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What About the Majority? Considering the Legal Research Practices of Solo and Small Firm Attorneys

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Solo and small firm practitioners account for the majority of attorneys practicing in the United States. However, they are regularly underrepresented in studies of attorneys' research practices, which tend to focus on attorneys in larger practice settings. This article reports the results of a local survey in which more than 80 percent of respondents fell into this forgotten demographic. Comparison of the local study with a recent national survey demonstrates that greater consideration of smaller firms could lead to a different understanding of fee-based online resource usage among the demographic, which may have widespread implications for public and academic law libraries, access to justice, and implementation of research competency standards. The research practices of solo and small firm attorneys, as well as the conditions leading to such practices, warrant further study.

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¶1 Solo and small firm practitioners are seemingly everywhere. Examples abound from Atticus Finch in our classic literature¹ to Abraham Lincoln in our history books² to the hundreds of thousands who make up the largest segment of the American Bar Association’s (ABA’s) compilation of lawyer demographics.³ In fact, solo practitioners alone accounted for 49% of all private practice attorneys in the United States as of 2005,⁴ and their ranks are expected to swell as employment opportunities in other settings continue to disappear.⁵ Nevertheless, attorneys practicing in smaller settings tend to be underrepresented in academic studies.⁶ As a result, there is a very real danger of neglecting the interests of a majority of attorneys when policy and curriculum decisions are made based on studies that fail to consider solo and small firm practitioners.

¶2 Underrepresentation of solo and small firm practitioners is also a trend in law librarian studies of attorney research practices. Such studies are often based on surveys of law firm librarians, which, although very helpful, provide skewed results that favor the interests of firms large enough to employ law librarians.⁷ While a limited number of surveys that include solo and small firm respondents have been reported, their presence is usually overshadowed by attorneys in larger practice settings.⁸ Within this context, a task force formed by the Academic Law Library Special Interest Section (ALL-SIS) of the American Association of Law Library (AALL) conducted a survey of practitioners (hereafter National Survey) meant to gain an “understanding of how practicing attorneys conduct legal research.”⁹ The

1. See HARPER LEE, *TO KILL A MOCKINGBIRD* (1960).
2. JOHN C. WAUGH, *ONE MAN GREAT ENOUGH: ABRAHAM LINCOLN’S ROAD TO THE CIVIL WAR* 169 (2007) (Lincoln became the senior partner of the two-attorney firm Lincoln & Herndon in 1844).
3. Am. Bar Ass’n, *Lawyer Demographics*, available at http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer_demographics_2013.authcheckdam.pdf (hereinafter ABA Demographics).
4. *Id.*
5. Genevieve Blake Tung, *Academic Law Libraries and the Crisis in Legal Education*, 105 LAW LIBR. J. 275, 276–77, 2013 LAW LIBR. J. 14 ¶¶ 2–3 (presenting employment statistics that suggest new graduates are entering practice in small firms or going directly into solo practice at increasing rates due to fewer opportunities in other settings).
6. See, e.g., Luz E. Herrera, *Training Lawyer-Entrepreneurs*, 89 DENV. U. L. REV. 887, 902 (2013) (“there is not an abundance of scholarship that focuses on the contemporary solo lawyer”).
7. David L. Armond & Shawn G. Nevers, *The Practitioners’ Council: Connecting Legal Research Instruction and Current Legal Research Practice*, 103 LAW LIBR. J. 575, 581, 2011 LAW LIBR. J. 36, ¶ 21 (provides an example of a recent survey by law firm librarians in which only 1 of 162 respondents worked for a firm with fewer than 25 attorneys).
8. See, e.g., Sanford N. Greenberg, *Legal Research Training: Preparing Students for a Rapidly Changing Research Environment*, 13 LEGAL WRITING: J. LEGAL WRITING INST. 241 (2007) (population sample for survey intended to assess transition from print to electronic sources included only 9.8% solo practitioners but 30.9% from settings with more than 100 attorneys).
9. ALL-SIS TASK FORCE ON IDENTIFYING SKILLS AND KNOWLEDGE FOR LEGAL PRACTICE, *A STUDY OF ATTORNEYS’ LEGAL RESEARCH PRACTICES AND OPINIONS OF NEW ASSOCIATES’ RESEARCH SKILLS 1* (June 2013), <http://www.aallnet.org/sections/all/committees/pages/legal-practice.html> (hereinafter National Survey).

ALL-SIS Task Force on Identifying Skills and Knowledge for Legal Practice received survey responses from more than 600 attorneys from a variety of states and practice settings, and produced a clearer picture of attorney research practices than ever before.¹⁰ Solo practitioners, however, comprised only 13.77% of the sample population,¹¹ so the survey results suffered from the same issues as previous efforts.

¶3 To determine the usefulness of the National Survey results for informing acquisitions and other policy decisions at the local level, the Fort Bend County Law Library collaborated with the Fort Bend County Bar Association (FBCBA) on a survey to collect comparable data from local bar members (hereafter Local Survey). Survey questions were intended to assess practice setting along with how often three resource formats—print resources, free online resources, and fee-based online resources—were used. To promote a high response rate, the questionnaire was distributed with the annual election ballot. While the short survey could not replicate the depth of information collected in the National Survey, the expectation was that similarity of results regarding frequency of use might suggest that the demographic discrepancy was a distinction without a difference. Eighty-nine attorneys, more than 50% of whom were solo practitioners, responded. Although respondents reported similar usage of print and free online resources, they appeared to use fee-based online resources far less frequently than National Survey respondents. Because the greatest discrepancy occurred in only one resource category, the results of the Local Survey pointed to a unique pattern among solo and small firm practitioners in relation to fee-based resources.

¶4 This article explores the potential correlation between solo and small firm practitioners and less frequent use of fee-based resources that is suggested by comparison of the Local and National Surveys. The article also considers possible causes for unique practices among this demographic, the implications of such practices for law libraries, and the need for more research. The first section presents the methodology and results of the Local Survey. The next section compares the results of the Local and National Surveys to show a possible relationship between practice setting and fee-based resource usage. The third section discusses potential causes of such a relationship, including a review of arguments that go beyond a mere inability to pay for cost-prohibitive products. The fourth section explores the implications of unique legal research practices among the growing solo and small firm demographic, including the need for access to resources in public law libraries, avenues for law libraries to promote access to justice for low- and middle-income individuals by supporting smaller practices, possible reforms to legal research curricula, and the effect due consideration would have on implementation of legal research competency standards. The fifth section proposes suggestions for further research.

10. *Id.* at 4.

11. *See infra* section comparing the Local and National Surveys.

The Local Survey¹²

¶5 The purpose of the Local Survey was, at its core, to gather information about the legal research practices of local attorneys to be used in making decisions about acquisitions, programming, and general administration of the Fort Bend County Law Library. The FBCBA periodically conducts surveys of its members concerning their use of the law library and shares the results with the law librarian. In the past, these surveys consisted of open-ended questions soliciting suggestions for collection development or amenities. While past survey results yielded invaluable insight into the felt needs¹³ of both current and potential patrons, the ability to compare the data to similar efforts or from year to year was limited. In an effort to standardize some of the data, the law library proposed the addition of structured questions. The FBCBA graciously agreed.

Methodology

¶6 To get a clearer picture of the target population, every effort was made to encourage a high rate of participation. The survey was distributed with the annual election ballot via SurveyMonkey to all 650 members of the FBCBA. Polling was open November 6–20, 2013, and several reminders were sent to members encouraging them to complete the ballot and survey.¹⁴ The survey was limited to four multiple-choice and two open-ended questions, and 87 respondents answered all the structured questions.¹⁵ Given the substantially lower participation rates on open-ended questions in the Local Survey and previous FBCBA surveys,¹⁶ the structured questions yielded unprecedented data about the association.¹⁷

¶7 The secondary purpose of the Local Survey was to collect data that could be compared with the results of the National Survey to determine its applicability locally. The questions were modeled after questions in the National Survey, and similar response categories were used. The first question assessed practice setting. Participants were asked to describe their practice using one of five categories: “solo practitioner,” “firm: 2–5,” “firm: 6–10,” “firm: 10+,” and “other (government, in-

12. Information about the planning and implementation of the Local Survey is based on the personal experience of the author. Documentation regarding the survey is on file with the author.

13. The phrase “felt needs” relates to the needs perceived and reported by the individual surveyed and can be contrasted with the phrase “expressed needs,” which may be gleaned from observation. Assessing felt needs is very important for outreach purposes because patrons are more likely to use a service they want rather than one they do not yet realize they need. For a general discussion of types of need that can be uncovered by an information needs assessment field survey, see G. EDWARD EVANS & MARGARET ZARNOSKY SAPONARO, *DEVELOPING LIBRARY AND INFORMATION CENTER COLLECTIONS* 40–41 (2005).

14. Efforts included an initial e-mail announcement from FBCBA, a segment in the November 15, 2013, FBCBA newsletter, a note in the Fort Bend County Law Library newsletter that was distributed in mid-November, and a word-of-mouth campaign by FBCBA officers and directors.

15. More precisely, 87 participants answered questions 1 and 2, 89 answered question 3, and 88 answered question 4. See *infra* appendix.

16. On the Local Survey, only ten participants answered open-ended questions. In the 2012 annual FBCBA survey, thirty-two responses of varying quality were recorded.

