

## Keeping Up with New Legal Titles\*

Compiled by Creighton J. Miller, Jr.\*\* and Annmarie Zell\*\*\*

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\* © Creighton J. Miller, Jr. and Annmarie Zell, 2009. The books reviewed in this issue were published in 2007 and 2008. If you would like to review books for "Keeping Up with New Legal Titles," please send an e-mail to [cmiller@law.ua.edu](mailto:cmiller@law.ua.edu) and [annmarie.zell@nyu.edu](mailto:annmarie.zell@nyu.edu).

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Brundage, James A. *The Medieval Origins of the Legal Profession: Canonists, Civilians,  
and Courts*. Chicago: University of Chicago Press, 2008. 607p. \$49.

*Reviewed by Kathleen A. McLeod*

¶1 With *The Medieval Origins of the Legal Profession*, Professor James Brundage has written a broad, comprehensive overview of the development of the European legal profession from its roots in ancient Greece and Rome through the end of the thirteenth century. This overview will be invaluable for academic libraries with faculty and students who have an interest in Roman law, canon law, or the development of the legal profession.

¶2 Professor Brundage provides a concise yet thorough discussion of the rise and fall of the Roman legal profession from the development of advocates and notaries in the third century B.C. through the fall of the Roman Empire in the sixth century A.D. Building on this background information, he discusses the influence

of the Roman system on the development of canon and European legal systems. He traces the elements common to the three systems and the influences that earlier systems had on their later brethren.

¶3 The development of the European legal profession is chronicled with a focus on the interplay between the secular and canon law systems. With the fall of the Roman Empire, church courts stepped in to provide civil remedies previously handled by the Roman legal system. From these ecclesiastical courts, in turn, two separate court systems evolved: canon and civil. The author explores the development of the new, secular, civil courts, looking both at widespread areas of congruence and at the differences that developed between various courts.

¶4 This work's appeal reaches beyond the narrow field of legal history. Its coverage encompasses a wide variety of topics, from the development of legal training and education to the rise of early legal systems. It includes detailed discussions of social status, educational training, admission requirements, professional ethics, and court procedure. These topics broaden the book's potential audience by looking not just at the development of the courts but also at changes in status and public opinion and at social mobility issues.

¶5 The author's expertise in the subject area is clear. This one-volume work is insightful and thought provoking for the experienced legal historian, but truly a gem for the student. It not only provides an exceptional introductory overview of the subject, but also serves as a research guide. Thoroughly footnoted and referenced, the work presents a serious student with an excellent jumping-off point from which to begin more extensive research.

¶6 The volume includes an extensive bibliography (86 pages) of primary and secondary sources. As an added bonus, the listings for primary materials include published sources within which the materials can be found. (Personally, I would purchase the volume for this information alone. Every librarian has spent hours tracking down obscure citations to original primary sources, only to discover that the sources have been reprinted in common, published sets.) A detailed subject index and a citation table round out the reference material, which accounts for nearly 20% of the book.

¶7 I highly recommend this volume for large academic law libraries, all law libraries that support active legal historians, and general academic libraries with European studies or medieval studies programs.

Burgess, Susan. *The Founding Fathers, Pop Culture, and Constitutional Law: Who's Your Daddy?* Burlington, Vt.: Ashgate Publishing, 2008. 154p. \$89.95.

*Reviewed by Jocelyn Kennedy*

¶8 Part of the Law, Justice and Power series edited by Austin Sarat, *The Founding Fathers, Pop Culture, and Constitutional Law: Who's Your Daddy?* examines constitutional legal theory through the lens of fictional narrative. Susan Burgess, Professor of Political Science and Women's Studies at Ohio State University, asks her readers to consider the notion of "fatherhood" in constitutional legal theory in relation to popular culture, including television, film, and literature.

Quite frankly, I could not resist reading a book that uses the phrase “Who’s Your Daddy?” in conjunction with the founding fathers.

¶9 The content of the book is derived from earlier articles written by Professor Burgess; many of the six chapters retain the titles of those original works. Thematically, these works are related; however, the combination is not as successful as one would hope. The first chapter lays out Burgess’s thesis. She argues that traditional legal theory writing places the constitutional debate squarely (as in both “in the middle of” and “conservatively”) in a small universe. Re-examining/re-writing constitutional theory in light of pop culture, Burgess contends, will enliven and expand the debate to include a hipper audience. Perhaps more importantly, re-visioning the debate may move it forward into a more contemporary context.

¶10 Burgess considers the role played by the founding fathers in constitutional discourse in order to provide the tension necessary to demonstrate how popular culture and narrative can alter the landscape. She employs narrative analysis within the constructs of romance novels and comedic/parody writing to examine the writings of Keith Whittington, Ronald Dworkin, and Derrick Bell. By doing so, she contends, “constitutional discourse can begin to be transformed from a dreary parsing of scholarly and juristic argot into a vibrant discussion with points of access and understanding for all” (p.2).

¶11 Burgess wants her readers to approach the scholarship of Whittington, Dworkin, and others by applying a narrative framework from popular culture. To do so she lays out Whittington’s and Dworkin’s arguments and then discusses particular literary devices that can be applied to each scholar. While her strength lies in articulating popular culture and literary devices, I was confused by her attempts to explain Whittington’s and Dworkin’s legal theories. I wanted her to weave the two together and show me how applying literary devices would expand my understanding of current constitutional discourse.

