American Association of Law Libraries

Law Library Journal Author’s Guide

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*Law Library Journal* is the official journal of the American Association of Law Libraries. It is published quarterly and circulates to more than 5000 members and subscribers. This guide is provided to assist authors in preparing articles for the *Journal*.

1. Content. *Law Library Journal* includes articles in all fields of interest and concern to law librarians and others who work with legal materials. Examples include law library collections and their acquisition and organization; services to patrons and instruction in legal research; law library administration; the effects of developing technology on law libraries; law library design and construction; substantive law as it applies to libraries; and the history of law libraries and legal materials. Submissions aimed at all types of law libraries and at all areas of library operations are encouraged. The *Journal* also encourages the publication of memorials to deceased members of the association.

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1. Title and Author Page. Provide a title that is brief, specific, and descriptive of the article’s content. Below the title, provide the name(s), professional title(s), and affiliation(s) of the author(s), and the address of the author to whom correspondence should be sent.

2. Abstract. Provide an abstract of fifty words or less.

3. Table of Contents. If the article is divided into headings and subheadings (which is preferred), provide a table of contents telling where in the text each heading is found.

4. Text. The entire text, including quotations, should be typed double-spaced with 1½ inch margins on all sides. Quotations of fewer than fifty words should be enclosed in quotation marks; quotations of fifty or more words should be blocked off and indented an additional inch on the left and right. Footnotes should be identified in the text by superscript numbers.

5. Footnotes. Acknowledgments (if any) should be preceded by an asterisk and placed before the first footnote. Footnotes should follow the form of the AALL Universal Citation Guide (2d ed. 2004) where applicable. For matters not covered in the UCG, use the form of The Bluebook (19th ed. 2010).

6. Appendices, Bibliographies, Tables, and Illustrations. Supplementary materials, such as appendices and bibliographies, should be provided on separate pages. Each table, illustration, and all similar material that is to be published within the text should be individually numbered (e.g., “Table 1”). Indicate the desired placement by providing an appropriate instruction within brackets in the text (e.g., [Insert Table 1]). Camera-ready copy must be supplied for all illustrations.

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The author (one designated author, if there are multiple authors) will receive a clean copy of the manuscript before it is sent to the printer. The copy must be proofread, approved, and returned within 15 days. Before publication, the author will be asked to agree to the Journal’s policy on classroom photocopying, which is published in each issue of the Journal. Upon publication, the author will receive two free copies of the issue in which the article appears, plus twenty-five individual offprints of the article itself. A form for ordering additional reprints will be sent to the author at the time the issue is published.
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The Need for Faculty Status and Uniform Tenure Requirements for Law Librarians*

Carol A. Parker**

Various statuses, tenure tracks, and performance review standards exist in law librarian tenure or continuous appointment policies. Professor Parker argues that law library leaders should insist on faculty status for librarians, develop uniform performance review standards for retention and promotion policies, and support scholarship with workshops and time off from administrative duties to write.

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Introduction

1 Literature on the subject of tenure or continuous appointment opportunities for nondirector academic law librarians primarily centers on two themes—surveys of how many law librarians have opportunities to pursue tenure or continuous appointment, and explorations of why it is personally and profession-
ally important for law librarians to have these opportunities. There has been less discussion of how the possession of faculty status relates to tenure, or what performance standards should be used to review law librarians for promotion, retention, and tenure or continuous appointment decisions. Faculty status for law librarians received some attention a few decades ago, but the concept is not much discussed of late nor is it singled out as being particularly significant. Discussion of performance review standards tends toward brief acknowledgments that wide variations in approaches exist.

As a profession, law librarians have not taken a clear stand on the importance of academic librarians’ holding faculty status, nor have they undertaken the work of creating model policy recommendations or guidelines identifying specific performance review factors for tenure considerations. This is in contrast to positions taken by the Association of College and Research Libraries (ACRL) endorsing faculty status for academic librarians and adopting tenure policy guidelines that include specific performance review factors.

This article reports data gathered in an August 2009 informal survey of law libraries that currently provide tenure or continuous appointment opportunities for academic law librarians [hereinafter 2009 Survey]. The survey results revealed that if law librarians have the ability to attain tenure or continuous appointment they are likely to hold faculty status. However, the results also showed that law libraries continue to employ widely varying performance review standards to assess librarians for tenure or continuous appointment.

The article begins by looking at the significance of faculty status for librarians, and discusses how that leads naturally to librarians’ having opportunities to

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attain tenure or continuous appointment. It next considers the ideal of tenured status and continuous appointment—what benefits are gained from such systems and what the implications of the concept of academic freedom that underpins the justification of tenure are for librarians.

The article then discusses variations seen in the tenure tracks currently in use for law librarians, and looks in depth at variations in performance review standards. It identifies potentially adverse consequences to the profession that can result from employing inconsistent performance review standards. Potentially adverse consequences include weakening support for law librarians’ holding faculty status and being able to attain tenure; creating challenges associated with the portability of tenured status once it is obtained due to difficulties in assessing whether a lateral candidate has demonstrated a body of work sufficient to warrant tenure on another library faculty; and creating confusion over how newly emerging roles within the profession of librarianship, such as teaching formal classes within law schools, should be treated in tenure policies.

The article concludes that library directors and other leaders within the profession must insist on faculty status for law librarians and must develop more robust programs for encouraging librarian scholarship, including workshops and time off from administrative duties to write. Law librarians must also make a concerted effort to employ more uniform and consistently rigorous standards for assessing performance for tenure or continuous appointment decisions.

It should be noted that throughout this article the need for law librarians to have tenure or continuous appointment opportunities is taken as a given; thus, revisiting arguments for and against tenure or continuous appointment for librarians is largely outside its scope. Nevertheless, I hope this article will fan the flame of support for librarian tenure, in light of continuing assaults upon it.

It should also be noted that much of the discussion in this article is equally applicable to both tenure and other similar forms of continuous appointment. Both provide many of the same benefits and, in turn, impose many of the same burdens. Therefore, for the sake of readability, the term “tenure” is used to refer to both tenure and other forms of continuous appointment that require similar processes, procedures, and commitments, unless it is necessary to distinguish between the two for purposes of clarity.

Methodology

To inform this discussion, a review was undertaken of law librarian and general librarian literature on the topic of faculty and tenured statuses for academic librarians. Additionally, an informal survey of academic law libraries that currently provide tenure opportunities for law librarians (the 2009 Survey) was distributed

5. Many law school faculties seemingly remain unable to grasp why librarians should hold tenured or continuous appointments, often pointing to a lack of need for academic freedom for librarians to do their work, despite the significant research and teaching components involved in librarians’ work. Because it has not automatically been given, and is often contested, there is still much debate centered on the notion of whether librarians “deserve” faculty status and tenure. See, e.g., Donovan, supra note 3.

6. See infra ¶¶ 17–23 for a discussion of the differences between the two.
to gather data on faculty status and standards and procedures currently used in tenure decisions. In particular, the survey asked law library directors whose institutions currently provide tenure opportunities for nondirector librarians

1. whether the law librarians hold faculty status;
2. what track is used to determine their academic status and tenure opportunities, i.e., a law school skills track, a university library track, or a separate law library track; and
3. what factors are considered in evaluating performance for tenure, e.g., librarianship, teaching, scholarship, or service.

¶10 The information gathered in the 2009 Survey builds on previous surveys on these topics, especially a 2001 survey conducted by law librarians at Texas Tech University School of Law, as well as data on law librarian status collected by AALL’s Academic Law Libraries Special Interest Section (ALL-SIS) Continuing Status/ Tenure Committee. The 2009 Survey generated fifty-six responses. These responses represent 47.5% of the libraries identified by the ALL-SIS Continuing Status/Tenure Committee in 2009 as providing tenure or some other form of enhanced employment status for nondirector law librarians.

Faculty Status and Shared Governance in Law Libraries

¶11 Librarians working in American colleges and universities began demanding—and receiving—faculty status in recognition of being the equals of teaching faculty more than fifty years ago, and particularly during the 1960s and 1970s. Hand in hand with achieving faculty status came attainment of more educational degrees; pursuit of continuing education opportunities; participation in campus governance; and opportunities to conduct original research, apply for internal and

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7. The complete survey form is included as the appendix.
8. Blackburn et al., supra note 1.
9. The 2009 ALL-SIS data listed information for 182 U.S. law schools, indicating that 118 law libraries provided some form of enhanced status for law librarians (forty-three provided tenure-track opportunities; and seventy-five had some type of continuous appointment status). The data were revised in 2010 but show very little change. ALL-SIS Continuing Status/Tenure Comm., Academic Law Librarian Tenure and Employment Status Survey, http://www.aallnet.org/sis/allsis/cst/index.html (last updated Apr. 6, 2010).
10. The survey was administered using Survey Monkey (www.surveymonkey.com) during August 2009; participation was solicited via e-mail postings to the Law Library Directors’ listserv and the ALL-SIS listserv. It was deliberately kept brief to encourage participation. Responses from institutions that do not currently provide tenure or continuous appointment opportunities were deleted, as were duplications and a few responses that were started but not completed. Some answers were edited based on explanations and comments provided. For instance, a few respondents checked “other equivalent” rather than “continuous appointment” to describe their systems, but their comments and explanations indicated it would be accurate to count these as forms of continuous appointment. In other instances, references to faculty tenure-track options applicable only to library directors were eliminated in order to report data focusing on nondirector law librarians. All 2009 Survey results are on file with the author. Some of the survey results are also referenced in a companion piece to this article. Carol A. Parker, Challenges Associated with Providing Tenure and Continuous Appointment Opportunities for Academic Law Librarians, available at http://ssrn.com/abstract=1490113 (forthcoming in 103 LAW LIBR. J. (2011)).
external grants, publish scholarship, and teach classes. Attaining faculty status also meant that academic librarians had opportunities to pursue tenured status. Today, approximately one-half of college and university librarians hold faculty status.

12. During the same time period, academic law librarians also sought faculty status. As in general academic libraries, faculty status in turn led to opportunities to attain tenure or forms of continuous appointment. Over time, however, as more law schools were established, it became less likely that librarians at newer law schools would hold faculty or tenured status. Consequently, today only between one-quarter and one-third of law librarians report holding faculty status. In my survey of law libraries, which was limited to libraries that currently offer tenure or continuous appointment opportunities, nearly seventy-seven percent (43 of 56) of respondents indicated their librarians hold faculty status (see figure 1).

Figure 1. Nondirector Law Librarians Have Faculty Status

13. In the case of college and university librarians, ACRL has taken a clear stand on the question of faculty status and unequivocally recommends that academic librarians should hold it, given the contributions they make “in the development of

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11. See Matthew J. Simon, The Library Director’s Role in Colleges and Universities Where Librarians Are Faculty, URBAN ACAD. LIBR., Fall 1987, at 20, 20–21 (discussing the additional responsibilities that accompany the pursuit of tenure for librarians with faculty status).

12. See, e.g., Richard W. Meyer, A Measure of the Impact of Tenure, 60 C. & RES. LIBR. 110, 119 n.2 (1999) (reporting that in the early 1990s just under half of colleges provided tenure for librarians); Betsy Park & Robert Riggs, Tenure and Promotion: A Study of Practices by Institutional Type, 19 J. ACADEMIC LIBRARIANSHIP 72, 73 (1993) (of 304 institutions surveyed, 41.1% of academic librarians held faculty status, with the rest holding some form of “professional status”).


15. Id. at 45. Respondents to a 1991 survey indicated that the number of nondirector law librarians with faculty rank had already decreased to about one-quarter of the respondents. Malmquist, supra note 1, at 149.
the institution’s educational policy.” The American Association of Law Libraries (AALL) has unfortunately not taken as strong a position on the question of law librarians’ holding faculty status. In a 1987 resolution on this subject, AALL called for requiring “faculty or academic status” for law librarians, leaving open the question of exactly what “academic status” might be.

Faculty status for librarians is important because it expands librarians’ roles, making them more aware of, responsible for, and involved in the overall educational process, and raises the stature of librarians in the eyes of the teaching faculty. Matthew Simon wrote that faculty status for librarians reflects “administrative recognition of a central educational contribution and implies a partnership with classroom faculty” on the part of librarians. In some universities, by obtaining faculty status, academic librarians are able to hold ten-month appointments like teaching faculty, rather than twelve-month appointments. As faculty members, librarians are hired through rigorous processes similar to those undertaken to recruit teaching faculty. Librarians with faculty status participate in campus governance and have comparable criteria for retention, promotion in rank, and tenure. Tenured faculty status, of course, is also regarded as providing a high level of employment security, academic freedom for its recipients, and somewhat higher salaries. Additionally, law schools, universities, and the profession of law librarianship as a whole benefit from the institutional and professional service that librarians provide.

17. Proceedings of the 80th Annual Meeting of the American Association of Law Libraries, Held in Chicago, Illinois, Business Sessions July 6–8, 1987, 79 LAW LIBR. J. 791, 831 (1987) [hereinafter AALL Resolution on Faculty or Academic Status]. Debate concerning the resolution language reflected concern that “academic status” was potentially ambiguous and very likely would be interpreted as something less than faculty status. The record shows that “academic status” was added as an alternative to “faculty status” because of concerns that conferring faculty status would subject librarians to the same promotion and retention requirements as the teaching law faculty. Id. at 832–33.
18. Freehling, supra note 2, at 889–90.
19. Simon, supra note 11, at 20 (footnote omitted).
21. See Christopher J. Hoeppner, Trends in Compensation of Academic Law Librarians, 1971–91, 85 LAW LIBR. J. 185, 192 (1993). In the late 1970s and early 1980s, demanding faculty status and tenure opportunities was a “hot” topic among law librarians, and several salary surveys from that era seemed to confirm a link between tenured faculty status and a somewhat higher salary for librarians. Id. However, a recent study of ARL libraries showed that faculty status and tenure had no effect on librarian salaries. Deborah Lee, Faculty Status, Tenure, and Compensating Wage Differentials Among Members of the Association of Research Libraries, 26 ADVANCES LIBR. ADMIN. & ORG. 151 (2008). In private conversations with the author on the topic of tenured faculty status and compensation, at least one sitting law library director argued that tenure systems can actually depress librarian compensation, leading to lock-step systems that allow for little or no merit increases, or leading to trading job security for market-rate salaries. For those interested in librarian compensation issues, AALL publishes a biennial salary survey of its members. A close review of the data for academic law librarians indicates that several factors weigh in salary determinations—tenure is one of them; other factors are longevity at the job and whether a librarian has a J.D. degree, teaches, or supervises others. AM. ASS’N OF LAW LIBRARIES, THE AALL BIENNIAL SALARY SURVEY & ORGANIZATIONAL CHARACTERISTICS at S-3 to S-29 (2009), available at http://www.aallnet.org/products/pub_salary_survey.asp (online version available only to AALL members).
ians with faculty status typically contribute, often as requirements for attaining tenure.22 Along with the rewards of faculty status come expectations of participation in shared governance as well as peer review, professional excellence, and research and publication.23

¶15 The concept of shared governance also deserves mention in any discussion of faculty status for librarians. By holding faculty status, one acquires a right to participate in the shared governance of the institution. According to the American Association of University Professors (AAUP), shared governance is “[o]ne of the key tenets of quality higher education” and “refers to governance of higher education institutions in which responsibility is shared by faculty, administrators, and trustees.”24

¶16 However, shared governance is both a benefit and burden. Fully implemented, shared governance gives teaching faculties primary responsibility for fundamental areas such as “curriculum, subject matter and methods of instruction, . . . and those aspects of student life which relate to the educational process.”25 Shared governance in a library setting should give librarians a say in determining a library’s mission, values, direction, and programming, and the ability to participate in development of policies for “the hiring, review, retention, and continuing appointment of their peers.”26 Library directors can benefit from sharing some responsibility with non-director law librarians.27 Shared governance should also give librarians a say in determining a law school’s curriculum on legal research skills instruction, based on their expertise in this area.

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22. See Huddleston, supra note 2, at 41; Simon, supra note 11, at 20.
23. ACRL Guideline, supra note 4, at III.B.
24. Am. Ass’n of Univ. Professors, Informal Glossary of AAUP Terms and Abbreviations, http://www.aaup.org/AAUP/about/mission/glossary.htm (last visited Oct. 27, 2010). The AAUP definition of shared governance also states that faculty should participate in “personnel decisions, selection of administrators, preparation of the budget, and determination of educational policies.” The practical application of shared governance, however, rarely includes faculty involvement in anything more than development of the curriculum, and decisions on whom to tenure and whom to promote. These requirements are generally listed in faculty handbooks.
25. Id. See also Ass’n of Coll. & Research Libraries, Guidelines for Academic Status for College and University Librarians (approved Jan. 23, 2007), http://www.ala.org/ala/mgrps/divs/acrl/standards/guidelinesacademic.cfm (“The library exists to support the teaching, research, and service functions of the institution. Thus librarians should also participate in the development of the institution’s mission, curriculum, and governance. Librarians should participate in the development of policies and procedures for their library including the hiring, review, retention, and continuing appointment of their peers.”). Librarians first became eligible for AAUP membership in 1956 if they held faculty status. Huddleston, supra note 2, at 37.
26. Ass’n of Coll. & Research Libraries, supra note 25. For example, library directors might invite program review by the library faculty, and work to achieve consensus among the library faculty on programming elements whenever possible. Hersberger, supra note 20, at 364–65.
27. “It must be the joint responsibility of management and librarians to set operational objectives and to develop programs to realize those objectives.” Hersberger, supra note 20, at 364. However, it should be acknowledged that implementation of shared governance in a library setting can be challenging. For an in-depth discussion of the challenges librarians and their directors face in implementing shared governance see Parker, supra note 10, at 10–14.
Benefits and Responsibilities Associated with Tenure or Continuous Appointment

¶17 Holding faculty status and contributing to the shared governance of a law library should lead naturally to law librarians’ having opportunities to attain tenure. AALL and ACRL both endorse academic librarians’ having tenured or continuous appointment status. 28 Exactly what tenure encompasses, however, proves difficult to define, and many misconceptions are associated with it.

¶18 Defining tenure is no easier when examined in the context of librarian roles. 29 Tenure is not simply a guarantee of lifetime employment, as is commonly thought. 30 As explicated by the AAUP, tenure seeks to guarantee that educators will be afforded academic freedom in their teaching and research pursuits—important

28. AALL Resolution on Faculty or Academic Status, supra note 17; ACRL Joint Statement, supra note 4. The 1987 AALL resolution also called for “tenure or a form of security of position reasonably similar to tenure . . . .” The resolution states in relevant part:

THEREFORE BE IT RESOLVED that the American Association of Law Libraries urges universities and law schools to recognize academic law librarians as partners in the educational enterprise and to extend to them the rights and privileges which are not only commensurate with their contributions, but are necessary if they are to carry out their responsibilities; and

BE IT FURTHER RESOLVED that the Association calls on academic institutions to grant formal faculty or academic status to law librarians, either through their law faculty, law library faculty, University library faculty, or general university faculty, thereby recognizing them as professional academic employees; and

BE IT FURTHER RESOLVED that since faculty or academic status entails for law librarians rights and responsibilities similar to those of other members of the faculty, they should have proportional entitlement to promotion, compensation, leaves, and travel funds; and they should be offered a program leading to tenure or a form of security of position reasonably similar to tenure; and

they should go through a similar process of evaluation and meet appropriate standards for appointment, promotion, and the grant of related benefits; and evaluative criteria should reflect the unique responsibilities of law librarians in the academic mission of the law school . . . .

AALL Resolution on Faculty or Academic Status, supra note 17, at 831–32.

It should also be noted that the question of faculty and tenure status for library directors, as opposed to nondirectors, has seemingly been settled, although there are continual threats to this status. See Barbara Bintliff, Update on Proposed Changes to ABA Standard 603(d): Faculty Status and Tenure for Law Library Directors, ALL-SIS NEWSL., Fall 2005, at 7, 7. Of course, the larger question still remains as to whether anyone—teaching faculty and librarians alike—should have tenure. As noted supra ¶7, this article assumes that tenured or continuous appointment status for law librarians is appropriate and desirable; however, that fact continues to be debated in the literature. A recent piece by Spencer Simons on the topic of law faculty tenure for library directors gives some perspective on the arguments for director faculty and tenure status, as well as the arguments against tenure generally. Spencer L. Simons, What Interests Are Served When Academic Law Library Directors Are Tenured Law Faculty? An Analysis and Proposal, 58 J. LEGAL EDUC. 245 (2008). See also Donovan, supra note 3, at 390; Huddleston, supra note 2, at 43 n.27.

29. The 1987 AALL resolution did not attempt to define tenure, but the Association of College and Research Libraries provides this definitional statement referencing academic librarians:

Tenure, or continuous appointment, is defined as an institutional commitment to permanent employment to be terminated only for adequate cause (for example, incompetence, malfeasance, mental or physical disability, bona fide financial exigency) and only after due process. Tenure (continuous appointment) shall be available to librarians in accordance with provisions for all faculty of the institution.

ACRL Guideline, supra note 4, at III.A.

30. “Faculty tenure in higher education is, in its essence, a presumption of competence and continuing service that can be overcome only if specified conditions are met. Faculty tenure is similar to civil service protection and to judicial tenure. It is not a lifetime guarantee of a position.” Donna R. Euben, Tenure: Perspectives and Challenges (Oct. 2002), http://www.aaup.org/AAUP/protect/legal/topics/tenure-perspectives.htm.
components in realizing the common good that education provides. Tenure is also a condition of employment, providing enough economic security to make fulfillment of a faculty member’s obligations to students and society a more attractive proposition. A faculty member is expected to give something, and continue to give something on an ongoing basis, in return for receiving tenure.31

¶19 It is important to understand how this link between tenure and academic freedom potentially affects librarians when they seek to justify having tenure opportunities on par with teaching faculties. Academic freedom protections apply to research, teaching, faculty governance responsibilities, and extramural speech32—all of which librarians often engage in—yet some have argued academic freedom is not necessary for the work of law librarians. James Donovan specifically took up the question of whether academic freedom is needed for the exercise of librarianship. He argued that it may not be, and that if tenure only provides law librarians with economic protection, then their demands for tenure amount to nothing more than hollow arguments.33

¶20 The lesson to take from this is the importance of law librarians’ engaging in faculty governance, publishing, and if possible, teaching, if they are to hold tenured status. Granted, some authors, including Donovan, try to escape this conclusion by arguing that librarianship by itself is sufficiently similar to the contribution to the

31. The most influential statement concerning academic freedom and tenure to date—the statement that is referenced in most modern university faculty handbooks and governance documents—is the AAUP’s 1940 Statement of Principles on Academic Freedom and Tenure, which has this to say about the need for academic freedom and tenure:

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to ensure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.

Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.


33. Donovan, supra note 3, at 391–97. See also Huddleston, supra note 2, at 38–39 (arguing that if librarians teach research effectively, then they do not need the protection afforded by academic freedom and tenure because teaching a skills class is objective work, and not equivalent to the work of doctrinal teaching faculty who might be working to define the principles of their discipline). But see Barbara Bintliff, The Roles and Status of the Academic Law Library Director, in THE LAW SCHOOL LIBRARIAN’S ROLE AS AN EDUCATOR 121, 130 (2008) (listing reasons why academic law library directors require tenure). Bintliff has also argued that academic freedom is necessary for academic librarians in any case. Id. (“Providing information resources to support new initiatives is equally controversial, as librarians well know.”)
educational process that teaching faculty make. One example offered in support of this argument is that reference desk service, properly done, is informal instruction by another name.34 Yet even in making this argument, Donovan acknowledges that the more librarians diverge from the requirements of teaching faculty, the more they risk being assigned “hollow” faculty status or becoming ineligible for tenure.35

¶21 Complicating the picture is the fact that a number of institutions provide continuous appointment opportunities instead of tenure for law librarians. Having a continuous appointment has been explained by Brian Huddleston as having “an employment contract that states the terms and conditions of service. The contracts also often provide some level of presumption that they will be renewed and specify that non-renewal or dismissal can only occur under specific, limited circumstances.”36

¶22 The status of librarians with continuous appointments can be less than clear-cut. Evidence of this is seen in the wide range of vocabulary used by those who appended comments to the 2009 Survey to describe statuses other than tenure: “continuing appointment,” “employment security status,” “term appointment,” “extended term contract,” “long-term contract,” and “permanent status.” Continuous appointment status is also sometimes associated with nonfaculty statuses described as “academic staff” or “professional staff”—something less than faculty status but more than at-will employment status. Teaching faculty may interpret such labels, which do not fit within their vocabulary of faculty status and tenure, as indicative of a status inferior to their own.37

¶23 It is not clear whether there is any attempt made in situations of continuous appointment statuses other than tenure to link librarian roles with a need for academic freedom protections. If not, it implies that continuous appointment might also require less in the way of the responsibilities and burdens that relate to academic freedom guarantees and faculty status. Conversely, however, some librarians who hold these more ambiguous statuses are expected to demonstrate the same level of accomplishment as librarians on a more traditional tenure track in order to obtain a continuous appointment. In fact, some continuous and permanent appointments are actually associated with faculty status,38 and ACRL and AAUP statements defining tenure use the idea of “continuous appointment” to explain part of what tenure represents.39

34. See Donovan, supra note 3, at 396.
35. Id. at 386.
36. Huddleston, supra note 2, at 35.
37. In fact, Brian Huddleston has described continuous appointments as less prestigious and less secure than tenure appointments. Id.
38. In some respects, forms of continuous appointment solve one of the problems associated with tenure—the fear that faculty will “retire on the job” without repercussion—by providing opportunities for continuous, periodic, meaningful review after permanent employment status is obtained. See Simons, supra note 28, at 249–50 (briefly describing the arguments against tenure generally). Arguably, though, the level of scrutiny and analysis is different when deciding whether one should get another three or five years under a continuing appointment system, versus whether one should get what is essentially a lifetime appointment. Which approach is preferable or more rigorous is debatable.
39. ACRL Joint Statement, supra note 4; Am. Ass’n of Univ. Professors, supra note 24 (using the term “continuous tenure”).
In general, about one-quarter of law librarians currently report having opportunities to achieve tenured status at their institutions. Roughly another forty percent have opportunities to secure some form of continuous appointment. The remaining one-third simply work as at-will employees.40

In the 2009 Survey, which was limited to libraries that already provide tenure or continuous appointment opportunities, more than fifty-five percent of respondents indicated that law librarians at their law schools could obtain tenured status (31 of 56). The other forty-five percent could obtain a form of continuous appointment (25 of 56) (see figure 2).

Notably, the thirty-one libraries responding to the survey that offer librarians a tenure track also regard librarians as faculty members. The fact that their librarians, who can obtain tenure, all hold faculty status is not surprising, given that traditionally one must be a faculty member in order to pursue and hold tenure in its fullest expression. However, there was no corresponding clear association between librarians holding a form of academic status other than faculty status and holding continuous appointment rather than tenure. Of the twenty-five libraries responding to the 2009 Survey that provide librarians with a form of continuous appointment, twelve (48%) give law librarians faculty status, and thirteen (52%) do not.41

It is also notable that all of the respondents indicated their law schools are affiliated with a university as opposed to being independent law schools. This may reflect broader acceptance of the concepts of faculty status and tenure for librarians employed by universities. It is also consistent with the Texas Tech law librarians’

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40. Huddleston, supra note 2, at 32.
41. It should be noted that references to faculty status in this article refer to library faculty status or university faculty status that is made available to librarians. As is mentioned infra ¶ 29, librarians other than directors rarely hold law faculty status.
survey results, which showed a correlation between tenure and affiliation with the Association for Research Libraries (ARL). In the 2001 Texas Tech survey, half of ARL-affiliated law library respondents offered tenure or continuous appointment opportunities to their law librarians—a figure that is much higher than for academic law libraries overall.42

¶28 If one parses all of the distinctions between the various labels currently used to describe law librarian status—faculty status, academic status, academic staff, professional staff, tenure, and continuous appointment—it is clear that what holds the most import for law librarians is faculty status. One can quibble about the differences between tenure and other forms of continuous appointment, but what is inescapable is the fact that only when law librarians hold faculty status can they claim a right to participate in the shared governance of the institution. Shared governance gives law librarians the ability to have a say, not only in library policies and procedures, but also arguably in the development of a law school’s educational program, particularly with respect to legal research instruction, to the great benefit of both the law faculty and law students. Participation in shared governance requires the protections afforded by the concept of academic freedom, and thus leads naturally to the protections of a tenure system.

Tenure Tracks for Law Librarians: The Emergence of Separate Law Librarian Faculties

¶29 Nondirector law librarians typically follow one of three paths to tenured or continuous appointment status: (1) a separate law school track for law librarians; (2) a university librarian track; or (3) a separate law school faculty track for clinicians, legal writing teachers, and other skills instructors.43 The 2009 Survey showed that separate law librarian tracks predominate among survey respondents—nearly 59% (33 of 56) of them provide tenure or continuous appointment options via a separate law library faculty track. Another 37.5% (21 of 56) provide tenure opportunities via a university librarian track. Only two respondents (3.6%) indicated that law librarians may pursue tenure on a law school track linked with practice, skills, or clinical instruction. None of the 2009 Survey respondents indicated that their law librarians have an opportunity to pursue tenure or continuous appointment on a regular law faculty teaching track, which would conceivably require that librarians meet the same standards as law teaching faculty. While this latter

42. While reviewing the various surveys of both general academic librarians and academic law librarians, the Texas Tech librarians were struck by the fact that while about one-third of non-director law librarians had tenure opportunities, about three-fourths of the ARL-member college and university librarians enjoyed tenure opportunities. Blackburn et al., supra note 1, at 134, ¶ 16. The Texas Tech survey indicated that tenure and continuous appointment opportunities at ARL-affiliated law libraries exceed the one-third figure reported for academic law libraries overall—nearly 40% of the ARL-affiliated law libraries responding to the Texas Tech survey provided tenure opportunities to their nondirector librarians. Blackburn et al., supra note 1, at 136–37, ¶ 23–24.

43. Previous surveys reported the first two options. Hoeppner, supra note 21, at 192; Trelles & Bailey, supra note 1, at 657–59. The third option of using a law school skills track was reported by two of the 2009 Survey respondents.
approach is common for law library directors, it was not mentioned once by survey respondents for nondirector law librarians (see figure 3).44

![Figure 3. Track Type for Tenure/Continuous Appointment](image)

¶30 Challenges are associated with each of the three approaches. With respect to a law faculty skills or practice track, librarians may be a good fit for the skills tracks seen in some law schools, particularly if they teach legal research classes, or if librarianship is equated with other practice, clinical, or skills roles that can exist within a law teaching faculty. On the other hand, there is a potential disadvantage for law librarians who do not teach in formal law school classes if the informal instruction librarians provide, or other work devoted to technical or electronic services or collection development, is not equated with the contributions made by those who formally teach. Such an approach might potentially create different statuses of librarians within the library, with librarians who teach formal law school classes able to pursue tenure, and those who do not formally teach unable to do so. It is hard to know if use of a law school skills track in the two instances reported in the survey represent special accommodations made for individuals who warranted extra effort on the part of the law school to keep them at their institutions, or if use of a law school skills track represents an emerging trend that will become increasingly common as more and more academic law librarians teach formal legal research classes.

¶31 The alternative approach of using separate library tracks presents other problems, however, including reinforcement of differences between librarians and

44. As previously noted, the question of faculty tenure for law library directors has seemingly been resolved for the time being, with tenure on the regular law teaching faculty track predominating. Simons, supra note 28, at 246 n.3. See also John Makdisi, *Improving Education-Delivery in the Twenty-First Century: The Vital Role of the Law Librarian*, 95 LAW LIBR. J. 431, 433, 2003 LAW LIBR. J. 32, ¶ 8 (emphasizing the need for academic law library directors to be faculty members). But see Bintliff, *supra* note 28, at 7 (describing continuing threats to law library directors’ ability to hold law faculty and tenured status).
teaching faculty. Nonetheless, this approach is taken by most law school libraries. Virtually all of the 2009 Survey respondents indicated tenure or continuous appointment status was attained by following a librarian track: either a university library track or a separate law library track.

¶32 Following a university library track can cause concern that the law library could be forced to yield some autonomy over operations, although ABA accreditation standards recommend that law libraries be under the control of law school deans rather than university library deans. Law librarians also may resist being held to university library tenure requirements that might not recognize the specialized nature of law librarianship.

¶33 Perhaps as a result of such concerns, the approach taken by nearly sixty percent of the 2009 Survey respondents was to create a separate law librarian tenure track. Yet the survey revealed a good deal of variation in the implementation of the concept, as shown by a number of comments:

• “We have a ‘law library faculty’ similar to the university library faculty. I pretty much copied our regulation from theirs.”
• “Our documents are part of the law school but we have academic professional status, as do all librarians throughout the greater university.”
• “The law librarians do not have their own promotion and tenure committee. We are handled by the law school P&T committee, of which we are not members (even though we are tenured, full professors).”
• “Although we are two different faculties within the law school, we have spelled out a few instances where law library faculty have the same rights

45. Dan Freehling made this point during discussion at an ALL-SIS panel presentation in 1980. Freehling, supra note 2, at 888 (“Where does a description such as ‘librarian with rank of assistant professor’ fit in all of this? I mean you never read job descriptions that say, ‘historian with rank of . . . ’”).

46. Blackburn et al., supra note 1, at 133, ¶ 12.

47. ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2010–2011 STANDARDS FOR APPROVAL OF LAW SCHOOLS 41 (Standard 602(a)), available at http://www.abanet.org/legaled/standards/standards.html (“A law school shall have sufficient administrative autonomy to direct the growth and development of the law library, and to control the use of its resources.”).

48. See Joyce A. McCray Pearson, The Director and Law School Librarian’s Role as Educator, in THE LAW SCHOOL LIBRARIAN’S ROLE AS AN EDUCATOR, supra note 33, at 31, 34 (describing specialized nature of law librarianship and differences from general academic librarianship). Involving law librarians with university library promotion and tenure tracks can lead to complicated relationships. One 2009 Survey respondent stated:

This is a lousy system. The university’s [library system] is headed by the dean of libraries . . . Although the law library is supposedly administratively independent, and is in most respects, this arrangement effectively gives the dean of libraries the ability to fire law librarians, who are hired and report through the director to the law school dean. The dean of libraries can and does override the decisions of the library college P&T [Promotion and Tenure] committee, creating considerable difficulties. The dean of libraries also uses this arrangement to perpetuate the misapprehension around the university that the law school somehow is within her jurisdiction. This arrangement should be avoided whenever proposed.

One other commentator was not as critical, but hoped to move away from a university librarian track over to a law school track: “We are pursuing autonomy from the university library. If that succeeds, the answer to this question will be ‘law school other faculty track.’”

49. This development has been tracked by previous surveys. See Blackburn et al., supra note 1, at 133, ¶ 12.
as law faculty: acceptability and recommendation votes on the law library director and law school dean; votes for representatives of the faculty committee; votes for law school representatives on university committees."

- "Years ago the law faculty recognized a small separate 'law library faculty,' which was subsequently recognized by the Provost. We have a separate librarian P&T policy which was modeled after the law faculty’s policy, and the university faculty handbook."

§34 Because academic law libraries are small in comparison with general academic libraries, law libraries may be less equipped to provide tenure-track librarians with support and mentoring during the tenure process. Law librarians can often find themselves in situations where there are too few colleagues available to undertake the peer review required in tenure systems. In these cases, law libraries need to choose between modifying the review process so that it involves fewer people, and resorting to outside reviewers. A library may determine that it is important to use outside reviewers in any case. Potential reviewers might be found at other law libraries, university libraries, or possibly even among the law teaching faculty, although arguably the teaching faculty might only be capable of reviewing scholarship, teaching, and service, and not librarianship. In light of the fact that law libraries favor creating small law library faculties rather than casting their lot with the university’s academic librarians, it would be useful for the library faculty to explore further who serves as reviewers in their systems.

§35 Also, as seen from the comment above mentioning voting rights, there can be questions of whether law librarians should have voting privileges at law faculty meetings. If law librarians are on a university librarian track, there is little basis for claiming a vote at a law faculty meeting. But if librarians are on a law faculty track, the argument for voting privileges is stronger. The separate, law librarian faculty track falls into a gray area. These tracks are typically created by the law school, so librarians could arguably claim a right to vote at law faculty meetings, except perhaps on law faculty promotion, retention, and tenure votes. Conversely, rational arguments can also be made to deny librarians votes at law faculty meetings because a separate, law librarian faculty can be distinguished from the law teaching faculty. Questions concerning voting status should be anticipated, and the answers clarified

50. The 2009 Survey asked the fifty-six respondents to provide the number of librarians at their institutions. The average was 7.14 librarians, not counting directors.

51. See generally Parker, supra note 10 (discussing mentoring and support obligations on the part of law library supervisors and directors).

52. Law librarians who aspire to move up in the profession tend to move around quite a bit in order to advance, so it is conceivable that there might be more junior faculty than senior faculty in a law library at any given time. See Jonathan A. Franklin, Why Let Them Go? Retaining Experienced Librarians by Creating Challenging Internal Career Paths: Introducing the “Executive Librarian,” 88 LAW LIBR. J. 352, 353 (1996). See also Malmquist, supra note 1, at 151.

in policy documents when a law school creates a separate law librarian faculty and tenure track.54

Factors Considered in Reviewing Law Librarian Tenure Candidates

¶36 To receive tenure, one must demonstrate a high level of competence, if not excellence, in an array of areas identified by the institution as relevant factors by which performance can be measured. The dilemma for librarians seeking to set standards for attaining tenure has always been what factors to include and how high to set the bar for candidates.

¶37 AALL and ACRL both recommend that librarian tenure policies reflect the same processes that are in place for reviewing the teaching faculties at their institutions;55 however, only ACRL has recommended performance standards for reviewing librarian tenure candidates.56 Tenure policies for academic librarians typically include the following factors for reviewing performance: librarianship; research and publishing; service to the institution, the profession, and possibly the community; and promise for continued excellence in the future.57 These factors reflect the ACRL Guideline, recommending that “performance, scholarship, and service” be considered when reviewing tenure candidates.58 In this manner, a librarianship requirement is typically substituted for the teaching requirement found in policies governing teaching faculties.59

¶38 Law librarian performance review standards are similar to those in use for most academic librarians in that librarianship is an almost universal performance review standard. However, there are variations and inconsistencies in the other factors that are used; these are described in detail in the following section.

¶39 The 2009 Survey asked respondents to describe performance factors that are considered when awarding tenure or continuous appointment to their law librarians. Librarianship, or job performance, was reported as a factor by nearly all respondents (98.2%, or 55 of 56 answers).60 A very close second was service at...
91.1% (51 of 56). Third was a category described as scholarship, research, or publishing at 85.7% (48 of 56). Teaching was fourth, considered by 44.6% (25 of 56) of respondents. This is notable given that these standards are applied to nondirector law librarians who presumably would not be required to teach as much as law library directors. However, it was not always clear from the survey results whether teaching is treated as a separate factor, or if it is considered to be a specialized service under librarianship; both approaches were evident in the survey results. Finally, 14.3% (8 of 56) reported other factors are also considered (see figure 4).

![Figure 4. Factors Considered for Tenure/Continuous Appointment](image)

The 2009 Survey thus revealed two basic approaches with respect to combinations of factors used:

1. 44.6% of respondents review performance on the basis of librarianship, scholarship, teaching, and service (25 of 56); and
2. 37.5% review performance on the basis of librarianship, scholarship, and service, but not teaching (21 of 56).

In hindsight, it is unfortunate that when AALL adopted its 1987 resolution in support of tenure for law librarians, it did not also recommend specific factors for evaluation of law librarians. The resolution simply states that “evaluative criteria should reflect the unique responsibilities of law librarians in the academic mission.

61. This result is similar to data reported in the Texas Tech survey. See Blackburn et al., supra note 1, at 140, ¶ 31.

62. One interesting variation on the basic theme was an either/or approach: “Librarianship/Job Performance is required. Two of the other three [scholarship, teaching, service] are required.” Only three respondents indicated librarianship or job performance alone was considered; these three libraries confer only forms of continuous appointment rather than tenure.
of the law school.”\textsuperscript{63} However, it is likely that variations in law library review standards among various institutions were already well entrenched at the time the resolution was adopted, and that the resolution simply reflects the realities of existing practices.

