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CASE DIGEST

*by Robert N. Schlesinger**

The materials in this section are intended to provide a concise overview of the case law relating to computer-assisted legal research ("CALR").[1] These cases cover a broad area, including anti-trust law, attorney-client privilege relating to CALR negotiations with the government, attorneys' fees as including CALR costs, breach of contract actions, commercial law, copyright infringement, securities fraud, tort claims, and judicial decisions where a CALR system was used by the court.

Each case is summarized in a separate digest entry. Each entry contains the following information:

- case name
- case citation
- subsequent history (if any)
- summary of salient facts
- legal analysis and holding of the court (or agency)

The digest entries are organized alphabetically.

R1 Carter v. Telectron, Inc., 452 F. Supp. 944 (S.D. Tex. 1977).

Albert H. Carter, a prisoner at the Texas Department of Corrections, was investigated by the court as a *pro se* litigant proceeding *in forma pauperis*. The court conducted an extensive investigation of Carter's many case filings.

Attempting to locate all of Carter's filings, the court corresponded with all the courts located at Carter's principal places of residence. Throughout the investigation and the preparation of the

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1. The term "CALR" refers to computer-assisted legal research. This type of legal research uses a computer to quickly isolate and retrieve fact patterns, text and/or pre-indexed legal concepts from the computer data bank.

court's opinion, additional cases were discovered in which Carter was a party. Finally, the court utilized the LEXIS system to search the available federal and state court libraries for any published opinions and citations which listed Albert Carter as a party. By using the search request "NAME (ALBERT W/3 CARTER)," the court obtained citations to twenty-two reported opinions. The court stated that:

> LEXIS proved invaluable as a research tool in that it provided a ready list of reporter citations to published Carter opinions, information not available from a review of the case files.[2]

By the end of its investigation, the court had found 178 cases known to have been filed by Carter throughout the country, many of which were frivolous and malicious.

Following the investigation, the court held, *inter alia*, that (1) in light of the numerous frivolous and malicious cases filed by Carter *in forma pauperis* and the continuous misrepresentation of his financial status, a stronger burden would be imposed upon him in future actions to both prove his indigency and that the action was in good faith and not malicious or without arguable merit, and (2) in determining whether a dismissal of actions would be with prejudice, a case-by-case review would be made, considering various factors, including the status of each lawsuit at the time of the order of dismissal and his prior or subsequent filing of the same or related causes of action.

The court also issued a mandatory injunction requiring, *inter alia*, that Carter send a copy of every complaint or petition hereafter filed by him to the staff law clerk in the Southern District of Texas, in an effort to limit Carter to good faith, non-malicious, meritorious litigation.

The court suggested tighter controls on *pro se* litigants proceeding in *in forma pauperis*, stating that:

> Although an atypical prisoner litigant, Carter is not alone. Other inmates, while not as experienced in law and procedure as Carter, have made a hobby while in prison with little else to do of engaging in protracted federal court litigation at the expense of the federal government. To date, few controls have been placed on their efforts, chiefly because of the time required to piece together and compare the filings and practices of a single multiple filer in different courts, a lack of appellate guidance in this area and the difficulty in promulgating an effective remedy short of a total denial of access to the courts.
>
> However, tighter controls such as those fashioned in this opinion are on the horizon as federal courts now begin to reach a plateau where, because of . . . technical advancements such as LEXIS,

2. 452 F. Supp. at 989-90.

they can attain for the first time an overview of the handiwork of these abusive multiple filers.[3]

R2 Computer Searching Service Corp. v. Ryan, 439 F.2d 6, 2 CLSR 984 (2d Cir. 1971).

In June 1966, West Publishing Company ("West") sued Law Research Service, Inc. ("LRS"), alleging that LRS purported to do computer-assisted legal research and had copied certain West Key Number digest indices, thereby infringing various West copyrights. *See also West Publishing Co. v. Law Research Service, Inc.*, 3 CLSR 561 (S.D.N.Y. 1972) [Case R18 *infra*]. West further alleged that this material was put on computer tapes, which became a "data bank" to be printed out as needed. West's complaint sought both injunctive and monetary relief.

