

**INFORMATION BEHAVIOR OF THREE LAWYERS:
A COMPARISON WITH TWO EARLIER STUDIES**

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THE PURPOSE OF THE STUDY

The purpose of this case study was to investigate the information behavior of a group of information users. As a team we chose to interview three litigation attorneys regarding their information behavior, analyze the results, and compare our findings to those of two other studies of attorneys' information behavior.

RELATED RESEARCH

Kuhlthau and Tama (2001) sought to gain a better understanding of the variety of tasks that involve lawyers as a particular group of information workers, how they use information to accomplish their work, and the role that mediators play in their process of information seeking. They used a semi-structured interview of eight lawyers who had been practicing for six to ten years, with eight open-ended questions to initiate discussions. Kuhlthau and Tama found that the sources used for complex tasks by their user group were paper, computer, and finally people. Complex tasks were defined as those involving considerable thinking and formulation using terms indicating a need for construction of a new approach to be worked out over time. They required a large variety of information at one time, and needed sources that were structured to enable extensive exploration. They had a clear sense of when they had used sufficient sources. These lawyers held that print sources helped the construction process better than computerized sources; as a result they expressed a desire to have hardcopy material computerized to improve access. Kuhlthau and Tama determined from these results that systems designed to respond to specificity do not support more complex tasks. Kuhlthau and Tama suggest that three additional aspects related to accomplishing work tasks needed to be studied further: the way information is

presented to the user; the limitation of keyword searching; how to better control the search for information as legal research is conducted using computerized information.

Otike and Matthews (2000) investigated the information behavior of one lawyer in Kenya using interviews and observations. They identified the purpose for which this lawyer sought information, and the kind of information required for his particular situation. The conclusions drawn by Otike and Matthews were: the legal needs of the client influences the information needs of the lawyer; the kind and amount of information required depends on the nature of the work to be done; and information access is problematic when lawyers don't have information collections of their own. The purposes identified by Otike and Matthews for which their particular lawyer sought information were: to assist him in providing accurate advice to his clients; to enable him to represent his client effectively in court; to research legal transactions pertaining to sale of property by his clients; and to stay abreast of current developments in the legal discipline. The types of information were both concise and detailed since he practices diverse areas of law.

METHODOLOGY

For this study, three trial lawyers, all practicing for at least 10 years, were interviewed using a survey instrument containing seventeen open-ended questions (Appendix A), with some supplemental or clarifying questions. The interviews were tape recorded and transcribed for analysis. Questions were geared to learn more about the following information behaviors of these three lawyers: type of need; type of seeking; information evaluation/avoidance; and information use.

Each member of the team conducted one interview in order to gain the experience. Each of the subjects had different areas of specialty: one in family and entertainment law, one in product liability and personal injury law, and the third in real estate law. Two of the lawyers have practiced continually since the 1990s and are quite comfortable using technology to support their practices—one even has a degree in computer science. The third lawyer practiced law for a time in California, then stopped for a number of years. She resumed her practice, in Washington, approximately one year ago, and is struggling somewhat with the shift to electronic information resources.

FINDINGS

Information Need

The three lawyers' need for information, to the extent described in the interviews, is a proxy need. All the scenarios they describe are for finding information to build a case for their client that supports the client's best interest. Although Otike & Matthews found their subject sought information "to stay abreast of current developments in the legal discipline" (Otike & Matthews, 2000, p. 248), these interviewees did not mention a need other than for their clients.

The lawyers have both known item needs and subject needs. Sometimes they know the exact item they need, such as a police report, a contract or case law. Other times, they may have to search by keyword to find the right item; other times, they have to search through thousands of documents in the hopes of something useful.

Information Seeking Behavior

Most information behavior is searching, where the attorney has a specific information need and is in pursuit of that information. However, one subject also described encountering experiences, wherein he might be conducting research for a case, or going about personal business (such as reading the newspaper), and happen across the name of someone who could be an expert witness for another case. When this happens, he is careful to note the encountered information and file it away for later.

The most used search strategies are analytical, empirical and known site. Empirical searches are the most common, as keyword searches on LexisNexis or Westlaw are conducted for most cases. Requests for specific information from an opposing party, without knowing how it will be produced, or even if it exists, is an example of an analytical search. For some cases, known site searches are required, such as when a property line must be reviewed, or a police report obtained.

Sources

The subjects report a variety of sources. The most common information sources are legal publications, whether online or print, and people. The attorneys have many different human resources to call upon, usually beginning with the client, but extending to witnesses, partners, professional groups, subject matter experts, and even people on the street. One attorney sometimes asks people in the elevator or at the grocery store how they feel about an argument she is considering.

