

Lexis & Westlaw Training - First Year

Instructors' Outline — Spring 2007

Issue-Based Searching (“Exploring the Unknown”)

Instructor's Set-Up

- ♦ Open two browser windows:
 - http://www.lexis.com/research* — and log on
 - http://lawschool.westlaw.com/*
- ♦ Launch PowerPoint presentation —
[SLIDE: “Preparing”]

Introductory Remarks

[SLIDE: Title]

- ♦ Introduce self.
- ♦ **Dilemma:** one mandatory session; so much to cover? How to pick what to emphasize?
- ♦ Introduce **theme: saving time.**
- ♦ **Describe handouts.** Can follow and review presentation on folded sheet
- ♦ Note: evaluation sheet (color: pink)
- ♦ **Goals** for session
 - ◇ Cover principles for selecting an appropriate place to run your search
 - ◇ Create a good online search (that will work in both LEXIS and WESTLAW)
 - I'll teach a style of writing searches that will work on both LEXIS and WESTLAW (whose search engines are (by design) almost identical.
 - I will teach how to create a “Terms and Connectors” search. LEXIS and WESTLAW have other options, but I believe that using T&C searching well is one of the foundational skills for success as an online research.
 - ◇ Evaluate and adjust search
- ♦ **Brisk pace** — what will be **omitted:**
 - ◇ Most basic interface skills; tutorial covered those.
 - ◇ No cite-checking/verification; will covered in later LRW&A classes.
 - Amy's handout gives good advice, comparisons.

Why focus on creating searches and picking the right place to run them? **To save time!**

1. Picking the “right” database (collection of documents to search) will save time and cost.
2. Learning to manipulate the unique LEXIS/WESTLAW search engines will give better results.

First Words — Deciding Where to Search

Even before writing a search, I want to say something about deciding where to start.

(Perhaps) Even more that writing a good search, making a good choice about where to search will give you faster, better results.

Recall tutorial?

Search for authority to prepare for meeting? Had to choose between cases and Witkin?

More than half chose to search cases BUT those who chose Witkin —

- ♦ Got fewer documents
- ♦ (even more important) Got more useful results
- ♦ (ultimately) said they were twice as likely to be prepared for the hypothetical meeting.

That's just one simple example of how a good choice of where to search makes the project go better (and faster). (Choice had big effect on satisfaction with search & results.)

Choices of Where to Search

WESTLAW and LEXIS both have multiple sources to search – think of both systems as vast online libraries of primary & secondary legal resources. Just as in fall in print you could choose a secondary source (like Witkin or a Rutter Group practice guide or ALR) or a primary source (like cases or statutes), the same holds true for LEXIS & WESTLAW.

Each offers, literally, tens of thousands of choices of cases, statutes, regulations, law review articles, practice guides, legal news, etc., etc.

Perhaps best for legal research, each has hundreds of general and topical secondary sources — which I believe are almost always the best places to start.

How to Find a Good Place to Start?

Three major ways of finding right place to start:

- ♦ Browsing
 - ✧ On LEXIS, use the “Look for a Source” box (Legal tab) on the Welcome (Search/Sources) screen.
 - ✧ On WESTLAW, use the “Directory” link.
- ♦ Searching for a title that you already know — and —
- ♦ Searching to discover items about a particular topic.
 - ✧ On LEXIS, use the “Find a Source” tab (in the “Look for a Source” box).
e.g., University of San Francisco Law Review
 - ✧ On WESTLAW, use the “Directory” link, then use “Search the Westlaw Directory”
e.g., Enter “products liability” in the “Search the Westlaw Directory”

Picking a good source may take a couple of minutes, but it can save you hours of research time. Literally hours!

Learning More About a Possible Source

What is it exactly? Who wrote it? What time does it cover? What jurisdiction does it cover? What topics does it deal with? What are some search tips?

