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Diversity: How Is AALL Doing?*

James M. Donovan**

This article describes the approaches to workplace diversity available to professional organizations, including the American Association of Law Libraries. The data demonstrate that if reflective diversity is the goal, AALL is farther behind in 2014 than it was in 2000. The article also inquires as to what extent AALL's poor performance arises out of features of law librarianship, or is symptomatic of a society-wide lack of a pool of suitable candidates.

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Introduction

¶1 Our society's failure to fully include its minority citizens does not go unnoticed. Major universities face student protests demanding that their schools show

* © James M. Donovan, 2016. This is a revised version of the winning entry in the open division of the 2016 AALL/LexisNexis Call for Papers Competition.

** Library Director and James and Mary Lassiter Associate Professor of Law, University of Kentucky College of Law.

more sensitivity to minority students. As part of this trend, Yale University committed \$50 million toward faculty diversification after a furor began with an e-mail suggesting that students avoid racially insensitive Halloween costumes.¹ Princeton University agreed to consider removing references to President Woodrow Wilson due to his racist beliefs,² while the president of the University of Missouri was compelled to resign in response to student demands, including a strike by the football team, arising from his perceived insensitivity to racism on campus.³ The University of Kentucky draped over a renowned mural from the 1930s because it depicted blacks in subservient roles.⁴

¶2 The customarily sedate confines of the academic law library have not been untouched. A former librarian with the South Texas College of Law sued on the grounds of racial and gender discrimination.⁵ The public facts are unclear on the racial and gender motivations of the alleged harassment, but the African American plaintiff's attorney claimed that other black employees "also experienced discrimination before retiring from the school."⁶

¶3 These outbursts are ample proof that despite gains on many fronts, social progress toward full inclusion of minorities has far to go. These public frustrations create a timely opening for the American Association of Law Libraries (AALL) to assess its own record on this vitally important matter.

¶4 Inclusion and promotion of racial and ethnic minorities⁷ within law librarianship has been an ongoing concern as evidenced not only in a healthy list of

1. Conor Friedersdorf, *The New Intolerance of Student Activism*, ATLANTIC (Nov. 9, 2015), <http://www.theatlantic.com/politics/archive/2015/11/the-new-intolerance-of-student-activism-at-yale/414810/> [https://perma.cc/JC3Y-ENDN].

2. Gabriel Fisher, *Princeton and the Fight over Woodrow Wilson's Legacy*, NEW YORKER (Nov. 25, 2015), <http://www.newyorker.com/news/news-desk/princeton-and-the-fight-over-woodrow-wilsons-legacy> [https://perma.cc/ECM5-ZPFA].

3. John Eligon & Richard Pérez-Peña, *Campus Protests at Missouri Protests Spur a Day of Change*, N.Y. TIMES, Nov. 10, 2015, at A1.

4. James Higdon & Nick Anderson, *U. of Kentucky Shrouds a 1934 Mural that Depicts African American Slaves*, WASH. POST (Dec. 1, 2015), <https://www.washingtonpost.com/news/grade-point/wp/2015/12/01/u-of-kentucky-shrouds-a-1934-mural-that-depicts-african-american-slaves/> [https://perma.cc/JZ2B-KD2V].

5. Karen Sloan, *Librarian Sues South Texas College of Law for Racial Discrimination*, NAT. L.J. ONLINE (Jan. 22, 2016) (available on LexisNexis).

6. *Id.*

7. The present discussion limits its focus to racial and ethnic minorities. Two points should be clarified. First, although some may combine race and ethnicity into a single demographic variable, these terms refer to conceptually distinct ideas and present different challenges. Race denotes supposed biological differences; ethnicity connotes a cultural background. Your race is usually determined by who your parents are, your ethnicity by how they raised you. Considerable overlap exists between the two, but beyond a certain point, eliding them into a single construct obstructs the goal of increasing actual diversity as opposed to the mere appearance of diversity.

The second point is that race and ethnicity do not exhaust the full range of championed categories. Those taking a broader perspective will argue for diversity of economic status, geographical origin, political philosophy, sex, religion, sexual orientation, as well as other demographic variables. Which are the dimensions to be prioritized by diversification projects, and for what reasons? Any list reflects the priorities of its time. If the original concerns addressed the prior discriminations against certain religions, then race, and later sex rose to the attention of the public in response to broader social debates and new ethical standards, we should expect the list of diversity-eligible criteria to expand. As Lorna Peterson warns, however, a growing list of categories to pay attention to can detract from the larger purpose of creating equity:

articles⁸ but also by the decision of the editor of *Law Library Journal* to devote regular column space to this topic.⁹ Despite many pages rehearsing the concerns, it is not clear that either the problems or strategies to solve them are any better understood. Even when surveying the same data, writers reach contrary conclusions. Alyssa Thurston finds that there has been “little change to show for decades of efforts and initiatives” by AALL,¹⁰ while Ron Wheeler in response more optimistically suggests that those same efforts “show positive results.”¹¹ Although observers may agree on the statistical changes in group representations, the meaning of those changes—whether the numbers reflect little or much progress—depends how one frames the underlying goals and benchmarks for improvement.

¶5 The most direct method to resolve this conflict would be to look at AALL totals and the best numbers for minority membership. That task, however, is surprisingly difficult. For many years AALL, like most professional associations,¹² collected and published demographic data on its membership. This information appeared biennially in the *Salary Survey*. For unclear reasons AALL ceased to collect this information after the 2005 survey, creating “a gap between what is acknowledged as an issue of concern, and what is being done about it.”¹³ The fallout of that

If policy language makes no distinction among differences, the legacy of segregation, discrimination, and oppression can be denied. If “quirkiness” (a term heard in workshops), knitting skills, and being African American are all measures of diversity, social injustice becomes an individual, not an institutional, matter. Institutions can more easily maintain the status quo, because the well-intended multiculturalists have diluted racism into a happy-faced discussion of difference.

Lorna Peterson, *Multiculturalism: Affirmative or Negative Action?*, LIBR. J., July 1995, at 30, 31. In her summary, the diversity project should be limited “to women, gays, the disabled, Asian Americans, Hispanics, Native Americans, and African Americans.” *Id.* at 30.

8. Notable examples include Albert Brecht & Robin Mills, *Minorities Employed in Law Libraries*, 71 LAW LIBR. J. 283 (1978); Yvonne J. Chandler, *Why Is Diversity Important for Law Librarianship?*, 90 LAW LIBR. J. 545 (1998); Teresa Y. Neely, *Diversity in Conflict*, 90 LAW LIBR. J. 587 (1998); and Joyce A. McCray Pearson, *Diversity in AALL—It Does Exist*, 90 LAW LIBR. J. 541 (1998). For a broader perspective, Raquel J. Gabriel offers a two-part bibliography covering readings outside *Law Library Journal*. Raquel J. Gabriel, *Selected Readings on Diversity Issues* (pts. 1 & 2), 105 LAW LIBR. J. 405, 567, 2013 LAW LIBR. J. 21, 31. Another bibliography highlights earlier writings beginning in 1990. Vicente E. Garces, *The Recruitment of Minority Librarians: A Bibliography of the Literature, 1990–1998*, 90 LAW LIBR. J. 603 (1998).

9. Raquel J. Gabriel, *Diversity in the Profession*, 102 LAW LIBR. J. 147, 147, 2010 LAW LIBR. J. 8 n* (“‘Diversity Dialogues’ is a new feature of *Law Library Journal*”).

10. Alyssa Thurston, *Addressing the “Emerging Majority”: Racial and Ethnic Diversity in Law Librarianship in the Twenty-First Century*, 104 LAW LIBR. J. 359, 381, 2012 LAW LIBR. J. 27, ¶ 61; see also Gabriel, *supra* note 9, at 151–52, ¶ 17:

Why is that that after years of awareness, and perhaps even limited acceptance of diversity as a goal in many aspects of society, we find ourselves stuck in a time warp when trying to move forward? What is it about diversity that feels as if we are continually repeating the same talking points with no significant movement?

The lack of progress from diversity efforts seems to be characteristic of the library profession more broadly. “In spite of intense recruitment initiatives the library and information profession continues to be one for which the modal entrant is a White female in her mid-thirties who majored in English, education or history.” Kathleen M. Heim & William E. Moen, *Diversification of the Library and Information Science Entry Pool: Issues from the LISSADA Survey Report*, 16 J. LIBR. ADMIN. 95, 102 (1992).

11. Ronald Wheeler, *Let’s Talk About Race*, 106 LAW LIBR. J. 267, 273, 2014 LAW LIBR. J. 16, ¶ 18.

12. As a spot check, I looked to see whether one of the other professional associations of which I am a member made its demographic statistics available. While the American Anthropological Association (AAA) does not presently include them on its website, they were immediately provided by the AAA’s executive director.

13. Gabriel, *supra* note 9, at 151, ¶ 15.

decision is that we must now rely on information that is more current but less complete and certainly less reliable.

¶6 At present the only descriptive information on law librarians comes from analyzing the listings contained in the self-reported *Minority Law Librarian Directory*.¹⁴ This method unquestionably undercounts the presence of minorities within AALL. As recorded in table 1,¹⁵ the numbers of minorities from the *Salary Survey* average about fourteen percent, all higher than those derived through the *Directory*. If the *Salary Survey* trend continues until today, the better estimate of actual diversity within AALL might be to add another ten percent to the rate found by comparing *Directory* listings to total AALL membership. But that correction has no firm foundation, and thus we are left with the numbers we actually have while regretting the lack of those we should have.

¶7 With that limitation in mind, table 1 contains the rate of minority inclusion spanning the years 2000 to 2014. Looking at the available numbers from the *Directory*, we find a consistent increase in the twenty-first century, during which AALL has more than doubled its claimed racial diversity.¹⁶ Any deep analysis, however, will find difficulties with this conclusion beyond the data's reliance on self-identification. In later years, a slice of the improvement appears to be due less to an increase in minority librarians than to a falling general membership. Further complicating the picture is that a not insignificant portion of the gains comes from increased foreign memberships to AALL rather than a rise in the minority participation here at home that most

14. The most consistent run of the best available data depends on self-identification and appeared in the annual directories through the 2014–2015 edition. Thereafter the print version of the *AALL Directory* ceased. While the electronic version allows a user to see current self-identified minority members, the site does not archive this information for regular snapshots. Retrospective work using even these weak numbers, therefore, will no longer be possible.

15. AALL membership numbers in the first column of table 1 were obtained by special request from Kate Hagan, Executive Director of AALL. E-mail from Kate Hagan, AALL Exec. Dir., to author (July 22, 2015) (on file with author). These numbers differ from those contained in the annual print directories because the criteria governing what to “count” have changed. The published data include Active, Retired, Student, Honorary, and Life members, while the 2015 tallies include only Active, Retired, and Student members. E-mail from Kate Hagan, AALL Exec. Dir., to author (Sept. 1, 2015) (on file with author). The Association stopped creating new Honorary and Life memberships, so those categories are no longer included. E-mail from Kate Hagan, AALL Exec. Dir., to author (Mar. 7, 2016) (on file with author).

The differences between the two counts can be significant. For example, the published membership number for 2003 is 5170, AALL MEMBERSHIP DIRECTORY 2005–2006, at 522 (2005), but under the later calculation it is 5094 due to the omission of seventy-six Life and Honorary members on the roll for that year. Under the revised figures, membership numbers are uniformly lower and thus increase retroactively the proportion of minority members claimed for AALL membership. Granting the good reason to omit those diminishing categories, the cost is that the historical published data describing AALL membership totals no longer connect to new figures, which complicates longitudinal analyses important to diversity questions. In instances where the published record is more detailed, with the membership categories broken out, a user can calculate the new number by omitting the two categories now eliminated. But not only is that process unnecessarily tedious, it cannot always be done due to AALL's inconsistent history of publishing data. AALL should consider republishing AALL membership numbers for past years using the new method, one that is updated each year, to make available a consistent run of totals.

16. This growth is relatively recent. According to Roy Mersky, “in 1989 the minority directory contained 135 names, and the 1990–91 *AALL Directory* [its first appearance in print] contained 150 names.” Roy M. Mersky, Commentary, *AALL and the Road to Diversity*, 85 LAW LIBR. J. 859, 863 (1993). That anchor figure means there was no consistent or sustained improvement in minority members in the ten years from 1990, with 150, to 2001, with 152.

Table 1

AALL Minority Members

	AALL members provided by AALL	Self-identified AALL minority members provided in <i>AALL Directory</i>	Percentage of minority librarians within AALL [Figure from <i>Salary Survey</i>]
2000	4857	152	3.13
2001	5010	193	3.86 [13%]
2002	5193	210	4.04
2003	5094	227	4.46 [14.2%]
2004	4976	223	4.48
2005	5026	230	4.58 [14.7%]
2006	4974	229	4.60
2007	5026	251	4.99
2008	5106	265	5.19
2009	5005	266	5.31
2010	4893	278	5.68
2011	4905	280	5.71
2012	4795	304	6.34
2013	4755	319	6.71
2014	4698	324	6.90

would expect to be the primary focus of the discussion. Finally, any apparent progress may be an artifact of the time span chosen. Mersky, for example, reported that in 1993 there were “more than 4,600 members of AALL, 205 of whom are members of an ethnic minority,”¹⁷ for a membership percentage of 4.46%. This rate would not be equaled in the present data until 2003.

¶8 Wheeler’s optimism that AALL has seen improvement on this problem may be justified, with caveats, but so too is Thurston’s skepticism. To gain firmer control over the situation in order to formulate more effective strategies and policies, we need a better understanding of the fundamentals. Identifying a sustainable goal that can be evaluated through shared criteria requires clarifying the underlying issues, concepts, and options.

¶9 The articles by Wheeler and Thurston are both vague concerning the basic questions: what do we mean when we talk about “diversity,” and what are the benefits we expect to achieve by maximizing this good? What, precisely, is being valued, and which are the best ways to realize those goals? Different answers to those questions will generate varying expectations about the directions in which any organization should move, as well as identify the different means to measure progress on the chosen path toward a diversified workplace.

17. *Id.* at 859–60. Mersky does not identify the source for this statistic, although presumably it came from the *Salary Survey*.

¶10 Wheeler offers without defense his preferred standard when he describes the larger project as aiming “to look demographically more and more like the larger population of the United States.”¹⁸ This statement asserts a goal of *reflective* representation, that groups should be present in any subset (like AALL) in the same proportion as they occur in the general population. He is not atypical in assuming the appropriateness of that goal, but its popularity should not shield it from critical scrutiny. While mirroring the demographic proportions of society may satisfy as a short-term objective, the strategy contains limitations to any diversity undertaking that takes the long view. Alternative forms of diversity do exist, and these must be considered so that we are at least aware of what we are not pursuing when we prioritize reflective diversity.

¶11 This article lays out the available options and the choices our profession must make. Paragraphs 14 through 23 review the basic terms: discrimination, bias, and diversity. Reasons for pursuing diversity in the workplace are discussed in paragraphs 24 through 51. Two instrumental justifications and one intrinsic rationale reveal the range of motivations behind these projects. Each rationale supports its characteristic form of diversity: reflective, substantive, and cognitive. Because the kind of diversity determines the anticipated outcome, disagreement over progress may be the result of expecting different kinds of diversity. Clarity on goals and means will lead to better communication about results and progress.

¶12 The data in paragraphs 52 through 87 demonstrate, however, that if reflective diversity is the appropriate standard, AALL not only falls short of the goal but is farther behind in 2014 than it was in 2000. Although evaluating AALL in absolute terms shows that it is becoming less diverse with time, that conclusion does not tell us what we should do about it. Paragraphs 88 through 129 compare AALL's diversity record with those of similar professions of law, general librarianship, and postsecondary teaching. The purpose is to identify to what extent AALL's poor performance suggests an unusual obstacle to entering law librarianship, and to what extent it is merely symptomatic of the society-wide lack of a sizeable pool of suitable candidates for professions of this type.

¶13 The thesis is that to judge AALL's diversity efforts, we must place law librarianship into broader social contexts so that patterns can be meaningfully interpreted. To devise effective remedies, we need to know how much of any demonstrated lack of diversity arises out of the intrinsic features of law librarianship. These should be separated from the difficulties situated elsewhere, such as in libraries and library education generally, or in the legal profession with which we are allied. Recognizing these wider patterns will allow us to target limited resources toward factors under our immediate control before moving on to address general societal shortcomings.

Discrimination, Bias, and Diversity

¶14 The first step toward evaluating AALL's progress in diversifying its membership is to distinguish three related ideas, each of which plays an important role in understanding the representation of minorities within the workplace. The first,

18. Wheeler, *supra* note 11, at 273, ¶ 18.

discrimination, relates to an active gatekeeping function that has as its purpose to impede targeted groups from entry into desirable opportunities and career options.

¶15 This exercise in obstruction need not always be the result of willful prejudice. When the effort has become internalized and unreflective, the hurdle may become one of *bias* rather than purposeful discrimination. Persons can harbor discriminatory beliefs unbeknownst even to themselves.¹⁹

Implicit biases are unconscious mental processes based on implicit attitudes or implicit stereotypes that are formed by one's life experiences and that lurk beneath the surface of the conscious. They are automatic; "the characteristic in question (skin color, age, sexual orientation) operates so quickly, in the relevant tests, that people have no time to deliberate."²⁰

The reality of implicit biases means that a discriminatory effect can exist within an organization beyond any individual's intentions, despite beliefs that it applies reasonable and objective selection criteria and procedures.

¶16 A common example points to the operation of uniform requirements that have differential consequences because their rigid application does not take into account the typical backgrounds of disparate groups.²¹ The LSAT, for instance, has been argued to contain cultural assumptions that give a competitive advantage to applicants from middle-class backgrounds denied persons not similarly blessed.²² To the extent this is true, a test advertised to measure a student's intellectual ability to succeed in law school in part scores his or her socioeconomic upbringing. Although such problems are serious, they are generally unintentional and thus open to remedy if revealed.²³

¶17 Whatever the mechanism—whether deliberate discrimination or unconscious bias—the outcome is the same, so for present purposes it is not necessary to further distinguish between them. What discrimination and bias share is the use of an immaterial characteristic like race when assigning roles and opportunities. To speak of either entails the charge that some entity, either individual or organizational,

19. See Nicole E. Negowetti, *Implicit Bias and the Legal Profession's "Diversity Crisis": A Call for Self-Reflection*, 15 NEV. L.J. 930 (2015).

20. *Id.* at 936 (quoting Christine Jolls & Cass R. Sunstein, *The Law of Implicit Bias*, 94 CALIF. L. REV. 969, 975 (2006)).

21. A cartoon makes this point very effectively in the context of educational testing. Under the guise of administering a fair test, all students—which include a bird, monkey, penguin, elephant, fish, seal, and dog—are asked to take the same exam: to climb a tree. The picture is sometimes accompanied by a quote (questionably attributed to Albert Einstein) that "[e]veryone is a genius. But if you judge a fish by its ability to climb a tree, it will live its whole life believing that it is stupid." See *Everybody Is a Genius. But If You Judge a Fish by Its Ability to Climb a Tree, It Will Live Its Whole Life Believing that It Is Stupid*, QUOTE INVESTIGATOR (Apr. 6, 2013), <http://quoteinvestigator.com/2013/04/06/fish-climb/> [<https://perma.cc/CM7B-3E4N>] ("There is no substantive evidence connecting Einstein to the quotation."). To view both image and quote in context, see James May, *Should Everyone Take the Same Test?*, CIRCLES OF INNOVATION (Jan. 17, 2013), <http://circlesofinnovation.valenciacollege.edu/2013/01/17/should-everyone-take-the-same-test/> [<https://perma.cc/NXU6-9YUQ>].

22. See, e.g., Leslie G. Espinoza, *The LSAT: Narratives and Bias*, 1 AM. U. J. GENDER & L. 121 (1993); William C. Kidder, *Portia Denied: Unmasking Gender Bias on the LSAT and Its Relationship to Racial Diversity in Legal Education*, 12 YALE J.L. & FEMINISM 1 (2000).

23. See Deborah L. Rhode, *Diversity and Gender Equity in Legal Practice*, 82 U. CIN. L. REV. 871, 888 (2014) ("Although antidiscrimination law provides some protection from overt bias, it is ill-suited to address contemporary racial, ethnic, and gender obstacles.").

has raised obstacles that selectively block specific kinds of candidates due to irrelevant criteria.²⁴

¶18 If discrimination is understood in the broadest sense as the raising of barriers to obstruct the flow of persons deemed “undesirable,” this processual view can be contrasted with *diversity’s* focus on outcomes. Diversity problems may commonly be the consequence of discriminatory acts earlier in the career pipeline.

¶19 Consider that “if one fails to hire or promote a qualified minority attorney, that is normally deemed discrimination, but if one argues credibly that pursuant to some objective criteria no such qualified minority candidate exists, that is considered an issue of diversity.”²⁵ Although the end result may look the same—the corner offices tend not to be assigned to minorities—the underlying causes differ. A diversity problem at the end of the pipeline can be the result of earlier discrimination as minority students are dissuaded either directly or indirectly, without suggesting bias on the part of the current employer.

¶20 We must also allow that today’s lack of diversity can arise from causes other than prior discrimination. Even when sufficient raw numbers of qualified candidates exist, they may distribute themselves in patterns that for one reason or another prefer some occupations rather than others. In that situation, we are challenged to look at elements of our operations that might be found unappealing. One related example concerns the culture within law firms that compels women to choose between a professional career and enjoying the experience of raising a family. Dissatisfaction with the current demanding realities of law practice can help explain why, despite being almost half of all law students, the rates of women actually practicing law continue to reflect a representative shortfall.²⁶ The inability to retain women is particularly acute in the case of minorities: “Eighty-five percent of minority female attorneys in the U.S. will quit large firms within seven years of starting their practice.”²⁷

¶21 While it is not immediately clear what features of law librarianship may deter potential candidates, one possibility can be imagined. The perception is that librarianship is predominantly a female profession. Membership in the American Library Association (ALA) is 81% female and 19% male.²⁸ AALL has not published comparable membership data by sex since its 2005 *Salary Survey*, when it claimed a membership of 71.4% females and 27.9% males.²⁹ A more current window onto

24. An early effort to describe the effects of discrimination in law libraries is Vernon A. Rayford, *A Black Librarian Takes a Look at Discrimination: By a Law School Library Survey*, 65 LAW LIBR. J. 183 (1972).

25. Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who Is Responsible for Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079, 1110 (2011). Thurston reviews the variables that contribute to a similar pipeline problem obstructing the flow of new minority librarians. See Thurston, *supra* note 10, at 366–77, ¶¶ 19–49.

26. Marlis Silver Sweeney, *The Female Lawyer Exodus*, DAILY BEAST (July 31, 2013, 4:45 AM), <http://www.thedailybeast.com/witw/articles/2013/07/31/the-exodus-of-female-lawyers.html> [<https://perma.cc/444F-AC5Q>] (“Even though they earned half of all law degrees in 2012, women are still leaving the legal profession in droves later on in life.”).

27. Liane Jackson, *Invisible, Then Gone*, A.B.A. J., Mar. 2016, at 36, 37.

28. ALA Office for Research & Statistics, *ALA Demographic Studies* (Sept. 2014), <http://www.ala.org/research/sites/ala.org.research/files/content/initiatives/membershipsurveys/September2014ALADemographics.pdf> [<https://perma.cc/Q37R-UKGV>].

29. *AALL Salary Survey 2005*, AM. ASS’N OF LAW LIBRARIES, <http://www.aallnet.org/mm/Publications/salary-survey/pub-salary05.html> (available to AALL members only).

the terrain can be had through data collected by the Association of Research Libraries (ARL). That source shows that in 2014–2015, members with law libraries reported a gender split among librarians of 34.3% male and 65.7% female.³⁰ This skew may dissuade some males from considering the field,³¹ as well as some women who find unappealing the prospect of a lifetime of labor in a “female” profession with all the negative connotations that association carries in our culture.³²

¶22 Perhaps the most important long-term difference between discrimination and diversity relates to the perceived need for remedy. While most people immediately recognize that discrimination is “inherently wrong, unacceptable, and as a phenomenon . . . demands aggressive intervention,” a diversity gap “generates a more ambivalent response.”³³ Discrimination is easily grasped, and its elimination offers an uncontroversial baseline that must be achieved of necessity. In contrast, many see rectifying diversity issues as an ideal that can be postponed should costs become prohibitive and, especially, as efforts produce little real change. In this light, we can understand why the list of forbidden discriminations in ABA accreditation Standard 205 is longer than that targeting diversity efforts under Standard 206.³⁴

¶23 Even among the most optimistic of proponents, the range of causes underlying diversity problems suggests that no single approach is likely to resolve them all. When earlier discrimination can be identified as the culprit, solutions should target those problems; when current practices are found to be the problem, however, a different set of corrections should be offered. We must be prepared, then, to consider approaches and solutions to diversity difficulties that are rooted in the specifics of particular organizations and professions, rather than assuming generic standards and approaches will solve the problem.

Defending Diversity: Three Justifications

¶24 Recognizing a lack of diversity is only the first step. What should be done to change the situation? A thoughtful answer will depend on our understanding of what costs are at stake should we allow the deficit to continue.

30. Martha Kyrillidou & Shaneka Morris, *ARL Annual Salary Survey 2014–2015*, at 14 fig.3a (2015), <http://publications.arl.org/ARL-Annual-Salary-Survey-2014-2015/14> (available to ARL members).

31. For a thoughtful discussion on the issues arising from males within female-dominated professions, including librarianship, see Christine L. Williams, *The Glass Escalator: Hidden Advantages for Men in the “Female” Professions*, 39 SOC. PROBS. 253 (1992).

32. “[B]oth women and men tend to assign more worth and prestige to work performed by men.” Philip N. Cohen & Matt L. Huffman, *Individuals, Jobs, and Labor Markets: The Devaluation of Women’s Work*, 68 AMER. SOC. REV. 443, 443 (2003). Given that sociological background, minority women with superior qualities may tend to aspire to male-dominated professions and bypass those dominated by females, further reducing the pipeline. See Audrey J. Murrell et al., *Aspiring to Careers in Male- and Female-Dominated Professions: A Study of Black and White College Women*, 15 PSYCHOL. WOMEN Q. 103 (1991).

33. Wald, *supra* note 25, at 1109.

34. Standard 205 includes “race, color, religion, national origin, gender, gender identity, sexual orientation, age, or disability,” while Standard 206 declined to extend the groups of underrepresented groups from “gender, race, and ethnicity” to also include “gender identity, sexual orientation, age, and disability.” Am. Bar Ass’n, Section of Legal Educ. & Admissions to the Bar, ABA Standards for Approval of Law Schools Matters for Notice and Comment (Dec. 11, 2015), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20151211_notice_and_comment.authcheckdam.pdf [https://perma.cc/ZHM5-BPCN].

¶25 This discussion assumes a world of finite resources in which more fundamental values are secured first, with remaining resources proportionately allocated to priorities farther removed from core principles. In that environment, if we believe that workplace diversity has immediate links to fundamental values, we would expect the goal to be pursued even at great cost and inconvenience. If, however, the defense of diversity depends on principles lower on the hierarchy of public priorities, our allotted costs will be proportionately less. While most readers would assume that diversity is a good, we need to know why it is good in order to assign its proper position within the list of all the goods that demand our commitment.

¶26 At least three reasons have been offered to defend the good of workplace diversity. While these need not be mutually exclusive—indeed, almost certainly they are not—the varying ills envisioned by each conceivably call forth different solutions that may not sit well together. Pursuit of diversity under one banner may complicate efforts under another, leading to overall ineffectiveness. We should therefore be clear why diversity is a worthwhile pursuit.

Two Instrumental Reasons to Pursue Diversity

¶27 The first question to consider asks whether diversity is an intrinsic good, worth pursuing in itself, or whether workplace diversity is desirable as a means to attain some other end. The latter is the more commonly offered justification. Even when the argument for diversity appears to be offered in a wrapper of intrinsic values, inside often lurks a motivating core of utilitarian benefit.

¶28 Instrumental defenses of diversity look not at the merit of diversity per se but at the advantages it provides toward achieving other goals. If diversification were costless, advocates might agree that workplaces should strive to increase group representation simply because our principles say we should. Under the consequentialist view, though, it is the benefit that diversity contributes toward another valued goal that makes the associated costs a prudent investment.

¶29 Justice O'Connor offers this kind of instrumental argument in her opinion in *Grutter v. Bollinger*, the case upholding the constitutionality of the University of Michigan's race-conscious law school admissions process. She found that the school had a compelling interest in "obtaining the educational benefits that flow from a diverse student body":

As part of its goal of "assembling a class that is both exceptionally academically qualified and broadly diverse," the Law School seeks to "enroll a 'critical mass' of minority students." The Law School's interest is not simply "to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin." That would amount to outright racial balancing, which is patently unconstitutional. Rather, the Law School's concept of critical mass is defined by reference to the educational benefits that diversity is designed to produce.³⁵

¶30 O'Connor rejects the reflective standard suggested by Wheeler and, in its stead, puts forward the claim that diversity considerations are valuable (and constitutionally permitted) because they generate "educational benefits." Without such benefits, diversity efforts would not pass muster in this context.

¶31 Other returns arise in different settings. In its *Presidential Diversity Initiative Report*, the ABA identifies two diversity rationales that can reasonably be

35. *Grutter v. Bollinger*, 539 U.S. 306, 329–30 (2003) (citations omitted).

categorized as instrumental for their emphases on the impacts of diversity on other ends. The business rationale is the best known, arguing that

[t]he rapid movement of people, financial instruments, culture, technology, and political change across international borders places new expectations on the ability of lawyers, law firms, corporations, and legal institutions to respond and adapt to the multinational and cross-cultural dimensions of legal issues.

A diverse workforce within legal and judicial offices exhibits different perspectives, life experiences, linguistic and cultural skills, and knowledge about international markets, legal regimes, different geographies, and current events.³⁶

¶32 Including demographically and culturally varied persons on its roster provides a business improved access to foreign markets and domestic sectors dominated by nonmajoritarian ethnic identities. This outcome may be because clients in those markets prefer to trade with others who resemble them or because in-house expertise allows the domestic enterprise to better tailor its products for an international market.

¶33 Whatever the reason, the business rationale offers an intuitive appeal. If a practice's client base is increasingly Hispanic, for example, it makes sense for the firm to include Spanish speakers among its attorneys, and for some of these to identify as Hispanic themselves to better communicate with and understand the needs and values of the client. These abilities not uncommonly become marketing points for law firms competing for new business.

¶34 The business rationale perhaps explains why studies "find a correlation between diversity and profitability in law firms as well as in Fortune 500 companies."³⁷ When viewed in this way, however, the business rationale can be a double-edged sword, cutting for diversity in those instances that satisfy the premise of targeting diversified customers, but also against it in other settings that might not. If the justification for law firms to diversify flows from its need to market to a cosmopolitan client base, firms in environments that lack that need to expand into foreign markets, or whose offices are outside environments with significant ethnic populations, may be unmotivated to increase their in-house diversity. More to the point, it would be difficult to fault them for failing to make this added recruitment effort given the premises of the business rationale.

¶35 A more generalizable spin on the business case looks not simply at a wish to create better connections with potential clients, but also considers the value of a range of views and opinions available to the organization to solve its problems. Scott Page has shown that greater diversity within a decision-making group makes that collective more successful problem solvers:³⁸

People from different backgrounds have varying ways of looking at problems, what I call "tools." The sum of these tools is far more powerful in organizations with diversity than in ones where everyone has gone to the same schools, been trained in the same mold and thinks in almost identical ways.³⁹

36. ABA PRESIDENTIAL DIVERSITY INITIATIVE, DIVERSITY IN THE LEGAL PROFESSION: THE NEXT STEPS: REPORT AND RECOMMENDATIONS 9 (2010).

37. Rhode, *supra* note 23, at 891–92.

38. SCOTT E. PAGE, THE DIFFERENCE: HOW THE POWER OF DIVERSITY CREATES BETTER GROUPS, FIRMS, SCHOOLS, AND SOCIETIES (2008).

39. Claudia Dreifus, *In Professor's Model, Diversity = Productivity (A Conversation with Scott E. Page)*, N.Y. TIMES, Jan. 8, 2008, at F2.

¶36 Although the introduction of new ideas and perspectives into monolithic institutional structures offers a powerfully self-interested reason for business organizations to seek out diverse hires, we can note that the result may not always take the form typically expected by diversity advocates. From the perspective of increasing the range of viewpoints available for innovative problem solving, a white conservative from a rural background and lower socioeconomic status might introduce more diversity than an African American from an upper-middle-class family who attended the same private schools as the traditional members of that organization.

[O]rganizations, firms, and universities that solve problems should seek out people with diverse experiences, training, and identities that translate into diverse perspectives and heuristics. Specifically, hiring students who had high grade point averages from the top-ranked school may be a less effective strategy than hiring good students from a diverse set of schools and a diverse set of backgrounds, majors, and electives.⁴⁰

Under the business rationale, what variables count as “diverse” become a fact-specific inquiry looking at the details of individual organizations, rather than social patterns of demographic participation.

¶37 The ABA Report’s second instrumental defense of increased diversification within the legal profession, the leadership rationale, echoes a different point within Justice O’Connor’s *Grutter* opinion.

[U]niversities, and in particular, law schools, represent the training ground for a large number of our Nation’s leaders. Individuals with law degrees occupy roughly half the state governorships, more than half the seats in the United States Senate, and more than a third of the seats in the United States House of Representatives. The pattern is even more striking when it comes to highly selective law schools. A handful of these schools accounts for 25 of the 100 United States Senators, 74 United States Courts of Appeals judges, and nearly 200 of the more than 600 United States District Court judges.

In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training. As we have recognized, law schools “cannot be effective in isolation from the individuals and institutions with which the law interacts.” Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.⁴¹

¶38 According to Justice O’Connor’s analysis, legal education and practice serve as common pathways to positions of authority within wider society, and because “society draws its leaders from the ranks of the legal profession, . . . that is one reason why diversity is a constitutionally protected principle and practice.”⁴² For the distribution of power within society to retain legitimacy in the eyes of the governed, those holding the reins should be drawn equitably from all segments of the population.

¶39 Two considerations appear to be at work here. The first points to the need for all segments of the population in some sense to see themselves sharing in the

40. PAGE, *supra* note 38, at 173.

41. *Grutter v. Bollinger*, 539 U.S. 306, 332–33 (2003) (citations omitted).

42. ABA PRESIDENTIAL DIVERSITY INITIATIVE, *supra* note 36, at 10.

material rewards available in society. The second idea within the leadership rationale is that if the power wielders of society are not sufficiently diverse, this perception undermines the assumed legitimacy of the political and economic order that often does not treat all groups equitably. Both work to encourage the belief that the distribution of valued status and rewards is fundamentally fair, even if in any specific case it is not.

¶40 Diversity advocates may again be taken by surprise by the consequences of the leadership rationale. While it might be assumed that increasing diversity within the upper ranks will redound to the socioeconomic fortunes of impacted groups, the possibility occurs that on the whole it may strengthen the status quo by diffusing any impulse for radical changes to the organization.⁴³ When the percentage of minorities in leadership positions significantly outpaces their representation in the ordinary membership, that imbalance may be a sign of unhealthy organizational priorities as the success of a few elites is read to mean that no deeper, more painful changes are required.

¶41 Librarianship has asserted both the business and leadership rationales in support of diversity within its own ranks. Gestures toward the communities served become reasons for a similar profile to provide adequate services.⁴⁴ We also find within the literature suggestions that individuals will not consider librarianship a serious or personally relevant profession unless they first encounter persons like themselves already successful in that role who then encourage them in that direction.⁴⁵ But as we have seen, if applied too literally both of these justifications of diversity can lead to unexpected and sometimes counterintuitive consequences. Given the possible weaknesses of such rationales, we should look elsewhere to explain more compellingly the need to exert greater effort and expend more resources to diversify the membership of AALL.

The Intrinsic Defense of Diversity

¶42 Although most defenses of diversity slide quickly into instrumental versions, intrinsic arguments can be offered. These claim that the workplace should be attentive to diversity because diversity is always ethically defensible even when it is pragmatically expensive. Even if no instrumental gains are realized by increasing

43. An interesting parallel phenomenon occurs in what is called *possession-trance* within some traditional societies. The afflicted are usually females who become possessed by male spirits. Episodes allow them the opportunity to speak their minds and demand special favors, all of which would normally be forbidden behaviors. But because the demands are viewed as coming from an honored male, they are tolerated and obeyed. These outlets allow the underprivileged sufficient relief from their ordinary condition that it prevents them from effectively organizing to structurally improve their situation. See I.M. LEWIS, *ECSTATIC RELIGION: A STUDY OF SHAMANISM AND SPIRIT POSSESSION* 64–77 (2d ed. 1989).

44. E.g., Emily K. Chan et al., *Discovering Librarianship: Personalizing the Recruitment Process for Underrepresented Students*, in *WHERE ARE ALL THE LIBRARIANS OF COLOR?* 11, 13 (Rebecca Hankins & Miguel Juárez eds., 2015) (“When contrasting these statistics to census numbers, it is evident that more needs to be done in order to attain greater parity between the profession and the communities that libraries serve.”); Juleah Swanson et al., *Why Diversity Matters: A Roundtable Discussion on Racial and Ethnic Diversity in Librarianship*, in *THE LIBRARY WITH THE LEAD PIPE* (July 29, 2015), <http://www.inthelibrarywiththeleadpipe.org/2015/why-diversity-matters-a-roundtable-discussion-on-racial-and-ethnic-diversity-in-librarianship/> [<https://perma.cc/7DMS-2HLN>] (“[D]iversity matters because the libraries must accommodate diverse user groups as well as librarian population.”).

45. E.g., Chan et al., *supra* note 44, at 16.

diversity among employees, any costs or inconveniences would still be justified because it is a good in itself. Understandably, this justification is rare. Arguing the case to taxpayers, stockholders, or others with financial interests in organizational accounts that they should spend extra resources on outreach and recruitment when these investments are not intended to improve operational efficiency or bottom-line yields can be a difficult challenge.

¶43 In spite of these hurdles, the ABA *Report* outlines its version of the intrinsic defense, the democracy rationale:

The United States occupies a special place among the nations of the world because of its commitment to equality, broad political participation, social mobility, and political representation of groups that lack political clout and/or ancestral power.

Diversity is the term used to describe the set of policies, practices, and programs that change the rhetoric of inclusion into empirically measureable change. . . . Without a diverse bench and bar, the rule of law is weakened as the people see and come to distrust their exclusion from the mechanisms of justice.⁴⁶

¶44 Like the leadership rationale, the democracy rationale begins with the observation that important social institutions should represent the peoples they serve. But whereas the purpose in the leadership rationale is to preserve the legitimacy of the institutions and thus maintain the people's compliance, the motivation behind the democracy rationale is different. While skewed representation is problematic for all fields of endeavor, the gap is especially challenging to a profession that defines itself as "the high priests of our civic religion" that has been "premised on the fundamental values of equality, fairness, and the rule of law."⁴⁷ As the ABA points out, law cannot hold itself out as defending equality and safeguarding broad political participation when its face literally contradicts those same values, and still be "law" rather than the mere exercise of power.

¶45 If the makeup of public entities does not embody the political ideals it is their purpose to promote and police without regard to irrelevancies like race or religion, then the entire system suffers an irreparable blow. If the system is not seen to be fair in its everyday operations, it is less likely to be fair in the more extraordinary circumstances such as criminal justice, and the distrust toward institutions will inevitably create a tear in the social fabric. In this light, diversity does not create a benefit, since our national mythology claims we should already be diverse, but its lack inflicts a significant cost by revealing those myths to be a lie.

¶46 Along these lines, Eli Wald argues that, despite the fact that "the legal profession's standard response to under-representation is to offer instrumental justifications to diversify," meaningful "justifications for diversity initiatives must be grounded . . . in non-utilitarian justifications. . . . [L]ack of diversity undermines the very meaning of law and of what it means to be a lawyer in the United States."⁴⁸

¶47 An analogy may be the discovery of endemic sexual harassment within the offices of the EEOC: disheartening in any context, but disillusioning when it occurs within the ranks of those charged to prevent that particular ill. "As long as lawyers claim to be public citizens and servants of the public interest, and purport to have a special relationship with and owe fiduciary duties to pursue equality and justice,

46. ABA PRESIDENTIAL DIVERSITY INITIATIVE, *supra* note 36, at 9.

47. Wald, *supra* note 25, at 1079, 1101.

48. *Id.* at 1100–01.

they owe a duty to combat under-representation based on inequalities, cultural perceptions, and past and current discriminations” first and foremost among their own members.⁴⁹

¶48 While the democracy rationale is designed to apply to the legal profession, it also extends to librarianship. As proclaimed in the ALA’s *Democracy Statement*, American libraries have a long tradition of supporting the political system by creating an informed citizenry capable of an active role in the democratic process:

Democracies need libraries. An informed public constitutes the very foundation of a democracy; after all, democracies are about discourse—discourse among the people. If a free society is to survive, it must ensure the preservation of its records and provide free and open access to this information to all its citizens. It must ensure that citizens have the resources to develop the information literacy skills necessary to participate in the democratic process. It must allow unfettered dialogue and guarantee freedom of expression. . . . Indeed, libraries ensure the freedom to read, to view, to speak and to participate. They are the cornerstone of democracy.⁵⁰

¶49 The ability of libraries to perform this role can be questioned when its personnel do not include everyone. In fact, librarianship has not always lived up to its responsibilities in this regard. As summarized by Rosemary Ruhig Du Mont, libraries were slow to embrace equity for minorities in terms of both services—“In 1940 . . . out of 774 public library units in the thirteen states of the South, only 99 provided any service for blacks”⁵¹—and professionals. Historically ALA’s “effort to prevent discrimination against its own black members” was “hesitant,”⁵² as evidenced at the 1936 annual meeting at which blacks “would be able to attend most sessions, sitting in a segregated portion of all meeting halls, but would not be allowed to attend any meetings where meals were served, nor would they be able to obtain rooms in the hotels housing the white delegates.”⁵³ Like lawyers, librarians have grown into their responsibilities and realized that diversity is not something one can optionally add to being a lawyer or a librarian; to be those things at all requires that the full range of citizens be embraced at every level.

¶50 Using the ABA *Report* as a guide, we have been able to identify two distinct instrumental justifications for diversity within the workplace, the business and the leadership rationales, as well as one intrinsic defense, the democracy rationale. These distinct bases for diversity show that the need for diversity initiatives is overdetermined. But if many reasons can support a specific endeavor, we should recognize that some are more persuasive than others.

¶51 The intrinsic reason provides the strongest defense of diversity because it is valid in all situations. No facet of American life should undermine the nation’s overarching commitment to the freedom of every citizen. Diversity is valuable because that is who we, as a people, have decided to be. If another rationale is needed, next should come the link between present diversity and future leadership. Although an instrumental justification, the benefit accrues to society as a whole and

49. *Id.* at 1101–02.

50. *Democracy Statement*, AM. LIBRARY ASS’N, <http://www.ala.org/aboutala/governance/officers/past/kranich/demo/statement> [<https://perma.cc/98PD-Q67S>].

51. Rosemary Ruhig Du Mont, *Race in American Librarianship: Attitudes of the Library Profession*, 21 J. LIBR. HIST. 488, 498 (1986).

52. *Id.* at 504.

53. *Id.* at 488.

thus offers a more general good than does the third and last reason to support diversity, the business rationale. Whatever appeal such an argument has, the business case treats diversity as a commodity to be exploited for returns limited to a few individuals or to a specific organization. As noted, the business rationale can easily become a contested process when one form of valued diversity, such as increasing underrepresented groups, is forced to compete with other kinds that advantage the business interests. For such reasons the business case for diversity is the weakest foundation on which to build that inclusive future.

The Kinds of Diversities

¶52 The three justifications for diversity generate in turn their own forms of diversity. Confusion arises with a mismatch between the reasons to pursue diversity and the kinds of diversity that are in fact pursued.

Reflective Diversity

¶53 The intrinsic rationale of democracy supports pursuit of at least some version of reflective diversity. *Reflective diversity* (also known as *formal diversity*) is achieved when groups are represented within each subset in proportion to their presence in the general population.⁵⁴ The assumptions supporting the goal of reflective diversity include “the basic intuition that in a competitive, equal society, the diversity of the populace will and ought to be reflected in diversity in its educational system and in its various occupations and professions.”⁵⁵ Operating under the assumption that no relevant differences attach to being of one ethnic background rather than another, persons should sort themselves into professional groups in a manner that tracks distributions in the general population. Any persistent skewing would indicate that hidden variables are at work influencing outcomes, and the rebuttable presumption is that those forces are of a nefarious quality.

¶54 As noted earlier, Wheeler asserts that reflective diversity should be the target for AALL, but he does not state what that would look like or how far we are from that goal. Table 1 shows that AALL has slowly climbed to a combined minority representation of 6.9%. Table 2 indicates that the percentage of all minorities in the U.S. currently stands at 37.9%. Even if we add in the theoretical corrective of an additional 10% to AALL’s *Directory* figure, it still would not be even halfway to meeting the goal of reflective diversity.

¶55 In what may be the central finding of this analysis, while AALL since 2000 has doubled its rate of minority membership—a source of optimism for Wheeler—when we look at table 2 we see that AALL’s total increase of less than four percentage points did not keep pace with the growth of minorities in the general population, which rose more than seven points from 30.5% to almost 38% over that same time. If reflective diversity is the appropriate goal for AALL, then Thurston is correct: we have done a poor job, and despite its relative progress AALL is worse off in 2014 than it was in 2000.

54. Wald, *supra* note 25, at 1093.

55. *Id.*

Table 2
U.S. Percentage of Nonwhite Minorities^a

	U.S. Total Population	White, not Hispanic	Nonwhite Total	Nonwhite Percentage
2000	281,424,600	195,576,996	85,847,604	30.50
2001	284,968,955	195,974,813	88,994,142	31.23
2002	287,625,193	196,140,540	91,484,653	31.81
2003	290,107,933	196,232,760	93,875,173	32.36
2004	292,805,298	196,461,761	96,343,537	32.90
2005	295,516,599	196,620,983	98,895,616	33.47
2006	298,379,912	196,832,697	101,547,215	34.03
2007	301,231,207	197,011,394	104,219,813	34.60
2008	304,093,966	197,183,535	106,910,431	35.16
2009	306,771,529	197,274,549	109,496,980	35.69
2010	308,74,5538	197,318,956	111,426,582	36.09
2011	311,591,917	197,510,927	114,080,990	36.61
2012	313,914,040	197,705,655	116,208,385	37.02
2013	316,128,839	197,836,231	118,292,608	37.42
2014	318,857,056	197,870,516	120,986,540	37.94

a. All figures taken from *Population Estimates: Historical Data*, U.S. CENSUS BUREAU, <http://www.census.gov/popest/data/historical/index.html> (last visited Oct. 8, 2016).

¶56 Two responses might be offered. The first suggests that, granting that the overall picture is bleak, the census statistic groups all minorities together (i.e., everyone who is not a non-Hispanic white). If we looked at the different minority groups separately, we may perhaps find that AALL does well among at least some groups. But because AALL no longer reports data in that format, we cannot perform that analysis (although the 2005 slice is considered in table 7).

¶57 The second response asks the same question about differential impacts, but, instead of considering underrepresented groups, looks instead at clusters within AALL itself. AALL is not a homogenous organization, but instead contains distinct units, and it is possible that some do better than others at incorporating minorities. Table 3 compares one such unit, the Academic Law Libraries Special Interest Section (ALL-SIS) with all others, such as firm, court, and corporate libraries.

¶58 While still falling significantly below the national figures, over the fourteen years examined ALL-SIS has consistently counted between 9 and 11% of its members as minorities. In contrast, the best the remainder of AALL can claim is 5.22%, up from 1.82% in 2000.

¶59 If we allow that academic law libraries benefit from their alliance with universities that work under a pressing mandate from federal and other laws, Howland suggests a similar but reverse process may have caused minority candidates to become disinterested in law librarianship within firms and courts. Drawing on reports from the 1970s she finds that, in addition to their own problems, law libraries suffered from

Table 3

Percentage of Minority Librarians in ALL-SIS and Non-ALL-SIS Units of AALL

	ALL-SIS Members ^a	ALL-SIS Minority Members ^b	Percentage of Minority Librarians Within ALL-SIS	Non-ALL-SIS AALL Members ^c	Non-ALL-SIS Minority Members ^d	Percentage of Non-ALL-SIS Minority Members
2000	849	79	9.31	4008	73	1.82
2001	884	92	10.41	4126	101	2.45
2002	895	95	10.61	4298	115	2.68
2003	967	102	10.55	4127	125	3.03
2004	1031	111	10.77	3945	112	2.84
2005	1117	111	9.94	3909	119	3.04
2006	1131	109	9.64	3843	120	3.12
2007	1220	119	9.75	3806	132	3.47
2008	1247	127	10.18	3859	138	3.58
2009	1312	128	9.76	3693	138	3.74
2010	1357	132	9.73	3536	146	4.13
2011	1429	135	9.45	3476	145	4.17
2012	1449	145	10.01	3346	159	4.75
2013	1467	155	10.57	3288	164	4.99
2014	1463	155	10.60	3235	169	5.22

- a. Membership numbers were obtained by special request from Kate Hagan, Executive Director of AALL. E-mail from Kate Hagan, Exec. Dir., Am. Ass’n of Law Libraries to author (July 22, 2015) (on file with author).
- b. ALL-SIS minority member numbers are based on the *Minority Law Librarians Directory* published in the *AALL Directory*. All those with .edu e-mails were automatically included; entries without that domain were evaluated for appropriateness.
- c. Table 1 membership totals minus ALL-SIS members.
- d. Table 1 minority librarians minus ALL-SIS minority members.

their close association with a legal profession that was slow to welcome racial minorities.⁵⁶ Even today problems linger in both recruitment and retention of nontraditional attorneys. The suggestion appears to be that law librarianship in those environments has been forced to trail behind the practices of legal firms, and could aggressively advance an agenda of nondiscrimination only after that policy became accepted within the legal field itself. This ripple effect may explain why the rate of minorities outside academic libraries continues to lag.

56. In 1970, O’Rourke identified as her second sign post the fact that law librarians serve the legal profession, with its “long and distinguished history of racial discrimination,” and the racism within the legal profession made it highly unlikely that law librarians would take a firm stand against biased hiring practices. Unfortunately, although the legal profession, like law librarianship, has generally adhered to the letter of the law in regard to fair hiring practices, the profession is still predominantly white.

Joan S. Howland, *Diversity Deferred*, 90 LAW LIBR. J. 561, 571 (1998).

¶60 Whatever the reason, the data are clear. Over the studied span, diversity within academic law libraries is greater, but plateaued; that within firm and court libraries is much lower, but growing. Whatever improvement in diversity is found within AALL generally, it is likely due to changes within nonacademic libraries. On the other side of the scales, the flat rates within academic libraries are what saves AALL from a truly dismal performance. Still, if AALL could bring the rest of its units up to the steady rate of the academic libraries, it would improve its overall inclusion of minorities by almost fifty percent.

Substantive Diversity

¶61 A group can achieve formal diversity representation while still falling short of the higher rewards of professional success. In contrast to reflective diversity, which reduces to a numbers game, *substantive diversity* concerns the distribution of meaningful participation, rewards, and power within the pool.⁵⁷ As such it builds on the values of the leadership rationale, which is less concerned with the representation of minorities in the rank and file if they are not also appearing among the profession's elite.

¶62 This divergence between the two kinds of diversity, as one example, has been used to understand the status of women within the legal profession. On the one hand, female participation within the legal profession approaches rates within the general population, which should be a cause of celebration. According to the ABA's Commission on Women in the Profession, women received 47.3% of the law degrees awarded in 2011.⁵⁸ They have also performed well on measures of federal clerkships (45.6%), state clerkships (54.8%), and local clerkships (54.3%).⁵⁹ Despite these gains, women's inclusion among partners and other top-end positions falls far short from what one might predict given their numerical presence. Within private firms, only 19.9% of partners, a mere 15% of equity partners, and a miniscule 4% of managing partners within the 200 largest law firms are women.⁶⁰ According to the Diversity and Flexibility Alliance, women comprise only slightly above a third of each new class of firm partners.⁶¹

¶63 Women experience impediments to the upper echelons of even a stereotypically female profession like librarianship. Although males comprise only 19% of ALA membership, in 1999 they held 39% of library directorships, with an average salary of \$68,586 compared to \$61,614 for female directors.⁶² In ARL law libraries, at least, the outcome is somewhat more in keeping with the requirements of

57. Wald, *supra* note 25, at 1105.

58. AM. BAR ASS'N, COMM'N ON WOMEN IN THE PROFESSION, A CURRENT GLANCE AT WOMEN IN THE LAW 4 (Feb. 2013), http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_feb2013.authcheckdam.pdf [<https://perma.cc/9NEC-3XRM>].

59. *Id.* at 5. These gains should be measured against an earlier era in which, "[u]ntil the late 1960s, women constituted no more than about three percent of the profession." Rhode, *supra* note 23, at 872.

60. AM. BAR ASS'N, COMM'N ON WOMEN IN THE PROFESSION, *supra* note 58, at 2.

61. *New Partner Report 2016*, DIVERSITY & FLEXIBILITY ALLIANCE, <http://dfalliance.com/research/new-partner-report/> [<https://perma.cc/33AC-E4XF>].

62. *Library Directors, Gender and Salary*, AM. LIBRARY ASS'N, <http://www.ala.org/research/librarystaffstats/diversity/libdirectors> [<https://perma.cc/3KHS-GV4F>].

both reflective and substantive diversity: of 72 reporting institutions, 38 law libraries (53%) are headed by women, and 34 by men.⁶³ Male directors' salaries, however, are averaging \$175,864 as compared to the women's \$167,788.⁶⁴

¶64 The lesson from both cases is that while reflective diversity is arguably a necessary precondition to achieving substantive diversity,⁶⁵ the latter represents the more meaningful goal of all diversification projects.⁶⁶ Ratcheting up the absolute numbers of underrepresented groups may offer some satisfactions, but an overall negative message would still be signaled if they are rarely seen to attain the highest ranks and rewards of professional engagement.

Cognitive Diversity

¶65 The business rationale generates a third form of diversity, *cognitive diversity*, which is markedly different from those described thus far. Conceptually orthogonal to the first two, cognitive diversity looks not at demographic variables or even persons per se, but to ideas.

¶66 Reflective and substantive diversities flow easily from our concepts of fairness. Persons should be judged on relevant criteria when considered for jobs and promotions, free from stereotypes or unconscious prejudices. Although distinguishable, reflective and substantive diversities bear a mutually supportive relationship to one another and may even, in a distant time horizon, become a single standard. Cognitive diversity, however, does not spring from the same equitable concerns. The value of this kind of diversity is found in the improved performance of organizations. While the benefits of reflective and substantive diversities accrue to society in general and to underrepresented groups more broadly, those of cognitive diversity are enjoyed by the specific business or organization wise enough to make it part of its member profile.

