Are We Teaching What They Will Use; Surveying Alumni to Assess Whether Skills Teaching Aligns with Alumni Practice

Sheila F. Miller

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Sheila F. Miller*

I. INTRODUCTION

The University of Dayton School of Law ("UDSL") Bar Outreach Project was developed by three faculty members of the UDSL Legal Profession Program[1] during the 2008–09 school year as way to inform the first year research and writing faculty about the current practice of law by our alumni. The members of the Bar Outreach Project (BOP)[2] felt removed from the current practice of law. The faculty members were many years removed from their practice experience. While there are certainly benefits of having many years of experience in full-time teaching, the more years of teaching one has, the further from the practice of law one may get.

The Bar Outreach Project started with two different lines of questions: first, the BOP members wanted to know what UDSL alumni actually do once they start practice; second, these faculty members wanted to know what skills the typical employer of UDSL students expect recent graduates to have, and whether recent graduates were meeting the employers' expectations. This article examines the results of a survey designed to answer the first question: what research and writing tasks are UDSL alumni actually doing in practice?[3] This question was asked to help us assess whether our teaching is aligned with the skills our students will eventually use in practice.

In Part I, I will explain how we developed the survey instrument, what it was designed to accomplish, and how it fits in with other similar surveys. In Part II, I will present the results of the survey including the profile of our alumni, the information gathered on their research tasks, and the information gathered on their drafting tasks. Finally, in Part III, I will explain

1. The Legal Profession Program is the Legal Research and Writing Program at UDSL. The current legal research and writing required classes consist of two three-credit courses for each semester of the first year, and one two-credit course taken during the second year. The first year classes concentrate on objective analysis of the law during the first semester, and advocacy in a pre-trial context during the second semester. During the second year students may take either an appellate advocacy class or a transactional drafting class to fulfill their upper level writing requirement.

2. The members of the Bar Outreach Project are Professors of Lawyering Skills Sheila Miller, Victoria VanZandt, and Susan Wawrose.

3. The second strand of inquiry, "what are the expectations of employers and how are they being met?" is the subject of an article by my colleague Susan Wawrose on the focus groups we held for employers of our graduates.

my recommendations for research and writing instruction based on these findings.

II. SURVEY IN CONTEXT

A. Developing the Survey

The BOP members developed a survey to be given to alumni who had graduated between 2004 and 2008. The goal was to discover which research and writing tasks UDSL students actually used once they started practicing law.[4] The 2004–2008 alumni were chosen because those alumni had been out at least a year and no more than five years. The goal was to inquire about what recent graduates did in practice, as these students would best represent the practice world that our current students would be entering. We were more interested in exploring the tasks of novice attorneys rather than those of experienced attorneys because we viewed our role as preparing novice attorneys for practice. Follow-up interviews with some of the survey participants were conducted to flesh out the data collected. Both the data from the survey itself and some of the insights from the follow up interviews are presented below.

Because BOP members came to this research without a background in survey design or data collection, the BOP team availed itself of resources available at the University of Dayton to help in the process. BOP members researched survey design.[5] The survey became an undergraduate psychology student's project for a University of Dayton psychology class on survey design.[6] Adjunct professors from the law school and others on the faculty who continue to practice, or who had recently left practice, evaluated the survey. A university expert on assessment and surveys reviewed the survey, urging us to shorten it.[7] The BOP members learned to keep in mind the question "how can we use the data we are collecting?" Finally, a test of two different versions of the survey was conducted using UDSL students studying for the 2009 bar exam. When we finalized the survey, it was sent out to 735 alumni via e-mail in January 2010. SurveyMonkey[8] was used to draft and distribute the survey.

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4. Our plan was to conduct the survey during the fall of 2009, but we eventually sent out the survey in January 2010. Thus the earliest graduates had been out of school for five and a half years, and the most recent graduates had been out for one and a half years.

5. SURVEYMONKEY, http://www.surveymonkey.com (last visited Nov. 2, 2013). Surveymonkey. com has several excellent publications to help members design surveys.

6. I would like to thank Professor William Moroney and student Michaela Kramer for their help in developing the survey.

7. I would like to thank Elise Bernal, University of Dayton Institutional Researcher for Academics for her help with statistical analysis on this project.

8. Surveymonkey.com is a website allowing members to design and distribute surveys and analyze the results.

B.   What the Survey Was Designed to Accomplish

The survey was designed to give the BOP members information that would help them teach first year research and writing better. While students will continue to learn and develop their skills after they leave the research and writing program, and after they arrive in practice, research and writing faculty would like to make sure that the students leave the research and writing program with the right tools to continue that development. Looking at what alumni do in practice can help faculty develop strategies to ensure the teaching is relevant to the current practice of law. This is not a new or unique concept. For example, in *Best Practices for Legal Education*, Roy Stuckey suggests that law schools look to the practicing bar to ensure the relevance of the curriculum.[9]

While some of the survey findings are applicable to development of upper level curriculum and the law school in general, the focus in developing the survey was always on information that would help in the development of the first year research and writing curriculum.[10] This was the area where BOP members had more control of the curriculum, and could actually implement changes.

C.   Other Similar Recent Surveys

Others have conducted surveys about new lawyers' skills in practice. Many of these surveys have focused on research in particular, and the critique of recent graduates researching habits.[11] Several surveys of law librarians and more senior attorneys have found that the new attorneys' research skills are insufficient.[12] The conclusions drawn are that new attorneys are not efficient researchers, and do not use print resources as much as the librarians or other more senior attorneys believe that they should.[13] The studies also found that new researchers did not use secondary materials to the extent that the evaluators thought that they should.[14] Finally the new attorneys' ability to plan research is found generally lacking.[15] Interestingly, when attorneys rather than librarians were asked to evaluate the

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9. Roy Stuckey et al., Best Practices for Legal Education 8 (Clinical Legal Educ. Ass'n 2007).

10. During the time that the survey was developed, UDSL changed the writing curriculum to include a required third semester of writing. The requirement can be fulfilled by taking appellate advocacy class, or a transactional drafting class. This returned a required third semester to the curriculum which had been eliminated in 2007 curriculum changes.

11. *See* Patrick Meyer, *Law Firm Legal Research Requirements of New Attorneys*, 101 Law Libr. J. 297 (2009); Aliza B. Kaplan & Kathleen Darvil, *Think [and Practice] Like a Lawyer. Legal Research for the New Millennials*, 8 Legal Comm. & Rhetoric: JALWD 153 (2011).

12. *See*, e.g., Meyer, *supra* note 11, at 302–11 and the numerous studies explained therein.

13. *Id.* at 303; Kaplan & Darvil, *supra* note 11, at 6–8.

14. Meyer, *supra* note 11, at 303, 305; Kaplan & Darvil, *supra* note 11 review other studies, but they surveyed law students as opposed to new attorneys in practice. Another survey of law students is found in Carolyn R. Young & Barbra A. Blanco, *What Students Don't Know Will Hurt Them. A Frank View From the Field on How to Better Prepare our Clinic and Externship Students*, 14 Clinical L. Rev. 105 (2007).

15. Kaplan & Darvil, *supra* note 11, at 7–8.

research skills of new attorneys, the supervising attorneys rated the skills as better than the librarians had rated them.[16]

Members of Chicago Kent Law school faculty conducted extensive surveys of both attorneys and law librarians about research habits of attorneys in 2005 and again in 2007. These surveys also had attorneys and law librarians evaluate new attorneys' research skills. However the surveys also show the research habits of attorneys without the evaluative component as well. The results of these surveys echo much of the data collected from our alumni.[17] The basic conclusion is that new attorneys spend most of their time researching online, and Lexis and Westlaw continue to dominate the online research world for new attorneys.[18]

One difference between our survey and most of the other research surveys is that the BOP survey was not designed to evaluate the skills of our alumni. Instead, the survey was designed to inform the BOP team of what was occurring in practice. For research, the goal was in large part to find out whether the alumni were using books to research, and if so which ones. The assumption was that faculty would continue to teach research strategies such as having a research plan and starting with secondary sources to get an overview of the issue before starting to look at the primary materials. However, in teaching secondary sources, it would be helpful to know which sources were used most often in practice and whether those sources were accessed in print or online.

