

PRODUCT REVIEW

WestlawNext

REVIEWED BY MARY CANNON VEED

About the time I began to consider law school, a salesperson pitched “computerized legal research” to my lawyer father and Frank, his skeptical partner. Frank had spent several days briefing an important case, but he lacked the one “gotcha” citation he yearned for. Undaunted, the salesperson connected her machine to a telephone, dialed up the modem, and input her query. All the cases Frank knew by heart appeared on the CRT screen. But there was one more, which he hadn’t found because the critical language was in a concurring opinion and the digests he combed in the firm’s library hadn’t picked it up. He claimed it won the case. It certainly made the sale.

Computerized legal research has become a way of life for most of us, but extracting what you seek from myriad databases is still an arcane art. Over time, Westlaw and its competitor Lexis have become more intuitive, less dependent on precise search logic, and much faster. But finding a statute in an unfamiliar state, or a provision in the Code of Federal Regulations, is still a perilous exercise.

Until now, most Westlaw users relied on rigid Boolean logic, even though natural language searching has been available for sometime. I

know I can type “what time is it in Honolulu?” or “Avatar near 60521” and the machine will send me to timeanddate.com or Fandango, with links to maps, weather forecasts, and movie reviews. In fact, because much of the legal library is posted on public databases, a Google search can yield pretty good results—free, except for your time. But it’s not perfect. If you’re reading a brief that cites minor authorities when better ones exist, your opponent probably used a generic search engine.

Mary Cannon Veed is a partner at Arnstein & Lehr LLP in Chicago, Illinois, and is executive editor (i.e., chair-elect) of The Brief editorial board. Her practice focuses on insurance company insolvency, insurance finance and regulation, and alternative risk transfer. She can be reached at mcveed@arnstein.com.

Westlaw says it has combined modern search logic with a better grasp of legal nuances and hierarchies in its new WestlawNext product (hereinafter “Next”). I was asked to give it a test drive as part of TIPS’s sponsorship agreement with West. I greatly appreciate West’s generous sponsorship, but I maintained Frank’s skepticism. I’ve burned out on technologies that can elegantly handle defined tasks but not the random, unique queries that compel me, after 30-odd years of law practice, to hit the books. The West trainer said their new interface was developed by asking several hundred associates to find the answer to a pretty basic question, which didn’t inspire much hope. Nor did his insistence that West’s new idea leveraged its key number system. I’ve stopped using key numbers because online they are cumbersome and not noticeably more effective than Boolean searching. I understood West might want to resurrect a proprietary tool built on decades of painstaking work, but I was less convinced the tool had much left to offer.

I am convinced now. Westlaw has done some great things with Next, and they actually work! For starters, the databases are gone. You type what you want in a single search bar, and Next figures out from context clues where to find it. 383 U.S. 715? Must be *United Mine Workers of America v. Gibbs*. “Abstention declaratory action” yields *Wilton v. Seven Falls Co.* and *Brillhart v. Excess Ins. Co.*, suitable treatise references, and some interesting law review articles.

But here’s the best part: A similar search in Westlaw would yield hundreds of cases, but you probably wouldn’t notice *Wilton*, even though it’s *the* case. You might find it eventually by seeing it cited in other cases. As it happens, the Supreme Court barely mentioned “abstention” in *Wilton* and not next to “declaratory action.” It might be in your results list somewhere, but Westlaw reports that few researchers read past the first page or two of citations. Next, however, provides results with a first page called “Overview,” which uses an algorithm that combines the frequency with which particular cases are cited and the depth in which they are discussed. Next also tracks which cases users choose to download or read in full text—giving the algorithm some artificial intelligence that it uses to decide which cases to display first. It even includes cases without your particular terms, but that are coded to the same key number as the ones with your terms.

The result: What Westlaw thinks is the best case—in this instance *Wilton*—shows up near the top of the page, followed by an all-star list of others. A bar on the right lists the top secondary sources. One on the left provides information about all search results, so you can quickly



see where, and how, the issue is addressed in the cases that aren't immediately visible. An easy-to-use filter system indicates whether your selected jurisdiction has addressed the subject and whether any of the cases suggest caution, and also what neighboring jurisdictions and bellwether courts say, plus treatise references and law review articles. With a few clicks and 10 minutes' reading you can confirm that the cases in your list are the real deal, check out the treatises, and then drill down to cases in the right places or with circumstances like yours.