¶67 According to Page, when diversity refers not to identity but to ways of thinking,

diverse groups of problem solvers—groups of people with diverse tools—consistently outperformed groups of the best and the brightest. If I formed two groups, one random (and therefore diverse) and one consisting of the best individual performers, the first group almost always did better. In my model, *diversity trumped ability*.⁶⁷

63. Kyrillidou & Morris, *supra* note 30, at 18 fig.5. A similar outcome is reported by a recent survey that includes non-ALR academic law libraries, finding in 2012 that forty-nine percent of directors were male and fifty-one percent female. Michael J. Slinger & Sarah C. Slinger, *The Career Path, Education, and Activities of Academic Law Library Directors Revisited Twenty-Five Years Later*, 107 LAW LIBR. J. 175, 203, 2015 LAW LIBR. J. 8, ¶ 148, tbl.1. The respective figures in 1986 were sixty-one percent male and thirty-nine percent female. *Id.*

64. Kyrillidou & Morris, *supra* note 30, at 18 fig.5.

65. Many groups have yet to overcome the first hurdle of reflective representation. For example, racial minorities represent only about eleven percent of lawyers despite being a third of the general population. See U.S. DEP'T OF LABOR, U.S. BUREAU OF LABOR STATISTICS, LABOR FORCE CHARACTERISTICS BY RACE AND ETHNICITY, 2010, at 18 tbl.6 (*Employed People by Detailed Occupation, Race, and Hispanic or Latino Ethnicity, 2010 Annual Averages*) (2011).

66. Wald, *supra* note 25, at 1105 ("Substantive diversity denotes the idea that formal diversity, demanding equality in the opportunity to participate in the legal profession, is merely the first, necessary step in achieving the goals of diversity, but is insufficient.").

67. PAGE, *supra* note 38, at xxv–xxvi.

¶68 There are conditions required for this effect to arise: “the problem has to be hard, the people have to be smart, and people have to be diverse, and the group size has to be bigger than a handful and chosen from a large population.”⁶⁸ Within these constraints, however, “This theorem is no mere metaphor or cute empirical anecdote that may or may not be true ten years from now. It’s a logical truth.”⁶⁹

¶69 While cognitive diversity highlights much of the asserted benefit of increasing identity diversity within the workplace, one must ask to what degree the two are related. To the extent that different racial and ethnic groups have disparate experiences that are sufficiently consistent so that one may speak meaningfully, say, of an African American way of seeing the world that is different from the Hispanic and from the Caucasian, then we can expect that pursuing identity diversity would yield many of the benefits of cognitive diversity.

¶70 This expectation will be stronger to the extent that the focal identity diversities incorporate linguistic diversity. Languages embed a characteristic way of looking at and linking concepts and objects. Linguist George Lakoff explored this idea in his book, *Women, Fire, and Dangerous Things*.⁷⁰ The title comes from Dyirbal, an Australian aboriginal language in which the word *balan* groups these three things together through extended associations.⁷¹ What is common sense in one language can be startlingly novel or even incomprehensible in another.⁷² Another mechanism by which a variety of conceptual categories might generate new ideas involves the finding that when we read a word *every* attached meaning activates simultaneously.⁷³ Unexpected interpretations, the raw material of creative problem solving, become more likely out of this buzz of associations.

¶71 These linguistic variations come together to help form perceptual viewpoints that differ from one another, and these in turn contribute to the construction of varying conscious structures and “institutional facts.”⁷⁴ Through this process

68. *Id.* at 162.

69. *Id.*

70. GEORGE LAKOFF, *WOMEN, FIRE, AND DANGEROUS THINGS: WHAT CATEGORIES REVEAL ABOUT THE MIND* (1987).

71. *Id.* at 5.

72. The popular belief that all languages encode the same reality, and thus can be translated from one into the other without loss of information, is exaggerated.

Sioux has no word for *time*, or the concepts *late* and *waiting*; . . . English has no translation for the Greek *philotimos*; Brazilian Portuguese has no equivalent for the phrase, “Why won’t you open the window?”; . . . Chinese lacks common counseling words such as *concern*, as in “I am concerned about you”; “marriage” as we know it today “quite corresponds” to nothing in the ancient world; “Hebrew has no general term for ‘child,’ sex automatically being indicated”; . . . in Thai “there is no word for ‘brother,’ only ‘older brother’ or ‘younger brother.’”

James M. Donovan & Brian A. Rundle, *Psychic Unity Constraints upon Successful Intercultural Communication*, 17 LANG. & COMM. 219, 229 (1997) (citations omitted). Labels for emotions are especially likely to be problematic for translators. See CATHERINE A. LUTZ, *UNNATURAL EMOTIONS: EVERYDAY SENTIMENTS ON A MICRONESIAN ATOLL & THEIR CHALLENGE TO WESTERN THEORY* 5 (1988) (“[T]he concepts of emotion can more profitably be viewed as serving complex communicative, moral, and cultural purposes rather than simply as labels for internal states whose nature or essence is presumed to be universal.”).

73. MARYANNE WOLF, *PROUST AND THE SQUID: THE STORY AND SCIENCE OF THE READING BRAIN* 9, 122 (2007).

74. JOHN R. SEARLE, *THE CONSTRUCTION OF SOCIAL REALITY* 64 (1995) (“[T]hat institutional facts are language dependent[] boils down to the thesis that the thoughts that are constitutive of institutional facts are language dependent.”).

ethnic minorities can offer perspectives that diverge from the majority's assumptions, generating a significant convergence between identity diversity and cognitive diversity.

¶72 For various reasons this chain of relationships may not play out perfectly. Not all ethnic groups speak different languages, and even if once they did, second and later generations may have lost the skill. We should thus not be surprised that Page's review of the relevant literature addressing this topic found that in terms of cognitive diversity the "evidence for identity diverse groups, though, is far from unequivocal. Some identity diverse groups perform well. Others do not . . . , [not least because] the linkages between identity diversity and cognitive diversity may not be strong in all cases."⁷⁵ He concludes that "[i]dentity diverse groups perform better when the task is primarily problem solving, when their identities translate into relevant tools, when they have little or no preference diversity [i.e., they agree on the end, differing only on the means], and when their members get along with one another."⁷⁶

Critical Reflective Diversity

¶73 Each kind of diversity offers something of value. Reflective diversity responds to the strong sense that, all things being equal, the goods of society should be shared proportionately among all its groups. Substantive diversity refines this conviction by explicitly requiring that those goods not be limited to gross numbers but also include the more elite benefits. Finally, cognitive diversity reminds us that difference can offer its own returns, and that pursuit of racial and ethnic diversity in the workplace does not require that we ignore the special strengths of each group. Minorities do not have to bury their differences to make a contribution; indeed, their input may be more valuable if they are not too similar. Beneficial on their own terms, each diversity type also harbors weaknesses that should dissuade us from putting all of our confidence in one to the exclusion of others.

¶74 This caution is especially necessary concerning the most popular diversity standard, reflective diversity. Despite its common invocation, an agenda of reflective diversity can prove difficult to achieve. On the one hand, the experiences of women and of religious denominations do suggest that it can be realized. After discriminatory bars were eliminated, law school enrollments for these groups did approach their levels in the general population.⁷⁷ This outcome, however, may prove to be the exception, as similar results do "not appear to be the natural and inevitable state of affairs for racial, socioeconomic, and other minorities who [remain] significantly under-represented in law schools and in the legal profession."⁷⁸ According to Redfield, between 2009 and 2030 the legal profession would need to add over the current rates, each year, an additional 33% more blacks and 173% more Hispanics to reach formal diversity.⁷⁹

75. PAGE, *supra* note 38, at 314.

76. *Id.* at 328.

77. Wald, *supra* note 25, at 1095.

78. *Id.*

79. SARAH E. REDFIELD, DIVERSITY REALIZED: PUTTING THE WALK WITH THE TALK FOR DIVERSITY IN THE LEGAL PROFESSION 10 (2009).

¶75 Beyond such pragmatic challenges, reflective diversity raises concerns on two fundamental levels. The first is that it is a rigid and unforgiving standard, and not merely because it has proven so challenging to satisfy. Recall that on its own terms, each group should see itself reflected in the profession in the same measure as it occurs in the general population. In practice, this standard has been applied in an ad hoc manner that undermines its overall credibility.

¶76 For example, as indicated earlier librarianship is a heavily female-dominated profession. Advocates of pursuing the goal of reflective diversity have no basis, without additional justifications external to the rationale, to deny that we should be pursuing the increase of male membership within AALL. In reality such efforts appear unlikely, but we should ask why this divergence from proportionate reflecting is tolerable, while others, such the gaps in race and ethnic numbers, are not. Reflective diversity itself allows no such distinctions.

¶77 If we poke at the data a bit we can construct a plausible post facto explanation. Because women are disadvantaged in so many other aspects of the American workforce, it perhaps makes a certain sense not to raise obstacles in one area where they have achieved success, especially as men are not disadvantaged by being under-represented within female-dominated professions like law librarianship.⁸⁰ This practical approach, however, undermines the sense of immediate obviousness that appeal to reflective diversity is meant to inspire. We either have to apply this rule across the board, for all groups, or recognize that reflective diversity does not offer a consistent or complete basis for outreach to minority groups. In practice, we need additional information beyond census counts to understand its appropriateness in one context but not another.

¶78 The second troubling concern directs our attention to even more basic contradictions in the claim that groups must be present in all occupational groups in matching proportions to their presence in the population. That rule mandates how many of each race or ethnic group a profession can include. If the goal of diversity efforts is to encourage freedom of choice by eliminating irrelevant obstacles, there seems something oddly counterintuitive to also declare, as the logic of reflective diversity would require, that African Americans do not have the freedom to choose if those collective choices do not yield 12.6% of law librarians, which is their presence within the general population.⁸¹ Above that threshold they are eating into some other group's equitable portion of AALL membership; below it, there is something wrong that is preventing otherwise interested individuals from pursuing law librarianship. Reflective diversity, in a word, mandates a quota to be met but not surpassed.

¶79 Table 6 shows, for instance, that Asian Americans occupy postsecondary teaching positions in excess of their presence in the population: about ten to twelve percent versus four to five percent respectively. Given the limited number of such posts, the success of this group at achieving and even exceeding reflective diversity

80. Michelle J. Budig, *Male Advantage and the Gender Composition of Jobs: Who Rides the Glass Escalator?*, 49 SOC. PROBS. 258, 258 (2002) (“[I]n terms of earnings, men are uniformly advantaged in male-dominated, female-dominated, and balanced jobs.”).

81. See U.S. Bureau of the Census, *United States: 2010: Summary Population and Housing Characteristics: 2010 Census of Population and Housing 4 tbl.2* (Jan. 2013), <http://www.census.gov/prod/cen2010/cph-1-1.pdf> [<https://perma.cc/83SK-DRNU>] (showing 38,929,319 blacks or African Americans out of a total population of 308,745,538).

must come at the expense of other groups. Reflective diversity, because it is concerned only with deviations from a population norm and not with the direction of that disparity, would deem overrepresentation as poor an outcome as being underrepresented. There seems something unprogressive in declaring that any group who has secured success—whether women in librarianship or Asian Americans in college teaching—has received “enough” and should back away from the table to allow others an opportunity. Yet this seems to be what the demands of reflective diversity would require.

¶80 These problems arise from the common characterizations of reflective diversity. Under any view these demands seem counterproductive. Although the description of reflective diversity includes the specified assumption of “all things being equal,” we should doubt that the real world very often satisfies this strict requirement. Among librarians, for example, an earlier study found that “[t]ype of work setting desired varied by ethnicity,” with the top choice for American Indians being large academic libraries (40%), for blacks, medium-to-large public libraries (29.2%), and for Hispanics, noncorporate special libraries (34.6%).⁸² Other research suggests that women with conservative Protestant religious affiliations may have disproportionately lower levels of workforce participation due to their higher priorities for childcare in the home.⁸³ Such differential behavioral patterns can be important for the present discussion because “people who are black or Hispanic, in comparison to white, were more likely to say that religious factors influenced their choice of career or job.”⁸⁴ Similarly, it may be significant for understanding the distribution and upward progression of minority law librarians that 48% in 1992 said they would not be willing to relocate to pursue career advancement,⁸⁵ a number that had increased to 51% by 2007.⁸⁶ Such a trend would limit both an ability to find positions within the profession (impacting reflective diversity) and the likelihood of rising to higher positions in different libraries (suppressing substantive diversity).

¶81 The broad lesson is that, whatever the reasons, the effort to maximize diversity should not discourage individuals from making personal choices even when collectively they cut against public policy objectives. Diversity efforts are intended to create more opportunities for everyone, especially those historically disadvantaged, not less. We must recognize that the choice of career path is subtly influenced by many variables. If any of these are differentially shaped by ethnic and cultural background—and it would seem odd if that were not the case—then we must be open to the possibility that all things are *not* equal, and that different

82. Heim & Moen, *supra* note 10, at 98.

83. Evelyn L. Lehrer, *The Effects of Religion on the Labor Supply of Married Women*, 24 SOC. SCI. RES. 281, 298 (1995).

84. Emily Sigalow et al., *Religion and Decisions About Marriage, Residence, Occupation, and Children*, 51 J. SCI. STUDY RELIGION 304, 313 (2012).

85. Dwight King et al., *Profiling Minority Law Librarians: A Report on the 1992–93 Survey*, 87 LAW LIBR. J. 247, 256 (1995). A follow-up study appeared fifteen years later and reported improvements in some areas but not others. Rhea Ballard-Thrower et al., *Profiling Minority Law Librarians: An Update*, 101 LAW LIBR. J. 267, 2009 LAW LIBR. J. 16.

86. Ballard-Thrower et al., *supra* note 85, at 286, ¶ 63. The lack of willingness to relocate may be characteristic of library students generally. One earlier study found that only about one-quarter of full-time students were mobile. Heim & Moen, *supra* note 10, at 98. Moreover, these are the students “more likely to seek employment in academic or special libraries,” presumably including law libraries. *Id.*

groups need not sort themselves identically into occupational categories. Someone raised in an environment in which material gain is the highest good will be more interested in becoming a hedge fund manager, for example, than if she had been taught to define herself through intellectual achievements. To insist otherwise is to deny respect to the varying identities that workplace diversity initiatives are supposed to be promoting and that cognitive diversity teaches have real and intrinsic value.

¶82 If this argument is reasonable, then we are left with the conclusion that there is something amiss with the earlier application of reflective diversity. The misstep occurred with the definitional leap that the condition to be reflected or mirrored was population distribution. As a philosophical matter, we should have been skeptical about the way in which reflective diversity constructs a parallel between the natural occurrence of raw racial and ethnic population statistics with a second distribution resulting from presumably free personal choices.

¶83 These conceptual difficulties with reflective diversity should not lead us to forget its strengths. As the previous section concluded, the democratic rationale embedded within this form of diversity offers the strongest defense of this workforce ideal. The goal should be to find something more coherently defensible for it to “reflect.” If we deconstruct the motive behind this reliance on a population statistic, we may be in a better position to identify a suitable alternative.

¶84 The goal to match population distributions can be approached less as a literal target than as a convenient proxy for what truly matters. Again we can look to Justice O’Conner for the clue written into the *Grutter* opinion. The goal is not, she says, an “outright racial balancing,” which is patently unconstitutional, but to achieve a “critical mass” that would create the desired educational benefits.⁸⁷ Minority groups should be represented in the professions not only because of the fairness issues centering on the individual applicants, but also because of the ripple effects from these persons being seen by others. The goal should not be a strict quota but for each group to be included in sufficient numbers that their presence becomes ordinary and unremarkable for everyone, and the minority members find their participation rewarding rather than a source of anxiety and stress.⁸⁸ When looking at Latinos, for example, students performed better both when the campus included a greater percentage of enrolled Latino students (supporting reflective diversity) and when they had contact with more Latino faculty (supporting substantive diversity).⁸⁹ When that minimal threshold has been crossed, aspirants will no longer doubt whether a career option is open to people like themselves; the only question in their minds should be if they find it personally interesting and attractive.

87. *Grutter v. Bollinger*, 539 U.S. 306, 329–30 (2003).

88. See, e.g., Linda Serra Hagedorn et al., *An Investigation of Critical Mass: The Role of Latino Representation in the Success of Urban Community College Students*, 48 RES. HIGHER EDUC. 73, 74 (2007) (“[W]ithin the field of education the term [critical mass] has been adapted to indicate a level of representation that brings comfort or familiarity within the education environment.”).

89. *Id.* at 82, 88; see also Suzanne E. Eckes, *Diversity in Higher Education: The Consideration of Race in Hiring University Faculty*, BYU EDUC. & L.J., no. 1, 2005, at 33, 49 (“[T]he presence of minority faculty tends to make students of color feel that they are welcome in the institution. A ‘critical mass’ of people of color can be quite beneficial.”).

¶85 This alternative read on the meaning of “reflective diversity” provides a solution to the question raised earlier concerning sex ratios within librarianship. If the important goal is the point at which a group’s participation becomes unremarkable rather than when it matches a census allocation, we can understand why AALL has no programs to bring more males into law librarianship despite a sizeable shortfall from their number within the general population. In this profession, at least, the presence of males has become uninteresting. Deviation from census proportions is therefore unproblematic. In contrast, this lack of concern does not appear to be true among nurses, where men made up only about nine percent of the profession in 2011,⁹⁰ and where the continuing lack of males generates an ongoing literature discussing ways to increase recruitment.⁹¹

¶86 Because background cultural assumptions attached to occupational categories differ, we can expect that what levels will provide the needed critical mass varies across professions and may vary depending on the underrepresented group being examined. The squishiness of efforts to quantify the “sufficient number” for each group to achieve the needed critical mass is what encourages resort to a proxy-like population proportion. Rather than attempting to ascertain what the target might be for each group and each occupation, reliance on an easily accessible statistic is both expedient and reasonable. The harm comes when the proxy, which when read literally verges on nonsense, assumes a life of its own and becomes an independent goal obscuring the purpose in whose place it is standing.

¶87 Even if we currently have no empirical basis on which to assign the true level of minority membership at which their participation elicits neither criticism nor applause, we can hypothesize that while the census statistic sets a ceiling, the level for perceptual ordinariness determines a floor. So long as the actual numbers float somewhere in between we can be less despairing when judging whether we are effectively addressing the issue. While this is the case for gender, AALL has not achieved that goal for race and ethnicity. Those numbers are clearly below the floor, and even in the sub-basement.

Diversity Within the Allied Professions

¶88 Even by the more forgiving standard described in the previous section, AALL performs poorly. Here we consider how much of its inability to attract minorities is due to failings within the organization and how much is due to broader social patterns over which AALL has little control. The recommendation is that AALL should focus its efforts on the former rather than the latter.

¶89 At a time when many people are experiencing “diversity fatigue”—an emotional response “to the continual recycling of issues that had seemingly already been discussed and even resolved”⁹²—the appearance of new outlooks on the topic

90. U.S. Census Bureau, *Men in Nursing Occupations 2* (Feb. 2013), https://www.census.gov/people/io/files/Men_in_Nursing_Occupations.pdf [<https://perma.cc/W7YQ-GZH6>].

91. See, e.g., Robert J. Meadus, *Men in Nursing: Barriers to Recruitment*, NURSING F., July–Sept. 2000, at 5; Dale Rajacich et al., *If They Do Call You a Nurse, It Is Always a “Male Nurse”: Experiences of Men in the Nursing Profession*, NURSING F., Jan.–Mar. 2013, at 71; Susan Trossman, *Caring Knows No Gender: Break the Stereotype and Boost the Number of Men in Nursing*, AM. J. NURSING, May 2003, at 65.

92. ABA PRESIDENTIAL DIVERSITY INITIATIVE, *supra* note 36, at 41.

can be a source of unexpected excitement. Scott Page's work developing the significance of cognitive diversity is one such fresh perspective. A second is offered by Jason Nance and Paul Madsen.

¶90 Nance and Madsen argue that while the legal profession fails by the rigid standard of reflective diversity, it does no worse than other similarly situated "extremely prestigious" professions such as health practitioners and college professors.⁹³ "[W]hen the results for minorities are disaggregated, women, African Americans, Hispanic Americans, Native Americans, and Other Minorities appear to be, for the most part, as well represented in the legal profession as they are in other high status professions."⁹⁴ Minority candidates "who are eligible to pursue professional or advanced degrees appear to be just as likely to become legal professionals as they are to become members of other high status professions."⁹⁵

¶91 The persistent lack of formal diversity within the legal profession, then, should not be addressed through law-specific programs. Trying to gain recruits at college job fairs, for example, merely competes with other professions for a small number of qualified persons without increasing the pool of such individuals. In addition to those short-term approaches, the legal profession needs to address broader pipeline factors that limit those to whom entry into law school is a realistic option. As described by Sarah Redfield,

there are too few underrepresented minorities moving through the pipeline, too few graduating from high school, too few persisting and succeeding in college, too few presenting LSAT scores and GPAs that meet today's norms for admission to law school. To achieve significant diverse populations, the law academy would need to increase its admissions for blacks and Hispanics well beyond what the current applicant pool, in the current milieu, can bear—at rough count, 1,500 more black students and 7,500 more Hispanic students a year would be needed to approach parity with the population by 2028, the year Justice O'Connor's twenty-five year window would close for affirmative action.⁹⁶

¶92 Granting the need for action on all fronts, the innovative analysis by Nance and Madsen allows them to isolate where the specific challenge exists for law, where it fails even when compared to similar occupational categories like medicine. The single exception to their conclusion that minorities are as well represented in law as they are in similar occupations with high academic and testing requirements is Asian Americans, who are "drastically underrepresented in the legal profession when compared to other high status professions."⁹⁷ This segment of the minority population seems to encounter unique obstacles to entering law occupations, and it is here, according to Nance and Madsen, that organizations such as the ABA and law schools have a special burden.

¶93 The next step involves identifying the nature of that unique obstacle. Personality stereotypes may be one likely problem:

93. Jason P. Nance & Paul E. Madsen, *An Empirical Analysis of Diversity in the Legal Profession*, 47 CONN. L. REV. 271, 304 (2014).

94. *Id.* at 314.

95. *Id.* at 316–17.

96. REDFIELD, *supra* note 79, at 2–3 (2009) (referring to O'Connor's statement in *Grutter* that "[w]e expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today," *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003)).

97. Nance & Madsen, *supra* note 93, at 314.

Several studies have found that people inside and outside the legal profession share common stereotypes of lawyers as assertive, dominant, ambitious, competitive, and argumentative. Professor [Jerry] Kang and his co-authors explain that these stereotypes of lawyers are both gendered and racialized because the traits and behaviors of ideal litigators typically are used to describe white male professionals. The authors suggest that the impact of these stereotypes leads to discrimination against those who do not fit this mold, such as Asian Americans.⁹⁸

¶94 Ideally we would like to perform a similar analysis for law librarianship. The optimism that AALL has made meaningful strides toward increasing its diversity cannot be properly evaluated if we restrict our attention to the aggregated numbers for AALL while ignoring the wider professional world in which AALL operates. The tallies for AALL have meaning only in the context of those broader comparisons, and as we have already seen, in that light it has actually lost ground.⁹⁹

¶95 Granting that the inclusion of minority groups falls well below the goal of reflective diversity, are AALL's shortcomings any worse than similarly situated occupations? If not, the problem is not recruitment at the output of the education pipeline. Focusing our attention at that point merely shuffles members of a too-small pool of qualified candidates between equally appealing career options. Inclusion rates for underrepresented minorities will be significantly improved only when that pool expands through better educational and training opportunities beginning as early as possible in a student's life.¹⁰⁰ Such broad social projects are arguably beyond the mission of AALL, although its individual members could contribute through other entities more directly tasked to address these problems.

¶96 If, however, we find that qualified recruits from some groups disproportionately choose options beside law librarianship, or once choosing fail to stay, then we should look within ourselves to discover what we are doing incorrectly. This problem would be wholly within our power to rectify and thus should receive the majority of AALL's diversification attention and resources.

¶97 This section compares the table 1 data for law librarianship with three allied professions in an effort to ascertain how it performs relative to other options against which we compete for the same candidates. Because law librarianship is a conjunct between law and librarianship, those two are obvious choices. Most drawn to a career in law librarianship would regard as feasible alternatives working in a different kind of library or becoming a practicing attorney. Similarly, many who find law librarianship attractive do so because it affords an opportunity for instructional interaction with intellectually mature patrons. Those enjoying that facet of law librarianship could have opted to become a teacher at the postsecondary (college or university) level, and thus that occupational category is also included for comparison.

¶98 We cannot fully replicate the method used by Nance and Madsen because AALL no longer provides statistics on individual racial groups, and the aggregated minority statistics we have culled from the *Minority Law Librarians Directory* are too thin to warrant any attempt to sort into smaller identity groups. For those reasons, the final comparison uses only the snapshot drawn from the 2005 *Salary*

98. Negowetti, *supra* note 19, at 943.

99. See *supra* ¶¶ 53–60.

100. See REDFIELD, *supra* note 79, at 69 (“By the time students reach the point of considering a law career, for many, the damage is done.”).

Table 4
Employed Lawyers by Race^a

	Lawyers	Percentage Black or African American	Percentage Asian/ Asian American	Percentage Hispanic or Latino Ethnicity	Percentage Blacks + Asians + Hispanic
2000	Not published				
2001	Not published				
2002	929,000	4.6	N/A	3.1	7.7
2003	952,000	3.6	2.8	4.0	10.4
2004	954,000	4.7	2.9	3.4	11.0
2005	961,000	4.7	2.0	3.5	10.2
2006	965,000	5.0	2.9	3.0	10.9
2007	1,001,000	4.9	2.6	4.3	11.8
2008	1,014,000	4.6	2.9	3.8	11.3
2009	1,043,000	4.7	4.1	2.8	11.6
2010	1,040,000	4.3	3.4	3.4	11.1
2011	1,085,000	5.3	4.2	3.2	12.7
2012	1,061,000	4.4	4.3	4.0	12.7
2013	1,092,000	4.2	5.1	5.1	14.4
2014	1,132,000	5.7	4.4	5.6	15.7

a. Data from annual reports of the U.S. Bureau of Labor Statistics, *Labor Force Characteristics by Race and Ethnicity* (various tables, *Employed People by Detailed Occupation, Race, and Hispanic or Latino Ethnicity*).

Survey and relates it to tallies from the three allied professions for the same year. Following that review, the usefulness of relying as a remedy on pipelines from either law or library schools is considered.

Diversity Within Law, Librarianship, and Postsecondary Teaching

¶99 As determined by the strict standard of reflective diversity, the equitable current participation rates for minority groups should be 12.6% for African Americans, 5.6% for Asian Americans, and 17% for Hispanics. As shown above in table 2, the aggregate rate for all minorities is 37.9%. Tables 4 through 6 reveal that each of the three chosen allied professions consistently fails to satisfy this goal. All fare better than the rates for law librarianship in table 1.

¶100 Beginning with the legal field, we see in table 4 that it falls significantly below the targets of reflective diversity, although less so for Asian Americans. This result might seem surprising given the discussion of the Nance and Madsen paper. The negative conclusions there concerning law’s inclusion of Asian Americans were in comparison with other “prestigious professions,” and not, as here, with the general population.

Table 5

Employed Librarians by Race^a

	Librarians (1000)	Percentage Black or African American	Percentage Asian or Asian American	Percentage Hispanic or Latino Ethnicity	Percentage Blacks + Asians + Hispanic
2000	Not published				
2001	Not published				
2002	207	7.8	N/A	5.1	12.9
2003	194	5.6	2.7	5.0	13.3
2004	217	5.6	4.5	4.6	14.7
2005	214	5.8	2.5	4.6	12.9
2006	229	8.8	1.1	2.9	12.8
2007	215	6.0	2.0	4.1	12.1
2008	197	6.7	3.5	3.7	13.9
2009	206	5.3	3.0	6.8	15.1
2010	216	9.2	1.7	5.2	16.1
2011	198	10.1	2.6	3.9	16.6
2012	181	7.9	2.5	2.8	13.2
2013	194	7.7	2.1	5.1	14.9
2014	198	3.6	4.0	5.7	13.3

a. Data from annual reports of the U.S. Bureau of Labor Statistics, *Labor Force Characteristics by Race and Ethnicity* (Various tables, *Employed People by Detailed Occupation, Race and Hispanic, or Latino Ethnicity*).

¶101 According to table 5, in most categories general librarianship fares even worse than law, although its ending statistic for Hispanics is slightly better. Most alarming is that the rate of inclusion for African Americans has been steadily falling, from a high of 7.8% in 2002 to the 2014 rate of 3.6%. Even if the immediately preceding value of 7.7% for 2013 is taken as more representative, that number still means that there has been no improvement in the past fifteen years.

¶102 In every column of table 6, postsecondary teachers are a better integrated professional category than either law or librarianship. In the case of Asian Americans, it even exceeds the standard of reflective diversity by more than 100%. As discussed above, this raises the question of whether a group can claim too much of an occupational category. This finding also reminds us that aggregated numbers can be misleading: Despite this spectacular performance for one group, the aggregate minority representation is still below reflective diversity.

¶103 Comparing the longitudinal numbers, law librarianship is well behind the three allied professions of law, librarianship, and postsecondary teaching in terms of its ability to attract and retain minorities.¹⁰¹ Even if we apply the generous (but

101. Although this discussion focuses on the challenges to recruit minority librarians, we should also recognize that there exists a significant problem with retention as well.

Table 6
Employed Postsecondary Teachers by Race^a

	Postsecondary Teachers (1000)	Percentage Black or African American	Percentage Asian or Asian Americans	Percentage Hispanic or Latino Ethnicity	Percentage Blacks + Asians + Hispanic
2000	Not published				
2001	Not published				
2002	1015	5.4	N/A	5.4	10.8
2003	1121	5.0	10.5	4.5	20.0
2004	1176	5.9	11.0	3.5	20.4
2005	1185	6.7	11.2	4.1	22.0
2006	1194	6.7	10.3	4.5	21.5
2007	1261	5.6	11.7	4.2	21.5
2008	1218	5.2	11.9	4.0	21.1
2009	1321	5.3	11.3	4.6	21.2
2010	1300	6.3	11.0	5.0	22.3
2011	1355	7.3	10.1	4.8	22.2
2012	1350	7.9	11.3	6.2	25.4
2013	1313	6.8	13.0	5.9	25.7
2014	1259	6.1	12.2	6.1	24.4

a. Data from annual reports of the U.S. Bureau of Labor Statistics, *Labor Force Characteristics by Race and Ethnicity* (various tables, *Employed People by Detailed Occupation, Race, and Hispanic or Latino Ethnicity*).

unsubstantiated) “+10” corrective proposed earlier,¹⁰² law librarianship still trails college professors, is about equal to lawyers, and can claim to be only marginally more successful than general librarians.

¶104 On the most generous reading, law librarianship on the whole has been able to attain no special success in terms of underrepresented peoples, but also no outstanding failure. If that conclusion holds, the inability to rise to the standard of reflective diversity lies with broader social issues, such as the pipeline problems discussed below. There exists, however, the possibility that the profession is performing well below that level, at least as determined by the currently best available

That credentialed librarians under age 45 comprised almost a third, 30%, of the total for that category in 2000, yet accounted for 44% of credentialed librarians leaving the work force, speaks not so much to an inability to effectively recruit individuals to LIS education and practice as to an inability to effectively retain them.

AM. LIBRARY ASS’N, OFFICE FOR RESEARCH & STATISTICS, DIVERSITY COUNTS 11 (2007), http://www.ala.org/offices/files/diversity/diversitycounts/diversitycounts_rev0.pdf [<https://perma.cc/M2E3-7H2B>]. It does little good to vex ourselves concerning recruiting minority librarians if we cannot provide an environment in which they wish to stay. See Chan et al., *supra* note 44, at 25 (noting “the conundrum that many librarians of color face—how to ‘sell academic librarianship or librarianship in general, as a positive career choice when they themselves are pondering their own rationales for staying in this profession’”).

102. See *supra* ¶ 6–7.

Table 7

2005 Minority Data for Lawyers, Librarians, Postsecondary Teachers, and Law Librarians

	Percentage Black or African American	Percentage Asian or Asian American	Percentage Hispanic or Latino	Percentage Minority
Lawyers	4.7	2.0	3.5	10.2
Librarians (General)	5.8	2.5	4.6	12.9
Postsecondary Teachers	6.7	11.2	4.1	22.0
Law Librarians	5.0	4.1	2.6	11.7
2005 Population Percentage Rates	12.23	4.43	14.56	31.32 ^a

a. This figure differs from that generated in table 1 because in that case the percentage of minorities was calculated as all those who were not Caucasian; here the number is found by adding the identified census groups.

data. If that outcome holds the field, AALL has a major difficulty, one largely of its own making, yet one that it has backed away from in recent years. So the options thus far appear to be: at best, we are performing poorly, but not consistently worse, than other similarly situated professions; or we are falling far behind. Neither of these is cause for pats on the back.

2005 Comparison

¶105 Before we accept such a depressing result, we can take one more look. AALL data from 2005 are old and may not offer an accurate sketch of how things stand today. Despite those limitations, rather than chunking all minorities into a single block, the statistics from the last *Salary Survey* to include member demographics by race permit the granularity needed for a nuanced analysis by identity group. If AALL has a disappointing performance in the aggregate, perhaps it can claim better outcomes in particular subsets. We can draw no conclusions about trends, but this single snapshot offers a window onto how things once stood.

¶106 Table 7 shows that, relative to the chosen allied professions, AALL in 2005 was less diverse than both librarians and postsecondary teachers, but more than lawyers. This same ranking describes its rate of inclusion of African Americans, but AALL was worse than all three in terms of its Hispanic and Latino members. On a more positive note, AALL approached reflective diversity with its percentage of Asian Americans.

¶107 Twelve years later, we cannot judge how well AALL performs on these measures when compared to these related professional choices. If we assume current conditions approximate those from 2005, we might conclude that, while all groups fall shamefully short of the target of thirty-one percent minority members, if AALL has a special difficulty, one that is not shared with similarly situated occupations, it lies in its failure to attract Hispanics and Latinos into the profession of law librarianship. AALL’s failings in these regards have perhaps been obscured due

to our stronger success among Asian Americans, so that the combined figure for minority members does not appear to deviate markedly from other professions.

¶108 To more clearly underscore the practical conclusion, what programs AALL intends to address its lack of minority members should prioritize the group it appears to have an idiosyncratic, as opposed to a shared society-wide structural inability to attract, namely Hispanics. Its second priority according to this analysis should be African Americans, a group represented better among law librarians than lawyers, but worse than general librarians and teachers.

Pipelines into Law Librarianship

¶109 The finding that AALL continues to have a diversity problem is only one part of the larger discussion. Another concerns the degree to which it can look to feeder pipelines to generate more qualified candidates that fit the necessary demographic profile. As pointed out long ago, “To increase the numbers of minorities in law librarianship, there must be either a corresponding increase in the source from which candidates are drawn or a more effective way to attract and recruit candidates to law librarianship from the existing pool of students, graduates, and practicing librarians.”¹⁰³

¶110 The previous sections have shown that on the second prong of that directive law librarianship has fared about as well as most other similarly situated professions, but that due to the constricted size of the pool none can reach its goals. This section asks whether looking toward the pipeline to expand that pool is a reasonable option. That strategy would not address immediate shortfalls, but could provide an assurance that with sufficient time more minority law librarians will appear. There may still be a scramble to convince them to join our profession rather than another, but with enough suitable students the hope would be that, in time, all recruitment needs could be satisfied.

¶111 The most likely graduate program pipelines into law librarianship are from either law or librarianship. In both these educational settings, however, minority students are in short supply. Without major changes to the pipelines into *those* programs, we cannot expect that either will award degrees to diverse students in sufficient numbers to break the racial homogeneity of AALL.

Law Schools

¶112 To the extent we look to law schools as a source of potential minority law librarians, this seems unwise. They can barely produce enough for their own profession, with high bars to entry and significant attrition through the process.

¶113 The chokepoints for the law school minority pipeline occur in three places: the requirements for admission, rates of graduation, and rates of bar passage. Each winnows the initial pool of potential minority attorneys and, in combination, they prove devastating to any hope that AALL can capture some of the graduates who inevitably realize that the daily practice of law is not a fulfilling path for them, but who still wish to apply their legal education in a challenging professional environment. This choice has proven especially true for those law students who worked in the library during school: “Half of the twenty-six [minority law librarian] respondents

103. King et al., *supra* note 85, at 254.

Table 8

Law School Applicants^a

	Total Law School Applicants	Caucasian Applicants	Percent Non-Caucasian Applicants
2000	74,600	48,680	34.75
2001	77,200	51,190	33.69
2002	90,900	59,570	34.47
2003	99,500	64,110	35.57
2004	100,600	64,870	35.52
2005	95,800	62,560	34.70
2006	88,700	58,070	34.53
2007	84,000	54,180	35.50
2008	83,400	52,960	36.50
2009	86,600	55,110	36.36
2010	87,900	54,540	37.95
2011	78,500	46,180	41.17
2012	67,900	42,800	36.97
2013	59,400	37,850	36.28
2014	55,700	34,600	37.88

a. *Applicants by Ethnic and Gender Group*, LSAC, <http://www.lsac.org/l sacsresources/data/ethnic-gender-applicants> [<https://perma.cc/UG4X-A3CQ>].

with a J.D. degree reported that they had worked in a library when they were law students.”¹⁰⁴ Law librarianship can be a viable alternative for these individuals, but so few minorities survive the process that this route offers an unreliable source for future legal information specialists.

¶114 In table 8, minority students display an interest in legal careers in full measure of reflective diversity: in 2014 almost thirty-eight percent of those taking the LSAT were members of racial and ethnic minorities. The systematic if unintentional frustration of these aspirations begins almost immediately. Because the ABA “generally denies accreditation to any school for which the average LSAT score is below 143,”¹⁰⁵ most schools cannot afford to admit too many students with low LSAT scores. But the most recent data show that the average LSAT score from 2007–2013 for African Americans is 142, about ten points less than the mean scores for Caucasians,¹⁰⁶ while that for Hispanics falls between 145 and 146.¹⁰⁷ Over this

104. *Id.* at 262–63.

105. George B. Shepherd, *No African-American Lawyers Allowed: The Inefficient Racism of the ABA’s Accreditation of Law Schools*, 53 J. LEGAL EDUC. 103, 104–05 (2003).

106. SUSAN P. DALESSANDRO ET AL., LSAT PERFORMANCE WITH REGIONAL, GENDER, AND RACIAL/ETHNIC BREAKDOWNS: 2007–2008 THROUGH 2013–2014 TESTING YEARS, at 21–25 (LSAT Tech. Report 14-02, Oct. 2014), <http://www.lsac.org/docs/default-source/research-%28lsac-resources%29/tr-14-02.pdf> [<https://perma.cc/5KLK-ZE86>].

107. *Id.* at 21–23.

Table 9

First-Year and Total J.D. and Minority Enrollment in ABA-Approved Law Schools^a

Academic Year	Number of Schools	First-Year Enrollment	First-Year Minority Enrollment	Percentage	Total J.D. Enrollment	Total J.D. Minority Enrollment	Percentage
2000	183	43,518	9335	21.5	125,173	25,753	20.6
2001	184	45,070	9557	21.2	127,610	26,257	20.6
2002	186	48,433	10,229	21.1	132,885	27,175	20.5
2003	187	48,867	10,468	21.4	137,676	28,325	20.6
2004	188	48,239	10,694	22.2	140,376	29,489	21.0
2005	191	48,132	10,389	21.6	140,298	29,768	21.2
2006	195	48,937	10,898	22.3	141,031	30,557	21.6
2007	198	49,082	11,016	22.4	141,719	30,657	21.6
2008	200	49,414	11,320	22.9	142,922	31,368	21.9
2009	200	51,646	11,840	22.9	145,239	32,505	22.4
2010	200	52,448	13,191	25.2	147,525	35,045	23.8
2011	201	48,697	12,779	26.2	146,288	35,859	24.5
2012	201	44,481	12,446	27.9	139,055	35,914	25.8
2013	202	40,802	11,892	29.1	128,712	34,584	26.9

a. Am. Bar Ass'n Sect. of Legal Educ. & Admissions to the Bar, *From 2013 Annual Questionnaire: ABA Approved 1st Year JD and Minority Enrollment: Fall 2013*, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2013_jd_enrollment_1yr_total_minority.xls [https://perma.cc/58W3-CJWW].

same period, Puerto Ricans average 138 to 139 points.¹⁰⁸ As Justice Clarence Thomas noted, “In 1992, 63 black applicants to law school had LSAT scores above 165. In 2000, that number was 65.”¹⁰⁹ All told, only “about 6% of African-American students who take the LSAT match or exceed the median LSAT score of 156 for matriculation into ABA approved law schools.”¹¹⁰

¶115 As Redfield explains, “Achievement gaps are not facts of nature. They are mostly because of differences in life experience.”¹¹¹ Low LSAT scores should be viewed as the outcomes of a lifetime of lack of educational opportunities, both formal and informal. Increased likelihood of being raised in poverty can lead to lower exposure to reading and vocabulary, a deficit that carries over on entering

108. *Id.*

109. *Grutter v. Bollinger*, 539 U.S. 306, 377 n.15 (2003) (Thomas, J., concurring in part and dissenting in part).

110. DOROTHY H. EVENSEN & CARLA D. PRATT, *THE END OF THE PIPELINE: A JOURNEY OF RECOGNITION FOR AFRICAN AMERICANS ENTERING THE LEGAL PROFESSION* 123 (2012).

111. REDFIELD, *supra* note 79, at 69 (quoting Ronald Ferguson, *Recent Research on the Achievement Gap* (Nov. 30, 2006), <http://cnpublications.net/2006/11/30/closing-the-achievement-gap/>).

Table 10

Law School Minority Enrollment by Class^a

Cohort Entering Year	First Year	Second Year	Third Year	Percent Lost
			7690	
		8052	7785	
2000	9335	8172	7898	15.4
2001	9557	8326	8062	15.6
2002	10,244	9144	8766	14.4
2003	10,468	9280	9061	13.4
2004	10,694	9644	9371	12.4
2005	10,462	9539	9203	12.0
2006	10,898	9639	9311	14.6
2007	10,992	10,028	9629	12.4
2008	11,320	10,227	10,267	9.3
2009	11,840	10,714	10,502	11.3
2010	13,191	11,649	11,326	14.1
2011	12,779	11,268	10,847	15.1
2012	12,446	10,947		
2013	11,892			

a. *JD Minority Enrollment at ABA-Approved Law Schools*, LSAC, <http://www.lsac.org/jd/diversity-in-law-school/racial-ethnic-minority-applicants/minorities-in-legal-education-statistics> [<https://perma.cc/QL8M-WXYD>].

school leading to other performance gaps.¹¹² While this relationship holds for all those living in poverty, it becomes especially important for present purposes because thirty-eight percent of African American children live in poverty as compared to only twelve percent of whites.¹¹³ These economic and educational deficits cannot help but remove many from the professional pipeline. “Given the leakage and deficits along the pipeline before law school, it is hardly surprising that the pool of underrepresented minority applicants approaching the law school gates is smaller than their proportion of the population might predict.”¹¹⁴

¶116 While a third of all law school applicants, minorities comprise a significantly smaller percentage of the first years, which table 9 shows rising no higher than about one-quarter of enrolled students. This milestone, however, is but the first in a long process that disproportionately impacts minorities.

112. See T. ROSS ET AL., *HIGHER EDUCATION: GAPS IN ACCESS AND PERSISTENCE STUDY* (NCES 2012-046) (2012).

113. NAT’L CTR. FOR EDUC. STATISTICS, *THE CONDITION OF EDUCATION: FAMILY CHARACTERISTICS OF SCHOOL-AGE CHILDREN 4* (2016), https://nces.ed.gov/programs/coe/pdf/coe_cce.pdf [<https://perma.cc/5CJR-VVLK>].

114. REDFIELD, *supra* note 79, at 48.

Table 11

Total J.D. Attrition Rate, 2000–2012^a

	Total J.D. Enrollment (Table 9)	Total Three-Year Attrition	Total Attrition Rate
2000	125,173	5775	4.61
2001	127,610	5899	4.62
2002	132,885	6179	4.65
2003	137,676	6784	4.93
2004	140,376	6264	4.46
2005	140,298	6838	4.87
2006	141,031	6465	4.58
2007	141,719	6433	4.54
2008	142,922	6155	4.31
2009	145,239	6151	4.24
2010	147,525	6765	4.59
2011	146,288	6672	4.56
2012	139,055	6334	4.56

a. Am. Bar Ass’n Sect. of Legal Educ. & Admissions to the Bar, *From 2013 Annual Questionnaire: ABA Approved JD Attrition: Fall 2013*, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2013_fall_jd_attrition.xls [<https://perma.cc/N49G-6NE4>].

¶117 Table 10 begins with the enrollments from table 9 and pairs these data with similar numbers from the second and third years of law school. Shifting the columns allows us to see the changes not in annual totals but in cohorts as they move through law school. For example, the cohort that entered law school in 2000 with 9335 minority members had only 7898 by its third year, for an attrition rate of 15.4%.

¶118 Averaging the twelve years for which we have full information, we find that law schools lose another 13.3% of the already low minority enrollments with which their programs began. Even if that number matched the standard attrition rate for all students from law school, the losses would still be critical given the low enrollments of minorities at the outset. Table 11, however, reveals that an average attrition rate of over thirteen percent for minorities is several times higher than the overall rate at which students resign from the J.D. program. While successful completion of a program of legal education can be a challenge for even the most gifted person, these figures point to special obstacles encountered by minority students on their way to this achievement.

¶119 For the comparatively few minority students who graduate with their J.D. degrees, one final hurdle remains: passing the bar. In the only major study to examine lifetime success, the LSAC found that while 94.8% of members of the class of

1991 eventually passed the bar,¹¹⁵ this success was not evenly distributed across groups:

The eventual passage rates for racial and ethnic groups were: American Indian, 82.2% (88 of 107); Asian American, 91.9% (883 of 961); black, 77.6% (1062 of 1368); Mexican American, 88.4% (352 of 398); Puerto Rican, 79.7% (102 of 128); Hispanic, 89.0% (463 of 520), white, 96.7% (18,664 of 19,285); and other, 91.5% (292 of 319).¹¹⁶

¶120 In addition to finding new pools of candidates to enroll in law school, law schools may have better success making sure that the students they already have are able to complete the training. According to one analysis, “if under-represented minorities passed the bar at the same rate as whites, this would have the same impact as increasing the number of under-represented minorities in law school by 18%.”¹¹⁷

¶121 In sum, despite being equally interested in pursuing a legal career, minorities are underrepresented among those who are actually admitted to law school, disproportionately find themselves leaving the programs after they are admitted, and pass the bar less successfully even when managing to be one of the few to graduate with the J.D. degree.

¶122 The pipeline into the legal profession consistently “leaks” its flow of minority candidates, leading to the often-noted inability for the field to meet its own diversity goals. While the occasional crossover should be encouraged, we have no reason to believe that law schools will prove a consistently rich source of diverse librarians.

Library Schools

¶123 Given the rising skepticism that a legal degree is a desirable qualification for law librarianship,¹¹⁸ the inability of law schools to provide the next generation of law librarians diverse or otherwise may not prove worrisome to some. Library schools are perhaps the more natural feeder pipeline—although some have expressed similar doubts that the library degree is needed any more than the J.D.¹¹⁹

¶124 Although the available data lack the depth collected from law schools, the same broad pattern emerges. Like law, libraries suffer an intractable lack of diversity. The title of a new volume frames the problem bluntly—*Where Are All the Librarians of Color?*¹²⁰—and like Thurston’s conclusions about law libraries, its contributors observe the heavy expenditure of resources yielding little improvement.¹²¹

115. LINDA F. WIGHTMAN, LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY, at viii (1998).

116. *Id.*

117. *Raising the Bar: An Analysis of African American and Hispanic/Latino Diversity in the Legal Profession*, http://www.americanbar.org/content/dam/aba/administrative/diversity/Microsoft_Raising_the_Bar_FINAL.ppt (last visited Sept. 30, 2016) (PowerPoint presentation).

118. See Stephen Young, *The Dual Degree: A Requirement in Search of a Justification*, AALL SPECTRUM, Dec. 2012, at 7.

119. See Janeen Williams, *The Importance of the MLS Degree for Academic Law Librarians*, SOUTHEASTERN L. LIBR., Summer 2013, at 3, 3–4.

120. WHERE ARE ALL THE LIBRARIANS OF COLOR?, *supra* note 44.

121. Agnes K. Bradshaw, *Strengthening the Pipeline—Talent Management for Libraries: A Human Resources Perspective*, in *id.* at 95, 117 (“In spite of ALA’s diversity initiatives over the decades, the diversity of the profession has not increased significantly.”).

Table 12

Enrollment by Ethnic Origin in ALA-Accredited Library Science Masters Programs^a

	Total Fall Enrollment	Black or African American	Asian/ Pacific Islander	Hispanic or Latino	Percent Minority
2000	13,127	588	311	353	9.54
2001	14,043	649	352	440	10.26
2002	15,117	679	397	563	10.84
2003	16,786	742	508	659	11.37
2004	17,784	741	538	690	11.07
2005	18,302	771	628	752	11.75
2006	Not Published				
2007	Not Published				
2008	17,421	800	674	878	13.50
2009	19,384	905	779	1097	14.35
2010	Not Published				
2011	18,640	787	727	1008	13.53
2012	Not Published				
2013	Not Published				
2014	13,544	632	502	971	15.54

a. Data from Ass’n of Library & Info. Sci. Educ. [ALISE], *Annual Statistical Reports*, tbl.II-4-C-2-LS (available to ALISE members; on file with author).

¶125 The information in table 12, taken from the Association for Library and Information Science Education (ALISE), describes the demographics of library school students. Barely enough minority students enroll to maintain the low level of racial and ethnic diversity currently recorded for libraries in table 5. There are not enough of either to improve the profiles of general libraries or to expect that adequate numbers are consistently available to noticeably alter the skewed ratios in AALL.

¶126 Beyond the obvious sense in which a library degree is typically required for professional employment in any library, there seems to be no special basis to expect library schools to be an abundant source of diversity candidates. If anything, the relationship may flow in the opposite direction. A recent survey found that sixty percent of African American librarians, forty-one percent of Asian Americans, and forty-four percent of Hispanics considered a library career after first working in libraries.¹²² This cause-and-effect relationship between library work experience and later pursuit of a career in librarianship holds as well for minority law librarians.

122. Kyung-Sun Kim & Sei-Ching Joanna Sin, *Increasing Ethnic Diversity in LIS: Strategies Suggested by Librarians of Color*, 78 LIBR. Q. 153, 167 (2008).

[M]ost library graduate student respondents had previous library work experience, and an overwhelming majority of these students had credited that work experience with influencing their decision to enter the library profession. . . . Respondents not only worked in libraries while students, over half (57%) entered the law library profession having already been employed in non-law libraries.¹²³

¶127 This pattern was repeated in the follow-up survey fifteen years later.¹²⁴ Despite close proximity to the library on a daily basis, many law students do not “see” the library, and certainly do not perceive it as a possible career choice until after they have spent time on the other side of the desk as a student worker. In this way, law libraries can expose more students to the value in professional librarianship, first planting the idea that it can be a real career at all, and then that it can be a good career *for them*. The best pipeline for future librarians may be those who have already found themselves working there.

¶128 Although the traditional pipelines will continue to disappoint for the foreseeable future, this may not be an entirely bad outcome. Scott Page, who brought to our attention the benefits of cognitive diversity, has suggested that the conditions under which different viewpoints are likely to emerge should rule out a structured source of applicants.

This insight should temper our enthusiasm for pipelines used to recruit minorities. These programs nurture potential employees or students from underrepresented groups. They may improve numbers, but they can limit the amount of cognitive diversity that a firm gets. By hiring only African American engineers who graduated from Berkeley and attended the same summer internship program, a company such as Cisco sacrifices cognitive diversity on the altar of identity accounting. Its employees look different, but they may not think differently. Thus, the use of pipelines probably has a negative effect on the benefits of diversity.¹²⁵

¶129 To the extent we wish to realize the full range of benefits from diversifying the workplace, from representative reflective diversity to productive cognitive diversity, we should perhaps decline to invest in constructing formal pipelines.

Conclusions

¶130 We live in a time when twenty percent of supporters of the new Republican President believe that Abraham Lincoln’s Emancipation Proclamation, which freed slaves in the southern states during the Civil War, was wrong.¹²⁶ Another candidate has argued the libertarian opinion that the part of the Civil Rights Act of 1964 that outlawed discrimination in public accommodations was a mistake.¹²⁷ In a milieu where disagreement with equal rights is openly applauded, focusing our attention on preventing discrimination and bias and mitigating the obstacles to diversity will only become more urgent in the years ahead. As one part of that

123. King et al., *supra* note 85, at 263.

124. Ballard-Thrower et al., *supra* note 85, at 280–81, ¶¶ 43–44.

125. PAGE, *supra* note 38, at 364.

126. Lynn Vavreck, *Measuring Donald Trump’s Supporters for Intolerance*, N.Y. TIMES: THE UPSHOT (Feb. 23, 2016), <http://www.nytimes.com/2016/02/25/upshot/measuring-donald-trumps-supporters-for-intolerance.html>.

127. Rand Paul Caught Lying About Past Civil Rights Act Objections, MSNBC.COM (July 25, 2014), <http://www.msnbc.com/rachel-maddow-show/watch/record-shows-rand-pauls-civil-rights-act-lie-312584259850>.

larger project, this article has offered a detailed critique of the efforts by AALL to expand its membership to include minority law librarians.

¶131 The primary threads running through this discussion lead to unambiguous conclusions regarding the success of AALL in attracting underrepresented groups into its ranks, and suggest specific actions the organization should adopt going forward.

Empirical

¶132 Review of the data results in the following findings of fact:

- By any standard, AALL membership lacks diversity within its racial and ethnic member demographics.
- In the local view, the last fifteen years reveal a small but consistent increase in the rate of minorities within AALL.
- From the global perspective, however, the growth of minority populations within the United States has outpaced the addition of minorities to AALL. The 2014 rate of diversity within AALL relative to the population as a whole is less than it was in 2000.
- The lack of minority librarians within AALL is not evenly distributed. The rate of diversity within academic law libraries is about twice that of others, such as law firm, court, and corporate libraries.
- While statistically greater, academic law library diversity plateaued over the examined span, with most of the improvement within AALL occurring within the other sectors of AALL member libraries.
- When compared with allied professions such as law, general librarianship, and postsecondary teaching, law librarianship at best fares equally well (or poorly) at attracting minorities excepting Hispanics.
- AALL cannot look to an influx of qualified potential law librarians through pipelines from law schools and even library schools because these lack sufficiently diverse students to satisfy even their own needs.

¶133 This article began by asking who had the better argument, Thurston with her skepticism about the lack of progress of AALL to more successfully address the lack of minorities within the organization, or Wheeler with his certainty that AALL has made real strides on the problem. As between these two choices, the data favor Thurston. The programs and efforts designed by AALL to attract minorities into the profession¹²⁸ have yielded small gains, not even enough to keep pace with the growing population of minorities.

