

# Keeping Up with New Legal Titles\*

Compiled by Amy Atchison\*\* and Catherine F. Halvorsen\*\*\*

## Contents

<i>Truth and Lives on Film: The Legal Problems of Depicting Real Persons and Events in a Fictional Medium</i> . . . . .	411
<i>The Bible in the Park: Federal District Courts, Religious Speech, and the Public Forum</i> . . . . .	412
<i>Careers for Legal Eagles and Other Law-and-Order Types</i> , 2d ed. . . . .	414
<i>Should You Really Be a Lawyer? The Guide to Smart Career Choices Before, During and After Law School</i> . . . . .	414
<i>Immigration Law for Paralegals</i> . . . . .	417
<i>The Disability Pendulum: The First Decade of the Americans with Disabilities Act</i> . . . . .	418
<i>Pleasing the Court: Writing Ethical and Effective Briefs</i> . . . . .	420
<i>Women's Lives, Men's Laws</i> . . . . .	421
<i>Learning Legal Research: A How-to Manual</i> . . . . .	423
<i>Classic Problems of Jurisprudence</i> . . . . .	424

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\* © Amy Atchison and Catherine F. Halvorsen, 2006. The books reviewed in this issue were published in 2005. 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 [atchison@law.ucla.edu](mailto:atchison@law.ucla.edu) or [halvorsengroup@aol.com](mailto:halvorsengroup@aol.com).

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Before, During and After Law School*. . . . . 414
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Aquino, John T. *Truth and Lives on Film: The Legal Problems of Depicting Real Persons and Events in a Fictional Medium*. Jefferson, N.C.: McFarland & Co., 2005. 220p. \$35.

*Reviewed by Adrienne Cobb*

¶1 The medium of film, with the exception of the documentary genre, is not traditionally considered an outlet for factual information. This might explain why the film industry readily resorts to artistic liberty—even when basing a film on a true story. John Aquino addresses the legal issues arising from this practice in *Truth and Lives on Film: The Legal Problems of Depicting Real Persons and Events in a Fictional Medium*.

¶2 In *Truth and Lives on Film*, Aquino summarizes the history of the dramatization of real events and people from Ancient Greece to contemporary times. He then examines the new paradigm created by the introduction of film in the early twentieth century. The legal challenges of libel, invasion of privacy, and defamation that impact other media forms also affect film. Aquino argues that filmmaking presents not only the opportunity, but also the outright need to take creative license even when depicting actual events. In film, long real-life sequences must be compressed to two or three hours, and characters who might be boring in real life must be made entertaining. Aquino spends a fair amount of time reviewing statements made by directors, producers, writers, and others in the film industry regarding their defense of this principle. “The makers of commercial Hollywood historical films have argued that the audience is smart enough to know that a movie is ‘only a movie’ and not a history lesson” (p.4).

¶3 Understandably, this notion produces tension between the First Amendment rights of the media and the legal challenges brought by those who are depicted. In the first chapter of his book, Aquino uses actual films to discuss this fictionalization of real life, commonly referred to as docudramas, and the legal issues it presents. He also touches on the film industry’s attempt to preempt legal challenges by issuing disclaimers, changing facts and names, obtaining permission or releases from people depicted, and creating post-mortem fact-based films.

¶4 Aquino uses the second chapter to review the movie *A Perfect Storm*,<sup>1</sup> offering a refreshing break from the hodgepodge of cases and film titles compacted

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1. THE PERFECT STORM (Warner Bros. 2000).

into the first chapter of the book. Although *A Perfect Storm* presents a unique circumstance because most of the film's story was invented purely out of necessity since no witnesses to the actual events survived, Aquino offers a good overview of the evolution of a legal challenge to a film based on factual circumstances and real people.<sup>2</sup>

¶5 In chapter 3, Aquino dissects thirteen courtroom dramas based on actual trials. His format is interesting, first presenting the actual facts of each trial, then describing the dramatized version, and concluding with a discussion of the legal issues presented. This chapter alone makes the book worth buying, for both entertainment and informational purposes. It is interesting to see the actual facts and occurrences in a trial juxtaposed against the film industry's interpretation of events. This chapter also best illustrates the conflict between the ambitions of both sides in the legal matter: the families and the individuals depicted, who want to maintain their privacy and good names, and the film industry, which has an obligation to hold the audience's interest by avoiding the banality of real life.

¶6 The final chapter of the book touches on the legal protection, if any, afforded fictional characters. Aquino addresses whether actors or individuals who are identified with the characters they play have exclusive rights to those characters, for example, Laurel and Hardy. While this chapter seems a tad out of place, it is an interesting addendum to the main text which focuses on legal protection afforded to real persons and events.