- ◆ Click the “information” symbol buttons
 - ◇ LEXIS — “i” in a square
 - ◇ WESTLAW — “i” in a circle

[SLIDE: WESTLAW database selection]

[SLIDE: LEXIS source selection]

Principles for Picking a Useful Place to Search

(These principles are summarized in the handout, page I.)

1. Use the smallest source/database that fits your project
 - ◇ Choose a source that covers only the jurisdiction that you need.

e.g., if you need to find a California case, search a source/database that is limited to California cases; don’t search a source that covers case law from all 50 states.
 - ◇ Choose a source that covers only your specific topic.

e.g., if your project involves federal antitrust law, search a source/database that covers only federal antitrust cases instead of all federal cases on every topic.

Or, (often better), start with a practice guide covering antitrust law!
(which leads to next principle — one I cannot emphasize enough!)
2. Look for a useful secondary source
(practice guide, treatise, ALR annotation, law review article, etc.)
 - ◇ When you’re not sure where to start;
 - ◇ When you’re researching a topic new to you, or,
 - ◇ Any time some explanation and analysis, coupled with citations to major statute and cases would be helpful.

Can pick single-topic (e.g., premises liability; copyright; criminal law) secondary sources, when you are sure of the area of law.

Can pick multi-subject secondary sources (e.g., encyclopedias, Witkin, ALR) when the problem might cover multiple areas of law, or you are not yet sure of the area of law.

My advice: (almost) always start with a secondary source, then move on to a (jurisdiction-specific and maybe even topic specific) primary source once you have a grasp of the context and big picture — of the key rules, principles and authorities.

What's next? - 4 stages in this session [nuts & bolts of writing a good search]

- 1 You'll each **draft a search** designed to take advantage of some of the power features of LEXIS/WESTLAW.
- 2 You'll each **run your search** (Initially, I'll choose where, so we can be assured of interesting results and compare them one to another).
- 3 We'll **review results** and, if needed, **revise** the searches.
- 4 Then, we'll **switch** to the other vendor's system.

There, we'll review how to **pick where to search**.

You'll practice that by finding a collection of materials to run your search - different materials than we looked at before.

(Let's start) **Creating the Search**

The process (handout, Pages 2 – 4)

- ♦ Assess the Problem
- ♦ Draft the Search
- ♦ Run and Evaluate the Search — rethink / revise as needed

Scenario / Problem for Today

Here's our hypothetical problem for today.

[Return to PowerPoint if necessary] [Alt-Tab]

[SLIDE — Fact pattern]

[While explaining scenario, hand out worksheets]

You represent a small business with 200 employees. The head of human resources has been informed that one of the employees is addicted to “crank” (also known as speed or methamphetamine). She calls you — on Friday evening — to find out if her company needs to provide any special accommodation for this employee under state or federal law. She needs an answer by 9:00 am on Monday.

(In reality, you'd ask the head of HR some clarifying questions about these facts (is he/she a current user? or in recovery?) and her goals for the outcome (retain or dismiss if possible.)

A. Assess the Problem (4 steps, page 2 of handout)

Research begins with a problem (from client or supervisor). Run through the 4 steps on page 2 of the handout. Do it quickly — but a little thought before drafting search & signing on will speed research.

Assess as to — [next page!]

Area of law—

Here there are a couple of candidates for the area of law. The area(s) of law we identify will affect where we choose to run our search, though we may not *need* to label *exactly* which area of law is involved to make a start.

The client's needs—

Here the client seeks advice or an answer, not case or statute citations, or a long memo.

Terms of art—

Here you may not know them to start with. Begin with what client gives you, and keep an eye out for terms of art as you search.

What type of materials to search —

[We never miss a chance to promote secondary sources.]

Do you need background? analysis, cases? statutes? regulations

Here, assuming you aren't experts in this area of law, and knowing you have no time to read and process a bunch of case law, starting with a good secondary source might save a bunch of time.

