

IN UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

WINSTON BRAKEALL,

4:18-CV-04056-LLP

Plaintiff,

-vs-

DENNIS KAEMINGK, Secretary of  
Corrections, individual and  
official capacity; BRENT FLUKE,  
individual and official capacity;  
KRIS KARBERG, individual and  
official capacity; and REBECCA  
SCHIEFFER, individual and official  
capacity,

Defendants.

\* \* \* \* \*

V I D E O D E P O S I T I O N O F

Anders Ganten

\* \* \* \* \*

APPEARANCES: Mr. Alex Hagen  
Cadwell, Sanford, Deibert & Garry  
Sioux Falls, South Dakota

Attorney for the Plaintiff.

Mr. James E. Moore  
Ms. Alexis A. Warner  
Woods, Fuller, Shultz & Smith  
Sioux Falls, South Dakota

Attorneys for the Defendants.

Mr. Jeff L. Bratkiewicz  
Bangs McCullen Law Firm  
Sioux Falls, South Dakota

Attorney for Anders Ganten.

ALSO PRESENT: Ms. Catherine Schlimgen

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\* \* \* \* \*

(Original transcript and exhibits provided to Mr. Moore.)

1           The videotaped deposition of Anders Ganten may be  
2 taken at this time and place, that is, at the offices of  
3 Woods, Fuller, Shultz & Smith, Sioux Falls, South Dakota,  
4 on October 10th, 2018, commencing at the hour of 10:00  
5 a.m.; said deposition taken before Kerry Lange, FAPR,  
6 RMR, a Notary Public within and for the State of South  
7 Dakota.

8 (Deposition Exhibit Numbers 1 through 9 marked for  
9 identification.)

10                               \* \* \* \* \*

11  
12           THE VIDEOGRAPHER: The deposition of Anders Ganten is  
13 being taken on October 10th, 2018 in the matter of  
14 Winston Brakeall, plaintiff, versus Dennis Kaemingk, et  
15 al, defendants. This case is venued in the United States  
16 District Court, District of South Dakota, Southern  
17 Division.

18           This deposition is being taken at Woods, Fuller Law  
19 Firm in Sioux Falls, South Dakota. The videographer is  
20 Jason Davis of Starhaven Films, and the court reporter is  
21 Kerry Lange of Dakotah Reporting.

22           Would counsel please state their appearance for the  
23 record, and then Kerry will swear in the witness.

24           MR. HAGEN: Alex Hagen on behalf of plaintiff,  
25 Winston Brakeall.

1 MR. MOORE: James Moore on behalf of the defendants.

2 MS. WARNER: Alexis Warner on behalf of the  
3 defendant.

4 ANDERS GANTEN,  
5 called as a witness, having been first duly sworn,  
6 testified as follows:

7 MR. MOORE: And just before we start, Alex, we agreed  
8 that this deposition could be taken today for use at  
9 trial?

10 MR. HAGEN: Correct.

11 MR. MOORE: All right. Thank you.

12 DIRECT EXAMINATION BY MR. MOORE:

13 Q Can you introduce yourself, please.

14 A Sure. Anders Ganten, senior director of government and  
15 corrections with LexisNexis.

16 Q And, Mr. Ganten, where do you live?

17 A I live in the San Francisco Bay area.

18 Q And, again, how are you currently employed?

19 A I'm employed with LexisNexis.

20 Q And how long have you worked for LexisNexis?

21 A Fourteen years.

22 Q And could you describe the scope of your current position  
23 with LexisNexis?

24 A Sure. I manage three different teams. One is a print  
25 publishing team that's responsible for all our primary

1 law publications, statutes and codes. Secondly, I manage  
2 our corrections segment for all 50 states. And, thirdly,  
3 I manage what's called our collaborative publishing arm  
4 where we partner with bar associations, professional  
5 organizations, and the -- and the like.

6 Q And with respect to the corrections segment, is there  
7 anyone else at Lexis who is more responsible for the  
8 corrections business than you are?

9 A No. I -- I'm fully responsible for all products,  
10 strategy and pricing decisions. There's a team of sales  
11 professionals and others that -- that are in the field,  
12 but when it comes to the product and how others decisions  
13 I'm the ultimate decision-maker.

14 Q What's your educational background?

15 A I have a law degree from the University of Lund in  
16 Sweden. Following that I have an LLM from the University  
17 of Maastricht in the Netherlands.

18 THE REPORTER: University of what?

19 A Maastricht.

20 Q And what was your employment, generally speaking, before  
21 you started working at Lexis 14 years ago?

22 A Before that I worked close to ten years at the European  
23 Parliament in Brussels as a committee staffer or a  
24 legislative staffer drafting legislation and things of  
25 that -- that nature.

1 Q And how long did you do that?

2 A Ten years -- or nine, nine and a half.

3 Q We have a trial scheduled in this case in South Dakota  
4 starting on November 19th and possibly running three  
5 days. Are you able to attend trial in South Dakota those  
6 three days?

7 A I am not.

8 Q All right. And so you made yourself available for this  
9 deposition today in South Dakota, correct?

10 A Correct.

11 Q Have you and I talked before today?

12 A I believe we had a while back, yes.

13 Q Had we met before this deposition?

14 A We have not.

15 Q And are you represented by counsel today --

16 A I am.

17 Q -- at the deposition? And who is that, for the record?

18 A Jeff over there.

19 Q Mr. Bratkiewicz?

20 A Yes.

21 Q All right. Thank you. Can you just describe for the  
22 Court the business of LexisNexis in general.

23 A Sure. So LexisNexis does a lot of things. As the  
24 pioneer in online legal research, we were the first  
25 online legal research that was created in late '60s in

1 cooperation with the Ohio Bar. It has grown into a  
2 comprehensive online legal research solution that's used  
3 by law firms, governments and corporate counsel.

4 In addition to that, we also have acquired over the  
5 years a number of traditional print publishers like  
6 Matthew Bender, who's a big analytical publisher out of  
7 New York, Michie Publishing out of Virginia which was  
8 primary law, and a whole host of other companies. So --  
9 and right now, of course, we are acquiring companies that  
10 are doing, A, artificial intelligence and decision  
11 support for attorneys.

12 Q Who are -- who are your primary competitors in the market  
13 for computer-assisted legal research?

14 A So there are two or three. The primary competitor  
15 that -- the way we -- we would view it is Westlaw,  
16 Thomson Reuters. There are a number of smaller  
17 providers, too. You have Fastcase and Casemakers.  
18 They'll typically team up with bar associations and offer  
19 an online legal research packet as a member benefit.

20 Q And in general who are Lexis' customers?

21 A They're from literally all walks of life; government,  
22 large law, small law, mid law, corporate -- corporate  
23 counsel -- counsel, police departments. It really -- it  
24 touches on all segments.

25 Q With respect to your work in corrections specifically,

1 when did that -- when did that get started?

2 A About a good ten years ago, I would say, give or take.

3 Q And how has it developed since it started to the point  
4 where it's at today. If you could just describe that.

5 A Right. And it started out -- I guess it grew organically  
6 out of the fact that a lot of law libraries have print  
7 law libraries at one point or another following Bounds  
8 and Casey. And as a traditional print publisher, many of  
9 those were our customers.

10 With the advancement in technology, a lot of  
11 companies -- a lot of correctional facilities look for  
12 different solutions. We developed an offline solution  
13 which is essentially -- it used to be DVD. Now it's an  
14 external hard drive that you can plug in and give inmates  
15 access to a fairly large library of legal materials.

16 Q And in the corrections world, as of today, how many state  
17 departments of corrections does Lexis provide service to?

18 A Thirty-nine if you include territories and the District  
19 of Columbia.

20 Q And how about -- how about jails?

21 A Well over a thousand. That shape shifts a lot because  
22 jails come and go, but -- but over a thousand jails.

23 Q Are there any other major entities within the corrections  
24 industry that Lexis works with?

25 A Right. So we are also the exclusive provider for the

1 Federal Bureau of Prisons as well as Immigrations and  
2 Customs Enforcement. And then in between that they're  
3 also, as you know, private correction corporations, and  
4 we service a number of those as well.

5 Q And with respect to the corrections market specifically,  
6 how would you characterize LexisNexis' market position?

7 A I mean we are definitely the market leader.

8 Q I want to show you what's been marked as Exhibit 1. Are  
9 you familiar with the graphs on this document?

10 A I am. I -- I created those.

11 Q All right. When did you create those?

12 A Probably about two weeks ago.

13 Q All right. And what information did you rely on to  
14 create the graphs shown in Exhibit 1?

15 A Research. We've had an -- a summer intern that did a lot  
16 of research looking over -- we know this organically. A  
17 lot of this we know from our salespeople. We -- we know  
18 fairly well. Since the DOC market is a finite market,  
19 we -- we have -- we keep pretty good tabs on that.

20 Q So is the -- is the information provided in the graphs  
21 based on data that is maintained by Lexis --

22 A Correct.

23 Q -- in the ordinary course of your -- of your business?

24 A Correct. Yes.

25 Q The -- the information that is specifically included in

1 Exhibit 1, could you just explain the graph on the left  
2 side of the page.

3 A Sure. So the left-hand side pie chart just shows the --  
4 the breakdown for the 52 DOCs that we track. That's the  
5 50 states and D.C., the District of Columbia, and Puerto  
6 Rico. So it shows what the different DOCs use.  
7 Primarily there are six -- five different providers.  
8 There's LexisNexis, Westlaw as I mentioned, Conway  
9 Greene, which is a smaller company that primarily only  
10 services New Mexico, and then the share of DOCs that use  
11 only books, and then the DOCs that use a -- an in-person  
12 method.

13 Q And are the percentages in this graph based on the number  
14 of departments of corrections or is it based on the  
15 number of inmates?

16 A Number of DOCs.

17 Q Okay. And the information that's contained on the right  
18 side of the -- of the exhibit, what is that?

19 A It's really the -- it's really the same a chart. It's  
20 just collapsing the -- the three different electronic  
21 formats, that -- that being LexisNexis, West and Conway  
22 Greene.

23 Q All right. Is the -- is the data supporting the graph  
24 shown in Exhibit 1 exclusive to departments of  
25 corrections? In other words, does it include any of the

1 jails or the Federal --

2 A It does not.

3 Q -- Bureau of Prisons?

4 A It does not. Just the 52 DOCs that we track.

5 MR. MOORE: All right. I would offer Exhibit 1.

6 MR. HAGEN: No objection.

7 Q Mr. Ganten, showing you what's been marked as Exhibit 2,  
8 again, are you familiar with this exhibit?

9 A Yes. I created it.

10 Q And what does it show?

11 A So it's -- it's a different slicing of the same data that  
12 was in the pie chart. This one shows the number of  
13 inmates, but essentially it is the same -- the same five  
14 categories as was in the left-hand pie chart on the  
15 previous slide.

16 Q All right. And how many total inmate users -- how many  
17 total inmate users are shown in the graph who use  
18 LexisNexis computer-assisted legal research?

19 A 922,515.

20 Q All right. And the total number of inmate users that  
21 includes other services, including books, what is that  
22 number?

23 A Unfortunately that's -- that bar is not there.  
24 1.22 million, give or take, for the DOCs.

25 Q Okay. And just so I understand, the last -- the last bar

1 chart on the right side of the graph is for Conway.

2 A Conway Greene, yeah.

3 Q All right. And what is Conway Greene?

4 A They're small publisher. They work -- they -- they only  
5 work in the State of New Mexico. They provide a CD rom  
6 product that the DOC in New Mexico uses.

7 Q All right.

8 A So it's an electronic form of it.

9 MR. MOORE: And I would offer Exhibit 2.

10 MR. HAGEN: No objection.

11 Q Mr. Ganten, showing you what's been marked as Exhibit 3  
12 can you identify that?

13 A Yeah. It's a graph I created about two weeks ago.

14 Q All right. What does it show?

15 A Again, it shows the breakout -- it's similar to the first  
16 slide, the right-hand chart, except that this one is by  
17 inmate population because obviously you -- you get a  
18 slightly different number if you tally up the inmates as  
19 opposed to the number of DOCs because, I mean, it's not  
20 strictly linear.

21 Q All right. And, again, it's -- is it based on  
22 information that Lexis maintains in its -- in the -- in  
23 the course of your business?

24 A Yes.

25 MR. MOORE: I'd offer Exhibit 3.

1 MR. HAGEN: No objection.

2 Q So, Mr. Ganten, do you know when Lexis first started  
3 talking to the State of South Dakota about providing  
4 service to the Department of Corrections?

5 A I think the -- the initial conversations probably  
6 happen -- happened well over two years ago.

7 Q And are you generally familiar with when Lexis started  
8 providing service in South Dakota?

9 A Yes.

10 Q And when did that happen?

11 A I believe it was roughly -- the rollout was in -- started  
12 in May of 2017.

13 Q And is there a standard sort of agreement that Lexis uses  
14 with the Department of Corrections? Is there anything  
15 different about Lexis' agreement to provide computer-  
16 assisted legal research for inmates in South Dakota than  
17 in any other state where you provide that service?

18 A No. It's fairly standard. There's always some variance  
19 in terms of the content provided. Occasionally there are  
20 some specific certifications that are required under --  
21 under state law, but -- but I don't believe that there  
22 was anything out of -- anything unusual in South Dakota.

23 Q So showing you what's been marked as Exhibit 4, can you  
24 identify what that is, please.

25 A That is the current list of content that is available to

1 inmates at this time.

2 Q All right. And this is a document that you prepared?

3 A Correct.

4 Q And just looking at the -- the document, it says content  
5 offering with November 2017 additions. Do you know what  
6 that refers to?

7 A Yeah. The work-up between -- I think that some things  
8 that were not on there originally was like AG opinions  
9 and a couple of small things like that. I mean it stayed  
10 roughly the same. There were a couple of things like AG  
11 opinions and -- and -- I don't recall. There was one  
12 more thing, but it was nothing -- nothing major. It was  
13 more like a tweak. I think the AG opinions was an  
14 oversight.

15 Q And are you familiar with who determined the content of  
16 the database offering in South Dakota?

17 A Not specifically, but -- because I wasn't there at the  
18 time. I'd offer that as a caveat. But it's a fairly  
19 typical -- typical offering, and something that we would  
20 have discussed with the DOC, and we would -- we would  
21 traditionally follow their lead. I mean they tend to --  
22 DOCs tend to have a good understanding of what -- what  
23 they want to provide and --

24 Q With respect to the state law that's listed on the left  
25 side of the page, it indicates that the only state law

1 cases that are available are South Dakota cases. Is that  
2 correct?

3 A That is correct.

4 Q If an inmate requires another state's law to prepare  
5 pleadings in a case, is there -- is there a mechanism by  
6 which Lexis can provide that to the inmate in South  
7 Dakota?

8 A Yes.

9 Q And how would that happen?

10 A You can do one or -- one -- one of two different ways.  
11 One, we can -- we can change the content offering, the  
12 menu that's there, to add. Some jurisdictions, for  
13 instance, do have a national primary law offering where  
14 they get access to all 50 states. And that -- that's  
15 certainly something that can be negotiated. If you want  
16 to take a specific state, for instance, for a particular  
17 inmate, it may be more cost effective to instead get an  
18 offline -- an external hard drive that we would plug into  
19 a terminal in a common area and make use.

20 Q And over the course of the last year, do you know whether  
21 there has been any request from South Dakota to provide  
22 the law of another state for any inmate in South Dakota  
23 made to Lexis?

24 A Not to my knowledge.

25 Q Looking at the federal case law that's available, is it

1 correct that essentially all federal case law is  
2 available to South Dakota inmates?

3 A That is correct, from district courts.

4 Q All right. And then looking at the -- looking at the  
5 secondary sources in particular, I wanted to ask you  
6 about two of the publications. One is the constitutional  
7 rights of prisoners. And I just want to show you what's  
8 been marked as Exhibit 5. Can you identify that, please.

9 A That is a table of contents.

10 MR. MOORE: And, Alex, I'm sorry. I think I forgot  
11 to offer Exhibit 4.

12 MR. HAGEN: Yeah. No objection.

13 MR. MOORE: All right. Thank you.

14 Q So Exhibit 5 is a table of contents for which  
15 publication?

16 A The Constitutional Rights of Prisoners, 9th edition, by  
17 James Palmer.

18 Q All right. And are you generally familiar with that  
19 publication?

20 A Yeah. It's -- it's one that is requested by most DOCs  
21 and jails.

22 MR. MOORE: All right. And I would offer Exhibit 5.

23 MR. HAGEN: No objection.

24 Q Just one more question about Exhibit 5. If -- if an  
25 online user accesses this work, is what's shown in

1 Exhibit 5 what the online user actually sees on the  
2 screen?

3 A Correct.

4 Q All right. And to access a particular topic within any  
5 given chapter, how does the online user do that?

6 A Again, one of two ways. I mean you can either search --  
7 I mean they would have -- at the top of the screen when  
8 an inmate accessed this, they would have a search box,  
9 Google like. And if they search for a particular term,  
10 such as conditions of confinement, they would search and  
11 they would get a bunch of hits, or you can -- you can  
12 browse the table of contents. You see in your exhibit,  
13 you have plus and minus signs. I -- I expanded the table  
14 of contents down to some -- to some degree. But you can  
15 essentially drill down all the way to the subject matter  
16 that you -- that interests you.

17 Q All right. Showing you what's been marked as Exhibit 6,  
18 can you identify that, please.

19 A Yes. It's a -- it's a similar table of contents for  
20 Federal Habeas Corpus Practice and Procedure.

21 Q And, again, is that -- is that a fairly standard text for  
22 a department of corrections?

23 A Yes. I -- I can't think of a DOC that wouldn't have  
24 that.

25 Q All right. Do you know who the authors of that --

1 A Randy Hertz and James Liebman I believe.

2 Q And, again, this particular exhibit shows what the --  
3 what the user would see on the screen when accessing this  
4 particular table of contents?

