

Teaching Taxonomies

By Thomas Keefe

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Introduction

In the Winter 2005 *Perspectives* “Our Question—Your Answers” column, Judy Meadows and Kay Todd presented the results of a survey they conducted among librarians and library administrators regarding their collection of and patron use of West’s print digests.¹ According to the article, those surveyed agreed that digests are still a “valuable and highly popular resource” for legal research and should continue to be taught as part of research training. This article supports that conclusion and adds some insight into how we might teach the digest system in an era when “the absence of print digests may not even be noticed.”²

Background: What Are Digests and Why Do We Need Them?

Allow me to begin with some definitions. When I use the expression “digest system” I really mean West’s digest system. This *system* is really nothing more than an indexing and abstracting service for legal cases. When I use the term *index* I mean a pre-coordinate index, i.e., an index in which the organization of the concepts precedes the search. Pre-coordinated indexing offers two important features for researchers: concept organization and controlled vocabulary. These features make the digest system a “highly effective case finding mechanism.”³ The real value of the digest system is that:

When a researcher locates a case in which a relevant point of law is discussed, the West headnotes can be scanned to identify the topic and key numbers assigned to that point of law. These topics and key numbers can then be used as locaters in the West digests to find other decisions from all West reporters on the same issue.⁴

Needless to say, teaching digest research has been a mainstay in introductory legal research classes.

Indeed, almost every partner has a war story about using the digest system to locate a case that can not be obtained through other means. My favorite story is that told by Scott Stolley in his excellent article, “The Corruption of Legal Research.”⁵ There, Stolley recounts how he had asked a young associate to locate a case supporting his contention that plaintiff’s counsel could not rely on late-filed evidence on appeal when plaintiff had moved during summary judgment proceedings to strike defendant’s late-filed evidence. Sadly, but not surprisingly, Stolley’s “computer-dependent” associate came back empty-handed. Stolley shocked the associate by “going to the books” and returning with a case that stated the broader concept that a “party cannot complain on appeal of action which he induced or allowed.”⁶

A recent study conducted by The Bureau of National Affairs, Inc. (BNA) provides further support for the value of indexes. The BNA study compared users’ success rates and completion times using both indexes and full-text searching.⁷ The

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¹ Judy Meadows and Kay Todd, *Our Question: Is the Use of Digests Changing?*, 13 *Perspectives: Teaching Legal Res. & Writing* 113 (2005).

² *Id.* at 115.

³ Morris L. Cohen, Robert C. Berring & Kent C. Olson, *How to Find the Law* 90 (9th ed. 1989).

⁴ *Id.* at 90.

⁵ Scott P. Stolley, *Shortcomings of Technology: The Corruption of Legal Research*, 46 *For the Defense* 39 (April 2004).

⁶ *Id.* at 40, citing *Dallas County v. Sweitzer*, 881 S.W.2d 757 (Tex. App. 1994).

⁷ Mary Elizabeth Williams, *Dr Searchlove: Or How I Learned to Stop Googling and Love Pre-Coordinate Indexing*, 10 *AALL Spectrum* 20 (September/October 2005).

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study measured users' success for both single answer and more complex research tasks. Overall, index users had a success rate of 86 percent while text searchers had a 23 percent success rate.⁸

In fact one can understand the history and development of online legal research tools as a grand attempt to create context in an otherwise unstructured world. SearchAdvisor, ResultsPlus®, and KeySearch® are all attempts to marry technology and tradition. LexisNexis® has very nearly completed its own indexing and abstracting service to rival West's digest system.⁹ Ironically legal research has now come full circle. Twenty years ago we had two fully integrated print case-finding systems: the West system and Lawyers Cooperative Publishing's Total Client Service Library. Today we have two fully integrated online case-finding systems, LexisNexis and Westlaw®.

So What's the Big Deal?

That which is a benefit for legal researchers has become an obstacle for research instructors. The popularity of the Lexis and Westlaw electronic course management systems among professors makes it increasingly difficult to deny students immediate access to the research systems, at least in limited form. Students now have all the incentive they need to avoid print entirely. All things being equal it is fair to say that about 50 percent of the students will choose to print cases via LexisNexis, thus avoiding the digest system altogether.¹⁰

So here's the rub. On the one hand, the wholesale cancellation of print reporters has undermined the value of instructing students on the intricacies of using the digest *system* in print. At the same time, now that LexisNexis has its own case-finding system there is every likelihood that a student will

attempt to find cases using the LexisNexis system online and not the West system online or in print.

I learned that lesson last semester when one of my more persistent students found an interesting case using a legal encyclopedia. She brought it to me and asked the obvious question, "What do I with this?" (we had yet to cover citators). My automatic research response was "follow the headnotes." My heart sank when I saw that she had printed the case from LexisNexis and she had in front of her a set of headnotes that did not correspond to what was available in print digests. I suggested that she go back and print the case from Westlaw (or maybe even copy it) and then follow the headnotes using the print digests. I recognized from the look in her eye that I had instantly lost credibility. Was it really ridiculous to ask a student to jump through these hoops to complete an assignment? She thought so and to a large extent that is all that mattered.

