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Getting to Know Fastcase

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Practicing Reference . . .

Getting to Know Fastcase[*]

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Librarians must learn how to use databases on a regular basis. The databases may be new, or they may be well-established ones that librarians haven't used before. Ms. Whisner examines Fastcase, an online system that recently entered into a cooperative agreement with HeinOnline, and discovers some lessons about how she learns new databases.

¶1 This column is about two things: the process of learning a new online system and Fastcase, the system I tried out. I want to talk about both topics because they are so intertwined: throughout my learning about Fastcase I was thinking about how I was learning, and how I approached learning affected what I learned. I'm not writing about my process just because I'm self-absorbed. Metacognition—knowledge about one's own learning strengths and weaknesses, orchestrating one's own learning, and reflecting on one's performance—is important to learning.[1] My reflections might be useful to others.

¶2 Fastcase was founded in 1999, more than twenty years after the giants of Westlaw and LexisNexis.[2] I didn't know much about it during its early years, but by last year, I had certainly heard of it. I'd stopped by its booth in the AALL annual meeting exhibit hall a couple of times. I'd heard Ed Walters, Fastcase's CEO, on at

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    1. *See, e.g.*, John D. Bransford et al., Comm. on Developments in the Science of Learning, Nat'l Research Council, How People Learn: Brain, Mind, Experience, and School 97 (expanded ed. 2000), *available at* http://www.nap.edu/catalog.php?record_id=9853. Prof. Jane Winn alerted me to this book when we were meeting with her RA to improve exercises she'd given her Contracts students. I downloaded it to my iPad right away (but I haven't read it all yet). I love it that the National Academies Press offers free PDFs of thousands of books and reports. Take a look: there are reports on incarceration, climate change, urban planning, and many other topics of interest to legal scholars.

    2. Fastcase was launched in December 1999. Joshua Auriemma, *Thanks for 15 Years!* (Jan. 16, 2014), http://www.fastcase.com/15-years/. LexisNexis came online in 1973, Westlaw in 1975. Alyssa Altshuler, *An Overview of Five Internet Legal Research Alternatives to Westlaw and LexisNexis*, Va. Law., Oct. 2001, at 10, 10. Fastcase is of the same generation as VersusLaw (1995), *id.* at 12, LoisLaw (1999), *id.* at 10, and Casemaker (1999), *About Us*, http://www.casemaker.us/AboutUs.aspx (last visited Sept. 28, 2014). For more on the development of Fastcase, see Daniel Fisher, *Open-Sourcing the Law*, Forbes, June 30, 2008, at 70.

least two panels.[3] But there's a big difference between being aware of a service and actually knowing how to use it. To understand it better, I would need to use it.

¶3 But my library doesn't subscribe, and my state bar association is not among the twenty-five that provide Fastcase access to their members. So I asked for a trial and, on May 1, 2013, a Fastcase representative generously set me up with thirty days of access. It took me thirteen days to get around to logging in for the first time. And then I was busy with other projects and my trial period ran out. That summer I was excited by the announcement of a partnership between Fastcase and HeinOnline.[4] Time passed. In March 2014, I asked for another trial. I thought that committing myself to write about Fastcase here would motivate me to explore. But time passed and I didn't do enough with it, so I had to ask for yet another trial.

Learning New Research Systems

¶4 This is more than a tale of procrastination. To explain, let me step back a moment to talk about my experience learning new legal research systems or interfaces.[5] Over many years, I have observed myself (and others) learning new interfaces. On one end of a spectrum is the barest exposure: yes, I've heard of that system and seen someone use it; if pressed, I could dig up my password and give it a try. On the other end: I feel comfortable going into that system; I know what's there and how to find it; I can get what I need and I can explain to others how they can use it.