5 A Correct. This is the online view. It's published in  
6 print as well obviously. It's a two-volume set. And  
7 it's -- I believe it's considered the leading book on the  
8 subject.

9 MR. MOORE: All right. I would offer Exhibit 6.

10 MR. HAGEN: No objection.

11 Q So, Mr. Ganten, the database of materials that is  
12 available to inmate users within the South Dakota  
13 Department of Corrections, are you familiar with the  
14 technical means, the mechanical means, by which inmates  
15 have access to this database of materials in South  
16 Dakota?

17 A I am.

18 Q And what is that?

19 A It's provided on -- on tablets that are deployed by a  
20 vendor called GTL, Global Tel Link.

21 Q All right. And are you personally familiar with the  
22 tablets and how they operate?

23 A I am actually.

24 Q And can you just describe for the Court what a tablet  
25 looks like and in general how it works.

1 A Sure. I -- I had opportunity to visit a facility here in  
2 the state actually earlier this year before I became  
3 aware of this. So there's a tablet. It's about -- it's  
4 smaller than -- it's about this big (indicating). It  
5 provides a number of things for inmates. Our service is  
6 a small part of it. It also provides I believe like  
7 commissary services, it allows subscription services for  
8 inmates, I believe streaming music, E-books, and a lot of  
9 things like that.

10 We also have an icon on there that allows them to  
11 access what we call a custom interface which is how we  
12 serve up the content, the legal content.

13 Q And when Lexis first started providing service to South  
14 Dakota inmates, were there other states that were  
15 providing access to Lexis through a tablet?

16 A South Dakota is actually the first, to my knowledge,  
17 statewide DOC deployment of tablets.

18 Q Are there other states that are also using tablets today?

19 A There are a lot of -- there are a lot of states talking  
20 about it. I mean that -- and certainly there are a  
21 number of conversations ongoing.

22 Q So for states that do not have tablets for inmates to  
23 use, how do the inmates in those states obtain access to  
24 Lexis?

25 A So two different ways and two different delivery models.

1 So you have some DOCs where they get it online, but they  
2 would access it either on a terminal or in some cases  
3 they have -- they would have a kiosk in each pod and  
4 they -- they would access it on there. So it would be  
5 more similar to the terminal. It -- it would be a shared  
6 resource.

7 Q What's the difference in your understanding between a  
8 terminal and a kiosk?

9 A So -- so in some cases arguably it's a distinction  
10 without a difference perhaps. Traditionally in some -- I  
11 was at a facility in Nevada, for instance. They had a  
12 whole room full of PCs; whereas in other -- in other  
13 facilities it looks more like what you would see at the  
14 airport when you check in. It would be a stand-alone  
15 little thing. It's a touch screen. But those two are  
16 both online delivery. They -- they would use  
17 substantially the same thing as here.

18 Then you have others like the Federal Bureau of  
19 Prisons and others that use an offline solution where we  
20 would send them a hard drive quarterly, and then they  
21 would then update their computers.

22 Q Okay. And in South Dakota, with the tablets, do the  
23 inmates have online access?

24 A They do.

25 Q And do they have access available 24 hours a day?

1 MR. HAGEN: Objection; foundation. Go ahead.

2 Q Are you aware whether South Dakota inmates have access 24  
3 hours a day?

4 A I am -- as far as I am aware, they have, generally  
5 speaking, access 24/7. There may be some exceptions if  
6 you're in restricted housing and things like that. But  
7 generally speaking, yes.

8 Q How does -- how does Lexis update the content that is  
9 provided on the database for South Dakota inmates?

10 A For South Dakota inmates, I mean it gets updated in  
11 realtime. So compared to an offline solution, you get a  
12 quarterly hard drive. Here, if a new case is handed down  
13 by the South Dakota Supreme Court today, we would  
14 typically -- it would typically be online and available  
15 to inmates essentially by the end of the day. An  
16 enhanced version would be available in a couple of days  
17 which would have headnotes and other analytical  
18 references, but --

19 Q And for new case law, is there any difference when it is  
20 available to an inmate user as opposed to a non-inmate  
21 user like a lawyer in a law firm?

22 A No. None whatsoever. And -- and that's an important  
23 question because I mean I made a reference a few minutes  
24 ago to a CI, a custom interface. So what we provide to  
25 the inmates is the same that a -- that a law firm would

1 use, which we call the platform Lexis Advance.

2 And essentially what we do is that we create a shell  
3 that -- that limits, you know, the -- the content that  
4 you can -- you can access. For a law firm, if you don't  
5 subscribe to a content set, there would be an icon saying  
6 that, hey, you don't have access to this. If you want to  
7 use it, there's going to be an extra charge.

8 For corrections we -- we create a hard wall around  
9 it. And there is also -- specific to corrections, there  
10 are a lot of considerations. You want to make sure that  
11 inmates cannot jump out on the open web. So we -- we do  
12 disable external links, for instance, because if you can  
13 jump to one external site, the next time you know you're  
14 on -- you're on Facebook.

15 Q All right. Are the secondary sources that are available  
16 updated as well through Lexis?

17 A Yes.

18 Q And do you know with what frequency that happens?

19 A It varies. Some of them are updated annually. Some are  
20 updated quarterly. A lot of those analytical titles,  
21 they would follow whatever is done in print. So if a  
22 book is updated annually, like a lot of law books are, it  
23 would be updated here annually.

24 Q All right. And with respect to cases and statutes and  
25 the frequency with which they're are updated, do users

1 have better and faster access to updates through  
2 computer-assisted legal research or through traditional  
3 hard copy books?

4 A Much, much better. It -- it doesn't even compare.

5 Q It's -- I'm sorry.

6 A It's much -- it's much faster and much more  
7 comprehensive.

8 Q The online research?

9 A The online research, yes.

10 Q All right. You started talking about Lexis Advance as  
11 the search platform. Could you just explain what that is  
12 and how it works.

13 A Sure. In layman terms, it's -- it's a lot of things. I  
14 mean it's a product name it's given. We -- if -- if  
15 you've been a Lexis user, it used to be called Lexis.com.  
16 It was a fairly -- it -- it was an interface. The old  
17 interface, Lexis.com, was really designed with the  
18 librarian in mind; the ones that can do the long Boolean  
19 search with ten terms and connectors.

20 Q All right. And you used the term "Boolean search." Can  
21 you -- can you describe what that actually is.

22 A It's using connectors like "and, or, if." And then  
23 you -- you can go deeper than that as well if you want,  
24 but what Lexis Advance really changed was to try to move  
25 more towards natural -- natural -- natural language

1 search because when -- research found that attorneys,  
2 just like everybody else, prefer to do a Google-like  
3 search. I mean it's great if you can do that search  
4 query that's 20 -- 20 words long, but most people don't  
5 search that way.

6 Q All right. So with Lexis Advance, can you just give an  
7 example of a search that an inmate might do on a topic  
8 related to a particular corrections subject.

9 A Again, conditions of confinement is probably a good one.

10 Q And how would you search for conditions of confinement  
11 related cases using Lexis Advance?

12 A So you -- you would put in -- you would start with a  
13 keyword search like that, and then you get a search  
14 screen. You'd probably get a large number of results.  
15 Then on the left you would have a tab you can restrict it  
16 by -- by date, you can -- you essentially have a graph.  
17 You just pull it if you want to restrict a certain date.  
18 You can restrict up -- further up if you want to just  
19 have cases, statutes, analytical titles.

20 Q And so for inmates who have never used Lexis before, or  
21 any other form of computer-assisted legal research, how  
22 do you assist the South Dakota Department of Corrections  
23 in helping inmates learn how to use your product?

24 A Couple of different ways. So one of them is that we  
25 prepared, back -- back when we started, a research guide.

1 Q So let me just show you what's been marked as Exhibit 7.

2 Can you identify that?

3 A Yes. That's a user guide that we provided to the DOC.

4 Q All right. And when was that created?

5 A At some point in 2017.

6 Q And was that created by Lexis?

7 A It was provided by one of our -- we call them client --  
8 client managers. But, yes.

9 MR. MOORE: All right. I would offer Exhibit 7.

10 MR. HAGEN: No objection.

11 Q And how is this document made available to inmates in  
12 South Dakota?

13 A It's provided on the tablets, on each -- on each tablet.

14 Q All right. And what was the -- what was the goal in  
15 creating this document?

16 A It was to create a reference guide for any inmate to --  
17 to give them some meat on the bones in terms of how to  
18 do -- how to do a search.

19 Q What other means has Lexis employed to help inmates  
20 understand how to use your service?

21 A So we did a -- we did in-person training I believe in the  
22 fall of 2017 at every facility. We had actually three  
23 people I believe that traveled the length and width of  
24 the state to -- to visit and train inmates at all  
25 facilities.

1 Q All right. And do you know how long that training lasted  
2 or how long they were in the state providing that  
3 service?

4 A I think they spread out, but they were here for about a  
5 week I believe.

6 Q Is there -- is there still a Lexis representative  
7 physically present in South Dakota who can provide  
8 training or assistance to South Dakota inmates?

9 A So we have -- we have a client manager. She's based in  
10 Missouri, but she travels extensively. She spends all  
11 her time going to correctional facilities to train  
12 inmates, and certainly is available at the request of the  
13 DOC if they -- if they feel that additional training  
14 would be warranted.

15 Q All right. Are there any other means that Lexis uses to  
16 provide training or assistance to inmates in South  
17 Dakota?

18 A That's the primary means, to do in-person training.

19 Q Mr. Ganten, does -- does Lexis track the usage of its  
20 service by South Dakota inmates?

21 A We do.

22 Q And showing you what's been marked as Exhibit 8, can you  
23 identify that, please.

24 A Yes. It's a graph I created.

25 MR. MOORE: I'm sorry. I don't think I offered

1 Exhibit 7. And I would offer that for the record.

2 MR. HAGEN: No objection.

3 MR. MOORE: Thank you.

4 Q So back to Exhibit 8.

5 A Yes. It's a graph showing the usage that I created about  
6 two weeks ago.

7 Q All right. And what data is this based on?

8 A It's based on our internal data. We track usage on the  
9 account level, meaning that we -- we have an  
10 understanding what the usage is for the DOC as such. We  
11 do not track on an inmate facility basis.

12 Q Okay. And the -- the data on the left side of the graph  
13 starting at 500,000 and going to 3 -- 3,500,000, what  
14 does that represent?

15 A So this is the hardest part probably to explain. But so  
16 the way it works is that any customer, any Lexis  
17 customer, you pay an agreed -- agreed amount every --  
18 agreed amount every month. So for -- if you pay us X  
19 dollars, you get access to this content. And then if you  
20 go outside of that, that's a different discussion. And  
21 essentially it's all you can eat, right?

22 But what we also look at is how much do you actually  
23 consume. So we actually assign a value that even though  
24 that you pay us X dollars, in most cases we -- we --  
25 again, this is a hard part to -- to -- to articulate to

1       somebody who is not living and breathing this every day  
2       perhaps.

3               We essentially assign a value to every search that  
4       you do based on the content we have and all of that. And  
5       then we -- we collapse it down. You still only pay what  
6       you're supposed to pay, but we track the usage and the  
7       value of the usage that -- that your firm would -- can  
8       see. We call it internally for some reason the X factor.  
9       Like the actual usage to what -- what you pay under your  
10      plan.

11             So what this shows here is the value of the actual  
12      usage the way that -- the way that we see it.

13   Q   And this is a dollar value?

14   A   It's a dollar value, yes.

15   Q   All right. So with respect to that number, can you just  
16      explain what this graph shows over the period from May of  
17      2017 until August of 2018?

18   A   Yeah. What -- what you would see, I mean if you -- if  
19      you take out some of the peaks and valleys, I mean you'd  
20      see a general -- generally stable, slightly trending  
21      upwards, usage. I mean you'd see a tremendous pike there  
22      right at the beginning which is probably hardly  
23      surprising. I mean people got a new -- they got a new  
24      tool to use. They probably spent a lot of time exploring  
25      it. And then you see like it -- generally it's trending

1 slightly like upwards.

2 Q Is there anything that is surprising or unusual to you in  
3 this graph about usage in South Dakota?

4 A It's pretty high, I would say.

5 MR. MOORE: I would offer Exhibit 8.

6 MR. HAGEN: No objection.

7 Q And then showing you what's been marked as Exhibit 9, can  
8 you identify that, please.

9 A Sure. It's a -- it's -- it's a slide I prepared.

10 Q All right. And, again, what is shown on the slide?

11 A So it's showing three different things. So on the left  
12 you have your ADP, your average daily population, which  
13 is kind of a metric we use. And I rounded the numbers  
14 as -- those are rounded numbers obviously. Comparing the  
15 ADP for Kansas, Alaska and South Dakota.

16 Q And why did you use those three states for comparison?

17 A Tying back to the earlier discussion, because it was  
18 really hard to find a true apples to apples to -- to make  
19 this comparison because South Dakota is the only state

20 that's gone statewide with tablets. Alaska and Kansas  
21 are the closest I could find. They use -- they use it  
22 online. They have a fairly extensive number of -- of  
23 kiosks and -- and terminals. So I figured that those  
24 were probably the best comparisons I could possibly find.

25 Q All right. So what is the -- what does the graph show

1 then in terms of monthly usage and monthly usage per  
2 inmate?

3 A Right. So the monthly usage in the center, I mean it's  
4 an average for -- for South Dakota, I believe it took an  
5 average for like the last 12 months.

6 Q And, again, the numbers there are consistent with what we  
7 were looking at on the left side of the graph shown on  
8 Exhibit 8?

9 A Correct. The South Dakota number is derived from the  
10 same dataset as that graph. I think I used the data for  
11 the last 12 months. I just took an average number there.  
12 And then a third graph then is that -- so you take a  
13 monthly usage and you divide it by the population to get  
14 a sense for what each inmate on a strict linear basis  
15 would consume.

16 Q And based on -- based on what's shown in Exhibit 9, how  
17 does inmate usage in South Dakota compare to the other  
18 states there with online access?

19 A It's very, very high. And -- and certainly -- I mean  
20 it's more than three times as high as in Kansas -- in  
21 Alaska, for instance. Certainly one factor is there that  
22 the acc -- the greater access.

23 MR. MOORE: I would offer Exhibit 9.

24 MR. HAGEN: No objection.

25 Q Mr. Ganten, based on your experience with departments of

1 corrections in other states, how does the database of  
2 materials available in South Dakota compare to what's  
3 available in other states?

4 A It's -- it's pretty robust. I mean certainly on the  
5 analytical side I would say that South Dakota inmates  
6 have access to more than -- than the average, so to  
7 speak. I mean it's a fairly robust analytical offering.  
8 So I would say it's in the upward 25 percent.

9 Q With respect to your corrections customers that have --  
10 the federal entities and the state entities that Lexis  
11 provides service to, has Lexis lost any business because  
12 of dissatisfaction with your product or concern that  
13 inmates in those states were not able to use the service?

14 A No.

15 Q In your experience with departments of corrections, has  
16 any state representative anywhere told you that they were  
17 concerned that inmates were generally unable to use  
18 Lexis?

19 A No.

20 Q And in your experience, working in corrections at Lexis  
21 for the last 14 years, do you have any reason to believe  
22 that inmates are unable to use Lexis Advance to search  
23 for cases and statutes?

24 A No. And I personally attended a number of training  
25 sessions in different states with inmates, and I must say

1 I was -- and -- and actually quote one of our trainers  
2 here, that in many cases inmates are better Lexis Advance  
3 users than many attorneys are.

4 MR. MOORE: Those are all the questions I have for  
5 you. Thank you.

6 CROSS-EXAMINATION BY MR. HAGEN:

7 Q Good afternoon, Mr. Ganten. I introduced myself briefly  
8 when I walked in, but my name is Alex Hagen, and I  
9 represent the plaintiff in this action, an inmate named  
10 Mr. Winston Brakeall.

11 I would like you to start by looking back at  
12 Exhibit 1, if you could, please. I'll probably ask you a  
13 number questions about Exhibits 1 through 3, so if you'd  
14 kind of get those laid out.

15 A Yep; got it.

16 Q So it's my understanding that of the current 52 state DOC  
17 systems, according to internal data, eight percent, which  
18 I would take to mean between four and five, use lawyers  
19 and legal services, is that correct?

20 A Correct.

21 Q And that number is shown on Exhibit 1 in the green part  
22 of the pie graph, correct?

23 A Correct.

24 Q Do you know which -- personally, do you know which of  
25 those systems use lawyers or legal services?

1 A I believe that it is Connecticut, North Carolina -- I'm  
2 visualizing a map in my head here. I apologize. I --  
3 no, I -- yeah. I apologize. My memory there is -- is  
4 failing me.

5 Q It's entirely understandable. Fair to say that your  
6 understanding is that four or five state DOC correction  
7 systems provide inmates with access to a lawyer; true?

8 A Lawyer or paralegal, yes.

9 Q Is it your understanding that those state systems do not  
10 provide any other resource to inmates in terms of legal  
11 materials? Is it always an either/or scenario?

12 A We're not aware that they -- that they use any electronic  
13 format.

14 Q But -- and you're not aware whether they provide legal  
15 books in physical format in addition to those legal  
16 services; true?

17 A I'm -- I'm not aware, no.

18 Q The scope of your understanding in this data is you know  
19 they provide lawyers, you know they don't provide  
20 electronic databases; true?

21 A That -- that's a fair statement.

22 Q What you don't know is whether they also provide physical  
23 legal books; true?

24 A Yeah.

25 Q Okay. In your conversations with representatives from

1 the State of South Dakota, were you aware that the State  
2 of South Dakota had previously entered into a settlement  
3 agreement as part of a lawsuit that set out certain terms  
4 that the State of South Dakota agreed to perform?

5 A No, I -- I was not.

6 Q And so in developing the extent of analytical options,  
7 did that topic ever come up; that certain periodicals or  
8 treatises needed to be included in the suite of materials  
9 that were provided because of this settlement agreement?

