MIND THE GAP

Ellie Margolis and Kristen Murray[*]

We are in the midst of a major paradigm shift in legal research—both how it is done and how it should be taught. For generations of lawyers, the process of legal research remained static, rooted in a bibliographic approach that reflected the print publication of legal materials. However, as legal sources have become digitized and migrated online, it is now impossible to talk about legal research from a purely bibliographic perspective. The organization of legal materials in digital databases is getting further and further away from the world of books it once replicated. The search box has replaced most print finding tools for legal research, and lawyers conduct most of their research electronically. Today, it would be irresponsible to teach legal research without a focus on electronic research, and many have abandoned teaching book research at all.

In recent years, legal writing professors and law librarians have given much scholarly attention to questions of pedagogy and training in a world of online legal research. One question that poses a serious and ongoing challenge is that of the generational divide between those in law practice, who grew up and learned research in an entirely bibliographic-based world, and those newly entering the profession, who have grown up in an entirely online environment. When it comes to legal research, does audience matter?

When senior attorneys complain that new lawyers don't know how to research in books, it isn't always clear whether their complaint is about the research process or the result. Some of their concern might stem from general mistrust of technology or mere lack of familiarity with the latest developments in electronic research. Whenever a new technology replaces an older one, there is always a transitional period in which those conversant in the older technology are unwilling to let it go. Eventually, however, as

the newer technology takes hold, consensus forms around a preference for the newer technology.

Consider the typewriter. Most senior lawyers probably came through law school and their early years of practice in a time when word processing was done using manual or electric typewriters. Clearly, word processing has come a long way since then, and even the most senior in the profession have embraced the personal computer for document creation purposes. For the rare circumstances when they are required, typewriters still exist. But no one argues that today's students should learn to write papers using a typewriter because it makes them better trained. In contrast, when it comes to legal research, as a profession we have not yet fully made the transition from the older technology (books) to the newer one (the search engine). Thus, there is a gap between the generations, as the older generation still asks, "what about the books?"

Previous generations of lawyers were educated in a book system and may not understand that organization of legal information has been reconceptualized. Westlaw got replaced by Westlaw.com got replaced by WestlawNext, and WestlawNext has already had multiple iterations, as have other electronic research services. Each of those changes represents change in how legal information is organized and accessed, as print volumes, digests and the like have been replaced by databases. Current and upcoming generations of law students, those who are digital natives, have an intuitive understanding of databases and search algorithms, but are not conversant in the language or organization of the print world. The index, for example, is a foreign concept.

Those who teach legal research and writing not only have to account for this gap, but also must prepare students for a world of electronic legal research that will look even more different from the one that exists in the first year, when most of the legal research instruction takes place. Teachers of legal research almost have to revisit their approach every year. While books remain, sturdy and unchanged, the electronic research landscape is ever-changing with stalwart electronic research services coming out with new versions and newcomers increasingly populating the marketplace. It's hard to know which new platforms and services will have a strong foothold and hard to predict what the landscape will look like three years later when the student enters practice. That's how fast things are moving. Even knowing what's

most popular in the marketplace doesn't necessarily mean that a particular service will be available in any given workplace.

As we have written before, the challenge of legal research is no longer finding sources, but rather the opposite—winnowing down from the mass of information that digital searching yields. What's hard is organizing analyzing, evaluating, and choosing among different legal sources. Legal research instruction can no longer be tied to specific technology, be that "old" technology like books or whatever version of commercial legal research services are currently available. Until recently, legal research instruction has been tied to research method, because in print research, method is critical to obtaining successful results. But perhaps it is time to recognize that in an electronic research world, method doesn't matter, as long as the research results are sound. An information literacy strategy focuses on those results, and should give the researcher enough confidence to talk about those results in a way that resonates with any audience.

Which brings us back to the question: does audience matter? We argue that it shouldn't, but it does. At the end of the research process, a good legal researcher will have all the authority required to provide a competent answer to a legal question, no matter the method(s) used in her research. But new lawyers must also be able to communicate to more senior lawyers that the research has been complete and is reliable. Whether or not we completely abandon bibliographic research instruction, there will always be a gap between the "old" and "new" or current way of doing legal research. This gap can be an obstacle to that communication. New lawyers must be able to communicate the results of their research in terms that more senior lawyers can understand.

Therefore, as we go forward, in addition to teaching the key information literacy necessary for legal research, we need to make sure students are aware of their audience. For example, they must know that a partner versed in book research may ask a question about digests, but that the question means "how did you find this?" We must teach students how to communicate the thoroughness of a search in terms that are understandable to someone who thinks in bibliographic terms. Finally, we must give the students the tools to be confident researchers today and in the future, when the next wave of legal research technologies arrives.

Audience awareness has long been a key part of legal writing pedagogy. We must now be mindful to make audience part of legal

research instruction as well. So, as we consider the future of legal research, it is also important to consider the past. This is how we mind the gap.