

Keeping Up with New Legal Titles*

Compiled by Catherine F. Halvorsen** and Diana C. Jaque***

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* © Catherine F. Halvorsen and Diana C. Jaque, 2004. The books reviewed in this issue were published in 2003 and 2004. If you would like to review books for "Keeping Up with New Legal Titles," please send an e-mail message expressing your interest to either halvorsengroup@aol.com or djaque@law.usc.edu.

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Bernstein, David E. *You Can't Say That!: The Growing Threat to Civil Liberties from Antidiscrimination Laws*. Washington, D.C.: Cato Institute, 2003. 197p. \$20.

Reviewed by Adrienne Cobb

¶1 The First Amendment can be, and frequently has been, used in support of legal and political positions leaning to both the far right and the far left of the political spectrum in American society. David Bernstein, a professor at the George Mason University School of Law, addresses this dichotomy in *You Can't Say That: The Growing Threat to Civil Liberties from Antidiscrimination Laws*. As the title implies, Bernstein does not come from a neutral perspective. Rather, he asserts that the protections afforded to us by the First Amendment are being eroded by antidiscrimination legislation and its proponents' intention to elevate antidiscrimination concerns above all others (p.1). While the book focuses heavily on the portions of the amendment that relate to free speech and expression, Bernstein also saves room for the freedoms of religion and association.

¶2 In his introduction, Bernstein provides the reader with several examples of what he claims are First Amendment intrusions caused by the overzealous insistence of modern society to be politically correct. He uses numerous, although sometimes tenuous, examples to illustrate that the "moralistic agenda aimed at eliminating all forms of invidious discrimination" has grave consequences for civil

liberties (p.4). For example, he discusses how the city of Denver was pressured by the Native American community into refusing to issue a permit for a Columbus Day parade unless all references to Christopher Columbus were deleted.

¶3 Each instance or event is used by Bernstein to support his primary thesis concerning the danger antidiscrimination laws pose to our civil liberties. In the first chapter, he points out the risks of censorship in general and describes the arguments posed by those in favor of antidiscrimination laws. He begins with an examination of “a compelling interest,” the standard of review for First Amendment protections. Next, he argues that antidiscrimination laws, even the Civil War amendments themselves, fail to satisfy this standard of review when it comes to limiting First Amendment rights. Bernstein’s argument loses more than a little validity once he attempts to flesh it out with contentions such as that the Civil War amendments were not meant to guarantee equality per se, and the social and political transformation of minorities was possible only through the guarantee of the freedom of expression.

¶4 Bernstein might have been more convincing had he instead focused on the dangers of censorship in general. The first civil libertarian argument he presents against censorship is the ever popular “marketplace of ideas,” the basic premise of which is that if all speech, no matter how unpopular or unenlightened, is expressed freely, eventually reason will prevail. He then argues that any government intrusion on free speech is inherently more dangerous than even the most unpopular, inaccurate, or dangerous speech. Bernstein suggests that if we cannot trust government to make the appropriate distinctions between speech that should and should not be censored, we should not permit any government censorship of speech, period. Bernstein does an adequate job of responding to critics of both theories, pointing out that those who use antidiscrimination laws to tread on First Amendment rights are the very individuals who are most likely to invoke freedom of expression protections.

¶5 In subsequent chapters, Bernstein examines the provinces most impacted by antidiscrimination laws. These include the workplace, artistic freedom, college campuses, and the political arena. He also dedicates a few chapters to the discussion of unique First Amendment issues such as compelled speech, the right to privacy, and the right to association. While he uses these sections to reinforce his very important and valid supposition that it is the unpopular points of view that often require the most protection, including them may cause the reader to question whether there are any limits to the speech or expression that Bernstein does find worth curtailing. At times, he uses rather extreme examples to highlight his arguments. He defends the free speech rights of a racist who posts a picture of someone on a television show with a caption that includes “they will be hung from the neck from the nearest tree or lamppost” (p.73) and a professor who uses the analogy of a student’s vagina to make a political statement about handguns (p.53). Whether or not these examples are convincing ammunition in support of his arguments, including them does make for interesting reading.

¶6 The First Amendment has long been a popular and fruitful topic for legal analysis. In *You Can't Say That!: The Growing Threat to Civil Liberties from Antidiscrimination Laws*, Bernstein begins with a stated thesis—antidiscrimination statutes are eroding First Amendment rights—and backs it up with specific examples. While it is true that civil rights laws have on occasion been used to inappropriately trample First Amendment rights, the same can be said for just about any law in existence. Today everything from curfew laws¹ to parking tickets² are fair game for First Amendment challenges. Bernstein has selected a deliberately controversial target to support civil libertarian values in favor of First Amendment rights. Although not a critical or appropriate choice for all law libraries, a library looking to supplement that portion of its First Amendment collection reserved for non-leftist civil libertarian values might be interested in adding *You Can't Say That!: The Growing Threat to Civil Liberties from Antidiscrimination Laws* to its collection.

Brand, Paul. *Kings, Barons, and Justices: The Making and Enforcement of Legislation in Thirteenth-Century England*. Cambridge: Cambridge Univ. Pr., 2003. 508p. \$90.

Reviewed by Karin den Bleyker

¶7 *Kings, Barons and Justices* is a truly remarkable piece of scholarly research. In the introduction, author Paul Brand explains how a topic chosen in 1967 turned into a thesis in 1974, was re-examined in 1988, and finally became the basis for this book. He prepares readers for the specificity and depth of research in the text, forewarning them that they might find the book overwhelming unless they have a better than average understanding of the political, judicial, and social climate of thirteenth-century England.

¶8 Brand's book is essentially the study of two important documents in English legal history, the Provisions of Westminster of 1259³ and the Statute of Marlborough of 1267.⁴ They both evolved out of a need to formulate legislation that addressed wrongs or ambiguities in existing law. They are recognized as the most important legislation passed during the thirteenth century. Both are discussed in part 1, while part 2 provides interpretation and application of this new legislation.