Policy

¶134 Two policy implications build on these findings, the first less controversial than the second. The success of AALL in opening the profession of law librarianship to persons of all backgrounds has not been evenly achieved. A principle of parsimony suggests that we should husband sparse resources and target them where they

128. Although this discussion includes no description of specific programs by AALL to increase diversity within the profession, a brief summary is offered by Michele A. Lucero & Beau Steenken, *Into the Breach with AALL's Diversity Committee: Law Libraries' Struggle to Achieve Diversity Goals*, AALL SPECTRUM, Feb. 2013, at 15.

can do the most good. Paragraphs 52 through 87 demonstrated that, by the standard of reflective diversity, we have a poor record of racial and ethnic diversity; paragraphs 88 through 129 refined that generalized finding to show that in most cases our ability to attract minorities is no worse than that of similarly situated professions. That result suggests that the issue is not attracting minorities to law librarianship—there simply are not enough in the pipelines to meet the needs of the professions. While our ability to redress these broad social ills may be limited, we would be more effective in using scarce resources to target the one identity group in which we lag behind all our peers. Admitting our shortcomings across the categories, the success among Hispanics is singularly poor and appears to be unique to our organization.

¶135 A more controversial observation notes that, as a practical matter, the emphasis on reflective diversity may be due to the inadequacies of the kinds of data that are available for comparison. For multiple reasons this standard should be questioned, not least being that the exceptionally rigid requirements of reflective diversity mandate an inflexible quota for each identity group through census statistics. This strategy may be reasonable when counting race because nothing relevant follows on mere variations of skin color. But greater challenges arise when applying the reflective standard to ethnic and linguistic differences that can generate real differences in values, desires, and perspectives. In those situations, culture may make some professional options more attractive than others, resulting in divergence from the census proportion for reasons that have little or nothing to do with the legacies of discrimination and bias we aspire to redress through diversity initiatives.

¶136 For example, in table 7 the census rate for Asian Americans is 4.43%; is the inclusion of this group within AALL at 4.1% a problem requiring corrective actions or the consequence of a preference by this group for postsecondary teaching in which it is overrepresented? We lack adequate information to draw this line, but we have enough to recognize that either can be a possible conclusion. We should not transform our lack of insight into a certain judgment by building our priorities on the convenient, if blunt, proxy of census figures. Attentiveness to the true range of diversity should lessen the literalness of the use of census figures and allow more nuanced understanding of the personal choices behind statistical deviations.

¶137 When deviations from census targets are the result of free choice rather than structural obstacles or discriminatory policies, we should not require or desire a different outcome. We do not celebrate the value of diversity when demanding that all groups behave identically.

Remediation

¶138 The data show that in most instances the lack of diversity within AALL is caused not by a closed gate at the front of the profession, but by a broken educational process that drains the pool of possible candidates. According to Wolf,

by five years of age some children from impoverished-language environments have heard 32 million fewer words spoken to them than the average middle-class child The sheer unavailability of books will have a crushing effect on the word knowledge and world knowledge that should be learned in these early years.¹²⁹

129. WOLF, *supra* note 73, at 102–03.

These early differences persist and negatively impact the future success of the child moving through school: “A student who is not a ‘modestly skilled reader by the end of third grade is quite unlikely to graduate from high school.’”¹³⁰

¶139 Correction of such massive structural failures is beyond both the mission and the resources of AALL. One activity that AALL offers that already targets this pivotal deprivation is the book drive for underprivileged children organized by the Social Responsibilities Special Interest Section each year at the annual meeting.¹³¹ Introducing reading material into homes responds to the primary cause of the lack of diverse members within all professions, including AALL. Adopted more broadly and pursued more vigorously as a permanent undertaking, in partnership with other organizations to generate donations and oversee placement,¹³² an enlarged book drive would have a measurable impact on the problem while perhaps being the single most effective strategy within AALL’s mission and identity as a library organization.

Organizational

¶140 While the lack of diversity within AALL may in large measure be beyond its control, our lack of knowledge about the lack of diversity within AALL is not. After the 2005 *Salary Survey*, AALL made the deliberate choice to discontinue collection of data about its member demographics.

¶141 If there is a perception that AALL has a strong commitment to diversity, that reputation is perhaps less deserved than once it was. The first AALL strategic plan in 1990 included as one goal to “foster diversity in the profession by increasing minority membership and participation.”¹³³ The intent to promote diversity was present through the 2000–2005 document¹³⁴ but was omitted thereafter.¹³⁵ Diversity merited no mention in the 2013–2016 plan.¹³⁶ The dropping of diversity as an organizational goal, and the cessation of data collection tracking its progress in that area, happened at approximately the same time. Although the background of these

130. REDFIELD, *supra* note 79, at 39 (quoting COMM. ON THE PREVENTION OF READING DIFFICULTIES IN YOUNG CHILDREN, PREVENTING READING DIFFICULTIES IN YOUNG CHILDREN 21 (Catherine E. Snow et al. eds., 1998)).

131. *Annual Book Drive*, AM. ASS’N OF LAW LIBRARIES, <http://www.aallnet.org/sections/sr/projects/Annual-Book-Drive.html> [https://perma.cc/WH4R-4ZB2].

132. A credible partner would be Reading Is Fundamental [RIF], an organization with more than fifty years of work giving free books to economically disadvantaged children. To date RIF has given 412 different titles to more than 40 million children. See *Books for Ownership*, READING IS FUNDAMENTAL, <http://www.rif.org/about-us/books-for-ownership/> [https://perma.cc/B56R-TJFN].

133. *The Strategic Plan 1990–1994 of the American Association of Law Libraries*, 22 AALL NEWSL. 201, 209 (1990).

134. *AALL Strategic Plan 2000–2005*, AM. ASS’N OF LAW LIBRARIES, <http://aallnet.org/Archived/Leadership-Governance/strategic/strategic-plan-2000-2005.html> [https://perma.cc/6XB5-ZTY8].

135. See *AALL Strategic Directions 2005–2010*, AM. ASS’N OF LAW LIBRARIES, <http://www.aallnet.org/Documents/E-newsletterAnnouncements/aall-2005-sd.pdf> [https://perma.cc/6YPE-PQP5]; *AALL Strategic Directions 2010–2013*, AM. ASS’N OF LAW LIBRARIES, <http://www.aallnet.org/mm/Leadership-Governance/strategic/strategic-direction-2010-2013> [https://perma.cc/R6P7-4UZY].

136. *Strategic Directions 2013–2016*, AM. ASS’N OF LAW LIBRARIES (July 2012), <http://aallnet.org/mm/Leadership-Governance/strategic/strategic-direction-2013-2016> [https://perma.cc/TB4U-D27H]. It should be noted that the latest version of the Strategic Directions, published after this article was written, includes a “commitment to diversity” as one of AALL’s Core Organizational Values. *Strategic Directions 2016–2019*, AM. ASS’N OF LAW LIBRARIES (July 2016), <http://www.aallnet.org/mm/Leadership-Governance/strategic> [https://perma.cc/AV6T-ZYM5].

decisions may offer an intriguing organizational history, they complicate any attempt such as this to formally analyze the standing of minorities within law librarianship. More important, they reflect poorly on AALL and, taken together, can call into question whether its diversity talk is only that, talk. Or at least surrender.

¶142 It was noted twenty years ago that “the need to diversify and to recruit should be accompanied by information about the existing AALL minority membership in order to provide a more meaningful direction for recruitment, retention, and promotion of minorities in the law library profession.”¹³⁷ That advice remains as true today. AALL should recommence its former data collection and publication procedures.

137. King et al., *supra* note 85, at 248.

The Law School Library or the Library at the Law School? How Lessons from Other Types of Libraries Can Inform the Evolution of the Academic Law Library in the Digital Age*

Ursula Gorham** and Paul T. Jaeger***

Academic law libraries must adapt to the new digital environment of reduced funds, smaller physical collections, and greater use of electronic resources. This article examines the historical development of academic law libraries and the current challenges they face, different approaches libraries take to change, and lessons about how to thrive from nonlaw libraries.

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Introduction

¶1 Law school libraries are beginning to realize the significant challenges they face in terms of perceived relevance and in terms of justifying support or perhaps even their existence. Since the turn of the century, some law school faculty and administrators have been asserting that the academic law library is becoming unnecessary due to the growing power and scope of Westlaw and LexisNexis electronic legal databases.¹ Further, administrators are looking to cut expenses, as law school enrollments and donations decrease. As observed by James Milles, currently

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1. See Richard A. Danner, *Law School Libraries*, in *ENCYCLOPEDIA OF LIBRARY AND INFORMATION SCIENCE* 1503 (2d ed. 2003); Robert M. Jarvis, *What Law Professors Will Want from Law Librarians in the Twenty-First Century*, 96 *LAW LIBR. J.* 503, 504, 2004 *LAW LIBR. J.* 29, ¶ 13.

a professor at the University of Buffalo School of Law, “What matters most to law schools? Going forward, it will not be law libraries.”²

¶2 As one of the largest costs in the law school, many law school libraries have already begun to feel noticeable budget cuts. These cuts adversely impact library staffing (e.g., the University of Maine School of Law eliminated three law library positions in response to a \$36 million university-wide funding shortfall³) as well as library resources (e.g., Pace Law Library specifically reduced the number of Thomson Reuter print titles in its collection due to budget cuts in recent years⁴). Such challenges are very similar to those faced by public and academic libraries as the overall relevance of libraries has been questioned in the age of Google and searchable databases. Public libraries, for example, have been seen as a very tempting target in terms of cutting local government costs. Notable examples in the news include:

- a Fox News Chicago editorial that asked: “With the Internet and e-books, do we really need millions for libraries?”;⁵
- a Florida newspaper editorial asserting that the Internet, and Google in particular, has made public libraries redundant and that “no serious research is carried on in the library stacks”;⁶ and
- a 2012 article in *Forbes* magazine declaring that a master’s degree in LIS is the worst type of master’s degree based on career earning potential and the perceived disappearance of libraries.⁷

¶3 Public libraries, however, have been fairly successful in deflecting such assertions by demonstrating the range of benefits that they provide that have nothing to do with physical materials or databases. This success is due in large part to their strategy of placing greater emphasis on their actions and their messages about what they do, highlighting the way in which they benefit their communities and the people in their communities.⁸

2. James G. Milles, *Legal Education in Crisis, and Why Law Libraries Are Doomed*, 106 LAW LIBR. J. 507, 519, 2014 LAW LIBR. J. 28, ¶ 40.

3. Noel K. Gallagher, *UMaine Law School Cuts Three Library Positions*, PORTLAND PRESS HERALD (Apr. 8, 2014), <http://www.pressherald.com/2014/04/08/umaine-law-school-cuts-three-library-positions/> [https://perma.cc/239W-8KCP].

4. ELISABETH HAUB SCH. OF LAW AT PACE UNIV., PACE LAW LIBRARY COLLECTION DEVELOPMENT POLICY 3 (Sept. 2016), <http://lawweb.pace.edu/library/collectiondevelopmentpolicy.pdf> [https://perma.cc/75B9-AMGM].

5. Anna Davlantes, *Are Libraries Necessary, or a Waste of Tax Money?*, FOX NEWS CHI. (June 28, 2010), <http://web.archive.org/web/20100703110315/http://www.myfoxchicago.com/dpp/news/special-report/library-taxes-closed-20100628>.

6. George Elmore, *Pull the Plug on the Library*, GAINESVILLE SUN (Mar. 3, 2008), <http://www.gainesville.com/article/20080303/OPINION03/803030303> [https://perma.cc/4M9P-LMY2].

7. Jacquelyn Smith, *The Best and Worst Master’s Degrees for Jobs*, FORBES (June 8, 2012), <http://www.forbes.com/sites/jacquelynsmith/2012/06/08/the-best-and-worst-masters-degrees-for-jobs-2/2/>.

8. See PAUL T. JAEGER ET AL., LIBRARIES, HUMAN RIGHTS, AND SOCIAL JUSTICE: ENABLING ACCESS AND PROMOTING INCLUSION (2015); PERSPECTIVES ON LIBRARIES AS INSTITUTIONS OF HUMAN RIGHTS AND SOCIAL JUSTICE (Ursula Gorham et al. eds., 2016); Paul T. Jaeger et al., *Library Research and What Libraries Actually Do Now: Education, Inclusion, Social Services, Public Spaces, Digital Literacy, Social Justice, Human Rights, and Other Community Needs*, 84 LIBR. Q. 491 (2014).

¶4 As other types of libraries have striven to find new ways to serve their communities to ensure that they continue to exist, however, law school libraries have generally continued to focus on the materials they provide rather than the unique educational services they offer. They have also remained largely focused on a very small user population—namely, law school students and faculty rather than the larger campus and surrounding community. Statements made by law school libraries to the effect that they left the Federal Depository Library Program (FDLP) specifically to avoid the requirement that FDLP libraries serve the broader community reflect this narrow mindset.⁹ To remain relevant—and to demonstrate their value to the law schools that they serve—law school libraries must change the odd and self-destructive approach of generally trying to be more exclusive than inclusive.

¶5 Law school libraries—though unique institutions among libraries—can learn a great deal from the ways in which public and academic libraries have evolved in the past few years to remain relevant as education institutions in their communities. More than seventy-five years ago, library education pioneer Jesse Shera asserted that “the objectives of the public library are directly dependent on the objectives of society itself.”¹⁰ In a law school context, this means that the library needs to find new ways to educate students as well as to contribute to the law school community. The academic law library can be a key part of educating law students about the world beyond the law and integrating their legal learning into practical contexts, something traditional legal education in the classroom is ill equipped to do. Being the provider of legal texts and legal databases is not enough of a contribution when the materials are available online and relatively easy for students and faculty to locate and use.

¶6 As discussed later in this article, there are, in fact, law school libraries that recognize the need to evolve, and the changes underway in these libraries can serve as examples for others that are struggling to adapt to an increasingly challenging environment. This article, however, argues for something beyond the need for changes to be implemented on a library-by-library basis. We are, in effect, calling for a fundamental shift in how academic law libraries view themselves. For too long, law school libraries have emphasized the “law school” part of their identities; it is time that the “libraries” part of their identities receives greater focus.

¶7 This article considers the events that led to the current state of law school libraries, lessons for law school libraries from the evolution of other types of libraries, and suggestions for law school libraries to expand their roles both within law schools and beyond so as to better demonstrate their value to their law schools. The ideas and considerations in this article are offered by two library school professors who are graduates both of library science programs and law schools. We understand the issues faced by law school libraries both as former law school students and as educators who have devoted our careers to the study of libraries; by virtue of these combined perspectives, we look to offer a unique lens for viewing the potential future of law school libraries.

9. Paul T. Jaeger et al., *The Federal Depository Library Program (FDLP), Academic Libraries, and Access to Government Information*, 36 J. ACAD. LIBRARIANSHIP 469, 471 (2010); John A. Shuler et al., *Implications of Harmonizing the Future of the Federal Depository Library Program Within E-Government Principles and Policies*, 27 GOV'T INFO. Q. 9 (2010).

10. JESSE H. SHERA, FOUNDATIONS OF THE PUBLIC LIBRARY: THE ORIGINS OF THE PUBLIC LIBRARY MOVEMENT IN NEW ENGLAND 1629–1855, at 248 (1949).

The Evolution of Academic Law Libraries and the Current Challenges They Face

¶8 For much of their history, law school libraries were routinely characterized as the heart of their law schools.¹¹ “The law library has always been a core part of the law school with the primary mission to serve the legal research needs of law school faculty and students.”¹² The importance of the academic law library has long been reflected by its prominent mention within the ABA’s *Standards and Rules of Procedure for Approval of Law Schools*.¹³ The 1960s marked the beginning of the golden age for academic law libraries,¹⁴ with the ABA standards at that time dictating collections’ minimum number of volumes and titles of required publications. Over the next three decades, extensive collection development was the norm for law libraries, with “the number of titles and number of volumes . . . almost the sole criteria for judging the quality of a library.”¹⁵

¶9 Historically, as the heart of the law school, law school libraries have functioned apart from the greater university library community. In a 1957 study, forty of the forty-one responding law libraries did not want to be considered part of the university library system or be a part of its administrative structure, even if they currently were.¹⁶ This position was codified through section 602(a) of the ABA standards, which requires law schools to “have sufficient administrative autonomy to direct the growth and development of the law library and to control the use of its resources.”¹⁷ Law librarians generally have interpreted this statement as supporting a separation between the university library system and the law school library. Armed with this interpretation, they have resisted efforts to change the status quo, and recent revisions to the ABA standards have not removed the requirement that law schools maintain administrative autonomy.

¶10 Section 601(a) of the ABA standards states that “[a] law school shall maintain a law library that . . . provides support through expertise, resources, and services adequate to enable the law school to carry out its program of legal education, accomplish its mission, and support scholarship and research.”¹⁸ Increasingly, however, law school libraries’ long-standing claim to being the heart of the law school has been challenged. By way of example, Milles asserts that “the law library as (1) *an iconic place within the law school*, (2) *managed financially and administra-*

11. See Richard A. Danner, *Law Libraries and Laboratories: The Legacies of Langdell and His Metaphor*, 107 LAW LIBR. J. 7, 30, 2015 LAW LIBR. J. 1, ¶ 55; Jennifer A. González, *Stuck Behind the Curve: How the Academic Law Library Can Help Students Who Struggle in Law School*, 33 LEGAL REFERENCE SERVS. Q. 239, 247 (2014). See generally Beatrice A. Tice, *The Academic Law Library in the 21st Century: Still the Heart of the Law School*, 1 UC IRVINE L. REV. 157 (2011).

12. Linda K. Fariss, *Issues Facing Academic Law Libraries—New Challenges, New Opportunities*, 31 IND. LIBR. 37, 37 (2012).

13. See Michael Whiteman, *Book Burning in the Twenty-First Century: ABA Standard 606 and the Future of Academic Law Libraries as the Smoke Clears*, 106 LAW LIBR. J. 11, 2014 LAW LIBR. J. 2.

14. Taylor Fitchett et al., *Law Library Budgets in Hard Times*, 103 LAW LIBR. J. 91, 93, 2011 LAW LIBR. J. 5, ¶ 9.

15. *Id.* at 94, ¶ 9.

16. M. Minnette Massey, *Law School Administration and the Law Librarian*, 10 J. LEGAL EDUC. 215, 216 (1957).

17. AM. BAR ASS’N, 2016–2017 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 40 (2016).

18. *Id.* at 39.

tively as part of the law school, and (3) with staff devoted to the law school, will become increasingly rare.”¹⁹

¶11 Economic and technological developments, when considered together, have provided fodder for those who question the continued value and relevance of law school libraries.²⁰ Prior to the mid-2000s, the availability of well-paid positions for many law school graduates made it an attractive investment of time and money. This “value proposition,” however, greatly diminished as these positions began disappearing and a “nearly nonstop escalation in tuition” became the industry norm.²¹ The bleak landscape facing law schools has been well documented through a steady stream of reports in recent years:

- Between 2003 and 2012, the number of applicants to law schools decreased from 98,300 to 67,957.²²
- Between 2013 and 2014, law school enrollment decreased 6.9%, marking the lowest total enrollment since 1987.²³
- As of June 2014, employment rates for recent law school graduates had declined for the sixth consecutive year.²⁴

Impacts on law school faculty have been observed as well. In July 2013, the *ABA Journal* reported that buyouts, early retirement offers, and canceled contracts with lower-level instructors were occurring within many law schools.²⁵

¶12 Law school libraries have not been immune from this turbulence. In fact, they have proven to be easy targets, with library budgets coming under increasing scrutiny.²⁶ The budgetary and space requirements of law school libraries are substantial,²⁷ leading to increasing questions as to the wisdom of devoting scarce resources to them. As Fitchett et al. note, “When a dean looks at a law school budget, the biggest expenditure after faculty salaries is the library, and many must now wonder ‘what are all those people doing with all that money?’”²⁸ The perceived benefits of the library are further obscured by libraries not counting as factors in

19. Milles, *supra* note 2, at 509, ¶ 5.

20. Genevieve Blake Tung, *Academic Libraries and the Crisis in Legal Education*, 105 LAW LIBR. J. 275, 2013 LAW LIBR. J. 14.

21. Kenneth J. Hirsh, *Like Mark Twain: The Death of Academic Law Libraries Is an Exaggeration*, 106 LAW LIBR. J. 521, 522, 2014 LAW LIBR. J. 29, ¶ 2.

22. Dan Miner, *Like UB, All Law Schools Have Their Struggles*, BUFFALO BUS. FIRST (Jan. 8, 2013), <http://www.bizjournals.com/buffalo/blog/miner-business/2013/01/like-ub-all-law-schools-have-their.html>.

23. Press Release, Am. Bar Ass’n, ABA Section of Legal Education Reports 2014 Law School Enrollment Data (Dec. 16, 2014), http://www.americanbar.org/news/abanews/aba-news-archives/2014/12/aba_section_of_legal.html [https://perma.cc/PGX3-VREE].

24. Press Release, NALP, For Second Year in a Row New Grads Find More Jobs, Starting Salaries Rise—But Overall Unemployment Rate Rises with Historically Large Graduating Class (June 19, 2014), http://www.nalp.org/2013_selected_pr [https://perma.cc/3V7C-ZXMU].

25. Debra Cassens Weiss, *Law Schools Cope with Declining Enrollment by Quietly Cutting Faculty*, ABA JOURNAL (July 16, 2013, 12:02 PM), http://www.abajournal.com/news/article/law_schools_cope_with_declining_enrollment_by_quietly_cutting_faculty/ [https://perma.cc/CL6S-JBH7].

26. Laura J. Ax-Fultz, *Igniting the Conversation: Embracing Legal Literacy as the Heart of the Profession*, 107 LAW LIBR. J. 421, 422, 2015 LAW LIBR. J. 20, ¶ 2; see also Fariss, *supra* note 12, at 38.

27. I. Richard Gershon, *In Ten Years, All New Law Schools!*, 44 U. TOL. L. REV. 335, 337 (2013).

28. Fitchett et al., *supra* note 14, at 95, ¶ 14.

law school rankings.²⁹ And, in an environment characterized by declining enrollment, law schools are increasingly looking to prioritize those areas that are key to rankings, such as admissions and career services: “The space for these offices and classrooms has to come from somewhere within the current building. As the availability of electronic resources grows, law school administrators assume that the law library needs less physical space and frequently will turn there first.”³⁰ This has led to the repurposing of library space in some cases,³¹ prompting those in the field to speculate that a return to the earlier glory days of law school libraries is not likely. As Fitchett et al. describe, at a 2010 meeting of the Association of American Law Schools, a number of law library directors expressed the belief that the current troubling economic conditions for academic law libraries were not likely to improve, with one director noting that “[a]ll academic law libraries are being dismantled and losing their space.”³²

¶13 As law schools have struggled in the wake of the recession and continually searched for ways to decrease expenditures, they have increasingly focused on the role of technology in expanding access to information. The dialogue surrounding the impact of technology on law school libraries, however, actually predates the current challenging law school environment. In an entry for the 2002 second edition of the *Encyclopedia of Library and Information Science*, Richard Danner, then senior associate dean for information technology at Duke University School of Law, made the following observation:

[B]ecause technology-based solutions to information storage and technological advances in information access and retrieval serve to provide ubiquitous access to information, they can be characterized as challenging the future value of the library as a physical place. If books are less important to legal research, and if students (and faculty) prefer to work with on-line information sources, why should law schools devote significant areas of their physical plants to collections of books? If the Internet makes legal information available anywhere a network connection is available, why is a designated library space needed at all? How important will an institution centered on the acquisition and preservation of information be in an increasingly digital information environment in which less information is acquired in physical formats? Is the role of the law librarian so tied to the law book and to physical library collections that the profession itself is no longer relevant to the information needs of law faculty and students? What kinds of new skills will be needed?³³

¶14 Two years later, Robert Jarvis raised similar arguments in a piece published in *Law Library Journal*, suggesting that law libraries were in for dramatic changes in the near future as faculty members began to require fewer and fewer of their resources and services.³⁴ Among the points he made were that faculty members who regularly engage in research would want library directors to assist them in their pursuits to become more self-sufficient in their research endeavors, leading to calls for more online resources and more digitization projects. As a result of faculty using fewer library resources and services, Jarvis argued, librarians will find it increasingly difficult to justify their physical space as well as their budgets. Law

29. Fariss, *supra* note 12, at 38.

30. *Id.*

31. Fitchett et al., *supra* note 14, at 95, ¶ 13.

32. *Id.* at 93, ¶ 8.

33. Danner, *supra* note 1, at 1503.

34. Jarvis, *supra* note 1, at 504, ¶ 13.

school deans will scrutinize libraries with particular care due to the fact that they demand significant resources yet do not produce revenue through fund-raising or other means. In light of these developments, Jarvis predicted that, by 2014,

law schools will no longer have libraries in the sense they do now. There still will be designated spaces for faculty and students to meet, socialize, and study, but only the richest—or most stubborn—law schools will continue to devote enormous portions of their physical plants to housing row after row of books and periodicals.³⁵

¶15 The recent economic challenges facing law schools, as discussed above, have brought renewed attention to Jarvis's arguments.³⁶ The arguments put forth by Jarvis and others have allowed two key assumptions to take hold:

1. Law libraries need less space as their print collections shrink.
2. Law librarians become less essential as students and faculty members become more self-sufficient in their use of information resources.

As to the first assumption, most of the major law libraries that were renovated within the past twenty years, including those at Harvard, Yale, and Chicago, reduced shelf space for print and expanded user service space.³⁷ "More and more, library directors view modern law libraries as hybrids of electronic and print resources, with their key deliverable now being a high level of customized service by staff rather than a collection of legal publishing materials."³⁸ Changes in the ABA standards with respect to volume count and title count, among other factors, have facilitated efforts to reduce the physical presence of the library.³⁹ Noticeable manifestations of these changes include cancellation of subscriptions to bound journals, as well as print subscriptions to the West National Reporter Service.⁴⁰

¶16 As to the second assumption, Margolis and Murray described how technology has led to significant changes in the way in which law students and faculty conduct research, observing that they are increasingly likely to go straight to the Internet rather than turn to books and other print materials housed within the law library.⁴¹

The generation of students entering law school in recent years has grown up using computers and conducting online research for everything from school projects to finding out the birthday of a favorite celebrity. Today's students expect that anything they need can be found online and are resistant to the notion that print-based research might be more effective in some situations.⁴²

¶17 The emergence of free electronic legal databases (such as Google Scholar) and improvements to subscription databases (such as Westlaw, Lexis Advance, and Bloomberg Law) have served to only solidify this preference. The inevitable outcome, according to Whiteman, is that academic law libraries in the twenty-first

35. *Id.* at 505, ¶ 16.

36. *See, e.g.,* Ax-Fultz, *supra* note 26.

37. S. Blair Kauffman, New Opportunities for 21st Century Law Libraries, <http://faculty.laverne.edu/~ajiang/cafl/NewOpportunities.pdf> [<https://perma.cc/7G9B-G5R8>].

38. Hirsh, *supra* note 21, at 528, ¶ 22.

39. Tice, *supra* note 11, at 171.

40. Hirsh, *supra* note 21, at 528, ¶ 22.

41. Ellie Margolis & Kristen E. Murray, *Say Goodbye to the Books: Information Literacy as the New Legal Research Paradigm*, 38 U. DAYTON L. REV. 117, 118 (2012).

42. *Id.* at 126.

century will consist primarily of digital information, with only limited exceptions (e.g., the annotated code, session laws, and regulatory code of the state in which the law school is situated).⁴³

¶18 Moreover, as students and faculty members are able to access online legal information anytime and anywhere, there is evidence of the increase in self-sufficiency predicted by Jarvis. As Tice explains:

The digital environment has empowered information-seekers to make such connections on their own, essentially whenever and from wherever they choose. Surely—it is argued—this represents a positive development in legal information management that should be supported, encouraging legal researchers to work independently of intermediation, regardless of what that might mean to the status of the library.⁴⁴

¶19 For example, in September 2015, LexisNexis announced that Suffolk University Law School had adopted its Digital Library solution, which provides students and faculty with access to legal e-book content via desktop and mobile applications. A variety of factors led to this decision, including a fifty percent reduction in the library's budget over a two-year period, reduced library space, and the desire to create a "modern library experience" characterized by improved access to information.⁴⁵

¶20 The question then becomes whether law school libraries have been able to carve out a place for themselves in this rapidly evolving information landscape. After all, they must fight against the erroneous belief that "[they] exist only in relation to print resources and are increasingly superfluous as materials become available in a digitized format."⁴⁶ In this regard, however, they may do doing themselves a disservice as many librarians teaching legal research classes continue to devote a fair amount of time to print resources.⁴⁷ Further, it is argued that while librarians are experts in legal research, they have not done enough to claim it as their territory—it is often incorporated into legal writing classes and/or taught by database vendors.⁴⁸ By failing to do so, they have made it easier for others to argue for their increasing irrelevance.

¶21 Jarvis cautions libraries against fighting downsizing or elimination, urging them instead to embrace the demise of law libraries and interpret it to "mean that the original goal of libraries—to ensure that scholars could find what they needed when they needed it—will at long last have been accomplished."⁴⁹ What Jarvis fails to entertain, however, is the possibility that law school libraries could redefine their purpose in a way that meets the pressing needs of their users. Fitchett et al. observe that

43. Whiteman, *supra* note 13, at 33, ¶ 70.

44. Tice, *supra* note 11, at 171.

45. Paul Caron, *Suffolk Law School Cuts Library Budget by 50%, Provides Students Free Course Materials Through LexisNexis Digital Library*, TAXPROF BLOG (Sept. 10, 2015), http://taxprof.typepad.com/taxprof_blog/2015/09/suffolk-law-school-cuts-library-budget-by-50-provides-students-free-course-materials-through-lexisne.html [<https://perma.cc/DQ6P-3L6C>].

46. Ax-Fultz, *supra* note 26, at 431, ¶ 29.

47. Margolis & Murray, *supra* note 41, at 125.

48. Barbara Bintliff, *Keeping Future Law Libraries Relevant* (2010), <http://www.alastore.ala.org/nealschuman/companionwebsite/academic/Bintliff2010.pdf> [<https://perma.cc/DP54-TV6Z>].

49. Jarvis, *supra* note 1, at 506, ¶ 18.

the most important lesson of this time is to tie the law library's purpose closely to the goals and objectives of the law school. All decisions in the law library need to be based on whether the results will move the institution forward within the scope of the school's vision and mission. Positioning the law library to serve the core mission of the law school is not optional.⁵⁰

Failure to do so will leave law libraries in a continually vulnerable position, subject to harsh scrutiny any time budgetary concerns arise. Within the law library community, suggestions for securing the position of law libraries range from carving out a distinct territory by making legal research an academic subject to relinquishing their long-standing autonomy and collaborating with other libraries within the broader university community. While these suggestions have merit, we argue that law librarians can benefit from taking a closer look at what other libraries are doing.

Libraries as Hedgehogs and Libraries as Foxes

¶22 In the seventh century, the Greek poet Archilocus wrote: "The fox knows many things, but the hedgehog knows one big thing."⁵¹ In 1953, social philosopher Isaiah Berlin expanded this notion to describe how thinkers can generally be separated into two categories: foxes "who pursue many ends, often unrelated, and even contradictory" and hedgehogs "who relate everything to a single central vision."⁵² Simply put, intellectual hedgehogs seek synthesis and intellectual foxes seek evaluation.⁵³ While the terms can be seen as having inherently negative connotations, Berlin meant them as equally valid approaches if applied thoughtfully, listing Aristotle, Shakespeare, Pushkin, and Balzac as foxes and Plato, Dostoevsky, and Nietzsche as hedgehogs.

¶23 Foxes are intellectual gatherers—adapting to changes, taking many approaches to a problem, seeing many possible outcomes, dealing well with uncertainty and complexity, practicing self-reflection, and examining problems in a multidisciplinary manner. In contrast, hedgehogs frame the operation of the world in one or two very big ideas that they espouse, sculpting new information to fit their ideologies. Foxes think loudly and act flexibly, while hedgehogs speak loudly and act stubbornly. The terms stem from the differences between the two animals in nature. The fox is amazingly adaptable in habit, diet, and living quarters, while hedgehogs keep to established behavior patterns. In the natural world, foxes have flourished and hedgehog populations are declining quickly. These metaphors apply not only to individual thinkers, but to organizational and governmental philosophies, with policies often reflecting a fox-like or hedgehog-like attitude toward the policy objectives.⁵⁴

50. Fitchett et al., *supra* note 14, at 110, ¶ 67.

51. ISAIAH BERLIN, *THE HEDGEHOG AND THE FOX: AN ESSAY ON TOLSTOY'S VIEW OF HISTORY* 1 (1953) (quoting Archilochus, *Fragment 201*, in *IAMBI ET ELEGI GRAECI ANTE ALEXANDRUM CANATI* 78, 78).

52. *Id.* at 3.

53. Peter Hlebowitsh, *Centripetal Thinking in Curriculum Studies*, 40 *CURRICULUM INQUIRY* 503, 503 (2010).

54. See David Michel, *Foxes, Hedgehogs, and Greenhouse Governance: Knowledge, Uncertainty, and International Policy-Making in a Warming World*, 86 *APPLIED ENERGY* 258 (2009); Norman W. Provizer, *On Hedgehogs, Foxes and Leadership: Uncovering the Other Tolstoy*, 19 *LEADERSHIP Q.* 453 (2008).

¶24 Public libraries are the most fox-like institution imaginable.⁵⁵ Throughout their modern history, public libraries have done nothing but change to meet community needs as they arise, continually redefining what they do for their patrons. They collect a wide assortment of multidisciplinary information sources and materials to meet a broad range of information needs, add new services and resources to meet localized community needs, and embrace an ever-changing array of technologies and educational roles to promote inclusion and equity in their communities. Services in a typical public library include digital literacy and inclusion, technology access, story time, youth services, health literacy education, services for immigrants, e-government access and assistance, social service access and provision, job-seeking resources, homework help, and entertainment options.⁵⁶ Public libraries also provide services designed to fit the educational and advocacy needs of a specific community; in different locations, these highly specific services have ranged from providing a place to buy food, as well as to access free public health care and drug counseling, all the way to lending collections of cake pans.⁵⁷

¶25 Law school libraries, as described in the preceding section, seem to be the most decidedly hedgehog-esque among the different types of libraries. In a profession “in which change is most drastic,”⁵⁸ law school libraries have stuck with what they have always done, and increasingly this steadfastness has been to their detriment. Studies of politicians, newscasters, media commentators, and even public intellectuals have demonstrated that professionals in each of these areas are overwhelmingly hedgehogs who are rewarded for being so with greater amounts of attention and airtime.⁵⁹ Clearly, hedgehogs enjoy some advantages, but such advantages do not necessarily arise for libraries, as evidenced by the pressures now confronting law school libraries.

So Put Your Books Aside . . .

¶26 Two challenges in the digital age that all libraries face—some successfully and others not—are remaining relevant and being perceived as remaining relevant. The former is a challenge of evolving and adapting contributions to meet changing technologies and user needs, while the latter challenge necessitates the demonstration of these contributions to users, funders, and the broader community. For an academic law library, this means simultaneously evolving to provide new value to law school students and faculty in an environment where much basic research can be done with no involvement from the library at all and broadening the uses of the academic law library—perhaps by expanding the range of populations served by the library—while also finding ways to demonstrate to law school and university administrators the contributions that the library makes. The ongoing crisis in legal

55. PAUL T. JAEGER ET AL., PUBLIC LIBRARIES, PUBLIC POLICIES, AND POLITICAL PROCESSES: SERVING AND TRANSFORMING COMMUNITIES IN TIMES OF ECONOMIC AND POLITICAL CONSTRAINT 101 (2014).

56. *Id.* at 115.

57. JAEGER ET AL., *supra* note 8, at 5.

58. Jesse H. Shera, *Toward a New Dimension for Library Education*, 57 A.L.A. BULL. 313, 313 (1963).

59. See, e.g., NATE SILVER, THE SIGNAL AND THE NOISE: WHY MOST PREDICTIONS FAIL—BUT SOME DON'T (2012); PHILIP E. TETLOCK, EXPERT POLITICAL JUDGMENT: HOW GOOD IS IT? HOW CAN WE KNOW? (2005).

education thus provides an opportunity for academic law librarians to shift their focus outward to the public interest.⁶⁰

¶27 Different individual libraries and entire kinds of libraries have faced these challenges and tried to grow in a variety of ways, but the main issue is the need to move away from viewing the library in terms of the materials it provides. In a piece declaring the demise of libraries, one blogger recently asserted:

The Internet has replaced the importance of libraries as a repository for knowledge. And digital distribution has replaced the role of a library as a central hub for obtaining the containers of such knowledge: books. And digital bits have replaced the need to cut down trees to make paper and waste ink to create those books.⁶¹

This assertion ignores, however, the role of the library as (1) a provider of access to technologies and materials, (2) a source of education and services, (3) an equalizing force in society, and (4) a symbol of equity and inclusion. It ignores the reality that, at this point in time, libraries are much more about the services they offer than the “stuff” they have in their collections.

¶28 From the library community’s adoption of service roles for immigrants in the early twentieth century to digital literacy and inclusion, government services, job training, and access to food offered at the beginning of the next century, libraries have long demonstrated their role as institutions of education, public discourse, and equality.⁶² The unique community actions that define the library are informing, enabling, equalizing, and leading.⁶³ Such actions occur in many different contexts: education, inclusion, employment, social services, public spaces, digital literacy, and community development, as well as other community needs.⁶⁴

¶29 In short, the meaning of a library has matured over time into being inherently a “place of ideas.”⁶⁵ Law school libraries have numerous opportunities to emphasize and expand their roles as law-focused educational institutions. They serve specific communities and provide specific services, but those communities and services can be served in new ways and widened in scope. Certain law school libraries have clearly recognized the need to change how they provide services to their faculty and students. Notable examples include the introduction of therapy dogs during periods of high stress at Yale, George Mason University, and the University of San Francisco and the circulation of non-traditional items (e.g., bicycles, soccer ball, iPads) at Yale and Cornell.⁶⁶ As they think about developing new services and

60. Milles, *supra* note 2, at 520, ¶ 48.

61. M.G. Siegler, *The End of the Library*, TECHCRUNCH (Oct. 13, 2013), <http://techcrunch.com/2013/10/13/the-end-of-the-library/> [<https://perma.cc/2PQZ-J32S>].

62. Kathleen de la Peña McCook, *Rocks in the Whirlpool* 17–18 (Univ. of S. Fla., Sch. of Info. No. 117, 2002), https://works.bepress.com/kathleendelapena_mccook/7/; see also KIM M. THOMPSON ET AL., DIGITAL LITERACY AND DIGITAL INCLUSION: INFORMATION POLICY AND THE PUBLIC LIBRARY (2014).

63. John Carlo Bertot, *Closing One Chapter, Opening Another: Moving Library Quarterly Forward*, 84 LIBR. Q. 489, 489–90 (2014).

64. JAEGER ET AL., *supra* note 8, at 31.

65. Gloria J. Leckie & John E. Buschman, *Space, Place, and Libraries: An Introduction*, in THE LIBRARY AS PLACE: HISTORY, COMMUNITY, AND CULTURE 3, 16 (John E. Buschman & Gloria J. Leckie eds., 2007).

66. Julian Aiken et al., *Not Your Parents’ Law Library: A Tale of Two Academic Law Libraries*, 16 GREEN BAG 2D 13, 19 (2012).

reaching out beyond their traditional users, law school libraries may want to more closely consider issues with which other types of libraries are grappling.

Space

¶30 Many of the physical materials—particularly the case reporters that once occupied endless aisles in law school libraries—are now accessible through electronic legal databases. This provides a wonderful opportunity to reconsider the space of the library building. If you no longer need all of the books, what can be done with the space? Computers for individual use and teaching? Collaborative spaces? Places for community work and organizations?

¶31 Many public and academic libraries have emphasized their roles as community institutions by replacing physical collection space with collaborative environments. The ways in which academic libraries have created collaborative flexible study spaces has been explored in the literature.⁶⁷ The idea of using the space in a fundamentally different manner has not been documented to the same extent, but increasingly public libraries are taking the idea of collaborative space to a new level. Rather than merely reconfiguring the space for existing users, libraries are developing collaborative spaces that reflect stronger ties with community partners. In recent years, for example, public libraries have expanded the scope of employment-related assistance. Long recognized for “being oases in the unemployment desert for millions of job seekers using their libraries’ free internet computers to sharpen their interview skills and sift through job boards,” public libraries are increasingly “making important contributions to the nation’s economic recovery by assisting the job *creators* in small-to-medium-size businesses.”⁶⁸ As reported in *American Libraries* in August 2012, the public library in Carson City, Nevada, in partnership with several city departments, set up a Business Resource Information Center, designed to be a “seamless portal” to help small business owners with everything from market research to business planning classes to services provided by licensing and community development departments.⁶⁹

¶32 The rise of solo practice incubators in law schools presents one opportunity for law school libraries to simultaneously repurpose underutilized space and strengthen their connections with the surrounding legal community. Cleveland-Marshall College of Law, for example, houses its solo practice incubator within the law library. As noted on the College of Law’s website, the incubator “will be part of current law students’ own experience. [It] will be prominently, physically integrated into the law school’s own facility, and will be built with some transparent walls so that students studying in the Law Library will have a first-hand view, throughout each day”⁷⁰

67. See, e.g., Lesley S.J. Farmer, *Library Space: Its Role in Research*, 57 REFERENCE LIBR. 87, 90 (2016); Jeffrey T. Gayton, *Academic Libraries: “Social” or “Communal?” The Nature and Future of Academic Libraries*, 34 J. ACAD. LIBRARIANSHIP 60, 62 (2008).

68. Bradley Collins, *How Public Libraries Are a Boon to Small Business*, AM. LIBR., July/Aug. 2012, at 28, 28.

69. *Id.* at 29.

70. *Solo Practice Incubator*, CLEVELAND-MARSHALL COLL. OF LAW, <https://www.law.csuohio.edu/careerplanning/solopracticeincubator> [<https://perma.cc/UB7N-YC7B>].

Education

¶33 As law school librarians need to spend less time teaching students how to use reporters or helping faculty find materials in bound volumes, they can embrace new educational roles. These new roles may encompass

- teaching students how to assess legal materials rather than just finding them;⁷¹
- finding and assessing nonlegal materials;⁷²
- providing instruction in legal literacy and technological literacy;⁷³ and
- teaching about the uses of the law and legal resources beyond the legal profession.⁷⁴

¶34 As Talley notes, several recent studies have found that law students, as well as recent graduates, lack strong information literacy skills, as demonstrated by their lack of familiarity with library catalogs as well as secondary sources.⁷⁵ Talley recommends that academic law librarians develop an information literacy curriculum tailored to the skills set forth in AALL's *Principles and Standards for Legal Research Competency*, approved in July 2013.⁷⁶ Neisler provides this summary of these skills:

[T]he basic principles state that a successful legal researcher: “possesses fundamental research skills,” “gathers information through effective and efficient research strategies,” “critically evaluates information,” “applies information effectively to resolve a specific issue or need,” and “distinguishes between ethical and unethical uses of information, and understands the legal issues associated with the discovery, use, or application of information.”⁷⁷

¶35 For example, using a legal database and using it well are two different things. Teaching successful search techniques is a key part of legal literacy, as well as learning to evaluate legal resources and to use and evaluate academic literature, grey literature, and other important nonlegal sources. Group and individual instruction in these areas are not necessarily otherwise available for law school students and other community members—such as graduate students in related fields—interested in learning how to research the law. Clearly, then, law school libraries would be contributing mightily by taking it upon themselves to teach these skills.

71. Margolis & Murray, *supra* note 41, at 149.

72. Taryn L. Rucinski, *The Elephant in the Room: Toward a Definition of Grey Legal Literature*, 107 LAW LIBR. J. 543, 556, 2015 LAW LIBR. J. 26, ¶ 24.

73. Ax-Fultz, *supra* note 26, at 436, ¶ 43.

74. Leonard J. Long, *Resisting Anti-Intellectualism and Promoting Legal Literacy*, 34 S. ILL. U. L.J. 1, 5 (2009).

75. Nancy B. Talley, *Are You Doing It Backward? Improving Information Literacy Instruction Using the AALL Principles and Standards for Legal Research Competency, Taxonomies, and Backward Design*, 106 LAW LIBR. J. 47, 54, 2014 LAW LIBR. J. 3, ¶¶ 15–16.

76. *Id.* at 63, ¶¶ 32–33; AM. ASS'N OF LAW LIBRARIES, PRINCIPLES AND STANDARDS FOR LEGAL RESEARCH COMPETENCIES [1] (2013), <http://www.aallnet.org/mm/Publications/products/pslrc-brochure.pdf> [<https://perma.cc/79YL-W6DT>].

77. Virginia Neisler, *How May We Help? Perspectives on Law Librarian Support of Students in Law School Clinics* 21 (Apr. 2014) (unpublished Master's paper, University of North Carolina), <https://cdr.lib.unc.edu/record/uuid:ee6e37e-d3f7-4c36-a59b-3cff5894a080> (quoting AM. ASS'N OF LAW LIBRARIES, *supra* note 76).

¶36 Education promoting digital literacy and digital inclusion are now primary functions of public and academic libraries.⁷⁸ The 2014 Digital Inclusion Survey, funded by the Institute of Museum and Library Services and conducted by the American Library Association and the Information Policy & Access Center at the University of Maryland, documents this phenomenon. Pertinent findings include the following: (1) 86.9% of public libraries offer training in basic computer skills (typically through informal, point-of-use assistance), (2) 55.9% of public libraries offer training in social media, and (3) 61.8% help users familiarize themselves with new technologies (e.g., e-readers, tablets).⁷⁹ These statistics demonstrate the extent to which public libraries are meeting community needs.

¶37 Similarly, law librarians can better meet the needs of their communities by considering more carefully the roles they can play in a range of increasingly popular programs at law schools that provide students with practical lawyering skills, such as experiential learning opportunities (including clinics) and solo practice incubators. Now more than ever, greater involvement in these programs is important as “[t]he readiness and ability to offer training in a key practice skill will be essential to maintaining law librarians’ positions in today’s reform-minded climate.”⁸⁰ Neisler examines the ways in which academic law librarians can support law school clinics, noting that their increased involvement in clinical work is an avenue for libraries to play larger roles in preparing students for real-world legal work.⁸¹ This is but one way for librarians to demonstrate their value to the law school community as well as to the surrounding communities being served by clinical programs.

Community Engagement

¶38 Law school libraries can serve law schools, law school students, law school faculty, students and faculty from other departments, the university as a whole, and the community in which the university resides.⁸² What needs can the academic law library fill for students and faculty that are currently unmet? Who else in the campus community and broader community can be invited in through resources and programs? Are there services, partnerships, or outreach programs that could better integrate the academic law library into the law school, the university, and the surrounding community? Similarly, how could new initiatives help the library more strongly contribute to the mission and goals of the law school, the university, and the surrounding community? Aiken et al. point to the 2CUL Project, a collaboration between Cornell and Columbia University libraries that seeks to integrate

78. See generally THOMPSON ET AL., *supra* note 62.

79. JOHN CARLO BERTOT ET AL., INFO. POL’Y & ACCESS CTR., 2014 DIGITAL INCLUSION SURVEY: SURVEY FINDINGS AND RESULTS (Oct. 1, 2015), <http://digitalinclusion.umd.edu/sites/default/files/uploads/2014DigitalInclusionSurveyFinalRelease.pdf> [https://perma.cc/PAH9-DUCA].

80. Tung, *supra* note 20, at 290, ¶ 33.

81. Neisler, *supra* note 77, at 45.

82. It should be noted that the extent to which law school libraries serve the broader community—the bench, the bar, and the public—depends in part on whether they are public or private institutions. Not all private law school libraries grant access to so-called external constituencies, whereas public law school libraries, to varying degrees, all “seem to recognize some obligation” to serve users from beyond the law school community. Connie Lenz, *The Public Mission of the Public Law School Library*, 105 LAW LIBR. J. 31, 45–46. 2013 LAW LIBR. J. 2, ¶ 34.

resources, collections, services, and expertise as a “blueprint and model” for academic law libraries.⁸³

¶39 In thinking about engagement beyond the law school or even the university community, law school libraries should also look to how public libraries have become more involved in providing self-help services to members of the public. Of course, ethical issues must be considered when providing assistance to the broader community.⁸⁴ As community access points, however, public libraries play an important role in connecting self-help users with the legal information they need by removing barriers created by geography, language, and technology and by providing emotional support.⁸⁵ Law libraries, in some ways, are even better equipped to meet this particular community need as their staff members possess the necessary skills and experience to facilitate self-help users’ access to legal information. A July 2014 white paper published by the AALL laid out the benefits of housing self-help centers in law libraries—these benefits include “expertly trained information staff, computers, print, and online resources, often in multiple languages.”⁸⁶ In recognition of the resource constraints facing many law libraries, the report recommends that libraries provide self-help services in collaboration with partners from the legal services community through which the library hosts legal clinics and seminars and develops information packets comprised of forms, instructions, and other resources. In the law school environment, increased collaboration between the library and clinical programs could enable the law school to play a bigger role in expanding access to justice in the surrounding community.

Education of Law Librarians

¶40 The field has never settled on the appropriate education for law librarians.⁸⁷ The education of law librarians—and the best ways to prepare them to work in the new realities of law school libraries—can be considered as well as a part of rethinking the roles and contributions of the academic law library.

¶41 The strongest libraries—regardless of type—are constantly rethinking and reevaluating what they do to stay central to their communities. These kinds of framing areas and questions may be useful starting points for academic law libraries considering the best ways to adapt to change. As was noted earlier, though, the starting point may be to focus more on the “library” part of their names rather the historical emphasis on the “law” part.

83. Aiken et al., *supra* note 66, at 19.

84. Paul Jerome McLaughlin, Jr., *Wanting to Do More but Bound to Do Less: A Law Librarian's Dilemma*, 56 REFERENCE LIBR. 119, 126–27 (2015).

85. See Laura N. Mancini, *Increasing Access to Justice for All: The Programs and Community Partnerships of the Adams-Pratt Oakland County Law Library and Their Impact on Self-Represented Litigants in Southeast Michigan*, 14 J.L. SOC'Y 65 (2013); Self-Represented Litigation Network, *Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes, Issues for Exploration, Examples, Contacts, and Resources* (2008), <http://www.srln.org/node/29/best-practices-best-practices-court-based-programs-self-represented-concepts-attributes> [<https://perma.cc/6PTD-ZJL6>].

86. AM. ASS'N OF LAW LIBRARIES, *LAW LIBRARIES AND ACCESS TO JUSTICE* 26 (July 2014), <http://www.aallnet.org/mm/Publications/products/atjwhitepaper.pdf> [<https://perma.cc/63LC-E4AC>].

87. Elizabeth Caufield, *Is This a Profession? Establishing Educational Criteria for Law Librarians*, 106 LAW LIBR. J. 287, 2014 LAW LIBR. J. 19.

Conclusion: The Library at the Law School Rather than the Law School Library?

¶42 The claim that online search is more powerful than libraries—recently reasserted in the *Wall Street Journal*⁸⁸—completely misses the value of libraries. However, such perceptions are based partly on the slowness of some libraries to adapt to change and partly on the failures of libraries to articulate and demonstrate their value beyond the library walls.⁸⁹ David S. Mao, the Deputy Librarian of Congress and a law librarian, recommends that law librarians “find a niche . . . and know—and be able to express—how they can bring value to the organization.”⁹⁰ This same message holds true for the law school libraries themselves.

¶43 Law school libraries, in many ways, have existed more in splendid isolation than other types of libraries. By intentionally trying to maximally limit their service population to the law school students and faculty, they have been able to provide rather specific collections and services, but they are also uniquely vulnerable to depending too much on those populations for their continued existence. Explanations of the value of law school libraries have typically focused more on the collected materials than on library services.⁹¹ However, as electronic databases erode this value that law school libraries have traditionally constructed for themselves, such isolation has become a very real problem.

¶44 Ultimately, for law school libraries—like all of types of libraries in the digital age—the search is for “a broader conception of community service.”⁹² The answer to that search will likely challenge many of the traditions and assumptions of law librarianship, but such considerations are essential for law school libraries to adapt and find the best new ways to contribute to law schools and communities beyond. Lessons from other types of libraries may prove very helpful as law school libraries embrace a broader sense of library-ness and grow from hedgehogs to foxes—foxes who think of their institutions not as law school libraries, but as libraries at law schools.

88. Steve Barker, *In Age of Google, Librarians Get Shelved*, WALL ST. J. (Jan. 10, 2016, 4:34 PM), <http://www.wsj.com/articles/in-age-of-google-librarians-get-shelved-1452461659>.

89. See generally JAEGER ET AL., *supra* note 55, at 97.

90. David S. Mao, *The Nation's Librarian (Interview)*, AALL SPECTRUM, Jan./Feb. 2016, at 12, 15.

91. See, e.g., Barbara Bintliff, *What Can the Faculty Expect from the Library of the Twenty-First Century?*, 96 LAW LIBR. J., 507, 2004 LAW LIBR. J. 30.

92. Philip H. Ennis & Floyd N. Fryden, *The Library in the Community Use Studies Revisited*, 30 LIBR. Q. 253, 253 (1960).

Law Libraries and the Future of Public Access to Born-Digital Government Information*

Rebecca Kunkel**

As government publications have shifted from print to electronic, mechanisms for guaranteeing the public's right to access government information have not kept pace. Because legal resources are among the publications most at risk of loss, law libraries should participate in efforts to ensure that born-digital government information remains freely available to all.

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Introduction

¶1 Web publishing has profoundly changed how the government disseminates information, including legal information. Many observers assume that the shift toward electronic publishing has improved access to government information. However, whether web publishing infrastructure sufficiently ensures that government information remains available over the long term is an open question. Link rot within electronic legal citations already undermines the ability of legal researchers to verify the sources on which courts' reasoning is based.¹ But another imminent threat looms over the long-term availability of the very sources that make up the law, which are increasingly likely to be born digital and published exclusively on the web.

¶2 This article discusses how changes in government publishing and distribution are likely to impact the long-term availability of this born-digital legal information. In paragraphs 3 through 14, I discuss how electronic publishing has altered the roles of the Federal Depository Library Program (FDLP) and Government

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1. See, e.g., Matthew E. Flyntz, *Ever Onward: Expanding the Use of Perma.cc*, 34 LEGAL REFERENCE SERVS. Q. 39 (2015); Lee F. Peoples, *Internet Citations in Oklahoma Attorney General Opinions*, 107 LAW LIBR. J. 347, 2015 LAW LIBR. J. 17; Sarah Rhodes, *Breaking Down Link Rot: The Chesapeake Project Legal Information Archive's Examination of URL Stability*, 102 LAW LIBR. J. 581, 2010 LAW LIBR. J. 33.