10 A Not to my knowledge.

11 Q And just so I understand kind of the dynamics, sir, do  
12 you believe it's fair to say you were the lead negotiator  
13 or contact person with representatives of the State of  
14 South Dakota in the lead-up to the eventual contract?

15 A No. I was -- I was not there at the time.

16 Q Was that -- is that the individual from Missouri, the --

17 A No. It would be the sales guy, probably the sales guy,  
18 so --

19 Q Okay. Who's -- what's his name?

20 A Jim Mattise.

21 (Deposition Exhibit Number 10 marked for identification.)

22 Q I'm going to show you what's been marked as Exhibit 10  
23 for purposes of this deposition. And it's previously  
24 been discussed in a prior deposition, but I think just  
25 for purposes of clarity, we're just going to refer to

1 Exhibit 10.

2 Is it your understanding that the State of South  
3 Dakota is paying your company \$54,000 a year for the  
4 services that you provide to South Dakota?

5 A Yeah.

6 Q And prior to 20 -- prior to the switch to the electronic  
7 database, did LexisNexis -- and I'm looking at 2015,  
8 2016, 2017 -- provide some, your understanding, some  
9 legal periodicals or something in hard cover form?

10 A Yeah. That -- that looks about the extent of it, yes.

11 Q In general, do representatives of the DOC that you speak  
12 with, is their primary motivation in transitioning to  
13 electronic data -- databases from your company cost  
14 savings?

15 MR. MOORE: I object to foundation.

16 A I'm not -- I'm not aware. I wasn't -- I was not there at  
17 the time, so I -- I can't speak for them.

18 Q You interact with DOC officials in general in the course  
19 of your -- the scope of your responsibilities in the  
20 corrections part of your obligations; true?

21 A Absolutely.

22 Q How do you market your product? What are you -- what's  
23 your pitch to DOC officials as to why they should use  
24 LexisNexis electronic databases?

25 A Couple things, but it's -- we believe it's a robust,

1 comprehensive solution that provides -- especially the  
2 online version. It -- it depends on the facility's need,  
3 right. The online version provides quicker updates, more  
4 comprehensive sources perhaps. The offline solution is  
5 certainly attractive to a lot of the facilities that are  
6 concerned about providing -- providing any form of  
7 internet access in the facilities.

8 We also see -- we -- we view it -- I mean the technol  
9 -- it's -- it's quite clear where the technology is  
10 going. You look at the tablet deployment. South Dakota  
11 was definitely pioneering in that regard. But you see  
12 that playing out all over the -- all over the country;  
13 that people are looking at using tablets for educational  
14 purposes, for providing other services to inmates,  
15 anything from education to entertainment through also  
16 legal research.

17 Q Did you ever tell them you can save a lot of money if you  
18 switched from hard cover books to electronic databases?

19 A That certainly is part of the -- it's certainly part of  
20 the pitch, but more -- more than that, the truth is that

21 a lot of hard cover books are going away. Like Shepard's  
22 is a good example, right? Most -- Shepard's is something  
23 that most facilities would want. But Shepard's in print  
24 is rapidly going -- going away. I mean for most of the  
25 smaller states, we -- we took -- we -- we stopped

1 printing Shepard's in print, Shepard's as -- as a book  
2 because it --

3 Q For \$54,000 per year, we looked at the -- in Exhibit 4,  
4 the suite of -- I'm just going to call it the content, is  
5 that fair?

6 A Sure.

7 Q If I wanted to add an additional treatise, let's call it  
8 the Restatement (Second) of Torts or something like that,  
9 what cost -- and we agreed and I'm Secretary Kaemingk,  
10 and he adds that. What cost is it to Lexis to add one  
11 periodical, so to speak?

12 A It -- it very much depends.

13 Q Is the general model that you would pay a license to the  
14 publisher if you -- is that the main cost increase that  
15 you would have?

16 A No. It's a variety of factors. I mean for an author  
17 title, I mean you'd have the author who would get a  
18 royalty. In some cases it's licensed content when -- we  
19 would pay to a third party. And then also you cannot  
20 also discount the fact that, you know, with more content  
21 comes more usage. More usage costs more server time.

22 Q Okay. Any other factor that you believe would play into  
23 your side of the increased costs if the scope of services  
24 were increased?

25 A I'm -- I'm not really sure how to answer that question, I

1 guess. I mean it would increase -- I mean part -- part  
2 of it, what you'd pay, just as you would for a physical  
3 law library, if you -- if you want to buy a second copy  
4 of the book, you buy a second copy of book.

5 Q Does the \$54,000 figure include the number of individuals  
6 you anticipate will be using this database that's  
7 reflected in Figure 4?

8 A Figure 4.

9 Q Exhibit 4. Let me ask a better question. If South  
10 Dakota's prison population was 250,000 instead of its  
11 current population, and the same suite of services were  
12 offered, same content, would the price increase?

13 A Short answer, no. Long answer, yes. In that "no," I  
14 mean we're currently in a contract with the DOC. If  
15 they -- if, when the contract is up and the population  
16 were to be 250,000, yes, the price -- we would certainly  
17 be unlikely to honor the current price. But for as long  
18 as we are in contract, I mean it -- it is a firm  
19 contract. We -- we -- we can't adjust it as such. But  
20 if the inmate population were to explode, yes, we  
21 would -- we would revisit the pricing.

22 Q I want to talk to you a little bit about -- you mentioned  
23 on-site training that Lexis provides. Lexis doesn't  
24 provide legal education training to inmates, does it?

25 A Define "legal education" I guess.

1 Q You're a lawyer. You've gone through not only law  
2 school, but an LLM. What's your understanding of what  
3 legal education is?

4 A Well, we provide, I mean generally speaking as -- and,  
5 again, I have observed quite a few of these trainings, is  
6 that we provide training in how to use the system and how  
7 to -- how to perform basic legal research.

8 Q Within your platform; true?

9 A Correct.

10 Q You don't teach black letter law or habeas corpus  
11 procedure; true?

12 A Correct.

13 Q Are the people who provide training to DOC inmates  
14 lawyers?

15 A Yes.

16 Q All of them?

17 A Yep.

18 Q And that's because you have concerns about liability;  
19 true?

20 A It's also probably the people that are best placed to  
21 train on the legal platform. I mean it's -- it's  
22 standard practice for us to have trainers that are  
23 lawyers themselves.

24 Q Because lawyers are the most equipped to understand the  
25 legal concepts and the legal research parameters; true?

1 A Well, they're trained to use our product. I mean we --  
2 we use lawyers because most other -- most of our  
3 non-inmate customers are attorneys, so it makes sense to  
4 have attorneys do the training.

5 Q And you wouldn't hire a doctor to come and provide this  
6 training because a doctor doesn't have familiarity with  
7 the general rubric of concepts that lawyers use in the  
8 day-to-day; fair?

9 A No, but we would probably -- we would probably consider  
10 people from other walks of life if they're good trainers.

11 Q Have you ever hired someone who is not a lawyer to  
12 provide training to inmates?

13 A Not to inmates, no.

14 Q If you know, from the South Dakota state cases content,  
15 that only includes Supreme Court, South Dakota Supreme  
16 Court, decisions; is that your understanding?

17 A Do you have a court of appeals?

18 Q We do not.

19 A No, you don't. So, yes, I believe so.

20 Q Okay. And then you mentioned the district court. Are  
21 you familiar with Pacer?

22 A Yes.

23 Q And you understand if I go into Pacer, I can find a  
24 complaint or an answer or things like that; true?

25 A True.

1 Q Okay. The materials that are available from the district  
2 courts are decisions from the Court itself; true?

3 A Correct.

4 Q So LexisNexis doesn't provide inmates with access to  
5 existing pleadings in live cases; true?

6 A We do not provide dockets, no.

7 Q Does your company have sample pleadings of particular  
8 types of claims that it makes available to inmates?

9 A I think that some are included in the -- like in fed  
10 habeas and things like that, yes.

11 Q Okay. I appreciate the distinction. Outside of the  
12 individual treatises, does Lexis itself provide samples  
13 of individual pleadings of particular causes of action?

14 A Without speaking specifically to South Dakota, because  
15 I'm -- I'd be lying to say if I'm an expert in South  
16 Dakota law, but typically statutes would include a  
17 collection of forms.

18 Q But Lexis doesn't develop or collect those pleadings and  
19 provide them as part of the services that it provides  
20 inmates; true?

21 A To the extent that we have them, we make them available  
22 through the statutes as forms and et cetera.

23 Q Does -- is South Dakota's content customized in the sense  
24 that LexisNexis had to build a library to provide it?

25 A Sure. Every customer gets a custom -- get a custom

1 library.

2 Q Are you familiar with a woman named Jane Newman?

3 A I know Jane, yes.

4 Q And she was previously a director of LexisNexis in the  
5 prison sales department?

6 A She was, yeah.

7 Q Okay. I'm looking at a Georgetown Law Journal article  
8 called "Ineffective Assistance of Library" in which she's  
9 quoted as saying, "It's not their problem that the  
10 prisoner -- that the inmate is computer illiterate.  
11 They're providing what the state is requiring, and it's  
12 up to the inmate to learn the system."

13 In your dealings with prison officials in the various  
14 DOC corrections, is Miss Newman's observation that it's  
15 not their problem if the inmate is computer illiterate?  
16 Is that consistent with your own experience?

17 A I -- I would let her words -- I let her stand for her  
18 words. And -- and -- and I'm probably somewhat reluctant  
19 to get drawn into other people's motivations. I mean I  
20 think that's -- if you were to look at it from a  
21 different -- from a different perspective, I think that a  
22 lot what's driving what a correction facility does is --  
23 obviously there's case law on the matter, and then you  
24 also have the accreditation standards primarily from the  
25 ACA and ASCA. And I think that that's probably what

1 drives the facilities to decide what they provide.

2 Q Have you ever heard a South Dakota prison official  
3 express concern to you about the plight of illiterate  
4 prison -- or prisoners?

5 A I -- I can't say I have had many direct interactions  
6 with the -- with the South Dakota correctional --  
7 correctional officer.

8 Q So is the answer to my question, no, you've never heard a  
9 South Dakota representative express concern about the  
10 plight of illiterate prisoners; true?

11 A In my minimal interactions, I have not.

12 Q Miss Newman has worked with the company for more than  
13 five years, correct?

14 A I can't speak definitively to that. She is no longer  
15 with the company.

16 Q Do you know the circumstances why she was terminated?  
17 Was she terminated?

18 A I'm not -- I'm not aware of the details.

19 Q In this article she goes on to say, and this is on  
20 Page 1213 of "Ineffective Assistance of Library, They  
21 just want to make sure that they're in compliance and  
22 that they can do it economically."

23 Is it your experience that the main concern of prison  
24 officials in implementing the LexisNexis electronic data  
25 base is that they are in compliance and they can do -- be

1 in compliance economically?

2 A I mean you would want -- you would like to think that,  
3 you know, any government agency would look to -- to  
4 provide a service economically. And -- and certainly --  
5 I mean the way I look at it, I look at it from my  
6 perspective, you know. And -- and at the end of the day,  
7 we provide a service. The facility decides, you know,  
8 what -- what they -- what they decide to provide. But  
9 what I do -- what I do view as revolutionary, quite  
10 frankly, is the access that you have here.

11 Q Are you familiar with the distinction between "signal"  
12 and "noise"? Are you familiar with that vocabulary, when  
13 people talk about the signal and the noise?

14 A Superficially.

15 Q Okay. What's your super -- superficial understanding of  
16 the term "signal" and "noise"?

17 A Are you talking in a computer sense or --

18 Q In a -- in a data sense.

19 A I -- I wouldn't want to go on record because I -- I can't  
20 say I'm a tech expert, so I mean I -- I don't think I  
21 could offer any meaningful -- meaningful insights here.

22 Q Is it fair to say the two concepts are generally talking  
23 about "noise" can just be a sea of data. "Signal" is  
24 meaningful data. Is that consistent with your  
25 understanding of the phrase?

1 A Yeah, that's probably one way of putting it.

2 Q Okay. And if you have more noise, if you have more  
3 availability of data, more cases to read and so on, but  
4 you don't have the ability to understand what's  
5 meaningful in those cases, that is not a significant  
6 advance for an individual in that situation; would you  
7 agree?

8 A I think I would have to agree to disagree on that one.

9 Q Okay. So if I have a person with a sixth grade education  
10 and I give them access to a hundred cases or I give them  
11 access to a million cases, do you think that meaningfully  
12 affects their ability to --

13 MR. BRATKIEWICZ: I would object as argumentative and  
14 based on foundation.

15 MR. HAGEN: I don't think you -- okay. I'm going to  
16 continue to do my analysis. If you want to tell him not  
17 to answer the question you can, but it's --

18 MR. BRATKIEWICZ: I don't know that he can answer the  
19 question.

20 MR. HAGEN: Okay. Your objection is noted.

21 Q If I have a 6th grade -- person with a 6th grade  
22 education and they have access to a hundred cases or a  
23 million cases, do you think, based on your experience and  
24 your prior testimony today, based on that experience,  
25 that that contributes a meaningful difference to that

1 person, that access to that data?

2 A What I can say is this perhaps. Is that if that -- if  
3 that person has access to a hundred cases and he relied  
4 on those, and 35 of those have been overturned and are no  
5 longer good law, that you -- you're losing a lot. I  
6 think you -- you would be hard-pressed to put me on the  
7 stand and say having less information is going to be  
8 better because if you don't know if it's still good law,  
9 if you're relying on a case that you find in the  
10 Northwestern Reporter from 1975 that's been -- that's  
11 been questioned and/or challenged by -- by subsequent  
12 courts, I mean I -- I don't think that you're necessarily  
13 doing that inmate a favor.

14 Q You were with the company in 2008, is that correct?

15 A Yes. I was not in correction space, but I was with the  
16 company.

17 Q The same article quotes an Oregon Department of  
18 Correction who had tested -- tested the LexisNexis system  
19 and indicated that they ran into a number of  
20 difficulties. And the article states, "An internal  
21 review by Oregon prison librarians described a dozen  
22 problems with the LexisNexis prison search engine  
23 including the catchall assessment, quote, confusing to  
24 users that are familiar with researching and those who  
25 are not," end quote.

1 Did you personally have any contact with any of  
2 librarians at the Oregon Department of Corrections who  
3 were testing this system?

4 A Not at that time a decade ago. What I can say, that  
5 they're still a customer.

6 Q They didn't switch to Westlaw or one --

7 A No.

8 Q -- of the other -- okay. Is there a significant advance  
9 in the platform between 2008 and 2018 other than adoption  
10 of the natural language protocol?

11 A Yeah. It's a world of difference.

12 Q Mr. Moore asked you some questions at the end of the  
13 examination regarding whether you had heard any  
14 complaints from Department of Correction officials that  
15 inmates were unable to use your system. And I believe  
16 your testimony was you had never heard complaints from  
17 the Department of Corrections individuals. True?

18 A Well, let me -- I'm aware that there were some close to  
19 the rollout. I'm certainly aware that there were some  
20 tech issues. We was more -- which didn't -- which didn't  
21 necessarily have to do with our service as such and --  
22 and the content thereof. But I am aware through what I  
23 learned from other people in the company that there were  
24 certainly some issues in terms of, I guess, the shared  
25 connectivity.

1 Q Fair. And -- and so people -- you are -- your  
2 understanding is that inmates have complained because  
3 they're unable to access your services, right, because of  
4 GTL; fair?

5 A What I am aware of was that there -- there was a slowness  
6 in the connection speed. I think there was also a  
7 question of, you know, at the -- at the get-go, the  
8 physical wiring of the facilities. I mean obviously you  
9 have thick walls. Getting a wireless signal through  
10 there certainly comes with its own unique challenges.

11 But I -- I am aware there were a number of issues. I  
12 mean we -- you know, we provide -- the way we provide --  
13 you know, to expand what I was asked before, we provide  
14 essentially an icon on -- on -- on a tablet. And then,  
15 you know, whatever request the inmate goes, then goes  
16 through the GTL network and ultimately out to our  
17 servers.

18 Q And Mr. Moore was asking you questions about information  
19 you received from your customer, which is the Department  
20 of Corrections official; true?

21 A True.

22 Q You don't take steps to survey inmates based on their  
23 views of the quality or usability of your platform; true?

24 A That's not actually true.

25 Q Okay.

1 A I mean I -- I personally actually before -- before I even  
2 became aware of this matter, I did actually have a --  
3 have the opportunity to visit a minimum security facility  
4 in Rapid City. Had a chance to sit down with a few  
5 inmates because I was generally interested in, because  
6 South Dakota is a -- is a unique case in that it's the  
7 first tablet-wide deployment, so I was actually very  
8 interested to sit down and listen what a few inmates had  
9 to say.

10 Q And so you have personal anecdotal information about a  
11 handful of people you've talked to, right?

12 A And in addition to that, our trainers are out in  
13 facilities every day and we get a ton of feedback.

14 Q So my question, though, is -- do you have collected  
15 survey data that the company collects from inmates in  
16 a -- in an aggregate fashion? Do you --

17 A We do -- we do not.

18 MR. HAGEN: Okay. Thank you for your time. I may  
19 have questions depending on what Mr. Moore does, but I'll  
20 -- I'll pass the witness.

21 REDIRECT EXAMINATION BY MR. MOORE:

22 Q Mr. Ganten, just a couple of questions. Does the data  
23 usage that you provided through a couple of exhibits  
24 indicate to you that there are ongoing technical issues  
25 in South Dakota that are inhibiting inmates from

1 accessing Lexis online?

2 A No. I believe that the ones that did exist at one time  
3 have been resolved. And certainly the usage is robust.  
4 I did review the September data. And I didn't have a  
5 chance to create an exhibit, but data for September is  
6 about the same as it was for August.

7 Q And does the South Dakota usage data indicate to you that  
8 inmates in South Dakota are computer illiterate in the  
9 sense that they are unable to access and use the service?

