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Reinforcing the Infrastructure of Legal Research
Through Court-Authored Metadata

Andrew J. Martineau

This article examines how the role of the court system in publishing legal information should be viewed in a digital, online environment. It then argues that courts should author detailed, standardized metadata for their written work product. This practice would result in immediate, identifiable improvements in free and low-cost case law databases, and may beneficially impact the next generation of AI-powered research tools as well.

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** Instructional Services Librarian and Assistant Professor, University of Minnesota Law Library, Minneapolis, Minnesota. This is a revised, updated, and expanded version of Andrew Martineau, My Lawyer Has a First Name, It's G-O-O-G-L-E: Improving Online Access to Case Law Through Court-Provided Metadata (Culminating Experience Project for MLIS, University of Washington Information School, May 13, 2013). I would like to thank Penny Hazelton, whose comments and insights on early drafts of this paper significantly altered its ultimate trajectory. Likewise, I’d like to thank my classmates in the 2013 University of Washington Law Librarianship Program for letting me bounce ideas off of them (even though they had their own papers to write). The participants of the 2016 Boulder Conference on Legal Information deserve my thanks as well for helping me solidify and organize the ideas in this article. Thank you to the librarians at the University of Minnesota Law Library for their helpful feedback, and to Connie Lenz and Scott Dewey in particular for their detailed comments. Finally, I am especially grateful to Miranda Snyder who, after proofreading dozens of drafts of this article over the years, should be awarded a medal (and maybe an honorary J.D./M.L.I.S).
Introduction

¶1 Technology has dramatically altered the legal information landscape over the past half century. This extended, ongoing transition from print to digital has exposed conflicting interests among legal publishers, Internet-native companies, courts, the public, and law libraries. Many in the legal community now enjoy easy access to a much richer universe of information than they did in the print era. Others have not benefited equally from these technological innovations; in fact, as some of the basic tools of legal research cease to be available in print, their ability to access quality legal information may be in danger.

¶2 Law librarians have stood on the front line to confront, implement, and explain these technological advancements, and have guarded against their collateral harms. They regularly advocate for free public access to useful legal information, but this role becomes more difficult in times of lean budgets. Thus, law librarians should endorse policies that appropriately use the free market in furthering these goals.

¶3 This article argues that courts could help reinforce the “crumbling infrastructure of legal research”1 by including detailed, standardized metadata with their written work product. Part 1 describes how the creation, publication, and dissemination of legal information have evolved over the past few decades. Next, part 2 demonstrates how improved, court-authored metadata could help ensure that the public, solo practitioners, and small firms retain access to useful legal information as the legal publishing industry continues to evolve. Finally, part 3 outlines how law librarians might help the courts fulfill their roles as editors and publishers of legal information.

Access to Legal Information in a Digital Age

¶4 Many scholars have covered the long history of U.S. legal publishing, from a variety of angles and perspectives.2 This part begins by reviewing scholarship that

1. This is a reference to Robert C. Berring, The Heart of Legal Information: The Crumbling Infrastructure of Legal Research, in LEGAL INFORMATION AND THE DEVELOPMENT OF AMERICAN LAW 272 (Richard A. Danner & Frank G. Houdek eds., 2007) [hereinafter Berring, Crumbling Infrastructure].

theorizes the recent history of legal publishing, beginning when legal information first became available via remote access to databases like Lexis. Next, it describes selected scholarship on the transition of legal information from print to digital formats, framing a few of the most pertinent issues associated with the decline of print. Finally, this part provides a broad framework for modeling the general structure of the legal information marketplace, ultimately arguing that the shift from print to digital access has created new opportunities for government actors to participate in—and improve—the marketplace for legal information.

Digital Legal Information: Theoretical and Practical Implications

Robert Berring, Peter Martin, Thomas Bruce, and Ethan Katsh are among the scholars who helped conceptualize the evolution of legal information over the past three decades, a period during which the legal information system underwent a seismic shift due to the explosion of legal information available online. Two relevant themes emerge from this body of literature: first, that the shift to digital has fundamentally changed how researchers use and view legal authority (case law, especially); and second, that this shift has expanded the public’s access to the law in some ways, while limiting access in others. Recent scholarship by Susan Nevelow Mart demonstrates—with empirical evidence—another cause for concern: the subtle subjectivity but significant impact of the proprietary algorithms on which this research often relies.

In The Heart of Legal Information: The Crumbling Infrastructure of Legal Research and other works, Robert Berring describes how technological advances and resultant changes in the legal publishing marketplace have affected the concept of legal authority. For example, because publication of an individual court docu-
ment in an existing electronic database costs next to nothing (assuming that the infrastructure for hosting these digital files is already in place), researchers can now access sources of legal authority that they could not access (or access fully) in the print world.8 The most obvious example is unpublished cases, but researchers also enjoy wider access to administrative law, legislative history, and court dockets.9

¶7 This all may seem like good news, but Berring argues that this phenomenon, combined with the ubiquity of full-text searching, may undermine traditional notions of precedent and authority.10 Rather than relying on the West Digest System to guide them to relevant, authoritative, and, usually, appellate case law, contemporary researchers tend to find cases using keyword searches.11 Legal researchers can thus circumvent finding aids like Shepard’s or the Digest System, and access the law directly.12 Because researchers can locate a case without learning its place in the greater structure of the law—or, at least, the structure imposed by an editor at West—the cases they find are divorced from context.13 Furthermore, the assumption that the law has an inherent structure at all becomes exposed as a myth—the law emanating from courts only appears to be innately, rationally structured because of the scaffolding provided by the Digest System.14 In effect, the sheer volume of available published and unpublished case law, floating untethered from context and much of it without real importance, dilutes the authority of the cases that really do matter according to traditional notions of precedent.15

¶8 Attorneys in small firms, solo practitioners, and pro se litigants are especially at risk since they might lose access to crucial finding aids and secondary sources in print without gaining access to the digital tools necessary to thrive in this new information environment.16 Berring, however, sees the situation as transitional and temporary: before you know it, we might all be querying an artificial

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8. See, e.g., Berring, Crumbling Infrastructure, supra note 1, at 287–90.
9. See, e.g., id. at 287–94.
10. See id. at 287–90.
11. See id. at 279; Robert C. Berring, Full-Text Databases and Legal Research: Backing into the Future, 1 High Tech. L.J. 27, 48 (1986) [hereinafter Berring, Full-Text Databases] (noting that this reliance on keyword searching can have negative consequences: because legal concepts can often be described in a variety of ways, formulating good searches is harder than legal research databases advertise to users).
12. See Robert C. Berring, Legal Research and Legal Concepts: Where Form Molds Substance, 75 Calif. L. Rev. 15, 26 (1987) [hereinafter Berring, Form Molds Substance] (“Now the researcher can search the entire corpus of law on a word-by-word basis, free from the constraint of a subject thesaurus. Custom-designed subject structures and searches based on entirely different groupings of subjects are possible once the intervening intelligence is removed.”).
13. See Berring, Full-Text Databases, supra note 11, at 54; see also Berring, Form Molds Substance, supra note 12, at 26.
14. Berring, Form Molds Substance, supra note 12, at 26–27. Ethan Katsh offered an alternative explanation for the “loss of faith in the metaphor” of law as a “seamless web”: even if law had an inherent structure when print was dominant, this structure could not survive in a digital world of “versatile and volatile” data points. See Ethan Katsh, Law in a Digital World: Computer Networks and Cyberspace, 38 Vill. L. Rev. 403, 405–06 (1993).
15. See Berring, Crumbling Infrastructure, supra note 1, at 289.
16. See Berring, Chaos, Cyberspace and Tradition, supra note 4, at 208.
intelligence-powered system in plain language for the answers to our legal woes.\(^ {17}\)

As long as the legal researchers of the future demand that these new systems provide authoritative, useful information, the market will catch up.\(^ {18}\) In the meantime, we’ll be in for a bumpy ride.\(^ {19}\)

¶9 Peter Martin describes the same phenomenon—the transition from print to electronic publishing—but focuses on the opportunities that the Internet creates for courts to directly disseminate information to the public, and the positive effect this could have on the development of the law in general. In *Reconfiguring the Law Report and the Concept of Precedent for the Digital Age*, Martin argues that access to a wider array of case law (such as unpublished and trial court opinions) would promote greater consistency among trial courts; increase the quality of judicial opinions and decisions; and encourage judges to adopt rules that are well reasoned, even if such rules are not necessarily “binding” authority.\(^ {20}\)

To fully achieve the promise of electronic publishing, however, courts would need to take a more active role in publishing their cases (in terms of using the right formats, encoding documents with high-quality metadata, and providing a means for authentication, among other things).\(^ {21}\) In addition, these “slip opinions,” pulled directly from a court’s website, would be truly useful only if the state adopted vendor-neutral citation policies.\(^ {22}\)

¶10 Thus, Martin tends to argue that we can avoid many of the problems identified in the shift to digital primary law if we implement the technology in a thoughtful, intentional way. Rather than a threat to the status quo, the transition to online legal information creates new opportunities for courts to assert control over their case law.\(^ {23}\)

¶11 Thomas Bruce, like Martin, was instrumental in the creation of the Legal Information Institute (LII) at Cornell. In *Public Legal Information: Focus and Future*, Bruce describes the shifting roles of government bodies, private actors, and academic institutions as legal information moved to an online environment.\(^ {24}\)

Given the low cost of publishing on the web, Bruce argues that the government should act as the primary distributor of its data online.\(^ {25}\)

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17. See Berring, *Cognitive Authority*, supra note 7, at 1706–07 (anticipating, however, that “black box” systems like these raise new concerns, such as the question of how to evaluate their effectiveness). In fact, it seems that these AI tools are now in the nascent stages of development; though, perhaps, the hype may not match reality—at least not yet. See generally Jamie J. Baker, 2018 A Legal Research Odyssey: Artificial Intelligence as Disruptor, 110 LAW LIBR. J. 5, 16, 2018 LAW LIBR. J. 1, ¶ 40.


19. See Berring, *Crumbling Infrastructure*, supra note 1, at 295 (“We are on the verge of a point where the system will stop working.”).


21. Id. at 37–38.

22. Id. at 30. See generally Peter W. Martin, *Neutral Citation, Court Web Sites, and Access to Authoritative Case Law*, 99 LAW LIBR. J. 329, 2007 LAW LIBR. J. 19. For a more recent update on this issue, see Michael Umberger, Checking Up on Court Citation Standards: How Neutral Citation Improves Public Access to Case Law, 31 LEGAL REFERENCE SERVS. Q. 312 (2012).

23. Martin, supra note 2, at 30. Although, Martin’s recent update on PACER shows that even in 2018, the federal judiciary has much room for improvement when it comes to digitally publishing case information. Peter W. Martin, District Court Opinions that Remain Hidden Despite a Long-standing Congressional Mandate of Transparency—The Result of Judicial Autonomy and Systemic Indifference, 110 LAW LIBR. J. 305, 2018 LAW LIBR. J. 14 [hereinafter Martin, District Court Opinions that Remain Hidden].


25. Id. at 26.
hand, should focus on the creation of standards for this data, to increase interoperability among different web-based systems. Further, to achieve “effective public access,” free online databases would need to offer better feedback to users.

¶12 Around the same time as the publication of Public Legal Information, Bruce authored Tears Shed over Peer Gynt’s Onion: Some Thoughts on the Constitution of Public Legal Information Providers. Here, he compared competing models for the legal information marketplace. For example, should government bodies self-publish their data, or should they outsource to private companies? Should a central authority control such a system, or should control be distributed among the creators of the data? In the end, Bruce concluded that the government should self-publish its work, initially through some central authority (e.g., to ensure that data standards were complied with), which would then shift to a decentralized model as the formats and standards became entrenched.

¶13 For Ethan Katsh, the transition from legal information in print to legal information in electronic format is just one aspect of the digital revolution that has swept through the legal community. Whether this ongoing transition is good or bad is less important to Katsh than the fact that it is inevitable and will continue to change how law is created, researched, and practiced. Like Berring, Katsh believes that traditional conceptions of legal precedent and authority were so intertwined with print as a medium of communication that the connection between the two was effectively invisible. Now that we have entered a world where digital has become dominant, however, the veil has been lifted. The massive volume of available case law will erode our concept of, and reliance on, precedent. The malleability and impermanence of digital law could undermine our faith in its authority. Boundaries between legal and nonlegal information, as well as between law practice and other sectors of the economy, will become porous, lessening lawyers’ value that traditionally flowed from privileged access to an exclusive, specialized set of

26. Id. at 26–28.
27. Id. at 31–34. John Joergensen, writing from his experience with the New Jersey Court Publishing Project, argued that users also expect legal information databases to search through many (or all) jurisdictions at once, as well as hyperlink to cited material. John P. Joergensen, Are Non-Profit Internet Publishers the Future of Legal Information?, 17 LEGAL REFERENCE SERVS. Q., nos. 1–2, 1999, at 33, 40 (“If the provision of [free] legal material on the Internet is to truly prosper and provide a real alternative to the large online services, the interactivity of sites needs to be improved so that the interactivity between the various sites that supply information at least approaches that of the major online services.”).
29. Id. § 4.
30. Id. § 7.
31. Id. § 8.
32. Id. § 9.
34. Id. at 268 (“The viability, effectiveness, and nature of law in the future depends on whether we understand the changes occurring to the law and are able to respond to them.”).
35. See id. at 35–40.
36. Id. at 44–46.
37. Id. at 89–94.
rule-oriented knowledge.38 Thus, lawyers will spend less time researching, analogizing, and synthesizing legal rules, and instead focus more on finding practical—often nonlitigious—solutions to client problems.39

¶14 The shift to digital will impact ordinary citizens as well. Although nonlawyers have gained access to a vast universe of online legal material, much of it is incomprehensible to them. As Katsh describes the situation, the physical distance between the user and legal information has shrunk to zero, but the informational distance is still great:

Informational distance refers to how inaccessible a medium makes information. The medium may be difficult to use or the information may be presented in a difficult to understand format. Consequently, some information may be less accessible than other information not because it is far away or because it is conceptually complex but because of inherent qualities of the medium in which it is organized and stored.40

¶15 Because online research platforms fail to give users adequate guidance, Katsh observed in 1995 that “[a] user logged on to most commercial databases today is physically close to relevant material but informationally distant from it.”41

¶16 Much like Berring, however, Katsh believes that these issues seem troubling in large part because we are still transitioning from a print to a digital world, and that these digital problems will have digital solutions: “The barriers currently standing in the way of or lending confusion to accessing electronic materials, however, are, to a considerable extent, a consequence of poor software design that will gradually be remedied.”42

¶17 In the works discussed above, Berring, Martin, Bruce, and Katsh focus on different but overlapping aspects of the shift from mainly print to mainly electronic sources of primary law. The transition they describe and anticipate in these articles is still underway. The Digest System has only fallen further out of favor, but many researchers do not have access to an adequate replacement, instead relying solely on basic keyword searching to find the law. Although the informational distance experienced by users of online databases has certainly diminished, online platforms still fail to give users adequate guidance and support—particularly in the low-cost or free segment of the market. We can now access a great amount of primary legal information in electronic format, but much of it is merely digitized versions of print documents, with the few features that take advantage of the digital format “tacked on” by legal publishers after the fact.43 As Katsh observes, “[w]e are still in an age in which

39. Id.
40. Katsh, supra note 14, at 450.
41. Cf. id. at 476. Part of this is because “word searching is not really very easy nor is it conceptually simple.” Id. at 475–76. For a librarian’s perspective on the problem of informational distance, see Haigh, supra note 5, at 253, which argues that in an online environment, the informational distance can be greater than that which was found in a traditional library, where at least patrons had reference librarians nearby and free access to a curated collection of secondary sources.
42. Katsh, supra note 14, at 478.
43. Katsh observed in 1989 that digital “[i]nformation need not be presented any longer in uniform and standardized form, since many of the constraints of print have been lifted.” Katsh, supra note 33, at 94. However, common practice has still yet to catch up with what the technology would allow. See generally Martin, supra note 22, at 345, ¶ 35 (”Most court Web sites remain locked onto the image of a decision as a printed document. The all-too-common approach at judicial sites is to present opinions in files designed to replicate the print slip opinions formerly distributed by the court.”). But cf. Berring, Crumbling Infrastructure, supra note 1, at 275 (with regard to commercial databases in the
...much of what emanates from computers strives to be similar to print.”

Although written in 1989, this observation still rings true today, particularly when it comes to decisions published by courts. The problems stemming from the decline of print have yet to be solved; in fact, these problems may have become so familiar as to become somewhat invisible. Perhaps this explains why many of the insights offered in the scholarship cited above feel as immediate and relevant as ever.

§18 Meanwhile, Susan Nevelow Mart identifies another reason to be concerned about the shift to digital legal research platforms: their lack of “algorithmic accountability.” Over the last several years, she has published a series of studies designed to test the effectiveness, accuracy, and consistency of the major legal research platforms. These studies have exposed great variation in the behavior of the current crop of legal research databases, which is worrisome given their veneer as objective, unbiased systems. For example, Mart uncovered significant discrepancies between Lexis and Westlaw in how each platform generates and classifies headnotes, as well as how individual headnotes link to other cases via each platform’s citator engine. Later, Mart found a great deal of variation between the results returned by Lexis Advance, Westlaw, Fastcase, Google Scholar, Ravel, and Casetext in response to relatively simple case law searches, both in terms of relevancy rankings and—more alarmingly—whether cases were included in the results at all.

§19 On a practical level, these studies showed how the algorithms and hidden metadata practices employed by research databases have concrete effects on research outcomes. For comprehensive research, it may be necessary to use a variety of search engines rather than just one. On a more conceptual level, these
articles posed difficult questions about the opaqueness and accountability of online research platforms. In print, the sources of legal research were basically transparent. Although we weren’t privy to the thoughts and reasoning of each West employee as they processed court decisions, the editorial process ultimately produced a classification scheme that was entirely perceptible and thus open to analysis and criticism. (Of course, most legal researchers were content with engaging the print research system on a surface level.)

Early versions of keyword searching, an exercise in strict Boolean logic, were also fairly transparent. If you knew the coverage of the database, it should have been evident why any given case was present in, or absent from, the results list. Also, you would expect different databases with similar coverage to return similar results in a Boolean environment, though perhaps in a different order if ranked by relevancy.

However, when algorithms play a more active role in the search process and much of the underlying metadata is hidden from users, legal research tools become more of a “black box.” Search terms are fed in, results are churned out—but what happens in the middle is a bit of a mystery. Given this lack of “algorithmic accountability,” how can users evaluate the overall effectiveness of these databases and determine which tool is best suited for particular tasks? How can potential biases be spotted and either leveraged or counteracted? These questions will become only more pressing as algorithms, likely to be described in the marketing literature as “A.I. powered,” undertake more of the work previously left to the researcher.

limitations of algorithms, researchers who want full results need to mine multiple resources with multiple searches.

§20 However, when algorithms play a more active role in the search process and much of the underlying metadata is hidden from users, legal research tools become more of a “black box.” Search terms are fed in, results are churned out—but what happens in the middle is a bit of a mystery. Given this lack of “algorithmic accountability,” how can users evaluate the overall effectiveness of these databases and determine which tool is best suited for particular tasks? How can potential biases be spotted and either leveraged or counteracted? These questions will become only more pressing as algorithms, likely to be described in the marketing literature as “A.I. powered,” undertake more of the work previously left to the researcher.

54. See, e.g., Mart, Human Indexing and Computer Algorithms, supra note 6, at 244, ¶ 38 (“If comprehensive research is required, either both [Westlaw and Lexis] must be used, or the researcher must fill in the gap by making sure that enough secondary sources have been reviewed to assure a good complement of seed cases.”).

55. See, e.g., Mart, Algorithm, supra note 6, at 395–96, ¶ 14 (“Algorithmic accountability’ is the term for disclosing prioritization, classification, association, and filtering. What we need is a frank discussion with database providers about what it means to search in their databases.”).

56. Id. at 393, ¶ 11 (“Going beneath the surface of research systems, even in the predigital search environment, has never been the norm. There is a long history in legal research of researching with only a surface understanding of the underlying structure.”).

57. ‘Hidden’ metadata would include things like logged user behavior history, rather than user-facing metadata such as Topic and Key Number classification.

58. See id. at 391–92, ¶ 9.

59. See id. at 389, ¶ 2 (“Legal researchers are not likely to be able to tell how the encoded biases and assumptions are affecting search results. Legal database providers have viewed their algorithms as trade secrets and so have been reluctant to discuss the algorithms.”). Though, as demonstrated in this study, carefully designed experiments can expose some of the biases inherent in a database’s algorithm. See id. (“In the absence of transparency from the database providers themselves, there may still be things that can be learned about system biases. This article sets out the results of a study designed to reveal how hidden biases and assumptions affect the results provided by some of the major legal database providers.”).

60. See id. at 420, ¶ 58 (“Black-boxing the research process is not helping educators or students achieve this goal. Algorithmic accountability will help researchers understand the best way to manipulate the input into the black box and be more certain of the strengths and weaknesses of the output.”).

61. See id.

62. Id. at 396, ¶ 15 (“The need to know about the input, the paths that mark the way to the results, only increases as the amount of work being done by the algorithms increases.”); cf. Berring, Chaos, Cyberspace and Tradition, supra note 4, at 209–10 (“The danger of the high-end products is that each step in the research process that is carried out automatically by the front end system, is a step taken away from the purview of the researcher. Each decision that is built into the system makes the human
¶21 In summary, the transition of legal information from print to electronic formats has been a hot topic in the law librarian community, and this was particularly true in the nineties and early aughts. The resulting books and articles sketched a rough, and often eerily prescient, outline of what might (and did) happen in the intervening decades. Many questions raised in this body of scholarship remain unanswered, while more recent scholarship has posed additional conceptual and practical concerns. For example, has the nature of legal authority changed, due to information overload and the reliance on decontextualized keyword searching? How can we protect the public’s access to useful and authoritative legal information, when sources crucial to the legal research process may cease to be available in print? How can researchers be confident in their research, when they do not have a good sense of how legal information databases work due to their “black box” quality? Outright answers or solutions are unlikely to be simple. However, by reimagining the role of the court system in the marketplace for legal information, we may at least mitigate these problems.

Modeling the Drift Toward Digital: Winners and Losers

¶22 At this point, it would be useful to model the essential elements of the legal information system and describe how the relationships among them have changed during the digital revolution. There are many ways to conceptualize the structure of the legal information system.63 Drawing inspiration from a model proposed by Richard A. Danner, an effective legal information marketplace requires (1) a “source” of the legal information; (2) an “editor” of this information, to make it digestible and useful; (3) a “publisher,” to fix this information in a stable format and to disseminate copies as needed; and (4) an “access point” for this information.64 Different parties or institutions can take on multiple roles or even share overlapping responsibilities for some of these tasks, depending on the circumstances.

who is doing the search one level further removed from the process. If each user of information was aware of these steps, if each user understood what was being done for her and could monitor results with a skeptical eye, the danger would not be so great. But the whole point of these systems is to work automatically.”). For a discussion of algorithmic accountability in the AI context, see Baker, supra note 17, at 22–25, ¶¶ 62–68.

63. See, e.g., Robert C. Berring, Collapse of the Structure of the Legal Research Universe: The Imperative of Digital Information, 69 Wash. L. Rev. 9, 16–17 (1994) [hereinafter Berring, Imperative of Digital Information] (“An information system is an ordering of any form of data in a way that makes it understandable and retrievable. Think of every information system as having two parts. The first part is the database of information, the second part is the organizing system.”); Bruce, supra note 28 (considering which actors should play which roles in the legal information system); Thomas R. Bruce, Legal Information, Open Models, and Current Practice, 30 Revue Juridique THEMIS R.J.T. 181–87 (1996) (arguing that the government is a “wholesaler” of information, but that this “raw material . . . needs the added editorial and organizing value provided by academia, practitioners, and publishers if it is to be genuinely useful . . . .”); Katsh, supra note 14, at 454–55 (mapping the relationship between courts, libraries, lawyers, and the public to show how the model will shift in a digital environment); McGinnis & Wasick, supra note 2, at 998–1000 (“There are two basic ways for law to organize information: (1) a centralized, top-down approach [e.g., codified law] and (2) a distributed approach [e.g., common law.”).

64. Richard A. Danner, From the Editor: Big Things, 86 Law Libr. J. 185, 188 (1994) (asserting that the legal information environment comprises “(1) the creators of legal information, (2) its publishers and distributors, (3) law librarians, who acquire, organize and assist users in locating information, and (4) the users themselves.”).
23 In the print world, the source of primary legal information was the government, most commonly the legislature, administrative agencies, and the courts. Depending on the context, different parties—or multiple parties—could play the role of editor by writing annotations and headnotes, making classifications, and creating various tables, indices, and finding aids. Many state court reporters, for example, would add synopses and headnotes to decisions, though this became less common over the years. Some states would annotate their official codes. Often, however, the heavy-duty editorial work fell to profit-driven legal publishers. Similarly, the printing of legal information was sometimes done by the government, but publishing was commonly outsourced to companies like West and Lexis (or their predecessors). This made sense: publication in print is expensive and can be logistically complex. As far as access points go, these existed wherever the print volumes ultimately ended up, oftentimes libraries.

24 We are now at the tail end of an extended transition from the print to digital format. This has been a messy process, and stakeholders in the traditional print world have had to adapt and shift responsibilities. Of course, even in 2020, the government remains the initial source of legal information. Editorial work is still mostly done by the legal publishers (sometimes now algorithmically), though some states continue to publish case summaries in the form of synopses or headnotes.

25 The significant developments have occurred in the realms of publishing and access, both of which are increasingly accomplished digitally and online. Whereas the traditional roles of “publisher” and “access point” were distinct and

65. Id.
66. See Peter W. Martin, Abandoning Law Reports for Official Digital Case Law, 12 J. App. Prac. & Process 25, 34 (2011) (“Today, far fewer than half the states have a judicial officer so denominated and there are no more than a baker’s dozen of jurisdictions (twelve states plus the United States Supreme Court) in which a public reporter of judicial decisions and staff perform the full range of functions traditionally associated with official case law publication.”); see also States with Court Provided Headnotes, Official Headnotes, and Syllabi, LexisNexis, http://lexisnexis.custhelp.com/app/answers/answer_view/a_id/1075428/~/states-with-court-provided-headnotes%2C-official-headnotes%2C-and-syllabi [https://perma.cc/PK8-VV8A] (note that while this chart includes good historical data, it does not seem to be regularly updated). Washington provides a good example of a state where the court reporter played an active role in editing cases, which included authoring headnotes. Tim Fuller, “The Most Accurate and Useful Law Books Possible,” Wash. Terr., Wash., Wn.2d, and Wn. App, Milestones of Official Case Reporting in Washington, https://www.courts.wa.gov/appellate_trial_courts/supreme/?fa=atc_supreme.milestones [https://perma.cc/BYT3-JT7H]. Today, Washington headnotes are written by Lexis editors under the supervision of the court reporter. Martin, supra, at 34 n.30.
67. Nevada, for example, still publishes its own annotated code. See Nev. LEGISLATIVE COUNSEL BUREAU, LEGISLATIVE COUNSEL BUREAU: AN OVERVIEW (2016), https://www.leg.state.nv.us/Division/Research/Publications/Misc/LCBSOverview.pdf [https://perma.cc/HQ7C-8L77].
69. See, e.g., Mart, Human Indexing and Computer Algorithms, supra note 46, at 226, ¶ 8 (“West creates a direct correlation between a headnote (drafted by a human editor) and the related key number topic, relying primarily, but not exclusively, on human editing to assign headnotes to a point in a classification system. LexisNexis relies primarily, although not exclusively, on algorithms to assign a headnote (taken from the court’s language) to a topic in the classification scheme . . . .”).
70. For example, Kansas provides court-authored syllabi. Martin, supra note 2, at 12 (“Kansas . . . is also one of a small number of states in which summaries of the key points of law in an opinion (the syllabus or set of headnotes) are prepared by the court itself, rather than added by the reporter or a private contractor”); see also Cases and Opinions, KAN. JUD. BRANCH, http://www.kscourts.org/Cases-and-Opinions/default.asp [https://perma.cc/FF9V-Q6RY].
separate, now these roles are often blended. Many of the major legal publishers (Westlaw, Lexis, Bloomberg/BNA, and Wolters Kluwer, to name a few) “publish” their products in online databases that double as access points—at least, for the legal professionals who can afford access. Although the public often enjoys some access to expensive research databases through law libraries, these kinds of licensing arrangements should not be taken for granted.

The government also publishes and provides access online, usually without extensive editorial content or other enhancements. In the print world, the government was always the initial source of primary legal information, and sometimes acted as editor or publisher, too. The government’s expanding role as an access point for legal information, however, is somewhat new, or at least a departure from tradition. In the past, the government provided access points to legal information more or less exclusively through libraries; now, government entities such as courts, agencies, and legislatures can disseminate legal information to citizens directly over the Internet, without the library acting as intermediary.

Given our federal system of government, it should come as no surprise that the robustness and functionality of these databases vary greatly from state to state, branch to branch, and government level to government level. For the most part, though, state websites host appellate-level court opinions on the Internet, along with state codes, session laws, and other legislative or administrative material. Likewise, the GPO, at govinfo.gov, provides access to many federal district court, court of appeals, and Supreme Court decisions, along with the United States Code, the Code of Federal Regulations, legislative history material, presidential documents, and more.

71. In fact, some might argue that making a distinction between “publishing” and “providing access” breaks down entirely on the web. However, it’s easy to find examples where this distinction holds up, such as when one entity makes data and metadata available for reuse, and another entity harvests this data and displays it to the public. In Law in a Digital World, Katsh is very critical of importing print metaphors into the digital sphere: these metaphors are usually somewhat imprecise and can impose limitations on how we think of and use new technologies. See, e.g., Katsh, supra note 14, at 407–08.

72. See Berring, Chaos, Cyberspace and Tradition, supra note 4, at 207–08 (“The producer of electronic information does not need libraries. The heart and soul of electronic information has been direct marketing to the end user.”).


74. See Danner, supra note 64, at 188–89.


76. As of now, govinfo.gov hosts circuit court, district court, and bankruptcy court decisions dating as far back as 2004, but much of this collection is incomplete. Coverage varies across different courts and jurisdictions. It is also possible to find opinions older than 2004, but this seems to be limited to opinions directly related to cases decided after the 2004 cutoff (for example, where a case was originally decided in 2002, but appealed or otherwise revisited in 2005). About United States
These efforts go a long way in ensuring that every citizen can access basic legal information. But even the best government legal information databases lack tools that would be considered fundamental in a traditional law library. On one hand, compared to its state-level counterparts, govinfo is likely the most robust government-run case law platform. In govinfo, advanced search fields include full-text, party name, court, nature of suit, case number, party role, citation, and others. Multiple fields can be searched simultaneously, making it possible, for example, to conduct a full-text search within specific jurisdictions. On the other hand, govinfo does not provide a citator, does not organize cases by legal issue, and includes only a fraction of the case law originating from the federal court system. In other words, although govinfo and similar government websites succeed in disseminating new cases to the public, they are not viable substitutes for, say, Lexis Advance or a law library.

In addition to the major legal publishers and various government entities, newer market entrants have begun filling the dual roles of “legal publisher” and “legal information access point.” These entities, such as Google Scholar, generally obtain legal information in the form of bulk data and then employ automated processes and algorithms to provide search tools. Court Listener, a nonprofit, provides access to millions of state and federal opinions and other court documents, sourced from volunteers, donations, and a system that scrapes data from court websites. The coverage of these databases is much closer to comprehensive than govinfo’s, case citations are often hyperlinked, and some even include basic citator functions. Still absent from these databases is a means to truly Shepardize a case, subject indexing, classification in any real detail or, of course, any human-generated editorial content.
¶30 Still, these free Internet-based entities have shown that it is possible to be a functional “access point” for legal information, without having to worry too much about editing or really even “publishing” this information. As mentioned above, Google receives dumps of bulk data containing court opinions and then hosts this data on its servers—this is the extent of its role as publisher. In terms of editing, Google provides basic citator functions, hyperlinks, and field searching—but this is all done algorithmically and, it is likely, at little ongoing cost.

¶31 Similarly, a variety of lower-cost databases have entered the fray, among them Fastcase, Casemaker, Casetext, and Judicata, to name a few. Often, these newer market entrants employ innovative algorithms to replicate features of Westlaw and Lexis that traditionally required a considerable amount of human input. In some cases, these algorithms function independently from human editors; in other cases, the algorithms work in tandem with human editors, to increase efficiency and thus reduce costs for end users. As such, the functionality and reliability of the different components of these databases can vary.

¶32 Law libraries have adapted to new roles as well. Primarily access points in the past, they have increasingly taken on the role of publisher, spurred by the comparatively low cost of online publishing. For example, it is commonplace for academic law libraries to oversee the digital publication of law reviews and faculty scholarship. A few libraries have created (or played a role in creating) online databases of case law and other primary law documents. The most well-known example would be Cornell's Legal Information Institute (LII), which hosts, among other things, the United States Code, Code of Federal Regulations, Supreme Court decisions, and a collection of original content including the Wex legal encyclopedia. The Rutgers Law Library partnered with New Jersey state and federal courts to publish case law through a database they built from the ground up. It captures a good amount of metadata, including citations, citing references, party names, decision date, and docket number. Recently, Harvard Law School Library partnered

83. Here, the distinction between “publication” and “providing an access point” is tricky to delineate; perhaps so many traditional “publishers” have also become online portals because the distinction between these two roles breaks down in an online environment. See supra note 71.

84. For example, Fastcase displays state of the law information, but this is handled by automatically scanning Bluebook citations for words like “rev’d.” Thus, a case won’t be flagged as overturned until another case comes along that explicitly recognizes (in a Bluebook-formatted citation) the fact that the original case has been overturned. Casemaker does provide complete state-of-the-law information, edited by humans. Greg Lambert, Casemaker Unique Among Legal Research Providers, Mich. Bar. J., Nov. 2010, at 54. Casetext uses a combination of algorithms and human editors to provide state of the law information. How Was Casetext Citator Built, Casetext, https://help.casetext.com/casetext-citator/how-was-casetext-citator-built (last accessed May 17, 2019).

85. I say “primarily” because law librarians have a track record of editing and writing all kinds of research guides, bibliographies, books, law review articles, and so on.

86. These activities seem to combine different elements from three roles: editor, publisher, and access point.


88. Though, the quality of the metadata varies depending on the practices of the issuing court. See John P. Joergensen, The New Jersey Courts Publishing Project of the Rutgers-Camden Law Library, 94 Law Libr. J. 673, 677, 2002 Law Libr. J. 42, ¶ 21 (“One problem we have is that it is impossible to get 100% accuracy in automatically extracting metadata from documents prepared and formatted by various people. In the case of the U.S. district court decisions, the formatting and placement of useful information varies so greatly from document to document that we cannot do it at all. Since we do not have the time or personnel to go through these documents individually, we do not extract any metadata
with Ravel (now owned by Lexis) to create a complete database of published case law, which required Harvard to scan a huge amount of historical case reporters.89

¶33 As outlined above, the contemporary crop of legal information databases break down into four rough types: expensive, one-stop shops run by major legal publishers; newer market entrants that use technological innovations to mimic the functionality of more traditional databases, but at a lower cost; a hodgepodge of government, library, and nonprofit websites, with varying degrees of coverage and functionality; and tools like Google Scholar that aspire to be free alternatives to Westlaw, Lexis, and Bloomberg but are missing crucial tools required for legal research. This marketplace-in-flux often duplicates efforts (e.g., instead of “just” Shepard’s, we now have Shepard’s, KeyCite, BCite, and Fastcase’s Bad Law Bot), and it seems reasonable to assume that many of these companies and organizations will either disappear or consolidate in the coming years.

¶34 Ownership consolidation in legal publishing is written about extensively, often from a critical point of view.90 But another kind of consolidation is underway in the legal publishing realm that blends previously distinct roles in the legal information ecosystem. Whether government entities or private companies, actors at every stage of the online legal information cycle are making some effort to become an access point for legal information, rather than just some combination of source, editor, or publisher of legal information.91

¶35 Whether the public has benefited from this trend is debatable, but certainly true is the increasingly large gap between the research tools available to a large law firm and those available to most pro se litigants. This is an especially frightening proposition if we envision a future where legal research is conducted exclusively online.92 Entities like Google Scholar host great volumes of legal documents, but they do not provide services like Shepard’s or KeyCite.93 Instead, these services rely from them. As a result, the only search options for this collection are the full-text search engine and by docket number.”).


90. See, e.g., Arewa, supra note 5, at 820–28; Berring, Chaos, Cyberspace and Tradition, supra note 4, at 198–99; Berring, Cognitive Authority, supra note 7, at 1698.

91. Cf. Katsh, supra note 14, at 431 (“An electronic network turns everyone into a publisher in a different and more meaningful way. The network provides the facilities for individuals to distribute their messages efficiently and cheaply, both widely and narrowly, to large groups as well as small.”).

92. This is just speculation, but I believe print, like vinyl, will never go away completely. However, it is possible to imagine a world where individual publications cease to be available in print (or where some law libraries cease to purchase them). If, for example, Shepard’s ceased to be available in print, then legal research would require an online component; this would also be the case if the West Digest System moved exclusively into the Westlaw database. Many, perhaps most, law libraries have cancelled or limited their subscriptions to many series of Shepard’s. Laura C. Dabney, Citators: Past, Present, and Future, 27 LEGAL REFERENCE SERVS. Q. 165, 181–82 (2008) (specifically noting the University of Washington’s Gallagher Law Library; anecdotally, 12 years later, it would seem that it is commonplace now for libraries to no longer receive Shepard’s in print).

93. Ravel has a citator algorithm, but it is available in only the premium version. And, in any case, its reliance on citation parentheticals in Bluebook format makes it an imperfect proxy for something like Shepard’s. See Negative Treatment, Ravel, https://ravellaw.zendesk.com/hc/en-us/articles/115002279974-Negative-Treatment [https://perma.cc/D3HN-Z2H8] (“Ravel’s treatment indicator is not a replacement for looking at a Lexis Shepard’s report and should not be relied upon exclusively.”).
on full-text searching\textsuperscript{94} combined with some basic forms of automated indexing (e.g., by identifying the year of the decision and the name of the court that issued the opinion). To better serve the needs of legal researchers, these free services must have the capability to tell users whether a case is still good law. Detailed subject indexing and classification, the ability to conduct faceted searching, and hyperlinked citations to statutes, regulations, and other sources of law would make these free services even stronger. Many free services already provide some of these functions, though in a limited way. As discussed below in part 2, with a little help from the courts, tools like Google Scholar might evolve into fully viable alternatives to Westlaw, Lexis, or Bloomberg Law for cash-strapped legal researchers.\textsuperscript{95}

\textsection{36} In a world full of access points for legal information, the role of the law library might be less apparent to some, but libraries are as vital now as they always have been. Law libraries facilitate access in ways that other actors in the legal information marketplace cannot. They pay for subscriptions and public access terminals, manage and organize digital collections to ensure that patrons can access the sources necessary for legal research, and employ librarians who can show patrons how to use these databases. Furthermore, as discussed in part 3, law librarians could play a role in improving free or low-cost legal information databases by more actively participating in the case law reporting process.

\textbf{Improving Public Access to Case Law Through Structured Metadata}

\textsection{37} One way to ensure that solo practitioners, small firms, and the public at large continue to enjoy access to the resources and tools necessary to conduct legal research is to help newer market entrants evolve into fully realized legal research

\textsuperscript{94} Giving the public the ability to keyword search their way through legal material without feedback or guidance might do as much harm as good. As observed by Katsh in 1993:  
Even if companies provided legal databases cost-free to the general public, they might be relatively useless to lay people because the boolean scheme is difficult to master and there are considerable differences in the rules and conventions for searching different databases. . . . A user logged on to most commercial databases today is physically close to relevant material but informationally distant from it. This is even more true of the individual who is interested in finding information on sources linked to the Internet.  
Katsh, \textit{supra} note 14, at 449; \textit{see also} Bruce, \textit{supra} note 24, at 31–34. Even for lawyers, it can be difficult to capture legal concepts in a keyword search. See Glassmeyer, \textit{supra} note 77, at 5 (“It is doubtful whether or not full text searching is sufficient or useful in accessing legal information. As it stands, no state provides an index to its case law.”); Daniel Dabney, \textit{The Universe of Thinkable Thoughts: Literary Warrant and West’s Key Number System}, 99 L\textsc{aw} L\textsc{i}br. J. 229, 237, 2007 L\textsc{i}br. J. 14, \textsection{35} (“At its heart, even the cleverest natural language search engines draw much of their power from the ability of the system to recognize individual words. To the extent that the ideas of interest to lawyers can be reliably associated with individual words, those systems excel. But to the extent that there is a gulf between the individual words and the ideas of interest to the searcher, free-text systems are limited.”). \textit{See generally} Daniel P. Dabney, \textit{The Curse of Thamus: An Analysis of Full-Text Legal Document Retrieval}, 78 L\textsc{aw} L\textsc{i}br. J. 5 (1985).

