

Results of Participant Observation in the Fifth Judicial District: Customizing the County Law
Library to Meet the Needs of Small Firm Attorneys in Rural Kansas

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Abstract

A participant observation study conducted in the fall of 2005 identified how attorneys in the Fifth Judicial District of Kansas access and use legal information. The Lyon County Law Library was restored in 2003 after three years of dormancy due to courthouse construction. The library had acquired basic legal reference materials and a better understanding of how its attorney clientele access and use information was needed for continual library improvement.

Six attorneys (13% of the law library's membership) were observed for two days each. Research notes were analyzed to address three study questions:

1. What are the legal information needs for attorneys in small rural firms?
2. Despite individual practice differences, do attorneys process information in much the same way?
3. Can legal information needs be met through a carefully designed law library, customized for the local legal community?

The study answered these questions and identified corresponding barriers to service delivery. Beginning in 2006, study results were used to develop and implement a strategy for customized services and resources of the Lyon County Law Library.

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Introduction

The purpose of this paper is to demonstrate how research findings can be applied to enhance the delivery of legal information services. It begins with an overview of the study, describes the findings and concludes with resulting services.

A participant observation study was conducted the in the fall of 2005 to identify how attorneys in the Fifth Judicial District of Kansas access and use legal information. The goal was to obtain information that would be used to customize services at the Lyon County Law Library, which had been re-established in 2003 following three years of dormancy due to new courthouse construction. A task force had studied the information needs of the local legal community and made recommendations for core materials acquisitions. Many of these were obtained, but a better understanding of how attorneys in the Fifth Judicial District access and use information was needed for continual library improvement.

Understanding the Study's Subjects

The majority of U.S. attorneys spend their careers in small firms or as solo practitioners¹, yet little is known about the information needs of these attorneys (Levin, 2001) . Our goal was to identify how attorneys in the Fifth Judicial District of Kansas access and use legal information in order to customize information services at the Lyon County Law Library. Participant observation methodology was used to study the information use patterns of six attorneys—four in private practice and two prosecutors—in the two counties that comprise the Fifth Judicial District. Our subject pool equated 13% of the law library's membership. This group not only represented a diversity of geographic location, type of practice and gender, but also a range of years of experience, from just over three to more than 30.

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3. Can legal information needs be met through a carefully designed law library, customized for the local legal community?

The data provide answers to these questions and the findings continue to be applied to our objective of customizing information services.

Methodology

For more than two decades, the information profession has seen the value of qualitative methodologies (e.g., action research, field methods, participant observation) to answer questions regarding information seeking and using habits (Greer and Hale, 1982; Kuhlthau, 1988, 1991, 1993, 2004). Driven by our desire to develop customer-centered services, our discipline conducted research to find out how library patrons sought and used information. We learned that circulation statistics alone cannot tell the story of what users were looking for, whether they found it, and whether it matched their information need or was an exercise in frustration. We also learned that to ask people how they look for information, what is useful to them or what would make their lives easier, is to depend on an “in the moment” answer, which may be unduly influenced by that moment’s context or suffer from memory gaps. Regardless, to understand library users’ habits fully, data gathered solely through the interview method can be considered only marginally useful.

By contrast, observing users in the context in which they seek and use information can be far more revealing and accurate. That is why participant observation was chosen to gather data from four private practice attorneys and two prosecuting attorneys for two days each. Each day’s notes were coded and analyzed for patterns. An aggregate of activity was compiled, noting the number of occurrences. In addition, commonalities were noted across the types of practice and demographics (i.e., rural vs. frontier) in accordance with naturalistic inquiry protocol. The environment of our subjects is one of many factors that influence the practice of law. Factors such as population density, office décor and dress, support staffing and client relations were noted. Participating attorneys answered questions and confirmed or corrected impressions during our many conversations.

Findings

Culture is the context in which professionals practice. Lawyers work primarily in the legal culture, with its extensive rules and procedures. Attorneys are responsible for maintaining professional conduct in relation to their clients and the court. In addition to the legal culture,

attorneys find themselves practicing law within the immediate social culture, in this case, that of a sparsely populated rural/frontier region.

