ARTICLES

Evaluating Shepard’s, KeyCite, and BCite for Case Validation Accuracy [2018-20]
Paul Hellyer 449

Sources of Alaska Legal History: An Annotated Bibliography, Part II [2018-21]
W. Clinton “Buck” Sterling 477
# Table of Contents

**From the Editor: The Last Chapter [2018-19]**

*James E. Duggan* 445

**General Articles**

Evaluating Shepard's, KeyCite, and BCite for Case Validation Accuracy [2018-20]

*Paul Hellyer* 449

Sources of Alaska Legal History: An Annotated Bibliography, Part II [2018-21]

*W. Clinton “Buck” Sterling* 477

**Review Article**

Keeping Up with New Legal Titles [2018-22]

*Benjamin J. Keele*

*Nick Sexton* 539

**Regular Features**

*Practicing Reference . . .*

*Mary Whisner* 561

My Year of Citation Studies, Part 4 [2018-23]


*Patrick E. Kehoe*

*Judy Janes* 579


Volume 110: Author and Title Index [2018-27] 607
From the Editor: The Last Chapter

James E. Duggan**

¶1 Six years ago¹ I took on the job of Assistant Editor of Law Library Journal under the amazing Janet Sinder,² mainly in order to learn the process of editing an academic journal, but also to prepare for becoming editor the following year (assuming I didn’t run away, screaming in horror!). I slowly learned the intricacies of the Bluebook,³ AALL’s universal citation format,⁴ and the differences between an em dash (—) and an en dash (–).⁵ The next year,⁶ thanks to Janet’s patient tutelage, I became the twenty–ninth⁷ editor of Law Library Journal.⁸ With this issue, I complete my five-year term as editor.

¶2 Overall, it has been a rewarding six years. Quite frankly, it has also been a lot of work, too! Nights and weekends were spent editing, cite-checking, and responding to author submissions and queries. I could not have done it without the support of my law school, Tulane, my law library staff, the extraordinarily talented Janet Sinder, the wonderful copy editor Lisa Wehrle, and the always understanding Christopher Keech at ALA Production Services.

¶3 Heather Haemker, AALL Publications Manager, and Cara Schillinger, AALL Director of Membership, Marketing & Communications, both managed the administrative side of publishing for LLJ. Of course, I could always count on Kim Rundle, AALL’s Leadership Services Coordinator, to provide whatever I needed, whether it was a business meeting script or an annual report. Former AALL Executive Director Kate Hagan deserves special credit for giving me the opportunity to take on this exceptional responsibility for AALL, and letting me put my individual stamp on it. I will always be grateful to Kate for her leadership in promoting LLJ. I

---

¹ © James E. Duggan, 2018.
² Director of the Law Library and Associate Professor of Law, Tulane University School of Law, New Orleans, Louisiana.
⁴ See Frank G. Houdek, Universal Citation Guide (3d ed. 2014).
⁵ Okay, I still don’t really understand the differences.
⁶ July 2013. I did figure out footnotes!
⁷ See Houdek, supra note 2, at 7a2.
would also like to thank Wolters Kluwer for their long-time sponsorship of the *Law Library Journal* and *AALL Spectrum* Authors’ Reception, held during the AALL Annual Meeting, and William S. Hein & Co., Inc. for sponsoring the reception in 2017.

¶ 4 I would have been lost without my board of editors, who, with one exception, served all five years of my editorship. Members included Frank G. Houdek, Anne Klinefelter, Janet Sinder, and the late Richard A. Danner. They provided advice on articles, potential authors, and stylistic details, and generally served as a sounding board when I needed to bounce off ideas.

¶ 5 My long-time columnists were lifesavers. Ben Keele and Nick Sexton continued to edit “Keeping Up with New Legal Titles” throughout my five-year term, and never missed a deadline. They are true stalwarts. Darla Jackson continued the “Thinking About Technology” column for a few issues, and Lynne Maxwell did the same for “Making Management Work.” I was able to talk my good friend and soon-to-be fellow AALL President colleague Ron Wheeler into taking over the longstanding “Diversity Dialogues” column, and he contributed some truly thought-provoking pieces.

¶ 6 No mention of columnists would be complete without thanking Mary Whisner. Her “Practicing Reference” column is truly a mainstay of *LLJ*, and she also has been a mainstay of my librarianship “life.” We met in library school, and she has been an inspiration for countless library students ever since. Her column is often the first thing readers turn to when they open a new issue of *LLJ*. Both she and her writing are erudite and entertaining. She is truly a great friend and a superb mentor.

13. Former Rufty Research Professor of Law and Senior Associate Dean for Information Services, Duke Law School, Durham, North Carolina. Dick was editor of *Law Library Journal* from 1984–94. See *Houdek*, supra note 2, at 7a2.
16. Research and Electronic Services Librarian, University of Oklahoma Law Library, Norman, Oklahoma.
17. Visiting Associate Professor of Law, West Virginia University College of Law, Morgantown, West Virginia.
18. Director of the Fineman & Pappas Law Libraries and Associate Professor of Law, Boston University, Boston, Massachusetts.
21. We are both graduates of Louisiana State University’s School of Library & Information Science in Baton Rouge. Go Tigers!
Thanks to all of the authors who contributed their scholarship to *LLJ* over the past five years. I have learned so much! There have been so many diverse topics covered. For example, from the legal resources of the Pitcairn Islands\(^{22}\) to Rwanda law libraries,\(^{23}\) I have gained a background in legal resources from around the world. Also, subjects such as artificial intelligence in law libraries\(^{24}\) and algorithms & legal research\(^{25}\) have kept *LLJ* readers mesmerized. Memorials\(^{26}\) for deceased law librarians remind us all about the incredible people that built the profession. Each of the articles contribute to our collective knowledge base, and I feel extremely fortunate to have been part of this scholastic endeavor.

Finally, thanks to Tom Gaylord,\(^{27}\) who takes over as the thirtieth *LLJ* editor with the next issue. He has ably served as the associate editor over the past year, and I know he has many good ideas for continuing the strong publication record that *LLJ* has enjoyed over the past 110 years. I wish him the best of luck!


\(^{27}\) Faculty Services & Scholarly Communications Librarian, Pritzker Legal Research Center, Northwestern University Pritzker School of Law, Chicago, Illinois.
Evaluating Shepard’s, KeyCite, and BCite for Case Validation Accuracy

Paul Hellyer**

This study evaluates and compares how accurately three legal citators (Shepard’s, KeyCite, and BCite) identify negative treatment of case law, based on a review of 357 citing relationships that at least one citator labeled as negative. In this sample, Shepard’s and KeyCite missed or mislabeled about one-third of negative citing relationships, while BCite missed or mislabeled over two-thirds. The citators’ relative performance is less clear when examining the most serious citator errors, examples of which can be found in all three citators.

Table of Contents

Introduction ........................................................... 449
Previous Citator Comparison Studies .............................................. 450
Methodology: Designing a Citator Comparison Test ......................... 455
Statistical Results .......................................................... 464
Examples of Citator Errors ..................................................... 467
Responses from the Database Providers ........................................ 473
Conclusion ................................................................. 476

Introduction

§1 Lexis, Westlaw, and Bloomberg Law are among the most trusted legal databases,¹ and their citators are one of their most crucial features: Shepard’s on Lexis Advance, KeyCite on Westlaw, and BCite on Bloomberg Law. Legal citators have a critical role in validating case law by identifying negative treatment from other cases. Most importantly, citators should indicate whether a case has been cited and overruled by a higher court. Without a reliable citator, lawyers and judges

---

might rely on invalid case law. In short, reliable citators are essential to the legal profession.

In their advertisements, Lexis, Westlaw, and Bloomberg Law boast about the reliability and convenience of their citators. Lexis claims to follow “rigorous quality controls,” and asserts that Shepard’s is “the best way to be confident your case is built on the best authority.” Westlaw calls KeyCite “[t]he industry’s most accurate, up-to-the-minute citation service,” and invites users to “[u]se it to instantly verify whether a case, statute, regulation, or administrative decision is good law.” Advertising for BCite is less exuberant but confident, with statements such as “Bloomberg Law makes it easy to verify that your cases remain good law with . . . BCite.”

This study evaluates how accurately Shepard’s, KeyCite, and BCite identify negative treatment of case law. The results will likely disappoint anyone who relies on these citators. I found highly inconsistent results and egregious mistakes. In this study, BCite’s statistical performance is the lowest by a wide margin, but the citators’ relative performance is less clear when specific citations are examined qualitatively. The results for all three citators are troubling. I begin this article with a review and analysis of previous comparison studies, followed by a discussion of my methodology, statistical results, and a discussion of specific mistakes. As far as I am aware, this is the largest statistical comparison study of citator performance for case validation, the first statistical comparison study involving BCite, and the first time both KeyCite and Shepard’s have been statistically compared with a third citator.

Previous Citator Comparison Studies

Shepard’s has a long history dating back to 1873, and has been available online since the early 1980s when both Westlaw and Lexis offered it. In the 1990s, Lexis gained control of Shepard’s; in response, Westlaw developed KeyCite. In the years following KeyCite’s 1997 debut, several law librarians conducted and published comparison tests of the two competing citators.

Fred Shapiro published the first major comparison study in the April 1998 issue of Legal Information Alert. Shapiro gathered a random sample of 421 federal and state cases decided in January 1996, and compared the KeyCite and Shepard’s


8. Id. at 171–75.

report for each case. He found that KeyCite returned over 50% more citing references than Shepard’s, mainly due to better coverage of citations from unreported cases and law review articles.\textsuperscript{10} He also found that KeyCite had an edge in currency.\textsuperscript{11} Shapiro did not evaluate the accuracy of either citator. \textit{Legal Information Alert} published a response from Lexis claiming that Shapiro did not use comparable data in his citation count comparison. Lexis claimed that Shepard’s listed only citing references that had been analyzed by its editors, whereas most of KeyCite’s citing references were merely computer-generated, with no analysis. Lexis also claimed that KeyCite’s apparent edge in currency was due to KeyCite’s practice of listing citing references before they had been analyzed.\textsuperscript{12}

\¶6 In 1999, \textit{Legal Reference Services Quarterly} published a second comparison study.\textsuperscript{13} Elizabeth McKenzie discussed the competing claims and counterclaims made by Lexis and Westlaw about their respective citators, and then presented the results of her own study. McKenzie selected a dozen federal and state cases, and compared the Shepard’s and KeyCite reports for each. Like Shapiro, McKenzie found that KeyCite retrieved more citing references from unreported cases and law review articles, and she also found that KeyCite added more headnote numbers to the citing references.\textsuperscript{14} She praised KeyCite’s innovative “Table of Authorities” and depth of treatment features, and predicted that Shepard’s would have to improve in response to KeyCite.\textsuperscript{15}

\¶7 In 2000, William L. Taylor published a comparison study in \textit{Law Library Journal},\textsuperscript{16} which appears to be the most significant statistical comparison study of KeyCite and Shepard’s published prior to this article. Taylor began by evaluating the completeness and currency of the two citators to see if Shepard’s had closed the gap in citation retrieval. Comparing the Shepard’s and KeyCite reports for a random sample of 459 state and federal cases decided in April 1997, Taylor found that, as of September 1999, there was no longer a significant difference between the citators in the number of citing references they retrieved.\textsuperscript{17} To test currency, Taylor retrieved a set of U.S. Courts of Appeals decisions decided just two workdays earlier, and identified eighty-seven case citations in these decisions. He then tested how long it took for these new case citations to appear in the Shepard’s and KeyCite reports for the cited cases. He found that all eighty-seven citations appeared in both citators within two workdays of the date of the citing opinion, but that the analyses sometimes took longer. Taylor found that Shepard’s was somewhat faster at adding analyses for unrelated cases, but he was uncertain about the validity of his results since he looked at only forty-five citing relationships with analysis in unrelated cases.\textsuperscript{18}

\textsuperscript{10. Id. at 3.}
\textsuperscript{11. Id. at 14.}
\textsuperscript{12. Shepard’s Response to the Shapiro Comparative Study of Shepard’s and KeyCite, Legal Info. Alert, Apr. 1998, at 4.}
\textsuperscript{13. Elizabeth M. McKenzie, Comparing KeyCite with Shepard’s Online, Legal Reference Servs. Q., 1999 No. 3, at 85.}
\textsuperscript{14. Id. at 92–96.}
\textsuperscript{15. Id. at 98–99.}
\textsuperscript{17. Id. at 129, ¶ 9. Taylor attributed the difference between his results and Shapiro’s to recent changes that Shepard’s had made.}
\textsuperscript{18. Id. at 130–32, ¶¶ 12–20.}
Taylor went a step further than Shapiro and McKenzie by comparing the citators’ case validation accuracy as well, albeit in a limited way. He looked at 146 citing relationships that at least one of the citators labeled as negative. Out of these 146, 77 were labeled as negative by both citators, 36 were labeled as negative only by Shepard’s, and 33 were labeled as negative only by KeyCite. If we assume that all the negative labels were correct, then Shepard’s missed 23% of the negative references and KeyCite missed 25%. But why assume all the negative labels were correct? Taylor explained this as follows:

It is possible that some of these negative analyses are unique to one system because they are mistakes. Looking at the text of each citing opinion, I did find some that I thought were incorrectly identified as negative, but I have decided not to interpose my own judgment in this very subjective area.

I agree with Taylor that this area can sometimes be subjective, so I can understand his reluctance to use his own judgment. But his reticence has drawbacks. Each time a citator creates a false negative label, Taylor’s method gives it credit for its mistake, while penalizing the other citator for not making the same mistake. It’s possible that one citator has a greater tendency to create false negative labels, which would invalidate the comparison. It’s also plausible that some of the discrepancies between the citators resulted from reasonable differences of opinion in interpreting ambiguous treatment, but Taylor did not make any attempt to separate reasonable differences of opinion from clear mistakes. For these reasons, it’s possible that the real error rates for one or both citators are much lower than Taylor’s estimate.

On the other hand, Taylor might have significantly undercounted the mistakes in one or both citators. Taylor only considered whether treatment was labeled as negative; he did not consider conflicts between the descriptive phrases that Shepard’s and KeyCite applied. If Shepard’s says a case was “overruled,” while KeyCite says it was merely “distinguished,” it’s unlikely that they could both be considered correct. Second, Taylor did not count any negative treatment that was missed by both Shepard’s and KeyCite. If Taylor had been able to compare results from a third citator, he might have identified additional errors.

Lexis and Westlaw both published responses to Taylor’s study and, not surprisingly, their criticism focused on Taylor’s method of determining accuracy. In an appendix to his article, Taylor listed the citing relationships that had been labeled as negative by one citator, but not the other. Both Lexis and Westlaw made good use of this list. Jane Morris, writing on behalf of Lexis, offered two examples of “errors” attributed to Shepard’s, which were in fact false negative labels generated by KeyCite. Not to be outdone, Westlaw commissioned an independent panel of experts to review all the citing relationships in Taylor’s appendix and determine which citator deserved the blame for each discrepancy. Dan Dabney, writing on behalf of Westlaw, announced that the panel had found that in this sample, KeyCite

---

19. Id. at 133, ¶ 23. Taylor looked at two different samples of citing relationships; I’m combining his numbers here.

20. Id. at 133 n.17, ¶ 22 n.17.

had a slight edge in accuracy over Shepard’s: thirty-five correct entries for KeyCite, versus thirty-three for Shepard’s.\(^{22}\)

\(\S 12\) Westlaw’s use of an independent panel of experts is intriguing. Dabney revealed that the panel members frequently disagreed with each other: they reached unanimous agreement only about half the time, and were split three to two on eighteen out of sixty-eight citing relationships.\(^{23}\) But Dabney’s article left many of the details unclear, making it hard to determine why the panel members disagreed so frequently. Apparently, Westlaw asked the panel members to give a simple yes or no answer on whether each citation should be labeled as negative.\(^{24}\) Dabney did not say whether the panel members were able to confer with each other, nor if they were given any guidance. It’s unclear whether each panel member came up with their own working definition of “negative treatment.” But Dabney’s conclusion is clear enough—he believes that citation analysis is a subjective process. He wrote:

Perhaps the most salient point to take from this exercise is that one should not rely too much on the history judgments supplied by the editors for either system. Each system missed history tags that were correctly identified by the other, and each applied some tags that were properly omitted by the other.

But, while both systems could undoubtedly do somewhat better in applying history tags, it is not to be expected that they can always anticipate the judgments of individual legal researchers. If individual researchers do not agree among themselves, there is no way that any system can always agree with all of them. Thus, while history tags are of immense assistance to the legal researcher, they should not be relied upon exclusively. Careful researchers should also examine citations that do not have negative tags.\(^{25}\)

\(\S 13\) Westlaw’s advertising for KeyCite does not reflect Dabney’s advice.\(^{26}\)

\(\S 14\) In the seventeen years since Taylor’s article was published, there have been no comparable follow-up studies that I’m aware of, although some of the later citator commentaries have been interesting.\(^{27}\) Perhaps the most significant develop-

\(^{22}\) Dan Dabney, Another Response to Taylor’s Comparison of KeyCite and Shepard’s, 92 Law Libr. J. 381, 383, 2000 Law Libr. J. 33, tbl. 1. Careful readers may notice a slight discrepancy between Taylor’s article and Dabney’s, which results from an error in Taylor’s article. In the main text of his article, Taylor wrote that there were a total of sixty-nine negative labels that were unique to either KeyCite or Shepard’s: thirty-three for KeyCite, and thirty-six for Shepard’s. Taylor, supra note 16, at 133, ¶ 23. But Dabney referred to only sixty-eight unique negative labels. This is because Taylor listed only sixty-eight unique negative labels in his appendix: thirty-two for KeyCite, and thirty-six for Shepard’s. Taylor either omitted a citing relationship from his appendix or miscounted when writing his article.

\(^{23}\) Dabney, supra note 22, at 384, tbl. 2.

\(^{24}\) Dabney did not say this explicitly, but he did not list anything other than simple binary responses.


\(^{26}\) See KeyCite on WestlawNext, supra note 5.

\(^{27}\) In 2003, Alan Wolf and Lynn Wishart examined an inherent shortcoming in both Shepard’s and KeyCite: they miss important new legal authorities that don’t cite the target case. Alan Wolf & Lynn Wishart, Shepard’s and KeyCite Are Flawed (Or Maybe It’s You), N.Y. St. B.J., Sept. 2003, at 24. This is an important problem often overlooked by novice researchers. For example, if a state legislature passes a new statute that supersedes an existing case, the statute itself won’t appear in the case’s citator report because the statute doesn’t cite the case. Although we can’t expect a citator to pick up non-citations, the databases must take some blame for their misleading advertising. Contrary to what their advertising suggests, Shepard’s, KeyCite, and BCite don’t tell you if a case is still good law—they merely tell you about the sources that cited it. More recently, in 2013 Susan Nevelow Mart found that Shepard’s outperformed KeyCite in identifying relevant headnotes. Susan Nevelow Mart, The Case for Curation: The Relevance of Digest and Citator Results in Westlaw and Lexis, 32 Legal Reference Servs. Q. 13, 41–42 (2013). In 2016, Aaron Kirschenfeld compared the descriptive phrases that KeyCite and
ment since Taylor’s article is the appearance of Bloomberg Law and its citator BCite, which launched in late 2009. I am not aware of any significant comparison tests involving BCite. Part of this article’s purpose is to determine whether BCite is comparable to Shepard’s and KeyCite for case validation, but perhaps more importantly, the addition of a third citator allows for a more thorough assessment of all three citators.

¶15 Designing a citator accuracy test is a difficult task. Taylor tried a minimalist approach, for which he was criticized. But Taylor’s critics ran into problems of their own. Westlaw went to the trouble of commissioning an independent study, only to find that their panel members frequently disagreed with each other. Westlaw’s Dan Dabney seemed ready to give up on the idea of comparing accuracy, instead offering his conclusion that citation analysis is a matter of opinion.

¶16 Based on my own experience with the study presented here, I concede that citation analysis is partly subjective. There are two key reasons for this. First, courts sometimes use ambiguous language when discussing other cases, sometimes deliberately. This creates ambiguity in a citator’s underlying data, and ambiguity will always be open to different interpretations. Second, different researchers may have different ideas on what “negative treatment” means, not to mention more specific terms like “distinguished” or “criticized.”

¶17 Nonetheless, I believe it’s possible to design a reasonably objective comparison of citator accuracy. In the vast majority of the citing relationships I saw, the courts expressed themselves clearly, and if the underlying data are reasonably clear, there’s no reason why citators and citator comparisons can’t also be reasonably clear and accurate. To illustrate, let’s consider again the independent study that Westlaw commissioned in response to Taylor’s article. At first glance, it may seem that the panel members often disagreed on what the citing cases said. But some of those apparent conflicts may have been due to flaws in the way Westlaw designed the comparison test.

¶18 Westlaw apparently asked each panelist for a simple yes or no answer on whether each citing relationship was negative. But Westlaw could have offered a third option—it could have allowed the panelists to say that a citing relationship was ambiguous. It could be that in many of the apparent conflicts, the panelists would have agreed with each other that the citing relationship was ambiguous. If Westlaw had excluded these ambiguous relationships from the results, no doubt they would have found a higher rate of agreement on the remaining relationships. Alternatively, Westlaw could have excluded citing relationships where the panelists split three to two, and based its comparison on the remaining citing relationships. Either way, it’s possible to create a more objective comparison test by filtering out

Shepard’s applied to negative citing references. Aaron S. Kirschenfeld, Yellow Flag Fever: Describing Negative Legal Precedent in Citators, 108 LAW LIBR. J. 77, 2016 LAW LIBR. J. 4. Due to a small sample size, he did not come to any conclusions about which citator was more accurate. Id. at 91–92, ¶ 40.


unreliable data. Some citing relationships are clear while others are hopelessly muddled; we shouldn’t treat both types of citing relationships the same way in a citator comparison test.

¶19 Furthermore, it’s not clear that Westlaw supplied the panel members with any definition of “negative treatment” or that Westlaw allowed the panel members to confer with each other on a definition. Even when a citing relationship is clear and two researchers read it the same way, they may apply conflicting labels if they don’t agree on what the labels mean. In any comparison test, it’s essential for all the testers to share clear and consistent understandings of what the labels mean, and to disclose these understandings when publishing their results.

¶20 Finally, it’s not clear that the conflicts between Westlaw’s panel members resulted from differences of opinion, rather than simple mistakes. Even when a citing relationship is clear, it may be hard to spot—sometimes I found a key phrase buried in a footnote, or sometimes the relevant discussion came a few paragraphs after the citation. If the panel members had been allowed to confer with each other at the end of the process, they might have been able to resolve many of their conflicts simply by pointing out the relevant passages to each other.

¶21 In the end, I expect it would be rare for two expert researchers to view the same citing relationship, point out the relevant passages to each other, agree that the language is unambiguous, and still disagree on what the citing court meant to say. There is more room for disagreement on how a citing relationship should be labeled, but a citator can and should explain any labels to end users through detailed definitions. In a comparison test, labels that are different but comparable can both be considered correct.

¶22 I’ve tried to improve on the accuracy of previous studies, but in the end no evaluation will be entirely free from subjectivity. So that readers may judge my work for themselves, I offer a detailed description of my methodology and many examples of the errors I perceived in the citators.

Methodology: Designing a Citator Comparison Test

¶23 In this study, I evaluate how accurately and thoroughly the citators identify negative citing references, from the perspective of a typical user. My “typical user” perspective centers on the needs of practicing lawyers, but it does not involve a particular jurisdiction or a particular legal problem. The question is whether a citing reference would negatively impact a lawyer’s reliance on a case in any jurisdiction for any purpose. If a citator fails to identify any such negative treatment, I count this failure against the citator, regardless of whether the citator followed its own procedures. This explains my basic approach.30

¶24 As a starting point, I used Lexis to retrieve all seventy-three published decisions of the Ninth Circuit Court of Appeals from January 1984.31 I selected the

---

30. It might be useful to separately evaluate how well the citators follow their own procedures, but my knowledge of the citators’ behind-the-scenes work is incomplete. Only the database providers could fully and accurately evaluate how well the citators follow their internal procedures.

31. To retrieve these cases, I used the search query date = 1/1984 in Lexis’s database of Ninth Circuit Court of Appeals cases, and then used the filter option for reported cases. This yielded seventy-six cases, three of which were false hits. Two of the false hits were cases that the court withdrew prior to final publication (Levi Strauss & Co. v. Blue Bell, Inc., 732 F.2d 676 (9th Cir. 1984), and Piatt v.
Ninth Circuit because of its reputation for a high reversal rate. In its October 1984 term, the U.S. Supreme Court reviewed twenty-eight Ninth Circuit cases and reversed them twenty-seven times. I didn’t design this article to evaluate the Ninth Circuit, but in any case my choice did not disappoint: as of mid-2017, according to the citators, these seventy-three Ninth Circuit cases have garnered a total of 357 negative citing references from other courts. These citing references are the basis for this comparison study.

Before going any further, I would like to stress that this study is not limited to results from January 1984, nor is it limited to Ninth Circuit cases. The seventy-three Ninth Circuit cases are merely a starting point. The relevant treatment comes from the citing cases, which date from 1984 to 2017, and come from a variety of courts. Federal cases predominate among the citing cases, which might skew the results somewhat if one or more citators handle federal cases with greater or lesser care than state cases. Otherwise, the results presented here should be representative of the citators’ overall validation performance.

After I had identified the seventy-three Ninth Circuit cases using Lexis, I skimmed or read portions of each case so that I understood its subject matter, and downloaded its Shepard’s, KeyCite, and BCite reports. The 357 citing cases I examined include each citing case that at least one of the three citators identified as negative, not including negative treatment from administrative decisions. All the citing cases I examined were from domestic courts (state, federal, and territorial), including both published and unpublished opinions. All three citators place citing cases into separate categories for “history” (i.e., other cases from the same course of litigation) and unrelated cases, but I make no such distinction and treat all negative case law treatment the same way, regardless of what category it comes from.

For BCite, I counted as negative any citing relationships labeled as “distinguished,” “criticized,” “superseded by statute,” “prior overruling,” “overruled in part,” or “overruled.” For KeyCite, I counted as negative any citing relationships on the “Negative Treatment” tab. For Shepard’s, I counted as negative any citing relationships with a red, orange, or yellow square, as well as citing relationships labeled as “Among Conflicting Authorities Noted In” (ACAN). Throughout this paper, I refer to all of these indicators as “negative.” For each citing relationship that I stud-

---


33. Wermiel, supra note 32, at 357.

34. BCite further separates unrelated cases into two tabs, “Case Analysis” and “Citing Documents.” See Product Help & Walkthrough: BCite, BLOOMBERG LAW, [https://www.bna.com/BCite/ [https://perma.cc/W4N6-ESQ5]. The cases on the “Citing Documents” tab have no treatment symbols or descriptions, and it’s not clear if they are analyzed at all. In this study, I make no distinction between the two tabs. I count all failures to appropriately label a case, regardless of whether the case is on the “Case Analysis” or “Citing Documents” tab.

35. Shepard’s considers ACAN to be neutral treatment, but the ACAN label is comparable to a negative label on KeyCite, so I decided to include ACAN labels in this study for purposes of comparison. See infra ¶¶ 42–44.
ied, I recorded the descriptive word or phrase that each citator applied (for example, “distinguished by” or “disagreement recognized by”).

¶28 I gathered the raw data for this study between April 25 and June 6, 2017. For each of the seventy-three Ninth Circuit cases, I always retrieved reports from all three citators on the same day, so that no citator would receive an unfair advantage due to timing. Prior to the publication of this article, I shared my findings with the database providers, and in response they have already made changes to their citator reports. I don’t take into account any changes to the reports after I downloaded them, so this article does not necessarily reflect the citators’ current content.

¶29 For each of the 357 citing relationships that I examined, I retrieved the citing case, read the relevant passages, and made my own judgment as to how the citing case treated the cited Ninth Circuit case. If I felt that reasonable people might disagree on whether a citing relationship was negative, I recorded it as ambiguous. In these situations, I did not treat any citator as right or wrong. For example, in *Fyffe v. Heckler*, a disability benefits case, a U.S. District Court cited the Ninth Circuit’s *Kail v. Heckler* in an ambiguous way. The district court wrote:

Fyffe argues that his objectively identified psychological disorder is “severe” as defined in the regulations. He then argues that the existence of this severe non-exertional impairment absolutely precludes a directed denial of disability pursuant to the grids [vocational guidelines]. There is some support for Fyffe’s argument. See, e.g., *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir.1984); *McCoy v. Schweiker*, supra (where non-exertional impairments are present, the grids may serve only as guidelines); *Roberts v. Schweiker*, 667 F.2d 1143 (4th Cir.1981) (recourse must be had to evidence other than the grids). Here, however, Fyffe’s real argument is not with the ALJ’s reliance on the grids, but rather is with the ALJ’s finding that Fyffe’s non-exertional impairment is not so severe as to preclude sedentary, unskilled work.

The court did not cite *Kail* again, and ruled against the plaintiff. How did the court treat *Kail*? It seems clear that the court distinguished *McCoy* and *Roberts*, and by implication it seems to have distinguished *Kail* as well, but it’s hard to be certain because the district court didn’t include any parenthetical for *Kail*. The district court said nothing explicit about *Kail*, except that it provided “some support for Fyffe’s argument.” According to Shepard’s, *Fyffe* distinguished *Kail*, but according to KeyCite and BCite, *Kail* did not receive any negative treatment here. I tend to agree with Shepard’s, but I recognize some room for reasonable difference of opinion. I marked this citing relationship as ambiguous, so that none of the citators are credited or penalized.

36. I used abbreviations in my data, such as “D” for “distinguished by” and “DR” for “disagreement recognized by.”

37. To improve the accuracy of my results, I reviewed all the citing cases a second time, a few months after my initial review. I recorded my own judgments again without looking at my initial judgments, and then compared my initial set of judgments with my second set of judgments. I reviewed for a third time the citing relationships where my judgment was inconsistent and produced a corrected set of results.


39. 722 F.2d 1496 (9th Cir. 1984).


41. Another example of ambiguous treatment can be seen in *Ferguson v. Park City Mobile Homes*, No. 89 C 1909, 1989 U.S. Dist. LEXIS 11010 (N.D. Ill. Sept. 15, 1989). In *Ferguson*, a U.S. District Court in Illinois agreed with the Ninth Circuit’s decision in *Brothers v. First Leasing*, 724 F.2d 789 (9th Cir.
¶30 For each citing relationship that was not ambiguous, I decided whether the relationship was negative. If a citing relationship was negative, but a citator failed to identify it as such, I marked this as a failure. These failures can occur in one of two ways: (i) failing to put a negative label on a negative case, or (ii) omitting a negative case altogether. In my records, I distinguished between the two types of situations. I sometimes refer to the first type of situation as “mislabeling,” but to be more precise, some of these cases have no analysis label at all. 42 I also tracked negative labels that citators applied to citing relationships that were in fact positive or neutral; in the results section of this article, I report these instances separately.

¶31 My understanding of “negative” treatment means any treatment that invalidates the cited case in any jurisdiction, casts doubt on its validity in any jurisdiction, criticizes its reasoning, and/or limits its application. It’s not uncommon for a court to treat a cited case both positively and negatively in the same opinion. In my view, any negative treatment needs to be labeled as such, regardless of whether it is mixed with positive treatment. Ideally, a citator should include both positive and negative labels for the same citing case where appropriate, with specific pin cites. Shepard's has this capability, but KeyCite and BCite do not. If a citing case gives a mix of positive and negative treatment, I expect a citator to apply a negative label, but in order to treat all three citators comparably, I overlook any failure to provide a positive label in addition to the negative label. 43

¶32 In a few instances, I noticed that a citator omitted a positive or ambiguous citing case from its list of citing cases. Positive omissions would come to my attention only if another citator mislabeled the positive case as negative. Although I recorded these positive and ambiguous omissions when I found them, I did not count these omissions as errors since I’m not judging the citators’ overall recall performance—I’m judging only their performance in identifying negative treatment.

1984), that a lease could be a form of credit covered by the Equal Credit Opportunity Act. But at the same time, the District Court disagreed with part of the Ninth Circuit's reasoning. Ferguson, 1989 U.S. Dist. LEXIS 11010, at *7 (“While this Court does not follow Brothers's analysis—the Ninth Circuit reasoned that the ECOA incorporates the proscriptions of the TILA as amended by the CLA—it agrees, based on what has been presented to the Court, that the ECOA can apply to this transaction.”). In effect, the District Court merely concurred with the result reached by the Ninth Circuit. In the KeyCite report for Brothers, Westlaw labeled Ferguson as “not followed by.” Shepard's did not label Ferguson as negative, while BCite missed Ferguson altogether. I tend to agree that Ferguson is negative, although I would have described it as “criticized by.” But it could be argued that declining to follow a line of reasoning is not the same as criticism, and that the departure in reasoning is outweighed by the agreed result. Seeing room for reasonable difference of opinion, I marked this citing relationship as ambiguous.

42. It's a worse mistake to put a distinctly positive label on a negative case than no analysis label at all, but the different citators don't have comparable ways of handling non-negative cases. KeyCite doesn't use positive or neutral analysis labels at all. In this article, I treat citing references that have no analysis label as being comparable to citing references with a positive or neutral label.

43. For example, in Marchese v. Shearson Hayden Stone, Inc., 734 F.2d 414 (9th Cir. 1984), the Ninth Circuit cited its earlier opinion in Amaro v. Continental Can Co., 724 F.2d 747 (9th Cir. 1984). The Marchese court applied Amaro to one of the plaintiff’s claims, 734 F.2d at 421, but held that Amaro was distinguishable with respect to another claim, id. at 423. Although Shepard's can label a citing case as both negative and positive, the Shepard's report for Amaro labeled Marchese only as “distinguished by.” KeyCite and BCite listed Marchese as a citing case, but did not label it as negative treatment. I marked Shepard's as correct, and KeyCite and BCite as incorrect.
All three citators do more than just mark certain citing references as negative. They also apply descriptive words or phrases to specify the type of negative treatment, such as “distinguished by” or “overruled.” These descriptions are important, as some forms of negative treatment are more severe than others, and users may choose to examine only certain types of negative treatment. I evaluated the descriptive labels that the citators applied to negative citing relationships, and counted any that were plainly incorrect. I allowed for some difference of opinion, so that two different descriptive labels applied by two different citators might both be considered correct. For example, in Chance Management, Inc. v. South Dakota, the Eighth Circuit said the following about a Ninth Circuit opinion: “We are not entirely persuaded by the reasoning in Western Oil and Gas; however, even if we were to agree, this case is different.” The court went on to describe how its case was different, but it made no critical remarks about the Ninth Circuit’s reasoning. Shepard’s labeled this citing relationship as “distinguished by,” while KeyCite labeled it as “called into doubt by.” I think that Shepard’s label is more accurate, but some users might feel that the phrase “we are not entirely persuaded by the reasoning” warrants the more negative label applied by KeyCite. Allowing for reasonable difference of opinion, I marked both labels as correct. BCite didn’t label this as negative, which I counted as a failure.

Sometimes different parts of a citing case engage in different types of negative treatment. This creates a potential problem in the underlying data, but not necessarily any ambiguity. Ideally, a citator should accurately describe all the applicable types of negative treatment. Shepard’s has this capability, but I didn’t notice any citing cases in KeyCite or BCite that had more than one negative descriptive label. At a minimum, citators need to alert users to the most serious type of negative treatment. Where more than one type of negative treatment is involved, I accept as correct any descriptive phrase that correctly describes the most serious type. For example, in Williams v. Baltimore County, the U.S. District Court in Maryland both criticized and distinguished a Ninth Circuit opinion. Shepard’s handled this the ideal way, by applying both “criticized by” and “distinguished by” labels. KeyCite and BCite labeled Williams as distinguishing only, which I counted as failures. If KeyCite or BCite had labeled Williams as “criticized by,” but not “distinguished by,” I would have marked them as correct.

Each citator has its own standardized list of descriptive terms and phrases that it applies to citing cases. For my statistical comparison, I didn’t evaluate KeyCite’s “most negative treatment” label, which is designed to highlight the single most negative reference for a case. See Kim Ellenberg, Westlaw Next Tip of the Week: Checking Cases with KeyCite, Legal Solutions Blog (June 11, 2012), http://blog.legalsolutions.thomsonreuters.com/legal-research/reference-attorney-tips/westlaw-next-tip-of-the-week-checking-cases-with-keycite/ [https://perma.cc/7ZLT-4GGJ]. I didn’t mark any “most negative” labels as wrong partly because Shepard’s and BCite lack a comparable feature, and partly because a mistake in a “most negative” label usually results from mistakes in other labels in the same KeyCite report. Counting “most negative” labels as wrong would subject KeyCite to a form of double-counting not applied to Shepard’s or BCite.

For my statistical comparison, I didn’t evaluate KeyCite’s “most negative treatment” label, which is designed to highlight the single most negative reference for a case. See Kim Ellenberg, Westlaw Next Tip of the Week: Checking Cases with KeyCite, Legal Solutions Blog (June 11, 2012), http://blog.legalsolutions.thomsonreuters.com/legal-research/reference-attorney-tips/westlaw-next-tip-of-the-week-checking-cases-with-keycite/ [https://perma.cc/7ZLT-4GGJ]. I didn’t mark any “most negative” labels as wrong partly because Shepard’s and BCite lack a comparable feature, and partly because a mistake in a “most negative” label usually results from mistakes in other labels in the same KeyCite report. Counting “most negative” labels as wrong would subject KeyCite to a form of double-counting not applied to Shepard’s or BCite.

44. For my statistical comparison, I didn’t evaluate KeyCite’s “most negative treatment” label, which is designed to highlight the single most negative reference for a case. See Kim Ellenberg, Westlaw Next Tip of the Week: Checking Cases with KeyCite, Legal Solutions Blog (June 11, 2012), http://blog.legalsolutions.thomsonreuters.com/legal-research/reference-attorney-tips/westlaw-next-tip-of-the-week-checking-cases-with-keycite/ [https://perma.cc/7ZLT-4GGJ]. I didn’t mark any “most negative” labels as wrong partly because Shepard’s and BCite lack a comparable feature, and partly because a mistake in a “most negative” label usually results from mistakes in other labels in the same KeyCite report. Counting “most negative” labels as wrong would subject KeyCite to a form of double-counting not applied to Shepard’s or BCite.

45. 97 F.3d 1107 (8th Cir. 1996).
46. Id. at 1114 (citing Western Oil & Gas Ass’n v. Cory, 726 F.2d 1340 (9th Cir. 1984)).
citators, but there are some differences. Minor differences are easily harmonized. For example, Shepard’s uses the phrase “questioned by;” while KeyCite uses the comparable phrase “called into doubt by.” Wherever the phrase “questioned by” is correct, I also consider the phrase “called into doubt by” to be correct. But sometimes a label in one citator has no counterpart in another. If a citator is unable to correctly identify relevant negative treatment because it has no appropriate label it can apply, I count this as a failure.

¶36 For example, in In re Schwartz, a bankruptcy court in the Third Circuit declined to apply a Ninth Circuit decision (Matthews) because it directly conflicted with a Third Circuit case (Pristas). KeyCite correctly labeled this treatment as “not followed,” while Shepard’s mislabeled it as “criticized by” and BCite mislabeled it as positive treatment. Shepard’s and BCite do not appear to have any label equivalent to “not followed.” It’s possible that the editor at Shepard’s chose the label “criticized by” because it was the best available label in Shepard’s. But the Schwartz court did not criticize the Ninth Circuit, according to any reasonable understanding of the term “criticized.” On the contrary, the Schwartz court acknowledged that Matthews offers a “tenable basis” and that it aligns with “numerous other cases.” From the perspective of the user, the Shepard’s label is wrong. It makes no difference to the user whether Shepard’s mistake resulted from an individual editor’s decision or from a broader design problem in Shepard’s list of descriptive terms and phrases. Likewise, BCite’s lack of any negative label here is a validation failure from the user’s perspective. For a lawyer in the Third Circuit, In re Schwartz indicates that Matthews is not good law, yet BCite applies no negative label.