\textsuperscript{95} \textit{See generally} Arewa, \textit{supra} note 5, at 838 (“One of the biggest potential barriers to new entrants in the legal information industry is the scope and depth of existing proprietary publishing business models. These databases have fostered a market in which consumers expect to have access and the ability to search a large range of potential legal information. Lexis and Westlaw have thus built legal databases with millions of documents; the creation of such databases and the functionality that such players bring to their databases has shaped many users’ expectations of what electronic legal databases should offer.”).
tools. 96 Free private sector portals like Google Scholar currently lack critical features present in pay services. By committing to making court opinions freely available with detailed metadata, courts can use the free market to help mitigate these access issues.

¶38 Librarians intuitively understand why court metadata practices are important—in fact, we have been advocating about this issue since the birth of the Internet. The following sections explicate these traditional rationales, discuss why these traditional rationales are still valid (even in 2020), and identify how court-authored metadata may be increasingly vital given the continued decline of print and the rise of AI and litigation analytics in legal research.

**Government as Data Provider**

¶39 As long as the Constitution is in force, the government will continue to be the original source of U.S. primary law. As discussed above, the government also plays the roles of editor, publisher, and access point for legal information. In the online environment, and particularly with regard to case law, the government should focus its efforts on editing its legal content in a format conducive to reuse by third parties—that is, by supplying detailed, quality metadata—rather than focusing too much energy on the creation of web-based portals to access this information. 97

¶40 Some argue that the GPO (and the government in general) should not be in the business of providing permanent access to government information, due to concerns about adequate, sustained funding. 98 Government spending, as a political issue, can be inconstant and unpredictable. 99 Xiaohua Zhu, while not taking sides on this issue, notes the following additional concerns about government-sponsored case law databases:

[Critics point to] the difficulty of collecting historical case law, the expense of maintaining a large system, the lack of legislation, the often-changing information policies of govern-

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97. See David Robinson et al., Government Data and the Invisible Hand, 11 YALE J.L. & TECH. 160, 160 (2009) (“It would be preferable for government to understand providing reusable data, rather than providing Web sites, as the core of its online publishing responsibility.”); see also Richard Susskind, The End of Lawyers? 268 (2008) (“The purpose of this sharing is not simply to give citizens sight of more documents. Rather, in the spirit of Web 2.0, it is to make public information available as a raw material that citizens, entrepreneurs, charitable bodies and many others can fashion, re-organize, and supplement for their own purposes.”); Bruce, supra note 24, at 26 (“It is becoming increasingly obvious that the issuers themselves—the courts, legislatures and agencies—are in the best position to maintain and publish their own collections of data.”).

98. See James A. Jacobs, James R. Jacobs & Shinjoung Yeo, Government Information in the Digital Age: The Once and Future Federal Depository Library Program, 31 J. ACAD. LIBRARIANSHIP 198, 203–04 (2005) (arguing that the GPO should focus on “helping agencies package and deliver their various information products,” rather than taking on “the role of permanent public preservation and access . . . the role traditionally fulfilled by FDLP libraries . . . .”).

99. See Berring, Cognitive Authority, supra note 7, at 1705 (“The government, at the state and federal level, has never been a reliable provider of information. The impetus to publish and maintain information, and to provide quality access to it, has always been the market.”); see also Gregory M. Silverman, Rise of the Machines: Justice Information Systems and the Question of Public Access to Court Records Over the Internet, 79 WASH. L. REV. 175, 184–85 (2004) (discussing funding for justice information systems at the state level).
ment agencies, and the different ideologies or value systems about governments’ roles in providing public access to the law. Many still hold the belief that the government should not compete with the private sector in the area of information dissemination but should leave the business opportunity to commercial information providers . . . .

¶41 Still, a strong case can be made for some kind of government involvement in publishing and disseminating government information. As Richard Susskind argues, “[e]nlightened public information policy would encourage or even require public bodies to take on the job of drawing attention to the laws, regulations, and rules that are so central to their daily work and ensuring they are made more accessible and digestible to the citizenry.” Similarly, the American Association of Law Libraries (AALL) has recognized the vital importance of the public sector retaining responsibility for the preservation of authentic government records. In the private sector, businesses come and go unpredictably—doubly so in periods of rapid technological transition—and when they go, they tend to take their information with them. Governments, on the other hand, tend to be much more stable and resilient. Thus, although the private sector is well suited for developing innovative searching and analytical tools for electronic government documents, it might be unwise to rely on private companies for archiving these documents in a permanent state.

¶42 If the government has stored its data in a standardized format and in a way that can be harvested by third parties, there is reason to believe that the private sector can provide robust search tools should the government portal be inadequate. According to Robinson et al., building an interactive site that searches,

101. Susskind, supra note 97, at 264.
102. See Richard J. Matthews & Mary Alice Baish, AALL, State-by-State Report on Authentication of Online Legal Resources (2007), https://www.aallnet.org/wp-content/uploads/2018/01/authenfinalreport.pdf [https://perma.cc/VF89-L7XB]; see also Jacobs et al., supra note 98, at 203–04 (arguing that both the government and Federal Depository Loan Program libraries have important roles to play in publishing, storing, and providing access to government documents).
104. But see Gallacher, supra note 78, at 22–23 (“The political process affects all decisions made by the legislative and executive branches, making lawmakers susceptible to influence from lobbyists and rendering them unsuitable caretakers of the law.”).
105. See Jacobs et al., supra note 98, at 204 (arguing that preservation of and access to digital government documents should be provided by government actors working in conjunction with depository libraries, whereas the role of the private sector should be “re-packaging, re-organizing, and re-distributing the information”). The careful preservation of historical legal information is likely not a priority for Westlaw and Lexis, because why would it be? It’s not surprising that the institutions most concerned with archiving and preserving legal information are not-for-profit entities like academic, court, and municipal law libraries. See, e.g., UELMA PRESERVATION GROUP, PRESERVATION OF ELECTRONIC LEGAL MATERIALS (2018), https://www.aallnet.org/wp-content/uploads/2018/04/Preservation-of-Electronic-Legal-Materials-White-Paper.pdf [https://perma.cc/49PW-F6HV].
106. See Robinson et al., supra note 97, at 165 (“[P]rivate actors have demonstrated a remarkably strong desire and ability to make government data more available and useful for citizens—often by going to great lengths to reassemble data that government bodies already possess but are not sharing in a machine-readable form.”). See generally Susskind, supra note 97, at 268 (“Public bodies will be providing the raw information upon which communities of interest and citizen-generated content will be built.”). In addressing the potential for “information overload” due to the
displays, and organizes information can be accomplished inexpensively, when the source data is freely available in a standardized format: “[w]eb hosting is cheap, software building blocks are often free and open source, and new sites can iterate their designs rapidly.”107 In other words, the creation of a Westlaw-style search interface is the (relatively) easy part; the difficult, expensive part is amassing the data to be searched, adding editorial content, and providing the necessary metadata to make it useful and easily searchable.

¶43 By focusing on the data itself, rather than finding tools and web portals, the government could minimize the risk of an expensive project quickly becoming obsolete. The Internet constantly changes: once popular destinations can become ghost towns overnight.108 Frankly, when one thinks of highly adaptable, flexible organizations, the government doesn’t jump to mind as an exemplar.109 An expensive, labor-intensive government information system could be replaced overnight by an innovative Internet startup. This isn’t a bad thing at all; in fact, this phenomenon is one of the strengths of a free market system. Government information is meant to be used, repackaged, and monetized by private parties, which is one reason why government documents at the federal level do not receive copyright protection.110

¶44 Here, it may be useful to draw an analogy between legal information on the “information superhighway” and an automobile on a physical highway.111 Most people probably wouldn’t want the government to manufacture their automobile. A government-built car would be slow, expensive, uncomfortable, aesthetically bland, and not very much fun to drive (though, possibly, safe and generally functional). People do, however, tend to trust the government with constructing the infrastructure for their cars (i.e., highways, tunnels, etc.). In the world of online legal information, user interfaces, search engines, AI-powered analytical tools, and the like are accessibility of too many judicial opinions, Martin notes that “[t]he rapid development of sophisticated Internet search tools provides strong evidence that with the right combination of public sector involvement and private sector competition in the dissemination of legal information” this may never become much of a problem at all. See Martin, supra note 2, at 44. Examples exist of the private sector creating portals to government data when the government-provided portal was seen as inadequate. Google Patents, for example, is a much more user-friendly interface than the search platform hosted by the USPTO. A few years back, in response to perceived shortcomings of the Regulations.gov website, Cornell helped launch the “Regulation Room,” a website dedicated to providing access to federal regulations in a Web 2.0 context, complete with RSS feeds, blogs, and social networking features. Claire Cardie et al., Rulemaking 2.0, 65 U. MIAMI L. Rev. 395 (2011). Regulation Room has since gone offline, however.

107. Robinson et al., supra note 97, at 170.

108. For example, the social media sites Friendster and MySpace suffered severe declines in popularity due to the rise of Facebook. See generally Liat Clark, Researchers Conduct Autopsy of Social Network Friendster, WIRED (UK) (Feb. 27, 2013), http://www.wired.co.uk/news/archive/2013-02/27/autopsy-of-friendster [https://perma.cc/K9HL-N8FA] (noting that social media sites can be prone to sudden mass exoduses).

109. Robinson et al., supra note 97, at 173 (“The institutional workings of government make it systematically incapable of adapting and improving Web sites as fast as technology itself progresses.”). See generally Berring, Cognitive Authority, supra note 7, at 1705–06 (arguing that innovation in the legal information sphere will likely come from the private sector, as has been the case in the past); Robert C. Berring, On Not Throwing Out the Baby: Planning the Future of Legal Information, 83 CALIF. L. Rev. 615, 616 (1995) [hereinafter Berring, Throwing Out the Baby] (“[M]arket forces, rather than governmental fiat, should dictate changes in the legal information system.”).


111. Cf. Katsh, supra note 14, at 440 (employing a similar metaphor, but focusing more on the physical structure of the Internet).
the cars we drive, and metadata is the infrastructure—the boring, heavy-duty stuff holding it all together.

¶45 For metadata to provide the necessary infrastructure for a full-fledged legal research tool (e.g., Westlaw), it must be consistently applied (you wouldn't want your highway to have unpaved gaps), contain as much detail as possible (you'd want your highway to have all of the necessary signposts so you don't miss your exit), adhere to the same metadata standard (you wouldn't want to switch to the left-hand lane halfway through your trip), and use a common metadata language (you wouldn't want your highway to suddenly turn into a monorail system). Happily, all of these components are feasible or extant (or in the midst of development). The metadata language is XML; one option for a standard is called LegalXML, which is still being perfected.112 These technologies are now commonplace in court e-filing systems, libraries, government repositories, and throughout the Internet in general. But, as discussed below, they have yet to fulfill their full potential with regard to online case law publication.

Structured Metadata: The Big Picture

¶46 In the term “eXtensible Markup Language” (XML), “markup” refers to “information embedded in the text of a document that is not intended for printing or display.”113 Rather, it is meant to be read by a machine. Through this “metadata,” XML can tell a computer what a document means, in a limited sense. The greater the detail included in the metadata, the more a computer can be programmed to “know” about a document.114

¶47 The key strength of XML is its standardized format, which is still flexible enough to apply across different information systems. Government repositories and e-filing systems commonly employ XML. If different courts used the same XML scheme, each court could use its own case management system, but the systems could still “speak” to each other by means of that shared XML language.115 Metadata applied in this way links to related data (in the same database or elsewhere), which gives it a potentially profound amount of power:116 when the terms “Semantic Web” or “linked data” are used, they are referring to this concept. In this way, government-wide adoption and implementation of a shared XML standard for legal materials would allow for better integration of court records with documents published by the legislative and executive branches, such as statutes, regulations, and administrative rulings.117

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112. This article focuses on XML because it seems to be the most commonly used of these technologies, but any machine-readable markup language might work fine, as long as it was used consistently across different courts and institutions.
114. See id.
115. See id. at 185–86.
116. See Edward L. Rubin, Computer Languages as Networks and Power Structures: Governing the Development of XML, 53 SMU L. Rev. 1447, 1448 (2000) (“XML facilitates thought and allows knowledge to cumulate over space and time . . . it becomes more effective and more powerful the more widely it is used.”).
Gregory Silverman identifies three broad categories of XML metadata. First, there is procedural markup (also called presentational markup). This metadata tells a computer how to display a document. This includes instructions about font type, font size, margin size, and similar elements. Second, there is structural markup, also called descriptive markup. This metadata identifies the general type of data being tagged—for example, this would tell a computer the title of the document. Last, and most important for the purposes of this article, comes semantic markup. This markup tells a computer what pieces of data in a document mean, in a limited sense. Applications of semantic markup might include labeling legal rules or issues, or noting whether a court’s treatment of precedent is supportive or negative.