¶12 Burgess hits her stride when she actually implements the narrative devices she painstakingly explains in the early chapters. I suggest most readers skip the first three chapters and focus on her discussion of Derrick Bell’s use of science fiction to articulate critical race theory and on Burgess’s own clever consideration of two landmark Supreme Court decisions in which she uses parody and queer theory as narrative devices. Her discussions of the Court’s constitutional discourse in *Bush v. Gore*<sup>1</sup> and *Lawrence v. Texas*<sup>2</sup> are not only funny, playful, and accessible, they are also downright hip.

¶13 This book is best suited to an academic environment, particularly one in which the patron group has an interest in literature and the law or in cultural studies. I hate to admit it, but I think I remain stuck in the middle of the square when it comes to legal studies written by those outside of the traditional legal academy. *The Founding Fathers, Pop Culture, and Constitutional Law: Who’s Your Daddy?* would be a wonderful addition to the bookshelves of those who study legal theory, but primarily to those who study it outside of the law school environment.

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1. 531 U.S. 98 (2000).

2. 539 U.S. 558 (2003).

Grossberg, Michael, and Christopher Tomlins, eds. *The Cambridge History of Law in America*. Cambridge: Cambridge University Press, 2008. 3 vols. 2624p. \$300.

*Reviewed by Joel Fishman*

¶14 *The Cambridge History of Law in America* is a magisterial work that in three volumes endeavors to cover the full history of American law from the early colonial years to the twenty-first century. Grossberg, of Indiana University, and Tomlins, of the American Bar Foundation (ABF), are well-known legal historians whose work as editors is outstanding. In their Editors' Preface, Grossberg and Tomlins lay out the "core principles of design" that have guided the development of the Cambridge series of histories since the late nineteenth century: "individual scholars charged to synthesize the broad sweep of current knowledge of a particular topic, but also free to present an original interpretation aimed at encouraging both reflection and further scholarship, and an overall architecture that encourages new understandings of an entire subject or area of historical scholarship" (p.x). The contributing authors to this *History* have performed exemplarily in carrying out this charge.

¶15 Contributors to the *History* are all well-known senior scholars. They are primarily a mix of academic historians and law professors, but also include academics from the disciplines of English, economics, and political science; a senior research fellow from the ABF; and a member of the Centre de Sociologie Européenne. Major legal historians whose work appears in the *History* include such recognizable names as Lawrence M. Friedman, Jack Greene, Kermit Hall, Michael Klarman, and Mark Tushnet. All contributors' articles are based on previous scholarship and serve as a synthesis of their research.

¶16 Over three separate volumes and fifty-five individual chapters, *The Cambridge History of Law in America* provides the overall legal-political history of the United States. Volume 1 covers the years 1580 to 1815 and deals with the background to colonization, the settlements, regionalism in the colonies, the Revolution, the Confederation and Constitution, and the early republic. Volume 2, addressing the long nineteenth century from 1789 to 1920, continues with the institutional history of antebellum America, the Civil War and Reconstruction, and politics and state building. Volume 3 finishes with the period from 1920 to the present, covering the Great Depression, the New Deal, and institutional growth since 1920. Each volume contains a useful index; there is, however, no list of cases cited.

¶17 The volumes each offer between sixteen and twenty individual essays covering specific historical topics and generally ranging in length from thirty to fifty pages. Many topics are repeated across two or even three volumes, presenting a unified history of such themes as legal education, legal profession, slavery, criminal law, domestic law, law and religion, law and economics, and international affairs. Other topics are addressed in single chapters dedicated to complete coverage of the subject, including agricultural law, military law, law and environment, and law and medicine. As the law evolved over the nineteenth and twentieth centuries, new topics arose, and these receive coverage in the appropriate volumes. Nineteenth-century topics include the development of citizenship and immigration, and innovations in law and technology, while the twentieth-century volume adds coverage of poverty law, the rights revolution, and war making.

¶18 Most essays contain an introductory statement, historical development, and a conclusion. Authors generally review the historiography of their topic and point out where their research differs from or supersedes previous work. The essays often benefit from the availability of new resources, such as court documents, presidential papers, and the papers of various lawyers and judges, all of which expand the research capabilities of current historians. Further, these essays participate in the continuing development of legal history from the “bottom up,” providing wide-ranging themes beyond the traditional view from “top to bottom,” and resulting in coverage of the lower classes, slaves, the poor, the less educated, homosexuality, and women’s rights.

¶19 Throughout the essays, footnotes are kept to a minimum, largely because of the extended bibliographic essays for each chapter that can be found near the end of all three volumes. These essays are impressive in themselves, demonstrating the wide range of reading by each author through extensive book and periodical references. Some essays are as long as twenty pages and cover sources published as recently as 2005. Totaling over 360 pages, these annotated bibliographies provide suggestions for further research and can serve, for librarians, as enormously useful reference sources and as collection development tools for each category under review. The bibliographies are also interesting. I especially liked Professor Welke’s description of the term “tessellation” in a chapter on law, personhood, and citizenship in the long nineteenth century (vol.2, p.766). With some additional work and merging of chapters, these bibliographic essays could stand alone as a separate publication.

¶20 This *History* will be a standard work of American legal history for decades to come and is of the same high quality as its Cambridge predecessors. All participants are to be congratulated for their contribution to this work. This work is highly recommended for all libraries.

Hoffman, Marci B., and Robert C. Berring. *International Legal Research in a Nutshell*. St. Paul, Minn.: Thomson-West, 2008. 313p. \$29, paper.

*Reviewed by Christopher C. Dykes*

¶21 The West Nutshell series needs no introduction, especially not to the nervous law students who often rely on these books when preparing for their first-year exams. The series is equally helpful to anyone who wants to gain a background in a particular legal field. Subjects covered can be as broad as contracts or as narrow as international taxation, and there is a Nutshell for virtually every legal topic. *International Legal Research in a Nutshell* is one of the best titles in the series, especially for the information professional who is looking to get started in the area of international law. While there are numerous other books on international legal research that are more thorough and offer further detail, this Nutshell will help its readers build an excellent foundation in the area.

