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### Access to Justice Starts in the Library: The Importance of Competent Research Skills and Free/Low-Cost Research Resources

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# ACCESS TO JUSTICE STARTS IN THE LIBRARY: THE IMPORTANCE OF COMPETENT RESEARCH SKILLS AND FREE/LOW-COST RESEARCH RESOURCES

*Deborah K. Hackerson*

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## ACCESS TO JUSTICE STARTS IN THE LIBRARY: THE IMPORTANCE OF COMPETENT RESEARCH SKILLS AND FREE/LOW-COST RESEARCH RESOURCES

*Deborah K. Hackerson\**

### I. INTRODUCTION

Access to justice is an important aspirational goal for everyone in the legal profession. Lawyers, however, cannot provide access to justice without adequate practical skills and the tools necessary to complete their work. Lawyers and law students provide many hours of public and pro bono service every year.<sup>1</sup> With the current state of the economy and the record jobless rate,<sup>2</sup> it is likely that the need for low cost and free legal services will continue to grow. In order to carry out the mission of continuing to provide services to those in need, law students must prepare learn the practical skills needed to serve their clients, including those who cannot pay.

The ability to perform competent and cost-effective legal research is one of the most important skills that law students should master to be prepared to practice law. Research skills are important when the law student or lawyer performs pro bono or public service work and needs to be especially mindful of saving costs. There can be no access to justice for any client if the attorney cannot adequately prepare to represent the client and if the client does not have access to the information needed to understand his or her case. The desire to ensure access to justice provides a strong impetus for examining the importance of these practical skills.

The first part of this Article examines the need to support lawyers and law students in the development of competent and cost-effective legal research skills so that they enter the legal profession ready to represent all types of clients. This includes having the skills necessary to perform pro bono and public service work. It is imperative that law schools continue to develop a curriculum to increase these practical skills for lawyers of today. The second part of the Article discusses the

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1. See, e.g., The American Bar Association Directory of Law School Public Interest and Pro Bono Programs, <http://www.abanet.org/legalservices/probono/lawschools/> (last visited Mar. 21, 2010) (providing information about pro bono efforts at American law schools); THE ABA STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE, SUPPORTING JUSTICE II: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS (February 2009), available at <http://www.abanet.org/legalservices/probono/report2.pdf> (last visited Mar. 21, 2010).

2. As of November, 2009, fourteen states and the District of Columbia reported jobless rates of at least 10 percent. BUREAU OF LABOR STATISTICS, REGIONAL AND STATE EMPLOYMENT AND UNEMPLOYMENT, chart 1 (2009), available at <http://www.bls.gov/news.release/pdf/laus.pdf> (last visited Mar. 21, 2010).

importance of the continued development of free and low-cost resources that will support law students, lawyers, and the general public in performing cost-effective legal research. Access to justice includes access to information. It is an important mission for the legal profession to ensure that everyone has access to justice through continued access to information.

## II. PRO BONO SERVICE AND THE NEED FOR SKILLED PROFESSIONALS

### A. *Pro Bono Service: Demands and Rewards*

Providing pro bono legal service is an important goal for the legal profession. Both law students and lawyers can derive many benefits from engaging in this type of public service. Lawyers are strongly encouraged to participate in this public service. In fact, the Model Rules of Professional Responsibility identify pro bono service as a professional responsibility for all attorneys.<sup>3</sup> As a profession, we have a duty to incorporate pro bono service and public service into our practice. We need to continue to incorporate it into our law school mission and curricula.<sup>4</sup> The need for pro bono legal services is great and growing, especially during these hard economic times. According to a recent study, the number of low income people compared to the number of legal aid attorneys is 6,861 to 1.<sup>5</sup> This figure represents only the extent of unmet needs for civil legal issues and does not even begin to take into account the great need for lawyers to provide pro bono service in the criminal law arena. It is clearly an understatement to say that the need is great. This recent study also examines the reasons why lawyers commit to providing pro bono service to those in need.<sup>6</sup> Some factors lawyers voice in support of offering pro bono service, even perhaps supporting a movement to making such service mandatory, include “the needs of the poor for legal representation; professional and personal benefits for the lawyer; benefits to legal employers seeking to recruit, train, and retain lawyers interested in public interest work; and improvement in the overall

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3. MODEL RULES OF PROF'L CONDUCT R. 6.1 (2009), available at [http://www.abanet.org/cpr/mrpc/rule\\_6\\_1.html](http://www.abanet.org/cpr/mrpc/rule_6_1.html) (last visited Mar. 21, 2010) (“Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono public legal services per year.”).

4. My school, the University of St. Thomas School of Law, like many others, has incorporated the importance of public service into the mission, vision, and curriculum. Our vision statement includes the following commitment to promote excellence in service and community:

The law school, inspired by Catholic social teaching, and members of the law school community, drawing on their own faith and values, will promote and participate in service programs designed to address the needs and improve the conditions of the disadvantaged and underserved. The law school will strive to enhance social justice and will assist students in integrating their commitments to serve society into their personal and professional lives.

