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TEACHING WESTLAWNEXT: NEXT STEPS FOR TEACHERS OF LEGAL  
RESEARCH

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## Teaching WestlawNext: Next Steps for Teachers of Legal Research

By Ronald E. Wheeler

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### Introduction

It's been nearly three years since the rollout of WestlawNext<sup>®</sup> began in the summer of 2010. Since that time, the innovative research system has dominated the scholarly conversation around electronic legal research. WestlawNext has been the subject of numerous articles,<sup>1</sup> blog posts,<sup>2</sup> and scholarly presentations and programs.<sup>3</sup>

However, most of these discussions have focused primarily on the system's search engine, usage, and effectiveness, and not on WestlawNext instruction. Many of us who teach legal research have already begun providing instruction on how best to conduct research using WestlawNext, but we have done so without much guidance or experience. Therefore, in this essay, I hope to share some insights and provide a few tips about strategies for teaching students to research using WestlawNext.

### Innovation and Change

One of the first things that teachers of legal research must come to terms with is change. We must face both our conscious and subconscious feelings about change, and if they are negative we must get past them. The landscape of legal research is now, more than ever, a moving target. Some of us have built our careers on being expert Boolean searchers using somewhat similar research systems. We may therefore be wedded to teaching Boolean search strategies in a somewhat static way. The idea that Boolean searching may be needless, irrelevant, or even obsolete is beyond our comprehension. Nevertheless, we cannot let ourselves devolve into disliking new legal research technologies because of a knee-jerk resistance to change. Christine Sellers makes the point nicely when she rightly asks, "Are we Fuddy-duddies? Do some of us resist change just because it is change?"<sup>4</sup>

The challenge of teaching students to use WestlawNext's algorithm legal research system effectively is upon us. This provides the teachers

<sup>1</sup> E.g., Christine L. Sellers & Phillip Gragg, *WestlawNext and Lexis Advance*, 104 Law Libr. J. 341 (2012); Lee F. Peoples, *Testing the Limits of WestlawNext*, 31 Legal Ref. Serv. Q. 125 (2012); Shawn G. Nevers, *WestlawNext: Westlaw's Next Generation Research System*, 39 Student Law., no. 4, 2011 at 12-13; Ronald E. Wheeler, *Does WestlawNext Really Change Everything? The Implications of WestlawNext on Legal Research*, 103 Law Libr. J. 359 (2011); Lisa D. Kinzer, *Easy Does It: Examining First-Year Law Student Impressions of the Online Resources They Use Most Often* (Working Paper, 2011) (available at <http://ssrn.com/abstract=1885524>).

<sup>2</sup> E.g., Martha Sperry, *A Little Late to the WestLawNext Party*, Advocate's Studio (Oct. 14, 2010), <http://advocatesstudio.com/2010/10/14/a-little-late-to-the-WestlawNext-party> (discussing the accuracy of WestlawNext's search engine); Marshall R. Isaacs, *WestlawNext Review: Google for Lawyers*, Smallfirmville (July 27, 2010, 5:50 p.m.), [http://nysbar.com/blogs/smallfirmville/2010/07/WestlawNext\\_google\\_for\\_lawyers.html](http://nysbar.com/blogs/smallfirmville/2010/07/WestlawNext_google_for_lawyers.html) (discussing WestlawNext usage and features); Greg Lambert, *WestlawNext—a Study in Applying Knowledge Management & Crowdsourcing*, 3 Geeks and a LawBlog (Jan. 28, 2010, 8:00 a.m.), <http://www.geeklawblog.com/2010/01/westlawnext-study-in-applying-knowledge.html> (discussing the WestlawNext search algorithm).

<sup>3</sup> E.g., *The Impact of WestlawNext on Legal Research and Legal Research Instruction*, WestPac Annual Meeting, San Francisco, CA, October 2010, (program brochure and description available at <http://www.aallnet.org/chapter/westpac/newsletter/no34-2.pdf>) (panel discussion of librarians examining the impact of WestlawNext on law firm, court, and academic law library research); *Coordinating Legal Research Instruction: From 1<sup>st</sup> Year Law Student to 1<sup>st</sup> Year Associate*, All California Joint Institute, San Diego, CA, March 9, 2012, (program brochure and description available at <http://www.aallnet.org/chapter/sandall/scheduleofevents.htm>) (panel discussion

of law librarians examining approaches to legal research instruction with a focus on WestlawNext and other algorithm-driven legal search engines).

<sup>4</sup> Sellers & Gragg, *supra* note 1, at 345.