**Challenges Associated with Performance Review Standards**

**Librarianship Standards**

¶41 As already noted, the 2009 Survey revealed that virtually all respondents use librarianship as a major factor when determining whether to retain, promote, or award tenure to law librarians. This is consistent with data from previous surveys.\textsuperscript{64}

¶42 In setting performance review standards, the obvious distinction between what librarians and teaching faculties do in their respective roles must be a prime consideration. Few institutions are willing to give librarians a free pass on their job performance as librarians—meaning few would review librarians solely on the basis of scholarship, service, and possibly teaching. Almost all want librarianship to be an important factor in the review process.\textsuperscript{65} But challenges exist when trying to evaluate librarianship as a performance factor.

¶43 Beyond serving the needs of law faculties and students, public services law librarians may be expected to serve secondary patron populations including lawyers and judges, faculty and students from other educational institutions, students in paralegal programs, government and court system employees, and members of the general public. Often these service demands also require that law librarians provide robust, expert support for law faculty research and scholarship, provide legal research instruction to law students, and at the same time serve \textit{pro se} patrons effectively and with sensitivity.

¶44 Other librarians become highly skilled specialists, perhaps focusing on collection development; developing subject specializations like foreign law, international law, or American Indian law; or developing expertise in technical services, electronic services, instructional technology support, or web page development.

¶45 Alternatively, there may be too few librarians available to permit specialization within a library, resulting in some librarians being called upon to perform multiple roles. This can lead to expectations that a law librarian should be able to demonstrate competence, if not excellence, in multiple areas of librarianship in order to attain tenure. It can also lead to assigning weights to different performance factors. This is sometimes seen in libraries that require excellent performance in two out of three or four factors, with merely a good effort necessary for the remainder.

¶46 Another challenge associated with “librarianship” as a performance review standard in tenure policies is how best to define the term. Fortunately, the invest-

\textsuperscript{63} AALL Resolution on Faculty or Academic Status, \textit{supra} note 17, at 831–32.

\textsuperscript{64} See, e.g., Park & Riggs, \textit{supra} note 12, at 75 (ninety-five percent of survey respondents used librarianship as a review factor).

\textsuperscript{65} See Donovan, \textit{supra} note 3, at 391–92.
ment made by AALL in developing its statement of Competencies of Law Librarianship\textsuperscript{66} could yield additional dividends in this context. The AALL statement of competencies could serve as a national standard to define what constitutes excellent librarianship in promotion, retention, and tenure policies. Referencing the AALL competencies in these policies would give law libraries a uniform benchmark for measuring librarianship performance. The competencies statement is updated periodically, so incorporating it by reference as a policy benchmark would allow policy documents to stay current and eliminate the need for libraries to continually update policy documents as librarian roles evolve over time. Law libraries using university-wide library policies could reference the AALL competencies to define “librarianship” through use of separate explanatory documents or appendixes.

\¶47 The AALL competencies statement is flexible enough to recognize that some law librarians are required to demonstrate specialized knowledge, skills, and abilities in certain specialized areas such as library management, reference, research and patron services, information technology, collection development, care and management, and teaching. The AALL competencies recognize these additional roles in separate sections on specialized competencies.\textsuperscript{67}

\¶48 The approach taken by the AALL in treating teaching as a specialized competency also shows potential as a means to treat teaching more consistently in librarian retention, promotion, and tenure policies. Considering teaching as a specialized competency of librarianship, rather than as a separate factor in tenure policies, would eliminate much of the inconsistency that currently surrounds the use of teaching as a tenure review standard. Teaching would simply be regarded as another specialized competency of librarianship. This proposal is discussed in more detail in the section below on teaching standards.

\section*{Scholarship Standards}

\¶49 Production of scholarly written communications should be a universal requirement for any academic librarian who seeks to attain tenure, since it is the one thing that all academic disciplines have in common.

\¶50 Some critics of tenure for librarians point to the mastery of skills associated with librarianship as being inferior and unworthy of tenure and not requiring academic freedom.\textsuperscript{68} This skills argument is a bit of a red herring, because it is uncontroversial for faculty members in other disciplines involving mastery of skills to have opportunities to attain tenure.\textsuperscript{69} More persuasive, though, is the sense that the combination of administrative and service roles with librarians’ more traditionally academic roles dilutes the need for the protections of tenure. Librarians should recognize this reality and work to overcome this prejudice by making meaningful contributions to the profession through traditional academic roles such as publish-
ing scholarly writings. The more law librarians publish, the more likely they are to gain or retain acceptance of the principle that law librarians are entitled to hold faculty and tenured status. Such efforts will ensure librarians’ contributions to the shared enterprise of legal education warrant faculty status, and the protections of academic freedom and tenure.

¶51 Daniel Ring said this about librarian scholarship and its relationship with faculty status more than three decades ago:

Faculty status for librarians has always implied a commitment to scholarship . . . . Because it is so clearly separate from the task and service aspects of librarianship, it places librarians on a common basis with teaching faculty, and it provides them the opportunity to view their positions as something more than nine-to-five jobs. Indeed, it would be no exaggeration to say that unless librarians do engage in scholarship, they are not truly faculty members.70

During the intervening years, few have said it better.

¶52 Compared to teaching faculty, librarians carry heavier service and administrative burdens. Law librarians typically are expected to be at the library at least thirty-five or forty hours a week, twelve months a year, providing service as part of the shared enterprise of operating a library. More challenging still, librarians are rarely fully in charge of their schedules. Serving law faculty, students, and frequently the public means that librarians must often make time for patrons at a moment’s notice. This situation is quite unlike the experience of teaching faculty, whose schedule is much more fully under their control. For teaching faculty, being on a tenure track resembles undergoing a program of intensive academic study—requiring much work, but doable with dedication and good time management skills. In contrast, librarians’ time management plans often are disrupted without warning by suddenly having to put the needs of others ahead of their own.71

¶53 This dilemma leads to the argument that some adjustment in the tenure requirements for librarians is in order. As James Donovan said on this point:

The challenge, then, is to make such adjustments as are necessary, but only those which are necessary. Fail to go far enough and librarians are inherently disadvantaged in the competition for academic stature; go too far and the tenure won by librarians will be regarded by teachers as being “hollow” or nominal only, failing to signify the rigorous scrutiny they had to endure themselves.72

¶54 The fear is that unless an appropriate balance can be found, there is a risk that libraries could “lose some very good librarians who [could be] denied tenure

70. Daniel F. Ring, Professional Development Leave as a Stepping Stone to Faculty Status, 4 J. ACAD. LIBRARIANSHIP 19, 19 (1978).

71. My thanks to Michelle Rigual for this observation, which was based on comparing the tenure-track experiences of family members who are on teaching faculties with what she experienced while seeking tenure as a librarian prior to becoming a director. She is not the first to make this observation. See, e.g., Editorial, Faculty Status: Playing on a Tilted Field, 19 J. ACAD. LIBRARIANSHIP 67 (1993).

72. Donovan, supra note 3, at 390. Some librarians view the differences between librarianship and regular teaching faculty as too vast to be bridged, going so far as to state that librarians are not educators, and that they most definitely perform procedural tasks that are in no way equivalent to what regular teaching faculty do. Freehling, supra note 2, at 891–92.
simply because they were not very good [at being] faculty.”73 In any case, it seems clear it would be unfair to simply impose teaching faculty performance standards upon librarians, given what else is expected of them.

¶ 55 The challenge for the law librarian profession is to find ways to craft promotion and retention policies that adequately recognize all of the roles encompassing law librarianship, and still provide a measure of balance. Given the importance to law schools of the unique role played by academic law librarians, law libraries should give librarianship more weight than other factors during performance reviews for retention, promotion, and tenure decisions. A heavy emphasis on librarianship recognizes the centrality and importance of the librarians’ primary role in the efficient functioning of the law library, while still permitting other contributions to legal education to be evaluated.

¶ 56 Scholarly research and writing can consume vast amounts of time—and require institutional support—but publishing can be what sets academic law librarians apart from other law librarians in courts, government, or private practice.74 Also, by publishing, academic law librarians can claim kinship with teaching faculty.

¶ 57 The act of writing clarifies concepts and triggers new ideas in ways that few other endeavors can. Donald Dunn argued that an obligation to publish exists for law librarians, regardless of whether faculty status or pursuit of tenure is involved.75 Adding tenure to the mix, however, certainly provides more incentive for librarians to write. What was disappointing about the results of the 2009 Survey was that it showed production of scholarship is not universally required of law librarian tenure candidates. Certainly, in comparison with general academic librarians and other teaching faculty, the extent to which law librarians are expected to conduct research, write, and publish as part of tenure requirements is less than clear-cut.

¶ 58 If three comments appended to the 2009 Survey are any indication, law libraries vary significantly in approaches taken with respect to scholarship:

- “Scholarship, in the form of law review articles, is not stressed.”
- “The scholarship requirements are very stringent.”
- “Scholarship is required, but librarianship and teaching are the most important factors for us.”

¶ 59 In contrast, the standard for what constitutes research and scholarship for general academic librarians has been elevated over the years. Whereas many academic librarians in the past might have satisfied research and publication requirements by writing internal bibliographies, today many have adopted standards that require at least applied research, if not original research.76

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73. Freehling, supra note 2, at 892.
74. Scholarship is not mentioned in the AALL statement of law librarianship competencies, either as a core competency or as a specialized competency. Arguably the competency statement: “shares knowledge and expertise with users and colleagues” could be read as implying a requirement to publish scholarship. It should be noted that the competencies are intended to apply to all law librarians, not just to those in academic law libraries. Am. Ass’n of Law Libraries, supra note 66.
75. Donald J. Dunn, The Law Librarian’s Obligation to Publish, 75 LAW LIBR. J. 225, 231 (1982).
76. Hersberger, supra note 20, at 362 (noting nevertheless that while original research might set the standard, few librarians have the time to pursue it). But see Park & Riggs, supra note 12, at 75–76.
¶60 As a profession, law librarians should work to achieve an elevation of scholarship standards for tenure, similar to what general academic librarians have experienced over time. It is more important than ever for law librarians to distinguish themselves as scholars. As a profession, academic law librarians do themselves no favor if they accept inconsistent standards for scholarship requirements for tenure. Not only do inconsistent standards for law librarians put justification of faculty and tenure statuses at risk for all, inconsistent standards mean that the profession of law librarianship may not be advanced to the fullest. When Dunn urged law librarians to publish, he argued that scholarship is important for its own sake. Dunn lamented the fact that few librarians were publishing their work. He also lamented an emphasis in the literature on librarians needing to write because of the “publish or perish” phenomenon, because he saw the need to publish as one of professional responsibility.77

¶61 Scholarship is important because it is the coin of the realm in the academy; it is how one gives voice to one’s ideas and, in turn, has one’s voice heard by other academics. In the “economy of prestige”78 within the academy, scholarship is how you earn your reputation and communicate ideas. If you do not publish, you are not a credible witness to your ideas. Scholarship gives ideas and arguments weight they would not have if they were merely conveyed orally, or were limited to an internal audience. Within the academy, if you want to influence or persuade, you must publish your ideas and arguments.

¶62 It is also important for today’s nondirector law librarians to write because it is from this cohort that the law library directors of tomorrow will emerge. It is essential that academic librarians have opportunities to master the art of writing to compete effectively for director positions that are part of the tenure-track law teaching faculty.

¶63 One of the challenges for the profession in the future will be to find more ways to support the scholarly initiatives of librarians. Law school administrators and law library directors must resolve to provide nondirector law librarians with time to write. In addition, law librarians must resolve to meet regularly in workshop settings to critique and encourage one another’s scholarship.79 Law faculties routinely present scholarly works at conferences. This practice needs to be more widely adopted by academic law librarians, especially if they are going to hold faculty and tenured status.

¶64 Scholarship workshops for law librarians could be a regular part of programming offered by ALL-SIS at AALL annual meetings. A good example of what is possible is the “Conference on Legal Information: Scholarship and Teaching.” Created by Barbara Bintliff as part of the University of Colorado Law School’s Boulder Summer Conference Series, twenty law librarians gathered at this confer-

In their survey, scholarship was considered at the institutions of only 62.2% of survey respondents, and there was additional evidence that scholarship was often not central to the review process: “The belief that librarians must publish or perish may be based on anecdotal evidence or on a few highly publicized cases, rather than established as fact.” Id.

77. Dunn, supra note 75, at 231.


79. The companion piece to this article describes in detail ways directors can support librarians’ pursuit of scholarship and teaching opportunities. Parker, supra note 10, at 23–27.
ence in 2009 after the annual CALI meeting, and again in 2010 prior to the annual AALL meeting, to present, critique, and support one another’s scholarship.\textsuperscript{80} The conference is not part of AALL programming, but it is a good example of the type of programming AALL should be offering.\textsuperscript{81} These types of initiatives, if sustained, will have the effect of raising expectations as to what should constitute scholarship for law librarian tenure performance standards, as well as advancing the profession of law librarianship generally.

\textsuperscript{65} Of course, this is not to say that no law libraries are currently using rigorous publications requirements to evaluate tenure candidates. A great many of them clearly do. However, as a profession, it is important that academic law librarians work to ensure that all libraries employ more consistent standards in this regard.

### Teaching Standards

\textsuperscript{66} Law librarians have a long tradition of providing instruction in law school settings. This tradition encompasses the bibliographic instruction, information literacy instruction, and informal instruction that occur regularly at the reference desk. Increasingly, growing numbers of nondirector law librarians also teach formal law school courses, primarily in legal research skills. These courses consist both of stand-alone courses\textsuperscript{82} and courses that integrate research with writing instruction,\textsuperscript{83} and they are growing in number in response to perceived deficiencies in current first-year legal research instruction programs.\textsuperscript{84} Consequently, law librarians are increasingly involved with teaching legal research skills in law schools. Also, more law librarians than ever hold J.D. degrees, which may lead to greater acceptance of

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\textsuperscript{81}. AALL does offer a variety of programming and initiatives to support librarian scholarship, including a Publishing Initiatives Caucus (www.aallnet.org/caucus/pic/index.htm). However, most of these initiatives focus on writing and publication tips rather than on providing substantive critique of works in progress. Other regular programming at AALL meetings includes the AALL LexisNexis Call for Papers Awards (www.aallnet.org/about/award_call_for_papers.asp) and a Writers’ Workshop hosted by the AALL/LexisNexis Call for Papers Committee (see \textit{Writers’ Workshop Offered at AALL 2010 Annual Meeting}, \textit{Strategic Librarian} (Apr. 7, 2010), http://strategiclibrarian.com/2010/04/07/writers%E2%80%99-workshop-offered-at-aall-2010-annual-meeting/), both of which focus on how-to tips.


law librarians in the classroom.\textsuperscript{85} The recent Carnegie Report,\textsuperscript{86} in particular, has led many schools to reevaluate the extent to which skills training is provided within the curriculum. This may signal increasing interest on the part of law schools in providing more skills instruction in the curriculum, which must also include legal research skills.\textsuperscript{87} With all of these forces at work, it should not be surprising to find that many law libraries now evaluate teaching performance during retention, promotion, and tenure reviews.

\textbf{¶67} How to treat teaching when it is required of librarian tenure candidates appears to be an area where a variety of approaches are used. Three comments from the 2009 Survey are illustrative:

- “Teaching is part of job performance for our public services librarians.”
- “Librarians may teach as adjuncts but it is outside the scope of their librarian duties; teaching may be considered scholarship or service.”
- “Librarians are expected to teach at least one legal research class in the law school every academic year; often some teach more than one.”

\textbf{¶68} In these three comments alone, we see a library that expects formal classes and evaluates teaching as a separate factor; a library that treats teaching as part of job performance; and a library that equates teaching with scholarship or service because it did not otherwise have a category for it. The challenge for law librarians, then, will be to develop a more consistent strategy for reviewing law librarian teaching, rather than leaving it open to interpretation, with potentially widely varying results.

\textbf{¶69} In the 2001 Texas Tech survey, only five of thirty-two libraries (15.6\%) that offered tenure or another form of protected academic status to law librarians required classroom teaching in the area of legal research, legal bibliography, or legal writing, in order to achieve these statuses.\textsuperscript{88} While the 2009 Survey figure on teaching is higher than this, the Texas Tech survey distinguished between formal classroom teaching and other forms of instruction, and the 2009 Survey did not. The 2009 figure may be higher because librarians are teaching more, or it may be higher because informal and formal teaching were combined in the survey results. In light of indications that librarians could be teaching more in response to the curricular reform movement, it would be useful to gather more data in this area in the future.

\textbf{¶70} Moving ahead, it would also be a good practice for the profession to explicitly track the different ways law librarians provide instruction in today’s law schools. Unfortunately, law librarians do not yet systematically gather data on the

\textsuperscript{85} Jeff Woodmansee, Information Services Specialist at the University of Arkansas at Little Rock, posted an informal survey on legal research instruction models to the ALL-SIS listserv in 2009. Among other questions, he asked: “Do law librarians teach legal research at your school? If so, are they dual degree librarians?” Twenty-eight librarians replied, with nearly all indicating that they teach legal research at their schools and that they are all dual degree. (Survey responses on file with author.)

\textsuperscript{86} William M. Sullivan et al., Educating Lawyers: Preparation for the Profession of Law (2007).

\textsuperscript{87} For an excellent, and pithy, overview of the curricular reform movements over the years, including the Carnegie Report, see Alford, supra note 80, at 304–06.

\textsuperscript{88} Blackburn et al., supra note 1, at 140, ¶ 30.
extent to which they teach. It is thus nearly impossible to get a sense of exactly how much librarian teaching is occurring. Until the legal research instruction that law librarians provide in law schools is reliably tracked, law librarians can look to the Association of Legal Writing Directors’ (ALWD) annual survey. The ALWD survey reports on formal librarian teaching; however, it does not capture informal librarian teaching. Annual ARL statistics for law libraries also capture librarian teaching activities, both formal and informal, but participation in this survey is limited to ARL-affiliated law libraries.

One particular area of interest in undertaking the 2009 Survey was to inquire about faculty status for law librarians. However, with respect to whether faculty status plays a determinative role in whether teaching is likely to be a performance factor, there was no clear association seen in the survey results. Among the 2009 Survey respondents whose librarians hold faculty status and can attain tenure (thirty-one in total), there was an even split between libraries that use teaching as a performance standard, and those that do not. Of the respondents whose librarians hold faculty status and can attain continuous appointment status (twelve in total), eight use teaching as a factor, and four do not. Among the respondents whose librarians do not hold faculty status but can attain continuous appointment (thirteen in total), only three use teaching performance as a review factor. The latter figure may be the only indication of a possible association seen in the survey results—the lack of faculty status tends to be associated with the lack of a teaching requirement. The data are otherwise too mixed to show other associations between library faculty status and the likelihood that teaching will or will not be evaluated when librarians are considered for promotion, retention, or tenure.

As previously noted, adopting the AALL competencies as a means for defining librarianship in tenure policies would allow for treatment of teaching as a specialized competency for law librarians. This approach would avoid the necessity of treating teaching as a separate performance review factor that is distinct from librarianship. Such an outcome would eliminate many of the inconsistencies currently surrounding use of teaching as a tenure review standard by simply making teaching another specialized competency of librarianship, like collection development or electronic services. Approaching teaching in this manner would allow law libraries to move toward a national standard that is not so restrictive that it causes

89. The ALL-SIS Statistics Committee proposed a supplement to the ABA annual questionnaire that included reporting instructional services. ALL-SIS Statistics Committee, 2009 Supplemental Annual Questionnaire (June 30, 2008), http://www.aallnet.org/sis/allsis/committees/statistics/all-sis_survey-063008.pdf.

90. Each year the ALWD Legal Writing Institute surveys its members, asking who teaches legal research at their law schools. The 2010 survey, which had responses from 191 schools, reported that at fifty-six schools (29%) research is taught by librarians and at sixty-eight schools (35%), both legal writing faculty and librarians teach legal research. Respondents were permitted to choose more than one option, so there may be some overlap between these two numbers. ASS’N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY, at i, 11 (2010), http://www.lwionline.org/uploads/FileUpload/2010Survey.pdf. The ALWD survey data means that at more than 35% of schools, law librarians have no involvement in legal research instruction.

problems for librarians who do not currently teach, but is flexible enough to allow teaching, when it occurs, to be fully and consistently evaluated.

¶73 Regardless of whether libraries elect to regard teaching as a specialized competency, tenure policies should clearly state that teaching roles exist for many librarians. Policies should recognize that teaching can occur both formally and informally, and clarify whether both formal and informal teaching will count, and if so, how performance will be measured. Making clear statements about librarian-provided instruction in retention, promotion, and tenure policies is important, not only for policy clarity, but also to remind law faculty members and other non-librarians who might read these policies of the similarities that exist between them and academic librarians. Recognizing that librarians can and do teach in retention, promotion, and tenure policies advances the perception of librarians as “partners in the educational enterprise”92 of modern law schools.

Service Standards

¶74 Nearly all of the respondents to the 2009 Survey reported using service as a factor in performance reviews for retention, promotion, and tenure decisions.93 Even the handful of respondents who did not consider either scholarship or teaching in tenure reviews considered service in addition to librarianship. This is consistent with results in previous surveys of both law librarians and college and university librarians.94 Yet while service appears to be a near-universal “third prong” in tenure policies, it occasionally appears to be used as a catch-all term to capture many different concepts. It is also often used to emphasize service to the profession via participation in professional organizations, rather than institutional or community service.95 Further, some of the survey respondents reported using the term “service” to capture “professional development,” rather than service to the community, the institution, or the profession of law librarianship in the traditional sense teaching faculties would refer to service in tenure policies. And as noted earlier, some survey respondents even reported using “service” as a means to consider scholarship and teaching when those standards are not otherwise specifically required by their policies. Examples of the wide range of applications can be seen in some of the survey responses:

- “The three areas of consideration are job performance, professional development, and service.”
- “Professional development includes a range of activities which includes scholarship/research and publication.”
- “They must be excellent in performance and above average in either Professional Development or Service.”

92. This phrase was used in the 1987 AALL resolution supporting tenure opportunities for academic law librarians. AALL Resolution on Faculty or Academic Status, supra note 17, at 831.
93. This category was the second most used by survey respondents, after librarianship itself, with 91.1% (51 of 56) reporting it as a factor.
94. See, e.g., Blackburn et al., supra note 1, at 141 tbls.11 & 12; Park & Riggs, supra note 12, at 75 (87% of survey respondents used institutional or professional service as a review factor).
95. See Blackburn et al., supra note 1, at 141 tbl.11 (service to the profession considered as distinct from institutional or community service).
“A high quality of performance in the area of the candidate’s responsibility; professional and academic achievement; and dedication to librarianship and participation in larger University affairs.”

“Professional Competence, Professional Development, Professional Contributions.”

Traditionally in tenure policies, service benefiting the institution, the community, or the profession is required of tenure candidates. There is also a clear association between this concept and faculty status. Service is part of the burden placed on a faculty member in exchange for the benefits that tenure confers. The absence of an institutional service requirement in the more traditional form of shared governance through committee work that was reported by many of the 2009 Survey respondents is noteworthy. It may partially be explained by law librarians’ attaining tenure or continuous appointment primarily within small law library faculties. When faculties are small, there is far less need to convene distinct committees, and thus less need for an institutional service requirement, unless it is provided at the law school or university level. Law librarians already meet regularly to collaborate and discuss day-to-day work such as reference service, faculty research support service, instructional service, and collection development. In the context of teaching faculties, such work would resemble faculty committee work and would be considered institutional service. In the context of librarians, this work is simply regarded as part of their job.

While that might explain the absence of an institutional service requirement on behalf of law libraries, it does not explain an absence of a requirement for service to the law school or university. There were data in the Texas Tech survey showing that law librarians who hold university faculty status are much more likely to participate in university governance activities than they are in law school governance. This pattern is consistent with indicators showing broader support for the concept of librarians as faculty at law schools within universities than among independent law schools.

Interestingly, the 2009 Survey also revealed use of a “professional development” requirement in several tenure policies. Its appearance under the “service” category of the survey, however, raises more questions than answers and merits further exploration. References to professional development are not typically seen in tenure policies governing teaching faculties, for example. Professional development, in its truest sense, is something one undertakes as a means to some other end. One engages in professional development in order to facilitate a goal, such as maintaining or enhancing one’s knowledge or skills, perhaps by attending a workshop. Policies that reference professional development would do well to clarify the end goals, not just the means of pursuing these goals. In the context of librarians, the need for professional development would presumably be linked to keeping one’s librarianship or teaching skills current.

Very likely, policies that reference professional development do clarify the end goals of the requirement, and the limited nature of the survey simply could not...
capture the context of the use of this term of art. Formulation of the 2009 Survey questions was heavily influenced by the three factors recommended in the ACRL tenure guidelines for librarians—performance, scholarship, and service\textsuperscript{97}—none of which includes “professional development.” Not seeing professional development as a survey option, respondents may have checked the next best choice in the survey and then added explanatory comments. Given more precise survey questions and categories, perhaps more consistent usage patterns among law libraries could be discerned. In any case, librarians should examine what concepts are meant by potentially ambiguous policy terms, and strive to bring clarity and consistency to the widely varying usage patterns currently seen in tenure policies.

**Conclusion and Recommendations**

\textsuperscript{79} Law libraries use a variety of tracks to award tenure, the most common being separate law library faculty tracks, with use of university librarian tracks being a close second. A tiny number of nondirector law librarians have been able to pursue tenure on a law school skills track. Regardless of the means employed, the most important thing for academic law librarians is that they also hold faculty status. Faculty status entitles librarians to participate in the shared governance of their institutions.

\textsuperscript{80} Law libraries today employ a variety of different performance review standards for tenure candidates. For example, while nearly all libraries require librarianship and scholarship, a third prong is often used to capture not just service to the profession, institution, or community, but also sometimes to capture the concept of “professional development.” Occasionally service is even used as a means to review scholarship or teaching when those factors are not considered separately. Scholarship is routinely, but not universally, required. Teaching is reviewed quite often—sometimes under its own category and sometimes as part of a librarianship category—but it is unclear whether or not existing policies distinguish between formal and informal teaching, and whether librarians who do not teach can also attain tenure if teaching is a separate requirement. As a profession, law librarians would benefit from a more rigorous exploration of how these performance standards are being employed.

\textsuperscript{81} Ideally, tenure standards across law libraries would be more uniform. Commentators have acknowledged on numerous occasions that the greater the difference between requirements for law librarians and teaching faculty, the more likely that resistance to librarian tenure will be encountered among teaching faculties.\textsuperscript{98} Being able to point to consistently rigorous standards for law librarians—even if they are different from those of the teaching faculty—is a good way to counter arguments against tenure for law librarians, and also to prevent review criteria from potentially being skewed to such an extent they do not recognize the central role librarianship can and should play in the process.

\textsuperscript{97} ACRL Guideline, supra note 4, at III.B.

\textsuperscript{98} Because of these concerns, there are some reports of criteria for librarian promotion and tenure having little relation to the actual day-to-day work of librarians. Simon, supra note 11, at 21.
¶82 Inconsistent standards can also interfere with portability of tenure once it is obtained by making it harder to determine if a lateral job candidate has met the same standards for tenure or continuous appointment that are in place at another library. Someone who currently has tenure or continuous appointment will expect to have it if they take a new position. The inconsistent standards seen in law libraries across the United States today could discourage mobility among institutions if it is “easier” to get tenure at one library than at another. Candidates whose portfolios are perceived as substandard may encounter resistance if they request similar status at a new library that employs more rigorous standards for attaining tenure.

¶83 Currently, if a law library seeks to implement a tenure policy where none existed before, or perhaps revise and update an existing policy, the standard operating procedure is to borrow a policy from another school or even another discipline. Thus, it is important for the profession of law librarianship to do the work of parsing out the common elements of the patchwork quilt of approaches, and forge those common elements into overarching guidelines and recommendations.

¶84 No professional association provides guidelines or recommendations for specific criteria for reviewing the performance of nondirector law librarians for retention, promotion, and tenure decisions. In contrast, the ACRL Guidelines for general academic library tenure policies recommend that scholarship, librarianship, and service be used to assess candidate performance. Why the 1987 AALL resolution in support of tenure or continuous appointment did not recommend specific performance factors for use in evaluating law librarians—not even librarianship—is not obvious from the literature. The only guidance the AALL resolution provides is to state that “evaluative criteria should reflect the unique responsibilities of law librarians in the academic mission of the law school.”

99 The 1987 resolution should be revised to include specific factors for performance review—at a minimum, librarianship and scholarship. It should not be controversial to promote the notion that excellent librarianship and production of scholarly writings should be required in order for academic law librarians to receive tenure or a form of continuous appointment.

¶85 The work of the ALL-SIS Continuing Status/Tenure Committee has made some important contributions to the profession. Its ongoing survey of law libraries that offer tenure and continuous appointment—currently published on its web site—and its collection of policy documents are valuable resources. However, an important next step for the profession would be to create model policy documents for libraries to consider when implementing or revising their own policies. The outcome of this work would be policies that are known to be well-suited to law librarians.

¶86 The work of creating a model policy statement would require that law librarians clarify what is meant by terms of art such as librarianship, scholarship, service, and professional development. It would require that law librarians reach a consensus about how law librarian instruction and teaching should be reviewed. Librarians should decide whether teaching or instruction should be a separate review factor, or should perhaps be regarded as a specialized competency within

99. AALL Resolution on Faculty or Academic Status, supra note 17, at 831–32.
librarianship, as it is currently treated in the AALL law librarian competencies statement. In any case, what is important is that the rationale behind the policies implemented be clear. This information is important for prospective job candidates to know when they are considering whether or not to take a tenure-track position.

¶87 In addition, library leaders must work together to create more opportunities for programming at conferences that helps law librarians develop their scholarship. This type of support, if sustained, could help raise expectations as to what should constitute scholarship for law librarian tenure performance standards, as well as advance the profession of law librarianship generally.

¶88 However, even absent new resolutions or model policy statements emerging from within professional associations, or development of new conference and workshop opportunities for librarians to present their scholarship, individual libraries can act on their own. Library directors need to ensure their policy statements reflect what should be a national standard for excellence. Tenure should be granted only after a rigorous process through which candidates demonstrate they are, and will continue to be, excellent librarians, scholars, occasionally teachers, and in general a “force for good” in carrying out the mission of the library and law school.100 If existing policies do not impose rigorous enough standards, they should be changed. Anything less than requiring librarians to publish, in addition to demonstrating excellence in librarianship, undercuts the position that tenure for librarians is warranted. Library directors also need to provide nondirector librarians with the resources and support necessary for them to engage in rigorous scholarship.

¶89 The observations of John Makdisi about the need not to dilute tenure requirements—although written regarding law library directors—are equally relevant to a discussion of tenure requirements for nondirector academic law librarians:

There is no way that you can promote what is necessary for the future of legal education unless you understand it at the very core: You are not going to have this degree of understanding unless you know what scholarship is like from the inside, and you are not going to know how to promote it unless you have actually taught and participated in the governance of a school.101

¶90 Law librarians, as faculty members and academic professionals, should embrace opportunities to engage in faculty governance, write, teach, and provide institutional and professional service, because of the personal, professional, and institutional benefits that flow from this work. Their policies should reflect these worthy goals.


101. Makdisi, supra note 44, at 433.
Appendix

2009 Survey of Academic Law Library Directors

1. Is your law school part of, or affiliated with, a university?
   ___ Yes
   ___ No
   Comments:

2. Name of your law school library:

3. How many law librarians work at your institution, not counting the director?

4. Law librarians (nondirectors) at your institution hold faculty status, and thus are afforded protections similar to those provided to regular teaching faculties through a faculty governance policy or policies:
   ___ Yes
   ___ No
   Comments:

5. Law librarians at your institution are able to pursue:
   ___ Tenure
   ___ Continuous appointment
   ___ Other equivalent (please describe in comment)
   Comments:

6. Law librarians at your institution attain tenure or continuous appointment through:
   ___ Law school regular teaching faculty track
   ___ Law school other faculty track (practical, skills, clinical, or equivalent)
   ___ Law library (librarians as a separate faculty)
   ___ University librarian track
   Comments:

7. Law librarians at your institution are required to demonstrate competence or excellence in the following areas in order to attain tenure or continuous appointment (please check all that apply):
   ___ Librarianship/job performance
   ___ Scholarship/research/publication
   ___ Teaching
   ___ Service
   ___ Other (please describe)
   Comments:
8. How many years does it normally take a law librarian to attain tenure or continuous appointment at your institution?
   ___ 1–3
   ___ 4
   ___ 5
   ___ 6
   ___ 6+
   Comments:

9. If a law librarian fails to attain tenure or continuous appointment at your institution, how many appeals are available and to whom (please check all that apply)?
   ___ Law School Dean
   ___ Provost
   ___ University faculty senate committee
   ___ Board of trustees/regents
   ___ University president
   ___ Other (please explain)

10. If your law school is part of, or affiliated with, a university, are the librarians at other university libraries eligible for tenure or continuous appointment?
    ___ Yes
    ___ No
    ___ Not applicable
    Comments:
The Durham Statement Two Years Later: Open Access in the Law School Journal Environment*

Richard A. Danner,** Kelly Leong,*** and Wayne V. Miller†

The Durham Statement on Open Access to Legal Scholarship, drafted by a group of academic law library directors, was promulgated in February 2009. It calls for two things: (1) open access publication of law school–published journals; and (2) an end to print publication of law journals, coupled with a commitment to keeping the electronic versions available in “stable, open, digital formats.” The two years since the Statement was issued have seen increased publication of law journals in openly available electronic formats, but little movement toward all-electronic publication. This article discusses the issues raised by the Durham Statement, the current state of law journal publishing, and directions forward.

Introduction: What Is the Durham Statement?

¶1 In November 2008, the directors of the law libraries at the University of Chicago, Columbia University, Cornell University, Duke University, Georgetown University, Harvard University, Northwestern University, the University of Pennsylvania, Stanford University, the University of Texas, and Yale University met in Durham, North Carolina, at the Duke Law School. At that meeting, those directors drafted the Durham Statement on Open Access to Legal Scholarship.1 Since it was finalized and posted in February 2009, the Durham Statement has prompted discussion on numerous blogs and listservs, and garnered over sixty-five online signatures from law librarians and other legal educators. It was the subject of a Law

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1. The Statement is posted on the web site of Harvard University’s Berkman Center for Internet and Society. The site includes background information on the Statement, a list of signatories, and an FAQ. Durham Statement on Open Access to Legal Scholarship (Feb. 9, 2009), available at http://cyber.law.harvard.edu/publications/durhamstatement [hereinafter Durham Statement].
Librarian BlogTalkRadio show in February 2010,² a program at the Annual Meeting of the American Association of Law Libraries in July 2010,³ and a workshop at Duke Law School in October 2010 under the title “Implementing the Durham Statement: Best Practices for Open Access Law Journals.”⁴ It has a Wikipedia entry.⁵

¶2 The Durham Statement calls for two things: (1) open access publication⁶ of law school–published journals; and (2) an end to print publication of law journals, coupled with a commitment to keeping the electronic versions available in “stable, open, digital formats.”⁷ Neither action is dependent on the other: current articles from many law journals are now freely accessible on the web while their print issues are still offered to libraries and other subscribers; journals can also be offered in fee-based electronic formats without print equivalents.⁸

¶3 This article examines the key issues arising from the Durham Statement’s calls for open access publication of law journals and for ending their publication in print.

Open Access to Legal Scholarship

¶4 Few commentators have objected to the Durham Statement’s call for open access publication of law journals. Not many U.S. law reviews are registered with

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³. “The Durham Statement on Open Access One Year Later: Preservation and Authentication of Legal Scholarship,” presentation at the 103rd Annual Meeting of the American Association of Law Libraries, Denver, Colorado, July 13, 2010. The program was moderated by Margaret Maes (Legal Information Preservation Alliance); the panelists were Margaret Leary (University of Michigan), Michelle Pearse (Harvard University), and Wayne Miller (Duke University). Information and a link to the audio file of the presentation are available at http://www.softconference.com/aall/sessionDetail.asp?SID=208487 (audio available free to meeting registrants only).
⁶. The drafters of the Statement expressed general agreement with the definition of open access in the 2002 Budapest Open Access Initiative, which calls for free availability on the public internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts of these articles, crawl them for indexing, pass them as data to software, or use them for any other lawful purpose, without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. Budapest Open Access Initiative (Feb. 14, 2002), http://www.soros.org/openaccess/read.shtml. For a brief, but useful, introduction to the open access movement, see John Willinsky, The Stratified Economics of Open Access, 39 ECON. ANALYSIS & POL’Y 53, 53–55. For a discussion of the economics of open access publication in disciplines other than law, see generally id.
either the Directory of Open Access Journals (DOAJ)\textsuperscript{9} or the Science Commons Open Access Law Program.\textsuperscript{10} An increasing number, however, post at least their current issues in freely accessible formats on their journal web sites, despite the risks of reducing revenue from print subscriptions and royalty income from HeinOnline, LexisNexis, Westlaw, and other online aggregators.

\%5 This suggests there is general agreement in the legal academy with the idea that “[s]cholarship, and hence the content of scholarly journals, is a public good”\textsuperscript{11} and perhaps with John Willinsky’s proposition that in the age of the Internet, a commitment to research and scholarship carries with it a responsibility to circulate one’s work as widely as possible.\textsuperscript{12}

\%6 Because scholarly research in law requires access not only to other scholarship, but also to legal authorities—the primary sources of law—open access to legal scholarship must be discussed within the context of electronic access to other types of legal information. In the United States, widespread use of what were first called computer-assisted legal research (CALR) systems began (at least for those who could pay premium fees) with the introduction of the full-text primary source legal information services by LexisNexis and Westlaw in the mid-1970s.\textsuperscript{13}

\%7 Since then, a number of competitors have entered the electronic legal information market with less robust products at lower costs;\textsuperscript{14} courts and governments have made legislation and court decisions freely available on official web sites;\textsuperscript{15} and dedicated open-access sites such as that of Cornell’s Legal Information Institute\textsuperscript{16} have been developed to provide aggregated access to large bodies of U.S. legal information. In addition, the Law.Gov movement is working toward developing mechanisms to improve free access to authenticated primary legal information.\textsuperscript{17}

\%8 Outside the United States, there are many examples of improved, free electronic access to legal information made available through government action.\textsuperscript{18} Elsewhere, the Free Access to Law Movement, which is based in the cooperative activities of fourteen national and regional legal information institutes (like that at

\begin{footnotesize}
\begin{enumerate}
\item Richard Edwards & David Shulenburger, The High Cost of Scholarly Journals (And What to Do About It), CHANGE, Nov./Dec. 2003, at 10, 12.
\item Legal Information Institute, CORNELL UNIV. LAW SCH., http://www.law.cornell.edu (last visited Nov. 14, 2010).
\end{enumerate}
\end{footnotesize}

\¶9 As a result, much legal information created by governments, courts, and other bodies with law-making authority is now available (at least for English-speaking jurisdictions) through sources that meet the general requirements for open access. In the United States and elsewhere, however, there has been less open access to legal scholarship, commentary, and other explanatory materials—the things that we in common law jurisdictions call secondary sources. In other parts of the world, this is because law journals (like many other scholarly journals) are generally published by commercial publishers. In the United States, this is not the case.