¶7 *Truth and Lives on Film : The Legal Problems of Depicting Real Persons and Events in a Fictional Medium* does a good job of providing a substantive legal analysis of a limited area of law that, in Aquino's opinion, is restricted by the dearth of published case law. If readers can muddle through the first chapter and obtain a good understanding of how the film industry operates and the legal challenges it faces, they will find the remainder of the book informative and somewhat enjoyable. This title is of possible interest to libraries with entertainment or art law sections.

Blakeman, John. *The Bible in the Park: Federal District Courts, Religious Speech, and the Public Forum*. Akron, Ohio: University of Akron Press, 2005. 300p. \$39.95.

*Reviewed by Sara Sampson*

¶8 *The Bible in the Park: Federal District Courts, Religious Speech, and the Public Forum* is a thorough analysis of federal district court cases concerning religious speech in public places, such as parks and government buildings. John Blakeman reviews various cases from 1974 to May 2001, where one of the parties sought to add or remove religious speech from a public place. Each case is evaluated to determine the status of the litigants, the type of speech at issue, the place where

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2. Aquino participated as an expert witness in the trial against the film's producers.

the speech occurred, and the outcome of the legal actions. The data appear in many charts and tables throughout the book.

¶9 Although *The Bible in the Park* is unique because it focuses on district court-level cases and provides detailed statistical information about these decisions,<sup>3</sup> it is so much more. Blakeman offers a thorough analysis of the litigants, the legal issues, and the overall context of religious speech in the public arena. The text is supported by citations to cases, other scholarly work, and newspaper accounts of highlighted cases. A selected bibliography includes religious speech cases, articles, and books.

¶10 *The Bible in the Park* begins with an overview of the legal issues involved in religious speech in public forum cases. The first two chapters are fairly easy to read and provide an interesting refresher on government regulation of speech in public places for the law-trained audience. Readers unfamiliar with First Amendment jurisprudence will need to read this section carefully to appreciate the thorough analysis that follows.

¶11 The book continues with an analysis of the litigants. Blakeman begins by categorizing plaintiffs by their status (e.g., religious groups or government entities), their relationship to larger religious groups or movements, and their religious affiliation. He then categorizes litigation by certain religious groups and by the types of speech for which protection is sought. The summaries of the history and impact of litigation by particular religious groups, such as the International Society for Krishna Consciousness, are particularly intriguing.

¶12 The focus then shifts to public places. Within First Amendment jurisprudence, the type of public forum dictates the amount and type of regulation the government can place on speech. How the court categorizes the place at issue, therefore, determines the legal rule to be applied. Blakeman not only pinpoints how often courts designate places a certain type of forum, but also classifies cases by the type of place at issue. For example, he tracks how many cases involve public schools and the respective percentage of cases where the courts characterize a public school as a traditional public forum or a designated public forum. This type of information should be of interest not only to academics, but to free speech litigation specialists as well.

¶13 Blakeman next explores the treatment of religious speech in different types of situations. For example, the table summarizing the trends in political partisanship by the type of expression (such as student religious clubs, prayer, or religious displays) shows that there is little difference between how Republican-appointed judges and Democrat-appointed judges treat certain types of speech and great differences in others. Blakeman explores this issue in the text of chapter 5 and provides a number of possible explanations.

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3. An analysis of preliminary data appeared in an earlier article. John C. Blakeman, *Federal District Courts, Religious Speech, and the Public Forum: An Analysis of Litigation Patterns and Outcomes*, 44 J. CHURCH & ST. 93 (2002).

¶14 The sparse table of contents may prove problematic for readers unfamiliar with free speech in public forum matters. It consists only of chapter titles, which are not descriptive enough to provide a subject framework or to allow one to quickly refer to a particular subject. With such a complex topic, a more detailed table of contents would allow readers who are unfamiliar with the area to put each individual chapter into context or to find a particular topic quickly. Readers trained in law will be pleased to note that the index includes case names, making it easy to quickly locate a discussion of a particular case.

¶15 *The Bible in the Park: Federal District Courts, Religious Speech, and the Public Forum* is an important addition to the scholarship on religious freedom cases because of its unique focus on district courts. It is highly recommended for academic law libraries, especially those with a strong First Amendment law collection.

Camenson, Blythe. *Careers for Legal Eagles and Other Law-and-Order Types*. 2d ed. New York: McGraw-Hill, 2005. 147p. Paper, \$13.95. E-book in various formats, \$13.95.

Schneider, Deborah, and Gary Belsky. *Should You Really Be a Lawyer? The Guide to Smart Career Choices Before, During and After Law School*. Seattle, Wash.: DecisionBooks, 2005. 239p. Paper, \$21.95.