The survey included open-ended questions which gave our alumni a chance to explain whether they felt that other types of sources should be emphasized in their initial research and writing classes, and whether they felt prepared for researching in practice.[19] These themes were explored in the follow up interviews as well. As was mentioned earlier, BOP members also conducted focus groups with employers to help evaluate the skills of recent graduates. That study is being written up separately, but in general the results of the study did not expose new attorneys as particularly weak researchers.[20]

There has been less published on the writing skills and habits of new attorneys. The most salient work for the BOP team was an article by Kristin Robbins-Tiscione on the use of the traditional objective legal memorandum in modern practice.[21] Robbins-Tiscione conducted a survey of

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16. Meyer, *supra* note 11, at 306–07. This may have to do with a different mindset for how research should be conducted between some law librarians and practicing lawyers. *See* Ian Gallacher, *Forty-Two. The Hitchhikers' guide to Teaching Legal Research to the Google Generation*, 39 AKRON L. REV. 151, 174 (2006).

17. *Back to the Future of Legal Research*, IIT CHICAGO-KENT COLLEGE OF LAW, http://www.kentlaw.edu/academics/lrw/future/ (last visited Nov. 2, 2013).

18. *Id.*

19. While some interviewees made suggestions for improving research instruction, the interviews revealed that most interviewees felt prepared for research in practice.

20. There was very little complaining about the research skills of new attorneys in the focus groups. Focus group transcripts on file with author.

21. Kristen Robbins-Tiscione, *From Snail Mail to E-mail. The Traditional Legal Memorandum in the Twenty-First Century*, 58 J. LEGAL EDUC. 32 (2008).

Georgetown University Law Center graduates on their use of memoranda in practice.[22] She found that the formal traditional legal memorandum is not widely used in practice.[23] Her survey showed that informal legal memoranda were much more common.[24] Nonetheless, about 75% of her respondents found that being taught to write the traditional memorandum was extremely or very helpful "in terms of mastering objective legal analysis (i.e., synthesizing rules of law and applying them to facts in an objective manner to predict outcomes)."[25] She did note that the most recent graduates were less likely to find the traditional memorandum helpful to their education, but there did not seem to be an analysis of whether this finding was statistically significant.[26]

The Robbins-Tiscione study was closer to the BOP study in terms of the objective and types of questions, but it did not include other types of writing, or any data on research. The demographics of the Robbins-Tiscione survey were different as that survey was sent to graduates from five different classes (1983, 1988, 1993, 1998, and 2003). Additionally, over half of her respondents worked at firms with over 100 attorneys.[27]

As will be shown below, the profile of our alumni differed from the profile of some of these prior surveys. We also had a different focus; we were looking more at gathering data on tasks performed rather than evaluating skills. Finally, we looked at both research and writing tasks in one survey instrument. Thus, the data we gathered adds to a rich field of data focusing on skills used in practice.

D.   Administering the Survey

In January 2010, 735 emails were sent to UDSL graduates from 2004-2008.[28] The email contained a link to the survey on SurveyMonkey. A copy of the survey is in the appendix. We received 150 "good" responses for a 20% response rate. A "good" response was defined as one in which

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22. *Id.*

23. *Id.* at 32. Interestingly, Robbins-Tiscione asked the question of whether the traditional legal memorandum was "still a primary form of communication between attorney and client." *Id.* However, the memorandum is usually referred to as an "inter-office memorandum," and is usually considered a means of communicating from a junior lawyer to a more senior lawyer rather than as a communication to the client directly. I have always taught that the memorandum may be sent to the client, but the audience should be considered another more senior lawyer.

24. *Id.*

25. *Id.* at 53.

26. *Id.* at 37–38.

27. *See infra* Part III.A (the BOP survey showed that 10% of our respondents worked in an office with over 100 attorneys).

28. The e-mails were gathered both through the law school development office and the office of career services. The University of Dayton requires that all communication with alumni be run through the University Office of Communications, and the BOP team worked with this office to send the survey.

at least some of the substantive questions were answered, where the respondent indicated the year of graduation from UDSL, and that the respondent had "worked as an attorney or in a law related field."[29] After we gathered the data from SurveyMonkey, we had the data consolidated by a statistician on campus. She ran cross tabulated results for us so we could look to see if there were any statistically significant differences to answers based on the respondents' size of office, type of practice, year of graduation, or gender.[30]

After we had looked at the results of the survey, twenty-six follow up interviews were conducted. The BOP team members developed a standard questionnaire for the interviews. Alumni who had agreed to be contacted in the survey were interviewed over the telephone.[31] The interviews lasted from twenty-five minutes to fifty-five minutes.

III. Survey Results

A. Profile of Our Alumni

The survey collected demographic information to insure that the data accurately reflected the makeup of the alumni in general. The demographic information from our respondents showed a rough match in terms of gender and minority enrollment for the years in question.[32] The data gave an overview of where UDSL alumni work, and what type of work they do. It is useful for faculty to know the type of work environment their students will be entering. This is also helpful for comparing data with other studies, which have tended to focus on large firm practice.[33] As the data shows, this is not the typical work environment for UDSL students. Not surprisingly, Ohio was the most popular state in which UDSL alumni work, with 30% of respondents having an Ohio zip code for their workplace. Indiana was the second most popular state with about 9% of the alumni working there. No other state had more than 4% of the surveyed alumni working there.

UDSL alumni tend to work in smaller law offices. The chart below shows that over half of our alumni reported working in an office with ten or fewer attorneys, and the largest group of our alumni (39%) work in offices with five or less attorneys. Only 10% of our surveyed alumni work in offices with more than 100 attorneys.

These demographics can have implications for the amount of training UDSL students can expect when out in practice. Larger firms may have

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29. We were not interested in responses from those who had not actually worked in a law related field because our mission is to train students to do legal work.

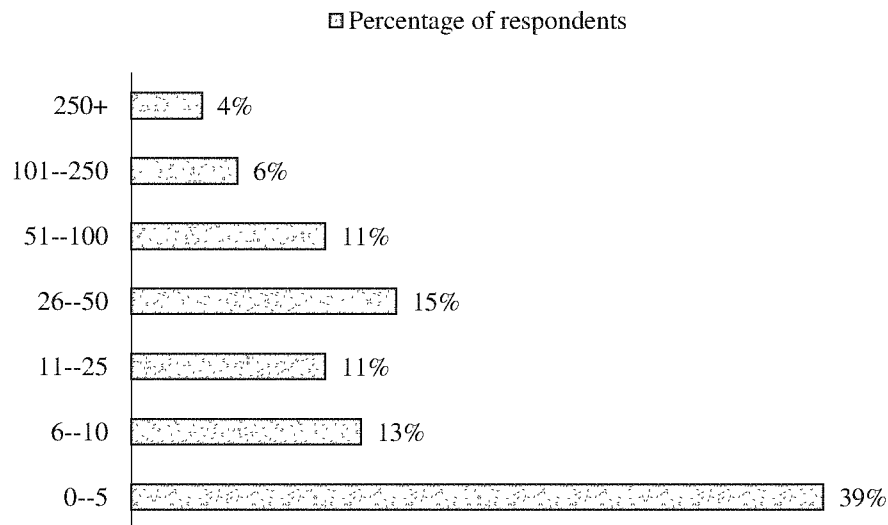30. This data is available upon request.

31. The interviewees were more predominantly male than overall survey respondents. There were twenty-three male and three female interviewees.

32. The survey respondents who answered the demographic questions were 43% female and 57% male; 7.5% minority and 92% Caucasian.

33. *See, e.g.,* Meyer *supra* note 11, at 311 (deciding not to include the few responses that he received from lawyers in firms with twenty-five or fewer attorneys); Robbins-Tiscione *supra* note 21, at 52 (26% of respondents worked in offices with twenty-five or less attorneys).

greater in-house training programs. Thus, UDSL students may get less formal on the job training. This puts more pressure on UDSL and the writing program to ensure that the students are ready to graduate "practice ready." There may also be differences in the research resources available to our alumni.[34]

CHART 1: NUMBER OF ATTORNEYS IN OFFICE

□ Percentage of respondents

Number of Attorneys	Percentage
250+	4%
101--250	6%
51--100	11%
26--50	15%
11--25	11%
6--10	13%
0--5	39%

In open-ended questions, survey participants identified their position and the type of work that they did. From these questions, BOP members then categorized the positions as consisting of a 1) litigation practice, 2) transactional practice, or 3) a practice involving both litigation and transactional work. Chart 2 below shows this breakdown. Also, from these open-ended questions, the alumni were categorized as either generalists or specialists.[35] Chart 4 shows this breakdown. The positions were also categorized by the type of office: private practice, the government (either state or federal), or in-house counsel. Chart 3 shows this breakdown.

