Legally Speaking -- Do we Still need Books for Legal Research? (Why books still matter.)

Bryan M. Carson J.D., M.I.L.S.

Western Kentucky University, bryan.carson@wku.edu
Several times every day in the course of my work as a librarian, I hear people express the opinion that books are no longer necessary, since “everything is now online.” A second opinion that I sometimes hear is that books are unnecessary, and libraries (and librarians) are no longer needed. Although the statements in the previous sentences raise hackles for most librarians and publishers, this myth is something that we need to contend with on a regular basis. So what is the truth—are books still needed for legal research? The answer is an unqualified YES!

In the past 25 years, Computer-Assisted Legal Research (CALR) systems such as Lexis and Westlaw have done wonders for the field of legal research. And since 1993, the World Wide Web has also increased the availability of many types of information. Yet books are still very important. I will talk about three very common myths. These myths are “Everything is available on the Web for free,” “Everything is available on Lexis or Westlaw,” and “Computer-Assisted Legal Research is less expensive!” Yet, as pervasive as these myths have become, they are not an accurate representation of the field of legal research.

Myth #1: “Everything is on the Web!”

Myth number 1, the idea that “everything is on the Web,” is probably the most pervasive misconception in the world of research. In order to see if that is true, let’s take a look at what is available on the free Web.

The popularity of the Internet has certainly changed everything. According to Jan Jukes and Ted McCain, “As Gutenberg’s printing press ignited the Renaissance, computers, the Internet and networking are igniting the Digital Renaissance. . .”

The advent of the World Wide Web has been a godsend for lawyers, librarians, and legal researchers. There is definitely a lot of information that is available online. At this time, you can get the statutes and administrative regulations for the Federal government and all 50 states. Some material is also available for the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

Another important use for the Internet involved preparing Legislative History reports. With Congressional and Legislative bills available at your fingertips, researching legal history becomes merely a matter of time, rather than the Herculean task it had formerly been. And certainly any researcher who has taken the time to curse the index to the Code of Federal Regulations knows how wonderful life has been since the CFR became available online.

Remember, however, that life is not perfect on the World Wide Web. Remember that not all years are available, and there are differences between states in the amount of material you can find online. For example, New York has placed all of the opinions from their highest court (the Court of Appeals) online dating back to 1992, but Alabama only has the state Supreme Court opinions since 1998 available on the Web. And cases from the U.S. Supreme Court only date back to 1893. Why don’t they put everything on the Web? The answer is based on economics.

The biggest factors preventing digitized collections are the costs involved. Items don’t just appear on the Web, they have to be scanned, the images must be adjusted or copy edited, etc. This is not done by a student worker or a lower-level staff person, but by a professional whose salary costs money. Digitized items take up a lot of space on a server, and that also costs money.

There is also the issue of actually creating the site and organizing it so that the user can find what he or she is looking for. This is the science known as taxonomy. Taxonomy is very much related to cataloging, and is usually done by trained catalogers with library degrees. (The difference is that if you call yourself a cataloger you get paid $30,000; if you call yourself a taxonomist you get paid $60,000. This is one of the reasons that libraries find it so difficult to hire catalogers these days.) Taxonomy also costs a lot of money. Everything that you do to put together an online collection costs money, and in this age of shrinking budgets an online collection is not always the first priority.

Myth #2: “Everything is available on Lexis or Westlaw!”

The release of Lexis and Westlaw in the 1970s revolutionized legal research. With the aid of the computer, many different types of information can be readily available at your fingertips. Unlike the free Web, CALR systems tend to give you extensive coverage of legal resources. For example, the opinions of the U.S. Supreme Court are available all the way back to the beginning, and New York Court of Appeals cases date back to 1794.

Yet there are significant differences between the way in which legal research is conducted online versus the way in which legal research is conducted in paper. Instead of searching for the rules which underlie our legal system, we instead concentrate on searching for facts. According to Barbara Bintliff, Director and Professor of Law at the University of Colorado Law Library, “Computer-assisted legal research actually starts from the opposite direction of traditional book-based research by looking for factually similar cases first. This leads to a thought process that puts its first and strongest emphasis on the facts; the legal rules become secondary.”