\¶10 Like scholarly journals in other fields, U.S. law reviews provide forums for faculty to gain promotion, tenure, and other professional rewards; disseminate new scholarship; provide space for scholarly discourse; showcase new knowledge; and produce print copies of articles for access and archiving. But they are also unusual among scholarly journals in a number of ways:

- Most are published by educational institutions—individual law schools—rather than by scholarly societies or professional organizations, or by commercial publishers;
- For the most part, they are managed and edited by students and are not peer-reviewed;
- There are so many of them;\footnote{One source suggests that there are presently about 650 student-edited journals published at U.S. law schools and 980 legal journals in all, counting those published by societies, bar associations, and commercial publishers. See Law Journals: Submissions and Rankings, WASH. & LEE UNIV. SCH. OF LAW, http://lawlib.wlu.edu/lj/index.aspx (last visited Nov. 14, 2010) (searches were conducted by selecting “United States” as the country, and then selecting the category “Student-edited”). Some sense of the number of new law journals being published can be gained by looking at the list of journals selected for indexing by the American Association of Law Libraries’ Committee on Indexing of Periodical Literature. From mid-2008 through mid-2010, the Committee selected 130 “substantive law school journals” and other periodicals “that primarily deal with common law” and publish articles that are “predominately legal and substantive in nature.” Title List, AALL Indexing of Periodical Literature Committee, http://www.aallnet.org/committee/ipl/AALL_Indexing_of_Periodical_Committee/Title_List.html (last visited Nov. 14, 2010); Submit a Journal, AALL Indexing of Periodical Literature Committee, http://www.aallnet.org/committee/ipl/AALL_Indexing_of_Periodical_Committee/Submit_a_journal.html (last visited Nov. 14, 2010).}
- One of their primary purposes is to provide both educational experiences for students and credentials for new law school graduates entering the job market.\footnote{John Doyle calls the educational benefits and credentialing “inefficient by-products” of the law review system and notes that the “abundance of law reviews . . . show[s] the breadth of subsidization that law schools are willing to fund.” John Doyle, The Business of Law Reviews, CONN. L. REV. CONTEMPLATIONS, Spring 2007, at 30, 30, 33, available at http://works.bepress.com/doylej/1.}
Law may also differ from other disciplines in the extent to which its scholarship is written, not only for other scholars, but also for audiences of practicing professionals. Law professors, students, and other scholars write to promote legal reform and improve access to justice, to critique legislation and court decisions, and to influence the practicing bar, the courts, legal decision-makers, and the public. In addition, much of what they write, like law itself, is jurisdiction-based and limited in its direct applicability to specific national legal systems, or, in federal systems, to the law of states, provinces, or other more localized jurisdictions.

Michael Carroll, a professor at American University, has argued that “[a]ccess to law matters . . . . [and] access to legal scholarship matters too.” But is free and open access to legal scholarship important to others outside the academy? Critics of legal scholarship (and of the law review as an institution) have long claimed that what appears in law reviews is written only for other professors and is of little value to judges or the practicing bar. Such criticism has taken many forms, often focusing on law schools’ increasingly closer ties to their universities than to the practicing bar, as seen by the numbers of Ph.D. holders on law school faculties, faculty interest in interdisciplinary study at the expense of doctrinal research, and the tendency of schools to place less value on practice experience than they once did when hiring new professors. Does legal scholarship actually have the impact on legal decision-making that we might like to claim for it?

In 2007, the New York Times reported on a Cardozo School of Law symposium discussing an apparent decline in judicial citations to law review articles. The article opened with the statement by a federal court of appeals judge that: “I haven’t opened up a law review in years. . . . No one speaks of them. No one relies on them.” In 2010, Chief Justice John Roberts reportedly said that “he doesn’t pay much attention to academic legal writing. Law review articles are ‘more abstract’ than practical, and are not ‘particularly helpful for practitioners and judges.’”

Is there any evidence that what is published in law journals influences the courts? Schwartz and Petherbridge’s 2010 empirical study of nearly 300,000 reported decisions of the federal courts of appeal from 1950 to 2008 suggests that appellate court citations to law review articles have increased over time. The num-


bers are not high, but opinions citing articles have grown to 4.8% of reported opinions between 1980 and 2008 from 3.4% in the period from 1950 to 1979, and to 6.21% from 1999 to 2008.26

¶15 Why are they rising? Among the reasons suggested by the authors of the study is “ease of finding and access to scholarship, perhaps brought about by ease of Internet publication (e.g., SSRN, bepress, HeinOnline, LexisNexis, Westlaw, etc.) . . . .”27 Because the study closed with 2008, it could not take fully into account the increasing availability and accessibility of law journal articles on law school web sites, as well as the other sources the authors list. How many law journals now post their articles?

¶16 The ABA’s Free Full-Text Online Law Review/Law Journal Search Engine web site indicates that the texts of articles in over 350 online law reviews and law journals are now available on freely accessible law school web sites.28 Our own research suggests that articles in 177 of the 296 scholarly journals published at the top fifty “Best Law Schools” as ranked by U.S. News & World Report in 201029 are accessible through law school web sites in PDF or HTML format.30

¶17 The use (and presumably the usefulness) of legal scholarship published in law journals has increased since their content has become accessible electronically; it can only be further enhanced as more journals make their articles freely and openly accessible by law schools directly on their own web sites, and as more schools and journals understand the limitations and delays of print publication.

¶18 In August 2010, in a speech before the Ninth Circuit Judicial Conference, Justice Anthony Kennedy bemoaned the lack of student-written case notes in contemporary law reviews. In his earlier years on the U.S. Supreme Court, Kennedy found law journal case notes discussing cases appealed to the Court to be useful in deciding whether or not to grant certiorari. Now, he finds that, if published at all, case notes often appear too late to be of help, because of the time taken for print publication. As a result, Kennedy’s clerks look to blogs for comments on pending cases. The blog discussions may meet his needs, but Kennedy pointedly expressed his concerns about the effects of the decline of case notes on law schools’ continued relevance to the appellate process: “It’s perfectly possible and feasible, it seems to me, for law review commentary immediately to come out with reference to important three-judge district court cases, so we have some neutral, detached, critical, intellectual commentary and analysis of the case. We need that.”31

27. Id. at 30.
29. Schools of Law, in AMERICA’S BEST GRADUATE SCHOOLS 28 (2010). Because of ties, the list includes 51 schools, ranked 1 through 48.
30. With the help of Duke Law research assistant Lila Zhao ’11, Kelly Leong examined the web presences of scholarly journals published at the top fifty schools. Newsletters, reprint journals, and journals that had not yet published issues were not counted.
¶19 It appears that the Supreme Court and the world of the law may move too quickly to wait for the slow process of print law review publication.

Ending Print Publication of Law Journals

¶20 The Statement’s call to end print publication of law reviews was more controversial than that regarding open access, prompting a number of concerns, mostly from law librarians. The Statement argued that: “If stable, open, digital formats are available, law schools should stop publishing law journals in print and law libraries should stop acquiring print law journals” reasoning that:

It is increasingly uneconomical to keep two systems afloat simultaneously. The presumption of need for redundant printed journals adds costs to library budgets, takes up physical space in libraries pressed for space, and has a deleterious effect on the environment . . .

In a time of extreme pressures on law school budgets, moving to all electronic publication of law journals will also eliminate the substantial costs borne by law schools for printing and mailing print editions of their school’s journals, and the costs borne by their libraries to purchase, process and preserve print versions.32

¶21 The major objections to the call to end print publication focused on the Statement’s reliance on the need for “stable, open, digital formats” in order to make the transition to all-electronic publishing feasible. In a posting to a discussion list for law library directors under the heading “Why I Did Not Sign the Durham Statement,” Margaret Leary wrote:

The answer is simple: I do not agree with the call to stop publishing in print, nor do I think we have now or will have in the foreseeable future the requisite “stable, open, digital formats.” As long as we believe legal scholarship is worthy of permanent retention, we should encourage the existence and retention of paper, in addition to digital, copies.33

¶22 In his blog The Life of Books, Richard Leiter focused on the roles of print and paper in the scholarly process:

In the end, ceasing to publish in print the-already-too-many-journals is only going to dilute their importance further . . .

The bottom line is this: Part of the value of articles published in these journals is that they are a record of a scholar’s ideas and thoughts about a legal issue. The ideas may be inspirational, challenging, enlightening, wrong, controversial, revolutionary, evolutionary, or all of the above and more. But, part of the process of scholarship is committing them to “paper”, or some medium in which the author can be held accountable and called to defend them. It doesn’t necessarily have to be paper. But it must be in a format that is permanent. To date, nothing in any computer format can even begin to approach anything resembling the permanence of a printed book.34

32. Durham Statement, supra note 1.
¶23 Access to legal information of all types is essential for lawyers and other legal professionals, and also for citizens whose lives are affected by legislation, precedential court decisions, and administrative rulings and regulations. To be understood and applied, however, legal authorities need to be explained and interpreted, as well as easily accessible. Both the texts of legal authorities and commentary on them must also be preserved for future users. The issues involved in access and preservation of electronic legal information are closely intertwined, but they are not new. As Harvard University Librarian Robert Darnton puts it, “Information has never been stable.” But they have changed in an age when much valuable information will never be formally published in print.

¶24 For hundreds of years, libraries have not only provided access to books and other printed materials, but tried to preserve them for future users. Publishers of books and journals were not expected to maintain permanent back stock of their publications; preserving the works they published was a responsibility taken on by libraries. Because one could reasonably assume that more than one library held a copy of a printed work, it was unlikely that an item’s disappearance from a particular library meant the work was lost forever. Yet printed information does not preserve itself. It requires paper manufactured so that it will not rapidly deteriorate over time, storage under appropriate temperature and humidification regimes, and proper shelving so that items are not lost. Kevin Guthrie notes: “One does not have to spend much time in a large library to find paper volumes and documents that cannot be used for much longer.” And Bob Berring has written: “One of the sad failures of librarianship has been the inability to develop reasonably priced means of preserving books.”

¶25 As noted above, publication of legal scholarship in the United States is for the most part a small-time, decentralized industry. Law school–published journals operate along with authors and libraries within a gift economy, in which earning a profit is not a primary goal for any participant. As described by Jessica Litman: We rely on few commercial publishers. The majority of law journals depend on unpaid students to undertake the selection and copy editing of articles. . . . At the same time, the first-copy cost of law reviews is heavily subsidized by the academy to an extent that dwarfs both the mailing and printing costs that make up law journals’ chief budgeted expenditures and the subscription and royalty payments that account for their chief budgeted revenues.

¶26 Under this long-standing model, law libraries purchase the journals at low cost, provide indexes to access them, and preserve them. Although subscription costs for individual law journals are generally significantly lower than for journals

39. Historically, law journals have also shipped excess copies to jobbers such as William S. Hein & Co., which provided hard copy, microform, and eventually electronic versions to customers on behalf of the law school publishers.
in other disciplines, in a time of tight budgets, the sheer number of journals produced at U.S. law schools makes them costly for law libraries to purchase, process, and preserve. Because most academic law libraries have traditionally striven toward comprehensiveness in their journal collections, the long runs of many journals and subscriptions to multiple copies of the most important ones mean that journal collections also take up large amounts of space in library facilities.

Access Issues

¶27 In recent years, the primary audiences for law journal articles—legal academics and the legal profession—have enjoyed increased and improved electronic access to both current and older legal scholarship through the primary legal databases, LexisNexis and Westlaw, and the extensive collections offered by HeinOnline, JSTOR, and other aggregators of journal content. For those in the academy, this access is funded by libraries and comes without direct individual cost. In addition, new law journal articles are increasingly freely available prior to formal publication via electronic working paper series, such as those supported by the Social Science Research Network (SSRN) and bepress (which for most users are also usually library-funded services and appear to be free to law faculty).

¶28 As a result, electronic access has become the preferred means for locating legal scholarship at the same time as law libraries are facing increased pressures on their budgets and their parent institutions are looking to library facilities to provide space for expanding programs. Both factors have placed under stress the library’s traditional role as purchaser and preserver of print law journals. Should print versions of journals available electronically be purchased and preserved by libraries if print is already no longer the primary means for accessing their contents? Can we rely on digital files for long-term access and preservation of legal scholarship?

¶29 The format in which a journal is digitally published matters. Both archiving and presentation formats are inadequately addressed by the customary solution in use today, the Portable Document Format, or PDF. It is no accident that the format itself was initiated by Adobe, a company known for its printing software. PDF reliably recreates the print experience, both on the screen and when the document is replicated across diverse printers. In doing so, it fulfills a key function in the redistribution of published text. However, if all it does is replicate the reader’s experience of the printed page, the PDF format fails to fully exploit the promise of digital media.

41. Adobe's core product at its founding was Postscript, which was made the software printing engine for Apple's LaserWriter in 1985. Adobe Photoshop was added in 1990 and Acrobat was released in 1993. See Adobe History, http://www.adobe.com/aboutadobe/pressroom/pdfs/timeline_090501.pdf (last visited Nov. 14, 2010).
In privileging the print layout, PDF documents force the on-screen reader into imperfect situations. Printed media are sized for natural eye-scanning of lines of text, but these same lines may become unreadable or, at best, awkwardly readable on a small handheld screen. While we can move our eyes freely around a single printed page, page delineation becomes little more than an inconvenience on most screens. Print documents also use footnotes and other conventions that are predicated upon the page format, but are cumbersome in the digital world and represent only one possible solution for isolating a footnote’s content.

The reader’s experience of a printed page is rich and multifaceted because of the experience we bring to it. We recognize titles, footnotes, citations, and parentheticals. The same experience can be had by the reader of a digital document on a screen, but for digital documents, scanning with our eyes is not the ultimate measure of usability. A digital document will not only be read with our eyes. It will be searched, parsed, and marked up in the digital realm by software of various types and stripes, from search engines to language parsers to style analyzers to categories of future software that we cannot now imagine. Because we cannot know to what uses a digital document will be put in the future, an essential principle in preserving digital collections must be to retain information already encoded in the document. There are many ways in which software can intelligently rediscover the information that our eyes see, but other information may never be recovered if a digital format loses it.

Most legal information is composed in digital documents with word processors such as Microsoft Word. The documents themselves contain a good deal of information that is interpreted by the software to enable title styles, footnote delineations, cross-references, and other features of the documents. Articles formatted for print are usually highly structured in both page elements and additional styles that define the functions of different sections of text. This information needs to be captured and made available for the future.

Historically, in common practice, PDF files have had none of the structural information that word processing files possess. The only information about the text and images was presentational, and most of the presentation detail was unavailable for searching or parsing. The recently added ability to embed XML metadata in the form of tags in the PDF standard means that the format is itself becoming viable for the storage of digital documents. Still, the primary place it gives to the print layout remains a limitation in understanding the potential of...
digital publishing. A more widely embraced XML schema is the best way to represent the text, if we are willing to de-privilege the printed page.45

¶34 As we begin to publish law journals digitally and come to grips with access to digitally published articles, will we abandon the primacy of the “printed” page? Are there more useful and logical ways to anchor citations to references needed to understand the work? Are there more effective and efficient ways than footnotes to store and present references and asides? What hypertextual and multimedia elements should become part of the publishing process in a fully digital environment? These questions need resolution in ways that will maximize the usefulness of our documents now and in the future.

¶35 At the moment, though, they are far from resolution, even as more journals make their articles available on law school web sites. In April 2010, Sarah Glassmeyer described her frustrations as she attempted to review the searchability of the journals listed in the ABA’s Free Full-Text Online Law Review/Law Journal Search Engine,46 concluding with her concern “that these online journals are becoming PDF dumping grounds with little to no metadata or access points contained within them to assist with the ‘access’ part of ‘open access.’”47 Tom Boone has written: “If metadata, structure, and permanence are vital to the success of the Durham Statement’s desired action, librarians must do more than simply ask their institutions to create digital access systems for law reviews. What the Durham Statement asks schools to create are digital libraries.”48 In a comment noting the first anniversary of the Durham Statement, Joe Hodnicki wrote:

Hopefully the objective of the Durham Statement will be realized by following the suggestion made by ALA and ACRL. In their OSTP comments regarding public access policies for science and technology funding agencies across the federal government, ALA and ACRL called for across-the-board format standardization as being crucial to long-term public access. Instead of PDF files, authorized repositories should provide support for file conversion to a standard mark-up language (e.g., XML) because the PDF format “does not support robust searching, linking, text-mining, or reformating over the long-term, nor does it provide full accessibility for the blind and reading impaired.”49

¶36 Not only the formats, but the forms of legal scholarship itself are changing to take advantage of the potential of electronic publishing, just as they are in other

45. A standards-based approach to structuring PDF is in committee with the ISO organization at the time of this writing. See ISO/AWI 14289-1, http://www.iso.org/iso/iso_catalogue/catalogue_ics/catalogue_detail_ics.htm?ics1=35&ics2=240&ics3=30&csnumber=54564 (last visited Nov. 14, 2010). Regardless, we believe that the choice of an XML schema for article and journal publishing should be a more robust replica of the original—suggesting the use of a word processor’s native XML, such as Open Document or Office Open XML—or more useful to content providers and consumers, as in the case of journal publishing standards such as the National Library of Medicine’s schema modules. See NLM Journal Archiving and Interchange Tag Suite, NCBI, http://dtd.nlm.nih.gov (last visited Nov. 14, 2010).


49. Hodnicki, supra note 42.
fields. Increasingly, law journal web sites now feature online-only companions, blogs, or other vehicles for “short form” legal scholarship, which offer timely discussion of current issues because they bypass print and can be published quickly. Our own examination of journals published at the top fifty law schools suggested that at least seventy-nine include one or more online-only features such as short essays, discussion forums, blogs, access to a Facebook page or Twitter feed, video of conferences, access to drafts of articles under review, or RSS notifications of new issues. Perhaps it is not yet possible to say in law (or in other social sciences and the humanities) that electronic versions of journals are primary, as they seem now to be in the sciences, but we cannot be far away from that point.

Preservation Issues

¶37 In February 2010, the Harvard Law School Library issued a new collection development policy for law journals, which states that the library will acquire in print and maintain print archives only for Harvard Law School publications, publications that are only available in print, and publications where the library has library of record responsibilities for Harvard University. Harvard will acquire law journals available on HeinOnline or JSTOR in print only if current issues are not available from those sources, but will retain them for only five years and not bind them. If the nation’s largest academic law library no longer plans to preserve print versions of electronically available journals, need we worry about the Durham Statement’s insistence on the availability of “stable, open, digital formats”? Other law libraries are making similar decisions: some not to purchase new law journals, others to rely on outside sources for long-term access to back files.

¶38 The 2005 Legal Information Preservation Alliance report Preserving Legal Materials in Digital Formats includes a discussion of the risk factors for digital materials. In summary, the factors are

• Storage Media Obsolescence: Because storage media (hardware) for digital materials change quickly, storing digital materials requires an ongoing commitment to moving the data from one storage medium to another. This is known as “refreshing the data.” It can be costly and time consuming, especially for large quantities of data.

50. Supra note 30.
51. As described in 2008 by a representative of a major publisher in the sciences: In STM [scientific, technical, and medical publishing], the migration of journals online is so advanced that the electronic version is effectively primary and print secondary. This is true in two senses. The online version is now commonly published ahead of print, an important factor when speed to publication is critical. Perhaps more significantly, the electronic article will often be richer than its print version, containing more data and certainly more functionality. Bill Cope & Angus Phillips, Introduction, in The Future of the Academic Journal 1, 2 (Bill Cope & Angus Phillips eds., 2009) (quoting Philip Carpenter, “Journals, Science and the Future of Books in the Humanities and Social Sciences” (paper presented at “A Challenge to the Book in Scholarship and Higher Education,” Amsterdam, Oct. 13, 2008)).
• **Software Obsolescence**: Like storage media, the software needed to access stored data also changes. File formats change, and software programs may not be compatible with older files. Proprietary formats may not always have full documentation; licensing agreements are subject to change; restrictions for use and modification may apply. Open formats and systems may be preferable for preservation purposes.

• **Organizational and Cultural Challenges**: Digital preservation is not solely a technical problem. Concerns over the quality of management of digital materials by creators and other caretakers of digital collections highlight other risks posed by high rates of technological change. Materials may be published on the web, then removed and deleted. Publishers cannot assure that their materials will be available in the long term.

• **Access**: The emphasis on digitizing materials to improve electronic access to information may lead librarians and others to focus on access, without addressing issues of preservation. Over time, there will be no access without a focus on preservation.

§39 How will these risks be overcome? Any new model for preserving legal scholarship in digital formats has to acknowledge that a range of stakeholders will have larger roles to play than they might have played under the print-based, purchase-and-preserve model. In addition to law libraries, these include the providers of legal databases like LexisNexis and Westlaw; the aggregators of journal content, such as HeinOnline and JSTOR; the disseminators of working papers and pre-prints, such as SSRN and bepress; and the printers of law journals, such as Joe Christensen, Inc., which will continue to be needed for formatting and print-on-demand services.

§40 It is important to recognize, however, that for the most part those stakeholders are not the actual publishers of most legal scholarship, but are pre-publishers or re-publishers of content that is formally published in the first instance by the law schools themselves. The schools provide the imprimatur of formal publication. There is little reason to expect the institution-based publication model that has characterized publication of legal scholarship in the United States since the late nineteenth century to change as print publication declines and ends. For student editors, the apparent credentialing and educational benefits of law journal editing will continue regardless of publishing format, as will legal scholars’ interests in publishing in the journals of prestigious law schools.

§41 Yet the formats in which legal scholarship is published will change. As more law journals provide some variety of web access to articles, and libraries stop buying print versions of journals, editors and deans will not see the need to continue publishing a journal in print. Student editors will be looking to improve accessibility to new articles, deans to reduce costs. It is unlikely that, left to their own resources as


they make these decisions, either group will have the time or inclination to think much about the relationships of access to preservation or the need for effective search capabilities. As Tom Boone has pointed out, even the recent growth in posting article PDFs on journal web sites

is hardly a universal movement, and such open availability can vary wildly even among publications produced at the same school. . . . While the initiative of such student staffers deserves our praise, there are certainly limits to what they can realistically accomplish. For example, given the transitory nature of law review staffs, there is little incentive to look beyond the digitization of the current volume, let alone establish a consistent system for subsequent years or plan a long term effort to digitize previous volumes.56

¶42 In the unique environment of law review publishing, there is both more need and more opportunity for law schools, law journals, law libraries, and others involved in the publication and dissemination of legal scholarship to collaborate in developing standards for access to and preservation of electronically published journal literature. There is also more risk if we do not. In the words of Pogo: “We shall meet the enemy, and not only may he be ours, he may be us.”57

What Can Law Schools and Their Libraries Do?

¶43 The Durham Statement calls for law schools to end print publication of law journals in a planned and coordinated effort led by the legal education community, focused on ensuring access to and preservation of the electronic journal literature. Without that effort, in an economic environment in which external factors are more than ever impacting libraries’ collection decisions and law school budgets, what can we do to assure that electronically published legal scholarship will remain available to future scholars?

¶44 Sarah Rhodes, digital collections librarian at the Georgetown Law Center, has written:

Frankly speaking, our current digital preservation strategies and systems are imperfect—and they most likely will never be perfected. That’s because digital preservation is a field that will be in a constant state of change and flux for as long as technology continues to progress. Yet, . . . libraries today have a number of viable tools, services, and best practices at our disposal for the preservation of digital content.

. . . .

Keep in mind that no system will perfectly accommodate your needs. . . . And there is no use in waiting for the “perfect system” to be developed. We must use what’s available today. In selecting a system, consider its adherence to digital preservation standards, the stability of the institution or organization providing the solution, and the extent to which the digital preservation system has been accepted and adopted by institutions and user communities.58

57. This is usually quoted as “We have met the enemy and he is us.” Walt Kelly, Zeroing In on Those Polluters: We Have Met the Enemy and He Is Us, in THE BEST OF POGO 224 (Mrs. Walt Kelly & Bill Crouch Jr. eds., 1982).
Rhodes’s comments suggest two things: first, that the Durham Statement’s reliance on the eventual development of “stable, open, digital formats” is misplaced. We may never have stable, open, digital formats. Second, her points remind us that we cannot afford to wait to begin developing approaches for preserving and ensuring access to electronically published legal scholarship. Some suggestions:

1. It is time for law librarians to explore alternatives for preserving legal scholarship by working in concert with the other stakeholders, including
   - Existing efforts to preserve legal information, such as the Legal Information Preservation Alliance (LIPA), which in 2010 established the Legal Information Archive as “a collaborative digital archive . . . to preserve and ensure permanent access to vital legal information currently published in digital formats.”
   - Legal publishers holding extensive libraries of law journal content in electronic format—LexisNexis and Westlaw, and perhaps primarily HeinOnline, with its extensive retrospective collections. Will their interests in preserving access to law journals for their commercial value mean they will now preserve digital content as libraries have traditionally preserved print content?
   - Established preservation and electronic archiving programs such as Portico and LOCKSS, which have worked mostly with libraries and publishers outside of law.
   - The Library of Congress, which already receives copies of all law journals whether published in print or electronic format under the mandatory deposit requirements of the Copyright Act, and works to establish best practices for digital preservation through the National Digital Information Infrastructure and Preservation Program (NDIIPP).
   - Institutional repositories, such as Harvard University’s local Digital Access to Scholarship at Harvard (DASH), or services such as the

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59. LIPA is an “organization of libraries working on projects to preserve print and electronic legal information. It provides the opportunity for libraries to work collaboratively on preservation projects at low cost and to take advantage of the partnerships created by the organization.” Legal Information Preservation Alliance, http://www.aallnet.org/committee/lipa/ (last visited Nov. 14, 2010).


62. LOCKSS (Lots of Copies Keep Stuff Safe) “provides libraries with digital preservation tools and support so that they can easily and inexpensively collect and preserve their own copies of authorized e-content.” LOCKSS, http://lockss.stanford.edu/lockss (last visited Nov. 14, 2010).


bepress Digital Commons, which hosts repositories for a number of law schools and supports law review publication.

- Printers of law journals, in order to forge the future role of print for preservation or print-on-demand services for legal scholarship.

2. It is also necessary to promote the use of common standards for formatting the files of the documents. Joe Hodnicki has noted ALA’s and ACRL’s calls for across-the-board format standardization, and the use of a standard mark-up language (e.g., XML) instead of PDF. Wayne Miller has proposed developing mutually agreed-upon law journal formats for archiving, preservation, and other uses.

3. It is time as well to take the initiative to create opportunities for dialogue with law school deans, law review editors, interested faculty, and legal information vendors on the need for concerted action regarding access to and preservation of electronically published law journals.

¶46 These activities do not answer all of the concerns raised regarding the Durham Statement’s call to end print publication of law journals, but they should at least provide a start for action toward meeting those concerns.

68. Hodnicki, supra note 42.
HeinOnline and Law Review Citation Patterns*

M. Sara Lowe** and Karen L. Wallace***

The authors tested the proposition that the ubiquity of HeinOnline in law libraries would alter law review citation patterns. Has HeinOnline’s provision of the full runs of law reviews in full text led to more citations to older materials? This article reports the results of the study they undertook to test this theory.

Introduction

¶1 Computer-assisted legal research (CALR), first developed in the 1960s, was introduced to users via several commercial options in the 1970s and was in widespread use by the 1980s.1 As CALR spread, librarians and lawyers began assessing the ways in which CALR would change legal research, and perhaps even the legal profession as a whole.2 As this revolution has progressed from dedicated computer terminals to the web, both change, and discussion of its significance, seem inevitable.3

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3. For a recent example of this discussion, see Katrina Fischer Kuh, Electronically Manufactured Law, 22 HARV. J.L. & TECH. 223 (2008).
This article explores one narrow change in the legal research landscape: electronic access to older law review articles via HeinOnline. Has the rate of law review citations to older law review articles increased since the introduction of HeinOnline? Before directly addressing this question, it is useful to look at the history of computer-assisted legal research as it applies to legal periodicals. Due to the nature of this study, the history reported here focuses on the changes in availability of pre-1980s articles.

A Brief History of Law Review Searching

The print Index to Legal Periodicals (ILP) began publication in 1908, and for decades provided the only comprehensive author and subject access to U.S. law review articles. When CALR first appeared in the 1960s and ’70s, it offered only primary sources. In 1980, the Current Law Index (CLI), a competitor to ILP, arrived, offering options in both print and microfilm. Starting with the 1982 issues, Lexis and Westlaw began providing full-text, nonindexed access to legal periodicals. Since the 1980s, ILP and CLI (as Legal Resource Index or LegalTrac) have offered access through an evolution of electronic platforms, including laser-discs, CD-ROMs, tape loads, online services, and the web.

Electronic search tools offered significant advances over print indexes, including the ability to search multiple years of articles simultaneously and to customize searches, accessing materials by terms beyond prescribed subject headings. For the most part, though, searching for articles published earlier than the 1980s still required the use of the print ILP. That changed at the beginning of the twenty-first century, starting with the launch of HeinOnline in mid-2000. By 2001, HeinOnline offered online access to the full text of articles from about ninety legal journals back to their first volumes, with plans to extend access to another one hundred journal titles. Law librarians took notice, and the American Association of Law Libraries (AALL) recognized HeinOnline with its New Product Award for 2001. In 2004, ILP began providing retrospective coverage electronically, offering a database containing the index back to 1918 and an OpenURL link resolver to allow users to move readily from an index entry to an electronic version of the article.

7. Hood, supra note 5, at 112.
article through a full-text provider, such as HeinOnline. By mid-2006, electronic ILP coverage had been expanded back to the index’s 1908 inception. These changes greatly benefited legal researchers interested in locating law review articles published prior to the 1980s. Like newer law review articles, older articles could now be identified, and often obtained in full text, without leaving the computer. Given this history, we wondered if the greater ease with which older journal articles could be accessed represented more than a time savings for researchers. Had it actually influenced citation patterns, encouraging authors to incorporate additional older references into their articles?

**Journal Citation Patterns**

Many have sought to learn about disciplines through bibliometric analysis of citation patterns. Such studies help paint a picture of a discipline’s literature and research standards through various distributions of the cited sources, such as type, age, language, and number of authors. The data may be further analyzed: for example, to see if core sources can be identified.

One of the most common types of bibliometric studies of law reviews attempts to rank the influence of these materials, typically by considering frequency or other analysis of citations in scholarship or court opinions. Some look at specific journal titles, others at specific articles. The ranking systems themselves, along


The author has been engaging in a one-person campaign to convince the H.W. Wilson Company of the value of publishing a retrospective database in electronic format of the Index to Legal Periodicals. To date, all arguments have been met only with raised eyebrows and wonderment. At this point in time, it appears that such a product may never be developed.


13. See, e.g., Ronen Perry, *The Relative Value of American Law Reviews: Refinement and Implementation*, 39 CONN. L. REV. 1 (2006); Law Journals: Submissions and Rankings: Methodology, WASH. & LEE UNIV. SCH. OF LAW, http://lawlib.wlu.edu/LJ/method.asp (last visited Oct. 7, 2010). Perhaps the earliest published law review bibliometrics come from Douglas Maggs, who provided detailed tables of the law review articles cited in published court opinions over a period of five to forty-eight months, depending on the court, in an appendix to his article discussing the general value of law reviews. Douglas B. Maggs, *Concerning the Extent to Which the Law Review Contributes to the Development of the Law*, 3 S. CAL. L. REV. 181 (1930). The data can be viewed by type of material cited, citing jurisdiction, citing judge, cited law reviews, citing case, and leading cited article, note, and book reviews. Id. at 191–204. Despite this wealth of data and access points, Maggs prefaced the appendix with this note: “The tables which follow do little more than show that law reviews are being cited to some extent by the courts. Whether the demonstration of this fact justifies the tedious paging of reports by an assistant, which was necessary to assemble the data, may well be doubted.” Id. at 191.


15. *Concerning the Extent to Which the Law Review Contributes to the Development of the Law, 3 S. CAL. L. REV. 181 (1930).* The data can be viewed by type of material cited, citing jurisdiction, citing judge, cited law reviews, citing case, and leading cited article, note, and book reviews. Id. at 191–204. Despite this wealth of data and access points, Maggs prefaced the appendix with this note: “The tables which follow do little more than show that law reviews are being cited to some extent by the courts. Whether the demonstration of this fact justifies the tedious paging of reports by an assistant, which was necessary to assemble the data, may well be doubted.” Id. at 191.

16. *See, e.g., James Leonard, Seein' the Cites: A Guided Tour of Citation Patterns in Recent American
with the concept that citation frequency is a measure of quality, have also been discussed and evaluated.17

¶8 Within this genre, some authors have empirically assessed what makes articles more likely to be heavily cited. They have identified a significant number of variables that affect the likelihood of citation, including (but not limited to) article subject,18 jurisdiction,19 placement in a symposium,20 publisher,21 the author’s sex or race,22 and the author’s legal education credentials.23

¶9 Several bibliometric studies of law journals have pointed to the effects of the characteristic most relevant for this study, article age. A study of citations in all journals indexed by the November 1972 ILP found that law journal articles are much more likely to cite to recent articles. Thirty-three percent of citations were to articles not more than two years old, 24% to three- to five-year-old articles, 19% to six- to ten-year-old articles, 15% to eleven- to twenty-year-old articles, and 9% to articles over twenty years old.24

¶10 Similar results were found a decade later, in a study analyzing the citations of 211 academic law review articles randomly selected from among those published in 1986.25 In the first five years after publication, an article received about twice as many citations as it did in the next five- year period, six to ten years after publication. Articles received eighty-seven percent of their citations within twenty years of being published.26
A more recent study considered 979 articles published in the *Harvard Law Review*, *Stanford Law Review*, and *Yale Law Journal* between 1980 and 1995.\(^\text{27}\) The data were adjusted for a number of author and article characteristics and supported the proposition that the number of citations to an article would rise quickly after its publication, peak, and then wane. The peak was about four years after an article’s publication; the number of citations an article has received 4.5 years after its initial publication represents about half of the total citations it will receive.\(^\text{28}\)

Mixed results have been reported on the ways in which widespread use of CALR has affected the rate of law review citations to older articles. In a study similar to ours, Richard Leiter analyzed article citations from 1976 (before the introduction of computers) and 1996 (after the introduction of computers) and found that regardless of access to computers, authors primarily cited to relatively recent material.\(^\text{29}\) Material older than sixteen years was cited at a much lower rate. The statistics for 1996 and 1976 were nearly identical. In 1996, material sixteen or fewer years old represented 73% of citations while older material accounted for 27% of citations.\(^\text{30}\) In 1976, those percentages were 72% and 28%, respectively.\(^\text{31}\) Regarding the implications for the print library collection, Leiter reached a “glass half-full” conclusion that because almost 30% of cited articles were from before 1980, libraries have a powerful reason to retain print journal collections.\(^\text{32}\) Lower usage does not mean the materials are unimportant.

Two more recent studies have documented that the ease of access provided by CALR has increased citations to law reviews. For example, John Joergensen found that when the full text of second-tier law reviews was included in LexisNexis and Westlaw, those journals were cited more frequently.\(^\text{33}\) This indicated that researchers’ reliance on Westlaw and LexisNexis was increasing and that online availability boded favorably for a journal’s visibility and use.\(^\text{34}\) However, unlike Leiter, Joergensen concluded that print collections were not cost-effective because users rely less heavily on them.\(^\text{35}\)

Recently, Mary Rumsey looked at this issue with regard to international law journals.\(^\text{36}\) She began with the hypothesis that the increase in journals available in electronic format has resulted in authors increasingly citing to journals, rather than books. She analyzed citations in the *American Journal of International Law* from 1982, 1992, and 2005 and found that in 1982 and 1992 a majority of citations (61.75% and 57.7% respectively) were to books.\(^\text{37}\) However, the opposite was true

\(^{27}\) Ayers & Vars, supra note 18, at 427.

\(^{28}\) Id. at 436–37.

\(^{29}\) Leiter, supra note 12, at 60–61.

\(^{30}\) Id. at 65 tbl.2.

\(^{31}\) Id.

\(^{32}\) Id. at 69.


\(^{34}\) Id. at 52.

\(^{35}\) Id. at 53.


\(^{37}\) Id. at 210.
in 2005: 59.1% of the citations were now to journal articles.\textsuperscript{38} After noting that in the same period the proportion of journal articles published on international law—as compared to books on the same subject—had risen by only 3%, she concluded that the increased availability of electronic articles had indeed affected citation patterns.\textsuperscript{39}

Has Law Journal Availability on HeinOnline Affected Citation Patterns?

Methodology

\textsuperscript{40} To determine whether the rate of law review citations to older law review articles has increased since the introduction of HeinOnline, we compared the number and age of the citations to articles published in twenty journals in two different years, 1998 and 2008. These years were selected to try to capture two distinctly different periods for researching law review articles. In both years, Westlaw and LexisNexis journal databases were in widespread use. However, 1998 predates the launch of HeinOnline, while it was ubiquitous at American law school libraries by 2008,\textsuperscript{40} thus permitting a reasonable evaluation of the influence HeinOnline might have had on citation patterns.

\textsuperscript{41} In determining which journals to sample, we considered three key characteristics: publication history, availability, and reach. To provide ample opportunity for citation to older articles, selected journals needed to have a significant backrun, beginning publication no later than the 1950s. The complete run of the journal (minus new content, which is sometimes embargoed) had to be available in HeinOnline, with LexisNexis/Westlaw coverage beginning no earlier than the 1980s. To further increase the likelihood of gathering a significant sample of citations to a given journal in a given year, we also selected titles from among the more heavily cited law reviews. Three major law review ranking systems (from Washington & Lee;\textsuperscript{41} the Connecticut Law Review;\textsuperscript{42} and HeinOnline\textsuperscript{43}) were consulted to assess journal reach. Twenty journals that appeared on all three lists and met the other criteria were chosen for evaluation.


\textsuperscript{38} Id.
\textsuperscript{39} Id. at 210–11.
\textsuperscript{40} E-mail from Marcie Baranich, Marketing Manager, William S. Hein & Co., to Karen L. Wallace (May 11, 2010, 10:55 A.M. CST) (on file with authors) (confirming that at the beginning of 2007, every ABA-approved law school subscribed to HeinOnline).
\textsuperscript{42} Perry, supra note 15, at 19–25.

¶18 The Westlaw Journals and Law Reviews (JLR) database was then searched to identify every time these journals were cited in any law review article published in 1998 or 2008. We began by searching for journal titles as they would be cited by the Bluebook45 or ALWD Manual46 and discovered that phrase searching omitted many valuable references. Westlaw customer service advised us to use proximity searches rather than phrase searches. Using the Iowa Law Review as an example, two sample search strings were te(iowa +2 l.rev.)(iowa +2 l. +2 rev.) & da(1998) and te(iowa +2 l.rev.)(iowa +2 l. +2 rev.) & da(2008).

¶19 The data were then analyzed to determine how often material from each decade was cited. Looking at the data for each journal and publication year separately, each citation was individually noted by decade (1920–1929, 1930–1939, etc.).47 The results were then tallied to determine what percentage of the citations came from each decade. Table 1 shows the number and percentage of citations for each journal from each decade.

Results

¶20 Overall, there were 60,141 citations to the twenty selected journals, of which 26,548 were from 1998 and 33,593 were from 2008. To try to assess a HeinOnline effect independent of Westlaw and LexisNexis, we considered the publication date when the researcher would have had to access articles either via HeinOnline or in print because they would not have been available on LexisNexis or Westlaw. For 2008 articles, we had to go back three decades, classifying articles published in 1979 or earlier as “older.”48 To ensure we compared articles of the same relative age, we also had to go back three decades for the 1998 articles; in this case the “older” articles were published in 1969 or earlier. In both cases, the group of newer articles included all those published less than thirty years from the test date of 2008 or 1998, and the group of older articles included all those published thirty or more years earlier than the test date. Of the 1998 citations, 94% were published fewer than thirty years earlier, while only 6% were thirty or more years old. The pattern was virtually unchanged in 2008: 93% less than and 7% equal to or more than thirty years old.

