Keeping Up with New Legal Titles*

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Binder, Sarah A., and Forrest Maltzman. *Advice & Dissent: The Struggle to Shape the Federal Judiciary*. Washington, D.C.: Brookings Institution Press, 2009. 150p. $22.95, paper.

Reviewed by Meg Martin

¶1 Authors Sarah Binder and Forrest Maltzman are professors of political science at George Washington University; Binder also serves as a senior fellow in governance studies at the Brookings Institution. Both scholars have been actively engaged in analyzing Congress and legislative politics since before they wrote their first joint article in 1996.[1] Their new book serves as a primer, explaining the federal judicial selection process as it has developed since the Framers first set the system in place. The book's title—*Advice & Dissent: The Struggle to Shape the Federal Judiciary*—effectively signals Binder and Maltzman's concern that the judicial selection system has broken down. Their first chapter lays out three goals for the book: to reconstruct the history and contemporary practice of advice and consent, to identify the causes of conflict over the makeup of the federal bench in the post-World War II period, and to explore the consequences of battles over appointments to the federal courts. The final chapter appends the authors' proposals for reforming the judicial selection process.

¶2 The book covers a subject area of which I had limited knowledge. I discovered a judicial selection process riddled with discord that impacts the federal judiciary on a daily basis. One of the points in the book that I found most interesting was the authors' assertion that those nominated for federal judgeships also often have no idea how the system works. Many nominees assume that extensive experience and knowledge of the law are all that they need to bring to their confirmation hearings. Again and again, the history of the judicial selection process has demonstrated that being competent is not enough.

¶3 Binder and Maltzman make clear that disagreements have always plagued the judicial selection system, but that the recent upsurge in observed conflict has negatively affected public perception of judges and disrupted the work of the judiciary. They lay to rest the mistaken notion that any increase in conflict over judicial appointments was a result of the Bork nomination in the 1980s. Although confirmation rates for presidential nominations to the U.S. courts of appeals have steeply declined over recent years, the authors found little evidence of statistical differences in nomination trends prior to or after Bork's failed confirmation. The book's fundamental message seems to be that antagonism has surrounded the process of

1. Forrest Maltzman, Lee Sigelman & Sarah Binder, *Leaving Office Feet First: Death in Congress*, 29 PS: Pol. Sci. & Pol. 665 (1996).

judicial selection, in one form or another, throughout U.S. history, but that the courts' increasingly intricate involvement in the interpretation and enforcement of federal law has affected the nature of judicial selection. The authors also note that the two political parties are more strongly and more ideologically opposed today than ever before. Sadly, although Binder and Maltzman make suggestions for changing the current selection system, they heavily discount the potential effectiveness of these suggestions, given the pervasive partisanship currently present within the Senate.

¶4 For the most part, the book delivers its information well. However, to grasp the full impact of the authors' statistical analyses and to fully comprehend their conclusions, readers may need a strong working knowledge of statistical terminology. Often, I was able to appreciate an in-depth analysis only after reading a chapter's conclusion, which summarized the results in a more accessible way. Endnotes, rather than footnotes, are used throughout the book, and this worked well. I found it unnecessary to consult the notes while reading the body of the book, but the information is available for those readers who wish to investigate further. I consulted the index as I wrote this review, and found it reasonably thorough.

¶5 *Advice & Dissent* will not be appropriate for all types of libraries. The state law library here in Wyoming, for instance, will not choose to add it to the collection, since the work is not geared toward supporting the state judiciary. The title may prove valuable for academic libraries, however, as an aid to understanding the history of the selection process. The book will be most suitable for individuals studying this specific aspect of the judiciary or Congressional process, or for anyone who aspires to a federal judicial position.

Blakeslee, Melise R. *Internet Crimes, Torts and Scams: Investigation and Remedies*. New York: Oxford University Press, 2010. 449p. $185.

Reviewed by James P. Kelly, Jr.

¶6 When a crime or scam is committed in the real world, most experienced lawyers know how to investigate it. However, when the crime or scam is committed online, even those lawyers with many years of experience can struggle with gathering evidence or effectively analyzing the offense. Melise Blakeslee, the author of this very useful book, is the founder and president of eCrimetools.com, a web site that gathers together various legal guidance, databases, and technology to assist lawyers in fighting cybercrime.[2] Her book, *Internet Crimes, Torts and Scams: Investigation and Remedies*, encapsulates much of Blakeslee's specialized expertise. It clearly lays out the questions lawyers must ask themselves when facing cyber law challenges and thoroughly explains the tools and techniques needed to pursue and punish online offenders.

¶7 After a short introduction, the book begins in earnest with two chapters offering critical background on overarching Internet and cyber law issues. The first includes an overview of basic investigative techniques for online misdeeds. In the course of this discussion, Blakeslee also explains distinctions between the World

2. eCrimetools.com, About, http://www.ecrimetools.com/#/about (last visited May 31, 2010).

Wide Web and the Internet and defines technical terminology, particularly that regarding domain names. This material is followed by "Jurisdictional Quagmire," a long chapter examining the complex questions of personal jurisdiction raised by online activity. Blakeslee's thorough explanation of the development of the case law, including real-world practice examples and hypothetical scenarios, clarifies both U.S. and international law on this topic.

