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American Association of Law Libraries

Law Library Journal Author’s Guide

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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).

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Building a Collaborative Digital Collection: A Necessary Evolution in Libraries

Michelle M. Wu

Law libraries are losing ground in the effort to collect and preserve information in the digital age. In part, this is due to declining budgets, user needs, and a caution born from the great responsibility libraries feel to ensure future access. That caution, though, has caused others, such as Google, to fill the gap with their own solutions. Libraries must contribute actively to the creation of digital collections if they expect to have a voice in future discussions. This article presents a vision of a collaborative, digital academic law library—one that will harness our collective strengths while still allowing individual collections to prosper. It seeks to identify and answer the thorniest issues—including copyright—surrounding digitization projects. It does not presume to solve all of these issues. It is, however, intended to be a call for collective action—to stop discussing the law library of the future and to start building it.

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** Law Library Director and Professor of Law, Georgetown University Law Center, Washington, D.C. The author thanks Thanh Nguyen and Erie Taniuchi for their assistance in preemption checking, and B2F2 members, particularly Betsy McKenzie, for input on the initial draft of this article.
Introduction

¶1 Imagine a world where library users are able to access every resource they need, regardless of time, space, and resources. While that vision may not yet be reachable, law libraries do have within their grasp the possibility of access to much more extensive collections than any one of them currently holds, with greater ease than is now provided by interlibrary loan or existing consortium efforts.

¶2 The United States has approximately two hundred American Bar Association (ABA)—accredited law schools, and collectively, they spend more than $230 million annually on building and maintaining their library collections.1 Within that $230 million, significant duplication exists, even for infrequently used materials—historically driven in part by the ABA Standards and various law school and law library rankings.2

¶3 In seeking a more useful solution for all users, law libraries can gain perspective from states like Florida, which has reduced costs through statewide collection building;3 from public libraries, which have moved to centralized forms of collection development;4 and from nonlaw academic cooperatives.5 These models can be exported and expanded for use by academic law libraries. This article proposes that

1. See ABA Annual Law School Survey Take-offs (2009). Each fall, the American Bar Association requires each of the law schools that it accredits to complete its Annual Questionnaire. After collecting the responses, the ABA compiles the data into a statistical report that they refer to as “take-offs” and distributes the report, which is deemed confidential, to the dean of each law school.


4. Catherine Gibson, “But We’ve Always Done It This Way!”: Centralized Selection Five Years Later, ACQUISITIONS LIBR., no. 20, 1998, at 33 (describing the successful implementation of centralized collection development).

5. See, e.g., About CRL, CTR. FOR RES. LIBRARIES, http://www.crl.edu/about/ (last visited June 23, 2011) (“We acquire and preserve newspapers, journals, documents, archives, and other traditional and digital resources from a global network of sources. . . . We enable institutions to provide students, faculty, and other researchers liberal access to these rich source materials through interlibrary loan and electronic delivery. . . . Membership in CRL also permits librarians, specialists, and scholars at the member institution to participate in building this shared CRL corpus of research materials through the purchase proposal and demand purchase programs.”); Cornell Univ. Library, Press Release, Columbia and Cornell Libraries Announce New Partnership, http://www.library.cornell.edu/news/091012/2cul (last visited July 19, 2011); Resource Sharing, WASH. RES. LIBRARY CONSORTIUM, http://www.wrlc.org/resource/ (last visited July 19, 2011) (“WRLC members have combined resources to create a shared library collection”).
academic law libraries pool resources, through a consortium, to create a centralized collection of legal materials, including copyrighted materials, and to digitize those materials for easy, cost-effective access by all consortium members. For the sake of expediency, this proposal will be referred to here as TALLO (Taking Academic Law Libraries Online) and the proposed consortium as the TALLO consortium.

¶4 Other entities, such as Google, have made similar attempts at a digital library, but TALLO differs from those projects in that it neither assumes privileges explicitly denied in the copyright code nor underestimates the flexibility that copyright law can provide to a user. I believe it is possible to build a digital library that respects both of the intended beneficiaries of the Copyright Clause—copyright owners and society—while testing commonly held assumptions about the limitations of copyright law. In balancing these goals, TALLO permits circulation of the exact number of copies purchased, thereby acknowledging the rights inherent in copyright, but it liberates the form of circulation from the print format.

¶5 In describing TALLO and the practicalities of implementing the proposal, this article first provides a brief history of academic law libraries, explaining why no library today can afford to build as comprehensive a collection as in the past, and illustrating how collaboration would achieve a stronger collection than can be constructed by any individual library. It then articulates a model (the TALLO consortium) for such collaboration. The article then addresses the most pressing objection against all digitization projects: copyright. Elements of this argument are dependent on the specific design of the TALLO project and may not be applicable generally to other digitization projects. It next discusses the other major library, user, and external objections, outside of copyright, to centralizing collections, and describes the minimum technologies necessary to fully exploit the hypothetical collection already described. The final section of the article describes how TALLO differs from other digitizing endeavors and how the proposed consortium might be able to partner with other groups to further the overall goal of greater access to resources.

The Need for a Collaborative Digital Collection

¶6 With the costs of materials rising at an unpredictable rate each year,6 the uncertainty of licensing in lieu of ownership, the reliability (or unreliability) of free online sources, users’ increased desire for digital sources, and the costly dependence on physical interlibrary loan (ILL), libraries are constantly struggling to find the resources to provide their users with the information they need in ways that will increase the likelihood of that information being used. With each purchase decision, libraries risk either losing future access to databases (including retrospective content) and experiencing greater restrictions on use through license terms than are

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available to publishers under copyright, or keeping materials in print even though they might not be used as often as an online equivalent. A quick review of libraries’ progress through the years will highlight how the research landscape has changed and why our collection practices must be altered.

¶7 Before the American Revolution, there were no public libraries and most individuals had little leisure time in which to use libraries. The libraries that did exist were privately owned by the privileged and wealthy. Lawyers collected materials for practice, and it was not until social, economic, and political conditions stabilized that public libraries came into being. Bar libraries were the first group-use law libraries to be formed, with the Philadelphia Bar Library founded in 1803 and the Social Law Library the year after.

¶8 With industrialization and greater regulation, corporations found higher education to be a more economical training ground than on-the-job experience. The resulting growth of universities prompted a flourishing of the academic library. University law libraries were established in the early 1800s, but law school libraries were not particularly well developed until the early twentieth century. By 1880, there were forty-eight law schools in the nation, but very few of them had dedicated libraries. The few in existence were typically expected to provide access only to materials relevant in their home state and to U.S. Supreme Court decisions, and it was not until 1912 that any minimum standard for law school libraries was adopted. That year, the Association of American Law Schools (AALS) promulgated a minimum standard for law library collections of 5000 volumes. Not surprisingly, even after this standard was adopted, the focus of most collections remained on primary sources. After World War II, though, the number of legal titles expanded greatly, due to a change in printing technology that permitted more limited runs. This enabled more specialized publications that would not have been fiscally viable in earlier years.

¶9 Despite the growing number of titles available for purchase, law libraries quickly recognized that they would need access to materials beyond their own individual collections. That access was provided in part by ILL, a service through which scholars could use resources not otherwise available at their libraries with-

11. See JOHNSON & HARRIS, supra note 9, at 4–5, 200.
13. JOHNSON & HARRIS, supra note 9, at 273–74.
15. Id. at 20–21.
16. SURRENCY, supra note 12, at 156.
out the burden or expense of travel. It allowed libraries to meet patron needs without exponentially increasing their expenses, and it allowed library budgets to be used for common, recurring needs instead of for materials of limited value to the overall collection and future library patrons. What was allowed to be loaned and what a law library was expected to collect was determined both by the ABA Standards and by the Copyright Act. The ABA Standards set the minimum requirement for law library collections, and any law school hoping to be accredited or reaccredited was expected to satisfy that standard for a core collection.

§10 The Copyright Act was instrumental in shaping law library collections in a slightly different manner. Instead of specifying what must be collected, it dictated what should not be borrowed. Materials to be borrowed using ILL were restricted to materials infrequently used; libraries were prohibited from substituting ILL for owning an item. The National Commission on New Technological Uses of Copyrighted Works (CONTU) also issued a report with recommended guidelines on when libraries should purchase an item instead of obtaining it through ILL.

While not binding, most libraries have voluntarily adopted these recommendations.

§11 Unlike during these earlier eras, today information is available more readily, in more forms and levels of reliability, and in overwhelming quantity, due both to technological advances and to the development of less costly printing practices. To illustrate, in 1860, there were only forty-eight law periodicals in print nationwide, whereas we now have almost 1000. Production of law monographs has also been steadily increasing, with almost 6000 new titles published in the United States each year. At one time, library collections were anticipated to double in size every sixteen years, but with online access supplementing ownership, that time period has shortened considerably, and the definition of a collection has become more elastic. But even as law libraries extend their reach, the types and numbers of materials law libraries are expected to offer to their users increases even more.

§12 The expansion of legal scholarship into interdisciplinary, transnational, comparative, and international arenas requires resources not traditionally collected by law libraries, thereby taxing collection budgets, especially those of libraries at stand-alone law schools. Because tenure requires scholarship, and rankings and

17. For the current version of the standard, see 2010–2011 ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS 41, 43 (Standard 606 and Interpretation 601-1).
21. SURRENCY, supra note 12, at 190.
24. JOHNSON & HARRIS, supra note 9, at 275.
reputation are driven in part by scholarly productivity, demand for informational resources and the expertise to use them are unlikely to decrease.

¶13 As a result, library collection budgets are rarely sufficient to collect all materials needed for research, and in law libraries, the financial strain has been amplified by vendor consolidation and the digitization of legal resources. Consolidation reduces competition, and this truism is borne out in cost statistics. Between the years 1993 and 2009, inflation for law library serials—which make up approximately seventy to eighty percent of the average law library collection—has averaged over nine percent annually, a rate that outstrips both the inflation rate in most other disciplines and the consumer price index.

¶14 As vendors continue to transition from selling print materials to licensing content, law libraries have shifted their approach. To counter the possibility of losing access to digital materials, many law libraries initially chose to obtain materials in dual formats: physical for preservation and future users, and electronic for current access. Increasingly, though, as budgets are cut, choices are being made and those choices often favor present use over future access; licensing an aggregator database for the short term may be affordable when acquiring all the items it contains in print is not. While such choices meet immediate needs, they serve to remind us how vulnerable our collections and populations have become—a budget cut resulting in termination of a database license could result in a loss of access to a significant portion of a library’s titles.

¶15 To address the concerns of broad and reliable access, then, law libraries need to revisit collection development. No single library is able to collect comprehensively in all of the areas desired by its researchers and also preserve those resources for future access. As a collective, though, law libraries can share the burden of developing a library deep in valuable but less frequently used (e.g., rabbinical jurisprudence) resources while concentrating local purchases on those materials used regularly (e.g., the Bluebook). They can digitize materials for easy access by current patrons while ensuring that vendor consolidation or profit-driven cost increases will not result in a loss of access for future users. Below are the particulars of one proposed configuration of such a consortium.


26. Data from 2000 to 2009 were analyzed from the Periodicals Price Survey published each year in the April 15 issue of Library Journal to arrive at these figures. See, e.g., Kathleen Born & Lee Van Orsdel, Searching for Serials Utopia, LIBR. J., Apr. 15, 2001, at 53. Consumer Price Index (CPI) data were obtained from the CPI inflation calculator at http://data.bls.gov/cgi-bin/cpicalc.pl, and as of March 25, 2010, showed an average annual increase of 2.73% over the same time period. For those attempting reproduction of this figure, there may be some deviation in the numbers, as Library Journal updates its figures each year retrospectively, but in each calculation, the CPI remained lower than the average obtained by any of the Library Journal numbers.
Collaborative Collection Building: Access and Permanence

§16 Instead of the current practice of forming regional or bilateral agreements for resource sharing, law libraries could form a national consortium through which a centralized collection would be established. The TALLO consortium would serve as a kind of jointly owned acquisitions department for member libraries. The discussion here is limited to a collection of print and microform acquisitions and donations—licensed databases are controlled by contract; media files often face additional issues controlled by the Digital Millennium Copyright Act;27 and freely available, born-digital materials already have an archiving model in the Chesapeake Project.28 That is not to say that some of the principles in this article would not apply, just that the analysis of nonphysical materials would require greater exploration than is possible here. Within the category of printed or microform texts, though, there would be no further mandatory restrictions, although there certainly could be practical challenges (e.g., digitizing and updating a loose-leaf title) that might reduce the number of titles that could be converted.

§17 The consortium would have independent staffing, dedicated solely to maintaining the collection, digitizing it, and providing access to it. This approach would maximize purchasing power, reduce the duplication in expenditures across libraries for common but rarely accessed sources (e.g., reporters), and address any number of existing issues with online resources, including authenticity, format choice, consistency in access, preservation, and continued access. There are three components to this proposal: dedicated staffing, shared collection development and storage, and digitization leading to more efficient document delivery.

Dedicated Staff

§18 The most critical component of TALLO is a dedicated staff. Some of the larger cooperative projects for print collections have stalled or failed because of inactivity or slow activity,29 a predictable outcome of asking existing libraries to take on additional duties. Inevitably, a local need will arise that takes precedence over the collective need.

§19 Another benefit of centralizing efforts is the reduced likelihood of duplication. Libraries working as independent actors might be unaware of one another’s activities and choose to digitize the same work or collection. With centralized management of the titles to be digitized, such duplication can largely be avoided. The central administration could provide online access to all members of a list of collections that had been converted or that were in the queue to be converted. Should member libraries wish to provide independent resources to scan additional titles,

they could then coordinate with the central administration. The centralized staff could also be charged with checking against other existing digital repositories and entering into sharing agreements with them if such agreements would be more resource efficient than rescanning the same content.

¶20 Establishing a dedicated staff would ensure that the project could continue to advance even if the individual members of the cooperative were otherwise occupied or if some members were no longer able to participate. While the staff may gain vision, mission, and direction from the members, it would have a great deal of autonomy in operation, ensuring consistent practices and policies regarding preservation, acquisition of multiple copies, digitization, format migration (when necessary), and cost allocation. Since time and consistency are necessary in these latter decisions, allowing the staff most intimately familiar with the use of the materials to make these decisions is the most logical option.

¶21 Staffing would exist for retrieval, digitization, cataloging/indexing, and billing. Provision of reference services and data mining of materials for library users would continue to be decentralized, housed at the individual member libraries.

¶22 The success of TALLO would depend on hiring experts in various fields. Digitization and development or adoption of search engines should be undertaken by technology experts, not necessarily librarians, while the indexing and organization of materials would be the responsibility of information specialists. Librarians have indexing expertise and can apply it to documents as they are added to a central database. Scholars have already noted the impact of the loss of features such as indexes in full-text databases; if the consortium can bring the best of technology and information management together in a single resource, it should be able to outperform existing services in accuracy and usability.

Storage and Collection Development

¶23 The TALLO consortium’s dedicated staff and member libraries would develop the initial subject-area collection development policy together, with the goal of expanding coverage as far as practical. The policy should exclude items frequently accessed by users (e.g., textbooks, reporters) and focus on scholarly materials less in demand (e.g., monographs in “law and” fields, laws in the American colonies, foreign law) but still useful for research.

¶24 Under the care of the staff, and in the same location as the staff, would be a storage facility for physical materials that would be used for preservation and historical purposes. Redundancy, while preferred, would not be necessary because of the third prong of the proposal—digitization. The physical materials would be


31. Any project involving foreign materials may face social and practical pressures; other countries have different copyright laws and, more important, different views on permitted copyright use. Many countries have no equivalent to the fair use doctrine, and therefore, while the TALLO consortium’s digitization would be legal in the United States, it might be viewed by foreign nations as contrary to their interests. Those nations’ vendors might then seek to exercise greater control through contract or restricted sales.
in a dark archive, accessed only once, for digitization, and then retained in cold storage in case the accuracy of the digital form were questioned.

¶25 All members would pay a base annual membership fee, which would give them co-ownership of materials purchased that year. If a library missed a year’s payment, it would not own that year’s acquisitions and would not have access to them. One might ask why a nonmember library could not still access the materials through ILL, and while this would be technologically possible, the TALLO proposal envisions restricting access to member libraries. Otherwise, libraries not in the consortium would have all the benefits of membership without paying for them, thereby discouraging member libraries from continuing participation. Libraries skipping payment in a given year would be permitted to pay back dues and regain co-ownership at a later date. Statistics of use by member libraries would be retained, so as to assess fairness of the membership fees. If appropriate, tiered fees could be established, distinguishing between frequent and infrequent users.

¶26 As a side benefit, this central storage facility might address some of the space issues libraries face. For libraries that have been retaining print journals, codes, and reporters purely as a safety net in case their electronic subscriptions ceased, this facility could provide them with that security without local consumption of shelf space. The logistics of digitizing and managing retrospective collections would be more complex than the processing of new titles but would be possible within this model.32

Digitization

¶27 Materials acquired would be digitized, and only the number of copies acquired in print for each subsequently digitized document would circulate at any given time. The print copy would be stored for archival purposes; only the digital copy would “circulate.” This digital copy would be an encrypted, protected document so that users could not print, save, or copy the entire work. It would allow for limited copying, to enable scholars to manage their citations easily. Documents withdrawn from libraries and offered to the consortium would be subject to the same rules.

¶28 The order of digitization would be determined by demand—as soon as an item was requested, it would be digitized, making usefulness the determining factor in prioritization. The local staff could determine priority of digitization in times when there were insufficient active requests to employ the staff’s full capacity. The digital collection would be subject to the same security, redundancy, and backup

32. There are several reasons why this could be more complicated than the handling of other materials. First, the consortium, in theory, might want to circulate 150 copies of a given reporter volume at one time if 150 libraries had donated the same volume to the consortium. While permitted under this article’s analysis, neither the consortium nor the libraries would want to bear the expense of transport or storage, so arrangements would need to be made to document the donation and destruction of copies not used, so as to remain faithful to the one-copy-in-use restriction. Second, with primary materials, libraries would want redundancy in the print copies, so some coordination among member libraries might be necessary to ensure that some primary sources remain available in their print form even if the consortium’s central storage facility were to be destroyed or damaged.
procedures that information technology professionals routinely require for servers and materials stored on them.

**TALLO and Copyright**

¶29 Copyright has been and continues to be the greatest hurdle to transforming library collections. Even though libraries subscribe to a wide range of databases, much of a library’s retrospective collection (and indeed, most current monographic acquisitions) exists only in print or microform.

¶30 To move to a more efficient and cost-effective way of transporting information to our users, regardless of location, libraries must be willing to test the assumptions behind copyright protection. Libraries are at a point where we must move forward and address these issues or find ourselves lagging so far behind other industries that we will be unable to catch up. The approach advocated here is modest, reasonable, and reflects existing library lending norms.

**History of Copyright**

¶31 Any meaningful discussion about copyright starts with an understanding of the origins of protection within the United States. A comprehensive history is unnecessary, but an exploration of the intent behind copyright is imperative. Though copyright existed long before 1710, adopted for reasons ranging from preventing printing errors to demonstrating the value of a work to controlling the distribution of “seditious” materials, this article will treat the Statute of Anne as its beginning. The Statute of Anne was England’s first grant of copyright protection to authors—prior to this enactment, protection existed, but only for printers. The preamble of the Statute of Anne reads: “An Act for the Encouragement of Learning, by Vesting the Copies of Printed books in the Authors or Purchasers of such Copies, during the Times therein mentioned.”

¶32 The United States took its cue from this language, and at the Constitutional Convention of 1787, the Statute of Anne’s influence was apparent. The committee charged with the task of drafting the Copyright Clause was asked to propose language that would allow Congress to “secure to literary authors their copy rights for a limited time,” “grant patents for useful inventions,” and “secure to authors exclusive rights for a certain time.” These were listed as three different interests, and no mention was made of societal benefit. But when the committee returned with proposed language, it had combined the concepts and added a key phrase. The proposal, which now gave Congress the power “[t]o promote the progress of Science and

33. For those readers wishing a more detailed history, there are many useful sources. See, e.g., Richard Rogers Bowker, Copyright: Its History and Its Law (1912); Marci A. Hamilton, The Historical and Philosophical Underpinnings of the Copyright Clause (n.d.); 1 William F. Patry, Patry on Copyright §§ 1:1–1:115 (2011).
34. See 1 Patry, supra note 33, at §§ 1:2–1:4.
35. 8 Anne ch. 19 (1710) (Eng.) (quoted in 1 Patry, supra note 33, § 1.9, at 1-95).
useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” was adopted without dissent.

¶33 As with the Statute of Anne, the clear goal of the United States’ Copyright Clause as adopted was not to protect authors—it was to promote advancement of learning and public knowledge. The protection of authors was merely the means to the end. This priority of rights has been affirmed and reaffirmed by courts over the years, in language similar to that used in Fox Film Corp. v. Doyal: “The sole interest of the United States and the primary object in conferring the monopoly lie in the general benefits derived by the public from the labors of authors.” At the heart of copyright, then, is the public good.

¶34 Portions of the TALLO proposal—collection, remote access—are already permitted by the copyright code and are widely practiced by libraries nationwide. The digitization portion, on which TALLO depends, is the part that would likely trigger a copyright challenge under section 106(1) of the copyright law. However, a reading in line with the spirit of the code allows restrictions on copyright owners’ rights under appropriate conditions. In fact, fair use, compulsory licensing, and other exceptions in the code were developed in recognition that copyright is not an absolute right. Further, in a nod to technological advancements, the Supreme Court has already acknowledged that it “must be circumspect in constructing the scope of rights created by a legislative enactment which never contemplated such a calculus of interests” and that “[w]hen technological change has rendered its literal terms ambiguous, the Copyright Act must be construed in light of this basic purpose.”

¶35 In recent years, the balance of copyright appears to have tipped more toward the rights of copyright owners over the benefits to society, with legislators unable or unwilling to change that balance through new legislation. Because existing statutory language is ill-equipped to handle new technologies, wealthy and powerful copyright holders have been quick to use technology to expand protection

37. 3 id. at 676 (emphasis added).
38. Id. at 678.
39. 1 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 1.03(A) (2011).
40. Fox Film Corp. v. Doyal, 286 U.S. 123, 127 (1932). See also Sony Corp. of Am. v. Universal City Studios, Inc., 464 U.S. 417, 429 (1984) (“The monopoly privileges that Congress may authorize are neither unlimited nor primarily designed to provide a special private benefit. Rather, the limited grant is a means by which an important public purpose may be achieved. It is intended to motivate the creative activity of authors and inventors by the provision of a special reward, and to allow the public access to the products of their genius after the limited period of exclusive control has expired.”).
42. Sony, 464 U.S. at 431 (holding permissible the noncommercial recording of television programs).
43. Twentieth Century Music Corp. v. Aiken, 422 U.S. 151, 156 (1975) (holding that the playing of a radio broadcast containing licensed music in a public restaurant was not a copyright violation by the restaurant owner).
of their works or to intimidate users. TALLO is an attempt to restore balance to copyright, reminding owners that societal benefit appropriately sits on the other side of the scales.

¶36 TALLO presses for a greater utilization of technology, while remaining constant in meeting the goals of and supporting the means behind the Copyright Clause. It seeks to protect an author’s rights while expanding the base of knowledge available to users. It accomplishes the former by restricting circulation to the number of copies purchased and prohibiting editing or disassembly of the copyrighted piece. For publishers and vendors, such a project would arguably result in no net loss. Because the TALLO consortium might be able to afford materials that none of its member libraries otherwise could have or would have acquired, it would be positioned to purchase more varied titles. There may be some losses for particular vendors, in that fewer multiple copies of an individual title might be purchased. But as law libraries have been facing budget cuts for the past decade, this decrease would not necessarily be solely attributable to TALLO.

17 U.S.C § 108

¶37 The activities of the TALLO consortium arguably fall within 17 U.S.C § 108, either subsections (a) or (c). Under subsection (a), the proposal meets the three requirements set forth in the statute. First, digitization and distribution would not be done for commercial gain and would be handled in a manner completely consistent with a library’s function. Because the library would not be increasing the number of copies available for use at any given time, the digital copy would not serve as a substitute for an additional subscription or purchase. Should demand be so great that multiple copies were needed simultaneously, TALLO would need to purchase or license additional copies or individual libraries within the consortium would need to make local purchases. Second, the materials would be available both to the institution’s primary users as well as to walk-in patrons. Third, a copyright statement overlay could be added to each digital page of every

45. See, e.g., Wendy Seltzer, The Imperfect Is the Enemy of the Good: Anticircumvention Versus Open User Innovation, 25 BERKELEY TECH. L.J. 909, 953 (2010) (describing the arrest and detention of a Russian student after he gave a conference presentation on how to circumvent Adobe’s e-book protections; the charges were later dropped “after widespread public protest”). See also Universal City Studios, Inc. v. Reimerdes, 111 F. Supp. 2d 346 (S.D.N.Y. 2000) (prohibiting even linking to a site that gives circumvention information).

46. 17 U.S.C. § 108(a) (2006) provides:

Except as otherwise provided in this title and notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, except as provided in subsections (b) and (c), or to distribute such copy or phonorecord, under the conditions specified by this section, if—

(1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

(2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and

(3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.
publication, ensuring that the user recognizes that the work is protected under copyright.

¶ 38 Alternatively, under 17 U.S.C. § 108(c), libraries can advance the argument that digitization is permitted as an archival function, given that the print form is obsolete. The digital copy would thus serve as the replacement copy permitted by statute. This reading would encounter significant challenge, from both within and outside of the library community, since the statute states that “a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.” Print works are clearly still perceptible, though one could argue that other technologies, such as Betamax tapes, which are seen to be obsolete, are also still technically perceptible but can legitimately be archived in a different format under this section. Machinery to read these technologies continues to be commercially available, though only through the resale market. Therefore, obsolescence appears to be partially subjective, despite the language of the statute, and libraries could take the approach that print falls within this definition, particularly as users show greater and greater preference for the electronic form.

¶ 39 Subsection (c) of section 108 also requires that before duplication the library must first check to see if “an unused replacement cannot be obtained at a fair price.” For some items in the TALLO collection, a digital version may be available for license or purchase. In cases where a digital version is available only for license, a library could argue that such a license is not equivalent to either the print copy or a digital copy they would make, because both of these items would be owned by the library and the licensed digital version would not. Thus, an unused equivalent replacement is not available in the marketplace.

¶ 40 One potential objection to applying section 108 to TALLO is the limiting text in subsection (g), which states that a library may not engage in “concerted reproduction or distribution of multiple copies . . . .” Some would argue that the

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47. 17 U.S.C. § 108(c) (2006) provides:
The right of reproduction under this section applies to three copies or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if—

(1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

(2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.

For purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

48. Id.


50. 17 U.S.C. § 108(g) (2006) provides:
The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee—
proposed consortial action is exactly what was intended to be proscribed by subsection (g), and that permitting libraries to digitize print materials would reduce copyright owners’ ability to make a living wage off their works.

¶41 However, TALLO’s limitation on circulation addresses the concerns underpinning subsection (g). The proposed consortium would be required to purchase multiple copies of any item that it anticipates will be consistently, simultaneously in demand; it would not be free to circulate more copies than it had legitimately acquired.

¶42 Indeed, libraries outside of this proposed consortium could accomplish a goal similar to what is proposed here through traditional ILL; they could simply exchange print materials via physical shipment. The costs might be higher, but those costs would be related to retrieval and shipping of the print item, not to the purchase of additional copies.

¶43 Because TALLO contemplates a more efficient method of sharing resources in a manner consistent with ILL principles, subsection (g) should not apply.51 Alternatively, if the proposed actions are not seen as being consistent with ILL principles, an argument could be made that any item in the consortium’s collection is co-owned by all member institutions. The participating libraries would not be substituting ownership with access, as each participating library will own a share of each title in the consortium’s holdings.52

**Format Shifting**

¶44 A more straightforward justification of digitization than section 108 would be a challenge to the common assumption that digitization of a full work outside the plain language parameters of the relevant statutes always qualifies as infringement. Instead, I believe that digitizing a text and retaining its original structure should be considered permitted format shifting.

¶45 In inspecting the exclusive rights of copyright holders, two author interests are evident. The first is to ensure that the author reaps the profits coming from the

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(1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or

(2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): Provided, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

51. While lending digital copies will create some temporary copies on users’ machines and servers, this type of copyright is protected. Earlier disputes over such buffer copies and the like have been replaced by recent cases in which courts see this as an incidental activity and not necessarily an infringing one. See U.S. COPYRIGHT OFFICE, DMCA SECTION 104 REPORT 106–46 (Aug. 2001), available at http://www.copyright.gov/reports/studies/dmca/sec-104-report-vol-1.pdf; Cartoon Network LP v. CSC Holdings, Inc. 536 F.3d 121, 127–30 (2d Cir. 2008) (permitting the cable company to provide users with digital video recorders that made temporary copies of television programs and movies).

52. See supra ¶ 25 discussing how libraries will be limited to using only materials purchased during the period they belong to the consortium.
work, and the second is to afford an author control of the context of the work. Under TALLO, the author will have already received the profits when the physical book was sold, and digitization, so long as it displays the full text in context, would not distort the copyrighted work in such a way as to frustrate the author’s authorization in the original printing. And because the number of copies of a work in circulation would not exceed the number that the author sold or authorized, the author could not assert damages resulting from flooding the marketplace with unauthorized copies.

¶46 It is the work itself that is copyrighted, not the form. While works must be in a fixed form to qualify for copyright protection, that protection is for the work itself. Some forms are necessarily part of some types of works (e.g., sculpture), but this cannot be said of most printed works. The form in which a work is fixed is irrelevant, and Congress recognized the importance of media neutrality when it adopted the language in the Copyright Act. Digitization changes only the form, and “the ‘transfer of a work between media’ does not ‘alter’ the character of” that work for copyright purposes.

¶47 Once a copyrighted work is sold, the “first sale doctrine” permits a purchaser of a book to use and dispose of the book in any manner he chooses: sale, discard, rental, or destruction. The discussion in the House at the time the relevant statute was adopted illustrates that actions beyond transfer of ownership were included in the first sale doctrine: “[T]he outright sale of an authorized copy of a book frees it from any copyright control over its resale price or other conditions of its future disposition. A library that has acquired ownership of a copy is entitled to lend it under any conditions it chooses to impose.” The question posed here is whether conversion to another format can qualify as a disposition, and if not, could the action otherwise be consistent with the principles behind the first sale doctrine?

¶48 Format conversion would be an unusual and untested extension of the first sale doctrine but is supported by the Supreme Court’s determination that a copyright owner’s right to copy and distribute was intended “to secure the right of multiplying copies of the work . . . .” Because conversion, if accompanied by


55. The Supreme Court has determined that publishers are liable for infringement if they take an author’s work out of the collective work when the only authorization that the author gave was inclusion in that collection. Publishing the work in digital format, if it had been the same collective work initially published in print, would not have been infringing. Tasini, 533 U.S. at 501. See also Greenberg v. Nat’l Geographic Soc’y, 533 F.3d 1244, 1258 (11th Cir. 2008) (holding that an exact replica of the print magazine produced on CD-ROM did not infringe the author’s rights).


57. There could be some exceptions in historical materials, such as illuminated texts.


destruction of the original item, does not increase the number of total copies available of the work, libraries can argue that this is simply a new disposition made possible by technology.\textsuperscript{63}

\textsuperscript{49} If such conversion is seen as inadequate for passing the test for a “disposition,” an alternative argument would be that the first sale doctrine supposes a user’s full use and enjoyment of the purchased item. Once a copyright owner has consented to publication of a work, he has authorized the release of a certain number of copies to the open market.\textsuperscript{64} Under this approach (and the fair use doctrine), users have long been copying CDs to MP3 players for their own use, and even copyright owners in litigation have conceded that this practice is lawful.\textsuperscript{65} While an additional copy may have been made under this scenario, that copy has not entered the marketplace, it continues to be used and controlled by the original purchaser, and it is used in a manner consistent with the purchase. If this practice is lawful, then converting a print text to a digital version should be equally legitimate so long as control of the converted text remains with the lawful title holder.

\textsuperscript{50} Libraries could also extrapolate from the reasoning in the Sony case to justify format shifting as fair use. In Sony, video-recorder makers were sued for producing equipment that could violate the copyright of authors and producers of televised programs. While the users, the claimed infringers of copyright, were not involved in the case, the Court’s language signaled that fair use could evolve with technology and that some novel, unauthorized uses could qualify for fair use. In Sony, copying a televised program, though impinging on authors’ exclusive rights to duplicate their work, was not seen as infringing.\textsuperscript{66} “A challenge to a noncommercial use of a copyrighted work requires proof either that the particular use is harmful, or that if it should become widespread, it would adversely affect the potential market for the copyrighted work.”\textsuperscript{67}

\textsuperscript{51} All reported judicial opinions thus far on format conversion have involved defendants who allowed users to download and retain copies of copyrighted works they had not purchased,\textsuperscript{68} who have profited from the sale or servicing of unaux-

\textsuperscript{63} Admittedly, the first sale doctrine has typically applied only to distribution, and not to reproduction. However, on the theory that digitization is actually a disposition of an item instead of a reproduction, the doctrine could still apply. That said, the owner may need to destroy the original copy for such an action to be considered a true disposition.

\textsuperscript{64} 2 Nimmer & Nimmer, supra note 39, § 8.12(A).

\textsuperscript{65} “The record companies . . . have said, for some time now, and it’s been on their Website for some time now, that it’s perfectly lawful to take a CD that you’ve purchased, upload it onto your computer, put it onto your iPod.” Transcript of Oral Argument at 12, Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd., 545 U.S. 913 (2005) (No. 04-480), available at http://www.supremecourt.gov/oral_arguments/argument_transcripts/04-480.pdf.

\textsuperscript{66} “This practice, known as ‘time-shifting,’ enlarges the television viewing audience. For that reason, a significant amount of television programming may be used in this manner without objection from the owners of the copyrights on the programs. For the same reason, even the two respondents in this case, who do assert objections to time-shifting in this litigation, were unable to prove that the practice has impaired the commercial value of their copyrights or has created any likelihood of future harm.” Sony Corp. of Am. v. Universal City Studios, Inc., 464 U.S. 417, 421 (1984).

\textsuperscript{67} Id. at 451.

Authorized copies,\textsuperscript{69} or who downloaded unauthorized copies for their own and others use.\textsuperscript{70} Each of these can easily be differentiated from TALLO, which proposes legally acquiring an item and subsequently shifting its format for the same use.

§52 Conversion for self-use, where the individual in question has obtained a copy legally and where the converted format serves the same basic purpose, has not been ruled infringing. An author may not forbid a library from circulating an item it has purchased, and TALLO anticipates exactly this action, just in a different format. The conversion would not involve an alteration of the purpose of the work; it would still be a book in readable form. It involves neither reinterpretation as an audio version might, nor translation as a foreign version would, nor alteration as an abridged version would. Essentially, the nature of the use of the converted copy would be the same as that of the original.

§53 Having met both the author’s and society’s interests in copyright, format shifting should be permitted as fair use or as a disposition within the protection of the first sale doctrine. Applied to libraries, where documents are protected in their new formats, this expanded application would continue to protect copyright owners’ interests. However, it would be naive to assume that such protection and alignment with the spirit of copyright would reduce resistance by copyright owners.

Likely Objections from Publishers and Copyright Holders

§54 As libraries have already seen, publishers have used new technologies to exert control over works beyond the control they had over printed works.\textsuperscript{71} They are replacing ownership with licensing, where they can regulate not only the number of users but also the number of uses.\textsuperscript{72} Historically, the same types of post-purchase actions—for example, dictating resale prices—could not be similarly constrained with print materials.\textsuperscript{73} Given this trend toward greater control over material by publishers, it would be remarkable if the industry did not object to libraries’ digitizing printed materials.

§55 For the reasons set forth above, though, these objections can be countered with statutory text, constitutional intent, and judicial documents on copyright and fair use. Nevertheless, the one argument that has not yet been articulated is also likely the strongest one—if format shifting is broadly accepted, speculative future harm to the market for works could be great. Individual users, once they have possession, albeit temporary, of digital works, are unlikely to protect the rights of the copyright owners. In fact, as has happened with protected musical works, many users are dismissive of copyright protections and very likely to share electronic


\textsuperscript{73} Bobbs-Merrill Co. v. Straus, 210 U.S. 339, 351 (1908).
documents with others.\textsuperscript{74} If users could transform their printed libraries into electronic versions, what effect might that have on publishers’ and copyright owners’ abilities to sell copies to nonowners? Could Google then digitize the world’s libraries as long as it obtained the original copy legally?

\textsuperscript{56} Fortunately, through the courts and the actions of the music industry, society already has a guide on how to appropriately address such harms. Restitution is properly sought from those who illegally make copies and distribute the work, not those who have actually purchased the work and are making use of the text in a manner consistent with that purchase. Neither a user uploading a copy for mass download by others nor Google providing simultaneous text access to multiple users falls within this latter definition, while TALLO does.

\textsuperscript{57} Finally, copyright owners should revisit the aftermath of the \textit{Sony} case before objecting to TALLO. Despite studios’ concerns about drastic market damage from video recorders, the legitimization of the actions and equipment they opposed actually increased their profits by creating opportunities for new, profitable industries.\textsuperscript{75} Similar potential exists here, and opposing a legitimate action only out of fear of unknown consequences advances neither copyright owners’ interests nor society’s.

\textsuperscript{58} Should Congress see format shifting as an extreme danger to copyright holders and enact explicit legislation to restrict it, libraries should advocate for language in the bill to mirror section 108, creating an exception for libraries and archives, as these entities are not seeking unrestricted distribution. Their goals, for materials in any format, remain the same—the use and preservation of knowledge while respecting copyright protections.

### Possible Objections Other Than Copyright

\textsuperscript{59} Aside from objections from copyright owners, libraries may also have concerns about such a proposal—concerns that range from cost to control to usability.

#### Why Re-create the Wheel?

\textsuperscript{60} Vendors (e.g., Thomson Reuters), commercial organizations (e.g., Google), and nonprofit entities (e.g., HathiTrust) have already created substantial digital information stores. Where they are free or reasonably priced, might it make sense to rely on these instead of creating a separate database, especially as they permit simultaneous use by multiple users? Indeed, information already available at a reasonable cost from other sources should remain at the lowest priority for the consortium to digitize. However, barring the establishment of postcancellation access directly from vendors, the titles digitized by for-profit institutions should remain on the list for the TALLO consortium, albeit at a low priority, because prod-


ucts by for-profit entities translate to unpredictable costs, uncertain future access, and varying quality.

¶61 The number of objectors within libraries to the various Google settlement agreements shows that there is significant concern with the idea of relying on a for-profit source as a repository. Further, researchers using Google Books have already mentioned flaws in the resource, including unlinked volumes of the same title, weak quality control, and inaccurate data. Having a noncommercial entity house materials ensures future access to information, even in the event of a publisher’s being acquired by another or going out of business.

¶62 Last, by building a digital collection, libraries can contribute to the preservation of knowledge for all. Instead of digitizing materials as they lose copyright protection, libraries could release already digitized materials to the public immediately upon the expiry of copyright terms. If each library group committed to preserving a portion of the world’s existing, printed knowledge in cooperation with one another, they could reduce duplication of effort and ensure an unbiased preservation of materials. This is where coordination with nonprofit entities would be relevant, and the TALLO consortium should endeavor first to scan unique materials instead of materials already digitized by other nonprofits.

Cost

¶63 Is this proposal one that is too ambitious for our means? The information necessary for a thorough analysis is unknown, but a basic analysis demonstrates that law schools certainly have the resources to fund the immediate costs of such a project. Future costs, especially if electronic formats change, are not as easily assessed. Looking at the immediate future, if each school provided $50,000 annually to the project, the operation would have a $10,000,000 annual operating budget. For that investment, each library would gain access to many times more titles than it could afford to purchase itself. While we can debate the pricing structure and whether there should be a sliding scale or a flat fee, ultimately it would be difficult to deny the availability of resources for such a venture. It is possible that startup costs might require a greater contribution in the initial year than in subsequent years if the TALLO consortium purchased real estate for storage.

¶64 Equipment, storage, and staffing costs will not be insubstantial, but it should be noted that the equipment used in digitizing has become much more affordable. For example, as of 2009, one Kirtas Technologies scanner cost $169,000 and could scan up to 3000 pages an hour. Staffing costs and storage costs are likely

77. Nunberg, supra note 30.
to outweigh any technology expenses but would still be within budget. Further, it
would be possible to decrease costs significantly if the print copy of the item were
to be discarded upon digitization, though such a step is not recommended.\textsuperscript{79}

Paragraph 65 Opportunities for cost savings that would offset the expenses of this new enterprise also abound. Storage and delivery of print materials will never be the
most cost-effective or time-efficient way to share materials widely; shipping and
delivery costs alone are significant.\textsuperscript{80} Online delivery has fewer costs and every member library should benefit from the savings resulting from the move to electronic delivery. Also, while there are expenses associated with online databases (such as storage, security, and accounting systems), these typically will not exceed the costs associated with print resources (e.g., space, lack of use, and duplication across schools). Expanding existing joint or collaborative efforts could reduce costs further. For example, the TALLO consortium could perhaps negotiate with Google for ownership of (or perpetual licenses to) their digital legal images in exchange for
adding expertise to their existing database to make it more useful, or it could
decentralize storage in a manner that utilizes space available at member libraries
with space to spare.

Reliability

Paragraph 66 Digital resources are inherently unreliable. They require devices to read
them, and any format that exists now may not exist ten years from now. While these
problems are real, it is equally inescapable that most users prefer online resources.\textsuperscript{81} Reliability is a legitimate concern that cannot be addressed in the abstract, without
knowing what future formats will be. However, the benefit of having a single central source for materials is that libraries will only have to convert a single format
over to future formats instead of migrating multiple formats each time a technolo-
gical advance is made.

Usability

Paragraph 67 Though e-reader popularity is increasing, the movement toward online
materials has been slow in the area of scholarly monographs. These, and other
resources, such as statutes, remain arguably easier to use in print than online. Further, digital resources, when heavily restricted in use, lose some of their utility (e.g., the ability to cut and paste portions) and therefore become less useful.

Paragraph 68 TALLO does not anticipate law libraries’ ceasing local collection purchases. Materials used on a regular basis or more easily accessed in print would still be most useful if available locally. After all, no library could depend solely on a collection whose volumes could be used or recalled by users throughout the nation. Immediate access to the TALLO consortium’s resources would not be as certain as it would be for a local, individually owned item. Libraries making such purchases

\textsuperscript{79}. As libraries serve a preservation function, they have an obligation to retain at least one original copy of a work.