¶22 *International Legal Research* begins with a summary of international legal concepts, including a discussion of private and public law, foreign law, transnational law, supranational law, soft law, and comparative law. Despite the focus on international law, the book also includes a chapter that summarizes various foreign

and comparative law materials and discusses the difference between civil law and common law jurisdictions. The authors cover several resources in these areas, such as session laws, codified laws, national gazettes, and subject guides. A research strategy section provides appropriate approaches for information professionals performing foreign legal research, including tips on finding translated materials. Translations are important because the language barrier is often a problem, but the authors are careful to point out that some translated materials are badly outdated.

¶23 Since international law consists largely of treaties between nations, chapter 4, which focuses on treaties, is perhaps the most important section of the book. The chapter introduces the reader to treaty basics and provides insight into problems commonly encountered by librarians searching for treaties. Both the *ASIL Guide to Electronic Resources for International Law* (<http://www.asil.org/erghome.cfm>) and the *Electronic Information System for International Law* (EISIL) (<http://www.eisil.org>) are mentioned as effective treaty research starting points. The authors discuss various print sources for locating the texts of U.S. treaties, including *Treaties and Other International Acts Series* (T.I.A.S.), where treaties between the United States and other countries appear in slip form, and *United States Treaties and Other International Agreements* (U.S.T.), into which these treaties are eventually compiled. Treaties can take from eight to nine years to appear in T.I.A.S., so the book appropriately suggests several electronic sources for those who wish to access the treaties sooner: sources such as HeinOnline, LexisNexis, Westlaw, and the U.S. State Department's web site. The authors explain the distinction between bilateral and multilateral treaties and the compilation of both kinds of treaties into the *United Nations Treaty Series* (U.N.T.S.), available in print and online. Finally, the authors suggest that readers may need to consult individual treaty collections from specific nations.

¶24 *International Legal Research in a Nutshell* also includes discussions of customary international law, international case law, and international institutions. Chapter 5 addresses customary international law, "rules of law derived from the consistent conduct of States acting out of the belief that [international] law required them to act in that way" (p.80).<sup>3</sup> The nutshell discusses in further detail the element of customary international law known as state practice, which reflects the traditional actions of countries in their relations with each other and is evidenced by various international documents, including cases and, especially, treaties. Chapter 6 lists a number of important print and online resources for international case law, which consists largely of cases from the International Court of Justice. Further chapters cover the European Union and United Nations, discussing the structure of the organizations as well as available research materials.

¶25 While readers of *International Legal Research in a Nutshell* will not become experts in the field overnight, I recommend the book because it provides a wealth of information both on the structure of international law and on important print and online research sources with which all law librarians should be familiar. Helpful and convenient charts detail, among other things, the different types of

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3. Quoting SHABTAI ROSENNE, *PRACTICE AND METHODS OF INTERNATIONAL LAW* 55 (1984).

international law and the appropriate sources for each. The authors also have provided a comprehensive source list, a web treaty collection list, an outline, and an index. Academic law libraries, especially those with strong international collections and active international law faculty, will gain the most benefit from this Nutshell, but law firm librarians may also find this book helpful when they need to find a treaty or other international document.

Levitt, Steven D., and Thomas J. Miles, eds. *Economics of Criminal Law*. Northampton, Mass.: Edward Elgar Publishing, 2008. 682p. \$330.

*Reviewed by Jaim Kivelevitz*

¶26 What impact should economic theory have on criminal law and policy? This is the underlying question addressed in *Economics of Criminal Law*, a new collection of essays in Edward Elgar's Economic Approaches to Law series. The editors of this title bring significant economic and legal expertise to the collection. Steven D. Levitt, a well-known economist at the University of Chicago, is famous beyond academic circles for his bestselling book *Freakonomics*,<sup>4</sup> in which he and Stephen J. Dubner explain how complex economic principles have important everyday applications. Thomas J. Miles is a professor at the University of Chicago Law School and an expert in law and economics. In this volume, the two have selected some of the most seminal essays on economics and criminal law and arranged them intelligently, thereby producing a valuable compilation that illustrates the interplay of economic theory and criminal policy.

¶27 *Economics of Criminal Law* is divided into three major parts. The first presents essays introducing some of the major theoretical underpinnings of the economic theory of criminal law. The opening entry is by Gary S. Becker, currently of the University of Chicago. In his article from 1968, "Crime and Punishment: An Economic Approach," Becker argues that a cost-benefit analysis is applicable to criminal activity. He further posits the somewhat counter-intuitive idea that most criminal sanctions could (and perhaps should) take the form of economic sanctions.

¶28 Dan Kahan of Yale Law School's essay titled "What Do Alternative Sanctions Mean" is also included in the first part of the book. Kahan's essay attempts to explain why society, to the great bewilderment of economists, has fixated on imprisonment as punishment for criminal activity and widely rejected economic or other alternative sanctions. In a novel attempt to answer this question, Kahan champions a new theory of punishment: the expressive theory. Put simply, this theory states that punishment is a reflection of society's moral condemnation of the accused. Economic sanctions and other alternative sanctions, the theory goes, often fail to express adequately this societal condemnation. Kahan spends a great deal of the essay explaining how the expressive theory differs from other, more recognized theories of punishment: that criminal punishment is motivated by a desire for vengeance (retributive theory) or is intended to deter future crime (deterrent theory).