“One of the first things that teachers of legal research must come to terms with is change.”

of legal research an opportunity to explore the new platform so that we can continue to provide research instruction to the best of our abilities. Moreover, even without factoring in the emergence of new research systems, we should be striving to change and innovate in our teaching in order to stay fresh and relevant and truly expert. It is my hope that we, the community of legal research teachers, can continue to strategize and brainstorm and learn from each other as we tackle teaching our students new platforms with algorithm-driven search engines like WestlawNext's.

### Possible Issues to Address When Teaching WestlawNext

Aside from having a different look and feel from Westlaw Classic, WestlawNext does incorporate several substantive changes that impact research results.<sup>5</sup> While I won't discuss each possible advantage or shortcoming of WestlawNext in this article, some of the possible limitations to address in evaluating these systems include the possibility that esoteric content is more difficult to find,<sup>6</sup> the possible inability to search broadly and then narrow your search,<sup>7</sup> and the possibility that these search systems erode the researcher's knowledge of legal sources.<sup>8</sup> The huge and sometimes overwhelming number of results retrieved is another possible shortcoming researchers have identified as a consequence of the all-encompassing searching that is available on WestlawNext.<sup>9</sup> The real struggle we face when teaching WestlawNext is getting students to resist the urge to just throw search terms into the search box at the top of WestlawNext's home page without taking the time to drill down to particular sources, choose a jurisdiction, or use the advanced search options. I acknowledge that there are times when this strategy of searching retrieves great results, but

I remain convinced that legal researchers need to know how to exercise other search strategies.

### Choose a Source

Source selection is traditionally one of the first steps that legal researchers take.<sup>10</sup> In WestlawNext, the user can bypass that first step and search across all content. While some may argue that teaching students to choose a source defeats the purpose of making WestlawNext easy and Google-like<sup>11</sup> to use, I nevertheless recommend that it be one of the search strategies that we continue to teach. Source selection reinforces a student's knowledge of the structure of U.S. law and U.S. legal institutions.<sup>12</sup> It informs the legal research process by requiring some knowledge of what a source contains, when and where it is published, how it is organized, and how it is best used. Granted, it is easy to use, "... but the ease of searching, while impressive, expects less of the user. It assumes [and even perpetuates] a lack of skill and understanding of material. ..."<sup>13</sup> At least one highly regarded legal research textbook also suggests choosing a source before searching across all of the content on WestlawNext.<sup>14</sup>

Using the browsing links available on the WestlawNext home page, students can be taught to think about sources, decide on one that is relevant or desirable, and click through the browsing links to a particular source before searching. Teachers of legal research can design assignments to illustrate when searching a particular source is more favorable than searching multiple sources and vice versa.

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<sup>5</sup> See, Wheeler, *supra* note 1 (For an in-depth discussion of the advantages and possible failings of WestlawNext); Peoples, *supra* note 1 (for an empirical study of the differences in research results using WestlawNext versus Westlaw Classic).

<sup>6</sup> Wheeler, *supra* note 1, at 364; Peoples, *supra* note 1, at 130.

<sup>7</sup> Wheeler, *supra* note 1, at 370.

<sup>8</sup> Wheeler, *supra* note 1, at 374; Peoples, *supra* note 1, at 134.

<sup>9</sup> Nevers, *supra* note 1, at 12.

<sup>10</sup> Morris L. Cohen & Kent C. Olson, *Legal Research in a Nutshell* 32 (10th ed. 2010) (discussing first steps and emphasizing that it is often wise to begin with a secondary source).

<sup>11</sup> Marshall R. Isaacs, *WestlawNext Review: Google for Lawyers*, Smallfirmville (July 27, 2010, 5:50 P.M.) [http://nysbar.com/blogs/smallfirmville/2010/07/WestlawNext\\_google\\_for\\_lawyers.html](http://nysbar.com/blogs/smallfirmville/2010/07/WestlawNext_google_for_lawyers.html).

<sup>12</sup> Wheeler, *supra* note 1, at 364.

<sup>13</sup> Laurel Oates & Anne M. Enquist, *The Legal Writing Handbook: Analysis, Research, and Writing and Electronic Supplement on Legal Research* § 7.4.4 (5th ed. 2010) (Seattle University School of Law Legal Paper Series #10-25) (available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1649049](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1649049)).

<sup>14</sup> *Ibid.*

“It is up to us to educate our students about the inverse relationship between the number of relevant results and the number of overall results.”

