

RESEARCHING A JUDGE

By David Dilenschneider

You don't need to convince me about the power of thorough judicial investigation. When I was a young litigator, I was asked to draft a motion to dismiss in a civil RICO case that had been filed against one of our big corporate clients. While doing my research for the motion, I uncovered numerous opinions, both reported and unpublished, on the issues involved that had been authored by the judge assigned to our case. I proceeded to quote those opinions liberally throughout my motion. The judge not only granted the motion I had written but also basically copied the language I had used, word for word, and pasted it into his opinion.¹ Our client, not to mention the partner with whom I was working, was delighted by the result.

Researching a judge can provide interesting and strategically advantageous information—and such information can be used in many ways. A big difference exists, however, between having such information and actually going about getting it. Making an inquiry about a judge via a “blast” email to your colleagues is not enough these days—particularly because so much more potentially relevant information is now available online.

Unfortunately, finding such information online can sometimes be very time consuming for inexperienced litigators, and therefore costly. Or at least it used to be. But now, LexisNexis® Total Litigator, a revolutionary research platform, highlights several products and databases that make the intelligence-gathering process far easier and more cost-effective.

LexisNexis Total Litigator

One of the most revolutionary aspects of Total Litigator is that it is task-based. In other words, instead of a researcher having to find the right database(s) or product(s) to use when conducting various types of research—something that is often difficult for the inexperienced – a researcher need only identify the task he/she needs to accomplish. Upon designating that task, relevant databases and products are “suggested” to the researcher.

For instance, in order to research a judge, a researcher can simply select the “Early Case Assessment” tab at Total Litigator and click on the “Jurors & Arbitrators” link from the left-side menu options. Upon selecting “Judge” in Step 1, two options are displayed in Step 2: the “Multiple Sources” option and the “Individual Sources” option. The “Multiple Sources” option allows the user to simultaneously search several databases and products, including LexisNexis® CourtLink® Strategic Profiles, LexisNexis® Analyzer, LexisNexis® SmartLinx®, and BNA® publications. In contrast, the “Individual Sources” option allows the user to select from individual databases that can be used to learn about judges.

The “Multiple Sources” Option

Although many researchers are unfamiliar with the resources suggested by the “Multiple Source” option, those resources can be very powerful. For instance, CourtLink® Strategic Profiles qualify cases filed during a time period selected by the researcher and, based on that time period, aggregate docket information about a judge from the selected court system (e.g., Federal District Courts), thereby enabling a litigator to gain valuable insights with respect to a judge. Information included in a Judicial Strategic Profile includes counts of the cases handled by the judge by “nature of suit,” yearly caseload numbers, trends analyses, and a compilation of each attorney and firm who has had a case before that judge over the selected time frame. In addition, a listing of all the cases that were used to form the report are displayed, and a researcher can access the dockets of those cases and then view online (or order for retrieval, if not available immediately online) any document from any of those cases.

¹ Whether this would happen today is questionable. See, e.g., *Bright v. Westmoreland County*, 380 F.3d 729 (3rd Cir. 2004) (reversing a trial judge's opinion that copied almost word for word a “proposed opinion” submitted by one of the attorneys).

From the aggregate view offered by a Judicial Strategic Profile, a litigator may draw compelling insight about a judge. For example, an attorney can assess a judge's experience (particularly recent) with certain types of cases or determine whether the judge has (or has had) any other cases involving opposing counsel.

LexisNexis Analyzer, which searches multiple databases simultaneously, adds efficiency and effectiveness to a litigator's investigation efforts by doing all the heavy lifting after a researcher simply enters a judge's name. For example, Judge Analyzer searches through case opinions, verdict reports, judicial directories, general and legal news articles and several other databases. And, when conducting that search, Analyzer eliminates most potentially "false" hits by retrieving, for example, only those verdict reports that reference "John Doe," the judge, and ignoring those reports referencing "John Doe," the expert witness.

Gathering all this information in a single search through Analyzer makes the litigator far more efficient and effective in his/her work. First, Analyzer saves the litigator time (i.e., hours billed to a client) by searching through multiple databases simultaneously. Second, the cost of Analyzer is far less than the cost of searching all the incorporated databases one by one. Finally, Analyzer searches through databases that some researchers might not otherwise know about or not consider as being important.