According to Kendall Svegals, Bintliff’s analysis has profound implications. ... Relying solely upon the results of a fact-based computer search, the attorney may not ascertain the underlying rules which provide the conceptual framework to predict the outcome of a case. In light of these observations, such concept-based legal research tools as the traditional key-number digest, legal encyclopedia, law review article, and legal treatise provide a necessary complement to computer-assisted legal research systems."

Another consideration that most people don’t think about is that not all search en-
with the legal encyclopedia, and to only go online after they have learned what the search terms are and what the major cases say.

Myth # 3: “Computer-Assisted Legal Research is less expensive!”

Some attorneys believe that using CALR is more economical than using books. After all, lawyers tend to think in terms of billable hours. It’s only natural, since that is how they are paid. So it is certainly understandable if a lawyer thinks that the cost of their time is worth the cost of using CALR. Understandable, but wrong!

At one time, the only kind of contracts that were available for Lexis and Westlaw were based on the amount of time you used the system. This transactional pricing was very expensive. It was very difficult to predict what the charges would be from a particular research session. Students and new lawyers who were used to having unlimited passwords in law school would often get into trouble by running up large bills. For example, in early 1994 I was working at the Guam Territorial Law Library in Agana (now known as Hagatna), Guam. After the law clerks at the Guam Superior Court ran up a research bill of $49,000 in one month, I was called in to provide training in the use of Lexis and Westlaw, as well as to discuss print research and the use of the law library.

Once the Internet became popular and other companies such as Versuslaw and Lois began to compete with Lexis and Westlaw, the pricing structure changed. It is now possible to obtain fixed-rate contracts for both Lexis and Westlaw, although practitioners still choose to use the transactional pricing instead. Many attorneys think that the new fixed prices mean that CALR systems are more economical. However, they are not necessarily correct.

Some surprises occur when you compare the costs of using CALR systems with the cost of assembling print libraries. For example, Sengalas lists the price of a used set of the National Reporter System as being $11,850, with a yearly upkeep cost of $3,185 for advance sheets. This price is the same whether you hire a lawyer or not.

Lexis, on the other hand, costs only $4,728 per year for the National Primary Law Package if you are a solo practitioner. However, in a firm that has between 16 and 20 attorneys, the same package costs $35,640 per year! This much more than makes up for the billable hours required for print research. According to Sengalas, “Except in some clearly defined circumstances, legal researchers should resist the use of CALR until less expensive alternatives have been exhausted.”

Another option, even less expensive, is to go to the law library for your research materials. Some law libraries are maintained by counties or universities; others are for bar associations or by membership. Whether the local law library is maintained by a membership fee or not, it is still the most economical alternative for conducting legal research. Remember that the cost of the National Reporter System ($11,850 for a used set with a yearly upkeep cost of $3,185) is the same for a law library as it is for an individual. Therefore, using the law library whenever possible will save money.

Conclusion

Legal researchers have to contend with three very common myths: “Everything is available on the Web for free,” “Everything is available on Lexis or Westlaw,” and “Computer-Assisted Legal Research is less expensive!” Yet these myths are not correct. Many items are not available on the Internet at all, or are only available for limited time periods. Other types of materials are not available on Lexis or Westlaw, and there are significant issues with the way in which materials are retrieved on the computer. Finally, CALR systems are not more economical than using the books, particularly if there is a decent-sized law library in close proximity to the law office.

After studying these myths, I have come to the conclusion that, although large offices use CALR systems more than small ones do, the use of CALR systems actually makes more sense economically for small practitioners than for large firms. Purchasing used sets of reporters and paying to keep them up to date would be more economical for both the large firms and the small firms. Without the large firms and the small firms would be better off using nearby law libraries instead of CALR systems.

With a little careful analysis, we can see the truth behind the three myths of legal research. So do we still need books for legal research? The answer is a resounding YES!

Endnotes


2. For more information about the availability of this edition of Lexis and Westlaw, see the Findlaw Website at http://www.findlaw.com/.


5. In the interests of patron confidentiality, I am not identifying the database that was used or the other university that he used it at.


7. Sengalas at 58.

8. Sengalas at 115.