¶5 First, watching is just a start. I do learn when I watch a demonstration or see screenshots flash by in a PowerPoint presentation, but that alone doesn't make me familiar with a service, any more than being a passenger in cars for sixteen years made me a competent driver. At some point, you have to take the wheel yourself. That's why a hands-on class is usually more effective than a demo or lecture. I especially like being in a room with several colleagues and a knowledgeable trainer

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3. I still have notes from *Understanding Search Engine Algorithms: Can We Effectively Teach Research Without Them?,* Ass'n of Am. L. Schs. Annual Meeting (Jan. 6, 2013). On the same panel, Susan Nevelow Mart presented the results of her comparison of searches (both natural language and terms and connectors) in Lexis Advance, WestlawNext, Fastcase, and Google Scholar. I didn't take notes per se at *The Economics of Interface: Vendors Respond*, Am. Ass'n of L. Libr. Annual Meeting, July 13, 2010—but I was able to look back at my tweets. *E.g.*, Mary Whisner, Twitter (July 13, 2010 8:31 AM), https://twitter.com/marywhisner/status/18445442209. When I did, I saw a tweet from the same day announcing Fastcase Forecite. Fastcase, Twitter (July 13, 2010 8:50 AM), https://twitter.com/fastcase/status/18446844346 (linking to Ed Walters, *Introducing: Fastcase Forecite*, http://www.fastcase.com/forecite/ (July 13, 2010)).

4. *Hein and Fastcase Announce Publishing Partnership: Hein to Include Hyperlinks to Caselaw and Bad Law Bot; Fastcase to Offer Law Reviews and Historical State Statutes and Session Laws*, http://heinonline.org/HeinDocs/HeinFastCasePressRelease.pdf (July 9, 2013). The content sharing between the two systems won AALL's New Product of the Year award in 2014. *Fastcase and HeinOnline, AALL Awards 2014 New Product of the Year to Publishing Partners Fastcase and HeinOnline*, May 14, 2014, *available at* http://www.fastcase.com/aall-awards-2014-new-product-of-the-year-to-publishing-partners-fastcase-and-heinonline/ and at http://help.heinonline.org/blog/2014/05/aall-awards-2014-new-product-of-the-year-to-publishing-partners-fastcase-heinonline/.

5. I discussed learning applications in general—from word processing programs to iTunes—in Mary Whisner, *Learning New Applications*, 101 Law Libr. J. 115, 2009 Law Libr. J. 6.

who not only walks us through some searches but allows us to try out our own searches and ask questions about why the system acts the way it does.

¶6 Second, it takes multiple exposures. Feeling confident with a new system comes after the initial training and a good bit of practice. It's possible to practice by making up searches, even goofy ones, but it's better to have some research needs. For example, I became comfortable using WestlawNext by using it to gather information for real questions I had to answer. It took a little effort to set aside Westlaw Classic, which I knew I could use quickly and effectively, in order to search using the new interface, but that was the way to become skillful. I became familiar with folders and other features of WestlawNext and Lexis Advance by using each one for my columns.[6]

¶7 Third, preparing to teach a system—or even explaining it on the fly at the reference desk—really helps me learn it myself. I have gotten better at BNA TaxCore and CheckPoint each time I've spoken about them. Preparing for guest presentations in Penny Hazelton's Advanced Legal Research class made me explore features of Lexis Advance, WestlawNext, and Bloomberg Law more deeply than I would have on my own. And since law students come in with WestlawNext or Lexis Advance already open on their laptops, I have been able to practice showing them how to get what they need.

¶8 My slowness to dig in to Fastcase illustrates the flip side of this experience. The conditions that have helped me learn new systems in the past simply weren't present. My library doesn't subscribe to Fastcase, so my colleagues and I didn't have a rep coming in to teach us. (Even if we did subscribe, Fastcase probably doesn't have the national network of trainers we see from Bloomberg Law, LexisNexis, Westlaw, and some other systems.) While I was open to using Fastcase for research projects that came up, the projects that came my way weren't appropriate for Fastcase. In the past couple of months, professors asked me to help them find a Mexican case about genetically modified corn, material contracts attached to EDGAR filings, an FDA policy that's not in the *Code of Federal Regulations*, the legislative history of a Washington State statute, statistics on murder prosecutions, and the French position on audiovisual materials in foreign trade. During this same period, I showed law students how to use Bloomberg Law to find dockets, how to use HeinOnline to find compiled federal legislative histories, and how to print cases from Lexis Advance. Interesting questions, but not ones where Fastcase would be much help, since it focuses on U.S. cases and statutes. I showed some people how to search for cases and statutes, but I couldn't use Fastcase searches since they didn't have access.