University of St. Thomas School of Law, Our Mission, <http://www.stthomas.edu/Law/about/mission/default.html> (last visited Mar. 21, 2010).

5. Deborah A. Schmedemann, *Pro Bono Publico as a Conscience Good*, 35 WM. MITCHELL L. REV. 977, 982 (2009) (citing LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 16 (2d ed. 2007), available at <http://www.lsc.gov/justicegap.pdf> (last visited Mar. 21, 2010)).

6. See generally *id.*

reputation of the legal profession.”<sup>7</sup> A recent report from the New York Bar Association is a good example of the benefits lawyers receive from adding pro bono service to their professional life.<sup>8</sup> Not only do lawyers report that providing pro bono service “makes them feel good,” but it can also provide them with networking opportunities and lead to further business development.<sup>9</sup> The New York Bar Association, like many other state bar associations, also provides an additional incentive by offering free or low-cost continuing legal education (CLE) programs to attorneys who accept a certain number of pro bono cases or perform a certain number of pro bono service hours each year.<sup>10</sup> There are certainly strong incentives, supporting an attorney’s (or law student’s) emotional welfare and the potential for financial or business growth, for those in the legal profession, or entering the profession, to provide pro bono service. It is important to make sure that law students graduate with the skills and access to the tools necessary to competently participate in providing pro bono service.

Legal research is a fundamental skill for all who practice law. In fact, this statement was echoed by the ABA Task Force on Law Schools and the Profession in the Statement of Fundamental Skill and Professional Values released in 1992.<sup>11</sup> This report concluded that “it can hardly be doubted that the ability to do legal research is one of the skills that any competent legal practitioner must possess.”<sup>12</sup> A recent survey demonstrates the significance of legal research in the professional environment.<sup>13</sup> A new associate should expect to spend approximately 80 percent of his or her time in the first year of practice engaged in legal research and writing.<sup>14</sup> In conducting this survey, Thomson West interviewed partners at several large and mid-sized firms. All of the firms emphasized that competent research skills are essential to success.<sup>15</sup> In fact, the survey results also indicate that poor research skills are likely to keep a lawyer from making partner.<sup>16</sup> Despite the fact that research remains an integral component of the legal profession, many law graduates are not entering the field with strong enough practical skills. In response

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7. *Id.*

8. See Michael E. Getnick, *Solos and Small Firms: Survival 101*, 81 N.Y. ST. B.J. 5, 6 (2009).

9. *Id.*

10. *Id.*, see also Connecticut Bar Association, Free Pro Bono CLE Seminars, <http://www.ctbar.org/article/view/832/1/65> (last visited Jan. 22, 2010); Philadelphia Bar Association, Trainings for Pro Bono Lawyers, <http://www.philadelphiabar.org/page/PISTraining?appNum=4> (last visited Jan. 22, 2010); State Bar of Wisconsin, Free CLE Training for Pro Bono Services, <http://www.wisbar.org/AM/Template.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=53289> (last visited Jan. 20, 2010).

11. Donald J. Dunn, *Are Legal Research Skills Essential? “It Can Hardly Be Doubted . . .”*, 2 PERSP.: TEACHING LEGAL RES. & WRITING 33, 33 (1993).

12. *Id.*

13. ANNE ELLIS, LEGAL RESEARCH AND THE NEW ASSOCIATE: “IDEAL VS. REALITY”, available at [http://west.thomson.com/pdf/librarian/Atty\\_Research\\_Skills\\_AALL.pdf](http://west.thomson.com/pdf/librarian/Atty_Research_Skills_AALL.pdf) (last visited Mar. 21, 2010) (presenting results from a survey conducted by Thomson West).

14. *Id.* at 3.

15. *Id.* at 16. See also Patrick Meyer, *Law Firm Legal Research Requirements for New Attorneys*, 101 LAW LIBR. J. 297 (2009) (presenting a thorough discussion of the legal research skills that law firms desire).

16. Ian Gallacher, *Forty-Two: The Hitchhiker’s Guide to Teaching Legal Research to the Google Generation*, 39 AKRON L. REV. 151, 158 (2006).

to this issue, the ABA recently modified one of the standards for law school accreditation to capture the importance of legal research skills. The standard now reads: “A law school shall require that each student receive substantial instruction in . . . legal analysis and reasoning, legal research, problem solving, and oral communication.”<sup>17</sup>

Legal research skills are necessary for success as a practicing lawyer. These skills are also necessary regardless of whether the lawyer (or supervised student lawyer) is being paid for services rendered. Just because the case is pro bono or the advice is free does not mean that an incompetent job will not get that lawyer in hot water. “An attorney’s failure to perform adequate research and write well can violate the attorney’s professional responsibility.”<sup>18</sup> Attorneys are bound to provide competent representation.<sup>19</sup> There are many examples of lawyers being subject to discipline for inadequate research.<sup>20</sup> Conducting competent research is a necessary component to competent representation. To be competent lawyers, law students must enter the profession with the ability to perform legal research.