Less common sources include whistleblowers, court records, arrest records, related lawsuits and listserves. The subjects reported they are skeptical when it comes to listserves (and

other information they find on the internet, especially from those who bill themselves as experts) because it is more difficult to verify the source. They are careful to double- and triple-check any information they get in this manner.

Changes in information seeking behavior

Since they began practicing law, these lawyers have noticed changes in their information seeking behavior in these ways:

1. Location - when they began practicing, law libraries were the primary sites where legal research happened, but today, research can happen anywhere Internet access is available or electronic documents are stored. One lawyer explained her shift from print to computer this way,

“I used to drive all the way over to the...law library at UW and then they remodeled it and they closed it and so in that period of time over the summer I had to turn to the computer....”

2. Speed - for most of its history, legal research was conducted by reading or scanning hundreds, even thousands, of pages of paper; technology has given attorneys the ability to search much faster through high-speed Internet access, automated keyword searching, and digital imaging of documents, to name a few advances.
3. Amount - the number of sources now easily accessible has expanded incrementally, eliminating the reliance on law books. Today, nearly everything is accessible. One subject described a source he often uses:

“Email is just a huge source of information these days because people will say anything and quite often it’s stored somewhere permanently.”

Complexity of information seeking tasks

All three lawyers report that some information seeking tasks are more complex than others.

The factors which most affect complexity are:

1. Familiarity with case law – the lawyers are more comfortable finding information for cases which they commonly argue;
2. Complexity of case law – some cases are naturally much more complex than others. For example, a case such as a property line dispute, where the law is clear, requires less complex information than a case in a controversial area of law, or a newer area where the law is still being created, such as intellectual property.
3. Complexity of subject matter – cases where the subject matter is very intricate, such as anti-trust law, or a drug product liability case.
4. Cooperativeness of parties – clients are usually the most cooperative parties, but opposing parties may try to withhold information, or neglect to provide anything not specifically requested. One attorney says that the further the source is from the case, the less interested it is in providing information. For example, if he subpoenas a bank record, but the bank is not otherwise part of the case, providing the record is often not a priority for the bank and it may be very difficult to gain that record.
5. Comfort with the medium (online) – one attorney in particular is having trouble adjusting to online research, which makes her search tasks more complex. She reports that she still feels more confident in her ability to search law books and make associations herself, than with the online legal research tool's ability to create those associations.
6. Amount of information to find or search through – the amount of information which has to be reviewed, especially in large cases such as mass torts, can be overwhelming.

Often additional staff has to be brought in to review the documents and find the relevant pieces of information.

7. Validity of information – as mentioned earlier, the lawyers are skeptical about information they find on the internet in non-traditional sites and from self-proclaimed experts. They double- and triple-check the information to make sure it is valid before it can become part of their arguments.

Difficulty in finding information

These lawyers are dogged information seekers. If they cannot find the information they need in one place, they keep trying with different resources, different forms, different sources, and different types of access until all options are exhausted. The most difficult parts of finding information are:

1. Adjusting to new research methods (online) – for the attorney who took a break from practicing law, making the transition from legal books to online research has been very difficult; she feels she is gaining ground, but still finds books easier to use.
2. Keeping up with speed and volume of changes in the law – new case law is published every day and keeping up with these changes can be overwhelming.
3. Dealing with the volume – efficiently finding the documents which apply to a case is a constant challenge now that so much information is stored electronically; there is access to more information than ever before, including misinformation;
4. Honing the skills to find where documents might be – some attorneys have become versed in data storage technologies in order to know what sort of data retrieval is possible. Said one interviewee,

“...it’s important to have a good understanding of how documents are archived and retrieved, how they could be indexed so that you get the doc that you want by asking in a way they can retrieve and you’re not leaving any loopholes.”

Enough information

These attorneys work under the assumption that they never have all the information; there may always be something hidden or withheld because it was not requested in just the right way. When asked how he knows when he has enough information, one attorney uses a cost-benefit analysis: he keeps searching until the client is no longer willing to pay for him to do so.

Ease or difficulty of finding information

These attorneys predict which information will be easy or difficult to find based on past experience. Easy sources include established case law, the client, basic information from the other side, and information from sources close to the case. It is more difficult to get information in areas where the law is still developing (e.g., intellectual property) and from disinterested sources because they have no stake in the case. Important or sensitive information is also usually harder to get. The attorney who only recently started practicing again finds procedures hard to pin down because, according to her, they are not as well documented in Washington as they are in California, where she previously practiced.