*Reviewed by Laura A. Cadra*

¶16 A number of people wind up in law school not because they have made a careful informed decision, but because they essentially don't know what to do after college.<sup>4</sup> Once in law school, students may stay because they do not know what they would do if they dropped out. Once in practice, attorneys may feel stuck because they are not sure whether their unhappiness stems just from being in the wrong job or, more profoundly, in the wrong career. Both *Should You Really Be a Lawyer? The Guide to Smart Career Choices Before, During and After Law School* and *Careers for Legal Eagles and Other Law-and-Order Types* attempt to aid current or would-be law students and attorneys who may find themselves in one or more of these situations make satisfying, informed decisions about their education and career choices.

¶17 Based in the field of behavioral economics,<sup>5</sup> *Should You Really Be a Lawyer?* is written for prospective and current law students, as well as working attorneys, to help answer the basic question, "Should you be a lawyer at all?" Authors Deborah Schneider, a law school graduate who formerly was associate director for career development at Hastings College of the Law, and Gary Belsky

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4. Of course, there are other equally problematic reasons that may lead an individual to law school: parental pressure, the desire for large sums of money, an uncritical acceptance of the lifestyle, and the antics of attorneys as presented in films and television.

5. Behavioral economics studies how people make decisions. For a somewhat skeptical explanation of the field, see Jerry Adler, *Mind Reading*, NEWSWEEK, Aug. 9, 2004, at 38.

believe many people fail to ask the “right questions” in making law their career choice. Through a series of self-assessment exercises, their book aims to guide people to the fundamental question: “Do I know what lawyers do and would I enjoy being one?” (p.5).

¶18 The book is divided into three similarly formatted sections that each address a specific audience. First, readers are presented with a series of “Decision Assessments” that feature common statements such as “everyone says I would make a good lawyer” and “I’m not sure what I want to do and a law degree will keep my options open.” Readers use the assessment worksheet to check off the statements that apply to them, and the authors then address which decision-making traps, known as “Choice Challenges,” may have influenced their decision. For instance, the first statement may reflect confirmation bias, where other people have undue influence over a decision, while the second may reflect decision paralysis caused by too many career choices. The “Choice Challenges” are well defined, easy to understand, and supported by examples familiar to anyone who has faced a career decision. In fact, they are useful to keep in mind when making all types of decisions, not just those related to law school or being an attorney. The decision assessment results are scored, and the score indicates the degree to which one’s decision about attending or remaining in law school or continuing to work as a lawyer is a meritorious one.

¶19 Next, readers are presented with a number of “Skills Preference Exercises” to determine what subject matter they find most interesting, what type of work environment they enjoy, and what skills they enjoy using (e.g., counseling, organizing, problem solving, etc.). The results of these exercises are used to fill in an assessment grid that can then be discussed with a school or professional career counselor or compared against actual tasks performed by lawyers or other professionals.

¶20 Finally, the authors emphasize the need for actual experience, both within and outside the legal field, and make concrete suggestions for obtaining this experience through internships, informational interviews, actual work experience, and shadowing. They suggest talking both to lawyers who practice and those who do not. They also suggest exploring a nonlegal field of interest for comparison’s sake. Ideas on how to identify and contact people in the field are included, as well as a list of jobs that offer exposure to the law (including library assistant in a law firm). For those who might balk at taking time off after college or during law school to explore career options, the authors repeatedly emphasize the time and financial commitment of law school.

¶21 *Should You Really Be a Lawyer?* is also filled with other useful information, including some excellent material on what law school is really like and what it actually costs. A number of suggested books and Web sites are incorporated into the text and are separately listed in the final chapter. Quotes from attorneys (both practicing and nonpracticing) and law students (and former law students) add insight into the topics discussed. Demonstrating their keen intellect, the authors

include law librarianship as a career for those who want to use their law degree in alternate ways.

¶22 The content of *Should You Really Be a Lawyer? The Guide to Smart Career Choices Before, During and After Law School* is superb, but unfortunately it suffers from abysmal copyediting. The acknowledgments section indicates that the two authors wrote individually at a physical distance, and it appears that no one took the time to review the final product. Typographical errors abound and words are intermittently missing. For example, we see “inancial obligations” (p.82) and “don’t want put your competitive” (p.30). Perhaps most annoying, URLs and cross-references, which the authors clearly intended to include, are missing. Ironically, proofreading marks are included on page 136, indicating that, at least in theory, an editor eyeballed the work at some point.

¶23 Also troublesome is the repetition of material between and within chapters. “How to Use This Book” indicates that one “would benefit from reading most if not all of the book, regardless of which particular camp you find yourself in” (p.ii). However, an eerie sense of déjà vu haunts anyone who follows this advice. Examples and advice are repeated (and repeated and repeated) verbatim.<sup>6</sup> Organizing the book in a different manner, perhaps by breaking the common themes out into one or two chapters and then placing the decision assessments appropriate to individual groups in separate chapters, would have removed this endless repetition.