¶37 BCite’s list of descriptive terms and phrases is significantly shorter than the lists offered by KeyCite and Shepard’s, which puts BCite at some disadvantage in this comparison study. I do not automatically count these missing labels against BCite, but rather I verify in each instance whether the labels applied by the other citators are accurate and relevant to the typical user. For example, if KeyCite applied a “not followed” label to a citing reference that did follow the cited case, I would mark KeyCite’s label as incorrect and credit BCite for having no negative label. If KeyCite applied a “not followed” label to an ambiguous citing reference, no
The citator would be credited or penalized. In their comments to me, Bloomberg Law asserted that I am unfairly penalizing BCite for having a shorter list of labels.53

¶38 The term “distinguished” appears to be the most common negative treatment label in all three citators, and requires some clarification. As I understand the term in this context, a “distinguishing” case reaches a different outcome or applies a different rule of law as compared to the cited case because of factual differences (procedural or substantive) between the two cases.54 This is a form of negative treatment because it may limit the scope of the cited case. By contrast, a citing case that points out a factual difference in the cited case, but nonetheless applies the same rule of law and reaches the same outcome, is not what I consider a “distinguishing” case. On the contrary, it’s a positive reference that reaffirms the cited case and perhaps even extends it.

¶39 A citation in United States v. Gleave55 illustrates this distinction. Gleave pointed out differences between its fact pattern and the Ninth Circuit’s United States v. Snowadzki,56 yet Gleave did not distinguish Snowadzki. Both cases found that an informant was not acting as a government agent under a Fourth Amendment analysis, so that evidence seized by the informant could be admitted. Gleave described the factual differences as follows:

In this case, the facts indicating government involvement in the alleged burglary of Knoll’s office are less than in Snowadzki. Unlike Snowadzki, in this case there is no evidence that the government knew of a potential seizure before it took place and no rewards to private parties were mentioned.57

Here, Gleave is pointing out that its defendant has an even weaker case than the defendant in Snowadzki, who also lost on this point. Gleave is in no way a negative reference for Snowadzki, yet KeyCite labeled it as “distinguished by.” I marked KeyCite’s label as incorrect. Shepard’s and BCite treated Gleave as a positive reference, which I marked as correct.

¶40 Some readers may have a broader view of the term “distinguished,” but in the context of citators it would be problematic to group together both positive and negative treatment under the same “distinguished” label. Labels should aid users in differentiating between types of treatment. Moreover, labeling positive cases as “distinguished” would conflict with the structure of Shepard’s and KeyCite, and is inconsistent with the data I gathered for BCite. Shepard’s assigns any distinguishing treatment a yellow caution sign (which indicates possible negative treatment), and KeyCite puts any distinguishing treatment on the “Negative Treatment” tab. From the user’s perspective, Gleave’s appearance in a negative category would seem to be a mistake. In BCite, the negative nature of the “distinguished” label is less clear to

53. See infra ¶ 75.
54. KeyCite’s published definition of “distinguished” matches my own, while the definitions published by Shepard’s and BCite are consistent with mine, but open to interpretation. See Thomson Reuters, KeyCite on Thomson Reuters Westlaw, supra note 48 (“Distinguished: There is a difference in facts, procedural posture, or law between the two cases that compels the citing court to reach a different result than the cited case”); LexisNexis, Shepard’s Signal Indicators and Treatments, supra note 48 (“Distinguished by: the citing case differs from the case you are Shepardizing, either involving dissimilar facts or requiring a different application of the law”); Bloomberg Law Citator, supra note 48 (“Distinguished: . . . one or more courts differentiate this opinion on the law or the facts”).
56. 723 F.2d 1427 (9th Cir. 1984).
the user. In their comments to me, Bloomberg Law stated that their “distinguished” label is not necessarily negative. However, BCite’s actual practice was to apply no distinguishing label to any of the nine citing references like *Gleave* in my dataset. Although BCite’s policy might pose a problem for future comparison tests, I regard it as a moot point in this comparison test.

¶41 Another important distinction is that “distinguished” doesn’t mean the same as “distinguishable.” Any case is distinguishable under the right circumstances. The purpose of a citator is not to tell us that a case is distinguishable, but rather to tell us which cases have distinguished it. This may seem like an obvious point, but the citators sometimes disregard it. For example, in *Vic Wertz Distributing Co. v. Teamsters Local 1038*, the court noted that *George Day Construction Co. v. United Brotherhood of Carpenters* is “distinguishable from the typical case,” and then in the next paragraph, it stated that its own case is like *George Day*—in other words, not like the typical case. Curiously, both BCite and KeyCite labeled *Vic Wertz* as distinguishing *George Day*. But surely users would expect the “distinguished by” label to refer to the relationship between *Vic Wertz* and *George Day*—not to the relationship between *George Day* and a nameless “typical case.” I marked BCite and KeyCite as incorrect. Shepard’s labeled *Vic Wertz* as a positive reference, which I marked as correct.

¶42 Shepard’s “Among Conflicting Authorities Noted In” (ACAN) label presents a puzzle. Shepard’s considers ACAN to be neutral treatment, but KeyCite has a similar descriptive phrase called “Disagreement Recognized By” (DR), which it treats as negative. BCite does not have a comparable label. Both Shepard’s and KeyCite apply these labels to cases that say the cited case is in conflict with other cases. For example, in *Burds v. Union Pacific Corp.*, the Eighth Circuit noted a circuit split involving the Ninth Circuit’s opinion in *Amaro v. Continental Can Co.* The Eighth Circuit said that *Amaro* conflicted with opinions from the Seventh and Eleventh Circuits, but the *Burds* court did not decide which side to take. Shepard’s labeled this as ACAN (neutral treatment), while KeyCite labeled it as DR (negative treatment).

---

58. In BCite, cases that have been distinguished can’t have a positive composite analysis label. From this, I inferred that the “distinguished” label in BCite is distinct from positive treatment. But unlike Shepard’s and KeyCite, BCite’s interface does not explicitly place distinguished references in a negative category.

59. Letter from Darby J. Green, Commercial Director of Litigation & Bankruptcy, Bloomberg Law, to author (July 10, 2018) (on file with author).

60. 898 F.2d 1136 (6th Cir. 1990).

61. 722 F.2d 1471 (9th Cir. 1984).

62. *Vic Wertz Distributing Co.*, 898 F.2d at 1140.

63. A citator might use a label such as “distinguishing recognized by;” similar to the label “overruling recognized by,” to cover situations where a court refers to a relationship between the cited case and some other case. It’s not clear whether such a label should be considered negative or whether it would be useful to users. But I have never seen such a label in any of the citators.

64. On this point, I don’t believe the database providers and I have any policy disagreement. In response to my findings, Bloomberg Law and Westlaw have already corrected their citator reports for *George Day*. Also, Bloomberg Law confirmed to me that their “distinguished” labels are supposed to refer to the relationship between the citing case and the cited case. Letter from Darby J. Green, supra note 59.

65. 223 F.3d 814 (8th Cir. 2000).

66. 724 F.2d 747 (9th Cir. 1984).

67. *Burds*, 223 F.3d at 817.
treatment). I believe it would be better to label this as negative treatment, since it would certainly be negative for anyone in the Seventh or Eleventh Circuits. If Burds were the only citing reference to indicate that Amaro is not good law in the Seventh or Eleventh Circuits, users from those circuits might be disserved by Shepard’s neutral label. But it would be unfair to say that Shepard’s ACAN label is wrong, and it would work for users provided they were paying close attention.

A tougher puzzle is presented when a citing case notes a conflict, but decides to follow the cited case. For example, in De Pace v. Matsushita Electric Corp. of America, a U.S. District Court in New York cited Amaro and noted the same circuit split with the Seventh and Eleventh Circuits, but sided with the Ninth Circuit’s view. Shepard’s labeled this as ACAN (neutral treatment), while KeyCite merely said that De Pace “discussed” Amaro. From the perspective of users in the Ninth or Second Circuits, De Pace appears to be positive treatment, but from the perspective of users in the Seventh or Eleventh Circuits, De Pace tells them that Amaro is not good law. Here, I think Shepard’s neutral label is best, but I see room for reasonable differences of opinion on whether this citing relationship should be marked as positive, neutral, or negative. (Neither KeyCite nor BCite has an appropriate neutral label that could be applied here.)

Citing references that Shepard’s labels as ACAN are difficult to compare to KeyCite and BCite. My solution was to include in my study all citing references that had the ACAN label, even though Shepard’s considers this to be neutral. (In this article, whenever I refer to relationships that are labeled as “negative,” that includes relationships that Shepard’s labeled as ACAN.) In situations like Burds, where the citing case did not decide whether to follow the cited case, I marked the ACAN label as correct, as well as the DR label from KeyCite. If a citator failed to apply a negative label in these situations, I counted this as a failure. In situations like De Pace where a citing case notes a conflict but follows the cited case, I marked the citing relationship as ambiguous, so that no citator is credited or penalized.

Negative citing references that appear in dissenting opinions also present some difficulties, as the three citators handle these types of citations differently. Shepard’s puts them in a neutral category called “cited in dissenting opinion” and never labels these citations as negative. But BCite and KeyCite apply negative labels to dissenting opinions in at least some situations. In my dataset, BCite labeled four citations from dissenting opinions as negative, and KeyCite labeled a fifth one as negative. As I stated earlier, I’m not judging the citators according to how well they follow their internal procedures, so it doesn’t matter for my purposes that Shepard’s withheld these negative labels according to a deliberate policy. If the negative treatment is clearly relevant to a typical user, it should be labeled as negative—I count anything less as a failure.

68. BCite labeled this as positive with no descriptive phrase other than “cited in.”
69. It’s not unusual for negative treatment to be a matter of perspective, and the citators generally label as negative any treatment that will be negative for some users, but not for others. For example, if the Eighth Circuit had expressly disagreed with Amaro, the treatment would obviously be labeled as negative, even though it presents no problem for users practicing in the Ninth Circuit.
71. Id. at 557–60.
72. Letter from Liz Christman, Senior Director of Case Law and Shepard’s Solutions, LexisNexis, to author (June 13, 2018) (on file with author).
But is negative treatment clearly relevant if it comes from a dissenting opinion? Not necessarily. If a U.S. Supreme Court majority opinion cites a Ninth Circuit case favorably, but the dissenting opinion criticizes the Ninth Circuit, I certainly wouldn't mark a citator as wrong for listing the Supreme Court case as a positive reference. As any first-year law student knows, it's the majority opinion that counts. But what if a dissenting opinion cites a case and points out that it has been treated negatively by another case? My dataset includes two examples of this. One is Enlow v. Salem-Keizer Yellow Cab Co., a Ninth Circuit panel decision in which Judge Ferguson wrote a separate opinion concurring in part and dissenting in part. Ferguson cited a Ninth Circuit case, EEOC v. Borden's, Inc., and noted that it had been overruled on other grounds by the U.S. Supreme Court. The majority opinion didn’t cite Borden's. Users would certainly want to know that Borden’s has been overruled, regardless of who points out this fact. BCite handled this perfectly by describing the treatment as “prior overruling in” and labeling Enlow as a concurring/dissenting opinion. The KeyCite and Shepard's reports for Borden's didn't indicate any negative treatment from Enlow, which I counted as failures. To make matters worse, the Supreme Court case itself is incorrectly listed as a positive reference in the Shepard's report for Borden's. For Shepard's, omitting the negative treatment in Enlow compounded a critical mistake. Nothing in Borden's Shepard's report indicates that it was overruled by the Supreme Court.

I credited KeyCite for applying an “overruling recognized by” label to another dissenting opinion similar to Enlow, which BCite and Shepard's failed to label as negative. The other three negative citations that BCite identified in dissenting opinions were distinguishing references. Some users might feel that distinguishing references in dissenting opinions are too insignificant to justify negative labels, but I tend to think that negative labels are useful here, provided that a citator follows BCite’s practice of clearly identifying the sources. Since I can see room for reasonable difference of opinion, I hesitate to mark KeyCite and Shepard's as wrong for not labeling these references as negative. Instead, I marked these three citations as ambiguous.

### Statistical Results

Before I started my independent analysis of the citators’ results, I could see a problem: the three citators are rarely in agreement. I looked at 357 citing relationships that have at least one negative label from a citator. Out of these, all three citators agree that there was negative treatment only 53 times. This means that in 85% of these citing relationships, the three citators do not agree on whether there was negative treatment. Even when they all agree there was negative treatment, their

73. 371 F.3d 645 (9th Cir. 2004).
74. Id. at 656 (citing EEOC v. Borden’s Inc., 724 F.2d 1390 (9th Cir. 1984)).
75. There might be some concern that the dissenting opinion mischaracterized the Supreme Court’s treatment of Borden's, but that concern is present whenever the “overruling recognized by” label is applied. Citators aren’t designed to verify whether negative treatment is justified; they merely point it out so that the user may investigate further. In any case, Judge Ferguson was correct in pointing out that Borden’s had been overruled.
descriptions often conflict. The three databases substantively agree on the type of negative treatment in only 40 of these citing relationships,\textsuperscript{77} which means that in this sample, they all agree with one another only 11% of the time.

¶49 On the surface, even without any further examination, these numbers are troubling. They mean that at least one citator is making a lot of mistakes, or (viewed more charitably) that the citators are very likely to have differences of opinion. Even the latter explanation is worrisome, because all three citators present their results as fact—none of the citators labeled any of the citing relationships as ambiguous or open to interpretation. This means that when you citate a case that has negative treatment, the results you get depend mainly on which citator you happen to be using.

¶50 The results of my independent analysis are just as troubling. Out of 357 citing relationships that at least one of the citators marked as having negative treatment, I found that 21 actually had no negative treatment and 27 were ambiguous, leaving 309 citing relationships in which there was clearly negative treatment. Out of these 309 negative citing relationships, Shepard’s failed to mark 85 (28%) as negative and applied incorrect descriptive phrases to another 18 (6%);\textsuperscript{78} overall, Shepard’s failed to correctly identify 103 (33%) of the negative references. KeyCite failed to mark 105 (34%) as negative and applied incorrect descriptive phrases to another 11 (4%); overall, KeyCite failed to correctly identify 116 (38%) of the negative references. BCite failed to mark 211 (68%) as negative and applied incorrect descriptive phrases to another 11 (4%); overall, BCite failed to correctly identify 222 (72%) of the negative references.

¶51 Most of the negative relationships that the citators missed were mislabeled, rather than omitted altogether. Of the 85 negative relationships that Shepard’s missed, 78 were mislabeled, while only 7 were omitted altogether. Of the 105 negative relationships that KeyCite missed, 99 were mislabeled, while only 6 were omitted altogether. BCite had a more significant problem with omissions. Of the 211 negative relationships that BCite missed, 178 were mislabeled, while 33 were omitted altogether. All omissions in all three citators were unpublished cases, which

\begin{table}
\centering
\caption{Citator Performance in Identifying 309 Negative Citing Relationships}
\begin{tabular}{lll}
\hline
 & Relationships omitted or mislabeled as positive or neutral & Relationships labeled as negative, but incorrectly described & Overall failure to correctly identify \\
\hline
Shepard’s & 85 (28\%) & 18 (6\%) & 103 (33\%) \\
KeyCite & 105 (34\%) & 11 (4\%) & 116 (38\%) \\
BCite & 211 (68\%) & 11 (4\%) & 222 (72\%) \\
\hline
\end{tabular}
\end{table}

\textsuperscript{77} By “substantively agree,” I don’t mean that the descriptions were necessarily identical, only that there was no clear substantive difference. For example, if Shepard’s described a citation as “distinguished,” while KeyCite described it as “declined to extend,” I would consider them to be in substantial agreement.

\textsuperscript{78} An incorrect descriptive label would be one that indicates the wrong type of negative treatment. For example, a citing reference that is labeled “distinguished by” when it should say “overruled by.”
would be less important to users.\footnote{A citator could have omitted a citing case for one of two reasons: (i) the citing case wasn’t in the database or (ii) the citator failed to spot the citation in the text of the citing case. I didn’t determine which of these two reasons explain each omission, but the fact that all the omissions involve unpublished cases suggests that the first reason explains most of the omissions.} For all the citators, the significant problems occur in the editorial process, after the initial process of identifying the citing cases.

I also calculated how accurately the citators described the negative treatment that they did identify. \footnote{See supra \textsuperscript{8–11}.} Excluding the ambiguous references, Shepard’s listed 235 references as negative; of these, 11 (5\%) were actually positive or neutral, while another 18 (8\%) were negative but not correctly described. Overall, 12\% of the negative labels in Shepard’s were incorrect. KeyCite listed 218 references as negative; of these, 14 (6\%) were actually positive or neutral, while another 11 (5\%) were negative but not correctly described. Overall, 11\% of the negative labels in KeyCite were incorrect. BCite listed 102 references as negative; of these, 4 (4\%) were actually positive or neutral, while another 11 (11\%) were negative but not correctly described. Overall, 15\% of the negative labels in BCite were incorrect.

The citators are much more likely to label a negative reference as positive than label a positive reference as negative. Unfortunately, the first type of situation is more serious, since it may lead users to cite invalid case law. Users can’t be expected to examine every citing reference for themselves. When they see a citing reference marked as positive, they’re not likely to investigate further. The second type of situation is more likely to be a mere inconvenience. A user who sees a false negative reference will probably investigate further and make their own judgment, or skip over the cited case and use another case.

As discussed earlier in this article, William L. Taylor’s comparison study rested on the assumption that no positive citing relationships were mislabeled as negative (an assumption for which he was much criticized).\footnote{See supra \textsuperscript{8–11}.} My results partly vindicate Taylor’s approach, and the performance rates I found for Shepard’s and KeyCite are fairly close to what Taylor found. I found that Shepard’s missed 28\% of the negative references, compared to Taylor’s 23\%. I found that KeyCite missed 34\% of the negative references, compared to Taylor’s 25\%. The different performance rates I found are due in part to my comparison with a third citator, as BCite sometimes spotted negative treatment that both Shepard’s and KeyCite missed. Other explanations for the difference in my results include the larger sample size.

<table>
<thead>
<tr>
<th></th>
<th>Relationships labeled as negative</th>
<th>Relationships that were actually positive or neutral</th>
<th>Relationships that were negative, but incorrectly described</th>
<th>Total incorrect negative labels</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shepard’s</td>
<td>235</td>
<td>11 (5%)</td>
<td>18 (8%)</td>
<td>29 (12%)</td>
</tr>
<tr>
<td>KeyCite</td>
<td>218</td>
<td>14 (6%)</td>
<td>11 (5%)</td>
<td>25 (11%)</td>
</tr>
<tr>
<td>BCite</td>
<td>102</td>
<td>4 (4%)</td>
<td>11 (11%)</td>
<td>15 (15%)</td>
</tr>
</tbody>
</table>
in this study, and the much broader time frame covered here. This study examines citing relationships dating from 1984 to 2017, compared to Taylor’s much narrower time frame of 1997 to 1999.\(^\text{81}\)

Neither Taylor’s study nor mine is designed to catch all failures in identifying negative treatment. Because I looked only at citing relationships that at least one of the three citators labeled as negative, I would not have caught any negative treatment that all three citators missed. Given the citators’ poor overall performance, it’s likely that many negative references were missed by all three.\(^\text{82}\) The performance rates presented here may underestimate the extent of the problem.

Although my statistics suggest that BCite underperforms in case validation as compared to Shepard’s and KeyCite, readers should keep in mind that these statistics treat all failures as equal. The reality is more complex, as discussed in the next section.

**Examples of Citator Errors**

The statistics tell only part of the story, since not all citator errors are of equal importance. Some are trivial. If a citator misses a brief distinguishing reference from an unpublished trial court case, users are not likely to suffer any harm. Moreover, a citator might reasonably focus its limited resources on labeling the more significant references, at the expense of less important ones. But the mistakes I found are not necessarily trivial. Most were significant, and some were astonishing. In this section of the article, I describe some of the most blatant and potentially harmful mistakes.\(^\text{83}\)

Perhaps no form of negative treatment is more important than an overruling from the U.S. Supreme Court. In my dataset, there are four of these overrulings, all directed at published opinions of the Ninth Circuit Court of Appeals. Incredibly, Shepard’s mislabeled three of them, while KeyCite mislabeled two and BCite mislabeled one. These four citing relationships are obviously not a statistically valid sample size, but the point is that serious mistakes of this kind should be exceedingly rare. The fact that Shepard’s mislabeled three out of four Supreme Court overrulings is evidence enough of a serious problem. Each of these mistakes is worth discussing in detail.

First, in *Public Employees Retirement Systems of Ohio v. Betts*, the Supreme Court construed a section of the Age Discrimination in Employment Act that exempts certain age-based employee benefit plans.\(^\text{84}\) At one point in the opinion, the Court considered whether the exemption should be limited to plans that have a cost justification for age-based differentials, a position that had been urged by the Equal Employment Opportunity Commission (EEOC). The Court acknowledged two Ninth Circuit cases that had recognized the cost justification requirement,
including *EEOC v. Borden’s*. In the next three paragraphs, the Court attacked the position taken by the EEOC and the Ninth Circuit. The Court wrote that “[t]here are a number of difficulties with this explanation for the cost-justification requirement,” and said the EEOC’s position was “quite difficult to believe.” The Court further wrote that the EEOC’s position was “weakened further” by regulatory authority, and finally concluded that the “cost-justification requirement is contrary to the plain language of the statute and is invalid.”

The Supreme Court’s rejection of the *Borden’s* holding is perfectly clear. KeyCite labeled *Betts* as disagreeing with *Borden’s*, and BCite labeled it (more appropriately) as overruling *Borden’s*. But the Shepard’s report for *Borden’s* inexplicably labeled *Betts* as “cited by,” indicating no negative treatment whatsoever from *Betts*.

Following the *Betts* decision, at least eight published federal court opinions have explicitly stated that *Betts* overruled *Borden’s*. KeyCite or BCite acknowledged these statements with the “overruling recognized by” or “prior overruling in” label, but the Shepard’s report for *Borden’s* doesn’t clearly acknowledge any of these statements. The best that Shepard’s could manage was to say that *Borden’s* had been “questioned” by only two other courts. The incorrect Shepard’s report for *Borden’s* resulted not just from a single mistake, but from a series of failures.

Next, in *Peacock v. Thomas*, the Supreme Court resolved a circuit split about ancillary jurisdiction involving the Ninth Circuit’s *Blackburn Truck Lines, Inc. v. Francis*. At the outset of its opinion, the Supreme Court said it had granted *certiorari* “to resolve a conflict among the Courts of Appeals.” In a footnote at the end of this sentence, the Court cited *Blackburn* and cases from the Third and Seventh Circuits as being aligned with the Fourth Circuit case under review, in opposition to cases from the Fifth and Tenth Circuits. The Supreme Court reversed the Fourth Circuit. Although the Court did not cite *Blackburn* again, the effect on *Blackburn* is clear. The Supreme Court declared that it was resolving a circuit split involving *Blackburn*, and *Blackburn* wound up on the losing side. BCite correctly labeled *Peacock* as overruling *Blackburn*, but Shepard’s and KeyCite both fell short. Shepard’s described *Peacock’s* treatment of *Blackburn* as “validity questioned by,” and KeyCite described it as “called into doubt by.”

---

85. *Id.* at 173 (citing EEOC v. Borden’s, 724 F.2d 1390 (9th Cir. 1984)).
86. *Id.* at 173–74.
87. *Id.* at 174–75.
88. *Id.* at 352.
89. *Id.* at 352 n.2.
90. *Id.* at 360.
91. *Id.* at 360.
92. *Id.* at 360.
93. *Id.* at 360.
sion to use these weaker descriptive phrases means that both citators display only yellow or orange warning signs for *Blackburn*, as opposed to the red warning signs that should have been displayed. Curiously, both Shepard’s and KeyCite noted that other cases had acknowledged *Peacock’s* invalidation of *Blackburn*, but apparently this didn’t prompt anyone at Shepard’s or KeyCite to reconsider their description of *Peacock* itself. In the KeyCite report for *Blackburn*, two published opinions from U.S. Courts of Appeals are labeled as “abrogation recognized by,” and they were both referring to *Peacock’s* abrogation of *Blackburn*. Shepard’s marked one of these as “validity questioned by,” but failed to identify any negative treatment in the other. But Shepard’s did say that *Blackburn* was “overruled in part as stated in” an unpublished U.S. District Court case, which again was referring to *Peacock’s* overruling of *Blackburn*.

¶62 KeyCite’s initial description of *Blackburn’s* overruling led to an even worse mistake in *Blackburn’s* KeyCite report. KeyCite has a “most negative” highlighting feature designed to highlight the single most negative citing case in a KeyCite report. The “most negative” case is listed first on the “Negative Treatment” tab, where it receives a prominent red label; it also appears directly on the “Document” tab where users view the full text of *Blackburn*. According to KeyCite, *Blackburn’s* most negative treatment came from the Fourth Circuit in *Thomas v. Peacock*, which also resolved a circuit split against a Ninth Circuit case. In *Republic National Bank of Miami v. United States*, which also resolved a circuit split against a Ninth Circuit case. In *Republic National Bank*, the treatment was not as clear as it had been in *Peacock*, because of small differences in the Supreme Court’s phrasing. The Court

95. Shepard’s displayed an orange “Q” sign for *Blackburn* as opposed to a red stop sign; KeyCite displayed a yellow flag as opposed to a red flag.
96. Ellis v. All Steel Constr., Inc., 389 F.3d 1031, 1035 (10th Cir. 2004); Futura Dev. of P.R., Inc. v. Puerto Rico, 144 F.3d 7, 11 (1st Cir. 1998).
97. Shepard’s described the negative treatment in *Futura Development* as “validity questioned by,” even though *Futura* made it clear that the Supreme Court had ruled against *Blackburn*. I gave Shepard’s credit for identifying *Futura* as a negative reference, but marked its descriptive phrase as incorrect. BCite failed to identify either *Ellis* or *Futura* as negative treatment for *Blackburn*.
99. For a description of KeyCite’s “most negative” feature, see Ellenberg, supra note 44.
100. 39 F.3d 493 (4th Cir. 1994).
101. KeyCite was correct to point out that the Fourth Circuit disagreed with part of *Blackburn*, but it’s absurd to suggest that this is more serious than an overruling by the U.S. Supreme Court. I didn’t count the “most negative” label as a separate error in my statistical comparison (see supra note 44), but it does help to illustrate why KeyCite’s description of *Peacock* is wrong. Users need accurate descriptive labels so they can see the relative importance of different citing relationships.
in Republic National Bank considered the limits of in rem jurisdiction, and said it granted certiorari “[i]n view of inconsistency and apparent uncertainty among the Courts of Appeals.”

Although this sentence could have been clearer, I interpret it to mean that the Supreme Court is resolving a circuit split. The Court is hedging somewhat with the word “apparent,” but note that this word qualifies “uncertainty,” not “inconsistency.” A footnote in this sentence gives examples of the circuit split, but it doesn't separate the cases as neatly as the Court did in Peacock. Here's the text of the footnote, in its entirety:

Compare United States v. One Lot of $25,721.00 in Currency, 938 F.2d 1417 (CA1 1991); United States v. Aiello, 912 F.2d 4 (CA2 1990), cert. denied, 498 U.S. 1048 (1991); United States v. $95,945.18, United States Currency, 913 F.2d 1106 (CA4 1990), with United States v. Cadillac Sedan Deville, 1983, 933 F.2d 1010 (CA6 1991) (appeal dismd); United States v. Tit's Cocktail Lounge, 873 F.2d 141 (CA7 1989); United States v. $29,959.00 U. S. Currency, 931 F.2d 549 (CA9 1991); and the Court of Appeals' opinion in the present case. Compare also United States v. $57,480.05 United States Currency and Other Coins, 722 F.2d 1457 (CA9 1984), with United States v. Aiello, 912 F.2d at 7, and United States v. $95,945.18, United States Currency, 913 F.2d at 1110, n. 4.

The Supreme Court reversed. The question for this study is how the Court treated the Ninth Circuit's $57,480.05 United States Currency and Other Coins, which it cited only in this footnote. The wording in the footnote requires some thought, but in the end its meaning is clear. In the first sentence, Aiello and $95,945.18 are contrasted with the “Court of Appeals’ opinion in the present case.” In the second sentence, $57,480.05 is contrasted with Aiello and $95,945.18. This places $57,480.05 on the same side as the case under direct review, which was reversed. This interpretation can be confirmed by comparing the Ninth Circuit's holding in $57,480.05 with the Supreme Court’s holding in Republic National Bank.

The Ninth Circuit held that federal courts lose jurisdiction over in rem cases if they lose control over the in rem currency, and further held that if in rem currency is transferred to the United States Treasury, federal courts have no power to order the Treasury to return it. In Republic National Bank, the Supreme Court rejected both aspects of this rule. The Supreme Court held that federal courts do not need continuing control over in rem currency to retain in rem jurisdiction, and further held that courts can order the Treasury to return in rem currency. The treatment in Republic National Bank is a good example of something that's easy to overlook, but not ambiguous after close examination. Catching it requires a sharp eye. Shepard's and BCite failed to identify any negative treatment from Republic National Bank in their reports for $57,480.05; KeyCite's report for

103. Id. at 84.
104. Id. at 84 n.3.
105. 722 F.2d 1457 (9th Cir. 1984).
106. Ordinarily, I expect the citators to make a judgment based only on the text of the citing case, without consulting the text of the cited case. If the text of the citing case doesn't reveal any negative treatment, I don't expect citators to independently consider conflicts between the two cases. But here, the text in Republic National is certainly enough to signal negative treatment; a comparison of the two cases merely confirms how the treatment should be described.
107. $57,480.05 United States Currency, 722 F.2d at 1458–59.
109. Id. at 95–96 (opinion of Rehnquist, J.).
$57,480.05 came closer by labeling Republic National Bank as “called into doubt by.”

¶65 The three Supreme Court cases discussed above are part of my dataset, because each of them was labeled as a negative reference by at least one citator. During my review, I discovered yet another mishandled Supreme Court case that should be part of my dataset. In Alexander v. Sandoval, the Supreme Court rejected a holding in Larry P. v. Riles, one of the Ninth Circuit cases that I used as a starting point for this study. All three citators included Alexander as a citing case for Larry P.; the reason why Alexander doesn’t appear in my dataset is that none of the three citators labeled Alexander as a negative reference. The majority opinion in Alexander didn’t cite Larry P., but Justice Stevens, in a dissent joined by three other justices, cited Larry P. as an example of a case that the majority was rejecting. Alexander illustrates why citations in dissenting opinions need to be analyzed. Any lawyer evaluating Larry P.’s validity would want to know about Justice Stevens’ citation. After Alexander was decided, it took twelve years for another court to cite Larry P. and point out that it had been invalidated by the Supreme Court. Shepard’s and KeyCite appropriately labeled this other case, but BCite missed it. Nothing else in the citator reports indicates that Larry P. is inconsistent with Supreme Court precedent.

¶66 En banc decisions in U.S. Courts of Appeals that reverse prior panel decisions are another critically important form of negative treatment. In Wallace v. Christensen, the Ninth Circuit sitting en banc reviewed a decision of the United States Parole Commission. As the court explained, “[p]revious cases in this circuit have referred to an ‘abuse of discretion’ standard as the basis for review of Commission decisions, and have implicitly assumed the existence of jurisdiction to conduct that analysis.” Immediately after this sentence, the court cited several Ninth Circuit panel decisions, including Roth v. U.S. Parole Commission and Torres-Macias v. U.S. Parole Commission. The court said that it “took this case en banc to reconsider this assumption and evaluate our standard of review.” The court disagreed with its prior rulings, and held that federal courts have no power to review the Commission’s use of discretion even under an abuse of discretion standard, but that courts may consider whether the Commission has acted outside its statutory authority or violated the Constitution. So far, the court’s treatment of Roth and Torres-Macias is similar to the Supreme Court’s treatment of Blackburn and $57,480.05. The court announced that it was reviewing a holding from prior cases

110. I gave KeyCite credit for recognizing Republic National Bank as a negative reference, but I marked its descriptive phrase as incorrect.
112. 793 F.2d 969 (9th Cir. 1984).
114. For further discussion of negative treatment in dissenting opinions, see supra ¶¶ 45–47.
116. In their reports for Larry P., Shepard’s labeled Landegger as “abrogated in part as stated in,” KeyCite labeled it as “abrogation recognized by,” and BCite labeled it as a positive reference.
117. 802 F.2d 1539 (9th Cir. 1986).
118. Id. at 1542.
119. 724 F.2d 836 (9th Cir. 1984).
120. 730 F.2d 1214 (9th Cir. 1984).
121. Wallace, 802 F.2d at 1542.
122. Id. at 1550–52.
cited by name, then declared a rule of law that conflicts with the holding in those prior decisions. Readers who are more sympathetic to the citators might feel that this sort of treatment just isn't clear enough: they may feel that the reviewing court needs to connect the overruling more directly to the cited cases. In *Wallace*, the court did just that. At the end of its opinion, it said: “We overrule our previous decisions only to the extent that we have held that Commission decisions granting or denying parole are subject to judicial review for an abuse of discretion.” This was followed by a footnote citing cases including *Roth* and *Torres-Macias*. In the reports for *Roth* and *Torres-Macias*, Shepard's and KeyCite correctly labeled *Wallace* as an overruling case, but BCite labeled *Wallace* as a positive case.

¶ 67 Most of the citing relationships I studied are less important than the ones discussed so far. But some of these relatively unimportant relationships involve especially blatant mistakes that cast further doubt on the citators' overall quality control. For example, in *In re Di Noto*, the Ninth Circuit Bankruptcy Appellate Panel spent three paragraphs and a footnote discussing *In re Comer*, referring to it by name six times. The Panel distinguished *Comer* in three different ways, writing that “*Comer* is not applicable to our case,” then in the next paragraph writing “a second reason for distinguishing *Comer* . . . ,” and then in a footnote writing “there is also a third possible basis for distinguishing *Comer*.” Although Shepard's and BCite correctly labeled *In re Di Noto* as a distinguishing reference, KeyCite somehow failed to identify any negative treatment here.

¶ 68 In another mistake equally strange but going in the other direction, Shepard's indicated that *In re Peterson* distinguished *United States v. Zolla*. In fact, *Peterson* didn't cite *Zolla* at all.

¶ 69 In *Roldan v. Rocette*, the Second Circuit spent over a full page in the *Federal Reporter* heaping criticism on a line of Ninth Circuit cases, including *Thorsteinsson v. INS*. *Thorsteinsson* came in for particular scorn, with the Second Circuit writing that “[t]he critical flaw in the *Mendez* rule is especially evident in *Thorsteinsson*,” followed by a full paragraph explaining why. Despite this and three other citing cases that clearly gave *Thorsteinsson* negative treatment, BCite gave *Thor-
steinsson a green plus sign indicating that Thorsteinsson hadn’t received negative treatment from any case. 135

¶70 BCite also bungled the report for United States v. Beckett,136 which was discussed at length, featured in a block quotation, and rejected by the Eleventh Circuit in United States v. Stone,137 and rejected another time by the Sixth Circuit in United States v. Mari with language including “we register our disagreement with the Ninth Circuit,” and “[Beckett] is contrary to the Supreme Court’s later decision . . . as well as illogical.”138 BCite missed the negative treatment in Stone and Mari, and managed to identify only one of two other cases that distinguished Beckett.139

¶71 I counted a total of 470 failures in the citators’ validation of seventy-three Ninth Circuit cases. These failures can’t be readily dismissed as insignificant. Although some failures are trivial, others are harmful; and while some failures are hard to see, others are blatant. The bottom line is that users can make no safe assumptions about what their citators will do for them.

Responses from the Database Providers

¶72 Thomson Reuters (publisher of Westlaw), LexisNexis, and Bloomberg Law reviewed a draft version of this article and my dataset prior to publication. All three companies offered some comments, and LexisNexis and Bloomberg Law also provided lists of citing references they disputed.140 In response, I made some revisions to the text and agreed to recode four citing references,141 but many disagreements remained.

¶73 Thomson Reuters conceded that I had identified some incorrect determinations in KeyCite, but said they disagreed with most of my results and conclusions. They did not provide examples. They wrote that the “complex nature of legal research, and analyzing judicial opinions specifically, does not lend itself to an ‘objectively correct’ interpretation,” and claimed that most of their labels involve “subjective determinations.”142 They further wrote that “Thomson Reuters stands behind KeyCite. It is the most complete, accurate and up to the minute citator available in the market.”143

¶74 LexisNexis and Bloomberg Law offered more specific comments. They both protested that I sometimes marked as incorrect citing references that had been

135. KeyCite correctly identified all of Thorsteinsson’s negative treatment, and Shepard’s correctly identified all but Santiago-Rodriguez.
136. 724 F.2d 855 (9th Cir. 1984).
137. 9 F.3d 934, 940 (11th Cir. 1993).
138. 47 F.3d 782, 787 (6th Cir. 1995).
139. The distinguishing reference that BCite identified was from United States v. Defazio, 899 F.2d 626, 636 (7th Cir. 1990). The distinguishing reference that BCite missed was from United States v. Mang Sun Wong, 884 F.2d 1537, 1542–43 (2d Cir. 1989). Shepard’s and KeyCite correctly identified all the negative treatment for Beckett.
140. All correspondence is on file with the author. Lexis listed forty citing references in dispute, while Bloomberg Law listed twenty-nine.
141. I agreed to recode as ambiguous three citing references that were somewhat unclear, and for another citing reference I agreed to credit BCite instead of Shepard’s and KeyCite due to a reading error on my part.
142. Letter from Leann Blanchfield, Vice President for Product Development, Thomson Reuters, to author (June 10, 2018) (on file with author).
143. Id.
handled correctly according to their own internal procedures. Naturally, the results presented here would be more favorable to all three citators if I judged each citator according to its own procedures, but as I explained previously, I judge the citators according to their end results from the perspective of a typical user.

¶75 Bloomberg Law’s key objection not only challenges my methodology, but perhaps questions the overall relevance of this article. As noted earlier, BCite uses a relatively short list of negative labels. For many types of negative treatment (such as “called into doubt” or “disagreement recognized by”), BCite simply has no label that can be applied. This issue accounts for roughly one-fifth of the missing negative labels I counted in BCite. In their comments to me, Bloomberg Law insisted that this design feature is not a weakness and should not have been counted against them. They explained that they made a deliberate decision to use a short list of negative labels in response to market research showing that most users don’t want as many negative labels as Shepard’s and KeyCite offer. Some users may agree with Bloomberg’s decision, but in any case it’s important for users to be aware of this significant difference between the citators.

