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Empirical Legal Scholarship and Law Libraries

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Submitted to

Professor Penny A. Hazelton

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Introduction

A number of articles have been written about legal empirical scholarship. These pieces have tended to focus on the growing amount of legal scholarship with empirical elements.¹ Most scholars agree that the number of empirically-based legal works have grown over time and empirical legal studies now occupy a firm, if not overwhelming, position in legal scholarship.² To put it bluntly: empirically-based legal scholarship is not going anywhere.

This paper began as an idea to empirically analyze the amount of empirically-based legal scholarship that is currently being performed. The focus developed and shifted as the data was gathered and analyzed, and greater consideration was given to the end objectives of this research: developing a better sense of the individuals and types of empirical legal research being performed by law school faculty, in order to help a law library better address their research needs.

In order to do that, the paper focuses on some facets of empirical legal scholarship that are pertinent to law faculty, and thereby to the law libraries that serve them. First, it defines empirical legal scholarship. Then, it describes the Empirical Legal Scholarship Bibliography database and the dataset for 2007-2011. It follows with an analysis of the amount of empirically-related articles published in different types of publications. Particular attention is paid to scholars associated with law schools. This analysis is performed using data from the Empirical Legal Scholarship Bibliography database (ELS database).

Following the analysis of empirical legal scholarship collected and indexed in the ELS database is a discussion of how law librarians can better prepare or anticipate needs of the faculty members they are serving. Most of the empirical legal scholarship in the ELS database is being done by non-legal scholars, or between coauthors. It is unlikely that law librarians will often interact with, or be able to directly help, these individuals.

Among law school faculty, there is a greater incidence of coauthorship than there is in legal scholarship in general, but the majority of legal academics still publish empirical legal scholarship as single authors. Additionally, these individuals continue to primarily publish in student-run journals, as opposed to peer-reviewed or commercially-produced legal publications or publications of other disciplines.

Depending on the nature of the relationship between the law library and the school and faculty it serves, the library may see an increase in requests from individuals performing empirical work, during the data collection phase. In order to get this data, they may rely on librarians to perform searches on materials

¹ See, e.g., Diamond and Mueller, *Empirical Legal scholarship in Law Review*, 2010 ANN. REV. LAW & SOC. SCI. 581; Tom Ginsburg & Thomas J. Miles, *Empiricism and the Rising Incidence of Coauthorship in Law*, 2011 U. ILL. L. REV. 1785; Michael Heise, *An Empirical Analysis of Empirical Legal Scholarship Production, 1990 – 2009*, 2011 U. Ill. L. Rev. 1739.

² See, e.g. Diamond & Mueller; Ginsburg & Miles; Heise, *supra* note 1.

located in print in the library or on library databases. If the library is not staffed to do such extensive work, or does not encourage such research requests from faculty, the faculty member might employ students as research assistants. Providing the student with training, before they begin daunting tasks of data collection, may allow them to perform in a more efficient and thorough manner.

Law librarians can also help point faculty and their research assistants to useful tools related to empirical legal research. These tools include print and online materials devoted to empirical (legal) analysis. Law librarians can also develop stronger relationships with librarians in other disciplines, particularly those with experience in empirical and statistical research. It would also be helpful for law librarians to be aware of how scholars might access software for data analysis.³

What is Empirical Legal Scholarship?

In order to understand current empirical legal scholarship, we must first define what empirical legal studies are. The term “empirical legal studies” is only recently popular; it came “into vogue” at the turn of this century.⁴ This does not mean that empirical legal studies did not exist well before 2000.⁵ Theodore Eisenberg, the founder of the *Journal of Empirical Legal Studies* describes it as employing a “methodology that is usually, but not always, the methodology of statistical analysis.”⁶ He also describes a core principle of ELS as being that “it is better to have more systematic knowledge of how the legal system works rather than less.”⁷ These two statements suggest that empirical legal scholarship is the systematic study of legal systems, usually through statistical analysis.

Different authors used different parameters to determine whether or not an article was empirical legal scholarship. Diamond and Mueller note that scholars have ranged from defining “empirical” as only that which uses statistical techniques and analyses to something based on “facts [that] have something to do with the world.”⁸ The authors themselves decided to adopt an approach open to work “dealing with experimental examinations of human behavior relevant to legal scholars (e.g. ultimatum games) and quantitative and qualitative empirical studies

³ Many universities, such as the University of Washington, provide for free downloads of certain statistical packages. There may also be statistics support teams, through the library or another department, willing to help with the implementation and use of these programs.

⁴ Herbert M. Kritzer, *Empirical Legal Studies Before 1940: A Bibliographic Essay*, 6(4) J. EMPIRICAL LEGAL STUD. 925 (2009).

⁵ *Id.*

⁶ Theodore Eisenberg, *The Origins, Nature, and Promise of Empirical Legal Studies and a Response to Concerns*, 2011 U. Ill. L. Rev. 1719.

⁷ *Id.*, 1720.

⁸ Diamond & Mueller, *supra* note 1, 582 (citing Heise, 2002, and Epstein & King, 2002).

of issues relevant to legal scholars.”⁹ Ginsburg and Miles considered an article to be “empirical” if it “presented a novel analysis of data.”¹⁰

The Empirical Legal Scholarship Database

For the purposes of this paper, I confined my analysis to the scholarship documented in the Empirical Legal Scholarship database.¹¹ This database, supported by the UCLA School of Law, began in 2006 by covering 79 separate publications: law reviews from the top 40 law schools in the country, major specialty journals from law schools, legal journals such as the *Journal of Empirical Legal Studies* not published by law schools, and top journals in economics, political science, sociology, anthropology and psychology.¹² It now has articles from 134 different publications: 87 student-run law reviews or specialized journals; 31 peer-review or professional published legal periodicals; and 16 journals from other academic disciplines.¹³

The Empirical Legal Scholarship database is not a complete set of empirically-driven legal scholarship from the last ten years. For one thing, as noted in the above paragraph, it only examines a limited number of publications. Law reviews outside of the top 40 law schools do publish empirical legal scholarship.¹⁴ Additionally, the ELS database follows a rubric to identify “empirical” research. According to the database description,

“The following rubrics were used to identify "empirical" research. (1) the presence of tables or charts based upon original empirical research, or (2) the inclusion of tables or charts from other publications (i.e., the Census) with more than a cursory interpretation of the data. The rule of thumb for (2) is whether another scholar would cite the article or the original source to support the proposition supported by the data. The third (3) rubric is whether the article contains a detailed description of the research methodology. This could include protocols for quantitative research (data collection) or qualitative research (interviews). If any one of these was met with satisfaction, the article was included in the database.”¹⁵

⁹ Diamond & Mueller, *supra* note 1, 582, (citing Arlen, 2010).