\textsuperscript{80}. Franca Rosen & Leanne Emm, The Cost of Getting Patrons What They Want: A Study in Colorado Resource Sharing, COLO. LIBR., Fall 2003, at 35, 37 tbl.2 (detailing the unit cost of borrowing and lending physical items).

\textsuperscript{81}. Senior et al., supra note 8, at 208–09.
would still have reason to participate in the consortium, though, to have access both to materials they do not purchase as well as to a digital copy of a document that they may already own.

¶69 While e-book technology still has a distance to go, students already lean heavily toward online resources, and it is reasonable to posit that this collection would provide materials in a format most likely to encourage student use. Faculty are more selective, but where a document is available in multiple formats, even they have developed a preference for the online version over print. In short, even though this consortium may not always produce documents in their ideal format for use, it would generally produce documents in a preferred format.

**U.S. News & World Report (and Other Statistical Comparisons)**

¶70 Law schools may be concerned about contributing to an effort that raises not only their own volume count but also the volume count of competitor schools. Sidestepping the issue of validity of using these statistics in measuring the worth of a library, if all schools participate, this becomes a nonissue. If only some schools participate, then there is the possibility of skewing the data, but since titles freely available on the web can be counted if cataloged, this project would not distort information in any way that is not already possible.

**Antitrust**

¶71 It is possible that TALLO might raise concerns about antitrust, but I believe the configuration of the project is such that it should not run afoul of any antitrust laws. The Sherman Act covers a variety of activities that constrain trade: concerted action, coercion, and monopolization among others. All prohibited acts restrain or intend to restrain trade. Relevant key points in TALLO that would counter any antitrust claim are (1) membership is not mandatory, (2) local purchasing is not discouraged, (3) other libraries may engage in the same behavior as TALLO participants without penalty, and (4) vendors still have abundant room in which to market and sell their products. In fact, it would encourage competition in that vendors would be encouraged to produce both less expensive and more innovative projects to displace any of TALLO’s efforts. At its heart, TALLO is a combination of efforts that already exist elsewhere: coordinated negotiation and contracting, digitization, and searching. All of these actions are tested and accepted actions, despite the existence of multiple participants.

**Delivery to Users in Foreign Nations**

¶72 Though beyond the scope of this paper, use by individuals in foreign countries deserves a cautionary mention. As faculty and students travel on study-abroad,

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research, or instructional activities, some may seek access to the consortium’s resources. As with the delivery of any materials to users in another country, libraries need to develop policies regarding such access. Even where an action is deemed legal by the United States, another country may not be in agreement and reaching into that country may trigger liability.

Underlying Technologies

¶73 A digital collection is only as good as its access points and user interface. Below is a brief discussion of the systems that would be needed, both internally and externally, to implement TALLO.

¶74 First, an integrated library system (ILS) or ILS-like utility would be required, supporting accounting and billing functions. This utility would need to communicate with or incorporate some relational databases to

• determine ownership of individual items in order to regulate which libraries were members of the consortium at the time of their purchase, and thus are able to access a particular item;
• provide rights management features to
  • track when materials can be made publicly available
  • record special permissions from authors where permission for public access is granted before the copyright term expires
  • ensure that materials not publicly available are secure
  • permit wider release of materials should copyright law be amended to make such an action lawful; and
• record and track digitization, editing, and use of any given document.

¶75 Second, a utility would need to be acquired to facilitate circulation to users. It is unlikely that we would be able to devise or obtain a utility enabling circulation systems of each member library to communicate dynamically with the consortium system, especially as ILSs used by most academic law libraries are proprietary. Even if the TALLO consortium could negotiate with vendors to overcome the technical difficulties of accessing proprietary systems, loan rules, days closed, and any number of other local factors would make such an arrangement difficult, if not impossible. Individual libraries would also need an interface containing order information, to facilitate both submitting acquisition requests to the consortium as well as evaluating their own collection purchases.

¶76 Last, and most important, is a search feature. Digital resources need to be easily found to be used. The value of a resource lies primarily in its value to the end user. Studies have been done with students in various stages of their education—K–12, undergraduate, and graduate levels—and all have come to the same conclusion: user searching has undeniably changed. For example, a 2009 study of business students found that seventy-three percent of business/marketing students started their research with Google.\footnote{86. Senior et al., supra note 8, at 213.} Fifty-seven percent preferred free online sites to subscription databases or print materials.\footnote{87. \textit{Id}.} No collection, however strong or complete
it may be, will be sufficient without a user-friendly interface. Any search engine must have the ability to interface with multiple databases, including the consortium’s holdings, individual library catalogs, or discovery platforms so that a user need only search once to see the available materials. This may require moving away from traditional ILS vendors and instead entering into partnerships with entities or individuals who have the greatest expertise in searching. While these seem like complex technologies, many of them have already been tested by commercial entities like Overdrive or collaborative projects like the HathiTrust.

¶77 In terms of future technologies, there are additional enhancements that libraries could provide as the project moves forward. We could create applications that allow users to copy limited text, and copy the citation information along with the selected text. We could link materials together in virtual subcollections with research guides or publicly available collections of related materials.

Google Books and Other Digitization Projects

¶78 Google Books serves as the largest and most fully developed commercial venture in this arena, and it has faced several challenges, including the recent rejection of its amended settlement plan with copyright owners’ representatives.88 In crafting a vision during the project’s initial stages and then later through the proposed settlement agreements, Google made several key decisions: it digitized materials without permission and without purchasing the works;89 its default position on any work was inclusion unless the author opted out;90 it negotiated to put the works into commerce, and, in the for-profit plan, it aimed to be the publisher/provider of multiple copies to multiple purchasers.91 The critical fault lines in this proposal dealt with profit and control: reducing the author’s ability to control the use of the work,92 and profiting from the works of others without remuneration (or, in the settlement agreement, with nonnegotiated remuneration). The proposed settlement plan and its amended version partially attempted to address the latter concern by creating a registry in which authors could register for payments related to the use of their works. The amended settlement was denied for various reasons, one of which was that it did not take into account sufficient interests (e.g., interests of foreign entities and authors who were more interested in exposure than profit).93

¶79 TALLO differs from Google Books in that it proposes to digitize only materials legitimately obtained—through purchase or gift—by a library. It contemplates circulation only of the number of copies owned, would not damage the author’s ability to continue selling copies in the marketplace, and would be available only to library users, in a manner similar to licensed databases. Despite their divergent approaches, the TALLO consortium and Google (or other commercial entities) could work together to make each project stronger, specifically on public domain

89. Id. at 670.
90. Id. at 680.
91. Id. at 676–77.
92. Id. at 681.
93. Id. at 679, 684–86.
items. The TALLO consortium could contribute indexing and record connections (e.g., series titles) for these titles in exchange for the rights to store and use the images within its own system. In this way, Google would address some of the deficiencies in its current search engine, and the TALLO consortium could minimize the amount of scanning it would need to undertake for works already scanned by Google.

¶ 80 Other efforts in the United States include those by nonlaw academics like Emory, and nonacademic nonprofits, such as HathiTrust or the Open Content Alliance. Both types of projects focus primarily on making publicly available only materials in the public domain, licensed under a Creative Commons (or similar) license, or approved by copyright owners.

¶ 81 Two projects are more ambitious than the others, though they are still different in scope from TALLO. One of them, at Columbia, has digitized many orphan works and made them publicly available. Authors of the works are encouraged to contact the university, but so far none of them have. The second, HathiTrust, preserves more materials than it makes available; any work still protected by copyright remains inaccessible publicly in full-text until such time as copyright protection expires. TALLO is closer to HathiTrust than any other model, though it pursues a wider range of access. As with Google, the TALLO consortium could find mutually beneficial ways to collaborate with nonprofit efforts. Looking specifically at HathiTrust, TALLO could contribute its images to HathiTrust in exchange for obtaining copies of materials it owns in print. In this manner, TALLO would avoid needing to digitize materials already in electronic form while contributing unique records to HathiTrust for inclusion in its database.

¶ 82 Attempts to create a digital library are not limited to the United States, of course. Abroad, countries and institutions have undertaken mass digitization projects, but as their actions will be governed in part by copyright laws in their respective countries, the TALLO consortium would experience greater difficulties in collaborating with them.

95. HathiTrust, supra note 85.
98. Copyright, HathiTrust, http://www.hathitrust.org/copyright (last visited July 14, 2011). However, HathiTrust member libraries may gain access to digitized, in-copyright texts if they own the title.
Conclusion

¶83 The benefits of a central digital library are great: expanded access to information, ensured preservation, and control over form. Its creation would hopefully also allow libraries to prevent a great harm—the potential distortion of information. If users gravitate to online sources and only recent legal information is available online, then society’s perception of reality shifts to reflect only the information easily available. Part of our mission, therefore, should be to ensure that use of information is not determined solely by format, and the most effective way to achieve that goal is to place print and online documents on equal ground.

¶84 This article is not intended to represent a single direction for libraries, as there may be other, more carefully formulated ones. The TALLO proposal, however, is intended to be a call for collective action—to stop discussing the library of the future and to start building it.

100. Richard A. Danner, Contemporary and Future Directions in American Legal Research: Responding to the Threat of the Available, 31 INT’L J. LEGAL INFO. 179, 191–92 (2003). Another example of where this has already occurred is in rankings of academic institutions, like the ones provided by U.S. News & World Report. There is agreement among schools that U.S. News & World Report rankings cannot accurately or completely represent any institution they evaluate, and yet users have found the rankings accessible, easy to use, and a wonderful proxy for complete information. See Michael Sauder & Ryon Lancaster, Do Rankings Matter? The Effects of U.S. News & World Report Rankings on the Admissions Process of Law Schools, 40 LAW & SOC’Y REV. 105, 127–29 (2006); Stephanie C. Emens, Comment, The Methodology & Manipulation of the U.S. News Law School Rankings, 34 J. LEGAL PROF. 197 (2009). Whether they are reliable, accurate, or complete is irrelevant: users prefer accessibility over accuracy. There is a danger that the same distortion happens in regard to legal information.
Citation Advantage of Open Access Legal Scholarship*

James M. Donovan** and Carol A. Watson***

In this study focusing on the impact of open access on legal scholarship, the authors examine open access articles from three journals at the University of Georgia School of Law and confirm that legal scholarship freely available via open access improves an article’s research impact. Open access legal scholarship—which today appears to account for almost half of the output of law faculties—can expect to receive fifty-eight percent more citations than non-open access writings of similar age from the same venue.

Introduction

¶1 Open access has, in recent years, become a new focus of information resource innovation. Whereas premium scholarly content was formerly available only through expensive print subscriptions or proprietary databases, the open access movement promises to realize one of the fundamental aspirations of the public library movement, which is to make information in all its forms available to any interested citizen, without regard to ability to pay.¹ While there are many who,

* © James M. Donovan and Carol A. Watson, 2011.
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¹ Michael H. Harris, History of Libraries in the Western World 149 (4th ed. 1995) ("What we mean today by the public library is the general library that is not only publicly owned and tax-supported, but also open to any citizen who desires to use it."). See also Thomas Augst, Faith in Reading: Public Libraries, Liberalism, and the Civil Religion, in Institutions of Reading 148, 154 (Thomas Augst & Kenneth Carpenter eds., 2007) ("The public library in particular became a temple
often with good cause, criticize the Internet,\textsuperscript{2} here, at least, is one outcome that perhaps everyone can agree would be a benefit.

\textsection{2} For law schools, the open access movement surfaced as a force of major importance with the announcement in 2008 of two major initiatives. First, the Harvard Law School faculty voted unanimously to make their scholarship “freely available in an online repository.”\textsuperscript{3} While other schools were early adopters of open access advocacy, with this action Harvard became perhaps the most visible law school to make open access mandatory for its faculty’s scholarly publications. The second milestone was achieved soon thereafter when the directors of several major law libraries met in Durham, North Carolina, at the Duke University School of Law, in November 2008. The talks there resulted in the Durham Statement on Open Access to Legal Scholarship, which calls for all law schools to stop publishing their journals in print format and to rely instead on electronic publication coupled with a commitment to keep the electronic versions available in stable, open, digital formats.\textsuperscript{4} Although controversial in its bold scope,\textsuperscript{5} when read together with the Harvard vote, the Durham Statement made clear to onlookers that open access had become a serious organizing principle for the future plans of law libraries.

\textsection{3} Considered from the perspectives of the end users and of the libraries, the allure of the benefits promised by wide adoption of open access policies can be quite easy to understand. Many people who otherwise would never have exposure to the world’s scholarly literature can now find the latest research with the same ease, and using the same tools, with which they might find a recipe using Google. One of John Willinsky’s key arguments in his book \textit{The Access Principle} is that, without open access, large portions of the planet will be excluded from sharing the benefits of the research of the industrialized West, consequently consigning them to permanent “third world” status.\textsuperscript{6}
Libraries, for their part, could anticipate freedom of a different kind—freedom from the need to maintain increasingly burdensome journal subscriptions. Most law school faculty members have been sheltered from the economic realities of journal publishing, happily relying on access to core legal periodicals through their library’s subscriptions to conglomerate databases such as Westlaw, LexisNexis, and HeinOnline. However, these legal scholars can no longer assume that the law library can afford subscriptions beyond these basic databases to meet proliferating and increasingly narrow faculty research needs. It is ironic that law faculty expertise is becoming more specialized and cross-disciplinary at a point in time when law libraries are becoming less able to keep up with their research needs due to the high cost of research materials.\footnote{7}

However they are measured, law journal prices are rapidly increasing beyond the reach of institutional resources. According to the latest Library Journal Periodical Price Survey, law titles rose sixteen percent from 2008 to 2010, from an average cost of $294 to $338.\footnote{8} The AALL Price Index for Legal Publications reported a forty-two percent increase in costs for all periodicals (both law-school-subsidized and commercial) from 2005 to 2009, with the average price jumping from $155 to $222.\footnote{9}

The possibility of dropping even a portion of these titles, relying instead on open access to provide this specialized content, would be a welcome relief from library budgetary pressures. Libraries could expect not only the savings from canceling subscriptions, but also a decrease in the associated expenses of processing and storing physical volumes.\footnote{10}

Journals, however, are not the only area in which law libraries are feeling growing demands on their collection budgets. They are also being called on to support more practice-oriented courses in the law school curriculum. Such practice-
oriented materials are notoriously more expensive than academic resources.\textsuperscript{12} Open access scholarship can help lighten this burden as well.

\textsuperscript{8} More than libraries and users, however, have been affected by the trend toward open scholarship. This article seeks to shed light on a less studied third participant in this transition, the producer of the scholarship. Beyond the desire to share the fruits of one’s intellectual labors, what motivations does the legal scholar have to openly disseminate scholarship?\textsuperscript{13} If, as the Durham Statement advocates, online publication occurs without an accompanying print version, it may be viewed as second-tier, lacking the prestige of association with a permanent volume under a traditionally respected masthead.\textsuperscript{14} Furthermore, many schools have not made clear how they will treat electronic publications listed in tenure and promotion dossiers.\textsuperscript{15} Reticence to jump on the open access bandwagon, therefore, is not altogether unreasonable. Although faculty may be reluctant to contribute to online-only journals and lack motivation to post articles in open access venues after traditional print distribution, with the librarian’s help they can learn to appreciate the counterbalancing benefits to these perceived reputational risks.

\textsuperscript{9} We hope to offer arguments here that build on the most basic reasons scholars write: to find readers and to influence the course of debate within their fields of expertise.\textsuperscript{16} By looking at the citation rates of open access law articles, we provide

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\item[13.] The full answer to this question turns out to be rather complex. See Jihyun Kim, \textit{Motivations of Faculty Self-Archiving in Institutional Repositories}, 37 \textit{J. Acad. Libr.} 246 (2011).
\item[14.] We can perhaps see signs of how this impression might arise within the legal community. The most prominent of the online-only publication venues are the electronic companions to traditional law reviews. These include content that, for one reason or another, has been deemed by the editors unsuitable to appear within the journal’s printed pages, but which they also thought merited some form of distribution. While it is perhaps still a coup to be published by the University of Pennsylvania’s \textit{PENNumbra}, it would be better still to be within the print volume of the \textit{University of Pennsylvania Law Review}. There thus can arise the sense that online publication is “second best,” which taints all electronic-only journals by association.
\item[15.] Lynn C. Hattendorf Westney, \textit{Mutually Exclusive? Information Technology and the Tenure, Promotion, and Review Process, in Digital Scholarship in the Tenure, Promotion, and Review Process} 30, 36 (Deborah Lines Andersen ed., 2004). See also C. Judson King et al., \textit{Scholarly Communication: Academic Values and Sustainable Models} 2, 5 (2006), available at http://chse.berkeley.edu/publications/docs/scholarlycomm_report.pdf. This report on five case studies at the University of California, Berkeley, “to provide a preliminary descriptive analysis and understanding of the academic value systems associated with scholarly publication and communication” found that Publishing in online-only resources is perceived among junior faculty as a possible threat to achieving tenure because online publication may not be counted as much, or even at all, in review. Despite the fact that written policy indicates that online publications should not be undervalued in consideration of advancement, actual practice may vary.
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empirical support for the position that articles freely available on the Internet are consistently cited more frequently than non–open access articles from the same publications. To the extent that the goal of scholarship is to find an appreciative audience, legal writers should view open access initiatives as an especially effective means to a valued professional and intellectual goal, and thus deserving of their support and participation.

Open Access Defined

¶10 In its most elemental form, open access can be defined as providing free access for all Internet users to materials that have traditionally been published in scholarly journals. The more formal phrasing from the Scholarly Publishing and Academic Resources Coalition (SPARC),17 modeled after the Budapest Open Access Initiative’s definition,18 states:

By Open Access, we mean the immediate, free availability on the public internet . . . permitting any user to read, download, copy, distribute, print, search or link to the full text of these articles, crawl them for indexing, pass them as data to software or use them for any other lawful purpose.19

¶11 Open access may be parsed into two categories, green and gold. “Gold” open access refers to publishing only in online open access journals,20 and today represents ten percent of all peer-reviewed journals.21 “Green” describes all other open access publishing, such as depositing a pre- or post-print into an institutional repository or elsewhere online.22 Currently, open access accounts for between 2% and 4.6% of all published articles.23 Our study was limited to looking at the impact of green open access techniques to distribute and publicize law faculty scholarship.

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22. Parker, supra note 20, at 439.
Why Open Access?

¶12 The Western intellectual tradition has attained unparalleled success through cumulative incrementalism. Individual results are incorporated into a broader store of disciplinary knowledge, where they are tested, critiqued, and improved. If they survive this scrutiny, the new information itself becomes the basis for future research. By means of this process, knowledge does not merely accumulate, but progresses, approaching more accurate, or at least more useful, descriptions of studied phenomena. For this method to work, however, the proposed findings must be widely available, and not only to those who might be friendly or well-disposed to the writer or his proposals. Our modern exercise of discovering new knowledge thus necessarily requires communication of past achievements. This step is perhaps most explicit in the hard sciences, but has been adopted by most disciplines within the academy.

¶13 Law has long recognized a similar need to promulgate the texts of its primary corpus. Kant, for example, proposed “the following proposition [for] the transcendental formula of public law: ‘All actions relating to the right of other men are unjust if their maxim is not consistent with publicity.’”24 He believed “the possibility of [publicity] is implied by every legal claim, since without it there can be no justice . . . .”25 Similarly, Lon Fuller’s fabled Rex found that, unless one avoids the “eight ways to fail to make a law,” he cannot rule.26 The second of these eight was the “failure to publicize, or at least to make available to the affected party, the rules he is expected to observe.”27

¶14 It has been argued that the need to communicate legal information extends beyond the primary materials to include the articles of secondary scholarly commentary on those laws. Law faculty “have a particular responsibility to make their work available because of the impact of law on the daily lives of the public, and the influences of legal scholarship on those who make the laws.”28

¶15 Open access technologies represent only the latest innovation in the means by which information can be placed within the reach of interested consumers. Every step in this line of improving distribution, from classical manuscript copyists to early printing presses to mass media distribution, even to proprietary electronic resources, has represented a new effort to meet the need to place texts in the hands of those who would participate in the great debates of their day.29 Open access represents the completion of this convergence of the universe of information with the full population of possible readers. While there will inevitably be new issues related to scale and execution, the fundamental warrant to pursue what Willinsky calls the “open access principle”—“that a commitment to the value and quality of

25. Id. at 453.
27. Id. at 39.
29. For one view of the history of the means of scholarly communication, see JAMES J. O’DONNELL, AVATARS OF THE WORD: FROM PAPYRUS TO CYBERSPACE (1998).
research carries with it a responsibility to extend the circulation of this work as far as possible, and ideally to all who are interested in it and all who might profit by it—need invoke nothing more than the well-established tradition of scholarly endeavor. ¶16 The case for dissemination has been framed in still stronger terms. If one accepts that all scholarship, regardless of academic discipline, is inherently built upon the foundation established by earlier scholars, then it follows that the more widespread and accessible scholarly information is, the more quickly and efficiently scholarship can advance. Many hands make light work, the maxim teaches. Because of the infinitely varied uses to which this information can be put, many of them directly affecting basic quality-of-life issues, the intellectual duty of the scholar to communicate can be argued to be mirrored by a human “right to know,” which “has a claim on our humanity that stands with other basic rights, whether to life, liberty, justice, or respect. More than that, access to knowledge is a human right closely associated with the ability to defend, as well as to advocate for, other rights.¶17 This “right to know,” if it is acknowledged to exist, demands the implementation of open access initiatives. Anything less amounts to willful withholding of the knowledge created within universities—which falls into the economic category of a “public good” in that it can be provided to everyone and remain undiminished by consumption—from those who arguably are most in need of its guidance. These texts would instead be either unreported and lost, or, very nearly the same thing, locked behind expensive and exclusive publishers’ web pages. ¶18 As these values become more common within academia, pressures build to adopt dissemination plans compatible with human-rights-enabling open access principles. For example, government- and privately funded projects frequently expect that reports of research conducted with their support will be made widely available to maximize their impact. Arguments that research paid for by taxpayers should remain unavailable to the average citizen become less defensible. Placing

30. Willinsky, supra note 6, at 5 (emphasis omitted).
31. Id. at 143. See also Peter Suber, Open Access Overview, http://www.earlham.edu/~peters/fos/overview.htm (last revised Nov. 6, 2010) (“OA accelerates not only research but the translation of research into new medicines, useful technologies, solved problems, and informed decisions that benefit everyone.”).
32. As Richard Danner points out, even the most progressive of the international calls for access to legal materials falls short of advocating anything so strong as Willinsky’s “right to know”:

Although they do not argue for a right of open access to information, the Declaration on Free Access to Law and the other open access declarations do include language regarding human knowledge and common cultural heritage that resonates with the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. Perhaps because of its emphasis on primary sources of law issued by “public bodies that have a duty to produce law and make it public,” the Montreal Declaration comes closest to suggesting a rights-based justification for the subject of its concerns.

Danner, supra note 28, at 365–66 (footnotes omitted).
34. For example, the Federal Research Public Access Act of 2009, a bill introduced in the 111th Congress, although not enacted, would have required every federal agency with an annual extramural research budget of $100 million or more to make their research available to the public within six months of publication. S. 1373, 111th Cong. (2009).
scholarly results in open access repositories not only levels the playing field between rich and poor information consumers, but also helps to ensure that monetary support for that scholarship will continue to flow, by allowing everyone to learn of the benefits and achievements of that work.

¶19 The current study contributes to a growing body of empirical literature documenting that these theorized benefits of open access are very real. The increased impact of scholarship can be measured through an article’s more frequent citation in subsequent writing. These data can serve as the cornerstone of discussions with faculty regarding their participation in institutionally created open access initiatives, such as a school’s digital repository. Inclusion of a professor’s articles not only can lead to wider visibility within the legal community, but may also introduce the faculty member to an entirely new readership within other disciplines.

¶20 Such exposure heightens both the author’s personal reputation and that of the home institution. This practical reality can prove especially attractive given today’s pressures from widely consumed academic rankings, such as those produced by U.S. News & World Report. Many such rankings incorporate as a crucial variable the school’s academic reputation within the legal community. Given that reputation plays such a large role, it behooves the legal scholar and academic institution to undertake proactive measures to ensure substantial distribution and publicity of the scholarship upon which its intellectual reputation is based. 35

**Using Article Citations to Measure Scholarly Impact**

¶21 The principal argument here—that scholars should support open access not only for the broad philosophical principles it advances but also because, at the personal and practical levels, it supports one of their professional goals by maximizing the impact of their work—is a relatively easy case to make, if the underlying premise is true.

¶22 The concept of “impact” refers to the number of subsequent citations a work receives. The rationale is that an article references previous literature that influenced the author in a significant way, either by artfully identifying and framing a problem, or by advancing a proposal for its solution. Not all such influences, of course, receive citation, but to be cited does mark an article as being of special importance for that specific discussion. 36

¶23 Citation studies are especially attractive for determining a scholar’s impact given the paucity of viable alternatives. Productivity, for example, might be offered


as a measure, whereby one counts the sheer quantity that an individual faculty member is able to publish. But we need not look too deeply to realize that someone can publish a great deal without creating the slightest ripple in the ongoing discussions in the field. This gap between publication volume and scholarly impact can occur for a number of different reasons. Perhaps the scholarship focuses on a legitimate but narrow and comparatively unchallenged intellectual point. Maybe the articles are largely ephemeral descriptions of current events, which, though useful at that moment, have little value over time. Or perhaps the subsequent papers add little to the initial insight offered in an earlier paper, which could be judged as having terminated all remaining questions. Whatever the cause, the tally of mere output represents an inferior indicator of faculty quality. On the contrary, qualitative measurements have become the norm. In academia, where once the frequently quoted demand to faculty was to publish or perish, today the more appropriate adage might well be to publish and get cited or perish. If one must choose, it is far better to have one article of great significance than a dozen articles that wither after they see the light of publication.

While not without their own limitations, citation studies offer a credible and meaningful way to speak about research impact. If open access increases an
article's citation rate, then it may be presumed that open access maximizes an article's research impact.

Open Access Citation Research

¶25 Does, in fact, open access, through whatever means, result in an article’s increased citation? And if this is true in the general case, does it apply equally to the special environment of legal scholarship? The first question has been answered in the affirmative, with the only remaining debates centering on the question of the magnitude of the effect, and the mediating variables that produce it.

¶26 In 2001, Steve Lawrence wrote a brief yet controversial article for Nature postulating that having scholarship freely available on the Internet substantially increases that scholarship’s impact. Using a citator to evaluate citations of conference proceedings in computer science, Lawrence noted a dramatic correlation between the number of times an article is cited and the probability that the article is online. More highly cited articles, and more recent articles, are significantly more likely to be online, in computer science. The mean number of citations to offline articles is 2.74, and the mean number of citations to online articles is 7.03, an increase of 157%.41

¶27 Of particular interest for the present study is the second analysis Lawrence performed, which looked at within-venue comparisons. Looking at articles from the same publishing source (allowing him to assume that the examined articles were all of similar quality), he found “an average of 336% (median 158%) more citations to online computer-science articles compared with offline articles published in the same venue.”42 In other words, while the first result allowed him to suggest generally that a correlation exists between high scholarly impact and open accessibility, it is the second that identifies the likely cause of that relationship to be the greater accessibility of the article (and not, for instance, that better articles are more likely to be placed online).

¶28 Subsequent studies have largely supported Lawrence’s conclusions, although they have not been immune from criticism.43 In one study, Eysenbach found that

41. Id. at 521.
42. Id.
43. See, e.g., Iain D. Craig et al., Do Open Access Articles Have Greater Citation Impact? A Critical Review of the Literature, 1 J. INFORMETRICS 239 (2007).

The most rigorous study available to date suggests that any residual open access effect in condensed matter physics is negligible, after accounting for selection bias and early view effects This suggests that the benefits of self-archiving for an individual article or the work of an individual author are uncertain and could be as much affected by subject area, inherent variations in publication, and citation patterns generally, and the presence and/or importance of a specialized online pre-print archive.

Id. at 248 (citation omitted). The authors define selection bias as “more prominent authors posting their articles, and/or authors preferentially posting their better works” and early view effects as “due to articles appearing sooner.” Id. at 245. There is, in other words, no pure “open access” effect such as Lawrence posits. Left undetermined, however, is whether this skeptical conclusion is limited to the subject field of the mentioned study, in which open access is very common and thus could allow these variables to swamp the open access impacts seen in other disciplines, like law, where open access still represents a comparatively small percentage of the total output of legal scholarship.
for articles published in 2004 in the *Proceedings of the National Academy of Sciences* (PNAS), open access articles were cited both earlier and up to 2.1 times more often in the first four to sixteen months after publication than non–open access articles from that same venue.\(^44\) If substantiated, these results suggest that all open access is not equivalent, but instead that the gold approach offers measurably superior outcomes over the green.

\(^29\) While this line of research has grown significantly since Lawrence’s first efforts, most of the research has analyzed literature from disciplines other than law. In a recent overview of the published studies, only one of the thirty-six identified papers takes even a cursory glance at how the open access effect might play out in law.\(^45\)

\(^30\) That study, a 2005 paper by Chawki Hajjem, Stevan Harnard, and Yves Gingrass, collected a sample of more than one million articles in ten subject disciplines including law.\(^46\) They concluded, when comparing open access articles from the same year, and in the same journal, that open access produced a citation advantage from between 25% and 250%, depending on the discipline. The results specific to law found that 5.1% of law articles were available through open access (across disciplines the range was between 5% and 15%), suggesting that law lags behind

\[ \text{Although most studies have supported the citation advantage of open access scholarship, a recent study of economics literature has challenged this proposition. See Mark J. McCabe & Christopher M. Snyder, Did Online Access to Journals Change the Economics Literature? (2011), http://ssrn.com/abstract=1746243 (reporting no effect of online access on citation patterns). A similar outcome has been reported by Philip Davis. Finding that after three years open access articles were cited no more frequently than “subscription-access control articles,” he concludes that} \]

As most scientific researchers are concentrated within a relatively small number of elite research universities with excellent access to the scientific literature, a process known as social stratification, it is not surprising that providing free access has little (if any) effect on article citations. . . . The real beneficiaries of open access may not be the research community, which traditionally has excellent access to the scientific literature, but communities of practice that consume, but rarely contribute to, the corpus of literature.

Philip M. Davis, *Open Access, Readership, Citations: A Randomized Controlled Trial of Scientific Journal Publishing*, 25 FASEB J. 2129, 2133 (2011) (citations omitted), available at http://www.fasebj.org/content/25/7/2129.full.pdf+html?sid=e30bd343-971e-4c37-b73f-e6b71d855416. This study included no law data, looking exclusively at journals published by the American Physiological Society (11), American Heart Association (5), Duke University Press (7), Sage (10), and one each from the Federation of American Societies for Experimental Biology, the Genetics Society of America, and the American Association for the Advancement of Science.

44. Gunther Eysenbach, *Citation Advantage of Open Access Articles*, 4 PLoS BIOLOGY 692, 696 (2006), http://www.plosbiology.org/article/info:doi/10.1371/journal.pbio.0040157. The difference between open access and non–open access articles from the studied journal arose when PNAS announced “that authors could pay US$1000 if they wanted their article to be immediately OA (as opposed to the usual non-OA ‘moving wall’ model, where articles become freely accessible after 6 mo).” Id. at 697.

45. Alma Swan, *The Open Access Citation Advantage: Studies and Results to Date* 6 (Feb. 17, 2010), http://eprints.ecs.soton.ac.uk/18516/2/Citation_advantage_paper.pdf. Of the studies she examined, Swan reports that twenty-seven found “a positive Open Access citation advantage,” while only four found “no Open Access citation advantage (or an OA citation disadvantage).” The magnitude of the open access advantage ranged from a 580% increase in physics and astronomy, to only a 45% increase in philosophy. Id. at 17.

other fields in this measure), and that within law generally (i.e., not controlled for journal and year) the open access citation advantage came to 108%, a figure bested only by sociology’s 172%.

### Research Methodology

¶31 The studies discussed above form the background from which the present project proceeded. We analyzed articles from three institutional law reviews, the *Georgia Law Review*, the *Georgia Journal of International and Comparative Law*, and the *Journal of Intellectual Property Law*, and compared the citation rates of those available through open access with those not similarly available. Our goal was to extend the investigation of the effect of open access on citation patterns to the field of law, and to ascertain how legal scholarship fit within the results of similar research on different scholarly collections. If, for example, we could replicate the broad outcomes reported by Hajjem et al., we would have a more sound empirical foundation upon which to report to our law faculties that open access archiving offers real gains to the influence of their scholarship.

¶32 On first impression, legal scholarship should be especially conducive to the open access effect. Law produces texts that are heavily documented and footnoted, to a degree unimagined in most other disciplines. The opportunities for any individual piece to be cited are arguably correspondingly greater. This writing style should make law citation studies especially revealing of the forces influencing open access availability and subsequent citation. Given these factors, as well as the prior research from other fields, we expected open access legal articles to be cited more often, and that this effect would be consistent and significant.

¶33 Comparing open access versus non–open access articles from the same journal is a much more effective measure of impact than comparing citation rates for open access journals against non–open access journals, because it controls for the quality of the venue. We drew our article sample from the three law journals

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48. We recognize that this characterization cuts against the other emerging finding concerning the relationship of online accessibility to scholarly writing practices. James Evans, studying thirty-four million articles, found that “As deeper backfiles became available [online], more recent articles were referenced; as more articles became available, fewer were cited and citations became more concentrated within fewer articles.” James A. Evans, *Electronic Publication and the Narrowing of Science and Scholarship*, 321 SCI. 395, 398 (2008). In other words, as more articles became available, scholars did not expand the population of research they cited, but rather that pool shrank. Evans theorizes that scholars following hyperlinks can quickly identify the consensus regarding important prior work while ignoring tangential articles. Our model, however, assumes that legal scholars use keyword searching and identify a wide range of articles for research and citation based on similarity of concepts rather than predetermined connections. This distinction would account for the seemingly discordant outcomes.

published at one law school, the University of Georgia School of Law—the Georgia Law Review, the Journal of Intellectual Property Law, and the Georgia Journal of International and Comparative Law.

¶34 The Georgia Law Review, established in 1966, is the flagship publication of the school.50 It is a general law review, with new issues published quarterly. The Georgia Journal of International and Comparative Law was created in 1971 and is a forum for academic discussion on global legal issues, theories, and developments.51 Established in 1993, the University of Georgia School of Law’s newest publication, the Journal of Intellectual Property Law (JIPL), is also the nation’s oldest student-edited journal on intellectual property law.52 It features articles by students, scholars, judges, and practicing attorneys on topics like trademarks, patent law, trade secrets, entertainment and sports law, copyright, and Internet law. Each of these three publications is staffed entirely by second- and third-year law students. As none of the three journals currently puts its contents online, ours is a study of green, rather than gold, open access effects.

¶35 From each of these journals we took the content published in the eighteen-year span from 1990 (excepting JIPL, which was not founded until 1993) through 2008. Although citation analyses typically use data from a much shorter range of dates,53 we selected this time period in the belief that it offered extensive enough opportunity for any open access advantage to become established and discernible to our study. Student writings were omitted from our analyses.

¶36 Journal articles were categorized as being open access if a Google search for the article title yielded any free, full-content access to the work. For older articles, online availability usually followed publication, often at a delay of many years; for newer pieces, posting in an open access repository frequently preceded actual publication in hard copy from the official source. We did not attempt to determine when an article was made available online relative to the time that it was first published.

¶37 Citation counts were obtained by entering article citations into Shepard’s on LexisNexis.54 In the few instances in which no Shepard’s reports were available, a KeyCite report from Westlaw was substituted. To obtain more detailed analytical information, journal and case law citations were counted separately. Author self-citations were not excluded.

53. For example, the Hajjem et al. study discussed earlier, although exceptional in the longitudinal span studied, still included data from only twelve years, 1992–2003. Hajjem et al., supra note 46.
54. It should be noted that this method underreports the number of citations received by the legal scholarship, because it looks only at citation by other legal scholarship, ignoring any citations to this literature from other disciplines. While this may be a significant factor when discussing particular sorts of articles—e.g., international and comparative law articles, as well as law and society pieces, could be expected to be especially affected by this omission—we have no reason to anticipate that it cuts differently between open access and non–open access articles.
Research Results

Open Access Availability of Legal Scholarship

¶38 From 1990 through 2007 (vols. 35–41), the *Georgia Law Review* published 272 articles (excluding student-authored pieces). Of these, seventy-five articles (28% of the total published) were freely available on the Internet at the time of this study. The *Georgia Journal of International and Comparative Law* published 199 articles between 1990 and 2008 (vols. 20–36), of which only twenty-six (13%) qualified as open access. Tallys for the third periodical, the *Journal of Intellectual Property Law* (vols. 1 [1993] through 15 [2007]), were ninety-five total articles, of which twenty-three (24%) were open access.

¶39 All three journals were pooled and analyzed by year to produce a single representation of the rate of increase of open access availability of legal scholarship (see figure 1). Although uneven, the data show a clear rise in accessibility from 1990, when no articles were available, to 2007–2008, when more than forty-four percent of the published articles were accessible.

¶40 The simple aggregate of the data (566 articles, 124 [22%] of which are open access) suggests that the earlier discussed finding by Hajjem et al.—that only 5.1% of law articles are open access—dramatically underrepresents the extent to which open access initiatives among legal institutions and individual authors have become common. This result remains significant even when the present data are trimmed to match the 1992–2003 span of the Hajjem et al. study: 357 articles, 67 (19%) of which are open access.

Citation Advantage of Open Access Articles

*Citation by Articles*

¶41 The data show a discernible difference in the mean citation rates of open access articles and those that are not freely available online. Treated as a group, *Georgia Law Review* articles within this sample were cited an average of 15 times by journals and 0.4 times by courts. As indicated in figure 2, almost every year after publication, an open access article’s likelihood of citation is either the same or higher than that of a non–open access article. Only after approximately seventeen years does open access no longer have an impact on an article’s citation rate.

¶42 *Georgia Journal of International and Comparative Law* articles were cited an average of 5.5 times by journals and 0.1 times by courts. Figure 3 shows the citation rate for open access articles compared with non–open access articles in the *Georgia Journal of International and Comparative Law*. There is an inexplicable dip in the citation of open access articles during years eight through ten. Also, as experienced with the *Georgia Law Review*, the impact is negligible after approximately seventeen years.

¶43 Articles from the *Journal of Intellectual Property Law* were cited an average of 7.7 times by journals and 0.15 times by courts. Figure 4 demonstrates that, as with the *Georgia Journal of International and Comparative Law*, there are a few decreases in citation rate without explanation during year eight and years thirteen
through sixteen. Again it should be noted that after seventeen years, articles appear to lose their luster and are rarely cited.

¶44 The idiosyncrasies of the individual titles can be at least partially smoothed by aggregating all the data; figure 5 shows the citation rates from all Georgia School of Law journals. We feel some confidence in offering this graph as a generally accurate characterization of the life cycle of the open access article citation advantage for legal scholarship. Open access availability offers a consistent citation advantage, especially during the years immediately following publication. The trend becomes more difficult to interpret, though, over the long term, due largely to the limits of the methodology.
Our analysis compresses the data toward the left side of the graph; that is, the data set has more articles with citation information for a year or two after publication than it does for those with information about its citations seventeen years later. Our initial pool of 566 articles dwindles to a mere thirty-two by the end of the examined span. Consequently, the information on the right side of the graph is comparatively less reliable, representing as it does substantially fewer data points.

Figure 3. Effect of Open Access on Citation Rates of Articles in the Georgia Journal of International and Comparative Law, 1990–2008

Figure 4. Effect of Open Access on Citation Rates of Articles in the Journal of Intellectual Property Law, 1993–2007
Graphing the differential rates of citation over the years (see figure 6), we see two primary results. First, the citation advantage is relatively consistent for the majority of the years, but becomes uninterpretable for years sixteen and beyond for the reasons described earlier. Second, looking only at the first fifteen years of data, we find that an open access article can expect to accrue approximately fifty-eight percent more citations than non-open access articles from the same venue and of similar age.

55. We characterize a negative outcome as “uninterpretable” because in all our cases the green open access articles are also available in print. No scenario comes to mind in which a print article would not be cited or used to support a research proposition simply because it is also available in an open access format. A negative outcome could be meaningful if one of the samples represented gold version open access.
While it may seem safe to suggest that decades after publication, the rates of differential citation between open access and non–open access converge to zero, we cannot conclude from the present analysis that the open access advantage seen so clearly in the earlier years in fact disappears altogether.

Citation by Courts

Due to the relative infrequency with which law review articles are cited by courts, we pooled all data for this analysis. The citation advantage of open access for legal scholarship, so evident within other scholarly writing, does not appear to carry over into citations by courts. The 442 non–open access articles received a total of 116 court citations, averaging about 0.26 cites per article, while the 124 open access articles received 28 case cites, for an article average of 0.23.

This result—to our knowledge the first to look at the relationship between open access and case citations—should be further investigated. If replicated, one likely explanation is that judges and law clerks are less likely to do research on the web, relying instead on proprietary databases such as Westlaw and LexisNexis. In that instance, their choice of writings to cite would be unaffected by whether the article was also available in a free format.

Discussion

By looking at an eighteen-year range of articles from three law journals, we have been able both to establish the existence of a citation advantage enjoyed by open access legal scholarship, and to suggest the likely magnitude of that advantage. Open access legal scholarship—which today appears to account for almost half of the nonmonographic output of law faculties—can expect to receive fifty-eight percent more citations than non–open access writings of similar age from the same venue.

If the phenomenon is real, we may then entertain other questions, not least those touching on the likely causes. The literature has proposed three major theories to explain why open access increases the impact of scholarship. The open access postulate theorizes that because open access articles are more easily accessed, they are read more often. Convenient access alone, according to this argument, increases the likelihood of citation. The early access postulate suggests that articles benefit from their quicker “start out of the gate” over competing articles on the same topic, and therefore the citation rate is higher for articles that are posted early in the publication process. The third offered explanation is the self-selection bias postulate, which argues that authors select their best articles to publish online, thus increasing their citation rate, assuming that these are also the “better” articles in their respective subject areas.


