



BUILDING ON THE PAST TO
CHART THE FUTURE:
NEW PERSPECTIVES ON
WORK PRODUCT AND LEGAL
RESEARCH

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Introduction

"If I have seen further, it is by standing on the shoulders of giants"¹

Isaac Newton explained his accomplishments in science by giving tribute to the great minds that informed his research. Legal research, by its very nature, is a problem solving process that relies on the work of others who have preceded us. When lawyers do legal research, they seek the written work of judges, law professors and other lawyers to help uncover legal information. They analyze the work product of these authors and apply the legal concepts that they discover to the problem at hand. In most cases, lawyers attempt to predict how judges will rule on question they are analyzing and try to forecast the direction of changes in the law.

"The best way to predict the future is to invent it"²

When Alan Kay made this powerful and optimistic statement in 1971 he was describing the amazing power of individual creativity to affect the future of computing. Alan invented object oriented programming and graphical user interfaces and now everybody uses those technologies in their daily work. But he could just as easily been describing the work of creative lawyers. Skilled legal advocacy is a kind of invention of the future with the clay of past decisions, arguments and analysis. New legal theories are soundly grounded on prior decisions, published briefs and the internal work product of lawyers working together in firms and partnerships.

LexisNexis Total Search offers a new perspective on the time tested methods of legal research that lawyers have used to predict the future of law. Total Search simultaneously searches selected LexisNexis databases while seamlessly linking to those firm documents that match the LexisNexis search terms. In addition, Total Search enhances the firm's work product archive by seamlessly evaluating every embedded citation using *Shepard's* to signal both good law and citations of questionable authority. With these two benefits lawyers are empowered to deliver higher levels of productivity, seamlessly.

¹ "The quotation above was written by [IsaacNewton](#). ...The phrase itself has a long and ancient history. It is thought that Newton will have seen the aphorism in Robert Burton's *The Anatomy Of Melancholy*: "*Pygmies placed on the shoulders of giants see more than the giants themselves.*" Burton in turn took his cue from the 12th Century scholastic Bernard de Chartres who is quoted as saying "*In comparison with the ancients we stand like dwarves on the shoulders of giants*". From WikiWikiWeb at <http://c2.com/cgi/wiki?ShouldersOfGiants>, last viewed March 10, 2005.

² Computer pioneer Alan Kay is credited with this quote in 1971 describing the future of graphical interfaces and object oriented programming. See http://www.hp.com/hpinfo/newsroom/feature_stories/2002/alankay02.html, last viewed March 10, 2004.

Imbedding Law Firm Work Product Within the Electronic Legal Research Process

Thirty years ago, when the LexisNexis service was invented, most large firms had less than 100 lawyers. Each firm had a law librarian whose job included the maintenance of paper files, in file drawers, that contained the work product of attorneys in the firm. These file drawers were organized using professional indexes prepared by the librarian. In addition, nearly every lawyer had some files or three ring binders that stored a copy of motions, subpoenas, memoranda and pleadings as well as deeds and contracts and powers of attorney that the lawyer had prepared for prior clients.

Lawyers also talked to each other and stayed in one firm for most of their careers. Attorneys in a practice group knew the type of matters handled by their colleagues. In this idyllic setting, if a lawyer were asked to draft a certain type of motion in a personal injury case, the assigning partner pointed to one of the partner's files to find a model or a starting point for the work.

The world has changed in the past thirty years. Law firms are larger today. Lawyers are mobile and move from firm to firm during their careers. Firm clients are sophisticated consumers of legal services and the buyer is often an attorney who spent years in a law firm before joining the corporate law department. In response to these changes, individual lawyers today have developed, from the very beginnings of their careers, a sophisticated set of competencies and habits that help them to find the law, locate important facts and apply the law to the facts in creative and appropriate ways to advance the cause of their clients. But the sheer size of large law firms and their geographic footprint and the mobility of lawyers make it increasingly difficult to bring all of the best resources of the firm to any individual lawyer.

Total Search technology now makes it possible to draw work product from the firm's document management system, store the work in a new searchable database, validate every citation using real time *Shepard's* and deliver relevant documents within the results of a Lexis search. But any new technology that combines law firm work product with a commercial database must be extremely easy to use. The new tool must not undermine or upset the patterns of research and analysis that successful lawyers have already established in their work.

To decide whether to deploy an integrated search tool, the cost/benefit analysis is critical. The cost and burden of implementing the new tool must be low enough and the proposed benefits high enough to justify the decision to move forward. Increasingly, as law firms have become more and more technically sophisticated the key metric in determining cost of implementation has been the ease of integration of a new innovation within the current technical infrastructure of a firm. Even if the price of software licensing and hardware purchases are reasonable, if the innovation takes hours of staff time to implement and install, then the innovation may be too costly to justify the proposed benefit.