In 1970, after a pretrial order had been entered, West moved to join Computer Searching Service Corporation ("CSSC") as a defendant on the ground that CSSC, an eight-three percent owned subsidiary of LRS, was "threatening to take over the infringing acts" of LRS. West claimed that LRS had transferred the supposedly infringing data bank to CSSC. West's motion was granted. Thereafter, West filed an amended and supplemental complaint, which CSSC answered with a number of defenses and counterclaims (some of which had not previously been made part of the case by LRS) and a demand for a jury trial. LRS proffered a new answer as well.

Prior to filing its answer, however CSSC instituted a separate proceeding in which it also asserted its counterclaims.[4] West then moved, *inter alia*, to strike CSSC's counterclaims and demand for a jury trial. District Court Judge Sylvester J. Ryan granted the motion. CSSC petitioned for mandamus, seeking vacation of Judge Ryan's order. The appellate court affirmed Judge Ryan's order, stating that the trial judge had acted "reasonably" in striking CSSC's counterclaims and jury demand, since CSSC's claims would be litigated in the pending action against West and it would be inefficient and inequitable to delay the action between West and LRS, otherwise ready for trial and high on the trial calendar, merely to allow CSSC to press its allegations as counterclaims. The appellate court further stated that the trial judge's granting of West's motion to strike CSSC's counterclaims and jury demand, did not deprive

3. *Id.* at 1004.

4. *See* Computer Searching Service Corp. v. West Publishing Co., No. 70 Civ. 3692 (S.D.N.Y., filed Aug. 25, 1970).

CSSC of its right to litigate those issues because (1) CSSC had already instituted a separate suit against West, which incorporated word-for-word the allegations of the counterclaim, and (2) much of the counterclaim might also be deemed an appropriate defense to the claims of West.

The appellate court also found that CSSC should not be treated as a general party defendant because the issues to be tried against CSSC would, in effect, be the same as if West had already obtained an injunction against LRS and proceeded against CSSC as a party bound by such an injunction due to its "active concert or participation."[5] Thus, CSSC could assert only those defenses which would be available to it in that posture. The appellate court also found that CSSC was not entitled to a jury trial because, *inter alia*, West agreed to cure its complaint for damages against CSSC by a further amendment to conform to a district court order, allowing joinder of CSSC as a defendant only for the limited purpose of injunctive relief. [For the results of this litigation, see Case R18 *infra*.]

R3 Equal Employment Opportunity Commission v. Eastex, Inc., 16 F.E.P. Cases 1062 (E.D. Tex. 1976), *vacated and remanded*, 16 F.E.P. Cases 1063 (5th Cir. 1978).

The Equal Employment Opportunity Commission ("EEOC") filed a motion to compel compliance with and to modify a consent decree and application by Eastex, Inc. ("Eastex") for attorneys' fees and costs. The court denied EEOC's motion and awarded Eastex its attorneys' fees and costs, including CALR expenses in using the LEXIS system.

On appeal, the award of attorneys' fees and costs was vacated and remanded, in light of *Christiansburg Garment Co. v. Equal Employment Opportunity Commission*, — U.S. —, 98 S. Ct. 694, 701 (1978), since the district court did not indicate the legal test it had applied in awarding attorneys' fees to Eastex and the district court's order did not contain sufficient facts to resolve the legal contention of either party on appeal.

R4 Globus v. Law Research Service, Inc., 287 F. Supp. 188 (S.D.N.Y. 1968), *aff'd in part, rev'd in part*, 418 F.2d 1276 (2d Cir. 1969), 2 CLSR 309, *cert. denied*, 397 U.S. 913 (1970).

5. FED. R. CIV. P. 65(d).

Law Research Service, Inc. ("LRS") entered into a five-year contract with the computer division of Sperry Rand Corporation ("Sperry Rand"). LRS, accumulating substantial debts, offered 100,000 shares of stock to the public to raise new capital. Material facts were omitted from the offering circular concerning a dispute between the corporations, which had resulted in Sperry Rand's refusal to allow LRS to use its computers to process inquiries. Subsequently, LRS instituted litigation against Sperry Rand.