The population density² of the Fifth Judicial District varies considerably between the two counties, Chase and Lyon. The former has a population density of 3.9 per square mile while the latter is estimated at 42.2. The result is a mix of two cultures – frontier and rural – within the larger culture of law. This cultural mix has a pronounced effect on the *how* of judicial procedure. The legal community in Chase County reflects its small town atmosphere and appears to have an easy-going attitude as compared to its counterpart in Lyon County.

An example of this is the procedure for record checks. Prosecutors in both counties routinely run criminal background checks prior to court hearings. Everyone in Chase County knows each other, so not only can the prosecutor request a check on someone by phone, he’s just as likely to engage in friendly chitchat with the sheriff’s dispatcher in the process. By contrast, the prosecutors in Lyon County must make their background checks in writing. Between the Lyon County sheriff and county attorney offices, there are simply too many people with too much personnel turnover to be able to rely on voice recognition.

While the culture may dictate how an attorney practices, the type of practice he or she has dictates the day-to-day activities—to an extent. As stated earlier, observation notes were coded and aggregated to activities that had 10 or more occurrences. The top ranking five activities are noted in Table 1:

Activity	Frequency
1. phone	97
2. technology/research	49
3. court/court prep	44
4. case	19
5. relationships	18

Table 1 Attorney Activities

Of Table 1’s activities, the top three were *phone* (97), *technology/research* (49) and *court/court prep* (44). The top category, phone, is a clear indication of the importance of communication in the attorneys’ day-to-day work schedule. A contributing factor to its high number is the amount of ‘phone tag’ that takes place between attorneys. Phone calls are typically brief and to the point; an exception is an interview or court appearance that takes place by phone. Related to the phone category is the importance of relationships (Table 1, #5). Most of the attorneys observed turned to me at some point and said, “I’m calling this person so we don’t

have any surprises.” Thoughtfulness for the other attorney is thoughtfulness for one’s client – when we play well together, everyone benefits.

Technology/research refers to how many times an attorney used a computer, handheld (PDA), cell phone (for other than calls) or other technology to obtain or transfer legal information. It reflects the increasing importance of online legal information services for attorneys as well as in-house digital information management systems. Despite the acceptance of technology in law offices, the importance of maintaining computer hardware through timely upgrades is not universally practiced. At the same time, broadband Internet access—even in the ‘frontier’ areas of Kansas—is making online legal information resources much easier to access. Another benefit of broadband Internet is the increasing use of ‘instant messaging’ within the firm. Attorneys can ask quick questions of each other or staff, and notes can be saved from these messages for the official digital case record. However, technology is not a cure-all; at times the in-house systems were observed to generate more work, and subsequently increased.

One might think that court and court prep time was heavily weighted by the observations of two prosecuting attorneys. However, three of the four private practice attorneys routinely spend time in court; therefore, this was a common enough activity to be found across the representative groups. On the other hand, most attorneys noted a preference to settle matters out of court. When that is possible, it saves everyone time and money.

The activity of “relationships” corroborates Stephanie Cahill’s 2002 study of small-firm and solo lawyers in Chicago: the importance of honesty and of relationships with other attorneys. This study of Cahill’s attorneys’ counterparts in sparsely populated eastern Kansas confirmed her findings. To a person, attorneys noted the importance of credibility as their single most important attribute. Whereas the Chicago attorneys worked to develop and maintain good relationships within the court system, in east-central Kansas, attorneys may find themselves working on a case with an attorney who last week was opposing counsel. Even more likely, attorneys of the Fifth Judicial District belong to the same social clubs and churches, and their kids go to the same schools. In this small environment, there’s no need for adversarial relations outside the courtroom and every reason to work toward good relationships. On the most pragmatic level, cases work out more expeditiously if attorneys share a professional relationship.

Unlike the Chicago attorneys who typically specialize in one or two areas of criminal or civil law, Fifth Judicial District attorneys have much more generalized practices. Their cases run

the range from agricultural law to zoning, and frequently include a considerable amount of child custody, estate planning and traffic cases. Other than prosecuting attorneys, it is rare to find a specialist in this geographical region. An important consideration regarding generalized legal practice in a small region is that most cases involve such small amounts of money that there frequently is not enough to justify the expense of in-depth research. Consequently, legal information needs are most likely researched by the attorney and only occasionally with the help of the law librarian³. As we will see in the next section, it is possible that the lack of law library use can be attributed to the erroneous perception that this resource would be a further waste of time⁴.

