official court syllabus also found in the LEXIS SYLLABUS segment, and (2) West's summary of the case. The Ohio researcher must be sensitive to the crucial difference between the controlling

language of the Ohio Supreme Court's syllabus and the noncontrolling language of WESTLAW's synopsis case summary. This distinction is not critical as to courts of appeals opinions where the court's syllabus is also non-controlling. Court reporters draft the headnotes found in LEXIS's HEADNOTE segment, while West editors write the headnotes in WEST-LAW's DIGEST field. In either system, headnotes are purely indexing aids without precedential value.

The following examples illustrate the volatility of segment/field searching. A 1987 Ohio Supreme Court decision, *Anilas v. Kern*, 31 Ohio St.3d 163, 509 N.E.2d 1267 (1987), addresses when Ohio can exercise jurisdiction over a noncitizen. The test is whether the defendant has sufficient minimum contacts with Ohio.

LEXIS

1. HEADNOTES(SUFFICIENT CONTACTS)
2. HEADNOTES(SUFFICIENT AND CONTACTS)

The first search does not find *Anilas* because the LEXIS HEADNOTE segment contains the phrase "sufficient minimum contacts." The AND connector in the second search accounts for alternative word positions and retrieves *Anilas*.[14]

WESTLAW

1. SY("MINIMUM CONTACT" AND "PERSONAL JURISDIC-TION")
2. DI("MINIMUM CONTACT" AND "PERSONAL JURISDIC-TION")
3. TO(PRETRIAL PROCEDURE) /P "SUFFICIENT CONTACT"
4. "MINIMUM CONTACT"

The first search retrieves *Anilas*. Both "minimum contacts" and "personal jurisdiction" occur in the SYNOPSIS field. The second search, however, fails to retrieve *Anilas* because only "personal jurisdiction" appears in the DIGEST field, which contains "sufficient contacts" but not "minimum contacts." The third search also misses *Anilas* because West assigned the topic "Courts," not "Pre-Trial Procedure," to the headnote containing "sufficient contacts." By searching the wrong topic, the

searcher missed *Anilas* despite correctly selecting the search term "sufficient contacts" which the headnote author used to express "minimum contacts." A DIGEST field search for "sufficient contact" without a topic restriction would have found *Anilas*. The fourth search locates *Anilas* because "minimum contacts" appears in both the SYNOPSIS field and in the text of the opinion.

Because of variations in phrasing ("minimum contacts" in the synopsis, "sufficient contacts" in the headnote), retrieval is less likely if only one field or only one type of contact ("minimum" or "sufficient") is searched. To account for variations in terminology and content within different fields, search multiple fields using more flexible search terms.

SY,DI("MINIMUM CONTACT" "SUFFICIENT CONTACT" "INSUF-
FICIENT CONTACT")

This search retrieves cases containing the keywords in either the SYNOP-SIS or the DIGEST fields.

(D) Disposition

This LEXIS segment tracks cases in which a judge's rulings have been affirmed or reversed. The following search in the OHIO file finds Ohio Supreme Court cases reversing Judge Krupansky of the Eighth District (Cuyahoga County) Court of Appeals.

DISPOSITION(REVERS! OR REMAND! OR VACAT! OR OVER-
RULE!) AND KRUPANSKY

Since many cases are affirmed in part and reversed in part, each opinion will have to be read to see which of Krupansky's rulings was reversed.

WESTLAW does not provide a separate disposition field, but includes similar information in its SYNOPSIS field. Searching the SYNOPSIS field for reversal information presents additional problems. The SYNOPSIS field includes both the disposition of the immediate appeal and the disposition made by the court being reviewed ("the court of appeals reversed the trial court").

COURT(HIGH) & SY(REVERS! REMAND! VACAT! OVERRULE!)
AND SY(KRUPANSKY)

As with LEXIS, this WESTLAW search picks up Ohio Supreme Court opinions which reverse Krupansky in whole or in part. The WESTLAW

search, however, also unavoidably retrieves opinions affirming Krupansky's "reversal" of the trial court in its entirety.