Plaintiffs, thirteen purchasers of LRS stock, brought suit against LRS, the president-principal stockholder of LRS, and the underwriter of the public offering. (LRS and its president brought cross-claims against the underwriter, who also brought cross-claims against them and a third-party claim against LRS' treasurer.) The plaintiffs recovered $32,000 in compensatory damages. Punitive damages for violations of Section 17(a) of the Securities Exchange Act of 1933[6] were assessed by the jury against the president of LRS and the underwriter for approximately $27,000 and $13,000, respectively, for their fraudulent, wanton and reckless conduct. The district court reasoned that punitive damages would serve to deter the kind of fraudulent conduct found in the present case, stating that such damages were in "accord . . . with the overall purpose of the anti-fraud provisions of the 1933 Act."[7] The district court further reasoned that the absence in the 1933 Act of a provision similar to section 28(a) of the Securities Act of 1934 indicated a congressional intent to permit punitive damages in actions brought under the 1933 Act.

The appellate court affirmed the district court opinion, while reversing the award of punitive damages. Though the court recognized that punitive damages would serve to punish wrongdoers and deter violations of the 1933 Act, it reasoned that there already existed an extensive "arsenal of weapons" under the federal securities laws for deterrence and retribution.[8] The court further reasoned that when a material misstatement was disseminated to the public and the resultant harm was widespread, the addition of punitive damages to the arsenal "could well bankrupt an otherwise honest underwriter or issuer who egregiously erred in one instance."[9]

For another reported decision arising from this case, see *Globus, Inc. v. Law Research Service, Inc.*, 318 F. Supp. 955 (S.D.N.Y. 1970), *aff'd*, 442 F.2d 1346 (2d Cir. 1971), *cert. denied*, 404 U.S. 941 (1971).

6. 15 U.S.C. § 77q(a) (1964).
7. 287 F. Supp. at 194.
8. 418 F.2d at 1285.
9. *Id.*

R5 State of Ohio *ex rel.* Grant v. Brown, 39 Ohio St. 2d 112, 313 N.E. 2d 847 (1974).

A proposed non-profit corporation sought to compel the Ohio Secretary of State to accept its articles of incorporation. The Ohio Supreme Court ruled, *inter alia*, that the promotion of homosexuality as a valid lifestyle was contrary to the public policy of Ohio and that the Secretary of State had properly refused to accept the articles.

In a dissenting opinion, Justice Stern stated that the majority's opinion permitted the Secretary of State to refuse to accept certain articles of incorporation on public policy grounds and that homosexuality was now being treated as a crime or against public policy, or both. Justice Stern used the CALR system, LEXIS, to show that past judicial pronouncements of the court failed to support the majority's public policy pronouncement. Nowhere in the recorded decision of the Ohio Supreme Court, as disclosed by LEXIS, had any justice ever used the term "homosexual" or "homosexuality," or even discussed the policy implications of such a lifestyle.

R6 Holcomb v. United States, 543 F.2d 1185 (7th Cir. 1976).

A husband and wife sued for refund of a penalty assessment leveled under 26 U.S.C. § 6672 (1954), for failure to pay corporate withholding taxes. The Government filed a counterclaim for the balance due. During the trial, the Government was questioned by the district judge concerning the proposition that the Holcomb's defense to the Government's counterclaim would be the statute of limitations. The Government counsel stated that the "*Danielson* case" was controlling in the present instance, but he could not recall its citation. The district court granted summary judgment for the Government and the Holcombs appealed.

On appeal, the appellate court put the name "Danielson" through the entire federal tax library of the LEXIS system and found only four cases, none of which had any relevance whatever to the present case. Furthermore, the appellate judge's own search of the point was likewise fruitless. The appellate court held that under the evidence, and in light of the factual issues, the case was not appropriate for summary judgment, reversed the district court order, and remanded the case for trial.

R7 Husky Oil Co. v. Department of Energy, 447 F. Supp. 339 (D.C. Wyo. 1978).

The Department of Energy ("DOE") issued a final administrative order denying Husky Oil Company's ("Husky") application for an adjustment in the standard of exception from the crude oil entitlement program under 10 C.F.R. § 211.67. Husky sought injunctive relief from the DOE order. Cross motions for summary judgment were filed.

