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Access to Print, Access to Justice

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Access to Print, Access to Justice*

Kimberly Mattioli**

This article examines the relationship between self-represented litigants and digital literacy and how this particularly vulnerable patron group stands to be harmed by the elimination of print materials from public law libraries. An examination of the literature and a survey help to shed light on this growing problem.

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Introduction

¶1 The legal industry and law schools are in a time of flux. Scholars, journalists, lawyers, and nonlawyers bemoan the glut of newly minted JDs who are churned out of law schools across the country every spring.¹ These commenters claim there are too many lawyers, many of whom are grossly unprepared to compete for the relatively small number of job openings in the legal field. The law schools they

* © Kimberly Mattioli, 2018. This article benefited from comments offered by Ashley Ahlbrand, Linda Fariss, and Jennifer Morgan.

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1. See Editorial, *The Law School Debt Crisis*, N.Y. TIMES, Oct. 25, 2015, at SR8; Noam Scheiber, *An Expensive Law Degree, and No Place to Use It*, N.Y. TIMES (June 17, 2016), <https://www.nytimes.com/2016/06/19/business/dealbook/an-expensive-law-degree-and-no-place-to-use-it.html>.

attend do not give them the real-world experience they need to practice law—instead, critics say, these fledgling attorneys are taught three years of irrelevant legal theory by overpaid law professors, overseen by money-hungry law school administrators who admit underqualified students just so they can stuff their coffers with tuition from those who are too unsophisticated to know better. Unless you can be admitted to a top school, they say, you would be foolish to attend law school.² This is the story the public is fed by popular-press pieces in the media. Whether it is true or not, the seemingly ceaseless media coverage of the demise of the American law school does seem to be taking its toll. Law school applications plummeted dramatically for several years and stagnated in 2016.³ Some law schools are being forced to buy out tenured faculty members or offer them early retirement.⁴ Others have drastically lowered the number of applicants they accept so they can keep their Law School Admission Test scores and grade point average numbers steady, resulting in less revenue from tuition.⁵ It is easy to understand why law school administrators need to look for places to save money. Often, the first place hit with a budget cut is the law library.⁶

¶2 Law library literature is full of articles talking about shrinking budgets.⁷ When budgets shrink, it logically follows that print collections shrink. Many of the most expensive volumes in a print collection are duplicated online—codes, digests, and periodicals to name a few, and these materials continue to grow more expensive.⁸ Law students are technologically savvy, and law faculty members are becoming increasingly so. It makes sense to save money by eliminating underutilized print volumes. Much of the literature on this topic focuses on how the downsizing of print collections will impact law librarianship or ways that librarians can remain relevant in the face of such a large change.⁹ This article shifts the focus away from how libraries and librarians will be affected to how the changes will affect a different group—self-represented litigants.

¶3 Public law school libraries have long served members of their communities. While access policies vary greatly from library to library, most institutions allow at

2. Elie Mystal, *A Guide for Choosing a Low-Ranked Law School*, ABOVE THE LAW (July 30, 2013, 6:04 PM), <http://abovethelaw.com/2013/07/a-guide-for-choosing-a-low-ranked-law-school/> [https://perma.cc/8CR9-H675].

3. *A Steep Slide in Law School Enrollment Accelerates*, N.Y. TIMES (Dec. 17, 2014), <https://dealbook.nytimes.com/2014/12/17/law-school-enrollment-falls-to-lowest-level-since-1987> [https://perma.cc/L2XY-WLK7]; Karen Sloan, *Number of Students Enrolling in Law School Basically Flat*, NAT'L L.J. (Dec. 15, 2016), <https://www.law.com/nationallawjournal/almID/1202774844249/> [https://perma.cc/NZ7R-Z7LJ].

4. See, e.g., Dave Stafford, *Valpo Law Announces Faculty Buyouts, Smaller Future Classes*, IND. LAW. (Feb. 26, 2016), <https://www.theindianalawyer.com/articles/39615> [https://perma.cc/X3KM-AM9J?type=image].

5. See, e.g., Elizabeth Olson, *Minnesota Law School, Facing Waning Interest, Cuts Admissions*, N.Y. TIMES (May 12, 2016), <https://www.nytimes.com/2016/05/13/business/dealbook/minnesota-law-school-facing-waning-interest-cuts-admissions.html>.

6. Linda K. Fariss, *Issues Facing Academic Law Libraries—New Challenges, New Opportunities*, 31 IND. LIBR. 37, 38 (2012).

7. See Taylor Fitchett et al., *Law Library Budgets in Hard Times*, 103 LAW LIBR. J. 91, 2011 LAW LIBR. J. 5.

8. Amanda M. Runyon, *The Effect of Economics and Electronic Resources on the Traditional Law Library Print Collection*, 101 LAW LIBR. J. 177, 2009 LAW LIBR. J. 11.

9. See Genevieve Blake Tung, *Academic Law Libraries and the Crisis in Legal Education*, 105 LAW LIBR. J. 275, 2013 LAW LIBR. J. 14.

least some public access to their collections. This includes access not only to print, but usually also to computer terminals where the public can access the Internet to use free online legal resources or subscription databases like Nexis Uni.¹⁰ Access to public law libraries is essential for self-represented litigants, and for many of them having Internet access to legal materials meets their needs. But what about the self-represented litigants who cannot use the computer?

¶4 Before attending library school, I volunteered at a community legal aid clinic in Berkeley, California. The clinic worked exclusively with individuals who fell under a certain income threshold and who lived in Alameda County—everyone else was turned away. Many of the clients were either homeless or in Section 8 housing and unemployed. Others were employed and had homes or apartments but had been completely overwhelmed by debt. These clients were not self-represented litigants, but they would have been had they not had access to the clinic. I noticed a fascinating pattern: regardless of which group the clients fell into, unemployed or employed, many of them did not know how to use a computer. Some were adamant about not even attempting to use a computer and certainly did not want to try to use the Internet. Many clients were willing to sit next to us while we worked on the computer for them, but others refused.

¶5 Later, during my time as a library school student, I worked part time and had an internship in a law library. I realized how similar some of our patrons were to the clients at the legal aid clinic. Now, however, I felt that I was working at a disadvantage. At the legal aid clinic, it was nearly irrelevant whether the clients were computer literate because we could do everything for them. We told them what statutes or cases they needed to rely on, we filled out their forms, we filed forms with the court, we e-mailed opposing counsel for them. As librarians, of course, we are not allowed to do any of these things because it may constitute the unauthorized practice of law. If a print title is not available, how are librarians supposed to help computer-illiterate patrons find legal resources? What happens to computer-illiterate patrons when they do not live near or qualify for a legal aid program?

¶6 Arguably, eliminating print titles will cut off access to the law for a subset of the population. The focus of this article is to direct discussion to a simple question: are self-represented litigants negatively impacted by the shrinking print collections in public law libraries? The answer to this question may be elusive—there are many interrelated facets of the problem that connect in complicated ways. In spite of the difficulty in reaching a conclusive answer, my thesis is that on the whole, self-represented litigants have less access to legal materials due to the shrinking print collections in public law libraries.

¶7 In this article, I first identify and discuss three issues that comprise the wider access to justice problem: shrinking print collections in public law libraries, digital literacy, and the rise in the number of self-represented litigants. I then discuss the results of a survey I conducted in the spring of 2017 that shed light on how large a problem public law libraries face when they attempt to help self-represented litigants. I next make some recommendations for public law librarians and describe

10. LAW LIBRARIANS' WORKING GROUP OF THE SELF-REPRESENTED LITIGATION NETWORK, A SURVEY OF LAW LIBRARY PROGRAMS FOR SELF-REPRESENTED LITIGANTS, INCLUDING SELF-HELP CENTERS 7 (Apr. 2014), <http://www.srln.org/node/551/survey-srln-library-working-group-national-self-help-libraries-survey-srln-2013>.

initiatives that are helping to bridge the justice gap in America. I end by explaining how librarians are uniquely situated to take part in these programs.

Background

Print Collections in Law Libraries

¶8 What to do with print materials has been widely discussed in the law library literature.¹¹ It is no secret that law school libraries have been under immense pressure to cut their budgets. At a time when law schools are strapped for cash, the library budget is usually one of the first expenditures to be put on the chopping block.¹² Critics of the current model of legal education have not minced words: “As legal practice continues to move away from requiring lawyers to consult books of any sort, the millions of dollars per year that the typical law school expends on maintaining a comprehensive law library could be reduced to a more rational level of expenditure,” writes Paul Campos.¹³ He continues, “[L]aw libraries . . . grow ever-more pharaonic even as the practice of law becomes less book-based, and as, if my own observations are accurate, law students find it less and less necessary or desirable to use these literary labyrinths even as opulent study spaces.”¹⁴ Everyone can form an individual opinion as to whether Campos’s observations are accurate, but there is no debating that his sentiment, if widely shared, is worrisome for law libraries.