¶9 Describing the political climate of the thirteenth century, Brand discusses the formation of the Committee of Twenty-Four and its duties. The committee's first actions were in administrative matters, but when the "Petition of the Barons" was placed before it, legal matters also had to be addressed. Although duties of sheriffs and bailiffs were newly defined, the rights and duties of the lord and tenant were

1. See *Hodgkins ex. rel. Hodgkins v. Peterson*, 355 F.3d 1048 (7th Cir. 2004).
2. See *Garcia v. City of Trenton*, 348 F.3d. 726 (8th Cir. 2003).
3. 43 Hen. 3, c. 13 (1259) (Eng.).
4. 52 Hen. 3, c. 18 (1267) (Eng.).

revised and finalized in the Statute of Marlborough. Land usage, duties to the land holder, and rights of inheritance constitute the bulk of the research. The complexity of Brand's research is illustrated by his presentation of the work of the committee:

It is reasonable, for example, to suppose that the framers of clauses 10, 17, and 18, had some kind of legislative remedy in mind when they complained of the religious acquiring lands without the consent of the lords of whom those lands were held (clause 10) and of sheriffs demanding the personal attendance of earls and barons and of the tenants of small parcels of land at the sheriffs' tourn (clauses 17 and 18), even though they do not specifically ask for legislation (p.21).

Brand provides his readers with the following example of specific legislation a few sentences later: "This is clearly the case with clause 1 which asked the law be amended to prevent lords from taking seisin of their tenants' holdings after their death unless they were entitled to wardship and to punish any waste they committed if they did so (p.21)." Brand proceeds to examine each clause in a very meticulous manner and discusses all circumstances that impacted each clause. Part 1 concludes with a lengthy summary of final revisions and additions that make up the Statute of Marlborough.

¶10 In part 2, Brand examines the rolls and early law reports to determine the effect of the Statute of Marlborough in the courts. He covers a time period spanning forty years, from 1267 to 1307. Brand draws his information from enrollments and reports of the writ of *Contra Formam Feoffamenti*. The examples he uses reflect the inability of the courts to agree on either the limitation date of the writ or of the wording of the Statute. Then he looks at the forms of pleading, again providing ample material from the original sources to illustrate his point. Next Brand examines the rights afforded to lords by chapter 9 of the Statute. Most often the complaints dealt with services rendered or to be rendered, the question of inheritance and separate suits and, throughout, the issue of distraint. He summarizes cases from the *Common Bench Plea Rolls* and other sources to point out the complexity of these issues. Moving on to the effect the Statute had on the procedures of the royal courts, Brand finds enough evidence to support the conclusion that the courts expedited proceedings, especially for actions of dower, but not in ecclesiastical cases.

¶11 Without any prior knowledge of the terms used throughout this book, the reader might give up after the first chapter. Imposing this organizational structure upon any other topic could be considered plodding, but here the step-by-step examination of the clauses of the provisions and the chapters of the Statute proves to be the best format for the subject matter. The abundant and skillful use of primary material makes this book unique in the range of titles available in this area. As Brand points out, some of the earlier writers pursued other aspects of early common law documents and development, and thus left room for the book in hand. The volume includes an excellent bibliography and an index, as well as several appendixes containing the text and translations of these legal documents. *Kings,*

Barons and Justices is not a book for every library, but, when one considers the reasonable cost, academic and law libraries ought to have it in their collections.

Broomhall, Bruce. *International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law*. Oxford: Oxford Univ. Pr., 2003. 215p. \$90.

Reviewed by Paul E. Howard

¶12 On July 1, 2002, the Rome Statute of the International Criminal Court⁵ entered into force. The Rome Statute established the first permanent international tribunal with jurisdiction to prosecute individuals accused of committing certain grave human rights violations. The recent rapid development of international criminal law culminated in the International Criminal Court (ICC). This has raised expectations that a more effective system of international justice is emerging, one that will hold the perpetrators of such crimes accountable. In *International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law*, author Bruce Broomhall, a law professor at Central European University and Senior Legal Officer for International Justice with the Open Society Institute, considers the likelihood of this promise being fulfilled.

¶13 Broomhall's focus is on the fundamental tensions existing between an effectual system of international justice and a world order based on sovereign states. He investigates whether enforcement of international criminal law can be promoted when states often give priority to their national interests over rule of law. He explores some of the key challenges to effective enforcement of international criminal law in general, and the ICC in particular. He begins by assuming that a system of international justice could work and then proceeds to identify obstacles for which solutions can be developed.

¶14 The book is divided into three main parts. Part 1 provides an overview of international criminal law. Chapter 1 defines its scope, which Broomhall argues is limited to certain "core crimes." These are derived from the legacy of the Nuremberg trials and include crimes against peace, war crimes, genocide, and crimes against humanity. Chapter 2 explores how individual responsibility for these core crimes developed in international law, which historically has only applied to states and not to individuals. In chapter 3, he discusses the tensions between the notion of rule of law and an international system based on state sovereignty. Again, Broomhall ponders whether impartial enforcement may be attained in the international system as it currently exists.

¶15 Part 2 examines how the tension between the doctrines of international criminal law and the reality of state discretion in enforcement have affected the development of select areas essential to the promotion of international justice.

5. Rome Statute of the International Criminal Court, July 17, 1998, U.N. Doc. A/CONF.183/9 (1998), 37 I.L.M. 999 (1998).

Chapter 4 provides general background information on the ICC, discussing the negotiation process that culminated in the Rome Statute, surveying the structure and jurisdiction of the ICC, and analyzing the balance that was struck between state interests and the establishment of an effective court. The focus of chapter 5 is the complementary jurisdiction of the ICC, under which states are given priority over the ICC to investigate and prosecute crimes. Broomhall considers how this mechanism may encourage the effective enforcement of international criminal law by the states. The role of universal jurisdiction in the system of international justice is reviewed in chapter 6, while chapter 7 covers the status of official immunities in international law and its impact on prosecutions through the ICC. Chapter 8 examines the prospects for effective enforcement of international criminal law by the ICC, exploring whether the court is likely to receive the state cooperation that is essential for it to function successfully. In chapter 9, Broomhall addresses the stance of the United States toward the ICC, discussing the role of the United States in the negotiations leading to the Rome Statute, U.S. concerns regarding the Statute, and the United States' response to its entry into force.

¶16 Part 3 is a brief section containing some concluding remarks. Given the end of the Cold War and increasing globalization, Broomhall considers whether the current state-centered system is moving in the direction of greater support for a robust international criminal justice system. While many of the systemic impediments have not changed as a result of such developments, Broomhall speculates that these developments may encourage a culture of accountability that will heighten state support for enforcement.

