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Bloomberg's Points of Law

Can They Compete with Headnotes?

BY JILL STURGEON

Generations of legal researchers have relied on headnotes to identify the legal principles within a case. Like a movie trailer intent on spoilers, headnotes seek to show legal researchers, attorneys, judges, and even legal scholars what a case is about before they begin reading it. West, now owned by Thomson Reuters, has incorporated headnotes into its published cases for more than a century. Indeed, Thomson Reuters has included headnotes in its print reporters since the 1880s and introduced its key number classification system in the early 1900s.¹ Lexis Advance users have also had access to headnotes for years, and now Bloomberg Law is adding a similar feature to its online legal research database. This new feature, called "Points of Law," uses machine learning to highlight important parts of cases and guide researchers to other cases containing similar legal phrases. This article explores Bloomberg Law's new product and compares it to Westlaw and Lexis Advance's headnote systems.

About Headnotes

Westlaw and Lexis Advance add headnotes to cases to help legal researchers quickly identify points of law discussed in the case and determine whether a case is relevant to their legal questions. These headnote systems also enable researchers to find cases discussing issues similar to the ones they are researching.

Westlaw's headnotes are created by attorney editors who identify important legal points in the case and summarize them into individual headnotes. Each headnote is then assigned one of Westlaw's key numbers. These key numbers

are assigned to headnotes in other cases that discuss the same idea, so that by searching the key number assigned to your legal issue, you can find other cases that are on-point, in multiple jurisdictions, with one click. Although it wasn't always one click away, Westlaw invented this key number system and its digests to enable researchers to find cases based on topic or, once a good headnote has been located, by key number.

Lexis Advance's headnote system similarly uses a topic classification to allow researchers to jump from a headnote on their issue in one case to a list of other cases that discuss that legal topic. Like Westlaw's digest system, Lexis Advance also allows searching by keyword in this topic classification system.

Bloomberg's Points of Law

Bloomberg Law, a relative newcomer to the legal research marketplace, added the Points of Law feature to existing subscriptions in 2017. In 2018, Bloomberg Law won the American Association of Law Library's New Product Award for Points of Law.² Unlike traditional headnotes found at the top of a case, Points of Law are found throughout the case, where text that is identified as legally relevant has been highlighted. Researchers can scan through the highlighted text for their research answers, but more important, they can also find cases with similar points of law by clicking on the highlighted portion of the case. This could be a great tool for locating other cases with identical language, but don't look to Points of Law to search by topic; there is no classification and index of the Points of Law analogous to Westlaw's key number system.

According to Bloomberg Law: "Points of Law offers a more efficient way to conduct case law research. Through the application of machine learning to *Bloomberg Law's* database of 13 million court opinions, Points of Law highlights language critical to the court's holding, links this language to governing statements of law and relevant on-point case law."³ Bloomberg touts the use of machine learning as an ultra-sophisticated way of finding important points of law in cases and cross-references,⁴ but how does it compare to the headnote systems legal researchers already know?

Comparing the Headnote Systems

To find out, I examined the case *Palsgraf v. Long Island Railroad Co.*,⁵ comparing the highlighted sections of Bloomberg's Points of Law to the headnotes in Lexis Advance and Westlaw. When I examined *Palsgraf* in Bloomberg, Points of Law indicated that there are 23 points of law, although I only count 22.⁶ In fact, one is a duplicate, in that it is highlighted as a Point of Law in both the main opinion and in the dissent. Bloomberg's Points of Law is the only headnote system that identified portions of the dissent, with nine of its 22 Points of Law coming from the dissent portion of the case. There are many fewer headnotes found in Westlaw (8) and Lexis Advance (5) for the *Palsgraf* case.⁷

Bloomberg's first highlighted Point of Law is: "Negligence is not actionable unless it involves the invasion of a legally protected interest, the violation of a right." This is identical to Westlaw's seventh headnote and is also the beginning of Lexis Advance's first headnote, which includes the next two sentences. Lexis Advance has the fewest number of headnotes, but its headnotes contain more total lines of text than either Bloomberg or Westlaw.

Even with Lexis's headnote wordiness, the fact that all three systems identify the same sentence as an important legal point is encouraging. More problematic is that in a headnote that all three have identified (e.g., "Negligence is not actionable unless it involves the invasion of a legally protected interest . . ."), each headnote system found a disparate number of similar headnotes. Bloomberg linked to 14 other cases, while Westlaw linked to 35. Lexis Advance linked

to 43 other cases from that headnote, but Lexis Advance is prone to longer headnotes, and one Lexis Advance headnote, linking to 43 cases, encapsulates two Bloomberg Points of Law, one linking to 14 and the second linking to 66 other cases. That Lexis Advance headnote also encapsulates two Westlaw headnotes, one linking to 35 and the other linking to 54 cases. If each system were really finding the same legal concepts in its cases, one would expect the headnotes to lead to the same cases across platforms.