¶21 Individual citation patterns, as shown in table 2, varied, with the split between older/newer citation percentages ranging from 1%/99% for the 1998 American University Law Review, to 14%/86% for the 2008 Minnesota Law Review. However, when comparing the same journal title for the two years, the rates were

44. Coverage information on all journals is included in the appendix.
47. Multiple citations within one article to a single article were counted only once.
48. For both 2008 and 1998, our most recent decade included only nine years—i.e., for the 2000s we counted only citations from 2000 to 2008. In both cases, the preceding decades included the full ten years—i.e., for 2008 articles, citations from the 1990s included articles published from 1990 to 1999.
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<tr>
<td>Ind. L.J./2008</td>
<td>1063</td>
<td>959</td>
<td>90%</td>
<td>104</td>
<td>10%</td>
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<tr>
<td>Iowa L. Rev./1998</td>
<td>987</td>
<td>921</td>
<td>93%</td>
<td>66</td>
<td>7%</td>
<td></td>
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<tr>
<td>Iowa L. Rev./2008</td>
<td>1357</td>
<td>1263</td>
<td>93%</td>
<td>94</td>
<td>7%</td>
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<tr>
<td>Mich. L. Rev./1998</td>
<td>3151</td>
<td>2857</td>
<td>91%</td>
<td>294</td>
<td>9%</td>
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<tr>
<td>Mich. L. Rev./2008</td>
<td>3602</td>
<td>3172</td>
<td>88%</td>
<td>430</td>
<td>12%</td>
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<tr>
<td>Minn. L. Rev./1998</td>
<td>1337</td>
<td>1190</td>
<td>89%</td>
<td>147</td>
<td>11%</td>
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<tr>
<td>Minn. L. Rev./2008</td>
<td>1688</td>
<td>1447</td>
<td>86%</td>
<td>241</td>
<td>14%</td>
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<tr>
<td>Nw. U. L. Rev./1998</td>
<td>1317</td>
<td>1201</td>
<td>91%</td>
<td>116</td>
<td>9%</td>
<td></td>
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<tr>
<td>Nw. U. L. Rev./2008</td>
<td>1939</td>
<td>1769</td>
<td>91%</td>
<td>170</td>
<td>9%</td>
<td></td>
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<tr>
<td>Notre Dame L. Rev./1998</td>
<td>837</td>
<td>803</td>
<td>96%</td>
<td>34</td>
<td>4%</td>
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<tr>
<td>Notre Dame L. Rev./2008</td>
<td>1417</td>
<td>1372</td>
<td>97%</td>
<td>45</td>
<td>3%</td>
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<tr>
<td>U. Chi. L. Rev./1998</td>
<td>2538</td>
<td>2293</td>
<td>90%</td>
<td>245</td>
<td>10%</td>
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<tr>
<td>U. Chi. L. Rev./2008</td>
<td>3071</td>
<td>2680</td>
<td>87%</td>
<td>391</td>
<td>13%</td>
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<tr>
<td>UCLA L. Rev./1998</td>
<td>1570</td>
<td>1532</td>
<td>98%</td>
<td>38</td>
<td>2%</td>
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<tr>
<td>UCLA L. Rev./2008</td>
<td>2032</td>
<td>1916</td>
<td>94%</td>
<td>116</td>
<td>6%</td>
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<tr>
<td>Vand. L. Rev./1998</td>
<td>1536</td>
<td>1417</td>
<td>92%</td>
<td>139</td>
<td>8%</td>
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<tr>
<td>Vand. L. Rev./2008</td>
<td>1837</td>
<td>1716</td>
<td>93%</td>
<td>121</td>
<td>7%</td>
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<tr>
<td>Wils. L. Rev./1998</td>
<td>1112</td>
<td>1040</td>
<td>94%</td>
<td>72</td>
<td>6%</td>
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<tr>
<td>Wils. L. Rev./2008</td>
<td>1085</td>
<td>971</td>
<td>89%</td>
<td>114</td>
<td>11%</td>
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<tr>
<td>Wm. &amp; Mary L. Rev./1998</td>
<td>845</td>
<td>837</td>
<td>99%</td>
<td>8</td>
<td>1%</td>
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<tr>
<td>Wm. &amp; Mary L. Rev./2008</td>
<td>1215</td>
<td>1192</td>
<td>98%</td>
<td>23</td>
<td>2%</td>
<td></td>
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similar (e.g., 3%/97% for the 2008 American University Law Review and 11%/89% for the 1998 Minnesota Law Review).

¶22 Because we compiled the data by decade, the results also show how citation rates break down among the three decades preceding the article’s publication. In 1998, 62% of citations were to material less than ten years old, 26% were to ten-to-nineteen-year-old material, and 6% to twenty-to-twenty-nine year-old material. In 2008, these percentages changed somewhat; 52% of citations were to material less than ten years old, 28% were to ten-to-nineteen-year-old material, and 13% to twenty-to-twenty-nine-year-old material. Although further study is warranted, it is interesting to note that the most recent material was cited less frequently in 2008 while twenty-to-twenty-nine-year-old material was cited more frequently. Table 3 shows citation rates for articles less than thirty years old.

Table 3

<table>
<thead>
<tr>
<th>Journal Year</th>
<th>0–9 years old</th>
<th>10–19 years old</th>
<th>20–29 years old</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>62%</td>
<td>26%</td>
<td>6%</td>
</tr>
<tr>
<td>2008</td>
<td>52%</td>
<td>28%</td>
<td>13%</td>
</tr>
</tbody>
</table>

Analysis of Results

¶23 Based on the data gathered through this bibliometric analysis, it would appear that there has been no HeinOnline influence on selection of materials being cited. In other words, online access to the full text of older journal articles through HeinOnline has not increased their citation rates.

¶24 It is possible that this is a result of the fact that in 2006 and 2007 (when articles published in 2008 were likely to be researched), researchers were more likely to use HeinOnline as part of a two-step process (identifying citations in another source, such as ILP or another article’s footnote, and then retrieving through HeinOnline), rather than starting searching directly in HeinOnline. This premise, however, is based only on personal experience and our assessment that, in 2006 and 2007, HeinOnline’s search function was not nearly as easy to use as those of ILP, LegalTrac, or LexisNexis/Westlaw, or as easy as it is now.49

¶25 If researchers in 2006 and 2007 were primarily using HeinOnline to obtain articles already located elsewhere, would the pattern change if more users started their research in HeinOnline—a distinct possibility as its search capabilities continue to become more robust? In other words, would citations to older materials increase if both citation and full-text were retrieved in a single search? Although

49. One researcher publishing in 2008 also noted this discrepancy in search sophistication, although she was using the HeinOnline Federal Register library, not the law journal library. See Katie R. Eyer, Administrative Adjudication and the Rule of Law, 60 ADMIN. L. REV. 647, 705 (2008).
this study cannot answer that question, the data can be parsed to at least glance at the issue.

¶26 Reducing the cut-off point between newer and older articles from three to two decades means that in the 2008 sample some older (1989 or earlier) articles cited could have been obtained via LexisNexis or Westlaw, while in the 1998 sample all older (1979 or earlier) cited articles would have been located and retrieved in print. Whereas our three-decade comparison showed almost identical preferences for newer materials—93% for 2008 and 94% for 1998—the two-decade comparison shows an increase in the proportion of older articles being cited from 1998 to 2008. The 1998 data set cited to 12% older and 88% newer articles (3192 to 23,356 respectively), while the 2008 data set cited to 20% older and 80% newer articles (6735 to 26,858 respectively). This change is very statistically significant ($p$-value less than .01).50

¶27 Moreover, previous studies on law review use also document similar preferences for newer materials at two other periods when all cited articles would be found and retrieved in print, as shown in table 4. Of the earlier studies looking at citation age, two provide data for comparable time periods, albeit from different randomly selected samples of articles. Maru’s study of 1972 data found that ninety-one percent of all citations were from the prior twenty years,51 and Leonard’s 1986 data showed eighty-seven percent of citations were from the prior twenty years.52 Although more study would be warranted, this might support the findings of both Rumsey and Joergensen that authors are more likely to cite what is easily available.53

Table 4

<table>
<thead>
<tr>
<th>Percentage of Citations by Article Age</th>
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<tbody>
<tr>
<td></td>
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<tr>
<td>Journal Year</td>
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<td></td>
</tr>
<tr>
<td>1972 (Maru)</td>
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<tr>
<td>1986 (Leonard)</td>
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<tr>
<td>1998</td>
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<tr>
<td>2008</td>
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</table>

50. Special thanks to Lisa Gardner, Associate Professor of Statistics at Drake University, for her help determining statistical significance.

51. Maru, supra note 24, at 247.


53. Joergensen, supra note 33, at 52–53; Rumsey, supra note 36, at 210–11.
There is a natural impulse to state that the lack of citations to older materials represents the Principle of Least Effort or the Tyranny of the Available. In fact, part of the motivation for this study came during an instructional session covering research sources for a seminar paper, when a student questioned why restricting secondary research in a database to full-text sources would not be the most efficient choice. We hypothesized that the relative ease of identifying articles in one database, such as Westlaw or LexisNexis, and accessing them in another, such as HeinOnline, would increase the rate of citation to older articles. However, our study did not find that convenient electronic access to law review articles thirty years old or older identified in a separate source increased their citation rate, indicating that mere availability may not be enough. Rather, researchers may want to exert even less effort than we hypothesized. They may be more likely to cite to older materials only if they find and obtain the article in a single step, as seen in our two-decade analysis.

Another reason for the preference for newer materials may be found in the study of law itself. Perhaps law operates more like the sciences in the citation of recent secondary material, and less like the humanities, where older materials are cited more frequently. This is especially true when authors are citing to law review articles, which act as a time-capsule of sorts, freezing the law as it was the day the author finished writing the article. It makes sense that researchers would be hesitant to use older materials, since updating them can be a tedious process.

Conclusion

Our study clearly shows that authors of law review articles remain far more likely to cite to articles that have been published fairly recently. But while online

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54. The Principal of Least Effort is thoroughly discussed in the context of information-seeking behavior by Thomas Mann in his 1993 book *Library Research Models* and is mentioned by both Leiter and Joergensen as one possible reason for their results. Thomas Mann, *Library Research Models* 91–101 (1993); Joergensen, supra note 33, at 53; Leiter, supra note 12, at 67.


56. See, e.g., Broadus, supra note 14 (sociology); Ortega, supra note 14 (chemistry); Ming-Yueh Tsay, *Library Journal Use and Citation Age in Medical Science*, 55 J. DOCUMENTATION 543 (1999); Ming-Yueh Tsay, *Library Journal Use and Citation Half-Life in Medical Science*, 49 J. AM. SOC’Y INFO. SCI. 1283 (1998).

57. See, e.g., Baum et al., supra note 14, at 905 (stating that the half-life for citations in the *American Historical Review* is 42.5 years); Heinzkill, supra note 14 (English). See also Yorgo Pasadeos et al., *Influences on the Media Law Literature: A Divergence of Mass Communication Scholars and Legal Scholars?*, 11 COMM. L. & POL’Y 179, 194 (2006) (comparing media law articles in law reviews and mass communications journals and finding an average citation age of fifteen years for the law reviews, compared to twenty-seven years for the mass communications journals).
access to the full text of older articles through HeinOnline has not increased their citation rates, that should not be construed as an indication that full-text accessibility of older journals is not necessary. After all, according to our study, seven percent of all citations in 2008 were to journal articles that were more than three decades old.

¶31 And, while electronic access to older articles is important, it is of even greater importance that current law review articles be widely accessible. With declining acquisitions budgets and space constraints, few law libraries would be able to maintain access to the hundreds of law review articles published each year without electronic databases. For both of these purposes, resources like HeinOnline, which provide access to both older and current journals, are invaluable.
## Appendix

Coverage Details for Journals Chosen for Analysis (as of April 2010)\(^{58}\)

<table>
<thead>
<tr>
<th>Title</th>
<th>Westlaw Coverage</th>
<th>LexisNexis Coverage</th>
<th>HeinOnline Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Georgetown Law Journal</td>
<td>Selected coverage begins with 1983 (vol. 71, no. 2); full coverage begins with 1986 (vol. 73, no. 3)</td>
<td>From October 1982 through current</td>
<td>Vols. 1–6, 8–95 (1912–2007) (Volume 7 never published) Title originally added to Hein: 2001</td>
</tr>
<tr>
<td>Hastings Law Journal</td>
<td>Full coverage begins with 1982 (vol. 33, no. 3)</td>
<td>From September 1982 through current; from vol. 34</td>
<td>Vols. 1–60 (1949–2009) Vol. 1 was The Hastings Journal Title originally added to Hein: 2002</td>
</tr>
</tbody>
</table>

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58. Coverage details for LexisNexis and Westlaw are taken verbatim from their web sites. Dates journals were added to HeinOnline were provided by the company. E-mail from Marcie Baranich, supra note 40.
<table>
<thead>
<tr>
<th>Title</th>
<th>Westlaw Coverage</th>
<th>LexisNexis Coverage</th>
<th>HeinOnline Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michigan Law Review</td>
<td>Selected coverage begins with 1982 (vol. 80, no. 5); full coverage begins with 1985 (vol. 84)</td>
<td>From October 1982 through current; from vol. 51</td>
<td>Vols. 1–108 #3 (1902–2009) Title originally added to Hein: 2000</td>
</tr>
<tr>
<td>Minnesota Law Review</td>
<td>Selected coverage begins with 1983 (vol. 67, no. 4); full coverage begins with 1985 (vol. 69, no. 4)</td>
<td>From October 1982 through current; from vol. 67</td>
<td>Vols. 1–93 (1917–2009) Title originally added to Hein: 2002</td>
</tr>
<tr>
<td>University of Chicago Law Review</td>
<td>Full coverage begins with 1982 (vol. 49)</td>
<td>From Spring 1982 through current; from vol. 49</td>
<td>Vols. 1–76 #3 (1933–2009) Title originally added to Hein: 2001</td>
</tr>
<tr>
<td>Vanderbilt Law Review</td>
<td>Selected coverage begins with 1981 (vol. 34); full coverage begins with 1984 (vol. 37, no. 5)</td>
<td>From October 1982 through current; from vol. 35</td>
<td>Vols. 1–61 (1947–2008) Title originally added to Hein: 2001</td>
</tr>
</tbody>
</table>
A Survey of Electronic Research Alternatives to LexisNexis and Westlaw in Law Firms

Laura K. Justiss

Ms. Justiss conducted a survey of law firm librarians in 2010 that identified electronic research database alternatives to LexisNexis and Westlaw and ranked them by subscription frequency. The survey also generated information regarding suggested or mandated legal research policies in law firms for the use of alternatives to LexisNexis and Westlaw and examined their applicability to billable and nonbillable research. Lastly, it examined the prevalence in firms of flat-rate pricing agreements with LexisNexis and Westlaw.

Introduction

§1 Since 2002, I have provided an annual presentation for our law students entitled “Beyond Lexis and Westlaw: Discover Other Databases Lawyers Use in Practice.” The lecture is one of a series of presentations on legal research topics offered by our reference librarians to assist students in their transition from law school to law practice.¹

§2 Moving to a law school library after eight years of law firm librarianship, I was naively surprised to learn that most law students had little, if any, awareness of the electronic services, other than LexisNexis and Westlaw, routinely used by practicing attorneys.² Of the alternative research databases I had used in my former life as a law firm librarian, only PACER was available in the law school in 2000. There were no court docket services for state courts, such as CourtLink or CourtExpress; no financial or business research databases, such as LiveEDGAR or Dun & Bradstreet; no public records databases (other than those available on LexisNexis and Westlaw); and no intellectual property, engineering, or technology research

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¹ © Laura K. Justiss, 2011. The author would like to thank the members of the Dallas Association of Law Librarians, especially Kathy Clement, Library Services Manager, Munsch, Hardt, Kopf & Harr; Ann Jeter, Manager of Information Services, Jackson Walker, LLP; Jane Reynolds, formerly Manager of Library Services, Jenkens & Gilchrist; and Terri DiCenzo, formerly Dallas Manager of Library Services, Jones Day. Their insights and assistance in testing the survey questions were invaluable in the preparation of this article.

² Collection Development Librarian, SMU Dedman School of Law, Dallas, Texas.

1. Our spring lecture series includes topics such as “Painless Legal Research Refresher” and “Legal Research Beyond Borders: An Overview of International and Foreign Legal Research Techniques and Sources.”

2. Students who had previously been (or were currently) employed at law firms as paralegals or administrative assistants or who had already completed a summer clerkship were occasional exceptions.
databases, such as Dialog. Thus, students seldom had the opportunity to learn of the existence of such alternatives, let alone why or how a lawyer might use them in practice.

The challenges inherent in preparing a presentation on alternative research databases were considerable. Would I be able to obtain current, meaningful information on databases I could no longer access myself? If so, would I then be able to get law students’ buy-in that not everything they would ever need was available on LexisNexis and Westlaw?

To deal with the first issue, I searched the law library literature, including the excellent annual CALR (computer-assisted legal research) updates and other electronic resource reviews in Legal Information Alert. I then contacted the database vendors for information on content and pricing that was not available on their websites. Several enthusiastically provided me with the necessary information, including instructional screen shots, promotional literature, and pricing descriptions. LiveEDGAR and Bloomberg Law were especially helpful, giving me complimentary access so that I could provide a live demonstration of some of the content and features of these sophisticated databases.

In addition, members of the Dallas Association of Law Librarians (DALL) generously shared information regarding the alternative databases their attorneys were using, those they had recently purchased or were considering, and those they had ceased to use. In short, they provided me with an annual reality check.

With this information, I prepared a handout, entitled “A Webliography of Legal and Non-Legal Online Research Sources,” and describing electronic services in six categories: (1) primary source alternatives to LexisNexis and Westlaw; (2) court docket and case information; (3) secondary sources for topical legal research; (4) finance, business, and news; (5) public records; and (6) nonlegal and law-related, including patents and trademarks, science, technology, and medicine. Predictably, the database list has grown longer each year.

My presentation to the students currently includes two major components: (1) an overview of the role of electronic research in law firm economics, noting that its billing and recovery have been historically, if not ideally, driven by LexisNexis and Westlaw, which were the earliest computer-assisted legal research products widely used in law firms; and (2) a review of the six major categories of research services, demonstrating one or two examples in each category.

3. Of course, some of these sources were available on LexisNexis and Westlaw. However, others, particularly licensed content such as Dun & Bradstreet reports, were not (and are not as of this writing) available on the academic subscription.

4. At that primitive time, law students had not yet universally concluded that everything not on LexisNexis or Westlaw is available on Google.


6. Over the past eight years, LiveEDGAR has been owned by Global Securities, Inc., and then Thomson West. It is now integrated with the Westlaw Business subscription.

The first component also contains examples of law firm retail pricing for both LexisNexis and Westlaw, including transactional and hourly pricing, eliciting the predictable sticker shock. I then focus on the importance of quality, accuracy, and efficiency as factors in a firm’s willingness to pay a steep price for information, noting also that all three factors can potentially impact an associate’s billing realization rate, especially during the early years of one’s career, when associates are often assigned more research than senior-level people. This discussion provides a natural segue to the subject of alternative electronic services.

In 2009, while updating my presentation, I learned that Locke Lord Bissell & Liddell, a large Dallas law firm, had established legal research guidelines limiting the use of LexisNexis and Westlaw under certain conditions, in favor of the far less costly Loislaw, a primary source online product purchased in 2001 by Wolters Kluwer. The policy in the firm’s memo stated:

- All non-billable legal research involving case law, statutes or regulations at both the state and federal level should first be performed using Loislaw.
- Loislaw should also be used for billable research where appropriate, resulting in a much lower cost to the client.
- If additional research is required on Lexis or Westlaw that research must be billed to a client/matter.

Never had I read or heard of any large law firm mandating the use of a primary source alternative, such as Loislaw, VersusLaw, or Fastcase, over LexisNexis and Westlaw, the industry gold standard for electronic legal research. Would large law firms actually deign to consider the silver or the bronze? If so, did this signal the beginning of the end of LexisNexis’s and Westlaw’s dominance in the online legal research market? I decided I needed a snapshot of the national picture, both for LexisNexis and Westlaw and for the increasing number of alternative research databases that appeared to be encroaching on the CALR giants’ turf.

This article describes the results of a survey of electronic research database alternatives that was submitted to the American Association of Law Libraries (AALL) Private Law Librarians Special Interest Section listserv in January 2010. My goals were threefold: (1) to identify products purchased most frequently in law practice; (2) to determine whether institutional policies for LexisNexis and Westlaw

8. Retail pricing refers to non-flat-rate pricing. Pricing is obtained annually from the LexisNexis Transactional and Hourly Pricing Guide and Westlaw’s Pricing Guide for Private Price Plans that I receive upon request from our account representatives. The vendors have thus far permitted me to disclose pricing to the students for selected databases with the understanding that this information will not be included in the “Webliography” or disseminated in any manner outside of the actual presentation.

9. Ronda Muir & Tanja Diklic, The Profit and Loss Equation for Associates, ROBIN ROLFE RESOURCES (Sept. 22, 2010), http://www.robinrolferesources.com/index.php?option=com_content&task=view&id=46&Itemid=91 (defining billing realization as “the percentage of billable hours that are actually billed to the client”).


usage were an emerging trend, or if the policy at Locke Lord was an anomaly; and (3) to measure the prevalence of flat-rate contracts with LexisNexis and Westlaw in law firms large enough to have professional library staff. In short, I wanted to get a sense of how law librarians were distributing their materials budgets among LexisNexis, Westlaw, and other online databases.

2010 Law Firm Survey

¶12 Because the purpose of the survey was to provide law librarians with information regarding general trends in electronic resource investments by law firms, the questions were designed to yield quantitative information regarding selected fee-based electronic services in firms with professional library staff. The survey did not address issues regarding training or research proficiencies, as these have been ably addressed in the recent past.12

¶13 The electronic survey included eleven multiple-choice questions and one open-ended question.13 I used Zoomerang to design and distribute it.14

¶14 Questions 1 through 6 addressed electronic services for each of the source categories covered in my annual presentation, as discussed above. Each question included an “Other” choice to add services not listed, as well as a “None” choice. Respondents could select as many choices as were applicable for each of these questions.

¶15 Questions 7 and 8 inquired about policies regarding the use of database alternatives to LexisNexis and Westlaw and whether they applied to billable or nonbillable research. I was most interested to learn whether other firms were following the lead of Locke Lord by establishing institutional limits on the use of LexisNexis and Westlaw.

¶16 Question 9 sought to determine how many firms had preferred provider agreements with LexisNexis or Westlaw as a cost-containment strategy.15 Question 10 sought to determine the size of respondent law firms. The question was formulated to include users in branch offices of large firms where a single license covered more than one location.

¶17 Question 11 sought to identify the position and title of respondents. In retrospect, I realize I crafted this question poorly and should have simply asked for the “position,” rather than the “position and title” of the respondent. A large number of respondents responded “Other,” rather than “Librarian”; their position

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12. See Patrick Meyer, Law Firm Legal Research Requirements for New Attorneys, 101 LAW LIBR. J. 297, 317–18, 2009 LAW LIBR. J. 17, ¶¶ 65–67 (discussing the results of his research regarding databases to which new attorneys have access and databases in which they are expected to be proficient).

13. The survey questions are reprinted in the appendix. All survey results are on file with the author.

14. Zoomerang is a Web 2.0 survey software product, offering three levels of features and functionality: free, Pro, and Premium. Product Feature Comparison, ZOOMERANG, http://www.zoomerang.com/pricing/ (last visited Nov. 4, 2010). I purchased the Pro version, as it enabled a larger number of survey responses than the free version and offered other helpful features and benefits.

15. A law library director in a large Dallas law firm had advised me the previous year that more firms in Dallas were opting for flat-rate contracts with both LexisNexis and Westlaw, rather than attempting to leverage firm usage with one over the other. I wanted to learn the extent, if any, to which this was a national trend.
descriptions were those of librarians, but their titles were predictably more specific as to their particular role within the library.

\[\text{¶18 Finally, question 12 was the only open-ended question and was optional. It solicited additional comments to explain or amplify answers to the preceding questions.}\]

\[\text{¶19 The survey was distributed to law firm librarians via the AALL Private Law Librarians Special Interest Section (PLL-SIS) listserv on January 26, 2010, and remained open for three weeks. Periodic e-mail reminders were posted during that time period.}\]

\[\text{¶20 The selection of sources that were listed in questions 1 through 6 was based on a review of the law library literature and my own examination of databases available from major legal publishers, such as BNA, LexisNexis, Wolters Kluwer, HeinOnline, and Thomson Reuters, as well as e-mail and telephone discussions with librarians in medium-to-large Dallas law firms.}\]

\[\text{¶21 Rather than trying to include every possible fee-based electronic source, an unrealistic goal at best, I focused primarily, though not exclusively, on established legal publishers that have made their print products accessible electronically, as noted above. My objective was to distribute a survey that would generate useful information for the greatest number of librarians while not being so burdensome as to preclude a meaningful response rate.}\]

**Survey Results**

\[\text{¶22 The survey yielded 167 responses of which 162 were complete. Incomplete responses were not tallied. All but three of the responses were from professional librarians. The exceptions were two paralegals and one information technology staff member.}\]

\[\text{¶23 With respect to firm size, 69\% of the respondents were employed by firms with more than 125 attorneys and 15\% by firms with 75 to 125 attorneys. Firms with 51 to 75 attorneys accounted for only 8\% of the responses, and only two firms, or 1\%, had 1 to 25 attorneys, underscoring the sample bias favoring large law firms in law firm librarian surveys.}\]

**Primary Source Alternatives**

\[\text{¶24 Primary source alternatives, listed in table 1 from highest to lowest rank by percentage, were fairly evenly distributed among the respondents, except for}\]

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16. Wolters Kluwer IntelliConnect was referred to in the survey as “Wolters Kluwer CCH Internet Research (IntelliConnect)” despite the fact that “CCH” no longer appears in any of the IntelliConnect databases. The product was renamed “IntelliConnect” to distinguish the redesigned platform from the previous Internet Research Network version, but the print loose-leaf versions of these products still bear the CCH label. In light of all of these labeling changes, I wanted to make certain the product was easily identifiable in the survey.

17. See Sarah Gotschall, *Teaching Cost-Effective Research Skills: Have We Overemphasized Its Importance?*, 29 LEGAL REFERENCE SERVICES Q. 149, 154 (2010) (considering the possibility that surveys of law firm librarians overstate the importance of cost-effective legal research to smaller firms because of the disproportionate number of large firms represented in survey results due to the fact that small firms rarely employ librarians). I confess that I knowingly sacrificed a more representative sample in order to obtain information that would be useful to law librarians rather than to law firms of all sizes.
VersusLaw, which had only one subscriber. Interestingly, Bloomberg Law, a comparative newcomer to the legal market, and Loislaw differed by only one percentage point, with Loislaw garnering 16% of responses and Bloomberg Law 15%. As Bloomberg Law’s web-based platform is less than a year old, the fact that it is nipping at the heels of the ten-year-old Loislaw suggests its potential as a major competitor to LexisNexis and Westlaw in the foreseeable future.

Table 1
Primary Source Alternatives to LexisNexis and Westlaw

<table>
<thead>
<tr>
<th>Database</th>
<th>No. of Respondents</th>
<th>% of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loislaw</td>
<td>26</td>
<td>16%</td>
</tr>
<tr>
<td>Bloomberg Law</td>
<td>25</td>
<td>15%</td>
</tr>
<tr>
<td>Fastcase</td>
<td>21</td>
<td>13%</td>
</tr>
<tr>
<td>Casemaker</td>
<td>21</td>
<td>13%</td>
</tr>
<tr>
<td>VersusLaw</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>None</td>
<td>62</td>
<td>38%</td>
</tr>
<tr>
<td>Other</td>
<td>27</td>
<td>17%</td>
</tr>
</tbody>
</table>

¶25 Casemaker and Fastcase were tied at 13% of respondents. Casemaker is free to state bar members in states that participate in the Casemaker Consortium, twenty-seven as of this writing. Similarly, Fastcase is available at no charge to bar members in eighteen participating states, but is also available via fee-based subscription.

¶26 More than sixty percent of responding firms subscribed to at least one of the alternative databases for primary law research. However, a larger number of firms than subscribed to any single alternative database, thirty-eight percent, eschewed all of them, presumably relying on LexisNexis and Westlaw, as well as commercial secondary source reporters, such as Wolters Kluwer IntelliConnect, BNA, and RIA. The latter three services were mentioned by respondents in the “Other” category for question 1 and were covered specifically in question 3 regarding secondary sources for topical legal research.

¶27 With respect to primary law research, however, it is safe to say that LexisNexis’s and Westlaw’s exclusive hold on the law firm market has been signifi-

cantly weakened by improved content from free and low-cost, bar-funded sources, as well as by commercial competitors such Loislaw and the boldly advancing Bloomberg Law.

**Court Docket and Case Information**

¶28 The survey results for court docket and case information services, shown in table 2, differed markedly from the alternative primary source databases. Most of the court docket and filing information services have been in the legal marketplace for as long as or longer than the primary source alternatives\(^{21}\) and yielded a much stronger showing in law firms. All but one firm subscribed to at least two of these services. Not surprisingly, PACER, the oldest and least expensive federal court docket and e-filing source, was selected by ninety-nine percent of respondents.

¶29 LexisNexis’s CourtLink and Westlaw’s CourtExpress are welcome additions to the docket and case information services. They provide not only all of the information available on PACER, but also much needed state court information, including full documents, and value-added enhancements such as keyword searching, filing alerts, case tracking, and custom reports not available on PACER.\(^{22}\)

¶30 Both products were originally launched by smaller companies and subsequently acquired by LexisNexis and Westlaw in 2001 and 2005 respectively.\(^{23}\) Interestingly, however, CourtLink’s market share in the survey results (80%) was nearly twice that of CourtExpress (46%). The two services, both of which link to their parent companies’ database content, offer varying features and benefits and are by no means interchangeable.

¶31 Courthouse News Service, a daily current awareness service, does not provide court docket information but produces in-depth news reports on federal court case activity from the date of filing through the appellate level.\(^{24}\) As such, it does not really compete directly with CourtLink and CourtExpress, but instead fills a very specialized market niche with a high-quality product for litigation and bankruptcy practitioners. Nevertheless, it still ranked significantly higher (68%) than CourtExpress.

¶32 I included Bloomberg Law in this question primarily to see whether any surveyed firms were using its court dockets product, which is not, as of this writing, competitive with CourtLink and CourtExpress in either content or in a feature-by-feature comparison. As noted above, however, Bloomberg Law is still very new and will likely see significantly enhanced content and features in coming months and years.

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21. See generally Warner J. Miller, *Trial Court Docket Research Tools*, LEGAL INFO. ALERT, Jul./Aug. 2007, at 1 (discussing the development of web-based court docket search and retrieval services and comparing the content and features of CourtLink and CourtExpress).


23. Miller, supra note 21, at 8.

In the “Other” category, respondents added Courttrax, CourtsOnline, Open Online, and JIMS, all of which serve specific states or regions. For example, Courttrax includes all federal and bankruptcy courts, but its state court coverage is limited. I expressly limited the sources I listed in the survey to court docket and information services that were national in scope so as not to skew the results if more responses were received from one part of the country than another.

Table 2
Court Docket and Case Information Services

<table>
<thead>
<tr>
<th>Database</th>
<th>No. of Respondents</th>
<th>% of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>PACER</td>
<td>160</td>
<td>99%</td>
</tr>
<tr>
<td>CourtLink</td>
<td>130</td>
<td>80%</td>
</tr>
<tr>
<td>Courthouse News Service</td>
<td>110</td>
<td>68%</td>
</tr>
<tr>
<td>CourtExpress</td>
<td>74</td>
<td>46%</td>
</tr>
<tr>
<td>Bloomberg Law</td>
<td>21</td>
<td>13%</td>
</tr>
<tr>
<td>None</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>Other</td>
<td>30</td>
<td>19%</td>
</tr>
</tbody>
</table>

Secondary Sources

Question 3 addressed the secondary services that law firms are using to support specific practice areas, such as tax and securities, as well as alternatives to LexisNexis and Westlaw for legal periodicals. I was admittedly unsure how best to categorize HeinOnline for the purposes of the survey or even whether to include it at all. However, because of the large volume of titles and diverse content available on HeinOnline, I felt it was a fair contender for the law firm library’s budget dollar and as such had a potentially prominent place as an alternative to LexisNexis and Westlaw.

The results, summarized in table 3, certainly highlighted the commercial success of BNA’s evolution from print to digital content, especially considering its high subscription costs. The surprise, however, was the comparatively low ranking of Wolters Kluwer’s IntelliConnect product. RIA Checkpoint offers only tax and tax-related content, compared with Wolters Kluwer, which transferred its vast CCH loose-leaf service content in nearly all areas of tax and business-related law to a digital format. However, RIA was selected by 75% of respondents versus 68% for IntelliConnect.

26. Respondent location information was not requested as part of the survey, so it is not possible to know what percentage of respondents work in each geographic region.
27. The HeinOnline “core” collection includes the ever-increasing law journals collection, as well as primary sources such as the Federal Register, Code of Federal Regulations, and federal legislative history sources. Customers can purchase additional modules on foreign and international law, historical legal collections, and much more. HeinOnline Overview, http://heinonline.org/HeinDocs/HOLBrochure.pdf (last visited Nov. 4, 2010).
A number of factors could account for this result. Perhaps some firms have eschewed the Wolters Kluwer IntelliConnect digital platform in favor of the CCH print loose-leaves or are accessing this content through their Westlaw subscriptions. Another possibility, given the reviews and comments on the IntelliConnect product in the law librarian community, is that librarians and their patrons have instead gravitated toward BNA, RIA Checkpoint, LexisNexis, and Westlaw for tax and business law content.

In a recent survey of law librarians questioning the reasonableness of legal publishers’ annual price increases, Wolters Kluwer received the second largest percentage of “Very Poor or Poor” ratings at 42.86%, just beneath West’s 48.94% rating. LexisNexis garnered the largest percentage of “Good or Excellent” ratings at 23.7%, while Wolters Kluwer received the lowest rating at 10.92%. Whatever the reason—whether perceived product quality issues, pricing policies and structures, or marketing strategies—BNA and RIA Checkpoint have clearly overtaken Wolters Kluwer’s market share for this content.

Another surprise was the popularity of HeinOnline in law firms, at 72%. Academic law libraries quickly embraced HeinOnline in its early years, delighted to acquire digital access to law review content preceding LexisNexis and Westlaw coverage. Later, as law firms reduced office space dedicated to print collections, the ever-increasing breadth of HeinOnline’s historical, and now more current, publications has made it a pragmatic and sound business investment. It is a particularly smart choice for materials that might otherwise be retrieved on LexisNexis or Westlaw at a higher unit cost, such as law review articles, legislative materials, and superseded federal regulations, to name only a few.

Twenty-four responses were received in the “Other” category. The standout was Law360 newsletters, which accounted for one-third of the responses in this category.

Financial, Business, and News Information

Selecting the services listed in question 4 regarding financial, business, and news information was the most challenging judgment call, not only for purposes of the survey, but also for inclusion in my annual lecture and “Webliography,” primarily because there are so many product choices. I chose to focus on those with an ongoing presence in the law librarian literature that were also consistently mentioned by DALL members.

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Table 3
Secondary Sources for Topical Legal Research, Legal Periodicals, etc.

<table>
<thead>
<tr>
<th>Database</th>
<th>No. of Respondents</th>
<th>% of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>BNA Newsletters &amp; Reporters</td>
<td>138</td>
<td>85%</td>
</tr>
<tr>
<td>RIA Checkpoint</td>
<td>122</td>
<td>75%</td>
</tr>
<tr>
<td>HeinOnline</td>
<td>116</td>
<td>72%</td>
</tr>
<tr>
<td>WK CCH Internet Research (IntelliConnect)</td>
<td>110</td>
<td>68%</td>
</tr>
<tr>
<td>None</td>
<td>6</td>
<td>4%</td>
</tr>
<tr>
<td>Other</td>
<td>28</td>
<td>17%</td>
</tr>
</tbody>
</table>

¶41 The responses, shown in table 4, were consistent with my expectations and yielded no surprises. The three top-ranking databases have long been important tools in the law firm research arsenal: Dun & Bradstreet Company Reports (60%), Westlaw Business: LiveEDGAR (56%), and D & B Hoover’s (51%). Morningstar’s 10K Wizard and Securities Mosaic fell into the second tier of user frequency with nearly a third of respondents. These two services provide much of the same SEC-related information that is available on LiveEDGAR and Bloomberg Law but do not include some of the very sophisticated features of those powerhouse providers. Hence 10K Wizard and Securities Mosaic are positioned to meet basic information needs for SEC filings and related materials at a lower cost.

¶42 Of the remaining services listed in the question, none garnered more than twenty percent of respondent subscribers. Bloomberg Law’s very recent entry into the law firm marketplace may account for its comparatively modest ranking. It currently offers much of the same enhanced functionality as LiveEDGAR, including the packaging of SEC filings and exhibits as a searchable research library for locating and drafting corporate documents.

¶43 Of the twenty-seven “Other” responses, only two services were listed more than once. Two firms listed Bloomberg Financial (not Bloomberg Law), and two others added Dialog (one expressly for Dun & Bradstreet Reports).

Public Records

¶44 Responses about public records, shown in table 5, clearly demonstrated that Accurint for Legal Professionals enjoyed the highest subscription rate among survey respondents. Seventy-three percent indicated using Accurint, while the next most popular service, AutotrackXP, was chosen by only twenty-three percent. Launched by LexisNexis in 2001, Accurint for Legal Professionals is marketed to legal professionals as an economical source for information on businesses and individuals. It shares the Lexis-Nexis platform, but is sold as a separate subscription.30 Interestingly, AutoTrackXP was removed from the LexisNexis product group at around the same time this survey was closed. The product was reportedly “sun-
settled into Accurint for Legal,” and the transition completed “approximately February 15, 2010.”

¶45 With regard to the remaining public records choices, Merlin’s market share was surprisingly low, given its ease of use, retrospective coverage of corporate information, and modest pricing. Even PublicData.com, which lacks comprehensive state coverage in most categories, had a higher profile than Merlin.

¶46 Twenty-four respondents selected the “None” response. It is not unlikely that they accounted for at least some of the nineteen “Other” responses, which

31. E-mail from Michael Morton, Regional Academic Manager, Rocky Mountain-Plains Region, LexisNexis, to author (Nov. 16, 2010, 17:18 CST) (on file with author).


Table 4
Financial, Business, and News Information

<table>
<thead>
<tr>
<th>Database</th>
<th>No. of Respondents</th>
<th>% of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dun &amp; Bradstreet Company Reports</td>
<td>97</td>
<td>60%</td>
</tr>
<tr>
<td>Westlaw Business: LiveEDGAR</td>
<td>91</td>
<td>56%</td>
</tr>
<tr>
<td>D &amp; B Hoover’s</td>
<td>83</td>
<td>51%</td>
</tr>
<tr>
<td>Wizard 10K (Morningstar Document Research)</td>
<td>50</td>
<td>31%</td>
</tr>
<tr>
<td>Securities Mosaic</td>
<td>49</td>
<td>30%</td>
</tr>
<tr>
<td>Capital IQ</td>
<td>32</td>
<td>20%</td>
</tr>
<tr>
<td>OneSource</td>
<td>29</td>
<td>18%</td>
</tr>
<tr>
<td>Bloomberg Law</td>
<td>24</td>
<td>15%</td>
</tr>
<tr>
<td>Skyminder</td>
<td>14</td>
<td>9%</td>
</tr>
<tr>
<td>None</td>
<td>19</td>
<td>12%</td>
</tr>
<tr>
<td>Other</td>
<td>27</td>
<td>17%</td>
</tr>
</tbody>
</table>

Table 5
Public Records

<table>
<thead>
<tr>
<th>Database</th>
<th>No. of Respondents</th>
<th>% of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accurint</td>
<td>119</td>
<td>73%</td>
</tr>
<tr>
<td>AutoTrackXP</td>
<td>38</td>
<td>23%</td>
</tr>
<tr>
<td>PublicData.com</td>
<td>8</td>
<td>5%</td>
</tr>
<tr>
<td>Merlin Information Services</td>
<td>4</td>
<td>2%</td>
</tr>
<tr>
<td>Courthouse Direct</td>
<td>2</td>
<td>1%</td>
</tr>
<tr>
<td>None</td>
<td>24</td>
<td>15%</td>
</tr>
<tr>
<td>Other</td>
<td>28</td>
<td>17%</td>
</tr>
</tbody>
</table>
included LexisNexis public records (eight), Westlaw public records (five), and selected state-specific databases, such as REJIS for the state of Missouri.

**Nonlegal and Law-Related**

¶47 Question 6 covered the catch-all category of nonlegal and law-related databases, excluding business and finance, and largely consisted of patent and trademark databases. Not surprisingly, Dialog, the oldest and most established product on the list, was the major player by a wide margin at fifty-four percent.

¶48 Among the services listed in question 6, only Dialog, CISTI, and Infotrieve provide non-intellectual property information, such as scientific, medical, and technical sources. Thus it was not surprising that two of them ranked at or near the top of the list. CISTI provides not only document services for North American journals, but also interlibrary loans of books and conference proceedings.34

¶49 With respect to patent and trademark databases, Thomson Delphion, which provides full-text patents that link from the Derwent World Patents Index, and MicroPatent were clearly a strong presence in firms with an intellectual property practice. Of course, Dialog offers both domestic and foreign patents and trademarks, as well as U.S. copyright information.35

¶50 Nearly all the services listed in the “Other” category were intellectual property databases, including Thomson Innovation (four respondents), CT CorSearch (three), Lexis Total Patent (three), and Thomson’s CompuMark services (three). Responses to this question are shown in table 6.