¶17 This work includes a number of helpful research aids. Broomhall supports his analysis through extensive use of detailed footnotes. A bibliography containing each cited source is included, as well as a table of contents and a decent index. One minor shortcoming is that the full text of the Rome Statute is not provided. Having the entire document included with the work would have been helpful, since much of the discussion revolves around its various provisions.

¶18 This book is a derivation of the author's Ph.D. thesis produced while attending the School of Law of King's College London. Not surprisingly, in many ways it reads like a thesis. It is an insightful and scholarly work that provides an exceptionally detailed analytical treatment of the subject. However, it is not an easy book to read. The prose is dense at times and is somewhat dry. Broomhall also presupposes that the reader has some familiarity with legal principles governing international law. Consequently, this book is not well suited for use as an introductory resource. That being said, it is a quality work that provides a thorough review of the many factors affecting the administration of international justice, and more experienced readers should find it very useful. This book would be a good addition to the collections of academic law libraries and other libraries with an interest in international criminal law, human rights, or international relations.

Brown, Michael F. *Who Owns Native Culture?* Cambridge, Mass.: Harvard Univ. Pr., 2003. 315p. \$29.95.

Reviewed by Nancy Carol Carter

¶19 The Sundance is a sacred tradition of the Lakota people. Participants ritually prepare for the twenty-eight-day ceremony. In the last four days of observance, dancers surround a specially selected and blessed tree. Some dancers are anchored to the tree by ropes tied to wooden or bone pegs inserted through incisions in their chests. This chest piercing is the most sacred part of the ceremony. Dancing until the skin tears away is importantly symbolic, representing the sacrifice that individuals make for the good of the tribe.

¶20 A few years ago, I had the misfortune of meeting a rather troubled person who insisted on showing off his piercing scars to our group of travelers. I was surprised that this decidedly non-Native American had been invited to join in a sacred tribal ceremony. In fact, he had not. This “Sundancer” paid to be a part of a New Age knock-off of the sacred Lakota ceremony, complete with a sweat lodge and sage tea.

¶21 The pages of *Who Owns Native Culture?* contain multiple examples of cultural borrowing or, as some would put it, cultural highjacking. An Australian fabric maker reproduces the designs of an Aboriginal artist with no compensation or acknowledgment. An ethnobotanist prospects in a tropical rain forest to learn the medicinal plant secrets of indigenous healers. Early photographs of secret tribal religious rituals are displayed in a museum. Rock climbers overrun and threaten to damage Devils Tower, claimed as a sacred site by several Indian tribes. Indigenous music from a remote corner of the world is integrated into a pop hit. Imitations from China are passed off as authentic Navajo arts and crafts. The design of a sun symbol, first created on the Zia Pueblo, is adapted and long used on New Mexico’s state flag and its automobile license plates. Oneida tableware, Mohawk Carpets, Jeep Cherokees, and Crazy Horse Malt Liquor all rely on some culturally based associations in their marketing.

¶22 In an expanding backlash, indigenous groups are battling unwelcome invasions, usurpations, and economic exploitation of their cultures and demanding protection. Author Michael Brown sympathetically, but objectively asks “to what end?” and “by what means?” While clearly seeing injustices, he is not entirely won over by the rhetoric of the cultural protectionists, nor is he persuaded that governments can successfully arbitrate these difficult moral issues with the legal tools at hand.

¶23 Brown worries about a tendency to overstate the otherness of indigenous peoples and questions some claims of cultural ownership. He acknowledges that overprotection or isolation of groups will inevitably detract from the worldwide intellectual and cultural commons. He is always respectful, but exposes paradox and hypocrisy when he spots it. He wryly points to the popularity of reggae music on the Hopi Reservation and the incongruity of an American Indian blues guitarist advocating cultural purity.

¶24 Can native cultures be legally protected? Although Brown is an anthropologist, not a lawyer, he offers an informative analysis of legal options. The *Protection of the Heritage of Indigenous People*,⁶ a 1997 United Nations report finding a property right in cultural heritage and setting out the “Total Heritage Protection” approach, is contrasted with the market-based protections of intellectual property law. He discusses a variety of legal theories, looking for reforms that will enhance the usefulness of intellectual property protections in the realm of indigenous culture and heritage. In the end, Brown cautions against overreliance on legalistic and regulatory solutions. He optimistically suggests that negotiation can be used to find a compromise between the excesses of cultural exploitation and the secreting of diverse cultures behind protective doors closed to the larger community.

¶25 This is an important book about troubling and unresolved policy questions. Legal systems, whether or not they offer the best solutions, are already dealing with some of these issues. The Native American Graves Protection and Repatriation Act⁷ is a recent example in United States law. Over the next decades we will see an intensified international debate about the legal protection of cultures, necessitating a concurrent discussion of the meaning of culture and the appropriate scope of cultural ownership. *Who Owns Native Culture?* is highly recommended for all law libraries as both a thoughtful and entertaining starting place for understanding the issues and erecting a frame for the debate.

Gerstmann, Evan. *Same Sex Marriage and the Constitution*. Cambridge; New York: Cambridge Univ. Pr., 2004. 222p. Cloth, \$60. Paper, \$22.

Moats, David. *Civil Wars: A Battle for Gay Marriage*. Orlando: Harcourt, 2004. 288p. \$25.

Reviewed by Larry Reeves

¶26 Same-sex marriage is a fast-evolving social, political, and jurisprudential issue. By the time you read this review, Massachusetts will have become the first state in the nation to sanction civil marriages between same-sex couples.⁸ Of course, that is only the beginning of the story. Supporters of same-sex marriage have state constitutional challenges pending in several jurisdictions. While we await the outcome of these challenges, opponents of same-sex marriage are busy trying to pass constitutional amendments. The Massachusetts legislature proposed a constitutional amendment defining marriage as one man and one woman, but allowing civil unions such as those offered in Vermont and California. The proposed amendment, if it makes it that far, will not be presented to the citizens of Massachusetts for a vote until November 2006, at the earliest. On the federal level,

6. ERICA-IRENE DAES, PROTECTION OF THE HERITAGE OF INDIGENOUS PEOPLE (1997).

7. 25 U.S.C. §§ 3001–13 (2000).