¶9 Other things can get in the way of learning a new system. We are busy with other work of all sorts. We get distracted.[7] And life happens: a friend was in the hospital so I left work one afternoon to go see her; our car had a flat, so I had to

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6. Not that it matters, but the columns were *Other Uses of Legislative History*, 105 LAW LIBR. J. 243, 2013 LAW LIBR. J. 11, and *Some Guidance About Federal Agencies and Guidance*, 105 LAW LIBR. J. 385, 2013 LAW LIBR. J. 19—two pieces that used a lot of primary and secondary sources.

7. For me, distractions abound. I see something interesting and take a minute to send it to several faculty members. I see something else and decide to write a blog post. I follow a link to read a news story or to skim a paper on SSRN. I decide to update a research guide. And of course there are distractions that have nothing to do with work!

take the morning off to get a new tire; someone suggested we have lunch and I said "Sure!" And so a generous thirty-day trial can slip by.[8]

Trial Searches, Documentation, More Searches

¶10 And yet I did get a chance to try it out, so I now know it better than I did before. I did my first searches when I was hanging out in my living room, watching streaming videos. Since *The West Wing* was on, I tried searching for **donna moss**. Just typing in those two words yielded 642 cases, and I learned that searching for two adjacent words doesn't necessarily get the phrase. (The first case had a Donna Talbot and a Kevin Moss.[9]) Searching for **donna w/2 moss** yielded a much more manageable twelve cases. Thinking about Lady Edith's editor and lover in *Downton Abbey*, I wondered whether there were cases about lunacy as a ground for (or defense against) divorce. My search, (**lunacy or insanity) w/3 divorce**, pulled up some cases. A sidebar under "Suggested Results" listed some articles from HeinOn-line. The first was more than forty years old but highly relevant.[10] Since my curiosity stemmed from a drama set in the 1920s, the age of the article was no drawback.

¶11 Some other trial questions came up because of other things I was working on. When we were interviewing some job applicants, I searched for **"interview questions"** and then used the feature that allows searching within results to look for **employment or hiring or employer**. I used this search to practice navigation, choosing to highlight all terms (rather than just one) and clicking "previous term," "next term," "previous case," "next case." I liked "Jump to the most relevant paragraph," but I was puzzled that the system's algorithm picked out some paragraphs that didn't have the phrase "interview questions." I noticed that Bad Law Bot—a feature that picks out adverse history—flagged some cases whose only negative history is a denial of cert. I suppose that a denial of cert. can be bad, but by itself it's not very bad.

¶12 In addition to experimenting with whatever questions came to me, I also looked at Fastcase's documentation.[11] I'm probably not alone in finding that trying out the system is more effective than simply reading a guide. For example, before I searched for **donna moss**, I might have read the following passage in the *Complete User Guide*: "Fastcase uses an 'implied AND' operator. This means that if there are multiple words in your search query and you do not specify a Boolean operator to connect them, Fastcase will treat your search as if you had placed an 'AND' between each term."[12] But trying out the search and finding hundreds of cases was what really taught me that to search for a phrase I'd need quotations or a proximity connector. I enjoyed the video tutorials on the support page. A couple have narrations;

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8. Not to mention an editor's submission deadline.

9. *In re* Greater Se. Cmty. Hosp. Corp. I v. HCA Inc., No. 02-02250 (Bankr. Colo. 2008).

10. James H. Hardisty, *Insanity as a Divorce Defense*, 12 J. Fam. L. 1 (1972–73). I was startled, because the author is a long-time faculty member—retiring this spring—from where I work.

11. Fastcase Quick Reference Guide (2014 ed.) (a one-page PDF) and Complete Fastcase User Guide (2013 ed.) (a thirty-page PDF) are available at http://www.fastcase.com/support/.

12. Complete Fastcase User Guide ch. 2, *supra* note 12.

the others have screen captures with text labels (and pleasant classical music in the background). They are all clear, and they do the trick.