10 MR. HAGEN: Objection; foundation. Go ahead.

11 A I mean I certainly would view it that it's certainly --  
12 we -- we're certainly getting a lot of usage by any  
13 measure.

14 MR. MOORE: That's all I have. Thank you.

15 RECROSS EXAMINATION BY MR. HAGEN:

16 Q On the computer usage data you have, it doesn't break it  
17 down by a facility; in other words, there are a number of  
18 facilities in the Department of Corrections in South  
19 Dakota. You don't have insight into the amount of usage  
20 per -- per facility, do you?

21 A Correct. We only track at a DOC level. We don't track  
22 it by facility level or inmate level.

23 Q So if a -- one institution in particular had connectivity  
24 issues and the usage level went down because of that,  
25 that wouldn't be reflected in the data to which you have

1 access?

2 A Correct.

3 MR. HAGEN: No further questions.

4 MR. MOORE: That's all. Thank you very much.

5 THE WITNESS: All right.

6 THE VIDEOGRAPHER: This ends this deposition. We are  
7 going off record.

8 MR. BRATKIEWICZ: Anders, you have a right to review  
9 your deposition transcript and sign that before it  
10 becomes final or you can waive that right. If you waive  
11 the right, you should state that on the record.

12 THE WITNESS: Yeah, I'll waive that right.

13 MR. BRATKIEWICZ: Thank you.

14 (Witness excused at 11:03 a.m.)  
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STATE OF SOUTH DAKOTA       )  
  :  
COUNTY OF MINNEHAHA       )

CERTIFICATE

I, Kerry Lange, Court Reporter and Notary Public, do hereby certify that the witness was first duly sworn by me to testify to the truth, the whole truth, and nothing but the truth relative to the matter under consideration; that the reading and signing of the deposition was waived by the witness, and the foregoing pages 1 - 51, inclusive, are a true and correct transcript of my stenotype notes.

I further certify that, in compliance with SDCL 15-6-28(c), I am not a relative or employee or attorney or counsel of any of the parties or a relative or employee of such attorney or counsel, that I am not financially interested in this action, and have no contractual relationship with any person or entity.

In testimony whereof, I have hereto affixed my signature this 18th day of October, 2018.

*Kerry Lange*

Kerry Lange  
Commission Expires: 7/12/23

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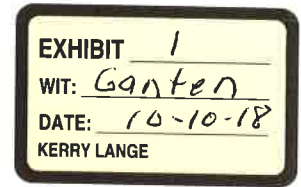
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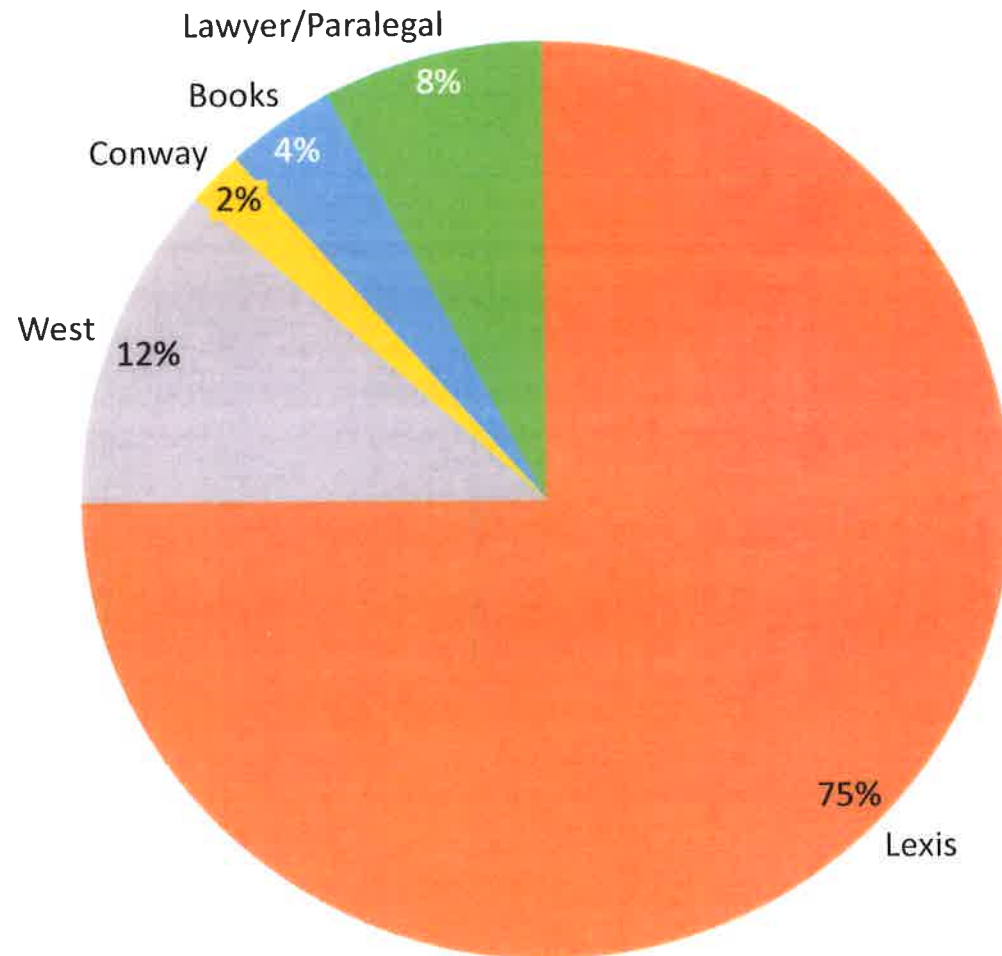
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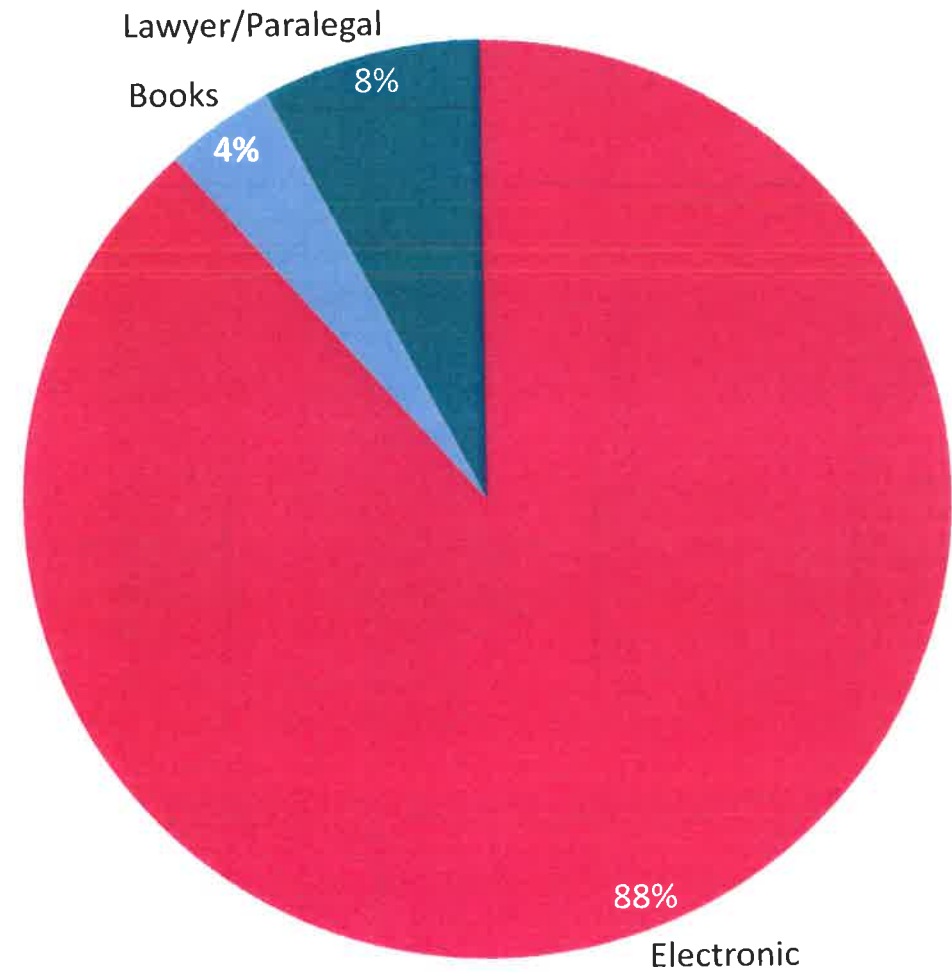
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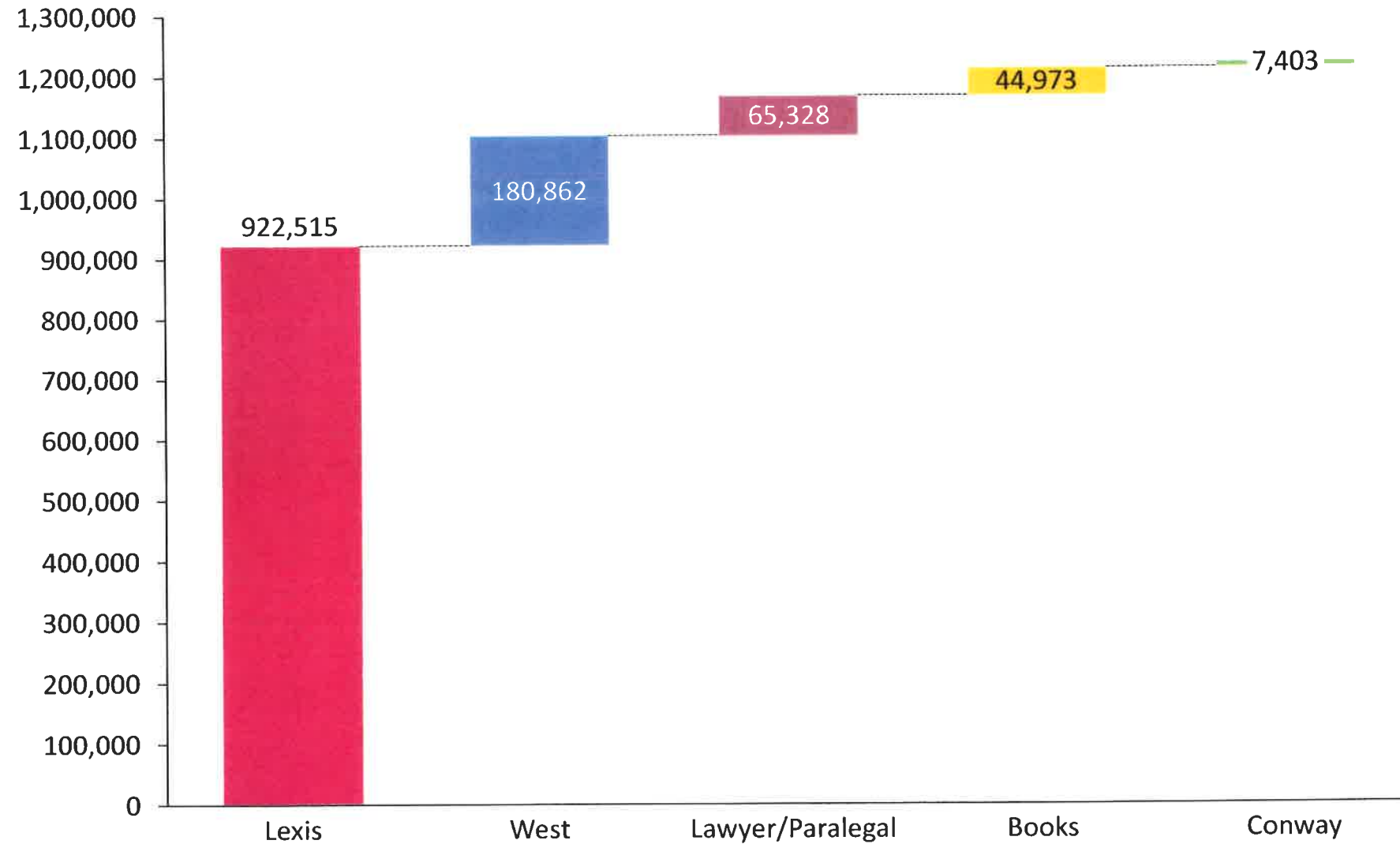


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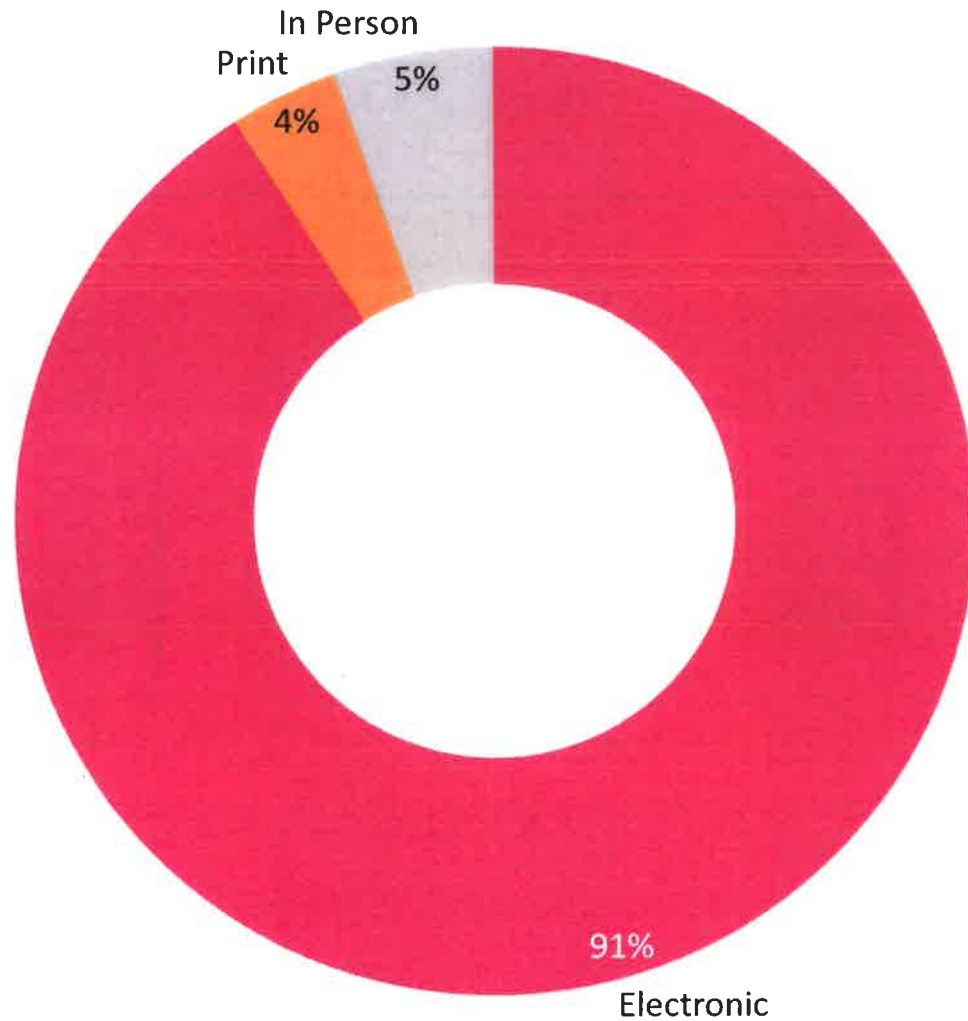


## Approx number of inmate users (by provider) in State DOCs





## State DOC Inmate Resources



### Key Take-aways:

- 46/52 DOCs use computer assisted legal resources covering 91% of all inmates
- 4/52 DOCs rely on attorneys/paralegals representing 5% of all inmates
- 2/52 DOCs rely on traditional print law libraries



## SD DOC Content Offering (w 11/2017 additions)

### State Primary Law

- Cases
  - SD State Cases
- Codes and Legislation
  - South Dakota Codified Laws Annotated
  - South Dakota Constitution
  - South Dakota State & Federal Court Rules
  - South Dakota Administrative Code
  - South Dakota Attorney General Opinions

### Secondary Sources

- Constitutional Rights of Prisoners
- Criminal Defense Techniques
- Criminal Law Advocacy
- Criminal Law Deskbook
- Federal Habeas Corpus Practice and Procedure
- Moore's Federal Practice – Civil
- Moore's Federal Practice – Criminal
- Weinstein's Evidence Manual
- Ballentine's Law Dictionary
- The Law Dictionary

### Federal Primary Law

- Cases
  - South Dakota Federal District Courts
  - 8th Circuit - US Court of Appeals Cases
  - U.S. Supreme Court Cases, Lawyers' Edition
  - All Federal Cases
- Codes , Legislation and Court Rules
  - United States Code Service - Titles 1 through 54
  - USCS – Constitution of the United States
  - USCS – Federal Rules Annotated

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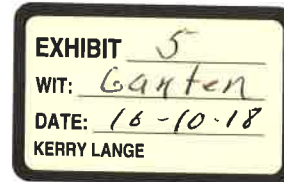


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[e] Previously determined.