¹⁰ Ginsburg & Miles, *supra* note 1, 1798.

¹¹ ELS BIBLIOGRAPHY, <https://apps.law.ucla.edu/els/>.

¹² *Database protocols*, DATABASE DESCRIPTION, <http://www.law.ucla.edu/centers-programs/empirical-research-group/Pages/database-description.aspx>.

¹³ As noted above, the law reviews from the top 40 law schools were canvassed; however, apparently only 87 had articles for the ELS database.

¹⁴ Diamond & Mueller found that there was original empirical work in law reviews throughout the spectrum. Diamond & Mueller, *supra* note 1.

¹⁵ DATABASE DESCRIPTION, *supra* note 12.

This determination technique is similar to the technique adopted by Diamond and Mueller in their article on empirical legal scholarship in law reviews.¹⁶ This rubric relies to some extent on human judgment. Determining if an interpretation of data was more than cursory, if another scholar would cite the article or the original source, or if the article contained a detailed description of the research methodology all require an individual to make a judgment call, which can result in an incomplete or overburdened data set. It should also be noted that some empirical legal work is published in monograph form.¹⁷ And finally, some empirical legal scholarship is simply not published in traditional media.¹⁸

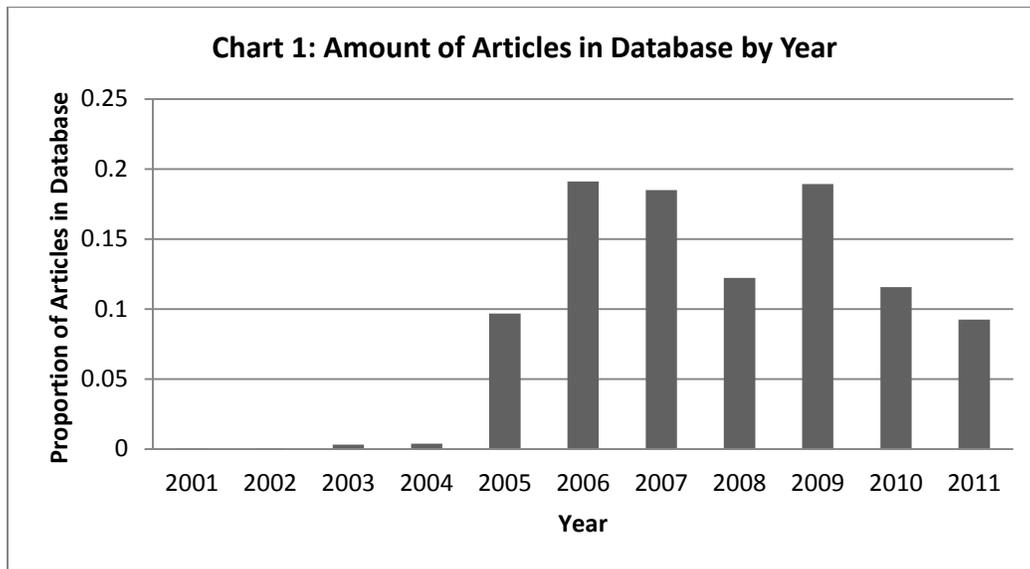
Beginning with the Empirical Legal Scholarship database, I removed entries that were not authored by named individuals –institutional papers or certain student notes. This left a selection of 1654 articles, stretching from 2001 to 2011. The Empirical Legal Scholarship database was begun in 2006, and has been filling in past years retroactively. Chart 1 demonstrates the proportion of articles in the database by year.

These proportions indicate that the data set is not a comprehensive selection of all of the empirical work over the last 10 years; it is much more complete after 2006. This was one reason why I narrowed my time frame of analysis to the last five years, 2007 to 2011. This five year time frame supplied me with a selection of 1168 articles. Additionally, the shortened time period allowed for a better representation of the current environment of empirical legal scholarship. Surveys and comparisons over longer periods of time can be very insightful, but may also dilute some of the data.

¹⁶ Diamond & Mueller note the similarity. Diamond & Mueller, *supra* note 1, 582.

¹⁷ See, e.g., Sean Farhang, THE LITIGATION STATE: PUBLIC REGULATION AND PRIVATE LAWSUITS IN THE U.S. (2010).

¹⁸ SSRN, for example, hosts a number of empirically-related legal scholarship working papers, which are presented at workshops or conferences but, for a variety of reasons, are not published in a traditional law review or peer-reviewed journal. See, e.g. Marco Becht, Patrick Bolton, & Ailsa A. Röell, *Corporate Governance and Control* ECGI - FINANCE WORKING PAPER NO. 02/2002, (Oct. 2002), <http://ssrn.com/abstract=343461>; Wolfgang Drobetz, Andreas Schillhofer, & Heinz Zimmermann, *Corporate Governance and Expected Stock Returns: Evidence from Germany*, ECGI - FINANCE WORKING PAPER NO. 11/2003, (Feb. 2003), <http://ssrn.com/abstract=379102>; Cass R. Sunstein, *The Law of Group Polarization*, U. CHICAGO L. SCHOOL, JOHN M. OLIN L. & ECON. WORKING PAPER NO. 91. (Dec. 1999), <http://ssrn.com/abstract=199668>.



Even the last five years have seen considerable changes that have affected empirical legal scholarship. Primary legal materials, as well as other data sets have become markedly easier to access –and thereby gather and analyze. While the internet existed well before 2007, the ability to transfer large packets of information quickly has exponentially improved over the last five years.¹⁹ Also, automation has streamlined data collection.²⁰ As Jeffrey Rachlinski writes, the “combination of the Internet and the desktop computer has liberated the modern empirical legal researcher. The Internet has induced courts, government agencies, and others to compile and make available mountains of data on all manner of subjects related to law.”²¹ Web 2.0 tools may also contribute to a continued rise of empirical legal scholarship, and interdisciplinary cooperation. For example, blogs such as Empirical Legal Studies allow scholars to stay abreast of developments in the area, share findings, and spread news about conferences and other useful events.²²

It is unclear if these technological developments have led or will lead to an increase in the amount of empirical scholarship, or if it has stayed the same (or decreased!). If the Empirical Legal Database is indicative of the amount of total empirical legal scholarship being performed each year, the past five years appear

¹⁹ See, e.g., Jeffrey J. Rachlinski, *Symposium: The Future of Legal Theory: Essay and Comment: Evidence Based Law*, 96 CORNELL L. REV 901 (May, 2011).