However, frequency of occurrence alone is not an indicator of an activity's importance. One incident coded as 'ethics' occurred during this study, and ethics is of paramount importance. In essence, we learned that despite a small general population and a much smaller legal community, the attorney/client privilege is highly respected and protected. As one of the participating attorneys observed, the system works even in a small town—they can and do keep personal and professional issues separate.

Discussion

The practice of law involves massive information gathering, sifting and use. Legal training provides the framework for information acquisition, use, thinking and problem solving. – Jeffrey J. Larson, formerly of Miller & Larson, Chtd., now judge in the Fifth Judicial District

At the beginning of this report, three questions were listed that will now serve as discussion points. Each question is addressed below.

The Legal Information Needs of Attorneys in Small Rural Firms

Kansas attorneys can be counted on to have a solid knowledge of state and federal constitutions, statutes and court rules. Beyond that, the scope of each practice determines the specificity of legal information needed for ready reference and research. Because of the small geographic area in which they practice, attorneys of the Fifth Judicial District primarily need access to basic state resources and updates of appellate court rulings. Svengalis (2006)

recommends a “core collection” for every law library; this study revealed that the Lyon County

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Law Library had made a strong start toward this goal. One recommendation drawn from this study was to fill in the few missing pieces of the core collection. Additional detail on collection development is found later in this paper under Applied Findings.

Similarities among Attorneys' Information Processing

Attorneys were observed to have certain processing tendencies in common. For one, they tend to be “hard core” information users. The more successful attorneys have learned not only how to access information but how to process it swiftly. They have mastered the art of learning, unlearning and relearning⁵.

They also demonstrated the art of multitasking. Why only sort the mail when you can make notes and talk on the phone at the same time? Even travel time is not wasted; an attorney in this study said that he frequently mentally processes his research while driving to court. Another attorney outside the study later confirmed this, adding that she keeps a notepad handy for those 2:00 a.m. “aha!” moments.

Multitasking is recognized as a human information behavior and is particularly appropriate when designing information services for attorneys. Multitasking is a human behavior that allows individuals to “cope with ever more complex environments by handling multiple tasks through task switching” (Spink and Park, 2005). Spink’s multitasking model appears to be particularly applicable to attorneys due to its assumption of a “depth of information processing required” (derived from the legal training framework), its high level of [topic] interest and “serendipity ... prompted by visual information cues.” The latter explains why so many attorneys, even those with above-average technology skills, prefer print resources to digital. The serendipitous discovery is rare online but quite frequent when browsing print documents (Kuhlthau and Tama, 2001).

How Can a Law Library Meet Attorneys' Legal Information Needs

It is worth noting that attorneys use diagnosis, as do information professionals. When asked whether Kuhlthau’s findings on the diagnostic exchange are pertinent, one of the attorneys asserted it was so. Kuhlthau noted that the diagnostic exchange is “shaped as much by the user’s learning during the information seeking process as it is the original question. What may be ‘relevant at the beginning of a search may later turn out to be irrelevant, and vice versa’” (1993, p. 3, Fowler 2005). Attorneys are well aware that the legal question changes as the research

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proceeds because of this on-going learning. For information professionals, diagnosis works if we can have an ongoing conversation with our client in order to gauge the learning that is taking place and how it is affecting the research question. Practicing diagnosis prevents us from committing the cardinal sin of our profession – assuming that all the client needs is the answer to their initial question. If we are to provide professional services with the same fervor as our attorneys provide legal services, we must develop ways to perform diagnosis for the most time-challenged of our clients. In the year following this study, we found that diagnosis for our attorneys takes place in a number of ways. It happens when we proactively select materials in terms of content and the formats that will best fit our attorneys' time constraints. It also takes place when the librarian is scanning legal blogs, listservs and periodicals and disseminates information she knows to be pertinent to her law library members. This discovery has resulted in removing a large part of one barrier to using the law library, but more barriers remain.