☐ § 41.8. Appeals.☐ CHAPTER 42 IMMIGRATION CASES☐ Synopsis to CHAPTER 42 : IMMIGRATION CASES☐ § 42.1. Availability of federal habeas corpus review.☐ § 42.2. Procedures.☐ APPENDIX A FEDERAL POSTCONVICTION STATUTES AS AMENDED BY THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 (AEDPA) AND FURTHER AMENDED BY THE USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005☐ Synopsis to APPENDIX A : FEDERAL POSTCONVICTION STATUTES AS AMENDED BY THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 (AEDPA) AND FURTHER AMENDED BY THE USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005☐ APPENDIX A1 CHAPTER 153 AS AMENDED BY AEDPA AND FURTHER AMENDED BY THE USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005☐ APPENDIX A2 CHAPTER 154 AS ADDED BY AEDPA AND THEREAFTER AMENDED BY THE USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005☐ APPENDIX B FEDERAL POSTCONVICTION RULES☐ Synopsis to APPENDIX B : FEDERAL POSTCONVICTION RULES☐ APPENDIX B1 RULES GOVERNING SECTION 2254 CASES IN THE UNITED STATES DISTRICT COURTS Effective February 1, 1977 As amended in 1979, 1982, 2004, and 2009☐ APPENDIX B2 RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS Effective February 1, 1977 As amended in 1979, 1982, 1993, 2004, and 2009☐ APPENDIX B3 RULE 22 OF THE FEDERAL RULES OF APPELLATE PROCEDURE AS AMENDED BY AEDPA AND THEREAFTER REVISED BY THE SUPREME COURT IN 1998 AND AGAIN IN 2009☐ APPENDIX C ANTI-DRUG ABUSE ACT OF 1988'S PROVISIONS FOR APPOINTMENT OF COUNSEL AND OTHER SERVICES IN CAPITAL HABEAS CORPUS PROCEEDINGS (AS SUBSEQUENTLY AMENDED BY AEDPA AND THEREAFTER RECODIFIED BY THE USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005)

Synopsis to APPENDIX C : ANTI-DRUG ABUSE ACT OF 1988'S PROVISIONS FOR APPOINTMENT OF COUNSEL AND OTHER SERVICES IN CAPITAL HABEAS

10/8/2018

Federal Habeas Corpus Practice and Procedure

 CORPUS PROCEEDINGS (AS SUBSEQUENTLY AMENDED BY AEDPA AND THEREAFTER RECODIFIED BY THE USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005)

 18 U.S.C. § 3599 Counsel for financially unable defendants



 APPENDIX D PRESIDENT'S STATEMENT UPON SIGNING THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996

 Synopsis to : APPENDIX D PRESIDENT'S STATEMENT UPON SIGNING THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996

 APPENDIX D PRESIDENT'S STATEMENT UPON SIGNING THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996

About  
LexisNexis®

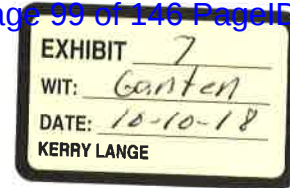
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# Lexis Advance User Guide

## South Dakota Department of Corrections

Lexis Advance for the South Dakota Department of Corrections is constructed with four tabs guiding your research. Each of the four tabs does a different legal research task.

### THE EXPLORE CONTENT TAB

View sources that you can search individually all on one page.

Search with Advanced Search Templates.

### THE SEARCH ALL TAB

Use the Red Search Boxes to search groups of similar sources.

Search with terms and connectors.

Search with segments and commands.

### THE GET A DOCUMENT TAB

Retrieve a specific document by citation.

Find a case by party name.

Find a case by docket number.

### THE SHEPARDIZE® TAB

Make sure a case is still good law with Shepard's® Citations Service

### HOME BUTTON

From anywhere in the website, you can access the Home page by clicking on the Lexis Advance button in the upper right hand corner.

Lexis Advance®

## Explore Content Tab

The Explore Content Tab is the first tab that will appear when you open the Lexis Advance solution. The Explore Content Tab is separated in to four sections:

- South Dakota
  - The South Dakota section contains all primary law from South Dakota and South Dakota specific secondary sources.
- Federal
  - The Federal section contains primary law from the Federal Government and Federal Specific secondary sources.
- Secondary Sources
  - The Secondary Sources section contains reference and practice guides that either cover the majority view of the area of the law or a specific jurisdiction.

Once you locate the source you would like to search, you have several options of how to perform your search. In order to access the search options for a particular source you would:

1. Click directly on the title of the source, or
2. To see all sources that are available, scroll fully down on the page.

Lexis Advance®



Let's explore the search options you will have once you click on a source.

If the source you click on has a Table of Contents associated with the source, you will have access to:


- Red Search Box to fully search the source, or
- Browsing capability with the Table of Contents.

If you click on a source that does not have a Table of Contents (for example, cases), you will have access to:

- Red search box to search all documents in the source, or
- Search templates

## The Red Search Box

All selections (sources or the Search All Tab) on Lexis Advance will give you access to a Red Search Box. In order to search from that box, you can use either Terms and Connectors Searching or Natural Language Searching (explained below). See the Red Search Box used to search South Dakota State Cases below. While this discussion regarding the Red Search Box is in terms of the Explore Content Tab, this information is pertinent to any Red Search Box you find.



You will notice that on Lexis Advance there is no button to select whether you want to search using Terms & Connectors or Natural Language. The Red Search Boxes on Lexis Advance are much more intuitive and allow you to form your search using either technique. Here are highlights and main features of each technique:

## Terms and Connectors Searching (also called Connectors and Commands)

- Terms and Connectors searching is a way of constructing your search so you are telling Lexis Advance exactly how you want the words to fit together in the documents. Terms and Connector is much like putting a puzzle together with your terms or words.
- This technique is called Terms and Connectors because you as the researcher supplies the terms (words) and Lexis supplies the connectors. Below is a discussion of the connectors and examples of how to utilize them on Lexis Advance (Please note: Many are similar to the ones used on Lexis.com, but there are some variations and additional connectors).
- Below is a complete discussion of how to use search connectors on Lexis Advance.

### Search connectors on Lexis Advance

And	Atleast	Or	And not
W/n	/n	w/s or /s	w/seg
Near/n	Pre/n	Pre/s	Pre/p
Not	!	*	?

Lexis Advance® uses the following order of operations for connector searches:

1. or
2. proximity connectors, such as near/n, onear/n, /seg, w/n, pre/n, NOT/n, NOT/seg, /s, /p, w/sent, w/para
3. and
4. and not

### Using Quotation Marks to Find Exact Matches

You can enclose any text in quotation marks to find documents containing that exact text. Quotation marks can also be used to ensure you find documents containing the singular and the plural of a search term. Here are some examples.

This Search	Finds This
"probable cause"	Documents containing the exact text <b>probable cause</b>
dispute and "inmate rights" or "inmate's rights"	Documents containing the term <b>dispute</b> and either the text <b>inmate rights</b> or <b>inmate's rights</b>
constitutional w/15 "right" or "rights"	Documents containing the term <b>constitutional</b> within 15 words of either the text <b>right</b> or <b>rights</b>

and Connector

Use the **and** connector to find words that are far apart from one another or in different sections, but still appear in the same document. Searches using **and** usually find more documents than searches using the **near** connector. The **near** connector places your terms closer together. As a general rule, use **and** when it doesn't matter where your search words appear in a document. Use the **near** connector when there is a connection between your search terms and you need to find the terms near each other.

For example, to find general information about crimes with sentencing information, you could use this search:

**crimes and sentencing**

However, to find documents that are relevant when your search terms are less specific, you may need to use the **near** connector.

Note: You can use an ampersand (&) in place of **and**. The ampersand is found by holding down the shifting key and hitting the 7 key. The two connectors operate the same way.

atleast Command

Use the **atleast** command to require that a term or terms appear "at least" so many times in a document. Use **atleast** when you want only documents that contain an in-depth discussion on a topic rather than just a mention.

For example, the following search requires references to AEDPA (the Antiterrorism and Effective Death Penalty Act) to appear in every document at least 10 times:

**atleast10(aedpa)**

You can use any number with the **atleast** command.

or Connector

Use the **or** connector to find documents that contain either or both of the words or phrases linked by **or**. Use the **or** connector to link search words that are synonyms, antonyms, alternative spellings, or abbreviations.

Synonyms	<b>Car or truck or vehicle</b>
Antonyms	<b>reasonable or unreasonable</b>
Alternatives	<b>takeover or take over</b>
Abbreviations	<b>british broadcasting corporation or b.b.c. or bbc</b>

The search looks for the words or phrases linked by the or connector, not the word "or" itself. The words or phrases linked by or can be in any part of a document.

#### and not Connector

Use the **and not** connector to find documents in which a search word or phrase is to be excluded.

For example, the following search finds documents where the word "vehicle" occurs but the word "car" does not.

#### **weapon and not car**

Because the exclusion covers the entire document, in this example, a document would be excluded if the word "car" appears anywhere in the document.

You can exclude documents containing multiple words this way:

#### **weapon and car and not vehicle**

This example finds documents where the word "weapon" occurs but the words "car" and "vehicle" do not.

Note: You can use these connectors in the same way as the **and not** connector.

- andnot
- but not
- butnot

All these connectors operate the same way.

#### w/n or /n Connector

Use the **w/n** or **/n** connector to find documents in which the first word appears within "n" words of the second one.

For example, the following search finds documents where the word "mitigating" occurs within 3 words of "circumstances".

**mitigating w/3 circumstances** or it could read **mitigating /3 circumstances**

Specifying the value of "n"

When choosing the value of n, these guidelines may prove useful:

Choose this...	For search words to appear here...
w/3 - w/5	in approximately the same phrase

w/25	in approximately the same sentence
w/75	in approximately the same paragraph

Tip: Although you may choose any number for n, you may want to choose a number less than 100. Choosing a number greater than 100 is likely to retrieve documents in which your search words are used in unrelated contexts.

Using Multiple w/n or /n Connectors

Multiple **w/n** connectors operate from left to right, regardless of the value of "n". The following search finds "dog" within 10 words of "cat", and then "fish" within 5 words of either "dog" or "cat":

**dog w/10 cat w/5 fish**

#### w/p or /p Connector

Use the **w/p** or **/p** (within paragraph) connector to find documents with search words that appear within approximately 75 words of each other. Lexis uses 75 words since that is the approximate size of a paragraph.

For example, the following search finds "warrantless" within 75 words of "search":

**warrantless w/p search**

The following example combines the **or** connector and the **/p** connectors to find "subcontract" or "sub-contract" within the same paragraph as "architect":

**subcontract or sub-contract /p architect**

Note: You can use **w/para** in place of **/p** or **w/p** if you wish. All 3 function the same way.

#### w/s or /s Connector

Use the **w/s** or **/s** (within sentence) connector to find documents with search words that appear within approximately 25 words of each other. Lexis uses 25 words since that is the approximate size of a sentence.

For example, the following finds "constitutional" within 25 words of "rights":

**constitutional /s rights**

Note: You can use **w/sent** in place of **/s** or **w/s** if you wish. All 3 function the same way.

w/seg Connector

Use the **w/seg** connector to find documents in which your search terms appear in the same segment (headline, body, etc.), or within approximately 100 words of each other. Each document has different segments based on the type of document. For example, a case would have the citation, title, summary, headnotes, and the text. Where a statute might have the citation, title, text, and annotations. By using this connector, you are telling Lexis to only look in the various parts of the documents for the words.

For example, the following search finds documents where the word "assistance" and "counsel" appear in the same segment.

**assistance w/seg counsel**

near/n Connector

Use the **near/n** connector to find documents with search words that appear within "n" words of each other. The value of "n" can be any number. Use near/n to join words and phrases that express parts of a single idea or to join closely-associated ideas. Anytime near is in the connector, it will eliminate noise words. Noise words are words like of, the, and, if.

Words or phrases linked by **near/n** must be in the same section (a specific part of a document). Either word may appear first.

For example, the following search finds documents in which both words appear in the same section, within three or fewer words of one another.

**habeas near/3 corpus**

Using Multiple near Connectors

Multiple **near/n** connectors operate from left to right, regardless of the value of "n". The following search finds "dog" within 10 words of "cat", and then "fish" within 5 words of either "dog" or "cat":

**dog near/10 cat near/5 fish**

#### onear/n Connector

Use the **onear/n** connector to find documents in which the first word precedes the second by not more than "n" words. This connector dictates specific order.

For example, the following search finds documents where the word "search" occurs within 3 words of "seizure".

**search onear/3 seizure**

onear/n is especially useful in situations where a different word order significantly alters meaning. For example, "summary judgment" is significantly different from "judgment summary."

Note: You can use **pre/n** or **+n** connector in the same way as the **onear/n** connector. All 3 connectors operate the same way.

#### pre/s Connector

Use the **pre/s** connector to find documents in which the first word precedes the second within approximately 25 words of each other.

For example, the following search finds documents where the word "overtime" precedes the word "compensation" within approximately 25 words.

**overtime pre/s compensation**

Note: You can use **+s** in place of **pre/s** if you wish. Both commands function the same way.

#### pre/p Connector

Use the **pre/p** connector to find documents in which the first word precedes the second within approximately 75 words of each other.

For example, the following search finds documents where the word "overtime" precedes the word "compensation" within approximately 75 words.

**overtime pre/p compensation**

Note: You can use **+p** in place of **pre/p** if you wish. Both commands function the same way.

Using not with search connectors

You can use **not** with proximity connectors. Here are the proximity connectors you can use with **not** and examples of how they are used.

Proximity Connector	Example	Finds
w/n	<b>search NOT w/5 seizure</b>	Documents where the word "search" occurs but not within 5 words of "seizure"
w/sent	<b>search NOT w/sent seizure</b>	Documents where the word "search" occurs but not within 25 words of "seizure"
w/para	<b>search NOT w/para seizure</b>	Documents where the word "search" occurs but not within 75 words of "seizure"
w/seg	<b>search NOT w/seg seizure</b>	Documents where the word "search" occurs but not within 100 words of "seizure"
pre/n	<b>search NOT pre/3 seizure</b>	Documents where the word "search" and "seizure" appear in the same document, but not when "search" precedes "seizure" by 3 words or fewer.

Using \* to Find Variations of a Word

Use an asterisk (\*) to find a root word plus all the words made by adding letters to the end of it. For example, employ\* would find variations on the term employ such as employee, employer, employment, and their plurals.

Note:

- Use \* only to find unique roots; fir! will find fired, firing and fires, but will also find first, which you may not want.
- You can use an exclamation mark (!) in place of the \* if you wish. Both function in the same way, but there must be at least 3 characters in front of the ! or you might receive unexpected results.
- The \* can be used in the middle or at the end of a word.

Using ? to Find Variations of a Word

Use a question mark (?) to find variations of a word by replacing characters anywhere in the word, except the first character. Use one question mark for each character you wish to replace. The ? can only be used in the middle of a word.

Examples:

- wom?n would find woman and women
- p???rson would find both the ea and the ie spelling of the name

### Using ! to Find Variations of a Word

Use an exclamation mark (!) to find a root word plus all the words made by adding letters to the end of it. For example, employ! would find variations on the term employ such as employee, employer, employment, and their plurals. The ! can only be used at the end of a word.

Note:

- There must be at least 3 characters prior to the ! or you may receive unexpected results.
- Use ! only to find unique roots; fir! will find fired, firing and fires, but will also find first, which you may not want.

## Natural Language Searching

Natural language searching is a much more loose way of searching for documents. With this technique, you do not define your search at all. You construct your search based on the words that you know you want to find.

To develop a natural language search, use words that you might use when describing your research topic to another person. For example, to find articles about habeas corpus, you might use this search:

### **What is habeas corpus?**

Or, you can use just the most important terms and phrases, in any order.

### **Habeas corpus**

Please note, you can still use quotation marks to designate phrases in a natural language search.

## Search Templates

When you click on a source from the Explore Content Tab that does not have a Table of Contents, you will be brought to a screen that will feature the Red Search Box on top, and then a series of search templates below. Depending on the type of content you click on (cases or law reviews) your search template could vary. Here is an example of the search templates you will find in cases:

### Cases

From the Explore Content Tab, you have access to several different types of cases from various jurisdictions. All of these sources will bring you to the same type of screen with the same search templates. This explanation is applicable to all cases from the Explore Content Tab.

Underneath the Red Search Box, there are several open boxes you can type words in to so Lexis will help you construct your search. Essentially, these boxes help you construct your search using the Search Connectors discussed above. The two sections of boxes are titled Terms and Document Segments/Fields. Here is an explanation of these sections:

- Terms

- The Terms Search Template allows you to have Lexis help you construct your search. All you have to do is fill out the boxes with words that match the description and then hit the add button to the right of the box.
- Here is an example of how to use this search template:

- I want to search for materials that explain ineffective assistance of counsel with witness testimony, objections and hearsay.
- Type witness testimony objections hearsay into the box titled Any of these terms.

Any of these terms

witness testimony objections hearsay |

Add ↑

- Then click the Add button
- Type ineffective assistance of counsel in the box titled This exact Phrase

This exact phrase

ineffective assistance of counsel

Add ↑

- Then click the Add Button
- Your Red Search Box will look like this

(witness or testimony or objections or hearsay) and "ineffective assistance of counsel"

- Notice how Lexis constructed the search for you using the search connectors explained above.
- You would just hit the enter key or click the magnifying glass at the end of the Red Search Box to run the search.

- Document Segments/Fields

- Every document that is on Lexis has specific segments within the document. For example, a case would have the following segments: Party Name, Court, Headnotes, Opinion, etc. When you know certain things about the case you are searching for, you can use the Document Segments/Fields search template to narrow your search.
- When you use the Document Segments/Fields search template, you do not need to type anything in the Red Search Box. If you do type words in the Red Search box, it will search those words with the words you place in the Search Template. Also, you can use as many or as few of the boxes as you would like.

- o Here is an example of how to use the Document Segments/Fields search Template.
  - I know specific things about a case I am looking for. I know that the case is from 1991 and one of the party names is Edelman. I also know it's about expert witness testimony.
  - In the boxes under Document Segments/Fields, I would type in the following:
    - Party Name box – Edelman
    - Date
      - Choose Date is After
      - Type in 1/1/1999 or Jan 1 1999
    - Headnotes – Expert Witness
    - Then Click Search and your case will be listed in the search results.

## Working with Results from a Red Search Box and Search Template Search

If you run a search utilizing either the Red Search Box by itself or together with the Search Templates, your results will display the same. With these results sets, you are given the option to narrow your search using filters, or to sort your results to match how you would like to see the results displayed.