¶8 Chapter 4 concerns intellectual property, focusing heavily on trademarks and domain names but providing broad coverage of copyright, trade secrets, and counterfeiting as well. In particular, Blakeslee clearly and concisely outlines techniques for determining who runs a particular web site—a useful skill when fighting, for instance, the unauthorized use of trademarks on defamatory web sites or in the metatags or keywords on a competitor's site. Blakeslee also pays special attention to cybersquatting, listing questions that can be used to determine whether the use of a domain name is appropriate, potential remedial causes of action for inappropriate use, and related practice tips.

¶9 The remainder of the book addresses narrower topics specific to online misbehavior. Internet scams can sometimes implicate issues of free expression, and such issues form the focus for chapter five. Here, Blakeslee examines the circumstances under which an Internet service provider may be liable for the offensive online activities of its subscribers. She also reviews online defamation and spam, detailing possible scenarios and the tools lawyers can use to address these wrongs. The book's final two chapters highlight evidentiary considerations. One chapter covers electronic evidence, in particular evidence authentication and the handling of hearsay concerns. In her final chapter, Blakeslee provides advice on choosing expert witnesses, ranging from what credentials to look for to how much to expect an expert to charge. Finally, the text concludes with a brief but detailed discussion of computer forensics.

¶10 Blakeslee emphasizes practicality over theory in *Internet Crimes, Torts and Scams*, though she also explains the history and development behind much of the law. Throughout the text, convenient, offset boxes provide helpful practice tips for readers. Nearly half of the book is devoted not to the text, but to a set of appendixes that provide excellent resources for any lawyer researching cybercrime or tortious behavior online. The appendixes include a list of investigative web sites; a glossary of legal and technical terms; the text of relevant federal and state laws; copies of policies and rules from the Internet Corporation for Assigned Names and Numbers (ICANN), an international regulatory entity that oversees, among other things, the management of IP addresses and domain names; sample litigation materials; and a flowchart outlining the steps for seizing electronic evidence. Finally, an index and a table of cases round out the book.

¶11 As a primarily practical work, *Internet Crimes, Torts and Scams* is more suited for a law firm or public law library than it is for an academic one. Any attorney who prosecutes Internet crimes and scams will want this book close at hand for reference. Lawyers with a more casual interest in the topic will find the book important, interesting, and relevant. As the Internet continues to evolve into an ever-more-essential tool for commerce, communication, and personal interaction, fraudulent and malicious activity in the virtual realm will also continue to grow. All

Internet users have a stake in preventing Internet crime and misconduct and in a system able to respond properly and effectively when online wrongdoing occurs. *Internet Crimes, Torts and Scams* offers interested lawyers and laypersons alike a solid reference with which to understand and address these virtual threats.

Ferreres Comella, Victor. *Constitutional Courts and Democratic Values: A European Perspective*. New Haven, Conn.: Yale University Press, 2009. 256p. $55.

Reviewed by Lisa Junghahn

¶12 *Constitutional Courts and Democratic Values: A European Perspective* is a well-researched and easy-to-read book that discusses the European model of legislative review. In it, author Victor Ferreres Comella explores the historical, social, and political reasons for the creation of centralized constitutional courts. His book also explains variations among the review processes used in eight European countries, providing an analysis of the benefits and disadvantages of various models. In addition, *Constitutional Courts* describes the differences between the European model and the tradition of legislative review in the United States.

¶13 The U.S. system developed out of the seminal Supreme Court decision in *Marbury v. Madison*, in which Chief Justice Marshall argued that the Constitution is supreme law and that courts should have the power to decide cases in accordance with all relevant law, both constitutional and ordinary.[3] When constitutional and legal norms conflict, courts are empowered to disregard legislation for the purposes of resolving a specific (and ordinary) controversy. All judges are therefore empowered to review legislation. This creates a diffuse system of review, one that allows constitutional cases to percolate throughout the judicial system—and through society at large.

¶14 In comparison, European countries have a centralized system of legislative review through special constitutional courts. In Europe, as in the United States, there is a strong appreciation for the primacy of the constitution in ensuring justice, even against acts of parliament. There is also, however, lingering distrust of ordinary judges, many of whom were thought to have perpetuated unjust legislation in the years prior to World War II. Furthermore, European countries follow civil law traditions that give rise to a philosophy of legislative review different from, for example, that in the United States, where separation of powers is rooted in the common law.

¶15 In *Constitutional Courts*, Ferreres Comella deftly explains the complex tension between European constitutional courts, charged with ensuring democratic values (and legal certainty), and democratically elected parliaments, charged with enacting laws. Specifically, he focuses on (1) the jurisdictional reach of constitutional courts, (2) the categories of possible litigants, and (3) the larger political impact of cases. He lays out the foundations for these courts and discusses the varying degrees of activism within various European systems. For example, he provides an analysis of the divergent processes for appointing judges.

3. 5 U.S. (1 Cranch) 137 (1803).