Metadata in XML format is added to a document through “tagging.” For example, the surnames of plaintiffs in court documents could be identified by a tag like “<PlaintiffLastName>.” Here, it doesn’t matter how the tag is characterized (e.g., “PlaintiffLastName” versus “LastName”) as long as the tags are applied consistently within the court and across different courts—that is, as long as each court uses the same metadata standard. A court document tagged in this manner would look something like this with the metadata visible:

```
<PlaintiffLastName> Doe </PlaintiffLastName>
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“<PlaintiffLastName>” is the “start tag,” and “</PlaintiffLastName>” is the “end tag.” Tags can be given attributes (like a numerical value, e.g., <Date Received=“05.16.2018”>). And an “empty tag” contains no element. All tags can be nested, which allows for multiple tags to be applied to the same chunk of text as well as the tagging of tags themselves.

Metadata becomes even more powerful when it is tied to a metadata standard that is sufficiently detailed and complex, which requires that the relationships among metadata tags be specified and defined. For example, the ideal metadata standard for court opinions might define the hierarchical relationships among different causes of action and legal issues, much like the West Key Number System. In this way, XML standards allow free-floating bits of data to solidify into structured data, which can more effectively be organized, parsed, searched, arranged, and linked by search engines and analytical tools.

In its raw form, with the metadata tags visible, XML looks cumbersome. However, court personnel likely rarely see XML data in its raw format. With regard to simple metadata, such as party names and filing dates, much of this is generated
through e-filing systems automatically. More complex and granular metadata, such as identifying and classifying legal rules, would be trickier to apply and might require new tools and interfaces. Fortunately, a variety of computer applications (and computer application add-ons) have been developed to make this process more user-friendly. Anyone can download a plug-in enabling users to tag text in Word documents simply by highlighting it, though courts may opt to develop or purchase bespoke tools. Once a court settles on a metadata standard (e.g., “<holding>” to be applied to text containing the court’s holding), this process could involve someone, perhaps a judge, clerk, or other court personnel, highlighting text and applying tags from a preset (i.e., controlled language) list. Alternatively, court personnel might input parts of an opinion into a form that would store the data in XML format, with fields for headnotes, subject classifications, factual background, rules applied, outcomes, and so on.

The Proof Is in the Patents: Comparing Google Patents with Google Scholar

To illustrate the effects of robust government-authored metadata, the U.S. Patent and Trademark Office (USPTO) provides an instructive example. When the USPTO publishes a patent, it does so with a rich, detailed collection of metadata that includes the name of the inventor, name of assignee, citations, classification, information about the patent examiner and prosecution process, and the various document sections (summary, claims, description, etc.). All of this work is done up front, as patents are processed. The end result is an extremely powerful search tool on the USPTO website. Being a government product, however, the search engine is rigid, difficult to use, and 20 years old in appearance.

The USPTO does not hoard this data for itself, thankfully. Private sector entities like Google Patents have used this data to create similarly powerful but much more user-friendly patent search and retrieval tools. In addition, because Google Patents receives data from other national and international patent offices, it can search multiple jurisdictions simultaneously and draw connections between patents filed across different jurisdictions. Overall, its functionality is roughly equivalent to that of the basic patent search tool in Westlaw.

By comparison, Google Scholar’s case law search falls far short of the standard set by Westlaw, Lexis Advance, or Bloomberg Law. Most important, Google does not provide users with citator tools comparable to KeyCite or Shepard’s.
This means a user is not given an immediate indication of whether a case is still good law or whether the decision is the ultimate disposition of the case.\footnote{For example, a search for the Washington case \textit{State v. Eriksen} in Google Scholar turns up six identically named documents, all related to the same case, \textit{State v. Eriksen}, 259 P.3d 1079 (Wash. 2011). But Google Scholar does not tell users how these various opinions relate to one another: although some are mentioned in the “Related documents” field, hundreds of other cases on similar topics are listed here as well.} This could be particularly dangerous to inexperienced lay users, who might not consider these issues unless the information were provided in a visible, easy-to-understand fashion.

\textsection{55} Google Scholar does have a rudimentary citator, which allows researchers to see where a case has been cited subsequently. Although Google estimates the depth in which the cited case has been discussed in subsequent cases, it does not indicate clearly and succinctly \textit{how} subsequent cases treat the preceding case.\footnote{Google Scholar does have something called a “how cited” feature, but this simply pulls quotes from the citing case, rather than providing an editorial characterization of the citation (e.g., “distinguished by,” “discussed in,” etc.). This is likely because of Google’s reliance on automation in providing these tools, whereas the Lexis and Westlaw citators rely on a combination of automation and human editors.} Nevertheless, a determined and cash-strapped legal researcher could use Google Scholar to check whether a case is good law, if they had the legal training to read through each decision citing the case in question. This time-consuming task is probably completely impractical for a layperson, however.

\textsection{56} In addition to its lack of a fully functioning citator, Google Scholar fails to index or classify its case law by subject and, unsurprisingly, adds no editorial content.\footnote{See generally Martin, supra note 2, at 39 (“[I]n a searchable collection of precedent, jurisdiction-specific editorial additions contribute insufficient value to justify the substantial costs of including them.”).} Finally, although Google Scholar hyperlinks to cases cited within an opinion, it does not do the same for legislation or administrative materials. This is likely because Google does not host materials from the other branches of government, but most of these sources could be hyperlinked if the will were there: most state and federal codes are freely available online.

\textsection{57} So why is Google Scholar’s case law search engine so weak compared to Google Patents? It would seem that the principal difference is the amount and quality of the metadata that these tools have to work with.\footnote{Another contributing factor might be that Google, being a tech company, is better able to see the value of a patent search engine; in fact, such a tool would be useful for its internal purposes.} The functionality of Google Scholar is limited by the data Google is given: unlike Westlaw, Google does not have an army of editors to summarize cases, index these cases by narrow legal topic according to a proprietary scheme, characterize citations, and the like.\footnote{\textit{Cf.} Michal S. Gal & Daniel L. Rubinfeld, \textit{Data Standardization}, 94 N.Y.U. L. Rev. 737, 762 (2019) (noting that market entrants can find it difficult or impossible to compete with large incumbents in data-oriented industries, absent the existence of open source data standards—“By preventing the creation of the standard, incumbents essentially raise their rivals’ costs relative to their own.”).}

How Structured Metadata Can Reinforce the Infrastructure of Legal Research

\textsection{58} By authoring detailed, high-quality metadata in every legal opinion, courts can help market entrants like Google Scholar become fully functioning legal research tools, thereby expanding meaningful access to legal information and fos-
tering a more vibrant and competitive legal information marketplace. As a beneficial byproduct, courts would gain greater control over how their decisions are found, interpreted, and applied, activities that legal publishers may have influenced too heavily in the past. To accomplish this goal, the public sector (courts and libraries, generally) will need to conduct some of the editorial work normally performed by legal publishers.140

¶59 In a sense, by subscribing to legal research platforms like Westlaw and Lexis, courts are paying for the government’s work product, aggregated into a single database and accompanied by editorial content.141 This arrangement seems sensible in a print world: publishing is expensive, gathering and compiling court decisions from every jurisdiction is a logistical nightmare, and the value-added, labor-intensive components like Shepard’s and West’s Digest System are necessary to making case reporters useful to researchers.

¶60 In the digital world, courts purchase many of the same specialized tools; however, given the state of technology, it might make sense for them to create these tools themselves—or, better yet, to lay down the infrastructure necessary for their creation. The inclusion of detailed, structured metadata in electronically published court opinions is a relatively low-cost way to improve the quality of online research tools—whether free or otherwise.142 As Martin notes, “[t]aking this largely invisible step can have a positive effect on the usefulness of court websites and, at the same time, reduce the costs of redistribution through commercial systems.”143

¶61 For example, the inclusion of metadata relating to how cases are cited and discussed within an opinion would allow for third parties to create programs that mimic Shepard’s or KeyCite, as well as more precise hyperlinking across court documents.144 KeyCite and Shepard’s rely on a combination of human editors and computer algorithms to function. In both systems, human editors provide some case analysis upfront, and the rest of the work is handled automatically.145 It is this

139. Cf. Berring, Crumbling Infrastructure, supra note 1, at 295 ("What happens when the legal system has to deal with the fact that it has lost control of the sources of the law itself?").
140. See id. ("Some basic work, work that lacks glamour and perhaps profit, needs to be done on the infrastructure of legal research.").
141. Note that this is not a break from tradition. In the print era, courts often outsourced the publication of official reports to a legal publisher and then purchased the volumes back at a discount. See Martin, supra note 66, at 54. There are parallels here with academic publishing, where universities pay researchers, the resulting research is published in for-profit journals, and then the journals are sold back to university libraries.
142. Martin, supra note 2, at 38.
143. Id.
144. LegalCiteM seems to still be under development, as part of the LegalXML standard. Oasis Legal Citation Markup (LegalCiteM) TC, OASIS, https://www.oasis-open.org/committees/tc_home.php?wg_abbrev=legalcitem [https://perma.cc/BE99-3S8M]. Many of these OASIS LegalXML initiatives are global in scope, which might be ambitious given the differences among legal systems, as well as the challenge of getting academics, programmers, and legal entities throughout the world to agree on standards. Some scholars have argued that the government should play a more active role in this process, given the potential power of XML standards. See Rubin, supra note 116, at 1449 ("[T]he political character of XML language creation requires that these organizations be regulated and that the more likely regulator is the government, not W3C. But . . . this regulation, like the regulation of the negotiated rulemaking process, should not specify substantive results, but simply specify the structure of the non-governmental decision making body that creates the language.").
145. Dabney, supra note 92, at 177 ("[T]oday both programs do case analysis editorially, and the rest of the process, including finding citations and headnote assignment (and, in KeyCite,
human component that essentially bars Google Scholar and its ilk from providing full-fledged citator tools. Computer algorithms require upfront costs to develop but are otherwise inexpensive; human editors require salaries and health insurance. If at the outset courts completed some of the work of Westlaw's human editors, Google would just need to develop an algorithm—a task Google's track record proves it does well. This would also have the effect of lowering Westlaw's cost of doing business—and given how expensive subscription services like this are, customers could benefit if Westlaw passed along its savings. More competition in the citator marketplace might be a good thing, as recent scholarship casts some doubt on the accuracy and consistency of KeyCite and Shepard's.¶

¶62 Pay services like Westlaw and Lexis do much more than provide state-of-the-law information, however. They also provide hyperlinks across different sources of law, integrated secondary sources, and advanced search and filtering options. If courts tagged dates, party names, names of judges and attorneys, case holdings, docket numbers, and other basic information (much of which is already “tagged” as such by courts through e-filing systems), a system like Google

depth of treatment and quotations), is done programmatically.”). See generally Mart, Case for Curation, supra note 46, at 18–21 (describing the West and Lexis citator systems and headnote classification systems, which involve both the use of computer algorithms and human input at different stages of the process and to varying degrees).

146. But see Fastcase’s Bad Law Bot, which shows that an almost entirely automated citator can convey some (though possibly spotty) state-of-the-law information. Note that the Bad Law Bot carries with it the following disclaimer:

Keep in mind that Bad Law Bot determines negative case history by using algorithms, and that it is not intended to be a complete replacement for a full editorial citator or for reading all later-citing cases.

... If a case has been overturned but no court opinion has cited to it yet, Bad Law Bot won't be able to find any citation signal information. Meet Our Newest Team Member, Bad Law Bot!, FASTCASE, https://www.fastcase.com/blog/badlawbot/ [https://perma.cc/6JVE-8FRB].

Also, such tools require adherence to Bluebook protocols, which isn’t always done. For example, Korte v. Sebelius, 735 F.3d 654, 720 (7th Cir. 2013), discusses the overruled case Adkins v. Children’s Hosp. of D.C., 261 U.S. 525 (1923), without employing Bluebook signals noting that the case is bad law. As a result, automated citators would miss the negative treatment of this case, unless it were cited according to Bluebook rules elsewhere (which happens to be the case here—Adkins has been cited hundreds of times).

147. This might not take that much extra effort, after the standards have been settled on: Bluebook citations almost qualify as machine-readable metadata as is, and they are treated as such by tools like the Fastcase Bad Law Bot. As described in the preceding note, relying solely on Bluebook citations does not allow these automatic citators to compete with KeyCite and Shepard’s in terms of accuracy, currency, and comprehensiveness. For that, additional citation metadata would be required. Pablo D. Arredondo has demonstrated that Bluebook citations can be used in other ways as well, such as generating brief case summaries and improving relevancy rankings of search results. Pablo D. Arredondo, Harvesting and Utilizing Explanatory Parentheticals, 1 LEGAL.INFO.REV. 31, 49–50 (2015–2016).

148. Robinson et al., supra note 97, at 171 (“When government provides reusable data, the practical costs of reuse, adaptation, and innovation by third parties are dramatically reduced.”).

149. See Paul Hellyer, Evaluating Shepard’s, KeyCite, and B’Cite for Case Validation Accuracy, 110 LAW LIBR. J. 449, 465, 2018 LAW LIBR. J. 20, ¶ 50; Aaron S. Kirschenfeld, Yellow Flag Fever: Describing Negative Legal Precedent in Citators, 108 LAW LIBR. J. 77, 96, 2016 LAW LIBR. J. 4, ¶ 49; cf. Mart, Human Indexing and Computer Algorithms, supra note 46, at 244–49, ¶¶ 39–50 (showing a wide discrepancy between KeyCite and Shepard’s when using these citators to find additional cases by topic).

150. See generally Martin, supra note 22, at 346, ¶¶ 37–38 (describing how the North Dakota Supreme Court and Oklahoma Supreme Court case law databases allow for retrieval by basic metadata fields like “opinion author,” and that the databases seem to be tied to the docket-based e-filing system at large).
Scholar could mimic these functions, allowing for expanded field searching, faceted searching, and an expanded set of options for sorting and filtering search results.

¶63 Given the breadth of materials housed in each database, Westlaw and Lexis users can search across multiple jurisdictions, state or federal, and multiple sources of law simultaneously. Assuming that other branches of government continue to expand their use of standardized XML metadata, we could imagine free services allowing for searches across different content types and jurisdictions as well. By systematically tagging citations to primary legislative and administrative law, a system like Google Scholar could link from court documents to provisions in the United States Code or Code of Federal Regulations. This is crucial to the ability of a legal database to compete with the likes of Westlaw or Lexis; as Martin observes in his analysis of the Arkansas court website:

Those working in digital collections have come to expect that case and statutory citations in decisions will be linked to the provisions cited, that the statutory authority cited for a regulation will be equally accessible, and finally that statutory annotations will have this same functionality. The Arkansas case law archive, like those mounted by the courts in most other United States jurisdictions, cannot offer this degree of integration. As a consequence, even with an enhanced search engine and a deeper historical collection, this path-breaking public site will have a hard time competing with the commercial services that bring statutes and case law together.

¶64 Once courts become comfortable tagging “easy” parts of a case (i.e., the parts that are objectively identifiable, like citations or party names), they could begin experimenting with more complex and detailed tagging practices. This might include, for example, tagging specific elements of different causes of action or specific factors in multifactor tests. If this practice were widespread and standardized, it might be possible to design a program that could pull up the rules underlying a cause of action in specific jurisdictions. If courts issued headnotes, as is still done by some, and classified these notes according to a metadata standard

151. Though linking to secondary sources would be trickier; publishers are not inclined to give this content away for free. Perhaps links to official guidance material or nonprofit self-help sites would be feasible, or links to library catalogs. See generally Manriquez, supra note 117 (describing how linked data could increase the visibility of library resources on the Internet).
152. See generally Martin, supra note 2, at 38 (describing how metadata deficiencies limit the flexibility users have when interacting with a case law database).
154. Martin, supra note 66, at 87.
155. See Bruce, supra note 24, at 27 (“It is simply not that difficult to decide which parts of a judicial decision are useful meta-data.”).
156. See supra notes 66 and 70; see also Martin, supra note 2, at 39 (“With limited exceptions, the headnotes and issue summaries prepared for official print reports by public law reporters
mapped onto some open source taxonomy, free legal research services could provide users with the ability to browse legal materials by narrow topics.\textsuperscript{157} If standard subject tags were adopted across jurisdictions, this would enable browsing to occur across jurisdictions.

\%65 Effectively, this would shift responsibility about how the law is classified and structured from the private to the public sector.\textsuperscript{158} And this might be an impor-

have not accompanied the decisions themselves onto the Internet or into commercial online collections.

\textsuperscript{157}. See Martin, supra note 2, at 39 (advocating that courts should produce their own headnotes and synopses, host them along with the online version of the case, and allow them to be harvested and used by commercial entities). This practice could have especially important benefits for the quality of electronic legal research. Scholars have argued that researchers using search engines often choose search terms pertaining to the client’s factual situation, rather than the legal rules, issues, and principles at play. See, e.g., Carol M. Bast & Ransford C. Pyle, \textit{Legal Research in the Computer Age: A Paradigm Shift?}, 93 Law Libr. J. 285, 297–98, 2001 Law Libr. J. 13, ¶¶ 43–50; Barbara Bintliff, \textit{From Creativity to Computerese: Thinking Like a Lawyer in the Computer Age}, 88 Law Libr. J. 338, 345–46 (1996); Richard Delgado & Jean Stefancic, \textit{Why Do We Tell the Same Stories? Law Reform, Critical Librarianship, and the Triple Helix Dilemma}, 42 Stan. L. Rev. 207, 221 (1989) (“Computers may be excellent means of finding cases about cows that wander onto highways. They are less useful in finding cases that illustrate or discuss more complex or abstract concepts.”); Stefan H. Krieger & Katrina Fischer Kuh, \textit{Accessing Law: An Empirical Study Exploring the Influence of Legal Research Medium}, 16 Vand. J. Ent. & Tech. L. 757, 789 (2014) (“This study’s findings suggest that electronic researchers can, in fact, be expected to emphasize fact terms as compared to legal concepts in their research and to rely more on primary sources and less on secondary sources than print researchers.”); cf. Hanson, supra note 2, at 583–84, ¶¶ 54–55 (arguing that keyword searching can be effective for finding cases on narrow legal doctrines, but is less conducive to finding cases embodying high-level legal principles).

Searching by keywords pertaining to factual information alone can have negative consequences on research outcomes and, by extension, might impair the efficiency of the legal system as a whole. See generally Katrina Fischer Kuh, \textit{Electronically Manufactured Law}, 22 Harv. J.L. & Tech. 223, 267–70 (2008) (arguing keyword searching has diminished reliance on editors, leading to greater diversity in how individual lawyers might “frame” a case and more “tilting at windmills,” i.e., reliance on spurious legal theories). By embedding taxonomical information in opinions, free and low-cost databases might mitigate these problems by allowing users the option to find cases more easily by topic. Though it is debatable whether and to what extent users of electronic databases will use classification data even if it is made readily available, see Kuh, supra, at 245, we can speculate that research databases could leverage this metadata to provide expanded, less literal keyword search results. See generally Mart, \textit{Algorithm}, supra note 6, at 392, ¶ 9 (“But it turns out that trying to make sense of information without underlying ontologies or classification systems can impede automation practices. Legal database providers may even make the human additives to their search explicit. LexisNexis boasts of the human indexing in \textit{Shepard’s} citations; Westlaw is proud of its human-generated Key Numbers; and Bloomberg BNA advertises that the human indexing in its BNA treatises significantly boosts search results.”). For example, a search engine might link certain sets of fact-related terms to legal issues commonly involving these facts and then retrieve some cases that deal with the legal issue but do not include the actual search terms used. Some of this might be possible through citation analysis alone—but more explicit classification metadata could only help.

\textsuperscript{158}. In many ways, this argument parallels—in kind of an inverted way—proposals advocating for greater use of public-private partnerships in providing basic government services. Usually, this means outsourcing services traditionally provided by the government to private companies. In the world of legal information, the \textit{private} sector has historically been the dominant player in the market, and this article argues for greater participation by government actors. See generally Dominique Custos & John Reitz, \textit{Public-Private Partnerships}, 58 Am. J. Comp. L. 555 (2010) (providing a history of public-private partnerships and arguing that these kinds of arrangements can result in insufficient oversight over private contractors providing public services); see also Joergensen, supra note 27, at 33 (“Traditional print is becoming increasingly cost bound and expensive, profit margins are shrinking, and consolidations are rampant. Because of this, and the relatively low startup costs involved in Internet publishing, the opportunity for non-profit and governmental institutions to gain control over their publications has never been greater.”).
tant benefit because scholars such as Berring have argued persuasively that the Digest System was not merely descriptive; rather, it influenced how the law was interpreted and applied.159 One specific complaint lodged against the Digest System is that West has historically been slow to add categories for new species of legal theories, effectively hiding them from practitioners and the lay citizenry alike.160 If courts classified headnotes, they could add categories whenever they saw fit.161 In this way, courts would gain greater control over how their decisions are found, interpreted, and used; by extension, the judiciary would enjoy greater control over the evolution of the common law in substantive terms.162

159. See, e.g., Berring, Full-Text Databases, supra note 11, at 33 (“Lawyers began to think according to the West categories.”); Berring, Imperative of Digital Information, supra note 63, at 23 (“How one organizes the law became the center of what the law could and did mean.”). But see Peter C. Schanck, Taking Up Barkan’s Challenge: Looking at the Judicial Process and Legal Research, 82 LAW LIBR. J. 1, 17 (1990) (“[K]ey numbers, headnotes, indexes, and so forth have had little or no impact on either the content of our law or our understanding of the legal system.”); Joseph A. Custer, The Universe of Thinkable Thoughts Versus the Facts of Empirical Research, 102 LAW LIBR. J. 251, 265, 2010 (“My research suggests that neither does the Key Number System influence the law nor does the law influence the Key Number System.”). For a recent analysis of whether and how the West Digest influenced lawyers, see generally Danner, Influences of the Digest, supra note 2. By giving researchers the freedom to “self-index” virtually the entire body of case law through keyword searching, it might seem like this concern has been nullified. However, Richard Delgado and Jean Stefancic argue that keyword searching is a partial solution at best. Delgado & Stefancic, supra note 157, at 221 (“[C]omputerized research can ‘freeze’ the law by limiting the search to cases containing particular words or expressions. Research should encourage browsing and analogical reasoning. Paradoxically, computer-assisted research can discourage innovation and law reform.”). Furthermore, some algorithms depend on traditional classification systems to provide relevant search results. For example, Westlaw’s algorithm is tied to the West Topic and Key Number System, though this link is not apparent to users. See Nicholas F. Stump, Following New Lights: Critical Legal Research Strategies as a Spark for Law Reform in Appalachia, 23 AM. U. J. GENDER SOC. POL’Y & L. 573, 610 (2014) (“A fundamental flaw in the assertion that online research transcends legal categories is that . . . legal categories are now critical components of legal database search algorithms: WestlawNext is the epicenter of such search algorithm innovation.”).

160. Berring, Full-Text Databases, supra note 11, at 33–34 (“The editors were trained to ‘normalize’ judicial opinions that used strange language or strange analysis or otherwise appeared to be anomalous, to bring them back into the orthodox mainstream, to make them fit past cases and present expectations.”); Delgado & Stefancic, supra note 157, at 215–16 (“Change comes slowly; The topic ‘Labor’ received a heading in the 1950s, and until recently West classified ‘Workers’ Compensation’ under ‘Master and Servant’ law.”).

161. If anything, the problem would be too many new categories of cases. But this is less of a problem than one might assume, given that (1) cases could be put in more than one spot, meaning that in addition to the more novel and unconventional category, a case could be given a tag that conformed to a standard, trans-jurisdictional taxonomy, perhaps created by some panel of experts; and (2) the provider of the user interface (e.g., Google Scholar) could always elect to ignore classification metadata that didn’t conform to the standard taxonomy, whatever that turned out to be.

162. At the very least, wider access to good classification schemes might improve the quality of arguments brought in front of a court. Cf. Kuh, Electronically Manufactured Law, supra note 157, at 263–64 (“[T]he digest and key systems provide a print researcher with a significant amount of information about a case before the researcher reviews the case text and, per cognitive psychology, the labels and categories imposed by the digest and key systems will have a strong influence on researcher understanding. . . . [W]e would expect electronic researchers to be less apt than print researchers to recognize faults in a case or theory that is at least superficially supportive of a research goal.”). For additional background on the topic of how the shift to keyword searching has affected the research and analysis of lawyers, see, e.g., Berring, Form Molds Substance, supra note 12, at 21–27; and Berring, Thinkable Thoughts, supra note 7.
Above, we saw how metadata increases the findability of case law and other sources of law. Courts can also use standardized metadata to exert greater control over when opinions are kept hidden. According to Silverman, XML “permits information in court records to be shared with the public at the courthouse and over the Internet while respecting the legitimate privacy interests of litigants and others who come before our courts.”163 This is important because privacy concerns are cited as one reason courts should be cautious about accepting filings and publishing decisions via the Internet.164 XML would allow a court to tag elements of a document as public and accessible to anyone, or private and accessible to just authorized individuals.165 Such a system might be designed so that information marked as private would be automatically culled from the document as it is made available for harvesting to third parties like Google.

Furthermore, if courts took seriously their roles as editors and publishers of legal information, mistakes involving the accidental dissemination of sensitive information might be reduced. As Martin notes in a recent article, online case reporting is now often tied directly to case management systems.166 For example, whether a federal district court decision ends up in the case law databases on Westlaw, Lexis, or Google Scholar can depend on whether the judge (or court personnel) correctly labels the document in PACER as a “written opinion.”167 In some cases, failing to apply the correct label can keep potentially useful cases hidden; in other cases, such mistakes can result in the unnecessary dissemination of sensitive personal information, like medical records in routine Social Security disability appeals.168 To protect privacy, it might make sense to decouple case reporting from case management systems. Instead of merely selecting a document type from a drop-down menu to mark a case for publication, a court might be forced to undertake the extra step of uploading the document to a separate repository containing only written opinions meant for wide distribution.169 The case management system could reside behind a CAPTCHA (and thus be effectively hidden from Google's

164. Silverman notes how “[a]ccording to these doomsayers, inexpensive and convenient public access to court records over the Internet must be abjured if we are to preserve what remains of the collapsing catacombs of personal privacy . . . .” Id. However, Silverman argues that this fear is misplaced because courts could “use XML tags to mark up sensitive personal information and control access to it programmatically.” Id. at 211; see also Peter A. Winn, Online Court Records: Balancing Judicial Accountability and Privacy in an Age of Electronic Information, 79 Wash. L. Rev. 307, 327 (2004) (arguing for an approach that balances privacy against the public’s interest in accessing court documents online).
165. See Silverman, supra note 99, at 211; Turner, supra note 129, at 281 (“[D]ifferent users are permitted to view different fields out of the entire document. Because individual fields are recognized, for example, court software displaying an electronic brief could show court staff all data, while blocking out address information in the view accessible by the general public.”); cf. Julien Maillard, The Semantic Web and Information Flow: A Legal Framework, 11 N.C. J.L. & Tech. 269 (2010) (noting that these kinds of technologies can block access to information, which can be used for nefarious purposes by repressive regimes).
166. See Martin, District Court Opinions that Remain Hidden, supra note 23, at 323, ¶¶ 48–51.
167. Id.
168. Cf. id. at 329, ¶ 68.
169. Although this would add an extra step to the process of marking court documents as written opinions meant for wide distribution, this additional friction could have the benefit of forcing judges to more carefully consider their role as “publishers” in the legal information system.
indiscriminate gaze), whereas the case law repository would encourage just this kind of indexing and harvesting by search engines.

¶68 Relatedly, courts could use metadata tags to clearly state whether a decision should be considered precedential.170 Tagging a document as “nonprecedential” would allow a search engine to give such a decision less weight or allow for appropriate filtering options—an especially important ability given the amount of unpublished case law making its way online.171

¶69 Good online publishing and metadata practices would also help ensure the accuracy and integrity of digital legal information. Martin notes that even the major legal databases have difficulty conforming digital texts to their official, print counterparts.172 Currently, “judges, reporters of decisions, and editors use delays inherent in the production of those reports to make post-release revisions . . . [resulting in] an indeterminate risk of version discrepancy.”173 If a court were to publish cases in XML format and allow the metadata to be freely harvested by third-party websites, any changes made to the version stored on the court’s website could (sooner or later) be reflected on reliable third-party sites.174 Then, when a finalized version of the opinion becomes available, an authenticated, official version in PDF format should be posted in conjunction with the XML data.175 Thus, by seriously investing in the online publication of decisions and opinions, courts can ensure that researchers find the most up-to-date, authoritative version of a case when conducting their research online.

¶70 In an ideal universe, we could imagine every federal and state trial and appellate court marking up all of their written work product in minute granularity. But this might not be very realistic, especially in the short term. Fortunately, improving metadata practices isn’t an all-or-nothing proposition: courts can take it one step at a time, and every step would have real effects on the legal information marketplace. For example, given that appellate-level court opinions have the greatest legal significance, it might make sense to focus on these higher courts first. Further, even marking up the “easier” elements of court opinions would go a long

170. Martin advocated for tagging each case with a note about its importance, but thought that every case should be citable and precedential. Martin, supra note 2, at 34 (“The digital environment allows appellate courts to tag those opinions they believe to involve routine application of settled law and for those conducting case research to focus initially on other opinions, without giving rise to all the problems that can flow from withholding opinions from general circulation on that ground or declaring those opinions non-precedential and uncitable.”).

171. See id. at 9 (“Vast numbers of ‘unpublished’ decisions of state and federal courts, decisions that have no volume and page numbers, are now collected and organized, linked and annotated in virtual law libraries.”); Berring, Crumbling Infrastructure, supra note 1, at 287–90.

172. Martin, supra note 22, at 363, ¶ 82.

173. Id.

174. See Martin, supra note 66, at 84–85 (discussing the importance of allowing bulk data downloads, including “a mechanism that will flag changed documents so that third-party publishers are able to identify and harvest revised versions of previously released documents as well as those being released for the first time”).

way to improving the legal information environment. Much of this is captured by court e-filing systems already, but going one step further and tagging citations with treatment information would be a relatively small task that could improve services like Google Scholar immensely.

¶71 The recommendations listed above would help U.S. courts avoid falling behind foreign court systems when it comes to online case publication and access. The European Union has adopted a number of policies in this area, including a publisher-neutral system for case identification, a subject classification scheme with multiple hierarchical levels and a decent amount of specificity, and an open data policy that allows its content to be reused in downstream commerce.176 This citation system (called the European Case Law Identifier) and the basic metadata standard are being implemented by many national courts throughout Europe as well.177 There is even a growing recognition that meaningful access to accurate legal information is a basic human right.178 And, according to preliminary views of the European Commission and the Hague Conference on Private International Law, the availability of reusable, quality metadata might be considered a foundational pillar of this right.179 Berring, in 1995, claimed that the United States had the best legal information system in the world; we have a responsibility to ensure this remains the case in the future.180

¶72 To sum up, the metadata practices of the judiciary can have concrete effects on the cost and quality of legal information databases that provide online access to case law. If courts used the same basic markup language for citations, free and low-cost research databases could develop algorithmic citators with accurate state-of-the-law information. The more detailed the metadata, the wider the array of search and filtering options these databases could provide. If courts fully embraced this editorial role, and began to write and classify their own headnotes and case summaries, we could imagine free or low-cost case law databases allowing users to find case law by topic, rather than just via keyword search. This presents an opportunity for courts to take greater control over how their decisions are found, interpreted, and applied.

176. See Marc van Opuijen, Gaining Momentum: How ECLI Improves Access to Case Law in Europe, 5 J. Open Access L. 1, 3–4 (2017) (providing background on ECLI); Marc Van Opuijen et al., Online Publication of Court Decisions in Europe, 17 LEGAL INFO. MGMT. 136, 141–43 (2017) (noting that although the European Union adheres to open data practices that allow downstream commercial and noncommercial use of court decisions, policies vary across member states). For an example of how these policies allow for improved search capabilities, see InfoCURIA, http://curia.europa.eu/juris/recherche.jsf?language=en [https://perma.cc/7GBG-64ZT].

177. Opuijen, supra note 176, at 4–5 (providing a map showing implementation status across Europe); see also European Case Law Identifier (ECLI), Eur. E-JUSTICE, https://e-justice.europa.eu/content_european_case_law_identifier_ecli-175-en.do [https://perma.cc/T67X-4WA3] (“[T]o facilitate easy access to—and citation of—national, foreign and European case law, the Council of the European Union invited Member States and EU institutions to introduce the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law.”).

178. For background, see generally Mitee, supra note 175.


180. Berring, Throwing Out the Baby, supra note 109, at 618.
How Might Court-Authored Metadata Affect Cutting Edge Research Tools?

¶73 The preceding section describes some of the concrete benefits of robust, court-provided metadata. This section strays into the territory of speculation and prediction: how might court metadata practices impact the development of AI-powered research tools?

¶74 Artificial intelligence, we are often told, is already here. Although it is difficult to predict everything that private actors using AI might do with court-authored metadata, it is safe to say that a large disconnect exists between common definitions of “artificial intelligence” and marketers’ use of the term. What we usually think of as artificial intelligence is often labeled “Artificial General Intelligence,” or AGI. A computer system meets this stringent definition when it is able to read a plain text document (or process information delivered verbally) and “understand” what it means—human-generated metadata be damned. This technology might be a ways off—and that might be a good thing. When it lands, court metadata practices will be the least of our concerns since virtually every white-collar professional could be out of a job.

¶75 When marketers use the term “artificial intelligence,” they usually mean “Artificial Narrow Intelligence,” or ANI. Examples of ANI include tools that use machine-learning processes to accomplish narrow tasks that previously required human involvement (self-driving cars, playing chess or Jeopardy!); tools that illuminate or visualize trends and connections in large datasets (e.g., CARA or Ravel); or just about any software that incorporates voice recognition coupled with natural language processing (e.g., Siri or Google Assistant). When marketers describe these technologies as “AI powered,” what they probably mean is that the technology uses some form of machine learning or is able to create some illusion of AGI. So, when you ask Google Assistant, “Who was the president in 1922?,” it is certainly impressive that it returns “Warren G. Harding” rather than just a link to a list of historical U.S. presidents. But the reason this magic works is because of a Wikipedia page containing structured metadata explicitly telling Google that (a) Warren G. Harding was a U.S. president, and (b) he was president in 1922. Thus, this answer is

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181. For a deeper exploration of this topic, see Baker, supra note 17.
182. Martin, supra note 2, at 39 (“Beyond linked and searchable headnotes and case summaries are myriad possibilities.”).
183. See Tad Friend, Superior Intelligence: Do the Perils of A.I. Exceed Its Promise?, New Yorker, May 14, 2018, at 44. Classic fictional representations of this kind of AI would include HAL 9000 from 2001: A Space Odyssey or, as a more benign example, Data from Star Trek: The Next Generation.
184. Cf. Baker, supra note 17, at 20, ¶ 53 (“While lawyers can generally access the information they seek, computers do not yet have the ability to move beyond natural language processing to natural language understanding. It is impossible, then, for computers to truly perform effortless expert legal research.”).
185. At least, as Amara’s Law would suggest: “We tend to overestimate the effect of a technology in the short run and underestimate the effect in the long run.” Roy Amara, WIKIPEDIA, https://en.wikipedia.org/wiki/Roy_Amara [https://perma.cc/QM87-GQDP]; see also Baker, supra note 17, at 16, ¶ 40 (arguing that marketing departments overstate the capabilities of current-generation AI tools).
186. Or worse—see, e.g., Harlan Ellison, I Have No Mouth and I Must Scream, reprinted in American Fantastic Tales: Terror and the Uncanny from the 1940’s to Now 197 (2009).
187. See Friend, supra note 183, at 44 (providing a definition of “Artificial Narrow Intelligence”).
achieved more through decade-old Semantic Web technologies (structured, linked data and natural language search) than anything much resembling HAL 9000.

¶76 This isn't to say that these kinds of ANI technologies aren't very valuable and useful. In fact, they are almost uncanny when they work correctly. But they are not magic, and they often rely on human-generated, structured data to work.188 Even tools that employ machine learning techniques require humongous sets of unstructured and structured data with which they can train, learn, and improve. It stands to reason, then, that better court metadata practices will increase the accuracy of ANI products when it comes to answering legal questions, help them learn and improve more quickly, and lower their costs.189 Already, you can plug some legal questions into Google and return an “answer” rather than just a link to a website. Wouldn't it be nice if that “answer” came from, say, a recent court opinion or government website rather than an online troll?190

¶77 Besides helping AI tools become better, cheaper, and more accessible, good metadata practices are important to the development of AI tools at a more basic level, in a way that impacts the integrity of the legal system. Decades ago, Berring made a good case that the West Digest System—which acted as a gatekeeper in the print world—not only reacted to the law but, because of the nature of the common law system, influenced the development of legal thought as well.191 After all, a case can’t be used as precedent if it can’t be found.192 Search engines and early ANI tools

188. See generally Jonathan Jenkins, What Can Information Technology Do for the Law?, 21 HARV. J.L. & TECH. 589, 603 (2008) (“Placing legal information—e.g., statutes, regulations, and judicial opinions— into the Semantic Web will enable search tools and decision support systems to operate on uniformly structured data, without relying on more uncertain methods for extracting information from plain text. Machine learning methods will be able to identify rules and patterns more accurately in such a data set.”); cf. Baker, supra note 17, at 12, ¶ 28 (describing how the effectiveness of medical diagnostic AI systems have been limited by medical data being “scattered across different computer systems in both structured and unstructured form . . . [making] it nearly impossible for one program to have a complete picture of the patient’s health record.”). Judicata, a startup that promises improved semantic legal search, relies on a combination of human editors and algorithms to build its database of structured case law metadata. See Ansel Halliburton, Judicata Raises $5.8M Second Round to Build Out Advanced Legal Research Systems; Keith Rabois Joins Board, TECHCRUNCH (May 28, 2013), https://techcrunch.com/2013/05/28/judicata-raises-5-8m-second-round-to-build-out-advanced-legal-research-systems-keith-rabois-joins-board/ [https://perma.cc/5G49-K87N]; see also John O. McGinnis & Russell G. Pearce, The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services, 82 FORDHAM L. REV. 3041, 3049–50 (2014).

189. Gal & Rubinfeld, supra note 138, at 16 (“Indeed, research has shown that access to data can shape both the level and direction of innovative activity, thereby affecting both private as well as social welfare.”).

190. As a cautionary tale, see the exchange on Yahoo! Answers that became the “How is Babby Formed?” meme. Annalee Newitz, How is Babby Formed—The One Yahoo Meme That Perfectly Represents the Faltering Company, ARS TECHNICA (Mar. 21, 2017), https://arstechnica.com/information-technology/2017/03/how-is-babby-formed-the-meme-that-will-define-yahoo-forever/ [https://perma.cc/3FFF-BK9W]. See also David Colarusso & Erika J. Rickard, Speaking the Same Language: Data Standards and Disruptive Technologies in the Administration of Justice, 50 SUFFOLK U. L. REV. 387, 403 (2017) (“Litigants searching online for information about family law are far more likely to find a search engine-optimized site from an enterprising small law firm looking for new clients rather than either of the more neutral resources.”).

191. See Berring, Imperative of Digital Information, supra note 63, at 23.

192. See Berring, Chaos, Cyberspace and Tradition, supra note 4, at 193 (“Only if the decision could be found in a bound case reporter, which meant it could be found in the West system, could it be deemed real.”); cf. McGinnis & Wasick, supra note 2, at 1000 (“Inaccessible data points are useless to the decision maker.”).
are the gatekeepers now and could be susceptible to bias-reinforcing “feedback loops” similar to those theorized to have resulted from the Digest System. Looking toward the future, robust, court-authored metadata could help ensure that cases are found and used the way that courts intend them to be.

§78 Put another way, courts need to reconsider the audience for their writings. When the Digest System was king, the human editors at West could be considered one of the primary audiences of court opinions. And their understanding of the documents they read was especially important, given that these editors affected how downstream audiences would later find and interpret the law. In a universe of AI-powered tools, much of the initial “readership” of court opinions will be machines rather than human editors. The closer court opinions are to being written in a machine-readable format, the more they will be properly “understood” by these ANI tools—and the better chance that lawyers and the public will ultimately be given the most relevant court opinion when they need it. Furthermore, since the metadata feeding into these tools would be open source and publicly available, this would make these research platforms a little less like unaccountable “black boxes.”

193. Without explicit guidance from the courts, AI systems would need to lean even more heavily on user behavior as a data source. ROSS learns, in part, by having subscribers “upvote” or “downvote” its outputs. Baker, supra note 17, at 15, ¶ 36. This is fine as long as the tool is used only by a single constituency, like big law firms. However, if a judge or judicial clerk also relied on the tool, a bias-reinforcing feedback loop results, especially if we assume that the law firm user base would significantly outnumber the user base in the judiciary, and be weighted by the system accordingly. To illustrate step-by-step: (1) the AI tool would begin to reflect the biases of its largest user group, attorneys at big law firms; (2) the research results of a judicial clerk using the tool would reflect this bias; (3) the decision of the judge would be influenced by this biased research; (4) the decision would become part of the AI system’s dataset, further solidifying this bias. Cf. Ronald E. Wheeler, Does WestlawNext Really Change Everything? The Implications of WestlawNext on Legal Research, 103 Law Libr. J. 359, 364–66, 2011 Law Libr. J. 23, ¶¶ 16–20 (noting that algorithms that mine user behavior data to provide relevant results will overlook the “legal oddities” that might be most interesting to academics or creative lawyers). See generally Baker, supra, at 24, ¶ 65 (describing how the biases of programmers and users can become entrenched in algorithms).

194. See generally Berring, Thinkable Thoughts, supra note 7, at 317 (asserting that, despite reports that computer intelligence will soon rival human intelligence, he rather “would choose to hope that we humans will stay in control of our lives and of our legal system”).

195. See generally Berring, Cognitive Authority, supra note 7, at 1693 (“While the Topic and Key Number System was never deemed ‘authoritative,’ the power of the classification function that it performed was staggering. Generations of lawyers learned to conceptualize legal problems using the categories of the Topics and Key Numbers of the American Digest System.”); Berring, Full-Text Databases, supra note 11, at 32 (“The importance of the placement of the headnote into the Digest’s subject index cannot be overemphasized. This initial placement had a tremendous impact on any subsequent manipulations of the data.”).

196. See Berring, Cognitive Authority, supra note 7, at 1706–07 (“The major filter of information could become the search engine. It will require less and less from the researcher while doing more and more for her. In this scenario the researcher accords cognitive authority to the search system. She relies on the algorithm that drives the system to be accurate.”).

197. Even in this scenario, research databases would likely still be opaque with regard to their proprietary algorithms. In fact, when it comes to systems using advanced machine learning algorithms (like those modeled as “neural networks”), even the owners of the algorithm might not have a clear sense of the AI system’s decision-making process. But if these systems were trained, at least in part, using structured data supplied by the court system, we might have a better sense of what these systems were basing their decisions on. See generally Mart, Algorithm, supra note 6, at 399, ¶ 18 (“Legal databases use similar primary law, but how it is readied for the algorithm differs: by the elements of metadata, relational, or object oriented database architecture, for example, or the categories of classification that are chosen.”).
¶79 In the past, we have viewed court opinions as quasi-literary creations with a narrative quality rather than a rigid, uniform set of facts, rules, and holdings. However, the future may require us to rethink this view.198 Silverman argues that by “tagging all the information contained in a court document, it is possible to dispense with documents altogether—through dissolving them into structured information.”199 In this way, structured metadata would enable a computer program, whether labeled as possessing AI or otherwise, to identify, isolate, manipulate, and display individual components of a court decision,200 allowing a legal researcher to easily identify and access just the parts or aspects of legal opinions that are relevant to her purposes. This would bring online legal research sources closer to the “hypertext” envisioned by Katsh in 1995, particularly for the researcher without access to a premium legal database.201

¶80 The thought of researchers finding—and relying on—decontextualized bits and pieces of court decisions to formulate legal advice surely would make many people nervous, but keep in mind that this isn’t far from how some attorneys conduct research online today.202 Furthermore, in the aggregate, these bits of data could be boiled down into meaningful guidance by litigation analytics tools.203 Again, courts should consider the audience for their decisions: the more machine-readable their written output, the greater chance that precedent will be found in the right contexts and have the anticipated effect on attorneys and subordinate courts. As new generations of attorneys enter the judiciary, a pivot to this kind of thinking about authoring court orders and opinions might occur naturally.

¶81 At a certain point, a legal information database can become so advanced as to encroach on the traditional role of the lawyer. We might even ask whether such a system is actually engaged in the practice of law.204 Some have argued, in fact, that restrictions on the unauthorized practice of law are stifling innovation in the legal technology field.205 As noted above, Google Scholar displays lists of citing cases, but

198. See generally Berring, *Cognitive Authority*, supra note 7, at 1704 (“The mummified and stylized prose of today’s judicial opinion will become a museum piece.”).
200. See Berring, *Cognitive Authority*, supra note 7, at 1704 (“In the future when, operating under a format-neutral regime, a court releases its opinion, that opinion is going to be manipulated, parsed, and repackaged by the legal information providers.”).
201. When we think of hypertext now, we think of a Web 1.0 world of hyperlinks; when Katsh discusses hypertext, he seems to be anticipating something more powerful, perhaps even the Semantic Web environment where information is linked but also identified in a standardized, machine readable format:

> The use of hypertext in cyberspace requires a new image or conception of information—not of discrete volumes existing on shelves, or of discrete and numbered issues and editions, but of something more organic and dynamic, of bodies of information in which the links contribute to a work in which the whole is much more than the sum of its parts.

*Katsh, supra* note 38, at 211.
202. See Molly Warner Lien, *Technocentrism and the Soul of the Common Law Lawyer*, 48 Am. U. L. Rev. 85, 88–89 (1998) (“[T]he methodology of researching in and working with electronic texts encourages work habits that prioritize speed and all too easily enable lawyers to find a kernel of phraseology that may support their often incorrect preconceived notions.”).
203. Currently, the litigation analytics tools available on Westlaw, Lexis, and Bloomberg Law hold a lot of promise, but their capabilities seem to be limited by the generality, inconsistencies, and gaps in the data provided by the state and federal case management systems on which these tools rely.
205. Jenkins, *supra* note 188, at 605–06.
without editorial characterizations of these citations—for example, whether the