57. Michael J. Kurtz et al., The Effect of Use and Access on Citations, 41 INFO. PROCESSING & MGMT. 1395, 1396 (2005); see also Swan, supra note 45, at 2.
52. Does the open access postulate explain the increased citation rate observed in this study? This suggestion does seem to have high initial plausibility. Writers will cite what they can lay their hands on, especially when they are at the stage not of debating the current literature, but of finding substantiation for points they have already included in the text. Keyword searching in a search engine such as Google seems tailor-made for that kind of problem, and can thus lead to citations for articles that would otherwise not have been selected.

53. Upon reflection, however, this explanation appears particularly weak in the context of legal writing. Much, if not the majority, of legal scholarship is available in Westlaw and LexisNexis, to which academic faculty have unlimited access. This limitless use in many senses mimics the advantages of open access.\(^5^\)\(^8\) Since an assumption of this proposed explanation is that freely available scholarship is more likely to be cited because access barriers have been removed, the effect of ubiquitous access to Westlaw, LexisNexis, and similar subscriptions would arguably minimize that benefit. In other words, law faculty already have as much access to the periodical literature as they can use.\(^5^\)\(^9\)

54. That legal writing should still show an open access citation advantage could therefore be largely coincidental, an artifact of preferentially citing the most recent articles, which we now know have approximately even odds of being available in some open access format (see figure 1). This possibility should deter the too-ready acceptance of the open access postulate as offering sufficient explanation for our data.

55. Open access scholars who support the second possible cause—the early access postulate—adhere to the proposition that the sooner an article is made freely available, the larger the increase of its citation rate. It would stand to reason, then, that early posting of draft articles should have a significant effect on an article’s impact.

56. Although articles in our study were not differentiated by when they became available online, most were certainly posted well after traditional publication. A large swath of our data covers time spans when self-archiving was far from common, at least within law. The Social Science Research Network (SSRN), the most popular platform among law faculty for self-dissemination of their written works, was not founded until 1994.\(^6^\)\(^0\) Were the early access postulate the primary explanation for the open access advantage, we would not expect the observed benefit to appear until at least the mid- to late 1990s, when SSRN and similar services had penetrated into the legal community. Moreover the effect would be short-lived, restricted primarily to the first months or years of the article’s public life. Yet, look-
ing at figure 5, we see that articles ten years and older within our sample were continuing to enjoy a substantial citation advantage. This suggests to us that early access cannot be a complete explanation for the observed results.

¶57 In many academic disciplines, the question has been raised as to whether cited articles had been self-selected for open access because they *a priori* were deemed of higher quality, or perhaps because frequently cited authors are also more likely to self-archive on the web. We can think of at least one serious counterargument to both these self-selection bias postulate scenarios.

¶58 While few law schools have followed in Harvard’s footsteps to mandate faculty contribution to an institutional open access repository, many have invested in something functionally similar by creating research paper series in the Legal Scholarship Network (LSN) within SSRN.61 These series collect and publish faculty writings, many of which would not, one imagines, have been posted had it been left solely to the initiative of the author. Pressures to contribute will only rise now that SSRN has begun to publish its own law school rankings based on the number of papers a school has contributed to LSN, and the number of times those papers have been downloaded.62

¶59 These recent developments have pushed more and more scholarship to be made open access (as seen in figure 1), leaving less opportunity for a selection bias to operate. Were bias the primary explanation for the observed effects, we would expect to see in figure 5 a flattening of the citation rate of the non–open access papers. Yet we see that, despite the growing prominence of open access literature, non–open access pieces continue to find their own audiences and receive consistent recognition. The number of papers falling into this category will, we predict, continue to decline, but thus far we see no evidence to suggest that these works are of inferior quality to those that receive open access treatment, a variable specifically controlled for in our methodology.63

¶60 At least in the case of law, none of the three postulated explanations for the open access citation advantage suffices. The likely answer will rest in some combination of the three. Further research, incorporating a more nuanced data set than ours, will be required to achieve the requisite fine-grain analysis to resolve this question.

¶61 There are other important and interesting questions that must likewise await future projects. Consider that we, and indeed the literature as a whole, have spoken as though the citation advantage will be enjoyed uniformly by articles on the web. In fact, it is possible that this effect could vary systematically depending


62. *SSRN Top 350 U.S. Law Schools, SOC. SCI. RES. NETWORK*, http://hq.ssrn.com/rankings/Ranking_Display.cfm?TMY_gID=2&TRN_gID=13 (listings other than the top ten schools limited to registered users).

63. One study of scientific literature determined that within a single journal, 15% of articles accounted for 50% of citations, and almost 90% of citations were to just 50% of the articles. Citation rates were skewed even for articles written by the same author. Per O. Seglen, *The Skewness of Science*, 43 J. Am. Soc’y Inf. Sci. 628, 631 (1992). By analyzing three different journals, one publishing general legal subject matter and two publishing on specialized legal subjects, our study sought to obviate the so-called “skewedness” effect.
on the stature of a school and its journals. Due to its high prestige, for example, it could be argued that articles in the *Harvard Law Review* will receive notice and citation regardless of whether they are also available in open access outlets. This would perhaps not be the case for an article published in the law review of a third- or fourth-tier school. If not for the ease of open access, such articles might get lost within the traditional outlets, crowded out by more glamorous competitors. For *Harvard Law Review* articles, then, one might hypothesize that the open access citation advantage will be comparatively smaller than what we see in the second situation.\(^{64}\) Advantage, in other words, might vary inversely with the prestige of the journal. If such a pattern exists, this could add impetus to create institutional repositories in precisely those environments where they will generate the most attention for both the school and its faculty authors.

**Conclusion**

\(^{62}\) In her highly regarded article reviewing the impact of open access issues on legal scholarship, Carol Parker had this to say about faculty participation:

[L]egal scholars’ access to the work of their peers has never been limited or jeopardized by cost and there has been little call to make “postprints” freely available simply for the sake of retaining access to the material.

Instead legal scholars appear to use repositories because they realize a professional benefit from doing so.\(^{65}\)

\(^{63}\) When seeking to launch a local repository project, the lesson appears to be that faculty enthusiasm depends less upon the high-minded values of dissemination and preservation that might appeal most immediately to librarians, and more on the possible practical returns such as readers and citations. Whether proposing these endeavors to administrators for funding, or to faculty for contributions, we suggest that the conversation highlight these understandably appealing and measurable outcomes.

\(^{64}\) The present article offers empirical justification to assert that these benefits are real, consistent, and sizable. The open access advantage reported for other bodies of literature extends to legal scholarship, albeit with some identified caveats. Open access is most likely to impact other legal scholarship, less so the citations within court opinions. The expected impact of the average article is an additional fifty-eight percent above that made by works of similar quality appearing in the same or a similar publication venue.\(^ {66}\) Open access offers the law scholar a classic opportunity, as Benjamin Franklin might say, “to do well by doing good.”

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64. A precedent for this possible behavior was reported by John Joergensen, who found that “middle of the road journals are much more widely used when they are available online.” John P. Joergensen, *Second Tier Law Reviews, Lexis and Westlaw: A Pattern of Increasing Use*, LEGAL REFERENCE SERVICES Q., Jan. 2002, at 43, 52.

65. Parker, *supra* note 20, at 443 (footnote omitted).

The Practitioners’ Council: Connecting Legal Research Instruction and Current Legal Research Practice*

David L. Armond** & Shawn G. Nevers***

In order to better prepare law students to perform legal research outside of academia, legal research instructors must connect with contemporary legal research practice. A desire to make such a connection led the authors to form an attorney advisory board known as the Practitioners’ Council to discuss legal research practice. The authors discuss the process of making the Practitioners’ Council a reality and how it has improved their legal research instruction.

¶1 “You mean you want to make law school reflect what we actually do in practice?” That was one attorney’s response to our idea of gathering a group of practicing attorneys with whom we could discuss current legal research practice. This sarcastic question highlights the disconnect between the standard law school curriculum and legal practice, and legal research instruction is no exception. While legal research is certainly more practical than many law school courses, the way it is taught in the academy can be estranged from the way it is currently practiced in the field. This, in turn, can be detrimental to students whose first “real world” task will likely be legal research.

¶2 Part of the problem is that many law librarians teaching legal research are not currently practicing law. Law librarians are experts in the use of a variety of legal resources and many have had significant legal research experience, but they often lack a current connection to legal research practice. This does not mean they must return to the practice of law or abandon teaching legal research. It does mean that law librarians should look for ways to stay connected to current legal research practice. As they do, legal research instruction will improve, better preparing students for the legal research assignments awaiting them in law practice.

¶3 In today’s ever-changing legal information environment, a connection to contemporary legal research practice is more important than ever. Law librarians can create such a connection in many ways: surveys or interviews of law firm

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* © David L. Armond and Shawn G. Nevers, 2011. This is a revised version of the winning entry in the open division of the 2011 AALL/LexisNexis Call for Papers Competition. A version of this article was presented at the Conference on Legal Information: Scholarship and Teaching, held at the University of Colorado Law School on July 8–10, 2010, as part of its Boulder Summer Conference Series. Many thanks to Barbara Bintliff for organizing and hosting the conference.

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librarians or attorneys, visits to law firms, visits by attorneys or law firm librarians to legal research classes, and so forth. Whatever the vehicle, we hope that all law librarians are looking for ways to ensure that their instruction is connected to and well-informed by current legal research practice.

Paragraph 4

The desire for our legal research instruction to be informed by current legal research practice led us to form what we now call the Practitioners’ Council. This council, made up of seven practicing attorneys, acts as an advisory board regarding current legal research practice and provides us with real-world insight and experiences that enhance our teaching. The feedback we receive does not dictate all or even a significant part of what we do in class, but coupled with our knowledge, experience, and professional judgment it is a valuable tool for ensuring our students are well-educated in legal research.

Paragraph 5

Because we chose the Practitioners’ Council as the vehicle to accomplish our goal of staying connected to current legal research practice, we hope sharing our experience with this project and the thought process behind it will help others in the quest to improve legal research instruction. This article first examines the criticism of law librarians’ lack of connection to legal research practice and ways law librarians have responded. It then discusses why we chose the Practitioners’ Council over other possible vehicles and describes our experience in creating and executing the Practitioners’ Council, including the brainstorming exercise called stemming that we used as our primary means of eliciting feedback from the attorneys. Finally, we examine what we learned for our classes and, more important, for making the Practitioners’ Council work. It also addresses possible future uses and benefits of the council.

Connecting with Current Legal Research Practice

The Need for a Connection

Paragraph 6

Full-time academic law librarians are in an interesting position regarding legal research instruction. As expert legal researchers, we have mastered a variety of legal research resources and skills that are valuable to our students. Because of the full-time nature of our jobs, however, most of us do not currently practice law and are, therefore, not in a practice-based legal research environment on a regular basis. As might be suspected, much of the legal research we do is academic.

Paragraph 7

Several authors have identified this as a weakness in law librarians who teach legal research. In 1997, Michael Lynch concluded that law librarians’ focus on scholarly research as opposed to client-centered research was a serious weakness for those teaching legal research. In his opinion, “the research experience of law librarians often predisposes them to a limited view of research that emphasizes the comprehensive search for all relevant sources over the struggle to understand authorities that are found in the context of a restricted problem controlled by the client’s interests.” Lynch asserted that this lack of client-centered research experi-

2. Id.
ence “sometimes colors the librarians’ discussion of legal research and keeps them from anticipating the reactions of other participants in the discussion of research training.”\(^3\)

\(^8\) Because their professional home is the academy, it is understandable that academic law librarians will have a stronger connection to academic, rather than client-centered, research. Lynch, however, does not offer any solutions for overcoming this weakness among his suggestions for improving legal research instruction.\(^4\) His only solution is that academic law librarians “must exercise care in making judgments about the research training appropriate for law students,”\(^5\) and his conclusion is that law librarians may be “too hopeful regarding what can be achieved [by legal research instruction] in law schools.”\(^6\)

\(^9\) Legal writing professor Ian Gallacher agrees with Lynch’s assessment of law librarians. In Gallacher’s opinion, law librarians offer an important academic approach to legal research instruction, but lack an essential practical perspective.\(^7\) “[L]egal writing teachers might not be as well trained as librarians in legal bibliography or information theory,” Gallacher argues, “but they often have more experience as legal researchers in the context of law practice, the place most law students will be using the research techniques they learn in law school.”\(^8\)

\(^10\) Paul Callister took the first step toward providing a solution to this dilemma. In explaining the objective of teaching legal research, Callister relied heavily on Lynch’s distinction between academic and client-centered legal research to demonstrate that there are differences between what law librarians do and what they must teach students to do.\(^9\) Callister then noted that “law librarians may need to stretch (or reflect on earlier days when they practiced law) to fully understand the package of skills needed by their students.”\(^10\) While reflecting on earlier practice

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3. Id. at 416.
4. See id. at 430–35.
5. Id. at 419.
6. Id. at 421.
8. Id. With this article, we are not entering the fray in the debate regarding who should teach legal research. The fact is that law librarians teach legal research in most law schools across the country. The 2010 ALWD/LWI Survey shows that law librarians participate in teaching legal research in LRW courses in 124 law schools and are solely responsible for legal research instruction in 56 of those schools. Ass’n of Legal Writing Dirs./Legal Writing Inst., ALWD/LWI 2010 Survey Report 11, available at http://www.alwd.org/surveys/survey_results/2010_Survey_Results.pdf. This is a trend that does not seem to be declining; the 124 schools is up from 91 in 2004. See Ass’n of Legal Writing Dirs./Legal Writing Inst., 2004 Survey Results, at iii, available at http://www.alwd.org/surveys/survey_results/2004_Survey_Results.pdf. Law librarians are overwhelmingly the instructors of advanced legal research courses. In Ann Hemmens’s 2000 survey of ALR courses, law librarians had primary responsibility for such courses in 68 of 72 schools that responded to her survey. Ann Hemmens, Advanced Legal Research Courses: A Survey of ABA-Accredited Law Schools, 94 Law. Libr. J. 209, 223, 2002 Law. Libr. J. 17, ¶ 34. Since law librarians are legal research instructors, our focus is on what those of us law librarians who teach can do to improve legal research instruction.
10. Id. at 24, ¶ 38.
experiences may help, its usefulness declines as the legal information environment continues to change rapidly. Callister’s suggestion to “stretch,” however, offers an important first step toward the answers law librarians need. Callister believes that by stretching, law librarians can overcome their lack of connection to current legal research practice without reentering practice. We agree. Unfortunately, he does not provide any concrete examples of what this stretching might look like.

¶11 Building on Lynch and Callister, Nolan Wright takes the extra step of providing some possible examples of stretching. First, Wright explains the lack-of-connection weakness this way:

[I]f [law librarians] have not actually practiced, or a long time has passed since they have, they run the risk of coming at legal research education from the wrong perspective, teaching research with an academic instead of a client-centered orientation, with ramifications both for how they prepare and evaluate students accordingly.11

¶12 As a solution, Wright believes that law librarians with recent practice experience will be able to overcome the weakness of a lack of connection to the client-based world.12 This makes sense, since these law librarians will be able to draw on their experience in a contemporary legal research practice setting to enhance their instruction. The problem, however, is time. Eventually each of us will get to the point where our practice experience is not recent enough to qualify under Wright’s formula. Additionally, we would be discounting the experience of law librarians who have taught legal research for years. There must be another solution.

¶13 While Wright puts a premium on recent practice experience, he also offers three ideas that might exemplify Callister’s idea of stretching. First, law librarians could teach “in connection with a legal clinic, public interest organization attorneys, or attorney in private practice.” Second, law librarians may want to occasionally attend continuing legal education seminars. And finally, “[t]hey might even consider volunteering occasionally at a local neighborhood legal clinic . . . .”13 While some of these ideas are more focused on legal research than others, they are good suggestions for law librarians looking to stay connected to current legal research practice.

¶14 Establishing this connection allows law librarians to keep a proper perspective between academic and client-centered research. It allows them to understand the ever-changing legal research environment that their students face.14 It even provides added interest and motivation for students in a legal research class. In fact, many academic law librarians are already engaged in activities to create connec-

12. Id.
13. Id. at 333.
14. See Leslie A. Street & Amanda M. Runyon, Finding the Middle Ground in Collection Development: How Academic Law Libraries Can Shape Their Collections in Response to the Call for More Practice-Oriented Legal Education, 102 LAW LIBR. J. 399, 431, 2010 LAW LIBR. J. 23, ¶ 78 (“By consulting practitioners, academic librarians can . . . . speak more authoritatively to students about what sources they can expect to be available in practice.”).
ctions between the ivory tower and current legal research practice to the benefit of their students.15

Law Librarians Connecting

15 One popular way in which librarians stay in touch with current legal research practice is through surveys. These surveys often target law firm librarians, but some have queried practicing attorneys as well.16 Through these surveys, law librarians generally attempt to discover what types of legal research materials new associates should be familiar with and in what formats. Inadequacies in research skills are also discovered, although these inadequacies tend to center around the use—or lack thereof—of certain resources or formats.

16 For example, law librarian Patrick Meyer recently published the results of a 2007 survey of law firm librarians in which he hoped to “ascertain the research needs of law firms.”17 The results of Meyer’s survey identified things such as the most important research tasks new attorneys should know how to do, what research tasks are best done in print, and what print and electronic resources new attorneys should know how to use. Meyer’s survey concluded that print resources are still alive and well in large law firms—a finding that is very useful for legal research instructors.18 Surveys such as Meyer’s help law librarians stay connected to the ever-changing legal information environment in practice and are a valuable resource for law librarians teaching legal research.

17 Another way in which law librarians stay connected to current legal research practice is by visiting law firms or having law firm librarians or attorneys visit legal research classes. For example, librarians from the Northern Kentucky University Chase College of Law Library toured several law firm libraries in 2007.19 According to tour organizer Michael Whiteman, goals of these visits included “[t]our[ing] the...
libraries to see what resources (both print and online) were available to their patrons” and “[d]iscuss[ing] with the librarians how they and the attorneys, and paralegals with whom they work, do research.” Law-Library-Palooza, as the tour was nicknamed, was a success in Whiteman’s eyes and helped him improve his legal research instruction. He noted: “The refresher on how things work in the ‘real world’ has, I believe, given me a great reason to revamp the legal research class to make it more meaningful to my students . . . .”

¶18 A far more common practice is to invite law firm librarians or practicing attorneys to be guest speakers in a legal research class. These guest speakers “can bring [a] real-world element to the classroom that law school professors often cannot.” In addition, guest speakers in legal research classes validate legal research instruction and its importance, providing a link between what students are learning and what they will be doing in practice. Inviting law firm librarians and practicing attorneys into legal research classrooms helps connect the ivory tower with the real world. It offers insight to librarians into ways legal research can be improved, as well as providing motivation to both teachers and students.

¶19 Law librarians also connect with current legal research practice by interviewing, either formally or informally, law firm librarians or practicing attorneys about how they conduct legal research. One of the few examples in the literature of formal interviews of attorneys was in a recent piece by Judith Lihosit, who spoke to fifteen San Diego attorneys regarding their legal research habits. The interview setting allowed Lihosit to clarify questions and answers, as well as probe deeper into the experiences of her interviewees. As a result, Lihosit reached conclusions contradictory to those of the prevailing literature with respect to computer-assisted legal research (CALR) and its effect on legal research. Her results also painted a valuable picture of how attorneys are conducting legal research in today’s practice environment.

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20. Id. at 8–9.
21. Id. at 9.
22. Id. at 35.
23. See Timothy L. Coggins, Bringing the “Real World” to Advanced Legal Research, 6 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 19, 19 (1997) (“Most Advanced Legal Research courses also use ‘real-world figures’ (guest speakers) to supplement and enhance the instruction provided by the professors of the courses. The experiences and current positions of the ‘real-world’ speakers are diverse, including librarians, attorneys, publisher/vendor representatives, and government officials.” (footnote omitted)); see also Marjorie Crawford, Bridging the Gap Between Legal Education and Practice, AALL SPECTRUM, Apr. 2008, at 10, 34.
25. Frank Houdek, Our Question—Your Answers, 2 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 66 (1994) (“I found that . . . I can talk until I’m blue in the face about the importance of legal research skills and only about twenty-five percent of the students hear me, but when a guest speaker such as a Texas District or Supreme Court judge or prominent local attorney [says the same thing] they really sit up and listen.”) (quoting Kristin Cheney).
27. Id. at 158, ¶ 1 (concluding that CALR will not “fundamentally alter the way attorneys think or do research, nor will it alter the legal system itself”).
28. Id. at 170–75, ¶¶ 35–47.
Why a Practitioners’ Council?

¶20 To meet our goal of ensuring our legal research instruction is informed by current legal research practice, we first listed several characteristics we felt necessary for any project we pursued. One of the first things we decided was that we wanted feedback that would be tailored to the practice environments of our particular students. This meant we would have to reach beyond the many connections academic law librarians are making with law firm librarians. While law firm librarians provide very useful insight about the skills of new associates, they represent only a portion of legal employers.

¶21 For example, in Patrick Meyer’s recent survey of law firm librarians, only five of 162 respondents were from firms ranging from one to twenty-five attorneys. The number was so small that the small-firm results were not summarized for the article.29 This leaves a gap in understanding current legal research practice for law librarians whose students get jobs with small firms. At Brigham Young University, for example, more than one-third of the students who took jobs with law firms in 2007 found them with firms of fewer than twenty attorneys.30 In approaching the problem of understanding current legal research practice, we wanted to make sure we took into account firms that do not have a law firm librarian, as the legal research environment in those firms often differs in the research tools available as well as the research tasks assigned.31

¶22 Another factor favoring the use of attorneys was that attorneys are the ones evaluating our students’ work product in the real world. At firms of all sizes, partners and associates are the ones who will determine just how good our students’ research really is. We wanted to be in touch with their expectations, as well as their impressions, of students’ and new associates’ research skills, so we could have a better feel for what our teaching might be lacking and how we could best prepare our students to succeed.

¶23 Critics may argue that attorneys are not the best group to consult when focusing on legal research skills, since they do not always follow “best practices.”32 This might have been true if we planned to rely wholly on their feedback to shape

30. Twenty-nine of seventy-nine students. These numbers were calculated by examining a spreadsheet provided by BYU Law School’s Career Services Office of firms for which 2007 graduates went to work. Firm size was then determined by locating the firm on the Martindale-Hubbell web site or on the firm’s own web site.
31. See Sarah Gotschall, Teaching Cost-Effective Research Skills: Have We Overemphasized Its Importance?, 29 LEGAL REFERENCE SERVICES Q. 149, 154 (2010) (noting the possibility that surveys of law firm librarians are not representative of smaller firms because small firms rarely employ librarians).
32. Of course, this argument in itself may be flawed. Richard Danner has pointed out that, “[a]lthough librarians and others have long shared the sense that lawyers are less effective researchers than they might be, the published literature on the subject suggests that we actually know very little about how lawyers go about their research.” Richard A. Danner, Contemporary and Future Directions in American Legal Research: Responding to the Threat of the Available, 31 INT’L J. LEGAL INFO. 179, 184 (2003). This was similarly the case in 1969 when Morris Cohen found that there was little written about the “actual procedures used by lawyers in their search into the law.” See Morris L. Cohen, Research Habits of Lawyers, 9 JURIMETRICS J. 183, 183 (1969).
our courses. We, however, saw our project as an attempt to add the legal research perspective of practicing attorneys to our own “best practices” to create a better way to teach legal research and motivate students, rather than to replace everything we had been doing.\textsuperscript{33} Consistent feedback from practicing attorneys is an area that is lacking in current legal research education.\textsuperscript{34}

¶24 In addition to focusing on practitioners, another aspect that was important to us was the ability to ask follow-up questions to broaden our understanding and to clarify responses. The inability to follow up successfully is a weakness inherent in surveys. While survey participants often provide useful comments, the surveyor can never dig deeper than what is written on the page. This is fine if the purpose of the survey is to get a better understanding of a legal research environment—print versus electronic, Westlaw versus LexisNexis—but limits the usefulness of the tool if what is being explored is something more intricate, like the legal research skills and habits of a practicing attorney.\textsuperscript{35}

¶25 Lihosit made this point when explaining why she chose to do interviews rather than a survey:

I wanted to make sure that any misconceptions that my subjects may have held about the legal research process would not cloud the results of the study. Indeed, there were quite a few occasions when my follow-up questions revealed that what I had in mind was not quite what my interviewee had in mind. I also hoped that open-ended questions calling for a descriptive narrative would lead my research in directions that I might not have thought of originally.\textsuperscript{36}

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\textsuperscript{33.} In a recent article primarily focused on legal research by scholars, Stephanie Davidson pointed out the importance of focusing on those who are actually doing the research. She wrote, “By focusing on theory and models without accounting for the actual practice of lawyers and scholars, librarians may miss important information about the way people use legal information . . . .” Stephanie Davidson, \textit{Way Beyond Legal Research: Understanding the Research Habits of Legal Scholars}, 102 \textit{Law Libr. J.} 561, 565, 2010 \textit{Law Libr. J.} 32, ¶ 8.

\textsuperscript{34.} AALL has also considered this an area in need of further exploration. Its research agenda includes the question, “How do lawyers in various professional settings actually conduct research. . . .?” Am. Ass’n of Law Libraries, AALL Research Agenda, § IV(A) (approved Nov. 4, 2000), available at http://www.aallnet.org/committee/research/agenda.asp. Indeed, the lack of practitioner feedback plagues all of legal education. In \textit{Best Practices for Legal Education}, the authors focus on practitioner feedback as an important principle for assessing institutional effectiveness: “The school solicits and incorporates the opinions of its alumni as well as other practicing judges and lawyers who hire and interact with graduates of the school.” Comments to this principle state: “Many law schools make curriculum decisions, even significant decisions, without consulting practitioners. This approach is precisely contrary to best practices in curriculum development.” ROY STUCKEY ET AL., \textit{BEST PRACTICES FOR LEGAL EDUCATION} 272 (2007). Other important examinations of legal education have also focused on the need to connect with constituents, including practitioners. See GREGORY S. MUNRO, \textit{OUTCOMES ASSESSMENT FOR LAW SCHOOLS} 62, 94 (2000); WILLIAM M. SULLIVAN ET AL., \textit{EDUCATING LAWYERS} 181–82 (2007) (Carnegie Report). This is an area in which legal research educators could be leaders in legal education.

\textsuperscript{35.} Davidson points out that the results of previous studies regarding the information-seeking behavior of lawyers “suggest that an approach using qualitative techniques, also referred to as a naturalistic or ethnographic approach, would be most effective” for understanding lawyers’ legal research behavior. Davidson, \textit{supra} note 33, at 570, ¶ 19.

\textsuperscript{36.} Lihosit, \textit{supra} note 26, at 170, ¶ 34.
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Lihsot’s interviews ultimately led to some interesting conclusions regarding the research habits of practicing attorneys, while also demonstrating the additional information that can be gained in an interview setting over a survey.\(^\text{37}\)

\(^\text{\S 26}\) Another critical characteristic we hoped our project would possess, and that ultimately led us away from interviews, was that of a sustained relationship between us and the attorneys with whom we hoped to work. The majority of projects we evaluated—whether surveys, on-site visits, or interviews—were fleeting. Law librarians connected with outside researchers at one moment in time, and then the connection ceased. We hoped that a sustained relationship with the attorneys would provide us with the continuing connection to current legal practice we were seeking. We also hoped it would produce a greater investment on the attorneys’ parts and allow us to collaborate with them in ways not possible with a written survey or a single interview. This would allow us not only to gather information, but to get feedback on things we were currently doing or ideas we were interested in trying.

\(^\text{\S 27}\) With these three characteristics—attorneys, interview-type interaction, and a sustained relationship—we felt confident we would find the connection to contemporary legal research practice we desired. It became clear that what we were looking to create was something akin to an advisory board to provide us with practical insights and make sure we were staying grounded in the real-world practice of legal research.\(^\text{38}\) Out of these ideas, the Practitioners’ Council was born.

The Practitioners’ Council

Getting Started

\(^\text{\S 28}\) Ideas about the Practitioners’ Council had been rattling around our heads for a while before we began. To start, we decided to synthesize our thoughts and put them in writing. We created a one-page guiding document for what we called the Legal Research Practitioners’ Advisory Council, which we immediately shortened to the Practitioners’ Council.\(^\text{39}\) This document began by stating the council’s purpose, which was “to assure that legal research instruction is well informed by contemporary legal research practice.” It also contained information detailing what the council would be asked to do, including (1) “Be familiar with the goals of the first-year legal research and writing program,” (2) “Provide feedback on the types of research tasks interns, clerks, and associates are typically conducting,” (3) “Provide feedback about existing and proposed legal research assignments,” and (4) “Provide feedback about specific research practices in their environment including sources and methods most often used.”

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37. See id. at 170–75, §§ 35–47; Davidson, supra note 33, at 570, ¶ 20 (“Interviews are useful for going deeper with questions, and for pursuing trails suggested by the subject’s responses.”).

38. A recent article has recommended “the formation of an advisory panel comprised of judges, decision makers . . . and practicing lawyers” to assist in improving legal writing programs. Amy Vorenberg & Margaret Sova McCabe, Practice Writing: Responding to the Needs of the Bench and Bar in First-Year Writing Programs, 2 PHOENIX L. REV. 1, 22 (2009).

39. The document is reprinted infra appendix A.
¶29 This document was prepared not only to help formalize the council and set forth its objectives, but also to serve as a reference sheet for the attorneys who would become members of the council. For this purpose we also included a few examples of what council members would be asked to do. We did not want the document to be overwhelming, but at the same time we wanted to clearly lay out what we hoped the council would be.

¶30 At this early stage, we thought a lot about the time commitment of the attorneys who would be involved. We knew the idea would be much better received if we were extremely sensitive to the attorneys’ busy schedules and limited our interactions with them as best we could. We decided we would only ask them to commit to ten hours of assistance during a calendar year. We knew this meant we would not be able to get all the information we wanted from them, but we felt it would help with buy-in on the project. As an added benefit, this kept things manageable for us as well.40 We were also pleased when our library director pledged some financial assistance so that we could offer our council members lunch and thereby use time that the attorneys could afford to give us, while also making it worth their while. After all, lawyers, like law students, still jump at a free lunch.

**Composition of the Council**

¶31 In order to more fully benefit our students, we wanted the council to roughly mirror the employment environments typical of our graduates. We contacted our Career Services Office and acquired their most recent placement report. The report indicated that approximately seventy percent of students went into private practice or a judicial clerkship after graduation. Of those who went into private practice, about one-third were employed by small firms, which we designated as having fewer than twenty attorneys. Approximately fifteen percent took jobs with the government or in public interest work. With these numbers, we were able to get a better idea of what we wanted our council to look like.41

¶32 We envisioned our council as being relatively small so that we could have meaningful interaction with the attorneys. After looking at the placement numbers, we determined it would be useful to have approximately one attorney from the government or public interest area, two attorneys from small firms, and three attorneys from medium to large firms. We also hoped that we would have some diversity in terms of practitioner age, gender, years of practice, and type of practice. In addition, we wanted to make sure we found attorneys who were interested in the council and could commit the time needed.

¶33 With this in mind we began making a list of potential council members. We started with people we knew—former law school classmates, people we had worked with, and other lawyers we had come to know over the years. We tried to

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40. We do not want to minimize the fact that the Practitioners’ Council takes time in a law librarian’s already busy schedule. The time commitment, however, lessens considerably once the council is organized and the ball is rolling. Additionally, the benefit to legal research instruction has, in our opinion, been well worth the time.

41. The placement numbers also revealed that about fifteen percent of our graduates went into “Business.” We decided not to include this segment in our composition determination as we deemed it unlikely that legal research was a large part of those graduates’ job description.
focus on attorneys in the Provo and Salt Lake City areas, as many of our law students are likely to practice in these cities, and it would allow us to meet with the attorneys in person.  

¶34 After our list was compiled, we did some background research on the candidates to determine how they would fit into the composition we desired. How big were their firms? Did they work for the government or a public interest entity? How long had they practiced? What type of law did they practice? From these questions we identified eight attorneys we were interested in having on the Practitioners’ Council: two from government, two from small firms, and four from medium to large firms. From this group we hoped we could get at least six attorneys who would be willing to participate.

**Initial Contact**

¶35 We contacted each of the selected attorneys by phone and explained our idea. We made sure to mention our purpose in creating the Practitioners’ Council, what we would be asking them to do, and the limited time commitment it would require. Our guiding document, mentioned above, was a great script for making sure we hit the important points. All the attorneys we talked to were very receptive to the idea of the council, and many were excited about the project.

¶36 The positive response we got indicated to us that attorneys are supportive of this type of attorney–law librarian collaboration and are willing to participate. There is no doubt attorneys are busy, but we found them willing to commit some time to a project they felt would be worthwhile. With all of the dissatisfaction there is in the legal profession about how law schools are training law students to actually practice law, we think attorneys on the whole will be willing supporters of projects like the Practitioners’ Council.

¶37 After the attorneys accepted our invitation, we sent them a follow-up e-mail thanking them. We attached the guiding document we had created at the outset of the project as a reference. We also included a link to a short survey that we hoped would help us understand the information environment in which they were conducting legal research.

**Defining the Information Environment**

¶38 Before meeting with the Practitioners’ Council, we wanted to define their information environments. Defining information environments is a critical starting point in today’s legal research world. When print was king, the information environment of attorneys was fairly consistent. With the explosion of specialized

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42. Meeting in person was important to us because of the brainstorming activities we planned to conduct with the Practitioners’ Council. See infra ¶¶ 50–58.

43. This did not mean that each of the attorneys was able to follow through with the time commitment. It ended up being a great thing that eight attorneys agreed to be a part of the council, as few of them were unable to be as involved as they first thought.

44. See, e.g., Steven C. Bennett, When Will Law School Change?, 89 Neb. L. Rev. 87 (2010) (written by a practicing attorney and calling for law schools to adopt programs that will give law students more real-world skills).
fee-based legal research systems, as well as free and low-cost systems, it can no longer be assumed that one attorney has a similar environment in which to conduct legal research as another.

¶39 The various surveys of law firm librarians and the few of practicing attorneys give us some idea of what the prevailing information environment is today. Defining that environment, however, cannot be a stopping point. We must take the next step of understanding and evaluating how attorneys are using that environment to conduct legal research and what their expectations are for our students’ legal research skills. Doing so will allow us to better prepare our students to perform legal research in today’s practice.

¶40 To define the information environments of our practitioners, we created a brief, ten-question survey. We included questions such as: “During an average week, how many hours do you spend researching?” “Do you have access to Westlaw and Lexis?” “What other electronic resources do you use for research?” “What print resources do you use to conduct research?” The responses we received provided us with a clearer picture of the environments in which the attorneys we would be meeting with were practicing legal research. This helped us gain background information we needed to maximize the utility of the Practitioners’ Council’s most important activity, the face-to-face meetings.

Face-to-Face Meetings

Advisory Board Feedback

¶41 When properly constituted, an advisory board represents a wide range of experience, opinion, and approaches to problem solving. In the business school setting, boards have proven to be a powerful tool to inform the curriculum and, in some cases, pedagogy. But few articles have taken the time to describe specific methods used to develop meaningful feedback. As noted above, the members of our council were carefully chosen based on their experience, practice area, and personality. But distilling information from any group of highly intelligent, highly articulate, and highly trained people is always more complex than interacting with a random survey sample or randomized focus group.

45. See sources cited supra note 16.

46. See Davidson, supra note 33, at 571, ¶ 21 (“A qualitative approach does not foreclose the limited use of quantitative tools, either as a preparatory step to fieldwork or as supplementary information to add to the description. Indeed, prior research on information-seeking behavior has incorporated the use of multiple methods of data collection and analysis to triangulate research questions.”).

47. See Gundars Kaupins & Malcolm Coco, Administrator Perceptions of Business School Advisory Boards, 123 EDUC. 351 (2002) (reviewing both the literature of advisory boards and the results of their study of boards’ perceived value); see also Brad Gilbreath et al., Using Management Advisory Boards in the Classroom, 25 J. MGMT. EDUC. 32 (2001) (discussing bringing boards directly into classrooms).

48. Once survey questions are set, there is no nuance, clarification, or adjustment for a respondent’s interest level and experience. In the objective survey world, the responsibility for resolving ambiguity rests on the participants, who have to figure out what is being asked and the best way to answer. In a face-to-face interaction, members of the group can push back on the meaning and purposes of a question in ways that they cannot when the creators of the instrument are not in the room. Random focus groups lack the cohesiveness of groups intentionally selected for specific qualities. From our experience, group cohesiveness produces more specific and voluminous feedback, but that in and of itself presents a challenge when information needs to be distilled into actionable items.


¶ 42 An additional level of complexity arose from the primary reason we impaneled the group. Traditional objective surveys work best when you know what questions you are trying to answer. In fact, it is hard to imagine how to structure a survey without knowing what questions need to be asked. An overriding concern we had was that legal research practice was changing in ways that we could not always anticipate. While survey design is always difficult—the ambiguity of language leads to subjects’ answering different questions than surveyors thought they were asking—the problem is compounded in a discipline that is so dependent on ever-changing information technology. We knew that we would need to ask questions, clarify responses, and develop consensus—and do it all quickly. And because the members of the council were all practicing attorneys, we knew that we would have to limit meetings to ninety minutes or less. Since we wanted to maximize the value of our face-to-face meetings, we knew that standard brainstorming could only be a partial solution.

¶ 43 Alex F. Osborn is traditionally credited with framing modern brainstorming with four basic rules: “(1) Criticism is ruled out. . . . (2) ‘Free-wheeling’ is welcomed. . . . (3) Quantity is wanted. . . . [and] (4) Combination and improvement are sought.” Others have added (5) “One conversation at a time” and (6) “Stay focused on the topic.” Osborn emphasized that brainstorming worked better as a method of solving “problems which primarily depend on idea-finding—not for problems which primarily depend on judgment.” He also admitted that there were limitations to group brainstorming and suggested what he called the “ideal methodology for idea-finding”: “a triple attack: (1) Individual ideation. (2) Group brainstorming. (3) Individual ideation.” Yet it was difficult to conceptualize how we could leverage this approach while we tried to limit the amount of time we asked members of the council to volunteer.

49. In reality we always planned for one hour, and then let conversations linger into the additional half-hour.

50. Alex F. Osborn, Applied Imagination 156 (3d rev. ed. 1963). While Osborn claims to have “first employed” what he called “organized ideation” in 1938 (id. at 151), brainstorming may date as far back as fourth century B.C. Athens. The war council discussed in the third book of the Anabasis illustrates a form of problem solving where ideation was valued. Xenophon’s Anabasis: Books I–IV, at 143–58 (Maurice W. Mather & Joseph William Hewitt eds., 1962). When a Greek mercenary army found itself trapped far behind enemy lines, the solution was to meet and discuss ideas that might lead to a solution: “in view of our present position we decided to meet together ourselves and to invite you to join us, so that, if possible, we might come to some good decision.” Xenophon’s Anabasis, supra, at 147 (translation by author Armond). Though Greek tradition did not necessarily value Osborn’s “free-wheeling” discussion, and traditionally ended with a formal approval of the best ideas, the concept of group creativity appears to have been valued for millennia.


52. Osborn, supra note 50, at 158.

53. Id. at 191; Osborn’s advice is based on a series of studies referred to in the Wall Street Journal that emphasized how individual test subjects came up with more ideas than subjects who were in groups. The studies clearly were uninformed by Osborn’s directions, and Robert Sutton’s response about the potential value of group synergy also illustrates how the cited studies missed Osborn’s suggestion that both individual and group activity was preferable to only group brainstorming. See Sutton, supra note 51, at 24.
Stemming

¶44 Fortunately, one of us had prior experience serving on a board filled with highly intelligent, highly trained, articulate people. Being a member of a community council that included two physicians, two attorneys, a political scientist, a patent-holding microbiologist, a member of the state legislature, a former manager of systems support for IBM, and former vice presidents of Procter and Gamble and Mead Data Central provided exposure to a brainstorming process that combined pre-meeting introspection with the creative writing technique known commonly as sentence stemming.54

¶45 For the community council, a series of sentence stems was drafted dealing with participants’ thoughts about the major issues facing our community. Some stems were very specific; others were as open ended as, “The major issue facing our community is . . . .” Participants were directed to seclude themselves in an environment without interruptions and then read each stem, completing the sentence at least three times and no more than five times. After pondering the general mission of the community council, responses to the stems were supposed to be emotive, “the first thing that comes into your mind.” However, after the first and second ideas flowed, the third and any subsequent sentences usually followed considerable introspection.

¶46 The responses to the questions were e-mailed to the facilitator two weeks before the face-to-face brainstorming session. As groundwork for the formal meeting, the facilitator reviewed responses, looking for patterns and noting any distinct groupings. Councilors were directed to bring their written responses when the council was convened, and were led through a whiteboard discussion starting with the first question. Participants were asked to read their highest priority responses. This was not necessarily their first response, or even their favorite response, but it was directed to be the response they felt best contributed to the discussion. Every member of the council was asked to participate. After the first sets were summarized on the board, participants were asked to read the next response they wanted to share.

¶47 This process continued for just under two hours. Two features of the process stood out. The first was the overall quality of the ideas presented. Based on the divergent experiences of the members of the council, the literary style of the responses ranged widely. Some were terse, Hemingway-like statements of perceived fact. Others were high-flown Victorian multiple-clause-sentence paragraphs with

54. This technique has elements of Andre L. Delbecq and Andrew H. Van de Ven’s Program Planning Model and what would later become known as Nominal Group Technique (NGT). In Group Techniques for Program Planning, Delbecq and his colleagues summarize the social psychological limitations that reduce the efficacy of group brainstorming, Andre L. Delbecq et al., Group Techniques for Program Planning 24–25 (1975). In an earlier article, Delbecq and Van de Ven explained how their formal rules for conducting round-robin discussion following the writing phase encouraged much broader participation in the brainstorming activity. Andre L. Delbecq & Andrew H. Van de Ven, A Group Process Model for Problem Identification and Program Planning, 7 J. APPLIED BEHAV. SCI. 466, 470–72 (1971). The exercise we conducted might also be classified by some as brainwriting; however, it does not fit neatly in the traditional descriptions. See Arthur B. VanGundy, Techniques of Structured Problem Solving 73–75 (2d ed. 1988). Though VanGundy discusses proactivity stimuli, the problem statement expressed in a sentence stem is not discussed. See VanGundy, supra, at 76–79.
asides, specific caveats, clarifications, and qualified conclusions. In almost every case, the ideas presented were amazing—far beyond what individual council members could have generated by themselves in any optimal setting for thinking.