CITATION LISTS

LEXIS displays Ohio citations in reverse chronological order by court level. WESTLAW's default setting displays Ohio citations in reverse chronological order, but does not segregate court levels. Only WESTLAW gives you the option of displaying citations containing the greatest number of search terms first. LEXIS provides parties' first and last names; WESTLAW lists only last names. LEXIS provides docket numbers in citation lists; in May 1992, WESTLAW also began including docket numbers in its cite lists. For court of appeals decisions, LEXIS identifies the district, e.g., "Eighth Appellate District, Cuyahoga County." Since the second half of 1991, WESTLAW identifies the appellate district number and county. Finally, only LEXIS citations include the disposition of each case.

EXCLUDING CONCEPTS OR TERMS

Increasing search precision through WESTLAW's "BUT NOT" (%) and LEXIS's "AND NOT" connectors must be attempted cautiously or relevant documents will be ignored. In this example, the searcher wants civil, not criminal, cases discussing Ohio Evidence Rule 803(6) (admissibility of business records at trial). A WESTLAW search for 803(6) finds 239 cases, most of which are criminal cases. Additional searches narrow the results.

1. 803(6) % CRIM!
2. 803(6) % TOPIC(CRIMINAL)
3. 803(6) % TITLE(STATE)

The first search reduced the list to 147 citations, but did not account for civil cases that incidentally contain the word "crime" or "criminal." It excludes a potentially relevant civil case, *Drage v. Ameritrust*, No. 55772 (8th Dist. Ct. App., Sept. 29, 1988), which discusses 803(6) but also contains this statement: "It is well established in Ohio that, on the trial of a case either civil or *criminal*, the weight to be given the evidence. . . ." Conversely, the search retrieves irrelevant criminal cases that do not contain either the word "crime" or "criminal."

The second search had virtually no effect, eliminating only 7 of the original 239 cases. The remaining 232 cases were unreported appellate

decisions which do not contain West's TOPIC fields; none of these opinions could be eliminated through a TOPIC field exclusion.

Since the plaintiff in most criminal cases is the State of Ohio, the third search excludes all cases in which 803(6) occurs and the State is a party. It reduced the total to 148. The risk with this strategy, however, is that in excluding the word "state" in the case title, you may inadvertently exclude some civil cases where "state" is part of a corporate or business name. State Farm Insurance Company alone is found 215 times in WESTLAW's Ohio cases TITLE field.

MISSPELLINGS

Misspellings are the things that try searchers' souls. In online systems, they cause searchers to miss relevant cases. A search for "summary judgment" illustrates the problem. WESTLAW generates an automatic equivalency between "judgment" and "judgement." Thus, separate searches for both spellings yield identical results. LEXIS does not treat these terms as automatic equivalencies. A LEXIS search for the more common spelling of summary judgment retrieves over 12,000 cases, while searching for summary judgement finds 18 cases. Any of these 18 cases that do not also include an occurrence of the more common spelling will be missed.

Correcting the spelling in some cases may be inappropriate. In one of the 18 cases located under the "summary judgement" search, the misspelling is quoted from a document submitted by one of the parties to the court. A spelling correction in this case would entail alteration of a court record. LEXIS users would be better served if LEXIS, like WESTLAW, employed an automatic equivalency between "judgment" and "judgement." Until then, searches for summary judgment on LEXIS should be constructed to account for both spellings.

SUMMARY JUDGMENT OR SUMMARY JUDGEMENT

The universal character (*) would not work here. When the asterisk is used within a term, it must be replaced with a character. The term JUDG*MENT would retrieve "judgement," but not "judgment."

Searchers must anticipate common misspellings. A WESTLAW search for "PUNITIVE DAMAGE" would retrieve hundreds of cases, but not those containing only the misspelled "punative damage." The universal character would work in this example. A search for "PUN*TIVE DAMAGE" retrieves both "punitive damage(s)" and "punative damage(s)."