²⁰ F. Allan Hanson cites a conversation with Columbia Clinical Law Professor Mary Zulack when noting that “greater empirical emphasis is visible in the work of legal scholars as automation makes it easier to gather data.” F. Allan Hanson, *From Key Numbers to Keywords: How Automation Has Transformed the Law*, 94 L. LIBR. J. 564, 589 (2002).

²¹ Rachlinski, *supra* note 18, 909.

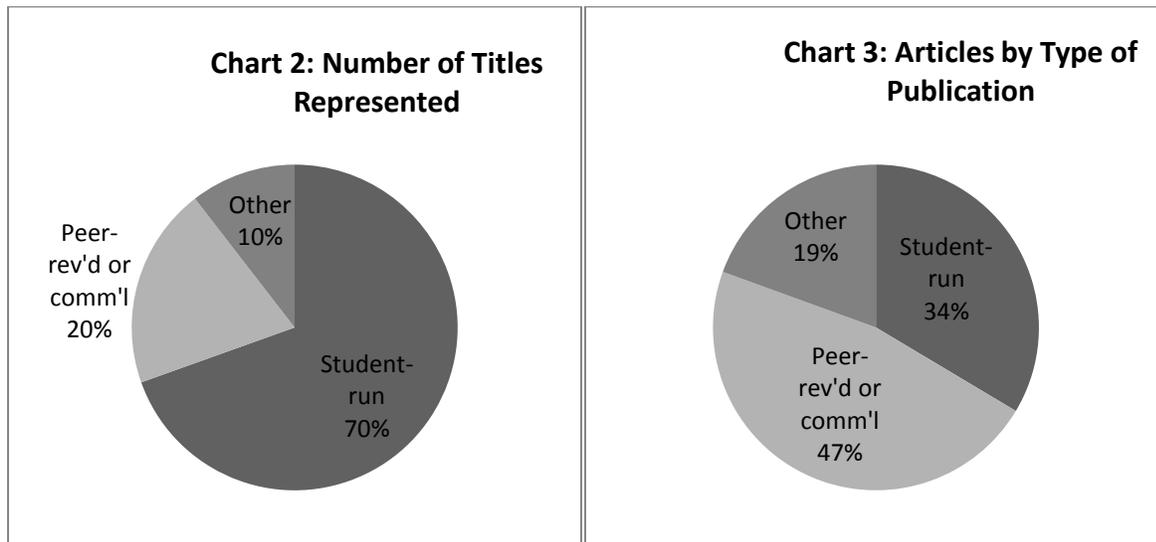
²² EMPIRICAL LEGAL STUDIES BLOG, <http://www.elsblog.org/>.

to fluctuate, without any significant overall increase or decrease. Previous scholarship has suggested an overall increase over the last two decades.²³

Unlike studies examining the past two decades, this examination of a shorter five year time period is not designed to indicate overall trends of growth or other change in empirical legal studies. However, it does allow for a more defined snapshot of empirical legal scholarship being published at present.

Analysis of Journals and Articles from 2007-2011

As stated above, the ELS Database contains articles from a variety of publications. These publications can be divided into three distinct groups: student-run legal publications; peer-reviewed or commercial publications; or publications of other disciplines.



For the years 2007-2011, 105 different publications in the Empirical Legal Database contained empirical legal scholarship. A majority of the titles were student-run law reviews or specialized journals, such as the *California Law Review* or the *Journal of Gender, Social Policy & the Law*. Approximately one-fifth of the titles were peer-reviewed or commercially-published legal serials, such as the *Journal of Empirical Legal Studies*. The remaining journal titles from other academic disciplines, such as economics or psychology. These journal titles may also be peer-reviewed, but they are to be distinguished from the peer-reviewed section because their focus is not the law.

The rough breakdown of 70:20:10 is not indicative of the amount of empirical legal scholarship found in each type of publication. When considering the number

²³ See, e.g. Diamond & Mueller; Ginsburg & Miles; Heise, *supra* note 1.

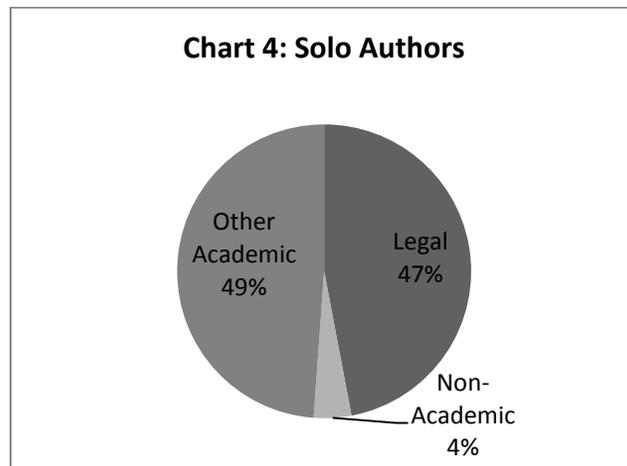
of articles, as opposed to the number of titles, the plurality of empirical work is found in peer-reviewed or commercial legal publication.

There are several possible reasons for this. Most of the peer-reviewed or commercial legal publications with articles in the ELS database are specialized journals that court empirical or interdisciplinary scholarship. This makes them a logical option for publication. There were no student-run journals with a stated empirical or interdisciplinary focus. Peer-review is generally recommended for empirical scholarship (ostensibly it ensures against certain data gathering and analysis pitfalls that might otherwise occur), and is a requirement for many scholars in other disciplines who are hoping for tenure. Peer-reviewed legal publications also have a large prestige factor; journals edited by law professors are relatively rare.

Analysis of Authors

From 2007-2011, approximately 40 percent of the articles in the ELS database were written by a solo individual. 32 percent were written by two authors, 17 percent by three, and 11 percent by four authors or more. This means that over half of the articles were written by at least two co-authors.

Among solo authors, legal scholars and other academics dominated, almost evenly. Four percent of the solo articles were written by individuals who were primarily associated with a non-academic institution. These institutions were mostly law firms, courts, intergovernmental organizations or administrative agencies.²⁴



²⁴ E.g. George Zanjani at the Federal Reserve Bank of New York, Anthony Francis Bruno at the Second Circuit Court of Appeals, or Brian Lizotte at Bingham McCutchen LLP.

Initially, the amount of non-legal solo authors outweighing the legal ones might be a surprise. It is important to remember that many of the publications surveyed in the ELS database are not the standard, student-edited law reviews; it contains more articles from peer-reviewed and commercially published journals, in law and other disciplines, than it does from student-run publications. For example, ninety five articles in the database were published in the *Journal of Empirical Legal Studies*. The types of authors contributing to each type of publication are analyzed later in the paper.