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34. Because we did not ask questions about formal training or research resources available, these are generalizations that may or may not be true of these respondents.

35. When categorizing generalist or specialist, BOP members did not consider "litigation" or "civil litigation" a specialty. Nor did we use insurance defense as a specialty. We used the criteria that a specialty would be working within a particular substantive area of the law. A specialist would be someone who reported that they performed mainly criminal defense, criminal prosecution, property use litigation, real estate transactions, intellectual property litigation, probate and estate work etc.
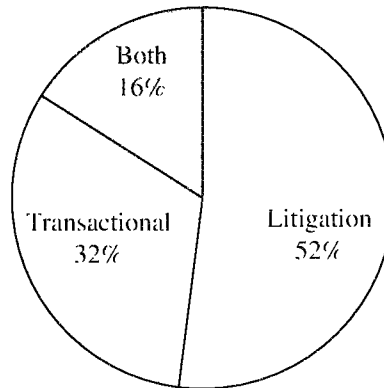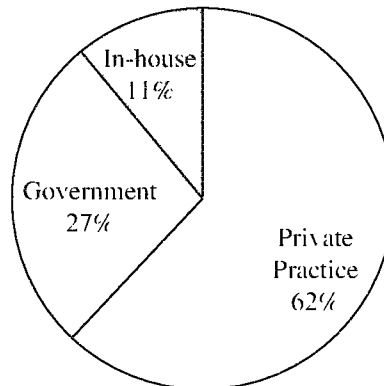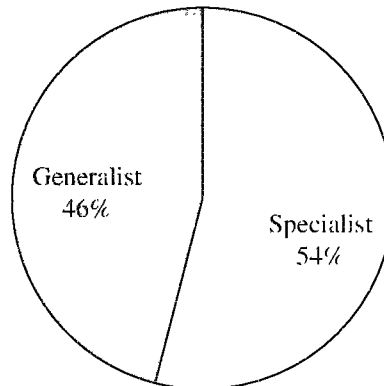
CHART 2: LITIGATION OR TRANSACTIONAL PRACTICE

Both
16%

Transactional
32%

Litigation
52%

CHART 3: OFFICE TYPE

In-house
11%

Government
27%

Private
Practice
62%

CHART 4: SPECIALIST OR GENERALIST PRACTICE

Generalist
46%

Specialist
54%

Alumni reported that about two-thirds do at least some litigation, as 52% are primarily litigators, and 16% do both transactional work and litigation. About one-third of the respondents reported that they do primarily transactional work. Chart 3 shows that over 60% of our survey respondents work in private practice, with 27% working for the government, and 11% working as in-house counsel. The government workers include quite

a few prosecutors. Finally, alumni reported that just over half of them have a specialty rather than a general practice. One alumnus reported in a follow-up interview that in his firm specialties are being pushed because clients like having a "specialist" work for them.

Finally, the responding alumni are busy. The respondents are almost all (92%) employed full-time in a law related field. The rest are either employed part-time or were unemployed at the time they took the survey. Most of them worked on eleven or more matters in a typical week, with approximately one-third working on more than twenty matters in a typical week.

CHART 5: NUMBER OF MATTERS HANDLED IN TYPICAL WEEK
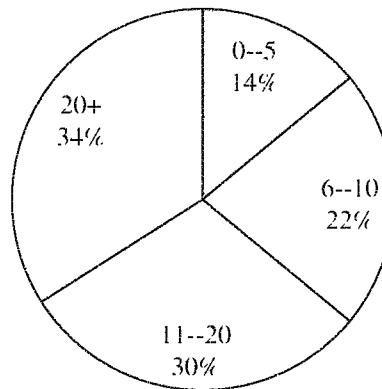
Having this information is helpful for seeing which other surveys may or may not apply to our students. It is comforting to see that most of our alumni do some litigation as our second semester of legal writing is litigation based. The trend towards specialization is something to look at, but as long as our students are going to small practices, a good percentage of our alumni will probably be generalists who handle whatever client walks in the door. Also, the typical graduate will have to be able to juggle a lot of different matters.

B.   Results on How our Recent Alumni Conduct Research

1.   Online v. Book Sources

Not surprisingly, the survey shows that our recent alumni rely on electronic research overwhelmingly and use printed material much less. We asked the participants to estimate the amount of time they spent researching using books versus online sources. The alumni estimated that they spent on average 82% of their research time online, and 18% using books. Tellingly, only 3% of the alumni reported having used books more than 50% of the time that they spent researching. Moreover 53% of the alumni reported using online resources 90% or more of the time that they spent researching. There were no significant differences between these numbers regardless of the type of practice, the size of the law office or the year that

the alumni graduated. Thus, even those in small law offices and those out for over four years overwhelmingly used online sources for research.

CHART 6: TIME SPENT RESEARCHING ONLINE VERSUS IN BOOKS
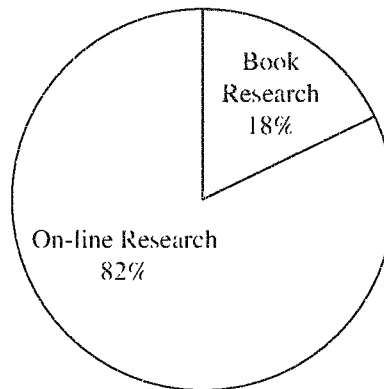
While some of the comments from some of the alumni emphasized the use of electronic sources ("[b]ooks are dead . . . it is an absolute waste of time to teach book research"),[36] others wished for some continuation of the book sources ("many attorneys, especially young attorneys, want to only look [online] but books are still important").[37] The use of books may just not be feasible for some attorneys, and we will have to prepare our students for that world. One alumna, in a follow-up interview, lamented that while she wished she could, she just did not have time to go to the county law library, and another alumnus noted in a comment that the Ohio county law libraries were cutting back on keeping up secondary sources. As was noted earlier, our alumni generally work in smaller law offices where print sources may be more limited.[38]

Our research instruction ought to reflect that the tools our students will use will be primarily online. Even if we stress that books are "still important," we should face the fact that most of our students will conduct the vast majority of their research online. There is more on how to use this data in teaching research in the conclusions and recommendations section.

2. Which Sources are Most Likely Used in Book Form?

We were curious as to the most commonly used sources in print. We identified what we thought would be the most common sources lawyers might use and asked the alumni to identify whether they used the source primarily online, primarily in book form, or about equally in books and online. We also asked them to identify whether they did not use the source at all. This gave us information not only about the most commonly used

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36. Comments from Survey (on file with author).
37. Comments from Follow-Up Interview (on file with author).
38. Meyer, *supra* note 11, at 320.

sources in book form, but also gave us information about which sources were not used in either form.

The results showed us that the most commonly used book sources are treatises and formbooks. Also from our follow-up interviews, we found that the attorneys rely on treatises and "desk books"[39] most often in book form.