¶13 Let's return to playing around with searches. One of our professors had a new article about the ethical rules for tax lawyers,[13] so I tried that as a search: **ethics tax lawyers**. (This was using the default search: Boolean, with an implied AND.) The first case[14] took a very long time to load. I wondered whether it was the system or my connection. And then the case finally came up and it was *huge*: 987 pages! And it turned out that the case wasn't predominantly about the ethics of tax lawyers (a 987-page case can have those three words in many places without having them very close to each other). Broad as this search was, the Suggested Results sidebar listed journal articles from HeinOnline that were clearly about tax lawyer ethics. I tried the same search as a natural language search and found almost a million results (938,981, to be precise). This presents an interesting contrast with natural language searching on LexisNexis and Westlaw, which limit the natural language results to, say, the 100 most relevant cases. It's more like the searching in Lexis Advance and WestlawNext.

¶14 A more precise Boolean search, **ethic* w/5 tax w/2 (lawyer OR attorney)**, retrieved a much more manageable set: ten cases, plus three more identified through Forecite. Forecite is a feature that identifies potentially relevant cases that don't satisfy the original search query but are frequently cited by the cases that do satisfy it. The example Fastcase gives for this is that when you search for "Miranda doctrine" you won't find *Miranda v. Arizona* because it doesn't use that phrase—but of course you'd want to know about that case. It will show up in Forecite because cases that do use the phrase "Miranda doctrine" cite *Miranda*.[15] With my practice search, the three cases found by Forecite were indeed about tax lawyer ethics. The next day, I tried adding an asterisk to "lawyer" and "attorney" and found twenty-two cases, not ten. I had assumed that the system automatically searched for plurals, but I was wrong. This might be something to highlight in the documentation—or to reprogram.

¶15 During my searches, I played with the different ways to sort results. The default is relevance, with a percentage score displayed in the margin. For example, searching for **"confrontation clause" w/15 hearsay** produces more than 7,400 results. The top case, with a relevance score of one hundred percent, is *Crawford v. Washington*, 541 U.S. 36 (2004). The second case is *Crawford v. Washington*, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), with a score of seventy-seven percent. Two quick comments: (1) Fastcase's programmers ought to figure out a way to tell that those two cases are the same case. (2) It's odd that two copies of the same case get such different relevance scores. Okay, back to sorting. You can also sort by case name, an option I haven't seen in other systems. It might be handy to look at a list like *Aaron v. State*, *Abdullah v. Groose*, *Abedi v. Smith*, and so on. For one thing, the tables of

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13. Michael Hatfield, *Committee Opinions and Treasury Regulation: Tax Lawyer Ethics, 1965–1985*, 14 Fla. Tax Rev. 675–735 (2014), *available at* http://ssrn.com/abstract=2432217. (I know it's available on SSRN because I posted it—which is why it was on my mind when I was trying to think up a topic to research on Fastcase.)

14. United States v. Philip Morris USA, Inc., 449 F. Supp. 2d 1 (D.D.C. 2006).

15. Walters, *supra* note 3.

cases in briefs are generally arranged in alphabetical order by case name, so this sort could make it easier to see whether a search yields all the cases cited in a brief and vice versa. There are still some bugs in the system. When I sorted the results from the "confrontation clause" search by case name, the first one was *United States v. Dinkins*, 691 F.3d 358 (4th Cir. 2012); presumably there's some hidden code that is making it alphabetize early. That case is followed by a case name that begins with numerals.[16] But then there are twelve cases where the citation was coded as part of the case name, so it appears that the case name begins with a numeral.[17] So there's a little cleanup to do. (This isn't an indictment. I've never used a database that didn't need cleanup.) You can also search by decision date. In the "Authority Check" column, you can sort by the number of times a case has been cited, either within the results or in the entire database.

