

**MODERN TRENDS IN LEGAL RESEARCH METHODOLOGY, A PAPER DELIVERED BY CHRISTOPHER O. OGUNDARE, ESQ.<sup>1</sup>, AT THE NATIONAL WORKSHOP FOR LEGAL AND RESEARCH ASSISTANTS, ON 15<sup>TH</sup> SEPTEMBER 2020 AT 10 AM**

**INTRODUCTION**

I want to express my profound and deepest gratitude to the Administrator of the National Judicial Institute, Abuja, my Lord, the Honourable Justice R.P.I. Bozimo, OFR, for the opportunity afforded me to be a presenter of this most stimulating of topics for us all, as Legal and Research Assistants in our various jurisdictions. I would likewise wish to thank the Management and Directorates for the confidence reposed in one of their own to take the lead at this epochal event. This workshop is coming up at a critical time for the nation's judiciary as we all respond to the emergent threat of a pandemic and the exigency of having a proactive, prescient method of research, in order to meet this threat.

The theme of the event, ***Repositioning the Judicial Researcher in the 21<sup>st</sup> Century***, is an apt reflection of the imperative of ensuring that all researchers are properly equipped with the tools of the trade (so to speak), so as to aid in effective delivery of their work, on time and in the most relevant manner. The topic "***Modern Trends in Legal Research Methodology***" is also a very important one that is perhaps made even more pellucid by the recent advent of the COVID 19 pandemic, which has

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upended the old order of things and created a new normal. It is upon this recent development that my paper shall be pivoted.

## **DEFINING OUR ROLES**

Research may be defined as any organized systematic enquiry that aims at providing information for solving identified problems. Legal research is a systematic enquiry carried out within the discipline of Law.

Legal Research in my simple estimation is the process of finding and retrieving information necessary to support legal decision-making and begins from the analysis of facts to the application and communication of results.<sup>2</sup> Legal research includes each step of a course of action that begins with an analysis of the facts of a problem and concludes with the application and communication of the results of the investigation.<sup>3</sup> It therefore involves the process of finding answers to legal questions or checking for precedents that would aid the determination of a subject matter, however obscure.

The legal Profession and research are inseparable Siamese twins, just as research and information are the twin sides of the same coin. Legal research therefore is indispensable to the Legal Profession and the effective practice of law. Without legal research, a legal practitioner will find his or herself groping in the dark for answers that the light of research brings to their notice.

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<sup>2</sup> Wikipedia (2020). Retrieved from [https://en.wikipedia.org/wiki/Legal\\_research](https://en.wikipedia.org/wiki/Legal_research) on the 7th September 2020

<sup>3</sup> J. Myron Jacobstein and Roy M. Mersky: Fundamentals of Legal Research, 8th Ed. (Foundation Press, 2002) p.1.

## LEGAL RESEARCH METHODOLOGY

As noted ably by Tijani and Popoola (2019), historically, research on law has been classified as “black-letter law” and “law in context”, referring to research that use doctrinal and non-doctrinal research methods, respectively.<sup>4</sup>

In reality however, most legal researchers utilize doctrinaire, linear research method that involves mainly obtaining, studying and working with legal statutes, case law, articles and scholarly opinion and policy documents. They also seek to review and possibly rely upon previous interpretations and adjudications of legal matters in case law, so as to aid their arguments. The word doctrine in itself derives from the Latin word “*doctrina*” which means instruction or teaching. This implies that the Legal Researcher uses already laid down procedures to achieve the desired result asked of him or her.

The obvious preference of most of us for doctrinal research methods is not farfetched. Firstly, doctrinal method relies heavily on secondary data, arising from the Constitution of the Federal Republic of Nigeria 1999 (as amended), Acts of the National Assembly, Laws of State Assemblies, Treaties, Regulations, Rules of Court and Practice Directions, Case Law, as well as such documents as the internal constitutions of political parties and other bodies and other legal sources. In their research, the legal researcher only needs to study such existing data and identify the relevant parts thereof. This helps the researcher present their cases, based on his or her own individual perceptions, summations and conclusions. Secondly, it is

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<sup>4</sup> Tijani, N., Popoola, O.D.; *Emerging Legal Research Methodological Issues and Opportunities in Developmental Economies*; Journal of Information Science, Systems and Technology, 2019, Vol. 3, No.1 [July], 35-47

much easier to gather and analyse such legal materials as they are in black and white and, through indexes or other classification, allows one to get a detailed knowledge of a specific pending judicial matter.