¶16 Ferreres Comella examines the possibility that constitutional courts may no longer be relevant, that they may have outlived their post-World War II value. He suggests, for example, that a centralized model may create tensions between constitutional and civil courts. An artificial dichotomy often arises between constitutional and ordinary cases when constitutional courts lack the flexibility to correct or amend legislation and civil courts lack broad autonomy to interpret legislation. Equally problematic is that the centralized model prevents complicated legal issues from reaching a broad audience. By contrast, in the United States, constitutional issues are litigated in lower and intermediate courts before arriving at the Supreme Court, allowing for a wider discussion of the underlying sociopolitical issues. Thus, constitutional courts may be in danger of undermining their sociopolitical legitimacy.

¶17 Despite their centralized power of review, Ferreres Comella believes that European constitutional courts can continue to preserve democratic values. He recommends, however, that constitutional courts become more active in offering interpretive guidance to ordinary courts. Such flexibility would allow for the preservation of constitutional values without the need to actively invalidate legislation.

¶18 Finally, Ferreres Comella warns that supranational tribunals, like the European Court of Justice and the European Court of Human Rights, may act to undermine the centrality of sovereign constitutional courts. He argues that norms such as democratic principles and legal certainty will be compromised if adjustments are not made. He suggests that one way to harmonize sovereign courts with supranational tribunals is to establish clear standards of review. He also recommends that sovereign courts provide guidance on applicable laws, much as some state supreme courts in the United States use advisory opinions to inform other jurisdictions about the proper interpretation of state laws.

¶19 Overall, *Constitutional Courts* is well organized and thorough. It offers clear examples to explain how different courts operate and to what benefits and disadvantages. To explain complicated theories, Ferreres Comella employs the teachings of notable legal scholars, including those of Bruce Ackerman, Alexander Bickel, Ronald Dworkin, Hans Kelsen, John Rawls, Alexis de Tocqueville, and Adrian Vermeule. A logical and complete index provides access to all of the material.

¶20 This book is appropriate for legal and nonlegal scholars interested in learning more about the history and the process of legislative review in European countries. The work should prove particularly relevant for comparative law scholars seeking a profound understanding of how European constitutional courts protect constitutional democracy and create legal certainty. Law school and other academic libraries will be the most logical collectors of *Constitutional Courts*.

Furr, Jonathan E., et al., eds. *Green Building and Sustainable Development: The Practical Legal Guide*. Chicago: American Bar Association, 2009. 304p. $179.95, paper.

Reviewed by Jim Gernert

¶21 In an era of heightened environmental consciousness, green building practices play an increasingly large role in modern construction. *Green Building and*

Sustainable Design: The Practical Legal Guide provides a helpful overview of the myriad laws, regulations, private organization standards, and incentives that govern environmentally conscious construction. It is one of the few titles to focus on the general legal issues raised by such construction rather than on the technical requirements for green certification.

¶22 *Green Building* is a collection of separately authored chapters divided into six topical sections. Entries in the first section, "Introduction and Background Considerations," lay the groundwork for the more detailed material that follows. The first chapter, on green building history, discusses early attempts at creating standards during the 1970s and 1980s, the formation of the U.S. Green Building Council in 1993, and the Council's development of the familiar Leadership in Energy and Environmental Design (LEED) Green Building Rating System. Chapter 2 focuses on climate change, giving a brief background on the environmental impact of urban development and discussing state and local initiatives to encourage building practices that reduce greenhouse gas emissions. The last chapter in this section introduces the New Urbanism movement, a movement promoting pedestrian-friendly urban development that helps preserve more open space in its natural state.

¶23 The next two sections of the book—"Site Selection" and "Financing, Leasing, and Contracting"—reflect phases in the construction process. Site selection chapters cover brownfields[4] redevelopment and transit-oriented design. The financing and leasing chapters question whether green buildings really are significantly more expensive to build (the alleged *green premium*) and catalog the financial benefits of green construction, such as reduced operating costs and the availability of state and federal incentives. The final "Financing, Leasing and Contracting" chapter provides nuts-and-bolts advice for attorneys working on green projects; topics include contract drafting, project management, and insurance coverage.

¶24 *Green Building* next addresses the unique issues that can arise in residential and governmental settings. Section four, "Residential Context," analyzes provisions in homeowners' association agreements that can help ensure the effectiveness and enforceability of environmental covenants. Using case studies from New York, California, and Michigan, a second chapter in this section addresses the feasibility of green construction in affordable housing projects. Chapters falling within the "Government Context" section discuss government incentive programs, the adoption of the LEED standards by local governments, and legal challenges used to contest such adoption, including arguments for federal or state preemption.

¶25 The work concludes with "Practicing What You Preach: Creating a Sustainable Law Practice," the only chapter in the "Law Firm Perspective" section. Addressing lawyers and their firms directly, the chapter opines: "To be sustainable means that your firm must hold itself accountable for its social, economic, and environmental impacts" (p.260). It then reviews reasons why firms might wish to

4. "The term 'brownfield site' means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant." 42 U.S.C. § 9601(39)(A) (2006).

become more sustainable, such as saving both resources and time. The chapter concludes with a ten-step action plan for creating a more sustainable practice.

¶26 *Green Building* is a concise, clearly written work that will be particularly useful for attorneys working on green construction issues. It provides a great deal of background on federal, state, and local laws and programs that address environmentally conscious development. The book will make an excellent addition to the collections of law school libraries supporting environmental law programs, firm libraries serving environmental law practitioners, and many bar association libraries.