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4. STEVEN D. LEVITT & STEPHEN J. DUBNER, *FREAKONOMICS: A ROGUE ECONOMIST EXPLORES THE HIDDEN SIDE OF EVERYTHING* (2005).

Kahan takes his explanation a step further by positing that these traditional theories of punishment ultimately fail without a basis in the expressive theory. Reading Kahan's essay, I was struck by how much sense it made, and I wondered why the expressive theory was not discussed in my first-year criminal law course.

¶29 The second section of the book consists of essays analyzing whether criminal policies actually have an effect on crime. Several essays by Levitt examine whether imprisonment has a deterrent effect or merely an incapacitative effect. In other words, does imprisonment reduce crime because a would-be criminal, fearing the possibility of jail, chooses not to commit a prospective crime? Or does imprisonment reduce crime because an incarcerated criminal cannot commit a crime he would likely have committed had he not been in jail? Levitt concludes that even controlling for other factors, the threat of imprisonment does deter crime.

¶30 The third and final section of the book gets to the "interesting stuff," namely, entries applying economics to tough political and social issues. This section touches on Levitt's ongoing dispute with rival economist John Lott regarding whether "shall-issue" gun laws actually reduce crime. (Shall-issue gun laws are those requiring concealed gun permits to be issued if stated criteria are met.) The book does not contain any of Lott's work—not surprising, since Lott's claim against Levitt for defamation is currently awaiting argument before the U.S. Seventh Circuit Court of Appeal.<sup>5</sup> Essays included in the book by economists other than Levitt seem to give Lott's work fair treatment. However, a reader seeking a comprehensive view of this issue will find the essays here lacking.

¶31 The best material is saved for last. The final essay of the book, "The Impact of Legalized Abortion on Crime," attempts to offer an alternative explanation for the decline of crime rates in the 1990s—alternative, that is, to explanations based on increased policing. Levitt, the essay's co-author, suggests that up to 50% of the reduction in crime is due to the legalization of abortion. Levitt expanded on this essay in *Freakonomics*.<sup>6</sup>

¶32 In *Economics of Criminal Law*, editors Levitt and Miles have succeeded in compiling some of the leading essays on economics and criminal law. In addition, the editors have crafted an arrangement that allows the reader to see the evolution of the scholarship and the contentiousness of the academic debate. Despite these many virtues, *Economics of Criminal Law* is not appropriate for all law libraries. It is primarily a scholarly work, with a hefty price tag of \$330, and is best suited for academic law libraries or other academic libraries supporting graduate programs in economics.

Russo, Charles J., ed. *Encyclopedia of Education Law*. Thousand Oaks, Calif.: Sage Publications, 2008. 2 vols. 1012p. \$295.

*Reviewed by Cathryn O'Neill*

¶33 As a teacher and an educational advocate, the field of education law is a particular interest of mine. Thus, I had eagerly anticipated the release of the

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5. Lott v. Levitt, No. 07-3095 (7th Cir. appeal docketed Aug. 31, 2007).

6. LEVITT & DUBNER, *supra* note 4, at 117.

*Encyclopedia of Education Law* since first receiving its pre-publication announcement. Charles Russo, editor of the *Encyclopedia*, is extremely well regarded in the field of education law. I have read a number of his earlier publications and have been impressed both with his knowledge and his ability to convey that knowledge to the reader. When I finally had the opportunity to peruse the *Encyclopedia*, it succeeded admirably in both capturing and holding my attention; I was not disappointed.

¶34 The *Encyclopedia* offers a comprehensive look at the multitude of issues in education law as a whole. The two-volume work is not limited to a single, isolated section of education law; it does not offer in-depth coverage merely of special education law, student rights, or teacher issues. The *Encyclopedia* is, instead, a reference for each of these areas and more.

¶35 Structurally, the *Encyclopedia of Education Law* consists of a series of articles arranged alphabetically by subject, each written by a separate author. Articles in the *Encyclopedia* cover various topics pertaining to teachers and students—topics such as unions, collective bargaining, and sexual harassment for teachers, or special education, gun free zones, and the First Amendment for students. Other articles cover administrative topics like school finance litigation and school desegregation practices. The *Encyclopedia* also offers summaries of federal laws impacting schools and the cases that interpret those laws. Beyond these strictly education-related topics, the work provides entries covering key legal principles that have impacted judicial thought and opinion, such as the doctrine of precedent or *stare decisis*. The *Encyclopedia* also includes biographies of the Supreme Court Justices and summaries of their rulings on issues of education law.

¶36 Considering that the entries are written by individual authors, the tone and the flow of the text are well maintained. The writing style is quite uniform and easy to follow. While I lack the comprehensive expertise possessed by the *Encyclopedia's* editor, I do know something of education law, and I learned a great deal more reading this book. For those topics I already knew, I can report that the articles offer a reasonably comprehensive but quick review of the subjects. All of the *Encyclopedia* articles are clear and easy to read and appear to convey sufficient information to provide their readers with a basic understanding of the topic.

¶37 The *Encyclopedia* was written with a wide variety of individual readers in mind and includes aspects that will appeal to all of its intended users. The legal reader will appreciate the sizable excerpts from judicial opinions provided in the articles and the lists of relevant legal citations accompanying most of the entries. The educator will find helpful the entries' clear explanations of the core tenets and sources of education law, as well as the probing analyses of what the laws mean for schools and for the education system at large. The *Encyclopedia's* clear definitions of various terms will appeal to all.

¶38 I strongly recommend the *Encyclopedia* as a reference guide and a starting place for anyone who is seeking to understand education law. Each entry in the *Encyclopedia* will provide such patrons a basic introduction to the covered topic, a bit of its history, and its current development. Most articles also offer suggestions for further reading and lists of citations that will help patrons expand their research.