Publishing Office (GPO). This discussion provides a baseline for understanding how electronic-only publishing falls short of the long-term guarantees of access traditionally afforded by depository libraries. Paragraphs 15 through 29 look at how the general trend toward web publishing has impacted a particular category of legal information, administrative decisions. I focus on administrative decisions because agencies have broad discretion over whether and how to publish their decisions. This section presents the methodology for gathering information about this group of publications and then summarizes conclusions about the level of preservation risk to each publication. Paragraphs 30 through 35 conclude with a discussion of how law libraries can take more active roles in preserving government information, both by participating in GPO's existing preservation efforts and by independently building collections of born-digital documents.

Digital Publishing and Public Access: Origins of the Problem

¶3 For many years, the FDLP was the principal way that the public accessed government information.² Most of the current program's legal requirements were set out in the Depository Library Act of 1962.³ At that time, the primary concern was that the public had access to physical copies of publications located in libraries geographically dispersed throughout the country. To do this, the FDLP distributes free copies of documents to member libraries. In exchange, libraries in the program are required to make the documents accessible to the public.⁴ The one regional depository library designated per state must maintain in perpetuity all documents distributed through the program.⁵ Other libraries, designated as selective depositories, receive only those documents determined to be relevant to their local community of users.⁶ Although selective libraries are only required to keep documents in their collections for five years, they may not discard documents received through the program without first offering those items to other depositories.⁷

¶4 Although this basic framework was meant to ensure public access, it also helps to preserve the documents in depository collections. Geographic dispersal of libraries limits how far members of the public have to travel to get to a depository, but it also makes sure that a threat to one library's collection does not endanger all copies of a document. Requirements that libraries maintain documents received from the program ensures that copies of documents remain available over time.

¶5 As more government information is published online, researchers can rely on the FDLP less and less to preserve the information that the federal government produces. Relatively early on, GPO decided to conflate "distribution" of links to

2. Leo T. Sorokin, *The Computerization of Government Information: Does It Circumvent Public Access Under the Freedom of Information Act and the Depository Library Program?*, 24 COLUM. J.L. & SOC. PROBS. 267, 279 (1991).

3. 44 U.S.C. §§ 1901–1916 (2012). See also Wendy R. Brown, *Federal Initiatives to Promote Access to Electronic Government Information: The Impact on the Federal Depository Library Program*, 91 LAW LIBR. J. 291, 293 (1999).

4. 44 U.S.C. § 1911.

5. *Id.*

6. See *id.* § 1904.

7. *Id.* § 1912.

web-based resources with distribution of the resources themselves.⁸ When a depository selects a web-based electronic product, it receives a catalog record with links to the item, if it receives anything at all.⁹ This method of “distributing” web-based documents means that unless libraries take additional steps to harvest electronic content from the web, the only copies of the document remain with the agency.

¶6 Web publishing is a powerful way of giving the public access to information, at least initially. However, when information is born digital and available exclusively from a webpage, it seriously complicates the issue of preservation, consequently threatening the public’s ability to access information over time.¹⁰ The authenticity of digital items is an ongoing concern, due “to the ease with which alterations can be made.”¹¹ In addition to the physical vulnerability of whatever medium the digital files are stored on, keepers of digital collections must guard against other issues unique to digital formats, including data corruption and hardware or software obsolescence.¹²

¶7 Compounding the technical challenges of dealing with digital formats, the distribution of links to web-based resources rather than actual files means that much of the government information published on the web tends to remain under the control of a single entity—whether that entity is GPO or another agency. Centralization renders information more vulnerable to the whims of the individual agency and its members, and may result in intentional removal or alteration based on changes in policy or budget cuts.¹³

¶8 GPO, to its credit, has made digital preservation a greater priority in recent years. Many of its own digital publications are hosted in its repository system, Federal Digital System (FDSys), which complies with the Open Archival Information System (OAIS) standard.¹⁴ The OAIS standard “is a conceptual framework for an archival system dedicated to preserving and maintaining access to digital information over the long term. It describes the environment in which an archive resides, the functional components of the archive itself, and the information infrastructure supporting the archive’s processes.”¹⁵ Compliance with this standard is widely

8. See James A. Jacobs et al., *Government Information in the Digital Age: The Once and Future Federal Depository Library Program*, 31 J. ACAD. LIBRARIANSHIP 198, 200 (2005) (noting that according to the strategic plan adopted by the agency in 2004, GPO failed to distinguish between depositing digital items with libraries and providing access to those items on a centralized government server).

9. R. ERIC PETERSEN, JENNIFER E. MANNING & CHRISTINA M. BAILEY, CONG. RESEARCH SERV., R42457, FEDERAL DEPOSITORY LIBRARY PROGRAM: ISSUES FOR CONGRESS 13 (2012), <https://www.fas.org/sgp/crs/misc/R42457.pdf> (“Unlike tangible collections, digital government information is not physically provided to depository libraries, but is provided through the Internet by GPO and its content partners to depository libraries and directly to users with Internet access.”).

10. JUDITH COBB & JOAN ALLEN-HART, PRESERVING LEGAL MATERIALS IN DIGITAL FORMATS 6 (2005), https://lipalliance.files.wordpress.com/2010/02/lipa_white_paper_final1.pdf [<https://perma.cc/7H8W-TFFE>].

11. *Id.* at 11.

12. Susan Lyons, *Preserving Electronic Government Information: Looking Back and Looking Forward*, 45 REFERENCE LIBR. 207, 209 (2006).

13. Jacobs et al., *supra* note 8, at 202.

14. U.S. GOV’T PRINTING OFFICE, DIGITAL PRESERVATION AT THE U.S. GOVERNMENT PRINTING OFFICE: WHITE PAPER 6 (ver. 2.0, 2008), https://www.gpo.gov/pdfs/fdsys-info/documents/preservation-white-paper_20080709.pdf [<https://perma.cc/33PE-DFY5>].

15. OCLC/RLG WORKING GROUP ON PRESERVATION METADATA, PRESERVATION METADATA AND THE OAIS INFORMATION MODEL: A METADATA FRAMEWORK TO SUPPORT THE PRESERVATION OF DIGITAL

“viewed as vital to a functioning trusted digital repository,”¹⁶ such that documents hosted in FDSys may be regarded as relatively secure.

¶9 In addition to what is contained in FDSys, GPO’s electronic collection includes copies of web-based documents and websites produced by other federal agencies. Barnum describes the measures undertaken for digital preservation of electronic items in GPO’s *Catalog of Government Publications* (CGP):

Where possible, GPO obtains a documented commitment from publishing agencies that electronic publications will be available on the originating site permanently, and that GPO is given the files to manage in the event that the agency cannot honor that commitment. Where a documented agreement isn’t possible, GPO harvests a copy of the publication for its own archive. These publications are retained, updated as needed, and served up to users only when the agency version is no longer available. The archived information may be managed on in-house servers at GPO, on servers operated by FDLP partners which agree to maintain and migrate archival publications, or on vendor-operated servers.¹⁷

¶10 Archiving takes place when the item is cataloged.¹⁸ This raises the question of whether GPO’s archives reflect information added to the resource subsequent to when the catalog record was created. This concern may be relatively limited when a catalog record points to a single, discrete document such as a PDF. However, items are frequently cataloged at a much more general level—for example, a landing page with multiple links to volumes of a continuing resource. Catalog records may also point to databases that can contain hundreds of discrete documents, which are likely to be changed and updated frequently.¹⁹

¶11 More recently, GPO has also begun archiving complete websites. Web archiving involves a periodic crawl of an entire agency site to create more or less functional snapshots at given points in time.²⁰ Currently, the program includes about 130 sites.²¹ While web archiving may be an effective way to preserve the “look and feel” of a website, it is far from a perfect solution to capturing all of the online content. One clear limitation is that a site must be archived at particular points in time, meaning that information may be lost as content is modified, moved, or taken down between crawls of the site.²² GPO’s web archiving software is also unable to capture the contents of databases or other webpages that rely on dynami-

OBJECTS 5 (June 2002), http://www.oclc.org/content/dam/research/activities/pmwg/pm_framework.pdf [<https://perma.cc/637W-2VF9>].

16. COBB & ALLEN-HART, *supra* note 10, at 20.

17. George Barnum, *Availability, Access, Authenticity, and Persistence: Creating the Environment for Permanent Public Access to Electronic Government Information*, 19 GOV’T INFO. Q. 37, 39 (2002).

18. *Id.*

19. For particular examples of records that point to each type of resource, see the appendix *infra*.

20. *Web Archiving*, FDLP: FED. DEPOSITORY LIBRARY PROGRAM, <http://www.fdlp.gov/project-list/web-archiving> [<https://perma.cc/WAP9-G9ZA>].

21. See *id.* (a current list of sites archived by the program can be obtained by searching for the term “webarch” in the online *Catalog of Government Publications*, <http://catalog.gpo.gov>).

22. See Caroline Young, *Oh My Blawg! Who Will Save the Legal Blogs?*, 105 LAW LIBR. J. 493, 496–97, 2013 LAW LIBR. J. 26, ¶ 11.

cally generated content.²³ Thus, even at the moments a site is crawled, much valuable information may not be captured.²⁴

¶12 As agencies continue to post more information on the web, the problem of fugitive documents—government publications that are in the scope of the FDL P but have been neither cataloged nor distributed to depositories²⁵—also continues to grow. In theory, almost all federal government publications should be distributed through the FDL P. The Depository Library Act directs agencies to submit publications to the Superintendent of Documents for distribution, carving out only two exceptions to this general rule: (1) internal documents that have “no public interest or educational value” and (2) “publications classified for reasons of national security.”²⁶

¶13 In practice, agencies regularly neglect this duty, a problem that did not originate with digital publishing. Even before web publishing became a widespread phenomenon, agencies often self-published or went through private publishers, neglecting to submit the required copies to the Superintendent of Documents.²⁷ However, web publishing is frequently cited as the cause of a sharp increase in the number of fugitive documents. In 2003, Gil Baldwin, then director of GPO’s Library Programs Service, estimated the number of digital fugitive documents at 250,000.²⁸ According to a more recent estimate, there may be “more born-digital government information items produced in a single year than all the two or three million non-digital information items accumulated in the FDL P over 200 years.”²⁹ Of those, a significant percentage may be fugitive documents.³⁰

¶14 In the past, fugitive documents thwarted the efforts of depositories to provide access to all publications of the federal government. Today, the public often has Internet access to documents, at least for whatever period of time the agency decides to make the document available on its website. However, the failure of agencies to submit web-based documents to GPO typically hinders efforts to identify publications for cataloging and archiving—actions that might help to reduce the risk of information once posted on the web becoming irrevocably lost.

23. *Web Archiving*, *supra* note 20 (“Additionally, some Web sites, such as databases or Web sites where content is generated ‘on the fly’ by a content management system, cannot be properly harvested or archived by Archive-It. In these instances, we try to create partnerships with the providing agencies to ensure permanent public access to their Web sites.”).

24. For example, when one tries to navigate to the Federal Energy Commission’s advisory opinions from the version of the FEC site captured December 8, 2015, attempts to search for opinions in the database or browse by the year of the opinion (<http://wayback.archive-it.org/4326/20151104165427/http://saos.fec.gov/saos/searchao>) result in a “Not in Archive” error message.

25. David Durant, *The Federal Depository Library Program: Anachronism or Necessity?*, 62 N.C. LIBR. 30, 36 (2004).

26. 44 U.S.C. § 1902 (Supp. II 2014).

27. Cynthia Bower, *Federal Fugitives, DNDs and Other Aberrants: A Cosmology*, 17 DOCUMENTS TO THE PEOPLE 120, 124 (1989).

28. Gil Baldwin, *Fugitive Documents—On the Loose or On the Run*, ADMIN. NOTES, Aug. 15, 2003, at 4, 5.

29. JAMES A. JACOBS, BORN-DIGITAL U.S. FEDERAL GOVERNMENT INFORMATION: PRESERVATION AND ACCESS 3 (Mar. 17, 2014), <https://www.crl.edu/sites/default/files/d6/attachments/pages/Leviathan%20Jacobs%20Report%20CRL%20%C6%92%20%283%29.pdf> [<https://perma.cc/MV4Q-SPYE>].

30. *Id.* at 13.

Legal Information and Administrative Decisions

¶15 Much of the information produced by the government is legal information, including the statutes, regulations, and opinions that constitute the primary sources of law. Some primary sources, such as the *United States Code*, *United States Reports*, and the *Code of Federal Regulations*, are still widely distributed by the FDLP in print and therefore available to legal researchers in stable formats as well as online. However, the web is becoming the main location for other government-produced legal information, including primary sources of administrative law.

¶16 Generally applicable regulations are required to be published in the *Federal Register*³¹ and are therefore distributed through the FDLP in both the *Federal Register* and the *Code of Federal Regulations*. On the other hand, there has never been a statutory requirement to publish written opinions issued under an agency's quasi-judicial authority.³² Historically, availability of administrative decisions has varied widely, with some agencies publishing their decisions in reporters printed by GPO, others through private publishers, and others making the decisions available only upon a specific request.³³

¶17 The lack of uniformity in publishing requirements does not imply that administrative decisions lack importance for legal researchers. Administrative decisions are analogous to court opinions, often containing the reasoning behind the agency's determination and interpretations of relevant law. These decisions may be treated as sources of precedent within the agency. Courts also treat administrative decisions as precedential and accord special deference to an agency's interpretations of its own rules.³⁴

¶18 Casual observation suggests that administrative decisions are among those documents increasingly likely to be self-published on the agency websites rather than in tangible formats. How these general trends in government publishing impact the long-term survival for this category of legal information has not yet been studied in detail. By its very nature, the problem is difficult to study. Decisions may be fugitive documents and therefore omitted from GPO's CGP, the most complete listing of federal publications available. No official census lists all agencies that issue administrative decisions, much less where and by whom those decisions are published. Information about preservation activities that may include these items is not collected in a single location.³⁵ Nonetheless, using GPO's catalog, supporting documentation, and other available resources, it is possible to improve our understanding of some basic issues that impact the long-term preservation and public accessibility of documents. Questions that existing tools can answer include whether analog copies of documents are being distributed to depositories, whether documents are being hosted in a publicly accessible standards-compliant repository such as FDSys, and whether GPO has cataloged (and is therefore likely to have archived) documents.

31. 44 U.S.C. § 1505 (2012).

32. 2 CHARLES H. KOCH, JR. & RICHARD MURPHY, ADMINISTRATIVE LAW & PRACTICE § 5:61 (3d ed. 2010).

33. See MORRIS L. COHEN & ROBERT C. BERRING, HOW TO FIND THE LAW app. D (8th ed. 1983).

34. 3 KOCH & MURPHY, *supra* note 32, § 10:26.

35. JACOBS, *supra* note 29, at 7.

¶19 The first step toward studying whether publications are at risk was to inventory available agency decisions. To find a list that was reasonably complete, I consulted two separate sources: the Superintendent of Documents's *List of Classes*³⁶ and a separate list of administrative decisions maintained by the University of Virginia (UVA) Library.³⁷ The *List of Classes* contains all items that are available to federal depositories. It is organized around the Superintendent of Documents (SuDocs) classification scheme used by the FDLP, which classifies documents based on agency provenance.³⁸ Although the *List of Classes* does not focus specifically on administrative decisions, it formed a useful starting point for gathering information because titles included in the *List of Classes* are listed alongside their Superintendent of Documents Classification Number. This provided a precise method of searching for documents in the CGP.

¶20 The titles identified through the *List of Classes* were likely to form an incomplete list for two reasons. As discussed in the previous section, agencies frequently publish information without going through GPO, meaning that some relevant sets of decisions would not appear in the *List of Classes*. Second, even those decisions being distributed to depositories may not be clearly described as such in the *List of Classes* due to the lack of standardization in the SuDocs Classification Scheme.³⁹ I therefore consulted the UVA list to fill in these potential gaps. The UVA list attempts to include all agency decisions available on the web, not necessarily those available through GPO, so it was more likely to include fugitive documents in the list of available publications.

¶21 After using these sources to compile the inventory, I gathered information to determine the degree of risk to each publication. To conduct this analysis, I used a framework outlined by the Legal Information Preservation Alliance to evaluate the levels of risk to electronic resources:

- Lowest Risk: Digital surrogates with an analog counterpart that is properly curated.
- Low Risk: Digital content that is curated properly and maintained in digital repositories with preservation policies and strategies specifically stated.
- Medium Risk: Digital content held by several independent organizations, possibly including the creator, caretakers, and publishers.
- High Risk: Digital content that is not held in redundant systems or a digital repository.

36. LIST OF CLASSES OF UNITED STATES GOVERNMENT PUBLICATIONS AVAILABLE FOR SELECTION BY DEPOSITORY LIBRARIES (rev. Oct. 2015), <https://www.fdlp.gov/file-repository/collection-management/list-of-classes/2682-list-of-classes-print-version-revised-11-2015/file>.

37. ADMINISTRATIVE DECISIONS, http://guides.lib.virginia.edu/administrative_decisions (last visited Dec. 13, 2016).

38. *Superintendent of Documents (SuDocs) Classification Scheme*, FDLP: FED. DEPOSITORY LIBRARY PROGRAM (last updated Jan. 28, 2015), <http://www.fdlp.gov/catalogingandclassification/cataloging-articles/1791-superintendent-of-documents-sudocs-classification-scheme> [<https://perma.cc/KY62-B4VH>].

39. See *Superintendent of Documents (SuDocs) Classification Scheme: Subordinate Structure*, FDLP: FED. DEPOSITORY LIBRARY PROGRAM (last updated Jan. 28, 2015), <http://www.fdlp.gov/catalogingandclassification/cataloging-articles/1791-sudocs-classification?showall=&start=3> [<https://perma.cc/TPZ4-7P8R>].

- Highest Risk: Digital content that is not held in redundant systems or a digital repository and that cannot be reformatted to eye readable formats.⁴⁰

¶22 I obtained most of the information relevant to the risk assessment for particular items through the CGP, which contains records of government publications since 1976. GPO does not attempt to catalog all government information made available through nongovernment sources such as commercial publishers or non-profit groups. It also does not include the contents of National Archives and Records Administration's digital repositories.⁴¹ The CGP therefore does not exhaust the entire universe of sources through which digital publications may be preserved. However, the CGP does include catalog records for items located with nongovernment entities that have formed agreements with GPO to guarantee public access to documents, making it reasonably complete with regard to the sources to which the public has a right to free access.

¶23 Information about whether analog versions of a title are distributed to depositories is readily available through the CGP. The same SuDoc class number typically includes records for both paper and electronic versions of the same title. GPO also attempts to link paper and microform from records for electronic equivalents and vice versa. Information about whether analog versions are current and up to date is also available through the CGP. Catalog records typically contain item-level information about continuing resources as well as information about whether these items were distributed to depositories. GPO catalogers may also use the publication dates or notes field to indicate whether an item has been discontinued or continued exclusively in electronic format.

¶24 Some information about whether documents are held in a properly maintained digital repository or redundant system may also be inferred from what is available in the CGP. Because FDSys is an OAIS-compliant repository, its items qualify as low risk.⁴² Catalog records for discrete documents that link directly to the item hosted on an agency site are evidence that GPO has an archived backup copy of the document, although not necessarily hosted in FDSys.⁴³ The implications of items cataloged at a more general level are more ambiguous. For the purposes of this article, I have presumed that when the catalog record links to a landing page with static links to content, the information contained in those links has been archived.⁴⁴ For records that link to databases with dynamically generated content, evidence suggests that this content has not been archived.⁴⁵

¶25 The appendix contains the complete list of the forty-two publications studied, along with conclusions about their risk levels and summaries of the informa-

40. COBB & ALLEN-HART, *supra* note 10, at 28–29.

41. NARA maintains its own catalog, which includes records of electronic items, available through <http://www.archives.gov/research/catalog/about.html>.

42. COBB & ALLEN-HART, *supra* note 10, at 30.

43. U.S. GOV'T PRINTING OFFICE, MANAGING THE FDLP ELECTRONIC COLLECTION: A POLICY AND PLANNING DOCUMENT 9 (2d ed., June 18, 2004), <http://www.fdlp.gov/file-repository/about-the-fdlp/gpo-projects/collection-of-last-resort/1908-managing-the-fdlp-electronic-collection-a-policy-and-planning-document?path=about-the-fdlp/gpo-projects/collection-of-last-resort> [https://perma.cc/D8U9-3DDP].

44. See *supra* ¶¶ 9–10.

45. See *supra* ¶ 11.

tion on which those conclusions are based. What follows is a brief summary of the information in the appendix.

¶26 Of the forty-two total publications, twenty-six were identified through the *List of Classes* and sixteen through the UVA list. Of the sixteen items from the UVA list, I identified only two that had associated records in the CGP. The remaining fourteen publications I therefore tentatively identified as high risk, with content existing solely in a digital medium, held by a single institution, with no specified preservation strategy.

¶27 Of the remaining twenty-eight titles for which SuDoc numbers were identified, three were not associated with any records of publications in the CGP. Three titles, or approximately 7.1% of the total number of publications, were at the level of lowest risk with all years for which the publication was available being distributed to depositories in a tangible format. Two titles (about 4.8%) were at medium risk for all dates available, and five of the cataloged titles (11.9%) were at high risk for all dates available, with contents available exclusively in electronic databases with dynamically generated contents. The remaining fifteen titles were at more than one risk level depending on the dates under consideration. Not surprisingly, eight of these titles (19.0%) went from lowest risk to high risk as paper publications formerly distributed to depositories were replaced by online-only databases.

¶28 In total, thirty publications, or 71.4% of the total number of publications studied, were at high risk for some period of their publication histories, owing to a lack of analog distribution and digital content either not being cataloged by GPO at all or else being hosted in a database making the contents of the database inaccessible to archiving. Only three publications (7.1%)—the *Federal Communications Commission Record*, *Decisions of the Federal Labor Relations Authority*, and *Nuclear Regulatory Commission Issuances*—unambiguously continue to exist at the lowest level of risk.

¶29 Although these numbers may not directly generalize to other types of publications, this inquiry certainly raises the question of whether other legal information created by federal agencies is being preserved in a publicly accessible form. In addition to decisions, agencies produce legal advisory opinions, internal rules and regulations, public guidance documents, newsletters, and journals with legal commentary. None of these resources are subject to publication in the *Federal Register*, but all are administrative law materials that fall within the scope of the FDLP. Further investigation is warranted to determine whether other legal information is being disseminated in a way that will ensure permanent public access.

Recommendations

¶30 The availability of items through the FDLP directly impacts law libraries, whether or not they are members of the program. The FDLP decreases researchers' dependence on commercial fee-based services. Public libraries that offer free online sources improve their ability to serve patrons who may not have full access to the libraries' paid subscriptions. The system of depository libraries also increases the likelihood that patrons can obtain harder-to-find government information, through either referral or interlibrary loan.

¶31 The fact that many administrative decisions are at high risk in terms of preservation suggests that GPO's preservation efforts are not necessarily focused on items used by legal researchers. Other legal publications produced by federal agencies—such as internal regulations, advisory opinions, public guidance documents, and legal periodicals—may no longer be distributed to depositories or preserved in digital formats. If we want to make sure this information is preserved in a form that remains free to all patrons, law libraries should be involved with efforts to save legal information published on government websites.

¶32 All librarians can contribute to GPO's preservation efforts by using the existing channels to request that GPO catalog and preserve specific publications. Identifying all in-scope publications omitted from the FDLP is a challenging and time-consuming task. However, law librarians can contribute to crowd-sourced efforts to identify fugitive documents by first determining whether GPO has cataloged publications that their patrons use and then reporting omissions to GPO through AskGPO⁴⁶ or through the Lost Docs reporting form,⁴⁷ neither of which require depository status to use.

¶33 Reporting documents to GPO may help to focus preservation resources on items most important to legal researchers. However, the universe of born digital documents is large and GPO's resources are finite. It is unlikely that GPO's preservation efforts alone can catch up with the sheer volume of information now being produced by the federal government. GPO's current strategic plan reflects this reality: it calls for the creation of a Federal Information Preservation Network (FIPNet) to share the burden of preserving digital resources among many institutions.⁴⁸

¶34 While the precise requirements of being a FIPNet preservation partner are as yet largely untested and undefined, it is clear that cooperating with the planned network will allow GPO to centralize coordination of preservation tasks. This may benefit participating libraries by avoiding unnecessary duplication of effort, as well as raising the profile of local collections through the help of GPO's existing finding aids and publicity tools. Partnerships may also help libraries to maintain their collections long term by allowing GPO to assume some of the burden of permanent public access.⁴⁹

¶35 Further, even libraries that cannot commit long term to partnering with GPO can significantly help preservation efforts. A collection need not be ideal to reduce the risk to large numbers of documents. Preservation measures may be as simple as downloading documents from government sites to local servers, along with a minimum of metadata, until such time that more permanent solutions become feasible.⁵⁰ This type of project may be undertaken at relatively low cost by

46. AskGPO, <https://www.gpo.gov/askgpo/> (last visited Dec. 23, 2016).

47. *Lost Docs Reporting Form*, FDLP: FED. DEPOSITORY LIBRARY PROGRAM, <http://www.fdlp.gov/collection-tools/lostdocs> [<https://perma.cc/7UF8-3CV9>].

48. *Federal Information Preservation Network (FIPNet)*, FDLP: FED. DEPOSITORY LIBRARY PROGRAM (last updated Apr. 13, 2015), <http://www.fdlp.gov/project-list/federal-information-preservation-network> [<https://perma.cc/2KRP-VLFE>].

49. *Partnerships*, FDLP: FED. DEPOSITORY LIBRARY PROGRAM (last updated Sept. 12, 2016), <http://www.fdlp.gov/about-the-fdlp/partnerships> [<https://perma.cc/253R-6UP8>] ("In the event that a partner is unable to provide permanent public access, GPO will make arrangements to provide access to the resource.").

50. See generally Jody L. DeRidder, *Benign Neglect: Developing Life Rafts for Digital Content*, 30 INFO. TECH. & LIBR. 71 (2011).

either writing scripts or using one of a growing number of open source, free, or commercial web scraping tools.⁵¹ Web scraping can recategorize a large number of documents from high risk to medium risk relatively quickly, by simply ensuring that backup copies exist somewhere in the event that the originals are removed or altered.⁵² This intermediate step may prove necessary given the current magnitude of the problem.

Conclusion

¶36 In the short term, web publishing gives members of the public improved access to government information. But as web publishing has supplanted distribution of tangible materials through the FDLP, the guarantee of long-term public access to these materials has become increasingly elusive. Long-term preservation of digital resources requires a more active approach than that for tangible materials. This inherent challenge gives enough cause for concern, but in addition, a vast quantity of information now resides exclusively with agencies that may lack an ongoing commitment to public access to these resources.

¶37 Many publications at risk of disappearing are legal resources, including primary sources of law such as administrative decisions. The vast majority of the administrative publications studied here, in fact, have qualified as high risk for some or most of their publication histories. Law libraries' interest in ensuring that government-produced legal resources remain free and available to the public must translate to action to save many currently available resources. Law librarians should contribute to preservation efforts, whether by identifying documents for preservation by others or by building their own collections of born-digital documents.

51. Some examples of free web scraping tools include the Outwit Docs plugin for Firefox (<http://outwit.com/products/docs/>), which harvests documents, and the Web Scraper plugin for Chrome (<http://webscraper.io/>), which is designed to harvest metadata from webpages.

52. For example, at Rutgers Law Library, we have downloaded about 5000 military departmental regulations and associated metadata from government databases using scripts written in the Perl programming language. The project is currently hosted at <http://govdocs.rutgers.edu/mil/form.php>.

Appendix

Sudoc No.	Title	Notes	Risk Level
A 1.58/A:	Agriculture Decisions	In print: last volume cataloged 2006; 2005–2006 not arrived or not distributed; electronic: record links to http://www.oaljdecisions.dm.usda.gov/agriculture-decisions-publication , with links to individual volumes; note from the Agriculture decisions webpage: “While Agriculture Decisions generally does not include full texts of Miscellaneous Orders, Default Decisions, or Consent Decisions, those decisions and orders are available in their entirety, in portable document format (pdf), under OALJ Decisions.”; the OALJ decisions page (http://www.oaljdecisions.dm.usda.gov/current) does not appear to be in CGP.	Lowest (to 2005)/medium (since 2005)
CC 1.12/3:	FCC Record	In print: paper volumes cataloged through 2015; electronic copy available through http://digital.library.unt.edu/explore/collections/FCCRD/browse/ .	Lowest
D 301.100:	Unpublished Comptroller General Decisions with Index	Nothing cataloged with this SuDoc number.	N/A
EP 1.130:	Environmental Administrative Decisions	In print: last volume cataloged 2008–2010; electronic: record links to http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Statutes?OpenPage , which appears to be dynamically generated content.	Lowest (to 2010)/high (since 2010)
FMC 1.10/2:	Formal Docket Decisions	Electronic only; links to http://www.fmc.gov/electronic_reading_room/docket_proceedings.aspx (dynamically generated in response to queries of proprietary aspx database content).	High
FT 1.11:	Federal Trade Commission Decisions	In print: according to additional form field “Beginning with v. 129 (Jan.–June 2000), available in online format only.”; electronic record: links to https://www.ftc.gov/enforcement/cases-proceedings/commission-decision-volumes , which has links to individual volumes.	Lowest (to 2000)/medium (since 2000)
GA 1.5/A-2:	[GAO] Decisions	703 records cataloged as individual titles most recent from 2013; sample of purls appear to be archived on permanent.access.gpo.gov ; FDSys contains decisions from 1995–2008; note in FDSys indicates “GPO signed a partnership agreement with the Government Accountability Office (GAO) to provide permanent public access to the GAO Reports database and GAO Comptroller General Decisions database on the GAO Web site. Under this agreement, GAO agrees to provide storage capacity and user access without restrictions on re-dissemination.” Decisions on the GAO website (http://www.gao.gov/legal/) appear to be dynamically generated in response to user searches.	Low (1995–2008); medium (2008–2013); high (since 2013)
GA 1.5/A-3:	Bid Protest Decisions	Nothing cataloged with this SuDoc number; bid protests are available on http://www.gao.gov (which does not appear to be cataloged).	N/A, but see previous entry

Sudoc No.	Title	Notes	Risk Level
GP 3.35: GPO CA	GPO Board of Contract Appeals Decisions	Electronic available at http://permanent.access.gpo.gov/lps16213/gpo_bca/ record; others available at https://www.gpo.gov/vendors/decisions.htm ; no paper equivalent found.	Medium
J 1.103:	Administrative Decisions Under Employer Sanctions, Unfair Immigration-Related Employment Practices, and Civil Penalty Document Fraud Laws	In print: records through 1997–1998; electronic: two separate records, one links to http://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions#PubDecOrders , which links to individual bound volumes; the other is an archived version at UNT (but does not contain all the current “looseleaf” decisions), http://webarchive.library.unt.edu/eot2008/20090118101113/http://justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders .	Lowest (to 1998)/low (since 1998)
L 28.9:	Digest and Decisions of the Employees’ Compensation Appeals Board	In print: volumes cataloged through 2007–2008; electronic: links to http://www.dol.gov/ecab/decisions.htm (can be browsed by year and month).	Lowest (pre-2008)/medium (since 2008)
LR 1.8:	Decisions and Orders	In print: volumes cataloged through 2010; electronic: links to https://www.nlr.gov/cases-decisions/board-decisions , which has links to recent decisions. To get to other decisions, requires users to do a full-text search.	Lowest (pre-2010)/high (since 2010)
MS 1.10:	Decisions (United States Merit Systems Protection Board)	In print: individual volumes of paper version not cataloged, general note “Not distributed to depository libraries in a physical form, 1983–”; electronic records links to http://www.mspb.gov/decisions/decisions.htm and http://www.mspb.gov/decisions/searchdec.htm , which requires searching a database to get to decisions.	High
SE 1.11:	Decisions and Reports	Record only for print item; dates are unclear but this title appears to have been last distributed in 2005–2006; current SEC decisions located at http://www.sec.gov/litigation/apdocuments.shtml do not appear to be cataloged.	Lowest (to 2006)/high (since 2006)
TD 1.122:	NTSB decisions	Microfilm: publication dates field note “Vol. 1 (Apr. 1967/Dec. 1972)–Vol. 7, bk. 2 (Jan. 1, 1990 to Dec. 31, 1991)”; purl in CGP is marked no longer valid (goes to error page on GPO server); current is on http://www.nts.gov/legal/alj/_layouts/nts.common.onoweb/query.aspx , page with dynamically generated content.	Lowest (to 1991)/high (since 1991)
TD 13.6/3:	Surface Transportation Board Decisions and Notices	Electronic only, links to http://www.stb.dot.gov/decisions/readingroom.nsf/WebServiceDate?openform , which appears to be dynamically generated content listing individual decisions by date.	High
VA 1.95/2:	Board of Veterans’ Appeals Decisions	CD-ROM, individual volumes not cataloged; preliminary record for online version links to http://www.index.va.gov/search/va/bva.jsp , a database search page.	High

Sudoc No.	Title	Notes	Risk Level
Y 11.15:	Decisions of the Board of Directors	37 individual decisions cataloged (1997–2005); current decisions located at http://www.compliance.gov/directives/final-decisions -year-issuance, which does not appear to be cataloged.	Medium (for cataloged decisions)/high (for decisions since 2005)
Y 3.EQ 2:18-7	Federal Sector Appellate Decisions (database)	Nothing cataloged with this SuDoc number.	n/a
Y 3.F 31/21-3:10-4/	Decisions of the Federal Labor Relations Authority	Paper issues through 2012–2014 cataloged; electronic record links to https://www.flra.gov/decisions , which appears to be dynamically generated content.	Lowest
Y 3.F 31/21-3:14-3/	FSIP Decisions	In print: publication dates field note “Ceased with: no. 490 (Feb. 24, 2010).”; electronic: links to https://flra.gov/fsip_table , which appears to be dynamically generated content.	Lowest (to 2010)/high (from 2010)
Y 3.F 31/21-3:9/ CASE	Report of Case Decisions	In print: cataloged through 2010; marked not distributed 2005–2010; electronic: current decisions (SuDoc Y 3.F 31/21-3:10-4/) at https://www.flra.gov/decisions .	Lowest (to 2005)/high (since 2005)
Y 3.F 31/21-3:9-3/	Administrative Law Judge Decisions	In print: cataloged through 2010; electronic links to https://flra.gov/alj_decisions .	Lowest (to 2010)/high (since 2010)
Y 3.M 66:9	Federal Mine Safety and Health Review Commission, Commission Decisions	In print: cataloged through 2015; 2004–2012 & June 2013–2015 marked not arrived/not distributed; record for archive of complete site (https://wayback.archive-it.org/4525*/http://www.fmshrc.gov/) does not appear to have captured all of the decisions posted to the page (links work from only one list of results); current decisions pages (http://www.fmshrc.gov/decisions) do not appear in the catalog and require user searches to get to contents of the database.	Lowest (before 2004)/high (since 2004)
Y 3.N 88:11	N.R.C. Issuances, Opinions and Decisions of the N.R.C. with Selected Orders	In print: cataloged through 2015; electronic record links to http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0750/ , which has link to individual volumes.	Lowest
Y 3.OC 1:10-5/	ALJ Decisions	Electronic (online) links to http://www.oshrc.gov/decisions/decisions.html and http://www.oshrc.gov/index.html ; CD-ROM publication dates: “Ceased with: Aug. 2005.”	Medium (pre-2005)/high (since 2005)
Y 3.OC 1:10-6/	Commission Decisions	Electronic record only links to http://www.oshrc.gov/decisions/decisions.html ; also available on CD-ROM for dates that are not clear in the catalog record.	Medium
Y 3.P 84/4:10	Opinion and Recommended Decision (online database)	Electronic record only links to http://www.prc.gov/dockets/search , a database search page; PRC site is archived by GPO but individual opinions do not appear to be available through the archived site.	High
	Forest Service Environmental Appeal Responses	No catalog record identified; http://www.fs.fed.us/appeals/ .	High

Sudoc No.	Title	Notes	Risk Level
Y 3.P 84/4:10	USDA Grain Inspection, Packers, and Stockyards Administration Enforcement Actions	No catalog record identified; http://www.gipsa.usda.gov/psp/enforcement.aspx .	High
	USDA National Appeals Division	No catalog record identified; https://usda-nad-local1.entellitrak.com/etk-usda-nad-prod-temp/page.request.do?page=page.searchDeterminations.styled#results .	High
	Patent Trial and Appeal Board Decisions	No catalog record identified; http://e-foia.uspto.gov/Foia/PTABReadingRoom.jsp .	High
	Armed Services Board of Contract Appeals	No catalog record identified; http://www.asbca.mil/Decisions/decisions2015.html . ⁵³	High
	Decisions of the Secretary of Education	No catalog record identified; http://oha.ed.gov/secretarydecisions.html .	High
	Education Office of Hearings and Appeals Decisions	No catalog record identified; http://oha.ed.gov/ohaindex.html .	High
	Farm Credit Administration Legal Opinion Summaries	No catalog record identified; http://www3.fca.gov/readingrm/legalop/Legal%20Opinion%20Summaries/Forms/AllItems.aspx .	High
	FDIC Enforcement Decisions and Orders	No catalog record identified; https://www5.fdic.gov/EDO/index.html ; HHS decisions http://www.hhs.gov/dab/decisions/index.html# .	High
	Coast Guard ALJ and Commandant Decisions	No catalog record identified; http://www.uscg.mil/alj/decisions/ .	High
	USPS Administrative Decisions	No catalog record identified; http://about.usps.com/who-we-are/judicial/admin-decisions/welcome.htm .	High
	Railroad Retirement Board Coverage Decisions	No catalog record identified; http://www.rrb.gov/blaw/bcd/cov_introduction.asp .	High
	SEC Opinions and Orders	No catalog record identified; http://www.sec.gov/litigation/opinions.shtml .	High
	Small Business Administration Office of Hearings and Appeals Decisions	No catalog record identified; https://www.sba.gov/oha/decisions .	High

53. This website was no longer working at the time of publication. An archived version is available through the Internet Archive at <https://web.archive.org/web/20161209092317/http://www.asbca.mil/Decisions/decisions2015.html>.

Increasing Article Findability Online: The Four Cs of Search Engine Optimization*

Taryn Marks** and Avery Le***

As researchers increasingly and exclusively conduct legal research online, authors must learn the essential skill of ensuring that their articles are both findable and among the top-ranked results in a search. This article highlights four search engine optimization best practices to apply to legal scholarship: creating effective titles, abstracts, and metadata; cross-discipline marketing to multiple disciplines; cross-posting to multiple locations; and converting to searchable PDFs.

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Introduction

¶1 Promoting scholarship online is difficult. When an author¹ posts an article on the web, such as in digital repositories or research databases, she pits her article against the millions of other articles already available online. For her article to rise above the masses of other online articles, the author must actively promote that scholarship. Such promotion is particularly important for an author in a tenured or tenure-track position, where citation counts, impact factors, and online recognition have become increasingly important in the tenure and promotion process, both before and after an author achieves tenure.²

¶2 To best increase an article's visibility online, an author must practice search engine optimization. To do this, she should learn how search engine optimization works, how online searches can influence citation counts and impact factors, and how certain techniques can promote the findability of scholarship online. To help educate authors who are unfamiliar with search engine optimization, we have developed four best practices that we believe best promote scholarship online. Before delving into a discussion of those four best practices, we first clarify how search engines work and how search engine optimization takes advantage of those search engine processes.

¶3 We first explain how search engines work. Because researchers increasingly use Google Scholar to find relevant research, we focus our analysis on the Google Scholar search algorithm and on how researchers use Google Scholar to find information. Many other databases and search engines model their algorithms on the Google algorithm, making an understanding of its underlying functionality even more useful to an author.³ Once an author understands the likely factors considered by Google Scholar when a researcher conducts a search,⁴ the author can use that knowledge to increase an article's findability.

¶4 We then explain how we extrapolated the four best practices for search engine optimization. Although we focused our efforts on how to identify practices that would maximize citation counts and impact factors—the metrics that are most important to law professors—we believe the underlying understanding of search engines and search engine optimization can be applied with equal success across multiple different academic fields and professional disciplines.

1. Throughout this article, we use the word “author” to refer to someone who produces academic research publications.

2. Emilio Delgado López-Cózar et al., *The Google Scholar Experiment: How to Index False Papers and Manipulate Bibliometric Indicators*, 65 J. ASS'N INFO. SCI. & TECH. 446, 446–47 (2014) (noting that “researchers have to respond to evermore demanding pressures to demonstrate their impact in order to obtain research funding or to progress in their academic career, especially in fields of the social sciences and humanities”). “Citation count” refers to the number of citations that an author has to her articles; “impact factor” measures an author's total number of articles, citations, and sometimes the quality of the journal in which the article is published. See, e.g., Raj Kumar Pan & Santo Fortunato, *Author Impact Factor: Tracking the Dynamics of Individual Scientific Impact*, SCI. REP. (May 12, 2014), <http://www.nature.com/articles/srep04880>.

3. In the law field, both Westlaw and Lexis Advance mimic Google's single search bar. See *infra* ¶¶ 7–8.

4. Unfortunately, Google does not publicize its search algorithm, so we rely on studies that reverse-engineered the Google Scholar algorithm and our own observations of the search engine. See *infra* ¶¶ 18–23.

¶5 Finally, we explain the four best practices and justify why these four are the best practices. We refer to the best practices as “The Four Cs of Search Engine Optimization.” They are (1) create effective titles, abstracts, and metadata; (2) cross-discipline posting of scholarship; (3) cross-post to multiple web locations; and (4) convert works to user-friendly, searchable PDFs. We then conclude, and in doing so also propose additional research projects that would expand on our own best practices in search engine optimization.

The New Research Paradigm: Google Scholar’s Algorithm and Its Impact on Research

¶6 Google Scholar has become so popular in the academic world that researchers almost always start their research in that database, and the habits that researchers develop when using Google Scholar translate across any other source they use.

Researchers Start with and Prefer Google Scholar

¶7 Authors need to understand Google Scholar and how Google Scholar works because both students and academic researchers often start (and too frequently complete) their research in Google Scholar⁵ or even in Google itself.⁶ Students and researchers, already familiar with the Google platform, like Google Scholar’s simple, straightforward search box; more important, they like how easy Google Scholar is to use and how quickly they can find information.⁷ Because of this “Google fluency,” students and academic researchers often turn to Google Scholar to conduct their initial scholarly searches,⁸ instead of using library catalogs and other academic databases such as EBSCO or ProQuest.⁹ Users in one study located an article using Google Scholar almost fourteen times more frequently than using the library catalog.¹⁰ Even among legal researchers, Google Scholar has become a preferred search engine.¹¹

¶8 As a result of Google Scholar’s success and popularity, students and researchers expect (or at least desire) databases other than Google to be Google-like in how they search and present information. Databases have responded to such user preferences by revamping their platforms and search algorithms to meet researchers’

5. Gail Herrera, *Google Scholar Users and User Behaviors: An Exploratory Study*, 72 C. & RES. LIBR. 316, 318, 319 (2011) (noting that Google Scholar “[i]s a good starting place for undergraduate research projects” and that there is “a general adoption of Google among students and researchers alike”).

6. Jillian R. Griffiths & Peter Brophy, *Student Searching Behavior and the Web: Use of Academic Resources and Google*, 53 LIBR. TRENDS 539, 548 (2005).

7. Herrera, *supra* note 5, at 317–18.

8. *Id.* at 318–19; see also Jöran Beel & Bela Gipp, *Google Scholar’s Ranking Algorithm: An Introductory Overview*, in 1 PROCEEDINGS OF THE 12TH INTERNATIONAL CONFERENCE ON SCIENTOMETRICS AND INFORMETRICS 230, 230 (2009) [hereinafter Beel & Gipp I] (discussing the influence on Google Scholar on the academic scientific community).

9. Griffiths & Brophy, *supra* note 6, at 546.

10. Herrera, *supra* note 5, at 327.

11. Ashley Krenelka Chase, *Making the Most of Free Legal Research: A Selected Annotated Bibliography*, 28 REFERENCE REV., no. 3, 2014, at 7.

demands.¹² Google Scholar thus plays an important role in current research techniques, and authors who understand how Google Scholar works and how researchers use Google Scholar can adapt and apply their knowledge across a multitude of databases.

Google Scholar Users Will Not Discover an Article Past the First Page

¶9 We know that researchers default to Google Scholar for academic research, so we now explore how researchers use Google Scholar to best understand how to optimize scholarship for that type of searching.

¶10 Based on eye-tracking analysis, studies determined that researchers infrequently go past the “page break” of search results¹³ and almost never click beyond the first page of search results.¹⁴ In Google Scholar, a typical page break occurs at about the sixth article in the list of search results; a typical first page includes approximately ten articles. For an article to have the greatest likelihood of being found by a researcher, the article must appear at least within the top ten articles returned by a Google Scholar search; otherwise, the vast majority of researchers will not see the article.

¶11 Understanding how Google Scholar researchers use Google Scholar applies to more than just Google Scholar, however. “[P]atterns of use of electronic information systems become habitual,”¹⁵ so that once researchers establish the habit of skimming only the first six articles returned from an online search or of looking only at the first page of results, they will maintain that habit across every database and search platform they use. As more databases imitate Google, researchers’ habitual research techniques become ingrained. This habit even translates to legal databases such as Lexis Advance or Westlaw (two of the most commonly used databases for legal researchers)—each of which endeavors to be more Google-like in its respective search functionality. When researchers use either Lexis Advance or Westlaw to locate articles, they likely see only those articles near the top of the search results. As such, to maximize the chances that researchers will notice their articles, authors must effectively use search engine optimization tools to push their articles to the top of research results, whether in Google Scholar or in any other database.

Google Scholar and the Google Scholar Algorithm

¶12 Before we explore the Google Scholar algorithm, we explain what we know about Google Scholar and its content. Authors seeking to grasp how Google Scholar ranks search results and how to increase the ranking of their articles must first understand what Google Scholar is.

12. See, e.g., Jill Schachner Chanen, *Wired!*, A.B.A. J., Feb. 2010, at 34, 37 (“[T]he industry’s new products will look very much like the Google-ization of legal research.”).

13. Laura A. Granka et al., *Eye-Tracking Analysis of User Behavior in WWW Search*, in PROCEEDINGS OF THE 27TH ANNUAL INTERNATIONAL ACM SIGIR CONFERENCE ON RESEARCH AND DEVELOPMENT IN INFORMATION RETRIEVAL 479 (2004). The page break is the spot on the screen where a person must scroll down to see the rest of the results.

14. Andrew D. Asher et al., *Paths of Discovery: Comparing the Search Effectiveness of EBSCO Discovery Service, Summon, Google Scholar, and Conventional Library Resources*, 74 C. & RES. LIBR. 464, 474 (2013).

15. Griffiths & Brophy, *supra* note 6, at 543.

What Google Scholar Searches

¶13 Google Scholar searches just a small subset of the Internet and does not draw from websites typified by a Google search, such as Wikipedia, free encyclopedias, or company webpages. Instead, the Google Scholar algorithm pulls results only from sources that Google Scholar deems “scholarly,” a term that Google Scholar does not define,¹⁶ leaving us to extrapolate its meaning. Based on our own observations of Google Scholar search results and Google Scholar’s examples of the websites it searches,¹⁷ we know that Google Scholar searches and indexes at least some of the articles from the following databases:¹⁸

- HeinOnline
- JSTOR
- SciELO
- SSRN
- ProQuest
- Wiley
- EBSCO
- Elsevier
- bepress (and other institutional repository hosting sites such as DSpace)
- Sage
- LexisNexis

Additionally, if an author posts a PDF on the publications page of an .edu website, with both a title and author at the top of the first page and either a list of references or a bibliography somewhere in the PDF, that author’s paper will also be indexed by Google Scholar.¹⁹

¶14 While we know the general outline of the sources that Google Scholar searches, we do not know its scope, such as the percentage of articles within the databases that Google Scholar accesses and indexes, and the parameters of that percentage; or Google Scholar’s depth, such as whether the algorithm searches all of the databases every time it runs a search.

¶15 We also know that Google Scholar indexing an article and presenting that article in search results does not equate to researchers having access to the full text of that article. Google Scholar has arrangements with most of the databases listed above, arrangements that allow the Google Scholar bots to index and list the databases’ articles in its search results. But almost all of the databases listed above are subscription databases, so that only those researchers who have subscriptions can read the full text of those articles.

¶16 Libraries have addressed some accessibility concerns. Google Scholar does contract with local libraries to crawl library catalogs and will link a researcher to the library catalog if the article might be found in that library. Universities with

16. See, e.g., *About*, GOOGLE SCHOLAR, <https://scholar.google.com/intl/en/scholar/about.html> [<https://perma.cc/Z22S-YK7C>].

17. *Inclusion Guidelines for Webmasters*, GOOGLE SCHOLAR, <https://scholar.google.com/intl/en/scholar/inclusion.html> [<https://perma.cc/GW3A-S3TZ>].

18. This list is not exhaustive, as we know that Google Scholar searches many additional databases.

19. *Inclusion Guidelines for Webmasters*, *supra* note 17.

IP-authenticated access to subscription databases also allow Google Scholar to seamlessly link researchers from the results of a Google Scholar search to the full text of articles behind paywalls. But for many researchers, Google Scholar search results provide only a tantalizing glimpse of potentially useful articles. Authors should request that their articles be posted in one of the databases Google Scholar indexes; they should also post articles on faculty webpages, SSRN, or institutional repositories to provide access for those who otherwise would not be able to use or cite the articles.

¶17 Authors seeking to increase the visibility of scholarship online must consider the sources Google Scholar draws from and the availability of articles to researchers using Google Scholar. In these ways, authors can take advantage of their knowledge of what Google Scholar searches; they can further take advantage of Google Scholar once they know how Google Scholar works.

How the Google Scholar Algorithm Works

¶18 In addition to understanding what Google Scholar searches, an author must understand how the algorithm searches for and then ranks the articles listed in search results. To achieve the best optimization of their articles, authors must work with the Google Scholar algorithm's methodology and ranking system.

¶19 Unfortunately, we do not know the details of the Google Scholar algorithm, as Google refuses to divulge the secret of its methodology and shares only a few vague details with the public.²⁰ But, since Google unveiled Google Scholar in November 2004,²¹ computer scientists and others have reverse-engineered the algorithm and extrapolated several factors that they believe the Google Scholar algorithm measures and utilizes to generate its search result rankings.²² Jöran Beel and Bela Gipp examined the algorithm using several different methodologies, focusing on three variables: a basic keyword search, citation count, and the age of an article.²³ From these studies, Beel and Gipp developed the following theories:

Factors that directly influenced search result ranking of an article:

- Citation count of the article²⁴
- Exact search terms appear in the article²⁵

20. Currently, Google Scholar says only that "Google Scholar aims to rank documents the way researchers do, weighing the full text of each document, where it was published, who it was written by, as well as how often and how recently it has been cited in other scholarly literature." *About*, *supra* note 16.

21. Judit Bar-Ilan, *Which h-index?—A Comparison of WoS, Scopus and Google Scholar*, 74 *SCIEN-TOMETRICS* 257, 258 (2008).

22. See, e.g., Beel & Gipp I, *supra* note 8; Jöran Beel & Bela Gipp, *Google Scholar's Ranking Algorithm: The Impact of Citation Counts (An Empirical Study)*, in *THIRD INTERNATIONAL CONFERENCE ON RESEARCH CHALLENGES IN INFORMATION SCIENCE* 439 (2009) [hereinafter Beel & Gipp II]; see also, e.g., Jöran Beel et al., *Academic Search Engine Optimization (ASEO): Optimizing Scholarly Literature for Google Scholar & Co.*, 41 *J. SCHOLARLY PUB.* 176 (2010); Péter Jacsó, *Google Scholar: The Pros and the Cons*, 29 *ONLINE INFO. REV.* 208 (2005).

23. Beel & Gipp I, *supra* note 8, at 230; Beel & Gipp II, *supra* note 22, at 439; Jöran Beel & Bela Gipp, *Google Scholar's Ranking Algorithm: The Impact of Articles' Age (An Empirical Study)*, in *SIXTH ANNUAL CONFERENCE ON INFORMATION TECHNOLOGY: NEW GENERATIONS* 160, 160 (2009) [hereinafter Beel & Gipp III].

24. Beel & Gipp I, *supra* note 8, at 233; Beel & Gipp II, *supra* note 22, at 442–43.

25. Beel & Gipp I, *supra* note 8, at 234.

- Search terms appear in the article's title²⁶

Factors that did not directly influence search result ranking of an article:

- Number of times a search term appears in the article²⁷
- Synonyms of search terms appear in the article²⁸
- Publication date of the article²⁹

¶20 Beel and Gipp also determined that during a title field search, the algorithm *always* factors the citation count of the article into the ranking of results. During a full-text search, however, the algorithm *usually* factors the citation count, but not always.³⁰ We speculate that when a researcher searches for keywords in the title field, search results tend to be more limited, so the algorithm assumes that the researcher would prefer an article with a higher reputation. When a researcher does a full-text keyword search, however, the number of possible articles expands, so the algorithm will usually rank articles by citation count, but not always.³¹

¶21 Additionally, the publication date of an article does not directly influence the search result ranking of that article, but articles in the top-ranked positions “are on average older than articles” in the lower-ranked positions.³² We hypothesize that this occurs because an article's publication date directly influences that article's citation count: an older article, published last year, will likely have a higher citation count than an article published yesterday, simply because of time.

¶22 Finally, Beel and Gipp demonstrated that the Google Scholar algorithm changes depending on whether the researcher uses the title, full text, cited by, or related article search function.³³ We think that perhaps Google Scholar “reads” a search string and determines an article's relevance differently depending on how the researcher constructs a search. A title search for “originalism” likely indicates to the algorithm that the researcher wants articles in which originalism is the exclusive topic of the article, while a full-text search for “originalism” may indicate to the algorithm that the researcher would like articles that discuss originalism, not articles in which originalism is the exclusive topic of the article. This may also be one of the reasons why Google Scholar does not seem to consider the number of times that a search term appears in the full text of an article.

¶23 All of this reverse engineering and understanding of the Google Scholar algorithm, though, only helps an author who implements techniques that take advantage of this knowledge. One such technique is the four best practices.

26. *Id.* at 235.

27. *Id.* at 234, 235.

28. *Id.*

29. Beel & Gipp III, *supra* note 23, at 164.

30. Beel & Gipp II, *supra* note 22, at 444.

31. For example, if an article has keywords both in its title and in its text, the algorithm may rank that article higher than an article with a higher citation count but keywords only in its text.

32. Beel & Gipp III, *supra* note 23, at 163.

33. Beel & Gipp I, *supra* note 8, at 235.

The Four Best Practices

¶24 We originally began identifying best practices to improve online scholarship visibility for a workshop that we presented to the University of Florida law faculty. To delineate the best practices, we researched how search engines such as Google Scholar function, but we also pooled our experiential knowledge and observations of online searches. Additionally, we both have expertise in the creation and management of institutional repositories. At the University of Chicago's law library, Taryn worked on defining and choosing the metadata most useful to a historical institutional repository. In her work at Levin College of Law, Avery frequently came across articles that contained weak and inaccurate metadata. Avery's experience managing repositories provided examples of good and bad metadata, and of how bad metadata could prevent information from being found.³⁴ Our technical research³⁵ and our experience led us to the "Four Cs" of search engine optimization for legal scholarly works.