Lexis Advance is really built on the theory of allowing you to do broader searches from the red search box, and then narrow down the results once you run the initial search. In this example, I ran a search for probable cause in South Dakota Cases. Here is what my results screen looks like:

Lexis Advance® Help

South Dakota Department of Corrections / Advanced Search / Results

Results for: probable cause Actions

---

Cases 560

Narrow By

South Dakota State Cases

☆

▼ Search Within Results

Enter search terms Q

- Court
- Timeline
- Publication Status
- Practice Areas & Topics
- Attorney
- Law Firm
- Most Cited

Cases (560) Sort by: Relevance ▼

---

1. ♦ Heib v. Lehrkamp. 2005 SD 98

**Overview:** In a false arrest case, a deputy had probable cause, as required by U.S. Const. amend. IV, to arrest plaintiff where children convinced professionals that they had been raped, the deputy interviewed the children several times, arranged to have the girls medically examined, and obtained statements from the people named as providing an alibi.

... Lack of **Probable Cause**, Evidence Elements, Causation HN6 The existence of **probable cause** to arrest is a complete bar to false arrest and ...

... prosecution claims. This is because proof of the absence of **probable cause** is an essential element in both causes of action. The burden of proving that the arrest was illegal or without **probable cause** always remains with the plaintiff. Law enforcement officers have **probable cause** to arrest if the facts and circumstances within their knowledge ...

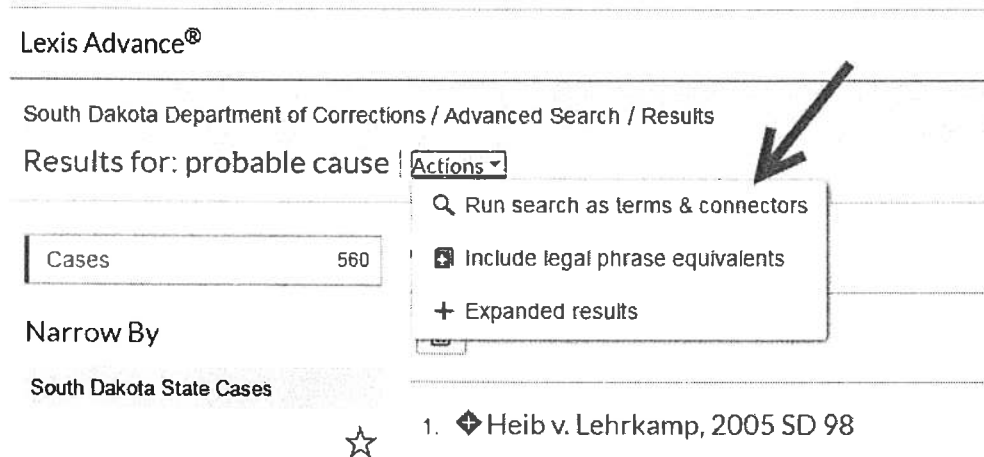
... that the suspect had committed or was committing an offense. **Probable cause** lies somewhere between mere suspicion and the trial standard of beyond a reasonable doubt. The existence of **probable cause** to arrest is a complete bar to false arrest and ...

... prosecution claims. This is because proof of the absence of **probable cause** is an essential element in both causes of action ...

... Standards of Review, Questions of Fact & Law Arrests, **Probable Cause** HN2 The question whether ...

**Jurisdiction**  
South Dakota  
Court  
Supreme Court of  
South Dakota  
**Date**  
Sep 21, 2005  
**Publication**  
SD Supreme Court  
Cases from 1867

Starting at the top of the screen, we can see that right next to my words that I used in my search, there is a drop down box that says Actions. If I click on that drop down box, here are my options:



Lexis Advance®

South Dakota Department of Corrections / Advanced Search / Results

Results for: probable cause **Actions**

Cases 560

Narrow By

South Dakota State Cases

1. ★ Heib v. Lehrkamp, 2005 SD 98

- Because I ran my search as Natural Language (no connectors and no quotation marks) Lexis is giving me the option to run I as terms & connectors. Likely, this would greatly narrow my search results.
- I can also include legal phrase equivalents. This option would rerun the search using synonyms to the words I typed in. This would likely expand my results.
- I can also see expanded results. This option is used when your results number over 10,000. Lexis will just how you the first 10,000 results. If you want the entire set of results, you would click Expanded Results.

#### Narrow By using Filters

Anytime you run a search from the Red Search Box with or without using the Search Templates, you will have the ability to narrow down your search results by using filters. These filters appear under the Narrow By column on the right-hand side of the screen.

## Narrow By

South Dakota State Cases



▼ Search Within Results
<input type="text" value="Enter search terms"/> <input type="button" value="Q"/>
▶ Court
▶ Timeline
▶ Publication Status
▶ Practice Areas & Topics
▶ Attorney
▶ Law Firm
▶ Most Cited
▶ Keyword
▶ Judge

- These filters allow you to narrow down your results with filters that are applicable to the type of content you searched. For instance, the filters in cases and much different than the filters that apply to Statutes.
- The first filter will always be a Search within Results option. This option allows you to add more words to your search to narrow the results. Once you have added more words, either hit enter or click on the magnifying glass in the search box.

Here are a few tips about using the filters:

- Filters will vary by content type. When first performing a search in a certain type content, review the filters before selecting one to use.
- To expand a filter out to see the options, simply click on the arrow next to the filter.

▶ Timeline
▶ Publication Status
▶ Sources
▶ Practice Areas & Topics

- This will expand the filter out and you will be able to see your options. For example, under the Keyword filter, Lexis is giving you other words to add to your search. This will narrow your results down.

▼ Keyword

- probable cause
- arrest
- trial court
- driving
- alcohol
- ⌵ More
- Select multiple

- If you would like to select more than one option under the filter, click on the Select Multiple at the bottom of the filter section.

### Keyword

Keyword All | None

- ☐ probable cause
- ☐ arrest
- ☐ trial court
- ☐ driving

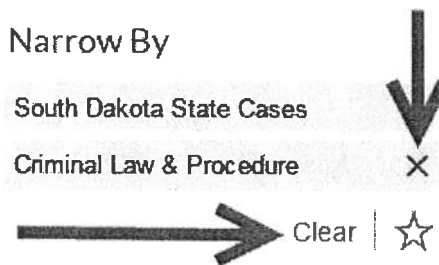
- With the select multiple option, you can select as many as you want and then click OK.
- You can use as many or as few of the filters as you would like. These are simply tools to help you narrow down your search to what you really need to see.

### Removing Filters

Often times, we use several of the filters and then get to a results list that may be too narrow, or might just not retrieve what we want. Instead of having to start our search again, we can simply remove any of the filters we have set and either start again with the basic search, or review the original results.

Once you have set filters on the search, they will appear directly beneath the Narrow By title on the left-hand side of the screen. You have two options for removing the filters:

- You can click on the Clear option at the bottom of the filters. This will remove all filters you have set in one action.
- Or, you can click out of particular filters by clicking on the X next to the filter you set.

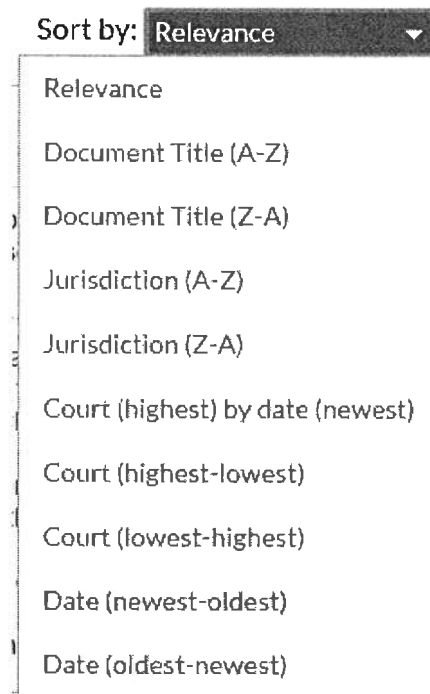


\*Remember, you can always apply the same filters after you have removed them. The filters are there to assist with the search.

### Sorting your results

Once you run your search, you may want to work with your results set before narrowing down. Or, after you narrow down your results set, you may want to see your results in a different order. Either way, you can use the Sort By drop down to change the order of your results. Much like the filters, the options in the Sort By box will change depending on the type of content you are in.

For cases, this is what the Sort By box looks like:



- Cases will always default to Relevance for the sort order in an initial search.
- Simply click on any of the options to reorder your search results list.

## Table of Contents Access and Searching

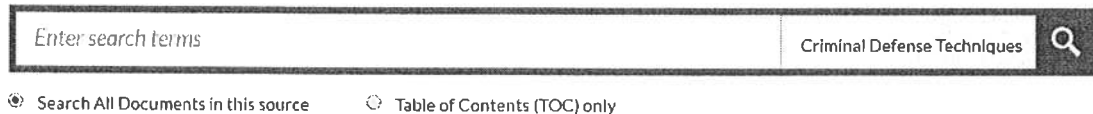
Several of the sources you have access to through Lexis have a Table of Contents. Tables of Contents are a very important part of the research process and should be used as much as possible. The Table of Contents will give you direct access to what the source contains and whether or not it is pertinent to your research.

- If your source has a Table of Contents, you will be taken directly to that feature.
- There are several options for searching in and working with the Table of Contents for a source. From the Table of Contents, you can:
  - Search within the full source
  - Search the Table of Contents Only
  - Search specific sections of the source
  - Browse the Table of Contents

Search within the full source

Once you access the Table of Contents for a source, you will see a Red Search Box at the top of the screen. If you run a search from this Red Search Box without making any other selections, it will search the entire source for your words.

- For a complete discussion of how to search from a Red Search Box, please see the sections on Terms & Connectors and Natural Language above.



Enter search terms

Criminal Defense Techniques

☒ Search All Documents in this source ☐ Table of Contents (TOC) only

Search the Table of Contents Only

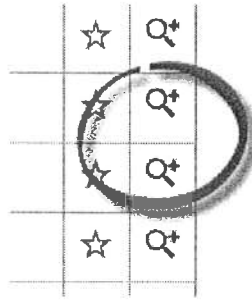
Sometimes it is necessary to restrict your search to the Table of Contents Only. This will keep Lexis from searching the entire documents within the publication and will just search the titles. This is useful because you can use very simple search terms and get to the section of the publication you are looking for, rather than sifting through every article or document that has your keywords in it. It can be a huge time saver.

- In order to just search within the Table of Contents, click on the radio button next to Table of Contents (TOC) Only.
- Now your Red Search Box is restricted to just searching the headings in the Table of Contents only.

Search specific sections of the source

While you are in a Table of Contents for a publication, you can chose to just search within specific sections of the publication. Again, you can use much simpler search terms and not have to sift through irrelevant results with this method.

- In order to search within a specific section or sections of the Table of Contents, first locate what section or sections you want to search within.
- On the right-hand side of the screen there are magnifying glasses corresponding to the sections of the publication.
- Click on the magnifying glass in the same row as the section you want to search within.
- Lexis will pop a message up that your Chapter has been added to the Search.
- If you want to search more than one section, just click on that corresponding magnifying glass, too.



- When you are done choosing sections, they will all appear below the Red Search Box with the designation Narrow By, alerting you to what you are searching within.

Criminal Defense Techniques
🔍

☒ Search All Documents in this source
☐ Table of Contents (TOC) only

Narrow By: CHAPTER 48 Criminal Appeals X
Clear

### Browse the Table of Contents

A Table of Contents can be a really useful tool in your research because sometimes it's hard to know what keywords to type in, or where to start. Being able to browse a Table of Contents can give you a frame of reference for what is in the publication, and what keywords to use in a search.

- In order to browse a Table of Contents first locate what section or sections you want to browse within.
- On the left-hand side of there are arrows that allow you to expand and collapse the sections.
- In order to expand a section, click on the arrow.

▶	Publication Information
▶	What's New
▶	CHAPTER 1 Ball Reform Act of 1984
▶	CHAPTER 1A Trial Strategy and Tactics
▶	CHAPTER 1B Federal Pretrial Motion Tactics and Techniques

- Now that you have clicked on the arrow, it will point downward. That is how you know that you have expanded the section. To shrink it back down, you would

just click on the arrow and it will close the section. Also, notice that there are multiple levels to the sections. You can keep clicking on the arrows to browse down as many levels as you want.

▼	CHAPTER 1A Trial Strategy and Tactics
	Synopsis to CHAPTER 1A : Trial Strategy and Tactics
	§ 1A.01 The Importance of Solid Strategy
▶	§ 1A.02 Right to Counsel
▶	§ 1A.03 Control and Direction of the Case

## Search Results screens from a Table of Contents Search

The search results screens when you search from within a Table of Contents differ from other search results screens on Lexis Advance.

Home

Results for: habeas

Enter search terms	Criminal Defense Techniques 
--------------------	---

 Search All Documents in this source

 Table of Contents (TOC) only



Criminal Defense Techniques > What's New

Publication Update

• Federal Habeas Corpus Practice and Procedure

- There are no filters from a Table of Contents Search. Essentially, your results should be much more limited from this search method.
- If you feel like you have too many results, you can simply type your search in the Red Search Box again and add more terms to it. This will narrow your search down further.

## Search All Tab

The Search All Tab is designed to allow you to search all sources without having to know the exact source you would like to start with. Search all is useful for getting perspective on how your keywords show up across several sources and can direct assist in directing your research. Search All is also a good strategy when you have a needle you need to find in a haystack.

Please note, Specific search strategy as far as Terms and Connectors and Natural Language is discussed above, so it will not be addressed in this section.

Remember, that when you search from a Search All Red Search Box, you are searching across groups of sources, so now in the results list, you will have content categories displayed in the upper right hand corner. When you search using the All Primary Content Red Search Box, these are the categories displayed:

Cases	10,000+
Statutes and Legislation	1207
Administrative Codes and Regulations	0
Secondary Materials	850

- Your search from the Search All Red Search Box will default to Statutes and Legislation. If you would like to look through your results under any other content category, simply click on it.
- Once you locate the type of content you would like to explore, then scroll down to the Narrow By and start going through the filters to narrow your search. For example, if I wanted to explore Court Rules related to Habeas Corpus, I would do the following:
  - Click on Statutes and Legislation
  - Click on the Category Filter
  - Click on Court Rules

▼ Search Within Results

Enter search terms

▼ Category

Bill Text	12,611
Codes	8,912
Legislative Histories	7,470
Congressional Record	6,474
Court Rules	2,257

▼ More

Select multiple

- Click on the Jurisdiction Filter
- Click on More
- Click on South Dakota
- If I needed to narrow my results further, I could either type more keywords in under the Search Within Results Box, or I could continue to use the filters to narrow.

From Search All red search box, you can also retrieve multiple citations from the same content category. For instance, if you want to search for more than one case at the same time, you can run a search such as this:

403 us 443, 129 sct 1710 All Primary Content

Citations just need to be separated by a comma. Make sure the citations are all the same content type, for instance all cases, codes, or court rules.

## Get a Document

The Get a Document Tab is designed to assist you in retrieving documents that you know specific information about. This tab is not used to search for documents based on the subject matter. This tab is used to search for documents with things like the citation (numbers associated with the document), party names, or docket number (the number the Court assigns to the case).

When you initially click on the Get a Document Tab, you will see this screen:

## Document Retrieval

Enter a citation
Citation Formats

Get Document

If you know your citation, you can enter it in the search box and click Get a Document. The way that Lexis Advance searches for documents is much less restrictive than Lexis.com, so you don't have to worry about punctuation, capitalization of letters or having the abbreviations exactly correct. Please note, if you don't know enough about the document to use this tab, you can all use the All Primary Content Red Search Box on the Search All Tab.

Let's look at an example of how to use the Get a Document Tab.

- If I know the case I am looking for is 403 U.S. 443, I would enter it in the Search Box like this:

## Document Retrieval

Enter a citation

403 us 443

Get Document

- Notice I did not use punctuation or capitalization of the US in the middle of the citation. Once I have my citation entered, I can click Get a Document
- Lexis Advance will take you directly to your citation if you have given it enough information to pinpoint which document you want.
- Please note, more than one case can have the same numbers in the citation, so it is always good to know the case name, too.

If you know specific information about your document, but you aren't sure how to type the information in to get to the document, then you can use the Citation Formats link in the upper right-hand corner of the search box.

Citation Formats

## By Citation

Once you have clicked on Citation formats, three tabs guiding you through your search. If you know parts of the citation, for example, the numbers but not how to format the rest of it, you would use By Citation.

- First, chose the content type you want to search for. For example, cases, statutes, or court rules.
- Second, chose the jurisdiction you would like to search in. For example, South Dakota or Federal.

By Citation	Cases by Party Name
-------------	---------------------

### Citation Formats

#### Content Type

#### Jurisdiction

- Once you have chosen both of those drop downs, Lexis Advance will give you options for how to format your search and will display blanks for the numbers.

## Cases by Party Name

As the name of the tab suggests, this tab is used only for cases. This tab is used when you know the people or parties that were involved in the case and were named in the title of the case. For instance, if we wanted to search for *Miranda v. Arizona*, but we didn't know the numbers association with the case, this is where I would go.

By Citation	Cases by Party Name	Cases by Docket Number
-------------	---------------------	------------------------

Party		v.	Party	
<i>Gets only case law documents</i>				
Jurisdiction				
<input type="text" value="Select a Jurisdiction"/>				
Date				
<input type="text" value="All available dates"/> <input checked="" type="checkbox"/>				

- First, the names can go in any order in the search. Lexis Advance will look for them in either order. So, while we know the case is *Miranda v. Arizona*, I could put in Arizona first and Miranda second.
- Second, you can chose a jurisdiction. Notice I said can, but you don't have to. So, if you are not sure what Court decided the case you can leave this blank. It is always better to have more information, but sometimes we have to search with what we have.
- Third, you can put a date restricter on the search. Again, you can do this but it is not necessary.
- Once you have all the information in that you know about the case, click Search.

## Cases by Docket Number

The Cases by Docket Number search is used when you know the number the Court assigned to the case. This number is different from the citation and will generally be found on the paperwork associated with the case when it is filed in Court. Notice in the case citation below, the number is No. 07-542.