Barriers to Using the Law Library

This researcher has been in independent professional information practice for 13 years, the majority of which has been spent serving corporate clients who typically are more willing to seek consulting services than clients in the legal field. It was a profoundly different experience to offer information services to a clientele who, in general, appeared disinterested. During the course of this study, it became clear that disinterest was often a sign of deep-rooted independence. It also stemmed from a lack of awareness of what the law library can offer. The latter was compounded by the most significant barrier of all – time.

Every private practice attorney observed spends a considerable amount of effort tracking his time. Time equals billable hours, and collectable billable hours is what keeps the office going. As is true for other professionals who bill by the hour, time is a precious commodity. How do we overcome the perception that using the law library is prohibited by time? We do so by demonstrating library services that save time – and marketing these services to the local legal community.

Services That Go Beyond the Barriers

Greer and Hale (1982) assert that libraries provide services on three levels: passive, reactive and assertive (proactive). A passive collection lies in wait for the chance user; a reactive library is happy to answer requests. A proactive library is one that takes time to know its primary clientele, anticipates the needs of the users and consults with them regarding material

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acquisitions. It is the goal of the Lyon County Law Library to be efficiently reactive at all times and proactive whenever possible. The 2005 study was the first step in that process and continues through an informal collection of data from which legal information needs are deduced, the customized collection is maintained, and information is disseminated to meet the inferred and expressed needs (Greer and Hale, p. 360).

In addition to the level of service, libraries have roles that should be selected based on the community's needs. Briefly, these are

- archival – serving as the historical repository for the community
- cultural – reflecting artifacts and values unique to the culture
- educational – provide materials used in teaching and learning
- recreational – materials that enhance one's leisure time
- informational – 'ready reference' and ephemeral news
- research – supplying resources, including people, that create new knowledge

Findings from this study created a profile of the local legal community. This profile of attorneys

- serving a sparsely populated area
- handling a wide range of legal matters
- continually learning with a partiality for multitasking
- adhering to strong professional ethics

narrowed the roles to four—two primary and two secondary—for the Lyon County Law Library. The primary roles are informational and research; secondary roles are cultural and educational.

Proposed services within these roles are listed in Table #2 next to corresponding delivered services. Informational services include providing access to legal news. The law library considered adding RSS (Really Simple Syndication) feed to its website for timely updates. This proved to be an information glut. The failure of this idea taught us that attorneys want and need only the slice of information that applies to their world. It also underscored the need for information to be relevant in order to be valued. We have had greater success with adopting instant messaging (IM). We find it to be very useful, especially for attorneys and their staff to pose 'ready reference' inquiries.

Library Role	Fits w/LCLL mission?	Evidence	Proposed Services	Delivered Services
Informational	Yes	one attorney made an effective argument in court by citing recent appellate court rulings	provide access to legal news, particularly cases of interest	articles, emails highlighting specific case links to Supreme Court opinions posted on library website
Research	Yes	every attorney observed did some type of research, usually print-based resources	within parameters established by the trustees to avoid conflict of interest	help formulate searches, conduct search for specific subject. Value added with Shepardizing & delivery
Cultural	Yes	attorneys need access to materials appropriate to the culture, such as agriculture law & estate planning for farmers & ranchers	acquisitions within scope of legal work routinely found in this geographic area	added appropriate materials, e.g., Search & Seizure, Trial Procedures, Family Law
Educational	Yes	offhand remarks, such as "I'd really like to know how to ...but don't have the time to sit down and learn it."	develop 15-minute 'quick courses' that attorneys can do in the library or login online	quick courses in development for future; CLE taught by librarian & updates in newsletter
Archival	No			
Recreational	No		"fun" is integrated in the quarterly contests that raise awareness of the library and offer prize incentives for participation.	the fun continues with a scheduled 'grab bag' event for Law Day (May 1)

Table 2 Library Roles and Services

The other major role, research, has the ability to play a critical role in the outcome of any legal case. The law library ensures that basic research materials from state and federal sources are kept current. Furthermore, the law librarian assists patrons with using research resources. The law librarian may provide in-depth research assistance with the trustees' permission. This is a

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challenge in a small legal community, one that we try to handle by attorneys not providing case details but only points of law in a search request. Without knowing which cases are involved the law librarian can assist both sides of the aisle without being aware of the exact case, and thereby avoid a conflict of interest. Obtaining permission resolves that issue, even to the point of avoiding the appearance of a conflict of interest. While librarians have a professional code of ethics that requires neutrality and confidentiality, attorneys' code of ethics prohibits the *appearance* of impropriety. The latter is a much stricter requirement yet achievable through collaborative efforts.