§48 The second feature of the stemming exercise was driven by the social dynamic. In all survey and brainstorming sessions there is a persistent problem with conformational bias. People “tend to seek out information that confirms our existing views and hypotheses, and we tend to avoid or even discount data that might disconfirm our current positions on particular issues.” Osborn’s brainstorming includes a “deferment of judgment principle,” which is in some ways an attempt to fight this tendency. Fortunately, the beauty of the stemming exercise was that it leveraged participants’ sometimes conflicting propensities to contribute and to create by giving them a chance to look over their work product and decide which response helped further the discussion.

§49 In the community council environment, several members described how, during the exercise, they felt a desire to let one of their favorite sentences wait for later discussion because they had an idea how another of their sentences could complement something already presented. Once momentum started building about a specific issue, the inclination to “contribute” (read conform) led to members’ selecting ideas that would build on or clarify rather than refute a particular thought-thread. This co-opted the traditional battles of the articulate, strong-willed, and passionate by uniting their energies to try to solve very complex and difficult problems. The final product in the community council setting was a set of clearly defined questions and some amazing proposed solutions.

### Stemming in the Practitioners’ Council

§50 Though a stemming exercise looked like it would be helpful, our time was more limited with the Practitioners’ Council. We were optimistic that we could reduce the discussion session to forty minutes because our group was roughly half the size of the community council. The size of the group and the duration of the session are typically defined by the problems you are trying to identify and solve. Osborn suggested “the ideal number is about a dozen.” But others have referred to groups of two, four, or six as producing beneficial results. Similarly, though most sessions we have participated in have taken hours, at least one author has suggested that “about 40 minutes is the optimum time for a brainstorming session.”

§51 With that in mind, we decided that we would sit down and draft our instructions for the stemming exercise and then draft the actual stems. We followed the standard stemming method of encouraging quick, but repeated, responses, knowing that by the time the practitioners completed the third finished sentence, they would have slowed down and deliberated a bit. We asked the attorneys to

56. Osborn, supra note 50, at 191.
57. Id. at 159.
e-mail us their responses—though this required several follow-ups and reminders. In the end only about four-fifths of the participants responded in advance, but all brought their answers to the meeting.

¶52 The stems themselves were not very sophisticated. For our first set of meetings, we decided to use five stems that probed the attorneys’ use of online resources, search behavior, and observations of weaknesses in law school legal research instruction. After defining the five stems, we decided to organize them with the most concretely answerable stems first and then move to broader conceptual ideas. Our first five stems were:

1. The feature on Westlaw or Lexis that I use most often is . . .
2. Besides case law, the most important source in Lexis or Westlaw I use is . . .
3. The biggest research-related mistake I see inexperienced attorneys make is . . .
4. The single most important legal research skill that new attorneys need is . . .
5. The most important thing to remember when using Lexis/Westlaw is . . .

¶53 While the first two stems came directly from ongoing discussion among legal research instructors about the most important features of LexisNexis and Westlaw that should be taught, the third question was an attempt to shine some light on an area we knew little about. As lawyers and librarians, we tend to define and solve problems that are brought to our attention by either clients or patrons. While some detective work is important, problems typically come to us, and we don’t spend much of our time defining problems that might be systemic or a consequence of our otherwise exemplary problem-solving behavior.

¶54 Service industries have celebrated the ability to identify problems as an important management tool. But their focus is often more fixed on a system as a whole than on a complex legal matter or a specific reference question that at least initially looks solvable. By asking our council what types of mistakes they had seen others make, we hoped to uncover gaps between what we thought we were teaching and what our students actually did in the early part of their practice. After setting the context with the third question, we attempted to generate more focused ideas about skills and tools with the fourth and fifth questions.

¶55 From our experience, the face-to-face discussion requires preparation and a certain amount of skill to produce useful results, with the former probably more important than the latter. Reviewing stemming responses ahead of time gives facilitators a sense of where the conversation might go in the meeting. More important, it allows the identification of follow-up questions, including questions to clarify a response that might appear to be a misreading of an essential point of an initial stem. As in any brainstorming activity, the pre-meeting review requires the suspension of criticism.

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60. Based on the time constraints of the attorneys, we decided to meet with the Provo practitioners in Provo and the Salt Lake practitioners in Salt Lake. This meant that we used each stemming exercise twice to cover both groups. This worked well, because we could focus our second effort a little better based on our first experience.

61. A copy of our original stemming exercise is included infra as appendix B.

62. See Roberto, supra note 55, at 6–9.
It also requires a healthy amount of skepticism. Existing behavior determined by library policy or practice may be indirectly or directly criticized in participants’ responses. More commonly, not all observations will be productive. Knowing ahead of time that someone is proposing a three-week-long, sixty-hour-a-week, reality-TV-style internship as the best way to teach legal research helps you set reasonable expectations for the exercise, and gives you time to practice saying diplomatically “that’s an interesting idea” without rolling your eyes. Though it may take practice to become unflappable, most of the ideas that you read will fuel your desire to do things differently and better. For the best results, as a facilitator you should fight any instinct to control or lead the group to a conclusion that you or your colleagues have already drawn.

After working with groups of people for years, we have found that it works best to have two facilitators in face-to-face meetings. Besides providing safety in numbers, a second set of eyes and ears leaves one person free to drive the discussion and the other to observe the temperament of council members. Participants often alter their previously submitted stems as a result of the group discussion. Summarizing a discussion that flows away from the initial written responses can be difficult. When your back is to the rest of the council as you write summary statements, it is very helpful to have a colleague keeping his or her eyes on members’ body language. This helps the supporting facilitator raise clarifying and follow-up questions to improve or correct a summary statement. It also helps to have a second perspective on summarizing the ideas presented and documenting what actually transpired in the meeting when you review your notes at a later date.

Documentation can take many forms. In our initial meetings, we used a digital camera to take a snapshot of the whiteboard before we erased it and moved on to the next discussion. In subsequent meetings we used both the camera and audio records to make sure we had accurately documented the conversations. The audio files were transcribed and matched with the pictures to remind us what actually transpired. This saved us the time of trying to transcribe statements during the meeting and let us focus our attention more on the flow of ideas than on recording precisely what was being said.

Results

Lessons for the Classroom

The Practitioners’ Council has been successful in connecting us with current legal research practice. It has provided us with new perspectives that have aided our legal research instruction. While many of the things we learned were not groundbreaking, the process has helped ensure that we remain grounded in legal research as it is actually practiced, which better prepares and motivates our students. A few examples of what we learned and changes that resulted are described below.

Court Rules

One of the first things we took away from the Practitioners’ Council was a need to focus more on court rules in the first-year curriculum. Court rules may
have been one of the first things that stuck out in our discussions, because neither of us taught it very well. We both mentioned court rules in our first-year classrooms, but were content to leave an in-depth discussion of the topic to the advanced legal research course. Our interaction with the council caused us to rethink the way we taught court rules to our first-year students and to develop exercises that would get our students into these sources in the first year. The exercises are brief, but give the students some hands-on learning to increase the chances of their retaining the information.

What we gained from the council in this instance was not that court rules existed or how to search them; it was the realization that practitioners rely on court rules to such a degree that they should be emphasized to our students in their first year. It was a reminder that while court rules may come up seldom in academic research, they are a constant in client-centered research. This refocusing is an enormous benefit of connecting with practitioners.

Context

Two of the five questions in our initial stemming exercise led to discussions emphasizing the importance of context in legal research. The third stem probed for the biggest research-related mistake practitioners saw inexperienced attorneys make, and the fifth stem targeted what practitioners felt was the most important thing to remember when using LexisNexis or Westlaw. In both discussions, a common theme developed around young, inexperienced, or just plain sloppy attorneys who mistook a collection of cases containing keyword phrases for the rule of law in a particular area.

While a general critique of research strategies was beyond the scope of our project, it is interesting to note that all attorneys on the panel expressed concern over how ubiquitous keyword searching has made it easy to mistake an outlying point of law as representing the field as a whole. Younger attorneys on the council expressed the realization that they had to guard against the bad practice, while the longest practicing member of the council expressed sympathy for young attorneys who were under time pressures to come up to speed in areas where they had never practiced before. He lamented the disappearance of a time when attorneys would read every case in the jurisdiction or field to make sure they developed a holistic understanding. When he started to practice in the 1970s, there were few affordable alternatives to reading numerous cases. With the dominance of electronic research models, the opposite is now true. From his perspective, electronic resources encourage an eclectic, as-needed approach, which can save an incredible amount of time when serving a diverse practice, but has the unintended consequence of limiting attorneys’ conceptual understanding of the law as a whole.

As librarians, we have most often encountered this problem when student externs contact the library because they cannot find clear summaries in case law that articulate the rule they are arguing. The holdings of the cases they find online usually only deal with exceptions and limitations to the general rules. The general rules are often listed in cases beyond the first few results pages in Westlaw or LexisNexis. This is typically because the common law in the area of practice was settled long ago. Proper use of secondary sources would have helped prevent the
mistake, but excessive reliance on keyword searching in case law leaves some lawyers blind to the fact that they are actually missing the primary points they should be arguing.

**Anecdotes and Motivation**

%65 One of the unanticipated results of the Practitioners’ Council was the number of valuable anecdotes we gathered from the practitioners. Each of us has our own favorite war stories we tell in our legal research classes: the time we used the digest to find a case others could not; the time we forgot to Shepardize; the time we, or better yet another associate, ran up a huge Westlaw bill. These stories are valuable because they demonstrate the principles we are teaching. Students take an interest in these stories and tend to remember them more easily than an explanation of how a digest works.

%66 Lawyers are generally good storytellers, and we found this to be true even when the topic was legal research. We gathered a wealth of anecdotes that were easily incorporated into our classroom discussions. When the topic of the importance of understanding an entire case instead of just looking for the perfect quote came up at one council meeting, one attorney shared that in a brief, opposing counsel had quoted a Utah case stating that a Missouri court held similarly to opposing counsel’s position. Upon analyzing the case himself, our attorney discovered that the very next line of the case read something to the effect of “we disagree with the Missouri court.” Opposing counsel had missed it completely.

%67 These anecdotes rejuvenated us and our classroom discussions. Old examples from our time practicing either gave way to or were now surrounded by examples that occurred last month or last week.63 And as we continue to meet with the council, our pool of examples continues to grow, allowing us to incorporate more real-world experience into our classrooms.64

%68 Along similar lines, we quickly noticed that the Practitioners’ Council helped pique our students’ interest in what we were teaching. Because much of law school feels far away from legal practice, attitudes toward legal research instruction can suffer as well, despite the fact it is one of the more practical skills taught in law school. But as our students saw that we were reaching out to practicing attorneys and had a connection with the real world, they appeared more interested in what

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63. As discussed earlier, while recent practice experience is a benefit to law librarians teaching legal research, it cannot be the only solution, since every day we move further away from practice. The Practitioners’ Council provides a solution to this problem by combining one’s personal experience with other, more current experiences from practicing attorneys.

64. This demonstrates another benefit of the council—the gathering of perspectives and experiences from a number of attorneys. While each of us has our own unique experiences, our students are benefited even more when we gather and share information and experiences from various attorneys across an array of workplaces and practice areas.
we had to say. This result is in line with educational research that finds that “perceived relevance is a critical factor in maintaining student interest and motivation.”

¶69 This played out in several ways within the classroom. For example, in the past, when teaching secondary sources, we have tried to give several reasons why these resources can help by providing background information, citations, search terms, and so forth. Now we introduce the topic by saying something like this:

Attorneys we’ve met with recently told us the biggest research-related mistake they see inexperienced attorneys make is their failure to understand the context of the issue they’re researching. They said they see many inexperienced attorneys jump right into searching case law without consulting some sort of secondary source first for background information.

¶70 Another example is when we teach about the Focus/Locate tools for narrowing searches while saving on costs. After teaching about these tools and why legal researchers would use them, we say, “The attorneys we’ve met with use the Focus/Locate tool often to narrow down searches and save money.” Many other examples have arisen spontaneously in our classrooms as we reach topics we have discussed in the Practitioners’ Council. These examples help give weight to what we are saying and provide extra motivation for students to focus on learning what we are teaching. Students see that we are striving to make our teaching more meaningful and relevant to them, and this helps improve legal research instruction and learning.

65. As much as we do not like it to be true, many people do not find legal research to be inherently interesting. Many students need some extra motivation to engage with the subject, and many authors have written about the importance of making instruction relevant to students’ lives. See Ellen M. Callinan, Simulated Research: A Teaching Model for Academic and Private Law Librarians, 1 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 6, 6 (1992) (“Relevance should be the guiding principle in research instruction because it fosters effectiveness. That which is relevant is retained. That which is retained can be applied.”); Maureen F. Fitzgerald, What’s Wrong with Legal Research and Writing? Problems and Solutions, 88 LAW LIBR. J. 247, 263 (1996) (adult students “need to relate tasks directly to preparation for future social and professional roles.”); Kristin B. Gerdy, Teacher, Coach, Cheerleader, and Judge: Promoting Learning Through Learner-Centered Assessment, 94 LAW LIBR. J. 59, 64, 2002 LAW LIBR. J. 4, ¶ 17 (“giving relevance to the subject [shows] learners how the new knowledge or skills will be important to their lives now and in the future”); Aliza B. Kaplan & Kathleen Darvil, Think [and Practice] like a Lawyer: Legal Research for the New Millennials, 8 J. ASS’N LEGAL WRITING DIRECTORS 153, 187 (2011) (“There is no better way to keep students engaged and motivated than to demonstrate that the skills they are learning in class are the ones they will need in the ‘real world.’”); James B. Levy, Escape to Alcatraz: What Self-Guided Museum Tours Can Show Us About Teaching Legal Research, 44 N.Y.L. SCH. L. REV. 387, 392 n.19 (2001) (“Adult orientation to learning is life—or work—centered. Therefore, the appropriate frameworks for organizing adult learning are life—and/or work-related situations, not academic or theoretical subjects.” (quoting FREDERIC H. MARGOLIS & CHIP R. BELL, MANAGING THE LEARNING PROCESS: EFFECTIVE TECHNIQUES FOR THE ADULT CLASSROOM 17 (1984))).


67. Sandra Sadow & Benjamin R. Beede, Library Instruction in American Law Schools, 68 LAW LIBR. J. 27, 29 (1975) (“Often, [first-year students] lack the motivation to learn any more about legal research than they need to complete their first-year course requirements.”).
Mediating Novices to Experts

As a result of the feedback we received in our first meetings in 2009, we focused our 2010 meetings on drilling deeper into our board members’ research practices. Our inquiry was based on our desire to apply the educational psychology theories regarding deliberate practice and mediated learning experience (MLE) to our research instruction. This meant that we needed to distill specific cognitive structures that could be taught to our students as the foundation for their ongoing development of skills, ideally through compelling practical assignments. To flush out the differences between novice and expert performance, we started by attempting to identify how our attorneys classified research problems. Specifically we asked them to describe particularly challenging research assignments, and then to describe those that they would characterize as easy.

68. Almost a decade ago, Carol M. Parker referenced the work of psychologist K. Anders Ericsson, explaining:

Studies of experts in various endeavors have identified some of the ways in which experts differ from novices and suggest that expertise is acquired through “deliberate practice.” The term “deliberate practice” refers to the undertaking of learning activities that present “a well-defined task with an appropriate difficulty level for the particular individual, informative feedback, and opportunities for repetition and for correction of errors.” Mechanical repetition—such as simply reading and rereading text—will not suffice; concentration is essential. Studies of acquisition of expertise suggest that about ten years of deliberate practice seem to be necessary to become an expert in an endeavor.

Carol M. Parker, A Liberal Education in Law: Engaging the Legal Imagination Through Research and Writing Beyond the Curriculum, 1 J. ASS’N LEGAL WRITING DIRECTORS 130, 136 (2002) (footnotes omitted) [hereinafter Parker, Liberal Education]. Four years later, Parker identified the “practicing bar” as “an obvious place to look for answers” to the “key questions for legal education”: “what do expert lawyers know how to do? and ‘how can law schools facilitate deliberate practice of those skills?” Carol McCrehan Parker, Writing Is Everybody’s Business: Theoretical and Practical Justifications for Teaching Writing Across the Law School Curriculum, 12 LEGAL WRITING: J. LEGAL WRITING INST. 175, 183 (2006) [hereinafter Parker, Everybody’s Business]. Parker cites Michael Hunter Schwartz’s call for the application of self-regulated learning as a strategy to create expert law students and ultimately lawyers, but neither author directs much attention to the specific cognitive structures that distinguish novice from expert performance other than the latter group’s often showing self-directed learning behavior. Parker, Everybody’s Business, supra, at 182–83 (citing Michael Hunter Schwartz, Teaching Law Students to Be Self-Regulated Learners, 2003 Mich. St. DCL L. Rev. 447, 454–55, 463). Though both authors do an excellent job of explaining what the ultimate student outcomes should be, neither is very specific about how teachers actually contribute to those outcomes, other than describing them in detail to students.

Mediated learning approaches spend time looking at questions of how things should be taught, not just what should be taught. The theory of MLE, developed by psychologists in the late 1950s, is rarely directly discussed in terms of Ericsson’s deliberate practice. For an interesting history of MLE, see Howard Sharron, Changing Children’s Minds: Feuerstein’s Revolution in the Teaching of Intelligence (1987). The failure to connect deliberate practice to MLE is unfortunate, since deliberate practice presupposes a coach, mentor, teacher, or trainer to develop cognitive structures that lead ultimately to self-identified, self-corrective behaviors. For more on Ericsson’s work, in addition to the summation in Parker, Liberal Education, supra, see Gregg Schraw, An Interview with K. Anders Ericsson, 17 EDUC. PSYCHOLOGY REV. 389 (2005).

We find Feuerstein and his colleagues’ rationale for the need for mediation, and ultimately its benefit, to be extremely valuable in the context of developing legal research expertise. See Reuven Feuerstein et al., Beyond Smarter: Mediated Learning and the Brain’s Capacity for Change 25–37 (2010). Once the instructor’s role has been defined in terms of mediated learning, then the task becomes an attempt to figure out just what makes an expert researcher.
As with the 2009 stemming experience, we found that the answers both confirmed our experience and expanded our understanding. While the “easy” spectrum did not surprise us—the most commonly referred to “easy” assignment was researching a statute—we were caught off guard when all the practitioners listed “research a statute” as their most difficult assignment as well.

The difference in reported difficulty centered on how the statute was applied. Two examples seemed particularly helpful. From the criminal defense attorney, we had the example of a death penalty case on appeal that ran into a cap on funds for the defense. After the cap was exceeded, an application was made for additional funds; however, at the same time the legislature passed a statute that not only limited the amount allocated to the appeal, but included a provision that left a defendant to self-representation when an attorney was forced to withdraw because of the potential ethical conflicts caused by a lack of sufficient funding. The “get tough” statute failed to state clearly whether it applied to cases that were already in process, or if it was completely prospective. In this case, the old statute was easy to find, the new statute was easy to find, but determining which statute applied was very difficult.

From the civil practice side, the hard problem dealt with what information from a county medical facility could be divulged to law enforcement officers without violating HIPAA. The U.S. Code provision was straightforward enough, but because it did not speak specifically to the issue at hand, the certainty of the statute did not assure an easy time completing research. In this case, multi-jurisdictional research was needed to understand how other states had treated the problem. Ultimately, a task force was set up by the Utah Attorney General’s office to develop a policy, since no case had been decided on the issue.

Besides the difficulties of subject matter jurisdiction and temporal application of statutory provisions, another area of difficulty reported was that of the time frame for an assignment. Based on a firm’s litigation calendar, research can have either a short or long window for completion. Two-thirds of the practitioners reported difficult research problems related to time constraints imposed by the litigation clock. Though we were aware that many attorneys experienced stress trying to balance the demands of the practice, we would not have conceptualized the timing of the litigation, and its limit on the time frame for legal research, as a dimensional qualifier for the difficulty of a legal research assignment. Typically time pressures were just treated as a background stressor, not a dimension of legal research that should be taught directly to the students.

This underscored the limitation of a strictly academic approach to research training—the scientific enumeration of a checklist of skills like “research statutes.” We who research daily do so through the lens of our experience. Like wearing eye glasses, occasionally we see the frame or a smudge on the lens—that is, we think about our training and strategy—but commonly we look through the structure and just perceive reality. Because as librarians we would classify the attorneys’ examples of difficult problems as statutory applications of first impression, we had never thought to teach students that this type of problem, in reality, is just a par-

particularly tricky type of statutory research. The difficulty is not related to how to use a tool like the statute’s index or annotations to find the text, but instead the challenge comes from the application of what is found. Finding is only the beginning of the legal research skill; application is what distinguishes expertise. This epiphany was a result of the feedback from the council.

¶77 The insight was especially valuable because we had been planning to expand our use of practical research assignments (practicums). The practicums had received positive evaluations from students, but they were not assigned until the middle of the second semester of the legal research and writing course. We had hoped to develop smaller assignments (micro-practicums) as a way “to develop a collection of authentic training tasks that can qualify as deliberate practice activities and support self-regulated learning, generation of feedback, and repeated practice of corrected performance.” What the Practitioners’ Council taught us was that our checklist approach to legal research skills needed more refinement. Not only would we need to develop assignments that required finding a statute, the exercises would also have to teach the student how to develop sensitivity for how difficult the discovered statute would be to apply. Not only would time limits need to be part of the micro-practicums, but we would also need to teach students to be aware of how timing increases the difficulty of assignments. We were committed to implementing the Boulder Statement, and the Practitioners’ Council helped us to understand the metacognitive elements of a task that we were likely to take for granted.

Lessons for Creating and Running a Practitioners’ Council

¶78 Taking an idea and making it a reality teaches you a lot about what works and what does not. This project was no different. We hope that those interested in giving the Practitioners’ Council a try can learn from what we’ve done and make their experience even better than ours has been.

¶79 One thing to keep in mind is that dealing with attorneys takes patience. As attorneys ourselves, we anticipated this would be the case and were not surprised when certain attorneys could not meet their commitments to us. One of the attorneys who initially agreed to help never responded after our initial few contacts. Another planned to attend our meetings, but was pulled away at the last minute on two occasions. This taught us that it is best to have a bigger group of attorneys participating in case such situations arise. And if they all participate, a few extra attorneys on the council does not hurt.

72. Overall the commitment by the majority of attorneys was fabulous. They did what we asked them to do and came when we asked them to come, despite their busy schedules.
73. He felt so bad, however, he took us out to lunch and brought two colleagues along so we could all have a conversation about legal research. We forgave him.
We also learned that it is important to focus on what you really want to know in the face-to-face sessions. Most attorneys like to talk, which is generally good in a Practitioners’ Council, but the time flies. During our first attempt at a face-to-face meeting, we had a whole agenda of things we hoped to discuss. We spent most of the time on the first few items and rushed through the rest. The discussion was great, but we did not get everything we wanted out of the meeting. For subsequent meetings we decided we would focus on only a few specific questions so that we could delve deeper. Naturally we had to leave out certain questions we were curious about, but we felt much more satisfied with the depth of the conversation.

As mentioned above, we found that having at least two people serving as facilitators for the stemming exercise during the face-to-face meetings was essential. The same is true for the Practitioners’ Council project as a whole. Our Practitioners’ Council would not have become a reality without us both. Since this project was outside of both of our primary job responsibilities, it often found itself on the back burner. But it wouldn’t be long before one of us would start talking about arranging a council meeting or bring up a question we thought we should ask the council. We could then split the workload of contacting the practitioners and making needed arrangements. We anticipate this collaboration will be a driving factor in the council’s future success as well.

We also found that the practitioners enjoyed being informed of things we had done with their feedback. At the start of a new council session we tried to give them an overview of any changes we had made to our instruction based on their feedback. They seemed genuinely interested in this, and we believe it promoted a greater investment on their part. They could tell they were really helping to improve legal research instruction at BYU.

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74. Our second stemming exercise, for example, consisted of only two stems: “In the past year, one of the most demanding problems I had to research was . . .” and “In the past year, one of the least demanding problems I had to research was . . .”

75. This willingness of practitioners to contribute to education is also documented in the context of advisory boards for engineering schools. See Stephen R. Genheimer & Randa Shehab, The Effective Industry Advisory Board in Engineering Education—A Model and Case Study, in 37TH ASEE/IEEE Frontiers in Educ. Conf., Session T3E, at 6 (2007), available at http://fie-conference.org/fie2007/papers/1415.pdf. Genheimer and Shehab use four dimensions developed by R.E. Quinn and J. Rohrbaugh to review advisory board effectiveness. The four quadrants defined were the human relations model—a board that focused on the board itself in attempts to maintain group cohesion, based on the various personalities on the board; the internal process model—a board that focused internally on the actual administrative workings of the group, including communications, structure of meetings, and the quality of agendas; the rational goal model—a board that focused on planning and setting goals looking outside the board itself to the things that actually got done; and finally the open systems model—a board that focused outside itself to look at how it could best meet institutional objectives. Id. at 8–9. The authors conclude that “the effective advisory board will have all four dimensions of organizational effectiveness in place . . . .” Id. at 11. While we found it easiest to concentrate on the relations between board members, the planning, communication, and development of meeting activities led directly to the valuable feedback we received.
Future Activities

¶83 One of the things we especially like about the Practitioners’ Council is that it is extremely flexible—it can be what we want it to be. To this point we have mainly focused on getting feedback through the stemming exercises in our face-to-face meetings. But we have many other ideas for utilizing the Practitioners’ Council in the future that may appeal to law librarians wondering whether they want to create a Practitioners’ Council of their own.

¶84 As discussed earlier, one of the reasons for soliciting feedback from practicing attorneys is that they are the evaluators of our students’ legal research skills in the real world. In the future we hope to ask our practitioners to comment on student work product. During their second semester, our students’ final project is a research scenario that results in a one- to two-page response. We would like to know how the best responses compare to what practitioners expect of a summer associate or even a young associate. This would give us a better idea of whether the work product our top students are producing is really what practitioners want to see.

¶85 We also hope to leverage the Practitioners’ Council to add new research problems to our curriculum. In the past few years we have focused on adding more real-world research assignments to our curriculum.76 We have used a number of resources—workbooks, research assistants, ourselves—to come up with research scenarios that help teach legal research skills while giving students a more realistic research experience. The Practitioners’ Council seems like a natural place to find real-world research scenarios. While the practitioners may have to be vague on certain details, we believe we could adapt these scenarios into viable research problems.77 They can even be introduced as issues recently encountered by a practicing attorney, which will likely enhance student interest.

¶86 We anticipate that other ideas for using the Practitioners’ Council will come as we continue the project. In our minds, the flexibility of the Practitioners’ Council is one of the reasons it is such a useful tool. While we have used it in certain ways that have been helpful to us, others may find very different approaches. However it is used, the most important aspect is the connection it creates between practicing attorneys and academic law librarians teaching legal research.

Conclusion

¶87 The ivory tower is the home of academic law librarians who teach legal research. But as legal research practice continues to change, we must reach outside

76. This is in line with the recently released Boulder Signature Pedagogy Statement, which states that legal research educators “teach an intellectual process for the application of methods for legal research by: 1) Using a . . . mix of realistic problem types.” Boulder Statement, supra note 71.

77. Current legal research education literature advocates collaboration with practitioners in creating problems. Kaplan & Darvil, supra note 65, at 184 (“Another way skills courses can effectively integrate research instruction is through the collaboration of skills faculty with . . . practitioners on the design of research problems. Because they are in the field . . . practitioners have a solid understanding of the types of issues new attorneys will face.”).
of the ivory tower and connect with contemporary legal research practice. The Practitioners’ Council has been a valuable tool for us to connect with attorneys who are in the thick of legal research practice. This connection has helped us improve our legal research curriculum, motivate our students, and align our instruction with current legal research practice.
Appendix A

Legal Research Practitioners’ Advisory Council (LRPAC)

Purpose:
The Legal Research Practitioners’ Advisory Council exists to assure that legal research instruction is well informed by contemporary legal research practice.

Justification:
Historically there have been three pillars to legal research curriculum:

1. The practice experience of law librarians,
2. Legal publishers’ representation of beneficial application of their sources, and
3. Historical approaches to applying printed legal materials to traditional legal questions.

Missing from these approaches is a contemporary perspective on how practicing attorneys conduct research, what sources are most commonly used, which general approaches taught in law school are more or less useful, and what type of problems interns and junior associates should be prepared to solve based on the continually changing practice and legal information environments.

Constituency:
The council is made up of attorneys who practice in a variety of settings—small, medium, and large firms, as well as general and boutique practices. Attorneys are asked to volunteer their time to give feedback to legal research faculty, informally and formally. While we will carefully consider all feedback we receive, we cannot guarantee that it will be implemented.

Methods:
The LRPAC is asked to:

1. Be familiar with the goals of the first-year legal research and writing program.
2. Provide feedback on the types of research tasks interns, clerks, and associates are typically conducting at their firms.
3. Provide feedback about existing and proposed legal research assignments.
4. Provide feedback about specific research practices in their environment including sources and methods most often used.

Time Commitment:
Each attorney is asked to commit approximately five to ten hours per year as a member of the council. Several brief surveys about sources and methods used, thought questions/brainstorming sessions intended to better inform law librarians about lawyers’ research behavior, and other correspondence to safeguard the relevancy of legal research instruction are planned. Interactive sessions will be conducted in person or via conference call.
Examples:
One example of LRPAC action would be to have members meet to review a set of core legal research sources that are covered in the first and second semesters. Members would give feedback about the frequency that sources are used in their environment, their preference for the format in which they conduct the research in those sources (electronic and print), and the method they used to record their research. Based on the feedback, participating legal research faculty would then evaluate the existing curriculum to determine the congruence with contemporary practice.

Another example would be to have LRPAC members help librarians brainstorm about the types of assignments that are typical for clerks or interns. This discussion would focus on the skills needed, and the types of assignments that might most appropriately assess student skills, as well as provide feedback from practitioners on the amount of time a typical assignment would be expected to take.
Appendix B

Stemming Exercise

Introduction to Stemming Exercise:
Below are five clauses. Please complete the sentence at least three times, but no more than five times. Do not deliberate; instead, just react to the question with the first thing that comes into your mind. If the same thing comes into your mind all three times you read the stem, just leave your first response. The responses will be the basis for our discussion on how to increase the value of legal research instruction at BYU.

1. The feature on Westlaw or Lexis that I use most often is . . .

2. Besides case law, the most important source in Lexis or Westlaw I use is . . .

3. The biggest research-related mistake I see inexperienced attorneys make is . . .

4. The single most important legal research skill that new attorneys need is . . .

5. The most important thing to remember when using Lexis/Westlaw is . . .
Legal research education has been slow to adopt information literacy as a framework, despite the demonstrated utility of this framework when applied to library instruction and assessment. This article defines law student information literacy (LSIL), analyzes how LSIL standards address existing and identified deficits in the current state of legal research education, and offers a copy of the draft LSIL standards. The recently approved AALL Law Student Research Competencies and Information Literacy Principles are appended to the article.

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Why LSIL?

Library instruction has gone through numerous changes since Otis Hall Robinson’s famous reply to Samuel Green’s paper, “Personal Relations Between Librarians and Readers.” Green conceived of library reference service as a type of personalized instruction, and in his paper, he charged reference librarians to “give [patrons] as much assistance as they need, but try at the same time to teach them to rely upon themselves and become independent.” In his reply, Robinson opined that a librarian should be much more than a keeper of books; he should be an educator. . . . No such librarian is fit for his place unless he holds himself to some degree responsible for the library education of his students. . . . It is his province to direct very much of their general reading; and especially in their investigation of subjects he should be their guide and friend. . . . [S]tudents get the most from me when they inquire about subjects that I know least about. They learn how to chase down a subject in a library. They get some facts, but especially a method. . . . All that is taught in college amounts to very little; but if we can send students out self-reliant in their investigations, we have accomplished very much.

Although we may roll our eyes at the anachronistic use of male pronouns, there is much in Robinson’s observation that applies to the students that we teach each day in our law libraries. Indeed, the practice of law has been particularly eager for graduates of law schools to be more “self-reliant in their investigations” for some time.

Most strikingly, the conversation between Green and Robinson indicates a vital scholarly debate about the role of instruction in libraries that had just begun to percolate, and has continued to brew ever since. As the scholarly “[I]nteresting note on the bibliographic instruction which has steadily grown since the 19th century,” the very notion of bibliographic instruction has reflected the debates contained within this literature. Known throughout the century by a variety of labels, such as Big Six and BI (Bibliographic Instruction), information literacy (IL) is the current operative heuristic intended to address this ongoing debate, as it is identified by the American Library Association (ALA) through its Association of College and Research Libraries (ACRL).

In the ten years since ACRL’s formal approval of the Information Literacy Competency Standards for Higher Education, a number of subject-specific inter-
est groups within ALA have drafted and gained approval for a variety of subject-
specific IL standards. However, law librarians have been relatively slow to adopt
our own subject-specific IL standards, despite the singular nature of legal research
and its impact on the practice of law. This article presents law student information
literacy (LSIL) as a subject-specific iteration of the ACRL’s IL initiatives, by first
articulating our current understanding of IL and analyzing LSIL standards, then
discussing deficits in research instruction identified in the MacCrate and Carnegie
reports and how LSIL addresses these deficits within the context of future uses for
LSIL, and appending the draft LSIL standards as they were first articulated. Finally,
appendix B provides the Law Student Research Competencies and Information
Literacy Principles. To understand exactly what LSIL is, however, we must first
understand the core concept of IL.

What Is Information Literacy?

§4 Information literacy is an assessment rubric designed by ACRL for measur-
ing the information literacy skills of an individual. ACRL defines IL as “the set of
skills needed to find, retrieve, analyze, and use information,” and articulated a set
of standards for IL in 2000. There are five top-level standards that are structured
according to a logical hierarchy: know, access, evaluate, use, and ethical/legal. ACRL
provides detailed explanations of these standards as follows:

1. **Know**: “The information literate student determines the nature and extent of
the information needed.”
2. **Access**: “The information literate student accesses needed information effec-
tively and efficiently.”
3. **Evaluate**: “The information literate student evaluates information and its
sources critically and incorporates selected information into his or her
knowledge base and value system.”
4. **Use**: “The information literate student, individually or as a member of a
group, uses information effectively to accomplish a specific purpose.”
5. **Ethical/Legal**: “The information literate student understands many of the
economic, legal, and social issues surrounding the use of information and
accesses and uses information ethically and legally. This standard recognizes
that students must be taught the social, economic and political issues sur-
rounding information, specifically the ethical and legal uses of information
and its technology.”

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8. ACRL INFORMATION LITERACY STANDARDS, supra note 6.
10. ACRL INFORMATION LITERACY STANDARDS, supra note 6.
11. “Each standard builds on and expands the previous one. In some cases . . . aspects of one
    standard are touched on briefly in others.” The Standards: Step-by-Step, ASS‘N OF COLL. & RESEARCH
    LIBRARIES, http://www.ala.org/ala/mgrps/divs/acrl/issues/infolit/standards/steps/index.cfm (last visited
    July 28, 2011).
12. Id.
These standards have been used in college and university libraries across North America for the purposes of assessment, curricular development, and programming. ACRL’s standards have also served as the basis for Project SAILS, the Standardized Assessment of Information Literacy Skills. Furthermore, these standards have served as the framework for WASSAIL, an open source information literacy assessment instrument recently developed at the Augustana Campus Library of the University of Alberta. Since the development of the standards, IL has become ubiquitous within the library literature. Indeed, since the publication of Breivik and Gee’s seminal study of information education in the academy, about 19,000 scholarly works have incorporated, analyzed, or otherwise referenced the term information literacy. While it is true that the term has not been commonly found in the legal and law library literatures, the general trend (especially since the ACRL standards were promulgated) has been toward an articulation of research skills as a set of the skills encompassed by the more holistic term information literacy, as figure 1, comparing the use of that term against research skills and bibliographic instruction, demonstrates.

Outside of academic libraries, IL has reached the attention of accrediting bodies. For example, the Middle States Commission on Higher Education has incorporated IL into their accreditation standards for higher education institutions. Their standard 11 explicitly mentions IL as an “essential component of any educational program at the graduate or undergraduate levels.” Additionally, several state initiatives have called for incorporation of IL standards into educational programming that requires certification. Given the breadth of academic, assessing...
ment, and regulatory material on this topic, there can be little doubt that IL will continue to shape library instruction, if not higher education as a whole, for years to come.

What Are the LSIL Standards?

§7 The LSIL standards are a set of standards and performance indicators that are based on the ACRL standards discussed above, but tailored to fit the skills, tools, and work product that we train law students to acquire, use, and create. They were drafted in 2009–2010 by members of the Joint Special Interest Section Committee on the Articulation of Law Student Information Literacy Standards. While the ACRL standards are a useful start, and critical to undergraduate education, the committee operated with the understanding that the particularized nature of legal research, with respect to content, research strategies, and tools, requires a subject-specific articulation of IL standards and competencies. Using the top-level ACRL standards as a framework, the committee began the work of articulating and honing LSIL standards and competencies in November 2009, in order to create standards for law student IL that could be used by member libraries of the American Association of Law Libraries (AALL) and legal research instructors. While the

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20. See appendix A, infra, for the complete text of the standards.

21. The Joint SIS Committee was chaired by the author. Molly Brownfield served as vice-chair. Academic Law Library (ALL-SIS) representatives on the committee were Kumar Jayasuriya and Laura Scott. The Foreign, Comparative, and International Law (FCIL-SIS) representatives were Mary Rumsey and Rachael Smith. Representatives from Private Law Libraries (PLL-SIS) were Jill L.K. Brooks and Susan van Beek. Representatives from Research, Instruction, and Patron Services (RIPS-SIS) were Thomas Mills and Karen Schneiderman.
mittee realized that our initial iteration of articulated LSIL standards would necessarily be limited to the subject area of U.S. law, the assumption was that these standards would need revision and reformulation, as both the tools of legal research and the practice of law itself also change.

¶8 Subsequently, AALL charged a Law Student Research Competency Standards Task Force with reviewing and applying LSIL standards to reflect the ever-changing landscape of practice. In March 2011, the executive board of AALL approved the Law Student Research Competencies and Information Literacy Principles articulated by this task force, an initial step that will foster the developments that this article contemplates.

¶9 The shape of the LSIL standards mirrors the overall shape of the ACRL standards: *identify, access, evaluate, apply*, and *ethical & legal issues of use*. These top-level standards are detailed below:

1. **Identify**: The information-literate law student is able to identify the type and sources of information appropriate to the problem or issue at hand.
2. **Access**: The student knows how to access the appropriate information effectively and efficiently.
3. **Evaluate**: The student also evaluates the information and its sources critically, in order to properly incorporate the appropriate information into reliable work product.
4. **Apply**: The student applies the information effectively to resolve a specific issue or need.
5. **Ethical & Legal Issues of Use**: The student distinguishes between ethical uses and unethical uses of information and understands legal issues arising from information discovery, use, or application.

While the resemblance to the framework of the top-level ACRL standards should be apparent, one key distinction between ACRL’s standards and the LSIL standards is that the latter are explicitly tied to the problem-solving work at the heart of legal analysis and research. This pragmatic approach is reinforced in the competencies and performance indicators that explicate each LSIL standard.

¶10 By means of example, LSIL Standard I recognizes law student information literacy through the student’s ability “to identify the type and sources of information appropriate to the problem or issue at hand.” The standard lists the following behaviors as indicative of such ability: naming the jurisdiction(s) able to exert authority over the issue at hand; articulating the legislative, regulatory, and judicial

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22. AALL charged the Law Student Research Competency Standards Task Force with reviewing the LSIL Standards to recommend whether or not AALL should adopt them, and if so, to revise and present them to the board for adoption. The Law Student Research Competency Standards Task Force was chaired by Sally Wise and included the following law librarians: Elizabeth Adelman, Beth DiFelice, Linda-Jean Schneider, Kay Moller Todd, and the author. *See Law Student Research Competency Standards Task Force, Am. Ass’N of Law Libraries, http://www.aallnet.org/committee/res_stds.asp* (last visited July 29, 2011). Appendix B, *infra*, contains the principles drafted by the task force.

processes; and explaining the hierarchical relationships among statutes, regulations, and judicial opinions. Each standard includes a set of behaviors indicating a student’s mastery of the material that the standard measures. But the clearest measure of the utility of these standards becomes apparent when we examine the gaps in legal research education that have already been noted in the literature.

The MacCrate and Carnegie Reports

§11 One aspect of legal practice that has not changed, perhaps even since the time of Blackstone, is the perception that new practitioners lack critical skills in legal research. In 2003, Paul Callister observed that “[e]ven before Westlaw and LexisNexis made ‘free’ passwords (at least from the student’s point of view) and unlimited online access available to virtually all law students, complaints about attorney and student research skills as well as legal research instruction were common themes in the literature . . .”24 However, the multitude of complaints is not limited to the realm of legal research education and training; the bar, judiciary, and professoriate have bemoaned numerous aspects of legal education. The most significant examples in recent literature are commonly known as the MacCrate Report, published in 1992,25 and the Carnegie Report, which followed more than a decade later.26

§12 We may see the depth of the MacCrate Report’s influence on legal research instruction most strikingly in its attempt to answer the oft-quoted question, “what skills, what attitudes, what character traits, what qualities of mind are required of lawyers?”27 Duncan Alford has provided a concise and accurate summary of what the MacCrate Report said and did:

The MacCrate Report emphasized the need, identified by practitioners, for additional skills training in law school and explored the role law schools should play in producing practitioners. The report identified ten “fundamental lawyering skills.” Among them were legal research and factual investigation. The report noted that legal research is “in essence a process of problem solving.” The MacCrate Report praised the “invaluable contribution” of clinics to legal education and noted favorably the funding provided by the Ford Foundation through the Council on Legal Education for Professional Responsibility (CLEPR) to support clinical legal education. The MacCrate Report also recommended that skills faculty should be permanent, full-time teachers within the legal academy.28

24. Paul Douglas Callister, Beyond Training: Law Librarianship’s Quest for the Pedagogy of Legal Research Education, 95 LAW LIBR. J. 7, 9, 2003 LAW LIBR. J. 1, ¶ 6 (footnote omitted). Callister goes on to list several comments on the inadequacy of research skills among new practitioners from the bar, the judiciary, and from law librarians, some dating back to 1902.
These recommendations were taken seriously by law schools, resulting in real changes to curricula. As Barbara Bintliff has noted, the MacCrate Report catalyzed enormous changes in legal writing and clinical courses, “the programs through which most fundamental lawyering skills are taught.”