Create Effective Titles, Abstracts, and Metadata

¶25 The first best practice is to carefully craft the title of any article, write a short abstract filled with keywords, and verify that an article's metadata is correct.

Write an Effective Title

¶26 First, an author should write an effective title. A title serves as the first point of contact with researchers and acts as one of the key components of an article's embedded metadata. Researchers who skim just the first page of search results quickly judge an article based solely on its title. As such, an author must carefully choose words that effectively summarize the contents of the article in only a brief snippet, and should incorporate important keywords into the title to make the article more findable to researchers conducting a search.³⁶

¶27 Ideally, the title will appeal to readers, so an author should create a smart, witty title that does not detract from the article's content: a challenging endeavor. Practically speaking, researchers are more likely to click on an article with a clear and accurate title that concisely describes the article's subject matter or main thesis, than they are to click on an article with an abstract, obtuse title. So although a creative title may attract a researcher's attention, the title's catchiness, without appropriate keywords, will likely push that article lower in a search result ranking than will a non-pithy title that has meaningful keywords. A cleverly titled article loses its value if researchers will not find the article at the top of their search results, so an author should favor information and keywords over wittiness.³⁷

¶28 An author must also consider the length of the title. A title should balance being catchy and informative, yet avoid the risk of being misleading, verbose, curt, or exhaustive to the point of overwhelming the researcher. Including a subtitle can allow an author to grab a researcher's attention with the title and then to fully con-

34. For example, in one of the articles, the named author was the research assistant of one of the professor's previous coauthors.

35. See *supra* ¶¶ 9–23.

36. See *supra* ¶¶ 18–23.

37. See *id.*

vey the substance of the article within the subtitle. When writing a subtitle, keyword positioning is critical. In Google Scholar (and some other databases), search results usually include only the first seven or eight words of a title. Because of this quirk, an author should put the most important content of the title first, then insert a colon (a frequently-used theme in law) for the clever, creative part of the title. By placing the explanatory part of the title first, the researcher will be able to readily decipher the subject of an article, instead of having to guess at the meaning of the clever and creative part of the title. Title transparency matters.

¶29 The most important practice with respect to article titles is to insert keywords directly into the titles. As Gipp and Beel revealed, keywords in the title influence an article's ranking far more than the keywords in the article itself.³⁸ For example, if an article's main focus is online data privacy, the author should highlight specific keywords such as "data privacy" and "online data protection" in the article's title. Although the title "The Right to Be Forgotten" may describe the article's contents and correlate with data privacy, the title may be misinterpreted if the researcher, especially a researcher outside of the law field, is unfamiliar with the concept of *the right to be forgotten*.³⁹ Adding a colon and several more words to the title, such as "The Right to Be Forgotten: Protecting Data Privacy in the Internet Era," helps to explain the right to be forgotten to those researchers without that knowledge. Even better would be "Protecting Data Privacy in the Internet Era: Asserting the Right to be Forgotten," which would place the critical keywords at the front of the title.

¶30 When an article's title matches the keywords in a researcher's search string, that article will likely rise in search result rankings and thus will be more likely to be read, used, and cited. Additionally, by continually connecting a broader topic (online data privacy) with an important subset of that topic (the right to be forgotten), search engine algorithms may start to recognize the connection and offer researchers the suggestion of "right to be forgotten" when the researcher searches "online data privacy."

¶31 Creating an effective title, with clear keywords that accurately convey the subject of the article, is just the first step of this best practice. Next, an author must consider the abstract.

Craft an Effective Abstract

¶32 After an author catches the researcher's attention with the title, she must then draw the researcher in with the abstract. As such, an author should write short, accurate abstracts that contain several keywords (ideally at the beginning of the abstract).

¶33 An abstract should provide more detail than a title, expanding on what the researcher learned from the title, but the abstract cannot be so long that it loses concision and clarity. The first lines of the abstract have significant weight on the researcher's decision to open the article, which means the repetitive use of important keywords within the abstract, particularly at the beginning, ensure that a

38. See Beel & Gipp I, *supra* note 8, at 234, 235.

39. We borrowed this title and example from Robert Kirk Walker, Note, *The Right to Be Forgotten*, 64 HASTINGS L.J. 257 (2012). The right to be forgotten is the right to have one's information deleted from the Internet (especially after death) and to have complete privacy from Internet search engines.

researcher will quickly grasp the article's subject matter and will open it if relevant or interesting to the researcher. In some search engines, such as Google Scholar, the first few lines of the abstract appear on the search results page. Abstracts that appear on the search results page greatly impact an article's findability because the researcher does not have to click into another document to determine whether the article is worth reading. Because the researcher can see only the first few lines of the abstract, those first lines must convince the researcher to click into the article.

¶34 A word of warning, however: an author should avoid trying to "game" the system by plastering a certain keyword repetitively in the abstract. This technique will fail to get the researcher's attention and will not result in a higher ranking in the search algorithm because the system will recognize that the abstract is "fake" and that the author is attempting to exaggerate certain elements to trick the system, which can result in the search algorithm completely removing an article from a search. An author should construct an effective, clear abstract that accurately conveys the contents of the article to avoid these potential downfalls.

Ensure Effective Metadata

¶35 The final component of the first best practice is the metadata. If the title and abstract are the protagonists on the main stage of Internet search results, then consider metadata as the behind-the-scenes production crew helping the show come together. Metadata contains descriptive information embedded into an article that reflects its contents. Researchers will not necessarily see metadata on the screen; on the back end, though, metadata is the essential component for electronic transmission of information. Computers see metadata like a blueprint of contents, using metadata to calculate and extract information for search results.

¶36 Search engines rely heavily on underlying metadata when indexing articles and determining relevancy, so this information must be as complete and accurate as possible. Although many programs automatically input metadata when a document is first created, the quality and content of that metadata varies based on several factors that are not germane to the content of the article: for example, the program used to create the metadata or the format of the document. An author should always check the accuracy of the metadata before publishing an article on the web because the consequences of incorrect metadata can be dire. An article that incorrectly lists the title or keywords (such as "Second Amendment" instead of "First Amendment") will be hidden among the masses of search results because the search algorithm will not recognize the article's relevance to a researcher's search string. The small amount of time an author devotes to checking for correct metadata is slight compared to the potential consequences of inaccurate metadata, so verifying the metadata is a must for authors.

¶37 Below, we discuss in detail the metadata underlying a PDF, as we assume that almost all articles are being posted in that format.⁴⁰ A PDF has three key metadata pieces: the title, the author, and the keywords.⁴¹

40. We encourage all articles to be posted as PDFs; the format is more stable than Word documents online and can be more difficult to manipulate.

41. For instructions on how to access the metadata in a PDF and how to check the title, author, and keyword metadata fields, see the appendix *infra*.

¶38 An author's easiest metadata field is the title field: an author should simply confirm that the title of the article in the metadata is correct. If not, the author corrects the metadata to reflect the right title.

¶39 The second field is an author's name. Entering an author's name, though, can be deceptively tricky because of the different variations an author may choose, such as middle initials, middle names, maiden names, and so on. Names are important because, over time, an author may come to be known as an expert in a specific field, so a researcher may try to search for articles using a specific name. An author also establishes a scholarly presence online, so that an author who is well known in a certain field is more likely to be cited by those researching in that field. If an author sometimes goes by John R. Smith, sometimes by John Smith, and sometimes by John Roe Smith, how is a researcher (or a search engine) to know whether those three names represent the same author, two separate authors, or three separate authors?

¶40 Whether an author chooses to use a middle initial or middle name, the author must be consistent, and all author fields in all articles that an author posts online should have the same name. This ensures that researchers find the specific author they are looking for and can help increase search result rankings because the search engine will be able to attribute all citations to one author, rather than splitting up citations because the search engine sees John Smith and John R. Smith as different people.

¶41 The last field of important metadata is the keyword field. As with the title and author name of an article, the keywords in the metadata must also be correct. Enter keywords that accurately reflect the content of the article and its area of law, similar to the contents of the title and abstract. We estimate that ten to twelve keywords is a good number; the metadata field needs enough to accurately convey the contents of the article, but with too many keywords the article will come up in results for which it is not relevant, discouraging researchers and potentially harming an author's online reputation.

¶42 The first best practice tells an author to write a clear, accurate title, with a short, sweet abstract with keywords, and to ensure the metadata underlying an article is correct. Doing so can help an author increase the chances that a researcher will find an author's article and will click into that article.

Cross-Discipline Posting

¶43 The second best practice is to market an article across multiple disciplines and under multiple sub-disciplines. Many law articles discuss more than law and cross into disciplines such as criminal justice, gender studies, or economics. When an author writes an article that deals with both subject matters, the author should post the article in law databases, as well as in economics databases, gender databases, and any cross-discipline databases, such as a law and economics database. An author must be careful, however, to ensure that he is not posting in databases that are completely unrelated to the topic of the article: search engines can pick up on when an author is gaming the system, and it can also reduce an author's reputation in the academic community if it becomes known that an author frequently exaggerates the subject matter of his articles. The credibility of the work may be contingent on an

author's expertise in the field, so an author should maintain his reputation and stay accurate with the discipline selection.

¶44 The key is to choose pertinent and relatable disciplines. An author should think about which disciplines form a broad umbrella that encompass a specific issue and topic, even if it does not coincide directly with the area of law. For example, consider the Legal Scholarship Network series on SSRN, which hosts a broad range of discrete topics, organized under big umbrella topics.⁴² By posting across multiple disciplines, an author gains more exposure for his work and disperses it to a wider range of researchers who may have academic backgrounds other than law. This effort can maximize an author's readership tenfold.

¶45 By posting across multiple disciplines, an author can also attract different audiences and can catch those who search by broad topic. Additionally, if an author inserts the cross-discipline as a keyword in the metadata of the article, it will increase the chances that a researcher will find the article. Much research today is being conducted across disciplines, so an author who can capture multiple markets increases the chances of being cited and of being recognized as an expert in several, related fields.

Cross-Post in Multiple Locations

¶46 The third best practice is to post an article (or the draft of an article) in multiple different places. Posting to several different locations helps an author reach a wider range of potential researchers. An author should post to a faculty biography page on a school's website; to SSRN or ResearchGate; to her LinkedIn profile; to her host institution's institutional repository or bepress SelectedWorks page; to any blogs, Twitter feeds, Facebook pages, and so on that an author has; and to any personal or professional websites that an author maintains. Of these different sites, posting to a faculty biography page, SSRN, and a host institution's institutional repository are the most important because of the credibility these sites give to an author's work, as opposed to an unverified work on a privately hosted webpage. By doing so, an author can increase the article's ranking in Google Scholar, as there is some evidence that Google considers the number of disparate places in which an article is located as a factor in ranking that article.

¶47 By posting across multiple locations, an author has the opportunity to catch disparate researchers. Different researchers regularly search SSRN, for example, more frequently than LinkedIn, simply because of the familiarity they have with SSRN and their knowledge of its use by academics as a scholarship repository. Other researchers may visit an author's LinkedIn page for networking purposes, but may also be intrigued by the author's publications, especially if an author is a known expert in a particular subject area. By posting to both SSRN and LinkedIn, an author can attract both of those audiences, increasing the chance that her scholarship will be read and that the scholarship will be cited.

¶48 Posting scholarship to multiple locations also helps an author create a strong online reputation. Being mentioned on different websites will reiterate the impact that the article has on the scholarly community, and in turn will enable the

42. See *Legal Scholarship Network eJournal Taxonomy*, SSRN, <http://ssrn.com/en/index.cfm/lsn/lsn-ejournals/> (last visited Feb. 13, 2017).

article to become a topic of discussion in the academic field. Multiple search results will also translate into more download counts for online statistics.

¶49 As with gaming the abstract, an author should be careful about floating duplicate versions of the same publication, which may result in an imbalance of citation counts. To minimize this potential predicament, an author should link to an original copy that is hosted on one centralized server, such as SSRN or an institutional repository, instead of re-uploading the PDF to a new location each time. But by credibly posting across different websites, an author will increase the findability of her articles.

Convert the PDF into a Searchable PDF

¶50 The final best practice is to only post PDFs that have been converted into searchable PDFs or to OCR (optical character recognition) the PDF.⁴³ PDFs are often posted to the web without being converted into text. This effectively renders the PDF as an image, preventing a search engine from “reading” the individual words in the article. By converting the PDF to a searchable PDF, an author transforms the image into a readable document. A search engine can now “read” the article word by word and bring it up in a search result if it is relevant to that search, especially useful for those researchers who rely on keyword searches within the text. Without readable text, the text of the PDF, even if it includes relevant keywords that researchers are typing into Google Scholar, may go unrecognized, limiting the article’s opportunities to be found by the search engine.

¶51 An OCRed article complements the accurate metadata encrypted into the article’s back end. Posting only searchable PDFs ensures that even if the metadata is missing vital information, the article will still be discoverable in search results. Additionally, a researcher can search through an OCRed PDF to find specific sections of scholarship, increasing the chances that the researcher may cite to that specific section.

¶52 To even further increase the likelihood that an article is on the first page of results, an author should post only OCRed PDFs.

Selling the Best Practices

¶53 Although we believe that the best practices can impact authors’ reputations and citation counts, and we purposely designed them to be simple and quick to implement, it can be frustrating to even inform others about the best practices, much less convince them that they should implement them. We know many authors who are aware of the best practices but who continue to publish without checking metadata or converting to a searchable PDF. Our institutional repository’s staff must double-check all information before uploading an article. A simple scroll through an SSRN eJournal will demonstrate how confusing article titles can be and how many authors still compose witty titles without context.

¶54 Part of the best practices, then, must also be marketing the best practices and convincing other authors that the few minutes they take to implement reap

43. The assumption, of course, is that all authors are already posting articles in PDF format, not in any other format (Word, Works, RTE, etc.). Authors not posting articles in PDF format should immediately change that practice.

enormous rewards. We point out the increased findability of articles, which leads to increased citation counts. In law schools especially, an increased citation count has come to be seen as an objective marker of influence and success, so we can connect the best practices to a specific, practical goal.

¶55 Marketing the best practices must also involve disabusing others of possibly inaccurate views of search engine optimization. For example, changing the metadata and OCRing an article already posted on SSRN does not restart the download counts for that article. There may be other misinformation about how search engine optimization works floating around. We must keep our ears open to any rumors about the best practices so that we can quickly and efficiently correct any confusion.

¶56 As yet, we rely heavily on regularly reminding others of the best practices and offering to walk them through any of them. Working with a dean of faculty development may also be an option, and convincing one of the more active, influential faculty members may be another. Sending faculty this article (or others like it) can be another starting point. We also think it important to implement the best practices for any scholarship you may produce, to lead by example.

Conclusion and the Future of Search Engine Optimization

¶57 By implementing the four best practices, we believe that authors have the opportunity to increase the chances that their scholarship will be found online and that the scholarship will then be cited in future articles. The best practices, based on a strong foundation of research and real-world experience, are easy to implement, practical, and likely to be successful.

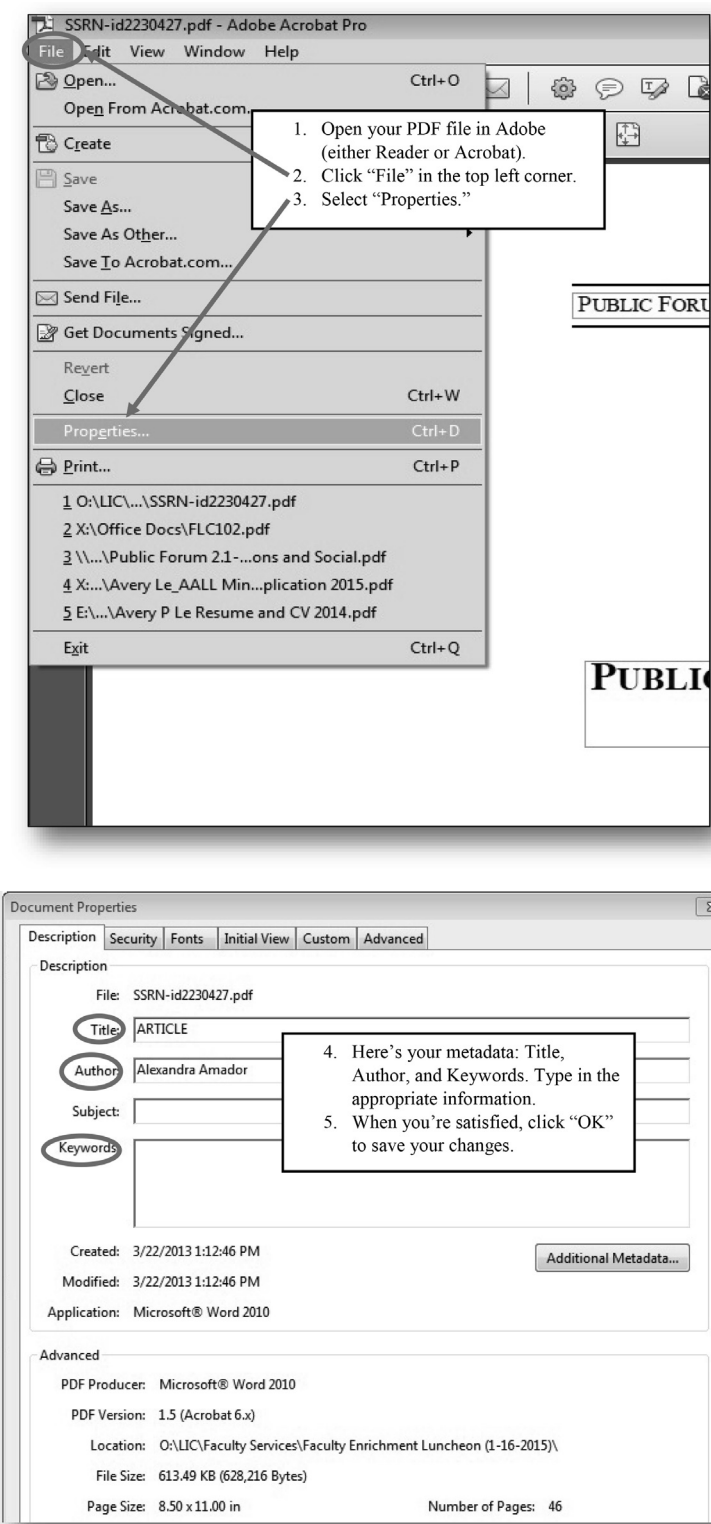
¶58 But simply implementing the best practices must only be the first step. Google Scholar and other search engines are bound to change. The way in which we search and find material is equally destined to change. One key to the success of the best practices is that it responds to the current research and methods of searching. Today the best practices may serve as useful tools; tomorrow's search engines may change that.

¶59 Continuing to research and track how search engine optimization works and the best methods for optimizing research should be a priority. We would be interested to know the impact of search engine optimization on a scholarly article. We would want to do case studies of SSRN, institutional repositories, and Google Scholar to further assess and articulate how those search engines operate and how researchers use those search engines. We would be interested in seeing whether Facebook's "Boost" option for a liked page could be applied to an article that has been cited on Google Scholar. These demonstrate just a few of the possibilities for future research, and we welcome thoughts about others.

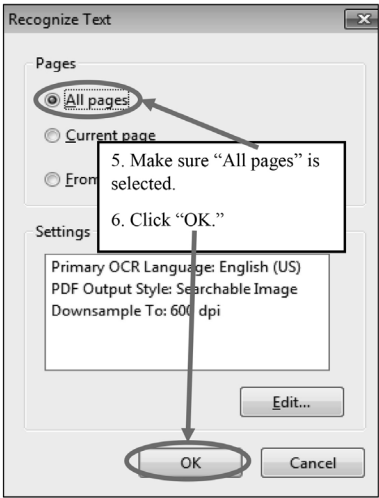
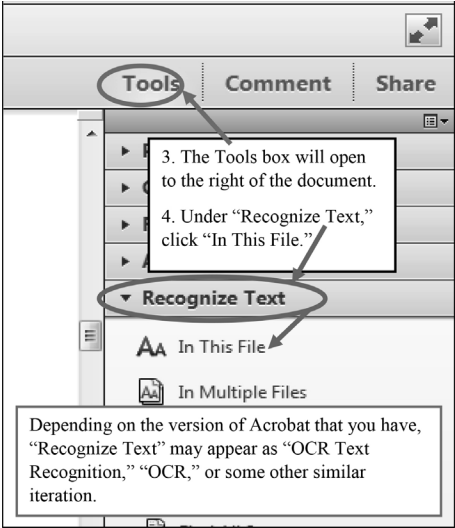
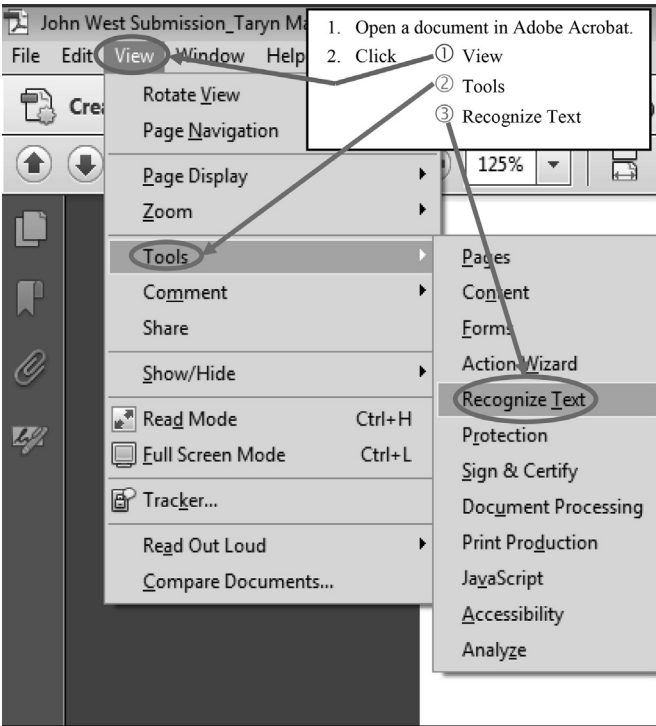
¶60 The four best practices for search engine optimization offer legal scholars the opportunity to increase their visibility to the academic research world. And a greater familiarity with how search engines work and how researchers find articles, along with a curiosity about the future of search engine optimization, means that we will only continue to expand the opportunities to increase that visibility.

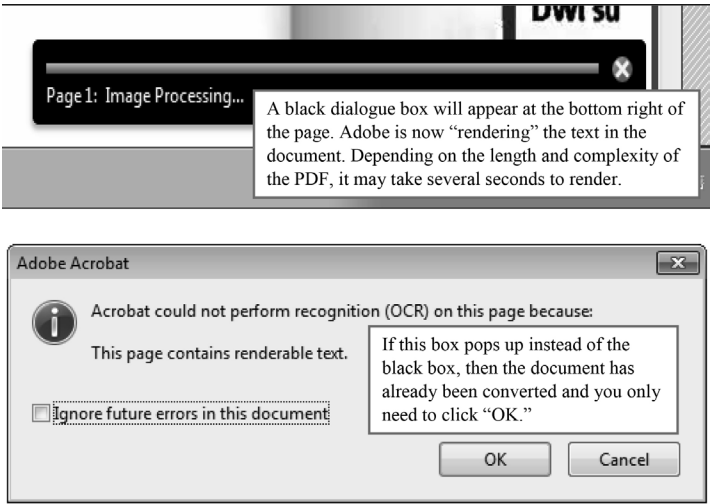
Appendix

Instructions for Best Practice 1: Check PDF Metadata



Instructions for Best Practice 4: Convert to Searchable PDF





Legal Research Instruction and Law Librarianship in China: An Updated View of Current Practices and a Comparison with the U.S. Legal Education System*

Ning Han,** Liying Yu,** and Anne Mostad-Jensen†

This article follows up on Liying Yu's 2008 survey exploring the state of legal research instruction in Chinese law schools. The updated survey revisits the state of legal research instruction in China, explores several aspects not previously addressed, and discusses broader issues relevant to law librarianship in China such as management models, funding, staffing, and law librarian faculty status.

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Introduction

¶1 Legal research and information literacy instruction is an overlooked area of pedagogy in China’s legal education system. For decades, almost no legal research instruction was available at all, and progress to increase offers was very slow. A 2008 survey conducted by Professor Liying Yu, Law Library Director of Tsinghua University School of Law, confirmed this dearth of legal research courses.¹ Today, legal research courses are still not consistently offered at law schools in China. However, recently skills education has gained greater attention in China, and there is increased discussion of experiential learning, clinical education, and legal writing.² Legal research, an important component of skills education, deserves the same amount of attention and discussion, and we reexamine its value and practice with fresh pairs of eyes in this article.

¶2 In the United States, legal research and writing courses were first offered to law students in the late 1940s.³ As U.S. legal research instruction has developed since then, it has exhibited growing pains similar to those that legal research instruction in China is currently experiencing.⁴ Today, law schools, the American Bar Association (ABA), and the law librarian community work toward one common goal: to make law students better researchers. Standard 302(c) of the 2016–2017 *American Bar Association Standards and Rules of Procedure for Approval of Law Schools* considers legal research to be a minimum competency that every law program should include in its learning outcomes.⁵ The American Association of Law Libraries (AALL) has gone further by defining and setting standards for legal research competency. The AALL has also strongly advocated for making law school curriculums reflect the realities of the legal field.⁶ In July 2013, AALL approved the

1. Liying Yu, *Analysis of the Chinese Legal Research Education*, 1 INFO. & RES. LEGAL LITERATURE 29 (China) (2009) (finding that only six among thirteen law schools surveyed offered legal research courses).

2. See Su Li Zhu, *An Institutional Inquiry into Legal Skills Education in China*, 22 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 75 (2009).

3. Roy M. Mersky, *Legal Research Versus Legal Writing Within the Law School Curriculum*, 99 LAW LIBR. J. 395, 2007 LAW LIBR. J. 22; Robin K. Mills, *Legal Research Instruction in Law Schools, The State of the Art or, Why Law School Graduates Do Not Know How to Find the Law*, 70 LAW LIBR. J. 343 (1977); Carol A. Parker & Dennis Kim-Prieto, *Implementing Effective Legal Research Pedagogy in Contemporary U.S. Law Schools: Challenges and Opportunities*, in THE BOULDER STATEMENTS ON LEGAL RESEARCH EDUCATION: THE INTERSECTION OF INTELLECTUAL AND PRACTICAL SKILLS 227, 227 (Susan Nevelow Mart ed., 2014).

4. See Kara Phillips, Wei Luo & Joan Liu, *Law Librarianship in China: Challenges and Opportunities*, AALL SPECTRUM, Dec. 2013 at 11, 13.

5. AM. BAR ASS’N, 2016–2017 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 15 (2016) (Standard 302(c)) [hereinafter 2016–2017 STANDARDS].

6. [Legal Research Competency] For Law Schools, AM. ASS’N OF LAW LIBRARIES, <http://www.aallnet.org/mm/Advocacy/legalresearchcompetency/outreach/lawschool.html> [https://perma.cc/D3MB

Principles and Standards for Legal Research Competency with the hope of providing value to the legal profession in the following ways:

- To foster best practices in law school curriculum development and design
- To inform law firm planning, training, and articulation of core competencies
- To encourage bar admission committee evaluation of applicants' research skills
- To inspire continuing education program development
- To impact law school accreditation standards review⁷

¶3 The U.S. practice of legal research instruction has inspired many Chinese law librarians. With this shifted focus of Chinese legal education, it is a good time to revisit legal research instruction practice in China to see whether improvements have occurred since the 2008 survey.

¶4 This study, a follow-up to Yu's 2008 work, sought to gain an updated view of legal research instructional offerings in law schools in China. We wanted to determine how legal research instruction was being delivered in terms of curriculum design, credit structure, teaching method, and assessment method, all in comparison with the U.S. model. In addition, we hoped to gain a better understanding of student and employer perceptions toward legal research skills as a way to determine whether a healthy working relationship existed between legal educators and practitioners. This article also touches on broader issues such as law library management models, funding, staffing, and law librarian faculty status to provide readers with a robust picture of the law library environment in law schools in China.

Background

China's Legal Education System

¶5 Despite China's long history of civilization, Chinese legal education, in a strict sense, is a product of modern China. Modern Chinese legal education commenced in the late years of the Qing Dynasty (1644–1912).⁸ It moved into a new era in 1977 when formal university education was restored in China.⁹ Its very existence, then, is only a little more than a hundred years old.¹⁰ The modern Chinese legal education system models itself after the continental legal education systems, particularly those of Japan and Germany.¹¹ It also exhibits certain influences from the

-93D7]; Gail Partin & Mary Jenkins, *There's a Competency for That! Standards for the Successful Researcher*, AALL SPECTRUM ONLINE (Mar. 4, 2014), <http://www.aallnet.org/mm/Publications/spectrum/archives/Vol-18/No-5/Competency.html> [<https://perma.cc/8N6J-NV8S>].

7. AM. ASS'N OF LAW LIBRARIES, PRINCIPLES AND STANDARDS FOR LEGAL RESEARCH COMPETENCY (approved July 11, 2013), <http://www.aallnet.org/Documents/Leadership-Governance/Policies/policy-legalrescompetency.pdf> [<https://perma.cc/3CRH-JL35>].

8. PHILIP C.C. HUANG, CODE, CUSTOM, AND LEGAL PRACTICE IN CHINA: THE QING AND THE REPUBLIC COMPARED 45 (2002).

9. R. Randle Edwards, *An Overview of Chinese Law and Legal Education*, 476 ANNALS AM. ACAD. POL. & SOC. SCI. 48, 52–55 (1984).

10. Xinyi Hou, *Modern Legal Education in China*, 31 OKLA. CITY U. L. REV. 293, 294 (2006). The earliest modern legal education program in China was at Peiyang University, founded in 1895.

11. *See id.*

former Soviet Union's legal education system.¹² The combined merits of these three systems were adopted and modified with added Chinese characteristics, which make the Chinese legal education system unique, especially when compared with that of the United States.¹³

¶6 One of the unique characteristics of the Chinese legal education system lies in its diverse types of law schools and law degrees. Legal education is typically offered in political science and law institutes or law schools that are associated with comprehensive universities. Legal education is also offered at independent law schools or law schools that are affiliated with community colleges or vocational schools.¹⁴ This study only examines legal research instruction offerings at law schools affiliated with comprehensive universities or political science and law institutes.

¶7 Under China's current legal education structure, four types of degrees are commonly offered: Bachelor of Laws (LL.B.), Master of Laws (LL.M.), Juris Master (J.M.), and Doctor of Laws (LL.D.). Some law schools also offer dual or joint degrees of law and other disciplines.¹⁵ As in many other countries, law in China is primarily an undergraduate field of study.¹⁶ Graduates from senior high schools who have passed the national entrance examination are eligible candidates for LL.B. programs. It usually takes an LL.B. candidate four years to complete the law school program of study. As for graduate programs, the LL.M. is a traditional civil law graduate degree, while the J.M.¹⁷ is modeled after the American J.D. degree.¹⁸ Only students with LL.B. degrees can apply for LL.M. programs. Unlike the large classes typical in LL.B. programs, LL.M. classes are mainly small seminars of no more than twenty students, organized according to their area of specialization.¹⁹ In contrast, J.M. programs are designed to attract students without LL.B. degrees and to offer students more practical and professional training with the hope of producing better legal practitioners.²⁰ However, prejudice against J.M. students is reported in legal education and the job market.²¹ Firms, whether international or domestic, favor students who obtain their LL.B. degree and then their LL.M. degree, in China or abroad.²² Similar to the S.J.D. or J.S.D. degree in America, the LL.D. tops China's

12. See *id.*

13. See *id.*

14. John Mo & Weidong Li, *Legal Education in the PRC*, 4 J. HIST. INT'L L. 176, 191 (2002); Jun Zhao & Ming Hu, *A Comparative Study of the Legal Education System in the United States and China and the Reform of Legal Education in China*, 35 SUFFOLK TRANSNAT'L L. REV. 329, 335 (2012).

15. Hou, *supra* note 10, at 298–99.

16. Cecily E. Baskir, *Crossing Borders: Creating an American Law Clinic in China*, 19 CLINICAL L. REV. 163, 167 (2012); Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 YALE HUMAN RTS. & DEV. L.J. 117, 127 & n.54 (2005); Cai Yanmin & J.L. Pottenger, Jr., *The "Chinese Characteristics" of Clinical Legal Education*, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE 87, 89 (Frank S. Bloch ed., 2011).

17. J.M., Juris Master, modeled after the American J.D. degree, was first introduced in 1995 in response to the reformation of the Chinese legal education system. See Matthew S. Erie, *Legal Education Reform in China Through U.S.-Inspired Transplants*, 59 J. LEGAL EDUC. 60, 62–63 (2009).

18. *Id.* at 66.

19. See Zhao & Hu, *supra* note 14, at 337.

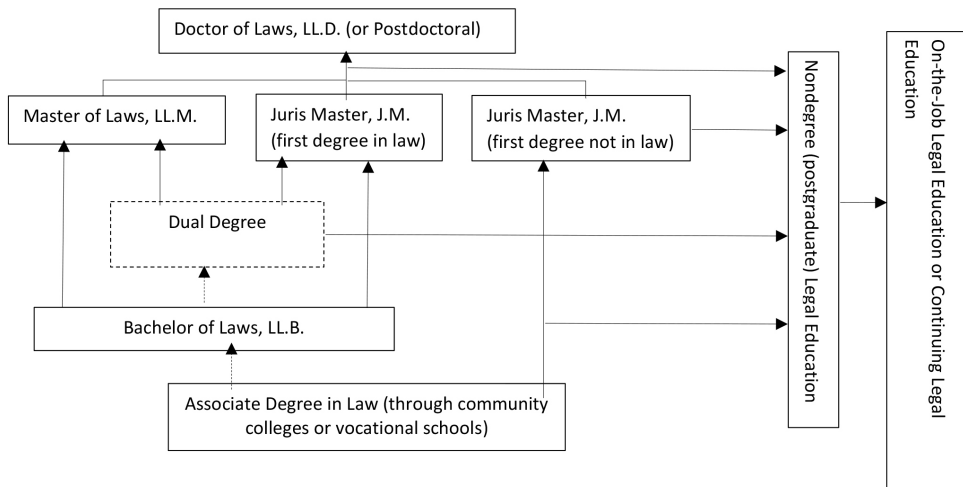
20. See Baskir, *supra* note 16, at 170; Erie, *supra* note 17, at 68.

21. Weifang He, *Foreign Models and Chinese Practice in Legal Education During the Reform Era*, in IN THE NAME OF JUSTICE: STRIVING FOR THE RULE OF LAW IN CHINA 144, 156–57 (2012).

22. Erie, *supra* note 17, at 73, 75.

Figure 1

Chinese Law Degree System



legal degree pyramid.²³ LL.D. programs primarily focus on producing legal researchers and scholars rather than practitioners. Figure 1 illustrates the law degree system in China.²⁴

¶8 The degree of disconnect between China's legal education system and the legal profession is another unique characteristic recognized by many legal scholars and educators.²⁵ It seems evident that law schools and the legal profession should be working together to offer the best training to future lawyers, judges, prosecutors, and public defenders and that this collaboration would be mutually beneficial.²⁶ Although China's legal education has developed at a rapid pace in the past two decades, it has not concerned itself with incorporating the needs and demands of the real world.²⁷ In the United States, the ABA plays an important role in not only regulating legal education and the legal profession but also in promoting exchanges

23. *Doctor of Science of Law (JSD)*, STANFORD LAW SCH., <https://law.stanford.edu/education/degrees/advanced-degree-programs/doctor-of-science-of-law-jsd/> [https://perma.cc/4FQ6-33QX] ("The Doctor of the Science of Law (JSD) is the Law School's most advanced degree."); *S.J.D. Program*, HARVARD LAW SCH., <http://hls.harvard.edu/dept/graduate-program/sjd-program/> [https://perma.cc/SS5E-97GM] ("The Doctor of Juridical Science (S.J.D.) is Harvard Law School's most advanced law degree . . .").

24. RENMIN UNIVERSITY OF CHINA REPORT ON CHINA LAW DEVELOPMENT 2013: LEGAL EDUCATION AND RESEARCH 24 (Jingwen Zhu ed., 2014).

25. Weidong Ji, *Legal Education in China: A Great Leap Forward of Professionalism*, 39 KOBÉ U. L. REV. 1, 13–14 (2004); Keyuan Zou, *Professionalizing Legal Education in the People's Republic of China*, 7 SING. J. INT'L & COMP. L. 159, 172–74 (2003).

26. See Zou, *supra* note 25, at 172.

27. *Id.* at 173.

and collaborations between these two stakeholders.²⁸ In contrast, legal education in China is largely under the purview of the Ministry of Education, while the legal profession is administered by the Ministry of Justice and is guided by professional associations.²⁹ The Ministry of Justice used to oversee five political science and law institutes,³⁰ but the Ministry of Education started to oversee those five law institutes in 2000.³¹ In addition, specialized organizations related to legal practice are usually not involved in the development of legal education.³² The All China Lawyers Association (ACLA), which is the Chinese equivalent of the ABA, is charged only with the regulation and training of lawyers once they have matriculated and joined the legal profession.³³

¶9 In addition, unlike legal education in the United States, which aims to cultivate legal practitioners, Chinese legal education attempts to produce legal generalists across disciplines with a basic understanding of the legal framework and philosophy, as well as vocational education.³⁴ Professor Zhu Suli³⁵ attributes the Chinese legal education program's lack of skills training to a rational choice made by the consumers, or law school students.³⁶ The majority of law school graduates choose not to practice law or perform legal-related work. Instead, they may become civil servants working in government agencies, engage in nonlegal work at private companies, start their own businesses, or even work for the media.³⁷ Because of the variety of career choices, legal skills education is deemed less critical by Chinese law students. Statistics indicate that every year less than ten percent of law school graduates enter the legal profession directly after graduating from law school.³⁸

Development of Legal Research Instruction in China

¶10 Legal research instruction had a relatively late start in China, beginning only in the mid-1980s. Since 1984, the Ministry of Education has encouraged colleges and universities to offer literature retrieval or information retrieval courses with the goal of increasing the information literacy level of college students.³⁹ The

28. *About the American Bar Association*, AM. BAR ASS'N, http://www.americanbar.org/about_the_aba.html [https://perma.cc/B2TU-X45G].

29. Ji, *supra* note 25, at 10; Zhao & Hu, *supra* note 14, at 335.

30. The five political science and law institutes are China University of Political Science and Law, Zhongnan University of Economics and Law, East China University of Political Science and Law, Southwest University of Political Science and Law, and Northwest University of Politics and Law.

31. Ji, *supra* note 25, at 13; Zhao & Hu, *supra* note 14, at 336; Zou, *supra* note 25, at 173.

32. Ji, *supra* note 25, at 13.

33. 中华全国律师协会章程, <http://www.acla.org.cn/zhangchen.jhtml> (last visited Dec. 30, 2016).

34. See Zhu, *supra* note 2, at 81.

35. Su Li Zhu, also known as Su Li, is a renowned civil law scholar, retired dean, and professor of law at Peking University Law School. See *Professor Zhu Suli, Legal Theory*, PEKING UNIV. LAW SCH., <http://en.law.pku.edu.cn/faculty/faculty1/11797.htm> [https://perma.cc/XH8P-U8M2].

36. See Zhu, *supra* note 2, at 81.

37. See *id.*

38. Wenxian Zhang, *Editor's Notes*, in 2012–2013 CHINESE YEARBOOK OF LEGAL EDUCATION 3, 3 (Wenxian Zhang ed., 2014).

39. In 1984, the Ministry of Education promulgated a guiding opinion encouraging higher education in China to offer information literacy and document retrieval courses. *Guyu zai Gaodeng Xuexiao Kaishe Wenxian Jiansuoke de Yijian* 《关于在高等学校开设文献检索课的意见》【(84)教高一字004号】，<http://edu.lib.tsinghua.edu.cn/ToolBox/WenJian/jiaoyubu.htm> [https://perma.cc/V4WT-9VWW].

Ministry of Education highly recommended that colleges and universities require students to take document retrieval courses. Schools with limited resources could offer electives or topical workshops and then gradually transition these offerings to required courses.⁴⁰ In 1985, the Ministry of Education instituted further requirements for course coverage, learning outcomes, credit hours, targeted audience, and more.⁴¹ In 1992, to further standardize the practices of research instruction in China's colleges and universities, the Ministry of Education formed a task force to tailor trainings and guidance for research instruction practices at different institutions.⁴² The task force also worked intensively on textbook writing and editing. All of the above-mentioned efforts were fundamental to the development of research instruction in colleges and universities, as well as to legal research instruction in law schools.

¶11 However, none of the Ministry of Education's recommendations regarding research instruction are mandatory, nor are they specifically tailored to guide legal research instruction in law schools. The lack of a national standard guiding legal research instruction has resulted in varied practices and offerings of legal research courses from school to school.

¶12 The 2008 survey conducted by Professor Liying Yu revealed that only six out of thirteen law schools surveyed offered legal research instruction as part of their formal law school curriculums.⁴³ The majority of law schools at that time did not offer any formal legal research courses. Indeed, the word "dearth" was used by Kara Phillips, Wei Luo, and Joan Liu in their 2013 article *Law Librarianship in China: Challenges and Opportunities* to describe the limited offerings of legal research instruction in law schools in China.⁴⁴

In 1985, the Ministry of Education issued guiding opinions on improving and furthering the offering of information literacy instruction. *Guanyu Gaijin he Fazhan Wenxianke Jiaoxue de Jidian Yijian* 《关于改进和发展文献课教学的几点意见》【(85)教高一司字065号】，<http://edu.lib.tsinghua.edu.cn/ToolBox/WenJian/jiaowei65.htm> [https://perma.cc/2CFL-WAWS].

Finally in April 1992, committees of the Ministry of Education and the Ministry of Industry and Information Technology in collaboration with the Society of Academic Library set out basic requirements for information literacy instruction to make information literacy and document retrieval courses relatively standardized and systematic from format to course content. *Wenxian Jiansuo Jiaoxue de Jiben Yaoqiu* 《文献检索课教学基本要求》(教高司字【1992】44号)，<http://edu.lib.tsinghua.edu.cn/ToolBox/WenJian/jiaowei44.htm> [https://perma.cc/TPM5-J6XG].

40. *Guyu zai Gaodeng Xuexiao Kaishe Wenxian Jiansuoke de Yijian*, *supra* note 39.

41. *Guanyu Gaijin he Fazhan Wenxianke Jiaoxue de Jidian Yijian*, *supra* note 39.

42. *Wenxian Jiansuo Jiaoxue de Jiben Yaoqiu*, *supra* note 39..

43. See Yu, *supra* note 1. The thirteen law schools surveyed in 2008 include four political science and law institutes and nine university-affiliated law schools. They are China University of Political Science and Law, Zhongnan University of Economics and Law, East China University of Political Science and Law, Southwest University of Political Science and Law, Peking University Law School, Renmin University Law School, Wuhan University School of Law, Nankai University School of Law, Kenneth Wang School of Law at Soochow University, Nanjing University School of Law, Zhejiang University Guanghua Law School, Xiamen University School of Law, and Tsinghua University School of Law. The six law schools found to offer legal research instruction as part of the law school curriculum are: China University of Political Science and Law, Zhongnan University of Economics and Law, East China University of Political Science and Law, Southwest University of Political Science and Law, Xiamen University School of Law, and Tsinghua University School of Law.

44. Phillips, Luo & Liu, *supra* note 4, at 13.

¶13 As Phillips, Luo, and Liu pointed out, even law schools that offer legal research instruction use varied approaches, much like U.S. law schools.⁴⁵ Only a few require students to take legal research, and the number of credits granted varies. Law librarians teach legal research instruction courses independently at certain law schools, while at other schools law librarians only co-teach with career faculty or guest lecturers on research techniques as an additional component to a doctrinal law course.⁴⁶ Law schools without formal legal research courses offer various types of legal research trainings, including orientation on using library resources, information literacy instruction, and specialized training on Chinese and foreign legal databases.⁴⁷

¶14 The lack of a national standard guiding legal research instruction and course offerings is not the only factor that impedes the development of legal research instruction in China. In fact, since the 2008 survey, Chinese law librarians at the regional, national, and international levels have discussed whether to add legal research courses to the formal law school curriculum, how to raise awareness among students and law school administration as to the importance of legal research instruction, and how to improve legal research instruction pedagogy. Questions about whether the status of legal research instruction in China has improved within the larger context of legal education after the 2008 survey led to the study on which this article is based.

Methodology

¶15 A survey was employed as the primary data collection instrument for this study. We also reviewed literature and information such as course offerings and learning outcomes, which were collected from the websites of the law schools surveyed.

Sample Size and Composition

¶16 In 2012, China had approximately 624 law schools and 450,000 law students.⁴⁸ To collect representative data about the current status of legal research instruction practices in China, we chose a sample set containing law schools of different types, ranking tiers, and geographic locations.

¶17 We surveyed twenty-five law schools, including sixteen law schools (sixty-four percent) that are affiliated with Project 985–rated universities;⁴⁹ four political science and law institutes or law schools (sixteen percent) that are affiliated with

45. *Id.*

46. *Id.*

47. *Id.*

48. Wenhua Shan, *Legal Education in China: The New “Outstanding Legal Personnel Education Scheme” and Its Implications*, 13 LEGAL INFO. MGMT. 10 (2013).

49. Project 985 is a project whose aim is to have a small number of universities become “world-class” centers of research excellence. There are currently thirty-nine Project 985–rated universities. See Carl F. Minzner, *The Rise and Fall of Chinese Legal Education*, 36 FORDHAM INT’L L.J. 334, 346 (2013); James Paradise, *International Education: Diplomacy in China*, 19 BROWN J. WORLD AFF. 195, 198 (2012). A list of 985 institutions can be found at *The Office of China Initiatives*, UK INT’L CENTER, http://www.uky.edu/international/211_985 [https://perma.cc/RK58-WFTZ].

Project 211-rated universities;⁵⁰ three political science and law institutes (twelve percent) that are not Project 211-rated universities, and two independent or non-traditional law schools (eight percent). In addition, the surveyed law schools represent top-rated law schools in China, according to the 2012 China Discipline Ranking (CDR) conducted by the China Academic Degrees and Graduate Education Development Center.⁵¹ Among the twenty-five law schools surveyed, twenty-one are on the list of the top thirty Chinese law schools. Overall, the survey includes law schools either affiliated with Project 985-rated or Project 211-rated universities or stand-alone top-ranked law institutes. We purposely composed the sample this way because these law schools tend to be better funded and are often early adopters of new legal research instruction practices, such as specialized legal research. Surveying these law schools not only revealed the current practices of legal research instruction in China, but also represented the best status of the current practices of legal research instruction in China. Appendix B lists the law schools included in the survey.

Survey Objectives

¶18 The 2015 survey was designed with five objectives: (1) to determine the level of independence law libraries have within their law schools and university libraries through indicators such as funding, personnel, and administrative structures; (2) to gather data on the current practices of basic legal research instruction in China, specifically in terms of course offerings, number of credits offered, format, frequency, instruction, and assessment methods; (3) to explore the level of legal research instruction available by surveying whether advanced legal research (ALR) or specialized legal research (SLR)⁵² are offered; (4) to study students' perceptions about research skill courses and level of support from law school administration for both law library and legal research instruction courses; and (5) to ascertain whether healthy feedback and regulatory systems are in place among employers, legal educators, the bar association, and the Ministry of Education.

50. Project 211 is a project seeking to develop one hundred leading universities in China. There are 112 Project 211-rated universities. See Minzner, *supra* note 49, at 346; Paradise, *supra* note 49, at 198. A list of 211 institutions can be found at *The Office of China Initiatives*, *supra* note 49.

51. The law school ranking is based on the 2012 China Discipline Ranking (CDR), which is the latest discipline ranking conducted by the China Academic Degrees and Graduate Education Development Center. CDR evaluates the disciplines of universities and colleges in Mainland China in accordance with the *Discipline Catalogue of Degree Awarding and Talent Training* approved by the Chinese Ministry of Education. In its evaluation, the CDR mainly focuses on a university or college's teaching staff and resources, its scientific research level, its quality of talent training, and the reputation of its disciplines. The CDR carries out its evaluation in a way that combines an objective calculation of data and peer review. 2012 CHINA DISCIPLINE RANKING, <http://www.cdgdc.edu.cn/xwyyjsjyxx/xxsbdxz/2012en/277261.shtml#> [https://perma.cc/M4MS-J5CC].

52. The specialized legal research (SLR) course is considered to be the next generation of the advanced legal research (ALR) course, and it typically focuses on teaching research skills tied to a specialized area of law. See Cassie DuBay, *Specialized Legal Research Courses: The Next Generation of Advanced Legal Research*, 33 LEGAL REFERENCE SERVS. Q. 203, 205 (2014).

Survey Design

¶19 To collect data on legal research instruction practices in China in a way to aid comparative study, the survey structure is based on legal research instruction approaches introduced in Blair Kauffman's article *Information Literacy in Law: Starting Points for Improving Legal Research Competencies*. In his article, Kauffman summarizes four approaches typically used in U.S. law schools for improving the legal research skills of prospective lawyers and encourages information professionals across borders to borrow whatever they deemed useful and transferrable from the U.S. experience.⁵³ The four approaches are "(1) offering mandatory law school courses in legal research; (2) adding elective credit-based courses in legal research," such as ALR or SLR; "(3) offering non-credit legal research support to law students at their points of need," such as embedded legal research teaching and online live reference services or tutorials; and "(4) testing prospective lawyers on their legal research competencies as a requirement to being licensed to practice law."⁵⁴ We used the first three approaches as the basis for the survey construction.

¶20 The 2015 survey comprised thirty-six questions that were primarily centered on the following four areas: (1) basic information about the law school surveyed and information about the law library, such as personnel and funding; (2) basic legal research or first-year legal research instruction offerings; (3) ALR and SLR instruction offering(s); and (4) embedded legal research instruction offerings and reference services. Concepts that might be alien to Chinese law librarians were introduced in the survey to ensure a shared understanding.

¶21 The survey was built in June 2014 using SurveyMonkey, an online survey software program that Concordia University School of Law licenses for conducting surveys. For the convenience of our Chinese participants, the survey was written in Chinese except for the background introduction section. Participants were allowed to provide extensive comments, if desired. Survey questions were pretested and revised before distribution. The survey was distributed electronically in October 2014 to law library directors or acting law library directors at the twenty-five law schools mentioned above, and most responses were received by January 2015.⁵⁵

Survey Results, Analysis, and Discussion

¶22 In this section, we share the findings of the survey, along with analysis and discussion of the survey results.

¶23 We received twenty-two valid responses, of which twenty were returned electronically and two were returned in paper format,⁵⁶ for a response rate of eighty-eight percent. Three individual responses received from Zhongnan University of Economics and Law were consolidated and counted as one response. Three

53. Blair Kauffman, *Information Literacy in Law: Starting Points for Improving Legal Research Competencies*, 38 INT'L J. LEGAL INFO. 339 (2010).

54. *Id.* at 339.

55. The survey is publicly accessible at <https://www.surveymonkey.com/r/ZPXKT2P>, and a translated version of the survey is available *infra* appendix A.

56. Sichuan University School of Law and Peking University School of Transnational Law (STL) responded to the survey in paper. The latter school submitted responses in May 2015, after the closing date of the survey. Unlike the responses received from other law schools, STL supplied seventy-one responses that were filled out directly by their enrolled students.

law schools did not respond: Shanghai Jiao Tong University School of Law, Jilin University School of Law, and Chongqing University School of Law.

Basic Legal Research Instruction

¶24 The 2015 survey revealed a noticeable increase in the offering of basic legal research or first-year legal research courses in Chinese law schools. The 2008 survey found only six law schools among the thirteen surveyed (forty-six percent) offering basic legal research instruction as a part of the law school curriculum.⁵⁷ In the new survey, sixteen law schools out of the twenty-two that responded (seventy-three percent) offer a basic legal research course.⁵⁸ In addition, it came as a pleasant surprise to learn that law schools in China are more willing to offer a basic legal research course as a required course. Basic legal research courses were not a required offering at any law schools at the time of the 2008 survey. Now, four law schools that participated in the 2015 survey reported requiring a basic legal research course.⁵⁹ Though these four schools are just the tip of the iceberg, they indicate an increased recognition of the importance of legal research instruction in the broader context of legal education in China. The other six law schools surveyed currently do not provide any formal basic legal research instruction. Figure 2 details this numerical breakdown.

¶25 The 2015 survey found that twelve of the sixteen law school respondents (seventy-five percent) that offer a basic legal research course assign it two credits (see figure 3). Peking University School of Transnational Law uses a three-credit structure, while Tsinghua University School of Law and Wuhan University School of Law employ a one-credit structure. Xiamen University School of Law's practice is a little different. Though the course is mandatory for graduate-level law students, there is no stipulated schoolwide credit requirement. The respondent from Xiamen University School of Law did not supply further information on how the course is conducted under such a unique setup. Yu reported in her article based on the 2008 survey that it is quite challenging to cover the wide range of topics, provide live demonstrations, and involve students in hands-on exercises within the limited

57. The thirteen law schools that participated in the 2008 survey were included in this survey as well. The thirteen schools were: *China University of Political Science and Law*, *East China University of Political Science and Law*, *Zhongnan University of Economics and Law*, *Southwest University of Political Science and Law*, Renmin University Law School, *Tsinghua University School of Law*, Peking University School of Law, Nanjing University School of Law, Zhejiang University Guanghua Law School, Nankai University School of Law, Wuhan University School of Law, *Xiamen University School of Law*, and Kenneth Wang School of Law at Soochow University. The six schools in italics are the ones that reported offering basic legal research instruction as part of the law school curriculum in the 2008 survey.

58. Renmin University Law School and Nanjing University School of Law started offering a basic legal research instruction course as an elective in spring 2015, even though they answered "no" when filling out the survey. For statistical purposes, we counted both schools in this article as schools that currently offer basic legal research courses.

59. The four law schools are Xiamen University School of Law, China-EU School of Law (CESL) at the China University of Political Science and Law, Peking University School of Transnational Law (STL), and Shandong University School of Law. Xiamen University School of Law has been considered an early-adopter school with regard to legal research instruction ever since the 2008 survey. Both CESL and STL are relatively unique since their programs are modeled on EU law schools and the American J.D. program. Both programs are taught in English, and their course offerings are similar to those offered at European and American law schools.

