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Nation Building and Law Collections: The Remarkable Development of Comparative Law Libraries in the United States

David S. Clark

This article focuses on the evolution of comparative law libraries in the United States, in particular on the Law Library of Congress. It argues that much of the impetus behind this development was a self-conscious component of nation building. This effort led many American law libraries to build exceptional collections of foreign, comparative, and international law.

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The Law Division of the Library of Congress is making a systematic effort to bring its collection of foreign law to a state of high efficiency. The growing interest in comparative law manifested by legislators, lawyers and scholars has indicated the utility and stimulated the acquisition of a well-developed laboratory of comparative law, in which shall be represented the best legal literature of the important states of the world.

May 3, 1911, Librarian of Congress

Introduction

¶1 There is a straightforward connection between law and legal institutions and the creation or development of a sophisticated polity. Of course, law is more important in some cultures than in others. An indicator of this variability is the emergence of substantial collections of written legal materials, prominent even in some classical societies. I survey a few examples prior to 1500 and then compare notable libraries in the early modern era, identifying law collections when possible.

¶2 In the nineteenth century, the task of nation building spread widely beyond the early European nation-states of England, France, and Spain. The independence of the United States from Great Britain and the Spanish-American republics from Spain provide useful illustrations in the New World to compare with the consolidating polities of Germany and Italy in Europe.2 In the post–World War II period, scholarly interest in nation building extended to reach new nations in the developing world created by decolonization.3 Because many countries outside Europe failed to develop legal institutions along the lines social scientists and lawyers had predicted, a new generation of scholars has attempted different enquiries and explanations.4


National libraries began to emerge in the eighteenth century in Europe as part of the process of nation building. There were already twenty national libraries in 1800. The explicit prominence that political leaders placed on the distinctiveness (and superiority) of their ethnicity, language, culture, and religion that defined a nation carried over to law. The era of European-wide *jus commune* written in Latin was giving way to national law in the vernacular, supported by national legal institutions. This phenomenon of nationalism affected most aspects of culture and society, even national museums that promoted a particular people’s values and myths.

This article focuses primarily on the evolution of comparative law libraries in the United States, in particular on the growth of the Law Library of Congress (hereafter LC Law Library). I argue that much of the impetus behind this development, with its emphasis on establishing the place of the country among the leading legal systems of the world, was a self-conscious component of nation building. This effort led many American law libraries to build exceptional collections of foreign, comparative, and international law.

The new nation in America that emerged after victory in the war of independence against Great Britain instituted a written Constitution that promoted popular sovereignty and law instead of reliance on rule by a king or queen. The Constitution called for a national government of limited and enumerated powers that shared governing with strong local autonomy in states. It further separated national authority into three branches along functional lines that put the task of lawmaking first in the Constitution’s Article I. In 1800, Congress established a library to encourage intelligent popular sovereignty and to facilitate the broad research necessary for drafting useful legislation. By 1832, Congress recognized the special characteristics of law as a discipline and established the LC Law Library. These actions were steps in a lengthy process of national state building. Compared to European examples, they also illustrate the distinctiveness of American government, law, and
culture, which by the twentieth century consolidated the paradigm of American exceptionalism.\textsuperscript{11}

\textsection{6} This rise of the LC Law Library is the story of an acorn that grew into a giant oak tree. The acorn was the small private book collection of Thomas Jefferson (1743–1826), and the tree is the Library of Congress, the world's largest library. The trunk of that tree is the LC Law Library, which by 1950 had become the largest of its kind. Much of its international reputation after World War II depended on its huge foreign and comparative law book and serial collection. Today, with almost four million volumes and an extensive foreign law book collection, covering virtually all the planet's jurisdictions, it is the world's largest comparative law library.\textsuperscript{12}

\textsection{7} This tale is a paradigmatic American saga. First, the new nation, established as a republic, required an informed citizenry to be successful. Second, several policy decisions, such as the pragmatic one not to have a national religion—diverging from nations in Europe and elsewhere—permitted the liberal circulation of uncensored information, including foreign ideas. The presence of numerous foreign cultures was a consequence of the nation's generous immigration policy prior to World War I.\textsuperscript{13} The Constitution's adoption of federalism, coupled with the free movement of persons, books, and capital among the states, stimulated this exchange of information. Third, the United States was fortunate in its geography, natural resources, and ability to attract labor and capital. By the beginning of the twentieth century, the United States was a wealthy nation and had the largest economy in the world. It could support impressive institutions, such as the LC Law Library.

\textsection{8} After World War II, there was renewed interest in foreign and comparative law in the United States.\textsuperscript{14} Much of this stemmed from the enviable political and economic position of the country as a superpower actively engaged in the exportation of American law and legal institutions. Academic comparative law reestablished itself in 1951 as the American Association for the Comparative Study of Law.\textsuperscript{15} Many of the leading U.S. law libraries diverted significant resources to augment their foreign and

\begin{thebibliography}{99}

\bibitem{11} Wilson, \textit{supra} note 8, at 2–3, 35.
\bibitem{12} \textit{About the Law Collections}, LAW LIBRARY OF CONG., https://www.loc.gov/law/about/collections.php (last updated Sept. 22, 2015) [https://perma.cc/KB57-L85W]; see infra \textsection{150 and \textsection{145–152}. For the purpose of this article, a comparative law library is one with substantial collections of foreign, comparative, and international legal materials in which the foreign and comparative portion dominates. \textit{See infra} \textsection{113–115.
\bibitem{15} David S. Clark, \textit{Development of Comparative Law in the United States, in The Oxford Handbook of Comparative Law} 175, 204–09 (Mathias Reimann & Reinhard Zimmermann eds., 2006).
\end{thebibliography}
comparative law collections, including the LC Law Library. These actions cemented the leadership role now expected of the United States.

**History of the Library Until 1500**

¶9 Pursuing this story requires an acceptable concept of what the word “library” means. The core elements for us will be a varied collection, primarily of writings, located in rooms or a building in which the materials may be preserved and used. These texts, because of their collection and preservation, are valuable to those involved with the library. This value may be cultural, broadly conceived, or utilitarian, associated with documentation, research, or learning. Either way, knowledge was power.

¶10 The history of libraries follows the invention of writing and the desire or need to collect documents about land and its use as well as those about debts. Although collections of documents (mostly clay tablets) first emerged among the cities of Mesopotamia (Sumer) about 3500 B.C.E., the number and diversity of writings parallel the rise and fall of civilizations. In the ancient Middle East, royal scribes and priests prepared writings that typically concerned law, commerce, religion, medicine, or literary texts such as fables.

¶11 The oldest surviving royal library in the world is that of Ashurbanipal, King of Assyria (668–627 B.C.E.). In the 1850s, Sir Austen Henry Layard and British Museum archaeologists discovered more than 30,000 cuneiform tablets and fragments at his capital, Nineveh (near Mosul, Iraq). These equate to about 10,000 texts and include administrative and legal matters, as well religious, medical, and literary topics.

¶12 Unlike scribes in the Sumerian civilization, those in ancient Egypt used papyrus sheets, which they could glue together in rolls. The Egyptians’ large bureaucracy required writing to record property ownership, taxes, censuses, the Nile’s annual floods, foreign trade accounts, and military campaigns. The archives of Imperial Egypt, located in temple compounds, contained volumes of laws and judicial decisions.

¶13 Ptolemy I Soter (ruled Egypt 323–285 B.C.E.) founded the Alexandria library on the advice of a political refugee from Athens who had studied at Plato’s Academy. His son, Ptolemy II Philadelphus (ruled 283–246 B.C.E.), enlarged the...
library with three aims in mind, which in some ways parallel the current mission of the Library of Congress. First, the library should collect all books written in Greek plus translations of the sacred and important literature of other peoples outside the civilized world (oikumene). Second, it should commission authentic versions of Greek poets and dramatists. Third, it should establish a research center for scholars in all branches of learning. To facilitate these activities, Ptolemy II acquired Aristotle's library. Determining the size of a library prior to the printing press is difficult, since the concept of a “book” or “volume” does not match a world of papyrus rolls, clay and wood tablets, and parchment. Some books, such as the Iliad, filled several rolls, while some rolls contained multiple short works. Nevertheless, the library at Alexandria was huge (one estimate is 400,000 rolls), and it continued its preeminent place in the Greco-Roman world until Emperor Aurelian destroyed the urban area where it was located in 272 C.E.21

¶14 Classical Greece was the earliest civilization to have widespread literacy. Many of the Hellenic cities had libraries from the sixth century B.C.E. In this region, writers generally used papyrus rolls, although a few wrote on parchment. Much of the writing involved law, taxes, and mercantile practice, but some works were political or rhetorical in nature. The Pergamum library (near today’s Bergama in Turkey) in the second century B.C.E. cataloged 160,000 rolls, which passed under the domain of the Roman Republic at the end of that century.22

¶15 Although there was some destruction of books tied to Roman military expansion, the overall peace and stability provided by Roman rule in the Mediterranean area benefited Hellenic libraries. After the Roman conquest of Macedonia in 168 B.C.E., the Romans seized several library collections and more fully absorbed Greek culture through its philosophical and literary books. In Rome, wealthy citizens such as Marcus Tullius Cicero (106–43 B.C.E.) assembled private villa libraries for their research and amusement.23

¶16 During the Principate (27 B.C.E.–284 C.E.), Roman emperors established and supported several important new libraries. Shortly after the end of the Republic, in 28 B.C.E., Gaius Octavius, whom the Senate named Caesar Augustus in 27 B.C.E., dedicated two “public” libraries on the Palantine Hill in Rome, one for Greek books and the other for Latin books. Emperor Trajan continued this state patronage with the establishment in 112 C.E. of a pair of Greek and Latin libraries in his new forum at Capitoline Hill, named for the jurist Ulpian. After the libraries of Alexandria and Pergamum, the Ulpian library was the most famous during the Roman Empire. Much of this library contained legal materials such as praetorian edicts and senatorial decrees.24


23. Casson, supra note 18, at 68–79; Lerner, supra note 18, at 20–21.

With the foundation of the second imperial capital at Byzantium (Constantinople) in 330 C.E., and later with Christianity replacing Roman paganism, Greek and Roman libraries during the Byzantine Empire served the crucial role of preserving the ancient world’s literature. Besides private libraries, there were imperial, Greek patriarchal, and monastic (or Roman church) libraries. The imperial library in Constantinople was now the largest library in the Roman Dominate with an estimated 120,000 volumes. An important task during this period was preservation, which meant scribes copied decaying papyrus rolls onto parchment or vellum that was more permanent, normally in the form of codices. Unfortunately for historians, the religious libraries often preferred using their limited space to preserve theological works rather than those of classical civilization.\(^{25}\)

Much of the book collection at the Roman imperial library in Constantinople concerned the law, reflecting the important role of law in Roman civilization. In 530 C.E., Emperor Justinian I authorized Tribonian to compile and harmonize the writings of classical Roman jurists to clarify the law and provide a useful text for law students. The endeavor also involved collecting the decrees, edicts, and letters of generations of emperors. Tribonian’s commission—composed of law professors and government lawyers—utilized resources from the imperial library, small law libraries for education, and the private libraries of jurists.\(^{26}\) The resulting compilation, later known as the *Corpus Juris Civilis* (530–534), provided the foundation for the revival of legal studies at medieval universities in Europe from the twelfth century.

After the collapse of the Western Roman Empire, no European state rivaled the size and wealth of classical Rome until the early period of European colonization beginning in the sixteenth century. From 600 until 1500, the major libraries were those in monasteries and cathedrals. Although one might expect a natural bias toward theological materials, many of these libraries, especially in France and Germany, also included classical humanistic works and documents associated with the canon law of the Roman Church as well as the Roman civil law.\(^{27}\)

With the rise of Islamic civilization in the eighth century and its spread to the Iberian Peninsula, Arabic libraries served an important role in the transmission of knowledge to Europeans that Muslims had earlier absorbed from their contact with the Greeks, Egyptians, Persians, Hindus, and Chinese. Besides the introduction of papermaking from China in the eighth century, Islamic scholars translated many works from these cultures into Arabic. Perhaps the largest Arabic library was the one Al-Hakam II, Caliph of Cordoba, established in 976. When European Christians conquered Toledo and Cordoba, they translated the Greco-Persian patrimony of knowledge into Latin from the books they found there.\(^{28}\)

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27. Kenneth W. Humphreys, *Church and Cathedral Libraries in Western Europe*, in *Encyclopedia of Library History*, supra note 18, at 139, 139–42; see also Casson, supra note 18, at 141–45.

28. Matthew Battles, *Library: An Unquiet History* 64–67 (2003); Harris, supra note 6, at 80–82, 85–86; Lerner, supra note 18, at 55–58, 65–66. Richard Hitchcock, Professor of Hispanic-Arabic Studies at the University of Exeter for almost forty years, insisted that the library at Cordoba
¶21 In Asia east of Persia, the size of libraries prior to the fifteenth century was smaller than were libraries established in the Roman Empire. In addition, the role of law in Asian society was less important than it was in Europe. Law and legal rules tended to be undifferentiated from religion or philosophy. Thus in China during the Zhou Dynasty (1046–256 B.C.E.), some imperial government libraries and archives existed to store literary treasures and official documents. The schools of Confucianism and Legalism developed during this period. Scholars made bamboo tablets that they strung together with cords. The largest had a few thousand manuscripts.

¶22 In the third century C.E., the imperial library in China copied bamboo books onto paper. Of the four principal categories for classification, law was a subdivision of histories, but legal principles and rules also appeared within the category of classics. In the early eighth century, the imperial library had more than 3000 titles, which grew to perhaps 5000 titles before it suffered severe setbacks until the Ming Dynasty in the fourteenth century. In both India and China, during the first millennium C.E., it was also likely that libraries existed in Buddhist monasteries and temples, but again their size was small. Consequently, the first substantial libraries in China, India, and Japan date from European influence—in the case of China, from the late nineteenth century.

History of the Library in the Early Modern Era

¶23 An early form of the contemporary library first arose at the middle of the thirteenth century in a small number of European universities. More universities started libraries by the fifteenth century. A few of these, such as the ones in Paris, Oxford, Salamanca, and Heidelberg, used books at the cathedral school library.

¶24 The emergence of a few European nation states by the sixteenth century could have supported substantial libraries—including law libraries—but few of any size appeared. Knowledge of papermaking had reached the West. The introduction of printing and movable type in the fifteenth century facilitated this process. Finally, the Protestant emphasis on literacy and the use of the written vernacular (rather than Latin) created a consumer market for books, or at least for the Bible.

¶25 Some states, and princes and dukes in smaller political units, created libraries in the fifteenth and sixteenth centuries. The printing press increased the number of titles available. However, between 1450 and 1600, most printed scholarly

had no more than 600 titles. Richard Hitchcock, Muslim Spain Reconsidered: From 711 to 1502, at 91–92 (2014). Other estimates are vastly larger, based on early twentieth century research and a Pakistani translation of Arabic estimates. See Battles, supra, at 65, 219–20; Lerner, supra note 18, at 58, 205.

29. See Lerner, supra note 18, at 38–41.


31. Humphreys, supra note 27, at 140–41. The Emperor Charles the Great promoted church libraries from the early ninth century. Church and cathedral libraries were small, with a volume count in the low hundreds and often below 100. Id. at 139–41; Lawrence J. McCrank, Medieval Libraries, in Encyclopedia of Library History, supra note 18, at 420, 427–28.

books appeared in what today is Germany, Italy, and France. For instance, German printers released 56,400 titles during this period, while printers produced 5000 titles in Spain and only 1700 titles in England.\textsuperscript{33} Many of these books burned, were looted during wars, or decayed through neglect. A substantial number of books and manuscripts then ended up in university libraries or at the Vatican library.\textsuperscript{34}

University Libraries

\textsuperscript{26} From the late twelfth century, the chancellor of Notre Dame Cathedral in Paris had bestowed teaching licenses on successful pupils of the cathedral school and other area church and abbey schools. This led teachers to form a “university” around 1170 as a guild of teachers (\textit{universitas magistrorum}). The guild and chancellor litigated issues in ecclesiastical courts over control of granting teaching licenses, admittance to the guild, conduct of teachers (masters) and students (scholars), content of instruction, and guild jurisdiction over booksellers (\textit{librarii}) and parchment sellers.\textsuperscript{35}

\textsuperscript{27} By 1200, the University of Paris offered instruction in Roman civil and canon law (\textit{leges et decreta}), theology (\textit{theologia}), medicine (\textit{phisica}), and liberal arts (\textit{artes liberales}), the basis for the four faculties within the teachers’ guild. However, to protect the privileged position of theology at Paris, and to counterbalance Europe’s leading Roman law faculty at the University of Bologna, Pope Honorius III in 1219 banned Roman law teaching at Paris. During the thirteenth century, most of the 3000 or so students—all except \textit{pauperes} paying fees (\textit{bursae}) to take classes—and the majority of professors studied the seven classical liberal arts. By the fourteenth century, masters periodically selected a dean (\textit{decanus}) for each superior faculty and a rector to administer the university.\textsuperscript{36}

\textsuperscript{28} The University of Paris was a poor corporation in the thirteenth century, without its own buildings or endowment. Masters rented classrooms for lectures; students paid fees. Each faculty had to borrow a church or convent for its meetings until the fourteenth century, when the University purchased some buildings. Most students lived in residence halls (\textit{hospitia}) that they rented at a price fixed by a joint university-city board. Monastic orders, churches, and philanthropists endowed \textit{hospitia}, which developed at Paris into colleges (\textit{collegia}). Masters moved in, served as tutors, heard recitations, and later began to lecture there. The \textit{Maison de Sorbonne}, founded in 1257 to teach theology by Robert de Sorbon (1201–1274), chaplain to

\begin{flushright}
\textsuperscript{33} Andrew Pettegree, \textit{The Renaissance Library and the Challenge of Print}, in \textit{The Meaning of the Library}, \textit{supra} note 17, at 72, 75–76. Printers issued 39,600 titles in Italy and 35,000 titles in France. \textit{Id.} at 76.
\textsuperscript{34} Richard W. Clement, \textit{Renaissance Libraries}, in \textit{Encyclopedia of Library History}, \textit{supra} note 18, at 546, 548; Pettegree, \textit{supra} note 33, at 83. Federico da Montefeltro, Duke of Urbino, provides an example. After life as a hired soldier (\textit{condottiero}), Federico hired a humanist to oversee a scriptorium of thirty scribes to copy books for his library, which contained 1120 volumes at his death in 1482. Pope Alexander VII purchased the library in 1658 for the Vatican after the Duchy passed to the Papal States, with the printed books going to the Biblioteca Alessandrina at the University of Rome. Clement, \textit{supra}, at 548.
\textsuperscript{36} \textit{Id.} at 704–06. The dean of the theology faculty was usually a bishop or archbishop. The ban on Roman law teaching, supported by French kings, remained until Louis XIV lifted it in 1679. \textit{Id.}
Louis IX, was an important example. He designed it to serve sixteen men, typically with an arts degree, who desired to pursue a doctorate in theology.\textsuperscript{37}

\textsuperscript{29}In the medieval mind, the University of Paris, which had begun as a guild of teachers, taught students as apprentices. Over time, this evolved into a conglomeration of faculties and colleges. Professors had an interest in building a library that they and their students could use. However, there was no general university library in Paris. Most colleges had their own lending library. Professors could borrow certain books stored on shelves to use for their lectures or for research. Other books were chained to long desks, which students or teachers could copy. In 1289, the Sorbonne library cataloged 1000 volumes in Latin. By the end of the fifteenth century, there were 2500 books. After that, it suffered stagnation and decline until it revived somewhat in the eighteenth century. In 1770, the Sorbonne library opened to the public under the name of the University of Paris library. It suffered a significant loss of books during the French Revolution.\textsuperscript{38}

\textsuperscript{30}The other twelfth century university with a European-wide reputation was at Bologna. It was the principal center for the study of Roman and canon law. It differed from its counterpart in Paris since foreign students created the Bologna universitas as a corporate body with civil and penal jurisdiction to parallel the protection citizen-teachers of Bologna already had. This student guild elected its officers and became an imperium in imperio, possessing authority over its members, the town inn, tavern keepers, and tradesmen involved with renting, copying, or binding books. Most of the registered books in Bologna—primarily dealing with law—were held by those in the book trade (stationarii) and in small collections of individual professors. A student guild did not have the same institutional interest in maintaining a library that a teachers’ guild would have.\textsuperscript{39}

\textsuperscript{31}Oxford and Cambridge universities developed libraries in a manner similar to the one in Paris since their early colleges were the primary institutions that together constituted the university. Some of these had their own separate libraries dating from the fourteenth and fifteenth centuries, intended for use by fellows. The origins of the university library at Oxford (now the Bodleian Library) traces to the fourteenth century, when Thomas Cobham, Bishop of Worcester, devised in 1327 a small collection of books placed in a room in the university church (St. Mary the Virgin). In 1410, clerics added reading desks with chained books. In the sixteenth century, the Reformation adversely affected this collection with its substantial

\textsuperscript{37}Id. at 706–07.


\footnote{42}{The importance of Charles the Great, King of the Franks, and the creation of the Germanic Roman Empire is traced in Clark, \textit{supra note} 35, at 661–67.}

\footnote{43}{History of Heidelberg University Library, Universitätsbibliothek Heidelberg, http://www.ub.uni-heidelberg.de/Englisch/allg/profil/geschichte.html [https://perma.cc/9NMS-DU4N]. For the organization of four faculties at European universities, with the law faculty present at most universities, usually with both Roman law and up to the sixteenth century, canon law, see Clark, \textit{supra note} 35, at 686–96, 700–01.}


\paragraph{¶32} In 1602, the Oxford library reopened with books and funds from Sir Thomas Bodley under the name Bodley's Library. In 1610, Bodley's agreement with Stationers' Company for the library to serve as a legal deposit for books published in England further added to the size of the library. Many donations, such as John Selden's (1584–1654) gift of 8000 law and history books, helped to build the library into the largest collection in England. Prior to the opening of the British Museum library in 1757, the Bodleian was effectively England's national library. In 1849, the Bodleian Library contained 220,000 books and 21,000 manuscripts; by 1914, it had reached one million books.\footnote{41}{Hoare, Oxford University Libraries, \textit{supra note} 40, at 482–84; David Vaisey, University of Oxford Libraries: Bodleian Library, \textit{in} 2 International Dictionary of Library Histories, \textit{supra note} 30, at 810, 810–11.}

\paragraph{¶33} Heidelberg was the capital of historic Palatinate (\textit{Pfalz}), a region in southwestern Germany bordering Bavaria. One of its counts was also one of seven electors (\textit{Kurfürsten}) who selected the emperor of the Holy Roman Empire German Nation.\footnote{43}{In 1467, Ulrich Fugger, a member of the Fugger mercantile banker family that had replaced the Medici family in wealth and influence, moved from Augsburg to Heidelberg and transferred his extensive set of Greek and Hebrew manuscripts. In the mid-sixteenth century, the Count Palatine Otto Heinrich (served as elector 1556–1559), a Lutheran, had acquired materials from the cathedral at Mainz and some disbanded monasteries, which he combined with the university library to form the Bibliotheca Palatina. With these additions, the Bibliotheca Palatina became the most significant library for the German Renaissance. After the transfer of this library as a spoil of war to the Vatican in 1623, the University of Heidelberg reconstructed another library in 1652 following the Thirty Years' War (1618–1648), but the French King Louis XIV heavily damaged it during the Palatinate War of Succession in 1693.\footnote{44}{Elmar Mittler, Heidelberg University Library: Germany, \textit{in} Encyclopedia of Library History, \textit{supra note} 18, at 257, 257–58; Armin Schlechter, University Library of Heidelberg, \textit{in} 2 International Dictionary of Library Histories, \textit{supra note} 30, at 771, 771–72; History of Heidelberg University

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\paragraph{\textit{Pfalz}}
Another significant university library was the one at Salamanca in Spain. It began in the fifteenth century as the Biblioteca Antigua in the St. Jerome chapel. In 1497, Alonso Ortiz, canon at the Toledo cathedral, donated his collection of 1000 books to the library. This necessitated a new building in 1509, the Biblioteca Nueva. Donations continued, and in the first half of the sixteenth century, scholars considered it the best library in Spain. After 1550, it went into decline, its collection dispersed among university departments; it did not revive as a university library until the eighteenth century.  

The Vatican Library

The modern Vatican library in Rome dates from Pope Nicholas V, a noted humanist. When Constantinople fell to the Ottomans in 1453, Nicholas invited exiled scholars to produce Latin translations of Greek classics. At his death in 1455, the library he nurtured had 400 Greek and 800 Latin manuscripts, considered large for its time. The collection grew in the fifteenth century, a librarian (with three assistants and a bookbinder) cataloged the volumes, and in the early sixteenth century, the library had about 4000 books. In 1623, Duke Maximillian I, Elector of Bavaria, donated 3500 printed books and codices to the Vatican, which his general had captured during the Thirty Years’ War. This collection had been in the University of Heidelberg library. By the 1640s, the Vatican library had 6000 Latin and 1500 Greek volumes.

Royal and Noble Libraries

The Bibliothèque du Roi was the focus for library development in Renaissance France since there were fewer private collectors than in Italy. In the fifteenth century, the Duke of Orléans had a library at the Château de Blois located between Orléans and Tours in the Loire Valley. King Louis XII of France (ruled 1498–1515), son of the Duke of Orléans, placed collections at Blois taken in war from the Duchy of Milan and the library of the Viscount of Pavia. An earlier French king had done the same with the looted royal library of the King of Naples. King Francis I (ruled 1515–1547) hired humanist scholars to acquire manuscripts and books for the Château de Fontainebleau near Paris. In 1537, he ordered legal deposit (dépôt légal)—a concept described in §§ 60–78—for new printed books in his library, although enforcement was difficult. In 1544, Francis moved the Bibliothèque du Roi from Blois and merged it with the library at Fontainebleau. The French humanist Jacques Amyot arranged for this combined library to move to Paris in 1568, where it successively occupied a variety of buildings. At this time, it consisted of 1781 manuscripts, mostly copied and some illuminated, and 109 printed books. By 1656,
there were 9223 volumes, primarily books. In the second half of the seventeenth century, the collection grew tremendously, reaching more than 55,000 volumes. The librarian during this period devised the classification system based on twenty-three primary categories, a system still in use at the end of the twentieth century.47

¶38 The largest library in Europe in the mid-seventeenth century was the Herzog August Bibliothek in Wolfenbüttel, a small town in today’s Niedersachsen, Germany. Julius, Duke of Brunswick-Lüneburg, promulgated a library statute in 1572 regulating the use of his book collection. Successive dukes amassed an impressive number of books, so that in 1666, the library had 135,000 volumes. In the nineteenth century, the library slipped into decline, but its rich collection of 400,000 books printed from 1450 to 1830 remained intact, and the library revived in the second half of the twentieth century as an important research center.48

The Impact of the Protestant Reformation

¶39 Besides war, insects, flood, and fire, during the sixteenth century, the Protestant Reformation had a distinct impact on libraries in northern Europe. On the positive side, in Lutheran areas, authorities expected each church to constitute a library and schools to promote literacy.49 Johannes Bugenhagen (1485–1558), for instance, drew up regulations for churches in Braunschweig, Hamburg, Lübeck, and Pomerania in Germany as well as those in Denmark. On the negative side, some books were lost in the destruction of Catholic monasteries and due to the fervor of the believers in the new religions who burned books deemed papist. However, many of the books from ruined monasteries found their way into German university libraries.50

¶40 An early German university library offers an example, since it began with the books and manuscripts from nearby secularized monasteries in the sixteenth century. In 1543, the Leipzig University rector, Caspar Borner, founded the Universitätsbibliothek Leipzig. By 1550, it had 6000 books and 1500 manuscripts. Of those, the university church (Paulinerkirche) had provided 600 volumes (Bibliotheca Paulina).51

¶41 In southern Europe, the Protestant Reformation indirectly acted as a stimulus to build the papacy’s defense on a firm Western cultural foundation of classic books.

47. Lerner, supra note 18, at 100–02; Alix Chevallier, Bibliothèque Nationale de France: Paris, in Encyclopedia of Library History, supra note 18, at 76, 76–79; Clement, supra note 34, at 548–49.


49. Lerner, supra note 18, at 92–93; Clement, supra note 34, at 552–53.


and codices. Archbishop Federigo Borromeo of Milan opened the Biblioteca Ambrosiana in 1609 as a counterpoint to Thomas Bodley’s library at Oxford. Borromeo procured 30,000 printed books and 15,000 manuscripts for the library.52

**Development of Major Libraries in the United States**

**Private and Public Libraries**

¶42 In colonial British America, private individuals—such as Cotton Mather (1663–1728), a graduate of Harvard College—owned most of the first libraries, with no more than a few thousand books mostly of a theological nature.53 The oldest library resulted from John Harvard’s bequest of 400 volumes in 1638 to the college that would bear his name. It continued to grow with gifts and confiscated Tory books during the Revolution, but had no significant financial support until 1841.54 Nevertheless, Harvard College still had the largest library during the eighteenth century. There were 3000 titles in 1723 (including many pamphlets). Most of these dealt with theology, but about 100 treated law and government, with another 220 on philosophy. By 1763, the total titles had climbed to 4700, and Harvard reported 7000 volumes in 1776.55 Yale College from 1765 to 1776 had a library of about 4000 volumes.56

¶43 College libraries suffered extensive damage during the Revolution. Benjamin Franklin organized the first subscription library in 1731, chartered as the Library Company of Philadelphia. Its quasi-public form as a social library pooled the book collections of members and served as an example to many other cities. By 1770, it had 500 members, about one-tenth of the city’s households, and a library of 5000 books.57 Another important social library was in New York City, which six men founded as the New York Society Library in 1754. It had about 3500 volumes in 1776.58

¶44 In the nineteenth century, Harvard University continued as the largest library in the United States up to the 1860s. It had 86,000 volumes in 1849, which was nevertheless much smaller than the largest libraries in Europe. France had the world’s largest library with 800,000 volumes.\(^59\) In 1849, the Library Company of Philadelphia, Yale College, the Boston Athenaeum, and the Library of Congress each had between 50,000 and 60,000 volumes.\(^60\) When Charles Eliot arrived as president of Harvard University in 1869, he realized that the library was losing its advantage over these peer institution libraries. For instance, in 1875, Harvard had the third largest library in the United States.\(^61\)

¶45 As part of Eliot’s overall strategy to remake Harvard along the lines of the best German research universities, he encouraged alumni to donate or provide endowed funds to enhance the library collections.\(^62\) Eliot also emphasized the classroom laboratory method based on his own background in mathematics and chemistry as well as what he had seen at German universities. For the law school, he presided over faculty meetings and chose Christopher Langdell as dean. Eliot was confident that one could transplant the German emphasis on legal science, suitably modified, as a laboratory of junior scientists in a classroom experience with questioning between professor and students supported by a superb law library.\(^63\) In 2016, Harvard University had the world’s largest academic library, consisting of seventy separate libraries—including the largest law library—that together contained nearly twenty million volumes.\(^64\)


59. 1 William Dawson Johnston, History of the Library of Congress: 1800–1864, at 474–75, 479 (1904); see infra table 1, note a. The largest libraries in Belgium, Denmark, France, Great Britain, Norway, Prussia, Spain, and Sweden each had more than 100,000 volumes in 1850. Johnston, supra 474–75; see also Warren & Clark, supra note 55, at 747–59. The University of Berlin library serves as an illustration. When Frederick the Great of Prussia died in 1786, his royal library had 150,000 volumes. In 1798, Frederick William III made his library independent of the monarchy, and it passed to the new University of Berlin in the early nineteenth century. Siegfried Baur, State Library of Berlin—Prussian Cultural Foundation, in 2 International Dictionary of Library Histories, supra note 30, at 713, 714.


61. See infra table 1, note a (libraries 1849 to 1885).


63. Clark, supra note 62, at 319, 326–30; see also Richard A Danner, Law Libraries and Laboratories: The Legacies of Langdell and His Metaphor, 107 Law Libr. J. 7–8, 11, 15–17, 21–22, 27–32, 35–38 (2015). The Association of American Law Schools charter member schools in 1900 recognized the importance of member law schools owning their own libraries to provide convenient access to faculty and students. In 1912, the average volume count of the twenty-eight original members was 15,000. Harvard Law School at 150,000 volumes had three times as many books as the next largest university law library. Id. at 53–54.

64. See HCL Libraries, HCL.HARVARD.EDU, http://hcl.harvard.edu/libraries/ [https://perma.cc/W84Z-8FSE]; see infra table 2, note a; table 7, note a.
¶ 46 The first important free public library, tax supported, was the Boston Public Library, authorized by state legislation in 1848 and opened in 1854 with about 10,000 reference and circulating books. Promoted by George Ticknor—a lawyer and Harvard professor, expert in the history of Spanish literature—its rationale was that a successful democracy depends on an educated populace with access to books, pamphlets, and serials.65 Table 1 illustrates the extraordinary growth of U.S. libraries in the second half of the nineteenth century, especially after the end of the Civil War in 1865, due to both private and public backing.

¶ 47 In 1858, Harvard University libraries had a clear lead in terms of their combined collection size. Over the course of the next quarter century, however, both the Library of Congress and the Boston Public Library surpassed Harvard with collections of approximately 300,000 volumes each. These three libraries maintained their commitment to collection development during the twentieth century and, in 2012, were the largest libraries in the United States. Nevertheless, a newcomer, the New York Public Library, was a close fourth in 2012 volume count.66

¶ 48 Public libraries proliferated in the last half of the nineteenth century, promoted by state legislation authorizing cities to create them and later by the municipal home rule movement. In 1875, there were 257 public libraries in the United States. Between 1881 and 1919, the industrialist and later philanthropist Andrew Carnegie provided $50 million in construction grants for 1679 public library buildings. By 1926, there were almost 6000 public libraries serving nearly sixty percent of the American population in all states.67

¶ 49 One of the most successful public libraries was the New York Public Library, founded in 1895, privately endowed, tax exempt, and governed by a board of trustees. It entered into partnership with New York City, which constructed the library’s main building (opened in 1911), and maintained popular lending services as well as a research and reference mission.68

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65. Arthur P. Curley, Boston Public Library: Massachusetts, USA, in Encyclopedia of Library History, supra note 18, at 85, 85–86; William Grealish, Boston Public Library, in 1 International Dictionary of Library Histories, supra note 30, at 218, 218–20; Passet, supra note 53, at 644. The concept of a public library had many supporters. One of the earliest for the Boston Public Library was Edward Everett, a former president of Harvard College and Massachusetts governor, who donated his substantial collection of U.S. federal documents covering 1776 to 1840. In 2000, the Boston Public Library had 6.9 million volumes. Curley, supra, at 86; Grealish, supra, at 218–19. For a brief history of public libraries, see Lerner, supra note 18, at 125–40; Wiegand, supra note 58, at 30–52 (United States from 1854 to 1876).

66. See infra table 2, note a.


A related development during this period was the emergence of private research libraries. Some were independent, such as the Newberry Library (1887 in Chicago) or the Huntington Library (1919 in San Marino, California), and others affiliated with universities, such as the Clements Library (in 1923) at the University of Michigan or the Hoover Institution Collection (in 1919) at Stanford University.

Today, universities dominate among the largest libraries in the United States. Table 2 shows that in 2012, of the top ten, eight were university libraries. In 1885, there were only two university libraries among the largest nine: Harvard and Yale. University dominance is even stronger than these numbers suggest, since in 2012, of the second ten in size, nine were also universities.

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In 2000, the Huntington had 750,000 volumes, emphasizing Anglo-American history and literature, while the Newberry had 1.5 million volumes, specializing in history and the humanities. Boone, supra, at 367; Wyly, supra, at 606.

70. See supra table 1, note a.
The Library of Congress

The Library of Congress (LC) has a special place in American history, since Presidents John Adams (1797–1801) and especially Thomas Jefferson (1801–1809)—both lawyers—took an interest in its establishment and development. In 1800, Adams signed legislation that appropriated $5000 to purchase books useful for the members of Congress. Vice President Jefferson supported this initiative. In 1802, Jefferson approved the statute that created the post of librarian, a presidential appointment, and authorized Congress to make the library’s rules. The library had 964 volumes (740 from England), housed in the Capitol. Among contemporary social libraries in the first part of the nineteenth century, the LC had the largest proportion of law books.

<table>
<thead>
<tr>
<th>Library</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Library of Congress</td>
<td>34,500,000</td>
</tr>
<tr>
<td>Boston Public Library</td>
<td>19,100,000</td>
</tr>
<tr>
<td>Harvard University</td>
<td>16,800,000</td>
</tr>
<tr>
<td>New York Public Library</td>
<td>16,300,000</td>
</tr>
<tr>
<td>University of Illinois at Urbana–Champaign</td>
<td>13,200,000</td>
</tr>
<tr>
<td>Yale University</td>
<td>12,800,000</td>
</tr>
<tr>
<td>University of California, Berkeley</td>
<td>11,500,000</td>
</tr>
<tr>
<td>Columbia University</td>
<td>11,200,000</td>
</tr>
<tr>
<td>University of Michigan</td>
<td>10,800,000</td>
</tr>
<tr>
<td>The University of Texas at Austin</td>
<td>10,000,000</td>
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Table 2
U.S. Library Collection Size (in Volumes) in 2012, by Library*  


When the British invaded Washington in 1814, they burned the Capitol and pillaged the library. Jefferson, retired at Monticello, offered his personal library of 6500 books as a replacement. Congress authorized almost $24,000 for the eclectic library with volumes ranging from law, philosophy, science, and literature, some in foreign languages. During the nineteenth century, the library used Jefferson's classification system of forty-four chapters, based on Francis Bacon's theory of knowledge. The universality of Jefferson's collection set the standard for building a comprehensive national library with foreign as well as domestic materials in the second half of the nineteenth century. Nevertheless, Congress was otherwise stingy with funds. The period influenced by Jacksonian democracy marked a shift in political culture, symbolized by President Jackson's dismissal in 1829 of a novelist comfortable with cultural nationalism as librarian of Congress and replacement with a political backer, who served for three undistinguished decades. After the Civil War, Congress in 1867 appropriated $100,000 to buy the collection of Peter Force (1790–1868), a printer and former mayor of Washington. Beyond that, the LC primarily depended on the deposit of books under copyright legislation for most of its growth until the beginning of the twentieth century.

In 1897, the library moved into its first separate building, the largest library building in the world. Congress in that year approved the expansion of the library's collection and other activities, made the librarian subject to Senate confirmation, and permitted the librarian to make rules for the library's governance. The librarian, Ainsworth Spofford (served 1864–1897), had promoted the idea that the library should be a national library, and it now had the space to pursue that goal. Herbert Putnam, librarian from 1899 to 1939, expanded on that aim by calling for a collection universal in scope, available to scholars and the public via interlibrary loan. However, trained as a lawyer at Columbia University, he put a priority on legal materials, and particularly legislation. In 1902, he called for the creation of an Index to Comparative Legislation as appropriate for a national library. To implement “universal,” Putnam directed the acquisition of research
collections representing foreign cultures, including the purchase of complete foreign libraries. In 1901, he reported that the LC was the first in America to contain one million volumes. The development of a classification scheme and distribution of cataloging information to other libraries moved the LC into a leadership role among the world’s libraries. After the end of World War II, the library organized automatic purchase agreements with foreign dealers and expanded international exchange of official publications.\textsuperscript{82}

\footnote{57} By the 1950s, Congress more enthusiastically supported the LC’s goal of achieving a universal collection. Quincy Mumford, librarian from 1954 to 1974, oversaw this expansion. Appropriations during this period grew from $9 million to $96 million with a staff increase from 1500 to 4200.\textsuperscript{83} In 1958, Congress authorized the library to acquire books and serials from other countries by using excess foreign currency that the United States earned from its overseas sales of surplus agricultural commodities.\textsuperscript{84} By 1961, the LC had created acquisition centers in India and Egypt. In 1965, Congress enacted the Higher Education Act, which approved appropriations to the library for what became the National Program for Acquisitions and Cataloging (NPAC).\textsuperscript{85}

\footnote{58} From 1965 to 1975, the library established ten overseas offices and, after 1976, ran the program under its own authority until the money ran out in 1987. Under these programs, the LC also distributed foreign books and serials to other research libraries and centers. Furthermore, the LC took the leadership role in developing international bibliographic standards from the 1960s with MARC, which communicated bibliographic data in machine-readable form. This became the official national standard in 1971 and an international standard in 1973. NPAC evolved into the Cooperative Acquisitions Program, under which the library in 2017 maintained six overseas offices in Africa, Asia, and Latin America. Collectively, they acquire materials from sixty nations.\textsuperscript{86}

\footnote{59} John Cole, the leading scholar on the history of the LC, has written that it is a product of Jefferson’s vision of universality, American cultural nationalism, and the initiative of librarians of Congress since Spofford. In any case, since World War II, the LC has become the world’s largest and most comprehensive library, which occupies a unique space in American civilization. In 2017, it had thirty-six million

\begin{thebibliography}{99}
\footnote{82. \textit{Cole, Jefferson’s Legacy}}, \textit{supra }note 75, at 27–28, 31, 59; \textit{Cole, Dictionary}}, \textit{supra }note 71, at 408–09; \textit{see also Conaway}}, \textit{supra }note 72, at 99–111; \textit{Rosenberg, supra }note 1. Putnam had been superintendent of the Boston Public Library. \textit{Cole, Dictionary}}, \textit{supra }note 71, at 408. The LC also benefited from participation in the Farmington Plan (involving fifty-four American libraries in 1950) for the cooperative acquisition of foreign publications. Its goal was to have at least one copy of every current foreign publication of research value available in the United States. \textit{ANNUAL REPORT FOR THE LIBRARIAN OF CONGRESS FOR THE FISCAL YEAR ENDING JUNE 30, 1950, at 115 (1951) [hereinafter 1950 ANN. REP. LIBR. CONG.].}
\footnote{83. \textit{Cole, Dictionary}}, \textit{supra }note 71, at 409–10; \textit{see also Conaway}}, \textit{supra }note 72, at 139–42.


cataloged books and other print materials in 460 languages. Two-thirds of the books and serials are in languages other than English. The LC well represents the position of the United States in the world today.

**The Role of Copyright and Legal Deposit in the Growth of Libraries**

**Europe**

¶60 We have seen that the invention of a moveable-type printing press around 1440 did not immediately lead to the development of libraries with tens of thousands of books. These larger libraries date from the second half of the seventeenth century. Nevertheless, this type of printing, replacing the use of wooden blocks, spread through most of Europe by 1500 and indirectly affected the potential size of libraries.

¶61 Printing swiftly reached Italy after its invention in Germany. The Venetian Senate first issued a *privilegium* in 1469 to Johann de Speyer, a German, for the exclusive right to print books in Venice for five years. His death in 1470 solved the monopoly issue raised by other printers, and later Venetian *privilegii* went to individuals to control the publication of their own work. A third type of privilege went to printers to publish the work of others. Venice as a city-state was interested in the economic benefits of printing, restricting book importation (foreign competition), and censoring writing that was heretical or seditious. By 1517, Venice ended its ad hoc approach to the protection of printing and within a few years enacted legislation to regulate printing and copyright. Its policies were to protect trade and the interests of authors or printers, regulate quality (for consumers and the prestige of Venice), and maintain censorship.

¶62 As noted above, King Francis I, in the Ordonnance de Montpellier (1537), required that publishers deposit (*dépôt légal*) one copy of a printed book prior to its sale at his royal library. This idea circulated through Europe and beyond as a means to compile a book collection worthy of the political entity as well as to protect the printer or bookseller against debased or unauthorized copies. To illustrate, King Phillip III in Spain initiated *depósito legal* in 1619 for the royal library at El Escorial. Phillip V expanded this in 1716 to include the royal library in Madrid, today the National Library of Spain. In 1624, Ferdinand II, Holy Roman Emperor, required a similar legal deposit of a book at his palace library. It subsequently influenced Sweden.


in 1661, Denmark in 1697, Prussia in 1699, and Finland in 1702. Before Italy became a nation in 1861, there were regional and provincial libraries, such as those in Lombardy and Tuscany, with deposito legale dating from the eighteenth century.

Two decades after the French adopted legal deposit, King Henry VIII in England granted literary rights, primarily to printers, which gave them some protection in their trade. Queen Mary I between 1556 and 1558 chartered the Stationers’ Company and required printers to register their published books by deposit (enforced by fine) with the Company. This registration provided rights and duties for the printers. In 1610, Sir Thomas Bodley, who had reestablished the Oxford University library, obtained an agreement from the Company for the library to claim a copy of material printed under royal license. In 1637, the Court of Star Chamber extended registration to either of England’s two archbishops, the bishop of London, or the chancellors of Oxford or Cambridge. The censorship policy was as strong as the trade regulation policy. In 1710, the Statute of Anne codified these privileges and dealt with three issues concerning literary publication: (1) copyright, (2) book prices, and (3) book deposit in specific libraries. A living author held a copyright exclusively to publish material for twenty-one years from the date of the statute. Later authors held a copyright for fourteen years, once renewable. These property right holders could assign their rights, for instance, to a printer or press. The 1790 U.S. statute on copyright was similar to this English legislation, but did not include legal deposit in a library.

Although the legal deposit feature of the English and U.S. law primarily aimed at securing statutory copyright protection, its secondary goal in England and eventually in the United States was to develop an archive of books, pamphlets, and serials. The creation of the British Museum (in London) by an act of Parliament in 1753 clarified this policy. The founding collections included a substantial number of books and manuscripts that several aristocrats provided. In 1757, King George II donated the Royal Library of 9000 books and some important manuscripts to the museum along with the privilege of copyright receipt. The Royal Library had obtained the legal deposit right in 1662. This privilege covered all copyrighted materials published in Great Britain and the dominions. In 1842, the Copyright Act required automatic deposit at the British Museum and on request, at one or more of five other libraries, carrying over a privilege codified in the Statute of Anne. Today, the Agency for the Legal Deposit Libraries processes requests for deposit in the university libraries at Oxford, Cambridge, and Trinity College (Dublin); the National Library of Scotland (until 1925, the Faculty of Advocates library); and, since 1911, the National Library of Wales.

92. Larivière, supra note 90, at 6–7; Baur, supra note 59, at 713. These later adoptions made the regulatory aspect clearer, including censorship. By 1938, fifty-two countries had a legal deposit system for books, which increased to 139 countries by 1990. Larivière, supra note 90, at 7.


95. Budd, supra note 89, at 171; P.R. Harris, British Library: London, in ENCYCLOPEDIA OF LIBRARY HISTORY, supra note 18, at 87, 87–89 [hereinafter P.R. Harris]; Philip R. Harris, British Library, in 1
United States

¶65 In the United States, Congress exercised its explicit power under the Constitution to enact a national copyright law in 1790. Unlike many countries and other political entities in Europe, it did not provide for deposit in a library. Rather Congress called for registration with a federal district court clerk and subsequent deposit with the secretary of state as evidence of a book’s copyright.96 In 1831, due to the failure of authors, publishers, and printers to comply with the deposit requirement, Congress amended the statute to require book deposit with the court clerk, who would then forward the volume to the secretary of state.97 Although this simplified the copyright process, and the U.S. Supreme Court affirmed that record deposit was essential for statutory copyright protection, compliance was minimal. Between 1790 and 1850, the State Department accumulated only 10,000 volumes as deposits of record.98

¶66 By the 1840s, New England scholars and literary figures began to promote the idea of a national library for the United States, similar to those emerging in Europe. A step in that direction occurred when Congress created the Smithsonian Institution in 1846, funded by the $500,000 devise of a British scientist, John Smith-son (1765–1829).99 The 1846 statute provided for copyright book deposits to enrich two American libraries, namely the Smithsonian Library and the Library of Congress. It called on authors and publishers to send one copy to each of the libraries within three months after publication for statutory protection. This was the first congressional recognition of the usefulness of deposit to build a national library. Nevertheless, as a supplemental requirement to legal deposit, without statutory enforcement, authors and publishers largely ignored it.100

¶67 The first Smithsonian librarian, Charles Jewett (served 1847–1854), had earlier spent two years visiting libraries in England, France, Italy, and Germany. He learned of the value of legal deposit to build a national library and wrote to support mandatory deposit at the Smithsonian backed by enforcement. By 1850, only fifteen percent of the library’s collection was the result of statutory deposit. At that
time, the library had 6000 volumes, while the LC had 50,000 volumes. Jewett’s effort would never reach fruition, however, since the institution’s head, Joseph Henry (served as secretary, 1846–1878), was hostile to the idea and instead promoted the institution’s mission in scientific research, publications, and international book exchanges. Henry favored giving the LC the task of becoming America’s national library. In 1859, Congress amended the copyright law to consolidate deposit of record at the Patent Office and to eliminate deposit for library use.\footnote{101}

\¶68 At the LC, John Meehan, librarian from 1829 to 1861, supported Henry’s goal to terminate copyright deposit for library use. He found it an administrative nuisance since the thirteen-year period in which it was law yielded only 4200 volumes. In 1859, the LC had 63,000 volumes compared to the 25,000 volumes in the Smithsonian library.\footnote{102} Near the end of the Civil War, the LC was fortunate that Ainsworth Spofford became librarian and held office from 1864 to 1897. He, like Jewett before him, believed that America needed a national library and that copyright deposit for library use could facilitate that goal. Spofford, as chief officer of its library, could directly lobby Congress and was successful in 1865 in returning copyright deposit to the LC. The 1865 amendment required that authors or printers provide the LC with their book within one month of publication, sanctioned by the penalty of losing their copyright for noncompliance.\footnote{103} In 1866, with Henry’s encouragement, Congress authorized the Smithsonian library’s transfer of its 40,000 volumes (including copyright deposits) to the 99,000 volume Library of Congress for better safekeeping.\footnote{104}

\¶69 Spofford now aggressively proceeded to enforce the 1865 copyright deposit law to build continued momentum toward a national library. He corresponded with thirty federal district court clerks to request copies of their copyright records to check against his records. In 1867, he convinced Congress to add a $25 fine for noncompliance and a provision for postage-free delivery for deposits to the LC. The number sent in 1866—1996 items—increased in 1867 to 4499 volumes, augmenting the library to 165,000 volumes, then the largest in the United States.\footnote{105}

\¶70 Dissatisfied with the need to supervise copyright deposit enforcement and the inefficiencies of dealing with so many court clerks, Spofford proposed to Congress that it remove the whole system from the Patent Office and federal clerks and place it in the LC. In 1870, Congress agreed and made the LC the central agency for copyright registration and for custody of copyright deposits. The 1867 amendment remained, and now authors and publishers had to send postage-free two copies of their book (one for record and the other for library use) within ten days


\footnote{102. Cole, \textit{supra} note 60, at 121–23.}

\footnote{103. Act of 1865, ch. 126, 13 Stat. 540; Ostrowski, \textit{supra} note 71, at 210–15; Cole, \textit{supra} note 60, at 123–25.}

\footnote{104. Cole, \textit{supra} note 60, at 125. The Smithsonian continued to treat the transferred collection as its main library, known as the Deposit, until the 1950s. Nancy E. Gwinn, \textit{Smithsonian Institution Libraries}, in \textit{2 International Dictionary of Library Histories, supra} note 30, at 702, 702–03.}

\footnote{105. Act of 1865, ch. 126, 13 Stat. 540; Cole, \textit{supra} note 60, at 125. The deposit compliance rate in 1867 was seventy-five percent. Cole, \textit{supra} note 60, at 125.}
of publication, enforceable by a $25 fine. By 1876, forty percent of the library’s collections were the result of copyright deposit. Congress further aided the LC in 1891 by permitting foreign authors to copyright their books printed in the United States. In 1897, when the library moved from its rooms in the Capitol to its own quarters—renamed the Thomas Jefferson Building in 1980—it possessed 840,000 volumes.

For the second half of the nineteenth century, copyright deposit became crucial in developing the LC as a national library. In 1874, the copyright law brought in more books than the LC purchased; by 1880, copyright provided twice as many as purchase. The administrative costs, however, were a burden. By 1896, Spofford spent seventy-five percent of his time supervising twenty-six (of forty-two total) library staff for copyright purposes. As the library moved into its new building in 1897, Spofford retired and John Young replaced him as librarian (served 1897–1899). Congress created the U.S. Copyright Office as a separate department in the LC, and Young selected Thorvald Solberg to be the first register of copyrights (served 1897–1930). Only after the LC had established itself did Congress seriously join the effort to fashion a great library with substantial annual appropriations. Herbert Putman (served 1899–1939) came from the Boston Public Library to succeed Young upon his death. In the next four years, the LC’s national services in cataloging, classification, reference, and interlibrary loan developed tremendously. Beyond lobbying Congress for appropriations, Putman augmented other collection-building methods such as gift and exchange. Nevertheless, copyright deposit remained significant into the twentieth century.

The Emergence of National Libraries

Many of the royal libraries in Europe that grew in size by purchase, inheritance, or plunder from the sixteenth through the eighteenth centuries evolved in the late eighteenth and nineteenth centuries into putative national libraries. Copyright and legal deposit contributed to this development. By 1800, there were twenty national libraries worldwide of this type, all in Europe. At that time, however, only the Bibliothèque Nationale in France had a formally recognized national library. Beyond that, formal designation and recognition occurred in the nineteenth and more generally in the twentieth century. The LC remains an exception, although librarians universally acknowledge it as the de facto national library of the United States.

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Today, virtually all countries and some regions have their respective comprehensive national libraries. These often arose from existing royal, legislative, university, or local public libraries. In the twenty-first century, the national libraries with the most ambitious collecting policies have been those in England, France, and Germany in Europe; the United States; and China and Japan in Asia. All of them use legal deposit as an aid in collection development. Table 3 presents a rough indicator of the libraries’ book collections at the beginning of the twenty-first century.

The backgrounds of the national libraries surveyed here are distinct, but they reflect one common belief: a country requires a national library to reflect and project its special culture and aspirations. In England, for instance, the British Museum library served as the assumed national library until the new British Library in 1973 absorbed it. The United Kingdom already had the National Library of Wales and the National Library of Scotland. In France, in 1792, the Legislative Assembly renamed the Bibliothèque du Roi the Bibliothèque Nationale. During the revolutionary period, the library—through confiscation from aristocrats and religious orders—acquired 250,000 books and 14,000 manuscripts. The shifting politics of the postrevolutionary period led to further name changes for the national library: Imperial Library (after Emperor Napoléon Bonaparte) in 1805 and again to Royal Library in 1814. In 1993, the government adopted the name Bibliothèque Nationale de France.

<table>
<thead>
<tr>
<th>National Library Size in 2000, by Country and Volumes^a</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Library of Congress</td>
</tr>
<tr>
<td>National Library of China</td>
</tr>
<tr>
<td>British Library</td>
</tr>
<tr>
<td>Deutsche Nationalbibliothek</td>
</tr>
<tr>
<td>Bibliothèque Nationale de France</td>
</tr>
<tr>
<td>National Diet Library of Japan</td>
</tr>
</tbody>
</table>

^a. 1–2 International Dictionary of Library Histories, supra note 30, at 227, 333, 407, 468, 499, 509. By comparison, Harvard University had 14.4 million volumes in 2000. Id. at 348, 352. The editor and advisers to the dictionary made an effort to provide comparable and reliable data for volume count in libraries. Id. at ix, xiv–xv.

110. Line, supra note 109, at 119–21. In Brazil, for instance, the national library began as the Royal Library of Portugal, which the crown transported to Brazil after Napoleon’s invasion of Portugal. It opened to the public in 1814, then the largest library in Latin America. It changed its name to Biblioteca Nacional in 1878. Laurence Hallewell, National Library of Brazil, in 1 International Dictionary of Library Histories, supra note 30, at 489, 489–90. Another example is Australia. The genesis of its national library (so named in 1961) was the Commonwealth Parliamentary Library, created in 1901, and influenced by the prestige of the Library of Congress. Jan Fullerton, National Library of Australia, in 1 International Dictionary of Library Histories, supra note 30, at 486, 486.

111. Harris, British Library, supra note 95, at 227, 231; see also supra ¶ 64.

After national reunification, Germany in 1990 merged the Deutsche Bücherei (Leipzig) and the Deutsche Bibliothek (Frankfurt) into the new Die Deutsche Bibliothek. In 1970, the Deutsches Musikarchiv (Berlin) had already become a department of the Frankfurt library. Consequently, the new entity had operations in three major German cities, divided by separate functions and responsibilities. In 2006, the Federal Parliament expanded the mission and officially recognized the library's national status with the name Deutsche Nationalbibliothek.  

In China, prior to 1900, the emperor maintained a library of official records and literary treasures, Jesuit missionaries established a library in Shanghai, and a few scholars and private collectors had substantial libraries. Near the end of the Qing Dynasty, the emperor authorized the merger of the imperial library and two private collections of Buddhist manuscripts into a new library in Beijing. The 1911 revolution delayed its completion, which in the new Republic of China opened as the Metropolitan Library in 1912 under the Ministry of Education's administration. In 1929, the library merged with Beihai Library of Beiping into the National Library of Beijing. In 1950, the People's Republic of China renamed it the National Library of Beijing, and finally, in 1998, the State Council approved the Chinese name of Zhongguo guo jia tu shu guan (National Library of China).  

In Japan, the influence of the United States was dominant during the occupation period following World War II. The occupation authorities believed that reform of the Diet library could be an important asset toward democratization in Japan. The Diet in 1947 invited a U.S. Library Mission, which included the assistant librarian of the LC, to provide guidance. Together with the Diet's two library committees, the consensus reached was that the new Diet library would have a national central library function in addition to its task of assisting the legislature. Opened in 1948, the National Diet Library merged with the former imperial library a year later. The Ministry of Education had administered the latter since 1872.  