Coauthored Scholarship

One of the few articles to look empirically at empirical legal scholarship was Tom Ginsburg and Thomas Miles's article, "Empiricism and the Rising Incidence of Coauthorship in Law."²⁵ Ginsburg and Miles, two professors at the University of Chicago Law School, observed that 20.1 percent (with a standard deviation of 40.1 percent) of the major articles appearing in the top fifteen law reviews from 2000-2010 were coauthored.²⁶ The authors found "an upward trend in coauthorship, and to a lesser degree, empiricism in major law reviews."²⁷ When they applied a regression model, they found a strong correlation between coauthorship and the presence of empirical work.²⁸ This aligns with the findings of this survey: 60 percent of the articles in the ELS database were written by more than one author.

Did this coauthorship occur evenly among the different types of authors?

Just as the publications can be divided into three distinct groups, so too can the authors: legal academics (law faculty and the occasional law student); non-legal (or "other") academics; and non-academics (e.g. judges, attorneys, think tank analysts, and psychiatrists). This survey found that each of the different groups approached coauthorship differently.

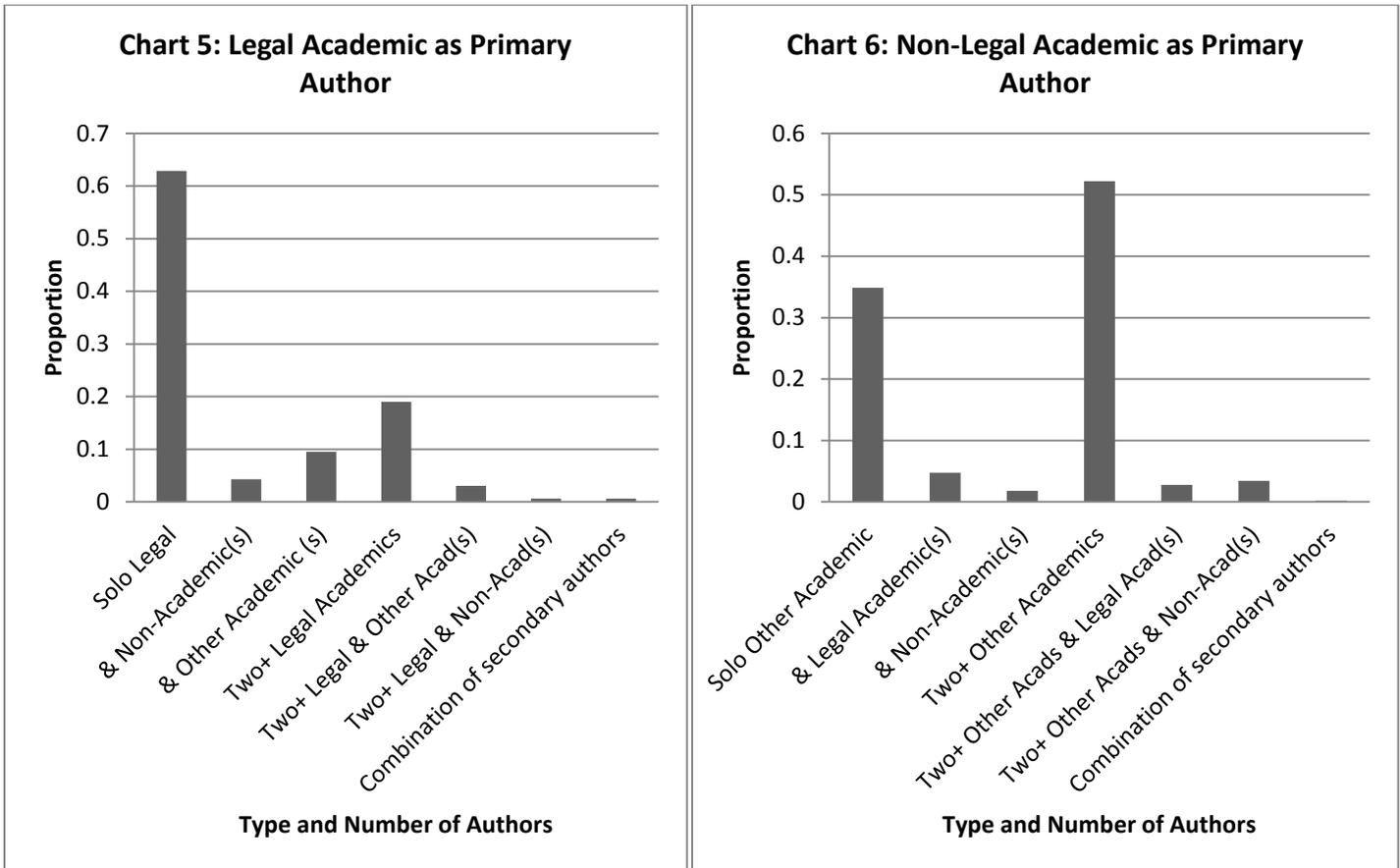
Among articles authored primarily by legal academics, less than four percent were written with only non-academics. Approximately ten percent were written in conjunction with other non-legal academics. Over 22% were written with at least one other legal scholar. The preference appears to be only one additional author; it drops off dramatically after two legal coauthors (3% of the articles were written by three legal academics; less than 1% was written by four legal academics). Chart 5 suggests that legal academics slightly favor coauthoring with at least one other legal academic, compared someone outside of the academic legal sphere.

²⁵ Ginsburg & Miles, *supra* note 1.