In my opinion, the addition of this title would benefit any library supporting a clientele interested in the education field.

Scalia, Antonin, and Bryan A. Garner. *Making Your Case: The Art of Persuading Judges*. St. Paul, Minn.: Thomson/West, 2008. 245p. \$29.95.

*Reviewed by Cindy Guyer*

¶39 How do I cut down my brief by ten pages? Do I really need to conduct a legislative history search? How should I address the judge? What is the correct pronunciation of *voir dire*? How do I respond to this amicus brief? Why did the judge give me that funny look?

¶40 These are only a few of the questions answered in *Making Your Case: The Art of Persuading Judges*, written by Associate Justice of the United States Supreme Court Antonin Scalia and prolific legal writing author Bryan Garner. In their book, the authors concisely yet thoroughly outline the foundations and finer details of effective legal advocacy in both its written and oral forms.

¶41 *Making Your Case* methodically examines the issues that arise when trying to persuade judges. The first two chapters present the foundations of persuasion. In chapter 1, explaining the principles of argumentation, the authors' advice includes instructing advocates to lead with their best arguments and to buttress arguments based on fairness with a citation to some jurisprudential maxim whenever possible. The second chapter focuses on legal reasoning. The authors provide an overview of syllogistic reasoning and encourage attorneys to be especially attentive to the relative weight of different forms of precedent. All of the advice offered by these two respected authors is, without question, highly credible. At times, the authors disagree on a point, bantering back and forth in an attempt to win the argument. This in no way undermines the book's credibility; rather it allows readers to see the disputed topic from differing perspectives and to make up their own minds.

¶42 For the litigator, the remaining chapters, which cover briefing and oral argument, will be the heart of the book. Tasks relevant to both are organized chronologically based on the stages of litigation. On briefs, the discussion ranges from overarching topics such as the key components of a brief and the actual writing process to details including footnoting and use of contractions—a divisive topic between the authors. On oral argument, the authors superbly address a range of topics, including presenting a rebuttal, using pauses effectively, deciding who will argue the case, seating arrangements, and mannerisms to avoid (don't chew on your eyeglasses!).

¶43 While the authors stress the formalities that govern effective advocacy, they have written *Making Your Case* in a casual, conversational tone. Humor and noteworthy legal quotations can be found throughout the book. For example, in conveying the importance of a good first impression, the Honorable Robert H. Jackson is quoted as saying, “[y]ou will not be stopped from arguing if you wear a race-track suit or sport a rainbow necktie. You will just create a first impression that you have strayed in at the wrong bar” (p.162). While imparting a substantial amount of

advice, Scalia and Garner make learning the tricks of the trade a pleasurable experience.

¶44 *Making Your Case* is easy to navigate, with a detailed table of contents and index. Thus, if a reader needs a quick refresher on how to handle questions during oral argument, he can easily find and read the applicable topics. A valuable addition to the book is a list of recommended sources on effective advocacy. Rhetoric guides, books on writing briefs, journal articles on oral arguments, and books on logic and critical thinking are included in the list.

¶45 I highly recommend *Making Your Case* for all law libraries, including law firm libraries, government agency libraries, and academic libraries. Practicing attorneys, law students in moot court programs, clinics, trial and appellate advocacy courses, and pro se litigants will find it especially valuable. The priceless advice offered by Scalia and Garner far outweighs the nominal cost of the book, making it a worthwhile purchase for any collection.

Teles, Steven M. *The Rise of the Conservative Legal Movement: The Battle for Control of the Law*. Princeton, N.J.: Princeton University Press, 2008. 339p. \$35.

*Reviewed by Isa Lang*

¶46 While I was reading this book for review, I saw *Swing Vote*,<sup>7</sup> a movie about a close presidential election. In *Swing Vote*, Bud Johnson, a citizen of below-average curiosity and motivation, has the opportunity to determine singlehandedly the outcome of a presidential election. The candidates and the press flock to Bud Johnson's small New Mexico town to buy his influence with empty promises, and Bud becomes "King for a Day."

¶47 Are we, as American voters, fooling ourselves into believing that each of our votes holds the power to implement change through our elected leaders? Professor Steven Teles, political scientist and author of *The Rise of the Conservative Legal Movement: The Battle for Control of the Law*, advances the thesis that political, legal, and social changes come about in a different way. Beginning with the New Deal reformers of the 1930s and continuing with the social activists of the 1960s and 1970s, networks of lawyers, professors, and policy analysts implemented those changes through Congress, the media, and the courts.

¶48 Professor Teles begins his book with a review of the founding and growth of the liberal legal network (LLN). The author's use of this acronym reminded me of the acronyms used for radical groups in the 1960s and 1970s—SDS (Students for a Democratic Society), for example—but the LLN was far from radical. According to Teles, the LLN made great progress in several areas of legal rights: consumer, women's, civil, and welfare. Teles characterizes the Supreme Court of this era as playing an "heroic" role and law professors as gaining an "elevated status" (p.45).

¶49 The LLN achieved social change through legislation and high-profile cases. Teles attributes the LLN's success to an educated elite responding in a civilized way to demands for social and legal change. Nonetheless, many individual Americans (the "silent majority" of the era) were concerned about the Supreme Court deci-

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7. SWING VOTE (Walt Disney Pictures 2008).

sions on desegregation, abortion, and prayer in schools. However, according to Teles, conservative lawyers, both Democrats and Republicans, lacked strategies to counter the liberal elite policy makers.

