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Does WestlawNext Really Change Everything: The Implications of WestlawNext on Legal Research

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DOES WESTLAWNEXT REALLY CHANGE EVERYTHING: THE
IMPLICATIONS OF WESTLAWNEXT ON LEGAL RESEARCH

Ronald E. Wheeler Jr.

Does WestlawNext Really Change Everything? The Implications of WestlawNext on Legal Research*

Ronald E. Wheeler**

WestlawNext, Thomson Reuters's newest electronic research service, has now been around for over a year. Professor Wheeler shares his thoughts on how this service may impact various aspects of legal research, and suggests that further study and research are necessary to fully evaluate and understand the system.

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Introduction

¶1 While there are numerous electronic legal research services and tools offered by many information vendors, Thomson Reuters's newest Westlaw enhancement, WestlawNext, is causing law librarians and legal researchers nationwide to sit up

* Ronald E. Wheeler, 2011.

** Director, Dorraine Zief Law Library and Associate Professor of Law, University of San Francisco School of Law, San Francisco, California. I owe a huge debt of gratitude to so many people without whom this article could not have been completed. Thank you to all of the amazing librarians and staff at the Dorraine Zief Law Library for their support and advice and also for running the library so that I could disappear into my office to write, especially Amy Wright, whose exhaustive and insightful comments enhanced every section; to the wonderfully supportive faculty at the University of San Francisco School of Law who encouraged me every step of the way; to my learned posse of friends who pushed and encouraged me, including Mary Sue Livingston, Nancy P. Johnson, Carol Parker, Michelle Rigual, Sherri Thomas, Suzanne Shende, and Susan Nevelow Mart; and to my best friend and partner Harry Rudolph.

and take notice. This article examines WestlawNext and attempts to identify a few possible effects that it may have on legal research. This is not an empirical study of WestlawNext; rather, it is intended to be an anecdotal discussion of my impressions of the product and its potential impact. Its purpose is to share my thoughts on this product and to provoke both a larger discussion and further research. The article first describes WestlawNext and explains some of its unique features. Second, it examines the process of performing traditional legal research and the factors important to that process. It then looks at some of the effects that WestlawNext will have on the legal research process—in particular its effect on finding esoteric content and how that could alter the practice of law, and its effect on broad searching. Next, the article discusses the role of choosing a source in the current legal research environment and explains how WestlawNext changes that role. Finally, it considers WestlawNext's pricing and its impact. Throughout, I hope to shed light on what legal researchers and teachers of legal research should think about when attempting to use and teach WestlawNext effectively.

What Is WestlawNext?

¶2 WestlawNext is the latest iteration of the Westlaw legal research database service. WestlawNext was introduced in February 2010 and began rollout in the summer of 2010, and it represents a significant departure from how online legal research databases have traditionally worked. It has been described as revolutionary,¹ ground-breaking,² and as “Google for lawyers.”³ But there are really three features that distinguish WestlawNext from classic Westlaw.⁴ First, it has a brand-new search engine. Second, it allows users to search without having to first choose a database. Third, its pricing formula is radically different from that of classic Westlaw. Each of these distinguishing features is addressed separately below.

¶3 WestlawNext's new search engine is called WestSearch,⁵ and WestSearch really is revolutionary. Although the secret of WestSearch is closely guarded, like the secret recipe for Coca-Cola, Kentucky Fried Chicken, or McDonald's Special Sauce, here are some of the ingredients: WestSearch is a result, in part, of “watching hundreds of legal professionals do research and analyzing Westlaw logs.”⁶ It employs an algorithm that “automates the process of applying Key Numbers,

1. 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>.

2. *WestlawNext Folder Sharing Taps the Collective Knowledge of the Entire Organization*, THE STREET (Dec. 6, 2010, 11:03 A.M.), <http://www.thestreet.com/story/10939374/WestlawNext-folder-sharing-taps-the-collective-knowledge-of-the-entire-organization.html>.

3. 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.

4. Throughout this article I will refer to the standard web-based version of Westlaw as classic Westlaw.

5. See *WestSearch: WestlawNext Search Technology*, WESTLAWNEXT QUICK REFERENCE GUIDE (2011), available at <http://west.thomson.com/documentation/westlaw/wlawdoc/web/wlnwsrch.pdf>.

6. Paula J. Hane, *Thomson Reuters Launches WestlawNext—the Next Chapter in Legal Research*, INFO. TODAY (Feb. 4, 2010), <http://newsbreaks.infotoday.com/NewsBreaks/Thomson-Reuters-Launches-WestlawNextThe-Next-Chapter-in-Legal-Research-60975.asp>.

KeyCite, and secondary sources . . . to find additional critical documents and then ranks them with the most important documents at the top of the results list.”⁷ The algorithm learns which documents are important or useful “from the aggregate usage of WestlawNext researchers, based on users’ ‘meaningful interactions’ with the results—when [a] user prints, emails, or KeyCites [them].”⁸ Thus, “the great results produced today improve even more over time.”⁹ The algorithm employs the collective knowledge or input of thousands of Westlaw users. My own research experiences with WestlawNext seem to support the company’s claims. I have performed numerous searches in WestlawNext, pursuing answers to what I thought were challenging research questions, and the results have been remarkable.

¶4 WestlawNext also allows users to search without having to first choose a database, while classic Westlaw does not allow users to search until they select a database. This new feature is considered by some to be “big news.”¹⁰ Because Westlaw has more than 40,000 databases,¹¹ avoiding choosing will almost certainly save time. Users no longer “have to know where the answer is before looking for it.”¹² They can now merely type in a search and begin searching.¹³ Once a search is completed, WestlawNext displays a faceted search result that groups the resulting hits into categories such as cases, statutes, and secondary sources, allowing researchers to jump directly to a particular type of document.

¶5 Finally, the pricing structure for WestlawNext is radically different from the one used for classic Westlaw. Under the transactional pricing scheme, classic Westlaw users are charged a set amount per search, and that amount depends on the database being searched. Larger databases typically cost more to search. However, once a search is completed, opening documents from that initial search does not carry any additional cost.¹⁴ WestlawNext charges researchers \$60 per search¹⁵ and approximately \$15 for each document opened within a search result.¹⁶

The Process of Legal Research

¶6 There are some essential components of the legal research process that have stood the test of time. A working knowledge of legal sources¹⁷ and the ability to

7. *Id.*

8. *Id.*

9. Thomson Reuters Unveils WestlawNext, the Next Generation in Legal Research, PR NEWSWIRE (Feb. 1, 2010), <http://www.prnewswire.com/news-releases/thomson-reuters-unveils-WestlawNext-the-next-generation-in-legal-research-83240872.html>.