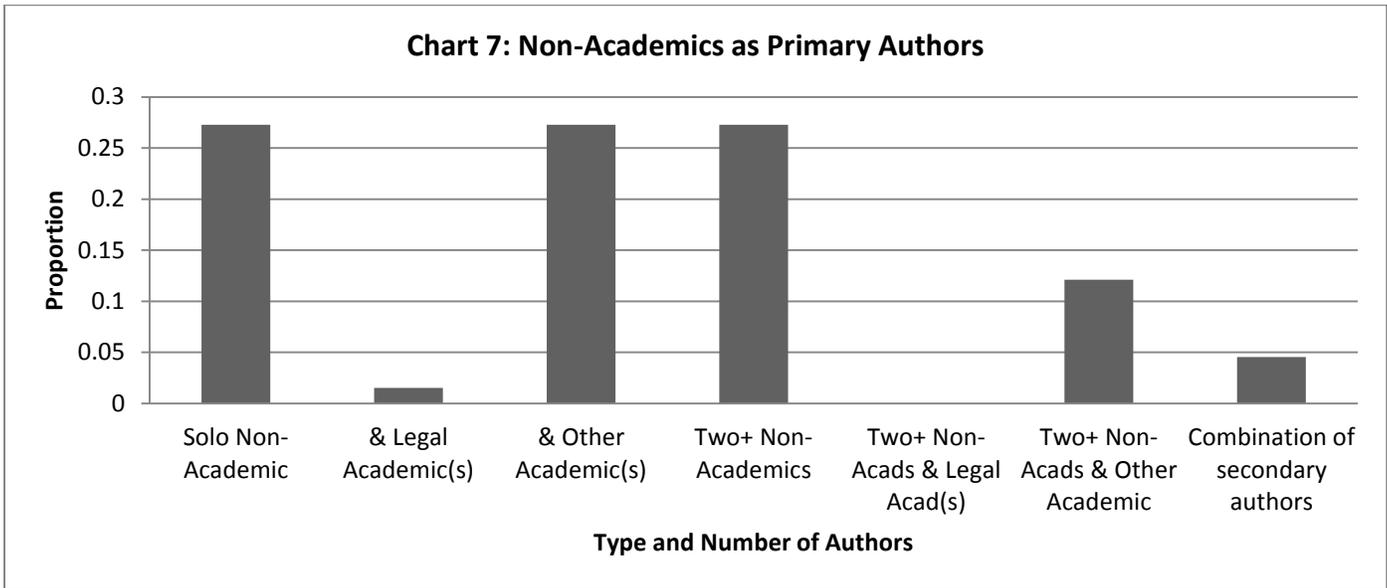
²⁶ *Id.*, 1807.

²⁷ *Id.*

²⁸ They performed a probit regression, which determined the correlation between whether a work was empirical or not empirical, the dependent variable being the number of coauthors. They found statistical significance at the 5 percent level. *Id.*, 1809.



Although the amount of solo authors from other, non-legal, academic fields was greater than the number of solo legal academics, it does not exceed the number of non-legal academics who coauthor with at least one additional individual. Scholars in other disciplines are much more inclined to coauthor with other academics than with a legal academic or non-academic. This may be out of convenience, if the other individual is located in their department. It may be due to the reticence on the part of a legal academic to work on a piece as a secondary author. It may also be that he or she simply does not need to team up with a legal academic, or that the legal academic does not bring the promise of an additional source of funding for the study. While legal academics may work collaboratively with people in other disciplines partly because they need someone with experience in empirical data analysis and statistical modeling and regression, the need may not go both ways.



Coauthoring with a legal academic occurs less frequently for non-legal academic primary authors than any other primary authors. Only three percent of the articles primarily authored by an individual unassociated with a university or academic institution had a lesser coauthor affiliated with a law school. Compare this to the seven percent of the articles with a primary author from another university department with legal academic secondary coauthors. Percentage-wise, this may not seem to be a very great difference, but when frequency is taken into account (many more articles were written by other academics than non-academics), the difference becomes even more apparent.

Interestingly, non-academic primary authors had a greater variation and balance of coauthors. There are several possible reasons for the different distribution of coauthorship activity of non-academics. Firstly, they face certain logistical barriers not present between academics of different disciplines: contacting an economist at one's university or a fellow school is likely easier for a law professor than an attorney. Ginsburg and Miles call these *coordination costs*.²⁹ Academics may harbor reservations about working with non-academic individuals, out of fear that the individual does not understand scholarship, will be difficult to work with, or does not bring the requisite amount of prestige to the project. On the flip side, non-academics may prefer working with other non-academics, perhaps because they already know them professionally or because they are biased against academic temperaments.

Ginsburg and Miles suggest that coauthored work is possibly of a higher quality, or has greater scholarly influence, by examining the citation counts of coauthored articles.³⁰ They also point out the difficulty for tenure committees and academic

²⁹ Ginsburg & Miles, *supra* note 1, 1790.

³⁰ Ginsburg & Miles, *supra* note 1, 1824.

administrators to assign credit to pieces that are coauthored, which may explain some reticence on the part of legal scholars to participate in coauthored scholarship. However, they suggest that name order reversal makes clear how much credit each author can demand for the work.³¹

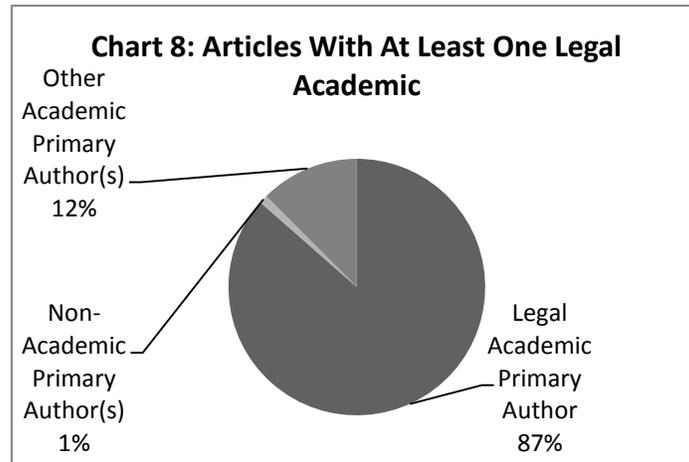


Chart 5 showed the breakdown of coauthors when a legal academic was the primary author. Legal academics also appeared as secondary authors. 36 percent of all of the articles had at least one legal author, whether as a primary or secondary author. If, as Ginsburg and Miles suggest, name order allows for authors to convey the amount of credit they deserve for the work, it appears that legal academics are not inclined to perform empirical legal scholarship unless they are getting primary credit.³²

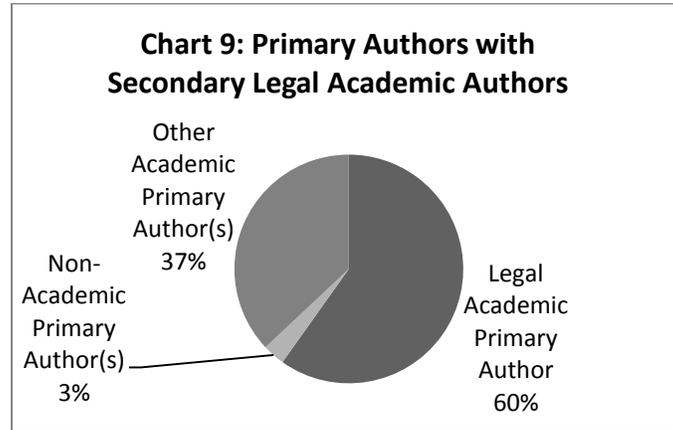
Chart 8 demonstrates that legal academics greatly favor working either alone or with other legal academics. In some cases, the other legal academics they are working with have additional PhDs or other social science training. This may be another reason that they do not work as often with academics in other fields.