### **Arizona v. Gant, 556 U.S. 332**


Supreme Court of the United States

October 7, 2008, Argued; April 21, 2009, Decided

No. 07-542

The Cases by Docket Number search allows you to receive assistance in formatting your Docket Number if you are not sure how to. See the link to Docket Formats below.


By Citation	Cases by Party Name	Cases by Docket Number
-------------	---------------------	------------------------

Docket Number Docket formats 

*Gets only case law documents*

Jurisdiction

Date



Much like the Cases by Party Name search, you just put the information in that you know. For example, for *Arizona v. Gant*:

- First, I would type in 07-542 in the Docket Number field.
- Second, I would Select the United State Supreme Court under Jurisdiction.
- Third, I would select Date is After under the Date drop down and then type in 2009.
- Remember, you only need to have the docket number for this search. The Jurisdiction and Date are optional fields and do not have to be used.

## Shepard's

*Shepard's* is a key component to any legal research process. We will look at several different ways to use *Shepard's* aside from the traditional case cite validation function.

The most important part of using *Shepard's* is that you have to have the citation to your case or other content that you will be researching. At their core, *Shepard's* reports are simply reports that show you everything on Lexis Advance that has cited back to the citation you are researching. *Shepard's* is all forward looking, meaning anything that is on the *Shepard's* report was published or created after the document you are researching.

*Shepard's* was originally created in the late 1800's as a way for attorneys to be able to check on whether their case was still good law. It saved many hours of research by putting all the cases together that have all cited back to the case that is being researched. Now we can work with several different types of content to determine the status of the law today.

*Shepard's* assigns signals to the documents so you know at a glance what the status of the law is without having to put all the pieces together yourself. The *Shepard's* Signals are as follows:

-  Warning: Negative treatment is indicated.

The red *Shepard's* Signal™ indicator indicates that citing references in the *Shepard's*® Citations Service contain strong negative history or treatment of your case (for example, overruled by or reversed).

-  Questioned: Validity questioned by citing reference.


The orange *Shepard's* Signal™ indicator indicates that the citing references in the *Shepard's*® Citations Service contain treatment that questions the continuing validity or precedential value of your case because of intervening circumstances, including judicial or legislative overruling

-  Caution: Possible negative treatment indicated

The yellow *Shepard's* Signal™ indicator indicates that citing references in the *Shepard's*® Citations Service contain history or treatment that may have a significant negative impact on your case (for example, limited or criticized by).

-  Positive treatment indicated

The green *Shepard's* Signal™ indicator indicates that citing references in the *Shepard's*® Citations Service contain history or treatment that has a positive impact on your case (for example, affirmed or followed by).

-  Citing references with analysis available. Click to Shepardize®.

The blue "A" *Shepard's* Signal™ indicator indicates that citing references in the *Shepard's*® Citations Service contain treatment of your case that is neither positive nor negative (for example, explained).

-  Citation information available

The blue "I" *Shepard's* Signal™ indicator indicates that citing references are available in the *Shepard's*® Citations Service for your case, but the references do not have history or treatment analysis (for example, the references are law review citations).

We will split the *Shepard's* discussion into Cases and Statutes as they are the two primary types of content we would use for a *Shepard's* Report.

## Shepard's for Cases

In order to *Shepardize* your case, you need to have the citation. You can use *Shepard's* to research your case from two aspects. First, if you find a case in your research that you want to find more similar cases, *Shepard's* will assist with that. Second, if you are at the end of your research, you need to use *Shepard's* to determine whether or not your case is still good law.

You can get to the *Shepard's* report for your case from two different ways.

- First, you can click on *Shepard's* Signal while you are in the case you want to research. Each case is assigned a signal based on what other cases are saying about it. Notice in the case below, you can click on the Yellow Triangle to get to the *Shepard's* report.

### **Arizona v. Gant, 556 U.S. 332**

Supreme Court of the United States

October 7, 2008, Argued; April 21, 2009, Decided

No. 07-542

- Second, if you know your citation, you can go directly to the *Shepard's* Tab and search for the report.

### Enter the citation to be checked

Enter a citation

Shepardize®

#### Basic Components of a Case Law *Shepard's* Report

Before we get in to the different ways to use *Shepard's*, I think it's important to explore the different parts of a *Shepard's* report.

- When you first retrieve a *Shepard's* Report, you will notice that in the upper left-hand corner, there is a category selector, much like other places on Lexis Advance. This allows you to select which part of the report you would like to view.

Appellate History

☒ Citing Decisions

Other Citing Sources

Table of Authorities

- The report will default to the Citing Decision section, but you can change to any other section just by click on it. Here is what each section covers:
  - Appellate History
    - The Appellate History section explains how this case moved through the Court system. Many times, a case will have been decided at more than one level and you are looking at the highest decision. This section will help you see what happened at the other levels of the case.
  - Citing Decisions
    - The Citing Decisions section is the real meat of the *Shepard's* Report. This is where all those cases that have cited back to our citation and we want to review sit.

- Other Citing Sources
  - This section contains sources outside of cases that have cited back to your citation. For example, Law reviews, Court Documents, Treatises, Statutes, Annotations, Other Citations and Secondary Sources.
- Table of Authorities
  - The Table of Authorities is the listing of all the cases your case cited to in the actual option. This is the best place to go to see the foundation that your case lies on, and also just an easy way to have a full list of all the cases cited to within the option you are researching.

#### How to Utilize the Citing Decisions Section

Just like all other places in Lexis Advance, when you get to the Shepard's Report, you will have a series of filters that you can use to narrow down your report to just what you need to see. Always remember, you can use the Select Multiple option at the end of each filter to narrow down by more than one selection.

The filters on a Shepard's Report for Case Law are as follows:

#### Narrow By

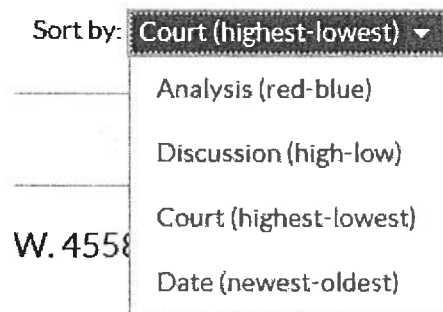
▶ Analysis
▶ Court
▶ Discussion
▶ Headnotes
▶ Search Within Results
▶ Timeline

- Analysis
  - This is the category where you have to determine whether you are researching this case to find like cases, or are researching it to determine whether or not it is still good law.
- Court
  - When you are searching for case law, it is important to first search for cases in your jurisdiction. This will be either state or federal and depends on what type of case you are involved in.

- Discussion
  - This section allows you to narrow down the report by how in depth the citing cases talked about your case. This is a great place to utilize the Select Multiple option at the bottom of the filter.
- Headnotes
  - Cases are split in to many different topics, and the headnotes assist in sectioning the case out that way. If you want to just narrow down to those cases that talked about 1 or more headnotes from your case, this is where you would select the specific headnotes. If you run your cursor over the headnote and let it sit there, it will pop up what topic it covers.
  - You can also click on View Text of Headnotes to see them all at once.
- Search Within Results
  - Sometimes it is important to add more keywords to your search, or find cases that have specific words in them.
- Timeline
  - This filter will assist in placing a date restricter on your search. You can either utilize the slide bars on the bottom of the graph or you can type in the dates in the boxes below the Timeline.

You do have several other features on the *Shepard's Report* that will assist you in working with the citations.

- Sort By
  - The Sort By drop down allows you to sort the material so you can see what you need to see first. You can sort by several different options:



- View Selections
  - In the upper right-hand corner of the screen, you can change the way you view the *Shepard's Report*. The view is defaulted to Full View.



- You can also view your report using the middle selection of Title View. This will only show you the titles of the cases.
- You can also use the third selection of Grid View. The grid view allows you to view your report in graphical format. The report is completely

interactive and can be a great way to see how other jurisdictions are treating your case. You can click on any of the boxes, jurisdictions, or treatments to narrow your report down.

### Analysis by Court

Warning (0)														
Questioned (29)		3			2	1	1		3					
Caution (164)	3	11	19	17	13	16	14	3	8	18	7	4	4	
Positive (385)	1	15	26	26	17	18	51	17	25	20	21	11	13	
Neutral (599)	58	5	25	9	15	17	27	15	15	31	11	4	17	
Cited By (7595)	49	142	340	190	177	223	264	167	251	253	232	186	78	1
	U.S. Supreme Court (111)	1st Circuit (176)	2nd Circuit (410)	3rd Circuit (242)	4th Circuit (224)	5th Circuit (275)	6th Circuit (357)	7th Circuit (202)	8th Circuit (299)	9th Circuit (325)	10th Circuit (271)	11th Circuit (205)	D.C. Circuit (112)	Fed. Circuit (1)

### Research Similar Case Law

During your research, you will more than likely come upon cases that have a similar fact pattern and argument that support your position. It is always good to be able to find more cases that support the argument you are presenting. One way of finding additional case law is to Shepardize the case and find all the cases that follow your case. When a case is followed, it is given the Green Positive Treatment Indicator, or the green diamond. Please keep in mind that *Shepard's Reports* are tailed to the specific case, meaning if there has been no positive treatment it will not be a selection in the filters.

If I wanted to find all cases out of my jurisdiction that have followed my case, I would do the following:

- Retrieve the Shepard's Report for your case
  - Please see above section for the various ways to get to the Shepard's Report.
- Narrow by Filters to use:
  - Analysis - Click on Positive
  - Court - click on all Courts pertinent to your search. Remember to use Select Multiple if you need more than one Court.

- Headnotes – if you want to narrow the report to certain points of law, then chose your headnotes. Remember to use Select Multiple if you want more than one point of law.
- Remember, you can always narrow by other filters, but the ones above are designed to specific get you to cases that are positive for you case, in your jurisdiction and on your points of law.

#### Validate Case Law

The original reason that *Shepard's* was created was to give the legal researcher of way of being able to retrieve a list of all the cases that have cited back to the case you are researching. Prior to *Shepard's* this was an almost impossible task. So, why do we need to *Shepardize* or research the validity of a case? The thing a lot of researchers don't know is that no matter how many times a court calls an opinion in to question, it will never be removed from the books. The Courts do this to make sure that you can always get the full background on case law and know where the law originated from, but it also puts the burden on the researcher to do their research and find out whether or not the case is still good law.

When you are validating your case to see whether or not it is still good law, you want to focus on the negative *Shepard's* categories of treatment. The negative categories will fall into the Red (Warning), Orange (Questioned) and Yellow (Distinguished) categories. In order to determine if you case has received any negative treatment, follow these steps:

- Retrieve your case or the Shepard's Report for your case
  - If you are already in your case, you can tell what the treatment is directly from the case.
  - Notice the Shepard's Signal will always appear next to the citation for the case.

### **Coolidge v. N.H., 403 U.S. 443**

Supreme Court of the United States

January 12, 1971, Argued ; June 21, 1971, Decided

No. 323

- If you are unsure of what your signal means, then look to the right-hand side of the screen. The Shepard's Panel will let you know the category. Here we can see that the orange Q is Questioned. From above, we know that this case has negative treatment, so we need to go in to the

*Shepard's* Report. Remember, just click on the signal or *Shepardize* this document to retrieve the report.

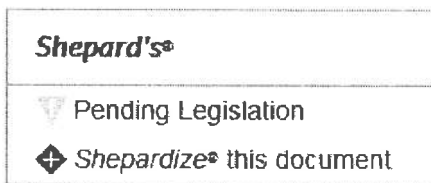
<b><i>Shepard's</i></b>
No negative subsequent appellate history
Citing Decisions (8378)
<div>Q Questioned (29)</div> <div>⚠ Caution (164)</div> <div>⬆ Positive (385)</div> <div>A Neutral (599)</div> <div>I Cited By (7595)</div>
Other Citing Sources (3028)
<b><i>Shepardize</i>® this document</b>

- If you are not already in your case but you have the citation, go to the *Shepard's* Tab and search for your case using the Search box (as illustrated above).
- Once you have retrieved your *Shepard's* Report, you will need to use the filters under Narrow By to refine the report.
- Narrow by Filters to use:
  - Analysis - If more than one of the negative treatments is available, click on Select Multiple to select them all. If there is only one type of negative treatment, just click on that type.
  - Court – click on all Courts pertinent to your search. Remember to use Select Multiple if you need more than one Court.
  - Headnotes – if you want to narrow the report to certain points of law, then chose your headnotes. Remember to use Select Multiple if you want more than one point of law.
- Remember, you can always narrow by other filters, but the ones above are designed to specific get you to cases that are positive for you case, in your jurisdiction and on your points of law.

## Shepard's for Statutes

As discussed above, *Shepard's* can be used for types of content other than case law because at its core it is a report that shows you everything that has cited back to your citation. Using *Shepard's* for statutes can be a very useful way of researching case law that cites back to those statutes. This should be used in addition to the annotations provided in the statutes.

Please note, each statute is assigned a *Shepard's* signal when you either retrieve the actual statute or when you retrieve the *Shepard's* Report. For instance, when I retrieve 28 U.S.C. 2254, you can see on the right-hand side of the screen under the *Shepard's* section that it is assigned the Green Positive Treatment signal.



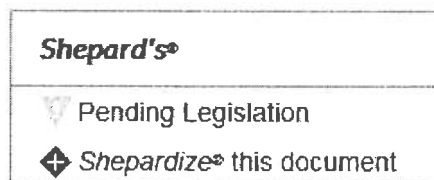
All of the signal categories of treatment used for cases are used in statutes, with the addition of one more signal:

-  Warning

The red *Shepard's* Signal™ indicator indicates that citing references in the *Shepard's*® Citations Service contain strong negative treatment of the section (for example, the section may have been found to be unconstitutional or void).

You can get to the *Shepard's* report for your statute from two different ways.

- First, you can click on *Shepardize* this document while you are in the statute you want to research.



- Second, if you know your citation, you can go directly to the *Shepard's* Tab and search for the report. Just remember, if you need assistance with formatting the citation, use the Get a Document tab.

## Enter the citation to be checked

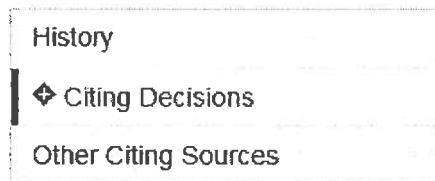
Enter a citation

Shepardize®

### Basic Components of a Statutory *Shepard's* Report

Before we get in to the different ways to use *Shepard's* for statutes, I think it's important to explore the different parts of a *Shepard's* report.

- When you first retrieve a *Shepard's* Report, you will notice that in the upper left-hand corner, there is a category selector, much like other places on Lexis Advance. This allows you to select which part of the report you would like to view.



- The report will default to the Citing Decision section, but you can change to any other section just by click on it. Here is what each section covers:
  - History
    - The History section is the same as the History section in the actual statute. The addition here is that there is a Pending Legislation link.
  - Citing Decisions
    - The Citing Decisions section is the real meat of the *Shepard's* Report. This is where all those cases that have cited back to our citation and we want to review sit.
  - Other Citing Sources
    - This section contains sources outside of cases that have cited back to your citation. For example, Law reviews, Court Documents, Treatises, Statutes, Annotations, Other Citations and Secondary Sources.

### How to Utilize the Citing Decisions Section

Just like all other places in Lexis Advance, when you get to the Shepard's Report, you will have a series of filters that you can use to narrow down your report to just what you need to see. Always remember, you can use the Select Multiple option at the end of each filter to narrow down by more than one selection.

- The filters on a Shepard's Report for Case Law are as follows:

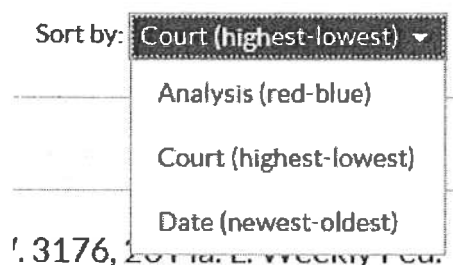
#### Narrow By

▶ Analysis
▶ Court
▶ Search Within Results
▶ Timeline

- Analysis
  - This is the category where you have to determine whether you are researching this statute to find cases that are for or against the statutory language.
- Court
  - When you are searching for case law, it is important to first search for cases in your jurisdiction. This will be either state or federal and depends on what type of case you are involved in.
- Search Within Results
  - Sometimes it is important to add more keywords to your search, or find cases that have specific words in them.
- Timeline
  - This filter will assist in placing a date restricter on your search. You can either utilize the slide bars on the bottom of the graph or you can type in the dates in the boxes below the Timeline.

You do have several other features on the *Shepard's Report* that will assist you in working with the cases.

- Sort By
  - The Sort By drop down allows you to sort the material so you can see what you need to see first. You can sort by several different options:



- View Selections
  - In the upper right-hand corner of the screen, you can change the way you view the *Shepard's Report*. The view is defaulted to Full View.



- You can also view your report using the middle selection of Title View. This will only show you the titles of the cases.
- You can also use the third selection of Grid View. The grid view allows you to view your report in graphical format. The report is completely interactive and can be a great way to see how other jurisdictions are treating your case. You can click on any of the boxes, jurisdictions, or treatments to narrow your report down.

### Analysis by Court

Warning (0)													
Questioned (0)													
Caution (0)													
Positive (636)	3	23	43	57	43	58	96	50	24	147	30	57	3
Neutral (2141)	85	39	102	163	128	177	333	111	77	566	99	164	3
Cited By (215540)	374	3097	14738	14388	24274	26554	26368	11173	9536	55287	12786	14896	379
	U.S. Supreme Court (462)	1st Circuit (3159)	2nd Circuit (14878)	3rd Circuit (14604)	4th Circuit (24445)	5th Circuit (26789)	6th Circuit (26792)	7th Circuit (11895)	8th Circuit (9637)	9th Circuit (56002)	10th Circuit (12917)	11th Circuit (15117)	D.C. Circuit (385)

## How to Research Cases Pertinent to your Statute


There are several ways to narrow the Shepard's Report down when you are looking for cases that are pertinent to your statute and specific argument. Unlike case law, statutes are broken up in to subsections. Often times, we want to research those specific subsections of the statute and find case law that pertains directly to that subsection. Please note, you must narrow the report down by the subsection prior to using the Narrow By filters.