A fundamental limitation of this doctrinal approach is that it excludes the consideration of the ways and manner in which these laws impact the society at large. In reality also, the rapidly evolving nature of human societies, especially with the COVID 19 pandemic, shows that some of the provisions of Rules of Court, evidentiary and other laws and legal precedents, have been overtaken by emerging developments globally and therefore require some reform. This necessitates thinking outside the box of existing legal documents, to gather newer information and knowledge through scientific analysis, public surveys and other means of information gathering.

The Legal Researcher is often at the core of this process, more so where they work for the Head of Court and are called upon to examine the existing rules in light of new extenuating circumstances. Thus, as already pointed out, there is need for the Legal Researcher to be better attuned to thinking out of the Box, so as to achieve the desired result sought from him or her. One must not forget that the world is a global technological village. Our research therefore must reflect this change.

With the advancement in Technology, the sourcing of information for legal research has been made easy and access to legal information has improved exponentially. Concomitantly, the Practice of Law is evolving. In the past, Judges and Legal Practitioners carried out all of their legal research using the hardcopies of books, found in often dusty shelves in our

Courthouses. Access to these documents often depended on the help of the librarians and the skill of the Researcher to identify what was needed and to make photocopies or borrow same. However, because written and published books are often finite in number, it was not uncommon to leave a library without having achieved what one desired.

Thankfully, this practice of flipping through large amount of books to search for relevant cases and statutes, is changing. New methodologies are being examined and newer tools are being explored. Let us examine some of these as we go along into the next section of this paper.

## **MODERN TRENDS IN LEGAL RESEARCH METHODOLOGY**

Whichever methodology the Legal Researcher has to adopt in his research, there is no doubt that this has been largely impacted by modern trends in Legal Research. The Legal Researcher therefore cannot be left out of these monumental changes in the development of the law and legal tools. No trend has been greater or more significant than developments in legal information brought about by new technology. Similarly, there are now different rules of procedure guiding the conduct of some proceedings in the light of the COVID 19.

It is therefore expedient to examine some of the new trends in legal research and look at how it affects us as Legal Researchers.

## **1. CROSS DISCIPLINARY LEGAL RESEARCH**

A recent trend in legal research is the movement towards a closer working relationship between the Legal Researcher and other genres such as the social and behavioural scientists in the development of solutions to legal problems. This straddles the areas of technology, criminal law research and business/economic crimes research, among others. The result of this collaboration is a large body of research that is now available online for the average Legal Researcher to access and better help in assisting their Lordships to arrive at a better informed decision that would otherwise not be achievable through the traditional monosyllabic research of old. The lack of availability of textbooks would have rendered such research impossible in any event. Permit me to cite an example.

In 2010, the south African Government initiated a new Criminal Justice Bill that sought to reduce the age of criminal responsibility under the *doli incapax* principle, from 16 to 10 years' old. This could not have been done in isolation except the Legal Researchers had collaborated with behavioural scientists, psychologists, neurologists etc., who examined

Another example is the role played by Information and Communications Technology (ICT) and computer software specialists in the development of the recent rules on COVID 19 and the Remote Hearing Guidelines issued by the National Judicial Council. This means that, as a legal researcher, we not only have to be aware of our immediate laws and developments in case law but also advances in cross sectoral research and how these affect our courts. An emergent sector as recently proven is the rise of the

Artificial Intelligence Dispute Resolution, which, whether one likes it or not, is set to be the trend to come in justice delivery. An assiduous Legal Researcher should be aware of this trend as it arises. I will cover this further in the next trend below.

## **2. TECHNOLOGY AND THE IMPACT OF THE INTERNET OF THINGS ON LEGAL RESEARCH METHODOLOGY**

The world of legal information is in a state of continuous change as law firms and legal researchers now find themselves surrounded by a variety of sources arrayed of formats. Judges and Lawyers can now speedily access court cases and decisions from anywhere in the world just by logging into smart phone applications, websites or software that keeps a legal database<sup>5</sup>. With frequent updates, it is easy to access the latest decisions, keeping Judges and Lawyers continuously informed about what is happening in the practice of law.

One of the biggest steps that has enabled technology evolve the practice of law is the development of digitalization of the storage of case law, statutes, and regulations. In this sense, I would define Legal Technology as technologies and software that are changing legal services delivery,<sup>6</sup> which in turn is easing the time constraints attributed to the old-fashioned practice of reading through hardcopies of books and other resources. Legal

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<sup>5</sup> Ofure Bethel Inedia, Technology and the Legal Profession in Nigeria, (2020). Retrieved from <https://blog.judy.legal/technology-and-the-legal-profession-in-nigeria/> on the 7<sup>th</sup> September 2020.