In addition to focusing on teaching practical skills, it is also important for law schools to expose students to the expectation of providing competent pro bono and public services as an integral part of the legal profession. “As gatekeepers to the profession, law schools have a unique opportunity and obligation to make access to justice a more central social priority.”<sup>21</sup> Law schools provide students with the opportunity (whether voluntary or part of a graduation requirement) to participate in public and pro bono service. Some law schools have made pro bono service a vital piece of their mission. The University of St. Thomas School of Law, for example, requires that students complete fifty hours of public service work prior to graduation.<sup>22</sup> The public service program at the University of St. Thomas School of Law exists to fulfill the following goals: “1) to ensure that law students remain members of the broader community with all of the accompanying responsibilities; 2) to foster students’ commitment to pro bono work throughout their legal careers; and 3) to fulfill the law school’s commitment to service as articulated in its Vision Statement.”<sup>23</sup> As of 2005, approximately 20 percent of law schools included a

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17. AM. BAR ASS’N., STANDARDS FOR APPROVAL OF LAW SCHOOLS § 302 (2009), available at <http://www.abanet.org/legaled/standards/2009-2010%20StandardsWebContent/Chapter3.pdf> (last visited Mar. 21, 2010).

18. Carol M. Bast & Susan W. Harrell, *Ethical Obligations: Performing Adequate Legal Research and Legal Writing*, 29 NOVA L. REV. 49, 49 (2004).

19. MODEL RULES OF PROF’L CONDUCT 1.1 (2009), available at [http://www.abanet.org/cpr/mrpc/rule\\_1\\_1.html](http://www.abanet.org/cpr/mrpc/rule_1_1.html) (last visited Mar. 21, 2010) (“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”).

20. See e.g., *In re Fisher*, 202 P.3d 1186, 1194 (Colo. 2009) (attorney found to have failed to provide competent representation due to lack of research); *People v. Aron*, 962 P.2d 261, 263 (Colo. 1998) (attorney failed to perform adequate research to advise an out-of-state client).

21. Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 997 (2004) (quoting DEBORAH L. RHODE, ACCESS TO JUSTICE 193 (2004)).

22. University of St. Thomas School of Law, Public Service Program, <http://www.stthomas.edu/law/academics/PolicyCatalog/III-A-4.html> (last visited Jan. 20, 2010).

23. *Id.*

public service graduation requirement.<sup>24</sup> However, it is clear that we are still not doing enough to help those in need of legal services and access to justice. “Law schools are not producing enough graduates who provide access to justice, are adequately competent, and practice in a professional manner.”<sup>25</sup> It is important that law schools continue to focus on this as an important mission. “The legal profession, due in part to the shortcomings of legal education, is failing to meet its obligation to provide access to justice.”<sup>26</sup>

The shortcomings in providing pro bono service are not only found in recent law graduates, but also in the practicing bar. A recent study from the ABA found that many lawyers did not participate in pro bono services and that the average hours spent on pro bono service was below the recommended fifty hours per year.<sup>27</sup> “Half of the country’s lawyers perform no pro bono work and, for those that do, the average contribution is not even half an hour a week.”<sup>28</sup> Especially during these trying economic times, it is imperative that all members of the legal profession take on the mission of helping those in need.

### B. Legal Research as a Learned Skill

Access to justice necessarily includes access to information as well as access to those skilled in performing legal research. One of the most important missions of a law school is to prepare its graduates for the practice of law. There is a general consensus that law schools have an “obligation” to do so.<sup>29</sup> In fact, the ABA accreditation standards require a law school to “maintain an educational program that prepares its students for admission to the bar and effective and responsible participation in the legal profession.”<sup>30</sup> One can hardly be an effective and responsible lawyer without the skills and tools necessary to perform proper legal research, notwithstanding a client’s ability to pay.

Law schools, through the efforts of faculty and law librarians, must continue to develop a research curriculum that helps to produce competent practitioners.<sup>31</sup> This can be challenging for those instructors that find themselves at an institution that

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24. DEBORAH L. RHODE, PRO BONO IN PRINCIPLE AND IN PRACTICE 154 (2005).

25. ROY STUCKEY, BEST PRACTICES FOR LEGAL EDUCATION 24 (2009).

26. *Id.*

27. Schmedemann, *supra* note 5, at 986 (citing ABA STANDING COMM. ON PRO BONO & PUB. SERV., SUPPORTING JUSTICE II: A REPORT ON THE PRO BONO WORK OF AMERICA’S LAWYERS 12-13 (2009), available at <http://www.abanet.org/legalservices/probono/report2.pdf> (last visited Mar. 21, 2010)).

