

Issue-Based Searching: Exploring the Unknown

Outline of First-Year LEXIS & WESTLAW Training, Spring 2007 Dorraine Zief Law Library, 415.422.6773

Goals

Use issue-based searching when you are beginning legal research without any relevant cases, statutes, or other primary materials, or when you have a few sources but need to search for additional sources about your topic. At the conclusion of this training session you will know how to:

- ◆ Create workable LEXIS/WESTLAW searches from an issue statement;
- ◆ Select an appropriate source to search; and
- ◆ Evaluate the effectiveness of your searches.

Comparing Lexis/Westlaw and Other Search Tools

LEXIS and WESTLAW differ from search engines like Google and other non-legal academic search tools in several ways, all of which let you to get accurate results with the least expenditure of time.

- ◆ Before you begin searching LEXIS and WESTLAW, you need to select a group of documents to search. LEXIS and WESTLAW each have 15,000 to 30,000 groups of documents (called “databases” on Westlaw and “sources” on Lexis), which are related by topic, jurisdiction, etc.
- ◆ LEXIS’s and WESTLAW’s search engines offer more options and features than most free and many other fee-based search engines.
- ◆ The default search technique in both LEXIS and WESTLAW is “terms and connectors” searching. “Terms and connectors” searching allows great precision but requires different skills than searching “natural language” search tools like Google.
- ◆ LEXIS and WESTLAW offer natural language searching, but you must deliberately select it, and the LEXIS/WESTLAW natural language engines also have their own unique features.

Selecting a Good Source to Search

A WESTLAW “database” or LEXIS “source” is a group of related documents. To make things easier, we’ll refer to both systems’ document groups as “sources.”

What Sources Are Useful?

- ◆ Choose the smallest source that fits your needs:
 - ◇ Limit by jurisdiction. For example, if you only need California cases, search a source that includes only California Supreme Court and California Court of Appeal cases instead of searching a larger source that covers multiple states.
 - ◇ Limit by topic. For example, if you are researching a federal antitrust matter, you may want to select a source that covers only federal antitrust cases.
- ◆ A secondary source (practice guide, treatise, ALR annotation, etc.) for background and citations to key cases and statutes about your issue.
- ◆ A multi-subject secondary source (encyclopedia or ALR), when the problem might cover multiple areas of law, or you are not yet sure what areas of law are involved.
- ◆ Locate primary sources, such as cases, statutes, or regulations, once you have a grasp of the big picture and have obtained some useful case and statute citations from a secondary source.

Ways to Find Suitable Sources

- ◆ Use the right tools:
 - ◇ On LEXIS: “Find a Source” tab on the Lexis law school “research system” home page.
 - ◇ On WESTLAW: “Directory” link, at the very top of the law school research home page.
- ◆ Use the LEXIS “Find a Source” or WESTLAW “Directory” function to search for titles that you already know, such as the law review/newspaper that contains an article that you need.
- ◆ Use words that might appear in the title of a helpful source. For example, if you’re looking for sources that discuss products liability, try entering these words in the search box to see if you can find publications with these terms in their titles.

Finding Out More About a Promising Source

If you find promising titles using the WESTLAW Directory or the LEXIS “Find a Source” function, you can get more detailed information about your source before you begin searching. Click on the “i” button located to the right of the source name on either LEXIS or WESTLAW. You’ll pull up a new screen with: a full description of the source; information about the date coverage for the source; and useful search tips for the source. For example, if you’re searching a law review source, and you would like to find out how to search by article title or author, the information can be found here.

Creating a Terms and Connectors Search

The process in brief: assess the problem; draft the search; run and evaluate the search.

Assess the Problem or Issue

Research begins with a problem. Before you search, consider:

- ♦ What’s the area of law? Am I familiar with it, or do I need to get some background?
- ♦ What does the client or supervisor need? Specific documents? A quick answer? A thorough brief?
- ♦ What words (jargon, terms of art) are used in this area of law?
- ♦ What type of materials do I want to search?
 - ✧ Treatises or practice guides (for context, background)?
 - ✧ Scholarly articles (for in-depth discussions)?
 - ✧ Legal encyclopedias (for quick overviews)?
 - ✧ Primary materials, such as cases or statutes (for authoritative statements of the law)?