TABLE 1: SOURCES LIKELY TO BE USED IN BOOK FORM

Sources	Primarily Book	Both Book and Online Equally	Total
American Law Reports	12.2%	2%	14.2%
Regulations	3.7%	15.5%	19.2%
National Encyclopedia	8.9%	11.9%	20.8%
Federal Statute	12.8%	10.2%%	23%
State Statute	8.6%	24.5%	33.1%
Loose-leafs/Online specialty subscription	28.8%	11.5%	40.3%
State Encyclopedia	19.7%	21%	40.7%
Treatise	29.2%	24.7%	53.9%
Form Book	29.4%	27.1%	56.5%

CHART 7: SOURCES USED IN BOOK FORM
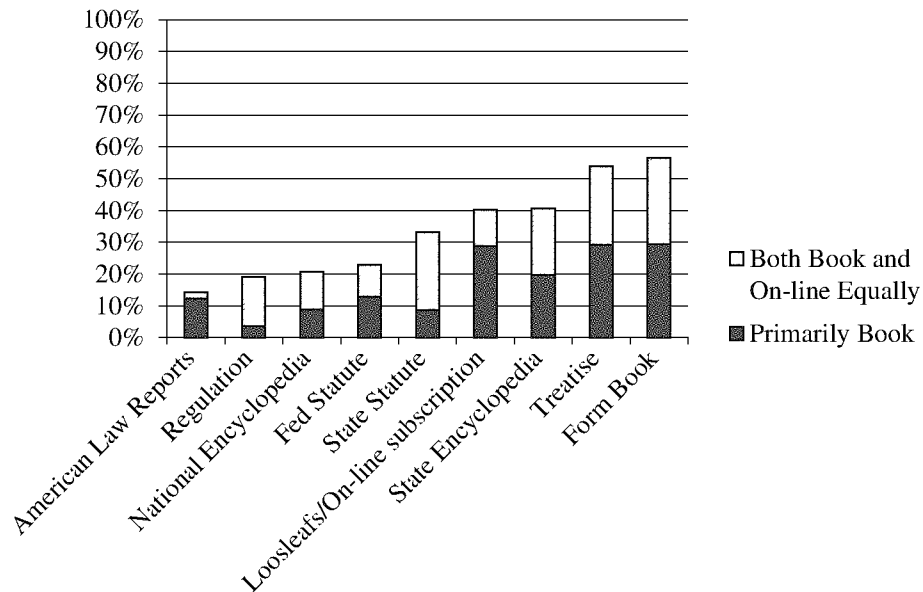
As can be seen from the table and chart, treatises and form books are the only sources that were used by at least 50% of their users either equally

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39. Desk books are annually updated books with the statutes, regulations or rules most commonly used in a particular area. A print copy is kept in the office—hence the name "deskbook."

or primarily in book form. Loose-leaf services and state legal encyclopedia were next most popular in book form with about 40% of users accessing them in either book form primarily, or at least as equally as online. Even the most popular "book sources" were not used primarily in book form by over 70% of respondents.

Not surprisingly, regulations had the lowest primarily book use at 3.7%. Many libraries no longer keep the book version of the Code of Federal Regulations up to date and federal regulations are available free and searchable from the federal government.[40] Several of the alumni mentioned in follow-up interviews or in the open-ended questions on the survey that they used the print form of regulations as printed in "desk books."

Following up on a suspicion that few attorneys still use the print digest system, the survey asked a specific question about use of the digests: "When finding cases, do you ever use the book version of the West Digest System?" The resounding answer was that 92% of alumni do not ever use the book version of the digest. The question was worded specifically to capture *any* use—not frequent or occasional use.

CHART 8: USING BOOK FORM OF WEST DIGEST TO FIND CASES
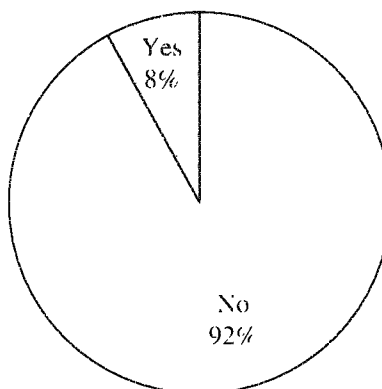
This is perhaps the most concrete and easily incorporated data that we collected. Based on this finding, I have stopped teaching the print version of the West Digest System. More on using this data in teaching research is in the conclusions and recommendations section.

3. Sources Primarily Accessed Online

As a counterpoint to the sources used primarily in book form, Chart 9 shows that most sources are accessed by most alumni primarily online. Although statutes are often listed as sources that should be used in book

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40. For a searchable unofficial Code of Federal regulations see Electronic Code of Federal Regulations, U.S. GOVERNMENT PRINTING OFFICE, http://www.ecfr.gpoaccess.gov/cgi/t/text/text-idx?c= ecfr&tpl=%2Findex.tpl (last visited Nov. 2, 2013), and for the official version of the Code of Federal Regulations see Code of Federal Regulations (Annual Edition), U.S. GOVERNMENT PRINTING OFFICE, http://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=200&page.go=GO (last visited Nov. 2, 2013).

form, most alumni reported that they accessed statutes mainly online. Both Federal and State statutes were used primarily online by 67% of users. While research instructors might like to stress the value of book resources for statutes, the alumni may not have easy access to the books, and they do have access to free online versions of statutes.

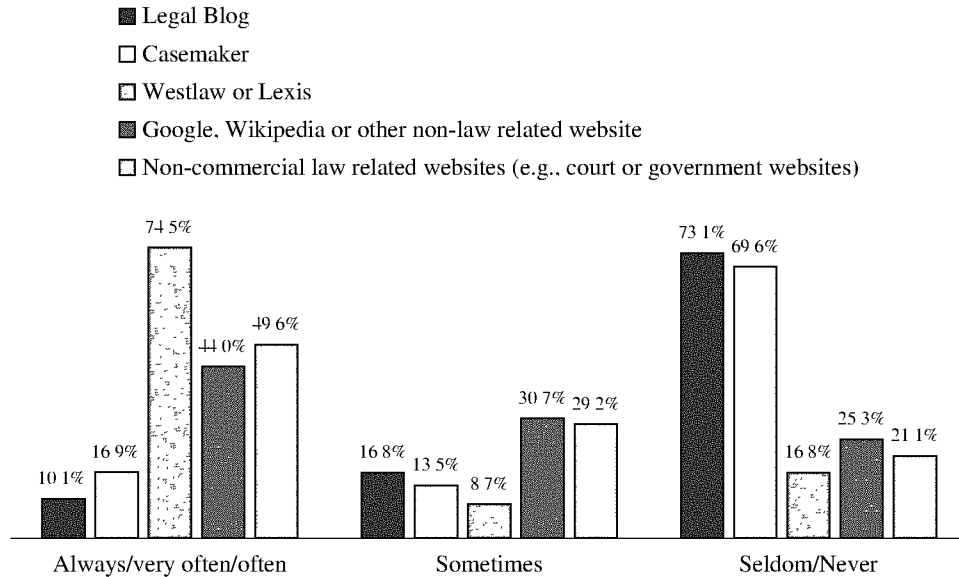CHART 9: SOURCES ACCESSED PRIMARILY ONLINE
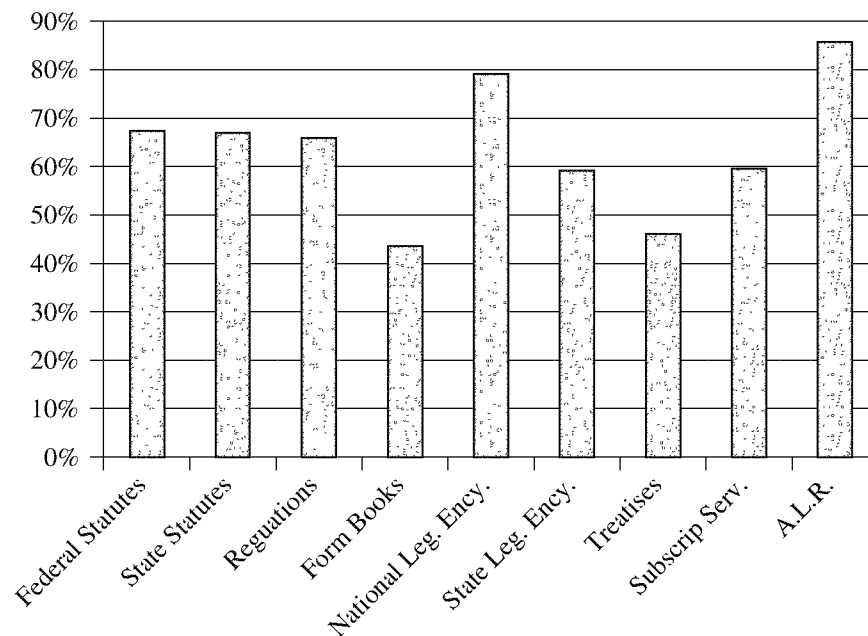
4. How Do the Alumni Research Online?

