

The Risk of Exclusive Reliance on Online Research

By Randy Foreman

Each term at Thomas M. Cooley Law School, the law librarians teach the Research and Writing classes for two weeks and the Advanced Research and Writing classes for one week. The librarians teach the online resources, focusing primarily on Westlaw and Lexis, but also briefly covering CaseMaker, LoisLaw, Fastcase, TheLaw.net, and anything else we happen to stumble across. The professors teach the print resources.

During my 10 years at Cooley, I have increasingly heard students say, “We don’t need books! It’s all online. Why are they wasting our time?” I’m not about to give you one of the standard sermons about the pros and cons of book research versus online research.¹ Instead, I’ve got a new one for you: the online cases just might go missing. In fact, this happened to me recently—half of the online cases I found one week were gone the next, and they didn’t all return for more than two weeks.

I had prepared an in-class exercise for the first-year Research and Writing students. The students were to use a popular database known as TwiddleDee, and one of the questions asked them to search for the phrase “reverse sex discrimination” in a federal case database.² They were to then look at the first case on the list (let’s call it the “*Krzynsky*” case) and answer questions about it.

We always check our exercises before giving them to students just in case something has changed. The changes are usually something innocuous like a hyperlink being moved from one side of the screen to the other, or perhaps a case we want them to look at has moved from third to fourth on the list.

My colleague was checking the exercise and asked why she found only about 70 cases when the screen shot for the exer-

cise showed approximately 140 cases. She also pointed out that the *Krzynsky* case was nowhere to be found.

Sure enough, 70 cases, including *Krzynsky*, were missing.

I found *Krzynsky* in the database by searching by citation, and then reviewed the document to see if the phrase “reverse sex discrimination” was there. It was in the case at least 10 times.

I called the database’s technical support staff and explained the situation. The technical support person told me she was aware that some federal cases had to be reloaded and perhaps were still being indexed, and she would call back when she knew more.

A week later she confirmed that many federal cases had been reloaded and approximately 130 cases could now be found when running the “reverse sex discrimination” search. However, the *Krzynsky* case was still missing; she explained that the reloaded cases were still being indexed. A week later, *Krzynsky* was back and only about three cases were still missing. The rest of the cases were back a few days later.

It is not as if *Krzynsky* was anything special—it just happened to be the case at the top of the list, and therefore the one I wanted students to reference. Of course, the real question is, “What if the *Krzynsky* case *was* special?” What if it were a seminal case that could make the difference for an attorney winning or losing a case, but was not found online because of human or computer error? Could an attorney win a

malpractice suit by saying, “Hey, it’s not my fault. It’s TwiddleDee’s fault for not indexing the case for two weeks”? I don’t think so.

Online data can disappear and users will likely never know. In the 17 years I have been using online research tools, I have experienced oddities such as the temporary loss of data. For example, I remember one occasion when Michigan’s homicide statute disappeared. I’m rarely online and I still stumble across this kind of stuff, so I suspect the occasional disappearance of data is not an isolated event.

Of course, strange things don’t just happen online. They happen in print all the time. Too often, the indexes for treatises, digests, and encyclopedias aren’t accurate. Sometimes you can find a cross-reference table explaining there is new numbering, but sometimes the indexes are just wrong. A few years ago I saw an example where two separate committees were working on different parts of the same Michigan statute, and when the changes were added to the written text, the changes from one committee were overwritten by the changes made by the other committee. Human error is always present whether we are using books or are online.

The exclusive reliance on online resources is extra risky now because of the potential for database errors³ in addition to human error. When database errors happen, you may never realize that core data is missing. Indeed, the vendor may not even know.

If online data disappears, users will likely never know.

The exclusive reliance on online resources is risky—not only because of possible human error, but also because of potential database error.