17. Letter from John W. Kelly, Jr., President, Fort Bend County Bar Association, to the Members of the Fort Bend County Bar Association (Jan. 9, 2014) (on file with author).

house counsel, retired, education, etc.).”¹⁸ The options were skewed toward the likely composition of the local legal community, but still conformed to the categories used by the ABA to measure lawyer demographics¹⁹ as well as the modified scale used in the National Survey.²⁰ The remaining three questions were modeled after Question 8 of the National Survey, which asked participants to report the frequency with which they used print materials, free online materials and fee-based online materials.²¹ To ensure comparability, the same five-category frequency scale was used: “very frequently,” “frequently,” “occasionally,” “rarely,” and “never.”²²

¶8 The Local Survey departed from the National Survey by including examples of free and fee-based online resources. Most notably, Casemaker was included alongside Google as an example of a free online resource. While Casemaker is not free to everyone as Google is, all members of the Texas bar, and by extension all attorneys who participated in the Local Survey, receive free access to the basic product.²³ Because the phrase “free online resource” may reasonably mean free to the survey participant or free to everyone, the decision was made to include Casemaker as an example of a free online resource to avoid confusion that might cause participants to skip the question. While the ambiguity of the term “free” was not addressed in the National Survey, the majority of respondents have free access to either Casemaker or Fastcase, a similar low-cost database that provides a basic version at no cost to members of bar associations in several jurisdictions.²⁴ As such, respondents in both surveys had the same opportunity to categorize databases to which they have free access as free online resources. Therefore, the inclusion of Casemaker as an example of a free resource is unlikely to affect the comparability of the results of the Local and National Surveys.

Results of Local Survey

¶9 The Local Survey yielded both expected and unexpected results. For example, as expected, more than 50% of participants reported solo practices. The next largest segment included attorneys in firms with five or fewer attorneys while firms with more than ten were least represented, also as expected (see table 1).

18. See *infra* appendix.

19. ABA Demographics, *supra* note 3.

20. National Survey, *supra* note 9, app., at A-13.

21. *Id.* at 30.

22. See *infra* appendix.

23. The Texas bar association is one of twenty-three state bar associations that offer free access to a basic version of Casemaker to members. See *Bar Association Consortium*, CASEMAKER, <http://www.casemaker.us/ProductsStateBarConsortium.aspx> (last visited Oct. 14, 2014).

24. Fastcase is provided to members of twenty-three state bar associations, the D.C. bar association, and a variety of other local and practice-specific associations. See *Bar Association Subscribers*, FASTCASE, <http://www.fastcase.com/barmembers/> (last visited Oct. 14, 2014).

Table 1

Local Survey Practice Setting Distribution

Practice Setting	No. of Respondents	Proportion of Respondents
Solo Practitioner	44	50.57%
Firm: 2–5	28	32.18%
Firm: 6–10	3	3.45%
Firm: 10+	2	2.3%
Other (government, in-house counsel, retired, education, etc.)	10	11.49%

A substantial number of participants (46%) reported using print resources either very frequently (17.24%) or frequently (28.74%), which is consistent with observations of local attorneys using print resources extensively in the law library or carrying personal copies of books throughout the courthouse.

¶10 An unexpected deviation between reported use of free and fee-based online resources was observed. Rather than observing similar rates of usage, as expected, or increased use of fee-based online resources, as reported in the National Survey, local attorneys reported using fee-based online resources significantly less frequently than free online resources. In fact, 42% of participants indicated that they never (23.86%) or rarely (18.18%) used fee-based resources while only 18% provided the same answers for free resources (see table 2).

Table 2

Frequency of Use Reported for Various Resource Formats

	Print Resources	Free Online Resources (e.g., Google, Casemaker)	Fee-Based Online Resources (e.g., Westlaw, Lexis)
Very Frequently	15 (17.24%)	22 (24.72%)	23 (26.14%)
Frequently	25 (28.74%)	22 (24.72%)	13 (14.77%)
Occasionally	29 (33.33%)	29 (32.58%)	15 (17.05%)
Rarely	14 (16.09%)	14 (15.73%)	16 (18.18%)
Never	4 (4.6%)	2 (2.25%)	21 (23.86%)

Comparison of Local Survey and National Survey

¶11 A major purpose of the Local Survey was to collect data that could be compared with the results of the National Survey. In June 2013, the ALL-SIS Task Force reported the results of a four-part survey that was completed by 603 practitioners between February 9 and April 18, 2012.²⁵ The first section was intended to assess

25. National Survey, *supra* note 9, at 2.

the demographics of respondents, including location of practice, office size, practice setting, and years in practice.²⁶ Questions concerning the amount of legal research performed by respondents as well as their research practices were included in section two.²⁷ The third section contained questions about specific resource formats (such as print resources) as well as specific resource types (such as treatises).²⁸ Finally, the questions in section four were intended to gain insight into practitioners' perceptions of recent law school graduates' research skills.²⁹ Given the extensive distribution of respondents in terms of geography³⁰ and attorney demographics,³¹ the expansive depth and breadth of questions produced invaluable data about the legal research practices of large portions of the U.S. attorney population.

¶12 As shown in figure 1, however, a comparison of the respondents' demographics with attorney demographics nationwide³² reveals underrepresentation among certain segments of the sample population, which may affect the generalizability of survey results. Specifically, solo practitioners, who make up 49% of U.S. attorneys in private practice, composed only 23.68% of private practice respondents in the National Survey.³³ More generally, private practice attorneys were underrepresented by 16.81% when compared with national statistics.³⁴ The combined effect is that solo attorneys accounted for only 13.77% of the total population sampled in the National Survey when they comprise 36.74% of all U.S. attorneys—a 23% discrepancy.³⁵ Small firm practitioners fared somewhat better because of overrepresentation among respondents in private practice; for example, practitioners in firms with 2 to 10 attorneys composed 21% of National Survey respondents while only 15% of attorneys nationwide fall into this category. Otherwise, respondents most often reported employment in midsize and large firms or government entities.³⁶ As a result, the National Survey demographics skewed away from the attorney–patron groups that most often use the Fort Bend County Law Library.

26. *Id.*

27. *Id.* at 3.

28. *Id.* Section 3 begins with question 8, on which three of the four multiple-choice questions in the Local Survey were modeled.

29. *Id.*

30. Respondents reported practicing in a variety of states, the District of Columbia, Puerto Rico, and international locations. Eleven states were unrepresented, while states with large legal communities, such as California, New York, Illinois, and Texas were well represented. National Survey, *supra* note 9, at 4.

31. *Id.* at 5–8.

32. A convenient summary of the American Bar Foundation's most recent attorney demographic estimates as of 2005 as well as other useful demographic information is available on the ABA's website. See ABA Demographics, *supra* note 3.

33. National Survey, *supra* note 9, app., at A-13.

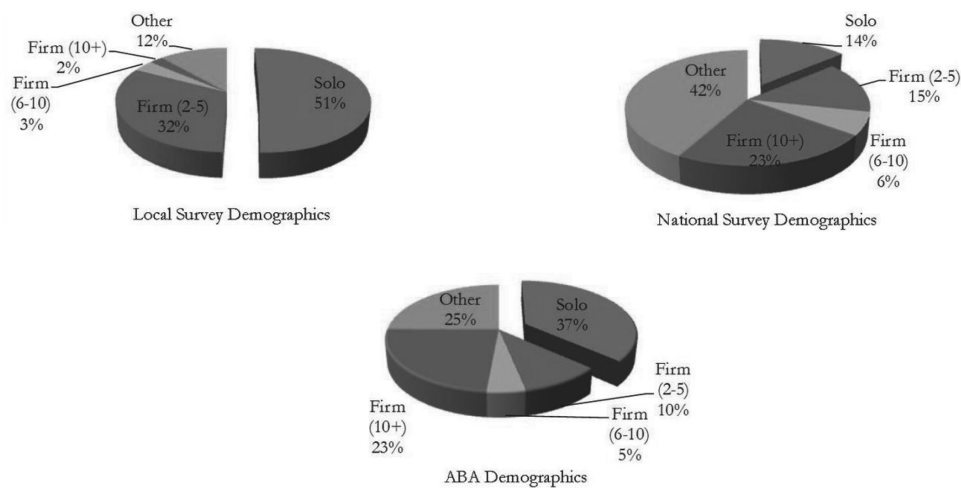
34. *Id.* at A-14.

35. For anyone interested in the math, the author derived the percentage of solo attorneys who responded to the National Survey by multiplying the percentage of private practice attorneys who reported being solo practitioners (23.68%) by the percentage who reported being in private practice (58.16%). Thus, 23.68% of 58.16% of n = 13.77% of n . A similar process can be used to find the national demographic percentages. See *id.* at A-13 to A-14.

36. *Id.*

Figure 1

Comparison of Local Survey, National Survey, and ABA Demographics



¶13 Use of print and free online resources was reported at similar rates by Local and National Survey respondents, but fee-based online materials were used far less frequently by Local Survey respondents. As shown in figure 2, use frequency of print resources was almost identical in both surveys, with no category differing by more than 2.5%. While Local Survey respondents generally reported less frequent use of free online materials, the discrepancy for any individual category remained fairly small, and less than 3% of respondents in each survey reported never using these resources, resulting in the more gradual redistribution shown in figure 3.

Figure 2

Comparison of Print Resource Use

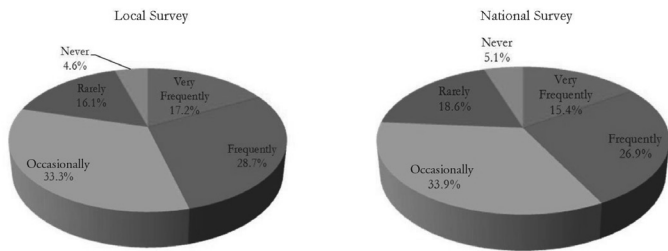
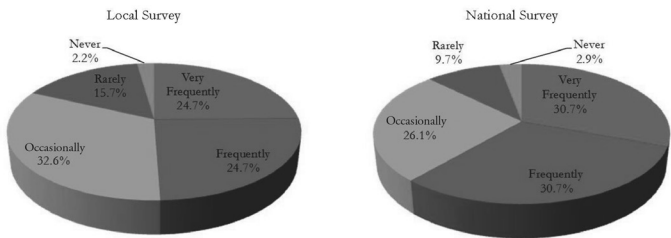


Figure 3

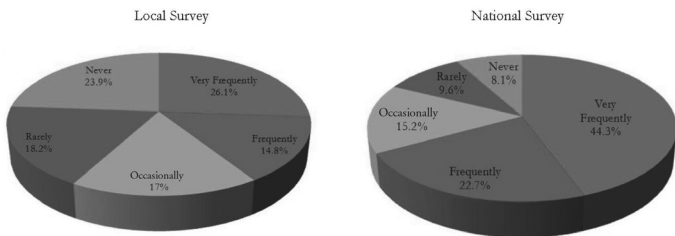
Comparison of Free Online Resource Use



¶14 As shown in figure 4, results for use of fee-based online materials yielded the greatest variance. Whereas 67% of respondents reported very frequent (44.3%) or frequent (22.7%) use of fee-based resources in the National Survey, only 40.9% reported the same in the Local Survey. Because occasional use was reported at similar rates in each survey, the discrepancy shifted to the opposite end of the spectrum, with 42.1% of respondents on the Local Survey reporting that they rarely (18.2%) or never (23.9%) used fee-based online materials, while only 17.7% of National Survey respondents reported the same.