8. See *Goodridge v. Dep't. of Pub. Health*, 798 N.E.2d 941 (Mass. 2003).

anticipating a challenge to the Defense of Marriage Act,⁹ President Bush is backing an amendment to the United States Constitution that would outlaw same-sex marriage. As you make your selections focusing on this national debate, here are two books you should consider.

¶27 *Same Sex Marriage and the Constitution* and *Civil Wars: A Battle for Gay Marriage* may share a common subject, but the authors' presentations are quite different. *Same Sex Marriage* explores the constitutional arguments for and against gay marriage in a scholarly, almost syllogistic fashion. By contrast, *Civil Wars* reads like fiction, telling the compelling story of the fight for gay marriage in Vermont, unfolding for the reader the human experience in moving detail. Both works contain an index and bibliography.

¶28 Perhaps the authors' backgrounds are telling with respect to their individual approaches to the subject matter. David Moats, a Pulitzer Prize recipient for his balanced editorials from the front lines of the battle for same-sex marriage in Vermont, grew up in San Mateo, California, and graduated from the University of California at Santa Barbara. He now lives in Middlebury, Vermont, and is an editor for the *Rutland Herald*. Evan Gerstmann is an associate professor of political science at Loyola Marymount University in Los Angeles. He holds a Ph.D. from the University of Wisconsin–Madison, a law degree from the University of Michigan, and has previously published *The Constitutional Underclass: Gays, Lesbians, and the Failure of Class-Based Equal Protection*.¹⁰

¶29 In the preface to *Same Sex Marriage*, Gerstmann acknowledges the fast-evolving nature of the subject matter: “Only a few days before this book went to press, the Supreme Court handed down its decision in *Lawrence v. Texas*, striking down the Texas anti-sodomy law. *Lawrence* is an enormously important decision that supports the central arguments of this book” (p.ix).

¶30 Obviously, the issue of same-sex marriage has continued to evolve since the *Lawrence* decision,¹¹ and what was unthinkable only a few short years ago now seems plausible. Still, in spite of the developing nature of same-sex marriage, Gerstmann's text is timely. Although the reader may find humor in some questions that have since been answered (most notably the question of whether a societal backlash would spurn a constitutional amendment proposal if the Supreme Court were to overturn the ban on same-sex marriage), Gerstmann's central argument is only strengthened by recent events.

¶31 Gerstmann contends that there exists in the United States Constitution a fundamental right to marry, which extends to gay and lesbian couples. Gerstmann prefers this substantive due process approach to the more popular equal protection argument.

9. 1 U.S.C. § 7 (2000).

10. EVAN GERSTMANN, *THE CONSTITUTIONAL UNDERCLASS: GAYS, LESBIANS, AND THE FAILURE OF CLASS-BASED EQUAL PROTECTION* (1999).

11. *Lawrence v. Texas*, 539 U.S. 558 (2003).

Under the fundamental rights approach, gays and lesbians are not forced to claim that they are an oppressed minority that requires special protection from a prejudiced majority; nor do they have to transmogrify their claims into gender-discrimination claims, as if it were women rather than gays and lesbians who are being denied the right to marry. Gays and lesbians can come forward as equal citizens, claiming nothing more than the right that the great majority of people currently take for granted: the right to marry the person they love (p.72).

¶32 *Same Sex Marriage* is organized into four parts: “The Challenge of Same-Sex Marriage,” “Marriage as a Fundamental Constitutional Right,” “Rights and Equality,” and “Rights in a Democratic Society.” Gerstmann’s presentation is balanced, giving thoughtful and legitimate consideration to the constitutional arguments for and against same-sex marriage. In addition to exploring the judicial debate, Gerstmann considers whether the legislative process might be a more effective means for gays and lesbians to achieve equality under the law, and whether court decisions could withstand the potential public backlash in a democratic society.

¶33 The conflict between the judicial and legislative branches of government was the central issue in the battle for gay marriage in Vermont. The Vermont Supreme Court recognized that gays and lesbians are entitled to equal treatment under Vermont law.¹² However, it directed the Vermont legislature to either include gays and lesbians in the existing marriage statute, or come up with an equal alternative in order to avoid a public backlash and constitutional amendment. Under the court’s directive the Vermont legislature created what we now know as civil unions.

¶34 In *Civil Wars*, Moats recalls in vivid detail the events leading up to, during, and following this judicial and political conflict. It is the story of the battle for gay marriage in Vermont, and the political compromise that resulted in civil unions for same-sex couples. More than that, it is a human story of how the people of a small, rural state came to terms with their differences in the context of an ongoing struggle for human rights. As Moats writes,

It was also by chance that I happened to witness the story of civil union in Vermont. I did not come to the issue as a gay man. I came to it as a journalist discovering the most extraordinary story I had ever covered. I had gay and lesbian friends, of course, and like anyone who manages to look beyond the distinctions of sexual orientation, I was able to see a truth that becomes increasingly plain as the curtains of bias are pulled aside. When love shows up, it does not always obey arbitrary social conventions. It is up to us to follow where it leads. If it is love, it will not be sinful, abusive, or otherwise wrong. . . . In my view the Vermont story ranks, not just with the Stonewall riots and the murder of Harvey Milk as landmarks of gay history, but with Birmingham and Selma as landmarks of our growth toward a more complete democracy (p.xiii–xiv).

¶35 What makes Moats’ writing so compelling is the human experience he brings to life, as the reader feels the full weight of the emotionally charged con-

12. See *Baker v. State*, 744 A.2d 864 (Vt. 1999).

flict. With chapters such as “Our Common Humanity,” “Freedom,” and “Family,” Moats introduces the reader to all of the key players in the debate: the plaintiffs and attorneys involved in the case, the justices of the Vermont Supreme Court, prominent Vermont legislators, and Governor Howard Dean, as well as Vermont citizens on both sides of the issue.

¶36 The battle for same-sex marriage is unfolding before us. Taken together, *Civil Wars* and *Same Sex Marriage* offer the reader both the constitutional context in which the debate is taking place and a story of how one state faced the issue head on. I would highly recommend both books for any public or academic library.

Jarvis, Robert M., Thomas E. Baker, and Andrew J. McClurg. *Amicus Humoriae: An Anthology of Legal Humor*. Durham, N.C.: Carolina Academic Pr., 2003. 259p. \$25.