¶16 Fastcase's most distinctive feature is its "interactive timeline." In a very clever use of two-dimensional space, the timeline displays cases showing relevance, date, and influence (citations by other cases in the search and citations in the database overall). Each case is represented by an olive-green circle. A gold or light green circle within that circle indicates how frequently the case has been cited, either in the database (light green) or in these results (Forecite). The horizontal axis shows years, so that cases decided later are to the right of earlier cases. The vertical axis shows relevance, so cases that Fastcase scores as more relevant are closer to the top of the screen. If you hover your mouse over one of the circles, a box displays the case name, a passage with the search terms, and a citation count. (*Crawford v. Washington* has been cited 9098 times in the database and 3481 times in the search results.) See figure 1.

¶17 If—as in this search—there are so many results that the display looks a little like a crazy bubble bath, you can choose to show a different number of results—say, 10, 100, 250, 500, 1000, and so on. You can also sort results in different ways. For example, figure 2 shows just 10 cases from the "confrontation clause" search, sorted by cites in these results. I'm not sure why *Crawford v. Washington* isn't at the top of the chart, with its relevance score of one hundred percent. (Even the second version of *Crawford* scored seventy-seven percent, much higher than the top of the timeline here.)

¶18 With a click, you can switch the vertical axis from relevance to court level (Supreme Court, courts of appeals, district courts and bankruptcy courts, state courts). See figure 3.

¶19 Fastcase got some good ink when the *ABA Journal*'s cover story on visualizing the law showed Fastcase's interactive timeline as an example. When Helen Anderson, one of our legal writing professors, saw that article she asked if anyone was familiar with the tools described, and I offered to show her Fastcase. Sitting down with her at a computer was really helpful for me. It included some teaching, some collaborative learning, and—perhaps most important—research questions

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16. $7,850 in U.S. Currency v. State, No. 13-0499 (W.Va. Dec. 4, 2013).

17.   Examples include 1997-NMCA-26, Darcy S., Matter of, 936 P.2d 888, 123 N.M. 206 (Ct. App. 1997); 26,725 La. App. 2 Cir. 4/7/95, State v. Beason, 653 So. 2d 1274 (La. Ct. App. 1995); 76 Hawai'i 148, State v. McGriff, 871 P.2d 782, 76 Haw. 148 (1994).

Figure 1

Interactive timeline for "confrontation clause" w/15 hearsay, showing 1000 results.
Pop-up has details about Crawford v. Washington. The 1000 results are the ones
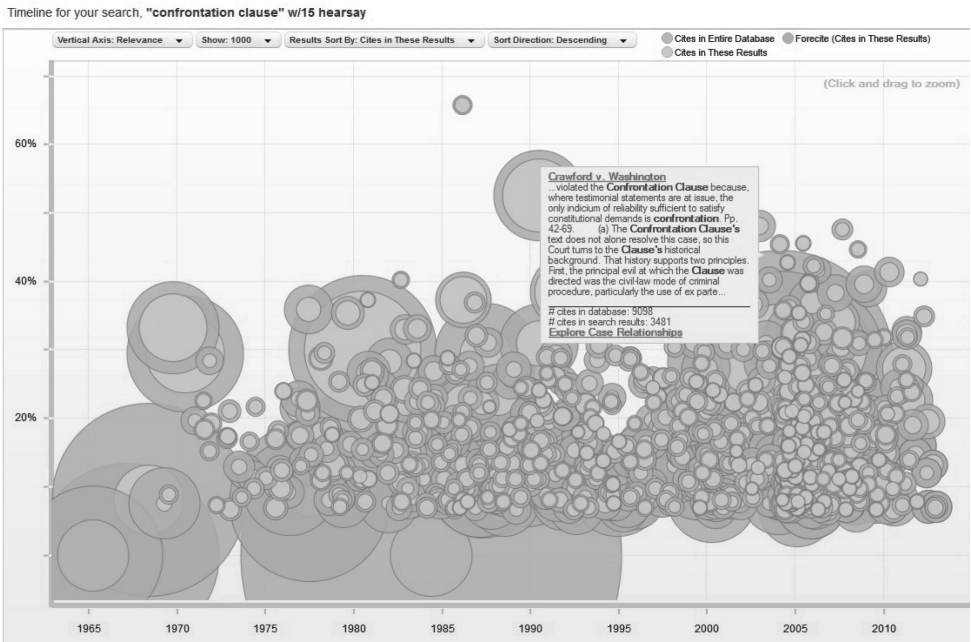with the most citations in the results list.