citing case overturned or affirmed the prior case. Assuming that Google were will-
ing to devote the time and energy to creating its own KeyCite-like service, would
this constitute providing legal advice? This is a relatively benign example, but we
can envision future AI tools that flaunt the divide between “research assistance”
and “legal advice” in more troubling ways.206

¶82 By providing their own characterizations of case treatment in explicit,
machine-readable terms, courts can help organizations like Google steer clear of
these muddy legal issues. If a Shepard’s-like system could be built off of the meta-
data included in court documents, then Google would be displaying this metadata
in a particular way, arguably, rather than adding its own interpretation of the
underlying data itself. A side effect of this practice is that it would require courts to
be crystal clear about what they are up to in their legal opinions, which could have
benefits as well as drawbacks.207

¶83 Also worth considering is the prospect of automated (or AI-assisted) trial
systems.208 The rigid and uniform classification of rules, standards, multifactor
tests, and so on might be a side effect of requiring judges (or court personnel) to
provide granular metadata on these points, and this data would only improve an
ANI’s ability to decide a case (or, more realistically, provide guidance to the
decider). Legal disputes may be difficult to automate now, given the law’s complex-
ity, ambiguities, gaps, and inconsistencies, but through the process of tagging
documents thoroughly, maybe some of those wrinkles could be exposed and
smoothed out.209

¶84 To summarize this part, XML is a powerful, flexible, and compatible way
to embed metadata in electronically published documents. By including robust
metadata in their opinions, and making this data available to be harvested, indexed,
and linked by commercial and nonprofit entities, courts can help ensure that their

206. See generally McGinnis & Wasick, supra note 2, at 1018 (anticipating a future where
users will be able to plug natural language questions into search engines and receive natural language
answers).
207. See Berring, Cognitive Authority, supra note 7, at 1704 (“Think how much easier the
law would be to understand if each opinion had to begin with an official judicially authored summary
of the case. We could even ask judges to write these in a controlled vocabulary. We could ask them to
tell us precisely how what the decision is intended to affect the law. Rather than major decisions being
followed by fractious debate as to what the Court intended, we could simply ask the Court to tell us.”);
cf. Martin, supra note 2, at 38 (speculating that requiring courts to provide detailed metadata might
even have “a long range beneficial effect on the analytic structure of decisions”). But see Bruce, supra
note 28, § 7.2.1 (“To be sure most markup schemes will be fairly general and most likely confined
to fairly incontestable metadata like the name of the author of an opinion or the date of enactment
of a statute. No matter how much law students might wish for it, it is not likely that we will ever see
a judicial opinion containing tags like <PAYATTENTION> or <DICTUMClass=“IMPORTANT”
duration=“ETERNAL”>, even from a court wanting to lend weight to its own statements.”).
208. See generally Kats, supra note 33, at 110 (“The specter of a computer that would
render final judgment for the parties is more remote than the appearance of a computer that could
answer particular kinds of questions, one that could help parties in a dispute to clarify what their
argument is about and what kinds of solutions are possible, and one that could guide them through
the problem-solving process.”).
209. See generally McGinnis & Wasick, supra note 2, at 996 (“[E]fficient legal search can
become law itself”). Also, it is interesting that this parallels how the West Topic and Key Number
System and the underlying body of court opinions congealed over time into a “seamless web” of law.
documents will be findable, useful, and machine-readable.\textsuperscript{210} Even if some of the recommendations above would be very difficult or even unrealistic to implement,\textsuperscript{211} simply tagging citations with basic metadata could create substantial benefits. It could be a boon, for example, to free sources of legal information, enabling cross-referencing, reverse-citation indexing, and features mimicking those of \textit{Shepard’s} and KeyCite. If we have faith in the free market’s ability to spur innovation (especially in sectors of the economy with plenty of competition, as is increasingly the case in the market for free and low cost online legal research), this could be a cost-effective way to give the public access to high-quality, free legal research tools. The more structured data included with electronically published court documents, the better free sources of legal information can mimic the advanced features of Westlaw, LexisNexis, and Bloomberg Law. Peering into the future, we can speculate that good court metadata practices would improve the functionality, reliability, accountability, and cost of the next generation of AI tools.

\textbf{Where Do Librarians Fit In?}

¶

85 Librarians are especially well suited to helping courts improve how they publish their case law, both in a practical sense and in terms of advocacy.

¶

86 First, they are experts in using and maintaining legal information systems—from a variety of perspectives given the diversity of material cataloged, patrons served, and reference questions faced. And they are accustomed to thinking about legal concepts categorically and relationally, which makes them particularly well suited for the task of creating legal taxonomies and ontologies (e.g., an open source Key Number System).\textsuperscript{212}

¶

87 The integration of a comprehensive legal ontology with large volumes of legal documents containing metadata in a standardized format could result in powerful legal research tools, with content linked across varied court systems, or even across different branches of government.\textsuperscript{213} Keele and Pearse note that a “shared
taxonomy/ontology emanating from the legal academy could also be ‘mapped’ to
taxonomies/ontologies developed for more practical or public uses such as projects
in the open law movement or internal governmental use.214 In this way, search
engines could see connections among not only primary law documents but sec-
ondary sources emanating from legal academia as well.215

¶88 Second, law librarians have a track record of advocating for the public
interest in the face of legal publishing monopolies. They have pushed for vendor-
neutral citation, for example, which would play a necessary role in removing bar-
rriers of entry for new legal information databases. Other sources of resistance
might include the courts, whose commitment to open access has been mixed.216
Ian Gallacher notes that some courts might be resistant to open access in part
“because open access would likely encourage more, and more complicated, pro se
filings.”217 Martin describes restrictive contracts between some courts and West or
Lexis (sometimes, in exchange for discounts and other benefits) as another obstacle
to open access.218 Finally, as also pointed out by Martin, state governments “quite
commonly assert copyright in all law report editorial additions”.219 Although the
copyrightability of state-authored editorial enhancements is questionable in some
circumstances,220 states should explicitly disclaim these copyrights to encourage
reuse by free and low-cost legal information providers.221

¶89 Persuading courts to spend time and money on tagging legal documents
will certainly be an uphill battle. During the debates on vendor-neutral citation,
Martin described the resistance of court staff to simply adding paragraph numbers
to their decisions.222 However, one way forward might be to focus attention on
tangible benefits: if there existed freely available alternatives to Lexis or Westlaw,
then courts wouldn’t need to subscribe to these expensive services. The freed

214. Keele & Pearse, supra note 130, at 400, ¶ 43 (footnote omitted).
215. See id.
216. See generally Martin, supra note 66 (describing how some state courts have taken their
online case reporting responsibilities very seriously, while others have not).
217. Gallacher, supra note 78, at 22.
218. Martin, supra note 2, at 28–30; cf. Leslie A. Street & David R. Hansen, Who Owns the
(describing “clickwrap” agreements on commercial websites that forbid bulk downloads and harvest-
ing by third parties, even where the commercial website contracted with the state to be the official
online host of the state’s legal information). See generally Bruce, supra note 24, at 21 (“The danger I
perceive lies in the idea that even the unrealized potential for such a cutting-out of the private sector
would be seen as sufficiently threatening to justify strict—and artificial—limits on the level of value
that could be offered by issuers themselves.”).
220. See, e.g., Banks v. Manchester, 128 U.S. 244 (1888); Code Revision Comm’n for Gen.
18-1150 (Apr. 27, 2020).
221. See generally Glassmeyer, supra note 77 (showing that it is commonplace for states
to include copyright claims on websites hosting legal information); Katie Fortney, Ending Copyright
Claims in State Primary Legal Materials: Toward an Open Source Legal System, 102 Law Libr. J. 59,
222. Martin, supra note 22, at 355 n.127. Including paragraph numbers in court opinions,
and requiring pinpoint citations to specific paragraphs instead of page numbers, could help improve
legal analytic tools that rely on citation analysis. After all, Bluebook citations are much like machine-
readable metadata, and the more specific the information included within each citation, the more
power they would have. For an in-depth analysis of the different ways that Bluebook citations can be
used to improve research databases, see Arredondo, supra note 147.
resources could help pay for a full-time metadata professional who could focus on writing headnotes and taking care of the more complex metadata tasks (e.g., characterizing citations). This would require a leap of faith—an “if you build it, they will come” sort of attitude. A tough sell, but maybe not an impossible one.

¶90 Third, law librarians have the skills to digitally catalog and mark up the gigantic backlog of historical cases, a task that would require either the cooperation of a vendor or a major scanning project. Law librarians are experts in processing metadata for print and digital cataloging efforts; and their institutions are well familiar with digitizing historical scholarship libraries. Yes, tagging all of these old documents would be a herculean task, but perhaps algorithms could do this work in a “good enough” way or at least assist in the process. And although this article argues that courts ought to take the reins when it comes to future work product, historical legal documents might be good candidates for crowdsourced tagging (with librarians taking the lead, of course).

¶91 Finally, librarians—particularly in academia—could help facilitate Thomas Bruce’s suggestion that an open source case law repository be initially centralized in a single authority, much in the way that the GPO publishes federal case law. That way, the central authority could (1) ensure that courts comply with data standards, and (2) offer technical assistance (and possibly technical infrastructure) to help get these projects off the ground, especially in places short on personnel and funding. Eventually, when courts became comfortable with the standards and technology, they could decouple from the central repository. As more courts became independent publishers, the system would transition to a distributed, decentralized model.

¶92 Academia would be a good initial home for a central repository of newly published case law. Academic law libraries commonly employ specialists familiar with digital repositories and metadata standards; furthermore, while it is commonplace to pay vendors to host institutional repositories, some law libraries do host repositories based on open source software, like DSpace. Once a repository is created and standards settled on (no small task), court staff or court librarians could

223. See Gallacher, supra note 78, at 27. Recently, the Harvard Case Law Project proved this to be possible; it completed this task in a partnership with Ravel. Dulin & Kribble, supra note 89. Somewhat ironically, Ravel has since been acquired by Lexis; it seems, however, that Harvard wisely anticipated this eventuality in its agreements with Ravel. See Adam Ziegler, Continued Support for the Caselaw Access Project, Er Seq. (June 8, 2017), http://etseq.law.harvard.edu/category/caselaw-access-project/ [https://perma.cc/8KQV-LDXN].

224. See Gallacher, supra note 78, at 38–39 (“The prospect of developing such a protocol, indexing all existing case law according to it, and applying the protocol to all future court opinions is, perhaps, too large a task to consider, even for an army of law students. Therefore, for an open-access site to be able to offer indexed research, it seems inevitable that some form of automated indexing process is necessary.”).

225. See generally Timothy K. Armstrong, Crowdsourcing and Open Access: Collaborative Techniques for Disseminating Legal Materials and Scholarship, 26 SANTA CLARA COMPUTER & HIGH TECH. L.J. 591 (2010) (arguing that crowdsourcing could play a crucial role in the open access movement and lead to free databases that are viable alternatives to Lexis or Westlaw); see also Gallacher, supra note 78, at 47–49.


227. Id.

228. Id.

229. See id. § 8.5 (“In order to have a distributed model that supports common interfaces and capabilities we need to formulate workable standards. This is challenging to say the least, and the
be given direct access to their pocket of the repository, allowing them to upload content and metadata. Again, the goal would be to allow court personnel and librarians a space to become comfortable with metadata standards and digital repositories, in the hope that one day they would strike out on their own.

¶93 Librarians should heed the dangers of inaction. What happens when Shepard’s, KeyCite, or BCite become unaffordable, when these are the only true state-of-the-law tools on the market? If a library can afford only one computer terminal with limited Westlaw access, what happens if the books go away? What if the “cognitive authority” of court opinions is further undermined by free, but ad-supported, case law databases dependent on “crowdsourced” descriptive and editorial content, where popularity acts as a proxy for authoritativeness—legal information as click bait?230 As Berring warns:

If the market picks the slickest, easiest-to-operate system with the glitziest front end, the integrity of the legal information system is in peril. As legal information commingles with other forms of information, there could be a significant debasing of legal information. With no informed, critical intelligence making choices, the marketeers will be in control. The thought of Rupert Murdoch controlling legal information makes my blood run cold. That would be a grim future indeed.231

Conclusion

¶94 A quick scan of Law Library Journal tables of contents over the past decades reveals that the ascendency of the digital format has brought with it a whole slew of challenges for law librarians, both practical and theoretical.

¶95 On a practical level, public access to quality legal information is in danger of declining—ironic given that the public enjoys remote access to a vast amount of primary legal authority over the Internet. Free websites lack tools that are crucial to the research process, such as fully functioning citators, editorial content, and authoritative secondary sources. For now, the public can still access these materials in law libraries, but it should give us pause that libraries commonly provide some of the basic tools solely through online research databases. Research databases are often leased, not owned, and access can easily be restricted to a class of privileged patrons. In fact, we may be entering an age of worsening information inequality, with the best AI-powered tools affordable only to elite law firms.232 Given our adversarial justice system, this raises real access-to-justice issues.
However, robust, court-authored metadata would go a long way toward improving free and low-cost research databases—in effect narrowing the sizeable quality gap between the legal information available to a pro se litigant versus a large law firm. Metadata that characterizes the nature of citations would help low-cost and free databases mimic the functions of KeyCite and Shepard’s. Headnotes would aid researchers both in finding and understanding the case law in these databases. Marking up legal rules and holdings would allow low-cost and free research tools to display or highlight important elements of a case. Links to other resources (e.g., statutes and regulations) would help nudge inexperienced researchers to other relevant sources of law.

In addition to these concrete concerns, the decline of print raises a number of questions more conceptual in nature. For example, is it realistic to expect that legal research can be conducted effectively and efficiently by keyword searching alone, without the use of a classification system? Can we expect AI tools to accurately grasp the law, absent a framework of authoritative, structured metadata? How can we hold the accuracy, objectivity, and fairness of these tools accountable when their underlying metadata and algorithms are proprietary? Could these changes in technology and research methodology chisel away at the structure of the law itself?

In Legal Research and the World of Thinkable Thoughts, Berring makes a plea for a new Blackstone to impose order and structure on the current mess that is online legal information. Rather than a single Blackstone, ours might be a bit more diffuse and decentralized: structured, standardized metadata written by individual courts and graphed onto the Semantic Web. In the future, instead of inserting legal documents into a classification scheme, the necessary organizational infrastructure might be embedded within the documents as they are generated. As librarians, we have a role to play, both in responding to the growing advancements in information technology and in preserving our profession’s values as the changes swirl all around us.

233. See supra notes 94 and 157.
234. See generally Mart, Algorithm, supra note 6, at 388–89, ¶ 2; Baker, supra note 17, at 22–25, ¶¶ 62–68.
235. See generally Berring, Crumbling Infrastructure, supra note 1.
236. Berring, Thinkable Thoughts, supra note 7, at 315.
Introduction

¶1 Case Western Reserve University School of Law celebrated its 125th anniversary on October 6, 2017.1 I began writing this article to commemorate my school’s milestone and its library’s development through these 125 years. As I

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1. Celebrated during the 2017 Alumni & Faculty Dinner/Law School’s 125th Anniversary Celebration, Friday, Oct. 6, 2017.
wrote, I drew inspiration from other writers’ histories of academic law libraries. By the time I finished, I had another goal: to contribute something of value to this larger body of work.

§2 This historical roadmap examines the means and ends of how the Case Western Reserve law library has served its patrons and administered its services over time. It relates the law school’s history through its people, buildings, services, and technologies. Showing how law libraries like Case Western’s have progressed through the years, I hope will both inspire and instruct as we adapt to our ever-changing, dynamic profession.

**Opening of a New Law School and Law Library (1892)**

§3 The first Western Reserve University School of Law started without a designated building, endowment, dean, or experienced faculty member—or even a library with walls. The law library was merely a collection of law books and law reports donated by the first part-time law faculty; these were stacked in corners of the rooms in the law school. The lack of a physical law library most likely had nothing to do with oversight and everything to do with the reality of starting and operating a new law school on a “financial shoestring.” In the later nineteenth century, it was not unusual for a new law school to lack an established law library.

§4 Despite these realities, a January 1892 *Cleveland Plain Dealer* article published some puffery a few months before the opening of the school. It described the new law school’s access to the university library, to the “valuable” Cleveland Public...
Law Library, and to its own special library.⁷ Despite the newspaper’s account, no special library existed when the law school doors opened in the fall of 1892.⁸

¶5 When the College for Women moved from the on-campus Ford house in summer 1892, the new law school relocated there in time for fall classes.⁹ Two weeks before the law school opened on September 23, 1892, the Cleveland Plain Dealer reported these developments with a more stylistic than factual description:

The library, which is fine for a new law school, will occupy two of the front rooms nicely furnished with tables and chairs. It will contain all the leading law text books, the leading state reports of America and the leading English reports and will be kept open from 8:30 a.m. to 9:30 p.m. every day except Sunday. Students will be encouraged to spend as much time there as possible. Several small rooms will be fitted up and placed at the disposal of students for study.¹⁰

¶6 The Ford house proved inadequate to house the law school and its library collection. The law school moved again in 1894 to a portion of the first floor of the Adelbert College Dormitory.¹¹ The law school paid Adelbert College annual rent of $800 for partial use of the dormitory, which was $200 less than the annual $1000 rent paid for the Ford house.¹² The Cleveland Plain Dealer asserted the law library collection significantly enlarged to “between 4,000 and 5,000 volumes” during its brief stay in Adelbert Dormitory.¹³

Old Law Building on Adelbert Road (1896)

¶7 In 1896, the university trustees approved the purchase of land on Adelbert Road for $6500 and the construction of a new law school for $25,000.¹⁴ The renamed Franklin Thomas Backus School of Law¹⁵ was to occupy a building constructed to accommodate 5 faculty members and 50 students.¹⁶ The building’s original two stories plus a basement was built in Italian Renaissance style of Ohio buff sandstone backed with a brick and copper roof.¹⁷ Its law library had a stack room for books and a reading room for students.¹⁸ The building, later called the Old Law Building, still stands today on the same corner.

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9. Cramer, supra note 3, at 23. The Ford house and land were later acquired by Western Reserve University. Ford, Horatio Clark, ENCYCLOPEDIA OF CLEV. HIST., https://case.edu/ech/articles/f/ford-horatio-clark [https://perma.cc/N4XL-K32L]. The house was razed in 1925, and on its location was built the Allen Memorial Medical Library (completed 1926).
10. Western Reserve Law School Encouraging Prospects for the New Department of the University, CLEV. PLAIN DEALER, Sept. 8, 1892, at 4.
12. Id.
15. Id.
8 Despite another optimistic prophecy from the Cleveland Plain Dealer, which predicted a law collection of 10,000 volumes in just two years,20 the new library21 contained at least 10,000 volumes by century’s end.22 Almost all of the approximately 13,000 books housed in the library at century’s end had been gifted from the part-time faculty.23 In 1897, the first designated librarian was hired on a part-time basis to help supervise student workers, manage physical space, and handle budgeting.24 Until then, the school had relied on students to maintain the collection.25

9 The new building brought a quick increase in enrollment, surpassing the 50-student accommodation planned for the new building in the first year. Enrollment increased from 41 to 68 students in year one,26 and from 68 to 88 in year two.27 In 1898, the law school raised the minimum requirements for admission. Students would now need to come from a “first-class” high school.28 The stricter admission requirement resulted in no visible loss in enrollment.29 The law school was still growing too large for the original plans.

10 The Western Reserve University Executive Committee met on February 2, 1899, and voted for the addition of a wing for the law school building.29 A Cleveland Plain Dealer article described a flourishing law school with a high number of students, but housing a law library that could accommodate only half of the student body.30 In addition to more space, the law library needed more books, and it was hoped that members of the Cleveland Bar would contribute them.31

11 An April 1899 newspaper article stated that a fund-raising goal of $50,000 was essential to build the addition to the law school.32 Half of the money was to be used to erect the actual addition and the rest used for a library fund (primarily to purchase books).33 However, a new addition had not been built by 1910. The law school did not know “where to put either the books or the students who wanted to read them.”34 In 1911, the law school became a graduate school,35 but still without an addition. Finally, the new addition came with a new law library and auditorium. It was opened to students and alumni to view as guests of the law faculty on Febru-

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20. Adelbert Road, 2145, supra note 17.
23. Id.
24. Id.
25. Id. at 27.
26. Id.
27. Id.
28. Id.
29. Endowments. They Have Been Received by Adelbert and Women’s Colleges, CLEV. PLAIN DEALER, Feb. 3, 1899, at 6.
30. Id.
31. Id.
33. Id.
34. Cramer, supra note 3, at 52.
35. Forges to the Front as Legal School, CLEV. PLAIN DEALER, June 15, 1910, at 1.
ary 7, 1914. The two-story (fireproof) addition had cost $35,000. The first floor consisted of a large auditorium and a “special” library stack room. The second floor housed the law library. It reportedly featured 12,000 volumes, but what was almost as important was a $10,000 library endowment the school received for the purchase of books.

¶12 Information about the law library from 1914 to the late 1920s is hard to find. In 1928, the Western Reserve College Law School hired Mildred Leone Dager as the law school’s first full-time librarian in time for the 1928–1929 school year. Dager was a graduate of Ohio Wesleyan University and had worked as a librarian previously at Cleveland College before attending and obtaining her law degree from the School of Law of Western Reserve the previous June. She was one of two graduating women among 67 graduates in the class of 1929 and admitted to the Ohio State Bar on August 5, 1929.

¶13 In 1929, the law school building was deemed inadequate only 15 years after the 1914 addition. It was terrible timing to address the law school building. The Great Crash on Wall Street occurred that year, followed by the Depression and then World War II. Although the war ended the Depression, it also demanded all of the country’s resources. The second and third floors of the law school, in fact, became U.S. Army Air Corps barracks. The effects of the Depression and the war were not unique to the Western Reserve University Law School. During the 1930s and 1940s, only five new law school buildings were built or additions to older ones identified. For years, no money was available to repair the inadequacies of the law school building.

¶14 The inadequate building didn’t stop Law Dean Walter Dunmore in December 1940 from declaring “Reserve Law School now has a library equaled by few.” There was some evidence to support Dunmore’s claim. At the time, the library featured over 53,000 bound volumes, 449 legal periodicals, and “all American and foreign legal periodicals in complete sets.” While Dean Dunmore’s optimism did reflect a collection with a volume count extending well beyond the required accred-
itation standards in play at the time, space was getting to a desperate state. Soon after World War II, the school had money to requisition up to 5000 new law books but had no place to put them. The library did not have the space for shelving what was already in the collection. A spillover of 5000 good law books sent to the basements of both the law and medical school buildings rotted under the damp and hot conditions. There was money available for another 5000 books, but they were not accessioned due to lack of space.

¶15 When Law Dean Clarence Finfrock, who initially joined the law faculty in 1907, replaced long-term Dean Walter Dunmore in 1945, he challenged the executive committee of the board of trustees. Dean Finfrock posed the following demand: "It comes down to this: Does the University want a Law School?" The trustees buckled and authorized a new addition and renovation to the current building. The cost of the effort was to be $350,000, and the building was completed in May 1948. The improvement greatly enhanced library space, now accommodating 85,000 volumes.

¶16 A rare book room was added in addition to a workroom to recondition and repair books. Dean Finfrock's tenure was defining for the law school and law library, but it was also short. He passed away the same year the new addition was completed in 1948. The next dean, Fletcher Reed Andrews, joined the law faculty in 1927. Dean Andrews would serve from 1948 to 1958. During Dean Andrews' tenure, law library funding was eventually deemed "depleted." The law school, described as being "operated on the cheap," was primarily tuition driven. The 1957 ABA inspection report described appropriations as inadequate to house even an appropriate law library staff. The librarian's salary was approximately $4000 a year, comparing unfavorably to other law librarians at the time.

¶17 Despite insufficient appropriations, the collection had grown by 9000 volumes during Dean Andrews' 10-year tenure. By 1958, the volume count was

51. Standards of the Am. Bar Ass'n § 2(c) (1958), in 1958 Rev. Legal Educ. in the U.S. 27 (1958) [hereinafter 1958 ABA Standards] (requiring "not less than seventy-five hundred well selected, usable volumes, not counting obsolete material or broken sets of reports").

52. Cramer, supra note 3, at 53.

53. Id.


55. Cramer, supra note 3, at 54.

56. Id.

57. It probably became known as the Old Law Building after Gund was built because it wasn't the law school anymore and it didn't have another name.

58. Cramer, supra note 3, at 54.

59. Id.

60. Id. at 60.

61. Miller, supra note 54, at 413.


63. Id.

64. Id.

65. Benjamin F. Boyer, Improving the Status of Law Librarians, 7 J. Legal Educ. 555, 556 (1955) (citing William R. Roalfe, The Libraries of the Legal Profession (1953)). Roalfe's study was prepared for the Survey of the Legal Profession under the auspices of the American Bar Association. The study took place five years before the 1957 ABA inspection report. Still, the median salary of 129 law librarians was $4200 and the average salary was $4154.
approximately 94,000 volumes.\textsuperscript{66} This ranked above the 1958 ABA Standards’ minimum volume count of 7500 volumes.\textsuperscript{67} The minimum accrediting volume count of 7500 volumes had not changed since the first published set of ABA accrediting standards in 1926–1927.\textsuperscript{68} The 1958 standards stated a change was coming soon:

An adequate library shall consist of not less than seventy-five hundred well-selected, usable volumes, not counting obsolete material or broken sets of reports, kept up to date and owned or controlled by the law school or the university with which it is connected. Beginning with the academic year 1958–59 the number of such volumes should be at least 10,000. Two years later it should be 12,500 and by the Fall of 1968 should be at least 15,000. It is required that a five-year expenditure of $4,000 per year on library additions be made, with a minimum expenditure of $8,000 in any one year.\textsuperscript{69}

\textsuperscript{¶18} In 1961, a distinguished Cleveland attorney named Carlton Hutchins bequeathed 90 percent of his estate to the law school, despite not having attended himself (he received his LL.B. from the University of Virginia). Hutchins had a great interest in Western Reserve Law School and thought it was not reaching its full potential. He envisioned the law school a match for the nationally renowned Western Reserve Medical School.\textsuperscript{70} The two trustees of the $800,000 fund ($6,744,510.07 in 2019 dollars)\textsuperscript{71} were recalcitrant to distribute the money to the law school until adequately persuaded that the funds were going to be used to maximum effectiveness.\textsuperscript{72}

\textsuperscript{¶19} The president and university trustees eventually acceded to the trustees’ demand and asked the University of Chicago’s provost, famed scholar and future U.S. attorney general Edward H. Levi, to form a committee of inquiry to determine what actions would be needed to make the most effective use of the funds.\textsuperscript{73} Levi asked Derek C. Bok, Harvard law professor and future dean and Harvard president, to lead several notables on the committee.\textsuperscript{74} The committee's report, titled “An Evaluation of Western Reserve Law School and Its Prospects for Development,” was the result.\textsuperscript{75} In May 1965, the Bok report stated that one action the law school should undertake promptly was to markedly increase the library staff and budget.\textsuperscript{76}

\textbf{Pollack Survey of the Law School Library (1966)}

\textsuperscript{¶20} The Bok report stated that the most significant single problem facing the law school was the recruitment of a new and capable dean.\textsuperscript{77} The school delivered
six months later, hiring Harvard Vice Dean Louis Adelbert Toepfer. Dean Toepfer was the first dean hired from outside the institution. Among his many accomplishments as dean, Toepfer notably improved the law library. He quickly arranged to have a thorough survey conducted by Ervin H. Pollack, one of the leading American experts on law libraries at the time and law professor and director of the law library at Ohio State University.

¶21 In 1965, the law library held a considerable title and volume collection, as measured by the ABA standards, and ranked 26th of 135 accredited law schools. At the time, ranking of academic law school libraries was based solely on title and volume count.

¶22 Regarding a more practical measurement of a law library’s worth, such as functionality, Pollack pointed out an “abominably” housed library. The law library, dispersed among five separate smaller collections due to lack of contiguous space, fragmented the wider collection. The fragmentation separated materials that functionally belonged together. The shelving of the collection, wrote Pollack, was “contrived rather than functional.”

¶23 When space for a collection is lacking, it is inevitable that housekeeping measures will mount. Books were piled on top of one another in the stacks where the shelving was inadequate. Due to the “congested stack conditions,” overflowing books were placed on floors or on nearby tables. The orderliness of the reading room was lamentable. The lack of order reverberated throughout the law library. Dated supplements and superseded issues sat on the overrun shelves taking up precious stack space.

¶24 Superseded copies of the Code of Federal Regulations (CFR) were intermixed with active CFR volumes. Years of old advance sheets for reporters in the National Reporter System stayed on the shelves. Dean Toepfer listened to Pollack’s strong concerns regarding the space, collection, and limited staff of the library. In the plans for the new law school, more than half of the 75,000 square feet of the new building was slated for the law library.
The most important solution for the collection in the new building was to create a connected, contiguous assemblage of books where patrons would not get lost or confused. The shelving capacity in the new Gund Hall would be located in one contiguous space accommodating up to 300,000 volumes. Beyond describing the disarray of the library collection, the survey offered user-friendly suggestions such as doubling the student seating capacity.

The survey described a woefully understaffed, undertrained, underpaid, and overworked law library workforce. The law library had only one librarian, Miss Garee, who had provided 15 years of service; she was, Pollock wrote, “dedicated, loyal and conscientious.” There were also two full-time clerical assistants, one described by faculty and students as “unsatisfactory and uncooperative,” the other as “an unimaginative, average clerical worker.” Also, there was a part-time person with miscellaneous duties not described in the report. Pollack stated that the nine comparable benchmarked law libraries averaged a full-time staff of 7.2 persons compared with Case Western’s three persons. Pollack’s recommendation was to add four personnel: a library director, secretary, cataloger, and clerk-typist, which would bring the full-time staff to seven.

The Pollack survey was undertaken before the vast majority of academic law libraries gained more autonomy from the central university library structure in the 1970s and early 1980s. In 1965, the law library was under the main campus library. Lyon Richardson, University Director of Libraries at the time, worked with Acting Law School Dean Oliver C. Schroeder in maintaining the law library. In his internal documented response, Richardson also mentioned working with Assistant Law Dean and Professor Maurice Culp. Richardson recommended that only two people, not four, be added to the law library staff for the upcoming academic year of 1966–1967. Richardson argued that no law library director was needed. His work with the dean of the law school would provide the needed administration.

The two positions he thought essential were that of cataloger and clerk.
¶28 Regarding the book budget, Pollack recommended it be set to $47,000 for the 1966–1967 academic year and then raised to the minimum of $75,000 by the end of the 1969–1970 academic year.\(^\text{107}\) At the time, the law library book budget was only $29,000.\(^\text{108}\) Pollack arrived at $47,000 by taking the average book budget of the nine comparable benchmark law libraries.\(^\text{109}\) Richardson, in his internal report, stated that he had consulted with Acting Dean Schroeder to propose a budget of $42,750 for the 1966–1967 academic year.\(^\text{110}\) As to Pollack’s recommendation that the book budget equal $75,000 in three years, Richardson stated that “[f]uture increases would await current needs.”\(^\text{111}\) Richardson went on to state that “[Pollack’s] sights may be set too high for fulfillment as regards both books and personnel by 1969.”\(^\text{112}\)

¶29 Dean Toepfer ignored the university librarian’s recommendations. Soon after his arrival from Harvard, Toepfer set in motion the process to hire the new director of the law library. He hired Simon Goren, who had been assistant law librarian at Cornell University School of Law.\(^\text{113}\) Goren had an interesting background. Before he obtained his master of library science, he had practiced law in Israel for over a decade, primarily as a prosecutor.\(^\text{114}\) Professor Goren had held the position as assistant law librarian for acquisitions at Cornell.\(^\text{115}\) Dean Toepfer gave Goren full law faculty status, the first for a law library director at the law school. Goren was a true scholar-librarian, providing meaningful translations on several works during his career, such as the *German Civil Code*.\(^\text{116}\) He also translated the *Introductory Act to the German Civil Code* and *Marriage Law of the Federal Republic of Germany*.\(^\text{117}\)

¶30 The Pollack survey showed that of the average staff size of 7.2 for the benchmarked law libraries, 3 was the average number of librarians.\(^\text{118}\) Unfortunately for Goren, the hardworking, longtime librarian Garee had left for a position elsewhere, and the two remaining staff members were mostly untrained.\(^\text{119}\) Goren experienced many challenges in hiring the right people to provide the needed skills

\(^{107}\) Pollack Survey, *supra* note 84, at 32.
\(^{108}\) *Id.*
\(^{109}\) Comparisons Attachment, *supra* note 99.
\(^{110}\) Richardson, *supra* note 103, at 1.
\(^{111}\) *Id.* at 5.
\(^{112}\) *Id.*
\(^{114}\) Cramer, *supra* note 3, at 82.
\(^{118}\) Pollock Survey, *supra* note 84, at 37.
and efficiencies so lacking according to the Pollack survey. In addition, several of the new hires in Goren’s first years left after short stints, for various reasons.

¶31 Dean Toepfer was the advocate and supporter that the law library needed at the time. In his 1969–1970 law dean’s report to the university president, Toepfer stated the following regarding the law library:

The Law Library has entered a rather awkward stage of development, being at the point of becoming a “large size” library but presently lacking proper facilities and sufficient personnel to cope adequately with the demands and problems caused by its growth. Good programs continue in the development and enrichment of the collection, and in improving internal and external services. The frustrations of inadequate space and limited resources have not kept Mr. Goren and his staff from accomplishing significant improvements in all operations and services in the library.

¶32 With a very supportive dean, Goren seemed confident in taking the steps needed to confront the frustrations he faced. Early in his directorship, he had only one reference librarian providing reference service, managing circulation, and leading stack maintenance. Regarding the early turnover of newly hired personnel, nothing indicates that poor management contributed to the departures. One librarian left to practice law. Another librarian left to become a full-time law student. A library associate retired. The outlook appeared promising for the 1970–1971 fiscal year, however, with a new librarian and a new staff member placed in the budget.

¶33 The challenges were many, however. Goren bemoaned the deterioration of reader services:

I must mention a marked deterioration of readers services owing to a widespread abuse of library privileges by our users, such as mutilating books, purloining textbooks and unbound periodicals, taking books out of the library without charging and keeping them for long periods and hiding books away from their assigned locations. As our library is wide open, no effective control could be established and repeated appeals to students have been in vain. At times we had over 120 periodicals titles, which could not be sent for binding because of missing issues.

120. Id.
121. Id.
125. Interview with Rosanna Masley, Library Assistant, Case Western Reserve University Law Library (Aug. 2, 2016) (Masley had worked under Goren for several years).
127. Id. (Kathleen Shartran, assistant cataloger, intended to resign to attend law school full time).
128. Id. (Mrs. Georgie Amann, loose-leaf filer and binding clerk, retired in September 1968).
130. Id. at 1.
In the same 1970–1971 annual report, however, Goren saw light ahead: “It is our hope that after our move into the new building we will be able to establish a tight control of our collection and thus avoid the frustrations, wasted staff time and expense we had to contend with here.”


¶34 The 1971–1972 academic year marked a significant event in the history of the law school and library. The law library was moving to a new building after having been housed in the Old Law Building on Adelbert Road (with its two additions) going back to 1896. The additions created more needed space when built but eventually resulted in a very fragmented collection.

¶35 Adding to Director Goren’s challenges, cataloging was also substandard. The law library had been using the outdated Hicks classification scheme. The law library started a reclassification to the Library of Congress classification scheme after the move to Gund Hall. Moving an academic law library is challenging enough, but the process of moving an unorganized collection broken into five separate sections to a new building where the collection would need to be contiguous is a tremendous challenge that most have not experienced.

¶36 The law library, under Goren, carefully surveyed the new space and laid out a detailed chart that provided for a 10-year growth period. Locations marked in the new building ensured the library collection moved into the allotted space. Rather than using professional movers, Goren rented vans and decided to use student workers. Goren documented it as a parsimonious decision, saving the law library considerable money in addition to allowing students the opportunity to earn some money.

¶37 Goren took the opportunity in his 1971–1972 annual report to state that two more librarians had resigned. Another reference librarian left to practice law. A senior cataloger moved to Minnesota with her family. On the positive side, Goren was happy that he could finally hire a circulation librarian that year. Goren, in his annual report to the dean, emphasized the burden low pay takes on

131. Id.
132. See supra notes 83–85 and accompanying text. The collection was located in five separate areas.
133. See supra notes 122–129 and accompanying text.
136. I directed a move of the Immel Law Library of the Saint Louis University School of Law from the main campus in 2013 to a new downtown setting.
138. Id.
139. Id.
141. Id. (Mrs. Fuchsman, senior cataloger).
142. Id. at 2 (hiring Miss Mosel as circulation librarian).
staff stability. He stated it would be desirable to examine the salary for each staff position.\textsuperscript{143}

\S 38 The move into the new building significantly improved the security of the collection. Before the move, securing five separate areas of a collection having multiple exits proved impossible. Now there was to be only one entry and exit, which made it much simpler for the staff to check briefcases and other items used to carry books in and out.\textsuperscript{144} According to the report, “[l]osses of books and periodicals, which had become intolerable in our old building, have been drastically reduced, as well as staff time spent on book hunting.”\textsuperscript{145}

\S 39 By 1973, needed services, previously unfulfilled due to lack of sufficient personnel, were being offered.\textsuperscript{146} However, with the increase in staff numbers came discontent, though eventually morale seemed to improve:

For the first time in seven years, difficulties with our personnel were experienced and there was a flare-up of discontent due to various factors among which, dissatisfaction with salaries, lack of compatibility, personalities unable to fit into an organizational framework, might be mentioned. While this was disturbing for a few months, no programs or services of the library suffered, but the pressure on some members of the staff became very great. Towards the end of the year the morale, as well as the composition of the staff greatly improved and teamwork, as well as productivity are better than before the flare-up.\textsuperscript{147}

\S 40 Just one year after the “flare-up,” Goren reported that “the library staff individually and as a team has never been better.”\textsuperscript{148} Goren wrote glowingly of a particular new reference librarian, Alvin Podboy, “who is held in high regard by faculty and students and who brought the right attributes and personality to the job.”\textsuperscript{149} Another newer addition, Anne Watkins, brought “maturity and experience” to the position of circulation librarian.\textsuperscript{150} Jane Addison, the recently hired technical services assistant, “has been developing very well and her work and productivity are eminently satisfactory.”\textsuperscript{151} Also, Perry Tillerman, public services assistant, had “proved a good and reliable employee.”\textsuperscript{152} The position of cataloger had been open during the year, but the successor, Loree Potash, had already been hired.\textsuperscript{153}

\S 41 Over his 14-year tenure, Goren was continuously concerned with the foreign and international collection, and focused on improving it. In his 1970–1971 annual report, Goren wrote, “[o]ur foreign law acquisitions have been minimal and

\begin{itemize}
  \item \textsuperscript{143} Id. at 3.
  \item \textsuperscript{144} Id. at 3 (Goren mentioned additional services offered with the additional personnel in the annual reports but did not elaborate).
  \item \textsuperscript{145} Id.
  \item \textsuperscript{147} Id.
  \item \textsuperscript{149} Id.
  \item \textsuperscript{150} Id.
  \item \textsuperscript{151} Id.
  \item \textsuperscript{152} Id.
  \item \textsuperscript{153} Id.
\end{itemize}
it is hoped that future budgets will be adequate to expand this part of our collection.”154 By his 1972–1973 report, the foreign law collection had been growing slowly, but the budget still did not allow for any dramatic increase in purchasing.155

¶42 In the 1974–1975 academic year, Goren reported that the law library had acquired its 150,000th book.156 Despite the landmark and that academic law libraries were ranked by title and volume number, Goren wrote that he “would like to point out that we don’t play the number games, we vigorously weed out books considered no longer useful and aim at quality rather than quantity.”157

¶43 Goren’s annual reports had running themes of tight budgets and increased book and periodical prices with concomitant rising inflation, a trend starting in the 1970s in academic law libraries.158 In considering the challenges Goren was facing, it is telling to examine the annual budget reports year by year. In Goren’s first year, the law library overspent by $1,268.01.159 Two years later, in the 1969–1970 fiscal year, the law library exceeded the budget by $1,678.97.160 For the next two years the law library finished in the black, but in the 1972–1973 fiscal year there was a spending overage of $4,858.65.161 In the next year, the law library overspent by $6,939.21.162 Goren stated in his annual report of the same year, “[w]e overspent somewhat, but this is covered by savings from salaries, equipment and Xerox accounts. The real worry is next year’s budget which is limited to 105% of this year’s.”163 Dealing with tight budgets and inadequacies in funding is not unusual in 2020, but the complaining about a limited budgetary increase certainly is.164

157. Id.
164. In a law librarian academic career now spanning 25 years, and 10 years as a director, I have never had the pleasure of experiencing a projected law library materials budget increase.
¶44 Goren’s worries over the next year’s budget not being adequate turned out to be prophetic. The June 1975 monthly budget report, representing the end of the fiscal year, showed the law library to be in the red by $12,976.21. In the same year’s annual report, Goren reported that “[o]ur preliminary spot checking shows an increase of some 25% in periodical subscription prices and approximately 15–20% in other book prices.” Added to the increased costs was a growing appetite by faculty for cross-disciplinary resources. The end-of-the-fiscal year June 1976 monthly budget report illustrated the impact of purchasing the cross-disciplinary sources: it showed a deficit of $20,530.23. Goren explained in the 1975–1976 academic year annual report that “as the scholarly activity of the faculty expands, there are more requests for non-legal materials in the areas of economics, social studies, etc., which the University Library is apparently unable to satisfy.”

¶45 Goren’s annual report from the 1976–77 academic year was very positive from start to finish. The report started with: “This year in review has been on the whole very satisfactory from the point of view of collection development and service.” The positive tone of the report continued throughout, even when it came to the budget. The budget was now comparing well to other schools of comparable size, allowing for the maintenance of the collection in addition to the ability to purchase new resources. Despite the optimism, the monthly budget report from June 1977 showed the law library still going over budget by $7,108.14. Interestingly, there was nothing in any of Goren’s several annual reports addressing the change in the ABA standards in the late 1970s and early 1980s recommending that academic law libraries be given more autonomy from the central university library structure. Apparently Goren believed Case Western Reserve’s law library enjoyed enough autonomy already.

**Early Automation (1972–1982)**

¶46 In the new building, the physical collection of the law library was making sense as a contiguous assemblage of books. Reclassification to the Library of Congress cataloging classification was still far from done, however. In November

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170. Id. at 6.
172. See Miles, supra note 101; Belniak, supra note 101 (ABA’s 1977 change in standards regarding law library autonomy).
173. A significant portion of the collection was still in the Hicks classification scheme.
1971, when the law school moved into Gund Hall, the law library found waiting a new computer terminal connected to a computer-assisted legal research (CALR) system named OBAR (Ohio Bar Automated Research), a subsidiary of the Ohio State Bar Association. By contract, Data Corporation of Ohio was responsible for developing the system. (Subsequently, Mead Corporation acquired Data Corporation to form Mead Data Central.) The OBAR computer provided uninterrupted telecommunications to the law school. Case Western was the first law school in the country to be provided the service.

¶47 In the first year of the new law school building, any Case law student or law faculty member could learn to use the system by signing up with a Mead Data Central representative for training. The training was performed mostly by nonlawyers and described as “at a less advanced stage than the still crude system.” Goren reported that the installation of the OBAR terminal had been “fully justified” in the first experimental year. It had become popular with students working on various projects. Goren advised that the OBAR terminal should be retained beyond the experimental year.

¶48 In the following 1972–1973 academic year, Spencer Neth, the head of the law school’s legal research and writing program, undertook the development of an instructional component with OBAR. Stipends were offered to young local attorneys to teach law students the database in the first-year research and writing program. By the 1973–1974 academic year, OBAR, which initially only searched Ohio law, had transitioned to Mead Data Central and was now Lexis, with both federal and New York law added to the searchable content.

¶49 Lexis offered a revised and improved software with much more random-access memory (RAM). Alvin Podboy, head of reference services, was responsible for conducting demonstrations on the OBAR computer. Goren stated in his 1975–1976 annual report that the OBAR was still popular, and “finally some faculty members began to appreciate its usefulness.” The law library had started teaching faculty members individually on the use of OBAR-LEXIS, as Goren labeled the terminal. Podboy started preparing OBAR questions for students in

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176. Plaque from Mead Data Central: “Mead Data Central recognizes Case Western Reserve University School of Law for its farsighted contribution to legal education in being the first law school to install LEXIS for regular use by professors and students. [signed] Jack W. Simpson, President.” https://law.case.edu/images/mead_dataNEW.jpg [https://perma.cc/C2ST-XP65].


179. Id.

180. Neth, supra note 177, at 560.

181. Id. at 561.

182. Id. (“Breakdowns became far less frequent and response time improved tremendously”).

183. Id.


186. Id.
one research and writing professor’s class and helped another professor use search logic to update the professor’s case research.187 From that year going forward, Podbo- 
you would be part of the research and writing program by preparing the written 
assignments and Lexis problems for all the research and writing professors.188

¶50 In the next school year, there were 3202 OBAR-LEXIS sign-up sessions.189 
Fortunately, the law library had joined a 12-school consortium for using Lexis,190 
which reduced its costs by half.191 The savings allowed the service to keep running 
through the summer months for the first time.192 Even with the savings, the law 
library overspent the budget by $16,556.26 in the 1977–1978 academic year.193 The 
arrears were covered by savings from photocopying income, economizing in other 
areas, and a supportive and sympathetic dean.194

¶51 The law library entered into a formal agreement with the university library, 
the Freiberger Library, in the 1978–1979 academic year for time sharing on the Ohio 
College Library Center (OCLC)195 terminal. The benefits of OCLC were significant, 
allowing a small staff to more efficiently catalog and catch up with increasing back-
logs compared to the previous manual system.196 The arrangement significantly 
improved the law library’s cataloging of book processing and card production.197 In 
the same year, the law library was accepted by the Government Printing Office (GPO) 
as a Federal Depository Library.198 Goren predicted that when Federal Deposit books 
started to arrive, the library would be able to start canceling a “substantial number of 
paid subscriptions.”199 The cancellations could not come too soon since the law 
library overspent by approximately $25,000 in the 1978–1979 academic year.200

¶52 In the 1977–1978 annual report, the library budget was labeled “sufficient,”201 
but high interest rates caused it to rapidly shrink.202 Goren did not include a budget

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187. Id. at 4.
188. Simon Goren, Annual Report of the Law Librarian to the Dean of the Case Western 
Reserve University School of Law for the Academic Year 1977–1978, at 6 (unpublished report) (on 
file with the Case Western Reserve University Law Library Archives) [hereinafter Director’s Annual 
191. Id.
193. Monthly Budget Report of the Law Librarian to the Dean of the Case Western Reserve 
University School of Law (June 1–30, 1978) (unpublished report) (on file with the Case Western 
Reserve University Law Library Archives).