Legal academics were predominantly primary authors. Chart 9 demonstrates the distribution of primary authors of articles with legal academics as secondary authors. This suggests that legal academics who were willing to be secondary authors choose to work with individuals outside of law schools a considerable amount of the time –roughly 40 percent. A legal author who had relinquished the

³¹ Generally, the order of authors indicates the amount of credit due to each scholar. *Id.*

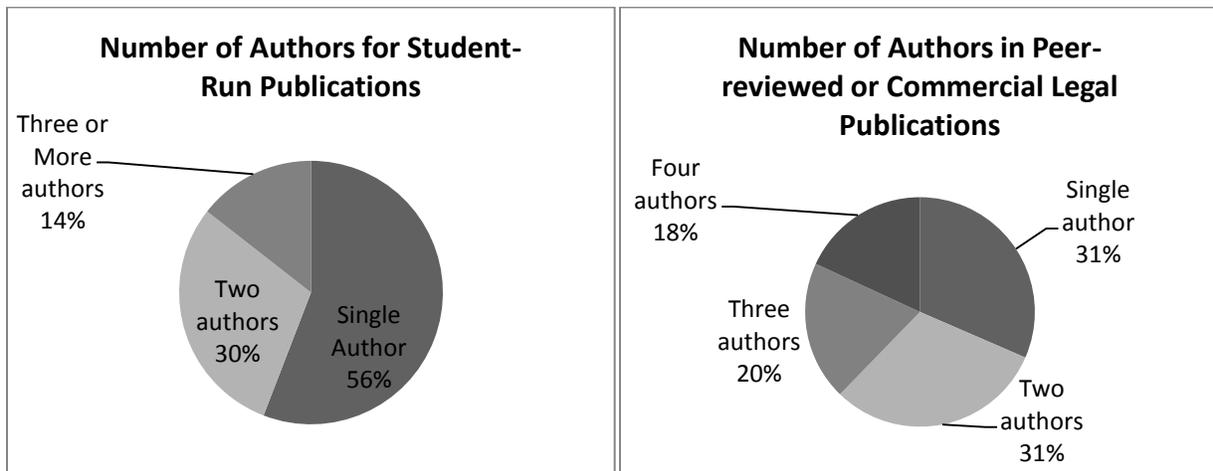
³² This may be because of tenure-track requirements of law schools, which view co-authored scholarship differently. See, e.g. University of Iowa, COLLEGE OF LAW TENURE STANDARDS AND PROCEDURES, <http://www.law.uiowa.edu/documents/coltenure.pdf> (stating that “if a scholarly work is jointly authored, the candidate shall document the relative contribution of each co-author, and this fact shall be noted in the candidate's tenure report.”).

primary position was far more likely to work with an outside academic or non-academic.³³



Coauthorship and Journal Titles

Ginsburg and Miles found that coauthorship was far more common in two peer-reviewed publications (the *Journal of Legal Studies* and the *Journal of Law, Economics and Organization*).³⁴ This finding not only correlated with the common perceptions of empirical work requiring peer-review, it also held true with the present dataset.



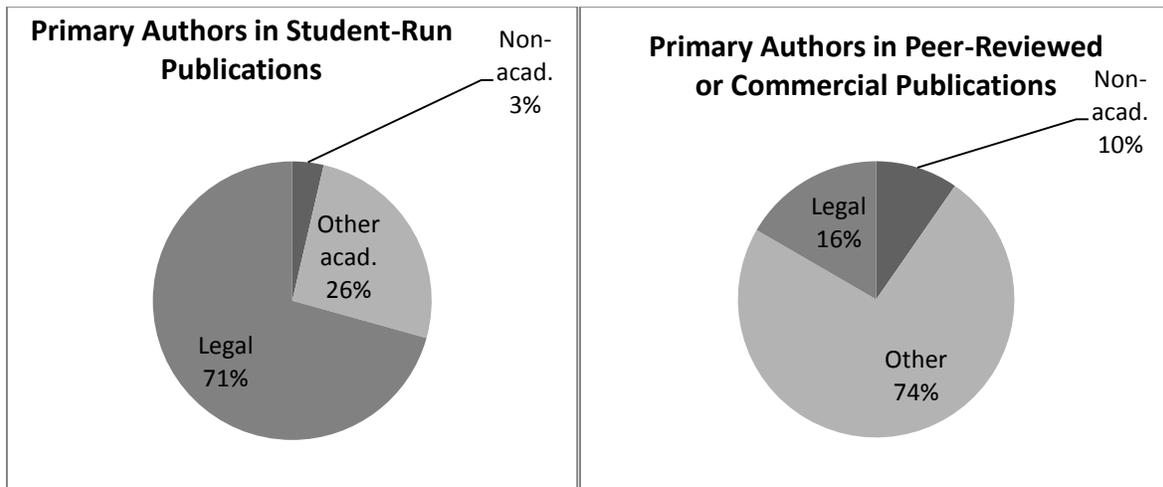
The number of authors is much more evenly distributed in peer-reviewed or commercially-produced publications. This may be because the reasons to pursue coauthorship are not as strong in the legal academic community when publishing

³³ This may be because the legal academic already had tenure, and therefore could work more collaboratively with other individuals, without worrying about name order. It may also be because the legal academic's input was actually relatively small, and done as a favor or out of interest, instead of for accolades.

³⁴ Ginsburg & Miles, *supra* note 1.

in a student-run journal. Ginsburg and Miles outline four different proposed reasons to coauthor: 1) for scholars with different specializations to *complement* each other; 2) to provide credit, or *compensation*, to colleagues for giving feedback and comments; 3) to improve the quality of scholarship; and 4) to *diversify* scholarship to improve chances of being published and/or writing a high-impact article. The compensation hypothesis may hold less sway in the legal community, simply because there is not much value to being a secondary author (that is unlikely to help you gain tenure).

There is also a more even distribution of the type of primary author in peer-reviewed or commercially-produced publications. In student-run publications, over 70 percent of the primary authors were legal academics. Amongst solo authors publishing empirical legal scholarship in student-run law journals, over 80 percent were legal academics.



When considering the distribution of primary authors in student-run versus peer-reviewed or commercial publications, it is important to remember that almost half of the articles indexed were in the second group. By extension, this means that the overall frequency of publications primarily authored by other-academics was even higher.