B. Draft the Search — This in itself is a 5 step process, pages 2 & 3 of folded handout & on “handy search form”

(1) Issue – (2) Terms – (3) Alternatives — (4) Root Expanders — (5) Connectors

Drafting of Issue Statement (Step 1)

[Explain **form** - a way to make the steps explicit, to break them down and mechanize them until it becomes 2nd nature]

Draft issue statement advise using same principles taught in LRW&A classes. Can't find answer unless/until you ask the right question.

Goal: not perfect but “good enough” statement

[PAUSE - to let them draft]

[SLIDE: Instructor's form, with issue statement]

[Instructor will create own search on entirely separate issue so that students can see process and use of the form w/o being influenced. There are different search styles; mine is just one way. Will build searches that work equally well on LEXIS & WESTLAW.]

The **next 4 steps** turn the issue statement into a Terms and Connectors search.

A mnemonic: **TARC**

TARC = Terms, Alternatives, Root expanders, Connectors

[In this session we will take each of the 4 steps separately. Consciously or unconsciously you make choices at each step. We'll be deliberate about choices.]

[SLIDE: Instructor's form: TERMS. Do not fill in.]

T = Terms — Identify Key Terms/Words (Step 2)

A term is —

Any word in issue statement that is important for or essential/necessary to describing the key aspects of the problem, e.g., facts, parties, or issue/legal theory — or —

A word without which it would be hard to write about the issue or describe the problem.

Any specific/distinctive word, phrase, name, abbreviation, term of art, or number may be a term, e.g.,

SEC, iPod, fluoxetine, "PATRIOT Act", "probable cause" damages, "generally accepted accounting principles" licensee, nurse, etc, etc

On search form—

Select terms. Enter in boxes at top of columns.

Use separate column for each distinct aspect of the issue that you want deal with in your search, e.g., parties, facts, legal theory. If you have two or more terms related to the same aspect of the problem, list them vertically in one column.

[You may not need to include terms for every aspect of your problem. If some of your terms are so distinctive that they will give you precise, useful results, they might do on their own. Or, if some of your terms are so common that they'd show up in lots of unrelated concepts you might consider omitting them.

Put all terms in singular (explanation later).

[PAUSE to let them pick TERMS]

[Fill in TERMS on instructor's slide]

[Note two terms related to same factual aspect "risk/side effect" are in one column. Note use of singular, quotation marks. Will explain later.]

[Next SLIDE: Instructor's form: ALTERNATIVES. Leave blank.]

A = Alternatives — Identify Alternatives to Key Terms (Step 3)

What other words (apart from what you've already got) might legal authors have used in writing about your problem or issue?

Look for

- ♦ (Exact) Synonyms, *always*, e.g., [Examples in handout; also:]
 - doctor or physician
 - (or surgeon? or osteopath? or chiropractor? are these synonyms, or close enough?)
- ♦ Antonyms, *always* (common in law), e.g., [as in handout]
 - admissible/inadmissible
 - legal/illegal
- ♦ Related broader or narrower words, *sometimes*, e.g., [Examples in handout; also:]
 - e.g. “sexual harassment” — do you also want to search for documents that mention “sex discrimination” or “employment discrimination”
 - [or, e.g., Murder, homicide, manslaughter] [in handout]

[Why it can be useful to include broader or narrower words: if your search terms are too specific to your facts, you may get zero results when there are relevant cases with slightly different facts. E.g., suppose your client slipped on rutabagas in the produce department. Useful cases might involve slipping on other vegetables, or on other substances in other departments or types of store even.]

Related terms: your judgment call: Do you need to stick with your exact problem, or would it help to explore similar/analogous facts, legal concepts?

Overall, *be reasonable!* Don't torture yourself to think of all possible off-the-wall options. (remember: “good enough” or “pass fail” searching.)