28. Deborah J. Cantrell, *Justice for Interests of the Poor: The Problem of Navigating the System Without Counsel*, 70 FORDHAM L. REV. 1573, 1577 (2002) (citing Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 FORDHAM L. REV. 2415, 2415 (1999)).

29. STUCKEY, *supra* note 25, at 16.

30. *Id.*; AM. BAR. ASS’N., *supra* note 17, at § 301(a).

31. For a thorough discussion of the history of legal research instruction, see Christopher G. Wren & Jill Robinson Wren, *The Teaching of Legal Research*, 80 LAW LIBR. J. 7 (1988); Robert C. Berring & Kathleen Vanden Heuvel, *Legal Research: Should Students Learn It or Wing It?*, 81 LAW LIBR. J. 431 (1989); and Robert C. Berring, *Twenty Years On: The Debate Over Legal Research Instruction*, 17 PERSP.: TEACHING LEGAL RES. & WRITING 1 (2008).

“do[es] not see research training as crucial.”<sup>32</sup> It is important that law librarians and legal writing faculty ensure that legal research training continues as an integral piece of the law school curriculum. The quantity, quality, and frequency of legal research instruction must improve at many institutions. One of the biggest problems with legal research instruction is the lack of context. There has been a push in recent years to reform the instruction model and use actual legal work to teach legal research and writing and to move a research and writing component into the other doctrinal courses in law school.<sup>33</sup>

Law librarians must continue to work on improving research instruction at law schools and law firms. “There is no one way to teach research, but incorporating legal research instruction across the curriculum will only help to reinforce, refocus, and repeat the initial skills that the students learned in their first-year legal research and writing classes. . . .”<sup>34</sup> “[L]egal research instruction must be taught across the student’s law school career, from the first year of law school in research and writing classes into second- and third-year classes to ensure that student have learned the fundamental research skills necessary to be competent attorneys.”<sup>35</sup> We cannot simply hand over the responsibility of teaching research to our commercial research database vendors.<sup>36</sup> The vendor representatives can be wonderful trainers on their particular products but are not a substitute for a more well-rounded research curriculum. Students must be exposed to more than Westlaw and LexisNexis if they are to be competent practitioners.

### C. Continued Development of Legal Research Teaching Methods

It is imperative that law schools continue to train law students to be competent in performing legal research. However, those who teach legal research must realize that times are changing and that our instruction methods must also change. It is important to continue to teach our students relevant skills based on what they will likely encounter in today’s professional legal environment. These skills are equally as important to the continued efforts of the legal profession to meet the needs for pro bono service. The only way that law students can be prepared to contribute to public service and pro bono efforts is by developing the skills necessary to help represent those in need. It is hard to imagine a lawyer, albeit a new lawyer, being able to competently answer a legal question without adequate legal research skills and tools.

Academic law librarians have continued to work to improve legal research

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32. Berring & Heuvel, *supra* note 31, at 3. I am fortunate to work at an institution where this is not the case.

33. See, e.g., Michael A. Millemann, *Using Actual Legal Work to Teach Legal Research and Writing*, 4 J. ASS’N LEGAL WRITING DIRECTORS 9 (2007).

34. Brooke J. Bowman, *Researching Across the Curriculum: The Road Must Continue Beyond the First Year*, 61 OKLA. L. REV. 503, 550 (2009).

35. *Id.* at 556.

36. It has been suggested that the vendors provide the “most meaningful legal research training for first-year law students” and that it is the vendors that “teach the students how to do the things they need to do.” It is important for law librarians to contribute to providing a curriculum and learning experience where training by the vendors is not the only or the “most meaningful” legal research training that law students experience while in law school. Berring & Heuvel, *supra* note 31, at 3.

teaching methods. The recent *Boulder Statement on Legal Research Education* “expresses an ideal legal research educational experience, and may provide guidance to the Standards Review Committee in its development of stronger standards for legal research instruction.”<sup>37</sup> This standard was developed by a group of well-respected academic law librarians at the *Conference of Legal Information: Scholarship and Teaching* held at the University of Colorado Law School in Boulder in June, 2009. The resulting *Boulder Statement on Legal Research Education* reads as follows:

Legal research education teaches the resolution of legal problems through an iterative and analytical process. Students will experience a practical apprenticeship of identifying significant facts; determining legal issues and problems; and locating, evaluating, and manipulating research authorities. Students will experience a cognitive apprenticeship by learning the importance of understanding the legal system in which their question arises and evaluating available legal resources. Through this apprenticeship the student will synthesize information about legal systems and resources to identify the best research plan for a given question. The students will also learn to continually re-evaluate their progress and results to arrive at the optimal answer to the legal problem.