¶9 The legal education reformers could be called alarmist or hyperbolic or accused of oversimplifying the problem, but they are not the only voices speaking out about where the future of academic law libraries is headed. If law librarians were ever in denial about the place of print collections in law schools, they seem to have adopted a tone of acceptance. In a *Law Library Journal* article entitled *Law Library Budgets in Hard Times*, several academic law library directors quash arguments that print proponents put forward in an effort to convince naysayers that print materials are necessary—namely the licensing agreements with commercial databases and the fact that people enjoy studying in rooms filled with books.

User emphasis is on access; few faculty and even fewer students are interested in whether the information that they use is licensed rather than owned by the library. As librarians, we may feel nostalgic and fiduciary responsibilities for our print collections, often carefully developed over decades, but few of our users, including our deans and faculties, feel the same way.¹⁵

It is not that these librarians believe licensing or fiduciary responsibilities are not valid concerns if law libraries eliminate print, but rather that librarians need to resign themselves to the fact that it is a battle that will not be won. For some librarians, there is no battle to fight at all.

11. See Ashley Krenelka Chase & Elizabeth C. Barnes, *The Road Oft Traveled: Collection Analysis and Development in a Modern Academic Law Library*, 39 *COLLECTION MGMT.* 196 (2014).

12. Fariss, *supra* note 6, at 38.

13. Paul Campos, *The Crisis of the American Law School*, 46 *U. MICH. J.L. REFORM* 177, 217 (2012).

14. *Id.* at 195.

15. Fitchett et al., *supra* note 7, at 94, ¶ 10.

¶10 The tone in the literature and in popular press pieces is clear—print collections are too large; they are wasteful and unnecessary since nobody uses books anymore. Lawyers prefer to access their legal research materials online, and a law school's duty is to teach students how to be lawyers. There is simply no point in instructing students on how to do extensive print research when they will not have access to those books once they are in practice anyway. Some librarians have also noted that it is untenable with today's financial constraints to maintain dual formats of information resources; since statutes, cases, and other materials are available online, there is no need to also have them in print.¹⁶ Nor are academic law libraries the only institutions facing pressure to limit the size of print collections—government law libraries, often funded through court filing fees, are also facing budget decreases.¹⁷ It is important to find out what is happening behind all this rhetoric—are law libraries actually shrinking their print collections?

¶11 Primary Research Group recently conducted a survey called *Law Library Plans for the Print Materials Collection*.¹⁸ The survey was given to sixty-six law libraries, with a mixture of academic, firm, and government organizations responding. A small number of the respondents were from private company law libraries. The survey consisted of questions about the size of print collections, whether the libraries had plans to shrink those collections, about what items were being weeded, and about specific sources such as print journals and legal encyclopedias.¹⁹

¶12 Based on the answers to the survey, the expected two-year drop in spending on print resources from 2014 to 2016 was about twenty-two percent.²⁰ Law school libraries are aggressively eliminating reporters, journals, and looseleaf subscriptions. Many law firm libraries stated they have aggressively eliminated print sources across the board, while others emphasized digests and reporters. The government law libraries that responded often stated that they are eliminating primary source materials, though one respondent did state that “[w]e maintain our Georgia print collection because 90% of our users are self-represented litigants who are not computer literate.”²¹

¶13 The survey shows that law libraries are in fact reducing their print collections. Of particular interest for this article is the fact that many libraries are eliminating their primary sources in print. Primary sources (along with basic secondary sources like legal encyclopedias) are likely the most important resources for self-represented litigants. Two-thirds of academic law libraries stated that they were eliminating primary sources and digests. Sixty percent of firm law libraries responded that they were eliminating either certain primary sources or primary sources across the board. The number is likely even higher, however, because other firm libraries stated they were eliminating all duplicative primary sources. As for government law libraries, sixty-eight percent responded that they were eliminating

16. Connie Lenz, *The Public Mission of the Public Law School Library*, 105 LAW LIBR. J. 31, 2013 LAW LIBR. J. 2.

17. See Anne Galloway, *State Law Library Victim of Budgeting*, STOWE REP. (June 18, 2015), http://www.stowetoday.com/stowe_reporter/news/state_news/state-law-library-victim-of-budgeting/article_6c0f06b8-1696-11e5-9677-7f76511f7b11.html [https://perma.cc/SP7D-9UW6].

18. PRIMARY RESEARCH GROUP, INC., LAW LIBRARY PLANS FOR THE PRINT MATERIALS COLLECTION (2015).

19. *Id.*

20. *Id.* at 17.

21. *Id.* at 38.

primary sources, and even more were eliminating duplicative materials.²² One law school librarian responded that “[a]s it becomes the ‘norm’ to have less primary materials in print, it be will be easier and safer to discard them.”²³ A statement like this indicates that even libraries that have no current plans to eliminate their primary materials may do so in the future.

¶14 Another source that is likely quite important to self-represented litigants, legal encyclopedias, is also reportedly being eliminated, with a 32% drop in spending for academic law libraries, a 32.4% drop for firm law libraries, and a 23.2% drop in government law libraries.²⁴ When asked what they anticipated would happen to their print collections in the next five years, about eighty percent of law school libraries said they expected their collections would either shrink or stay about the same. Law firm libraries all expected decreases to their print collections.²⁵ Some libraries seem aware that self-represented litigants have different needs than other patron bases. When asked what they do when they have a material in both print and digital format, one law school librarian responded, “Some print sources are used more heavily by the general public than by our faculty and students. We try to balance those needs when we make decisions.”²⁶ Another stated, “We have an obligation to serve the public as well as the bench and bar. . . . Print material is often the easiest for patrons outside of academia to understand and use.”²⁷

¶15 As shown from the responses to this survey, the shrinking of law library print collections has already begun in earnest, and it will likely continue into the future. While some librarians seem to understand that many self-represented litigants are not going to have the computer skills to conduct adequate online legal research, other librarians seem eager to rid themselves of print. Others simply have no choice.

Digital Literacy and Access to Information

¶16 To understand how self-represented litigants may be negatively impacted by the decrease in print primary sources and print secondary sources such as legal encyclopedias, it is necessary to explore the phenomenon of digital literacy. Much of the literature on libraries and digital literacy uses a three-part framework to show the different aspects of information access: physical access, intellectual access, and social access.²⁸

¶17 Physical access is what many people think of as the “digital divide.” This is the issue of an individual’s ability to access information, whether in print or online.²⁹ The fear when the Internet became widespread was that low-income people or families in rural areas would be cut off from Internet access and thus further marginalized. More and more people do have physical access to the Inter-

22. *Id.* at 73–76.

23. *Id.* at 42.

24. *Id.* at 20.

25. *Id.* at 18.

26. *Id.* at 68.

27. *Id.* at 74.

28. See KIM M. THOMPSON ET AL., DIGITAL LITERACY AND DIGITAL INCLUSION: INFORMATION POLICY AND THE PUBLIC LIBRARY 10 (2014).

29. *Id.* at 4.

net, especially as smartphones and tablets become increasingly prevalent, but research has shown that the problem of access has not been entirely alleviated.³⁰

¶18 The knee-jerk response to legal materials being digitized and put online for free is that physical access will no longer be an issue—self-represented litigants will not have to visit their local public law libraries to look at print codes or reporters. Instead, they will be able to access the material for free from their home computers or from places with free Internet access, like public libraries. Setting aside the issue of whether an individual is computer literate, recent research calls into question whether free online legal material should really count as access in the first place. In a recent study, Sarah Glassmeyer surveyed the websites of all fifty states to see how open the access was to state primary materials—statutes, cases, and regulations.³¹ Glassmeyer identified fourteen barriers to “free” state legal materials, some being minor annoyances to users while others were real impediments to retrieving materials. For example, Glassmeyer points out that not all state websites have search functionality, and some that do search the entire page and not just the law. As Glassmeyer points out in her research, “the mere existence of information on a webpage does not automatically mean that there is access to it.”³²

¶19 Glassmeyer’s research assumes that those in need of legal information are able to use a computer, even though that is very often not the case. If making legal information freely available online does not completely solve the physical access problem, as Glassmeyer posits in her research, it certainly does not solve the next aspect of information access: intellectual access. Intellectual access is when an individual not only knows how to get to information, but also is able to understand the information once it has been obtained.³³

Intellectual access requires the ability to understand the information in a source, which, in turn, requires the cognitive ability to understand the source, the ability to read the language and dialect in which the source is written, and the knowledge of the specific vocabulary that is used. Intellectual access also requires knowledge of the use of any necessary technology to access a source, such as telephones, computers, mobile devices, search engines, electronic databases, or the internet.³⁴

¶20 The third aspect of information access is social access. This is the idea that just because a person *can* access information does not mean that the person *will*.³⁵ In addition, not every person will interpret the information in the same way. For the purposes of this project, I will assume that social access is outside of the realm of concern for public law libraries.