Reviewed by Jennifer R. Hill

¶37 One of the last words I would have used to describe law reviews is “humorous,” but *Amicus Humoriae: An Anthology of Legal Humor* has shown me that even in the lofty arena of legal scholarship, one can have a little fun. The compilers of the book, law professors Robert Jarvis, Thomas Baker, and Andrew McClurg have put together a book full of witty articles that make good-natured fun of the legal world. They only include articles that were previously published in law reviews or bar journals, excluding “lawyer gaffes, jokes, poems, speeches, testimonials, and war stories” (p.x). They also focused on articles that have appeared since *Juris-Jocular: An Anthology of Modern American Legal Humor*¹³ was published in 1989. The targets of humor range from law reviews and legal scholarship to law students, law professors, judges, and attorneys. Hardly anyone or any topic in the legal profession is left out. The book also includes articles written by all of the compilers, including Baker’s excellent comprehensive bibliography of humorous law review articles.

¶38 *Amicus Humoriae* is organized into sections according to topic. Each topic includes articles that are arranged in alphabetical order by author’s last name. The first topic, “Law Students,” includes a piece that pokes fun at the exam-writing skills of law students. Anyone who has ever worked at a law school library circulation desk will appreciate William Prosser’s “Needleman on Mortgages,” which retells the story of bored student workers, a slow evening, a mind game, and the stressed out students of an impossible security transactions class. The second section on law professors includes the fictional and ludicrous account of a day in the life of a law professor. In the third section, McClurg makes fun of the clueless, out-of-touch student who asks for a recommendation letter with his submission “Dear Employer.” McClurg’s protagonist, “Professor Bugler,” writes an honest letter that would scare any employer contemplating hiring fictional law student Harold Weenicker.

13. RONALD L. BROWN, *JURIS-JOCULAR: AN ANTHOLOGY OF MODERN AMERICAN LEGAL HUMOR* (1989).

¶39 The next three sections, “Lawyers,” “Judges,” and “Legal Scholarship,” also include clever pieces covering a broad spectrum of topics from sports to animal law. To underline the need for new buffalo (as in the animal) law scholarship, the article states that “The *Buffalo Law Review* has provided an opportunity for scholars to come to terms with the world of buffalo law, but the potential has not been fulfilled” (p.195). The last article, and section, “Bibliography,” consists of the annotated bibliography of “clever and amusing law review” articles by Baker. This is the place to turn if you are looking for a laugh in a law review. Like the main text, the bibliography is arranged by topic and includes subjects such as areas of law, legal education, and legal scholarship. Also contained in the bibliography are law review articles written by law librarians.

¶40 The hardcover book is small in size, easy to shelve, and will not take up a lot of space. At a mere \$25, it is an economical choice for a quality addition to any library’s humor collection. Although the primary users of all law libraries might find this book entertaining, it is probably best suited for an academic law library. Law professors and law students, especially students who are members of a law review staff, will find this book a humorous break from scholarship and study.

Kapardis, Andreas. *Psychology and Law: A Critical Introduction*. 2d ed. Cambridge: Cambridge Univ. Pr., 2003. 429p. Cloth, \$85. Paper, \$30.

Reviewed by David Zopfi-Jordan

¶41 Andreas Kapardis provides a new text that overlaps the two disciplines of psychology and law. While intended for classroom use by undergraduate and graduate students studying law enforcement and criminology, *Psychology and Law: A Critical Introduction*, 2d ed., contains a number of chapters that would also be of interest to practitioners. Chapters are comparative in scope and give insights into how the legal systems of various countries handle problems related to human behavior, polygraph techniques, and human traits and events that influence recall and memory. Criminal law topics are discussed from the perspective of various countries and regions including the United States, United Kingdom, Europe, and Australia. Kapardis devotes a significant portion of *Psychology and Law* to his area of expertise—forensic psychology. Though he states that the text emphasizes many aspects of criminal cases, there are also civil implications for most topics that he discusses. Chapters cover interviewing techniques, evidence gathering, race and gender issues, use of the polygraph, and witness recognition procedures—all of which are relevant in civil cases.

¶42 The table of contents in the second edition is more detailed than that of the first edition, an added value to those wanting to pinpoint a topic. Another beneficial feature is its emphasis on case studies. One study mentioned is on witness recognition after previous exposure to photos of the suspect. Another tells the story of an innocent person who was wrongfully imprisoned after being misidentified by a witness. The many case studies assist readers in increasing their knowledge of psychology and law.

¶43 Few books like Kapardis' are available, and of those available *Psychology and Law* is among the most recent. Some other titles on the topic are *Taking Psychology and Law into the Twenty-First Century*¹⁴ and *Psychology and Law: Theory, Research, and Application*.¹⁵ Kapardis' work includes references to these and other related texts in an extensive list, a separate bibliography, and two indexes (author and title). The bibliography gives a comprehensive list of recent and older publications on law and psychology. This list is a great tool and assists the researcher in locating other sources on point. With this feature and its comparative treatment of the topic, *Psychology and the Law: A Critical Introduction* is a very rich and useful textbook that is suitable for academic and special libraries.

Patkus, Beth. *Assessing Preservation Needs: A Self-Survey Guide*. Andover, Mass.: Northeast Document Conservation Center, 2003. 82p. \$15.

Reviewed by Patricia K. Turpening

¶44 As a preservation consultant, I have recommended the original version of this title, Karen Motylewski's *What an Institution Can Do to Survey Its Own Preservation Needs*,¹⁶ to law libraries as a tool to survey their own buildings and collections. Motylewski's work has served for many years as the definitive resource for libraries involved in describing the characteristics of their facilities, determining disaster and security risks, and evaluating their storage needs. It served the purpose admirably, but now a new-and-improved resource is available. It is clear that Beth Patkus, author of *Assessing Preservation Needs: A Self-Survey Guide*, went back to the drawing board to see how a useful library manual could be made even more so.

¶45 Before comparing the two, perhaps a definition of a preservation survey is in order. A preservation survey, also known as a needs assessment survey, is an essential step in the development of a library's long-range preservation plan. Sherlyn Ogden, in *Preservation Planning: Guidelines for Writing a Long-Range Plan*, asserts that "[a] preservation plan is based on the needs of an institution and the actions required to meet these needs. This information is provided in the reports of the surveys, . . . [and] surveys are the foundation of preservation planning."¹⁷ Therefore, surveys and their findings are not an end in themselves but a means to an end, that being a complete plan to preserve all materials in a library or archives.