Verifying the Completeness of Your Research

So how can you quickly double-check online results? The most obvious answer is to use printed resources as a backup. Treatises are a nice way to find core cases and statutes, and are current within a year. Michigan legal encyclopedias are sometimes pretty good, but are expensive. The West and Callaghan digests are also useful tools, but are not cheap either.

Assuming you can't afford or don't have easy access to printed resources, which online resources can you use to verify your main online resource? As you know, the State Bar of Michigan offers CaseMaker free to its members; bar associations in 25 other states also offer CaseMaker to their members. I like it, as do other law librarians that I have spoken with. In my opinion, its results are as good as Westlaw and Lexis. It lacks the proprietary headnotes, case summaries, and Shepard's/Keycite features of Westlaw and Lexis, but has excellent terms-and-connectors search capabilities. And for free, who's complaining?

But what if CaseMaker *is* your main legal research tool and you don't subscribe to Westlaw or Lexis or have easy access to printed resources? How do you double-check CaseMaker?

There are some reasonably priced alternatives. I've used LoisLaw for years. It's the original competitor to Westlaw and Lexis and allows terms-and-connectors searching. There are others I have not tried such as Fastcase, TheLaw.net, VersusLaw, and CaseClerk.com. I believe that prices for the Michigan-only plans are \$50 or less per month per attorney. One research tool charges approximately \$15 for the "your state only" plan. So if you need an online backup source, one of these might serve as a reasonable double-check.

There are very few free resources. LexisOne was great, but is no longer available. Google Scholar scanned all U.S. cases a few years ago, but has no plans to update, so opinions newer than three or four years are not available. That leaves us with official court websites. The quality of court websites varies dramatically, but most do little more than provide access by docket numbers and party names.



What about the Michigan Courts website? Is it any good? Actually, yes! The Michigan Courts website provides access to published opinions from the Michigan Supreme Court and the Michigan Court of Appeals from January 2001 to the present. Granted, the new interface is a bit cumbersome because the web page has a "mouse over" feature that changes the page every time you move your mouse.

Once you master the navigation, find the "Opinion and Order Search" link. The image shown above should help you find it, as the link disappears if you move your mouse even slightly.

After clicking the "Opinion and Order Search" link, you have the option to search by keywords.

By clicking the "Search Tips" link, you can search using the AND, OR, NOT, and NEAR connectors as well as quotation marks. You also can use the * and ? wildcards. The * is the multi-letter wildcard that goes at the end of the first few letters of a search term, and the ? replaces a single letter within a search term.

I wish the site used same sentence (/s) and same paragraph (/p) connectors instead of the NEAR connector, but overall, the results are, in my opinion, very good.

To summarize, any online database could temporarily lose some of its data, so you need a plan to verify you have found the relevant cases. Printed resources are the logical place to look—if you have access to them. If you must rely on online materials only, there are a number of free or inexpensive databases. CaseMaker, which is free to State Bar of Michigan members, is an excellent resource as is the Michigan Courts website. ■

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FOOTNOTES

1. If you want to know the standard "books versus online" arguments, here they are: "It's not *all* online, and if it were, you wouldn't be able to afford it. The Westlaw and Lexis resources available to law students provide access to a thousand times as much material as the 'your state only' plan that practicing attorneys buy. You will have your state cases and statutes and maybe a state encyclopedia in your plan and that's pretty much it."

Another popular one is: "Studies show that students think they are doing better using online research tools, but that is an illusion. In reality their results are substantially worse than the results of those using the printed resources."
2. Admittedly, this is a very low-quality search phrase. It was used merely as an example for students who are new to online legal research. A vastly superior search phrase is **reverse /s sex! /s discrim!**, although it displays numerous sex discrimination cases that have been reversed. Probably best to put the words "reverse" and "sex" close together and add the alternative term "gender" as in this example: **reverse /4 (sex! or gender) /7 discrim!**
3. There can, of course, also be telecommunications and personal computer errors, but everyone probably knows by now that the Internet and your computer *will* inevitably go down when you most need them.