Goldberg, Gerald A. *Practical Lawyering: The Skills You Did Not Learn in Law School*. New York: Kaplan Publishing, 2009. 200p. $24.95.

Reviewed by Elizabeth S. McCurry

¶27 Graduation. Law school ends, and the door to a new career stands open. For the former law student, however, actually stepping through that door may seem daunting, foreign, or downright scary. Upon crossing the threshold, new graduates face new and vastly different challenges. Almost instantly, they will be expected to interview clients, size up opponents, negotiate unfamiliar terms, develop professional relationships, manage stress, and balance their personal lives with their new responsibilities as lawyers, all with little or no guidance. In his book, *Practical Lawyering: The Skills You Did Not Learn in Law School*, Gerald A. Goldberg seeks to help guide unprepared law graduates along a path through this imposing doorway, leading them on from their law school pasts toward new careers in the practice of law.

¶28 Goldberg directs his commentary at new or soon-to-be attorneys. He blames widespread job dissatisfaction among this group on poor preparation for the pressures that accompany the practice of law, a phenomenon he labels the "'I wish I had known' syndrome" (p.xvii). As Goldberg explains, "Law students and young lawyers are not being told about the anxiety and stress that is waiting for them in the profession, and as a result of not being told, they have not developed in school the skill sets necessary to do battle with the 'demons' that await" (p.xvii). Additionally, Goldberg urges the legal academy to impress upon its students the idea that the practice of law is a calling, not just another way to earn a living.

¶29 Goldberg has an impressive resume, filled with publications, speaking engagements, professional memberships, and many years of trial practice. In the twenty-two chapters of *Practical Lawyering,* he draws on this extensive experience to touch upon many different aspects of practicing law. Goldberg is not too shy to reveal some of the more bizarre incidents that have transpired during his career. By sharing such personal anecdotes, he comes across as knowledgeable while retaining an air of humor. His comedic side shines through particularly well in chapter 4, "Assessing Your Opponent," where Goldberg introduces various humorous personality stereotypes exemplified by attorneys—"The Egomaniac" (p.33), "The Rambo" (p.35), "The Liar" (p.35), "The Mope" (p.38), "The Hollywood Movie Star" (p.40), and "Everyone's Friend" (p.41). Cautioning readers about "The Mope," for example, Goldberg warns, "Don't be fooled by the cheap wrinkled suit, frayed shirt collar,

and scuffed shoes—yes, these are telltale signs of low self-esteem, but don't let your guard down. Never underestimate this opponent" (p.38). Goldberg regularly takes on this mentoring role, offering extremely valuable, learn-from-my-mistakes advice.

¶30 *Practical Lawyering*'s layout is excellent, and it is easy for readers to navigate from one topic to the next. At times, though, Goldberg's discussion of practicalities is rushed. The longest chapter in the book, "Client Contact," is merely eighteen pages long; other chapters range in length from six to ten pages. With twenty-two different topics crammed into two hundred pages, readers will sometimes be left wanting more. Goldberg's stories are fascinating; however, they were few and far between. Because Goldberg is a seasoned and well-respected attorney, some readers may expect more on particular topics than he actually provides. Most, however, will finish the book feeling positive and resolved.

¶31 In aiming his book primarily at an audience immediately out of law school, Goldberg misses the mark. To be truly helpful for new professionals, this book should have had more depth and provided more detailed direction. The book is probably better suited for attorneys looking to make a lateral move or to pursue a new career path. Goldberg himself made a career switch from government work to private practice, and he artfully describes the peaks and valleys of each experience. Attorneys-in-transition will also appreciate the book's discussions of public interest work, alternative career options, and small-town legal practice. Recent law school graduates may prefer to stick with the leading resource for novice attorneys, Kimm Alayne Walton's *What Law School Doesn't Teach You—But You Really Need to Know*.[5]

¶32 Despite some holes in its coverage, *Practical Lawyering* will still add value to legal collections in both academic and law firm libraries. In particular, law librarians who have not practiced law should pick up this title, take a step back from their library duties, and learn a bit more about the realities of being a lawyer. By and large, *Practical Lawyering* provides concise and straightforward advice on practicing law. The book does not always comprehensively consider its topics, but hopefully this leaves Goldberg ample opportunity to provide further guidance in future titles.

Kwall, Roberta Rosenthal. *The Soul of Creativity: Forging a Moral Rights Law for the United States*. Stanford, Calif.: Stanford University Press, 2010. 247p. $70.

Reviewed by Alicia Brillon

¶33 In the vocabulary of copyright law, the term *moral rights* refers to those noneconomic rights held by authors of creative works that protect the authors and their reputations and allow the authors to prevent the mutilation or distortion of their works. Originating in France, the concept of moral rights is largely ignored by U.S. law.[6] Indeed, many books on the topic of copyright do not even address this

5. Kimm Alayne Walton, What Law School Doesn't Teach You—But You Really Need to Know (2000).

6. This is true notwithstanding the extremely limited application of certain moral rights to specific works of visual art under the Visual Artists Rights Act of 1990, Pub. L. 101-650, tit. VI, 104 Stat. 5128 (codified as amended in scattered sections of 17 U.S.C.).

sub-issue; *The Soul of Creativity: Forging a Moral Rights Law for the United States* is an exception. In it, author Roberta Kwall, founding director of the Center for Intellectual Property Law and Information Technology at DePaul University, delves deeply into the system of moral rights and investigates how these rights might be integrated into the U.S. copyright scheme.