Throughout the process, students will learn to apply the professional and ethical norms implicated by their research, which will reinforce their apprenticeship of identity and purpose. For legal research instruction, this includes an ongoing examination of professional standards including the identification of ethical responsibilities, the avoidance of plagiarism, and the fulfillment of the ethical duty to conduct adequate and thorough research.<sup>38</sup>

In addition to emphasizing that learning legal research skills is a continual process, this statement also prominently supports a commitment to include professional standards and ethics in the process of teaching legal research. By specifically including a requirement to review the professional and ethical standards, this arguably can be read to include the duty to provide pro bono service. The obligation and rewards associated with pro bono and public service certainly have an important place in legal research instruction.

### III. ACCESS TO JUSTICE NECESSARILY INCLUDES ACCESS TO INFORMATION

In order to help those in need, or to ensure that any citizen can conduct research to understand a legal issue, the information and resources must be available and accessible. “Individuals who cannot afford lawyers need to have ready access to the tools used by lawyers in their practice of law—statutes, cases, legal encyclopedias, and formbooks.”<sup>39</sup>

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37. Memorandum from ALL-SIS Task Force on ABA Standards Review, Recommendations for ABA Standards Revision Relating to Academic Law Libraries (Sept. 14, 2009) (on file with author).

38. *Id.*

39. Michael P. Forrest, Mike Martinez, Jr., & Paul S. Miller, *Updated Lessons in Conducting Basic Legal Research by Pro Se Litigants Who Cannot Afford an Attorney*, 11 SCHOLAR 1, 2 (2008).

*A. Beware of the Cost of Legal Research*

Many law students can develop poor legal research habits in law school, while their access to expensive research tools, such as Westlaw and LexisNexis, are free. Many students tend to turn to these expensive tools as the first step in their research process and often will simply run a key word search using the biggest and most expensive databases. Despite what they have been taught in their first-year legal research and writing classes, many students do not take the time to formulate a good search query and strategically think about what source they should use as a starting point for their research. These poor research habits, based on the free access they have to expensive research tools, will not serve them well when they enter the professional law firm environment, where costs matter. Many firms limit, or even prohibit, access to Westlaw and LexisNexis for new attorneys. This may be in response to the bad habits that recent law graduates bring with them to the working world.

It is not surprising to learn that, according to recent surveys, practicing attorneys are increasingly turning to online sources, including free internet sources, to perform legal research.<sup>40</sup> It may be surprising, however, for law students to learn that their supervising lawyers in the law firm are dissatisfied with the tendency of a recent law graduate to be “overly eager to jump online before using print resources such as treatises to get an overview of a new area [of law].”<sup>41</sup> This is just one example to illustrate the typical overdependence on commercial legal research databases that most law students develop during their law school career. It is imperative that law students develop expertise at using many different research tools and learn how to be cost-effective. “Legal research experts are constantly scouting newer, better research sources and techniques for their next project. Like librarians, they develop instincts for choosing the ideal resource for each research task.”<sup>42</sup> Competent legal research skills are necessary for all lawyers and even those new to the profession.

Students must also realize that many clients cannot or will not pay the expensive research bills generated when attorneys use these expensive systems. A recent article notes that:

[m]ore and more clients maintain that they cannot justify paying the fees that commercial [Computer Assisted Legal Research] CALR outlets charge, even if this means paying for more hours of an associate’s time to do the research in a library. As a result, new associates often find that they are restricted from using the commercial computer databases that they became addicted to during law school.<sup>43</sup>

Thus, there is a clear financial incentive for lawyers (and law students) to make

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40. Sanford N. Greenberg, *Legal Research Training: Preparing Students for a Rapidly Changing Research Environment*, 13 J. LEGAL WRITING INST. 241, 246-47 (2007).

41. *Id.* at 242.

42. James R. Seidel & S.A. Supina, *Legal Research*, in LITIGATING TORT CASES § 4:10 (Roxanne Barton Colin et al. eds., 2009).

43. Susan Hanley Kosse & David T. Butleritchie, *Putting One Foot in Front of the Other: The Importance of Teaching Text-Based Research Before Exposing Students to Computer-Assisted Legal Research*, 9 PERSP. TEACHING LEGAL RES. & WRITING 69, 69 (2001).

sure that they are conducting research in the most cost-effective manner possible.