Three keys to determining if it makes sense for a firm to deploy a product, like Total Search, that combines a search of firm work product with a commercial database are:

1. **Extreme ease of use:** successful junior lawyers are already successful researchers and they have developed tools for finding and reusing the work of others, including other lawyers in the firm. Any new tool that improves this

process must fit easily and seamlessly into their successful working patterns. This factor is most critical in deciding to deploy any technology that affects the way that lawyers do their core professional tasks.

2. **Reasonable cost:** law firms must exercise business judgment to evaluate the benefits of technology innovations against the costs of acquiring and implementing those innovations. Costs for a combined search product come in two varieties: out-of-pocket expenditures and the time of staff and fee earners.
 - Hardware and software costs are easy to determine and compare.
 - The implementation costs and the burdens on technology staff to install and maintain this type of innovation are likely to be a more significant cost.
 - Training of the technical staff and, most importantly, training of the lawyers and paralegals must also be included in the assessment.
 - The cost of selecting documents, describing them for the work product retrieval database and maintaining the content are also costs that may be significant and a critical determinant of successful implementation of this type of knowledge management.
3. **Powerful benefits:** the combination of firm resources and commercial search results must produce significant benefits for the lawyers who adopt the new tool. Benefits should include an increase in research speed and accuracy and a leap in the precision of collaboration that the combination of research resources makes possible. Achieving these benefits will depend in large measure on the current structure of the firm's internal data and on the past and future ability of the firm's data infrastructure to insure that the firm data is of very high quality.

A combined search tool must be very effective in searching the work product of the firm. The commercial search side of the tool is LexisNexis—a search and retrieval system that has been refined over thirty years. Law firms have not struggled to encourage researchers to use LexisNexis. But work product retrieval systems have failed for lack of use and lack of ease of use. Therefore, the most important innovation in a combined search product is a breakthrough in the part of the product that searches firm data. The search of firm data using this tool must be easy to use, comprehensive and a leap forward in effectiveness.

Work product storage and retrieval projects also have failed because the software was difficult to install and maintain. Burdens on technical staff equate to significant costs of ownership. Yet these costs pale when compared to the cost of hiring editors to select documents and write metadata to guide classification and improve retrieval of past work product. Even more costly is the loss of revenue from top fee earners when the work product system demands significant time from them. New systems that require any significant time from lawyers to build and maintain the archive are doomed from the start. If new staff must be hired to eliminate the burdens the system would otherwise impose on fee earners, the cost of the innovation greatly increases.

Conclusion

LexisNexis Total Search meets the challenge of the three keys outlined above.

- First, Total Search is extremely easy to use. It does not require a radical overhaul of the way lawyers do research. Because LexisNexis Total Search is based on Lexis.com and its user environment, lawyers will find that it fits into their current research and drafting workflow. Most lawyers, without any training, will find the combination of work product search and LexisNexis natural and powerful.
- Second, LexisNexis Total Search is thoughtfully engineered so that the firm's administrative staff will not be required to devote significant personnel resources or hardware costs to the project.
- Finally, from a benefits standpoint, LexisNexis Total Search allows lawyers to achieve new productivity gains by leveraging existing firm work product as well as current IT investments in the document management system. Existing work product dramatically is enhanced by the addition of *Shepard's* signals to update and validate every citation in real time.

Total Search helps every lawyer find the giants and invent the future.

About the Author

Ronald W. Staudt is Professor of Law and Associate Vice President for Law, Business and Technology at Chicago-Kent College of Law. He teaches Internet law, computer law, copyright law and a seminar called Access to Justice and Technology. He co-founded and supervises the Justice Web Collaboratory - a law school center using Internet resources to improve access to justice with special emphasis on building web tools to support judges, legal services advocates and pro se litigants. Current projects of the Justice Web Collaboratory include: Judgeline, a national portal for state court judges; Illinois Technology Center for Law and Public Interest, the Illinois statewide legal assistance web portal; and Access to Justice, an interdisciplinary project with the IIT Institute for Design to reengineer court systems for self-represented litigants. From 1994 through 1998, on leave from the law school, Professor Staudt served in various capacities for LexisNexis including Vice President for Knowledge Management. He continues to be a LexisNexis consultant.

Professor Staudt received a B.S. in mathematics and a B.A. in philosophy from St. Joseph's College, Rensselaer, Indiana. He is a graduate of the University of Chicago Law School, where he was a member of the University of Chicago Law Review. Before joining the Chicago-Kent faculty in 1978, he practiced with the firm of Hubacheck, Kelly, Rauch & Kirby for two years, was staff attorney and assistant director of the Pima County, Arizona Legal Aid Society, and was a clinical fellow and lecturer at the Mandel Legal Aid Clinic, University of Chicago Law School.