¶76 LexisNexis defended Shepard’s policy of withholding negative labels from what it calls “citing convention negatives.” An example explains the general idea. In AARP v. Farmers Group, Inc., the Ninth Circuit briefly cited one of its earlier decisions as follows: “Cf. E.E.O.C. v. Borden’s Inc., 724 F.2d 1390, 1396–97 (9th Cir.1984), overruled on other grounds, Betts, 492 U.S. at 173–75.” In its report for Borden’s, Shepard’s did not apply an “overruled as stated in” label to AARP because its negative treatment of Borden’s can be attributed to a “citing convention.” I was unable to determine how Shepard’s defines a “citing convention,” but the idea is that these citing convention negatives are too inconsequential to note. According to LexisNexis, this policy accounts for twelve of the missing labels I counted in Shepard’s. I decided not to exclude these missing labels from my statistics. After receiving LexisNexis’s explanation and viewing many examples, I still don’t fully understand how Shepard’s applies this policy, so I don’t believe it would be clear to the typical user. Moreover, these “citing convention negatives” are not necessarily

144. See supra ¶ 37.
145. Letter from Darby J. Green, supra note 59. In my view, a truncated list of negative labels is not an improvement. I realize that users are often uninterested in certain types of negative labels, but in KeyCite and Shepard’s they can choose to focus on whatever labels they feel are important. If some users find KeyCite and Shepard’s confusing, BCite could have offered improved customization so that individual users could easily choose the level of detail they prefer.
146. BCite’s more limited approach is not immediately clear to the user. Although Bloomberg publishes a complete list of its BCite labels, it doesn’t indicate that the list is complete. On the contrary, it presents the list as “a description of the main components,” which suggests there may be additional components not listed. Bloomberg Law Citator, supra note 48. Knowing that Westlaw and Lexis publish similar lists of citator labels that are not complete, I assumed at first that BCite’s list was not complete. Moreover, a typical user is not likely to compare the lists from the different citators, determine what’s missing from BCite, and realize how this impacts the validation process.
147. 943 F.2d 996, 1004 (9th Cir. 1991).
148. As LexisNexis explains, “our policy is based on the rationale that including citing convention references artificially inflates negative citing references and results in researchers having to go check cases to review these allegedly negative references unnecessarily.” Letter from Liz Christman, supra note 72.
149. Id. I can’t verify that number since I don’t understand the boundaries of the policy.
inconsequential. I have already discussed the serious deficiencies in the Shepard’s report for Borden’s,¹⁵⁰ and the missing label for AARP is part of the problem.¹⁵¹

¶77 LexisNexis also pointed out its policy of withholding editorial analysis labels from citing references in unpublished California Court of Appeal decisions.¹⁵² This accounts for five of the missing negative labels I counted in Shepard’s.¹⁵³ According to LexisNexis, the rationale for its policy “is that California follows a strict rule of not citing unpublished opinions as precedential authority.”¹⁵⁴ Again, I decided not to exclude these missing labels from my statistics. From the user’s perspective, Shepard’s policy looks like a mistake. For example, in its report for Javor v. United States,¹⁵⁵ Shepard’s lists seven citing references from unpublished California Court of Appeal cases. These look like any other citing cases in a Shepard’s report. All seven have a blue square with a “cited by” label (which indicates no negative treatment), but a user who views these cases would discover that at least three of them are in fact negative. Of course, these are minor problems since these citing cases are of little importance,¹⁵⁶ but I don’t separate major and minor problems in my statistics.

¶78 Finally, there were additional, specific citing references that Bloomberg Law and/or LexisNexis argued were simply ambiguous. Deciding which citing references to code as ambiguous is perhaps the most subjective part of this study, but lines must be drawn somewhere. Some of the references we disagreed on were admittedly close to the line,¹⁵⁷ while many others struck me as perfectly clear.¹⁵⁸ I admit that different researchers might choose to code somewhat more or somewhat

¹⁵⁰. Supra ¶¶ 46, 59–60.
¹⁵¹. When a citing convention negative notes an express overruling, the information is usually redundant. But redundancy can be a good way of mitigating errors like the one that occurred in Borden’s Shepard’s report. In other situations, citing convention negatives might point out implicit overrulings that would not otherwise be noted in a citator report.
¹⁵². E-mail from Liz Christman to author (June 13, 2018, 18:34 EST) (on file with author).
¹⁵³. A sixth unpublished California Court of Appeal decision was omitted altogether from Shepard’s report.
¹⁵⁴. E-mail from Liz Christman, supra note 152.
¹⁵⁵. 724 F.2d 831 (9th Cir. 1984).
¹⁵⁶. These citing cases are unimportant, but not irrelevant. In this study, the typical user is assessing the validity of published Ninth Circuit cases. The question is whether the Ninth Circuit cases should be cited, not whether any unpublished California cases should be cited. Viewed in this context, unpublished California cases should have the same, limited relevance as any other unpublished cases.
¹⁵⁷. For example, Sheley v. Dugger, 833 F.2d 1420 (11th Cir. 1987), cited two cases called Toussaint. First, it cited Toussaint v. McCarthy, 801 F.2d 1080 (9th Cir. 1986), which is not part of my dataset. Sheley, 833 F.2d at 1425. Sheley referred to this case with the shorthand reference “Toussaint” and clearly distinguished it. Id. at 1426–27. Immediately after this discussion, Sheley cited Toussaint v. Yockey, 722 F.2d 1490 (9th Cir. 1984), which is part of my dataset. Id. at 1427. Although most readers would infer that the two Toussaints are related cases, Sheley doesn’t say this explicitly. KeyCite and Shepard’s noted no distinguishing treatment here for Toussaint v. Yockey, but BCite did. I marked BCite as incorrect. I thought it was clear enough that the two Toussaints should not be treated as one and the same, but some readers might see ambiguity here.
¹⁵⁸. For example, almost the entire opinion in Berryman v. Wong, 2010 U.S. Dist. LEXIS 9910 (E.D. Cal. Jan. 15, 2010), was about the applicability of Javor v. United States, 724 F.2d 831 (9th Cir. 1984). The court extensively discussed the factual differences between the two cases and concluded that “[t]he presumed prejudice standard under Javor does not apply.” Berryman, 2010 U.S. Dist. LEXIS, at *18. Shepard’s and BCite failed to apply a “distinguished” label here, which LexisNexis argued was just a “judgment call.” Letter from Liz Christman, supra note 72. Bloomberg Law did not dispute this reference.
fewer citing references as ambiguous, but I doubt these differences would result in much change to the overall outcome.

Conclusion

¶79 This study evaluates one key aspect of legal citators: their performance in flagging negative citing references. Other important aspects such as currency, overall retrieval of citing references, labeling of positive references, ease of use, customer satisfaction, and cost are not covered here. This study is not an assessment of any citator’s overall merit. I do not claim that any citator is “best” or “worst.”

¶80 I strove to make this study as fair and objective as possible, but any evaluation of the citators’ case validation performance will rest partly on personal opinion. I’ve mitigated the role of personal opinion by attempting to exclude ambiguous citing relationships from my statistics, disclosing my methodology, offering many examples of what I consider to be errors, and giving the benefit of the doubt to the citators on close questions. Some readers may remain unconvinced. But it’s not only my own judgment that conflicts with the citators—for almost 90% of the negative labels reviewed here, at least one citator conflicts with another.¹⁵⁹ If these discrepancies can’t be objectively resolved, then the citators themselves are based on nothing more than idiosyncratic opinion. If true, this would undermine the citators’ usefulness. The citators can be reliable or they can be idiosyncratic, but they can’t be both.

¶81 I believe that most citing relationships are clear and can be objectively described, that labels in citators can be right or wrong, and that all three citators can and should do better. I don’t expect perfection. But surely there is room for improvement, especially in the most important citing relationships, such as citations from the U.S. Supreme Court. In the meantime, users may need to reconsider the trust they place in citators, and law librarians may need to rethink how they discuss citators with their patrons. Citators will always be an essential part of the legal research process, but researchers need to be aware of the citators’ shortcomings. Relying only on a citator’s treatment symbols is a risky strategy for case validation.

¹⁵⁹ See supra ¶ 48.
Sources of Alaska Legal History:
An Annotated Bibliography, Part II*

W. Clinton “Buck” Sterling**

*The author provides the second part of an annotated bibliography of sources for the legal history of Alaska.

Introduction ....................................................... 478
Bibliography ........................................................ 479
Environment Law .................................................. 479
Exxon Valdez Oil Spill ............................................ 481
Federal, State & Local Government ............................. 483
Fish & Wildlife .................................................... 484
Floating Courts ..................................................... 488
Gun Rights ........................................................... 489
Health Care ............................................................ 489
History of Alaska ................................................. 489
Insurance ............................................................... 490
Labor ................................................................. 490
Law Enforcement ................................................... 492
Maritime ............................................................... 493
Mental Health ........................................................ 494
Mining ................................................................. 495
Native Corporations ............................................... 497
Oil and Gas ........................................................... 500
Permanent Fund .................................................... 503
Pre-Statehood: 1868–1959 ......................................... 504
Property and Land Use ............................................. 512
Reindeer ............................................................... 514
Resources and Development ..................................... 515
Rural Justice .......................................................... 516

** Public Services Librarian, Alaska State Court Law Library, Anchorage, Alaska. I offer my sincere appreciation to Professor Stacey Gordon Sterling, Director of the Jameson Law Library, University of Montana, Missoula, Montana; Dr. Joel Fishman, Duquesne University Center for Legal Information/Allegheny County Law Library, Pittsburgh, Pennsylvania; Justice Peter Maassen, Alaska Supreme Court, Anchorage, Alaska; and Michael T. Schwaiger for their advice and assistance in reviewing this work. I also thank my colleagues at the Alaska State Law Library for their forbearance, in particular Susan Falk, Alaska State Law Librarian, Anchorage, Alaska; and Therese Veker, Library Assistant III, Alaska State Court Law Library, Anchorage, Alaska.
Introduction

¶1 Nearly two decades ago, it was reported that the demand for legal history research was growing.1 This bibliography helps meet that ongoing demand by contributing an annotated list of books, articles, occasional reports and papers, and selected unpublished materials that shed light on the rich, diverse, and vibrant legal history of Alaska, including both the territorial and statehood periods, as well as the period of Russian control, the period between U.S. acquisition in 1867 and the onset of territorial status in 1912, the Native Alaskan experience, and relevant federal law.

¶2 The bibliography is intended to be as comprehensive as possible. While I took a broad view of what constitutes Alaska legal history, I used certain guidelines for inclusion. I have included accounts of historical events with legal consequences, stories of legislative and court actions, and the biographies or biographical sketches of prominent members of the Alaska bar. I have also included sources that offer some history of the development of a particular area of Alaska law or that embed the state’s legal history in a broader narrative. The bibliography also contains sections on crime and justice. In addition, since Alaska was under federal control for so long, and since federal rules and regulations still control much of the state, I include relevant federal legal history: for example, relations with Native Alaskans in areas such as education, subsistence, and land claims settlement. I also include materials on the “law ways” of the Alaska Natives, the distinctly Native and non-Western approaches to law and justice developed by the Alaska Natives prior to contact and beyond. Law from the period of Russian Alaska was a challenge. For one thing, I include only sources in English. For another, many of the rules used to govern were corporate rules from the Russian-American Company (RAC). Those are included, as are accounts of corporate history and the RAC’s relationship and subservience to the imperial government.

¶3 To keep the size manageable, legal history sources found to be marginal or unhelpful are weeded out. Sources that merely present the state of an area of law at a given time or predict the effect of a court decision are excluded, as are most meet-

1. Joel Fishman et al., Bibliography of Legal History Articles Appearing in Law Library Journal, Volumes 1–94 (1908–2002), 95 Law Libr. J. 217, 220–21, 2003 Law Libr. J. 13, ¶ 2 (citing two reasons for the increased demand: more courses in legal history, reflecting greater interest by both faculty and students; and an increase in the number of legal history articles in the periodical literature).
Beginning with the online catalog of the Alaska State Court Law Library, I developed a list of subject headings that I then searched in OCLC’s WorldShare database, as well as the catalogs of the Anchorage Public Library and the Alaska Resources Library and Information Services (ARLIS). I also searched some discrete subjects in JSTOR. As topics of interest emerged, I leveraged the new subject headings as well. I also searched the tables of contents of Alaska’s two law reviews, Alaska’s two bar journals, and several other relevant periodicals. Finally, I browsed shelves, here in the Anchorage Law Library and in the Loussac Library, the main branch of the Anchorage Public Library. Each identified item was then obtained and combed for references to additional items. When the well ran dry, my research was at an end.

The bibliography is organized with a modified list of the subject headings used by Dr. Joel Fishman in a compilation project he led of legal history articles in Law Library Journal. While some entries fall under multiple subject headings, they are listed only once under the subject heading that seemed the best fit. Where appropriate, I include an explanation of the subject heading, allowing me to truncate some annotations in the interest of avoiding repetition. Part I covered the subjects Alaska Bar, Practice and Education, through Education, and appeared in the Summer issue of volume 110 of Law Library Journal. Part II covers the subjects Environmental Law through Wilderness.

Bibliography

Environmental Law


In 1957 the Atomic Energy Commission, eager to promote what it called “geographical engineering,” hatched a plan to carve out a port in northern Alaska by detonation of an atomic device on Cape Thompson on the Chukchi Sea. This article traces the history of the plan and its opposition, which led to the emergence of local and national environmentalism. The use of a bioenvironmental study was a forerunner of the environmental impact study approach required by the National Environmental Protection Act.

5. Fishman et al., supra note 1, at 218–19.

This narrative details the fights over the establishment of the Arctic National Wildlife Refuge, the Trans-Alaska Pipeline, and the Alaska Lands Act from the perspective of Alaskan interests and structures.


This article negatively reviews federal laws, including legislation, executive orders, and Forestry Bureau regulations, which limit the exploitation of coal and forestry on federal land in early twentieth century Alaska.


This book is about the testing of nuclear devices in the Aleutian Islands, how the program came about, and objections to it and activism against it, including legal action that went all the way to the U.S. Supreme Court.


The purpose of this article is to see how the Alaska state legislature handled water pollution control. Includes background on Alaska water law and the Alaska Environmental Conservation Act.


In this book-length treatment the author tells the story of how the Atomic Energy Commission attempted to “create an instant harbor on the coast of Alaska by detonating several thermonuclear bombs,” and the gathering and eventual success of opposition to the plan. It also includes the story of the conduct of an environmental study within the AEC to examine the project. It was effectively an environmental impact statement and it provided a model for the first ones produced after the enactment of the National Environmental Policy Act in 1969.


This is a shorter treatment of the subject covered in O’Neill’s *Firecracker Boys*.


The first part of this article reviews forty-five years of “federal and state efforts regarding land use planning, conservation, and development” (1967–2012) in the drainages of Kvichak and Nushagak, including the protection of uplands.


This volume reviews various wildlife disputes and land management issues in Alaska, and the movement toward environmental responsibility and corporate accountability.


This article includes a background and history of the 1966 statute, as well as the development of Territorial water law.
Exxon Valdez Oil Spill


This brief summary of the complex litigation that followed the grounding of the Exxon Valdez and the resulting oil spill in the Prince William Sound is taken from trial Judge Russel Holland's Order 34.


This article looks at the ability of the American tort system to handle the enormity of a case like the Exxon Valdez. The author looks at several theories of liability and how they played out in the litigation, including the public trust doctrine, federal maritime tort law, and cultural and spiritual damage to Alaska Natives.


This article looks with some detail at how the jury in the Exxon trial levied large punitive damages against Exxon for their negligence in the spill.


The settlement made by Exxon Oil Company in the Exxon Valdez litigation required the company to pay $1.025 billion in civil and criminal fines. It was also used to create the Exxon Valdez Settlement Trustee Council, which was charged with using the settlement funds to “restore, replace, rehabilitate or acquire the equivalent resources injured.” This article examines the Trustees’ efforts to purchase Native holdings within the “spill zone” to carry out that charge.


While this book focuses primarily on the spill and the social ramifications of the disaster, it includes a chapter on the litigation and other efforts to find justice.


This article discusses the facts of the accident, the insurance policies applicable and coverage, the claims, and the settlement.


In 1991 Exxon agreed to pay $900 million in civil claims and a $25 million criminal settlement for its responsibility in the oil spill. A Trustee Council was set up to spend the money on, inter alia, cleanup and damage assessment; purchase land to protect or enhance damaged resources; conduct monitoring, research, and restoration; and pay administrative costs. The purpose of this report is to inform Congress how the money was spent.


While less well-remembered oils spills in 1988 and 1989 helped to inspire new federal legislation to address the issue, it was the *Exxon Valdez* disaster that helped reconcile the House and Senate approaches and get the legislation enacted. This article reviews the major provisions and issues in the legislative activity, and then looks at the post-enactment issues.


The author defines this book as a “documented history of the Trustee Council.” In it he reviews the legal actions that led to the $1 billion settlement and the establishment of the Trustee Council, as well as its initial evolution. He also looks at public involvement and the development of restoration science.


This comment reviews the history of the *Exxon Valdez* litigation, focusing on litigation between defendant Exxon and claimants who suffered injuries as a result of the spill. Also included are analyses of strategies adopted by the claimants as well as substantive and procedural tools used by Exxon in its own defense and Exxon’s post-trial motions and appeals.


This article reviews the *Exxon Valdez* case as it was proceeding through Alaska federal court, noting procedural issues such as standing and class certification. The author also addresses areas where the litigation “almost certainly will make new law,” such as natural-resources damages and the constitutionality of high punitive damages.


The author presents a narrative of the sticky and complex civil action resulting from what has been called the biggest drunk-driving case of all time, the *Exxon Valdez* oil spill in the Prince William Sound.


After a summary of current law the author gives a history of Congressional involvement in oil pollution liability and compensation.


Prior to a lengthy examination of the evolution of punitive damages and tort reform, which gets a push from the *Exxon Valdez* litigation experience, the author provides a summary of the oil spill, cleanup efforts, and litigation.

Overall the aim of this comment is to review and analyze the strategy of the Alaska Natives in seeking compensation for the damages incurred by the *Exxon Valdez* oil spill. Part I reviews the facts of the conflict that resulted in the commencement of actions in *Native Village of Chenega Bay v. Lujan* and *Chenega Corp. v. Lujan* (undecided at the time of the writing). The article also introduces the key players and analyzes their strategies and goals.

Raucher, Stephen. “Raising the Stakes for Environmental Polluters: The *Exxon Valdez* Criminal Prosecution.” *Ecology Law Quarterly* 19, no. 1 (1992): 147–85. The author attempts to reconstruct the criminal prosecution against Exxon and then looks at how the eventual settlement may make similar criminal prosecutions easier in the future.

Stoll, N. Robert. “Litigating and Managing a Mass Disaster Case: An Oregon Plaintiff Lawyer’s Experience in the *Exxon Valdez* Oil Litigation.” *Oregon State Bar Bulletin* 56, no. 1 (October 1995): 14–22. This is an account of the *Exxon Valdez* litigation from the inside, with attention paid to case management, the discovery plan, funding the litigation, dual trials, and settlements, etc.

Wood, Amy Edwards. “In Re the *Exxon Valdez*: The Danger of Deception in a Novel Mary Carter Agreement.” *Seattle University Law Review* 21, no. 2 (Fall 1997): 413–39. This article looks at the controversy around a secret Mary Carter agreement between Exxon and seven Seattle food processors. Under the agreement Exxon settled with the Seattle Seven for compensatory damages but the Seattle Seven agreed to return any punitive damages to Exxon, thus reducing Exxon’s burden. Revelation of the ruse outraged Judge Holland.

**Federal, State & Local Government**


Graves, W. Brooke. *Establishing Local Government in Alaska*. Fairbanks, Alaska: University of Alaska, 1959. This work, labeled “A Statement prepared for and at the request of the Alaska Legislative council,” is a report, written by a Carnegie Visiting Professor at the University of Alaska. He analyzes the concept of “borough government” and looks at some of the problems of intergovernmental relations and service agencies.


This study provides a history of evolution of local government in Alaska, an examination of the constitutional framework, and a history of borough government and politics, including their establishment.


This is a study of the evolution of local government in Alaska and the state’s role in regional and community development. It also “examines the origins, environmental setting, and policy making process of establishing area-wide borough government in Alaska,” as provided for in the state constitution, a blend of county and unified metropolitan government.


This book is a treatment of local government in Alaska, including pre-statehood and constitutional history, and the establishment of boroughs.

Fish & Wildlife


This article gives a history of salmon fishing in Alaska and the coming of regulation to that industry.


This is a treatment of the Carlisle Cannery controversy, the first major subsistence fight in Alaska; it focused attention on conserving an important natural resource.


The Alaska state policies and regulatory structure are reviewed in a small portion of this long report, including Alaska management authority, the Pacific Salmon Treaty, and budget history.


This article reviews waterfowl management in Alaska, including the history of federal laws, such as the Alaska Game Law, and their enforcement. It also reviews the “Alaska Goose Litigation” from the 1980s.


This book looks at the effort to preserve the Alaska salmon runs. In particular,

---

Part Two provides extensive treatment of relevant federal legislation and regulation, as well as controversy over them.


The purpose of this book is to demonstrate the consequences of open access and irrational conservation of a resource—in this case salmon fisheries—and set a framework for establishing effective conservation rules and efficient economic measures to prevent the diminishment of the resource. Four chapters focus on Alaska salmon fisheries, tracing their development, history of regulation, and potential economic yield.


In 1918 the Carlisle Packing Company installed a floating canning operation at the mouth of the Yukon River, which quickly led to severely reduced catches by Alaskans living along the river, thereby threatening starvation. This article relates the story of Archdeacon Stuck’s opposition to the cannery, which helped lead to the enactment of the strongest salmon conservation legislation prior to statehood.


While the *Albatross* conducted research into the marine fisheries of Alaska, it also served as the eyes and ears of the federal government by making data available regarding marine resources. In that capacity it conducted special investigations into the fur seal islands, such as the Pribilofs, and it played a role in establishing conservationist arguments. It was also periodically called into service for the Navy and Revenue Cutter Service.


Anadromous fish are fish that migrate up rivers from the sea to breed in the fresh water from where they were born. This survey reviews the history of Alaska’s efforts to protect anadromous fish–bearing streams, from 1917 forward, both legislative and regulatory.


Alaska managed its marine mammals prior to enactment of the Marine Mammal Protection Act in 1972. In 1984 Alaska considered applying to the U.S. Fish and Wildlife Service to return management authority over ten marine mammals to the state. A brief portion of this brief pamphlet describes the process of putting together the management plan.


The legislative history of efforts to protect Alaska’s migratory waterfowl is reviewed in Section II, and Section III reviews the litigation that resulted in the *Alaska Fish and Wildlife Federation* decision.9

---

McKnight, Donald E. *The History of Predator Control in Alaska.* Juneau, Alaska: Alaska Department of Fish and Game, 1970.
This brief report reviews the predator control policies in Alaska, including bounty payments, during the twentieth century, during both the territorial period and statehood.

This article provides a history of Kenai Refuge in Alaska and the litigation and decision in *The Wilderness Society v. United States Fish and Wildlife Service,* in which the Cook Inlet Aquaculture Association was enjoined from annually stocking Tustumena Lake with sockeye salmon fry as an enhancement project.

The purpose of limited entry fishing programs is to preserve fish, and to keep too many fisherman from chasing too few fish. This study reviews, in part, programs in Alaska and provides a history of those programs.

The Alaska legislature established a regulatory scheme to limit entry into the state’s commercial fisheries in 1973. This article reviews its legislative history and also examines two constitutional challenges to it.

This book focuses on the American Indian policies as they were brought to bear on the Tlingit and Haida in Southeast Alaska through the lens of the salmon industry. While the author maintains that the main factor that changed the lives of the Native Alaskans was the operation of the free market, he also reviews the legislative and judicial influences on them.

This article reviews the exploitation of sea otter fur along the North American west coast with some focus on Alaska. In part, the fate of the sea otter was tied to the effort to aid the fur seals of the Pribilof Islands through the North Pacific Fur Seal Convention of 1911 and the conservationism of the Progressive Era.

This article reviews the recent introduction of local traditional knowledge, traditional knowledge holders, and the social science of traditional knowledge into the science, policy, and management initiatives of the North Pacific Fishery Management Council in their development of a federal Bering Sea Fisheries Ecosystem Plan. While it is a departure from other Fisheries Ecosystem Plans, the authors

---

10. 353 F.3d 1051 (9th Cir. 2003), *amended en banc,* 360 F.3d 1374 (9th Cir. 2004).
argue that the approach is consistent with the Magnuson-Stevens Fishery Conservation and Management Act12 and relevant federal regulations.

This book contains chapters that discuss statutes and regulations that had bearing on the salmon fisheries of Kodiak Island, particularly with regard to protecting the salmon runs.

This book conveys the story of the development of wildlife management in Alaska as a conflict between hunters and conservationists. It also shows how federal wildlife policies in Alaska were affected by outside pressure, particularly from special interest groups in the lower forty-eight.

This article reviews the history of the struggle between national conservationists and local interests in developing game laws to regulate the hunting of Alaskan brown bears.

This report reviews the history of conservation efforts and wildlife management in Alaska from the period of Russian control, with a focus on, among other things, establishment motivations and objectives. Part I covers the Aleutian Islands National Wildlife Refuge, Arctic National Wildlife Refuge, and Kenai National Moose Range.

This article recounts the passage of the 1924 White Act to regulate the salmon industry in Alaska. As a product of compromise the act failed to ensure the preservation of the fisheries as the catch increased, and didn't outlaw fish traps.

While this report is primarily a study of the king salmon in Cook Inlet, it provides a half page regulatory history.

This article looks at the treatment of Alaska’s constitutional equal access clauses by the state Supreme Court, starting with the history and application of the clauses. It also looks at the ‘court's efforts to harmonize equal access jurisprudence with the 'preference among beneficial uses' and equal protection provisions of the state constitution.”


This report includes regulatory history.

**Floating Courts**


Judges held court on U.S. Revenue Cutter Service ships to bring justice to some of the more outlying communities of Alaska’s sprawling geography, a sailing circuit more commonly known as the “Floating Court.”


This brief article describes a visit by the floating court to Kodiak in 1956.


This article gives an account of how justice was brought to the Bering Sea and Arctic in the early twentieth century.


Part III of the judicial journey of the *Wachusett*, from Nome to Barrow.


Floating courts took Alaskan justice by ship to some of the more far flung settlements in the territory, akin to “riding circuit.” This article, the first of three excerpts from “Down Darkness Wide,” a book then being written by the author, recounts the journey of the *U.S.S. Wachusett*, the last time the floating court put to sea (1957). This excerpt gives a brief history of the floating courts, and then covers the author’s experiences aboard the *Wachusett* from Seward to St. Matthew Island in the Bering Sea.


Part II of the judicial journey of the *Wachusett*.

Naske, Claus-M. “Alaska’s Floating Court.” *Western Legal History* 11, no. 2 (Summer/Fall 1998): 163–83.

When Alaska was given a resident judiciary in 1884, what wasn’t taken into consideration in the legislation was the size of the Alaska territory and the remoteness of its communities. To meet Alaska’s needs, judges held court on U.S. Revenue Cutter Service ships to bring justice to some of the more outlying communities. It was, in a sense, a sailing circuit. This article gives a brief history of that uniquely Alaskan, but bygone, institution.


The federal government established a “judicial presence” in Alaska to address, among other things, issues arising from the mining of valuable resources. Because of the remoteness of much of the territory, that presence was limited and not wide-reaching. This article recounts how several federal judges took their courts “on the road,” riding circuit aboard U.S. Revenue Service ships, i.e., the “floating courts.”

**Gun Rights**


Among other things, this article reviews the history of article 1, section 19 of the Alaska Constitution (Right to Keep and Bear Arms) and also looks at the legislative history of the 1994 amendment to that section, which added the following language: “The individual right to keep and bear arms shall not be denied or infringed by the State or a political subdivision of the State.”


This note looks at the Alaska Misconduct Involving Weapons statute, concentrating on its interpretation by two Alaska Court of Appeals decisions, and also compares it to the federal statutes on which the interpretations are based.


This article looks at the issue of gun rights from the standpoint of states’ rights, local gun rights, and nullification, and also analyzes the Alaska Firearms Freedom Act of 2010. It includes a brief history of the right to bear arms in Alaska.

**Health Care**


Since colonial times American Indian and Alaska Native children have been impacted by federal laws intended to provide health services to citizens of federally recognized tribes. This article reviews various relevant public laws and programs, as well as the context in which they were designed.

**History of Alaska**


This lengthy history provides an extensive look at the history of Russian Alaska but also covers the first twenty years of American rule. Legal issues, including criminal and civil, are occasionally examined in the broader narrative.


The author, a governor of territorial Alaska and United States Senator after statehood, uses his history of the then-territory (at the time of the writing) to publicize

---

what he saw as federal neglect. Published during the final push for statehood, the book gives attention to legal issues, such as organic acts, self-government, establishment of the judicial branch, the New Deal, justice, and Native claims.


While this is a very good overall history of Alaska, from *promishlenniki* to Palin, it is also useful for its excellent treatment of legal issues and their development in Alaska.

**Insurance**


Dave Donley finishes the story of bringing mandatory auto insurance to Alaska, which went into effect in 1991, with some fine-tuning in subsequent years.


Part I. As a senate aide, Dave Donley was involved in the framing and passage of Alaska's first mandatory auto insurance statute, enacted in 1984. This brief article is an account of that effort and the opposition that the sponsors faced.


The 1984 legislation that Dave Donley described in Part I went out of force in 1989 due to a sunset provision in the original legislation. Part II recounts the introduction of an unsuccessful bill to create a more permanent statute, and Donley's part as a member of the legislature.


Section IV contains a history of insurance regulation in Alaska from the territorial period through the early 1990s. The section also includes a description of the administrative and enforcement mechanisms.

**Labor**


This is an account of labor activities in Nome, including the Nome waterfront strike of 1905 and subsequent mining strikes.


In 1907 the United Mine Workers of Tanana, Local 193 of the Western Federation of Miners, went on strike. Arrayed against them was the Mine Owners and Operators Association. This article tells the story of that strike, what the miners were striking for, and its outcome.


Due to high wages and good working conditions, the Treadwell gold mine, on Douglas Island near Juneau, had not had to tolerate a union. This article is about
how the Western Federation of Miners tried to change that. Scabs, strikebreakers, police crackdowns, and federal troops all played a role.


While this book examines Asian-American labor in the canning industry along the American west coast, some focus is given to issues in Alaska, as well as overall issues that affected the industry in Alaska, including unions and the contract system.


By the turn of the twentieth century, salmon was being canned in Alaska at the rate of several million cases per year. The canneries relied on Chinese workers, who were recruited through the contract system. This chapter is about how they were extra-legally and ruthlessly exploited.


This article looks at the coming of mining to Juneau, Douglas, and the Gastineau Channel. In particular, it focuses on resistance to the employment of Chinese labor and legislation that sought to exclude them.


The author recounts an experience he had early in his career in Clark Point, Alaska. Provided is information on law, property, and the labor force, work rules and management, and a narrative of the events.


This paper examines the employment of Chinese nationals in the salmon canneries of Alaska, with focus on the Chinese labor contractor, workers’ contracts, and earnings.


This dissertation focuses primarily on settler colonialism and the racialization of Asians and Native Americans in Alaska, with accounts of labor conditions in the mines and canneries of the territory, as well as mob law, lynching, and violence directed against the two groups. There is also an analysis of the early career of James Wickersham in Tacoma, Washington, including his racial attitudes toward the Chinese and local Natives, as well as a description of his efforts to dispossess Natives of their land in his legal practice.


This article is primarily a political history of socialism in Alaska in the early twentieth century, but there is also focus on their demands for legal reform and application of sedition laws.

Law Enforcement


With P.L. 280, Congress transferred jurisdiction from the federal government to the state governments with regard to law enforcement in Indian country, changing the division of legal authority among tribal, federal, and state governments. The authors opine that the act created obstacles to tribal prosecution of criminal behavior. They examine the history of the act, which originally applied to only six states, and the later inclusion of Alaska.


Frontier lawmen, according to the author, did not die out after Arizona statehood in 1912; instead they moved to Alaska. This book recounts Chenoweth’s experiences from 1951–1960, when he was Chief Deputy U.S. Marshal for the Third Judicial Division in the Territory of Alaska. It includes an account of the last “floating court,” aboard the U.S.S. Wachusett in 1957.


The chapters of this book are taken from newspapers and other sources to convey a sense of frontier justice in gold rush and early territorial Alaska and Canada.


The Alaska attorney general serves, officially, as general counsel to the governor and executive departments, and to the legislature. This volume reviews law enforcement prior to statehood and then traces the development of the department with treatment of each attorney general.


This book provides a look at early law enforcement in Alaska, from the arrival of the first officers to the judicial structure at statehood, with accounts of notable characters, from Nellie “Black Bear” Bates to Soapy Smith and Jack London.


This article looks at enforcement of the liquor control laws in Alaska in the early twentieth century and the officers who enforced them.


McCoy, Donald R. “The Special Indian Agency in Alaska, 1873–1874: Its Origins and Operation.” *Pacific Historical Review* 25, no. 4 (November 1956): 355–67. During the seventeen years between purchase from Russia and the promulgation of formally organized territorial government in 1884, the federal government was neglectful of the inhabitants’ needs. This article recounts the history of one brief effort to bring American law to Alaska.

Rearden, Jim. *Sam O. White: Tales of a Legendary Wildlife Agent and Bush Pilot.* Missoula, Montana: Pictorial Histories Publishing Company, Inc., 2006. This biography of a one-time Alaska game warden recounts how, when frustrated by the impossibility of enforcing conservation laws on the ground, he transformed the assignment by purchasing a plane and enforcing the rules from the sky.

Rychetnik, Joseph. “Law and Order Comes to the 49th State.” *Journal of the West* 38, no. 1 (January 1999): 77–84. This article reviews law and order practices in Alaska from the Russian period through Statehood when responsibility for state law enforcement vested in the Department of Public Safety with the Alaska State Police as its investigative arm.


Williams, Gerald O., and the Alaska State Troopers Golden Anniversary Committee. *Alaska State Troopers: 50 Years of History.* Anchorage, Alaska: Alaska State Troopers Golden Anniversary Committee, 1991. This lengthy and well-illustrated book provides a detailed history of the Alaska State Troopers, from their inception as the Territory of Alaska Highway Patrol in 1941, through other names and incarnations and their assumption of police service to areas not served by community police. Also provides treatment of law and order during the period of military rule.

**Maritime**

Kloenhamer, Larry Niles. *The History of Title Navigability in America and its Application to the State of Alaska.* Boulder, Colorado: Western Interstate Commission for Higher Education, 1979. Title to navigable waters is usually retained by the states in trust for the public. This report reviews the history of title to navigable waters, from the early Public Trust Doctrine to the Navigability Test in America and subsequent development through case law. It also reviews how navigability has been treated in Alaska, through case law and administrative proceedings.
Mental Health


In 1956 federal land was put in trust by Alaska under the Alaska Mental Health Enabling Act in order to support Alaska's mental health program. In 1978 it was repurposed by the state legislature. This article gives a brief history of the litigation challenging that change in status.


By enacting the Alaska Mental Health Enabling Act in 1956 Congress granted the Territory of Alaska one million acres of land to be held in trust to fund the mental health programs of Alaska. In 1978 the land was reclassified by the State of Alaska as general grant lands. This article recounts the history of the treatment of the mentally ill in Alaska, legislation to assist in that treatment, and the litigation brought by a group of mental health patients in the state after the reclassification of the trust lands.


For many years persons judged to be mentally ill in Alaska were sent “outside” for treatment, primarily at the Morningside Hospital in Portland, Oregon. Alaskans were not happy with the arrangement and felt that, for a variety of reasons, treatment could be better provided in Alaska. This article examines how the federal Alaska Mental Health Enabling Act, which provided for Alaskan treatment of the mentally ill, was shepherded through Congress by Alaska's Congressional Delegate, Bob Bartlett.


This account of the effort to enact the Alaska Mental Health Act was inserted into the record by Senator Bob Bartlett when reviewing the legislation ten years after its passage.


This article looks at the attempt to establish detention hospitals for the mentally ill in Alaska between 1910 and 1915. Along the way it provides insight into Alaskan mental health policy and politics, and federal-territorial relations during that time.


Congress provided Alaska with an organic act in 1884, after which it relied on the laws of Oregon as a model for its own laws. However, Oregon's laws did not meet Alaska's needs with regard to treatment of the mentally ill. This narrative provides insight into how Alaska tried to meet those needs.

Mining


Federal management of mineral resources in Alaska changed with the passage of the Alaska Native Claims Settlement Act in 1971. This article, the first of a two-part series, includes the history of mineral patent examination in Alaska.


This report provides an overall view of the Kennecott Copper mine from early development to its final days. It also reviews the Ballinger-Pinchot Affair as well as various legal challenges to the owners of the mine, the Morgan- and Guggenheim-controlled Alaska Syndicate.


This article gives a brief account of miners’ meetings as sources of justice, both in the Canadian Yukon during the gold rush, and subsequently during other strikes in Alaska.


While this publication gives an overall view of mining in the region, it touches on government action with regard to specific mines, and Chapter 10, “Government, Law and Natives,” focuses more specifically on the development and application of mining laws.


The Treadwell Mine, located on Douglas Island across the Gastineau Channel from Juneau, was in its day the largest hard rock gold mine in the world, and it produced more than three million troy ounces of gold between 1881 and 1922. It also produced labor strikes. While the author focuses primarily on the running of the mine, she also includes a chapter on labor that includes an account of the 1907 labor strike.


This publication is primarily a history of the mines in a portion of Interior Alaska. However, it also provides a narrative of Judge James Wickersham’s judicial activities in the area.


While this publication does not recount the whole of the Ballinger Affair (it looks more closely at the dispute as illustrative of administrative behavior), nonetheless it does give some background on the issue of the conservation of Alaska’s coal lands.


This book purports to be an “ethnology of law,” and focuses on how legal institutions succeeded or failed in the nineteenth century Yukon and Alaska gold fields. It also looks at how the institutions were affected by demographic and social changes from the 1870s through the turn of the century.


While this book is primarily about the friction between Gifford Pinchot and Richard Ballinger over the direction of conservationism, it covers the illegal access to Alaska coalfields in 1909 by the Morgan-Guggenheim “Alaska Syndicate,” which blew up into a national scandal.


In 1920 Congress appropriated funds to the Department of the Navy to identify sources of Alaska coal with which to power naval ships in the Pacific Ocean. A secondary intent was to develop industry in Alaska. To that end, the Secretary of the Navy appointed the commission to carry out that task with a focus on the Chickaloon Coal Mine in the Matanuska Valley. In the end, the coal was found to be inferior to meet the Navy’s needs.


This book attempts an “authoritative exposition of the law relating to mines and mining in the United States and Canada” as it existed at the time of publication, with particular reference to Alaska and certain Canadian jurisdictions. It contains all the relevant statutes and regulations, “together with reference to all the judicial and departmental decisions construing such statutes and regulations . . . .”

Roppel, Patricia. “‘Have I Got a Deal for You!’: Mining Frauds on Douglas Island.” *Alaska History* 5, no. 2 (Fall 1990): 17–29.

Douglas Island, across the Gastineau Channel from Juneau, was the site of the Treadwell Lode, one of the world’s largest gold mines. While gold may not be ferrous it is still a magnet for frauds and swindles. This article weaves together tales of shenanigans on Douglas Island in the late nineteenth century.


Prior to statehood land ownership was simple, but with the coming of statehood and, later, the passage of the Alaska Native Claims Settlement Act, the process became more complicated. This chapter describes some of the events that led to the change and also reveals some of the problems in the transition of land ownership from the United States to Alaska and to Natives and their corporations.
This pamphlet looks at mining laws as they applied to placer mining in Alaska near the turn of the twentieth century. Includes analysis of case law.

Secretary of the Interior Richard A. Ballinger was accused of using his influence to help the Morgan-Guggenheim “Alaska Syndicate” illegally gain access to Alaska coalfields in 1909. The affair blew up into a national scandal that ruptured the Republican Party. This article looks more closely at the effect of the scandal in Alaska.