¶24 Despite its editorial flaws, *Should You Really Be a Lawyer? The Guide to Smart Career Choices Before, During and After Law School* offers a solid approach to making tough career decisions. While particularly recommended for those counseling undergraduates regarding law school, it should also be a part of every law school and county law library collection.

¶25 Unlike *Should You Really Be a Lawyer?* which covers only lawyers and would-be lawyers, *Careers for Legal Eagles and Other Law-and-Order Types* aims to expose its readers to nine careers in the legal field: attorney, judge, court staff, paralegal, legal secretary, law enforcement officer, investigator, correctional officer, and security guard. Each specialty is covered in a chapter that discusses working conditions, training required, job outlook, and earnings. In addition, each chapter includes interviews with one or more practitioners who tell “What It’s Really Like.” While this structure would appear to offer a solid overview of each job, in fact, the information provided is superficial at best. For example, “Working Conditions for Judges” informs the reader that “sitting in the same position in the courtroom for long periods of time can be tiring” (p.31); similar offerings include “[m]ost security guards spend considerable time on their feet” (p.133) and “[t]he work of law enforcement can be very dangerous and stressful” (p.87). Job outlook qualifications are also stated only in the most general terms; for example, “expected to grow more slowly than the average for all occupations,” “project to

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6. See pages 205 and 207 for the closest repeating passages.

grow faster,” and “is excellent.” Neither job outlook nor salary is attributed to any source, making it difficult to determine the accuracy of the information. The lack of substantial information negatively impacts the usefulness of this book.

¶26 Certainly the most interesting portion of each chapter is “What It’s Really Like.” As emphasized in *Should You Really Be a Lawyer?* knowing what a job entails is important in assessing the fit. While all of the firsthand accounts included are interesting, it is puzzling why some of the individuals interviewed were selected for inclusion. None work for a law firm, yet two mention the horrors of working in a firm. As many lawyers do start their careers in a law firm, having an associate’s perspective would have been useful. Some of the interviewees no longer even work in the field: Joe Nickell, the undercover investigator interviewed, no longer works for a detective agency but is now a paranormal investigator. Gigi Starnes, a legal secretary, seems to be retired, although her career status is never made clear. Given the number of individuals employed in the fields covered, perhaps disclosure of the criteria used for selecting the interviewees and a more judicious selection of firsthand accounts would have added to the substance of this section.

¶27 Inexplicably, the chapters on attorneys, judges, and law enforcement all include information on those professions in Canada. While Canadians certainly must read books published in the United States and U.S. citizens may move to Canada, so little detail is offered that these sections serve primarily to let the reader know that our northern neighbors do in fact have a legal system.

¶28 *Careers for Legal Eagles and Other Law-and-Order Types* does include an excellent appendix of professional associations for each career included. Full contact information is provided. While certainly providing an overview of some possible careers in the legal arena, *Careers for Legal Eagles* is most suited to a high school audience or others who are just beginning to think of potential careers, and would not be an appropriate addition to any law library.

Casablanca, Maria Isabel, and Gloria Roa Bodin. *Immigration Law for Paralegals*. Durham, N.C.: Carolina Academic Press, 2005. 264p. \$45; \$39 student price.

*Reviewed by Elizabeth Adelman*

¶29 Reading *Immigration Law for Paralegals* transported me back to my law school immigration class and the struggle to navigate the Immigration and Naturalization Act<sup>7</sup> in order to understand the assigned cases. Where was this fabulous book when I needed it? Any new law student or new paralegal would love this handy resource. In the classroom and the law office, this book provides information essential for understanding and completing work assignments.

¶30 The material is presented in a simple format. Each chapter has a purpose that is clearly set forth in the table of contents; the purpose is so clear that the short index is unnecessary. Chapter 1 describes a consultation with an immigration-related client

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7. Pub. L. No. 82-414, 66 Stat. 163 (1952) (codified as amended in scattered sections of 8 U.S.C.).

and the requisite skills for a successful meeting, such as interview skills, procedures for opening files and file organization, and time management. Chapters 2 through 7 explain the different types of visas available. Chapters 8 and 9 deal with asylum standards and appeals before the Administrative Appeals Office, immigration judges, and the Board of Immigration Appeals. Chapter 10 outlines the general requirements for citizenship in the United States, and chapter 11 focuses on immigration issues in the post-9/11 era.

¶31 Each chapter includes citations to applicable laws and regulations, a list of requirements such as documents and forms, conditions of admission spelled out in layperson's terminology, and an appendix with sample forms. *Immigration Law for Paralegals* also includes a glossary and acronyms section. A CD-ROM accompanying the text includes PDF templates of the forms mentioned in each chapter for easy reference and printing. In addition to blank forms, the authors include completed sample forms, in both the CD-ROM and the appendix section of each chapter, which allow legal assistants to see typical answers to basic questions on the form.