Figure 4

Comparison of Fee-Based Online Resource Use



¶15 The combination of significantly lower rates of fee-based online resource use and significantly higher participation of solo and small firm attorneys in the Local Survey suggests a unique usage pattern among the demographic. The similarity of results in both surveys for other resource categories further indicates that a relationship between resource format and population sampled exists and that the discrepancy is not tied to a general characteristic of the group surveyed. For example, if attorneys in smaller firms simply do less research than those in other settings, one might expect the very frequent and frequent categories to be lower across all resource categories. Similarly, if attorneys in smaller firms struggle with digital literacy,³⁷ one would expect to see both free and fee-based online resource usage to

37. The definition of digital literacy continues to be debated, but it generally involves the ability to use a variety of software and hardware and to think critically about digital media. See Klara Nelson, Marcy Courier & Gilbert W. Joseph, *An Investigation of Digital Literacy Needs of Students*, 22 J. INFO. SYS. EDUC. 96–97 (2011).

decrease significantly and at similar rates as the number of respondents practicing in smaller firms increases. However, because the greatest discrepancy occurred for only one category when a large number of respondents are solo or small firm practitioners, it is worth investigating possible causes of a relationship between these attorneys and decreased use of fee-based online resources.

Conditions Affecting Solo and Small Firm Practitioners' Use of Fee-Based Resources

¶16 Whether they relate to access to subscription databases in public law libraries or curriculum and support services in academic settings, the efforts of law libraries should take into account the needs of the majority of attorneys. Considering the causes of unique research practices of attorneys in smaller firms is thus important. Data collected about attorneys in other settings is being used to set wide-reaching policy in law libraries, law schools, and other venues.³⁸ Gaining a better understanding of the nuanced practices of the majority of attorneys regarding the most commonly taught research tools—as well as the conditions that cause such practices—would lead to more informed and balanced decision making.

¶17 When investigating possible causes, law librarians should be cautious about dismissing low usage rates as a purely economic issue and instead consider cost as one of several contributing factors. Limited access based on an inability to pay could easily lead to a “digital divide” between firms that can afford to pay for expensive database subscriptions and those that cannot.³⁹ This understanding of the issue would mirror the traditional view of the digital divide, which has been defined and researched as “a simple separation between ‘haves’ and ‘have nots’” where “the ‘haves’ have access to computers and the internet and the ‘have nots’ do not.”⁴⁰ However, technology has become more widely available, the mere inability to access the tools has become only one of many possible causes studied, which

38. See National Survey, *supra* note 9, at 1 (noting “[t]he Task Force was charged with ‘identify[ing] the current and future research skills that law school graduates need to succeed in legal practice’” and that the National Survey would be used to gain “a better understanding of how practicing attorneys conduct legal research”). See also AM. ASS’N OF L. LIBR., PRINCIPLES AND STANDARDS FOR LEGAL RESEARCH COMPETENCY 2–3 (2013), <http://www.aallnet.org/main-menu/Advocacy/legal-researchcompetency/principlesstds> (hereinafter AALL Research Competencies) (results of existing surveys used to support call for reform in legal education and adoption of legal research competency principles by “law schools, CLE providers, bar examiners, paralegal and law office administration associations, law firms, and others”).

39. Hall suggests that the inability of smaller firms to pass legal research costs to clients adversely affects their ability to access expensive databases, which puts them at a disadvantage and “perpetuates the notion that the legal world is run by the ‘haves’ at the expense of the ‘have-nots.’” David Hall, *Google, Westlaw, LexisNexis and Open Access: How the Demand for Free Legal Research Will Change the Legal Profession*, 26 SYRACUSE SCI. & TECH. L. REP. 53, 72 (2012). See also Michael E. Heintz, Comment, *The Digital Divide and Courtroom Technology: Can David Keep Up with Goliath?*, 54 FED. COMM. L.J. 567 (2002) (arguing that an inability to pay for software and hardware for courtroom presentations and law practice technology could lead to a “digital divide” and that courts should continue to provide basic technologies to “level the playing field”).

40. Enrico Ferro, Natalie C. Helbig & J. Ramon Gil-Garcia, *The Role of IT Literacy in Defining Digital Divide Policy Needs*, 28 GOV’T INFO. Q. 3, 4 (2011).

include demographics and skill set.⁴¹ The transformation of the digital divide from a simple economic issue to a multifaceted problem is instructive when considering possible causes of the unique practices of solo and small firm practitioners in relation to fee-based online resources. Although there is evidence that attorneys in smaller settings struggle with the cost of expensive databases,⁴² the available literature suggests that the fee is not the only factor.⁴³ Instead, it is likely one of several, which may include the technical ability of the individual attorney as well as reduced need for expensive databases due to efficiencies of small firm practice, increased experience, and reliance on professional networks. If economic issues are explored exclusively, future research might ignore these other possibilities. Therefore, cost should be considered as just one of several factors that may influence the practices of solo and small firm attorneys throughout their careers.

Economic Issues

¶18 The most obvious obstacle to using fee-based resources is the fee. The costs of database subscriptions can be quite expensive.⁴⁴ In large part, this is due to market concentration in favor of just two vendors—Westlaw and Lexis.⁴⁵ With a 90% market share in the legal information industry, these companies form a “duopoly,” which can drive up prices.⁴⁶ Typically, charges for using these databases are incurred through a combination of hourly, transactional, and flat-rate billing.⁴⁷ Under any combination, subscriptions can be cost-prohibitive because fees incurred outside of a flat-rate plan can be unexpectedly large and fixed rates can increase annually with increased usage.⁴⁸ One scholar argues that these characteristics make Westlaw and Lexis “particularly suited to large law firms that bill clients.”⁴⁹ Because such pricing might be cost-prohibitive for a substantial number of legal information consumers, these vendors have offered limited access products for reduced fees to attorneys in smaller settings.⁵⁰ These products are fundamentally different in that they are often severely restricted by jurisdiction or practice area or both, and there is no option to retrieve documents beyond a predetermined set of databases.⁵¹ Additionally even reduced access can be relatively expensive.⁵²

¶19 Small firms are not well positioned to pay the high costs of traditional legal database subscriptions. While there are exceptions to every rule, smaller firms

41. *Id.*

42. See *infra* section on economic issues.

43. See *infra* sections on technical ability, efficiencies, and professional networks.

44. Olufunmilayo B. Arewa, *Open Access in a Closed Universe: Lexis, Westlaw, Law Schools, and the Legal Information Market*, 10 LEWIS & CLARK L. REV. 797, 830 (2006).

45. *Id.* at 821.

46. Hall, *supra* note 39, at 67.

47. Sarah Gotschall, *Teaching Cost-Effective Research Skills: Have We Overemphasized Its Importance?*, 29 LEGAL REFERENCE SERVICES Q. 149, 155 (2010).

48. *Id.* at 156–57.

49. Arewa, *supra* note 44, at 830.

50. *Id.* at 831.

51. Gotschall, *supra* note 47, at 157.

52. Arewa, *supra* note 44, at 831.

generally face financial insecurity and issues with cash flow.⁵³ When compared with larger firms, solo and small law firms charge lower rates and generate fewer profits, which results in lower attorney incomes.⁵⁴ Recent economic conditions seem to be pushing the rates of smaller firms even lower.⁵⁵ Attorneys in smaller settings are also facing increased competition from nonlawyer alternatives, such as document assembly and legal information websites,⁵⁶ for the business of their core clients—individuals and small businesses.⁵⁷ By some estimates, these new competitors may be absorbing millions of dollars each year from the personal legal services market that might otherwise go to solo and small firm practitioners.⁵⁸ With competition on two fronts, it is easy to imagine that paying fees for expensive database subscriptions feels less like a nibble and more like a bite out of an already small financial pie.

¶20 In addition to reduced income, smaller firms have greater difficulty with cost recovery than other firms. Large firms have traditionally passed some or all of the fee charged by the vendor directly to the client.⁵⁹ As a result, the actual cost of using the database is shared and only a portion, if any, can be counted as overhead.⁶⁰ Solo and small firm attorneys face a very different scenario because they rarely have the option to pass along costs to their clients.⁶¹ Without the option to recover these costs, the price of legal information must be absorbed.⁶² Some firms might be able to increase rates charged to all clients to defray costs, but smaller firms have had difficulty maintaining rates through the recent economic downturn.⁶³ Options to recover the costs of online research as part of an award of attorney's fees following successful litigation—an option smaller firms might use to offset the client's fee—vary by jurisdiction, and several courts and legislatures discourage the practice.⁶⁴ As a result, increased overhead from research costs is

53. Leslie C. Levin, *The Ethical World of Solo and Small Law Firm Practitioners*, 41 HOUS. L. REV. 309, 323 (2004) (reporting results of qualitative study of forty-one solo and small firm attorneys; regardless of practice area, many reported that attracting clients and maintaining cash flow “are the biggest challenges of working in a solo or small firm practice”).