¶21 While it is debatable whether physical access to legal information is universal, it is clear that making legal information freely available online is a step in the right direction. It allows homebound individuals or those who do not live near a

30. See MAPPING THE DIGITAL DIVIDE 4 (Council of Economic Advisers Issue Brief, July 2015), https://obamawhitehouse.archives.gov/sites/default/files/wh_digital_divide_issue_brief.pdf [<https://perma.cc/45HH-VRR6>].

31. Sarah Glassmeyer, *Access to Law in the Twenty-First Century: Current Barriers to Access and the Future of Legal Information*, AALL SPECTRUM, Nov./Dec. 2016, at 34.

32. Sarah Glassmeyer, *State Legal Information Census: An Analysis of Primary State Legal Information: Search*, <http://www.sarahglassmeyer.com/StateLegalInformation/barriers-to-access/search/> [<https://perma.cc/5MMT-4D3F>].

33. THOMPSON ET AL., *supra* note 28, at 5.

34. *Id.* at 5–6.

35. *Id.* at 6.

public law library to technically have access to primary source material. The type of access law librarians who want to serve the public should be concerned with is intellectual access. It is bad enough that many self-represented litigants will lack intellectual access because they cannot understand the specific vocabulary that is used—it takes it to another level when the individual cannot even understand the required technology. It also brings about an important question for law librarians: what are we expected to do for individuals who are computer illiterate if electronic resources are all that we have available?

¶22 Public libraries have been conducting technology training for their patrons for many years. The library science literature makes evident that technology training is one of the biggest services that public libraries provide.³⁶ These trainings can take the form of workshops or one-on-one sessions, and tend to consist of topics such as general Internet searching, setting up an e-mail account, applying for a job, or e-filing government forms such as Affordable Care Act registrations.³⁷ Another thing that is evident from the library science literature is that most of these technology trainings are still very basic, even though the Internet has been widespread for upwards of twenty years. “[T]he most requested topics have not deviated from the basics. General computer topics, including word processing, email and internet use, remain the leading classes. Libraries are still teaching people how to use the mouse and how to search the internet.”³⁸

¶23 These technology trainings are a wonderful and indispensable service to the public. In an age where it is increasingly difficult to get by in life without using the Internet, technology trainings can help people apply for jobs or government aid such as disability payments. If it is true, however, that most public library trainings are still teaching people how to set up an e-mail account, can these same individuals be expected to then perform complicated legal research tasks? Legal research is difficult enough for many self-represented litigants without the added hurdle of trying to navigate the sources online if the person is not accustomed to using technology. At a time when many individuals who cannot afford an attorney or do not qualify for legal aid are already cut off from justice, eliminating the only resource they have experience with may further affect their access.

¶24 Librarians are not the only ones concerned about access to information. Many studies have been conducted by nonpartisan think tanks addressing the issue.³⁹ One study released in 2012 shows that while Internet use is increasing among all demographics, individuals with low incomes and with low educational attainment are much less likely to use it.⁴⁰ Some of the differences were stark—sixty-two percent of people with annual household incomes less than \$30,000 used the Internet, as opposed to ninety-seven percent of people with annual household incomes higher than \$75,000.⁴¹ Education was even more divisive—forty-three percent of those with no high school diploma were Internet users, as opposed to

36. Stephanie Gerding, *Transforming Public Library Patron Technology Training*, LIBR. TECH. REP., Aug./Sept. 2011, at 43.

37. *Id.*

38. *Id.* at 44.

39. See, e.g., MAPPING THE DIGITAL DIVIDE, *supra* note 30.

40. KATHRYN ZICKUHR & AARON SMITH, DIGITAL DIFFERENCES (Pew Internet & American Life Project, 2012).

41. *Id.* at 6.

ninety-four percent of those with college degrees.⁴² Most of the respondents who did not use the Internet had *never* used the Internet at all, and many of them reported living in a household where no one else had ever used it either. Adults living with disabilities were also shown to be less likely to use the Internet.⁴³

¶25 A more recent study further shows that income level is associated with whether a person has Internet access in the home. “A 90 year old in the top income quartile is more likely to have an internet connection than a person of any age in the bottom quartile.”⁴⁴ As of 2014, fewer than half of households in the bottom income quintile had Internet access, as opposed to ninety-five percent in the top quintile. Similar numbers are seen with education levels.⁴⁵ In addition, there is a slight disparity in Internet usage between urban and rural residents—seventy-nine percent of urban residents have Internet access at home, as opposed to seventy-four percent of rural residents.⁴⁶

¶26 Some progress has been made in decreasing the digital divide. For instance, the gap in Internet usage between white people and minorities has decreased. Even so, black households are still sixteen percent less likely to have Internet access than white households. Hispanics are eleven percent less likely than whites, and Native Americans are nineteen percent less likely.⁴⁷ In addition, the gap based on income and education remains. Libraries and other social institutions have implemented programs to assist those who have been left behind. However, a large number of U.S. citizens, many of them poor and uneducated, simply do not have Internet access and would not know how to use it anyway. For them, the question of whether free online legal material really amounts to physical access is irrelevant. It is these people who will be further left behind when there are no more physical law books in a library’s collection.

Self-Represented Litigants

¶27 It is estimated that three out of five litigants in civil cases go to court without a lawyer.⁴⁸ This number is an estimate rather than a firm statistic because there is simply no reliable data about self-represented litigants. However, some courts routinely report that seventy-five percent or more of cases have at least one self-represented litigant.⁴⁹

¶28 Demographic information in this area is severely lacking. A survey of the literature turned up no national demographic data on self-represented litigants. Individual courts have conducted surveys to learn more about their self-represented litigant population, however. A 2005 survey in the New York City Family Court and the New York City Housing Court sheds some light on the types of individuals who are showing up to court without a lawyer. The majority of the self-represented liti-

42. *Id.* at 5.

43. *Id.* at 2.

44. MAPPING THE DIGITAL DIVIDE, *supra* note 30, at 3.

45. THE DIGITAL DIVIDE AND ECONOMIC BENEFITS OF BROADBAND ACCESS (Council of Economic Advisers Issue Brief, Mar. 2016), https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160308_broadband_cea_issue_brief.pdf [<https://perma.cc/W58Z-7U3P>].

46. *Id.* at 3.

47. MAPPING THE DIGITAL DIVIDE, *supra* note 30, at 2.

48. SELF-REPRESENTED LITIGATION NETWORK, <http://www.srln.org> (last visited Mar. 24, 2018).

49. SRLN Brief: How Many SRLs?, SELF-REPRESENTED LITIGATION NETWORK (Oct. 2015), <http://www.srln.org/node/548/srln-brief-how-many-srls-srln-2015> [<https://perma.cc/EC3P-5FRE>].

gants in those two New York City courts had low incomes, believed they could not afford a lawyer, and had low education levels.⁵⁰ More specifically, about half of the respondents reported having a high school education or less. Eighty-three percent of the respondents had an annual household income of less than \$30,000, while fifty-seven percent had an income of less than \$20,000. The percentages for education level and for income were lower than for the total population of New York City at the time. In addition, eighty-three percent of the respondents reported being African American, Hispanic, or Asian, indicating a racial component to this issue as well.⁵¹ Most of the self-represented litigants indicated that they wanted written materials to be available in courthouses, while one-third expressed interest in having information online.⁵²

¶29 Other states have surveyed not self-represented litigants per se but low-income individuals to determine their legal needs. A survey conducted in 2014 by researchers at Washington State University discovered that more than seventy percent of low-income individuals in Washington face at least one legal problem per year.⁵³ Again, low-income people of color are disproportionately affected by legal issues. Of the respondents who had legal issues, seventy-six percent of them did not retain the services of an attorney.⁵⁴ “[L]ow-income Washingtonians continue to face their problems without necessary legal help, no matter how serious or complex the problem may be and regardless of the potential short- or long-term consequences.”⁵⁵

¶30 While these two reports are small and cover only a very small percentage of the population, they still tell us something important: self-represented litigants are involved in the majority of the civil cases in the United States, and they may tend to be disproportionately poor and uneducated. Low-income individuals may be more likely to encounter legal troubles, and when they do, they may be unable or unwilling to hire an attorney. From the existing literature, it is reasonable to deduce that self-represented litigants are more likely to be poor and uneducated, and people who are poor and uneducated are more likely to be computer illiterate. Therefore, self-represented litigants may be more likely to be computer illiterate. Self-represented litigants are compelled to do their own legal research, and it is critical that they are able to do so using a medium that they can understand. When public law libraries eliminate their print materials, they may very well be taking the only source a vulnerable person can understand and throwing it in the garbage.