Figure 2

Number of Law Schools with or Without Basic Legal Research Courses,
2008 and 2015 Surveys

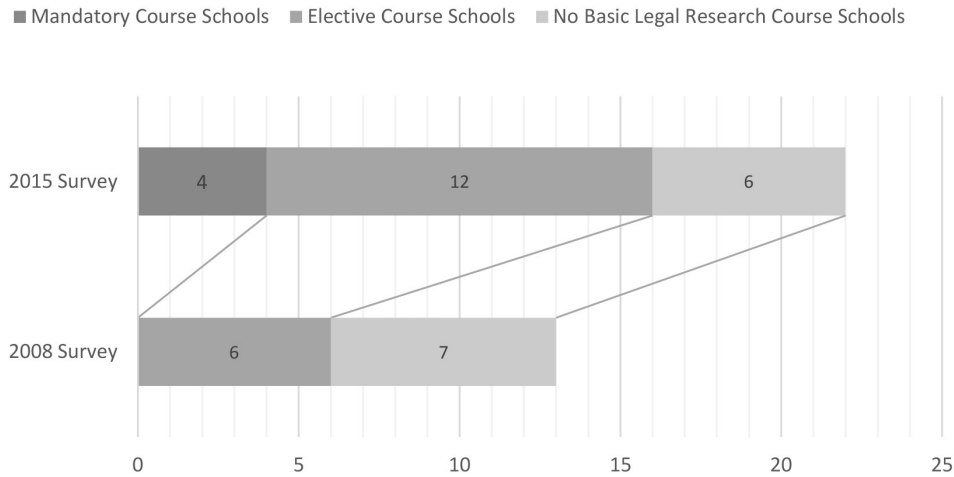
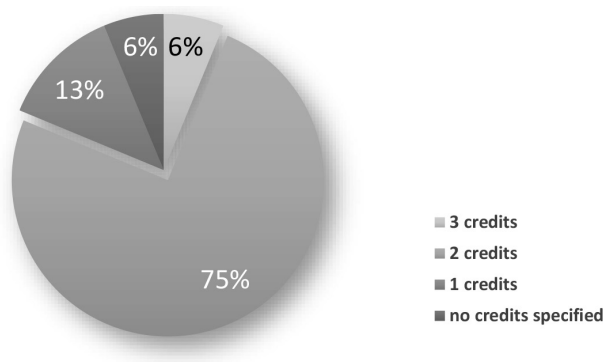


Figure 3

Course Credit Variation Among Law Schools Offering a Basic Legal Research Course



course time.⁶⁰ In the future, we would like to find out whether there is any trend or movement toward making basic legal research a three-credit course in China.

¶26 There was no consensus among the schools surveyed as to whether basic legal research should be an undergraduate- or a graduate-level course. Schools tend to either offer basic legal research to their LL.B. students during the fall semester or opt to only offer it to their LL.M. or J.M. students as part of the graduate-level course of study. No schools surveyed indicated that basic legal research is offered

60. See Yu, *supra* note 1, at 31–32.

at both undergraduate and graduate levels, primarily because of a lack of sufficient personnel to support offerings at both levels. For example, Tsinghua University School of Law has only one law librarian qualified to teach legal research. The course used to be offered at the graduate level at Tsinghua Law, but now is offered at the undergraduate level due to the limited personnel capacity. Class size generally varies from thirty to two hundred, depending on the enrollment during the year and whether it is offered at the undergraduate or graduate level.

¶27 In more than eighty percent of the law schools that responded, law librarians teach the basic legal research course. The practices at the China-EU School of Law (CESL), Peking University School of Transnational Law (STL), and Peking University Law School differ slightly from the majority of law schools surveyed.⁶¹ The law programs offered at the CESL and STL are very much like a typical U.S. law school J.D. program.⁶² Rather than offering a separate first-year legal research course, both schools offer Legal Research and Writing, which is currently taught by American professors. In contrast, Peking University Law School employs a law school professor rather than a law librarian to teach the basic legal research and writing course.⁶³

¶28 One issue that troubled us is that the status of law librarians in China is not the same as their peers in the United States.⁶⁴ Most law librarians in China do not have permanent employment status, not to mention faculty status. This job insecurity causes unpredictable personnel changes, which in turn affects course offerings. The limited interactions between law librarians and law school faculty result in disconnected coverage between the research courses and the doctrinal law courses. In addition, some law schools do not allow law librarians enough time to prepare for courses or compensate them properly for teaching, which further dampens law librarians' enthusiasm and interest in teaching.

¶29 Course coverage varies from school to school. Most respondents indicated that the following topics are generally covered: introduction to legal research, research methods and strategies, legal sources and authorities, Chinese law research, foreign and international law research, reference tools and free Internet resources, database search tips, and how to communicate research results through legal writing. When asked about textbook usage and specific textbook choices, a split was found among the sixteen law schools that currently offer basic legal research courses. Fifty percent of the respondents indicated that they use either commercial textbooks or internally produced textbooks. *Falu Wenxian Jiansuo* 《法律文献检

61. The Peking University School of Transnational Law (STL) and Peking University Law School (PKU Law) are two separate programs. STL is located at the Shenzhen satellite campus while PKU Law sits on its main campus in Beijing.

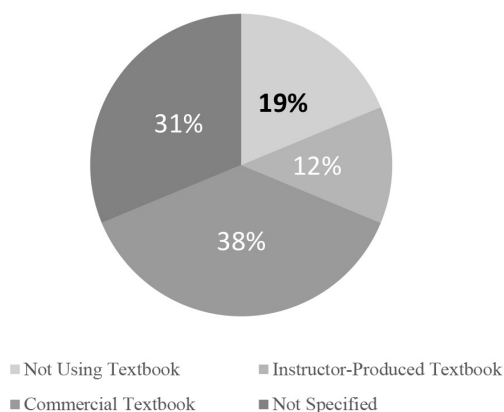
62. See CHINA UNIV. OF POLITICAL SCI. & LAW, <http://web.cupl.edu.cn/en/> [<https://perma.cc/4CGY-TQY4>]; PEKING UNIV. SCH. OF TRANSNAT'L LAW, <http://stl.pku.edu.cn/> [<https://perma.cc/3H2C-AA59>].

63. The course at PKU Law is currently taught by Professor Bin Ling, who also wrote a book titled *A Must-Read Book for Law Students: Legal Writing and Research* 《法科学生必修课: 论文写作与资源检索》(2013), published by Peking University Press.

64. We report on more findings with regard to law librarians' status in China in later sections of this article.

Figure 4

Use of Textbooks in Legal Research Courses



索》⁶⁵ by Liying Yu and *Zhongwai Falu Wenxian Jiansuo* 《中外法律文献检索》⁶⁶ by Yanping Lin are the two most commonly used textbooks, according to the survey.⁶⁷ One respondent commented that his school tends to use multiple textbooks to provide more comprehensive coverage. The survey revealed a linear correlation between course coverage and textbook usage. Textbook-supported courses are more comprehensive in their coverage. Figure 4 details these findings.

¶30 In terms of teaching method, two-thirds of responding law schools currently offering basic legal research courses reported using a combined approach of lecturing, live demonstration, and hands-on exercises, while the remaining third still rely heavily on a pure lecturing approach.⁶⁸ Though there is a plethora of literature criticizing the inefficiency of a pure lecturing teaching style, it is still widely used for law school instruction in China.⁶⁹ Chinese legal educators recognized the drawbacks of the lecture approach several decades ago, and some of them have avidly advocated for incorporating the Socratic method into the traditional lecturing approach to encourage in-class student engagement.⁷⁰ We were pleased to learn

65. LIYING YU, *FALU WENXIAN JIANSUO*, 《法律文献检索》 (3d ed. 2015).

66. ZHONGWAI FALU WENXIAN JIANSUO, 《中外法律文献检索》 (Yanping Lin ed., 2013).

67. There currently are more than twenty textbooks on legal research. For a list of these titles, see YU, *supra* note 65, at 274.

68. This mainstream teaching approach was referred as “stuffing the duck” (*tianya jiaoxue*) by Matthew S. Erie. See Erie, *supra* note 17, at 71; cf. Sharon K. Hom, *Beyond “Stuffing the Goose”: The Challenge of Modernization and Reform for Law and Legal Education in the People’s Republic of China*, in CHINESE EDUCATION: PROGRAMS, POLICIES, AND PROSPECTS 287 (Irving Epstein ed., 1991).

69. See Erie, *supra* note 17, at 71; Mao Ling, *Clinical Legal Education and the Reform of the Higher Legal Education System in China*, 30 FORDHAM INT’L L.J. 421, 429 (2007); Zhao & Hu, *supra* note 14, at 354.

70. There are numerous Chinese publications advocating legal education reform, especially in the areas of pedagogical change and shifting focus from theoretical education to professional education and lawyering skills education. A few serial publications include *Chinese Yearbook of*

from the results of this survey that this desired pedagogical change is taking place and, in fact, is already largely reflected in the teaching of legal research courses.

¶31 The assessment methods adopted by basic legal research course instructors in China are strikingly similar to those used in the United States, at least judging from the survey's brief responses. Nine out of sixteen law schools reported that a variety of assessment methods, rather than relying exclusively on a final exam or project, are used to assess students. The assessment methods adopted by individual instructors at individual institutions could be a combination of the following: weekly assignments, quizzes, presentations, final projects, or final exams (that are either written or hands-on, based on hypotheticals given). The ABA Section of Legal Education and Admissions to the Bar released the revised Standard 302 on Learning Outcomes and Standard 314 on Assessment of Student Learning in June 2015,⁷¹ which now require law schools to identify learning outcomes for its program as a whole, as well as for each course offered. The revised standards also emphasize the importance of utilizing both formative and summative assessment methods in law school curriculums to measure and improve student learning and provide meaningful feedback to students.⁷² Though the survey results confirm that the specific assessment methods used in legal research instruction in China are similar to the ones used in law schools in the United States, we are unsure whether the assessment methods chosen are tied to learning outcomes and whether both formative and summative assessments are required to be used to provide feedback to students.

¶32 The remaining six law schools reported that no formal basic or first-year legal research course is currently offered to their students.⁷³ These schools did report, however, that various informal research trainings such as library resources orientations, vendor-led database trainings, and specialized research sessions as a component of a doctrinal course were offered. When asked whether their schools planned to add a basic legal research course as part of the law school curriculum, only three respondents answered affirmatively, while the rest indicated either that

Legal Education 《中国法学教育年刊》, *Legal Education Research* 《法学教育研究》, and *China Legal Research Education* 《中国法学教育研究》. A monograph and two articles that discuss the reformation include: NEW DEVELOPMENT OF LEGAL STUDIES 《中国法学教育现状与发展趋势》 (Xiangde Ji ed., 2008); Yunsong Ge, *Fa Xue Jiao Yu de Li Xiang* 法学教育的理想, 2 PEKING UNIV. L.J. 285 (2014); Weidong Ji, *Zhong Guo Fa Xue Jiao Yu Gai Ge yu Hang Ye Xu Qiu* 中国法学教育改革与行业需求, 9 STUDY & EXPLORATION 83 (2014).

71. Am. Bar Ass'n, Managing Director's Guidance Memo: Standards 301, 302, 314, 315 (June 2015), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_outcomes_guidance.authcheckdam.pdf [https://perma.cc/7PWB-ZGAC].

72. See *id.* at 2. According to ABA Interpretation 314-1:

Formative assessment methods are measurements at different points during a particular course or at different points over the span of a student's education that provide meaningful feedback to improve student learning. Summative assessment methods are measurements at the culmination of a particular course or at the culmination of any part of a student's legal education that measure the degree of student learning.

2016–2017 STANDARDS, *supra* note 5, at 23.

73. The number of law schools that did not offer a basic or first-year legal research course at the time of the survey was eight, rather than six. Two of them, Renmin University Law School and Nanjing University School of Law, started offering basic or first-year legal research as an elective beginning in spring 2015. For statistical purposes, we did not count them as schools that currently do not offer basic or first-year legal research for this part of the discussion. See *supra* note 58.

there was no such plan or that they were unsure about what direction their law schools were going to take on this particular matter.⁷⁴ What interested us most were the reasons certain law schools were less willing to include a basic or first-year legal research course as part of the formal curriculum. Reasons identified by respondents from different law schools included the law school administration's insufficient recognition of the value of research courses; a lack of qualified law librarians; a low perceived student demand; a lack of a national committee guiding legal research instruction across law schools; and a lack of related trainings, guidance, and standards. This finding is consistent with feedback received in later parts of the study as well as the existing literature.⁷⁵

Advanced Legal Research and Specialized Legal Research

¶33 Under the U.S. system, the ALR course is generally defined as “a course offered in the law school curriculum, beyond the first year, for academic credit in which the primary focus is teaching legal research skills.”⁷⁶ The ALR course tends to cover databases and print materials not typically covered in the basic legal research course, such as legislative histories, secondary sources, and municipal codes.⁷⁷ The existence of ALR courses was first researched in 1983 and has now become an integral part of the law school curriculum.⁷⁸ Of the 198 ABA-approved law schools, 53.5% offered an ALR course in 2014.⁷⁹ The SLR course, considered the next generation of ALR courses, typically focuses on teaching research skills tied to a specialized area of law. Topics in these courses range “from tax and foreign and international law to more unique [areas] such as animal law, health law, and even space law.”⁸⁰

¶34 To make sure that respondents shared the same understanding of ALR and SLR courses, as well as to make sure that comparable data could be collected, we defined and introduced those two concepts when designing the survey. But it did not appear that respondents shared the same understanding of ALR and SLR when they filled out the survey. However, their understanding did not deviate very much from the concepts introduced, so the validity of the survey was not compromised. According to the responses, five law schools out of twenty-two (23%) currently offer formal ALR or SLR courses, and eight law schools (38%) offer some ALR or

74. The following schools answered affirmatively that their law schools are planning to offer a basic legal research course in the near future: Nankai University School of Law, Renmin University Law School, and Nanjing University School of Law.

75. See Phillips, Luo & Liu, *supra* note 4. In their article, Phillips, Luo, and Liu discuss some key issues and challenges faced by law librarians, and many of the issues echoed the findings from our survey. Some major issues raised included the lack of national standards requiring Chinese law schools to allocate sufficient funds to support law library functions; the lack of accreditation processes and accreditation standards that require law schools to have law libraries; the fundamental problem with the law library director appointment mechanism, which is largely based on seniority rather than qualifications; and the incredibly high librarian-to-student ratio, which makes it impossible to provide value-added services to faculty and students.

76. Ann Hemmens, *Advanced Legal Research Courses: A Survey of ABA-Accredited Law Schools*, 94 LAW LIBR. J. 209, 217, 2002 LAW LIBR. J. 17, ¶ 16.

77. DuBay, *supra* note 52, at 208.

78. See *id.*

79. See *id.* at 212.

80. *Id.* at 216.

SLR components. The remaining nine schools do not offer any ALR or SLR courses or components at this time.

¶35 Law schools without a basic legal research course offering largely overlapped with schools that do not currently offer ALR or SLR courses. Nankai University School of Law and Fudan University Law School are two exceptions. Neither offered basic legal research instruction courses at the time of the survey, but both claimed that they offered some sort of ALR or SLR instruction. Nankai University School of Law reported that research seminars were offered in the past upon request, while Fudan University Law School reported that professors teaching British and American law tend to cover legal research in their classes. Even though both schools self-identified as schools that offer ALR or SLR courses, none of the offerings would be considered as formal ALR or SLR offerings in a strict sense, as defined above. In contrast, Shandong University School of Law and China University of Political Science and Law are ahead of the ALR or SLR game compared to the rest of the schools surveyed. Both schools regularly offer ALR or SLR to their graduate students. These courses are tailored to the students' specializations and the special requirements of the programs in which they are enrolled.⁸¹ The offerings tend to be one or two credits and are usually taught by law librarians.

¶36 When asked about future plans to offer ALR or SLR courses, only five of twenty-two schools answered affirmatively. Respondents from the other seventeen law schools answered no or unknown, or simply skipped the question. The law school administrations' insufficient recognition of the value of legal research courses was again identified as the primary obstacle that slowed down the offering of ALR or SLR courses. The study results further confirmed that the offerings of ALR and SLR courses at law schools in China are still limited, and the level of ALR and SLR offerings vary widely from school to school. The survey results send a clear message that law librarians and law school administrations in China need to further promote the value of ALR and SLR courses.

¶37 Despite the fact that the current offerings of ALR and SLR courses are less than desirable, there are some positive practices worth mentioning. Zhejiang University Guanghua Law School invited Professor Wei Luo from Washington University in St. Louis School of Law to teach an elective legal research course three years in a row beginning in 2010.⁸² In May 2015, Tsinghua University School of Law hosted Professor Joan Liu from New York University School of Law, and she offered a seminar titled International and Foreign Law Research Sources, Citations, Strategies, and Methods. Both offerings were very well received by law students in China.⁸³ In addition, the Chinese and American Forum on Legal Information and Law Libraries (CAFLI) has actively promoted exchanges between U.S. and Chinese law

81. Law librarians at China University of Political Science and Law offer tailored ALR courses for the following schools and colleges: Law School, College of Comparative Law Studies (School of American and Comparative Law, Chinesisch Deutsches Institut für Rechtswissenschaft), Institute of Evidence Law and Forensic Science, and School of Juris Master.

82. *Zhejiang University School of Law Falu Wenxian Jiansuo Duanqi Kecheng Jiaoyu Baodao*, 2 INFO. & RES. LEGAL LITERATURE 71 (China) (2011).

83. Liying Yu & Ning Han, *Zhongguo Falv Jiansuo Jiaoyu Xinfazhan (New Developments of Chinese Legal Research Instruction)*, CHINA LEG. EDUC. RES. (中国法学教育研究), 2016, no. 2, at 31, 41.

schools and generated valuable educational opportunities for law librarians and law school administrations in China.⁸⁴

Embedded Legal Research Instruction, Reference Services, and More

¶38 Embedded legal research instruction most often provides a research component to substantive/doctrinal courses, clinical courses, or even student organizations that engage in research-related activities (e.g., law review). Also referred to as point-of-need instruction and described as a proactive reference approach,⁸⁵ embedded legal research instruction most commonly partners with doctrinal professors. For example, a law librarian participates in a sports law course by teaching a segment on how to research sports law. A more creative embedded approach is to partner with clinical education professors. Vicenç Feliú and Helen Frazer describe their successful efforts of incorporating research instructional support in the University of the District of Columbia David A. Clarke School of Law's clinical education in their article *Embedded Librarians: Teaching Legal Research as a Lawyering Skill*.⁸⁶ Their experience further exemplifies how law schools can maximize the contributions of law school libraries and their librarians' expertise by embedding law librarians in clinics, doctrinal courses, and beyond.

¶39 We solicited feedback on whether and how Chinese law schools offer embedded legal research instruction. Our study showed that law librarians in China are sufficiently aware of this type of research instruction. Seven out of twenty-two law schools (32%) reported offering embedded legal research instruction on a regular basis or on an instructor's request. In most cases, law librarians introduced subject-related legal resources and research methods in doctrinal law courses such as environmental law, negotiable instruments, and international law, the three subject areas where this kind of collaboration was reported to happen most often. The China University of Political Science and Law successfully embedded law librarians into its Space Law Moot Court course, an experience described in one recent article that also includes an in-depth discussion of the course content design issues, given the fact that embedded research sessions tend to be short, yet highly subject specific.⁸⁷ Another reported approach involves law librarians arranging for database vendor training specialists to join doctrinal courses. This approach does not require much involvement from law librarians, so we did not count it the same as law librarian-led research sessions. But since most law libraries in China suffer from severe staffing shortages, being able to offer alternative embedded legal research instructions is worth mentioning.

¶40 Reference services were found to be ubiquitously available when compared with the offerings of formal legal research instruction courses. Every respondent indicated reference services are not only available, but available through many dif-

84. The mission of the Chinese and American Forum on Legal Information and Law Libraries (CAFLI) is to "promote[] the accessibility of legal information and foster[] the education of legal information professionals in the United States and China." *Bylaws, CHINESE & AM. FORUM ON LEGAL INFO. & LAW LIBRARIES*, <https://caflinet.org/by-laws/> [https://perma.cc/P2TY-TCKS].

85. See Kauffman, *supra* note 53, at 346–48.

86. Vicenç Feliú & Helen Frazer, *Embedded Librarians: Teaching Legal Research as a Lawyering Skill*, 61 J. LEGAL EDUC. 540 (2012).

87. Limei Xie, *Thoughts on the Content Design of Literature Retrieval Course in Line with Specialized Courses: A Case Study on Space Law Moot Court*, LIBR. J (CHINA), Jan. 2015, at 43.

ferent channels. Face-to-face, phone, and e-mail reference services are fairly standard among all the law schools surveyed. Some took the provision of reference services a step further by using a variety of trendy social network platforms, such as WeChat (similar to Snapchat or Line), Weibo (similar to Twitter), instant messaging, and the school's internal discussion board. The majority of law schools reported offering standard reference services with set hours provided by law librarians. In-depth research consultations were available as well, but primarily to graduate students. Some law schools also engage in research town hall meetings where law librarians bring students up to date on the library's latest services and resource additions, answer questions, and receive feedback from students. Respondents reported that students' demand for reference services is mediocre overall; however, they did find students are generally happy with the services received.

Students' Perceptions and Employers' Expectations of Legal Research Skills

¶41 In their classic 1990 article, Joan S. Howland and Nancy J. Lewis asked firm librarians to supply their own perception of the attitudes of summer clerks and first-year associates toward legal research training.⁸⁸ Students' interest in sharpening their legal research skills is one important external driver for law school administration's support of various legal research course offerings. Inspired by Howland and Lewis's work, we used our survey to probe this perception issue. Respondents were asked whether they believe law students recognize the value of legal research courses and view legal research skills as an important competency that is desired by employers. Though respondents could provide only their own perceptions of the attitudes that law school students have about legal research trainings their feedback contributes value to the discussion. Nine out of twenty-two law schools (41%) indicated that their law students recognize legal research as an important skill to have. Eleven (50%) reported that students' recognition is still at a minimum level, while two respondents (9%) indicated that their students do not care about legal research at all. Figure 5 summarizes these results. What makes this finding especially disturbing is that at least six respondents identified low student demand and perception of legal research courses as the primary obstacle limiting the offerings of legal research courses in China.

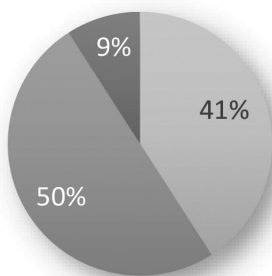
¶42 On the positive side, as mentioned earlier, we received direct feedback from seventy-one students who are currently studying at Peking University School of Transnational Law. We were surprised, yet pleased, to find that nearly all of the seventy-one students indicated they valued legal research courses and saw legal research skills as an important competency desired by employers. Though this feedback is all from a single law school and is not sufficient to represent the overall perception of all law students in China, it does give law librarians hope.

¶43 Employers' expectations of students' legal research competency was another factor studied in the survey. Ideally, employers' expectations would directly affect students' perception of legal research and encourage law school administrations to provide more resources to support legal research courses. We were interested in finding out whether a healthy feedback and response system exists between legal employers and legal educators in China. In addition, we wanted to understand how

88. Joan S. Howland & Nancy J. Lewis, *The Effectiveness of Law School Legal Research Training Programs*, 40 J. LEGAL EDUC. 381 (1990).

Figure 5**Perceived Student Attitude Toward the Importance of Legal Research as a Skill**

■ Important ■ Fair ■ Not at all



legal employers and educators could help each other to produce practice-ready graduates. U.S. law schools often incorporate feedback from practitioners or shift the focus of their curriculums to respond to market needs. On the other side, legal employers in the United States are eager to help law schools understand and bridge the gap between skills taught in law schools and those demanded by today's legal market.⁸⁹ In 2015, LexisNexis commissioned 5 Square Research Inc. to conduct a survey "among 300 hiring partners and senior associates who supervise new attorneys, from litigation and transactional practices in small to large U.S. law firms" to find out "whether new law school graduates and young lawyers possess particular core skills needed by their employers." The overarching goal of this study "was to reveal the most important skills desired by legal employers and . . . help inform law schools [how to] integrate [these skills] into applicable classes and experiential learning programs pursuant to employer demand and the [revised] ABA standards."⁹⁰ The study revealed that eighty-six percent of respondents "believe legal research skills are highly important in young associates."⁹¹ It also reported that "[y]oung lawyers often lack advanced legal research skills such as researching more complex legal issues in cases, statutes, and regulations, determining strength of validity or primary law, and legislative or administrative intent."⁹²

89. David L. Armond & Shawn G. Nevers, *The Practitioners' Council: Connecting Legal Research Instruction and Current Legal Research Practice*, 103 LAW LIBR. J. 575, 583–91, 2011 LAW LIBR. J. 36, ¶¶ 28–58 (discussing implementation of an attorney advisory board, the Practitioners' Council, in order to maintain a continuing connection with current legal research practice).

90. LEXISNEXIS, WHITE PAPER: HIRING PARTNERS REVEAL NEW ATTORNEY READINESS FOR REAL WORLD PRACTICE 2 (2015), http://www.lexisnexis.com/documents/pdf/20150325064926_large.pdf [<https://perma.cc/9QVP-CCQ4>].

91. *Id.* at 3.

92. *Id.* at 4.

¶44 In our study, feedback was not directly solicited from legal employers. Instead, we solicited law librarians' perceptions of employers' demand for new graduates' legal research skills. The first question asked was: Do you find legal employers desire law school graduates to have a high level of proficiency in legal research skills? More than thirty-six percent of the respondents (eight out of twenty-two) answered yes to this question, meaning that, in law librarians' minds, legal research skills are desired by legal employers, even though the desire is not perceived to be across the board yet. Several comments mentioned that foreign law firms, in particular, want new law graduates to have strong legal research skills. Respondents also pointed out that legal employers nowadays prefer new law graduates to be able to do legal research independently and effectively; have a high level of familiarity of major domestic and foreign databases, such as Chinalawinfo.com, Westlaw, and LexisNexis; and to demonstrate proficiency in case law, statutory, and regulatory research.

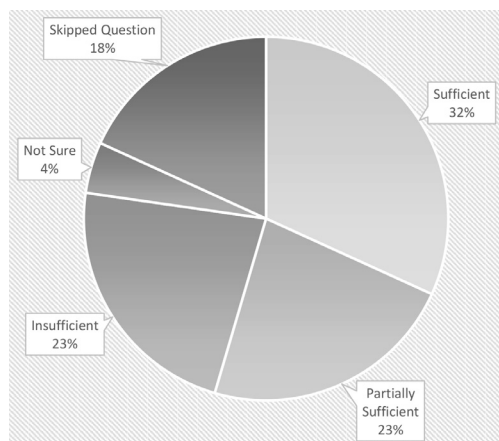
¶45 The second question asked was: Have employers' expectation toward law school graduates' legal research skills increased over the years based on your observation? More than fifty percent of respondents confirmed that the demand had risen over the years, more than thirty percent said the demand has remained the same, while less than fifteen percent indicated that an increase in demand had not been observed. Regrettably, thirteen respondents replied that they hardly receive any direct feedback from practitioners, either through formal channels or casual conversations. There was a clear indication from the comments that law schools in China had not been working closely with practitioners or legal employers. For law schools to integrate the lawyering skills desired by employers, conversations between practitioners and legal educators need to be encouraged and promoted. The collaboration between legal employers and law schools in China needs to be further improved and strengthened to advance the goal of producing practice-ready law school graduates.

Law Librarians' Self-Assessment: Adequacy and Quality of Research Course Offerings

¶46 One section of the survey was devoted to soliciting law librarians' perception of the current status of legal research education in China. The survey questions invited law librarians to freely express what changes they would like to see, from resource support to borrowing experiences from other countries. When queried about whether the current legal research course offerings at their individual schools sufficiently met students' demands and legal employers' expectations, seven law schools (32%) considered their offerings sufficient. No schools indicated that they stayed ahead of the game by proactively responding to the demands. The plurality of the respondents (46%) identified their offerings as either partially sufficient or insufficient. Low enrollment rates for elective legal research courses and the lack of qualified instructors were the two primary reasons given for inadequate legal research course offerings at individual schools. Four schools that do not currently offer any legal research courses skipped the question altogether. Figure 6 details these findings.

Figure 6

**Sufficiency of Legal Research Course Offerings to Meet Student Needs
and Employer Expectations**



¶47 In the same section, the respondents were asked what changes should take place to improve legal research instruction based on feedback provided by students and employers. First, respondents would like to see a basic or first-year legal research course become a required course at their individual schools for all law students at both undergraduate and graduate levels. Second, law librarians in China welcome opportunities to offer more specialized legal research courses. They would like to receive more support and recognition from their law school administrations. Pedagogy-wise, legal research courses are still taught with a strong theoretical focus in law schools in China. As a skills course, respondents suggested that the focus of the course should be shifted to research skill acquisition rather than theory acquisition. Regarding the course coverage, respondents suggested that case law research should be introduced into research courses, as the importance of being able to effectively conduct case law research has increased over the years. Zhihong Wu at East China University of Political Science and Law (ECUPL) mentioned that students had shown increased interest in case law research, especially when introduced along with current domestic and foreign cases. ECUPL students are also interested in learning about research course coverage in foreign law schools, which poses extra challenges to the instructors. In addition, respondents suggested that course content must be adjusted accordingly when new databases or resources need to be introduced. Resource management tools, such as Endnote, should be also be covered if possible.

Law Library Management Models in China

¶48 We also wanted to provide readers with a robust understanding of the Chinese law library environment while giving Chinese readers a greater understanding of the U.S. law library environment. To do so, the survey posed questions about the

law library's independence from the university library, along with questions about funding, staffing, educational requirements for law librarians, and faculty status for law librarians. The following section reports on the results of this portion of the survey, discusses how those results compare to the U.S. law library environment, and reflects on what this means for law libraries in China.

Autonomous Model vs. Nonautonomous Model

¶49 In the United States, ABA Standard 602 requires that “[a] law school shall have sufficient administrative autonomy to direct the growth and development of the law library and to control the use of its resources.”⁹³ This autonomy extends to personnel, library services, and collection development.⁹⁴ Additionally, the budget for the law library should be “part of, and administered in the same manner, as the law school budget.”⁹⁵ These standards would seem to indicate that the administration of a law library in the United States cannot fall under the main university library system. But Interpretation 602-1 provides further explication on when and under what conditions the law library can be administered as part of the university library system.⁹⁶ When the law library is administered as part of the university library system, it is called a nonautonomous model of administration.⁹⁷ Under the nonautonomous model in the United States, the director of the law library reports to both the dean of the law school and to the university librarian, and a portion of the law library's budget is derived from the central library's funds.⁹⁸ While this interpretation allows for the law library to be administered as part of the university library system, the historical trend has moved away from a nonautonomous model.⁹⁹ Currently ninety-six percent of law libraries in the United States fall under the autonomous model.¹⁰⁰ All but one law library in the United States with a nonautonomous model had their administrative structures in place before ABA Standard 602 was implemented.¹⁰¹ The one law library that did move from the autonomous

93. 2016–2017 STANDARDS, *supra* note 5, at 40 (Standard 602(a)).

94. *Id.* (Standard 602(c)).

95. *Id.* (Standard 602(d)).

96. *Id.* (Interpretation 602-1). This standard envisions law library participation in university library decisions that may affect the law library. While it is preferred that the law school administer the law library, a law library may be administered as part of a university library system if the dean, the director of the law library, and the faculty of the law school are responsible for the determination of basic law library policies, priorities, and funding requests.

97. Elizabeth G. Adelman, *The Three Percent: Common Issues in Nonautonomous Law School Libraries*, in ACADEMIC LAW LIBRARY DIRECTOR PERSPECTIVES: CASE STUDIES AND INSIGHTS 53, 53 (Michele M. Wu ed., 2015).

98. *Id.*

99. *Id.* at 54 (citing Oscar M. Trelles II & James F. Bailey III, *Autonomy, Librarian Status, and Librarian Tenure in Law School Libraries: The State of the Art, 1984*, 78 LAW LIBR. J. 605, 670 (1984)) (45% of libraries were nonautonomous prior to 1937 and that number dropped over time to 35% in 1938, 25% in 1973, 15% in 1978, 6.5% in 1984, and 3% in 2010).

100. *Id.* at 53. Adelman lists ninety-seven percent of ABA accredited schools as autonomous, but Washington University Law Library was in the process of “transitioning from autonomous to nonautonomous as this chapter is being written, and therefore, is not included in the discussion of or the calculation of the 3% non-autonomous law libraries.” *Id.* at 53 n.4.

101. *Id.* at 54. (“Of the remaining law schools with nonautonomous libraries today, all were accredited prior to 1938, which suggests that nonautonomous libraries were a model that comported with pre-1940 accreditation standards.”).

structure following the implementation of Standard 602 did so to address budget challenges.¹⁰²

¶50 Although Elizabeth G. Adelman, the director of a nonautonomous law library in the United States, has described the benefits of the model (increased training opportunities, collaboration on projects, more awareness of what is going on in different libraries, access to additional services, a more insulated budget, the ability to forum-shop between two administrators),¹⁰³ there are also many challenges, and arguably many of the benefits of the nonautonomous model are not necessarily limited to a nonautonomous model. The law library director may hold more administrative responsibilities, and lack of consensus between two library administrators can slow down projects.¹⁰⁴ The main library administrator and personnel also may not understand the ABA Standards' effect on law library needs and services.¹⁰⁵

¶51 Chinese law libraries have no equivalent requirement that they be autonomous from university libraries and no equivalent of the ABA standards. Despite that, we wanted to learn what level of independence law libraries exercise and whether they face some of the same challenges of autonomous and nonautonomous law libraries in the United States.

Administrative Structure and Facility

¶52 In this section of the survey, the first question asked whether law schools in China are supported by law libraries that are independent from the university library systems. Thirteen out of the twenty-two of respondents (59%) indicated that they were independent. This is a much lower level of independence than the ninety-six percent in the United States.¹⁰⁶ Law schools affiliated with either Project 985 or Project 211 universities tend to receive support from independent law libraries. Among the five political science and law institutes, only Zhongnan University of Economics and Law is supported by an independent law library; the rest identified themselves as law schools with no independent law libraries. (See figure 7.) This result does not surprise us. Political science and law institutes in China tend to focus on law and law-related interdisciplinary studies. As a result, their university libraries collect heavily in legal materials and tend to function like large research law libraries. Though respondents from these schools claimed that they did not enjoy an independent law library, in a strict sense, we should consider that they do. China University of Political Science and Law, China-EU School of Law, and Peking University School of Transnational Law do not have independent law libraries. Peking University School of Transnational Law, Tsinghua University, and Harbin Institute of Technology partner with the University Town Library,¹⁰⁷ which

102. *Id.* ("During the 2013/14 academic year, Washington University Law Library announced its plans to become non-autonomous to address budget challenges.").

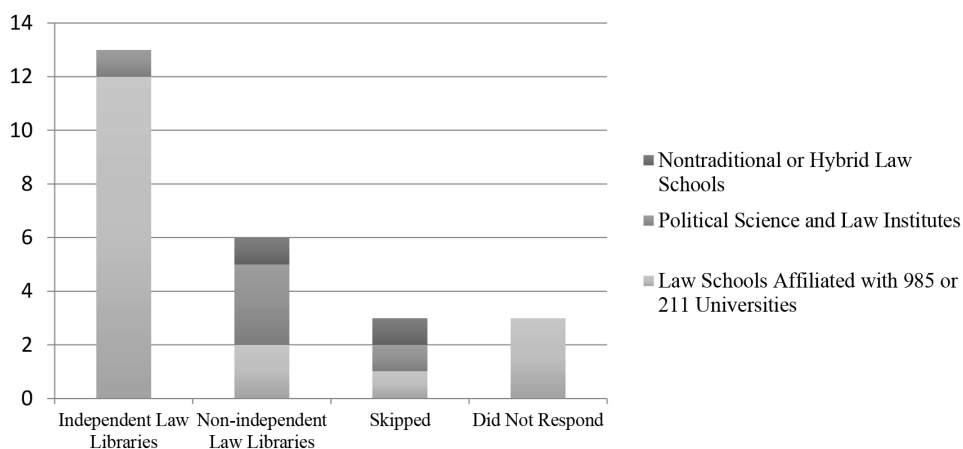
103. *Id.* at 57–58.

104. *Id.* at 58.

105. *Id.* at 59.

106. *Id.* at 54.

107. Ning Han & Duncan E. Alford, "A Tale of Two Countries: Behind-the-Scenes Stories of Two Unique but Newly Established Law Libraries," presentation at the Third Chinese & American Forum on Legal Information & Law Libraries (CAFLI), Shanghai, China, June 10–12, 2013

Figure 7**Law Library Independence from University Library by Type of Law School**

hosts the Legal Research Center on its third floor.¹⁰⁸ Fudan University and Beijing Normal University describe themselves as law schools with no independent law libraries. Both law schools once independently maintained their law libraries, but later they were placed under the jurisdiction of their university libraries. Fudan University Law School Library merged into the new Lee Shau Kee Library at its new Jiangwan campus in 2008. Our educated guess is that students and faculty at Fudan Law are better served since Lee Shau Kee Library is a better-funded, modern, user-centric, and technology-heavy library with a strong collection emphasizing legal materials.¹⁰⁹

¶53 The second question asked whether the law libraries enjoyed a separate facility, and if not, whether they had to share the space with university libraries. One would assume those independent law libraries should all enjoy a separate facility. This assumption is largely true; however, contradicting responses were received. Zhongshan University School of Law has an independent law library, but the law library is not physically independent from the university library. Southwest University of Political Science and Law and Northwest University of Politics and Law are the complete opposite.

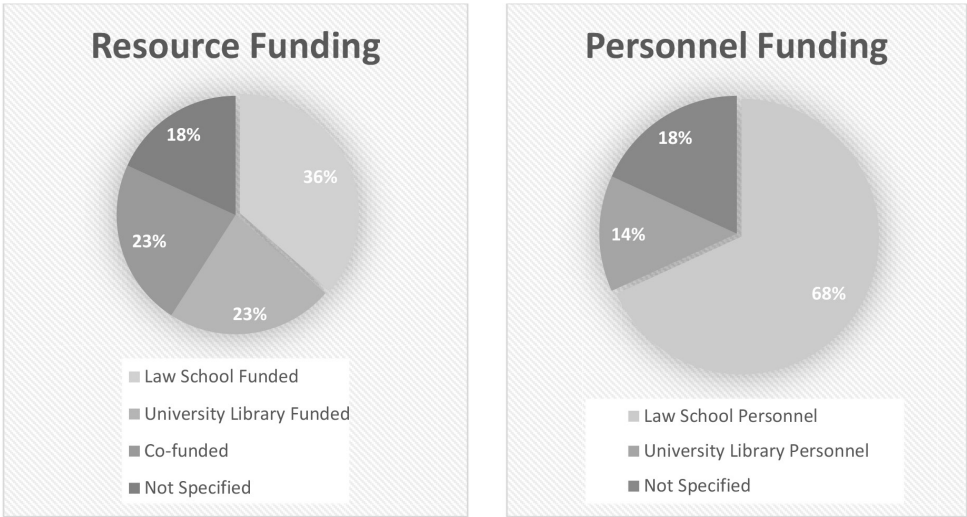
(PowerPoint presentations available at <http://faculty.laverne.edu/~ajiang/cafl/alford.pdf> [https://perma.cc/6NX4-XS6A] and <http://faculty.laverne.edu/~ajiang/cafl/NingHan.pdf> [https://perma.cc/GY9N-4RYL]).

108. *Law Library*, PEKING UNIV. STL LEGAL RESEARCH CTR., <http://lrcguides.stl.pku.edu.cn/content.php?pid=298133&sid=2451029> (last visited Feb. 13, 2017).

109. FUDAN UNIV. LEE SHAU KEE LIBRARY, <http://www.library.fudan.edu.cn/lzjtsg/list/353-1-20.htm> (last visited Feb. 13, 2017).

Figure 8

Independence of Law Library Resource Funding and Personnel Funding



¶54 Overall, based on the survey feedback, law libraries in China are becoming more autonomous and independent in both administrative structure and facilities as they develop.

Funding, Staffing, and Resource-Sharing Structure

¶55 To further understand how law libraries can respond to needs or desires for change, it is important to understand libraries’ structures and the relationships they have with their university libraries, especially with regard to funding, staffing, and resource sharing. With that in mind, we solicited feedback on all these areas of law library practices in China.

¶56 The survey revealed several different funding and staffing structures or arrangements between law libraries and their respective university libraries. Funding was discussed here primarily with regard to resource funding. Resources tend to be funded either solely by the law school, solely by the university library, or through a partnership between the law library and the university library. No single type of funding structure prevails. The number of law libraries with independent law school funding is the most common funding structure (see figure 8). In contrast, law library personnel are predominantly funded by their law schools, except for the law schools that do not enjoy a separate law library.

¶57 More specifically, eight law libraries out of twenty-two (36%) stated they are solely funded by their law schools. These law libraries reported having overall control of their budget in every aspect of library operations. University libraries have no oversight over the operation of the eight law libraries. Law library directors of the eight law libraries answer only to their law school deans. While remaining financially independent from their university libraries, these law libraries still rely on

university libraries for integrated library system support, resource sharing, and more. Among the eight schools, the School of Law at University of International Business and Economics not only fully funds its law library, it has also been providing funds for its university library to acquire foreign legal materials for the past few years.

¶58 Five law libraries are reported to be cofunded by both law schools and university libraries. University appropriations are primarily used toward purchasing resources. In the case of Fudan University Law School, all law school acquisition work, including license negotiations, book purchases, and periodical subscriptions, is delegated to their university libraries. All five law libraries appoint their own law library directors and librarians. Librarians and staff are considered law school employees whose salaries come out of the law school budget. Other than the need to coordinate resource purchasing and arrange resource sharing with university libraries, all five law library directors enjoy autonomy over the operation of their law libraries.

¶59 Except for the four schools failing to supply a specific answer to this question, the other five law libraries are funded and overseen by their respective university libraries. Among the five, three are completely reliant on university library funding, from resources to facility to personnel. In other words, there are no stand-alone law libraries for the three law schools. Beijing Normal University Law School and Fudan University Law School used to have separate law libraries, which later merged into their respective university libraries. The law library of Northwest University of Politics and Law is a branch of the university library. The branch manager reports to the university library director and is part of the university library team rather than the law school team. The other two law libraries, Tsinghua University School of Law and Sichuan University School of Law, rely on university library funding for resource purchasing and management¹¹⁰ but enjoy autonomy over personnel. Personnel are funded and managed separately by their respective law schools.

Other Issues Faced by Law Libraries in China

Are Law Libraries in China Adequately Staffed?

¶60 To answer the question as to whether law libraries are adequately staffed, we asked respondents to share the number of law librarians available at their individual law libraries.¹¹¹ The latest AALL Salary Survey reported that the average number of professionals per law library in the United States was 8.03 in 2015.¹¹² This represents a decrease when compared to both 2013 and 2011, when there were averages of 8.53 and 8.69 professionals per law school library respectively.¹¹³ This average does not include paraprofessionals. The average number of paraprofessionals in 2015 was

110. Tsinghua University School of Law shares its integrated library system with the university library and also relies on university library to help with acquisition, cataloging, physical processing, and other technical services work.

111. For law schools without a stand-alone law library, we solicited the number of law subject librarians instead.

112. AM. ASS'N OF LAW LIBRARIES, AALL BIENNIAL SALARY SURVEY AND ORGANIZATIONAL CHARACTERISTICS 2015, at 22, *Table 8: Average Number of Professionals per Library (FTE)*, <http://www.aallnet.org/Documents/Publications/Salary-Survey/pub-salary2015/2015AALLSalarySurvey.pdf> (online version available only to AALL members).

113. *Id.*

5.61.¹¹⁴ This is lower than the average of 6.63 in 2013 and 7.22 in 2011.¹¹⁵ In addition, “the average number of students (FTE) in U.S. law schools for 2015 was 606, with an average of 44 faculty. The ratio of library professionals to students (FTE) was 1 to 79.93, while the ratio of library professionals to faculty was 1 to 5.98.”¹¹⁶

¶61 The broad range of responses received showed that the number of law librarians available at each law library in China ranges from zero to twenty. Both law schools with no autonomous law libraries, Beijing Normal University Law School and Fudan University Law School, reported that they do not currently have any law librarians or even law subject librarians. Fudan University Law School reported that it has a plan in place to train and add a law subject librarian in the near future. On the other end, Kenneth Wang School of Law at Soochow University reported having twenty law librarians, which we discounted as invalid. We suspect that the respondent might have included the number of paraprofessionals in the count as well.¹¹⁷ The plurality of law libraries (nine out of twenty-two, nearly forty-one percent) stated that they had only one law librarian. The survey found that political science and law institutes tend to be supported by a larger number of law librarians. East China University of Political Science and Law has nine law librarians, China University of Political Science and Law and Southwest University of Political Science and Law each have six law librarians, and Zhongnan University of Economics and Law has two law librarians. Figure 9 depicts these findings.

¶62 Assuming the reported numbers are accurately reflecting the staffing situation at each library surveyed, the average number of law librarians per law library in China is two, discounting the invalid response supplied by Kenneth Wang School of Law at Soochow University. What is even bleaker is the law librarian to student (FTE) ratio. A quick survey of the websites of those participating law schools revealed the average number of students enrolled for 2015 was more than 1877,¹¹⁸ which made the FTE ratio at least 1:938.5. Arguably these numbers do not fully compare to the American averages because our survey was not as comprehensive as the AALL Salary Survey. However, it still shows that Chinese law libraries are extremely understaffed. Each law library staff's size is barely sufficient to keep up with the daily operation, let alone carry out advanced tasks, such as offering legal

114. *Id.* at Table 9: *Average Number of Paraprofessionals per Library (FTE)*.

115. *Id.*

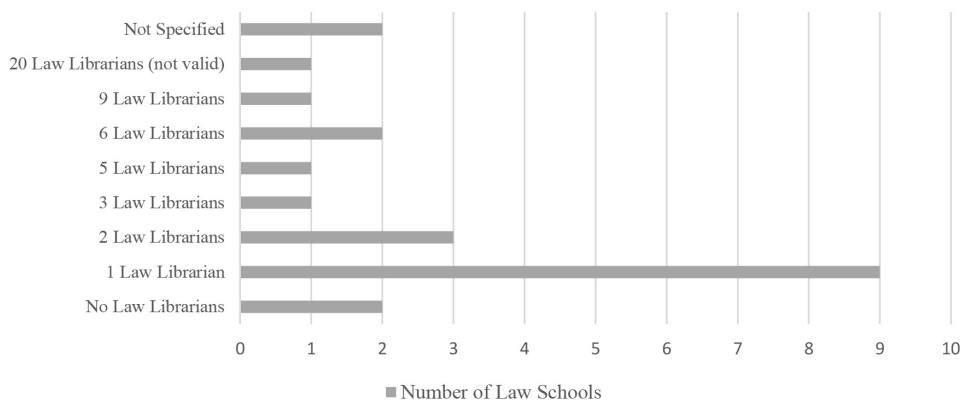
116. Am. Ass'n of Law Libraries, Executive Summary: 2015 AALL Biennial Salary Survey and Organizational Characteristics 2015, at 5, <http://www.aallnet.org/Documents/Publications/Salary-Survey/pub-salary2015/2015AALLSalarySurveyExecSum.pdf> [<https://perma.cc/J8AC-MCYH>].

117. The respondent from the Kenneth Wang School of Law at Soochow University identified understaffing as a main issue when asked about whether law school administration had provided adequate support to the law library in a later question. It should be safe for the authors to infer that the number supplied by this school was invalid.

118. The authors asked respondents to supply the number of students (FTE) enrolled in their law schools in the survey. We were able to track that information from each individual law school's website as well. Here are some FTE enrollment distributions: Nankai University School of Law (over 1000), Zhongnan University of Economics and Law (over 4250), Renmin University Law School (over 2000), Kenneth Wang School of Law at Soochow University (over 2000), Zhejiang University Guanghua Law School (over 700), East China University of Political Science and Law (over 3400), China-EU School of Law (380), Shandong University School of Law (over 3000), Nanjing University School of Law (over 1200), Fudan University Law School (1800–2000), Peking University Law School (over 3000), Tsinghua University School of Law (over 1400), Peking University School of Transnational Law (over 70).

Figure 9

Number of Law Librarians per Law School



research courses at various forms or levels. More broadly, the understaffing reality means that law libraries in China cannot proactively respond to demands or provide value-added services to faculty and students. Instead they have the capacity to react to only the most basic needs. This finding of understaffing was also reflected in the comments provided by the majority of the respondents when asked in which areas they perceived a lack of support.

¶63 In the United States, law schools can rely on rankings such as the *U.S. News & World Report* or staffing levels at other institutions as leverage to maintain or request adding law librarians.¹¹⁹ Perhaps this survey finding will lend law librarians in China some help in making the argument for better staffing support.

Educational Requirements for Law Librarians in China

¶64 The survey also inquired into what education and experience requirements different institutions had for their library personnel. This is a relevant question to ask because strong educational requirements for law librarians can help address many of the limitations law libraries face in including legal research instruction in the law school curriculum. One of the main reasons schools reported having limited legal research instruction was the lack of qualified law librarians. If the profession in China consistently compelled law librarians to meet certain educational requirements, law schools would then not need to exercise their discretion, as they currently do, in order to determine what educational backgrounds are deemed adequate for hiring law librarians.

119. SUSAN LEWIS-SOMERS, USING STATISTICS TO MARKET ACADEMIC LAW LIBRARIES 5 [2004], <http://www.aallnet.org/sections/all/storage/marketingtoolkit2004/statistics.pdf> [<https://perma.cc/AZD8-EXM9>].

¶65 In the United States there is a long history of debate over what degrees law librarians should possess.¹²⁰ Currently, the overwhelming majority of law library directors have both a J.D. and an M.L.I.S. degree.¹²¹ ABA Standard 603(c) governs the educational requirements of law library directors.¹²² The ABA Standards regarding education requirements for law library directors changed in 2014–15.¹²³ Under the old Standard 603(c), law schools were practically mandated to hire law library directors with both J.D. and M.L.I.S. degrees.¹²⁴ Under the new Standard 603(c), law library directors “shall have appropriate academic qualifications and shall have knowledge of and experience in law library administration sufficient to support the program of legal education and to enable the law school to operate in compliance with the Standards.”¹²⁵ Interpretation 603-1 states that if a law library director does not have a J.D. and an M.L.I.S., “a law school . . . bears the burden of demonstrating that it is in compliance with Standard 603(c).”¹²⁶ Again, the vast majority of academic law library directors have both degrees, and the requirement of both a J.D. and M.L.I.S. degree has also become the standard for nondirector law librarian positions in academic law libraries.¹²⁷ Though there are no formal requirements for nondirector positions, there have been calls for standardization of educational qualifications for law librarians in the United States.¹²⁸

¶66 With regard to the survey results, admittedly, there was a wide variety of responses as to what educational requirements were used to hire library personnel at individual law schools in China. As illustrated in figure 10, eleven out of twenty-two (fifty percent) law schools now require their law librarians to have a master’s degree in either law or library and information science. Among the eleven, four law schools¹²⁹ prefer their librarians to possess both law and library and information science degrees. Both Peking University Law School and Zhongnan University of Economics and Law currently employ law librarians with doctoral degrees. There are four law schools that require their law librarians to have undergraduate degrees, and they do not specify whether law or library and information science is the preferred major. In addition to the degree requirements, several other qualifications,

120. For an excellent background of the historical debate over educational requirements and citation to sources, see Elizabeth Caulfield, *Is This a Profession? Establishing Educational Criteria for Law Librarians*, 106 LAW LIBR. J. 287, 2014 LAW LIBR. J 19.

121. Michael J. Slinger & Sarah C. Slinger, *The Career Path, Education, and Activities of Academic Law Library Directors Revisited Twenty-Five Years Later*, 107 LAW LIBR. J. 175, 203–04, 2015 LAW LIBR. J. 8, tbls.2 & 3 (100% of respondents in a 2012 survey of law library directors had an M.L.I.S. degree or equivalent and 98% of respondents had a J.D.)

122. See 2016–2017 STANDARDS, *supra* note 5, at 40.

123. AM. BAR ASS’N, 2014–2015 ABA STANDARDS AND RULES OF PROCEDURE FOR LAW SCHOOLS 40 (2014).

124. “A director of a law library should have a law degree and a degree in library or information science and shall have a sound knowledge of and experience in library administration.” AM. BAR ASS’N, 2013–2014 ABA STANDARDS AND RULES OF PROCEDURE FOR LAW SCHOOLS 46 (2013). See Slinger & Slinger, *supra* note 121, at 181, ¶ 25.

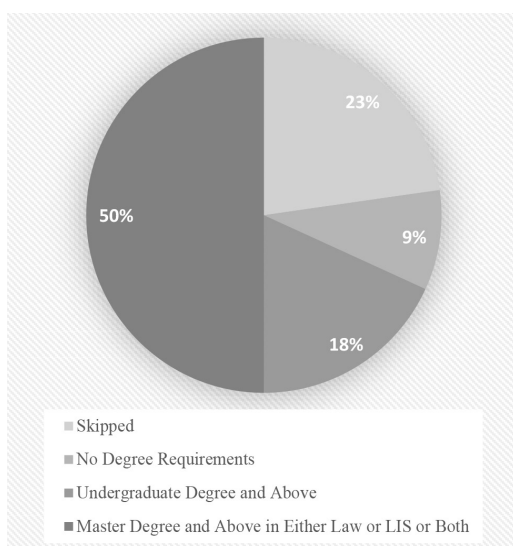
125. See 2016–2017 STANDARDS, *supra* note 5, at 40.

126. *Id.*

127. Slinger & Slinger, *supra* note 121 at 181, ¶ 26.

128. See Caulfield, *supra* note 120, at 322, ¶ 120.

129. The four law schools are: East China University of Political Science and Law, Northwest University of Politics and Law, Renmin University Law School, and Southwest University of Political Science and Law.

Figure 10**Educational Requirements for Law Librarians**

such as previous library experience, teaching experience, English proficiency, and familiarity with integrated library systems (ILS), were mentioned.

Faculty Status for Law Librarians in China

¶67 The survey also queried whether Chinese librarians enjoyed faculty status. Faculty status for law librarians is a perennial issue in law libraries in the United States. In fact, the continued study of status for law librarians is a part of the AALL Research Agenda.¹³⁰ While faculty status may increase the amount of responsibilities (i.e., additional service, administration, and publishing requirements), many perceived benefits exist as well. Benefits of having faculty status include, but are not limited to, academic freedom, teaching opportunities, increased job security, increased involvement in faculty governance, and increased stature in the university.¹³¹ Both the AALL and the Association of College and Research Libraries encourage faculty status for academic librarians.¹³² Under ABA Standard 603(d), “[e]xcept

130. *AALL Research Agenda 2013–2016*, AM. ASS’N OF LAW LIBRARIES (rev. June 2013), <http://www.aallnet.org/mm/Member-Resources/grants/research-grants/research-agenda.html> [https://perma.cc/6J82-THT7] (“The formal status of the librarian within a broader institution creates a range of consequences both intended and unintended for both the individual and the organization. These structural arrangements should be investigated in terms of both their perceived significance as well as their actual impacts on the exercise of professional responsibilities.”).

131. Carol A. Parker, *The Need for Faculty Status and Uniform Tenure Requirements for Law Librarians*, 103 LAW. LIBR. J. 7, 12–13, 2011 LAW. LIBR. J. 1, ¶ 14.