194. Simon Goren, Annual Report of the Law Librarian to the Dean of the Case Western 
Reserve University School of Law for the Academic Year 1978–1979, at 7 (unpublished report) (on 
file with the Case Western Reserve University Law Library Archives).
195. In 2002, OCLC changed its name to Online Computer Library Center. Ohio Secre-
tary of State Non-Profit Corporation Registration for OCLC, https://businesssearch.sos.state.oh.us/
/?=businessDetails/362623 [https://perma.cc/9N2U-MHZQ].
196. Ellen McGrath, A Century’s Worth of Access: A Historical View of Cataloging in Law 
198. Id.
199. Id.
section in the annual report for 1979–1980. The only reference made to finances was under the collection development section of the annual report. The statistical data was already out for 1980, and subscription prices for legal periodicals had risen by 20.7 percent. The associate director, writing part of the 1979–1980 annual report, perhaps displaying naiveté, imagined that other categories of the collection, especially monographs, would show an even higher rate of inflation. The associate director hoped the next year's budget would be sufficient to ward off discontinuations.

§53 The law library reached and exceeded the 200,000 volume mark in 1979–1980. It was now considered a “large” academic law library in a time when volume count was still important. Podboy had resigned the year before to become the head librarian at Baker Hostetler. Cataloger Loree Potash, who was near completion of her law degree at Cleveland Marshall College of Law, transferred from her previous position to head of public services upon Podboy's departure. Potash assumed the law library role in the research and writing program, writing the research questions and Lexis problems.

§54 Potash, like Podboy before her, taught in Goren's law librarianship class at the CWRU School of Library Science. Goren, over his tenure at the Case Law School, also worked with the CWRU School of Library Science, established in 1903. In 1925, the school was one of the original 13 library science graduate programs to become accredited by the American Library Association.

§55 The academy of library science started falling behind the times in the 1960s. The stale curricula of the traditional library education, with its decades-old precepts and philosophies, were falling behind what librarians were doing in practice. The academy responded slowly to the technological paradigm shifts of the late 1960s and 1970s, which led to the closing of many library schools in the 1980s and 1990s.

204. Id. at 7.
205. Id.
206. Id. at 1.
207. Id.
209. Id.
211. Id.
213. Western Reserve University was joined by University of California (Berkeley), Carnegie Institute of Technology, Carnegie Library of Atlanta, Drexel University, University of Illinois, Los Angeles Public Library, New York Public Library, Pratt Institute, St. Louis Library School, Simmons College, University of Washington, and University of Wisconsin. Accredited Library and Information Studies Master’s Programs from 1925 through Present, Am. Libr. Ass’n, http://www.ala.org/educationcareers/accreditedprograms/directory/historicallist [https://perma.cc/UQ9U-WYWZ].
215. Id.
Case Western Reserve University attempted to save its library science program by revamping the curriculum and dividing it into three areas: Information (resources and organization), Management and Technology (with a heavy emphasis placed on the core-comprising half of a student’s program of study), and Distributive Requirements. The name of the school changed from the School of Library Science to the Mathew A. Baxter School of Information in 1981. The restructuring came too late to align with the shifting paradigm, and ultimately the school closed its doors in 1986.

Several law library staff members over the years matriculated at the library school. The Judge Ben C. Green Law Library still has two librarians on staff who received their M.L.S. from the CWRU library school. The program offered a consistent, ready pool of interns for the law library. The program also offered librarians opportunities to better their administrative and teaching skills. Most notably, Goren became the Director of the Library Science School’s Law Librarianship Program while at the university, where he taught the foundation course of law librarianship in addition to legal bibliography, which was open to both library school and law school students.

By the 1979–1980 academic year, the law library was still working through the process of reclassifying the treatise collection into the Library of Congress scheme. It was now proceeding at an even slower pace due to changes in library personnel and unfilled positions. There was a turnover of four staff members the very next year. To add insult to injury, one of the issues identified by the recently visiting ABA Accreditation Committee site team was insufficient evening reference coverage. Fortunately, the library was permitted to add a new professional position to assume the additional reference time needed. This same position would also oversee the government depository duties.

During the 1980–1981 academic year, the library overspent by $57,687.42. There was mention of finances in the prefatory paragraphs of the annual report.

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217. It was named School of Library Science from 1924 to 1981. When it was established by Western Reserve University in 1903, it was known as the Library School. The Schools of CWRU, supra note 212.
218. Id.
219. Id.
225. Id.
226. Id.
227. Id.
The associate director stated that the deficit was “alarming” and that it was due to the rise in subscription costs over which the library had no control.229

§60 In the 1979–1980 academic year, the law library was still sharing the university OCLC terminal with the main campus library at an agreed-upon rate of 10 hours a week.230 In the next year, the new AACR2 cataloging rules took effect.231 The rules changes caused great concern among the law library staff, evident from these changes becoming the subject of three library staff meetings.232 Goren stated that the library was making progress on the new rules and that it would primarily help preserve the integrity of the collection.233 In the 1981–1982 academic year, Goren would report that the further implementation of the new AACR2 cataloging rules was the most demanding and time-consuming project of the year.234

§61 In the 1981–1982 academic year, Goren reduced overspending to a $13,220.39 deficit.235 He recommended a 12 percent, or $30,000, budget increase for the upcoming year.236 Sunday reference hours were added, and by adding a reference librarian, the law library could include a 2:00 p.m. to 6:00 p.m. Sunday reference shift to its recently created Monday through Thursday evening shifts.237 The law library also became the repository for student class evaluations and prior exams.238 A memo was sent to all faculty asking them to send any exams they wanted on file for students to the law library.239

§62 The big library technology news in the 1981–1982 academic year was the installation of a new Lexis terminal in the law library.240 The new “deluxe” UBIQ model with a high-speed printer replaced the OBAR installed over 10 years ago.241 Equipment rental fees increased with the upgraded terminal and printer, but communication costs decreased.242 Potash, recently promoted to associate law librarian, trained the research and writing professors and students on the new terminal.243 The new terminal was such hot property the Lexis room door had to be locked.244 Students now had to sign out their ID card at the circulation desk to use the terminal.245

229. Id. at 1.
231. Over time, the AACR2 rules would be highly criticized, the primary reason being they were tailored toward the physical card catalog. Joseph Thomas, Cataloging Reform: An Overview for Academic Law Librarians, 85 LAW LIBR.J. 99, 99 (1993).
233. Id.
235. Id. at 10.
236. Id. at 8.
237. Id. at 4.
238. Id.
239. Id. at 5.
240. Id. at 3.
241. Id.
242. Id.
243. Id.
244. Id.
245. Id.

Upon Professor Goren’s retirement, Dean Ernest Gellhorn noted the importance of hiring his successor. Gellhorn hired Kathleen Carrick in 1983. Director Carrick, who assumed her duties in August 1983, had been associate professor and librarian for three years at the University of Buffalo Law School. Like her predecessor, she was given faculty status and also engaged in writing and teaching. In 1989, she authored *Lexis: A Legal Research Manual*, a Mead Data Central publication.

Carrick presided over the law library when the trend in academic law libraries was growth in collection, personnel, and automation.

In her first year as director, she invited Thomas Reynolds, the associate director at Boalt Law Library at the University of California at Berkeley School of Law, to visit and evaluate the foreign and international collection at Case Western.

Previously Goren had acknowledged the need for a stronger foreign and international collection and had attempted to buttress it within a constrained budget. Reynolds assessed the foreign collection as “spotty . . . expensive, little used, and insufficient for true scholarship.” Reynolds’s harsh assessment, based on his experience and substantial knowledge as a foreign and international law scholar, suggested that the Case Western law library, even without a significant endowment and a challenged operating budget, should concentrate on the international realm.

The 1983–1984 school year was filled with technological enhancements. After years of sharing with the main campus library, the law library acquired its first in-house OCLC terminal. The acquisition allowed the library to undertake projects previously deemed impossible without unlimited access to the database, such as conducting retrospective conversions of law library records to machine-readable format. The law library was also starting to use OCLC as a reference tool and for interlibrary loan purposes.

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254. Id.
The Westlaw-dedicated WALT terminal arrived in the same academic year.\textsuperscript{255} It was during this time that the law library also became an early subscriber to Cleveland Freenet, an early worldwide Internet interface.\textsuperscript{256} Mead Data Central supplied an additional UBIQ terminal for Lexis access, and the library became an early test trial of “home access” to Lexis for clinic law students.\textsuperscript{257} The law library, with financial assistance from the law school, was proactive in creating what was soon to be a ubiquitous feature in academic law libraries around the country: the computer lab.\textsuperscript{258} Also, the school constructed a computer training classroom.\textsuperscript{259} AALL bestowed the law library with its 1986 AALL Publication Award for its Computer Lab Manual and research Pathfinder Series.\textsuperscript{260}

Despite the successes of the 1983–1984 school year, the director was dissatisfied with the library’s limited collection space, which forced it to consider new formats, such as microfilm and microfiche, to provide access to needed materials. The law library was starting to purchase audio and videotapes for trial technique classes and the clinic. The VHS video collection quickly became larger.\textsuperscript{261} The switch in formats was not inexpensive because the materials required new equipment and printers to provide readable copies, but Carrick believed that space issues left the law library with no alternatives.\textsuperscript{262}

Carrick was not shy in talking budget in her reports to the dean: “It must be stressed that a million-dollar budget is not a luxury to a law library in these days and inflation will continue to eat into our budget.”\textsuperscript{263} Carrick also stated that the library budget was being used to compensate for years of inadequate law school support of the library’s facility and collections.\textsuperscript{264}

In addition to collection space challenges, the lack of student space in quantity and quality was a significant issue.\textsuperscript{265} Inadequate numbers of chairs and study carrels were placed in open, overcrowded, high-noise areas not conducive to quiet study.\textsuperscript{266} The director heard complaints from several students stating they are studying elsewhere. She reported the lack of space in the library mirrored what was happening throughout Gund Hall.\textsuperscript{267} The law school, just a dozen years removed from opening the new building, was now suffering growing pains. Director Carrick mentioned losing library space to student lockers and faculty offices.\textsuperscript{268} The addi-

\textsuperscript{255.} Id.
\textsuperscript{258.} Id.
\textsuperscript{259.} Id.
\textsuperscript{261.} Director’s Annual Report 1983–1984, supra note 249, at 5.
\textsuperscript{262.} Id.
\textsuperscript{263.} Id. at 12.
\textsuperscript{264.} Id.
\textsuperscript{265.} Id. at 11.
\textsuperscript{266.} Id.
\textsuperscript{267.} Id.
\textsuperscript{268.} Id. at 9.
tion of new computers and systems exacerbated the space issues by reducing student study areas.269

¶70 With space becoming increasingly limited for students and staff, the south wall of the second floor of the library was torn down the next year and rebuilt, giving the technical services area of the law library administration an additional 500 square feet to ease the congestion caused by additional work computers, printers, and two new staff members.270

¶71 The law library in the early to middle years of the 1980s had started to undertake the second age of automation.271 As Clifford Lynch describes, the first age of automation transpired primarily in the mid- to late-1960s into the early 1970s in libraries that benefited from the new race-to-space technologies.272 Circulation and acquisition departments became automated with minicomputers, books were barcoded, and ordering systems became computer-based in passing on orders to book and serials vendors.273 These changes automated many manual processes, making operations more efficient and economical.274

¶72 The second automation age of the later 1970s and 1980s involved automated online catalogs, personal computers for all workers, with attached printers, and automated online catalogs.275 The use of Windows and other new office automation software created enormous productivity improvements that were suddenly possible in library technical processing departments.276 The new automation software further hastened the adoption of systems based around a client-server architecture.277 The law library’s inclusion in the university’s plan to implement an integrated local library system was a significant example of the second automation stage.278 The plan was to establish an automated circulation system that would, in time, serve as the basis for the online catalog.279

¶73 The law library budget experienced two significant expenses in the 1984–1985 school year. One expense involved supporting the new computer lab.280 The law library spent over $65,000 of its budget in that year for computers, student support, supplies, and software that enabled the law library to provide the new lab to students.281 The other primary expense was the law library inheritance of the newly reformatted legal research and writing program.282 The program was restructured

269. Id.
272. Id. at 62.
273. Id.
274. Id.
275. Id. at 62–63.
276. Id.
279. Id.
280. Id. at 8.
281. Id.
282. Id. at 10.
from the previous one, which had 20 third-year law students teaching the course,
to a new program having four full-time instructors.\textsuperscript{283} The lawyer-librarians who
taught in the law library assumed the responsibility of teaching the students legal
research in the new research and writing class for the first-year students.\textsuperscript{284} The
research instruction was condensed into the first seven weeks of the semester and
was assessed with one written exam.\textsuperscript{285}

\textsuperscript{74} The research and writing program instructors were hired based on their
law school success, legal experience, and research and writing skills. The four
instructors hired were Elizabeth Brandt, Alice Belfiore, Kathryn Mercer, and Mary
McManamon.\textsuperscript{286} Mercer still teaches at the law school.\textsuperscript{287} She is held in high regard
and more than once has won the coveted teacher of the year award voted on by the
student body. The law library budget for the 1984–1985 school year was increased
by $290,000 by the law school to cover the new significant expenses.\textsuperscript{288} Immedi-
ately deducted from the increase was $25,000 to account for additions to the
research and writing program, and an additional $40,000 went to Lexis and West-
law and other database costs added to the library’s computer services.\textsuperscript{289}

\textsuperscript{75} The increase in the budget was additionally eaten away by inflation, leaving
Carrick with a minimal amount left over to address inadequate acquisitions funds.
Finances remained a matter of great concern for the director. She stated in her
annual report that a complete budgetary statement would be prepared and pre-
sented at the end of the 1984–1985 fiscal year to the library committee.\textsuperscript{290} The
seriousness of the matter is best described by Carrick herself:

\begin{quote}
We have reached a juncture as an institution and some difficult decisions about the col-
lection and its support must be made. We must either recognize the need for additional
support for our acquisitions budget or mandate the conscious elimination of large parts of
our collection and its development.\textsuperscript{291}
\end{quote}

\textsuperscript{76} The 1985–1986 annual report mentions some budgetary support in the
next year, stating that the “budget figures were up slightly from the previous
year.”\textsuperscript{292} The support was not nearly enough to counter the dramatic budget short-
fall described in the 1984–1985 annual report.\textsuperscript{293} Carrick stated that the budget
increase did not cover inflation and expenses.\textsuperscript{294} The anticipated budget for the
next year was expected to create “a larger funding base and thus help solve some of

\begin{footnotes}
\textsuperscript{283.} Id.
\textsuperscript{284.} Kathleen Carrick, Annual Report of the Law Librarian to the Dean of the Case West-
ern Reserve University School of Law for the Academic Year 1985–1986, at 7 (unpublished report)
(on file with the Case Western Reserve University Law Library Archives) [hereinafter Director's
\textsuperscript{285.} Id.
\textsuperscript{286.} Id.
\textsuperscript{287.} Faculty Detail: Kathryn S. Mercer, CASE W. RESERVE UNIV. SCH. OF LAW, https://law.case.edu
/Our-School/Faculty-Staff/Meet-Our-Faculty/Faculty-Detail/id/136 [https://perma.cc/ERY7-EFXX].
\textsuperscript{288.} Director’s Annual Report 1984–1985, supra note 270, at 8.
\textsuperscript{289.} Id.
\textsuperscript{290.} Id. at 9.
\textsuperscript{291.} Id.
\textsuperscript{293.} Director’s Annual Report 1984–1985, supra note 270, at 8, and text accompanying notes
280–81.
\textsuperscript{294.} Id.
\end{footnotes}
the problems that have been created by past Limitations on our acquisitions funding." Carrick advocated “the importance of establishing a separate fund for capital expenditures,” which would discontinue the invasion of the operating budget for important and necessary projects, such as the future automation of the serials and acquisitions procedures in the law library.

While the current 2019 Judge Ben C. Green collection development plan makes no mention of analog media, a dated format, in 1985 the law library was one of the first to acquire and implement analog technology, the INFOTRAC Index, via laser disk (LD). This analog format added to the then current slide projector collection and VHS videotapes.

In taking another step toward an integrated library system, the law library started its retrospective conversion during the 1985–1986 school year, transferring the collection information to computer tape, eventually enabling the law library to access the records online. A university-wide grant from the W.M. Keck Foundation allowed the law library to hire a full-time cataloger and assistant to help with the transition.

The 1985–1986 Association of Research Libraries (ARL) Law Library Data represented some of the budgetary support noted above. The ARL Data reported a total expenditures budget of $1,083,783, ranking the Case Western Reserve University Franklin Thomas Bachus School of Law library 23rd out of 107 academic law libraries. The staff consisted of 12 librarians, 10 nonlibrarian professionals, and 5 student assistants, totaling 27, placing the law library 24th out of 107 academic law libraries. The monograph and serials and continuations budgets for 1985–1986 were both lower, at $30,064 and $234,080 respectively. These figures ranked the law library 52nd out of 107 academic law libraries in both categories.

The “budgetary support in the next year” that Carrick alluded to in her 1985–1986 annual report did result in execution. It was the first time the library
could budget $60,000 for monographs and $300,000 for serials and continuations.\textsuperscript{310} The retrospective conversion was not yet complete, and the grant funding was running out. Carrick anticipated that some of the budget would be needed to continue the conversion.\textsuperscript{311}

¶81 In 1986, the online catalog was newly accessible. The law library had 75 percent of its collection reflected in the catalog.\textsuperscript{312} In addition to loading the last of the records, the law library also had to reload some initial entries made in error. Much of the remaining 25 percent to be loaded was of the problem of title variety.\textsuperscript{313} Records needed to be cleaned up or changed to reflect the actual bibliographic holdings and circulation information.\textsuperscript{314} The next significant phase would be automating the circulation system.\textsuperscript{315}

¶82 Carrick gave the new dean, Peter Gerhart, much credit in her 1986–1987 annual report for his help and support, and included that she hoped the honeymoon would continue. She did not shy away, however, from stating that the support needed to continue. Perhaps because of the show of financial support, Carrick directed some of her attention back to the physical facility, stating that the library faced the possibility of losing additional space as the law school looked to reallocate the basement library space.\textsuperscript{316} Carrick expressed that library space, budget, staff, and collections were all interconnected and needed to be addressed with the law school if progress was to continue.\textsuperscript{317}

¶83 The computer lab in 1986 received additional enhancements. Twenty hardcards\textsuperscript{318} were installed on the computers, which significantly enhanced capability. Law students now had to register to get an identifying ID number to gain access to the computer menu, but many software packages were added directly to the computers, giving law students access to an extensive menu of available software.\textsuperscript{319} The need for constant supervision in the lab to help the students and provide security for the systems was significantly reduced, saving the library money.\textsuperscript{320}

¶84 The law library received the seventh-year ABA site visit in February 1988. Perhaps in anticipation of the visit, some of the previous problematic issues that Carrick had written about in recent annual reports seem to have been addressed to a significant degree. Adding compact shelving in the basement largely solved the loss of library space. As far as the lack of longer-range space planning, the law

\begin{footnotes}
\footnote{310. Kathleen Carrick, Annual Report of the Law Librarian to the Dean of the Case Western Reserve University School of Law for the Academic Year 1986–1987, at 6 (unpublished report) (on file with the Case Western Reserve University Law Library Archives) [hereinafter Director's Annual Report 1986–1987]. Where the law library was ranked in regard to the increase could not be ascertained due to inability to secure ARL data for the year.}
\footnote{311. Id.}
\footnote{312. Id. at 5.}
\footnote{313. Id.}
\footnote{314. Id.}
\footnote{315. Id.}
\footnote{316. Id.}
\footnote{317. Id. at 9.}
\footnote{318. Quantum Corporation's Hardcard was “a 3 1/2-inch rigid disk drive mounted on a controller board.” It went into a computer expansion slot and increased the computer's memory. Other manufacturers soon made similar products. Disk Drive Makers Take Quantum Leap to Future Whole New Product Category, Chi. Trib., Jan. 6, 1986, at 18.}
\footnote{319. Director's Annual Report 1986–1987, supra note 310, at 2.}
\footnote{320. Id.}
\end{footnotes}
school seemed to be finally moving toward a phase of planning for an addition to the library. The director and others in the law school had already begun working with an architect in the 1987–1988 academic school year.\textsuperscript{321}

¶85 Despite the addition of endowment monies the previous year, Carrick continued to belabor the issue of the weak budget. In the 1987–1988 academic year, the library spent $75,000 for monographs and $370,000 on serials, a jump of almost 18 percent over the previous year.\textsuperscript{322} To support the spending, the library relied on the additional endowment money that Carrick had hoped to spend on special projects.\textsuperscript{323} Over the past two years, the operating budget had increased by only 0.015 percent.\textsuperscript{324}

¶86 Beyond addressing the physical facility and the budget, the other primary concern was the progress of the integrated university online catalog, EUCLID.\textsuperscript{325} The online system was bogged down by problems. The tapes loaded slowly, and it became apparent that the system lacked adequate disk space. The positive news was that the new circulation system became operational in March 1988.\textsuperscript{326} The library staff agreed that it was an improvement over the previous manual system.\textsuperscript{327}

¶87 In light of the difficulties that were becoming apparent with completing the online catalog, the campus libraries formed a committee to study the problems and to recommend a solution. During the process, the university librarian unilaterally committed to a system, called GEAC, for the indefinite future.\textsuperscript{328} In response, the three other library directors on campus decided to find their own best acquisition and serials systems possible for their libraries.\textsuperscript{329}

¶88 A law library cataloging department report from late 1989, author unknown, stated that even though the GEAC online catalog had been up and running for a while at the main campus library, there had been questions about the reliability of the information in the system.\textsuperscript{330} There was so much doubt about the system that the law library decided to maintain its manual card catalog.\textsuperscript{331} The law library was able to purchase a card catalog cabinet from the Euclid Public Library, which it hoped would suffice until the online catalog situation was resolved.\textsuperscript{332} In late 1989, the manual card catalog ran out of space in title card catalog cabinets.\textsuperscript{333}

\textsuperscript{321} Kathleen Carrick, Annual Report of the Law Librarian to the Dean of the Case Western Reserve University School of Law for the Academic Year 1987–1988, at 6 (unpublished report) (on file with the Case Western Reserve University Law Library Archives) [hereinafter Director’s Annual Report 1987–1988].

\textsuperscript{322} Id. at 5.

\textsuperscript{323} Id.

\textsuperscript{324} Id.

\textsuperscript{325} Named after Euclid Avenue, which runs through University Circle and the campus of Case Western Reserve University. Euclid Avenue takes its name from the small settlement of surveyors who settled to the east in the town of Euclid. \textit{Euclid Ave., Encyclopedia of Clev. Hist.}, https://case.edu/ech/articles/e/euclid-ave [https://perma.cc/UE8B-V772].


\textsuperscript{327} Id.

\textsuperscript{328} For whatever reasons, there is a history of the CWRU main library administration making unilateral decisions, some directly affecting the other three campus libraries, either with or without the other libraries’ input.


\textsuperscript{331} Id.

\textsuperscript{332} Id.

\textsuperscript{333} Id.
¶89 The law school library and Mead Data Central have had an early and rich partnership,334 and that continued in October 1989 with the two agreeing to another test project. Mead provided remote Lexis/Nexis access to CWRU law faculty, curricula, and programs, including the clinic, law reviews, moot court, and several seminars.335 Students who were not involved in the associated programs and seminars were provided formatted disks and gained access using library TLC passwords.336 In the seven months since the test began, usage hours for CWRU increased by 95 percent, with associated costs decreasing by 13 percent.337 This successful program was continued in the 1990–1991 academic year.338

¶90 The 1989–1990 annual report described significant financial restraints on the law school, resulting in the law library being asked in February 1990 to hold invoices until the start of the new fiscal year, starting on July 1, 1990.339 At the end of the 1989–1990 fiscal year, the law library was holding invoices in the amount of $169,839.24.340 The cause of the law school invasion into the law library accounts went unexplained in the annual report.

¶91 To deal with the budget crisis, a moratorium was placed on ordering any new monographs. In response, one faculty member wrote a memorandum to the library committee in which he argued,

[t]he question is not whether we need to save money, the question is how and on what. That is a question which deserves some serious consideration, not only by the Library staff, the Library Committee and the Administration but by the full faculty. Just by way of example, I don't think that the maintenance of a volume on Ohio pleading and practice is worth even one new monograph.341

The result of the law library not paying its invoices during this period of uncertainty led to many collection decisions and, in one instance, a major vendor, Shepard's/McGraw-Hill, suspending its services to the law library because of outstanding invoices.342 As previously mentioned, at the end of the fiscal year, the law library was holding invoices totaling $169,839.24.343 In today's economy, that would equal $338,376.06.344 The law library received $89,000 from the law school

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334. See supra notes 174–192, and accompanying text.
336. The Library Corporation (TLC) “provides . . . automation, cataloging, and data services to more than 4,500 public, school, academic, and special libraries worldwide.” Who We Are, LIBR. CORP, https://tlcdelivers.com/who-we-are/ [https://perma.cc/W8R7-CY4L].
338. Id.
340. Id.
341. Letter from Melvyn R. Durchslag to the Case Western Reserve University Law Library Committee (Dec. 4, 1990) (on file with the Case Western Reserve University Law Library Archives).
343. Id.
for the next year’s budget to address the $169,839.24 carryover, leaving the library to address the remaining $80,000. 345 Nothing else in the research uncovered anything more regarding the invasion of the law library budget, but Carrick stated in a 1994 document prepared in anticipation of the ABA/AALS inspection that since 1990, the year of the materials moratorium, the library had been “studying its collection and recommending cancellations.” 346

¶ 92 Two of the areas studied for cancellation were state reporters and state print Shepard’s. 347 The research and writing (RAW) faculty wrote a memorandum of concern to Dean Gerhart, stating that eliminating state reporters would make it difficult for adequate student access to needed materials for the first-year RAW exercises. 348 The regional reporters were already in heavy use, and the elimination of most state reporters would increase that use, challenging needed accessibility for law students. 349 The RAW faculty also did not support eliminating state print Shepard’s because, at that time, the online resources on Westlaw and Lexis did not include full statutory information and some secondary source materials, such as citations to state bar association journals. Besides, they argued, some government offices and law firms provided little or no access to online services. 350

¶ 93 Despite the RAW faculty’s concern, Gerhart had already given his permission to the law library committee to stop the upkeep of many print state reporters and state Shepard’s. 351 The memorandum to the law library committee made it clear that the dean had conversed with RAW faculty, acknowledging their concerns, but thought the CWRU law community could successfully rely on the online resources and the regional Shepard’s to provide the needed law student accessibility. The dean, questioning the usage of the state print citators, stated that the state print Shepard’s were still available at the Cleveland Public Law Library and the Cleveland State University Law Library. 352 Thirty-four state reporters and state print statutes were ultimately discontinued, giving preference to Ohio and the largest states, such as New York, California, Florida, and Texas, and many of the states geographically close to Ohio, such as Indiana, Michigan, Pennsylvania, and West Virginia. 353

347. Id.
348. Memorandum from RAW Faculty to Peter Gerhart, Dean of the Case Western Reserve University School of Law (February 4, 1993) (on file with the Case Western Reserve University Law Library Archives).
349. Id.
350. Id.
351. Memorandum from Peter M. Gerhart, Dean of the Case Western Reserve University School of Law, to the Case Western Reserve University School of Law Library Committee (Jan. 28, 1993) (on file with the Case Western Reserve University Law Library Archives).
352. Id.
353. States for which print state reporters and print state statutes upkeep were discontinued: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, and Wyoming.

¶94 In the 1992–1993 academic year, the campus libraries permanently moved from the inflexible, ineffectual GEAC system to the Innovative Interfaces system (III). After hundreds of hours in negotiations, policy meetings, planning, and training sessions, the actual implementation was smooth, quick, and successful. The law library was able to use all its components with initial success.

¶95 The law library once and for all put its acquisitions and serials subsystems into electronic format. Automated records, after years of frustration, were finally fully available to staff and users. Added to this major automation event was another called OhioLINK. Case Western Reserve University was a charter member of OhioLINK, “a statewide academic library consortium serving 118 libraries, 89 institutions of higher education, the State Library of Ohio and more than 880,000 students, faculty, staff and researchers.”

¶96 New policies and procedures, regarding both systems, were then developed in the 1992–1993 academic year. The effect was moving the law library from what it had been for decades—a manual, self-contained, print-reliant system—to an automated one that was now open to the state and beyond. Law faculty and students had access to resources they could have only imagined beforehand. It took considerable library staff time to examine loan policies, discuss fines, develop renewal procedures, and arrange delivery systems, but the changes were historic for the law library.

¶97 The law library, with its print-based interlibrary loan (ILL) system, was highly functional. It had become well established over the last several years, and Carrick, emphasizing ILL’s importance since her arrival, was mostly responsible for the vast improvement. In Carrick’s first year, the 1983–1984 academic year, the interlibrary loan staff processed 285 borrowing/lending transactions. Nine years later, the same year they were implementing the III system and OhioLINK in the 1992–1993 academic year, they processed 2607 transactions, an 89 percent increase in ILL activity.

¶98 Being the only law library founding member of OhioLINK, the new regional consortium would predictably result in even more interlibrary loan trans--
actions. 363 As the law library received the first wave of transaction requests, it had to be prepared to increase the staff to meet demand. 364 Whether the increase in staff occurred to meet the ILL demand was not determined. 365

§99 Technology, in all eras, makes it difficult to know how long each new tech innovation will endure. People predicted in the mid-1950s, for example, that nuclear-powered vacuum cleaners and rocket mail would replace existing products, 366 and a jet-grille design car named Edsel would sell 200,000 units in its first year alone. 367 And Carrick in the early 1990s believed that CD-ROM was going to be a major technology in law for years to come and would be the medium of choice for archival purposes. 368 She was not alone. 369

§100 Carrick’s reflection on the early 1990s as a period of significant technological changes in law libraries, however, was on the mark and remains poignant well over 20 years later:

These changes come at a time of budget cuts throughout legal education and the revision of ABA and AALS standards. The proposed standards recognize the impact new technology will have in both the format of libraries collections and the type of information that is accessible. Resource sharing has become the accepted norm as libraries try to accurately identify their strengths and weaknesses, realizing that no single institution can afford to be strong in every area. 370

The 1995 ABA-AALS evaluation team report 371 stated the CWRU law library had proceeded with the integration of CD-ROM products more quickly than many other schools. 372 Although the use of CD-ROMs in the practice of law didn’t take off as anticipated, several reasons explain that, such as licensing, 373 the rise of smaller and mobile computers, lack of capacity, and the rise of nonphysical media like digital files. 374

§101 It was reported in the 1995 ABA-AALS evaluation team report that the core collection was solid, but that the collection of treatises was thin and not sustainable for in-depth faculty research. 375 The review stated that the lack of a quality research

363. Id.
364. Id. at 12.
365. I did not find any more associated references to increased staff in the available documentation.
368. Law Library Briefing Book, supra note 346, at 11.
372. Id. at 32.
375. ABA-AALS Report, supra note 371, at 32.
collection was not a new problem, having also been identified in the previous ABA site report. The library director, in answering the evaluation team’s query, admitted that she no longer prepared a formal annual report in which she would usually ask for additional funds from the dean because the law library generally received a flat amount based on the university’s projection for the other campus libraries.

¶102 Even if there had been additional funds to purchase more of a quality collection beyond the core, there would have been little shelf room for it. The library had relocated some of the older collection to compact shelving and some to offsite storage, due to insufficient shelving space in the building. The materials listed as retrievable remained in boxes.

¶103 The library facility paled in comparison to the rest of the law school. The law school was “generally spacious, airy, and light,” while the law library was “crowded, dimly lit, and somewhat dingy.” The ABA site report concluded that the library facilities needed “substantial” attention. The HVAC system needed adjustment or overhaul to accommodate the expanding computer facilities. The library shelving was 84 percent full, meaning it was functionally full for purposes of the standards. The closeness of the stacks on the third floor made vision difficult. Even the lighting in some study areas was inadequate.

¶104 Michael Gerhardt, who had spent his previous six years as associate professor and professor of law at William & Mary, became the new dean on July 1, 1996. He decided to address the issues from the 1995 ABA site report by preparing a new self-study. The self-study committee he created addressed the library issues stressed from the ABA inspection (space and facilities, inadequate collection, and budgetary concerns). The dean determined an overall concept for the library was needed. The final 1997 self-study stated that the law school needed to identify its long-term plans for the physical library space.

¶105 The self-study committee noted that in the two years since the ABA inspection, the library had grown from 84 percent full to 86 percent full. The library had identified alternative storage space and began a weeding process. Dean Gerhardt initiated a 3 percent increase in the materials budget, the first increase in funds since the early 1990s. The collection remained an unresolved

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376. Id.
378. Id.
379. Id. at 34.
380. Id. at 37.
381. Id. at 40.
382. Id.
383. Id. at 39.
384. Id.
385. Id.
386. Case Western Reserve University School of Law Self-Study for ABA Reaccreditation 12 (Feb. 18, 1997) (on file with the Case Western Reserve University Law Library Archives) [hereinafter CWRU Law Self-Study 1997].
387. Id.
388. Id.
389. Id.
390. Id. at 14.
issue with the self-study committee, but the recent implementation of the Ohio-LINK consortium was thought to be a possible solution to the resource needs of faculty and students. 391 In sum, the committee stated that none of the problems identified by the ABA site team regarding the library were insurmountable, but the issues still needed attention. 392

¶106 In response to concerns raised in the 1995 ABA report and 1996–97 self-study, Carrick circulated a memorandum stating that the three main concerns (space, operating budget, and collections) confronting the library had not yet been addressed. 393 (Although the memo was not dated, a book Carrick used to calculate shelf space was published in 1999, 394 making it likely that the memo dates to around the same time. Its likely audience was the law school’s library committee.) The memo first addressed space. Carrick ran through the over 25-year history of the physical law library space, mentioning several piecemeal changes the law school had made, such as gerrymandering library space for faculty offices and other programs. The director also criticized library remodeling projects that never got off the ground due to lack of funds. 395 An example was the scheduled remodeling of the north side of the main first floor that was eliminated in 1994 after the renovations for the new classroom construction ran over budget. 396

¶107 Carrick let out her frustration concerning how the law school had dealt with library space:

We need to come to two basic agreements. First, the Library needs to be recognized as a priority of the Law School, not as an afterthought which is dealt with only because it is again sacrificing space to another project.

Second, the Law School needs to reach an honest acknowledgement that the Library will remain in its current space for the indefinite future . . . By eliminating the ungrounded expectation that a new building is possible or inevitable, we eliminate one of the basic excuses for not facing our current situation. We would also eliminate the concept that the library can continue to sacrifice space because an addition is in the future. 397

Carrick went on to discuss the various facility shortcomings throughout the library, including the poor lighting and the noisy wind tunnels on the third floor, along with insufficient storage and the lack of support for additional compact shelving. Storage space was at the very top of the director’s wish list. The library was effectively full at 86 percent capacity. 398 The law library had looked for temporary shelving even before the last ABA site visit, moving some 30,000 volumes to commercial off-site storage. The library also rented storage space in what was called

391. Id. at 15.
392. Id. at 16.
393. Kathleen Carrick, Law Library Memo: Current Issues and Future Directions (ca. 1999) (on file with the Case Western Reserve University Law Library Archives) [hereinafter Current Issues and Future Directions].
396. Id.
397. Id.
398. Id.
the Cedar Facility, which proved an inappropriate setting for the open storage of materials. A deceased judge’s boxed papers sat alongside old furniture.

¶108 The director also let some frustration be known over the state of the budget:

The library’s major budget issues are unfortunately similar to our space problems. The Law School has often viewed the library as the residuary for the School’s space and funding. If space was needed, it was taken from the library. If money was needed, it was taken from the library’s funding. . . . The perception of the library’s budget as “changeable”—as a figure that the Law School administration could alter throughout the fiscal year—has driven the library’s collections, and sometimes policies, through many of our recent years.

¶109 Curiously, Carrick stated that the current library operating budget was adequate and that the library and law school needed to keep working together to maintain a clear, reliable budget. She imagined adjustments in the budget were possible through communication. Carrick acknowledged that “the clarification of accounting and adjustments was a major goal that, now achieved, should be protected and maintained in good faith.” The director went on to state that the budget could develop more stability through the creation of new endowments for equipment and other ongoing expenses, such as maintaining the international collection, where inflation was as high as 20 percent.

¶110 In her comments about the final area of significant concern, the collection, Carrick lamented that a lot of the budget spending went to maintaining costly and duplicative sets of the West regional reporters, the American Law Reports, and legal encyclopedias, even though these sources were duplicating sets of CD-ROMs and online databases. Faculty members were concerned about student accessibility, however, and this conservative view, in her opinion, led to both issues of duplicated costs and space limitations.

¶111 The director was not hopeful for a change of attitude among some of the faculty and resigned herself to more attainable goals, such as establishing a substantial monograph budget that the library could commit to protecting against law library budget invasions during times of financial difficulties. Also, she thought there might be potential collection areas where online resources would suffice, freeing up needed shelf space. For example, the infrequently used English Reports took up much shelf space. Carrick asserted the set would be perfectly fine for online access only.

399. Id.
400. Id.
401. Id. at 7.
402. Id.
403. Id.
404. Id.
405. Note that establishing new endowments for maintaining ongoing expenses is a difficult sell.
406. Current Issues and Future Directions, supra note 393, at 8.
407. Id.
408. Id. at 9.
409. Id.
410. Id. at 10.
An influx of new personnel in the early 2000s filled several positions. Director Carrick and Associate Director D.R. Jones hired several talented people who would become essential members of the law school library for years to come, librarians like Rob Myers, Megan Allen, and Lisa Peters. In addition to the important personnel additions, Blackboard was the new educational software introduced in the spring of 2001. The introduction of the software offered faculty the opportunity to post announcements and assignments to their students consistently. The law library also introduced Iliad in the summer of 2001, an automated interlibrary loan software program allowing users to request and track interlibrary loan requests online.

With the influx of new people, the law library had a staff of 30 in 2000–2001. Included in the total number were the IT and AV departments. IT had a director with a staff of five, and AV had a two-member department, all under the supervision of the law library director. It was difficult finding workspaces for everyone due to the law school’s cannibalization of parts of the law library space over the years. In January 2002, the library comprised only 31,495 square feet, which ranked the law library 143rd among U.S. law schools.

In 2000–2001, the law library took advantage of the opportunity to piggyback on the university library’s decision to move a sizeable portion of its collection to an Iron Mountain preservation facility located in Pennsylvania. The move to Iron Mountain helped the law library address the long-term storage issue. The law library set in motion a plan to assess the off-site storage potential, identify materials for storage, and start moving the selected items to the Pennsylvania facility.

The 2002 self-study report described a complete renovation of the library. The self-study mentioned student conference rooms, more student study and work areas, and increased professional staff space. The plan had been presented to the faculty and was well received. As of January 2002, the hurdle appeared to be the funding.

In 2008, D.R. Jones became professor and law library director at the University of Memphis Law School. See CWRU Law Library Self-Study 2009, infra note 466, and accompanying text.

Librarians Judy Kaul, Deb Dennison, Andrew Dorchack, Cheryl Cheatham, and Sara-Jean Petite were already staff members.

Case Western Reserve University School of Law Self-Study for ABA Reaccreditation 34 (Jan. 2002) (on file with the Case Western Reserve University Law Library Archives) [hereinafter CWRU Law Self-Study 2002].

"Iron Mountain Incorporated (NYSE: IRM) is a global business dedicated to storing, protecting and managing, information and assets." About Us, IRON MOUNTAIN, https://www.ironmountain.com/about-us [https://perma.cc/3YGW-792H].


CWRU Law Self-Study 2002, supra note 413, at 34–35.

I interpret these to be study rooms.


¶116 Robert Bull, an architect of the SmithGroup, suggested a design charrette425 for the law library renovation.426 In his letter to Carrick, he reported meeting with several library user groups.427 Five library stakeholder groups collaborated: the dean, the law faculty, the students, the library directors, and the librarians and staff.428

¶117 In comparing the objectives of the five individual groups, the dean was most concerned with image, engaging students, the flexibility of creating multifunctional and student gathering areas, and fundraising opportunities for attaching naming rights to rooms or areas within the library.429 The faculty had a number of interests, including creating multifunctional spaces to share resources, image, and engaging students. The faculty also stressed efficiencies, making the maximum utility of the space using creative options. They stated that the quality of the study areas needed to improve through the installation of better lighting and more noise control. Last, the faculty was interested in technology, stating that there needed to be more access to power and data outlets in addition to increased access to online services.430

¶118 The students wanted more variety overall and better-equipped study areas. Comfortable and better-configured furniture, improved lighting, and larger tables in the study areas were also high on their list. The students wanted more group study rooms, more AV display rooms, and choices between quiet and noisier study areas. Interviewed at the turn of the 21st century, the student group was also looking for the convenience of more email stations on the first floor. They also wanted places within the stacks to lay books as they searched the shelves, such as pull-out shelving. Regarding other technology, the students wanted a bigger computer lab and more power and data connectivity in the study areas, in addition to effortless access to online services.431

¶119 The library directors also wanted the strong image mentioned by the dean and the faculty presented by a dignified, academic, and professional space. They wanted the flexibility of space, also like the dean and the faculty. Like the dean, the library directors mentioned the creation of neighborhoods in the library that would comprise the community of the law library, with each neighborhood representing a naming opportunity.432 (Despite the dean’s and library directors’ interest, ultimately the neighborhood theme was not adopted.)

425. “A design charrette is a short, collaborative meeting during which members of a team quickly collaborate and sketch designs to explore and share a broad diversity of design ideas.” Charrettes (Design Sketching): 1/2 Inspiration, 1/2 Buy-In, Nielsen Norman Grp, https://www.nngroup.com/articles/design-charrettes/ [https://perma.cc/7NZ6-USFM].
426. Letter from Robert Bull, AIA Assoc., SmithGroup, to Kathleen Carrick, Director of Law Library (Mar. 10, 2000) (on file with Case Western Reserve University Law Library Archives).
427. Id.
429. Id. at 1 (dean).
430. Id. at 3 (faculty).
431. Id. at 5 (students).
432. Id. at 2 (library directors).
¶120 The library directors, like the faculty and the students, stressed the importance of technology. The library directors specifically mentioned the hope for a “wired School.” The directors echoed the students’ need for more comfortable areas and seating in the library. The one area the directors mentioned, not mentioned by any other collaborating user group, was an objective of “openness” in the renovated library, with attractive open spaces that promoted student interaction.433

¶121 The remaining user group, librarians and staff, had some of the same objectives as the previous four. They advocated for a positive image, flexibility, comfort, and efficiency through better organization of staff areas and storage options. Also, the librarians and staff advocated for a future technology plan and a more extensive computer lab. They encouraged more computer stations throughout the library, which would provide online card catalog access, but they discouraged any email use on the first floor.434 They lost the email battle with several email accessibility points added to the first floor in the renovation.435

¶122 The one objective the librarians and staff addressed that no other user group mentioned, even the library directors, was the current configuration of the circulation and reference desks.436 The group asked for a clear delineation between the reference and circulation desks and a better orientation of the reference space.437 Circulation and reference services shared the same space to one side at the entrance to the law library.438 The opening to the space, approximately four feet off the ground, resembled a coat rack opening with the bottom closed.439 Patrons had no place to sit and thus remained standing during any interaction at the service point.440 Besides, there was a need for more reserve shelving in the reference area.

¶123 The Cleveland Plain Dealer reported on February 4, 2003, that the law school received $2 million from the family of former U.S. District Judge Ben C. Green to name the law library in his honor.441 Judge Green was appointed to the U.S. District Court for the Northern District of Ohio by President Kennedy in 1962.442 The late judge, who received both his undergraduate degree (cum laude) in 1928 and his LL.B. (Order of the Coif)443 from Western Reserve University School of Law in 1930, served 20 years in the Northern District Court and died at 78 while still sitting on the court in 1983.444

433. Id.
434. Id. at 4 (librarians).
437. Id.
438. Id.
439. Id.
440. Id.
441. Barb Galbincea, Judge’s Kin Give $2 Million to Law School, C/l.sc/e.sc/v.sc . P/l.sc/a.sc/i.sc/n.sc D/e.sc/a.sc/l.sc/e.sc, Feb. 4, 2003, at B1.
442. Id.
443. COMMENCEMENT [Program]: Western Reserve University in the City of Cleveland 3 (1928), http://hdl.handle.net/2186/ksl:uarchives-wrucmp1928-06 [https://perma.cc/US7S-TVQG]; COMMENCEMENT [Program]: Western Reserve University in the City of Cleveland 10 (1930), http://hdl.handle.net/2186/ksl:uarchives-wrucmp1930-06 [https://perma.cc/83HB-E9TZ].
¶124 Dean Gerald Korngold put the $2 million Green family gift toward a $5.5 million renovation of the entire library.445 After some fits and starts, the final planning for the renovation of the law library started in 2003.446 The actual construction started in September 2004, soon after the fall semester started.447 Transforming the third floor from a “shelf forest” to a more functional, ADA-compliant library space, containing eight large study rooms, two computer labs, and some low shelving to create a more open environment, required the removal of approximately 57,600 volumes to long-term offsite storage, adding to the 25,000 volumes already there.448

¶125 The 15-month-long renovation came toward the end of the “golden age” of academic law libraries.449 The golden age was a time that included expanded collections, additional dual-degreed librarians, and adequate staffs and budgets.450 The ABA standards focused on volume count in ranking academic law libraries during the golden age.451 It was a time before the electronic collections came to overshadow print, when an essential thing was finding shelving space for countless books. It was a time of quantity over quality. Multiple, redundant sets of primary and secondary print series were the collection norm and were even encouraged to pump up the volume count to meet the quantitative accreditation standards.452

¶126 With the renovation taking place during the golden age, the law library was on strict instructions from Dean Korngold not to withdraw any volumes or titles.453 Either the books remained onsite or were shipped to offsite storage.454 After the renovation, the law library still held 210,000 volumes onsite.455 The law library turned to the faculty library committee to discern what exactly should move to storage.456 The faculty committee created guidelines in August 2003:

[T]he committee decided to store long term all state reporters, encyclopedias, and digests (except for five states); all duplicate federal reporters and statutes; all duplicate journal sets; most Canadian and Commonwealth reporters; select government document sets; and a percentage of the law and non-law monograph collections. The committee also approved guidelines to be used in determining which particular monographic titles would be sent offsite.457

446. Id. at 21.
447. Id.
448. Id.
452. Peoples, supra note 449, at 613.
454. Id.