"PUNATIVE DAMAGE" finds ten cases. Four of these cases contain occurrences of both "punitive" and "punative"; six contain only "punative." Searching only "PUNITIVE" misses these six cases. The four containing both spellings present more retrieval problems.

In a typical search, an additional search term would be connected to "punitive" using a proximity connector, rather than the "AND" connector. If the universal character is not employed in anticipation of misspellings, relevant cases may be missed. As Woxland notes, "[i]f, in those documents where both the incorrect and correct spellings occur, [the] proximity operator happens to work with only the incorrect spelling, the actual percentage of lost cases increases."[15]

WESTLAW: "BAD FAITH" /S "PUNITIVE DAMAGE"

This search will not retrieve "bad faith" where it occurs within the same sentence as "punative damage." Even if the opinion contains the correct spelling elsewhere, it may not occur within the same sentence as "bad faith." It would be incongruous to suggest that searchers combat this problem by using the "AND" connector instead of a proximity connector. The cost in lost precision would far outweigh the benefit of a few additional random hits.

VERIFYING AND UPDATING CASES

Before citing a case to the court, it must be checked to see that it is still good law. There are three ways to update cases online: (1) Shepard's and Shepard's PreView, (2) Auto-Cite and Insta-Cite, and (3) using LEXIS and WESTLAW as citators.

Always check the scope of Shepard's online coverage, which may not extend as far back as the print version. Check the print version for references to citations in older cases. Shepard's PreView, available on WESTLAW only, provides case references before they appear in Shepard's, but does not include Shepard's treatment codes.

LEXIS's Auto-Cite and WESTLAW's Insta-Cite provide more current negative treatment information than Shepard's. Researchers should always check one of these services to determine whether an opinion has been overruled or called into doubt. Insta-Cite and Auto-Cite searches conducted on May 10, 1991 for *Thornberry v. Oyler Bros., Inc.*, 164 Ohio St. 395 (1955), found that *Thornberry* had been overruled on April 10, 1991 by *Wyckoff Trucking, Inc. v. Marsh Bros. Trucking Service, Inc.*, 58 Ohio St.3d 261 (1991). This information did not appear in Shepard's or Shepard's PreView, nor in *Shepard's Ohio Express*

Citations (print version) as of May 10, 1991. Insta-Cite and Auto-Cite track unreported opinions by their WESTLAW or LEXIS cites (available from Customer Service). All Ohio unreported appellate opinions on WESTLAW contain WESTLAW cites. LEXIS cites for Ohio unreported opinions exist only since 1988.

The Ohio researcher should also use WESTLAW and LEXIS as citators. Shepard's does not track unreported decisions.[15a] Consequently, Shepardizing, either manually or online, will not alert users to cases (reported or unreported) that are cited by unreported opinions, or to unreported opinions that are cited by reported opinions. To retrieve comprehensive references from this underground citing network, run the case cite as a search term in addition to Insta-Citing or Auto-Citing the case. LEXCITE, on LEXIS, and QUICK*CITE*, on WESTLAW, automatically generate this type of search for you. If an Ohio unreported appellate opinion decided before 1981 cites your case, only LEXIS, which has unreported opinions prior to 1981, will find it.

ECONOMIC CONSIDERATIONS

Exploiting fundamental differences in WESTLAW's and LEXIS's pricing structures reduces costs without compromising quality. This section explores advantages and disadvantages of WESTLAW's per minute usage charge and LEXIS's per search charge.

On LEXIS, a LEXSEE search is always less expensive than running a name or citation search. The LEXSEE command easily retrieves *Karnes v. Doctors Hospital*, 51 Ohio St.3d 139.

LEXSEE 51 OS3d 139

This search costs $4. Retrieving *Karnes* by performing a NAME segment search in the COURTS file costs $20. LEXSEE requires one of the parallel citations to a case reporter in which the case is published or, if the case is unreported and was decided after 1987, a LEXIS cite which can be obtained from Customer Service.

