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PATTERNS OF LEGAL RESEARCH IN NORTH DAKOTA: A SURVEY

RITA T. REUSCH*

I. INTRODUCTION

Legal research is a fact of life for attorneys. Because the Anglo-American legal system is founded on the ancient doctrine of stare decisis, research to find precedent for propositions that are considered and argued is fundamental to the practice of law. The system is further complicated by statutes, rules, and regulations emanating from many governmental levels, which increasingly play a crucial role in the resolution of the legal problems confronting attorneys. Thus, attorneys must research through the maze of these rules and regulations and the case law interpreting them to discover how they affect the issues in dispute.

When we teach legal research method to law students at the University of North Dakota School of Law, the necessary resources are available to the researcher. Students are taught about the importance of research and their ethical responsibility to undertake necessary research to discover applicable law.¹ They are

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1. An attorney is required, as a matter of professional ethics, to undertake necessary research to discover applicable law. North Dakota Code of Professional Responsibility, DR 6-101(A)(1) and EC 6-2, 6-4. Failure to perform reasonable research may constitute legal malpractice. *Smith v. Lewis*, 13 Cal.3d 349, 530 P.2d 589, 118 Cal. Rptr. 621 (1975); *cf. Copeland Lumber Yards v. Kincaid*, 684 P.2d 13 (Or. App. 1984).

taught fundamentals of using the various resources and the practical purpose of these resources in legal practice.

When our graduates leave law school, however, they quickly learn that most legal research resources are not available to them. Not only do they become more concerned about the costs of research relative to the value of the case and the amount the client can afford to pay, but they also realize that, even when there is a potentially good paying case or a deep pocket client, the legal research resources encountered in law school may not be available.

The demographics of North Dakota make the problem of access to adequate legal research resources particularly acute. North Dakota is ranked forty-sixth nationally in population² and 51.2 percent of that population lives in rural areas.³ Attorney demographics in North Dakota more graphically reflect this urban/rural split. Thirty-nine of the state's fifty-three counties have fewer than ten licensed attorneys, and another eight counties have fewer than thirty.⁴ Approximately 71.5 percent of North Dakota attorneys are located in six counties, with heaviest concentrations in the more populous Burleigh, Cass, and Grand Forks counties.⁵ Of course, even these "urban" counties are relatively small when compared with other metropolitan areas in the country.⁶

Attorneys across the state, in small communities and in the larger towns and cities, are thus confronted with the need to access legal information. This state has two major public law libraries, the supreme court library in Bismarck and the Thormodsgard Law Library at the UND School of Law in Grand Forks. Attorneys from outside of the Bismarck and Grand Forks areas are left to their own devices (and to the wiles of law book publishers) in locating necessary precedent and analysis.

North Dakota is not unique in its relative scarcity of law libraries and the problems of access to legal research resources by attorneys in rural areas. Efforts have been undertaken to survey the needs of attorneys in other states,⁷ and various schemes for

2. Statistical Abstract of the United States 1985, 11.

3. Statistical Abstract of North Dakota (2d ed. 1983), 8.

4. *Id.* at 623.

5. *Id.*

6. Nationally in 1984, the Bismarck (Burleigh County) metropolitan area was ranked 270th in population, the Fargo (Cass County) metropolitan area was ranked 190th in population, and the Grand Forks metropolitan area was ranked 274th in population. Statistical Abstract of the United States 1984, 20-22.

7. Surveys have been attempted in recent years in at least two other states: Idaho and Michigan. See Idaho Law Library Project Part I: Assessment of Needs (Dec. 1979) (conducted by Prima Associates Inc. for Idaho Law Foundation, unpublished); Leary & Cooper, *Research Needs of Outstate Michigan Lawyers*, 60 MICH. B.J. 641 (1981). A survey of the Nebraska bar was apparently conducted

resolving the problem have been developed.

One response is modeled on a concept developed at Creighton School of Law in Omaha, Nebraska, in the mid-1970s. The Law Enforcement Assistance Administration and other agencies funded the Creighton Legal Information Center to provide legal research assistance to judges, prosecutors, and court-appointed defense counsel.⁸ Although this service is no longer functioning at Creighton,⁹ similar models have been successfully implemented at the University of Montana School of Law¹⁰ and at the University of North Dakota School of Law.

UND's Central Legal Research (CLR), like the Creighton and Montana projects, provides research services to North Dakota judges, prosecutors, court-appointed defense counsel, and other attorneys employed by the state.¹¹ The program successfully combines educational research and writing experience for law students while satisfying its users' need for legal information. The CLR director is a member of the UND law school faculty, and six to nine law students work under the director's supervision. A thorough examination of North Dakota statute and case law and other relevant precedent is provided to the requesting attorney in the form of a legal memorandum.