455. The print collection contained 268,000 volumes before the renovation, but compliance with the Americans with Disabilities Act required losing more than 20 percent (or 57,600 volumes) of the print collection to offsite storage. Jones & Myers, supra note 445, at 21.
456. Id.
457. Id.
§127 The faculty approved the committee’s guidelines and, to streamline the move to storage, the library staff created a database that collected information from the online catalog on each title’s publication date, edition, circulation history, and reshelving history. Lists of all the titles, mostly monographs (more than 19,000), were compiled and distributed to librarians based on their faculty liaison assignments and subject specialty knowledge (many times the same). The librarians would then go to the shelves armed with the list data to make the determinations. The storage decisions were entered back into the database for all collection decisions going forward.

§128 The compilation of librarian storage decisions was finished in early 2004 and submitted to the faculty via 17 three-ring binders. Faculty comfortable with reviewing an electronic format received database access. Since the law library was piggybacking off the main campus library’s contract with Iron Mountain and time was of the essence, only a one-month faculty review was permitted. There were very few faculty requests. The process of pulling the volumes, authenticating barcodes, boxing the volumes, and then transporting the boxes to Pennsylvania took five weeks.

§129 The completion of the renovated library transformed what had been the traditional, classic law library structure of rows and rows of shelved, printed books, mimicking a warehouse with seating along the fringes, to a transformative arrangement offering much more comfortable seating, openness, places to collaborate, and areas for study, some designated as quiet.


§130 After the completion of the renovation, there followed a realignment of staff positions and responsibilities. The law school IT department no longer reported to the law library director, so the number of full-time employees in the library staff diminished. D.R. Jones, deputy director, left in the summer of 2008 to become the law library director at the University of Memphis. Upon her departure, there was a realignment of the position of manager of serials and acquisitions into the position of associate director for collections and acquisitions, which led to the promotion of the incumbent manager, Rob Myers. Rob had distinguished himself through his excellent collection supervision during the renovation and his CRIV committee work. Besides, he had a background in serials and budgetary...
matters going back to his days directing law firm libraries. In 2009, there were 23 members of the library staff. Ten were librarians.

¶131 Another redesigned position after the departure of the deputy director was that of the associate director of public services, who would now oversee reference, access services, web/technology, and the teaching program. Andrew Plumb-Larrick filled the position after a nationwide search in the 2009–2010 school year. Plumb-Larrick had been the head of public services and lecturer in law at the Arthur W. Diamond Law Library at Columbia Law School. After the personnel changes were in place, the establishment of administrative unit meetings transpired, consisting of the director, the two associate directors mentioned above, another associate director of budget and HR, and the library’s administrative coordinator, meeting weekly.

¶132 Lisa Peters moved into the position of business law and empirical specialist/reference librarian, relieving her from the daily responsibilities as head of access services and allowing her to support the law faculty’s growing interest in empirical research areas. The development of Donna Ertin helped facilitate the change. Ertin had served in various capacities in the access services department since 2004, and had served as access services manager since 2006. She assumed the role of head of access services and was assigned to report to the associate director for public services. Before filling the associate director for public services position, the director supervised the position with the support of the staff.

¶133 The law library received increases in its materials budget in the first 10 years of the new century. The increases ranged between 2 and 5 percent over the aughts. Even with the increases, the law library was forced to make some substantial cancellations. The year 2007 saw a cut of $104,000 due to the annual price increases for serials supplementation.

¶134 During the 2007–2008 school year, with the ABA officially deemphasizing volume and title count as a method of measuring the value of academic law libraries, the library started to reduce its offsite storage costs. In October 2007, the law library arranged with Iron Mountain to withdraw and recycle 13 duplicative large sets of federal titles in storage. The new long-range goal, totally different from what it had been four years previously, was to significantly reduce offsite storage holdings to a collection of unique treatises, legislative materials, and monographs.
¶135 In the spring of 2013, Kathy Carrick retired. Andrew Plumb-Larrick was chosen by Dean Lawrence Mitchell to become the acting director. Soon after, the law school confronted a severe budgetary hardship, and Dean Mitchell gave the unpleasant task of cutting four library staff to the inexperienced acting director.482

¶136 The law school, hit with a financial and budgetary crisis, put a stop to Dean Mitchell’s exploratory plans with Arnold Hirshon, Associate Provost and University Librarian at CWRU, to consolidate the law library with the main campus library.483 Soon after, Dean Mitchell faced allegations of sexual impropriety that came to light during the 2013–2014 school year, and Mitchell resigned on March 1, 2014.484 He had been on a leave of absence since November 2013.485

¶137 The law school landed well on its feet during this challenging time, with the president of the university486 appointing Jessica Berg and Michael Scharf, two dynamic and highly accomplished law professors, interim co-deans to lead the law school.487 The interim co-deans decided to make the law library director’s position a national search, hiring me as associate professor of law and director of the Judge Ben C. Green Law Library. Within two months of my first day as director (July 1, 2015), the co-deans’ interim status was made permanent.488

¶138 The most important effect of my tenure thus far on the law library is instilling a program of a living strategic plan, partnered with project management to make the rubber meet the road.489 During the 2015–2016 fiscal year, the law library completed eight projects.490 In fiscal 2016–2017, the law library completed
21 projects.\(^{491}\) By December 31, 2017, halfway through the 2017–2018 fiscal year, the law library completed 10 projects.\(^{492}\) The discussion below covers some of these projects.

¶139 In fiscal 2016–2017, the law school adopted Freedcamp as the project management software to be used across law school departments. The law library has held project management training classes for the rest of the law school.\(^{493}\) The deans intend there to be a reliance upon Freedcamp, and the library intends to lead the way.\(^{494}\)

¶140 During the 2015–2016 fiscal year, the law library loaded all five law school journals on bePress’s Digital Commons platform.\(^{495}\) The law library also relaunched the library liaison program in 2015–2016, which had been dormant since Kathy Carrick’s retirement in the spring of 2013.\(^{496}\) The law library improved innovative faculty teaching.\(^{497}\) Other improvements in the area of technology included upgrades made to the computer training classroom and installation of the Intel Unite model in two of the library study rooms.\(^{498}\)

¶141 Also, two self-service Scannx Book ScanCenters scanners were added in fiscal year 2015–2016 and are big hits with the students and staff.\(^{499}\) The library has purchased a host of smaller items students can check out from the circulation desk, such as phone chargers, MacBook chargers, iPads, charging blocks, and standing desks.\(^{500}\)

¶142 In the 2016–2017 fiscal year, the law library cut over $150,000 from the law library budget by adopting the MALLCO (Mid-America Law Library Consortium) print treatise and statute collection sharing plans.\(^{501}\) The law library collection has become much more electronic since 2015. In fiscal year 2015–2016, the law library had budgeted $350,000 for electronic materials and $625,000 for print serials. With a smaller budget, the law library has almost flipped those numbers in the last three years.\(^{502}\) The infusion of electronic books over the past three years has been significant. In fiscal year 2015–2016, the library added 11 databases, 7 of

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\(^{492}\) Project Management Completed Projects File Spreadsheet (on file with author).


\(^{494}\) Email from Co-Deans Berg and Scharf to law school faculty and staff (May 7, 2017, 13:31 EDT) (on file with author).


\(^{496}\) Andrew Plumb-Larrick, in his tenure as acting director, de-emphasized the program.

\(^{497}\) Under the leadership of Megan Allen, Assistant Director of Technology and Strategic Initiatives.


\(^{499}\) Director’s Annual Report 2015–2016, supra note 490, at 6.

\(^{500}\) Id. at 10.

\(^{501}\) I was president of MALLCO when hired at Case School of Law, and I advocated for Ben C. Green Law Library’s inclusion in the MALLCO consortium.

\(^{502}\) For the 2018–2019 fiscal year, the law library is budgeting $530,000 for electronic materials and $310,000 for print serials.
which were one-time ownership purchases, at a total cost of $200,000.\footnote{Director's Annual Report 2015–2016, supra note 490, at 9.} Four of the 11 were subscriptions costing $23,734.80 annually.\footnote{Id.} The money was recouped by cutting print subscriptions; almost all the periodical subscriptions are online.\footnote{Id.}

\section*{¶143} The law library added another six Intel innovative platforms to the previous two in the 2016–2017 fiscal year,\footnote{See Gawer & Casumano, supra note 498.} and installed a new state-of-the-art smartboard/monitor in the library computer training classroom.\footnote{Director's Annual Report 2016–2017, supra note 491, at 4–5.} The new setup in the study rooms allows the law library to support student group collaboration needs.\footnote{Id.} The installation of new TVs and computers allows students to access the room’s monitors wirelessly, and by using Intel Unite the students can project their computer screens to the TV with ease.\footnote{Id.}

\section*{¶144} The law library initiated another new project during the 2015–2016 fiscal year, upgrading its prior research guide series by adopting the electronic interactive template LibGuides, which takes a traditional, straightforward research guide and makes it much more visible and functional, offering information in a much more user-friendly format. The number of views garnered by our guides has greatly increased with the new format.\footnote{From January 1, 2016, through December 31, 2018, there were 105 LibGuides created with 51,225 total views.}

\section*{¶145} In fiscal year 2016–2017, the law library instituted a personal librarian (PL) program.\footnote{Director’s Annual Report 2016–2017, supra note 491, at 2.} The only other PL program known to me among academic law libraries is the program at the Immel Law Library at Saint Louis University School of Law.\footnote{I was assistant professor of law & director of the Immel Law Library from July 1, 2010 to June 30, 2015.} The PL program matches each incoming first-year law student with his or her own PL to serve as a point of contact with the law library.\footnote{Personal Librarian, Case W. Reserve Univ. Law Library, https://law.case.edu/Our-School/Library/Students/Personal-Librarian [https://perma.cc/XW8H-597T].}

\section*{¶146} The program also provides incoming LL.M. students with a PL. Several students used their PL in one of the intended roles of helping them acclimate to the information resources, not only in the law library but beyond to the other campus libraries and the vast electronic world. Several of the PLs interacted socially with their assigned students; one took his group of students to a local bar for some live music; two others joined causes and had a lunchtime pizza fest. Bottom line, it was fun and successful in most people’s opinions.\footnote{Joseph Custer, Robert Myers, Megan Allen & Andrew Dorchak, Launching a Personal Librarian Program within a Specialized Library (Mar. 22, 2018), https://researchguides.case.edu/ld.php?content_id=41420113 [https://perma.cc/R2VQ-6QMK] (presented at the Third Personal Librarian and First Year Experience Library Conference, Kelvin Smith Library, Case Western Reserve University, Mar. 21–22, 2018).}
data.\textsuperscript{515} The project, supported by the NELLCO consortium and Yale Law Library, has an advisory board, including Associate Director Rob Myers as a member. Sara-Jean Petite, reference and government documents librarian, is a current member of the board. Many additional law libraries have joined since. ALLStAR is giving libraries more options regarding the number of features, levels of access, and pricing, in an attempt to appeal to as many academic law libraries as it can.\textsuperscript{516}

\textsection{148} In the late fall of 2016, the Ben C. Green Law Library staff started a weeding project, finished in November 2017. Currently, the law library is weeding its compact shelving in the basement. The law library is making room for the books from offsite storage that still hold value for our collection and recycling the many thousands of others that were shipped out to offsite years ago to maintain the volume and title count. Over 90 percent of the stored collection was useless second and third runs of primary sources, old textbooks, dated monographs from pedestrian publishers, and errata.\textsuperscript{517}

\textsection{149} Tens of thousands of dollars will be saved yearly in costly offsite storage by project’s end.\textsuperscript{518} Also, the room made available in compact shelving will allow an eventual shift in the collection that will result in a new, exciting commons area on the third floor, extending past the current computer lab area and keeping the outer shell of the current lab.\textsuperscript{519} We are proposing a plan that will mix well with the current classical look and feel of the law library, but also bring in some comfortable seating and collaborative space. Our goal is to create this friendly student space within the next five years, by July 1, 2022.\textsuperscript{520}

\textsection{150} To further reduce serial costs going forward, the law library entered into agreements at the end of the 2016–2017 fiscal year with both Thomson Reuters (West) and LexisNexis. Under the West Library Management Arrangement, Thomson Reuters print serial costs are fixed to rise at slightly less than 5 percent per year for the next three years. In exchange for the lowering of the inflation rate on Thomson Reuters’s products, the library has agreed not to cancel any Thomson Reuters print serial products during the term of the contract. However, at the end of each annual period, the law library can swap out lesser-used titles for titles that students and faculty use more.\textsuperscript{521}

\textsection{151} The LexisNexis two-year agreement is slightly different. Under the agreement, Lexis will be providing e-book access (on the OverDrive platform) to all of the Matthew Bender titles the law library subscribes to in print. While the law library will be paying additional money for access to the e-book titles, the print titles are deeply discounted to offset the electronic costs.\textsuperscript{522} The savings from the
serials, mentioned above, and cancellations have allowed the law library to subscribe to the electronic study aid packages from Westlaw and Lexis.523

¶152 In fiscal year 2016–2017, the library added 17 new databases and e-book collections—7 of which were one-time purchases at a cost of $107,350.51, and 12 of which were annual subscriptions of $61,156.79. Also, part of the Westlaw subscription mentioned above included the “Practice Ready” suite of resources (i.e., Drafting Essentials, Firm Central, Form Builder, Practical Law, Rise of American Law, Tribal Law, and Westlaw China).524 Last, the library subscribed to one new electronic cataloging tool: StackMap.525 It is a mapping tool that interfaces with the law library catalog so that patrons can click on a “Map It” icon and see exactly where the book is located on maps of the law library (the mapped floors and ranges within the library).526

The Future of the Judge Ben C. Green Law Library (2018–)

¶153 In the fiscal year 2017–2018, through the efforts and solicitation of the chair of the faculty senate committee on university libraries, the university provost agreed to send a charge to a library external review team (LERT) consisting of five top library administrators from across the county.527 The LERT team accepted the charge of providing the university administration with an objective assessment concerning the quality, capabilities, and resource allocation of the university’s libraries.528 Before the LERT project, the four main libraries comprising the CWRU system had started some productive collaborations, and the LERT team thought the four libraries could go further to provide more integrated services to the university community, and to develop shared infrastructures and shared expertise where it made sense.529

¶154 The LERT team did not think that consolidation would result in an additional source of funding for the main campus library, the Kelvin Smith Library (KSL), or result in any hoped-for cost savings.530 The LERT team met with students, library staffs, faculty, deans, and provosts across campus. The following paragraph, written by the LERT team, offers insights about consolidation:

There was a consistent refrain from the Mandel and Law School libraries’ stakeholders: they saw no potential benefits and feared losing their relative autonomy and stronger resource base if there were a stronger association with KSL. Rather, they perceived KSL funding to represent a “lowest common denominator” of services and resources, which underscored the frequent and explicit fear that the LERT visit portended consolidation. However, LERT...
heard an expression of willingness to work more collaboratively to achieve efficiencies, share best practices, and provide and avail themselves of training and development opportunities.531

¶155 The LERT report was very complimentary of the law library. The oral report presented on May 25, 2018, specifically pointed out the social sciences and law school libraries as having very dedicated staff, who were professional and service oriented.532 The LERT team heard acclamations from administrators, faculty, and library staff that the law library was well staffed, funded, and supported.533 LERT also made note that the Mandel School of Applied Social Sciences (MSASS) and the School of Law have made their libraries priorities and have provided them strong, reliable support.534

¶156 After completing a three-year strategic plan, the law library held a retreat in 2018, focusing on the next five years, through 2022. In addition to addressing any new projects and changing course on any that needed restructuring, the law library explored creating both a vision statement and a behavior values statement, respectively. These two statements were projects emanating from the law library’s strategic plan and fueled by project management.535 The plan’s projects need quarterly updates during the year to stay relevant. Retreats need to be scheduled every two years for reflection, change, and refocus.

¶157 A law library director’s vision should be that of the whole library. The law library’s mission statement articulates what the law library does.536 A vision statement, on the other hand, helps the law library aspire to greater heights going forward. It is meant to make a law library uncomfortable.537 The vision statement that leads the Case Western Law Library into the future states: “[b]ecome the leader in creating an environment that empowers world-class scholarship, innovative teaching, and interdisciplinary research support in an interconnected world.”538 The law library may never attain the lofty vision, but the continual effort to get there makes it a dynamic, pace-setting environment in which to work and prosper. The planning and work go on now to pave the way for this vision statement to come to fruition.

¶158 History is inspiring. For those who love law libraries, writing a law library history is a gift to law library literature worth undertaking. Prior law library histories provided me with the inspiration to research and write the above history. Oth-

531. Id. at 3.
532. Yolanda Cooper, Sarah Hooke Lee, Carol Mandel, Mary Ann Mavrinac & Denise Stephens, LERT Oral Presentation to the University Provost and Other Top CWRU Administrators (May 25, 2018).
533. LERT Report, supra note 527, at 3.
534. Id.
535. See Anzalone, supra note 489, and accompanying text.
536. Mission Statement: The mission of the law library is to provide outstanding service and information access to the faculty, students, and staff of the law community. The library supports the curriculum of the law school and is a resource for the Case Western Reserve University community.
538. Vision statement created after the law library held mini-retreat session facilitated by Robert M. Hall, CWRU Director of Professional Development and Learning, June 5, 2018.
erwise, the 125th Anniversary of the Case Western School of Law would have come and gone with only faint mention of the beautiful place influencing multitudes over the years. The law library is our past and our future.
The Gaps Model and Faculty Services: Quality Analysis Through a “New” Lens

Alex Zhang** and Sherry Xin Chen***

Faculty service is an important function of U.S. academic law libraries. This article evaluates three types of faculty services programs using the Gaps Model to identify, analyze, and propose ways to fill four main gaps: knowledge, policy, delivery, and service quality.

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Introduction

How do we best evaluate the service quality of the 21st century U.S. academic law library? This question is frequently addressed in scholarly and professional literature. Sarah Hooke Lee, for example, explored this topic at length 12 years ago in anticipation of the most comprehensive review of the ABA Standards for Approval of Law Schools (the ABA standards). Lee argued that traditional quality criteria tied to the print paradigm are inadequate and suggested ways for law librarians to update library quality assessment standards to protect the core missions of law libraries. More recently, during and after the review and revision of the ABA standards, scholarly literature has discussed the standards for law libraries of the past, present, and future. However, although many agree that measurement standards have shifted from focusing on quantity to quality, few offer conceptual or practical suggestions about the specifics of a quality-based measurement model for law library services.

In this article, we look beyond the horizon of academic law libraries for possible solutions. Commercial industries use many different models to evaluate and assess service quality. Among them, the Gaps Model, developed in the 1980s for the business sector, is the most well-known and well-used model to analyze service quality. A look into the history and application of the Gaps Model in both for-profit and nonprofit sectors makes us confident about its potential usefulness in analyzing the service quality of academic law libraries. Since faculty services is one of the most important functions of U.S. academic law libraries, we choose to conduct our Gaps analysis in that department first. Evaluating the service quality of different faculty services models through this lens, we hope to find new channels to discover potential gaps and improve service quality.

Why the Gaps Model?

The Gaps Model: Brief History and Application in Libraries

The Gaps Model is the brainchild of A. Parasuraman, Valarie A. Zeithaml, and Leonard L. Berry. Based on the expectation-confirmation theory, the Gaps Model “illustrates how consumers assess quality, and takes into account the factors that contribute to determine quality in its various connotations.” After its first
publication in 1985, the Gaps Model has been applied as a conceptual framework in different services sectors and to different geographical areas.8

¶4 “Quality is an elusive and indistinct construct.” Parasuraman, Zeithaml, and Berry started with this sentence in their groundbreaking work.9 Their observations about service quality, though describing the business sector three decades ago, still ring true in the context of academic law libraries today. Services provided by law libraries fit the “[t]hree well-documented characteristics of services—intangibility, heterogeneity, and inseparability.”10 Most services provided by law libraries are intangible. Reference, teaching, borrowing, support for faculty and students—these are performances rather than objects. Also, the performance “often varies from producer to producer, and from customer to customer, and from day to day.”11 In addition, the “production” and “delivery” of those library services are often inseparable.

¶5 After reviewing works on service quality from previous researchers and gaining insights from explorative study in the form of executive and focus group interviews, Parasuraman, Zeithaml, and Berry conceptualized the Gaps Model of Service Quality, “summarizing the nature and determinants of service quality as perceived by consumers.”12 From the explorative study, they concluded that “the quality that a consumer perceives in a service is a function of the magnitude and direction of the gap between expected service and perceived service.”13

¶6 A set of five gaps summarizes the model:14

- **Gap 1**: the gap between customer expectations and management perceptions of these expectations;
- **Gap 2**: the gap between management perceptions of customer expectations and the company or organization’s service-quality specifications;
- **Gap 3**: the gap between service-quality specifications and actual service delivery;
- **Gap 4**: the gap between actual service delivery and external communications about the service; and
- **Gap 5**: the gap between customers’ expected services and perceived services delivered.

¶7 Gap 5 is the foundation of a customer-oriented definition of service quality: the discrepancy between customers’ expectations of service and their perceptions of the actual service delivered. The first four gaps all contribute to Gap 5 because they closely relate to the design, marketing, and delivery of services.

¶8 The Gaps Model and SERVQUAL, a survey instrument developed after the creation of the conceptual model,15 have been modified and applied in academic libraries since the 1990s. Because SERVQUAL was originally designed for the busi-
ness sector, it needed testing and modifications to become a useful assessment tool for academic libraries. In the late 1990s, researchers from Texas A&M University and the Association of Research Libraries developed an alternative instrument, LibQUAL+, to evaluate service quality in libraries. The LibQUAL+ project was initially supported by a three-year grant from the U.S. Department of Education’s Fund for the Improvement of Post-Secondary Education. Since its inception in 2000, the LibQUAL+ survey instrument has been used to collect data from more than one million library users and one thousand institutions in the United States and abroad. The 2018 LibQUAL+ Survey Highlights indicate that 65 U.S. libraries participated in the survey at the conclusion of the calendar year, although none of them was an academic law library.

We Need a Quality-Based Model to Embrace the Changing ABA Standards

¶9 By introducing the Gaps Model, we hope to reapproach the discussion of service quality from the perspectives of users and develop an instrument to evaluate the service quality in academic law libraries more systematically. Before we start the Gaps analysis, a brief overview of the evolving standards for academic law libraries may also be necessary.

¶10 As many have observed, “[a]pplication of the concept of quality to libraries is rooted . . . in a library’s relationship with its governing organization.” In the United States, the discussion of service quality in academic law libraries closely entwines with the discussion of the ABA standards.

¶11 Since 1952, the Council of the Section of Legal Education and Admissions to the Bar (the Council) of the American Bar Association (ABA) has been recognized by the U.S. Department of Education as the accrediting agency of law schools in the United States. Since the goal of accreditation is to ensure that institutions of higher education meet acceptable levels of quality, the ABA standards promulgated by the Council have long been used as a yardstick to measure a library’s quality. One chapter of the ABA standards, chapter 6, is devoted to law libraries. The ABA standards set the criteria that law schools must meet to obtain and retain ABA accreditation. Winning ABA approval is essential for a law school’s graduates to satisfy the minimum legal education requirements for taking the bar exam in most jurisdictions or to obtain federal loans to pay for their legal education.

¶12 Theodora Belniak provided a comprehensive review of the ABA accreditation standards for law libraries from the late 19th century to 2014. Using annual

16. Bruce Thompson, Birth of LibQUAL+, LibQUAL+, [https://www.libqual.org/about/about_lq/birth_lq](https://www.libqual.org/about/about_lq/birth_lq) [https://perma.cc/M5HT-VQVA].
17. Id.
23. Belniak, supra note 3.
reports, conference reports, and other periodical materials from the ABA, she shed light on the rationales behind the changing standards and discussed their impact on law libraries.\textsuperscript{24} From its formative years, the ABA has required law schools and law libraries to provide data and information in the form of checklists, questionnaires, and other forms to comply with the standards. The changes in the types of data and information collected by the ABA indicate that different measurement models were considered. Over the last 100 years, the ABA standards have evolved from input-based to outcome- and quality-based in response to changes in technology and pressures from the legal profession.

¶13 Until the early 2000s, the ABA’s library standards relied consistently, if not exclusively, on an input-based measuring model.\textsuperscript{25} An input-based model counts “the resources available to the system,”\textsuperscript{26} collecting quantified data on the law library’s staff, budget and, most important, the size of its collection tied to a “print paradigm.”\textsuperscript{27} From the late 1990s, with the revolutions in computer technology and easier access to electronic information, the once firmly established print paradigm has slowly but gradually melted away. The ABA standards of 1995 started to allow for “ownership or reliable access,” and added “requirements focused on nontangible items such as services, teaching, and professional backgrounds of employees.”\textsuperscript{28} Despite criticism from many law librarians,\textsuperscript{29} the title and volume counts lingered for almost another decade and were finally dropped by the ABA in the late 2000s. The Annual Questionnaire, which the ABA uses to collect data from law schools each year as part of the accreditation process,\textsuperscript{30} stopped asking for volume or title counts from the 2008–2009 year; instead, the Site Evaluation Questionnaire started to “have a greatly expanded section on library services.”\textsuperscript{31}

¶14 The review and revision of the ABA standards from 2008 to 2014, the most comprehensive of such efforts undertaken by the ABA, echoed the “tectonic shifts in the educational landscape”\textsuperscript{32} triggered by “the economic recession” and “the crisis of confidence in legal education.”\textsuperscript{33} The revised library accreditation standards reflect the ABA’s larger goals “to more concretely link library performance to the mission of the law school, to require measurements that are more outcome-related and focus on quality instead of quantity, and to alter the Standards to reflect the ways that legal information can be accessed or acquired in the 21st century.”\textsuperscript{34} The

\footnotesize{24. Id.  
25. Lee, supra note 1, at 10.  
26. Martha Kyrillidou, \textit{From Input and Output Measures to Quality and Outcome Measures, or, From the User in the Life of the Library to the Library in the Life of the User}, 28 J. A/c.sc/a.sc/d.sc. L/i.sc/b.sc/r.sc. 42, 43 (2002).  
27. Lee, supra note 1, at 163; Belniak, supra note 3, at 162–65.  
29. See, e.g., Lee, supra note 1.  
30. See ABA Standards, supra note 21, at 5 (Standard 104).  
32. Belniak, supra note 3, at 172.  
newly revised ABA standards shift the focus from what the library has to what the library does, and signals the adoption of outcome- and quality-related measurement models. However, the standards offer very little guidance as to how outcome- or quality-based measurements will be conducted.35

¶15 Advocates of the outcome-based model agree that it is results oriented and user focused.36 The Institute of Museum and Library Services, an organization influential in promoting the outcome-based model, defines “outcomes” as “benefits or changes for individuals or populations during or after participating in program activities, including new knowledge, increased skills, changed attitudes or values, modified behavior, improved condition, or altered status.”37 Outcome measurement closely connects to the service-quality-based model we introduce below.38 Because the impact of library services on users inextricably folds into users’ expectations and perceptions of service quality, better understanding the Gaps Model will improve our understanding and application of the outcome-based model.

Service Quality Reexamined from the Faculty’s Perspective

¶16 The creators of the Gaps Model firmly believe that service quality should be evaluated from the customer’s or user’s perspective. “The only criteria that count in evaluating service quality are defined by customers,” write Parasuraman, Zeithaml, and Berry. “Only customers judge quality; all other judgments are essentially irrelevant.”39 From the early days when the Gaps Model and SERVQUAL were breaking ground in the field of library science, researchers have embraced the customer- or user-based approach.40 In particular, “[i]dentification of universal criteria for customers to use in evaluating service quality, and the simplicity of utilizing a customer survey might offer library managers an incentive to monitor their users’ expectations and perceptions systematically as the basis for improving services.”41

¶17 The ABA standards identify “faculty, students and administration of the law school” as the three groups of “customers” or constituents that a law library shall maintain “a direct, continuing and informed relationship with.”42 Among the three groups, law librarians have long identified the faculty as “a key constituent” and “a steady user group” of the law library; this core group also “possesses great influence over the library’s operation” and “has clout with students regarding the

35. Russell, supra note 3, at 337.
38. See Peter Hernon, Outcomes Are Key But Not the Whole Story, 28 J. ACAD. LIBR. 54 (2002).
42. ABA STANDARDS, supra note 21, at 39 (Standard 601).
Recent articles in this journal and others have explored different aspects of faculty services. However, few have addressed the service-quality aspect of faculty services, let alone a standard to evaluate the quality of faculty services across institutions.

§18 We focus our quality analysis on faculty services not only because the faculty is one key constituent, but also because the range of services provided and the organizational structure each institution adopts for its faculty services program offer fertile ground for comparison and analysis. Academic law libraries deliver faculty services in different models and varieties. One influential group, the AALL Academic Law Libraries’ Special Interest Section (ALL-SIS) Faculty Services Committee, reviews school websites and interviews individual librarians every few years, and concludes its efforts in one practical document, the ALL-SIS Faculty Services Toolkit. The most recently updated Toolkit identifies three major models under which law libraries structure their faculty services programs:

- The centralized (or faculty services librarian) model is primarily led or managed by one librarian, whose primary responsibility is to manage and develop faculty services.
- The decentralized (or faculty liaison) model distributes faculty research assignments among a team of librarians. Each librarian develops and manages faculty services for a fixed group of faculty members. Librarians may conduct research for the faculty members assigned to them or hire or train research assistants to conduct the research.
- The hybrid model makes librarians collectively responsible for conducting research for the entire law school faculty.

§19 By providing the Gaps analysis for each of the above models, we hope to open the discussion about developing both a conceptual model and a measuring instrument for faculty services, with the ultimate goal of improving the quality of faculty services across institutions. As two experts on library assessment standards point out, “[m]erely knowing the expectations is insufficient; that knowledge must be translated into performance that reduces the gap between expectations and the service actually proved. Gaps, especially large ones, identify areas for improvement.”

### Gaps Analysis of Faculty Services Programs in the United States

§20 In this section, we focus on examining the quality of faculty services offered in academic law libraries in the United States, utilizing the revised Gaps Model

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46. See id.
47. Altman & Hernon, *supra* note 41, at 53.
developed by Parasuraman, Zeithaml, and Berry. Based on the unique characteristics of faculty services, we revised the original Gaps Model as follows:

- **Gap 1:** the gap between customer expectations and law library management perceptions of these expectations (knowledge gap);
- **Gap 2:** the gap between law library management perceptions of customer expectations and a law library’s service-quality specifications (policy gap);
- **Gap 3:** the gap between service-quality specifications and actual service delivery, including communications about the service, which we consider an important component of the actual service delivery (delivery gap); and
- **Gap 4:** the gap between customers’ expected services and perceived services delivered (service-quality gap).

¶21 The ultimate purpose of the discussion is to identify existing and potential gaps in current faculty services programs and propose solutions to fill the gaps. Through our review of faculty services programs in the United States, we recognize many, if not all, schools have some unique features in their programs. However, to make the discussion more useful to a wide audience, we focus on the commonalities among schools by categorizing faculty services programs into the three major models already introduced: centralized, decentralized, and hybrid.

**What Is Service Quality of Faculty Services?**

¶22 Before we start our analyses, we need to define service quality and how to measure it. Service quality (SQ) measures the difference between a customer’s expectations (E) and a service provider’s performance (P). Thus, SQ = P – E. In the context of faculty services (FS), SQ translates to FS (sq) = P (l) – E (f), or faculty services quality hinges on whether librarians’ service as judged/perceived by faculty members meets the faculty’s (perceived) expectation. If our service meets or exceeds the faculty’s expectation, then it will be perceived as high quality. Otherwise, it will be considered as low quality. Therefore, the key is the difference between a customer’s perceived expectation before the service is delivered and his or her experience after receiving the service.

¶23 Here we use this service-quality concept to evaluate three faculty services models to find to what degree they minimize the difference between faculty’s expectation and libraries’ perceived performance. Based on the original Gaps Model, we designed a faculty services model as follows:

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48. See Parasuraman, Zeithaml & Berry, supra note 9.
Figure 1
Gaps Model of Faculty Services

Gap 1: Knowledge Gap

 paragraph 24 Gap 1 contains three layers: the faculty’s expectation of library services, the law library’s expectation of library services, and the law library’s perception of faculty’s expectation of library services. A knowledge gap may form in one or more of these three layers.

 paragraph 25 First, individual faculty members may have different expectations of what a law library does. For instance, a newly joined faculty member whose previous library provided Bluebook editing may assume—mistakenly—that her new library offers the same service. Or, faculty members may be unaware of the library’s full range of services, perhaps because the library does not effectively communicate them or because some members of the faculty do not follow up.

 paragraph 26 Second, a law library’s expectations of its services may not match the faculty’s. For example, if the library bases its understanding of faculty research needs only on previous projects or assignments, it may ignore emerging research needs. A faculty member who has focused on U.S. tax research may start to explore comparative tax legal issues, for instance. In that case, the library’s expectation that its services are adequate may not agree with the professor’s expectation. Third, the law library may misperceive what the faculty’s expectations of library services are.

 paragraph 27 Many factors can create a knowledge gap, such as lack of a consistent and regular direct communication channel between a law library and the faculty it serves;

52. Figures 1–5 were revised and adapted from SERVQUAL model charts. See ZEITHAML, PARAVERSEANU & BENETT, supra note 39, at 35–49.
lack of a mechanism that would allow the law library to track and receive updated information from the outside, not necessarily from a particular faculty member; or lack of a communication system ensuring that information, once received, is shared timely and accurately within the library either from top to bottom or vice versa. To address potential knowledge gaps both externally with faculty members and internally among librarians and library staff, a good faculty services program must include a system that promotes communication in both areas effectively, consistently, and uniformly. Furthermore, it is as important for law libraries to communicate their service scope and philosophy to faculty members at the appropriate time and with the proper frequency, to help them build a reasonable expectation of services they would receive. Faculty members’ expectations of law library services may not always be right or reasonable, but are usually amenable to adjustment. It is important for law library administrators to clarify and communicate their expectations, values, and nature of services that they are willing to provide.

¶28 Most libraries today either have already set up or have the potential to set up systems that promote faculty services. Librarians also have opportunities to keep abreast of faculty’s general research needs by attending workshops or faculty talks. Many libraries also have ways to keep updated with faculty’s legal research in general. For example, the University of Michigan Law School has created a faculty bibliography website that includes each member’s publications, and the law library maintains the law school’s digital repository. Washington and Lee Law School has a scholarly commons through which faculty’s publications are recorded and promoted.

¶29 Stanford has a very similar website, called Law School Publications, that includes publications by faculty members, maintained by the law library. In addition, Stanford Law Library creates a separate faculty bibliography list and a biweekly newsletter (SLS Today) to provide updates on publications, presentations, and other activities by the Stanford law community. Echoing the practice at Michigan and Stanford, Boston College maintains an up-to-date institutional repository for law faculty, which collects a variety of scholarly works for preservation and access purposes. These collections help market scholarship of law school faculty members and thus increase their scholarly impact along with the law school’s reputation. They help librarians gain detailed knowledge of the faculty’s research interests. And they help spread high-quality knowledge and research and further law schools’ and libraries’ teaching and research missions.

53. Timing is essential for any communication. In the academic context, the beginning of the semester may be a good time for some faculty who do not have teaching duties, but probably not for faculty who do. Or law review submission season may not be a good time to connect with the faculty members, but the weeks before the submission season may be a great time to communicate about their research needs. Some faculty members may prefer you check in with them at the beginning of each academic year, when they are working on their research agenda for the upcoming year, while others may prefer a different time or checking in on demand.


56. Scholarly impact refers to scholars’ contribution to the research field in which they specialize. Research field (e.g., law) here distinguishes it from research areas (administrative law), as many subcategories are interconnected and hard to separate for the purpose of measuring scholarly impact.
These regular communication channels operate effectively in many libraries, regardless of which faculty services model they use or would like to use. However, these channels alone cannot close the knowledge gap, as useful as they are as tools or resources. Different models provide inherent strengths and weaknesses that make some more fit for understanding faculty research needs. We next look at each model, using two criteria: effectiveness and consistency.

**Effectiveness in Identifying Faculty Research Needs**

Our examination shows that all models can be effective in identifying faculty’s initial research needs as long as they use uniform faculty orientation programs or in-person meetings to understand and establish short-term plans to meet current research needs. However, when it comes to identifying long-term or emerging research needs, decentralized programs may work better than centralized or hybrid programs.

A faculty liaison (decentralized) program allows librarians to customize services to faculty members. Generally speaking, this type of program assigns one librarian to serve only a few faculty members, which facilitates a number of positive results: (1) faculty members develop more trusting long-term relationships with librarians, which allows more openness about research needs; (2) time savings and more effective communication results from librarians becoming familiar with faculty members’ preferred workstyles; (3) librarians develop skills in their faculty members’ specialized areas of law and therefore better understand and appreciate faculty research needs in those areas; (4) librarians’ accountability is increased, which provides more incentives and motivation for self-driven performance than the other two models.

In contrast, a centralized system managed by one faculty services librarian may effectively serve immediate faculty research needs but fail with longer term ones. A librarian who either does most of the research alone or manages a group of research assistants will presumably have the research skills and broad knowledge to quickly understand and predict current and emerging faculty research trends. However, over the long term, high turnover rates may result from the nature of the position, including constant deadlines, time and energy spent training temporary student assistants, and the lack of varied job responsibilities. This makes it harder to build trusting, long-term relationships with faculty members.

A hybrid model utilizing a centralized platform in which a senior manager manages the service with a few librarians assigned to research tasks may ease some of the issues that a centralized program experiences. But librarians focusing only on research tasks may not have the accountability or incentives to build good relationships with individual faculty members, a goal encouraged by the other two models.

57. There has not been much discussion in the library field regarding the effectiveness of personalized services beyond anecdotal evidence. But there have been a lot of studies in the marketing and business fields showing that personalized services tend to increase sales and loyalty. For example, see Shep Hyken, *Personalized Customer Experience Increases Revenue and Loyalty*, Forbes (Oct. 29, 2017), https://www.forbes.com/sites/shephyken/2017/10/29/personalized-customer-experience-increases-revenue-and-loyalty/ [https://perma.cc/34ZW-3V3Z].

Despite the fact a decentralized system has some inherent strengths in identifying and updating faculty research needs, its success largely depends on two factors: fairness and open communication. Each librarian must receive an equitable workload when faculty assignments are first made. It is also important for library management to periodically monitor workload balance among its team members. Tools that can help managers stay informed of librarians’ workloads include statistics gathering and regular meetings.

From an institutional perspective, it is also important to have librarians develop more balanced skills. The decentralized program may encourage librarians to become specialists in certain areas over the long term and thus lose interest or the skills to perform services in other areas. Tools that can help develop more balanced skills and knowledge among a team include creating opportunities to share knowledge and expertise in meetings and through collaborative projects or asking faculty services librarians to join a rotation of some commonly shared responsibilities.

Another issue currently haunting library management is staff retention. Librarians move between jobs pretty quickly and for a variety of reasons. From the management perspective, it is important to build a mechanism to keep institutional memories no matter which model of faculty services a library decides to adopt. A system to preserve documentation, such as faculty correspondence and research deliverables, maintains high-quality services despite staffing changes. So too does a team with balanced skills and knowledge because its members can successfully take over assignments when someone leaves; a team of specialists may not contain the necessary overlapping skills and knowledge. Many libraries use technology tools such as Box, Dropbox, or local drives to store institutional knowledge. Other tools to consider include sophisticated legal document management tools commonly used by law firms, if the volume and complexity of faculty research projects require such a choice.

No matter which tools are used for records retention, they must include strong searchability and tagging features. It is easier for a library adopting a centralized model to keep all records, including email correspondence, because most or all faculty communication goes through one person. However, long-term goals are probably better met by storing relevant email correspondence on a central platform, especially given the increasing use of data analytics and artificial intelligence tools in developing service frameworks, as discussed in the section on Gap 4.

Effectiveness in Setting Clear Internal Policies and Guidelines

Effectively and accurately communicating the services a library offers will minimize Gap 1 differences. Before any external communication takes place, however, library management must establish clear policies and guidelines for what services the library provides to faculty members, both in the short and long term. Key factors to consider when forming such policies include the faculty’s and the school’s needs; the law library’s perception of its role and mission; and the available library resources, including personnel and their talents. Most generally stated, an academic law library’s mission is to fulfill the teaching and research needs of the law school faculty. Anything that further promotes faculty teaching and research needs should be considered as well.
However, library management should also consider the legal information profession’s mission and goals, which in principle coincide with those of individual law libraries. Management must ensure that these missions and goals coincide in practice as well. Take, for example, a decision to offer a service or material that falls outside of traditional law librarianship service or collection models. On the one hand, offering this service may help satisfy a particular faculty member in the short term. On the other hand, in the long term, it may mislead others about our profession and expertise. Suppose a faculty member regularly asks library staff to print out materials for him, which might be considered a paraprofessional’s job. If the law library continues to provide such a service without any qualification or clarification, it will reinforce the faculty member’s misconception of our profession. Over time, this misconception may grow to include his sending other tasks to library staff or seeing the two positions—assistant and librarian—as interchangeable.

Other practical issues faced by library management include whether resources are sufficient to provide all legal informational services necessary to meet the library’s mission. If not, management must consider which services shall be prioritized to develop in the short term. Which should be the focus in the long term? How should the library juggle long-term goals with short-term needs? These important considerations require library management review when it comes to setting up the scope of faculty services that a library would like and can afford to offer.

Effectiveness in Communicating Library Services to All Stakeholders

Once policies are set, it is important to communicate them clearly to all people involved in implementing them and, more essentially, to make sure they will be communicated to all faculty accurately and consistently. When it comes to communication, both content and methods are essential. For internal communication to library staff, it is important to communicate not just the policy or guideline itself, but also the reasons and rationale behind the policy setting. The library leadership may also consider adopting technological tools such as Slack, Trello and monday.com to ensure timely feedback and to make adjustments based on the feedback. For external communication to faculty, it is important to strategize about effective and flexible communication channels and timing based on the institutional culture and practices, as well as teaching schedules, to reach the largest audience possible.

There are potential gaps with each service model. The centralized model appears to have the greatest advantage here. It is easier to maintain consistency and uniformity of information when all communications go through one person. It is also quite essential to keep constant communication between the faculty services librarian and library management to make sure any changes or misunderstandings are cleared in a timely fashion.

The decentralized model has more potential gaps, however. For example, each librarian may have a different understanding of the same policy, especially

59. This does not mean that law librarians should not embrace changes. We should be “nimble—not willing to change, but eager to change.” James S. Heller, Retrospective: 30 Lessons Learned (and a Few Strokes of Luck) at the Crossroads, 111 LAW LIBR. J. 121, 140, 2018 LAW LIBR. J. 6, ¶ 104 (emphasis in original).

when it comes to gray areas, and therefore may communicate policies differently to different faculty members. Moreover, when faculty members communicate their needs to their liaisons, the needs may not be timely communicated to library management, especially when they are not run-of-the-mill requests. Therefore, proposed solutions to fill gaps here include establishing constant communication channels internally, both with library management and within the reference team, to make sure services are uniform and timely.

¶45 The hybrid model has an advantage in keeping faculty needs and preferences in a centralized, open platform. However, it largely relies on individual librarians’ self-awareness to inform library management and the team of any special faculty needs, as individual librarians are not charged to develop long-term faculty relationships, are usually assignment-driven, and are not expected to look at correspondence between faculty members and other peer librarians. Therefore, constant communication channels to keep everyone informed become even more essential for a hybrid service model. Possible tools to maintain effective communication channels include regular team meetings and a centralized and updated sheet of special or new faculty needs or preferences.

Gap 2: Policy Gap

¶46 Gap 2 discrepancies occur during the process of program design and standards setting. In other words, once management identifies faculty needs and creates a program to address them, it must verify that the program performs effec-
An effective program establishes guidelines or standards that instruct the right group—those who actually perform the services—with the right information—which faculty services the library provides. Faculty services can range from “everything that faculty members ask” to only strictly defined functions (e.g., bibliographic services). No matter where on the service spectrum the guidelines point, they deserve thoughtful deliberation about how to meet faculty needs without compromising the profession’s image and core mission.