¶13 The heart of the recommendations that the MacCrate Report puts forward is found in the second part of the report, titled “A Vision of the Skills and Values New Lawyers Should Acquire.” Within this section, the report first formulates “A Statement of Skills and Values,” in chapter 4, and subsequently presents the aspirational “Statement of Fundamental Lawyering Skills and Professional Values,” in chapter 5. The report summarizes its emphasis on legal research: “In order to conduct legal research effectively, a lawyer should have a working knowledge of the nature of legal rules and legal institutions, the fundamental tools of legal research, and the process of devising and implementing a coherent and effective research design . . . .” The report goes on to analyze legal research skills with respect to the following components, providing specific examples that demonstrate the concepts embedded within these skills: “Knowledge of the nature of legal rules and institutions; . . . knowledge of and ability to use the most fundamental tools of legal research; . . . [and] understanding of the process of devising and implementing a coherent and effective research design.”

¶14 Such analysis demonstrates the MacCrate Report’s emphasis on legal research as a fundamental skill; as noted in the report, “the ability to do legal research is one of the skills that any competent legal practitioner must possess.” It is also worth noting that the structure of the analysis MacCrate applied to legal research skills proved to be very influential in the drafting of the LSIL standards—perhaps as influential as ACRL’s standards. Indeed, the skills identified in the MacCrate Report are represented quite strongly throughout the standards.

¶15 We see this influence clearly when we juxtapose the MacCrate Statement on Legal Research with the LSIL standards themselves. Section 3.3 of the MacCrate statement sets forth the need for lawyerly “Understanding of the Process of Devising and Implementing a Coherent and Effective Research Design,” while LSIL Standards III and IV require that students demonstrate IL, first by critically evaluating “the information and its sources, in order to properly incorporate the appropriate information into reliable work product,” and then by applying “information effectively to resolve a specific issue or need.” However, each document’s subpoints and performance indicators express concern with very similar skills and tasks in

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29. Barbara Bintliff, Legal Research: MacCrate’s “Fundamental Lawyering Skill” Missing in Action, 28 LEGAL REFERENCE SERVICES Q. 1, 1 (2009) (noting that, in the post-MacCrate landscape, “mock trial and moot court competitions increased, providing additional outlets for the application of client skills and multiple writing opportunities; as often as not, clinical or writing faculty supervised these competitions. Law schools reallocated resources and invested significant funds in improving their offerings in these areas. For the most part, these programs taught the fundamental lawyering skills identified in the MacCrate Report; legal education and law graduates are the better for it.”).

30. AM. BAR ASS’N, supra note 25, at 157. Note the similarity between this language and the definitional phrase associated with the ACRL’s iteration of information literacy: “the ability to find, retrieve, analyze, and use information.” Introduction to Information Literacy, supra note 9.


32. Id. at 163.
language that is also strikingly similar. For comparison, the MacCrate Report emphasizes that

A lawyer should be familiar with the skills and concepts involved in:

\dots
c (c) Evaluating the various search strategies and settling upon a research design which should take into account:

(i) The degree of thoroughness of research that would be necessary in order to adequately resolve the legal issues \dots ;
(ii) The degree of thoroughness that is necessary in the light of the uses to which the research will be put \dots ;
(iii) An estimation of the amount of time that will be necessary to conduct research of the desired degree of thoroughness;
(iv) An assessment of the feasibility of conducting research \dots ;
\dots 
(vi) Strategies for double-checking the accuracy of the research . . . .

¶16 Although the statement seems to bear a slightly different focus than the LSIL standards, the competency indicators that underlie these standards yield a very similar outcome. Students may show their mastery of LSIL Standards III and IV through behaviors described under the performance indicators quoted below:

III.2.a. Evaluating the accuracy, authority, objectivity, currency, and coverage of legal and nonlegal information and information sources.

III.2.b. Describing the different purposes and relative strengths and weaknesses of different kinds of sources . . .

III.4.a. Verifying factual claims with information from knowledgeable authorities.

III.5.a. Determining if original information need has been satisfied or if additional information is needed.

IV.4.a. Reflecting on the successes or failures of prior strategies for integrating new information into the analysis.

IV.4.b. Recognizing when specific questions within a larger research problem have not been answered with the information compiled.

IV.4.c. Recognizing when the ultimate questions presented have not been fully answered through the research already obtained.

IV.4.d. Recognizing when sufficient research has been done to adequately address the legal issue or information need.

Despite the difference in precise topical foci between the MacCrate Report and the LSIL standards listed above, behaviors that demonstrate mastery of the material in both of these resources are quite similar: each requires that the law student or lawyer bring a methodical plan and a recursive approach to legal research.

¶17 Furthermore, while the MacCrate skills are a useful benchmark, they do not offer particular competencies to assess performance. Rather, the report links these skills to generalized descriptions of research sources, regardless of particular areas of practice. Moreover, the MacCrate skills are not tied to any other research instruction rubric, which complicates the development of assessment tools that might be based exclusively on its skills list. The MacCrate Report presents a useful start, but it merely points to gaps, without providing any means of bridging the gaps between the reality of and our aspirations for law student legal research proficiency. As noted

33. Id. at 160–62.
above, the report indicates deficits that many law students present in class and in
the workplace, but merely provides a framework, rather than the mechanism, to
remedy these deficits. The LSIL standards, with their structure and their perform-
ance indicators, can provide such a mechanism.

¶18 Unlike the MacCrate Report, the Carnegie Report did not devote separate
attention to legal research or legal research training. Rather, the Carnegie model
emphasizes a holistic approach to legal education that will apprentice law students
into the community of legal practice. In particular, the report proposes three
apprenticeship types: the cognitive apprenticeship, the expert practice apprentice-
ship, and the apprenticeship of identity and purpose.34 Of these three types, the
Carnegie Report discusses the cognitive apprenticeship most thoroughly. And
while law librarians might find a place for all three types of apprenticeships when
training law library students, it does seem that the domain of the cognitive appren-
ticeship most aptly fits the legal research training that is our classroom expertise.
Yet the authors of the report are careful not to allow these types to remain
individuated:

[An] adequate and properly formative legal education requires a better balance among the
cognitive, practical, and ethical-social apprenticeships. To achieve this balance, legal educa-
tors will have to . . . [carefully rethink] both the existing curriculum and the pedagogies
that law schools employ to produce a more coherent and integrated initiation into a life
in the law.35

¶19 This language strongly echoes the descriptions of IL as a general practice
that are offered in the literature. Tuominen et al. note that “[a]s IL skills do not
evolve in a vacuum, content is needed for these skills to occur and thus IL should
be contextualized within the structures and modes of thought of particular disciplines.”36
In short, while the Carnegie Report does not explicitly address legal
research or even contemplate IL, the report reads as if it is recommending an
IL-supported approach toward a holistic program of legal training and apprentice-
ship that immerses students fully in the context and the community of legal
practice.

¶20 Still, the Carnegie Report has exerted a powerful influence across the world
of legal research education, and like the MacCrate Report, it has generated mani-
fold responses in print and within law schools. Taken together, both of these
reports stand for the proposition that our system of legal education and profes-
sional development has been underserving law students for generations now, and
in some cases, catastrophically.37 Focusing instructional efforts on a set of lawyer-
ing skills and professional values, as the MacCrate Report recommends, can pro-
vide the framework to address this proposition.38 The LSIL standards, likewise, are
ready to serve as one element within this framework.

34. SULLIVAN ET AL., supra note 26, at 28.
35. Id. at 147.
36. Tuominen et al., supra note 5, at 334.
38. SEE AM. BAR ASS’N, supra note 25, at 330–32.
What Can Be Done with LSIL Standards?

¶21 The LSIL standards provide a baseline articulation of the set of behaviors associated with competency in legal research. This articulation is valuable in and of itself as a statement of the skills that the legal research professoriate aspires to inculcate in our students. But it is also valuable because it provides us with a baseline set of skills that may be evaluated. The articulation or selection of standards is an essential step in evaluation, for it is these standards that provide evaluators with skills that may be measured. To this end, the LSIL standards represent the beginning of a methodical approach to evaluating legal research competency.

¶22 This approach may well take place within the curricular context. As law schools have been revising curricula in response to the Carnegie Report, standards that enumerate and analyze the research skills that law students should have acquired by the time they graduate can be used to benchmark elements of a given curriculum, and can also be revised to reflect changes that result from improvements in student performance. Furthermore, an analytic focus on research skills, grounded in a common set of standards, makes a comprehensive approach toward including research skills in doctrinal and clinical classes much more accessible. As Bintliff has noted,

[L]aw librarians, through responsive services tailored to faculty needs, have so successfully insulated law faculty from the realities of today’s research environment that the faculty are not making their curricular decisions based on actual knowledge of how research has changed since their years in law school and how it is currently conducted in law firms. For at least the last fifteen years, academic law libraries have emphasized “faculty services,” dedicating personnel to providing expert research services to faculty on demand and assisting and supervising faculty research assistants to enable them to do the same. Many law faculty members no longer know how to perform the research themselves and have lost sight of the importance of being able to research in both legal education and the daily practice of law. The end result is that law schools have decreased their emphasis on legal research instruction, neglecting this critical component of legal education.39

¶23 Bintliff cogently demonstrates how academic law librarians have been able to use their research skills to yield less research capacity from one of the communities that relies on them the most: law faculty. By reengaging with research training and scholarship, and away from merely providing research services and materials, we also return to a position within the academy that emphasizes another of our skills— instructional expertise.40 Redirecting our focus toward this instructional expertise would not only reintroduce the acquisition of research skills into the curriculum, it would also provide the doctrinal and clinical faculty with a summary of what research skills entail, and how they can identify students who present these skills.

¶24 Finally, LSIL can also be used within the overall context of administrative and educational efficiency within individual universities. Because LSIL derives

40. See Carol A. Parker, The Need for Faculty Status and Uniform Tenure Requirements for Law Librarians, 103 LAW LIBR. J. 7, 15–16, 2011 LAW LIBR. J. 1, ¶ 20 (discussing why law librarians might need to emphasize their academic and instructional contributions).
from ACRL’s work in IL, adopting LSIL standards can provide law libraries access to the overall trend toward IL. Adopting LSIL standards allows law libraries to frame their curricular development in terms that dovetail with existing library curricula and programming. This not only allows institutions to tackle the perennial problems of IL across the curriculum and differentiated levels of higher education, it also enables a comprehensive approach to training researchers.

Standardized Assessment

¶25 The National Council of Bar Examiners (NCBE) has articulated plans to develop a component measuring legal research skills to be added to the Multistate Bar Exam. However, one of “the most challenging aspects of including legal research on the bar exam [is] defining minimal competency and determining how that competency will be measured.” To this end, it is worth noting that “a statement of the specific assumptions about the legal research environment and the legal research knowledge and competencies that would be evaluated on the bar exam does not yet exist.” While the MacCrate Report offers a brief but compelling discussion of the importance of legal research, and although AALL has offered a lengthy and highly detailed compendium of legal research skills based on the MacCrate Report, the observation about the lack of a statement of legal research knowledge and competencies that might be testable is still true.

¶26 It is critical that law librarians articulate our own LSIL standards independently of NCBE, so that we might offer responsible contributions to the development of NCBE’s assessment tool. After all, without foundational knowledge of the types of legal authority and how each type is generated, law students cannot begin to research legal issues effectively. NCBE is responding precisely to this particular gap, and AALL should also contribute significantly toward the resolution of these issues. LSIL standards are a foundational step toward such a contribution. LSIL standards also provide a statement of legal research knowledge and competencies that can support an examination constructed according to item response theory

41. Among all U.S. academic libraries, 46.3% have either defined IL or defined the information-literate student. Among all Carnegie-classified “Doctoral/Research” libraries, 50.9% have defined IL, and 38.9% have incorporated IL into their institution’s mission. Looking at Carnegie-classified “Master’s I & II” libraries, 60.7% have defined IL, and 38.8% have incorporated IL into their institution’s mission. U.S. DEPT OF EDUC., ACADEMIC LIBRARIES 2008: FIRST LOOK 16 tbl.13 (2009), available at http://nces.ed.gov/pubs2010/2010348.pdf.


43. Barkan et al., supra note 42, at 284.

44. Id. at 289 n.4.

(IRT). Tests constructed according to IRT rely on mathematical models that link performance on a particular test item with the characteristics that the test measures. Although this concept dates back to the 1940s, it has been the dominant mode of constructing tools that measure and evaluate performance only within the past forty years, due to advances in mathematical modeling that have been facilitated by increased access to computing power.46 Since IRT is currently the dominant mode of constructing assessment measures, any assessment of legal research skills will necessarily start from such a statement of standardized legal research knowledge and competencies.

**Measuring Research Performance by Institution**

¶27 LSIL standards are also essential to the creation of a library-focused assessment tool sufficient to provide meaningful data as a complement to NCBE’s legal research exam. LSIL standards will provide a set of baseline competencies that each legal research program can use as a curricular foundation. Moreover, an LSIL assessment tool would allow the profession to identify best practices among research curricula, which would in turn help the profession hone its reflective, critical dialogue on research education and training.

¶28 To be sure, the prospect of measuring student research aptitude by institution is daunting to many. The current system of ranking by *U.S. News & World Report* is famously problematic,47 and it is not likely that law schools will be eager to adopt another ranking system that might add to these controversies. But bar passage information is available and is used as a ranking criterion; law librarians must not ignore the opportunity to have an effect on a critical input into student research skills that will inevitably affect these rankings.

**Conclusion**

¶29 From the perspective that hindsight offers, it seems that by paying only scant attention to the concept of IL, law librarians may have overlooked a very useful model for research aptitude, precisely when we are in particular need of such models. Indeed, as law schools seek to attract more students, curricular trends toward practical skills instruction will also increase, and LSIL standards can provide a useful touchstone for the legal research instruction that is at the core of the legal skills curricula. As a conceptual model, LSIL provides a common framework for legal research inquiry and instruction, as well as access to the current scholarship in library instruction for law librarians. In short, LSIL not only addresses curricular


and scholarly concerns in legal research education, it also provides new fields for assessment.

¶30 Of late, law schools are facing increased pressure for accountability and educational reform from states, from students, and from law faculty as well as the legal profession; the time is right for methodical evaluation of how students perform against a standard set of research skills. The first step in such evaluation is the formal adoption of the LSIL standards by the professional associations representing the legal academy, which would not only result in the addition of critical baseline standards for measuring student legal research aptitude, but also open up a new area of scholarship addressing the acquisition of legal research skills.

¶31 However, the suggestions presented here are but inchoate ideas following on from developments in the larger world of academic librarianship; the ultimate use and value of LSIL standards cannot be known until we choose to adopt and implement them. Now that the Law Student Research Competencies and Information Literacy Principles have been approved by AALL, the gateway ahead of us has been merely opened. There is still much work to be done, and the road to fully assessing LSIL among law students, recent graduates, and new associates remains at our feet, ready for us to race along it to the end.
Appendix A

Draft LSIL Standards

Standard I: Identify the type and sources of information appropriate to the problem or issue at hand.

What the student needs to do:

1. Identify whether the issue at hand requires application of statute, case law, regulation, or other relevant information.

   Examples of behaviors that indicate mastery:

   a. Identifying research strategies appropriate to analyzing the problem at hand.
   b. Naming the jurisdiction that controls the issue at hand. Knowing whether the issue is governed by judicial, administrative, constitutional, or statutory authority (or some combination thereof).
   c. Articulating the processes of legislation, regulation, constitutions, and case law, including the theories that underlie the authority of each process.
   d. Distinguishing between official case reporters and commercially published case reporters; and between official statutory codes or compilations and commercially published statutory codes or compilations. Describing contents normally found in case and statutory annotations.
   e. Explaining the hierarchical relationships between statutory authority, regulatory authority, and judicial opinions. Articulating how case law, constitutions, statutes, regulations, or other legal authority will address the problem the student is facing.
   f. Identifying the secondary sources that aid in finding the information relevant to analyzing the issue at hand.

2. Determine which research tools are most appropriate for the problem at hand.

   Examples of behaviors that indicate mastery:

   a. Finding authoritative sources for legal authority: knowing how and when to refer to constitutions, knowing to find cases in reporters or case law databases, statutes in statutory compilations, and regulations in administrative codes.
   b. Distinguishing between official and unofficial publications for each type of legal authority, and describing the advantages of each type of publication.

3. Consider the costs and benefits of acquiring the needed information.

   Examples of behaviors that indicate mastery:

   a. Demonstrating a basic familiarity with the costs of online or computer-assisted legal research.
   b. Starting a research task with the most cost-efficient source; determining cost efficiency by balancing the cost of print or online service against its ease of use.
c. Drafting a realistic overall plan and time line for acquiring the needed information, analyzing the problem, and applying new resources or analysis as needed.

Commentary on Standard I

Standard I requires that the student determine whether analysis of the problem presented requires applying constitutional authority, statutory authority, regulatory authority, common-law authority, scholarship, or some combination of the above. Such determination requires deciding if legislative history, regulatory history, or judicial posture will be useful in analyzing the issue at hand. The student who masters Competency 1 above will be familiar with recognized secondary sources of legal information, such as the American Law Reports, legal encyclopedias such as Corpus Juris Secundum and American Jurisprudence, practice guides, form books, and subject-specific hornbooks and treatises.

The student who masters Competency 2 above should be familiar with the differences between resources that cover overlapping information. For example, this student should be able to explain how the contents of the Federal & State Cases, Combined database in LexisNexis differ from LexisNexis’s Federal Court Cases, Combined database and the State Court Cases, Combined database.

Standard II: Access the appropriate information effectively and efficiently.

What the student needs to do:

1. Select the most appropriate sources for accessing and obtaining the needed information.

Examples of behaviors that indicate mastery:

a. Identifying and selecting databases, library catalogs, print resources, and other sources most appropriate to the information need.

b. Distinguishing between the different types of information-gathering strategies, such as using tables of contents, indices, and digests, as well as a variety of processes for using query-driven database searches. Understanding how to use search engines appropriately and effectively.

c. Seeking out knowledgeable individuals in the library, law school, and community as part of the research plan, mindful of the ethical obligations as articulated in Standard V, infra.

2. Construct, implement, and refine well-designed search strategies that use a variety of methods to find information.

Examples of behaviors that indicate mastery:

a. Demonstrating knowledge of cost-effective research by appropriately using print resources and open access web search engines to supplement results from legal and other subject-specific databases.

b. Using terms of art and other appropriate legal terminology when asking research questions or constructing search queries, and recognizing the dif-
ferent effects of using keywords, synonyms, and vocabulary from the database's own particular list of subject keyword terms.

c. Creating and using effective search strategies in multiple legal sources using advanced search features; refining searches as needed later in the process to obtain additional or missing information.

d. Updating results through citators such as Shepard's, KeyCite, and other supplemental materials, as part of the research plan.

e. Reflecting upon initial choices and strategies for sources of information as ongoing research reveals more about the problem at hand, and revising these choices as necessary.


*Examples of behaviors that indicate mastery:*

a. Producing accurate citations and reference lists using professionally and jurisdictionally appropriate documentation style.

b. Systematically recording all pertinent information for future reference.

Understanding knowledge management systems (KMS) and using them appropriately.

c. Documenting sources and search strategies by, for example, taking notes on content and bibliographic information in order to cite the source appropriately.

*Commentary on Standard II*

The student who masters Competency 1 above will know how to use jurisdiction- and discipline-specific publications and databases such as state or federal practice guides, Westlaw, LexisNexis, HeinOnline, Thomas, GPO Access, FDsys, and PACER; will know how to find state and local bar sites; federal, state, and local library catalogs; city, county, and zoning codes; as well as jurisdictionally or topically relevant legal research guides; may also know how to use subject-specific databases such as those found through the Securities & Exchange Commission, CorporateCounsel.net, Property Finder, and Accounting Standards.

“Advanced search features” may include the ability to use Boolean operators, truncation, and proximity searches, as well as natural language search functionality.

The student who masters Competency 2 above will be familiar with the differences between these search capabilities and will know when to use each type of search.

Competency 3a above contemplates citation formats such as those found in *The Bluebook: A Uniform System of Citation*, the *ALWD Citation Manual*, or the citation guidelines particular to local rules adopted in federal and state courts as containing “professionally and jurisdictionally appropriate documentation style.” Students will demonstrate mastery of this competency by knowing which citation format to adopt when preparing work product.

Knowledge Management Systems, or KMSs, are increasingly common in law schools and legal clinics, as well as firms, and are marketed under names and marks such as CaseMap, West KM, Amicus Attorney, Needles, and Abacus Law, *inter alia*. Students who master Competency 3b above need not know the details of the various KMSs used at large, but they should know how to use the KMS they find in their office or clinic.
Standard III: Critically evaluate the information and its sources, in order to properly incorporate the appropriate information into reliable work product.

What the student needs to do:

1. Identify and summarize the main elements of the gathered research work product, and synthesize these elements to construct new concepts applicable to resolving the problem at hand.

   Examples of behaviors that indicate mastery:

   a. Describing the differences between and the relative importance of rules, holdings, and dicta in court decisions.
   b. Distinguishing between binding and persuasive authority.
   c. Distinguishing otherwise binding cases from the facts at hand.
   d. Comparing the research work product with and applying it to the problem or issue at hand.

2. Apply appropriate criteria for evaluating both the information and its source.

   Examples of behaviors that indicate mastery:

   a. Evaluating the accuracy, authority, objectivity, currency, and coverage of legal and nonlegal information and information sources.
   b. Describing the different purposes and relative strengths and weaknesses of different kinds of sources. Explaining the differences among types of primary sources, such as statutes, cases, and regulations; or among types of secondary sources, such as Restatements, treatises, hornbooks, and nutshells.
   c. Articulating the relationships between print and electronic sources. Demonstrating awareness of the availability of complete or incomplete versions of some sources, e.g., by acknowledging the availability of tabular or graphic material from some vendor-supplied cases or law review articles. Describing the added value and limitations of print and electronic sources.

3. Compare new knowledge with prior knowledge to determine value added, contradictions, or other unique characteristics of the information and take steps to reconcile differences.

   Examples of behaviors that indicate mastery:

   a. Recognizing and addressing contrary authority; incorporating into analysis a case that may stand for a proposition at odds with the argument at hand without completely contradicting the argument.
   b. Incorporating factually dissimilar yet legally relevant cases by drawing parallels to the facts at hand.
   c. Synthesizing recent decisions into an existing line of case-law doctrine.

4. Validate understanding and interpretation of the information through discourse with other individuals, subject-area experts, or practitioners.
Examples of behaviors that indicate mastery:

a. Verifying factual claims with information from knowledgeable authorities.

b. Participating actively and responsibly in live or virtual discussions.

c. Seeking expert opinion through discussions with law professors or consultations with law librarians.

5. Determine whether the initial queries should be revised.

Examples of behaviors that indicate mastery:

a. Determining if original information need has been satisfied or if additional information is needed.

b. Reviewing research strategies and incorporating additional concepts as necessary.

c. After reviewing initial information retrieval sources and strategies used, expanding or narrowing the initial query to include or exclude terms or methods as needed; e.g., using a “Key Number” or “Topic Search” in place of a “Terms & Connectors” or “Natural Language” search which may have excluded relevant results that relied upon slightly different terms of art.

Commentary on Standard III

Students who master Competencies 2 and 5 above should understand that the online “Key Number,” “Topic Search,” or other indexical systems for electronic sources generally reflect the same organizational strategies as each system’s corresponding print sources. Students who find print versions of particular materials easier to use than their electronic counterparts (or vice versa) should be able to describe why.

Students who master these competencies will also know (and be able to describe) the advantages and limitations of annotated statutory compilations and official statutory compilations. Information-literate law students will incorporate this understanding into their approach to research accordingly.

Students who master Competency 4 above should be able to constructively engage in a variety of discussion formats, including academic and professional colloquia, continuing education seminars, and electronic communications designed to encourage discourse on the topic. Responsible participation in such fora is a key measure of a student’s mastery and application of this particular competency.

Standard IV: Apply information effectively to resolve a specific issue or need.

What the student needs to do:

1. Apply legal information and research results to the planning, creation, and revision of an argument, brief, or analysis.

Examples of behaviors that indicate mastery:

a. Describing the binding authority of legal information relevant to the legal question at hand and as applied to the specific issue or need.
b. Articulating the hierarchy of legal authority and incorporating this articulation into analysis of the question at hand.
c. Determining when legal information from other jurisdictions is relevant as persuasive authority in resolving the question at hand.
d. Identifying secondary sources that are persuasive authority to resolve the question at hand, and determining if a treatise is a well-known authority on a topic.

2. Seek background information to help understand the legal issue at hand.

*Examples of behaviors that indicate mastery:*

a. Determining background information to help answer a legal issue or need; using records of constitutional conventions, legislative histories, congressional reports, administrative histories, or trial or appellate briefs from cases on point with the issue at hand.
b. Using background or historical information about given legal authority when relevant to analyzing the issue at hand.

3. Apply information from disciplines other than the law, when appropriate, to the planning, creation, and revision of an argument, brief, or analysis.

*Examples of behaviors that indicate mastery:*

a. Identifying scholarship from other disciplines relevant to resolving a specific issue.
b. Demonstrating understanding of how courts or other legal decision makers have applied materials from other disciplines in the past, and determining when material from these disciplines might be persuasive in resolving a particular issue.

4. Know when to conduct more research to better resolve a specific issue or need.

*Examples of behaviors that indicate mastery:*

a. Reflecting on the successes or failures of prior strategies for integrating new information into the analysis.
b. Recognizing when specific questions within a larger research problem have not been answered with the information compiled.
c. Recognizing when the ultimate questions presented have not been fully answered through the research already obtained.
d. Recognizing when sufficient research has been done to adequately address the legal issue or information need.

5. Communicate the argument, brief, or analysis effectively to others.

*Examples of behaviors that indicate mastery:*

a. Organizing and integrating content, quotations, and paraphrasing in a manner that supports the purposes and format of the argument, brief, or analysis.
b. Choosing a communication medium, format, and style that best supports the purposes of the argument, brief, or analysis for the intended audience and integrating charts, maps, or photos into this document or presentation for maximally persuasive effect, when appropriate.

c. Citing authority in the chosen medium according to Standard II, Competency 3, supra.

Commentary on Standard IV

Students who master Competency 1 above should know that statutory authority has more binding weight than regulatory authority; they should also be aware that authorizing statutes limit the weight of a regulation and that the regulation may be unenforceable if it exceeds the agency’s statutory authority. Similarly, students mastering this competency should also know that courts or administrative agencies can designate certain decisions as “nonbinding,” and should be able to incorporate sources so designated into their analyses. In short, mastering this competency requires mastering the distinctions at the core of Standard III, Competency 1, and subsequently applying the hierarchical order of binding legal authority to these distinctions.

Students who master Competency 2 above should be able to determine if the history behind a given legal authority can help analyze the issue at hand. In particular, the student should be able to identify when legislative histories, litigation briefs, or administrative histories can bring relevant information to bear upon the issue at hand. For example, students should understand that federal regulations published in the Federal Register include background information about why the agency created the regulations and how the agency responded to the public comments submitted during the rule-making process. They should be able to find and use legislative history when analyzing statutory authority, litigation documents when analyzing case law, and most significantly, they should be able to synthesize the relevant research strategies above when analyzing an issue that incorporates a combination of statutory authority, regulatory authority, and case law.

Students who master Competency 4 above should know when to stop researching a topic as a matter of efficiency when a memo or other document on the topic can provide an answer to the issue at hand, or when further research will not help analyze the issue at hand because all relevant information has been incorporated into existing analysis.

Standard V: Distinguish between ethical uses and unethical uses of information, and understand legal issues arising from information discovery, use, or application.

What the student needs to do:

1. Articulate the factors that determine the ethics of information use, as well as the legality of information use, in order to use information in conformity with a lawyer’s obligations to the court, the bar, and society.
Examples of behaviors that indicate mastery:

a. Comprehending and complying with laws and organizational (firm, school, court) rules on access to information resources and storage and dissemination of information.

b. Demonstrating an understanding of intellectual property, copyright, and fair use of copyrighted material.

c. Articulating privacy, confidentiality, security, diligence, and other ethical issues related to research and practice in accordance with the Model Rules of Professional Conduct, the Model Code of Professional Responsibility, or the prevailing local law governing legal ethics.

2. Apply laws, rules, and other legal authority governing a lawyer’s use of information in the course of practice.

Examples of behaviors that indicate mastery:

a. Using citation of sources to respect authors’ intellectual property rights and accurately indicating where the words and ideas of others have been used.

b. Comprehending and complying with license and subscription agreements.

*No commentary on Standard V*
Appendix B

Law Student Research Competencies and Information Literacy Principles*

Introduction

The Law Student Research Competency Standards Task Force of the American Association of Law Libraries (hereinafter Task Force) presents this paradigm of general research competency principles to foster the development of different models and eventually best practices.1

There is a growing body of literature and a lively discussion among members of the legal academy and the practicing bar about the research competency skills of law school graduates. This dialogue among stakeholders is essential to forge change. In our discussions, we determined that continuing communication and collaboration between law schools, legal employers, and the law school accrediting body2 are fundamental to any efforts to address and improve the research skills of law students.

To this end, law school programs should reflect the realities of the legal field. In particular, an understanding of the many varied legal practice business models is vital. In today’s environment, law firm success hinges on billable time, effective time management, effective communication, effective peer collaboration, and cost recovery. Similarly, efficient research habits in governmental and nonprofit settings ultimately benefit those employees and the public. Highly competent research skills, effective problem solving skills, and critical thinking skills are keys to success in all areas of legal practices of today and the future.

The Task Force is confident that this paradigm of general research competency principles will engage more stakeholders in the dialogue about the need to establish benchmarks in this area. These benchmarks should include the development of a detailed list of required skills to reflect the needs of the legal employers of the twenty-first century.

We offer our five Law Student Research Competency Principles for consideration, and for use in the following discussions:

• law school curriculum development and design;
• law firm planning, training, and articulation of core competencies;
• bar admission committee evaluation of research skills of applicants;
• continuing legal education program development;
• law school accreditation standards review.3

* Drafted by the AALL Law Student Research Competency Standards Task Force; approved by the AALL Executive Board, March 2011.

1. The foundation of the task force’s principles are the Information Literacy Competency Standards for Higher Education, endorsed both by the American Association for Higher Education and the Council of Independent Colleges. Information literacy as defined by ACRL is the set of skills needed to find, retrieve, analyze, and use information. See http://www.ala.org/ala/mgrps/divs/acrl/issues/infolit/overview/intro/index.cfm. A significant body of literature on information literacy has developed over the years.

2. The Section on Legal Education and Admissions to the Bar of the American Bar Association administers the law school accreditation process.

3. The Section on Legal Education and Admissions to the Bar is discussing student learning outcomes in proposed Standard 202.
Principle I: A successful researcher should possess fundamental research skills.

- **Law students should have an understanding of the complexities of the legal system.** They should know the processes and the interrelationships between the three branches of government and the legislation, regulations, and case law they produce. They should distinguish between official and unofficial sources of law and should place issues in context.

- **Law students should know how to effectively use secondary sources.** They should distinguish between primary and secondary sources of law. They should identify and use secondary sources for background information, to gain familiarity with terms of art, and to put primary sources in context.

- **Law students should have an awareness of the cost of research.** They should understand the costs associated with research using all formats. Further, they should identify where cost and efficiency intersect in the selection of format.

Principle II: A successful researcher should implement effective, efficient research strategies.

- **Law students should select appropriate sources for obtaining required information.** Based on the authority governing the issue, law students should determine which research tools are best suited to analyze the issue, and then they should validate the completeness and appropriateness of the selected sources.

- **Law students should construct and implement efficient, cost-effective search strategies.** Law students should first break the problem down into its components and determine an approach to each of them. They should draft research plans and time lines that include identifying the most cost-efficient sources, appropriately using available resources to perform the research, and using supplemental materials to validate and update results.

- **Law students should confirm and validate research results, incorporating existing work product and expertise.** Law students should confirm the validity of their results by consulting prior work product, when appropriate and available. They should also seek out knowledgeable legal researchers for guidance, when necessary, considering ethical obligations.

- **Law students should document research strategies.** They should record all pertinent information, such as resources and methods used, for future reference. They should produce accurate citations and reference lists using appropriate documentation style.

Principle III: A successful researcher should critically evaluate legal and nonlegal information and information sources.

- **Law students should critically evaluate the validity and credibility of information sources.** They should know the different purposes and the relative strengths and weaknesses of different types and formats of information sources. They should be able to translate skills used for familiar
information sources in order to master new information resources.

- **Law students should critically evaluate retrieved information.** They should distinguish between binding and persuasive authority and distinguish otherwise binding authority from the facts at hand. They should recognize and address contrary authority and incorporate factually dissimilar yet legally relevant authority by drawing parallels to the facts.

- **Law students should synthesize the results of their research to construct new concepts applicable to resolving the problem at hand.** They should draw analogies between their situation and other areas of the law, when appropriate.

**Principle IV: A successful researcher should apply information effectively to resolve a specific issue or need.**

- **Law students should understand the context for the legal issue under analysis.** They should research background or historical information, such as legislative or administrative histories, where that context can inform the analysis. They should apply scholarship from other disciplines, consistent with the use made of nonlegal materials by courts and other decision makers in the past.

- **Law students should modify the initial research strategy as suggested by preliminary results.** They should incorporate additional concepts when implicated by preliminary results, and expand or narrow research queries when they retrieve unanticipated results due to the coverage of research tools or the operation of search engines.

- **Law students should determine when research has provided sufficient background to explain or support a conclusion.** They should ensure that all questions posed are answered. They should identify unresolved issues and incorporate as appropriate analogous background where research did not clearly resolve the issue posed.

- **Law students should use the results of their research to formulate their legal analysis and to prepare their work product.** Law students should apply principles of relevance and priority to the authority cited, taking care to choose a format and style that are appropriate for the audience and that best support their analysis. They should organize and integrate the results of research into a persuasive document. They should also cite authority consistent with locally accepted rules, ensuring that cited references can be located by the reader.

**Principle V: A successful researcher should be able to distinguish between ethical and unethical uses of information and understand the legal issues arising from discovery, use, and application of information.**

- **Law students should have a mastery of information ethics and should be able to articulate the factors that determine whether an information use is ethical.** They should understand that the analysis of information ethics includes determining the lawyer’s ethical obligations to the court,
the bar, and society. They should also understand the organization’s (firm, school, court, corporation) rules on access, storage, and dissemination of information.

- **Law students should apply laws, rules, and other legal authority that govern a lawyer’s use of information in the course of practice.** They should understand the principles of intellectual property, copyright, and fair use. They should also use source citations properly, to accurately indicate where the words and ideas of others have been found, and they should understand and comply with license and subscription agreements and other limitations.
The Use of Non-MARC Metadata in AALL Libraries: A Baseline Study*

Robert Richards**

This article reports results of a recent survey of AALL libraries respecting non-MARC metadata practices, with a focus on interoperability. Results cover types of collections described with non-MARC metadata, as well as metadata standards, platforms, and tools. Results suggest substantial, though incomplete, awareness among respondents of metadata interoperability and the factors that enable it.

Introduction and Background

Greater use of non-MARC metadata is a key recent development in library technical services. Libraries, and particularly academic libraries, have begun to use...
non-MARC metadata to describe digital materials in their collections, and research suggests that library use of such metadata will likely increase. Library leaders are calling for the next generation of integrated library systems and discovery tools to accommodate non-MARC as well as MARC metadata, and many vendors and open source developers appear to be responding. The factors informing the need


for libraries to gain expertise in creating and managing non-MARC metadata include library patrons’ demand for digital information resources—such as data sets, multimedia, “new” media such as blog posts, and unpublished or semipublished texts—that are typically described using non-MARC metadata, and libraries’ roles in digitization projects and the management of digital libraries and institutional repositories.³

¶2 Further, the trend toward sharing and harvesting metadata describing information resources is influencing libraries’ approach to non-MARC metadata creation and management.⁴ In the present networked environment, most individuals report beginning their research with commercial search engines such as Google and Yahoo.⁵ In addition, many scholars now provide open access to their scholarly

will be able to serve as a repository for both existing and future library metadata.”); About the Project, NEW ENG. LAW LIBRARY CONSORTIUM, http://www.nellco.org/index.cfm?pageId=505&parentID=504 (last visited May 16, 2011) (describing the Universal Search Solution project).


4. See, e.g., KAREN MARKEY ET AL., CENSUS OF INSTITUTIONAL REPOSITORIES IN THE UNITED STATES: MIRACLE PROJECT RESEARCH FINDINGS 14, 156 (2007), available at http://www.clir.org/pubs/reports/pub140/pub140.pdf (reporting that out of forty-eight U.S. academic libraries that have implemented institutional repositories, “[m]any IRs employ shared standards such as ... the Open Archives Initiative Protocol for Metadata Harvesting (OAI-PMH”); KAREN SMITH-YOSHIMURA, RLG PROGRAMS DESCRIPTIVE METADATA PRACTICES SURVEY RESULTS 9 (2007), available at http://www.oclc.org/programs/publications/reports/2007-03.pdf (reporting, respecting a survey with total of eighteen RLG-member respondents, “a quarter of [those that use MARC metadata expose it] by using the Open Archives Initiative—Protocol for Metadata Harvesting (OAI-PMH); ... [a]bout 40% of respondents expose some or all of their metadata to OAI harvesters”); SMITH-YOSHIMURA & CELLENTANI, supra note 1, at 16 (stating that as of August 2007, two-thirds of seventy-nine respondents from eighteen RLG institutions reported using both qualified and unqualified versions of the Dublin Core metadata schema); Jan Ryan Novak & Leslie A. Pardo, The Evolving Nature of Faculty Publications, LEGAL REFERENCE SERVICES Q., nos. 1–2, 2007, at 209, 216 (noting recommendations that law librarians enhance access to the scholarship of their law faculty by creating high-quality metadata in faculty publications databases or institutional repositories); Palfrey, supra note 3, at 181–82 (calling on technical services librarians to combine diverse types of metadata in “a new, open citator, a system ... which [would] link a statute, the case law, the article that critiques it, the treatise that comments on it, the foreign law that copies it, the treaties that drive it”; all of this metadata “would be publicly available, with APIs (application programming interfaces) open for systems to interconnect”).

5. See, e.g., CATHY DE ROSA ET AL., PERCEPTIONS OF LIBRARIES AND INFORMATION RESOURCES: A REPORT TO THE OCLC MEMBERSHIP 1–17 (2005), available at http://www.oclc.org/reports/pdfs/Percept_all.pdf (“The ... findings [of a survey of English-speaking persons in the United States and five other nations] indicate that 84 percent of information searches begin with a search engine,” and the figure among college students was 89%). See also Vicki Burns & Kenn Harper, Asking Students About Their Research, in STUDYING STUDENTS: THE UNDERGRADUATE RESEARCH PROJECT AT THE UNIVERSITY OF ROCHESTER 8 (Nancy Fried Foster & Susan Gibbons eds., 2007), available at http://www.ala.org/ala/mgrps/divs/acrl/publications/digital/Foster-Gibbons_cmpd.pdf (finding that, of
works free of charge through preprint services, institutional repositories, or open access journals.\(^6\) Responding to these trends, many information providers, including libraries, consortia such as OCLC, journal publishers, preprint services such as the Social Science Research Network (SSRN), and institutional repositories now expose their metadata to commercial search engines.\(^7\)

\(\S\) Further, many libraries and other information intermediaries are seeking to improve access to information by creating new collections of descriptive metadata records, by harvesting that metadata over the Internet.\(^8\) Such large-scale sharing

fifteen surveyed undergraduates, “20 percent reported using only Google” “before seeking assistance at the reference desk”), 75 (reporting that “a significant trend” in undergraduates’ research is to “start with the instructor’s recommendations, move quickly to the online library catalog, and then on to Google”).

6. See, e.g., Bo-Christer Björk et al., Scientific Journal Publishing: Yearly Volume and Open Access Availability, 14 INFO. RES., no. 1 (Paper No. 391, 2009), http://informationr.net/ir/14-1/paper391.html (estimating that of scholarly articles published in 2006, 19.4% were available via open access, including 11.3% via self-archiving and 8.1% via open access journals); Novak & Pardo, supra note 4, at 213 (describing dissemination of faculty scholarship via “open access journals, deposit of pre-prints or post-prints in a digital archive (e.g., SSRN or bepress), and publication on one’s own and/or an institutional web site,” and noting that “[n]early fifty legal journals have already adopted the Creative Commons’ Open Access Law Journal Principals [sic] and there is no doubt the list will grow”) (footnote omitted); Palfrey, supra note 3, at 177 (“Scholars are publishing their work in various formats including online open access formats and blogs.”); Stephanie L. Plotin, Legal Scholarship, Electronic Publishing, and Open Access: Transformation or Steadfast Stagnation?, 101 LAW LIBR. J. 31, 53–56, 2009 (describing the significance of legal blogs as a form of scholarly communication); Solum, supra note 4, at 856–57, 861 (describing open access to legal scholarship via SSRN and law school web sites).

7. See, e.g., CHRISTINE L. BORGMAN, SCHOLARSHIP IN THE DIGITAL AGE: INFORMATION, INFRA-STRUCTURE, AND THE INTERNET 235 (2007) (“Publishers and booksellers are exposing their metadata for harvesting, which is why . . . search engines can retrieve surrogate records for journal articles and books.”); SMITH-YOSHIMURA, supra note 4, at 9 (reporting, respecting a survey with a total of eighteen RLG-member respondents, “[a] majority of [those that use MARC metadata] expose it, predominantly through a Z39.50 server; . . . [A]most 60% [of respondents] . . . provide a Web interface for crawlers such as Google, Yahoo, and MSN, exposing at least some of their metadata on the Web via hypertext transfer protocol (http).”); Péter Jacsó, Google Scholar Revisited, 32 ONLINE INFO. REV. 102, 102 (2008) (“[T]he crawlers of Google Scholar have collect[ed] data from and index[ed] the full-text of millions of articles from academic journal collections and scholarly repositories of preprints and reprints. The Google Books project also has given a massive and valuable boost to the . . . content of Google Scholar.”).

and harvesting of metadata is enabled in part by the use of open standards, such as the Open Archives Initiative Protocol for Metadata Harvesting (OAI-PMH) 2.0 specification\(^9\) and the Dublin Core metadata schema.\(^10\) OAI-PMH permits institutions to share and harvest metadata describing information resources, provided that the sharing institution makes its metadata available in the unqualified version of the Dublin Core schema\(^11\) and utilizes a metadata management system that complies with other elements of the OAI-PMH specification.\(^12\) Accordingly, law libraries desiring to share their non-MARC metadata with other institutions may wish to employ the Dublin Core schema for describing their resources or map their descriptive metadata to Dublin Core, utilize a system that can output metadata in Dublin Core, and ensure that their metadata systems otherwise comply with OAI-PMH. And law libraries seeking to harvest non-MARC metadata may wish to encourage other law libraries to adopt OAI-PMH-compliant systems and to otherwise make their descriptive metadata available in Dublin Core.