In the heat of argument during the trial, DOE's counsel "broadly hinted that the Temporary Emergency Court of Appeals ("TECA") would eventually find for DOE."[10] The court stated that:

> We are not unaware that 84 percent of the cases decided by TECA (as shown by Tenth Circuit LEXIS information) have held for the government. But that does not give DOE a bureaucratic license to ignore the mandate of Congress, the department's own rules and regulations, and the evidence of this case.[11]

The court issued the injunction, granting Husky's motion for a summary judgment and denying DOE's motion for a summary judgment.

R8 *In re* Law Research Service, Inc., 5 CLSR 220 (S.D.N.Y. 1972), *aff'd in part and rev'd in part sub nom.* Law Research Service, Inc. v. General Automation, Inc., 5 CLSR 223 (2d Cir. 1974).

Debtor-in-possession, Law Research Service, Inc. ("LRS"), objected in a Chapter XI proceedings to a claim made by General Automation, Inc. ("General Automation") that the greater of two invoices of claimant was the correct invoice. LRS' objection was denied by the trial court due to the absence of any correspondence protesting the alleged overcharge. The appellate court, however, reversed and remanded, finding a lack of evidence in the record to support the finding that the second invoice was correct.

LRS also objected to the claim that software received from General Automation was complete. LRS asserted that it did not receive a manual explaining what to do "if something breaks down."[12] The court rejected this claim, finding that the delivery of a repair manual was not required by the contract and that LRS had failed to produce any correspondence complaining of this failure. Further testimony revealed that no repair manuals are furnished for "special application programming to make computer research for lawyers" and that there was no need for the repair manual since the equipment was still operating when the Chapter XI petition was filed.[13]

10. 447 F. Supp. at 349.
11. *Id.*
12. 5 CLSR at 222.
13. *Id.*

R9 Law Research Service, Inc. v. Western Union Telegraph Co., 1 CLSR 1002 (Supreme Ct., N.Y. Cty. 1968).

Law Research Service, Inc. ("LRS") sued Western Union Telegraph Co. ("Western Union") for specific performance and for damages in connection with two joint venture agreements allegedly entered into for the delivery of legal citation data to all subscribers of the plaintiff's services in the United States through defendant's facilities. Western Union filed a counterclaim, seeking a declaratory judgment that the first of the two alleged agreements was not a binding contract, and that the second agreement contained the only legal relationship between the parties, with its terms violated in numerous material respects by plaintiff.

The court held that Western Union had breached its contract by failing to advise LRS that the octal digits employed in its programming had to be used sequentially to maximize system efficiency. LRS did not learn of this fact until over six months after the octal digits were depleted due to inefficient utilization. This depletion in octal digits resulted in a delay in LRS' service to its subscribers and prevented LRS from programming additional data or loading more material onto the computer.

The court also ruled that Western Union breached the contract by failing to furnish LRS with billing tapes until more than eight months after execution of the contract. Since inquiries for citation data went directly to Western Union, without notification to LRS, LRS "remained in the dark about such matters."[14] Under the contract, LRS was to be notified of inquiries for citation data. To a degree, Western Union explained its failure by alleging that LRS' equipment was not programmed in the computer language in which Western Union's billing tapes were transcribed.

R10 Law Research Service of Missouri, Inc. v. Western Union Telegraph Co., 336 F. Supp. 510, 3 CLSR 161 (E.D. Mo. 1971).

A tort action by a legal research service against a computer facility and another legal research service for interference with contractual relations stated a claim upon which relief could be granted, although no express malice was alleged. The court reasoned that since intentional interference is malicious in law, even if it is the result of good motives and there is no express malice, "the promisee may recover for any act which retards, makes more difficult, or prevents performance or makes performance of a contract of less value

14. 1 CLSR at 1006-07.

to him."[15]

A contract claim involving the same parties was dismissed. The court reasoned that the plaintiff was not a third-party beneficiary to the contract between the defendants, and thus had no standing to sue.

R11 Mead Data Central, Inc. v. United States Department of the Air Force, 402 F. Supp. 460, 5 CLSR 1242 (D.D.C. 1975), *rev'd*, 566 F.2d 242 (D.C. Cir. 1977).

Mead Data Central, Inc., a competitor of West Publishing Company ("West"), sought, under the Freedom of Information Act ("FOIA"),[16] to compel disclosure of seven documents relating to a licensing agreement between West and the Department of the Air Force. This licensing agreement was entered into after the Air Force determined that an agreement with West for permission to use the copyrighted West "Key Number System" to expand and improve its CALR system (now known as FLITE—Federal Legal Information Through Electronics) was necessary to avoid copyright infringement.