- If you want to narrow your Shepard's Report down by the specific subsection the case cites to, click on Subsection Reports by Specific Court Citation at the top of the screen.

### Subsection reports by specific court citation

- Once you click in to this feature you will be brought to a screen that lists out the different ways the courts have cited to the statute with the pertinent subsection. It will also tell you how many cases have cited to the statute in this way. If your subsection does not appear in the list, there are no cases citing directly to it.

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25.  28 U.S.C. sec. 2254 (b) (1) (B) (1 to 2)

Total Cites  
143

- 
- Once you have the pertinent subsection report chosen, then you can utilize the Narrow By filters.
  - Narrow By Filters to use:
    - Analysis – this filter should be used if you want to find cases that take a position, either negative or positive on the statutory language.
    - Court - click on all Courts pertinent to your search. Remember to use Select Multiple if you need more than one Court.
    - Search Within Results – use this filter to find cases that contain specific keywords.
    - Timeline – use this filter if there was a change to the language of the statute in a certain year and you want to the cases before or after that year.


# Features of Specific Content

Lexis Advance has provide many features in order to assist in the navigation through specific types on content. Some of these features will be new with Lexis Advance and some will be features that were retained from Lexis.com. Here, we will explore the features of the most used types of content: Cases, Statutes, and Secondary Sources.

## Cases

Cases on Lexis Advance feature several enhancements and editorial pieces that assist in the research process.

Go To

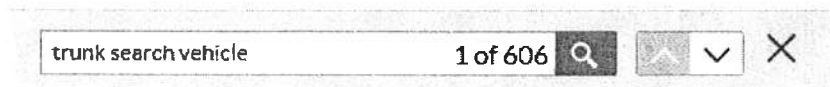


- The Go To drop down box allows you to jump to a specific page within the document.

Search Document



- Often times, the case law is long and we are looking for a specific word within the document. You can use search document in that case.
- If you have found the case through a keyword search, the Search Document box will actual turn to a keyword box like below:



- You can use the up and down arrow to navigate between the terms you searched for.

Switching Citation View

### Reporter

**403 U.S. 443** \* | 91 S. Ct. 2022 \*\* | 29 L. Ed. 2d 564 \*\*\* | 1971 U.S. LEXIS 25 \*\*\*\*

- Case law often times is published in more than one reporter. If you would like to see the pagination in the case change to a different reporter than the default one, just click on the links to the other citations and the pagination in your case will change.

#### Core Terms

- Core terms are the legal terms of art that are used the most in the case. These terms can help you determine whether or not the case is pertinent to your search.

#### Case Summary

- Lexis Advance provides you with a case summary that will give you the facts and law that are pertinent to the case. You can tell from these paragraphs whether or not the case discusses the topic that you need to research.


#### Headnotes

- Case law editors add headnotes to the cases to help the researcher navigate through all of the decisions the court made in a case. When an appeal is filed, the party appealing has to appeal every issue they have in the case, or lose their right to appeal it. So, the courts will usually decide several different issues in one case. The Headnotes will assist you in jumping to specific topics, but also in knowing whether your particular issue was discussed in depth.

#### Shepard's

- *Shepard's* reports are now more fully integrated in to the case. Instead of only seeing the signal, you now see a breakdown of the report on the right-hand side. Now you can tell if that red stop sign comes from one case, or 100 cases.

#### About this document

- Topic Summary Reports
  - Topic Summaries are a collection of information about a legal topic that is addressed in a case you are viewing. If legal topic summaries related to the case are available, you'll see Topic Summaries in the About This Document box to the right on the page. Since a case may address multiple legal topics, you'll see a View Reports icon  in each LexisNexis® Headnote for which there is a topic summary.
- Legal Issue Trail
  - The Legal Issue Trail™ lists cases that cite to the case you are viewing as well as cases your case has cited - for a specific legal issue or point of law. To use it, select Activate Passages and then select the passage dealing with the issue you are researching. The list of cases is displayed with the *Shepard's* Signal™ indicator for each case.

## Statutes and Other Materials in Table of Content Format

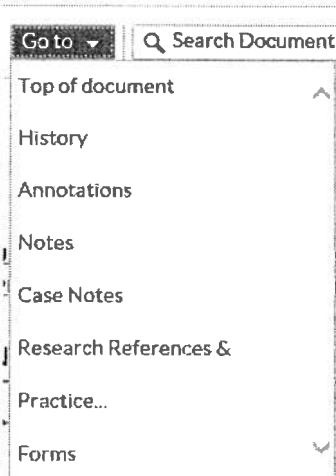
Most of the content on Lexis Advance that is in Table of Contents format will work the same way. Since statutes are of great importance, we will talk about the features in their context.

### Table of Contents Slide Out



- While you are in any type of content that has a Table of Contents, you will be able to directly access it from the right hand corner of the document. Simply click on this pane and the TOC will fly out. To remove it, simply click on it again.

### Go To

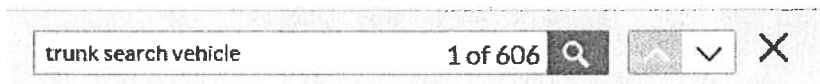


- The Go To drop down assists you in navigating directly to a certain portion of the document.

### Search Document

 Search Document

- Often times, the case law is long and we are looking for a specific word within the document. You can use search document in that case.
- If you have found the case through a keyword search, the Search Document box will actual turn to a keyword box like below:



### Previous and Next Buttons

◀ Previous      Next ▶

- The previous and next buttons assist in navigating through a publication if you do not want to utilize the Table of Contents, or leave the actual publication.

### Shepard's

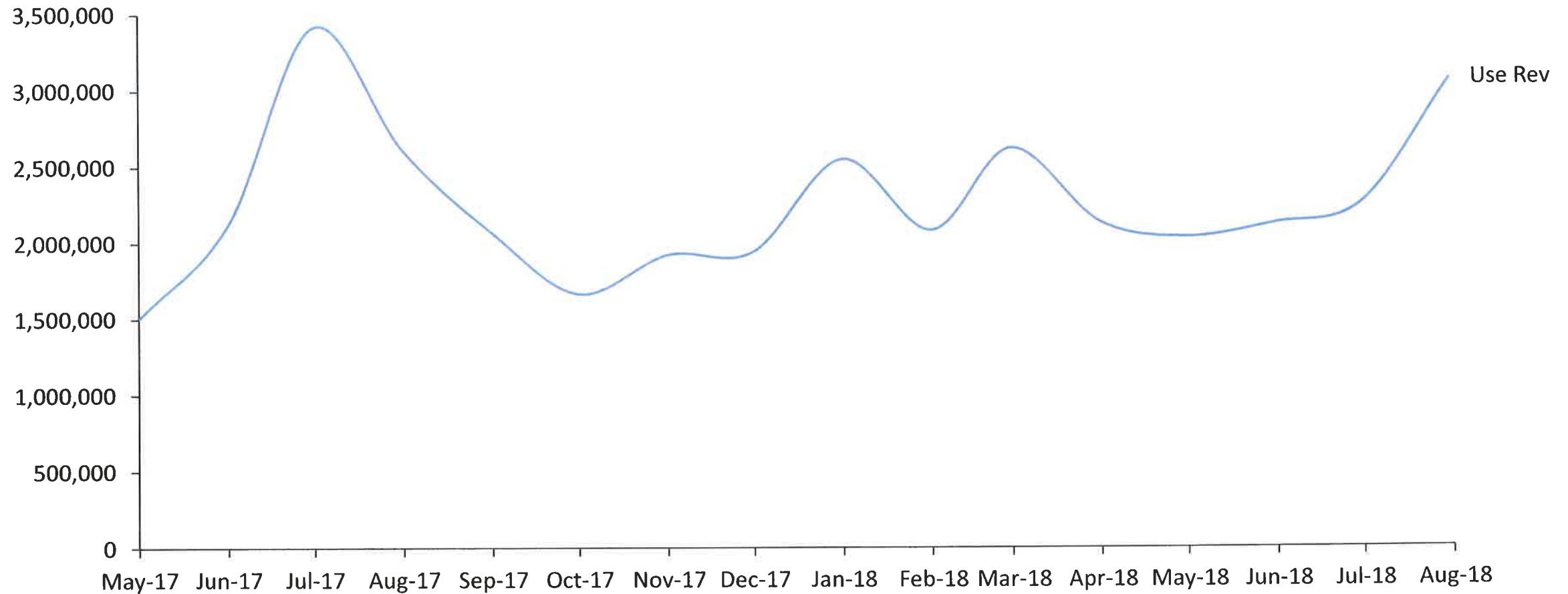
- Pending Legislation
  - This link will show you any pending legislation that the pertinent legislature has filed that will affect this document.
- Shepardize this Document
  - This will take you directly to the *Shepard's* Report for this document.

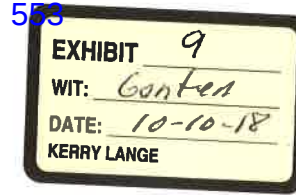
### About this Document

- Archived Code Versions
  - This link will take you directly to the archived versions of the code section, or other document that you are looking at.

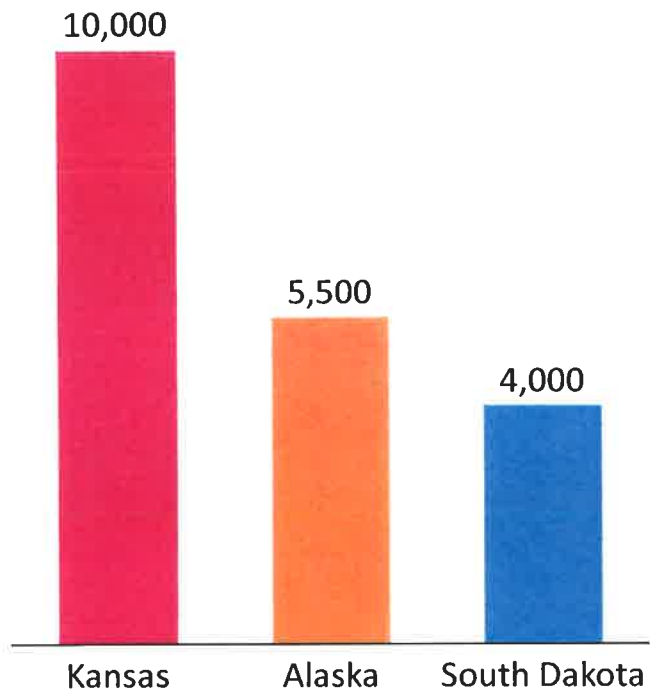


## SD DOC USAGE – Start Through Aug 2018

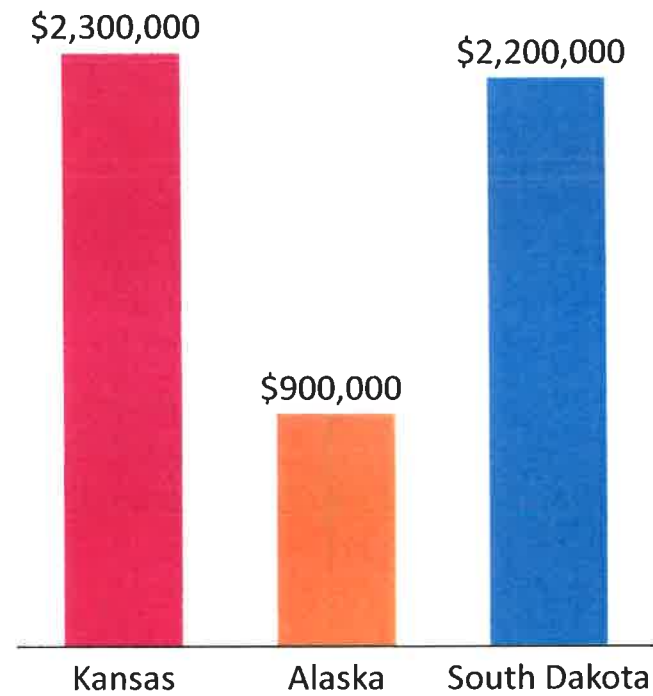




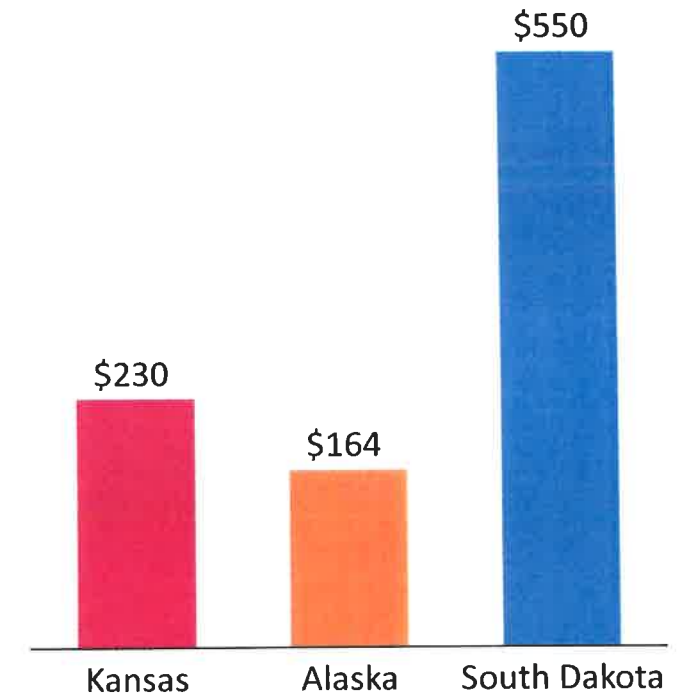
ADP



Monthly Usage



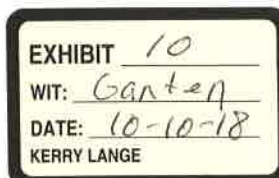
Monthly Usage/Inmate (\$)



**Alexis A. Warner**

**From:** Kaemingk, Denny <Denny.Kaemingk@state.sd.us>  
**Sent:** Thursday, September 28, 2017 9:38 AM  
**To:** Kaemingk, Denny  
**Subject:** FW: Lexis Nexis

	2015	2016	2017
Thompson Reuters (West)	\$ 89,630.99	\$ 80,729.00	\$ 121,201.25
State Bar of SD	\$ 517.40	\$ 425.00	\$ 215.00
LexisNexis	\$ 430.27	\$ 462.94	\$ 190.10
Aspen	\$ 1,873.30		\$ 190.10
Wolters Kluwer	\$ 7,108.27	\$ 9,673.00	\$ 6,132.00
	<b>\$ 99,560.23</b>	<b>\$ 91,289.94</b>	<b>\$ 127,928.45</b>
	2015	2016	2017
James Carlin	\$ 6,000.00	\$ 4,500.00	\$ 7,500.00
Tamara Lee			\$ 5,527.00
Manuel DeCastro	\$ 1,897.52	\$ 778.20	
Delmar Sonny Walter	\$ 129,256.56	\$ 131,841.60	\$ 135,401.40
Law library costs			
	<b>\$ 137,154.08</b>	<b>\$ 137,119.80</b>	<b>\$ 148,428.40</b>
Attorneys & Law books	<b>\$ 236,714.31</b>	<b>\$ 228,409.74</b>	<b>\$ 276,356.85</b>
LexisNexis			<b>\$54,720</b>

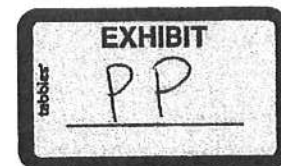


	2015	2016	2017	2018
Thompson Reuters	\$ 88,406.90	\$ 80,729.00	\$ 121,201.25	\$ 319.04
State Bar of SD	\$ 517.40	\$ 425.00	\$ 215.00	\$ 425.00
Lexis Nexis	\$ 430.27	\$ 462.94	\$ 190.10	\$ 54,720.00
Aspen	\$ 1,873.30			
Wolters Kuwer Law	\$ 7,108.27	\$ 9,673.00	\$ 6,132.00	
Carlin Law Office	\$ 6,000.00	\$ 4,500.00	\$ 7,500.00	\$ 1,500.00
Tamara Lee			\$ 5,527.00	\$ 3,686.00
DeCastro Law Office	\$ 1,897.52	\$ 778.20		
Delmar Sonny Walter	\$ 129,256.56	\$ 131,841.60	\$ 135,401.40	\$ 33,850.35
	<u>\$ 235,490.22</u>	<u>\$ 228,409.74</u>	<u>\$ 276,166.75</u>	<u>\$ 94,500.39</u>

**NOTES**

1. Lexis Nexis costs \$4,560 PER MONTH
2. Lexis Nexis began May 1, 2017 (paid in June)
3. We cancelled our law book subscriptions on 5/2/17
4. Tablets went live as follows:
 

SDWP	5/2/2017
SDSP	5/16/2018
YCWC	5/18/2017
MDSP	5/30/2017
RCCWC	6/6/2017
5. We cancelled the contracts with attorneys for the end of September and sent notice to inmates that effective 10/1/17 attorneys would no long be available



**Legal Assistance**

# Memo

**To:** All Inmates  
**From:** Chief Warden Dooley  
**CC:** All Staff  
**Date:** September 28, 2017  
**Re:** Legal Assistance

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Access for legal assistance will change as of October 1<sup>st</sup>, 2017

The contract attorneys will no longer be available starting October 1, 2017. If you need access to legal forms, photocopies for legal purposes, or a notary, you must contact your unit staff.

*Any legal questions that you have must be directed to your outside attorney as staff members are not trained to give any type of legal advice.*

THANK YOU