

SEARCHING CASE DIGESTS IN PRINT OR ONLINE: HOW TO FIND THE “THINKABLE THOUGHTS”

BY SCOTT MATHESON

Scott Matheson is Reference Librarian at the Lillian Goldman Law Library, Yale Law School, New Haven, Conn.

This article outlines how to use digests in print and online to find case law on a specific topic. The West Key Number System®, sometimes called the “universe of thinkable thoughts,” is the foundation of U.S. case law digests. The system organizes legal concepts into broad groups, then into smaller and smaller parts and subparts. What follows is a basic guide to effective use of this powerful system, whether searching in print or online.

Many books have an index. Statutory sets have an index. Sometimes law students ask where the index to West’s National Reporter System® is. They are seldom amused (or enlightened) when I point to the wall of the reading room filled with the *Decennial Digest*. Often by the time they ask for an “index,” they have already tried searching for a relevant case in an online database with no success. The student’s question raises the question for me of when to refer students to the print digests and when to suggest that they search the headnote field in cases on Westlaw®.

Regardless of where I suggest the student end up searching, I usually pull down *West’s Analysis of American Law*¹, a handy publication that presents the entire digest system in one volume. I explain to the researcher that this is the outline of the index—a sort of list of broad legal concepts each broken down into more discrete topics.

This allows students several options. If they have already found one case that they believe is on-point, then I suggest picking a favorite headnote or two and browsing around the *Analysis* to see if an adjacent key number might be more on point. Students seem to find the posting notes (brief

explanations included for some numbers) particularly helpful.

If the researcher has not found a case that seems helpful at all and only has a vague notion of the issue he or she is looking for, the *Analysis* is useful in conjunction with the Descriptive-Word Index from the latest digest. The Index is helpful for translating ideas like “will” or “inheritance” in digest topics like “Dower and Curtesy” (topic 136) or “Descent and Distribution” (topic 124). Once a concept has been translated into a digest heading, perusing the *Analysis* allows the researchers to easily narrow down just the right topic and key number. For example, a case about the inheritance rights of a surviving wife might be assigned the topic and key number Descent and Distribution k 52(2).² Once students have picked a key number they think is just right, I suggest that they read the first case they find that has been assigned that number to make sure the key number is the correct one for their issue.

When the student is coming from an annotated code, looking for a case that has analyzed a concept discussed in the statute, he or she may already have a key number suggested by the annotation in the statute. Alternatively, he or she may have a case that seems on point. Consulting the headnotes in the case should yield a useful key number. Again, scanning the *Analysis* at this point can reassure the researcher that he or she has the correct key number.

Regardless of how the student finds the key number, a few moments spent with the *Analysis* can save a lot of time in the long run. This is especially clear to students when I explain how to use the print digest system—they want to search for as few key numbers as possible to get their “perfect case.” One library I have used thought the *Analysis* was so useful that it placed copies with the *Decennial Digest* and the state digest, and at the reference desk.

Once the student has decided on a few key numbers that describe the concept or issue he or she is researching, the student is left with a pure

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¹ *West’s Analysis of American Law* (2002 ed.)

² It is important to understand how key numbers are expressed in print: Descent and Distribution k 52(2) and how they are expressed in Westlaw: 124k52(2). The words *Descent and Distribution* are replaced with the equivalent topic number in the online world. The *Analysis* provides a numbered list of topic and key numbers in the front of the book.

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bibliographic question; that is, whether to use the print digest system or to search for the key number in an online database. This is where the reference librarian can really show off the elegance of the digest system. It also allows the construction of an incredibly precise online search. Which route to choose is influenced by many factors; I'll outline a few that I usually go over with student researchers when we get to this fork in the road.

Price: For students, price is usually a moot point as they don't directly pay for either the costs of the print digests or the costs of their online research. It is always something I encourage them to consider: if they have the option, they should weigh the greater time investment for using the print version against the greater cash investment for using the online version.

Display: Some researchers (myself included) prefer the format of the print digests to the on-screen display, even though it means that they may spend a few more minutes searching for their key numbers. The print display lets the researcher easily browse the adjacent key numbers; this is more difficult in the online environment.

Scope: A state-specific digest or the federal digest, if available, can be a great time-saver for some types of questions. For others, the *Decennial Digest* is the only way to get the scope needed. Online, state-specific (or jurisdiction-specific) digest searches are available, but so are subject-specific digest searches. Researchers can search for their key numbers in subject databases, e.g., only tax cases or only labor cases. This is helpful when searching for a key number that describes a subject-specific concept. Sometimes this is not helpful, for example when searching for a key number that describes a procedural issue that could crop up in any type of case.

Speed: Speed depends on how many key numbers are involved, the jurisdictions involved, and the desired results. If the researcher only wants the two or three most recent state cases with a specific key number, it might actually be faster to find the cases in the state digest. Most experienced researchers can pull the appropriate volume and check a key number (or a range of key numbers) before they can start a computer, let alone log in, select a database, and enter a search. Conversely, if a 50-state survey of the entire 20th century through the present is the researcher's goal,

searching for the key numbers online will save countless hours of research, note-taking, and photocopying.

Currentness: Updating cases, of course, is always best done online; similarly, an online search will reveal the most recent cases with a given key number long before they can be printed and delivered in advance sheets. That said, this factor is not always decisive. A properly updated print digest search—working through the *Decennial Digest* and the *General Digest* to the newest bound reporters and advance sheets (with their “back of the book” digests)—can also be fairly comprehensive, if a bit tedious.

Availability: Some researchers may not have access to the print digests, while others may not have access to an online research service. Additionally, a number of factors affect the availability of online services. As reliable as many services are, a power or phone outage could cut off access to an online service. Conversely, another student may have the required print digest volume off the shelf.

Assignment: Sometimes a professor (or supervising attorney) may require a student to work in one format or the other. Most research can be done either in print or online, as long as students understand the difference in the methods. These differences in the mechanics of finding cases with a given key number are important, but are secondary to the importance of understanding the system that makes the search possible. Explaining the system to students and showing them the *Analysis* is a big part of making sure they understand the system they are using—whether in print or online.

The question of whether to turn to the print digest or an online digest service is important today, especially in an educational setting. But, as more firms do away with bulky print digests, and as new lawyers are more and more pressed for time, this consideration will become less important. What will (hopefully) remain important is the researcher's ability to understand and use the underlying index—the West Key Number System—and to use it effectively, in print or online.

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