54. Ann Juergens, *Valuing Small Firm and Solo Law Practice: Models for Expanding Service to Middle-Income Clients*, 39 WM. MITCHELL L. REV. 81, 87–88 (2012).

55. *Id.* at 119.

56. Ronald W. Staudt & Andrew P. Medeiros, *Access to Justice and Technology Clinics: A 4% Solution*, 88 CHI-KENT L. REV. 695, 706 (2013).

57. Herrera, *supra* note 6, at 898–99 (noting that smaller firms are more likely than other firms to represent individuals and small businesses).

58. Herrera, *supra* note 6, at 898.

59. Arewa, *supra* note 44, at 823.

60. *Id.*

61. Hall, *supra* note 39, at 72. It should be noted that all firms, regardless of size, are having trouble passing the costs of legal research on to clients. See Rachel M. Zahorsky, *Firms Wave Goodbye to Billing for Research Costs* (Nov. 14, 2012), http://www.abajournal.com/lawscribbler/article/firms_wave_goodbye_to_billing_for_research_costs/. Nevertheless, the same pressures that force larger firms to bill fewer costs may completely foreclose the possibility for smaller firms.

62. CARY J. GRIFFITH & VICKI C. KRUEGER, RECOVERING ONLINE LEGAL RESEARCH COSTS: BEST PRACTICES FOR ENHANCING SMALL FIRM PROFITABILITY AND SERVICE TO CLIENTS 4 (2005) (“online research can be one of the biggest expenses incurred by modern law firms—often second only to personnel costs as the highest overhead item in a small firm’s budget”).

63. See Juergens, *supra* note 54, at 119.

64. Deborah K. Hackerson, *Access to Justice Starts in the Library: The Importance of Competent Research Skills and Free/Low-Cost Research Resources*, 62 ME. L. REV. 473, 482 (2010) (noting a split of authority on the recovery of costs for computer assisted legal research).

likely to reduce already limited profits for solo and small firm practitioners.⁶⁵ It is no surprise that these attorneys cite cost as an obstacle to acquiring legal information.⁶⁶

Technical Ability

¶21 Solo and small firm practitioners who can afford database subscriptions may still need training on the underlying technologies or on new search platforms. As demonstrated by D. Casey Flaherty's much-discussed audit for technology competency, a large number of attorneys struggle with technology in their practices.⁶⁷ Nelson Miller and Derek Witte suggest that many lawyers are Luddites who actively oppose the use of technology in their practices.⁶⁸ In a study by Leslie Levin, older attorneys reported that they "were not technologically competent" and that their inability to use technology negatively affected their use of fee-based online resources.⁶⁹ Without basic technology skills, the ability to use Internet-based resources is diminished. Nevertheless, a large number of respondents reported at least occasional use of free online resources in both the Local (82%) and National (87.5%) Surveys.⁷⁰ Therefore, it is unlikely that a general inability to use technology is a widespread cause of lower usage rates among solo and small firm practitioners.

¶22 A lack of training on Westlaw and Lexis might lead to a lack of technical ability that is more prevalent in smaller firms than in other settings. Such a suggestion may be counterintuitive since, as David Hall notes, law schools are graduating "Westlaw addicts" whose free, unlimited access to these products gives them plenty of practice.⁷¹ However, law school training provides at most a three-year snapshot of the technology as it exists before graduation, and with new products such as WestlawNext and Lexis Advance,⁷² continued training is necessary to maintain technical proficiency.⁷³ Solo and small firm attorneys have fewer options than their large firm counterparts in this regard. Genevieve Blake Tung suggests that training and development of attorneys has generally been accomplished through mentorships within a firm.⁷⁴ Many large firms devote substantial resources to training,

65. GRIFFITH & KRUEGER, *supra* note 62, at 4.

66. See Levin, *supra* note 53, at 334.

67. D. Casey Flaherty, *Could You Pass This In-House Counsel's Tech Test? If the Answer Is No, You May Be Losing Business* (Jul. 17, 2013), http://www.abajournal.com/legalrebels/article/could_you_pass_this_in-house_counsels_tech_test (reporting results of a technology skills audit by Kia Motors America, Inc. in-house counsel in which all firms tested failed to complete a set of tasks with widely available software in the amount of time provided).

68. See Nelson P. Miller & Derek S. Witte, *Helping Law-Firm Luddites Cross the Digital Divide—Arguments for Mastering Law-Practice Technology*, 12 SMU L. REV. 113 (2009).

69. Levin, *supra* note 53, at 333.

70. See *supra* section comparing the Local and National Surveys.

71. Hall, *supra* note 39, at 73.

72. Michelle M. Wu & Leslie A. Lee, *An Empirical Study on the Research and Critical Evaluation Skills of Law Students*, 31 LEGAL REFERENCE SERVICES Q. 205, 206 (2012) (noting that WestlawNext and Lexis Advance were still being adopted by academic law libraries in late 2011).

73. Training is likely to be a continuing concern as the median age of attorneys—and, correspondingly, the amount of time they have been out of law school—increases. See ABA Demographics, *supra* note 3. Additionally, specialized training may be a continuing requirement to ensure database use does not result in surprise billing. See Gotschall, *supra* note 47, at 155.

74. Tung, *supra* note 5, at 280.

including billable-hour credit for the attorney's time.⁷⁵ Smaller firms are not able to devote such resources to training, especially when the firm consists of only one attorney.⁷⁶ Training may be available from the database provider.⁷⁷ Smaller firms, however, may not have existing accounts, or their accounts may not represent big business, so vendors are unlikely to give them the attention needed for adequate training. On the attorney's end, using time for training rather than marketing or paid legal work has few immediate incentives. While all of these obstacles could be overcome, they may be sufficient to discourage some solo and small firm attorneys from receiving adequate training, resulting in decreased use of subscription databases.

Efficiencies of Solo and Small Firm Practice

¶23 Certain efficiencies inherent in solo and small firm work may also contribute to decreased reliance on fee-based online resources. Attorneys in all practice settings become more efficient researchers as they gain more experience and begin to specialize.⁷⁸ Between 2006 and 2008, Judith Lihosit interviewed fifteen attorneys to determine how they conduct legal research in practice.⁷⁹ Interviewees consistently reported that they became faster researchers as they gained experience.⁸⁰ Familiarity with a practice area also results in more efficient research because the attorney needs to consult fewer secondary sources for context and fewer finding tools before discovering the appropriate terms of art.⁸¹ As the need for overview information is reduced and the path to primary source material is shortened, attorneys may find it less necessary to pay for expensive database subscriptions.

¶24 However, experience cannot fully displace the need for research tools because experience is only valuable to those who have it. New attorneys lack experience. The attorneys in Lihosit's study reported extensive use of "legal encyclopedias, treatises, and practice guides" as young associates.⁸² As many as 49% of graduates who enter private practice go directly to smaller firms or solo practices, reducing the efficiencies derived from experience.⁸³ Similarly, attorneys who encounter new areas of law do not have the full benefit of experience on their side.⁸⁴ In Lihosit's study, attorneys who encountered a new area of law turned to "secondary sources, in-house documents, and other attorneys" to gain an understanding of the topic and "locate key cases and key terminology."⁸⁵ Because solo and small firm attorneys are more likely than others to become general practitioners, they are the

75. *Id.*

76. *Id.*

77. Greenberg, *supra* note 8, at 250.

78. Judith Lihosit, *Research in the Wild: CALR and the Role of Informal Apprenticeship in Attorney Training*, 101 LAW LIB. J. 157, 173 (2009).

79. *Id.* at 170.

80. *Id.* at 173.

81. *Id.*

82. *Id.*

83. Tung, *supra* note 5, at 277.

84. Lihosit, *supra* note 78, at 174.

85. *Id.*

ones most likely to encounter new areas of law throughout their careers.⁸⁶ Without the ability to anticipate where their legal work will take them, these attorneys will likely not have taken every law school course needed to prepare them for every topic they will encounter.⁸⁷ As a result, continued access to secondary sources and practice materials may in fact be most important to solo and small firm practitioners. Nevertheless, Lihosit suggests that “[a]ttorneys are still learning to do research . . . by using whatever tools are available to them.”⁸⁸ If this is true for all attorneys, those in smaller settings would be able to transfer their strategies for finding information outside of fee-based online resources to new practice areas even if the concepts do not easily translate. Assisting attorneys in acquiring legal research agility is a task well suited for law libraries, so it would be useful to learn the extent to which experience is a contributing factor in reducing the need for secondary source research, as Lihosit’s study suggests, and how it affects use of particular resources in different segments of the attorney population.

¶25 Some solo and small firm attorneys may also benefit from efficiencies attributable to the repetitive nature of their practices. The work of smaller firms has been described as “routine in nature.”⁸⁹ This may stem from their representation of clients in personal matters such as divorce, personal injury, and real estate transactions, which can involve many of the same issues and documents from client to client.⁹⁰ While calling a practice routine is not very flattering, Luz Herrera suggests that enterprising attorneys may view it “as an asset to serving more clients with fewer resources” through delegation of tasks to support staff, standardization of forms and documents, and use of technology to streamline workflow.⁹¹ They can also use document assembly software to promote efficiency.⁹² As attorneys develop in-house repositories of standardized documents, they reduce the need to perform research to complete similar tasks.⁹³ Without the demand for bespoke solutions from high-paying clients, solo and small firm attorneys may be able to do substantially less research than their large firm counterparts.⁹⁴ Herrera provides the example of a solo attorney who combines the efficiencies of routine work into a “virtual law firm” focused on simple family law matters. With the assistance of technology, the attorney can serve a large number of Maryland litigants with similar legal issues “from his Palm Beach Gardens home.”⁹⁵ Although few attorneys can make their practices so efficient that they can operate from another state, they may be able to reduce the amount of research required for their practice. For example, an attorney

86. Tung, *supra* note 5, at 298.

87. *Id.* (providing example of a young solo attorney who taught himself how to practice bankruptcy law using secondary resources in a county law library to take advantage of a new business opportunity).