¶46 According to *Assessing Preservation Needs*, the purposes of a survey are to: "1) Identify potential hazards to the collection, 2) Prioritize areas of the collection

14. JAMES R. P. OGDEN, *TAKING PSYCHOLOGY AND LAW INTO THE TWENTY-FIRST CENTURY* (2002).

15. CURT R. BARTOK & ANNE M. BARTOK, *PSYCHOLOGY AND LAW: THEORY, RESEARCH, AND APPLICATION* (3d ed. 2003).

16. KAREN MOTYLEWSKI, *WHAT AN INSTITUTION CAN DO TO SURVEY ITS OWN PRESERVATION NEEDS* (1991).

17. SHERLYN OGDEN, *PRESERVATION PLANNING: GUIDELINES FOR WRITING A LONG-RANGE PLAN* 4 (1997).

for preservation action, 3) Identify preservation action required to keep collections in the best condition possible for the longest time possible, and 4) Prioritize the needs of the collections and identify steps necessary to achieve the required preservation actions” (p.2).

¶47 Motylewski guided users in these worthy aims with descriptions and pointed questions such as “Where are steam and water pipes relative to collections?” and “Is there an established procedure for periodic examination of all collections?” However, in the current work, Patkus goes even further, adding charts and boxed “Tips for Taking Action.” Another important difference is the number of sample worksheets included for users to survey their buildings and collections. Whereas the earlier resource has lists of questions pertaining to areas of concern, the newer one has twenty-six separate one- or two-page worksheets. These forms address areas such as the building environment, fire protection, general handling, and library binding. Forms related to specific collections or formats, including bound volumes and periodicals, documents and manuscripts, and audiovisual materials are also provided. Examples of worksheet questions include “How are materials in need of conservation treatment identified?” “Who has responsibility for preparing materials for exhibit?” and “Are shades, curtains, or blinds shut when sunlight is direct?”

¶48 Libraries that are diligent and complete each worksheet included in *Assessing Preservation Needs* will have a comprehensive picture of their strengths and weaknesses in the area of preservation. They will be able to use the data as ammunition with funders and grantors to demonstrate exactly what the library requires in order to remedy preservation shortfalls. However, it is not necessary for any library to complete the entire book if time and staffing do not permit. Every chapter or section can stand alone and offers considerable value as part of the library’s preservation survey.

¶49 Unfortunately, neither title has an index. Including one would eliminate some unnecessary page-flipping when researching a particular topic. The forty-six-item bibliography contained in *Assessing Preservation Needs* is an extremely useful resource with information on finding a surveyor and funding sources, in addition to specific topics covered in the book. Created as a complement to this volume, *The Preservation Survey: A First Step in Saving Your Collections*,¹⁸ a thirty-minute video, follows a surveyor as he examines a library building and collections to answer many of the questions posed by Patkus. Used together to determine hazards and priorities, *Assessing Preservation Needs* and the video form a dynamic combination.

¶50 The readability of Patkus has been enhanced with a larger font. Setting the worksheets apart increases their usability since they can be photocopied and used

18. THE PRESERVATION SURVEY: A FIRST STEP IN SAVING YOUR COLLECTIONS (Amigos Library Services, Northeast Document Conservation Center & OCLC 2003).

individually. Despite its minor weakness, I would highly recommend *Assessing Preservation Needs: A Self-Survey Guide* to any law or other library. It is a valuable resource that will facilitate the preservation study process and help the library make solid, measurable improvements in the longevity of library materials in all formats.

Paust, Jordan J. *International Law as Law of the United States*, 2d ed. Durham, N.C.: Carolina Academic Pr., 2003. 532p. \$55.

Reviewed by Mary Rumsey

¶51 The second edition of Jordan Paust's indispensable work, *International Law as Law of the United States*, is surprisingly dispensable. The 1996 edition¹⁹ remains a masterly summary of the use of international law in United States jurisprudence. Whether or not you agree with Paust's premise that international law is directly incorporable into U.S. law, his thorough identification of relevant cases, statutes, treaties, scholarly books and articles, and other legal materials makes the book invaluable for research. The only problem with the second edition is that it differs little from the first. And as the first edition is widely held, many librarians may wonder whether they need to buy this 2003 update.

¶52 At first glance, the second edition looks like a major revision. Fifteen chapters have shrunk to twelve, and three have new titles. The index has been expanded. In general, however, the material has been reorganized rather than updated. Granted, one major virtue of the first edition was how Paust traced the history of international law as a thread within U.S. law. Much of his meticulous analysis rests on early Supreme Court, federal, and even state cases, as well as other early legal documents, so it makes sense to retain this material.

¶53 Paust approaches several subjects of interest to practitioners and scholars in the same way: he examines the history of a doctrine, such as human rights, within the U.S. legal system. In the first edition, his examination of human rights took the reader nearly up to the date of publication. In the second edition, much of the text remains virtually unchanged. Only the footnotes have been updated, and the updating is sparse. For the most part, footnotes add only new cases—without any new scholarly commentary. Even for case law, Paust does not extend his interesting survey of the use of human rights language in Supreme Court and lower court cases. The first edition documented an increase in the use of the phrase “human rights” and related phrases from 1925 to 1994, but the second edition does not update that research.

¶54 Of course, Paust has excellent qualifications to decide whether new developments merit inclusion. Perhaps no new scholarly works have raised arguments that he believes deserve the reader's attention. Comparing the footnotes between the two editions, however, it strains credulity that nothing new is relevant to Paust's essay “Human Rights and the Ninth Amendment,” or that his chapter

19. JORDAN J. PAUST, *INTERNATIONAL LAW AS LAW OF THE UNITED STATES* (1996).

“Congress and Genocide” should reappear with unchanged footnotes in the second edition. Chapter 11, on the power to declare war, shows only a few additions to existing footnotes, including a citation to one of the author’s own articles. Chapter 9, “Bases of Jurisdiction in International Law,” is one of the few chapters where the footnotes appear to have been systematically updated. Another exception is part of chapter 12, “Law, National Security, Necessity, Executive Discretion, and Judicial Power.” Even this up-to-date and powerful essay, however, consists of revisions to an article that the author published in the *Harvard International Law Journal* in 2003.²⁰

¶55 For libraries that do not already own the first edition and whose patrons need to know how international law can be used in U.S. courts, *International Law as Law of the United States*, 2d ed., will be an invaluable acquisition. The substantial similarity between the two editions, however, makes the second edition of marginal value to any library that owns the first one.