[PAUSE to let them pick alternatives]

[Instructor's slide: fill in ALTERNATIVES.] [Got ahead of self in issue stmt. with risk/"side effect"]

[Next SLIDE: Examples of Root Expanders / Wild Card - also in handout]

R = Root Expander (& Universal Character / Wild-Card) (Step 4) —
Use these characters to account for variant spellings and endings

These are the exclamation point (!) and asterisk (*). Used because relevant documents might use your key terms, but with different endings or variant spellings.

! for truncation / alternate endings, e.g., as in handout (p.2) & on slide,
or negligen! = negligent, negligence, negligently

Beware: think what else begins with that root (as slide & handout):

test! = test, tested, testing, testify, testimony, testamentary...

* for alternate spellings, or when ! is too much, e.g., as in slide, handout
[super*ede = supercede and supersede]

Also, wild card corrects (partly when) “!” generates too many irrelevant alternative forms from the root, so, as in slide/handout:

[test*** = test, tests, tested, testing, (and also testify) —
but not testified, testifying, testimony, testamentary]

Can't use either at the start of a word. Can't use (!) in the middle of a word.

Plurals: No need to use a special character to get the regular plurals of words. The singular will retrieve the *regular* plural. [mouse ≠ mice; cactus ≠ cacti]

[Next SLIDE - **neg! versus negligen!** Do not overtruncate. Suppose you want to search for documents with the words “negligence” or “negligent” or “negligently.” Careless truncation gets too many words. More careful truncation gets just what you need.]

[Next SLIDE - Instructor's form, ROOT EXPANDERS. Leave blank.]

[PAUSE to let them pick Root Expanders]

[Instructor's form: Fill in ROOT EXPANDERS]

C = Connectors (think CONtext) (Step 5 — **Final step** in creating search)

Add connectors to show the relationship you expect your search terms to have to one another in the relevant document / to show the context in which you expect to find them.

There are really only two connectors:

[SLIDE comparing connectors]

♦ **OR**

OR is always used to link any alternatives. It is *already on your form*. Any document with any term will be retrieved. OR **expands** search results.

♦ **AND** family (and, w/s, w/p, w/#)

Do most of you have more than one column/set of terms?

Then, you will...

use a form of AND to convey/express that you expect at least one term from each set (column) of alternative terms to appear in each relevant document. So, documents must have at least one term from each column (set) of alternative terms to be included in results.

The AND family **Limits** search results.

AND itself, however, is often is too broad because terms could be very far apart in long documents. That's why there are

Variants of AND — (useful when AND is too broad)

- ❖ w/s (within the same sentence)
- ❖ w/p (within the same paragraph)
- ❖ w/# (within # words) e.g., w/3 (within 3 words)

Grammatical connectors useful in issue-based searching. They require terms to occur in the same unit of thought (the paragraph or sentence), and legal documents often contain one paragraph (or even a sentence) summarizing the facts or issues. If words are in same sentence or paragraph, there is a greater chance they'll relate to one another and to your issue.

[I said earlier that Lexis and Westlaw's search engines are almost identical. But, ... Beware: Don't mix w/# and w/p, w/s — at least, not on LEXIS.]

[AND can be useful for 2 separate concepts that must both be represented in relevant documents, but could be a some distance apart, e.g., Plane crash & punitive damages; Attorney malpractice & failure to do research]

[SLIDE: Graphic demonstration: how OR expands; AND restricts & grammatical connectors help.]

Alternatives broaden the result

AND guarantees that terms from each aspect appear, thus narrowing results.

Grammatical connectors narrow even more.

[SLIDE — Phrases]

Phrase Searching – Be Careful! (see handout, page 4)

First: Always put phrases in quotation marks.

[This has to do with another of the rare differences between Lexis and Westlaw. If you type “proximate cause” without quotation marks, Westlaw (and only Westlaw) will interpret the search as “proximate OR cause” and retrieve document with either term!]