¶4 To prepare law librarians for the transition to the management of non-MARC metadata, the Technical Services Special Interest Section (TS-SIS) of the American Association of Law Libraries (AALL) sponsored a preconference workshop at the 2007 AALL Annual Meeting, titled “The Future Is Digital: Metadata Standards and Applications.”\(^13\) At that workshop, Diane Hillmann, formerly of Cornell University Library and the National Science Digital Library, provided law librarians with training in a number of non-MARC metadata standards and tools. These included commonly used descriptive metadata schemas such as Dublin Core and the Metadata Object Description Schema (MODS),\(^14\) relationship models such as Functional Requirements for Bibliographic Records (FRBR),\(^15\) interoperability mechanisms such as OAI-PMH, knowledge representation tools such as thesauri

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12. Id. §§ 2–4.


and ontologies, and application profiles, including those for Dublin Core. Hillmann also discussed the relevance of these metadata types to the new cataloging standard, Resource Description and Access (RDA).

Now that some time has passed since that workshop, the moment is ripe for assessing the extent of non-MARC metadata work in law libraries. Such an assessment also fills a gap in the research literature on library metadata practices. Several previous studies report on non-MARC metadata activity among research libraries or digital libraries generally, but none appear to report on the non-MARC metadata activity of law libraries in particular. This article reports on recent non-MARC metadata activity among AALL academic, government, and public law libraries, and those libraries’ future plans for creating and managing non-MARC metadata.

Research Questions

This article seeks to begin to address the following research questions:

- To what extent are law libraries using non-MARC descriptive metadata?
- To what extent does law libraries’ use of non-MARC descriptive metadata differ from other libraries’ use of such metadata?
- What non-MARC descriptive metadata schemas are law libraries using?
- To what extent are law libraries using content standards, such as controlled vocabularies or authority files, in connection with non-MARC descriptive metadata?
- What platforms and tools are law libraries using to create or manage non-MARC descriptive metadata?
- What kinds of materials and collections are law libraries describing with non-MARC metadata?
- To what extent do law libraries’ non-MARC metadata systems and practices enable metadata interoperability through measures such as the use of open and standard schemas, mapping between schemas, and compliance with OAI-PMH?

Objectives

The present study attempts to assess AALL member libraries’ non-MARC descriptive metadata activity and the extent to which that activity enables metadata interoperability. Interoperability is operationalized by the use of open standards, the utilization of mapping between descriptive metadata schemas, and the compli-

18. See, e.g., AYERS et al., supra note 1; FOSTER et al., supra note 1; SANCHEZ, supra note 1; MA, supra note 1; SMITH-YOSHIMURA, supra note 4; SMITH-YOSHIMURA & CELLENTANI, supra note 1; Carole Palmer et al., Trends in Metadata Practices: A Longitudinal Study of Collection Federation, 7 Proc. ACM/IEEE-CS Joint Conf. on Digital Libr. 386 (2007).
ance of metadata management systems with the OAI-PMH specification. This study was limited to academic, federal, state, court, county, city, and public law libraries, and consortia or projects involving multiple libraries of these types, because these types of libraries, given their public or scholarly service objectives, are likely to prioritize metadata interoperability: that is, they are likely to seek to share their descriptive metadata with other institutions. Since private law libraries, in light of their concern with safeguarding client confidentiality and supporting their parent organizations’ competitive positions, are less likely to seek to share descriptive metadata with other institutions, they were excluded. This study is intended as a preliminary inquiry that affords some sense of law libraries’ current non-MARC metadata activity and offers findings that may furnish a baseline for future studies of such activity.

**Methodology**

§8 In February and March of 2009, e-mail queries were sent to six AALL-related listservs.¹⁹ The queries sought information about which non-MARC descriptive metadata formats law libraries were using; the types of documents, collections, structural metadata, and software platforms in connection with which such metadata were used; the tools used to work with those metadata; and whether libraries’ non-MARC metadata systems complied with the OAI-PMH specification.²⁰ In some instances, an initial request—without the text of the survey—for respondents was sent to listservs, and a survey was then sent to respondents. In other instances, the survey was sent as part of the initial request. Usable responses were received from eleven AALL libraries. Further investigation disclosed thirteen other AALL libraries engaged in digital projects. The survey was then sent by e-mail to personnel at those libraries, all thirteen of which furnished usable responses.

§9 A final phase of data collection concerned the mapping of descriptive metadata schemas. A review of recent literature on descriptive metadata for digital resources²¹ revealed that mapping between descriptive metadata schemas contributed significantly to metadata interoperability, and that mapping is often used in OAI-PMH-compliant systems to facilitate output of descriptive metadata in unqualified Dublin Core. The survey for this study did not inquire about mapping, but the survey responses showed that several respondents in fact mapped their descriptive metadata, while technical documents respecting platforms used by

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¹⁹. The listservs to which queries were posted were ts-sis@aallnet.org (with 618 subscribers as of March 20, 2009), all-sis@aallnet.org (1123 subscribers as of March 20, 2009), sis-lhrb@aallnet.org (215 subscribers as of March 26, 2009), cssis-l@aallnet.org (463 subscribers as of March 24, 2009), teknoids@ruckus.law.cornell.edu (791 subscribers as of April 1, 2009), and scll-sis@aallnet.org (460 subscribers as of March 26, 2009).

²⁰. Survey questions are included in the appendix, *infra*. Complete results are on file with the author. Names of respondents and their institutions have been kept confidential by request of the respondents.

²¹. The work of the University of Illinois at Urbana-Champaign in connection with the IMLS Digital Collections and Content project proved particularly valuable. See, e.g., Palmer et al., *infra* note 18.
respondents revealed that several of those platforms enabled mapping. Therefore in May 2009, additional information about mapping of descriptive metadata schemas was requested from one vendor of platforms used by respondents and from seven respondents, of whom the vendor and six respondents furnished usable information.

¶10 The survey results are not necessarily representative of all AALL libraries of the included types. Nevertheless, because multiple listservs with large and diverse memberships were queried; because a variety of types of libraries responded; and because respondents described a diversity of schemas, tools, collections, platforms, and practices, the results arguably furnish a useful picture of recent non-MARC metadata practices among AALL libraries.

¶11 Twenty-three of the twenty-four respondents described their current projects in detail. Nine respondents also described, in various levels of detail, future projects involving non-MARC metadata. While the data respecting future projects are less granular than those respecting current projects, the information respecting future projects nevertheless may suggest trends in non-MARC metadata practices among AALL nonprivate libraries.

Respondents

¶12 Of the twenty-four responding libraries, eighteen (75%) were academic libraries, of which ten (42%) were public and eight (33%) private. Respondents included one consortium and one multilibrery project, each of which comprises both public and private institutions: the project has three members (one private academic law library and two state law libraries), and the consortium includes 101 U.S. or Canadian members, among them 96 academic libraries (including 31 public and 65 private), 2 state law libraries, and 2 court libraries. Of the noncourt government library respondents, one is a state law library and one a provincial law library. One state supreme court library responded, as did a public law library associated with a not-for-profit public interest law firm.

Findings

Collections and Projects

¶13 The respondents reported working with non-MARC metadata in connection with a total of ninety currently active collections or projects, characterized by a considerable diversity in content and purpose. In addition, nine respondents

22. See, e.g., DSPACE FOUNDATION, DSPACE 1.5.2 MANUAL 5, 96–97 (2009), available at http://www.dspace.org/1_5_2Documentation/DSpace-Manual.pdf (discussing mapping between qualified Dublin Core and MODS); OCLC CONTENTdm Frequently Asked Questions, OCLC (2009), http://www.oclc.org/support/questions/contentdm/default.htm (stating that CONTENTdm descriptive metadata can be exported in METS, and implying that such metadata can be exported in unqualified Dublin Core, consistent with OAI-PMH).

23. The consortium also includes one membership library, which is not within the population of this study.
reported definite plans to work on a total of twenty-six future collections or projects. The number of current collections or projects per institution ranged from a maximum of fifteen to a minimum of one, with a mean of 3.9 and a median of 2. The number of future collections or projects ranged from a maximum of eight to a minimum of one, with a mean of 2.9 and a median of 2. Fifteen categories of collections or projects were identified:

1. Continuing legal education (CLE) materials
2. Digital preservation archives
3. Resource discovery tools
4. Exhibits
5. Faculty publications databases
6. Fine art
7. Harvested metadata
8. Institutional repositories
9. Law library publications
10. Law school publications
11. Manuscripts and archives (including archival finding aids and audiovisual materials) not restricted to a single subject
12. Portals (a single user interface enabling access to multiple related resources) or subject-specific collections that include multiple types of material
13. Primary legal materials
14. Rare books
15. Secondary legal resources not otherwise specified (including legislative history materials, other government documents, litigation materials, treatises, periodicals, etc.)

¶14 As shown in table 1, respecting current collections or projects, the greatest number of institutions reported using non-MARC metadata in connection with manuscripts and archives or portals or subject-specific collections (34.8%), followed by primary legal materials (30.4%), secondary legal materials not otherwise specified (26.1%), and institutional repositories (17.4%). Respecting current collections or projects in which non-MARC metadata were used, manuscripts and archives again led with 25.6% of collections, followed by primary legal materials (21.1%); portals or subject-specific collections (17.8%); secondary legal materials not otherwise specified (12.2%); and institutional repositories, rare books, or law school publications (in each case 4.4%). Respecting future plans, most institutions reported planning to use non-MARC metadata in connection with manuscripts and archives or secondary materials not otherwise specified (for each, 33.3%), followed by portals or subject-specific collections, or primary legal materials (for each, 22.2%). Of future collections or projects, most were reported to involve manuscripts and archives (30.8%), followed by primary legal materials (23.1%), and secondary legal materials, or portals or subject-specific collections (for each, 15.4%).
Table 1  
Types of Metadata Projects

<table>
<thead>
<tr>
<th>Current Collections or Projects</th>
<th># (%) of Institutions</th>
<th># (%) of Collections or Projects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manuscripts/archival materials (includes finding aids &amp; AV)</td>
<td>8 (34.8%)</td>
<td>23 (25.6%)</td>
</tr>
<tr>
<td>Portal or subject-specific collection</td>
<td>8 (34.8%)</td>
<td>16 (17.8%)</td>
</tr>
<tr>
<td>Primary legal materials</td>
<td>7 (30.4%)</td>
<td>19 (21.1%)</td>
</tr>
<tr>
<td>Secondary legal materials (not otherwise specified)</td>
<td>6 (26.1%)</td>
<td>11 (12.2%)</td>
</tr>
<tr>
<td>Institutional repository</td>
<td>4 (17.4%)</td>
<td>4 (4.4%)</td>
</tr>
<tr>
<td>Rare books</td>
<td>2 (8.7%)</td>
<td>4 (4.4%)</td>
</tr>
<tr>
<td>Law school publications</td>
<td>2 (8.7%)</td>
<td>4 (4.4%)</td>
</tr>
<tr>
<td>Digital preservation archive</td>
<td>1 (4.3%)</td>
<td>2 (2.2%)</td>
</tr>
<tr>
<td>Other</td>
<td>7 (30.4%)</td>
<td>7 (7.8%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Future Collections or Projects</th>
<th># (%) of Institutions</th>
<th># (%) of Collections or Projects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manuscripts/archival materials (includes finding aids &amp; AV)</td>
<td>3 (33.3%)</td>
<td>8 (30.8%)</td>
</tr>
<tr>
<td>Secondary legal materials</td>
<td>3 (33.3%)</td>
<td>4 (15.4%)</td>
</tr>
<tr>
<td>Primary legal materials</td>
<td>2 (22.2%)</td>
<td>6 (23.1%)</td>
</tr>
<tr>
<td>Portal or subject-specific collection</td>
<td>2 (22.2%)</td>
<td>4 (15.4%)</td>
</tr>
<tr>
<td>Other</td>
<td>4 (44.4%)</td>
<td>4 (15.4%)</td>
</tr>
</tbody>
</table>

¶15 In addition, as shown in table 2, collections or projects were distinguished as to whether they included published or unpublished materials. Roughly equal numbers of respondents reported using non-MARC metadata to describe published material (for current activities, 87% of institutions; for future activities, 77.8%) and unpublished material (for current activities, 82.6%; for future activities, 66.7%). Respecting current collections or projects, slightly more contain unpublished (71.1%) than published (64.4%) material. The reverse is true of future collections or projects, of which slightly more (69.2%) contain published than unpublished (61.5%) material.

¶16 Table 3 shows the data representing the types or media of materials that respondents are describing, or plan to describe, using non-MARC metadata. As is to be expected for traditionally text-focused law library collections, text is by far the predominant material type, with all institutions reporting describing at least one collection containing text in connection with current or future activity, and 93.3% of present and 92.3% of future collections or projects containing textual material. For current activity, 34.8% of institutions reported at least one collection or project containing images or sound resources, followed by video (26.1%), and maps/cartographic materials (21.7%). Twenty-five percent of current collections or projects contain images, followed by 11.1% containing audio and 7.8% containing video or
Tangible resources, including physical objects, were among the described materials, because some non-MARC descriptive metadata took the form of finding aids describing tangible manuscript or archival collections.

### Table 2

**Publication Status of Project/Collection Materials**

<table>
<thead>
<tr>
<th></th>
<th># (% of Institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>( (n = 23) )</td>
</tr>
<tr>
<td>Current Collections or Projects</td>
<td>( (n = 90) )</td>
</tr>
<tr>
<td>Published material</td>
<td>20 (87.0%)</td>
</tr>
<tr>
<td>Unpublished material</td>
<td>19 (82.6%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th># (% of Institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>( (n = 9) )</td>
</tr>
<tr>
<td>Future Collections or Projects</td>
<td>( (n = 26) )</td>
</tr>
<tr>
<td>Published material</td>
<td>7 (77.8%)</td>
</tr>
<tr>
<td>Unpublished material</td>
<td>6 (66.7%)</td>
</tr>
</tbody>
</table>

### Table 3

**Type of Material Described**

<table>
<thead>
<tr>
<th></th>
<th># (% of Institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>( (n = 23) )</td>
</tr>
<tr>
<td>Current Collections or Projects</td>
<td>( (n = 90) )</td>
</tr>
<tr>
<td>Text</td>
<td>23 (100.0%)</td>
</tr>
<tr>
<td>Image</td>
<td>8 (34.8%)</td>
</tr>
<tr>
<td>Audio</td>
<td>8 (34.8%)</td>
</tr>
<tr>
<td>Video</td>
<td>6 (26.1%)</td>
</tr>
<tr>
<td>Map/cartographic</td>
<td>5 (21.7%)</td>
</tr>
<tr>
<td>Physical objects</td>
<td>3 (13.0%)</td>
</tr>
<tr>
<td>Blog</td>
<td>2 (8.7%)</td>
</tr>
<tr>
<td>Presentation slides (e.g., PowerPoint)</td>
<td>2 (8.7%)</td>
</tr>
<tr>
<td>Database</td>
<td>1 (4.3%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th># (% of Institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>( (n = 9) )</td>
</tr>
<tr>
<td>Future Collections or Projects</td>
<td>( (n = 26) )</td>
</tr>
<tr>
<td>Text</td>
<td>9 (100.0%)</td>
</tr>
<tr>
<td>Image</td>
<td>2 (22.2%)</td>
</tr>
<tr>
<td>Video</td>
<td>2 (22.2%)</td>
</tr>
<tr>
<td>Audio</td>
<td>1 (11.1%)</td>
</tr>
<tr>
<td>Map/cartographic</td>
<td>1 (11.1%)</td>
</tr>
</tbody>
</table>
Compared to collections or projects discussed in several recent surveys of non-MARC metadata activity, text figured more prominently, and other types or media figured less prominently, among the collections or projects described by respondents. Given that, with few exceptions, respondents are utilizing non-MARC metadata to describe resources in their own collections, and that most U.S. or Canadian law library collections consist primarily of textual resources, the predominance of text among the projects described by respondents reflects that most of their non-MARC descriptive metadata activity concerns materials in their collections.

Platforms/Software Environment

Respondents reported utilizing a wide variety of platforms or software environments for their non-MARC metadata activities. Twenty-seven distinct platforms/environments or components, as detailed in table 4, were identified as being used in connection with current work. In the table, five platforms, used by a total of two institutions, are consolidated in the row for “Locally created platform or system.” Respecting current activities, the greatest proportion of institutions (43.5%) reported using a generic or unspecified web server in connection with at least one collection or project, followed by PHP or Microsoft Access (each used by 13% of institutions), and CONTENTdm, Linux plus Apache, locally created platforms or systems, Microsoft SQL plus MS .Net or Zope, or MySQL (each used by two institutions). Fifteen other platforms, systems, or components are used by only one institution. Respecting current collections or projects, the greatest share are described in connection with a generic or unspecified web server (35.6%), followed by PHP (22.2%); Linux plus Apache, or MySQL (each 18.9%); XML Engine (16.7%); and locally created platforms or systems (15.6%). DSpace and Archival-Ware were the only two platforms respondents unambiguously specified for use in connection with future non-MARC metadata projects. Respondents that had not made final decisions respecting platforms for future projects stated that they were considering several other platforms, including CONTENTdm, Drupal, Microsoft SharePoint, Wordpress, or an unspecified database plus PHP.

24. See, e.g., Smith-Yoshimura & Cellentani, supra note 1, at 11 (finding, in a survey of eighty-six respondents from eighteen RLG institutions, that 83% reported describing images, 81% text, 62% video or film, and 59% audio); Palmer et al., supra note 18, § 4.1.2 (finding, in a survey of metadata practices related to 169 institutions of multiple types, that images were identified in eighty percent of collections and text in sixty-eight percent).

25. The principal exceptions are a project by a private academic library involving harvesting descriptive metadata from other institutions, and one of the multilibrary projects, which involves harvesting resources from the Internet.
Table 4
Platform/Software Environment Used

<table>
<thead>
<tr>
<th>Current Activity</th>
<th># (%) of Institutions (n = 23)</th>
<th># (%) of Collections or Projects (n = 90)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Generic or unspecified web server</td>
<td>10 (43.5%)</td>
<td>32 (35.6%)</td>
</tr>
<tr>
<td>PHP</td>
<td>3 (13.0%)</td>
<td>20 (22.2%)</td>
</tr>
<tr>
<td>Microsoft Access</td>
<td>3 (13.0%)</td>
<td>6 (6.7%)</td>
</tr>
<tr>
<td>Linux + Apache</td>
<td>2 (8.7%)</td>
<td>17 (18.9%)</td>
</tr>
<tr>
<td>MySQL</td>
<td>2 (8.7%)</td>
<td>17 (18.9%)</td>
</tr>
<tr>
<td>Locally created platform or system</td>
<td>2 (8.7%)</td>
<td>14 (15.6%)</td>
</tr>
<tr>
<td>CONTENTdm</td>
<td>2 (8.7%)</td>
<td>2 (2.2%)</td>
</tr>
<tr>
<td>Microsoft SQL + MS .Net or Zope</td>
<td>2 (8.7%)</td>
<td>2 (2.2%)</td>
</tr>
<tr>
<td>XML Engine</td>
<td>1 (4.3%)</td>
<td>15 (16.7%)</td>
</tr>
<tr>
<td>ht://Dig + CGI scripts</td>
<td>1 (4.3%)</td>
<td>4 (4.4%)</td>
</tr>
<tr>
<td>ArchivalWare</td>
<td>1 (4.3%)</td>
<td>2 (2.2%)</td>
</tr>
<tr>
<td>Microsoft NT</td>
<td>1 (4.3%)</td>
<td>2 (2.2%)</td>
</tr>
<tr>
<td>Other</td>
<td>11 (47.8%)</td>
<td>11 (12.2%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Future Activity</th>
<th># (%) of Institutions (n = 9)</th>
<th># (%) of Collections or Projects (n = 26)</th>
</tr>
</thead>
<tbody>
<tr>
<td>DSpace</td>
<td>2 (22.2%)</td>
<td>2 (7.7%)</td>
</tr>
<tr>
<td>ArchivalWare</td>
<td>1 (11.1%)</td>
<td>1 (3.8%)</td>
</tr>
</tbody>
</table>

¶19 Respecting types of platforms, systems, or components, 39.1% of respondents reported using an open source product in connection with at least one current collection or project, and 47.8% reported using a proprietary product in connection with such collections or projects. Open source platforms, systems, or components were utilized in connection with 33.3% of current collections or projects, while proprietary products were employed in connection with 21.2% of such collections or projects.

¶20 Some interesting aspects of these findings include the very large number of platforms being used, possibly reflecting that law libraries are currently in a period of experimentation respecting digitization practice; the continued common use of generic web server environments, as opposed to identified commercial or open source platforms or systems; and the fact that no respondent reported using, or definitively planning to use, Drupal, Sharepoint, or Wordpress in connection with a non-MARC metadata project. In addition, only one respondent, a private academic library, reported outsourcing most of their non-MARC metadata work to another unit, in that case to the digitization unit of its main campus library.

Descriptive Metadata

¶21 Table 5 describes general attributes of respondents’ descriptive metadata practices. The great majority of respondents (73.9%) utilize open, standard
descriptive metadata schemas respecting at least one collection or project, and such schemas are employed in a majority of collections or projects (66.7%). In addition, 21.7% of respondents reported using systems that can output descriptive metadata in open, standard schemas in connection with at least one collection or project, notwithstanding that such metadata are stored in locally created schemas or in no schema, and these collections or projects make up 14.4% of the total.

Table 5

<table>
<thead>
<tr>
<th>Current Activity</th>
<th># (% of Institutions (n = 23))</th>
<th># (% of Collections or Projects (n = 90)*)</th>
</tr>
</thead>
<tbody>
<tr>
<td>An open, standard schema is used</td>
<td>17 (73.9%)</td>
<td>60 (66.7%)</td>
</tr>
<tr>
<td>A nonstandard schema is used; descriptive metadata can be output in an open, standard schema</td>
<td>5 (21.7%)</td>
<td>13 (14.4%)</td>
</tr>
<tr>
<td>A nonstandard schema is used; descriptive metadata cannot be output in an open, standard schema</td>
<td>4 (17.4%)</td>
<td>8 (8.9%)</td>
</tr>
<tr>
<td>Only minimal descriptive metadata are provided</td>
<td>3 (13.0%)</td>
<td>11 (12.2%)</td>
</tr>
<tr>
<td>Descriptive metadata are not used</td>
<td>5 (21.7%)</td>
<td>14 (15.6%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Future Activity</th>
<th># (% of Institutions (n = 9))</th>
<th># (% of Collections or Projects (n = 26))</th>
</tr>
</thead>
<tbody>
<tr>
<td>An open, standard schema is used</td>
<td>4 (44.4%)</td>
<td>19 (73.1%)</td>
</tr>
<tr>
<td>A nonstandard schema is used; descriptive metadata can be output in an open, standard schema</td>
<td>1 (11.1%)</td>
<td>1 (3.8%)</td>
</tr>
</tbody>
</table>

* Multiple attributes apply to some individual collections or projects.

²² This is not the entire story, however. More than one-fifth of respondents report adding no descriptive metadata at all to at least one collection or project, and another approximately one-fifth of respondents reported utilizing nonstandard descriptive metadata schemas in conjunction with systems that cannot output metadata in open, standard schemas. Collections having these attributes represent twenty-five percent of the total. Further, among the institutions utilizing open, standard schemas, three provide only minimal descriptive metadata, and all of these institutions do so with HTML “Title” or “Meta” tags. Minimal descriptive metadata are furnished for 12.2% of collections or projects.²⁶ Respecting future

²⁶. The sum of percentages in this section exceeds 100% because in some instances multiple attributes pertain to a single collection. For example, respecting several collections, one respondent uses a nonstandard descriptive metadata schema in conjunction with open, standard schemas, and utilizes a system that cannot output descriptive metadata in an open, standard schema. Another respondent, for several collections uses both open, standard schemas and locally created schemas in systems that can output metadata in open, standard schemas.
activity, all respondents that reported metadata with these attributes stated that they planned to use open, standard descriptive metadata schemas, or local schemas with systems that can output descriptive metadata in an open, standard schema.

§23 Several findings seem of particular interest. First, use of open, standard descriptive metadata schemas, or of systems that can output metadata in such schemas, is widespread. This suggests that most law libraries that work with non-MARC metadata are aware of the role of open, standard schemas in facilitating resource discovery, metadata transfer among platforms, and interoperability. Second, the survey nevertheless revealed significant gaps in non-MARC descriptive metadata practice. Nearly thirty-five percent of respondents reported using no or minimal non-MARC descriptive metadata for at least one digital collection or project. Most of these findings relate to HTML- or XHTML-based collections, respecting which most respondents expressed a desire to enhance the descriptive metadata, either within the existing environments for these collections, or by transferring these collections to more advanced systems that enabled the addition of descriptive metadata. Further, almost one-fifth of respondents reported utilizing locally created schemas in systems that could not output descriptive metadata in open, standard schemas.

§24 Table 6 shows reported descriptive metadata schema usage. Dublin Core was the most frequently used non-MARC metadata schema in connection with current collections or projects; 34.8% of respondents reported using it. The qualified version of Dublin Core was used by more respondents (21.7%) than the unqualified version (13%). Locally created schemas were the second most frequently used type, utilized by 30.4% of respondents, followed by HTML or XHTML “Title” or “Meta” tags (21.7%), and Encoded Archival Description (EAD), used by 17.4% of respondents. For current collections or projects, Dublin Core was again the most frequently used schema, utilized to describe 24.4% of collections or projects, with the unqualified version being used in more collections or projects (18.9%) than the qualified version (5.6%). HTML or XHTML “Title” or “Meta” tags were the next most frequently used (in 20.0% of collections or projects), followed by locally defined schemas (18.9%), EAD (11.1%), and MODS (10%). Respecting future activity, the greatest share of institutions reported planning to use Dublin Core (33.3%), followed by HTML or XHTML “Title” or “Meta” tags, EAD, MODS, and locally defined schemas (each to be used by one institution). For future collections or projects, respondents reported planning to use HTML or XHTML “Title” or “Meta” tags most frequently (30.8% of such collections or projects), followed by Dublin Core (11.5%), and EAD or MODS (each 7.7%).

§25 Three other findings seem notable. First, almost one-third of all respondents use locally created schemas. Second, more than one-fifth of respondents employ HTML or XHTML “Title” or “Meta” tags, apparently reflecting the continued use of a substantial number of legacy HTML- or XHTML-based collections. As noted above, however, many respondents having such collections seek to enhance the metadata contained in those tags or to migrate those collections to more advanced systems offering improved descriptive metadata capabilities. Third, no institution reported using the VRA Core schema, although that schema is widely
used to describe digital images.\textsuperscript{27} However, one respondent reported describing digital images with a locally created schema based on VRA Core.

Table 6

Reported Descriptive Metadata Schema Usage

<table>
<thead>
<tr>
<th>Current Activity</th>
<th># (% of Institutions (n = 23))</th>
<th># (% of Collections or Projects (n = 90)*)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dublin Core (qualified and unqualified)</td>
<td>8 (34.8%)</td>
<td>22 (24.4%)</td>
</tr>
<tr>
<td>Locally defined schema</td>
<td>7 (30.4%)</td>
<td>17 (18.9%)</td>
</tr>
<tr>
<td>HTML or XHTML “Title” or “Meta” tags</td>
<td>5 (21.7%)</td>
<td>18 (20.0%)</td>
</tr>
<tr>
<td>Dublin Core (qualified)</td>
<td>5 (21.7%)</td>
<td>5 (5.6%)</td>
</tr>
<tr>
<td>EAD</td>
<td>4 (17.4%)</td>
<td>10 (11.1%)</td>
</tr>
<tr>
<td>Dublin Core (unqualified)</td>
<td>3 (13.0%)</td>
<td>17 (18.9%)</td>
</tr>
<tr>
<td>XMP</td>
<td>2 (8.7%)</td>
<td>3 (3.3%)</td>
</tr>
<tr>
<td>XML</td>
<td>2 (8.7%)</td>
<td>2 (2.2%)</td>
</tr>
<tr>
<td>MODS</td>
<td>1 (4.3%)</td>
<td>9 (10.0%)</td>
</tr>
<tr>
<td>TEI Header</td>
<td>1 (4.3%)</td>
<td>1 (1.1%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Future Activity</th>
<th># (% of Institutions (n = 9))</th>
<th># (% of Collections or Projects (n = 26))</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dublin Core (qualified and unqualified)</td>
<td>3 (33.3%)</td>
<td>3 (11.5%)</td>
</tr>
<tr>
<td>Dublin Core (qualified)</td>
<td>2 (22.2%)</td>
<td>2 (7.7%)</td>
</tr>
<tr>
<td>HTML or XHTML “Title” or “Meta” tags</td>
<td>1 (11.1%)</td>
<td>8 (30.8%)</td>
</tr>
<tr>
<td>EAD</td>
<td>1 (11.1%)</td>
<td>2 (7.7%)</td>
</tr>
<tr>
<td>MODS</td>
<td>1 (11.1%)</td>
<td>2 (7.7%)</td>
</tr>
<tr>
<td>Dublin Core (unqualified)</td>
<td>1 (11.1%)</td>
<td>1 (3.8%)</td>
</tr>
<tr>
<td>Locally defined schema</td>
<td>1 (11.1%)</td>
<td>1 (3.8%)</td>
</tr>
</tbody>
</table>

* Multiple schemas are used to describe some collections or projects.

\textsuperscript{26} Tables 7 and 8 detail the differences between institutions that use one descriptive metadata schema and those that use multiple schemas. A greater proportion of respondents using multiple schemas to describe current collections or projects report using locally created schemas (60%), Dublin Core (60%), or EAD (40%), than do respondents reporting using only a single schema; respecting the latter, 25% reported using a locally created schema, 31.3% reported using Dublin Core, and 12.5% reported using EAD. The weight to be accorded these percentage differences is uncertain, however, given the small number of institutions using multiple schemas to describe current collections or projects.

\textsuperscript{27} See, e.g., Smith-Yoshimura & Cellentani, supra note 1, at 16 (finding, in a survey of seventy-nine respondents from eighteen RLG institutions, that 23% reported using VRA Core, more than reported using MODS or TEI Header).
Table 7

Users of Single Metadata Schema

<table>
<thead>
<tr>
<th>Current Activity</th>
<th># (%) of Institutions (n = 16)</th>
<th># (%) of Collections or Projects (n = 44)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dublin Core (qualified and unqualified)</td>
<td>5 (31.3%)</td>
<td>19 (43.2%)</td>
</tr>
<tr>
<td>Locally created schema</td>
<td>4 (25.0%)</td>
<td>6 (13.6%)</td>
</tr>
<tr>
<td>HTML or XHTML “Title” or “Meta” tags</td>
<td>3 (18.8%)</td>
<td>11 (25.0%)</td>
</tr>
<tr>
<td>Dublin Core (qualified)</td>
<td>3 (18.8%)</td>
<td>3 (6.8%)</td>
</tr>
<tr>
<td>Dublin Core (unqualified)</td>
<td>2 (12.5%)</td>
<td>16 (36.4%)</td>
</tr>
<tr>
<td>EAD</td>
<td>2 (12.5%)</td>
<td>6 (13.6%)</td>
</tr>
<tr>
<td>XML</td>
<td>2 (12.5%)</td>
<td>2 (4.5%)</td>
</tr>
<tr>
<td>Locally defined schema; can output open, standard schema</td>
<td>2 (12.5%)</td>
<td>3 (6.8%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Future Activity</th>
<th># (%) of Institutions (n = 5)</th>
<th># (%) of Collections or Projects (n = 13)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dublin Core (qualified and unqualified)</td>
<td>3 (60.0%)</td>
<td>3 (23.1%)</td>
</tr>
<tr>
<td>Dublin Core (qualified)</td>
<td>2 (40.0%)</td>
<td>2 (15.4%)</td>
</tr>
<tr>
<td>HTML or XHTML “Title” or “Meta” tags</td>
<td>1 (20.0%)</td>
<td>8 (61.5%)</td>
</tr>
<tr>
<td>Dublin Core (unqualified)</td>
<td>1 (20.0%)</td>
<td>1 (7.7%)</td>
</tr>
<tr>
<td>Locally defined schema</td>
<td>1 (20.0%)</td>
<td>1 (7.7%)</td>
</tr>
</tbody>
</table>

Table 8

Users of Multiple Metadata Schemas

<table>
<thead>
<tr>
<th>Current Activity</th>
<th># (%) of Institutions (n = 5)</th>
<th># (%) of Collections or Projects (n = 30)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Locally created schema</td>
<td>3 (60.0%)</td>
<td>21 (70.0%)</td>
</tr>
<tr>
<td>Dublin Core (qualified and unqualified)</td>
<td>3 (60.0%)</td>
<td>15 (50.0%)</td>
</tr>
<tr>
<td>EAD (combined)</td>
<td>2 (40.0%)</td>
<td>20 (66.7%)</td>
</tr>
<tr>
<td>Dublin Core (qualified and unqualified) &amp; locally created schema</td>
<td>2 (40.0%)</td>
<td>8 (26.7%)</td>
</tr>
<tr>
<td>EAD, MODS, TEI Header, &amp; locally created schemas</td>
<td>1 (20.0%)</td>
<td>13 (43.3%)</td>
</tr>
<tr>
<td>Dublin Core (qualified) &amp; EAD</td>
<td>1 (20.0%)</td>
<td>7 (23.3%)</td>
</tr>
<tr>
<td>Dublin Core (qualified) &amp; local</td>
<td>1 (20.0%)</td>
<td>6 (20.0%)</td>
</tr>
<tr>
<td>Dublin Core (unqualified or unspecified) &amp; local</td>
<td>1 (20.0%)</td>
<td>2 (6.7%)</td>
</tr>
<tr>
<td>HTML or XHTML “Title” or “Meta” tags &amp; XMP</td>
<td>1 (20.0%)</td>
<td>2 (6.7%)</td>
</tr>
<tr>
<td>Locally defined schema; can output open, standard schema</td>
<td>2 (40.0%)</td>
<td>15 (50.0%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Future Activity</th>
<th># (%) of Institutions (n = 1)</th>
<th># (%) of Collections or Projects (n = 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>EAD &amp; MODS</td>
<td>1 (100.0%)</td>
<td>4 (100.0%)</td>
</tr>
</tbody>
</table>

* Multiple schemas are used to describe some collections or projects.
Mapping between descriptive metadata schemas is described in table 9. Regarding current activity, 52.2% of respondents reported mapping, while 47.8% stated they did not map descriptive metadata. The most common mapping, employed by 25% of institutions that utilized mapping, was from qualified to unqualified Dublin Core. The next most common mappings were from qualified Dublin Core to unqualified Dublin Core and several other schemas (16.7%), and from MARC to qualified Dublin Core (16.7%).

As shown in table 10, Dublin Core (qualified or unqualified) was the most frequently identified target of descriptive metadata mapping, named by all respondents that reported utilizing mapping. Nearly 92% of respondents who utilized mapping employed a mapping that targeted unqualified Dublin Core. The next most frequently identified mapping targets were XML, followed by MODS, and qualified Dublin Core and METS. Only one respondent identified MARC as a mapping target.

The prevalence of mapping, and particularly of mappings that target unqualified Dublin Core, may suggest an awareness among respondents generally of the OAI-PMH specification, which requires that systems output descriptive metadata in unqualified Dublin Core.

### Table 9

Mapping Between Descriptive Metadata Schemas

<table>
<thead>
<tr>
<th>Current Activity</th>
<th># (%) of Institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(n = 12, except as noted below)</td>
</tr>
<tr>
<td>Mapping is used</td>
<td>12 (52.2%)</td>
</tr>
<tr>
<td></td>
<td>n = 23</td>
</tr>
<tr>
<td>Mapping is not used</td>
<td>11 (47.8%)</td>
</tr>
<tr>
<td></td>
<td>n = 23</td>
</tr>
<tr>
<td>Dublin Core (qualified) to Dublin Core (unqualified)</td>
<td>3 (25%)</td>
</tr>
<tr>
<td>Dublin Core (qualified) to Dublin Core (unqualified)</td>
<td>2 (16.7%)</td>
</tr>
<tr>
<td>&amp; several other schemas</td>
<td></td>
</tr>
<tr>
<td>MARC to Dublin Core (qualified)</td>
<td>2 (16.7%)</td>
</tr>
<tr>
<td>Other</td>
<td>11 (47.8%)</td>
</tr>
<tr>
<td></td>
<td>n = 23</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Future Activity</th>
<th># (%) of Institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(n = 3, except as noted below)</td>
</tr>
<tr>
<td>Mapping used</td>
<td>3 (33.3%)</td>
</tr>
<tr>
<td></td>
<td>n = 9</td>
</tr>
<tr>
<td>Mapping not used</td>
<td>2 (22.2%)</td>
</tr>
<tr>
<td></td>
<td>n = 9</td>
</tr>
<tr>
<td>Dublin Core (qualified) to Dublin Core (unqualified)</td>
<td>2 (66.7%)</td>
</tr>
<tr>
<td>Local to Dublin Core (unqualified), XML, &amp; other schemas</td>
<td>1 (33.3%)</td>
</tr>
</tbody>
</table>
Table 10
Targets of Mapping Between Descriptive Metadata Schemas

<table>
<thead>
<tr>
<th>Current Activity</th>
<th># (%) of Institutions (n = 12)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mapping: Target: Dublin Core (qualified or unqualified)</td>
<td>12 (100%)</td>
</tr>
<tr>
<td>Mapping: Target: Dublin Core (unqualified)</td>
<td>11 (91.7%)</td>
</tr>
<tr>
<td>Mapping: Target: XML</td>
<td>5 (41.7%)</td>
</tr>
<tr>
<td>Mapping: Target: MODS</td>
<td>3 (25.0%)</td>
</tr>
<tr>
<td>Mapping: Target: Dublin Core (qualified)</td>
<td>2 (16.7%)</td>
</tr>
<tr>
<td>Mapping: Target: METS</td>
<td>2 (16.7%)</td>
</tr>
<tr>
<td>Mapping: Target: MARC</td>
<td>1 (8.3%)</td>
</tr>
</tbody>
</table>

Descriptive Metadata Content Standards

30 Content standards for descriptive metadata identified by respondents are described in table 11. Although the survey did not ask about standards other than authority files, some respondents volunteered information about their use of non-authority content standards. Two institutions (half of those reporting use of EAD) reported using Describing Archives: A Content Standard (DACS)28 as a content standard for finding aids marked up in EAD for current activities, and one institution reported planning to use DACS for future projects. More information is needed to verify the extent of DACS usage among all respondents reporting usage of EAD. Nevertheless, usage of DACS is consistent with the finding that the creation of finding aids to describe archives or manuscripts is a significant non-MARC metadata activity for several respondents. Only one respondent reported using Anglo-American Cataloguing Rules (AACR2)29 to describe current collections or projects.

Respecting authority files, the general trend among respondents regarding current activity was not to utilize such files, but if using them, to prefer local files to external standards. Regarding both name and subject authority files, 65.2% of respondents reported not using authority files for at least one collection or project, and 47.8% reported using authority files for at least one collection or project.30 For current collections or projects, only 27.8% contained material receiving name authority control and 20% contained material receiving subject authority control, whereas 71.1% contained material not receiving name authority control and 81.1% contained material not receiving subject authority control. The most frequently used type of authority file was locally created, with local name authority files utilized by

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30. Some respondents use multiple approaches, and multiple approaches are used respecting different types of material within certain individual collections or projects. For example, one respondent described a certain collection containing digital texts and digital images, in which the texts receive name authority control but not subject authority control, whereas the images receive both name and subject authority control.
### Table 11

#### Descriptive Metadata Content Standards

<table>
<thead>
<tr>
<th>Current Activity</th>
<th># (%) of Institutions (n = 23)</th>
<th># (%) of Collections or Projects (n = 90)</th>
</tr>
</thead>
<tbody>
<tr>
<td>DACS</td>
<td>2 (8.7%)</td>
<td>4 (4.4%)</td>
</tr>
<tr>
<td>AACR2</td>
<td>1 (4.3%)</td>
<td>10 (11.1%)</td>
</tr>
</tbody>
</table>

**Name Authority Files**

| Name authority file used                  | 11 (47.8%)                    | 25 (27.8%)                             |
| Name authority file not used              | 15 (65.2%)                    | 64 (71.1%)                             |
| Local authority file                      | 8 (34.8%)                     | 21 (23.3%)                             |
| LC Name Authorities                       | 7 (30.4%)                     | 20 (22.2%)                             |
| Canadiana authorities                      | 1 (4.3%)                      | 1 (1.1%)                               |

**Subject Authority Files**

| Subject authority file used               | 11 (47.8%)                    | 18 (20.0%)                             |
| Subject authority file not used           | 15 (65.2%)                    | 73 (81.1%)                             |
| Local authority file                      | 7 (30.4%)                     | 13 (14.4%)                             |
| LCSH                                      | 5 (21.7%)                     | 10 (11.1%)                             |
| CILP subject headings                     | 2 (8.7%)                      | 2 (2.2%)                               |
| Art & Architecture Thesaurus              | 1 (4.3%)                      | 4 (4.4%)                               |
| Other                                     | 2 (8.7%)                      | 2 (2.2%)                               |

**Additional Metadata**

| Abstracts/summaries added                 | 3 (13.0%)                     | 7 (7.8%)                               |

**Future Activity**

<table>
<thead>
<tr>
<th>Content Standards Other Than Authority Files</th>
<th># (%) of Institutions (n = 9)</th>
<th># (%) of Collections or Projects (n = 26)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>DACS</td>
<td>1 (11.1%)</td>
<td>2 (7.7%)</td>
</tr>
</tbody>
</table>

**Name Authority Files**

| Name authority file used                  | 2 (22.2%)                     | 2 (7.7%)                               |
| Name authority file not used              | 1 (11.1%)                     | 1 (3.8%)                               |
| LC                                         | 2 (22.2%)                     | 2 (7.7%)                               |
| Local authority file                      | 1 (11.1%)                     | 1 (3.8%)                               |

**Subject Authority Files**

| Subject authority file used               | 4 (44.4%)                     | 4 (15.4%)                              |
| Subject authority file not used           | 0 (0.0%)                      | 0 (0.0%)                               |
| LCSH                                       | 4 (44.4%)                     | 4 (15.4%)                              |
| MeSH                                       | 1 (11.1%)                     | 1 (3.8%)                               |
| Local authority file                      | 1 (11.1%)                     | 1 (3.8%)                               |

* Multiple approaches or standards apply to some collections or projects.
34.8% of respondents in connection with at least one current collection or project, and local subject authority files employed by 30.4% of respondents in connection with at least one collection or project. Locally created name authority files were reported to be used in 23.3% of current collections or projects, and locally created subject authority files were reported to be used in 14.4% of collections or projects. The Library of Congress (LC) authority files were the second most commonly identified content standards. Slightly more than 30% of respondents reported using the LC Name Authority File in describing at least one current collection or project, and 21.7% of respondents identified Library of Congress Subject Headings as a standard for describing at least one current collection or project. Respondents reported employing the LC Name Authority File to describe material contained in 22.2% current collections or projects, and the LC Subject Headings to describe material in 11.1% of collections or projects. Two respondents also reported using Subject Headings for the Current Index to Legal Periodicals (CILP)\(^{31}\) to describe material in a total of two collections.