Secondary library roles of cultural and education serve to establish the scope of the overall collection and to enhance educational opportunities through contests and other fun activities. The cultural role guides acquisitions in that materials will be acquired only if they meet the needs of the general legal community. The law library acquires specialized materials only after establishing a significant interest by more than a few attorneys or firms. Services related to the educational role include the development of instruction modules that allow time-conscious attorneys to practice research skills.

Applied Findings

While we've yet to figure out how to conquer the small firm attorney's sense of independence, we have made strides in raising awareness of what the library can offer, especially how we can save an attorney's valuable time. We began distributing a monthly e-newsletter that covers new materials, highlights upcoming events, and covers topics of interest to small-firm or solo practitioners. One newsletter led to the law librarian teaching a CLE (Continuing Legal Education) to the local bar on the role of metadata in legal information management. Titled "Metadata: Will it Kill Your Practice?" the 2-hour course was well-attended and has led to continuing education on electronically stored information (ESI) and in particular, how to respond in light of recent changes to the federal rules of civil procedure. That course led to continued updates issued by the library and is evolving into another library teaching opportunity on technology for the small law firm.

We also hosted two database vendors during National Library Week. Attorneys were able to play with portions of the database that our usual subscriptions do not cover and received promo items from the vendors. The experience of working out a research question online has led to more attorneys asking for help formulating their searches.

In addition to the collections gaps that the study revealed, we continue to add quality legal materials that many of our members need to access, but infrequently. One book on Search & Seizure is extremely popular among the defense attorneys – and its price tag is \$411. It's hard for a small firm to justify an expense like that for only occasional use, but makes tremendous sense for the law library to make it available to all its attorneys.

Quarterly contests are another way of marketing the library and serve to encourage attorneys to test their research skills. Last October's contest capitalized on the World Series by asking questions about the U.S. Supreme Court's role in major league baseball. It didn't hurt that the prize was a rolling computer case (courtesy of a vendor) but we concluded it was the question topic that had this contest receiving the most attention of any held in the previous year.

Although no other systematic data gathering has taken place to supplement the 2005 study, informal data gathering takes place through conversations with attorneys in the library, through email and IM. Most collection development is vetted through the law library member email list and/or the monthly e-newsletter. This clarifies what attorneys really want and quickly provides a realistic view of the critical mass.

Conclusion

The 2005 study revealed how attorneys of the Fifth Judicial District access and use information, under what circumstances and preferred formats. It also told us that influencing factors go beyond the traditional legal community ethics. Because of the small general population, most attorneys are generalists who need access to basic resources and only occasionally to more specialized materials. This rural/frontier population dictates that attorneys spend their time performing a myriad of legal services, most of which are not lucrative enough to justify extra expenditures on research or expert witnesses. However, because attorneys want to provide the best possible service, and because we took the time to listen, the law library is developing into a resource that ensures the desired quality of work without additional costs. It is becoming that resource by customizing its services and promoting it to the local legal community.

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Endnotes

¹ Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2004-05 Edition*; *National Law Journal* 2003 rankings of top 250 firms

² Average residents per square mile.

³ Since implementing the results from this study, the law library has noted a much higher incidence of attorney asking the librarian for help in formulating searches.

⁴ The irony, of course, is that effective use of the law library can save an attorney significant time and add to his/her bottom line. Research shows that librarians are found to save professional staff as much as 8 hours for an extended reference question and 1 hour for quick reference questions. (AALL 2005 *Prove Your Worth: Calculating Your Library's Value*)

⁵ A paraphrase of Alvin Toffler's now-famous quote: "The illiterate of the 21st century will not be those who cannot read and write, but those who cannot learn, unlearn, and relearn."