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Tom Enneking, Editor

## StatutesPlus: Westlaw Eases the Burden of Statutory Research

Tom Enneking

Statutory research is an often difficult, but necessary undertaking. It is a challenge with paper sources, but it can be more daunting with electronic resources. Electronic research does not lend itself very well to statutory research, but there is hope. This year, Westlaw (<http://www.westlaw.com>) has launched StatutesPlus, which combines book-like indexing, browsing and other linked information, along with refined search capabilities, in a centralized location. To access StatutesPlus, you simply enter a statute's citation at the search bar, hit enter, and the information presents itself.

In an attempt to mirror book research, StatutesPlus offers direct access to topics via an *Index*, which means that you can quickly locate your topics of interest and you will have to digest only relevant information. Also included are the abilities to browse and conduct term searches, as well as a searchable *Popular Name Table* and *Table of Contents*. The *Popular Name Table* refers you to the common names for specific items (e.g. Scott-Ponzer), whereas the *Table of Contents* allows you to search by individual chapter or subsection. The *Browse All* feature allows you to view a series of documents in sequence as a single document; five documents become one, which is much easier to view and print.

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## Fair Labor Standards: Revised Exemptions

Chuck Kallendorf

On March 27, 2003, the United States Department of Labor (DOL) published its set of proposed changes to the more than 50 year-old regulations governing overtime pay and the classifications used to determine which jobs are eligible for overtime and which are exempt. ([http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=15559&dbname=2003\\_register](http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=15559&dbname=2003_register))

The proposals met with almost no attention when first released, but by the end of the response period preceding a bill's entrance to Congress, the DOL was swamped with more than 75,000 letters debating the merits of those changes – the most that agency had received on any wage and hour topic in a decade. Many of the major legal and business publishers issued advisories and “special reports” on the impact they would have.

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## New Director at Library

Chuck Kallendorf

David P. Whelan joined the Cincinnati Law Library as its new director and head librarian on June 14. He is the tenth law librarian in the Library's 157-year history.

"The Library must be agile," Mr. Whelan said, "and deliver information to its members in ways that enable them to offer the most effective professional services to clients. We will need to provide print and electronic resources as well as online and in-person services, and provide clear value to Hamilton County's judges and elected officials as well as the library's membership."

David received his J.D. from the University of Arkansas-Little Rock, and his M.L.S. from the University of North Texas. He was most recently the director of the American Bar Association's Legal Technology Resource Center and the manager of the ABA's Web services group.

### *StatutesPlus, Cont'd from Page 1*

When using StatutesPlus, the screen is divided into two windows. On the right side of the screen is the text of the statute. On the left side, a new navigation pane provides links to information covering numerous documents related to statutory research. You may find links to two different case databases: the first is to citing decisions, which are the same as the annotation notes in *Baldwin's Ohio Revised Code*; the second is to additional citing cases from *KeyCite*. You may access versions of statutes dating from 1994 to present, which is helpful in researching certain areas of law,

### *FLSA Cont'd from Page 1*

After a lengthy stay in Congress and committee hearings, the DOL revised some of the proposed rules and released its final draft in April 23, 2004, to be effective August 23<sup>rd</sup>.

([http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=22121&dbname=2004\\_register](http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=22121&dbname=2004_register))

Debate and confusion remain on how the new regulations will affect the majority of American workers, especially with regard to those becoming eligible and those losing eligibility. The DOL, sensitive to these changes, has posted a number of guidelines to aid employers.

A few noteworthy starting points include:

- The Department of Labor's *Fair Pay Overtime Initiative*, designed to assist in the understanding of the new regulations

<http://www.dol.gov/esa/regs/compliance/whd/fairpay/main.htm>

- *Employment Law Guide* at <http://www.dol.gov/asp/programs/guide.htm>
- *Compliance Assistance* at <http://www.dol.gov/compliance/>
- *White Sheets* on individual exemption requirements at [http://www.dol.gov/esa/regs/compliance/whd/fairpay/fact\\_exemption.htm](http://www.dol.gov/esa/regs/compliance/whd/fairpay/fact_exemption.htm)

The DOL has issued new overtime security rules. The *Overtime Security Amicus Program*, ([http://www.dol.gov/sol/541\\_amicus.htm](http://www.dol.gov/sol/541_amicus.htm)) hopes to ensure employees better understand their rights, employers their legal obligations, and the DOL more effectively enforce the law.

The library has a number of texts and references both on employment law in general and the new "white collar" regulations.

like contracts. Related to this is the link to the statute's legislative history, which shows amendments and editor's notes. StatutesPlus provides links many secondary sources, including ALR publications, law review articles, treatise references, and forms. As a whole, the navigation pane acts as a checklist for you to consult while conducting statutory research.