Only use phrases for terms of art, and common, accepted phrases, e.g.,

“products liability” (or “res judicata”)

But, Second: Phrases can be *too restrictive*: [in handout, example, page 4:]

“child support” won’t get docs that say “support of the minor child”

[also in handout: “free speech” won’t get docs using “freedom of speech” (let alone “1st amendment”)]

“ann jones” won’t get “ann l. jones”

Sometimes you need to use a connector in the search, e.g.,: child w/s support

[Instructors SLIDE: Display now, but don’t fill in..]

Having Trouble choosing which form of AND?

Start with **w/p** unless you can think of a good reason why not. You can always edit later.

[On Instructor’s form: Fill in CONNECTORS & write out search at bottom.]

[PAUSE to let students fill in Connectors and write out search (b/c LEXIS and WESTLAW don’t have a neat template like this search form.)]

Next step — Log on and select a place to search

[RETURN workstation control to students now.]

C. Review Features

[Instructor and students LOG ON now!]

Have students pause at (or return to) welcome (“Law School”) page.

Make fun of puny choice of databases

Point out a few key landmarks, in this order:

- ♦ Find By Citation
- ♦ KeyCite This Citation [recall Handout on cite checking]
- ♦ Search These Databases
- ♦ Directory (Here’s where the other 29,970 choices are!)

D. Select Database

As I mentioned before, I'll pick one source/database where you all will run the searches you created. This will make it easier to compare results (and will save us a little time).

Note that WESTLAW won't let you search until you pick somewhere to search first.

Will try secondary first; we need an answer fast for this client. Specifically, **we'll use ALR. Why?** It is: objective and succinct; cites to other related ALR annotations; covers lots of areas of law; and cites to lots of primary sources.

[Instructor] Select the ALR database,

On WESTLAW, ALR appears on the crappy list on the Law School welcome screen.

[Instructor: Have students select "American Law Reports" link on the Welcome screen.]

E. Run and Assess The Search

No search is perfect. Just be prepared to adjust as needed. Also, no strategy is inherently incorrect (or correct). It's OK to start broad and use "Locate" or "Focus" or other techniques to narrow. It's also OK to start narrow and modify if results are too few.

The basic process: run the search, look at results, modify, and run again.

Assessing and Modifying Searches—Advice [Most appears in handout, page 4.]

Look at results first — at least a some of the documents.

In secondary sources, Skim titles of articles, ALR annotations, book chapters

In any source, use highlighted search terms ("show hits" on LEXIS) to pick items to look at in more detail.

If **too broad**, consider —

- ◆ Eliminating common words or word with multiple meanings (release) and/or ...
- ◆ Eliminating terms that might show up in lots of contexts unrelated to the issue at hand (e.g., "company")
- ◆ Using fact-specific or issue-specific terms that you may have rejected initially as being too likely to narrow your results
- ◆ Undoing excessive truncation
- ◆ Searching for some key terms in "title" field — e.g., title(disab! and drug or narcotic)

If **too narrow**, consider —

- ◆ Eliminating uncommon words — or words very specific to the facts or issue at hand — from your search.
- ◆ Using broader search terms (that you might have initially rejected)
- ◆ Eliminating an entire column/cluster of alternative terms that might not be as descriptive of your issue or problem as others. (Such terms can narrow results.)
- ◆ Using AND in place of w/p.
- ◆ Truncating search terms to find variant forms

Whenever results are disappointing:

- ♦ If you see any possibly-relevant documents in results, follow the links in it to other relevant sources, (e.g., leading cases, annotated statutes, articles, etc.)
- ♦ Try a different database or source: maybe the one you started with does not in fact contain as many relevant documents as you'd hoped.

Suggested Instructor Search(es)

After reviewing student searches, run the Instructor search:

drug or narcotic w/s addict! or abus! or use* [or using] w/p accommodat!
[copy before running!]

Tell students: quick tour to give you a taste of some more features (all of which are in the vendors' documentation — which is always in this room in abundant quantities.)