¶34 *The Soul of Creativity* consists of an introduction, ten substantive chapters, an extensive section of notes, and an index. In the introduction, Kwall sets out the book's foundational proposition—that the U.S. system of copyright protection is based on economic incentives, disregarding the creative impulses that often lead artists to produce their works in the first place. Kwall asserts that copyright law should account not only for the economics involved in the creative process but also for other aspects of artists' motivations. By ignoring these noneconomic aspects, current U.S. law fails to safeguard an author's work from such wrongs as misattribution, lack of attribution, or even mutilation. Ultimately, Kwall hopes to open a dialogue on how such safeguards can be implemented without dismantling the existing structure of U.S. copyright law.

¶35 In each of her first nine chapters, Kwall discusses one unique topic under the general subject of moral rights. With subjects ranging from how other countries treat moral rights to the challenges that authors face in asserting moral rights, Kwall provides her readers with a solid background for understanding the issues involved. To do this, she combines perspectives from a wide variety of fields, including politics, art, history, literature, psychology, philosophy, and theology. Kwall looks closely at the authorship process from each of these many perspectives and finds that artists' motives for creativity and innovation often have nothing to do with the economic incentives so highly valued in U.S. copyright law.

¶36 The book's final chapter is devoted to Kwall's proposal for more fully integrating moral rights into United States law. She addresses the possible scope of coverage; rights of integrity and attribution, including anonymous and pseudonymous creation; remedies; fair use; and length of protection. At each step, Kwall carefully considers how her proposals would interact or conflict with existing law, including both the Visual Artists Rights Act[7] and the Berne Convention.[8]

¶37 *The Soul of Creativity* is a highly theoretical work with a narrow focus. Readers unfamiliar with copyright law may find themselves a bit adrift at first. However, Kwall adeptly builds on various nuances of moral rights from one chapter to the next. By the end of the book, even those new to the subject of moral rights should have a firm grasp of the basics—and likely of the more complicated aspects as well. Readers with an intellectual property background, especially those who practice copyright law, will find *The Soul of Creativity* a particularly intriguing book. Although I worked for nine years as an intellectual property attorney and was heavily involved with copyright issues pertaining to photographers in both the United States and Europe, I never seriously considered why U.S. and European law varied so much on this topic. After reading Kwall's book, I better understand the

7. *Id.*

8. Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, last amended Sept. 28, 1979, S. Treaty Doc. No. 99-27 (1986), 1161 U.N.T.S. 3.

underpinnings of moral rights and appreciate how greater legal recognition for these rights in the United States could increase the productivity and satisfaction of the nation's artists.

¶38 *The Soul of Creativity* would be a welcome addition to any intellectual property firm's library. I also highly recommend the title for all academic law libraries, as their faculty and students will find it a unique and valuable addition to the more standard copyright fare.

Nunziato, Dawn C. *Virtual Freedom: Net Neutrality and Free Speech in the Internet Age*. Stanford, Calif.: Stanford University Press, 2009. 194p. $65.

Reviewed by Pat Newcombe

¶39 The Internet is often seen as a victory for free speech—a vast, open, democratic forum for free-wheeling expression and debate. Given this reputation, it is surprising—and, according to author Dawn Nunziato, problematic—to learn that a smattering of powerful entities control most Internet traffic and that these private players are not subject to the limitations of the First Amendment. In *Virtual Freedom: Net Neutrality and Free Speech in the Internet Age*, Nunziato, professor of law at George Washington University Law School, provides a well-written, insightful work that discusses private censorship of online communication and that proffers wise solutions designed to protect free speech in the Internet age.

¶40 In her introduction to *Virtual Freedom*, Nunziato provides chilling examples of broadband providers and major search engines limiting online speech—often political speech, at that—by blocking e-mails, censoring cablecasts, and suppressing search results. Because private entities rather than governmental bodies engage in these acts of censorship, Nunziato explains, the restrictions do not implicate the First Amendment under "the prevailing understanding of the free speech guarantee" (p.xiv). This troubling situation stems from a shift in the judiciary's understanding of the free speech guarantee from the affirmative conception in place thirty years ago to the current, negative conception. This new, negative conception of the First Amendment asserts that the state's role is to permit the development of forums for expression unregulated by the state, thus preserving a competitive marketplace for free speech. An affirmative conception contends that the state "is justified in intervening in marketplaces for speech to achieve important societal goals . . . by prohibiting discrimination by powerful conduits of expression" (p.24). When the Supreme Court followed an affirmative conception of the First Amendment, it "imposed obligations on public *and powerful private* conduits of speech to facilitate individuals' right to speak without discrimination" (p.xv), opening private conduits of speech to First Amendment responsibilities. Now that the Supreme Court has moved to a negative conception of the First Amendment, broadband providers and search engines are largely unconstrained in their freedom to control expression. Currently, the free speech rights of individuals are triggered solely when government censorship is involved.