10. Hane, *supra* note 6.

11. *Id.*

12. *Id.*

13. Users may choose a jurisdiction or a database before searching, but it is no longer required.

14. [WESTLAW] PRICING GUIDE FOR PRIVATE PRICE PLANS (Apr. 2010), available at <http://theprattlawlibrarian.files.wordpress.com/2010/09/wl-pricing-april-2010.pdf>.

15. WESTLAWNEXT PRICING GUIDE FOR COMMERCIAL PLANS (Feb. 2010), available at <http://west.thomson.com/pdf/librarian/L-356047.pdf> (hereinafter WESTLAWNEXT PRICING GUIDE). This is Westlaw’s transactional billing charge; there are other pricing plans. *See id.*

16. *Id.* While the charges for viewing documents vary greatly depending on the type of document, according to this pamphlet, \$15 is a conservative average for basic primary source materials.

17. AMY E. SLOAN, BASIC LEGAL RESEARCH 1 (4th ed. 2009) (discussing the importance to legal research of understanding the different sources of law).

identify appropriate sources of law are two such components.¹⁸ Knowledge of the structure of U.S. law is another.¹⁹ A working knowledge of legal sources means knowing that an array of reporters, codes, indexes and finding aids, treatises, practice guides, and online systems do exist. The ability to identify appropriate sources of law is not only the ability to distinguish common law questions from statutory questions, but also the ability to choose which source is best to answer these questions. Knowledge of the structure of U.S. law means understanding courts and court levels, legislatures, administrative agencies, and all that they produce. Legal research experts have emphasized these three components as paramount for decades.²⁰

Choosing a Source

¶7 Choosing a source is one of the first steps in tackling a legal research problem.²¹ Traditionally, before researchers can begin either print or electronic research, they must decide which book or database to start with. This initial choice of a source shapes the entirety of the research process. It can determine if the process will be lengthier than necessary, whether false leads will be followed and dead ends encountered, whether key terms and terminology will be adequately and authoritatively defined, and ultimately whether a complete, correct, and authoritative answer will be found. The initial choice of a source is crucial.

¶8 The process of choosing an appropriate source is often based on some prior knowledge or experience. Frequently, law students will begin researching any legal research problem by searching for cases. This choice is based on their exposure to cases in their doctrinal law school courses.²² The issue they are researching may be controlled by a statute or by an administrative regulation. Nevertheless, their decision to search for cases first is informed both by their heavy exposure to cases and also, perhaps, by their lack of exposure to statutory law, administrative law, and secondary sources of various kinds.

18. Nancy P. Johnson, *Best Practices: What First-Year Law Students Should Learn in a Legal Research Class*, 28 LEGAL REFERENCE SERVICES Q. 77, 80 (2009) (“For students to relate to legal research, they must know how and when to use the materials”).

19. MORRIS L. COHEN, *HOW TO FIND THE LAW* 2 (7th ed. 1976) (discussing the need to understand “the organizational structure of published legal materials”).

20. For examples of books that have emphasized this throughout the past century, see, e.g., FREDERICK C. HICKS, *MATERIALS AND METHODS OF LEGAL RESEARCH* 43–44 (1923) (stating the chief means of legal research as being law books that are broken into categories like source books, expositions of the law, compilations, and indexes); COHEN, *supra* note 19, at 2–4 (discussing the factors determining the methods of legal research as including knowledge of the multiplicity of sources and the characteristics of sources); J. MYRON JACOBSTEIN, ROY M. MERSKY & DONALD J. DUNN, *FUNDAMENTALS OF LEGAL RESEARCH* 18 (7th ed. 1998) (noting the importance of deciding which sources to use, which not to use, and the order in which to use them); LAUREL CURRIE OATES & ANNE ENQUIST, *JUST RESEARCH* 17 (2d ed. 2009) (discussing the importance of knowing what sources are available and how to find information in those sources).

21. 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).

22. ROBERT C. BERRING & ELIZABETH A. EDINGER, *FINDING THE LAW* 4 (12th ed. 2005) (“[M]ost of the first year of law school is spent reading and analyzing excerpts of cases as presented in case-books.”).

¶9 An experienced legal researcher bases the initial choice of a source on her knowledge (or lack thereof) of an area of law. An attorney may know an issue is controlled by state statute and will thus begin by searching a state annotated code. A law firm librarian, familiar with the firm's environmental law practice, might begin a search in federal regulations. A third researcher who is experienced but completely unfamiliar with the area of law he is investigating might begin with a legal encyclopedia or a search of the law journal literature. In all three cases, the choice of a source is informed by either a familiarity with the law, or knowledge of what particular legal sources can and cannot do, or both. Choosing unwisely can often result in confusion,²³ wasted time, futile and expensive searching, and frustration.

Knowledge of Particular Sources

¶10 Having a complete and well-informed understanding of the various sources of legal information can drive the entire research process and determine its duration and success. In particular, there are a few sources, discussed below, that are commonly misunderstood or underutilized.

¶11 Knowledge of secondary sources, their authority, their role in the research process, and how they function is an important component in the legal research process. "Secondary sources are usually more straightforward and try to explain the law."²⁴ For inexperienced researchers, secondary sources can provide much needed background, explanation, and grounding in the law. Secondary sources can help a researcher achieve greater understanding about how the law works, discover idiosyncrasies or peculiarities in a particular area of law, discover exceptions to or modifications of the law, and gain insight into how the law in question is applied practically. For these reasons, secondary sources are often recommended as the starting place for legal research.²⁵

¶12 The usefulness of starting with secondary sources often seems counterintuitive to inexperienced researchers. Beginning with primary sources or the actual law seems like the more logical and direct approach. This misconception is understandable. When beginners are looking for the law, it appears to make sense to begin searching sources of primary law. Nevertheless, once researchers comprehend the shortcuts and explanations that secondary sources can offer, they will seek out secondary sources when embarking on new research projects in order to save time. Thus, cultivating and reinforcing an understanding of such sources can be quite valuable.

¶13 Knowledge of databases containing pending and proposed legislation or regulations can be useful in a completely different way. Detailed information about likely changes in the law can drive both academic and practice-oriented research in entirely new directions. It can suggest courses of further investigation, and it can also dictate the appropriate research approach. Legislation proposed or pending in one jurisdiction might prompt researchers to investigate similar legislation and its

23. See COHEN & OLSON, *supra* note 21, at 32.

24. *Id.* at 32.