¶31 While statistics and demographics on self-represented litigants are lacking, there is information on the types of resources that law libraries offer to this patron group. A study published in April 2014, *Library Self-Help Programs and Services: A Survey of Law Library Programs for Self-Represented Litigants, including Self-Help Centers*, outlines the findings of a joint task force of the Self-Represented Litigation

50. OFFICE OF THE DEPUTY CHIEF ADMIN. JUDGE FOR JUSTICE INITIATIVES, SELF-REPRESENTED LITIGANTS: CHARACTERISTICS, NEEDS, SERVICES, at i (2005), https://www.nycourts.gov/reports/AJJL_Self_Rep06.pdf [<https://perma.cc/3BYJ-C99A>].

51. *Id.*

52. *Id.* at ii.

53. CIVIL LEGAL NEEDS STUDY UPDATE COMM., WASH. STATE SUP. CT., 2015 WASHINGTON STATE CIVIL LEGAL NEEDS STUDY UPDATE (2015), http://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf [<https://perma.cc/9C9H-9M58>].

54. *Id.* at 3.

55. *Id.*

Network's Law Librarians' Working Group and the State, Court and County Law Library Special Interest Section (now known as the Government Law Library Special Interest Section) of the American Association of Law Libraries (AALL).⁵⁶ The survey garnered 153 responses from academic law libraries and government law libraries from across the country, and two responses from overseas. Of those libraries, ninety-nine percent reported that they provided services to self-represented litigants.⁵⁷ The survey results were split into two different categories: traditional library services and self-help centers. Self-help centers will be discussed later in this article.

¶32 For traditional library services, the most common services provided to self-represented litigants were traditional legal research help, referrals to other programs, computerized legal research, telephone reference, and maintaining a collection of print materials for nonlawyers. In addition, ninety-five percent of libraries provide court forms—to a lesser degree, some libraries also provide instructions for court forms, forms in plain language, or forms in multiple languages. Ninety-seven percent of libraries surveyed provide self-represented litigants with computers with Internet access.⁵⁸

¶33 It is unclear how many self-represented litigants currently are involved in the court system in the United States, but it is clear that there are a lot, and their numbers are rising. It is also evident from the survey of Library Self-Help Programs and Services that self-represented litigants are welcome to conduct their legal research in most public law libraries across the country. What is less clear at this point is whether public law libraries can meaningfully assist self-represented litigants in a time of massive budget cuts and decreasing print collections.

Survey on Public Law Libraries and Self-Represented Litigants

Methodology

¶34 In the spring of 2017, I created and circulated a survey that aimed to give me a better understanding of how librarians in public law libraries around the country view the self-represented litigant issue, and whether they believe this patron group can adequately conduct their legal research online. I distributed the survey through several different e-mail listservs, and outline the results below.⁵⁹

¶35 In drafting the survey questions, I reviewed the available empirical data and identified gaps in the knowledge. As shown above, previous survey results tell us what resources law libraries offer to self-represented litigants in different types of law libraries across the country. Previous studies also tell us that law libraries of all types are eliminating print resources. What we do not know is how often self-represented litigants are using public law libraries, what resources they are using, and how they are accessing those materials. It is also impossible to tell from the existing empirical data whether self-represented litigants will be adversely affected by the decrease in law library print collections. My goal was to design a survey that would shed light on these unanswered questions.

56. LAW LIBRARIANS' WORKING GROUP OF THE SELF-REPRESENTED LITIGATION NETWORK, *supra* note 10.

57. *Id.* at 2.

58. *Id.* at 3.

59. See *infra* appendix.

¶36 I used Qualtrics to both draft and distribute the survey. The survey was distributed through several different e-mail listservs in an attempt to get diverse responses. I assumed that academic law libraries and government law libraries would interact the most with self-represented litigants, so I focused my distribution on those two types of institutions.

¶37 To reach academic law librarians, I asked the director of my library to send an e-mail to the law library directors' listserv, with a request to have the most appropriate person in the library fill out the survey. I chose this method rather than distributing the survey through the AALL Academic Law Libraries (ALL-SIS) listserv in an attempt to avoid duplicative responses.

¶38 To reach government law libraries, I distributed the survey through the Ohio Regional Association of Law Libraries (ORALL) listserv. I made this decision after presenting a preliminary version of this project at the ORALL conference in Fort Wayne, Indiana, in October 2015. Ohio is required by statute to have a law library in every county,⁶⁰ and librarians at those institutions interact extensively with self-represented litigants. Many librarians at that conference indicated that while they were members of ORALL, they were not members of AALL. Using the ORALL listserv allowed me to survey librarians whom I would not have been able to reach through AALL.

¶39 To further contact all types of librarians who are interested in self-represented litigants, I contacted the chair of the AALL Legal Information Services to the Public Special Interest Section (LISP-SIS). She kindly agreed to distribute the survey on the section's My Communities page. This allowed me to reach out to librarians who deal with the public, regardless of the type of library in which they are employed.

¶40 There are some limitations to my methodology that deserve to be addressed. I had a relatively low number of responses from academic libraries, and I believe that the majority of academic responses came from the survey request through the LISP-SIS My Communities page. I chose to distribute it through the directors' listserv instead of the ALL-SIS My Communities page because a colleague had luck with gathering survey responses in that manner. However, I may have received more responses had I contacted a larger number of people.

¶41 Another limitation to my methodology was that choosing to use the ORALL listserv had the potential to give me a disproportionate number of responses from Ohio libraries, skewing my data. While I did have a significant number of Ohio librarians respond to the survey, I received survey responses from thirty states, encompassing all areas of the United States. The results were varied enough that I do not think the high number of Ohio responses negates the findings of the survey.

¶42 A final limitation to this methodology is that it may be hard to get a representative sample when sending out a survey to a large population. Librarians with a particular interest in access to justice issues or who spend significant amounts of time assisting self-represented litigants may have been more likely to respond to the survey. While this would not invalidate any of the information gathered from the survey, it may give a falsely high estimate of how often self-represented litigants are using law library materials. There is some evidence of this in my survey results,

60. OHIO REV. CODE ANN. § 307.51 (Supp. 2017).

where many respondents indicated that they worked with self-represented litigants on a daily basis.

¶43 While there are some limitations to the methodology I used in conducting this survey, none of them cast any serious doubt on the results. I received responses from sixty-eight academic, court, county, and state law libraries located in thirty states. This is a small number of law libraries in relation to the total number in the country, but a lot of useful information can be gleaned from the responses.

Survey Results

¶44 The survey had sixty-eight responses, the majority (66.18%) being from government law libraries, while 29.41% were from academic law libraries. One library reported being private, while the other sixty-seven were public law libraries. All sixty-eight libraries reported being open to the public.

¶45 In an effort to determine what types of obstacles self-represented litigants may face when they visit libraries regardless of their digital literacy status, I asked respondents whether their libraries place any sort of restrictions on the general public. This could include restrictions on hours, usage, or any other way in which public patrons are treated differently from the library's other patron base. Every respondent answered this question, with fifty librarians (73.53%) answering yes, and eighteen (26.47%) answering no. Of the respondents who indicated that restrictions were placed on their public patrons, there were two overwhelmingly common responses: restrictions on the hours public patrons are allowed in the building (nineteen, including one that has public access only once a week) and a blanket ban on circulation to public patrons (fifteen). Further circulation limitations included requiring public patrons to purchase a special card to check out materials (two), requiring a deposit for circulation privileges (one), and restricting the materials that a public patron can check out (one). Related to public usage of computers, six respondents said their libraries put a time limitation on public computers (though one noted that this was enforced only if other patrons were waiting), and two said the public computer terminals had restricted Internet access. One respondent mentioned that the library has no public computer access at all. This is unusual among libraries that serve the public—the *Library Self-Help Programs and Services* survey indicates that more than 90% of law libraries offer computerized legal research help to self-represented litigants.⁶¹

¶46 The purpose of this article is not to discuss the ramifications of restrictions such as these on self-represented litigants. Imposing artificial time limits on computer usage certainly has the potential to be problematic, and other researchers have commented on this. Rather, the focus of this article is on whether self-represented litigants who are digitally illiterate will be able to continue to research in law libraries when print materials are culled. This issue does provide some insight into the types of challenges self-represented litigants may face in public law libraries, however, even in those libraries that still provide public patrons with print materials.