This book is a study of the “ethnology of law,” focusing on conflict management and effectiveness for limiting the potential for violence in the changing demographics and social conditions of the gold fields of late nineteenth century Yukon and Alaska. It reviews miners’ justice, police, federal authority, courts, and even Soapy Smith.

This book covers the early exploitation of Alaska resources, in particular by the Morgan-Guggenheim Alaska Syndicate, which built the Kennecott Copper Mining Company and the Copper River & Northwestern Railway. The focus is on three men, George Cheever Hazelet, Stephen Birch, and Captain David Jarvis, and their challenges and setbacks, including legal challenges from trust busters, conservationists, Judge James Wickersham, and rivals.

This work presents a compilation of all the mining laws then in force, with a general explanation of those laws.

**Native Corporations**

The author provides a history of Alaska Native Corporations from their birth at the promulgation of ANCSA to date, their failure to perform as hoped, and their admission to the U.S. Small Business Administration 8(a) Business Development program, which gave them additional contracting benefits, and the subsequent failure to benefit Alaska Natives as intended despite those benefits.

The author looks at the emerging role of Alaska Native corporations, first by providing a brief history of the settlement of Alaska Native land claims, and then by reviewing the major provisions of ANCSA and the various regional and village corporations brought into existence by the legislation. He also emphasizes the emergence of an Alaska Native elite who were able to skillfully mobilize two opposed lobbying groups, transnational oil companies and environmental organizations, to persuade Congress to generously settle the Native Alaskan land claims.

This article gives a brief progress report on how Alaska Native corporations were faring ten years after the passage of ANCSA.


While this article is primarily a review of the Bankruptcy Code as it applies or conflicts with the Native-owned corporations set up under ANCSA, it also provides a brief review of the Congressional decision to exchange transfers of land to Native corporate entities for the extinguished aboriginal claims, and how the legislative purposes worked out in the first twenty years.


Preceding his main argument, the author provides a brief history of Alaska Native corporations and their context in terms of ANCSA and the Small Business Act.


This article provides some background on the passage of ANCSA and the decision to choose corporations as the method for managing the settlement land and money. It also discusses the consolidated economic performance of the corporations from enactment until 1998.


This article looks, in part, at the effect of ANCSA on timber harvesting by southeast Alaska Native corporations and the accumulation and sale of net operating losses, a tax loophole. One outcome was the encouragement of clearcutting of Native timber holdings. Another was that the revenue thus attained by the Native corporations exacerbated the split between shareholders in the Native corporation and the non-shareholders.


This article reviews the problem of corporate viability when used as an institutional vehicle for generating Native profits under ANCSA. The author reviews ANCSA and its 1987 amendments in an economy prone to booms and busts while also trying to fulfill the social and economic needs of the shareholders.


The purpose of this article is to examine the “issues of membership and the landholding under ANCSA and consider how the contemporary corporate view of these concepts collide[s] with Native sovereignty.” Among other things it describes the background of the act and explains its flaws relating to control of Native lands and membership in Native organizations.

This article looks at the effect ANCSA has had on Alaska Natives in various ways. For one example, it looks at the implication for land use and social organization of imposing corporate structure on tribal communities.

Lindsay, Britt. “Tribal Land Quarrels in Alaska: Leisnoi v. Stratman.” Public Land and Resources Law Review 20 (1999): 169–83. The Leisnoi decision examined the legal structure of ANCSA in the context of a resource extraction dispute between regional and village corporations. The article gives a brief history of ANCSA and provides background to the dispute before analyzing the decision.

London, J. Tate. “The ‘1991 Amendments’ to the Alaska Native Claims Settlement Act: Protection of Native Lands?” Stanford Environmental Law Journal 8 (1989): 200–28. Among other things this article analyzes the events preceding the passage of ANCSA and later implementation issues. It also looks at the legislative effort to pass the 1991 Amendments, which helped provide some limited protection of lands conveyed on behalf of Native Alaskans to for-profit corporations that were created pursuant to ANCSA.

Metcalfe, Peter. Earning a Place in History: Shee Atika, the Sitka Native Claims Corporation. Sitka, Alaska: Shee Atika Incorporate, 2000. This coffee table book relates the history of the Alaska Native claims movement, the passage of ANCSA, and the creation of Shee Atika, the Native corporation for the Sitka Natives.


Morehouse, Thomas A. The Alaska Native Claims Settlement Act, 1991, and Tribal Governments. ISER Occasional Papers, No. 19. Anchorage, Alaska: Institute for Social and Economic Research, University of Alaska Anchorage, 1988. This paper reviews the 1987 and 1991 amendments to ANCSA, in particular the protection of ANCSA corporations and the failure of Congress to authorize the transfer of ANCSA lands from corporations to “qualified transferee entities” (QTEs), predominantly village tribal governments. The author also reviews these issues against competing visions of political community—the dominant western culture of individualism and private property versus the Native culture of cultural identity and shared resources.

Price, Monroe E., Richard R. Purtich, and D. Gerber. “The Tax Exemption of Native Lands Under Section 21(d) of the Alaska Native Claims Settlement Act.” UCLA-Alaska Law Review 6, no. 1 (Fall 1976): 1–33. Section 21(d) of ANCSA exempted, with some exceptions, the taxation of lands conveyed to Alaska Natives and Native corporations by state and local entities. The implications were complicated. This article reviews the section and attempts

22. Leisnoi, Inc. v. Stratman, 154 F.3d 1062 (9th Cir. 1998).
23. Malabed v. N. Slope Borough, 335 F.3d 864 (9th Cir. 2003); Malabed v. N. Slope Borough, 70 P.3d 416 (Alaska 2003).
to elicit the legislative goals. It then looks at how various interpretations might influence Native corporate behavior and discusses strategies and possible alternative approaches in trying to achieve the legislative goals.


ANCSA allowed eligible Native Alaskans to receive, through Native corporations, fee title to 44 million acres of land as part of a broad land claim settlement. The new Native corporations took up the task of proving eligibility for enrollment, based on the formula of American citizenship and one-fourth or more Indian, Eskimo, or Aleut blood. This article looks, in part, at the difficulty of the Sugpiat, self-identified as Creole in Russian America, in proving their claim.


The author contends that the modification of the business corporation form by Alaska Natives will develop a hybrid form of sustainable enterprise. Along the way she gives historical background to the development and purpose of this form of enterprise and its inclusion in ANCSA.

**Oil and Gas**


This note looks at ANILCA and its relevance to the National Petroleum Reserve in Alaska. It includes a background of ANILCA and a brief legislative history of the Naval Petroleum Reserves Production Act.24


In response to public pressure, particularly after the *Exxon Valdez* spill in the case of Alaska, west coast states passed legislation to enhance oil spill prevention and response capabilities. The authors briefly review different issues state by state (Alaska, California, Oregon, and Washington).


This book tells the story of the various fixes, legal and otherwise, that had to take place before the Trans-Alaska Pipeline could be built, from land settlements with Alaska Natives, to meeting NEPA requirements, to legislation, to dilatory court suits.


This dissertation provides an “institutional retrospective of past decisions by clarifying the issues faced by decision makers and illuminating the various stages of the policy-making process,” including focus on the Territorial Land Board, State Department of Natural Resources, Royalty and Price Administration, etc.

---


This article discusses conservation regulations that pertained to oil and gas field development and production and that are of administrative concern to the Alaska Oil and Gas Conservation Committee and the Alaska Division of Oil and Gas. They are not the same as the broader forms of state and federal regulations that deal with oil exploration, pipeline construction, and oil tanker and transport facilities.


The author examines the “development of national policies for oil development and nature conservation in the state of Alaska.” In particular, he looks at the Trans-Alaska Pipeline System, ANILCA, and the Exxon Valdez spill and the Oil Pollution Act of 1990.


The Alaskan pipeline is often seen as Alaska’s first major environmental dispute, and it presented political, legal, and engineering, as well as environmental, challenges. This book looks in-depth at all of these.


This work provides a historical perspective of oil and gas taxation in Alaska as well as an inventory of oil and gas legislative tax proposals, a summary of proposals enacted, and historical and projected petroleum revenues.


This article looks at how the old homestead laws, including the Homestead Act of 1898, clashed with the urge to develop oil resources, especially in the Kenai Peninsula. It also includes an account of the effort to pass federal relief legislation promoted by Senator Ernest Gruening.


The state of Alaska believed that the oil corporations were undervaluing the final market value of the crude they were taking out of Prudhoe Bay, and were doing so by using “bookkeeping trickery.” This dissertation, based primarily on an examination of the unsealed portions of the court records, reviews the history of the lengthy litigation Alaska waged to recoup missing royalties from the oil companies.


Overall, this article is concerned with federal trust responsibility to Alaskan Natives when conducting an outer continental shelf leasing operation because of the possible impact to subsistence culture due to drilling. While the history of federal Indian trusteeship, development of Alaskan oil and gas resources, and settlement of federal-state conflicts over offshore jurisdiction are not individually “Alaska legal history,” they merge in the author’s treatment to become so.

This book examines the history of the Trans-Alaska Pipeline, including a review of the judicial decisions that stopped it and the federal legislation that subsequently allowed it. It also briefly reviews the history of Native Alaskan land claims and some other relevant federal legislation.


This article reviews the path to the 1990 enactment of comprehensive federal oil spill legislation, and also gives an account of the Exxon Valdez disaster.


This article reviews the history of federal legal activity leading up to the construction of the Trans-Alaska oil pipeline and also covers some other major substantive issues, including the relevance of an Environmental Impact Statement.


Apart from providing a history of Alaska’s North Slope and its transformation by oil production, this comment also includes a legislative history of the 107th Congress’ energy bill.


This article recounts the unsuccessful legislative efforts by Alaska’s congressional representatives to free up the Naval Petroleum Reserve No. 4 to oil exploration and extraction.


The first attempt to build an oil pipeline south from Prudhoe Bay was frustrated by the federal court decision in *Wilderness Society v. Morton,*25 which ruled against Interior Department authorization of a special land use permit under the Mineral Leasing Act of 1920. This article recounts the history of the legislative impact of that decision.


This book reviews the coming of the oil industry to Alaska and its effect once there. One of the conditions precedent to building the Trans-Alaska Pipeline was the settlement of Native Alaskan land claims through the passage of ANCSA. This book tells that story, too.


Among other things, the authors review the state of the law prior to enactment of the 1990 Act and then contrast and compare the Act to the prior laws, with some insight into “the Act’s key controversies and their resolutions in Congress.”26

 Permanent Fund

The Alaska Permanent Fund is a public trust income-producing investment fund into which is deposited twenty-five percent of mineral bonuses, royalties, and related income (primarily from oil) for the benefit of the residents of the state, and from which there is an annual distribution of dividend to those who have resided in the state for the duration of the previous year. The fund was established by constitutional amendment in 1976 and conceived as a way to protect a portion of the state’s resource production income from dissipation and a hedge against lean years. In 1980 the Alaska Permanent Fund Corporation was established to manage the investments. Distribution of Permanent Fund dividends (PFD) was also established that year.


The Permanent Fund is where a large portion of Alaska’s oil royalties are parked for investment and protection, and each year each resident of Alaska is given a dividend from the fund. It is an approach unique to Alaska and not replicated in the other states. This article reviews the history of how the fund came to be.


The author describes mineral wealth investment scenarios in several countries, including, in Chapter 5, the Alaska Permanent Fund. The chapter describes the fund, its intent, and some of its history, including embedding it in the state constitution.


This treatment reviews the history of the Permanent Fund, from the conception of Alaska in the state constitution as an “ownership state,” to amendment of the constitution, to different proposals in the legislature and refinement of goals, to establishment, debates over how best to invest, and distribution of dividends.


The purpose of this report is to examine the public attitudes toward the PFD program, the impact of the dividends on recipients, and the effects on the Alaska economy. It also provides a brief history of the origins of the program.


---

28. Id.
The author was the first Chairman of the Board of Trustees of the Alaska Permanent Fund, and served on the Board from 1980–1986. He provides a brief history of the fund and recounts his experiences in the corporation, including board member issues, and observations on the dividend.


The Permanent Fund was created by amendment to the Alaska Constitution and designed to invest at least twenty-five percent of Alaska’s oil money to keep it out of direct political control. It was intended to survive the depletion of the oil reserves. In this book Dave Rose recounts his experiences and challenges, including political and economic challenges, as the first director of the fund.


This report is a narrative legislative history of the Permanent Fund. It reviews, among other things, the history and issues in the development of the concept, objectives, fiscal issues, structure, dividend fund, and 1982 amendments.

**Pre-Statehood: 1868–1959**

\(^{29}\) Id.
statehood. On the other hand, he opined that should a “South Alaska” territory be cleaved off from the whole, the smaller and more densely populated rump entity would be in a better position to be given self-government by Congress than the entire territory.

This article looks at the efforts of Alaska’s delegate to Congress, James Wickersham, and others to coax Congress into providing statehood for Alaska.

This article is about bringing law to Nome, where the formation of a Consent Government (established by citizens based on common consent), on the recommendation of federal judge Charles S. Johnson, and the appointment of a federal commissioner began to lift it out of gold rush chaos.

This brief article gives an account of the first official census of Alaska after cession, a count made by Ivan Petrov.

This is a history of mail service in Alaska from 1867–1900 and the conditions faced by the mail carrier.

This article compares the national attitudes and perception in governing and developing distant colonies, Canada in the Yukon Territory and the United States in Alaska.

In the early years of American control over Alaska, experiments in home rule failed—no civil governing authority, no judiciary, no criminal and civil codes. To keep order the U.S. Navy was called in under the local command of Commander Lester Anthony Beardslee. This brief article covers the five-year period of Naval rule in Alaska.

Dunning, William A. “Paying for Alaska.” *Political Science Quarterly* 27, no. 3 (September 1912): 385–98.
This article examines the events surrounding the purchase of Alaska from Russia in 1867. In particular, it looks at corruption and the bribery of key members of Congress to encourage them to support the purchase of the Russian possession.

The author makes a distinction between territorial and district status for new acquisitions of territory by the United States, and how the distinction was applied to Alaska after cession by Russia in 1867. In particular, territorial status indicated an intention to incorporate the territory as a state, whereas, with regard to Alaska, there was no immediate probability, for a variety of reasons, that it would be incorporated as such.

This article examines the effort by U.S. Secretary of Interior Harold Ickes, just prior to World War II, to save European Jews by resettling them in the Territory of Alaska, which fell within his administrative domain. Despite the Slattery Report that opined that resettlement would have a positive impact on territorial development, there was opposition in Alaska and the effort did not come to fruition.


From 1867 until 1884 Alaska was administered as the Department of Alaska. From 1879 until 1884 the Department was administered by the U.S. Navy. This article gives an account of how the Navy went about establishing order during its administration.


When, by 1881, Congress had not established a method for Alaska to choose a delegate to the United States Congress, the citizens of the territory took matters into their own hands and elected Mottrom D. Ball to represent them in Washington, D.C. While Ball appeared before Congress he was never seated and Alaska had to wait until 1906 before it achieved representation in Congress.


This treatment reviews the organization, responsibilities, and activities of the Civilian Conservation Corps in Alaska during the New Deal.


Acquisition of Alaska from the Russians in 1867 brought a lengthy period of transition from Russian to American culture, with Alaska initially governed by the Navy and then the Army. Hinckley tells the story of bringing American culture, including law, to Alaska during these early years and how standards of frontier development applied during the settlement of the American West did not always conform to conditions in Alaska.


This article recounts a working relationship of mutual trust between the Rev. Jackson and Senator, later President, Benjamin Harrison. Issues reviewed are education, the passage of the 1884 Organic Act, and the effectiveness of prohibition.


This article recounts the onset of American control of the Alaska territory, including the extension of American law and governance to the territory.

---


The author reviews and analyzes the career of Dr. Jackson in Alaska, from his efforts as a champion of Alaska Natives to his work as General Agent for Education in the territory, his stance regarding alcohol prohibition, and his efforts to bring reindeer to Alaska.


After the purchase of Alaska by the United States from Russia in 1867, accusations were made claiming that the deal was corrupt. This book provides a history of the events surrounding the claims and attempts to resolve them, specifically the claim that William H. Seward was bribed.


This book gives an overview of the cultures of several of Alaska's gold rushes and the challenges they presented. Topics covered include Judge Wickersham in Eagle and Nome, lawlessness in the camps, and outlaw Soapy Smith in Skagway.


This report articulates the administration of Native Alaskans from the beginning of American control of the territory until statehood. Among the topics examined are law enforcement, federal and territorial responsibilities, and education.


The author opines that the lack of adequate governance in Alaska is emblematic of multiple forms of government “pathology.” In particular he reviews the lack of adequate control of the fur seal, sea otter, and salmon industries, the lack of federal concern and oversight, the appointment of unfit officials, the prevalence of fraud alongside well-established companies, and the rigid prohibition of alcohol as problematic and signs of mismanagement not unusual in a colonial setting.


This book covers the history of the Northern Commercial Company (Alaska Commercial Company), as successor of the Russian-American Company, through its acquisition of a monopoly over sealing in the Pribilof Islands, and beyond. It also provides a history of the Russian-American Company.


While this article primarily reviews the dynamics between the British Hudson's Bay Company and the Tlingit with regard to trade in Russian America, it also includes an account of the murder of John McLoughlin, Jr., Chief Trader at Fort Stikine, and the disputed jurisdiction over the murderer.


This article reviews the transition from Russian rule to American rule in Alaska.


This article is about the effort of the United States government, shortly after assuming control of Alaska from the Russians, to evict the Hudson's Bay Company
from Fort Yukon, despite a lease agreement between the HBC and the Russian-American Company.


This dissertation looks at how Alaska was administered from cession in 1867 until the First Organic Act of 1884. During that time it was, in turn, administered by the U.S. Army, the Treasury Department, and the U.S. Navy. Issues that are addressed include regulation of alcohol, public order, military rule, and policy toward the Alaska natives.


This article, penned by the Secretary of the Interior, lists the duties and responsibilities of various bureaus and departments of the federal government with regard to Alaska. He opines that such a patchwork administrative machinery leads to red-tape, citing specific examples, and calls for a more unified approach.


This paper reviews the enforcement of laws and regulations of national application that were written without an understanding of the realities of frontier Alaska.


This article examines the events surrounding the claims of corruption in the deal allowing the purchase of Alaska from Russia in 1867. Particular attention is paid to the role of Robert J. Walker, former Senator from Mississippi and former Secretary of the Treasury.


This dissertation reviews the history of civilian government in Alaska and the organization of home rule, ending with the political “triumph” of 1912, with the convening of the first territorial legislature. Included are chapters on the Organic Law and Legislature of 1899, the movement for congressional representation, the first election, and “anti-Guggenheimism.”


In 1906 Alaska at last gained (non-voting) representation in Congress and could elect a delegate. That year, Alaskans elected two delegates to Congress, one to serve out the remainder of the 58th Congress, the other to serve a full term in the 59th Congress. This article looks at the two simultaneous elections and the candidates who won.


This report contains several chapters focusing on a variety of issues: coordination of federal agencies in the territory, Alaska’s territorial government, territorial and local tax systems, justice and law enforcement, etc.

The Federal Emergency Relief Administration was tasked during the New Deal with establishing rural rehabilitation colonies as part of the Depression-era relief effort. One of the colonies was in the Matanuska Valley in the Territory of Alaska. This is a history of the establishment of that colony and includes a look at how it was run.


In the 1930s anti-immigrant sentiment and restrictive immigration policies in the United States were disastrous to Jews seeking to escape persecution in Hitler’s Germany and Europe. This article tells the story of how some members of Congress saw a possible way around immigration restrictions by allowing up to 10,000 Jewish immigrants to settle in Alaska. In the end the effort failed, partly because of parochialism, nativism, and anti-Semitism, but also because those allowed in under the law would not be allowed to settle anywhere else in the country. It would have set the Territory apart from the rest of the nation.


In 1955 President Dwight D. Eisenhower proposed a major road construction program for the nation. This article provides a history of road funding to give context to the activities of Alaska Congressional Delegate E.L. “Bob” Bartlett in making sure that Alaska got at least its fair share of the funding from the Federal Aid Highway Act of 1956.


The author tells the tale of the unsuccessful effort by the colonization Branch of the United Congo Improvement Association to set up a colony of African-Americans in Alaska modeled on a farming colony started in the Matanuska Valley.


The author provides a history of post-World War II efforts to bring development to the Territory of Alaska, including a proposal for an Alaska Development Commission and other plans for federal administration of development.


Alaska was a war zone during World War II and so it came to be under military jurisdiction, which led to a turf war between the military and civilian officials. The Alaska War Council was set up to try to maintain civilian control of Alaska during the war and establish a working relationship with the military. As the author demonstrates, in the end the council had no real authority.


This article is about the movement to bring Jewish refugees to Alaska in the 1930s and 1940s, and the opposition to that effort, as part of an effort to develop Alaska. It also reviews the failed effort to pass the King-Havenner bill through Congress.

When the oil fields of Alaska’s North Slope started to be developed, the legislature tried to plan how best to use the windfall. Confusion reigned. According to the author, that should not have been so. This article demonstrates how a framework for long-range planning had been evolving since 1937.


Executive Order 9066 was issued by President Franklin D. Roosevelt after America’s entry into World War II to authorize the Secretary of War to establish “military areas” from which certain people could be excluded for security reasons. This article is about the application of that order to the more than 200 Japanese Americans in the Territory of Alaska.


This article reviews the history of federal efforts, often through legislation, to provide the infrastructure to allow Alaska to develop economically. The time period covered runs from circa 1900 to statehood.


This is a history of the first governments of Alaska, in which are covered such issues as administration of justice, Organic Act of 1884, civil code, police power, property rights, and criminal code.


This book looks primarily at the military role of the U.S. Army and Navy in Alaska. However, between acquisition from Russia in 1867 and the passage of Alaska’s first Organic Act in 1884, Alaska was governed as a Department under the jurisdiction of the Army (1867–1877) and then of the Navy (1879–1884). The early chapters look at, *inter alia,* how the two military branches brought law and law enforcement to the Department of Alaska.


This lengthy dissertation (two volumes) looks broadly at the U.S. Army’s governance of Alaska during the ten years that followed acquisition in 1867. Topics treated include the Army’s role policing and administering justice, the problem of alcohol, community self-government, and policy toward the Alaska natives.


This article reviews the history of United States citizenship in Gold-Rush Alaska and the path to it. It also includes a biographical sketch of Judge James Wickersham as well as a focus on the effort of John Minook to attain U.S. citizenship in a case decided by Judge Wickersham.

---

31. In between these periods Alaska was under the jurisdiction of the Department of the Treasury.


In a brief 115 pages this study reviews the civil and political rights of Alaska’s inhabitants, the judicial system and administration of justice, and the legislative power in the territory, from the Treaty of Cession until the 1920s.


Following cession of Alaska to the United States by Russia in 1867, the U.S. Revenue Cutter Service was used to help establish U.S. sovereignty over the domain. Among its activities were relief, rescue, and such social experiments as transportation of reindeer to Alaska and training of Alaska Natives on how to herd them, as well as transport of federal judges to bring justice to remote villages, which became known as the “floating courts.”


This thesis provides an account of the effort of the United States Army to administer the new, but giant, acquisition from Russia until Congress could provide some form of civilian government. It was saddled with a ten-year responsibility without legal standing or necessary authority.


This article presents an account of the arrival and career in Wrangell of United States Commissioner James Sheakley, *ex-officio* Justice of the Peace, Probate Judge, Recorder, and Coroner.


While the naming of the state capital is outside the scope of this bibliography, this brief history of the city, including legal history, falls squarely within. Subjects include naval oversight, military law, native law, and vigilante law.


In 1916 a Land and Industrial Department was added to the engineering commission to encourage the purchase of Alaska produce, act as a sort of agricultural immigration bureau, and get involved with land matters. Part of their efforts led to an easing of homesteading requirements as applied in Alaska. This article reviews the history of those efforts and their challenges.


Anchorage was founded in 1915 as a construction base for the Alaska Railroad and started its municipal life as a tent village. That didn’t last long. This treatment is an account of how the community was planned and the challenges faced by the Alaskan Engineering Commission as it tried to establish the community’s future government and enforce the Alaska Railroad Townsite Regulations issued by President Woodrow Wilson.
Property and Land Use


This report reviews the history of Territorial and Alaska Statehood Act land grants, selection efforts, and activity after the enactment of ANCSA and ANILCA.


This article analyzes takings law in Alaska, by reviewing both the application of federal takings principles and the possible development of broader protections by the Alaska Supreme Court.


Homesteading was a way people could obtain land from the federal government at virtually no cost provided they met certain requirements. This government pamphlet provides information on the homesteading experience in Alaska, and outlines the laws and requirements as they evolved.


This article reviews standing to challenge Alaska land dispositions by the state and localities. Prefaced by a review of the background of standing to sue in Alaska, the article goes on to review four Alaska Supreme Court decisions that further refined standing in the state, for citizens and taxpayers.


This note reviews the history and holding of the decision in *Nome 2000 v. Fagerstrom,* as well as a brief overview of history and operation of adverse possession in Alaska.


When Alaska was accepted into the Union it gained title to 104 million acres of land from the public domain. In this book the author reviews the selection, management, and disposal of those lands, as well as state constitutional issues, land and resources policies, and jurisdictional disputes.


This chapter reviews the origins and application of federal land policy in Alaska, including major federal laws and controversies, covering the time prior to, and after, statehood.


The Alaska Statehood Act of 1958\(^3\)\(^5\) effected the transfer of more than 100 million acres to the state from the federal public domain, with the new state being tasked with selecting, classifying, and disposing of the lands. This article looks at how the Alaska transfer differed from earlier statehood transfers and how Alaska coped with the undertaking.


This article gives a brief history of land ownership and land management in Alaska, and also looks at four challenges that inhibit Native participation, including the large number of plans and differences in communication styles.


This article reviews the history of changing land ownership laws in Alaska primarily from cession until 2000, and then looks at the different types of land ownership and status in Alaska. Includes charts, maps, and tables.


This study looks at various aspects of homesteading in the Kenai Peninsula, from off-farm earnings, to livestock numbers, to average income and expenses. More pertinently, it reviews the settlement history and land withdrawals.


This article reviews the history of changing land ownership laws in Alaska primarily from the advent of statehood until 1985, and then looks at the different types of land ownership and status in Alaska. It includes charts, maps, and tables.


This article traces the development of Alaska’s debtor protections from early federal administration of Alaska through the territorial period and statehood.


This note examines Alaska adverse possession law as it existed prior to the revisions brought by the passage of Senate Bill 93 in 2003, and then gives a brief history of Senate Bill 93 and the changes it brought.


This report is concerned with homesteading, which played a major role in settling territories acquired by the nation as it expanded west but, did not play a role in settling Alaska, where the frontier was “deliberately preserved.” The author reviews the means of acquiring public land for private needs that were available at

---

the time of publication, including homesteading, school lands, national forests, and principal purchase provisions.

This brief article provides historical perspective on the different types of land ownership in Alaska, from acquisition of the territory through statehood and into ANCSA.

This report briefly reviews the federal land laws as they applied to Alaska and the withdrawal of land from leasing and selection by the Interior Department in the 1960s prior to the resolution of Alaska Native land claims.

**Reindeer**

The author briefly reviews the influx of reindeer into Alaska from Europe and Siberia. Congress provided the funds for purchase of reindeer from time to time to provide food to the mining districts and also to spark a reindeer industry.

This article gives an overview of the reindeer industry in Alaska and its history, including administrative activity by the Bureau of Land Management.

This article provides a narrative of the importation of reindeer to Alaska in order to provide a sustainable food supply for the Alaska Natives, the subsequent history of reindeer herding in Alaska, and the government’s role in funding and regulating the industry.

The author of this report was appointed special representative to the Secretary of Interior in order to effectuate Congressional legislation establishing a native reindeer industry. This report provides a history of the reindeer industry in Alaska and summarizes findings by the author, as well as recommendations.

Among other things, this article looks at the history of the Native and non-Native reindeer industry in Alaska, the promulgation and enforcement of the Reindeer Industry Act of 1937, and the opening of the reindeer industry to non-Natives after the 1997 *Williams v. Babbitt* decision.37 Also looks at how the federal government’s trust responsibilities have been applied to Native Alaskans.


37. 115 F.3d 657 (9th Cir. 1997).
This article provides a history of the growth and decline of the reindeer industry in Alaska and also reviews the government’s role in supporting and regulating it.


This article provides an overview of the reindeer business in Alaska, including government involvement.


This brief article presents a history of reindeer herding in Alaska with a focus on ownership, including individual and joint Native ownership. Prior to the gold rush reindeer were seen as primarily a subsistence resource. After, they became a more lucrative commercial prospect.


This article reviews Rev. Jackson’s role in the establishment, with federal help, of the reindeer industry in Alaska.


This article is the first part of a narrative relating the efforts of missionary Sheldon Jackson to introduce non-native reindeer into Alaska to provide relief for Alaska Natives. He saw the effort as part of his duties as General Agent of Education to oversee the educational development of the District of Alaska, in particular for the establishment of an agricultural school for stock raising. Congressional and departmental efforts are also recounted, which take the story to 1891.


Part II picks up the story from 1892.

Willis, Roxanne. “A New Game in the North: Alaska Native Reindeer Herding, 1890–1940.” *Western Historical Quarterly* 37, no. 3 (Autumn 2006): 277–301. 38

This article reviews the history of reindeer herding in Western Alaska, from the importation of reindeer by the Rev. Sheldon Jackson in 1890, which sparked a small reindeer “industry,” through hearings by the Congressional Reindeer Committee, to the passage of the Reindeer Act of 1937. The act authorized the purchase of all non-Native Alaska reindeer herds for transference to Native ownership, which had a collateral effect of putting Sami herders (Finnic) out of business.

**Resources and Development**


This article, taken from a 1911 address to the Public Lands Convention by former Secretary of the Interior Richard A. Ballinger, maintains that bureaucracy impedes the development of natural resources, which makes it a particular hindrance to the development of Alaska. He is also critical of the conservation movement for the same reason.

---


The public trust doctrine, which has ancient roots, posits that the sovereign holds in trust for public use some of the resources of its jurisdiction on behalf of its people. This article examines the public trust doctrine and its history in Alaska, where it was implicitly adopted into the state constitution.


Among other things, the contributors of this work examine the experience of village and regional corporations in the first ten years after the passage of ANCSA, and also use the North Slope Borough as an example of what local government can accomplish. It also touches on subsistence.


This article examines the history of the passage of the Tongass Timber Act, which was promulgated in order to exploit the timber reserves of Southeast Alaska. The author opines that the developers won the battle at the expense of the Native land title claims and environmental integrity.


This study reviews the efforts to develop three separate hydroelectric projects in Alaska. Government efforts, in Congress and by federal agencies, are examined, as well as rivalries between agencies and opposition to the projects.

### Rural Justice


This report provides a brief history of law enforcement in rural Alaska, reveals systemic obstacles to law enforcement in those areas, and makes specific recommendations.

Angell, John E. *Alaskan Village Justice: An Explanatory Study.* Anchorage, Alaska: Criminal Justice Center, University of Alaska, 1979.\(^{39}\)

This study looks at the differences between rural and urban Alaskan justice with a focus on the relationships among Native customs, formal laws, and crimes in Native communities.


As background to describing the challenges and approaches of Native villages regarding public safety, the author discusses the social control traditions that informed “bush justice.”


---

\(^{39}\) Available at [https://scholarworks.alaska.edu/bitstream/handle/11122/4154/7909.01.ak_village.pdf?sequence=1][https://perma.cc/FNA9-7VBP].
This article examines the focus on rural justice issues through increased access to justice services beyond the presence of a Village Peace Officer (VPO) or a Village Public Safety Officer (VPSO), particularly by developing tribal courts or councils. The period of examination covers six years, from 1987, when the Alaska Judicial Council made access to justice services a top priority, until 1993.


This brief article looks at the interplay between agents of outside power and traditional power in Native Alaskan communities. At the onset of American control of Alaska there was little American legal process applied in the Native villages, but over time village councils began collaborating extralegally with civil law enforcement for dispute resolution (for example, reapplying power from the criminal justice system to resolve civil disputes).


This article looks at the role of council governance and tribal tradition for Alaska Natives after ANCSA and ANILCA and as they seek to assert and implement their Native rights.


In assessing the role of state law in meeting changing needs in the Alaskan village, the author explores the long-term relationship between Native Alaskan social control, hybrid forms of village-based extralegal authority, and town-based personnel representative of state legal processes.


After giving a brief history of Alaskan Native village councils, the article recounts the “village project,” a study by the authors looking at how the legal system could “broaden its access to native residents and at the same time allow the locus of decision making in the administration of justice to be retained in the village.”


The authors comment on the “strange evolution” of village law in Alaska. In particular, they look at the erosion of Native village councils’ power to resolve minor local conflicts and offenses, with resolution moving from the village to the court system, which doesn’t always exercise the tact and cultural understanding of the village councils.


This article, based on an Alaska Judicial Council evaluation of three organizations, looks at how rural Alaskan communities are establishing culturally appropriate dispute resolution organizations to meet local justice needs.


The second section contains a history of tribal courts in Alaska.
Hippler, Arthur, and Stephen Conn. “The Village Council and its Offspring: A Reform for Bush Justice.” *UCLA-Alaska Law Review* 5, no. 1 (Fall 1975): 22–57. This article analyzes Native Alaskan values, attitudes, and “personality” with relation to their “law ways” from before contact, and then looks at the evolution of “village mechanisms for social control and law since then.” Section III looks at the historical development of Native Alaskan “mechanisms for dispute adjustment” and how eventually the Village Council declined as a dispute resolving forum.


King, Rachel. “Bush Justice: The Intersection of Alaska Natives and the Criminal Justice System in Rural Alaska.” *Oregon Law Review* 77, no. 1 (Spring 1988): 1–58. The purpose of this article is to examine systemic aspects of the justice system in rural Alaska as a way to understand why the Alaska Native population is over-represented in the Alaska prison system by a rate of nearly three to one. Aspects examined are: the attorney-client relationship; bail; the difficulty in participating in court proceedings; the tendency not to assert constitutional rights; jury selection and composition; sentencing; and probation compliance.


Marenin, Otwin. “Patterns of Reported Crime in Alaska Villages.” *Alaska Justice Forum* 8, no. 2 (Summer 1991): 1, 4–6, 8. This article reports on research done into patterns of crime in Alaskan Native villages, based on incident files kept by Alaska State Troopers from January 1985 through May 1990.

**Russian Alaska**


Burbank, Jane. “An Imperial Rights Regime: Law and Citizenship in the Russian Empire.” *Kritika* 7, no. 3 (Summer 2006): 397–431. The author examines the Russian approach to and concept of law and custom. There were no natural rights. Instead, rights and duties were “assigned differentially to variously defined groups” across the empire, in which Russian imperial law would accommodate by selectively legalizing social institutions extant prior to absorption into the empire. This article does not refer to Alaska but helps to provide a background into the Russian legal mindset as it operated in their North American colony.


Casson, Richard F. Evolution of the Judicial System in 19th Century Imperial Russia. Submitted in Partial Requirement for Fulfillment of the Senior Scholar Program, Colby College, 1960.41 Chapter one of this paper looks at the “Old Courts,” those prior to the judicial reforms of the mid-1860s, and therefore relevant to the period of the Russian-American Company. While the paper does not offer any link to Alaska it does illuminate the legal system in which the company operated.

Dmytryshyn, Basil. “The Administrative Apparatus of the Russian-American Company, 1798–1867.” Canadian-American Slavic Studies 28, no. 1 (Spring 1994): 1–52. The Russian-American Company exercised economic and political control over the Russian settlements in Alaska. This article reviews the legal foundations of the administrative apparatus of the company under the act of incorporation and under different charters, as well as its legal responsibility toward the settlements. It also looks at the company’s rights, privileges, and obligations within the Russian Imperial government, as well as the government’s involvement in the company’s operations.

Grinëv, Andrei V. Translated by Richard Bland. “A Failed Monopoly: Management of the Russian-American Company, 1799–1867.” Alaska History 27, nos. 1-2 (Spring/Fall 2012): 19–49. This article presents a brief history of the RAC, which functioned as a hunting-trading organization as well as a quasi-state agency, to the extent that the tsarist government authorized it to govern the land and population of Russian America.

Grinëv, Andrei V. Translated by Richard L. Bland. “The Dynamics of the Administrative Elite of the Russian-American Company.” Alaska History 17, nos. 1-2 (Spring/Fall 2002): 1–25. This article examines the transformation of the administrative structure of the Russian-American Company from a merchant organization to a specific state institution. The company became a military-bureaucratic monopoly and resembled a guild rather than a capitalistic entity. It also looks at laws passed in 1844 to regulate the RAC.

Grinëv, Andrei V. Translated by Richard L. Bland. “The Kaiury: Slaves of Russian America.” Alaska History 15, no. 2 (Fall 2000): 1–18. This article looks at the long history of using enslaved Native Alaskans (kaiury) to support the commercial activities of the Russians in North America, starting with Grigori Shelikhov’s first permanent Russian settlement on Kodiak Island in the 1780s until the more enlightened 1820s when the kaiury became actual employees of the Russian-American Company.


The total number of Russians in Russian Alaska was not high, 550 or so in all, for its entire history. What might have in another culture been seen as a land of opportunity was tightly controlled by the state, and it was the rigid passport system that controlled the mobility of Russians and blocked their ability to settle in the colony. This article examines the history of the Russian passport system, with particular regard to the needs of the Russian Alaska Company and its employees.


This study, which was requested by the Senate Committee on Interior and Insular Affairs, presents a history of Russian involvement in Alaska and contains, as Appendix 1, a survey of Russian laws dealing with Alaska, focusing primarily on how the Natives were to be treated.


While this dissertation gives an overview of the administration of the Russian-American Company in the mid-nineteenth century, it also looks at how law was enforced by the company based on its corporate charter.


This article offers a look at the pre-reform legal system of Imperial Russia. While it does not offer any link to Alaska, it does provide an overview of the legal system in which the Russian-American Company operated.


This article reviews, among other things, efforts to rein in the *promyshlenniki* (Russian trappers and fur traders) and encourage humane treatment of the Alaska Natives, issues of tribute laws applied to the Natives, and enslavement.


The author reviews the policies and practices applied by the Russian-American Company toward Native Alaskans. He also examines the corporate hierarchy and contrasts Russian trade practices and colonial encounters with British and American practices in North America.


The author of this article makes the argument that the Russian-American Company was not an entity of private enterprise, at least not by the nineteenth century, but instead an “agency of the crown.” In other words, it was a representative of the Russian imperial government in Alaska.

42. Also issued as S. Doc. No. 152, 81st Cong., 2nd sess., 1950.
Menzel, Dorothy. “Papers Relating to the Trial of Feodor Bashmakov for Sorcery at Sitka in 1829.” *Kroeber Anthropological Society Papers* 5 (1951): 6–25. These papers are held in the manuscript collection of the Bancroft Library, University of California, Berkeley, and derive from the collection of historian Hubert Howe Bancroft. They were translated by his secretary, Ivan Petrov. They contain a copy of the charges to the Holy Synod, testimony, and other communications.

Miller, Gwenn A. *Kodiak Kreol: Communities of Empire in Early Russian America*. Ithaca, New York: Cornell University Press, 2010. This book looks, in part, at the emerging community of Kodiak in the early years of Russian rule, 1780–1820. One focus is on the effort to control the complicated relations between the Native Alaskans and the colonizing Russians.


Sarafian, Winston Lee. “Russian-American Company Employee Policies and Practices, 1799–1867.” PhD diss., University of California, Los Angeles, 1970. This dissertation looks at how the Russian-American Company treated its employees in all three categories, Russians, creoles (mixed heritage), and Native Alaskans. In its first charter (1799) the company was described as a “commercial corporation answerable to the emperor,” while under its second charter (1819) it came under government control, as did the policies for treating its employees.