Figure 2

Interactive timeline for "confrontation clause" w/15 hearsay, showing 10 results.
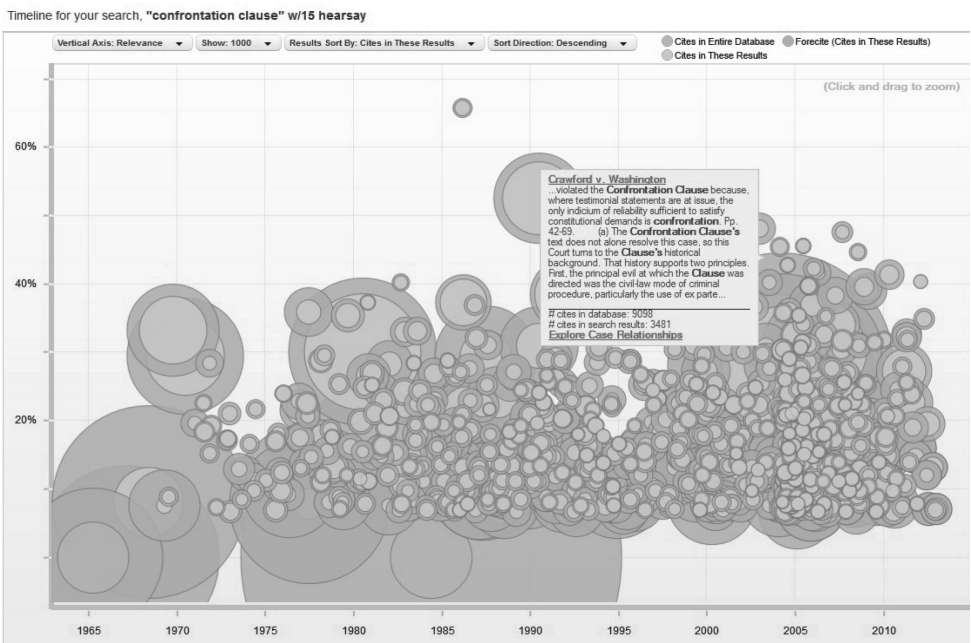Pop-up has details about Crawford v. Washington.

Figure 3

Interactive timeline for "confrontation clause" w/15 hearsay, showing the 250 most relevant results grouped by court. Supreme Court cases are across the top; their big circles indicate that they are cited frequently. Federal appellate cases and district court cases are in the next two tiers. And state cases are lined up across the bottom.
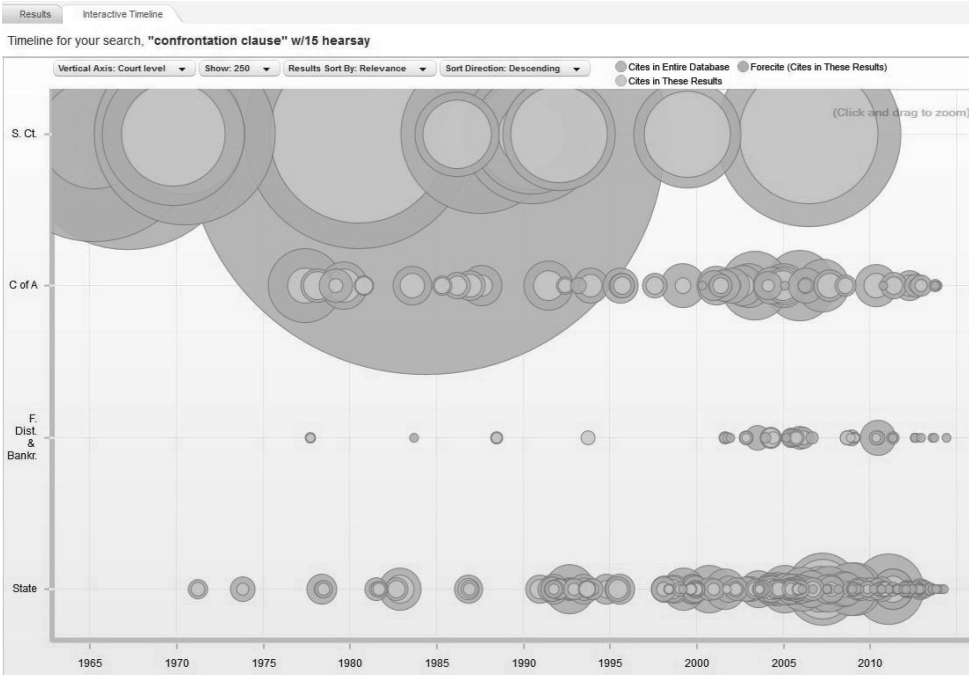
informed by someone familiar with the subjects. We searched for cases related to two of her students' major assignments, a brief they'd just completed and a memo they'd written a few months ago. Helen knew the relevant cases and saw that the Fastcase searches found them. The ones Fastcase ranked as highly relevant were indeed highly relevant. We weren't sure how useful the interactive timeline would be. Would it help a researcher find the most influential cases and focus on them? Maybe. Helen commented that she already knew to look for the Supreme Court cases and to follow threads back to the cases that seem to be cited a lot, but this visual display could get people there faster. The timeline's display grouping all state cases together wasn't useful. The students' memo assignment had involved a state law question. Within Washington, for instance, it would be good to know whether a case was from the Washington Supreme Court or the Washington Court of Appeals. Maybe Fastcase could also indicate which cases are unpublished. Showing the influence of a case within the database (the size of the outer circle) and within the search results (the inner circle) is useful. You can quickly spot the cases that matter within the universe of cases with your terms.