Another approach to furnishing adequate law library service to attorneys is through the upgrading of county law libraries. County law libraries in California have long been supported by civil filing fees,¹² giving libraries in the more litigious counties very well-financed and complete collections of legal research materials. Minnesota has recently adopted this approach,¹³ and the Minnesota State Law Library has undertaken a County Law Library Project to inventory, upgrade, and assist the county law libraries of that state.¹⁴

These approaches to providing legal research assistance to

at the outset of the Creighton project, but results of that survey could not be located. See STUART & WISE *infra* note 8, at 1.

8. L. STUART & H. WISE, *Rural Legal Research: Creighton Legal Information Center* (1977) [hereinafter cited as STUART & WISE].

9. Telephone conversation with Office of the Dean, Creighton Law School (Nov. 1, 1984).

10. BROCHURE: FACT SHEET ON MONTCLIRC (Montana Criminal Law Information Research Center) (undated).

11. UND School of Law, University of North Dakota 1985-86 (bulletin) 35.

12. CAL. BUS. & PROF. CODE §§ 6320-6326 (West 1974 & Supp. 1986).

13. MINN. STAT. ANN. §§ 140.421-.46 (Supp. 1986).

14. The Minnesota County Law Library Project was initiated under a grant from the Minnesota State Bar Foundation, and continued pursuant to the mandate of the law libraries statute that "[t]he state law librarian, under the guidance of the supreme court, shall advise and assist in the operation and maintenance of the county law libraries." MINN. STAT. ANN. § 140.47 (Supp. 1986); see also Minnesota State Law Library County Law Library Project Bulletin No. 20 (Jan. 20, 1984).

attorneys have been successful but also have some drawbacks. The Central Legal Research model, for example, is restricted to government-paid attorneys and concentrates primarily on criminal law. Although UND Central Legal Research makes its research memoranda available to private attorneys, it does not undertake original research for the private bar.

Establishing working collections in each county law library in this state would be, to put it mildly, a matter of overkill. The cost of establishing a viable research collection of legal materials, including the National Reporter System and digests, federal and state statutory and administrative codes, basic law reviews, services, and treatises, and also personnel to manage these, would be prohibitive.¹⁵ The overall population of most North Dakota counties is so low that filing fees would not support an adequate law library. Even if county law libraries could be assembled, there are so few attorneys in most North Dakota counties that these libraries would be underutilized. Thus, except in the most populous counties the outlay would not be cost effective, and in two of the populous counties, Burleigh and Grand Forks, adequate law libraries already exist.

A third approach to the problem of access to legal research information is the relatively recent phenomenon of centrally located computerized research services. This service typically provides LEXIS or WESTLAW computer searches conducted by a law-trained librarian. Variations of this service have recently been introduced at the state law libraries in Idaho,¹⁶ Minnesota,¹⁷ and Wisconsin.¹⁸ To utilize a computer assisted legal research (CALR) service, the attorney calls or writes the library and outlines the research problem; the librarian then develops a search inquiry and sends the resulting computer printout to the requesting attorney.

The utility and attractiveness of the CALR service is that attorneys have access to the extensive resources of LEXIS or WESTLAW through a person trained to do online research. Further, attorneys pay only for what they use and are spared the

15. A conservative (and very rough) estimate of the costs associated with acquiring and maintaining the basic collection listed is: initial expense, \$110,000; annual upkeep, \$25,000; annual personnel and miscellaneous administrative expense, \$30,000. These cost estimates are based on payment records at the Thormodsgard Law Library, University of North Dakota School of Law.

16. Bianchi, *Public Lexis Terminal in State Law Library*, THE ADVOCATE, NOV. 1983, at 9.

17. See Minnesota State Law Library County Law Library Project Bulletin Nos. 22 (May 23, 1984) and 23 (July 25, 1984). Several of the larger county law libraries, developed under the County Law Library Project, have also installed computer research systems. Minnesota State Law Library County Law Library Project Bulletin No. 31 (Nov. 25, 1985).

18. *Wisconsin bar, state library join to offer Lexis*, BAR LEADER, Jan.-Feb. 1984, at 9; see *Computerized Legal Research: Participants Pleased with Results*, WIS. B. BULL., Sept. 1984, at 20.

start-up and monthly charges associated with subscriptions to these systems. On the other hand, not all research questions are appropriate for computer searches, and thus a CALR service, without more, satisfies only some of the attorneys' needs for legal information.