---

43. Ivan Petrov was notoriously unreliable, so some caution may be prudent when approaching documents he provided. For more information about Petrov, see Richard A. Pierce, *New Light on Ivan Petroff, Historian of Alaska*, 59 P N.W. Q. 1 (1968).
mid-eighteenth century up to when it was granted a twenty-year monopoly by Tsar Paul in 1799.


This treatment examines the early years of the Russian-American Company through its formation, mergers, reports, imperial ukases, and charters in the eighteenth century.

**Seal Hunting and the Bering Sea Crisis**

The Pribilof Islands, located in the Bering Sea and part of Alaska, were a center for sealing, which was limited to the American Commercial Company and the Natives who lived there. It was a lucrative business, though not for the Alaska Native sealers who were forced to harvest tens of thousands of the fur seals each year under conditions of virtual slavery. The ACC tried to harvest the seals sustainably but were outflanked by pelagic sealers—*seal pirates*, as it were—whose wasteful plunder threatened the continued viability of the once extensive herds. When Canadian British and Japanese sealers continued to poach pelagic seals both in and outside American waters, the American government authorized seizure of their ships, leading to a diplomatic crisis. It was ultimately resolved by the North Pacific Sealing Convention of 1911.


This article describes the problem of seal poaching, pelagic and on shore, and then provides a narrative of the successful efforts to protect the seal herds by international agreement.


While this book is mostly about sealing and its broader impact and its history in North America, an account is also given of the establishment of the Alaska Commercial Company and opposition to its monopoly over sealing, the condition of the Aleuts in the Pribilof Islands and the laws that kept them there, and the Bering Sea dispute and arbitration between the United States and Great Britain.


This article recounts the diplomatic arbitration to resolve the issue of pelagic seal poaching and establish rules.


Taking fur seals in the Pribilof Islands was a common crime in the late nineteenth century, with international implications. This article gives an account of the resolution of that problem.


This volume contains a section on the North American Fur Seal Convention.

Naturalist Henry Elliott was the first to sound the alarm regarding the decimation of the pelagic fur seals of the Pribilof Islands and worked to protect them. This is a brief account of his efforts, and those of the United States government, to protect them.


This book examines the role of the fur seal in American diplomacy, with a focus on the controversy involving the United States, Great Britain, Japan, and Russia.


This article looks at the corruption aspect, within the American administration, of the Bering Sea Crisis.


This article reviews the life and efforts of Henry Elliott to save the Pribilof Islands fur seals from extinction.


This article is an account of the problem of pelagic seal poaching and the steps taken to resolve it and enforce the law.


This brief celebratory piece notes the increase in the fur seal population in the Pribilof Islands year by year from 1912–1919.


This is a lengthy report on the condition of the Fur Seal herds in the North Pacific, the history of sealing in the region, both terrestrial and pelagic, and its effect on the herds, and the international arbitration with the resulting regulations to protect and restore the herds.


This article offers a brief account of the life and career of Henry Elliott, who tried to enforce laws that protected the pelagic fur seals of the Pribilof Islands and also exposed bad faith on the part of the administration of Benjamin Harrison, which, on the one hand offered to prohibit killing of seals pending arbitration with Great Britain, and on the other issued a secret permit to slaughter 60,000 seals.


In the late nineteenth century and the first decade of the twentieth, the Japanese engaged in pelagic sealing in the North Pacific, including on and around Alaska’s Pribilof Islands (contemporaneously, “Seal Islands”), where it was illegal. This article recounts a fatal encounter by some sealers with federal enforcement on the islands, which led to American understanding that any permanent settlement of the pelagic sealing problem had to include the Japanese.

Apart from giving an account of the role of the Revenue Maritime and Cutter Service (today’s Coast Guard) and the industry of fur seal peltry, this monograph also focuses on the dispute between Canada and the United States with regard to pelagic sealing and its effect on the rookeries of the Pribilof Islands.

**Slavery**


This book presents a panoramic view of aboriginal slavery in the Pacific North Coast, including among the Tlingit and Haida. Among the treated topics are production of slaves, slave labor, transactions in slaves, and changes in slavery from 1780 to 1880.


This article looks at the sources of slaves for the Tlingit, Haida, and Tsimshian, as well as their use as labor and commodities.


In this article, William Paul, Tlingit lawyer, state legislator, and activist in the Alaska Native Brotherhood, disputes an account by James Wickersham that the Lincoln Totem pole was erected in 1883 by the Tlingits to honor Lincoln’s freeing of the slaves. He presents his evidence and concludes with an account of the trial that ended inter-tribal slavery in Alaska in 1886, *In re Sah Quah*.


This chapter postulates that slavery was a pre-contact phenomenon and was not the result of pressure from the Russians.

**The Spoilers**

¶8 In 1901 a Republican national committeeman from North Dakota, Alexander McKenzie, hit upon a scheme to profit off the Nome gold rush by jumping the gold claims of some Swedish nationals there, initially through the manipulation of the process in Congress to adopt a civil code for Alaska. When that failed, he had the help of a crooked federal judge in the U.S. District Court for Nome, Arthur Noyes, who ruled that “foreigners” could not legitimately stake mining claims. He was reversed by the U.S. Court of Appeals in California but McKenzie ignored the ruling and continued to take gold from the mines. The Court of Appeals had McKenzie arrested, found him in contempt, and sentenced him to a year in jail. After serving three months he was pardoned by President McKinley. Law and order was eventually restored through the effort of Judge James Wickersham.

44. 31 F. 327 (D. Alaska 1886).

This is an account of the 1900 effort of the “Spoilers.”


This is an account of the “Spoilers” based mostly “upon the records, and opinions of the courts in the proceedings before them . . . .” The author, who participated in some of the proceedings, also interviewed some of the interested parties.


This dissertation provides a history of the Nome gold rush as well as an account of life in Nome during that time. It also treats, at some length, the conspiracy of the Spoilers.


Chapter 4, “Intrigue at Anvil Creek,” is an account of the Spoilers and the role of the Ninth Circuit in maintaining its authority over the subordinate federal court in Alaska in *In re Noyes*. 45


The authors opine that there is a popularly understood (and not disputed) pattern to gold rushes: miners precede civil government, greed and violence ensue, miners’ meetings provide the only law, vigilance committees are formed to enforce that law, confrontation with the bad guys follows. Nome, in their view, was something of an exception. While government authority broke down there wasn’t the resort to vigilantism seen elsewhere but a reliance on legal process, which was, in the end, how the plans of the “Spoilers” were spoiled.


This analysis relies on court opinions, records, and transcripts, as well as Congressional materials, to give an account of the “Spoilers.” Special attention is given to the U.S. District Court for Nome, the legal battle for the mines, and the assertion of authority by the Circuit Court of Appeals.


This article is an account of the “Spoilers,” disgruntled miners who were backed by a United States Senator and tried to forcibly take claims staked by “foreigners.”


This book is a history of the 1900 Nome gold rush, including a treatment of the mining laws concerning Alaska, and a lengthy contemporaneous look at the effort to jump claims by the “Spoilers.”

45. 121 F. 209 (9th Cir. 1902).

46. Available at http://catalog.hathitrust.org/api/volumes/oclc/15312045.html [https://perma.cc/C4UM-KWX2].

Justice Morrow, of the United States Court of Appeals for the Ninth Circuit, delivered an account of the “Spoilers” to the University of California’s School of Jurisprudence Law Association on November 19, 1915. The *California Law Review* published text of the address in full.

**Subsistence**


This article provides a history of Alaska Native rights prior to the passage of ANCSA as well as a history of ANCSA and its effect on tribal sovereignty and subsistence rights, and examines judicial and legislative treatment of Alaska Native sovereignty and subsistence uses post-ANCSA.


The purpose of this note is to examine the subsistence provisions of ANILCA and trace the nature of Native hunting and fishing rights, including the federal provisions established to protect them.


Alaska is one of several regions in the world with significant indigenous populations that rely heavily on hunting and fishing. While reviewing competing ideas of various groups in the subsistence dispute, this article also presents a political and legal history of the issue.


The purpose of this report is to examine the implementation of Alaska’s 1992 subsistence law for the 1996 Alaska State Legislature as it contemplated reauthorization. As part of the examination the author also looks at the 1978 and 1986 subsistence laws.


The Alaska Supreme Court in *McDowell* 47 “struck down legislation that granted exclusive subsistence rights to rural residents.” This article gives the history of that litigation in the context of the Alaska Constitution and ANILCA.


This article looks, in part, at how Alaskan political, cultural, and legal history contributed to a “current crisis” over subsistence and state sovereignty in Alaska.

47. 785 P.2d 1 (Alaska 1989).

This comment examines United States v. Alexander, which held that “subsistence use” by Alaskan Natives, as defined under ANILCA, could be used as a defense against prosecution by the state for regulatory violation. It also gives a brief coverage to the development of regulatory schemes in Alaska that impacted the Natives’ subsistence way of life, and describes the “broader context of the culture and traditional practices of rural residents in southeast Alaska.”


This note reviews federal and Alaska subsistence laws as they developed and concludes that both sometimes restrict it, and approach subsistence culture in Alaska as an individual right rather than a collective right.


This article gives an account of how the unwritten rules of Alaska Native fishing and hunting were replaced by formal rules, thus hindering tribal self-determination. Three regulatory regimes are reviewed with regard to opportunities for “co-management” of wildlife: the Alaska National Interest Lands Conservation Act (ANILCA), the Marine Mammal Protection Act, and the Alaska Eskimo Whaling Commission.


This article examines subsistence management regimes in Alaska following the McDowell v. Alaska decision. Along the way it reviews ANILCA’s framework for subsistence in Alaska, and the McDowell decision itself.


Part of the purpose of the Alaska National Interest Lands Conservation Act of 1980 was to enhance the role of Native people in managing renewable resources. Section 808 established “subsistence resource commissions” to leverage local knowledge and expertise in the management of new national park units in Alaska. This paper examines the role of seven of those commissions.


---

48. 938 F.2d 942 (9th Cir. 1991).
50. *Supra* note 46.
According to the authors there are two types of retribalization. The first is official federal recognition, the second is a reconstitution of a shared and traditional cultural system. This paper looks at the strategies of Alaska Natives seeking to promote general welfare, including social security, through both understandings of retribalization. The authors also look at the development of the legal-regulatory scheme, as well as efforts by specific communities.


This article provides an overview of the state and federal legislation that gives preference to subsistence uses in resource management, reviews research methods with findings regarding mixed subsistence-based economies in Alaskan villages, and illustrates how some of the data have been applied to management decisions.


In reviewing the tension between Native Alaskan subsistence hunting and federal, state, and local regulatory regimes the author also provides a brief history of Alaska game laws and regulations. The author also reviews federal, state, and local management of wildlife in northern Alaska and the North Slope Borough.


This article explores the nature of Alaska Native “subsistence” and its legal history in legislation, administrative decisions, and court cases.

Kelso, Dennis D. *Technical Overview of the State’s Subsistence Program.* Technical Paper Number 64. Juneau, Alaska: Alaska Department of Fish and Game, Division of Subsistence, 1981.

This paper reviews the State of Alaska’s subsistence policy and regulatory development before and after enactment of the state’s subsistence statutes.


Following a discussion of customary and traditional subsistence practices in Alaska, this paper provides a historical overview of state and federal subsistence management regimes in Alaska.


This article includes a brief statutory history of ANCSA and a “History of the Rural Preference and its Clash with the Alaska Constitution.”


---

This lengthy article provides background and history of the inclusion of Title VII, section 810 in ANILCA, the section requiring federal agencies to protect subsistence in their land-development decisions.


This article describes how the state Board of Game in Alaska contemporaneously wrote regulations applicable to remote villages, and then reviewed federal Indian law defining territorial jurisdiction of tribes to determine whether that federal law can preempt state law, and then applied those principles to Alaska tribal governments.


Provides historical background to subsistence rights in Alaska and the facts of the *Katie John* case before analyzing the opinion.


This article contemplates the nuances in defining “subsistence” in Alaska and among different constituencies.


While a procedural provision in ANILCA was designed to protect the subsistence interests of Alaskan Natives, the U.S. Supreme Court held in its *Gambell* decision that it does not apply to the sale of oil and gas leases on the outer continental shelf. This article in part reviews the decision and the various lower court opinions that led up to it.


As part of an examination of subsistence laws in Alaska the author provides an overview of the history of federal policy toward Alaska Natives, as well as an analysis of federal and state subsistence laws, including the Alaska Native Claims Settlement Act (ANCSA), 1971, and the Alaska National Interest Lands Conservation Act (ANILCA), 1980.


The author reviews the history of the conflict of laws between state and federal court holdings with regard to jurisdiction in Alaska subsistence cases. He also reviews the history and holding of the *Totemoff* case, in which native subsistence hunters were convicted under state law for hunting deer on federal land.


This article reviews the development of the subsistence debate in Alaska, and analyzes the effects of resource management regimes on Native food security. It also demonstrates the need for legal protection of subsistence.

---

This article reviews the historical and legal framework for native subsistence rights in Alaska, as well as the federal trust responsibility for native subsistence rights.

In looking at the roots of a subsistence crisis in Alaska Native culture, the author examines the effect of ANCSA and ANILCA on Native hunting and fishing rights, as well as conflicts between state and federal governments over rural preference.

This article provides a history of ANILCA and ANCSA, a history of oil and gas leasing on the outer continental shelf, and a review of the *Amoco Production* decision.

This chapter briefly describes traditional property law. It also gives treatment to the land claims movement and the effect of ANCSA on traditional property ownership and the subsistence way of life, as well as the revival of subsistence rights in the Tongass resulting from the passage of Title VIII of ANILCA.

The author reviews the differences between subsistence approaches in unroaded, rural areas of Alaska where the cultural majority are Alaska Native groups, and urban, roaded areas where the “Euro-American political system” holds sway.

Worl, Rosita. “Competition, Confrontation, and Compromise: The Politics of Fish and Game Allocations.” *Cultural Survival Quarterly* 22, no. 3 (September 1998) [np].
This article briefly reviews the history of Native Alaskan subsistence rights, including compromise and conflict with non-Natives. In other words, a struggle between sides trying not to give up something: Native Alaskans giving up something they have as against non-Natives giving up something they want.

**Suffrage**


---

57. *Supra* note 52.
This article gives background into the successful write-in campaign for re-election by U.S. Senator Lisa Murkowski and issues of voter assistance in associated litigation.


This article examines the history and application of Article V, section 1 (removed by amendment in 1970) of the Alaska Constitution, which required voter ability to “read or speak the English language.” The author concludes that the literacy test was not intended to be discriminatory, was not implemented in a discriminatory manner, and was not the reason Alaska was covered by the “preclearance” section of the Voting Rights Act.


Tlingit activist and politician William Paul was able to put together enough of a political base in the 1920s to win elections, threatening the established, and often racist, political order in Alaska. This article examines the effort to diminish Native power by passing a literacy test for voters.


This report covers the history of racial discrimination in Alaska, the difficulties faced by Natives in voting and everyday life, and the general minority voting experience under the Voting Rights Act in Alaska under the minority language and preclearance provisions of the Constitution.


The author tells the family story of how his grandmother and her friend Charley Jones, both Tlingits, were arrested when Charley Jones voted in 1922. They were successfully defended at trial by William Paul, the author’s father.

Taxes


This report to the Alaska legislature gives a brief history of several taxes in Alaska as well as a snapshot of where things stood at the time. (Part II evaluates the data collected and makes recommendations.)


This report examines the tax history of Alaska, from the territorial period into statehood, financial arguments for and against statehood, and the necessity of taxes as a step toward, and price for, statehood.


This brief article reviews the history of the income tax in the Territory and State of Alaska, including its repeal in 1980 after a big flush of oil money.

---

61. Available at [https://pubs.iseralaska.org/media/77ca1c3f-ac11-4b21-bddd-ae329ee6de82/blindedbyriches.pdf](https://pubs.iseralaska.org/media/77ca1c3f-ac11-4b21-bddd-ae329ee6de82/blindedbyriches.pdf) [https://perma.cc/6D8Z-8TLQ].
Torts

Galbraith, Peter A. *Denali Justice*. Place of publication not identified: Peter A. Galbraith, 2014.

In December 1981 a small air taxi crashed at 10,000 feet on Denali. The four passengers survived and were quickly located. However, even though the weather was good no rescuers appeared and no emergency supplies were delivered for four days until rescuers finally arrived. This book tells the tale of the civil action that was tried two years later against the Army, Air Force, Federal Aviation Administration, and National Park Service.


This three-part survey of wrongful death awards in Alaska looks at the history of the practice in Alaska from the territorial period until publication and concludes with some jury instructions.


Among other things, this article traces the development of torts in Alaska prior to the passage of the Alaska Tort Reform Act in 1986, and then looks at the legislative intent of the act itself.

Transportation


This treatment reviews the history of railroad building in Alaska that preceded the establishment of a federal commission, including the movement for construction of a government railroad and the passage of federal legislation in 1898 that provided for rights of way. Provision for a commission was made in the legislation creating the Territory of Alaska in 1912. The author then defines the commission and its work.


The author traces the development of the Alaska Road Commission in its various incarnations, from establishment in 1905 as part of the War Department through its inclusion in the Bureau of Public Roads in the federal Commerce Department in 1956. After statehood it became the State of Alaska Department of Highways. The author provides encyclopedic coverage of federal and state policy, and a narrative tale of the work. The book contains an appendix listing laws relating to road construction in Alaska.

63. Available at https://archive.org/stream/alaskanengineeri00bern#page/n0/mode/2up (last visited Sept. 20, 2018).

Regulation came to the Richardson Highway after the Alaska Road Commission was transferred from the War Department to the Department of the Interior. Among the regulations were vehicle licensing requirements and tolls for commercial use, perhaps to equalize competition with railroad rates. This article relates the saga of the unpopular tolls.


This article reviews the attempt to use Congressional legislation to pave the way for railroad development in Alaska to stimulate resource extraction, particularly coal, and the bill was intended to exclude monopolists from exploiting the resource. In the end, coal production never really took off in Alaska because, while abundant, it was difficult and expensive to mine, and was of inferior quality.


The opening of the Alaska Railroad to through traffic from Seward to Fairbanks led to competition for shipping in the Alaska interior with the White Pass & Yukon Route, a Canadian rail line, and their affiliated trading companies. An ore traffic agreement between them seemed to clear the way for more harmonious competition. This article looks at how the agreement came about and how it worked in practice.


The Alaska Railroad was the only railroad built in the United States by the federal government (with the exception of the Panama Canal Zone), a massive and unique experiment in nationally directed economic development. While most of this well-illustrated book is about the political and engineering aspects of building the ARR, it also provides information about the Alaska Engineering Commission, particularly its establishment and its role in recommending routes for developing Alaska’s resources.


With the demise of the steamship passenger service in Alaska in 1954 a ferry system was contemplated to provide a needed transportation network and attract investors to the state. Following statehood the First Legislature sent bond issues to the public for a vote, including $18 million for ferries. This article recounts the process and the electoral victory.

**Whaling**


The author gives a thumbnail history of the International Whaling Commission ban on whaling in general and the IWC ban on aboriginal whaling, followed by an account of the Inupiat suit against the federal government in *Adams v. Vance.*

---

64. 570 F.2d 950 (D.C. Cir. 1978).

While this book explores cultural clashes over whaling it also reviews international laws, covenants, conventions, and strategies as well as management of whaling in Alaska.


In response to the International Whaling Commission repeal of the Alaska Native exemption for hunting bowhead whales, the Alaska Natives formed the Alaska Eskimo Whaling Commission, which developed its own management plan for the harvest of bowheads. This paper examines the development of the AEWC, its management of whaling, and implications for other local wildlife management arrangements.


This article looks at the controversy over the regulation, access, and control of whales and how it affects the fate of Inupiat society. In particular, it looks at how the evolution of Western notions of species protection, in particular the whales, conflicted with Inupiat cultural needs—a narrowing of the cultural significance of whaling to “subsistence harvesting.” History, cultural perspectives, and legal history are reviewed and explored.


This article examines the background, history, and competing legal interests in the *Adams v Vance* litigation, in which representatives of Alaska Native bowhead hunters fought for the Secretary of State to file an objection to the International Whaling Commission prohibition on Native subsistence hunting of bowheads.


This note looks primarily at whaling and native whaling but also includes a look at the *Adams v. Vance* decision and its fallout with regard to native whaling in Alaska.


While this article focuses primarily on the “balancing of interests that must be undertaken when examining the conflict between Eskimos seeking to preserve their subsistence culture and those people desiring to protect the bowhead whale,” it examines some case law affecting Alaska Native rights to bowhead hunting. It also offers a brief history of federal trust responsibility to the Native Alaskans.

65. *Id.*
Wilderness


This dissertation reviews the history of opposition to the creation of national parks in Alaska, from the nineteenth century up to and including the passage of ANCSA and ANILCA. There had long been tension between residents of the territory and the federal government but the idea that Alaska was for Alaskans alone became more and more entrenched following statehood.


This article is about a proposed transfer of National Forests in Alaska from the Department of Agriculture to the Interior Department. A statement by Secretary of the Interior Albert Fall is included in part, claiming that he has been the subject of a propaganda attack. The American Forestry Association uses their space in the article to deny that assertion and musters statements in support from other government officials.


This book tells the complex story of how public policy and conservation evolved to protect wilderness lands in Alaska, from just prior to territorial status up until the Eisenhower administration’s designation of the Arctic National Wildlife Region (later the Arctic National Wildlife Refuge) soon after statehood, the first time a federal unit was preserved solely by the application of ecological principles.


The Alaska Statehood Act of 1958 set up a process of land-use planning and land allocations, which culminated in the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Among other things it established Kenai Fjords National Park. This publication recounts some of that history and reviews the challenges that distinguish Kenai Fjords from other National Parks in Alaska.


The author examines the creation of some of Alaska’s national parks—i.e., Glacier Bay, Denali, Gates of the Arctic—and the struggle to reach accommodation with the Alaska Natives who were there first.


The administrative history of Glacier Bay National Park is reviewed chronologically in three parts: Science and Monumentalism, 1879–1938; Habitat Protection, 1939–1965; Wilderness Preservation, 1966–1992. The work also provides a history of federal legislation that affected the park, and reviews the different conceptions of the park’s purpose.


This article provides, in part, some background into the establishment of the Alaska National Wildlife Refuge and a look into the components of the factual record, as well as the role of the Secretary of the Interior in producing that record.


ANILCA was enacted in the waning days of the Carter administration, which left the implementation to the new Reagan administration. The author uses this article to bemoan the new administration’s effort to shift management priorities from wilderness protection to a multiple use approach, which he feels practically rewrote the legislation.


This article recounts the creation of the Tongass National Forest by President Theodore Roosevelt based on a proposal conceived by George T. Emmons, a retired naval lieutenant who had spent much time in Alaska.


After World War II, the federal government encouraged the exploitation of timber in the Tongass National Forest. In time the mills brought jobs, growth, ecological havoc, and union unrest. This book gives a narrative account of the campaign, touching on the legal, legislative, and grassroots aspects, to bring balance and sustainability to the Tongass by activists, lawyers, and the Tlingit.


As the title suggests, this article pushes a particular policy proposal. However, Section I provides a legal history of the Arctic Refuge.


This article examines why Secretary of the Interior Andrus encouraged President Jimmy Carter to use the Antiquities Act to preserve Alaskan lands. It also provides some historical and legal background into the Alaska lands “situation.”


This article looks at the issue of federal preemption as the State of Alaska tries to implement its own Intensive Management policies when they conflict with federal regulations in the National Wildlife Refuge System. Various laws and regulations are examined.


When Congress created the Misty Fjords National Monument as part of the ANILCA in 1980, it allowed the development of a molybdenum mine at Quartz Hill. Prohibited in the original iteration of the act, mining was allowed in a compromise but only after additional safeguards and stringent testing were applied. This article is about how the developer, U.S. Borax and Chemical Corporation, tried to get around strict regulation.

This book presents a narrative of the effort to preserve an entire ecosystem in Alaska, including the people, the movement, and the legislation.


This article reviews some of the 100-year policy dilemma and conflict in Glacier Bay between utilization of the resource, either for tourism or resource extraction, and preservation.


According to the author, the treatment of the Wrangell Mountains is “intrinsic to the administrative history” of the National Park Service in Alaska since the 1930s. This study surveys the evolution of federal agency policies in the Wrangells since that time and addresses “key internal and external factors that compelled” sometimes unorthodox management plans.


Through the doctrine of preemption Alaska’s intensive management statute must yield to federal laws and wildlife management policies in national park lands. This article reviews both relevant federal and Alaska laws and the application of preemption to wildlife management in Alaska.


This article is about the trial of *Sierra Club v. Hardin*, an action challenging a Forest Service timber sale.


This article provides a history of the Katmai area, its designation as a National Monument, and its later change in designation as a National Park and Preserve by ANILCA.


This article charts the emergence of various environmental and conservation organizations, starting with the Alaska Conservation Society in 1960, that helped provide the initiative, along with national organizations, to compel protection of wilderness in Alaska.


This narrative starts with the emergence of the conservation movement and brings it into 1960s and 1970s Alaska. Close examination is given to Congressional activity and deliberation leading up to and including the passage of ANILCA.

---

Norris, Frank. “A Lone Voice in the Wilderness: The National Park Service in Alaska, 1917–1969.” *Environmental History* 1, no. 4 (October 1996): 66–76. This article reviews the establishment of national parks and monuments in Alaska, their expansion, and the challenges faced by the NPS to administer, regulate, and protect the units.


---


Keeping Up with New Legal Titles*

Compiled by Benjamin J. Keele** and Nick Sexton***

Contents

The Moral Conflict of Law and Neuroscience reviewed by 540
by Peter A. Alces

Private Government: How Employers Rule Our Lives (and Why We Don't Talk About It) reviewed by 542
by Elizabeth Anderson

Closing the Courthouse Door: How Your Constitutional Rights Became Unenforceable reviewed by 543
by Erwin Chemerinsky

Baseball Meets the Law: A Chronology of Decisions, Statutes and Other Legal Events reviewed by 545
by Ed Edmonds and Frank G. Houdek

The Doctrine-Skills Divide: Legal Education's Self-Inflicted Wound by Linda H. Edwards reviewed by 546

The Law & Politics of Brexit edited by Federico Fabbrini reviewed by 548

With Passion: An Activist Lawyer’s Life reviewed by 549
by Michael Meltsner

---

* The works reviewed in this issue were published in 2017 and 2018. 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.

** Research and Instructional Librarian and Lecturer in Law, Ruth Lilly Law Library, Indiana University Robert H. McKinney School of Law, Indianapolis, Indiana.

*** Clinical Assistant Professor of Law and Head of Access Services, Kathrine R. Everett Law Library, University of North Carolina School of Law, Chapel Hill, North Carolina.
Algorithms of Oppression: How Search Engines Reinforce Racism by Safiya Umoja Noble reviewed by Jamie J. Baker 550

Cheating: Ethics in Everyday Life by Deborah L. Rhode reviewed by Matthew E. Braun 552


Finding the Answers to Legal Questions, Second Edition by Virginia M. Tucker and Marc Lampson reviewed by Susan David deMaine 555

The Woman’s Hour: The Great Fight to Win the Vote by Elaine Weiss reviewed by Elaine M. Knecht 557

In the Shadow of Korematsu: Democratic Liberties and National Security by Eric K. Yamamoto reviewed by Genevieve P. Nicholson 558


Reviewed by David Sanborne

1 While Peter A. Alces’ The Moral Conflict of Law and Neuroscience is mostly successful, it can be a frustrating book, especially for a reader who expects substantiated claims and is skeptical of the either/or fallacy. It is frustrating when Alces blends evidence-based research and discussion about the relationship between human biology, psychology, and the law with arguments by assertion that rely heavily on a series of unproven, poorly supported premises. As a whole, the book is wildly uneven. This comes down to several sections where Alces writes outside of his areas of expertise without doing sufficient research. These sections are monuments to bad philosophy and unproven assumptions, where Alces admits to making up statistics and then proceeds as if they are true. In the sections where he focuses on law, especially tort and contract law, Alces is in his element. When he engages with other legal scholars, he avoids broad proclamations and crafts carefully cited, evidence-based arguments. He examines the works of Ernest Weinrib, Stephen Morse, Jules Coleman, and others, and examines the moral implications of their theories while contrasting them with developments in neuroscience.

2 The text begins with Alces laying out his arguments, explaining what he sees as the gap between how human biology works and the assumptions made by the legal system. He then goes into detail, examining the relationships between neuro-
science and criminal law, tort law, and contract law. In the final chapter, Alces attempts to address anticipated criticism of his work.

¶3 Alces admits early on that his book is predicated on assumptions, most significantly that free will is an illusion and that the theories of Robert Sapolsky and Adrian Raine are correct. He treats his assumptions as so obviously true that they require no evidence. This problem is compounded by the intense dualism with which Alces approaches nearly every issue. He presents his own view and then lumps all other possible views into a single stance. He then proceeds to dismiss opposing views by calling them incoherent, despite the fact that his lumping of diverse perspectives into a single group is what renders them incoherent.

¶4 Alces treats almost every issue this way—all schools of ethics are either deontological or consequentialist utilitarianism. Either humans lack free will and all action is the result of biochemical processes over which humans have no control, or biology has no influence whatsoever on human psychology. Even when Alces acknowledges that the most popular perspective on the latter issue is compatibilism, that human psychology is driven by biology but limited free will exists, he still insists that the issue must be either entirely one or entirely the other, and the majority is deluding themselves into thinking otherwise.

¶5 Alces frequently makes assumptions about future developments in neuroscience generally and neuroimaging specifically. He fails to make clear the distinction between what is currently possible and what he anticipates will become possible. The result is that The Moral Conflict of Law and Neuroscience does a good job of identifying conceptual problems in the legal system of the United States but the solutions that Alces offers are reliant on speculative future technology.

¶6 Despite writing a book ostensibly about the intersection of law, science, and morality, Alces seems to have decided that researching the first two topics was sufficient. He talks about normative ethics in sweeping terms but the works he cites are from two very narrow schools of thought. He does not engage with the argument that a system of normative ethics could be both instrumental and not rooted in consequentialist utilitarianism, like those espoused by Felix Adler, Du Weiming, or Virginia Held. The closest this book gets is a single reference to restorative justice in the introduction.

¶7 In the final chapter, Alces addresses what he anticipates will be criticisms of the book. This is generally unsuccessful, partially because most of his responses boil down to “I’m right because I’m right” and partially because he fails to anticipate any criticism that does not ultimately derive from Kant.

¶8 The Moral Conflict of Law and Neuroscience succeeds mostly in spite of Alces. The author’s insistence that only hard determinism is defensible is irrelevant to the conclusions he draws. His argument that retributive justice is inherently immoral holds from the perspective of any instrumentalist ethical paradigm. Similarly, the argument that drawing distinctions between physical and emotional harm is an anachronism because emotional harm is physical succeeds as long as the reader acknowledges that at least some component of human psychology is rooted in neurochemistry. The book presents a strong argument that noninstrumental theories of justice, criminal or civil, are fundamentally immoral.

¶9 If his speculation about future neuroscientific developments is accurate, then this book will be invaluable; as it is, The Moral Conflict of Law and Neuroscience still identifies serious conceptual flaws in the legal system of the United States and dem-
onstrates that there is a vast gulf between what science has revealed about human psychology and the assumptions about human nature made by the law.

¶10 In the end, it is difficult to recommend *The Moral Conflict of Law and Neuroscience*. From an instrumentalist perspective it adds very little to a practitioner-focused law library. As a book primarily about the philosophy of law its natural home is in the academic law library. The strength of its observations about the gulf between what science knows and what law assumes make it a potentially valuable addition, but the fact that Alces consistently treats his assumptions as facts is cause for concern.


Reviewed by Sarah Reneker Andeen*

¶11 Elizabeth Anderson’s *Private Government: How Employers Rule Our Lives (and Why We Don’t Talk About It)* is based on her Tanner Lectures on Human Values, which she gave in 2014 at Princeton University, and the responses to her lectures by the academic community. The book begins with a clear and succinct overview that nicely lays out the primary focus, the history, and the arguments. Readers are advised to not skip the introduction.

¶12 Anderson’s Tanner Lectures were designed to answer two primary questions: “Why do we talk as if workers are free at work?” and “What would be a better way to talk about the ways employers constrain workers’ lives?” The author’s preface explains the rationale behind the questions and how the critical responses helped her sharpen her thesis.

¶13 Anderson’s two lectures form the basis for the first two chapters. Those chapters are followed by responses from four commentators. The book’s final chapter is Anderson’s replies to the commentators. This structure works well and allows readers to get a good sense of the issues Anderson raises with the current state of employment; it also shows how she encounters some well-argued critiques of these ideas.

¶14 Anderson’s primary thesis is that most people in the workforce spend their time working for what she calls private government. To explain this concept, she takes a long trip through the history of the ideology of the left prior to the Industrial Revolution. Outlining the ideals of Karl Marx, Adam Smith, Thomas Paine, and Abraham Lincoln, she explains that their thinking and theories about how markets should work was turned on its head by the Industrial Revolution, and any hope that workers had of equity after that was no longer possible.

¶15 Chapter 2 covers Anderson’s second lecture and explains her theory of private government, which can be distilled to “the privacy of a government is defined relative to the governed, not relative to the state” (p.45). Anderson makes the point that employers are a form of private government where the employees often have no recourse, other than quitting, to influence the decisions of their employer. To her thinking, this makes the employer a private government with

extensive control over the governed. Chapter 2 looks at how private governments function and the advantages and disadvantages for all involved, especially in the workplace, and how this notion has shifted in light of the Industrial Revolution and the rise and fall of labor unions. The second part of the chapter details the ways in which employers are limiting workers' freedoms. She uses this to support her point that employers are acting as a private government.

¶16 The book then moves on to provide responses to Anderson's lectures. The first comment, by Ann Hughes, focuses on Anderson's first lecture and strives to portray a more nuanced picture of the economic transition of workers in England in the seventeenth century. This is followed by David Bromwich's comment on market rationalization, which also serves to provide broader context for Anderson's works. Niko Kolodny provides more details on the concept of what equality is and how it impacts the relationship between employer and employee. The last commentator, Tyler Cowen, takes on the argument that employers are overly dictatorial and concludes that Anderson is too negative toward employers. These comments do a nice job of responding to the lectures and giving people more material with which to formulate their own opinions.

¶17 Anderson then responds to all of the commentators “in the spirit of continuing the investigation of these issues, rather than [treating her replies] as final answers” (p.120). Anderson provides additional information and thoughts to rebut the key points of each of the commentators. She ends by suggesting that workers can have a stronger voice in their workplace governance.

¶18 *Private Government* is an interesting read. It would be good for a broad general academic collection or for a very large public law library that wants more general reading on employment issues. Anderson's book is not a practitioner guide in any sense, but it does provide readers with an excellent overview of the issues facing workers today and provides a context in which to think about these issues. It is well researched and thoughtful, and contains a substantive notes section for anyone wishing to delve deeper into the topic. Readers interested in this topic will find much to like about this book.


Reviewed by Stewart A. Caton*

¶19 Written by constitutional scholar Erwin Chemerinsky, *Closing the Courthouse Door: How Your Constitutional Rights Became Unenforceable* presents a critical look at procedural hurdles that prevent people from having recourse for violations of their constitutional rights. His central thesis is that “the most important role of the federal courts is to enforce the Constitution; many doctrines created by the Supreme Court prevent the federal courts from fulfilling this mission; and these should be changed—by Court decision and legislative action.” (p.xi).

¶20 *Closing the Courthouse Door* is presented in seven chapters followed by endnotes and an index. Throughout his engaging work, Chemerinsky weaves in
cases to support his arguments. In chapter 1, Chemerinsky convincingly argues that the preeminent purpose of the federal courts is to enforce the Constitution. Chapters 2 through 5 introduce and provide a critical analysis of doctrines and procedures that limit access to the courts, including the expansion of sovereign, absolute, and qualified immunity for federal, state, and local governments and their officials; obstacles to standing; the political question doctrine; and restricting habeas corpus. Although chapter 6 is titled “Opening the Federal Courthouse Doors,” it focuses on three additional constraints to access: heightened pleading standards, abstention doctrines, and limits to class action lawsuits. In the final chapter, Chemerinsky offers the state secrets doctrine as another limitation and presents his closing thoughts.

¶21 Chemerinsky begins each chapter with a case showing the kind of injustice that can occur when one is unable to enforce their constitutional rights. In chapter 1, he details the stories of two active military members raped and harassed by colleagues. In Klay v. Panetta, they sued the military for violation of their constitutional rights. Their case was dismissed because the United States has sovereign immunity and, in the end, there was no way for them to pursue damages for their injuries. Chemerinsky relies heavily on Marbury v. Madison in his analysis of this injustice. He observes that not allowing a means of redress for violations of these military members’ constitutional rights contradicts Marbury v. Madison: “The very essence of civil liberty consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.”

¶22 Chemerinsky tackles immunity doctrines in chapters 2 and 3. In chapter 2, he discusses the recent expansions to sovereign immunity; misreliance on the Eleventh Amendment; rejecting common justifications for sovereign immunity; and possible solutions. In chapter 3, Chemerinsky concentrates on absolute and qualified immunity from suit against federal, state, and local officers.

¶23 Chemerinsky scrutinizes the judicially created doctrine of standing in chapter 4. He begins with a case illustrating how difficult it is to have standing to enjoin an unconstitutional government practice because demonstrating a threat of imminent harm is too high a standard. In City of Los Angeles v. Lyons, the Supreme Court held that Los Angeles could not be enjoined from using a deadly chokehold they had employed against Lyons during a routine traffic stop because he could not demonstrate that he was likely to be choked again. Chapter 4 also examines how the political question doctrine acts as a barrier to enforcing the Constitution.

¶24 In chapter 5, Chemerinsky considers the importance of habeas corpus to ensure that a person held or convicted in violation of the Constitution can find relief. As he illustrates how the Supreme Court has limited lower federal courts’ ability to grant habeas relief, he routinely pivots back to where the focus should be: whether a person has been unconstitutionally detained. The chapter concludes with a list of eight restrictions to habeas relief that should be overturned.

¶25 Chapter 6 first details how the Supreme Court has expanded the kinds of state proceedings that federal courts must abstain from hearing. Chemerinsky next

---

1. 758 F.3d 369 (D.C. Cir. 2014).
2. 5 U.S. (1 Cranch) 137 (1803).
3. Id. at 163.
examines how the Roberts Court’s strict enforcement of arbitration clauses limits the availability of class actions to enforce the Constitution.

¶26 In his final chapter, Chemerinsky evaluates the state secrets doctrine to reinforce that any doctrine, whether discussed in the book or not, limiting access to federal courts to enforce the Constitution is unacceptable. Chemerinsky concludes by addressing realistic objections to his thesis: whether his positions would vest too much power in the federal judiciary, whether his discussion is politically motivated, and whether his pursuit is unrealistic.

¶27 Closing the Courthouse Door is a great addition to any library, especially academic law libraries. It is fairly approachable for anyone interested in constitutional law and access to justice. For those writing on these topics, in addition to text from a constitutional scholar, there are several hundred footnotes to comb through for more information.