132. Academic Law Libraries SIS, *Resolution on Faculty or Academic Status*, *Proceedings of the 80th Annual Meeting of the American Association of Law Libraries, Held in Chicago, Illinois, Business Sessions July 6–8, 1987*, 79 LAW LIBR. J. 791, 831 (1987); Ass’n of Coll. & Research Libraries, *A Guideline*

in extraordinary circumstances, a law library director shall hold a law faculty appointment with security of faculty position.”¹³³ Translated into practice, then, a director could have a range of faculty appointments from being on the law school tenure track, to having multiyear contracts, to being on a law library faculty track, or serving as university library faculty.¹³⁴ The majority of law library directors are on the tenure track within the law school.¹³⁵ There is no equivalent ABA requirement stipulating that law schools offer nondirector law librarians faculty status. In the United States, “only between one-quarter and one-third of law librarians report holding faculty status,” through the law school, the main university, the law library, or the university library.¹³⁶

¶68 The survey findings confirmed that almost all law librarians in China do not currently have faculty status. Specifically, law librarians at seventeen institutions (more than 77%) are not considered law school, law library, university, or university library faculty. A few schools among the seventeen reported that their law librarians have lecturer status. Only two respondents reported having faculty status, and those two are law library directors at Renmin University Law School and Tsinghua University School of Law. Figure 11 depicts these findings.

¶69 The finding again proves that the status of law librarians in China is not nearly the same as that of law librarians in the United States. The value of law library directors, or even law librarians, having faculty status has not been recognized by law school administrations in China. Whether there are merits to offering law librarian faculty status warrants further discussion. We hope to use the findings from the survey to raise awareness among law librarians in China in regard to the faculty status issue.

Conclusion

¶70 The Ministry of Education and the Central Political and Legal Affairs Committee jointly issued the “Several Opinions on the Implementation of Outstanding Legal Talent Education and Cultivation Initiative” on December 23, 2011.¹³⁷ Several fundamental problems of China’s current legal education system were raised in this release, including legal education programs’ lack of diversity and innovation and the tendency to stay unchanged over years. Also discussed was law school gradu-

for the Appointment, Promotion and Tenure of Academic Librarians (approved at the American Library Association Annual Conference, June 2010), <http://www.ala.org/acrl/standards/promotiontenure>.

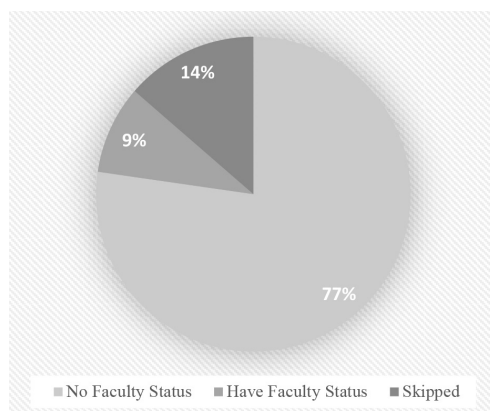
133. 2016–2017 STANDARDS, *supra* note 5, at 40 (Standard 603(d)).

134. James M. Donovan & Kevin B. Shelton, *Tenure and the Law Library Director*, 61 J. LEGAL EDUC. 406, 409 n.13 (2012).

135. *Id.* (“112 of 187 directors described themselves as currently on the law school tenure track. Forty-three held multi-year contracts, while 24 were on separate law library faculty tracks. Eight were categorized as university library faculty.”).

136. Parker, *supra* note 131, at 11, ¶ 12 (finding that seventy-seven percent of the fifty-six respondents [to a survey of “libraries that currently offer tenure or continuous appointment opportunities”] received faculty status).

137. Guanyu Shishi Zhuoyue Falu Rencai Jiaoyu Peiyang Jihua de Ruogan Yijian 《关于实施卓越法律人才教育培养计划的若干意见》(教高[2011]10号), <http://www.moe.edu.cn/publicfiles/business/htmlfiles/moe/s3875/201204/134451.html> [<https://perma.cc/4FBA-MGEV>]; Xin Guan, *Studies on the Standard and Model for Cultivating Outstanding Legal Talent*, 2013 FRONTIERS OF LEGAL RES. (China) vol. 1, iss. 2, at 45.

Figure 11**Faculty Status Among Law Librarians**

ates' lack of practical, analytical, and interdisciplinary skills. Most law schools failed to produce graduates with comprehensive legal knowledge who could uphold the highest ethical standards. The challenges faced by legal education in general apply to legal research education. In addition, there are more specific challenges to legal research education in China.

Problems and Challenges

¶71 For both historical and practical reasons, legal education in China was designed to meet the fast-growing economic and legal needs at many different levels. Instead of being a completely professional education like the U.S. model, legal education in China combines elite education, general education, and professional education with the goal of equipping graduates with legal knowledge and a framework that can be transferred into many different professions. Career choice of law school graduates varies in China. The majority of law school graduates ultimately choose not to engage in the legal profession by becoming practicing attorneys, judges, or prosecutors. Instead, they take up alternative career options such as becoming civil servants at various levels of governmental agencies and offices, working for corporations, opening their own businesses, or joining the press or news media.¹³⁸ According to employment statistics conducted by certain schools, fewer than ten percent of law school graduates become judges, prosecutors, and practicing attorneys.¹³⁹ For the ones who pass the Chinese bar exam, less than fifty percent choose to practice law.¹⁴⁰ To be more specific, every year, among the 110,000 students admitted to the bachelor of law programs, only 5000 to 6000 graduates enter the legal profession. In a strict sense, legal education in China can hardly call

138. Zhu, *supra* note 2, at 81.

139. See Zhang, *supra* note 38, at 3.

140. See *id.*

itself professional education.¹⁴¹ Arguably, skills education has never been supported by the mission of legal education in China.¹⁴² Students are also less motivated to acquire research skills because they are not pressured to practice law upon graduation.

¶72 In reality, it is not efficient and effective to achieve the learning outcomes skills courses strive to achieve. Civil law systems call for a different set of legal research skills. Legal education in China focuses more on jurisprudence, codified laws, and interpretations. Judicial decisions and case law analysis tend to be neglected. Due to the structure of the course of study for undergraduate law students in China, law students are not exposed to skills education, including legal research skills education, until they engage in moot court, courtroom hearings, clinical education, experiential learning, legal aid, and similar experiences in their senior years. However, the increasing load of required core courses and students' interest in taking courses from other departments on campus to diversify their career choices make skills education even more peripheral.

¶73 In addition, there is no compulsory system governing law school programs, curriculums, and learning outcomes, not to mention regulations specific to legal research education. So far neither the Chinese government nor the Chinese Bar Association has set up standards for establishing or accrediting a law school or department in China.¹⁴³ Individual law schools have great latitude in designing curriculum and assessing learning outcomes, which results in inconsistent practices in offering legal research courses among law schools. Vertically, it is difficult to maintain the offerings within individual law schools due to the high rate of personnel turnover.

¶74 The tie between the legal market and legal education also remains weak and disconnected. The job placement rate is used as an important indicator to assess law school programs in the United States.¹⁴⁴ A similar assessment method, the Graduate Employment Rate (GER), was adopted by law schools in China to evaluate graduates' employability as well as the quality of law school programs. However, for reasons stated above, the validity and effectiveness of the GER have been questioned.¹⁴⁵ Additionally, legal employers rarely pay attention to what courses law school graduates have taken.¹⁴⁶ It is a sad truth that skills courses, including legal research courses, have minimal effect on law graduates' employability.

141. See *id.*

142. See Zhu, *supra* note 2, at 81.

143. Phillips, Luo & Liu, *supra* note 4, at 12.

144. RENMIN UNIVERSITY OF CHINA REPORT, *supra* note 24, at 255–57, 262; Robert Morse, *Methodology: 2017 Best Law Schools Rankings*, U.S. NEWS & WORLD REPORT (Mar. 15, 2016, 10:00 PM), <http://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology> [<https://perma.cc/L33P-KGJX>].

145. See RENMIN UNIVERSITY OF CHINA REPORT, *supra* note 24, at 262 (arguing that there is no direct connection between GER statistics and the quality of legal education); see also Yu & Han, *supra* note 83, at 49.

146. We reviewed job postings for firm positions and found that the requirements are very general. There are rarely requirements for specific skills or courses. See 中国律师网律师招聘, <http://www.acla.org.cn/lvsuopingyong/index.jhtml> [<https://perma.cc/WWK8-G8QC>].

Opportunities for Future Changes

¶75 The Outstanding Legal Talent Education and Cultivation Initiative¹⁴⁷ is an important step taken by the Chinese government to enhance the quality of legal education. The initiative urges law schools and practitioners to work together to produce law school graduates with a comprehensive knowledge of law, strong lawyering skills, foreign language skills, and a strong sense of ethics.¹⁴⁸ The initiative especially emphasizes improving law students' problem-solving, reasoning, and analytical skills. The initiative compels law schools to increase their offerings of experiential learning and clinical education credits/experiences. The cumulative number of skill course credits should be no less than fifteen percent of the overall program credits.¹⁴⁹ This requirement opens up many opportunities for legal research instruction.

¶76 In responding to the Outstanding Legal Talent Education and Cultivation Initiative, many Chinese law schools conducted program reform and innovation. To name a few successful pilot programs, Shanghai Jiao Tong University KoGuan Law School experimented with the 3+3 program under the leadership of Dean Weidong Ji¹⁵⁰ with the goal of producing elite graduates with strong practical skills and high ethical standards.¹⁵¹ This highly selective program is geared toward students who are interested in engaging in high-end domestic or international legal practice. The program selected only fifteen top-notch students when it was first piloted in 2009.¹⁵² Since fall 2012, Tsinghua University School of Law was able to offer a unique track of study with a heavy focus on international law, lawyering skills, and foreign language training to a select group of students who were already enrolled in Tsinghua Law.¹⁵³ Legal research instruction benefits hugely from these two innovative programs as both programs require students to take legal research courses as part of the suggested course of study.¹⁵⁴

¶77 In addition, in May 2015, Peking University Law School hosted the second China Legal Education High-End Forum,¹⁵⁵ in which a consensus was reached on the need to enhance law students' writing and research skills, especially among graduate-level law students. Participants recognized the need to add legal writing, legal research, and law review courses to law school curriculums. Though legal research still seems to fall under the shadow of legal writing at most institutions in

147. We also have seen it translated as "Outstanding Legal Personnel Education Scheme." See Shan, *supra* note 48, at 11.

148. Guan, *supra* note 137, at 45–48.

149. See Zhu, *supra* note 2, at 82.

150. Dean's Message, KO GUAN LAW SCHOOL OF SHANGHAI JIAO TONG UNIV., <http://en.law.sjtu.edu.cn/About/Article0101P0.html> [https://perma.cc/27Q7-KW3D].

151. Weidong Ji, *Falu Zhuoyue Rencai Peiyang yu Sansanzhi Jiaoyu Moshi*, FENGXIAN SHEHUI DE FAZHI, <http://jiweidong.blog.caixin.com/archives/18547> [https://perma.cc/VQ9F-3LMR].

152. See *id.*

153. The program is called Guojixing Falu Rencai Xiangmu 国际型法律人才项目在 Chinese.

154. See the suggested course of study for the Tsinghua Law program: 清华大学法学院“国际型法律人才项目”培养方案, <http://www.tsinghua.edu.cn/publish/law/3376/20130820142007507362082/1.pdf> [https://perma.cc/FJ6Z-F2WY].

155. See the program summary of the Second China Legal Education High-End Forum (全国法学教育高端论坛) published on the website of Peking University Law School, <http://www.law.pku.edu.cn/xwzx/xwdt/15124.htm> [https://perma.cc/4FRA-X9TZ].

China, emphasizing legal writing inevitably welcomes opportunities for promoting legal research since the two are closely related.

Final Thoughts

¶78 Both the results of our survey and the actions taken in response to the Outstanding Legal Talent Education and Cultivation Initiative show that, while the number of schools offering legal research instruction has increased and greater emphasis has been placed on integrating legal research skills into the law school curriculum, great challenges and opportunities remain for law librarians in China. Moving forward, with China's continued development, reform, and innovation of legal education, legal research education will inevitably be on the agenda. Law librarians should be aware of these changes and seize the opportunity to strengthen and enhance their role in legal education in China. Law librarians should also work together and collaborate, both across China and in the United States, to develop and enhance the capacity of legal research instruction and to make the provision of legal research instruction more stable across curriculums globally. Law librarians, whether in China or the United States, should work together and share experiences to strengthen students' legal information literacy and legal research skills.

Appendix A: English Translation of the Survey

Section I: Law School Profile

Q1: Type of Law School

- ☐ Comprehensive University
- ☐ Political Science and Law Institute
- ☐ Non-Traditional or Hybrid Law School

Q2: School profile

What is the approximate number of students enrolled?

What type of law degrees do you offer?

Q3: Is there a law library or law branch library for the law school?

- ☐ Yes
- ☐ No

Q4: Does the law library or the law library branch have separate facilities?

- ☐ Yes
- ☐ No
- ☐ Other, please specify

Q5: What is the relationship between the law library (law branch library) and the university library like? Is it completely independent? Or are there shared budgets, personnel, and resources? Is there a working relationship between the two libraries?

Q6: How many Reference Librarians/Law Subject Librarians do you have?

Q7: What are the required qualifications for Reference Librarians/Law Subject Librarians (education, experience requirements, etc.)?

Q8: Is the Library Reference Librarian/Law Subject Librarian a professor at the law school (do they have faculty status)?

- ☐ Yes
- ☐ No
- ☐ Library faculty, Lecturer, or Other, please specify

Q9: Do you get enough support for the library or law library from the school or law school?

- ☐ Yes
- ☐ No

Please specify areas with sufficient or insufficient support.

Section II: About Basic or First-Year Legal Research Instruction

Q10: Is there formal or informal supervision, guidance, or a feedback system to help identify what you should be teaching as far as research instruction or legal instruction overall? For example, the Ministry of Education, the National Institute of Lawyers, legal job market, etc.

- ☐ Yes, national system
- ☐ Yes, regional or institutional system
- ☐ Yes, informal system
- ☐ No

Please supply more details based on your answer.

Q11: Do you find legal employers desire law school graduates to have a high level of proficiency in legal research skills?

- ☐ Yes, please specify
- ☐ No

Q12: If your answer to Q11 was Yes, based on your observation, have employers' expectations toward law school graduates' legal research skills increased over the years?

- ☐ Yes, please specify
- ☐ Remained the same
- ☐ No

Q13: Is there awareness among students that legal research skill is an important competency desired by employers?

- ☐ Yes
- ☐ A little bit
- ☐ Not at all

If you answered no, please specify what led students to have that perception.

Q14: Does your school currently offer a basic or first-year legal instruction course?

- ☐ Yes
- ☐ No, please go to Q25

Q15: Is the basic legal instruction course mandatory or elective?

- ☐ Mandatory
- ☐ Elective

Q16: How many credits is the basic legal instruction course?

- ☐ 3 credits
- ☐ 2 credits
- ☐ Other, please specify

Q17: At what level is basic legal instruction taught?

- ☐ Undergraduate
- ☐ Graduate
- ☐ Other, please specify

Q18: How frequently are basic legal research courses offered?

Q19: What is the class size?

Q20: Who teaches the basic legal research course, a law librarian or a law school professor?

Q21: What topics does the basic legal instruction course cover? Are textbooks being used? If yes, which textbook(s) is (are) used?

Q22: What teaching methods are used?

Q23: What assessment method(s) do you use to assess student research skills? Exams, semester-long independent projects, hybrid, or other?

Q24: If the basic legal research course is currently an elective, are there plans to make it mandatory?

- ☐ Yes
- ☐ No
- ☐ Not Sure

Q25: If you have not offered a formal basic legal research course, are there plans to do so in the near future?

- ☐ Yes
- ☐ No
- ☐ Other, please specify

Q26: If you have not offered a formal basic legal research course, is there any other informal teaching, such as open workshops or training?

Q27: What are the reasons limiting your school from offering a basic or first-year legal research course as part of the formal curriculum?

Section III: Advanced or Specialized Legal Research Course Offerings

Q28: Are ALR or SLR courses currently offered at your law school?

- ☐ Yes, regularly
- ☐ Yes, but not regularly
- ☐ Not at the moment
- ☐ Other, please specify:

Q29: If ALR or SLR is offered at your school, what is the setup of it with regard to teachers, course content, class size, credit numbers, and assessment?

Q30: If you haven't offered an advanced research course, is there a plan to offer one?

Section IV: Embedded Legal Research Instruction Offerings and Reference Services

Q31: Is embedded legal research instruction offered at your law school? (That is, collaboration with professors where you go into their classes and provide legal research instruction on specialized topics.) Please give examples if the answer is yes.

Q32: How are reference services conducted? Are there set reference hours? What type of reference services do you offer? Please give examples. Are students generally happy with the services received?

Section V: Other Suggestions/Recommendations

Q33: Do you think your school's legal research/reference offerings are adequate to meet the student needs and provide them with the skills needed for the job market?

Q34: Have changes to research course offerings and the curriculum been made to meet the demands of the job market?

Q35: Based on your understanding of how legal research is taught in other countries, what practices could be borrowed to improve legal research education in China?

Q36: What is the biggest perceived obstacle in improving legal research education in China? The lack of student demand, inadequate support from the law school administration, the lack of qualified personnel, or other?

Appendix B: List of Law Schools Surveyed

Tier 1: Sixteen law schools affiliated with Project 985–rated universities:

- Beijing Normal University Law School
- Chongqing University School of Law
- Fudan University Law School
- Jilin University School of Law
- Nanjing University School of Law
- Nankai University School of Law
- Peking University Law School
- Renmin University Law School
- Shandong University School of Law
- Shanghai Jiao Tong University KoGuan Law School
- Sichuan University School of Law
- Sun Yat-Sen University School of Law
- Tsinghua University School of Law
- Wuhan University School of Law
- Xiamen University School of Law
- Zhejiang University Guanghua Law School

Tier 2: Four political science and law institutes or law schools affiliated with Project 211–rated universities:

- China University of Political Science and Law
- Kenneth Wang School of Law at Soochow University
- School of Law at University of International Business and Economics
- Zhongnan University of Economics and Law

Tier 3: Three political science and law institutes not Project 211–rated:

- East China University of Political Science and Law
- Northwest University of Politics and Law
- Southwest University of Political Science and Law

Tier 4: Nontraditional or hybrid law schools:

- China-EU School of Law at the China University of Political Science and Law
- Peking University School of Transnational Law

Keeping Up with New Legal Titles*

Compiled by Benjamin J. Keele** and Nick Sexton***

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* The works reviewed in this issue were published in 2015 and 2016. If you would like to review books for "Keeping Up with New Legal Titles," please send an e-mail to bkeele@indiana.edu and nsexton@email.unc.edu.

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Bowles, Samuel. *The Moral Economy: Why Good Incentives Are No Substitute for Good Citizens*. New Haven, Conn.: Yale University Press, 2016. 272p. \$27.50.

*Reviewed by Charles D. Wilson**

¶1 In *The Moral Economy: Why Good Incentives Are No Substitute for Good Citizens*, Samuel Bowles, a research professor at the Santa Fe Institute, examines the implications that research regarding human behavior holds for the “design of policies and institutions that would work well for people given to both self-interest and generosity, both moral action and amorality” (p.xvi). Bowles is interested in how policymakers can design policies and institutions to achieve the best outcomes.

* © Charles D. Wilson, 2017. Library Manager, Lindquist & Vennum LLP, Minneapolis, Minnesota.

¶2 One of the most interesting aspects of the book is Bowles's examination of situations where incentives and policies fail, or even backfire, producing the opposite result desired by the policymaker. This happens when policies or incentives motivate the material self-interest of the participants, effectively crowding out ethical and other noneconomic motivations.

¶3 Noneconomic motivations are at the heart of the book, and Bowles delves into what situations can cause policies and incentives to undermine or enhance behaviors desired by policymakers. Bowles sums up research conducted by him and other scholars on people's behavior and motivations and places it in the context of public policy design.

¶4 Bowles begins by examining the assumptions of current policymakers regarding economic incentives and the supposedly self-interested motivations of their citizens. He also compares those assumptions with what thinkers such as Aristotle, Machiavelli, Rousseau, Hume, and others have had to say about the virtue (or lack thereof) of people and the implications for governing. Bowles argues that poorly designed policies and incentives may shape what citizens value in a negative way.

¶5 Bowles's approach is theoretical (rather than practical), and he provides a framework for analysis: a hypothetical legislator interested in crafting an effective public policy. However, the book is geared toward an academic audience rather than actual legislators. The chapters take a close look at experiments conducted around the world measuring social preferences and the effects of incentives, and examine the implications of their conclusions for public policy.

¶6 Some parts of the book are challenging to read as a result of the academic jargon and complex concepts. It can be difficult to track the multiple variations of the different games used in the experiments. Bowles takes some pains to spell things out for the reader, but the book is conceptually dense considering its relatively short length. It is extensively footnoted, and the list of works cited runs to twenty-one pages. In addition to the notes and works cited, there are four appendixes covering the concepts, games, and models used in the book.

¶7 The book does an excellent job of covering the existing research regarding incentives and human behavior and synthesizing it into an understandable format. This is an evolving area of scholarship so there are few, if any, similar books. This book will have cross-disciplinary appeal for scholars interested in economics, public policy, and behavioral sciences.

Cameron, Lindsay. *Biglaw: A Novel*. Chicago: Ankerwycke, 2015. 270p. \$26.95.

*Reviewed by Margo Jeske**

¶8 The American Bar Association has launched a new trade imprint, Ankerwycke, which includes legal fiction. One of the titles published under this imprint is *Biglaw: A Novel*. With film and television rights optioned to Paramount and named by several popular magazines as one of the best books of 2015, *Biglaw* exposes the life of a junior associate whose firm "at times filled me with dread and other times [has] been the place where I sought refuge" (p.270).

* © Margo Jeske, 2017. Director, Brian Dickson Law Library, University of Ottawa, Ottawa, Ontario, Canada.

¶9 Lindsay Cameron, a graduate of the University of British Columbia School of Law, worked for six years as a corporate attorney at large law firms in the United States and Canada before writing *Biglaw*, her debut novel. The novel's title refers to firms that cater to the country's largest corporations. These firms often include sections specializing in mergers and acquisitions, banking, and corporate litigation.

¶10 Insights into big law suggest that it is a grueling environment in which associates are expected to be available at all times. To best survive, they must put down their heads, plow through obligations, and learn to tolerate unpleasant work. They must keep track of several ongoing projects at once and keep partners informed.

¶11 Mackenzie Corbett is a twenty-eight-year-old graduate of Georgetown Law Center. After two years at Freedman & Downs, a top (fictional) Manhattan law firm, she is about to obtain a prestigious temporary job assignment with one of the firm's clients. *Biglaw* follows Mackenzie as she moves seemingly closer to reaching her goal, when an unexpected visit from Securities and Exchange Enforcement changes her plans. Covering a seven-month time frame, Cameron details all aspects of Mackenzie's life as a dedicated junior associate, through all the ups and downs of working in big law. As Mackenzie is tormented by her mentor, works day and night to satisfy the partners' requests, and finds herself investigated for insider trading, we learn about the life of an associate in a big law firm. Intrigue in the small bit of her life outside the office moves the story along at a quick pace. Colorful characters that inhabit Mackenzie's sphere, her secretary Rita in particular, are well developed.

¶12 Is all that is presented truly realistic? Details of sleep deprivation and psychological abuse seem plausible, given what is at stake for the lawyers and their clients. The sacrifices that continue to be made and the cutthroat nature of the interactions between partners, associates, and administrative personnel ring true, if only due to many examples of similar actions found in the legal fiction genre.

¶13 Perhaps one needs to have been a big law associate to know for sure, but Cameron's novel amuses and entertains. One wants to root for Mackenzie and her eventual discovery of the truth and realization of her inner strengths. Complete with legal intrigue, humor, romance, betrayal, lust for power, and a strong female character readers can root for, *Biglaw* is engaging and suspenseful. It is a perfect Sunday afternoon read—if you are not still at the office. Legal fiction fans and anyone who would enjoy an inside look at big law firms will want to get a copy of this book. Recommended for popular legal fiction collections.

Cole, David. *Engines of Liberty: The Power of Citizen Activists to Make Constitutional Law*. New York: Basic Books, 2016. 307p. \$27.99.

*Reviewed by Pat Newcombe**

¶14 Beginning in the 1980s, Evan Wolfson, an attorney who worked at Lambda Legal Defense Fund and later established Freedom to Marry, a leading nonprofit

* © Pat Newcombe, 2017. Associate Dean for Library and Information Resources, Western New England University School of Law, Springfield, Massachusetts.

advocacy group, banded with other marriage equality champions and developed a game plan to incrementally pursue state rights for gay people. Once gay rights activists made sufficient headway in certain states, the push for marriage equality began in the states that appeared most amenable. They collaborated with public relations strategists to identify the best arguments to persuade the citizenry and brought pressure on the entertainment/media industry to portray gay individuals in a more positive light. All of this strategic planning for more than twenty years, including the wins and the losses along the way, led to the constitutional acknowledgment of same-sex marriage rights in *Obergefell v. Hodges*.¹

¶15 This epic struggle is captured masterfully by David Cole in *Engines of Liberty: The Power of Citizen Activists to Make Constitutional Law*. The book recounts three engaging stories of enormous constitutional change and of the organizations and individuals whose efforts achieved such change. Cole holds up these movements—same-sex marriage, gun rights, and human rights in the war on terror—as examples of where ordinary citizen activists have been actual change agents, and convincingly proposes that constitutional evolution begins not when a legal matter comes before the Supreme Court, but much earlier when civil society organizations advocate for reform.

¶16 Cole's second illustration of citizen activism traces the evolution of the individual right to bear arms. For nearly a hundred years, it had been well settled in Second Amendment doctrine that only the states' rights to support militia was protected, not an individual's right. Cole introduces the second main character, Marion Hammer, who entered politics when Congress passed the Gun Control Act in 1968, believing that the Act was setting a path to abolish what she viewed as an individual right to bear arms. Hammer decided to get involved in this struggle and eventually became the first female president of the National Rifle Association (NRA). The NRA and its advocates adopted a state incrementalism strategy, beginning with those states most inclined to be sympathetic to amending gun laws to recognize an individual right to bear arms under their own constitutions. The NRA then used precedents won there to continue their progress in other states.

¶17 Throughout the decades, the NRA campaigned outside the federal courts, encouraging legal scholarship that promoted their perspective, backing legislators who advocated amending state laws and constitutions to advance the individual right to bear arms, obtaining influential endorsements from Congress and the executive branch for individual gun rights, and helping ensure that the "Supreme Court's newest justices were selected in part on the basis of their sympathy to gun rights" (p.100). By 2008, the Supreme Court held in *District of Columbia v. Heller*² that the Second Amendment indeed protects an individual's right to bear arms.

¶18 The third example of citizen activism recounts the work of civil liberties and human rights organizations to alter the deference paid to the President during war and times of conflict and hostilities. "Civil liberties are often among the first casualties of war" (p.151), and the courts have largely approved actions sacrificing liberty during wartime. Cole introduces Michael Ratner, a lawyer with the Center for Constitutional Rights, who learned that prisoners housed at Guantanamo Bay

1. 135 S. Ct. 2584 (2015).

2. 554 U.S. 570 (2008).

Naval Base were deprived of hearings and legal representation. Ratner and other activist groups working to protect civil liberties and human rights faced an uphill battle, as the Supreme Court had held that foreign prisoners of war may not be heard in U.S. courts. However, these groups formed a strategy to focus on foreign audiences and governments, beseeching them to pressure the United States to abide by principles of basic human rights. They found support from retired military commanders, a very credible resource; they sought transparency, acquiring records under the Freedom of Information Act and publicizing them to draw scrutiny to the administration's controversial initiatives; and they resorted to a public shaming strategy that many human rights organizations use when formal remedies are not available. Human rights organizations also took their constitutional concerns to the federal courts, since delaying such a tactic (as same-sex marriage advocates and gun right advocates had done) is not feasible when individuals are facing detention. In 2004, the Supreme Court ruled that the Guantanamo prisoners had a right to sue in federal court to challenge the legality of their detentions.³ However, the threat of judicial oversight brought about reform. President Bush curtailed most of his highly aggressive counterterrorism initiatives.

¶19 All three groups chronicled in this book eventually succeeded in federal court because they had helped to transform popular consensus via advocacy outside the court, often triumphing without any express court involvement. All were dedicated to constitutional reform with lengthy periods of sustained and intensive advocacy, and each worked with civil society organizations that were focused on safeguarding, protecting, and upholding fundamental values.

¶20 Cole presents a fascinating perspective on constitutional law that is well supported with citations to documents and personal interviews, all written in an accessible, engaging, and clear style. Cole has made a strong case that individuals with such a desire can shape the law to their own ends. I highly recommend this first-rate work to law, general academic, and public libraries.

Donohue, Laura K. *The Future of Foreign Intelligence: Privacy and Surveillance in a Digital Age*. New York: Oxford University Press, 2016. 183p. \$24.95.

*Reviewed by Franklin L. Runge**

¶21 International spying seems like a good profession. Judging by the James Bond films, a spy's job description includes the extrajudicial killing of awful people, dressing sharply, falling in "love" with much younger individuals, and visiting exotic locations. Laura K. Donohue's new book, *The Future of Foreign Intelligence: Privacy and Surveillance in a Digital Age*, obliterates this archetype. She convincingly asserts that the United States of America's intelligence agencies repeatedly and brazenly violate the Constitution to spy on their own citizens.

¶22 If you play a role in collection development at an academic library (law or otherwise), you should add this monograph to your shelves. As a reader, I zipped

3. *Rasul v. Bush*, 542 U.S. 466 (2004).

* © Franklin L. Runge, 2017. Faculty Services Librarian, University of Kentucky College of Law, Lexington, Kentucky.

through some of the chapters, whereas I soldiered through others. My difficulties were not a reflection of Donohue's writing style. When discussing intelligence agencies, a thorough author is required to use a lot of acronyms, discuss bureaucrats at congressional hearings, and detail the timing of various off-the-record meetings. These portions of the book required me to slow down and reread some sections; however, Donohue's prose shone in her chapters on metadata, the origins of the Fourth Amendment, and general warrants.

¶23 National security, data collection, and privacy are the defining issues of our time, and Donohue makes an important contribution to the discussion. Throughout the book, her arguments are logical, thorough, and well sourced; additionally, Donohue's recommendations for reforming the foreign intelligence system are detailed and reasonable.

¶24 With respect to security and privacy, a citizen's relationship to the U.S. government is a pendulum in perpetual motion. This book opens with descriptions of the Federal Bureau of Investigation (FBI), Central Intelligence Agency (CIA), and National Security Agency (NSA) conducting massive intelligence operations against U.S. citizens between the 1950s and 1970s. When the malfeasance was brought to light, a reform movement was born, and a legal framework delineating domestic and foreign intelligence was patched together across the government's three branches. In 1972, the U.S. Supreme Court held that the surveillance of domestic groups required the government to obtain a warrant; notably, the surveillance of foreign powers and their agents was not addressed by the Court's opinion.⁴ After the September 11, 2001, attacks, the pendulum of privacy swung again, and the federal government prioritized massive foreign surveillance operations. Therein lies the rub. Donohue successfully parses the post-9/11 landscape to describe how foreign intelligence collection merged with criminal law principles, which allowed the FBI, CIA, and NSA backdoor access to massive domestic operations.

¶25 In her most inspiring chapters, Donohue describes the history and principles behind the Fourth Amendment and general warrants. In the colonial era, British officials could receive a general warrant without specifying who or where they were going to search, or providing evidence under oath about any potential crime. With this unchecked power, British officials entered the homes and businesses of colonists with impunity. This tyrannical exercise of power helped to foment the American Revolution. Two hundred and forty years later, in a sad twist, general warrants have returned as a common instrument for the U.S. government. To prevent against executive branch overreach, Congress created the Foreign Intelligence Surveillance Court (FISC) to ensure that an independent entity was reviewing surveillance decisions. In establishing her position on the modern-day general warrant, Donohue describes an order issued by FISC that allows for the collection of international Internet and telephone content. This decision was not based on suspicious wrongdoing or focused on a particular person or place, yet it effectively captures the communications of millions of U.S. citizens.

¶26 This book deftly lays out the United States' mercurial relationship to security and privacy. In the past few years, I have considered myself a centrist on this issue. I

4. *United States v. U.S. Dist. Ct. (Plamondon)*, 407 U.S. 297, 321–22 (1972).

found Edward Snowden's revelations to be critical for our society, but I found his worldview and recklessness troubling. I was not Pollyanna-ish with respect to our government's behavior, but I had faith that there are well-intentioned bureaucrats running the FBI, CIA, and NSA. Donohue's book has persuaded me that poor behavior has become the norm in our federal government. Any reader will be stunned by the number of unconstitutional actions taken by executive branch agencies.

Garton Ash, Timothy. *Free Speech: Ten Principles for a Connected World*. New Haven, Conn.: Yale University Press, 2016. 491p. \$30.

*Reviewed by Margaret Butler**

¶27 Timothy Garton Ash advocates for the universality of free speech in his recent project, *Free Speech: Ten Principles for a Connected World*. I recommend addition of this title to the academic library collection, as well as to the collection of any firm library in which there is either general interest in free speech or litigation specifically in that area. Garton Ash's project, which has a goal of achieving consensus regarding free speech principles across the cosmopolis (the connected and networked world in which we live), is grounded in both national and international law. Although densely written and rife with so many examples that the message may get lost, those examples and issues are often timely. Such examples include the necessity for trigger warnings on college campuses, editorial standards and the application of community standards on Facebook, and the degree of protection provided by hate-speech legislation. The book includes hundreds of end-notes as well as an index.

¶28 Written in two parts, the book first describes the international commitment to free speech, the networked world in which we live, and the resulting ways in which speech, such as "a sleazy little video posted on YouTube by a convicted fraudster in Southern California" (p.70), has echoing effects around the world. Functionally, the first part lays out Garton Ash's position that "we should limit free speech as little as possible by law and the executive action of governments or corporations, but do correspondingly more to develop shared norms and practices that enable us to make best use of this essential freedom" (p.81). The thought Garton Ash put into the first section may be lost on readers already convinced of the importance of free speech, though it does not hurt to read the analysis of the interplay between "international bodies, nation states, private powers and electronically enabled networks of individuals" (*id.*) or his efforts to capture the complexity of free speech as applied in a variety of countries and traditions.

¶29 The principles laid out in the second part of the book largely explore ways in which speech should be free. In his final challenge to readers, Garton Ash posits alternate paths by which the principles may be adopted. He writes that "[a] minimal consensus would consist in endorsing the first two principles" (p.379). Those principles are that "[f]reedom of expression is not merely one among many freedoms. It is the one upon which all others depend" (p.119), and that "we do not

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ourselves make threats of violence” or “accept violent intimidation” (p.129). This part, which addresses hot-button issues including knowledge diversity, religion, privacy, and secrecy, is thought provoking. At several points, Garton Ash advocates as an alternative to legislation or regulation of speech that individuals develop a thicker skin and practice the norms of civility.

¶30 An interesting companion to the print book is the website Free Speech Debate, a research project at Oxford University.⁵ The site includes an essay by Garton Ash corresponding with each of the principles included in the book. The purpose of the site is to invite participation and discussion in an effort to crowdsource free speech principles that will be universally recognized. Site content includes essays, videos, maps, and other materials, much of it available in thirteen languages. The ability to translate comments to any of the thirteen languages using the site’s tools is quite helpful for increasing international dialogue regarding free speech.

¶31 There may be elements of Garton Ash’s suggestions that practically work in opposition to each other. For example, he notes “the danger of people going off into their own little echo chambers, their ‘Daily Me,’ where they only encounter opinions that reinforce their own prejudices, with facts—or factoids—to match” (p.197). The echo chamber is in part perpetuated by the collection and maintenance of troves of personal data by the likes of Google, Facebook, and Twitter, and the difficulty of fulfilling the right to be forgotten or being “zuckered” (named after Mark Zuckerberg, the word means accidentally sharing on the web more than intended or understood) (p.310). In the context of the lack of privacy, Garton Ash compliments those who “adapt their forms of self-expression in ingenious ways” (p.313), while in the context of diversity, he notes that “[o]nline anonymity further encourages the expression of naked prejudice and faecal rudeness” (p.229). These internal conflicts reflect the complexity of the discussion and encourage the reader to engage critically with the work.

¶32 Garton Ash has contributed to the ongoing dialogue about the role of free speech and how it works in our society. His book has been well received and likely will be cited in scholarship.

Gizzi, Michael C., and R. Craig Curtis. *The Fourth Amendment in Flux: The Roberts Court, Crime Control, and Digital Privacy*. Lawrence: University Press of Kansas, 2016. 188p. \$39.95.

*Reviewed by Michelle Cosby**

¶33 *The Fourth Amendment in Flux: The Roberts Court, Crime Control, and Digital Privacy* is a quick read that discusses the Roberts Court’s approach to Fourth Amendment jurisprudence. Part 1 begins with illustrating the types of legal issues that have called for the Roberts Court’s departure from previous Fourth Amendment jurisprudence. Changes in technology have created digital privacy issues, which are still fairly new issues for the Court to handle. Similarly, technological changes have also created questions about what makes a search or

5. FREE SPEECH DEBATE, <http://freespeechdebate.com/en> (last visited Sept. 14, 2016).

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seizure unreasonable as citizens and police both rely heavily on technology. These changes have led the Roberts Court to make decisions that are departures from well-established law.

¶34 Michael C. Gizzi and R. Craig Curtis suggest that how the Supreme Court decides to treat Fourth Amendment cases can change over time, depending on whether the current social climate favors due process or crime control. For example, the book covers the Warren Court's rulings in the 1960s and explains that these rulings are pro-defendant. In contrast, the Burger Court strongly favored crime control, possibly due to the political climate created by President Nixon. The Burger Court began to make changes to the Warren Court's rulings, expanding the powers of the police by creating exceptions to warrant requirements and changing the criteria for reasonable expectations of privacy. The jurisprudence favoring crime control continued under the Rehnquist Court as the War on Drugs became a political focal point, though some decisions of the Rehnquist Court balanced the rights of individuals with the needs of police.

¶35 Part 2 provides greater detail about the early expectations for the Roberts Court jurisprudence, how the makeup of the Court unexpectedly changed, and how Justice Antonin Scalia began to change his voting patterns on Fourth Amendment issues. The Roberts Court's Fourth Amendment jurisprudence really came to light with its decision in *Arizona v. Gant*⁶ in 2009. *Arizona v. Gant* was a departure from *New York v. Belton*,⁷ which had allowed police officers to search the vehicles of individuals under arrest. The book also goes into detail about several subsequent decisions that continued the trend of favoring the rights of the individual over the powers of the police. This includes *United States v. Jones*,⁸ which changed the landscape for the use of warrantless GPS surveillance by the police. This section also continues the discussion from part 1 on how the Roberts Court has treated digital privacy concerns when there is a search incident to arrest of the individual.

¶36 Despite these changes, the Roberts Court continues the trend of favoring crime control, including decisions that expand police powers, such as *Herring v. United States*,⁹ which expanded the good faith exception of the exclusionary rule created in *Mapp v. Ohio*¹⁰ in the early 1960s. The authors conclude that "while much is still the same in terms of how search and seizure issues are decided, the Court today seems to be more open to reining in the excesses of the crime control model and, for some issues, willing to advance privacy interests" (p.158).

¶37 In general, *The Fourth Amendment in Flux* is an interesting and informative read. It is useful to those writing a research paper on Fourth Amendment issues or the Roberts Court. This book would be appropriate for a law library that serves undergraduate or graduate students in addition to patrons interested in political science, criminal justice, Supreme Court jurisprudence, and Fourth Amendment issues.

6. 556 U.S. 332 (2009).

7. 453 U.S. 454 (1981).

8. 565 U.S. 400 (2012).

9. 555 U.S. 135 (2009).

10. 367 U.S. 643 (1961).

Graetz, Michael J., and Linda Greenhouse. *The Burger Court and the Rise of the Judicial Right*. New York: Simon & Schuster, 2016. 468p. \$30.

*Reviewed by Stephen Parks**

¶38 Much has been written about the Warren Court and its expansion of civil rights, civil liberties, and judicial power. Much has also been written about the Rehnquist Court and its preference for federalism and its slowing down of many of the expansions the Warren Court created. The Burger Court, sandwiched between the two, has not received as much scholarly examination. In fact, many view the Burger Court as being one where nothing much happened at all. It was a Court without two diametrically opposed wings with a single swing justice, as we have grown accustomed to today. Rather, at all times between two to four justices formed the Court's center. With no dominant ideological wing, it is conceivable that nothing definitive could be decided by the Court.

¶39 This view of a do-nothing Court, according to Michael J. Graetz and Linda Greenhouse, authors of *The Burger Court and the Rise of the Judicial Right*, is incorrect. Dividing their book into five sections—crime, race, social transformation, business, and the presidency—the authors methodically present the case that the Burger Court, in reaching its most lasting decisions, created the legal foundation for the conservative Rehnquist and subsequent Roberts Court.

¶40 Part 1 focuses on the issue of crime. Concentrating on the death penalty, the authors describe how the Burger Court, having first halted all executions in the country, began to hand down decisions defining how and when the death penalty may be administered, virtually leaving the issue to the states' discretion. Also, while not directly overruling *Miranda* and other pro-defendant Warren Court precedents, the Burger Court began to attach conditions and limitations to the exclusionary rule and habeas petitions, for example, making them essentially useless for defendants.

¶41 Part 2 focuses on race. It became the Burger Court's responsibility to determine how to implement *Brown*, as very little desegregation had taken place since the 1954 landmark ruling.¹¹ However, the Court passed up many opportunities to further *Brown's* objectives. It restricted busing to the school district line and held that universities have a right to a diverse student body rather than that minority applicants have a right to admission. In so doing the Burger Court ensured that debates surrounding these topics would continue.

¶42 Part 3 focuses on social transformation, particularly the issues of abortion and sexual orientation. In deciding *Roe*,¹² the notes and memos of the Justices and their clerks indicate that this momentous decision was, at its core, a decision with the doctor's role in mind rather than that of the woman. In subsequent decisions, the Court seemed to retreat, placing restrictions on a woman's access to an abortion, a retreat that continues to this day as many states attempt further limits. The authors do a great job of showing how the Court did not foresee how *Roe* would become the lightning rod that it has. In the area of gay rights, the Burger Court narrowly rejected a constitutional right to privacy for same-sex relationships. Justice Powell's notes

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11. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

12. *Roe v. Wade*, 410 U.S. 113 (1973).

from that decision indicate his vote changed on the issue at the urging of the Chief Justice, who viewed a finding of a constitutional right to gay sexual relationships to be the most far-reaching issue of his three decades on the bench. Justice Powell, after he had left the Court, noted that he most likely made a mistake by switching his vote.

¶43 Part 4 focuses on business. The authors discuss the Burger Court's extension of speech rights to corporations in allowing product advertisement and the expenditure of corporate money in the political realm. The landmark and controversial decision of the Roberts Court in *Citizens United*¹³ traces back to Burger Court decisions. In fact, the authors note that if citizens had been more familiar with their Supreme Court and its decisions, the level of shock and outrage over the *Citizens United* decision would have been dampened, as the Burger Court essentially put forth decades ago the premise that corporations have First Amendment rights.

¶44 Part 5 focuses on the presidency. President Nixon famously set out to remake the Court after the liberalism of the Warren Court. He was able to put his own stamp on the Court as he appointed four members of the Burger Court, including the Chief Justice. Yet the Court had to face the President himself in deciding whether he would be required to turn over certain Oval Office recordings. The Court unanimously decided that he must.¹⁴ The President ultimately resigned not long after the decision. While playing this bit part in the resignation of the President, the Burger Court actually strengthened the presidency. The Court found an absolute immunity granted to the President from damages for liability predicated on official acts, and it also found a qualified immunity for presidential aides.

¶45 The authors include an informative appendix of short biographies of all Justices serving on the Burger Court. Even more informative are the notes on source materials. Using a multitude of primary source materials, including the papers of Justices Lewis Powell, Harry Blackmun, and Potter Stewart, the authors pull back the proverbial curtain that surrounds the perceived secrecy of the Court's inner workings. The wealth of materials is a treasure trove for those fascinated by the Court. This title deserves to be placed on the bookshelf alongside other scholarly books written on the Court, its Justices, and its work.

Hasen, Richard L. *Plutocrats United: Campaign Money, the Supreme Court, and the Distortion of American Elections*. New Haven, Conn.: Yale University Press, 2016. 241p. \$32.50.

*Reviewed by Paul J. Gatz**

¶46 One of the most valuable skills that law schools can teach students is how to reside comfortably in the grey areas—those regions of thought where competing concepts are continually held in tension without ever resolving into a clear outcome. The law is replete with these types of intellectual challenges, and campaign finance law is no exception, weighing in the balance two of the highest values of our system of laws: popular democracy and freedom of expression. Richard L. Hasen's new book highlights this tension and navigates through these two poles to arrive at a workable proposal that seeks to preserve the values of both.

13. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010).

14. *United States v. Nixon*, 418 U.S. 683 (1974).

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¶47 The First Amendment of the U.S. Constitution protects the freedom of expression by forbidding Congress from making laws “abridging the freedom of speech.”¹⁵ As in many other areas of constitutional law, the U.S. Supreme Court decides cases involving potential violations of the First Amendment by examining the challenged law under varying degrees of scrutiny that apply balancing tests weighing the government’s interest against the protection of freedom of speech. In *Buckley v. Valeo*,¹⁶ and in many cases since, the Supreme Court has considered only one possible government interest that might outweigh free speech rights: corruption or the appearance thereof.

¶48 Notably, the word “corruption” is not found in the title of this book, but “plutocrat” is front and center. This is because, as Hasen argues, the central problem of money in politics is not corruption, but rather that the amount of money flowing into political campaigns creates “a system in which economic inequalities, inevitable in a free market economy, are transformed into political inequalities that affect both electoral and legislative outcomes” (p.5). In support of this diagnosis, Hasen relies on empirical studies of the effect of campaign money on electoral outcomes, legislative influence, and public confidence in elected officials. This distortion of the constitutional and democratic principle of “one person, one vote” creates the conditions for a form of government that resembles more the rule of the wealthy than the rule of the people.

¶49 Hasen has written a book that prepares the intellectual groundwork that some future U.S. Supreme Court may draw on to create a new jurisprudence that would uphold the constitutionality of effective campaign finance laws on the basis of political equality as a compelling government interest. Time and again, Justices have defined corruption so narrowly that the concept fails to justify nearly any type of campaign finance regulation. Hasen’s conception of political equality is drawn from precedents in *Harper v. Virginia State Board of Elections*¹⁷ and *Reynolds v. Sims*,¹⁸ right-to-vote cases involving the poll tax and malapportioned legislative districts. In those cases, Hasen recognizes an implicit political theory that emphasizes political equality in the form of equality of inputs, which he defines as “a system in which each voter has roughly equal political power in the electoral or policymaking process” (p.73). Since this is precisely the type of system harmed by excessive money in politics, Hasen believes that this implicit recognition of a government interest in political equality must be made explicit to justify campaign finance regulation.

¶50 The type of regulation Hasen has in mind is a mixture of vouchers that give all voters the opportunity to provide monetary support to the candidates, parties, or interest groups of their choice, and contribution and spending limits that prevent the wealthiest citizens from too greatly influencing electoral and political outcomes. But Hasen is careful to consider possible objections to his proposal and its supporting jurisprudence. He provides chapters on a variety of First Amendment issues that adequate campaign finance legislation and jurisprudence would need to address: grappling with charges of censorship, accounting for media exceptions and their

15. U.S. CONST. amend. I.

16. 424 U.S. 1 (1976).

17. 383 U.S. 663 (1966).

18. 377 U.S. 533 (1964).

application to new media, and anticipating unintended consequences such as incumbent entrenchment.

¶51 Hasen ends by acknowledging that it will indeed be a future Supreme Court, and not the one we currently have, that will change the constitutional jurisprudence of campaign finance. Hasen rejects as wholly unrealistic the idea that a constitutional amendment to “repeal” *Citizens United* could be approved by the U.S. Congress and three-quarters of the state legislatures. Likewise, he does not expect Justice Kennedy, author of the majority opinion in *Citizens United v. Federal Election Commission*,¹⁹ to change his mind on how to conduct First Amendment analysis. The only realistic change that Hasen foresees is the election of a Democratic President and a Democratic majority in the U.S. Senate to appoint and confirm a Justice who will vote with at least four of his or her colleagues to uphold the sort of campaign finance law that he proposes.

¶52 Hasen’s prose is lively and colorfully illustrated by the background facts of major Supreme Court campaign finance cases and clever thought experiments like the “voting lottery.” The potential audience for this book is wide and diverse. In its pages the educated nonlawyer may look to gain an understanding of the law and issues behind the public debate on campaign finance. The law student will discover an excellent introduction to Supreme Court jurisprudence on campaign finance as well as a worthy exemplar of how to think about important issues of law and public policy. And of course, the professoriate will find more than a few new ideas to ponder and critique.

Jones, Meg Leta. *Ctrl + Z: The Right to Be Forgotten*. New York: New York University Press, 2016. 269p. \$29.95.

*Reviewed by Latia L. Ward**

¶53 In an Appalachian folktale, a forgetful boy named Plug is admonished by his mother not to forget the soap. To help himself remember as he is on the way to the store, he repeats the phrase, “Soap! Soap! Don’t forget the soap!” This would not be such a problem except that he meets people along the way who make untoward statements, which he repeats to the next people who cross his path who are then offended by these out-of-context statements.²⁰ Like Plug, the Internet repeats statements or provides access to images and information that may be out of context, out of date, or irrelevant. Consequently, some people whose information is on the Internet want to be forgotten.

¶54 In *Ctrl + Z: The Right to Be Forgotten*, Meg Leta Jones, a professor at Georgetown University, describes the major differences in how the U.S. and E.U. legal systems treat privacy and personal information. In addition to analyzing the law regarding the right to be forgotten in the United States and European Union, Jones gives an overview of the movements to end the posting of revenge porn and

19. 558 U.S. 310 (2010).

* © Latia L. Ward, 2017. Reference Librarian and Assistant Professor, Indiana Tech Law School, Fort Wayne, Indiana.

20. TOM BIRDSEY, SOAP! SOAP! DON’T FORGET THE SOAP! AN APPALACHIAN FOLKTALE (1993).

mugshots online. Readers who enjoyed *Delete: The Virtue of Forgetting in the Digital Age*²¹ will also enjoy *Ctrl + Z*.

¶55 At the heart of Jones's analysis is the idea that both the United States and the European Union face the problem of outdated, untrue, and no longer relevant information being accessible on the Internet. Due to the United States' and European Union's different legal traditions, they must find a solution to this problem in different ways. However, Jones concludes that the solutions of the two jurisdictions must be compatible through "technical, social, and legal interoperability" (p.23) for the right to be forgotten to thrive.

¶56 The legal right to be forgotten is well established in Europe. Nations such as Germany, France, and Italy place a major emphasis on personality rights and have recognized the right to be forgotten in a sophisticated way for years. In addition, some countries in Europe have long recognized the right to be forgotten in the context of the rehabilitation of a person who has been convicted of a crime. For example, in Switzerland, once a person has served his or her sentence or been rehabilitated, other people are prohibited by law from associating the person's name with the crime. A similar practice exists in Italy, which recognizes the right to personal identity. Jones recounts the experience of a person who was pardoned after being convicted of murder and successfully sued a newspaper after the newspaper mentioned the person's name in connection with the murder.

¶57 In addition to noting that the U.S. Constitution does not recognize a right to information privacy, Jones asserts that the First Amendment is a major barrier to enacting a right to be forgotten law that is similar in scope to the E.U. Data Protection Directive. After analyzing the importance of the First Amendment, Jones suggests ways in which the right to be forgotten can be implemented in the United States. Enacting a law that prohibits potential employers from considering information regarding a job candidate that is older than a certain date is one option Jones suggests will integrate the right to be forgotten into U.S. legal culture. However, Jones does not provide a strategy for how such a law would be enforced. If illicit information about a job candidate is easily accessible on the Internet, and most sophisticated potential employers who access this information and make a hiring decision based on it would provide a pretextual and hard-to-disprove reason for the hiring decision, the law may not be amenable to enforcement.

¶58 Jones solely focuses on the right to be forgotten in the United States and the European Union. However, this legal concept is gaining ground around the world, and I would have liked for Jones to have expanded her research to nations in Africa and Asia. Legal scholars have written about data protection in China²² and Nigeria,²³ and in December 2015 a court in Japan recognized the right to be forgotten for the first time.²⁴

21. VIKTOR MAYER-SCHÖNBERGER, *DELETE: THE VIRTUE OF FORGETTING IN THE DIGITAL AGE* (2009).

22. Mei Ning Yan, *Protecting the Right to Be Forgotten: Is Mainland China Ready?*, 1 EUR. DATA PROT. L. REV. 190 (2015).

23. Lukman Adebisi Abdulrauf, *Do We Need to Bother About Protecting Our Personal Data? Reflections on Neglecting Data Protection in Nigeria*, 5 YONSEI L.J. 163 (2014).

24. *Japanese Court Recognizes "Right to Be Forgotten" in Suit Against Google*, JAPAN TIMES (Feb. 27, 2016), <http://www.japantimes.co.jp/news/2016/02/27/national/crime-legal/japanese-court-recognizes-right-to-be-forgotten-in-suit-against-google/#.V1h5nPkrLct> [<https://perma.cc/D4NX-C2RQ>].

¶59 As the Appalachian folktale suggests, remembering in some contexts (what to buy at the store) is beneficial but in other contexts (untoward statements that people have made) is detrimental. In *Ctrl + Z*, Jones analyzes U.S. and E.U. laws regarding the right to be forgotten that no academic law library should miss.

McGinley, Ann C. *Masculinity at Work: Employment Discrimination Through a Different Lens*. New York: New York University Press, 2016. 255p. \$49.

*Reviewed by James G. Durham**

¶60 Ann C. McGinley is a law professor at the University of Nevada, Las Vegas, where she teaches employment discrimination courses. Her latest book, *Masculinity at Work: Employment Discrimination Through a Different Lens*, develops and applies multidimensional masculinities theory through an in-depth examination of Title VII of the Civil Rights Act of 1964.

¶61 McGinley describes multidimensional masculinities theory as a

critical theory of law that “assumes that law distributes power by relying upon assumptions about human behavior that reproduce preexisting social relations. Law and culture are co-constitutive: cultural norms influence law and legal norms simultaneously influence culture”. . . . Multidimensional masculinities theory differs from masculinities studies in that it takes a multidimensional approach in a legal environment: it considers not only gender but also other identities, as they are performed in context” (pp.215–16).