88. Lihosit, *supra* note 78, at 174.

89. Herrera, *supra* note 6, at 909.

90. *Id.* at 903.

91. *Id.*

92. Juergens, *supra* note 54, at 118.

93. See Lihosit, *supra* note 78, at 174.

94. I. Trotter Hardy, *Why Legal Research Training Is So Bad: A Response to Howland and Lewis*, 41 J. LEGAL EDUC. 221, 222 (1991).

95. Herrera, *supra* note 6, at 900.

who conducts research on public law library computers to find case law addressing her state's summary judgment standard will be able to reuse the authority in motions for other clients. While novel legal issues requiring more in-depth research will arise, efficiencies derived from routine work within the attorney's practice areas may reduce the need to access expensive databases. If the need is adequately reduced, attorneys may be able to conduct a sufficient amount of research using free resources, including free access to print resources and subscription databases at public law libraries as well as databases provided through bar associations.

¶26 Regarding the value of flexible rate plans offered by Westlaw and Lexis, an interesting paradox arises if indeed a substantial number of solo and small firm practitioners can take advantage of efficiencies derived from experience or repetition. Westlaw and Lexis tend to offer discounts by reducing access.⁹⁶ Quite often, access is limited by subject area, reducing the few secondary sources available to those within the subscriber's practice area.⁹⁷ Experience and repetition reduce the need for research within the attorney's practice area, which would seem to reduce the value of the access granted. Yet as Sarah Gotschall reports, subscriptions for smaller firms often restrict out-of-plan searching.⁹⁸ Since these attorneys are the most likely to encounter new practice areas throughout their careers and more in-depth research is required for new practice areas, one might imagine access to resources outside of their practice areas would become more valuable over time. As a result, solo and small firm practitioners are met with a scenario in which they give up much of the information they will need to access in exchange for discounts that make access to subscription databases possible. This may explain, at least in part, why these attorneys choose not to access subscription databases even though less expensive options are available.

Effect of Professional Networks

¶27 Practitioners in smaller firms may also have a lessened need to pay for legal information due to their reliance on professional networks. Lihosit's study focused on the role of advice networks in training attorneys to conduct research.⁹⁹ Every attorney she interviewed indicated that he or she "had at some point looked to other attorneys for guidance."¹⁰⁰ The advice networks to which the attorneys turned consisted of senior attorneys in a firm, attorneys in shared office space, local attorneys who practice in the same subject area, and even opposing counsel. Attorney networks might also extend through the Internet via e-mail, electronic mailing lists, and document repositories.¹⁰¹ While Lihosit's study did not involve a representative sample of solo and small firm practitioners, other studies have found that reliance on similar networks, including attorneys from other firms¹⁰² and elec-

96. Arewa, *supra* note 44, at 831.

97. Gotschall, *supra* note 47, at 157.

98. *Id.*

99. Lihosit, *supra* note 78, at 172.

100. *Id.*

101. *Id.*

102. Levin, *supra* note 53, at 328-29.

tronic mailing lists,¹⁰³ informs other aspects of small firm practice. At the local level, bar associations also help connect attorneys in similar practice areas to facilitate the exchange of information.¹⁰⁴ As such, Lihosit's findings that "use of secondary sources is usually supplemented with, or even over time replaced by consultation with in-house document repositories or more experienced attorneys who are part of [an] informal network" is likely to be widely applicable among the respondents in the Local and National Surveys.¹⁰⁵ As a result, reliance on an advice network may offset the amount of research that needs to be completed with expensive databases. If a young attorney can glean context and terms of art from an experienced attorney, she may be able to bypass extensive secondary source research just as an experienced attorney might. Also, because advice is likely to be most plentiful within an attorney's specialty,¹⁰⁶ the paradox in which access to the most useful databases is limited in exchange for discounts that make access possible, may also come into play when attorneys rely on advice networks, making even discounted products less appealing. Ultimately, the extent to which professional networks allow attorneys in smaller firms to practice without incurring the high cost of subscription databases warrants further study.

Implications for Law Libraries

¶28 The unique research practices of lawyers in small practice settings in relation to fee-based online resources—as well as the underlying causes thereof—have a variety of implications for law libraries.¹⁰⁷ As is suggested by the title of this article, solo and small firm practitioners make up the majority of practicing attorneys. Private practice attorneys have always comprised about 75% of all attorneys¹⁰⁸ and, as of 2005, 69% of those attorneys practiced in firms that ranged from one to ten attorneys.¹⁰⁹ As such, 51.75%¹¹⁰ of all attorneys in the United States can be called a solo or small firm practitioner.¹¹¹ There are also indications that the ranks of attorneys in smaller firms are growing.¹¹² Therefore, any effort to gain "a better understanding of how practicing attorneys conduct legal research"¹¹³ should give due consideration to the practices of this growing majority. In doing so, law libraries

103. Juergens, *supra* note 54, at 118 (reporting on electronic mailing lists maintained by state bar association that help connect attorneys in smaller firms).

104. *Fort Bend County Criminal Defense Attorneys Association*, <http://www.fbccdla.org/> (last visited Oct. 14, 2014) (members receive access to an electronic document repository and member directory).

105. Lihosit, *supra* note 78, at 172.

106. *See id.*

107. The implications discussed in this section will focus on public and academic law libraries. As previously noted, law firm librarians tend to be employed in settings that cannot be described as solo or small firm practices. As such, any concern they have for solo and small firm practitioners likely lies beyond the scope of this article.

108. Herrera, *supra* note 6, at 888.

109. ABA Demographics, *supra* note 3.

110. 69% of 75% of $n = 51.75\%$ of n .

111. Juergens, *supra* note 54, at 93 (suggesting that the term "small firm" includes "ten or fewer lawyers").

112. Tung, *supra* note 5, at 276–77.

113. National Survey, *supra* note 9, at 1.

would be better positioned to promote access to needed resources, support access to justice for low- and middle-income litigants, develop legal research curricula that prepare all graduates for practice,¹¹⁴ and properly implement legal research competency standards.

Providing Access and Support

¶29 The unique realities facing many solo and small firm practitioners should cement the commitment of public law libraries to providing access to fee-based online resources, which are likely necessary tools for modern practice. There should be little doubt that legal research is important to the practice of law.¹¹⁵ Richard Danner notes that the purpose of practitioner research is “to find answers to problems” and the manner in which research is conducted “is driven by the nature of the primary source materials and by their sheer bulk.”¹¹⁶ With an estimated 8.5 million cases published through the end of 2013,¹¹⁷ the need for complex finding tools and citators is great. Although attorneys in smaller settings may be able to limit their research needs through a variety of strategies,¹¹⁸ new attorneys, attorneys who venture into new practice areas, and attorneys seeking to stay up-to-date will need access to extensive collections of secondary sources in addition to primary sources.¹¹⁹ As a result, solo and small firm practitioners will very likely need access to the expensive, high-powered research products offered by Westlaw and Lexis. The truth of the matter is that these vendors control 90% of the legal publishing market.¹²⁰ In the case of West, government outsourcing of court document publishing means that, in many jurisdictions, the publisher actually wrote the book—or, at least, published the book—that practitioners will have to use.¹²¹ As the copyright owner for the West Digest System and the headnotes appearing at the

114. Phebe E. Poydras, *Developing Legal Information Literate Law Students: “That Dog Will Hunt,”* 32 LEGAL REFERENCE SERVICES Q. 183, 185 (2013) (suggesting that a wider view taking into account “as many practice areas as possible” should be adopted by legal research educators when developing legal research curricula).

115. The word “should” is necessitated because some commentators have called into question the importance of legal research in the practice of law. See, e.g., Hardy, *supra* note 94, at 222 (“legal research may not be all that important”). However, inclusion of legal research as a fundamental lawyering skill in the ABA’s often-cited MacCrate Report as well as evidence of consequences faced by attorneys who fail to properly conduct legal research strongly suggests otherwise. See Yasmin Sokkar Harker, “Information Is Cheap, but Meaning Is Expensive”: Building Analytical Skill into Legal Research Instruction, 105 LAW LIB. J. 79, 81 (2013).

116. Richard A. Danner, *Contemporary and Future Directions in American Legal Research: Responding to the Threat of the Available*, 31 INT’L J. LEGAL INFO. 179, 185 (2003).

117. Danner discusses an often-cited estimate of 6 million cases through 2000 with “200,000 new cases published annually.” Conservatively, if no new courts were formed and existing courts did not increase their rates of publication, another 2.5 million cases would be added between 2001 and 2013 for a total of 8.5 million. See *id.* at 181.

118. See *supra* sections on efficiencies and professional networks.

119. Tung, *supra* note 5, 298 (“Attorneys who are thrust into new or unanticipated situations have both a great need for research resources and a great appreciation for how law libraries can assist them”); Levin, *supra* note 53, at 333 (suggesting that solo and small firm practitioners stay up-to-date by doing legal research and reading bar association publications, among other things).

120. Hall, *supra* note 39, at 54–55.

121. Arewa, *supra* note 44, at 815 (noting that “West’s reporters [have] achieved quasi-official status for American case law”).

beginning of cases,¹²² West did write the book on two of the most important finding tools in American jurisprudence.¹²³ Now that electronic legal research is ubiquitous, Westlaw and Lexis are likely still the best options for comprehensive research.¹²⁴ Hall notes that they are the most reliable resources available and that recent competitors lack many of the tools, such as a citator, required for legal research.¹²⁵ Solo and small firm practitioners may find ways to minimize their use of expensive databases, but when the need arises, it is likely critical that they obtain access.