Charts 5, 6, and 7 have already demonstrated the lack of articles with legal academics in supporting roles. This means that, aside from student-run publications featuring articles primarily authored by legal academics, empirical legal scholarship is still being done mostly by people outside of legal academia. Over 60 percent of the articles surveyed had no authors in any position associated with a law school. Just over one percent of the articles in outside publications had legal authors in any position; there were no articles in outside publications with a primary legal academic author.

One reason for this may be that legal academics already have a plethora of publishing options, and therefore have no reason to look to journals in other

disciplines. Also, legal academics are likely looking to reach primarily legal audiences, which are to be found reading student-run, peer-reviewed or commercial legal publications. In order to publish more regularly, legal academics may be performing smaller empirical studies that are more easily published in non-peer-reviewed legal journals.

Article Topics in Student-Run Publications

Very little analysis has been done regarding the subject matter of empirical legal scholarship. It is frequently noted that empirical legal scholarship is closely associated with the rise of law and economics.³⁵ Ginsburg and Miles performed a cursory analysis of the subject distribution in *JLS* and *JLEO* and found that 34.5 percent (with a 17.1 percent standard deviation) of the major articles concerned private and commercial law. Public law was also a popular topic (30 percent with a 45.8 percent standard deviation).

The ELS database tagged articles with up to three different subjects. Because the tagging was not uniform, I first consolidated the subjects.³⁶ I then tabulated the frequency of these subjects in articles being published in student-run publications. I chose to focus solely on student-run publications because, as explained above, they are the publications in which legal academics primarily publish, especially when writing solo. As further discussed below, the behavior of solo legal academic authors is important for law librarians to consider, because these are the authors with whom law librarians are most likely to interact.

The majority of subjects appeared between one and twenty times over the five year timespan. However, several subjects appeared much more frequently – enough to merit note. The five most popular subject, in order, were: judges, intellectual property, corporations, courts and constitutional law.

There are several possible ways to interpret these results. It may be that some of these topics are simply more popular than others. Corporate law is a much more popular article topic than gaming law generally, not just in empirical legal studies. Some topics are also more conducive to empirical legal analysis. Judges and judicial decision-making are topics that allow for data to be relatively easily gathered and analyzed. Such analyses are often used to support greater arguments, such as those based on legal realism –the “theory that law is based, not on formal rules or principles, but instead on judicial decisions that should derive from social interests and public policy.”³⁷ The connection to legal realism is not new: many

³⁵ See, e.g. Eisenberg, *supra* note 6.

³⁶ I assigned each subject to the appropriate Current Index to Legal Periodicals (CILP) subject heading. See <http://lib.law.washington.edu/cilp/cilp.html/> I used CILP subject headings because they are numerous, and yet still distinct from each other (I did not have difficulty deciding which subject to assign).

³⁷ *Legal realism*, BLACK’S LAW DICTIONARY (9th ed. 2009).

of the early empirical legal studies were linked to the legal realism movement in some way.³⁸

These early empirical legal studies may also be a reason why certain topics are more popular than others. Several of the most popular topics of the present (such as those regarding courts and judges) were popular for empirical legal studies before 1940 as well. These studies may have laid the groundwork for continued data gathering and empirical analysis in those areas.

Because the data examined from the ELS database only spans a five year period, it is impossible to discount the possibility that some of the topics are under or overrepresented, because of the fluctuating nature of “hot” topics and issues. Large, singly-occurring changes, such as a massive statutory change, or newly released datasets, such as census data, could result in a bump in the number of articles published on a certain topic. Journals publishing an issue devoted to a single theme (often in conjunction with a conference) is also common and might skew the amount of attention a particular topic receives. Still, there were three markedly dominant subjects over the five year: judges, corporations, and intellectual property.

What Law Libraries Can and Should Do.

Eisenberg lists a number of law schools that have taken steps to accommodate empirical legal studies.³⁹ Schools such as Northwestern have been providing legal workshops for their faculty.⁴⁰ Cane and Kritzer’s casebook, *The Oxford Handbook of Empirical Legal Research*, is being used in law school classes.⁴¹ UCLA, Cornell, Washington University, Harvard and Berkeley have established centers of empirical legal studies.⁴² These schools are bringing in experienced scholars to study empirical legal scholarship, and help other faculty create it. Still, these programs and workshops are not yet prevalent throughout law schools around the country, and they certainly do not exist at all of the schools supporting legal faculty performing empirical work.

These legal academics have several different avenues they can use to help them during their research process. It is possible that they have training in empirical work from previous education or professional work. Law professors who also possess PhDs are not uncommon.⁴³ If they are collaborating with another scholar affiliated with a different discipline, that individual may already have experience and training in empirical research and analysis. They can also pursue training, by

³⁸ Kritzer, *supra* note 4, 926.

³⁹ Eisenberg, *supra* note 6, 1714.

⁴⁰ *Id.*

⁴¹ Peter Cane & Herbert Kritzer, OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH (2010).

⁴² Eisenberg, *supra* note 6.

⁴³ Northwestern provides some data comparing the number of faculty with PhDs at top law schools. FACULTY RESEARCH & ACHIEVEMENT, <http://www.law.northwestern.edu/faculty/>.

traveling to opportunities like the 11th Annual Conducting Empirical Legal Scholarship Workshop, hosted by the USC Gould School of Law and Washington University.⁴⁴

Or perhaps they could also make use of their law libraries. In fact, many faculty members already do so. In an ALL-SIS Faculty Services Committee discussion on “Supporting the Interdisciplinary and Empirical Research Needs of Law Faculty,” many academic law librarians have noted an increase in interdisciplinary and empirical research support being supplied by the library.⁴⁵

Law librarians are in the unique position of being able to point faculty members to resources of which they might be unaware. Such resources may include sources of instruction, in print or online. Law librarians may also be able to identify resources that will allow for faculty members to gather data more quickly. They can also help faculty obtain data that has been used before, to recheck work and replicate studies.⁴⁶ For example, the Georgetown Law Library’s “Statistics & Empirical Legal Studies Research Guide,” provides links to numerous datasets that are now easily accessed online. In addition to those, librarians can put their skillsets to use to hunt down other, less popular, datasets.