Mindful of the benefits and shortcomings inherent in the programs and services developed elsewhere, the Thormodsgard Law Library at the UND School of Law has responded to the practitioner's need for legal research resources in a variety of ways: the library is open to attorneys 100 hours a week; reference assistance is provided to attorneys who come in or phone in with inquiries; photocopy services are provided, and cases, statutes, journal articles, and treatises are mailed to attorneys across the state; audio and video programs are loaned to attorneys; and charge accounts are available to firms and their law student interns for copying library materials. The law library has thus built a tradition of service to the bar, assisting North Dakota's attorneys with their legal information needs.

The extent to which its services are used by attorneys, coupled with an appreciation of the rural demographics of this state, has led the Thormodsgard Law Library to conclude that North Dakota practitioners would benefit from a CALR program. Before developing such a program, however, North Dakota attorneys were surveyed to discover what legal research resources they had access to and what their legal research needs were. The results of this survey confirmed our perceptions and prompted us to go forward with an experimental Attorney Services Program.

II. THE SURVEY

Initially, this survey was undertaken with a fairly limited purpose: to determine how North Dakota's attorneys acquire legal information and what they use after they have left law school and no longer have access to the comprehensive resources of their law school's library. The survey was also intended to test the validity of the assumptions that North Dakota attorneys need assistance in obtaining legal information and that they would support an Attorney Services Program at the Thormodsgard Law Library.

In February 1984, a questionnaire was mailed to all attorneys who are members of the State Bar Association of North Dakota and who have North Dakota mailing addresses. The questionnaire and

its cover letter were entitled "Legal Research Resources Available to/Utilized by North Dakota Attorneys."¹⁹ Of the 1,150 mailed, 505 responses were received, for a healthy response rate of 43.6 percent.

The questionnaire asked attorneys to indicate what legal research resources were available to them by stating whether a publication was either in their office or located nearby. Attorneys were also asked what secondary resources or treatises they consulted during research, and to what extent they would leave their offices to do further research. Finally, respondents were given the option to comment further on the legal information needs of North Dakota attorneys.

Initial concerns in devising this survey were whether attorneys were sufficiently interested to respond, and whether their responses would accurately reflect their research practices and needs. The format of the questionnaire was deliberately kept simple to facilitate easy response. Judging from the large number of respondents, the effort was successful. This format, however, may have affected the accuracy of the results, since questions were asked in general terms regardless of other variables such as need, proximity, and time, which could have influenced responses.²⁰ The concern for frankness and accuracy was also addressed, at least partially, by the assurance that anonymity would be preserved.

In tabulating the results of the survey, responses were divided into groups based on the nature of the legal practice involved. Table 1 categorizes respondents by the nature of the practice.

Table 1. Respondents Categorized by Nature of Practice

	No. of Respondents	% of Respondents
Private practice	356	70.3 %
Government	77	15.3 %
Judges	42	8.4 %
Other	30	6 %
	505	100 %

The questionnaire also asked respondents to indicate the size of the community in which they practice. The breakdown of these responses is shown in Table 2.

19. The questionnaire responses are reproduced in the Appendix.

20. The Leary and Cooper survey of Michigan attorneys asked respondents to rank their need for 34 kinds of legal research materials, based on the number of times per year that they needed each

Table 2. Responses Categorized by Size of Community

	No. of Respondents	% of Respondents
Less than 1,000	14	2.8%
1,000-5,000	85	16.8%
5,000-20,000	103	20.4%
over 20,000	303	60%
TOTAL	505	100%

The pattern of response appears to follow the pattern of population distribution generally and attorney distribution specifically across North Dakota. Almost two-thirds (sixty percent) of the respondents were from the population centers of the state. The various responses from attorneys located in the relatively well-served cities of Bismarck, Fargo, Grand Forks, and Minot differed from responses by attorneys practicing in the smaller communities in the state.

A. RESOURCES AVAILABLE TO NORTH DAKOTA ATTORNEYS

The questionnaire listed basic state and federal legal resources and asked attorneys to indicate whether they had access to each listed item, either in their offices or nearby. There were few surprises in responses given to this section. Virtually all respondents had access to the North Dakota Century Code, while legal periodical indexes were the least accessible. North Dakota and federal statutes and case law were more available to responding attorneys than were North Dakota and federal administrative regulations. Case law from other states was also relatively inaccessible.