Draft the Search — A Five-Step Process

Write an Issue Statement

Use plain English. Apply the principles you learned in LRW&A classes.

The next 4 steps turn the issue statement into a search. A mnemonic is **TARC**:

TARC = **T**erms
 Alternatives
 Root expanders
 Connectors

T = Terms — Identify Key Terms/Words

A term is: a word in the issue statement that is important for or essential to describing the facts of the problem or issue raised, or the legal theory involved.

Any specific or distinctive word, phrase, name or number may be a search term, e.g.,

401K, IBM, “Ford Pinto”, negligence, landlord, ERISA, etc., etc.

A = Alternatives — Identify Alternatives to Key Terms

Look for words that legal writers are reasonably likely to use in place of the key terms you’ve identified. Think about:

- ♦ (Exact) Synonyms, e.g.,
 - car, automobile
 - child, minor, juvenile, youth
- ♦ Antonyms, e.g.,
 - admissible / inadmissible
 - adequate / inadequate
 - legal / illegal
- ♦ Related broader or narrower words, e.g.,
 - homicide, murder, manslaughter
 - Volvo, automobile, truck, motorcycle, vehicle

R = Root Expander (& Universal Character / Wild-Card)

Use these characters to account for variant spellings and endings.

- ♦ The root expander is the exclamation point (!).
for truncation / alternate endings, e.g.,
discrim! = discrimination, discriminatory, discriminated...
- ♦ The universal character is the asterisk (*) —
for variant spellings, or when the root expander (!) gives too many alternative endings, e.g.,
super*ede = supercede and supersede
bank*** = bank, banks, banker, *but not* bankrupt or bankruptcy
- ♦ But beware of roots that generate too many alternative words, e.g.,
test! = test, tested, testing, testify, testimony, testamentary...

Plurals: **the singular will retrieve the regular plural.**

C = Connectors (for context) —

Use connectors to show the way you expect your search terms to appear in relevant documents. The two main connectors are **OR** and **AND**.

OR — expands search results

When used between two words, **OR** means that the results may contain either or both words.

OR is always placed between alternative terms (synonyms, antonyms, and related terms).

AND — limits / restricts search results

When used between two words, **AND** means that the results must contain both words. Any form of **AND** used between groups of alternative search terms representing discrete aspects of the issue or problem means that the search results must contain at least one term from each group of terms.

Variants of AND limit / restrict search results more precisely.

w/s — within the same sentence

w/p — within the same paragraph

w/# — within # words (e.g., w/3 equals within 3 words)

If you're not sure which is best, start with "**w/p**" unless there is a compelling reason to use another form of **AND**.

Grammatical connectors (w/s, w/p)

The grammatical connectors are particularly useful in issue-based searching. They require terms to appear within 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, and therefore that the document will be relevant.

Beware: Don't mix **w/#** with a grammatical connector (**w/p, w/s**) on LEXIS.

Phrase Searching Cautions

- ◆ Always put phrases in quotation marks. On WESTLAW, entering proximate cause without quotation marks will return different search results than entering the phrase “proximate cause” using quotation marks.
- ◆ Only use phrases for settled terms of art, and common, accepted phrases, e.g., “proximate cause” or “products liability” or “collateral estoppel” or “unlawful detainer”
- ◆ Phrases can be too restrictive. For example:
 - “child support” won’t get “support of the minor child”
 - “free speech” won’t get “freedom of speech”

Run and Assess Your Search

Remember — no search is perfect.

Run the search, look at the results, edit as needed, and run again.

Common Problems and Possible Solutions

- ◆ Lots of results with many irrelevant documents —
 - ◇ Consider eliminating common words or words with multiple meanings from your search.
 - ◇ Pick one relevant document and follow the links in it to other relevant documents.
 - ◇ Use LEXIS’s “Focus” or WESTLAW’s “Locate” to search within your results.
 - ◇ Re-run the search in a smaller, more precise source (e.g., California cases versus all state cases, if that will meet your needs).
- ◆ Very few results —
 - ◇ Consider eliminating rare or highly specific words from your search. Will a more general word express what you need?
 - ◇ Pick one relevant document and follow the links in it to other relevant documents.
 - ◇ Pick a different source. Perhaps a different group of materials will have more relevant documents.