



# ISN'T EVERYTHING

BY KURT MATTSON, ESQ.

The question isn't, "why do we need books?" That's another line of discussion. The reason you may need books could be one of many. Some of the most common reasons fall in the areas of economics, logistics and personal preference. Although, admittedly, a large collection of legal volumes has a dignified aesthetic appeal, most attorneys will say that keeping such a collection isn't practical or cost-effective. The cost of books continues to climb and many newer attorneys aren't quite sure how to use them.

Before beginning a discussion on the common reasons that a majority of attorneys prefer to conduct their legal research online, let's look at the history of law books. We won't go back to Moses or even Blackstone, but only as far as the expansion of the legal field in our country. The collection of case law in the U.S. has grown exponentially in the past 40 years.

There are thousands of court decisions being released now, as compared to 40 years ago. Statistics show that the number of published cases has grown from 43,000 in 1972, to approximately 75,000 in 2012. Here in Nevada, the Supreme Court appeals were roughly 2,400 in 2012, compared to less than 1,900 in 2004. That's more than a 26 percent increase in just eight years. Although many of these opinions will not be officially "published," there are still a great deal more pages to print and many more volumes on the shelf each year.

One way in which the courts have tried to limit the amount of case law produced each year, is to designate some opinions as unpublished. This began in the federal circuit courts in 1973, and by 2005, 81.6 percent of circuit court opinions were designated as unpublished.<sup>1</sup> Even with those efforts, more space is needed on the bookshelf than ever before. In the year 1972, roughly 16 volumes of the Federal Reporter were added to the print collection. In 2012, the number added was 39 volumes. More dramatically, the 2012 federal district court cases are still being published. So far 63 volumes have been shipped and placed on the shelves. Compare that to 17 volumes of the Federal Supplement in the year 1972, and one sees how maintaining a comprehensive legal library today could be an onerous task.

## Economics

For some attorneys, the decision on the format of research resources may just be guided by money. Some law offices do not want to take on the overhead of a full, hard-copy law library. This overhead includes the cost of subscriptions plus the cost of the floor space. Add to this the upkeep in supplements, pocket parts and new volumes, and the dollar figure increases quickly.

The cost of printing reporters and legal texts rises annually in the range of 7-11 percent in recent years. Along with the rising costs of materials and labor required to produce books, each year fewer attorneys purchase them. This means the cost of a subscription for Pacific Digest, at the current price of nearly \$14,000, will increase by yet another percentage to cover lost revenue from decreasing sales. Of course there are discounts, end-of-the-year promotions and library maintenance agreements,<sup>2</sup> but keeping a publication up to date is a constant and regular debit.

Even if an attorney or a law firm anticipated a total switch from print to online, the law libraries might not follow. This summer, at the Annual Meeting of the American Association of Law Librarians, all of the major legal publishers vowed to law librarians that they have no plans to terminate the distribution of legal information in print form.

Another economic factor centers around what is billable to a client. The argument can be made that it is cheaper for the client to be charged for 20 minutes of an attorney's research time, plus the database charge, than for closer to an hour of time spent paging through digests and reporters. A portion of the online bill from Lexis or Westlaw is passed on to the client by many firms; however, it would be difficult to ask a client to pay for a treatise or some portion of a subscription, even though the information is the same and only the medium differs.

# ONLINE?

## Logistics

As mentioned above, the cost of office space is not insignificant. Few attorneys want to cut into profits by keeping a vast set of reporters, treatises and encyclopedias that are underutilized and can be accessed online. The need for access to these materials needs to outweigh the expense of maintaining a physical library. In many instances, convenience is also a major factor. Copying and pasting a passage from a case into a brief takes only a few seconds as compared to retrieving the correct volume, finding the page and typing in the section.

## Personal Preference

This section could also be labeled "Old School vs. New School." Younger attorneys are receiving little to no training on conducting book research. These new attorneys seem not to even register the books on the shelf (while some older attorneys wear their lack of computer research skills as badges of pride). The major online legal databases are not doing anything to dissuade the younger generation from this approach. Lexis Advantage and WestlawNext are both "Google-like" search engines, requiring no preparation for the research. Users just type in the issue and see what they get.

Google and Google Scholar can also be used to retrieve primary law. If an individual wants a certain case, he or she can Google the docket number or parties, or even go the court's website and find it there (though at this point, many courts only have cases within a certain timeframe available). Other materials are available free of charge online, but a person needs to know where to look. The legal vendors have systems with linking, citators and other tools that help the researcher accomplish more tasks in less time.

## So is everything online?

The answer, of course, is no. There are multitudes of documents that are not, and likely never will be, available via an online database. For example, many documents (from all levels of government) are only available from their specific agencies or departments and may never make it online for a variety of reasons, including the money and man-hours required to scan the documents, and the poor condition of the hard copies themselves. Another factor driving the decision to add online content is a cost-benefit analysis. At present, commercial bidding for a small town municipal code makes little sense, as there are few willing to pay to access the information. The business case is a non-starter. However, as this industry continues to grow more competitive with the advent of Bloomberg Law online and Fastcase, opportunities may arise for a commercial service to distinguish itself by adding exclusive, regional or practice-specific content in addition to a list of features and benefits.

## When to Use a Book

The "Googling" research strategy has become the norm in most online experiences; however, there are some circumstances that warrant cracking open a book. Some examples include:

- An area of law that sees few major changes, such as criminal procedure or estate planning;
- Legislative history is in some ways easier to sort out when looking at a book; and
- A procedural issue research in the index or table of contents of a set such as Moore's Federal Practice or Wright & Miller can be a much simpler task than Googling on the web or trying to concoct the appropriate Boolean search.

A few other tasks that lend themselves to using the books include:

- If you're looking into an evidentiary question, books will have indexes and a specific breakdown, often by rule number;
- Statutes, court rules or administrative regulations are easy to view and compare in the books (especially when contrasting different versions of a statute); and
- A subject area of which you know very little is best reviewed in a nutshell, hornbook or treatise.

On the other hand, online research – especially from one of the large databases – is great for Shepardizing, WestCheck, searching for cases that reference a concept in several different ways, news and current events, public records and company investigation.

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## But I could do all my research online, right?

It depends.

As a well-prepared attorney, you will want to have the most effective and cost-effective tools at your disposal. Knowing when to use them can be critical to keeping your costs in check and productivity high. Access to an online service – coupled with an up-to-date state and federal rules pamphlet, a procedural and evidentiary guide and a practice area treatise within reach – can help you accomplish these objectives. Again, when it comes to some tasks, like the circumstances listed above, conditioning oneself to reach for the book, rather than the mouse, will help you find many answers more efficiently and in a manner that is more economical for your practice. ■

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- 1 See Stucky, Anika C., Building Law, Not Libraries: The Value of Unpublished Opinions and their Effects on Precedent, 59 Okla. L. Rev. 403 (2006).
  - 2 An "LMA" is a single contract for all of a firm's Thomson West print subscriptions with negotiated year-over-year increases. The pricing is fixed for the life of the contract, so the library is unaffected by subscription price increases for any individual title included in the agreement. <http://legalsolutions.thomsonreuters.com/law-products/customer-service/book-pricing-options/library-maintenance-agreement>.
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