¶41 Due to recent FCC policy changes, the same broadband providers exempt from First Amendment restrictions are also not subject to regulation as common carriers. Historically, telecommunication providers, such as telephone and tele-

graph companies, were bound by common carriage regulations that prohibited them from discriminating against speech on the basis of its content. Until recently, these regulations also applied to Internet service providers, but since 2002, the Federal Communications Commission has undertaken a progressive removal of these obligations from Internet providers, influenced by a negative interpretation of the First Amendment. The Supreme Court signaled its support of this move in its 2005 decision in *National Cable & Telecommunications Ass'n v. Brand X Internet Services*.[9]

¶42 Nunziato offers a fresh, unique viewpoint on escaping the chokehold on free speech currently held by Internet conduits. Her preferred approach is judicial relief: she argues that the Supreme Court should restore an affirmative conception of the First Amendment and enforce it in the Internet world. If this proves impossible, Nunziato urges Congress to intervene and enact legislation requiring the FCC to apply common-carrier obligations to broadband providers. Nunziato also suggests that Congress require Internet conduits to inform their consumers whenever the conduits restrict online content and to specify the justification for any restrictions. This would allow an essential check by the marketplace on such activity and safeguard against content-based discrimination. Lastly, Nunziato calls for statutes that would prevent the predominant search engines, those that wield "enormous, unchecked power" over online speech, from "deliberately manipulating search results" (p.156) in a discriminatory fashion.

¶43 The arguments Nunziato presents in this book are clear, well supported, and forceful. She examines the theories of Justice Oliver Wendell Holmes, John Stuart Mill, Cass Sunstein, Alexander Meiklejohn, and Owen Fiss, among others. She discusses in detail five germane doctrines—state action doctrine, public forum doctrine, fairness doctrine, must-carry regulations, and common carriage doctrine—each of which compels dominant private regulators of speech to promote communication and not to discriminate against it. To bolster her arguments, Nunziato carefully reviews pertinent case law, most of which pre-dates the Internet age. She then discusses legal rulings directly tied to the Internet and places them in the same analytical framework.

¶44 *Virtual Freedom* is an important, compelling book that will not only be of value to readers concerned with the First Amendment and Internet law, but will also appeal to anyone who cares about Internet freedom. It would be an excellent addition to law, academic, and larger public libraries.

Roth, Randolph. *American Homicide*. Cambridge, Mass.: Harvard University Press, 2009. 672p. $45.

Reviewed by Paul D. Venard

¶45 The United States is currently the most homicidal nation in the Western world. Indeed, homicide has thrived in America since the initial period of European colonization. Yet, homicide rates have been far from consistent—rates have varied

9. 545 U.S. 967 (2005) (upholding an administrative ruling that cable Internet providers were exempt from common-carrier regulations).

by geographic region, race, and class throughout U.S. history. In *American Homicide*, Randolph Roth attempts to demonstrate a relationship between such variances and the nation's changing social and political circumstances. Roth's analysis yields the intriguing theory that homicide rates are actually determined by such remote factors as the faith citizens have in their government, the pride they have in their nation, and the kinship they feel with their communities.

¶46 Roth defines homicide as any death resulting from willful assault, excluding those occurring during open warfare. He concentrates his study on adult homicides, contending that homicide rates among those aged fifteen years or younger follow different patterns that he plans to address in a future volume. In the present work, Roth classifies adult homicides using a system based on race and geography, and his analysis proceeds sequentially to examine homicide rates in various time periods and locales.

¶47 Roth offers a particularly interesting analysis of the changes in homicide rates that accompanied the progression of African Americans from slavery to freedom. As slaves, African Americans tended to possess a strong feeling of community, each slave sharing common struggles and facing similar conditions. However, once African Americans became free, this commonality disappeared as individuals found themselves competing for limited job openings and similar opportunities. These circumstances, Roth posits, help explain the substantial increase in the homicide rate among African Americans that followed emancipation.

¶48 Roth also analyzes geographic variations in homicide rates. In one example, he examines homicide rates in the North and South following the War of 1812. Northerners, during this time period, enjoyed increasing opportunities for self-employment and found race, religion, and class to pose less substantial barriers to personal growth than had been true in the past. A new sense of patriotism arose in the North, as people grew more satisfied with their government. In the South, though, there was growing distrust of the government. The failure of efforts to free slaves upset many African Americans, while whites feared potential slave rebellions. As a consequence, Roth claims, the North experienced substantial decreases in homicide rates, and Southern homicide rates grew higher.

¶49 Roth attempted to be as thorough as possible in his research for this project—he mined a wealth of data from census bureaus, health departments, law enforcement agencies, old newspapers, and court documents. Despite such efforts, if there is a flaw to this book, it is a lack of sufficient data. Gaps in the data lead Roth himself to recognize the need for further research. Using the data that were available, however, Roth presents impressively detailed statistical analyses and comparisons. Admittedly, much of the statistical analysis in *American Homicide* was beyond my basic education in statistics, but the book's charts and text help to convey the message behind the numbers. Roth even goes so far as to supplement his already voluminous text—the appendix alone is over one hundred pages—by posting additional information regarding his methods and data online at Ohio State University's Criminal Justice Research Center web site.[10]

10. Criminal Justice Research Center, Historical Violence Database, http://cjrc.osu.edu/researchprojects/hvd/AHsup.html (last visited Apr. 30, 2010).