¶32 In the introduction, paralegals and other readers are strongly urged to use the information contained in the book under the supervision of an attorney to avoid the unauthorized practice of law. The absence of any reference to the currentness of the information contained in the text, or any guidelines for updating legal information, is troubling to this librarian. The book does not address at all how readers can make sure that they have the most up-to-date information and forms.

¶33 Compared to other books of the same type, this title is fairly current, provides the simplest format, and boasts printable forms on CD-ROM. In addition, the authors, immigration lawyers practicing in Miami, Florida, meet their goal of simplifying the new forms and procedures required by the Homeland Security Act.<sup>8</sup> Although directed to the paralegal audience, *Immigration Law for Paralegals* is also recommended to law firm libraries that handle immigration cases and to academic and public law libraries that actively collect resources in demand by pro se patrons. When used as a supplement to immigration law casebooks, this resource also provides law students with an understanding of procedural processes that accompany the theoretical issues presented in immigration law courses.

Colker, Ruth. *The Disability Pendulum: The First Decade of the Americans with Disabilities Act*. New York: New York University Press, 2005. 244p. \$45.

*Reviewed by Heather A. Phillips*

¶34 The Americans with Disabilities Act (ADA)<sup>9</sup> was signed into law in 1990 by President George H.W. Bush. Hailed by many as a groundbreaking piece of civil rights legislation, its passage was accompanied by an air of congressional

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8. Pub. L. No. 107-296, 116 Stat. 2135 (2002).

9. 42 U.S.C. §§ 12101-12213 (2000).

bipartisanship. It had key legislative sponsors from both political parties, including Senate majority leader Robert Dole (R-Kansas) and Congressman Tony Coelho (D-California), who both have disabilities. It passed both the House of Representatives and the Senate with overwhelming majorities. Nevertheless, *The Disability Pendulum: The First Decade of the Americans with Disabilities Act* argues that since its enactment, the ADA has been weakened by inconsistent judicial decisions and flawed enforcement mechanisms. Author Ruth Colker is the Heck-Faust Memorial Chair in Constitutional Law at Ohio State University and has written extensively on the ADA.<sup>10</sup>

¶35 The book is organized in a straightforward manner, and chapters and subheadings are identified in a succinct, jargon-free manner. Colker introduces her text with a clarity that is especially welcome and presents cogent analysis and systematic compilation of data, as well as detailed anecdotes and readable prose. She examines the legislative history and first ten years of case law under the ADA. Colker's carefully supported and closely reasoned arguments are constantly concerned with the practical implications of the law. Academic law libraries that support civil rights programs may be especially interested in including *The Disability Pendulum* in their collection.

¶36 The book is arranged thematically rather than chronologically. It begins with a discussion of the disability rights movement and the passage of the ADA. It then proceeds to examine judicial decisions concerning ADA's three major sections, and analyzes the trajectory of those decisions. After recounting the legislative history of the ADA, Colker offers an empirical examination of the employment cases brought under Title I.<sup>11</sup> She examines data relating to settlement and trial and appellate court outcomes. Colker also reviews empirical evidence supporting the theory that appellate courts have been hostile to ADA claims and explores the reasons for this, which she contends center on the definition of disability and the use of summary judgment.

¶37 Colker then examines litigation concerning the governmental services dealt with by Title II.<sup>12</sup> She begins with an examination of *Olmstead v. L.C.*<sup>13</sup> and moves on to consider how lower courts have applied the Supreme Court's subsequent rulings in *Garrett*,<sup>14</sup> *Sandoval*,<sup>15</sup> and *Lane*,<sup>16</sup> asserting that broader national protections are needed in the area of public accommodations as lower courts have consistently weakened those originally enumerated by the ADA.

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10. RUTH COLKER & ADAM MILANI, *THE LAW OF DISABILITY DISCRIMINATION* (5th ed. 2005); RUTH COLKER & ADAM MILANI, *THE LAW OF DISABILITY DISCRIMINATION HANDBOOK: STATUTES AND REGULATORY GUIDANCE* (5th ed. 2005); Ruth Colker, *The ADA's Journey Through Congress*, 39 WAKE FOREST L. REV. 1 (2004).

11. 42 U.S.C. §§12111–12117.

12. 42 U.S.C. §§12131–12165.

13. 527 U.S. 581 (1999).

14. *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001).

15. *Alexander v. Sandoval*, 532 U.S. 275 (2001).

16. *Tennessee v. Lane*, 541 U.S. 509 (2004).

¶38 Colker goes on to deal with enforcement issues arising out of Title III,<sup>17</sup> specifically the problems of enforcement arising out of the scheme set up by Congress and the legislative history from which the scheme arose.