We were curious as to whether the alumni use primarily the commercial legal databases (Westlaw and Lexis) for research or some of the other free or less expensive sources. We identified many categories of electronic sources and asked whether they used the sources 1) always or almost always, 2) very often, 3) often, 4) sometimes, 5) seldom, or 6) never. The full data is available in the appendix, but I have condensed the categories for ease of analysis in the following chart.[41]

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41. We also included Fastcase in our question, but very few of our respondents used this source. Survey Data (on file with author). Casemaker is the free source available through both the Indiana and Ohio Bar Associations (covering about 40% of our respondents). Fastcase is similarly available through other state bar associations.

CHART 10: FREQUENCY OF USE OF SPECIFIC ONLINE
SOURCES CONDENSED

■ Legal Blog

☐ Casemaker

☐ Westlaw or Lexis

■ Google, Wikipedia or other non-law related website

☐ Non-commercial law related websites (e.g., court or government websites)

Always/very often/often   Sometimes   Seldom/Never

   As can be seen from the frequency of usage chart, Lexis and Westlaw continue to be the most popular choices for online research. This finding is not significantly different depending on the size of firm, or year of graduation. This data is similar to a 2007 survey of Chicago lawyers in which 87% of attorneys surveyed who had practiced for zero to five years did "most" of their research in Lexis or Westlaw.[42] Casemaker provides free research for members of both the Ohio and Indiana Bar Associations.[43] Yet, only 16.9% of respondents used Casemaker often, very often, or always, and only 13.5% used it at least sometimes. This was a surprising number given the number of the respondents in small offices. In the follow-up interviews there was some criticism of Casemaker. For example, attorneys stated Casemaker is "too slow" and Casemaker is "not as easy as Westlaw, and I have an unlimited subscription for Ohio law."

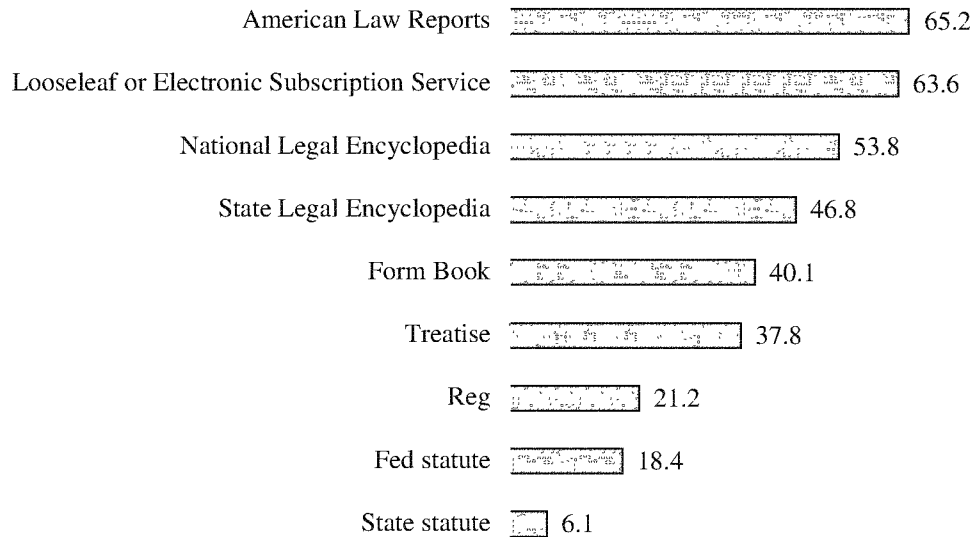5.   Use of Secondary v. Primary Sources

   Contrary to what some of the prior surveys have found, UDSL alumni are using secondary sources when they research. The survey asked alumni to identify which sources they did not use when researching. The following is a chart showing the sources that were not used.

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   42.   Sanford N. Greenberg, *Attorney Survey 2007, slide 30* (PowerPoint presentation prepared for the Back to the Future of Legal Research Conference at Chicago-Kent College of Law, May 18, 2007), http://www.kentlaw.edu/academics/lrw/future/handouts/greenberg%20-%20powerpoint.pdf.

   43.   Fastcase provides basically the same service for some other states, and we asked in the survey about Fastcase as well. The numbers were so low on Fastcase use that I did not include them in the tables of results.

CHART 11: SOURCES NOT USED IN EITHER BOOK OR ONLINE FORMAT

□ % not using source

American Law Reports	65.2
Looseleaf or Electronic Subscription Service	63.6
National Legal Encyclopedia	53.8
State Legal Encyclopedia	46.8
Form Book	40.1
Treatise	37.8
Reg	21.2
Fed statute	18.4
State statute	6.1

The primary sources, federal and state statutes and regulations, are all used by the vast majority of alumni. Treatises, form books, and state legal encyclopedia are used by over half of the alumni. It should also be noted that the information above on electronic sources showed that 44% of the respondents indicated that they often used Google, Wikipedia, or other non-law related websites. From the follow-up interviews we gleaned that the alumni are using Google or Wikipedia as a secondary source. Many of the attorneys when asked how they start research said that they would first "Google" key terms to "see what is out there" on the topic.

C. Results on what our Alumni are Drafting

1. What Documents are the Alumni Drafting?

In addition to the information on the types of sources and how they are accessing those sources, the survey results also show us the type of writing that our recent graduates are doing. As noted earlier, there has been some discussion about the continuing relevance of the formal interoffice memorandum in current practice, so we designed a question to explore this type of document specifically.

The interoffice memo is the most common assignment given in required legal writing classes.[44] As was noted above, the use of this type of

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44. George Mader, et al., Association of Legal Writing Directors/Legal Writing Institute, *Report of the Annual Legal Writing Survey* 2013 at 8 (Assignments: Question 20), http://www.alwd.org/wp-content/uploads/2013/08/2013-Survey-Report-final.pdf.

drafting in practice has come under question.[45] We wanted to know whether our alumni were drafting objective memoranda, and if they were drafting these documents, what format were they using? We developed a question just about this type of document. We asked the respondents how often they drafted the following types of interoffice memos:

- Formal interoffice memoranda (e.g., contains question presented, brief answer, facts, discussion);
- Informal interoffice memoranda (contains only answer and analysis);
- Bottom line answer to legal question with little or no analysis;
- Substantive e-mail that contains legal analysis in the body of the e-mail, not as an attachment.

We asked them to rate whether they drafted these documents 1) always or almost always, 2) very often, 3) often, 4) seldom, or 5) never. The following table shows the results for this question, and chart 14 shows the results graphically with the answers condensed to 1) always/very often/ often, 2) sometimes, or 3) seldom/never. Table 2 below shows the data for each type of memo and chart 13 shows the condensed data graphically.
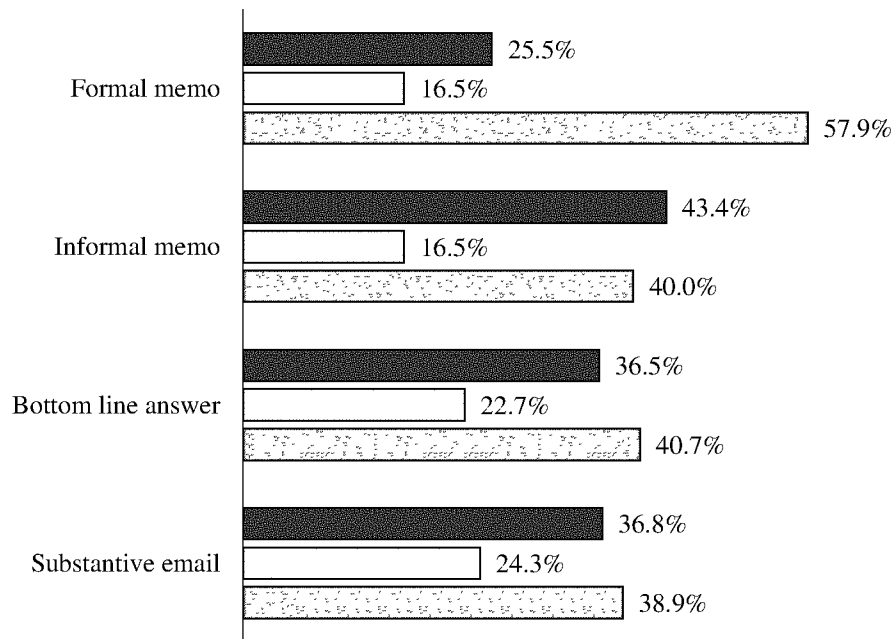
TABLE 2: FREQUENTLY DRAFTED MEMO TYPE

Memo type	Always	Very often	Often	Sometimes	Seldom	Never
Formal memo	6.2%	9.0%	10.3%	16.5%	29.0%	29.0%
Informal memo	7.6%	15.2%	20.7%	16.5%	23.4%	16.5%
Bottom line answer	4.8%	11.7%	20.0%	22.7%	23.4%	17.2%
Substantive e-mail	2.1%	16.7%	18.0%	24.3%	23.6%	15.3%

45. *See generally* Robbins-Tiscione, *supra* note 21.