Strong guidelines also consider patron hierarchies. For example, are faculty services extended only to tenured and tenure-track faculty members? To teaching faculty, including fellows and visiting professors? Or, are tiered services developed for different kinds of audiences? Furthermore, guidelines should define the average turnaround for services provided. For example, a library can decide that all substantive legal research requests will be handled within two weeks, with rush requests being done in two days.

Generally speaking, definitive guidelines are clearer, easier to follow, and more uniform, making them preferable in most cases. However, an effective service builds in exception handling and fault tolerance mechanisms, concepts that originated in the field of computer science. Exception handling mechanisms outline when and what types of exceptions are made, who carries the authority to make exceptions, and how the impact of exceptions is minimized. Sometimes, an exception becomes the start of a new rule. Fault tolerance mechanisms in computer systems generally use four phases: “error detection, damage confinement and assessment, error recovery, and fault treatment and continued system service.”

Incorporating these considerations, we propose the following checklists for libraries to consider when setting standards and building effective faculty services:

- **Request take-in.** Guidelines should identify who takes in initial requests and through which channels. These decisions often correlate closely with a library’s model, be it centralized, decentralized, or hybrid. All requests, for example, might come through a centralized email system and then be distributed to individual librarians through a fixed schedule. Or a faculty services librarian might take in all requests and make the distributions. In a decentralized faculty liaison program, each librarian might take in requests from the faculty assigned to them. No matter which model a library uses, its faculty services program should use an equitable and clear distribution mechanism that includes properly authorizing librarians to assign service requests and ensuring collaboration between the librarians and other research staff, regardless of the reporting structure.

- **Reference interview.** All library research staff need clear and uniform guidelines on how to conduct a reference interview. Librarians taking in requests need to understand the nature of research tasks, their preferred timeline, and their purpose, all appropriate topics for the reference interview. For example, a request for resources on the effectiveness of

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of online education might require a broad, comprehensive approach, perhaps requiring many hours, or a much narrower one because the requester needs only a few sources to support one argument. A library following a decentralized liaison model may have an advantage here because a librarian assigned to a small group of faculty members is more likely to know the context of a particular request due to a long-term collaboration. Librarians working in a centralized or a hybrid model may have less context for analyzing a research request, especially when they are first collaborating with faculty members. Mastering reference interview techniques requires a great deal of training and experience, so in libraries following a model in which students conduct faculty research, librarians should conduct reference interviews or closely monitor those who do.

- **Standards setting.** No matter which model a library adopts, standards must be developed in advance and subject to periodic reviews. Standards should include turnaround time, types of services covered and not covered, the scope of patrons served, and memo formats and templates.

- **Open minds and embracing changes.** We also advocate that law library management keep an open mind when setting standards. Not only should legal research trends and the faculty's emerging needs be taken into consideration at the beginning of the standards-setting process, but law library management should also periodically review its standards to embrace new trends as they arise.

**Figure 3**

**Gap 2: Policy Gap**

**Gap 3: Delivery Gap**

Gap 3 reflects a mismatch between the service delivery specifications set by law library management and the actual service provided and delivered by the performers. For example, suppose a library's default rule when scanning a book chapter for a professor is to include the title and copyright pages for cite-checking
purposes. If the library staff person scanning a chapter forgets to include the front-matter pages or does not even know that this requirement exists, a gap occurs.

§51 Two key measures can help close the gap here: training and quality control. First, effective training includes communication of library policies, reference interview skills, and research knowledge both in depth and in breadth. Working on an assumption that a professional librarian has already acquired the necessary skills and knowledge when taking on an assignment, the training may be easier and less time consuming for the libraries that adopt either the decentralized or the hybrid model. Unfortunately, the assumption is not always true, on at least two levels. First, librarians, especially inexperienced, entry-level librarians, may not have acquired the necessary skills and knowledge. As a result, it is imperative that whoever manages a library’s research services program, regardless of model, fully appreciates each librarian’s skill and knowledge level, and provides customized training plans. A librarian’s other job responsibilities may provide training opportunities as well, which can be folded into the training plan. For example, teaching and collective development assignments help broaden and deepen librarians’ research knowledge. Working at the reference desk helps librarians improve their reference interview skills, which is essential for ascertaining a faculty member’s need in making a particular research request. Therefore, when devising training plans, a creative manager thinks outside the research services box and collaborates with library management to maximize staff members’ learning opportunities.

§52 It is also important to communicate with and set the same training expectations with staff involved in the delivery process, but outside the core faculty services team, as the delivery process is an indispensable part of the faculty research process. Sometimes, it requires cross-unit training and communications to make sure the performance meets library management’s and faculty’s expectations. Many libraries may unconsciously or intentionally set up a higher expectation for professional librarians than for other professional or paraprofessional staff. This might make sense in other domains of library functions, but it may actually harm the library and the quality of service in the long term when it comes to providing research services. First of all, many paraprofessionals have accumulated a lot of knowledge and experience through the years. Setting a lower expectation for them might actually discourage them from performing at a higher level. Second, without proper training about service standards, their knowledge and experience is wasted. Third, close training and regular communication with them about how important their work is for the entire service could motivate them to do their tasks more efficiently and with better results.

§53 Second, quality control is an essential function in all library research service programs. In a research service program that uses a centralized model, the faculty services librarian should check the quality of each assignment performed by a temporary student research assistant or an inexperienced librarian. This type of quality control is time-consuming and requires high-level research skills and knowledge, as well as excellent judgment and the ability to provide constructive feedback. These should be the top skills to look for when recruiting and hiring a faculty services librarian for a centralized faculty services model. For decentralized or hybrid models, it is essential that librarians share the same quality expectations defined by library management. Best practices are communicated to everyone, and preferably in writing, on a regular basis.
Gap 4: Service-Quality Gap

Gap 4 represents the difference between the faculty’s expected service and the perceived service experienced. Gap 4 incorporates the previous three gaps. When library management designs a faculty services program, it must not only consider how to address Gaps 1–3, but also include a mechanism to periodically evaluate Gap 4 lapses. Doing so requires a more holistic view of the challenges of managing and providing faculty services in light of their unique characteristics and the constantly changing outside environment, such as emerging trends in legal research, new law school priorities and educational missions, and the nonstop disruptors of our services.

Concluding with the Big Picture

In looking ahead to solutions, we recommend a proactive and aggressive framework to improve faculty services and eliminate service gaps by using our profession’s comparative advantage: that is, our core specialized knowledge, developed over the long history of our profession.

Major challenges to providing beyond-expectation faculty services come from the nature of the services themselves and the constantly changing needs of our clients. The first challenge is an internal one. A faculty services program possesses characteristics of both tangible products and intangible services. As a result, when measuring the quality of faculty services and trying to fill Gaps 1–3, library administration should consider the characteristics associated with both the services and products delivered.

Furthermore, providing quality faculty services requires the investment and effort of the reference staff, librarians, and paraprofessionals alike. It requires the knowledge and expertise built by the entire library staff over time. Accurate and user-friendly catalogs save research librarians’ time significantly, whereas constantly delayed delivery services may ruin the quality of the research services, no matter how great the end product is. The product of faculty services is a team effort. Just as winning an NBA Championship takes seamless collaboration among
team members, both on- and off-court, providing quality faculty services takes the entire library staff’s constant and thoughtful contributions.

¶58 The second challenge is an external one. Some of the faculty’s changing needs derive from shifts in individual faculty members’ research interests, but many result from changes to collective research interests determined by consumer needs in the larger legal marketplace. For example, driverless cars are already on the street, but without a framework to regulate them. Playing this kind of regulatory catch-up generates significant research interest among professors and clinicians, the primary clients for law library research services, thus driving a need to focus on developing legal frameworks in newly emerging service industries.62

¶59 Whether we want to admit it, academic law libraries no longer occupy the ivory tower or safe harbor; these havens no longer exist. Disruptive technologies and services are everywhere. Our profession is not at its apex, when every researcher had to use the law library to find research materials. Even back then, it was not

library professionals who were considered indispensable for research; it was the libraries holding the books, journals, and archives considered necessary elements for research.

§60 Disruptive innovation is not a new term, but it permeates everything today. Many innovative ideas and products are gradually disrupting the core position of our profession as a legal information and legal research profession. For us, the best defense is a good offense. To continue to provide essential, high-quality research services, we must think and act proactively and aggressively. It is essential for each law library leadership team to consider building an institutional capacity to promote professional development and to expand all library staff’s knowledge and expertise, both in depth and in breadth, as a top priority.

It Takes a Village

§61 Eiglier et al. suggests three fundamental features of service that also apply to our faculty services: intangibility, direct organization–client relationship, and consumer participation in the production process. Thus, when designing an effective faculty services program, the quality of service lies not just in the quality of research findings or deliverables. Of course, those are important parts of the quality matrix, but there are others. In other words, any communication with faculty is essential, and libraries cannot afford to have a weak link in any part of that communication. More specifically, when it comes to designing internal training, library administration must create training plans for everyone, not just the core team of reference librarians. Training research assistants, part-time workers, and paraprofessionals deserves at least equal attention. In addition, training with team members who do not often directly communicate with faculty members but do interact with library customers, including faculty members in less obvious ways, such as the technical services team, is just as important.

Focus on the Profession’s Comparative Advantages

§62 When designing a valuable and sustainable faculty services model, we need to focus on our profession’s comparative advantages. Two main characteristics of our profession are specialized knowledge of legal research and information, and our legal reference service orientation. In the era in which both the legal research and legal information landscapes are constantly changing and subject to disruptive technologies and innovative services, it is paramount for law library leaders to

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65. For more discussion on the defining features of law librarianship as a profession, see Alex “Xiaomeng” Zhang, Discovering the Knowledge Monopoly of Law Librarianship under the DIKW Pyramid, 108 Law Libr. J. 599, 2016 Law Libr. J. 29.
design a service framework driven by these innovative changes. For example, it is clear that big data and data analytics have arrived and have started to visit a significant impact on our profession. When designing a faculty services program, then, we must consider how to develop and train librarians with the basic skills to assist faculty research in emerging fields. We need to take advantage of the data already found in our libraries related to faculty research interests and research information behavior and use it to narrow the gaps.
Academic Law Library Director Status Since the Great Recession: Strengthened, Maintained, or Degraded?

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The status of the academic law library director is central to the educational mission of the law library. We collected data from 2006 to 2016 showing a 25 percent decrease in tenure-track directorships. We also found one in four changes in directorships since 2013 resulted in the new director having a degraded status compared to her predecessor.

Introduction

Concern about the status of law firms, law schools, and law libraries has been discussed widely since the economic crisis that began in December 2007.1 Scholars have debated whether some law schools will—or should—close, merge, or

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implement other changes. This dialogue has considered a variety of underlying reasons for the various changes. In this article we continue the conversation by examining changes in law schools that have occurred since late 2007 resulting in part from the economic downturn and from advances in technology. Our particular focus is on the status of law library directors. We view the status of law library directors as one indicator among many signifying the well-being of law schools and their libraries. In short, we ask: How has the employment status of academic law library directors changed since the Great Recession?

§2 We begin with an overview of the legal industry and related institutions, compiled from American Bar Association (ABA) reports, legal scholarship, and legal news sources. Following that, we detail changes that have occurred in law libraries and among law library directors. Finally, we turn to data analysis to explore the impact of these changes.

**The Economy**

**Law Firm Recruiting and Hiring**

§3 The Great Recession began in December 2007, and by 2009 entry-level recruiting by large law firms was nearly extinct. This changed after 2014, when law
firms slowly began hiring again. While the industry has experienced some growth since then,\(^5\) it lags far behind the national economy’s overall employment rate.\(^6\)

¶ 4 The apparent stabilization of the legal industry by 2017 and through 2018 has led some to have greater confidence in its sustainability. According to the 2017 National Association of Law Placement (NALP) *Perspectives on 2017 Law School Recruiting*, “most law firms have rebuilt their summer programs [since 2009,] and in many ways, Big Law recruiting volume and practices resemble those measured before the recession.”\(^7\) This signifies more of a “leveling of recruiting levels” than a contraction.\(^8\) NALP again reported recruiting as steady in 2018, while noting a wide variation among law firms in both the number of offers given for summer programs and the size of the programs.\(^9\) A comprehensive analysis of the legal industry by IBISWorld projects mild revenue growth over the next five years (2018–2023).\(^10\)

While throughout the past three decades law firms have merged or moved overseas, away from the saturated domestic market, new lawyers and firms continue to emerge:\(^11\)

[C]ompanies will always have a need for the industry’s services, since property disputes, business activity and criminal justice require a legal framework. The industry also helps define and regulate important aspects of business and government activity and various aspects of personal conduct. Law firms will continue to rely heavily on labor. While new technologies make research and communication easier, technological advancement is unlikely to replace the need for a lawyer in a courtroom.\(^12\)

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6. In December 2018, for example, the national employment picture showed 99 consecutive months of job gains and a near-record low 3.9 percent unemployment rate. *Id.*

7. Nat’l Ass’n for Law Placement (NALP), *Perspectives on 2017 Law Student Recruiting* 4 (Feb. 2018), https://www.nalp.org/uploads/Perspectiveson2017LawStudentRecruiting.pdf [https://perma.cc/T6HW-9WJ9] (“The percent of law firms recruiting 3Ls fell precipitously from 2006 to 2009, from 59 percent to just 3 percent, and has since bobbled around in the 15–20 percent range, with figures of 18 percent measured in each of the last two recruiting cycles”). James Leipold, NALP’s executive director, said, “[W]e have seen the recruiting market stabilize over the last two years.” *Id.* at 5.

8. *Id.* at 5 (noting that “across employers of all sizes, the median number of offers extended has been at or about 12 for the last three years, still well-below the high of 15 measured in 2007, but well above the low of 7 measured in 2009.”).

9. *Id.* at 50 (“As is the case with summer program sizes, the average or median number of offers . . . masks a very wide range . . . from none . . . to 476 offers.”)

10. Claire O’Connor, IBISWorld Industry Report 54111—Industry at a Glance, Law Firms in the US (July 2018), https://clients1.ibisworld.com/reports/us/industry/default.aspx?entid=1389 (“The overall performance of the economy, including an expected annualized growth of 2.4% in corporate profit and an influx of new laws and regulations, will aid revenue growth over the next five years. Consumer disposable income is expected to increase at an annualized rate of 1.9% over the five years to 2023, which will also aid smaller industry participants by increasing demand for services like estate and trust planning. In addition, improving investor confidence will stimulate more activity in M&A and IPO markets, facilitating higher demand for corporate legal services.”).

11. *Id.*

12. *Id.*
Law Schools

¶5 Kyle McEntee, director of a consumer advocacy nonprofit, Law School Transparency, summed up the state of the legal academy, recognizing the impact the Great Recession had on the legal market, including law schools.13 In the earlier economy, law schools expanded “without regard for any market pressure,” and students were able to easily secure loans needed to cover the costs of a legal education, trusting that a law school degree would bring financial security.14 That changed after the recession.15 Declines in enrollment brought “financial shock” to law schools, as overall enrollment numbers dropped from a high of 52,000 in 2010 and leveled out at approximately 37,000 students in 2014.16 As a result, some schools began a practice coined “textbook exploitation,” or instituting more lenient academic standards and enrolling students with criteria indicating a lower likelihood of passing the bar exam.17

¶6 The ABA, concerned about the success and financial future of these students, began to more closely scrutinize law school admissions, law school support programs, and law school standards. With critical issues facing legal education, in May 2014 the ABA created the Task Force on the Financing of Legal Education, charged with investigating and making recommendations related to declining enrollments and revenues, increased student tuition and debt, and the struggling job market.18 The outcome brought, among other recommendations, a call for greater transparency, accountability,19 and innovation.20

Law School Applicants and Enrollment

¶7 Law schools saw a 36 percent decline in applicants from 2010 to 2016 and a $1.5 billion reduction in annual tuition revenue.21 While the number of applicants to law schools plunged from 2010 through 2016, eventually leveling off,22 there has been a slight increase in the last few years in both the number of applicants and the quality of applicants.23 The number of law school applicants for 2018 increased 8

14. Id.
15. Id.
16. Id.
17. Id.
19. Id. at 40.
20. Id. at 3, 42.
23. Burk, Organ & Rasiel, supra note 21, at 1–2; Derek T. Muller, February 2018 MBE Bar
percent from 2010, and, according to Law School Admission Council (LSAC) figures, there were 60,401 applicants in fall 2018, nearly 5,000 more than 2017’s 55,580.24 LSAT scores indicate that the quality of the 2018 applicant pool increased as well. Law school enrollment data show that the uptick of students in non-J.D. degree programs are outpacing the uptick in J.D. enrollment.25

**The Future of Legal Education**

§8 With the recent upswing in law school applications and enrollments, law school confidence in the future of legal education has grown stronger, but not for all schools or for those who are cautiously following the trends. Independent law schools (i.e., those not part of a university, all of which are private), for instance, rely heavily on tuition for funding and, therefore, are particularly vulnerable when enrollment rates drop.26 Unlike law schools that are affiliated with larger institutions, they have no overarching body to turn to for funding should operating losses occur.27

§9 Some members of the legal academy have expressed concern that legal education is in peril.28 Indicators of the possible failure of law schools include seating less-credentialed students, law school tuition discounting, a perceived lack of return on investment,29 the increased transparency requirements of employment data per ABA Standard 509,30 and a reduction in guaranteed student loans.31 Additionally, technological advances have had a negative impact on some schools, particularly those that have not adapted to them.32 When schools are not able to meet the challenges of the legal education environment or marketplace, some believe that closing may be the best option.33


28. See, e.g., Wu, supra note 2, at 18.

29. See id.

30. See, e.g., Brian Z. Tamanaha, Failing Law Schools 77 (2012).


32. Demleitner, supra note 22, at 655.

¶10 In 2011, legal education experts expressed concerns about what appeared to be ABA’s lack of enforcement of particular standards.\(^{34}\) In response to these concerns, the ABA began publicly posting online the accreditation status of law schools, particularly those newly approved.\(^{35}\) The ABA notified 11 law schools between 2011 and the end of 2017 that they had been censured, placed on probation, found to be out of compliance with standards, or needed to take remedial action.\(^{36}\) The increasing numbers of accreditation challenges may be a result of inaction in the face of changes in the legal education market. Other law schools, recognizing the challenges, have made efforts to shrink in size or to exit the market entirely.\(^{37}\)

### Law School Expansion and Contraction Since the Great Recession

¶11 Panel A in figure 1 shows that, over more than a decade (2006–2019), growth in law schools was twice as high as contraction.\(^{38}\) Between 2006 and 2018, 19 law schools and branches received full or provisional ABA accreditation (including one that closed within a year of being approved),\(^{39}\) 10 branch campuses opened, and 2 schools split their separate campuses into 2 independent, yet affiliated, law schools.\(^{40}\) Despite this period of growth in law schools, less than one law school per year was accredited. In the prior decade, 1999–2008, an average of 1.5 schools a year were accredited, with greatest approval rates from 2004–2006, with approximately 2.3 approvals per year.\(^{41}\)

¶12 While there was expansion in legal education, there was also contraction and subsistence. Panel B in figure 1 shows five law school mergers occurred

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\(^{36}\) Id.

\(^{37}\) Id.

\(^{38}\) See Steinbuch, * supra* note 2 (explaining contraction can take many forms, but generally focusing on maximizing leverage by increasing the proportion of core courses with a higher student-faculty ratio and curtailing expensive narrow programs that involve few students per faculty member, such as travel-rich competitions).

\(^{39}\) See Am. Bar Ass’n, Section of Legal Educ. & Admissions to the Bar, ABA-Approved Law Schools by Year Approved, https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/by_year_approved/ [https://perma.cc/N42U-7HGH].

\(^{40}\) See Penn State Law, FAQs on Separate Accreditation, https://pennstatelaw.psu.edu/faqs-separate-accreditation [https://perma.cc/YTS9-89HK]; Widener University Commonwealth Law School, *History*, https://commonwealthlaw.widener.edu/prospective-students/getting-to-know-us/history [https://perma.cc/D8U4-2V7P ] (explaining that in late March 2015, the ABA approved Widener University’s plan to separate into two independent law schools—one in Delaware (Widener University), the other in Pennsylvania (Widener University Commonwealth Law School)).

\(^{41}\) ABA-Approved Law Schools by Year Approved, * supra* note 39.
<table>
<thead>
<tr>
<th>Year</th>
<th>Law School Contraction &amp; Subsistence</th>
<th>Law School Expansion &amp; Growth</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>Law School Contraction &amp; Subsistence</td>
<td>Law School Expansion &amp; Growth</td>
</tr>
<tr>
<td>2007</td>
<td>Law School Contraction &amp; Subsistence</td>
<td>Law School Expansion &amp; Growth</td>
</tr>
<tr>
<td>2008</td>
<td>Law School Contraction &amp; Subsistence</td>
<td>Law School Expansion &amp; Growth</td>
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<tr>
<td>2009</td>
<td>Law School Contraction &amp; Subsistence</td>
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<td>2010</td>
<td>Law School Contraction &amp; Subsistence</td>
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<tr>
<td>2011</td>
<td>Law School Contraction &amp; Subsistence</td>
<td>Law School Expansion &amp; Growth</td>
</tr>
<tr>
<td>2012</td>
<td>Law School Contraction &amp; Subsistence</td>
<td>Law School Expansion &amp; Growth</td>
</tr>
<tr>
<td>2013</td>
<td>Law School Contraction &amp; Subsistence</td>
<td>Law School Expansion &amp; Growth</td>
</tr>
<tr>
<td>2014</td>
<td>Law School Contraction &amp; Subsistence</td>
<td>Law School Expansion &amp; Growth</td>
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<tr>
<td>2015</td>
<td>Law School Contraction &amp; Subsistence</td>
<td>Law School Expansion &amp; Growth</td>
</tr>
<tr>
<td>2016</td>
<td>Law School Contraction &amp; Subsistence</td>
<td>Law School Expansion &amp; Growth</td>
</tr>
<tr>
<td>2017</td>
<td>Law School Contraction &amp; Subsistence</td>
<td>Law School Expansion &amp; Growth</td>
</tr>
<tr>
<td>2018</td>
<td>Law School Contraction &amp; Subsistence</td>
<td>Law School Expansion &amp; Growth</td>
</tr>
<tr>
<td>2019</td>
<td>Law School Contraction &amp; Subsistence</td>
<td>Law School Expansion &amp; Growth</td>
</tr>
</tbody>
</table>

Figure 1: Timeline of Law School Contraction, Subsistence, Expansion, and Growth, 2006–2019

ACADEMIC LAW LIBRARY DIRECTOR STATUS SINCE THE GREAT RECESSION

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between 2010 and 2016.\textsuperscript{42} In the summer of 2018, the ABA acquiesced to the request by another law school to merge with a larger public university.\textsuperscript{43} From 2013 to 2020, six mergers will have occurred: four involving private law schools merging or more closely affiliating with public universities, and two involving law schools forming a single school.\textsuperscript{44} Indeed, the majority of ABA-accredited law schools are affiliated with a university,\textsuperscript{45} with less than one in ten as stand-alone law schools.\textsuperscript{46} This is important because the economic conditions in the legal industry may result in additional closures or mergers among these schools, which is seen as a “demonstration that legal education is changing, and old stand-alone law schools are slowly becoming a thing of the past.”\textsuperscript{47}

\[\text{¶13}\] There is skepticism about the sustainability of the current business model of law schools, wherein schools often must make adjustments to enrollment based on revenue, selectivity, or rankings.\textsuperscript{48} Attaining greater student enrollment numbers, thus more tuition revenue, often means accepting those with weaker credentials.\textsuperscript{49} This is a difficult choice for law schools, especially in the face of recently approved ABA Standard 316, which articulates a stringent bar passage rate standard for law schools.\textsuperscript{50}

**Law Libraries**

\[\text{¶14}\] An ongoing dialogue in the law library community has focused on the future of law libraries. Some argue that when faced with difficult choices, the library will be deemed the lower priority and, therefore, expendable.\textsuperscript{51} After the economic crisis, and as technology pushed people toward search engines like Google, law libraries, including librarian positions, became targets for budget cuts. The value-added services librarians provide are often overlooked despite their


\textsuperscript{43} Id.


\textsuperscript{45} Muller, supra note 44.

\textsuperscript{46} Wu, supra note 2, at 20.

\textsuperscript{47} Muller, supra note 44.

\textsuperscript{48} Wu, supra note 2, at 20.

\textsuperscript{49} Id.

\textsuperscript{50} See AM. BAR ASS’N, LEGAL EDUC. & ADMISSIONS TO THE BAR, Revisions to Standard 316: Bar Passage (rev. 5/6/2019), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/may19/may-7-19-316-memo.pdf [https://perma.cc/H48R-5MJH].

\textsuperscript{51} Lynne F. Maxwell, The Emperor’s New Law Library: The Decline and Fall of Academic Law Libraries or a New Chapter?, 44 RUTGERS L. REC. 46, 51 (2016–2017).}
skills in finding, evaluating, curating, and organizing information in the age of data overload.\textsuperscript{52}

\textsection{15} With less prestige, a compromised standing in the law school pecking order, and budget strain, some law schools are investigating shared services with central university libraries or even centralizing operations completely. Centralization within a university library setting means that services are provided or tasks are performed through the administration of one central unit and/or one central location. Typically, centralization of services takes place when administrations seek operational or financial efficiencies, or when they see an opportunity for change.\textsuperscript{53} Nonetheless, 97 percent of law libraries are “autonomous,” with library directors reporting directly to the law school dean.\textsuperscript{54}

\textsection{16} Is it necessary or advantageous for law school libraries to be fully independent from the institution’s main library? James Milles makes the case that collaboration and cooperation of the law library with the parent university library or other information providers enables a library to better serve its students and faculty, particularly considering budget constraints and the interdisciplinary activities of legal academics in current times.\textsuperscript{55}

\textsection{17} Some librarians have suggested that law schools, post-2008, may merge their devalued law libraries with central institutional libraries in an attempt to save money as the institutional focus shifts to the support of revenue-generating arms of law schools.\textsuperscript{56} Kenneth Hirsh provides a more positive outlook, recognizing that changes have and will occur, but that law libraries will adapt and continue to exist with new and changed services and responsibilities; while less space may be needed thanks to online resources, library workspaces and study spaces will continue to be valued.\textsuperscript{57}

\textsection{18} As evident in the 2018–2019 ABA Standards, law libraries are still required to have “sufficient administrative autonomy,”\textsuperscript{58} and “priorities and funding” are to be determined by the law library director, the dean, and the law school faculty even if the law library is administered as part of the university’s library system.\textsuperscript{59} Although it is preferred that the law school administer the law library, a law library may be administered as part of a university library system if the dean, the director

\textsuperscript{57} See Kenneth J. Hirsh, Like Mark Twain: The Death of Academic Law Libraries Is an Exaggeration, 106 LEBRY. 521, 2014 LAW LIBR. J. 29.
\textsuperscript{59} Id. (Interpretation 601-1).}
of the law library, and the faculty of the law school are responsible for the determination of basic law library policies, priorities, and funding requests. Concerning the physical space of the law library, ABA Standard 702(a)(2) on facilities requirements states:

[a] law school’s facilities shall include . . . a law library that is suitable and sufficient in size, location, and design in relation to the law school’s programs and enrollment to accommodate the needs of the law school’s students and faculty and the law library’s services, collections, staff, operations, and equipment.

¶19 While space is obviously valuable to law libraries and their communities, librarians have always known that libraries are more than mere bricks and mortar, and have recognized for many years the need to direct more attention and promotion to the services and programs libraries offer:

The best law libraries have already moved beyond the storage stereotype to research professionalism; their continuing challenge will be to reengineer themselves around their professionals’ skill sets, rather than their local holdings and to reestablish their value proposition in an environment in which content no longer equates to defined physical spaces.

Law Library Directors

¶20 The director of the academic law library has been characterized in the literature as a strong leader managing the law library as if on an island unto herself. The law library’s role has expanded from its historic roots of being its own island to a role that is more enmeshed in the law school. Law librarians are involved with law school activities more than ever, forging new roles as teachers, grant writers, fundraisers, and collaborators with administrative units, such as admissions and student services.

¶21 Current ABA Standards still require a full-time law library director who is selected by the law faculty, who has appropriate credentials, who has law library experience, and who holds a faculty appointment with security of position. The ABA Standards implicitly recommend that library directors have library science and J.D. degrees (or their equivalents). Interpretation 603-1 explains that having both degrees is an “effective method of assuring that the individual has appropriate qualifications and knowledge of and experience in library administration sufficient to support the program of legal education and to enable the law school to operate in compliance with the Standards.” The Interpretation cautions that “[a] law

60. Id.
61. Id. at 44 (Standard 702(a)(2)).
64. Id.
65. See, e.g., Maxwell, supra note 51, at 58–62.
66. ABA STANDARDS, supra note 58, at 40 (Standard 603).
67. Id. (Interpretation 603-1).
school not having a director with these credentials bears the burden of demonstrating that it is in compliance with Standard 603(c).

¶22 Particularly important for the leadership and decision-making roles of law library directors is subsection 603(d), noting “[e]xcept in extraordinary circumstances, a law library director shall hold a law faculty appointment with security of faculty position.” Yet tenure or tenure-track law library director positions are not as prevalent as they used to be, as we show below. Administrative or non-tenured positions are becoming more common; they tend to command less respect and prestige, and little in the way of security, voting rights, and other benefits of membership on the faculty. This may play a role in the diluted ABA support that law library directors have to direct their law libraries. Despite declining prestige and authority, law library directors are expected to keep up with the demands of new technology and trends affecting law libraries and legal education. Shrinking law school budgets may create new demands on directors’ time, such as increased teaching loads, additional advisees, and more law school initiatives.

¶23 The law library is no longer the independent fortress it was in the past, protecting the scope and depth of legal education. The law library’s position in legal education is changing through technology, electronic resources, and economic conditions in legal education. Today’s law library directors, often viewed as middle managers, must collaborate with the law school dean and others in university administration. While this collaboration better integrates the library into law school and university systems, this evolution has diluted law libraries’ autonomy.

¶24 In addition to these issues, there is concern about faculty status and tenure. Losing faculty status and tenure impedes law library directors’ abilities to do their jobs efficiently and to enable the library to best serve the law school community. Keith Ann Stiverson, retired director, IIT Chicago-Kent College of Law, and 2017–2018 AALL president, clearly stated her concerns during a discussion at the AALS annual meeting in 2015. Stiverson was not worried about status when she began as a director, but she soon realized how much it matters.

[O]ne important reason I can do my job is that I have a faculty appointment. It is important that faculty accept you as one of their own, not simply consider you an administrator. In my case, if I didn’t have a faculty appointment, I would not even be on the faculty listserv at my school, so I would miss all sorts of information that faculty share and I need to know.

¶25 Service on faculty committees and “a balance of service, teaching, research, and administrative responsibilities” also are among the valued benefits that faculty...
status and tenure bring to law library directors.\textsuperscript{77} Not having this creates a wall between law library directors and their access to essential institutional information that enables and strengthens efficient library operations. The directors, the libraries they lead, and the entire law school community are placed in a disadvantaged position without it.

\textsuperscript{26} Slinger's 1986\textsuperscript{78} and Slinger and Slinger's 2012 survey data\textsuperscript{79} compared changes in law library director academic rank. Academic rank refers to the faculty member's place in the faculty status hierarchy as professor, associate professor, assistant professor, or instructor. Academic rank does not indicate whether a faculty member is tenured or tenure track. According to Slinger's 1986 findings, 89 percent of law library directors held academic rank with their law faculty.\textsuperscript{80} In 2012, Slinger and Slinger found that 75 percent held academic rank with their law faculty, about a 14 percent decrease.\textsuperscript{81} Most disconcerting is that the 2012 study shows that among directors with one to five years of experience, 40 percent (18 directors) had no law school rank.\textsuperscript{82}

\textsuperscript{27} In addition to academic rank, “[t]enure protection for the academic law library director is critically important if the director is to exercise the best professional judgment without undue concern that an unpopular decision may lead to his or her termination.”\textsuperscript{83} Moreover, diluting the position of the law library director from its historic status as a full member of the law faculty into some type of non-faculty administrative status . . . strips away important voting rights, affects tenure protection, and lessens the value of the law library in the eyes of many of its constituents.\textsuperscript{84}

Against the backdrop of tectonic shifts in legal education since the Great Recession, we ask: How has the employment status of academic law library directors changed since the Great Recession?

**Data and Methods**

\textsuperscript{28} We collected data on law library director tenure status\textsuperscript{85} and job turnover for the years 2006, one year before the official start of the Great Recession,\textsuperscript{86} through 2016. These data were collected from a number of sources. With the permission of John E. Christensen, compiler of the *US Law School Library Directors E-mail Directory* (hereinafter *E-mail Directory*), annual updates of the names of sitting U.S. academic law library directors were available. These annual updates...
were not always released on the same schedule. For example, the 2006 *E-mail Directory* was issued in August 2006 whereas the 2007 *E-Mail Directory* was issued in July 2007. In addition, an *E-mail Directory* for the year 2015 was never released. Data that supplemented the *E-mail Directory* were gathered in a number of ways. The Internet Archive’s Wayback Machine provided snapshots of law school and law library websites, and was an excellent source of information for the 2006–2016 period. Annual editions of *The AALS Directory of Law Teachers* were also consulted via HeinOnline.

To fill the data gaps remaining after consulting the aforementioned sources, 93 current and previous U.S. law library directors were contacted for information. Sixty-six provided responses; thus, 27 law library directors did not respond after two requests. Because we do not have enough information about these 27 cases, they were dropped from our sample. Additional cases were removed for a variety of reasons, such as law libraries with two directors (e.g., an executive director), law libraries at schools that had closed, and law libraries at schools that had merged. In the end, we built a dataset for the years 2006–2016 of 124 law library director positions and law libraries from a population of 203 ABA-accredited law schools offering the J.D. degree. Although the dataset is small and omits some libraries, this is the most comprehensive dataset about law library director employment status that is known to us. The data help shed light on trends among academic law librarian directorships and law school institutional hiring practices.

Based on our survey questions about changes to law librarian leadership, we analyzed variations in status over time. In particular, we examined the degradation of the position from 2006–2016. Using the descriptions of the law library director statuses from the 124 law libraries discussed above, we developed a six-point degradation measure that encompassed the status of every law library director in our sample from year to year. The scale, in order of decreasing status, is defined as: (1) Tenure Track (TT) Law Faculty, (2) TT Library Faculty, (3) TT Law Library Faculty, (4) Non-TT Faculty, (5) Staff/Administration, and (6) Acting or Interim Director. Any instance of a decrease in status from year to year using this measure was treated as a degradation of the position. However, the position of acting director was not coded as a degradation unless the library had an acting director in place for three or more years. If the acting director was in place for less than three years,

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88. “When the most recent hiring of a law library director took place at your institution (maybe you), was the position hired on a law faculty line, a library faculty line, a non-faculty line, or some other kind of line?”

“When the previous hiring of a law library director took place at your institution, was the position a law faculty line, a library faculty line, a non-faculty line, or some other kind of line?”

“Are/were these positions tenure-track law faculty, library faculty, or law library faculty?”

89. According to the ABA, there are 202 fully accredited law schools and one provisionally accredited law school. Am. Bar Ass’n, Legal Educ. & Admissions to the Bar, ABA-Approved Law Schools, https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/ [https://perma.cc/Rua8-AUR4].

90. We view TT Library Faculty as having a slightly higher status than TT Law Library Faculty for a number of reasons, including size of the library faculty compared to the law library faculty. This is echoed in the literature about the prestige of academic departments. See, e.g., Warren O. Hagstrom, *Inputs, Outputs, and the Prestige of University Science Departments*, 44 Soc. Educ. 375, 380–82 (1971) ("Department size by itself accounts for almost one-third of the variance in departmental prestige . . . [and it] is an almost necessary condition for excellence in modern scientific establishments.").
the status was treated as remaining the same. Once the three-year threshold was reached, however, the law library director status of that library was considered to have experienced a degradation. Figure 2 illustrates a simple dichotomy in the change in tenure status over time (tenure track versus non-tenure track). However,
the degradation measure is more thorough because we capture additional detailed status changes within the tenure-track and non-tenure-track law library directors. Thus, we seek to explain degradation in the profession.

### Results

§31 Figure 2 shows change in the tenure status of law library directors from 2006 to 2016. From 2006 to 2013, the percentage of tenure-track librarians ranges from a high of 82 percent in 2006 to 76 percent in 2013. Between 2013 and 2014, the percentage dropped from 76 percent to 70 percent; by 2016, about 60 percent of all directors were tenure track and around 40 percent were not tenure track, matching the academic rank findings from Slinger and Slinger for 2012. Thus,
there is a 25 percent decrease in tenure-track directorships from the high in 2006 (82 percent) to the 2016 (61 percent) figure.

¶32 Figure 3 shows degradation over time. As discussed above, degradation includes more than tenure-track status among law library directors. Overall, we show 42 cases of degradation. Figure 3 shows there were relatively few degradations through 2013, with a high of 6 in 2011. In 2014, however, there were 8 cases of degradation, 11 in 2015, and 6 more in 2016. Moreover, figure 3 also shows that 36 percent of the degradation cases in our sample took place from 2006 to 2012, compared with 64 percent between 2013 and 2016.

¶33 What explains the degradation in the data? Table 1 presents descriptive statistics for the degradation measure and for potential explanatory variables of degradation. Thirty-four percent of the 124 libraries (42 law libraries) experienced at least one instance of degradation in the directorship position between 2006 and 2016. That is, the director position of 42 libraries decreased in status according to the degradation measure defined earlier. There are a number of potential explana-

### Table 2

Academic Law Library Director Years of Service by Degradation Experienced (n=124)

<table>
<thead>
<tr>
<th>Degradation</th>
<th>No Degradation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Panel A: 2006–2016&lt;sup&gt;a&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td>5 or Fewer Years</td>
<td>32%</td>
</tr>
<tr>
<td>6 or More Years</td>
<td>35%</td>
</tr>
<tr>
<td>Frequency</td>
<td>42</td>
</tr>
<tr>
<td>Panel B: 2013–2016&lt;sup&gt;b&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td>5 or Fewer Years</td>
<td>16%</td>
</tr>
<tr>
<td>6 or More Years</td>
<td>27%</td>
</tr>
<tr>
<td>Frequency</td>
<td>27</td>
</tr>
</tbody>
</table>

Note: Values rounded to the nearest percentage.

<sup>a</sup> Service time of the sitting director as of 2006 by whether there was status degradation from 2006–2016.

<sup>b</sup> Service time of the sitting director as of 2012 by whether there was status degradation from 2013–2016.

### Table 3

Academic Law Library Director Hiring by Degradation Experienced (n=124)

<table>
<thead>
<tr>
<th>Degradation 2006–2016</th>
<th>No Degradation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internal Hire 2006–2016</td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>31%</td>
</tr>
<tr>
<td>No</td>
<td>44%</td>
</tr>
<tr>
<td>Frequency</td>
<td>42</td>
</tr>
</tbody>
</table>

Note: Values rounded to the nearest percentage.
tions for this, including the age of the law school (ABA approval date), institutional status (private or public), gender of newly appointed directors, whether hired from within or from outside the institution, and years of service of the sitting director in 2006 and in 2012.

§34 We examined these factors as potential explanations for degradation. However, only director years of service appears to provide a partial explanation. Consequently, in table 2, we show two panels. Panel A examines the relationship between years of service (among directors) and any degradation experienced from 2006 to 2016 (the full time frame of our data); Panel B shows the same relationship but only for the 2013 to 2016 period. There were 27 cases of degradation between 2013 and 2016 when new directors were hired. Given the discussion above in our literature review regarding changes in law schools during the 2012–2013 period, and the data shown in table 2, it is not surprising that the data suggest that years of service among directors matters because when a long-time director left the position (for any reason), in more than one of every four changes (27%), the new director was hired into a degraded status.

§35 With the state of legal education in upheaval and suffering from accompanying financial troubles, it seems logical that hiring academic law library directors from within the ranks of existing library staff, typically hirable at a lower pay rate than external candidates, 92 may become the norm. In fact, we found the opposite to be true, as is shown in table 3. Over the time period, among those hired internally in our sample, 31 percent experienced degradation in status as the director compared to 69 percent who did not. For those hired externally, 44 percent were hired into a degraded status relative to 56 percent who were not. Thus, in this sample of law library directors, when there was degradation, it was experienced more often by external hires than by internal ones, relative to the previous sitting director. One conclusion is that law schools are hesitant to hire tenure-track positions, thus obligating the institution to a potentially long employment contract. 93

Conclusion

§36 Since the Great Recession, degradation has begun to emerge within academic law library directorships. Our data suggest that there is a 25 percent decrease in tenure-track directorships from 2006 to 2016. Examining degradation more broadly shows that about two-thirds of the degradation occurring in our sample

92. See, e.g., Matthew Bidwell, Paying More to Get Less: The Effects of External Hiring Versus Internal Mobility, 56 ADMIN. SCI. Q. 369, 388 (2011) (“All internal movers received significantly lower salaries than external hires.”); Philip S. DeOrtentiis et al., Build or Buy? The Individual and Unit-Level Performance of Internally Versus Externally Selected Managers Over Time, 103 J. APPLIED PSYCHOL. 916, 921 (2018) (“[I]nternal hires did indeed have significantly lower salaries than external hires.”).

93. See, e.g., Victor Gold, Reducing the Cost of Legal Education: The Profession Hangs Together or Hangs Separately, 66 SYRACUSE L. REV. 497, 500–01 (2016) (“After decades of law schools charging more and spending more in a vain attempt to rise in rank, the recession revealed that the logical result of U.S. News was mutually assured financial destruction . . . [in] a ranking system that incentivized spending money and fueled by annual increases in tuition, law schools rapidly increased their fixed costs. Schools invested in new buildings, technology, scholarships, library collections, and, of course, faculty. . . . Because of tenure, a larger faculty and higher salaries became fixed costs that could not easily or quickly be reduced if enrollment and tuition revenue suddenly declined.”).
took place between 2013 and 2016. These trends reflect the economic conditions of the legal industry and the realities of an uncertain future, one in which law schools may not hire tenured directors because the institutions are uncertain whether they can afford them in the long run.

¶37 The economic conditions in the legal arena have stabilized but will likely never return to their previous level. More lenient ABA standards for law libraries and the law library director pave the way for a decreased status of the law library and, in turn, the director. Combined, these conditions set the stage for continued law library director degradation and an increasingly challenging environment to fulfill the law library’s mission.
Keeping Up with New Legal Titles*

Compiled by Susan Azyndar** and Susan David deMaine***

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* The works reviewed in this issue were published in 2018 and 2019. If you would like to review books for "Keeping Up with New Legal Titles," please send an e-mail to azyndar.1@osu.edu and sdemaine@iupui.edu.

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Reviewed by Matthew R. Steinke*

¶1 Dan Abrams is familiar to many as the chief legal affairs anchor for ABC News. Author David Fisher’s many books include collaborations with celebrities such as Johnnie Cochran, Bill O’Reilly, and William Shatner. Together, Abrams and Fisher have written two recent books about trials involving U.S. presidents: Lincoln’s Last Trial: The Murder Case that Propelled Him to the Presidency and Theodore Roosevelt for the Defense.

¶2 Lincoln’s Last Trial narrates the murder trial of Simeon “Peachy” Quinn Harrison, which took place in Springfield, Illinois, in 1859. Harrison allegedly made some disparaging remarks about Greek Crafton’s family. During an ensuing fight, Harrison stabbed Crafton, who succumbed to his wounds three days later. The issue at trial was whether Harrison acted in self-defense when he stabbed Crafton. The Harrison family hired Abraham Lincoln as one of their son’s defense attorneys.

* © Matthew R. Steinke, 2020. Associate Director/Head of Public Services, Tarlton Law Library, University of Texas School of Law, Austin, Texas.
¶3 A transcript of the trial was discovered in 1989, a document that greatly aided Abrams and Fisher in their storytelling. Robert Roberts Hitt, the transcript’s stenographer, is the protagonist of the book, and we see the action through his eyes. It so happens that Hitt also recorded the famous Lincoln-Douglas debates that helped to transform Lincoln into a national figure. The trial and debates occur in the very early days of stenography and transcription, and it is interesting to read about the power of these verbatim transcripts as they are telegraphed to newspapers across the country.

¶4 Lincoln is such an important and legendary national political figure that his work as an attorney tends to get lumped in with everything that he did before he became president. Before becoming an attorney, Lincoln held a variety of positions: store clerk, postmaster, shopkeeper, farm laborer, surveyor, and riverboat captain. Perhaps lost a bit in the Lincoln legend is that he was an exceptionally good and well-regarded attorney. A fellow attorney described Lincoln as the “strongest jury lawyer we ever had in Illinois…. He could compel a witness to tell the truth when he meant to lie. He could make a jury laugh, and generally, weep, at his pleasure.” (p.45). Lincoln practiced law for more than 20 years and had tried thousands of criminal and civil cases, appearing before the Illinois Supreme Court more than 300 times. As Abrams and Fisher note, “[b]y the time he walked into the Springfield courthouse the first week of September in 1859 to defend Peachy Quinn Harrison against charges of murder, he was among the most respected and experienced attorneys in the west” (p.36).

¶5 Abrams and Fisher take readers through Harrison’s trial in great detail, witness by witness, examination and cross-examination. The book occasionally seems repetitive, as many witnesses testify to similar things, but overall, readers will likely appreciate this thorough approach. Important questions were raised in the trial. Did Harrison fear for his life when he stabbed Crafton? Could Harrison have avoided using a lethal weapon in what began as a fistfight? As the conclusion of the trial approached, “everyone anticipated that Lincoln’s closing argument in the Harrison case was going to be a humdinger” (p.254).