These reference services should be distinguished from the more in-depth research services. Law librarians may not want to assume the role of research assistant, gathering data for professors. These tasks can be very time-consuming and cut in to other library time. Employing a (student) research assistant may be a much more economical.⁴⁷

Often it is not the faculty member that is gathering the data, but instead a student research assistant. This is one of the areas where law librarians can help: many of the research assistants employed by faculty may be new to research in general, and may be untrained in finding the material they are asked to find. For example, say a student is asked to gather cases related to a rule of evidence. The student may still be new to Westlaw and LexisNexis database searching, and may be unaware of other finding aids, such as bibliographies, 50-state surveys, and

⁴⁴ “The Conducting Empirical Legal Scholarship Workshop is for law school faculty, political science faculty and graduate students interested in learning about empirical research. Leading empirical scholars Lee Epstein and Andrew Martin teach the workshop and provide the formal training necessary to design, conduct, and assess empirical studies and use statistical software (Stata) to analyze and manage data.”

11TH ANNUAL

CONDUCTING EMPIRICAL LEGAL SCHOLARSHIP WORKSHOP, <http://law.usc.edu/EmpiricalWorkshop>.

⁴⁵ ALL-SIS Faculty Services Committee, *Supporting the Interdisciplinary and Empirical Research Needs of Law Faculty*, <http://www.aallnet.org/sis/allsis/committees/faculty/discussion/interdisciplinary-empirical-research.pdf>.

⁴⁶ Lindgren notes the importance of replicating work in empirical legal studies. James Lindgren, *Predicting the Future of Empirical Legal Studies*, 86 BOSTON U. L. REV. 1447, 1453 (2006).

⁴⁷ Richard A. Danner, S. Blair Kauffman & John G. Palfrey, *Twenty-First Century Law Library*, 101(2) L. LIBRARY J. 143, 151 (2009).

indexing materials. Providing the student with training, before they begin their daunting tasks of data collection, may allow them to perform in a more efficient and thorough manner.

Law libraries would also benefit from having librarians with knowledge of statistics. As Lindgren states in his article, “Predicting the Future of Empirical Legal Studies,” “expertise in using statistics is growing much more slowly than the availability of data, computers, and statistical tools.”⁴⁸ Law librarians who are adept at navigating statistical tools, and understanding the analyses being performed, could be great assets to faculty members who otherwise have to ask other law faculty or other academics for help.

The coordination costs mentioned earlier in the paper might be much lower for the library than for other academic faculty members. For example, other law faculty may have their own scholarship that they are devoted to, and be unwilling to devote time to helping their colleague. Similarly, other academics may be consumed with other projects, or may be difficult to coordinate with. Libraries are already established to provide service to the law school community; asking a knowledgeable law librarian is likely to result in help much more quickly. Even if the law librarian is not familiar with empirical research tools, he or she can be aware of resources available at the school, such as university departments that help with statistical analysis conducted by faculty members.

Law librarians are not ignorant of the need to support empirical research, and their unique ability to do so.⁴⁹ Richard Danner pointed out in the published conversation, “The Twenty-First Century Law Library,” that Duke has established an open access repository for faculty scholarship, a program to support empirical research, and a research assistants program.⁵⁰ All three of these programs help the law library support empirical research. Blair Kauffman, in the same conversation, suggested that libraries have someone on staff with knowledge of statistical packages who can work with faculty and their students and research assistants.⁵¹

Legal academics have noted law libraries that have hired librarians specializing in empirical research. Michael Heise wrote on the Empirical Legal Studies blog,

⁴⁸ Lindgren, *supra* note 45, 1454.

⁴⁹ Todd Melnick, a Law Librarian at Fordham, wrote “Empirical legal research can not be accomplished without considerable institutional support. The supporting institution provides software, access to data sets, funds for research assistants, etc. The library seems to me to be the perfect unit of the law school for locating data gathering and study design expertise for use by faculty members who are not themselves experts in those areas or simply need assistance.” EMPIRICAL LEGAL SCHOLARSHIP BLOG, http://www.elsblog.org/the_empirical_legal_studi/2010/05/els-law-libraries-and-faculty-research-support.html.

⁵⁰ Danner, Kauffman & Palfrey, *supra* note 46, 148.

⁵¹ *Id.*, 148.

“Increasingly, as one colleague recently remarked, “[l]aw school libraries across the nation ... have either hired or actively sought to hire an empirical research librarian, often a MLS holding librarian with a masters or Ph.D. in one of the social sciences, to assist law professors with data retrieval and analysis.” Such law libraries include: University of Texas, Cornell, Duke, Georgetown, Fordham, to name but a few. I know that I benefit from tremendous research and library support at Cornell (and am grateful for it).”⁵²

Of course, libraries need to consider their faculty and available resources when making decisions. If there are no members of a law school faculty performing empirical legal research, it may be unwise to invest in different tools and skillsets related to it. However, if at some point a faculty member does begin an empirical project, the library may want to be prepared. While law libraries like the ones named above may stress empirical legal research, many law librarians may still have very little knowledge about the area.⁵³ As one law librarian wrote, “I do not myself feel confident that I know enough about what large datasets are available to our faculty and how to work with them once I find them. My statistics knowledge (such as it is) goes back to undergrad and is all to [sic] often not up to the challenge posed by the kind of scholarship my faculty engage in.”⁵⁴ Amending that and being prepared to help struggling faculty allows a library to live up to a mantra of service, it also stresses the value and relevance of the library today.

Finally, just as legal academics on occasion collaborate with individuals outside of the law school, law librarians need to collaborate with other non-law librarians. These may be data librarians, who specialize in the organization of data sets, or other librarians in the related disciplines.⁵⁵

Whether empirical legal scholarship will continue to grow, or will level off or decrease, remains to be seen. More legal academics may begin to work collaboratively with authors outside of law schools. They may also begin to publish in journals outside of those which are traditionally legal. However, for the time being, based on the selection of articles provided by the ELS database for 2007-2011, most law faculty performing empirical legal work continue to work alone and publish in student law reviews. Although these articles are boasting only one or two authors, they often still require considerable labor, large datasets,

⁵² Melnick, *supra* note 48.

⁵³ Darla Jackson noted that a survey of MAALL librarians to see what types of empirical research they were involved in resulted in several confessions from librarians that they were uncertain what empirical legal research involved. Darla Jackson, *Empirical Legal Research: The Next Big Thing for Law Librarians?*, SELECTEDWORKS OF DARLA W. JACKSON, 4 (2008).

⁵⁴ ALL-SIS Faculty Services Committee, *supra* note 44.

⁵⁵ David Hollander stresses the importance of interdisciplinary librarian collaboration. David Hollander, *Interdisciplinary Legal Scholarship: What Can We Learn from Princeton's Long-standing Tradition?*, 99 L. LIBRARY J. 772 (2007).

and the use of complicated statistical software packages. This activity can require large amounts of research support. In order to manage this, many law librarians must become more versed in empirical research and the resources available.