¶47 The restrictions on circulation policies for public patrons is particularly important to this topic. While none of the circulation restrictions listed in the survey responses overtly prevent self-represented litigants from using library collec-

61. Law Librarians' Working Group of the Self-Represented Litigation Network, *supra* note 10, at 2.

tions, one could question whether putting a blanket ban on circulation for public patrons is really granting them full access. Individuals with low literacy skills or low educational attainment may need more time to comprehend complicated legal materials and may be more comfortable looking at these materials at home rather than in a public space. In addition, requiring public patrons to purchase a special circulation card may deter some particularly low-income individuals from checking out materials. There are certainly good reasons for reserving circulation privileges for a library's typical patron base—at academic law libraries, for example, librarians are able to locate students with overdue materials fairly easily or send library fines to the student's bursar account if necessary. The same cannot be said of members of the general public who may borrow materials and then never come back to the library. Librarians involved in creating borrowing policies must balance the risks of allowing circulation to the public against the need of providing public patrons with full access to the materials they need. It is natural that different institutions will come to different conclusions, but librarians should consider whether they are putting undue burdens on self-represented litigants when they make these decisions. These considerations are moot, of course, when it comes to certain materials that self-represented litigants may very likely need for their research (statutory codes, reporters, etc.) that do not circulate to anyone.

¶48 After these preliminary questions, I then asked respondents a series of questions about self-represented litigant usage in their libraries. When asked how frequently self-represented litigants used their libraries, sixty (88.24%) respondents stated that they helped this patron base several times per month. Four respondents (5.88%) chose once or twice a month, and another four answered several times per year. There were no respondents who replied that they saw self-represented litigants only once or twice per year or not at all. It is very likely that the high number of government librarians who responded to the survey resulted in such a high number of people who reported seeing self-represented litigants several times per month—perhaps government law libraries are more likely to serve the public on a regular basis than are academic law libraries. In fact, several government librarians left comments stating that they actually see self-represented litigants on a daily basis or several times per day.

¶49 When asked whether self-represented litigants tend to use a library's print or electronic resources more often, the majority of respondents (71.64%) said that they tend to use a mixture of both. This is perhaps unsurprising given that self-represented litigants are such a large and diverse group. As stated above, there are no reliable demographic statistics about self-represented litigants as a whole, but we do know that it is estimated that three out of five civil litigants go to court without a lawyer.⁶² This tells us that the group cannot be homogenous, and it makes sense that digital literacy skills are varied amongst individuals. In fact, one respondent to the survey stated, "SLRs can and do refuse 'paper' and insist on electronic resources." However, the next highest response (20.9%) stated that self-represented litigants use mostly print resources. Only five respondents said that this particular patron group uses mostly electronic resources—it is unclear whether this is by choice or by circumstance. The responses to this question could indicate that while a large number of self-represented litigants are able to use a mixture of sources, the

62. SELF-REPRESENTED LITIGATION NETWORK, *supra* note 48.

majority are not comfortable conducting their research *solely* online. As one respondent succinctly put it, “most SRLs are not interested in the computers, that’s why they come to the law library.” This group of individuals could certainly be negatively impacted by the print resources at their public law library being eliminated.

¶50 Another question designed to gauge self-represented litigant usage in public law libraries asked respondents to indicate which types of print sources these patrons tend to use. Respondents were given a list of resources and told to choose all that applied to their situation. The highest response was print state or federal codes at fifty-four respondents (79.41%). Form books came in second at fifty respondents (73.53%), followed by secondary sources such as *American Law Reports* or legal encyclopedias at forty-eight respondents (70.59%), and Nolo books or other books for nonlawyers at forty-five respondents (66.18%). Twenty-eight respondents (41.18%) indicated that self-represented litigants use print reporters when they are conducting their legal research. Of all the survey respondents, only two (2.94%) stated that self-represented litigants in their libraries do not use many print materials and instead conduct their legal research online—again, it is unclear whether the patrons at those libraries choose to use the computers or whether they are forced to because of an inadequate print collection. These survey results are alarming when taken in conjunction with the *Law Library Plans for the Print Materials Collection* survey, which indicates that about two-thirds of academic and government law libraries stated they had already eliminated or planned to eliminate print primary sources, presumably including both codes and reporters.⁶³ Many of those same libraries also reported eliminating print secondary sources. When these two surveys are taken together, it appears that many libraries will be eliminating print resources that self-represented litigants tend to use on a regular basis. It is not clear from the *Law Library Plans for the Print Materials Collection* survey whether form books and books for nonlawyers are also on the chopping block for these libraries.

¶51 After determining how frequently self-represented litigants visit public law libraries, which sources they tend to use, and whether they access those materials online or in print, I asked the respondents to state whether their libraries have any immediate plans to eliminate the frequently used print sources. This question was essentially duplicative of the survey *Law Library Plans for the Print Materials Collection*, but I hoped to tailor it more specifically to self-represented litigants. To that end, I asked, “Does your library have immediate plans to eliminate any of the print resources that self-represented litigants tend to use?” The responses to this question were somewhat surprising and do not match up with either the *Law Library Plans for the Print Materials Collection* survey or the other responses in my survey. Only 14.7% of respondents indicated that there were probably or definitely immediate plans to eliminate these particular print resources. Sixteen percent of respondents said they were unsure, while nearly seventy percent of respondents said that there were probably not or definitely not any plans to eliminate these materials. These results seem unlikely when taken in conjunction with the other national survey that indicates more than two-thirds of both academic and government law libraries are eliminating primary materials in print.

63. PRIMARY RESEARCH GROUP, INC., *supra* note 18, at 17.

¶52 There are a couple of likely explanations for this discrepancy. One is a problem with the wording of the question. The question asked about plans to eliminate “print resources that self-represented litigants tend to use.” The phrasing of this question likely led to confusion among the respondents because of its lack of specificity. Perhaps respondents thought of form books or books for nonlawyers (Nolo books) when asked about resources that self-represented litigants “tend to use.” Their libraries may have no immediate plans to eliminate form books or Nolo books for their print collection, leading the respondents to answer “probably not” or “definitely not” to the question. Another, less likely, explanation is that since my survey had such a high number of responses from government law libraries, these respondents actually fall within the small group of law libraries nationwide that have no plans to eliminate any print from their collections. Perhaps these law libraries deal with such a large number of self-represented litigants that they have decided not to cull their print collections in the hopes that their patrons will be able to research in print rather than online. Another possible explanation is that the majority of these libraries already eliminated much of their print collections and have no plans for further weeding. Finally, it is possible that these libraries do in fact have plans to eliminate print, but they are eliminating for everyone and not specifically for self-represented litigants.

¶53 While the latter explanations are certainly possible, it seems more plausible that the former is the real reason for the inconsistent responses. When asked in the previous question about what types of print resources self-represented litigants use in their libraries, 79.41% answered that they use print state or federal codes, and 41.18% answered that they use print reporters. In *Law Library Plans for the Print Materials Collection*, more than two-thirds of both academic and government law libraries stated that they planned to eliminate print primary sources.⁶⁴ It simply does not follow that 70% of the current respondents have no plans to eliminate sources that self-represented litigants tend to use in print. While the responses to this question certainly introduce some inconsistencies to my study, I do not believe they cast any serious doubt onto my assertion that public law libraries are actively eliminating print sources that self-represented litigants rely on to conduct their legal research. In fact, several respondents commented about sources that their libraries are canceling or no longer updating. One stated, “We do still keep a number of state secondary resources in print for pro ses, but I don’t know how long we’ll be able to keep doing that.” Another said, “We just cancelled our print subscription to AmJur2d encyclopedia—I haven’t found an alternative—it’s OK for now, but as the volumes become more and more out of date it will be a problem.” Finally, one other respondent said, “we have not updated the pro se material recently due to a shrinking budget.”