FIND is WESTLAW's counterpart to LEXSEE. Although FIND commands can be entered from the database directory screen, where you are being charged only for connect/communication charges, once the command is processed, you are dumped into the database from which the case was retrieved and per minute usage rates begin to accrue. WESTLAW's Customer Service also provides WESTLAW cites to find unreported Ohio opinions.[15b]

Because of WESTLAW's per minute, rather than per search, charge structure, a quick TITLE field search in the appropriate database does not cost much more than a FIND search from the database directory. This differs from LEXIS, where the cost of a NAME segment search is substantially higher than a LEXSEE search. Retrieving unreported Ohio appellate opinions from 1981 through 1987 is always cheaper on WESTLAW since the LEXSEE feature cannot be used to pull up these cases.

When searching issues, initial search results are frequently off target, requiring refinement of search strategy. Performing several new searches in LEXIS on the same issue becomes very expensive. By properly using LEXIS's modification feature, however, you can avoid these new search charges by editing searches for free. Modification will not be possible if the initial search fails to retrieve any cases. The original search can always be edited and rerun, but a new search charge will be tacked on.

There are two ways to overcome this problem. First, construct the initial search broadly enough to assure that some cases will be found; e.g., instead of searching for "barking dachshunds," search for "dogs and nuisance." In case there are only barking beagle cases, you will be able to modify your broader original search to find them and analogize them to unruly dachshunds. A second approach would be to run a search that you know from previous experience will retrieve only one or two cases. For example, searching Section 4701.03 of the Ohio Revised Code retrieves only two cases when run in the Ohio CASE file in LEXIS. This search can be used as the starter search that you then modify using the OR connector to perform any other search. This latter approach protects against incurring a new search charge because of typing errors in the initial search.

4701.03 OR (BREECH W/3 KONTRACT)

The spelling on this search may be corrected without incurring a new search charge. Because you know that searching for 4701.03 retrieves two cases, this search can be modified. Modification would not be possible if the initial search contained only the misspelled subject search.

BREECH W/3 KONTRACT

This search would retrieve no cases and would require performing a new search.

LEXIS searching becomes very economical when the modification feature is employed properly. Each modification creates a new level of results. Each level is preserved during the search session and can be reviewed by using the "Display Different Level" command. Although previous levels can be modified, a new search charge will be incurred. Only modification of the most recent level is free. Assuming successful modifications of an initial $20 search in the COURTS file plus one hour spent online reviewing the results (approximately another $35), the total cost of $55 compares favorably with one hour of WESTLAW time at a cost exceeding $120. Conversely, ten new searches performed on the same issue by inexperienced LEXIS searchers unfamiliar with modifications is a surefire way to irritate both clients and supervising partners.

WESTLAW searchers do not have to worry about new search charges when they edit their search queries or run a new search. The per minute WESTLAW rate, however, builds up quickly, placing a premium on the searchers' speed in formulating and entering search queries. Because there is no cost for performing new searches, search sessions involving multiple issues may be more economical on WESTLAW.

WESTLAW also offers an economic advantage over LEXIS when performing quick searches for cites to both Ohio state and federal court decisions. WESTLAW's state and federal databases cannot be searched simultaneously, but the SDB command will run your current OH-CS search in another database, or the QDB command will transfer your current query to a different database where you can edit it before searching. Cross-database searching using the SDB or QDB commands, including the cost of printing citation lists, typically costs less than multiple jurisdiction searches on LEXIS. First, run your search in ALLFEDS with a COURT(OHIO) restrictor to retrieve Sixth Circuit Court of Appeals and Ohio federal district court decisions. Then enter "SDB OH" to retrieve the state court cases. On LEXIS, you would have to search either GENFED's MEGA file ($68) with a COURT(OHIO) segment restriction, or both the OHIO COURT file ($20) and GENFED 6TH file ($23), the latter with a COURT(SIXTH OR OHIO) segment restriction. The economic banner shifts to LEXIS, however, when the original "hit and run" search turns into a prolonged browsing session.