¶50 Although this review has focused largely on the book's use of data, *American Homicide* is not solely about numbers and statistics. Roth also uses vivid, narrative descriptions of actual events to back up his assertions. Often these descriptions are rather shocking. Roth's very purpose, however, is to convey the shocking nature of the events. Through such illustrations, Roth provides historical context and shows how societal attitudes and perceptions correlate to changes in homicide rates. For instance, Roth describes the nineteenth-century murder of Joseph Harrison, killed by Turner Horton in revenge for Horton's public humiliation. One of Harrison's slaves first publicly insulted Horton by requesting the repayment of a debt. When Horton responded by beating the slave, Harrison interceded on the slave's behalf and added to Horton's humiliation by soundly and publicly thrashing Horton with a stick. Horton replied by later shooting Harrison through the heart during a church service. Roth maintains that African Americans and nonslaveholding whites during this time period lacked faith in government, leaving people like Horton particularly concerned with issues of status and saving face. According to Roth, the resulting tension and anxiety made it more likely that individuals would turn to violence and murder than would have been true had they enjoyed a greater sense of nationalism and community.

¶51 Overall, *American Homicide* is an interesting book, though perhaps a difficult fit for law library collections. Although the subject of homicide is obviously important as a legal issue, this book examines homicide primarily from a historical perspective and does not analyze the substantive law governing the crime. Academic law libraries, the law libraries for which the work is most suited, might select it as a "law-related" title suitable for inclusion in a legal history or popular reading collection. No matter where the book finds a home, it is certainly an eye-opening examination of the history of homicide in the United States. It should be read by anyone interested in the history of the United States as a homicidal nation.

Vogel, Brenda. *The Prison Library Primer: A Program for the Twenty-First Century*. Lanham, Md.: Scarecrow Press, Inc., 2009. 272p. $60.

Reviewed by Carol A. Watson

¶52 Brenda Vogel's *The Prison Library Primer: A Program for the Twenty-First Century* is a well-organized, thorough, and practical guide to administering libraries in correctional facilities. Vogel, a veteran librarian with more than twenty-five years of first-hand experience as the coordinator for the Maryland Correctional Education Libraries, has written extensively on the topic of prison libraries. While her knowledge and experience lend credence to *The Prison Library Primer*'s content, Vogel's unwavering commitment to an often-overlooked community of library patrons makes the book truly inspiring: "How should library service to people living in prisons and jails differ from library service to people who are not convicted of a crime and do not live in restricted confinement? Let me count the ways. There aren't any!" (p.18).

¶53 *The Prison Library Primer* covers a range of diverse topics relating to the delivery of basic library services in a penal institution, a range that runs from collection development to technology, contraband, and library facilities. The book

begins with background on the history of library outreach to prisoners since the end of the eighteenth century, and segues into a general discussion on how to deliver library service within an institution designed primarily to deprive and isolate its inhabitants. Throughout the *Primer*, Vogel emphasizes that good library service is often at odds with the punitive goals of the correctional facility. In a chapter entitled "Learning to Become a Correctional Librarian," she describes in some detail the two opposing worlds found in prisons—the prison authority and the inmate society—and provides sage advice on how to operate a successful library within an environment containing cultures in such stark conflict. Vogel warns that the librarian's position, sandwiched within this clash of cultures, can lead to feelings of isolation. To combat this isolation and foster resolve, she recommends that prison librarians network locally and nationally with other professionals, organizations, and community groups. Elsewhere, Vogel offers examples of how librarians can provide critical information for prisoners without compromising the safety and security concerns that form the top priorities for the prison authority. For instance, she describes how to prepare reentry manuals and offers an example of an information-skills training curriculum, both of which are designed to help inmates transition back into the community.

¶54 Law library topics provide the specific focus for two chapters in *The Prison Library Primer*. The first, "A Prisoner's Locus Sanctum: The Law Library," reviews current legislation and judicial decisions bearing on prisoners' access to legal materials. Vogel suggests techniques that can help correctional librarians, even those with no legal training, establish legal reference services and select legal materials. She describes strategies and resources that correctional librarians can use to enhance their legal reference expertise, and she proposes creative solutions for assisting prisoners with legal research needs. One interesting solution calls for the preparation of legal information packets that contain an overview of a selected topic—such as search and seizure, self-incrimination, or eyewitness identification—as well as the full text of relevant cases, code sections, and other primary legal materials. A sample legal information packet can be found in appendix B of the *Primer.*

¶55 The second chapter related to law librarianship is a reprint of an article written by Evan R. Seamone and originally published in the *Yale Law and Policy Review*.[11] In the article, Seamone advocates establishing a formal process to certify jailhouse lawyers. More immediately relevant, perhaps, is the insight that his article provides into one of the most frequent users of the correctional library—the jailhouse lawyer. Seamone describes both the characteristics of a jailhouse lawyer and the useful services such a person performs.