The Development of Law Libraries

Europe

¶79 The archetypical law library of classical civilization was Justinian's imperial library in fifth century Constantinople.\textsuperscript{116} As implied earlier, there was no tradition in European universities to establish a separate library for the law faculty, even though there could be small law collections in the building used for legal instruction. In addition, in those universities that had general libraries, librarians might segregate law books on a separate floor or area, as at Heidelberg University in the fifteenth century.\textsuperscript{117}

¶80 The four London Inns of Court libraries for barristers from the sixteenth century illustrate early modern law libraries. The one at Inner Temple consisted of two rooms with bookshelves padlocked by iron rods and valuable books chained. The library's records report that Sir Edward Coke donated his multivolume Reports in 1608. Gifts, in fact, constituted the main source for growth in the number of books, while fire represented their main threat. The Inn appointed in 1709 its first library keeper, who served for £20 per year. During the eighteenth century, librarians created several catalogues of the collection, but it was only in 1806 that the first one was printed. In 1843, the library contained 12,000 books and 500 manuscripts, and in 1970, 75,000 volumes.\textsuperscript{118} By contrast, the Faculty of Advocates library in Edinburgh, founded in 1689, became in essence the national library of Scotland until 1925, when it donated the whole nonlaw collection of 750,000 books and manuscripts to the new National Library of Scotland. Since 1925, the Faculty of Advocates collection has been a law library. In 1970, it had 65,000 books.\textsuperscript{119}

¶81 The French equivalent, the Paris Bar Association library, resulted from a bequest in 1708 for advocates, including those beginning their careers. It opened in 1713 and was small, fewer than a thousand books. However, by 1789, it was one of the most important libraries in Paris with about 40,000 books. After the Revolution, the government in 1793 appropriated the library’s books and split them between the Council of State and the Court of Cassation. The minister of the interior permitted the reestablishment of the bar library in 1811 with 1100 books. In 1864, the library had 25,000 books, and by 1970, 120,000 volumes.\textsuperscript{120}

¶82 Even by 1970, Europe did not have large law libraries by comparison to those in the United States. Nevertheless, a few had collections between 100,000 and 200,000 volumes.\textsuperscript{121}

\textsuperscript{116} S. Blair Kauffman, Law Libraries, in Encyclopedia of Library History, supra note 18, at 332, 332; see also supra ¶¶ 17–18.

\textsuperscript{117} See supra ¶¶ 29, 31, 33.


\textsuperscript{119} Int’l Ass’n of Law Libraries, supra note 118, at 637; see also supra ¶ 64 and note 95.

\textsuperscript{120} Michael P. Fitzsimmons, The Parisian Order of Barristers and the French Revolution 17–18 (1987); Joachim Antoine Joseph Gaudry, 2 Histoire du Barreau de Paris depuis Son Origine jusque’à 1830, at 70–73, 336, 504 (1864); Int’l Ass’n of Law Libraries, supra note 118, at 150.

\textsuperscript{121} See infra table 6, note a; ¶¶ 93–95.
United States in the Nineteenth Century

¶83 In the United States, John Adams in the eighteenth century spent substantial time and money building what he considered the best law library in Massachusetts. When he traveled in England, France, and Spain, he purchased books to send home. His collection primarily concerned history, political and moral philosophy, comparative and foreign law, and public international law. Most lawyer libraries from the colonial period through the early nineteenth century consisted largely of books about foreign law, history, and political theory.122 In 1822, Adams at the age of eighty-six bequeathed his library of about 3000 books to the town of Quincy. Of that number, his collection had 750 volumes of the type one might find in a modern law library. By comparison, Harvard Law School, formed in 1817, had 600 books in the office of the university professor of law.123

¶84 Nevertheless, by 1875, Harvard Law School had the largest university law collection in the United States with 15,000 volumes.124 The primary impetus for that improvement was the shift in focus at the university toward a German-style scientific approach for scholarship and teaching that required a comprehensive book collection. Charles Eliot as president and Christopher Langdell as law dean implemented that program.125 Yale Law School had the second largest academic law library with 8000 volumes in 1875.126 Table 4 shows that the only other law school library by 1885 in the top eleven U.S. law libraries was that at the University of Michigan.127

¶85 Law libraries in general—beyond those of individual bibliophiles—oriented their collecting primarily to match the necessities of government, law practice, and legal education. Different institutions emphasized one group more than the other groups. For instance, the Litchfield Law School grew out of the entrepreneurial efforts of a lawyer who saw apprenticeship training as inefficient and uneven in quality. For more than fifty years beginning in 1784, he and his colleague trained more than 1000 students using classroom instruction based on Blackstone’s Commentaries. The small private library the instructors accumulated—primarily practice books and law reports—was available to the students in the classroom.128

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125. Brock, supra note 53, at 342–45; Clark, supra note 62, at 318–28; Kauffman, supra note 116, at 334; see supra ¶¶ 44–45 (Eliot).

126. Griswold, supra note 124, at 168.

127. See infra table 4, note a.

American lawyers who needed access to books for their practice formed bar association libraries, as in Europe, or pooled their resources for membership libraries. Two examples are the Boston Social Law Library (1803) and the Library of the New York City Bar Association (1870). Boston Federalist lawyers founded a social library as a means to promote the common law system by importing English law books and to defeat the Jeffersonian Republicans who supported the adoption of a civil law system based on legislative codes. In a private-public arrangement that continues today, the lawyers agreed to allow judges from the Massachusetts Supreme Judicial Court to use the library in exchange for locating it at the courthouse. Reinforced by the legislature’s authorization of a reporter of judicial decisions, lawyers and judges using the library adapted English precedents to accommodate American conditions.\(^{129}\)

\(^{129}\) Edgar J. Bellefontaine & James A. Brink, The History of the Social Law Library, in LAW LIBRARIANSHIP: HISTORICAL PERSPECTIVES 111, 114–17 (Laura N. Gasaway & Michael G. Chiorazzi eds., 1996); History, Social Law Library, https://www.socialaw.com/about/history [https://perma.cc/P8LA-ZKZZ]. In 2015, the library had a collection of 500,000 volumes with 10,200 attorney members. It still provided access to the Massachusetts judiciary, as well as to the legislature, the executive, legal services organizations, and certain law-related nonprofits. Id. For nineteenth century bar association libraries in general, see Brock, supra note 53, at 331–32.

### Table 4
U.S. Law Library Size in 1875 and 1885, by Institution and Volumes\(^{a}\)

<table>
<thead>
<tr>
<th>Law Library</th>
<th>1875</th>
<th>1885</th>
</tr>
</thead>
<tbody>
<tr>
<td>Library of Congress</td>
<td>35,000</td>
<td>66,000</td>
</tr>
<tr>
<td>New York State</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New York Law Institute</td>
<td>20,000</td>
<td>34,000</td>
</tr>
<tr>
<td>New York City Bar Association</td>
<td>9,000</td>
<td>27,000</td>
</tr>
<tr>
<td>San Francisco County</td>
<td>13,000</td>
<td>26,000</td>
</tr>
<tr>
<td>Harvard University</td>
<td>15,000</td>
<td>22,000</td>
</tr>
<tr>
<td>Boston Social</td>
<td>13,000</td>
<td>20,000</td>
</tr>
<tr>
<td>Philadelphia Law Association</td>
<td>9,000</td>
<td>19,000</td>
</tr>
<tr>
<td>Chicago Law Institute(^{b})</td>
<td>7,000</td>
<td>19,000</td>
</tr>
<tr>
<td>University of Michigan</td>
<td>3,000</td>
<td>10,000</td>
</tr>
<tr>
<td>Yale University</td>
<td>8,000</td>
<td>9,000</td>
</tr>
</tbody>
</table>


\(^{b}\) The Chicago Law Institute, founded in 1857, was a member law library for Cook County lawyers. When the Illinois General Assembly approved a statute in 1961 authorizing counties to form free law libraries paid for by court filing fees, the Institute could no longer financially survive and transferred its collection of 140,000 volumes to the Cook County Law Library in 1966, located at the newly constructed Chicago Civic Center (renamed the Daley Center in 1976). See Abstract of Record and Appellant Brief, Chicago Law Institute v. Benjamin Black (1966) (Ill. Ct. App., No. 51619), available in HeinOnline (World Trials Library); John Oswald, 140,000 Volumes Are Awaiting Removal, CAT. TRIB., June 21 1966, § 1A, at 4.
The founding lawyers of the New York City Bar Association desired to address the growing public concern over venality in the New York City justice system. Early officers were active in seeking the removal of corrupt judges and in leading prosecutions of notorious Tweed Ring members. Although there were numerous policy debates regarding the role for the association, members continuously agreed that they needed a grand law library suitable for the nation’s largest city. By 1902, the library had 56,000 volumes.\footnote{George Martin, Causes and Conflicts: The Centennial History of the Association of the Bar of New York 1870–1970, at 319–50 (2d ed. 1997); About Us, N.Y. City Bar, http://www.nycbar.org/about-us/overview-about-us [https://perma.cc/5XRW-KUGQ]; Library: Overview and Hours, N.Y. City Bar, http://www.nycbar.org/library/overview-hours [https://perma.cc/Y95B-29C8]. Today, the dues of 24,000 lawyers support the library, which is similar in size to the Social Law Library. Id.}

More broad-based tax-supported law libraries also emerged in response to the requirements of local public officials, the legal community, and sometimes the citizenry. To illustrate, in 1806, Allegheny County in New York established a law library. Massachusetts created a system of county law libraries in 1815. These were open to the public. To support the Massachusetts initiative, the libraries received a portion of civil court filing fees. This technique also financed the Los Angeles County Law Library, which accumulated one of the more important U.S. comparative law collections in the twentieth century.\footnote{Kauffman, supra note 116, at 333; see infra ¶¶ 125–127.}

State governments also saw the need to establish a library—normally to function as a repository for official state and federal statutes, regulations, court cases, agency reports, and other publications. Pennsylvania and Ohio set one up in 1816 and 1817 respectively. Connecticut created one in 1854. The New York Assembly authorized its State Library in 1818 for government use, located at the capitol. From the beginning, the New York State Library directors exceeded their mandate for government materials and collected books appropriate for public policy formulation, local history, and liberal learning. Some library trustees saw the institution as a state-level Library of Congress. Melvil Dewey, director from 1888 to 1905 and inventor of the Dewey decimal system of classification, transformed the State Library into his vision of a “people’s university” with innovative reference services and dramatically increased book circulation. Today, the New York State Library is the largest of the American state libraries; its law collection—strictly defined—consists of 450,000 titles.\footnote{Brock, supra note 53, at 332–39; Kenneth E. Carpenter, New York State Library, in 2 International Dictionary of Library Histories, supra note 30, at 621, 621–23; Melinda Yates, A Capital Asset: The History and Resources of the New York State Library, N.Y. State Library, http://www.nysl.nysed.gov/library/otherpubs/capasset.htm [https://perma.cc/6KDF-TGR3]. In 2000, the library with all its divisions had a collection of 2.5 million volumes. Carpenter, supra, at 621. For Dewey’s contribution to libraries, see Lerner, supra note 18, at 120–22, 174–75, 180, 186.}
Types of U.S. Law Libraries: 1900 to 1960

¶90 During the first half of the twentieth century, four distinct types of law libraries proliferated in the United States, a process that accelerated after World War II with the dramatic growth in the number of lawyers and the size of government. These four categories are, first, academic libraries associated with separately administered law schools, typically part of a university. These universities may be private or public, but their law school mission focuses on legal education and scholarly research. Second, government law libraries—financed mainly by taxpayers—serve a national, state, county, or citywide combination of legislators, administrators, judges, lawyers, and the public. Third, state, county, or city bar association libraries—paid for by attorney bar membership dues—provide books, serials, and today online services, for that constituency. Fourth, private law libraries exist in law firms and large corporations with legal departments to offer legal materials for their lawyers.133

¶91 By 1938, the leading U.S. law libraries had collections of at least 100,000 volumes, as reported in table 5. Of the fifteen libraries listed, eight were university law libraries located and administered at the institution’s law school. In fact, the Association of American Law Schools (AALS) required approved law schools to “own a law library” as early as 1926.134 The development of university law schools in the nineteenth century set the tradition of law libraries distinct from the university or liberal arts college library.135

¶92 After World II, American law libraries established a commanding worldwide lead in the size and diversity of their collections.136 In 1950, thirty-one U.S. law libraries had more than 100,000 volumes, and by 1960, fifty-seven libraries had


The proliferation of law firm libraries is impressive. In 1950, there were sixty; by the end of the twentieth century, there were more than 1000. Their size was also significant. In the 1930s, the largest New York firms had libraries of 10,000 volumes. In 1995, the big U.S. firms had upwards of 70,000 volumes. Gitelle Seer & Jill Sidford, The Evolution of Law Firm Libraries: A Preliminary History, in Law Librarianship: Historical Perspectives, supra note 129, at 77, 79, 88. Baker & McKenzie, the world’s largest global law firm in 1972, had a foreign and comparative law collection of 7000 books (with another 100 books on international law) at its headquarters in Chicago. Igor I. Kavass, Foreign and International Law Collections in Selected Law Libraries of the United States: Survey 1972–1973, 1 Int’l J.L. Libr. 117, 128 (1973).

134. Alfred Z. Reed, Review of Legal Education in the United States and Canada for the Years 1926 and 1927, at 7 (1928). The ABA amended its standards for approved law schools in 1940 to support the same idea as the AALS. New standard IV read:

[T]he library is the heart of a law school and is a most important factor in training law students and in providing faculty members with materials for research and study. Therefore, it is a cardinal requirement of the American Bar Association that an adequate library be maintained, consisting of not less than 7,500 well-selected, usable volumes, . . . kept up to date and owned or controlled by the law school.


135. Columbia, Harvard, Michigan, and Yale all had separate law libraries established prior to 1860. Griswold, supra note 124, at 169.

136. Even by 1970, in Germany, Italy, and the United Kingdom, the largest law libraries contained between 100,000 and 200,000 volumes. Int’l Ass’n of Law Libraries, supra note 118, at 249, 258–59, 275–76, 281, 412, 606, 621, 629.
reached that threshold.\textsuperscript{137} Table 6 reflects that growth, which for the largest libraries occurred primarily at university law schools. The principal exception was the LC Law Library, which by 1950 had overtaken Harvard Law School Library as the largest one in the United States. Congress had increased its law library funding since the 1930s as it recognized the importance of broadening the foreign law collection from a half dozen European nations to all the countries of the world.\textsuperscript{138}

### European Law Libraries in 1970

\textsuperscript{¶}93 In contrast to the United States, only one United Kingdom law library had a collection that exceeded 130,000 volumes, even by 1970. That library was the Bodleian Law Library at Oxford University, which in 1964 had separated with 145,000 volumes from the main library. The Institute for Advanced Legal Studies

\textsuperscript{137} Schwerin, \textit{supra} note 16, at 541–42.

In Germany, which had the largest law libraries in Europe in 1970, the Max Planck Institutes had a comparative law collection of 135,000 volumes (in Hamburg) and a comparative and international law collection of 140,000 volumes (in Heidelberg). The German Supreme Court Library’s size in 1970 was 145,000 volumes. German universities libraries, as typical in most other European countries, maintained their law books and journals as part of a general collection. The University of Göttingen library had 180,000 law volumes within a total collection of 96,400 volumes.

¶94 In Germany, which had the largest law libraries in Europe in 1970, the Max Planck Institutes had a comparative law collection of 135,000 volumes (in Hamburg) and a comparative and international law collection of 140,000 volumes (in Heidelberg). The German Supreme Court Library’s size in 1970 was 145,000 volumes. German universities libraries, as typical in most other European countries, maintained their law books and journals as part of a general collection. The University of Göttingen library had 180,000 law volumes within a total collection of 96,400 volumes.

### Table 6

<table>
<thead>
<tr>
<th>Law Library</th>
<th>1950</th>
<th>1960</th>
</tr>
</thead>
<tbody>
<tr>
<td>Library of Congress</td>
<td>805,000</td>
<td>1,020,000</td>
</tr>
<tr>
<td>Harvard University</td>
<td>656,000</td>
<td>933,000</td>
</tr>
<tr>
<td>Yale University</td>
<td>327,000</td>
<td>393,000</td>
</tr>
<tr>
<td>Columbia University</td>
<td>300,000</td>
<td>387,000</td>
</tr>
<tr>
<td>New York City Bar Association</td>
<td>308,000</td>
<td></td>
</tr>
<tr>
<td>Los Angeles County</td>
<td>308,000</td>
<td></td>
</tr>
<tr>
<td>University of Michigan</td>
<td>210,000</td>
<td>276,000</td>
</tr>
<tr>
<td>University of Minnesota</td>
<td>172,000</td>
<td>244,000</td>
</tr>
<tr>
<td>San Francisco County</td>
<td></td>
<td>195,000</td>
</tr>
<tr>
<td>Northwestern University</td>
<td>144,000</td>
<td>181,000</td>
</tr>
<tr>
<td>New York Law Institute</td>
<td></td>
<td>165,000</td>
</tr>
<tr>
<td>New York University</td>
<td>100,000</td>
<td>165,000</td>
</tr>
<tr>
<td>Ohio State University</td>
<td>85,000</td>
<td>154,000</td>
</tr>
<tr>
<td>University of Pennsylvania</td>
<td>121,000</td>
<td>145,000</td>
</tr>
<tr>
<td>Cornell University</td>
<td>114,000</td>
<td>144,000</td>
</tr>
<tr>
<td>University of Washington</td>
<td>111,000</td>
<td>135,000</td>
</tr>
<tr>
<td>University of California</td>
<td>91,000</td>
<td>135,000</td>
</tr>
<tr>
<td>University of Chicago</td>
<td>125,000</td>
<td>134,000</td>
</tr>
<tr>
<td>University of Illinois</td>
<td>95,000</td>
<td>130,000</td>
</tr>
</tbody>
</table>


2,000,000 volumes; the University of Hamburg library had 120,000 law volumes within a general collection of 1,000,000 volumes; and the University of Heidelberg library had 200,000 law volumes.\textsuperscript{140}

\textsuperscript{140} In Italy, the International Institute for the Unification of Private Law in Rome in 1970 had the largest separate law library with 172,000 volumes.\textsuperscript{141}

\textbf{The Issue of Library Size Since 1980}

\textsuperscript{96} There are many problems associated with comparing libraries by the size of their collections. The attempt itself arises from a desire to assess the relative importance of libraries otherwise comparable, meaning they belong to the same category of libraries. In general, this article discusses three categories of libraries: comprehensive libraries, law libraries, and comparative law libraries. I define a single library as one geographically centralized and administered under a single hierarchy. That hierarchy need not be autonomous, but should have a significant degree of administrative responsibility. Thus, law librarians at universities may be under the bureaucratic control of the university librarian, and comparative law librarians normally report to the law librarian. The proximity element is necessary to distinguish, for instance, the Boston Public Library (and its twenty-four branches that I count as a single library) and the University of California libraries, which are distributed on ten campuses throughout the state and count as ten libraries.\textsuperscript{142}

\textsuperscript{142} Many argue that quantity is not quality, and that certainly is true. Some small research libraries have unique collections invaluable to certain patrons.\textsuperscript{143} Nevertheless, large libraries often consist of numerous special collections and normally have the resources to make their materials accessible to many people. Comprehensive libraries also typically collect many other items in addition to books and serials—often in the millions. These items may include technical reports, manuscripts, maps, music, and visual material such as photographs, posters, and film. By the twenty-first century, this has led librarians to report library size in both volumes (and volume equivalents) plus other items.\textsuperscript{144}

\textsuperscript{144} The question of volumes versus items is less important for law libraries, since they have continued to focus on collecting books, serials, and other written material such as documents (or their evolving photographic or electronic equivalents) related to the law. After 1960, technology began to divert some law librarians away from only the traditional collection of print books and serials toward the purchase or creation of microforms.\textsuperscript{145} By 1980, U.S. law library statistics separately

\begin{itemize}
\item \textsuperscript{141} \textit{Int’l Ass’n of Law Libraries},\textit{ supra} note 118, at 412.
\item \textsuperscript{145} The Library of Congress initiated the acquisition of handmade copies of documents from the British Museum and the Bodleian Library after 1905. By 1925, the LC had special funds to photostat and microfilm foreign archival materials, which added rare items to the collection. 1950 \textit{Ann. Rep. Libr. Cong.},\textit{ supra} note 82, at 99–106.
\end{itemize}
counted print materials from microforms, the latter of which usually represented less than fifteen percent of the total volume number. Since the Department of Education had not at that time achieved an agreement among librarians on how to count microforms, the American Bar Association (ABA) for its accrediting mission directed law librarians to provide a volume equivalent for microforms equal to the print copy. If the original material was not in countable volumes, librarians should calculate 800 pages as equivalent to one volume. Table 7 sets out law library collection size (in volumes and volume equivalents) from 1980 to 2007 for the largest law libraries in the United States.

¶99 As shown in table 6, of the nineteen U.S. law libraries with 130,000 volumes or more in 1960, fourteen were university law libraries. By 1980, academic law libraries became even more dominant. Table 7 shows that the twenty largest law libraries consisted of eighteen academic libraries and two government libraries: the Law Library of Congress and Los Angeles County Law Library. Table 7 added four university law libraries to replace the three private bar association and member libraries in table 6 that grew more slowly and fell behind academic law libraries. This shift appears primarily related to resource availability, as law schools continued to generate substantial revenue after 1980, some of which administrators could use to support the law library collection. The private member law libraries in New York and San Francisco could not keep up.

¶100 By 2000, the ABA had a more exact rule about calculating microform equivalents in law school libraries. Each microfilm roll counted as five print volumes and six microfiche equaled one volume. This rule prevailed until 2007, after which the ABA responded to librarian complaints about measuring collection size and eliminated the annual reporting of print volumes and volume equivalents. In its place, ABA-approved law schools would report the total money spent on library materials, including electronic resources, and the availability of Internet networks and computers. In 2014, after a major review of its standards for law school accreditation, the ABA approved in chapter 6 on libraries a new standard 606 on the library’s collection. Standard 606(a) no longer requires that the collection be available in the law library, but mandates only that the library provide “reli-

148. For 2007, other law library collection sizes included New York City Bar Association (465,000 volumes), San Francisco County (340,000 volumes), and New York Law Institute (240,000 volumes). Mary E. Wiss, Legal Lore for Advocates: San Francisco Law Library, S.F. Att’y, Spring 2009, at 30; Our History, N.Y. Law Inst., http://www.nyl.org/history [https://perma.cc/P5PA-T72Z]; E-mail from Richard Tuske, Library Director, N.Y. City Bar Ass’n, to author (Mar. 3 2016) (on file with author). San Francisco County Law Library permits only lawyers to borrow books, although the public may use materials while present at the library. See Policies and Rules, San Francisco Law Library, http://sflawlibrary.org/policies-rules. The two New York bar libraries in table 6 are member-only libraries.
able access.” This access, which may be to electronic materials, should support the school’s programs and objectives.\footnote{151} Interpretation 606-2 elaborates that access may be to electronic subscription databases or through resource-sharing arrangements with other institutions.\footnote{152}

§101 How should one assess law library quality in the twenty-first century? Librarians now speak of access to legal information as the critical criterion rather than the emphasis on volume count under the print paradigm. Physical books and serials may fade as the primary medium for storing information. Today, much information about law and legal institutions exists in both the print medium and electronically. Libraries can choose to collect both or only one source (often the initially less expensive electronic version). Other information exists only electronically, typically online as a website. Libraries can provide Internet access to these websites.

§102 Because of these developments, technology has diverted many librarians from the traditional collection of books and serials (or microforms) toward the acquisition of electronic resources. This has some leveling effect among libraries of the same type as smaller libraries pursue less expensive volume equivalents in lieu of developing distinctive book, journal, and manuscript collections. Of course, electronic materials have advantages, such as full-document word search and twenty-four-hour availability. However, an important limitation to this strategy is the lack of longevity for leased or subscription-based electronic materials.\footnote{153} How important to law librarians is the preservation of authoritative information for future use?

§103 It no longer is possible to create a reliable list of the best comprehensive law libraries, as in table 7, based on the size of a library collection. The question of library quality, centered on access to materials, may become intractable in the twenty-first century. There is insufficient consensus about what qualifies as a volume, the standard unit in measuring collection size and thus general library usefulness. Without independent assessment, statistical attempts to differentiate libraries depend on self-reporting with the associated proclivity to inflate information resources or perhaps to defer to political or administrative pressure to exaggerate.\footnote{154} The Association of Research Libraries (ARL) law library statistics for 2014 provide an example. They include six law libraries with more than one million volumes in their collections in 2014. Five of those libraries overlap the eight law libraries that reported more than a million volumes to the ABA for 2007 (see table 7). However, one law library reached the million mark by stating an enormous electronic book count. Boston University listed 677,000 e-books, representing sixty-five percent of

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\footnote{152}{Am. Bar Ass’n, supra note 151, at 42; Russell, supra note 151, at 362, ¶¶ 81–83.}

\footnote{153}{Lee, supra note 150, at 15–16, ¶ 26; David H. Stam, Introduction, in 1 International Dictionary of Library Histories, supra note 30, at xi, xiii.}

\footnote{154}{Flores, supra note 143, at 242–43, 246, 249; Lee, supra note 150, at 16, ¶¶ 28–29; Stam, supra note 153, at xiv–xv.}
its total collection. New York University was the second-largest academic law library in America, reporting for the ARL a total of 829,000 e-books, forty-four percent of its total collection.\(^{155}\)


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<tr>
<td>Library of Congress(^{b})</td>
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<td>3,324,000</td>
<td>178,000</td>
<td>1,174,000</td>
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<tr>
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<td>2,287,000</td>
<td>n/a</td>
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<td>335,000</td>
<td>1,233,000</td>
<td>34,000</td>
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<tr>
<td>Yale University</td>
<td>592,000</td>
<td>1,143,000</td>
<td>23,000</td>
<td>1,070,000</td>
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<tr>
<td>Georgetown University</td>
<td>195,000</td>
<td>1,097,000</td>
<td>81,000</td>
<td>1,059,000</td>
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<tr>
<td>Columbia University</td>
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<td>57,000</td>
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<td>989,000</td>
<td>23,000</td>
<td>822,000</td>
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<td>989,000</td>
<td>48,000</td>
<td>813,000</td>
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<td>University of Michigan</td>
<td>497,000</td>
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<tr>
<td>Los Angeles County(^{c})</td>
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<td>University of California</td>
<td>113,000</td>
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<td>University of Pennsylvania</td>
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<td>University of Illinois</td>
<td>370,000</td>
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<td>46,000</td>
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<tr>
<td>Northwestern University</td>
<td>361,000</td>
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<td>18,000</td>
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<tr>
<td>Cornell University</td>
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<tr>
<td>University of Chicago</td>
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<td>University of Washington</td>
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<td>277,000</td>
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Law Library Associations

¶104 Most of the growth and development of law libraries worldwide occurred in the twentieth and twenty-first centuries. The United States has been in the forefront of this movement, and prior to 1960 was the only country effectively to organize its law libraries into an association.\textsuperscript{156} Law library professionals pushed to establish aggregations of law libraries to serve better the requirements of their specialist clienteles. The American Association of Law Libraries (AALL) began in 1906 to separate its interests from those of the American Library Association. Within two years, AALL had seventy-seven members and started publishing the \textit{Law Library Journal} and the \textit{Index to Legal Periodicals}. By 1960, there were 900 members. In 1992, AALL had 5000 members, while the equivalent British and Irish Association of Law Librarians (founded in 1969) had 500 members. There were only eleven national law library associations at this time, mostly in English-speaking countries. The German association, formed in 1971, was the largest in continental Europe and yet was small by comparison to its United Kingdom counterpart.\textsuperscript{157}

¶105 By 1960, fifty-seven U.S. law libraries had collections of at least 100,000 volumes.\textsuperscript{158} Interest in obtaining books and journals about foreign, comparative, and international law had been growing since the 1930s, but in the 1960s that interest gained substantial momentum. AALL members, especially William Roalfe, were instrumental in creating the International Association of Law Libraries (IALL) in 1959, and the AALL began publishing the \textit{Index to Foreign Legal Periodicals} one year later. In addition, Charles Szladits at Columbia Law School had begun his six-volume series of bibliographies on foreign and comparative law in English in 1955.\textsuperscript{159}

¶106 From 1990 to 2016, the IALL had between 400 and 600 members from fifty countries, with 150 to 180 of those members from the United States. This reflected the increased importance of foreign, comparative, and international law to law libraries and their patrons and its central locus in the United States.\textsuperscript{160}

\textsuperscript{156} Schwerin, \textit{supra} note 16, at 541. In 1960, there were also working groups of law libraries in Germany and the Netherlands. \textit{Id.} at 541 n.10.


\textsuperscript{158} See \textit{supra} ¶ 92.


The IALL’s website states that its members are “concerned with the acquisition, dissemination, and use of legal information from sources other than their own jurisdictions.” Mission, IALL: Int’l Ass’n of Law Libraries, http://iall.org/about-iall-2/mission-statements [https://perma.cc/3QQG-BA7A].
Comparative Law Libraries in the Twentieth Century

United States

¶107 Harvard Law Library began its collection of Roman, foreign, and comparative law with the purchase of Joseph Story’s library in 1829. Among other leading U.S. law libraries, a few determined as early as the beginning of the twentieth century to make foreign and comparative law an important component. For academic law libraries, this decision typically required cooperation between the law dean and a law librarian, at least one of whom needed the special background required to build such a collection.

¶108 Dean John Wigmore (served 1901–1929) at Northwestern University illustrates the situation in which the law dean had the necessary background and took the lead to build a comparative law collection. At Harvard, Charles Eliot selected Wigmore to be the first professor of Anglo-American law at Keio University in Tokyo. Wigmore became an expert in Tokugawa law and corresponded with comparatists in Europe and elsewhere. He was on the founding Board of Managers (1907) of the Comparative Law Bureau in the United States, remaining until 1933.

¶109 When Wigmore became law dean at Northwestern, the law school library had only 3000 volumes. Wigmore began a worldwide book acquisition initiative, obtained the money and book donations for a comprehensive library, and appointed the school’s first librarian in 1907. Some of the books came from the Chicago Law Institute, a membership library for Chicago attorneys. By 1910, the law school library had 40,000 volumes and at the end of Wigmore’s deanship about 100,000 volumes. By the 1970s, about one-third of the books and serials dealt with foreign, comparative, and international law. Wigmore’s interest in anthropology and legal history added important materials in primitive, ancient, customary European, and Tokugawa Japanese law.

¶110 At the University of Michigan Law School, the dean and librarian formed a cooperative team in the 1920s. Henry Bates became law dean in 1910 (serving until 1939) with a vision to build a world-renowned law school. The library was one part of this plan. Once Bates had the opportunity to attract private money to support a major library, he hired as law librarian Hobart Coffey (served 1926–1966), who emulated the approach used by the Harvard Law Library. Coffey had studied at the law faculties in Paris, Berlin, and Munich. He developed the foreign law collection using a variety of methods: faculty assistance, travel abroad, developing foreign relationships, collaborating with university librarians, exchanging and selling duplicates, and encouraging gifts. During his tenure, the law school library expanded from 55,000 to 330,000 volumes and in 1960 had a comparative law collection.
collection of 150,000 books. In 2002, the foreign, comparative, and international law portion of the law library represented thirty-three percent of all books andserials at 300,000 volumes.

¶111 U.S. law librarians in general responded in the 1950s to the expanded interest in foreign, comparative, and international law that economic and political circumstances had thrust on the United States. AALL had already discussed in the 1930s and 1940s the growing importance of this subject at its annual meetings and then, in 1959, helped to establish the IALL. Article II of the IALL’s Constitution listed its purpose as promoting the “work of individuals, libraries, and other institutions and agencies concerned with the acquisition and bibliographic processing of legal materials collected on a multi-national basis.” In 1960, the Foreign Law Committee at the AALL annual meeting agreed to survey American foreign law collections. The renamed Foreign and International Committee undertook a similar survey in 1972. Table 8 provides the results.

¶112 Of the four categories of American law libraries discussed above, the largest foreign and comparative law collections developed by 1972 existed primarily in academic libraries. The exceptions listed in table 8 were two government law libraries—the Law Library of Congress and Los Angeles County Law Library—and one bar association library—the New York City Bar Association Library. The academic law libraries have a narrower user base than the others since they primarily serve the academic community. In addition to the LC Law Library, I describe two other examples of foreign and comparative law collections, those at the Harvard Law Library and at the Los Angeles County Law Library.

¶113 At this point, we can settle on what constitutes a comparative law library. Unlike the separation of law school libraries from university libraries in the United States—an ABA accreditation requirement for approved law schools—large comparative law libraries are not administered or generally situated apart in their own building from law school libraries. Thus, table 8 refers to comparative law collections, which are part of major American law libraries. In 1972, these collections usually represented between twenty-five and thirty-nine percent of the total law library’s size. The LC Law Library was the leader, with comparative law holdings

166. Id. at 404–20; Hobart Coffey: Memorial Address, 14 Law Quadrangle Notes, Winter 1970, at 16; see infra table 8, note a. In the 1920s and 1930s, the foreign, comparative, and international law collection grew significantly through the purchase of several private law libraries. Leary, supra note 165, at 408, ¶ 38.
167. Leary, supra note 165, at 397 n.3; see infra ¶ 113.
169. Schwerin, supra note 116, at 538, 555–56; Constitution (1975), IALL: Int’l Ass’n of Law Libraries, http://iall.org/iall-archives/constitution [https://perma.cc/5GJZ-KGBC]. Today, the Foreign Law Committee is the AALL Foreign, Comparative, and International Law Special Interest Section. Its primary objective is to provide a forum for the exchange of ideas and information of foreign, comparative, and international law and had 429 members in 2012. Agrawal, supra note 160, at 204 n.32.
170. Kavass, supra note 133, at 121.
171. See supra ¶¶ 90–92.
172. See supra ¶ 91 and notes 134–135.
173. Am. Bar Ass’n, Law Schools & Bar Admission Requirements: A Review of Legal Education in the United States—Fall 1972, at 7–33 (1973); Kavass, supra note 133, at 127–28. For the two smallest comparative law collections in 1972—Cornell and Chicago—the proportion was nineteen and fifteen percent respectively.
of sixty percent of its total. At the University of Michigan Law Library in 2002, the ratio for the foreign and comparative law collection was thirty-three percent.

Among foreign and comparative lawyers, some libraries have a reputation for particularly useful collections of foreign primary and secondary legal materials and comparative law books and serials. These libraries typically promote this reputation and have librarians—frequently foreign born—expert in foreign and comparative law who assist users. I refer to this category of libraries as compara-

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174. See infra ¶ 147 and note 242.
175. Leary, supra note 165, at 397 n.3.
176. These libraries will also have books and journals on national law—typically the largest collection of any single jurisdiction—but that will be useful for foreign scholars. Thus, the actual size of a “comparative law library” is greater than only the foreign and comparative law collection.
177. Agrawal, supra note 160, at 203–04, 211, ¶¶ 12, 36.
tive law libraries. Their presence is further evident from the activities of comparative law librarians who belong to the IALL, which supports both comparative and international law.178

¶115 Virtually all major comparative law libraries also include collections of international law, both private and public. In general, this international law portion is small next to the foreign and comparative law part of the law library. In reviewing the information in table 8 as it relates to the quantity of international law materials, the international law component of the listed libraries’ total foreign, comparative, and international law collection ranges from six to twenty-two percent (except for the University of Chicago at thirty-two percent).179

Europe

¶116 Within Europe, the four most useful comparative law libraries are in Germany, England, and Switzerland. The two largest ones are in Germany. They are part of two institutes that the Kaiser Wilhelm Society for the Advancement of Science authorized in 1924 and 1926.180 The first was the Institute for Foreign Public Law and International Law, and the second was the Institute for Foreign and International Private Law. Both, located in Berlin, were the result of the unenviable position in which German jurists found themselves under part X of the Versailles Treaty (1919). Part X regulated economic relationships between Germany and its citizens vis-à-vis victor and associate states and their citizens. Since the German translation was not authentic, the solution to legal questions concerning contracts, debts, tangible and intangible property rights, shipping, prescription, and court judgments had to be found in French and English legal concepts such as dette or debt. Similarly, public law issues, legal traditions, interpretation methods, and the nature of legal institutions required foreign law expertise about terms such as tribunal or court.181

¶117 The two German law institutes hired research staff, and each formed a library to support its work. It is instructive that their existence (separate from universities) arose out of the consequences of World War I. In a similar way, the reinvigorated Library of Congress and its Law Library by 1950 found its financial support augmented due to the U.S. government’s concerns in the 1930s and the new role that the United States assumed in world affairs following World War II.182

¶118 In 1949, Germany reestablished the two comparative law institutes by substituting the name Max Planck for that of Kaiser Wilhelm. As we saw, these institute libraries in 1970 already were the largest law libraries in Europe. The comparative private law collection (now in Hamburg) had 135,000 volumes, and the comparative public law and international law collection (now in Heidelberg) had 140,000 volumes.183 In 2000, about three-fourths of the Hamburg book holdings concerned

178. See supra ¶¶ 105–106.
180. The Kaiser supported the establishment of the public-private association in 1911 to provide a means for leaders of industry to support Germany’s scientific success and to complement university research. Kaiser Wilhelm Society, MAX PLANCK GESELLSCHAFT, http://www.mpg.de/195494/Kaiser_Wilhelm_Society [https://perma.cc/45HV-NH9E].
182. See supra ¶¶ 92, 111.
183. See supra ¶ 94.
foreign and comparative law, while the other one-quarter was on German law. The ratio for serials was ninety percent foreign and comparative and ten percent German.\textsuperscript{184} In 2017, the Hamburg institute’s library consisted of 500,000 print and microform volumes while the Heidelberg institute had 645,000 volumes.\textsuperscript{185}

\textsuperscript{119} The Institute of Advanced Legal Studies (IALS) in London, founded in 1947, serves the national academic research community in law and the various law schools affiliated with the University of London as their graduate-level law library. In 2000, the IALS had a total of 253,000 volumes and microforms. For its acquisitions at that time, about eighty-five to ninety percent of the materials concerned foreign, comparative, or international law.\textsuperscript{186} In 2015, the IALS had more than 312,000 print volumes and microform equivalents. It refers to itself as a global law library and as the United Kingdom’s largest comparative law library.\textsuperscript{187}

\textsuperscript{120} The final European comparative law library surveyed is the Swiss Institute of Comparative Law, established in 1981. In 2000, the library had a collection of 200,000 volumes, about ninety percent of which covered foreign and comparative law. In 2015, the collection had grown to over 300,000 volumes. In its acquisitions that year, only six percent dealt with Swiss law, ten percent public international law, and the remainder foreign and comparative law.\textsuperscript{188}

\textbf{Harvard Law Library}

\textsuperscript{121} Harvard Law School began in 1817 with 600 books in the office of the university professor of law. By 1875, the law library had 15,000 volumes, the largest academic law library in the United States. Due to the purchase from 1829 to 1831 of Joseph Story’s collection of Roman, foreign, and comparative law, and Samuel Livermore’s 1833 bequest of 400 Roman, French, and Spanish law books, Harvard also had the best comparative law library in the United States at this time. In 1845, the foreign and comparative law books—especially for Europe and Asia—numbered 12,000 volumes and equaled or exceeded the libraries in Europe.\textsuperscript{189}

\textsuperscript{122} Christopher Langdell, the first dean of Harvard Law School, took a strong interest in improving the law library’s English language collection in the 1870s. In 1895, when James Barr Ames became dean, he expanded library acquisitions

\begin{thebibliography}{99}
\bibitem{184} David S. Clark, \textit{Applied Comparative Law: Researching Foreign Law in an Imperfect World}, 30 \textit{Int’l J. Legal Info.} 232, 240 (2002). The total collection consisted of 390,000 volumes. \textit{Id.}
\bibitem{186} Clark, supra note 184, at 242–43.
\end{thebibliography}
beyond Anglo-American law to include Roman law and foreign and comparative law. His goal was to develop the world’s best law library for use of scholars everywhere. By 1912, Harvard had a law library of more than 150,000 books with its foreign and comparative law collection at 35,000 volumes or twenty-three percent of the total.

§123 Roscoe Pound joined the Harvard law faculty in 1910. One of the leading comparativists of the twentieth century, he became dean in 1916 and served in that position until 1936. During that period, Pound, his allies on the faculty, and the librarian accomplished Ames’s ambitious plan for a world library. In 1925, the law library had 280,000 volumes, and by 1938, 532,000 volumes. In 1938, it was the largest law library in the United States.

§124 However, after World War II (by 1950), the LC Law Library surpassed the Harvard Law Library in size. Harvard had 933,000 volumes in 1960, while its comparative law collection was forty-five percent of its total holdings, at 420,000 volumes. Today, the law school library considers itself a “global library providing access to the world’s legal information.” It collects present and past print materials from jurisdictions that have difficulty maintaining their legal collections, assuming for some places a preservation obligation. For countries with more developed legal systems, it may collect only current materials in an electronic format.

Los Angeles Law Library

§125 The LA Law Library is today the second largest government law library—after the LC Law Library—in the United States. The California legislature created it in 1891 as an independent public agency affiliated with Los Angeles County. A few Los Angeles attorneys succeeded in convincing the legislature to authorize county law libraries after the Los Angeles Bar Association failed to set up a viable law library based on membership fees. Rather than funding with taxes, the library’s budget derives from civil court filing fees and private donations.


191. Arnold, supra note 161, at 17, 20; Pulling, supra note 189, at 5. The comparative law figure appears to exclude books from the United Kingdom and British Commonwealth. Arnold, supra note 161, at 20.

192. Clark, Modern Development, supra note 14, at 605–07; Danner, supra note 63, at 48–49; Dawson, supra note 189, at 106–09; Pound, supra note 161, at 294–96, 301; Pulling, supra note 189, at 8–10; HLS Deans, supra note 190.


194. Schwerin, supra note 16, at 548; see supra table 6, note a.


196. See supra table 7, note a.


¶126 Besides serving the local legal community, the LA Law Library provides access for the public to books, serials, and online resources, as well as classes. Its overall collection of one million volumes includes primary legal materials from 200 countries and secondary materials from 125 countries that comprise 300,000 volumes. The library purchased its first foreign law books in 1894 and expanded its foreign collection with the British Empire law reports in 1903. By 1972, the library spent a quarter of its acquisition funds on foreign books and journals.

¶127 The establishment of the LA Law Library as a major foreign, comparative, and international law library was due to the efforts of William Stern, foreign law librarian from 1939 until 1970. Stern completed his law studies in Germany at the University of Würzburg in 1933, left during the Nazi period, and began his U.S. career at the University of Chicago Law Library, where he developed a classification system for foreign law. His work had substantial visibility since he was active in national and international librarian groups, published essays on foreign law collecting, and served as chair of the AALL Committee on Foreign Law Indexing from 1959 to 1970. By the early 1990s, the foreign, comparative, and international law collection constituted more than forty percent of the library’s total volumes.

The Law Library of Congress

Initial Law Library Development and Support for Foreign Law

¶128 In the nineteenth century, the LC Law Library established two important tenets related to its later development as the world’s largest comparative law library. The first was its physical separation and semi-autonomy from the general Library of Congress. The second principle was the library’s commitment from the 1840s to collect foreign books and pamphlets, which for the Law Library provided the foundation for building a collection of foreign primary and secondary legal materials. Later, when they became available, the Law Library collected comparative law books and serials that analyzed foreign legal materials.

¶129 From the beginning of the Library of Congress, law books and serials were important components of the collection. Thus, in 1802, thirty-seven percent of the 728 volumes were law-related. Only two of the law titles had American publishers. For example, Alexander Dallas published by that date three volumes that became United States Reports. In 1812, only nineteen percent of the book


201. Fruchtman, supra note 198, at 697.


204. Fruchtman, supra note 198, at 700. Stern’s committee initiated and supervised the Index to Foreign Legal Periodicals, which began publication in 1960. Stern served as president of both AALL (1969–1970) and the IALL (1962–1965); Id.; Kulpa, supra note 203, at 211–12.


206. Dallas, a Philadelphia lawyer, published four volumes. Volume 1 (later called Dallas Reports)
titles concerned law. Of these law books, ninety percent still came from foreign publishers—mostly British—and almost two-thirds were treatises and commentaries. As mentioned earlier, most of the books were lost in the fire of 1814 that burned the Capitol. Thomas Jefferson offered his personal library as a replacement, which included a substantial proportion of books on law, politics, and philosophy. Of the 639 volumes moved to the law library in 1832, 60 were from America, 318 from England, and the remainder from elsewhere in Europe.207

¶130 In 1832, the U.S. Congress established the Law Library of Congress as one of two administrative units in the Library of Congress. The intent was to have a government library that could facilitate the legal research work of both the legislature and the Supreme Court, which was also located in the Capitol. The statute ordered the librarian to remove the law books from the general library and place them in a separate room. It authorized $5000 for the purchase of additional legal materials with another $1000 annually for five years.208 ‘The new Law Library had a collection in 1832 of 2011 volumes, 639 of which belonged to the Jefferson collection.209

¶131 In 1895, Congress directed the librarian to report whether maintaining a separate law library remained desirable. Ainsworth Spofford advocated for its continuation.210 When the Supreme Court finally moved into its own building in 1935, part of the original justification for the separate law library weakened. Nevertheless, when librarian Archibald MacLeish undertook a reorganization of the Library of Congress in the 1940s, he retained the law library as a separate department.211 Finally, in 1977, the librarian proposed a reorganization plan to merge the law library as simply another subject-matter division within the Library of Congress. However, the law library’s defenders argued for continuing its coequal status, and the librarian withdrew his plan.212 Consequently, the LC Law Library has had a long tradition and strong support as a distinct library, consistent with the general American tradition of maintaining separate law libraries as part of larger institutions or sometimes as substantially independent.

¶132 The other important early development for the LC Law Library was the exchange of legal materials printed or financed by the U.S. government for foreign primary and secondary legal books, serials, and documents. Congress passed the first resolution in 1834 authorizing its library committee to use twenty-five copies of each U.S.-funded work for general exchange. In 1837, this committee voted to

had Pennsylvania colonial and state cases from 1759 to 1789. Volumes 2 and 3 included both Pennsylvania and federal cases from 1789 to 1799. See Site Map, SUPREME COURT OF THE UNITED STATES, http://www.supremecourt.gov/sitemap.aspx (select "Dates of Early Supreme Court Decisions").


208. Act of July 14, 1832, ch. 221, 4 Stat. 579 (codified as amended in 2 U.S.C. §§ 132, 134–135, 137 (2012)). The $1000 appropriation continued most years until 1850 (except for $5000 in 1837), when Congress increased its annual authorization to $2000. From 1850 until 1865, the general book fund for the LC was $5000 (except for the special authorization of $85,000 in 1852) compared to the $2000 book fund for the Law Library, Johnston, supra note 59, at 515–16.


210. LIBRARY OF CONG., supra note 205, at 9; see supra ¶ 55.

211. LIBRARY OF CONG., supra note 205, at 19–21; CONAWAY, supra note 72, at 118–20.

exchange certain government publications with the French government. Then, in 1840, a congressional resolution more clearly expanded its authorization for foreign materials, permitting the librarian to exchange fifty copies of documents printed by the Senate or the House of Representatives as well as, by implication, library duplicates, with other nations. Because of this resolution, Alexandre Vattemare (1796–1864), a French citizen who had initiated a duplicate book exchange system among European libraries and promoted the program to Congress, left Washington for Europe with 700 volumes of congressional documents. In return, the LC received 340 public documents on science, the arts, and law from France.

¶133 Shortly after the end of the Mexican-American War in 1848, the LC Law Library undertook to acquire all the constitutions and laws of Mexico. In 1854, Congress appropriated $1700 for additional Mexican legal materials as well as Spanish law books. These events illustrate the relationship developing between the interests of Congress and the LC Law Library, independent from the collection interests of the Justices on the Supreme Court.

¶134 In 1848, Congress passed a statute confirming the 1840 resolution for acquiring foreign materials and approved $2000 to support one or more agents the library committee selected to facilitate the book exchange and donation program more generally within the United States. The committee appointed Vattemare to handle international exchanges and provided him $1500 for personal and agency expenses. Consequently, with the appropriation of additional money through 1858, the Library of Congress, Boston Public Library, and New York State Library all acquired strong French and European book collections. In 1857, Congress transferred the document distribution and exchange program to the Department of State and Interior Department. The 1860 LC catalog reported that there were almost 16,000 books in the LC Law Library, plus additional international law and law-related political science books in the general collection.

¶135 During the 1850s, the Smithsonian Institution also actively exchanged U.S. government publications with European countries, primarily dealing with science. When Congress confirmed Spofford as Librarian of Congress in 1864, he renewed the LC’s interest in the exchange of documents while attempting to


214. Joint Res. 5, 26th Cong. (July 20, 1840); ch. 5, 5 Stat. 409 (1840); Gwinn, supra note 213, at 109; Johnston, supra note 59, at 253, 256–57.


217. Gwinn, supra note 213, at 109–10, 113; Johnston, supra note 59, at 260–66. In 1850 and 1852, Congress appropriated an additional $5200 for the foreign book exchanges. Johnston, supra note 59, at 261 n.1, 265. The LC over the two-year period from May 1848 to June 1850 received more than 3300 volumes from Baden, Belgium, France, and Holland under the program. Id. at 263 n.2.


219. See supra ¶ 67.
avoid the shortcomings of Vattemare’s arrangement. The solution resulted from the transfer of the Smithsonian library of 40,000 volumes to the LC in 1866. Spofford proposed that the LC also continue the Smithsonian’s book exchange program with foreign governments, maintaining the foreign documents in the LC. Congress approved this arrangement in 1867 by authorizing fifty copies of all House, Senate, and government department publications to be available for foreign exchange.\(^{220}\)

Some of the foreign materials received in return were statutes and other legislative materials, court cases, and foreign relations documents, appropriate for the Law Library.\(^{221}\). In 1869, the LC Law Library book catalog listed almost 27,000 books. From 1849 to 1900, the LC Law Library had grown in size from 8400 to 103,000 volumes.\(^{222}\) By the end of the century, twelve percent of the titles were in languages other than English.\(^{223}\)

\(\S 136\) In the 1860s and 1870s, communications from the Smithsonian to the international diplomatic community and other supporters resulted in a treaty, the Brussels Convention (1886), which placed international exchange of legislative and administrative documents on a firm basis similar to Smithsonian model.\(^{224}\) The program eventually had substantial financial support from Congress. For instance, in 1922, Congress appropriated $50,000 for international exchanges. The LC received almost 10,000 packages (most with many volumes) of books, serials, and pamphlets from foreign governments in the category of parliamentary and government department documents. Seventy countries and twenty-five subnational jurisdictions were receiving U.S. documents.\(^{225}\)

\(\S 137\) Librarians after Spofford consolidated and expanded the LC’s foreign book exchange and acquisition programs, repeatedly referring to Jefferson’s vision of building a collection universal in scope that would serve the country as a whole. Herbert Putnam, in particular, aggressively acquired government documents from Europe, Asia, and Latin America. In Putnam’s annual report to Congress in 1928, he mentioned three libraries he was attempting to emulate: the British Museum, the Bibliothèque Nationale de France, and the Staatsbibliothek zu Berlin.\(^{226}\)

\(^{220}\) Joint Res. 55, 39th Cong. (Mar. 2, 1867); ch. 55, 14 Stat. 573 (1867); Gwinn, supra note 213, at 111–14; see supra ¶ 68 (library transfer).

\(^{221}\) Gwinn, supra note 213, at 114–15. Progress was slow in the beginning due to disagreement about financing, but by 1876, the Smithsonian was shipping documents to most European countries, as well as Russia, Turkey, Argentina, Brazil, Chile, and Mexico. Id. at 115–17. In 1869, the LC received 934 volumes from the Chinese government. Cole, World Library, supra note 75, at 387.

\(^{222}\) Library of Cong., supra note 205, at 7; Murphy, supra note 207, at 558; see supra table 4, note a.


\(^{224}\) Convention for the International Exchange of Official Documents, Mar. 15, 1886, 25 Stat. 1465, T.S. No. 381; see also Gwinn, supra note 213, at 117–19. The Convention entered into force for the United States in 1889. Article 2(1) covered the exchange of “official documents, parliamentary and administrative.” Article 1 required each signatory to establish a bureau of exchange, which for the United States was the Smithsonian.

A second Brussels Convention, signed the same day, called for the signatories to exchange a country’s official journal, parliamentary annals, and other legislative documents directly with other signatories’ legislatures. Convention for Immediate Exchange of Official Journal, Parliamentary Annals and Documents, art. 1, Mar. 15, 1886, 25 Stat. 1469, T.S. 382.

\(^{225}\) Report of the Secretary of the Smithsonian Institution for the Year Ending June 30, 1922, at 76–82 (1922).

\(^{226}\) Cole, World Library, supra note 75, at 388–90; see supra ¶ 72 (national libraries).
Foreign and Comparative Law: 1900 to 1950

¶138 Between 1900 and 1930, the LC Law Library expanded from 103,000 volumes to 240,000 volumes. This was a period of substantial growth in the foreign and comparative law collection. We saw that the international book and document exchange program administered through the Smithsonian Institution since the 1890s greatly benefited the Library of Congress, but especially the Law Library since its emphasis was on government documents. In addition, copyright deposit continued to be important. Congressional appropriations to the LC Law Library for books and serials in the twentieth century began at $3000 annually in 1902, but in 1930, ballooned to $50,000 to support aggressive acquisition of foreign legal materials.227

¶139 During this time, the LC Law Library made the transition from a legislative, court, and government reference library to become also a legal research center. This entailed preparing written legal reports and comparative studies for Congress to use in its efforts to legislate more effectively. The staff of five, which increased to thirteen by 1932, also wrote bibliographic studies and scholarly analyses useful for lawyers, judges, and academics.228

¶140 Edwin Borchard, law librarian from 1911 to 1916, proposed using the growing wealth of foreign legal materials to prepare a series of guides to the legal literature of individual countries that would serve as introductions to foreign law for American lawyers and judges. In 1910, as an assistant in law for the LC Law Library, he had toured the major European capitals seeking advice about what foreign law literature the Law Library should acquire. The first guide covered Germany, published in 1912.229 Borchard was also on the editorial board of the Comparative Law Bureau, which published an Annual Bulletin.230 In 1915, he made an acquisitions trip to eleven nations in Latin America, which greatly improved the Hispanic holdings.231 Although he took a position as a law professor at Yale Law School in 1917 (until 1950), Borchard continued to supervise and assist in the foreign law guide series, which the government printed.232


228. Library of Cong., supra note 205, at 13, 21, 28. In 1906, the title law librarian replaced assistant at law or custodian in law, which the LC Law Library used in the nineteenth century. Id. at 13, 29.


¶141 In 1914, Congress established the Legislative Reference Service (LRS), which the law librarian supervised until 1921, when the directorship became a separate position. Both entities handled congressional American law reference questions, but the LC Law Library was responsible for foreign law reference and research inquiries while LRS processed research on American law.233

¶142 John Vance became law librarian in 1924 (serving until 1943), one year after he made a book acquisition trip to Latin America on behalf of the LC Law Library. He continued the emphasis on improving the foreign law collection. In particular, Vance emphasized the goal of building good working collections of every legal system in the world. This meant legislation, court decisions, and a reasonable number of legal treatises, dictionaries, digests, journals, and law society publications. In the 1920s, the LC Law Library had a smaller book budget than the law schools at Columbia, Harvard, Michigan, and Yale. Vance argued that mere law library parity was something the U.S. government should not tolerate.234 With significantly increased funding in 1930, thanks in part to lobbying by Supreme Court Justices Louis Brandeis and Harlan Stone, Vance made the LC Law Library an impressive foreign and comparative law research center, doubled the collection size, and renewed interest in the foreign law guide series in 1943. The series, substantially financed by the U.S. State Department, resulted in twelve new volumes, most covering Latin America and authored by Helen Clagett, chief of the Latin American Law Section.235

¶143 In 1942, the law librarian was able to organize the LC Law Library into specialties, with the goal of hiring staff who had the language and cultural competence to pursue the LC’s ambition to have a universal collection. The five law sections were British, Foreign (meaning traditions other than the common law), American, International, and Jurisprudence. The next year, the librarian merged the International Law and Jurisprudence sections and added a Latin American Law section. In 1946, further consolidation yielded a staff of thirty working in the Anglo-American, Latin American, and Foreign (now including international law) sections and two

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processing and technical services sections. With further adjustments, the five divisions in 1960 became (1) American-British, (2) European, (3) Far Eastern, (4) Hispanic (Latin American), and (5) Near Eastern and North African. Each division had a chief and staff of experts in the division’s specialization. By 1960, the LC Law Library was the largest comparative law library in the world and included literature for most of the world’s countries.236

¶144 Many foreign-born law librarians have staffed the LC Law Library since the 1850s. As the importance of foreign and comparative law grew, these librarians educated a national audience of librarians about acquiring and using a comparative law collection. In addition, through exchange programs, international meetings, and book-purchase trips, they assisted legal researchers worldwide. In 1942, the Law Library opened a Foreign Law Reading Room and, as mentioned, created a Foreign Law section within the administrative organization.237

Foreign and Comparative Law Since 1950

¶145 Foreign-born librarians of the mid-twentieth century contributed to general LC Law Library development. To illustrate, Helen Clagett, head of the Latin American (Hispanic) Law Division for decades, authored or coauthored from 1944 to 1948 eleven very useful guides to the law and legal literature of various Latin American countries. Werner Ellinger, with a doctorate in law from the University of Heidelberg, was in charge of the LC classification for American law, class KF, completed in 1967. Jolande Goldberg, who also had a law doctorate from Heidelberg, was primarily responsible for creating the class K schedules for foreign law holdings. Finally, the Librarian of Congress appointed Rubens Medina—who had a law degree from the Universidad Nacional de Asunción (Paraguay) and had worked at the LC since 1971—Law Librarian of Congress in 1994 (until 2008).238

¶146 In general, the foreign legal specialists working at the LC Law Library after World War II were foreign lawyers, fluent in one or more foreign languages plus English, who had an aptitude for research and library services. This facilitated the Law Library’s preparation of various bibliographic and indexing books on foreign legislation and other legal materials.239

¶147 Table 8 reports that in 1960, the LC Law Library’s comparative law collection had 475,000 volumes, forty-seven percent of the total collection. About half of those comparative law books and journals concerned the law of European countries, Roman

236. Annual Report of the Librarian of Congress for the Fiscal Year Ending June 30, 1946, at 402–03, 405 (1947); Library of Cong., supra note 205, at 22; Murphy, supra note 207, at 559–60; Schwerin, supra note 16, at 547. In 1954, the LC Law Library created the Far Eastern Law Section after the U.S. State Department had funded research by Asian lawyers in the library for several years. In 1959, it added the Near Eastern and North African Law division. In a 1957 reorganization, the LC Law Library had put the foreign and geographical area sections into divisional status. The Foreign Law Section, for instance, became the European Law Division. Library of Cong., supra note 205, at 23.

