

Research, Interrupted

By Jan Bissett and Margi Heinen

As offices and institutions reopen, we're all taking stock of and noting what worked and didn't during the pandemic. The need for flexibility, creativity, and agility during the pandemic has now transitioned to the necessity to examine much of what we took for granted prior to March 2020.

According to the 2020 ABA Legal Technology Survey, most legal research is performed online with free platforms and fee-based services among the most popular resources.¹ We have now crossed the threshold between print and online resources — a big step for those who have maintained a reliance on print sources, but also a potential stumbling block for those who have seldom used print. On the one hand, folks have had to dig deep online to find what they once found so easily on the shelves; on the other hand, newer researchers have had to try to make sense of bibliographic holdovers from the age of print.

During the past 18 months, we've encountered several research questions that illustrate these struggles, and we'd like to share a few with you. Some very practical considerations about accessibility and availability of legal information presented themselves to researchers during this time. Licensing restrictions made online information as inaccessible as print collections during pandemic shutdowns. Gaps in online coverage were discovered as we sought older materials electronically. Researchers made creative use of resources readily available and took a closer look at some familiar research concepts.

Archived Michigan legislative information

Attorneys' research collections reflect their particular practice areas with an eye

toward best serving their clients. They often rely on academic law libraries or the state law library for research materials and expertise outside of their practice areas. One frequent request is researching archived legislation and legislative history materials in Michigan.²

Many Michigan documents are available as digital resources, both subscription and free. Commercial legal research services LexisNexis and Westlaw offer archived Michigan legislative information including bill texts, summaries, and status with various dates of coverage within the past 30-plus years. Government news services Gongwer and Michigan Information and Research Service (MIRS) offer specialized in-depth coverage of politics and legislative activities to subscribers. LLMC Digital offers its subscribers the texts of archived legislative journals and analyses. The Michigan Legislature (<https://www.legislature.mi.gov>) and Michigan Law Revision Commission (<https://council.legislature.mi.gov/CouncilAdministrator/MLRC> [<https://perma.cc/U4VS-KVW8>]) websites are invaluable to those researching legislative information.

If you are faced with starting a legislative history project for states other than Michigan, the Indiana University library guide is a great place to find aggregated links for all 50 states.³

Beyond these traditional and familiar resources, researchers made use of or were introduced to the Library of Michigan Digital collection of selected government publications (<https://lmdigital.libraryofmichigan.org>). This site offers current and historical primary and secondary sources including Michigan legislative and statutory materials.

The Hathitrust (<https://www.hathitrust.org>) and Internet Archive (<https://archive.org/>) may also be sources of historical Michigan government publications. The Library of Michigan catalog ANSWER (<http://catalog.lib.msu.edu/search-S37> [<https://perma.cc/H6BB-FG2Z>]) can be used to identify resources associated with significant legislation in Michigan. If you're hoping to identify legislation prior to 1970, searching the final status of all legislation in the Library of Michigan Digital collection can summon that information (<https://lmdigital.libraryofmichigan.org/michigan-legislative-and-statutory-materials-0> [<https://perma.cc/DL82-QXEB>]).

The *Michigan Bar Journal* can be useful in identifying archived legislation in Michigan. The Public Policy Report identifies legislation of interest to the profession. Significant legislation in a particular practice area is also noted or discussed in themed issues. Access to complete issues dating back to 1921 is readily available to members through

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SBM member resources by logging in and clicking Bar Journal Search.⁴

Published vs. unpublished

Those pesky published and unpublished cases can be confusing for new attorneys and summer associates who have never read opinions in print publications. The question, "Where are the headnotes?" can be answered with a little history lesson about those opinions chosen for full publication and those snagged by vendors as they use online opinion retrieval.

As long ago as 2015, a Forbes magazine article asked whether there is a need for unpublished opinions,⁵ arguing that it made sense to publish fewer opinions to slow the rapid growth of print reporters that threatened to swamp law library shelves, but since the 1960s, the distinction has been problematic. Law school library guides can help explain to new researchers what this holdover language means in practice,⁶ while checking the court rules in some jurisdictions can assist in understanding what jurists expect.⁷ Exploring the history and impact upon litigants and the courts' reliance on unpublished decisions in the past 20 years is another aspect that has been recently addressed.⁸

Publication of statutes — official versions

Just as court opinions were designated published or not published, statutes required official anointing before considered the law. Therefore, we have references to Michigan Compiled Laws (1979) as the last official compilation. That may be confusing since today's research consists primarily of accessing statutes online where newly enacted language may be catalogued in a variety of ways.

Online vendors try to get recently passed legislation into online compiled laws as quickly as possible, but careful researchers watch for flags and effective date messages alerting us to the full story. For example, the July enactment of a Michigan statute on marijuana-infused beer has an effective date of October 11, 2021, so multiple versions of the measure appear online until that date — see MCL 436.1914b. Westlaw and Lexis show

both versions with effective dates clearly visible, but this is one instance where a yellow caution flag on a statute should not be ignored. Since the language is not yet effective, the warning flag is not red on Westlaw. The language is still good...but has a distinct shelf life. Lexis chooses to use a red flag. Fastcase (<https://www.fastcase.com/>) lists both versions in its table of contents with a note following the text alerting users to the existence of two versions with different effective dates.

Conclusion

Reviewing our research difficulties and successes of the past year will help inform our transition from print to online and office to virtual. Continued creativity and an awareness of our print resource past may aid the transition. ■

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ENDNOTES

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