Schuck, Peter H. *Diversity in America: Keeping Government at a Safe Distance*. Cambridge, Mass.: Belknap Pr. of Harvard Univ. Pr., 2003. 444p. \$35.

Reviewed by Lucy Cox

¶56 How government manages the interests of groups of varying ethnic, linguistic, religious, and racial backgrounds is the issue addressed in *Diversity in America: Keeping Government at a Safe Distance*. Peter Schuck, a professor of law at Yale Law School, describes in thorough detail what constitutes diversity in the United States and its relationship with and to the law. In this densely documented work, Schuck marshals historical facts, statistics, laws, surveys, and writings from various disciplines and explains the complexities underlying the concept of diversity. He draws a distinction between two diversity theories, which he describes as “diversity-in-fact” and “diversity-as-ideal.” Schuck emphasizes that although “diversity-in-fact” has existed in this country since its origin, “diversity-as-ideal,” the generally accepted idea that diversity is something to be celebrated as a pervasive element of American society, only emerged as recently as the 1960s. Schuck is convinced that the impetus for this new diversity ideal was the 1965 Immigration and Nationality Act Amendments of 1965,²¹ which he describes as “the most powerful engine of ethno-racial diversification in the history of any nation” (p.75). This law eliminated the previous racist and national origin discriminations of earlier immigration laws, resulting in a fairer allocation of quotas from European countries which had typically supplied immigrants to the United States, as well as an explosion of immigrants from atypical areas such as Latin America, Asia, and Africa.

20. Jordan J. Paust, *Judicial Power to Determine the Status and Rights of Persons Detained without Trial*, 44 HARV. INT’L L.J. 503 (2003).

21. Pub. L. No. 89-236, 79 Stat. 911 (1965).

¶57 As is implicit in his use of the subtitle *Keeping Government at a Safe Distance*, Schuck holds some specific views on how government should deal with diversity. One important theme running throughout the book is that government measures fail, or arouse controversy, when they interfere with deeply held values or prevent local government or civil society bodies from devising their own solutions to various diversity-related issues. Schuck articulates his views most fully in the chapters focusing on four different policy domains that have achievement of diversity as a central aim: “Immigration: Importing and Assimilating Diversity”; “Affirmative Action: Defining and Certifying Diversity”; “Residential Neighborhoods: Subsidizing and Mandating Diversity”; and “Religion: Protecting and Exploiting Diversity.” The chapters are similarly structured; each begins with a description of the levels of diversity-in-fact within each domain, continues with a list of respective important ideals and an enumeration of specific government measures designed to manage diversity in each domain, and ends with a critical evaluation of these government measures.

¶58 In the chapter on affirmative action, Schuck dissects the federal bilingual language policy, which in his view exemplifies a leading paradigm in government’s failure to manage diversity, as it prevented local schools from creating their own programs to assimilate immigrant children into the education system. It is Schuck’s belief that affirmative action is controversial because it goes against societal perception of such deeply held values as individualism, merit, and fairness. Affirmative action corrodes distinctions between what most Americans feel is distinct, and he suggests that race should not be used as a proxy for diversity. Instead, Schuck advocates using religious background, which does not currently count as a preference in affirmative action, as a richer source of diversity. He feels that forcing people who are multiracial to choose just one race in the official coding scheme created by the government leads to rigid pigeon-holing and clashes with the American ideal of freedom of choice and fluidity of identity.

¶59 In the final chapter on residential integration, Schuck analyzes in detail the Mount Laurel²² and Yonkers²³ controversies. Despite years of litigation and numerous court mandates to do so, neither series of decisions succeeded in relocating poor families into low-cost or subsidized housing in working-class or higher-income suburbs. Schuck attributes this failure to “classism,” a societal perception that it is unfair for persons to live in a specific area if they cannot actually afford to do so. He points to the voucher-based Gautreaux measures in Chicago as alternatives to the heavy-handed, court-imposed measures of Mount Laurel and Yonkers in moving low-income families to perceived better neighborhoods.

22. *S. Burlington County NAACP v. Township of Mount Laurel*, 336 A.2d 713 (N.J. 1975); *S. Burlington County NAACP v. Township of Mount Laurel*, 456 A.2d 390 (N.J. 1983).

23. *United States v. Yonkers Bd. of Educ.*, 518 F.Supp. 191 (D.C.N.Y. 1981).

¶60 While Schuck clearly promotes many of his own personal views throughout, *Diversity in America: Keeping Government at a Safe Distance* is not a tendentious book. Its tone is judicious and fair. The material is so thoroughly covered that any readers holding alternative viewpoints can easily find information to support their position. This is a thought-provoking and scholarly work, one that expertly grapples with the complex legal and social issues involved in dealing with the phenomenon of American diversity. *Diversity in America: Keeping Government at a Safe Distance* belongs in law and other academic libraries, as well as appropriate public libraries. The bibliographical resources supporting the information and views presented in the book provide a strong foundation for scholars or students interested in researching any of the topics included in the text.

Wallace, Linda K. *Libraries, Mission, and Marketing: Writing Mission Statements That Work*. Chicago: American Library Association, 2004. 82p. \$27.

Reviewed by Virginia J. Kelsh

¶61 Linda Wallace's *Libraries, Mission & Marketing: Writing Mission Statements That Work* provides practical guidance for librarians seeking to develop effective mission statements that might also serve as marketing tools. The author, a former director of the American Library Association's Public Information Office and current partner and cofounder of Library Communication Strategies, Inc., possesses solid credentials and experience to write such a book for the profession. After twenty-five years of library marketing and communication work, Wallace observes that librarians "are better at describing what they do . . . than at communicating why their work is important and the difference it makes in people's lives" (p.vi). Her purpose in writing this book is to help librarians "bring their libraries' mission to life" (p.vi), through a vibrant mission message that can be as easily said as read.

¶62 Marketing has become a core competency required of librarians. This book offers a how-to approach through which librarians might develop and communicate a key mission message that defines the library and presents its compelling and current essence to a target audience. Wallace's predominant advice about writing mission statements embodies the notion: be brief, be brilliant, and be effective.