237. Kulpa, supra note 203, at 206; see supra ¶ 143.

238. Kulpa, supra note 203, at 206–08; see also Kristen M. Hallows, It’s All Enumerative: Reconsidering Library of Congress Classification in U.S. Law Libraries, 106 LAW LIBR. J. 85, 88, 2014 LAW LIBR. J. 5, ¶ 14. There also have been many foreign-born head law librarians at university law schools since the 1930s. Kulpa, supra note 203, at 208–10.

law, and canon law, while a quarter dealt with the legal systems of the Iberian Peninsula and Latin America. In 1972, the LC Law Library spent half of its acquisition budget on foreign books and journals. It could also depend on other federal programs and transfers from federal agencies, copyright deposit, gifts, and foreign exchanges. The comparative law collection was now 750,000 volumes, an augmented sixty percent of the total Law Library volume count. By this time, the Law Library's reputation as unique, both in the United States and abroad, rested largely on its non-American holdings and staff. For instance, in the 1970s, it typically wrote about 500 congressional studies annually analyzing how foreign governments used law to address social problems.

Table 9 sets out the foreign country collections at the LC Law Library in 1977. About one-third of the total volumes were U.S. law books and one-third were law books from 155 foreign countries. The final one-third were volumes in other categories, including legal periodicals, general law (comparative law, public and private international law, legal history, legal sociology and anthropology, jurisprudence, and other matters), and special collections (Roman law, canon law, manuscripts, English year books, consilia, statuta, coutumes, incunabula, and special rare books). Many of the journals in the legal periodicals division (47,000 volumes) and books in special collections concerned foreign and comparative law, as did the volumes in the general law category (12,000 volumes). The international law collection in 1977


244. The Law Library, supra note 73, at 7. In 1977, the only LC law classifications completed were KF (United States), KD (United Kingdom and Ireland), and KE (Canada). Id. at 10. Most of the law books temporarily classified “LAW,” consequently, still required retrospective classification into the LC K category. About fifteen percent of the Law Library’s books were in the K category. Annual Report of the Librarian of Congress for the Fiscal Year Ending September 30, 1977, at A-10 (1978). Prior to World War II, the LC first organized law books into countries, and then into ten types of books such as constitutions, session laws, judicial decisions, codes and compilations, and treatises. Within each type of book, it arranged the volumes chronologically or alphabetically by author or title. Goodrum, supra note 239, at 147–49.

245. The Law Library, supra note 73, at 7–10. For example, the Roman law collection had 15,000 volumes and canon law 2800 volumes. Id. at 24, 29. There were 1000 volumes of consilia and 750 volumes of coutumes. Carleton W. Kenyon, Library of Congress Law Library, 67 Law Libr. J. 276, 279 (1974). By 2015, the LC had 5700 incunabula (books printed prior to 1501). Europe, Library of Congress: An Illustrated Guide, http://www.loc.gov/tr/rarebook/guide/europe.html [https://perma.cc/AF4A-EKQ]. The Law Library began significant storing of microforms only after 1970, but the volume-equivalent number by 1978 was substantial, about 68,000 volumes. The Law Library, supra note 73, at 9; see supra ¶ 100 (ABA microform counting rule).
(about 50,000 volumes) had materials classified JX, and thousands of serials and documents were in the LC’s Serial Division. 246

¶149 The volumes listed in table 9 from the fourteen largest foreign collections constituted 463,000 books. Scholars interested in the law of any of these jurisdictions would have an excellent library in which to carry out their research. The LC Law Library’s commitment to foreign, comparative, and international law has continued up to the present. In the early 1980s, the Law Library added between 40,000 and 50,000 volumes annually, about one-third serials and two-thirds monographs. One-half of the acquisition budget went toward the purchase of foreign materials. Ninety-five professionals—most of whom were lawyers with practical experience in particular legal systems—performed the research, reference, bibliographical, and collection development functions of the Law Library. 247 Carleton Kenyon, law librarian from 1971 to 1989, stated that the Law Library’s “chief task is to function as a major research arm of Congress in foreign and international law.” 248 In 1981, for example, the LC Law Library prepared 870 special studies for Congress, many analyzing and

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246. The Law Library, supra note 73, at 41–43. J was the category for political science.
248. Kenyon, supra note 247, at 809. The Law Library also provides foreign, comparative, and international law research for the judicial and executive branches of government, including the U.S. State Department and the diplomatic corps. Id. at 810.
comparing how foreign jurisdictions dealt with a problem for which Congress was seeking a legislative solution.249

¶150 In 2017, the Law Library had 2,900,000 print volumes, plus 960,000 microform volume equivalents, classified in the K and LAW categories, which excluded law-related books from the J (political science) and H (social sciences) classifications.250 The LC had begun classifying foreign jurisdiction law materials into the K class in 1973, focusing first on newly acquired titles. Prior to 1973, the Subject Cataloging Division put these foreign and comparative law books and serials into the LAW class as a temporary matter. Working on the pre-1973 foreign materials more recently, Collection and Services moved 310,000 volumes from LAW to K between 2004 and 2012.251 The work continues today.

¶151 One LC Law Library curator estimates that sixty percent of the law collection today is in languages other than English. This results from more than 100 years of building the world’s greatest comparative and foreign law library, including the legal literature of more than 240 jurisdictions.252 Some of these jurisdictions are historical; for instance, the Roman law collection numbers 16,000 volumes. The LC Law Library has 43,000 law periodical titles, covering most countries, including 300 religious-law periodicals.253 One could mention many other superlative components of this institution.

¶152 A core task of today’s LC Law Library is for foreign law specialists in the Global Legal Research Directorate to provide foreign and comparative legal information services to national and global researchers.254 In addition, there is online access to foreign law research guides and bibliographies.255 The Global Legal Monitor, commenced in 2006, is the library’s online publication covering legal news and developments worldwide.256

249. Id. at 809–10, 817. The 870 reports totaled 17,450 pages. For American law, the LC Law Library provides Congress with only reference information, since the American Law Division of the Congressional Research Service prepares those research reports. Id. at 810.

250. About the Law Collections, supra note 12; see supra note 138; ¶ 135; table 7, note a.


The End of the Book?

¶153 The history of books and other written forms of communication, and their residence in various types of libraries, is a cyclical one that follows the fortu-

ities of nature and civilizations. Nature has presented libraries with earthquakes,
floods, fire, vermin, and chemical decay. The desire of humans to describe and
preserve their cultures promotes libraries, but war and religious, ethnic, and ideo-

logical suppression—along with book burnings, censorship, withdrawals, and
neglect—reduce and destroy libraries.

¶154 What is the status of the book in twenty-first century culture? It and its
predecessors—the clay tablet, papyrus roll, parchment roll, and sheepskin codex—
all demanded a physical presence for their preservation and collective utility in
research and learning. This physical dimension required the development of the
library in a building with a fixed location. Much of what constitutes culture in
complex literate societies depended on the transmission of culture through written
text. Readers traveled to the library, or books traveled to the reader.

¶155 Today, visual culture has returned to educated societies to challenge the
dominance of text. Visual culture was always important in preliterate and semi-
literate communities. Consider the role for Neolithic Stonehenge in England or the
stained glass windows of European cathedrals. In the twentieth century, photogra-
phy, movies, and then television supplemented or replaced books for many people
as instruments to acquire ideas and values about their community. Libraries could
adjust to these changes by collecting these new source materials, all of which had a
clear physical existence.

¶156 In the twenty-first century, however, cyberculture promises to replace the
physical aspect of books and other written materials as well as the visual technolo-
gies of the twentieth century. What does this mean for the traditional library and
its tasks of preservation, documentation, research, and learning?257 Cyberculture
instills a new set of skills, habits, and values that have evolved with the use of com-
puters and the Internet. The effects of cyberculture extend well beyond the role and
even need for libraries to affect traditional notions of authorship, intellectual prop-
erty, and authority—matters outside the scope of this article.258

¶157 Proponents of these developments argue for virtual libraries, which reside
on a server as a computer database or index to websites and digital materials located
on other servers. Although the public may access these virtual libraries, they may also
be restricted. A government or private enterprise may control these libraries. For
instance, the most successful U.S. corporation to undertake this task, Google, originally
proclaimed that its mission was “to organize the world’s information and make
it universally accessible and useful.”259 The details were in the terms of access.260

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257. See generally JEAN-CLAUDE CARRIÈRE & UMBERTO ECO, THIS IS NOT THE END OF THE BOOK: A
CONVERSATION CURATED BY JEAN-PHILIPPE DE TONNAC (Polly McLean trans., 2011).
259. Google’s Mission Statement Evolving as CEO Looks to Future Goals, CHIEF EXECUTIVE (Nov. 4,
perma.cc/7C5E-RUPZ].
260. See SIVA VAIDHYANATHAN, THE GOOGLIZATION OF EVERYTHING: (AND WHY WE SHOULD
¶158 There are other concerns. Will backing for virtual libraries lead to reduced support or actual closing of physical libraries? Some technologies may alter digital material in ways difficult to achieve with written texts. Finally, virtual libraries depend on electricity as well as cables with wires, optical fibers, or wireless wi-fi to transmit data packets from computer servers or electromagnetic signals from satellites that communicate with servers and routers. All of these technologies are subject to failure from a variety of causes that would be far more disruptive to a society than the fire that burned the library at Alexandria.

¶159 Technology, consequently, is a double-edged sword. On the one hand, it has dramatically increased access to information in all its forms, including electronic books and journals. This has a leveling effect on libraries with physical materials, as alternative avenues to information develop. On the other hand, technology has also reduced the production and use of physical books and, in particular, serials such as scholarly journals, popular magazines, and newspapers. In turn, government and private support for traditional libraries and the mission of preservation may well dwindle. Nevertheless, libraries have endured for as long as people have created records of civilization. Our knowledge of the amazing diversity of human cultures depends on it.

¶160 Some comparative law libraries may believe the future is with building digital collections of online and remote access to law books and serials, which users increasingly prefer. Libraries have traditionally owned and controlled their physical assets. However, today renting access to books and serials is an option facing librarians. Publishers may offer those who resist a more expensive alternative that appears to be “ownership,” but the lump-sum payment requires an annual charge to maintain access to and search capability of the library’s new materials through the vendor’s proprietary interface. What will happen if the library is unable to pay the maintenance fee will depend on the license agreement with the publisher. In any case, the library now must add the risk of access loss to the traditional dangers of natural disaster and human calamity.

¶161 Other comparative law libraries have begun the process of reducing the size of their collections or even forgoing the mission of maintaining a foreign law collection. For instance, New York City Bar Association Library is downsizing by working with digital vendors that sell sets of e-books, lease online databases, or create databases from existing library materials. These companies include Cengage Learning (sold by Thomson to a private equity consortium, and includes Gale), Hein (includes HeinOnline), and Google (includes Google Books). At the same time, this library has arranged with Yale Law School Library to house (and restore where necessary) the bar association’s Roman law, canon law, and German and Italian law materials. As for the remainder of the foreign law collection of 80,000 volumes, New York City Bar has sold those to George Washington University Law School Library.

261. Clark, supra note 184, at 234–36.

262. Simon Canick, The Ownership Delusion, AALL Spectrum, Feb. 2008, at 30–31. When the annual maintenance fee is unpaid, including for reason of its substantial increase, some license contracts entitle the library to receive DVDs of the materials. However, the library may need special equipment or software to use the DVDs, which itself could be expensive. Id. at 31–33.

263. E-mail from Richard Tuske, supra note 148; see also Roman and Canon Law, Lillian Goldman Law Library, http://library.law.yale.edu/roman-and-canon-law [https://perma.cc/SF3D-AXE6].
¶162 It is unlikely that the Law Library of Congress would ever be in the plight of the New York City Bar Association Library. The success of the LC Law Library in building the world’s largest comparative law collection is a source of pride for the U.S. government and its commitment to the rule of law. The Law Library’s dedication to preservation and service extends to users from around the world. It has been, and should continue to be, an essential resource for legal comparatists everywhere. Visionaries in a prospering country can plan and work to make a library great. Generations of aspiring leaders and librarians have achieved that task for several American law libraries. Above all, the Library of Congress and its Law Library add to the prestige of the United States as a nation. We have not seen the end of the book.

264. In 2014, the law librarian wrote,

The Law Library has grown over the years to become the world’s largest, with a collection that spans the ages and covers virtually every jurisdiction in the world. As the leading research center for foreign, comparative and international law, the Library also provides valuable reference assistance to the scholarly community and to law practitioners across the nation and the globe. While our name says “of Congress,” we are an intellectual asset that belongs to everyone!

Surprising Differences: An Empirical Analysis of LexisNexis and West Headnotes in the Written Opinions of the 2009 Supreme Court Term

Peter A. Hook** and Kurt R. Mattson***

The number of headnotes assigned by LexisNexis and West are empirically examined for opinions of the 2009 Supreme Court Term. Additionally, Citizens United is examined in detail to determine the overlap of headnote-worthy language. Discrepancies in the number of headnotes assigned and disagreement as to headnote-worthy language call into question the rigor with which headnotes are created.

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Introduction

¶1 Headnotes are important.1 They continue to be one of the main ways2 that legal researchers engage with the massive body of case law3 in the United States to marshal arguments for legal advocacy, advising, and scholarship. As one publisher-supplied component of the rule of law in the United States, they contribute to the stability, social justice, and economic growth4 of the country by making case law usable. Headnotes are vendor-described, atomistic statements of discrete concepts5 of law found in judicial opinions. They are supplied by two competing legal publishers (and vendors of their online legal platforms)—LexisNexis and Thomson Reuters (formally Thomson/West, formally West Publishing, and hereinafter West). They are not primary source content but important finding aids to the primary source content that are judicial opinions. However, the two publishers show surprising differences in how they assign headnotes, as illustrated by an empirical review of the headnotes assigned to the written opinions of the 2009 Term of the United States Supreme Court. The differences between the two vendors are found in (1) the number of headnotes assigned to each case, and (2) the identification of opinion language that merits a headnote.

1. See John O. McGinnis & Steven Wasick, Law’s Algorithm, 66 Fla. L. Rev. 991, 1003 (2014) (“[T]echnology that makes precedent broadly available improves performance” of a distributed approach to legal ordering such as the common law, case-based system.).
5. They are decidedly not only for “holdings” as was originally written. See infra ¶¶ 26–28 below on holdings and dicta.
What Are Headnotes?

§2 To critically analyze and evaluate the assignment of headnotes by LexisNexis and West, it is important to articulate with specificity what they are and include. “Headnotes, or syllabi, are brief summaries of the points of law, usually accompanied by relevant facts bearing on that point of law. . . . Each headnote represents a point of law extracted from the case, and the number of headnotes varies from case to case.”

Headnotes serve three main purposes: (1) They allow “the reader to grasp relatively quickly the legal issues discussed within the opinion” (overview function). (2) They help the reader to quickly locate the issues described in the headnote paragraphs by including bracketed numbers (“[1]”) that specify where in the opinion a particular headnote derives the basis for its summary (intra-case location function). (3) And finally, headnotes allow a researcher to identify topically similar cases that have also been marked-up, assigned headnotes, and integrated within the larger categorization scheme (digest function). This is why we refer to them as headnote systems.

§3 Prior to computer-assisted legal research, a researcher typically started by referencing a multivolume printed digest. Digests contain all of the cases assigned headnotes with particular topics for a particular jurisdiction; they are organized alphabetically by top-level controlled vocabulary topics. Sometimes digests are regional. Sometimes they cover a particular level of the federal judiciary or, in the case of the General and Decennial digests, all West-headnoted U.S. case law. These digests reproduce the headnote summaries from the indexed cases. In this manner, a user obtains topical access to what is otherwise only a chronological and jurisdictional organization of case law. Prior to the introduction of the LexisNexis categorization system, most legal researchers used West’s Key Number System.

§4 The Key Number System is an alphanumeric categorization system that contains more than 400 top-level topics. These top-level topics are also assigned topic numbers such as “92 Constitutional Law.” Beyond the top-level topic, West assigns key numbers that drill down numerous levels of the hierarchy and contain a large amount of specificity. The end result are key numbers that look like 92k1018. This key number represents six levels of the hierarchy in West’s taxonomy: (1) 92 Constitutional Law, (2) VI Enforcement of Constitutional Provisions, (3) C Determination of Constitutional Questions, (4) 3 Presumptions and

6. Barkan et al., supra note 2, at 38.
7. Id.
8. Id.
9. Id.
10. See id. at 78, 95.
12. In cases of expansion or renumbering, sometimes topic numbers are followed by letters: 231H Labor and Employment. A pure numerical organization lacks the ability to change (hospitality) and still keep topics in alphabetical order without resorting to decimals.
Construction as to Constitutionality, (5) 1006 Particular Issues and Applications, and (6) 1018 Freedom of speech, expression, and press. At its inception in 1908, the Key Number System had 77,000 unique topics. There has been relatively little change in the overall number of unique topics since. In 2007, the Key Number System had “109,183 lines, of which 90,429 are postable [capable of receiving headnote content], and the remaining 18,754 are structural lines in the hierarchy.”

Use of the headnote systems has changed dramatically since the introduction of online, hypertext legal search platforms. In 1999, LexisNexis was able to retrospectively introduce a headnote categorization system for its body of online case law to compete with the West Key Number System. It remains available exclusively online with no analog to print digests or headnote paragraphs in printed case reporters. Currently, LexisNexis includes approximately 16,000 topics in its categorization system. Some commentators assert that these topics are assigned, in part, by automated, patented, and algorithmic systems rather than exclusively by human editors and human decision making.

Today’s online research environment offers several distinct advantages in the use of headnote systems. The first is the easy display of all levels of the nested hierarchy that accompanies each topic assigned to a headnote. The online world also allows for easy and comprehensive updating of topics that have been renumbered or reorganized. Finally, the online world allows for hyperlinked access to all other cases assigned similar headnotes with further customizable refinements such as jurisdictional restraints or the inclusion of additional key words.

What to Call These Systems?

In the literature, the topical organizations of headnote content are often called classifications. It is worth referencing definitions from the information science community to add clarity as to how these systems should be discussed. “Cat-
егORIZATION is the process of dividing the world into groups of entities whose members are in some way similar to each other.”24 In contrast, “[c]lassification . . . involves the orderly and systematic assignment of each entity to one and only one class within a system of mutually exclusive and nonoverlapping classes.”25 The Library of Congress Classification System, used to put call numbers on the spines of books, is a true classification system. Books on a shelf are placed in one, and only one, location.26 The fact that both LexisNexis and West frequently assign headnote paragraphs to more than one topic, by definition makes these categorization systems rather than classification systems.

¶8 It is also worthwhile to identify whether the two competing categorization systems are controlled vocabularies, taxonomies, and thesauri. A controlled vocabulary is “an authoritative list of terms to be used in indexing (human or automated).”27 Both systems are controlled vocabularies. Otherwise, they would not be as effective at gathering related case law and would be mere indexes of every word used in judicial opinions. However, they are not static. For example, the West Key Number System has evolved over time to incorporate changes in legal terminology and usage. For instance, in 2003, the controlled vocabulary topic of Master and Servant28 was updated and merged with Labor Relations to form the new controlled vocabulary topic of Labor and Employment.29

¶9 A taxonomy is “a controlled vocabulary with a hierarchical structure.”30 As evidenced by the multipart, hierarchical topical organization displayed with each headnote (in the online world), both categorization systems are taxonomies. Furthermore, a thesaurus is a taxonomy that contains syndetic structure reflecting relationships between terms: broader terms and narrower terms (hierarchical relationships), see also references (associative relationships), and use/used for statements (equivalency relationships).31 The latter sometimes are called an entry vocabulary pointing the user to the preferred term. Additionally, terms in a thesaurus often carry scope notes (“brief explanations of how the term should be used in indexing”) and term history notes.32 It is unknown whether the LexisNexis categorization system is a thesaurus. While it is likely that LexisNexis has thesaurus content that it uses in-house, it is not available to the end user. West, on the other hand, makes available its thesaurus in the semi-annual book, West’s Analysis of American Law: With Key Number Classifications.33 The 1994 edition of this work includes scope notes at the outset of each of the top-level topic categories (“Subjects Included”) as well as see also references (“Subjects Excluded and Covered by Other

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25. Id. at 522.
26. This assumes that multiple copies of the book are not classed in different locations. The multiple assignment of call numbers to one work is possible in online, virtual call number browsing systems and may be useful to the user.
29. See 1 Eleventh Decennial Digest pt. 1, V–VII (2005); id. pt. 2, IV–VI.
30. About Taxonomies & Controlled Vocabularies, supra note 27.
31. Id.
32. Id.
33. West’s Analysis of American Law: With Key Number Classifications, supra note 23.
Topics”). There are also scope notes and see also references for some specific key numbers.

**Historical Background**

¶10 To empirically analyze the two competing headnote systems, it is important to understand how they evolved historically and in response to what stimuli. This, coupled with commentators’ observations about the two systems, has informed the focus of the empirical study and the methodologies used herein.

**West’s National Reporter System**

¶11 When the number of cases increases dramatically and becomes overwhelming to use and navigate, this leads to new technologies for “abridgement and synthesis.” In the late nineteenth to early twentieth centuries, the technological response to the burgeoning amount of case law was the National Reporter System and the Key Number System. Around 1870, and around the age of eighteen, John B. West began selling office supplies and medical and legal publications out of St. Paul, Minnesota, for the D.D. Merrill Book Store. In 1872, he struck out on his own and became a full-time seller of law-related books. In 1876, joined by his brother Horatio, John B. West & Co. launched a weekly legal newspaper named the *Syllabi*. This publication planted the seed that became the National Reporter System.

¶12 The *Syllabi* provided excerpts, and soon full text, of Minnesota court decisions long before they were available in the official state reports. The *Syllabi* was expanded to include cases from Wisconsin, and subsequently other states in the region, and became the *North Western Reporter*. Nationwide subscriptions to and interest in the *North Western Reporter* allowed West Publishing Company to create and publish the *Federal Reporter* in 1880 (covering federal circuit and district court opinions), and the *U.S. Supreme Court Reporter* in 1882. “These three Reporters were all edited under a uniform plan of headnotes and indexing which added greatly to the convenience of the user and which was not to be found in the separate State Reports.” Soon after, in 1888, case law from all jurisdictions within the United States was collected, indexed, headnoted, and included in a series of reporters that cumulatively became known as the National Reporter System.

35. *Id.* at 730 (Injunction “138.54. Schools; colleges and universities. Excludes school desegregation, see Schools 13(20), and interscholastic and intercollegiate associations, see Schools 183 and Colleges and Universities 15.”).
37. *Id.* at 1003–06.
40. *Id.* at 30–32.
41. *Id.* at 30–35.
42. *Id.* at 36–38.
43. *Id.* at 39, 61.
44. *Id.* at 39.
45. *Id.* at 39, 42–49.
Key Number System

¶13 Digests were soon created to allow topical exploration of this chronological collection of case law. This process began as West's Monthly Index in 1886, which became the American Digest in 1887. Aided by the purchase of competing digests that were at a comparative economic disadvantage with West because West already had case law content used to produce its reporters, West created the Century Digest in 1897, followed by the first Decennial Digest in 1908. The Key Number System was developed by John A. Mallory and introduced in 1908 in the first Decennial Digest. “This was the critical innovation from West . . . . It gave lawyers the ability to identify a discrete topic that was relevant to their case and then pull up a heretofore unavailable amount of case law on that topic.”

The Advent of LexisNexis and Computerized Legal Search

¶14 The process of using computerized information retrieval systems to research the law began in the late 1950s when a computer was used to produce an index to the Pennsylvania health statutes to find and replace the outdated term “retarded child.” The genesis of LexisNexis was a 1964 working group of the Ohio Bar Association that was formed to adopt a computerized legal information system. It commissioned the creation of a system that would eventually become LexisNexis. As LexisNexis originally did not have any editorial value-added material such as abstracts to allow users to quickly ascertain the relevance of a returned document, it pioneered in 1970 the “keyword-in-context (KWIC) format, where the search term was highlighted and displayed with leading and following lines (much like the snippets giving the results of a current search engine).” Initially, LexisNexis dedicated computer terminals were seen as a finding aid to cases that would then be read or photocopied out of traditional law books. To compete, West introduced its own computerized search platform in 1975. Until 1978, the West-law platform was limited to searching only West’s editorial headnotes of cases and, unlike LexisNexis, did not include the full text of legal documents. In 1999, when

46. Id. at 47–48; James H. Wyman, Freeing the Law: Case Reporter Copyright and the Universal Citation System, 24 FLA. ST. U. L. REV. 217, 229 (1996).
47. Marvin, supra note 15, at 68–70.
48. Id. at 73.
50. Marvin, supra note 15, at 28.
51. McGinnis & Wasick, supra note 1, at 1005.
53. Bing, Let There Be LITE, supra note 52.
54. Id.; Wyman, supra note 46, at 230–32.
55. Bing, Let There Be LITE, supra note 52; Harrington, supra note 52, at 545.
56. Bing, Let There Be LITE, supra note 52.
57. Id.
58. Id.
59. Id.
LexisNexis began to retrospectively introduce headnotes, both LexisNexis and Westlaw offered full text, headnotes, and a related categorization scheme.60

**Related Literature**

¶15 The literature that informs this empirical study falls into three categories: (1) the publishers’ own claims as to their headnote practices; (2) other literature empirically evaluating LexisNexis and West products and commentary as to the headnote systems; and (3) a discussion of “holding” versus “dicta,” which applies to the subsequent analysis as to what content is given headnote treatment.

**Vendor Claims as to Their Headnote Process**

¶16 To analyze and critique the assignment of headnotes by both major publishers of case law, it is useful to survey what the publishers themselves claim about their headnotes. It is legitimate to analyze whether each publisher is living up to its stated aims and intent with its headnoting.

**West**

¶17 In its marketing materials, West promotes its long history as being the primary digest system for U.S. case law.61 West also claims that “[t]he Key Number System makes legal research easier, more accurate, and more relevant.”62 “Easier” is appropriate as one needs a digest system for topical access into what is otherwise only a chronological ordering of case law per a given jurisdiction.63 “More accurate” and “more relevant” are much greater claims and appear similar to two information retrieval terms of art, “precision” and “recall.” While “more accurate” and “more relevant” are not explicitly proven in the marketing assertion, context supplies some understanding of the claim. From the language immediately following the claim, one may infer that accuracy and relevance stem from the digest function of the West headnote system and the ability to view the full outline of West’s hierarchical controlled subjects to discover the applicable divisions and elements of particular areas of the law. “The Key Number System is both an index you use to find opinions relevant to whatever legal problem you are working on and an outline of issues important in the law. This means that it will not only help you find the cases you want, but it will also help you identify the issues you need to consider in the first place!”64

¶18 West enumerates the steps used in creating its headnote system:

- A court issues an opinion in a case.
- A copy of the case is obtained by West, where . . . trained attorney editors read the case and pick out the points of law addressed in the case.

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61. “The logical organization of legal materials is essential to the maintenance of a legal system based on precedent. For more than 100 years, the legal community has relied on the Topic and Key Number System’s organization of case law to locate that precedent.” Thomson Reuters Westlaw, [*Topic and Key Number Overview*], https://lawschool.westlaw.com/marketing/display/RE/24 [https://perma.cc/8MBP-JFLR].
62. Id.
63. See *Wren & Wren*, supra note 11, at 6; *Callister, Thinking*, supra note 11, at 40 tbl.4; *Callister, Time to Blossom*, supra note 11, at 203 tbl.3, 210 fig.6; *Wren & Wren*, supra note 11, 35 matrix A.
64. Thomson Reuters Westlaw, *supra* note 61.
• Written as a short, concise paragraph, these are called headnotes. . . .
• The headnotes are then passed along to attorney editors who are experts in figuring out where points of law belong in the huge Key Number System “outline.”
• These “Classifiers” find the correct location on the outline, and assign at least one Key Number to the headnote. . . .
• Then the West Digests take over. Digests are arranged alphabetically by Topic and then numerically by Key Number. There are regional, federal, state, chronological and topical digests. All cases dealing with a legal concept in the jurisdiction, time period, or topical area covered by a Digest are grouped together. . . . On Westlaw, all Key Numbers are hyperlinked to cases addressing the same issue in any jurisdiction. All you have to do is know which Key Number describes the problem or point of law on which you would like to find cases. The rest has all been done for you.

¶19 By its own admission, West glosses “points of law” for inclusion in its headnotes and not necessarily only holdings. West also has long emphasized its frequent use of alternative terms in its headnotes, to standardize topics and keywords and make them more findable. For example, the headnote to Ravell v. United States uses “spectator” to refer to a woman attending an air show, even though the opinion never uses this word. One commentator notes that “editors take the legal concepts from a case [and] summarize the concept in the editor’s own language[.]” Sometimes, the editor’s own language is the “exact language of the court.”

LexisNexis

¶20 LexisNexis asserts in its promotional and marketing literature that its headnotes “reflect the language of the court.” “We never editorialize headnotes, which could lead to a misinterpretation of points of law.” LexisNexis goes on to encourage its users to “[g]et the vital information you need from attorney-editors who write headnotes in the language of the court, ensuring reliable information and no misinterpretation.” This fidelity to the actual language of the court also appears as a selling point in LexisNexis’s instructional materials geared toward law students: “Lexis headnotes provide a more detailed overview of the legal issues discussed. You’ll understand the court’s assessment of each issue, as actual case language is used in each headnote.” LexisNexis also promotes the overview and intra-case

68. Mart, Relevance, supra note 3, at 223, ¶ 5.
69. Id. at 223 n.13.
71. Id.
72. Id.
location functions of its headnotes by stating that they allow a researcher to "[d]etermine if a case merits deeper analysis by quickly accessing the key legal issues and points of law material to a case." Furthermore, LexisNexis promotes the digest function of its headnote system when it states that its headnotes allow a user to "[f]ind other relevant authority with headnotes that help direct you to other important cases related to your legal question."

 LexisNexis’s emphasis on how its fidelity to the court’s language avoids creating misleading headnotes obliquely implies that West’s headnotes may suffer from this problem. We are not aware of any empirical research that demonstrates this is indeed a problem. If such research existed, it would probably be featured in LexisNexis promotional materials. LexisNexis also emphasizes the role of the attorney-editor in the creation of its headnotes. In an online brochure that features the twenty-nine steps of the LexisNexis editorial process, steps 20 through 25 ("Case Enhancements") are:

20. Headnote attorney-editors read both published and unpublished cases for identification and analysis of legal issues.
21. Attorney-editors craft a case-law summary for each case, which includes a concise synopsis, an overview of relevant legal facts and pertinent authorities, and a statement of the case outcome.
22. Attorney-editors identify the issues or points of law that are material to the resolution of the case and create stand-alone headnotes for each statement of authority.
23. Every headnote is assigned the most on-point classifications from our legal topic digest. Classifications provide instructive headings for the material rules of law and are a powerful research tool for relevant subject matter.
24. Case summaries, headnotes and classifications are quickly updated in the database.
25. Work is sampled and audited for quality review. Results are monitored.

Steps 22 and 23 provide the language with which LexisNexis headnotes may be evaluated based on the corporation’s own claims. To what extent do their headnotes gloss the “issues or points of law that are material to the resolution of the case” and contain each statement of authority?

Commentators’ Thoughts as to What the Systems Are Designed to Do

Support is found for both sides of the issue as to whether headnotes should use the actual language of the court opinion:

74. LexisNexis Case Law, supra note 70.
75. Id.
76. LexisNexis, Case Law & Shepard’s Editorial Process (2013), http://www.lexisnexis.com/pdf/LexisNexis_Case_Law_Shepards_29_Step_Editorial_Process.pdf [https://perma.cc/3GQJ-F6W9]; see also Shawn Nevers, LexisNexis Headnotes, Hunter’s Query (Sept. 18, 2009), http://huntersquery.byu.edu/wordpress/index.php/2009/09/lexisnexis_headnotes/ [https://perma.cc/7LJZ-DZ7P]: "[T]he editor reads the case and manually chooses the classifications. He or she has a tool much like an index that has all of the classifications listed there (topics and subtopics). For each point of law in the case that the editor chooses to include as a headnote, he or she then selects the most relevant subtopic/topic. Often they are given more than one as obviously they can not be hampered into only one subtopic. If the language does not fit any current topics, then the editor can request a new one created and a committee of editors makes that decision, but that is very rare. Once the editor has chosen the language and matched the topics, the secondary editors then check that to make sure it is correct." (quoting e-mail from Michael Morton, LexisNexis Regional Account Manager, to Shawn Nevers).
Because the headnotes are not the actual judicial opinions, and because by design they abbreviate the information set forth in full by the opinion, and because they reflect the style of the digestor and not that of the person writing the opinion, vital data from the opinion can be omitted from its headnotes; or worse yet, the headnote can inaccurately represent the gist of the opinion.  

This provides some support to LexisNexis’s marketing claims for incorporating the actual language of the court opinion. However, the same commentator also supports West’s practice of using its own language to gloss headnotes to use more common key words and phrases: “[a] skilled professional case digestor who writes headnotes can enhance the utility of his or her employer’s publication by helping the researcher find the information sought.”

¶23 There is an interesting discussion as to what extent these headnote categorization schemes influence the law itself: more specifically, whether they limit the ability to research the law and to even develop new rationales and arguments outside the bounds of traditional topic categories.

The Key Number system, while detailed, could never actually cover every possible topic created by legal events. As a result, lawyers trained to use (rather than critically examine) the West Key Number System would feel pressure to wedge the facts from their case into arguments that could be developed from within the Key Topic system.

“The essence of a classification scheme is to be a closed list of the salient ideas in the literature it serves, and when the system, by omitting an idea, implies that the idea is not sufficiently salient to be included, it can be an obstacle to considering the idea.” Dabney references the inability to use the Topic and Key Number System to research concepts related to feminist jurisprudence as one area of the law hampered by the language of the categorization system.

¶24 Only a little empirical work has compared the two categorization systems. Mart did an empirical analysis as to the return of relevant results between the two vendors’ platforms using both the digest and citator tools available on each platform. She started with a dataset of headnotes from ten marquee cases that significantly developed the law. Subsequently, she repeated her study on a larger corpus of ninety important federal and state cases and obtained the following results:

For digests, Key Number results had a higher percentage of relevant results than either digest function available on Lexis . . . . For citators, . . . Lexis’s Shepard’s algorithm produced slightly more relevant results than Westlaw’s KeyCite algorithm, but the overlap in cases between the two systems is still very small. The differences in the result sets for digest and citator systems illustrate the fact that no one system or type of resource returns comprehensive results.

¶25 We are not aware of any study that directly compares the number of headnotes and their qualities assigned by LexisNexis and West for the same body of cases. Presumably, however, each company has performed such an analysis to gain competitive intelligence on its competitor.

77. Ryesky, supra note 67, at 382.
78. Id. at 382.
80. McGinnis & Wasick, supra note 1, at 1006.
82. Id. at 239, ¶ 46.
84. Mart, Case for Curation, supra note 3, at 15.
Holdings Versus Dicta

¶26 Relevant to our inquiry is an exploration of holding and dicta, what their conflation might mean for the practice of law in the United States, and how their conflation might be abetted by the headnoting process. Stinson notes two general groupings of definitions of the “holding” of a case: (1) (the more limited) “a holding is limited to the facts plus outcome”; and (2) (the more expansive) “a holding includes the rationale or reasoning a court employs to reach a particular result.”

Dicta is then defined as everything else in a case that is not a holding. As only holdings are obligated to be followed by lower courts in a multitiered, common-law system, Stinson surveys the problems that result when dicta is mistakenly elevated to a holding and vice versa. This includes a lessening of (1) the accuracy of opinions (whether they are actually correct), (2) judicial authority, and (3) legitimacy of the common-law system. As relates to the U.S. Supreme Court, with its abundance of law clerks and small numbers of written opinions issued each year, the Court “sets broad policy, which invites espousing dicta that would be unnecessary if the Court’s sole function were to narrowly resolve litigant’s disputes.” The problem is exacerbated by the typical length of a Supreme Court written opinion.

¶27 One of the three reasons Stinson gives for the conflation of holdings and dicta is the increasing reliance on “the words found in judicial opinions rather than the underlying components of those judicial decisions—facts, issues, holdings, and outcomes.” The distillation of holding from dicta can be difficult, and it is often easier to quote language from an opinion rather than succinctly summarize the holding. An additional reason that Stinson gives for preference for quotations from an opinion rather than a careful untangling of holding and dicta is that “electronic legal research encourages a focus on individual screens and snippets of text rather than documents as a whole; this devalues the significance of legal principles in favor of facts and rules taken out of context.”

¶28 LexisNexis, with its professed fidelity to the language of the court used for its headnote content, might be complicit with this trend of relying on quoted language rather than a careful parsing of holding from dicta. Stinson cites Doyle in noting that the development of full-text retrieval “minimized the assistance to be gained from editorial judgment.” This editorial judgment might support the West approach of more careful editorialized headnotes that summarize concepts rather than merely giving applicable language from the court opinion. Alternatively, advocates in our adversarial legal system want quick access to applicable snippets of language from opinions to marshal arguments most favorable for their clients. In other words, attorneys might welcome a certain degree of muddling of holding and dicta to advance the interests of their clients. Of course, this might be a structural flaw in our common law, adversarial process.

86. Id. at 223–33.
87. Id. at 221.
88. Id. at 222.
89. Id. at 246.
90. Id. at 253.
91. Id. at 254 (quoting John Doyle, WESTLAW and the American Digest Classification Scheme, 84 LAW LIBR. J. 229, 229–30 (1992)).
Case Corpus

¶29 Opinions at the U.S. Supreme Court level were chosen for our study because it is assumed that they garner the most careful and thorough editorial treatment from each of the publishers. For the sake of completeness, we decided to examine the entire output of the written opinions of one term of the Court. The 2009 Term was chosen (October 5, 2009, through October 3, 2010) because this was the most recent term in which all of the opinions appeared in their bound form in the *United States Reports* when we began work on this article in January 2016. The bound and presumed final version of the *United States Reports* was important because it was the neutral source of line numbering for comparisons of the two publishers’ versions of the cases and the location of their headnote placement within each case. The fact that over five years had elapsed since the final written opinion was issued also gave the two publishers plenty of time to make changes and otherwise correct errors (if any) in their editorial enhancements of the cases. This assured that the analysis was conducted on more or less final products.

¶30 The authoritative listing of written opinions come from two sources. The first is the list of slip opinions hosted on the Supreme Court’s website (“2009 Term Opinions of the Court”). However, it appears that these lists are not maintained on the Court’s website once the relevant opinions are published in the bound volumes of the *United States Reports*. Because of this, we obtained the listing using the Internet Archive’s Wayback Machine for the appearance of the Court’s website on August 28, 2010.92 This listing was confirmed using the data contained in the *Supreme Court Database*.93 Consequently, the relevant corpus for this analysis was eighty-seven written case opinions94 that have been given headnote treatment by at least


93. *The Supreme Court Database*, Washington Univ. Law, http://supremecourtdatabase.org/ (last visited Nov. 10, 2017). As to the list of “2009 Term Opinions of the Court” and the *Supreme Court Database*, there were two discrepancies. The *Supreme Court Database* included with its listing of written opinions one case that was a sentence-long dismissal pursuant to Rule 46 rather than a written opinion, *Pottawattamie Cty. v. McGhee*, 558 U.S. 1103 (2010). Conversely, the “2009 Term Opinions of the Court” included one case not included in the *Supreme Court Database* for the 2009 Term, *Weyhrauch v. United States*, 561 U.S. 476 (2010) (“R-” number: 87): “R: Sequential number assigned by the Reporter of Decisions after the particular case was issued.” *Column Header Definitions*, Sup. Ct. of the U.S., http://www.supremecourt.gov/opinions/definitions.aspx [https://perma.cc/GE7L-T9SG]. This was a one-paragraph per curiam decision that did not garner any headnote treatment from either publisher because it merely vacated the lower court ruling consistent with a companion case in the same 2009 Term, *Skilling v. United States*, 561 U.S. 358 (2010). The *Supreme Court Database* had two other errors: the citations given for two cases were to subsequent treatments of the cases and not the original opinions in the 2009 Term that merited headnote treatment from at least one of the publishers: *Thaler v. Haynes*, 559 U.S. 43 (2010) (“R-” number: 23), *rehg den.,* 559 U.S. 1088 (*Supreme Court Database* citations were to the “rehearing denied” memorandum decision). *United States v. Juvenile Male*, 560 U.S. 558 (2010) (“R-” number: 67), contained a certified question to the Montana State Supreme Court necessary to address a potential issue of mootness related to a juvenile sex offender. The case was subsequently resolved by *United States v. Juvenile Male*, 564 U.S. 932 (2011). The *Supreme Court Database* citations were to the subsequent and final opinion.

one of the two publishers. These eighty-seven opinions were downloaded from Lexis Advance and Westlaw in Microsoft Word format. For Westlaw, the option to display the topic and key numbers with the expanded hierarchy was chosen.

**Number of Headnotes**

¶31 The metric collected for each written opinion was the total number of headnotes assigned to each case by each publisher. Thus, the unit of analysis for comparison was the entire written opinion. One author populated a spreadsheet with the count numbers for each publisher for each of the written cases of the 2009 Term. (See appendix A.) This was made relatively easy as the headnotes are numbered in each publisher’s version of the opinions and the total was obtained by looking at the last numbered headnote. The spreadsheet entries of the numbers per case were then confirmed by the other author. Data was collected for the total number of headnotes assigned by West and LexisNexis, as well as the Lawyers’ Edition, which is a different categorization scheme also owned and maintained by LexisNexis and given with the LexisNexis case opinions. The total number of headnotes given by both publishers to the eighty-seven cases is surprisingly close given the variances discussed below—1063 for LexisNexis, 1063 for Lawyers’ Edition, and 929 for Westlaw. (See table 1.)

**Headnotes per Case**

¶32 The total number of headnotes assigned, divided by the eighty-seven cases, resulted in a per case average (arithmetic mean) for LexisNexis of 12.22 headnotes per case and West, 10.68. The similarity of these two averages belies vast differences between the two publishers, as discussed below. The range of the number of headnotes assigned by LexisNexis was 0 to 51. The range of the number of headnotes assigned by West was 1 to 36. In terms of statistical central tendency, some of these differences were captured by the median and mode number of headnotes assigned to the eighty-seven cases by the two publishers. (See table 1.) The median number of headnotes assigned per case by LexisNexis was eleven and nine for West. This means, by definition, half of the LexisNexis cases had fewer than eleven headnotes, and half had more. For West, half of the cases had fewer than nine headnotes, and half had more. The mode number, the most frequently occurring number of headnotes assigned per case, for LexisNexis was two and eleven (tie with six instances each) and eight for West (nine instances).

**Headnotes per Page**

¶33 Opinion page counts were calculated to evaluate how well the number of headnotes correlated with the number of opinion pages. The impetus for the analysis was to see whether a correlation suggested that either publisher used page length as an algorithmic prompt for a target number of headnotes. Page counts excluded the syllabus and started from the language that announced which Justice authored the opinion: “Justice ______ delivered the opinion of the Court” or, when applicable,
“Per Curiam.” The last page of the opinion contained the line “It is so ordered” or “Affirmed.” The math to determine the overall number of opinion pages was conducted automatically using a populated Excel spreadsheet: (“U.S. Reports Opinion Ends Page” minus U.S. “Reports Opinion Begins Page”) + 1. (The plus one was used to avoid one-page opinions registering as having zero page lengths.) The number of pages per opinion in the corpus is given in appendix B.

Table 1

<table>
<thead>
<tr>
<th></th>
<th>LexisNexis</th>
<th>Lawyers’ Edition</th>
<th>West</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Headnotes</td>
<td>1063</td>
<td>1063</td>
<td>929</td>
</tr>
<tr>
<td>Average (Mean) Number of Assigned Headnotes per Case</td>
<td>12.22</td>
<td>12.22</td>
<td>10.68</td>
</tr>
<tr>
<td>Median Number of Assigned Headnotes per Case</td>
<td>11</td>
<td>11</td>
<td>9</td>
</tr>
<tr>
<td>Mode Amount of Assigned Headnotes per Case</td>
<td>2 (6 instances)</td>
<td>6 (6 instances)</td>
<td>8 (9 instances)</td>
</tr>
<tr>
<td>Range</td>
<td>0–51</td>
<td>0–51</td>
<td>1–36</td>
</tr>
<tr>
<td><em>Citizens United v. Fed. Election Comm’n</em> (Case with Most LexisNexis Headnotes)</td>
<td>51</td>
<td>51</td>
<td>24</td>
</tr>
<tr>
<td><em>Skilling v. United States</em> (Case with Most West Headnotes)</td>
<td>41</td>
<td>41</td>
<td>36</td>
</tr>
<tr>
<td><em>McDonald v. City of Chicago</em> (Case with Greatest Disparity in the Number of Headnotes)</td>
<td>18</td>
<td>18</td>
<td>1</td>
</tr>
<tr>
<td>Number of Cases Each Publisher Assigned the Greater Number of Headnotes. (Note: Three cases had an equal number of headnotes.)</td>
<td>47 of 87 cases</td>
<td>n/a</td>
<td>37 of 87 cases</td>
</tr>
</tbody>
</table>

¶34 Lexis averaged 0.70 headnotes per page (1063 headnotes/1521 total pages). West averaged 0.61 headnotes per page (929 headnotes/1521 total pages). Linear regression analysis was conducted using Microsoft Excel for each of the vendors relative to the total page counts for each of the eighty-seven cases in the corpus. The independent variable or predictor variable \(x\) was the number of pages, and the dependent variable or predicted variable \(y\) was the number of headnotes assigned by each vendor. The results are discussed in the Regression Analysis Results section below.


96. Carlberg, *supra* note 95, at 130.

97. Id.
Headnotes per Lines

¶35 Line counts per opinion were calculated to evaluate how well the number of headnotes supplied by each publisher correlated with the number of lines in the Court’s opinions. The impetus for the analysis was to see whether a correlation suggested that either publisher used the number of lines in an opinion as an algorithmic prompt for a target number of headnotes. The applicable volumes of the United States Reports were downloaded from the Supreme Court’s website. The entire volumes were opened in the original PDF format and saved as Microsoft Word files. Additionally, continuous line numbering was enabled so each line within the volume had a distinct line number. Opinions of the Court excluded the syllabus and started from the language that announces which Justice authored the opinion: “Justice ______ delivered the opinion of the Court” or, when applicable, “Per Curiam.” The last line of the opinion was the line “It is so ordered” or “Affirmed.” The math to determine the overall number of lines of the opinion was conducted automatically in a populated Excel spreadsheet: (“U.S. Reports Opinion of the Court Line Number Ends” minus “U.S. Reports Opinion of the Court Line Number Begins”) + 1. The number of lines per opinion in the corpus is given in appendix B.

¶36 Lexis averaged 0.016 headnotes per line (1063 headnotes/64,950 total lines). West averaged 0.014 headnotes per line (929 headnotes/64,950 total lines). Correlation analysis (linear regression) was conducted using Microsoft Excel for each of the vendors relative to the total number of lines for each of the eighty-seven cases. The independent variable (x) was the total number of lines per opinion, and the dependent variable (y) was the number of headnotes assigned by each vendor per opinion. The results are discussed in the Regression Analysis Results section below.

Regression Analysis Results

¶37 In addition to number of pages per opinion and total number of lines per opinion, two other variables were captured in the linear regression analysis: the number of majority votes and the date the opinion was released. We speculated that one or both vendors might use the voting counts as an algorithmic prompt for a target number of headnotes. Less divisive opinions with a larger number of majority votes were hypothesized to receive fewer headnotes. In the regression analysis, the number of majority votes (ranging from 5 to 9) was the independent variable (x), and the number of headnotes was the dependent variable (y). Additionally, as more controversial cases are often released later in the year, this might be another algorithmic prompt as to a target number of headnotes used by one or both publishers. It was speculated that the later an opinion was released, the greater number of headnotes it would have. In the linear regression analysis, the date was the independent variable (x), and the number of assigned headnotes was the dependent variable (y). These additional variables are also set out in appendix B.

¶38 Table 2 shows the results of the linear regression analysis conducted using Microsoft Excel for each of the variables discussed above. As to the correlation coefficient, values range between −1 and 1.98 Perfectly correlated items have a value of either 1 or −1. Completely uncorrelated items have a value of zero.99 With LexisNexis, there is a strong, positive correlation between number of headnotes per opinion and

98. Id. at 30–32.
99. Id.
number of pages per opinion. As the number of opinion pages goes up, so does the number of headnotes assigned. (See figure 1.) There is also a moderate correlation between the number of West headnotes assigned and the number of opinion pages. (See figure 2.) In this instance, the two are more correlated than not correlated. However, the greater correlation coefficient strength as to LexisNexis (0.708) than West (0.527) for this phenomenon makes it more likely that LexisNexis uses an algorithmically suggested number of headnotes based on the length of an opinion (total number of opinion pages) than does West. Alternatively, this might be a result of LexisNexis using more of the exact language of the Court—more language (longer opinions) equating to more headnotes. The results are similar as to the number of headnotes assigned per number of lines in the opinion. As might be expected, the correlation improves marginally (a few decimal places for LexisNexis [0.708 to 0.714]), which is probably due to the increased specificity that the count of lines represents over the count of pages. However, the results are (or are almost) the exact same for both publishers when compared to the correlations for number of opinion pages.

¶39 As to the remaining variables analyzed, the correlation coefficients are very weak and, in the case of the number of Justices signing the opinion, statistically unreliable.100 As pertains to the 2009 Supreme Court Term, there is almost no correlation

100. See T-test results in table 2.
### Table 2

Correlation Analysis Results

<table>
<thead>
<tr>
<th>Correlation Coefficient&lt;sup&gt;a&lt;/sup&gt;</th>
<th>0.708</th>
<th>0.527</th>
<th>0.714</th>
<th>0.527</th>
<th>-0.100</th>
<th>0.082</th>
<th>0.349</th>
<th>0.210</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slope of the Regression Line&lt;sup&gt;b&lt;/sup&gt;</td>
<td>0.717</td>
<td>0.425</td>
<td>0.016</td>
<td>0.009</td>
<td>-0.553</td>
<td>-0.361</td>
<td>0.043</td>
<td>0.021</td>
</tr>
<tr>
<td>Standard Error of the Slope of the Regression Line&lt;sup&gt;c&lt;/sup&gt;</td>
<td>0.078</td>
<td>0.074</td>
<td>0.002</td>
<td>0.002</td>
<td>0.595</td>
<td>0.474</td>
<td>0.0127</td>
<td>0.011</td>
</tr>
<tr>
<td>t-ratio (slope of the regression line/standard error of the slope of the regression line)&lt;sup&gt;d&lt;/sup&gt;</td>
<td>9.192</td>
<td>5.724</td>
<td>9.406</td>
<td>5.719</td>
<td>-0.930</td>
<td>-0.761</td>
<td>3.434</td>
<td>1.979</td>
</tr>
<tr>
<td>Degrees of Freedom&lt;sup&gt;e&lt;/sup&gt;</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
</tr>
<tr>
<td>T-test (probability of sample slope of the regression line when actual population slope of the regression line equals zero)&lt;sup&gt;f&lt;/sup&gt;</td>
<td>1.101</td>
<td>7.63</td>
<td>4.07</td>
<td>7.788</td>
<td>0.823</td>
<td>0.776</td>
<td>0.000461</td>
<td>0.026</td>
</tr>
<tr>
<td>y-Intercept of the Regression Line&lt;sup&gt;g&lt;/sup&gt;</td>
<td>-0.309</td>
<td>3.247</td>
<td>0.246</td>
<td>3.642</td>
<td>16.283</td>
<td>13.331</td>
<td>-1737.69</td>
<td>-827.093</td>
</tr>
<tr>
<td>Standard Error of the y-Intercept&lt;sup&gt;h&lt;/sup&gt;</td>
<td>1.512</td>
<td>1.449</td>
<td>1.436</td>
<td>1.388</td>
<td>4.470</td>
<td>3.565</td>
<td>509.596</td>
<td>423.305</td>
</tr>
<tr>
<td>R&lt;sup&gt;i&lt;/sup&gt;</td>
<td>0.501</td>
<td>0.278</td>
<td>0.510</td>
<td>0.278</td>
<td>0.010</td>
<td>0.007</td>
<td>0.122</td>
<td>0.044</td>
</tr>
<tr>
<td>F-Ratio&lt;sup&gt;k&lt;/sup&gt;</td>
<td>85.409</td>
<td>32.766</td>
<td>88.471</td>
<td>32.711</td>
<td>0.865</td>
<td>0.580</td>
<td>11.792</td>
<td>3.917</td>
</tr>
<tr>
<td>Sum of Squares for the Regression&lt;sup&lt;l&lt;/sup&gt;</td>
<td>3345.438</td>
<td>1717.187</td>
<td>3404.209</td>
<td>1757.575</td>
<td>67.264</td>
<td>28.661</td>
<td>813.177</td>
<td>186.382</td>
</tr>
<tr>
<td>Sum of Squares for the Residuals&lt;sup&gt;m&lt;/sup&gt;</td>
<td>3329.413</td>
<td>3053.802</td>
<td>3270.642</td>
<td>3055.231</td>
<td>6607.587</td>
<td>4202.327</td>
<td>5861.674</td>
<td>4044.607</td>
</tr>
<tr>
<td>Observations</td>
<td>87</td>
<td>87</td>
<td>87</td>
<td>87</td>
<td>87</td>
<td>87</td>
<td>87</td>
<td>87</td>
</tr>
</tbody>
</table>

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<sup>a</sup> Carlberg, supra note 95, at 29–57.
<sup>b</sup> Id. at 107; see also LINEST Function, Microsoft Corp., https://support.office.com/en-us/article/LINEST-function-84d7d0d9-6e50-4101-977a-fa7ab772b6d [https://perma.cc/78XT-379F].
<sup>c</sup> Carlberg, supra note 95, at 109–14.
<sup>d</sup> Id. at 112.
<sup>e</sup> Id. at 13, 112.
<sup>f</sup> Id. at 109–14.
<sup>g</sup> Id. at 107.
<sup>h</sup> Id. at 109–14.
<sup>i</sup> Id. at 117–19.
<sup>j</sup> Id. at 120–21.
<sup>k</sup> Id. at 129–48.
<sup>l</sup> Id. at 125–29.
<sup>m</sup> Id.
(for either publisher) between the number of headnotes assigned and the number of Justices that join the majority opinion. Even though the regression line slopes in the anticipated negative direction—more headnotes assigned when fewer Justices join the majority—the extremely low correlation coefficient rejects the hypothesis that more headnotes would be assigned when more Justices are dissenting (an indication of controversial opinions). Though a dataset of eighty-seven cases is not too small from which to draw statistical inferences,\textsuperscript{101} conducting the same analysis on ten or twenty years of Supreme Court cases would be more dispositive. Additionally, there is a weak correlation, for both publishers, as to the number of headnotes assigned and when in the Term opinions are released. The higher correlation coefficient for LexisNexis (0.349) than for West (0.210) indicates that LexisNexis is more likely to use the timing of an opinion release (later in the Term cases being viewed as more significant and thus more headnote worthy) to suggest that more headnotes are merited. (However, opinions released later in the Term are longer, which is the reason they garner more headnote treatment from LexisNexis.) Again, conducting the same analysis over a larger dataset might be more informative. As to the 2009 Term, results might have been skewed by the very controversial case of \textit{Citizens United v.}  

\textsuperscript{101} \textsc{Charles Wheelan, Naked Statistics: Stripping the Dread from the Data} 135 (2013) ("As a rule of thumb, the sample size must be at least 30 for the central limit theorem to hold true.").
Federal Election Commission,\textsuperscript{102} which was released comparatively early in the term (Jan. 21, 2010). Chronologically, it was the nineteenth of the eighty-seven opinions released that year. (See appendix B. See appendix C for an example of the rich topical and procedural information supplied for each case in the Supreme Court database.)

Greatest Differences

\textsection{40} Ideally, one publisher would consistently assign more headnotes than the other. This would mean that each publisher consistently identified headnote-worthy language, and one of them consistently found more headnote-worthy language in each of the cases based on its own criteria. The differing numbers could then be nicely attributed to different philosophies of headnoting. However, this is not the case. Each publisher assigned more headnotes per case than the other almost an equal number of times: forty-seven times LexisNexis assigned more headnotes than West, and thirty-seven times West assigned more headnotes than LexisNexis. Only in three cases did each publisher assign an equal number of headnotes.\textsuperscript{103} If headnote assignment was a science rather than an art, there should be many more instances in which each publisher assigned the same number of headnotes or that one publisher consistently assigned the same ratio of a greater number than the other publisher. In other words, if “issues or points of law that are material to the resolution of the case”\textsuperscript{104} (LexisNexis) and “points of law”\textsuperscript{105} (West) could be consistently and accurately identified each time, there would not be the disparities seen in the data. It is important to note that LexisNexis also claims to give headnote treatment to each statement of authority.\textsuperscript{106} A priori, this suggests that LexisNexis would consistently assign more headnotes than West. It does not. Tables 3 through 6 reveal the greatest disparities in the number of headnotes assigned and the resulting ratios for each publisher. The fact that in numerous instances one publisher assigned multiples of headnotes compared to the other (frequently five or six times as many) further indicates that headnote assignment is an art and not a science.