CONCLUSION

Online searching is more an art than a science. There is no single right way to perform a subject search in either system, and the wrong ways to search are legion. Successful searching heuristics which exploit the power

of LEXIS and WESTLAW and overcome their inherent limitations vary among searchers.

Certain types of searches may be better suited to one system or the other, but most noninformation professionals rely exclusively on the system they are most familiar with. This is not surprising–given the complexities of LEXIS and WESTLAW few law students, attorneys, judges, etc., will ever master one, let alone two, CALR systems.

Because so much of the search process is invisible, inexperienced users are vulnerable to performing searches that yield superficially satisfactory results, but still miss important cases. Before implementing a search strategy, assess how search commands and system features will affect results.

NOTES

1. From 1975 through 1981, only three percent of Ohio court of appeal opinions were published in the *Ohio Official Reports*. Since then, unpublished opinions have outnumbered those reported by approximately ten to one. But some rain may be falling on this publication drought. In awarding publication rights for the *Ohio Official Reports* to West beginning July 1, 1991, Chief Justice Thomas J. Moyer of the Ohio Supreme Court noted that the number of published court of appeals opinions will double in the first year of the new contract.

As Paul Richert notes in the Preface to *Ohio Appellate Decisions Index* p. v (1990), Ohio judicial reporting has been the subject of previous studies, including Black, *Hide and Seek Precedent: Phantom Opinions in Ohio*, 50 U. Cin. L. Rev. 477 (1981); Black, *Unveiling Ohio's Hidden Court*, 16 Akron L. Rev. 107 (1982); Kobalka, *The Rules for Reporting Opinions*, Law & Fact, Jan. 1984, at 7; Richert, *Update on Ohio Judicial Reporting*, 41 Ohio St. L.J. 675 (1980); Richman and Reynolds, *The Supreme Court Rules for the Reporting of Opinions: A Critique*, 46 Ohio St. L.J. 313 (1985).

2. In addition to their availability online, unreported appellate opinions from 1981 to the present are produced by the Law Library Microfiche Consortium and are available on microfiche from Banks-Baldwin Law Publishing Co., which indexes the opinions by case name, district, and subject matter in the *Ohio Appellate Decisions Index*, issued quarterly. *Anderson's Unreported Ohio Appellate Cases* contains selected 1990 appellate decisions, but was discontinued in 1992 when the publisher introduced *Anderson's Unreported Ohio Appellate Cases on CD-ROM*.

3. OH-CS covers the Ohio Supreme Court since 1821, the courts of appeals since 1920, unreported courts of appeals since 1981, and miscellaneous courts since 1945. The COURTS file in the Ohio Library includes three case files: Ohio Supreme Court (OHIO), courts of appeals (APP), and miscellaneous courts (MISC), covering decisions since 1940. For older Ohio cases in LEXIS, search OSUP, OAPP, or OMISC. The CASES file combines all six Ohio state court files.

Ohio cases can also be searched by topic in selected specialized legal libraries in LEXIS and in selected topical materials databases in WESTLAW.

4. Whether WESTLAW's "Full-Text Plus" searching of editorial enhancements and the opinion text retrieves more cases than searching the opinion text alone is not as important as whether the additional cases are relevant. Relevance, however, defies measurement. Coco noted that "determinations of relevance require subjective appraisals." Coco, *Full-Text vs. Full-Text Plus Editorial Additions: Comparative Retrieval Effectiveness of the LEXIS and WESTLAW Systems*, 4 Legal Ref. Serv. Q. 27, 36 (Summer 1984). Individual assessments of relevance are based on whether the material addresses a perceived information need. Law students, inexperienced in the art of legal reasoning, are quick to reject cases that are not factually or legally identical to their research problem. Seasoned legal researchers distinguish the facts in analogous cases. Consequently, a person's level of expertise in a field and understanding of how information is applied in that field affects relevance judgments.

5. LEXIS subscribers can also access LEXIS at a flat per minute rate. This option should appeal more to regular WESTLAW users who are uncomfortable modifying searches on LEXIS. For experienced LEXIS users, this option would negate the benefits of modifying searches and browsing results online.