¶54 The next questions in my survey were intended to get an understanding of how robust public law libraries’ current collections are and whether librarians often have to refer self-represented litigants to electronic resources. I asked respondents whether they feel they can adequately assist self-represented litigants with their existing print collections, without having to send them to a computer. This is important for those patrons who may be digitally illiterate. About a third of respondents (33.82%) stated that they can adequately assist patrons using only their print materi-

64. *Id.*

als. Thirty-four respondents (50%) stated that they can only sometimes assist self-represented litigants using only print resources without having to turn to electronic sources, and eleven (16.18%) said they can never rely solely on print before having to go to the computer. This tells us that at current levels, two-thirds of respondents say they cannot rely solely on their print collections to help self-represented litigants. This obviously has an extremely negative impact on digitally illiterate patrons who do not feel comfortable researching in a format other than print. One librarian commented,

our biggest issue is our pro se print collection. It seems to always be out of date and we don't have the funds to continuously update the books, so we are looking into getting Nolo online. However, this might not fix the issue entirely because many pro se's do not like to use the computers. They want to read a book.

The number of librarians having to refer their patrons to electronic resources likely stands to increase as print collections decrease even further.

¶55 The next question asked whether when referring self-represented litigants to electronic resources, the respondent feels that the patron can adequately navigate the databases without further technology training. Forty-two respondents (61.76%) answered that they feel self-represented litigants can sometimes manage the technology without further training, while twenty-six respondents (38.24%) said that they do not feel that the group can manage effectively. No respondents answered that, as a whole, self-represented litigants are able to use electronic databases with no further technology training. As mentioned above, self-represented litigants are a hugely varied group of people with a wide range of skill, education, and ability levels. It is telling, however, that in general, librarians who regularly work with them feel that they need more technology training to effectively use online resources. One respondent stated, "75% of our patrons are computer illiterate, a very real digital divide exists with patrons and desktop computing. Social media interaction on a cell phone is very different from trying to navigate through a desktop Word document or understanding how to navigate through Westlaw or a federal government forms website." Another respondent stated, "the biggest hurdle is that we are moving a lot of resources to electronic only, and we encounter many computer illiterate patrons." One respondent framed the issue very well by saying "some can use the online [resources] with help from librarians. None can just sit down and know what to do with Westlaw."

¶56 The final question of the survey was an important one: "Do self-represented litigants have other options for legal research help in your area?" Options could include other law libraries that serve the public or self-help centers. Thirty-eight respondents (55.88%) answered yes, twenty-two (32.35%) answered no, and eight (11.76%) were unsure. This issue is important because if a self-represented litigant is digitally illiterate and the only public law library in the state has eliminated all primary print resources, that person will have no other options for conducting legal research. Whether a self-represented litigant can rely on other libraries or self-help centers will depend entirely on where that person lives. Individuals in sparsely populated areas may be the most negatively impacted. For example, one respondent commented, "We are only 1 of 2 law libraries open to the public in the entire state of New Mexico." According to the 2010 United States Census, New Mexico is ranked thirty-seventh of the states in terms of population, so at first glance it may

seem that the state does not require a lot of public law libraries to serve its population.⁶⁵ However, even though it is not very populous, New Mexico is the fifth largest state in the country.⁶⁶ The two public law libraries are located in Santa Fe and Albuquerque. According to Google Maps, a self-represented litigant residing in Las Cruces who cannot use a computer would have to drive three hours to Albuquerque to access a public law library.⁶⁷ Other examples are even more striking. If a self-represented litigant lives on the eastern border of Montana, the closest public law library is in Helena—more than an eight-hour drive away.⁶⁸ This would be an insurmountable hurdle for many self-represented litigants who may be unable to take time off work or who may not have reliable transportation.

Survey Conclusion

¶57 The vast majority of respondents to the survey indicated that self-represented litigants visit their libraries on a regular basis. Only four respondents stated that they see self-represented litigants only a few times per year. This shows that the problem described in this article is not an insignificant one that affects only a small group of people; self-represented litigants from all over the country rely on public law libraries. According to this survey, many of those same self-represented litigants do not have the technology skills to conduct their legal research solely online without further training. It follows that when libraries eliminate print materials such as codes, reporters, and legal encyclopedias, these patrons are going to be unable to efficiently conduct their legal research to prepare themselves for court. Self-represented litigants are often already the victims of the larger access to justice problem—the ones who are digitally illiterate are being further victimized by not being able to access information in a format they can understand.

Further Research

¶58 At the end of the survey, I left a space for any comments respondents had about self-represented litigants and how they related to print or electronic resources. Many of the comments are outlined in the discussion above, but several respondents raised issues that are outside the scope of this article but are also incredibly important. I outline them here as related issues that warrant further research.

¶59 One respondent left a comment that many law librarians who serve the public can probably relate to: “They don’t want to do legal research. They want fill in the blank forms or access to a lawyer.” Other respondents put it less bluntly but had the same types of comments. One stated, “they seem to need help whether using print or electronic resources,” and another said, “if they don’t recall how to use an index or table of contents, let alone the internet, we are not much help.” While these three comments approach it slightly differently, they are all describing the same basic problem: a number of self-represented litigants are beyond our help. Some patrons are unwilling to research on their own or just want to spend their

65. *2010 Census Data*, U.S. CENSUS 2010, <https://www.census.gov/2010census/data/> [<https://perma.cc/8FTQ-JPSL>].

66. *Size of U.S. States by Area*, NATIONS ONLINE, <http://www.nationsonline.org/oneworld/US-states-by-area.htm> [<https://perma.cc/9KYF-EW93>].

67. See GOOGLE MAPS, <http://www.google.com/maps> (last visited Mar. 24, 2018).

68. *Id.*

time trying to get legal advice from librarians. Others are not only digitally illiterate but also illiterate in the general sense and are unable to understand books any better than they can understand a computer. Others may be able to read but have low comprehension of what they are reading. Librarians tend to want to help everyone, but for those patrons who have needs for which the typical law library is not equipped, other options have to be explored. For self-represented litigants who are unwilling or unable to research on their own, a self-help center is an ideal solution. These institutions will be discussed below.

¶60 A similar problem that is different enough to warrant its own discussion is the issue of self-represented litigants who are not native English speakers. One respondent to the survey said, “self-help materials in other languages—particularly Spanish—are woefully inadequate.” The American Community Survey conducted from 2009 to 2013 and published by the United States Census Bureau shows that there are at least 350 different languages spoken in the United States.⁶⁹ Spanish is by far the most common, with 37.58 million people in the United States speaking the language. Librarians in large metropolitan areas and those in states that border Mexico are likely to encounter self-represented litigants who are not native English speakers.⁷⁰ It is essential to this group of patrons that librarians can help them with legal research, and this is an area that should be further explored.

Recommendations

Background

¶61 The access to justice problem is a real one for our society. The unfortunate truth is that many people in the United States cannot afford an attorney and do not qualify for or live near legal aid services. Many of these people are low-income and undereducated. They are expected to navigate a complicated legal system on their own from beginning to end. It is another unfortunate truth that many of these people are unable to conduct legal research online without significant technological training; when libraries eliminate print materials, they are further cutting these individuals off from their day in court.

¶62 This article argues that libraries are irreparably harming digitally illiterate self-represented litigants when print collections are culled, but it has yet to address the biggest barrier to avoiding this access to justice crisis: the decision to eliminate print sources is nearly always outside the library’s control. No librarian would set out to deny access to a vulnerable patron base. The decisions to eliminate print resources have been ones of necessity—government law library budgets have been slashed by state legislatures, and academic law library budgets have been reduced by money-conscious law school administrators who need the cash for recruitment, scholarships, clinics, and more. Librarians reading this article may come away thinking that this access to justice issue is a real problem, but one that is outside their control. To some extent this is true, but there are ways that public law librarians can try to offset some of the damage that this problem is creating.

69. Press Release, U.S. Census Bureau, Census Bureau Reports at Least 350 Languages Spoken in U.S. Homes, <https://www.census.gov/newsroom/press-releases/2015/cb15-185.html> [https://perma.cc/K24W-ENPJ].

70. *Id.*

“Lawyer in the Library” Programs and Self-Help Centers

¶63 Self-help centers already exist in public law libraries around the country. The 2013 survey conducted by the Law Librarians’ Working Group of the Self-Represented Litigation Network showed that about thirty-four percent of the 153 library respondents were affiliated in some way with a self-help center—the majority of these respondents were from government law libraries.⁷¹ There is no standard definition of a self-help center, but a 2014 AALL white paper called *Law Libraries and Access to Justice* gives examples of several self-help center functions, including providing court forms and instructions, making referrals to other legal service providers, and sponsoring clinics in the law library.⁷² Ideally, a self-help center should have no restrictions on subject matter and no income requirement. These types of programs are invaluable community assets, but it does not appear that they will solve the underlying problem for those self-represented litigants who are digitally illiterate.