<sup>6</sup> Prateek Saxena, What's the Role of Technology in the Legal Sector?, (2020). Retrieved from <https://appinventiv.com/blog/technology-in-legal-sector/> on the 7<sup>th</sup> September 2020

Technology is creating software and Legal research databases that are changing the legal profession; some databases have broken down case law and statute.

In Nigeria, the impact of technology is clear because Law Reports, Laws of the Federation of Nigeria, Law Materials, etc., are accessible online and via Legal Technologies. Most research can now be done electronically with legal research databases such as Law Pavillion, LegalPedia, etc. and other sources of information on the internet like the Nigerian Legal Information Institute ([nigerialii.org](http://nigerialii.org)), Nigerian Law Guru ([nigerianlawguru.com](http://nigerianlawguru.com)), Academia ([academia.edu](http://academia.edu)), Researchgate ([researchgate.net](http://researchgate.net)), etc. Information have become easier and faster to access and are more updated than the hardcopies.

### ***Benefit of Technology in Legal Research***

- i. **It saves time:** the traditional legal research is performed manually with Judges and Legal Practitioners investing valuable time in pouring through law reports, statutes, books, etc., when researching. With legal technology, time consuming task such as searches are automated and managed through algorithms that make it easy for more time to be spent on other productive tasks.
- ii. **Speed:** As stated above, time consuming processes in the practice of law can be sped up, therefore allowing more work to be done in less time. This will lead to speedy justice delivery. For example, legal software like Law Pavillion, LegalPedia, etc., has made it easy to search and get results in seconds, leaving more time for expounding the law.

- iii. Ease of Research:** Although, Judges and Lawyers have adapted to the Internet and added it to their research methods, many still use print products regularly. Some of these print products can take a while to be updated, and the law always changes so an online legal research platform could help researchers stay up to date with the law and could provide tools that are otherwise unavailable with print products.
- iv. Wider Skillset deliverability:** An example of this is the use of e-resources and software to perform complex legal analytics (which often involves the classification of data contained in case laws to reveal trends and patterns in past litigation that helps in the adoption of strategies and anticipate outcomes for present cases).
- v. Abundance of Resource Materials:** for a Legal Researcher who knows his or her way around the internet, it is a potential gold mine for information on any subject matter. This resource is far larger than any information that a library could get. In 2018, a total of Four (4) Zetabites of information (4x one billion, billion, billion Bytes) was uploaded and is available for access. This information far exceeds the sum total of printed books anywhere in the world at this current time. Google alone contains all the information that has been generated in history either as a reference or as a file. Such breadth is a potential research tool opening up a new and wide-ranging source of information and knowledge. Information is probably the biggest advantage internet is offering to the users. The Internet is a treasure trove of information and information on any topic is available on the Internet. The job of the researcher is to sift through this information

and make use of those that are relevant and apply them according to their research needs.

### ***Disadvantages of Technology in Legal Research***

As with all things, technology in legal research provides a double-edged sword for the average legal researcher. The most obvious are as follows:

- i. Leads to Information Overload:** The internet provides a huge amount of information thereby causing information overload. It may leave one confused with this infinite amount of books, texts and materials on a topic because of the overwhelming information available on the Internet, one must be cautious about information gotten.
- ii. Institutionalizes Lazy attitude to Research and reduces the quality of work:** Over-dependence on technology can present a threat to the Legal Researcher because of the legal researchers' reliance on its seemingly easier access as their only source of information. This information may be unverified (see the next point) and an over reliance on same, without more, can be institutionalize laziness and be detrimental to their work.
- iii. Problem of False Information:** There is no regulatory procedure to organize, monitor/supervise, to check and confirm the accuracy of an information that is published on the internet. Most information in the Internet does not go through any evaluation process. Anyone can publish on the web, without first proper editing and proof reading of their content through an editor. Pages might be written by an expert on the topic, or a child or even a disgruntled contributor. Therefore,

getting information from book or from various other printed sources guarantees high standard and peer review.

