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Out of the Jungle

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In 1972 Shoichi Yokoi, a Japanese soldier who had remained hidden in the jungles of Guam since the island was captured by Allied forces in 1944, was found by two hunters and returned to Japan. In the early years of his self-imposed exile, leaflets were dropped from planes announcing that the war was over and that Japan had surrendered. Disbelieving the reports and refusing to surrender himself, he remained in isolation in the jungle for 26 years.

How to get beyond the digital v. print debate—and deal with the fact that digital won

by James G. Milles

In 2004 the digital v. print debate is over, and digital has won; some of us just refuse to believe it. Libraries in the future are going to be mostly digital. Monographs will continue to be published and read in print for the foreseeable future, and law journals will probably be published in hard copy owing to the demands of tenure requirements. But the most heavily used research sources—statutes, cases, administrative regulations and rulings, treatises, and even law journals—will be used almost exclusively in electronic format.

In the wake of the digital v. print outcome, law librarians in all settings need to reexamine some of the assumptions that we have held on to so tightly.

Assumption One: The Primacy of Print

Some law librarians admit that certain research tools, like Shepard's citators, can be used more effectively online than in print, and some are willing to consider teaching online citators in lieu of hard copy. Still, most law librarians retain a strong preference for book research. This preference typically takes two forms: an insistence that print resources are more effective for certain types of research and an untested assertion that learning to use print research first enables students to use online sources more effectively.

Librarians who do research instruction should be wary of the error of elevating subjective judgments, reflecting the experiences and biases of the current generation of librarians raised on print, to universal statements of fact. It is true that court opinions, as discrete documents with no structural connection to the cases appearing adjacent to them in print, lend themselves to key word or Boolean searching in a way that more structured, subject-arranged materials, like statutory codes, do not. However, key word searching is not the only method available for researching these materials online.

Online sources are increasingly incorporating all the structural elements and search tools of print. Both LexisNexis and Westlaw have included fully functional, hyperlinked tables of contents for structured resources, like statutes, for several years. New features, such as Westlaw's StatutesPlus

(which automatically displays relevant case annotations, journal articles, forms, and sections of practice materials and treatises) and, to a lesser extent, LexisNexis' Research Tasks pages, are maximizing the power of online research to incorporate the full range of tools available to lawyers.

My own discussions with current law students suggest that they are much more comfortable than previous generations with reading and using online texts. Moreover, and more significantly, they find print aids, like tables of contents, less intuitive than we do. The benefits of print that seem self-evident to trained law librarians are not so to the coming generation of law students.

One can take the position that this is a regrettable outcome of a childhood spent in front of video games, or one can allow that the current generation has an intimate familiarity with digital information of which older generations are not readily capable. It might be a useful practice, at least for the sake of looking at familiar questions with fresh eyes, to

reverse our traditional presumption. In teaching legal research, we ought to favor electronic resources, unless there is a *demonstrable* and *significant* benefit to using print. Mere tradition and trivial benefits of print resources are no longer persuasive to students raised on digital information and may not be sufficient to justify the cost of maintaining print.

Assumption Two: History Determines Pedagogy

Following from the assumption of the primacy of print, librarians and research instructors assume that the best way to *introduce* research instruction is with print sources. Librarians often claim that it is necessary to learn print research tools first in order to use online sources effectively or in

order for those sources to make sense. This statement is often asserted with no empirical basis—few if any of those making this claim have seriously tried any alternative.

Early versions of Westlaw and LexisNexis were relatively primitive and lacking in many of the features of print research tools. Both Westlaw and LexisNexis have gone a long way toward eliminating those gaps, and today it is questionable whether those differences that remain between online and print are significant. The fact that print sources developed historically before computers bears no correlation to effective pedagogical methods. Neither does the fact that most of us learned

to use print research tools before online tools lead to the conclusion that they must be taught in this order. One could, with just as much reason, insist on teaching legal writing by starting with quill pens.