Table 3 sets forth attorney responses regarding the availability of selected materials, all of which are, to some degree, basic research resources. The responses are categorized by nature of practice. The numbers represent the percent of respondents in each category who have local access to that particular legal research resource.

category of materials, and then to indicate whether they could obtain the materials. Leary & Cooper, *Research Needs of Outstate Michigan Lawyers*, 60 MICH. B.J. 641, 641-43 (1981). While a measure of relative need for these materials is certainly relevant to this inquiry, it also interjects a very imprecise and subjective variable into the process and, incidentally, complicates the questionnaire answering process. The North Dakota survey assumes that all materials listed are needed by most attorneys at least some of the time, and simply asks whether they have access to them.

Table 3. Research Materials Available to Attorneys (by nature of practice)

	Private Practice (%)	Govt (%)	Judges (%)	Other (%)
N.D. Century Code	100	100	100	99.6
N.D. Admin. Code	74.5	84	99.9	83.3
Northwestern Reporter	99.1	100	88	96.6
N.D. Shepard's	92.4	94.8	92.8	89.9
U.S. Code	88	92.2	88	96.6
C.F.R.	57	74.1	52.3	96.6
U.S. Supreme Court Opinions	73.6	84.5	90.4	99.9
Federal Reporter	68.6	57.1	80.9	86.6
Pacific Reporter	66.3	81.7	73.6	66.6
Southeastern Reporter	40.3	53	33.3	53.2
Legal Periodical Indexes	35.7	56	33.3	53.2

The numbers in Table 3 indicate that the majority of attorneys in all four categories have at least nearby access to basic research resources. When the 202 respondents from communities of fewer than 20,000 population are compared with the 303 respondents from communities of populations over 20,000, however, the results are different. (In this count, all respondents are grouped together because there were too few in the non-private practice groups to constitute an accurate statistical sample.)

Table 4. Research Materials Available to Attorneys (small communities compared with large communities)

	Respondents from communities of fewer than 20,000 (%)	Respondents from communities of more than 20,000 (%)
N.D. Cent. Code	100	100
N.D. Admin. Code	57.4	89.2
Northwestern Reporter	97.4	100

N.D. Shepard's	83.2	99.3
U.S. Code	70.3	99.7
C.F.R.	29.7	85.8
U.S. Supreme Court		
Opinions	64.7	84.8
Federal Reporter	41.1	95
Pacific Reporter	47.9	84.8
Southeastern Reporter	18.8	69.3
Legal Periodical		
Indexes	13.4	63

Table 4 indicates that attorneys in smaller communities, not surprisingly, have more difficulty accessing basic research resources. Although all have access to the Century Code and most have access to the Northwestern Reporter and North Dakota Shepard's citator, forty-three percent of these respondents did not have even nearby access to the North Dakota Administrative Code. Sources of law outside of North Dakota present greater problems for these practitioners, with thirty percent unable to access the United States Code, seventy percent unable to access the Code of Federal Regulations, and fifty-nine percent unable to access lower federal court opinions. Attorneys from Bismarck, Fargo, Grand Forks, and Minot generally have at least nearby access to all necessary resources, including federal and regional reporters and, to a lesser extent, law review indexes.²¹

Computer-assisted legal research systems are becoming more common in North Dakota. Seventy-one respondents (14.1 percent) indicated that they have access to either LEXIS or WESTLAW in their own offices. WESTLAW appeared to be more popular than LEXIS, with fifty-four respondents having access to WESTLAW and seventeen having access to LEXIS. Further, several respondents indicated in the comments section that their firm intended to purchase one of these systems soon, so at this writing, figures on the number of North Dakota attorneys with access to computer-assisted legal research systems may be deceptively low.

21. All resources that were listed on the questionnaire are available to attorneys in Bismarck and Grand Forks, although responses from these communities indicate that not all attorneys are aware of this. Most resources listed are available to most attorneys in Fargo, although some are available only in private law libraries. No attorneys in Minot have access to state case law outside of the Northwest or Pacific reporters or to law review indexes.

B. SECONDARY LEGAL RESEARCHES USED BY NORTH DAKOTA ATTORNEYS

Secondary legal research materials such as treatises are popular because they are a less costly means for attorneys practicing in particular areas of law to keep current. They also provide an excellent source of specialized case law. In part two of the questionnaire, respondents were asked to name five treatises or services which they used in their work. A wide variety of sources were listed in the responses, reflecting not only the different fields of practice engaged in by North Dakota attorneys, but also the large selection of published material available.

One hundred eighty-six different sources were listed by the 505 respondents. Ninety-four respondents (18.7 percent) did not list any secondary sources. Table 5 lists the twenty most frequently mentioned secondary research resources.²² These materials are listed in order of their popularity.