\textsection{41} McDonald v. Chicago\textsuperscript{107} offers the starkest contrast, with eighteen LexisNexis headnotes and only one West headnote (a ratio of 1:18, as displayed in tables 3 and 4). In this one instance, West headnotes only the holding of the case—merely enunciating the overarching legal principle on which the case stands in one headnote. Given the significant constitutional issues addressed in McDonald, West’s choice is puzzling. Surely the McDonald opinion states more than one point of law worthy of a headnote assignment that would interest West’s users. All three functions of headnotes (overview, intra-case location, and digest) might be improved by more than one headnote being assigned. In contrast, LexisNexis offers eighteen “issues or points of law that are material to the resolution of the case” or statements

\textsuperscript{104} LexisNexis, \textit{supra} note 76.
\textsuperscript{105} Thomson Reuters Westlaw, \textit{supra} note 61.
\textsuperscript{106} LexisNexis, \textit{supra} note 76.
\textsuperscript{107} 561 U.S. 742 (2010).
of authority for its users to use and discover in reading *McDonald*. In this instance, the LexisNexis headnotes offer more of the component building blocks that went into the holding. Presumably, these building blocks greatly interest advocates who might want to marshal them as legal arguments in their own briefs.

**Idiosyncratic Differences**

¶42 A few noteworthy idiosyncratic differences appear in the way headnotes were assigned. This includes the two instances in which West assigned headnotes and LexisNexis did not, as well as the two instances in which the number of LexisNexis headnotes did not equal the number of Lawyers’ Edition headnotes.

108. *LexisNexis*, *supra* note 76.
Table 4
Greatest Ratio Differences in Headnote Numbers: LexisNexis Greater Than West

<table>
<thead>
<tr>
<th>Rank</th>
<th>Case Name</th>
<th>United States Reports Citation</th>
<th>Supreme Court Reporter Citation</th>
<th>United States Supreme Court Reports—Lawyers’ Edition Citation</th>
<th>Total Number LexisNexis Headnotes</th>
<th>Total Number West Headnotes</th>
<th>Absolute Difference</th>
<th>Difference Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>McDonald v. City of Chicago</td>
<td>561 U.S. 742</td>
<td>130 S. Ct. 3020</td>
<td>177 L. Ed. 2d 894</td>
<td>18</td>
<td>1</td>
<td>17</td>
<td>1:18</td>
</tr>
<tr>
<td>2</td>
<td>Carr v. United States</td>
<td>560 U.S. 438</td>
<td>130 S. Ct. 2229</td>
<td>176 L. Ed. 2d 1152</td>
<td>20</td>
<td>3</td>
<td>17</td>
<td>1:6.67</td>
</tr>
<tr>
<td>3</td>
<td>New Process Steel, L.P. v. NLRB</td>
<td>560 U.S. 674</td>
<td>130 S. Ct. 2635</td>
<td>177 L. Ed. 2d 162</td>
<td>13</td>
<td>2</td>
<td>11</td>
<td>1:6.5</td>
</tr>
<tr>
<td>4</td>
<td>Astrue v. Ratliff</td>
<td>560 U.S. 586</td>
<td>130 S. Ct. 2521</td>
<td>177 L. Ed. 2d 91</td>
<td>16</td>
<td>3</td>
<td>13</td>
<td>1:5.33</td>
</tr>
<tr>
<td>6</td>
<td>Jerman v. Carlisle, McNellie, Rini, Kramer &amp; Ulrich LPA</td>
<td>559 U.S. 573</td>
<td>130 S. Ct. 1605</td>
<td>176 L. Ed. 2d 519</td>
<td>9</td>
<td>2</td>
<td>7</td>
<td>1:4.5</td>
</tr>
<tr>
<td>7</td>
<td>Mac’s Shell Serv., Inc. v. Shell Oil Prods. Co.</td>
<td>559 U.S. 175</td>
<td>130 S. Ct. 1251</td>
<td>176 L. Ed. 2d 36</td>
<td>18</td>
<td>5</td>
<td>13</td>
<td>1:3.6</td>
</tr>
<tr>
<td>8</td>
<td>Kucana v. Holder</td>
<td>558 U.S. 233</td>
<td>130 S. Ct. 827</td>
<td>175 L. Ed. 2d 694</td>
<td>14</td>
<td>4</td>
<td>10</td>
<td>1:3.5</td>
</tr>
<tr>
<td>10</td>
<td>Dillon v. United States</td>
<td>560 U.S. 817</td>
<td>130 S. Ct. 2683</td>
<td>177 L. Ed. 2d 271</td>
<td>18</td>
<td>6</td>
<td>12</td>
<td>1:3</td>
</tr>
</tbody>
</table>

Corcoran v. Levenhagen

¶43 In only two instances, one publisher assigned headnotes in a case in which the other did not. Corcoran v. Levenhagen,109 the first opinion of the Term, is a per curiam decision that corrects appellate error. A convicted murderer appealed his state conviction on five separate grounds for federal habeas relief. The federal district judge granted relief on one of those grounds without hearing the other four. The court of appeals reversed without analyzing the other four grounds of the original habeas petition. The Supreme Court reversed, stating that the case should have either been remanded to the district court for consideration of the four other grounds in the original habeas petition or the court of appeals should have explained why such a remand was unnecessary. West created one headnote (unitary for the whole opinion without a bracketed indicator designating a specific part of the opinion) encompassing the holding of this two-page opinion. LexisNexis offered no headnote treatment,

which presumably was an oversight. Perhaps the need for headnote treatment could not easily be machine spotted or generated. Regardless, practitioners who might otherwise rely on Corcoran’s holding to combat similar errors in the appellate courts receive no help from LexisNexis in finding it.

Table 5
Greatest Total Differences in Headnote Numbers: West Greater Than LexisNexis

<table>
<thead>
<tr>
<th>Rank</th>
<th>Case Name</th>
<th>United States Reports Citation</th>
<th>Supreme Court Reporter Citation</th>
<th>United States Supreme Court Reports—Lawyers’ Edition Citation</th>
<th>Total Number LexisNexis Headnotes</th>
<th>Total Number West Headnotes</th>
<th>Absolute Difference</th>
<th>Difference Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Alabama v. North Carolina</td>
<td>560 U.S. 330</td>
<td>130 S. Ct. 229</td>
<td>376 L. Ed. 2d 1070</td>
<td>4</td>
<td>21</td>
<td>17</td>
<td>1:5.25</td>
</tr>
<tr>
<td>2</td>
<td>Graham v. Florida</td>
<td>560 U.S. 48</td>
<td>130 S. Ct. 2011</td>
<td>376 L. Ed. 2d 825</td>
<td>12</td>
<td>25</td>
<td>13</td>
<td>1:2.08</td>
</tr>
<tr>
<td>3</td>
<td>Renico v. Lett</td>
<td>559 U.S. 766</td>
<td>130 S. Ct. 1855</td>
<td>376 L. Ed. 2d 678</td>
<td>9</td>
<td>21</td>
<td>12</td>
<td>1:2.33</td>
</tr>
<tr>
<td>5</td>
<td>Salazar v. Buono</td>
<td>559 U.S. 700</td>
<td>130 S. Ct. 1803</td>
<td>376 L. Ed. 2d 634</td>
<td>11</td>
<td>20</td>
<td>9</td>
<td>1:1.82</td>
</tr>
<tr>
<td>6</td>
<td>Berghuis v. Smith</td>
<td>559 U.S. 314</td>
<td>130 S. Ct. 1382</td>
<td>376 L. Ed. 2d 249</td>
<td>6</td>
<td>13</td>
<td>7</td>
<td>1:2.17</td>
</tr>
<tr>
<td>6</td>
<td>Milavetz, Gallop &amp; Milavetz, P.A. v. United States</td>
<td>559 U.S. 229</td>
<td>130 S. Ct. 1324</td>
<td>376 L. Ed. 2d 79</td>
<td>10</td>
<td>17</td>
<td>7</td>
<td>1:1.7</td>
</tr>
<tr>
<td>6</td>
<td>South Carolina v. North Carolina</td>
<td>558 U.S. 256</td>
<td>130 S. Ct. 854</td>
<td>375 L. Ed. 2d 713</td>
<td>6</td>
<td>13</td>
<td>7</td>
<td>1:2.17</td>
</tr>
<tr>
<td>10</td>
<td>Granite Rock Co. v. Teamsters</td>
<td>561 U.S. 287</td>
<td>130 S. Ct. 2847</td>
<td>377 L. Ed. 2d 567</td>
<td>8</td>
<td>14</td>
<td>6</td>
<td>1:1.75</td>
</tr>
<tr>
<td>10</td>
<td>Conkright v. Frommert</td>
<td>559 U.S. 506</td>
<td>130 S. Ct. 1640</td>
<td>376 L. Ed. 2d 469</td>
<td>2</td>
<td>8</td>
<td>6</td>
<td>1:4</td>
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<tr>
<td>10</td>
<td>Maryland v. Shatzer</td>
<td>559 U.S. 98</td>
<td>130 S. Ct. 1213</td>
<td>375 L. Ed. 2d 1045</td>
<td>12</td>
<td>18</td>
<td>6</td>
<td>1:1.5</td>
</tr>
<tr>
<td>10</td>
<td>Hollingsworth v. Perry</td>
<td>558 U.S. 183</td>
<td>130 S. Ct. 705</td>
<td>375 L. Ed. 2d 657</td>
<td>4</td>
<td>10</td>
<td>6</td>
<td>1:2.5</td>
</tr>
</tbody>
</table>

which presumably was an oversight. Perhaps the need for headnote treatment could not easily be machine spotted or generated. Regardless, practitioners who might otherwise rely on Corcoran’s holding to combat similar errors in the appellate courts receive no help from LexisNexis in finding it.

United States v. Juvenile Male

¶44 United States v. Juvenile Male110 is a short, per curiam decision that certifies a question to the Montana Supreme Court necessary to address a potential issue of mootness related to a juvenile sex offender case. The case was resolved in a subsequent

The one West headnote (assigned without specific reference in the text of the opinion) is a long, complicated, procedural headnote. The scenario in the case, while unusual, might usefully guide future litigation involving when a federal court may appropriately certify a question to a state supreme court. Ideally, these types of cases are adequately collected under Topic and Key Number 170bk30117, “Federal Courts, particular questions.” As LexisNexis did not assign this case a headnote, only a search using Boolean terms or natural language (either by the user or behind the scenes by LexisNexis) will uncover this case. Perhaps the lack of a

Table 6

Greatest Ratio Differences in Headnote Numbers: West Greater Than LexisNexesis

<table>
<thead>
<tr>
<th>Rank</th>
<th>Case Name</th>
<th>United States Reports Citation</th>
<th>Supreme Court Reporter Citation</th>
<th>United States Supreme Court Reports—Lawyers’ Edition Citation</th>
<th>Total Number LexisNexis Headnotes</th>
<th>Total Number West Headnotes</th>
<th>Absolute Difference</th>
<th>Difference Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>United States v. Juvenile Male</td>
<td>560 U.S. 558</td>
<td>130 S. Ct. 2518</td>
<td>177 L. Ed. 2d 64</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1:Infinitive</td>
</tr>
<tr>
<td>1</td>
<td>Corcoran v. Levenhagen</td>
<td>558 U.S. 1</td>
<td>130 S. Ct. 8</td>
<td>175 L. Ed. 2d 1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1:Infinitive</td>
</tr>
<tr>
<td>3</td>
<td>Alabama v. North Carolina</td>
<td>560 U.S. 330</td>
<td>130 S. Ct. 2295</td>
<td>176 L. Ed. 2d 1070</td>
<td>4</td>
<td>21</td>
<td>17</td>
<td>1:5.25</td>
</tr>
<tr>
<td>5</td>
<td>Conkright v. Frommert</td>
<td>559 U.S. 506</td>
<td>130 S. Ct. 1640</td>
<td>176 L. Ed. 2d 469</td>
<td>2</td>
<td>8</td>
<td>6</td>
<td>1:4</td>
</tr>
<tr>
<td>6</td>
<td>Bobby v. Van Hook</td>
<td>558 U.S. 4</td>
<td>130 S. Ct. 13</td>
<td>175 L. Ed. 2d 255</td>
<td>2</td>
<td>7</td>
<td>5</td>
<td>1:3.5</td>
</tr>
<tr>
<td>7</td>
<td>Hollingsworth v. Perry</td>
<td>558 U.S. 183</td>
<td>130 S. Ct. 705</td>
<td>175 L. Ed. 2d 657</td>
<td>4</td>
<td>10</td>
<td>6</td>
<td>1:2.5</td>
</tr>
<tr>
<td>7</td>
<td>Thaler v. Haynes</td>
<td>559 U.S. 43</td>
<td>130 S. Ct. 1171</td>
<td>175 L. Ed. 2d 1003</td>
<td>2</td>
<td>5</td>
<td>3</td>
<td>1:2.5</td>
</tr>
<tr>
<td>7</td>
<td>Wellsos v. Hall</td>
<td>558 U.S. 220</td>
<td>130 S. Ct. 727</td>
<td>175 L. Ed. 2d 684</td>
<td>2</td>
<td>5</td>
<td>3</td>
<td>1:2.5</td>
</tr>
<tr>
<td>10</td>
<td>Renico v. Lett</td>
<td>559 U.S. 766</td>
<td>130 S. Ct. 1855</td>
<td>176 L. Ed. 2d 678</td>
<td>9</td>
<td>21</td>
<td>12</td>
<td>1:2.33</td>
</tr>
<tr>
<td>10</td>
<td>Wilkins v. Gaddy</td>
<td>559 U.S. 34</td>
<td>130 S. Ct. 1175</td>
<td>175 L. Ed. 2d 995</td>
<td>3</td>
<td>7</td>
<td>4</td>
<td>1:2.33</td>
</tr>
<tr>
<td>10</td>
<td>Michigan v. Fisher</td>
<td>558 U.S. 45</td>
<td>130 S. Ct. 546</td>
<td>175 L. Ed. 2d 410</td>
<td>3</td>
<td>7</td>
<td>4</td>
<td>1:2.33</td>
</tr>
<tr>
<td>10</td>
<td>Wong v. Belmontes</td>
<td>558 U.S. 15</td>
<td>130 S. Ct. 383</td>
<td>175 L. Ed. 2d 328</td>
<td>3</td>
<td>7</td>
<td>4</td>
<td>1:2.33</td>
</tr>
</tbody>
</table>

Supreme Court Term. The one West headnote (assigned without specific reference in the text of the opinion) is a long, complicated, procedural headnote. The scenario in the case, while unusual, might usefully guide future litigation involving when a federal court may appropriately certify a question to a state supreme court. Ideally, these types of cases are adequately collected under Topic and Key Number 170bk30117, “Federal Courts, particular questions.” As LexisNexis did not assign this case a headnote, only a search using Boolean terms or natural language (either by the user or behind the scenes by LexisNexis) will uncover this case. Perhaps the lack of a

traditional paper digest frees LexisNexis from the mindset of giving headnotes to small, mostly procedural cases like this one. However, it might be better practice to err on the side of assigning headnotes to all Supreme Court written opinions.

Lexis Advance Compared with Lawyers’ Edition

¶45 Except for two cases,\textsuperscript{112} Lexis assigned the same number of headnotes to both its Lexis Advance and Lawyers’ Edition versions. In fact, the headnote paragraph language is usually identical for both versions, and they both gloss the exact same language from the opinion. Thus, their headnote indicators are almost always side by side in the text of the opinion. However, each version of LexisNexis headnote treatment has different topic assignments as each draws from a unique taxonomy. In \textit{Bobby v. Van Hook}, Lawyers’ Edition has one headnote prior to the start of the Lexis Advance headnotes. However, the remaining two headnotes in both editions use the same language and gloss the same points. Similarly, in \textit{Ontario v. Quon}, Lexis Advance headnotes one and two are combined in Lawyers’ Edition headnote one. The remaining headnotes use identical headnote language and gloss the same language from the opinion. We have no explanation for why two of the eighty-seven cases vary in this way.

Agreement in Headnote-Worthy Opinion Language

¶46 As revealed by a case study of \textit{Citizens United}, there are significant differences in the opinion language that garners headnote treatment from each publisher; and, in some cases, there is a surprising lack of overlap in the opinion language that is assigned headnotes by each publisher. To evaluate this, we used line numbers to map each publisher’s headnotes to the exact portion of the opinion language glossed by each headnote.\textsuperscript{113} We began by parsing the opinion into its outline form (I,II,III; A,B,C; 1,2,3; etc.) and correlating these segments with the line numbering. Neutral line numbering from the \textit{United States Reports} facilitated the ability to determine with precision where each publisher’s headnotes began and ended and to compare them. (See tables 7–9.)

¶47 The operative assumption was that a headnote began where indicated in the text and ended where either the next headnote began or the specific section or subsection in the opinion ended. These are identified in table 9 as the columns “Headnote Line Number Start” and “Headnote Line Number End.” A more specific, discerning, and limited line number range was also associated with each headnote based on the language of the opinion as well as the language of the headnote paragraph. This range derived from a smaller section of the opinion as reflected in the two columns in table 9 labeled “Headnote Line Number Specific Start” and “Headnote Line Number Specific End.” Both line number parsings,


\textsuperscript{113} The opinion was downloaded as a PDF file from the online version of the bound volumes of the \textit{United States Reports}, https://www.supremecourt.gov/opinions/boundvolumes.aspx (last visited Nov. 10, 2017). Pages that did not contain the actual opinion of the Court were deleted. This included syllabus and heading information, and all concurring and dissenting opinions that were not the opinion of the Court in any part. Next, the PDF file was converted to a Microsoft Word document, and the continuous line numbering feature was enabled.
general and more specific, were manually completed for each of the seventy-five combined headnotes assigned to *Citizens United*.

§48 This intensive headnote study involving *Citizens United* provides an illustrative case study of the differences and vagaries of headnote assignments by LexisNexis and West. The simplest explanation would have been if all twenty-four West headnotes glossed the same portions of opinion language as twenty-four of the fifty-one LexisNexis headnotes and the remaining twenty-seven LexisNexis headnotes covered portions of the opinion not covered by West. Unfortunately, the correspondence mapping is not so simple. (See table 7.)

§49 In thirty-two instances, LexisNexis deems portions of opinion language headnote worthy and West does not. In six instances, West deems portions of the opinion language headnote worthy and LexisNexis does not. In fourteen instances, both LexisNexis and West deem opinion language headnote worthy (thus, twenty-eight implicated headnotes—fourteen from each publisher). This agreement is encouraging as it suggests that both publishers interpret the same the legal propositions objectively as headnote worthy. However, the differences suggest a certain amount of arbitrariness that is difficult to explain. Also, on three different instances, the correlation between headnotes was 2:1, not 1:1. In other words, the opinion language covered by two West headnotes was glossed by one LexisNexis headnote and vice versa. This suggests a divergence in the size of the headnote-able unit. It should also be noted that headnote equivalency used in this study is based on overlap in the opinion language glossed. Generally, equivalency based on similar content meaning has not been examined. However, if substantially similar headnotes can be drawn from diverse sections of an opinion, this reduces the efficacy of (or at least muddles) the intra-case location function for headnotes.

§50 Table 8 shows the variance of headnote assignments broken down by opinion section per the outline format. LexisNexis assigns headnotes to six subsections (0, IB, IID, IIIB2, IVC, and V) that West does not. The same is not true in reverse: West assigns no headnotes to sections that LexisNexis likewise does not. Section 0, or the introductory section, provides a brief overview of the case and a concise holding of the opinion. Arguably, the language providing the concise holding of the opinion is headnote worthy: “The Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether.” LexisNexis glosses this exact language with a headnote. While not headnoting this specific language, West does cover these points of law in two separate and lengthier headnotes from language much later in the opinion (headnotes 21 and 23). It is assumed that most discrete sections should have some headnote-worthy language, or else why do they exist? On the other hand, when sections merely refute portions of a party’s argument that are dispositively made moot in another section, maybe those sections do not produce any headnote-worthy language (see subsection IID).
Table 7

Headnote Equivalency Between LexisNexis and West in *Citizens United*

<table>
<thead>
<tr>
<th>Opinion Part (0 indicates introductory section)</th>
<th>LexisNexis Headnote Number</th>
<th>West Headnote Number</th>
<th>Notes About the Equivalency</th>
<th>Number of LexisNexis Headnotes Without West Equivalents</th>
<th>Number of West Headnotes Without LexisNexis Equivalents</th>
<th>Number of Incidences When Publishers’ Headnotes Are Equivalent</th>
<th>Number of Implicated Headnotes That Do Not Map 1 to 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>1</td>
<td>No equivalency</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>I.B</td>
<td>2</td>
<td>No equivalency</td>
<td>1</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>II.A</td>
<td></td>
<td>No equivalency</td>
<td>1 - 2</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>II.B</td>
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<td></td>
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<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
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<td>II.C</td>
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<td></td>
<td>5</td>
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<td>II.D</td>
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<td></td>
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<td>8</td>
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<tr>
<td>II.E</td>
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<td>7</td>
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<tr>
<td>II.E</td>
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<td></td>
<td>9</td>
<td>8</td>
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</tr>
<tr>
<td>II.E</td>
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<td></td>
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<td>9</td>
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<td></td>
<td></td>
<td>11</td>
<td>10</td>
<td></td>
<td></td>
<td></td>
</tr>
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<td>II.E</td>
<td></td>
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<td>11</td>
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<td></td>
</tr>
<tr>
<td>III</td>
<td></td>
<td></td>
<td>17</td>
<td>12</td>
<td>LexisNexis headnote 17 is broader than West headnote 12 and incorporates what arguably should be a separate distinct headnote.</td>
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<td></td>
<td>18</td>
<td>13</td>
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<tr>
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<td>Opinion Part (o indicates introductory section)</td>
<td>LexisNexis Headnote Number</td>
<td>West Headnote Number</td>
<td>Notes About the Equivalency</td>
<td>Number of LexisNexis Headnotes Without West Equivalents</td>
<td>Number of West Headnotes Without LexisNexis Equivalents</td>
<td>Number of Incidences When Publishers’ Headnotes Are Equivalent</td>
<td>Number of Implicated Headnotes That Do Not Map 1 to 1</td>
</tr>
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<td>---</td>
</tr>
<tr>
<td>III.C</td>
<td>36</td>
<td>16, 17</td>
<td>LexisNexis headnote 36 incorporates the same opinion language as two separate West headnotes, 16 &amp; 17, plus an additional legal proposition.</td>
<td>3</td>
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<tr>
<td></td>
<td>37</td>
<td>No equivalency</td>
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<tr>
<td></td>
<td>38</td>
<td>18</td>
<td>Exact same headnote paragraph text both taken verbatim from the opinion language.</td>
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<tr>
<td></td>
<td>39</td>
<td>19</td>
<td>Exact same headnote paragraph text both taken verbatim from the opinion language.</td>
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<tr>
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<td>No equivalency</td>
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<tr>
<td>III.D</td>
<td>41, 42</td>
<td>22</td>
<td>West headnote 22 incorporates the same opinion language as two separate Lexis headnotes, 41 &amp; 42.</td>
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<tr>
<td>IV.A</td>
<td>43, 44</td>
<td>23</td>
<td>West headnote 23 incorporates the same opinion language as two separate Lexis headnotes, 43 &amp; 44.</td>
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<tr>
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<td>45–47</td>
<td>No equivalency</td>
<td>Lexis headnotes the supporting rationales.</td>
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<td>IV.B</td>
<td>48–49</td>
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<td></td>
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<tr>
<td>V</td>
<td>51</td>
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<td></td>
<td>32</td>
<td>6</td>
<td>14</td>
<td>9</td>
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</tbody>
</table>
Conclusions and Future Work

¶51 The data make clear that headnote assignments are far from scientific. In fact, they appear somewhat arbitrary, at least based on the discrepancies described in this article. Further study is warranted. Perhaps we will next examine cases from lower federal courts and state appellate courts to see whether the differences are even starker. We hypothesize that the lesser amount of editorial scrutiny given these cases is likely to create even more differences between LexisNexis’s and West’s headnote assignments. We also would like to compare (1) the average word count of each publisher’s headnote statements; (2) the number of hierarchical levels in each publisher’s categorization system; (3) the extent to which headnote language is taken from the court opinion itself; and (4) the number of multiple categories assigned to each headnote.

Table 8

Section-by-Section Assignment of Headnotes in *Citizens United*

<table>
<thead>
<tr>
<th>Opinion Part (indicates introductory section)</th>
<th>U.S. Reports Page Number</th>
<th>Line Number</th>
<th>Section Starts</th>
<th>Headnote Number or Range of Headnote Numbers (LexisNexis)</th>
<th>Headnote Number or Range of Headnote Numbers (West)</th>
<th>Number of LexisNexis Headnotes</th>
<th>Number of West Headnotes</th>
<th>Notes About the Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>318</td>
<td>1</td>
<td>1</td>
<td>n/a</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>High-level summary of the case and a concise statement of the holding.</td>
</tr>
<tr>
<td>I</td>
<td>319</td>
<td>66</td>
<td>n/a</td>
<td>n/a</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>No content. Just outline section designator.</td>
</tr>
<tr>
<td>I.A</td>
<td>319</td>
<td>67</td>
<td>n/a</td>
<td>n/a</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>Factual background section. No headnote treatment expected.</td>
</tr>
<tr>
<td>I.B</td>
<td>320</td>
<td>107</td>
<td>2</td>
<td>n/a</td>
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<td>185</td>
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<td>One-sentence statement as to what Section II is about.</td>
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<td>II.A</td>
<td>322</td>
<td>190</td>
<td>3</td>
<td>1-3</td>
<td>1</td>
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<td>3</td>
<td>Statutory interpretation as to whether the applicable <em>Hillary</em> video was an “electioneering communication.”</td>
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<td>II.B</td>
<td>324</td>
<td>254</td>
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<td>4-5</td>
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<td>Analysis as to whether <em>Hillary</em> video is the functional equivalent of express advocacy.</td>
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<td>II.C</td>
<td>326</td>
<td>311</td>
<td>5-6</td>
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<td>Rejecting the argument that video-on-demand should be treated differently from other forms of advocacy.</td>
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<td>327</td>
<td>353</td>
<td>7</td>
<td>n/a</td>
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<td>Addressing winning party’s argument to create an exception for nonprofit organizations. Rendered moot by more expansive, ultimate holding.</td>
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<td>II.E</td>
<td>329</td>
<td>434</td>
<td>8-14</td>
<td>7-10</td>
<td>7</td>
<td>4</td>
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<td>Analysis as to whether it is appropriate to revisit free speech precedents.</td>
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<td>Section Starts Line Number</td>
<td>Section Starts Headnote Number or Range of Headnote Numbers (LexisNexis)</td>
<td>Headnote Number or Range of Headnote Numbers (West)</td>
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<td>III</td>
<td>336</td>
<td>707</td>
<td>15–21</td>
<td>11–13</td>
<td>7</td>
<td>3</td>
<td>Section explains how the applicable law burdens the free speech of commercial entities.</td>
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<td>342</td>
<td>901</td>
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<td>III.A.1</td>
<td>342</td>
<td>902</td>
<td>22–23</td>
<td>14</td>
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<td>Analysis of past cases addressing the constitutionality of restrictions on corporate and union political speech.</td>
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<td>III.A.2</td>
<td>345</td>
<td>1019</td>
<td>n/a</td>
<td>n/a</td>
<td>0</td>
<td>0</td>
<td>Lengthy section discussing past Supreme Court precedent, <em>Buckley</em> and <em>Bellotti</em>.</td>
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<tr>
<td>III.A.3</td>
<td>347</td>
<td>1115</td>
<td>n/a</td>
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<td>0</td>
<td>Stating applicable portions of the past Supreme Court case, <em>Austin</em>.</td>
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<td>III.B</td>
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<td>1137</td>
<td>n/a</td>
<td>n/a</td>
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<td>0</td>
<td>Noting conflicting lines of precedent and the past rationales used for upholding corporate spending limits that will be addressed in subsequent sections.</td>
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<td>III.B.1</td>
<td>349</td>
<td>1168</td>
<td>24–34</td>
<td>15</td>
<td>11</td>
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<td>Analysis and rejection of <em>Austin</em>’s anti-distortion rationale.</td>
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<td>1440</td>
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<td>Rejecting the anticorruption or appearance of corruption argument.</td>
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<td>III.B.4</td>
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<td>1667</td>
<td>n/a</td>
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<td>Dismissing the need to address the issue of foreign corporations having undue influence in the national political process.</td>
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<td>III.C</td>
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<td>1681</td>
<td>36–40</td>
<td>16–21</td>
<td>5</td>
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<td>Application of stare decisis and overturning <em>Austin</em>.</td>
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<td>III.D</td>
<td>365</td>
<td>1784</td>
<td>41–42</td>
<td>22</td>
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<td>Overruling <em>McConnell</em>.</td>
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<td>366</td>
<td>1806</td>
<td>43–47</td>
<td>23</td>
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<td>Upholding BCRA's disclaimer and disclosure provisions.</td>
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<td>IV.B</td>
<td>367</td>
<td>1862</td>
<td>48–49</td>
<td>24</td>
<td>2</td>
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<td>Upholding disclaimer and disclosure provisions as to broadcast advertisements.</td>
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<tr>
<td>IV.C</td>
<td>371</td>
<td>1990</td>
<td>50</td>
<td>n/a</td>
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<td>Simple one-paragraph section explaining that BCRA's disclaimer and disclosure requirements are constitutional based on the rationales given in the previous two subsections.</td>
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<td>V</td>
<td>371</td>
<td>1999</td>
<td>51</td>
<td>n/a</td>
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<td>Policy argument about not chilling new forms of speech and new forums.</td>
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<td><strong>Totals</strong></td>
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Table 9

### Headnotes Paragraph Language from Both Vendors in Citizens United

(LexisNexis headnote language reprinted with the permission of LexisNexis; West headnote language used with permission of Thomson Reuters.)

<table>
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<tr>
<th>Opinion Part</th>
<th>Headnote Company (LexisNexis (L) or Westlaw (W))</th>
<th>Company's Headnote Number</th>
<th>Headnote Line Number (Explicit from bracket indicator)</th>
<th>Headnote Line Number Specific Start (Inference from opinion language)</th>
<th>Headnote Line Number Specific End (Inference from opinion language)</th>
<th>Headnote Line Number End (Explicit from end of section or start of next bracketed headnote section)</th>
<th>Headnote Paragraph</th>
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<td>0</td>
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<td>1</td>
<td>61</td>
<td>64</td>
<td>64</td>
<td></td>
<td>The Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether.</td>
<td>Major holding of the opinion.</td>
</tr>
<tr>
<td>I.B</td>
<td>L</td>
<td>2</td>
<td>121</td>
<td>121</td>
<td>133</td>
<td>141</td>
<td>An electioneering communication is defined as any broadcast, cable, or satellite communication that refers to a clearly identified candidate for federal office and is made within 30 days of a primary or 60 days of a general election. 2 U.S.C.S. § 434(f)(3)(A). The Federal Election Commission's regulations further define an electioneering communication as a communication that is &quot;publicly distributed.&quot; 11 C.F.R. § 100.29(a)(2) (2009). In the case of a candidate for nomination for President, publicly distributed means that the communication can be received by 50,000 or more persons in a state where a primary election is being held within 30 days. 11 C.F.R. § 100.29(b)(3)(ii).</td>
<td>Mere statement of the applicable statutory and regulatory law.</td>
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<td>II.A</td>
<td>W</td>
<td>1</td>
<td>191</td>
<td>191</td>
<td>197</td>
<td>234</td>
<td>Supreme Court would consider contention of nonprofit corporation that its film, regarding a candidate seeking nomination as a political party's candidate in the next Presidential election, did not qualify as an “electioneering communication” under federal statute prohibiting corporations from using their general treasury funds to make independent expenditures for electioneering communications within 30 days of a primary election or 60 days of general election for federal office, though nonprofit corporation raised the contention for the first time before the Supreme Court, where the district court had addressed it in its decision granting summary judgment to Federal Election Commission (FEC) with respect to nonprofit corporation’s claims for declaratory and injunctive relief. Federal Election Campaign Act of 1971, §§ 304(f)(3)(A)(i), 316(b)(2), 2 U.S.C.A. §§ 434(f)(3)(A)(i), 441b(b)(2); 11 C.F.R. § 100.29(a)(2), (b)(3)(ii).</td>
<td>Significant contextualizing language added.</td>
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<tr>
<td>Opinion Part</td>
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<td>Company’s Headnote Number</td>
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<td>II.A</td>
<td>W</td>
<td>2</td>
<td>191</td>
<td>199</td>
<td>220</td>
<td>234</td>
<td>Nonprofit corporation’s film regarding a candidate seeking nomination as a political party’s candidate in the next Presidential election, which the nonprofit corporation wished to distribute on cable television through video-on-demand, was an “electioneering communication,” for purposes of federal statute prohibiting corporations from using their general treasury funds to make independent expenditures for electioneering communications within 30 days of a primary election or 60 days of general election for federal office; the film was a cable communication that referred to a clearly identified candidate for federal office, and distribution through video-on-demand could allow the communication to be received by 50,000 persons or more. Federal Election Campaign Act of 1971, §§ 304(f)(3)(A)(i), 316(b)(2), 2 U.S.C.A. §§ 434(f)(3)(A)(i), 441b(b)(2); 11 C.F.R. § 100.29(a)(2), (b)(3)(i), (b)(7)(i)(G), (b)(7)(i)(i).</td>
<td>Significant contextualizing language added.</td>
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<td>II.A</td>
<td>W</td>
<td>3</td>
<td>235</td>
<td>245</td>
<td>249</td>
<td>253</td>
<td>Prolix laws chill speech, for First Amendment purposes, for the same reason that vague laws chill speech, i.e., people of common intelligence must necessarily guess at the law’s meaning and differ as to its application. U.S.C.A. Const. Amend. 1.</td>
<td></td>
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<tr>
<td>Opinion Part</td>
<td>Headnote Company (LexisNexis (L) or Westlaw (W))</td>
<td>Company’s Headnote Number</td>
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<td>3</td>
<td>241</td>
<td>241</td>
<td>251</td>
<td>253</td>
<td>The First Amendment does not permit laws that force speakers to retain a campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient political issues of our day. Prolix laws chill speech for the same reason that vague laws chill speech: people of common intelligence must necessarily guess at the law's meaning and differ as to its application. The Government may not render a ban on political speech constitutional by carving out a limited exemption through an amorphous regulatory interpretation.</td>
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<tr>
<td>II.B</td>
<td>L</td>
<td>4</td>
<td>266</td>
<td>266</td>
<td>271</td>
<td>309</td>
<td>The functional-equivalent test for an “electioneering communication” is objective: a court should find that a communication is the functional equivalent of express advocacy only if it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.</td>
<td></td>
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<tr>
<td>Opinion Part</td>
<td>Headnote Company (LexisNexis (L) or Westlaw (W))</td>
<td>Company’s Headnote Number</td>
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<td>II.B</td>
<td>W</td>
<td>5</td>
<td>256</td>
<td>266</td>
<td>271</td>
<td>309</td>
<td>The test for determining whether a communication is functionally equivalent to express advocacy for the election or defeat of a candidate, for purposes of federal statute barring corporations from using general treasury funds to make independent expenditures that expressly advocate the election or defeat of a candidate, through any form of media, in connection with certain qualified federal elections, is an objective test, under which a court should find that a communication is the functional equivalent of express advocacy only if it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. Federal Election Campaign Act of 1971, § 316, 2 U.S.C.A. § 441b.</td>
<td>Significant contextualizing language added.</td>
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<td>II.B</td>
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<td>256</td>
<td>273</td>
<td>280</td>
<td>309</td>
<td>Nonprofit corporation’s film regarding a candidate seeking nomination as a political party’s candidate in the next Presidential election, which the nonprofit corporation wished to distribute on cable television through video-on-demand, was functionally equivalent to express advocacy for or against a specific candidate, for purposes of federal statute barring corporations from using general treasury funds to make independent expenditures that expressly advocate the election or defeat of a candidate, through any form of media, in connection with certain qualified federal elections; the film was, in essence, a feature-length negative advertisement that urged viewers to vote against the candidate, and in light of its historical footage, interviews with persons critical of candidate, and voiceover narration, the film would be understood by most viewers as an extended criticism of the candidate’s character and her fitness for the office of the Presidency. Federal Election Campaign Act of 1971, § 316, 2 U.S.C.A. § 441b.</td>
<td>Significant contextualizing language added.</td>
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<tr>
<td>II.C</td>
<td>L</td>
<td>5</td>
<td>336</td>
<td>336</td>
<td>339</td>
<td>351</td>
<td>Courts are bound by the First Amendment. A court must decline to draw, and then redraw, constitutional lines based on the particular media or technology used to disseminate political speech from a particular speaker.</td>
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<tr>
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<td>Company’s Headnote Number</td>
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<td>II.C</td>
<td>L</td>
<td>6</td>
<td>347</td>
<td>347</td>
<td>351</td>
<td>First Amendment standards must give the benefit of any doubt to protecting rather than stifling speech.</td>
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<tr>
<td>II.D</td>
<td>L</td>
<td>7</td>
<td>425</td>
<td>425</td>
<td>432</td>
<td>First Amendment freedoms need breathing space to survive.</td>
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<tr>
<td>II.E</td>
<td>L</td>
<td>8</td>
<td>437</td>
<td>437</td>
<td>460</td>
<td>Political speech is speech that is central to the meaning and purpose of the First Amendment.</td>
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<tr>
<td>II.E</td>
<td>W</td>
<td>7</td>
<td>448</td>
<td>448</td>
<td>455</td>
<td>Nonprofit corporation did not waive, for purposes of direct review by Supreme Court of decision of three-judge district court panel granting summary judgment to Federal Election Commission (FEC) in nonprofit corporation’s action for declaratory and injunctive relief, its facial constitutional challenge, on grounds of violation of First Amendment protection of political speech, to federal statute prohibiting corporations from using their general treasury funds to make independent expenditures for electioneering communications within 30 days of a primary election or 60 days of general election for federal office, though in the district court the corporation had stipulated to the dismissal of the count in its complaint asserting the facial challenge and had proceeded on another count asserting an as-applied constitutional challenge, where the district court panel had addressed the facial challenge by noting that nonprofit corporation could prevail in the facial challenge only if the Supreme Court overruled controlling precedent. U.S.C.A. Const. Amend. 1; Federal Election Campaign Act of 1971, 316, 2 U.S.C.A. § 441b.</td>
<td>Significant contextualizing language added.</td>
<td></td>
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<tr>
<td>Opinion Part</td>
<td>Headnote Company (LexisNexis (L) or Westlaw (W))</td>
<td>Company's Headnote Number</td>
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<tr>
<td>II.E W 8</td>
<td>L 457</td>
<td>460</td>
<td>462</td>
<td>488</td>
<td>The Supreme Court’s practice permits review of an issue not pressed below, so long as it has been passed upon.</td>
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<tr>
<td>II.E W 9</td>
<td>L 489</td>
<td>492</td>
<td>496</td>
<td>503</td>
<td>United States Supreme Court practice permits review of an issue not pressed below so long as it has been passed upon.</td>
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<td>II.E W 10</td>
<td>W 504</td>
<td>504</td>
<td>510</td>
<td>705</td>
<td>Once a federal claim is properly presented on appeal, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.</td>
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<td>II.E L 10</td>
<td>W 504</td>
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<td>510</td>
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<td>For purposes of United States Supreme Court review, once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.</td>
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<td>The distinction between facial constitutional challenges and as-applied constitutional challenges goes to the breadth of the remedy employed by the court, not what must be pleaded in a complaint.</td>
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<td>II.E</td>
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<td>522</td>
<td>The distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge. The distinction is both instructive and necessary, for it goes to the breadth of the remedy employed by a court, not what must be pleaded in a complaint. The parties cannot enter into a stipulation that prevents the court from considering certain remedies if those remedies are necessary to resolve a claim that has been preserved.</td>
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<td>II.E</td>
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<td>522</td>
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<td>524</td>
<td>683</td>
<td>Once a case is brought, no general categorical line bars a court from making broader pronouncements of invalidity in properly “as-applied” cases.</td>
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<td>II.E</td>
<td>L</td>
<td>13</td>
<td>683</td>
<td>683</td>
<td>686</td>
<td>701</td>
<td>First Amendment standards must eschew the open-ended rough-and-tumble of factors, which invites complex argument in a trial court and a virtually inevitable appeal.</td>
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<td>II.E</td>
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<td>14</td>
<td>701</td>
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<td>705</td>
<td>A statute which chills speech can and must be invalidated where its facial invalidity has been demonstrated.</td>
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<td>III</td>
<td>L</td>
<td>15</td>
<td>709</td>
<td>709</td>
<td>710</td>
<td>824</td>
<td>See U.S. Const. amend. I.</td>
<td>This headnote merely indicates that the First Amendment right to free speech has been quoted.</td>
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<td>III</td>
<td>W</td>
<td>11</td>
<td>817</td>
<td>824</td>
<td>826</td>
<td>833</td>
<td>First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office. U.S.C.A. Const. Amend. 1.</td>
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<td>824</td>
<td>833</td>
<td>833</td>
<td>The First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office. Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by the United States Constitution.</td>
<td>This headnote combines two different propositions and probably should be two separate headnotes.</td>
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<td>III</td>
<td>L</td>
<td>17</td>
<td>834</td>
<td>834</td>
<td>839</td>
<td>846</td>
<td>Political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.</td>
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<td>III</td>
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<td>836</td>
<td>839</td>
<td>846</td>
<td>Laws that burden political speech are subject to strict scrutiny for a violation of the First Amendment, which level of scrutiny requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest. U.S.C.A. Const. Amend. 1.</td>
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<td>III</td>
<td>W</td>
<td>13</td>
<td>847</td>
<td>847</td>
<td>853</td>
<td>899</td>
<td>Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints, and prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. U.S.C.A. Const. Amend. 1.</td>
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<td>III</td>
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<td>853</td>
<td>857</td>
<td>Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints. Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others.</td>
<td>This headnote replicates an entire paragraph from the opinion. It contains multiple propositions and probably should be divided into two or more headnotes. This represents particularly sloppy headnoting.</td>
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<td>888</td>
<td>Quite apart from the purpose or effect of regulating content, the Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker’s voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each.</td>
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<td>893</td>
<td>895</td>
<td>There are certain governmental functions that cannot operate without some restrictions on particular kinds of speech. By contrast, it is inherent in the nature of the political process that voters must be free to obtain information from diverse sources in order to determine how to cast their votes.</td>
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<td>III</td>
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<td>21</td>
<td>896</td>
<td>896</td>
<td>898</td>
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<td>There is no basis for the proposition that, in the context of political speech, the Government may impose restrictions on certain disfavored speakers.</td>
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<td>III.A.1</td>
<td>L 22</td>
<td>904</td>
<td>905</td>
<td>931</td>
<td>First Amendment protection extends to corporations.</td>
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<td>III.A.1</td>
<td>L 23</td>
<td>931</td>
<td>945</td>
<td>1017</td>
<td>Political speech does not lose First Amendment protection simply because its source is a corporation. The identity of the speaker is not decisive in determining whether speech is protected. Corporations and other associations, like individuals, contribute to the discussion, debate, and the dissemination of information and ideas that the First Amendment seeks to foster. The United States Supreme Court has thus rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not “natural persons.”</td>
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<td>Lengthy headnote that could be unpacked into several different headnotes or stated more succinctly.</td>
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<td>III.B.1</td>
<td>L 24</td>
<td>1174</td>
<td>1176</td>
<td>1193</td>
<td>If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech.</td>
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<td>III.B.1</td>
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<td>25</td>
<td>1194</td>
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<td>1204</td>
<td>1212</td>
<td>Political speech is indispensable to decision-making in a democracy, and this is no less true because the speech comes from a corporation rather than an individual. The worth of speech does not depend upon the identity of its source, whether a corporation, an association, a union, or an individual. The concept that Government may restrict the speech of some elements of United States society in order to enhance the relative voice of others is wholly foreign to the First Amendment.</td>
<td>Lengthy headnote that could be unpacked into several different headnotes or stated more succinctly.</td>
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<td>1232</td>
<td>The premise has been rejected that the Government has an interest in equalizing the relative ability of individuals and groups to influence the outcome of elections. The skyrocketing cost of political campaigns cannot sustain a governmental prohibition. The First Amendment’s protections do not depend on the speaker’s financial ability to engage in public discussion.</td>
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<td>III.B.1</td>
<td>L</td>
<td>27</td>
<td>1232</td>
<td>1232</td>
<td>1236</td>
<td>1241</td>
<td>The rule that political speech cannot be limited based on a speaker’s wealth is a necessary consequence of the premise that the First Amendment generally prohibits the suppression of political speech based on the speaker’s identity.</td>
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<td>State law grants corporations special advantages—such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets. This does not suffice, however, to allow laws prohibiting speech. It is rudimentary that a state cannot exact as the price of those special advantages the forfeiture of First Amendment rights.</td>
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<td>III.B.1 L 29 1249 1257 1285</td>
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<td>It is irrelevant for purposes of the First Amendment that corporate funds may have little or no correlation to the public’s support for the corporation’s political ideas. All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech. The First Amendment protects the resulting speech, even if it was enabled by economic transactions with persons or entities who disagree with the speaker’s ideas.</td>
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<td>The United States Supreme Court has consistently rejected the proposition that the institutional press has any constitutional privilege beyond that of other speakers.</td>
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<td>III.B.1 L 31 1346 1352 1356</td>
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<td>The Framers may have been unaware of certain types of speakers or forms of communication, but that does not mean that those speakers and media are entitled to less First Amendment protection than those types of speakers and media that provided the means of communicating political ideas when the Bill of Rights was adopted.</td>
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<td>Ideas may compete in the marketplace without Government interference.</td>
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<td>III.B.1</td>
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<td>1397</td>
<td>1397</td>
<td>1398</td>
<td>1433</td>
<td>The First Amendment protects the right of corporations to petition legislative and administrative bodies.</td>
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<td>III.B.1</td>
<td>L</td>
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<td>1434</td>
<td>1434</td>
<td>1439</td>
<td>1439</td>
<td>When Government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.</td>
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<td>III.B.2</td>
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<td>1628</td>
<td>When Congress finds that a problem exists, a court must give that finding due deference, but Congress may not choose an unconstitutional remedy. If elected officials succumb to improper influences from independent expenditures; if they surrender their best judgment; and if they put expediency before principle, then surely there is cause for concern. A court must give weight to attempts by Congress to seek to dispel either the appearance or the reality of these influences. The remedies enacted by law, however, must comply with the First Amendment; and, it is United States law and tradition that more speech, not less, is the governing rule. An outright ban on corporate political speech during the critical pre-election period is not a permissible remedy.</td>
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<td>III.C</td>
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<td>1683</td>
<td>1683</td>
<td>1695</td>
<td>Supreme Court precedent is to be respected by the Court unless the most convincing of reasons demonstrates that adherence to it puts the Court on a course that is sure error.</td>
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<td>III.C</td>
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<td>1683</td>
<td>1685</td>
<td>1690</td>
<td>Beyond workability, the relevant factors in deciding whether to adhere to the principle of stare decisis include the antiquity of the precedent, the reliance interests at stake, and whether the decision was well reasoned.</td>
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<td>III.C</td>
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<td>1693</td>
<td>1698</td>
<td>United States Supreme Court precedent is to be respected unless the most convincing of reasons demonstrates that adherence to it puts the Court on a course that is sure error. Beyond workability, the relevant factors in deciding whether to adhere to the principle of stare decisis include the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned. The Court has also examined whether experience has pointed up the precedent’s shortcomings.</td>
<td>This headnote incorporates the same opinion language as the two separate proceeding West headnotes, plus an additional proposition.</td>
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<td>III.C</td>
<td>L</td>
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<td>1698</td>
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<td>The United States Supreme Court has not hesitated to overrule decisions offensive to the First Amendment.</td>
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<td>III.C</td>
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<td>Stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision.</td>
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<td>III.C</td>
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<td>1700</td>
<td>1702</td>
<td>Stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision.</td>
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<td>III.C</td>
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<td>1704</td>
<td>1709</td>
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<td>When neither party defends the reasoning of a precedent, the principle of adhering to that precedent through stare decisis is diminished.</td>
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<td>1766</td>
<td>1775</td>
<td>With respect to stare decisis, reliance interests are important considerations in property and contract cases, where parties may have acted in conformance with existing legal rules in order to conduct transactions.</td>
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<td>III.C</td>
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<td>1782</td>
<td>1782</td>
<td><em>Austin v. Michigan Chamber of Commerce</em>, 494 U.S. 652 (1990), is overruled. The United States Supreme Court returns to the principle that the Government may not suppress political speech on the basis of the speaker’s corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations.</td>
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<td>1804</td>
<td>1804</td>
<td>Federal statute barring corporations from using general treasury funds to make independent expenditures that expressly advocate the election or defeat of a candidate, through any form of media, in connection with certain qualified federal elections, and, as amended by Bipartisan Campaign Reform Act of 2002 (BCRA), barring corporations from using general treasury funds to make independent expenditures for electioneering communications within 30 days of a primary election or 60 days of general election for federal office, violated First Amendment political speech rights of nonprofit corporation that wished to distribute on cable television, through video-on-demand, a film regarding a candidate seeking nomination as a political party’s candidate in the next Presidential election; overruling McConnell v. Federal Election Comm’n, 540 U.S. 93, 124 S.Ct. 619, 157 L.Ed.2d 491, U.S.C.A. Const. Amend. 1; Federal Election Campaign Act of 1971, § 316, 2 U.S.C.A. § 441b.</td>
<td>Significant contextualizing language added with very little actual language of the Court.</td>
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<td>1788</td>
<td>1788</td>
<td>1793</td>
<td>1795</td>
<td>Overruling Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990), effectively invalidates not only § 203 of the Bipartisan Campaign Reform Act of 2002, but also 2 U.S.C.S. § 441b’s prohibition on the use of corporate treasury funds for express advocacy. Section 441b’s restrictions on corporate independent expenditures are therefore invalid.</td>
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<td>1797</td>
<td>1804</td>
<td>The United States Supreme Court overrules the part of <em>McConnell v. Federal Election Comm’n</em>, 540 U.S. 93 (2003), that upheld the extension under § 203 of the Bipartisan Campaign Reform Act of 2002 of 2 U.S.C.S. § 441b’s restrictions on corporate independent expenditures.</td>
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<td>1807</td>
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<td>1860</td>
<td>Provisions of Bipartisan Campaign Reform Act of 2002 (BCRA) requiring televised electioneering communications funded by anyone other than a candidate to include a disclaimer identifying the person or entity responsible for the content of the advertising, and requiring any person spending more than $10,000 on electioneering communications within a calendar year to file a disclosure statement with the Federal Election Commission (FEC), did not violate First Amendment protection of political speech, as applied to a non-profit corporation that wished to distribute on cable television, through video-on-demand, a film regarding a candidate seeking nomination as a political party’s candidate in the next Presidential election, and that wished to run three advertisements for the film. U.S.C.A. Const. Amend. 1; Federal Election Campaign Act of 1971, §§ 304(f)(1, 2), 318(a)(3), (d)(2), 2 U.S.C.A. §§ 434(f)(1, 2), 441d(a)(3), (d)(2).</td>
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<td>IV.A</td>
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<td>1819</td>
<td>Under § 311 of the Bipartisan Campaign Reform Act of 2002, (2) U.S.C.S. § 441d, televised electioneering communications funded by anyone other than a candidate must include a disclaimer that “_____ is responsible for the content of this advertising.” (2) U.S.C.S. § 441d(d)(2). The required statement must be made in a clearly spoken manner, and displayed on the screen in a clearly readable manner for at least four seconds. (2) U.S.C.S. § 441d(d)(2). It must state that the communication is not authorized by any candidate or candidate’s committee; it must also display the name and address (or Web site address) of the person or group that funded the advertisement. (2) U.S.C.S. § 441d(a)(3).</td>
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<td>1826</td>
<td>Under § 201 of the Bipartisan Campaign Reform Act of 2002, (2) U.S.C.S. § 434, any person who spends more than $10,000 on electioneering communications within a calendar year must file a disclosure statement with the Federal Election Commission. (2) U.S.C.S. § 434(f)(1). That statement must identify the person making the expenditure, the amount of the expenditure, the election to which the communication was directed, and the names of certain contributors. (2) U.S.C.S. § 434(f)(2).</td>
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<td>1836</td>
<td>1838</td>
<td>Disclaimer and disclosure requirements may burden the ability to speak, but they impose no ceiling on campaign-related activities and do not prevent anyone from speaking. These requirements are subjected to exacting scrutiny, which requires a substantial relation between the disclosure requirement and a sufficiently important governmental interest.</td>
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<td>1838</td>
<td>1838</td>
<td>1843</td>
<td>1853</td>
<td>Disclosure can be justified based on a governmental interest in providing the electorate with information about the sources of election-related spending. This interest has been applied in rejecting facial challenges to §§ 201 and 311 of the Bipartisan Campaign Reform Act of 2002, 2 U.S.C.S. §§ 434 and 441d.</td>
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<td>1853</td>
<td>1857</td>
<td>1860</td>
<td>As-applied challenges to 2 U.S.C.S. §§ 434 and 441d are be available if a group can show a reasonable probability that disclosure of its contributors’ names will subject them to threats, harassment, or reprisals from either Government officials or private parties.</td>
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<td>Three advertisements for non-profit corporation’s film regarding a candidate seeking nomination as a political party’s candidate in the next Presidential election, which film the nonprofit corporation wished to distribute on cable television through video-on-demand shortly before primary election, were “electioneering communications,” for purposes of provisions of Bipartisan Campaign Reform Act of 2002 (BCRA) requiring televised electioneering communications funded by anyone other than a candidate to include a disclaimer identifying the person or entity responsible for the content of the advertising; the advertisements referred to the candidate by name and contained pejorative references to her candidacy. Federal Election Campaign Act of 1971, § 318(a)(3), (d)(2), 2 U.S.C.A. § 441d(a)(3), (d)(2); 11 C.F.R. § 100.29.</td>
<td>Significant contextualizing language added with very little actual language of the Court.</td>
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<td>IV.C</td>
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<td>49</td>
<td>1888</td>
<td>1888</td>
<td>1891</td>
<td>1988</td>
<td>Identification of the source of campaign advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected.</td>
<td>Underlying rationale for the constitutionality of the disclaimer provision of BCRA.</td>
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<td>50</td>
<td>1993</td>
<td>1993</td>
<td>1995</td>
<td>1997</td>
<td>No constitutional impediment is found to the application of the disclaimer and disclosure requirements of the Bipartisan Campaign Reform Act of 2002 to a movie broadcast via video-on-demand.</td>
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<td>2039</td>
<td>2039</td>
<td>2044</td>
<td>2051</td>
<td>The First Amendment underwrites the freedom to experiment and to create in the realm of thought and speech. Citizens must be free to use new forms, and new forums, for the expression of ideas. The civic discourse belongs to the people, and the Government may not prescribe the means used to conduct it.</td>
<td>Concluding rhetorical flourish as to the high-level rationale for the holding in the opinion.</td>
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## Appendix A

### Headnote Counts for the 2009 Term

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Improving Lives by Building Social Capital: A New Way to Frame the Work of Law Libraries*

Ryan Metheny**

Social capital analysis could provide a valuable tool in advocating for law libraries’ new roles in today’s online environment. The author describes how social capital analysis could benefit law libraries and offers LA Law Library’s Business Series program as one example of how a law library can leverage existing resources to generate social capital and improve the lives of its patrons.

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Introduction: New and Expanded Roles for Law Libraries and Law Librarians

1 Law libraries are in the midst of profound changes. Budget struggles continue in many institutions, in no small part because we suffer from the erroneous perception that accessing legal information is now an activity that takes place exclusively online, disconnected from specific physical spaces or human intermediaries. As a result, the law library seems, to many, to no longer fill an obvious utilitarian role. While law librarians know that law libraries still provide vital access to legal information and resources, the assumption that “everything is online” will continue to dog the profession as we fight for resources in our institutional settings.

2 Meanwhile, law libraries and law librarians have taken on a variety of new and expanded roles in recent years, in part to justify the resources they use in the face of the “everything is online” attitude. Academic law libraries, for example, increasingly serve as spaces for individual and collaborative study, and academic law librarians step into expanded instructional and supportive roles in law schools.1 Likewise, law firm librarians perform a much wider variety of functions than they typically did in the past.2 Public law libraries, meanwhile, now serve the needs of the exploding population of self-represented litigants suffering the effects of a nationwide crisis in access to justice.3 Public law libraries do this through, among other efforts, an increased focus on self-help materials and reference services for nonlawyers, as well as the development and hosting of educational programs and legal clinics for the self-represented.4

3 These new and expanded roles address important institutional, business, and societal needs. However, they also represent a challenge for those who advocate on behalf of law libraries, and a separate but related challenge for scholars who conceptualize the function of law libraries. The new roles taken on by libraries are diverse and, frankly, somewhat divergent and inconsistent. This makes it difficult to succinctly describe them and advocate for why they are essential; it makes it equally difficult to conceptualize the overall function of the modern law library. Yet these new and expanded roles represent an increasing part of the justification for law library resources and funding, as well as an increasing demand on law libraries’ existing resources.

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How Do We Conceptualize, Describe, and Advocate for Our New Roles?
The Problem of Place

§4 So how do we to conceptualize, describe, and advocate for law libraries’ new roles? What, if any, unifying concept links all of these efforts? What is it we do if we no longer simply act as caretakers of the place where legal information is stored and accessed? By answering these questions, we can not only better conceptualize our functions in a scholarly way, but we can also better justify the resources we need; we can better argue for law libraries’ continued places in academia, in law firms, as public institutions, and elsewhere. A unified conceptualization of our new roles can also serve as guidance as we develop additional new roles and niches for law librarians.

§5 Of course, the answers to these questions may differ for different types of law libraries. The roles we perform necessarily fill the needs of the specific institution, firm, or community that the law library serves. Law schools, law firms, the courts, and the general public have very different needs, and different law libraries are positioned differently to address them. Nevertheless, a single conceptualization for the profession should be possible.

§6 None of the answers put forth to these questions have been entirely satisfactory. The American Association of Law Libraries recently went through a rebranding effort to widen the umbrella of the organization and make advocacy to stakeholders more straightforward by recommending the adoption of the name “Association for Legal Information”5—an effort that AALL members roundly rejected.6 While the proposed name was certainly inclusive and might have helped some with advocacy, it appears to have failed as a description of law libraries’ work in the eyes of law librarians.

