

Law Large

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Books? Why?

by Penny A. Hazelton

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Consider these facts: An academic law library with a print collection of 350,000 volumes; educational contracts that give all students, staff, and faculty access to virtually all of the Westlaw and LEXIS-NEXIS databases 24/7; and a new law school building being planned for 2003.

Consider these questions: How big does that new law school's law library have to be? Isn't everything in electronic form? We don't still need books, do we?

Findings: Only thirteen percent of my law library's collection (similar to Social Law's) is available online (seven percent if you exclude duplicates); the number of law books printed continues to increase; and some legal materials are easier and better to access and use in print.

Conclusion: Fifty percent of the space in the new law school building will be set aside as library space. Yes, we still need law books.

What does this have to do with you, a practicing attorney? EVERYTHING! Your ability to locate unusual legal material, older treatises, and other monographic works as well as your ability to find that current government report or agency interpretation that was on the Web last week are all at issue. In other words, the quality of your research for clients and the time you spend on research projects can be affected by the "books versus bytes" controversy.

rarely makes sense—normally, an attorney must read the statutes that surround §10 to understand the legislature's scheme. The study of § 6C in an *ALR* annotation will not make sense unless you understand the organization of the entire annotation, more specifically, §§ 6A and 6B.

In these hierarchically-arranged legal materials, what comes before and after the specific part to which you may have been led is usually relevant and important. There is a relationship between a small part and the whole. A quick review of the whole will give context and a framework for understanding the specific part. Treatises, legal encyclopedias, *ALR* annotations, looseleaf services, law review articles, statutes, and codes all have a relational structure that may well be better suited to print products. So, think twice before you decide that electronic versions of these tools will be the exclusive choice in your office.

Not only do statutes have a hierarchical arrangement, they are also hard to search online. Each section is a separate document containing relatively few words. These short documents are often written in general or even arcane language. Electronic legal information started with court opinions online. The databases are large and each document contains many words. Most attorneys learned search techniques by using case databases.

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What does this have to do with you, a practicing attorney? EVERYTHING! Your ability to locate unusual legal material, older treatises, and other monographic works as well as your ability to find that current government report or agency interpretation that was on the Web last week are all at issue. In other words, the quality of your research for clients and the time you spend on research projects can be affected by the “books versus bytes” controversy.

First, let’s set the record straight. Not everything you need for a legal research project is located online.¹ Every project is different, requiring access to perhaps very different materials. But even those materials which you think are duplicated online are not really a complete replica of the print version. For example, is the table of contents or the index to *Massachusetts Practice* online? Are the charts and other graphics commonly found in the *Federal Register* and *Code of Federal Regulations* online? Some online databases are not complete nor comprehensive, so you get access to only a limited range of court opinions, session laws, regulations, administrative decisions, law review articles, and the like.

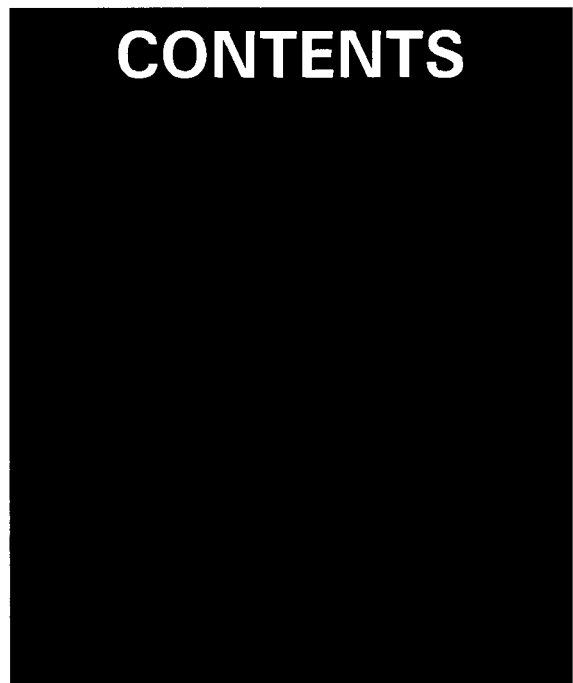
Perhaps more importantly, are there some tools that, because of their arrangement or organization, are more efficient to use in print than online? If so, would you still want to keep these in print even if they are duplicated online? The answer is a resounding YES! Statutes and other hierarchically arranged legal tools are efficient and effective resources in print.

Reading only § 10 of a sixty-section statute

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Books? Why? (continued from page 1)

must search statutes by subject, the print tools are efficient and have effective updating through pocket parts and session law updates.

As Professor George Grossman, Director of the Law Library at the University of California at Davis, said: "If legal information were available only in electronic form, someone would invent the book."²

Now that we have been reminded that not all legal information is online and we also acknowledge that some legal materials can be most effectively used in print, what are the other effects of electronic only access to legal information?