25. See, e.g., COHEN & OLSON, *supra* note 21, at 32; Johnson, *supra* note 18, at 93.

effects in other jurisdictions. Proposed or pending regulations governing pollution control might prompt detailed scientific inquiries involving news and other sources that are not, strictly speaking, legal sources. Having an awareness of the availability and usefulness of sources containing pending or proposed law can be essential in certain fields.

¶14 These two examples, secondary sources and sources of proposed or pending law, illustrate why many legal research experts conclude that knowledge of sources and the ability to identify appropriate sources are essential to the legal research process.

Knowledge of the Structure of U.S. Law

¶15 Knowledge of the structure of U.S. law and U.S. legal institutions both informs the legal research process and is reinforced by it. Researchers who can identify the three branches of government (legislative, executive, and judicial), the types of documents that flow from each branch, when and where these documents are published, which publications are official, and how to find these documents clearly have an advantage when beginning a legal research project. A researcher may be clear that she is looking for a case, but unless she knows which jurisdiction and which court level is appropriate, her research will be more involved. A researcher who is clear that he is looking for a statute will become confused unless he knows something about jurisdictions, the differences between codes and session laws, and how (and when) statutes are updated. Additionally, doing research using both codified and uncodified versions of legislative acts and using cases from different court levels and jurisdictions helps to reinforce the structure of U.S. legal information to a researcher. Having to choose between and among sources is itself instructive.

What Are the Effects of WestlawNext on Legal Research?

The Algorithm's Crowdsourcing Effect on Finding Esoteric Content

¶16 WestlawNext is a powerful legal research tool that the company claims produces very accurate results.²⁶ Researchers throughout the legal community are praising the results they get from WestlawNext.²⁷ Nevertheless, there are likely to be particular types of results that are more difficult to find using WestlawNext because of its crowdsourcing attributes.²⁸

26. LEGAL RESEARCH CTR., ONLINE RESEARCH PRODUCT COMPARISON STUDY: WESTLAW AND WESTLAWNEXT 8 (2010), available at http://west.thomson.com/WestlawNext/assets/pdf/Online_Product_Comparison_Study_-_19_April_2010.pdf (describing results of a study commissioned by Thomson Reuters).

27. See, e.g., Ken Adams, *Kicking the Tires of WestlawNext*, ADAMS DRAFTING (Feb. 1, 2010), <http://www.adamsdrafting.com/2010/02/01/kicking-the-tires-of-WestlawNext/> (calling it more efficient, quicker, and more relevant); Robert Ambrogi, *A First Look at WestlawNext*, ROBERT AMBROGI'S LAW SITES (Jan. 26, 2010), <http://www.lawsitesblog.com/2010/01/first-look-at-WestlawNext.html> (calling it simple and intuitive).

28. See generally JEFF HOWE, CROWDSOURCING: WHY THE POWER OF THE CROWD IS DRIVING THE FUTURE OF BUSINESS (2008) (providing a definition, history, and detailed explanation of crowdsourcing).

¶17 “Crowdsourcing had its genesis in the open source movement in software,” and that movement revealed several fundamental truths:²⁹

[L]abor can often be organized more efficiently in the context of community than it can in the context of a corporation. The best person to do a job is the one who most wants to do that job; and the best people to evaluate their performance are their friends and peers who . . . will enthusiastically pitch in to improve the final product, simply for the sheer pleasure of helping one another³⁰

These concepts have been applied in various contexts, including wiki creation (e.g., Wikipedia) and web searching (e.g., Google). Thomson Reuters has now applied these concepts to legal information retrieval with WestSearch.

¶18 WestlawNext capitalizes on the wisdom of its users by “monitoring key actions after the search results are returned. WestSearch takes actions like ‘print’, ‘save’, ‘folder’, and ‘view’ that a searcher performs and logs that information for future reference.”³¹ Actions from previous searches, which have been logged and stored in the WestSearch knowledge base, help to inform and influence future search results. This collective information from the “crowd” of Westlaw users “potentially rank[s] items higher or lower in the results list” for each WestlawNext search.³² Law student data, and perhaps all academic account data, are not used to inform the WestSearch algorithm.³³

¶19 So, what does this mean for the average legal researcher? Most of the time, the vetting of results via a crowdsourcing algorithm will produce a result that is desirable and useful for a researcher. Why is that the case? It is because “diverse groups of problem solvers—groups of people with diverse tools—consistently outperform[] groups of the best and the brightest.”³⁴ A group with functional diversity displaying “differences in how people represent problems and how they go about solving them” always “outperform[s] homogeneous groups” as well as “the best individual agents.”³⁵ This concept is called the “Diversity Trumps Ability Theorem.”³⁶ When this theorem is applied to legal research, years of search results gleaned from unrelated, functionally diverse Westlaw users should understandably yield better results than any single Westlaw researcher.³⁷

29. *Id.* at 8.

30. *Id.*

31. Greg Lambert, *WestlawNext—a Study in Applying Knowledge Management and Crowdsourcing*, 3 GEEKS AND A LAW BLOG (Jan. 28, 2010, 8:00 A.M.), <http://www.geeklawblog.com/2010/01/westlaw-next-study-in-applying-knowledge.html>.

32. *Id.*

33. See Greg Lambert, *WestlawNext—Some Issues Answered*, 3 GEEKS AND A LAW BLOG (Feb. 15, 2010, 10:23 A.M.), <http://www.geeklawblog.com/2010/02/westlawnext-some-issues-answered.html> (reprinting a response from Anne Ellis, senior director of librarian relations at Thomson Reuters, indicating that law student research is not a part of the WestSearch algorithm).

34. SCOTT E. PAGE, *THE DIFFERENCE: HOW THE POWER OF DIVERSITY CREATES BETTER GROUPS, FIRMS, SCHOOLS, AND SOCIETIES*, at xix (2007).

35. Lu Hong & Scott E. Page, *Groups of Diverse Problem Solvers Can Outperform Groups of High-Ability Problem Solvers*, 101 PROC. NAT’L ACAD. SCI. 16385, 16385 (2004).

36. See HOWE, *supra* note 28, at 132.

37. There are, though, information technology professionals who either disagree with the concept of crowdsourcing or think it is a myth. See, e.g., Dan Woods, *The Myth of Crowdsourcing*, FORBES.COM (Sept. 29, 2009, 6:00 A.M. EDT), <http://www.forbes.com/2009/09/28/crowdsourcing-enterprise-innovation-technology-cio-network-jargonspy.html>.