§7 One reason the rebranding effort failed likely is that members of the profession still value the law library as a place—a physical location where people interact and connect socially. Indeed, many of the new roles law libraries have taken on involve leveraging the often beautiful, well-located, and eminently useful physical libraries that are a legacy of our nondigital past. Whether serving as study space, a place to meet and collaborate, a location for classes and clinics, or all of these, law libraries and their patrons clearly benefit from the expanded uses of our library buildings. The AALL membership, perhaps seeing how our legacy spaces can still be used in innovative ways, may have recognized that to rhetorically unmoor ourselves from a specific physical place was unwise.

§8 However, a satisfactory theory of contemporary law librarianship that recognizes the value of the library as place has proved elusive. One such effort appears in descriptions of law libraries as a type of “third place.”7 The sociologist Ray Oldenburg popularized the term in his influential book The Great Good Place.8 Oldenburg argues that American life suffers from a lack of third places, after the first and

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7. See, e.g., Danner, Kauffman & Palfrey, supra note 1, at 144–45, ¶¶ 9–10.
second places of home and work, respectively. These third places provide essential psychological and social support by serving as neutral and democratic places for playful conversation—emotional refuges, in other words, from the stresses of the other two primary places in our lives.\(^9\)

\(\¶\) However, Oldenburg’s concept is an awkward fit for law libraries conceptually, and not especially useful in advocating for the new and varied roles law libraries continue to take on. Oldenburg describes eight essential features of a third place: it (1) is neutral; (2) is democratic, in the sense of being socioeconomically “leveling”; (3) has conversation as the main activity; (4) is accessible and accommodating; (5) features a cast of “regulars”; (6) has a low profile and is out of the way; (7) has a playful mood; and (8) serves as an emotional “home away from home.”\(^10\)

\(\¶\) The typical law library satisfies perhaps three or, at most, four of these eight criteria. It is neutral, probably democratic in the sense Oldenburg uses the term, and hopefully accessible and accommodating; some law libraries also feature a cast of regulars. However, the criteria that law libraries do not meet for Oldenburg’s third place are rather important. Most notably, the law library’s primary function has never been to serve as a place of casual, lighthearted conversation—which is really the central role for Oldenburg’s third place, and the one without which the various psychological and social benefits he describes cannot be enjoyed.\(^11\)

\(\¶\) Instead, the law library serves much more utilitarian functions: patrons go there to study, attend a class, and get help with legal problems or research issues. Whatever casual and playful conversation takes place at the law library serves only as a pleasant detour from patrons’ main activities: studying, attending class, and getting help. For example, law libraries’ increased usage by law students as a quiet study space suggests that for law students, at least, the library serves primarily as a second place (a location for work), and not a third (a location for relaxation and playful conversation). Further, to characterize law libraries as “hangouts,” however essential such places are, also seems to miss the mark for those looking to advocate in support of the essential work that law libraries do. If we were simply hangouts, we would be rather expensive ones given the cost of legal information!

\(\¶\) Lastly, the third-place concept does not serve especially well as a guidepost for those innovating new functions for the law library and law librarians: the profession needs to innovate new roles that can be succinctly and convincingly sold to stakeholders; such roles will likely perform utilitarian functions. We are not primarily facilitators of a pleasant hangout, even though we hope patrons find our physical spaces pleasing.

**Can Social Capital Analysis Provide the Framework Law Libraries Need?**

\(\¶\) Law libraries—and especially public law libraries—are better conceptualized as locations for generating the social capital needed to address legal informa-
tion needs and get legal help. The sociologist Nan Lin, a leader in the field of social capital scholarship, defines social capital as the “resources embedded in a social structure which are accessed and used by actors for actions.”¹² Less technically, one could say social capital is simply a measurement of the total value of our social connections. Many of the new roles law libraries are taking on serve to increase this value for patrons.

¶14 Law libraries’ essential function is to provide access to legal information resources; and increasingly, they do so by providing social intermediaries to those resources. Otherwise, law librarians’ function could well be reduced to database management alone, as the “everything is online” naysayers might have it. These social intermediaries, however, come in increasingly myriad forms, including traditional reference services; expanded instructional responsibilities; instructional support; and development and coordination of classes, clinics, and other events to provide connections to information and resources. These law library undertakings would seem to create social capital as that concept is defined. So can social capital analysis provide the framework we need?

¶15 Social capital is an established concept in the social sciences, although one that has only relatively recently gained widespread use and acceptance. Robert Putnam popularized the term in his bestselling book *Bowling Alone*,¹³ and a wealth of recent scholarship has focused on the concept. Social capital research aims to uncover the ways in which the value inherent in our social fabric is created and how social capital can be increased. Scholars apply social capital analysis to subjects as diverse as organizational management,¹⁴ democratic participation,¹⁵ economic performance of nations,¹⁶ and the structure and characteristics of political institutions.¹⁷ Social capital analysis is also used, fairly extensively, in the study of general public (nonlaw) libraries and their effectiveness in improving the lives of their patrons and the well-being of their communities.¹⁸

¶16 As argued in this article, the framework provided by the idea of social capital accurately describes most of the new roles our profession has taken on, lends itself to advocacy, and serves as a reliable guiding concept for law librarians as we

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¹⁵. Political Disaffection in Contemporary Democracies: Social Capital, Institutions, and Politics (Mariano Torcal & José Ramón Montero eds., 2006).
continue to innovate. It also complements the profession’s commitment to the library as place and the innovative ways in which law libraries leverage legacy spaces. Yet it is rarely applied to law libraries.

¶ 17 This seems an odd omission in law library scholarship. The few examples found do not fully use social capital analysis to conceptualize the range of roles law libraries now play. To take one example, social capital has been used to describe the value of the relationship between a reference librarian and a self-represented litigant (SRL) through the reference interaction—a valuable insight, but only one way in which law libraries create social capital. It has also been used to describe the essential role of the law itself in building and maintaining social capital, and how law libraries support this by facilitating access to the law—also an important point, but one that seems somewhat theoretical and distant from much of the innovative new work law libraries are undertaking.

¶ 18 Much closer to the mark, Mareth Wilson at the Sacramento County Public Law Library describes, albeit briefly, how public law libraries foster social capital among the bench, bar, and the SRL through a variety of programs that aid SRLs’ meaningful access to the courts and aid the courts in addressing the needs of SRLs. Unfortunately, Wilson alone has applied this social capital analysis to the new, nontraditional roles law libraries are adopting; no broad-ranging attempt has been made to advocate for social capital as the primary framework in which to view law libraries’ new work.

¶ 19 The educational programs, legal clinics, and other events that many public law libraries organize and host are particularly ripe for a social capital analysis. These events help to increase the value of social networks formed by law library patrons. Social capital also can be used to analyze, advocate for, and design future programming along the same lines as the work that public law libraries do now. This article uses one example of public law library programming, LA Law Library’s Business Series, to show how a social capital analysis can effectively conceptualize and describe a new role taken on by a public law library, and how it can guide future program development. By doing so, I hope to expand the application of a little-used but eminently useful concept to how we talk about public law libraries and law libraries generally.

Social Capital: Background, Differing Theories, and the Important Role for Law Libraries

¶ 20 Social capital comes in two basic forms. The first, “bonding” social capital, refers to the close, often familial, connections that link similar people. These types of connections are also referred to as “strong ties.” The second, “bridging” social capital, refers to the more casual relationships that connect individuals to colleagues, acquaintances, and others outside the immediate circle of family and close

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friends. These types of connections are also known as “weak ties.”\textsuperscript{22} Most social capital research concerns bridging social capital, which allows individuals to expand their horizons and access resources that otherwise would be unavailable to them through their “strong ties” alone.

¶\textsuperscript{21} In the aggregate, bridging connections make for more cohesive, healthier, and productive communities and societies.\textsuperscript{23} Among the positive effects associated with high levels of bridging social capital are well-performing democratic institutions,\textsuperscript{24} optimism and tolerance,\textsuperscript{25} economic growth,\textsuperscript{26} and democratic stability.\textsuperscript{27} Troublingly, however, social capital in the United States has declined over the last several decades.\textsuperscript{28} This decline is intertwined with—and sometimes measured by—a decline in “generalized trust,” or the extent to which members of a society feel they can trust the average stranger. Without such trust, the social structures needed to access capital (resources) do not form, or do not form as easily, resulting in a less healthy and productive population.\textsuperscript{29}

¶\textsuperscript{22} Central to social capital research, then, is the question of how exactly social capital is generated—and thus, perhaps, how to reverse the trend of declining social capital. Interestingly, the scholarly consensus on this question seems to be moving toward a view that implicates an important role for law libraries.

¶\textsuperscript{23} Initially, Putnam and others saw civic or voluntary associations as the key to understanding how weak ties develop in communities.\textsuperscript{30} According to this theory, social capital arises organically from communities through years of interaction and association within the structures of civil society—clubs, private organizations, charities, and the like. However, this approach to social capital research has fallen into disfavor in recent years, as scholars have been unable to show that participation in voluntary associations actually increases trust and cooperation on a larger scale, rather than solely in those particular settings, among those particular actors.\textsuperscript{31} This theory of social capital generation also suffers from a tautological problem: social capital generates because the civic organizations that embody it form and grow—without an explanation of the mechanisms by which one actually causes the other.\textsuperscript{32}

¶\textsuperscript{24} More recently, scholars have shown that rather than voluntary associations, effective “on-the-ground” government institutions may both predict the presence of social capital and plausibly explain its generation.\textsuperscript{33} These “on-the-ground”

\begin{thebibliography}{99}

\bibitem{22} Putnam, supra note 13, at 22–23.
\bibitem{23} Id. at 20–21, 287–349; see also Mark S. Granovetter, The Strength of Weak Ties, 78 Am. J. Soc. 1360 (1973).
\bibitem{27} Ronald Inglehart, Trust, Well-Being and Democracy, in Democracy and Trust 88, 88–120 (Mark E. Warren ed., 1999).
\bibitem{28} See, e.g., Putnam, supra note 13, at 31–147.
\bibitem{29} See, e.g., id. at 134–47.
\bibitem{31} Rothstein & Stolle, supra note 17, at 442–43.
\bibitem{32} Id.
\bibitem{33} Id. at 443–44.
\end{thebibliography}
institutions include nonpolitical or “order” institutions—such as the police, the courts, the civil service, and public schools—with which everyday citizens regularly interact. According to this theory, by providing impartial and fair services, checking bad actors, ensuring that contractual relationships are honored, maintaining safety and order, and setting an example of fairness and impartiality, on-the-ground government institutions build an environment in which social capital can grow and thrive. In fact, empirical research has shown a strong association between trust in order institutions and the generalized trust that builds social capital.34

¶25 This latter theory has special significance to public libraries—including public law libraries—since such institutions are very much “on the ground,” serving members of the public directly and in person through reference services, community events, and classes, and by providing a safe and neutral place to obtain information and assistance with a variety of problems. In fact, recent scholarship has included general public libraries as a clear example of an “on-the-ground” institution for purposes of building social capital.35 Although this scholarship has not referenced public law libraries specifically, it seems quite likely that the law library serves, if anything, an even greater “on-the-ground” role than the general public library.

General Public Libraries as Generators of Social Capital, and How Law Libraries Fit

¶26 The scholarship on general public libraries strongly supports the hypothesis that public law libraries generate social capital. First, from an eagle-eyed view, a positive correlation exists between library spending among democratic societies and measurements of social capital, when controlling for other factors.36 Surprisingly, public library spending was found to be one of the most significant factors in predicting a nation’s overall levels of social capital.37 At a more micro level, public library patrons in one U.S. city exhibited higher levels of social capital in terms of community involvement and social trust than a random sample of city residents.38 In another U.S. city, residents of neighborhoods with more frequently used public libraries enjoyed higher levels of social capital overall.39

¶27 While these findings show a correlation between public libraries and social capital, and strongly suggest the possibility that public libraries contribute to higher levels of social capital, they do not suggest the mechanisms by which public libraries might actually generate social capital. However, two such mechanisms have been documented, if not conclusively proven.

¶28 First, public libraries typically engage in a number of outreach activities that aim to introduce library resources and bring into the fold disadvantaged or marginalized groups, such as recent immigrants.40 By introducing library resources to these groups, and bringing both these groups and nondisadvantaged demo-

34. Id. at 444–57.
35. See, e.g., Robert D. Putnam & Lewis M. Feldstein, Better Together: Restoring the American Community 34–54 (2003); Johnson, Preliminary Investigation, supra note 18; Johnson, Analysis of Interactions, supra note 18; Varheim, supra note 18; Varheim et al., supra note 18.
36. Varheim et al., supra note 18, at 889–90.
37. Id.
38. Johnson, Preliminary Investigation, supra note 18, at 151–52.
40. Varheim et al., supra note 18, at 887–89.
graphic groups together to share and interact in the same safe, neutral space, generalized trust is probably increased in a given community.41

¶29 While Varheim focuses on how such outreach programming increases generalized trust, such programming increases social capital in a more literal, utilitarian way as well. By connecting individuals within these disadvantaged groups with members of other groups possessing higher levels of social capital, connections are formed that can materially improve lives. Such “weak ties” probably serve to connect individuals to needed resources they otherwise could not access through their immediate circle of “strong ties.” For example, a member of a lower-income community could learn how to access a government benefit such as the Earned Income Tax Credit or could learn about employment or job training opportunities. The connection to a librarian or a class or a workshop instructor who provides access to this information quite literally increases the social capital available to the public library patron.

¶30 Second, public libraries may increase generalized trust through the daily, supportive interactions that take place between staff and patrons. These interactions take the form not only of traditional reference service, which connects a patron to needed information and resources, but also include informal, friendly interactions that provide social support, reduce isolation, and provide a positive place for neighborhood residents to gather.42 Supportive interactions like these likely increase overall levels of generalized trust, and thus social capital, in a given community.43 In addition, individual reference interactions literally build social capital by providing meaningful access to information through the medium of the relationship between patron and reference librarian.44

¶31 Based on this scholarship, I suggest that public law libraries can and do increase social capital in their communities. By extension, other types of law libraries probably have a similar effect in the communities, institutions, and firms they serve. Law libraries serve many of the same roles as general public libraries, in terms of providing a safe environment and impartial service, and through the organization of outreach activities such as community events, classes, and workshops.

¶32 Public law libraries, however, potentially do much more to increase social capital than their general public library peers. That is because, in addition to the functions shared with general public libraries, law libraries also support other important on-the-ground institutions such as the courts and other government agencies, by aiding access to justice.45 These access-to-justice services include reference and collection development aimed at the SRL, classes to train the SRL to represent herself more effectively, and legal clinics to provide direct service to SRLs in conjunction with legal aid and attorney volunteers.46 These services, which help to level the playing field for those who cannot afford an attorney, in turn help to ensure the fair administration of the law and the vindication of legal rights—which is the backbone of order in any society.47 Indeed, the fair and impartial administration of the law is a fundamental role of the “order institutions” noted by scholars,
the perceived proper functioning of which are associated with high levels of social
capital throughout the world.\textsuperscript{48}

\textsuperscript{33} Going beyond the legal system per se, the information and knowledge pro-
vided by law libraries also give community members the tools needed to interact
with those in positions of power, whether it be the police, a landlord, a mortgage
lender, or an employer. Law libraries provide a safe and neutral space to learn about
one’s legal rights and how to vindicate them, a single place where one can access
print and electronic resources specifically aimed at the nonlawyer, trained refer-
ence librarians to help one find and use those resources, classes to learn about one’s
rights from an instructor, and clinics at which to get help from an attorney. These
resources doubtlessly create increased value in the social fabric of the communities
where they are available (and thus generate social capital).

\textsuperscript{34} In addition to the important utilitarian functions these resources serve,
they also help to increase the sense among the general population, as a matter of
subjective experience, that the law is administered fairly and impartially—merely
by the fact that they are being made available to those who otherwise cannot afford
legal assistance. The availability of such resources at law libraries creates a sense
that the order institutions of our society operate impartially and effectively by help-
ing those who would otherwise remain at a hopeless disadvantage in litigation or
other legal matters. It is, after all, the belief in well-functioning order institutions
that leads to higher levels of generalized trust and the creation of social capital.\textsuperscript{49}
Thus, it is quite likely that law libraries can, and do—to the extent possible, given
current resources—serve a central role in the creation of social capital.

\textbf{Mechanisms for Law Libraries to Generate Social Capital}

\textsuperscript{35} This scholarship builds to the conclusion, then, that law libraries can and
do build social capital. But through what mechanisms? Each of the following
mechanisms describes and conceptualizes many of the recently developed, nontra-
ditional roles taken on by law libraries and law librarians. Each also provides a rela-
tively straightforward way in which law librarians can succinctly advocate on
behalf of new and expanded roles. Finally, these mechanisms provide guideposts
by which we can continue to innovate new functions and programs.

\textsuperscript{36} Law libraries can generate social capital in the following ways:

1. \textbf{Law libraries provide impartial and fair access to the law.} By providing
a place where patrons can receive impartial and fair service with their law-
related issues, regardless of income, race, creed, or any other characteristic,
law libraries serve as effective “order institutions” themselves, while also
aiding the functioning of other order institutions, thereby creating social
capital through the increase of generalized social trust.

2. \textbf{Law libraries create a space for positive interactions.} Like general
libraries, law libraries provide safe, neutral places where positive, supportive
interactions can take place between staff and patrons, which increases
generalized trust and social capital.

\footnotesize{48. Rothstein & Stolle, \textit{supra} note 17.}
\footnotesize{49. \textit{Id.} at 445–46.}
3. **Law libraries perform outreach to underserved populations.** Educational programming, clinics, self-help workshops, and other services aimed at assisting marginalized and disadvantaged populations help to “bring into the fold,” and increase the generalized trust felt among, members of these groups. These services also bring these patrons together to build connections with members of other diverse groups, thereby increasing their “weak ties” and the social capital available to them.

4. **Law libraries provide social connections to resources.** Perhaps most important, law library services help to increase the social capital available to their patrons through the connections these services provide. Law library services do this by connecting patrons to reference librarians who can aid in access to the law; class instructors who can help explain the law; private attorneys and legal aid providers who can provide direct legal assistance; other resources, such as governmental or nonprofit organizations or campus student services that can assist with nonlegal needs; and other patrons who are similarly situated, so that they can share connections with each other.

¶37 Of course, social capital generation per se should not be the overriding concern when innovating new law library functions. Instead, the modern law library should help generate social capital in a way that connects to law libraries’ missions to provide legal information resources and legal help in their communities and institutional settings. The profession should avoid sending the message that scarce law library resources and staff can be used for any generally beneficial undertaking. Practical concerns intervene as well. A new role may be too far outside the expertise of a given library’s staff, too ill-suited to the library space, or simply too expensive or difficult to take on for one reason or another; in that case, it should be declined. However, where a new or expanded role can build social capital in a way that aids access to the law, and especially where that role leverages existing resources like the physical library space and the expertise of law librarians, these mechanisms serve well both as guideposts and as descriptors.

¶38 By using these mechanisms for generating social capital as guideposts in developing new or expanded roles, law librarians should garner results that benefit their patrons in tangible and explicable ways. This in turn enables law librarians to advocate effectively for the work they and their institutions do, and the resources law libraries need when “everything is online.”

**LA Law Library’s Business Series: An Example of Social Capital–Focused Programming**

¶39 One example of how a public law library might apply the four guideposts above is found in the Los Angeles County Law Library (LA Law Library). Its Business Series has successfully increased social capital and assisted the law library in advocating for the resources it needs to remain a vital institution within the larger community.
Concept and Development: A New Way to Generate Social Capital

¶40 In the summer of 2015, LA Law Library began holding a series of classes and workshops focused on the legal issues faced by small business owners and entrepreneurs. The Business Series was part of the library’s three-year Strategic Plan (2013–2016), which contained a goal to reach out to nonlawyer professionals, including businesspeople, by creating legal education programming aimed at their specific legal information needs. This goal was seen as a means to serve a part of the community that had been underserved by the library up to that time.

¶41 Traditionally, LA Law Library has served the needs of two groups: legal professionals and SRLs—with increasing emphasis on the latter in recent years as access to justice has become a crisis in American society. However, LA Law Library had developed few services for other professionals, including businesspeople, who also had important legal information needs.

¶42 As a first step to developing programing to serve this new patron group, in 2014 LA Law Library staff began exploring existing resources for small businesses and entrepreneurs in the Los Angeles area to see how the law library might complement what was already available. They found that none of the somewhat dizzying array of training and assistance available to small businesspeople—through non-profits and city, county, state, and federal agencies—focused specifically on legal concerns in a comprehensive or in-depth way. Moreover, the available resources were somewhat disconnected, with relatively little integration in terms of each agency and nonprofit providing comprehensive information about or referrals to the many other organizations. The Los Angeles area also lacked regularized, comprehensive programming where small businesses could receive training on a predictable schedule in a single location.

¶43 LA Law Library staff thus saw an important niche going unfilled. Small-business owners and entrepreneurs who could not afford to hire legal professionals, or who did not wish to or could not afford to study business law through formal education, did not have access to comprehensive or in-depth legal information and training. Nor did they have easy means to get comprehensive information, in one place, about the many resources available through local organizations. In other words, many current and prospective business owners lacked the social capital necessary to get their businesses off the ground: their strong ties were insufficient, and the means to create the weak ties necessary to provide these opportunities were scarce in Los Angeles.

¶44 The law library, therefore, could create a program to (1) provide connections to the information and resources small business owners needed; (2) reach out to the underserved groups most in need of these connections; (3) innovate a new way to provide impartial and fair access to the law; and (4) bring a new patron group into the supportive and positive environment of the library. All four ends were textbook ways for a library to create social capital. They were also, simply, the right thing to do from a social justice perspective. The law library could provide a service that helped the disadvantaged, evening the playing field in favor of those whose “strong ties” did not already provide them with the tools needed to succeed.

¶45 In the meantime, the law library itself, it was hoped, would create a visible and demonstrable new way in which it would continue to serve in a time when
many assume that “everything is online.” Moreover, it would have done so in support of a group—small business owners and entrepreneurs—of great political importance since they constitute a major driver of job creation and the local economy. Municipal government, under new mayor Eric Garcetti, was placing increased emphasis on serving small businesses by creating the Mayor’s Office of Economic Development, which was working to integrate and aid access to resources for small business owners. The county government was moving in a similar direction, combining previously separate agencies into a unified Department of Consumer and Business Affairs (DCBA) and creating a Small Business Liaison Program. The federal government, meanwhile, continued to focus on small business development through the local office of the Small Business Administration (SBA), and the White House was developing its “Startup in a Day” partnership with local governments, including the City of Los Angeles, to make cutting through the red tape of licensing and permitting easier for new businesses. LA Law Library, it was hoped, could garner some of the same political goodwill by doing its part to help small businesses.

Execution of the Idea: Leveraging the Law Library’s Own Social Capital

While the law library appeared well positioned to develop an educational program on legal topics for small business owners and entrepreneurs along these lines, executing the idea proved challenging. Fortunately, LA Law Library was able to leverage existing connections and relationships to a surprising extent in its creation of the program. The social capital of the library itself, one might say, proved to be extremely valuable.

First, the law library had a rich network of connections to potential attorney speakers through its Minimum Continuing Legal Education (MCLE) program and through its Members Program, a fee-enhanced service for legal professionals with approximately 300 attorney participants. Thus, it had a deep reserve on which to draw for speakers on the various topics that the series might cover. Librarians guessed—correctly, it turned out—that recruitment for the program would not be an issue, as attorneys who represent businesses would themselves be taking advantage of a potentially great business development opportunity in the form of the connections they might make with business owners interested in legal issues.

One particularly valuable early connection from the library’s MCLE program, for instance, came in the form of a former undersecretary of commerce with the Clinton administration, who had gone on to a long career as in-house counsel at companies large and small, and was now a sole practitioner who had visited the library for several different MCLE events. He had chatted with staff on a few occasions and was interested in speaking opportunities. This connection allowed the coordinating librarian to pick the brain of someone with deep experience in the business world, which then resulted in the development of a draft list of twelve topics the series might cover, helping to conceptualize the structure and sequence of the classes to be included.

Second, the law library was able to draw from connections made by virtue of other programming and partnerships it had developed in recent years. The law library had previously hosted programs and workshops by other county agencies, which resulted in connections to personnel in the newly designated DCBA and its Small Business Liaison program. Similarly, the library had served as the venue recently for Export U., a training series on exporting for small business developed
by TradeConnect, the outreach arm of the L.A. Ports; and it had hosted programs in partnership with the Small Business Clinic at the University of Southern California (USC) Gould School of Law. Each of these connections led to speakers for particular sessions in the series and to library partners who would help to promote the series and increase attendance.

¶50 Other connections necessary to make the series a success developed organically through a process of leveraging the networks of the library’s existing connections. Perhaps the most important connection developed this way was to a local bank, Pacific Western Bank, that came to serve as the financial sponsor of the series, in partnership with the Friends of the Los Angeles County Law Library, the library’s supporting 501(c)(3) charitable organization. The existing connection was to a financial advisor who had attended a program at the library; he happened to have a connection to the vice president at Pacific Western Bank who oversaw the bank’s community outreach efforts, and kindly referred staff and the Friends of the Los Angeles County Law Library to her. She was excited by the concept of the series, and the bank agreed to serve as the sponsor and provide a speaker on small business financing. The sponsorship allowed the library to offer the series at no charge to attendees, helping tremendously with promotion and attendance.

¶51 Many important new connections were also made through the old-fashioned means of cold-calling and approaching new contacts with no prior relationship or introduction. Fortunately, two of these connections, who would become vital partners in the series, were themselves starting new programs and were very open to collaboration and the development of joint programming. The first connection came about when library staff were surveying existing programs for small business and attended an event put on at the Los Angeles Public Library’s main downtown branch by the Mayor’s Office of Economic Development. The program coordinator from the Mayor’s Office was intrigued by the possibility of legally oriented programming through the law library, and went on to help guide the development of the series, eventually lending the mayor’s logo to the series and assisting with promotion.

¶52 The second new connection came by way of the local SBA office, which referred the coordinating librarian for the series to a new arm of the L.A. Area Chamber of Commerce focused on fostering tech startups, called Bixel Exchange. This group, engaged in a similar effort to develop training and programming for new businesses, proved a valuable partner. It referred the library to well-qualified speakers on a number of more business-oriented—as opposed to purely legal—topics, while also eventually helping with cross-promotion.

¶53 By leveraging these connections to help develop program topics, recruit qualified speakers, obtain sponsorship, and promote the series, the library put together an initial twelve-part iteration of the series, which commenced in June 2015. The library held classes on the following topics in this sequence:

- Intersection of Law and Business: Series Kickoff
- Make It Official: Get Your Business Licensed
- How to Form a Corporation or LLC
- From Seed Money to Serious Investment: Raising Money for Your Business
- Planning for Success: Budgets and Long-Term Financial Planning
• Know Before You Sign on the Dotted Line: Reading and Negotiating Business Contracts
• Debt and Business Reorganization: Leaders, Failure and Rebuilding
• Nuts and Bolts of Exporting
• Legal Do's and Don'ts for Employers
• Government Contracts in Plain Language
• Protecting Your “Intangible” Assets: Confidential Information and Trade Secrets
• Making the Next Step: How to Grow Your Company

¶54 Each class in the series gave attendees a chance to peruse pamphlets and materials from nonprofits and state agencies that assisted small businesses. Handouts included an LA Law Library resource list for small business owners, with a focus on titles contained in the library’s self-help collection. Most of these organizations also provided in-person representatives who prior to class described the assistance available through their organizations. The following organizations provided representatives and/or materials:

• Federal SBA
• Los Angeles County DCBA
• Mayor’s Office of Economic Development
• L.A. BusinessSource centers (which provide advisory assistance to small business)
• Bixel Exchange and the L.A. Area Chamber of Commerce
• L.A. Ports’ TradeConnect
• City Office of Finance and the State Board of Equalization (which administer business licensing and taxes at the local and state levels)
• Kiva Zip and Opportunity Fund (two nonprofits focused on microlending to small business owners)
• Los Angeles Public Library

Most of these partnering organizations, as part of their participation, also helped to promote the series through their e-mail lists and social media. This aided the library in reaching a new audience it had only just started to serve and with whom it had little prior contact. With the help of this promotion, as well as a considerable amount of in-house promotion through the library’s e-mail list, social media, and print flyers distributed through several community outlets, the first iteration of the series achieved solid success. Each session enjoyed high attendance, with most receiving nearly one hundred pre-registrations, and many filling the library’s classroom space to capacity (fifty-four seats, plus standing room). The law library, suddenly, was on the map for the small business community and the many organizations that serve it.

¶55 Since then, the law library has held the series twice annually, with slight modifications to its content and sequence. Attendance remains strong; each spring and fall the library welcomes a new group of new and prospective small business owners and entrepreneurs. The law library continues its partnerships with all of the original participating organizations, maintaining a valuable set of relationships that, prior to the series, either were not as strong or did not exist at all. In April
2016, LA Law Library received an official commendation from Mayor Garcetti in recognition of its contributions to the community.

Social Capital Benefits of the Business Series

¶56 LA Law Library set out to create a program that would increase access to legal information while generating social capital in the four ways stated above (see “Mechanisms for Law Libraries to Generate Social Capital”). While an empirical study to demonstrate the extent to which social capital was generated is beyond the scope of this article, the nature of the connections and resources provided through the series, the number of people reached, and the feedback received from attendees and partners on the series all strongly support the case that LA Law Library did innovate an effective means of generating social capital in its community.

¶57 First, the series continued the law library’s long-standing tradition, as an “on-the-ground” institution, of providing fair and impartial service. The series provided access to legal information, in the form of educational programming, to a new patron group, business owners and entrepreneurs, in an entirely neutral way. Classes were offered at no charge, and anyone could register. Instructors and staff provided information to all attendees equally, and everyone received the same assistance. Library staff knew based on registration data that an extremely diverse group was likely, and therefore instructors were told to expect a broad range of attendees: from established and successful businesspeople, to those just starting out, to those with additional challenges such as possible mental health issues.

¶58 By providing the benefits of the series to everyone equally, and advertising the series widely through the library’s own promotion and that of its partners, the law library likely helped to create generalized trust through the appearance, and reality, of fair and impartial service by a government institution, thus generating social capital. This conclusion finds support in the comments left by attendees on each class session’s evaluation form. A common refrain was that attendees were glad to have access to the type of instruction given (“so glad the library is putting this on”; the class “help[ed] demystify” the business world; “excellent information”; “glad that you guys offer these classes to the public”).

¶59 Second, the series brought a new group of patrons into the safe and supportive space of the law library. Attendees became accustomed, over the course of the twelve-part series, to seeing one another, library staff, and some of the representatives from partnering organizations who were present during multiple sessions. Positive and supportive relationships with attendees were developed. Over time, some attendees frequently contacted the coordinating librarian with questions not just about the series and future classes, but also about general topics such as going back to school, how to find an attorney, or where to find other types of assistance.

¶60 The attendees also benefited from the opportunity to ask questions after each session, which was by design— instructors were told to expect to field questions for at least thirty minutes after the formal presentation. Additionally, attendees were given instructors’ contact information, thus creating the possibility of a lasting connection. Evaluation forms support the conclusion that attendees found great value in having access to the instructors (“very compassionate attorney”; glad to have “interaction [and] Q&A”; consistent 5 out of 5 ratings for most instructors).
The opportunity for the attendees to connect with one another was another valuable benefit, with one attendee even remarking in her class evaluation form that she “did not expect it to be such a great networking opportunity.” By bringing new patrons into the safe and positive space of the library, the series likely helped create generalized trust, and thus social capital.

Third, the series constituted, in part, an outreach effort to disadvantaged groups, one that brought owners of new, small, and struggling businesses into contact with well-qualified instructors who not only have considerable knowledge of law and business, but also possess connections to additional resources that these businesspeople could leverage to improve their prospects. For example, two attendees at the class on business finance were in the early stages of creating an online application that would provide three-dimensional mapping of the city. By connecting with the speaker, who was also an advisor at Bixel Exchange and himself an experienced tech entrepreneur, this tech startup was able to gain a mentor and go on to create a prototype of its app. More generally, the series brought into the library a group of patrons who may not have otherwise had access to sophisticated legal and business training, nor to the instructors who provide such training.

Last, and perhaps most important, the series provided social connections to resources. Class members had opportunities to connect with well-qualified and well-connected speakers from one or more organizations that provide many different types of assistance. Attendees noted and appreciated the connections to resources that were provided (“helpful to hear [about] resources, such as the Small Business Clinic and LA Law Library, since these topics are so complex”).

Examples that illustrate how attendees connected to valuable resources are plentiful: an aspiring restaurateur received information about crowdfunding, which eventually enabled her to open her restaurant in downtown Los Angeles; a pair of attendees in the early stages of creating an app for sharing apparel (“Airbnb for clothes”) connected to an instructor who is an experienced CPA specializing in tech startups; a caterer connected with a representative of the SBA to learn about small business loan options; and several attendees connected, through the instructor, to the Small Business Clinic at USC Gould School of Law for assistance with incorporating or forming a limited liability company. The list could go on; it constitutes only some of those connections the coordinating librarian observed and noted. Clearly, the series created many social connections that directly benefited patrons and increased the social capital available to them.

Benefits for the Law Library

As mentioned, the L.A. Mayor’s Office has recognized LA Law Library for its work on the Business Series. The library received the support of several local nonprofits and government agencies that helped to make the Business Series a success. The multifaceted promotion done for the series by both the library and its partners helped to inform a new audience about resources available at the law library. All of this helped bring attention to the work the law library does and garnered positive press for what had been a somewhat forgotten institution in Los Angeles. One might say that the law library, by helping generate social capital for its patrons through the Business Series, also helped increase the value of its own institutional connections. A visible generator of social capital such as the Business Series
thus makes it easier for the law library to advocate on its own behalf. For example, the Business Series is now mentioned prominently in the library’s annual report to the County Board of Supervisors. Social capital–focused development of new programs and roles at law libraries can positively affect advocacy efforts and meet head-on the dreaded question, “But isn’t everything online?”

Possible Applications to Nonpublic Law Libraries

¶66 Perhaps not every type of new role taken on by law libraries and law librarians in recent years is appropriate for a social capital analysis. Certainly, this type of analysis fits many of the efforts of public law libraries very well. However, social capital generation can and should be applied quite broadly. For example, the efforts of some academic law libraries to assist in academic support programs for underachieving students could be viewed through a social capital lens: library staff are reaching out to disadvantaged patrons—minority groups are overrepresented in academic support programs—by bringing these patrons into the fold and connecting them with resources they may not have known were available.50 Training programs for first-year associates coordinated and taught by firm librarians might be viewed similarly. Many of the orientation activities for first-year law students likewise could be viewed as providing important social capital for those in a new environment with few, if any, existing connections. A social capital analysis provides tools likely to be useful in most institutional settings and for most types of new undertakings by law libraries.

Conclusion and Opportunities for Future Study

¶67 Social capital remains an underutilized framework in law librarianship. It provides a useful set of tools for conceptualizing, describing, and articulating the value of much of the new and innovative work that law libraries do, and can do, particularly the work that involves use of legacy library spaces. Public law libraries lend themselves especially well to social capital analysis, as they are peculiarly well positioned as institutions to undertake programming aimed at social capital generation. Every type of law library, however, could benefit from the use of social capital concepts and language. It is, after all, worth learning how to talk about the value of real social connections during these times when “everything is online.”

¶68 Opportunities abound for the future application of social capital analysis to the work of law libraries. Empirical research especially is needed to support the reasonable presumption that law libraries can and do create social capital. Further inquiry is also needed into how specifically law libraries benefit from social capital analysis in advocating for continued—or even expanded—resources. Such inquiry would be especially valuable from law library professionals who are experienced advocates to institutional stakeholders.

The Strategic Academic Law Library Director in the Twenty-First Century*

Roberta F. Studwell**

Newer library directors must make brutal choices about the services their libraries offer and the budget available to spend on space, personnel, programs, and collections. A strategic plan, goal-setting process, and implementation plan assist the newer director in making these choices. The time spent on these planning processes will be boundless, but worthwhile.

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Introduction

¶1 It is the first day of your dream job. After rising through the ranks in academic law libraries, you have reached your ultimate goal—being the associate dean or director of a law library. But, if your experiences these past ten years have allowed you to lurk in the background while other administrators made choices about budget and resources, you may find yourself not fully prepared for your new leadership role.1 This article encourages newer law library leaders to recognize that they must make brutal choices about library services and budgets. And, they must base these tough decisions on economic constraints and the changing needs of library users. Whatever work or institutional cultures these brand-new directors enjoyed in previous positions, “no one in [the] profession is naive enough to believe that good work alone always wins out.”2

¶2 Only a short two decades ago, academic law libraries were primarily interested in collecting materials, most in print, that faculty needed for scholarship and teaching.3 Much like the world of the corporate CEO, the library world has rapidly changed since 1990.4 Technology’s strong foothold has expanded, directors are evaluated on their ability to perceive and drive change in the library and in other parts of the law school,5 and assessment is now a watchword for the ABA and the law school community as a whole.6 Not only must the head of the law library plan for the future of library space, personnel, programs, and services, she must be aware of the changes that are predicted for the law school as a whole, and for the legal profession.7

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5. See, for example, a series of papers from the Richard A. Matasar Symposium: The Future of Legal and Higher Education, 66 SYRACUSE L. REV. 419–729 (2016) [hereinafter Matasar Symposium], concerning change in law schools and predicting that “under any future scenario, the research mission of many schools will significantly evolve” and a cost-to-value ratio must be achieved. Richard A. Matasar, Higher Education Evolved: Becoming the University of Value, 66 SYRACUSE L. REV. 689, 729 (2016).
§3 Just as businesses employ process improvement techniques\(^8\) to predict costs, increase return on investment (ROI),\(^9\) and improve predictability and efficiency of outcomes, so must library directors.\(^10\) Much of the rationale behind planning for and predicting the future lies in the simple fact that jobs and roles are changing constantly, and new administrators are changing positions much more frequently than they did in the past. For example, when a new law school dean enters the world of academe from a business or law firm setting, the whole formula of how the school is run changes. What may look to some like micromanagement instead may help to forecast the future. Internal and external pressures to reduce costs and improve efficiency, much of it driven by the business world, will only increase over the next two decades.\(^11\) Those who lag in joining, or at least being aware of, strategic planning approaches,\(^12\) process improvement strategies, and assessment vanguards may find their libraries and institutions at peril.

§4 The new library director who correctly perceives the role that various types of planning could play in helping a library thrive will also understand the considerable cultural change that will be needed if such planning is doomed to fail or bound to succeed.\(^13\) The dean and other administrators also must embrace these changes. In some cases, the new director and her library will drive the entire school to initiate changes, making the law library both a potential change agent and a transformer, intimately knowledgeable about the best ways to identify and stay ahead of trends and opportunities.\(^14\)

**Managing Strategically**

§5 Where is the new library leader to begin? Managing strategically is the answer. Strategic management is defined in a variety of ways;\(^15\) however, in the end,
strategic management is primarily about action, planning, performance, and results. Systematic strategies that lead to successful actions include planning for programs or services that benefit law library users. Two important goals of strategic management are to reassess and improve planning strategies and to achieve strategic results with the least amount of impact on the staff’s regular routines.

Complex law library strategies and administrative processes can be difficult to break down into steps because of the number of variables involved. However, once a strategic plan, goal-setting process, and implementation plan are complete, the librarians working under their leader are likely to discover a set of common, repeatable steps that can be recorded, examined, and tracked for completion and reassessment. Richard Danner provides visuals of many strategic planning steps in *Strategic Planning: A Law Library Management Tool for the 90’s and Beyond*.

**Strategic Planning Processes**

To manage strategically, the library leader must implement a coherent strategic planning process. This normally starts with an environmental scan, resource assessment, and SWOT analysis (of strengths, weaknesses, opportunities, and threats). Once the initial steps are complete, planners draft goals, determine objectives, and set strategies. Initial strategies and goals should be reviewed with an eye toward improving and changing them over time. Only then can the library’s implementation planning be analyzed, lessons be recorded and discussed, and goals be adapted and changed as library and law school circumstances change.

Newer library directors may be surprised at how messy the entire strategic process sometimes is. Every part of the strategic plan affects every strategy step outlined and detailed, even if it is never implemented. For this reason, most strategic plans—especially the first ones implemented at a law library—take a considerable amount of time and energy to generate, discuss, and implement. Sometimes steps that seemed logical must be refined. The messy process does not create an agile way of producing results. But all is not lost.

Strategic agility helps planners to respond to unexpected crises or opportunities. This concept emerged not long after the strategic planning movement was becoming stronger; it represents a competing management strategy to that of strategic planning. Strategic agility yields “just in time” strategies called for in crisis or emergency situations. Although the concept is defined differently depending on the situation, some common themes have emerged in the last two decades. Strategic agility involves a set of actions taken by organizations that operate in rapidly changing environments and interpretations. Ryszard Barnat, *Strategic Management: Formulation and Implementation* (2014), http://www.introduction-to-management.24xls.com/en202.

Variables include collections, teaching, personnel management, training, budgeting, and many more, all of which are governed by the time spent on each, cost of each, quality of work, and scope of work to be completed. Julius J. Marke, Richard Sloane & Linda M. Ryan, *Legal Research and Law Library Management § 1.04* (2d ed. 2017).

An implementation plan is a strategy and process for achieving goals and results. The implementation plan describes how the strategies will be designed and rolled out, usually as substrategies that change from year to year.


Id. at 25–28.

changing, unpredictable environments, as do today’s law libraries and law schools. Unlike strategic planning, strategic agility means dealing with circumstances that require immediate change. The change is usually a continuous, systematic variation in an organization’s products, processes, services, and structures in response to a sudden environmental threat or opportunity.21

¶10 Strategic agility includes the ability both to identify and sense major opportunities and threats and to respond to them rapidly. A manager who is strategically agile constantly and rapidly scans the environment, senses the need for change, and responds by intentionally discerning strategic moves and consequently adapting her organizational configuration for successful implementation to meet the challenge.22

¶11 For academic law libraries, creating a systematic plan and agile approach is exemplified by libraries that have integrated functional activities within the library as budgets have shrunk or been eliminated.24 Eliminating silos and integrating public, technical, and technology services permits the leader and her team to achieve organizational success that aligns with the school’s vision and strategic priorities, and to reduce costs. Most often, to achieve maximum ROI, this means reorganizing and determining where efficiencies can be gained and which unwanted steps or duplication of effort can be reduced. Identifying or eliminating those steps is usually achieved by strategically using available data as a part of the scan and response.

Using Data to Support Strategic Decisions

¶12 Until the start of this century, the public and technical services functions worked independently and separately in most law libraries. Some libraries began integrating these functions under one umbrella during the economic downturn of the past few years.25 Some libraries added technology services to the mix. Ultimately, this meant that many law libraries began regularly collecting data regarding how well these functions performed and how these sets of functions, such as technical and public services, were relevant to the law library and to the law school in general. “Technology has increased the need for well trained, technology savvy, and highly inventive librarians who are not afraid to embrace change and to implement new ideas and concepts.”26 Technical services librarians must be involved in decisions about bibliographic data involved in daily maintenance, implementation, and data migration. Since many decisions are based on the integrity of that bibliographic data, it could be argued that many technical services functions should not be eliminated but should be better integrated and aligned with other library functions, such as public or circulation services. A forward-looking strategic plan can

23. Id. at 7.
25. Id.
26. Id. at 181.
27. Id. at 189.
assist with that integration. When staff constantly discuss the law library’s strategic and other planning, it can decrease the fear of change that such an integration might engender.

¶13 Even in today’s normal business environments, only forty percent of employees report that they are well informed about their company’s goals, strategies, and tactics. If communication and engagement lead to positive outcomes, then those who are deeply and significantly involved in planning processes can assist when strategic agility is called for in an unknown situation. This has proved to be the case in many technical services realignments.

¶14 Collecting data to support these important staff realignment decisions is necessary. All libraries collect data. Every piece of mail processed and cataloged, book checked out, or service offered produces a data point. By analyzing specific data segments for trends, the leader can determine overlaps and gaps between the various functions in the library. In technical services, for example, functional data collection has moved beyond recording the number of pieces of materials ordered and received, filed or discarded, to a new paradigm. How does technical services contribute to creating data relevant to budget changes and collection policy revisions, especially those focused on electronic files and resources?

¶15 Data has begun to drive decision making in many law libraries, as the example above indicates. Many law libraries are now embracing data analytics and are seeking new ways to more effectively analyze the data they currently collect or change the data points, keeping the law library user in mind at every step of that analysis. Just as a decision made in a law firm library cannot be made in isolation from the firm itself, decisions affecting academic law libraries cannot be made without an analysis of how the library is impacting other areas of the school. Data helps to answer administrators’ questions about which law library services are significantly impacting faculty and the users those faculty interact with during their journey through law school.

30. Luna-Lamas, supra note 24, at 192.
31. Analytics in Higher Education: Establishing a Common Language explores the basic definitions of analytics in higher education:

Angela van Barneveld, Kimberly E. Arnold & John P. Campbell, Analytics in Higher Education: Establishing a Common Language (EDUCAUSE Learning Initiative Paper 1, 2012), http://net.educause.edu/ir/library/pdf/ELI3026.pdf (emphasis added). Analytics is the process of data assessment and analysis that enables us to measure, improve, and compare the performance of individuals, programs, departments, institutions or enterprises, groups of organizations or entire industries.

In a recent webcast on the topic of collecting data, Sarah Tudesco stresses that a user-driven focus for discovering and using data is imperative. Such a focus can maximize services and efficiencies by using a data collection plan and by analyzing the data collected to generate actionable recommendations. Those recommendations should answer user demand for services, collections, or programs. In the law library setting, that means tracking data differently than in the past. To make the data useful, extremely specific parameters to track user needs must be determined and specific time frames to track data must be established.

Collecting and compiling data can be challenging if disparate tracking systems are used in various law library functions. The strategic law library director will locate and implement a database that can analyze and build spreadsheets and generate other storytelling tools for both law library functions. Many programs exist to help a manager or her employees manipulate and analyze data. Excel spreadsheets offer one simple way to start. Data can also be extracted from several databases and analyzed using SQL tools to compare datasets over time. Once analyzed, this data can help predict why users utilize library services and collections in various ways; going well beyond what they use. Other programs, such as Open Refine, can help clean up data and make disparate datasets work together. Another, ATLAS.ti, can help with qualitative data analysis.

Tudesco reminds us to begin with the data goal in mind. “The key goal is to translate this information for a provost or for other administrators. Data visualization can help, but beautiful charts are not enough.” Instead, Tudesco reminds us to “learn to tell a story.”

EDUCAUSE leaders also propose developing data about users through the study of analytics to optimize student success and justify programs and project current trends that will maximize outcomes.

Especially telling [in higher education], there is a talent gap in analytics-experienced professionals and difficulties in hiring both specialized and general analytics talent. This includes skills and competences in the technical aspects of analytics and big data and know-how in changing institutional processes, workflows, cultures, and behaviors to a performance orientation.

The strategic law library director should consider how to train members of her staff to fill this gap in her law school.

In Data-Driven Organization Design, Rupert Morrison provides examples of data that can drive decision making in the best possible ways for the best possible

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34. Id.
36. OpenRefine (www.openrefine.org) (formerly Google Refine) is a powerful tool for working with messy data. OpenRefine cleans it, transforms it from one format into another, and extends data for use by web services and external data.
37. The webpage (http://atlasti.com) touts itself as grounding your findings in the data.
38. Tudesco, supra note 33.
39. Id.
41. Id. at 43.
outcomes. Morrison’s design starts with the customer. At the end of the day, customers are central to libraries and law schools—the reason we exist in the first place. Organizations that leverage analytics to understand customers’ needs and behavior, and transform their offerings accordingly, are the ones to gain students and increase the popularity of the institution and the law library with alumni and stakeholders.

¶20 A successful example of using data to inform decision making is occurring in law firms. Law firm libraries are heavily involved in “moving from just managing the format or housing . . . information to supervising all steps of knowledge evolution—from the existence of data, to the processing of that data into information, to the application of that data in knowledge (management)”44 As firms continue to move in this direction, two questions are critical: “Are the library services/staff/decisions/resources increasing shareholder value? Are you directly contributing to the success of the firm?”45 Academic law library directors would be wise to consider asking similar questions and target the way they are creating value for their users.

¶21 The strategic director knows that the value the law library must create is to “meet their users’ needs,”46 and it starts with the library’s mission. A law library’s mission statement is normally geared toward the successful retrieval of information by its users. To determine if a library is meeting its users’ needs, most directors would begin by reviewing the mission statement and planning strategies. The strategic director might consider another approach and start by skimming the literature on User Experience (UX) to determine whether the mission itself needs tweaking or dramatic changes in focus.47

¶22 Keying in on UX literature, the strategic director will discover that the keynote speaker at the summer 2016 AALL Annual Meeting, Will Evans, spoke about Lean Six Sigma startups and how critical the user is in the project design and implementation phases.48 He described Lean processes and project plans that failed because the critical pieces—users—were added to the mix at too late a point in implementing the strategy or project.49 He advised those in attendance to add users into the planning phase as early as possible. Ideally, library users should be the central focus of the critical starting point, i.e., its mission.

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44. Ross, supra note 32, at 129.
45. Id. at 120.
47. As a starting point, see Aaron Schmidt & Amanda Etches, Useful, Usable, Desirable: Applying User Experience Design to Your Library (2014).
48. Will Evans, New Models of Purpose Driven Exploration in Knowledge Work (July 17, 2016), http://community.aallnet.org/viewdocument/opening-general-sess (site accessible to AALL members only).
49. Lean is a planning approach to streamlining service processes by eliminating waste while continuing to deliver value to customers. Not simply a set of tools, it is a management approach dependent on nurturing a Lean culture. A successful combination of defining customer value, aligning around a common purpose, and striving for perfection while at the same time respecting and developing employees creates this culture. Id.
Many articles discuss Lean strategies. Because the aim of Lean is to identify and perform tasks that are valuable to the customer, Lean processes can be used to avoid waste and improve user satisfaction. The focus of these articles is clear. User focus and engagement are critical components in all stages of strategic planning.

Keeping the user as the focus, law libraries should consider moving from collection-centric to engagement-centered models if they have not already done so. Organizational design experts such as Morrison have been promoting engagement models for libraries for some time. The literature is ripe with articles and papers about satisfying the library customer. In a recent article, Josh Sterns discusses a profession that may have waited too long to do so—journalism. He argues that building meaningful relationships with user communities is unlikely if journalists operate at an arm’s distance (or further) from that community.

Many other professions are puzzled about how to build engagement. Recently, Anthony De Rosa suggested that automatic updates to social media tools used by publishers could produce loyalty to an institution or entity. He suggested that entities should transparently engage the communities they serve. For law libraries, most of which already have groups of loyal followers, the issue is how to further engage those groups to satisfy their learning and knowledge needs.

Data collection, data visualization, and data analysis can help with engagement, and are all necessary parts of the puzzle that transform a law library into a thriving and integral part of the school. But what drives that data collection and how a library gets there are underpinnings of a strategic plan; one that is updated regularly and reviewed annually. Annual planning reviews will provide insights into new goals and projects that should be developed.

Planning Strategically

A law library director’s job description is longer than it used to be a few decades ago. It typically now includes the ability to plan for the future, including articulating a vision and plan that synchronizes with the law school’s mission and overall plan, administration of budget planning and purchasing, governance, and

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technology; development of computing initiatives and distance education; management criteria, such as setting priorities or setting policies for personnel decisions; developing collection development criteria; and marketing services and collections. She is evaluated on all of these job duties; adding additional layers to the planning paradigm she oversees.  

¶28 The difference between day-to-day planning and strategic planning is epitomized in a question known as the Yirka Question: What should law libraries stop doing to address higher priority initiatives?  

¶29 The focus of this question is a strategic one that can assist in realigning faltering strategic processes.  

From a strategic planning perspective, framing data that has been scanned in an organized way, such as focusing on the Yirka Question, permits a law library director to keep the strategic planning process simple and focused by concentrating on fewer issues. Data also helps law libraries make planning decisions about emerging trends, challenges, and opportunities for improvement.  

Ultimately, the steps that become a part of the planning processes themselves will benefit from this sharper focus.

Strategic Planning Processes

¶30 The need for strategic planning, its phases, and the goals and processes that emerge from it have always existed. “Ultimately, the law library director’s job is to get results.”  

Strategic plans that are well structured, bought into by staff, and regularly revisited will move the library toward getting those results. “[S]trategic planning is also critical for institutional success. The transformational forces of technological innovation and global competition continue to put more pressure on American law schools to perform better, faster, and cheaper.”  

“And like any business, a plan is essential to take the organization (and the people in it) where it wants to go. A strategic plan is no longer optional.” Therefore, the law library’s plan must synchronize with the institution’s plan.

¶31 Libraries must be engaged in strategic planning because the ABA requires their institution to be, but also because a lack of engagement means that law library competitors—vendors, startup companies, and more—could run the library out of business. Engagement means that the planning and ultimate assessment of a library’s goals cannot be a separate “management activity” but must be appreciated and valued by all members of the library and assumed to be part of their regular work.

¶32 The rationale and purpose for strategic planning set out in Bryson’s “Strategic Change Cycle” has been used by academic and law libraries alike for some time.63 Bryson’s Strategy Change Cycle consists of ten phases:

1. Initiate and agree on a strategic planning process
2. Identify organizational mandates
3. Clarify organizational mission and values
4. Assess the external and internal environments to identify strengths, weaknesses, opportunities, and threats [SWOT]
5. Identify the strategic issues facing the organization
6. Formulate strategies to manage the issues
7. Review and adopt the strategic plan or plans
8. Establish an effective organizational vision
9. Develop an effective implementation process
10. Reassess strategies and the strategic planning process64

Bryson’s process is like other models, but establishes a vision step that some other processes do not, and recognizes that institutional politics influence planning processes.

¶33 Managers must now regularly analyze and act on the many forecasts they read or hear about from staff. Even if the new information received is not acted on immediately, it should still be discussed with other administrators to evaluate its impact on the school. The type of scanning that strategic planning requires means constantly reviewing pertinent literature both in- and outside of the field, predicting, and ultimately acting on those scans.

¶34 Many resources now exist to allow library leaders to put a strategic planning process in place.65 Most of these resources encourage the strategic library director to examine the law library’s mission, vision, culture, and trends as Bryson suggested.

¶35 Most businesses (and libraries) have created their own mission and vision statements because their institutions have done so. Many law libraries fashion their own mission and vision to highlight their distinct culture and vision and the mindset of the library and its staff. That set of statements, along with an analysis of emerging trends in the law library field, provides the mechanism for setting a new strategic course. The first analysis commonly taken as a part of strategic planning is known as a SWOT analysis.66

SWOT

¶36 A SWOT analysis should include both internal and external scans of a variety of factors that represent strengths, weaknesses, opportunities, and threats. A nonexhaustive list of these factors includes:

- competition for the library’s patrons, services, and resources;
- digital initiatives that impact the law library;

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64. Id. at 46.
65. See, e.g., Danner, supra note 18; Joseph R. Matthews, Strategic Planning and Management for Library Managers (2005); Sandra Nelson, Strategic Planning for Results (2008).
66. SWOT stands for strengths, weaknesses, opportunities, and threats. Libraries generally divide the four areas of analysis into separate grids as they annually review their strategic planning initiatives.
• levels of technical support offered and bandwidth available to connect to patrons and vendors;
• the law library’s current digital environment and disruptive technologies that could impact the law library;
• the existence or lack of a survival plan;
• the cost or ROI for the information, service, and communications offered;
• the mix of services the law library provides;
• the agreements the library is locked into or is anticipating; and
• plans to develop and maintain lasting relationships with users.

³³⁷ Additionally, an internal scan of core values, leadership, culture, efficiencies, marketing, training needs, right sizing or balancing collections, compensation, and technology should be part of an additional annual SWOT analysis as personnel and school changes occur. An external scan of competitors, reputation, and of predicted local, regional, and national changes in economic factors, politics, and regulation that might affect the law library is also needed. In addition to Bryson’s planning stages, a new review needs to be added; a scan of users and their unique needs. A direct review of users’ interactions in libraries is needed to determine how information-seeking behaviors are changing and which services that law libraries offer are not meeting user needs.

³³⁸ Managers should include all staff in the strategic planning process in this SWOT analysis. Front-line employees can provide a unique perspective. The results will present a more accurate and well-rounded picture of the law library’s strengths and weaknesses. Being inclusive and valuing the opinions and contributions of everyone is a signal that the manager values her employees and wants their input.

Creating a Plan

³³⁹ In the end, after the SWOT analysis takes place, a list of four or five categories will emerge, such as collections, planning, services, marketing, and physical plant. Crafting a set of goals for each category forms the next part of the planning phase. Some of the goals first generated around these categories may need further refinement and discussion. Many institutions find that setting three or four realistic goals for each category is challenging. Constant communication about the user will help refine the various planning goals and reduce duplication.

³⁴⁰ Choosing the right goals to implement can be easier if a stakeholder is selected to review the output of the SWOT along with the first round of selected planning goals. A variety of pertinent questions, such as the two that follow, must be asked to complete the last phase of a successful library-planning process, selecting relevant goals for the short and long term.⁶⁷ How will the goal be measured and communicated, evaluated, and promoted? How does it relate to other goals and projects already underway? Goals will need to be revised several times, maybe even over the course of a second or third annual planning meeting, since some assumptions may prove incorrect or the stakeholder reviewing the goals may not agree that they fit with the school’s strategic goals.

Implementing a Strategic Plan

¶41 Implementing a strategic plan requires both buy-in and follow-through. Implementation is probably the most difficult part of strategic planning. Human resource needs and the ongoing need to revise the plan may make the first year’s progress less than optimal.68

¶42 The annual strategies should be revisited at least monthly. Monitoring can be accomplished through monthly meetings or through a project-tracking system such as Asana, Basecamp, Track, Teamwork, Trello, or Wrike. SharePoint is another option when cost is an issue and the institution is a Microsoft shop. These tracking systems allow every staff member involved in achieving strategic goals to know who is working to implement which part of the strategy and how far along they are. Setting up a tracking system shows the leader’s commitment to meet the yearly strategic goals.