¶39 Colker next analyzes the case law. She argues that, despite the initial bipartisan cooperation surrounding the ADA's journey through Congress, the first decade of judicial decisions have not been consistent with congressional intentions; hence the title of the chapter, *Dissing Congress*. As implied by the book's title, Colker asserts that courts have swung between pro-plaintiff and pro-defendant positions, reading the law in an alternately narrow and expansive fashion. Though Colker lambastes courts for inconsistent and varying readings of the law, she does not engage in partisan politics, focusing instead on the factual and practical realities of the decisions.

¶40 Colker's book is not a history of the disability rights movement. Those seeking such a treatment would do better to examine a book such as Joseph P. Shapiro's *No Pity: People with Disabilities Forging a New Civil Rights Movement*.<sup>18</sup> However, for those seeking an examination specifically of the ADA, Colker's book is an excellent choice.

Fischer, Judith D. *Pleasing the Court: Writing Ethical and Effective Briefs*. Durham, N.C.: North Carolina Press, 2005. 112p. \$15.

*Reviewed by Janai Powell Lane*

¶41 *Pleasing the Court: Writing Ethical and Effective Briefs* is an amusing and informative book about legal writing. It addresses such topics as stating the law accurately, providing cogent analysis, writing clearly, avoiding wordiness and legalese, avoiding spelling and typographical errors, citing correctly, following court rules, avoiding plagiarism, and being civil.

¶42 In addition to material on effective and ethical writing techniques, author Judith Fischer also provides helpful examples of mistakes made by attorneys when drafting pleadings for court. In fact, the entire text is organized around these specific and commonly made legal writing mistakes, as well as selected admonishments and sanctions imposed by judges.

¶43 One particularly amusing example discusses an attorney who cut and pasted eighteen pages of text from a book into a brief he submitted to the court. He then had the audacity to request an award of \$16,000 in attorney fees for his work in preparing the brief. The court not only denied the award, but it also reported him to the bar association ethics board, who suspended him from practice for six months (p.49). Other examples cover both malpractice mistakes, such as using an incorrect citation or ignoring court rules, and ethical violations, such as inaccurate recitation of facts.

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17. 42 U.S.C. §§ 12181–12189.

18. JOSEPH P. SHAPIRO, *NO PITY: PEOPLE WITH DISABILITIES FORGING A NEW CIVIL RIGHTS MOVEMENT* (1993).

¶44 All of the chapters are short and well written. One of Fischer's most effective methods is positioning the examples and writing assignments in the appendixes at the end, where they will not break the flow of the main text. Here the reader will find problems like comparing four similar passages to determine which one adequately summarizes and cites its sources, and which constitute inappropriate plagiarism.

¶45 *Pleasing the Court: Writing Ethical and Effective Briefs* is a useful addition to an academic or court law library. It is a quick read and provides practical examples that show the consequences of poor writing. While it will be useful to students and practicing attorneys, it will be most helpful to legal writing professors seeking useful examples and assignments.

MacKinnon, Catharine A. *Women's Lives, Men's Laws*. Cambridge, Mass.; London: Belknap Press of Harvard University Press, 2005. 558p. \$39.95.

*Reviewed by Tammy R. Pettinato*

¶46 In chapter 20 of her new book, *Women's Lives, Men's Laws*, Catherine MacKinnon notes, "Where feminism is based on material reality, liberalism is based on some ideal realm in the head" (p.267). A collection of MacKinnon's most important work since 1980, much of it previously unpublished, *Women's Lives, Men's Laws* is, at heart, about this "material reality." What is it? Who controls it? And most important, what is at stake when it is ignored?

¶47 In a series of essays, transcribed speeches, and law review articles, MacKinnon develops a contextual theory of sex equality that attempts to integrate women's day-to-day experiences into existing legal frameworks. Although the book is divided into two major sections, one focused on developing a new theory of equality that encompasses women's experiences and the other on the interrelationship between sex inequality and speech, the underlying theme of the book is the same in both sections: purportedly objective laws are actually in many ways "masculine," to the continuing detriment of women's rights (p.1). MacKinnon argues that equality law, as it stands, is ill-equipped to deal with women's real life experiences, and the section on speech is in many ways an extended illustration of this point.

¶48 At the center of MacKinnon's argument is the inadequacy of the Aristotelian conception of equality, which underlies much of American equality jurisprudence, in dealing with hierarchy as a source of inequality. Under Aristotle's rubric, as quoted by MacKinnon, "things that are alike should be treated alike, while things that are unlike should be treated unlike in proportion to their unalikehood" (p.80). The problem, as MacKinnon sees it, is that this view forces women to contort their experiences into a form that can be understood from a male perspective, much like pornography, where women contort their bodies and facial expressions into a vision of female sexuality as men would like it to exist. Because of both social and biological factors, women and men do not

occupy the same place in society, but if women fight too hard to have their differences acknowledged, they risk exposing themselves as not “alike” and thus as not deserving of equal treatment. Of course, this begs the question, as MacKinnon notes repeatedly throughout the book, like whom?