¶50 The conservative legal movement in the 1970s and 1980s, Teles contends, used the same strategies for growth that the LLN had used a decade or two earlier. Early conservative public interest firms made mistakes, including alienating the media through the notorious General Westmoreland libel case against CBS.<sup>8</sup> The movement's decentralization presented a further problem: it focused on regions rather than on clients. Alliances with the business community did nothing to attract the attention of legal intellectuals in the law schools.

¶51 Teles believes the conservative intellectual climate began to change with the burgeoning of law and economics in the 1970s. Originating at the University of Chicago, the movement offered law professors the opportunity to apply economic analysis to virtually every area of law. Moreover, as Teles notes, "many conservatives, especially foundation patrons, saw in law and economics a powerful critique of state intervention in the economy" (p.90).

¶52 Hand in hand with the growth of law and economics as a respected legal and analytical discipline, according to Teles, came the ultimate success of conservative public interest law firms such as the Center for Individual Rights and the Institute for Justice. These firms were libertarian, focusing on such individual rights as school choice, academic freedom, and eminent domain. Their legal achievements resulted from choosing cases selectively from a wide range of issues. At the same time, Teles notes, the Federalist Society recruited conservative legal talent from law school communities.

¶53 Throughout *The Rise of the Conservative Movement*, Professor Teles emphasizes that in law, as opposed to electoral politics, the prestige of the members and the intellectual appeal of the ideas is crucial. When "conservatives felt like strangers in the elite ranks of the legal academy and organized bar" (p.278), the conservative legal movement made little progress. It needed to challenge legal liberalism "in the courts, in classrooms, and in legal culture" (p.57).

¶54 Professor Teles aims his discussion at his fellow political scientists and law professors (he has had appointments as both over the past few years). He deftly moves from political science analysis to organizational philosophy to the law. Honest interviews with key figures in the conservative movement enliven the text, and regular summations keep the reader focused. The book would be a welcome addition to any academic law library.

Tigar, Michael E., and Angela J. Davis, eds. *Trial Stories*. New York: Foundation Press, 2008. 480p. \$33.

*Reviewed by Lisa A. Goodman*

¶55 For myriad reasons, "[t]rials—and particularly jury trials—capture the American imagination as do few other public events" (p.1). In like fashion, *Trial*

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8. For information about the Westmoreland case, see generally DON KOWET, A MATTER OF HONOR (1984); BOB BREWIN & SYDNEY SHAW, VIETNAM ON TRIAL: WESTMORELAND VS. CBS (1987).

*Stories*, edited by law professors Michael E. Tigar and Angela J. Davis, captivates the reader—it certainly did in my case. This recent addition to Foundation Press’s Law Stories series presents an in-depth study of nine selected trials, highlighting the facts of each case, the ensuing litigation, and the resulting courtroom drama. The most noteworthy feature of the book is the way it juxtaposes excerpts from the trial transcripts with insightful explanations of the strategic decisions made by the trial attorneys. The stories are told, for the most part, in a point/counterpoint fashion that incorporates the views of both the defense and the prosecution.

¶56 Each substantive chapter profiles a single trial that is significant in some respect. For instance, *Connecticut Mutual Life Insurance Co. of New York v. Hillmon*<sup>9</sup> occurred during the sequence of litigation that created the basis for the “state of mind” exception to the hearsay rule,<sup>10</sup> while *Pennzoil v. Texaco*<sup>11</sup> resulted in the largest jury verdict ever awarded, 10.53 billion dollars. Other stories range from the highly publicized O. J. Simpson murder trial and the Oklahoma City bombing case to the historic treason trial of Aaron Burr and the lesser known, yet infinitely compelling, trial of Dr. Ossian Sweet, an African-American physician tried for the murder of a white man in 1925 Detroit.

¶57 The stories in the book do not appear to be arranged in any particular order, but none is really necessary. Because *Trial Stories* is purely a collection of individual stories, it includes no index, charts, or appendixes; however, the table of contents is helpful for locating the various cases.

¶58 The individual stories are authored by law professors well versed in the areas of law covered by each case. The authors’ narratives deftly analyze various aspects of the trials, from jury selection and opening statements to cross-examinations and attempts to admit expert testimony. One author, Ellen Yaroshefsky, Clinical Professor of Law at the Benjamin N. Cardozo Law School in New York City, actually served as trial counsel in the case she profiles. Examples like Professor Yaroshefsky’s first-hand account of her efforts to introduce the Battered Women’s Syndrome as a defense make this book unique and its stories valuable.

¶59 Two of the cases profiled showcase famed trial attorney Clarence Darrow’s courtroom performance. I found the descriptions and excerpts of Darrow’s arguments to be both engaging and instructive. As author Carol S. Steiker asserts in her essay on Darrow’s famous defense during the sentencing of Leopold and Loeb, “[i]f one measure of how ‘memorable’ or ‘great’ a long-ago trial was is its capacity to speak to the administration of justice today, then Darrow’s performance in defense of Leopold and Loeb richly deserves such description” (p.119). Each of the trials outlined has had some lasting impact on the administration of justice in America today, one of the main reasons these stories are as fascinating as they are.

¶60 *Trial Stories* makes for a valuable study of excellence and creativity in trial advocacy and as such would serve as an exceptional teaching tool. Although layper-

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9. 188 U.S. 208 (1903).

10. *Mut. Life. Ins. Co. of N.Y. v. Hillmon*, 145 U.S. 285 (1892). *Trial Stories* describes the complex history of this case: “The case was tried six times, to six different judges and juries, and it produced two U.S. Supreme Court cases, separated by over a decade” (pp.83–84).