In addition to the possibility that research costs may not be billed, the cost of computer assisted legal research may or may not be recoverable as attorney fees or costs, even if an attorney is successful and wins his or her case. In the bankruptcy courts, the “majority view [is that] computer research time that is necessary and attributable to a particular client or case may be reimbursed.”<sup>44</sup> The prevailing party may ask the court to award costs and fees pursuant to Fed. R. Civ. P. 54(d) (or a similar state rule).<sup>45</sup> There is a split of authority on this issue and whether the court will award the costs of computer assisted legal research may depend on the jurisdiction and whether the costs are recoverable pursuant to statutory authority.<sup>46</sup> Students need to know this and realize that they must take this into consideration when planning research strategy (and even to encourage them to start with a research strategy in the first place). The cost of using fee-based computer research (such as Westlaw and LexisNexis) may not be recoverable. Attorneys and law students should take care to be as cost-effective as possible when preparing their cases. This includes being cost-effective in the time spent as well as the research tools used. There are many times when using the fee-based tools are more cost-effective.<sup>47</sup> However, there are also times when researchers should start elsewhere.<sup>48</sup> By learning to be more cost-effective researchers, lawyers can more confidently represent a pro bono client and not worry about recouping costs.

While CALR can be very expensive, both Thomson Reuters (Westlaw) and LexisNexis are very supportive of pro bono service efforts. Thomson Reuters provides attorneys with complimentary Westlaw access to use for pro bono research. This password gives an attorney working on a pro bono project access to state and federal cases and statutes for up to 60 hours of research time.<sup>49</sup> LexisNexis also supports pro bono efforts through programs such as [Associates

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44. 1 Bankruptcy Desk Guide § 2:87 (2009).

45. FED. R. CIV. P. 54(d) (2009) (“Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney’s fees—should be allowed to the prevailing party.”).

46. See Kurtis A. Kemper, *Recovery of Computer-Assisted Research Costs as Part of or in Addition to Attorney’s Fees Under Federal Fee-Shifting Statutes*, 28 A.L.R. FED. 2d 397 (2008) (for an in-depth discussion of the recovery of computer assisted legal research fees).

47. For example, KeyCiting on Westlaw or Shepardizing on LexisNexis can be done much more thoroughly and quickly online using these systems than it can be done with any other tools, including the print version of Shepard’s.

48. I can think of several instances in which a researcher should begin their research process using a tool other than Westlaw or LexisNexis. Here is one example: If the issue to be researched is covered by statute, one of the best places to begin to research is the annotated statutes in print. Most law firm libraries, law school, or county and state law libraries have the annotated statutes in their collection. By using this free resource, a researcher can obtain the current language of the statute, references to analytical sources, and case annotations with one quick search. Another example would be a case where the researcher is unfamiliar with the legal issue at hand. It is a much more cost-effective to begin this research with an encyclopedia or treatise to gain valuable background information and learn the terms of art before turning to a fee-based search tool.

49. Between Cases – Limited-Use Westlaw Access for Pro Bono Research, <http://www.betweencases.com/westlawofferb/> (last visited Mar. 21, 2010). In order to access this service, attorneys must register for a password, which is good for ninety days and up to sixty hours of research time.

Serving Public Interests Research] ASPIRE.<sup>50</sup> Lawyers and law students should be aware of these efforts and be sure to contact their representative to learn about what resources could be made available to assist with pro bono and public service efforts.

### *B. The Open Source/Free/Cost-Effective Movement*

Law librarians teaching research to law students or new associates often try to focus on cost-effective techniques and free resources. There are several authoritative free resources available that law students and lawyers should incorporate into their research strategy. By learning these resources, lawyers can also save time and money when representing a pro bono client or working on a public service project. There are free resources for case law research,<sup>51</sup> statutory research,<sup>52</sup> regulations,<sup>53</sup> and some very good portal sites with access to a multitude of legal resources.<sup>54</sup> The movement to create more and free access to legal materials is gaining ground. Google has even joined the effort.<sup>55</sup> Researchers can now experiment with finding federal and state case law and legal journal articles through a new search option in Google Scholar. According to Google, researchers will be able to “find and read full text legal opinions from U.S. federal and state district, appellate and supreme courts using Google Scholar.”<sup>56</sup> Researchers should be able to find opinions by case name or by topic. By using the advanced search feature, researchers will be able to limit their search to a particular

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50. The LexisNexis ASPIRE program allows recent law school graduates access to LexisNexis resources to work on a public service project. For further information, see <http://www.lexisnexis.com/about-us/rule-of-law/aspire-program.aspx> (last visited Mar. 21, 2010).

51. Many states have their case law available for free online. See, e.g., Minnesota Judicial Branch Website, <http://www.mncourts.gov/default.aspx> (last visited Jan. 20, 2010). Many states do not have comprehensive coverage of case law available for free on their websites, but most carry opinions back to the early 1990s. There are several authoritative free sources for U.S. Supreme Court and federal court opinions. See Supreme Court of the United States, <http://www.supremecourtus.gov> (last visited Jan. 20, 2010); Legal Information Institute, <http://law.Cornell.edu> (last visited Jan. 20, 2010).