For instance, *Wilton* encourages federal district courts to abstain from hearing insurance declaratory judgment cases when a state case is already seeking to directly enforce the same contract. Next filters helped me locate cases involving surety bonds, cases addressing suits that combined both declaratory and conventional relief requests, and an opinion written by the chief judge in the district where my own case was pending. Another search, on an arcane point I floundered with for weeks, led to two antique Supreme Court cases, one authored by Justice Cardozo, which not only decided the point, but put the question permanently to bed—hence the scarcity of more recent references. But the case did not contain my search terms, and it was lurking in the federal database I would never have searched for a contract interpretation question.

Like a kid at an Easter egg hunt, with Next you can quickly find more information than you know what to do with. Here is where Westlaw's other "what took them so long?" idea pays off: Numerous tools let you rapidly stash potentially useful stuff into "folders" as you find it. You can highlight text and apply electronic sticky notes to the good bits. Another tool lets you save your discoveries—either whole cases or snippets with *Bluebooked* pinpoint citations—to your personal folders, where you can reread them for free, hold them for up to a year, or download them en masse. An improved "history" button lets you retrace how you got from here to there, or go back and reread references whose significance might have escaped you at first. It's remarkably easy to learn: I had the program figured out to the point of obtaining usable results in about a half an hour.

Just as I am still learning Next, Next has some learning to do, too. They left off the little box that told you which page of a document your cursor was on. You can "go to page" if you know it, but to find that out requires that you scroll up or down until you find a little star mark ((**52), for instance) and then deduce which reporter is the one with three stars. To use West's "copy with bluebook" feature, you must copy your reference to a separate document and read the resulting *Bluebook* cite—a nuisance if you only want to cite-check your brief. And, surely Westlaw will develop context-sensitive help; now, clicking "help" only gets you a link to a single PDF manual with very generic information.

In spite of a few such irritations, WestlawNext is a terrific product. It also makes a hash of Westlaw's usual pricing schedule, so it's hard to compare future and current Westlaw costs. Conventional Westlaw charges key off your selection of a database, but because a Next user doesn't select a database before searching, Next does not. Instead, WestlawNext charges a single, and quite reasonable, price per search (\$60 compared to hundreds or a thousand dollars, depending on where you searched in Westlaw) and the search covers nearly the entire universe of West-



law content. You are charged again if you click through to a document in a list, but with the more extensive "peek" you get in the search results window, you often don't need to do that. And, if you've saved your results to your folder, you download the case only once, and you

can review your folder materials, free of charge, even months later. Westlaw says, and I agree, that net cost comparisons are difficult not only because users vary in what and how they search, but because adoption of WestlawNext will change their habits in unpredictable ways. The business estimates, with disclaimers, that the net price of WestlawNext might average 10–15 percent higher—but the hours spent using the product should drop. Only experience will reveal where the bottom line falls. However, it seems Westlaw has deliberately priced Next to make it a reasonable choice in the face of "free" competition instead of maximizing short-term revenue.

If your firm has a bulk pricing plan, per-search prices are important more to allocate costs to clients than as a measure of out-of-pocket expense. WestlawNext is available only under a bulk-rate, flat-rate pricing plan. Therefore, determining whether the costs of WestlawNext are fair will require careful analysis. What I can say, however, is that WestlawNext is a game-changing innovation in legal searching. It dramatically improves the quality of search results, as well as the speed with which a user finds them. Frank would be impressed all over again. ■

For more information about WestlawNext, contact your Thomson Reuters sales representative or call Westlaw's Reference Attorneys at 1-800-733-2889 (REF-ATTY).

Thomson Reuters is the primary sponsor of the Tort Trial & Insurance Practice Section; this article appears in connection with the Section's sponsorship agreement with Thomson Reuters. Neither the ABA nor ABA entities endorse non-ABA products or services, and this review should not be so construed.