An alternative method of teaching legal research would start where the students are, with a primary focus on electronic resources. Print tools should be introduced where

necessary. In those instances where print truly does offer significant advantages over online, those advantages should be apparent. Some traditional print resources—certainly Shepard's, perhaps digests—might not be covered at all in the law school research course, but rather offered in optional instructional workshops to prepare students for summer clerkships. Further alternatives are discussed below.

Assumption Three: The Failure of Legal Research Instruction

Law firm librarians frequently—and justifiably—lament the lack of research skills of new law clerks and complain that law schools are doing a poor job of teaching legal research. Blaming this lack on the law

(continued on page 16)

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Out of the Jungle

continued from page 11

schools, however, is misplaced or at least incomplete. How can we expect first-year law students to learn research in the first year when they have no opportunity to practice their research skills in any of their other classes and when they are thoroughly occupied with learning the basics of the substantive first-year curriculum?

Students begin first-year research and writing classes with no conceptual tools with which to work. It is unreasonable to expect them to make sense of the tools of legal research when they are still trying to learn the difference between statutes and cases, much less master the basic doctrines of torts, contracts, and property law. Learning theory indicates that students do not learn skills effectively when they have no context in which to use them. To require students to learn research, writing, and substantive law, all at the same time, is to set them up for failure.

One should also note that law firms themselves bear some of the blame. Law firm interviewers do not appear to have high expectations of research expertise from law students. I suspect that hiring attorneys recognize that one learns research by doing research. Rather than complaining about the lack of research skills of new law clerks, law firm librarians should embrace the opportunity to teach law clerks at the point of need. The chance to make use of the teachable moment, when the student has an actual need for the skill to be learned, is typically unavailable to academic law librarians.

Another Approach: Start Online

It is hardly surprising, given the problems discussed above, that law students do not learn legal research in their first year. Yet we still persist in attempting to teach legal research to first-year students who have no conceptual understanding of law and no contextual basis for specific research skills. We can continue to keep doing the same thing, somehow expecting a different result, or we can try something new.

One solution is to move primary research instruction to the second year of law school. This would allow writing instructors to focus on writing and analysis in the first-year course. Then in the second year, after the students have a basic understanding of law and some practical experience of the need for legal information, legal research will make sense. After all, legal research is not difficult; it is the novelty of the terminology, the unfamiliarity of the concepts, and the lack of the tools of legal analysis that make research appear difficult.

True, law students typically spend their first summer clerking for law firms, and research is part of that first job. One wonders, though, how much of what students are required to do is true “research” as opposed to document retrieval. I suspect that students could learn most of the research skills they need for a summer clerkship in a short course of “guerrilla legal research” in the last weeks of the spring semester.

Second-year legal research instruction could be structured any number of ways: as a separate credit or non-credit course; as a component of another course, such as professional responsibility; or as a more comprehensive course of “research across the curriculum,” incorporated into a variety of upper-division courses. There are difficulties and benefits to all of these options; the

specifics will depend on the practical and political realities of the law school in question.

The key is to teach students how to do electronic research effectively. This is not something that most of us have ever really tried to do. The traditional method—force-feeding print research to reluctant law students and then allowing the students to use the electronic sources that they are convinced are easier and better—leaves little time to teach a critical understanding of online research. A primary focus on online research would allow us more time to teach in-depth principles of research strategy, information literacy, and how to evaluate the authority and reliability of both online and print sources, with less time wasted on tracking down missing pocket parts and unshelved volumes of Shepard’s. We would be able to teach the differences between Boolean and natural language searching,

as well as alternative research methods, such as the online West digests and the LexisNexis Search Advisor. We might even be able to include instruction in BNA Online, LoisLaw, Hein Online, and other services.

This would be a harder job for us than teaching the same research tools we learned in the same way that we learned them. We will

have to do some digging to understand, for example, the differences between the Google and Yahoo! search engines. Students will benefit, though, by learning fundamental research skills that will retain their utility both today and in the future.

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