- iv. Virus Threat:** A Virus is a program that interrupts the normal functioning of the computer systems. Computers that are attached to internet are more likely to be attacked by virus, either as ransomware, Trojans or malware etc. These attacks could result in the hard disk crashing, thereby causing a big disaster on the computer and unsaved research work. Although this can be prevented or stopped by installing antivirus software to create a firewall but imagine all your research work is on a computer that's infected. That could be a valuable loss.
- v. Infrastructural Deficit:** The non-availability of high speed and stable internet network is adversely affecting the use of technology. Added to this is the epileptic electricity supply which increases the cost of adopting and using this technology making the maximization of the legal technologies unachievable.<sup>7</sup>

### **3. COVID 19 AND LEGAL RESEARCH**

While this factor would not have been within the consideration of any Legal Research Assistant about twelve months ago, it has become a key consideration in any research one is to embark upon. As an exigency of

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<sup>7</sup> Olubiyi, Ifeoluwa & Olaniyan, Ayobami & Odiaka, Ngozi. (2015). The Role of Technology in the Advancement of Legal Education and Practice in Nigeria'. Page 14 and 15. Retrieved from [https://www.researchgate.net/publication/280566346\\_The\\_Role\\_of\\_Technology\\_in\\_the\\_Advancement\\_of\\_Legal\\_Education\\_and\\_Practice\\_in\\_Nigeria'](https://www.researchgate.net/publication/280566346_The_Role_of_Technology_in_the_Advancement_of_Legal_Education_and_Practice_in_Nigeria) on the 8th of September 2020

checking the spread of the virus, non-essential parts of the court such as the Library were temporarily closed and this may have included the Library. While we do not pray for same to repeat itself, there is a remote possibility that such may occur.

This calls for a different response to research than one would otherwise adopt. Less Books and hard material are now the order of the day and the pandemic may see a reduction in the number of publications that are available as compared with the pre-COVID 19 epoch. As such, the new COVID 19 protocols call for more sterilisation of materials used in our research and as such, we must be armed with sanitizers and face masks when visiting a public location such as a Library or even the court room itself. This calls for steps which will be discoursed further.

#### **4. LEGAL REGIME AND THE LEGAL RESEARCHER**

One of the lasting trends exacerbated by the COVID 19 has been the rise of the e-hearing or remote hearing provisions. There has also been a decade long development and testing of the Nigerian Case Management System (NCMS) and the Legal Email Project. This is an automated, nationwide, software that was developed by the National Judicial Council to ensure the automated management of cases from filing to disposition. It is even robust enough to include compilations for appeal purposes.

As Legal Researchers, we need to avail ourselves of the basic knowledge of these system and I am glad to say the NCMS and Legal Email were partly

developed by staff of the National Judicial Institute, whose knowhow is available. In any event, these systems will result in a change in the legal regime, which have an inevitable effect on the work of a Legal Researcher.

We therefore will need to become active case managers by being able to access the Remote Hearing and NCMS systems and easily work with same, while helping to remind our principals of any timelines set therein and generally to prepare their Lordships for any matter assigned to them remotely. This is more so as an inability to use the system or understand it may lead to targets being missed, e-hearing notices not been made available to their Lordships, inability of e-court proceedings to commence and general confusion ensuing as to what case is to be heard and when. As such, one will have to learn to complement this technology with a diary that will help the research assistant readily know the case docket of the Judge and prepare them for it.

## **5. IMPROVED ACCESS TO DECISIONS OF THE COURTS**

The legal researcher is now exposed to a plethora of decisions by various courts of coordinate or superior jurisdiction that may or may not conflict with one another, but are usually delivered with little or no fanfare in the press or further information. As such, a Legal Researcher has the onerous task of ensuring that they visit various courts or in some other way, avail themselves of the latest decisions of the Appellate Courts so as to guide the work that is produced for our principals.

One must remember that the law that they read and cite today, may have been overturned yesterday. Technology may help this process because forums such as this may offer us all the chance to network and have an online community to share information on latest developments in case law in our jurisdictions. In addition, online resources are now developing means to present decisions of various courts contemporaneously so that same is available to the public. It may be advisable to study such sites. Nevertheless, we must always seek to read the newspapers so as to keep well-informed of events in our Courts.

## **IN SUMMARY**

The goal of legal research is to find the relevant jurisprudence and analysis of legal issues that will ultimately solve a legal problem presented by the Judge. In doing this, there is no doubt that making changes to the processes involved in legal research would help researchers. This requires the adoption of pragmatic approaches to emergent challenges such as the onset of COVID 19 and the rise of the internet to things, should not be to bury one's head in the sand or state that "***my principal does not need it***" or "***my Lord does not like technology***". There is the need to be a 21<sup>st</sup> Century Legal Researcher and embrace the multiplicity of solutions that are available to all so as to ease the workload and be more strategic in delivery of a successful outcome.