SmartLinx® searches through over 3,000 public records databases (covering billions of documents) available from LexisNexis® in a single search – everything from real property records to bankruptcy filings to licensing information. Importantly, the SmartLinx feature searches with intelligence. That is, it utilizes relational algorithms to recognize that the public record for "David Hneider" is actually a public record for "David Dilenschneider." Having a product that makes such a connection is incredibly important because a search through regular public records won't reveal existing name variants—as well as public records associated with those variants. Through SmartLinx, a litigator can uncover other types of information as well, such as: phone numbers, current and previous addresses, gender, birthdates, filings (i.e., bankruptcy, judgment, and lien), licensing information, voter registration records, associated entities (e.g., mortgage companies and banks), associated individuals (e.g., spouses, co-owners of property) and more.

With respect to a judge, SmartLinx has potentially-critical relevance. The vast majority of judges are very conscientious about identifying and relating their potential conflicts of interest. Some judges, however, may not be aware that certain conflicts exist or, quite frankly, a very small minority may deliberately fail to reveal them. For instance, it was recently reported that an Kentucky state court judge was reprimanded (and later ultimately resigned) because he "did not disclose his close personal relationship with [a man] who played a substantial role as a trial consultant for the plaintiffs [sic] attorneys [in a lawsuit heard by the judge] and was paid \$2 million to help work out the settlement."² Specifically, the judge and trial consultant, while the lawsuit was pending, together purchased a \$412,000 house in Florida³—information easily uncovered through a SmartLinx search.⁴

The "Individual Sources" Option

As noted above, the "Individual Sources" option allows the user to select from individual databases that can be used to learn about judges. Those databases are organized by types, such as biographical information, case-related information (e.g., case opinions and verdict reports), news (including legal news from Mealey's™),

² Bronson, Peter, "Hold this judge in contempt," *The Cincinnati Enquirer* (Ohio), March 2, 2006.

³ Wolfson, Andrew, "Lawyer: Fen-phen notes destroyed," *The Courier-Journal* (Louisville, Kentucky), January 21, 2007.

⁴ Another potential judicial conflict that might come to light involves spouses who work for law firms providing representation in a lawsuit the judge is hearing. See, e.g., Accola, John, "Wal-Mart suit judge challenged," *Rocky Mountain News*, October 11, 2003; Bar, Beth, "N.Y. Federal Judge Rebuffs Recusal Motion Citing Clients of Husband's Firm," *New York Law Journal*, March 5, 2007.

disciplinary information (e.g., judicial conduct opinions), and other sources (such as law reviews). All the user has to do is select the database and enter the judge's name.

Biographical information can be particularly important. For instance, the Texas Supreme Court recently ruled that “[a]n appellate judge must be disqualified from hearing a case that was handled by members of the judge’s former firm.”⁵ Notably, judges usually list their prior occupations (including law firm employment) in their biographical records. Or, what if you were handling a lawsuit for a tobacco company and it has been assigned to the federal district court judge who serves on the board of directors for the American Lung Association—something that is noted in his biographical information available through the Judicial Staff Directory?

Conclusion

When it comes to litigation, everyone is looking for a meaningful edge—a strategic advantage, if you will. Powerful new products and services support litigation efforts by enabling the efficient gathering of intelligence about all the various “players” involved in litigation: the litigants, experts, witnesses, attorneys, law firms and judges. These products and services utilize information from prior litigations and search for relevant information across a multitude of related sources to provide a new approach to litigation research; research that goes well beyond case law.

About the Author



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David is a Director, Industry Relations (Litigation Services) for LexisNexis. Prior to joining LexisNexis, David was a litigator for six years with Vorys, Sater, Seymour and Pease LLP in Columbus, Ohio, practicing primarily in the areas of ERISA litigation, commercial and business litigation, asbestos litigation and criminal law. He has conducted hundreds of presentations to firms all across the country on how online resources can be used strategically. David has also presented at numerous programs conducted by the National Institute for Trial Advocacy and routinely serves as a speaker at prominent legal-education conferences (e.g. Mealey’s Teleconferences, the Litigation Technology Summit (New York City), the Legal Computing Summit (New York City), LegalWorks (San Francisco)), at bar association meetings (e.g. California, Colorado, New Mexico, Louisiana, etc.), at law schools (e.g. Harvard, Stanford, Northwestern, etc.) and even on radio programs (MyTechnologyLawyer.com). Finally, he has authored articles printed in Expert Alert (a publication of the ABA Section of Litigation Expert Witness Committee), The Metropolitan Corporate Counsel, and the LA Daily Journal. He is also a co-author of a White Paper titled “Finding and Researching Experts and Their Testimony” (available at www.expertwitnesswhitepaper.com). He can be reached at david.dilenschneider@lexisnexis.com.

⁵ “Judge can’t hear case handled by former firm,” The National Law Journal, March 27, 2006.