### Table 6

<table>
<thead>
<tr>
<th>Database</th>
<th>No. of Respondents</th>
<th>% of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dialog</td>
<td>87</td>
<td>54%</td>
</tr>
<tr>
<td>Thomson Delphion</td>
<td>47</td>
<td>29%</td>
</tr>
<tr>
<td>MicroPatent</td>
<td>43</td>
<td>27%</td>
</tr>
<tr>
<td>CISTI (Canada Institute for Scientific and Technical Information)</td>
<td>34</td>
<td>21%</td>
</tr>
<tr>
<td>Derwent World Patents Index (Thomson Reuters)</td>
<td>28</td>
<td>17%</td>
</tr>
<tr>
<td>Esp@cenet</td>
<td>16</td>
<td>10%</td>
</tr>
<tr>
<td>InfoTrieve.com</td>
<td>11</td>
<td>7%</td>
</tr>
<tr>
<td>Questel Orbit or Questel QPAT</td>
<td>9</td>
<td>6%</td>
</tr>
<tr>
<td>Minesoft PatBase</td>
<td>6</td>
<td>4%</td>
</tr>
<tr>
<td>None</td>
<td>37</td>
<td>23%</td>
</tr>
<tr>
<td>Other</td>
<td>21</td>
<td>13%</td>
</tr>
</tbody>
</table>

34. Information about CISTI (Canada Institute for Scientific and Technical Information) is on its web site (cisti.nrc.gc.ca).

Online Research Costs

§51 Questions 7 through 9 dealt with issues pertaining to containment and recovery of online research costs. Only thirty-three firms, 20% of the survey sample, reported having an institutional policy for the use of alternative databases for legal research. While this number was likely higher than it would have been before the financial crisis of 2008, it was still lower than I expected, given the attention received by the Locke Lord research guidelines memo. Subsequent commentary in law librarian postings suggested that the adoption of such a policy by a large high-profile law firm would open the door for companies such as BNA, Wolters Kluwer IntelliConnect, and Loislaw to compete with LexisNexis and Westlaw on a broader scale.36 One year later, the ABA Journal published an article noting that increased competition from such products as Bloomberg Law, Google’s case law search, and products such as Fastcase threatened the market share dominance of LexisNexis and Westlaw.37

§52 Notably, there was some indication that Wolters Kluwer interpreted the Locke Lord policy broadly as a portent sufficient to justify charging law schools for Loislaw, a product that had previously been provided at no charge.38 In June 2010 SMU’s Wolters Kluwer representative informed me of the new academic pricing model for Loislaw, stating that Locke Lord’s policy signaled an emerging trend in law firms favoring low-cost primary source alternatives such as Loislaw, thereby requiring law schools to make it available to students.39 While Locke Lord’s highly publicized memo may ultimately turn out to have been a harbinger of more draconian standards for LexisNexis and Westlaw usage in firms, the responses to my survey in early 2010, shown in table 7, did not support that conclusion.

Table 7
Policy Mandating or Encouraging Use of Alternatives to LexisNexis and Westlaw

<table>
<thead>
<tr>
<th>Policy in Place</th>
<th>No. of Respondents</th>
<th>% of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>33</td>
<td>20%</td>
</tr>
<tr>
<td>No</td>
<td>129</td>
<td>80%</td>
</tr>
</tbody>
</table>

§53 Table 8 summarizes the responses regarding the application of a law firm’s legal research policy, if any, to billable and nonbillable research. Of the thirty-three


38. In May and June 2010, Wolters Kluwer representatives advised law school customers that Loislaw would no longer be provided at no charge. The price quoted for the SMU Dedman School of Law was $3000 per year for the primary source materials and $3500 for the “treatise bundle,” a lengthy list of Aspen treatises, of which only eight were owned in print by the library. In a related telephone conversation with the author, SMU’s sales representative specifically cited the Locke Lord research policy as justification for a fee-based academic subscription to Loislaw. Telephone interview with Chris Egeland, CCH Account Representative, Wolters Kluwer Law & Bus. (June 2010).

39. Id.
firms with such a policy, the vast majority (73%) applied it to all online research, not only nonbillable work. Only eight firms (3%) limited the policy to nonbillable research.

Table 8
Policy Applicable to Billable vs. Nonbillable Research

<table>
<thead>
<tr>
<th></th>
<th>No. of Respondents</th>
<th>% of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Billable</td>
<td>1</td>
<td>3%</td>
</tr>
<tr>
<td>Nonbillable</td>
<td>8</td>
<td>24%</td>
</tr>
<tr>
<td>Both</td>
<td>24</td>
<td>73%</td>
</tr>
</tbody>
</table>

Table 9 summarizes the responses regarding law firms’ flat-rate contracts with LexisNexis and Westlaw. The results showed that a plurality of firms (39%) had flat-rate contracts with both vendors. As nearly seventy percent of the survey respondents worked at firms with more than 125 attorneys, the largest firms may well have generated this result. Westlaw as a sole preferred provider came in second at 33%, and LexisNexis trailed at 17%. Only 12% reported no flat-rate contract with either provider.

Table 9
Firms with Preferred Provider (Flat-Rate) Agreements

<table>
<thead>
<tr>
<th></th>
<th>No. of Respondents</th>
<th>% of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>LexisNexis</td>
<td>26</td>
<td>17%</td>
</tr>
<tr>
<td>Westlaw</td>
<td>49</td>
<td>32%</td>
</tr>
<tr>
<td>Both</td>
<td>59</td>
<td>39%</td>
</tr>
<tr>
<td>Neither</td>
<td>19</td>
<td>12%</td>
</tr>
</tbody>
</table>

Of course, these results did not address whether firms had chosen to eliminate one provider, regardless of whether a preferred provider agreement was in place. However, 35% of Am Law 200 firms recently reported that they were considering moving to a single vendor for electronic legal research in the next five years, up from 31% in 2009 and only 12% in 2008.40

Conclusion

Because the survey sample was heavily weighted toward large law firms, the results are probably more relevant to firms of 125 or more attorneys than to small-to-medium-sized firms. That said, the responses strongly suggested that LexisNexis

and Westlaw are facing competitors of increasing strength, such as Bloomberg Law, which will not be easily overcome either by corporate acquisition or better capitalized marketing strategies. In addition, the sheer number of competitively priced database alternatives has reduced the value of LexisNexis and Westlaw as “one-stop shopping” resources, even if some of the alternatives are owned or licensed by entities affiliated with LexisNexis or Westlaw.

§57 On the other hand, LexisNexis and, particularly, Westlaw clearly remain the dominant players in large firms. The majority are relying on flat-rate subscriptions with one or both providers to better predict costs and control firm overhead. Accordingly, most respondent firms have not yet instituted policies requiring the use of alternative databases for research that would normally be done on LexisNexis or Westlaw. However, with the example set by Locke Lord, as well as other firms that were counted but not identified in this survey, similar institutional research policies may well emerge as a cost-containment strategy that is likely to appeal to clients.

§58 For law librarians attempting to extract as much value as possible from increasingly limited budgets, I believe these results are, at least preliminarily, good news. While the warp-speed advances in research technology can tax even the most progressive and cutting-edge among us, the democratization and flattening of the online legal research marketplace, highlighted by these results, promise to yield a better value to the legal profession than the de facto market control of LexisNexis and Westlaw that has been in place for decades.
Appendix

Survey on Electronic Database Alternatives to LexisNexis and Westlaw

1. **Primary Source Alternatives to LexisNexis and Westlaw**: Does your firm subscribe to one or more of the following services?

   Please check all that apply. If your firm subscribes to any services not listed, please add them under “Other.”

   ___ Bloomberg Law
   ___ Casemaker (if available in your state)
   ___ Fastcase
   ___ Loislaw
   ___ VersusLaw
   ___ None
   ___ Other—Please list any additional services to which the firm subscribes.

2. **Court Docket and Case Information Services**: Does your firm subscribe to one or more of the following services?

   Please check all that apply. If your firm subscribes to any services not listed, please add them under “Other.”

   ___ Bloomberg Law
   ___ CourtExpress
   ___ Courthouse News Service
   ___ CourtLink
   ___ PACER
   ___ None
   ___ Other—Please list any additional services to which the firm subscribes.

3. **Secondary Sources for Topical Legal Research, Legal Periodicals, etc.**: Does your firm subscribe to one or more of the following secondary source electronic services?

   Please check all that apply. If your firm subscribes to any services not listed, please add them under “Other.”

   ___ BNA topical newsletters and reporters
   ___ HeinOnline
   ___ RIA Checkpoint
   ___ Wolters Kluwer CCH Internet Research (IntelliConnect)
   ___ None
   ___ Other—Please list any additional services to which the firm subscribes.
4. **Financial, Business, and News Information (including SEC Filings, Public and Private Company Information):** Does your firm subscribe to one or more of the following services?

Please check all that apply. If your firm subscribes to any services not listed, please add them under “Other.”

___ Bloomberg Law  
___ Capital IQ  
___ D & B Hoover’s  
___ Dun & Bradstreet Company Reports  
___ Morningstar Document Research: Wizard10K  
___ OneSource  
___ Securities Mosaic  
___ Skyminder  
___ Westlaw Business: LiveEDGAR  
___ None  
___ Other—Please list any additional services to which the firm subscribes.

5. **Public Records:** Does your firm subscribe to one or more of the following services?

Please check all that apply. If your firm subscribes to any services not listed, please add them under “Other.”

___ Accurint  
___ AutoTrackXP  
___ Courthouse Direct  
___ Merlin Information Services  
___ PublicData.com  
___ None  
___ Other—Please list any additional services to which the firm subscribes.

6. **Nonlegal and Law-Related: Patents and Trademarks, Science, Technology, Medicine, etc.:** Does your firm subscribe to one or more of the following services?

Please check all that apply. If your firm subscribes to any services not listed, please add them under “Other.”

___ CISTI (Canada Institute for Scientific and Technical Information)  
___ Derwent World Patents Index (Thomson Reuters)  
___ Dialog
7. **Does your firm have a policy in place, whether written or oral, encouraging or mandating the use of database alternatives to LexisNexis or Westlaw?**

   ___ Yes  
   ___ No

8. **If you answered yes to question 7, does the policy apply to:**

   ___ Billable research only  
   ___ Nonbillable research only  
   ___ All research

9. **Does your firm have a preferred provider agreement (flat-rate contract) with:**

   ___ LexisNexis  
   ___ Westlaw  
   ___ Both  
   ___ Neither

10. **Law Firm Size:** The choices below refer to the total number of attorneys in your law firm who have access to the databases listed in the questions above. For example, if the firm’s main office has access to a database, but branch offices do not, select the firm size of the main office.

    If one or more branch offices also have access, select the firm size that corresponds with the aggregate number.

    If the subscription license is limited to the librarian(s) or other individual(s) (e.g., no site license), please select the firm size that corresponds to the number of attorneys in the office or offices for whom the librarian(s) or other individual(s) provides research services.
11. **Position and Title of Respondent**

   ___ Librarian  
   ___ Information Technology Staff  
   ___ Paralegal  
   ___ Other—please specify your job title

12. **Please add any additional comments that will help to explain or amplify any of your responses above.**
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Law Library Budgets in Hard Times*

Taylor Fitchett,** James Hambleton,*** Penny Hazelton,† Anne Klinefelter,‡ and Judith Wright†††

This article begins by looking at the environment of the academic law library of the twenty-first century, followed by an analysis of the current economic climate and an assessment of how these difficult economic times will affect academic law libraries. The next section discusses strategies a law library director can marshal to manage a multimillion-dollar budget in face of reduced resources. Focusing in on the institution’s own budget and accounting framework, creative thinking, and planning for use of resources can have successful and innovative outcomes for law libraries and the schools they support. Finally tools and strategies that can help support budget requests are discussed.

Introduction‡

¶¶ One of the most challenging tasks for academic law library directors is the planning and management of the law library budget. And because institutions have very different fiscal systems, there is usually a steep learning curve for a new academic director. Given the very difficult economic environment of the past two years, as well as the tremendous changes in the format and cost of legal information, we thought it useful for some experienced law librarians to share their thoughts and ideas about managing law library budgets in this challenging time. In addition to the worst recession many law librarians have ever seen, there are several other factors at work in the academic law library environment that drive the need for academic law library directors who are imaginative, creative, and strategic thinkers, particularly about resources.

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‡ Introduction and conclusion © Penny Hazelton, 2011.
Changes in the practice of law itself are a hot topic of conversation these days. The competition in the legal profession to provide outstanding legal services for the best price, combined with the economic crisis, have reduced the number of law jobs available and are forcing change in the way law firms do business. For example, with job placement for new law graduates about as bad as it has ever been, increasing numbers of recent law graduates are considering solo practice. Even within larger law firms, partnership tracks are being redefined. And law firms are looking at different billing methods, in some cases moving away from the billable hour systems that have been so prevalent in the profession. More attention is being paid by law firms to outstanding customer service, at the same time that they look for efficiencies in the provision of those services. Even more radical ideas have some traction, as evidenced by an article in which the author urges a liberalization of law firm business structures that would permit outside investment in law firms in order to create publicly traded partnerships.

These changes to the organizational structure, billing systems, and management efficiencies of law firms will be felt in legal education by pushing law schools to graduate more highly skilled, practice-ready students. Thus, many law schools are studying and working on changes to the law school curriculum, adjusting the balance between theory and practice for the twenty-first-century law student. And if lucrative jobs are not readily available so students can pay back their high burden of educational loans, any decline in the number of students attending law school will in turn impact the number of law schools, the resources they have available to run their academic programs, and the tuition they can expect to charge.

Legal education is being pressured from many sides—changes in the legal profession itself; higher expectations by employers of law school graduates; the high cost of a legal education, which leaves so many graduates with extremely high debt loads; law school rankings that increasingly pressure law school expenditure toward recruitment of the best students and faculty; a recession that has created several years of very poor job markets for law graduates; studies such as the Carnegie Report that highlight the need for a more integrative legal education with skills emphasis; the American Bar Association’s (ABA) review of law school accreditation standards; and likely future emphasis on outcomes of the legal education process.

The potential of new technologies may be the single biggest driver of change in the legal academy. Developments that rely on technological innovation are likely to change the face of legal education forever: the completely online law school, changes in ABA standards that permit more distance-learning courses, the ubiquitous nature of access to legal information, social networking, mobile devices, electronic textbooks that release us from our reliance on the casebook method of teaching, and sophisticated course management systems and technology to deliver information to students both inside and outside the classroom.

Managing a law library budget in these times of great change and stress is an art form. This article covers four topics related to managing budgets in academic law libraries. It first explores the current economic environment and argues that these difficult economic times are not transitory, and the necessity of living with limited resources is likely to be permanent. The second section describes strategies for managing a multimillion dollar budget in times of reduced resources. The third section addresses creative ways to use library resources within the scheme of the institution’s own budget and accounting framework. Finally, the fourth section discusses the best tools available to make your case for the resources needed to provide library services.

We hope this article can serve to help those dealing with management and administration of academic law libraries during these challenging times. Don’t forget—challenging times create opportunities.

Permanent Tough Times and the Impact on Academic Law Libraries

During the 2010 AALS meeting, I asked law library directors if they thought the current tough economic times were permanent. Virtually every law library director with whom I spoke thought they were. Most qualified their remarks by saying they thought that while economic conditions for law schools will improve, those of academic law libraries probably will not. One colleague even said, “All academic law libraries are being dismantled and losing their space.”

In the 1960s, law schools all over the country begin to expand and improve their academic programs and libraries. These changes were the beginning of the “golden age” of academic law libraries:

- Many law schools moved beyond being “black letter” schools, and began hiring new, younger faculty with serious research interests. These new faculty members often were graduates of national law schools and were accustomed to large research libraries. Libraries were commonly referred to as the “laboratory of the law school.”

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* © Judith Wright, 2011.
The ABA Standards began to require expanded “core collections,” along with faculty status and tenure for the law library director and autonomous status for the law library.

At many law schools, the law library director had been the only person working in the library who had a law degree except the teaching faculty. Beginning in the early 1970s, more and more law libraries began to require dual degrees, an M.L.S. and a J.D., for their reference librarians, and today it is rare to find a reference librarian without both degrees.

Throughout the next three decades, there was a great expansion in the size of law library collections, with an emphasis on the size of the collection. The number of titles and number of volumes were almost the sole criteria for judging the quality of a library.

The golden age of the academic law library may now be over. All of us agree that the future of our libraries must be different from the past. Already there have been dramatic changes in many academic law libraries as they have started to adapt to the transition from print to digital collections. We are no longer building print collections, and our users primarily rely upon our electronic collections. User emphasis is on access; few faculty and even fewer students are interested in whether the information that they use is licensed rather than owned by the library. As librarians, we may feel a nostalgic and fiduciary responsibility for our print collections, often carefully developed over decades, but few of our users, including our deans and faculties, share these feelings.

The general consensus is that the tough times for academic law libraries are permanent and that the law firm changes in the last decade may be a predictor of

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11. The 1968 ABA standards required a minimum collection of 20,000 volumes and noted that "the Council will make available upon request a list of the books recommended as basic . . . .“ AM. BAR ASS’N, STANDARDS FOR LEGAL EDUCATION AND FOR THE APPROVAL OF LAW SCHOOLS 40 (1968). The 1969 standards included a list of publications that must minimally be in the collection. STANDARDS OF THE AMERICAN BAR ASSOCIATION FOR LEGAL EDUCATION 8–9 (1969).


14. The specialized law librarianship program at the University of Washington (UW) requires a J.D. for admission and has graduated 159 M.L.I.S./J.D. students from its program since 1986. Seventy-one percent had a career in law librarianship or are still working as law librarians. Statistics were compiled from job history data on the UW Law Librarianship Program web site, http://lib.law.washington.edu/lawlibrarianship/index.asp (password required for access). A number of other library and information schools have specialized educational and practical programs for people interested in law librarianship. See Am. Ass’n of Law Libraries, Recruitment Committee, ALA-Accredited Graduate Programs in Library Science with Law Library Classes or Joint MLS/JD Classes, http://www.aallnet.org/committee/rlc/resources/lawlib-state.asp (last updated Nov. 18, 2009).

15. Aside from library expenditures that are included with all other law school expenditures in the U.S. News & World Report ranking algorithm for the category “expenditures per student,” the only library information that is part of the rankings calculation is the number of volumes and titles reported by each law school (valued at only 7.5% of the total score). Robert Morse, The Law School Rankings Methodology, U.S. NEWS & WORLD REPORT (Apr. 15, 2010), http://www.usnews.com/articles/education/best-law-schools/2010/04/15/the-law-school-rankings-methodology.html.
the future of academic law libraries. There is also a consensus that academic law libraries must find a new model for an expanded role within the law school.

¶12 The pessimism of the law library directors with whom I spoke in January 2010 was not entirely due to the transition from print to digital collections, or even to the economic downturn. For almost a decade, libraries have been increasingly affected by the growing importance of the U.S. News & World Report rankings17 and the resulting competition among law schools. Every law school dean is aware of the ranking of his or her law school compared with the schools regarded as “peer” schools—the schools with whom they must compete for students; faculty; and local, regional, or national standing.

¶13 For the past ten years or more, law library space has been repurposed to meet other law school needs. More than six years ago, the librarians attending the academic director’s breakfast at the AALL Annual Meeting were asked how many were having library space taken for nonlibrary purposes. Over fifty percent of those attending responded affirmatively. I am sure that many more have lost space since then—my own library at the University of Chicago is among them.

¶14 In addition, many deans are looking to library budgets as a source of funds. The U.S. News rankings have inspired a stricter scrutiny of law library costs, and the economic crisis has only added fuel to the fire. As we know, admissions and career services statistics count heavily in the rankings.18 Those activities are greatly expanding, requiring increased financial support. Their staffs have become increasingly professionalized, with the J.D. a routine qualification for many positions. Deans have few options but to support these expanded programs. They cannot touch faculty salaries or law student financial aid. When a dean looks at a law school budget, the biggest expenditure after faculty salaries is the library, and many must now wonder “what are all those people doing with all that money?”

¶15 The budget and space reductions many law libraries have faced may have been accelerated by the new economic climate, but I believe it would be happening regardless. Scrutiny of law library budgets will not go away with improved financial stability. Libraries will marginalize themselves and be vulnerable to financial and space reductions if we do not broaden our scope and our value to our law schools. Each of us must be much more creative and align what the library does with the law school’s goals. We must identify local opportunities where the library can make important contributions and actively pursue opportunities to contribute value to our organizations. Where can the library cooperate with colleagues in the law school? We must think of tasks that are traditional for libraries and also of those where libraries can play an important role even though they have not done so in the past. We should be perceived as the “yes” people who are willing, and have the skill,

16. Over the past twenty years, law firm libraries have lost space, canceled print collections, focused on access rather than ownership, and continually marketed their services as essential to the quality of legal services offered to the firm’s clients. See The Future of the Law Firm Library, AALL Spectrum, Sept. 1996, at 14 (discussing changes in law firm library services and ways that libraries can market themselves to their firms).

17. The most recent version of the rankings can be found in Schools of Law, in America’s Best Graduate Schools 28 (2010).

18. Morse, supra note 15.
to take on new tasks and projects. Those of us in my generation of law library directors are relying on the new generation of library directors to be creative and find new roles for our libraries.

¶16 The following are some of the trends and indicators that I believe are likely to determine the future of academic law libraries:

- The proposed changes in the ABA Standards will eliminate the core collection requirement. The ABA Annual Questionnaire no longer collects the number of volumes or titles in the library. Without these traditional measures, how can we demonstrate the value of our collections? Should we develop measures that demonstrate the value of our library services? If so, what are these measures?
- As we acquire fewer books, the work of the library staff must change, since we need fewer catalogers and fewer staff to process books. Does this mean that libraries should cut staff, or should we redirect current staff to other tasks? If so, how do we determine what we are not doing that we should be doing?19
- Are we committed to a continual study of the ever-changing work habits and research needs of our faculties and students? Are we anticipating and responding to the impact of increasingly multidisciplinary research and to the generational differences of our community? Are we designing new services that focus on the needs of our users? Can we distinguish between what we think our users need and what they think they need? Do we understand how our electronic collections are used? How do we find ways to capture the attention of a complex user community?
- What if the ABA standards require that law schools produce outcome measures?20 We can be sure that U.S. News will watch these measures very carefully. Will these outcome measures result in even more financial resources being diverted from the library to “other law school needs”? Can academic law libraries develop successful outcome measures for themselves? Libraries are now completely marginalized when law schools are “ranked.” Can we avoid this marginalization in outcome measures?
- What will it mean for many law schools and libraries when the ABA approves more distance-learning opportunities for law students? How can the library adapt instruction, services, and resources to make itself indispensable for these distance students? Or will our Information Technology departments assume this indispensable role?
- What if the job market for our graduates does not improve and there are fewer students attending law school? What will a reduction in the size of the student body and a corresponding reduction in tuition income mean for libraries?


• Google, Google Book, and Google Scholar are the preferred research starting points for many of our students. What does that mean for us, especially as Google expands its legal content? How can we utilize the power of the Google interface and databases to improve service to our faculty and students?

• If the trend toward open-access law journals continues, what is the law library’s role in providing access and in supporting faculty scholarship? Should the law library be actively engaged with student-edited journals as they move toward open access?

• Does the law library have a role in preserving and providing access to unique law school content, such as student journal articles and the diverse content that most law schools now post on the law school’s web page? Will those faculty podcasts, blogs, and videos be lost as they age and are removed from the law school web page?

• Law schools will be focusing more resources on career services because law schools that can place their students will thrive, and those who cannot, will not. What can libraries do to help career services and make the students more employable? There has been a strong focus on faculty services in the last five years or so, reflecting the perceived importance of scholarship in the reputation market. The reputation market currency that will really be important in the next five years is how well our alumni do in the job market. Faculty services will continue to be extremely important, but if I were a dean, I would be worrying less about them and more about preparing the students for a really tough job market.

¶17 I am sure that there are other trends that are equally challenging for academic law libraries on a national level and even greater local challenges for most of us. I do have a few suggestions to think about. There are some areas in which academic law libraries need to be more aggressive. For example, cooperation and collaboration are particularly important for academic law libraries.21 Interlibrary loan is invaluable, but cooperative acquisition has been less successful. We need to be much more proactive as we consider the benefits of a variety of broader cooperative efforts:

• Cooperation among local law libraries that allows reliance on the subject specialties of each library. Work out easy, quick borrowing agreements. Loan, scan, and e-mail anything needed by your colleagues. Create a culture among logical cooperating partner libraries that supports reliance upon shared resources and broad cooperation.

• Cooperation in print and digital preservation projects, with libraries assuming special responsibility for their own jurisdictions.22 We not only

21. See generally John Palfrey, Cornerstones of Law Libraries for an Era of Digital-Plus, 102 Law Libr. J. 171, 2010 Law Libr. J. 11 (arguing that as the legal information landscape changes, libraries must cooperate and collaborate to continue to provide their patrons with the best service).

22. The Legal Information Preservation Alliance is a group of law libraries working on various print and digital preservation and access programs. History of LIPA, LEGAL INFORMATION PRESERVATION ALLIANCE, http://www.aallnet.org/committee/lipa/history.asp (last updated July 30, 2009).
need access to each other’s collections, we must work cooperatively to retain regional and national print collections.

- Cooperation on a broader national level to support foreign law scholarship, by utilizing both the expertise of foreign law bibliographers and the acquisition of foreign law collections, in print and digital formats.

In the near future we will have to cooperate much more successfully than in the past if we hope to meet the research needs of our users, preserve print law books, and ensure that our digital collections are not lost.

¶18 On some campuses the university library will present opportunities for cooperation, especially as interdisciplinary programs become more important. Now is the time to start building bridges and encouraging your university library colleagues to value the law library’s collections and subject expertise—interdisciplinarity goes both ways, and on many campuses the law collections are highly valued and used by nonlaw faculty and students.

¶19 Become actively involved in introducing legal research wherever you find a need. For over five years our reference librarians have taught a four-week course to the undergraduate law club. We routinely provide instruction in U.S. congressional research and in legal research for the university librarians and for university students. Many campuses offer “law and” courses. Is there a greater bibliographic instruction role for the law librarians? Until recently it was safe for academic law libraries to rely on law school funding, but that may change in the future, and expanding one’s user group may result in greater support for the law collections throughout the campus.

¶20 In addition, if your library has a commitment to print and digital preservation, the university libraries may have technological expertise and funding options that are beyond those possible at most law libraries. Equally important, become informed about the print and digital preservation programs in your state. Assume responsibility, and, even if your library cannot afford to be an active partner, make sure that those making these print and digital preservation decisions locally, statewide, and regionally understand and include legal publications. Law librarians have a long history of distance from our “other library” colleagues. That attitude is unlikely to benefit law libraries and law schools in the future.

¶21 We must recognize that our patrons now use electronic resources (often almost exclusively). Therefore, we must reorganize our processes around the most effective delivery of electronic resources and make sure that we provide the best service for our electronic collections. We must manage electronic collections with the same care that we have managed our print collections. Have all law libraries installed the Google application programming interface (API) to link the library’s books to the Google version? Are the library’s holdings reflected in a WorldCat search? Does Google Scholar lead the user directly to links to the library’s licensed databases? Are the links on the library’s web page regularly examined to make sure

they still work? Do the library’s online catalog, web pages, and research guides provide easy, efficient access to the library’s electronic resources?

22 Do our librarians and staff possess the skills they need? Is our aging staff continuing to develop new skills and expand their technological expertise? Are managers identifying and using all possible opportunities to expand and enhance staff skills? What are the training programs on your campus or those offered by your local or state library associations? Do we take full advantage of the online training and webinars many publishers now offer, especially those offered for nonlaw databases? Can our librarians provide the expertise needed by our faculty engaged in multidisciplinary research? Have we built the connections elsewhere on campus for access to data sets and other nonlaw resources? Are we helping our colleagues elsewhere on campus to take a broad view of the services that the library should offer?

23 Can we be flexible and open-minded about “library work”? Are there indicators that we are not noticing and new trends that may have library implications or should have library implications? What are possible expanded roles for the law library? Some deans might have the idea that the library could supervise all faculty services; at my law school we have a faculty support coordinator—she does almost everything that the librarians do not do, and we still have faculty secretaries. It is possible that the move of some library directors to positions as associate administrative deans may lead to some consolidation—libraries could begin reporting to an administrative dean rather than the Dean, or the library could be asked to assume responsibility for miscellaneous law school tasks.

24 We are in a period of rapid change, and we must watch for opportunities and share ideas. The Academic Law Libraries Special Interest Section (ALL-SIS) provides us with a structure to actively exchange good ideas and develop new services. Its Faculty Services and Student Services committees are excellent examples of the value of working together to develop new programs, such as these:

- Librarians worked with a faculty member and his thirty student workers to set up an environmental wiki. The librarians provided training and resource guides. Many of the student workers were not law students, and the law librarians worked with the science librarians to provide the expertise needed to work with the science resources.
- Librarians organized Microsoft Office Word and Excel training for law students.
- Librarians are actively engaged in citation checking of faculty publications.
- Librarians are responsible for posting faculty articles on SSRN and assigning the abstract terms.
- Librarians develop or coordinate a digital repository for the law school.

25 As you read this short list, you will probably think of interesting initiatives at your own library. We can all learn from each other if we share ideas for new programs and ideas. Our first reaction might be that a new idea is “interesting, but it could never be done here” or “there is no interest.” But situations, deans, faculty, and budgets now change very rapidly. What was unlikely in the past can become essential today.
¶26 It is crucial that we work with our faculty and students to discover what they need and what barriers they face in their research for teaching and scholarship, and then develop solutions to meet those research and instructional needs. We must work together to demonstrate that the services and collections of our libraries are essential to meet the educational goals of the law school. We can articulate why our work is important and our libraries are valuable, but now we have to demonstrate that value to our deans, faculties, and students.

The Multimillion Dollar Question*

¶27 In considering the question of how academic law libraries can manage our multimillion dollar budgets in hard times, I’ve framed my answer as a “top ten” list. All of these strategies have been useful at the University of North Carolina, where the law library has a healthy tradition of being well integrated into the activities of the law school, the campus library system, and the area library consortium. My top ten thoughts incorporate the benefits of collaboration, strategic fund management, nimble planning, and a flexible idea of the library’s purpose:

1. *Develop plan A, but also plans B through D, and have them ready in case of mid-year budget reversions or permanent cuts in the budget.* Most funding sources, including private investments and state revenues, are unpredictable in this tough economic climate, so libraries must be able to respond quickly to change, even dramatic change. Rapid decreases (or even increases) in a library’s budget are much easier to manage if a plan is already in place. Although our situations vary, most of us have seen or anticipate seeing decreases of ten percent or more, particularly over the course of several years. These cuts are traumatic and vision-changing; planning helps the institution and its employees respond rationally.

2. *If you are fortunate enough to have multiple types of funding sources, spend vulnerable funds first.* This strategy works within a budget season or cycle and also works to protect against ongoing decreases. For example, a library that spends its state funds before private resources might be spared a budget cut if state funding is cut mid-year due to lower-than-expected tax revenues, since the library’s state money will have already been spent.

3. *Identify or create one-time expenditures, including paying in advance, to take advantage of short-term opportunities.* While most of us have seventy to eighty percent of our collections budgets in serials, even these costs can be covered with nonrecurring funds in the short term. For example, vacant positions can generate lapsed salaries that can be used to postpone cancellations. If the library expects a future increase in the budget, this strategy can prevent gaps in subscriptions. Even if the budget cuts are more permanent, postponing cancellations using one-time funding can still provide the benefit of extra time to determine the best titles to cancel. Similarly, if one year’s budget allows you the opportunity to pay in advance through a

* © Anne Klinefelter, 2011.
deposit account or multiyear contract, this can give you some breathing room for the collection development cancellation process in the coming year.

4. **Prepare talking points about the value of the law library in hard times.** Opportunities to increase or prevent decreases in the library’s budget may require a very quick response. Anticipate these scenarios by preparing a simple message of opportunities and vulnerabilities and their impact on services. Busy deans and provosts are more receptive to clear, concrete descriptions of library services that should be supported. This list should be your “elevator talk,” or a half-page list of bullet points. Details can go into a follow-up e-mail or into the appendix of a report.

5. **Embrace hard times as a way to make changes based on shifting needs and new technologies.** Funding constraints are a powerful reason for change. Consider reorganization, cancellations of materials, and even reductions in some services to protect those priorities that rise to the top. Practice using such phrases as “doing less with less” and “planned abandonment.” These issues are challenging to librarians and staff who have invested their careers in building collections and services that may no longer be priorities due to changes in technology, curriculum, law practice, legal publishing, and of course, the economy. However, these changes can also be invigorating. Librarians at the AALS workshop spoke enthusiastically about the opportunities that forced change can bring; I find that enthusiasm to be inspiring.

6. **Take advantage of this situation to introduce or expand law librarian teaching opportunities in the law school.** Teaching connects the library with the core mission of the school, protecting the positions of law librarians and strengthening the argument for salary increases or teaching stipends in better times. Because research options are increasing and law practice is becoming more complex, legal research instruction requires more attention. Schools are working to improve the employment rates of their graduates, and better research skills can help graduates hit the ground running. Academic law librarians can offer advanced or specialized instruction. In addition, individual librarians may be well positioned to teach other law courses that draw on their unique experiences and expertise. Other services may have to be sacrificed to support new teaching responsibilities, but that trade-off might better connect with and support the law school’s goals.

7. **Use this time to introduce or expand research support for law faculty.** Faculty members are important advocates for the law library, and document delivery and supervised research assistants reliably increase the popularity of the library. Again, any new services are likely to mean the loss of something traditional, and these choices can be painful—or exhilarating.

8. **Work with your staff to get ideas for reorganization and budget cutting.** Sometimes directors can’t see the trees for the forest. Staff may have excel-

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24. Some might prefer the phrase “strategic prioritization.” See also Yirka, *supra* note 19, at 29 (discussing what services librarians might abandon in order to address more urgent priorities).
lent ideas about procedures or even services that are no longer necessary or that can be streamlined. Just bringing the staff together to talk about processes and goals can generate useful solutions. We need to remember to ask, “What are [we] doing . . . that we don’t need to do at all?”

9. **Work with other campus or area libraries.** While most directors report to the law school dean, our academic law libraries probably also serve as a part of the overall provision of research services to the campus. Collaboration with campus libraries can yield significant benefits. A unified voice can generate support for funding through end-of-year allocations and grant overhead to prevent cancellations, can produce support for digital repositories and print collection storage, and can help with negotiations with common vendors. Some libraries are also beginning to share staff. If your library is lucky enough to be in a community with other law libraries or other university libraries, collaboration can save funding through collection specialization and shared staffing. For example, the UNC Law Library shares the services of an empirical legal research consultant hired by the Duke Law Library for law faculty support.

10. **Promote the library’s value to the larger institution through your web site.** Particularly if you are in a state institution, don’t forget to promote your value to the state through web site tools, interlibrary loan, and direct circulation services, and through programs such as outreach legal research instruction to public library librarians. In both state and private institutions, even minimal services to the university and its alumni can protect or generate funds.

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**Creative Use of Your Library’s Resources Within Your Institution’s Fiscal Framework**

¶28 Tough economic times offer opportunities to step away from routine tasks to evaluate objectives and the systems employed to reach those objectives. During this process, new perspectives are gained, priorities are set, and innovation is driven. Librarians are extraordinarily creative where budgets are concerned. We have been successful innovators because we do not sacrifice commitment to service on any altar. Whether deciding how to take a budget cut or roll out a new piece of software, librarians focus on the end user.

¶29 In recent years, few libraries have had robust budgets, and yet they continue to improve processes in order to enhance services for patrons. Librarians have a weakness in the use of financial creativity, however. By piecing together budgets to keep operations afloat, they have not been transparent enough about the true cost of information. In our efforts to broaden the scope of its accessibility, we have shielded library users and deans from understanding that as information becomes more accessible it also becomes more expensive, at least in the short term. Recent


* © Taylor Fitchett, 2011.
cutbacks will promote budgetary transparency if librarians are forced to unveil costs in order to protect funding.

¶30 Before addressing the specific ways that the University of Virginia (UVA) Law Library has responded to the budgetary downturn, two general observations about innovation within libraries should be made. First, when librarians talk about innovation, the conversation quickly turns to technology, a single aspect of innovation, albeit a pervasive one. Innovation also occurs when the library workforce is restructured to better serve the mission of the law school or when a brochure to market library services is produced. Value is being added by a new approach or a new product. Second, innovation is fostered in an environment where risk-taking is acceptable. During rough times, it is not business as usual, and this makes people uncomfortable. Everyone wants to protect the things they know, be they books, jobs, policies, or procedures. This is especially true at UVA, an institution founded by Thomas Jefferson, which has thrived on its rich traditions.

¶31 Over the past decade, the UVA Law Library had only small increases for inflation to its budget. The process of cancellation, largely of big-ticket print subscriptions, was begun years ago. In 2009, with a flat budget and little hope that prospects would change in the near future, it was time to do more than continue hacking at the print collection. The librarians needed to rethink collection development from the bottom up in order to create new ways to maximize the use of resources. We also needed to take a new look at library policies and procedures and develop fresh perspectives on the workforce.

¶32 Early in the process of reconsideration, it was reaffirmed that the library’s primary goal of providing excellent customer service to faculty, students, and other libraries could not be compromised. Rather than reacting to the budget woes by reducing library hours or eliminating any valued service, the librarians decided to use the unfavorable economic situation as an opportunity to expand services. Online surveys and focus groups were employed to discover the aspects of the library that people most valued. As a result, a few services were dropped, but a very successful new service was created, Student Document Delivery (SDS).

¶33 Law students had long wanted the same on-grounds document delivery service that was available to the faculty. Hesitant to offer it to 1200 students for fear that the system would be overwhelmed, their request had been previously rejected. Within a few weeks of the program’s inception, though, it was clear that with the establishment of a few guidelines the service could be expanded to students without adding additional personnel.

¶34 The students had also been clamoring for additional group study rooms, especially around exam time. Needless to say, there was little money for construction-related activity when this request was taken under consideration. It took a couple of years, but eight group study spaces were either carved out of existing library space or negotiated away from other law school functions. The SDS and the study rooms are classic examples of a little bit of investment in the right place going a very long way.

¶35 Our second reaffirmation was to the workforce. It was critical to morale that people be reassured that cuts would not come from personnel lines. Classified staff members have not had raises for three years, but they still have jobs. This secu-
rity was helpful during a time when many changes were being made, and it was
given up front by our university president, who declared that there would be no
layoffs. The student wage budget was even protected, because it was understood
that in this economy students need jobs more than ever. Maybe the library could
do without student workers, but in Charlottesville students could not do without
on-campus employment.

¶36 With a renewed commitment to service and the workforce intact, discus-
sions were opened on ways to use the economic situation as an opportunity. Efforts
were directed toward three main initiatives:

1. rethinking collection development;
2. developing partnerships with other institutions to maximize resources;
and
3. reevaluating jobs to eliminate library procedures for which there is little
return on investment in order to free employees to do new tasks that yield
a higher return.

Collections

¶37 The first venture was aimed at collections, especially the quick fixes that
could be realized during the 2009 fiscal year. It was a perfect opportunity to elimi-
nate many materials that were financed because UVA is a major research library
and not because they were critical to the research of UVA scholars. However, the
mere thought that they would no longer have a place in the collection was heresy
to some. For the UVA Law Library this was a sea change—more titles were elimi-
nated in a single year than had ever been canceled in the history of the library.
Approval plan selections were tailored more specifically to current areas of faculty
research. Further, it was decided that most approval titles should be ordered in
softcover to save a few more dollars.

¶38 Electronic information has been under the same scrutiny for retention as
print materials. Statistics on database usage are employed to guide license continu-
ance decisions, and databases are now reviewed on an annual schedule. Stringent
evaluation is made prior to purchase, and contract bargaining with vendors is no
longer a passive activity. Several years ago, UVA hired a special advisor to the
University Librarian and liaison to the General Counsel, an attorney who assists
libraries with contract negotiations. As a result, many thousands of dollars have
been saved in both the costs of license agreements and in the time librarians would
have spent dealing with vendors.