¶63 According to Wallace, most library mission statements inspire disinterest rather than interest in the library because they are ponderous rather than "punchy." Wallace effectively offers examples of both types of mission statements. One of the author's tips is to edit ruthlessly, and she gives effective examples of "before" and "after" mission statements to illustrate her point. She also notes that once written, the mission statement often languishes in obscurity for lack of marketing or communication. She searched hundreds of library Web sites in researching this book, yet found that fewer than half of those examined made available posted or easily located mission statements. Wallace observes that library goals, planning, and activities flow from the mission statement. Writing a mission statement that

also serves as a communication tool ensures that the “library will both *do* what it says and *say* what it does” (p.4).

¶64 The book is easily readable in a single sitting. It contains four core chapters covering about one-third of the book, followed by a fifth chapter of mission statement examples, and completed by appendixes, suggested readings, and an index. Chapter 1, “Putting the Mission in a Mission Statement,” discusses the importance of a vibrant mission statement for marketing the library and communicating its identity. Chapter 2 elaborates on the tie-in between the mission message and marketing. Here Wallace offers examples of both good and bad mission statements, and distinguishes between mission and vision statements. Chapter 3 advises on the actual craft of writing an effective mission statement, while chapter 4, “Putting Your Statement to Work,” offers suggestions about communicating the mission statement effectively as part of the library’s marketing effort, and enumerates places and spaces where a shortened version of the mission statement might be posted. Chapter 5 presents an extensive array of examples of mission statements from the academic, public, research, school, and other library sectors. These examples are offered as inspiration for the reader in developing his or her library mission statement. One academic law library mission statement is presented under the heading of “Research Libraries.” A model mission statement for a school library media center is illustrated in appendix A, and a marketing communication planning worksheet is offered as appendix B.

¶65 Wallace’s work is replete with helpful examples, questions, and suggestions. This reviewer, prior to reading *Libraries, Mission & Marketing: Writing Mission Statements That Work*, wrote an article covering mission statements for a marketing toolkit to be published by the Academic Law Libraries Special Interest Section of the American Association of Law Libraries.²⁴ After reading Wallace’s work, I refined my article to incorporate some of her ideas. This book would be useful to any librarian struggling to write a clear and compelling mission statement that is intended to form the basis of a library marketing effort. It is cogent, concise, and current in content and approach.

Wojcik, Mark E. *Illinois Legal Research*. Durham, N.C.: Carolina Academic Pr., 2003. 228p. \$22.50.

Reviewed by Jennifer Locke

¶66 Designed as a “teaching tool rather than a bibliographic compilation of state legal research sources” (p.xviii), *Illinois Legal Research* provides practical instruction primarily to law students. It can also serve as a ready reference tool for practitioners and others interested in researching laws specific to Illinois.

24. The Law Library Mission Statement, at <http://www.aallnet.org/sis/allsis/toolkit/toolkit.html> (last visited June 17, 2004).

¶67 Mark Wojcik, associate professor of law at the John Marshall Law School in Chicago, begins with a quick review of basic legal research methods and gives tips for developing effective and efficient research skills. He transitions into in-depth explanations of Illinois law, covering topics such as constitutions, judicial decisions, statutes and ordinances, administrative law, rules of court, and various types of secondary sources. Wojcik also includes a chapter on citation, comparing the requirements of the *ALWD Citation Manual*,²⁵ the Illinois citation rules,²⁶ and the *Bluebook*.²⁷

¶68 The text has a well-defined scope and an intuitive layout. It includes a table of contents, appendixes providing contact information for government offices and Web site addresses for Illinois courts, a listing of additional resources, and an index. Each of these features contributes to the usability of the text and helps to increase its value as a ready reference tool for more seasoned attorneys. Additionally, each chapter is well footnoted and contains a list of additional resources to help researchers find more detailed information on the chapter's topic.

¶69 Throughout the chapters, Wojcik intersperses anecdotes and tips, such as, "what can happen if you don't update your research" and "never quote a headnote," which help both to add interest to the text and give the substantive instruction real-world context. These tips do, however, tend to be more appropriate for inexperienced legal researchers and may thus seem a little superfluous to practitioners.

¶70 One of the greatest strengths of *Illinois Legal Research* is Wojcik's adherence to his purpose of providing a state-specific legal research guide. It does not veer off and attempt to bring in tangential discussions of federal law. Wojcik does discuss federal courts in Illinois, but this exception is appropriate within the context of the chapter on judicial courts. By remaining faithful to this purpose, Wojcik is able to keep the text succinct and manageable.

¶71 The chapter on "Illinois Constitutions" is especially well done. It contains a thorough history of the state, including the period prior to statehood, and discussions of each of the state's four constitutions. One minor omission from this chapter is a discussion on how the current constitution can be amended.

¶72 One drawback to the text is the short shrift given to legislative history research. In his section on legislative histories, Wojcik spends as much time discussing the debate concerning the appropriateness of using legislative histories as he does providing information on how best to compile one. Legislative history research can be complicated and intimidating, and this section does not provide

25. DARBY DICKERSON & ASS'N OF LEGAL WRITING DIRS., *ALWD CITATION MANUAL: A PROFESSIONAL SYSTEM OF CITATION* (2d ed. 2003).

26. *STYLE MANUAL FOR THE SUPREME AND APPELLATE COURTS OF ILLINOIS* (Brian C. Ervin ed., 3d ed. 1995).

27. *THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION* (Columbia Law Review Ass'n et al. eds., 17th ed. 2000).

enough guidance for inexperienced researchers. Additionally, this section would be improved by the addition of a quick review of the legislative process, explaining precisely how a bill becomes a law in Illinois.

¶73 Finally, the text could benefit from the inclusion of excerpts from the resources being described, tables, and quick checklists. These tools would convert *Illinois Legal Research* from a textbook to a quick reference guide and might also help the reader grasp the material more readily. Despite these minor criticisms, the text is a remarkably readable legal research guide that will introduce law students to the particulars of Illinois law and can serve as a ready-reference tool for practitioners. *Illinois Legal Research* is a solid, state-specific supplement to more general research guides, such as Berring and Edinger's *Finding the Law*.²⁸

28. ROBERT C. BERRING & ELIZABETH A. EDINGER, *FINDING THE LAW* (11th ed. 1999).