Information Avoidance, Evaluation and Use

Avoiding information is rare among these three attorneys. In fact, by ignoring information, one leaves oneself open to defeat: “...you deal with the fact and you ultimately turn the fact around to the point it helps you. Or you simply ignore it hoping that the other side won’t use it.” Rather, these litigators prefer to prepare as many points as they can. When confronted

with information which conflicts with his position, says one interviewee, “If the evidence shows up that it’s clear that our position is erroneous then we change positions.” Another strategy is to negate the fact, or damage the credibility of the person who presented it:

“...if you can’t impeach the fact, you impeach the person who says the fact. So, somebody says the light was red, you say ‘do you still beat your wife?’”.

Filtering

There are two types of filtering that go on. First, there is filtering by authority where the information is found: more recent, more local, higher court, and higher priority in the law make for better sources. There is also filtering for the best argument possible given the circumstances of the case.

Attorneys filter information so that the judge and jury do not have to. It is impossible to effectively present the huge amount of information gathered in a case, so attorneys filter to prevent information overload. There are also court rules which set the maximum size of some documents, and prescribe information which may or may not be divulged.

Information Use

The purpose of using information is to persuade a judge, jury or opposing parties that one position is stronger than the other(s). The job of the attorneys is to maximize what is to their client’s benefit and minimize what is not.

Creativity

The subjects describe these tasks as the most creative part of using information:

1. Tracking down key information, if it exists;

2. Narrowing down the huge amounts of information to core concepts;
3. Sorting and sifting the evidence so it tells the story that gets the desired result.

Improving information seeking

The interviewees' suggestions for improvements all have to do with improving technology:

1. "Cheat sheet" for online research programs - the attorney who is having difficulty with online research would like a list of commonly used commands, keys and shortcuts;
2. Electronic document and evidence management – to improve storage and retrieval;
3. Text searching in electronic documents and sorting by relevance– keyword searching to more quickly determine the documents related to the subject;
4. Better wireless access – for attorneys who like to have access wherever they go, the lack of wireless access has been a stumbling block; when access is a problem, one attorney calls his law clerk to research an issue for him.

COMPARISONS

Comparison with Kuhlthau and Tama

While the lawyers in the Kuhlthau-Tama study, had a clear sense of when they had used a sufficient number of sources, these lawyers often feel they can never have enough information. Also, the Kuhlthau-Tama subjects, who were interviewed in 2001 and had been practicing six to ten years, were more comfortable with print sources than electronic sources. The lawyers in this study have been practicing for a longer time, and two of them are very comfortable with the electronic format. Both groups agreed that converting hardcopy material to electronic versions

improved access. This study supports Kuhlthau and Tama's determination that "systems, designed to respond to specificity, were found not to serve their purposes in their more complex tasks." (Kuhlthau and Tama, 2001, p. 40), as illustrated by the complaints about the keyword searches and the desire for better relevance determination and associations in electronic research.

Comparison with Otike & Matthews

This study agrees with the conclusions of Otike and Matthews that the information needs of the lawyer are influenced by the legal needs of the client, and also that the kind and amount of information required depends on the nature of the case. The attorney who still prefers print sources to online sources also agrees that information access is problematic when lawyers do not have information collections of their own, but the two who are comfortable with technology (and have ready access to it) would disagree.

CONCLUSIONS

The three lawyers in this study mirror the lawyers in the other two studies to a great extent, but the influence of technology is clear in the areas where they differ. This could be a chronological issue (the other studies were conducted in 2000 and 2001), or possibly a regional issue, as information professionals in the Pacific Northwest may be more heavily influenced by technology than in other parts of the world.

They possess very sophisticated information behavior, with highly developed information management skills. In fact, each one is a unique information management system unto himself.

APPENDIX A

QUESTIONS

1. Describe your work, specifically the tasks and goals in your work.
2. What type of law do you practice?
3. How do you use information?
4. What are typical sources? What are less commonly-used sources?
5. How has the way you seek information changed since you began practicing?
6. Does the type of case you're working on determine the type of information you seek?
7. Describe the stages of a case and the information research used in each.
8. Are some information-seeking tasks more complex than others?
9. What is the most difficult part of finding information?
10. What is the most creative part of finding information?
11. What do you do when you find information which conflicts with your position?
12. What do you do if you can't easily access the information you need?
13. How do you know when you have enough information?
14. How do you predict which information will be easy or difficult to find?
15. How do you filter the information for relevance?
16. Why do you filter information?
17. What sources, systems, and services might be make finding information better/easier for you?

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