¶43 Monthly meetings to review annual strategies held after a plan has been adopted, and before the date has been set to reevaluate a plan, can be short. Only allotting enough meeting time for each staff member or goal group to give an update will help to keep the entire law library staff up to date. If the staff decides that changes need to be made to the annual strategies, extra time can be added to these meetings.

¶44 Integrating the annual strategies into daily operations is another messy part of the planning process. Long- and short-term strategies ultimately fail or deliver far less than originally envisioned due to an incorrect application of the plan-do-check-act-and-repeat cycle69 or because the law library has failed to ensure that everyone understands the goals and strategies.70 Regular communication is critical to ensure that annual goals and objectives tied to a plan are integrated into the everyday work of all employees.

¶45 Another difficulty in implementing strategic goals is that law library budgets may not align with the strategic plan, outcomes of the goals or objectives are inappropriate or not measurable, or the objectives do not align with the organizational strategic plan. Successful implementation requires budgets that focus on achieving strategic goals and individual units within the library that focus on the bigger picture of the library and the organization as a whole.71 Often the law library director must step in to ensure that the library’s strategies are aligned and appropriately funded.

¶46 To avoid some of these issues, the law library director should ensure that the groups or individuals charged with creating annual strategies create a process plan or map that outlines the steps involved, setting negotiated deadlines for each strategy. Groups charged with meeting strategy goals should discuss the planning steps,}

68. Danner, supra note 18, at 43.
69. W. Edwards Deming coined the define, measure, analyze, improve, control (DMAIC) statistical and analytical method in the 1950s, and it was used to reduce defects by finding their root causes, eliminating them, and sustaining the subsequent improvement best known at Toyota. It has been refined over the years, and in nonbusiness settings is now commonly referred to as the plan-do-study-act strategy and is widely used as an alternate method to ensure improvement in processes. A Look at Six Sigma DMAIC Facts, Six Sigma Online, https://www.sixsigmaonline.org/six-sigma-training-certification-information/a-look-at-six-sigma-dmaic-facts/ [https://perma.cc/9XWB-A44B].
71. Id. at 166.
assign responsibility to individuals for the different steps, and revisit and revise them as a part of an ongoing process. Regular communication between groups involved in implementing the various strategies will lessen workload impact.

¶47 The last measure of annual strategic goal success is determining what deliverables will be prepared to set a milestone for each major step or strategy. A deliverable is a tangible or intangible product or service. For law libraries, a deliverable in a project plan might be a survey to draw out users’ opinions, a design of a floor plan, or a final report.

Assessing Progress Strategically

¶48 One of the most important steps in evaluating whether a strategic plan and its goals and initiatives are working is assessment. Is the plan working? In education, the term assessment refers to methods or tools that educators use to evaluate, measure, and document the academic readiness, learning progress, skill acquisition, or educational needs of students. In law libraries, it refers to evaluating, measuring, and documenting progress made toward meeting stated program, space, collection, and other goals. Assessment requires data. The institutional part of collecting data needed by the library to create change is probably the most crucial and troublesome for law library directors. Data that can impact the library’s key stakeholders may not be shared, depending on the director’s relationship with other administrators. If processes that already exist for sharing data are not made apparent to newer directors, it can mean that they will need to track down siloed data. “Siloed data is always going to inhibit the scope of what can be achieved.” Ultimately a lack of sharing will lead to stalled strategies.

¶49 The value of data increases as sets of data are aggregated into collections and as they become more available for reuse to address new and challenging research questions. “This means that members of the law school administrative team should be meeting regularly to assess data needs and create mechanisms for collecting data. As progress is assessed and data collection mechanisms are reevaluated, data sets can be useful for other law library and school projects.

¶50 Data may be collected because the ABA or another accrediting or certification entity requires it. It may also result from changed processes, as mentioned in a previous section. However, the data that best assesses the success of strategic initiatives and plans is well thought out, is centered on users, and is focused on institutional needs; not those of an accrediting body.

¶51 The Value of Academic Libraries Report challenges libraries to think differently about assessment and success in achieving goals; focusing externally. The report encourages law library directors to focus on the answer to the question, “How does the library advance the missions of the institution?” Instead of focusing on library data alone, the report encourages libraries “to link academic library outcomes to institutional outcomes related to the following areas: student enrollment,

student retention and graduation rates, student success, student achievement, student learning, student engagement, faculty research productivity, faculty teaching, service, and overarching institutional quality.” Moving from the traditional library-centered focus to a new institutional focus should become the goal of the strategically directed law library director and her staff. However, the process doesn’t end with data collection.

¶52 Analytics is the key to quality analysis of results affecting the law library, its users, and the law school. Analytics both inform and persuade the influencers of an institution. Brent Dykes talks about an “analytics value chain.” Selected data should be used to drive reports, which should lead to deeper dives and analysis.

¶53 To move toward thoughtful analysis and reporting, a law library director might consult literature about the Living the Future movement and other projects dealing with scenario planning and future visioning. A wealth of resources about planning and visioning the future is available on the Association of Research Libraries (ARL) webpage. Other recent materials that may prove useful in selecting topics about which to report include Reflecting on the Future of Academic and Public Libraries and No Brief Candle.

¶54 The final step needed to discover whether the law library’s strategies are working as planned includes another data collection phase. Some direct measurement of the use and impact a new service or collection has had on the research needs of library users must be taken. An example could include collecting and analyzing data about increased use of a service after its initial launch and marketing to compare against older data for the same or a similar service. After this step, the library has completed the major assessment loop phases of design, implement, measure, and assess.

¶55 The strategic manager who is fully involved in helping to create, monitor and evaluate ongoing assessment loops will then decide how to repeat successes or improve goals and strategies in upcoming planning cycles. A variety of mechanisms can accomplish this: examining workflow processes, implementing Lean Six Sigma Principles, or using balanced scorecards.

Strategies for Continuous Improvement

¶56 Once goals and plans are tested against the measures directly related to those plans and goals, the next phase begins. Using the results gathered at the end

75. Id. at 12.
of the assessment loop, the strategic director moves into creating continuous improvement goals. These techniques and strategies are used to continuously improve processes and procedures that were directly linked to strategic goals during the planning process.

¶57 The law library can use a variety of approaches to continuously improve its performance annually or more frequently. Some of these improvement techniques may already be a part of day-to-day processes. Only a sampling of improvement techniques is outlined below. Each library will fashion improvement processes more targeted to its environment as it moves through the process improvement phases of planning.

**Workflow Improvement**

¶58 A workflow describes the sequential steps that comprise a work process. An example appropriate to a law library would be the steps needed to process a new supplement from the point it enters the library to the point it reaches the shelf, is filed, or is electronically uploaded to an existing database.

¶59 To improve workflow, the steps in that routine process must be better managed to become more efficient in terms of saving time and budget. Analyzing a workflow can be accomplished manually as the steps are drawn into a diagram or can be analyzed using some software systems. Some analysis can be done using a “process map,” which is a workflow diagram that will highlight the steps in a process or series of parallel processes. (See, for example, a process map from a set of art and architecture libraries comparing print and digital usage in justifying spending on both formats.80)

¶60 Once analyzed, the need for improvement usually is apparent. Processes outlined in a drawing or map tend to loop back and reflect problems in a process related to handling materials, duplication of effort, or unnecessary steps in some staff members’ or function’s workflow. The strategic leader should be certain that managers are trained to analyze workflows and to repurpose staff time for higher-level activities.

**Lean Six Sigma**

¶61 As libraries focus on customer satisfaction as a part of their vision and mission, they will be drawn to the Six Sigma and Lean Six Sigma literature mentioned above at ¶¶ 22–23. Six Sigma is based on the continuous cycle of identifying and eliminating all sources of variation in process performance that significantly influence cost and quality. The DMAIC system mentioned in footnote 69 is useful in identifying solutions based on the collection and analysis of relevant data, and creating improved processes by measuring and monitoring performance of those processes.

¶62 Lean Six Sigma combines Lean processes and Six Sigma techniques. Now a part of law firm jargon, the concepts are known as Legal Lean and Legal Lean Sigma.81 The law firm that adopts these systems discovers that many of its processes are not linear, but adaptive and dynamic. That does not mean that all processes are

unsuitable to Lean techniques. While Six Sigma focuses on measurement and data collection, Lean methodologies focus on efficiency and creating value for the customer. Lean focuses on the pace of the work, Six Sigma focuses on making sure that work is completed correctly every time, according to customer requirements.

§63 Lean concepts are a great fit for a law library since library work is often adaptive and dynamic. A strategic leader wanting to transition from a print to a digital world could focus on simplifying steps and, more importantly, on creating value for library customers by using Lean concepts. Learning about Six Sigma techniques will help law librarians and their strategic leaders determine which processes can be mapped and improved to make them more efficient to deliver bottom-line results, and which cannot. Designing an organizational process map that keys in on the most user-oriented systems, resources, and programs that the law library offers could prove a valuable first step in the continuous improvement cycle.

Balanced Scorecards

§64 Possibly the most robust practice for integrating and aligning planning, strategy, performance, assessment, and organizational development is the use of the Balanced Scorecard (BSC). Originated by Robert Kaplan and David Norton in the early 1990s, the BSC started as a performance measurement framework but has since evolved into a full strategic planning and management system. The BSC is a representation of the library’s shared vision with its school. It is a continuous improvement tool because it measures performance indicators that are based on library objectives, reflects the school’s and library’s mission and strategies, and evaluates current performance in meeting those objectives now and into the future. The scorecard measures are “balanced” into four “perspectives”: the user perspective, encompassing reference and circulation; the finance perspective, encompassing budgets, buildings, and collection growth; the internal process perspective, encompassing collection management, web pages, and personnel; and, the learning and growth perspective, encompassing teaching, research, and outreach.

§65 The key to using the BSC successfully is to “keep it simple.” The BSC process is straightforward: draft a few goals aligned with each of the four perspectives, select a few measures for each goal, identify data collection methods, assign targets, collect data, and analyze results. The BSC approach provides tested results that

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82. THE LAWYER’S GUIDE TO LEGAL PROCESS IMPROVEMENT 9 (Laura Slater ed., 2015).
83. Crosby, supra note 81, at 43.
84. For an example of an organizational level process map, see THE LAWYER’S GUIDE TO LEGAL PROCESS IMPROVEMENT; supra note 82, at 31.
86. Id. at 85.
88. Id. at 4.
can be analyzed for continuous improvement. For examples, see the University of Virginia’s BSC approach that focuses on each perspective.91

66 Without continuous improvement, law libraries will face reduced funding, obsolescence, or oversight by another academic unit.92 In addition to using continuous improvement techniques, predicting trends that might affect collections or staff and forecasting how those trends will affect the law library’s future is an integral part of remaining focused on user needs and on remaining valuable to the school.

Forecasting Strategically

67 Forecasting how technology changes will affect law libraries is key to our survival. Forecasting tools are relatively easy to locate, but prognosticating the effect on law libraries is not. For example, will computers that are tethered to an outlet or to other electrical power supplies be considered antiquated in 2020? The strategic director should be scanning the literature regularly to make educated guesses. Tools such as Library Technology Trends, the Horizon Report, and many computer magazines provide clues about which technologies could affect law libraries in a short few years.

68 Amy Webb describes a useful way to gather and “funnel” information from the technological fringe in The Signals Are Talking. Although her book is aimed at business and investment-minded readers, law library leaders would benefit as well.93 She advises us to test various scenarios and to identify hidden patterns by spotting contradictions, inflections, practices, hacks, extremes, and rarities.94

Contemplating Disruptive Technologies

69 Disruptive innovation arrived in the library world and was first noted by Clayton Christensen in the late 1990s.95 When disruptive technologies are viewed as an opportunity instead of a threat, law library directors can capitalize on their value to the library and school by understanding their impacts and by adopting those technologies relatively early.96

70 There is a distinction between a sustaining technology and a disruptive technology. “[B]oth types [of technologies] result in change, but they have different characteristics, and bring very different kinds of change.”97 Sustaining technologies improve the performance of established products and processes that are historically valued. Sustaining technologies improve products such as LexisNexis or

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94. Id. at 151–53.
Westlaw or processes such as those used effectively in technical services, and they can be driven by new, and sometimes even revolutionary, technologies. What is important is that the improvements result in accomplishing the same thing, only doing it better. Therefore, sustaining technologies are pertinent to Six Sigma improvement techniques and strategies.

Disruptive technologies affect law libraries as well. Mobile phones are a good example of disruptive technologies that have altered the very way that libraries work. Search engines and Google are other examples. Drones, robots, and other newer technologies could have the same disruptive impact and should be reviewed, and if thought to be useful, should eventually be added to the strategic director’s future planning efforts. A few of these technologies are explored in the sections that follow.

Mobile Technologies

Many of us forget that mobile technologies such as SMS and text messaging arrived on the law library scene at about the same time that web browsers were coming into their own in the early 1990s. Libraries began to embrace mobile technologies for learning and service delivery long after they were initially introduced.

Some faculty may not want the library to deliver services, information, learning modules, or other little-known services to their students’ phones because they believe students already receive too much information. However, phone apps that supply reminders, tips, help from a librarian, or QR codes might well make these students more effective learners in those professor’s classes. Students who need these extra prompts might view text services as important enough to pay for with their current mobile phone plans.

Law library directors need to forecast, develop, pilot, and introduce other mobile technology uses more quickly. Ripe for planning and development now are mobile services that address lifelong learning.

Mobile services and information provided to users will be unique to each law library setting. However, if the 2016 Horizon Report is an accurate predictor of the immediate future, then law libraries would be wise to consider how they might leverage learning analytics and adaptive learning methodologies through mobile technologies to improve student outcomes. Additionally, library involvement in mobile teaching and learning about augmented and virtual reality could prepare students for future workplace needs. These reality spaces could be created by law libraries from current print and electronic materials and transformed into “rich contextual settings, appropriate for mobile technologies that more closely mirror real world situations.” For example, Makerspaces are already used in some law library settings. Makerspaces for mobile technologies are likely to arrive soon.
and law libraries would be prepared to support them if they started planning now.\footnote{104}

### Artificial Intelligence

\section*{¶76} Definitions of artificial intelligence (AI) differ widely, depending on the situation and resources being discussed.\footnote{105} AI is machine learning in all forms and formats. AI already affects the management and distribution of information and information flows. Take IBM's Watson, for example. Or consider the way AI is used on Internet sites to observe and interact with users' online movements.

\section*{¶77} Although not directly related to law libraries, a recent article on AI and product design forecasts the automation and simplification of work processes through constructing better user interfaces (UI). Law libraries that plan for ways to prepare content instead of just leading users to it would be personalizing the user experience (UX) and preparing for the future.\footnote{106} Law library directors should also contemplate how ROSS, touted as AI for lawyers, might affect the need for law librarians in the future.\footnote{107}

\section*{¶78} Soon, if not already, AI will be used to understand the way a human brain works. Once AI can interpret text and the meaning behind the text in a research passage and apply it to the question presented by a researcher, librarian's roles will change. The need for reference staff could even disappear.\footnote{108}

### Internet of Things

\section*{¶79} The Internet of Things (IoT) is a system of interrelated computing devices, machines, objects, animals, or people that carry unique identifiers and transfer data over a network without requiring human-to-human or human-to-computer interaction. The latest issues of Library Technology Trends highlight potential uses of the IoT and predict some uses in libraries.\footnote{109} Law library directors would be wise to explore the literature behind the predicted uses of these systems.

\section*{¶80} In 2016, there was a consensus that IoT-generated data not only had a place in analytics, but could be programmed to learn.\footnote{110} If true, then those data streams created by the IoT could create research tools that we have not yet dreamed about. Law libraries need to become aware of the policy and privacy implications those

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\footnote{104} Horizons Report, supra note 101, at 42.


\footnote{107} Marketing on ROSS's website states: “Join the world’s leading law firms and in-house teams in embracing artificial intelligence. ROSS is an artificially intelligent system that gets smarter each day to advance your legal career.” ROSS, http://www.rossintelligence.com/ [https://perma.cc/66QC-MFHA].


\footnote{110} Talley, supra note 105, at 388, ¶ 8.
data streams could generate. The strategic librarian will also need to forecast the implications of budget changes that might be needed to gain access to such non-mainstream information.

3D Printing

§81. Three-dimensional (3D) printing creates three-dimensional solid objects from digital files. At first glance, it might seem unlikely that this technology would affect libraries at all. But look again.

§82. At Ball State, librarians began to think about how educators could take advantage of 3D printing to enhance curricula and promote professor knowledge and student learning of essential principles. The project involved using a printer, located in the library, to monitor curricular activities of chemistry students. Those same students were then paid to become proficient in the use of the 3D printer, to experiment with learning applications, and to collect data in relation to the use and maintenance of 3D printers for the library.111

§83. It is relatively rare to have a direct curricular collaboration of this type.112 Similar collaborations with law library users are the type of disruptive 3D uses that the strategic law library director will already have contemplated through her literature scans.

Altmetrics

§84. Altmetrics, short for “alternative metrics,” use collaborative and social web resources to measure and quantify scholarly influence. This data can be used for various purposes, including the assessment of faculty for tenure and promotion, which often falls on the law library to compile. Altmetrics can include numerous scholarly work products ranging from social media responses to journal articles, academic blog posts, research bookmarking services, online videos, datasets, computer software, online presentation materials, and many more items available through the Internet.113

§85. The impact of compiling these assessment tools and reports is labor intense for many law libraries. The value lies in the fact that librarians can pinpoint the important works being read by both scholars and the general public to better promote them and enhance the reputation of the school. As the field of Altmetrics enters the second half of this decade, its potential for reputation management and community building may be key areas for librarians to monitor and for which the library could take on a critical role in building communities of researchers.114

Quantum Computing

§86. Modern digital computers manipulate data built on bits, the smallest unit of digital information.115 Digital computer processors perform mathematical operations

112. Id. at 12.
on these bits (units) one at a time (although at incredibly high speeds). At this micro level, the bit is replaced by the quantum bit, or qubit\textsuperscript{116} which can exist in more than one place at a time. In the current macroscopic world, objects exist in only one place at one time. Quantum computing at the qubit level is currently at a highly experimental stage, and many engineering problems need to be overcome before this type of computing becomes ready for practical use.\textsuperscript{117} Because quantum computers promise to provide information billions of times faster than today’s computers, it is difficult to predict their effect on law libraries and information retrieval, although privacy and information security are areas that law libraries should be exploring now. Letting our imaginations run away with us, perhaps libraries could become the first place that patrons visit using teleportation techniques that quantum computing technologies are exploring now.\textsuperscript{118} Imagine being transported to the Bodleian Library for the first time to answer a reference question. Virtual reality techniques that law libraries develop to meet user needs are another of the infinite possibilities that quantum computing holds in store and is a reality for which libraries can plan now.

**Becoming Truly “Unwired”**

\textsuperscript{116} One of the last disruptive technologies that could affect the way that law libraries operate is chemical or “unwired” computing techniques. Although not yet on the radar of the *Horizon Report* for its educational impact, a scan of unwired technologies is one that the strategic director should consider taking now. If unwired technologies eliminate the need for a “place to compute,” some might argue about the need for law libraries to exist at all. However, computing and studying is not the only reason that libraries have existed through the ages. The law library or similar spaces in the future will always have a role and an impact on core values such as access and stewardship.\textsuperscript{119}

**Conclusion**

\textsuperscript{117} Academic law libraries have played an important role in law schools over the past century and, one could even argue, since the advent of the book in the fifth century. The law library as a place to meet, discuss issues, and analyze the law will always be needed. The question is whether libraries will be needed in the near future to access materials and files. Realistically, the number of law schools and law libraries may drop in the future. This could mean that law schools will lose unique information that those law libraries preserved and shared in the past.

\textsuperscript{118} Planning and forecasting will play major roles in the ways that library administrators meet changing needs. If the director of the future uses a strategic approach to assess and analyze the present state of her library and accurately predicts the future, perhaps little useful information will be lost and few programs will suffer. Once implemented, strategic processes provide a good framework for ways


\textsuperscript{116} Id.


to approach future opportunities and threats such as those mentioned throughout this article.

¶90 As technology continues to inhabit the globe of the legal service continuum, “it will create a major new frontier for those legal academics focused on the needs of consumers.”120 The strategic librarian will ensure that her law library meets those technology challenges, adds value to them, and trains the students and faculty in their use. And, as law schools assess the need for and begin to provide targeted training aimed at emerging legal occupations such as compliance, mediation, artificial intelligence, e-discovery, and others that are not currently contemplated, law libraries and their staff will be there ready to guide their institutions in processes and strategies that will add value to the programs and curricular changes that these new training programs demand.

¶91 The strategic director who constantly scans the legal landscape, plans strategically for the present and the future, and reviews technology changes will be prepared for this unpredictable future. It will prove to be an exciting and bumpy one given the current pace of change. Good fortune, success, and Godspeed on your journey through the rest of this century.

Law for Farmers in Nineteenth-Century America

R.B. Chandler, Jr.** and M.H. Hoeflich***

This article discusses the popular guides to law that were published specifically for farmers. The authors analyze the form and structure of these guides, their publishing history, and the ways in which these books permitted farmers to avoid the costs and headaches of hiring lawyers.

Introduction

§1 In the nineteenth century, as today, Americans were a legalistic people. They were not simply litigious but believed that law properly regulated society. And although, as Alexis de Tocqueville noted, lawyers as a class formed a quasi-aristocracy in the United States, generally Americans did not like them. As many negative terms for lawyers, such as pettifogger and “tavern lawyer,” were applied to the profession as were honorifics. Of the many negative characteristics assigned to lawyers in the popular mind, none was more widespread than that of greed. Going to a lawyer for advice or representation, many believed, could result in a client’s impoverishment—if not from losing the case, then from the lawyer’s fees. This seeming incongruity of belief in and dependence on the law combined with a dislike of lawyers resulted in the appearance of a specialized genre of literature during this period: the hundreds of books that advertised using the slogan “every man his own lawyer.” Begun in England in the eighteenth century, this genre was soon adopted by Americans as well.2

Every Man His Own Lawyer

§2 The average nineteenth-century American man could not master the technical intricacies of pleading and procedure to represent himself adequately in a courtroom. In litigation, therefore, the legal profession enjoyed an unassailable monopoly. In other matters, however, such as drawing a will, a lease, or a contract, a mostly literate individual could act without a lawyer so long as he had a decent exposition of the law and form documents that he could adapt to use. Most nineteenth-century

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lawyers did not draw up original documents for each case but depended on published law blanks and formbooks. A layperson who obtained a set of law blanks or a formbook with adequate explanations could easily draft his own forms and avoid legal fees and any entanglement with a lawyer.

¶3 The publication of volumes of forms and legal information for nonlawyers served publishers’ needs as well. Legal publishers depended on law professionals and libraries as their primary market, but this market was limited in size. The market for law books geared to laymen, however, was an entirely different matter. Many newspapers and general publishers found that producing law blanks and law collections formed a lucrative business: first, because the number of nonlawyers seeking legal publications was not self-limiting like the professional market; and second, because forms had to conform to the sometimes very different laws of numerous local jurisdictions. Furthermore, since laws on such matters as contract, estates, trusts, and property transactions often changed year to year, frequent new editions were necessary to keep these forms up to date. These geographical and chronological realities created important business advantages. Publishers generally did not face national competitors to their local productions, and each published edition produced a new market. The more frequent the editions, the more copies sold over time.

¶4 Commonly, publishers of these volumes retained local lawyers to draft or revise the forms and to keep them up to date. The use of local lawyers, particularly when their names appeared on the title page, added prestige to the volumes as well as reassurance to the intended users that the texts were accurate. We may suppose too that it was relatively simple for publishers to hire local lawyers who had worked on formbooks intended for the bar to author similar texts for laypersons. The basic forms remained the same. All that was needed was to add simple explanations of current law, both case decisions and statutes for each jurisdiction. In many cases, too, this task may have consisted simply of modifying existing texts from other jurisdictions to fit local law or updating out-of-date texts.

¶5 In fact, nineteenth-century America was awash in volumes that fit within the general category of “every man his own lawyer.” The vast majority of these volumes were general in scope and designed for merchants and people who had commercial dealings or some amount of personal wealth that would require having a will or making a contract. The subjects included in these volumes were fairly broad and covered topics that would have interested a small businessman or wealthy merchant. Some publishers became widely known for these publications, and a few, like Wells & Company, produced numerous editions for a variety of states.

¶6 In addition to publishing these general volumes for nonlawyers, some publishers targeted special groups. One example is the volumes tailored for women, often titled something on the order of “every woman her own lawyer.” One of the

5. See Hoeflich, supra note 3, at 195.
6. Id. at 194.
7. Id. at 192.
8. Id. at 199–200.
9. See, e.g., George Bishop, Every Woman Her Own Lawyer (1858).
most important such groups, and for which numerous texts were published, was farmers.

Every Farmer His Own Lawyer

¶7 Do-it-yourself law books for farmers and “country gentlemen” were published early on in England, just as those intended for a more general audience. These books attempted to compress the everyday rural business and rural governance into a single volume. One example is William Marriott’s *The Country Gentleman’s Lawyer: and the Farmer’s Complete Law Library.* 10 This type of book, compact and complete in one volume, was a quick reference for lawyers, district officers, and landowners—particularly in relation to the business of farming. Having current access to “the Laws in Force” protected the farmer/businessman from unscrupulous trade and acted as a playbook of sorts for doing rural business.

¶8 Marriot, a barrister of the Inner Temple, 11 explains in a brief address to the reader, “I have selected whatever I deemed essential for furnishing the Country Reader with legal information, to enable him to be a competent Lawyer in matters which concern himself . . . .” 12 He also notes that to own a legal library of the magnitude needed to hold all the information he has painstakingly researched, reviewed, and compressed would “amount to a sum not easily to be conceived.” 13

¶9 Because access to useful legal information and legal aid in the countryside was not readily available, Marriot rephrased statutes, laws, and cases of Common English Law for use in everyday business transactions. In an example, Marriott rephrases the laws concerning weights and measures into a brief paragraph.

Weights and Measures.

A standard of weights and measure is to be kept in market towns, at which balance all the inhabitants may freely weigh without paying any thing; and justices, mayors, bailiffs, and stewards of franchises may enquire of offenders against this ordinance, and do execution of them that be found faulty. 8 H. 6 c. 5 II H. 7. c. 4. 14

The book went through seven editions from 1795 to 1811, with each new edition being printed about every two years and claiming substantial updated information so that it was current. 15

¶10 Law books published for U.S. farmers followed the same pattern as English books—they condensed everyday common transactions and laws in a quick reference format, “compiled by a Gentleman of the Bar.” 16 Their legal forms could be copied by hand and filled out with pertinent details of the parties involved. As long

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11. The Honourable Society of the Inner Temple, commonly known as the Inner Temple, is one of the four Inns of Court in London. To be called to the bar and practice as a barrister in England and Wales, an individual must belong to one of these Inns. See Inn of Court, Black’s Law Dictionary 910 (10th ed. 2014).

12. Marriott, supra note 10, at preface [1].

13. Id. at [2].

14. Id. at 119.

15. WorldCat lists editions from 1795, 1796, 1797, 1801, 1803, 1808, 1811, 1812, and 1817.

16. A book authored by a lawyer of note no doubt gave the work credibility in the eyes of the farmer and businessman. See Paraclete Potter, *The Farmer’s Instructor: or Every Man His Own Lawyer* (2d & enlarged ed. 1824).
as the form was current, correctly followed the law, and contained accurate details, the transaction would be valid. One example of an American volume of this genre is Paraclete Potter’s *The Farmer’s Instructor: or Every Man His Own Lawyer*. The book’s title was meant to sell itself, and at 240 large-print pages bound between 6 ½ by 4 ½ inch covers, the book was a handy, accessible, and quick reference.

The design of the following collection of forms etc., is to bring home to every man’s door a sufficient knowledge of the common transactions of business in life, especially such as those that arise on contract and its operative effect in law to which every member of the community is bound, either directly or indirectly to conform.

¶11 After the short preface, the U.S. Constitution and its amendments commanded the first section of the book, immediately followed by the New York State Constitution. By page fifty-one, the text got down to business, starting with a short but thorough definition, for example, of what a contract is and how it works. This led to examples of legal forms representing several common types of contracts useful to farmers and rural businessmen. Each contract generally included brief italicized “practical remarks” for the contract’s use. The user of the book, either lawyer or layperson, would find the contract form that best suited his needs and then copy the form by hand. The main chapters covered contracts, receipts, bills of sale, deeds, mortgages, powers of attorney, leases, and wills. Each topic was explained, and selected forms followed to be copied and modified as needed.

¶12 Like Marriott’s book for doing business in the English countryside, Potter’s book was geared for those in the business of farming in a rural and expanding countryside. The second edition from 1824 differed from the first edition of 1823 in that the appendix had thirty-six extra pages of updates concerning amendments to previous acts, jurisdiction of officials, highways, right of ways, and school districts.

¶13 By 1850, New York State reformed and passed “the Code of Procedures” to simplify state laws and make them less cumbersome to use. In response, Jacob Multer published *The Farmers’ Law Book and Town Officer’s Guide*. Just as earlier authors had done, Multer wrote that he offered readers a useful and thorough explanation of the new codes so that they, everyday farmers and businessmen, could understand them. He emphasized the importance of one section in particular, that on town officers: “These duties and laws should be understood by the people, whether they hold such offices or not, for it is often as necessary for those interested to know what these duties are, as for those that perform them.” Like other books in this genre, a selling point was that farmers and other men of business needed to stay informed about the law so that they could make good decisions about their trade and work.

¶14 The collection of forms was designed to bring to every man’s door a sufficient knowledge of common business transactions, especially those that arise in

17. *Id.*
18. *Id.* at 4.
19. *Id.* at 51.
20. *Id.* at xxiv–lx (app.).
23. *Id.* at iii.
24. *Id.*
contracts, and their operative effect in law to which every member of the community was bound, either directly or indirectly, to conform.\footnote{25}{See \textit{id.} at iv.}

\%15 The second part of the book provided sample forms for most rural business transactions, which, again, could be copied by hand and modified as needed. Each heading or chapter title had a fairly detailed explanation of what the following text or document was intended to do. These practical remarks appear to have been written more for the benefit of the common businessman and farmer, and less for the lawyer or town officer as in the first section of the book. The sample forms’ language was simplified, but still quite detailed enough to be an accurate and authoritative document. \textit{The Farmers’ Law Book and Town Officers’ Guide} went through six editions from 1851 to 1859 to keep current with rapidly changing laws.\footnote{26}{Editions were published in 1851, 1852, 1853, 1854, 1856, and 1859.}

\%16 “Plain, Practical statements of the Laws” exclaimed the title page of the 1886 edition of \textit{The American Agriculturist Law Book.}\footnote{27}{Henry B. Corey & Henry A. Haigh, \textit{The American Agriculturist Law Book: A Compendium of Every Day Law, for Farmers, Mechanics, Business Men, Manufactures, etc., etc.} (1886).} The authors, Henry B. Corey and Henry A. Haigh, were listed only as authors and members of the New York Bar and Michigan Bar respectively, with Corey listed as having a law degree of \textit{Legum Bacca laureus} (LL.B.).\footnote{28}{Bachelor of Laws, \textit{Black’s Law Dictionary}, supra note 11, at 1077. Henry Bascom Corey also authored \textit{Law Without Lawyers} and \textit{The People’s Law Book}, which were both heavily advertised in men’s and women’s popular magazines and book catalogs. Henry Allyn Haigh earned a B.S. from Michigan Agricultural College in 1874, and an LL.B. in 1878 from the University of Michigan. He published \textit{Our Rights and Duties: Manual of Law and Business Forms} in 1887, a compilation of laws applicable to farm life and rural districts. 4 \textit{Clarence Monroe Burton et al., The City of Detroit, Michigan, 1701–1922}, at 181 (1922).} No preface or introduction preceded the text, which was packed with everyday law. The language was as advertised: plain, practical, and to the point, clearly written for the common user as a quick reference. The book’s twenty-four chapters covered almost every transaction a businessman or farmer might encounter in his everyday affairs. Contracts, partnerships, corporations, deeds, wills, and powers of attorney were all explained with legal terms defined for the reader. Forms for copying were supplied with basic instructions on how to fill them out.

\%17 \textit{The American Agriculturist Law Book}, published in 1886, contained the same topics in its table of contents as the \textit{The Farmer’s Instructor: or Every Man His Own Lawyer} (1884) and, from more than eighty years earlier, \textit{The Country Gentleman’s Lawyer: and the Farmer’s Complete Law Library}.\footnote{29}{Marriott, supra note 10.} A twenty-page, detailed alphabetical subject index, including the sample forms under each subject heading, allowed the user to navigate this 404-page book with ease.

\%18 What is striking now is that lawyers and their expertise were hardly mentioned. Lawyers were noted only briefly in the definitions of legal terms. \textit{The American Agriculturist Law Book} stressed instead that by knowing the common law, doing business honestly, and avoiding legal trouble, farmers would not need to hire legal professionals.

Avoid litigation. Farmers, perhaps more than any other class of men, “go to law” because of some spite or personal enmity over a wrong which is often largely imaginary, and for which they are equally to blame. Differences arise, it may be honestly, which a few dollars would settle at the outset, or a little charity would forever forgive. Unscrupulous attorneys may
enlarge their importance by discerning great principles in them; the ill will engendered becomes hatred, and the hatred may become revenge; thousands of dollars are squandered to prolong the differences . . . and when they are finally settled . . . are found to have nothing in them.\textsuperscript{30}

The authors continued, writing that when differences have grown serious enough to lead to a lawsuit parties should have their lawyers try to settle matters amicably. “The lawyer’s best work is in preventing and avoiding litigation, just as the doctor’s most valuable service should be in preventing disease . . . . A good lawyer’s best clients seldom get into the courts.”\textsuperscript{31}

¶19 Another feature to note: the publisher of The American Agriculturist Law Book solicited readers to purchase The American Agriculturist for the Farm, Garden, and Household,\textsuperscript{32} a journal printed in both English and German.\textsuperscript{33} Other popular reading titles and subjects were offered via catalog purchase from the publisher. In addition, three editions of The American Agriculturist Law Book were printed in 1885, 1886, and 1887.\textsuperscript{34}

¶20 Noticeable changes in this genre of books appeared with the 1899 publication of The Agricultural Log Book.\textsuperscript{35} First, this book’s ready-made legal aids were intended for farmers and businessmen, not for attorneys. The book’s primary purpose was to explain annual bookkeeping and farm management techniques, and provide the common legal forms a farmer might need for his transactions. A small section titled “Instructive Laws for Farmers” described everyday business practices, as had The American Agriculturist Law Book (1886), but the book provided only basic practical information about topics such as contracts, deeds, and mortgages. Overall, the lawyer’s status seemed significantly diminished. He no longer authored the book or provided legal expertise, and thus was pushed out of the “every man his own lawyer” market.

¶21 Second, the volume was large: 17 by 11 inches. This allowed for the book’s ample supply of ledger pages with basic tables for recording twenty years’ worth of livestock, equipment, and expenses.

¶22 Third was the book’s preprinted legal blank forms. Instead of transcribing a legal form by hand onto a separate paper, now the farmer or businessman simply filled in the blanks in the preprinted spaces provided—for names, dates, terms, and so on—and then detached the form along the perforated cut lines. While the number of blank forms was not generous—77 blank, preprinted forms in the last 39

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\textsuperscript{30} Corey & Haigh, \textit{supra} note 27, at 404.

\textsuperscript{31} \textit{Id.}

\textsuperscript{32} Initially a monthly, but later a weekly magazine, it began with vol. 1, no. 1, April 1842, and ceased with vol. 89, no. 20, May 1912.

\textsuperscript{33} Der Amerikanische Agriculturist: Gewidmet der Belehrung aller Klassen, Welche in der Bodencultur betheiligt sind, Darin Begriffen den Farmer, Gärtner, Obstzüchter, Pflanzer, Viehzüchter (Orange Judd Co., Springfield, Mass.). This monthly magazine was printed in English and German; it began in 1842 and ceased in 1888.

\textsuperscript{34} Corey & Haigh, \textit{supra} note 27.

\textsuperscript{35} John W. Hallman & Central Publ’g Co., \textit{Agricultural Log Book: A Complete and Simplified System of Accounts for the Farmer, Planter, Stock Raiser, Fruit Grower, Dairymen, etc., etc. with a Compendium of Instructive Laws and Valuable Information and Recipes for the Farm, Household, Horses, Cattle, Hogs, Sheep, Poultry, etc., etc.: Together with a Complete Household Expense Account and Detachable Legal Blank Forms} (1899).
pages of the 400-page volume—they provided the means to quickly and cheaply create all the basic legal documents a farmer or businessman would need.

¶23 The Agricultural Log Book appears to have had only one printing in 1899. The reason may have been that publishers and printers earned more income selling advertising space—pages they could insert into the Log Book customized for local merchants to advertise their goods and services to farmers—than from publishing frequent new editions.

¶24 Evidence of this printing practice appears in the copy held in the collection of the Wheat Law Library at the University of Kansas. The owner/farmer began entering data about his farming enterprise on January 1, 1911. The Log Book includes a one-page, front and back insert of advertisements from the merchants of the town of Lexington, Nebraska.\textsuperscript{36} A local unnamed printer or publisher has sold space on this inserted page to the merchants to advertise and offer discounts to customers. “We the undersigned merchants agree to accept five per cent rebate coupons issued to purchasers of the Agricultural Log Book on all cash sales.”\textsuperscript{37} These merchants included Lembach & Wiese Dry Goods; Rosenberg Hardware Co.; The Hyde Studio—Fine Photographs (including their phone number—349); Wm. G. Kugler, Blacksmithing—Wagonwork—Machine Shop; Dr. M. E. House—Dentist; and Ford & Emerson—Undertaking and Embalming.

¶25 A search in WorldCat reveals a copy of the same edition of the Log Book is held at the University of Virginia.\textsuperscript{38} It includes six pages of inserts printed by local printer Schmid's Printery, Staunton, Virginia, with similar advertisements by local merchants offering the same announcement of five per cent rebate on cash sales: e.g., Jos. L. Barth & Co.—Clothiers; W.C. Marshall—Druggist; Timberlake Shoe Co.; H.L. Lang—Jeweler; Crawford & Smith—Farm machinery; J.P. Ast Hardware Co.; Frank Grim—Monuments—Headstones; and Staunton Wagon and Buggy Co.\textsuperscript{39}

¶26 By the early twentieth century, printers and publishers were providing individualized printings of local laws and legal forms to generate income. From 1903 to at least 1925, the Bankers Law Publishing Co. out of Kansas City, Missouri, published a 100-page volume of “Laws Made Plain,” with customized book covers printed for a local bank such that the bank could advertise its attributes to clientele, who were mainly farmers and businessmen. The format of “Laws Made Plain” books included the general statutes of the state it was printed for, with example legal forms: wills, contracts, deeds, bills of sales, leases, mortgages, and power of attorney—generalized blank forms intended to be copied by hand.

¶27 The Bankers Law Publishing Co. simply printed the current statutes of the state, and in turn, a local printer or publisher could print customized book covers, no doubt for a fee, for every bank in every city and town in that state that wanted to advertise its brand. Each book was “compiled” by a prominent “former” attorney general or “ex-” commissioner of said state, who authored a brief, often vague preface on being better acquainted with the general provisions of the statutory law of

\textsuperscript{36} Id. (see advertisement insert page).
\textsuperscript{37} Id. (see advertisement insert page).
\textsuperscript{38} Albert & Shirley Small Special Collections Library, University of Virginia, Charlottesville, Virginia.
\textsuperscript{39} Hallman & Central Publ’g Co., supra note 35 (inserted advertisements).
the state. A notable attorney’s name on the book, whether he had much of a hand in its creation or not, gave the book credibility.

¶28 Such an example is the Spencer Research Library’s copy of the 1903 edition of *Kansas Laws Made Plain; Laws and Legal Forms Prepared for the Use of Farmers, Mechanics and Business Men.*40 The customized printed book cover for the Watkins National Bank of Lawrence, Kansas, is a volume compiled by the Honorable A.A. Godard, former attorney general of Kansas.41 Godard authored a brief preface, which included that *Kansas Laws Made Plain* “is not intended as a compilation or outline of all the statutes, but only of such as will interest farmers, mechanics, and businessmen generally.”42 Printed prominently on the cover of the book, in bold type: “Presented by Watkins National Bank of Lawrence, Kansas.” The back cover boasts the strong attributes of the bank and its capital assets.

¶29 A later 1910 edition of *Kansas Laws Made Plain* is the same volume as the 1903 edition, authorized by Godard, with the same preface, laws, and legal forms. The only difference between the editions is that the cover has been custom-printed to advertise the National Bank of Barnard, Kansas.43 This copy, which is held in the Wheat Law Library at the University of Kansas, illustrates how slight changes in printing could quickly and easily provide mass-produced individualized advertising to banks over the entire state of Kansas.

¶30 A search of the Library of Congress online catalog shows that the Bankers Law Publishing Co. of Kansas City, Missouri, published the “Laws Made Plain” format from 1903 to at least 1925, with almost all fifty states having multiple editions. In every case, the publisher slightly modified its template to print the name of the state and then added the respective state’s statutes. A “former” official added a short preface, but the generic legal forms remained unchanged. A local printer or publisher then customized the books’ covers by printing the name of a local bank. Other editions published with this same printing production were Missouri in 1915,44 Texas in 1921,45 South Dakota in 1922,46 Virginia in 1923,47 California in 1924,48 and Kentucky in 1925.49

40. *Aretas Allen Godard, Kansas Laws Made Plain; Legal Forms Prepared for the Use of Farmers, Mechanics and Business Men (1903).*

41. A.A. Godard was Kansas Attorney General from 1899 to 1903. See 2 Frank Wilson Blackmar, *Kansas: A Cyclopedia of State History, Embracing Events, Institutions, Industries, Counties, Cities, Towns, Prominent Persons, etc.* 134 (1912).

42. Godard, *supra* note 40, at ii.

43. *Aretas Allen Godard, Kansas Laws Made Plain: Laws and Legal Forms Prepared for the Use of Farmers, Mechanics and Business Men (1910).*

44. *William M. Fitch, Missouri Laws Made Plain: Laws and Legal Forms Prepared for the Use of Farmers, Mechanics and Businessmen (1915).*

45. *D.E. Simmons & D.A. Simmons, Texas Laws Made Plain: Laws and Legal Forms Prepared for the Use of Farmers, Mechanics and Business Men (1921).*

46. *Oliver E. Sweet, South Dakota Laws Made Plain: Laws and Legal Forms Prepared for the Use of Farmers, Mechanics and Business Men (1922).*

47. *Josiah Dickenson Hank, Virginia Laws Made Plain: Laws and Legal Forms Prepared for the Use of Business Men, Farmers, and Mechanics (1923).*

48. *John Francis Davis, California Laws Made Plain: Laws and Legal Forms Prepared for the Use of Farmers, Mechanics and Business Men (1924).*

Conclusion

¶31 This study of legal books published for the benefit of farmers in the nineteenth and early twentieth centuries demonstrates a number of points useful to legal historians, historians of the book and publishing in the United States, and those interested in the roles of lawyers in American society. First, this subgenre of the “everyman his own lawyer” demonstrates the continuity of the form from England to the United States, a continuity undoubtedly resulting from similar social and agricultural demands. Law was pervasive throughout society and no person engaging in business of any sort, including agriculture, could afford not to be conversant with the relevant law and legal principles. On the other hand, lawyers were expensive. Farmers, especially, may not have had the cash to pay a lawyer every time a contract or other legal document was needed. These law books designed for farmers made it possible to avoid using lawyers to accomplish basic transactions. At the same time, publishers found that these sorts of books were always in demand, and since the law changed on a regular basis, it was a market that renewed itself periodically. Thus, the books discussed in this article met the needs of both publishers and farmers, which was why the genre flourished for so long in both England and the United States.
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 2016 and 2017. If you would like to review books for “Keeping Up With New Legal Titles,” please send an e-mail to bkeele@iu.edu and nsexton@email.unc.edu.

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Reviewed by Clare Gaynor Willis*

¶1 The idea behind The Craft of Librarian Instruction: Using Acting Techniques to Create Your Teaching Presence certainly caught my attention. I worried, though, that the comparison of acting to teaching would be a gimmick. It was not. The authors’ deep research and appreciation for acting truly shows. The book is well researched and includes ample references and notes for further reading.

¶2 The authors state that they wrote the book for librarians who are new to teaching, librarians who struggle with classroom “stage fright,” and experienced librarians looking for a new perspective. They acknowledge the increasing demand for instruction librarians and lament that librarian education does not often provide coursework to help train for that role.

¶3 One especially strong part, which could have been a model for how to improve other sections of the book, is the section comparing an actor’s objectives with student learning objectives. The authors first explain objectives from the actor’s perspective, stating that she creates objectives “to define [her] moment-to-moment needs and desires” (p.49) and uses tactics to accomplish those objectives and satisfy those needs and desires. The authors then compare those objectives and tactics to a librarian instructor’s work identifying student learning outcomes and teaching with those outcomes in mind. The authors counsel that objectives “are most effective when you craft them in relation to the students” (p.50). This refreshing approach fits with the contemporary understanding of student-centered learning. Finally, the authors advise librarian instructors that “[o]nce you know what your objectives are and what tactics you will use, your actions become more mean-

* © Clare Gaynor Willis, 2017. Research and Instructional Services Librarian, Pritzker Legal Research Center, Northwestern Pritzker School of Law, Chicago, Illinois.
meaningful, and your students will know it” (p.57). This section amounts to a useful and persuasive case for using learning objectives to drive classroom interaction.

¶4 I identified several ideas or strategies in the book that took me years of teaching to learn. For example, in a section about improvisation, the authors give some strategies for how to improvise material to fill the time when a database does not respond or there is some other technical error. I developed that same strategy over years of working with unpredictable technology. If newer librarians can learn from this book, instead of making mistakes in front of students and faculty, then this book is a valuable read.

¶5 The authors do a good job of bridging the gap between the best practices of teaching and the actual experience in the classroom. The teaching literature, including several articles cited by the authors, concludes that students are more engaged when the instructor speaks clearly and confidently. Rather than just telling new instructors to speak up, the chapter on physical and vocal preparation borrows acting advice and exercises to show how teachers can “use . . . physical or vocal tools to their best expression in the teaching environment” (p.17).

¶6 The authors sometimes fail, however, to demonstrate the connection between acting technique and librarian instruction. For example, the authors explain the idea of an actor’s motivation with examples from Hamlet and a lengthy quote from an acting teacher. Yet they end the section with this conclusory statement: “It is clear that motivations can fuel powerful intentions that strengthen your teaching purpose and instruction presence” (p.73). The authors may have assumed their audience is familiar already with librarianship and information literacy instruction. Even if this explains why they write more about acting than library instruction, it does not excuse them from more directly connecting acting and teaching.

¶7 I believe this book is most suitable for new librarian instructors or librarians struggling with classroom stage fright. Although the book likely would appeal broadly to teaching librarians, most of the examples and advice center on undergraduate libraries and, more specifically, one-shot instruction sessions. This limits how helpful the book can be to a law librarian. Thus, unless a law library is starting an instruction program and hiring new librarians into instructor roles, I do not think it is an appropriate book to add to a law library collection because of its narrow interest.


Reviewed by Lucinda Harrison-Cox*

¶8 Massachusetts Legal Research is the part of the Carolina Academic Press Legal Research Series covering research in thirty-one states and at the federal level. The stated goal of the series is to provide concise guides to legal research for a wide range of readers. This creates a daunting challenge for authors. Writing for an audience who may need to know about general legal research and jurisdiction-specific legal research is quite different from writing for an audience with some legal

* © Lucinda Harrison-Cox, 2017. Associate Law Librarian, Roger Williams University School of Law Library, Bristol, Rhode Island.
research knowledge who needs information only on a specific jurisdiction’s legal research information. The authors of this work, two professors from Massachusetts law schools, state from the beginning their view that research is a process. This combined focus on process, linked with the requirement to make the material accessible to the full range of researchers envisioned by the series, is both the work’s strength and weakness.

¶9 The strength is that the process parts are well written and accessible. The process takes a beginning researcher along a path, exploring research tools and showing how to use those tools. The weakness is that it results in a book that leaves the reader wanting something more. This is particularly true as the series suffers from the apparent requirement to include discussion of federal material in addition to state materials. This choice both distracts from the emphasis on the jurisdiction’s research and, by taking space in this concise work, weakens it as a source of information on Massachusetts research. The process coverage is strong, but the Massachusetts research tools coverage does not stand up as well.

¶10 The book consists of just ten chapters. The first two chapters focus on process. There is a brief discussion of the Massachusetts court structure, the designation of Massachusetts as a Commonwealth instead of a state, and the occasional reference to Massachusetts sources in these chapters. Abbreviated tables are included with footnotes providing sources for more in-depth information. Most of the content could easily apply to legal research in any state. It is a sound introduction to research process for any beginning researcher.

¶11 The chapters progress through secondary sources, judicial opinions, case law research, statutes, legislative process and legislative history, administrative law, constitutions, and, very briefly, rules. Each section follows an established pattern for the series, mixing broad introductory, state, and federal research information. As noted above, this takes valuable space away from the ability to focus on the specific jurisdiction’s resources. Here, there is less focus on Massachusetts materials. Some introductory text is naturally necessary. The process aspect fitting each new tool into place works. E. Joan Blum and Shaun B. Spencer have managed to fit a remarkable amount of information into a small package. However, the focus on Massachusetts resources gets lost in the big picture approach.

¶12 The chapter on secondary sources shows this loss of Massachusetts focus. When discussing treatises and books, more of the titles used as illustrations are national titles, not Massachusetts titles. Using Massachusetts titles could have had the added benefit of introducing the reader to jurisdiction-specific resources. The discussion of law reviews uses titles from Drake University and Duke University as examples. In both instances, Massachusetts journal examples exist. Just as striking, for legal encyclopedias, the authors fail to mention that Massachusetts does not have a state encyclopedia. They discuss only the national encyclopedias.

¶13 The chapter on judicial opinions contains an effective introduction to the Massachusetts court system and the process by which cases are reported. Even the portion on the federal courts ties into the Massachusetts courts. By contrast, the chapter on case law research could have been included in any book in the series by just changing a couple of screenshots. While Blum and Spencer do not include many screenshots from online research vendors (Bloomberg Law, Lexis Advance, and Westlaw), they do consistently include discussion of online research where appropriate.
¶14 The pattern of strong discussion of process, complemented by sometimes strong and sometimes less focused discussion of Massachusetts resources, and finished with a journey into federal research continues throughout the book. At the end, there are two interesting appendixes on citation and full-text searching in research databases. The citation appendix provides both general and Massachusetts citation guidance. The appendix on searching is not Massachusetts specific. However, it does provide a brief refresher for a researcher who might need a reminder of some solid practices.

¶15 There is another guide to legal research resources in Massachusetts. The *Handbook of Legal Research in Massachusetts*¹ is a very different resource and is frequently cited by Blum and Spencer. It focuses solely on Massachusetts materials in much greater depth than *Massachusetts Legal Research*. However, the *Handbook of Legal Research in Massachusetts* lacks the emphasis on process that a beginning researcher would find helpful and, frequently, necessary. Each work has significant strengths. Yet neither work is truly complete.


Reviewed by Janeen Williams∗

¶16 Rose Elizabeth Bird may seem like a tragic figure to some. She became California’s first female supreme court justice in 1977. In 1986, she lost her retention election and was removed from the bench. In *The Case of Rose Bird: Gender, Politics, and the California Courts*, Kathleen Cairns attempts to present the former California supreme court chief justice as a complete person and not a caricature. Cairns portrays an accomplished individual who ascended to positions of power that few women had during that time period. Bird’s career culminated in public humiliation when she failed to win voter approval. She subsequently faded from the public eye, although for decades she remained a cautionary tale. Cairns explores the role that gender had in Bird’s failure to win retention. She also explores the possibility that Bird’s own actions may have contributed to her failure to win the popular vote.

¶17 The book begins with an overview of Bird’s childhood. Bird was an over-achieving high school student who participated in many organizations and sports teams. Despite her involvement in school activities, she was not viewed as popular. This theme recurs throughout the book. Bird is portrayed as highly accomplished but not universally liked; she was viewed, at times, with contempt.

¶18 Cairns examines the importance of the California Supreme Court. She refers to it as “the nation’s most pioneering and prestigious state judicial institution” (p.58). To support this statement, she provides the example of *Perez v. Sharp*,² a case in which the California Supreme Court found the state’s anti-miscegenation laws to be unconstitutional decades before *Loving v. Virginia*³ was decided.

¶19 Death penalty decisions were a point of contention during the time Bird was on the court. Cairns focuses on the death penalty because it was one of the


2. 198 P.2d 17 (Cal. 1948).

motivating factors cited by organizations that sought to remove Bird from office. During Justice Bird’s tenure, the political and social climate in California was shifting. California revised its death penalty statute in 1977. The new statute set forth special circumstances under which the death penalty could be imposed. The following year Proposition 7, a ballot measure, expanded the list of circumstances for which the death penalty could be imposed. The wide margins by which this measure passed indicated that, at this time, Californians supported the death penalty. In dissents written in death penalty cases, Justice Bird emphasized that the death penalty could be justly imposed only as a result of a fair trial. Opponents would later use these dissents as evidence that she was soft on crime.

¶20 Cairns argues that Bird’s removal from office signaled a shift away from an independent judiciary toward an increasingly partisan judicial appointment process. She emphasizes this point by comparing Justice Bird’s removal to the nomination of Robert Bork to the U.S. Supreme Court. With this comparison, Cairns demonstrates that Bird’s story has national implications when viewed as the start of a trend. At the time, Bird’s contentious nomination hearings seemed abnormal. Today, after the Bork hearings, we are no longer shocked by partisanship in the judicial nomination process.

¶21 Cairns is sympathetic toward Bird, the first female to hold several traditionally male-dominated positions of authority, but she is critical as well. This is evident when the reader reaches the description of the second female chief justice to serve on the California Supreme Court. Tani Cantil-Sakauye is described as both charismatic and media-savvy. According to Cairns, Bird’s lack of these traits likely contributed to her downfall.

¶22 This book would be an asset to both law and academic libraries. Law students and professors would be delighted with the insider view of the inner workings of a state supreme court. Additionally, the book provides insight into the sparse job opportunities that were available for women in law during the 1960s and 1970s. This historical perspective could be useful for both law students and professors. The book heavily focuses on California and, sometimes, national politics and gender. It would be beneficial for academic libraries that have patrons engaged in political science studies or gender studies.


Reviewed by Sherry L. Leysen*

¶23 In the TV series *Mad Men*, a poignant episode involves Don (played by Jon Hamm) and Peggy (played by Elisabeth Moss) working together on the Samsonite luggage campaign.4 If you are a *Mad Men* fan, you may know that the show’s creator, Matthew Weiner, also received a “written by” credit for this particular episode (garnering him an Outstanding Writing for a Drama Series nomination at the Sixty-Third Primetime Emmy Awards). Now, think of an advertisement that caught your attention. While you surely will recall the brand owner or product and

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can probably determine with a little investigating which advertising agency created it, do you know who wrote the ad’s content or copy?

¶24 In *Writing for Hire: Unions, Hollywood, and Madison Avenue*, Catherine L. Fisk masterfully presents the history of two professions: Hollywood writers (television, film, and radio) and Madison Avenue advertising writers. She explains through the framework of labor, employment, contract, and intellectual property how different norms of attribution and anonymity led to parallel but distinct models. She describes how credit (such as that for Weiner mentioned above) was hard-fought through decades of work by the Writers Guild as a way for writers to retain some rights of authorship and control. She explores how ad agency norms led to the scenario where consumers readily identify the brand owner associated with a creative work, but not the individual writers who created it, through a model of intentional nonattribution.

¶25 *Writing for Hire* is logically arranged in three acts. Act I includes the two-chapter section “Beginnings.” This section offers an illuminating look at the advertising agency model of the early twentieth century and its norms of professionalism (highlighting the prolific agency J. Walter Thompson, known for ad campaigns for clients such as Ford, Kraft, and many others). It also presents the early conditions and practices present in Hollywood that led to the formation of the Writers Guild, such as abuse of screen credit. Act II, the three-chapter “Intersections,” delves deeply into the history of radio and television writing and attribution, compensation, and the critical work of the Writers Guild, especially the 1930s through the 1950s. Act III contains the two-chapter “Denouement.” Here, Fisk explores how the Guild navigated the very serious challenges of the blacklist era, particularly in the context of attribution and credit, and closes with a thorough look at labor relations and the midcentury writer-as-employee.

¶26 This is a meticulously researched work. Fisk consulted numerous archives and reviewed decades of historical material, described in the section “Archival Sources.” For the advertising agency perspective, one of the archives she consulted was the J. Walter Thompson advertising agency archive held at Duke University’s Hartman Center for Sales, Advertising and Marketing History. The Writers Guild of America, West (WGAW) was a primary source for the Hollywood perspective. The WGAW granted her permission to review and quote from its extensive files, including its screen credit system files and executive board meeting minutes. Fisk and a colleague also interviewed more than thirty television writers (including Weiner). The conclusion incorporates the perspective of many of these writers, offering a contemporary look at the issues discussed. Screen credit, residuals, and new media, and their connection to labor, employment, and intellectual property issues, are considered.

¶27 This thoughtful and detailed book would be a welcome addition to academic libraries supporting research and advanced scholarship in several disciplines. Labor scholars (along with scholars of marketing and advertising) will benefit from the historical comparison of the two sectors explored in this book: one that unionized, and one that did not. Scholars of entertainment, television, and film will appreciate learning about the historical origins of the Writers Guild, its struggles and accomplishments, and how attribution and screen credit came to be. Intellectual property scholars also will appreciate the discussions concerning what it means to be an author and a writer under the law.