In fact, each system locates *slightly* different points of law than its competitors. In *Palsgraf*, Bloomberg had three Points of Law, aside from the nine found in the dissenting opinion, which were not identified by either Lexis Advance or Westlaw as headnotes. Westlaw had one. Lexis Advance had none, though its tendency to enfold long portions of text into a single headnote meant there were parts of each of its headnotes that did not overlap with either Westlaw or Bloomberg.

This means that Westlaw, with its robust editorial processes and attorney editors who “write headnotes that standardize the language between cases,”⁸ came up with only one completely unique headnote. Additionally, there were only two Westlaw headnotes that did not track the language of the opinion exactly, and those two borrowed large portions of it. Based on an analysis of this case, having attorney editors does not appear to enhance the quality of the legal summary found in the headnote/Point of Law. So, does Bloomberg Law’s machine learning do an adequate job of identifying relevant legal phrases? When you look at the 90-year-old *Palsgraff* case, it appears that it does.

However, a look at a more recent case tells a different story. On June 7, 2018, I looked up *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*,⁹ decided by the U.S. Supreme Court three days earlier, on June 4. Westlaw had nine headnotes, Lexis Advance had four headnotes, and Bloomberg Law had zero Points of Law. Wondering whether Bloomberg’s Points of Law was simply slower than both Westlaw and Lexis Advance, I emailed the helpdesk and asked how long it typically takes for Points of


Law to show up on a newly published case and what the scope of coverage for Points of Law is.

It turns out that not all Bloomberg Law opinions have Points of Law. To be recognized as a Point of Law by Bloomberg’s programming, a statement of law must be stated in the same language across cases and must appear in at least five other opinions. This explains why a seminal case from 1928 has many Points of Law, but a newly published Supreme Court case has none. It also makes one speculate about how much the West attorney editors of 1928, who chose particular phrases from the case to include as headnotes, influenced how these legal concepts were phrased in subsequent cases—leaving a trail of linguistic breadcrumbs for Bloomberg Law’s machines to later discover.

Conclusion

Compared to the more seasoned headnote systems, Bloomberg’s Points of Law falls short in a few areas. Points of Law looks for repeated words and phrases, so it can help researchers find other cases that discuss that point in a similar way. An obvious pitfall is that this will not lead researchers to cases on a certain topic if they were written by a judge prone to flowery language or unique verbosity. Additionally, the fact that something only qualifies as a Point of Law if it has already been stated at least five

other times means that new law is overlooked by the Points of Law system. So, researchers who scan through Points of Law like they would scan through headnotes to get the gist of the case would be in danger of missing the latest in legal thinking.

Nevertheless, Bloomberg Law’s response to my query about Points of Law’s coverage indicates that over time, the algorithms will get better at understanding language and context, and will eventually be able to capture more of the statements of law in cases. Until then, attorneys who use headnotes to make research tasks more efficient may not want to depend solely on Bloomberg’s Points of Law. 



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NOTES

1. Surrency, *A History of American Law Publishing* 112 (Oceana Pub. 1990).
2. American Association of Law Libraries, “Points of Law Wins 2018 AALL New Product Award” (Apr. 24, 2018), www.aallnet.org/wp-content/uploads/2018/04/PR_042418_POINTS-OF-LAW-WINS-2018-AALL-NEW-PRODUCT-AWARD-1.pdf.
3. Bloomberg Law Points of Law, www.bna.com/points-law-m73014464390/?promocode=BLAW764AD.
4. Rynkiewicz, “Bloomberg Law Trains Machine to Highlight Legal Points,” *ABA Journal* (Oct. 2, 2017), www.abajournal.com/news/article/bloomberg_points_of_law_technology.
5. *Palsgraf v. Long Island R. R. Co.*, 248 N.Y. 339, 162 N.E. 99 (1928).
6. This was not a situation unique to me. As one early reviewer writes: “In the Not Everything is Perfect category, one case, *Bierach v. Nichols*, 248 A.D.2d 916, 669 N.Y.S.2d 988 (App Div, 3d Dept 1998), had one Point of Law listed but not highlighted in the text.” Hodnicki and Giangrande, “Bloomberg Law’s New Feature, Points Of Law,” *Law Librarian Blog* (Oct. 4, 2017), <https://llb2.com/2017/10/04/bloomberg-laws-new-feature-points-of-law>.
7. Of course, the relative numerosity of headnotes in each system varies based on the case and its date of publication. Westlaw’s copy of *Martin v. Union Pac. R.R.*, 186 P.3d 61 (Colo.App. 2007), for instance, contains 27 headnotes, Lexis Advance has 26 headnotes, and Bloomberg Law’s copy has only 12 Points of Law.
8. Thompson Reuters Legal, “Westlaw: Our Process,” YouTube (Apr. 12 2018), www.youtube.com/watch?time_continue=35&v=NX52GDZfHsg.
9. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 86 U.S.L.W. 4335 (U.S. June 04, 2018).