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Quod non est in Google et Wikipedia non est in mundo

- Legal research competency – past, present and future -

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Abstract:

Based on his own experience as a student in pre-digital times the author describes the impact of printed and digital legal sources on research training in our times. He deals with the challenges for librarians, both as learners needing to cope with an ever changing environment, and as teachers needing to convince their students that research is more than just navigating through the web.

I am supposed to talk for some minutes about “legal research competency”, or “legal research skills”, or “legal information literacy”. There are different terms for this phenomenon but the meaning is always the same: How can non-information-specialists gain the best possible access to the sources they need to pursue their research, and what can information-specialists do to help them find their way through an ever confusing multitude of sources?

This question seems to become ever more important in the times of shifting paradigms and the ever growing role of digital information in legal teaching, and legal practice. To mention but two: the “Legal Information Management”, the journal of the British and Irish Association of Law Librarians has very recently dedicated a full

journal issue to the topic “Legal Research Skills - Life-long Learning”[1], and also very recently an article about the Dutch experience was published in the “International Journal of Legal Information”, the journal of the International Association of Law Libraries[2].

There are about 200 states in the world and this inevitably means that there are 200 legal systems worldwide and, as a matter of fact, even more since quite a number of states are composed of federal entities with own laws – sometimes combining the intricate mixed legal systems under one roof like in the case of Canada and the United Kingdom. This confusing multitude translates into the fact that the need for, and the training in, research competency differs from country to country, and to quite an extent. What seems to be very important in the common law systems is rather irrelevant in the civil law systems, and vice versa. This, together with the limited time frame I have, is why I can only point to some very general aspects of the topic here.

When I started my legal studies forty years ago, information seeking among German law students was based more on chance than on a clearly structured strategy. Optional courses were offered by librarians and research assistants but not much appreciated and attended. This has not changed since that time, or rather: it has become worse with the “easy” availability of all kinds of digital information, be it free of charge or payable
Looking back at this situation which might appear quite strange to foreign colleagues I believe that the reluctance to learn research strategies was and is based in the first instance on the fact that German lawyers base their work on commentaries. The German legal system is as a matter of fact characterized by the widespread existence and use of sophisticated commentaries. Commentaries cite the law article by article and, for each article, name the relevant general literature followed by an explanatory section in which legal problems and questions of the precise meaning and interpretation of individual notions are defined and illustrated by the aid of suitable doctrinal writings and court decisions. As a rule, for every law of some significance there is a commentary. The more important and frequently needed laws are often explained by several competing commentaries. For example, Germany’s most important law, the civil code, can be interpreted by means of no less than ten

[1] Legal Information Management vol. 2, 2010 (pp. 79 – 155).
[2]Ben Beijaars, “Implementing Legal Information Literacy: A challenge for the Curriculum” in IJLI 2010, pp. 320 - 332

different commentaries to which can be added some older commentaries which have not been brought up to date. They range from one-volume books to 50plus-volume works; many of the commentaries are available in PDF-format now and recently commentaries have been introduced which were designed exclusively for digital use. So the only thing a German law student had to do (or rather: thought to be sufficient) was to identify the appropriate commentary and then look for the cited literature or court decisions by means of a catalogue. The rule was: not learning by being taught but learning by doing. An easy task and surprisingly successful method even for students and professionals unwilling to learn better research strategies in depth! I must admit that I only found out about the bounty of useful research tools for the lawyer after I had finished my law studies and when I went to library school where working with these sources was compulsory.

I happened to experience a very, very, very, different world when I was a trainee at the Harvard Law School in 1982. It was there that I followed my first proper course on "How To Find The Law" and it was there that I got acquainted with a dedicated LEXIS terminal for the first time in my life. (For the youngsters here in the room: dedicated terminals provided access to one product only and instead of a keyboard proper they had different and quite colourful buttons for the different search functions. This was quite alright in times of a very limited number of databases but it would of course be nonsense in our times to have one terminal each for every single database). The training at the law school mainly aimed at acquiring research competency and perfection about the organization and usage of the sources needed to identify the adequate laws and the adequate cases in the law reports through digests and encyclopaedias and how to make decisions about their relevance and value for the respective legal problem through "shepardizing". I remember having spent many painstaking hours at the Harvard reference desk working meticulously with these materials completely unknown to me before.

The difference between the United States of America and Germany was twofold at the time: firstly the American law students did follow the introductory courses and it does not matter much whether they did it out of interest or because the courses were compulsory, and the American law students had the opportunity to consult with trained specialists at the reference desk when they were unable to identify the right research path to locate the sources they needed, or to apply them properly. Under

the German system where tuition is free and where the comparatively poor Universities are run by the state such an expensive and user-friendly system was and is not an issue. But the systems have one point in common, though: both the users of commentaries, and the users of digests etc. had to have trust in the reliability of the editors without really being able to control whether the information thus provided was correct.

The advent of digital information has resulted in an almost schizophrenic situation: on the one hand it has seemingly become very easy and painless to navigate and to find a lot of information in the wide world of the world wide web, while on the other hand it is becoming ever more important and ever more difficult to evaluate the usefulness of the information and to identify the authenticity of the information thus collected in an environment which by its very nature is subject to constant change.

Librarians of the past millennium were used to making printed literature available and their raison d'être was based on the fact that no one knew the sources better than they themselves, and this knowledge defined their role in the academy and in the society.
The environment has changed completely and it seems that many researchers now prefer to look for information (I deliberately avoided the word: "doing research") from the comfort of their office or desk and that this comfort leads them to be happy and content with the sources they can identify this way. This is why I have chosen the title "what you cannot find in Google or Wikipedia is irrelevant". If librarians want to survive the next millennium they must, quite like their students, acquire information literacy for the new sources, and they must be willing to engage in a constant process of lifelong learning. They must be prepared to pass their knowledge on to their readers and they must know how to teach their patrons to evaluate the relevance and authenticity of sources. It will be their task to show their patrons how to filter the bounty of digital information and how to separate the grain from the chaff, in order to pursue an intelligent research and in order to arrive at well-prepared and well-informed results. I know that many patrons do not really understand why such a training is useful, as, after all, everything is so easily available. But librarians must at least try to make their patrons aware of the problems and pitfalls of the digital world. This awareness will be the new kind of information literacy of the 21st century. It is, by the way, a question of both contents and technical ability. If and once librarians fail

and if and once their patrons know how to cope with the new sources better than the librarians - then they run the risk of becoming an endangered species and eventually superfluous. I have mentioned at the outset of my speech the differences between legal research and legal teaching in the common law countries and the civil law countries. While the differences in format continue to exist, there are no differences any longer when it comes to accessing digital sources and this unifies the task of librarians worldwide when it comes to enhance information literacy in the new millennium regardless of where the studies take place and regardless of what legal system is taught. The law continues to be a national affair - the problems of finding the law are global now.