¶49 Having deconstructed the old notion of equality, MacKinnon sets about rebuilding a new one. In her vision, equality theory would not start from the assumption that everyone is already equal. Instead, recognizing the hierarchical nature of social inequality, it would aim to affirmatively dismantle existing barriers to equality, many of them rooted in the very difference that under the current jurisprudence, women are asked to deny. MacKinnon cites the law of sexual harassment as a successful example of this theory. She notes the role that women’s actual individual experiences played in turning sexual harassment into a concrete wrong, rather than the “abstract hopscotch” of hypotheticals it had previously been (p.168). Arguing that sexual abuse is “gendered unequal, hierarchically not simply differentially” (p.174), she shows how sexual harassment law was able to encompass sex difference without denying that, even with no hypothetical unharassed male to compare herself to, a woman could be sexually harassed because she was a woman.

¶50 Relating her ideas to speech, MacKinnon tackles pornography as sex inequality, showing how many of the arguments against its regulation depend on theoretical (and masculine) conceptions of harm and free choice that simply do not reflect reality. As MacKinnon says, “Those who say women are in pornography by choice should explain why women who have the fewest choices are in it the most” (p.313). I got the feeling in reading the book that this was the area closest to MacKinnon’s heart, perhaps because she was instrumental, along with her friend and colleague, the late Andrea Dworkin, in designing the civil rights law against pornography that was ultimately found unconstitutional by the seventh circuit,<sup>19</sup> a decision that was reaffirmed by the Supreme Court.<sup>20</sup> Here, MacKinnon is at her most passionate, lucidly and convincingly arguing that real-life harm to women should not be justified as somebody else’s “expression.”

¶51 It is difficult to imagine anyone making these arguments with the clarity, conviction, and discernment of Catharine MacKinnon. The Elizabeth A. Long Professor of Law at the University of Michigan Law School and a frequent visiting professor at many other prestigious institutions, she is arguably the preeminent scholar of women’s rights now working and has written extensively on sex equality theory and jurisprudence.<sup>21</sup> *Women’s Lives, Men’s Laws* is a valuable addition to this body of work, both as an original contribution and as a collection of prior work. It is well organized, well edited, and well argued with extensive endnotes

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19. *Am. Booksellers v. Hudnut*, 771 F.2d 323 (7th Cir. 1985).

20. *Hudnut v. Am. Booksellers*, 475 U.S. 1001 (1986).

21. *E.g.*, CATHARINE A. MACKINNON, *SEX EQUALITY* (2001); CATHARINE A. MACKINNON, *ONLY WORDS* (1993); CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989).

and a thorough index. I recommend it to academic law libraries and to social science libraries with strong collections in women's studies or equality studies. Many of the essays are also appropriate for lay readers, though the book as a whole is scholarly in tone.

Nemeth, Charles P., and Hope I. Haywood. *Learning Legal Research: A How-to Manual*. Upper Saddle River, N.J.: Prentice Hall, 2005. 479p. \$45.

*Reviewed by Eric Brust*

¶52 *Learning Legal Research: A How-to Manual*, “a textbook for those in need of a journey into the world of legal research” (p.xi), introduces the reader to fundamental legal materials in a convenient context. This manual is distinctive because it contains full-page examples of material from many legal sources. All of the basics are covered in five large sections that provide an overview of the legal world and an introduction to citation method, general finding aids, various tertiary sources, a review of primary sources, and a summary of how to update and present material. These sections are broken down into several chapters with exercises and examples of relevant source material. Though primarily directed at those who need to know about the basics of legal research, this manual is specifically designed for those who lack the time or access to a physical law library.

¶53 Nemeth and Haywood's paperbound book is well organized, and the scope of each of the fifteen chapters is clear and concise. The preface indicates that *Learning Legal Research* is meant to be read start to finish, serving as a guide to teach the reader how to navigate through legal sources. However, each chapter is independent, and a researcher may refer to any chapter for a quick review of terms and sources related to a specific topic. Each chapter shares a similar layout and features: bolded key terms, illustrations of relevant sources (including pictures of book bindings and actual examples of text), graphs, maps, and frequent cross-referencing to other related portions. The manual has a detailed index that includes both subjects and figures.

¶54 Although the authors devote an entire separate chapter specifically to computer-assisted legal research, examples from computer sources are incorporated throughout the work. Unlike examples from print resources, the layout of which does not typically change much over time, the computer screen-shots may quickly date this manual.

¶55 While *Learning Legal Research* is not a necessity for a law student with access to a law library, paralegals, law office staff, and law students without access to a law library will appreciate the clear language, helpful exercises, and the many full-page examples of legal sources. This manual is a solid introduction to the world of legal research and is useful for anyone needing a review of legal resources. Easily accessible, *Learning Legal Research: A How-to Manual* offers an opportunity for readers to use legal resources without visiting a law library or turning on a computer.