Reviewed by Patrick J. Charles*

“Baseball, it is said, is only a game. True. And the Grand Canyon is only a hole in Arizona. Not all holes, or games, are created equal.”—George Will

¶28 I am a huge sports fan, but I have a special love for the game of baseball. At almost every phase of my fifty-three years on earth, I associate major events in my life with baseball. When I was growing up in the 1970s, my father was blind, so we listened to baseball on the radio. That was the era of dynasty teams, beginning with the Swinging A’s, then the Big Red Machine, and ending the decade with a New York Yankees team that included Reggie Jackson, George Steinbrenner, and Billy Martin. I spent my youth in Florida, so February and March of my grade school and high school years were marked by truancy due to Atlanta Braves and Montreal Expos Grapefruit League spring training games. When my wife and I found out she was pregnant with our first child, we celebrated by going to a Mariners game in the old Kingdome. In my current job as the Director at Gonzaga University School of Law, my office looks out at the Patterson Baseball Complex, where the Gonzaga men’s baseball team plays. Each spring, I add to my bucket of foul baseballs that I have retrieved from the employee parking lot. With the game of baseball intertwining all aspects of my life, I find it fitting that I was able to review Baseball Meets the Law: A Chronology of Decisions, Statutes and Other Legal Events by Ed Edmonds and Frank G. Houdek.

¶29 Sports law covers a variety of different sports, including football, basketball, track and field, soccer, hockey, boxing, and others. However, with its long and rich history, the game of baseball is an excellent vehicle with which to study the law. Baseball is probably the only sport that mirrors the law because of the scope of baseball in American history. Through the years, baseball has dealt with many of the major issues that have affected American society: racial and civil rights, antitrust and big business, labor and employment law, contract law, intellectual prop-

* © Patrick J. Charles, 2018. Associate Professor of Law and Library Director, Chastek Library, Gonzaga University School of Law, Spokane, Washington.
erty, immigration law, gambling law, tort liability, and doping and performance-enhancing drug use and abuse.

§30 There are many books and articles on baseball and the law, but *Baseball Meets the Law* is one of the few that attempt to list comprehensively the significant cases, statutes, and events relating to the intersection of baseball and American law. It is an impressive and well-researched reference guide to the game's most notable legal developments. The focus of the book is on major league baseball but it also includes little league, college, and minor league baseball.

§31 *Baseball Meets the Law*'s chapters correspond to the various eras of baseball. Each chapter includes a brief introduction that sets the tone for each entry. The book contains 1089 endnotes and each of these is extensive and well-researched. There are three appendices: “A Selective List of Lawyers Involved with Baseball,” “A Selective Chronology of the Black Sox Scandal,” and “A Selective Black Sox Bibliography.” There is also a comprehensive bibliography, an index of cases and statutes, and a subject index.

§32 The authors have painstakingly detailed an exhaustive account of baseball and the law with over 400 items. The first entry begins in 1791 with an ordinance prohibiting the playing of baseball near the Pittsfield, Massachusetts, meeting house, and the book concludes with a December 14, 2015, entry discussing the rejection of Pete Rose’s latest petition to be removed from baseball's permanently ineligible list on which he was placed for sports gambling. It is appropriate that the last entry concerns Rose, arguably one of the greatest players in the history of the game but also one of the most flawed individuals because of his off-the-field actions.

§33 *Baseball Meets the Law* is a meticulously detailed account of baseball's most noteworthy legal occurrences. It is useful for any baseball fan with an interest in the application of law to baseball or a sports law scholar beginning their research. This is a great reference book and should be part of any law library’s collection.


Reviewed by Dinah Minkoff*

§34 A demand for law schools to make their new graduates more practice-ready is a reverberating call from employers. In *The Doctrine-Skills Divide: Legal Education’s Self-Inflicted Wound*, Linda Edwards expounds upon why answering that call requires a substantial overhaul of the established legal curriculum.

§35 The book’s title is not simply a nod to the somewhat recent addition of ABA Standard 303’s experiential learning requirement. Rather, Edwards clarifies that the struggle to ensure that students learn not just the theory of law but lawyering skills extends back to early last century. In fact, the book is not merely Edwards’ own perspective, but is comprised of articles, or excerpts from articles, from numerous law professors and educators throughout the country. This emphasizes how pervasive the call to reform has been and continues to be.

§36 Edwards addresses what she decries as a false dichotomy between doctrinal-based courses and skills-based courses. “Can contracts, torts, and property be

* © Dinah Minkoff, 2018. Assistant Professor and Reference and Research Librarian, Peter W. Rodino Law Library, Seton Hall University School of Law, Newark, New Jersey.
said to teach no skills?” (p.19), she rightly asks. Substantive courses like property teach law students the skill of using knowledge effectively and identifying the relevant facts from a case. Similarly, legal writing courses, traditionally labeled as skills classes, teach students the doctrine applicable to making effective legal arguments. To that end, Edwards argues the importance of legal writing classes being taught by full-time faculty instead of adjuncts or recent graduates. Both types of courses deserve equal consideration by law faculty.

¶37 Edwards further asserts that today’s law schools should not rely on the categories for courses created by law faculties of the past but should question whether the categories encourage or impede today’s students. In chapter 5, the University of Richmond’s Jessica Erickson posits that to truly improve legal education, professors must focus on zeroing in on what “we really want students to learn” and ensuring that students are “actually learning what we want” (p.104). Collaboration between the doctrinal faculty and legal writing or clinical faculty can be beneficial to the students and professors alike. Although doctrinal professors often balk at experiential learning methods, students often absorb doctrine better when experiential teaching methods are used.

¶38 Quite notably, ABA Standard 303’s experiential learning requirement is not a panacea for this entrenched false dichotomy. While Standard 303 requires integration of doctrine, theory, skills, and ethics, the requirement can only be satisfied in a “simulation, law clinic, [or] field placement” course (p.227). Doctrinal courses that contain experiential elements will not count. Therefore, while this new requirement may look like a success to those hoping to “dismantle insupportable dichotomies” (id.), this success should be viewed with uncertainty.

¶39 Going forward, advocates for reform can acknowledge that while this doctrine-skills divide has been in existence for a long time, historically it was not always the case. In the colonial era, law was taught by apprenticeship. And indeed, when new associates enter practice, the senior attorneys at the firm train them in doctrine and skills simultaneously. While ideally all law school courses would intertwine doctrine and skills, professors can begin to break down this divide and make minor changes to their curricula that will still have significant impact. For instance, lecture courses can include interactive quizzes in which students each respond with a clicker (or phone app) rather than one-on-one Socratic questioning.

¶40 The book contains a huge swath of scholarly analysis on the history and future of legal education. Although parts of the book can be a dense read because of the academic nature of the writing and the extensive footnotes, the book does not have to be read linearly, and the chapter titles clearly indicate the topics covered in each section. If further reading on the topics of each chapter is desired, it can easily be achieved by reading the unabbreviated source articles. Overall, The Doctrine-Skills Divide will be a useful addition to a library’s faculty development collection, especially in light of ABA Standard 303.

Reviewed by Daniel Donahue*

¶ 41 *The Law & Politics of Brexit* is a collection of essays examining the legal and political aspects of the 2016 referendum in which the British public voted to withdraw their nation from the European Union. One of the better features of this book is its convenient organization. *The Law & Politics of Brexit* is divided into four sections of three essays each, with each section addressing a major feature of Brexit.

¶ 42 The first section, “Brexit: Politics, Process and Prospects,” is a study of what, exactly, Brexit is. The editor made the obvious and excellent decision to start at the beginning; these essays are just what is needed for newcomers who are unfamiliar with Brexit, as well as for anyone who may have forgotten the details, or who will have forgotten the details by next year, when Brexit is scheduled to take effect. The three essays in this section review the British referendum itself, Article 50 of the Treaty on European Union (the article dealing with a member nation's withdrawal from the EU), and the British plans for after Brexit's completion.

¶ 43 The second section, “Brexit and Constitutional Change in Regional Perspective,” is a study of the internal regional British political and legal circumstances that led to the Brexit vote, along with an examination of how the constituent countries of the United Kingdom might be affected after Brexit takes effect. There are essays addressing how Brexit will affect Scotland and Northern Ireland, as well as a third essay examining the English perspective on this issue. This leads to my only criticism of this book: this should have been the section of the book where the “three essays per section” format was changed. Even if the editors felt that the Welsh perspective would not be of use or interest to the reader, the book should have at least included an explanation somewhere of why Wales was not addressed along with the other countries.

¶ 44 *The Law & Politics of Brexit* returns to high form in its third section: “Brexit and Constitutional Change in European Perspective.” The essays in this section address currency law, criminal law, and trade and labor law in the European Union, and examine how Brexit will affect British law. This is the most legally oriented section of the book, and is an excellent resource for legal practitioners interested in European Union law, whether or not they are interested in Brexit.

¶ 45 The final section, “Beyond Brexit: Relaunching the EU?,” deals primarily with political questions and expert predictions of what the post-Brexit future might look like. While the focus of this section is predictions, it includes discussion of the European Union's governing structure and still contains enough legal information to be of interest to practitioners unfamiliar with European Union law. Overall, *The Law & Politics of Brexit* is an excellent reference, and I highly recommend it to anyone interested in learning about Brexit.

---

* © Daniel Donahue, 2018. Foreign and International Law Librarian, O’Quinn Law Library, University of Houston, Houston, Texas.

Reviewed by Ellie Campbell*

¶46 Michael Meltsner, currently a professor at Northeastern University School of Law, has had a long and storied career as an attorney, law professor, and author. *With Passion: An Activist Lawyer's Life* is his second memoir, following *The Making of a Civil Rights Lawyer*, published in 2006. He has also written fiction, drama, legal texts, and numerous articles. His first memoir focused on his years as first assistant counsel for the NAACP Legal Defense and Educational Fund (LDF). Meltsner worked for the LDF from 1961 to 1970, during the height of the civil rights movement. *With Passion* forms a kind of companion text to his previous memoir, starting with some of his earliest childhood memories, stories about growing up in New York, his undergraduate years and law school, and some of the more memorable celebrity encounters of his legal career. Though it does cover some of the same territory as *The Making of a Civil Rights Lawyer*, *With Passion* broadens and deepens Meltsner's depictions of his life.

¶47 Meltsner begins by reflecting on his relationship with his parents and New York City, flipping back and forth between his early years living in Rockaway Beach and his memories of his parents’ deaths. A mid-childhood move to the Upper West Side opened his eyes to a completely different part of the city, as did an early job delivering messages across town. He witnessed some of the early 1950s gang culture in various neighborhoods, as well as the coffee house scene in Greenwich Village around the same time. Meltsner focuses on his memories of scenes that may be familiar to readers conversant with that period in New York. Sometimes he just provides long lists of culturally significant places, figures, books, records, theater, and happenings to give a sense of the experience of the city in those days.

¶48 Meltsner moves on to describe his years attending Oberlin College in Ohio, the convoluted story of how he came to attend Yale Law School, and his attempts to start a career as a freelance writer while traveling overseas. Close to running out of money, Meltsner returns to the United States. Now halfway through the book, Meltsner pauses to reflect on his career in a chapter titled “Coming to the Law.” It is less about how he wound up working for the NAACP LDF, and more about the value of social justice legal work itself. He describes the attitudes of many colleagues, gives a few anecdotes, and ultimately decides that he can be neither optimistic nor pessimistic about the state of justice in the United States. The only thing he is willing to say is, “All I know is that there is more work to be done” (p.203).

¶49 Accordingly, after describing how he came to work for the NAACP LDF, Meltsner presents two long chapters on “Tales of Reform—Failure” and “Tales of Reform—Success,” spinning long stories about two key legal projects. “Failure” focuses on bail reform efforts and concerns over the increasing costs of the justice system, sketching Meltsner and others’ labors over many years to tackle that project, and the lack of progress made since the 1960s. “Success” looks at hospital desegregation in the South; the LDF took on cases in the mid-sixties to challenge discrimination in health care. Those struggles were successful partly because of those lawsuits, but also because Medicare and Medicaid programs tied receiving federal

* © Ellie Campbell, 2018. Reference and Instruction Law Librarian, Grisham Law Library, University of Mississippi School of Law, University, Mississippi.
money to following federal antidiscrimination laws. Meltsner uses these two examples to reflect on how many factors, not just legal, but social, political, and economic, play into how social change does or does not happen. He continues to explore these concerns while discussing other events in his LDF career and his eventual move into running legal clinics in academia.

¶50 Overall, Meltsner’s second memoir is more uneven than his first. Short chapters, like the two-page reminiscence on Zabar’s grocery on the Upper West Side, alternate with longer chapters reflecting on his legal career and the ways in which the law affected not only his life, but other lives as well. Meltsner does not always give a clear sense of why he is telling a particular story, or what relationship it bears to other stories or reflections in the text. This gives the book an overall scattered effect. His anecdotes also jump around in time, and it is not always clear when they take place. A little more information about dates, or a timeline of his life, might have been helpful.

¶51 Nevertheless, this is a useful work for academic law libraries, or readers interested in the legal side of the civil rights movement, other social justice impact litigation, or the development of clinical programs within law schools. Meltsner refuses to allow his career to be reduced to a list of achievements; he constantly reflects on the value of the work he has done and the impact that various projects have had. He is just as willing to write about failures as successes, and the value that can be gleaned from both. Paired with his earlier memoir and other works, *With Passion* contributes a unique perspective on many key events in U.S. legal history.


Reviewed by Jamie J. Baker*

¶52 As algorithms become increasingly ubiquitous in all facets of life, it is imperative that users understand the risks associated with programmatic and data discrimination when relying on results. With little regulation and the lack of transparency inherent in the use of algorithms, it is nearly impossible to be a fully informed user. In *Algorithms of Oppression: How Search Engines Reinforce Racism*, Safia Umoja Noble makes a valiant effort to bring awareness to the issues surrounding the use of algorithms, with the goal of creating informed users.

¶53 Noble notes that “[t]his book is about the power of algorithms . . . and the ways those digital decisions reinforce oppressive social relationships and enact new modes of racial profiling . . .” (p.1). Noble has termed the new modes of racial profiling “technological redlining.” In addition, “[b]y making visible the ways that capital, race, and gender are factors in creating unequal conditions,” Noble hopes to bring to light the “various forms of technological redlining that are on the rise” (*id.*). To that end, Noble organized the book “to emphasize one main point: there is a missing social and human context in some types of algorithmically driven decision making, and this matters for everyone engaging with these types of technologies in everyday life” (p.10).

---

* © Jamie J. Baker, 2018. Associate Law Librarian & Interim Director, Texas Tech University School of Law Library, Lubbock, Texas.
¶54 *Algorithms of Oppression* begins by exploring corporate control over information with a focus on Google. As Noble states, “Google has become a ubiquitous entity that is synonymous for many everyday users with ‘the Internet’ itself” (p.34). In 2012, for example, “83% of search engine users used Google” (p.35). When discussing Google’s “monopoly status,” Noble argues “that Google functions in the interests of its most influential paid advertisers or through an intersection of popular and commercial interests. Yet Google’s users think of it as a public resource, generally free from commercial interest” (p.36). Noble goes on to mention that “overreliance on commercial search by the public, including librarians, information professionals, and knowledge managers—all of whom are susceptible to overuse of or even replacement by search engines—is something that we must pay closer attention to right now” (*id.*).

¶55 Noble brings attention, in chapter 2, to searching for “black girls” as a way “to think about the ways in which search engine results perpetuate particular narratives that reflect historically uneven distributions of power in society” (p.71). Noble’s ultimate “goal is not to inform about this but to uncover new ways of thinking about search results and the power that such results have on our ways of knowing and relating” (*id.*). Throughout the rest of the chapter, Noble continues to explore the relationship between the keyword and the result in a variety of contexts, including searching for people and communities with a pertinent discussion about efforts to provide protections from search engines.

¶56 The latter part of *Algorithms of Oppression* looks to the future of knowledge in the public by discussing problems with classifying people. Noble points out that “[t]raditional library and information science (LIS) organization systems . . . are an important part of understanding the landscape of how information science has inherited and continues biased practices in current system designs, especially on the web” (p.137). Noble further argues that “[t]he adoption of critical race theory as a stance in [LIS] would mean examining the beliefs about the neutrality and objectivity of the entire field of LIS and moving toward undoing racist classification and knowledge management practices” (p.138). Noble bridges these ideas with a discussion of misrepresentation in classifying people in Library of Congress Subject Headings and algorithmic bias in library discovery systems.

¶57 The final chapter covers the future of information culture and examines “[a]n increasingly de- and unregulated commercially driven Internet . . . ” (p.154). Noble discusses the consequences of an information monopoly and why public policy is important. She concludes with a discussion toward an ethical algorithmic future.

¶58 Noble’s efforts to bring a broader awareness to the issues surrounding the use of algorithms are, well, noble. Given that the most widely used algorithms are commercial, users cannot see under the hood to understand the decision trees that make up results. The underlying programs are proprietary, so Noble is left to use the autosuggest function, as well as generated results, to draw connections to the programmatic and data discrimination implicit in the results.

¶59 In *Algorithms of Oppression*, Noble accomplishes her goal to “uncover new ways of thinking about search results and the power that such results have on our ways of knowing and relating” (p.71). At this point, academic law librarians are likely aware of the many pitfalls inherent in the use of algorithms. This book, however, provides a dynamic discussion of classification systems and information
structures that all LIS professionals should heed when working toward the continued evolution of law library information retrieval. This book is also greatly recommended reading for an advanced legal research course when the instructor focuses on the benefits and risks associated with algorithmic technology.


*Reviewed by Matthew E. Braun*

¶60 We hear about it in the news. Banks and other financial institutions laundering money, rigging interest rates, opening fake accounts. Athletes taking banned substances, rubbing pine tar on baseballs, deflating footballs. Companies stiffing employees on pay, making expensive lawsuits the workers’ only recourse. Universities recruiting athletes with money, and keeping athletes eligible for competition via imaginary classes that result in unearned credits and grades.

¶61 We see it in our own lives and in the lives of those around us. A few made-up charitable contributions or business expenses claimed on a tax return. A paper written for a class that is not really the work of the student. An insurance claim for items that were never owned. A few songs, here and there, downloaded freely from a website.

¶62 Cheating, with its attendant causes and consequences, is present in nearly all aspects of society, despite holding a generally pejorative connotation. This reality, and the need to push back against it, forms the core of *Cheating: Ethics in Everyday Life* by Deborah L. Rhode, a professor at Stanford Law School and a noted legal ethics scholar.

¶63 Over the course of nine chapters, Rhode explores the reasons that individuals and institutions engage in cheating, the systems that permit and even encourage such activity, the steep and often underappreciated costs of cheating, and the measures that should be taken to combat cheating and to foster ethical behavior and improved societal norms.

¶64 Focusing on cheating related to sports, white-collar organizations, taxes, academia, copyright, insurance and mortgages, and marriage, Rhode first presents the myriad forms and techniques of cheating, tying them to the underlying fears, pressures, conformist mentalities, and desires for revenge or to “even the score” that lead to cheating.

¶65 Detailing the Salomon Brothers’ Treasury bond scandal of the early 1990s, the Enron accounting fraud of the 1990s and early 2000s, and the recently discovered Wells Fargo fake account practices, Rhode explains that “[c]heating is most likely when individuals find that legitimate means of achieving goals are blocked . . . ” (p.42).

¶66 For financial actors, cheating may have roots in “Wall Street’s unrealistic growth expectations” *(id.*). For athletes, it may be that “career[s], not to mention millions of dollars, are on the line” (p.29). For students, it may be “the view that ‘It’s cheat or be cheated: Because everyone is doing it, you don’t want to be the only one not doing well’” (p.79). For tax evaders, it may be the belief that “complying with
our labyrinthine tax regulations is frustrating, costly, and intrusive” (p.66), against the backdrop of “wealthy people and big businesses [who] have much larger loopholes” (p.68). For illegal downloaders, the sentiment may be that “the record companies don't need my fifteen dollars as much as I do” (p.95).

¶67 Second, Rhode emphasizes that cheating thrives when “illegitimate means carry relatively low risks of sanctions” and that “[l]eniency in oversight makes cheating more economically profitable, [with] political and financial constraints often work[ing] against effective governance” (p.42). Illustrative of this are the hundreds of millions in compensation that two Wells Fargo executives took upon leaving their employment; the career-best contract that one baseball player inked two months after serving a 50-game suspension for performance-enhancing drugs; and the token $15,000 tax penalty that an opera singer was required to pay for claiming $216,000 in disallowed deductions, filing tax returns up to five years late, and skipping out on a tax court hearing.

¶68 Third, Rhode lays out the numerous ways that cheating is costly and harmful to society. Among her examples: investors losing large portions of their life savings, much of it intended for retirement, in the Enron and Bernie Madoff scandals; “[t]he average American family [paying] between $400 and $700 per year in the form of increased insurance premiums resulting from fraud” (p.101); articles being written by drug companies, instead of medical professors, misleading readers as to where ideas truly originated; and, in a case with simultaneous beneficiaries and victims of cheating, “academically challenged students” being “handed a cheap knockoff of the academic experience their typical nonathlete classmates can reliably expect to receive,” all in the name of a university’s “own pursuit of profits and wins” (p.32).

¶69 Finally, Rhode offers strategies to combat cheating. Among these are strong laws protecting whistleblowers, so that disclosures of misconduct are investigated and courageous actors are not retaliated against; ethics codes and honor codes that are actually enforced and “reinforced by organizational norms” (p.16); white-collar legal sanctions that actually have bite, so that federal sentences for fraud, for example, average more than 23 months, “compared with 70 months for drug trafficking, and 83 months for robbery” (p.56); legal structures, particularly in areas such as taxation and copyright, that are simplified and “more in line with what people believe [they] should be” (p.99); and, perhaps most importantly, the teaching of ethical behavior by parents and guardians, educators, and organizations.

¶70 Cheating is certainly worth acquiring for any academic, court, or public library that collects sources on contemporary legal and ethical problems. Professor Rhode's writing is concise yet deep, with examples and explanations that clarify and emphasize the core issues with cheating. The endnotes are extensive, covering over fifty pages, and the detailed index allows readers to easily locate particular instances of and concepts associated with this most relevant and timely of subjects.

*Reviewed by Matthew E. Flyntz*

¶71 Anyone who has been through law school (and many who have not) will be familiar with the concept of *de jure* versus *de facto* segregation. *De jure* segregation is accomplished “by law”—that is, by some sort of official government action. *De facto* segregation supposedly arises through other means: individual choice, socio-economic factors, etc. There is a widespread belief that *de jure* segregation existed in the former Confederate states, while segregation in the North, Midwest, and West was merely *de facto*. In *The Color of Law: A Forgotten History of How Our Government Segregated America*, Richard Rothstein exposes this belief as a myth.

¶72 As Rothstein explains in the preface, “*The Color of Law* is concerned with consistent government policy that was employed in the mid-twentieth century to enforce residential segregation” (p.x). He argues that “[w]e have created a caste system in this country, with African-Americans kept exploited and geographically separate by racially explicit government policies. Although most of these policies are now off the books, they have never been remedied and their effects endure” (p.xvii). He spends the remainder of the book marshaling evidence to support this thesis.

¶73 For example, in the first chapter, he provides a history of the development of the city of Richmond, California, a heavily African-American suburb of San Francisco. (I found that consulting the University of Virginia’s Racial Dot Map while reading this book enabled me to visualize the segregation that Rothstein discusses. The map is available at https://demographics.virginia.edu/DotMap/ [https://perma.cc/R99S-TTA2].) The population of Richmond boomed during World War II, as both white and black workers streamed in to work in the shipyards. There was not nearly enough housing available for everyone, so the federal government stepped in to finance public housing projects. Rothstein notes that these projects were segregated, with projects for African-Americans being built shoddily and close to train tracks and the shipyards, while projects for whites were built more sturdily and situated farther inland, closer to existing white residential areas. The federal government also contracted with a developer to construct an entirely new suburb called Rollingwood. One of the government's conditions for granting loans to finance construction was that none of the 700 units be sold to African-Americans. And African-Americans did not have many private options either, as the federal government refused to insure loans issued by banks to African-Americans. As Rothstein notes, “The government was not following preexisting racial patterns; it was imposing segregation where it hadn’t previously taken root” (p.14).

¶74 This is just one example of a wide array of instances where federal, state, and local governments created explicitly discriminatory policies. Rothstein demonstrates how the exclusion of African-Americans from whites-only public hous-
ing projects created “black ghettos” (chapter 2), how local zoning boards excluded African-Americans from predominantly white areas (chapter 3), how the government imposed racially restrictive financing conditions on property developers (chapter 4), how the government supported and enforced purportedly private racial covenants (chapter 5), how “white flight” was a direct result of racist Federal Housing Authority (FHA) policies (chapter 6), how various government actions, such as IRS grants of tax-exempt status, supported segregation and discrimination (chapter 7), how local governments undertook all sorts of creative and devious efforts to exclude African-Americans from white areas (chapter 8), how governments turned a blind eye to violence against African-Americans when they did move into predominantly white neighborhoods (chapter 9), and how official government policies suppressed African-American incomes, preventing them from moving to more expensive areas (chapter 10). Rothstein paints a picture of a government dead set on preventing integration, even in areas that we think of as liberal, such as San Francisco, New York City, Chicago, and Boston.

¶75 This book is well-researched, well-argued, and well-written. It is accessible enough for a layperson to read, but rigorous enough to support an academic’s research. And given the widespread acceptance of the de jure/de facto dichotomy in the American law school curriculum, I recommend that all academic law libraries purchase this book. Scholars of constitutional law, housing law, and urban studies will all find it particularly worthwhile.


Reviewed by Susan David deMaine*

¶76 Law librarians know all too well how challenging it can be to work with public patrons who have legal questions. It comes as no surprise that these questions would be even more challenging for public librarians, most of whom lack legal expertise and legal research experience. Virginia M. Tucker and Marc Lampson’s Finding the Answers to Legal Questions, Second Edition is a well-written and useful book aimed at public librarians who want to increase their understanding of legal resources and research techniques, as well as build a collection to help their patrons access the most frequently needed information. The authors are both experienced county law librarians, and their expertise and experience are evident throughout the text.

¶77 Like the first edition, this second edition begins with foundational information about the American legal system, secondary sources, and primary sources. The text is quite readable and packed with explanatory information. A non-law librarian may still find it somewhat challenging due to the unique nature of the resources the authors cover, such as American Law Reports, but on the whole, the authors do an excellent job of explaining in laypersons’ terms what the resources contain and how they work.

¶78 One aspect of this foundational part of the book that was distracting was that the text ping-ponged between print and electronic resources for each branch.

of government, first at the federal level and then at the state level. For example, in the section on U.S. Supreme Court cases, the text first discusses print resources: the three main reporters, *United States Law Week*, digests in general, and three different specific digests, even including the *Decennial Digest*. The authors then switch to websites and cover the Supreme Court’s website, Cornell’s Legal Information Institute, and Oyez, finishing with mentions of FindLaw, FedWorld, FDsys, and a few others. The narrative switches back to print for the courts of appeals, and the cycle repeats. Then again for the federal district courts, other federal courts, and finally once more for the states in the next chapter. By the end of Part I, Cornell’s LII has been covered at least ten times. “Recaps” throughout this part restate the resources in a table format, which helps, but they still bounce between print and electronic. This seems an odd choice since most public libraries are unlikely to have many of the print materials, except perhaps for state statutes. A single explanation of print reporters and digests followed by electronic recommendations would have been less jumbled.

Part II is designed to prepare the public librarian for the reference interview and actual search for information. It includes a discussion of challenges familiar to law librarians who provide reference services—a patron’s lack of knowledge about the legal system, the law, and legal research—and goes on to discuss the basics of formulating search strategies in both print and electronic materials. It also includes information to help the public librarian locate further help in the form of both law libraries and lawyers. As with Part I, this section of the book is, on the whole, accessible while still being dense with information.

In Part III, the authors dive into frequently requested areas of the law such as debt collection, wills, bankruptcy, and employment. They use a question-and-answer format to cover some very basic law (yes, you need to respond to a summons; no, you cannot skip out on child support) and introduce relevant topical resources to help answer questions. For example, in the chapter on family law, these questions appear: “What makes a marriage invalid or void? And isn’t there a way to annul a marriage? What are the differences anyway?” (p.108). The response does not provide a direct answer, of course, but it does briefly discuss annulment versus divorce and then goes on to guide the librarian to consult the state statutes on marriage. For other questions, the librarian is directed to secondary sources such as form books or treatises, fifty-state surveys, Nolo guides, ABA materials, and many other resources. This part of the book, with its practical and realistic approach, stands out as the most useful and thorough. Given the nature of the questions, there was some repetition of “consult the state statutes” and similar answers, but this did not distract from the content.

Part IV offers advice for the public librarian on building a legal research collection and evaluating materials, both print and electronic. The advice on jurisdiction, currency, and using Google Scholar is spot-on, but the advice on creating a website, blog, or wiki seems dated and almost patronizing given that public librarians are likely to already have these skills, and if they do not, this book is not the place to get them. Similarly, the discussion about looking at domain name suffixes to assess website trustworthiness seemed unnecessary given the target audience.

This publication is a second edition, and the structure and content appear to have changed little. URLs and suggested materials have been updated to reflect
changing titles and online locations, and some updates have been made to the text where necessary. It is a more compact design and feels less like a workbook than the original edition. Appendixes include a short glossary as well as a summary list of online resources, which is considerably shorter than the list that appeared in the original edition. The volume concludes with a thorough index.

¶83 Despite a few flaws, this book is an excellent resource for public librarians, its target audience, looking to expand their capability to help patrons with legal questions. It would also be valuable to a new law librarian, and sections of it would be appropriate and helpful for law students, paralegal students, and public patrons undertaking their own research. Even for the experienced law librarian, Part III suggests resources that may be useful in answering pro se questions in certain areas. This book fills a real need and does so admirably.


Reviewed by Elaine M. Knecht*

¶84 History is a chronicle of what has happened and what is happening. American history starts, technically, on July 4, 1776, and is still unfolding. The full history of the Nineteenth Amendment begins in Adams, Massachusetts, with the birth of Susan B. Anthony on February 15, 1820, and reaches its culmination just a bit over a century later, in Tennessee, on August 18, 1920. A lot goes on in one hundred years, and author Elaine Weiss tells us about all of it.

¶85 The story in *The Woman's Hour: The Great Fight to Win the Vote* begins in mid-July 1920, as the representatives of the suffragists (Suffs) and those opposed (Antis) begin their travels to Nashville. The immediate backstory begins with the passing of the Nineteenth Amendment—“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex”—by Congress in 1919. In the ensuing months, thirty-five of the thirty-six states needed for ratification approved the amendment. The greatest part of Weiss’s book takes place in the weeks between the thirty-fifth ratification (Washington state on March 22, 1920) and Tennessee’s momentous vote in mid-August.

¶86 In Weiss’s narrative, we meet a large cast of characters in the fight for women’s suffrage, for and against, male and female, politicians and lobbyists. In addition to the actions of all these people in the summer of 1920, the narrative looks back to the groundwork laid in the mid-nineteenth century by Susan B. Anthony and Elizabeth Cady Stanton. We come to understand the relationships, both positive and negative, among the Suffragists, the abolitionist movement, the work for racial equality after the Civil War, and the early days of the feminist movement. The interests of “Big Railroad” and “Big Whiskey” (this is Tennessee, after all) are referenced as well.

¶87 Both high school and college American history and women’s studies courses will have given you an overview of the Nineteenth Amendment. Weiss, however, has more than a passing interest in the road to suffrage and the political influence it afforded, and continues to afford, half the population of this country.

She introduces us to and tracks the work of many important names on both sides of the fence: Carrie Catt, Anne Dudley, Alice Paul, Josephine Pearson, Harry Burn, and Seth Walker to name but a few. She tells stories that take us back to Seneca Falls. She describes in colorful detail—red roses for the Antis, yellow for the Suffrs—the everyday appearance of the men and women joined in the fight.

¶88 To the nonstudent of American history there are surprising and fascinating details about life in the United States in the early twentieth century. Senator and presidential candidate Warren G. Harding’s extramarital entanglements, out-of-wedlock child, and blackmailer were new to me. Woodrow Wilson’s burning in effigy in Lafayette Park across from the White House led to a police captain’s feeling of unease regarding the subsequent imprisonment of participating suffragists, especially Mrs. Havemeyer, who was particularly grandmotherly. Her family in New York was horrified by the news that she was in jail. They insisted she pay the fine to be released, as her grandchildren were crying for her.

¶89 Weiss’s first book was another foray into the role of women in America’s history—Fruits of Victory: The Woman’s Land Army of America in the Great War. Her byline has appeared in the New York Times, Boston Globe, and Atlantic. The Woman’s Hour is well researched and meticulously referenced with over fifty pages of footnotes and bibliography. An expansive tribute to the dedication and commitment of so many workers, it belongs in every academic institution’s library and has the potential to be read by serious students of women’s history, political history, and the history of our country.


Reviewed by Genevieve P. Nicholson*

¶90 In February of 1942, President Franklin D. Roosevelt issued an executive order that gave the Secretary of War and his designates broad authority to prescribe military areas and impose and enforce related restrictions.⁵ Pursuant to this authority, the military issued a series of curfew, exclusion, and detention orders that ultimately led to the forced relocation and incarceration of over 100,000 Japanese Americans. In 1944, the U.S. Supreme Court upheld Fred Toyosaburo Korematsu’s conviction for violating an exclusion order.⁶ Although the Court stated that “all legal restrictions which curtail the civil rights of a single racial group are immediately suspect” and that “courts must subject them to the most rigid scrutiny,”⁷ its reasoning reflected a deference to, not rigid scrutiny of, government decision-making: “Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direst emergency and peril, is inconsistent with our basic governmental institutions. But when under conditions of modern warfare our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger.”⁸


⁷ Id. at 216.
⁸ Id. at 219–20.
Four decades later, evidence emerged that the government concealed information from the *Korematsu* court and provided false justification for the exclusion orders. Korematsu successfully petitioned for a writ of *coram nobis* to vacate his conviction. The district court opinion granting the writ concluded:

Korematsu remains on the pages of our legal and political history. As a legal precedent it is now recognized as having very limited application. As historical precedent it stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees. It stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability. It stands as a caution that in times of international hostility and antagonisms our institutions, legislative, executive and judicial, must be prepared to exercise their authority to protect all citizens from the petty fears and prejudices that are so easily aroused.

*In the Shadow of Korematsu: Democratic Liberties and National Security* examines the impact of the *Korematsu* case and the World War II internment of Japanese Americans on the way the United States responds to national security measures that restrict civil liberties, particularly in the context of 9/11, the San Bernardino and Paris attacks, and President Trump's 2017 exclusion orders. Eric K. Yamamoto asserts that the 1944 opinion carries more precedential weight than credited in the *coram nobis* decision. As he traces *Korematsu*’s reach to the present day, Yamamoto highlights the troubling tendency of the judicial branch to give more deference than warranted when scrutiny is most crucial: when the two elective branches of government act, often in ways that restrict freedoms of minority populations, in response to public fear.

The book consists of four parts: “The Challenge,” “The Contested Cases,” “The Next Steps,” and “Looking Back, Moving Ahead.” The first part identifies the issues and explains briefly that *Korematsu* has inspired two divergent schools of thought on the role of the judiciary in times of crisis: one views the case as a warning that demands heightened judicial scrutiny; the other views the case as precedent for extreme judicial deference. Next, Yamamoto delves further into *Korematsu* and related cases, the *coram nobis* reopenings of those cases, and how jurists and policymakers have treated these cases over time. In the third part, he proposes a multi-step method for judicial review of government actions that threaten civil liberties. The final part reviews the book’s overarching themes.

*In the Shadow of Korematsu* demonstrates how the legal, political, and societal climate precipitated and ultimately condoned the internment of Japanese Americans during World War II. Throughout the book, Yamamoto proves how easily the reasoning of *Korematsu* could be adopted today. By examining the existing jurisprudence, considering a number of variables, and addressing concerns, he proposes a thoughtful, detailed approach for avoiding a similar result. At times, especially in the first two parts, the book seems repetitive and disorganized and is therefore hard to read, but it offers valuable insights on a timely subject.

---

11. See supra note 9.
In her fourth and last installment examining citation studies, Ms. Whisner follows up on part three of her Citation Study by comparing articles from each of the examined journals in 1982 with articles from 1992 and 2002, and comes to some interesting conclusions.

I developed some curiosity about citation rates of law journal articles and decided to roll up my sleeves and dig through some data. Realizing that even small excursions into the forest of data would be too much for one column, I decided to devote all four columns of 2018 to the project. One benefit has been eliminating my quarterly search for a good topic.

**Methodology**

In Part 3, I generated a random sample of thirty “flagship” law reviews and then dove into a sample from 1982: five articles (when possible) from each of the twenty-three journals that were published that year. In this column, I build on that work by comparing articles from those same journals in 1992 and 2002. The sample size is a little larger because of the addition of newer journals: District of Columbia Law Review is included in the 1992 and 2002 samples; Appalachian Journal of Law and New York City Law Review (now CUNY Law Review) join the ranks in 2002.

I looked at the first five articles in each journal published in the sample year. I omitted introductions, memorials, book reviews, and commentary. A few judgment calls that are too boring for the text are set out in a footnote. I used

---

** Research Services Librarian, Marian Gould Gallagher Law Library, University of Washington School of Law, Seattle, Washington.
1. The thirty journals were first published between 1887 and 2011 (the median is between 1961 and 1964).
3. The Journal of Family Law devoted vol. 30 no. 2 (1991–92) to brief summaries of family law developments in various countries. I decided not to count these as articles and drew my sample from vol. 30 no. 3.

The book reviews in the Michigan Law Review’s annual book review issue are substantial and may be cited as often as many articles, but I omitted them. I also omitted the essays for the journal’s centennial, in vol. 100 no. 7 (June 2002).
HeinOnline’s ScholarCheck to record the number of citations to each article, year by year.\(^3\)

**Findings**

**Citations over Time**

\(^4\) First, let’s look at the aggregate: all the citations to all of the articles. The 1992 and 2002 samples were consistent with what we saw in the 1982 sample. There aren’t many citations in the year of publication, because it takes a while for citing articles to make it into print. The most citations are in the first several years after publication. For example, in Year 2, 1992 articles were cited an average (mean) of 2.5 times, and 2002 articles were cited an average of 2.7 times. Fifteen years out (2006 for 1992 articles and 2016 for 2002 articles), average citations were down to .8 and 1.0, respectively. See Figures 1 through 4.

\(^5\) These numbers are similar to (but a little higher than) those in 1982. In 1983 (Year 2), the 1982 articles were cited an average of 2.3 times. In 1996 (Year 15), the 1982 articles were cited .7 times on average.

\(^6\) In the aggregate, articles from the 1982 sample were cited 3451 times in the 36 years of the study; those from 1992 were cited 3137 times in the 26 years covered; and those from 2002 were cited 2179 times in 16 years. To make a more meaningful comparison, I looked at citations in the first ten years after publication for each sample: 1982 articles were cited 1683 times; 1992 articles were cited 1723 times; and 2002 articles were cited 2179 times. Figure 5 shows the citations over the ten years. The curves are very similar, but it looks like 2002 articles did better, getting cited more often.

\(^7\) But if you remember that the samples are a little larger for 1992 and 2002 than for 1982, you might think this comparison isn’t quite fair. So let’s look at the mean citations in the first 10 years. Articles published in 1982 were cited an average of 15.7 times; those from 1992 were cited 14.5 times; and those from 2002 were cited 16.8 times. What the heck: we have at least sixteen years for each sample, so let’s crunch the numbers for that length of time. Looking at averages instead of totals evens things out a little, but the 2002 articles still got more citations—an average of 23.4 over their first sixteen years, as compared with 20.8 for 1982 articles and 19.5 for 1992 articles. Despite these small differences, the similarity in the article cohorts’ performance is striking: few citations in the publication year, a peak in the next year, and a gradual falling off over the next fourteen years. Figure 6 shows the parallel citation lives of the three samples.