Reviewed by Jennifer Mart-Rice*

¶28 Ah yes, the septennial American Bar Association (ABA) accreditation visit. The stress and anticipation of that visit can send the most organized, controlled administrator cowering in the farthest corner of her office. Add the annual *U.S. News & World Report* law school rankings to the mix, and it is sure to send anyone in legal academia scampering for escape. These two topics dominate *Legal Asylum: A Comedy*, and rightfully so, as they may just be the two most distressing items in our little realm of academia. However, Paul Goldstein turns these two very serious topics into a comedic parable in which one law school dean's world comes crashing down due to her lack of attention or concern for her actions and how they affect those around her.

¶29 *Legal Asylum* is structured into four parts, one part for each day of the ominous ABA site inspection visit. Part I, Sunday, provides us with an introduction to the key players of what would best be described as a game to beat every other law school in the rankings while slinking through the reaccreditation process that has been planned so strategically by Dean Elspeth Flowers. Strategy and planning is what consumes Flowers, down to the number and type of drinks each person at the opening reception is permitted to be served, and which faculty members are allowed to speak to the site inspection team. However, between her late arrival and a last-minute cancellation of a key member of the inspection team, the reasoning for the book's title begins to unfold. Enter the unknown replacement team member, the curious mail clerk, and the Director of Special Projects, and things begin to gnaw their way into Flowers's mind in what Goldstein describes as a “rag-tag army of sprites” (p.39).

¶30 Part II, Monday, finds us digging into the actual strategy that Flowers has concocted to succeed in her quest for the top of the *U.S. News* rankings. Flowers's actions begin to reveal her ignorance, or disregard, of the way she affects those around her with her demands and what might be called an unreasonable and delusional personality. The true reason Flowers seeks that treasured top-ranked spot and how her narcissistic tendencies dominate her decision making and cloud her judgment also begin to reveal themselves throughout Monday as her plans begin to deteriorate. Part II also begins detailing the actual site inspection and how things are not truly as they seem, both regarding the courses being taught and the law school environment that appears to be centered around entertainment at the expense of education.

¶31 The chair of the inspection team, an alumnus named Littlefield, begins to become a main character as his inspection report is dictated and he starts to see Flowers for what she truly is. Not to mention the curious mail clerk turned salesman who is secretly negotiating the expansion of the law school with a mysterious Chinese businessman in the parking lot of the local grocery store.

¶32 Part III, Tuesday, begins with a flurry of activity for Flowers as everything she has worked so hard to control starts to come unwound. Between campus security involvement for one member of the inspection team and the arrest of another,
things begin to look grim. As Tuesday progresses and people begin to question her judgment and decision making, Flowers loses her calm exterior and snaps, leaving one team member in questionable condition and another a possible victim of human trafficking. However, on a positive note, Tuesday also brings the third member of the team, Littlefield, some clarity: the truth behind what is going on at this law school and a possible path that will “irrevocably alter the final chapters of [his] life” (p.146). Who would have thought that there was a glimmer of hope buried deep down in the law school with the Director of Special Projects, and a possibility of saving what Littlefield remembers to be the fondest, yet most brutal, years of his life.

¶33 Without revealing too much, Part IV, Wednesday, is the most exciting part of Legal Asylum by far. As things rapidly fall apart for some characters and fall together for others, Goldstein provides the reader with even more comedic relief. Wednesday is not only decision day, but also an explosion of revelations that will keep you turning the pages rapidly to see what will happen next and who wins this game of law school life.

¶34 Despite its classification as a fictional story, as opposed to many of the items you may be considering for your collection, and keeping in mind dwindling budgets, Legal Asylum is still well worth the small amount of money it would take to add this creative and entertaining title to your shelves, even if only for your own personal collection. Faculty, staff, and students will all thank you for it in the end. Consider grabbing a copy, and enjoy your weekend filled with laughter.


Reviewed by Christine Bowersox*

¶35 The Nutshell series is one that many legal researchers will have encountered when wanting to know a little about an area of law without taking a deep dive into the subject. This Nutshell is no different in its approach. International legal research, once a highly specialized area of research, is made more accessible in this publication. Marci Hoffman and Robert Berring approach the subject with many helpful suggestions for effective research in general, along with guidance on searching for international legal information sources such as treatises, indexes, and organizational documents.

¶36 Chapter 1 begins with the basics, discussing the different types of law a researcher could potentially use when looking for international information. These include public and private international law, foreign law, comparative law, transnational law, soft law, and supranational law, all explained in more detail in the book. Additional basics include help deciphering the many abbreviations and unusual citations you will find in your research. Sources in print and online are mentioned, including the Cardiff Index to Legal Abbreviations and the Guide to Foreign and International Legal Citations.

¶37 Foreign and comparative law are covered in the next section, which discusses how best to use these types of law when searching for international legal information. The authors recommend gaining knowledge of the fundamentals of

civil and common law. Helpful sources for these types of law and guidelines for developing a research strategy round out this chapter.

¶38 Next we move to treaties and international agreements, “one of the most common types of international legal research” (p.49). Helpful tips on locating treaties are included along with full-text sources and indexes to finding both U.S. and non-U.S. treaties.

¶39 Chapter 5 covers customary international law and general principles of law, which are two particularly helpful areas of law when performing international legal research. Neither one is familiar to many researchers outside of international law. The authors recommend secondary sources and digests among other resources to begin searches in these areas of law.

¶40 In discussing international case law, the authors share that dispute resolution mechanisms are of interest to international researchers, along with case law from international courts and tribunals such as the International Court of Justice, the European Court of Justice, and the Permanent Court of Arbitration, to name a few. Websites, databases, dockets, and court filings are also covered within this publication.

¶41 Chapters 7 through 9 cover the European Union (EU), the United Nations (UN), and other international organizations, such as intergovernmental organizations (IGOs) and nongovernmental organizations (NGOs). The book provides background on the EU and the UN, and suggestions on ways to research their treaties, cases, and other documents and legislation. The EU and UN receive slightly deeper treatment than the rest of the topics in the Nutshell. For IGOs and NGOs, a chapter covers strategies for locating documents relevant to these types of organizations. Suggestions on locating research guides and issued documents and publications are listed, along with assistance in understanding document symbols necessary to find said documents.

¶42 The book finishes by discussing research strategies over the remaining chapters. As law librarians, we are well aware of much of the strategic suggestions on how to begin research, even on an unfamiliar topic, but I found these chapters to be of significant use as well as a solid ending. Some suggestions include beginning with sources covering commentary and analysis, giving a solid introduction to an unfamiliar topic. Use of library catalog records, such as OCLC or international-based catalogs, is encouraged. Articles in print and digital formats should be used together; no one format is favored. Working and research papers are another avenue to pursue, these sources being favored more heavily in digital format. The way to organize an approach to researching print and digital resources is outlined along with helpful hints and suggestions for staying on task once a good starting point is found.

¶43 I highly recommend this Nutshell to any law school library or court library that might have patron interest in international law. Law firms that have the occasional need to delve into international research may want to keep a copy of this book in their collection as a starting place.

Reviewed by Aaron S. Kirschenfeld*

¶44 The third—and previously most recent—edition of *Cataloging Legal Literature* (*CLL*) was released in 1997, but readers of the handbook’s fourth incarnation, published in 2016, need not wait so long for updates. Published in both print and digital format on HeinOnline, *CLL4* can keep pace with changes in cataloging practice and in the institutions that manage those changes. The work will be updated frequently, with the authors planning for new material at least every three months until a new edition is published.

¶45 Many current law librarians began their careers sometime after *CLL3* was published, so many readers may not be familiar with the riches it offers. The book is aimed principally at librarians with some experience in cataloging but who lack in-depth knowledge of the peculiarities and varieties of legal sources. That said, the book can also serve as a bridge to cataloging for recent technical services émigrés, who may have experience with legal materials in a reference context, but who are eager to learn the mysteries of, say, subfield b of MARC21 tag 245. (An entire chapter covers “Titles and More Titles” for those curious, and brave, enough to look.) Its descriptive-cataloging sections can be read start to finish or consulted as the need arises, and the second half of the work comprises an extremely valuable A–Z section detailing types of materials and offering tips for cataloging them.

¶46 Two tectonic shifts in the cataloging landscape animate much of the new material in *CLL4*: the shift from AACR2 to RDA, and the explosion in number and type of electronic resources and the metadata records used to represent them. Each chapter of the book contains numerous helpful examples showing the differences between the descriptive cataloging standards, offering in-depth explanations along the way. The newly added chapter on e-resource records covers changes in cataloging rules—such as the gradual disappearance of the General Material Designation, or GMD—as well as in cataloging workflow, accounting for the rise in vendor-supplied e-resource records, for instance.

¶47 A strength of *CLL* since its first appearance in 1984 has been its alphabetically arranged section of legal terms, genres, and subject headings. This part of the work has been greatly expanded to include several hundred entries stretching from “accompanying materials” to “year books” and almost anything in between. Most entries include information about how to use the term in cataloging with suggested subjects, examples, or access points, as well as top-line alerts about the potential pitfalls in cataloging the genre or using the topical heading. Some alerts include snippets of columns from *Technical Services Law Librarian*, and the most detailed can be used for original cataloging of materials uniquely held by a law library. The entry on proceedings, or records, of civil cases offers just one of many such entries.

¶48 The advantages of the online format option are manifest, including full-text searching and links to documentation of major cataloging or subject-heading standards easily at reach from the browser. In short, *CLL4* is both a well-organized and clearly worded primer and a comprehensive reference work that can be useful to

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any member of the law library staff. It will be an essential and up-to-date resource for the ever-evolving practice of the description of legal information, and should take its rightful place in any law library’s collection.


Reviewed by Miriam A. Murphy*

¶49 William G. Ross opens a portal into a fascinating past, focusing on the constitutional stresses that occur when the executive, legislative, and judicial branches come into conflict during a time of war. This book is impeccably researched, drawing on a rich array of primary sources including the personal correspondence and diaries of legislators, officials, and other leaders; statements from the *Congressional Record* and *Public Papers of the Presidents*; and an extensive assortment of period publications and journals from different social factions. Ross has also extensively researched and cited the constitutional scholarship of the era as well as contemporary constitutional analysis.

¶50 At the start of World War I, the United States was coming to terms with an emerging international presence, advances in technology, and upheavals in labor and society, all of which disrupted the economy and challenged the status quo. Ross reviews how the White House, Congress, and U.S. Supreme Court dealt with the impacts of war and change and how they interacted on the issues of personal liberties, including military conscription, regulation of the economy and labor, the treatment of women and minorities, and the League of Nations. Each chapter is dedicated to a single issue and provides an in-depth analysis of the legal environment at the start of the war, changes that occurred, and the actions of each branch of the government.

¶51 The expansion of governmental power and the growing pains of determining which branch of the government has ultimate authority play out again and again throughout the text. Ross profiles agencies empowered by President Wilson under exigencies of war, including the War Department, which implemented draft boards and conscription; the War Industries Board, which prioritized supplies; and the Fuel Administration Board, which implemented Daylight Saving Time. Many members of Congress were enraged at these preemptive executive actions, viewing them as usurping legislative authority. At the same time, Congress did not hesitate to pass a number of war-related laws, including acts controlling major economic sectors, adding new taxes, and managing labor. A variety of critics believed that both the executive and legislative branches acted beyond their constitutional authorities, and many of the chapters conclude with the U.S. Supreme Court reviewing the constitutionality of a law or administrative action.

¶52 Wider prewar social changes, such as growing support for women’s suffrage, Prohibition, and greater labor protections, are also examined with a particular focus on how the war accelerated developments in each of these areas. In contrast, the chapter on the treatment of racial minorities by the government discusses the lack of improvement despite the many contributions minorities made to the war effort. Ross’s recounting of how African Americans were treated during and

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after the war are horrific to the modern reader. The experiences of African Americans and other minorities are stark reminders of the irony that America went to war to protect the rights of citizens in allied nations overseas but ignored the rights of its own citizens.

§53 Ross elicits a recurring theme of an unstated political agenda behind the law. He digs below the surface patriotism to explore the backstory of each law, the motivations of the proponents and the constitutional arguments of the opponents, and how selective enforcement had disparate impacts. For example, proponents of the Espionage Act presented it as a law to capture spies, yet virtually no spies or saboteurs were convicted. Instead, prosecutions under the act targeted those who opposed the war, had alternate opinions, or were known radicals and socialists. Likewise, unstated party politics and resentment of presidential abuse of executive authority played key roles in the final chapter's exploration of the failure of the League of Nations.

§54 The book is a smooth read; Ross brings each issue to life by quoting the participants involved. This technique provides a human context to the legal positioning of the parties. There are detailed descriptions of the bitter congressional debates, political party infighting, administrative ineptitude or overreach, impact on individuals, and lower court successes and failures, all of which provide depth to the diorama of the era. This book is a rich lesson in the political operations of an expanding U.S. government pushing the constitutional envelope to gain increased authority over the citizenry.

§55 While the setting of this text is World War I, the lessons concerning the power struggle between presidential authority and congressional responsibility, and the willingness of the masses to give up rights in the name of patriotism have contemporary relevance. Although there is plenty of literature covering this era, the use of primary sources elevates this book from the ordinary, and it is recommended for any university library or academic law library.


Reviewed by Lei Zhang*

§56 People who believe our constitutional democracy is under increasing stress might blame any number of reasons. Possible factors include political polarization, government gridlock, excessive executive power, and national security overreach. Ganesh Sitaraman, a constitutional law professor at Vanderbilt Law School, thinks there is another, more pressing concern than those four. He opens his new book, The Crisis of the Middle-Class Constitution: Why Economic Inequality Threatens Our Republic, by provocatively asserting, “The number one threat to American constitutional government today is the collapse of the middle class” (p.3). Sitaraman’s claim may seem unintuitive at first, but over the next few hundred pages, he presents a meticulously researched and fairly convincing argument that a healthy middle class is critical for our constitution to survive.

§57 Sitaraman’s central thesis is that the Founders designed the U.S. Constitution as a “middle-class constitution,” and a collapse of the middle class and surge in
economic inequality could severely jeopardize its survival. The book is broken down into three parts, with each part focusing on a different aspect of his claim. The first part explains what a middle-class constitution is and how the U.S. Constitution qualifies as one. The second part details how the U.S. middle-class constitution has survived previous threats of economic inequality. The third part shows why economic inequality is so dangerous and offers options to preserve the middle-class constitution.

¶58 Sitaraman begins by noting two interpretations of how societies structure government to deal with the unavoidable reality of economic inequality. One option was a “class warfare constitution” in which divisions between rich and poor were built into the constitutional structure itself, such as having governing bodies composed of only the rich or only the poor (for example, the Roman Senate and the plebeian tribune). The other option was a “middle-class constitution” in which a government built around a strong, healthy middle class could stabilize the natural conflict between the rich and poor. Sitaraman argues that during the late eighteenth century, the United States was a relatively equal society economically (setting aside slavery and gender oppression) without the high levels of social stratification seen in Europe, and the Founders used a middle-class model to draft the Constitution, not anticipating the degree to which economic inequality could develop.

¶59 Sitaraman later examines periods in U.S. history when economic inequality increased, such as the rise of industrialization and the Great Depression. He describes how the populace fought for various reforms, including the Sixteenth Amendment (establishing an income tax), the Seventeenth Amendment (direct election of senators), and campaign finance reform, all of which were intended to limit corruption and the power of the wealthy.

¶60 In the last part of the book, Sitaraman explains how economic inequality and the disintegration of the middle class can threaten the middle-class constitution. Sitaraman sees two possibilities, one being the wealthy will dominate and shape policies to their benefit so that the government ultimately “becomes an oligarchy” (p.237). The alternative is equally undesirable, where “the poor will overthrow the rich,” possibly “through the emergence of a demagogue with authoritarian tendencies” (p.238). To avoid either outcome, Sitaraman offers possible solutions, some of which aim to limit the influence of wealth in the political process while others are designed to directly strengthen the middle class and reduce economic inequality. Examples include affordable education, worker empowerment, and progressive tax policies.

¶61 While the premise of the book may seem rather alarmist, it actually feels measured and reasoned because of Sitaraman’s writing style. Sitaraman is not overly polemical, and he uses a tone halfway between formal academic prose and a conversational, storytelling voice that you might get from Malcolm Gladwell or Michael Lewis. That fits the overall content of the book. The Crisis of the Middle-Class Constitution deals more with history and political philosophy than it does with legal theory or jurisprudence. Sitaraman discusses the cases and laws in the book more to give historical context than to scrutinize their legal ramifications. His audience is not limited to legal scholars.

¶62 What is particularly important about the book is how it takes an issue that many people consider confined to the political left, reducing income inequality, but
couches it in conservative dress. If you squint hard enough, Sitaraman’s argument speaks to certain conservative values—reducing economic inequality is beneficial not simply because it is \textit{fair}, but because it will help \textit{preserve the republic}. Certainly, not every reader will agree that economic inequality poses such a dire threat, and even if there were agreement, the policy prescriptions between conservatives and progressives would likely differ. Nevertheless, increasing the number of people concerned about economic inequality is a good thing if the goal is to reduce it.

§63 One of the book’s shortcomings rests with the last portion, in which Sitaraman discusses what to do to address the collapse of the middle class. Many of his suggestions are common progressive political goals, so it reads a little bit like a proposed Democratic Party platform. It would have been interesting to see what he thinks about the rise of automation and artificial intelligence, what that might do to the nature of work in the future, and its implications for the middle class. That topic may have been beyond the scope of what Sitaraman wanted to cover in his book, but fortunately for readers, what he does cover he covers thoroughly.


\textit{Reviewed by Alison P. Sherwin*}

§64 \textit{Discretionary Justice: Pardon and Parole in New York from the Revolution to the Depression} is two books in one. First, it is an extensive review of the governor of New York’s considerable discretion and power in the use of pardons and paroles from colonial times to the 1940s. Second, if “[h]istorians of modern punishment have rightly named New York the nation’s chief engine room of penal innovation” (p.1), this book can also be read as a springboard to contemporary debates over the role parole and pardon play in the U.S. criminal justice system, including the Obama administration’s clemency initiative, California’s Proposition 57, and proposals to stem the growth of the United States’ prison population. Can a governor’s pardon resolve injustices in sentencing or the use of the death penalty? Should parole be a solution to prison overcrowding or substandard prison conditions? Which inmates deserve parole, and what factors should parole boards use to grant it? \textit{Discretionary Justice} analyzes how the governors of New York have grappled with these issues, while being lobbied by the media, prosecutors, prominent citizens, and the prison system itself.

§65 Each of the seven chapters covers a different time period—from the Revolutionary War to the 1930s and 1940s. In each chapter, Carolyn Strange discusses the politics of pardons and the media’s role in the process, and she uses specific examples of prisoners drawn from the New York State archives. She discusses how race, class, gender, and mental capacity have affected the likelihood of success in a campaign for pardon or parole. Throughout the book, Strange discusses the interplay between pardon and parole, and argues that the latter did not supplant the former.

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Strange also sheds light on the personalities of individual governors who shaped the debate through their use of executive power—from George Clinton, who wielded clemency power as both governor and as a general in the Continental Army, to Al Smith's battles with New York newspapers over his pardons of so-called anarchists. In this way, readers discover the ongoing disputes governors had with the public and the state legislature regarding their discretionary power. Although the narrative occasionally gets bogged down by the minutiae of specific debates, legislation, and names, overall the book is readable and absorbing.

One of the most interesting and surprising aspects the book mentions is the influence of New York newspapers in the criminal justice process. Strange frequently cites articles and (often inflammatory) editorials from local papers, such as the *Brooklyn Daily Eagle*, and describes the influence they had over pardon requests. In one case, the *Brooklyn Daily Eagle* ranted that governors could pardon “the MOST DANGEROUS CRIMINAL by a mere SWISH of the GUBERNATORIAL PEN!” (p.188). Many New Yorkers will be familiar with the over-the-top crime headlines of the *New York Daily News* and the *New York Post*, but it was fascinating to learn about the historical impact such papers had on individual clemency decisions.

Strange draws her research from an extensive number of primary sources, including clemency case files and official prison records. She describes her research methodology, including how she chose which appeals to review and how she compensated for the underrepresentation of women in the overall prison population. She also describes the holes in the archival records and possibilities for future projects. This explanation is vital because otherwise readers may question whether Strange has simply cherry-picked files to support her theories.

One shortcoming of this book is the uneven nature of the endnotes. At times, some of the most interesting or necessary information is buried in the back. For example, Strange's discussion in chapter 1 of Italian criminologist Cesare Beccaria’s influence on Governor Clinton would have been much improved had she explained in the main text how Beccaria’s writings made their way to the colonies. At other points, the endnotes are frustratingly brief. A discussion of the relationship between Native American restitution traditions in the post–Revolutionary War era and the state and federal governments refers to the practice of “grave covering” (p.52). The accompanying endnote refers to another work with neither a definition of the term nor an explanation of why it was so contentious.

The governor of New York changed frequently in the time period covered by this book, and several governors, including two with the surname Clinton, served nonconsecutive terms. The frequent turnover in the office and Strange's practice of referring mainly to “the Governor” serves brevity but often makes it difficult to follow which governor was in office during any particular narrative. Strange includes a table of governors and dates of their terms of office, but without it—and the willingness of the reader to consult the table frequently—the book may become confusing to follow.

Overall, *Discretionary Justice* is an engrossing book. All academic libraries in New York should have a copy of this book, and academic libraries in other states with patrons interested in the history of criminal justice should consider having a copy as well.

Reviewed by Andrew W. Lang*

¶72 In *#Republic: Divided Democracy in the Age of Social Media*, Cass R. Sunstein presents a timely and persuasive argument about the risk that online media polarization poses to deliberative democracy in the United States. In the acknowledgments, Sunstein notes that *#Republic* is a successor to his earlier works: *Republic.com* (2001) and *Republic.com 2.0* (2007). The major development since these earlier works is the rise of social media platforms and the explosion of algorithmic filtering, which Sunstein felt deserved its own examination.

¶73 Throughout, Sunstein makes a very deliberate effort to remain politically neutral, arguing these issues affect all Americans, regardless of political affiliation. The chapter titles are not very descriptive concerning where they factor into the argument, but generally the first six chapters build Sunstein’s argument, chapters 7 and 8 address counterarguments, and chapter 9 presents proposals to alleviate some of the problems associated with media filtering. Chapter 10 fits somewhat awkwardly as an exploration of how online behavior can lead to violent extremism, before the final chapter summarizes the overarching argument.

¶74 After the first chapter’s general introduction to the subject and the scope of his argument, Sunstein devotes the second chapter to describing public forums and general-interest intermediaries and their essential roles in a deliberative democracy. Sunstein is careful to note that there is nothing inherently bad about online filtering—it can promote the development of communities based on shared interests and connect people across broad geographic distances. His concern is rooted in the way that perfect filtering can eliminate serendipity and narrow individuals’ exposure to the unfamiliar or uncomfortable.

¶75 Over time, as individuals are able to filter out exposure to material they disagree with, the population becomes increasingly polarized and fragmented. This leads not only to skewed perceptions, but the continual reinforcement of one’s own beliefs in an echo chamber of like-minded others can also intensify the belief, potentially leading to extremism. In the third chapter on polarization and the fourth chapter on cybercascades, Sunstein skillfully weaves studies from social science into his argument to illustrate how groups polarize and how informational cascades can accelerate the process. The cascade effect in particular is important for understanding how quickly information can spread as individuals are either persuaded by echoing arguments or pressured into agreement or silence. One of the major consequences of these developments is the questions that online filtering raises about whether “‘more speech’ is necessarily an adequate remedy for bad speech—especially if many people are inclined and increasingly able to wall themselves off from competing views” (p.88).

¶76 In the fifth chapter, “Social Glue and Spreading Information,” Sunstein addresses the second problem created in a world of perfect filtering: how fragmented information spheres weaken a community by undermining shared experiences. Especially in diverse societies, shared experiences work as “social glue, facilitating efforts to solve shared problems, encouraging people to view one another as

* © Andrew W. Lang, 2017. Reference Librarian, Edward Bennett Williams Law Library, Georgetown University Law Center, Washington, D.C.
fellow citizens, and sometimes helping to ensure responsiveness to genuine problems and needs” (p.155). In an increasingly personalized world, these experiences, and the connections they create, are undermined. Similarly, as information becomes politically balkanized, its value as a solidarity good (that is, a good “whose value increases with the number of people who are consuming” it [p.58]) that benefits the entire community is also diminished.

¶77 The third major problem created by filtering is what Sunstein describes as a distorted understanding of freedom that emphasizes consumer sovereignty above all else. From the perspective of consumer sovereignty, information filtering is good because it allows the consumer to limit exposure to only the things that she wants. Yet, as Sunstein points out, individuals’ consumer choices do not always align with the choices they make as citizens.

¶78 Sunstein’s concern about the warping effect of the consumer sovereignty ideal also plays a significant role in the counterarguments that he addresses: first, the general resistance to so-called government regulation of the Internet; and second, the objections to Internet speech regulation based on free speech absolutism. Sunstein argues that aspects of both these positions are incoherent. Generalized opposition to regulations ignores the fact that the communications sphere can exist only when the government recognizes and protects property rights in intangible things like broadcast frequencies or domain names.

¶79 Despite these criticisms, Sunstein does have some suggestions to counteract online polarization. Sunstein envisions a number of possible solutions including deliberative domains for open conversation, increased self-regulation, and platforms designed to break filter bubbles by providing access to opposing viewpoints. Without doing something to counteract these trends, conditions will continue to deteriorate—especially as terrorist and hate groups continue to use the mechanisms of polarization to their advantage.

¶80 While other scholars have examined filter bubbles and echo chambers, Sunstein narrows the focus to the polarizing effects social media has had on public discourse in the United States and the damaging consequences for deliberative democracy. Sunstein provides ample support for his positions and conveys their urgency clearly and concisely. Overall, #Republic is an astute and accessible exploration of the ways online behavior affects civic governance. Sunstein’s proposals serve as a helpful reminder that it is not too late to reverse the most damaging trends of social media polarization.


Reviewed by Andrew J. Christensen*

¶81 Incidents of citizens dying at the hands of police officers across the United States have undeniably risen in the national consciousness in recent years. But are these unfortunate events actually increasing in frequency? If so, why? What can be done to reduce the rate and societal impact of deadly encounters with law enforcement?

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* © Andrew J. Christensen, 2017. Faculty Services Librarian, Washington and Lee University School of Law, Lexington, Virginia.
§82 With *When Police Kill*, Franklin Zimring presents a deeply researched, empirically driven summary of a troubling situation that continues to generate headlines and court cases today, some three years since the high-profile shooting of unarmed black teenager Michael Brown by a white officer in Ferguson, Missouri. More than a dozen similarly scrutinized killings of minority citizens by police have occurred since, many caught on video.\(^5\) However, these cases have typically resulted in decisions not to press charges or acquittals for the officers due to legal standards that favor police in their use of deadly force.\(^6\) The ensuing media coverage has been extensive and sensational, and the surrounding conversations have often been politically and racially charged. Those wishing to examine the facts rationally and assess a practical path forward will be well served by the statistics, conclusions, and suggestions that Zimring brings forth in this timely and important book.

§83 The first half of *When Police Kill* focuses on the causes of police killings, arguing that police use of lethal force is a serious national problem that has been overlooked in legal scholarship, improperly addressed by government, misrepresented in the media, and perhaps most important, underreported in official statistics. Zimring claims that the relevant federal records compiled by the National Vital Statistics System, Federal Bureau of Investigation, and the Bureau of Justice Statistics fail to account for at least half of killings by American police. Instead of an official figure around 500, he estimates more than 1000 such killings a year, based on comprehensive, crowdsourced searches of news reports vetted and published online by the *Washington Post*\(^7\) and the *Guardian*.\(^8\)

§84 Zimring also identifies a significant sociocultural shift with respect to police shootings in the aftermath of Ferguson. News and social media commentary, along with movements like Black Lives Matter, now draw national, front-page attention—and sometimes even federal investigative scrutiny—to controversial uses of force that were previously reported only locally and often as justified actions on the part of officers.

§85 Adding to the public’s growing perception of injustice in police violence matters is Zimring’s striking finding that only 1 in 1000 officers who kill in the line of duty are ever criminally convicted. This institutionalized lack of accountability is


tantamount to immunity for police, even in many of the most apparently unnecessary or unjustifiable killings, and is the result of several factors that Zimring identifies, including political reluctance among prosecutors, jurors’ sympathy for or admiration of police, and a body of law and judicial practices that permit extremely broad justification of the use of deadly force by police.

¶86 Other interesting conclusions borne out by Zimring’s wide-ranging survey of data include findings that in 2016, police in the United States killed citizens between 4.6 and 125 times more often than in four other Western countries. This can be explained to a degree, Zimring writes, by corresponding statistics that show police in America to be many times more likely to encounter deadly resistance or attack, often with firearms, than elsewhere in the world. Of course, there is also the sobering, if unsurprising, calculation that racial minorities, particularly African Americans and Native Americans, are killed by police at a rate more than double their overall demographic proportions in the United States.

¶87 The second half of When Police Kill advises on preventing and controlling police killings. Drawn from the preceding parade of problems and shortcomings relating to law, policy, statistics keeping, and officer training, Zimring’s prescription for improving a daunting yet ameliorable status quo is comparably multifaceted. Among his proposals is a vision for revamped police rules of engagement and force escalation that are more in line with actual situational threats, with awareness of not only officer safety, but also the fact that lives matter more broadly. Plausible and practical new administrative and technological initiatives within police departments and municipal governments, with coordination on the state and federal levels, would also help realign officers’ actions and attitudes, strengthen police-community relationships, and ultimately reduce the death tolls on both sides.

¶88 When Police Kill is a must-have for any academic law library collection and a strong candidate for the shelves of government and court libraries. The book is a compelling example of the value of the growing empirical and current-event-analysis trends in legal scholarship, relying on open source statistics, news accounts, and crowdsourced efforts both to inform potentially fraught dialogue and advance new public policy approaches. Research librarians, who may increasingly find themselves tapped to assist with or manage such projects,9 should look to When Police Kill for information, as well as inspiration, about how a diverse and data-driven study can be presented for consumption by a wide audience.

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9. On several occasions Zimring acknowledges the contributions of librarians at Berkeley Law to his research for the book.
Incorporating Race into Your Legal Research Class*

Shamika Dalton**

Ms. Dalton examines ways to incorporate a discussion of race into legal research courses, and suggests a number of hypotheticals to use in creating “teachable moments.”

¶1 As head of reference and instructional services, one of my responsibilities is to share my instructional materials with our newer teaching librarians. For years, I have used the following asylum prompt as a homework assignment in my first-year legal research class.

Your firm’s new client, Muneer Ahmad, had a meeting with your supervising partner today, and you were allowed to sit in on the meeting to take notes. Mr. Ahmad is a citizen of a small country named Halassam. At present, Halassam is in the midst of a civil war. The government of Halassam is fighting an organized antigovernment rebel group for control of the country. Recently, both groups have stepped up recruitment efforts. Last month, two antigovernment rebels knocked on Mr. Ahmad’s door and asked him to pledge his allegiance to the group. Mr. Ahmad told the rebels that he was not interested in politics and declined to pick sides. The rebels beat Mr. Ahmad for his response and told Mr. Ahmad that he had one week to change his mind “or else.” After he spent a few days in the local hospital, recovering from his wounds, Mr. Ahmad returned to his home in the capital of Halassam, packed a bag, and fled the country. He landed on the shores of south Florida three days ago and seeks asylum in the United States.

The partner asks you to research the requirements for seeking asylum in the United States. The partner is particularly concerned with whether Mr. Ahmad’s refusal to choose sides between the government and the rebels is considered enough of a political opinion to earn asylum.  

¶2 This spring, one of our new librarians came to me, unsure whether she should use the asylum prompt in the wake of the travel ban signed by President Trump that same week. Understandably, many of our students were visibly disturbed and fearful that their family members could be deported. At the time, I told her that she should do whatever she felt comfortable with, but later I thought, “Why is it so difficult to talk about issues such as race, sexual orientation, religion, gender, and immigration status in the classroom?” and “How can we incorporate sensitive diversity issues into our legal research course?” These questions formed the basis of my idea for this column.

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1. This hypothetical was written by Loren Turner, a former colleague and now the Foreign and International Librarian at the University of Minnesota Law Library. The country in this hypothetical does not exist.
Our nation has been forced to address various diversity issues over the past five years. We have dealt with the senseless killing of unarmed African Americans at the hands of the police, racial gerrymandering, unequal pay for women, the unfair treatment of Muslims due to our fear of terrorism, and a campaign to build a wall to keep immigrants and refugees out of the United States. Citizens have led nationwide protests to express their frustration and outrage over these injustices, eerily reminding some of the Los Angeles riots in the 1990s.

Over the years, the role of a law librarian has evolved to include the title lecturer or professor. Many of us teach first-year legal research, advanced legal research, and other specialized legal research classes. In the nation’s current climate, I think we have an unique opportunity and obligation to help train students to become culturally competent legal researchers by incorporating research assignments that address many of the injustices described above. While I encourage you to incorporate all diversity topics into your research assignments, I chose to focus on race in this column for two reasons: (1) race is the most emotionally charged and polarizing diversity topic, and (2) race is the topic I believe educators are most hesitant to discuss in the classroom.

For decades, educators have tried to figure out what race means and how to “unravel the intertwining nature of race and education.” Race is about much more than skin color. Race was created in the modern era as a way to divide people such that some benefit at the expense of others. The bias, inequalities, and consequences of race were developed and constructed by human beings, not by scientific law or genetics. One’s perception about race is based on four constructs.

1. Physical—People have constructed ideas, biases, and belief systems about others based on skin pigmentation. Many of these constructions are inaccurate, but nevertheless they exist. The physical construction of race varies from one society to the next. The physical construction of race in Europe, Asia, and even Africa differs from that in the United States.
2. Social—The social construction of race is linked to preferences, worldviews, and how groups of people perform. People categorize themselves and others based on a range of societal perspectives drawn from interpretations of history and law.
3. Legal—The U.S. legal system plays a huge role in the construct of race. Infamous cases such as *Plessy v. Ferguson* and *Brown v. Board of Education* have influenced and defined the construction of race in America.
4. Historical—Historical realities, such as Jim Crow laws, slavery, and racial discrimination, also shape the way people conceptualize race. The way we understand how people have been treated in a society based on the color of their skin shapes how we understand, talk about, and conceptualize race.

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4. *Id*.
5. 163 U.S. 537 (1896).
Furthermore, the discussion of race is not only about people of color. White is a racial category as well, and it is important to critically examine whiteness or white privilege just as we examine the experiences of nonwhite people.¹⁸

Race and Education

When in a diverse group, many of us tend to avoid the topic of race for fear of discomfort, hostility, and embarrassment.⁹ This “code of silence” reflects our society’s denial that cultural factors such as racism and whiteness exist. The history of racism in the United States is both “intensively intellectual and an extremely emotional issue triggering deep feelings about identity and self-worth.”¹⁰ White Americans feel guilt and even shame about the inhumane treatment of minorities. Many Whites acknowledge that white privilege exists, but they are unsure what to do about it. Meanwhile, people of color face subtle or obvious racial projections daily and have to deal with how other cultural groups “question their worth and judge them to be less qualified.”¹¹ With these conflicting emotions, it is easy to understand why we avoid conversations about race.¹²

In Western academic tradition, emotions are held to be “irrational and unnecessary for intellectual pursuits.”¹³ Faculty are trained to focus on cognitive processes and not emotions in the classroom. Faculty are experts in subject matter, but many lack intercultural competence. Due to the “inextricable emotional dimension of race”, faculty hesitate to discuss race, not wanting to reveal their lack of knowledge on the topic and expose their vulnerability.¹⁴

In 2014, I attended a faculty brownbag discussion hosted by University of Florida (UF) College of Law’s Diversity and Community Relations Committee. There professors openly discussed their fears and hesitation to talk about race, and shared techniques for discussing race in the classroom. Having graduated from a Historically Black College and University (HBCU), where race is discussed on a daily basis, I found it eye-opening to hear White law professors share their hesitations to talk about race. Professors expressed some common fears: fear of not being politically correct, fear of being judged and deemed prejudiced, fear a student may say something offensive, fear the only minority student in the class would feel compelled to defend his or her race, fear students would feel guilt or anger, or fear students would withdraw.

While I understand their concerns, I think we (including myself) are underestimating the willingness that students have to learn about race and how our legal system impacts the lives of people of color. More importantly, students recognize when professors ignore the “elephant” in the classroom. In 2015 and 2016, I served on UF College of Law’s Diversity and Community Relations Committee. Both years, the Committee organized a program called “Comm(unity) Amidst Diversity:

¹⁸ Id. at 9.
¹⁹ Gale Young, Dealing with Difficult Classroom Dialogue 349 (2003).
¹⁰ Id.
¹¹ Id.
¹² Id. at 349–50.
¹³ Id. at 350.
¹⁴ Id.
Sharing Our Experiences at Levin,” open to all students as a forum to discuss diversity barriers that exist at UF Law.

¶11 At the beginning of the program, we asked students to form groups and share their own experiences dealing with diversity at the law school. After the small-group discussions, we reconvened and students shared what they thought was missing in the discussion about diversity issues in the classroom. One of the comments I heard repeatedly was that students wanted to talk about race and valued its importance. Students mentioned reading cases in which racial injustices were clearly looming, but shared that their professors did not discuss these in class. When professors ignore or deny that racial issues exist, they communicate that students’ knowledge and experiences about race are not worth academic attention.15

¶12 As instructors, it is our responsibility to train students to be “conversant with and understand the nuanced ways” racial issues affect what they do as lawyers.16 For students to gain intellectual depth and breadth of the law, they need to explore how the application of diversity issues limits legal doctrines, and how legal doctrines undermine the purpose of the law.17 It is important that we openly talk about “the power that societal stereotypes have in shaping legal arguments or outcome.”18 The more comfortable students are with talking about diversity issues, the better advocates they will be for their clients.19

Race and Legal Research

¶13 Race has played an important role in U.S. history and law.20 Racial issues do not only arise in criminal and constitutional law, but they permeate most (if not all) areas of law.21 I agree with Mary Whisner: “[We law librarians] have a responsibility to be aware of [racial] issues.”22 Many academic law librarians, who work at law schools with student-edited journals, centers, courses, and seminars about race and the law, may routinely be asked to provide traditional research services to students and faculty on various racial issues. Some librarians have also contributed to blogs and created research guides on the topic of race.23

¶14 As I was sitting at that brownbag years ago, I was wondering “Should I incorporate race in my legal research course?” and “If so, how?” After some thought, the answer to the first question is yes. Research skills are key to the success of a lawyer, so we can play a critical role in training students to be ethical, culturally competent legal researchers. We need to design a legal research curriculum that challenges students’ perceptions and helps them understand how the construction and application of certain laws are racially discriminatory. Ronald Wheeler said it

15. Id. at 350.
17. Id. at 544.
18. Id. at 548.
19. Id. at 554.
23. Id. at 632, ¶¶ 8–9.
best: “Showing an interest in racial justice and issues of race helps to break down barriers, expose as false perceived misunderstandings, and shed light on commonly held perceptions of a race-infused reality.”

Choosing to incorporate race in your class will also make students of color feel more welcomed and understood, and it will “unmask the truth that even those of us who are white can have a common understanding of how race impacts us all daily.”

§15 As for the second question, I do think there are ways that we can incorporate race in our lectures, hypotheticals, and classroom discussions. When I discuss the process of generating search terms, I make it a point to remind students that African Americans and Latinos have not always been called by those names. Throughout society, we have changed the terms we use to identify minority groups in a quest to be “politically correct.” If race is a pertinent element of a legal issue, I tell my students to be mindful and include all synonyms (yes, you may even have to type in the word “Negro”) for a particular minority group to ensure the search yields cases from the 1940s and 2000s.

§16 I also incorporate race in my “Expand and Update Your Research” lecture. I use Loving v. Virginia as a nod to “love week” in February. I do not require students to read the case, but I do give them a brief synopsis, and we look at the thousands of cases that have cited Loving v. Virginia. I explain that even though Loving v. Virginia is about interracial marriage, lawyers have used the language from the case to advocate for the legalization of same-sex marriage. Then I show them how to use the search filters to narrow by jurisdiction, relevancy, and keyword searches.

§17 Another opportunity to incorporate race into the classroom is through in-class exercises and homework assignments. Below are three hypotheticals that I plan to use this year in my advanced legal research course.

Hypothetical Example # 1—Employment Discrimination

Assume that you just started working at an employment law firm in Jacksonville, Florida. Tyrone Bennett, a thirty-two-year-old African American male, comes into your office for a consultation with you and your boss. Mr. Bennett has worked in the kitchen of a local restaurant for the past five years. He worked his way up from dishwasher to line cook to sous chef. At age of twenty-one, Mr. Bennett had to stop shaving his facial hair due to a medical condition called pseudofolliculitis barbae, which causes severe shaving bumps. When he works at the restaurant, he wears a sanitary beard cover.

Recently, the head chef position at the restaurant became vacant, and Mr. Bennett was promoted to that position. On his first day as head chef, Mr. Bennett’s supervisor explained that the new position required him to deal directly with the customers, so he would have to maintain a clean-shaven face, which meant he could not have any visible facial hair. Mr. Bennett informed his supervisor that he could not shave his face due to a medical condition, but he promised to keep his beard well groomed. When Mr. Bennett arrived at work the next day, he was told that he no longer qualified for the head chef position, and if he wanted to stay with the restaurant, he would have to go back to working as a sous chef.

25. Id. at 473.
Mr. Bennett is at your office to find out what his rights are and whether he can sue the restaurant. Your boss has never heard of this medical condition, so she wants you to (1) conduct some background research on the medical condition, and (2) determine if Mr. Bennett has a cause of action against his employer.

¶18 I plan to use this hypothetical during my “Secondary Sources Week.” Students will start by using the traditional subject-specific secondary sources to help them answer this legal question, but they should not just stop there. This hypothetical requires students to conduct “creative research” outside of the traditional legal resources to learn more about Mr. Bennett’s medical condition. Students should learn that this condition disproportionately affects African American men. My hope is that they will find case law to support a cause of action for employment discrimination.

**Hypothetical Example # 2—Jury Selection**

Assume that you work as a law clerk for Janet Stevenson, an appeals attorney in Tampa, Florida. Janet's client, Carlos Garcia, was tried by a jury and convicted of robbery and assault. Janet is working on his appeal and wants to challenge his conviction on the grounds that the trial court erred in denying Mr. Garcia's challenge to the state's preemptory strike of two jurors: Ms. Martinez, a Hispanic female, and Mr. Lee, an Asian American male.

When the objection was made during jury selection, the defense asked why both jurors were dismissed. The prosecutor explained that he used a preemptory strike for Ms. Martinez because she failed to disclose that she was a victim of sexual assault fifteen years ago. He used a preemptory strike to dismiss Mr. Lee due to his thick accent. The trial court found that both strikes were race-neutral and upheld both preemptory strikes. Ultimately, the jury seated for Mr. Garcia's trial consisted of no minority jurors. Janet wants you to research (1) the standard (or basis) required for a preemptory challenge, (2) how courts “test” for such challenge, (3) examples of what courts deem to be “race-neutral” strikes, and (4) the likelihood that Mr. Garcia will win the challenge on appeal.

¶19 I plan to use this hypothetical during my first week of case law research. Jury selection (or voir dire) is a critical part of the trial process. A defendant's fate is in the hands of the jury. I think students will be surprised to learn how courts interpret a jury of “peers” and how preemptory strikes can disadvantage racially diverse defendants. This issue also has some gender implications. 31

**Hypothetical Example # 3—Criminal Law**

Assume that you are a law clerk for the State Attorney's Office in Miami-Dade County, Florida. You have a case with the following facts: On March 10, 2017, at approximately 11 p.m., Shanaya Jenkins, a seventeen-year-old resident of affluent Coral Gables, Florida, was walking home from a FSU vs. UM rivalry game party a few blocks away. On her way, she realized that she misplaced her house keys. She thought, “Oh no.” The last thing Ms. Jenkins wanted to do was call her mother and tell her that she lost her second set of house keys this year. Then she remembered that her brother kept his bedroom window slightly ajar during the spring and summer months.

Meanwhile, Officer James Coffey, a rookie to the Coral Gables Police Department, was patrolling Ms. Jenkins's neighborhood. Officer Coffey observed Ms. Jenkins walking to the backside of a home. He made a U-turn. Officer Coffey called for backup and told the

29. Whisner, supra note 20, at 630.
30. You could also create a hypothetical that involves discrimination against persons with sickle cell anemia, a medical condition that predominately affects African Americans.
31. William M. Hicks, TRIAL HANDBOOK FOR FLORIDA LAWYERS § 8:3 (3d ed. 2016).
dispatcher that he observed a suspicious person walking with their hands hidden inside a black UM hoodie about to burglarize a home. He did not want to spook the “burglar,” so he did not turn on his police lights or blast his sirens as he approached the house again. Officer Coffey saw Ms. Jenkins trying to lift the window up. Officer Coffey yelled for Ms. Jenkins to freeze, but Ms. Jenkins did not hear him because she was listening to music on her brand new Beats headphones. Officer Coffey yelled again, “It’s the police. Freeze or I’ll shoot.” Ms. Jenkins got the window open and began to climb in. Officer Coffey shot Ms. Jenkins three times, twice in the lower back and once in the right leg. Ms. Jenkins fell forward inside the window. Officer Coffey grabbed Ms. Jenkins and pulled her to the ground. He checked for a pulse. No pulse. He called into his radio for an ambulance. When the ambulance arrived, it was too late. Ms. Jenkins was dead.

About thirty minutes after the shooting, Ms. Jenkins’s mom approached her home and noticed all of the crime scene tape. She jumped out of her car and ran up to a group of officers. After officers asked her a few questions, they realized that Ms. Jenkins was her seventeen-year-old daughter. Officer Coffey was put on administrative leave with pay. The local community was outraged. The State Prosecutor wants to know whether the state has enough to charge Officer Coffey with murder, manslaughter, or a lesser crime.

I plan to use a different strategy to approach race with this hypothetical in my second week of case law research. The facts do not include Ms. Jenkins’s or Officer Coffey’s race. When I review the assignment, I will pose the following questions: Did you consider the race of Ms. Jenkins or Officer Coffey? Would your legal argument change if Ms. Jenkins was African American and Officer Coffey was White? What if Ms. Jenkins was White and Officer Coffey was Latino? I suspect that many students did not consider race because the facts do not disclose this. This teaching moment will show students that they must be mindful of potential social factors that could exist when they are conducting legal research.

You can make other small changes to your existing hypotheticals to make them multicultural. The issue of race may not change the legal outcome, but it will make the hypotheticals more practical and train students to think about the possible racial implications. Here are two suggestions:

- Use ethnic names such as Rhonda, Juanita, Enrique, Safiya, and Chang in your hypotheticals instead of the typical race-neutral “Jack and Jill.” Students are going to represent clients from all racial groups, so our hypotheticals should reflect this reality. Use the same guideline for naming attorneys, firms, and judges.
- Identify the race of the client in your hypotheticals. We cannot leave it up to the student to visualize what their clients look like because many of them will envision a client who looks like them and conforms to their social norms. Including the race of the client will make students mindful that their client’s race could be a social factor to explore.

When students and faculty collectively decide to talk about race and discuss its intricacies, growth becomes more and more visible. The growth is not just for the White students and faculty. My experience and perspective as an African American woman is different from that of a Latino woman or even another African American woman. Opportunities are abundant for us to learn from each other. As

32. Id.
33. Id. at 551.
As legal research instructors, we should not be afraid to create legal research hypotheticals that require students to research and analyze how laws impact social forces such as race, class, gender, sexual orientation, disability, and religion. I hope that you will consider incorporating race into your next legal research course. Feel free to use the hypotheticals that I provided or collaborate with your colleagues to create your own.
Annual Meeting of the
American Association of Law Libraries
Held in Austin, Texas
July 15–18, 2017

General Business Meeting

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General Business Meeting  
July 17, 2017  
Ballroom D  
Austin Convention Center  
Austin, Texas

[The General Business Meeting of the American Association of Law Libraries was called to order at 3:30 p.m. at the Austin Convention Center, Austin, Texas, Ballroom D, with Ronald E. Wheeler, President, presiding.]

Call to Order and Approval of the Agenda

¶1 President Ronald E. Wheeler, Jr. (Fineman & Pappas Law Libraries, Boston University, Boston, Massachusetts): Thank you. Good afternoon. (Chorus of “good afternoon.”) That’s what I like to hear. I’m Ron Wheeler, Association President, and I’m pleased to call to order the 2017 Business Meeting of the American Association of Law Libraries.

¶2 The AALL bylaws stipulate in Article 5, Section 3, that “A quorum for a business meeting of the Association shall consist of 50 members registered at that meeting.” The Chair observes that there is a quorum present.

¶3 Copies of today’s agenda, standing rules, and accompanying handouts are available on the meeting app. We are no longer making paper copies available to you as they can be easily accessed on the app. This is in support of our Resolution on Sustainability passed by our membership in September of last year. The agenda is also provided to you on the screens on either side of the stage. In the interest of managing today’s agenda, no member may speak for more than three minutes, and the discussion is limited to no more than ten minutes on any one agenda item. The Chair will announce when the time is completed. If members wish to extend discussion beyond the allowed time, a motion to extend discussion will require passage by a two-thirds majority.

¶4 If there are no objections, these rules and the agenda will be adopted in this meeting. Hearing no objection, the rules and agenda are adopted for this business meeting.

Introductions

¶5 I would now like to introduce those present on the stage with me today. Beginning on my left, Vice President/President-Elect Greg Lambert, Treasurer Jean Willis, Secretary Katherine Coolidge, and Executive Director Kate Hagan.

Report of the President

¶6 Now I’ll begin with my president’s report. Colleagues and friends, it is important to me that I use this time to report to you the goals that were set and the accomplishments achieved during my AALL presidency. Although there is always a lot of work yet to be done, we have made significant strides this year.

¶7 But before reporting to you about the past year, I want to acknowledge that recent actions by the Texas state legislature overturning antidiscrimination policies
directed at the LGBTQ community have been very disheartening, to say the least. Many of our members who live in states like California, that will not fund attendance to meetings in Texas because of this legislation, have been unable to join us here in Austin. I apologize to those members for this having occurred, thus keeping them from this meeting.

¶8 AALL has a policy of not meeting in cities with laws that violate our own antidiscrimination policies. When we contracted for this meeting six years ago, Austin met this requirement. However, very recent actions by the Texas legislature have changed the law, and Texas now violates our policy. In response, AALL has sent a letter to the mayor and the convention and visitors CEO in every major city in Texas to object to these discriminatory laws aimed at the LGBTQ community. We also communicated that we will not meet in Texas again until these practices stop. We recognize that our Association is strongest when all people, regardless of race, color, gender, age, national origin, disability, sexual orientation, or gender identity or expression, are free to pursue education and a career in legal information without fear of discrimination either in the workplace or in the greater society.

¶9 Now, on to my report. First, in July of 2016, the Executive Board approved our 2016–2019 Strategic Goals of Knowledge, Community, and Leadership. Two of the objectives under Knowledge involved creation of an innovation incubator and creating a process for identifying current and emerging competencies. Well, the Innovation Incubator Special Committee, chaired by the incomparable Beth Williams from Stanford Law School, has completed a report and recommendations for launching AALL’s first Innovation Incubator. In addition, the Body of Knowledge Development Special Committee, chaired by the beyond-amazing Catherine Dunn from the University of Denver Sturm College of Law, has drafted their report and recommendations identifying a set of knowledge domains with competencies for law librarians.

¶10 One of our objectives under Community is to build strong relationships with affiliated entities, stakeholders, and related professional associations. To that end, I traveled extensively during my presidency and worked hard to use my one true talent, my abundant people and networking skills, to make connections and forge alliances. Here are some examples. First, through a series of planned formal meetings and serendipitous run-ins, we have cemented a solid relationship with the new Librarian of Congress Dr. Carla Hayden.

¶11 I visited the Association for Legal Administrators meeting, where I learned that their educational offerings around human resources and personnel issues are excellent and possibly worth forming collaborations so that our own members can access them. I visited the Legal Marketing Association meeting, where I learned that they are starved for the kind of research training that we offer in AALL, another possible collaboration to explore. I attended the International Legal Technology Association meeting and befriended their then president, Meredith Williams, my new BFF, who sees numerous avenues for partnership and collaboration with AALL.

¶12 While visiting the Canadian Association of Law Libraries, I met Junior Browne, a former president of the Caribbean Association of Law Libraries, who lives in Barbados and who is dying to explore possible collaborations with AALL. My belief is that the future health of legal information–related associations may well
depend on collaborations, and I have helped lay the groundwork for future talks to that end during my presidency.

¶13 In Hangzhou, China, where I attended the Fifth Chinese American Forum on Legal Information and Law Libraries, it was clear to me that, over the years, Chinese law librarians have begun to mirror our own successes as a direct result of this inspiring forum. This is especially true in law schools, where they are beginning to hold themselves out as legal research experts, to teach legal research, to demonstrate value that we sometimes now take for granted here in the U.S., and much, much more. I applaud the efforts of the Chinese American Forum on Legal Information and Law Libraries.

¶14 Also related to Community is advocacy in the form of our government relations victories this past year. This includes the full House Appropriations Committee approving language directing the Congressional Research Service to report back to the committee within ninety days of enactment with a plan to make its nonconfidential reports available to the public. This is great. Thank you.

¶15 We celebrated the enactment of the Uniform Electronic Legal Material Act, UELMA, in Maryland, Washington, West Virginia, and Washington, D.C., which brought the total number of enactments to seventeen. We lobbied against the Register of Copyrights Selection and Accountability Act, which would make the position of the Register of Copyrights subject to presidential appointment and Senate confirmation, and the Copyright Office for the Digital Economy Act, which would move the Copyright Office out of the Library of Congress.

¶16 We are asking AALL members to add their voices to the chorus in support of GPO and the Library of Congress by sending postcards to their members of Congress. In case you don’t know what a postcard is (indicated), these postcards are available at the Member Services pavilion in the exhibit hall. Our members are working hard with our staff to help make all of these things happen.

¶17 This year we have two online advocacy trainings for members. “Advocates and Influencers: How Law Librarians Can Impact the New Congress and New Administration” and “Speaking Up and Speaking Out: Influencing Your Members of Congress in Favor of Law Libraries.” We will be offering more this year, so I urge you to get involved and participate in these efforts.

¶18 Finally, under the leadership prong of our Strategic Directions, our objective of developing the appropriate public relations infrastructure, to reinforce AALL as the association of thought leaders in legal information, is well on its way, and we have retained a public relations firm to help us with these efforts. The new daily “KnowItAALL” e-mail seems to be exceeding everyone’s, including my own, expectations and is capitalizing on member expertise by getting member content out to stakeholders and to the media.

¶19 Finally—I really mean finally this time—you all know this, but I could not function without the many, many, many people who make my presidency possible. My dean, Maureen O’Rourke, all of the staff at the Fineman and Pappas Law Libraries at Boston University—and they’re out there somewhere, and if they could stand up, that would be really great, really fast because we don’t have time for this—the AALL staff, our amazing Executive Board, and really every single member who said “yes” when I called to ask you to volunteer. The accomplishments I’ve listed above are more yours than they are mine. Thanks also to big Ron, my dad. He’s the person whom I called regularly for advice, grounding, compassion, a shoulder to
lean on, if you only knew how often I needed that advice. So thank you, Dad. I now invite Greg Lambert to the podium to give his report.

**Report of the Vice President/President-Elect**

¶20 Mr. Gregory R. Lambert (Jackson Walker LLP, Houston, Texas): Thank you. Before I begin, please join me in thanking Ron Wheeler for what he’s accomplished in the past year. Ron is a true leader for the Association and the profession, and I have benefited greatly from his guidance and mentorship the past year. Also, please join me in thanking Kate Hagan for what she’s done. They are the ones that put our ideas and vision into action, so thank you all.

¶21 I am excited about the upcoming year and proud to serve as your president. In the past twenty years, I have gone from academic, to government, to outsourced consultant, and then to private law firm occupations. The constant throughout that period has been AALL, and I am honored to have the opportunity to lead an organization that has given me so much.

¶22 The Association has endured many challenges over the past decade. A global recession, which decimated parts of our profession, especially in the corporate, the private law, and the government library sectors, and a retiring baby boomer population, which made up a large percentage of our overall membership. We face competition from other associations for roles, which are traditional or law library–created functions. Now we face a legal education market in retraction after decades of expansion.

¶23 AALL has faced these challenges, and we have adapted to become a leaner Association. Staffing levels are down. We have adjusted how the Association spends money to ensure that we are fiscally responsible and providing stability for the future of the Association. While we now see gains in the members—or the number of new members joining our ranks—we continue to lose members to retirement and budget cuts. We are still losing more members than we are gaining, and that is a situation we must address, and the long-term strategy of the Association must adapt to this trend. We have held off most of those losses through cuts. However, I am a big believer that you cannot cut your way to prosperity.

¶24 The Association must look for new revenue sources, and I believe that there are many opportunities out there to find ways of increasing the numbers of new members; finding options for retiring members who want to stay engaged within the profession; informing stakeholders about the value of professional development for our members who want to stay; and providing programming to attract those who do not think of themselves as law librarians or legal information professionals, either into the Association as new members, or through other revenue-generating offerings. We have so much knowledge and expertise in this association that is of considerable value to the industry. We need to leverage that and put it into action.

¶25 I have written many times in my blog that as a law librarian, or however you refer to yourself as an individual or within your department, you are one of the most valuable and most credentialed members of your workplace. We all work tirelessly for our organizations to support the overall strategic goals of our employers. Our voices should be heard, our leadership and expertise recognized, and our contribution to the success of our organizations acknowledged. Our professional association should assist us in these efforts through leadership training, professional
development opportunities, and promoting the overall value of law librarianship to our direct stakeholders and to others within the legal profession.

¶26 AALL is stepping up on this front to make law librarians’ voices heard beyond our inner circles. This year we are working with public relations firms to increase our reach and highlight the critical role that we play within the legal community. Most importantly, we will begin to share all of the content created by our members broadly with the media, both legal and nonlegal. We are confident these efforts will position us as the only national association committed to championing the essential role that law librarians play in the legal profession.

