

Availability of Works Cited in Recent Law Review Articles on LexisNexis™, WESTLAW, the Internet and Other Databases

by Simon Canick

In recent years, online resources have become compelling alternatives to traditional, print-based legal research for many attorneys and law students. This trend will surely continue as LexisNexis™, WESTLAW and the Internet broaden their coverage and become more reliable. So far, databases and Web sites have mostly offered commonly used materials like statutes and case law. These materials are what practitioners generally need, and the wide availability of primary legal information and practice materials online may lead some attorneys to believe that they no longer need to visit law libraries.

Academic legal scholarship is fundamentally different, however. Work produced by law school faculty and students, for instance, often relies on the obscure or historical. These materials, including secondary sources such as treatises and other books, have not been traditionally available online. This is clearly changing, but for WESTLAW and LexisNexis to attract scholars away from libraries, they will have to aggressively expand their coverage.

In order to assess what legal materials were truly available online, I decided to design and run a study. The purpose of this study was to assess the scope of various online databases with respect to a particular type of research. Specifically, I examined a group of recent law review articles to determine the proportion of cited resources that can be easily found online.

Searches were conducted in several databases and on the Internet for full-text versions of every source cited in seven articles. The selection of the seven articles was arbitrary; no effort was made to ensure consideration of particular subjects, authors or journals. The articles studied had little in common. Their subject areas ranged from the *Civil False Claims Act* to Spanish publicity right, to class action lawsuits, to the treatment of children born out of wedlock. As expected, this diverse body of articles included citations to a wide variety of resources, including cases, statutes, periodicals, working papers, treatises, government documents and foreign law.

In conducting the study, each citation in each article was coded according to its

type. Categories included legal periodicals from 1990 to the present; legal periodicals prior to 1990; nonlegal periodicals from 1990 to the present; nonlegal periodicals prior to 1990; books; reports and working papers; federal court cases; state court cases; federal statutory and administrative law; state statutory and administrative law; uniform laws; foreign and International law; and court filings and transcripts.

For each footnote in each article, I determined whether the cited material could be found using LexisNexis or WESTLAW. If unavailable there, I consulted other online databases, such as JSTOR or ABINFORM, or the World Wide Web. If full text could not be located in any online format, I noted that fact.

Every citation in every article was counted, whether or not the resources encountered had been previously cited. For example, when checking for a cited case, I checked LexisNexis or WESTLAW first to make sure it was available there. If so, I coded the case as found on WESTLAW/LexisNexis without inquiring whether, for example, the case existed on the Web. I followed the same process for code citations. For journal articles, I checked WESTLAW or LexisNexis first, then consulted other databases if they were not available on WESTLAW or LexisNexis.

Originally, I intended to search each cited work only once and ignore all "id" and "supra" references. However, problems with statutes made this unrealistic. In many cases it was unclear how many discrete sources would result from a list of cited statutes. Rather than create an arbitrary rule for dealing with such situations, it made more sense to count each citation once, even if that source had been cited before.

Studying the seven randomly selected articles resulted in some very interesting results. Overall, 77 percent of the works cited were found online. LexisNexis and WESTLAW had the broadest coverage, with access to 73 percent. Roughly 4 percent — or 79 out of 1,984 total citations studied — could be found only on another database or the Internet.

The percentage of citations available online varied widely from article to article. For instance, 98 percent of the cited works from one article were found, compared to only 48 percent from another. The

difference lies in the types of material most frequently footnoted. The first article relied heavily on case law, but the second routinely cited relatively hard-to-find items, like books and nonlegal periodicals.

The different categories I used to classify each source also provided some interesting data.

- *Legal periodicals from 1990 to the present* were cited 163 times. Of those, 150, or 92 percent, were found on LexisNexis or WESTLAW. The remaining 13 were unavailable in any online source.
- *Legal periodicals prior to 1990* were much more difficult to locate online. Of 107 cited in the seven selected articles, WESTLAW and LexisNexis had only 26, or 24 percent. None of the remaining 81 resources cited could be located on another database or the World Wide Web.
- Full-text versions of roughly two-thirds of the cited *nonlegal periodicals from 1990 to the present* were located online. Forty-seven percent, or 80 of the 169 citations in this category, were available on LexisNexis or WESTLAW, and 34 more, another 20 percent, were found on other databases, such as JSTOR.
- Of the 16 citations to *nonlegal periodicals prior to 1990*, none were available on LexisNexis or WESTLAW. Half were accessible through other databases, and the other half could not be found online.
- *Books* showed the lowest online coverage rate of any major category. LexisNexis and WESTLAW contain the text of some important treatises and looseleaf services, but the vast majority of monographic works, legal or nonlegal, are not reproduced online.
- Three of the seven articles reviewed cited frequently to various types of *reports and working papers*. When available online, most of these documents reside on the Internet.
- With 844 footnote references, *federal cases* were the most heavily cited category of material in the seven articles. LexisNexis and WESTLAW

provided access to every cited case. Similarly, LexisNexis and WESTLAW provided access to each of the 214 state cases cited.

- Almost all *U.S. statutory and administrative materials* are available on LexisNexis and WESTLAW, although some superseded material could not be found. The seven articles reviewed cited to *state statutory or regulatory material* only six times, but all were found on LexisNexis or WESTLAW.
- *Uniform Laws, Model Codes and Restatements* were cited 12 times. All 12 are available on LexisNexis or WESTLAW.
- Nearly three-fourths of the *foreign legal material* cited in the seven articles could not be found online. Most of the available material was on the World Wide Web rather than on LexisNexis or WESTLAW.
- *Court pleadings, motions and trial transcripts* were cited frequently in

two of the articles, but none of the 20 cited items could be found online.

In the future, many online law review articles may have direct links to the full text of each of the works to which they cite. However, this study indicates it may be many years before this vision is achieved.

The study did lead to some interesting conclusions. Online databases are rich resources for the full text of certain types of documents cited in recent law review articles. For instance, LexisNexis and WESTLAW covered more than 95 percent — or 1,166 out of 1,222 — of the citations to primary legal materials. The figure jumps to 99 percent — or 1,164 out of 1,174 — when limited to U.S. law.

As expected, LexisNexis and WESTLAW are much less effective for retrieving secondary material. Only 280 out of 766 cited legal and nonlegal secondary materials could be found. When combined with other databases available at Columbia University and the Internet, the total jumped to nearly 50 percent, or 380

out of 766. The World Wide Web offered reasonably good access to government documents, working papers and reports. Other online databases covered many nonlegal publications.

The fact that 77 percent of all cited resources were found in electronic form shows how vast the universe of online full-text materials has become. Yet it also illustrates the opportunity for improvement. Many law review articles cite books of all kinds, yet precious few can be located online in any form. In addition, coverage by LexisNexis and WESTLAW gets thinner as the material cited gets older. Without extending their reach back in time, these services cannot adequately replace print collections, especially for individuals engaged in legal scholarship.

Simon Canick (*scanik@law.columbia.edu*) is a reference librarian at Columbia University Arthur W. Diamond Law Library in New York City.