**Differences Among Articles**

\(^8\) Articles do not meet with equal receptions by the citing public. Some achieve great popularity while others are never cited at all. In the 1992 sample, the

---

3. I omitted citations in *Supreme Court Bulletin* and *SEC Docket*: I wanted to focus on citations in journals.

When I spotted duplicates in ScholarCheck results, I omitted them—and corresponded with HeinOnline’s customer support team. I think I spotted more duplicates in the 1992 and 2002 samples than in the 1982 sample. If it’s because I became better at spotting them, then the 1982 citation counts are a smidgen high—but only a smidgen.
The top article was cited 346 times, while four articles have not yet been cited. The 2002 sample had an article with 232 citations at the top; seven articles at the other end of the spreadsheet had no citations.

In Figure 6, we saw that in the aggregate articles tend to be cited most in the year after publication, with a decline over the next fifteen years. But is what's true for the group true for each article? I graphed the citations to the three most-cited articles in each sample over their first sixteen years. The shape is very different. There are ups and downs, but interest stays strong, with roughly the same number of citations in later years as in the first few. So we can expect most articles to get cited less as time goes on, but the most successful articles hold the citing public’s interest. See Figures 7–9.
When I arranged the data by rank of an article (the most-cited in position one, the second-most-cited in position two, and so on), the graph (Figure 10) formed a lovely “long tail.” Even within the top-twenty articles of each cycle, the numbers produced a long tail (Figure 11).

---


5. Mathias Siems used a box plot to show SSRN downloads, looking at the number of downloads for papers posted during two windows in 2012. Mathias M. Siems, *Legal Research in Search of Attention: A Quantitative Assessment*, 27 King’s L.J. 170, 177 (2016). Instead of a long-tail curve, his graph shows thickness at the low-citation end and scattered stars at the high-citation end.
In Tables 1 and 2, I list the most-cited articles in the 1992 and 2002 samples. Skimming the list, you will probably see some authors you recognize. Common themes were constitutional law, criminal procedure, civil procedure, and legal theory. Family law made an appearance, particularly with respect to same-sex relationships (same-sex marriage and parentage issues).

I used the presence of a state’s name in the title as a proxy for articles focusing on one state’s law. Based on this, state focus went down substantially from the first sample to the third. In 1982, 20.5 percent of the articles had a state name in the title; in 1992 it was 9.2 percent; and in 2002 it was only 7.7 percent. The articles with state names in the title tend to have low citation counts, but even so, if discussions

[Figure 5: Citations in First 10 Years (1982, 1992, and 2002 Articles)]

[Figure 6: Average Citations in First 16 Years (1982, 1992, and 2002 Articles)]

¶11 In Tables 1 and 2, I list the most-cited articles in the 1992 and 2002 samples. Skimming the list, you will probably see some authors you recognize. Common themes were constitutional law, criminal procedure, civil procedure, and legal theory. Family law made an appearance, particularly with respect to same-sex relationships (same-sex marriage and parentage issues).

¶12 I used the presence of a state’s name in the title as a proxy for articles focusing on one state’s law. Based on this, state focus went down substantially from the first sample to the third. In 1982, 20.5 percent of the articles had a state name in the title; in 1992 it was 9.2 percent; and in 2002 it was only 7.7 percent. The articles with state names in the title tend to have low citation counts, but even so, if discussions

6. The median citations of articles with states in their titles were 5 (1982), 3 (1992), and 2 (2002).
Figure 7
Citations in First 16 Years, Top 3 Articles (1982)

Figure 8
Citations in First 16 Years, Top 3 Articles (1992)

Figure 9
Citations in First 16 Years, Top 3 Articles (2002)
of state law are indeed going down, I think that’s a loss. A lot of law happens at the state level—legislation, litigation, and transactions—and good analysis could be useful. As a reference librarian, I’ve heard many researchers asking for articles about particular state statutes or doctrines. They might not cite the articles in other articles, but that doesn’t mean the articles aren’t useful. Of course, there are some articles with local interest that do not have the state’s name in the title. For example,
the liability of ski areas\textsuperscript{7} is of more interest in Idaho (and Utah and Colorado) than in Kansas or Florida.

### Number of Authors

\textsuperscript{¶}13 In the 1982 sample, 22 out of 109 articles were coauthored. The numbers were a little smaller in the two later samples: 18 out of 119 (1992) and 18 out of 130 (2002). So the coauthored articles dropped from almost 20 percent to less than 15 percent.\textsuperscript{8}

\textsuperscript{¶}14 I was a little surprised by this. With more interdisciplinary work and faculties who have doctorates from outside the law,\textsuperscript{9} I expected to see more coauthored articles in law journals. My samples are too small to infer that this is a trend for all law reviews. Looking at a much larger sample, Lynn LoPucki found a “modest upward trend” in coauthored articles in law; 23 percent of articles in top-50 law reviews in 2009–2011 were coauthored.\textsuperscript{10}

### Words in Title

\textsuperscript{¶}15 I again counted words in articles’ titles. That 32-word title in the 1982 sample continued to be an outlier: no title in the 1992 or 2002 samples was longer than 25 words. That still left room for some titles that struck me as long and clunky. Of course, this is a matter of taste. I might like the rhythm of \textit{The Rhetoric of Constitutional Law}\textsuperscript{11} or \textit{Ambiguity and Income Taxation}\textsuperscript{12} better than that of \textit{Going Nowhere, Slowly: The Long Struggle over Campaign Finance Reform and Some Attempts at Explanation and Alternatives},\textsuperscript{13} but the authors who choose long titles must think they sound pretty good.\textsuperscript{14}

\textsuperscript{¶}16 Does the length of a title correlate with citation rates? Eyeballing the lists, I could see some long titles among the most-cited works and some short titles among the least-cited, but it seemed to me that there were few of the really long titles at the top. Two graphs illustrate this. Figure 12 shows the distribution of title length in the three sample years. Lots of titles are between 8 and 14 words long. Figure 13 shows the distribution of title length for the twenty most-cited articles in the three samples. A glance shows that these articles had fewer long titles. The medians are just a little smaller: the top 20 articles had a median title length of 9 in 1982 and 1992 and 11 in 2002; overall, articles in the samples had median lengths of 10, 11, and 12 words, respectively. Of course, very few articles will have titles shorter than 3 words (and none will be shorter than 1 word!). The real difference is to the right of the median, where titles can get longer and longer. The most-cited


\textsuperscript{8} 19.6% in 1982, 15.1% in 1992, 13.8% in 2002.


\textsuperscript{14} I think using ”slippery slope” in an article about ski areas is clever enough to justify a longish title, but even “Surveying the Slippery Slope: The Questionable Value of Legislation to Limit Ski Area Liability” has only 14 words. See Frakt & Rankin, \textit{supra} note 7.
articles seldom had titles longer than 14 words. The usual caveats apply: these are small samples, and correlation is not causation. But if you’ve drafted a title that’s, say, 22 words long, see if you can trim it a little.\(^\text{15}\) Figures 12 and 13 provide graphs

\(^{15}\) Similarly, a study of law papers in SSRN found that short titles correlate with increased
Figure 12

Figure 13
### Table 2

**Most-Cited Articles in 2002 Sample**

<table>
<thead>
<tr>
<th>Rank</th>
<th>Article</th>
<th>Citations</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Devon W. Carbado, <em>(E)racing the Fourth Amendment</em>, 100 Mich. L. Rev. 946 (2002)</td>
<td>179</td>
</tr>
</tbody>
</table>

### Hot Journals

I looked at the twenty articles that got the most and the fewest citations in the 1992 and 2002 samples. Which journals published them? In the 1982 study, downloads. Siems, *supra* note 5, at 181. Siems cautions against using his findings as a recipe for increasing SSRN downloads, "since it cannot be excluded that some of the explanatory variables proxy for the unobservable quality of a paper." *Id.* at 185.

---

**Table 3**  
Selected Articles with Short Titles

<table>
<thead>
<tr>
<th>Words in Title</th>
<th>Article</th>
<th>Citations</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Harlan S. Abrahams &amp; Bobbee Joan Musgrave, <em>The DES Labyrinth</em>, 33</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>S.C. L. Rev. 663 (1982)</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Michael B. Kennedy, <em>Idaho’s Generic Theft Law</em>, 18 IDAHO L. Rev. 43</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>(1982)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(1992)</td>
<td></td>
</tr>
</tbody>
</table>

**Table 4**  
Selected Articles with Long Titles

<table>
<thead>
<tr>
<th>Words in Title</th>
<th>Article</th>
<th>Citations</th>
</tr>
</thead>
</table>
Harvard Law Review and Michigan Law Review stood out: each of them had five out of five of their articles make the top twenty. But I observed that some less prominent journals had at least one article near the top. Now we can look at three sample years, 1982, 1992, and 2002. Harvard and Michigan maintain their star status: each had 13 out of their 15 articles in the study make the top twenty. But here’s good news for underdogs. Of the 25 journals in the study, seventeen had at least one article make the top twenty in its year. But some less prominent journals had at least one article near the top. Now we can look at three sample years, 1982, 1992, and 2002. Harvard and Michigan maintain their star status: each had 13 out of their 15 articles in the study make the top twenty. But here’s good news for underdogs. Of the 25 journals in the study, seventeen had at least one article make the top twenty in its year. A good, timely article published in almost any journal might find its audience and be highly cited.

18 The other end of the spectrum was a little more spread out. No journal had as many articles in the bottom twenty as Harvard and Michigan had in the top twenty. Twenty-one of the twenty-five journals in the study had at least one article in the bottom twenty. Summary data are in Table 5.

Recap of Findings from the Year

19 In this and the last three columns, I have explored citation patterns of law journal articles, focusing on citations in journals (rather than cases). Some take-aways:

1. Citations to an article are one measure of its influence, but they don’t tell you everything. Many people could read, think about, and discuss an article without ever citing it. An article on a narrow topic or focused on one jurisdiction might not garner high citation counts, even though it’s very useful to its readers. (Part 1, ¶ 3)
2. Several tools enable you to find citing references. Web of Science, Shepard’s, KeyCite, and HeinOnline’s ScholarCheck have overlapping coverage, but the overlap is only partial. Each tool is imperfect. (Part 1, ¶¶ 14–20, 28–29).
3. In general, articles by professors and other professionals are cited more than student notes and comments. (Part 2, ¶ 19)
4. But some student pieces do quite well: in a sample from 2012, many student pieces were cited at least as often as the median article. (Part 2, ¶ 19)
5. It’s possible to generate a list of frequently cited student pieces to offer student authors examples of successful publications. (Part 1, ¶¶ 8–20) (creating lists for environmental law and for intellectual property and technology law).
6. Journals vary widely in their mix of articles and student works. (Part 2, ¶ 10)
7. Articles in some journals tend to be cited much more often than those in other journals. (Part 2, ¶ 7; Part 3, ¶¶ 22–23; supra, ¶¶ 17–18).

16 Very loosely, we can think of the “top 20” being the top quintile. In fact, it is a more exclusive club: top 18.7% in 1982, top 16.8% in 1992, and top 15.4% in 2002.

Table 5
Journals with Articles in the Top and Bottom Twenty in Citation Count

<table>
<thead>
<tr>
<th>Journal Title(s)</th>
<th>Number of Articles in Top 20</th>
<th>Number of Articles in Bottom 20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appalachian Journal of Law</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Buffalo Law Review</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>California Western Law Review</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Cardozo Law Review</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Catholic University Law Review</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Dickinson Law Review</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>District of Columbia Law Review / U.D.C. L. Rev.</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Florida State University Law Review</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Harvard Law Review</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Howard Law Review</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Idaho Law Review</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Journal of Family Law / Brandeis L.J.</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Michigan Law Review</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>New York City Law Review (now CUNY Law Review)</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>North Carolina Law Review</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>North Dakota Law Review</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Saint Louis University Law Review</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>South Carolina Law Review</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>South Dakota Law Review</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Southwestern University Law Review</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Stetson Law Review</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Tulsa Law Journal</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>University of Arkansas at Little Rock Law Journal</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
8. But no journal has a monopoly on high citations. In samples from three decades, the majority of journals had at least one article in the top fifth of articles by times cited. (Supra, ¶ 17)

9. In a sample of 2012 journals, the highly-cited journals correlated with journals that faculty and staff scored high in a quick, informal poll. (Part 2, ¶ 11)

10. In the aggregate—many articles across many journals—citations are low in the year of publication, then jump up in the first year after publication, and decline gradually over the next 15 years. This finding was consistent across three samples, in 1982, 1992, and 2002. (Supra, ¶ 9)

11. When you line up articles in order from the most-cited to the least cited, you get a “long-tail” curve. That is, there are a few articles with lots of citations, followed by a number with a middling number of citations, followed by a large number with dwindling citations. This finding held for a sample that included flagship and specialty journals published in 2012 and for samples of flagship journals in 1982, 1992, and 2002. (Part 2, ¶9; Part 3, ¶15; supra, ¶ 17)

12. Title length varies. The articles with the longest titles generally don’t make the ranks of the top-cited. (Supra, ¶ 16)

When I discussed my data with one of my colleagues, she asked why I chose to look at such old articles. Even 2002 is so long ago! Why couldn’t I look at something more recent? Well, Part 2 did look at a sample from 2012. I went back to the older years because I wanted to see how articles fared over time. If you want to see whether interest in articles falls off after five or ten years and whether anyone is still using articles that are more than twenty years old, then you have to look at old articles. Some of the patterns in my study were so similar in the different samples that it’s likely they can be generalized. The articles published in 1982—before people used computers to find journal articles—showed the same pattern of citation in their

---

*Because of ties in ranking, sometimes the top or bottom "20" has 21 or 22 articles.*
first sixteen years as did the ones published in 1992 (when people used Lexis and Westlaw to find articles) and 2002 (when people used even more online tools).

Lessons Learned About the Study Process

¶21 This project has been many things to me: interesting, rewarding, tedious, vexing. I had to do some slogging to gather the data; getting it done was a challenge. I can’t say that each hour was fascinating, but I found enough nuggets here and there that it wasn’t as bad as it could have been.18

¶22 I formed new questions to answer as I went along. Although I thought about looking at citations in cases, I settled in to looking at patterns of articles being cited in journals. I never got back to the question I posed in Part 1 (¶ 21) about what authors cite: “What is the balance of law review articles, notes and comments, books, cases, statutes?” Hard as it was to compile the spreadsheets of citations to articles, I think it would have been harder to parse citations within a good sample of articles.

¶23 Excel is a very powerful tool—much more powerful than I took advantage of. But I did learn a lot about the functions I used. For instance, if you use data to create a chart and then re-sort that data, the chart will update—even if it is pasted into a Word document. I learned to copy my charts as pictures and then paste them into Word, and that way they stayed the way I wanted them. Excel defaults to color charts, but Law Library Journal publishes in black and white, so I learned how to change orange and blue lines to black and gray. I think gray-scale graphs are sometimes hard to read (is that line the dark gray or the medium gray?), so I also learned to make dotted and dashed lines. Unfortunately, I often had to relearn these lessons several times over the course of these four columns. Was it the interface or was it me? Maybe a little of both. But now I’m reasonably competent at that particular skill.

¶24 I’m glad I immersed myself in the data and tried my hand at compiling, sorting, and graphing to find something interesting. I regret that I did not find the time to read more widely. There are so many bibliometric studies out there that I never looked at! But I was fitting this project in around my regular job (not to mention the rest of my life), and there was only time to do so much.

¶25 I think my experience should be encouraging for readers: if you are curious about something that can be addressed by some systematic searching, go ahead. It’s possible to get somewhere with junior-high math (I used nothing fancier than means and medians) and Excel. Do you wonder how many people cite notes and comments in your school’s journals? How about the articles? Go ahead: you can crunch the numbers.

¶26 On the other hand, I am very aware of the limits of my studies. For instance, in Part 2, I looked at a sample of 32 journals, selected not randomly but with some variety (flagship and specialty journals from law schools that were large and small, public and private). In Parts 3 and 4, I looked at the first five articles in each of 26 flagship reviews in 1982, 1992, and 2002. (I selected 30 journals randomly; 4 were not published in the years studied.) The samples are so small, it’s like dipping a

18. It’s not my first time slogging through a lot of data to find something useful. See, e.g., Mary Whisner, The Rewards of Tedium, 102 LAW LIBR. J. 657, 2010 LAW LIBR. J. 37; Mary Whisner, The 4-1-1 on Lawyer Directories, 106 LAW LIBR. J. 257, 106 LAW LIBR. J. 15. By the way, I don’t cite myself just to increase my citation counts, but self-citation does increase them, unless the counter screens them out.
coffee cup into a lake. The studies would be much more rigorous with larger samples. But even with small samples, I think I’ve made some interesting findings. With just a cup of water, you could tell whether a lake was freshwater or saltwater and spot some pollutants, even if you weren’t able to tell what was going on in every region of the lake. I did see consistent patterns in different samples, so the findings are stronger than if I’d stopped with one study. If you dip that cup in the lake in three places and get very similar results, you start to have some confidence.

¶27 I did all of the data gathering and sorting on my own. That meant that I was the only one to catch it when I did something stupid, like forgetting to include results from a journal, highlighting the wrong area when I sorted, or using the wrong denominator when I calculated an average. A bigger project—or even another project of this size—would benefit from a team approach, so people could kick around ideas together and check each other’s work.

¶28 Even though I was able to do a lot with my basic math, I think it would surely be helpful to have a solid grounding in statistics and empirical research methods. Perhaps this would be another benefit to having a team: at least one of the team members might have that knowledge. Someone planning to work on a big citation study would be well advised to learn more before jumping in. And there are resources available. When I had questions, I looked at some university websites with statistics outlines. I didn’t take the time to read a book on empirical legal research, but one could. If someone wanted to do it right, she could take a class or two. The workshops introducing empirical legal studies methods always look interesting. One could even watch lessons from Kahn Academy. Help is out there.


Memorial: George Stefan Grossman (1938–2018)

George’s Lifelong Journey*

¶1 George Stefan Grossman, Professor Emeritus of Law and the retired Law Librarian/Director at the Mabie Law Library at the University of California, Davis, died on July 11, 2018, at his retirement home alongside the picturesque Willamette River in Portland, Oregon. George is survived by his son Zoltán and daughter-in-law Debra McNutt. George’s wife Susanna (Suzi) predeceased him in 2008 after forty-eight years of marriage. George had retired two years earlier.

¶2 George, a highly regarded law librarian for over fifty years, had been selected to be inducted into AALL’s Hall of Fame. His induction was scheduled to take place only five days after his death. George thus received this honor posthumously.

¶3 George was born in Czechoslovakia on May 31, 1938, to an American citizen father and a Hungarian mother. In his interview for *An Oral History of Law Librarianship*, George described being born at the worst place and time possible for a Jewish boy.¹ After the Nazis also took over neighboring Hungary in 1939, the family relocated to his mother’s hometown of Mezőtúr, Hungary. Later they were interned in a camp for foreign enemy nationals near Budapest. George’s father was summarily executed along with the camp’s other Jewish men on December 31, 1944. George and his mother survived the war and in 1949 George, a derivative U.S. citizen, was able to come to America and a foster home in a suburb of Buffalo, N.Y. George’s mother and half brother followed him to America in 1962.

¶4 After George’s graduation from high school in 1956, he took a job at Bell Aircraft Corporation, where he worked on the first American satellite and an early version of vertical takeoff and landing airplanes. George also began evening school at the University of Buffalo. In 1957, George moved west and enrolled at the University of Chicago, where he received his BA degree, with honors, in International Relations in 1960.

¶5 George married Susanna Herczeg, whom he had met as a fellow student at college. Their marriage took place on the same day as George’s graduation. Susanna, or Suzi as she preferred, had also been a post-World War II childhood immigrant from Hungary who had even lived for a time in Buffalo (although the couple did not know each other during that period). George later went to graduate school but, after learning that Suzi was pregnant, left school and accepted full-time work as an editor for the American Bar Foundation.

¶6 In 1962, George, Suzi, and their new son Zoltán moved to Palo Alto, California, where George worked as an administrative assistant for the California Law

---

Revision Commission, whose offices were located on the Stanford University campus. George enrolled at Stanford Law School a year after arriving in California and graduated in 1966. He was admitted to the California Bar that same year. Later he would also become a member of the Minnesota Bar.

¶7 While he was a law student George worked in the law library. In his oral history interview, George described that he thought that the reference librarian, George Torzsay-Biber, had a nice job and so he asked Torzsay-Biber how he could get one like it. Torzsay-Biber told George to go see law librarian J. Myron Jacobstein and ask him. Myron (also known as Mike) encouraged George to become a law librarian and subsequently became George’s mentor.

¶8 Stanford Law School was at that time planning a new building and Mike invited George to help him with its design. George took a course in mechanical drawing and, armed with a t-square, a drafting table, and some other specialized equipment, would draw whatever Mike requested in connection with possible library layouts.

¶9 During George’s senior year at Stanford, he was invited to accompany Mike to the AALL Annual Meeting, where George was introduced to other law librarians. George then returned to classes at Stanford with an employment offer in hand from the University of Pennsylvania, where he would subsequently work under the direction of yet another of law librarianship’s luminaries, Morris Cohen. George’s specific job at Penn was as acquisitions librarian and his main duty was book selection. He and Morris developed a lifelong friendship. Prior to leaving Penn for the University of Utah in 1968, George started library school at Drexel.

¶10 George’s old boss and mentor at Stanford, Mike Jacobstein, had been doing consulting work for the University of Utah and realized they needed a law librarian who could remedy the library’s several shortcomings. Mike recommended George, who was hired and appointed both as law librarian and professor of law. While working there George decided to finish earning his library degree, so he also commuted to nearby Provo, and was ultimately awarded the degree from Brigham Young University in 1971. George remained at the University of Utah for another two years.

¶11 Once again, in 1973, George’s mentor Mike Jacobstein was consulting for another law school when he realized that it had a need for a good law librarian. This resulted in George being offered the appointment as law librarian and professor of law at the University of Minnesota. He remained at Minnesota until 1979. Much of the attraction for Minnesota was that the law school was about to begin a major building project. This meant that George would be able to hone his skills designing buildings as well as being able to serve as the director of a very large and sophisticated academic law library.

¶12 As at Utah, George really enjoyed his work and other experiences at Minnesota. However, when yet another well-connected colleague recommended George for a job opening, George decided to move yet again. The colleague was Roy Mersky, who had just declined an offer from Northwestern University in Chicago in order to remain at the University of Texas. George indicated that he ended up accepting an offer from Northwestern to become professor of law and law librarian/director because the school also had grand plans to move from its Chicago campus to the main university’s campus in nearby Evanston and into an entirely new building yet to be designed. This was just too tempting an opportunity since it would mean that George would be able for the first time to design a library from scratch.
At Northwestern, George utilized his special expertise in planning buildings, but not in connection with the promised new Evanston campus facility. The law school ended up merely planning a major expansion of its Chicago facility on Lake Shore Drive. George remained at Northwestern for fourteen years (until 1993). As with all his earlier jobs, George enjoyed his time there.

Unfortunately, Suzi developed some chronic health issues so she and George decided that because of the cold winters in Chicago, they ought to consider a return to a more moderate climate such as that they had experienced in California. They also decided, however, that this move would only happen if George could find a position that met his criteria for further professional challenge. Thus George applied for an impending opening as Director of the Law Library and Professor of Law at the University of California at Davis. The school’s founding law librarian, Mortimer Schwartz, had just announced his retirement and a new building was in the school’s plans. George got the job.

His appointment at Davis was to be George’s final position and, as he said in his oral history interview, much of what attracted him to the relatively new law school was their plan to construct a new building. George said he wanted this to be “his” building and as perfect a one as possible since he planned to use in its design all the great concepts he had learned and used in his extensive work and consulting practice. Later, however, as at Northwestern, the promise of a wonderful, completely new facility was not to be fulfilled because the legislature would only fund a new wing for the existing building. George was of course still able to at least cap his career with yet one more construction project while at UC Davis.

George remained at Davis for fourteen years before retiring in 2007 and moving to join Suzi full time in San Francisco. She had moved there a little ahead of him, although he had commuted in from Davis to join her on weekends. Later, four years after Suzi’s death, George moved in 2012 to Ashland, in southern Oregon, and two years after that still farther north to Portland. While living in Ashland, George helped out as a volunteer in the library of his synagogue. After his move to Portland, however, George’s own declining health due to Parkinson’s Disease limited his activities.

George used his special expertise designing and planning building projects pretty much throughout his career. Early on, he became one of two law librarians who were considered to be the “go to” consultants for any colleague working on a new building or building renovation. The other of these “go to” consultants was, of course, Roy Mersky of the University of Texas. Although competitors for the consultant jobs, George and Roy were always very close friends. I am sure that many of their clients welcomed their friendly competition, however, perhaps since it may have kept their fees a bit lower than what they might otherwise have charged.

Obviously, as required of any successful candidate for induction into AALL’s Hall of Fame, George had a long and very distinguished career. It consisted of successive appointments at prestigious law schools and a record of professional service including committee assignments for AALL, AALS, and the American Bar Association, and a membership on the Westlaw Advisory Board. George also served while at the University of Utah as president of the local ACLU chapter. In his oral history interview, George admitted to have been considering going into politics at that time. Suzi was also politically active in Utah as a lobbyist for the campaign to get Utah to ratify the Equal Rights Amendment to the United States Constitution, although ultimately this effort failed both in Utah and nationally.
George’s teaching role at Davis, as it did at Utah and Minnesota, included courses in legal research and writing. In addition, during the last five years he was at Davis, he also taught American legal history. While he was at Northwestern, another colleague on the teaching faculty was responsible for the legal research and writing program, so George taught courses in copyright and contracts. George also taught an advanced legal research course at Northwestern but, unlike many of them elsewhere, his included an historic perspective.

George’s scholarship included a long and distinguished list of articles, chapters, and other contributions to several books, a number of editorships, and many professional presentations. George was also the author of Legal Research Foundations of the Electronic Age, which was published in 1994 by Oxford University Press. As a consultant George served forty-four clients, including law schools, universities, and county law libraries, mostly while advising on building projects but also, for a few, on library administration and once on library automation.— Patrick E. Kehoe

George’s Years at UC Davis

George Grossman was hired in 1993 as Director of the UC Davis Mabie Law Library and retired in June of 2007. Prior to taking the position at Davis, George held several director assignments at other prestigious academic law libraries. Professor Grossman, a tenured faculty member, was only the second director of the Mabie Law Library, after founding director, Mortimer Schwartz, retired. When asked why he was willing to relocate to the West Coast at the sunset of his career, he simply stated that his strong interests in taking the job were because of the imminent library building/remodeling project slated for King Hall. His interests at this point in his career were in designing and overseeing the building/remodeling of library space, and UC Davis appeared to be the next big project on his radar. He had been a consultant on various projects throughout the country and had gained a reputation as a library space expert.

It initially appeared the library would be a new structure and not just renovated, but as plans would have it, the new construction dedicated much needed space for new administrative offices for the School of Law, more faculty offices, a new courtroom, and classroom spaces. These priorities delayed the library’s project, and plans drawn for the library renovation were in phase two of the King Hall expansion and renovation. Professor Grossman’s vision for the library never wavered and he continued to formulate ideas and draw sketches of how best the library space could be updated.

The new construction areas of King Hall, however, were not completed until 2008, and it was not clear whether there was enough funding left in the project to complete all that was intended for the library’s remodeling project. Having had experience with architects, drawings, and library buildings, Grossman became heavily engaged in finalizing plans for the library space. He steered architects towards addressing issues of work flow, traffic patterns, space accommodations, and other important features not well-known by the architects hired for the project.

2. Professor Emeritus of Law & Retired Director, American University Law Library, Washington, D.C.

The project moved slowly, and Professor Grossman retired before construction ever was realized. Yet, much of his work was transcribed into the project and the result was and is a beautifully functional library, with a spacious and welcoming lobby, great study space for students, the addition of group study rooms, and upgraded staff work areas.

George Grossman wore two hats in his professional career, one as a law professor and one as a law librarian. As a librarian he was part of the founding group of national academic law library directors, a field dominated mostly by men who were giants in their field. It was a small, tight-knit group, and they were mentors and models for anyone wishing to become a law school library director. Morris Cohen, Roy Mersky, Myron Jacobstein, Al Coco, Julius Marke, Dick Danner, and others were admired for establishing the academic law library’s place of importance in the law school program. George Grossman was respected as well, and was considered an institutional member of the academic law librarianship directors’ professional group. As a faculty member, his scholarship interests and teaching were focused on legal history, a course he taught at the School of Law. His interest in legal history led to his authorship of his course book, *The Spirit of American Law*.

A lesser known fact about George was his love for, knowledge of, and association with art. A collector himself, he focused on adding a collection of framed prints, Kenta cloth, and other art products to the Mabie Law Library to enhance the look and warmth of the library. He was adept at enriching the art collection in the library without spending a lot of money. He donated many of the prints and other materials that still hang in the library. He was an active member of the Pence Gallery in Davis and Crocker Art Museum in Sacramento. He would certainly have been involved in and supportive of the Manetti Shrem museum project on the campus, had he been here during its development.

Professor Grossman was a warm and caring leader. While he ran a tight ship, and expected high performance levels from his employees, he directed with a soft voice and collaborative style. He cared about the library staff and was a strong advocate for the library. He celebrated birthdays and holidays with the staff, and every May, his birthday, he brought in cookies to share with the staff from his favorite Davis bakery, Konditeri. The 1990s were difficult times for academic law libraries. Budgets were cut, libraries were especially hit hard, and UC Davis was no exception. A ten percent cut was announced, which led to George downsizing the collection and eliminating positions. It was not a popular time to be the director, yet we somehow survived. The students and faculty continued to receive the resources and library services they needed and we learned to do more with less. It was an opportunity to work on developing a new strategic plan and model for the future. His leadership during these difficult years sustained the library and provided encouragement and support for the library staff and operations.

Upon retirement, George moved to Oregon to be closer to his family. Yet, he sent holiday greetings and kept in touch with many of us over the years. He was inducted into the AALL Hall of Fame this past summer, only days after his passing. It was a most deserving tribute, marking the career of a truly dedicated professional law librarian. — Judy Janes

---

3. Director of the Mabie Law Library and Lecturer in Law, University of California at Davis Law Library, Davis, California.
Annual Meeting of the
American Association of Law Libraries
Held in Baltimore, Maryland
July 14–17, 2018

General Business Meeting

Call to Order and Approval of the Agenda ........................................ 586
Memorials ......................................................................................... 590
President’s Certificates of Appreciation ............................................. 591
Introduction and Remarks of Special Guests ..................................... 591
New Business, Announcements, and Adjournment ............................. 593
Appendix A ......................................................................................... 594
  Report of the Director of the Government Relations Office ............... 594
  Report of the Executive Director .................................................... 595
Call to Order and Approval of the Agenda

§1 **President Greg Lambert** (Jackson Walker LLP, Houston, Texas): Good afternoon. I am Greg Lambert, Association President, and I am pleased to call to order the 2018 Business Meeting of the American Association of Law Libraries.

§2 The AALL Bylaws stipulate in Article V, Section 3 that: “... a quorum for a business meeting of the Association shall consist of fifty members registered at that meeting.” I am looking around. I see that there is a quorum present. (Applause.)

§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 are easily accessed on that app. The agenda is also provided to you on the screens on either side of the stage.

§4 I would like to introduce those present today on the stage with me, beginning on my left, Vice President–Elect, Femi Cadmus. (Applause.) Treasurer, Jean Willis. Secretary, Luis Acosta. Executive Director, Kate Hagan. (Applause.)

§5 It has been a busy year, and the Executive Board and AALL member entities have worked diligently to meet the goals of our strategic plan. Femi and I would like to provide you with an annual update of what we have accomplished, and things still ahead on our agenda for this year. So, as a result of the branding project, we now have many messages to weave in and out of what we say about AALL, “Your Legal Knowledge Network.”

§6 **Vice President/President-Elect Femi Cadmus** (Cornell University Law Library, Ithaca, New York): We champion our profession and our members.

§7 **President Lambert**: We are your advantage.

§8 **Vice President Cadmus**: We are leaders in legal information.

§9 **President Lambert**: Where legal problem solvers go to solve problems. But what powers these words? How do we ensure that they are and remain a reality? Our mission—to advance the profession of law librarianship and support the professional growth of our members through leadership and advocacy in the field of legal information and information policy—is brought to life through our strategic directions.

§10 **Vice President Cadmus**: Now, our strategic directions focus on three core pillars, knowledge, community, and leadership, and each pillar has corresponding goals, objectives, and success measures.

§11 **President Lambert**: Over the past year, I am pleased to report that we have made significant progress in bringing our strategic objectives to life.

§12 **Vice President Cadmus**: Now, who is attending the Innovation Tournament tomorrow? (Applause.) It was such a tremendous success last year, we are...
doing it again this year. I can’t wait to hear whose innovation will be selected by the panel and by the audience.

¶13 **President Lambert:** We want to spur more innovation and creativity. So much so that we are developing an Innovation Incubator. The incubator will be comprised of a group of innovative thinkers and builders selected through an application process, and who will participate in a year-long dialogue that will kick off with a two-day, in-person Innovation Boot Camp. The boot camp will be held in the spring of 2019, and throughout the remainder of the year, the group’s members will focus on project development and implementation.

¶14 **Vice President Cadmus:** Who attended one or both of our inaugural competitive intelligence programs? Oh, no! Oh, one person. This is a new addition to our line-up of in-person training. We hosted the foundation’s course last fall and the Strategies and Analysis Course was held in May. Both courses were led by CI-maven Zena Applebaum.

¶15 **President Lambert:** So, please raise your hand if you have noticed we have a new website. Alright! I am actually pleased to see many hands raised. The content migration of the website also included a migration of the membership database. The project, consisting of the website and the database, was a mammoth undertaking that took our staff over eighteen months to achieve. Personally, I think it has been a great success. (Applause.)

¶16 **Vice President Cadmus:** It has been wonderful! It has many improved search features. We now have Boolean search and taxonomic functionality.

¶17 **President Lambert:** The improved knowledge center features a lot of SIS content, to help share resources across AALL entities for the benefit of everyone. Resources include tool kits, research guides, best practices, and more. Many of you raised your hands as we mentioned our strategic initiatives, and most of the initiatives have one thing in common: they impact your education and success as legal information professionals. I am very proud to roll out one of the most important outcomes of the 2016–2019 goals, and that is the AALL Body of Knowledge or BoK. Technically, it is under the knowledge pillar, but it certainly impacts both community and leadership, as well. So, what is the BoK and what’s in it for you and me?

¶18 The AALL Body of Knowledge, the BoK, is designed to serve as a blueprint for career development. It defines the domains, the competencies, and the skills today’s legal information professionals need for success. It is a blueprint for career development. Did I take some of your lines?

¶19 **Vice President Cadmus:** That’s okay.

¶20 **President Lambert:** The names of the core content areas of expertise: Competencies are the key knowledge areas required for proficiency in each domain; skills are the actions demonstrating the required knowledge and experience to appropriately practice the competency through actions.

¶21 **Vice President Cadmus:** Let’s look at the six domains: The first one is Professionalism and Leadership at Every Level. Then, we have Research and Analysis, Information Management, Teaching and Training, Marketing and Outreach, and Management and Business Acumen.

¶22 Through the domains, competencies, and skills, the BoK assists legal information professionals in identifying strengths and opportunities. What is really exciting is that all professional development content, including the Annual Meeting
and Conference programs, publications, webinars, and resources, will now identify applicable domains.

¶23 President Lambert: That’s right. The concept of the content areas that we have been using to categorize Annual Meeting programs will now extend to all professional development content, which will be marked with applicable domains and the corresponding icons.

¶24 Vice President Cadmus: So, what is next? We are working on incorporating the domains into our content, and we are in the process of creating later resources to help guide you in your professional paths. You will see them in the AALL Spectrum, you can explore the domains in the Knowledge Center, and you will see it prominently next to webinars on the website.

¶25 President Lambert: We are very excited to roll out the BoK as the universal benchmark for legal information professionals and to develop and deliver professional development programs and tools to meet these benchmarks. I look forward to hearing your feedback about it.

¶26 Vice President Cadmus: So to all of you specialty bloggers, you are getting a sneak peek here at AALL 2018. We will officially launch the BoK on Thursday with a press release and an e-blast to all of our membership. (Applause.)

¶27 President Lambert: Speaking of press releases, that reminds me of one last important initiative for us, that is increasing our visibility to the broader legal community. Over the past year, Kimball Hughes Public Relations has helped us garner more than 1200 mentions in the legal and mainstream press. That means that we either had stories written about us, stories that quoted us, or stories about broader legal issues affecting the industry where we were included thanks to our proactive efforts. This includes your Executive Board of Directors’ efforts last June to highlight the discriminatory policies being enacted in Texas toward the LGBTQ community. Actually, it was a year ago today that all of the television coverage was broadcast across the nation on that as well as the ongoing discussions right now with LexisNexis about the company’s sales policies.

¶28 Vice President Cadmus: What’s more, these stories that included AALL in some fashion have been shared across Facebook nearly 7000 times between June 2017 and June 2018. They were shared 756 times on Twitter and more than 400 times on LinkedIn. In total, stories about or involving AALL were shared across social media more than 10,170 times this past year. (Applause.)

¶29 President Lambert: The part that excites me the most is that all of this media coverage has put the AALL name in front of an aggregate readership of 398 million news consumers for the year. That’s more than the entire U.S. population. We have come a long way and we are just getting started!

¶30 Vice President Cadmus: What’s next for AALL? As we continue to implement our 2016–2019 goals and build on our success, this November, the Board is going to be hard at work. We will start working on our three-year plan for 2019 through 2022. We will be reaching out to all of you as we begin this strategic planning process. Member participation is critical to our success, so I hope you will contribute when we call upon you, you, and you!

¶31 President Lambert: Femi and I, and the rest of the Executive Board and the staff hope that you find these successes valuable. We will happily take your questions and comments at the Members Open Forum immediately following this meeting. (Applause.)
Thank you, Femi. So, I now invite Jean Willis to the podium to give the Treasurer’s Report.

**Ms. Jean L. Willis** (Sacramento County Public Law Library, Sacramento, California): Thank you, Greg. Good afternoon. I am pleased to be with you today to share a summary of our Association’s financial statements for the 2017 fiscal year, which ended on September 30, 2017. Not quite as exciting, but equally important for the health of our Association.

Today’s report was culled from the Treasurer’s Report that appeared in the May/June issue of the 2018 *AALL Spectrum*, at page 10.¹ We also have a link to that report for the conference. The *Spectrum* article features three charts summarizing the data presented by our auditors, Legacy Professionals.

The first slide provides a snapshot of the Association’s assets. The Association’s largest asset is its investment portfolio. This portfolio is invested in a variety of fixed income instruments and managed equities, such as corporate funds and mutual funds. Last year was a great year for market investments, so as of September 30, 2017, over $482,700 of our investment income was realized. That was an increase over the $421,000 that we realized in 2016.

The next slide summarizes our fund balances. Of the four fund balances depicted, the largest percentage of our funds falls within the large blue wedge depicting the Permanent Investment Fund. The 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. 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.

The final slide shows our fund revenues. We saw a total revenue of $4,189,179 in 2017, which was just 1.9 percent, or $82,500, less than what we received in 2017.

The three major sources that fund our programs and activities are membership dues, Annual Meeting registrations and fees, and revenues from the *Index to Foreign Legal Periodicals*. Membership dues of $921,984 were collected in 2017. This is up from the $906,332 collected in 2016. Revenue from the Annual Meeting was $1,156,557, which was a slight decrease of about 8 percent from the prior year, while AALL realized $517,486 in income from the *Index to Foreign Legal Periodicals*.