¶64 There are many examples of self-help centers that go well beyond this basic level of service, however. Some government law libraries have taken the extra step and have coordinated “Lawyer in the Library” programs.⁷³ Some government law libraries even have full-time attorneys on staff, an incredible service that is unfortunately out of the question for most cash-strapped libraries. The Los Angeles County Law Library has had a Lawyer in the Library program since 2014 staffed by volunteer attorneys.⁷⁴ The attorneys come to the library once a month for a three-hour block. Self-represented litigants who take advantage of the program are cautioned that these attorneys do not represent them and will not be going to court—rather the attorneys help them fill out forms, explain legal details, confirm that the patron is on the right track or tell them to go in another direction, and provide general guidance on what to do next.⁷⁵ It is difficult to overstate how helpful this would be to any self-represented litigant, but especially to those who cannot conduct research online. Without this type of program, a digitally illiterate self-represented litigant who goes to a law library that has significantly reduced its print collection will be unable to effectively find the legal materials he or she needs to prepare for court. With a Lawyer in the Library program, that individual could go to the same library and not be greatly hindered by the fact that legal research materials are available only online. The attorney would be able to guide the patron toward the correct forms (even helping the patron find them online), help that patron fill out the forms, explain the filing instructions, explain the law, and provide advice for further actions. These are all things that public law librarians may be incredibly hesitant to do for fear of engaging in the unauthorized practice of law.

¶65 Lawyer in the Library programs are often talked about in conjunction with government law libraries, but there is no reason that academic law libraries could

71. LAW LIBRARIANS’ WORKING GROUP OF THE SELF-REPRESENTED LITIGATION NETWORK, *supra* note 10, at 1.

72. AM. ASS’N OF LAW LIBRARIES, *LAW LIBRARIES AND ACCESS TO JUSTICE* 26 (2014), <https://www.aallnet.org/wp-content/uploads/2017/11/2013-2014-CommFR-Access-to-Justice-Special-Committee.pdf> [<https://perma.cc/7LDH-MJZ4>].

73. Malinda Muller & Sandra Levin, *Law Libraries and the Delivery of Direct Legal Services: Why “Lawyer in the Library” Makes Sense*, GLL NEWS, Summer 2016, at 25.

74. *Id.* at 26.

75. *Id.* at 27.

not plan a similar program. Alumni of the law school may be eager to help out the community and simultaneously gain pro bono hours. Law school deans could potentially appreciate the public relations benefit, and prospective students who are interested in social justice may be attracted to the school because of its dedication to the public. State and local bar associations might be able to help coordinate volunteer attorneys for both government and academic law libraries. Organizing a Lawyer in the Library program is a way for public law librarians to continue to help digitally illiterate self-represented litigants at a time when the shrinking of their print collection may be entirely out of their control.

Clinics

¶66 For librarians who work in academic law libraries, it may be an option to refer self-represented litigants, whether digitally illiterate or not, to one of the law school's legal clinics. Clinics allow law students in their second and third years to get hands-on legal experience under the supervision of a licensed attorney. While some law schools may have general legal clinics, most clinics deal with a specific type of legal issue, such as family law or disability law.⁷⁶ Many clinics also have income requirements, similar to how legal aid organizations work. What this means for self-represented litigants is that they must fall into a very specific category to have their cases chosen by a clinic. The same is true for patrons of government law libraries, which often are home to legal clinics—these clinics have the same barriers as law school clinics, such as subject requirements and income requirements.⁷⁷

¶67 Law libraries can help to fill in the gap that other clinics create. The Law Library at Cornell University Law School hosts the Cornell Legal Research Clinic. The clinic was formed in 2015 and is unique among law school clinics in that it does not require that clinic clients be involved in a specific type of legal dispute.⁷⁸ The director of the clinic, Amy Emerson, said that she was inventing problems for her first-year students so that they could learn how to research, and “at the same time, we had people from the community coming into the library with legal questions, but librarians are not supposed to give legal advice.”⁷⁹ The clinic was formed to help alleviate this problem. Students in the Legal Research Clinic work under the supervision of two attorneys to help self-represented litigants conduct their legal research. Students do not do anything beyond answering the legal research question that is presented by the client, though they are able to recommend specific courses of action.⁸⁰

¶68 Like Lawyer in the Library programs, the Cornell Legal Research Clinic is a phenomenal resource for self-represented litigants in the community, particularly those who are unable to conduct legal research online. There are a few small limitations, however. First, unless students are hired to staff the clinic over the summer, clients will necessarily be required to submit legal research questions during specific

76. LAW LIBRARIANS' WORKING GROUP OF THE SELF-REPRESENTED LITIGATION NETWORK, *supra* note 10, at 8.

77. See *Legal Clinics*, TEX. STATE LAW LIBR., <https://www.sll.texas.gov/self-help/where-to-go-for-help/legal-clinics/> [<https://perma.cc/4MLS-T9PM>].

78. Melanie Lefkowitz, *Law Students Resolve Questions for Residents, Nonprofits*, CORNELL CHRON. (Nov. 28, 2016), <http://news.cornell.edu/stories/2016/11/law-students-resolve-questions-residents-nonprofits> [<https://perma.cc/8KVY-5MR2>].

79. *Id.*

80. CORNELL LEGAL RESEARCH CLINIC, <https://law.library.cornell.edu/lrc> [<https://perma.cc/4KD9-5KJK>].

times of year when the law school is in session. Some law school clinics do operate year-round though, so this is not a hurdle that is impossible to overcome.⁸¹ Another limitation is that law schools may still set an income requirement so that the clinic is not overrun by clients who could probably afford an attorney but are choosing not to hire one. This might preclude middle-income self-represented litigants from using the clinic's services. As mentioned in ¶¶ 8–33 of this article, however, digital literacy tends to rise with income level, so perhaps our concern should focus mainly on the lowest-income groups in our communities.

¶69 Self-represented litigants, digitally illiterate and literate alike, would greatly benefit from the existence of more legal research clinics like the one at Cornell Law Library. This type of program should be especially interesting to law school deans and administrators at a time when law students are demanding more experiential learning opportunities.

Access to Justice Initiatives

¶70 There are initiatives underway from organizations around the country that will make it easier for law librarians to assist self-represented litigants who are digitally illiterate. One of them is the Access to Justice Lab, which is a part of the Center on the Legal Profession at Harvard Law School. The Access to Justice Lab strives to change legal practice in the United States by producing empirical evidence of what works to increase access to the court system and then implementing “creative interventions” to address the issues.⁸²

¶71 The A2J Lab, as it is known, is by no means geared just toward computer-illiterate self-represented litigants. However, many individuals in that patron base could greatly benefit from the work the organization is doing. The A2J Lab conducted a study on debt collection cases, as most debt collection lawsuits in the United States are decided because the defendant defaults.⁸³ This study tried to determine which types of mailings from a legal service provider could cause defendants to file answers and show up on their court dates. Defendants in the study were divided into three groups: a group that received limited mailings, a group that received enhanced mailings, and a control group.⁸⁴ Of particular interest for this article is the mailing that the A2J Lab sent to the enhanced group. The mailing was a set of instructions for filing an answer to a complaint, but the instructions featured a cartoon showing the defendant the actions they needed to take.⁸⁵ The drawing contained no legalese or check box and featured only about twenty words. The A2J Lab found that defendants who received these mailings were more likely to file answers and show up in court, but there was no statistically significant difference between the limited mailings group and the enhanced mailings groups.⁸⁶ This is

81. Some law school clinics hire summer clerks who do work similar to that of students during the academic year. See *FAQs About the Human Trafficking Clinic (HTC) and the Human Trafficking Law Project (HTLP)*, MICH. LAW, <https://www.law.umich.edu/clinical/humantraffickingclinicalprogram/Pages/FAQs.aspx> [<https://perma.cc/LL5W-7WP5>].

82. *Access to Justice Lab*, HARV. LAW SCH. CTR. ON THE LEGAL PROFESSION, <http://a2jlab.org/> [<https://perma.cc/MZ45-4UV9>].

83. *The Problem of Default*, HARV. LAW SCH. CTR. ON THE LEGAL PROFESSION, <http://access2justice.wpengine.com/current-projects/signature-studies/default/> [<https://perma.cc/5C4J-2ZVN>].