A number of the requested documents were made available at the time of the initial request. The Air Force claimed privilege, however, with regard to the seven documents in suit, providing only a very brief description of these withheld documents. The trial court held that Exception 5 of the Act[17] applied to three of the requested documents on the grounds of "attorney-client privilege." The court reasoned that these documents were prepared by attorneys on behalf of a client who invoked the privilege and were not the type of material routinely discoverable by a private party in litigation with the agency. In one of these documents, for example, an Air Force attorney stated that a licensing agreement for the use of West's Key Number System was necessary to avoid infringement.

The trial court also held that the narrow exception for intra-agency memoranda contained in Exception 5 of the Act applied to the other four requested documents. The court found that these documents reflected ongoing developments in the negotiating process and dealt strictly with pre-decisional deliberations and contract negotiations, and disclosure was thus unwarranted, absent public

15. 336 F. Supp. at 511, 3 CLSR at 162.

16. 5 U.S.C. § 552 (1970 & Supp. V 1975).

17. Exception 5 provides that the FOIA does not apply to inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency. *Id.* at § 552(b)(5).

bidding or procurement requirements. These documents consisted of, *inter alia*, handwritten summaries of meetings and telephone conversations concerning negotiations between the Air Force and West, and related to the parties' negotiation positions and detailed discussions concerning the licensing agreement.

The appellate court held that the trial court's interpretation of the applicable FOIA exemption (Exception 5) was impermissibly broad, and that remand was necessary for further proceedings under a narrower construction. The Air Force had only provided a very brief description of and claimed privilege with regard to the seven documents litigated herein. The appellate court stated that "[w]here there is . . . a factual dispute over the nature of the information sought in a FOIA suit, the lack of access of the party seeking disclosure undercuts the traditional adversarial theory of judicial dispute resolution."[18]

The appellate court also held that the Air Force did not adequately justify its claim that there was no non-exempt information in the documents which could be disclosed, stating:

> . . . when an agency seeks to withhold information it must provide a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.[19]

The appellate court accordingly directed the Air Force to provide an adequate description of the contents of the documents, the reasons for the Air Force's decision to withhold the documents, an indication of the proportion of the material which is non-exempt, and how that non-exempt material is distributed throughout the documents.

In a dissenting opinion, Judge McGowan criticized the majority opinion, warning that:

> As I understand it, the logic proceeds as follows:
>
> a) Only *confidential* communications can be covered by the attorney-client privilege.
>
> b) Legal opinions rendered by counsel on the basis of information provided by a client can be privileged only if disclosure would tend to reveal the underlying information, and that information was provided in confidence.
>
> c) West knew the details of its contract negotiations with the Air Force.
>
> d) Therefore, the information provided to Air Force counsel was not confidential, and the resulting legal opinions are not privileged.
>
> Adoption of this position would go a long way toward eliminating

18. 566 F.2d at 250.
19. *Id.* at 251.

the attorney-client privilege altogether.[20]

R12 Mead Data Central, Inc. v. West Publishing Co., 76 Civ. 3618 (S.D.N.Y., filed March 15, 1977), *reprinted in* 1977-1 Trade Case ¶ 61,332 (1977).

Mead Data Central, Inc. ("Mead") has been engaged in the business of operating a CALR service under the name LEXIS since about 1973. Subscribers to LEXIS are located throughout the country, but are concentrated mainly in the Northeast. West Publishing Company ("West") has been providing a competitive CALR service under the name WESTLAW since about 1975.

Mead brought suit against West, under the Sherman Anti-trust Act,[21] alleging that West has monopolized and attempted to monopolize the market in legal reporting by (1) acquiring, during the 1930's and 1940's, a number of lawbook publishers; (2) improperly asserting copyrights not only in the "Keynote" references and headnotes of the reported decisions, but also in the text of the judicial opinions themselves, and by threatening legal action against anyone publishing such opinions or using them in commerce; and (3) attempting to restrain competition and create a monopoly in the sub-market of CALR. The complaint alleged that West was attempting to restrain competition and create a monopoly by

(a) blocking a proposed agreement between Mead and Shepard's Citations, Inc., through threats to deprive Shepard's of its early access to West publications, which expedited preparation of the Citators;

(b) entering into contracts with the United States Court of Appeals for the Fifth and D.C. Circuits for the printing of

20. *Id.* at 263-64 (J. McGowan, dissenting).

21. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

15 U.S.C. § 1 (1890, *as amended* 1975).

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

15 U.S.C. § 2 (1890, *as amended* 1974).

their slip opinions, and seeking similar contracts with other courts, thereby giving West early access to the opinions of these courts and permitting them to be fed into the WESTLAW data bank substantially before they are available to the rest of the public; and,

(c) entering into exclusive contracts with the Justice Department and the Department of the Air Force ("Air Force"), whereby in exchange for permitting the Air Force to record on computer tapes West's complete federal law reports, including the "Keynotes" and headnotes, West would obtain access to these tapes for use in the WESTLAW system. The Air Force contract provided that the Air Force could not make those tapes available to others and, if it did so, West had the right to cancel the license and to require the return of its material.

Mead urged that these arrangements committed the use of public funds to subsidize West's entry into the CALR business, whereas Mead had to make a major capital investment of private funds to convert such source materials to machine-readable form.

Mead sought a declaratory judgment (1) that West violated Sections 1 and 2 of the Sherman Anti-Trust Act; (2) that the contracts with the Justice Department and the Air Force were null and void; and (3) that West had no copyright in the texts of judicial opinions. Mead also sought treble damges, attorneys' fees, costs and an injunction restraining the use of West's copyrights for "predatory" purposes, excluding West from the business of CALR, and directing West to make available to the public in machine-readable form, free of charge, at least one week prior to their appearance in any West publication, such court opinions as West received as a result of an exclusive or preferential contract with any other court.

It was recently reported that Mead had withdrawn its suit.[22]

R13 Miller & Rhoads v. West, 442 F. Supp. 341 (E.D. Va. 1977).

In a breach of contract action against officers and directors of a foreign corporation, the plaintiff argued, *inter alia*, that service of process could properly be achieved by use of the Virginia Long-Arm Statute. Neither party, however, cited any case authority construing the statute in that context. "After extensive research, including the use of the LEXIS computer system, the court [was] satisfied

22. *Lexis Drops Westlaw Antitrust Suit; Both Sides Claim Strategic Victory*, Nat'l L.J., Sept. 18, 1978, at 3, col. 1.

that no such case exists."[23]

R14 State of Missouri *ex rel.* McNary v. Stussie, 518 S.W. 2d 630 (Mo. 1974).

In an original proceeding in mandamus, a prosecuting attorney sought to compel the state circuit court to proceed with the trial of a criminal case, without requiring that 18 to 20-year olds be summoned as jurors.[24] The Missouri Supreme Court ruled that mandamus was appropriate to determine the validity of a statute, allegedly reducing the minimum age for jurors to eighteen. Article III, § 28 of the Missouri Constitution states, *inter alia*, that "no act shall be amended by providing that words be stricken out or inserted, but the words to be stricken out, or the words to be inserted, . . . together with the act or section amended, shall be set forth in full as amended." The Court ruled that the statute reducing the minimum age for jurors was not severable from the remainder of the act, and that the absence of persons eighteen to twenty years of age in the jury array did not deprive the defendant of due process.

The court used LEXIS to examine the existing statutes to which the subject act, if valid, might be held applicable. Analysis of the information retrieved from LEXIS revealed that a number of related statutes contained some rather ambiguous, statutory terminology relating to age. Furthermore, the court found that some of the statutes relating to age would lead to paradoxes if literally construed and used with other statutes relating to age. In light of these findings, the court found the subject statute ambiguous and, therefore, unconstitutional.

R15 *In re* the Ohio Bar Automated Research Systems, Opinion of the Ohio Attorney General, Opinion No. 71-085, December 6, 1971, *reprinted in* 3 CLSR 767 (1971).