CHART 12: FREQUENCY OF MEMO TYPES
■ Always to often   □ Sometimes   ▣ Seldom/Never

There are no significant differences in this data based on the size of office or the year of graduation. Thus, it is true that over half of all respondents seldom or never write a formal interoffice memo. Nevertheless, the fact that a quarter of the respondents often (or more frequently) write such memos and 42% write them at least sometimes shows that this is a document that many new attorneys will need to use. Moreover, more than 60% of the respondents draft informal interoffice memos at least sometimes.

The table below shows the results of our question about different documents that are drafted other than the inter-office memo. The surprising thing about the drafting data is that letters are the only document that is seemingly universally drafted by UDSL alumni. None of the other document types are drafted often by over 50% of the respondents.

TABLE 3: FREQUENTLY DRAFTED DOCUMENTS

Document type	Always or almost always	Very often	Often	Sometimes	Seldom	Never
Discovery requests or responses	7.6%	14.5%	17.9%	15.9%	11.0%	33.1%
Letters	22.6%	32.2%	17.1%	11.6%	5.5%	10.9%
Pleadings	15.7%	20.5%	12.3%	12.3%	8.9%	30.1%
Settlement documents	0.7%	14.4%	11.6%	21.9%	8.2%	36.3%
Transactional documents	9.6%	13.0%	11.6%	15.7%	17.8%	32.2%
Trial or appellate briefs	12.3%	18.5%	8.9%	16.4%	13.7%	30.1%

Below is a chart showing the graphical representation of the frequency of drafting documents at least sometimes. I have included the formal and informal interoffice memo in this chart to show how these documents fit in with the others.

After letters, the most often drafted documents are pleadings and informal interoffice memos. Thus for our alumni the interoffice memo is not dead, but drafted almost as often as are pleadings. Granted, this memo may be less formal than the ones written for their first year research and writing class.

CHART 13: FREQUENTLY DRAFTED DOCUMENTS

□ Always/Very Often/Often   □ Sometimes
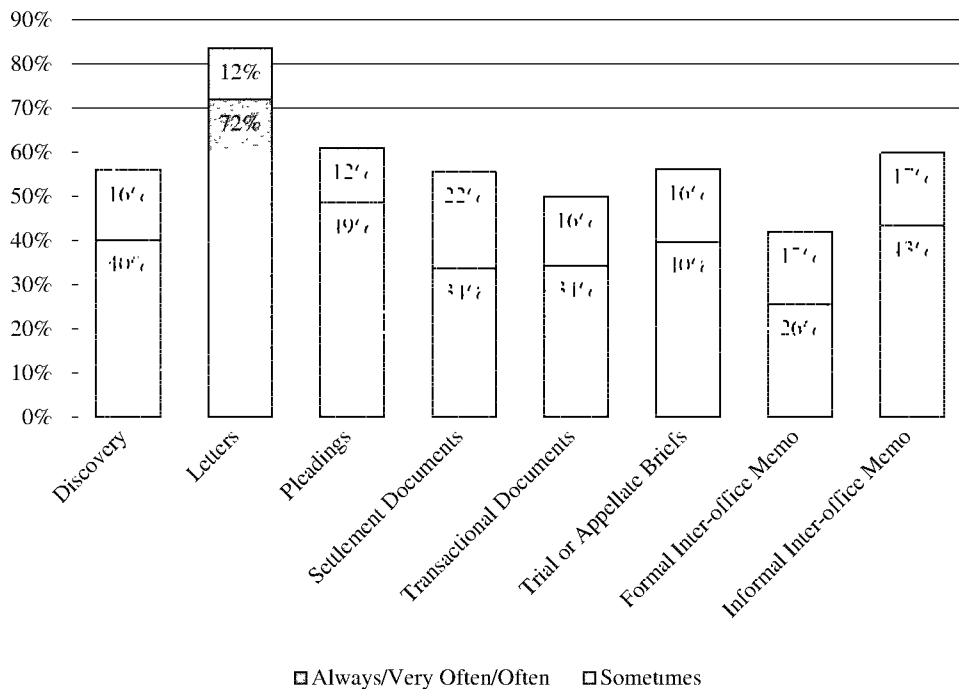
2. How Long are the Documents Alumni are Drafting?

We also were curious about the typical length of the memoranda and briefs that our alumni draft. We suspected that the documents drafted for their first-year research and writing class were longer than the documents drafted in practice. Our suspicion was confirmed by the data. While the alumni overwhelmingly draft memos that are five pages or less, the first-year writing students' interoffice memos are almost always longer than five pages. First-year students' trial briefs are also often longer than ten pages even though the alumni reported that most trial briefs are ten pages or less. The second-year students' appellate briefs seem more in-line with the length in practice.
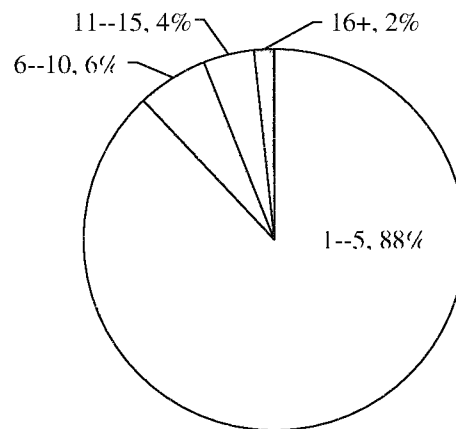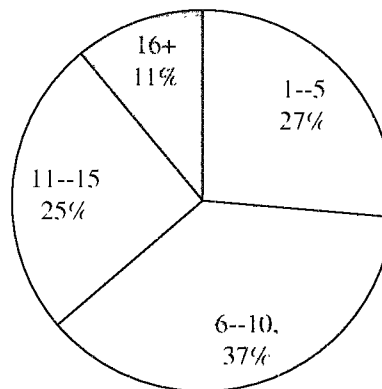
CHART 14: LENGTH OF MEMOS

11--15, 4%   16+, 2%

6--10, 6%

1--5, 88%

CHART 15: LENGTH OF TRIAL BRIEFS

16+
11%

1--5
27%

11--15
25%

6--10,
37%

CHART 16: LENGTH OF APPELLATE BRIEFS

1--5
5%

6--10
14%

16+
50%

11--15
31%
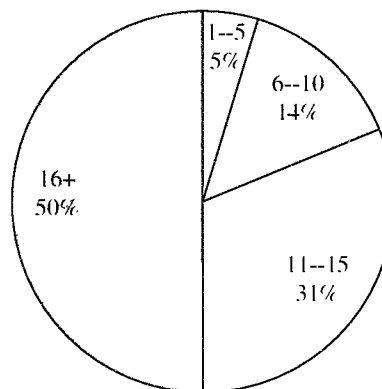
   The reason for the shorter memos and briefs may be twofold. First, for the interoffice memoranda, the proliferation of informal and bottom line or e-mail answers will make the average length shorter. Also, for pedagogical reasons, faculty teaching first-year research and writing will choose topics on which there is not necessarily an easy answer. The faculty

members want to make the students synthesize rules and analyze some facts that give rise to complications. The students may be asked to answer a question on which there is no binding authority. In law practice sometimes the answer is more straightforward. The fact that so many alumni report working on more than twenty matters a week gives some evidence that their practice may involve less complicated cases.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Do Try This at Home

One of the more eye opening findings from the survey was the breakdown of where our alumni are practicing law. Over half of our alumni have ten or fewer attorneys in their work place, and almost 40% have five or less attorneys. It has been documented that bigger firms have more print sources available.[46] Also, Lexis and Westlaw both have plans geared to solo and small firms more now than in the past.[47] Thus, conclusions drawn from other surveys may or may not apply to our alumni.[48] One must look at those results carefully. I feel more confident drawing conclusions for our program based on data involving our alumni.