84. *Id.*

85. *Id.*

86. *Id.*

certainly a useful study for those who are interested in lowering the default rate in debt collection cases, but it features even more valuable research for law librarians who serve self-represented litigants.

¶72 D. James Greiner, Dalie Jimenez, and Lois R. Lupica conducted research through the A2J Lab, both on default and on financial distress. They also published an article called *Self-Help, Reimagined* in the *Indiana Law Journal*, that outlines their work with visuals in self-help materials for individuals without legal representation. They used research from the areas of education, psychology, and public health showing that visuals and graphics can improve learning outcomes in order to develop a cartoon that they call “Blob.”⁸⁷ Responses to their cartoons were positive, with one person saying “I don’t understand the official wording so the cartoons help.”⁸⁸ Another said, “I’d rather read a long picture book than a short book with no pictures.”⁸⁹

¶73 Incorporating materials with visuals into existing self-help centers is a way that law librarians could help their self-represented litigant patrons. It is clear from the A2J Lab researchers’ work that these types of materials will help not only self-represented litigants who are digitally illiterate but other public patrons as well. Librarians could create their own self-help materials using visuals or flowcharts that have fewer words than traditional forms, even ones that are supposed to be in plain language. This is an area that likely needs to grow and develop before law librarians can easily embrace it, but using research from other disciplines like education and psychology is a way to ensure that law librarians are being as helpful to self-represented litigants as possible.

Technology Recommendations

¶74 Some law librarians, no matter their good intentions, are not going to have the ability to spearhead a Lawyer in the Library program or a new law school clinic devoted to legal research. They also might not have the resources or the ability to create self-help materials that incorporate visuals or flowcharts. Librarians in those situations who are seeing their print collections shrink will need to use technology even for self-represented litigants who cannot use the computer. Richard Zorza, a former public defender and the founder of the Self-Represented Litigation Network, outlines several technology recommendations in his white paper.⁹⁰ These recommendations include keeping public access terminals in a user-friendly location, creating a single gateway specifically designed for self-represented litigants, using chat reference for patrons who cannot physically come to the law library, and not artificially inhibiting time on the computers.⁹¹ All of this advice is important, though it does not really help people who cannot use a computer. For those patrons, law librarians will simply have to do the best they can, perhaps referring them to the local public library for technology training if possible.

87. D. James Grenier et al., *Self-Help, Reimagined*, 92 IND. L.J. 1119 (2017).

88. *Id.* at 1137–38.

89. *Id.* at 1138.

90. RICHARD ZORZA, THE SUSTAINABLE 21ST CENTURY LAW LIBRARY: VISION, DEPLOYMENT AND ASSESSMENT FOR ACCESS TO JUSTICE (2012), https://www.srln.org/system/files/attachments/Zorza%2021st%20Century%20Library_0.pdf [<https://perma.cc/752P-8NDF>].

91. *Id.* at 38.

¶75 Another interesting aspect of technology and digital literacy is that some individuals cannot use a computer but are able to effectively use a smartphone. Self-represented litigants who fall into that category might be able to use an app on their smartphones to help them with their legal needs. Some law schools have been instrumental in creating access to justice apps. For example, a class at Georgetown Law Center called “Technology, Innovation and Legal Practice” requires teams of students to develop an app that addresses an access to justice issue.⁹² One of the apps that was developed in the class was for the U.S. Department of Justice and helps individuals with disabilities.⁹³ Librarians should keep abreast of access to justice apps like those coming out of Georgetown so that they can recommend them to self-represented litigants who may be savvy enough with a smartphone to use them.

Conclusion

¶76 This country faces an immense access to justice problem. The number of self-represented litigants in the U.S. court system is on the rise, without any corresponding increase in the number of people available to help them. Frequently, these individuals are on their own from start to finish. In addition, many self-represented litigants are either completely digitally illiterate or not technologically savvy enough to conduct legal research online. The unfortunate truth is that the great strides made in digitizing legal information and making it freely available on the Internet are simply not enough for a significant group of people in this country. Librarians in public law libraries have a mandate to help the public with its legal research needs, and the recent trend of eliminating print materials—particularly primary sources and select secondary sources—makes it increasingly difficult for librarians to fulfill that duty.

¶77 Nothing in this article is meant to criticize recent initiatives to digitize legal materials and make them freely available to the public. We should continue to make legal information as freely available to as many people as possible, and this certainly includes digitizing materials and putting them online. Technology makes life better for many people and has the greatest potential to help solve the access to justice problem. This article points out, however, that a group of people is being left behind in our rush to digitize. Digitally illiterate people may not see the same benefits of technology that others do, but nevertheless, “the digital divide was never a sufficient reason not to make maximal use of the internet for persons who did have access to it.”⁹⁴ This sentiment is still true, and technology should be maximized to its greatest extent. People who care about self-represented litigants should continue to take full advantage of all that technology can offer, while remaining aware that there is more to the story.

92. See *Students Pitch Projects to Experts and Luminaries*, GEORGETOWN LAW, <http://www.law.georgetown.edu/news/web-stories/students-pitch-projects-to-judges-and-luminaries.cfm> [https://perma.cc/54Q6-9J4R].

93. Terry Carter, *Professor Tanina Rostain Has Her Students Developing Access-to-Justice Apps*, A.B.A. J. (Sept. 23, 2015), http://www.abajournal.com/legalrebels/article/tanina_rostain_profile [https://perma.cc/BRH3-6DU3].

94. James E. Cabral et al., *Using Technology to Enhance Access to Justice*, 26 HARV. J.L. & TECH. 241, 266 (2012).

¶78 Many librarians may feel that these issues are out of their control, and to some extent that is true. Government law librarians are subject to the whims of the legislators in their state, and if their budgets are cut, they may have no choice but to eliminate important print materials. So too with academic law librarians, whose first priorities necessarily lie with law students and faculty members. What librarians in these situations can do is make their voices heard to law school administrators or state legislators. Let the decision-makers know that the supposition that nobody uses books anymore is false. Stress the importance of helping *all* self-represented litigants, regardless of how independently they can use the library's resources. Explain that by eliminating particular print resources they are harming the most vulnerable part of an already vulnerable group. Remind those who set the budget that taxpayers have the right to use these materials in a format they can understand—otherwise, there is no hope for them in the court system. If all these efforts fail and print collections are reduced, librarians can do the best they can and try to follow technology recommendations that make things easier for self-represented litigants. Librarians who care about self-represented litigants may not be able to stop print collections from being eliminated, but they certainly do not need to remain silent about those who are left behind as a result of these decisions.

Appendix

Survey on Self-Represented Litigants and Law Library Resources

1. In what type of library do you work?
 - a. Academic
 - b. Firm
 - c. Government
 - d. Other _____
2. Is your library public or private?
 - a. Public
 - b. Private
3. Does your law library serve the general public?
 - a. Yes
 - b. No
4. Does your library put any sort of restrictions on the general public (hour restrictions, usage restrictions, etc.)? Please indicate the type of restriction.
 - a. Yes _____
 - b. No
5. How often does your library serve self-represented (pro se) litigants?
 - a. Several times per month
 - b. Once or twice a month
 - c. Several times per year
 - d. Once or twice a year
 - e. Never
6. Do self-represented litigants tend to use your library's print or electronic resources more often?
 - a. Mostly print
 - b. Mostly electronic
 - c. A mixture of both
7. What sorts of print sources do self-represented litigants typically use? Check all that apply.
 - a. State or federal codes
 - b. Reporters
 - c. Secondary sources, like encyclopedias or ALRs
 - d. Form books
 - e. Nolo books or other law books for nonlawyers
 - f. Nothing—they use electronic resources
 - g. Other _____

8. Does your library have immediate plans to eliminate any of the print resources that self-represented litigants tend to use?
 - a. Definitely yes
 - b. Probably yes
 - c. Might or might not
 - d. Probably not
 - e. Definitely not
9. Do you feel that you can adequately assist self-represented litigants with your existing print collection without referring them to online resources?
 - a. Yes
 - b. Sometimes
 - c. No
10. When referring self-represented litigants to electronic resources, do you feel they can adequately navigate the databases without further technology training?
 - a. Yes
 - b. Sometimes
 - c. No
11. Do self-represented litigants have other options for legal research help in your area (other public law libraries, self-help centers, etc.)?
 - a. Yes
 - b. No
 - c. Unsure
12. Please respond below with any other thoughts or comments about self-represented litigants and their ability to conduct legal research in your library.