¶20 However, there are certainly times when researchers are looking to find the stone left unturned, the less popular result, the most esoteric tidbit of legal information, or the item that has not been viewed, printed, saved, or put in folders by members of the crowd. In fact, particularly in the academic environment, it is often the case that the obscure or less popular results are exactly what are needed. Often academics are doing research to advance their scholarly agendas for publication. It is important in academia to write about unique ideas or concepts, or to approach a topic from a different point of view, because the most popular or most used information has probably already been written about. Legal scholars, therefore, often look for legal oddities, unfamiliar concepts, breaking news, and rulings or decisions that are different from the current state of the law.³⁸ Legal scholars and creative thinkers also frequently write about changing the law or the effects of proposed changes.³⁹ The desired results for these sorts of research inquiries may not fall within the collection of results considered useful by the masses. WestlawNext's search algorithm may rank seldom-viewed documents lower than frequently viewed documents, which may require the user to scroll down significantly to locate such items. Perhaps these esoteric items will not display at all.⁴⁰ This phenomenon of less popular results getting buried or potentially not appearing at all is worthy of examination.⁴¹

¶21 To test this idea, I ran the following search in WestlawNext in an attempt to discover whether or not it is lawful to use deadly force to defend a motor vehicle in the state of Georgia: **deadly force defend motor vehicle Georgia**.⁴² I did not limit

38. See, e.g., David Hricik & Victoria S. Salzman, *Why There Should Be Fewer Articles like This One: Law Professors Should Write More for Legal Decision-Makers and Less for Themselves*, 38 SUFFOLK U. L. REV. 761, 771-72 (2005) (discussing how law professors write about esoteric topics and abstract legal theory); Judith Welch Wegner, *Reframing Legal Education's "Wicked Problems"*, 61 RUTGERS L. REV. 867, 971 (2009) (discussing how scholarly writing involves creative insights, a capacity to reframe problems, developing new judgments, and "multiple modalities of 'knowing' and 'learning'").

39. See BERNARD SCHWARTZ, MAIN CURRENTS IN AMERICAN LEGAL THOUGHT 566 (1993) ("It is the 'academic scribbler,' more than the judge, who is setting the themes for the developing law.").

40. It is unclear whether results that have never been viewed or printed will appear in a WestSearch result. As of March 17, 2011, no one at Thomson Reuters seemed able to answer this question. E.g., Interview with Mark Schwartz, Dir. of Librarian Relations, West/Thomson Reuters, in San Francisco, Calif. (Oct. 15, 2010) (stating that he was unsure whether less viewed content would disappear or become more difficult to retrieve); E-mail from Mark Cygnet, West Academic Acct. Manager, to author (Feb. 22, 2011, 4:22 P.M. PST) (on file with author) ("The serious question, of course, is whether WestSearch systematically makes certain types of materials less-likely to be retrieved because of how it weighs printing or downloading in its relevance determination. We certainly hope not, but it's important that the question be raised."). The answer is likely to depend on how relevant the result is and whether a key number captures the desired concept. Yet since WestSearch relevance is partly determined by number of views and prints, the logic behind answering this question becomes circular.

41. On March 18, 2011, I had a telephone conversation with Dinyar Mehta, director of WestlawNext, during which he insisted that documents that have never been interacted with will continue to appear in WestlawNext search results. E-mail from Dinyar Mehta, Dir., WestlawNext, to author (Mar. 21, 2011, 9:43 A.M. PST) (on file with author) ("Documents that have never been viewed or printed by customers will still appear in WestSearch results in general. Whether they appear for a particular query and how they are ranked will depend on all of the factors considered by WestSearch.").

42. To answer this question you need to read several statutory sections, including GA. CODE ANN. §§ 16-3-23, 16-3-23.1, 16-3-24, 16.3.24.1 (2007). However, after reading them all, it is § 16-3-24.1 that ultimately defines the term "habitation" to include motor vehicles in a way that answers the question.

the search in any way before running it; I just typed in the search terms and clicked “search.” The statutory section I was looking for did not appear in the initial documents displayed in the overview list of results.

¶22 I then chose to view all fifty-four of the statutes that were retrieved, to see if the statutory section I wanted was in the top few listed. It appeared ninth on the list of statutory sections retrieved, and I had to scroll almost halfway through the documents displayed before I found it.⁴³ While this might not seem onerous to some, requiring researchers to scroll down far below the initial three documents displayed makes the desired information far less likely to be discovered.⁴⁴ Because of WestlawNext’s renown for accuracy, inexperienced users will click and open documents at the top of the results list. Given the deterrent effect of charging for opening each document, these researchers will likely feel that they’ve overspent and cannot continue to open documents for cost reasons, thus making it even more likely that they will not see the correct answer.⁴⁵

¶23 It is interesting to note that the identical search run in classic Westlaw’s state statutes database (ST-ANN-ALL) using a natural language search yields only slightly worse results. The desired statutory section appears tenth among the results using natural language searching.⁴⁶ This suggests that, especially for statutory searching, WestlawNext is almost identical to regular natural language searching and therefore probably not worth the additional cost.

¶24 Let us look next at an example involving law journals. Suppose that I am looking for an article that I read a few months ago, which discusses how researchers don’t really read information on the web; they actually skim.⁴⁷ I recall reading about this concept in a law journal, but I cannot recall the title, author, or other identifying information about the article. To try to find the article using WestlawNext, I typed in the search: **researchers don’t read they scan the web**. Again I did not limit my sources at all; I just typed in the search and began searching. The article did not appear among the initial thirteen documents displayed on the overview results screen. I then limited the publication type to law reviews and journals. The article I was looking for did not appear among the fifteen law review and journal results returned. In fact, most of the articles I found did not address the issue at all.

¶25 Next, I tried running the identical search on WestlawNext, but limited my search to the law reviews and journals (JLR) database. WestlawNext returned 6666

43. All of the searches and search results discussed in this paper were run in December 2010. Due to the dynamic nature of WestSearch, my colleagues have noticed that search results sometimes change over time.

44. JEFF JOHNSON, GUI BLOOPERS: DON’TS AND DO’S FOR SOFTWARE DEVELOPERS AND WEB DESIGNERS 360 (2000) (“Web users in fact do not scroll down much and often assume that what is visible without scrolling is all that is there.”).

45. See *infra* ¶ 54.

46. The search “**deadly force**” & **defend** & “**motor vehicle**” & **Georgia**, when run in the state statutes database (ST-ANN-ALL) using terms and connectors searching, yielded seventy two results, none of which were the desired statutory section. This is a novice Boolean search that an inexperienced researcher might run. Experienced researchers could construct a better Boolean search (or would start with a secondary source).