Others should also survey their students. The more surveys done, the better our overall picture of the current practice of law. Thus, I would encourage others to "try this at home." More information is good, and then we can distill universal truths by comparing results with others. We can also draw conclusions based on similar situations. Use our survey questions, or improve on them.[49]

SurveyMonkey and other similar services make it easy to survey student or alumni populations. As an added benefit, this type of research was enthusiastically embraced by others at our university, and the BOP team built invaluable bridges by reaching out to those experts. Finally, and perhaps most valuable are the bridges we built with our alumni. Staying connected to our alumni who are out there practicing was one of the founding principles of our Bar Outreach Project. Thus, there are many reasons for others to do their own survey.

B. Research Instruction Recommendations

As was noted earlier, we did not ask questions about research planning or methodology in our survey.[50] We do teach the principles of research planning, using secondary sources to get an overview and help

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46. Meyer, *supra* note 11, at 319.

47. *See, e.g., Litigation support service expands in small firm market, Legal publishing, technology industry continue new services,* THE INDIANA LAWYER (April 11, 2001) (noting the beginning of Westlaw and Lexis push into solo and small office market).

48. Meyer's survey of law librarians for example returned so few responses from firms with 25 attorneys or fewer that he excluded those results from the discussion of his results. Meyer, *supra* note 11, at 311. In essence, this eliminates 63% of the UDSL respondents' workplaces.

49. Survey Questions (on file with author).

50. See appendix for a copy of the survey questions.

define the issues, taking good notes, and keeping track of authorities. The BOP members did not think that the thinking behind how to research was something that we needed to revise, but that the sources that we emphasized in planning research and how much time we spent introducing print versus online sources was an area ripe for revision.

1. Ditch the Paper Digest

The most clear-cut finding from our survey was that our alumni are not using the book form of the West Digest System. While law librarians seem to lament this fact,[51] I cannot justify spending valuable research instruction time on a source that 92% of my alumni are not using despite the fact that they had instruction on how to use it in their first-year research and writing class.[52] Those advocating keeping the paper digest research instruction argue that students will have a greater grasp on how to use digests online if they have learned how to use a digest in print.[53] This argument presupposes that using the digest system online is a superior method of finding cases online than other methods. Online databases were created partially in order to open-up the method of finding cases from the rigid indexing system imposed by the West Digest System.[54] A discussion of the advantages or disadvantages of using the West Digest System to find cases is beyond the scope of this article,[55] but it should be noted that the system can still be used and taught using online sources. As a matter of fact, the Lexis indexing system cannot be taught in print, and for those lawyers working at an office where Lexis is the preferred vendor, it would be beneficial to have been taught about both systems.

Part of the rationale given for teaching the print West Digest System is based on getting a picture of the forest rather than being lost in the trees.[56] This can be accomplished with other secondary sources more efficiently, and those sources are actually used by our alumni. The reasons to teach the digest cannot overcome the overwhelming evidence of non-use in practice.

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51. *See* Meyer, *supra* note 11, at 313.

52. Up until the results of the survey were known, the members of the Legal Profession Program taught the West Digest System.

53. *Id.*

54. Gallacher, *supra* note 16, at 181 & n.147.

55. *See id.* at 179–183 (providing a discussion of the pros and cons of indexed case searching).

56. *See* Judith Lihosit, *Research in the Wild. CALR and the Role of Informal Apprenticeship in Attorney Training,* 101 LAW LIBR. J. 157, 160 (2009).

2. In Print, Focus on Treatises, Loose-leaf Services, and State Legal Encyclopedia[57]

The data reveal that some of the other secondary sources that can be used to help students get the big picture are still used by a greater percentage of practitioners in book form.[58] Treatises in particular are the most common resource used in print—over half of the respondents who use treatises use them in print at least as often as online. Whereas most of the users of loose-leaf services and state legal encyclopedias access them online, at least a substantial portion use them in print form, thus giving rise to the assumption that they are more readily available in print to our alumni.[59] Moreover, state legal encyclopedia and treatises are more suitable than digests for teaching the skill of using a table of contents and an index. Novice attorneys' lack of ability to use a table of contents and an index in print are common complaints about novice researchers.[60]

3. When Teaching Online Resources, Stress the Use of Devices to Help See the Big Picture

Some practitioners advocate print sources for getting the "big picture."[61] However, this is not necessarily a complaint about book versus online research, but also implicates the type of resources that are accessed online. Immediately starting with a terms and connectors search of cases, can bypass the "big picture" beginning.[62] However, our data shows that our alumni are using secondary sources, but may be using them online.[63] The other area where practitioners and librarians have advocated use of print is for researching statutes.[64] Again, practitioners note that statutes in print present a better means of looking at the "big picture," or the entire statutory scheme.[65]

The fact that two-thirds of our alumni report accessing statutes online, and almost all secondary sources are accessed more online than in print, emphasizes that we have to prepare our students to use the online versions of these sources. Even if faculty members teach the print sources, the alumni may not use them.[66] Some may choose to teach the value of looking at statutes in print. Nonetheless, it is equally important to show how to properly get the big picture when accessing these sources online.

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57. I am omitting formbooks here, but have a conclusion regarding formbooks under the writing section. *See infra* Part III.C.4.

58. *See supra* Table 1 & Chart 7.

59. This is one area that I wish we had asked about—the availability of print sources.

60. *See* Meyer, *supra* note 11, at 320 (use of a table of contents and an index are used as examples of the skills that make teaching print materials still important).

61. *Id.*; Gallacher, *supra* note 16, at 162.

62. Granted there may be times when this approach is appropriate given one's familiarity with the topic of the search.

63. *See supra* Chart 9.

64. *See, e.g.,* Meyer, *supra* note 11, at 316.

65. *See, e.g.,* AMY E. SLOAN, BASIC LEGAL RESEARCH 162 (4th ed. 2009).

66. These sources have traditionally been taught in print to the very alumni surveyed.

For example the use of the online table of contents view of any source in which it is available should be stressed. Students should be strongly encouraged to use this function once they have found a relevant statute, so they can see where the statute fits into the statutory scheme. Also, students should be taught how to access statutes and secondary sources using the table of contents view, again to show the "big picture." Also the "book browse" function should be stressed in research instruction. Using table of contents and book browse functions more closely mimic the big picture given in print formats.[67]

4. Teach Responsible Use of Google and Wikipedia

Not only are our alumni using traditional secondary sources online, but they are also using Google and Wikipedia to get the "big picture" or background on legal issues. About 75% of respondents use these sources at least sometimes, and 40% use them at least often if not more.[68] The follow-up interviews helped demonstrate that these sources are being used for secondary research. When asked about sources that they use when doing electronic research, a typical comment was "I always start with Google or Wikipedia as a jumping off point."[69] Another attorney notes that if a case has made it to popping up in a Google or Wikipedia search, "it is important enough for me to look at it."