Coverage

¶20 As you'd guess from its name, Fastcase's strength is in case law. It has the full run of United States Supreme Court cases and federal appellate and district court cases since 1924; for about half the states coverage begins in the 1950s, and others go back to the 1800s.[18] But it also has state and federal statutes and regulations. Some of this content is within Fastcase and can be searched just as the cases can. Other content is external: for example, in the menu of administrative codes, a number of them link to separate state sites.[19] Fastcase has statutes for most states,[20] but links to Mississippi's site. State attorney general opinions and court rules are generally outside the site. So searching is limited, but still it's useful to have the links. For newspapers, Fastcase links to NewsLibrary.com (Newsbank), which allows searching but then charges for full articles. For federal filings, there's a link to Justia.[21] Access to legal forms is via US Legal Forms. Since I advocate searching secondary sources for almost any project, the partnership with HeinOnline for access to law review articles is great. I'd like to see more developed content notes for each database so that you could see coverage for a given state at a glance and find out whether unpublished opinions are included (they are, at least for Washington).

Conclusion

¶21 I expected to like Fastcase, and I did. Playing around with searches enabled me to see features (and some glitches) that I wouldn't have seen in a quick demonstration while standing in an exhibit hall. My trial of Fastcase also reinforced some lessons about how I learn to use new databases. It can be hard to fit learning into an already full work life. Adding an incentive (like the need to write a column) can improve focus, but even then I have to carve out time. Being able to discuss the system with someone helps, too.

¶22 I now have some good basic knowledge about Fastcase, but I am still far from an expert. Looking at the screen, I see there are links I haven't even clicked on, notably "My Library." Moving to an expert level would require hundreds more searches, trying to solve actual research puzzles.

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18. *See* FASTCASE, *Scope of Coverage*, http://www.fastcase.com/whatisfastcase/coverage/ (last visited Sept. 28, 2014). *See also Hein and Fastcase Announce Publishing Partnership*, *supra* note 4.

19. These include Alabama, Arkansas, Connecticut, Idaho, Kansas, Maine, Massachusetts, Michigan, Mississippi, Nebraska, North Dakota, Ohio, Rhode Island, Vermont, and Wyoming. The *Code of Federal Regulations* is searchable within Fastcase, but Fastcase links to FDSys for the *Federal Register*.

20. It is also building an archive. For most states, at least a couple of years of superseded codes are available.

21. *Justia Dockets & Filings*, http://dockets.justia.com/ (last visited Sept. 28, 2014).