52. Students should be aware of the GPO Access web site where they can gain access to federal resources, including the Statutes at Large and United States Code. GPO Access, <http://gpoaccess.gov/index.html> (last visited Jan. 20, 2010). The United States Code and links to the various state statutes and codes are also available through Cornell's Legal Information Institute. *Id.* Many states also provide access to the official statutes or codes for free online. Students should be taught to check these sources before a fee-based database, especially if they already have a citation. It can save both time and money.

53. Federal regulations are freely available through GPO Access. *Id.* Several agency websites can be very useful legal research tools as well.

54. See, e.g., Legal Information Institute, <http://law.cornell.edu> (last visited Jan. 20, 2010). The Legal Information Institute provides access to constitutions, codes, court opinions (federal and state), and other links to law by source or jurisdiction. *Id.*

55. In a “Tweet” heard around the legal world, on November 17, 2009, Google unveiled a new search function in Google Scholar that allows searching legal opinions and journals for free. This volley in the arena of legal research has been described as “the loudest and certainly most recent salvo in the battle for free access to case law.” Internet for Lawyers, Google Makes Free Caselaw Search Available in Scholar, <http://www.netforlawyers.com/content/google-makes-free-caselaw-search-available-scholar> (last visited Jan. 20, 2010).

56. The Official Google Blog, Finding the Laws that Govern Us, Nov. 17, 2009, <http://googleblog.blogspot.com/2009/11/finding-laws-that-govern-us.html> (last visited Jan. 20, 2010).

jurisdiction or even select multiple jurisdictions to search simultaneously. This is an exciting development for those who want to be cost-effective researchers and for those citizens who want to be better informed on legal issues. Equal access to justice demands that everyone be able to research any legal or political issue. We should all be concerned about making sure that credible resources for legal research are available to everyone.

Many attorneys may also have access to free or low-cost research tools through their local bar association. However, law students should also be exposed to these tools. There are two relatively new resources available almost exclusively through bar associations: Casemaker<sup>57</sup> and Fastcase.<sup>58</sup> Attorneys and student members of the bar association can access these databases (depending on which one the bar association provides) and research case law, statutes, and regulations for free. This should be enticement enough for law students to consider joining their local bar associations as student members. Academic law libraries should also continue to lobby Casemaker and Fastcase to provide access to the law students, regardless of bar membership. These are tools that law students should be exposed to before entering the law firm environment.

There has also been a growing movement towards open-source or free access to scholarly materials. There are various commons projects and social networks that are creating useful tools for researchers.<sup>59</sup> “There is no reason to believe that the legal community, properly organized and harnessed, cannot democratize legal access by making legal aid a common resource.”<sup>60</sup> “Commons projects spanning a variety of disciplines share two key characteristics: open collaboration and open sharing.”<sup>61</sup> In early 2008, Harvard made an announcement that it would “soon begin posting research and articles produced by its faculty on the Internet free of charge.”<sup>62</sup> A recent announcement from five research universities is another

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57. Casemaker was first launched by the Ohio State Bar Association in 1998. Casemaker provides access to federal and state resources. Casemaker is available through a membership to various state bar associations. More information is available at <http://www.casemaker.us> (last visited February 24, 2010).

58. The story behind the inception of Fastcase is worth noting, especially as the focus of this Article is on the importance of continuing to make legal resources available at no or little cost. Edward Walters, an associate at a Washington, D.C., law firm had been working on a legal research assignment and was told by a client to search online but not to “use the large legal research database services because we won’t pay for them.” Dianne Molvig, *Fastcase and State Bar Partnership: Filling a Legal Research Void*, 81 *Wis. LAW.* 8, 8 (2008). After hours of searching in vain, he turned to LexisNexis and finished his research very quickly. This left him with the idea to start a free or low-cost legal research web-based search engine. And that is what he did. Fastcase is now available to many lawyers through their state bar membership and attorneys can use it to research federal and state case law, statutes, and regulations. *Id.* at 8-10. Fastcase is available through membership in various state bar associations. More information is available at <http://www.fastcase.com> (last visited Mar. 21, 2010).

59. See Allen K. Yu, *Enhancing Legal Aid Access Through an Open Source Commons Model*, 20 *HARV. J. L. & TECH.* 373, 375 (2007) (“Today, just as the original computer community created commons versions of software, various other types of commons and social networks are creating public goods in [diverse areas].”).

60. *Id.*

61. *Id.* at 376.