What we do know is that our portfolio is delivering a good return on our investment. Addressing Association revenues is and will continue to be a priority for the Board and the Association staff. Cost-cutting measures and reduction in overall expenses ensure that our Association has a strong financial health. If you have any questions about the information presented in today’s report or in the article, please feel free to contact me or Paula Davidson.

As I round the corner of my second year in office, I feel much more confident in my comprehension and understanding of our Association’s financial condi-

---

tion. I would like to acknowledge, especially, Executive Director Kate Hagan’s helpful guidance to me over the past few years. (Applause.)

¶41 Kate, you will be missed. Also, many thanks, as always, to Paula Davidson, our fabulous Finance Director, who makes it all look so easy. Paula, you are great. You help me out to no avail. A final shout out to this year’s Finance and Budget Committee members, Greg Lambert, Femi Cadmus, Emily Florio, and Mary Jenkins. This committee and the Board as a whole review the Association’s finances judiciously to ensure that AALL makes a robust and vital Association that continues to meet and advocate for our members’ needs. Thank you very much. (Applause.)

¶42 President Lambert: Thank you, Jean. I now invite Luis Acosta to the podium to give the Secretary’s report. (Applause.)

¶43 Mr. Luis Acosta (Library of Congress, Washington, D.C.): Thanks, Greg. Good afternoon. The ballots for AALL’s election of Officers and Executive Board members were distributed to all voting members on September 29, 2017, returned on October 31, 2017, and tabulated on November 1, 2017. This schedule is consistent with the Bylaws.

¶44 I want to thank all candidates who stood for office this past year and who are standing for office this coming year. We are a great professional association because of your willingness to volunteer and serve.

¶45 The successful candidates were: Michelle Cosby, President-Elect; June Liebert and Karen Selden, members of the Executive Board. (Applause.) Continuing on the Board will be: Femi Cadmus, President; Greg Lambert, Past President; Jean Willis, Treasurer; myself, Luis Acosta, Secretary; Beth Adelman, Mary Jenkins, Meg Kribble, and Jean O’Grady, members of the Executive Board. (Applause.) 1,179 ballots were received, and none were invalidated.

¶46 I would now like to introduce the candidates for the 2018 election coming up in October. Candidates, when I say your name, please stand. For President-Elect: Emily R. Florio and Marlene Gebauer. (Applause.) Candidates for Treasurer: Joy Shoemaker and Cornell H. Winston. (Applause.) For the Executive Board: Angela T. Baldree, Emily M. Janoski-Haehlen, Joseph D. Lawson, and Jason R. Sowards. (Applause.) Thank you to all of the candidates for agreeing to be on the Executive Board. (Applause.)

Memorials

¶47 President Lambert: Thank you, Luis, for your report. It is now time to remember our colleagues who died during the past year. They were members and friends of our Association: Keith Andrew Berthrong, Charlotte Leigh Bynum, Alfred Joseph Coco, Richard A. Danner, Stephen Ligda, Kathryn B. Mackey, Deborah Anne Maglione, David Merkin, Margaret Milam, Paul A. Rothman, Nancy Mahood Weiss. Are there any others who should be remembered at this time?

¶48 Speaker: David Donaldson.

¶49 Speaker: Beth Mobley.

¶50 Speaker: George Grossman.

¶51 President Lambert: Thank you. Now, please stand and join me in a moment of silence. (A moment of silence was observed.) Thank you.
President’s Certificates of Appreciation

¶52 President Lambert: Each year the president has an opportunity to present Certificates of Appreciation to people or organizations who have contributed to the Association or the profession in exceptional ways this year. I was pleased to rely upon their leadership and direction. It is my pleasure to present certificates to the following individuals.

¶53 Cassie DuBay, in recognition of your leadership as the Awards Creation and Review Special Committee Chair. (Applause.)

¶54 James E. Duggan, in recognition of your leadership as the Law Library Journal Editor from 2013 to 2018. (Applause.)

¶55 June Liebert, in recognition of your leadership and generosity for hosting the Cooperative Intelligence Courses at the Sidley Austin LLP Chicago office. (Applause.)

¶56 Elizabeth Outler, in recognition of your leadership as the Guide to Fair Business Practices and Licensing Principles Special Committee Chair. (Applause.)

¶57 Gail Warren, in recognition of your leadership as the AALL Executive Director Search Special Committee Chair. (Applause.) Gail reminded me she hasn’t finished her job yet, so we may take that back. (Laughter.)

¶58 The entire AALL staff is also recognized for all of their behind-the-scenes efforts that have helped make this meeting a success. The staff is truly dedicated, and they go above and beyond the call of duty to be sure everything runs smoothly. They are all remarkable individuals and I ask our staff to please stand and be recognized. (Applause.)

Introduction and Remarks of Special Guests

¶59 President Lambert: We are delighted to have in our attendance special guests from our counterpart law libraries from other countries. I will now introduce each of them, and invite them to go to one of the floor microphones for a brief greeting from their Association. Dunstan Speight, President of British and Irish Association Law Libraries. (Applause.)

¶60 Mr. Dunstan Speight (Lincoln’s Inn, London, England): Greg, thank you very much indeed for inviting me here to what has been a very interesting and thought-provoking conference. It has also been a great opportunity to get to know Baltimore, as well. It is a very fascinating city. I have enjoyed it. I think the fact that you welcome a Brit to Baltimore after we tried to burn the city down in 1814 is remarkably magnanimous of you, so I do send greetings.

¶61 I would urge you to think about our next conference, which we are very excited about because it will be our 50th anniversary conference, and the anniversary of the founding of the Association. It will be in Falmouth, which is a town in southeast England. From there it is easy to reach some of the most beautiful countryside in England. The date is June 13, 2019. Thank you all very much. (Applause.)

¶62 President Lambert: Anne Marie Melvie, President of the Canadian Association of Law Libraries. (Applause.)

¶63 Ms. Ann Marie Melvie: (Court of Appeal for Saskatchewan, Regina, Saskatchewan, Canada): Good afternoon, everyone. Thank you so much for inviting me to your conference. I have thoroughly enjoyed every aspect of it. I bring greet-
ings and best wishes from the Executive Board and the members of the Canadian Association of Law Libraries. We appreciate and value the innovation we have with our partner and sister association. As I chat with some of the members and look at the subject matter of the wonderful sessions being offered at this conference, it strikes me that our associations share common opportunities, and common challenges, and we can learn from each other.

§64 Now, one thing that I need to learn as President is how to rock a particular piece of clothing like Greg did yesterday. Greg, that suit jacket you were wearing was absolutely awesome! Did you notice that Twitter exploded? I only need to know where you got your suit so I can wear a female equivalent.

§65 Speaking of our conference next year, please consider this your personal invitation to attend. It will be happening before Dunstan’s conference. Our conference will be held May 26 to May 29, 2019, in Edmonton, Alberta. Our theme will be “Inspired Innovation.” Edmonton is a beautiful city in western Canada. It has a vibrant arts and culture scene, a fantastic movie scene, and an incredible library scene, and it is a mere four-hour drive from the Canadian Rockies. It has excellent shopping. There is a brand new mall at the airport. You won’t want to miss the Westminster Mall, which hosts water slides, a wave pool, a skating rink, and three roller coasters. We are pleased to welcome you to our conference. Thank you very much!

§66 President Lambert: I guess the secret is out! I bought the sport coat at the prom section of Macy’s. So, thank you to some seventeen-year-old boy for not wearing it. I would next like to welcome Jeroen Vervliet, President of the International Association of Law Libraries.

§67 Mr. Jeroen Vervliet (Peace Palace Library, The Hague, Netherlands): Thank you, Greg, for increasingly improving the pronunciation of my horrible Dutch name. It is my pleasure to extend the greetings of the International Association of Law Libraries to the American Association of Law Libraries and I congratulate the Association with this highly interesting program that we have experienced in Baltimore in 2018. The Dutch do not have the same relationship with Baltimore as the English have, so it is okay for me to walk about in your fair city.

§68 We also have an Annual Meeting, which we will hold next year in Sydney, Australia. However, this year IALL plans to have its annual course from September 30 to October 3, 2018, in Luxembourg, and I cordially invite you to visit our website and look at the program. Highlights include international and the modern character of Luxembourg law, banking, vacation, outer space exploration, and so on. Please plan on registering for the program as well.

§69 Finally, I want to draw, once again, your attention to our journal, the International Journal of Legal Information, published by Cambridge University Press. Please subscribe or continue your subscription. Thanks, Greg, for giving me time for extending greetings, and I wish you the very best continuation of this conference.

§70 President Lambert: I have had the honor of going to all three of those conferences and I highly recommend if you get a chance to go to any or all of them, please do so. My one disappointment was that my IALL conference was in Atlanta. Not much international travel for me! Still, it was an excellent conference. Thank you all.
New Business, Announcements, and Adjournment

¶71 President Lambert: Are there any other items of new business? Okay. Receiving no requests for new business, are there any announcements to be made? Okay. We have completed our agenda and the 2018 Business Meeting of the American Association of Law Libraries is now adjourned. (Applause.) We hope you will stay for the Members Open Forum, which will begin immediately. Saskia Mehlhorn will serve as the moderator. The Forum will be held for 30 minutes, if discussion warrants.

(WHEREUPON the 2018 General Business Meeting was adjourned at 4:03 P.M.)
Appendix A

Report of the Director of the Government Relations Office

Ms. Emily Feltren (American Association of Law Libraries, Washington, D.C.): AALL has a strong and enduring commitment to promoting public policies that protect public access to legal information, support continuous improvement in access to justice, and ensure a healthy democracy. We celebrated several policy successes this year, due in large part to the dedicated and sustained advocacy of our members.

Federal Policy Priorities

- AALL was a key stakeholder in the House Committee on House Administration’s review of Title 44 of the U.S. Code on Public Printing and Documents. The result of the Committee’s year-long review was the introduction of the FDLP Modernization Act of 2018 (H.R. 5305), which AALL strongly supports. During its review, the Committee invited AALL members Mary Elizabeth (Beth) Williams and Stephen Parks to testify.
- We celebrated passage of language in the Fiscal Year 2018 omnibus appropriations act (Public Law No 115-141) that requires the Library of Congress to publish all non-confidential Congressional Research Service reports on a publicly accessible website.
- President Greg Lambert testified before the House of Representatives Appropriations Legislative Branch Subcommittee in support of Fiscal Year 2019 funding for the Government Publishing Office (GPO) and Library of Congress/Law Library of Congress. The House and Senate Legislative Branch appropriations bills provided the requested level of funding for GPO, and a significant increase for the Library of Congress.
- We filed an amicus curiae brief with the U.S. District Court for the District of Columbia in response to National Veterans Legal Services Programs, et al. v. United States of America, calling on the judicial body to ensure that the Administrative Office of the U.S. Courts makes electronic federal court records freely available “to the greatest extent possible.” We also coordinated submissions to the House Appropriations Financial Services Subcommittee in support of improved access to PACER.
- We lobbied for additional privacy and transparency measures as Congress considered extending the warrantless spying authority known as Section 702. While those efforts ultimately failed, we continue to work with our coalition partners to ensure oversight of government surveillance programs.
- We advocated for a strong and independent Law Library of Congress in the face of the Library’s new Special Announcement 18-5 “User-Centered Realignment.”
- We fought back a number of legislative proposals that would have restricted public access to print legal materials, and worked with Congressional staff to ensure that any language about Congressional printing does not negatively impact public access to information or information distributed to libraries through the FDLP.
AALL issued *eBriefings* in response to President Trump’s plan to terminate Deferred Action to Childhood Arrivals (September 2017), in support of net neutrality (December 2017), in celebration of Sunshine Week (March 2018), and to call on President Trump to end the separation of families at the U.S. border (June 2018).

**State Policy Priorities**

We celebrated enactment of the Uniform Electronic Legal Material Act (UELMA) in Utah, which brought the total number of enactments to eighteen. As of this writing, UELMA is awaiting the governor’s signature in Ohio. 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. AALL’s UELMA advocacy resources are located on AALLNET.²

AALL also provided guidance and assistance to members and chapters on issues related to government law library funding.

**AALL’s Advocacy Team**

We held AALL’s Virtual Lobby Day on April 12, 2018, with our online advocacy training held immediately preceding the Lobby Day. Members were invited to contact their members of Congress through our Legislative Action Center and social media in support of the FDLP Modernization Act.

AALL provided lobbying and advocacy support to chapters, including strategy deployment, campaign planning, and limited direct lobbying support, while being careful not to trigger state lobbying laws. This year, several chapters, including the Law Library Association of Maryland, Law Librarians Association of Wisconsin, Minnesota Association of Law Libraries, Northern California Association of Law Libraries, San Diego Area Law Libraries, Southern California Association of Law Libraries, and Southeastern Chapter of the American Association of Law Libraries, wrote letters to Congress in support of the FDLP Modernization Act.

AALL members are invited to join the new AALL Advocates Community³ to stay informed about the latest federal and state policy news with weekly updates from the Government Relations Committee and timely action alerts from the Government Relations Office. This new community replaces AALL’s Advocacy Listserv, which was retired in April 2018.

Members can also stay in the know by reading the monthly *Washington eBulletin*, which provides updates on AALL’s top public policy issues, highlights action alerts, and provides advocacy-related chapter news.

**Report of the Executive Director**

**Ms. Kate Hagan** (American Association of Law Libraries, Chicago, Illinois):

This is my last report to you after eleven years at AALL. I have been in association

---

³. See My Communities, All Communities, AALL, https://community.aallnet.org/communities/allcommunities [https://perma.cc/ZM5C-8DWX].
management for more than thirty years, and it has allowed me to meet and work with people who love the work they do and the profession they have chosen. AALL is no different, and its success is because of members who are engaged and advocate so passionately for their profession.

It was a pleasure to serve as AALL’s Executive Director. I have had the good fortune to work with a truly dedicated staff, board, and membership to move the Association forward. Throughout its 112-year history, the Association continues to evolve, adjust, innovate, and successfully navigate and envision its future. I am privileged to have played a role in its ongoing history.

**Association Year 2017–2018: Highlights**

**Strategic Plan Progress**

We continue to focus on moving the Association’s strategic plan forward to ensure we meet all of its goals. Each year the Board adopts a plan, which includes their priorities for the year related to the strategic plan. Staff then works with the Board and special committees to meet the goals of the annual plan.

Under the plan **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 development of an Innovation Boot Camp was a goal this year, and we are now in the planning stage for holding the program in spring of 2019. This will add more support to the Innovation Tournament launched last year at the 2017 AALL Annual Meeting & Conference.
- Creating a knowledge management system that involves members and key stakeholders in generating, capturing, sharing, and using knowledge was another goal. To meet this goal, in February 2018, AALL completed the migration to a new Association Management System and Content Management System, and the new AALL website was launched. To date, we have received positive feedback regarding the new website’s design, the revamped navigation and organization structure, the improved search capabilities that support Boolean search, and an updated taxonomic functionality. In addition, the new and improved Knowledge Center now showcases toolkits, research guides, best practices, and other content from SISs. In addition, we continue to make use of the website’s structure and features in order to aid member innovation, collaboration, and advocacy.
- The creation of an evergreen process for identifying current and emerging competencies that translate into actionable knowledge points to apply to education, publications, and programs resulted in the development of the Association’s Body of Knowledge (BoK). The BoK was produced through the work of a special committee chaired by Catherine Dunn.

Under the plan **Community Goal**: *Providing a platform and opportunities for meaningful engagement between and among members and key stakeholders throughout their careers*, we undertook the following initiatives:
• A new SIS content engagement community, consisting of SIS chairs, vice chairs, webmasters, and other key individuals involved with resource development, was launched in early June. Participants will provide their input on “hot topic” discussions and upon completion of every conversation, the resources and topics discussed will be summarized and shared with the AALL membership through the Members Open Forum. In addition, our staff members will continue to regularly monitor the discussions within each SIS community to help identify content and encourage SISs to share their content with the rest of the AALL membership. Finally, digital ribbons that acknowledge community participation have been updated and new ribbons, such as the Champion the Profession ribbon, have been released.

Professional Development

The AALL Body of Knowledge (BoK) is designed to serve as a blueprint for career development by legal information professionals, including future professional development opportunities. The BoK includes domains (core content areas of expertise), competencies (key knowledge areas required for proficiency in each domain), and skills (actions demonstrating the required knowledge and experience to appropriately practice the competency). Approved in late 2017, we are now working diligently to incorporate the BoK into all of our education and professional development content. Icons for each domain have been designed so that members can easily identify what domain(s) are covered by the content they are accessing. A brochure has also been produced and was designed to create awareness and visibility for the BoK. Visit the AALL Knowledge Center to see how AALL education and resources are being tagged and made available by domain.

This year, we held our first Competitive Intelligence workshop series, which included Competitive Intelligence Foundations (held in October 2017) and Competitive Intelligence Strategies & Analysis (held in May 2018).

We also held our second AALL Innovation Tournament to encourage support for the development and implementation of compelling workplace innovations. We are also planning an Innovation Boot Camp to help members learn innovation competences to build support for and foster a culture of innovation in their workplace.

Aligned with our strategic plan is providing information and resources to help members solve problems, develop new strategies, and stay informed about trends and developments in legal information.

The daily KnowItAALL has grown in popularity this year, with more than 700 nonmember subscribers. This expanded reader base helps us to highlight the value of the profession and the work our members do every day in support of the legal system. We also worked to expand our social media reach through content sharing on Twitter, Facebook, and LinkedIn. Our “follower” base for Twitter is at 4500 and our LinkedIn is at 1700. Both have grown by 1000 since January 2017.

We are currently developing a *State of the Profession Survey*, which is scheduled for publication in late fall. The survey will document the current landscape of law libraries, specific to each library type. It will benchmark in the following areas: Budget, Facilities, Standards, Constituent Services, Staffing & Training, Technology & Research, and Collections & Resources.

**Media Relations and Outreach**

An important goal related to our strategic plan was increasing our visibility in the broader legal community. Last June we retained Kimball Hughes Public Relations, which has resulted in more than 1200 mentions in the legal and mainstream press. This includes stories written about us, stories that quote us, or stories about broader legal issues affecting our industry where we were included due to our proactive efforts. We will continue to work with Kimball Hughes in the year ahead to build on this success.

**AALL Membership**

AALL continues to have an active and engaged membership. The 2017–2018 membership year ended with a total of 4301 members, which is seventy fewer than the prior year.

Efforts to grow and engage our members continue. This time last year we launched the Member-Get-a-Member campaign and, as of mid-June, we have had forty-seven new members recruited by forty-four current members. Two new membership options were launched in May of this year. Our Champion Upgrade recognizes members’ commitment to the profession and work as ambassadors to the Association. Thirty-eight are being recognized here at AALL 2018. We also introduced a pre-payment option for our retired members where they can continue enjoying the benefits of AALL membership for a one-time renewal rate of $425. Sixteen members have taken advantage of the Sustaining Member payment option.

**Collaboration & Cooperation**

We continue to meet and collaborate with a number of Associations and organizations, including:

- American Bar Association, Section on Legal Education and Admission to the Bar
- American Library Association
- Association of American Law Schools
- 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 Association of Legal Administrators, the International Legal Technology Association, and the Legal Marketing Association annual meetings.

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
- Silver Level: Thompson Reuters, Wolters Kluwer
- Bronze Level: Fastcase
- Contributor: William S. Hein & Co., Inc.

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.

They are a fabulous team, and I have valued their professionalism, support, and friendship for the past eleven years.
Ms. Saskia Mehlhorn (Norton Rose Fulbright, Houston, Texas): Hello, everyone. We received two questions in advance. It is going to be a good start. The first one comes from Malinda Muller (LA Law Library, Studio City, California): “With more SISs crossing over, what is AALL’s leadership’s opinion on restructuring the costs of participation in multiple SISs and encouraging information sharing, insight, and experience?”

President Greg Lambert (Jackson Walker LLP, Houston, Texas): I will take that one. One of the things with the SISs is that we want to make sure that ideas like this bubble up from the SISs. The SISs should be asking the Board for changes that they want. I suggest on an issue like this, that the SIS, the SIS chairs, and the SIS counsel chairs talk with the liaison, and with Heather [Haemker], and once you have decided what it is you would like to do within the SISs, please bring that to the Board. We do not want the Board trying to define what it is that the SISs want. (Applause.)

Ms. Mehlhorn: The next question comes from Deborah Rusin (Freeborn & Peters LLP, Chicago, Illinois): With more members coming in for the PLL Summit on Saturday and not being able to stay for the entire conference, will the exhibit hall be opening early on Saturday since it is no longer open on Tuesday?

President Lambert: I will take that one as well. With the pre-conference workshops and the PLL Summit, we want to make sure that those have the ability to go uninterrupted for the time that they are set up, and we have the opening reception in the exhibit hall starting at 5 o’clock, which is not that long after those workshops and summit are finished. We are making sure that they are open, and you do have a chance to see the exhibitors on Saturday evening.

Ms. Mehlhorn: Thank you. At this point, there are no other questions that we received in advance. I just want to say, if there are any questions, please come up to the microphone, state your name, your organization, and your question.

Ms. Meg Butler (Georgia State University College of Law Library, Atlanta, Georgia): My name is Meg Butler. I am from Georgia State University College of Law Library. I have a question. This comes from the very beginning of the Business Meeting. I missed the beginning of the explanation of how the sponsorship for our reception had changed. What I heard was something that sounded like Headquarters had decided that our vendors and sponsors for our reception could no longer do it. I was curious if you could talk through how the decisions were made this year about sponsorship and how the sponsorship was allocated across the group members?
¶7 **Ms. Kate Irwin-Smiler** (Wake Forest University Professional Center Library, Winston-Salem, North Carolina): Probably because we are roommates, this is a very similar question. Our meeting was not sponsored. It seems incredibly unfair why that was and we are hoping for some clarity about how sponsorship was happening this year and in the future. My question is about providing transparency for the events with regard to sponsorship. I think that is part of the same question as Meg’s.

¶8 **Ms. Kate Hagan** (Executive Director, American Association of Law Libraries, Chicago, Illinois): I think what you are referring to is we had called bundled sponsorship. Are you referring to the Government Documents breakfast?

¶9 **Ms. Irwin-Smiler:** Yes.

¶10 **Ms. Hagan:** There were a number of breakfasts like that that were considered a bundle sponsorship. I am responsible for coordinating some of the sponsorships. That particular breakfast was a sponsorship opportunity that the vendors did not think they wanted to put their dollars into those bundled events. Frankly, they are smaller events. They don’t fill up. It is marketing opportunities for them. Thus, I communicated with all of the SIS chairs to let them know, and I also communicated every year with the SISs to ask them what they would like to have sponsored. This keeps them up to date about what is sponsored and what is not sponsored. Each year it can change depending on how many sponsors there are, and what they allocate towards sponsorship. Is that responsive to your question?

¶11 **Ms. Irwin-Smiler:** I think so. I think what would be useful from an association point of view would be some transparency so far as what gets funded and sponsored, and what doesn’t. I work with several SISs that would be interested in knowing where the funding goes.

¶12 **Ms. Hagan:** The sponsorships are listed on the website for the Annual Meeting. They are also listed in your programs. If something is sponsored, the conference program will list it. The conference website also lists sponsors and what they sponsored.

¶13 **President Lambert:** I will add briefly to that as I think one of the issues that we have run into has been a paradigm shift in what the vendors think gives them the best bang for their buck on sponsorships, and the breakfasts, and the various lunch meetings are the ones that we are seeing are having more and more difficulty in finding sponsors. This is just me, your soon to be ex-President, saying that I would work with vendors to see how they can become part of the content of your meeting. Also understand the pressures that those vendors who typically sponsor your meetings are under, as they have to go back and tell their marketing department why their marketing budget is valuable.

¶14 **Ms. Irwin-Smiler:** Where is that conversation happening? Are you having a conversation with these vendors?

¶15 **Ms. Hagan:** That is one of the responsibilities of the Executive Director, coordinating all of the sponsors with the Sponsorship Program.

¶16 **Ms. Irwin-Smiler:** It sounds, Greg, like you are talking about the organizers of the meeting having a conversation with the sponsors directly, but Kate is indicating that she is responsible on an Association level. It sounds like two different things.

¶17 **President Lambert:** That is what I was saying. My suggestion is that you work with those vendors.
Ms. Hagan: That's against our policy. You will need to work with me. I email AALL entities and talk to them about what their event is, how many people they expect, and why should vendors sponsor it. I work hard every year to try to get as much money as I can for these events, but vendors are making different decisions how they are allocating their dollars.

Ms. Mehlhorn: There is another question? Mark?

Mr. Mark Estes (Bernard E. Witkin Alameda County Law Library, Oakland, California): Mark Estes. I noticed one key publication missing from the BoK, the Law Library Journal. That was just a typo, wasn’t it? You said AALL Spectrum and AALL Community and other things, but I didn’t hear Law Library Journal. Perhaps I was tuned out. I just wanted to find out.

Ms. Hagan: Mark, it may not have been in the script, but they are part of it.

Mr. Estes: Very well. Now, as in sponsorship, would it be fair to say that we, the members, need to help the Executive Director sell ourselves to our vendors, just as those of us who are trying to fundraise sell our organization to potential donors? We have got to help you understand how they will benefit by sponsoring our events. Would that be fair?

Ms. Hagan: That’s completely fair. You can talk to the vendors about what you do as law librarians and why you are a valuable asset. At the end of the day, I am the one doing the fundraising. We will give you money and allocate it properly. That way, we record it properly, as well. We should promote the Association and the opportunity to sponsor us, and then throw it back to me, the Executive Director, to take it from there.

Ms. Mehlhorn: We have another question.

Ms. Taryn L. Rucinski (U.S. Courts Library, U.S. Court of International Trade, New York, New York): Hi, everyone. How are you today? My name is Taryn Rucinski. Actually, I am a U.S. Coordinator, but I am not here for that. I am actually here because I am an Adjunct Professor with St. John’s Library Science Program. One of the things I would like to bring to the Board’s attention is kind of a quiet crisis of preparation for potential librarians.

St. John’s recently suspended its law concentration primarily because of budgetary reasons, but also because we don’t have enough people in the classroom even though we have an online program. In surveying what other programs are doing, we are finding that even schools that are accredited and listing law concentration, they are not actually functionally running them. These include places in the northeast, such as Pratt, Rutgers, and some of the student schools, such as St. John’s. If you see less and less basic research, and subject matter research classes disappearing from the library science curriculum, how are we going to adequately prepare librarians for this particular career?

Vice President/President-Elect Femi Cadmus (Cornell University Law Library, Ithaca, New York): We are aware of this. We had a Board member bring up the St. John’s situation to us at a Board meeting. Of course, we are very concerned about this new development and the final phase of our strategic plan is to strengthen our relationship. I will consider library programs from the school. It is something we are going to be looking at very closely this fall. Thank you for bringing this up, and keeping us concerned, as we want to protect the future generations of librarians and library science students. The programs decimated very quietly. The impacts will be very negative, and we are aware of that, and we have tried and will try to address it.
Ms. Rucinski: I appreciate that. Thank you very much.

Mr. Steve Anderson (Maryland State Law Library, Annapolis, Maryland): I was just wondering whether the Guide to Fair Business Practices still has language that allows the Executive Board to not accept donations for vendors that do not comply with the Fair Business Practices?

Ms. Hagan: I don’t think that is in the actual guide. It was not one of our policies when we used to do the price index. It did not have language about the Fair Business Practices.

Mr. Anderson: Okay. Thank you.

Ms. Janice Henderson (Brooklyn, New York): This question has to do with the Annual Meeting. Way back when I first started being a committee member, back in 1980, my impression was that every room was packed, including the Business Meeting. Over the years, the Annual Meeting cut out Wednesday because it was too long. Now, people are leaving early on Tuesday. So this year, the Annual Meeting ends Tuesday afternoon, after the luncheon, and the exhibit hall closes Monday evening. My question is, has there been any discussion about the future of Annual Meeting? Now it is actually Sunday, Monday, half a day Tuesday, and Saturday is packed with Association meetings, and the workshop, and things like that. We are decreasing the number of days. What is the future of the Annual Meeting? If we cut back anymore, if you cut back to Monday, then what is the point of us coming for two days?

President Lambert: I would say that we have been tweaking this Annual Meeting for decades. What it was like in the ’80s, it was then different than what it was like in the ’90s, and the next decade. There was a strong push to reduce it and drop the Wednesday because people, especially those that were in firms, felt like it almost cut out an entire week if it were on a coast. So we evaluated that. I don’t remember at the time, but I am positive that we probably did a survey of the membership on that, and reacted to what the members were asking us to do. Now, I have heard very little negative feedback about the content from everyone I have talked to that have attended this Annual Meeting. The content is strong.

We are still seeing about the same percentage of total membership attending the Annual Meeting every year. We look at everything when it comes to Annual Meeting: the location and the cost. We are evaluating whether to move away from a convention center and go to hotel venues. It is something we continually look at over the years, based on the financial incentives, and needs of the organization, and on the time and other constraints of the membership to get there.

Do we have to continue doing it the way we are doing it? That has never really been the story. We have always been changing. I imagine that we will continue to change and try to do things that get more attendance, better content, good locations, and make sure that the time is appropriate for each and all members.

Ms. Hagan: If I can add to that, we do a survey of the membership every two years, and the Annual Meeting is always the most highly rated member service that we provide. People like the programs. They like the networking. They like the opportunity to see each other. Also, people do leave early on Tuesday because they have to go home. What can we do to make it better? We still have the same number of programs. On Tuesday, people could still get in the programming in the morning and then leave if they needed to get back home, or to get work done. We did not cut out educational opportunities. I think that is important to know, because
that is the most important thing to do at the Annual Meeting. We did that in response to members’ comments.

¶37 **Ms. Henderson:** Kate mentioned that the programming has not decreased and I am saying that there is so much going on at the same time that it is too hard to pick what programs you want to attend. It is overwhelming at this point that we have so many programs at the same time, and a limited number of days of programming. I remember when the pre-workshops were on a Thursday or a Friday. Saturday was the Association meeting, all of the community meetings, and the Annual Meeting opened on Sunday. I know we cannot go back to those days, but maybe we should go to more of a virtual convention where we spread the programs out during multiple months as opposed to two-and-a-half or three days now. Just a suggestion.

¶38 **Ms. Mehlhorn:** I would like to get to another question. Steve?

¶39 **Mr. Steve Lastres** (Debevoise & Plimpton LLP, New York, New York): I just want to follow up about Steve Anderson’s question and maybe ask it a little differently about AALL’s practices. The Board met with one of our largest vendors, who was actually a Gold Sponsor, and at any one of our offices, that would have been a conflict of interest, since we were receiving monetary income from that vendor for the Annual Meeting at the same time we are trying to represent all of the members of the Association in that practice. Is that an antitrust violation?

¶40 I just have two questions. The Board had discussions about what they might do about that, and since there wasn’t a lot of concrete follow-up in terms of the communication that went out about it, what are the next steps? Essentially what we understood was that Lexis was hiding behind the MBA that they signed, and their law firms, but there wasn’t much said about what the Board might consider about future options. If you could answer that, and, secondly, whether you believe this is a conflict of interest because we are receiving funds? Thank you.

¶41 **President Lambert:** Well, I would leave it to Steve to give me the easy one. In essence, that is a really good question on that because there is not necessarily what we considered a pure conflict. It was something that we discussed fully before we met with them. I will say that I don’t think in this particular interest there is a pure conflict of interest, but it is something we consistently address. Are we handling this in the right way? Are we allowing certain things to influence us? At this point, we have solidly answered no, because we have all agreed that if something happens and the money goes away because of what we are doing, that is just how it is going to be. I don’t think the money is influencing the way that we are going forward with this.

¶42 As far as ongoing matters, we are continuing to talk with them, and we are also keeping all options on the table, which run the gamut. I can tell you that there are things behind the scenes that are continuing to go on. Our main goal is to get a change in policy, to have transparency, and to urge the vendor to have more specific conversations with their clients about what is going on so that the clients can better protect themselves, and, if possible without violating MBAs, relay information that would be good information for us to use in communicating to the vendor. So, there is still a lot going on.

¶43 **Ms. Mehlhorn:** One more quick question.

¶44 **Mr. Lawrence Meyer** (Law Library for San Bernardino County, San Bernardino, California): San Bernardino County is the largest county in the United
States. Just real quick. I know a conference is supposed to make money, but keep in
mind, the more you shorten it, that this is a national organization. When are we
ever going to meet west of the Rockies? We have to meet west of the Rockies.
(Applause.)

¶ 45 **President Lambert**: Larry, we are going to Denver in 2021. Well, it is not
yet official. We have not signed the paperwork, but that is what is in motion right
now. It has been approved by the Board to go to Denver. I will say quickly that we
looked very diligently at the west coast, but the realities of how much it cost to host
the Annual Meeting in Seattle, Portland, and San Francisco, and other cities that
are further out west is astronomical. We continue to look at other options. The
western United States is still very important to us.

¶ 46 **Ms. Mehlhorn**: Very quickly.

¶ 47 **Mr. Anderson**: I am looking at the AALL Sponsorship Policy that says,
“The Association has the right to refuse sponsorships provided by business entities
that do not comply with Guide to Fair Business Practices for Legal Publishers.” 1 So,
my follow-up question is: Will the Board do something about non-acceptance
sponsorships?

¶ 48 **President Lambert**: That is something we always consider.

¶ 49 **Ms. Mehlhorn**: Thank you so much. We are at the end of our time and I
urge everyone to go to the AALL Communities and continue the conversations
there and use that as a tool to have a virtual open forum. Thank you so much for
joining us.

(Whereupon, the meeting was concluded at 4:32 p.m.)

---

Author Index

American Association of Law Libraries, 2018 Members’ Open Forum—111th Annual Meeting, 601
Baker, Jamie J., 2018: A Legal Research Odyssey: Artificial Intelligence as Disruptor, 5
Cross, Stephanie, Mark G. Harmon, Shannon Grzybowski, and Bryan Thompson, Remaking the Public Law Library into a Twenty-First Century Legal Resource Center, 115
Dalton, Shamika D., Gail Mathapo, and Endia Sowers-Paige, Navigating Law Librarianship While Black: A Week in the Life of a Black Female Law Librarian, 429
deMaine, Susan David, Access to the Justices’ Papers: A Better Balance, 185
Duggan, James E., From the Editor: The Last Chapter, 445
Eshleman, Michael O., A History of the Digests, 235
Grzybowski, Shannon, Mark G. Harmon, Bryan Thompson, and Stephanie Cross, Remaking the Public Law Library into a Twenty-First Century Legal Resource Center, 115
Harmon, Mark G., Shannon Grzybowski, Bryan Thompson, and Stephanie Cross, Remaking the Public Law Library into a Twenty-First Century Legal Resource Center, 115
Hellyer, Paul, Evaluating Shepard’s, KeyCite, and BCite for Case Validation Accuracy, 449
Janes, Judy, and Patrick E. Kehoe, Memorial: George Stefan Grossman (1938–2018), 579
Keele, Benjamin J., and Nick Sexton, Keeping Up with New Legal Titles, 149, 261, 403, 539
Kehoe, Patrick E., Denny Haythorn, Laura N. (Lolly) Gasaway, and Mark E. Estes, Memorial: Alfred Joseph (Al) Coco (1933–2017), 295
Kehoe, Patrick E. and Judy Janes, Memorial: George Stefan Grossman (1938–2018), 579
Longa, Ernesto A., The History of the University of New Mexico School of Law Librarians’ Fight for Faculty Status and Equal Voting Rights, 93
Martin, Peter W., District Court Opinions That Remain Hidden Despite a Long-standing Congressional Mandate of Transparency—The Result of Judicial Autonomy and Systemic Indifference, 305

607
Mathapo, Gail, Shamika D. Dalton, and Endia Sowers-Paige, Navigating Law Librarianship While Black: A Week in the Life of a Black Female Law Librarian, 429

Mattioli, Kimberly, Access to Print, Access to Justice, 31

Moser, Annalee Hickman, and Felicity Murphy, The Reference Assistant, 59

Murphy, Felicity, and Annalee Hickman Moser, The Reference Assistant, 59

Rasmussen, Jamie Pamela, Horseless Carriages with Buggy-Whip Holders: The Failure of Legal Citation Reform in the 1990s, 221

Sexton, Nick, and Benjamin J. Keele, Keeping Up with New Legal Titles, 149, 261, 403, 539

Sowers-Paige, Endia, Shamika D. Dalton, and Gail Mathapo, Navigating Law Librarianship While Black: A Week in the Life of a Black Female Law Librarian, 429

Sterling, W. Clinton “Buck,” Sources of Alaska Legal History: An Annotated Bibliography, Part I, 333

Sterling, W. Clinton “Buck,” Sources of Alaska Legal History: An Annotated Bibliography, Part II, 477

Thompson, Bryan, Mark G. Harmon, Shannon Grzybowski, and Stephanie Cross, Remaking the Public Law Library into a Twenty-First Century Legal Resource Center, 115

Whisner, Mary, My Year of Citation Studies, Part 1, 167

Whisner, Mary, My Year of Citation Studies, Part 2, 283

Whisner, Mary, My Year of Citation Studies, Part 3, 419

Whisner, Mary, My Year of Citation Studies, Part 4, 561
Title Index

2018: A Legal Research Odyssey: Artificial Intelligence as Disruptor, Jamie J. Baker, 5
2018 Members’ Open Forum—111th Annual Meeting, American Association of Law Libraries, 601
Access to Print, Access to Justice, Kimberly Mattioli, 31
Access to the Justices’ Papers: A Better Balance, Susan David deMaine, 185
District Court Opinions That Remain Hidden Despite a Long-standing Congressional Mandate of Transparency—The Result of Judicial Autonomy and Systemic Indifference, Peter W. Martin, 305
Evaluating Shepard’s, KeyCite, and BCite for Case Validation Accuracy, Paul Hellyer, 449
From the Editor: The Last Chapter, James E. Duggan, 445
A History of the Digests, Michael O. Eshleman, 235
The History of the University of New Mexico School of Law Librarians’ Fight for Faculty Status and Equal Voting Rights, Ernesto A. Longa, 93
Horseless Carriages with Buggy-Whip Holders: The Failure of Legal Citation Reform in the 1990s, Jamie Pamela Rasmussen, 221
Keeping Up with New Legal Titles, Benjamin J. Keele and Nick Sexton, 149, 261, 403, 539
Memorial: George Stefan Grossman (1938–2018), Patrick E. Kehoe and Judy Janes, 579
My Year of Citation Studies, Part 1, Mary Whisner, 167
My Year of Citation Studies, Part 2, Mary Whisner, 283
My Year of Citation Studies, Part 3, Mary Whisner, 419
My Year of Citation Studies, Part 4, Mary Whisner, 561
Navigating Law Librarianship While Black: A Week in the Life of a Black Female Law Librarian, Shamika D. Dalton, Gail Mathapo, and Endia Sowers-Paige, 429
The Reference Assistant, Annalee Hickman Moser and Felicity Murphy, 59
Remaking the Public Law Library into a Twenty-First Century Legal Resource Center, Mark G. Harmon, Shannon Grzybowksi, Bryan Thompson, and Stephanie Cross, 115
Sources of Alaska Legal History: An Annotated Bibliography, Part I, W. Clinton “Buck” Sterling, 333
Sources of Alaska Legal History: An Annotated Bibliography, Part II, W. Clinton “Buck” Sterling, 477
Erratum


It has been brought to the authors’ attention that Catherine Deane wrote about “microaggressions” prior to Ronald Wheeler’s article, in a series of blog posts that were later removed. Catherine has archived those posts on her personal website.1

---