Table 5. Secondary Research Resources Used by Attorneys

Source	Number of Respondents
1. Collier on Bankruptcy	141
2. CCH tax service	78
3. Rabkin-Johnson tax service	57
4. PH tax service	56
5. Weinstein: Evidence	49
6. Couch: Insurance	47
7. Moore's Federal Practice	43
8. Wright and Miller: Federal Practice & Procedure	36
9. Williams and Meyers: Oil and Gas Treatise	35
10. Harl: Agricultural Law	31
11. Patton on Titles	28
12. Am. Jur. Proof of Facts	26
13. Frumer: Products Liability	22
14. UCC Reporting Service	20

22. These results were difficult to tabulate accurately because many attorneys used shorthand names for some sources. Thus, although Commerce Clearing House, Matthew Bender, and Prentice Hall all publish various units of their tax services, it was impossible to separate these services and list them individually.

15.	Bucklin: Civil Practice in North Dakota	16
16.	Blashfield: Automobile Law and Practice	16
17.	ALI Restatements	13
18.	Am. Jur. Trials	13
19.	Attorney's Textbook of Medicine	13
20.	Uniform Laws Annotated	12

Although the question did not attempt to gauge the extent of the respondents' reliance on these publications, the fact that they volunteered the titles indicates some familiarity with the publications listed. The overwhelming popularity of the Collier treatise is perhaps a reflection of economic times in North Dakota.

C. LEGAL RESEARCH PRACTICES OF NORTH DAKOTA ATTORNEYS

This part of the questionnaire was intended to find out how often attorneys go outside of their own offices to perform legal research. "Going outside" included traveling to a public or other law firm library, delegating the research to someone else within or outside of the firm, referring the question to Central Legal Research at UND (if eligible), or ordering copies of materials from the UND or supreme court law libraries. Respondents indicated the extent to which they do any of these listed practices as "most of the time," "some of the time," or "rarely."

A majority of responding attorneys indicated that they do their own research and limit themselves to resources available in their office. A surprisingly small number indicated that they delegate the research, and a relatively small percentage of the respondents utilize the resources of the UND or supreme court law libraries. Table 6 shows responses to this research practices question in terms of percentage of all respondents.

Table 6. Research Practices of Responding Attorneys

	<u>most</u> <u>the time</u> (%)	<u>some of</u> <u>the time</u> (%)	<u>rarely</u> (%)
Perform myself; limited to office	61.2	20.7	6.4

Perform myself; travel nearby	26.1	30.1	19.5
Perform myself; travel more than 10 miles	4	11	48.2
Delegate within office	8.8	18.9	32.7
Delegate outside of office	.8	9.4	48
Refer to CLR	3.4	10.4	44.4
Order copies	3.4	16.9	44.4

*The responses in the "rarely" column are highly suspect. In retrospect, a fourth response term of "never" should have been included. It is impossible to tell how many of the respondents who gave this response do not even perform the indicated activity "rarely."

D. COMMENTS ON INFORMATION NEEDS OF NORTH DAKOTA ATTORNEYS

This section of the questionnaire gave attorneys the opportunity to comment on their legal research needs and the legal research practices of North Dakota attorneys generally. Written comments were received from about half of the respondents.

Although comments were received on a wide variety of issues relating to legal research in North Dakota, they can be roughly categorized as follows: comments about their own legal research practices; observations about the practices of other attorneys; opinions regarding the services provided by Central Legal Research and the supreme court and UND law libraries; concerns about computer-assisted research; and general comments or suggestions.

Regarding their own research practices and the adequacy of resources, many respondents indicated that their office library is adequate, while others stated that the cost of maintaining an adequate law library is prohibitive. The urban/rural split is evident here, as respondents from Bismarck and Grand Forks, and to a lesser extent, Fargo, stated that their office libraries were adequately supplemented by local law libraries. Many respondents from smaller towns expressed an inability to access such basic materials as federal case and statutory law. Even from the larger

cities, however, some dissatisfaction was evident, as practitioners from Fargo wanted a more comprehensive public law library²³ and some from Bismarck expressed a desire for a more extensive law review and treatise collection at the supreme court library.

The following is a selection of comments from respondents on their research practices:

“Need access to regional reporters.”

* * *

“My personal observation is that *I* do not find adequate time to devote to research projects. Evenings and weekends are [the] only ‘quiet’ times available.”

* * *

“Our library is not adequate. Obviously, most law firms have only a working library which is not always adequate. The courts need computerization and *full time* law clerks such as the Supreme Court has.” (Judge)

* * *

“We are often hampered locally by lack of federal cases.”