62. Patricia Cohen, *Harvard Research to be Free Online*, *N.Y. TIMES*, Feb. 14, 2008, at E2, available at [http://www.nytimes.com/2008/02/14/books/14arts-HARVARDRESEA\\_BRF.html](http://www.nytimes.com/2008/02/14/books/14arts-HARVARDRESEA_BRF.html) (last visited Mar. 21, 2010) (reporting that the “arts and sciences faculty voted overwhelmingly in favor of a

example of this movement.<sup>63</sup> Finally, most recently, another fifty-seven colleges released an open letter on September 22, 2009, “endorsing the Federal Research Access Act of 2009, a bill aimed at increasing public access to academic research that is funded by the federal government.”<sup>64</sup> Perhaps the same movement will begin to take a stronger hold in the legal academy. Case law, statutes, and regulations can be found freely online.<sup>65</sup> However, analytical materials such as scholarly articles and treatises are not yet widely available for free. The open source movement may provide the momentum to ensure more free access to these legal materials. If there is continued development in providing legal resources, the open source movement may prove to be very beneficial to the pro bono or legal aid efforts. Having access to more resources for free will help practitioners in controlling the costs of litigation, including what can be a very expensive component—legal research. Importantly, the ability to work on pro bono cases is greater when the resources are not cost prohibitive.

Librarians can be leaders in the movement to develop useful free or low-cost research resources. One example of a very successful partnership is that between the Minnesota Volunteer Lawyers Network (VLN) and the Minnesota Association of Law Libraries’ Volunteer Librarians Coalition (VLC). Trudi Busch, the Director of Information Resources at Oppenheimer, Wolff, & Donnelly in Minneapolis and Jennifer Doyle, Law Library Manager at Robins, Kaplan, Miller & Ciresi, helped establish the VLC with the help of other Minnesota law librarians. The VLC created a wiki, or organized website, of free legal research resources for VLN. The VLN’s mission “is to advise and represent economically disadvantaged people with legal problems through volunteer attorneys and without charge to the clients.”<sup>66</sup> The VLC’s mission “is to facilitate the access of information needed by the VLN attorneys in representing economically disadvantaged people with legal problems.”<sup>67</sup> For her efforts, Trudi Busch was recently honored as an “Unsung Legal Hero” by *Minnesota Lawyer*.<sup>68</sup> She reports that the idea for the VLC came from a conversation with one of the attorneys at her firm who commented that “it

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resolution that would commit Harvard to open access—the movement to speed the exchange of knowledge by freely distributing research on the Web.”).

63. Ben Terris, *Five Major Research Universities Endorse Open-Access Journals*, THE CHRON. OF HIGHER EDUC., Sept. 14, 2009, available at <http://chronicle.com/blogPost/5-Major-Research-Universiti/8042/> (last visited Mar. 21, 2010). The institutions involved include Cornell University, Dartmouth College, Harvard University, the Massachusetts Institute of Technology, and the University of California at Berkeley. *Id.* These institutions “signed a compact agreeing to the ‘timely establishment’ of mechanisms for providing financial support for free open-access journals.” *Id.*

64. Steve Kolowich, *Open Letter on Open Access*, INSIDE HIGHER EDUC., Sept. 23, 2009, available at <http://www.insidehighered.com/layout/set/print/news/2009/09/23/access> (last visited Mar. 21, 2010).

65. An exciting development in online access to government information was announced on October 5, 2009. The White House, U.S. Government Printing Office, and the National Archives’ Office of the Federal Register have made the text of the Federal Register for 2000-2009 available in XML (extensible markup language). With the data in a format that can be manipulated, librarians and other interested parties can create databases and other valuable research tools with this information.

66. Volunteer Lawyers Network, <http://www.volunteerlawyersnetwork.org/> (last visited Jan. 20, 2010).

67. Volunteer Librarians Coalition, Mission Statement, <https://vlc.wikispaces.com/About+VLC> (last visited Jan. 20, 2010).

68. Minnesota Unsung Legal Heroes, *Minnesota Lawyer*, Special Supplement S-8, Sept. 2009.

would be great if librarians could become involved to support [the firm's] pro bono efforts.<sup>69</sup> She took that idea and enlisted the help of her fellow librarians to put together a research tool that would support attorneys in their efforts to provide pro bono service to people in need. The VLC's "wiki" is a research tool. Librarians can contribute links and resources for pro bono attorneys working through VLN. In addition to the free resource links provided on the wiki, Thomson Reuters contributes free research databases for the VLN attorneys to use in their pro bono efforts.<sup>70</sup> This is one fine example of the importance of legal research skills, resources, and what librarians can do to support pro bono efforts within the legal profession.

#### IV. CONCLUSION

In the effort to ensure that everyone has equal access to justice, it is important to make sure that the necessary components for building such a system of access are also in place. Law students must enter the legal profession with the level of competence needed to provide assistance to all potential clients. A lawyer's duty of competent representation mandates that even new attorneys must be skilled in performing cost-effective research. They must know about free and low-cost resources. They must know which resource to consult to educate themselves and respond to any given legal issue. They must have continued access to legal information. They must be taught about their professional responsibility and ethical obligation to participate in pro bono and public service. It is up to those of us who teach practical skills in law schools today to continue to make this an important part of our mission and service to the profession.

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69. *Id.*

70. Volunteer Librarians Coalition, VLC News, <https://vlc.wikispaces.com/VLC+News> (last visited Jan. 20, 2010).