¶39 Existing library holdings, which are never fully utilized, can be maximized
if they are easier to find in both the physical and virtual realms. Over the course of
the year, directional signage to collections throughout the library was enhanced. At
the same time, the web presence committee worked to improve its approach to
presenting online information. Ongoing collaboration with the main campus
library to develop OneSearch, a federated search engine that allows simultaneous
searching of many law-related databases, holds the promise that it will unlock
information that is already available campuswide. Within the UVA library system,
an increasing number of resources are being diverted from the purchase of materi-
als to initiatives that explore ways to identify and locate information that is obscured in the databases owned or licensed by the university.

¶40 Another way to maximize the use of existing resources is to teach people how to do effective legal research. Reference librarians commonly do this when assisting students, but a larger impact can be made in the classroom. The number of advanced legal research sections that law librarians teach was doubled, allowing more students to have exposure to sources that would otherwise be little used, especially print materials.

¶41 As a result of the collection evaluation brought about by the budget decrease, librarians are more engaged in acquisition decisions today than ever before. Better aware of collection content themselves, they are more likely to promote relevant materials to researchers. Faculty members who have been interviewed concerning their research and instructional needs and who frequently suggest titles for purchase are likewise integrated into the collection development process. They learn about the real cost of information from librarians and have consistently been supportive of decisions not to purchase outrageously expensive items. The secondary benefit of this collaborative approach to collection development is the additional rapport it has fostered between librarians and faculty.

¶42 The most profound financial outcome for those who were a part of reexamining the collection development process was that somewhere along the way their strategy changed from that of managing a materials budget to that of managing a highly complex research budget, where the absolute value of the information to the researcher, rather than its potential value, is paramount. As research interests evolve, the collections will transform, so flexibility must be built into budgets. Ongoing collection evaluation will assure that funds can be held in reserve for new information tools as they emerge.

Partnerships

¶43 Not anticipating a generous budget in future years, we asked what else might be done to ensure that faculty and students retain access to scholarly sources. A far-reaching response to the current budget situation is the strategic partnering that libraries are doing within their own institutions and with external groups. Many institutions, including the UVA Law Library, are gearing up for partnering in the open-access environment. Economic uncertainty in higher education will encourage them to accelerate in this direction. Still, it will be a few years and take a fair number of resources before all of the major academic institutions are fully committed to this agenda.

¶44 When considering what new partnerships might be formed, we recalled that the New England Law Library Consortium (NELLCO) had successfully negotiated significant savings for the consortium in their vendor negotiations. Many of the NELLCO libraries hold major research collections that would have complemented our own. It was not possible, however, to become a member of NELLCO, as they are only accepting affiliate members, so the search for a partner turned back to the southeast and to a school with a research mission similar to UVA’s. That school was Duke, which has one of the most comprehensive research collections in
the region. The Duke Law Library had a significant budget reduction in 2009; they were open to cooperative collection building.

¶45 The partnership with Duke is new, and there are many details to be worked through. But even now the two libraries have saved thousands of dollars at the same time as access to information for each institution has been expanded. So far, it has been resolved to divide collection responsibilities for some major serial sets, including retention and storage responsibilities. Costs on other publications will be split, and, where possible, same-day access to materials in each collection will be granted. Discussions have begun on how simultaneous searching of both online catalogs might be achieved. In the future, reference librarians will spend time in the partner library so that research agendas specific to the other school can be better understood.

¶46 The UVA Law Library has also stepped up resource sharing efforts with other campus libraries. If there is a way to save money without compromising service, it is explored. It was cheaper to farm out interlibrary loan, so the main library has taken over that responsibility from the law library. The law library has a two-hour rush document delivery system of its own, but for twenty-four-hour turn-around on deliveries of on-grounds materials, it is cheaper to participate in the campuswide document delivery program. The law library relies on the main library’s programmers and many of their software applications, their digital text center and repository, their training programs, and their databases. It remains an autonomous library and reimburses the main library, through an annual invoice, for most of the costs of their assistance.

¶47 The greatest dollar amount paid to the main library by the law library is for access to electronic information. It was more cost-effective for us to pay a percentage of the total expenditure for databases on campus than to negotiate each contract independently. Before coming to this agreement, the main library and the law library shared costs of individual databases, such as JSTOR and CIS, where there was a clear link to legal research. But it soon became difficult to support the contention that the legal community did not have a stake in the complete pool of digital information on campus. The law library wanted a seat at the table when it came to database subscription and cancellation decisions. As it turned out, that seat was very important, because we had a voice in the recent round of database cancellations brought about by the main library’s significant budget shortfall.

Reevaluation of Jobs

¶48 Jobs at UVA have been protected during the current downturn, but this may not always be the case. Over the years, and especially when money is tight, more than one dean or faculty member has been heard to say that there seem to be a lot of people in the library. With two-thirds of our budget going to salaries, it was prudent to better articulate a workforce plan. It takes a while to devise and implement plans that involve making changes to human resources. Institutional buy-in is imperative when job descriptions are radically changed or positions are eliminated. Many libraries are restructuring in significant ways due to technological change as well as a change of focus toward expanded research and teaching. A workforce plan may not save money during the current year, but it will guide per-
sonnel expenditures in the future. During its creation there are opportunities to revisit priorities, to project future needs, and to outsource, streamline, and realign talent.

¶49 The law library’s workforce plan is based on a firm commitment to research support. Both practical experience and survey results have indicated that our most valued output is the research assistance offered by librarians. Accordingly, much of our planning has focused on how to develop the research staff. At present, all but two librarians have at least a fifty percent research component in their job descriptions; in the future, all professional staff will be directly involved in research.

¶50 The increased emphasis within our curriculum on corporate law and the growing demand among our faculty for assistance with empirical research suggests that more skills are required in those areas. A year ago, a business librarian was added to the research team, and he was immediately inundated with requests for research assistance. Consequently, when our special collections librarian accepted another position, her job description was rewritten for a second business librarian with empirical research experience. It was wonderful to have someone on the staff who handled rare books, archives, and manuscripts, but there are fewer customers who need specialized assistance with these materials than there are those who need help with large data sets.

¶51 Likewise, when the government documents position and later the cataloger position were vacated, similar decisions were made. Most documents that legal researchers require are readily available online, so it made sense to replace that position with someone who had a broader scope of legal research skills. The cataloger was replaced with an emerging technologies librarian, and now the small amount of original cataloging is outsourced. Looking at future needs of the library, a historian and additional staff who have expertise working with digital text would create team enhancements. Through attrition within the workforce, new position descriptions will be created to fulfill these needs. Each time a position becomes open, it offers a chance to see if duties can be eliminated or reassigned to another position, and it is an opportunity to bring in outside talent or advance an existing employee.

¶52 Once the fundamental employment needs of the library were determined, the staff focused attention on the specific tasks in each job description, asking which tasks could reasonably be eliminated in order to free up staff hours in preparation for alternate job assignments. This came at a good time, because the new head of human resources was implementing changes in the university’s personnel system, and there was much duplication of purpose. To date, most of the workforce savings that have been garnered have come from streamlining processes within the technical services department. There are updated procedures for ordering, and fewer materials are checked in, routed, or filed. A smaller number of materials are bound, and once the journal negotiations with Duke are completed, even fewer journals will be bound. Little shelf-reading is done anymore; books are used less, so there are fewer shelving errors. When a book is missing, it can usually be purchased cheaply and quickly enough from Amazon to satisfy user needs. Revised gift guidelines have reduced the number of collections that must be processed. Staff time has been freed for new tasks, including digital projects, a review of materials in offsite storage, and preservation work.
§53 The direction for our personnel development over the next several years fits well into the mission of the law school. By no means has this process created gloom and doom among the staff. Instead, the changes have been energizing. The staff, who have had a voice in workforce redesign, have assumed tasks more relevant to the library’s research mission and have had additional job training to help them succeed in their new challenges. National polls show that for the past two decades there has been a general decline in worker satisfaction. Perhaps the fact that many workers feel less relevant to their work contributes to the mood. Most of us want to feel anchored, to have a professional purpose. People understand that they need to acquire new skills to continue to be valued in the workplace, but they need to have a presence in the process that alters their profession.

§54 In summary, libraries need a functional collection development plan that reflects the research and instructional mission of their institution. They need to look at partnering in new ways, remembering that tighter collaboration among libraries is not optional. Workforce plans should be well articulated to clarify personnel goals and to justify expenditures on the workforce. Bad times push innovation, but they also encourage rash decisions. The challenges to libraries are understood. Now is the time to think about possibilities and to innovate our way into new strategies for doing business. We cannot allow faltering budgets to drive us to retreat from the very ventures that will lead to our future success.

Making the Case for the Law Library’s Budget*

§55 After the library has considered ways to either curtail or refocus its budget, it must still have that budget approved by the law school administration. In order to make a case for the law library’s budget, it is important to put the budget in context. Look at the library’s budget first in relation to the budgets of other law school departments, and second in relation to the law library budgets of peer schools.

§56 Law school budgets are generally divided into two major categories: operating expenditures and personnel expenditures. Total operating expenditures are divided among the law school’s different departments to fund the activities in that department. Compare the law library’s operating expenditures as a percentage of total expenditures with the percentage of total expenditures for all other law school departments. It is especially important to do this over a span of years to see whether the percentage of total operating expenditures for the law library is decreasing or increasing. This will indicate whether support for the law library is holding steady, increasing, or eroding.

§57 For comparing the law library’s budget with those of other law school departments, the ABA’s annual questionnaire provides a good source of data. The

* © James Hambleton, 2011.
27. The annual questionnaire is available at Questionnaires, AM. BAR ASS’N, http://www.abanet.org/legaled/questionnaire/questionnairedocuments.html (last visited Nov. 9, 2010).
annual questionnaire summarizes the library’s operational expenditures as well as all other law school operating expenditures.

¶58 Another source of data for a department-to-department comparison would be the internal accounting system used by the law school. Most law schools have a fiscal or budget officer who is responsible for drawing up its operating budget. The numbers for the operating budget of the law library and for the operating budgets of other law departments are likely available from this person.

¶59 Second, to help make your case, compare the law library’s budget with those of libraries at peer schools. All law schools have other schools with which they compete for students. In fact, the Law School Admission Council can provide reports to admissions departments listing how many students who have applied to a school have also applied to specific other schools. This report even lists to which schools applicants have paid seat deposits. This “overlap” in applications and seat deposits can pinpoint which schools students are considering before making a final selection. It is important to see how a law library stacks up compared with the law libraries in overlap schools.

¶60 The ABA again provides useful data for this school-to-school comparison. Each year the data reported in the ABA annual questionnaire are recompiled by topic in “take-offs.” Most law schools subscribe to these take-offs, which are released a few months after the annual survey due date. The take-offs compile law library data, including actual operational expenditures. The data are arranged in a table, with schools listed alphabetically by state, and then by name within each state. The amount spent on the operation of a law library can thus easily be compared to the amounts spent on law libraries of competitor, or overlap, schools. This provides a snapshot of comparative support. It is important, though, to make sure these overlap schools have a comparable number of students.

¶61 In planning the law library budget request, you should not overreach. That is, try to keep budget requests for increases in line with the overall spending increases for the law school, or in line with the historical increases that law libraries in peer or overlap schools have received. If other law school departments are being limited to a five percent increase in operating budgets, it is hard to argue the law library should receive a ten percent increase in its operating budget. Keeping costs down, though, is always a challenge, because so much of library expenditure is non-discretionary. Exploring other options for providing materials, such as cooperative arrangements, may help minimize the amount of any budget increase requested.

¶62 Making a case for the law library’s budget is important, but just as important is making a case for the law library’s physical space. Many law schools are not only trimming law library budgets, they are also “reclaiming” law library space for other functions. Some in the law school may argue that, without as many print materials, the law library no longer needs the physical space originally allocated to it.

¶63 This trend is based on the mistaken premise that the law library is a mere warehouse for books. The law library serves two other important, but often overlooked, functions. First, the law library is the “safe place” for law students. It is the place that students consider theirs. Often, when designing and building law schools, student space is the first to be reduced to accommodate other law school functions. The law library is not just a place for books and computers, it is a reading area, it is
a refuge, it is a place to meet with a study group, and it is a place to relax from the hubbub of the classroom. These important roles that the law library plays in students’ lives should not be undervalued.

¶64 Second, the law library can play an important role in admissions and marketing. Competition for students is increasing, and prospective students have become discriminating consumers. Prospective law students know they will be spending a good portion of their time in the law school building, and they want a comfortable place to go between classes or to study. The law library is often the “living room” of the law school. An inviting space can help in attracting new students. When prospective students tour a law school facility, it is hard to impress them with a classroom. Most classrooms look pretty much the same. What can get prospective students’ attention is a law library with a warm and inviting atmosphere, comfortable seating, and a friendly staff.

¶65 Making your case for the law library budget, then, first consists of compiling empirical data on how the library’s expenditures compare with expenditures for other law school departments. Second, compare law library expenditures with the law library expenditures of peer or competitor schools. And last, make a case for retaining physical library space by emphasizing that, although the content of the law library may change, its function of providing important space for student interaction and study remains.

Conclusion

¶66 Several points should be clear from this article. First, the recession and consequent reduction of law library budgets provides us with the opportunity to rethink the traditional framework of our libraries. Whatever we have done well in the past is no guarantee of our future success.28 As our users change their preferences from print to digital materials and as publishers and authors move to create more digital content, libraries need to change as well. Organizational structures, job responsibilities, digital and print collection management, library space—everything is on the table.

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

¶68 And finally, the need to create webs of collaboration and partnership is a pervasive theme. We cannot expect to solve the enormous problems associated with our ever-changing world without working with others—other law libraries, other types of libraries, and other organizations. The key to progress in the explod-

28. One of my very favorite futurists, Joel Barker, uses a phrase similar to this in his classic video, The Business of Paradigms. The examples in his video are extremely relevant today, as he describes how paradigms frame our world and make it nearly impossible for those of us working within our own law library paradigms to make the discoveries and changes the rest of the world requires. JOEL BARKER, THE BUSINESS OF PARADIGMS (1990).
ing world of information today is to work with others to enhance preservation and access to the legal information that is at the core of the legal profession and a core function of every law school.
Thinking, Writing, Sharing, Blogging: Lessons Learned from Implementing a Law Library Blog*

Jordon Steele** and Ed Greenlee***

The authors detail the experience of the University of Pennsylvania Biddle Law Library’s implementation of a departmental blog-writing program, established in 2007. The article includes a discussion of successes and challenges in running the Biddleblog and closes with suggested strategies for law libraries considering starting, or perhaps revamping, their own blogs.

Introduction

¶1 Recent advances in technology are changing the role of librarians. Historically, librarians were viewed as keepers of a collection, providing on-site access to information resources.1 Even when the introduction of electronic databases afforded remote access to users, libraries were still primarily identified by the collections they owned rather than the services they provided.2

¶2 With the recent proliferation of Internet-based resources, however, libraries are in competition with information available on the open web. Progressive libraries have evolved to accommodate this decentralization of information, using their role as information authorities to help patrons filter out irrelevant online resources from relevant ones.3

¶3 As a result, many librarians are now compelled to demonstrate their mastery of an increasingly complicated universe of information.4 One of the ways this proficiency can be exemplified is through the use of online outreach mechanisms,5 and one of the most popular of these tools is the blog. At first the province of technolo-

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* © Jordon Steele and Ed Greenlee, 2011. Thanks to Rebecca Stanley and Tara Ewald for their assistance with the research for this article.
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5. See, e.g., Jodie Mozdzer, Libraries Using MySpace, Facebook to Interact with Youths, HARTFORD (CONN.) COURANT, May 27, 2008, at B4 (discussing the use of these services by public libraries).
gists and teenagers, the blog has evolved to be a publishing platform by which a number of voices, including those of librarians, can be heard.6

¶4 In the library community, many of the earliest adopters of blogging were individual librarians who wrote about personal interests as well as professional responsibilities.7 Then libraries began to develop their own blogs that attempted to supplement traditional means of communicating with patrons. Recent law library literature has discussed the blogosphere as a means for libraries to share law-related information with their patrons.8

¶5 Many law librarians, however, may still be unfamiliar with blogging or concerned about experimenting in such a public forum. This paper describes the experiences of the Biddle Law Library at the University of Pennsylvania, which has been running a blog since the summer of 2007, and also summarizes the results of a 2009 survey of peer institutions that was conducted to gain a greater understanding of the nature of law library blogging programs. Following an analysis of prior research on the topic of blogs in general and law library blogs in particular, the article describes the history of the Biddle Law Library blog, enumerates its successes and challenges, and presents and discusses the survey results.

Research on Library Blogs

¶6 Web 2.0 technology is a developing field, so public perception and library implementation of its features remain in nascent stages. “Web 2.0” was arguably coined by Tim O’Reilly, a technology industry executive who has described the phenomenon as “the move to the Internet as a platform, and the attempt to understand the rules and success on that new platform.”9 To help readers better understand this emerging trend, recent library literature has attempted to identify the main Web 2.0 technologies such as RSS feeds, social networking services like Facebook, multimedia-sharing sites like Flickr and YouTube, social bookmarking companies like del.icio.us, and blogs.

¶7 Libraries have a long tradition of interacting with and being challenged by the emergence of new technologies.10 This trend is particularly important in the modern age, because a commitment to reference service in libraries is also a commitment to being comfortable with the latest technology.11 As the locus of information becomes more decentralized in a digital world, good library programs have evolved from “curators” of collections to “navigators of a shifting universe of information” that is often beyond their control.12 As a result, “Library 2.0” has emerged,

7. See id. at 41.
12. Byrne, supra note 10, at 366.
defined as “the application of Web 2.0 technologies and ideas to library services.”13 Unlike traditional means of outreach, the advantage of Web 2.0 technologies is that many can be easily accessed using smart phones and other handheld devices, thereby making the content more portable.14

¶8 Blogs are one of the more established Web 2.0 technologies.15 At its essence, a blog is a publishing platform. Blogs range from the purely topical to the purely personal.16 Because of the flexibility of applications and ease of use that blogs afford, libraries are increasingly implementing them to share information quickly, express opinions, get user feedback, and discuss common themes among diffuse groups.17 Since blog posts can be discovered through popular search engines, a blog can serve as an important “contact point” for the library.18 Blogs provide an informal, less-institutionalized face for both the library and its parent organization.

¶9 However, for libraries that are currently considering implementing a blog, there is a lack of solid information available regarding the usefulness of implementing Web 2.0 technologies, like blogs, to support the core library services.19 A survey of the Australian Technology Network of Universities found few blogs directed at library users, although one library reported using a blog to promote news and events.20 Most of the existing literature focuses on tips for writing blog posts and descriptions of what constitutes a good blog.21 While helpful, the current literature does not provide information targeted to the academic law library.

¶10 Early adopters of library blogs identified a number of challenges. These included developing strategies to increase readership22 and effectively marketing the blog.23 Generally, the most successful academic library blogs were those that were actively promoted by the library.24 Some ways to promote blogs are to provide a link on the home page or an RSS feed for the blog, and talking about the blog to faculty and students during reference transactions or in classes.25

¶11 Blogs often compete with other demands on their target audience’s attention. The University of Pennsylvania Medical Center, which has attempted to employ a number of Web 2.0 tools (including podcasts, wikis, social tagging, and blogs), found it challenging to determine how to increase knowledge about the usefulness of these technologies to its core audience: busy medical personnel.26

14. See id. at 203, ¶ 21.
15. Boxen, supra note 9, at 23.
18. Id. at 17.
19. See Boxen, supra note 9, at 24 (reporting the results of a 2008 literature survey).
20. Byrne, supra note 10, at 367.
22. See Bar-Ilan, supra note 16 (discussing studies of the percentage of Internet users who read blogs).
23. Draper & Turnage, supra note 17, at 17–18.
24. Id. at 20–22.
25. Id. at 20–21.
A survey of Facebook use among academic health science libraries also showed that most respondents failed to see the usefulness of the application or were daunted by the technology.27

¶12 At present, very little scholarly literature exists about blogs in the law library community. In 2006, Bonnie Shucha surveyed law libraries on their use of blogs, identifying categories of uses among adopters: “marketing and outreach,” “knowledge management,” and “professional reputation.”28 More recently, Rebekah Maxwell examined the evolution of blogs from online diaries to credible sources of expert information in the legal field, citing, as an example, the use of blog citations in Supreme Court opinions.29 A discussion of law library blogs in the U.K. suggested that they tend to focus on external issues like research resources and overall influences in the legal field, leading to some uniformity among these blogs.30

The Biddleblog

Developing a Mission, Setting Policy

¶13 In the summer of 2007, the Biddle Law Library at the University of Pennsylvania Law School was exploring new ways of communicating with its patrons, faculty, and staff. Among the motivations for this initiative were the results gathered from a survey that the library conducted of its law students to gauge their use of various social computing technologies, including blogs, wikis, and social networking sites. While the results suggested that students’ adoption of some of these technologies was limited, many of the respondents reported that they frequently read blogs for both personal and professional reasons. At the same time, some members of Biddle’s professional staff were also increasingly using blogs as a means to stay informed of the latest developments in the fields of law and librarianship. A library blog appeared to be a good opportunity to unite these two trends. Two librarians were appointed blog editors to shepherd the process and serve as the points of contact for the library administration and the rest of the professional staff.

¶14 Next, the administrators investigated the technology solutions available at the law school for creating blogs. After consultation with the law school’s IT department, Movable Type31 was installed on the servers and the librarians were given access to the web interface. As experienced blog readers, the blog editors were familiar with the informal tone that characterized much of the “blogosphere.” However, it was decided that our blog, which had now been whimsically named the

27. Dean Hendrix et al., Use of Facebook in Academic Health Sciences Libraries, 97 J. MED. LIBR. ASS’N 44, 47 (2009).
31. Movable Type is software that allows users to create blogs as well as build web sites. Overview, MOVABLE TYPE, http://www.movabletype.com/overview (last visited Dec. 18, 2010).
Biddleblog, would endeavor to balance the use of a casual tone with maintaining the professional demeanor expected of law librarians.

¶15 We decided that all of the posts on the Biddleblog would provide substantive and thoughtful commentary and would not merely link to external information sources. There were two main justifications for this approach. First, we wanted to demonstrate the ability of our librarians to synthesize and critically analyze the resources they encountered on a daily basis. Second, the editors’ survey of the state of the law blogosphere suggested that law blogs more established and more popular than the Biddleblog were already performing the function of pointing readers, without commentary, to news stories. We wanted our blog to serve as an extension of its mission to “add value” to the resources and information to which access is provided.

¶16 Having defined the approach to content and tone that the library would take with regard to its blog program, the editors of the Biddleblog decided that the best way of showcasing the many talents and interests of Biddle’s professional staff would be to encourage all of the professional librarians to blog. This strategy also had the added benefit of engendering institutional buy-in to the success of the program. We also decided to keep the comments section closed. This was to avoid the possibility of unprofessional comments being posted by readers.

Scheduling Blog Posts

¶17 Based on their familiarity with the blogosphere, the editors knew that an ongoing problem was that many blogs are either updated too frequently (resulting in many posts per day) or not updated regularly enough.32 To ensure consistently fresh content, we decided to take a planned approach.

¶18 At the beginning of each semester, the library staff meet, at which time the Biddleblog editors moderate a conversation among the librarians about general topics that might make interesting blog posts. In addition to the professional librarians, the meeting includes our research assistants and interns.

¶19 Based on discussions at the initial meeting, we developed a set of categories of topics that the staff could consult when considering what to blog about:

- Book reviews
- Reviews of web sites, databases, and other relevant online resources
- Posts highlighting Biddle’s special collections and archives
- Posts providing a “behind-the-scenes” look at the operations of the law library
- Announcements of exhibits and other special events
- Posts that comment on news items relevant to our law school audience
- Legal research tips

¶20 The editors then schedule specific deadlines during the semester when each staff member is required to submit a blog post. As a result, the Biddleblog endeavors

32. According to a June 2009 New York Times report, which used 2008 data from the blog search engine Technorati, 95% of blogs have not been updated in the last two months. Douglas Quenqua, Blogs Falling in an Empty Forest, N.Y. TIMES, June 7, 2009, at ST1.
to debut a new post every one or two weeks during the academic year. The editors felt that this approach assured that the blog would be updated regularly while not unduly burdening the public services staff. The library’s administration supports this approach, thus providing additional impetus to motivate the professional staff to agree to the process. Each blog post written by contributors is reviewed by the blog administrators and, ultimately, the director of the library. Once approved, the blog post is published.

Lessons Learned

Successes

¶21 At the risk of engaging in circular logic, the very fact that the library has succeeded in maintaining a frequently updated blog for more than three years is our major success. Unlike the majority of blogs, the Biddleblog has not been abandoned.

¶22 We were also pleased with the traffic that the blog attracted. According to Google Analytics, a popular tool for measuring web site traffic, the Biddleblog averaged approximately 440 page visits and 330 unique visitors per month from September 2009 to September 2010. These visitation statistics suggest that the Biddleblog has a solid following.

¶23 Taking a broader view, our experience with blogging has served as a departure for experiments with other less established Web 2.0 technologies such as social networking sites like Facebook and microblogging services like Twitter. During the first year of the Biddleblog’s existence, the editors were able to parlay the initiative into a law school–wide presentation on blogs and the culture of blogging. This event was well-attended by administrators, staff, and students and reflected a wide range of familiarity with blogging, from neophyte to expert.

¶24 Building on its experiences running the Biddleblog, in March 2009 the library hosted a symposium for Mid-Atlantic law libraries, focusing on the use of Web 2.0 technologies in academic law libraries. The success of the Biddleblog, and the librarians’ commitment to it, sends the signal that the Biddle Law Library staff is thinking critically about ways to apply new forms of technology to the operations of its parent institution and the legal research field. The Biddleblog provides evidence that its contributors are engaged in the field of librarianship, are aggregating and synthesizing resources for their users, and are exploiting Web 2.0 as a distribution mechanism. These are all qualities of a professionally engaged librarian.

Challenges

¶25 While tools like Google Analytics provide some measurement of the Biddleblog’s traffic, we have yet to pinpoint exactly who comprises the readership of the blog. Crucially, this information would allow the editors to renew their commitment to the Biddleblog’s existing readership while also developing strategies for reaching out to other audiences. For example, if it were discovered that the largest readership of the Biddleblog encompassed colleagues in the library profession, Biddle could explore ways of better reaching its primary intended audience—the law school’s faculty and students. Because the analytics software available does not
successfully automate this type of analysis, the likely way to investigate readership would be to administer surveys or conduct focus groups.

¶26 Another challenge lies in striking just the right tone in a post. Some posts tend to be too formal, others too informal. It is a continuing effort to integrate the tone of the blog, which lends itself to informality, into the overall editorial voice of the law school, which strives to portray itself in the most professional light.

¶27 Sometimes staff members found it challenging to balance their primary commitments with the additional responsibility of contributing blog posts. Like most publications, the success of the Biddleblog largely depends upon efforts and enthusiasm of its editors who shepherd the blogging process.

Survey

¶28 In order to gain a greater understanding about trends in law library blog programs and how its own blog reflects these trends, we developed a survey to be distributed to law library blogs in a range of settings.33

Participants

¶29 We chose to survey as wide a selection of law library blogs as possible, using the list from the Law Library Blog Wiki maintained by the Computing Services Special Interest Section of the American Association of Law Libraries.34 While compiling the list, we determined that “law library blogs” was perhaps not the most descriptive term. Therefore, when soliciting responses to the survey, we reframed the blog category as “patron-oriented legal research blogs.” Exempt from consideration for this study were blogs written by law librarians and other legal research professionals for colleagues.

¶30 We distributed the survey in January and February 2009 to the “owners” of eighty-eight blogs. The library received forty-seven responses, a fifty-three percent response rate. Of the respondents, thirty-four identified themselves as academic institutions; four as courts; two as state or local institutions; and seven as “other” institutions. Although the survey results are now two years old, and more law libraries have blogs, we believe the results continue to present a useful picture of law library blogging practices.

Results and Discussion

¶31 Survey participants’ blogs debuted between 2003 and 2009. The years 2003 and 2004 saw the debut of only four blogs, while 2005 to 2009 had a range of five to thirteen blogs created, with the most beginning in 2008. Most institutions (17) used Blogger, the blogging tool hosted by Google, as their publication platform. Twenty-six participants responded that their blog does not have an administrator, while seventeen responded affirmatively. Most institutions (46) responded that

33. The questionnaire and selected responses are included in the appendix. Complete results are on file with the authors.

only library staff or upper-level administrators were allowed to contribute blog posts. There was nearly an even split between institutions that train their bloggers (13) and those that do not (14). A plurality of survey respondents (24) post between one and ten blog entries per month, with nine institutions responding that they post more. Participants generally post on topics including information about collections (31), announcements (30), new technology (30), news stories (30), library operations (24), posts about their institutions (20), and legal research tips (13). Only eight participants characterized their blog post topics as a form of marketing or public relations, which may suggest that institutions do not perceive their blogs in this light. A strong majority of respondents use the comment feature on their blog (33), with a majority (29) choosing to have comments moderated.

When asked if they considered their blogs a success, respondents indicated mixed results, with twenty describing their programs as a success while twenty-two thought of them as something between a success and a failure. Only one participant responded that its blog was a failure. When asked for the reactions of the people who contribute to their blog, respondents reported varied reactions. Some bloggers enjoy participation in general, but others are concerned about uneven contribution. Some respondents were simply confused by the question, wondering if the survey characterized “blogging program” as the ongoing initiative to contribute to the blog or the blog software itself. (We meant the former.) When given the opportunity to elaborate on any of their responses, respondents largely commented that blogging was perceived as a low-cost means of communication, with participants leaning toward providing information about news and announcements rather than legal research.

Conclusion

The legitimization of the blog as a publication platform has helped encourage librarians to integrate blogs into their institutions’ traditional missions of outreach and instruction. The Biddle Law Library’s experience maintaining a blog since 2007 has led to promising evolutions in the department’s outreach efforts, while at the same time revealing important areas for improvement, particularly in light of the library’s challenges in marketing the blog effectively. The experience has also been a helpful lesson in organization dynamics, personnel motivation, and managing change. Above all, the library is pleased to have found a mechanism for cultivating the communication and outreach skills of its professional librarians.

The survey results suggest that many blog programs, regardless of institution, face a number of similar challenges: how to motivate staff to contribute, publishing blog posts consistently over time, and how best to promote the blog. Law library bloggers are concerned with how their blogs fit in with their library’s institutional mission, but they appear to be committed to continuing to support the blog despite these misgivings. In conclusion, law library blogs exhibit the potential to showcase libraries that perceive themselves to be not just depositories for information resources, but rather centers of knowledge for the faculty, staff, and students they serve.
Appendix

Law Library Blogging Survey (with Responses)

Q1. Select the parent institution with which your blog is affiliated.

<table>
<thead>
<tr>
<th>Institution or Entity</th>
<th>Percent (Number) of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Academic</td>
<td>72.3% (34)</td>
</tr>
<tr>
<td>Law Firm</td>
<td>0</td>
</tr>
<tr>
<td>Court</td>
<td>8.6% (4)</td>
</tr>
<tr>
<td>State or Local Library</td>
<td>4.2% (2)</td>
</tr>
<tr>
<td>Personal</td>
<td>0</td>
</tr>
<tr>
<td>Other</td>
<td>14.9% (7)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>47</td>
</tr>
</tbody>
</table>

Q2. If you answered “Other” to the preceding question, please explain.

Q3. When did your blog debut?

<table>
<thead>
<tr>
<th>Year of Debut</th>
<th>Percent (Number) of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>4.7% (2)</td>
</tr>
<tr>
<td>2004</td>
<td>4.7% (2)</td>
</tr>
<tr>
<td>2005</td>
<td>16.6% (7)</td>
</tr>
<tr>
<td>2006</td>
<td>14.3% (6)</td>
</tr>
<tr>
<td>2007</td>
<td>16.6% (7)</td>
</tr>
<tr>
<td>2008</td>
<td>30.9% (13)</td>
</tr>
<tr>
<td>2009</td>
<td>11.9% (5)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>42</td>
</tr>
</tbody>
</table>

Q4. What blogging software do you use?

<table>
<thead>
<tr>
<th>Percent (Number) of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blogger</td>
</tr>
<tr>
<td>Wordpress.com</td>
</tr>
<tr>
<td>Wordpress (locally hosted application)</td>
</tr>
<tr>
<td>Movable Type</td>
</tr>
<tr>
<td>Other</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
</tr>
</tbody>
</table>

Q5. If you answered “Other” to the preceding question, please explain.
Q6. Does your blog have an administrator, editor, or other person who supervises or otherwise vets the blog posts prior to publication?

<table>
<thead>
<tr>
<th>Percent (Number) of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes: someone has editorial control</td>
</tr>
<tr>
<td>No: contributors post content freely</td>
</tr>
<tr>
<td>TOTAL</td>
</tr>
</tbody>
</table>

Q7. If you answered “Yes” to the preceding question, please explain.

Q8. Who is authorized to contribute posts to the blog? (Choose all that apply.)

<table>
<thead>
<tr>
<th>Entities Authorized as Blog Contributors</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Librarians</td>
<td>34</td>
</tr>
<tr>
<td>Upper-Level Administrators</td>
<td>11</td>
</tr>
<tr>
<td>Attorneys</td>
<td>2</td>
</tr>
<tr>
<td>Marketing/Public Relations Staff</td>
<td>1</td>
</tr>
<tr>
<td>Nonprofessional Staff</td>
<td>9</td>
</tr>
<tr>
<td>Work-Study Students or Interns</td>
<td>3</td>
</tr>
<tr>
<td>Only the Survey Respondent</td>
<td>8</td>
</tr>
<tr>
<td>Other</td>
<td>6</td>
</tr>
</tbody>
</table>

Q9. If you answered “Other” to the preceding question, please explain.

Q10. If you have other contributors, did you train them on how to blog?

<table>
<thead>
<tr>
<th>Are Contributors Trained to Blog?</th>
<th>Percent (Number) of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>48.1% (13)</td>
</tr>
<tr>
<td>No</td>
<td>51.9% (14)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>27</td>
</tr>
</tbody>
</table>

Q11. Please describe your training methods if applicable.

Q12. Approximately how many posts per month does your blog publish?

<table>
<thead>
<tr>
<th>Number of Posts Per Month</th>
<th>Percent (Number) of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>1–5</td>
<td>37.8% (14)</td>
</tr>
<tr>
<td>6–10</td>
<td>27.0% (10)</td>
</tr>
<tr>
<td>11–50</td>
<td>24.3% (9)</td>
</tr>
<tr>
<td>51–100</td>
<td>5.4% (2)</td>
</tr>
<tr>
<td>101–150</td>
<td>5.4% (2)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>37</td>
</tr>
</tbody>
</table>
Q13. What sort of topics do your contributors write blog posts about? (Choose all that apply.)

<table>
<thead>
<tr>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Research Tips</td>
</tr>
<tr>
<td>New Technologies</td>
</tr>
<tr>
<td>News Stories</td>
</tr>
<tr>
<td>Information About Collections</td>
</tr>
<tr>
<td>Library Operations</td>
</tr>
<tr>
<td>Announcements</td>
</tr>
<tr>
<td>Posts About Your Institution</td>
</tr>
<tr>
<td>Marketing/Public Relations</td>
</tr>
<tr>
<td>Other</td>
</tr>
</tbody>
</table>

Q14. If you answered “Other” to the preceding question, please explain.

Q15. Does your blog allow comments?

<table>
<thead>
<tr>
<th>Percent (Number) of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes with moderated comments</td>
</tr>
<tr>
<td>Yes with unmoderated comments</td>
</tr>
<tr>
<td>No</td>
</tr>
<tr>
<td>TOTAL</td>
</tr>
</tbody>
</table>

Q16. Do you consider your blog program a success, a failure, or somewhere in between?

<table>
<thead>
<tr>
<th>Percent (Number) of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Success</td>
</tr>
<tr>
<td>Failure</td>
</tr>
<tr>
<td>In Between</td>
</tr>
<tr>
<td>TOTAL</td>
</tr>
</tbody>
</table>

Q17. Please describe some of the challenges, failures, and successes you have experienced in running your blog program.

Q18. If applicable, describe your bloggers’ reactions to your blogging program.

Q19. You are invited to elaborate on your responses.
Keeping Up with New Legal Titles*

Compiled by Creighton J. Miller, Jr.,** and Annmarie Zell***

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Reviewed by Jennifer Wondracek

¶1 Every day, I see pedestrians on the street talking on cell phones, texting, or listening to iPods. My students, who are quite taken with Sum and Substance CDs, keep asking for them in MP3 format so that they can load them onto their iPods and listen to them while exercising or cleaning house. Mobile technology has
become so well integrated into our culture that libraries are considering new, mobile-friendly services, such as video tutorials and MP3 library tours. At the University of Florida, where I work, a university-wide mandate to increase distance education offerings—recently addressed by both our president and the dean of the law school—may further increase demand for mobile applications. So, as you can imagine, I was very excited to review *M-Libraries 2: A Virtual Library in Everyone’s Pocket*.

¶2 *M-Libraries 2* provides readers with a multinational perspective on how mobile technologies—including laptops, cellular phones, PDAs, and iPods—are being used in libraries. The book is the result of the Second International m-Libraries Conference, which took place in Vancouver, Canada, in 2009.1 The twenty-seven individually authored chapters incorporate case studies, research, and personal experiences from conference participants who live in a wide variety of countries with huge disparities in technology availability and use. Chapter 24, for instance, discusses the current and potential utilization of mobile technologies in Bangladesh, a country where more than half of the libraries do not even have an ILS (integrated library system) in place, while two chapters later, readers will find case studies from Yale University and UCLA.

¶3 Unfortunately, the organization of *M-Libraries 2* is erratic. The editors attempted to organize the chapters into five distinct topics: (1) M-Libraries: Developments Around the World, (2) Technology in m-Libraries, (3) Application of m-Libraries, (4) M-Libraries and Learning, and (5) Building the Evidence Base for m-Libraries. In reality, these topics are not clearly delineated and tend to overlap, leaving the reader to wonder why a chapter was placed in a particular section when similar chapters are located elsewhere. Individual chapters are uniformly short, ranging from three to seventeen pages in length, but vary widely in internal structure. Some are quite impressive, containing abstracts, introductions, references, and suggested readings, while others lack even a single reference to support their factual statements. The book’s finding aids are also of inconsistent quality. The table of contents follows standard structure and is perfectly usable. However, I began to run into trouble when I tried to use the index to look up QR codes (two-dimensional cousins of barcodes that can be read by smartphones).2 The index provided two page references for QR codes, both of which were accurate. It did not, however, identify either chapter 8, which discusses QR codes exclusively, or a section of chapter 22 devoted to QR codes. This evidence led me to doubt the accuracy of the index on other topics as well.

¶4 Though the book may be structurally deficient, its content is generally good. You should not pick up this book expecting detailed instructions on how to implement mobile applications in your library. Instead, you should look to it as a resource for learning what other libraries are doing, what challenges they have faced, and what research has been performed—in short, to gather new ideas for

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your own library. *M-Libraries 2* is simply not meant to be a how-to manual, though some chapters do provide this kind of information in small chunks. For instance, chapter 8 provides a good discussion of how to use QR codes, and chapter 20 lists the steps to follow for a needs assessment.

§5 If you are willing to overlook its structural problems, *M-Libraries 2* can provide valuable information on mobile technologies for libraries of all types, particularly those libraries that are just starting to consider adding these technologies to their service offerings. Although much of the technical information in the book can be obtained from other sources, the case studies are unique, and the variety presented across the different chapters offers a glimpse of some of the best practices that are evolving in this field.


Reviewed by Saskia Mehlhorn

§6 Children are a nation’s future—a proposition true for any society, but one crucial to Native Americans. For centuries, American Indian and Alaska Native children were taken from their families and removed from their reservations in the name of progress and assimilation into mainstream, predominantly white society. Since the mid-twentieth century, criticism of this practice has grown, and in 2007 the United Nations finally condemned it as a form of genocide.³ In line with this cultural shift, the U.S. federal government began in the 1960s to support movement toward tribal self-determination. In the child welfare arena, this support culminated with the enactment of the Indian Child Welfare Act (ICWA) in 1978.⁴ The ICWA’s aims are twofold: to protect the right of an Indian child to live with an Indian family and to promote and stabilize tribal existence. The ICWA forms a central point of focus for Barbara Ann Atwood’s new book, *Children, Tribes, and States: Adoption and Custody Conflicts over American Indian Children*, but Atwood’s analysis goes further, providing insight into a wide range of child custody issues in American Indian communities. Atwood is a distinguished scholar from the University of Arizona who has been working in the field of indigenous peoples’ rights for more than two decades. She begins *Children, Tribes, and States* with a perceptive exploration of Indian identity that portrays Indian children as the keys to the survival of their tribes—tribes surrounded and beset by a wider society that fosters assimilation to the point of threatening to annihilate tribal roots.