47. Julie M. Jones, *Not Just Key Numbers and Keywords Anymore: How User Interface Design Affects Legal Research*, 101 LAW LIBR. J. 7, 15, 2009 LAW LIBR. J. 1, ¶ 18.

results. The article I was seeking appeared seventeenth on the list, again requiring significant scrolling beyond the five displayed without scrolling. Interestingly, when I ran a natural language search using classic Westlaw and the exact same search terms, the desired article appeared as the fourth result and required no scrolling. This result suggests, perhaps, that too few researchers have run searches for this concept and found the article I remembered. Whatever the cause, WestlawNext failed to deliver.

¶26 The potential for content to become more difficult to access is greater for documents other than cases. This is true because of the incorporation of key numbers and KeyCite into the WestSearch algorithm. I have run numerous searches (far too many to detail here), and I have not yet discovered an instance where relevant and important cases that share a particular topic and key number fail to display within a search result designed to retrieve the issue covered by said topic and key number.⁴⁸ Thus the examples I focus on here involve statutes and secondary sources. Nevertheless, given the research on the variability of KeyCite results,⁴⁹ and the newness of WestlawNext, the issue of relevant cases becoming buried is one that can only be clarified by future research and study.

¶27 This issue of potentially buried content is one that will certainly need further discussion, research, and testing. Empirical research about the continuing accessibility of obscure or little-used content, and research about how best to find this content using WestlawNext, will be the only useful way to answer these questions.

Law-Changing Effects

¶28 Suppose that online legal information systems like WestlawNext are the wave of the future. Suppose also that the other large legal information vendors follow suit and create WestlawNext-like systems for searching legal content.⁵⁰ A cache of irretrievable legal information could result in a couple of problems. First, documents without meaningful interactions may not appear at all. Second, if such documents do appear, they may appear so far down in a citation list that most researchers (especially inexperienced ones) will never scroll down far enough to open them.

¶29 If legal researchers are unable to find unpopular or less used tidbits of legal information, this has the potential to change the law. If the applicable legal precedent is unfindable and therefore unusable, hasn't the law been effectively changed? Existing but less popular legal precedents could effectively become invisible. Rarely used but valid laws, doctrines, or arguments might fade into nonexistence. The unfindable could practically cease to exist. This phenomenon might have serious

48. A detailed discussion of headnotes, topics, and key numbers in WestlawNext is beyond the scope of this article. Indeed, this could be the subject of an entire article and certainly warrants further study.

49. See Susan Nevelow Mart, *The Relevance of Results Generated by Human Indexing and Computer Algorithms: A Study of West's Headnotes and Key Numbers and LexisNexis's Headnotes and Topics*, 102 LAW LIBR. J. 221, 2010 LAW LIBR. J. 13.

50. Just before this piece went to press, LexisNexis rolled out its next-generation system, Lexis Advance, to law librarians, with a promised availability date for law students and faculty of fall 2011.

and detrimental effects on legal scholarship. New and emerging ideas are what legal academic writing is all about. While it is true that not all new ideas are obscure, many of them are. These obscure ideas might never be uncovered, examined, and expounded upon if irretrievable. The result would be to limit the possibilities of legal writing, to limit the reach of creative thinking about the law, to narrow the range of alternative legal perceptions, to close the door to the unknown. Alternative views of the law or of the possibilities of the law would never be exposed.

Effects on the Practice of Law

¶30 “Legal research is a cornerstone of the legal process and the development of the law”⁵¹ Both are fueled by research results. Research on the current law, research on the law in other jurisdictions, research on trends in the law, and research on proposed or pending law are what the practice of law is built upon. “The legal publication universe is at the core of American law.”⁵² Therefore, what would the above-mentioned limitations on legal research mean to the practice of law? First, since lawyers practicing in certain areas of law frequently rely on academic articles for clarification and explanation of the law,⁵³ their understanding of the law would be narrowed. Second, creative lawyering would be stifled. Not only would creative lawyers be unable to find cutting-edge legal documents, the academic articles on which they rely for new and creative ideas would be similarly limited. The expansion of the law and the evolution of legal theory could therefore be slowed, if not brought to a standstill. The law is an organic and evolving entity that relies on original argument and research to advance. If the novel and peripheral are hidden, advancement will be slower and more incremental.

¶31 Combating this phenomenon of disappearing esoteric legal information will require specialized legal research strategies and training. The strategies necessary to combat this phenomenon will likely develop over time as researchers work more with WestlawNext. One approach might be to use Boolean commands that force the search engine to return results containing particular words or word combinations. For example, the commands “atleast,” “and not,” “allcaps,” and “singular” can be employed to require the return of documents with certain quantities of words and excluding other words and word forms. This is nothing new to most

51. Katrina Fischer Kuh, *Electronically Manufactured Law*, 22 HARV. J.L. & TECH. 223, 227 (2008).

52. Robert Berring, *Chaos, Cyberspace and Tradition: Legal Information Transmogrified*, 12 BERKELEY TECH. L.J. 189, 190 (1997).

53. Although many practicing lawyers perceive law review articles as irrelevant, lawyers in certain practice areas find them instructive. See, e.g., Max Stier et al., *Law Review Usage and Suggestions for Improvement: A Survey of Attorneys, Professors, and Judges*, 44 STAN. L. REV. 1467, 1485 (1992) (“[W]hereas professors rarely used law reviews to gain a general overview of existing law, attorneys valued law reviews in large part for exactly that purpose: Evidently practitioners (and perhaps judges and their clerks as well) treat law reviews as an alternative to treatises for summarizing the law in a particular area.”); Jay D. Wexler, *Defending the Middle Way: Intermediate Scrutiny as Judicial Minimalism*, 66 GEO. WASH. L. REV. 298, 333–34 (1998) (discussing how law review articles help judges, lawyers, and courts); Maxwell S. Kennerly, *Investing in Lawsuits, Part II: New Law Review Article on Third-Party Litigation Funding*, LITIGATION & TRIAL (Apr. 20, 2010), <http://www.litigationandtrial.com/2010/04/articles/the-law/for-people/investing-in-lawsuits-part-ii-new-law-review-article-on-thirdparty-litigation-funding> (example of a practicing lawyer finding “an interesting idea” in a law review article).

advanced researchers. However, WestlawNext may require researchers to use these types of commands more often. It is also unclear to what extent WestlawNext obeys Boolean commands, because a WestlawNext Boolean search is still subject to WestSearch and its incorporation of key numbers, meaningful interactions, and other factors that affect search results and rankings.⁵⁴ Another approach to finding esoteric information might be the use of particular sources or tools like the *American Law Reports* (A.L.R.), KeyCite, and the West Key Number System.