I like having students research an issue controlled by federal regulations to illustrate this point. Take, for example, the very specific issue of which U.S. counties are under Karnal Bunt quarantine.<sup>15</sup> The search **karnal bunt quarantine**, run in WestlawNext without first choosing a source, yields over 5,000 results from 12 different sources, some of which do not contain the words **karnal bunt** at all. Wading through this many results can be confusing, time-consuming, and expensive when time equals money in practice. Simply put, “. . . a results list with everything in it is too much.”<sup>16</sup> However, running the same search on WestlawNext after choosing the Code of Federal Regulations database yields only 51 results. Most of these results are irrelevant too, but the quarantine information can be found in the eighth result.<sup>17</sup> This is arguably an overly simplistic example, but it conveys the point that exercises can be designed to encourage source selection. Exercises that illustrate the advantages of secondary sources can also be used in this way.

### Filters Are Your Friends

Another strategy to use when teaching WestlawNext is to highlight and reinforce the usefulness of the filters that appear after searching. These filters, found under the “view” or “narrow” labels on the left side of the home page, are one of the features of WestlawNext that has received universal praise.<sup>18</sup> The filters labeled “view” allow you to view particular types of materials like cases, statutes, proposed legislation, secondary sources, administrative decisions, and more. Spending time going through these materials with students after they run searches is a way to reinforce their knowledge of different sources. It can ultimately help them to differentiate between sources, learn which ones are useful

for particular types of questions, and choose appropriate sources earlier in the research process.

The filters labeled “narrow” allow you to narrow your search by jurisdiction, date, publication type, publication name, author, and viewed versus not-yet-viewed items. These filters allow a researcher to put some thought into what otherwise might be achieved through pre-search selection of jurisdiction, date limitation, and field searching. Indeed, because of the publication name and publication type filtering capacity, “. . . researchers are exposed to numerous types of publications and numerous titles that they may never have otherwise discovered.”<sup>19</sup> Devising exercises requiring and reinforcing the use of these filters can achieve pedagogical goals related to exposing students to appropriate sources and essential titles.

### Lots of Results

Legal researchers seem to agree that WestlawNext’s all-in-one searching produces a surprisingly large number of results.<sup>20</sup> These large result lists can be turned into teachable moments for our students. My experience has been that some students feel that the more results they get the better. They “. . . are unaware of the tendency of relevance to decrease when the number of returns increases.”<sup>21</sup> It is up to us to educate our students about the inverse relationship between the number of relevant results and the number of overall results. Exercises juxtaposing results from a broad algorithm-driven search and a more focused Boolean search will help students understand these concepts.

If we use the same search I used in the example above,<sup>22</sup> **karnal bunt quarantine**, run in WestlawNext’s Code of Federal Regulations database,

<sup>15</sup> Karnal bunt is a fungal disease of wheat. See, NASDA: National Association of State Departments of Agriculture, <http://www.nasda.org/cms/7196/7351/8565.aspx> (last visited June 22, 2012).

<sup>16</sup> Sellers & Gragg, *supra* note 1, at 344

<sup>17</sup> 7 C.F.R. § 301.89-3.

<sup>18</sup> See e.g., Robert J. Ambrogi, *Westlaw’s Great Leap Forward*, 67 *Bench & B. Minn.* 18 (2010) (praising the filters and preferring them over choosing a database).

<sup>19</sup> Wheeler, *supra* note 1, at 373-374.

<sup>20</sup> See e.g., Lisa D. Kinzer, *supra*, note 1, section IV (calling the number of results returned on WestlawNext “mind-boggling”); Nevers, *supra* note 1, at 13 (asserting that when searching on WestlawNext “. . . the sheer number of hits can be overwhelming”); Sellers & Gragg, *supra* note 1, at 344 (proclaiming that “Every search seems to result in 10,000 results . . .”).

<sup>21</sup> Kinzer, *supra* note 1.

<sup>22</sup> See *supra*, Choose a Source section.

we get 51 results, and the desired regulation is the eighth result. If instead we use the advanced search option and run the search “**karnal bunt**” and **quarantine** in the text document field, we get only three results. The desired regulation appears third here. I’m sure there are better examples, but the idea is to show students the beauty of doing simple Boolean searching, using the advanced search options, and getting fewer results. In this example, the researcher will save time by only reading three documents instead of eight. In fact, by browsing the text previewed for each of the three results returned, it is fairly obvious that the third hit is the desired regulation without even opening the first two. Clearly this illustrates the power of a simple Boolean search in a correctly chosen field. Teachers of legal research will need to develop exercises like these to reinforce the desirability of Boolean searching in certain contexts.

### Esoteric Content and Broad Searching

One concern researchers have voiced about WestlawNext is that it may do such focused searching that it excludes relevant content.<sup>23</sup> Esoteric, obscure, and less heavily used content may become harder to find with WestlawNext.<sup>24</sup> Legal research exercises that compare the functionality and the relevance of results between WestlawNext, WestlawNext’s advanced search, and Westlaw Classic can help students understand when they should be concerned with possibly missing content, as esoteric, obscure, and less heavily used content may be a challenge to find.