¶30 Public law libraries, as well as academic law libraries that provide services to alumni and local attorneys, offer the best option for making expensive databases available to solo and small firm practitioners when needed. Public law libraries have long been considered collective institutions that might support the research needs of practitioners, thereby offsetting the overhead associated with building and maintaining a private law library.¹²⁶ A recent study of county law library mission statements suggests these institutions remain ready to fulfill this role, with a majority indicating that they “provide access to legal information and research services to the members of the local community.”¹²⁷ Similarly, academic law libraries can promote collective cost containment by opening their collections and electronic offerings to local attorneys.¹²⁸ Making resources available to a broad range of patrons increases the likelihood that expensive tools will be used frequently enough in the aggregate to justify the cost even though individual use may be infrequent as the result of reliance on experience or professional networks. The expense is spread over a wider pool by channeling the cost through filing fees or other funding mechanisms, thereby lessening the impact on individual practitioners.

¶31 As discussed above, however, the reason for lower usage rates of fee-based resources among solo and small firm practitioners may not be entirely economic.¹²⁹ If, for instance, attorneys in smaller settings need training on new search interfaces, providing mere access will not solve the issue. Nevertheless, public law libraries are well positioned to assist. Whether through point-of-need assistance or through educational opportunities, law librarians can provide continuing training on databases. Librarians can also connect attorneys with appropriate electronic resources when they move into new practice areas, engage in continuing education, or implement current awareness strategies to acquire information that they share with

122. Hall, *supra* note 39, at 69.

123. There is some discussion about how important the West Digest System is for legal research. Some argue it is so ubiquitous in law school education that it actually shapes how attorneys think about the law. Others take a different view. See Joseph A. Cluster, *The Universe of Thinkable Thoughts Versus the Facts of Empirical Research*, 102 LAW LIB. J. 251 (2010). Perhaps the amount of attention given to the subject, if nothing else, can serve as proof of its significance.

124. Hall, *supra* note 39, at 55.

125. *Id.* at 55, 59 (noting Google Scholar does not provide a citator).

126. Peter Freeman, *Network Prospects for the Legal Profession*, 65 LAW LIBR. J. 4, 4 (1972).

127. Greg Lambert, County Law Libraries: 50 Mission Statements (Aug. 1, 2011), <http://www.geeklawblog.com/2011/08/county-law-libraries-50-mission.html>.

128. Tung, *supra* note 5, at 299 (Tung suggests that offering such services would help practitioners but may affect collection development policies because the local bar may have different information needs than students and faculty).

129. See *supra* sections on technical ability, efficiencies, and professional networks. Local Survey respondents have free access to Westlaw and Lexis through local public law libraries, which suggests access is not the only issue. See Fort Bend County Libraries, *Fort Bend County Law Library* (2013), <http://www.fortbend.lib.tx.us/branches/ll.html> (free access to Westlaw and Lexis).

professional networks. Such services need not be limited to expensive databases. Free and low-cost resources come from a variety of sources, including courts and other government agencies, law schools, bar associations, and several commercial vendors.¹³⁰ Bringing these diverse resources together in a usable manner and assisting attorneys in moving between free and fee-based resources are tasks well suited for law librarian expertise.

Access to Justice

¶32 Supporting solo and small firm practitioners has positive implications for access to justice. With only one legal aid attorney for every 6,861 low-income Americans,¹³¹ as much as 80% of the civil legal needs for those in the bottom income brackets go unmet.¹³² The Legal Service Corporation, a federally funded nonprofit corporation that promotes equal access to justice,¹³³ reports that its affiliate legal aid organizations “turn away a million eligible prospective clients every year because they lack the capacity and the lawyers to serve [low-income litigants] legal needs.”¹³⁴ When considering the unmet legal needs of middle-income Americans, the economics of access to justice look even bleaker. Ronald Staudt and Andrew Medeiros suggest that there are “millions of modest-income people who are not eligible for legal aid [and] cannot afford the fees charged by lawyers.”¹³⁵ Juergens notes that middle-income litigants’ needs “are largely left for the market to fill” where a glut of unemployed attorneys “should translate into lower costs and more legal needs being met.”¹³⁶ Several commentators have pointed out, however, that despite the presence of both high supply and high demand, there are still unemployed attorneys and unmet legal needs.¹³⁷

¶33 Part of the solution¹³⁸ to the crisis of unmet legal needs of low- and middle-income people includes services offered by solo and small firm practitioners. Juergens argues that smaller practices are uniquely positioned to assist individuals of modest means because these firms generally charge the lowest rates, are widely distributed geographically, and are consistently the largest segment of attorneys.¹³⁹ Solo and small firm practitioners also tend to practice more—and therefore, have more expertise—in areas with which low- and middle-income clients need assistance.¹⁴⁰ Nevertheless, access to an attorney is still cost-prohibitive for many Americans. Juergens argues that one of the best ways solo and small firm practitio-

130. Arewa, *supra* note 44, at 835–36.

131. Hackerson, *supra* note 64, at 475.

132. Staudt & Medeiros, *supra* note 56, at 696.

133. *Id.* at 707.

134. *Id.* at 696.

135. *Id.*

136. Juergens, *supra* note 54, at 83–84.

137. *Id.* See also Tung, *supra* note 5, at 277.

138. The solution to such an extensive crisis will likely be multifaceted. Other parts of the solution will include encouraging or mandating pro bono work, increased funding for legal aid, and facilitating pro se representation as appropriate. See Juergens, *supra* note 54, at 84.

139. Juergens, *supra* note 54, at 85–87.

140. Herrera, *supra* note 6, at 906.

ners can reduce their fees is by reducing their overhead.¹⁴¹ An independent study commissioned by West reveals that “online research can be one of the biggest expenses incurred by modern law firms—often second only to personnel costs as the highest overhead item in a small firm’s budget.”¹⁴² Lowering the cost of legal information thus translates to a reduction in overhead. Market forces, including competition from nonlawyer services, are already pressuring small firms to lower their costs.¹⁴³ Because affordability is a major obstacle to hiring an attorney, lower prices allow services to be offered to people whose needs might otherwise go unmet, which could also result in more employment opportunities for unemployed lawyers.¹⁴⁴ Another possibility is that more financial security could translate into more pro bono work by smaller firm attorneys, who are uniquely qualified to address the needs of low- and middle-income clients. Many attorneys begin “law school with a desire to do public interest work,” but succumb to economic pressures either before or shortly after graduation.¹⁴⁵ Reducing the financial uncertainty that plagues many solo and small firm attorneys could very well lead to increased hours spent on pro bono work.¹⁴⁶ Regardless of the fee arrangement, helping smaller firms reduce their overhead would likely result in more needs met for low- and middle-income people.

¶34 Law libraries have a variety of options for helping practitioners reduce the costs of accessing legal information. Providing the local bar with access to and training for fee-based online resources is well within the purview of public law libraries as well as academic law libraries that can open their collections.¹⁴⁷ Legal research curricula could be adjusted to better prepare solo and small firm practitioners to conduct research using the tools available to them in practice. The benefits of implementing such measures would likely produce results similar to those realized by the Law School Consortium Project.¹⁴⁸ A joint venture of four law schools, the Law School Consortium Project was designed to promote the formation of professional networks of solo and small firm practitioners and to provide support services to network attorneys who work with low- and middle-income clients and

141. Juergens, *supra* note 54, at 115.

142. GRIFFITH & KRUEGER, *supra* note 62, at 4.

143. Juergens, *supra* note 54, at 119 (“There is some evidence that rates for small firm practitioners are trending down in conjunction with the downturn in the economy, even as medium and large firms continue to slowly raise their hourly rates.”).

144. *Id.* at 86.

145. Deborah Howard, *The Law School Consortium Project: Law Schools Supporting Graduates to Increase Access to Justice for Low and Moderate-Income Individuals and Communities*, 29 FORDHAM URB. L.J. 1245 (2002).

146. Lest the reader think the author naïve, not all attorneys will have an innate desire to give away the shop just because they can. Nevertheless, in jurisdictions where pro bono work is mandatory or strongly encouraged, lessening the financial pressures may also increase the likelihood that practitioners who are less inclined toward public service will actually comply with the requirements rather than factoring the consequences as a business expense. Lower fees charged by those who want to do good may also drive down prices throughout the market, resulting in a more widespread positive change.

147. See *supra* section on providing access and support.

148. Howard, *supra* note 145, at 1257–58.

underserved communities.¹⁴⁹ The support took many forms, from training to discounted malpractice insurance to mentoring. It also included free or discounted access to subscription databases and, at CUNY Law School, the assistance of a dedicated research librarian.¹⁵⁰ As one network attorney who used the law library service observed, “Through help with research [from the CUNY network’s staff librarian] and the ability to discuss cases, through email and directly with other members, I can do things more quickly and thoroughly, thereby saving my clients money and representing them more aggressively.”¹⁵¹ Access to resources in public law libraries can achieve similar results. In response to an open-ended question, a Local Survey participant pointed out that she “would have no access to paid online legal research” if Westlaw were not available at the law library. “It helps me, as a solo practitioner, hold my own against bigger firms and it helps me do the best job I can for my clients!” she noted. By providing such access, law libraries can play a part in promoting access to justice for low- and middle-income people.

Legal Research Curricula

¶35 The best approach to teaching legal research has been the topic of much debate. Tung examined legal research education within the context of the bifurcated debate about law school curriculum.¹⁵² On the traditional side of the debate, some argue for a continuation of the Langdellian model that emphasizes the case method where “libraries [are] the laboratories of legal science.”¹⁵³ On the other side, commentators argue for more practical training for future lawyers.¹⁵⁴ While advocates of practicality spurred law schools to develop legal research classes and clinical programs during the twentieth century, law schools continue to devote most of their curricular attention to traditional, academic instruction.¹⁵⁵ Nevertheless, the 2007 Carnegie Report has increased pressure on law schools to provide more practical training by including “‘practical skill’ as one of the three pillars that provide structure to legal education.”¹⁵⁶ David Armond and Shawn Nevers argue that “legal research is certainly more practical than many law school courses, [but] the way it is taught in the academy can be estranged from the way it is currently practiced in the field” and that “[i]n today’s ever-changing legal information environment, a connection to contemporary legal research practice is more important than ever.”¹⁵⁷ Because the majority of attorneys practice in small firms, one of the best ways academic law libraries can make legal research instruction more practical

149. Herrera, *supra* note 6, at 921.

150. Howard, *supra* note 145, at 1246–56.

151. *Id.* at 1259.