\(^{32}\) Respecting use of authority files in connection with future activity, two respondents reported planning to use a name authority file to describe at least one collection or project, and one respondent reported it would not use such an authority file in connection with at least one collection or project. Both respondents planning to use name authority files stated they planned to use the LC Name Authority File, and one stated its intention also to use a locally created name authority file. Four respondents reported planning to utilize a subject authority file to describe at least one collection or project, and no respondents reported deciding not to utilize such an authority file in connection with future collections or projects. All four stated that they planned to use the Library of Congress Subject Headings, while one reported planning also to use Medical Subject Headings and one stated its intention also to utilize a local subject authority file. Given that relatively few respondents planning to engage in future projects furnished answers to questions about authority file usage, the weight to be given the responses respecting future authority file usage is uncertain.

\(^{33}\) These findings suggest that, at least for current non-MARC metadata work, respondent libraries frequently do not use content standards. Accordingly, much of the resulting descriptive metadata may lack standardized access points, with potential consequences for users. However, automated indexing and other information retrieval innovations may overcome discovery obstacles posed by a paucity of authorized access points.\(^{32}\)

**Descriptive Metadata Tools**

\(^{34}\) Tools, other than those specific to particular platforms, used by respondents in connection with creating non-MARC descriptive metadata are described in table

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Dreamweaver was the most frequently named tool used in connection with current activities, identified by 13% of respondents. The same share of respondents reported using locally created tools in connection with current descriptive metadata work. The next most commonly identified descriptive metadata tools used for current activities were the NoteTab Pro and XMetaL editors, each cited by two respondents.

### Table 12

<table>
<thead>
<tr>
<th>Current Activity</th>
<th># (%) of Institutions (n = 23)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dreamweaver</td>
<td>3 (13.0%)</td>
</tr>
<tr>
<td>Locally created tools</td>
<td>3 (13.0%)</td>
</tr>
<tr>
<td>NoteTab Pro</td>
<td>2 (8.7%)</td>
</tr>
<tr>
<td>XMetaL</td>
<td>2 (8.7%)</td>
</tr>
<tr>
<td>Other</td>
<td>10 (43.5%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Future Activity</th>
<th># (%) of Institutions (n = 9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Microsoft Excel</td>
<td>1 (11.1%)</td>
</tr>
<tr>
<td>NoteTab Pro</td>
<td>1 (11.1%)</td>
</tr>
</tbody>
</table>

Table 13 sets out reported descriptive metadata tools by type. Editors are the most frequently identified type of tool, as they were identified by 47.8% of respondents as being used to describe at least one current collection or project. Web authoring tools (defined as editors that can perform multiple coding and/or scripting functions, such as, for example, Dreamweaver, which facilitates coding in HTML, XHTML, XML, CSS, and JavaScript, and can assist the user in enabling interaction between web pages and databases) and XML editors were each identified by three respondents, followed by HTML editors, identified by two respondents.

Of note is the substantial number of respondents utilizing locally created tools, and the wide variety of tools employed by respondents. These findings suggest that standardization of descriptive metadata tools has progressed no further in law libraries than in other research institutions.

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33. Platform-specific tools are described in table 4 and the accompanying text.
34. See, e.g., Ayers et al., supra note 1, at 6, 12 (finding, in a survey of 134 respondents from 67 RLG institutions, that respondents utilized a “great variation of tools,” “that the tools being used are very localized, and [that] no one tool kit is being used”); id. at 12 (listing identified tools).
Table 13
Non-Platform-Specific Descriptive Metadata Tools

<table>
<thead>
<tr>
<th>Current Activity</th>
<th># (% of Institutions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Editors</td>
<td>11 (47.8%)</td>
</tr>
<tr>
<td>Editors: web authoring software</td>
<td>3 (13.0%)</td>
</tr>
<tr>
<td>Editors: XML editors</td>
<td>3 (13.0%)</td>
</tr>
<tr>
<td>Editors: HTML editors</td>
<td>2 (8.7%)</td>
</tr>
<tr>
<td>Other</td>
<td>11 (47.8%)</td>
</tr>
</tbody>
</table>

Structural Metadata Formats

¶37 Structural metadata standards used in connection with non-MARC descriptive metadata activity are described in table 14. The vast majority of respondents (91.3%) reported using an open, standard structural metadata format in connection with at least one current collection or project, and stated that 93.3% of current collections or projects contain materials in open, standard structural metadata formats. The most frequently identified structural metadata format utilized in current collections or projects was PDF (56.5% of respondents), followed by HTML/XHTML (47.8%), EAD (17.4%), and JPEG and TEI (each named by two respondents). Respecting current collections or projects, HTML/XHTML was the most frequently identified structural metadata format, utilized in 55.6% of such collections or projects, followed by PDF (22.2%), EAD (11.1%), and XML and METS (10% each).

¶38 Several points regarding these findings warrant comment. First, the extensive use of HTML/XHTML in digital collections or projects engaged in by all types of libraries seems to reflect the legacy of early digitization activities undertaken before database-centered digital collection approaches became common. As noted above, many respondents report plans to enhance HTML/XHTML-based collections or transfer them to newer platforms enabling improved descriptive metadata features and enhanced discovery capabilities. Second, and as noted above, EAD usage seems substantial, reflecting the importance of archival and manuscript collections in current law library digitization efforts. Third, respecting structuring of digital texts, reported usage of PDF and HTML/XHTML—which generally exhibit relatively limited features related to usability and display, and in the case of HTML/XHTML, may not be optimal for preservation purposes—far exceeds that of TEI, METS, or other formats that are designed to enable enhanced usability and display of digital texts, and which may be more suitable for long-term preservation of such texts. This finding seems to indicate a preference among many respondents for relatively simple and speedy digitization techniques entailing low labor costs. This preference seems particularly appropriate for the databases of current primary legal resources maintained by several respondents, but may not prove optimal for other kinds of digital textual material of long-term interest to legal scholars.
Table 14

Structural Metadata Formats Used

<table>
<thead>
<tr>
<th>Current Activity</th>
<th># (%) of Institutions (n = 23)</th>
<th># (%) of Collections or Projects (n = 90)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open structural metadata standards/formats/schemas used</td>
<td>21 (91.3%)</td>
<td>84 (93.3%)</td>
</tr>
<tr>
<td>Structural metadata standards/formats/schemas not open</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
</tr>
<tr>
<td>Structural metadata not used</td>
<td>4 (17.4%)</td>
<td>6 (6.7%)</td>
</tr>
<tr>
<td>PDF</td>
<td>13 (56.5%)</td>
<td>20 (22.2%)</td>
</tr>
<tr>
<td>HTML/XHTML</td>
<td>11 (47.8%)</td>
<td>50 (55.6%)</td>
</tr>
<tr>
<td>EAD</td>
<td>4 (17.4%)</td>
<td>10 (11.1%)</td>
</tr>
<tr>
<td>JPEG</td>
<td>2 (8.7%)</td>
<td>8 (8.9%)</td>
</tr>
<tr>
<td>TEI</td>
<td>2 (8.7%)</td>
<td>2 (2.2%)</td>
</tr>
<tr>
<td>METS</td>
<td>1 (4.3%)</td>
<td>9 (10.0%)</td>
</tr>
<tr>
<td>RTF</td>
<td>1 (4.3%)</td>
<td>1 (1.1%)</td>
</tr>
<tr>
<td>TIFF</td>
<td>1 (4.3%)</td>
<td>1 (1.1%)</td>
</tr>
<tr>
<td>XML</td>
<td>1 (4.3%)</td>
<td>9 (10.0%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Future Activity</th>
<th># (%) of Institutions (n = 9)</th>
<th># (%) of Collections or Projects (n = 26)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open structural metadata standards/formats/schemas used</td>
<td>2 (22.2%)</td>
<td>5 (19.2%)</td>
</tr>
<tr>
<td>EAD</td>
<td>1 (11.1%)</td>
<td>2 (7.7%)</td>
</tr>
<tr>
<td>METS</td>
<td>1 (11.1%)</td>
<td>2 (7.7%)</td>
</tr>
<tr>
<td>PDF</td>
<td>1 (11.1%)</td>
<td>1 (3.8%)</td>
</tr>
</tbody>
</table>

* Multiple formats are used to describe some collections or projects.

Structural Metadata Tools

The tools that respondents reported using in creating structural metadata are described in table 15. As was true respecting descriptive metadata tools, Dreamweaver is the most commonly identified structural metadata tool, followed by the Notepad++, NoteTab Pro, and XMetaL editors. Editors predominate, consistent with the relatively high rate of use of HTML/XHTML and EAD in respondents’ current digitization efforts.

Compliance with OAI-PMH

Responses on the OAI-PMH compliance of respondents’ descriptive metadata systems are set out in table 16. Slightly more than 65% of respondents report using a system that does not comply with OAI-PMH in connection with at least one current collection or project, while 47.8% of respondents reported utilizing OAI-PMH-compliant systems in connection with at least one such collection or
Regarding future activity, four respondents reported planning to use OAI-PMH-compliant systems, and no respondents reported planning to use systems that do not comply with OAI-PMH.

### Discussion

Non-MARC metadata are being used most often to describe manuscript or archival collections, resources in portals or subject-specific collections, and collections of primary legal resources, and are being used to describe unpublished and published materials in approximately equal proportions. Text is the type of material
most frequently being described using such metadata, followed by images, sound, and video.

¶42 The platforms, systems, or components thereof utilized most commonly in connection with non-MARC metadata activity are generic web servers, followed by PHP, Microsoft Access, Linux plus Apache, MySQL, and locally created systems. A greater share of respondents reported using proprietary platforms or systems than open source platforms or systems.

¶43 Use of open, standard descriptive metadata schemas, or of systems that can output metadata in such schemas, appears to be widespread. However, nearly thirty-five percent of respondents reported using no or minimal non-MARC descriptive metadata for at least one digital collection or project, and almost one-fifth of respondents reported utilizing locally created schemas in systems that could not output descriptive metadata in open, standard schemas.

¶44 Dublin Core is the most frequently employed descriptive metadata schema, followed by locally created schemas, HTML or XHTML “Title” or “Meta” tags, and EAD. Results point to a large number of legacy HTML- or XHTML-based collections, respecting which respondents voiced intentions to enhance the metadata contained in those files or to migrate those collections to systems that support open, standard descriptive metadata schemas.

¶45 More than half of respondents reported utilizing mapping between descriptive metadata schemas, most commonly from qualified to unqualified Dublin Core, a mapping that is consistent with the OAI-PMH specification.

¶46 The trend among respondents was not to utilize authority files, and, when using them, to prefer local files to external standards. Accordingly, much of respondents’ non-MARC descriptive metadata activity may lack standardized access points.

¶47 Respondents reported using a great number and variety of tools for creating descriptive and structural metadata, suggesting that metadata tool standardization has not advanced among respondent libraries. The most frequently identified tools used in metadata creation were Dreamweaver, NoteTab Pro, and XMetaL.

¶48 The most frequently identified structural metadata format was PDF, followed by HTML/XHTML and EAD. TEI, METS, and other structural metadata formats for text that offer better usability, display, and preservation features are not widely used.

¶49 Nearly two-thirds of respondents report using systems that do not comply with OAI-PMH, in connection with at least one current collection or project.

¶50 Taken together, these findings seem to reflect substantial, though incomplete, awareness among respondents of metadata interoperability and the factors that enable it. In addition, these findings point to two factors as possible obstacles to wider and swifter adoption of practices that foster metadata interoperability: the legacy of early digitization activities—which involved the creation of large collections of “flat” HTML or XHTML documents containing little or no descriptive metadata—and the maintenance of databases of current primary legal resources, which require fast and inexpensive metadata processing techniques.
Conclusion

¶51 Overall, the results of this study depict law libraries in a period of transition and experimentation respecting non-MARC metadata practices. Respondents report employing a great variety of systems, tools, and formats in their descriptive metadata work. Several respondents have developed, or are currently creating, extremely innovative digital legal information systems. Other respondents are actively planning upgrades to large legacy HTML- or XHTML-based collections to permit improved description, access, and metadata sharing.

¶52 Moreover, the distribution of descriptive metadata among institutions has the potential to dramatically expand the boundaries of law library collections, and a substantial share of respondents evince awareness of the role of interoperability in facilitating such metadata exchange. However, a sizable share of respondents report continuing to use non-MARC metadata systems that do not comply with the OAI-PMH standard, a key condition of metadata interoperability. This suggests a possible need within the law library community for more education on how to foster metadata interoperability in the emerging digital environment.
Appendix

Survey on the Use of Non-MARC Metadata in Law Libraries

I am writing an article on non-MARC metadata use in law libraries and would be grateful if you would please respond to the following questions. Examples of non-MARC metadata projects include digitization projects (such as digitizing court opinions, statutes, secondary legal materials, or manuscripts or archival materials); creating archival finding aids in digital format; creating a subject-specific portal of digital documents; maintaining an institutional repository; and maintaining a digital preservation archive.

1. What software or database platform(s) do you use (e.g., MS Access, My SQL/PHP, DigitalCommons, DSpace, CONTENTdm, eprints, etc.)?
2. What structural metadata schema(s) or formats (e.g., EAD, TEI, HTML, XHTML, PDF, etc.) do you use, and what editors, scripts, or programs do you use to mark up digital texts or finding aids?
3. What non-MARC descriptive metadata schema(s) (e.g., Dublin Core (Unqualified), Dublin Core (Qualified), MODS, etc.) do you use, and what editors, scripts, or programs do you use to encode this metadata?
4. Respecting the content of non-MARC descriptive metadata, do you use authority files or controlled vocabularies for names of persons and institutions or for subject terms, and, if so, which external authority files or vocabularies (e.g., LC Name Authority File, LC Subject Headings, Genre Terms for Law Materials, CILP Subject Headings, etc.) do you use, or do you use locally created authority files?
5. Are your non-MARC metadata databases compliant with OAI-PMH?
Keeping Up with New Legal Titles*

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

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* © Creighton J. Miller, Jr., and Annmarie Zell, 2011. The books reviewed in this issue were published in 2011. If you would like to review books for “Keeping Up with New Legal Titles,” please send an e-mail to creighton.miller@washburn.edu and annmarie.zell@nyu.edu.

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Reviewed by Jessica Wimer

1. Though specialization is generally thought to produce positive results and superior outcomes, this proposition is not universally accepted when it comes to our court system. Instead, many maintain that correct judicial outcomes depend on generalist judges, whose lack of specialization allows them to address a wide range of legal issues. To this day, most American judges remain generalists, and most of the nation’s courts decide cases on a variety of legal topics. This situation may be changing, however. In *Specializing the Courts,* Lawrence Baum takes a look at an accelerating trend toward more specialized court structures. Over the course of the book, Baum carefully analyzes this movement, examining the federal and state courts most representative of the trend, explaining the roots of the phenomenon, and discussing the impact that specialization has on the work of the judiciary.

2. In the book’s first chapter, Baum lays his groundwork. He presents detailed, introductory information on the major topics associated with his subject, the justifications advanced to support specialization, the causes leading to the development of specialized courts, and the consequences resulting from those courts’ creation. He also provides an estimate of the number of specialized courts actually present within the federal and state judiciaries. Most important, he poses three questions that will frame his discussions throughout the remainder of the book: (1) To what extent have we abandoned the generalist ideal and moved toward a more specialized court structure? (2) What difference does it make whether judges are generalists or specialists? (3) What forces bring about judicial specialization?

3. Baum’s second chapter proceeds to outline the historical expansion of specialized courts, paying considerable attention to the consequences of specialization for court outputs. The chapter examines policy considerations commonly presented as reasons for creating specialized courts and details the goals these courts are expected to achieve. Baum also analyzes the motivations of various parties—legislators, so-called “friends of the court” (p.53), and the judges themselves—that regularly advocate for generalist or specialized courts.

4. Over the next four chapters, Baum examines the causes and effects of judicial specialization with regard to four broad areas of legal policy: (1) chapter 3, “Foreign Policy and Internal Security”; (2) chapter 4, “Criminal Cases”; (3) chapter 5, “Economic Issues: Government Litigation”; and (4) chapter 6, “Economic Issues: Private Litigation.” For each topic, Baum surveys evidence regarding the causes and consequences of specialization, highlights relevant specialized courts, and identifies key policy considerations that justify each court’s existence. In his chapter on crimi-
nal justice, for example, Baum outlines various specialized criminal courts and discusses the reasons for their establishment. He demonstrates that many such courts were established in response to particular social needs (e.g., the need to provide rehabilitation for juvenile offenders) and notes that the goals of efficiency and consistency often guided the courts’ formation. He highlights the point that both those involved in creating these courts and the judges who adjudicate the courts’ cases frequently do so with their own needs and interests in mind, an issue that often goes unaddressed. Such thorough treatment is characteristic of the attention Baum gives to all four of the identified areas of legal policy.

¶5 Baum’s final chapter, titled “Putting the Pieces Together,” assembles the various factors that help to explain the growing number of specialized courts in America and our society’s increased acceptance of judicial specialization. Baum reconsiders how specialization has affected court outputs and revisits the causes, goals, and consequences of establishing specialized courts. He ends his discussion by addressing two additional issues—the desirability of judicial specialization and the future for specialized courts in the United States.

¶6 Baum does an excellent job of organizing and making accessible the information in his book. He provides a comprehensive index, a thorough table of contents, and a useful list of tables. Each chapter is thoroughly footnoted, and the end of the book includes a very complete section of references, with cites to relevant books, reports, and articles and to key legislative, statutory, and regulatory materials, court decisions, and related documents.

¶7 Baum is a noted expert on judicial politics. As a professor of political science at the Ohio State University, he has performed extensive research on judicial decision making, judicial elections, and, of course, judicial specialization. In addition to Specializing the Courts, his books include The Puzzle of Judicial Behavior1 and Judges and Their Audiences.2 He has also authored numerous book chapters, and his articles have appeared in political science journals and law reviews. Baum’s expertise is on full display in Specializing the Courts, and the work will appeal to both legal scholars and political scientists. Because this title focuses on an otherwise poorly developed area of study, it will make a great addition to almost any academic or law library.


Reviewed by David Bachman

¶8 The economic crisis that began in 2008 has accelerated global trends toward restructuring in the legal industry, and the consequences for U.S. lawyers have been dramatic. In this new legal environment, what kind of work awaits law school students, recent graduates, and the many out-of-work attorneys whose jobs have been lost to firm mergers, closings, or general downsizing? Author Robert A. Brooks

suggests one particularly unpleasant answer to this question in *Cheaper by the Hour: Temporary Lawyers and the Deprofessionalization of the Law*, an illuminating and sobering look at the law’s version of the temporary employment industry.

¶9 Brooks acknowledges that the term *temporary lawyer* covers attorneys performing a variety of legal activities, but his book focuses specifically on lawyers engaged in large-scale document review projects, a sector of the industry in which Brooks himself once worked. Specifically, Brooks participated in seventeen such projects for nine different Washington, D.C., area law firms over the course of four years in the early 2000s. He drew heavily on this personal experience in writing *Cheaper by the Hour*—indeed, his research methodology consisted primarily of personal observation and a series of “semistructured interview[s]” (p.xii) that he conducted with fellow project participants. (Both the interview questionnaire and short biographical sketches of the interviewees are found in the book’s appendixes.) The resulting book uses comments from Brooks and quotations drawn from the interview material to examine document review work in great detail. In the process, it focuses on some of the most frustrating aspects of temporary legal employment, such as the challenge of looking for the next job while logging long hours at the present one and the threat to professionalism and morale posed by work that attorneys find “‘obviously boring,’ ‘mindless,’ ‘grunt work,’ and ‘a real waste of educated people’” (p.80).

¶10 The book’s structure, though logical, makes for monotonous reading. The first chapter reviews the literature on management theory and chronicles the rise of an increasingly “‘degraded and insecure’” (p.xiii) workforce. Here, Brooks introduces a major theme of the book: attempts by management to impose, and workers to resist, controls over “work process and output” (p.27). The book revisits this and other familiar themes in separate chapters dedicated to project attorneys’ respective struggles over work and working conditions (chapter 4), time (chapter 5), and professional identity (chapter 6). In interview extracts reported throughout the work, project lawyers regularly describe their roles using terms such as “glorified data entry person,” “worker bees[,] . . . warm bodies,” and even “‘drones’ and ‘slaves’” (p.135). Brooks repeatedly emphasizes the job insecurity inherent in the work—a “‘feast or famine’ existence” (p.104) in which periods of unemployment alternate with intense weeks working long hours—and describes workplace conditions that range from adequate to uncomfortable to disgusting. One horror story features an infamous Rosslyn, Virginia, facility, dubbed “Nike Town,” that was “quite literally a sweatshop,” with hundreds of project attorneys stationed in a condemned, leaky warehouse with no air-conditioning and “huge mold ‘blooms’ in the carpeting” (p.65).

¶11 Brooks directs his most pointed criticism at placement firms that sold the idea of temporary lawyering in the legal media “as a ‘win-win’ for lawyers and their employers” (p.28), promising unemployed, overworked, or unfulfilled lawyers high incomes, flexible hours, “interesting and complex assignments” (p.50), a way to learn new skills, and a “stepping-stone” (*id.*) to permanent work with a firm. Brooks maintains that, on the contrary, such work is largely deprofessionalized—“deskilled, routinized, fragmented, intensified, and rigidly controlled” (pp.155–56). He disputes suggestions that attorneys choose document review work either for its “flex-
ibility and variety” (p.52) or for any other affirmative reason, concluding instead that most do it “‘involuntarily’ [when] unable to find permanent legal jobs” (id.). Notably, Brooks also remarks that he never saw a law firm offer an associate position to a temporary attorney working on one of its document review projects. Far from being a win-win situation, “[i]t appears that—just as in other types of work—temporary lawyering arrangements largely benefit employers and staffing agencies” (p.29).

 ¶12 The book’s conclusion situates temporary lawyering within the context of other trends that reflect the commoditization of legal services and the deprofessionalization of the law. These include de-lawyering (assigning tasks to nonlawyers), outsourcing, and the “booming offshore legal services market” (p.165) in India. Brooks describes an increasing bifurcation of legal practice, marked by an expanding gulf between highly paid, elite attorneys and an underclass that includes temporary lawyers. While some temporary attorneys may eventually succeed in crossing this gulf, Brooks predicts that many others will be left behind. The least fortunate face the prospect that offshoring and similar trends may eventually eliminate even temporary legal jobs.

 ¶13 Cheaper by the Hour should prove instructive for anyone concerned about the short- or long-term future of the U.S. legal profession, and the title is recommended for all libraries that serve law firms or law schools. The book may also provide a sharp but valuable dose of reality for undergraduate students considering legal education and the debt load that it can entail.


Reviewed by Christine I. Hepler

 ¶14 Litigation has always been an expensive proposition. This adage is increasingly true today in a legal environment that includes ever-escalating discovery demands for the production of electronically stored information. The costs to business litigants of gathering and producing this information continue to grow exponentially as our methods for transmitting and storing digital content expand to include not only e-mail and computers, but also cell phones, handheld PDAs, iPads, and other electronic devices. In an attempt to control these spiraling costs, Litigation Readiness: A Practical Approach to Electronic Discovery offers a step-by-step guide to creating a discovery plan that corporations can use when facing a request for production involving electronically stored information. The book is an excellent resource and should be added to most legal information collections, particularly those in private law practices. It is a must-have for libraries in firms with corporate clients or for any library supporting corporate counsel, and it is a valuable resource for academic law libraries as well, particularly given the increased emphasis on practice-oriented classes in the law school curriculum. However, the

specialized nature of this book makes it a poor candidate for purchase by undergraduate, public, and government libraries.

¶15 Authors Prashant Dubey and Sam Panarella have extensive experience working with corporations to develop discovery response plans that suit corporate needs. This book is their checklist for crafting a discovery plan that can be embraced by an organization and implemented as needed. To achieve this goal, the authors urge corporations to approach e-discovery as they would any other initiative—to treat it as a business process, not a litigation process. In its first five chapters, *Litigation Readiness* explains in detail the components that define a business process and applies the concepts to litigation, effectively turning litigation itself into a business process. For the remainder of the book, the authors use these same business process techniques to dissect the discovery process and to develop a guide to the creation of a discovery response plan. Thus, the book employs language and concepts corporate stakeholders already understand to describe litigation and discovery practices that are far less familiar. This proves an effective strategy and provides readers with a guide for developing a plan that is easy for businesses to create, embrace, and implement.

¶16 The authors’ best advice on creating a discovery response plan comes early in the book, where they discuss the “Just Good Enough” (p.19) approach. As part of their explanation of the good faith requirement for complying with discovery requests, the authors warn against an attorney’s tendency to strive for perfection, an attitude that might stall creation of a discovery plan. They argue instead that it is better to draft a broad plan “and then add more detail over time” (p.21). All discovery plans should be proportional to the company’s level of exposure in any given matter; a broad plan provides flexibility that allows the plan to be adjusted as exposure levels change.

¶17 One striking feature of this book is the intricately detailed table of contents provided by the authors. Upon initial consideration, such detail seems curious. Was it truly necessary to list all of the book’s subparts, not to mention the sub-subparts? However, this level of detail is actually a great benefit for users of the book. The table of contents here acts as a checklist for readers who may soon become the authors of discovery response plans. It could, in fact, even serve as the general outline from which a plan creation team could build a full discovery response plan, with necessary details added as team members sort through the process. In this context, the level of detail in this “checklist” ensures that important but less obvious steps—like plan assessment or acceptance—are not forgotten.

¶18 *Litigation Readiness: A Practical Approach to Electronic Discovery* is just what its subtitle indicates—eminently practical. It is filled to capacity with sensible suggestions that can guide a discovery response team step-by-step through the process of creating an effective discovery response plan. The authors have undoubtedly perfected their approach over the course of years spent working to prepare their corporate clients for the brave new world of electronically stored information. Such experiences have produced a book that successfully guides its readers through the steps required to create a plan that is “Just Good Enough,” one that complies with the formal rules of discovery without becoming so onerous that it will not be invoked when needed.

**Reviewed by Patricia R. Monk**

¶19 Within the legal community, the Oxford University Press is best known for its books on academic subjects. Recently, however, Oxford has expanded its offerings to include titles for practicing attorneys, a move that has not diminished its reputation for scholarly analysis. *The Prosecution and Defense of Public Corruption: The Law and Legal Strategies* is one such book. Authored by two former federal prosecutors, the new work is an exhaustive treatment of federal public corruption statutes and associated case law.

¶20 The book’s authors, Peter J. Henning and Lee J. Radek, are both highly qualified to write on this subject. Henning served as a senior attorney in the Division of Enforcement at the Securities and Exchange Commission and later worked on bank fraud cases for the Department of Justice’s Criminal Division. He is presently a full professor at Wayne State University Law School and has published widely on criminal law topics.4 He is also a coauthor, along with the late Charles Alan Wright, of the Federal Rules of Criminal Procedure portion of Wright and Miller’s *Federal Practice and Procedure*.5 Radek helped initiate the Justice Department’s Public Integrity Section and served at various times as both Deputy Chief and Chief of the section. He also spent two years as Director of the Asset Forfeiture Office.

¶21 In *Prosecution and Defense of Public Corruption*, Henning and Radek employ knowledge and expertise gained over their extensive careers to analyze the many different federal statutes used to prosecute corrupt public officials holding federal, state, and local positions. For each statute, the authors clearly explain the law and carefully describe how the act has been interpreted by the U.S. Courts of Appeals or, more rarely, the Supreme Court. If the Courts of Appeals have expressed divergent views, Henning and Radek thoroughly elucidate the differences. The authors also point out hotly contested issues, such as who qualifies as an “agent” under 18 U.S.C. § 666,6 and note instances in which reported case law has not yet addressed a particular provision, as is true for 18 U.S.C. § 610.7

¶22 The book opens with a historical overview covering such well-known scandals as Credit Mobilier, the Oregon land fraud trials, Teapot Dome, and the prosecution of Second Circuit Judge Martin T. Manton, who in 1939 had the dubious distinction of becoming the first federal judge to be convicted of charges related to bribery. The authors then turn their attention to the individual corruption statutes. Chapters 2 through 13 address specific types of federal crime and the statutes rel-

evant to each. Four concluding chapters treat procedural and structural issues relevant to public corruption trials, namely venue, investigations, the Constitution’s Speech and Debate clause, and sentencing. The book also contains copious footnotes, extensive tables of cases and statutes, and a thirteen-page index—features that should prove particularly effective for reference purposes.

¶23 Though Prosecution and Defense of Public Corruption is not the first work to address the broad topic of public corruption law, the book is unique in both its content and its perspective. Bribe, an older title by Ninth Circuit Senior Judge John T. Noonan, Jr., employs a moral and philosophical approach to analyze historical and literary instances of bribery dating as far back as 1500 B.C.8 The Pursuit of Absolute Integrity, a controversial case study written by academics Frank Anechiarico and James B. Jacobs, purports to demonstrate that anticorruption laws and regulations impede the effectiveness of government without actually eliminating corruption.9 However, Prosecution and Defense of Public Corruption is the only title analyzing the federal law on public corruption from the viewpoint of practicing attorneys. Accordingly, this book belongs in the libraries of criminal defense firms, federal prosecutors, and academic institutions.


Reviewed by Emily Black

¶24 In The Victimization of Women: Law, Policies, and Politics, Susan L. Miller and Michelle L. Meloy take a hard look at American social, legal, and political responses to violence against women. Both Miller (Professor of Sociology and Criminal Justice, University of Delaware) and Meloy (Associate Professor of Sociology, Anthropology, and Criminal Justice, Rutgers University, Camden) are veteran researchers with extensive records of publication in this field.10 Their present work, which addresses its topic from a distinctly feminist perspective, is refreshing in its forthrightness. The authors have deliberately chosen to flout conventions dictating gender neutrality in language, asserting that gender-neutral terms obfuscate an important truth—that sexual assaults and cases of domestic violence involving serious injury are overwhelmingly perpetrated by men and against women. In fact, the authors have eschewed even the use of terms like domestic violence, preferring unvarnished words like battering.

¶25 The seven chapters that constitute Victimization of Women apply this frank approach to a number of distinct topics. Early chapters present a review of victimology, surveying the historical treatment of female rape victims in academic literature and revealing a persistent tendency toward victim blaming in the scholarship. Chapter 3, guest authored by LeAnn Iovanni of Denmark’s Aalborg

10. See, e.g., Michelle L. Meloy, Sex Offenses and the Men Who Commit Them (2006); Susan L. Miller, After the Crime (2011); Susan L. Miller, Victims as Offenders: The Paradox of Women’s Violence in Relationships (2005).
University, details the criminal justice system’s response to violence against women—from bans on wife beating in colonial times through the reforms to rape and domestic violence laws prompted by feminist activism in the 1970s. Sadly, Iovanni reports that studies on the impact of criminal justice reforms show only negligible effects on rates of arrest, prosecution, and conviction for violent offenses. Chapter 4 steps outside the book’s declared focus on law, policies, and politics to explore the media’s coverage of female victims. Miller and Meloy criticize the sensationalism prevalent in press reports of rape and battering and denounce the media for its narrow focus on stranger rape and crimes involving famous perpetrators or victims. The chapter suggests instead that the media should promote awareness of more common forms of gendered crime, especially date rape and intrafamily violence.

¶26 Later chapters shift attention to explicitly legal areas, such as the Violence Against Women Act of 1994 (VAWA)\textsuperscript{11} and state laws mandating the registration of sex offenders. These chapters report research findings culled from various studies and surveys, including data the authors themselves gathered through direct interviews with convicted sex offenders. Among other topics, the authors discuss the unintended consequences that can flow from legislation addressing subjects largely unrelated to gender violence or victimization. For instance, welfare reform laws dictate “expanded efforts . . . to establish [the] paternity” (p.120) of children who receive aid; unfortunately, such efforts may put battered mothers of such children at increased risk for retaliatory violence.

¶27 The book’s final chapter focuses on the impact of programs aimed at combating gender violence. Miller and Meloy explore the extent to which services implemented under VAWA and related state programs have provided meaningful support for victims. They also analyze the effectiveness of various criminal justice measures intended to reduce violence against women, including victim-offender mediation, stricter prosecution standards, and harsher sentencing. Though they acknowledge that measures like these are important, the authors conclude that a lasting solution to violence against women will require change at a more systemic level. The touchstone for that change, they assert, must be education, introduced at an early age, that redefines gender roles and stops the “perpetuation of models . . . that foster aggression, violence and fear” (p.171).

¶28 Miller and Meloy list dual objectives for Victimization of Women: to educate readers, but also to encourage them to “join in the fight” (p.175) for systemic reform. Overall, the authors achieve these goals, but the potential impact of their work is diminished somewhat by a lack of organization. In particular, the book’s chapters often incorporate multiple, seemingly unrelated sections. For example, chapter 5 is titled “Sexual Victimization: Offenders Speak Out About Their Victims,” but its first fifteen pages concern the efficacy of sex-offender laws—material that is certainly important, but misplaced in a chapter ostensibly dedicated to the offenders’ perspectives. Similarly, in the heart of chapter 6, a chapter that addresses the negative effects of welfare and public housing laws on victims of gender violence, is

an extended discussion of why battered women stay with their abusers. Despite such organizational problems, however, *Victimization of Women* offers a wealth of substantive data and discerning analysis on violence against women. Thus, the work is recommended for libraries supporting law schools and other relevant graduate programs, as well as for government libraries specializing in criminal justice and victims’ rights issues.


Reviewed by Michael J. Gentile

§29 What constitutes hate speech? How should it be regulated? Should it be regulated at all? During the spring of 2011, such questions formed recurring themes in the news and received contrasting answers from two separate jurisdictions. On March 2, the U.S. Supreme Court handed down a landmark First Amendment victory for the Westboro Baptist Church, a group infamous for picketing military funerals with the message “that God hates and punishes the United States for its tolerance of homosexuality . . . .” 12 On the very same day, French prosecutors announced that fashion designer John Galliano would face a criminal trial for engaging in a drunken, anti-Semitic rant in a Paris bar. 13 These events highlight the very different approaches to hate speech taken by the United States and by much of Europe, and they provide an interesting backdrop for the new book *Degradation: What the History of Obscenity Tells Us About Hate Speech* by Kevin W. Saunders.

§30 Professor Saunders teaches constitutional law at Michigan State University and has written widely on First Amendment issues. 14 In *Degradation*, he makes a creative and provocative argument connecting the regulation of hate speech to the law of obscenity. The essential focus of obscenity law, Saunders argues, is not sex, but the fact that obscenity is degrading to humanity. Hate speech is equally degrading to its subjects, and is thus analogous to obscenity. Indeed, Saunders suggests that “what obscenity was all about in the past now applies to racist and sexist speech rather than to sexual images” (p.2). While maintaining that hate speech should not “necessarily receive the same legal treatment as obscene speech” (p.6), he also asserts that obscenity laws can be readily adapted to regulate hate speech as needed. If, at some point in the future, our society chooses to criminalize hate speech, Saunders submits that the law of obscenity should serve as our guide.

§31 The first half of *Degradation* explores in detail the evolution of obscenity law throughout the centuries. Saunders shows that graphic sexual depictions were widely accepted in ancient Greece and Rome. These societies, he asserts, viewed the gods themselves as sexually active and perceived depictions of sex as neither degrading nor shameful. With the rise of Christianity and its conception of a non-
sexual deity, however, Western society came to see sexuality as the aspect of man that was most animalistic and most distinct from the divine. From this perspective, depictions of human sexuality were inherently degrading. Yet, even in the Christian era, Saunders claims, authorities rarely prosecuted secular bawdiness; by contrast, sexual depictions of the clergy were deemed blasphemous and banned. The latter half of the nineteenth century saw a dramatic rise in American obscenity prosecutions, and Saunders sees this as a direct reaction against Darwin’s theory of evolution. Supposedly, by lowering *homo sapiens* to the level of the animals, evolution also threatened to distance humanity further from the divine. According to Saunders, “[i]t is as though society expressed itself in denial of Darwin’s claims by proscribing the depiction of humans engaged in . . . such nondivine activities” (p.5). Though this contention is intriguing, Saunders offers it without much supporting authority.

§32 Having linked obscenity to degradation, Saunders turns in the second half of his book to address hate speech. Hate speech also degrades its targets, depicting them as somehow less than human, and Saunders believes this makes it analogous to obscenity. Actually, Saunders goes further, claiming “hate speech now fills the role once played by pornography [and] can be seen, conceptually if not legally, as the new obscenity” (p.73). He argues that obscenity jurisprudence should serve as a model for the legal analysis of hate speech, suggesting that the test for obscenity set forth by the Supreme Court in *Miller v. California* could be adapted rather easily for use in hate speech prosecutions. The remainder of the book considers specific examples of possible hate speech violations and examines how they might fare under an approach modeled on obscenity law. Of particular note are examples drawn from the experiences of those countries that already have laws prohibiting hate speech.

§33 Whether Saunders’s views regarding hate speech are ultimately persuasive will probably depend on what a particular reader thinks of the law’s current approach to obscenity. Readers who believe that efforts to regulate obscenity have proven neither wise nor successful may well conclude that an analogous effort to regulate hate speech would be an equally bad idea. Nonetheless, *Degradation* is provocative and generally well presented; it should make interesting reading for both legal professionals and others interested in First Amendment issues. The text is supplemented by a thorough index and supported by extensive endnotes. The book would be a useful addition for academic law libraries, private law firm libraries, and public libraries.

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15. 413 U.S. 15, 24 (1973) (“The basic guidelines for the trier of fact must be: (a) whether ‘the average person, applying contemporary community standards’ would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.” (citation omitted)).
Information Security and Privacy: A Practical Guide for Global Executives, Lawyers and Technologists is an ambitious attempt to explain the law of information security and privacy in a coherent framework. Its editor describes the book as taking “a wide and deep approach” (p.xiii), and the text does provide a good structure for appreciating the breadth and depth of its subject matter. The book’s content, however, offers little more than a starting point for those who wish to research the topics mentioned within.

The book comprises eight chapters, four appendixes, and a number of finding aids (specifically, a table of authorities, a table of cases, and an index). Individual chapters address an “Introduction to Information Security,” “Information Security and Privacy Laws and Regulations,” “Information Security and Privacy Liability,” “Information Risk Management,” “Information Security and Privacy Controls,” “Information Security and Privacy Best Practices,” “New and Emerging Technologies,” and “The Role of Advisors and Wrapping Up.” The first chapter, one of the most useful portions of the book, does a good job of summarizing the overall topic and is well footnoted with citations to a number of helpful sources. Subsequent chapters offer similarly valuable introductions to their specific subtopics. The chapter dealing with statutes, an appendix addressing standards, and the book’s tables of cases and authorities are particularly helpful, as they provide simple and direct access to a variety of scattered authorities, including state privacy statutes, national standards for cryptography, and the many federal and foreign statutes encompassed by data security and privacy law.

Unfortunately, the approach the book takes to its material presents a number of problems. At just under 400 pages of substantive content, the work provides only a bird’s-eye view of data/information security and privacy. It offers a useful overview of the topic, but lacks any significant depth of treatment. Though the book’s subtitle, A Practical Guide, is largely accurate, the work is only a starting place for meaningful study of the broad, pervasive, and complex issues that make up this subject area.

Equally problematic is that the book aims at too wide a potential audience for its treatment to satisfy any of the intended user groups—executives, lawyers, or technologists. The long lists of footnoted statutes will prove helpful for lawyers and legal researchers, and appendix A’s catalog of ISO, NIST, and similar information standards will be useful to technologists. Grouped together in the same book, however, these collections form a confusing assortment of material. By seeking to appeal to such a broad range of readers, the book falls short of providing comprehensive and convenient coverage for any of the groups it hopes to serve.

A final problem is that of authorship. The book has an “editor and lead author” and lists seven pages of contributors. However, individual chapters are not expressly attributed to specific authors. Though all of those listed as contributors appear to be highly qualified, there is no indication of who wrote what. One
important aspect of determining the authority and credibility of any piece of writing is ascertaining its authors; without this information, the reliability of the chapters in *Information Security and Privacy* must be considered at least somewhat indeterminate.

¶ 39 Despite its problems, this title belongs in academic law library collections and in those of law firm libraries that support intellectual property or corporate law practices. The book is both useful as an entry point to research and relatively inexpensive. However, those who want a comprehensive and in-depth treatment of data/information security and privacy law may prefer other works, such as *Proskauer on Privacy*, an extensive loose-leaf treatise.16


Reviewed by Ellen E. Qualey

¶ 40 From the first sale rights that authorize our circulation practices to the licensing terms we negotiate for digital content, issues of copyright law affect our libraries on a daily basis, and we librarians are already familiar with the copyright implications of our everyday workplace activities. However, we may be far less aware of the copyright concerns that arise when we leave the office and resume our lives as ordinary consumers and creators of content. In his new book, *Infringement Nation: Copyright 2.0 and You*, Professor John Tehrani addresses this aspect of copyright, analyzing the interactions between regular people and the creative works protected under U.S. copyright law. This new perspective reveals that even the most mundane of activities can create potential issues of copyright liability, impede our efforts to express ourselves, and even undermine protection for our own creative content. Tehrani concludes that copyright law as it has developed over time is out of tune with the ways modern Americans interact with intellectual property.