- ♦ Show the list of results (with highlighted search terms)
- ♦ Show split-screen view
- ♦ Show “Term Mode”
- ♦ Show “locate” using the locate search:

cocaine or heroin or methamphetamine

Possible alterations to search [OPTIONAL, as time permits]

[Field Search ?]

Edit Search, put terms in title?

Switch to another database [OPTIONAL, as time permits]

Search Directory for (no “”)

americans with disabilities

Select a secondary-sounding source, e.g.,
the “Disability Law Compliance Manual” (DLCM) or
Americans With Disabilities: Practice and Compliance (AMDISPCM)

Run the “Instructor’s search” in DLCM or AMDISPCM:

drug or narcotic w/s abus! or addict! or use* or using w/p accommodat!

LEXIS

Creating the Search

Use same search as on WESTLAW, or use instructor's search:

drug or narcotic w/s abus! or addict! or use* or using w/p accommodat!

Review of Lexis Features

- ♦ Get A Document
- ♦ Find A Source Tab (Search/Source tab at upper left, too)
- ♦ Shepard's [recall Handout on cite checking]

Selecting a Good Database/Source to Search

[Recap: A database/source is a group of related documents. They might be related by jurisdiction, topic, or type of document (article, book, cases, statute).]

Like WESTLAW, LEXIS won't let you search until you have decided *where* to search.

As with WESTLAW, you have tens of thousands of choices.

As with WESTLAW, you can browse the directory, or search it to find a useful group of documents to search.

Browse the Full "Look for a Source" listing (Legal tab)

Show how browse by using **Torts** as a topic

Demonstrate "Find a Source" searching

Since we've already searched a secondary source (ALR) on WESTLAW, we're ready to search a primary source on LEXIS.

Let's search for a collection (database/source) of cases dealing exclusively with the ADA. (remember search principle: seek a source/database limited to your subject/topic.)

Have students perform this "Find a Source" search

americans with disabilities cases

Select BNA's Americans with Disabilities Cases for searching.

[Browsing path:

All Sources > Area of Law - By Topic > Labor and Employment > Cases > BNA AD Cases]

Run Searches

Have students run their previous search (or edited version) in BNAs AD Cases.

Note: must write out “or” “and.” Good idea to write full “w/p”

[if time] **Challenge the Students** —

Find what appears to be a trustworthy, reliable secondary source — ideally a practice guide or treatise of some sort — that discusses ADA / disability law.

Ask: what did you pick? Why?

Run Searches

Have students run their previous search (or edited version) in the database they chose.

Ask them: If you took the time to read the results, could you help client with what you found?

Reviewing Search Results — Instructor Demo [if out of time]

Select BNA’s Americans with Disabilities Cases for searching.

Browsing path:

All Sources > Area of Law - By Topic > Labor and Employment > Cases >
BNA AD Cases

Use “Find a Source” looking for (without quotes)

americans with disabilities cases

Run the “Instructor’s search”:

drug or narcotic w/s abus! or addict! or use* or using w/p accommodat!

Show the list of results (with highlighted search terms)

Show “Show Hits” and “Hide Hits”

Show “KWIC”

Show “Focus” using the focus search:

cocaine or heroin or methamphetamine

When Are You Done?

[SLIDE: How do I know when I'm done?]

Some questions to help you decide if your research is done ... Are you —

- ♦ Seeing the same documents over & over?
- ♦ Using different search techniques?
- ♦ Using different publishers' tools?
- ♦ Checking both primary & secondary sources?
- ♦ Using both Shepards & KeyCite?

Getting Help

Two options

[SLIDE: Just Ask]

- ♦ Your Zief Librarians — impartial; expert in both systems; can suggest useful tools that are neither LEXIS nor WESTLAW.

[SLIDE: Coyote]

- ♦ LEXIS and WESTLAW customer support. Great hours. Good expertise; But one-trick ponies.