* * *

“Being alone in a rural area I find it extremely difficult to find any time to do research, and the cost of maintaining a library is prohibitive.”

* * *

“Limiting research to the NW system is frustrating!”

* * *

“My information needs at the state level are fairly well met by my library. My problem is the federal level . . .”

* * *

“Access to law reviews & specialized treatises is needed.” (Bismarck)

* * *

“We attorneys in Fargo should develop our own central library. I believe we could do it at a fraction of what we are collectively paying.”

23. The Fargo Law Library Association, a nonprofit corporation founded in 1966, has recently expanded its scope and membership. Seven law firms, consisting of about 60 attorneys, have leased space in a central location in downtown Fargo and have merged the holdings of their libraries. The library will have a fairly comprehensive research collection and eliminate much of the duplication of the separately maintained firm libraries. Details regarding the library's functions and scope, such as opening membership to additional firms or allowing access by the public or nonmember attorneys, were not finalized at this writing.

Comments regarding the research practices of other attorneys tended to be critical, although some thought that the research practices of others were adequate under the circumstances. Some samples:

“The adequacy of legal research practices of ND attorneys is thought to be poor.”

* * *

“At least from my view, the legal research I see being done is adequate, but there are cases where very little law is cited.”

* * *

“Research practices are adequate considering resources available.”

* * *

“Most legal research is of marginal or superficial nature, i.e., quoting Am. Jur. or C.J.S. as authority rather than specific cases.”

* * *

“Adequacy varies from excellent to poor. The more the attorneys in a community, the higher the level of research overall.”

* * *

“[I] generally find things are not researched nearly as thorough [sic] as they should be!”

* * *

“Unfortunately, time and cost *are* factors which cause many attorneys to do minimal research at best.”

* * *

“Most briefs I receive are not adequately researched.”
(Judge)

Many respondents commented on the services of Central Legal Research at the UND Law School and the law libraries at UND and the supreme court. Attorneys who utilize these resources seem very satisfied with them. Comments also reflect a desire to know more about these services and, as indicated previously, a need for expansion of the treatise and law review collections at the supreme court library.

Some comments about Central Legal Research:

“Central Legal Research is a great help.”

“Services such as CLR are vital to members of the profession in a rural setting.”

Regarding the supreme court library in Bismarck:

“Living in Bismarck, most things I need are, fortunately, available at the Supreme Court Library - only law reviews are lacking and articles I need are readily available from the UND library (this service is very much appreciated).

* * *

“The greatest need for those who utilize the Supreme Ct. Library is to get an adequate selection of law reviews.”

And comments about the Thormodsgard Law Library at the UND School of Law:

“I order cases from the UND Law Library. This service is *invaluable* and has been very good.”

* * *

“An occasional reminder of how attorneys outside of Grand Forks can use UND law school library, on what basis, and at what cost, would be helpful.”

* * *

“Attorneys practicing in Grand Forks are lucky to have access to the excellent Thormodsgard Law Library.”

Another focus of comments was the prospect of computer-assisted legal research to help resolve problems of access. Many expressed an interest, but also concern, at the high cost of CALR. Some examples:

“We are convinced that computer assisted research is the wave of the future and will continue to expand in that area.”

* * *

“I would like to have access to affordable computer legal research systems.”

* * *

“Need WESTLAW or LEXIS to keep pace with research & law.”

* * *

“The only practical way to upgrade access to legal

research resources is the use of a database system, but the cost is prohibitive in a small office.”

* * *

“Regional availability of WESTLAW would benefit general practice.”

Finally, some general comments and suggestions for improving legal research practices in North Dakota:

“Could use N.D. Research Service (avoid duplication of libraries).”

* * *

“Would like to have a big law library in Fargo under one roof with everything in it!”

* * *

“It would be desirable to have a uniform contact for research at the law school. A fee basis service, monthly billing, telephone access.”

* * *

“I believe there is a need in N.D. for a multi-volume set similar to Minnesota Practice.”

E. THE ATTORNEY SERVICES PROGRAM

Responses to the questionnaire confirm the perception that attorneys in North Dakota need improved access to legal information. The need varies from city to small town, and from federal case law to law reviews to forms, but clearly it is there.

The Thormodsgard Law Library at the UND School of Law is in a unique position to assist the bar in satisfying attorneys' needs for legal information. Its collection of primary and secondary sources is comprehensive, it has a staff trained to give assistance, and it trains law students in research methods. Further, as stated earlier, the library is already providing extensive service to the bar, from reference assistance to photocopying cases and other materials.