Broad Searching and When to Focus: The Changing Norm

¶32 Part of the beauty of electronic legal research is its ability to retrieve the broadest possible grouping of relevant results.⁵⁵ Electronic researchers find more information and are exposed to more and different cases and other documents.⁵⁶ After decades of using and refining legal research approaches and techniques, librarians and other experienced researchers have developed strategies for dealing with the wealth of information gathered through electronic searching. One of the preferred strategies for doing electronic legal research is to begin searching broadly and then to focus once you find results that begin to look useful. This strategy or norm is widely recommended by legal research experts.⁵⁷ Broad searches allow a researcher to take advantage of the power of electronic searching by gathering more results than were ever previously possible in print. Some of these results will undoubtedly be irrelevant, tangential, or only marginally related. Nevertheless, exposure to the broad results is a benefit in and of itself.

¶33 WestlawNext changes this norm significantly. The nature and beauty of WestlawNext is that researchers don't have to think about broad versus narrow searching. It simplifies the process by allowing users to simply throw in search terms and, in most cases, get very accurate and relevant results.⁵⁸ Texts on legal research have already begun to acknowledge that "WestlawNext[] changes several of the basic features of searching."⁵⁹ This reality changes how we will both approach and teach legal research.

¶34 Starting research with a broad search serves a couple of important purposes. First, starting broadly helps unfamiliar researchers discover the landscape of the desired area of law by exposing them to a large spectrum of relevant docu-

54. Dinyar Mehta, director of WestlawNext, disagrees with me on this point. He says that WestlawNext obeys Boolean commands and that to trigger Boolean searching you must use the Advanced Search template; enter a term expander, proximity connector, or document field; or use the "Advanced:" command. E-mail from Dinyar Mehta, *supra* note 41. Researchers who enter only search terms and the **and** or **or** connectors into the global search box will not trigger Boolean searching. In my experience, few researchers other than librarians use advanced search features, specialized commands like "Advanced:," or anything other than the **and** or **or** connectors. Moreover, my limited side-by-side tests of identical Boolean searches run in classic Westlaw and WestlawNext have sometimes returned slightly different results.

55. See Kuh, *supra* note 51, at 247–49 (discussing how electronic searching yields broader and more numerous results than print).

56. *Id.* at 249.

57. See, e.g., SLOAN, *supra* note 17, at 291–92; Patrick Meyer, *Law Firm Legal Research Requirements for New Attorneys*, 101 LAW LIBR. J. 297, 312, 2009 LAW LIBR. J. 17, ¶ 48.

58. LEGAL RESEARCH CTR., *supra* note 26, at 8.

59. COHEN & OLSON, *supra* note 21, at 18.

ments. It helps researchers become familiar with a particular area of law and its norms and precedents. It acquaints them with existing terms of art, provides a historical perspective by exposing them to leading cases and other primary sources of law, and gives them a sense of whether or not multiple aspects or facets exist that may be useful. Researching broadly helps researchers locate new sources, arguments, or lines of reasoning.

¶35 Second, starting broadly allows a researcher to focus on a particular topic or facet of the research only after getting a sense of the quantity of materials that exist. It lets researchers pinpoint specific aspects of their research with the knowledge that they are not missing things.⁶⁰ She has seen the forest, so she can now focus on a particular type of tree.

¶36 Retrieving an initially focused WestlawNext result will require researchers to rethink how they approach research. WestlawNext does not afford researchers the luxury of sifting through or focusing on a large and wide-ranging set of search results. It has no mechanism for executing an initially broad search. Even attempts to broaden searching through using broader or more expansive search terms will not yield a truly broad search result because the algorithm of WestSearch prevents it. More than a decade ago, Berring warned of the dangers of relinquishing control over searching to automated search algorithms. He wrote that “the whole point of these systems is to work automatically. . . . In this [automated] environment one accepts the search results as being the best available information.”⁶¹ The WestSearch algorithm is designed to narrow or focus even the broadest of searches, and control over the scope of searches is beyond the user’s control.

¶37 To test this theory I ran the search: **abortion trimester constitutional** in WestlawNext. My intention was to find cases dealing with the constitutionality of abortion, cases grappling with the same issues as *Roe v. Wade*.⁶² I did not limit the search in any way before running it; I just typed in the search terms and clicked “search.” My results included 317 cases. As one would expect, the cases were all on point. In fact, *Roe v. Wade* was the very first case listed, indicating that it was considered the most relevant. All of the 317 cases dealt with the constitutionality of abortion and the timing measured in trimesters. When I ran the exact same search in the ALLCASES database using natural language in classic Westlaw, I retrieved 804 cases. Classic Westlaw retrieved over two and a half times more cases than WestlawNext. This example illustrates the point that classic Westlaw allows broader searching and retrieves a larger sampling of cases than WestlawNext. This is true when the broadest possible search terms are used.⁶³ WestlawNext offers various means by which researchers can narrow their search results via the “filters” and

60. Running broad searches, even “custom digest” searches using topics and key numbers, will not guarantee that a researcher has retrieved everything or that all of the materials retrieved are relevant. See Mart, *supra* note 49 (discussing the relevance and completeness of electronic legal research results on Westlaw and LexisNexis).

61. Berring, *supra* note 52, at 210.

62. 410 U.S. 113 (1973).

63. My WestlawNext search was intentionally broad and was not limited or narrowed by proximity connectors or any other narrowing strategies.

“views” displayed on the left side of the screen. However, there are no built-in tools for expanding search results.

¶38 This example is significant because, as suggested earlier, cases that are not directly on point may often prove useful to the researcher. Researchers may want to browse through a larger set of cases that are related but, at first glance, not directly relevant. In the example above, classic Westlaw results included the recent case of *Burton v. State*.⁶⁴ *Burton* is a case about whether a pregnant woman who refuses treatment can be forced by the state “to submit to any medical treatment deemed necessary . . . including detention in the hospital for enforcement of bed rest, administration of intra-venous medications, and anticipated surgical delivery . . .”⁶⁵ The case discusses the issues of determining fetus viability and of trimesters.⁶⁶ A researcher interested in cases that grapple with many of the same issues as *Roe* might very well be interested in reading the *Burton* case. However, *Burton* does not appear in the 317 results retrieved by WestlawNext. Moreover, when I limited the same search to Florida, I retrieved only twenty-six cases, but again *Burton* was not one of them. The legal researcher using WestlawNext and doing broad searching will be exposed not only to fewer cases, but also to a far narrower range of related content. Different tools and strategies will be needed by researchers to expand on results, to broaden the scope of research and to get a view of the forest after having examined only a small cluster of trees.