My experience with teaching the digest system (in print) is that my students have little or no experience with print resources and consequently no experience with basic concepts of information science like indexing and abstracting or taxonomies. Not only do they not understand the concept of a taxonomy, they do not have the skills, training, or patience to work with a keyword index. When they do not find what they are looking for on the first try, they quit. I try to teach them that digests are good but their frustration with the organization features of the print digests leaves them with a negative impression. This unintended lesson leaves them perfectly prepared for the wonderful world of Lexis and Westlaw.

Students perception of and lack of experience with "traditional" research tools, is a serious obstacle to teaching legal research. In a recent study, Lee Peoples of the Oklahoma City University School of Law determined, among other things, that the students tested had a higher rate in answering fact-based questions with print digests than with online sources.¹¹ Their perception, however, was much

⁸ *Id.* at 20.

⁹ See *LexisNexis Case Summaries and Headnotes—A Progress Report*, LexisNexis InfoPro (February 2004), <www.lexisnexis.com/infopro/profdev/column/2004/200402.asp>.

¹⁰ I take it as a given that students will print cases from Lexis and Westlaw whenever possible because 1) it's faster than copying; 2) it's cheaper than copying; 3) it is what they are used to; and 4) in my experience, it's what students actually do. I welcome rebuttals.

¹¹ Lee F. Peoples, *The Death of the Digest and the Pitfalls of Electronic Research: What Is the Modern Legal Researcher to Do?*, 97 *Law Libr. J.* 661 (2005).

different. The study concluded that students perceived terms and connectors searching to be superior even when, objectively speaking, it was not.¹² Furthermore, students rated their overall effectiveness at answering questions with print digests as very low. Even after students were shown how successful they were with print digests, they responded that they still preferred electronic resources over the print digest. The reason, as Peoples suggests and I completely agree with, is that today's students cut their teeth on personal computers, so they are used to and prefer to do things electronically.¹³

It occurred to me recently that I have been doing my students a disservice. I have been introducing them to the notion of traditional legal research sources without really clarifying what traditional meant to me. It seems to me that to my students the traditional/electronic distinction translates as print is bad and online is good—no matter what I say. The upshot of this is that they spend more time and effort trying to get around using print than they do actually using it. But I do not mean for the term to be understood one-dimensionally. To me the term traditional has two dimensions—format (print) and structure (pre-coordinated).

Teaching Tradition Versus Teaching Structure

So I began to ponder how we teach digests—their importance and how to use them. The problem as I realized it is that students no longer need print digests to learn the more important lesson that the concepts in law tend to be hierarchically related and using hierarchically organized research resources in combination with free text searching simply makes good sense. So in essence, I decided to de-emphasize teaching sources as a primary means of relating the secondary lesson that structure is important because of the threat that students understood my gesture as one of foisting print upon them.

This semester I decided to take a step back from teaching traditional sources like print digests and focus somewhat more on basic concepts in information science like what is a taxonomy and why hierarchically arranged research resources are so important in law. My mantra was “think hierarchically.”¹⁴ Having provided at least a very basic grounding in information science, I tried to show them that the need for hierarchal thinking is demonstrated by the fact that taxonomies exist all around them in their daily lives. The most obvious and popular example of hierarchy is a cell phone. Yes, today's most essential electronic convenience is (or at least mine is) completely menu-driven.

Likewise the personal computer, a student's other best friend, offers many excellent examples of the value of menu-driven searching. For example, the easiest way to access “disk cleanup” on one's hard drive is to choose start>programs>accessories>system tools>scan disk. Voila! Internet subject directories offer another lesson in the value of structured searching. Finally, as one navigates through almost any well-designed Web site these days one sees “breadcrumbs”; these act to mark one's path through the taxonomy that is the Web site's hierarchical organization.

Of course, lessons about the need for structure abound in law as well. Within a few weeks of this lesson I had to introduce my class to the wonderful world of statutes. I was able to offer them a preview of what was coming by demonstrating that our laws ultimately get categorized into a hierarchical arrangement to improve accessibility for research purposes. In fact, rules themselves, especially statutes, have a structure; part of the success in analyzing statutes is recognizing the structure. There can be no more important lesson than understanding the hierarchical relationship of factual concepts in law (employer>private employer>with more than 100 employees>

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¹² *Id.* at 674–675.

¹³ *Id.*

¹⁴ As one legal writing text teaches, the capacity to think structurally is one of the critical skills in the lawyerly use of rules. See Richard K. Neumann Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* 25 (5th ed. 2005).

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carrying goods only>intrastate>carrying toxic materials). To whom does a certain regulation apply?¹⁵

Conclusion

Today we stand at a crossroads as legal research instructors. We now find ourselves attempting to teach traditional sources and techniques to students who have been raised entirely on computers. We must recognize this reality and adjust our teaching to account for it. Teaching

print digests as part of a legal research system no longer represents an efficient use of limited time and resources. Teaching digests as an example of a hierarchically organized research resource will be fruitful if we give students an introduction to what taxonomies are, why they are important, and how they can be found throughout the wonderful world of legal research.

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Another Perspective

“[T]eachers possess the power to create conditions that can help students learn a great deal—or keep them from learning much at all. Teaching is the intentional act of creating those conditions, and good teaching requires that we understand the inner sources of both the intent and the act”

—Parker J. Palmer, *The Courage to Teach: Exploring the Inner Landscape of a Teacher's Life* 6 (1998).

¹⁵ Adopted from Thomas R. Haggard, *Legal Drafting: Practical Exercises and Problem Materials* 19–20 (1999).