Once you discard your print, will you always be able to access appropriate and reasonably priced legal databases? Will the material you want still be available online? For example, in the early 1990s, Matthew Bender removed all its treatises from the major online databases. If you had been relying on Westlaw or LEXIS-NEXIS for these information sources, you had to find an alternative. Currently, BNA may take all its looseleaf and daily current awareness services off LEXIS-NEXIS and Westlaw academic contracts.

If you rely on an Internet site for session laws and up-to-the-minute bill tracking services, how many years will the site host the historical information? In Washington State, the legislative information is left on the Web for only four years before it is removed from the site! Thus, gathering the documents that comprise a legislative history, easy to do on the Web site, must be accomplished by using inadequate and hard-to-locate print tools. Who will archive and refresh online material, particularly that which is not commercially viable to preserve?

Are you an effective searcher online? Electronic research requires the legal researcher to be the indexer. Full text searching (that is, the

applies to cases of many different fact patterns. These researchers will be unable to reason by analogy, because analogies have to be known in order to search for them in databases! Finding legal rules and concepts is difficult using electronic legal research tools; matching cases of similar facts is easy. "The computer format itself may exacerbate the CALR researcher's tendency to remain at the factual-level analysis of retrieved cases."⁵

Before you decide that I am a Luddite and should be buried alive for saying these heretical things, let me assure you that I love electronic legal information. We can ask questions we could never ask before! We can save time and money. Information that was never printed in any form is now available for the price of a URL. Cases decided today can be read by anyone with access to the Internet. Hypertext linking allows me to link immediately to a cited statute or treatise or law review article. Case verification systems are extremely current and reliable.

Electronic information frees us from the strictures of the old print-only world. But let's not throw the baby out with the bath water. Some of the traditional print tools in law are very sophisticated. At this point in time, some electronic products are just not as good as the print version.

We live in an exciting yet challenging world. Keeping up with the changes in legal research tools—print and electronic—is a full-time job for most law librarians. Constant evaluation of the source of information, its authenticity, accuracy, reliability, and currency keeps law librarians busy and anxious to share this expertise. Don't hesitate to ask the experts! Librarians can help you make the hard decisions about discarding print tools, help identify electronic resources that are stable and comprehensive, give you advice about how to approach a research problem, write or find a research guide on the Internet, or refer you to print and electronic tools that can help you give the best possible advice to your client.

ability to look at every word in every document online) is very powerful. But success is limited by the knowledge of the researcher and the search query entered. Retrieved documents may not be relevant to your inquiry. Or your search may miss the best cases completely! Is close good enough? Are you willing to compromise the quality of your legal representation by limiting the format of legal information to electronic media only?

For many law students and recent law school graduates, if it is not online, it does not exist. This phenomenon, combined with the false confidence³ many legal researchers feel with electronic search capability, can lead to wasted time, poor research, and inadequate representation of a client.

Speaking of wasted time, second- and third-year law students in my Advanced Legal Research class were willing to spend several more hours working on a research project electronically so they could stay home, even though they knew they could have saved time on the project by using print tools that were in the law library! Will convenience trump efficiency or quality?

Most alarming, I think, is the trend toward "factual" legal research, that is, research based on facts, but not based on the rule of law or legal concepts. In a thought-provoking article published in 1996, Professor Barbara Bintliff of the University of Colorado and Director of the Law Library, posits that computers have made it easy *not* to think like a lawyer.⁴ Legal concepts are hard to locate with word searches and fact words are easy. Therefore, lawyers who research using electronic databases look for factually similar cases and limit their research to those cases, even if the rule of law is best explained and understood in cases with different facts.

Fact-first researchers will miss the rule that

And don't forget the library itself. Libraries like Social Law have rich historical collections as well as access to current legal information in all forms. Most law firms cannot have everything they need to perform every legal research task that presents itself. The expertise of the library staff and the collections it has gathered over the years become an invaluable resource, especially in this age of information overload. ■

¹ Penny A. Hazelton, *How Much of Your Print Collection is Really on WESTLAW or LEXIS-NEXIS?*, 18 LEGAL REF. SERVICES Q. 3-22 (no. 1, 1999).

² Penny A. Hazelton, *Library Highlights: Electronic Law Library*, 30 SYLLABUS 12 (no. 3, Summer 1999).

³ Barbara Bintliff, *From Creativity to Computerese: Thinking Like a Lawyer in the Computer Age*, 88 LAW LIB. J. 338, 349 (1996).

⁴ *Id.*

⁵ Carol M. Bast and Ransford C. Pyle, *Legal Research in the Computer Age: A Paradigm Shift?*, 93 LAW LIB. J. 285, 298 (2001).

Other Reading:

• Robert C. Berring, *Full-Text Databases and Legal Research: Backing into the Future*, 1 HIGH TECH. L. J. 27 (1986).

• Robert C. Berring, *Legal Research and Legal Concepts: Where Form Molds Substance*, 75 CAL. L. REV. 15 (1987).

• Robert C. Berring, *Collapse of the Structure of the Legal Research Universe: The Imperative of the Digital Information*, 69 WASH. LAW REV. 9 (1994).

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