¶27 We have a wealth of knowledge within AALL, and we will put into action processes to expose that knowledge. We are currently working to develop a knowledge management system, which will capture, share, and use content in support of our members. We are currently overhauling the AALL website, which will have a more intuitive navigation, Boolean search—that’s a good one—and taxonomic functionality. We will expand the site’s knowledge center so information and work product can easily be shared across AALL entities. This will produce an evergreen process for identifying current and emerging competencies that will translate into knowledge points to apply to all of our education, publications, and programs.

¶28 We are also expanding our education programs. And this October, we are holding a one-day competitive intelligence program in Chicago, facilitated by Zena Applebaum, a well-known expert in the field, and, actually, a really good friend of mine. The theme for the 2018 Annual Meeting and Conference in Baltimore is “From Knowledge to Action.” As I mentioned earlier, law librarians and others in the legal information profession are some of the smartest and most credentialed members in their organizations. However, this does very little when you are not part of the decision-making team.

¶29 We need to find ways of exposing the powers that be in our organization to the power of people in our law libraries and our knowledge resources departments. I want to see our members producing more white papers, placing articles in journals and other publications that are read by those decision-makers, and finding opportunities for members to engage with industry leaders. We need to have more interaction with our own stakeholders and others within the legal profession in ways that press the question of why aren’t they leveraging this talent in better ways to benefit the law firms, the law schools, the government institutions, and other businesses that have law librarians and legal information professionals on staff.

¶30 A local Houston politician once told me, “If you are not at the table, you are on the menu.” And she is right; it is time to go beyond being smart and credentialed and helpful and nice. It’s time we take action and create success for ourselves, our profession, our association, our workplace, and the entire legal profession. It’s my goal for AALL to work alongside you, providing tools and support to make that leap from knowledge to action. As much as I have enjoyed having you here in my home state of Texas, I am excited for Baltimore next year. The AMPC Committee, led by Kim Serna, is already in action and will be reaching out to all of you to put your knowledge into action in Baltimore. We have a lot to do between now and then. Please feel free to reach out to me with your ideas, and let me know of your successes. I look forward to representing AALL and all of you in the coming year. Thank you.
Treasurer's Report

¶31 President Wheeler: Thank you, Greg. I now invite Jean Willis to the podium to give the treasurer's report.

¶32 Ms. Jean L. Willis (Sacramento County Public Law Library, Sacramento, California): Thanks, Ron. Good afternoon, everyone. I am pleased to be with you today to share a summary of our association's financial statements for the 2016 fiscal year, which ended on September 30, 2016.

¶33 Today's report was culled from the treasurer's report, which was available and appears in the May/June 2017 issue of Spectrum at page 12.¹ And as mentioned previously, the report is linked in your conference app. The Spectrum article features three charts summarizing the data presented to us by our auditors, Legacy Professionals. The first chart on this slide provides a snapshot of the Association's assets. The Association's largest asset is its investment portfolio. The portfolio is invested in a variety of fixed income and instrument-managed equities, such as corporate bonds and mutual funds.

¶34 Last year was a great year for market investments, happily. So as of September 30, 2016, over $421,000 of our investment income was realized, which was a substantial increase over the $64,000 realized in 2015. Moving on to figure 2, concerning fund balances. Of the four fund balances depicted, the greatest percentage of our funds falls within the large blue wedge, which depicts our Permanent Investment Fund. Investments here are managed by Chevy Chase Trust, according to AALL's Permanent Investment Fund Policy. This fund is managed to generate earnings to increase our assets through reinvestment and capital appreciation. The Restricted Endowment Fund includes the corpus from and contributions to our seven endowed funds, which is mostly for scholarships and grants. The Current Reserve Fund serves as the Association's short-term savings account, which includes funds designated for specific purposes by way of Executive Board action.

¶35 Moving on to the third slide, it detects fund revenues for the past five years. We saw a total revenue of $4,271,692 in 2016, which was 12% over what we realized in 2015. Figure 3 illustrates how each of the three primary sources of revenue has performed over the past five years. The largest contributing factor to our revenue stream in 2016 was a substantial increase in investment income as previously discussed. The three major sources that fund programs and activities for our Association are membership dues, Annual Meeting registrations and fees, and revenues from the Index to Foreign Legal Periodicals. Membership dues of $906,322 were down from $930,259 collected in 2015. Revenue from the Annual Meeting increased by 9.8% from the prior year, while AALL also realized almost $13,000 in increased income from the Index to Foreign Legal Periodicals.

¶36 Despite declining membership dues, AALL's net assets showed an increase of approximately 3.4% over the prior fiscal year. What we know is that our portfolio is delivering a very good return on investment. Addressing declining revenues is and will continue to be a priority for the board and the association staff. Cost-cutting measures and a reduction in overall expenses ensure our Association's strong

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¹ Jean L. Willis, From the Treasurer: Looking Back and Moving Forward, AALL Spectrum, May/June 2017, at 12.
financial health. If you have any questions at all about the information presented today or the *Spectrum* article, please feel free to contact Paula Davidson or me.

¶37 As I complete my first year as treasurer, I can only describe it as a challenging but interesting learning experience in my career. I would like to acknowledge especially the many contributions from Paula Davidson, our wonderful finance director, and also from our wonderful executive director, Kate Hagan. As well, I would like to thank the prior treasurer, Gail Warren, who mentored me, and the members of the past two years’ Finance and Budget Committees. I have the utmost confidence that the board and staff will continue to review the Association’s finances to ensure that AALL remains a vital and strong association that can meet and advocate for its members’ needs. Thank you very much.

Secretary’s Report on Elections

¶38 **President Wheeler**: Thank you, Jean. I now invite Katherine Coolidge to the podium for the secretary’s report.

¶39 **Ms. Katherine K. Coolidge** (Accufile, Inc., Boston, Massachusetts): Thank you, Ron, and good afternoon. The ballots for AALL’s election of the officers and Executive Board members were distributed to all voting members on September 30, 2016, returned by October 31, 2016, and tabulated on November 1, 2016. This schedule is consistent with bylaws. I want to thank all the candidates who stood for office this past year and who are standing for office in this coming year. We are a great professional association because of your willingness to volunteer and serve.

¶40 The successful candidates were Femi Cadmus, President-Elect; Luis Acosta, Secretary; Beth Adelman and Jean O’Grady, members of the Executive Board. Continuing on the board will be Greg Lambert as President; Ron Wheeler, Past President; Jean Willis, Treasurer; and Emily Florio, Mary Jenkins, Meg Kribble, and Mary Matuszak, members of the Executive Board. There were 1344 ballots returned, and none were invalidated. I would like to now introduce the candidates for the 2017 election coming up in October.

¶41 Candidates, when I call your name, please stand. For President-Elect, Michelle Cosby and Carol A. Watson. For members of the Executive Board, June Liebert, Liz Reppe, Karen Selden, and Christine Sellers. Thank you to all the candidates, and thank you to the membership for allowing me to serve as secretary for the past three years. It has truly been my honor to serve you and the Association.

Memorials

¶42 **President Wheeler**: It is now time to remember our colleagues who died during the past year. They were members and friends of our Association: Charlotte Bynum; Dorothy A. Divilbiss; Karl T. Gruben; Donna L. Haverkamp; Robert Q. “Bob” Kelly, Sr.; Betty Kern; Susan Levinkind; Stephen Ligda, who served on the AALL staff until retiring in 2007; Debbie Maglione; Diana Duerler Mercer; Jennifer S. Murray Mesquita; Peyton Ring Neal, Jr.; Carol Joan Pedzich; Helen Skuggedal Reed; Bess Reynolds; Mary Ann Roman; Robert S. Ryan; Mortimer D. Schwartz; Anita Martin Steele; Lee Warthen; Barbara A. White. Are there any others who should be remembered at this time? Please stand and—
¶43 **Unidentified Speaker:** Marian Parker.

¶44 **Mary Whisner:** Marjorie Rombauer, who was a professor at the University of Washington and belonged to AALL for many years although she was not a librarian.

¶45 **President Wheeler:** Thank you both. Now, please stand and join me in a moment of silence. Thank you. (*A moment of silence was observed.*)

### President’s Certificates of Appreciation

¶46 Each year the President has an opportunity to present Certificates of Appreciation to people who have contributed to the Association or to the profession in exceptional ways. I was pleased to rely on these people and their leadership and direction, so it is my pleasure to present certificates to these individuals.

¶47 Stacy Etheredge, in recognition of your leadership as the Special Interest Section Council Chair. (*Applause.*)

¶48 Julie Pabarja, in recognition of your leadership as the Chapter Council Chair. (*Applause.*)

¶49 Julie Graves Krishnaswami, in recognition of your leadership of the Awards Review Special Committee. (*Applause.*)

¶50 Catherine Dunn, in recognition of your leadership of the Body of Knowledge Development Special Committee. (*Applause.*)

¶51 Allen Moye, in recognition of your leadership of the George A. Strait Minority Scholarship Review Committee. (*Applause.*)

¶52 Now I have lights and tears in my eyes. Beth Williams, in recognition of your leadership of the Innovation Incubator Special Committee. (*Applause.*)

¶53 Roger Skalbeck, in recognition of your leadership of the National Conference on Copyright of State Legal Material Special Committee. (*Applause.*)

¶54 Kris Niedringhaus, in recognition of your leadership as the *AALL Spectrum* Editorial Board Chair. (*Applause.*)

¶55 I would also like to acknowledge members of the staff who have reached service milestones. Paula Davidson, Director of Finance Administration, for ten years of dedicated service to AALL and its members. (*Applause.*)

¶56 Emily Feltren, Director of Government Relations, for ten years of dedicated service to AALL and its members. (*Applause.*)

¶57 Kate Hagan, Executive Director, for ten years of dedicated service to AALL and its members. (*Applause.*)

¶58 I’m not going to cry on this one. Pam Reisinger, Director of Meetings, for twenty years of dedicated service to AALL and its members. (*Applause.*)

¶59 **Mr. Lambert:** Okay. I’m just going to take over now.

¶60 **President Wheeler:** Got through that one. Yeah. You all know me. Right? The entire AALL staff is also recognized for all their behind-the-scene efforts that have helped to make this meeting a success. The staff is truly dedicated and regularly goes above and beyond the call of duty to be sure everything runs smoothly. They are all remarkable individuals. Would all of our AALL staff members please stand?
Introduction and Remarks of Special Guests

We are delighted to have in attendance several special guests from our counterpart law library associations in other countries. I will now introduce each of them and invite them to give us a brief greeting from the floor microphones. First, Alex Cato, President, Australian Law Librarians Association.

Ms. Alex Cato (Ashurst, Sydney, Australia): Okay. So this is the one time I’m going to say this at the conference. G’day. Thank you for the opportunity to attend this truly magical conference. It’s like library superdom. It’s amazing. I would like to also thank Wolters Kluwer for their support, and both of the associations for allowing me to be here. And on behalf of the Australian Association of Law Librarians, I would like to extend to you a very warm welcome to join us in Darwin in 2018. And now, I can’t cope with planes and I know it’s a really long way, but if I can do it, you guys can do it. Okay? It’s fun. There’s crocodiles. It’s going to be a great, giant beach party. And your attendance can help to make us realize our goal of making it a truly global conference and in line with our theme of “Global Impact, Local Footprint.” Thank you.

President Wheeler: Ann Marie Melvie, President, Canadian Association of Law Libraries.

Ms. Ann Marie Melvie (Court of Appeal for Saskatchewan, Regina, Saskatchewan, Canada): Good afternoon, everyone. First of all, I must compliment you on this wonderful conference. I am truly enjoying every aspect of it, and you have made me feel very welcome. I bring warm greetings from your colleagues in Canada. No matter where we live and work, all of us share similar challenges and opportunities as legal information specialists. Many people here have asked me if they could come to Canada and take away our dreamy prime minister, and I’m telling you right now, no. Please consider this your personal invitation to join us at our next annual conference, which will take place in beautiful Halifax, Nova Scotia, from May 27–31, 2018. The theme will be “Build Bridges, Broaden Our Reach.” You’ll find it to be an excellent learning opportunity in a beautiful setting, so please join us. Thank you very much.

President Wheeler: Anneli Sarkanen, President, British and Irish Association of Law Librarians.

Ms. Anneli Sarkanen (Fieldfisher, London, England): Thank you. Hello. This is London calling. Greetings from the legal community in the UK and Ireland. I’ve really got a short moment here, as Ron said. But I would just like to say thank you to Ron and to Greg, and to everyone, for the invitation to attend and how welcome you’ve made me feel. I have had a great conference so far, and I know there’s still more to come. I know that I’ve got a lot of things to take back home, and good ideas to take back home, to work and to Ireland as well.

We just had our annual conference last month. I can’t really tell you much about it because we don’t have enough time, but we had a fantastic hotel. Our keynote speaker was David Allen Green, who—if you want to know about Brexit, he’s the person to follow and to learn from—read his column in the Financial Times. We are in the very early stage of the planning of the conference next year. So I really can’t tell you anything about it, other than it’s in June 2018, and it’s going to be in Birmingham. If you don’t know anything about Birmingham, I encourage you to come. And I’ll tell you one thing, it’s the home of Catherine’s Chocolates. Thank you.
President Wheeler: Jeroen Vervliet, President, International Association of Law Libraries.

Mr. Jeroen Vervliet (Peace Palace Library, The Hague, Netherlands): Thank you, Ron. Ron, with whom I have crossed so many paths last year. Thank you, American Association of Law Libraries. The International Association of Law Libraries greets you. And once again, so glad that you enable me to come here and to meander through your program, library topics, and subject matter as offered in your lofty program.

But also, allow me to briefly, briefly mention the annual course of the International Association of Law Libraries, that is going to happen this autumn from the 22nd of October to the 26th, and I invite you to come there and to experience the International Association of Law Libraries. It will be very easy for you because it’s going to take place in Atlanta. So get acquainted easily with the International Association of Law Libraries’ annual course. The theme is “Civil Rights, Human Rights and Critical Issues in U.S. Law.” We’ve all been deeply moved by Bryan Stevenson’s talk of yesterday, haven’t we? Thus, please join us in Atlanta for our annual course on “Civil Rights, Human Rights and Critical Issues of U.S. Law.” I have a folder over here, and there are many with other colleagues on the board and the local organizing committee of Atlanta so you can get more information. But for now, we will continue to enjoy the program of the American Association of Law Libraries. Thank you.

New Business, Announcements, and Adjournment

President Wheeler: Are there any other items of new business? Are there any announcements? We have completed our agenda in the 2017 Business Meeting and the American Association of Law Libraries is now adjourned. We hope you will stay for the Members’ Open Forum, which will begin immediately. Kyle Courtney will serve as the moderator. The forum will be held for thirty minutes, if discussion warrants.

(WHEREUPON the 2017 General Business Meeting was adjourned at 4:25 P.M.)
Appendix A

Report of the Director of the Government Relations Office

Ms. Emily Feltren (American Association of Law Libraries, Washington, D.C.): This year was a busy one for AALL's advocacy program. With the start of a new administration and new Congress, AALL has been working hard to advocate for the value of law librarians and other legal information professionals and to influence information policy issues in Washington, D.C., and beyond.

While the new administration has challenged some of AALL's core values, it has also strengthened our advocacy efforts and affirmed our commitment to promoting policies that protect access to government information, support our justice system, and ensure a healthy democracy.

Federal Policy Priorities

Just after the November 2016 elections, AALL published our Public Policy Priorities for the 115th Congress to guide our work through 2018. Priorities include access to justice, balance in copyright, greater access to legal information, openness in government, and protection of privacy in a networked world.

We released the following statements related to our priorities:

- AALL Reaffirms Commitment to Core Values (February 6, 2017)
- Joint Letter to Protect Access to Information (February 14, 2017)

We also published a press release in April 2017 rejecting the Federal Communications Commission's plans to dismantle net neutrality protections. We joined companies including Amazon and Mozilla and organizations including Fight for the Future, the Internet Archive, and the American Library Association in planning for an Internet-Wide Day of Action to Save Net Neutrality on July 12, 2017.

AALL actively lobbied Congress on a number of different issues, including in favor of passage of the Equal Access to Congressional Research Service (CRS) Reports Act of 2017 (H.R. 2335), which would provide comprehensive access to nonconfidential reports through the Government Publishing Office (GPO), and the OPEN Government Data Act (H.R. 1770/S. 760), which would require greater transparency of data produced by the federal government. We continued to work with our allies and members of Congress in support of greater access to information on PACER.

We lobbied against the Register of Copyrights Selection and Accountability Act of 2017 (H.R. 1695/S. 1010), which would make the position of the Register of Copyrights subject to presidential appointment and Senate confirmation, and the Copyright Office for the Digital Economy Act (H.R. 890), which would move the Copyright Office out of the Library of Congress (LC).

AALL once again submitted testimony to the House and Senate Appropriations Subcommittees on the Legislative Branch in support of funding for GPO and LC, and we celebrated when the subcommittee approved report language to require...
CRS to make its nonconfidential reports publicly available. We are asking AALL members to add their voices to the chorus in support of GPO and LC by sending postcards to their members of Congress (available at the Member Services pavilion in the exhibit hall at the Annual Meeting), or by emailing their members of Congress through our Action Center.

AALL sent comments in response to the Copyright Office’s Study on the Moral Rights of Attribution and Integrity (82 Fed. Reg. 7870, Docket No. 2017-2). We also submitted comments to the Administrative Conference of the United States (ACUS) to urge ACUS to consider adding language from AALL’s Principles and Core Values Concerning Public Information on Government Websites to its proposal encouraging greater transparency of adjudication materials on agency websites.

In addition, we released seven new advocacy one-pagers on our policy priorities to inform members about our top issues and provide opportunities for engagement. We also published two longer issue briefs on significant copyright cases, including Fox News Network, LLC v. TVEyes, Inc.¹ and Star Athletica, L.L.C. v. Varsity Brands, Inc.²

**State Policy Priorities**

We celebrated the enactment of the Uniform Electronic Legal Material Act (UELMA) in Maryland, Washington, West Virginia, and Washington, D.C., which brought the total number of enactments to seventeen. AALL’s UELMA Enactment Chart, which includes information about the covered legal materials and fiscal impact of UELMA in each state that has adopted it, has been updated to reflect these developments. I had the special opportunity to speak about UELMA at the United States Court of Appeals for the Armed Forces’ Continuing Legal Education and Training Program in March 2017.

AALL also provided guidance and assistance to members and chapters on issues related to government law library funding.

**AALL’s Advocacy Team**

We have held two online advocacy trainings since last July: “Advocates and Influencers: How Law Librarians Can Impact the New Congress and New Administration” (December 2016) and “Speaking Up and Speaking Out: Influencing Your Members of Congress in Favor of Law Libraries” (April 2017).

Also in April 2017, we hosted our third annual Virtual Lobby Day, during which AALL members wrote hundreds of emails, called, and tweeted their members of Congress on our top policy priorities. This year’s most popular alerts addressed funding for the Institute of Museum and Library Services and the Legal Services Corporation, along with support for net neutrality.

**National Conference on Copyright of State Legal Materials**

The National Conference on Copyright of State Legal Materials, held at Boston University School of Law on Dec. 2, 2016, was a success, with nearly 100 attendees.

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on-site. The video recordings, slides, and other resources are available on AALLNET at bit.ly/AALLCopyrightCon16.

Report of the Executive Director

This association year we focused on moving the 2016–2019 strategic plan forward, which included the appointment of several special committees to meet goals. In addition, the Association website, AALLNET, is being redesigned and our association management database is being migrated to a new platform. All of these efforts are designed to increase member satisfaction and engagement.

Strategic Plan Progress

Under the plan’s Knowledge goal: “To be the profession’s hub of information, the authority and creator, conduit and co-collaborator of industry information. Liberate resources from silos and make them available to all members,” we have undertaken the following initiatives:

- The creation of an innovation incubator, designed to facilitate innovation within the Association and the profession, and result in the creation of compelling ideas and products. With this goal in mind, an Innovation Incubator Special Committee was appointed, chaired by Beth Williams. The special committee has submitted its report and recommendations to the Executive Board, which will now work to implement the plan. In addition, during this year’s Annual Meeting, we are hosting an Innovation Tournament, sponsored by Bloomberg Law.

- The development of a knowledge management system that will enable AALL and its members to create, capture, share, and use content in support of their professional development and expanding opportunities for stakeholder involvement. To further this goal, we are overhauling our website, and migrating to a new content management system. This will allow for more intuitive navigation, Boolean search, and taxonomic functionality. It will also house an expanded Knowledge Center that will showcase toolkits, research guides, best practices, and more from the SISs—making it easy for all members to share and utilize these resources. The SISs have provided taxonomic input and have been involved in sharing their resources. The anticipated completion date for the launch of the new system is October 2017.

- The creation of an evergreen process for identifying current and emerging competencies that translates into actionable knowledge points to apply to AALL education, publications, and programs. To further this goal, the Body of Knowledge Special Committee, chaired by Catherine Dunn, was appointed, with the task of creating knowledge domains and competencies for AALL and its members. The committee has submitted its report and recommendations to the Executive Board, which will now work to implement the processes and plan.

Under the plan’s Leadership goal: “AALL and the profession are recognized experts in the field of legal information within the legal community,” we have undertaken the following initiatives:
The development of the appropriate public relations infrastructure to reinforce AALL as the association of thought leaders in legal information. In furtherance of that goal, we have selected Kimball Communications to support the development of a public/media relations effort for AALL. The goals for this effort include:

- Proactive media outreach to both the legal and general press (this includes blogs and social media press)
- Leveraging social media to increase our reach within the legal community, and with our advocacy partners
- Article placement in the legal press, as well as general press as appropriate, authored by AALL thought leaders on trending topics
- Content creation for print and digital media
- Developing AALL as the “go to” media contact on all subjects related to legal information
- Developing a press resource site on the AALL website
- Media list and editorial calendar development

Created a new staff position, Director of Content Strategy, which is held by Megan Mall, who joined the staff in August 2016. Megan is responsible for collecting, organizing, analyzing, researching, and sharing information with members, through a wide variety of communication channels. The primary focus is to create a knowledge management system to provide information and resources to help members solve problems, develop new strategies, and stay informed about trends and developments in legal information. Since August, she has worked to expand our social media reach through content sharing on Twitter, Facebook, and LinkedIn. In addition, the daily KnowItAALL newsletter was launched in December, and has a strong following by both members and stakeholders.

Under the plan’s Community goal: “Provide a platform and opportunities for meaningful engagement between and among members and key stakeholder throughout their careers,” we have undertaken the following initiatives:

- The creation of a sustaining member program for our retired members, allowing them to pay a one-time fee of $425 for six years of continued membership.
- Creation of a Champion Membership, for members who choose to pay an additional $75 in dues, and be recognized as an AALL Champion.
- A Member-Get-A-Member program, created to incentivize recruitment efforts, generate engagement, and create recognition opportunities for members. The program empowers members to be ambassadors for the profession and their association. Details of the program were included in your registration materials. The more new members you recruit, the more recognition you receive.
Professional Development

We hosted a number of education events this year, including the Management Institute, in which fifty-seven members participated. The 2016 AALL Leadership Academy Fellows wrapped up their year-long mentorship process (after participating in the academy in 2016). We continue to provide the monthly Education Update for members to keep them informed about all AALL education offerings. This year we introduced the AALL innovation tournament to encourage members to support the development and implementation of compelling workplace innovations.

As part of our AALL webinar series, sponsored by Wolters Kluwer, eleven webinars were produced this year, with more than 1500 members participating. Webinars covered a variety of topics from “Teaching Technology” to “Copyright Issues in Institutional Repositories and Digital Archives,” with an average of 151 registrants for each. AALL also collaborated with the Legal Marketing Association to produce two cosponsored webinars on the topic of library and marketing department collaboration. Both webinars were well attended with 293 attending the first webinar and 270 attending the second webinar.

The Body of Knowledge Development Special Committee convened this year to develop the AALL Body of Knowledge, which will clearly define core content areas of expertise and the related competencies and skill sets needed for essential and advanced abilities in law librarianship. The Body of Knowledge will serve as a blueprint for developing core professional development opportunities for legal information professionals.

Collaboration and Cooperation

We continue to meet with and collaborate with a number of associations and organizations, including:

- Association of American Law Schools
- American Bar Association, Section on Legal Education and Admissions to the Bar
- American Library Association
- Association of Legal Administrators
- British and Irish Association of Law Librarians
- Canadian Association of Law Libraries
- International Association of Law Libraries
- International Legal Technology Association
- Legal Marketing Association
- Medical Library Association
- National Association of Law Placement
- Uniform Law Commission

In addition to attending their conferences and meetings, we also hosted information booths at the meetings of the Association of Legal Administrators, International Legal Technology Association, the Legal Marketing Association, and at Legaltech New York.
Corporate Sponsorship

We are pleased to have a number of corporate sponsors this year, who, in addition to hosting AALL Annual Meeting events, also support a number of our programs and publications. We value their support and collaboration. Sponsors include:

- Gold Level: Bloomberg Law, LexisNexis, and Wolters Kluwer
- Silver Level: Thomson Reuters
- Bronze Level: William S. Hein & Co., Inc.

AALL Membership

AALL continues to have an active and engaged membership. The 2016–2017 membership year ended with a total of 4371 members, which is one percent lower than our total for the prior year. We closed the 2016–2017 membership year with a ninety-two percent retention rate, while the 2016 average renewal rate for individual membership organizations is eighty percent.

Staff Organization

As is always the case, the AALL staff work hard to deliver value and provide superior service to our members. They work with committees, task forces, SISs, chapters, and caucuses to support their projects and initiatives. They are also mindful of AALL’s strategic plan, and strive to achieve its goals.

You should never hesitate to contact a member of the AALL staff. We are all dedicated to serving our members and to championing the profession and our members.
Appendix B

Statements of Candidates for the 2016–2017 AALL Election

Candidates for Vice President/President-Elect in 2016–2017

Kathleen (Katie) Brown*

At a young age, I was taught that if you have the means—financial or time—you give back to the people or groups that have supported your growth. My first library director, Karl Gruben, reinforced this lesson when he encouraged me to run for a leadership role in our local chapter of the American Association of Law Libraries (AALL) in my first year as a professional librarian. I was honored to give back to that chapter so quickly after becoming a member, and today, I am honored with the opportunity to continue to give back to AALL at the national level.

Since joining AALL as a law student more than ten years ago, my involvement and service as a member have been broad. I have had the privilege of serving in a variety of leadership roles in chapters, on committees at all levels, through the Gen X/Gen Y Caucus, special interest section membership, and as an elected member of the AALL Executive Board.

AALL provides its members with significant support while on their career path both in person at the AALL Annual Meeting and online through webinars. Like many in our profession, I am motivated and engaged when exposed to new challenges, responsibilities, and opportunities for knowledge. I see an opportunity for the membership as a whole by expanding the scope of webinars to address soft skills that are key to employment advancement, as these skills are often not taught in library or law school. Online instruction on how to handle difficult conversations, providing and accepting feedback, and leadership succession planning could be a great benefit to all of our members.

The core of the Association has always been the commitment to advancing the library profession and, in recent years, our value in the business of law to those outside our profession. I recently had the opportunity to work with a team of members from all library types on the creation of a multiday educational opportunity on topics that are essential to the business of law. Empowering our members with greater knowledge about the business of law is a vision I strongly support and will continue to promote, no matter what my leadership role in the profession is.

Another recent initiative for AALL was establishing partnerships with groups like the International Legal Technology Association and Legal Marketing Association. These partnerships are crucial for our education and for the Association’s growth, and I would emphasize seeking out more collaborations with groups and individuals who are undertaking innovative work in the legal

* Associate Dean for Library and International Program Relationships, Charlotte School of Law, Charlotte, North Carolina.
profession. At our libraries, we have learned we cannot serve any of our users in silos. The same is true for AALL. With greater collaboration, the membership will gain new knowledge and be able to maximize our impact on the business of law.

This Association and its membership have, and continue to provide me with significant opportunities and knowledge in librarianship, leadership, management, and collegiality. I am eager to continue advancing this profession and those who dedicate their lives to it. Every day, I am happy that I am a law librarian and a member of this Association.

Femi Cadmus

This past spring, I received my 20th American Association of Law Libraries (AALL) anniversary membership pin with emotions of delight and deep nostalgia. My mind immediately raced back to my beginnings as an inexperienced, freshly minted librarian in an academic law library and the challenges that awaited me on the job. Right from the start, my AALL membership proved invaluable with timely educational offerings, mentorship, networking, collaborative, and leadership opportunities. Indeed, I started to flourish and come into my own, rising steadily through the ranks to my current position as director of an academic law library. Our Association has been a constant over the course of my career, and I count it a tremendous honor to be provided with the opportunity to give back to the Association that has literally nurtured me.

We live in disruptive times, and no industry, including law librarianship, is insulated from the twin impact of a shifting economy and rapidly evolving technologies. The digital age has been a double-edged sword with the exponential growth of information and sophisticated ways to organize and access information on one hand. On the other hand, challenges in preservation and access have increased, coupled with the fermenting of erroneously held beliefs that search engines (and even robots) are dispensing with the need for librarians and information professionals. It is no surprise that many of our colleagues are fighting for their libraries and professional lives.

My aim is to galvanize and harness our tremendous multifaceted talent and to leverage opportunities to partner with public and private entities to create innovative and compelling strategies for remaining relevant and viable as a profession in changing and uncertain times. I am optimistic about the future of our profession and commit to bring my skills, expertise, and entrepreneurial spirit and energy to the Association. I am also a firm believer in transparency, shared governance, and collaboration. My goal is to keep open channels of communication and robust dialogue with membership. If given the opportunity to lead our venerable Association, I believe that together, we will make a lasting difference to our profession and impact generations of information seekers to come.

* Edward Cornell Law Librarian, Associate Dean for Library Services, Professor of Practice, Cornell University Law School, Ithaca, New York.
Candidates for Secretary in 2016–2017

Luis Acosta*

The entrance to the building where I work displays a quote from James Madison, which reads: “Knowledge will forever govern ignorance: and a people who mean to be their own governours must arm themselves with the power which knowledge gives.” That quote followed his observation in a letter from 1822 that “[a] popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both.” Our profession helps secure Americans’ access to legal information, which Madison recognized as crucial to our democracy. The American Association of Law Libraries (AALL), as the national association for our profession, is essential in ensuring our effectiveness in this role.

When I became a law librarian after many years practicing law, my colleagues and mentors encouraged me to be active in AALL. I have been privileged to have played several leadership roles that have given me an appreciation for many aspects of how the Association operates. These have included chairing a special committee, chairing a standing committee, chairing a special interest section, and acting as an AALL representative. One particular highlight was chairing the Special Committee for Law Library Compensation from 2002–2003. That special committee petitioned the AALL Executive Board to establish a standing committee to continue its work, which they agreed to create—it is now called the Economic Status of Law Librarians Committee.

I would be deeply honored, should the membership select me, to serve our Association as secretary.

Scott D. Bailey**

Regardless of what we call ourselves, the future of law librarianship is in our hands rather than handed to us; we have heard this before. There has never been a more exciting time to be a law librarian, and the need for collaboration across our institutions has never been greater. Together, we can determine whether this time is exciting in the way that leads to extinction or exciting in the way that leads to growth and opportunity. This effort will take all types of law librarians and the diversity, insight, and power of our people that has kept me engaged, involved, and proud of my membership in the American Association of Law Libraries (AALL) since 1997.

Artificial and real divisions do exist within our field and Association, but the greatest opportunities arise from setting those aside and joining together to leverage our larger environment and role in the business of law. By reaching out to other professionals and constituents in the legal community and speaking their

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* Chief, Foreign, Comparative, and International Law Division II, Law Library of Congress, Washington, D.C.
** Global Director of Research Services, Squire Patton Boggs LLP, Washington, D.C.
language, we can give visibility to our value regardless of our perceived boundaries. I propose that we continue the outreach work we have begun, including all types of law libraries, and work to bring the legal industry to a new level of awareness that transcends preaching to the choir. By inviting faculty, government, legal marketing, administrative, and technology professionals to targeted events—promoting and creating a brand that demonstrates our value and brings visibility to our existing high-level contributions—we can create new interest, demand, and recognition for our widening array of services industry-wide. Approaching the legal field strategically and aligning our priorities with metrics our institutions value will be essential to a prosperous future for the law library community and the legal profession as a whole.

We can find new ways to thrive, but we must do it together. Bringing our services to the people who are our clients and mobilizing our services to provide convenient efficiency to the practice and study of law is the way forward for our field. We can incorporate a tradition of excellence with a proactive direction toward dynamic librarianship. As we approach the critical 2016 AALL Annual Meeting, I will continue to advance these critical concepts and will facilitate programs and funding of actions that would strategically align ourselves with our constituent interests and evolve the business of law across sectors and divisions. We are an ideal alternative in a competitive market and are poised to provide more analytical, higher-level services at a tremendous value. As outgoing Private Law Librarians & Information Professionals Special Interest Section (PLLIP-SIS) Chair, I will be honored to be a bridge of action between PLLIP leadership and the AALL Executive Board as we move forward together as law librarians toward a brighter future.

Candidates for AALL Executive Board Member in 2016–2017

Beth Adelman*

If elected, I will participate in the leadership of the American Association of Law Libraries (AALL) according to my philosophy about the current state and future of law libraries.

Law librarianship is a dynamic profession. Indeed, change is all around us, and it has forced us out of our comfort zone and into new internal and external modalities. Internally, each institution is unique with its own cultural, financial, and technological forces at work. I believe that we need to wholeheartedly acknowledge that there is no clear solution to the challenges of the “new normal.” It is the uncertainty of being outside of our comfort zones, along with our willingness to experiment and to accept an occasional failure as a step forward that will spur innovation and lead the profession into the future.

Externally, we are faced with the challenge of the perception of libraries as becoming obsolete, and the impact that perception can have on future support for libraries. I believe law librarians need to challenge this perception. We have a powerful story to tell about our impact on the institutions we serve. We need to be

* Director, Charles B. Sears Law Library, Vice Dean for Legal Information Services, University at Buffalo, The State University of New York, Buffalo, New York.
prepared for any situation—from the elevator speech to legislative advocacy. I believe we will be able to yield support from our stakeholders if we are cognizant of, and are prepared to engage in a dialogue about, this external reality.

It is a great honor to be nominated for the position of AALL Executive Board member. Likewise, it would be an honor to serve—thank you for your consideration.

Katherine M. Lowry*

During law school, I researched for the faculty and worked for information vendors. Little did I know this would ignite a passion for legal research and drive me toward a great career as an information professional—and I quickly found other likeminded professionals at the American Association of Law Libraries (AALL). I was drawn to a network of colleagues that were devoted to delivering exceptional service, constantly absorbing knowledge, and with precision, sharpening their expertise. I enjoyed exploring all the different facets of being a librarian and learning from my peers. It was clear to me the value this role had on an organization, but every once in a while, I noticed that the same value did not resonate to the same degree with the business. With determination, I wanted to uncover why some members of the business were so blinded by what seemed so obvious to me. As my career began to flourish, I sought to understand the business imperatives of my organization on a deeper level, advocated on behalf of the profession, led local librarian associations, consulted for large firms, pushed the envelope, and learned a great deal about the business and myself along the way.

Today, our collective challenges are more complex than they were fifteen years ago; however, I feel empowered by experience to evolve with our profession, claim a seat at the table, and be a strategic adviser to my organization. The very foundation of our profession enables us to deliver value that resonates well beyond a classification of being a cost center or on some level associated only with books. We need to embrace the foundation of our profession but dare enough to explore and maximize utilization of our talents in a way that continues to translate value to the business. My newest exploration is to invent new ways to embrace emerging technologies to further promote our expertise and deliver a positive business impact. My long-term exploration is dedicated to creating new leaders to carry on our legacy.

In closing, I owe a great deal to AALL and feel fortunate to say that many of the great people I met in the beginning are still my colleagues today. Some are even close friends. Without this network, I would not be half the leader that I am today. If in turn, I can serve you and AALL, I would be honored.

* Director of Practice Services, BakerHostetler LLP, Cincinnati, Ohio.
My roots in the profession began when I was hired as a paralegal straight out of college, which immersed me in the world of legal research. It didn’t take long before I was inspired to build on this initial experience by attending graduate school and working in a variety of law firm libraries. I have been an active member of the American Association of Law Libraries (AALL) for more than twenty years and have been involved at the local level both in New York and Philadelphia. I have also been very active at one of our “sister” organizations—the International Legal Technology Association (ILTA)—as part of their Knowledge Management Peer Group and Strategic Vendor Program.

These experiences connected me with peers and colleagues across the profession in court, academic, firm, and corporate organizations, and within a variety of administrative areas such as information technology, professional development, marketing, etc. This type of partnership and collaboration with affiliated groups was a strategic objective identified by the Executive Board in 2012, and continues to be relevant today as we move forward with related goals. I would welcome the chance to further strengthen our alignment in these areas.

When I think of AALL, one of the first words that comes to mind is “opportunity.” As members of a vital organization, we have the opportunity to make a difference. In addition to professional organizations, we can continue to advocate for equal access to legal information and further the advancement of electronic research for those in need—an essential civic duty and responsibility. We can also foster greater awareness around risks associated with privacy and cybersecurity issues. While minimizing risk to our organizations and constituents is paramount, we need to strike a balance to make sound decisions that minimize the impact on collaboration and ensure that access is not limited.

As information professionals, we are often at the intersection of identifying problems and supporting users with their needs. With the ever-changing landscape of technology, we need to be on the forefront of embracing the repercussions of what this means to our membership and to our individual organizations. What do our users need in terms of research, and how can we surface relevant content more easily in a mobile world? How will the advent of cognitive computing impact these issues? How will this affect our roles and responsibilities in areas of knowledge management, competitive intelligence, project management, and risk avoidance? Certainly hiring staff and retaining talent will be a key part of the equation.

I am honored to be nominated to run for AALL’s Executive Board and would welcome the prospect to serve the members of this organization to support our current mission and grow our future vision. It is fitting that our 2016 conference theme is “Make It New—Create the Future.” With the myriad of challenges that are part of the legal profession, we as information professionals are ideally situated to effect change and create solutions with our vendors and peers—the future is now.

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Jean P. O'Grady*

Ever since I attended my first American Association of Law Libraries (AALL) conference in 1983, AALL has been a source of continuity through decades of profound professional change. AALL has provided me with a fantastic network of colleagues and important educational opportunities as I moved from academic law libraries to private firms. I began my career as a part-time evening circulation librarian at the Pace University Law School in 1979 while I was earning my M.L.S. at St. John’s University. I held several positions at Pace, but the majority of my career has been spent in private firms. When I applied for private firm jobs, I encountered several law firm directors who did not respect the value that academic experience could bring to private firms. That experience shaped my future approach to recruiting when I became a private firm director myself. I always looked at the special expertise of the candidate no matter what environment they worked in. More than a few of my most successful hires came from law schools and vendors. I have built stronger organizations by seeking a variety of experiences and backgrounds. Membership in AALL and local organizations such as the Law Library Association of Greater New York and Law Librarians’ Society of Washington, D.C., have proven to be powerful sources of personal networking and learning from my colleagues’ professional expertise.

In recent years, I have turned some of my focus to the “nonlibrarian” organizations in order to evangelize and advocate for law librarians and information professionals in the larger legal and business community. I have undertaken this outreach in a variety of contexts. I created my blog Dewey B Strategic in 2013 as a platform to highlight the strategic role played by law librarians and information professionals in the organizations they support. I have also published articles on the value of law librarians in Law360, Peer to Peer (the journal of the International Legal Technology Association), and Thomson Reuters Practice Innovations Newsletter. In 2014, I was elected as a Fellow of the College of Law Practice Management, and was the first law librarian elected to the board of the New York Law Institute. I have spoken at Ark Conferences on Knowledge Management, Competitive Intelligence & Business Analytics, and at the Janders Dean Knowledge Management Conference in Australia.

I have also continued to speak and write for the law library community. I was honored to be co-chair of the AALL Private Law Librarian & Information Professional Special Interest Section (PLLIP-SIS) Summit in 2012 and 2013. I also continue to be an active speaker, moderator, and panelist at the AALL Annual Meeting and Conference. In addition to speaking at local events around the United States, I have addressed the annual meetings of the Australian Law Librarians’ Association and the Canadian Association of Law Libraries.

I have been a witness to the entire arc of digital transformation of knowledge access, which continues to transform our organizations and our roles. I am not ashamed to admit that I became a librarian because I loved books, and I especially loved the sacred spaces of research libraries. In moving to private firms, I have

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embraced the potential of digital resources, competitive intelligence, knowledge management, big data, and analytics to provide new avenues for developing the expertise of information professionals and delivering ever higher value insights into the organizations we serve.

The Association and the profession face unprecedented challenges as well as unprecedented opportunities in helping organizations develop intelligent knowledge strategies. Librarians and information professionals in law firms are at unprecedented risk of outsourcing and marginalization.

If elected to the AALL Executive Board, I would focus on initiatives that highlight the value of information professionals. In particular, we need to establish metrics for measuring value; we need to educate our organization leaders that there is a wide spectrum of law libraries. In law firms we need to educate leadership that it is in their own best interest to have strategic information professionals enhancing their competitive knowledge of law and business. It’s no secret that I believe that in the twenty-first century law firm environment—our professional identity as “law librarians” is a bad brand. Even though AALL’s Association for Legal Information rebrand was defeated, the rebranding discussion must continue. We have seen in recent weeks law firms proudly proclaiming that they have “outsourced our law library.” Ask yourself how many law firm leaders would brag that they had outsourced their “strategic knowledge and insights team?”

It would be an honor to serve on the AALL Executive Board at such a critical time in the history of our profession.
Mr. Kyle Courtney (Harvard University, Cambridge, Massachusetts): All right. Thank you. Ron, thanks for inviting me to do this. As both a friend and colleague, I’m honored to be here to organize this open forum here this afternoon. This is an opportunity for us to communicate with the Executive Board, answer questions both from the floor and also from online. We have received several questions here in three varieties. Some were received prior to the conference, some we have received here at the conference at the AALL booth, and some, hopefully, we will answer from the floor, if you can step up to the microphone and be identified.

To start off, I’m just going to tell you that you have exactly thirty minutes. I have a clock and we’ll try to stay on time. Between Ron and me we are often late, so we will be exact. But to start, I would like to start with a question received prior to the conference for the board.

This is from Eugene Giudice and he asked, “Does AALL plan to take a formal position on the University of Chicago principles on free expression?”

President Ronald E. Wheeler, Jr. (Fineman & Pappas Law Libraries, Boston University, Boston, Massachusetts): I spoke with Eugene, and I thought about this issue and I read the Chicago statement. AALL supports free expression, and our government relations policy states the following: “AALL endorses the American Library Association’s Library Bill of Rights and supports the right to libraries to disseminate materials on all subjects. AALL opposes government censorship and supports nondiscriminatory access to information for all library users.”

The ALA Library Bill of Rights specifically mentions freedom of expression. Subparagraph 4 says, “Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.”

After reading the Chicago principles on free expression, it is my opinion, at least, that that broad statement applies specifically to educational institutions and the exchange of information and ideas in education. And it was so broad as to, in my reading, be inapplicable to government agencies and, in particular, law firms.

Mr. Courtney: Thank you, Ron. Another variety of questions we have here, since no one is stepping up to the microphone at the moment, are these blue cards and some were submitted here at the conference. This one was written by someone who identified themselves as “A proud Texan” and asked, “Why does Ron Wheeler hate Texas?”
Mr. Gregory R. Lambert (Jackson Walker LLP, Houston, Texas): So I asked if I could answer this one. And really what I want to start off with is, I assume this is in relation to us sending the letter on Friday to the major cities about our taking Texas out of consideration for future conferences. And there’s a couple things I want to say first. But one, this was not a Ron Wheeler decision. This was a board decision.

This was something that as the organization, or Association, what Texas is doing violates our code of ethics, and therefore, as much as it pains me as a proud Texan, what pains me more is that the governor, lieutenant governor, and legislature has put us in this position so that we have to take Texas out of the rotation because of the anti-LGBTQ legislation that is both enacted, such as the adoption law, and what is currently considered a “high priority” by the state’s governor for anti-LGBTQ, especially trans—trans access to restrooms.

As the father of a 15-year-old trans boy, it affects me personally, and it is something that I think is a valiant stand by the Association, to make our voices heard, that this type of discrimination, especially state-sponsored discrimination, will not be supported through our financial assistance. So it’s not about hating Texas. We’ve been to Texas three times in the past dozen or so years. We love Texas. Texas is a great place to come. But when you’re put into this corner, I think this was the right decision made.

Mr. Courtney: Okay. We have a question at the microphone right here.


Thank you, President Wheeler, incoming President Lambert, and the Executive Board for issuing a statement excluding Texas as a future location for all AALL conferences. We applaud and support that statement. But given the breadth and depth of our mission and values as an Association, we must go further. We urge the Executive Board to amend the current site selection policy, to recognize that there may be times when a location should be changed or canceled at the last minute, and to provide a method for doing so, if necessary.

The request for such a procedure was first made by the CSP-SIS in July 1991, in New Orleans after the Louisiana legislature passed legislation extremely offensive and oppressive to women’s healthcare. Other organizations canceled their conventions in Louisiana at that point.

In 1992, Colorado voters adopted Amendment 2, an initiative that bans state and local laws prohibiting discrimination on the basis of sexual orientation. After a lobbying effort led by the SISs and chapters, the Executive Board voted to cancel the meeting scheduled for Denver in 1998, and moved it to Anaheim. But then, as now, there was no stated policy or procedure in place to guide the board through the process.

Over the past few years, Texas has enacted legislation restricting voting rights, reproductive and healthcare rights of women, LGBTQ rights, and immigrant rights. Many AALL members are not here today because of the social and political climate in Texas. Some of us are here only after much debate about spending funds in Texas. And, as President Wheeler mentioned, in addition, California will no longer fund state employee travel to Texas.
¶17 It is important for the Association to have a policy that addresses how to make adjustments when meeting sites are scheduled for states or cities that have passed discriminatory legislation. Future challenges for us as an Association may be the prohibition on the use of public funds to purchase particular legal materials, removal of funding from law school clinics, prohibition on research assistance in particular areas, or requiring librarians to submit personal information to authorities without a warrant.

¶18 AALL should have a stated procedure to respond nimbly, quickly, and decisively if so challenged. Although some procedures are currently in place, nothing, as far as I know, to adequately respond on short notice. We urge the board to discuss all of the issues, contractual, insurance related, and others, and develop a procedure that can respond to various conference venue issues, including discriminatory practices and to include this policy in the site selection documentation.

¶19 I understand it might be expensive, and yes, it might require intensive administrative time and effort, but we believe it is time for AALL to address these issues. Thank you.

¶20 Mr. Courtney: Thank you. Mark Estes sent an e-mail to us as well, so he’s represented here both virtually and flat as well.

¶21 President Wheeler: So I think what I would like to do in response to your question is to read Mark Estes’s two questions, read the prepared response that I have and you know, riff a little bit and tell you that I think you’re actually right about some of that. So Mark writes a hypothetical question: “In January or February of this year, what penalty fees would the Association have had to pay for canceling the conference in Austin?”

¶22 And he also asks a factual question: “Does the Association carry an insurance policy to cover canceling the Annual Meeting for any number of reasons: air traffic controller strikes, union workers at the convention center, or headquarters hotel, or discriminatory acts by government officials?”

¶23 Here’s my response: We would have incurred $632,000 in cancellation fees if we had canceled the meeting in January of this year. This does not include all of our other costs that would have already been incurred in the planning preparation for the meeting, including service contracts, supplier fees, speaker fees, sponsorships, exhibitor fees, and other costs.

¶24 We do carry an insurance policy to protect us from catastrophic events, such as acts of terrorism and acts of nature, or if the facility is unable to meet contract obligations due to a circumstance that leaves them unable to operate. The policy does not provide coverage to us for canceling due to changes in state or local laws.

¶25 When selecting a site for the meeting, we now require the convention center and hotels we contract with to include an agreement to comply with our bylaws and antidiscrimination policy. This was not a part of our requirements in 2011 when we signed the Austin contract.

¶26 We have recently revised the language for our contracts to make it tighter and to include proposed or enacted legislation by any government entity located in the same state as the hotel or convention center that is not in compliance with our antidiscrimination policy.
¶27 I want to further state that the difference between the Denver/Anaheim situation and the current situation here was that the change that happened in Colorado left one whole year during which planning a change of venue could occur. Here we had six months, and that’s not a rebuttal to what you say, Camille. I actually think you’re right; we can still work on policy.

¶28 However, if we have six months or less, it’s very unclear regardless of the policy whether or not we would be able to change venues and find a venue and plan a meeting in just six months. I just want to say that out loud. But again, I think you’re right; we should review our policies and tighten them up. So thank you for the question.

¶29 Mr. Courtney: We have another question from the floor over here.

¶30 Ms. Kate Irwin-Smiler (Professional Center Library, Wake Forest University, Winston-Salem, North Carolina): I had a very similar question to Camille, although not nearly that robust. So I’m going to sort of alter it on the fly here.

¶31 I was, until recently, the chapter treasurer for SEAALL. And our annual meeting this spring was in North Carolina, so we faced a very similar situation. Our chapter meeting started the day that the legislature enacted the HB2 repeal, which was in many respects not at all a repeal. I drove to Raleigh that day, skipped the institute, and met with my legislators and protested outside the governor’s mansion instead. So this is something that feels very personal to me.

¶32 And I want to make sure that we have options when things like this come up, and I want to add into this idea about plans for when things go wrong with a site that we’ve selected. What’s our worst-case scenario? What’s the, pardon the phrase, the drop-dead, last date on which we can decide to have a different site? What’s our deadline for moving from a chosen location to finding a different site?

¶33 It would be good for members to know the last possible date for us to have moved. Not to necessarily say we can move, we could definitely move up to that point, but after that point there is no possible way for us to have moved.

¶34 Mr. Courtney: We have another question on the floor here. Please, go ahead.

¶35 Mr. Jeff Woodmansee (University of Arkansas at Little Rock William H. Bowen School of Law, Little Rock, Arkansas): I want to bring up a couple of things that definitely dovetails on this, including the previous question. As a leader and someone who happens to be planning (or is leading the program committee for) the Southwestern Association of Law Libraries meeting in Houston, and then the following year with plans to host in Little Rock, I just wonder if you could speak to what considerations you discussed about the regional chapter meetings prior to releasing this statement and how to plan for the future.

¶36 And the second thing I’ll just say along those lines is, we need to be on the front lines. Being from a red state, one of the best recruiting tools for legal information professionals and to get them involved in being leaders is the Annual Meeting. If you can get someone to come, it’s a great thing to build upon.

¶37 I have some concerns that there are a lot of folks out here in red states. Are you worried at all about recruitment? And if we preclude hosting Annual Meetings in states like Texas, and Arkansas, which has a similar legislation that’s on the board and could very well be enacted in a couple of years, is that going to impact recruiting nationally? I wonder if any thought was given to the cities that host. The Annual Meetings tend to be in some of the most progressive cities in those states,
Austin being a perfect example. So I’m just kind of curious if some of the trickle-down impacts of the policy were given any thought.

¶38 **Mr. Lambert:** Thanks, Jeff. The chapters themselves are independent entities, so they can make up their own mind on that. We hope we give guidance out there, but really they make their own decisions. The SEAALL conference actually had a record attendance.

¶39 I can give you a personal example. I just got off the phone earlier with a reporter from San Antonio, and he knows my personal situation as well as professional situation, and he said, “Well, are you going to move out of Texas?” And I said, “It is something that we’ve thought about, but I think we also need to stay here and challenge the status quo. We know things are going to change, and if we are not here to help facilitate that change, then to me, personally, it’s giving in.”

¶40 Now, as an association, that’s different because it’s not just me, it’s the group as a whole. So I would say on the chapter level, that is something that you’re going to have to decide individually, but I would highly suggest that you have some type of strategy, that you get your boards together. And especially if you know over time you’re going to be going to these states, do you stay and fight and announce, and then take the hit from some of the members to do that, or do you protest in other ways. So I know that’s not exactly answering your question, but I thought it would be better than, “Well, it depends.”

¶41 **Mr. Woodmansee:** SWALL is mandated to be every other year in Texas. It’s a unique situation, I guess, presently there. Thank you.

¶42 **Mr. Courtney:** Thank you. We have a question in the center.

¶43 **Mr. Daniel B. Cordova** (Colorado Supreme Court Law Library, Denver, Colorado): Thank you. Good afternoon. My comment today is really more in the form of a request for a call for policy action from AALL at the board level. The question is, is it possible for AALL to establish, at the SIS level, a group to create an electronic database collection tool, modeled in part on some 2013 database survey work done in Connecticut, where they created a statewide contract for the state bar association by taking real-life legal research questions and using them as a test for how they select the legal research vendor?

¶44 Again, Mark Estes seems to be everywhere. John Stark and I were on a conference call with him today, and we were running through some different variations about why this might be helpful and how that might be more inclusive moving forward for states and groups that have to go through this work routinely but don’t really have a template to do it. So I know work is being done everywhere, and I don’t want to hold the outcome of this particular survey up as what everyone should do. But I think there’s some value to having a process where we share a guidance document as a baseline for database evaluation, especially where it spends taxpayer dollars.

¶45 The process here that I’m suggesting really is measuring the value of the tool by testing it against something that we know is good work but that needs to be sustained so that it can be customized for jurisdictions after it’s established, but also could be used as something that can be looked to at various points in time as we evaluate the value of electronic databases. Does that make sense?

¶46 **Mr. Courtney:** It certainly does. It’s being written down. So noted. Thank you, Dan. There is a question here on the floor.
Mr. Steve Anderson (Maryland State Law Library, Annapolis, Maryland): Thank you. I just wanted to say that I second Camille and flat Mark's request that the Executive Board take a look at the site selection policy. In particular, I think that there are some issues that are so core to our existence as an association, such as making sure that we are free to buy any type of material that we would like for our patrons, making sure that prison libraries are funded and in existence for offenders' rights, things like that that might not be in the antidiscrimination policy that the Association has, but things that might be very core to our members and our Association, if they were blocked by some type of state action.

So I think we need to kind of merge some of the antidiscrimination policy stuff that we might look at for a site selection policy in with some of this core what-it-really-means-to-be-a-law-librarian stuff. Thank you.

Mr. Courtney: Thank you. Next in line, please.

Ms. Margaret (Meg) Butler (Georgia State University College of Law Library, Atlanta, Georgia): Hello. I have a question about attendance at this conference and whether it met with the expected attendance based on legislation in California and similar kinds of things and where people might have just been like, “Eh, not so much Texas I’m feeling.”

And then I'm also curious not just for comparison between expected attendance this year with actual, but also how this compares to, historically, the last three years. If you have any sense of that, I would love to hear it.

Ms. Kate Hagan (American Association of Law Libraries, Chicago, Illinois): So I can tell you that we budgeted this year for 1400 attendees. That doesn't include exhibitors. It's registrants. And we're just, I think, twenty short of that as of a few minutes ago. We did hear from some California members who had registered, and then needed to be refunded their registration because of the ban in California on travel to Texas, and that was around nine people.

And last year in Chicago we were right at 1500 or a little short of 1500, which we kind of expected just because of where, you know, the population center is, basically, of law librarians, and transportation to and from Chicago, for instance, is easier than Austin.

Mr. Courtney: Thank you. We have another question here.

Ms. Luci Curci-Gonzalez (New York Law Institute, New York, New York): This is an issue of discrimination. We have been to venues in the past barred admittance to people of color, Italians, Catholics, Jews, Irish. Our association needs to take a stand. This is the United States of America, the country that my ancestors got in a boat from southern Italy, and my husband's family got on a plane from Cuba to come to, plain and simple.

Mr. Courtney: Thank you. Another question, please, from the floor.

Ms. Casandra Laskowski (Duke University School of Law Library, Durham, North Carolina): I'm going to phrase this a little bit more as a question. I want to say thank you for writing the letter. I think that it is very factually written. I'm curious to know that with the range of discriminatory policies that were in effect, why we focus on one group as a pat erasure of all the others that are equally discriminated against by Texas? Why there wasn't mention of SB4 or anti-women's health laws, or any of that? And why was there this one focus? Because we're getting all this publicity, but it sounds like what it says is, “As long as you take care of these two bills, AALL will come back,” and I don't know that's the message we want to send.
President Wheeler: Thank you for that question. Our response was in direct correlation to our antidiscrimination policy from the Association. And so our current antidiscrimination policy does not include issues of women’s health, and we can’t change that as a board. That would be something that would have to be changed by the membership. We can only respond in the way that we did or in other ways to discrimination that we preclude as of today.

Ms. Laskowski: SB4 is about race and immigration.

President Wheeler: I’m not aware of SB4. Are you saying that there’s a policy of discrimination?

Ms. Laskowski: SB4 actually is about redistricting, which was disenfranchising an entire population. And SB4, which is anti-immigration, which has been compared largely to the “show me your papers law,” which is completely in line with discrimination laws.

Mr. Lambert: I agree with you. SB4 goes toward sanctuary cities as well, and is a very hot-button issue and is probably something that we should address as well. I don’t have to tell anybody here in the room that we are in a very polarized political environment. Our keynote speaker yesterday said, “We live in an era of where what makes you fearful and afraid and angry is what’s going to sell at the moment.” And unfortunately, it seems like the legislatures, especially some like Texas, bring those red-meat issues to life almost every day as though there’s a primary challenge going on.

And so, yes, you’re right, SB4 with the sanctuary cities, it should have been something that was addressed. I will say that I had worked with one of the members to write an article for Spectrum, and I’m not sure what the status is right now, but there is a sanctuary cities article that we are publishing in Spectrum to include what resources are out there for people in a sanctuary city, and that you need to provide resources to your citizens. So it’s not an unknown issue to us, but I think it was one that also came up in this legislative session, which ended May 31.

Mr. Courtney: So we’ve hit thirty minutes exactly. I see that there’s a person standing there with a question. Could we have a staffer send her a blue card? We did not get to all our e-mail and blue card questions, but they will all be answered online after the conclusion of this conference.

Thank you for your candor, your questions. I appreciate your time here today. Enjoy the rest of it.

(WHEREUPON the Open Members’ Forum adjourned at 4:56 p.m.)
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