StatutesPlus is a potentially powerful tool, but it is not without its flaws. For example, Westlaw provides this feature for about 25 states and the USC, but all 50 states will be available by January

2005. Second, to be effective, StatutesPlus requires a certain level of comfort with the navigation pane; it is a good idea to run a few practice searches before conducting actual research. Third, a navigational reminder, such as a mouseover, would assist in orienting the researcher by explaining the content of a database. Despite these few shortcomings, StatutesPlus streamlines statutory research, improves Westlaw's navigation, and is an effective method for conducting statutory research.

# Take Your Internet Search with You

David Whelan

A frustration of Internet searching is to know where you have been but not to be able to get there again. Books allow you to create a visual pile, one on top of the other open to the correct page, of the cases and other research you have looked at and want to keep.

## Internet Search

Web searching can be daunting. First, you must open your Web browser, Internet Explorer or Netscape Navigator, or the like. Then you have to select one of a number of reputable search engines, type in your query, and hope to see something in the results that looks applicable. In most cases, just as with any legal research, the first try will not be quite right; nothing may appear on point.

## Search Toolbars

Your Internet searching can be just as efficient but it requires some different tactics. Unless you are comfortable keeping numerous different Web pages open on your computer screen – which, facing facts, has MUCH less space than your desk or research table – you will have to take your search with you. The easiest way is to add a search toolbar to your browser. Some common search toolbars come from).

## Search Features

These toolbars can add features to your search that you are accustomed in getting from Westlaw or Lexisnexis, including

Term Highlighting: as you scan

the document or search results, the words and phrases in your search query are highlighted, to make them easier to find;

Term Jumping: you can select a particular word or phrase from your search query, and jump to the next time it occurs in the document;

Search Recall: store your searches in your browser, so that you can repeat a search that you've used recently;

Context Searching: see a phrase or term of art on a Web page? Highlight it with your mouse, right-click your mouse button, and select the "Google search" from the menu. No retyping – or mistyping – and it immediately starts the search!

## Beware the Search Spy

Not all search toolbars are equal. If you see a toolbar that will enhance your Web experience, do a bit of due diligence to ensure that it is a legitimate application. Some applications pretend to be toolbars but are actually malware or spyware, malicious programs that might cause a security breach on your computer or send back information about what you do while you are on the Internet.

## Don't Care Much About History?

The search function takes you forward. Do not overlook your Web browser's history. It can be set to save as much as 3 years worth of Web activity. If you want to retrace your steps, to specific Web sites or pages, you can review your browsing history – by date, by order visited, or by site address – and immediately step back in time. Microsoft Internet

Explorer hides the history option under the View menu, then Explorer Bar. Netscape users can find history under the Go menu. Keyboard fans can use the shortcut CTRL-H on either browser.

## Take It With You

The days of having to go to the search engine pages are over. The number of reliable and effective search toolbars that are available make it easier than ever to search the Internet efficiently.



## Got Toolbar?

The most popular toolbars are available for free from the major search engines. If you use a Web browser other than Microsoft's Internet Explorer, you will have fewer choices. Here are some popular ones:

### Google

<http://toolbar.google.com>

### Altavista

<http://www.altavista.com/toolbar/>

### Dogpile

<http://www.dogpile.com/info.dogpl/tbar/>

### Teoma

<http://sp.ask.com/docs/teoma/toolbar/>

## Blakely v. Washington: A Legal Train Wreck?

(124 S. Ct. 2531, 2004)

Tom Enneking

In June, the United States Supreme Court decided in a 5-4 ruling that threw out a Washington law that permitted judges to increase sentences without input from a jury. Any facts increasing a criminal sentence must be admitted by the defense or found by a jury. This ruling is sending shockwaves through other courts and it may affect the federal courts most of all.

Until *Blakely* called them into question, sentencing guidelines allowed judges to impose sentences based on evidence not presented to the jury. In sentencing for an assault, for example, a judge would consider the use of a gun, if the defendant made death threats, or if the defendant has prior assault convictions, before issuing a sentence. The Supreme Court found that such a finding violated the defendant's right to a jury trial in that it took power away from the jury as a fact-finder. Justice Antonin Scalia did not, however, find that determinate sentencing schemes were unconstitutional.

Justice Sandra Day O'Connor said the ruling may jeopardize thousands of criminal sentences currently on appeal. In fact, several jurisdictions, including those in Southern Ohio, placed a 30 day moratorium on sentences that could be affected by *Blakely*.

Court officials believe that at least 100 cases may have been put on hold. However, *Blakely* does not affect the Texas court system and the 5<sup>th</sup> U.S. Circuit Court of Appeals because they already allow juries to impose punishments.

What does *Blakely* mean to the American judicial system? It may lead to numerous resentencings. *Blakely* affects cases currently in court, but will it be applied retroactively? If so, Justice O'Connor noted in her dissent that at the federal level alone, nearly 250,000 convicts may be eligible for resentencing; hundreds of thousands more may seek it in the state courts.