¶6 *Lincoln’s Last Trial* is an engaging book about the last important trial in Lincoln’s legal career, and readers see Lincoln as an attorney at the height of his powers. Abrams and Fisher do a good job describing the practice of law in the mid-nineteenth century. For dramatic and narrative effect, the authors provide some imagined thoughts and conversations of the trial participants that sometimes mix awkwardly with real quotations from the trial transcript or other accounts. However, the book overall very effectively helps readers get a sense of Springfield in 1859, the atmosphere of the courtroom, and the effect on the community of a trial in which one well-liked young man caused the death of another.

¶7 A very different trial atmosphere is presented in *Theodore Roosevelt for the Defense*, which explores the 1915 libel trial of the larger-than-life Teddy Roosevelt. Roosevelt was the former governor of New York and the former (almost) two-term president of the United States. He was a man of many experiences and accomplishments; he had “charged into heavily armed Spanish troops on the San Juan Heights, he had braved the uncharted dangers of Brazil’s River of Doubt and stood tall against the great charging beasts of Africa” (p.25). Roosevelt was probably the most famous man in the country in 1915, and he was being called a liar in a courtroom in Syracuse, New York.
In the course of endorsing a nonpartisan candidate for governor of New York, Roosevelt had written an article in 1914 in which he accused Democrat and Republican political “bosses” of working together in a corrupt way to thwart the public good. One of the bosses mentioned was William Barnes, the former head of the New York Republican Party. Barnes sued Roosevelt for libel, demanding $50,000 in damages.

The plaintiff tried to paint Roosevelt as a hypocrite. Roosevelt was railing against the party bosses in 1915, but he seemed to get along with them quite well when he was New York’s governor. The plaintiff’s attorneys produced letter after letter between Roosevelt and Republican Party officials discussing appointments and legislation. Roosevelt operated very successfully within the Republican political machine and could certainly have claimed that he worked effectively within the existing system and its political realities. Many in the courtroom, however, could have formed the opinion that Roosevelt’s views on whether an individual was corrupt strongly correlated with whether that individual agreed or disagreed with him.

As they did with the Harrison trial in Lincoln’s Last Trial, Abrams and Fisher take readers through Roosevelt’s trial in great detail. The Roosevelt trial lasted six weeks (versus Harrison’s trial of four days). The number of witnesses and the volume of materials presented to the jury was much greater. As the authors proceed witness by witness through the trial, the amount of information presented can feel overwhelming and occasionally a bit dull as relatively uninteresting points are covered.

The book really comes alive, however, when Roosevelt takes the stand. The plaintiff’s legal team was led by the “flamboyant and combative, nationally respected litigator William M. Ivins” (p.28). In preparation for Ivins’s cross-examination, Roosevelt “had given his counsel one specific instruction: they were not to object at all during this phase; he needed no assistance, he would take on Ivins himself” (p.100). Ivins was a highly skilled attorney, and he scored some points against Roosevelt, but Roosevelt was very difficult to contain. At one point, Ivins objected that Roosevelt was being too “emphatic” (p.114) in his gestures to the jury. The men went back and forth with their questions and answers. Roosevelt’s memory and recall of specific facts, as well as his ability to provide carefully worded answers in the face of questioning by a highly skilled trial attorney, were extremely impressive. Roosevelt would work himself up with righteous indignation but then make a joke to cause the courtroom to burst into laughter. The book provides readers with insight into Roosevelt’s personality and why he was so popular with people.

Roosevelt for the Defense and Lincoln’s Last Trial were both written with general audiences in mind. The authors explain legal concepts in an accessible way, although readers with academic or legal backgrounds may notice the absence of footnotes and legal citations that would traditionally accompany scholarly works. These books are highly recommended for public libraries and academic law libraries that purchase titles for leisure reading.

Reviewed by Sara Bensley*

¶13 *Robotics, AI and the Future of Law* is a wide-ranging collection of chapters on the general topic of emerging technologies affecting law. The book clearly focuses on European law, though some chapters apply more broadly. The areas of scholarship each author represents diverge significantly. As a result, each chapter is a stand-alone piece, with the exception of the initial chapter in which the authors summarize the content of the subsequent entries. The introductory chapter sets out the book’s overarching theme: robots and artificial intelligence (AI) disrupt by their nature, and this disruption offers both opportunities and challenges for the legal profession.

¶14 The introduction includes a brief history of the development of and the relationship between robots and AI. Then, the first couple of chapters and the last chapter present largely philosophical discussions about whether and how robots and other machines outfitted with AI fit into the current legal landscape. These chapters include “Do We Need New Legal Personhood in the Age of Robots and AI?” by Robert van den Hoven van Genderen; “The Peculiar Case of the Mushroom Picking Robot: Extra-Contractual Liability in Robotics” by Ionnis Revolidis and Alan Dahi; and “I, Inhuman Lawyer: Developing Artificial Intelligence in the Legal Profession” by Dena Dervanović. Each one is thought provoking, raising far more questions than answers and challenging the reader to consider several possibilities for how robots may (or may not) fit into existing legal structures. Key questions addressed by van den Hoven van Genderen and by Revolidis and Dahi include how a legal system should address harm caused by robots and what it really means to hold a nonhuman liable for harm. Dervanović considers robots as legal service providers and examines whether prospects for a robot lawyer are feasible.

¶15 The remaining chapters are far less philosophical. Sam Wrigley’s “Taming Artificial Intelligence: ‘Bots,’ the GDPR and Regulatory Approaches” and Stefanie Häinold’s “Profiling and Automated Decision-Making: Legal Implications and Shortcomings” delve deeply into the European Union’s General Data Protection Regulation (GDPR), which went into effect in May 2018. Wrigley examines specific provisions within the GDPR and considers whether they treat data processing by bots the same as traditional (human-centric) methods of data processing. Two of the book’s editors, Mark Fenwick and Marcelo Corrales, along with Erik P.M. Vermeulen, contribute a chapter aimed at how regulators and industry participants can proactively encourage development of innovative technologies using examples of “fintech” (financial services technology) successes. The authors identify the UK Financial Conduct Authority’s use of “regulatory sandboxes” (p.82) as one notable success. In “The Rise and Regulation of Drones: Are We Embracing Minority Report or WALL-E?,” a fairly narrow chapter, Pam Storr and Christine Storr consider the specific technology of drones and discuss three areas of regulation with

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implications for the manufacturing and operation of drones: surveillance, privacy and data protection, and aviation. Arguably most specific of all is Steven Van Uyt-
seel’s chapter, “Artificial Intelligence and Collusion: A Literature Overview.” As the chapter title suggests, the author reviews scholarly literature about the likelihood of AI leading to collusive pricing and, assuming that scenario is a realistic possibility (which is a question unto itself), whether existing competition laws are capable of addressing such a threat.

¶16 Robotics, AI and the Future of Law manages to avoid technical jargon for the most part and does not assume the reader has a technology background. The book is not a thorough exposition of the topic of robots, AI, and the law, but rather a series of deep dives on particular subtopics. Scholars interested in legal-philosophical aspects of emerging technologies or researching privacy regulations likely would find relevant material in this book. This book is recommended for academic collections, especially those with a European law and/or robotics focus.


Reviewed by Stephanie Ziegler*

¶17 Bourbon Justice falls neatly into the barrel of books addressing how specific goods and services affect areas of law beyond their narrow regulatory frameworks. And as goods go, bourbon is a fascinating subject for American law as bourbon must be, by definition, American. Author Brian Haara clearly has a passion for the topic, being not only a long-standing bourbon enthusiast but also a lawyer who practices “bourbon justice.” He has defended a startup distillery on a bourbon trademark dispute and writes a blog dedicated to bourbon law.1

¶18 The technical specifications of how and where bourbon must be made drew me in, as did the brief treatment of popular misconceptions about bourbon. I learned, for example, that although most bourbon is made in Kentucky, it is produced in other states as well. In fact, I would have enjoyed reading more information about how these misconceptions came into being and what modern distilleries are doing to correct them.

¶19 One chapter of Bourbon Justice centers on Prohibition, discussing subjects such as “medicinal” alcohol and the law of search and seizure. Readers will see, however, that the story of bourbon and the law involves so much more than Prohi-
bition. Haara traces the history of bourbon from the earliest family distilleries around the time of the Revolutionary War all the way to the 21st century. The full timeline of bourbon’s legal history is covered in the book, including President Taft’s providing official definitions of “straight,” “blended,” and “imitation” whiskey in 1909 (p.5), and labeling and advertising cases of very recent years. Much of the book devotes itself to these more recent lawsuits. In his discussion of bourbon-based legal disputes, Haara balances detail with readability. Bourbon enthusiasts of all sorts, from distillers to consumers, will find much of interest in this book, and

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lege of Law, The Ohio State University, Columbus, Ohio.

lawyers and law students will better understand how bourbon has affected the laws of advertising, workplace safety, trademarks, and criminal law.

Haara supplements the text not only with an index but also with photos of bourbon advertisements, labels, and bottles that have been the subjects of litigation. Occasional “Tasting Notes” offer readers unique opportunities to “interact” with the material. As they read, for example, about the case of Maker’s Mark Distillery, Inc. v. Diageo North America, Inc. and the issue of what color and design of wax seals are permitted on bottles of alcohol, they can try sipping Maker’s Mark Cask Strength Kentucky Straight Bourbon Whisky, with its “intensification of aromas and flavors, in particular creamy vanilla, caramel, raisins, honey, and oak, with a long, warming finish” (p.41). Bourbon Justice is a captivating read that provides some surprising insights into the legal history of bourbon, and I highly recommend it for bourbon lovers as well as public, general academic, and academic law libraries.


Reviewed by Matthew S. Cooper*

In Justice on Trial, coauthors Mollie Hemingway and Carrie Severino describe U.S. Supreme Court Justice Brett Kavanaugh’s contentious confirmation process in 2018. Severino and Hemingway provide extensive and interesting details about how Kavanaugh’s nomination came about and ultimately succeeded. The picture of the confirmation process emerges from more than 100 interviews with people closely involved, including the President, Supreme Court Justices, White House and Justice Department officials, senators, advocacy groups, and legal experts, in addition to friends, family, and former law clerks of Justice Kavanaugh. Notably, the reader sees the influence of former White House Counsel Don McGahn and Federalist Society Executive Vice President Leonard Leo.

Both authors have deep ties to the conservative legal community, ties that likely explain their remarkable access to numerous major figures involved in Kavanaugh’s nomination and confirmation. Severino is chief counsel and policy director of the Judicial Crisis Network (JCN), which was ready to fight for Kavanaugh’s nomination “on day one with a twelve-million-dollar war chest” (p.74). JCN created the website ConfirmKavanaugh.com and quickly launched ad campaigns in key states, seeking to shape public perception of then Judge Kavanaugh. Severino is also a former clerk of Justice Clarence Thomas, who is repeatedly mentioned in Justice on Trial. The authors draw parallels between Kavanaugh’s confirmation process and the “horrifying ordeal” preceding Thomas’s confirmation when Anita Hill accused him “without evidence” (p.44) of sexual harassment. Hemingway is no stranger to politics either. She is a Fox News contributor and a senior editor of the politically conservative online magazine The Federalist.

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In a “Note to readers” at the end of the book, Hemingway and Severino acknowledge their “right-of-center perspective” (p.308), but add that they “endeavored to produce an objective account that reflects a respect for the rule of law and the presumption of innocence” (p.308). The book, however, fails as an objective account. First, so few interviewees express disfavor over Kavanaugh’s confirmation that one wonders whether Hemingway and Severino contacted only individuals likely to hold pro-Kavanaugh views. Second, the authors’ right-of-center perspective shapes the narrative in significant ways. They portray Kavanaugh’s supporters as sympathetic figures fighting for a just cause in the face of many unfair obstacles. They humanize Kavanaugh, for example, by describing how he was affected by a biblical reading about enduring hardships and persecution, how he brought pizza to staffers working tirelessly to help him prepare for the hearings, and how his wife provided cupcakes to federal marshals protecting their home.

In contrast, Hemingway and Severino characterize the media and those questioning Justice Kavanaugh’s confirmation as uniformly biased, obstructionist, and not genuinely interested in the truth of the sexual misconduct allegations of Dr. Christine Blasey Ford and Ms. Deborah Ramirez. They forgo the humanizing details for Kavanaugh’s accusers or those raising questions about his fitness to serve. Regarding Blasey Ford, the authors mention unnamed acquaintances who recall her salacious high school behavior and unnamed college acquaintances who describe her purchasing drugs and regularly attending fraternity parties. Further, the authors scrutinize her Senate testimony to a greater degree than they do Kavanaugh’s. Tracking prosecutor Rachel Mitchell’s memo, they carefully note inconsistencies in Blasey Ford’s account as to who was present at the party where the assault allegedly occurred, the precise year the events happened, and whether she showed her therapist’s notes or summaries of those notes to a Washington Post reporter. Meanwhile, the authors are quick to accept with little comment Kavanaugh’s questionable explanations of the terms “boof[ing], “Renate alumnius [sic],” and “Devil’s Triangle” (p.233).

Despite its authors’ claims, then, Justice on Trial presents a particular perspective that reflects deep hostility toward the media and a firm belief in the unfairness of Supreme Court confirmation hearings generally and Justice Kavanaugh’s in particular. Missing is the perspective of those who thought it reasonable to raise questions about Kavanaugh in light of the sexual misconduct allegations against him. A truly objective and more valuable account would give voice to opposing views. For instance, it would have been interesting to hear more about Republican Senator Lisa Murkowski’s reasons for voting not to confirm Kavanaugh beyond what she stated publicly. Instead, regarding Murkowski’s vote, the authors are quick to conclude that “[t]he media’s attack on Kavanaugh’s temperament had hit at least one of its marks” (p.277).

Notwithstanding its shortcomings, Justice on Trial may be a worthwhile acquisition for academic, public, or special libraries. Nevertheless, libraries acquiring this book should realize that the authors present a largely one-sided view of events. Recommended with reservations due to its lack of objectivity and balance.

Reviewed by Sarah A. Lewis*

¶27 In *Inconsistency and Indecision in the United States Supreme Court*, Matthew P. Hitt, an assistant professor of political science at Colorado State University, provides a systematic study of unreasoned judgments from the U.S. Supreme Court. Unreasoned judgments are judgments whose rationale is unclear. Examples are plurality opinions, which represent agreement on outcome but often not on reasoning, and *per curiam* opinions, which often present a short description of the outcome with no explanation of reasoning.

¶28 Hitt addresses the inherent tension between decisiveness and consistency, two values fundamental to American law. Decisiveness is seen in the obligation of the courts, and the Supreme Court in particular in this instance, to resolve conflict. Consistency, on the other hand, is the idea that the Supreme Court must promulgate legal doctrine. Over time, there has been a pivot away from decisiveness toward consistency. Hitt posits that the impetus for this shift was the Supreme Court Case Selections Act of 1988,\(^2\) under which Congress gave the Supreme Court greater discretion in deciding what cases it would hear by limiting mandatory jurisdiction. This act has resulted in a marked decrease in the number of cases heard by the Supreme Court, although the number of petitions for *certiorari* and the number of cases heard by the federal circuit courts have increased significantly over the same period. The author argues that the Supreme Court abdicates its responsibility by not resolving splits among the circuits, cementing disparities in legal outcomes according to geography, which in turn leads to forum shopping. Moreover, Hitt argues that by prioritizing decisiveness over consistency, the Supreme Court is not operating according to what the Founders intended: acting as a body that says what the law is. In the final chapters, the author examines responses from Congress and the public to unreasoned judgments. Surprisingly, he finds both Congress and the public are outcome-motivated and do not seem as invested in consistency.

¶29 *Inconsistency and Indecision in the United States Supreme Court* is well organized. Each chapter opens with the summary of an illustrative Supreme Court case, providing interesting background information gleaned from the papers of Justices and their clerks, and ends with a conclusion summarizing key points. In each chapter, Hitt discusses how he used and analyzed data to reach his conclusions, and the book includes many charts and graphs of statistical analysis to illustrate his points. Further information on Hitt’s data analysis is given in the detailed appendixes. Hitt also provides a rich list of references for researchers looking for more information about judicial decision making.

¶30 This book would make an excellent addition to any academic law library. This is particularly true for academic law libraries with collections on the U.S. Supreme Court.

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Reviewed by Michael N. Umberger*

¶31 Have you ever paused to consider what the original *Ghostbusters* (1984) says about freedom and the bureaucratic state? Eric T. Kasper and Quentin D. Vieregge, professors at the University of Wisconsin–Eau Claire, consider this and other questions in *The United States Constitution in Film: Part of Our National Culture*, a wide-ranging survey of the interplay between American film and constitutional law. Although the authors discuss many classics of law and film, including *Anatomy of a Murder* (1959), *To Kill a Mockingbird* (1962), and *My Cousin Vinny* (1992), their book pushes beyond the traditional law and film canon, finding rich sources of discussion in unexpected movies. The scope of the films analyzed runs the length of American film history, from *The Great Train Robbery* (1903) to *The Post* (2017), as well as the gamut of high and low film art, from Orson Welles’s *Citizen Kane* (1941) to, somewhat shockingly, Pauly Shore’s *Jury Duty* (1995).

¶32 This academic monograph is divided into 12 chapters, each centered on a major area of constitutional study. Chapters on the branches of the federal government are followed by chapters on individual rights and powers, ranging from the freedom of speech to the right to vote. Each chapter discusses specific constitutional passages and provides background on the development of an institution, right, or power in constitutional history. The analysis proceeds mostly chronologically, both in terms of constitutional and film history, and several films are discussed in depth on each subject. Kasper and Vieregge lay out how films not only serve an instructive role in popular culture but also function as aspirational visions for the country. Their belief that films powerfully shape popular understandings of the Constitution is ably demonstrated in their choices of films and discussions of how these films interpret the Constitution.

¶33 What distinguishes this study from others on law and film is its scope, taking into consideration not just modern movies but also a fair number of silent and other early films. Part of the satisfaction in reading this book lies in the joy of discovery, both because it sheds new light on old classics and because it highlights hard-to-find movies such as *The Story on Page One* (1959), *The Man* (1972), *The Front* (1976), and *The Star Chamber* (1983), as well as a number of television movies perhaps unfairly neglected today. As a result of casting a wider than typical net, the authors reveal many welcome surprises; for instance, who would have guessed that the ludicrous propaganda film *Reefer Madness* (1936) has an intelligent, contemporaneously accurate discussion of Congress’s Commerce Clause powers?

¶34 The authors recognize that interpretations of the Constitution have changed over time and fairly apply the law as it existed at the time the movies were released. Where the law has shifted significantly since a film’s release, the authors also occasionally speculate how the protagonists in certain films would have fared in court given those subsequent developments in constitutional doctrine. A good example of their engaging use of such speculation arises in the context of the evolu-

tion of the Eighth Amendment's ban on cruel and unusual punishment, which the authors apply retroactively to the horrid conditions of imprisonment in *Cool Hand Luke* (1967), *Brubaker* (1980), and *The Shawshank Redemption* (1994). This passage and others like it illustrate how the popular medium of film could be used as a tool to visualize the impact of constitutional law in the real world.

¶35 The book works best when it compares films and discerns strains of constitutional doctrine that pervade both legal and popular culture. It succeeds as a survey of constitutional law in American film, although its aim for breadth rather than depth results in relatively shallow overviews that do little more than mechanically summarize particularly relevant legal plot points from individual films. An alternative approach might have been to structure the book as a comprehensive catalog of constitutional clauses, listing scenes from movies that illustrate, accurately or not, how the provisions operate in real life.

¶36 Film is a powerful medium that not only reflects popular understandings of the law but also influences how the public perceives the Constitution. The authors acknowledge that fictional portrayals of law in film often take liberties with constitutional fact, misapplying doctrine, distorting historical fact or, at least in the case of *Double Jeopardy* (1999), seemingly willfully misconstruing its central legal concepts. While these creative stretches may develop a film's artistic vision, Kasper and Vieregge emphasize that films do have real impact on how the public understands the law—it is not hard to imagine that, for many people, films serve as a primary source of constitutional law knowledge. In the authors' final analysis, film is an influential medium for education and inspiration about our nation's founding document, and this book, which concludes with a thorough bibliography and index, would fit well in a collection that values explorations of the intersection of law with popular culture. Recommended for academic law libraries as well as other academic libraries and public libraries.


Reviewed by Jennifer Dixon*

¶37 In 1983, Judith Kaye became the first woman to serve on the New York Court of Appeals, the state's highest court. A decade later Judge Kaye achieved another first for women when she was elevated to chief judge, a position she held until her retirement in 2008. It is only natural that her long career would generate a host of noteworthy judicial opinions, speeches, and other writings. Many of them appear in *Judith S. Kaye in Her Own Words*, which provides a glimpse into the life and mind of one of the New York legal community's truly trail-blazing figures.

¶38 The book begins with more than 100 pages of memoir that Judge Kaye completed before her death from cancer in 2016. Fittingly, the memoir begins with Judge Kaye's start on the Court of Appeals. It describes discussions at the conference table, interactions with her fellow judges, and the process of how common law is made, revealing in particular detail her reasoning in a handful of major decisions.

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The memoir then discusses her “second act” as counsel at the firm Skadden, Arps, Slate, Meagher & Flom after she retired from the bench. It concludes on a more personal note, briefly delving into her childhood and family life. The tone is frank and conversational, and Judge Kaye's passion for the law, justice, her family, and her relationships with her colleagues shines through.

¶39 A selection of Kaye's judicial opinions, articles, and speeches follows the memoir, providing further insight into her life and career. The editorial team, which included the Honorable Albert M. Rosenblatt, Kaye's colleague on the Court of Appeals; and Kaye's daughter, Luisa M. Kaye, faced the unenviable task of choosing works to include from among Kaye's 637 judicial opinions and hundreds more articles. A brief introduction from a fellow judge or a former law clerk precedes each opinion in the book. This additional commentary highlights Judge Kaye's impact on those who worked closely with her, beyond the importance of the decisions to the legal world. The selected cases range from a 1990 opinion adopting the “business judgment rule” in corporate shareholder litigation to a 2006 dissent from a decision declining to adopt marriage equality for same-sex couples in New York. These decisions are a survey not only of Kaye's work but also of the evolution of New York law.

¶40 The other, nonjudicial writings include, for example, Judge Kaye's New York City Bar Association lecture entitled “Dual Constitutionalism in Practice and Principle,” which made waves by exploring the role of state constitutions, especially the New York Constitution, in protecting individual rights not protected by the federal Constitution. Also included is an essay on “Women in Law,” delivered at a New York University School of Law commencement and reflecting on the “civilizing, humanizing process” (p.365) that can and should advance the law and the legal profession.

¶41 Ultimately, Judith S. Kaye in Her Own Words paints a striking portrait of a highly respected and multitalented lawyer and judge. Readers curious about the evolution of New York's law and courts over the past several decades will find the book of particular interest, as will any practitioner who has appeared (or hopes to appear) in the New York Court of Appeals. In general, this book is a highly recommended addition to law libraries in the New York area, but it could also interest libraries nationwide given that Judge Kaye's thoughtful approach to the law is sure to continue to reverberate across state lines.


Reviewed by Tanya M. Johnson*

¶42 What does it mean to look like a lawyer? As articulated by one of the participants in Tseabela M. Melaku’s recent study, “I think that there's still enough of a thought that a lawyer looks a certain way…. [Others] feel comfortable with you because you fit an image of what they actually think works” (p.27). This mental construct of a lawyer, particularly for those in powerful positions at elite law firms, is a white male. In these law firms, the status quo is preserved by institutional prac-
ties that reinforce this mental construct and systematically exclude those who do not “look like a lawyer.” Through detailed qualitative research and interviews, Melaku delves deeply into the systemic nature of the racial and gendered aspects of this construct and, even more important, the intersection of race and gender. In so doing, she brings to light the unique difficulties experienced by black female lawyers within an environment “created, controlled, and reproduced by elite white men and embedded within law firms” (p.36).

¶43 Drawing on the theoretical framework of systemic gendered racism, Melaku presents a thoughtful, critical, and well-written analysis of the lives and experiences of black female lawyers within elite corporate law firms that, despite alleged progress, remain largely the province of white men. *You Don’t Look Like a Lawyer* focuses on two related core concepts explained in the first chapter. First, the “invisible labor clause” describes the “added emotional, mental, and physical labor black women are forced to expend in order to survive in the white institutional spaces” (p.17) such as law firms. An unwritten rule, this invisible labor clause takes many forms, from the daily investment of time needed to project an expected physical appearance to the emotional stress caused by worrying about job performance. Second, the “inclusion tax is the additional resources ‘spent,’ such as time, money, and mental and emotional energy, just to be allowed in white spaces” (p.18). It is essentially a necessary fee that black female lawyers must pay to be included in law firms dominated by white men.

¶44 The remaining chapters of the book elucidate the myriad ways in which the invisible labor clause and the inclusion tax operate in the legal workplace. Melaku examines professional appearance early in *You Don’t Look Like a Lawyer*, discussing the perceptions and stereotypes associated with not looking like the archetypal white male lawyer. She then explores black female lawyers’ outsider status within law firms, where the spaces defined by white males typically exclude black women and thereby limit opportunities. This outsider status is exacerbated by the adverse effects of limited access to external social networks that would provide assistance in navigating this space. Relatedly, this chapter discusses how negative views of affirmative action contribute not only to the isolation of black female lawyers but also to retention rates within firms. The theme of outsider status is echoed in later chapters in which Melaku discusses professional networking challenges as well as exclusion of black female lawyers from mentor and sponsorship relationships between partners and associates, all of which lead to disparities in the performance review process and limited opportunities for advancement. Melaku also scrutinizes the unique experiences of black female lawyers in an environment where the focus is usually on either race (black men) or gender (white women), while the distinct difficulties of people who fit both categories (black women) are often sidelined or ignored. She concludes with an overarching discussion of the barriers to success that black female lawyers face, which could apply equally to almost any professional setting. Finally, an appendix detailing Melaku’s research methodology is helpfully provided.

¶45 As I was drafting this review at the reference desk, a white male patron in a golf shirt approached me and, upon seeing the book, began to describe how racial and gender diversity in the legal profession has significantly improved since he first started working. He explained hiring and promoting one excellent black female lawyer during his long career in a leadership role in the legal department of a very large company. Using the wealth of explanations and examples from Melaku’s study,
I was able to challenge the man’s beliefs. I explained the invisible labor clause, the inclusion tax, and the significant hurdles that black female lawyers must overcome in an environment with which he has minimal difficulties. Although the man’s primary response was, “I’ve never thought about it that way,” he was receptive to the conversation and asked a number of questions to clarify his understanding. I do not know whether I actually changed the man’s mind, but clearly I made him think about the issue in a different way, and just having that conversation felt like some form of progress. In Melaku’s words, I “shift[ed] the focus away from quantifying the number of associates of color and partners in firms to actually discussing how racial and gender discrimination plays a significant role” (p.119). When I first finished reading the book, I was almost disappointed that You Don’t Look Like a Lawyer offered little discussion of specific strategies to combat systemic gendered racism, and yet there I was doing just that because of this book.

¶46 In sum, Melaku paints an accurate yet bleak, and at times emotionally disturbing, picture of the lives and experiences of black female lawyers at elite corporate law firms. You Don’t Look Like a Lawyer is a necessary contribution to the study of the legal profession as a whole, which for too long has avoided difficult discussions of systemic gendered racism. I recommend this book to anyone who is working or wants to work in the legal profession, law librarians included. It may be particularly appropriate for law firm libraries involved in diversity and inclusion efforts within their firms and law school libraries whose faculty and students struggle with these issues. To conclude, I would like to echo Melaku’s plea and “urge all readers to go beyond a shallow understanding of the experiences of the black women highlighted in this book and earnestly consider their obstacles in attempting to gain equal opportunity and access to the top and how we can clear that path of obstructions” (p.120).


Review by David M. Haendler*

¶47 A History of Intellectual Property in 50 Objects uniquely combines an edited scholarly collection and a lavishly illustrated coffee-table book. It discusses a wide variety of themes in intellectual property law and history through 50 chapters, each centering its analysis on a (loosely defined) material object. For example, the reader learns about how geographical indication laws have influenced the creation of Champagne and vice versa, sees the development of U.S. privacy doctrines through the lens of the Kodak camera, explores the public domain’s shifting boundaries alongside Steamboat Willie, and much more. The best chapters tell the stories of the industries, egos, and technologies behind now-ubiquitous inventions and well-known cultural artifacts, using those narratives as jumping-off points for reflection about how those inventions became ubiquitous, how those artifacts came to be well known, and the subtle interplay between law and technosocial developments.

¶48 Each object’s story is told with the aid of copious illustrations. It would hardly do to tell the tale of Oscar Wilde Portrait No. 18 and its influence on celebrity

culture without including a copy of the photograph or to discuss the controversy over Mike Tyson’s Maori-inspired facial tattoos and cultural appropriation without providing images for comparison. In some instances, the illustrations get in the way of the text—a two-page spread of Scarlett O’Hara dressing does not add much to the explanation of 19th century patent litigation over corset designs—but for the most part, they help create a work that can be enjoyed on multiple levels.

¶ 49 With 50 contributing authors from diverse disciplines including law, sociology, media, and history, the book covers an impressive range of themes and subjects. However, the book’s breadth also necessitates considerable brevity. One could write an entire book about the development of the light bulb, and some authors have,3 but in A History of Intellectual Property in 50 Objects, the creation of this icon of discovery and the industrial battles over control of its market must be condensed into just a few pages. Regardless, the brevity is mostly a strength. This is not a book designed for serious research, but it is one that may inspire many productive questions. Relatedly, with so much ground to cover, the authors have little space to explain foundational concepts. Many authors assume the reader has some level of doctrinal knowledge about intellectual property law, and a reader with no background in the field will likely be confused by some of the specialized vocabulary. The book is fairly accessible and reader-friendly, but it would not be ideal as an introduction to the subject area.

¶ 50 Although organized in a roughly chronological order spanning 12th century Korean pottery glazing to 21st century Bitcoin mining, A History of Intellectual Property in 50 Objects is decidedly not a systematic or comprehensive review of how intellectual property doctrines and systems have developed over time. A reader hoping for such a straightforward narrative will leave disappointed. The playful format encourages skipping about; a reader may flip to any chapter of this history without fear he or she will miss out on important background. Law professors may wish to assign a chapter or two in isolation.

¶ 51 A History of Intellectual Property in 50 Objects is a brisk, pleasurable, and stimulating meander through a fascinating and multifaceted topic. It will be welcomed by academics looking to enrich their historical knowledge or ground their students’ understandings of abstract doctrines, and anyone seeking a holiday present for an intellectual property enthusiast. Recommended for academic law libraries as well as college and university libraries.


Reviewed by Shannon Roddy*  

¶ 52 Justice John Paul Stevens was appointed to the Supreme Court by President Gerald Ford. He was the third-longest-sitting Supreme Court Justice, serving from 1975 until his retirement in 2010. In his first memoir, Five Chiefs, he recounted and reflected on his legal career. The Making of a Justice is a somewhat more personal memoir, opening with 100 pages devoted to Justice Stevens’s pre–Supreme Court

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years, starting with his family and childhood\textsuperscript{4} and culminating with his time as a judge on the Seventh Circuit. He follows this with chapters on the Supreme Court, adopting Justice Byron White’s opinion that a new Court is born each time a new Justice arrives. Thus, these chapters begin with “The Stevens Court” and end with “The Kagan Court” (Justice Stevens’s successor). Each of these chapters is divided into the Court’s terms.

§\textsuperscript{53} Most of The Making of a Justice is devoted to discussions of key cases decided each term Justice Stevens was on the Court. Though he was appointed by a Republican president, Justice Stevens often voted with the liberal wing of the Court. In recounting his first term on the bench, he emphasizes that he joined a majority opinion upholding an earlier ruling interpreting the Civil Rights Act of 1866 as prohibiting private discrimination.\textsuperscript{5} He also voted with Justices Brennan and Marshall to hear a case involving the constitutionality of a Virginia statute banning sodomy.\textsuperscript{6} This was nearly 30 years before Lawrence v. Texas\textsuperscript{7} and 40 years before Obergefell v. Hodges.\textsuperscript{8}

§\textsuperscript{54} Justice Stevens’s stance against the death penalty in particular is woven throughout the narrative. He candidly admits that he made a mistake in not voting to invalidate Texas’s death penalty statute in Jurek v. Texas\textsuperscript{9} in 1976. The Justice later came to believe that the risk of putting an innocent person to death is a sufficient reason to abolish capital punishment in all cases.

§\textsuperscript{55} Lay readers may find it difficult to wade through the technical discussions of constitutional provisions and legal doctrine. Even those with a law background will likely skim over some cases. Everyone except Supreme Court experts will likely need to look up the cases or refer to secondary sources to more fully understand and appreciate Justice Stevens’s commentary.

§\textsuperscript{56} Those without legal training or a particular interest in the law should still find aspects of the book enjoyable. Justice Stevens includes enough entertaining anecdotes to keep the narrative moving. Intermingled with his discussion of key cases, he describes memorable events in his and his clerks’ lives, with a particular emphasis on sports. He recounts playing ping-pong against Justice William Rehnquist, learning to ski in Aspen, and playing golf at Augusta National.

§\textsuperscript{57} Baseball fans should especially enjoy parts of the book, as the Justice peppers his memoir with interesting baseball stories, including a firsthand account of arguably the most famous home run in history: Babe Ruth’s called shot. It happened during game three of the 1932 World Series, and Justice Stevens sat with his father about 20 rows behind the third-base dugout.\textsuperscript{10} The book’s index, disappointingly, does not contain entries for baseball or sports, although the Chicago Cubs,

\textsuperscript{4} The Justice’s memory is quite remarkable, as he recounts events from when he was five or six years old, including a brief meeting with Amelia Earhart.
\textsuperscript{5} Runyon v. McCrory, 427 U.S. 160 (1976).
\textsuperscript{7} 539 U.S. 558 (2003).
\textsuperscript{8} 576 U.S. 644 (2015).
\textsuperscript{9} 428 U.S. 262 (1976).
\textsuperscript{10} Law librarians may be particularly gratified to learn that the Justice’s Babe Ruth story involves a bit of research. Justice Stevens recounts that a few years ago, after he told his story at a judicial conference, a “young bankruptcy judge” (whom he does not name) (p.18) disputed his account of the direction of the Babe’s called shot. Justice Stevens promptly directed his law clerk to research the issue, and he was ultimately vindicated.
the Justice’s beloved hometown team, does merit its own entry. Indeed, he describes throwing out the first pitch at a Cubs game (it made it to the plate despite being a bit high and outside) as “unquestionably the highlight of [his] career” (p.451).

¶58 Throughout the book, Justice Stevens is unfailingly kind and gracious, referring to friends, former colleagues, law clerks, and secretaries by name as often as possible. While he does not shy away from noting when he felt a colleague’s decision or reasoning was flawed, he never makes ad hominem attacks. Those hoping for more gossip-y anecdotes about the Court should look elsewhere. Perhaps the Justice’s strongest personal criticism is when he notes that all the Justices supported Justice Rehnquist’s elevation to Chief Justice “because [they] knew he would do a significantly better job than Burger had” (p.225). One is left to wonder what objections he had to how Chief Justice Warren Burger ran the Court.

¶59 The Making of a Justice concludes with a description of Justice Stevens’s surprise 94th birthday party and a letter of birthday wishes from President Obama with a handwritten postscript: “We miss you on the Court!” (p.531).

¶60 This is an appropriate book for all types of law libraries, as scholars, practitioners, and public patrons alike should find aspects of it educational and enjoyable. It is highly recommended.


Reviewed by Andrea Alexander*

¶61 The title Lawless: The Secret Rules That Govern Our Digital Lives is perfectly calibrated to grab the attention of readers who’ve been jaded by years of clickbait headlines and ominous articles about privacy and the dangers of Internet surveillance. Within the first six pages, though, Nicholas Suzor justifies the extremity of his title by providing a timely and relevant narrative that shows exactly how unregulated the Internet is. To illustrate this, he uses the Charlottesville Unite the Right rally tragedy and its aftermath, demonstrating how a lack of regulation resulted in private companies effectively operating as policymakers and enforcers to quell the white supremacist tide of the Daily Stormer website. Suzor competently lays out the sometimes-problematic nature of the contemporary Internet, where the lack of articulated and enforced rules serves to encourage open discourse and knowledge exchange—but also to fuel the propagation of online communities that promote hate and violence. He supports his ideas with a smart and well-researched discussion showing some of the many areas of law implicated in our own digital lives. The subsequent chapters in part 1 detail the consequences of this digital Wild West with examples like social media harassment of women, minorities, and LGBTQIA+ individuals; revenge porn; and file sharing of copyrighted materials—topics that are familiar and germane to law students.

¶62 Part 2 may be less accessible for some readers due to its shift from the largely concrete problems to more nebulous, policy-based potential solutions. Given how thoroughly the Internet has infiltrated our lives, there is virtually no end to the possible areas that could be regulated. But the many nuances inherent in

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these potential areas of regulation make it difficult to propose specific means of handling the challenges set out in part 1. Suzor addresses those difficulties:

> It's a mistake to look at particular controversies and mistakes in isolation. The real problem is systemic; it’s about how platforms are designed, how their rules are set out and enforced, and how they choose to do business. The open question is what we should expect from platforms: what are their obligations? There are no easy answers to many of these questions, many of which involve difficult trade-offs. (p.129)

Part 2’s broadness—its lack of specific policy recommendations and lighter hand with the examples that keep part 1 moving at a quicker clip—is a feature, not a bug, but the change in focus may have an impact on how readers experience this book.

§63 *Lawless* is helpfully structured with a detailed table of contents, an index, and extensive endnotes (although flipping back and forth to those may irritate readers accustomed to legal-style footnoting on the relevant page). Slim at 171 pages of text, it is a relatively quick read. But the book’s thesis is also its biggest weakness as a secondary legal source: this area *is* largely lawless, meaning that the book cites few primary law sources. It may therefore prove unhelpful in a court library or law firm setting. In addition, its scholarly tone may not appeal to most readers of popular nonfiction. Although the quick pace of the digital world may make this book soon outdated, it will remain helpful as a snapshot of a moment in history when the unregulated Internet’s problems are clear while solutions are still largely out of reach. This affordable title will appeal to law students and faculty members researching the topic for a seminar or article touching on Internet law, women and law, harassment, international law, copyright, and more. Recommended for academic law libraries.


Reviewed by Kevin Rothenberg*

§64 In her later years on the Supreme Court, Justice Sandra Day O’Connor displayed an embroidered pillow in her chambers that read, “Maybe in error, but never in doubt” (p.340). Jeffrey Rosen, a constitutional law professor writing for the *New York Times Magazine* in 2001, considered the pillow a pithy summation of her flaws as a judge: “[S]he views the court in general, and herself in particular, as the proper forum to decide every political and constitutional question in the land” (p.340). To her defenders, like former clerk RonNell Anderson Jones, the pillow spoke instead to her deep sense of duty to Court and country, and her need to be resolute in her decision making, remarking that “[s]he didn’t like those ‘Most Powerful Woman in the World’ articles.... She did not relish her role as the fifth vote. I heard her agonize over it....” (p.341). Biographer Evan Thomas, charitable to O’Connor to a fault, gives yet a third interpretation, positing that the embroidery represented the complex, many-faceted O’Connor herself. In his words, “[s]he could present a confusing or contradictory image. She could be charming or brusque. She could be disarmingly straightforward; she could also be roundabout and sly” (p.341). More striking perhaps than the pillow (which was a kitschy gag

gift from a few of her friends) is that a distinguished constitutional law professor, a former Supreme Court clerk, and a seasoned editor of *Newsweek* and *Time* each thought the pillow spoke to something deeper about O’Connor—and that each of them apparently heard something different.

¶65 *First*, Evan Thomas’s new biography of Sandra Day O’Connor, is flush with these kinds of anecdotes, and necessarily so. To a generation of Supreme Court litigators and journalists, Justice O’Connor was enigmatic. She was not an ideological purist like Antonin Scalia or Ruth Bader Ginsberg, not an effete like Stephen Breyer, not a one-of-a-kind original like David Souter, and not a proud independent like John Paul Stevens. Instead, as Clarence Thomas put it, she was “the glue” (p.301) that held the Justices together—a moderate, a pragmatist, a dealmaker, an expert from her days as the Arizona Senate majority leader in massaging, persuading, whipping, cajoling, and negotiating strong personalities, while rarely revealing too much about herself to others.

¶66 Such a complex and guarded person can make for a difficult biographical subject. Thomas, a veteran of extensively researched, well-sourced biographies of eminent Americans including Dwight D. Eisenhower, Robert Kennedy, and Richard Nixon, thankfully resists the temptation to oversimplify. The biography, over 400 pages (including 40 pages of endnotes, a bibliography, and an index) and spanning nearly 90 years, carefully lays out the details of Justice O’Connor’s life from the beginning up to the present, showing how certain formative personal and intellectual experiences informed her decision making both as a private individual and as a Supreme Court Justice.

¶67 Some of these formative experiences bear elaborating. On the Lazy B. Ranch where she grew up, she learned to be self-reliant, to make no excuses for herself, and to use her innate intelligence and steely determination to overcome any challenge no matter how daunting: lessons she would carry into her professional life. Undeterred by pervasive and vicious sexism, she ruled the Arizona Senate and eventually became, in some observers’ eyes, the de facto chief justice; more than one commentator referred to the Rehnquist Court as the “O’Connor Court” (p.308) instead. As an undergraduate and then a law student at Stanford University, she became deeply committed to the civic life and health of the United States. Her confidence in the essential rightness of America’s civic and political system later gave her the confidence to make difficult and sometimes controversial decisions on issues like abortion and affirmative action for what she saw as the good of the country, even when she had personal reservations. Through her lifelong commitment to the welfare of people—as socialite par excellence in Phoenix and Washington, bridge builder and occasional arm twister in the Arizona Senate, the unifying force within the Supreme Court, and an advocate for justice and fair play around the world—she became an exemplar of how a person can, in the words of one of her clerks, “do it all” (p.295).

¶68 Sandra Day O’Connor is an extraordinary figure, and it is easy to get swept up by the story of her life; to grow to admire, like, and retroactively root for her; and, in turn, to give O’Connor the benefit of the doubt. Thomas is not immune to this appeal. Though he presents both sides of the arguments surrounding her jurisprudence, his sympathies mostly lie with her defenders. In his telling, she was a humble and patriotic public servant who sought careful, incremental change and flexible standards rather than bright-line rules, and curbed the worst partisan
excesses that began to creep in after her departure. Scholars more steeped in constitutional jurisprudence may not agree on such a universally positive assessment of her tenure on the Court. Thomas also often downplays the impact that her personal political leanings may have had on her decision making while on the Court. For example, Thomas endorses the most generous reading possible of *Bush v. Gore*, perhaps her most contentious decision. In his view, by voting to halt the recount in Florida, she did not act on her own political preferences but instead made the hard decision the country needed, sparing it from a protracted and painful political struggle. Many will find his account of the 2000 election specifically, and the role that her politics played in her jurisprudence generally, somewhat unconvincing.

¶69 Despite these shortcomings, Thomas expertly illustrates how specific experiences from O’Connor’s past surfaced again and again throughout her life, informing both her private and professional lives. By book’s end, a nuanced portrait of O’Connor emerges: at once complicated, brilliant, and sympathetic, sometimes flawed and perhaps a bit too self-assured, but far more often noble and inspiring. *First* is likely to become one of the (or perhaps the) standard biographies of Sandra Day O’Connor and deserves a place in any academic law library’s collection.


*Reviewed by Vanessa Seeger*

¶70 Kim Wehle is a professor of law at the University of Baltimore School of Law and legal expert for CBS with credentials almost as long as her book. In *How to Read the Constitution and Why*, Wehle makes a compelling argument for why each citizen of the United States should read the Constitution and understand generally what it actually says. She uses plain language and real-world examples to explain each article and section of the Constitution in the context of present-day politics. She reasons that understanding the provisions of the Constitution is important because

[a] prohibition on murder is meaningless if there are no police officers or prosecutors to enforce it or if a judge’s order sending a convicted criminal to prison can be ignored for the right price.... Accordingly, if a provision of the Constitution is *not* enforced, it becomes worthless. (p.8)

¶71 Wehle emphasizes that each time a Supreme Court case or piece of legislation interprets the Constitution in a new way, each time the Supreme Court or Congress chooses not to enforce a measure of the Constitution, that decision has long-lasting ramifications. She notes that “[o]nce [an interpretation] gets in the government’s ‘toolbox,’ it can be picked up for use at any time” (p.14).

¶72 *How to Read the Constitution and Why* begins by exploring each branch of government and the articles of the Constitution that imbue them with power. She discusses the implications of each word, each comma, and each glaring lack of definition. For instance, how does the Constitution define “executive power”? Does the

President have the power to pardon anyone, including himself? Do executive orders and presidential proclamations have authority under the Constitution? If administrative agencies were created as entities of the executive branch, but have the power to create regulations with the force of law like the legislative branch, and can hold hearings and trials like the judicial branch, how does this system uphold the separation of powers?

¶ 73 The majority of the book explores “rights” and what is or is not guaranteed under the Constitution. Each amendment in the Bill of Rights is discussed in turn, with multiple hypotheticals and examples to give context. As a result, the book bogs down somewhat. Wehle’s extensive use of examples, while well intentioned, seems excessive and distracting. While the plain language of the text is appreciated, her use of words like “period” and “full-stop” to emphasize limitations starts to wear.

¶ 74 Overall, Wehle does a good job of discussing multiple administrations representing both parties throughout the history of the United States. Those who come into this book expecting a discussion of the constitutionality of presidential powers, from the Affordable Care Act to waterboarding to the dismissal of James Comey, will find an insightful book written in terms easy to understand by laypersons. However, the reading experience may not be as comfortable for all readers, particularly those with conservative leanings. The introduction constructs multiple hypothetical situations to discuss presidential powers in general that could be construed as accusatory toward the current administration. The chapter addressing the Second Amendment is likely to read as biased by more ardent supporters of that particular amendment.

¶ 75 I would recommend this book for members of the general public who want to better understand the Constitution and its implications in modern politics, but it may not be academic or objective enough for most law libraries.