Section 307.84 of the Ohio Revised Code Annotated prohibits any *county* office (including a court) from using automatic data processing equipment without permission of the county automatic data processing board.[25] The Attorney General found that the Court of Appeals and the Court of Common Pleas were Ohio *state*

23. 442 F. Supp. at 343.
24. Mo. Rev. Stat. § 494.010 (1969).
25. The board of county commissioners of any county may, by resolution, establish a county automatic data processing board. The board shall consist of the county treasurer or his representative, a member or representative of the

courts and, as such, did not require prior approval of the county automatic data processing board to purchase, lease, operate, or contract for use and services of the Ohio Bar Automated Research System.

R16 Pitchford Scientific Instruments Corp. v. Pepi, Inc., 440 F. Supp. 1175 (W.D. Pa. 1977).

In proceedings to determine the amount of attorneys' fees to which a successful antitrust plaintiff was entitled, the court held, *inter alia*, that a charge for the use of a CALR system was recoverable. The court reasoned that the LEXIS computer service "replaces by instantaneous and supposedly infallible retrieval, many hours which would be billable if performed by human talent. The amount allowable, however, is merely the cost of the service. The item is expressed in terms of hours merely because the LEXIS machine is made available on that basis to users."[26]

R17 *In re* Use of Official Law Reports by a Commercial Legal Research Service, Opinion of the Attorney General of the State of New York, July 21, 1964, *reprinted in* 142 U.S.P.Q. 288 (1964).

Judge John P. Lomenzo inquired of New York State Attorney General's Office concerning the use by a commercial legal research service of the official law reports of the State of New York. The Attorney General responded that the text of opinions of the courts of the State of New York are in the public domain and may be published and used without copyright infringement. When, however, a copyright is taken in the name of the Secretary of State, pursuant to Section 438 of the New York Judiciary Act,[27] the copyrighted state-

board of county commissioners chosen by the board, and the county auditor or his representative who shall serve as secretary.

After the initial meeting of the county automatic data processing board, no county office shall purchase, lease, operate, or contract for the use of any automatic data processing equipment without prior approval of the board.

As used in sections 307.84 to 307.846 [307.84.6], inclusive, of the Revised Code, "county office" means any officer, department, board, commission, agency, court, or other office of the county.

OHIO REV. STAT. § 307.84 (1967).

26. 440 F. Supp. at 1178.

27. The copyright of the statements of facts, of the headnotes and of all other notes or references prepared by the law reporting bureau must be taken by and shall be vested in the Secretary of State for the benefit of the people of the state. The Secretary of State is authorized by a writing filed in his office to grant to any person, firm or corporation, under such terms and conditions as he may determine to be for the best interests of the state, the right to pub-

ments of fact, headnotes, and all other matter prepared by the law reporting bureau and appearing in the official reports may not be used as part of any publication of such texts in the absence of express legislative authorization.

R18 West Publishing Co. v. Law Research Service, Inc., 3 CLSR 561 (S.D.N.Y. 1972).

West Publishing Co. ("West") sued Law Research Service, Inc. ("LRS") for copyright infringement, and sought injunctive relief and monetary damages. West alleged that LRS purported to do computer-assisted legal research and had copied certain West Key Number digest indices. LRS filed a counterclaim, seeking, *inter alia*, injunctive relief and monetary damages for alleged antitrust violations. A settlement was reached without either party admitting the allegations contained in the pleadings.

The settlement, in part, (1) stipulated dismissal of all claims and counterclaims, (2) barred recovery of damages and costs, (3) noted the pendency of LRS' bankruptcy proceedings, (4) included LRS' representations that West's copyrighted works had not been utilized after infringement notices, and that such material, including the data bank, had been destroyed, (5) precluded future sale or publication of certain works and of said data bank, (6) prohibited the copying by any process of a table of cases or descriptive-word index of West's digests or practice books, unless such copying was subsequently found legally permissible or future infringers were not sued, in which cases, these proscriptions would be modified in accordance with specified notice provisions, (7) allowed West to retain the computer printout obtained during discovery proceedings, and (8) precluded West from creating or selling a CALR service substantially identical to that offered by LRS, as that system was revealed in the documents produced and depositions taken during the discovery phase of the suit.

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lish the above mentioned copyrighted matter in an annotated edition of the law reporting bureau or its predecessors which have been heretofore issued. Such publication shall be made without cost to the state, and nothing in this section contained shall otherwise affect the obligation of any contract for the publication of such reports.

N.Y. JUD. ACT. § 438 (1938).