152. Tung, *supra* note 5, at 281.

153. *Id.*

154. To show just how practical some think the training should be, Tung provides a quote from “noted ‘legal realist’” and law professor Carl Llewellyn, who said, “I hold that a lawyer’s first job is to be a *lawyer*. I hold that we must teach him, first of all, to make a legal table or a chair that will stand up without a wobble.” *Id.* at 282.

155. *Id.*

156. Harker, *supra* note 115, at 81.

157. Armond & Nevers, *supra* note 7, at 575.

is by giving proper consideration to solo and small firm attorneys and developing legal research curricula that would be useful in a variety of practice settings.¹⁵⁸

¶36 When considering the needs of attorneys in smaller firms, the importance of exposure to a wide range of research tools and strategies for incorporating these tools into an overall research and business plan becomes paramount. Laura Justiss notes that law students receive limited exposure to electronic resources beyond Westlaw and Lexis despite widespread use of alternatives, including free and low-cost tools, in practice.¹⁵⁹ Assuming the results of the Local Survey hold true for all attorneys practicing in smaller settings,¹⁶⁰ more than 40% rarely or never access the tools most often covered in law school. Regardless of the reasons for decreased use,¹⁶¹ it does a disservice to law students to expose them only to tools they will not use.

¶37 A legal research curriculum that takes into account the needs of solo and small firm practitioners can employ two strategies that have already been discussed in the literature for improving overall legal research instruction: cost-effective legal research and legal information literacy. Deborah Hackerson suggests that law students develop a habit of using databases without considering the costs in law school because they have free access to expensive research tools.¹⁶² She argues that such habits “will not serve them well when they enter the professional law firm environment, where costs matter.”¹⁶³ The need to limit legal research costs is very important for smaller firms because profit margins are tight and costs are not easily passed to clients.¹⁶⁴ Incorporation of cost-effective strategies, including free and low-cost tools, into legal research coursework would help solo and small firm practitioners discover research tools that fit into their unique business plans.¹⁶⁵

158. Herrera suggests that law schools should generally give more consideration than they do to the needs of solo and small firm practitioners because of the large number of students who will eventually find work in small practices. Herrera, *supra* note 6, at 891. Tung notes that a disproportionate number of associates at large, wealthy firms attended elite law schools, so there may be a heightened need to prepare students for small firm practice at local and regional law schools (the majority of law schools) that “are more likely to graduate students who work for small firms and serve individual clients.” Tung, *supra* note 5, at 284. See also Poydras, *supra* note 114, at 185 (arguing that law librarians should consider “as many practice areas as possible” when developing legal research curricula).

159. Laura K. Justiss, *A Survey of Electronic Research Alternatives to LexisNexis and Westlaw in Law Firms*, 103 LAW LIBR. J. 71, 2011 LAW LIBR. J. 4, ¶2.

160. As noted throughout this article, the largest segment of the attorney population is underrepresented in surveys concerning legal research practices, so further study will be necessary to determine the widespread applicability of the results of the Local Survey. See *infra* section discussing opportunities for more research.

161. See *supra* section on conditions affecting use of fee-based resources.

162. Hackerson, *supra* note 64, at 481. See also Greenberg, *supra* note 8, at 255 (reporting survey results in which respondents referred to recent graduates’ use of only expensive databases available in law school as an “addiction”).

163. *Id.*

164. See *supra* section on economic issues.

165. This is by no means a new idea. For example, Robert Berring of the University of California Berkeley School of Law incorporates free online resources into his legal research coursework. See Hall, *supra* note 39, at 57. Justiss presents lectures on alternatives to Westlaw and Lexis at SMU School of Law. See Justiss, *supra* note 160, at 71. Tung recommends teaching about free and low-cost legal research platforms to “better prepare students regardless of their ultimate practice destination.” Tung, *supra* note 5, at 302.

¶38 In contrast, Gotschall argues that too much emphasis is already placed on cost-effective research in legal research classes and that “[s]mall firms and government organizations are less concerned with cost-effective research than large firms.”¹⁶⁶ Gotschall suggests that law librarian scholarship is largely underpinned by surveys of law firm librarians, which places a disproportionate emphasis on large firms while a majority of attorneys practice in smaller settings.¹⁶⁷ To determine whether cost-effective legal research is as important to a majority of firms, Gotschall surveyed seventy-three law students concerning the importance of cost-effective research to the firms or institutions that employed them for summer clerkships or internships.¹⁶⁸ Survey results suggested that little or no emphasis was placed on cost containment by a majority of organizations and that most reports of high importance came from students who worked at the largest firms. Based on these results, she concluded that smaller firms are less concerned than larger firms about cost-effective research.¹⁶⁹

¶39 Nevertheless, Gotschall’s argument suffers from two key flaws when viewed in the context of the needs of practitioners in smaller firms. First, the sampled population is insufficient to draw general conclusions about small firms. Fewer than 2% of the student respondents reported working with solo practitioners, and approximately 4% reported working in firms with between two and ten attorneys.¹⁷⁰ Thus, while the survey yielded more representative results of the attorney population as a whole than law firm librarian surveys might, it relied on 6% of its sample to represent 51.75% of the total population.¹⁷¹ Second, Gotschall uses a highly constrained definition of “cost-effective legal research” when arguing that consideration of smaller firms should lead curricula away from the topic. She concludes that “[l]arger firms are more concerned with containing online research costs than smaller firms . . . because of differences in how they are charged for Westlaw and Lexis access,” which includes limited access to out-of-plan documents for smaller firms.¹⁷² This conclusion necessarily assumes that all attorneys are using just two subscription databases and the only cost containment that matters relates to surprise fees from out-of-plan searching. However, subscription to a limited database is an indication that containment of legal research costs matters. Certainly, firms with limited plans, like all firms, will have to look beyond the scope of their restricted access, but when they do, they know beforehand that the price is too high through their primary vendor. When they look for the information, it can likely be left unsaid that wherever the information comes from, its costs need to be contained. As such, it is no surprise that the Local and National Surveys suggest a majority of attorneys rely heavily on free online resources. However, when they

166. Gotschall, *supra* note 47, at 151–57.

167. *Id.* at 159.

168. *Id.* at 153.

169. *Id.* at 158–59.

170. There is uncertainty about the number of respondents who worked in firms with between two and ten attorneys, stemming from the categories used to report demographics. Presumably, this firm size was reported as “other,” which composed 4.1% of the total sample. *Id.* at 153.

171. Total number of solo and small firm attorneys is calculated in *supra* note 110.

172. Gotschall, *supra* note 47, at 155.

cannot avoid using Westlaw or Lexis (for example, for Shepardizing), solo and small firm attorneys may need to know how to find free access to these high-powered research tools, including access through a public law library.¹⁷³ Therefore, legal research training that is meant to prepare the majority of law students for practice should incorporate cost-effective legal research strategies that give due consideration to free and low-cost tools.¹⁷⁴

¶40 Legal information literacy¹⁷⁵ is another concept that might direct changes in legal research curricula to meet the needs of solo and small firm practitioners. Catherine Lemmer describes legal information literacy as “the ability to find, retrieve, analyze, and use legal information.”¹⁷⁶ Yasmin Sokkar Harker argues that such skills are necessary for modern legal researchers because of the “huge amount and variety of information on the Internet.”¹⁷⁷ Following the general expansion of the Internet, the amount of legal information available online has grown and is presented through a diverse collection of websites and databases that are maintained by government entities, commercial vendors, and other organizations.¹⁷⁸ Margolis and Murray argue that changing the focus of instruction to legal information literacy would allow students to critically evaluate available resources and develop a “deeper understanding of electronic research so that skills can be transferred as the research technology continues to evolve and change.”¹⁷⁹ Given the decentralized nature of available resources, the ability to develop strategies for finding and evaluating resources wherever they are found is clearly a beneficial one for researchers. Use of expensive legal databases, however, can negate the need for extensive evaluation because Westlaw and Lexis are the most reliable sources available to legal researchers.¹⁸⁰ Nevertheless, there are many occasions when the majority of attorneys will not have access to such authoritative services¹⁸¹ and, as shown by the Local and National Surveys, a large number of them will look to free online resources and print resources. When they do, practitioners will encounter a plethora of materials of differing quality accessed through a variety of interfaces. Preparing them to find and critically evaluate all available information, rather than just to

173. Telling students about free access to research tools at public law libraries is also a great cross-selling opportunity for academic law libraries to market other AALL institutions.

174. This conclusion is the same as that drawn by Hackerson for students regardless of future practice setting. Hackerson, *supra* note 64, at 484 (arguing students should be exposed to Case-maker, Fastcase, Google Scholar, and other tools before leaving law school).

175. Many authors discuss information literacy in the context of law school. See, e.g., Harker, *supra* note 115, at 85. Poydras refers to this as “legal information literacy,” which is how it will be referred to here. Poydras, *supra* note 114, at 184.

176. Catherine A. Lemmer, *A View from the Flip Side: Using the “Inverted Classroom” to Enhance the Legal Information Literacy of the International LL.M. Student*, 105 LAW LIBR. J. 461, 462–63, 2013 LAW LIBR. J. 25, ¶ 2.