¶56 *The Prison Library Primer* offers numerous resources for obtaining further information about prison libraries and librarianship. Each chapter is annotated with ample endnotes, and an entire chapter is devoted to lists of recommended readings, both in print and online, that address jail libraries, federal prisons, pris-

11. Evan R. Seamone, Fahrenheit 451 *on Cell Block D: A Bar Examination to Safeguard America's Jailhouse Lawyers from the Post-*Lewis *Blaze Consuming Their Law Libraries*, 24 YALE L. & POL'Y REV. 91 (2006).

oners' rights, prisoner re-entry, and technology, among other topics. A separate chapter identifies various advocacy resources for noncorrectional librarians, highlighting Vogel's strong belief that all librarians, not just prison librarians, should advocate for prisoners' rights.

¶57 The potential audience for this book will consist primarily of on-the-job correctional librarians and librarians contemplating work in a prison library, but correctional administrators will find Vogel's advice to be useful as well. In addition, all librarians with an interest in human rights will benefit from reading this text. *The Prison Library Primer* is recommended for those libraries maintaining either criminal justice or information science collections.

Witte, John, Jr. *The Sins of the Fathers: The Law and Theology of Illegitimacy Reconsidered*. New York: Cambridge University Press, 2009. 211p. $28.

Reviewed by SaraJean Petite

¶58 John Witte, Jr., is professor of law and director of the Center for the Study of Law and Religion at Emory University. His newly published book, *The Sins of the Fathers: The Law and Theology of Illegitimacy Reconsidered*, is "a brief historical essay . . . intended to provoke new thinking about the historical doctrine of illegitimacy . . . [and] to retrace what warrants there are for and against illegitimacy doctrine in Scripture and tradition" (p.xii). Witte meets these goals in a book that is thought-provoking, yet remains accessible to readers who lack an extensive legal background.

¶59 In *The Sins of the Fathers*, Witte traces the historical legal treatment of illegitimate children in various times and places, beginning with the cultures that birthed early Western legal traditions. Chapter 1 explores illegitimacy in early Judaism and Christianity. Talmudic rabbis and the Church Fathers generally "rejected the notion of visiting the sins of the fathers upon children" (p.27), and the law reflected this predisposition in its narrow definition of illegitimacy and limited restrictions on children of illegitimate birth. Roman law, discussed in chapter 2, defined illegitimacy more broadly, but also allowed parents to legitimize certain illegitimate children. In particular, Roman law permitted the legitimization of *natural illegitimates*, children resulting from premarital sex or a husband's infidelity—considered "simple fornication" (p.53). It did not, however, allow the legitimization of *spurious illegitimates*, those children born as a result of more serious sexual sins, such as incest, interreligious marriage, or adultery—defined solely as "sexual intercourse between a married woman and another man" (p.53). Moreover, Roman law imposed substantial legal restrictions on spurious illegitimates: such children received neither an inheritance nor support from their families.

¶60 Medieval canon law, the focus of chapter 3, extended the classification of illegitimate children seen in Roman law. Canon law employed a hierarchical classification system based on "the severity of the sexual sin of [the] parents" (p.89). Witte describes five degrees of illegitimacy, each with separate legal remedies and escalating degrees of stigma. The classes ranged from *natural illegitimates*, children whose parents were permitted to marry each other under canon law, to *sacrilegious bastards*, children born to members of the clergy who had obviously violated their

vows of celibacy. Some illegitimate children could be legitimated, but for others, the options for escaping strict legal restrictions were limited to suing their parents for support (members of the clergy could not be sued); entering a monastic order and a "life of mortification" (p.98);[12] or obtaining a papal dispensation, which could enable the illegitimate child to hold a monastic or clerical position.

¶61 The remaining chapters cover the development of the Anglo-American law of illegitimacy. The treatment of illegitimacy under early English common law, the focus of chapter 4, reflected a significant change of perspective from that of medieval canon law. "Common lawyers' concerns on the subject of illegitimacy were more material than moral. They were concerned with title to the family's property, not purity of the child's pedigree" (p.109). Ultimately, lawyers wanted clarity on questions of support and inheritance, and the law developed to provide that clarity with a straightforward understanding of a legitimate child. Specifically, a child was considered legitimate and an heir to his father's estate if the child's parents were married when the child was born. Illegitimate children could not be legitimated. The fifth chapter takes up U.S. law, which came to reform common law to "favor . . . the rights of the child" (p.163). Witte reports that while the United States first followed traditional common law practices, it eventually abandoned strictures that discriminated against those of illegitimate birth. After U.S. law evolved, England and several other European countries adopted similar changes.

¶62 *The Sins of the Fathers* is an easy read, with plenty of citation footnotes, explanatory notes, and related material. The book includes a nineteen-page bibliography, an index to biblical sources, and a useful subject index, all situated at the end of the book. As a bibliographic access librarian, I was pleased to see that some sub-topics are listed as main topics elsewhere in the index. For example, the index contains entries for both "American law, adulterous paramours" and "Adulterous paramours, American law."

¶63 *The Sins of the Fathers* would be a solid addition to the collection of any academic law library or to legal collections found in general academic libraries or public libraries with a scholarly patron base. This book is available in both paperback and hardcover editions. The paperback edition held up well despite my throwing it in a book bag and using pencils as bookmarks. Given this durability and the additional cost of the glue-bound, hardcover edition, the most cost-effective choice for libraries may be the paperback version.

12. Quoting Gilbert Joseph McDevitt, Legitimacy and Legitimation: An Historical Synopsis and Commentary 56–58 (1941).