¶39 Experienced researchers have ways of expanding the scope of their research when they are forced to begin with a specialized kernel of knowledge, such as a specific case or statute. These strategies for expanding research scope will need to be honed and more widely relied on by researchers. Research expansion strategies will also need to be emphasized when teaching legal research to law students and other inexperienced researchers.

¶40 One strategy for expanding the scope of legal research is to use a citator service like KeyCite. KeyCite is designed to give you both analysis and links to all of the documents that cite to your original authority. Theoretically, by using the citing references to a case or by using headnotes to do a key number search, one should be able to expand one’s research results. The citing references retrieved from KeyCite could then be used to expand the scope of research beyond the original focused result retrieved using WestlawNext. However, even this strategy has limits. A recent study that compared results from headnote searches using KeyCite and Shepard’s revealed not only that the two systems yield different results, but also that both systems yield incomplete results.⁶⁷

¶41 There is another problem with using KeyCite to expand narrow research, especially for case law retrieved from WestlawNext. WestlawNext’s algorithm, WestSearch, incorporates both KeyCite and West’s topics and key numbers into its

64. 39 So. 3d 263 (Fla. Dist. Ct. App. 2010).

65. *Id.* at 264.

66. *Id.* at 268 (Berger, J. dissenting).

67. Mart, *supra* note 49, at 249, ¶ 53 (“The lack of a significant overlap for cases in the result sets for KeyCite and Shepard’s illustrates an essential problem of algorithmic searching: no one algorithm will give you all of the relevant results.”).

searching.⁶⁸ Therefore, theoretically, search results from WestlawNext should yield cases with the same relevant headnote or headnotes or that have been cited by these cases. If that is in fact true, then employing KeyCite to expand search results would either be fruitless or redundant. Yet, the examples above demonstrate that WestSearch definitely does not retrieve every single case that is relevant. Moreover, if a case cannot be found, it will not be cited to, and it will therefore not appear in later KeyCite reports. Needless to say, further research is necessary to determine the usefulness of KeyCite in expanding WestlawNext search results.

¶42 Other strategies for expanding focused or anecdotal research results include searching law reviews and journals, treatises, legal encyclopedias, and A.L.R. The power of secondary sources to expand research or to reveal additional primary source material is no secret.⁶⁹ However, searching secondary sources using WestlawNext may not yield the same expanse of secondary documents. It is likely, therefore, to produce a more limited set of citations to primary authority than classic Westlaw. Again, this is because of WestlawNext's design. It is designed to produce a limited set of very focused, and mostly very accurate, results. It was not designed to produce everything. Librarians and other researchers will have to continue to work on strategies for expanding research results using WestlawNext.

¶43 Due to the newness of WestlawNext, the effects of many of the variables in play here are still unknown. Follow-up in the form of empirical studies or other research about WestlawNext results is really the only way to accurately gauge the narrowness of initial results and the effectiveness of techniques to expand on those results.

Not Choosing a Database or Source

¶44 The fact that WestlawNext does not require researchers to choose a database or a source before searching will have a number of effects, not all of them negative. One such effect is that researchers will be pointed toward and gain exposure to previously unknown sources, databases, and documents. Once a search is run in WestlawNext, results are categorized on the left side of the screen. There are general categories for types of sources like cases, statutes, regulations, administrative decisions, trial court orders, secondary sources, briefs, pleadings and motions, expert testimony, jury verdicts and settlements, pending and proposed legislation, and pending and proposed regulations. Within each category, sources are broken down even further into subcategories like publication type and publication name.

¶45 For example, when I ran a general search in WestlawNext and clicked on the category "secondary sources," the general category of secondary sources was subdivided into publication types like A.L.R., 50 State Surveys Regulations, 50 State Surveys Statutes, CLE and Seminar Materials, and Law Reviews and Journals. The general category of secondary sources is also further subdivided into publication names like *American Jurisprudence 2d*, C.J.S., *Wright & Miller*, and *Florida Jurisprudence*. The result is that researchers are exposed to numerous types of pub-

68. Hane, *supra* note 6.

69. See NANCY P. JOHNSON, ROBERT C. BERRING & THOMAS A. WOXLAND, *WINNING RESEARCH SKILLS* 117 (4th ed. 1999).

lications and to numerous titles that they may never have otherwise discovered. Teachers of legal research will need to focus much more on examining and evaluating sources when using WestlawNext. On the other hand, time previously spent teaching Boolean and other search strategies using classic Westlaw may not be necessary as these concepts become less important to search results.

¶46 The potential downside to not having to choose a database or source prior to searching is that a researcher's knowledge of particular sources is not reinforced in the same way. When researchers search an electronic database without first stopping to think about what they want to search or where and how they are intending to search, their knowledge of the structure of law is also eroded. Simply put, researchers don't know what they are searching if they do not have to choose a source first, and researchers using WestlawNext don't really need to know what they are searching. All they have to do is type and click.

¶47 In the past, analyzing facts, making determinations about jurisdiction, and thinking about other legal aspects related to the facts were all steps that had to be taken before searching either traditional legal research databases or print sources.⁷⁰ Pondering these issues while using both print and electronic resources prepares students and other researchers to tackle research projects in the real world "where the availability of legal sources will vary depending on the type and size of the practice or workplace."⁷¹ With WestlawNext, researchers do not have to think about their legal questions and ponder whether they are likely to be controlled by statute, common law, or regulation. Without having to ponder those questions, researchers do not develop a sense of which types of documents are best to consider, given their unique facts and circumstances.

¶48 Novice researchers are likely to wade through cases first even when that approach is not justified. WestlawNext researchers do not even have to think about jurisdictional questions, which in some instances could be disastrous. WestlawNext allows researchers to simply throw in search terms and to consider what they are getting later. The inherent need for reflection, analysis, and assessment that formerly built and reinforced knowledge of sources and the structure of law is eliminated with WestlawNext.

¶49 Experienced researchers develop specialized strategies over time for searching particular types of documents. A search constructed for the purpose of finding case information will often differ from a search constructed to find statutory or regulatory information. Researchers structure searches differently to account for the ways different materials are organized. Judicial opinions are written in narrative or explanatory prose, and they are usually organized in paragraphs. Statutes are most commonly organized in outline form with sections and subsections that range in length from one sentence to several paragraphs.