5a. This search was rerun in May 1992, one year after the original search. During that year, LEXIS corrected the *Pacific Chemical* court segment information. *Pacific Chemical* can now be found by searching for NAME(Pacific Chemical) and COURT(Eighth). Nevertheless, the same search (substituting the appropriate parties' names) still misses eighth district decisions such as *Sakian v. Taylor*, 18 Ohio App. 3d 62 (1984), and *Person v. Gum*, 7 Ohio App. 3d 307 (1983), which are styled "Eight Appellate District."

6. *Westlaw Reference Manual* 61 (4th ed. 1990).

7. Ohio Supreme Court Rules for the Reporting of Opinions are published in 3 *Ohio Official Reports* xxi-xxiii; Ohio Rev. Code Ann., Rules of Court II (Baldwin); and 19 Ohio Rev. Code Ann. (Anderson).

Unpublished opinions are controlling authority only in the district in which they are rendered and only between the litigants. Rep. Rule 2(G)(1). Otherwise, they are persuasive authority in the judicial district in which they are rendered. Opinions reported in the *Ohio Official Reports* are controlling authority for all purposes in the judicial district in which they are rendered unless reversed or modified by a court of competent jurisdiction. Rep. Rule 2(G)(2). Citing parties must attach copies of unpublished opinions to their briefs and memoranda and indicate any disposition by a superior appellate court. Rep. Rule 2(G)(3). Notwithstanding these provisions, courts of appeals may cite unpublished opinions of another district for certifying conflict questions to the Ohio Supreme Court under provisions of the Ohio Constitution. Rep. Rule 2(H).

8. A search in the Ohio APP file for CITE(SLIP OPINION) AND DATE BEF 1981 finds 22,471 cases.

9. COURT(OHIO.APP) & DA (1988) tells you the number of Ohio appellate decisions in WESTLAW for 1988. A search in the Ohio APP file for OHIO AND

DATE IS 1988 gives you the LEXIS numbers for the same court level and year. The number of reported decisions is found by searching in WESTLAW for COURT(OHIO.APP) & DA (1988) % "UNPUBLISHED OPINION" /S LIMITATION.

9a. These searches were updated in May 1992. The updates showed an increase in reported, and scheduled to be reported, appellate decisions in 1988 from 575 (as of May 1991) to 625 (as of May 1992), and in 1990 from 20 (as of May 1991) to 731 (as of May 1992). Also as of May 1992, WESTLAW had 6,209 Ohio courts of appeals decisions from 1991, 325 of which were reported or scheduled to be reported.

10. When West receives a slip opinion, it is first dumped into WESTLAW without editorial enhancements. It is not searchable by fields, however, until the later enhanced version replaces the original.

11. Searches on "emotional distress" in this section are derived from examples in the *WESTLAW Reference Manual* 101-02 (4th ed. 1990) and in Advanced WESTLAW for Law Librarians (1989) (WESTLAW seminar materials).

12. F. R. Shapiro, *LEXIS: The Complete User's Guide* 88 (1989).

13. In per curiam opinions of the Ohio Supreme Court, the points of law decided are contained within the text of each opinion.

14. Since *Anilas* is a per curiam opinion, it does not contain a court syllabus.

15. Woxland, *More on Misspellings in CALR Databases*, 3 Trends L. Libr. Mgmt. & Tech. 1-3 (February 1990).

15a. Shepard's connoisseurs will note that *Shepard's Ohio Citations* includes references to reported decisions found in the short-lived *Anderson's Unreported Ohio Appellate Cases* (*AOA* covered only selected 1990 unreported opinions). Apparently, this "published" compilation of unpublished opinions was adaptable to Shepard's tracking system.

15b. Whether WEST*CHEK* 2.0, which allows you to "FIND" cases for $2 per cite plus connect/communication and printing/downloading charges, is more economical than going online depends on the online searcher's speed and accuracy, and whether the time freed by using WEST*CHEK* is factored into the equation.