When masculinities theory is used as a methodology, it helps expose hidden forms of bias and discrimination by shifting the lens through which workplace situations are viewed. For example, when male-to-male sexual harassment is alleged, the situation might alternatively be viewed as male-to-female sexual harassment to expose underlying sexist assumptions about the situation and the persons involved. Multidimensional masculinities theory examines the intersection of race, class, gender, and sexual orientation to give voice to historically silenced populations facing workplace discrimination.

¶62 McGinley provides a rigorous and highly detailed examination of Title VII through the lens of masculinities theory. She builds a foundation for her arguments by presenting a careful history of Title VII legislation and litigation. She analyzes many of the famous cases in the field of workplace discrimination, such as *Price Waterhouse v. Hopkins*²⁵ and *Oncale v. Sundowner Offshore Services*,²⁶ but she also covers more recent and less widely discussed scenarios. McGinley then provides an orderly and deeply insightful dissection of hostile work environments, reasonable person standards, disparate treatment, and disparate impact claims. The discussion is a rich academic brew of law, sociology, psychology, and practical applications. She lays detailed roadmaps for litigators who are searching for ways to explain overlooked and sometime unconscious sources of bias that negatively impact sexual, racial, and social diversity in the workplace. McGinley concludes

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25. 490 U.S. 228 (1989) (holding that Title VII prohibits employment decisions in which gender was a factor, even if other factors were also considered).

26. 523 U.S. 75 (1998) (holding that same-sex sexual harassment is actionable under Title VII).

with a concise chapter on the role of expert testimony in educating judges and juries when applying multidimensional masculinities theory in the courtroom.

¶63 *Masculinity at Work* is geared toward an advanced audience. Legal and gender studies professors and students, attorneys, and activists would benefit greatly from the in-depth examination of Title VII claims. Persons unfamiliar with Title VII may wish to consult an overview of the topic before diving into this detailed and engaging treatise.

¶64 Scholars and librarians will be pleased by the solid organization of the material. The book begins with a table of contents, preface, acknowledgments, and introduction. Citation information is provided throughout the text and in a small collection of endnotes. A significant collection of references follows the endnotes and provides a solid base for further investigation. The book ends with an index and a short biographical clip about the author. This book is recommended for academic libraries, law firms with employment law sections, and individuals who advocate for equity in the workplace.

Reed, Thomas J. *Avenging Lincoln's Death: The Trial of John Wilkes Booth's Accomplices*. Madison, N.J.: Farleigh Dickinson University Press, 2015. 215p. \$75.

*Reviewed by Christine Timko**

¶65 This book resulted from Thomas J. Reed's assistance in an effort to rectify the record of Dr. Samuel Mudd. The effort eventually culminated in a course on the Lincoln assassination for the Osher Institute of the University of Delaware. Reed's students encouraged him to put the course materials into book form.

¶66 Reed discusses in detail the conspiracies, the Hunter Commission, the lawyers, the conduct of the trial, and the cases against Mary Surratt and Samuel Mudd. It ends with why Reed thinks the trial was unfair and unconstitutional. He tells the story of this trial in an interesting and informative way that makes the events come alive for the reader. Along with a sense of how people reacted during this time, the reader gets a sense of how physically close the war was to the District of Columbia with Virginia, the capital of the enemy, just across the Potomac River.

¶67 The book examines transcripts and evidence relating to the trial of the accomplices to argue that the military commission trial was unfair and unconstitutional. Reed alleges that if the accomplices, especially Surratt and Mudd, had been tried in a civil court instead of by a military commission, the outcome would have been different. Four of the eight accused accomplices were hanged, and four went to prison. Surratt was hanged, and Mudd went to prison.

¶68 One of the most fascinating issues discussed in the book is whether the accomplices were guilty of conspiring to assassinate Lincoln or to kidnap him. The facts seem to indicate that all of the accomplices knew of the plot to kidnap Lincoln, but it is unclear whether they knew of Booth's intention to kill the President. Evidence at the time suggested two distinct conspiracies: the first was to kidnap President Lincoln and use him as a bargaining chip for the release of Confederate prisoners of war, and the second was to murder the President, the Vice President, and the Secretary of State to cripple the government. The crucial questions are whether

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all the accomplices knew about the plot to assassinate and whether they conspired to achieve the assassination.

¶69 It is clear from the facts assembled by Reed that Booth assassinated President Lincoln only after the kidnapping conspiracy was terminated when the attempt failed to come to fruition. While everyone was in favor of kidnapping, the evidence shows that five of the conspirators balked at assassination and probably would not have agreed to participate had they known that Booth was contemplating it.

¶70 The military commission chose to view the two conspiracies as a single conspiracy to assassinate President Lincoln. This was used to legitimize the military commission to try the defendants. As Reed points out, this trial has held the interest of lay historians and scholars since 1865. As recently as 1993, the legality and the legal implications were reexamined when University of Richmond law professor John P. Jones held a mock appellate argument challenging Mudd's conviction on constitutional grounds.

¶71 This book would be an excellent starting point for anyone who wanted to research this time period and the assassination of President Lincoln, as multiple sources are well documented in footnotes. The book includes a bibliography and index. This book would be a great choice for any Lincoln collection and any library that has an interest in collecting Civil War materials. It is also timely, as the choice between military commissions and civilian courts is still under discussion.

Rose, Mark. *Authors in Court: Scenes from the Theater of Copyright*. Cambridge, Mass.: Harvard University Press, 2016. 219p. \$29.95.

*Reviewed by Mary Hemmings**

¶72 Copyright does not prevent the communication of ideas or stories or thoughts. It does attempt to protect the copying of individualized expression or, as Blackstone put it, the "same conceptions, clothed in the same words."²⁷ Individualized expression is essentially the reflection of the personality of the author. In *Authors in Court: Scenes from the Theater of Copyright*, Mark Rose does not provide a dry treatise on the nature of authorship, but rather he provides six case studies of authors performing in the theater of the courts.

¶73 Rose is a research professor of English at the University of California, Santa Barbara. He has taught not only English literature but also numerous courses on copyright and society. The authors he looks at are both English and American, and the examples span from 1741 to 1992. As early as 1703, authors, such as Daniel Defoe, were not normally present in courtrooms. After the Statute of Anne in 1710, authors assumed a more active role in the adjudication of ownership.

¶74 The personality of the author shaped the narrative in each of these examples. A 1741 case involving letters between Alexander Pope and Jonathan Swift established the principle that copyright in correspondence belongs to the author. As part of the drama, Alexander Pope portrayed himself as a gentleman poet beleaguered by commercial greed.

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27. 2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *406.

¶75 In 1853, Harriet Beecher Stowe, author of *Uncle Tom's Cabin*, presented herself as a principled yet genteel wife and daughter of clergymen. Stowe was not a supporter of the 1850 Fugitive Slave Act. The judge in that case was, and ruled against Stowe's opposition to a German translation of her work.

¶76 In 1884, Napoleon Sarony was an eccentric photographer often seen strolling down Broadway in a fez and mismatched military clothes. His subjects included Sarah Bernhardt and Lillie Langtry. At issue was his photographic rendition of the equally outrageous Oscar Wilde.

¶77 A Broadway hit, *Abie's Irish Rose*, became a Universal Pictures movie in 1926 (*The Cohens and Kellys*) without the benefit of copyright license by the playwright, Anne Nichols. The lawyer representing Universal asserted that "Hollywood rarely steals; it imitates" (p.91). The lawyer representing Nichols drew on the power of Nichols's feminine intuitive genius. The case was known for Justice Learned Hand's pragmatic "abstraction" test (p.109).

¶78 J.D. Salinger's reputation as a recluse was an influential factor in a noncommercial dispute with Random House in 1987. Salinger's refusal to permit his unpublished letters from being quoted in an unauthorized biography had less to do with copyright and everything to do with his right to privacy. As Alexander Pope had been characterized as the gentleman poet, Salinger's case captured popular attention because of his intense rejection of publicity.

¶79 The limits of postmodern artistic interpretation were tested when a photograph of eight puppies was incorporated without permission into another artist's sculpture. Jeff Koons had asserted his status as genius, much like Sarony had a century earlier. Koons's factory-like studio did not convince the judge that three-dimensional art could appropriate the work of others. It also underscored the inherent role of the judge as artistic critic in the process of adjudicating rights and assigning commercial value.

¶80 The cases that Rose writes about exemplify unique tensions between how authors regard themselves and their creations as economic commodities. Besides being informative and scholarly, Rose's book is also highly entertaining.

Temperman, Jeroen. *Religious Hatred and International Law: The Prohibition of Incitement to Violence or Discrimination*. Cambridge, Eng.: Cambridge University Press, 2015. 394p. \$125.

*Reviewed by Paul F. McKenna**

¶81 This book is part of the Cambridge Studies in International and Comparative Law series. It offers a close reading of the U.N. International Covenant on Civil and Political Rights (ICCPR), especially Article 20(2), which prohibits the advocacy of religious hatred through incitement to discrimination or violence. Jeroen Temperman is a public international law professor at Erasmus University Rotterdam. This valuable academic contribution will be considered from the perspective of its central themes, its thoroughness and organization, and some of its noteworthy specific features.

* © Paul F. McKenna, 2017. Adjunct Professor, School of Information Management, Dalhousie University, Halifax, Nova Scotia, Canada.

¶82 Temperman begins with an analysis of the evolution of the ICCPR. This archeology includes the resurfacing of, and elaboration on, the *travaux préparatoire* that contributed to the international incitement provisions of the ICCPR. Here, Temperman's work is a model of sound scholarship and contributes to a solid understanding of the thinking behind, and the conceptual ground beneath, these provisions. It should be recalled that the Holocaust painfully informed earlier international efforts to deal with the ultimate consequences of hate speech. Temperman notes the delicate tension between freedom of expression and any obligation for states to grapple with extreme speech, especially that which incites national, racial, or religious hatred.

¶83 However, preventing the crimes of National Socialism (and other state-sponsored hate campaigns) remains humanity's challenge. Temperman mentions events in Yugoslavia involving ethnic cleansing as a cue for constant vigilance. Even now the national political arena in the United States is not immune to extreme speech with respect to matters of national, racial, and religious hatred. Temperman addresses the need to move beyond persistent notions around the defamation of religions that may produce uncomfortable and unseemly speech while still addressing any and all forms of extreme speech that may promote acts of violence against individuals or groups on the basis of religion. Blasphemy is not a category of hate speech that should require state sanctions, and therefore clear definitions and conceptualizations are critically important for bringing international (and national) attention to areas where sanctions are actually required.

¶84 Temperman provides an international perspective (with legal developments current up to January 1, 2015) on topical issues that have come before the U.N. Human Rights Committee, the U.N. Committee on the Elimination of Racial Discrimination, and the European Court of Human Rights. He delves into comparative national law in ways that are instructive and relevant. There is extensive consideration of the legislative obligations that pertain to the offence of advocacy of religious hatred that constitutes incitement, and details relevant to the triangle of incitement (the inciter, the audience, and the target group) are offered.

¶85 Temperman does a masterful job of blending textual analysis, legal scholarship, and the workings of the U.N. Human Rights Committee to support definitional foundations. This work is presented with thoroughness and clarity. We learn about a range of cases that have considered a key component of the ICCPR (Article 20(2) dealing with incitement to violence), and Temperman offers a synopsis of these cases in their international (or national) context, allowing the reader to better understand the considerations, complexities, and complications that surround issues of incitement. Temperman also looks at the aggravating factors and sanctions that relate to organized hatred and discusses the expectation that states will view incitement to religious hatred as a criminal offense. The book includes individual tables of international law, international cases, national law, and national cases to consolidate his research.

¶86 Beginning with the foreword by the U.N. special rapporteur on freedom of religion or belief, there are several references to speech acts throughout this book. Common, nonlegal English usage tends to differentiate between words and actions. We learn that actions "speak" more loudly than words. People say that "talk is

cheap,” implying that what one says is of less importance or impact than what one actually does. Yet, knowing that extreme speech can actually move an audience to action is conceptually pivotal for the effective application of the ICCPR. The outlawing of certain categories of hate speech, especially when delivered by certain types of individuals in particularly incendiary contexts, is essential for the protection of those who may be subjected to religious violence. It is extremely useful that Temperman highlights the test proposed by Susan Benesch for determining a call to violence in any given speech act.²⁸

¶87 Finally, Temperman’s contribution to the literature on religious hatred and international law is written with great care for legal language. It covers the subject matter with skill and patience. And while the contents often deal with matters relating to racial and national hatred rather than religious hatred per se, it must be clear to anyone following these issues, and the cases that erupt across the globe, that all three aspects often coalesce in a monstrous hybrid of hatred that requires a firm state response. Accordingly, this book is highly recommended for law library collections that have interests in international law, particularly in the areas of religion and human rights.

Urofsky, Melvin I. *Dissent and the Supreme Court: Its Role in the Court’s History and the Nation’s Constitutional Dialogue*. New York: Pantheon Books, 2015. 528p. \$35.

*Reviewed by Gilda Chiu**

¶88 In *Dissent and the Supreme Court: Its Role in the Court’s History and the Nation’s Constitutional Dialogue*, Melvin I. Urofsky examines the role dissent has played within the U.S. Supreme Court and how it has influenced the constitutional dialogue between the Court, other branches of government, and the American people. Urofsky surveys the Supreme Court’s entire history of majority opinions, concurrences, and dissents, and presents readers with the most prominent and notable ones that have shaped the debate on public policy and the rights protected by the Constitution.

¶89 The book consists of twelve chapters, with some *mise-en-scène* chapters that focus on particular Justices and dissents. Most of the chapters, with the exception of the first and last couple, follow a chronological order of the Court’s history, from its creation to the present-day Roberts Court.

¶90 The first chapter gives a general summary of the history of dissents and their role in the constitutional dialogue that occurs in and outside the Court. In addition, Urofsky presents both sides of the argument over the validity of a dissent. Are dissents really necessary? Could they be harmful given how they question the reasoning of the majority opinion? Or perhaps they could be a boon for judges who can use them to create stronger and more thorough opinions. If not that, they might be used by later generations of jurists who see the arguments in the dissents as correct. Urofsky clearly agrees with the latter, for which he makes the case in subsequent chapters.

28. Susan Benesch, *Vile Crime or Inalienable Right: Defining Incitement to Genocide*, 48 VA. J. INT’L L. 485, 519 (2008).

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¶91 Chapters 2 through 9 follow a similar pattern. In each Urofsky weaves history and important opinions, concurrences, and dissents to create a narrative that illustrates how Justices use their jurisprudence, views of the Constitution, and knowledge of current public debate to form their judgments. Chapter 2 describes the beginnings of the Court and its transition from seriatim opinions by each Justice to unified opinions of the Court. Chapter 3 discusses the Taney Court, the reemergence of dissents, and the *Dred Scott*²⁹ decision and dissents and their repercussions. Chapter 4 examines the *Slaughterhouse Cases*³⁰ and *Munn*,³¹ particularly highlighting Justice Field and his influential dissent in the *Slaughterhouse Cases*. Chapters 5 through 9 focus on specific Justices like Harlan and Brandeis, and the landmark cases that they dissented from or concurred in that shaped the public and constitutional dialogue of the time.

¶92 Urofsky in later chapters shifts to emphasize dissent and how constitutional dialogue has progressed in recent times. Chapter 10 provides an overview of the structure and jurisdiction of lower federal and state courts, how the decisions of each affect the other, and how dissents work in both. It also explains how dissents work in foreign courts and tribunals, if they even allow them, and how dissents are viewed overseas. Chapter 11 analyzes the continuing constitutional issues that are still being discussed and decided by the Court and by the public. Some of these include the right to privacy, *Roe v. Wade*,³² affirmative action, and the protection of individual rights. Chapter 12 offers Urofsky's assessment of all that is covered in the book and his conclusions on the power dissents have had in framing and, at times, directing the constitutional, political, and public dialogue, not only during their time of deliverance but decades later.

¶93 *Dissent and the Supreme Court* would be an excellent addition to any law school library collection, especially in the area of constitutional law. Urofsky excels in presenting dissents in relation to the Justices who issued them and the state of public affairs at the time of their creation. He gives readers a clear and detailed understanding of each Justice's jurisprudence and consideration of current events, and how these factors influenced their decisions and dissents. Arguably the strongest accomplishment of this book is how Urofsky effectively makes the case for the necessity of dissents in the Supreme Court. Urofsky contends that history shows that dissents, sometimes seen as detrimental, have been ultimately beneficial for American social and public issues and can continue to be the cornerstones for the constitutional and public debate that brings about change and progress.

29. *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

30. 83 U.S. 36 (1873) (holding that the Privileges and Immunities Clause protected only rights stemming from national citizenship).

31. *Munn v. Illinois*, 94 U.S. 113 (1877) (holding that the Fourteenth Amendment does not prevent states from regulating grain warehouses).

32. 410 U.S. 113 (1973).

Vile, John R. *Conventional Wisdom: The Alternate Article V Mechanism for Proposing Amendments to the U.S. Constitution*. Athens: University of Georgia Press, 2016. 266p. \$49.95.

*Reviewed by Justin R. Huckaby**

¶94 In *Conventional Wisdom: The Alternate Article V Mechanism for Proposing Amendments to the U.S. Constitution*, John R. Vile discusses the thus-far unused Article V convention method of amending the U.S. Constitution. The book focuses on what an Article V convention could be and what parameters it might entail. Could such a convention be limited in scope, or must it be general in nature? Vile considers these questions and the literature behind them to develop his own interpretation of an Article V convention and how it should be implemented.

¶95 Vile begins the book by describing the Constitutional Convention of 1787 and its subsequent ratification process. He describes the deliberations and processes of the Founding Fathers as they determined how the newly proposed Constitution would be amended in the future. It was agreed that the Constitution would be amended through two separate processes as described in Article V. The first process would be the legislative proposal of amendments supported by two-thirds majorities of both chambers of Congress, followed by ratification of three-fourths of the existing states. It would be up to Congress to determine whether states would ratify through their respective state legislatures or by state conventions. The second process of proposing amendments would be through a convention convened on the application of two-thirds of the existing states. Of the current twenty-seven amendments to the Constitution, all have been passed through the legislative proposal mechanism. To date, an Article V convention has never been called.

¶96 In the next portion of the book, Vile addresses the existing literature from both scholars of the founding generation and current constitutional scholars. The debate surrounding Article V conventions centers on the scope of a proposed convention. Some scholars think an Article V convention should be limited to the subject matter that Congress called it to address. Therefore, if two-thirds of the states apply for a convention dealing with passing a balanced budget amendment, Congress would call an Article V convention limited to the specific balanced budget topic. However, other scholars argue that once an Article V convention has been called, the convention itself will be a general convention in which delegates can address any topic they desire.

¶97 Upon studying the existing literature behind the scope of an Article V convention, Vile concludes that an Article V convention can be limited or general. He identifies four convention models that are ideal types for an Article V convention. The first type is the single-issue referendum convention. In this type, states would convene to take an up-or-down vote on a specific amendment or set of amendments that the states had applied for Congress to call the convention to address. Vile contends this type of convention is unwise since it lacks deliberations among the delegates. The second type is the single-issue deliberative convention. In this type, states would convene to deliberate a particular issue or set of issues, and the delegates would propose an amendment or set of amendments in the process. As this

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type mirrors the legislative proposal process of Article V, Vile thinks this type of convention would be wise when Congress as a whole is malfunctioning, congressional rules are effectively blocking all amendments, or when institutional interests are blocking needed amendments.

¶98 The third type is the limited constitutional restructuring or updating convention. This type of convention would be used to remedy systematic problems in the operation of government or to update the language of the Constitution to the public's current understanding of it. The last type is a convention to rewrite or replace the Constitution. Vile explains how this type of convention would mirror the Convention of 1787, but the convention would be called under the authority of Article V.

¶99 Vile concludes by exploring the literature behind selecting delegates for an Article V convention and considers who should or should not serve. In addition, he looks at the literature behind the process of calling the convention and how it should operate. Through this study, Vile suggests that Congress pass legislation addressing all of these aspects of an Article V convention in advance of a convention being called. He concludes with his own proposed legislation, which is similar to Senator Orrin Hatch's proposed Constitutional Convention Implementation Act of 1985 that died on the floor of the Senate.³³

¶100 *Conventional Wisdom* would be an excellent addition to any academic law library. No prior constitutional knowledge is required outside of a basic understanding of American governance. Vile does a superb job of evaluating the existing literature behind Article V conventions and addressing both the attributes and apprehensions in his proposed legislation for implementing an Article V convention. Though an Article V convention has never occurred, *Conventional Wisdom* makes the possible process seem a lot less daunting.

Wolff, Lutz-Christian, and Jenny Chan. *Flipped Classrooms for Legal Education*. Singapore: Springer, 2016. 138p. \$54.99.

*Reviewed by Louis M. Rosen**

¶101 Most law librarians who teach legal research classes have been using a flipped (or inverted) classroom method for years. Assigning a combination of reading and video or audio lectures for students to watch or listen to before class frees up valuable classroom time for interactive, hands-on activities to simulate real-world practice scenarios; makes abstract concepts from the reading and lectures more concrete; encourages collaboration; and allows instructors better opportunities to assess students' progress.

¶102 But for much of the legal academy, professors accustomed to years or even decades of lecturing throughout classes and relying on the Socratic method, the flipped classroom model of teaching may be unfamiliar or even intimidating. It is often up to us, my fellow law librarians, to introduce professors to the latest technological innovations for teaching and assessment, and Lutz-Christian Wolff and Jenny Chan's new book, *Flipped Classrooms for Legal Education*, would definitely be

33. Constitutional Convention Implementation Act of 1985, S. 40, 99th Cong.

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a useful tool for introducing our faculties to flipped classrooms. Wolff is a professor of law and dean of the Graduate School of the Chinese University of Hong Kong (CUHK), and Chan was his research assistant. While the book deals with their study of flipped law classes in Hong Kong, their techniques and results are universal and would certainly apply to U.S. law schools. They also conducted a detailed literature review and consulted the websites of law schools in the United States, United Kingdom, Australia, New Zealand, and Asian countries for flipped classroom policies and techniques.

¶103 After establishing the definition of flipped classrooms used above, Wolff and Chan's longest chapter discusses the approach's pedagogical feasibility, comparing and contrasting the new method to traditional lectures and the Socratic method. The authors argue that flipping improves the learning experience by increasing flexibility for varied in-class activities, improving students' technological skills, and meeting students' expectations as digital natives. They cite studies that show flipping the classroom improves learning outcomes and leads to more positive student evaluations. Flipping meets the higher levels of learning activities in Bloom's taxonomy—the analysis, synthesis, and evaluation activities that are often left out of traditional classroom instruction, which by necessity focuses on the lower-order activities like knowledge acquisition and comprehension.

¶104 Wolff and Chan next compare the pros and cons of video versus audio lectures, point out potential problems with flipping, and raise valid concerns, like the relatively limited data available to them, since it is still such a new concept. Even the most comprehensive studies do not focus on legal education, so they have only so much value to law professors considering flipping. The authors also point out resistance to flipping from the points of view of faculty, institutions, and students, which are all valid and worth considering. They conclude that flipping does not replace in-class instruction, nor should it; online lectures in any format should exist only to *supplement* hands-on, in-person instruction, and there is no pedagogical method that is perfect for every situation.

¶105 A shorter chapter on developing flipped classrooms is divided into sections on planning, production, and distribution. The planning section contains some of the sagest advice in the book, warning professors to start small and possibly just flip one or two units or lessons at first, rather than flipping an entire established course, which would be very labor-intensive. The production section is extremely useful, listing software and techniques for recording lectures in white board, screen capture, or audio-only formats; warning to take student preferences into account; and listing possible technical challenges.

¶106 The rest of the book is a case study of why and how the authors flipped their Law of International Business Transactions II class at CUHK in early 2015. While this example may not be immediately useful for U.S. law professors or librarians considering flipping their own courses, it provides the rationale behind making the decisions they made and how they evaluated everything. It was a successful experiment that confirmed their theories, namely that flipping a classroom is not as hard as it seems, and that students, for the most part, would enjoy the change. But they caution that it was a small class, so this cannot be the final word on assessing the success of flipped classrooms.

¶107 The book includes an appendix with a useful checklist of planning, production, and distribution processes for any professor considering a flip or any librarians working with them to assist, as well as surveys Wolff and Chan used that others can adapt. I think this book belongs in any academic law library collection with sections for pedagogy, teaching techniques, educational technology, or working with learning outcomes and assessments. Although most of this is not new to law librarians, we can use this book to introduce doctrinal faculty to these new methods and possibly help them experiment and adapt. *Flipped Classrooms for Legal Education* is a short book that is easy to read, but it will require us to market it to faculty to get them interested.

Practicing Reference . . .

Lexicographer for a Day*

Mary Whisner**

Ms. Whisner shares her love of learning about new words and phrases, and details how she investigates their origins and usages in dictionaries and full-text databases.

¶1 I have always enjoyed learning new words and leafing through dictionaries. When I was in junior high, my habit of carrying around a paperback dictionary, while not the only evidence, certainly contributed to my reputation as an egghead.¹ Now, decades after becoming a librarian, I'm still grateful to have found a setting where my natural inclinations are not only accepted but valued. I actually get paid for digging around in reference books! Many research tasks are interesting, of course, but it's a treat when I get to dabble in lexicography. Because I suspect that others enjoy a good word quest, I'm sharing a couple.

"Race to the Bottom"

¶2 In July 2008, a professor asked when the metaphor "race to the bottom" entered debates "about policy discussions over taxes, public benefits, and regulation." A visit to the online *OED* led me to a subentry under "race":

race to (also for) the bottom *n. orig. U.S. Finance* the progressive degeneration of standards or elimination of regulations (in a market, business, etc.) due to the pressures of competition; (more generally) a progressive or deliberate deterioration of standards.

1974 *Yale Law Jrnl.* 83 666 The best example of 'the race for the bottom' appears in the Report of the Corporation Law Revision Commission of New Jersey.

1988 *Washington Post* (Electronic ed.) 4 July f7 A major argument for federal legislation always has been that local governments would engage in a 'race for the bottom,' a drive to be more permissive in order to lure new employers.

1993 M. J. ROE in *Deal Decade* 347 State corporate law is a race to the bottom, as states pander to managers by providing weak, promanagerial, antishareholder corporate law.

2005 *Guardian* (Nexis) 10 Jan. 2 There are recurring complaints about dumbing-down. Some journalists distinguish their trade while others demean it. . . As circulations decline, there is a race to the bottom.²

* © Mary Whisner, 2017.

** Reference Librarian, Marian Gould Gallagher Law Library, University of Washington School of Law, Seattle, Washington. I thank the faculty who send me on these explorations, and I also thank my friend and loyal reader, Nancy Unger, who reviewed a draft of this piece.

1. By the way, "nerd" had not yet come into common usage. I doubt that I would have been a popular girl, even without the dictionary. However, I've learned in middle age that the popular kids were often at least as insecure and unhappy as those of us who were on the edges.

2. *Race*, n.1, phrase 3, *OED ONLINE* (June 2016), <http://www.oed.com/view/Entry/157030/> [<https://perma.cc/EP66-Y5KT>]

¶3 Using a dictionary doesn't make one an amateur lexicographer in itself, but I didn't stop there. Was the *OED*'s earliest citation from 1974 truly the beginning? The first step was to look up that 1974 article.³ William L. Cary characterized the practice of states easing the burdens on corporations to attract their business as "the race for the bottom."⁴ Cary cited a similar metaphor by Justice Brandeis: "[t]he race was not one of diligence but of laxity."⁵ Later articles credit Cary with the phrase,⁶ sometimes while disputing its usefulness.⁷ I searched for earlier uses. There were several from water law, but the "bottom" was more literal: competing appropriators were digging wells deeper and deeper to get to the bottom of the water source.⁸

¶4 Careful readers might have noticed that Cary said "race for the bottom," while later authors said "race to the bottom." Which is preferred today? I searched journals and law reviews in Westlaw, comparing the results for "race #to the bottom" & da(>2007) with those for "race #for the bottom" & da(>2007).⁹ Back when I first looked at this, in July 2008, the score was 144 to 1, favoring "to" over "for." Now it's 2939 to 93.¹⁰

¶5 For decades we law librarians have been able to search full-text documents for word usage. Now available are much more powerful online tools to facilitate the search in vast collections of documents. Mark Davies, a linguistics professor at Brigham Young University (BYU), maintains a site where you can check out word frequencies in corpora¹¹ such as *Time* magazine (1923–2006) and the Corpus of Contemporary American English.¹² "Race to the bottom" appeared in *Time* once in the 1990s and twice in the 2000s. "Race for the bottom" doesn't appear. (See figure 1.)

3. William L. Cary, *Federalism and Corporate Law: Reflections upon Delaware*, 83 YALE L.J. 663 (1974).

4. *Id.* at 666.

5. *Id.* at 664 (citing *Liggett Co. v. Lee*, 288 U.S. 517, 559 (1933) (Brandeis, J., dissenting in part)).

6. E.g., Jens C. Dammann, *Freedom of Choice in European Corporate Law*, 29 YALE J. INT'L L. 477, 478 n.6 (2004).

7. John V. Orth, "The Race to the Bottom": *Competition in the Law of Property*, 9 GREEN BAG 2d 47, 47 n.1 (2005) ("Whether the race was truly to the 'bottom' is debated; whether there was even a race at all is denied.") (citing Marcel Kahan & Ehud Kamar, *The Myth of State Competition in Corporate Law*, 55 STAN. L. REV. 679 (2002)). For citations to the debate in the context of environmental law, see Kirsten H. Engel, *State Environmental Standard-Setting: Is There a "Race" and Is It "To the Bottom"?*, 48 HASTINGS L.J. 271, 274–75 nn.1–3 (1997).

8. See, e.g., *Noh v. Stoner*, 26 P.2d 1112, 1114 (Idaho 1933) ("a race for the bottom of the artesian belt"); *Baker v. Ore-Ida Foods, Inc.*, 513 P.2d 627, 633 (Idaho 1973) (the court summarizes the quote in *Noh* as "a race for the bottom of the aquifer"); Gregory K. Hoskin, Comment, *Who Pays When the Well Runs Dry?*, 37 U. COLO. L. REV. 402, 412 (1965) ("a race for the bottom of a basin would destroy the basin, or at least make continued economic stability of the area over the basin questionable").

9. The "#" enables you to search stop words that otherwise would be ignored. For a history of the punctuation mark known variously as "pound sign," "number sign," and "octothorpe," see KEITH HOUSTON, *SHADY CHARACTERS: THE SECRET LIFE OF PUNCTUATION, SYMBOLS & OTHER TYPOGRAPHICAL MARKS* 41–57 (2013).

10. Westlaw searches performed July 29, 2008, and Aug. 30, 2016.

11. When I searched for past memos where a reference librarian referred to the BYU Corpora, I learned that SharePoint is "smart" enough to know that "corpora" is the plural of "corpus": it retrieved the many memos that used "habeas corpus" or "*Corpus Juris Secundum*" in addition to the couple that referred to this linguistic tool.

12. CORPUS OF CONTEMPORARY AM. ENGLISH, <http://corpus.byu.edu> (last visited Aug. 30, 2016).

Figure 1

“Race to the Bottom” in Time Magazine Corpus for 2000s

TIME Magazine Corpus								
SEARCH		FREQUENCY		CONTEXT		OVERVIEW		
SECTION: 2000s [2]								
CLICK FOR MORE CONTEXT [2]								
1	2005/06/13	A	B	C	innovations in printing. No doubt HP is hoping to avoid a race to the bottom . -- By Jeremy Caplan			
2	2006/03/27	A	B	C	," but not here. France wants no part in a race to the bottom . " # That's a noble sentiment, but lurking beneath it is something			

Figure 2

“Race to the Bottom” in Hansard Corpus for 1990s

CLICK FOR MORE CONTEXT											
1	C-1997	Mallaber (L)	A	B	C	the textiles industry— because we can not compete in the global race to the bottom with Morocco, Sri Lanka and the far east: The idea that we can					
2	C-1998	Short (L)	A	B	C	into seeking ever cheaper labour, with all the instability and the race to the bottom on environmental standards that that can entail:					
3	C-1999	Simpson (L)	A	B	C	us to compete in a price-only market, which is a beggar-your-neighbour race to the bottom of the barrel? " In Seattle, trade union marchers— industrial workers and					
4	C-1999	Colman (L)	A	B	C	agenda: Other honi: Members have spoken about the need not to race to the bottom : It is important to recognise that, by having good investment rules, we					
5	C-1999	Colman (L)	A	B	C	having good investment rules, we can ensure that there is no race to the bottom : I ask the House to endorse that way forward: The major thing that					
6	L-1999	----- (L)	A	B	C	, as we call them— we find ourselves dragged into a race to the bottom , each country seeking to outbid the other in an attempt to attract mobile financial					
7	L-1999	----- (L)	A	B	C	when competition does not work, when it destroys itself in the race to the bottom : It is on these occasions that cooperation is required: The final conclusion of					

¶6 In the Hansard Corpus (British parliament, 1803–2005), “race to the bottom” appears seven times in the 1990s and ten times in the 2000s, with no hits for “race for the bottom.”¹³ (See figure 2.)

¶7 The BYU site also offers an advanced interface for searching Google Books.¹⁴ To get a graphical representation of the comparative usage of two words or phrases, we can use Google Ngrams. (See figure 3.¹⁵) Although the original law review article used “race for the bottom,” writers of English have clearly come to prefer “race to the bottom.”

“Till Forbid”

¶8 About a year ago, I joined a group of professors for a Veterans Day happy hour.¹⁶ One professor reminisced about an experience from her practice in the 1980s. She had to review a newspaper’s comic strip syndication contracts and was

13. Searches conducted Aug. 30, 2016. It doesn’t help us with “race to the bottom,” but I can’t resist mentioning the Corpus of American Soap Operas (corpus.byu.edu/soap), which includes the words from 22,000 soap opera transcripts from the 2000s. It’s a good source for less formal English than you find in, say, law review articles and cases. And it’s also just fun. You can find that “cheated” appears 1747 times, while “faithful” shows up only 744 times. And “law library” appears 14 times.

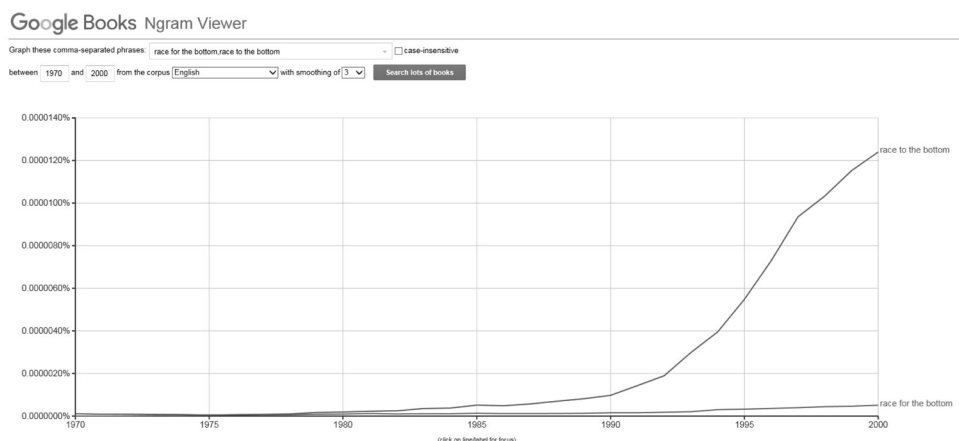
14. See The Corpus of Historical American English (COHA), Google Books (Standard), and the Google Books (BYU / Advanced) Corpus, <http://googlebooks.byu.edu/compare-googleBooks.asp> [https://perma.cc/BZM6-PXV5].

15. For more examples, see Matthew Flyntz, *Visualizing Legal History with Google Ngrams*, GALLAGHER BLOGS (Oct. 7, 2013, 9:39 PM), <http://gallagherlawlibrary.blogspot.com/2013/10/visualizing-legal-history-with-google.html> [https://perma.cc/3N36-6TTJ].

16. If you’re in the office on a holiday, why *not* end the day with a beverage and a snack with colleagues?

Figure 3

Google Ngram (created Oct. 21, 2016), Showing Comparative Frequencies of “Race to the Bottom” and “Race for the Bottom,” 1970–2000, from the Google Books English Corpus, 2016



puzzled by the term “till forbid.” No one at the table had heard of the term. A couple of weeks later,¹⁷ I investigated. “Till forbid” wasn’t in *Black’s Law Dictionary* or the *OED*. A search in Westlaw yielded only four documents with the phrase: three FCC determinations (from 1957, 1967, and 1972)¹⁸ and an expert witness report in a 2004 filing.¹⁹ The search result of only four documents—out of all the cases, treatises, encyclopedias, law review articles, and more in Westlaw—seemed insignificant. And yet there were four documents: a trace of this elusive contract term.

I tried Google Books and was rewarded with hits in fairly recent books on the comics business and on marketing.²⁰ It even showed up in *Ad Sense* over a century

17. Wednesday afternoon before Thanksgiving: another time when there is little action in the library and we might turn away from our most serious work.

18. *In re* Application of Radio Enters. of Ohio, Inc; Ashtabula, Ohio, for the Renewal of License of Station WREO, Ashtabula, Ohio, 38 F.C.C.2d 1104, 1107, 1972 WL 27147, at *3 (1972) (“This contract . . . did not specify a termination date. In lieu thereof, the contract contained a ‘Till Forbid’ provision which permitted the contract to be cancelled by either party on two days’ notice . . .”); *In re* Application of Cont’l Broad., Inc., Newark, N.J. for Renewal of License of Station WNJR, Newark, N.J., 15 F.C.C.2d 133, 158, 1967 WL 12887, at *21 (1967) (“All of these documents . . . indicated . . . whether or not the arrangement was ‘T.F.’ meaning ‘till forbid’ (i.e., to remain in force until terminated by either the sponsor or the station).”); *In re* Applications of WKAT, Inc., Miami Beach, Fla., 22 F.C.C. 117, 183, 1957 WL 94694, at *53 (1957) (“All arrangements for time are on a ‘TF’ or ‘till forbid’ basis, which means they can be canceled at any time by either party.”).

19. *Rest. Advert. Grp., Inc. v. J.P. Morgan Chase & Co.*, No. 2:04-cv-01020, 2004 WL 3804669 (S.D. Ohio Dec. 6, 2004).

20. For example:

All the newspapers sign on thirty-day agreements. Thirty-day till forbid. If I ever found the person who invented the thirty-day till forbid, I’d love to give them a good talking to, or worse. But it’s the industry standard, and it’s widely accepted. Thirty TF, meaning that either party can cancel on thirty days’ notice. Everybody uses it.

LEE NORDLING, *YOUR CAREER IN THE COMICS* 79 (1995) (quoting Alan Shearer, Washington Post Writers Group).

ago.²¹ Acquisitions and serials librarians might be way ahead of me on this because it turns out to be a synonym (or near synonym) for “standing order.”²² When I first did the research, I recorded:

18 *Library Trends* 306 (1970) (“Standing orders can be handled in a variety of ways: they can be placed directly with the publisher, through a dealer or a subscription agent and, in turn these may be on a “till forbid” basis, annual renewal, multiple-year, or considering the ingenuity and individualism of serials personnel, a number of variations on these approaches.”).²³

¶9 That citation was enough for my purposes then, but before citing it here, I needed the article’s author and title. I tried to recreate my Google Books search. The *Library Trends* article wasn’t close to the top. I added parts of the quoted sentences. It still didn’t rise to the surface. One could learn a couple of lessons: (a) record complete citation information if you imagine there’s a chance you’ll need it later; (b) don’t assume you’ll be able to find the same results in a search engine if you wait almost a year to search again. (In fact, there might be enough going on behind the scenes, with Google’s search algorithm and with the contents of Google Books, that one might get different results without waiting long at all.)

¶10 But not so fast. I did record the volume, publication, and page number, so it wouldn’t be hard to fill in what I needed without Google Scholar. My library has a good print run of *Library Trends*, and even if it didn’t, the main library on campus does. And I don’t even have to go to a library. Sitting in my neighborhood Starbucks, I searched the university’s list of e-journals and found a link. The University of Illinois provides almost the whole run of this journal available online free.²⁴ So

In a till-forbid order, a monthly, quarterly, or other ongoing fee . . . is charged to the credit card until the customer says to stop.

....

In a till-forbid order, you continue to ship product or supply service—and bill the buyer for it on some agreed-upon schedule—until the buyer cancels.

ROBERT W. BLY, *THE COMPLETE IDIOT’S GUIDE TO DIRECT MARKETING* 39 (2001).

[T]ill forbid (TF) an instruction from an advertiser to a newspaper to continue running a particular advertisement until further notice to stop.

NORMAN A.P. GOVONI, *DICTIONARY OF MARKETING COMMUNICATIONS* 221 (2004).

21. One of the facts we have learned from sad experience is the utter unreliability of the “till forbid” order when it comes through an advertising agency. Long ago we used to imagine that a “t-f” order meant to run the same advertisement each month unless notified to the contrary. At this date we are unable to imagine what “till forbid” means in the comprehensive lexicon of the advertising agencies, who make a point of disallowing charges for ads inserted on “t-f” orders unless special instructions are given for the insertion.

E.H. Beach, *The Advertising Department of a Magazine*, 15 *AD SENSE* 281, 282 (1903).

22. See, e.g., Rita Echt et al., *Back to Basics: The Serials Acquisitions Elements*, in *EXPERIMENTATION AND COLLABORATION: CREATING SERIALS FOR A NEW MILLENNIUM* 5, 9 (Charlene N. Simser & Michael A. Somers eds., 1998) (distinguishing “standing order” from “subscription till forbidden”—“a special request to continue to order something until the order is formally stopped”); J.B. Merriman, *The Work of a Periodicals Agent*, in *LIBRARIES AND SUBSCRIPTION AGENCIES: INTERACTIONS AND INNOVATIONS* 17, 27 (Peter Gellatly ed., 1988) (giving “until forbid” as an alternate for “standing orders”). Examples could be multiplied.

23. E-mail from author to Karen E. Boxx et al., Nov. 25, 2015, 5:42 PM PST (on file with author).

24. *Library Trends*, IDEALS, <https://www.ideals.illinois.edu/handle/2142/999> (last visited Jan. 5, 2017). (“IDEALS” stands for Illinois Digital Environment for Access to Learning and Scholarship: a nice acronym!)

now I can provide the full citation²⁵—an achievement that will please many readers, as well as *LLJ*'s editor, I'm sure.

¶11 A researcher who failed to find a term like “till forbid” in *Black's Law Dictionary* or in *Words and Phrases* might conclude that it was just a weird anomaly of those contracts the professor had reviewed thirty years ago. But the evidence from my Google Books searches shows that “till forbid” has been—at least in some contexts—a fairly common term. Some of the library examples showed me that there might be spelling variants, such as “til forbid” and “until forbidden.” So I tried a broader Westlaw search (**adv: til till #until +2 forbid!**) and added a handful of documents to my list.²⁶ It's still not common in Westlaw's sources, but there are more examples than I found last year.

¶12 You might have noticed that there was no reference question here. No one asked me to look into “till forbid,” but I did anyway. Yet it wasn't just for my own amusement (although I was entertained, in that flip-through-a-dictionary way of being entertained). Even though the issue of this oddball contract term only arose as happy-hour banter, it was something that the professors at the table found interesting. Most of them weren't heavy users of reference services. Investigating this idle question and sending them an e-mail message with my results was a form of faculty outreach. Librarians tell faculty again and again that we are able to do research and find answers for them. Actually doing some research and finding an answer to an offbeat question was a way to show them. I can't report that their use of reference services has picked up, but I still think it was good outreach—as was participating in the happy hour in the first place. I concluded my e-mail message: “Keep the happy hour invitations coming till forbid.”

25. William H. Huff, *The Acquisition of Serial Publications*, 18 *LIBR. TRENDS* 294, 306 (1970).

26. *E.g.*, *W. Newspaper Union v. Kitchel*, 166 N.W. 1021, 1021 (Mich. 1918) (“The letters ‘T. F.’ in said option clause are an abbreviation of ‘till forbidden.’”); *Class Journal Co. v. Valveless Inner Tube Co.*, 134 N.Y.S. 916, 916 (N.Y. App. Term 1912) (“until forbid”); *White v. Allen Kingston Motor Car Co.*, 126 N.Y.S. 150, 151 (N.Y. App. Term 1910) (“until forbid”); *Hartwell Bros. v. William E. Peck & Co.*, 71 N.E. 958, 959 (Ind. 1904) (“until forbidden”); *Peacock v. Iron & Steel Pub. Co.*, 114 Ill. App. 463, 464 (1904) (“until forbid”). The only secondary source using the phrase in the context of a contract was Annotation, *Loss of Profits as Damages for Breach of Contract in Relation to Advertising*, 41 A.L.R. 198, 203 (1926) (“All the proof offered in regard to the contracts showed that they were to continue until forbidden, and, unless so forbidden, would run to the end of the year.”).

Memorial: Mortimer D. Schwartz (1922–2016)*

¶1 Mortimer Donald Schwartz, founding director of the Mabie Law Library at the University of California, Davis, died on September 10, 2016, at the age of 93. Mort, who had retired from the position of professor of law and associate dean for library services in 1991, was professor emeritus of law at the time of his death. During his retirement period, Mort indulged in three passions: fly fishing, gourmet cooking, and law libraries. He is survived by his wife Giovanna and his children and grandchildren.

¶2 Mort was born on September 3, 1922, in the Bronx section of New York City, but at age 2 moved with his family to Milford, Connecticut, where he was raised. His education included three years at the University of Pennsylvania just prior to World War II and then, courtesy of the GI Bill, at Boston University Law School where he received his LL.B./J.D. degree in 1949 before taking and passing the Maine state bar exam. Later Mort was admitted to the practice of law in Oklahoma and California. In his 2013 interview for *An Oral History of Law Librarianship*,¹ Mort related that he had intended to practice law in Maine, but it did not take him long to realize that this was not for him. So to further sort out his options, Mort returned to Boston University and earned an LL.M. in 1950.

¶3 While at Boston University, Mort met and was very impressed by three librarians and the work they did there. These colleagues were Arthur Charpentier, who was the librarian from 1948 to 1950; Lois Elizabeth Peterson, the assistant librarian; and Harrison M. MacDonald, the librarian from 1927 to 1948. Mort said in his oral history interview that it was basically these three who served to attract him into our profession, but that he was further influenced to become a law librarian by reports in a government publication of the day that librarians were in very short supply. As Mort was contemplating enrolling at Columbia's library school and thus becoming a law librarian, he made a little study of his own. Based on his finding, he figured out that only twelve law librarians in the entire country held both law and library degrees. He said in the oral history that this definitely caused him to view law librarianship as just right for him.

¶4 Mort completed his studies at Columbia and thus, as a newly credentialed "double degree" law librarian, accepted his first professional appointment and moved to the University of Montana in 1951 as assistant professor of law and librarian. While at Montana, Mort realized that the size and makeup of larger law library collections was moving well beyond just statutes and case reports to also include many new kinds of titles. He decided that a system that was more responsive to the new bibliographic organizational needs was required (just as similar

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1. *Mortimer D. Schwartz, An Oral History of Law Librarianship*, Spinelli's Law Library Reference Shelf, HeinOnline (June 30, 2013) (subscription database).

systems were already in use in many general libraries). Mort then reorganized the collection at Montana using theory and practical skills that he had learned at Columbia. Another accomplishment of Mort's time at Montana was to develop his lifelong passion for serious fishing. Mort also began learning about American Indians and their cultures, laws, and customs, and he even viewed his first bison in the wild while there. The University of Montana was truly a good first professional appointment for the newly credentialed law librarian, but, after two years there, Mort decided it was time for him to move on.

¶5 In 1953 Mort moved to the University of Oklahoma as professor of law and the school's first law librarian. Again at Oklahoma Mort recognized that law libraries were continuing to develop their collections and to expand acquisitions beyond only the traditional kinds of books and titles that had been found up to then in many if not most law libraries. Thus he decided further improvements beyond those for the traditional organization of a law collection were needed to ensure continued real access to the expanding holdings by researchers and other users. As a result, Mort decided to introduce cataloging to the library. This decision was, for its time, very forward thinking. Mort later summarized his activities in an article about introducing the card catalog at Oklahoma.²

¶6 Today's law librarians expect to see just about any law collection cataloged, and most law libraries, of course, are fully cataloged. Yet, in the early part of Mort's career cataloging was generally assumed to be an unnecessary expense for most law libraries since collections would consist mostly of statutes, reports, a few finding guides, and perhaps some loose-leaf materials. A typical user would not have to do more than look through the shelves to find what was needed. Mort was among those who realized that collections were expanding, making it much harder for patrons to find materials using traditional organizational techniques. So the University of Oklahoma joined the select few law libraries of that era to be fully cataloged.

¶7 Mort also focused on broadening the scope of the collection at Oklahoma by acquiring new kinds of titles as well as more traditional kinds of legal books. These new titles included, among others, treatises, materials from other states, and even some foreign titles. Among Mort's more significant foreign acquisitions was a collection of Scottish legal materials that had been recommended to him by Phil Cohen of Oceana Publications. Mort also relied on Phil and other law book dealers, including Fred Dennis and Fred Rothman, to help him identify gaps in the collection, which he then filled with acquisitions. Some of the acquisitions Mort made were guided by the emerging new *Standards of the American Bar Association for Approval of Law Schools*. Mort's work at Oklahoma was not unique in that many law school libraries were being built at that time, and there was a general recognition that legal scholars needed access to much broader kinds of collections than had been the norm.

¶8 Mort said in his oral history interview that he was especially pleased when scholars from such diverse places as Canada would come to Oklahoma to use the Scottish law collection. Mort also developed his lifelong interest and expertise in space law while at Oklahoma, and his extensive list of scholarly publications clearly reflects this topic.

2. Mortimer Schwartz, *Dividing and Conquering the Card Catalog at Oklahoma*, 50 LAW LIBR. J. 129 (1957).

¶9 Mort also said in his oral history interview that he purchased his first automobile, a Plymouth, while at Oklahoma. He told the dealer that he could not take delivery of the car until he had received a check from family sources to enable him to pay for it. Well, the dealer just told Mort to take the car, enjoy driving it, and pay for it when he had that check in hand. Things were certainly more relaxed and informal in the early 1950s than they are today.

¶10 Oklahoma was not to be the culmination of Mort's distinguished career, however, as he moved on in 1965, after twelve years at Oklahoma, to the University of California, Davis. There Mort became the founding director of the law library. In fact, when he first arrived at the UC Davis Law School, Mort, as a professor of law, had half the votes on the new law faculty. The other half was held by his only colleague on the faculty at the time, the dean, Edward L. Barrett, Jr., the first dean of the School of Law and the person who recruited Mort to be the founding law librarian. Needless to say, it was uphill from there, but they were very successful in mounting that "hill" and putting together, along with their respective successors, the great law school faculty and law librarians and legal collection that exist at UC Davis today. Mort oversaw the construction of the library portion of the law building, named Martin Luther King, Jr., Hall, in 1969, which brought students, faculty, and librarians under the same roof for the first time. Mort was a strong advocate for the law library within the law school community. As well, he was connected with law library directors across the United States, and together they promoted and enhanced the work and reputation of academic law libraries as integral units of their law school communities. Serving as librarian at UC Davis for twenty-six years until his retirement in 1991 as associate dean for the library, Mort left the library well-positioned to meet the turn-of-the-century information explosion; he is credited with his forward-thinking leadership in preparing the library for the onset of the information age. After retirement, Mort and his family continued to reside in Davis for the remainder of his life.

¶11 Prior to going into law and law librarianship, Mort served the United States during World War II as an officer in the Navy. Mort used to share bits and pieces of his military experiences and lots of jokes too with colleagues on the AALL retired librarians' e-mail list.

¶12 Mort was much more than just a colleague who successfully managed three major academic law libraries over the course of his career. He engaged in a very wide range of service to the profession. Among other things, Mort was the founding president of the Southwestern Association of Law Libraries (SWALL), the founding president of the Western Pacific Chapter of AALL (WestPac), editor of *Law Library Journal*, a member or chair of many of AALL's committees, program chair of the 57th Annual Meeting of AALL in 1964, and a member of the AALL Executive Board from 1966 to 1969. More important, Mort was a friend to all of us in the profession and willing to offer very good advice whenever asked (as he often was). In 1978 Mort was honored with the Berkeley Institute Literature Award, and in 1995 he received AALL's highest recognition, the Marian Gould Gallagher Distinguished Service Award. Mort was also an inaugural inductee into AALL's Hall of Fame.—Patrick E. Kehoe³ and Judy C. Janes⁴

3. Professor Emeritus of Law and Retired Law Library Director, American University, Washington, D.C.

4. Director of the Mabie Law Library and Lecturer in Law, University of California, Davis, Davis, California.

Memorial: Franklin Atwater Weston (1934–2016)*

¶1 Franklin Atwater Weston, former head of public services at the University of San Diego (USD) Legal Research Center, succumbed to complications from Parkinson's disease on August 4, 2016, after a six-year struggle.

¶2 After graduating from the University of Maine, Frank earned a master's degree in librarianship from Columbia University. After library school, Frank worked at Columbia's Law Library, the Fordham University Law Library, and the Ronson Corporation. He was active in the profession, occupying roles such as business manager in charge of advertising for *Law Library Journal* for many years, founding member of Southern California Association of Law Libraries (SCALL), early SCALL Institute chair, and longtime editor of the Legal Information Services to the Public (LISP-SIS) *Newsletter*.

¶3 In 1963 Frank attended the AALL Annual Meeting on Mackinac Island, Michigan, where he met the love of his life, fellow law librarian Stan Pearce. From that moment on, both men's lives changed forever. Frank and Stan had a lovely life together for nearly forty years.

¶4 Toward the end of his career, Frank was adored by hundreds of law school students at the University of San Diego School of Law, to whom he taught legal research. He was devoted to helping gay and lesbian law students come to terms with their sexuality in a conservative profession. Frank advocated adding sexual orientation to USD's nondiscrimination clause and championed its adoption. Frank had an extensive campus-wide e-mail list that was carefully guarded for privacy to which he sent daily messages about LGBTQ legal news and current events. Frank's e-mails linked closeted gays and lesbians on campus to the community they longed for and encouraged many people to come out. For his open and fearless influence during his twelve years at USD, he received a special award from the campus Pride organization.

¶5 After retirement, Frank and Stan lived in Rancho Mirage, California, where Frank worked at the public library and enjoyed the desert good life. Stan became ill and passed away from an aggressive form of prostate cancer in 2010.

¶6 Frank was a great believer in the power of art to inspire. In his later years, he was a benefactor to the San Diego Law Library. He believed in its mission, and it brought back good memories of his stint as a law librarian for Legal Aid. He provided art for the law library's grand opening after the renovation, and his collection has been featured around the library at different times. In fact, Frank's bronze sculptures are still featured in the reading room.

¶7 Frank leaves behind friends too numerous to count and a legacy of support for those he helped by teaching and mentoring. A private celebration of life was held in Los Angeles in the fall of 2016.—*John W. Adkins*¹

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1. Director of Libraries, San Diego Law Library, San Diego, California.

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