Although the Thormodsgard Law Library, as the comprehensive law collection in the state, clearly has an obligation to make its resources available to the attorneys of North Dakota, the legislature has funded the library for the primary purpose of supporting the educational program at the UND School of Law. A major issue facing the law library in recent years has been how to

maintain its level of service to the attorneys of North Dakota while still fulfilling its primary obligation to the students and faculty of the School of Law.

The proposed solution to this predicament is development of a bar-supported Attorney Services Program. The Board of Governors of the State Bar Association of North Dakota has agreed to commit financial support for the initiation of the Attorney Services Program on an experimental basis.

The Attorney Services Program at the Thormodsgard Law Library is being initiated to respond to the needs of North Dakota attorneys for legal information by providing reference assistance, a LEXIS computer-assisted research service, a copy service for cases, statutes, journal articles, and other materials, and a loan program for books, and audio and video materials. The director of the Attorney Services Program, a law-trained member of the library staff, is available to provide assistance to members of the bar and is the coordinator and developer of services. The director fields questions from attorneys from all over the state and communicates with the bar through short articles in the state bar association newsletter, *The Gavel*.²⁴ The initial phases of the program include setting up the LEXIS research service and refining a procedure for developing a research strategy with attorneys over the phone. Other issues to be addressed include the extent of service that the director can provide,²⁵ and the potential for conflict of interest when both sides on a case contact the library for assistance.²⁶

The commitment of the State Bar Association of North Dakota to the Attorney Services Program includes a mandate that the program seek to become self-supporting. Therefore, fees for services rendered are charged, and these fees include out-of-pocket costs and an assessment for overhead expense. The library is

24. See, e.g. Wilson, *Attorney Services*, THE GAVEL, NOV. 1985, at 5.

25. The line between reference service and legal advice is admittedly an uncertain one. Law librarians have long been concerned about the ramifications of giving too much reference assistance to patrons, and the possible malpractice exposure which could result. See, e.g., Leone, *Malpractice Liability of a Law Librarian?*, 72 L. LIBR. J. 44 (1980); Mills, *Reference Service vs. Legal Advice: is it Possible to Draw the Line?*, 72 L. LIBR. J. 179 (1979). Given the nature of the attorney's need for information and the assertiveness of the typical attorney patron, a policy statement concerning the extent to which the library will provide reference service will attempt to accommodate these needs and concerns.

26. The library has had relatively few problems with conflict of interest in the past. Occasionally both sides to a dispute, or the presiding judge, will request the same case or statute or treatise, and the library staff has been able to accommodate those requests without compromising its neutral stance. The Attorney Services Program may present an increase in these kinds of requests and there may be occasions when the library will have to refuse to assist the subsequent requestor. For example, a CALR search which had been conducted by the Director of Attorney Services after consultation with the requesting attorney would necessarily have revealed considerable detail about the nature of the case and theory employed by the requesting attorney. Should opposing counsel later contact the library for a CALR search, under terms of a conflict of interest policy statement, the library would refuse to accept the second request.

mindful, however, that it is a public institution supported by tax dollars and that the Attorney Services Program, through its fee for service structure, should not inhibit attorney access to information, thereby undermining its very *raison d'être*. Thus, a balance must be struck in setting the charges for services to enable and facilitate attorney access.

III. CONCLUSION

This survey has provided data on the actual research needs and practices of North Dakota attorneys. Most attorneys invest substantial sums in providing themselves with legal research resources. They seek information elsewhere when it is not available in their own offices. Time and cost factors will continue to inhibit the ability of attorneys to thoroughly research legal issues with which they deal on a daily basis. Even if comprehensive resources were conveniently available, another survey may find that frustrations persist regarding research needs and practices.

Computer-assisted legal research systems such as LEXIS and WESTLAW could, at least potentially, alleviate disparities between resources available to attorneys in North Dakota cities and those in small communities. The cost of these systems continues to be an inhibiting factor for the small firm, however, and thus, to date the disparity is even greater: larger firms in cities not only have access to more book resources but also the extensive resources available through their LEXIS or WESTLAW subscriptions. The CALR service of the Attorney Services Program at the UND School of Law library is attempting to respond to this problem by providing affordable computer research services to all North Dakota attorneys.