Some attorneys noted that secondary sources are too expensive in Lexis or Westlaw.[70] Thus those with limited libraries from the commercial vendors may turn to these free online sources. Few of the attorneys interviewed use Google Scholar to pull cases, and at least some did not know about the service. The interviews revealed that these attorneys knew that Wikipedia could be unreliable, but they recognized the value in getting some background, and some citations to more verifiable sources. The same was true of those who used Google searches; the attorneys knew to verify information, but said that getting background and cites to statutes and cases made these searches valuable. While it is comforting to hear from the interviews that the attorneys seem to be using these sources responsibly, it is important to make sure that instruction in research includes the warnings about responsible use and using these sources to get to trusted sources. One interviewee told the story of another associate relying on a Google search for information that turned out to be incorrect.[71]

Responsible use of free sources can be incorporated into the first-year research and writing class. For example, I have instituted short in-class research exercise where the students are given a legal question and instructions that they have to use free internet sources to get the answer. They

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67. It is beyond the scope of this article, but the use of tablet computers and touch technology may add features to electronically accessed content that mimic books.
68. *See supra* Chart 11.
69. Quote from Interview Notes (on file with author).
70. Notes from Interviews (on file with author).
71. Notes from Interview (on file with author).

are also told that they have to give a reliable source as the citation to the correct information. The students usually all come up with the "right" answer to the legal question, but some do not get full-credit for the answer because they cite a law firm website, blog, or other similar source when the answer could be found on an official federal agency site. Those who cite to the unofficial sources were able to go back to those sources and see that they could find the ".gov" source from their original source, but they had not taken that next step. This is the type of lesson that students relying on free internet sources must learn.

5.   Continue to Teach Westlaw and Lexis but also Focus on Free
     Electronic Sources

Many of the complaints from the prior surveys about research habits concern efficiency of research, particularly for Lexis and Westlaw.[72] However, it has also been noted that given the plethora of pricing schemes for these services, it is extremely difficult to teach the "efficient" way to research on these services.[73] Despite the proliferation of Casemaker, Fastcase, and Google Scholar, as our data shows, most attorneys still rely on Lexis and Westlaw for most of their electronic searching. As such, research faculty must continue to teach how to research on these services. Nonetheless given the pressure to be efficient, students should also be taught more about free services that are alternatives to the pay services. Again, this was one of the more common suggestions in both the open-ended questions, and in the follow-up interviews.[74]

As noted below, teaching how to use free secondary sources online may help make use of the pay service more efficient. Having background on a topic can be helpful for formulating a search, and also recognizing the most useful sources in an answer set. Also, while some of the attorneys complained about the searching and speed of Casemaker, they did note that they use the service to pull a known case. Casemaker has been upgraded, and is becoming closer to the fee-based services, and additional exposure to it may increase the use by future alumni. Because we were limiting our survey to our alumni, this may be a chicken and egg problem. Are the alumni not using Casemaker because they have had limited exposure to it,[75] or are we not emphasizing it because not very many attorneys are using it extensively?

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72. *See, e.g.,* Meyer, *supra* note 11, at 305, 306.

73. Jean P. O'Grady, *The Myth and the Madness of Cost Effective Lexis and Westlaw Research Training,* DEWEY B STRATEGIC (May 5, 2011), http://deweybstrategic.blogspot.com/2011/05/myth-and-madness-of-cost-effective.html. (O'Grady notes that there are so many differences in how these systems bill that it is virtually impossible to teach students how to be cost effective researchers on these systems).

74. This was mentioned in four of the interviews and two of the open-ended comments.

75. For a number of years, we have had one class on Casemaker taught by the vendor. One issue is access. Unlike Lexis and Westlaw, which provide our students with free access starting during first year orientation, students must sign up (for free) for the Student Bar Association in order to get access to Casemaker.

6. Have Students Report on Research Verbally, and Answer Questions About Their Research

The interviewees reported that many times they report on research verbally to their employers. Four of the interviewees mentioned that this was a skill that could be incorporated more into the first year research and writing class.[76] Also, having students do oral reports on research will help with developing students' people skills, an area of weakness the employers mentioned in the BOP focus groups.

C.   Drafting Instruction Recommendations

1. Keep the Formal Interoffice Memo

The data shows that the formal interoffice memo is the least common type of document that our alumni draft, yet 42% do draft them at least sometimes. Moreover there is some question about whether one can efficiently draft an informal memo without at least going through the process of drafting a more formal memo.[77] Robbins-Tiscione points out that while attorneys who have practiced for over ten years believe the formal memo is the best way to teach analysis, more recent graduates do not.[78] She also makes the point that faculty, if teaching the formal memo, should point out that it may not be used in practice.[79]

Using a formal memo as a teaching tool does not seem harmful, especially to the 42% of our alumni who draft such documents sometimes. Having to distill a specific question presented and brief answer are skills that are important to drafting the more informal memos because even a "bottom line answer" has to have the question and the answer precisely and accurately stated. Showing the full analysis of a legal issue helps the faculty member evaluate the students' reasoning process and have a meaningful conversation about where that analysis may be lacking. Thus, the pedagogical usefulness of teaching a formal memo seems to outweigh the concern that students may not be using them in practice.

2. Have Students Retool their Formal Memos into Other Formats, Particularly Client Communication

The question remains of whether some of the other types of memos should also be introduced. A good assignment might be to ask students to take their formal memo and use it as the basis for an e-mail to a client, or a

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76. Some UDSL legal writing faculty members have regular oral research reports, and some do not.

77. Ben Bratman, *Legal Research and Writing as a Proxy. Using Traditional Assignments to Achieve a More Fundamental Form of Practice Readiness*, 25 LEGAL WRITING INSTITUTE: THE SECOND DRAFT 1, 7–8, (Spring 2011) ("Producing any written assessment of how a body of law applies to a client's set of facts will surely build general analysis and writing skills. But a formal memorandum offers the additional advantage of requiring compliance with exacting rules of format and style. The presence and enforcement of these rules highlights the importance of an enhanced level of attention to detail.").

78. Robbins-Tiscione, *supra* note 21, at 46–47.

79. *Id.* at 49.

more concise, less formal memo to a partner. Because letters are the most commonly drafted document, transferring from a formal memo to a client letter is a particularly useful assignment. One has to keep in mind both the faculty time for reviewing additional assignments, and the students' time for drafting these additional assignments. Some programs have the luxury of more time than others. Yet, client letters are already a very popular assignment for legal research and writing classes with about ninety-nine schools already including them.[80] Seeing that the letter is the most common document drafted by our alumni makes me more determined to make sure to include a client letter in my class. I have done so in the past only when I could "fit it in."

3.   Use Page Limits and Keep the Assignments Shorter

One of the most consistent comments from both the follow-up interviews and the open-ended questions was to have more and shorter assignments in the first year research and writing class. The alumni particularly emphasized that the students need to learn to be more concise.[81] Enforcing page limits can help build this skill. Yet, as noted above, sometimes a memo or brief may be longer in school than in practice because the faculty member who developed the assignment wants the student to have practice with synthesizing a rule or analyzing complicated facts. I am not advocating use of just very simple assignments, as these analytical skills are crucial.

Giving the students additional assignments in which they must cut down on their original formal memoranda will also help with developing the skill of being concise. Moreover, assignments based on the same simulation will not require additional research. The use of additional assignments has to be balanced with the time constraints for both faculty and students. Yet, not every assignment must be graded and shorter assignments will take up less of the students' and faculty's time. There is value in including some very quick answer type assignments, as it appears our alumni do this type of work in practice.

4.   Consider Adding a Transactional Assignment Using a Formbook

About half of our respondents reported drafting transactional documents. Another common suggestion from both the interviews and the open-ended questions was the introduction of transactional drafting. At UDSL a class in transactional drafting was added as an alternative to the appellate advocacy class as the required second-year writing class. One also might want to consider a short transactional drafting assignment in the first-year. This also relates to one of the most common sources used in book format—the form book. Teaching the skill of using forms responsibly is something that our students will need if they are using form books. This

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80. Mader, *supra* note 44.

81. One respondent noted in an open ended response that "my boss would laugh if I handed her a five page discussion of legal principles . . . [t]here is much to be gained for the lawyer who can articulate her point concisely."

also relates to some of the information coming from our focus groups with employers. A short assignment based on a form from a formbook may accomplish several goals.

IV. CONCLUSION

The BOP survey project has produced data useful to our thinking about first-year research and writing pedagogy. The BOP team members feel like they have a better idea of what our students are doing in practice. In addition, the survey strengthened our connection to our alumni and colleagues on campus. Our work is not completed; as new technologies emerge, we will need to keep up with what is happening in legal practice, but we have developed tools to do so. Moreover, we have developed relationships both on campus and with our alumni that will make further research easier to accomplish. Hopefully the survey data will encourage others to survey their own alumni as well as help others rethink how to best teach research and writing to their students.