§7 In the chapters that follow, Atwood carefully examines how the status of Indian children is determined under law, focusing closely on the role of the ICWA. In chapter 2, for example, she describes the mechanics of tribal jurisdiction over

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child custody disputes, and she analyzes the circumstances under which state and federal courts will recognize tribal custody decrees. As Atwood explains, because Congress has provided for tribal jurisdiction over adoption, child welfare, and child custody cases involving an Indian minor, tribal sovereignty regarding these disputes is generally acknowledged. Later, in chapters 4 and 5, Atwood examines core features of the ICWA and takes a close look at the problems that can occur if a child’s Indian identity is contested by the parents or is unknown when a custody dispute begins. In such cases, proceedings may commence in the wrong jurisdiction, become far more complex, and ultimately last much longer. Atwood acknowledges that the ICWA, despite its drafters’ best intentions, can lead to injustice in disputes such as these. She urges that the goal should always be to do “justice case by case” (p.247). Atwood ends *Children, Tribes, and States* with two heartfelt appeals: that Congress dedicate greater resources to programs and facilities supporting Indian children and their families, and that the courts involved with Indian custody issues work hard to ensure that every child is heard.

Atwood’s book is a well-written and concise overview of adoption and custody issues involving American Indian and Alaska Native children, and its footnotes are an excellent starting point for further research. *Children, Tribes, and States* would be an asset to any library, but particularly to academic libraries, both undergraduate and graduate. The book will also prove valuable for law firm libraries that support practices closely involved with Native American law.


Reviewed by Maureen H. Anderson

*Ultimate Sanction: Understanding the Death Penalty Through Its Many Voices and Many Sides* takes a unique look at the human cost of capital punishment through the eyes of those beyond the immediate victims and offenders who are involved in the process. The author, Robert Bohm, is a professor of criminal justice and legal studies at the University of Central Florida, with more than thirty-five years of experience in criminal justice and criminology. Bohm, who has written extensively on the topic of capital punishment, has gathered together the views of attorneys, law enforcement professionals, family members, and judges into a provocative book that will prove valuable to anyone interested in looking at the death penalty from a new angle.

The first two of *Ultimate Sanction*’s eleven chapters start at the beginning of the death penalty story. Chapter 1 examines the impact of capital punishment on homicide detectives and tracks the role that these officers play in the process. Unsurprisingly, a majority of homicide detectives support the death penalty, though most do not believe the punishment is an effective deterrent. Bohm portrays their jobs as both physically and emotionally demanding, and several detectives acknowledge that having a high clearance rate is a matter of pride. Chapter 2 turns to prosecutors, whom Bohm presents as important gatekeepers in the death penalty system. The chapter provides tangible examples of the challenges faced by prosecutors once they make the decision to charge a capital crime, and it concludes
with a look at the effects that the capital punishment process has on these attorneys.

¶11 In chapters 3 and 5, Bohm does an excellent job of analyzing the myriad emotions that the families of both victims and offenders experience upon learning of a murder. The family members are the only participants in the death penalty drama who did not choose to participate. Bohm points out that the capital punishment process only adds to the pain felt by many victims’ families. Meanwhile, family members of the offenders are forgotten victims for whom self-blame is common.

¶12 Those involved in a capital trial and its aftermath also suffer from their involvement in the process. In chapter 4, Bohm takes a critical look at the defense attorneys in the often unpleasant position of representing clients who are more than likely guilty. Many of these attorneys, who represent primarily indigent defendants, are ill-equipped to handle a death penalty case. Yet, the more experienced a capital defendant’s lawyer is, the better the chances are of avoiding a sentence of death. In chapter 6, the judges who conduct capital proceedings readily admit to experiencing substantial stress. Few of these judges are strong proponents of the death penalty. Chapter 7 explores the impact on jurors, regular citizens who endure both physical and emotional side effects as a result of their service—effects that do not stop once the trial is over. Bohm concludes the chapter by questioning the very idea of allowing ordinary people to determine whether someone should live or die. Chapter 8 turns to the roles of postconviction counsel and appellate judges. Concerns about compensation, court bureaucracy, and the capital punishment system itself disturb postconviction attorneys, while appellate judges face the physically and mentally exhausting task of wading through a long record fraught with depictions of extreme violence.

¶13 The toll on participants continues into the execution phase. In the book’s most profound section, chapters 9 and 10, Bohm investigates the impact on the prison officials who watch over convicted offenders and carry out executions. Among corrections officers, fear of violence from these convicts is an ever-present theme. Yet, every prison warden who has participated in executions has been deeply affected by the process, and many such wardens oppose the death penalty. Members of the actual execution teams view their role as just a job, one that must be done correctly and professionally, but they experience an emotional roller coaster over the course of an execution, particularly if a stay is granted. The emotional impact is also great for execution witnesses and for governors facing clemency decisions, the two groups covered in Bohm’s final chapter. Witnesses to an execution never come away unscathed. They undergo a multitude of emotions, including fear, shame, despair, and detachment, and many have trouble sleeping after the experience. Governors find themselves in the unenviable position of making the final decision about life and death, a decision that will haunt some of them for the rest of their lives.

¶14 Ultimate Sanction effectively demonstrates that the collateral damage from capital punishment is widespread and profound—no one involved in the protracted process is immune from its impact. Bohm ends the book with several theories explaining why these participants involve themselves in the process. As one of
only a few titles to focus on the human side of capital punishment, *Ultimate Sanction* would make a fine addition to any public or academic library, or to a law firm engaged in death penalty practice.


*Reviewed by Therese A. Clarke Arado*

¶15 From the start, *Law in the Laboratory: A Guide to the Ethics of Federally Funded Science Research* is an interesting and informative read. Author Robert P. Charrow, an experienced attorney and a prolific writer on law and science,\(^5\) presents a wide array of information related to the law and to scientific research, and he explores in depth the extent to which the two fields are intertwined. In his preface, Charrow states directly that *Law in the Laboratory* is not intended for “lawyers, but rather [for] scientists—faculty and graduate students” (p.vii). With due respect to Charrow’s intentions, however, his book will likely be of interest to attorneys and law librarians as well as to those in the sciences.

¶16 *Law in the Laboratory* opens with an overview of the U.S. legal system that addresses basic legislative, judicial, and administrative lawmaking. In chapter 2, Charrow turns to his more significant subjects, beginning with an examination of federal funding for scientific research. Here he does an excellent job of weaving legislative history into an account that covers topics such as the grant award process, government funding agencies and other participants in the system, and the availability of recourse for unsuccessful grant applicants. Charrow’s dissection of the funding process and his explanation of the various parties to a grant provide valuable insight into a world foreign to many of his readers.

¶17 The next set of chapters “explores the seedier side of science” (p.viii). First, chapter 3 discusses scientific misconduct. Charrow provides an overview of activities that specifically qualify as misconduct—“fabrication, falsification, and plagiarism” (p.77)—and of other “bad behavior” (p.78) that does not. He also describes the processes that unfold in response to a charge of misconduct, presenting as examples various prominent investigations into research misconduct and describing the legislative and judicial responses that came in reaction to those investigations. Chapter 4 continues the theme with a lengthy inquiry into the protection of human research subjects. Charrow identifies five kinds of rules governing research on human subjects and provides in-depth analysis for each. One key to this inquiry involves categorization—determining who qualifies as a human subject, who as a third party, etc. The threats posed to science by the influence of money are addressed in chapter 5, which considers conflicts of interest in the research arena. Charrow discusses various rules that regulate potential conflicts involving researchers in general, federally employed researchers, and research institutions.

¶18 Next, Charrow considers laws governing access to the information and research materials connected to government-funded projects, including “grant

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applications, . . . research data, . . . scientific publications, . . . reagents and specimens” (p.221). This chapter covers both privacy and accessibility, approaching the subject from the competing perspectives of researchers who want to retain control of potentially valuable data and of those who want access to information that was obtained at public expense. The discussion focuses primarily on the Freedom of Information Act (FOIA), specifically the circumstances under which the act requires disclosure of scientific information, the procedures for filing a FOIA request, and the process that such a request sets in motion. In addition to FOIA, the text reviews other statutes that can affect access to research information, such as the Government in the Sunshine Act and Federal Advisory Committee Act.

¶19 No examination of the legal environment for scientific research would be complete without a proper analysis of intellectual property (IP). Charrow obliges with a chapter that addresses various IP issues, chiefly those connected with patent law. He describes the requirements for obtaining a patent, discusses patent priority, and explains the benefits conveyed through patent protection. Although the chapter describes the three types of patents authorized by U.S. law (utility patents, design patents, and plant patents), Charrow’s discussion focuses primarily on utility patents. In addition to patent law, the chapter also considers licensing, copyright law, and the use of material transfer agreements, or MTAs.

¶20 The substantive material in Law in the Laboratory concludes with an examination of basic U.S. laws regulating laboratory animals, including the Animal Welfare Act, the Health Research Extension Act of 1985, and assorted U.S. Department of Agriculture standards. Rounding out the text is a set of appendixes that provides a short primer on legal citation, a key to acronyms used in the book, URLs for accessing online versions of relevant regulatory and statutory material, and analyses of the hypothetical problems presented at the end of most chapters. The book ends with a detailed index.

¶21 Law in the Laboratory is not a research text, but rather an informative and interesting look at the law governing scientific research. It is recommended for academic law libraries and for firm libraries supporting practices that commonly deal with universities or other research institutions.


Reviewed by Janis Fusaris

¶22 Top law students treat a judicial clerkship as a highly coveted prize that can be an important springboard to a successful legal career. Yet while students usually have a general idea of what a clerkship entails, most are unfamiliar with critical details, especially those surrounding the application process and the specific duties

of the position. Those who eventually land a clerkship often start the job knowing little about the various documents they will be called upon to draft. Judicial Clerkships: A Practical Guide is a new handbook that helps fill this knowledge gap with information covering the ins and outs of many aspects of judicial clerkships.

¶23 The book’s subtitle, A Practical Guide, is particularly fitting. The work employs a nuts-and-bolts approach to its subject and is written in an almost instructional tone. The book also benefits from a great deal of real-world knowledge. The authors, all former judicial clerks, have supplemented their own clerkship expertise with information gleaned from other current and former clerks who were surveyed and interviewed for the book. This results in a consistently practical viewpoint that is evident throughout the text.

¶24 The first few chapters give a general introduction to clerkships. Here the authors explain in detail exactly what the job of judicial clerk entails, covering even some of the position’s more negative aspects. For instance, a section entitled “A Day in the Life” aims to provide a sense of a typical clerk’s workload. The authors also discuss the fundamentals of applying for a clerkship, offer advice on how to prepare for the position, and provide insight into the traits and qualifications judges want to see in a prospective clerk.

¶25 Judicial Clerkships continues with a series of refreshers on legal research, legal writing, and citation. This portion of the book is particularly well done—no surprise, given that all three authors currently work as legal research and writing instructors at Hamline University School of Law. The legal writing chapter is exceptionally thorough, and it offers valuable bonus features, like a set of tables that list problematic terms and suggested substitutions. Throughout these chapters, the authors emphasize how researching and writing for a court differ from conducting the same activities in a law school setting, and they illustrate the ways in which clerks can and should adjust their skills for the new environment. As a result, these refreshers effectively bridge the gap between the demands placed on law students and the work expected of judicial clerks.

¶26 The central part of the book consists of several chapters on drafting court documents. The documents covered include bench memoranda and appellate opinions, along with trial court documents such as orders, findings of fact, and jury instructions. The text goes into extensive detail about each document, describing its function, explaining its structure, and discussing the specific information it should contain. Each chapter also includes a checklist and sample documents. Although the coverage is fairly exhaustive, the presentation is quite clear and easy to follow. Using the book as a guide, even recent law school graduates should be able to draft any of these unfamiliar documents with relative ease.

¶27 Rounding out the book are two brief chapters—one on proofreading and one on drafting miscellaneous letters, e-mail messages, and speeches—and a more extensive chapter covering ethics and professionalism. The ethics chapter provides considerable detail on issues like loyalty, confidentiality, and the pursuit of outside activities. It also includes a reproduction of Federal Judicial Center guidelines on confidentiality and provides a set of checklists on conflicts of interest.

The text as a whole is well organized and highly readable. Plentiful headings and subheadings are printed in boldface type throughout the work and, combined with a thorough index and a detailed table of contents, help to ease navigation of the book’s material. The checklists provided in many chapters are effective and well structured. Relevant and useful bibliographic references appear at the end of each chapter, and the footnotes used within the text are clear, offering just the right amount of detail.

Judicial Clerkships is recommended for all law school and court libraries. Law students will appreciate the information on how to obtain a clerkship and, once hired, can use the book to prepare for their new positions. The book will also make an excellent reference tool for current judicial clerks at both the trial and appellate court levels.


Reviewed by Kathleen Agno

The new ABA title, Social Media for Lawyers: The Next Frontier, focuses on social media as a marketing and networking tool that can help expand the presence of a law practice within the local community and across the World Wide Web. Both of the book’s authors are themselves examples of how social networking can advance a legal career. Carolyn Elefant is a solo practitioner who writes a blog popular among other solos and small-firm lawyers. Nicole Black, who is “of counsel” to a boutique firm in Rochester, New York, authors several different blogs, one of which covers New York law. Both have active Twitter accounts with numerous followers from various sectors of the legal profession, and both are frequent speakers on social media and the law.

Social Media for Lawyers is meant for attorneys at every level of social networking experience. For novices, the book defines social media and explains the basics, describing how to select the right platforms, access them, and create profiles. The authors outline the pros and cons of platforms geared toward general audiences, such as Twitter, Facebook, and LinkedIn, and those aimed directly at the legal community, like the Avvo directory and the JD Supra document-sharing service. To illustrate features on the different platforms, the book includes a number of screenshots. However, the authors should have edited these screenshots to highlight the useful features, instead of wasting space with images that include generic toolbars and browser elements. As well, some of the platforms are certain to change their look and feel in the near future, which will only frustrate novice users if they try to use outdated illustrations to interpret what they actually see on their computer screens. All the same, social networking beginners will appreciate other details in the book, including the clear, step-by-step instructions for creating Facebook and Avvo profiles found in one of the appendixes.

The authors encourage attorneys who are already experts in social networking to use multiple social media tools to increase their online presence and market their legal expertise. When an attorney receives a favorable ruling in a case, for instance, she can tweet it, blog about it, share it on Facebook, and upload it to JD
Supra. The text restates this cross-marketing message many times, often enough that some readers will find it tedious, but the lesson is useful and probably bears repeating. Done well, cross-marketing can not only increase an attorney’s visibility to potential clients, but it can also create more opportunities for networking with other lawyers. Testimonials—sometimes in the form of tweets—from various legal professionals appear throughout the book and help confirm social media’s value in building a law practice. As a second repeated theme, the authors insist that social networking does not have to be expensive, time-consuming, or difficult. A section of one chapter focuses on time-saving techniques, such as browser tools that link together different forms of social media; another section establishes best practices for evaluating return on investment.

Social Media for Lawyers arrives at a time when the hiring of entry-level associates at many large law firms is down considerably. In 2010, summer associate hiring was off forty-four percent from 2009 levels, and fewer law firms recruited at law schools. Given the grim job prospects, many recent graduates and new attorneys are entering the practice of law on their own. In this difficult economy, Social Media for Lawyers will make a good addition for many academic and public law libraries, particularly those in the markets hardest hit by decreased hiring and layoffs.

Newly admitted attorneys will probably get the most value from this book, and should particularly appreciate its advice on using social media to build their practices and attract clients. Seasoned attorneys, especially those who are less technologically savvy, can also use the book to help breathe new life into their practices. Chapters on the ethical and legal issues surrounding social networking should be useful for both groups as starting points for researching jurisdiction-specific rules and laws. Other members of the legal community who are interested in networking and outreach—firm marketing directors, retired judges, law librarians, etc.—may also benefit from the book’s advice.


Reviewed by Shannon L. Kemen

Richard S. Grossman is a professor of economics at Wesleyan University, a visiting scholar at Harvard University’s Institute for Quantitative Social Science, and the author of numerous scholarly articles on the banking industry. In his new work, Unsettled Account: The Evolution of Banking in the Industrialized World Since

1800, Grossman draws on his considerable knowledge and expertise to compile a history of commercial banking in Western Europe, Australia, Canada, Japan, and the United States. Rather than covering in depth the history of commercial banks in each of these countries individually, Grossman’s approach is primarily “thematic and comparative” (p.16). By following the development of commercial banking across various countries at different points in time, Grossman is able to sketch out a more general picture portraying the evolution of the industry as a whole. He uses this general picture to identify and highlight certain patterns common to all commercial banking systems over time, patterns that establish what Grossman calls “the life cycle of banking systems” (p.17). This cycle involves “four types of structure-altering events” (p.16) that form the focus of the book: namely (1) banking crises, (2) bailouts, (3) merger movements, and (4) regulation.

¶36 Grossman hits his stride with his discussions of banking bailouts and regulations, topics that he explores thoroughly in two separate chapters. Chapter 4, “Rescuing the Banking System: Bailouts, Lenders of Last Resort, and More Extreme Measures,” offers a step-by-step analysis that covers instances when bailouts have been used in the past, explains why bailouts might be selected as a rescue strategy, and discusses alternative measures for responding to a crisis. These topics are all acutely relevant now, given recent events in the U.S. banking industry. Chapter 6, “Regulation,” includes a well-written examination of the process governing the formation of regulations for commercial banks. While law librarians will already be familiar with most aspects of the regulatory process, Grossman provides unique insight, particularly into the role that economic and political factors play. The chapter also provides context for understanding why regulation has been a prominent feature of the commercial banking system during some periods and less so in others.

¶37 Unsettled Account offers several useful features that add to the value of the text itself. Each chapter concludes with a concise summary that helps to explain the topics covered in the chapter and to clarify complex issues that readers may otherwise find unclear. Several appendixes appear at the end of the book, with tables that conveniently encapsulate data on subjects like the origins of central banks, banking crises occurring before 1929, crises that happened during the Great Depression, and merger movements prior to 1940. The book also includes a detailed bibliography, which is useful for locating additional resources on commercial banking in specific countries. Unfortunately, Unsettled Account lacks a glossary of terms, a feature that would benefit readers with no financial background and could make the book more accessible to a wider audience.

¶38 Grossman relies heavily on statistical information and on frequent comparisons between the complex banking practices of various countries; at times, these strategies leave his text dense and difficult to follow. This tendency and the book’s scholarly focus make Unsettled Account inappropriate for law firm or public libraries. The book is also too specialized for most academic law libraries. However, Professor Grossman has assembled an impressive collection of historical, statistical, and bibliographic data, one that would be extremely difficult to reproduce using other sources. This information will prove invaluable for those conducting intensive research on commercial or international banking, and Unsettled Account will
make an excellent addition for libraries that commonly serve such patrons. Academic law libraries at institutions offering specific courses in commercial banking may also want to consider a copy.


Reviewed by Joel Fishman

¶39 At least until quite recently, lawyers have needed law books in order to practice law. However, between the difficulty of finding historical source material on booksellers and publishers and a disciplinary emphasis on the development of substantive doctrine, legal historians have largely ignored the connection between the law and its books. Professor Michael Hoeflich of the University of Kansas, a well-known and respected Anglo-American legal historian, begins to address this deficiency with Legal Publishing in Antebellum America, a slim book that combines, to quote praise from Daniel R. Coquillette found on the book jacket, “the study of law, business, history, books, and informational technology.” In this history, Hoeflich, who dedicated more than a dozen years to researching and writing the work, describes the growth of the legal profession and its intellectual tools over the course of the nation’s first century.

¶40 During the period covered by Hoeflich’s book, “the key to establishing the law as a prestigious profession lay in making lawyers learned,” a fact that “lies at the heart of why the history of the production and distribution of law books is so crucial” (p.12). The Federalist nationalist ideology that helped create the American legal system and bar also encouraged the rise of university-affiliated legal education and, correspondingly, the development of the law as a science. These advances in turn led to the growth of institutional law libraries and a legal publishing industry. Growing legal publishers produced the court reports and treatises from which members of the practicing bars built their own libraries. Hoeflich’s first chapter divides this “co-evolution” (p.3) into three distinct periods: from 1770 to 1820, when American publishing and distribution of law books was essentially local and most books were imported from overseas producers, chiefly in London and Dublin; from 1820 to 1850, “the true founding period of American legal literature” (p.26), which brought the rise of a learned legal profession, law schools, and large-scale book publishers; and from 1851 to 1870, beginning with a change in postal regulations that permitted the economical shipment of books throughout the country, especially to the western states, and ending with Christopher Columbus Langdell’s appointment as dean of Harvard Law School.

¶41 Hoeflich begins to flesh out the development of the American law book trade in chapter 2, which describes the growing number of legal booksellers over the colonial and post-revolutionary eras. Though the earliest book dealers did not focus on law books, a specialized industry quickly developed, chiefly in the large, metropolitan cities of Boston, New York, and Philadelphia. The men who ran this industry, such as Stephen Gould in New York, were not only booksellers, but printers and publishers as well. Their production of law books grew dramatically, from a total value of $200,000 in 1820 to more than $700,000 thirty years later. Hoeflich
describes how these sellers acquired stock through co-publishing deals and similar arrangements designed to share the costs and risks of printing and publication. Much of Hoeflich’s evidence for the period comes from law book catalogs, which he describes as important sources for the history of the trade, the price of books, and the types of books sold by dealers. Along with other advertisements, these book catalogs demonstrate that law booksellers gave discounts for quantity purchases, that they sold various other stock in addition to law books (including printed legal forms, equipment, bookbinding services, and special order, nonlegal materials), and that they even provided their law books on a rental basis.

¶42 The next three chapters focus on mechanisms for the marketing and sale of law books. Hoeflich first returns to publishers’ catalogs, examining their expansion from the single-page advertisements of the 1770s to the pamphlets of the 1830s and the even larger catalogs used after 1840. National booksellers like Little, Brown arose largely as a result of improvements to the transportation infrastructure that allowed the sale of their books through catalogs or through advertising found on the covers of their publications, sent direct by mail, or placed in legal periodicals or newspapers. Law book consumers could also purchase used books at auction, and contemporary auction catalogs provide an intriguing look at the contents of antebellum private libraries and the interests of the deceased lawyers to whom they belonged. Though only a limited number—at most, thirty—were produced annually, auction catalogs also provide valuable information on the distribution of law books and the extent to which lawyers were willing to invest in their libraries. Finally, the high cost of law book publishing was reflected in the common use of the subscription method, whereby a would-be publisher advertised for subscribers to fund a book prior to its publication. This method was used most famously by Robert Bell to print the first American editions of Blackstone’s Commentaries.

¶43 Hoeflich concludes his study with a chapter on the life of John Livingston—the nation’s “first great lawyer-entrepreneur” (p.146). Livingston was a notable lawyer and businessman who coordinated various business activities throughout the country for three decades. Among other endeavors, he published periodicals, legal directories, and a series of biographical encyclopedias, and he organized the North American Legal Association. In Hoeflich’s words, with Livingston’s “story . . . we can see all of the various aspects of the antebellum law book trade come to fruition in one man’s remarkable enterprise” (p.144).

¶44 The book ends with a short final chapter that summarizes the major points of the work. There is no bibliography or note on sources, but the footnotes provide access to Hoeflich’s voluminous research. These are wide-ranging and comprehensive, covering even such arcane topics as Archbishop James Ussher’s establishment of October 22, 4004 B.C.E. as the date of creation (p.25 n.79). Researchers who want a more complete and systematic listing of research materials can access one online through the book’s web site,16 where Hoeflich provides complete bibliographies as well as scanned copies of some of his most interesting sources.

In conclusion, Professor Hoeflich has written a splendid book on antebellum legal publishing that should serve as a standard work for many years to come and one that will, with luck, encourage more legal historians to continue his research. The title is recommended for all libraries supporting patrons interested in the history of the law book.


Reviewed by Jennifer Duperon

*The Happy Lawyer: Making a Good Life in the Law* is an ambitious project that seeks to address an issue important to the legal profession—improving lawyer happiness. In their efforts to accomplish this worthwhile goal, the book’s authors sift through data on whether or not lawyers are happy, submit a happiness toolbox filled with tips for practicing attorneys, and proffer specific advice for law students and law firm managers. The book is short and easy to read, and it successfully identifies commonsense suggestions for choosing a new work environment or improving an existing one. However, *The Happy Lawyer* suffers from several flaws, including both a lack of appropriate support for its propositions and an unrealized ambition to meet the needs of too many audiences. Despite these weaknesses, the book will prove a useful guide for prospective law students in deciding which school to attend and in making plans to maximize their law school experience; it can also help current law students identify legal specialties and work environments that will allow them to thrive. Thus, *The Happy Lawyer* is appropriate for academic law libraries and other libraries that collect materials on choosing the law as a career.

After a helpful review of lawyer satisfaction data in the opening chapter, which concludes that at least some lawyers are unhappy and “most law careers could be better” (p.17), chapter 2 attempts a brief survey of scholarly literature on the science of happiness. For a couple of reasons, the book would be better without this section. First, none of the science discussed here contributes to the advice that will later make up the authors’ happiness toolbox. For example, although this chapter identifies exercise and meditation as two techniques that the “science of satisfaction” (p.30) finds effective for increasing long-term happiness, the authors mention exercise and meditation on only two pages of their entire book and include neither in their later advice. Second, the chapter includes several overly broad statements that are poorly supported by evidence. The authors state, for instance, “[a]cross all cultures, six experiences have been found central to making a person thrive. . . . Those experiences are security, autonomy, authenticity, relatedness, competence, and self-esteem” (p.44). Instead of supporting this claim with a reference to a peer-reviewed, scientific study, the authors cite only a brief law journal article that, in turn, cites to a social psychology article. The latter describes three studies surveying U.S. and South Korean introductory psychology students and concludes that

“the results lend good support for [the] proposal that autonomy, competence, and relatedness are basic psychological needs.”18 Here, as in other places throughout this chapter, the authors’ decision to rely on a secondhand, nonscientific source distorts narrow conclusions into more interesting, but decidedly inaccurate, sound bites.

§48 Following a chapter discussing reasons why lawyers are unhappy—a largely anecdotal list that includes overwork, incivility in the profession, and excessive competition and comparison—we get to the meat of the book: the happiness toolbox. The suggestions provided in this chapter are intended to increase control, connections, creative challenge, and downward comparison—four qualities previously identified by the authors in an earlier law review article on lawyer happiness as being key to achieving satisfaction.19 The chapter ends with the toolbox itself, which is full of noncontroversial, commonsense advice presented in bulleted form, like “[m]ake sure your job is one that matters to you” (p.109), or “[s]trive for a comfortable work-life balance” (p.110).

§49 The next chapter, meant for potential and current law students, is the highlight of the book, because it contains practical advice actually aimed at those in a good position to follow it. The first part addresses the decision to attend law school and offers advice on factors to consider when choosing a school. Next, the authors counsel current students to engage themselves in learning and to become involved in law school life, choices that the authors predict will increase happiness in law school and lay the foundation for a happy career. Finally, the chapter urges students to remember their passions and to avoid making career decisions based on concerns about debt.

§50 Later chapters address a muddled assortment of further topics. One, aimed at law firm decision-makers, lists ten steps managers can take to make their firms happier places to work, such as reducing billable hour expectations, limiting firm size, and creating a more playful work environment. Another consists of edited anecdotes describing situations and experiences that lawyers found either satisfying or disheartening about legal practice. In the final chapter, the authors restructure their advice one final time to produce a list of five factors related to happiness, and they conclude with their most important message: “caring deeply about somebody or something” (p.242) makes us happiest of all.

§51 Between the happiness literature, the toolbox, the ten steps, the four qualities, the five factors, and the parting message on the importance of caring deeply, it is easy to get lost reading this book. The Happy Lawyer simply tries too hard to be too many things to too many different readers. The book is best suited for aspiring and current law students, who will benefit from the chapter aimed specifically at them and from the chapters on lawyer happiness in general. Although the book’s advice for practicing lawyers and law firm managers might prove effective for increasing happiness, I wonder if unhappy people in unhappy work environments will be able to implement much of it.


Reviewed by Thomas Sneed

¶52 At some point, anyone who majored in history studied the American Civil War and probably remembers the famous names, the important battles, and the basic questions surrounding issues such as slavery and states’ rights. In his new book, Justice in Blue and Gray: A Legal History of the Civil War, Stephen C. Neff examines topics less commonly encountered in an undergraduate history class—specifically, the legal issues that arose during this crucial period in American history. From the suspension of habeas corpus to the Prize Cases, Neff explores the court decisions, statutes, and executive actions that helped define not only the Civil War, but also the subsequent development of American law.

¶53 Justice in Blue and Gray covers most of the major Civil War themes, including secession and the commencement of war (chapter 1), slavery (chapter 5), and the early stages of Reconstruction (chapter 10). Due to Neff’s focus on legal issues, however, the topics that stand out are those historians generally neglect. In particular, two major issues feature prominently: (1) the question of sovereign versus belligerent rights and (2) the laws of war.

¶54 Neff himself notes that the tension between sovereign rights (“rights and powers . . . applied to citizens of the law-making power in question” (pp.4–5)) and belligerent rights (“rights and powers . . . invoked against enemy nationals” (p.5)) is a major theme of his book. Throughout the war, the Union did its best to treat the actions of the Southern states as those of an internal rebellion and to avoid any declaration or recognition that the Confederacy was a sovereign nation. Evidence of this approach can be seen both in actions taken by the federal government, such as its treatment of personal property and slaves owned by Southern citizens, and in its reactions to the activities of foreign countries. Neff dedicates substantial effort to detailing this evidence and explaining the legal consequences of the Union’s approach.

¶55 Justice in Blue and Gray also covers in depth the numerous contributions to the laws of war that were made at both the domestic and international levels during the Civil War. In the domestic arena, Francis Lieber drafted for the Union army a general set of rules summarizing the laws of war, which later became known as the Lieber Code. Neff describes the Lieber Code as “a legal masterpiece—a sort of pocket version of Blackstone’s famous Commentaries on the Laws of England” (p.57). Covering subjects as varied as reprisals and hostage taking, unlawful combatants, and the use of land mines, the Lieber Code was so thorough that it was later used in the creation of the Hague Conventions.

¶56 On the international front, Neff provides a fascinating discussion on the implications of the positions that the Union took regarding the laws of war, particularly in the area of blockades. The Union justified its blockade enforcement partly under the intention doctrine and the continuous voyage doctrine, which respectively permitted it to stop both ships that had not yet penetrated the blockade and ships headed for port in neutral countries with goods destined for final transport to the Confederacy. Neff adeptly points out that the British, though their
shipping was often adversely affected by the North’s blockade, were privately very excited about the direction in which maritime law was moving, as it would prove advantageous to their future activities on the high seas.

§57 Stylistically, Neff’s writing is quite easy to follow and comprehend. In each chapter, he carefully sets out his thesis for the section and follows with concrete, supporting examples drawn from court cases, congressional enactments, or presidential actions. He uses a chronological approach, discussing first the issues that arose early in the conflict and ending the book with the war’s conclusion and the federal government’s decision essentially to ignore many war-time Confederate actions. In an appendix almost as long as the actual text of Justice in Blue and Gray, Neff provides a glossary of key terms and a substantial bibliography that will be extremely useful to anyone conducting further research on legal issues stemming from the Civil War.

§58 As a Reader in Public and International Law at the University of Edinburgh who has written extensively on the legal issues surrounding war, Neff is obviously well-versed on the law. Nonetheless, he acknowledges that this is not a book written for lawyers and that he assumes no prior legal knowledge on the part of his readers. Even with these caveats, this reviewer—a former lawyer—found Neff’s discussions excellent and his book an informative and enjoyable read. Given the author’s expertise, extensive use and explanation of legal sources, and easy-to-follow writing style, Justice in Blue and Gray would be appropriate for many types of libraries, including law school libraries, undergraduate libraries, and even public libraries.


Reviewed by Heather Hamilton

§59 Though marketed as an “entry point to the legal system of France,” this book misses the mark on what students and practitioners want from an introductory text. As one example, sizable excerpts from French primary sources appear without translation throughout the text. Author Eva Steiner has apparently made the dangerous and incorrect assumption that anyone interested in learning about the French legal system will already be fluent in French. This is certainly not the case for American students, and it is a highly questionable assumption to make about American practitioners or about students and practitioners in the United Kingdom, where the author currently resides. Professor Steiner is certainly no stranger to the legal system of France. She has a doctorate in private law and criminal sciences from the University of Paris, was a member of the Paris Bar, and served as a lecturer in law at the University of Paris I-Pantheon-Sorbonne. Thus, the problem with this book does not lie in the author’s lack of knowledge, but instead seems to flow from an expectation that her readers will all be well-versed in the language, culture, and government of France. This would not be an unreasonable demand to make in a

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more advanced work on French law, but the approach is detrimental for readers who have been led to believe they are selecting an introductory work.

¶60 The overly ambitious use of an introductory label for this book stands out even more when the work is compared to other well-known introductions to French law. For example, Principles of French Law by John Bell, Sophie Boyron, and Simon Whittaker22 is one of the more influential introductory texts. One way that Principles of French Law excels is in its use of primary sources to illustrate its points. Steiner would have benefited from adopting a similar style, using translated statutory or case language to support her points so that readers who are not fluent in French can grasp the meaning of the referenced sources and understand why each is being cited.

¶61 None of this is to say that French Law: A Comparative Approach is not a well-researched and well-written book. On the contrary, it offers a concise yet thorough analysis of the French legal system and makes excellent use of French-language primary sources. For practitioners already somewhat familiar with French and with the civil law, the book will make an invaluable addition to their collections. Like various other books on the topic, including Principles of French Law, Steiner’s work offers a basic breakdown of the French legal system and includes chapters addressing specific areas of French private and public law. The book focuses first on the law-making process in France and then proceeds to discuss the method used to decide French cases, legal education in France, and specific areas of French law. As with many of its predecessors, the book relies primarily on British common law to provide a point of comparison with French civil law, a tactic that will also help American readers, due to similarities in the common law systems. Steiner also uses other civilian jurisdictions, like Germany, to demonstrate contrasting approaches within the same legal system.

¶62 Law school, law firm, and government libraries that support wide use of foreign and international materials will certainly benefit from adding this book to their collections. Libraries that do not specialize in foreign law and that see minimal use of books on foreign and international legal topics should stick with standards like Principles of French Law or Brice Dickson’s Introduction to French Law.23 These books contain much of the same information presented in Steiner’s work, but offer a truly introductory approach that does not demand fluency in French to fully understand the primary sources used to illustrate important concepts.

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Reviewed by Judith A. Kaul

¶63 When told I was writing a review of a Mark Tushnet book, a colleague responded, “Oh, Tushnet—you could write it without reading the book, couldn’t you? Everyone knows what he thinks is important about the Constitution!” True, I have encountered Tushnet’s publications many times, both while helping students and faculty research constitutional issues over the years and through my own long-term interest in Critical Legal Studies and its impact on multidisciplinary research in law libraries. I know Tushnet is renowned as an eminent constitutional law theorist, a respected legal historian, and a founding member of the Critical Legal Studies movement. I also know Tushnet thinks that law equals politics and that the Constitution matters because it structures our political discourse. Nonetheless, I am glad that I did read Why the Constitution Matters. The work is part of the Why X Matters Series from Yale University Press, a series dedicated to books that seek to “present a concise argument for the continuing relevance of an important person or idea.” Elsewhere in the series, the X stands for the Dreyfuss affair, Hannah Arendt, architecture, poetry, and translation. The series proves an ideal platform for an explication of Tushnet’s theories. In fact, the exercise of writing this book seems to have helped Tushnet consolidate his theories in a cohesive fashion, yielding a very elegant yet complex hypothesis, described with great eloquence.

¶64 In outline, the book consists of an introduction followed by three chapters: “How the Constitution Matters,” “How the Supreme Court Matters,” and “How to Make the Constitution Matter More—or Differently.” In the introduction, Tushnet announces the book’s basic hypothesis and lays out the background that supports it. He points out that most Americans think the Constitution matters because it provides for and protects our fundamental rights. According to Tushnet, though, this is not actually the case. Indeed, he asserts that “[t]he written Constitution doesn’t even provide the framework within which we argue about what rights are fundamental” (p.9), a fact that we may find, as Tushnet would say, “disquieting” (p.151). Instead, Tushnet hypothesizes that, “[i]f the Constitution matters, it does so because it has something to do with politics and elections” (p.11).

¶65 Chapter 1 defines this “something”: the Constitution provides the framework that gives rise to partisan politics and our two-party political system. But the beauty of this work is that Tushnet goes beyond just saying this to provide a rich historical overview combined with a mini-course in political science. He covers what the Constitution creates—Congress and the presidency—and the constitutional requirement of popular elections for seats in the House and Senate, though not for the presidency. He then details connections between the concepts of separation of powers and federalism, the presidency, and the First Amendment’s protection of political speech as interpreted by the Supreme Court. These complex dynamics lead Tushnet to conclude that the Constitution matters because its “struc-
tural features—the separation of powers and federalism” (p.92)—affect the way our political parties function.

¶66 I was particularly interested in Tushnet’s discussion of how, as “[i]ncreasing national power [made] party control of the national government more important” (p.33) over the last century, Supreme Court decisions worked to favor continuation of the two-party system. Parties are mentioned nowhere in the Constitution, but, as we well know, they exercise great influence over national politics. Among other things, party politics dictates much about the processes by which Justices are nominated and appointed to the Supreme Court. Tushnet introduces the political science concept of political regimes, systems “that combine programmatic commitments . . . with distinctive institutional arrangements” (pp.41–42) and last well beyond a single President’s term. Examples of regimes include the “New Deal/Great Society regime” (p.42) and the “Reagan revolution” (p.43). Tushnet submits that these regimes run in cycles that interrelate with the Supreme Court appointment process to produce Justices who continue to decide cases in favor of the regime under which they were appointed, even after the regime is reconstructed by later presidential leadership. One cannot do justice to Tushnet’s wonderful development of this complex argument in a short review, but I was surprised to find that it all made sense to me, at least as Tushnet described it.

¶67 The last two chapters are much shorter, but provide in-depth analysis and further development of variations on themes from the first chapter. Though concise, Tushnet’s carefully crafted presentation is thorough. He recapitulates his analysis of the relationship between the Supreme Court and presidential regimes. He also points out interconnections linking lawmakers and the Court, explaining how the Court can bypass obstacles to the political process by taking unpopular actions that would yield negative consequences for politicians. When addressing criticism of the Constitution, Tushnet suggests workarounds for overcoming potential flaws rather than dismantling the document itself.

¶68 Why the Constitution Matters is beautifully written and a pleasure to read. I recommend that anyone who wants a basic background in constitutional theory read this book. It should definitely be acquired by all academic law libraries.
Facing a time crunch herself, Ms. Whisner suggests ways that librarians can handle periods when there is just too much to do.

¶1 This piece is scheduled for the winter issue of Law Library Journal, so I’m working on it in the fall, just as my institution is starting a new school year. This is always a busy time for me and, frankly, I felt some panic when I realized my column deadline was nestled in the midst of a lot of other time-sensitive tasks. I hadn't begun work on the column, and I didn’t even have a topic in mind, so it was a little daunting to think of writing it while I also spoke at student orientation, began training new law librarianship students, and so on. And then it hit me: this challenge of having a crush of work could be my topic. The experience was so immediate, I felt I could come up with a little something say, and I just might make my deadline after all.