There are challenges to the application and implementation of technology in legal research. There are also new policy changes that point to the rise of the remote hearing template for our Courts. The COVID 19 pandemic has brought about an urgency in digitalization and we must adapt to this

inevitability. Although there are demerits to the new technology and remote hearing, the benefits outweigh these. It is therefore essential that the legal profession embraces and maximizes technology to advance the practice of law in Nigeria. Practically, the methodology of research has to now embrace the new layer of safety consciousness that COVID 19 has brought about. As such, some practical recommendations may be advanced to help us all be in the right position to take advantage of same. Some of the recommendations may seem obvious but practically speaking, still remain home truths that others may not know about.

## **RECOMMENDATIONS**

**1. INVEST IN YOURSELF:** I must confess that the cost of technology presents an obstacle to the use of technology that can assist researchers in their work. However, this can be dealt with if we advocate for the Court or Judge to invest in technology. If not successful, we can buy technological aids by the creation of special funds saved over time or set aside for the purpose of technology acquisition be it a Computer or the Wi-Fi or Router, legal research software etc. it may also be necessary to buy a smartphone with the capacity of carrying out research no matter where we find ourselves.

**2. EDUCATE YOURSELF:** It is also important for us all to educate ourselves extensively on the use of technology and how to protect ourselves while on the internet, while doing research. It is also necessary to protect our information by knowing how to access the latest software protection against cyber-criminals.

Similarly, the Nigerian Bar Association may be a good avenue to access trainings in emerging technology and access to ZOOM or other conferencing software could greatly aid one's ability to understand the technology behind remote hearings.

**3. CHECK ALL INFORMATION:** We should not take all information at face value but need to educate ourselves on how to ensure that only verified information is used while doing research work to ensure that the correct information is disseminated to end users of these information.

**4. USE MULTIPLE SOURCES OF INFORMATION:** while technology makes things easier, it is always important to back up any research with publications such as Law Reports, Scholarly Articles and other material that is available in the Library, provided these are recent documents that touch on laws that are still in force. An example of the Laws of the Federation of Nigeria. Where possible, use other sources to back up information that you have accessed online so that you can authenticate same.

**5. INNOVATE:** one can be proactive in research by building a subject-matter database for case law and principles discovered in the course of research so that one can develop a repository of relevant research that will have future application. One must also proactively research

other jurisdictions in order to properly advise our principals on the comparative trends in other countries.

**6. BE MORE TIME CONSCIOUS:** the rise of cases in the dockets due to the delay caused by COVID 19 means more work for a Legal Assistant. Therefore, it is important to be time conscious and more deliberate. If we haven't developed an itinerary or schedule of tasks, it may be a good idea to develop one on a weekly basis. This will help develop priorities and thus better streamline the time taken to research, as opposed to handling other tasks for the Judge or Justice. The use of new technology can help us to be better time managers but we must be careful to use that time sparingly, efficiently and effectively.

**7. PREPARE SELF FOR THE CHANGE:** The world is evolving research trends that will inevitably be different from that which we have been used to. The rise of artificial intelligence technology may help in facilitating non doctrinaire approaches to adjudication research while presenting us with virtual assistants. It is therefore important to up the ante of our skill sets by also reading extensively and learning about developments in other jurisdictions, which have the potential to affect how we adjudicate in Nigeria.

## **CONCLUSION**

The job of a Legal Research Assistant has never been more challenging. The growth of litigation has swelled the dockets of their Lordships and the recent disruption to the justice delivery system has created bottlenecks that are likely to result in more work for us. The need to be time conscious and proactive in research cannot be understated as these factors can save one a great deal of stress.

COVID 19 has been the biggest global disruptor in the 21<sup>st</sup> Century thus far. This has brought about practical considerations for preventing the disease that we as Legal Researchers would be foolish to ignore. Thus, we must ensure that we take precautions in the course of our research by adhering to the COVID 19 regulations as they affect us all.

It is also advisable to embrace technology in our work as this is a tool of ease. However, one must remember that the technology is an extension of our duties and not the other way around. We must not become slavishly reliant on its use, at the expense of other physical sources which are more likely to be verified and certified. The use of corroborative data and information will help ensure that the quality of our work is veritable and sound.

We must remember that the Judges are depending on us to lighten the burden of adjudication. Some of the Legal Researchers gathered at this workshop will be Judges tomorrow. The skills we develop on our jobs will inevitably avail or derail us in future careers. Let us therefore be thorough, comprehensive, proactive and adaptive to new innovation. I am sure that where we are efficient, the Judiciary and wider public will be the ultimate beneficiaries.

Thank you all for your rapt attention.