Consider this experiment. I chose the source “law reviews & journals” in WestlawNext, and ran the search **transgender discrimination**. I retrieved 9,950 documents.<sup>25</sup> However, when I ran the identical search using the text field box on the advanced search screen, I got 9,998 documents. Failing to use the advanced search screen will prevent a

researcher from discovering 48 documents, which is something our students should know about.

Next I ran the same search, **transgender discrimination** in the source “law reviews & journals,” but I used the advanced search feature’s box labeled “all of these terms.” This time I retrieved 1,859 documents. My expectation was that I had retrieved all of the documents containing both words. To test this theory, I ran the terms and connectors search **transgender and discrimination** in Westlaw Classic, and retrieved 2,019 documents. So, 160 documents were hidden or undiscoverable in WestlawNext. Again, this is a phenomenon legal research teachers can expose with exercises incorporating similar searches.

Finally, to test the Boolean searching capacity of WestlawNext, I ran the search **transgender /s discrimination** using the “law reviews & journals” source, but this time using the text field box on the advanced search screen. I retrieved 534 documents. However, when I ran the identical text field search in Westlaw Classic using the search **TE(transgender /s discrimination)**, I retrieved 591 documents. WestlawNext retrieved 57 fewer documents. Thus even Boolean searching exercises can teach students the very real differences between these legal research tools.

### Necessity of Knowing other Resources

I’m sure all teachers of legal research tell their students how important it is for them to know how to search using many different research systems with varied platforms, search engines, and interfaces. When it comes to WestlawNext, this is even more important. Students tend to prefer using the resource that they find easiest to use.<sup>26</sup> At least one study has shown that students find WestlawNext the fastest and easiest online legal research system to use, and they therefore use it most often.<sup>27</sup> Nevertheless, not all law firms and other legal employers have adopted WestlawNext.<sup>28</sup>

“Legal research exercises that compare the functionality and the relevance of results ... can help students understand when they should be concerned with possibly missing content, as esoteric, obscure, and less heavily used content may be a challenge to find.”

<sup>23</sup> See e.g., Wheeler, *supra* note 1, at 370-371.

<sup>24</sup> *Id.* at 364-368, and, Peoples, *supra* note 1, at 127.

<sup>25</sup> I ran all of the searches in this search on July 28, 2012. As I understand it, these results may change in the future as documents are added and documents are interacted with.

<sup>26</sup> Kinzer, *supra* note 1, section IIIB.

<sup>27</sup> *Id.* at section IIIB.

<sup>28</sup> Nevers, *supra* note 1, at 13.

“There is also no doubt that algorithm-driven search engines like the one that powers WestlawNext is the wave of the future.”

Students should be reminded that they will need to gain some proficiency using other legal research systems, including Westlaw Classic. This can perhaps serve as a motivator for students to learn to do Boolean searching on Westlaw Classic and on other legal research systems.

### Conclusion

There is no doubt that WestlawNext is a powerful and desirable legal research tool.<sup>29</sup> There is also no doubt that algorithm-driven search engines like the one that powers WestlawNext is the wave of the future.<sup>30</sup> Legal research search engines powered by algorithms that take some of the control away from the researcher present a challenge to law librarians. First, we must learn as much as we can about these algorithm-driven search engines so that we can evaluate how and when they are best used. Second, we must figure out how best to teach our students not only how to use these resources but also when to use them.<sup>31</sup> There may

be times when resources like Westlaw Classic or even others may better serve their legal research needs. WestlawNext is a fantastic tool that I continue to be amazed by, but teachers of legal research must design exercises and examples that illustrate both the strengths and the weaknesses of WestlawNext and other legal research tools. It is important for our students to know when they can expect to find the best answer quickly and easily using WestlawNext. Yet, it is just as important for our students to know when content is easily overlooked or hidden. The tips and examples provided here are just a first step in helping our students and each other to understand the ever-changing electronic legal research landscape.

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<sup>29</sup> Thomson Reuters, *WestlawNext Awards and Reviews*, <http://store.westlaw.com/westlawnext/awards-reviews/default.aspx> (last visited June 29, 2012) (listing numerous awards and favorable reviews that WestlawNext has received).

<sup>30</sup> Jason Eiseman, *5 Random Thoughts About WestlawNext*, Jason the Content Librarian Blog (January 29, 2010), <http://www.jasoneiseman.com/blog/?p=383> (asserting that “. . . the application of modern search techniques, coupled with new web technologies may open up a whole new world of legal research. . .”)

<sup>31</sup> Peoples, *supra* note 1, at 145 (“Librarians have a significant role to play in educating law students in using WestlawNext.”).