¶2 To some extent, having more than you can do is a chronic condition of reference work. Even if you’ve answered every reference question in the queue, prepared that report your supervisor requested, and created a handout for next week’s presentation, there is always more you could do to improve your skills and knowledge or to serve your library’s users. In my case, I could work on my filing backlog, read some of the journals I’ve piled up or articles I’ve downloaded, walk the faculty hallways to see what new projects are brewing, pick up work on a couple of half-written guides I’ve started, write a few blog posts, or review and delete some of the gazillion e-mail messages in my inbox. Even if you are better than I am at managing your filing and e-mail (and you probably are) and you stay on top of the professional journals that are routed to you, you could still come up with useful things to do—for instance, read more, try out a new tech tool, write an article, or ask for cross-training in another department.

¶3 I am sure there are people who absolutely hate this aspect of our work—the fact that there is always more that could be done. I generally like it. At least, I like the way the work fuels my curiosity and gives me an outlet for my creativity. I’m not so keen on my disorderly desk and e-mail backlog. My inability to clear the decks can be disheartening.

* © Mary Whisner, 2011.
But this piece isn’t about the chronic condition—the extra things to do that are part of the backdrop of our days. Nor do I want to talk about the single reference shift when throngs of people come through and the list of pending e-mail questions only grows. Instead, I’ll discuss periods like the one I’m in now—a week or a month when the projects and commitments collide. The start of the school year is often like that for me. If you work in a law firm, your crunch time might be when the class of summer associates starts. Or, in any type of library, such a period might strike at a surprising time—perhaps you agree to do something extra and your coworker gets the flu, so what was normal-busy suddenly becomes crazy-busy.

How can a busy period be handled? What can we do to take care of the work that seems to be coming at us from all directions?

Finding Time

One technique is to come up with extra time. Work during a lunch hour, stay late, or go in on a Saturday. I have used this approach and, for limited periods, it helps. But it has costs. Used in excess, the technique throws off your life balance. You don’t see your friends or do your household chores or get exercise. You burn out. I like my non-work life far too much to try to solve the problem of a crush of work only by staying in my office. (One reason I have dogs is that they remind me to leave the office and take a walk, no matter how much work there is to do.)

Asking for Help

When you are overwhelmed by work, don’t rule out asking for help. If you have others in your department, they might be willing to pick up an extra shift for you or take on one of those time-consuming research projects. If you’re working on an outside professional project, maybe there’s someone else on your board or committee who could help out. It’s okay to ask. Maybe the people around you are just as overwhelmed as you are and can’t help this time, but maybe they can. You’d do the same for them, wouldn’t you?

Adjusting Dates

When projects are colliding, it’s worth exploring the possibility of shifting some. For instance, if you have projects for three different faculty members, ask them when they need the results. Maybe they all have tight deadlines—but I have been pleasantly surprised on a few occasions when, for instance, I’m wondering how I can get something done in a day or two and the professor says he won’t have time to use the results for several weeks. If you have a writing deadline, see if an extension is possible: with good communication, you might be able to buy a week without inconveniencing your editor. If you’ve been asked to speak in two classes, see if one can be delayed. (Of course, you should have checked your calendar and considered declining before committing to the second class, but sometimes things do pile up unexpectedly.)
Delaying Some Discretionary Work

§9 Some of the tasks that are on your plate might be within your discretion if no one is depending on you to get them done at any particular time. In my case, there are those half-finished research guides. Plus there’s my own professional housekeeping: filing, nonurgent e-mail, professional reading. During the few weeks when I am bombarded by projects and deadlines, I can put these on hold. The danger in this technique, of course, is that one may never get back to the tasks that were put on hold. And that’s exactly why my e-mail inbox and my desk are usually such messes. I keep putting maintenance aside in favor of projects that are—or seem to be—more urgent.¹

Cutting Corners

§10 It might be laudable, but it isn’t always realistic to strive for excellence in all that you do. There just isn’t time. If you think you can’t prepare for a second guest lecture until you have thoroughly polished your notes and PowerPoint presentation for the first, then you might never get to it at all. And if you can’t let go of a research project until you have checked absolutely everything and made sure that the product is beautifully formatted, then you might never finish that first one, let alone get to a second. A quest for perfection may leave a lot of patrons unserved and projects uncompleted.²

§11 The tough thing to learn is how to cut corners without sacrificing too much. Often it is helpful to be transparent about what you are and aren’t doing. For instance, in response to a professor who asked for a bibliography on some topic, you might say:

Below is a list of citations drawn from WorldCat and LegalTrac. I did not take the time to tinker with the citation format or check for duplicates. If you want us to look further, we could try some other databases (e.g., full-text journals on Westlaw or LexisNexis, business indexes, or Dissertation Abstracts). I hope this is a good start for you; let us know if you’d like anything further.

In this way, you save some time, but you let the professor know which corners you cut and make it clear that you could do more if requested. Sometimes, the patron

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1. Years ago I started reading The Seven Habits of Highly Effective People. If I’d finished it and applied its lessons, I would doubtless have a different work style—and a cleaner desk—than I do. One thing I remember is the author’s four-way division of things into urgent or not urgent, important or not important. He warned against spending time on things that are urgent (whether or not they are important) and neglecting those that are important but not urgent. **Stephen R. Covey, The Seven Habits of Highly Effective People**, 151–54 (2004). Long-range planning isn’t urgent but it is important. Some of my back-burner projects are also important but not urgent. Filing might be neither urgent nor very important, but it’s worth getting to at some point.

2. This might be the place to throw in an aphorism attributed to Voltaire, “‘The perfect is the enemy of the good,’ although it was first an Italian proverb, Il meglio, e l’ininico del bene. The **Yale Book of Quotations**, 791 (Fred R. Shapiro ed., 2006) (quoting a 1744 letter from Voltaire to the Duc de Richelieu and translating the quote as: “The best is the enemy of the good.”). Wikiquote cites Voltaire’s use of the proverb in 1764 (in Italian) and 1772. **Voltaire, Wikiquote**, http://en.wikiquote.org/wiki/Voltaire (last visited Nov. 1, 2010). No matter who said it first, it’s a good point.
will reply and ask for the additional searches, but many times the first citations you found will suffice.

¶12 After many years of speaking on research topics, I have learned to streamline my preparation—especially when I have limited time. First, I try to use what my colleagues and I have already done: notes from a similar class, a relevant guide on our web site, an existing PowerPoint presentation. Second, I make some decisions about how to present the material based on how much time I have to prepare. When things go well, these decisions have occasionally even improved my presentations while saving time. For example, sometimes I choose not to create PowerPoint presentations and instead develop visual aids “live”—during class, I make points and solicit ideas from the class to create a shared outline (either in Word or on a notepad projected with a document camera). Instead of passively waiting for the next slide to appear, the students are engaged, contributing to the outline that’s forming. Of course, I need to go in with an idea of where I want to steer the class, but the extemporaneous outline can work well and also save some preparation time.

¶13 I have also had some good classes when I don’t have (or take) the time to take notes on lots of sample searches before a presentation to a seminar. Instead, I elicit topics from the students (who should have been thinking about the themes of the seminar anyway) and put together searches on the fly. Students see examples they are interested in, and they also see how an experienced searcher thinks through a problem. I have done so many searches in my career that I can usually put together searches that work. But even when the impromptu searches fail, they can be instructive. It’s not really working without a net. Unlike the tightrope walker, if I fall during an unrehearsed stunt, there’s no bodily injury. And the class and I can try to troubleshoot the failed search together.

¶14 I don’t want to give the impression that cutting corners always leads to better classes. Sometimes I know that I could have done a better job if I’d had a few more hours. But during a time crunch, it’s good to remember that a good presentation is still good. If the students got something out of it—if they learned about resources and gained some skills so they can write their papers—then the class was worthwhile. With luck I’ll have the time to do better for another presentation.

¶15 Cutting corners is tricky. Not everyone can cut the same corners and still have a good outcome. I am not suggesting that everyone stop preparing sample searches before demonstrating a database—if you aren’t familiar with the database or the subject, you will want to take the time to try out different searches and make notes for yourself. Put in the time for that preparation. My examples are only examples of how I—in my work environment, with my strengths and weaknesses—economize on time when it’s in short supply. You might find other ways to save yourself a little time. Find techniques that work for you in your situation.

3. When I recently spoke to a tax class, I did take the time to create a list of sample searches. I’m not very familiar with the field, and it’s harder for me to come up with a good search on the fly than in some other subject areas.
Conclusion

¶16 All of us hit some periods when it seems that we have more work than we can handle. Take a deep breath and take heart: there are ways to cope. Ask for help. Find extra time. See if you can move deadlines. Delay work that doesn’t have to be done right away. And cut corners—if possible, in a way that doesn’t compromise quality too much. Keep calm and carry on.  

Thinking about Technology . . .

Standard Bar Codes Beware—Smartphone Users May Prefer QR Codes*

Darla W. Jackson**

Quick Response (QR) codes are free to produce, allow access to data, and can be read with most smartphones. QR codes are already popular in some other countries and are gaining popularity in the United States. This article discusses this growing popularity and the reasons for it, how QR codes are being used in law libraries and the legal profession, and how they may be used by librarians in the future to add value through the marketing of professional and library services and by providing easy access to information from library resources.

¶1 While at the 2010 Computer-Assisted Legal Instruction (CALI) Conference, I learned about a number of new technological tools that could assist librarians with information literacy instruction and other library functions. I came away ready to try several new tools, but I was the most enthusiastic about implementing the use of Quick Response (QR) codes. I was not the only one. Jon Lutz’s presentation on the topic of Florida State University College of Law Research Center’s use of QR codes1 seemed to generate a shared enthusiasm for those attending the session.

¶2 QR codes, including the one shown above, are square bar codes “with blocks of black and white pixels arranged in such a way that a mobile phone’s camera can recognize them, align them, and pull data from what may seem like random checkers to human eyes.”2 Originally developed by Denso Wave in 1994, the “two-dimensional matrix symbology” and the three-cornered position detection patterns of the QR code were designed for “ultra-high-speed and omnidirectional reading.”3 Denso, a member of the Toyota group, designed the technology to track parts during vehicle manufacturing.4 Since 1994, QR codes have been used in many other

* © Darla W. Jackson, 2011.
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fields, including marketing and education. This widespread adoption has likely resulted from Denso’s willingness to make QR codes available at no cost.\(^5\)

\(\S\) The low cost of producing QR codes is one of the exciting aspects of the technology. QR generators can be downloaded at no cost.\(^6\) Thus, the primary investment in producing QR codes is staff time. Despite the fact that staff cuts necessitated by difficult economic times have made staff time increasingly valuable, the value added by using this technological tool to improve access to information would likely offset the staff cost.

\(\S\) QR code readers can also be downloaded at no cost.\(^7\) Yet there may still be some cost associated with the use of QR codes. Concerning Google Place Pages, which use QR codes, Allison Mooney wrote:

[T]here is still the barrier of cost. QR decoding requires data, which requires money. Will people be willing to pay money (albeit tiny amounts) to read what is ostensibly an ad? Or will Place Pages provide enough value (through information, maps, reviews and now coupons) that people won’t even think twice about it?\(^8\)

\(\S\) If there is a cost for accessing the Internet via a cell phone, at least one survey of college students from four universities in the United Kingdom indicates some of the students might “think twice about” incurring that cost. According to the survey, while 93% of the college students had camera phones, 52% had Wi-Fi access on their phones, and 39% had data plans, only 18% percent of the responding students said they would be willing to use their own money to access educational materials on their phones.\(^9\) However, not all QR Codes require an Internet connection to communicate information. Codes containing addresses, text, and telephone numbers can be directly resolved on the phone.\(^10\) This use of these codes would not impose the cost barrier suggested by Mooney.

\(\S\) Despite some expressed hesitancy by college students to use technology to access educational materials, the use of QR Codes nonetheless appears to be catching on in the United States. At the March 2010 South by Southwest (SXSW) festival in Austin, Texas, Mark Sullivan, a blogger for PC World, wrote:

Everywhere you go here you see little black and white QR Codes. On signs and posters, in magazines, on T-shirts, on badges. . . .

When you aim your smartphone camera at that pattern on my badge, you will go to a location on the SXSW site where you can see various information about me, like who I am, who I work for, and what I look like.

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5. Id.
9. Andy Ramsden, The Level of Student Engagement with QR Codes: Findings from a Cross Institutional Survey 4 (University of Bath, Working Paper, 2010), available at http://opus.bath.ac.uk/19974/1/students_qr_codes_cross_ints_survey_2010.pdf. Forty percent of the students surveyed had heard about QR codes, and nearly ten percent had used one in 2009. This result was a nearly fivefold increase from the previous year. Id. at 2.
10. See Lutz, supra note 1 (video at approximately 3:30).
If I choose, I can put a lot more information at that URL, like a link to my Twitter feed or my profile on Facebook. . . .

QR Codes—or something like them—might start showing up everywhere. Especially as mobile networks get faster and mobile devices get easier to use (think iPad).\(^{11}\)

Sullivan’s comment that “QR Codes—or something like them—might start showing up everywhere” raises an interesting question. Why are QR codes or Microsoft tags,\(^{12}\) both of which are a type of bar code, creating such a stir in comparison to the use of standard bar codes? One reason is that QR codes and their counterparts can contain far more data than the standard barcode. Each code is made up of a grid of tiny squares that can be read both horizontally and vertically. Some codes can even be stacked one on top of another. The increased data capacity means QR codes can trigger more complex actions such as opening a Web page or initiating the download of a video or an online coupon.\(^{13}\)

Another commentator had this to say:

The reason why [QR Codes] are more useful than a standard barcode is that they can store (and digitally present) much more data, including url links, geo coordinates, and text. The other key feature of QR Codes is that instead of requiring a chunky hand-held scanner to scan them, many modern cell phones can scan them.\(^{14}\)

QR codes have a number of benefits related to their use on the web. Incorporating the codes on a web site allows search engines to “see that your pages have changed, and that you are updating pages. The search engine will see a new image and index it accordingly.”\(^{15}\) Thus, adding QR codes is a method of search engine optimization that will increase your site’s discoverability. In fact, there is some speculation that “[a]t some point soon, the search engines will likely recognize QR codes and possibly index the content in them.”\(^{16}\) Further, web users are increasingly using their mobile devices to access the web, and “typing out URLs or other data on their tiny keyboards is still not very efficient.”\(^{17}\) The use of QR codes negates the need for those seeking information to type in the URL. Because of this, . . .

\(^{11}\) Mark Sullivan, SXSW Notes: QR Codes Are Everywhere, TODAY @ PCWORLD (Mar. 15, 2010, 12:52 P.M.), http://www.pcworld.com/article/191528/sxsw_notes_qr_codes_are_everywhere.html.

\(^{12}\) Microsoft tags have functions similar to QR codes. Microsoft uses a somewhat different process to produce its “High Capacity Color Barcodes, which are two-dimensional barcodes that can be quickly read on a mobile phone.” Brennon Slattery, Microsoft Tag: You’re It, TODAY @ PCWORLD (May 28, 2010, 12:24 P.M.), http://www.pcworld.com/article/197455/microsoft_tag_youre_it.html.

\(^{13}\) Leslie Meredith, Beyond the Barcode: QR Codes for Shopping, Discounts and More, TECHNEWSDAILY (July 7, 2010 3:13 P.M.), http://www.technewsdaily.com/beyond-the-barcode-qrcodes-for-shopping-discounts-and-more-0820. While over 4000 characters may be hidden in a QR code, most phones don’t have the resolution to read that many. As a result, QR code scans are usually limited to 250 characters. Rarely will a URL exceed 250 characters. Lutz, supra note 1 (video at approximately 3:50).


\(^{15}\) Id.

\(^{16}\) Id.

and because QR codes can be read from any angle without the need for alignment,\textsuperscript{18} the use of QR codes could help libraries serve visually impaired individuals.\textsuperscript{19} Finally, because users are just beginning to see an expanded use of QR codes, they may identify organizations that use QR codes as “tech savvy” and be more receptive to information provided by those organizations.\textsuperscript{20}

\textsuperscript{¶}10 While there are many positive aspects of QR code use, there are also negative aspects. For example, one study of human and computer interaction reported that when comparing one-dimensional bar codes with QR codes “[s]ome participants felt that the designed QR code burdened their eyes with its fine pattern, and they felt giddy when viewing its labyrinth-like patterns.”\textsuperscript{21} Second, while QR code technology is rather easy to use, there may be interface issues that librarians will need to address in order to offer effective services using QR code technology. For instance, will camera quality or the operating system of the user’s mobile phone result in lack of access to some resources through the utilization of QR codes?\textsuperscript{22} Some have suggested that if a QR code directs the user to a site without knowing which web browser the user has, the whole experience seems “low tech.”\textsuperscript{23} But, in contrast, others have argued that browser detection is not the solution because it hinders some devices from accessing content, even if the device has the capability to access the content.\textsuperscript{24} It can also be problematic if the QR code directs the user to a site that is not optimized for mobile devices.\textsuperscript{25}

\textsuperscript{¶}11 Abuse of the QR code technology to gather information on users is another potential negative. While QR code generators may be downloaded for free, it has been reported that some generators collect data about users before redirecting the user to the desired web site.\textsuperscript{26} However, possible abuse of the open nature of QR code technology should not be a reason to foreclose use of QR codes altogether.\textsuperscript{27}

\begin{flushright}
\textsuperscript{18.} \textit{Id.}
\textsuperscript{19.} See Hend S. Al-Khalifa, \textit{Utilizing QR Code and Mobile Phones for Blinds [sic] and Visually Impaired People, in Computers Helping People with Special Needs} 1065 (Klaus Miesenberger et al. eds., 2008).
\textsuperscript{20.} Such a suggestion has been made to businesses seeking product sales. Lyne, \textit{supra} note 14.
\textsuperscript{22.} See EVANS, \textit{supra} note 2, at 81.
\textsuperscript{25.} \textit{The First Rule of QR Codes, 2D CODE} (Feb. 21, 2009), http://2d-code.co.uk/first-rule-of-qr-codes. The QR code appearing at the beginning of this column was optimized for mobile users using Google’s mobilizer function, which is described in \textit{id}.
\textsuperscript{26.} For those that generate QR codes using tools on the web please keep in mind that many of the QR generators out there propagate spam and then redirect your users to your site. (Collecting information about them first).
\textsuperscript{27.} If you use a QR generator, just be sure to use one that is known not to retain information or redirect users.
\end{flushright}
Finally, the need to operate call phones in the library at all may be viewed by some as a negative outcome of QR code use. In academic environments particularly, libraries have traditionally been seen as areas of “quiet study” that should not be disturbed by the noise associated with the use of cell phones. As a result, some libraries have policies banning cell phone use in some or all areas of the library. However, policies that restrict only the use of phones for incoming or outgoing calls would allow for maintenance of a quiet environment, while also indicating that libraries are willing to adapt to change.

Based on the widespread use of QR codes in other parts of the world, it seems likely that the positive aspects of QR code use will be judged to outweigh the negative, and use in the United States is likely to increase. If this is the case, how can QR codes be used in law libraries and in the legal community? Sarah Glassmeyer has suggested that you could place one at the front door that will tell patrons hours/contact info/etc., especially if they arrive after business hours. You could have one at the Reference Desk that will connect to a SMS reference service. Or how about putting them on the end caps of shelves? So, for this example, put a link to your Tax Research Guide on the shelves that contain your tax books. Or another link to the reference desk info for research help.

The Florida State University law library is already utilizing QR codes in some of the ways mentioned by Glassmeyer. For example, contact information for the reference librarians in the library is available via QR code. QR codes are also being located in the stacks to assist library users attempting to locate the electronic format of a print resource. Further, the library is using bookmarks with QR codes to market library services and lead students to the mobile library catalog, law-related databases, legal research guides, and the library’s blog.

One of the often suggested uses of QR codes in libraries has been to supplement print resources. For example, a library could use QR codes to assist patrons in accessing reviews of print resources. Or QR codes might be used to connect library users not only with resources but also with people. As suggested above, contact information for reference librarians might be provided via QR codes, or QR codes could be used to connect patrons having computer problems to a help desk.
And there are additional uses that might be possible as the technology becomes more fully developed. For instance, “[t]he technology may evolve so that data embedded in a QR code can be interpreted differently by different viewers; that is, passwords or biometric data might open more data to some authorized users, or viewer signatures may unlock different information sets.” Can you imagine the delight of librarians, attorneys, and students everywhere if passwords to subscription databases could be accessed any time through the simple scanning of a QR code? In fact, Denso, the original developer of QR code technology, has released Security QR Code (SQRC), which could potentially be used for such purposes. Using SQRC, “[c]onfidential information is code key encrypted and combined in the QR Code. This means that the QR code can still be read by general readers, but the encrypted data is protected and only accessible using a special reading device with the same SQRC code key.”

QR codes are starting to appear within the legal community outside of law libraries. For example, the Legal Services Staff Section of the National Conference of State Legislatures (NCSL) reported that “[b]ill watchers in a dozen or so states are used to seeing bar codes on bills” but in January 2011 the Wisconsin State Legislature will include “matrix codes” on legislative proposals. The purpose of the inclusion of the codes is “to speed access to bill information for anyone who has a smartphone equipped with a camera and a 2D matrix code reader.” Steve Miller, Chief of the Wisconsin Legislative Reference Bureau, had looked into how standard barcodes were used by other state legislatures, but wanted to put technology to work in a way that would assist public access to legislative information.

As law librarians, we want to use the available technology to support the information needs of our patrons. And it is best if we can introduce newer technology to our patrons rather than waiting for the demand to arise. The use of QR codes and Microsoft tags provides us with the opportunity to assist our patrons in a proactive way through the use of an emerging technology. We can help formulate the answers about the value of libraries in the electronic age if we seize the day and the opportunity to link our patrons with information in new ways.

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37. Id.
38. Id.
Memorial: Edgar J. Bellefontaine (1930–2010)*

¶1 Edgar Bellefontaine died on April 24, 2010, from diabetes-related complications. He was born in Bangor, Maine, and raised in Hampden, Maine. Although he moved to the Boston metropolitan area after graduating from college, he maintained his down east accent throughout his life, and I will fondly remember his calling me “Regeener.” Edgar’s mother died when he was twelve, and he helped his father raise his twin sister and brother. He graduated from Hampden Academy in 1949 and entered the Air Force, where he became a cryptographer and served five years during the Korean War, retiring as a staff sergeant.

¶2 Edgar earned his B.A. from the University of Maine at Orono in 1958 and his law degree from Boston College Law School in 1961. During his law school years he worked at the Social Law Library, and upon graduation from law school, he accepted the position of Chief Librarian at Suffolk County Courthouse’s Social Law Library in 1961. He continued to serve in that capacity until his retirement in 1998.

¶3 During his tenure at the Social Law Library, Edgar mentored many law librarians and was active in local and national library associations in addition to his bar participation, writing, and other professional interests. He served on various American Association of Law Libraries (AALL) committees and chaired the AALL Public Relations and Financial committees, as well as the AALL Certification Board (which certified law librarians). Edgar served as president of the State, Court, and County Libraries SIS in 1982–83 and as president of the New England Law Library Consortium from 1990 to 1992. He received the Marian Gould Gallagher Distinguished Service Award in 1999.

¶4 Edgar made time, no matter how busy he was, to coach new law librarians on how to run their libraries successfully. He was patient, and no question or problem was too trivial to ask about. Edgar treated people as equals and with respect. When I moved from academia into my present position at the Jenkins Law Library, he invited me to visit the Social Law Library to observe how he ran his operation. The library was still in the Suffolk County Courthouse, and it was a hot Boston summer day. The library was not air conditioned and had large floor fans scattered throughout; lemonade was served at the circulation desk. He gave me a half-day of his time, took me to lunch, and would not let me pay. I came back to Philadelphia with a new appreciation for what I could do at Jenkins. He did this for many law librarians, and some even visited the Social Law Library with their trustees to see how it was done right.

¶5 When attending the AALL Annual Meeting, Edgar would go out of his way to introduce me to the Association’s leaders and experienced law librarians. This was something that one could not learn in the educational programs—the

networking opportunities that he introduced me to throughout the years have been invaluable. We served together on vendor advisory boards, and I treasure the time that we were able to work together on projects. He was open to new ideas, and the success of the Social Law Library’s special projects is a tribute to his creativity.

§6 Edgar was a great sounding board. I knew that if I was experiencing difficulties, I could call him, and he would give me his honest opinion. He would tell me if I was off base and why. He would also praise me if I was right about something—and if he decided to implement something that I had thought of for my library, he would always tell others that it was my idea. He nurtured his staff, and it has been wonderful for me to watch them grow professionally throughout the years. His staff affectionately referred to him as Mr. B.

§7 Edgar and I had a running joke about whose library was older. Jenkins was founded in 1802 as the Law Library Company of the City of Philadelphia and the Social Law Library was founded a year later, but still operates under the same name. So that’s how we came to settle it—his library still has the same name, so it is older than Jenkins in that respect.

§8 In 1985, Edgar invited directors of membership law libraries in North America to the Social Law Library to learn about their Colonial Records Project and fund-raising and to share and discuss the challenges that our type of library faces. We met from Wednesday evening through Saturday morning and came back with real-life tips and the knowledge that we were not alone, but now had a support group. Since that first meeting, our group has met annually. Each year we update one another on what has happened in our libraries since we last met. One year, Edgar decided to do something different. He and his staff made a video and, just as it was about to begin, he donned a tricorn hat. Throughout the presentation, he changed hats to illustrate the many hats he had to wear to be the director of the Social Law Library. Edgar was quite a showman!

§9 Although he retired as director of the Social Law Library in 1998, we remained in touch. I last visited him about eighteen months ago. He was using an electric wheelchair, and he and his wife took me on a tour of the continuing care community where they lived. People kept stopping us along the way to chat with Edgar and Greta, and it was apparent that he had made new friends and was as engaging as ever. Edgar put the “social” in the Social Law Library and was now doing the same at Brooksby Village.

§10 The day before he died, Edgar called to tell me that he was not well and was spending the day calling his friends to say goodbye. We reminisced about old times, friends, and colleagues and said our farewells. The act of calling his friends that day typified who Edgar was. He was larger than life and lived life to its fullest. He truly cared about his family, those who worked with and for him, his friends, and his colleagues. I consider myself fortunate to have been mentored by him and to have had him as my friend and colleague.—Regina L. Smith

1. Executive Director, Jenkins Law Library, Philadelphia, Pennsylvania.
Edgar Bellefontaine at the Social Law Library

§11 Capturing in a few pages Edgar Bellefontaine’s long career at Boston’s Social Law Library is, to use Shakespeare’s image in Henry V, like turning the accomplishments of many years into an hourglass. When Edgar’s tenure at the Social Law Library came to a close in 1998, the trustees commissioned a renowned artist, Michael Del Priore, whose commissions included portraits of Ronald Reagan and Bill Gates, for a portrait of the man who had presided over the Social Law Library for thirty-seven years. The portrait was hung amid the likes of Theophilus Parsons, Daniel Webster, Rufus Choate, Lemuel Shaw, Oliver Wendell Holmes, Jr., Christopher Columbus Langdell, and other lawyers and judges of local and national prominence who, since 1803, had played a role in the Social Law Library’s storied history.

§12 Edgar Bellefontaine’s personable likeness (replete with his long mane of unruly white hair) immediately stood out from the rest. His friends marveled that this particular painting was truly lifelike, capturing Edgar’s essence. Total strangers commented that there was a quality about this portrait different from all the rest. The subject stood apart somehow. But how? And why? It was puzzling, until someone pointed out that this was the portrait of a happy, friendly man. On closer inspection, his portrait was surrounded by the stares (and sometimes glares) of serious and stern men who seemed to look on their careers as a struggle with, to use Holmes’s phrase, a jealous mistress. Edgar was literally the only subject with a smile and a sparkle in his eye, clearly someone who looked back upon his career as a lover, and not a fighter.

§13 Edgar’s first annual report, in 1962, foreshadowed his approach to management and his ambitions for the Social Law Library. Rather boldly, he informed the trustees that he had hired three full-time assistants. His goal was to “build one of the strongest staffs in the Library’s history,” with people of “enthusiasm and intelligence” that can not only “handle most questions asked of them,” but also take on the many special projects that he would delegate to them to implement. The additional staff released Edgar from the routine reference and circulation duties that had kept his predecessor from much, if any, involvement in the legal community. The new employees also allowed Edgar time to “plan for long range improvements.”

§14 Freed from the quotidian duties in the library, Edgar embarked on a quest to put himself and the Social Law Library at the center of the legal community. He also set his sights on the horizon.

§15 His next annual report, in 1963, was remarkable for its foresight. Noting that he had been “active in professional organizations,” including serving as secretary-
treasurer of the Law Librarians of New England and as a member of the Boston Bar Association Committee on Automation, he went on to predict that automation will “force fundamental changes” in legal research. He told the trustees of groundbreaking experiments sponsored by the American Bar Foundation and marveled how a revolutionary new method of research called “keyword in context” would allow the user to approach his subject electronically by means of any key word. Fully a decade before LexisNexis was introduced in 1973 as the first computer-assisted legal research system (Westlaw was not introduced until 1975), Edgar’s 1963 annual report predicted that major law book publishers would introduce electronic law searches in the near future.

¶16 As one trustee recounted at Edgar’s memorial service, Edgar Bellefontaine’s futuristic predictions in the 1960s and 1970s struck the Board of Trustees as something akin to science fiction. Nevertheless, Edgar advised the board: “It is essential that the Social Law Library be prepared to use data processing methods and materials as soon as they may practically be applied to our circumstances.”

¶17 As his first two annual reports foreshadowed, from the very start of his career Edgar Bellefontaine wanted the Social Law Library to be in the vanguard and on the cutting edge. By the time he retired, the library had embraced every new technology and had a notable number of “firsts” to its credit. What was exciting and cutting edge in the 1960s, ’70s, ’80s, and ’90s is commonplace today and not worth recounting. But there are some innovations of Edgar’s that are not typically associated with law libraries and that illustrate his inventive, groundbreaking approach to patron services.

¶18 Although the Social Law Library has been the official library of the Massachusetts Supreme Judicial Court since 1803, and counts among its 14,000 members the largest and most sophisticated firms in Boston, it is also the “library of the little guy,” serving less affluent solo and small firms across the state that can’t afford the technology and databases.

¶19 To bridge this digital divide, the library became an Internet service provider in 1996 and offered its patrons e-mail addresses (@socialaw.com), professional web site design, and hosting services (replete with the full array of high-speed T1 lines, and an air-conditioned server room with redundant back-up servers, staffed by certified technicians).

¶20 As an additional service to solo practitioners and government lawyers challenged by the high costs of commercial publishers, in 1989 the library also began publishing searchable databases of Massachusetts primary and administrative law, first offered as CDs and now fully searchable on the library’s web site, www.socialaw.com. The largely free databases provide cash-strapped patrons with almost all Massachusetts primary and administrative law decisions needed in practice. Today, there are thirty-five Edgar-inspired databases that Social Law Library members log into approximately 2000 times a day.

¶21 By the end of his career, Edgar had earned well-deserved awards as a library innovator. In 1999, AALL bestowed on him its highest honor, the Marian Gould Gallagher Distinguished Service Award. In addition, in 1996, in Edgar Bellefontaine’s honor, the Law Librarians of New England created a tribute in his name and gave him the inaugural Edgar Award for Innovation, Excellence and Dedication to the
Practice of Law Librarianship. AALL’s State, Court and County Law Libraries SIS honored Edgar with the Bethany J. Ochal Award for Distinguished Service to the Profession, and West Publishing Company recognized him with its Excellence in Government Law Librarianship Award.

¶22 In addition to tributes from the library world, Edgar also earned awards for his contributions to the law and the legal system in Massachusetts, notably the Chief Justice’s Award for Distinguished Service to the Judiciary, the Henry C. Lind Award of the Association of the Reporters of Judicial Decisions, and Boston College Law School’s Lifetime Achievement Award.

¶23 Edgar was not only a “librarian’s librarian,” but also a “lawyer’s lawyer.” He had a great legal mind. Apart from his role as librarian, Edgar’s advice and counsel as an authority on the law were in constant demand by practitioners, the courts, and bar associations. In the 1970s, for instance, he served as the reporter for the Massachusetts Judicial Conference Criminal Rules Project and reporter for the Federal Speedy Trial Planning Group for the Districts of Massachusetts and Rhode Island.

¶24 Space does not allow a recital of all of his contributions to the law and the legal community. But Massachusetts Lawyers Weekly summed them up when in 1997 the editors named Edgar Bellefontaine one of the twenty-five “Most Influential Lawyers of the Past 25 Years.”

¶25 Edgar loved history, and through his intervention as librarian he saved some of the country’s most historic court papers. Much has been written about the Social Law Library’s Colonial Court Records Project but the story of Edgar’s discovery is worth repeating.

¶26 Sometime in the mid-1970s, the clerk of one of the courts in an old courthouse in Boston wanted to make space by destroying what everyone believed were worthless old papers that had been gathering dust in a dank and dark basement. After hearing of the plan, Edgar had to see for himself. He discovered what turned out to be the lost and long forgotten papers of the Inferior Court of Common Pleas for Suffolk County, Boston. This was the very same collection that historians had forsaken ever finding, leading the editors of the Legal Papers of John Adams to lament in 1965 that nothing but mere “fragments” from Adams’s time had survived.

¶27 As unbelievable as it may sound, the files that Edgar Bellefontaine discovered—an estimated 360,000 documents and an unbroken series of docket and extended record books—comprised the complete collection from the Inferior Court’s very first session in 1692 to its very last in 1859 (when it was legislatively abolished and replaced by the Superior Court). In fact, virtually all of the file papers were tied and bundled in their original case rolls, rag-paper wrappings tied with ribbons, unopened and unseen by anyone for almost three centuries, until Edgar wondrously set his eyes on them.

3. 1 LEGAL PAPERS OF JOHN ADAMS xxxiii (L. Kinvin Wroth & Hiller B. Zobel eds., 1965).
¶28 As the files were untied and examined, the names of litigants and lawyers read like a *Who's Who* of the colonial era: Paul Revere, John Hancock, John Adams, Charles Bulfinch, John Singleton Copley—just to mention a few notables from the Revolutionary War generation.

¶29 One of the first scholars to study the records was Kenneth Silverman, in connection with his Pulitzer Prize–winning book on Cotton Mather. In an interview with the *New York Times Book Review*, Silverman remarked that the records Edgar Bellefontaine saved from destruction were his “biggest strike.”

The Social Law Library’s Colonial Court Records Project set in motion what Dan Coquillette aptly characterized as an “archival revolution.” Posterity can thank Edgar Bellefontaine for saving an important part of American history and helping to spark an interest in early American court records that has now preserved countless other collections in Massachusetts and elsewhere in the nation.

¶30 On April 30, 2010, the Social Law Library held a memorial celebration for Edgar. The state’s chief justice, a former senate president, the president of the New England Law Library Consortium, the library’s president, and I remembered Edgar J. Bellefontaine. Even though Edgar had retired more than a decade ago, the Social Law Library’s auditorium of one hundred seats was full, and we had to broadcast the proceedings into an adjoining room for the overflow.

¶31 What was most striking to me was a conversation I had after the ceremony with one of Edgar’s now-adult children, Billy. With a sense of awe and surprise, he told me that he had not been at all aware of his father’s awards and accomplishments, or the respect with which the greater Boston legal community had held his father. Instead, he and his siblings remembered family dinners, trips to Maine, a house full of antiques, a loving and easygoing man with a joy of living who spent time with his wife, sons, daughters, and grandchildren. To him, Edgar J. Bellefontaine was not the revered lawyer and librarian. He was his loving and devoted Dad.

¶32 No wonder the portrait artist saw in Edgar a contented man with a smile and a sparkle in his eye.—*Robert J. Brink*

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6. Executive Director, Social Law Library, Boston, Massachusetts.
Memorial: Elizabeth Slusser Kelly (1938–2010)

¶1 Elizabeth Slusser Kelly died suddenly on July 14, 2010, in the waters of Lake Huron near her home on Bois Blanc Island, Michigan. Liz, as she was known to colleagues around the country, is survived by her beloved husband Matt, their four children and their spouses, and nine grandchildren, as well as a host of other family members and friends.

¶2 Liz was my first and most constant mentor almost from the time I entered the profession of law librarianship. She began her career in law librarianship as the cataloger on the founding staff of the newly formed Southern Illinois University (SIU) School of Law. She quickly realized she would need a law degree if she wanted to advance in the profession, so she attended law school part-time at SIU, while still working full-time and raising her four active children. When founding director Roger Jacobs accepted another position, Liz succeeded him as director of the Law Library. I met her for the first time in 1978, one year after I entered the profession, when I interviewed and was offered a job as Assistant Reader Services Librarian at SIU.

¶3 At that time, the SIU law school was still housed in temporary buildings that were former fraternity buildings. None of the rooms were really appropriate spaces for library purposes, and there was so little space that it was impossible to create a very functional work flow. My office was a former mechanical room with pipes running just above head height. Liz’s office was the former housemother’s room, selected as the director’s office primarily because it came with an en suite bathroom. Technical Services was in the basement of a separate building. Books were shelved on three floors, in buildings with no elevators, in rooms too small to allow for coherent shelving plans. None of that mattered. Liz created a strong, service-oriented staff and built a far better library collection than anyone could have imagined. She had enormous vision and an absolutely unshakable determination to be the very best. I once heard an associate dean remark that SIU “has a far better library than it deserves.”

¶4 Fortunately, the state came through with money for a new building, and Liz was in her element. She was a meticulous researcher and a discerning questioner. She had never been involved in a library building project, but she read voraciously and absorbed the wisdom of the experts. She learned to read architectural plans, and she spent countless hours going over every single detail of the new building. Absolutely nothing escaped her eagle eye, and when the new building opened, it was flawless. She later repeated that stellar performance at the University of Pennsylvania when, in her capacity as director of the Law Library, she headed the
committee to build a new law library. In an article published in the Penn law alumni magazine on the occasion of Liz’s retirement in 2001, a colleague observed:

[I]t is rare that one individual can be given credit as the architect of so much institutional change, let alone of the building in which the institution lives. Biddle is an old but, thanks to Liz, virtually new institution, and each and every student, faculty member and graduate of Penn Law is greatly in the debt of this far-sighted educator.1

¶5 Liz was modest to a fault. I learned only after her death that she had received the Distinguished Service Award, the most prestigious award offered by the Penn law school alumni association. She was also the first female emeritus professor at Penn. Her reticence about tooting her own horn did not mean she was without ego, however. Just a few weeks before she died, I was cleaning out files in preparation for my own retirement and ran across a letter I had written nominating her for an important directorship. I thought it was really a good letter, so I sent it to her with a thank-you note for having been my mentor for all these years, noting in passing that the letter’s primary virtue was that it was utterly true. Here are a few excerpts from that letter:

• “Liz is never satisfied with good enough. Her mind is constantly working to discover how it can be done better no matter what ‘it’ is.”
• “She gives credit where credit is due, she regards occasional failures as steps in a learning process rather than opportunities to assign blame, and she remains serene in the face of any challenge.”
• “Although Liz is a tireless library advocate, she has not a scintilla of tunnel vision. Her goals for library development keep the appropriate perspective of the library as just one component, albeit an important component, of a great law school.”
• “Liz definitely has the ‘vision thing.’ She is usually several steps ahead of the pack in perceiving new opportunities for excellence. That same keen perception also allows her to avert problems before they occur.”

¶6 Liz called me to tell me how much she enjoyed reading that letter, and for the first and only time in all the years I knew her, she cried. That was the only evidence of sentimentality I ever saw in her.

¶7 In the weeks since her death, I have learned more about her early life from her husband Matt. They met when they were working at Glacier National Park in Montana. Liz was eighteen, Matt, twenty-two. Matt fell in love instantly. It took Liz about a week longer, but Liz’s parents insisted she finish college before marrying. Once married, however, they wasted no time in starting a family. Liz gave birth to their fourth child on their fifth wedding anniversary!2 The marriage lasted fifty-two years, including nine years as a commuter couple when Liz lived in Philadelphia and Matt in Carbondale, Illinois, where he was a professor in the philosophy department.

2. Having coped daily with four children under four must surely explain Liz’s serene, unflappable demeanor. After that, nothing else would seem very challenging.
Elizabeth Slusser Kelly was a great librarian, a great colleague, a great co-author, a great mentor, a great boss, and always, always, a great friend. Her passing leaves a large hole in the world.—Ann Puckett

3. Director of the Law Library and Professor of Law Emerita, University of Georgia, Athens, Georgia.