Rodes, Robert E., Jr. *Classic Problems of Jurisprudence*. Durham, N.C.: Carolina Academic Press, 2005. 162p. \$28.

*Reviewed by Nick Sexton*

¶56 Jurisprudence is variously defined as “the science or philosophy of the law”;<sup>22</sup> “the study of the first principles of the law of nature, the civil law, and the law of nations”;<sup>23</sup> and “the study of the general or fundamental elements of a particular legal system, as opposed to its practical and concrete details.”<sup>24</sup> In his 1990 book on the subject, Richard A. Posner described it as “address[ing] the questions about law that an intelligent layperson of speculative bent—not a lawyer—might think particularly interesting.”<sup>25</sup> Robert Rodes, a law professor at the University of Notre Dame Law School and author of *Classic Problems of Jurisprudence*, defines jurisprudence more generally as “what lawyers, judges, and legislators are about” (p.3).

¶57 In separate chapters, *Classic Problems of Jurisprudence* grapples with such issues as the definition of law itself, the role of morality in law, how law uses language, the rights-remedies problem, and what Rodes calls the instrumental and didactic applications of law. The chapters begin with ten to fifteen pages that explicate the issue at hand, followed by a discussion of ten to fifteen cases (some fictional, some actual) that present the issue in different ways. Each case is also accompanied by at least one attorney brief. A casual browser may conclude that the cases are open-ended and, as such, are intended to stimulate conversations about the subject at hand. To a limited extent, the cases may do that, but Rodes closes each case with his own conclusions. As a result, the reader is left to agree or disagree with Rodes’s analysis, rather than form his or her own opinion, as a judge might, with only the facts at hand.

¶58 In the chapter discussing what the law is, readers are given three “definitional strategies” of the law (p.6): American Legal Realism, represented by Oliver Wendell Holmes, Jr.; English Positivism, represented by H. L. A. Hart; and what Rodes refers to as the “so-called Scandinavian Realists” (p.10), which has, as you might expect, a Swedish founder and Swedish followers, and is represented here by Karl Olivecrona. The aim of this chapter is to show how different interpretations of what the law is—whether it is Holmes’s “prophecies of what the courts will do in fact” (p.6), Hart’s emphasis on examining how “disputes are in fact resolved” (p.9), or Olivecrona’s attention to what public attitudes are—are insufficient. As Rodes says himself, “none of [these definitional strategies] provide us with a definition of law because none of them can stand alone” (p.13). In this chapter’s cases, Rodes determines which definition—Holmes’s, Hart’s, or Olivecrona’s—is the best approach to the facts of that case.

22. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 679 (11th ed. 2005).

23. BLACK’S LAW DICTIONARY 871 (8th ed. 2004).

24. *Id.*

25. RICHARD A. POSNER, THE PROBLEMS OF JURISPRUDENCE 1 (1990).

¶59 A subject with less esoterica, the role of morality in law, better engages readers whose first interest is not jurisprudence. Rodes asks “whether morality is intrinsic to law, a sine qua non of legality, or whether it is only an extrinsic input like economics, physics, or psychology, to be introduced into legal reasoning at discrete points” (p.25). In the opening pages of this chapter, Rodes finds the most convincing apprehension about combining law and morality to be that they are enforced in different ways: “Morality operates directly on the conscience of the individual actor, whereas law is something that people impose on other people” (p.37). However, he concludes that “transcendent moral values are internal to the law at least to the extent that we who serve the law are not abandoning its service when we find it necessary to obey natural rather than positive law, God rather than men, and to call on others to do the same” (p.38). Secular lawyers must come to their own conclusion.

¶60 The chapter on language and meaning discusses the way terms are used in different ways in the law; the chapter on rights and remedies asks whether “the law create[s] rights by adopting remedies, or . . . adopt[s] . . . remedies because the rights already exist” (p.4); and the chapter on instrumental and didactic applications of the law examines two functions or operations of the law that motivate citizens either by use of incentives and disincentives (instrumental) or by commands and prohibitions (didactic).

¶61 In the conclusion, Rodes admits that “the subject of jurisprudence is . . . elusive” because sometimes it is philosophical and sometimes it is practical, but he attempts again to define it by saying that it “is primarily the reflection of thoughtful lawyers on what they are about, what they are trying to accomplish, and how they can accomplish it better” (p.148).

¶62 Regardless of which definition we settle on for jurisprudence, *Classic Problems of Jurisprudence* is difficult to characterize. I could never determine exactly for whom it was written. Is it a textbook with answers? Or is it a book for general readers that doesn’t always lucidly explain its subject matter? Some of Rodes’s cases are interesting, but they are hardly worth the price of the whole book. *Classic Problems of Jurisprudence* may gratify the person who already indulges a vigorous interest in the subject, but it is unlikely to convert the uninitiated.