*Blakely* could also change how the judicial system works. For example, plea bargains may become harder to obtain as defendants will have more leverage during plea negotiations. It might also result in fewer plea bargains because defendants will challenge the government in court. Finally, longer trials are a possibility, becoming more involved and more expensive.

If the *Blakely* decision stands, federal judges must change the way they administer sentences. Three possible scenarios exist: 1) judges impose a sentence based on the information presented in the trial; 2) divide all trials, as is done in death penalty cases, into guilt and penalty phases; and 3) use the sentencing guidelines currently in place as an advisory tool, which would carry no legal weight.

In his article on *FindLaw*, Mark H. Allenbaugh believes the *Blakely* decision represents a chance for reform. Many states have draconian anticrime statutes that require harsh sentences. Some think *Blakely* is a move toward more reasonable and responsible sentencing guidelines. It will be interesting to see what the immediate future holds for *Blakely* and sentencing.

For works cited, consult the following websites:

<http://www.law.com/jsp/article.jsp?id=1089315054139>;  
[http://www.enquirer.com/editions/2004/07/15/loc\\_blakely15.html](http://www.enquirer.com/editions/2004/07/15/loc_blakely15.html); and  
<http://writ.corporate.findlaw.com/allenbaugh/20040706.html>.

For further information, please see the *Blakely* section of Douglas A. Berman's webpage:

[http://sentencing.typepad.com/sentencing\\_law\\_and\\_policy/blakely\\_commentary\\_and\\_news/](http://sentencing.typepad.com/sentencing_law_and_policy/blakely_commentary_and_news/).



## New Titles

### *Anderson's estate planning forms and clauses*

by Jeffrey A. Schoenblum. (2000, Anderson)

### *Officer's search and seizure handbook : state-to-state case summaries*

(2004, LexisNexis)(CD-ROM)

### *Ekonomon & Heinle Business Organizations Laws & Rules*

by Adam Ekonomon and Matthew Heinle (2004, Thomson-West)

### *Prisoners and the Law*

by Ira P. Robbins (2004, Thomson West)

### *The Ohio Medicaid Manual : How to Qualify for Medicaid*

by Richard T. Taps (2002, R.T. Taps)

### *Electronic Discovery : Law and Practice*

by Adam I. Cohen, David J. Lender. (2004, Aspen)

### *Friedman on Leases*

ed. Patrick A. Randolph, Jr. (2004, PLI)

### *Lindey on Entertainment, Publishing, and the Arts: Agreements and Law*

by Alexander Lindey and Michael Landau (2004, Thomson-West)

### *Government Contracts : Cyclopedic Guide to Law, Administration, Procedure*

(2004, Matthew Bender)

### *The Delaware Corporation : Legal Aspects of Organization and Operation*

by A. Gilchrist Sparks and Frederick H. Alexander (2004, BNA)

### *Red Book : Pharmacy's Fundamental Reference*

(2004, Thomson)

### *A Lawyer's Guide to Estate Planning : Fundamentals for the Legal Practitioner*

by L. Rush Hunt and Lara Rae Hunt (2004, ABA)(CD-ROM)

### *Limited Liability Companies: Law, Practice & Forms*

by Nicholas G. Karambelas (2004, Thomson-West)

### *Ribstein and Keatinge on Limited Liability Companies*

by Larry E. Ribstein and Robert R. Keatinge (2004, Thomson-West)

### *The lawyer's guide to elder injury and accident compensation*

by James T. O'Reilly (2004, ABA)

## Collection and Service Changes

### Statutes

The following state statutes will be cancelled in print, although they are still accessible through our Westlaw subscription (AL, AK, AZ, AR, CO, DE, HI, ID, KS, ME, MD, MN, MO, MT, NE, NV, NH, NM, NC, Virgin Islands)

### Online Databases

The Library's Lexisnexis online contract lapses in October and the subscription will not be renewed for budgetary reasons. It will not stop use of personal Lexisnexis accounts on Library computers.

Not comfortable with Westlaw? We will be offering training throughout September and October in the Library.

### Renew Online

Have a book checked out and need to renew it? Go to our online catalog and renew it online, 24 hours a day. Log in to "My Account" and use your Library borrower number. Don't know your borrower number? Call us (946-5300) and we'll be happy to provide it to you.

<http://lawlib.hamilton-co.org/ipac20/ipac.jsp?profile=ccla#focus>

### New Web Site

Visit our re-designed Web site, where you will find quick links to local, state, and federal legal resources, practice forms, and other useful information. The online form can be used to submit reference requests.

<http://www.hamilton-co.org/cinlawlib/>

## Did You Know Our Members Receive ...

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- rules
- treatises
- jury verdicts

❖ Borrowing privileges to nearly all materials in the Library's collection, including CLE materials

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## Cincinnati Law Library Association Newsletter What's Inside!

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- Blakely v. Washington
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– Pew Internet and American Life Project

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