11. *Pennzoil Co. v. Texaco, Inc.*, No. 84-05905 (151st Dist. Ct., Harris County, Tex. 1985), *modified*, 729 S.W.2d 768 (Tex. App. 1987).

sons would undoubtedly find the stories intriguing, the liberal use of legal jargon might make the book difficult for them to understand. Further, I doubt that the stories present enough practical information to be very useful in a law firm environment. Thus, the book is best suited to academic law libraries and is highly recommended for all such collections.

Torremans, Paul, ed. *Copyright Law: A Handbook of Contemporary Research*. Northampton, Mass.: Edward Elgar Publishing Ltd., 2008. 552p. \$245.

*Reviewed by Ryan Saltz*

¶61 Copyright law can be difficult to understand and, at times, even more difficult to interpret. As computers and various forms of technology and electronic media integrate themselves into our lives, copyright laws all over the world are being re-examined and reassessed in an attempt to make them applicable to an evolving electronic world in which one can commit copyright infringement with just two strokes on a keyboard. When the current copyright laws were written, reactions to situations then at hand drove the discourse; computers and rapid technological evolution were not at the forefront of the debates. The world has since undergone a paradigm shift that makes clear the need to become proactive in the revision of copyright laws. Furthering that endeavor, Paul Torremans has assembled a group of notable intellectual property scholars to provide insight into and to pose fundamental research questions on the cutting edge of copyright law in a global context.

¶62 Each chapter in Torremans' book has its own distinct focus. The topics range from public domain to databases, collective management, audiovisual works, protecting folklore, alternative dispute resolution, Canadian law, and developing Asian laws. Though the focus of a particular chapter may be an individual country, other countries are also discussed, providing a global perspective. The essays look at the current state of the copyright laws in given jurisdictions, examine the historical development of the laws, and then pose, based on thorough analysis, conclusions that will allow copyright law to remain relevant. Novice copyright scholars will find the explanations and jurisdictional comparisons in the essays useful in understanding the origins of the issues discussed and the direction in which the author wishes to advance the particular area of law. More intermediate and advanced copyright enthusiasts will appreciate the modern and extremely relevant context of the research and its presentation as a progressive discourse rather than a reactive post mortem—taking copyright research forward, not leaving it in a “could have, should have” loop.

¶63 The book is composed of twenty chapters, a very brief foreword by the editor, a thorough index, and a list of contributors. The list of contributors provides only the current position and place of employment for each scholar and would benefit from brief biographies of the authors. Those who are familiar with current copyright and intellectual property research will recognize some of these authors, but a brief biography would be useful for those just entering the scholarly conversation. Each chapter can be read independently, as each focuses on a specific issue relevant to the digital age. When all of the chapters are read as a whole, how-

ever, the reader will gain a perspective grounded in thoroughly researched analysis on how copyright law is being applied and the law's possible future application. The comprehensive index provides topics, subtopics, and page numbers and allows researchers to quickly find what is relevant to their research. Topics in the index include the people, ideas, treaties, cases, directives, and laws that are discussed throughout the text.

¶64 *Copyright Law: A Handbook of Contemporary Research* is part of the Research Handbooks in Intellectual Property series edited by Jeremy Philips. The series is meant to take an international and comparative approach to the pillars of intellectual property, bringing together leading scholars and younger up-and-coming authors. According to the publisher's web site,<sup>12</sup> four of the books in the series, including *Copyright Law*, have already been published. The others focus on patents, trademark theory, and the future of EU copyright, and six more titles are forthcoming. Students, academics, and practitioners will all find *Copyright Law* and, if the series continues to stay as relevant and progressive as this volume, possibly the entire set, useful research and learning tools.

Van Kokswijk, Jacob. *Digital Ego: Social and Legal Aspects of Virtual Identity*. Delft [The Netherlands]: Eburon Academic Publishers, 2007. 2nd ed. 160p. \$25, paper.

*Reviewed by Leslie Wong*

¶65 *Digital Ego: Social and Legal Aspects of Virtual Identity* by Jacob van Kokswijk is a work that explores how the phenomenon of virtual identities has impacted society. *Digital Ego* is a dense work, presenting in-depth philosophical discussions on both the cyber- and real-world consequences flowing from the cyber-world activities of virtual identities. With the rapidly growing popularity of such cyber worlds as *Second Life* and *World of Warcraft*, the time is ripe for just such an analysis. Although at times heavy with philosophical and historical references, *Digital Ego's* exploration of the legal aspects of virtual identity is both interesting and novel.

¶66 Drawing from several philosophers, cultures, and ages, *Digital Ego* starts with an historical overview of the meaning of the term "identity." Van Kokswijk discusses the impact of technology on identity, a discussion that ultimately leads the reader to an understanding of "virtual identity," defined by van Kokswijk as the "representation of an identity in a virtual environment" (p.53). Van Kokswijk points out that a "key feature of cyberspace is the interaction through which a new sense of self and control can be constructed" (p.95). This gives individuals a sense of a virtual self with a virtual identity and the feeling that they have the right to protect this identity. At the same time, however, people often wish to remain anonymous in cyberspace, leaving their physical world identities private.

¶67 Building on this discussion of virtual identities, van Koswijk makes one of his prime assertions, arguing that, considering all the different human activities that can be performed in cyberspace with a virtual identity, and given the complex-

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12. Edward Elgar Publishing, <http://www.e-elgar-law.com> (last visited Oct. 17, 2008).

ity of these activities, regulation is required. Cyber crimes and violations often have physical world consequences, so government entities have already moved to regulate the medium.