¶50 Thus, choices about proximity between search terms or search concepts vary depending on the source being searched. For example, with cases it is common to search using the "within paragraph" (w/p) or the "within sentence" (w/s) Boolean connector. With statutes, because spacing between sections varies, para-

70. Johnson, *supra* note 18, at 79.

71. *Id.*

graphs can be only one sentence long, and sentences often contain only one concept or term. Therefore, the “within number” (w/n) Boolean connector is more often used with statutory searching. This is just one example, but it illustrates one way that search strategy can differ when searching different sources. Researchers who never have to choose a source may never develop this and other source-specific search strategies. Researchers with poor or underdeveloped searching skills may end up wasting money and time.⁷²

¶51 Finally, the practice of not choosing a source before searching increases the risk of retrieving non-authoritative or extraneous documents. Knowledge of the concepts of authority and precedent is important to the research process.⁷³ Having to choose databases containing sources that are authoritative or that have precedential value guarantees the value of documents retrieved.

¶52 While it is true that WestlawNext does a great job of identifying categories, subcategories, and even the publication types and names from which documents come, researchers may still become confused. Novice researchers or researchers unfamiliar with an area of law may just begin opening the first documents displayed without regard to the sources from which they come. Researchers who do not know how to evaluate the appropriateness of a source in relation to the information sought will waste time or become confused. Such researchers may spend time reading cases when the issue in question is controlled by administrative regulations. Or they might spend time reading a brief on an issue that is controlled by statute. Such confusion is far more likely to occur when researchers can skip the step of choosing a source and thereby never develop a sense of source appropriateness.

Pricing

¶53 The way that WestlawNext is priced for nonacademic users is likely to significantly impact the way that research is conducted among practicing lawyers, judges, and other legal professionals.⁷⁴ In February 2010, Thomson Reuters published a pamphlet, *WestlawNext Pricing Guide for Commercial Plans*.⁷⁵ This pricing guide confirms that WestlawNext costs a researcher \$60 per search for running or editing a search.⁷⁶ That document also summarizes what it calls “Chargeable Events,” and it lists per-minute and transactional charges that users will incur for

72. *See id.* at 86.

73. *Id.* at 81.

74. There are three basic pricing models for nonacademic users of classic Westlaw: transactional, hourly, and WestPro, and many firms have a hybrid of two or more of these models. I only consider how WestlawNext changes transactional pricing. Pricing plans using other pricing models will impact user choices differently. *See* WESTLAW QUICK REFERENCE GUIDE: WESTLAW PRICING FOR PLAN 1 SUBSCRIBERS (Apr. 2006) available at <http://west.thomson.com/documentation/westlaw/wlawdoc/billing/wlplan1.pdf> (listing pricing options for “private plan subscribers”).

75. WESTLAWNEXT PRICING GUIDE, *supra* note 15.

76. Dinyar Mehta, director of WestlawNext, points out that with transactional pricing, the \$60 or more charge per search is included in a customer’s subscription, implying that it is therefore meaningless. E-mail from Dinyar Mehta, *supra* note 41. However, I have spoken with numerous law firm librarians who point out that these per search charges are used when billing clients. The fact that clients’ bills reflect these per search charges makes them inherently significant and noteworthy.

opening various types of documents, for example: cases (\$13.00); state statutes, court rules, and regulations (\$16.00); federal statutes, court rules, and regulations (\$25.00); secondary sources (journals and law reviews, practice guides, and jury instructions) (\$30.00); premium secondary sources (A.L.R., C.J.S., *American Jurisprudence 2d*) (\$46.00); Fifty-State Surveys (\$250.00); trial court filings (pleadings, motions, memoranda, and court orders) (\$75.00); or *New York Times* (\$36.00). KeyCite is also a chargeable event costing \$7.00 per citation.⁷⁷

¶54 Initiating the practice of charging a fee for each opened document will discourage researchers from opening and reading documents. It will cause researchers to examine fewer documents and discover less information. WestlawNext's new pricing structure creates a strong economic disincentive for researchers to open and peruse numerous documents. Opening, skimming, and even reading portions of numerous documents was, in the past, the norm for thorough, thoughtful, and careful researchers. Classic Westlaw encouraged that type of research behavior by not charging researchers a fee for each opened document. Experienced researchers have come to rely on their ability to examine portions of the documents they gather. Moreover, examining and reading documents is one of the leading ways that attorneys and other researchers gather information.⁷⁸ Pricing structures like WestlawNext's, which discourage the practice of opening and reading multiple documents during the research process, will surely result in less thorough and less productive research.

Conclusion

¶55 WestlawNext will certainly change the landscape for both legal researchers and teachers of legal research. Its new search algorithm, WestSearch, is a powerful tool that returns more focused results. The new display of search results may offer researchers increased exposure to more sources and titles. However, there are aspects of this product with potentially negative effects. Searching without having to choose a database eliminates the mechanism by which researchers learn about and reinforce their knowledge of sources. WestSearch's seemingly unalterable ability to return very focused results has the potential to bury or hide documents. WestlawNext's new transactional pricing scheme will also affect how practitioners search and what they ultimately find. It would be a mistake, though, to use these and other possible effects to demonize or disparage the product. Instead, researchers and teachers of legal research should use these observations as a springboard to developing effective ways to use this powerful and innovative legal research tool. Further research and empirical studies of WestlawNext are necessary to assess its strengths and weaknesses accurately.

¶56 Like any other legal information product, WestlawNext is designed to do certain things amazingly well. It is up to users, and particularly law librarian

77. WESTLAWNEXT PRICING GUIDE, *supra* note 15.

78. See Michael J. Lynch, *An Impossible Task but Everybody Has to Do It—Teaching Legal Research in Law Schools*, 89 LAW LIBR. J. 415, 417–18 & n.4 (1997) (discussing the necessity for researchers to read and sometimes reread cases and other materials to gain a true understanding of the law).

experts, to develop strategies for using this product in ways that will best benefit our organizations. Law librarians and other researchers need to be aware of both the strengths and weaknesses of WestlawNext in order to craft thoughtful and innovative strategies for its use and also for teaching these strategies to the next generation of legal researchers. Teachers of legal research will undoubtedly need to teach both classic Westlaw and WestlawNext differently. Attention will need to be paid to the differing techniques necessary to retrieve desirable results from each system.

¶57 More than two decades ago, Robert Berring, speaking of electronic databases, wrote:

The danger of the high-end products is that each step in the research process that is carried out automatically by the front end system, is a step taken away from the purview of the researcher. Each decision that is built into the system makes the human who is doing the search one level further removed from the process.⁷⁹

Berring's words should serve as a reminder to librarians and teachers of legal research. We must strive to understand as much of the research process as possible, even the steps carried out by online algorithms, so that we can develop and teach effective strategies for achieving our research goals.

79. Berring, *supra* note 52, at 209–10.