APPENDIX

QUESTIONNAIRE: LEGAL RESEARCH RESOURCES AVAILABLE TO/UTILIZED BY NORTH DAKOTA ATTORNEYS

I. Personal Data and Demographics.

1. What is the nature of your legal practice?

- 77 government (include state's attorneys, attorneys affiliated with state government or state institutions)
 42 judge (include part time judges and judicial law clerks)
 356 private practice
 30 other (specify: _____)

2. For attorneys in private practice only: what is the size of your firm?

81	1	25	7		
				1	13
68	2	9	8	3	14
40	3	10	9	3	15
40	4	15	10	3	16
11	5	2	11	1	17
17	6	17	12	8	18

3. How many years have you been out of law school?

- 166 less than 5
 139 5-10
 97 11-20
 103 more than 20

4. What is the size of your community?

- 14 less than 1000
 85 1000-5000
 103 5000-20,000
 303 over 20,000

II. Legal Research Resources Available to North Dakota Attorneys.

Key: 0 - listed item is available to you in your firm's **offices** (or in your governmental offices or courthouse, as appropriate)

N - listed item is available to you **nearby**, at a library or another firm where you have use privileges

(Note: if your access to any of these materials is via Lexis or Westlaw and not the books themselves, mark the entry for the database only.)

O N

- 498 5 North Dakota Century Code
 313 120 North Dakota Session Laws
 268 89 North Dakota Administrative Code
 401 95 North Western Reporter, Second
 252 122 Dakota Digest
 321 122 North Western Digest, Second
 351 115 Shepard's North Dakota Citations
 290 158 United States Code (USC, USCA, or USCS)
 88 221 Code of Federal Regulations
 69 215 Federal Register
 182 211 U.S. Supreme Court Reports (U.S., S.Ct. or L.Ed.)
 115 231 Federal Reporter
 99 238 Federal Supplement
 89 203 Federal Practice Digest
 119 216 Shepard's U.S. Citations (Cases & Statutes)
 109 215 Shepard's Federal Citations
 334 148 American Law Reports, Third & Fourth
 206 174 ALR Federal
 359 109 Am Jur 2d
 247 179 Corpus Juris Secundum
 57 215 American Digest System
 — — Autocite
 17 — Lexis
 54 — Westlaw
 41 202 Atlantic Reporter, Second
 23 197 Shepard's Atlantic Reporter Citations

Questionnaire, part II, continued

O N

87	261	Pacific Reporter, Second
63	243	Shepard's Pacific Reporter Citations
45	211	North Eastern Reporter, Second
25	207	Shepard's Northeastern Reporter Citations
31	202	South Eastern Reporter, Second
18	185	Shepard's Southeastern Reporter Citations
31	202	Southern Reporter, Second
18	185	Shepard's Southern Reporter Citations
31	202	South Western Reporter, Second
18	185	Shepard's Southwestern Reporter Citations
33	166	Index to Legal Periodicals or Current Law Index
430	53	North Dakota Law Review
236	114	Federal Procedural Forms or West's Federal Forms, or Bender's Federal Practice Forms
360	85	Am Jur Legal Forms or Modern Legal Forms/West's Legal Forms or Nichols Encyclopedia of Legal Forms

III. Secondary Legal Resources Used by North Dakota Attorneys.

List below up to 5 titles of legal treatises or looseleaf services to which you frequently refer in your research (examples: Couch on Insurance, Collier on Bankruptcy, PH or CCH tax service):

1. _____
2. _____
3. _____
4. _____
5. _____

IV. Legal Research Practices of North Dakota Attorneys.

If presented with a legal problem which required original legal research, which of the following best approximates what you would do (assume time and cost are neutral factors in your decision):

Mark all that apply, indicating frequency in the following manner:

- 1 - most of the time (more than 75% of the time)
- 2 - some of the time (between 25-75% of the time)
- 3 - rarely (less than 25% of the time)

- | | |
|-----------------------|---|
| 1: 307; 2: 104; 3: 32 | perform research myself; limited to resources available in my office |
| 1: 131; 2: 151; 3: 98 | perform research myself; travel to resources located within ten miles from my office |
| 1: 20; 2: 55; 3: 242 | perform research myself; travel more than ten miles to access resources |
| 1: 44; 2: 95; 3: 164 | delegate research to person in office (e.g., an associate in the firm or a law clerk) |
| 1: 4; 2: 47; 3: 241 | delegate to an outside researcher (such as a law student intern) |
| 1: 17; 2: 52; 3: 223 | refer question to Central Legal Research at UND (if eligible) |
| 1: 17; 2: 85; 3: 223 | order copies of cases, journal articles from UND or Supreme Court law libraries |

V. (Optional). Legal Information Needs of North Dakota Attorneys.

Please comment on your legal information needs and the adequacy of legal research practices of North Dakota attorneys.