¶68 Through a brief overview of the history of law and regulation, van Koswijk identifies three essential ideologies that have guided rules of governance and regulation: territoriality, sovereignty, and jurisdiction. The physical boundaries so crucial to these real world concepts mean little or nothing in cyberspace. Yet, no nation-state is willing to relinquish application of its sovereign laws to cyberspace. Thus, jurisdictional limitations and disputes complicate and impede effective governance of the cyber world.

¶69 Regulation outside of government is one possible response to this challenge. Citing David D. Friedman,<sup>13</sup> Van Koswijk asserts that real world regulation may be produced by the market through arbitration-like activity without governmental action. In this way, disagreements could be settled within the bounds of the law, but essentially on the terms of the parties.

¶70 Van Koswijk submits that regulation through software code is a second emerging way to control the Internet and, therefore, cyber world usage and behavior. By manipulating the underlying programming of the various networks and systems that make up the Internet and its cyber worlds, various actors can enforce limitations on virtual identity and behavior. Governments already use digitized personal identification systems as a means of identifying their physical world citizens in the cyber world. Other simple means of regulating through code include banning individuals based on IP addresses, limiting the features available to certain virtual identities, or building systems that allow for self-regulation by groups of users.

¶71 Cyber crimes and violations have consequences in the real world, but often not in the cyber world. Van Koswijk supports correction of this imbalance through another means of alternative regulation: a system of cyber world law. This idea of a legal system within cyberspace, complete with cyber police, cyber judges, and virtual investigators, could allow regulation of cyber worlds and virtual identities that are effectively beyond the reach of real world regulatory processes.

¶72 Finally, van Koswijk concludes that, as digitally simulated virtual worlds become increasingly popular and lifelike, real world law will eventually adapt to regulate fully the virtual environment. He foresees the development of new legal definitions and a new system of “virtual law” (p.153). He offers some thoughts on the appropriate makeup of this new system and asserts conclusions on a number of regulatory and philosophical issues, including jurisdiction, identity correlation, identity switching, autonomous virtual identities, freedom, and law making.

¶73 *Digital Ego*'s strength is its articulation of thought-provoking concepts. Several of the book's citations are to Wikipedia entries rather than verifiable sources, and it should be considered primarily a book of interesting ideas rather than a reference work. *Digital Ego* is appropriate for academic law libraries that collect interdisciplinary works.

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13. DAVID D. FRIEDMAN, *THE MACHINERY OF FREEDOM: GUIDE TO A RADICAL CAPITALISM* (1989).

Zittrain, Jonathan. *The Future of the Internet and How to Stop It*. New Haven, Conn.: Yale University Press, 2008. 342p. \$30.

*Reviewed by June Hsiao Liebert*

¶74 The title of the book may give you pause, since it appears to advocate the end of the Internet. Instead author Jonathan Zittrain, seeing a very bleak future for the Internet, describes the threats to its health and outlines some possible solutions.

¶75 Zittrain, a professor at Harvard Law School and co-founder and co-director of the school's Berkman Center for Internet and Society, begins the book by discussing the history of the Internet. He reasons that the Internet has been successful primarily due to its generative (or open) nature. This "generativity" allows users to easily create and add content of their own and to share this content with others.

¶76 Unfortunately, Zittrain notes, this very openness could potentially cause the Internet's downfall, because it is just as easy to do harm as to do good. We have all seen firsthand how computer viruses, such as MyDoom and Sobig, and other malicious code have nearly crippled the Internet. Similar to the situation in medicine, where the first response to a new virus is to quarantine everyone exposed, the initial reaction to most computer viruses and other malware is either to isolate or to shut down the system.

¶77 Zittrain believes this defensive mindset is counterproductive and fears that it will bring about the end of the generative Internet. New products that use the Internet, such as the iPhone or Tivo, can only be changed by the vendor. These "tethered appliances" are just the first wave of closed products, which are becoming increasingly popular. Both consumers and producers seem to want stable products less vulnerable to problems caused by the carelessness or maliciousness of others.

¶78 As a former IT director, I experienced firsthand the differences between open and closed systems. Open and unmonitored computers were often shut down by one virus after another, while "locked down" computers—those for which users lack the administrative rights needed to change or install software—rarely suffered a glitch. Why the stability? These computers are protected from viruses accidentally activated by their users because the viruses only inherit the limited rights possessed by the user and, therefore, can cause little damage. The cost of this stability, the inability of users to make changes to their own computers, has generally been seen as a small price to pay.

¶79 Instead of automatically turning to a "locked down" solution, Zittrain urges us to rely upon the very "generativity" of the Internet to improve or heal the network. In his book, he provides example after example of how this type of solution can be far superior to the traditional quarantine approach. Wikipedia, for example, turned to its own users to find a solution for the problems of malicious postings and changes to content. Instead of simply disabling its posting feature, Wikipedia developed a sophisticated versioning system that makes it easy to revert to previous versions of a corrupted article.

¶80 Zittrain is certainly not the only one who is worried about the future of the Internet. Sir Tim Berners-Lee, the creator of the World Wide Web, recently

expressed concerns about the spread of misinformation on the web.<sup>14</sup> Berners-Lee is considering the use of a labeling system to provide users with some guidance regarding the trustworthiness of a web site.<sup>15</sup> Given Wikipedia's initiative on malicious postings, it fortunately is not hard to imagine a solution for the misinformation and security issues affecting the web that utilizes the openness favored by Zittrain.

¶81 This is an entertaining and informative book, which I highly recommend for any academic law library collection, as well as for personal collections.

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14. David Derbyshire, *My Campaign for the Truth in a Web of Lies*, DAILY MAIL, Sept. 16, 2008, at 25.

15. *Id.*