177. Harker, *supra* note 115, at 85.

178. Danner, *supra* note 116, at 181. See also Ross-Blakely Law Library, *Cost-Effective and No-Cost Legal Research*, <http://www.law.asu.edu/library/RossBlakelyLawLibrary/ResearchNow/ResearchGuides/CostEffectiveandNoCostLegalResearch.aspx> (last visited Oct. 14, 2014).

179. Ellie Margolis & Kristen E. Murray, *Say Goodbye to the Books: Information Literacy as the New Legal Research Paradigm*, 38 U. DAYTON L. REV. 117, 129–31 (2012).

180. Hall, *supra* note 39, at 55.

181. See *supra* section on conditions affecting usage of fee-based resources.

use specific tools as they exist before graduation, would better prepare solo and small firm practitioners as well as all graduates for practice.

Solo and Small Firm Incubators and Related Programs

¶41 Another area in which academic law libraries can support future solo and small firm practitioners is through the development of programs directly targeting students who wish to prepare for careers in smaller practices. Several law schools have started incubator programs where recent graduates begin their solo or small firm practice with the assistance of the law school.¹⁸² Many of these programs offer office space at reduced rents, access to clinical faculty who serve as mentors, and training on legal practice technology.¹⁸³ While one clear purpose of the programs is “to mak[e] new graduates more successful in tough economic times,” many of the graduates also serve disadvantaged clients, thereby promoting access to justice.¹⁸⁴ Similar programs geared toward preparing students for practice in small firms have taken hold. For example, the University of Missouri–Kansas City School of Law has developed a specialized curriculum for students interested in solo and small firm practice.¹⁸⁵ Arizona State University has announced plans to open a nonprofit law firm, “modeled after teaching hospitals,” that will “hire about 10 alumni as associates.”¹⁸⁶ Tung suggests that law librarians “can play an important role” in the educational programs and services offered by their parent institutions.¹⁸⁷ From offering research support and resources¹⁸⁸ to placing incubator office space inside the law library,¹⁸⁹ there is a wide range of options to explore. While Tung also points out that there are challenges, including adjustments to acquisitions policies to meet the needs of practitioners that “do not completely overlap with those of faculty and students,”¹⁹⁰ supporting such programs would be mutually beneficial to solo and small firm practitioners as well as academic law libraries that look to remain relevant in a changing law school environment.

Recommendations for Implementing a Legal Research Competency Policy

¶42 In July 2013, the AALL Executive Board approved *Principles and Standards for Legal Research Competency*, a statement of five principles meant to promote improvement of legal research practices in law schools and throughout the legal

182. Herrera, *supra* note 6, at 923–28 (describing programs at several law schools).

183. *Id.*

184. Tung, *supra* note 5, at 297–98.

185. Herrera, *supra* note 6, at 926. See also University of Missouri–Kansas City School of Law, *Solo and Small Firm Student Program*, <http://law.umkc.edu/academics/solo-and-small-firm-student-program.asp> (last visited Oct. 14, 2014).

186. ASU News, *New ASU Alumni Law Group Bridging Gap Between School, Practice* (June 19, 2013), https://asunews.asu.edu/20130620_inthenews_asu-alumni-law-group.

187. Tung, *supra* note 5, at 297–98.

188. *Id.*

189. Cleveland-Marshall College of Law, *Solo Practice Incubator*, <https://webmail.law.csuohio.edu/careerplanning/solopracticeincubator> (last visited Oct. 14, 2014) (office space in law library with “transparent walls” so studying students can observe practice).

190. Tung, *supra* note 5, at 299.

community.¹⁹¹ By developing these standards, AALL has shown a commitment to legal information literacy, which is beneficial for students who go on to practice in a variety of settings.¹⁹² The goal stated in the document is for the legal community to implement the “*Principles and Standards* in meaningful ways that will result in more competent, effective, and efficient legal research, thus impacting the bottom line and service positively.”¹⁹³ While the high-level principles are certainly positive and applicable in any practice setting, many of the specifically enumerated competencies may be implemented differently depending on whether solo and small firm practitioners are taken into account. For example, Principle III reads, “A successful researcher critically evaluates information.”¹⁹⁴ Very few would hesitate to agree. However, Competency III.B.1., which reads, “Understands that there are costs associated with legal research, regardless of type, publisher, or format,”¹⁹⁵ is open to interpretation when implemented. To properly prepare future solo and small firm practitioners to meet this standard, a legal research instructor might focus on exploring inefficiency as one cost of using free online resources and on strategies for minimizing such costs. Alternatively, an instructor’s discussion might lead to a detailed analysis of price structures for out-of-plan searching in Westlaw and Lexis databases, which may or may not be useful depending on the placement of graduates in larger or smaller firms. In a legal research class, where time is limited, implementation of the AALL Research Competencies could greatly influence how well the curriculum prepares students for practice, especially in local and regional law schools (that is, the majority of law schools) that “are more likely to graduate students who work for small firms.”¹⁹⁶ As such, implementation efforts would benefit greatly from adequate consideration of solo and small firm practitioners, who make up a majority of practicing attorneys.

Opportunities for Additional Research

¶43 Ultimately there is a need for more research regarding the legal research practices of solo and small firm practitioners. While the National Survey produced a clearer picture of practitioner research than previous efforts, law librarians need to go further. The Local Survey is a step in that direction, but without additional study, it is unclear if its results extend beyond Fort Bend County, Texas. Following the lead of the ALL-SIS Task Force, surveys of attorneys who practice in smaller firms need to be conducted across the country.

191. AALL Research Competencies, *supra* note 38, at 1–3.

192. Margolis and Murray reviewed the *Law Student Research Competency and Information Literacy Principles* adopted by AALL in 2011 and noted that through its work on the principles, AALL has devoted more attention to concerns about information literacy than many other groups. Margolis & Murray, *supra* note 180, at 119–20. The AALL Research Competencies contain many of the same statements as the previously adopted competencies, which shows further commitment to the issue.

193. AALL Research Competencies, *supra* note 38, at 3.

194. *Id.* at 7.

195. *Id.* at 8.

196. Tung, *supra* note 5, at 284.

¶44 As mentioned, law librarian scholarship concerning legal research habits of practitioners tends to rely on surveys in which solo and small firm attorneys are either absent (such as law firm librarian surveys) or severely underrepresented.¹⁹⁷ This is not to say that other groups should not be surveyed. Law firm librarians provide very valuable insight into large firm practices. Attorneys working in these settings as well as in mid-sized firms and government settings make up substantial portions of the attorney population, and many law students will eventually work in those settings. Yet considering only these groups leaves out 51.75% of the total population. By ignoring the majority of attorneys, law librarians risk remaining “estranged from the way [legal research] is currently practiced in the field.”¹⁹⁸

¶45 When contemplating future surveys, one must consider both what questions to ask and how to contact potential respondents. A few topics have been suggested above. For instance, one goal might be a better understanding of the reasons behind decreased use of fee-based resources. If cost is the main factor, then cost-effective legal research would be paramount at law schools where graduates tend to work in smaller firms. If solo and small firm practitioners are developing strategies that allow them to rely on free and low-cost resources, law libraries could help communicate these strategies to law students through legal research classes and other law school programs. Contacting solo and small firm practitioners, however, may prove difficult. Ann Juergens’ experience in surveying solo and small firm practitioners can be instructive. She obtained the names of attorneys in smaller firms from her law school’s alumni office and through the Martindale-Hubbell directory, which allows the searcher to filter by firm size.¹⁹⁹ She was also given referrals to other attorneys in the professional networks of her initial contacts.²⁰⁰ Following these strategies or contacting county law librarians, who often know local solo and small firm attorneys and the local bar associations that represent them, can produce potential survey candidates whose participation would ensure a more representative sampling of the national legal community.

Conclusion

¶46 The majority of U.S. attorneys (51.75%) are solo or small firm practitioners. Yet sampling of this group is often disproportionately low in law librarian scholarship. As a result, there is a real danger that our understanding of the legal research practices and needs of this group is lacking. The National Survey is a substantial step toward gaining a clearer picture of all attorneys’ research practices, but its population sample is skewed away from private practice attorneys and, specifically, solo practitioners. Based on the comparison of the Local and National Surveys, it appears that solo and small firm practitioners use fee-based online resources at lower rates than attorneys in other practice settings. As law librarians continue

197. Underrepresentation of solo and small firm practitioners in studies is a trend throughout legal scholarship. See, e.g., Herrera, *supra* note 6, at 902 (“there is not an abundance of scholarship that focuses on the contemporary solo lawyer”).

198. Armond & Nevers, *supra* note 7, at 575.

199. Juergens, *supra* note 54, at 100.

200. *Id.*

to refine their view of attorney research practices, it will be important to determine whether the results of the Local Survey are representative of the wider population of solo and small firm attorneys as well as the reasons for the divergence. The simplest explanation, that decreased use is solely an economic issue, may be one of many causes, each of which might have implications for law libraries. Whether providing access and training to legal resources, promoting access to justice, developing law school curricula, or implementing research competency standards, consideration of solo and small firm practitioners is warranted. It is this author's hope that the Local Survey will be the first of many conducted to develop our understanding of the majority of attorneys.

Appendix

Survey Questions

1. Which best describes your practice setting?
 - a. Solo Practitioner
 - b. Firm: 2–5 attorneys
 - c. Firm: 6–10 attorneys
 - d. Firm: 10+ attorneys
 - e. Other (government, in-house counsel, retired, education, etc.)
2. How frequently do you use print materials for legal research?
 - a. Very Frequently
 - b. Frequently
 - c. Occasionally
 - d. Rarely
 - e. Never
3. How frequently do you use free online materials (e.g., Google, Casemaker) for legal research?
 - a. Very Frequently
 - b. Frequently
 - c. Occasionally
 - d. Rarely
 - e. Never
4. How frequently do you use fee-based online materials (e.g., Westlaw, Lexis) for legal research?
 - a. Very Frequently
 - b. Frequently
 - c. Occasionally
 - d. Rarely
 - e. Never