¶ 41 To support this argument, Tehrani analyzes the impact of the law on various roles that we take with regard to copyright, namely those of infringer, transformer, consumer, creator, and reformer. Each chapter in the book explores how we interact with creative content in one of these capacities and then uses the interactions this analysis uncovers to highlight inadequacies in copyright policy. For example, in chapter 1, “The Individual as Infringer,” Tehrani calculates the copyright damages that a typical law professor might incur in an average day and finds $12.45 million in potential daily liabilities—or more than $4.5 billion annually—even if the hypothetical professor avoids file-sharing and downloads of digital content (p.4).

¶ 42 As further illustration that copyright policy does not truly reflect modern-day expectations for interacting with creative works, Tehrani analyzes how our reliance on fair use as a defense against copyright infringement may prevent users from transforming creative content. Examining a historic shift in the interpretation

of copyright, Tehranian argues that contemporary fair use doctrine supports a natural law vision of property rights as inherent in creative works, a view that stifles many of the innovative and transformative uses of content possible under an older, utilitarian perspective on intellectual property. Examples of transformative uses that are no longer permitted under the modern interpretation include derivative works such as *The Lexicon: An Unauthorized Guide to Harry Potter Fiction and Related Materials* or *The Joy of Trek*, a reference source for the Star Trek universe.18

¶43 The impact of technology on our use of creative works forms a theme that runs throughout *Infringement Nation*; indeed, the rise of the digital age pervades each chapter of the book. One example of how technology has contributed to a “vast disparity between copyright law and copyright norms” (p.xvi) is addressed in Tehranian’s analysis of our role as consumers of creative content. In shaping our personal online identities, we often make use of digital images, music, and similar works—sometimes even customizing such content for our own purposes—despite having no license whatsoever to use this protected material. Tehranian uses Myspace to illustrate the pervasive use of such unauthorized content on social network profiles and, thus, to highlight the disparity between copyright law and our expectations about acceptable uses of creative works.

¶44 Tehranian, Director of the Entertainment Law Program at Chapman University School of Law, is well suited to discuss the impact of copyright law on our everyday lives. Drawing on his experience in entertainment and intellectual property litigation, Tehranian fills *Infringement Nation* with colorful examples—from the lyrics of Nirvana songs to discussions of flag burning and photographs of Britney Spears—that make his analysis of copyright policy relevant for the average reader. Despite these illustrations and Tehranian’s clear and engaging arguments, this work addresses sophisticated legal concepts and is perhaps best suited for readers who already possess some background understanding of copyright law. *Infringement Nation* is ideal for both academic law libraries and those undergraduate library collections supporting research and scholarship on copyright and technology.


Reviewed by I-Wei Wang

¶45 *Finding the Answers to Legal Questions: A How-to-Do-It Manual* seeks to help librarians serve patrons who have basic legal information needs but no experience in the essential tasks of framing a legal question, finding appropriate sources, or evaluating legal materials. Authored by two lawyer-librarians who also teach law librarianship, the book is aimed principally at public librarians, library school students, and others who lack legal research expertise. The work combines in a single

volume common aspects of popular law-for-the-layperson manuals (such as the various Nolo Press titles or the Legal Almanac series from Oxford University Press) along with guidance for library professionals seeking to provide a basic level of legal research support. Up-to-date and well researched, the manual is a valuable asset for both law and nonlaw libraries serving unskilled legal researchers.

¶46 Part 1 of the book outlines the American legal system and introduces the various primary and secondary sources used to research federal and state law. Material more specifically oriented to librarians is found in parts 2 and 4, which focus respectively on diagnosing and addressing legal information needs and on evaluating and collecting resources for basic legal research. However, much of this material may also prove useful to researchers themselves. For example, chapter 5 in part 2 covers not only such “librarian” topics as conducting legal reference interviews, but also basic skills like interpreting legal citations, Boolean searching in legal databases, and using citators to update and expand on legal research. Chapter 6, “Resources Beyond the Public Library,” is also well suited for both library professionals and their patrons. And, though much of part 4 (chapter 17, with tips on collection development and building legal information web sites) is pitched explicitly to public librarians, the remainder (chapters 15 and 16) offers practical guidance on using online versus print sources and on assessing the reliability and accuracy of online and do-it-yourself law publications, topics directly relevant to pro se litigants performing their own legal research.

¶47 Despite the value of these introductory and structural chapters, patrons using Finding the Answers as a how-to manual may be tempted to skip directly to part 3, which provides research tips in eight specific subject areas. With chapters on litigation, family law, landlord-tenant matters, wills and estates, debt collection, bankruptcy, employment law, and criminal law, this section makes up more than a third of the manual. Inevitably, with so many topics to cover, each chapter can present only limited background on the relevant legal framework and pointers to a few key resources useful for researching representative questions. Nonetheless—and despite a somewhat heavy reliance on Nolo Press publications as research starting points—these chapters do more than just skim the surface of their topics. On the contrary, they address a wide variety of university-, government-, and organization-sponsored portals and information sites, and often recommend practitioner-oriented treatises and similar research tools tailored to various aspects of the chapter topic.

¶48 One design flaw in these chapters is the use of large “Resources Recap” tables—each including a “Notes” column that is often blank. The table layout is easy to scan quickly, but given the compressed treatment accorded each topic, the space would have been better utilized if devoted to sources omitted from the main text or to an explanation of how and when to use the various materials. Alternatively, instead of repeating information listed in these tables, the textual discussion could simply have referenced relevant sections. These flaws, however, do not detract substantially from the book, and the “Resources Recap” tables may even be appreciated by readers who want an executive summary or quick reference for the chapters.

¶49 Though not the book’s target audience, law librarians who deal with public patrons may find this work valuable when assisting this sometimes time-consuming
and difficult-to-serve patron group. Moreover, the manual may help nonlaw librarians satisfy legal information needs outside the law library context—ideally, empowering public libraries to serve as a sort of legal information triage station. Thus, this book can support law libraries indirectly by filtering out patrons whose needs can be adequately met elsewhere, while also helping to ensure that those patrons who do need more in-depth legal resources are better prepared when they arrive at the law library’s doors.

§50 As such, *Finding the Answers* is recommended to public libraries as a training tool for reference librarians, a collection and website development guide, and an entry-level research tool for patrons. The book is also appropriate—though solely as a supplement to other, more detailed works on legal research topics—for county, court, and academic law libraries, particularly those seeking a versatile, “one stop shopping” treatment of key legal research techniques and resources for their public patron visitors.
Using quotations from writers about writing, Ms. Whisner discusses why we write and ways that companions, be they friends, colleagues, or even animals, can help us write better.

1 This year I was invited to speak at the AALL/LexisNexis Call for Papers program, but not because I’d won the call for papers. As an experienced author, I was asked to speak for five minutes or so about writing—ideally saying something that could be useful to AALL members who would like to write for publication. An experienced writer? Well, yes, I guess I am, thanks largely to this column, which I’ve been writing since 1999. Middle age, wrinkles, a touch of arthritis, being an experienced writer—these things can sneak up on us.

2 I don’t have experience in all areas of writing—not even all areas of the sort of writing that law librarians typically pursue. For instance, I haven’t had to go through the labor and trauma of mailing off a paper to a journal and waiting for the editors to get back to me with an acceptance or rejection. Since Frank Houdek first invited me to write a column, I have had the opposite problem: an editor expecting a manuscript and (I imagine) tsk-ing at the creep of the calendar past the due date. So I have experience at finding a theme every three months, writing, and coming close enough to meeting deadlines that the editors haven’t given me the boot.

3 There are different reasons for librarians to write. For some, it might be external pressure—your boss or your promotion committee says that you have to publish to keep your job. Some might hope to make some money, although a lot of us write for journals, newsletters, and blogs without any prospect of financial reward. For me (and I suspect for many of us), writing stems from a basic social impulse: we want to connect with others. Writing can feed our social needs, and we can also use our social lives to feed our writing.

4 Over the years, I’ve collected quotations that appeal to me, and in the following pages I include some about writing. All writers share many of the same challenges—finding a topic, finding the time, finding a voice, getting help, reaching

* © Mary Whisner, 2011. I’m grateful to Alice Bloch, Mary Hotchkiss, and Nancy Unger—three of my writing buddies—for helpful comments on a draft of this column.


an audience—whether the project is as big as a three-hundred-page novel or as slight as a short article for a professional newsletter. Those of us who write smallish pieces for professional publications can feel ourselves part of the community of writers, albeit not in the segment of the community that is interviewed by Terri Gross or honored by the Pulitzer committee. You might recognize your own experience in the words from the writers quoted.

**Write to Connect**

When I began to make friends, writing was the vehicle. So that, in the beginning, writing, like reading, was less a solitary pursuit than an attempt to connect with others. I did not write alone but with another student in my class at school. We would sit together, this friend and I, dreaming up characters and plots, taking turns writing sections of the story, passing the pages back and forth. Our handwriting was the only thing that separated us, the only way to determine which section was whose. I always preferred rainy days to bright ones, so that we could stay indoors at recess, sit in the hallway, and concentrate. But even on nice days I found somewhere to sit, under a tree or on the ledge of the sandbox, with this friend, and sometimes one or two others, to continue the work on our tale.—Jhumpa Lahiri

¶5 Writing for publication is somewhere on a continuum that starts with passing notes to our friends. The impulse is to express an opinion (“I hate this class”) or convey a fact (“I haven’t done my homework”) and have someone else (but not the teacher) notice you. Online social media that enable us to publish our little notes are fairly recent additions to the continuum. Now we can tell all of our Facebook friends or Twitter followers how we feel and what we observe. We want to share, and for that we need an audience. Blog posts offer more latitude: we can write more, link to more sources, think through a topic in more depth. Writing for an established publication generally reaches a bigger community: when I write for *Law Library Journal*, I reach all the subscribers (or rather, all the subscribers who have the time to get to their professional reading and choose to flip to my column), not just my Facebook friends or Twitter followers.

¶6 In the 1990s I fairly often responded to questions or comments on the law-lib listserv. (I think it was those posts that led Frank Houdek to ask me to write a column.) With a discussion list, it’s natural to feel the social nature of writing. You already know some of the people who are on the list, and you see other people’s posts and get a feel for their personalities, even if you haven’t met them face to face. Responding to a post is responding—you are connecting with the person who wrote, and the rest of the community is also in on the conversation.

¶7 When I write this column, I still have that feeling of being part of a community. I find something that interests me, often through conversations with colleagues, students, or patrons, and that I think might be of interest or use to people in the community—the law librarianship interns I work with, librarians I’ve known a long time, or people I’ve never met—and I write to them. To you. And so my advice to less experienced writers is to keep in mind the goal of writing to connect.

View your reader as a companionable friend—someone with a warm sense of humor and a love of simple directness.—John R. Trimble

I believe in addressing as earnestly, and as modestly, and as forthrightly as possible, somebody whom I cannot see, whom I do not know.—Jeff Nunokawa

You Get to Sound Better Than You Do in Everyday Life

Inside your head, you’re yakking away to yourself all the time. Getting that voice down on paper is a depressing experience. When you write, you're trying to transpose what you're thinking into something that is less like an annoying drone and more like a piece of music. This writing voice is the voice that people are surprised not to encounter when they “meet the writer.” The writer is not so surprised.—Louis Menand

[W]riters of all kinds are superstitious about their gifts and about their relationship to their readers. They know in their hearts that their literary personae are not quite what they themselves are—to pick an extreme example, the narrator of Justine, by the Marquis de Sade, was far more ruthless and imaginative than the Marquis himself. The rest of us writers are not quite so funny nor so compassionate nor so tough, nor so enterprising nor so discerning in our lives as we are in our books. If we were, then our friends and family would esteem us as highly as some of our readers do. And so it is an act of some bravery to lay aside the persona at the behest of a newspaper and come forth as oneself, dull, sublunar, just a guy or a gal, with quirks and crochets [sic] and odd habits.—Jane Smiley

¶8 One great thing about writing is that you can think it over. You don’t have to send off the first thing that pops into your head. You can ponder word choice, paragraph order, points to make. Even though your style might be conversational, and you always have a sense of writing to your buddies or a community of readers, you can sound better than you do when you are speaking extemporaneously. Sometimes, when I’m speaking to a class, I become painfully aware of my ums and pauses and wish I could turn them off. In writing, I can. If I write something like “Well, yes, I guess I am,” I am choosing the casual locution, not stammering because I can’t come up with something more articulate on the fly.

¶9 Another benefit of the written word is that your audience can choose when to read what you say. I think of a time when I was out to dinner with two friends. I was bubbling over with enthusiasm about a book I was reading about the Rocky Mountain locust. My summary of the book’s high points was cut short by some eye rolling by one of my companions, who was not in the mood to hear quite so much about a horde of insects destroying miles of prairie. But maybe she would have been more interested at another time (American history, biology, ecology,

4. Rebecca Mead, One a Day: Earnest, New Yorker, July 4, 2011, at 19, 20 (quoting Jeff Nunokawa, a literature professor at Princeton who posts daily meditations on Facebook).
5. Louis Menand, Bad Comma, New Yorker, June 28, 2004, at 102, 104 (reviewing Lynne Truss, Eats, Shoots & Leaves (2004)).
human drama—it’s an interesting tale). Because readers choose when to read what you write, you can actually seem more interesting than when you blurt out your nerdy thoughts on legal research at a party. Hearing about codification of federal statutes at the dinner table: boring. Reading about it when you’re in the mood: hey, not so bad.

**But Don’t Think You Have to Be Perfect**

¶10 It’s great to take the time to polish your writing, but the quest for excellence can go too far. Some people never get around to writing at all because their expectations for themselves are so high they can’t seem to form the first sentence. Others start something and grow disheartened when their prose doesn’t sing to them. There are ways around this.

¶11 First, read. Reading great writing helps you think about all the different ways that people can write well. You start writing a little better yourself, because you’ve developed your ear. But don’t read great writing exclusively, because that can make your task seem hopeless. Read ordinary, competent writing, too. If you read law reviews and professional journals, you will often see writing that you could improve. Do a little mental editing. You’ll find paragraphs that could be streamlined, words that could be replaced with better ones, convoluted sentences that could be split in two. As you do this, your own writing will improve. And, just as important, you’ll realize that writing doesn’t have to be perfect to be accepted for publication and to make a contribution.

¶12 Second, write alone to make it easier to write to others. Your personal journal doesn’t have to be about much of anything, and it certainly doesn’t have to be about professional matters, to improve your writing fluency.

“My dear madam, I am not so ignorant of young ladies’ ways as you wish to believe me; it is this delightful habit of journaling which largely contributes to form the easy style of writing for which ladies are so generally celebrated. Everybody allows that the talent of writing agreeable letters is peculiarly female. Nature may have done something, but I am sure it must be essentially assisted by the practice of keeping a journal.”—Jane Austen

¶13 Third, write frequent short pieces, instead of a big work. In libraries, writing for the library newsletter or your chapter newsletter can work. Or resolve to write two blog posts a week and do it.

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9. Jane Austen, *Northanger Abbey and Persuasion* 6 (Shoes and Ships and Sealing Wax Ltd. 2008) (1818). Austen’s use of the word “journaling” in *Northanger Abbey* astonished me when I saw it: I had thought that using “journal” as a verb was a recent development. When my editor checked the quotation, though, she found editions in Google Books that used “journalizing” or “journalising,” so Austen might not have said “journaling” after all. (The OED does have an instance of someone else using “journaling” in 1803, so I can still remark on its being such an old usage.) And the point remains: writing in a journal develops your ease in writing.
People have writer’s block not because they can’t write, but because they despair of writing eloquently. That’s not the way it works, and one of the best places to learn that is a newspaper, which in its instant obsolescence is infinitely forgiving.—Anna Quindlen

Cultivate Relationships That Sustain You

On the homefront my family kept me sane. I could not have written this book without the help of my wife, Christine Gleason, a doctor by profession but also one of the best natural editors I’ve encountered. Her confidence was a beacon. My three daughters showed me what really matters. My dog showed me that nothing matters but dinner.—Erik Larson

¶14 While writing can feed our social natures by helping us connect with readers across time and space, it is unlikely to satisfy all of our social needs. And so it is important to cultivate relationships that sustain us. It is really wonderful if your coworkers encourage your writing (of course you encourage theirs, right?), and if your friends and family see it as part of the wonderful you. It doesn’t matter if your research guide or bibliometric study is not going to set the world on fire: it’s something you care about and you are working hard on, and so encouragement is important.

¶15 I have some friends I get together with for what we call “writing days.” On a Saturday, we meet mid-morning at someone’s house. There’s a little greeting chatter, and then we settle into different spots—kitchen table, living room couch, desk—to write (or, sometimes, work on other projects). We break for lunch and conversation, then sit down to write a bit more. All in all, it’s really only three or four hours of writing, but it’s helpful. It’s time sitting at my laptop when I’m supposed to be writing, not catching up on e-mail, not checking Facebook, not exploring the web. My friends are sitting at their laptops too, and at lunch we ask one another in a friendly way what we’re working on. I have gotten some good work done on columns during these days.

¶16 These writing buddies aren’t always available, but I still would like some company. Alone in my office, I get distracted by e-mail and everything else that’s there. Alone at home, I think about napping. So I like to write in cafés. I commit a certain amount of time to writing, and the comings and goings around me feel companionable. And there’s the coffee, of course—even decaf helps me by giving me something to sip while I’m thinking of the next sentence.

I would also like to acknowledge the many coffeehouses whose rich coffee and cute barista girls inspired my numerous hours writing stories. Note: If any of the following businesses are interested in the corporate sponsorship of a writer, give me a call. Thanks to: Starbucks on Church and Market, Coffee Bean and Tea Leaf on Ocean Park, Le Grande Orange on 40th and Campbell, and Peet’s Coffee on Market. I’ve bought plenty of coffee; now it’s time for you to buy a book!—Tania Katan

10. Anna Quindlen, The Eye of the Reporter, the Heart of the Novelist, in Writers on Writing Volume II, supra note 6, at 195, 197.
You can get support for your writing from coworkers, friends, and even baristas and fellow customers. And if you accept it, even your dog can give you support; those walks can give you time to think about what you’re writing.

There is nothing so pressing that you can’t take the dog for a walk. I have a Labrador who likes to go for walks. Lots of walks. I have lived with him for eight years, which means that at four outings a day I have been on approximately 11,680 walks. I don’t always feel like taking Roger on walks. Sometimes I even try explaining to him that I’m far too busy with deadlines to go anywhere. But inevitably he doesn’t listen, and whines until I am forced to abandon what I’m doing so that he can drag me down the street to the park. When I do, and I see how happy it makes him, I feel better myself and I find that my writing is much more enjoyable when I go back to it. So take your dog out a lot. If you don’t have a dog, I feel sorry for you. Everyone should have a dog.—Michael Thomas Ford

Get Feedback from People You Trust and Respect

To this day [my wife] Nily is my first reader. When she finds something in a draft that is wrong she says: That just doesn’t work. Cross it out. Sit down and write it again. Or: We’ve heard that before. You’ve already written it somewhere. No need to repeat yourself. But when she likes something, she looks up from the page and gives me a certain look, and the room gets bigger. And when something sad comes off, she says, that passage makes me cry. Or if it’s something funny, she bursts into peals of laughter. After her, my daughters and my son read it: they all have sharp eyes and a good ear. After a while, a few friends will read what I have written, and then the readers, and after them come the literary experts, the scholars, the critics, and the firing squads. But by then I’m not there anymore.—Amos Oz

When I read my modest sentence “He drank his coffee,” revised by her, in bright blue felt-tip pen to read, “He quaffed the steaming dark bitter brew,” I threw what can only be called a tantrum, and the editor was removed from the fray.—Frederick Busch

When you’ve written something, you need a reader—someone to tell you if your piece works, on various levels. Does it make sense? Does it flow? Do you need to cut a few sentences? Did you write “role” when you meant “roll”? You can ask your reader for the sort of feedback you need at the time—whether it’s looking at the big picture or proofreading.

I have asked many people for feedback on my writing, depending on who’s available and what the piece is. My most regular reader is my friend since junior high, Nancy Unger, who is a history professor in another state. She reads my drafts carefully and points out sentences that need reworking or words that I’ve used too often on a page. Because she’s not a lawyer or a librarian, she sometimes spots jargon that I wasn’t even aware of (sometimes I leave it in because it works in context). She also sometimes adds encouraging notes (“I like this” or “nice”). Our editing relationship is reciprocal: I send her drafts and she sends me drafts. It’s very helpful to have at least one writing buddy like this. If you want to write, find someone else who’s writing and share drafts.

By the time I send my column to my editor, it’s usually been through another person. And then the editor works through it. Here is another opportunity for improvements. Fresh eyes see new things: ambiguities, missing steps, redundancies. She sends me back my manuscript with suggestions and queries, and I get another chance to tweak it. I trust my editor to want the best for my work. She knows her stuff, and so her comments and queries really do help. This is the best kind of editor to have.

While You Might Write to Connect with Others, Remember That You Don’t Have to Connect with Millions

“You,” Father said with a sad smile to his friend Israel Zarchi, “write a new novel every six months, and instantly all the pretty girls snatch you off the shelves and take you straight to bed with them, while we scholars, we wear ourselves out for years on end checking every detail, verifying every quotation, spending a week on a single footnote, and who bothers to read us? If we’re lucky, two or three fellow prisoners in our own discipline read our books before they tear us to shreds. Sometimes not even that. We are simply ignored.”—Amos Oz

Writing for professional publications won’t make you wildly popular, sought out by avid readers from coast to coast. But you can reach some people in your community who find what you write helpful or interesting, and that is tremendously rewarding. Last year a library assistant sent me an e-mail message, as she was retiring, to say that my columns had been very helpful to her. That message warmed me for days, and I still am pleased and touched by it. That’s a lovely connection, and that sort of connection keeps me writing.
Ms. Gabriel discusses conflict within organizations and how it poses a challenge for employees from diverse backgrounds. In an organization without awareness of diversity issues or a supervisor who is able to provide support, a new employee may find it harder to acclimate. A supervisor’s multicultural awareness increases the likelihood of success for new employees and the effective management of the library as a whole.

¶1 In earlier columns, I have discussed definitions of diversity,¹ how it might be recognized within the context of one’s organization to improve diversity and a library’s value to an institution,² and how librarians should explore the similarities that underlie our profession to truly examine diversity.³ I write these columns based on a reflection of my work in a variety of libraries over the years where I’ve had a wide range of responsibilities, and the privilege of interacting with many interesting and inspiring colleagues. Overall, I have been lucky to find positions that have offered me constant opportunities to learn and to contribute what I can to the field I’ve chosen to pursue as a career.

¶2 But as much as I love my profession, I would be dishonest if I did not also acknowledge that there have been moments when I have seriously questioned whether or not I have pursued the right one. I have, at times, questioned whether the work I do or the particular path I chose was in the best interest of my professional or personal fulfillment, and had moments when I’ve debated whether or not I should consider moving into another type of work. While preparing to write this column, I reflected on those brief periods of questioning and examined them more closely. I tried to understand what motivated a particular moment’s strong, almost overwhelming, dissatisfaction with where I was and what I was doing and what had precipitated those negative feelings.

¶3 Looking back, I can see that in most cases it was due to a conflict of some kind—of cultures, of personalities, or of expectations. Usually at the root of each

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** Assistant Director for Reference & Research Services, CUNY School of Law, Queens, New York. Special thanks to Douglas Cox, Yasmin Sokkar Harker, and Sarah Shik Lamdan for their thoughts on this column and to Rebecca Sarro for her research assistance. Comments or thoughts on this column, or on any other topics regarding diversity and law libraries, can be sent to gabriel@mail.law.cuny.edu. Any comments used within a column will be kept anonymous.
conflict was a fundamental lack of communication between groups or individuals, or a situation that was handled poorly due to miscommunication. In some instances, the cause of the conflict had nothing to do with the competency of any individual to perform the requirements of a position, but instead with the inability of one party to understand the priorities or expectations of the other, or perhaps with the pressures on a particular individual at the time.

¶4 Although there is a stereotype of the library as a calm oasis, I am sure that every librarian would scoff at the suggestion that conflict doesn’t exist within our institutions. Whether it is with the communities we serve, our colleagues, or our supervisors, I find it hard to imagine any library—just like any other workplace—without some level of conflict that needs to be managed and addressed. External pressures, in the form of budget cuts, staff shortages, or conflicts with the larger institution—be it a law school, university, law firm, or government department—can also have a marked impact upon the amount of stress affecting library employees.

¶5 The concept of conflict management is not new to academic librarianship, and while it may not use this term, the law library literature has noted the difficulty of management in challenging situations, whether it is with employees, institutions, or expectations. Organizational culture and conflict management or conflict resolution—or what may simply be called “politics” in an organization—have been studied with vigor in other fields but were never covered in any librarianship course I took.

¶6 Nowadays, I hope that the idea of conflict—and how to deal with it—is at least discussed in a basic management class. With an increasing emphasis on diversity in the workplace, I believe it is imperative that librarians have a foundation from which they can manage conflict—whether it’s with a coworker, a supervisor, or a member of the public. That foundation might derive from reading the literature, talking to a colleague, or taking advantage of a program or service designed to assist employees. However one obtains it, the ability to manage conflict is, I firmly believe, key to increasing diversity within law libraries and the profession.


5. See, for example, the many “Managing by the Book” columns written by Jean M. Holcomb for *Law Library Journal*.

6. The Center for Creative Leadership, for example, publishes a variety of publications aimed at the “practicing manager” that deal with conflict management. See, e.g., *TALULA CARTWRIGHT*, MANAGING CONFLICT WITH PEERS (2003); JENNIFER J. DEAL & DON W. PRINCE, DEVELOPING CULTURAL ADAPTABILITY (2007); BARBARA POPEJOY & BRENDA J. MCMANIGLE, MANAGING CONFLICT WITH DIRECT REPORTS (2002); MEENA S. WILSON ET AL., MANAGING ACROSS CULTURES (1996).
For those wondering how to recognize the sorts of conflict that might be at work within a library, Joan Howland has written an insightful article, Challenges of Working in a Multicultural Environment, which specifically addresses working in a library with an increasingly diverse workforce. She discusses six challenges facing a library when dealing with a changing staff: (1) “fluctuating power dynamics”; (2) “merging a diversity of opinions and approaches”; (3) “overcoming perceived lack of empathy”; (4) “tokenism, reality or perception?”; (5) accountability; and (6) transforming challenges into opportunities.

While each of the six challenges could be the basis of an article on its own, it is the first challenge of fluctuating power dynamics that I anticipate could be the hardest for a newcomer to an organization to readily discern, especially if she is from a different background or culture from many of her colleagues. Acclimating to a new environment can be stressful, particularly if it is the librarian’s first professional job, or if she has substantially different responsibilities than in her last position. Recognizing that organizational culture exists is one thing, but to take the information you perceive about an organization and understand who holds power within it can be much more difficult.

In certain institutions, it might be relatively simple to understand who holds the power. For example, in theory, the director of an academic law library holds a measure of power or influence. But that power might be tempered by the value the larger institution places upon the library as a whole, or on individual staff members, including the director. It could also be affected by the relationship members of the library staff have with the entire faculty, or even with an individual faculty member who is vocal about her dealings with the library. The inability to interpret power dynamics within an organization can be an enormous source of potential conflict for new employees, especially those from a background different from the majority of employees. What happens when an institution or administrative structure makes it harder for one to understand where the power dynamics exist in an organization, when clear lines of authority both within and outside the library are not easily defined or explained, or when the institution as a whole is so riddled with internal conflicts that it is difficult for different departments even to communicate with one another?

It is not uncommon for individuals new to a job to be so overwhelmed that they focus only on fulfilling the immediate demands of their position. The easiest option is to determine who your immediate supervisor is and which people you must answer to above your supervisor, and begin from there. For example, in an academic law library, you would know who the dean of the law school is, and you would also learn which faculty or administration members interact the most with your particular department. You might try to lie low for a bit as you get used to your

7. Joan S. Howland, Challenges of Working in a Multicultural Environment, 33 J. Libr. Admin. 105 (2001). Howland’s article should be required reading for anyone in a management position or aspiring to one, as it sums up many of the issues that organizations find hard to articulate when discussing diversity issues.

new responsibilities while also trying to figure out whose opinions are thoughtfully considered or whose ideas are immediately dismissed. In essence, you spend a lot of time when new on a job trying to determine the organizational culture—where you fit within it, and where the power dynamics are. In the best case scenario, you have supervisors or individuals to whom you can quickly turn to help you fill in the gaps, and you also have the personal confidence to reach out to those people for assistance.

¶11 The type of personal confidence needed for such discussions with colleagues or supervisors may be more difficult for those with diverse backgrounds. Someone from a different culture with different models of communication may be uncomfortable approaching a supervisor with a question about organizational politics, believing it reflects poorly on her professionalism to ask how to communicate with others. Alternatively, if direct questioning about such matters is not accepted practice in an organization, these queries could alienate coworkers. For new employees trying to understand organizational culture, the potential to misunderstand power dynamics can be a very real threat to establishing credibility.

¶12 It might be even more difficult for an employee from a different cultural background if she does not have a mentor within the organization who is from that same culture. In that situation, it is important for the manager to reach out to the new employee. Otherwise the employee might quickly feel isolated or hesitant about voicing her ideas or opinions for fear of saying the wrong thing.

¶13 Even if there is someone willing to act as an unofficial mentor, the new-comer might not know whether or not it is best professionally to consult that person if she gets a sense that the mentor is not respected or valued by the organization for some reason. An organization with limited awareness of diversity and a small number of employees from different backgrounds may unwittingly label all members of the same background similarly, assuming that they will all feel or act the same way as the most visible member of that group. In some instances this might benefit a new employee, but if the most visible member is viewed negatively, the new employee could suffer by association. A library with little diversity among its staff should be especially careful to examine the merits of each employee individually. In a worst case scenario, negative attitudes toward one person may subtly work to influence hiring committees and prevent organizations from employing any additional members from a specific background or culture.

¶14 It is the hesitation to hire additional employees who belong to a specific culture if there has been one negative experience with any individual from that group that is of the greatest concern. In addition to being subject to the perceived stereotypes that may exist about a particular group, candidates from diverse backgrounds also often inherit the positive and negative opinions about every previous individual of that same cultural group who has worked within that organization. Such new hires must often work harder and longer to be taken seriously as distinct individuals with unique strengths and weaknesses.

¶15 In my opinion, it’s critical that there be a manager or supervisor with an acute awareness of such diversity issues who can help new employees from diverse backgrounds acclimate to the organization. Ideally, the manager not only helps new employees understand the power dynamics within the library, but is especially aware of the different communication styles that may be present in a particular
culture, and works with new employees to determine the best method in which to interact with other individuals within the organization.

¶16 This does not mean that a supervisor should suppress any legitimate concerns about the new employee—what it does mean is that a supervisor committed to diversity needs to be proactive in working with new employees from diverse backgrounds, and acknowledge that different modes of communication exist and must be accounted for when trying to explain the expectations of an organization to an increasingly diverse workforce. In order for a new employee to succeed within the organization, the methods a supervisor uses to communicate the ways productivity or accomplishment is measured in an organization may need to be expanded or revised to reach the greatest number of employees.

¶17 For instance, a supervisor could structure meetings differently, so that everyone with a stake in a decision understands that they must state their opinion at a department-wide meeting, not leave the discussion to the individuals who are usually the most vocal during meetings. Otherwise, a new employee might feel hesitant about voicing an opinion critical of a colleague. Or the manager could approach staffers individually to hear their opinions on a matter, giving them an opportunity to be heard alone before calling a meeting if raising an issue for the first time might spark an argument based on assumptions or miscommunication. If a colleague complains about another’s work, the manager must delve deeper to understand what the expectations and assumptions were on both sides of the issue, instead of assuming that the more experienced employee necessarily provided the most accurate description of the problem.

¶18 All of these approaches are dependent on having a supervisor who works not only with an awareness of multicultural issues, but also with an understanding of the power dynamics specific to the organization. The supervisor can take that knowledge and do her best to ensure that new employees feel comfortable adjusting to the library or organization while giving them the best possible base upon which to succeed.

¶19 I believe that a manager who develops a conscious awareness of the needs of the culturally diverse members of her staff becomes a better manager for all library employees. The ability to identify and comprehend the issues that may be confronted by those from different backgrounds can only increase a manager’s ability to understand the issues faced by all employees. The successful management of these issues minimizes the impact of politics and of fluctuating power dynamics, which can only mean a stronger, more positive work environment for all members of the staff.

¶20 Clearly, even before diversifying the profession became an issue, conflicts existed within law libraries. But whether termed “politics” or “power dynamics,” the fact remains that managing conflict within organizations gets more difficult with an increasingly diverse workforce, and poor management effectively hinders the likelihood that culturally diverse candidates will be attracted to the profession. Like other professionals, law librarians should look to an awareness of multicultural issues to help increase the ways in which they can better manage conflict within their organizations. By doing so, they increase the ability of the profession as a whole to appeal to a diverse group of individuals who can only enrich the field with their experiences, and who reflect the larger world.
Dress for Success! The Battle for Class, Comfort, and Sexual Equality*

Christine L. Sellers** and Phillip Gragg***

The columnists discuss and debate the sartorial librarian.

¶1 Christine Sellers: A blog post was forwarded to me recently: *The Search for America’s Most Glamorous Librarian*,¹ with the comment that it had my name written all over it. I’ll take the compliment, but it also brought up a question I often think about and discuss with my fellow librarians: Does the way we dress affect how we are perceived and does that have an even greater impact than we think? I say yes. In fact, I’ve pretty much been screaming “yes” since library school. But you’re a boy—what do you think?

¶2 Phillip Gragg: Wow! How many cans of worms does this open up? I guess I would say that I have two standards—what I want, and what I think would be the better part of discretion (valorous dressing?). I actually struggle with this quite a bit. I think that you will cede me the point that men have a fairly limited range of clothing to choose from, the largest two categories falling under the broad bifurcation of “collared” or “collarless,” although adding casual Friday jeans with a dress shirt and tie does confuse the matter. But to answer your question, yes, I think dress can play a very important role in how people are perceived by faculty, students, and other patrons. Whether or not we like it, people who are well dressed are likely to be viewed as more organized, more self-aware, and more “professional.” I’m not suggesting this is a fair indicator or measure of capability, but if you took two otherwise equally situated people and dressed one in a burlap sack and another in a smart business suit, I think we know who would be perceived as the more capable.

¶3 CS: I definitely agree with that. For women, there’s a tremendous amount of stereotyping related to the image of a “librarian.” You have the “sexy librarian,” which usually involves pencil skirts, glasses, button-down white shirts, and hair in a bun. On the opposite end of the spectrum is the . . . well . . . “cat sweatshirt librari-

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ian,” with all the expectations that brings of shushing and disapproval. I’ve observed both types and everything in between at both work and conferences.

¶4 **PG:** Regional variation in dress is another issue, and weather seems to be the ultimate arbiter of good taste. I spent a semester in Fairbanks, Alaska, and the most liberating thing about living there was that clothing was, of necessity, functional. In winter at least, Fairbanks was a place where function trumped fashion. Yes, the occasional appearance of fur or faux fur was noted, but no one really looks cool at –30°. Making it through the winter without frostbite and all of one’s appendages still attached? Very fashionable. (The coldest temperature I experienced there was –58°F—quite tolerable, as there was no wind.) At any time of year, however, the standard for dressing up was probably on par with casual Friday in large continental cities.

¶5 Moving further south to Tucson, fashion gives way somewhat to the intense heat that holds sway for several months of the year. Suits are seen less frequently—wool suits in particular.

¶6 **CS:** In the part of the South I’m from (read South Carolina, not Washington, D.C.), even with the heat, people dress up more often. Women wear dresses to football games and horse races! Men wear wonderful seersucker suits. However, I’m speaking more about the characteristics of the region than a certain profession.

¶7 **PG:** I guess the question driving all these dress codes and standards is: What do we lose by dressing up or down? I think it’s generally correct that it’s hard to be overdressed. Being underdressed can be awkward at best and embarrassing at worst. On the embarrassing end of the spectrum, you probably have entered the realm of compromising your image to the point of damage if you are underdressed frequently enough. Looking specifically at librarians, I think that they can sometimes be viewed in a less than ideal light, and dressing professionally can make a strong statement about the regard in which we hold our own positions.

¶8 **CS:** There was a recent article in *Information Outlook* containing advice from two professional librarians on how to dress, especially for interviews and conferences.² Their article is actually a dialogue between the two very similar in style to ours. I thought it was well written, but it focused more on the personal styles of the authors, which were very different. One was younger and wanted to convey that, while the other had always dreamed of dressing like a professor, which he now did.

¶9 Ultimately, I do not think we lose anything by being more professionally dressed than necessary. There are ways to be professional and stylish and also comfortable. When I worked in a law firm, I dressed like an attorney: suits, jackets, and heels. For me, it was a matter of putting myself on the same level as those for whom I was working. Now that I am a public reference librarian at the Library of Congress, my dress has changed somewhat. I wear fewer jackets and more flats (D.C. is brutal on feet), but I still try to look professional. For me, it is a matter of representing my employer to whichever patron I am helping, be it a congressional aide or a member of the public. For conferences, I dress exactly the same as I do for

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². Mallory K. Olguin & Tony Stankus, *Dressing like We Mean It*, INFO. OUTLOOK, Mar. 2011, at 8.
work. For interviews, my Wellesley training usually rears its head, and I go full-on professional in a suit with heels.

¶10 **PG:** I certainly don’t think anyone should apologize for being well dressed and presenting a professional face; we are after all professionals and many of us are lawyers, too. I tend to adjust my dress for the occasion, but at the core of my decision is usually the realization that I’m acting as a representative of my institution. I don’t think faculty candidates would bat an eye if I gave them a library tour in a business casual outfit, but, on the other hand, I expect candidates for faculty and library positions to show me one hundred percent. I expect it in their résumé, their professional demeanor, and their dress. And they really should expect no less of the place where they are interviewing.

¶11 What would you think if you showed up to a place that had no order and no plan about how to use you? I like to see a little evidence of thoughtful planning. Dress is not so far removed from this. So nearly every time I give such tours you’ll find me in a suit. I’m serious about providing support and service to our faculty and students and want people who may work here to know it. Being well dressed removes one question from the equation.

¶12 As we write these words back and forth to each other, LSU is planning to hire some new librarians. We’re very excited to welcome new people to our school, and since the director and I will be doing some preinterviewing at AALL, I feel compelled to wear a suit. Having already ruled out the possibility that I might successfully pull off a seersucker suit (although, am I not in the right state for it?), I’m left with no other option than to wear a suit to these interviews. I want our potential candidates to know that we are serious, have a great collection, are committed to our first-year and advanced legal research courses, and are excited to bring the candidates into an environment that will offer great potential for professional growth. So I think the exterior needs to reflect that. The problem is, who wants to run around the convention center in a full suit? And please, let me take my complaint one step further—to really dress up, a man has one option, and whatever it looks like, it involves a tie and a buttoned collar.

¶13 Now, I’m glad that we have made great strides in gender equality over the past several decades, and that I grew up and work in an environment (and time) where everyone is equal, but it is time to talk about men. We’ve been suffering for a long time with this tie and collar thing! We’ve managed to throw off the oppression of the dress hat, much to the chagrin of balding gentlemen, and this is an improvement overall (I do like the look, but not the cost or inconvenience of a hat). Our brave and bold Apollo engineers even suffered through the indignity of thick-rimmed glasses and short-sleeved dress shirts to get our country to the moon. I am fully aware of how smart a dark suit and a nice tie look (a shave and a haircut don’t hurt either!), and we men appreciate how well-mannered women compliment us on our heightened appearance, but we’re jealous.

¶14 Women have a lot of more flexibility in the comfort of their clothes than do men. I know you also have a lot more things to keep track of and coordinate, but all I’m asking for is a little ventilation in my clothes! I’m not suggesting sleeveless shirts for men (I can’t even stand the short-sleeved dress shirt . . . it never looks well
proportioned), and some of us are doing well if we choose a belt that matches our shoes, I’ll admit it. But can you help us out? It’s hot over here!

¶15 CS: True, but I’ve never had to worry about seeing too much thigh or cleavage on a man or a man thinking leggings legitimately qualify as pants. I think it’s easy for men to look put together, even in a library setting. You have your pants and your button-down shirt and your shoes. Women have so much more to deal with, which makes it harder, and which is where I think the errors come from in the workplace. A woman’s skirt in a professional setting should be no more than three finger-widths above her knee. It’s a pretty good rule to follow. And don’t show cleavage, especially if there is even a remote possibility you will be leaning across a reference desk during the day.

¶16 However, those are suggestions for the more exposed end of the spectrum. Be very careful about fit, even if it requires a tailor. A tailor can be your best friend.

¶17 PG: Okay, I can’t argue with the fact that men ultimately have it easier. We do. I think some of the fashion and beauty tips that were widely circulated during the metrosexual fashion movement were beyond the interest of most men, for time and money reasons if no other, but because of that movement I think that men have slowly started to take a greater interest in how they present themselves.

¶18 There really is a lot wrapped up in image and dress, though. I’d rather people present a healthy image than look like they just came off the runway at a Milan fashion show—not that the two are mutually exclusive. I suppose the question we keep coming back to is, is there substance behind the image we present? Does it really matter? Is perception as important as our actual work product, or a precursor to getting our foot in the door with patrons?

¶19 I also think about male corporate CEOs, who for years have felt the need to appear youthful, using hair dye, hair plugs, face-lifts, and artificial tanning. This is pretty common in the business world. But what about the other side of age? Youth trying to look older. There are many people in our profession who are in the twenty-six- to thirty-year-old range. As with all career-minded professionals, they are motivated and are looking to make a mark. They also want to be recognized for their knowledge and skill. Do age and dress impact perception? As the new wave of library directors comes in over the next five to ten years, we are going to see a huge increase in the number of directors in their thirties—the face of our profession’s leadership will literally change, and we will see it in law faculty, too. Over time the thirty-five-year-old director will seem less and less like an anomaly, but right now, does more gray hair help?

¶20 CS: I’m not sure it does. I think we, as a profession, are open to the authority of youth. Granted, I say that as a relatively young person. You also raise a good point about work product. That is ultimately the most important thing we can contribute to the profession. I don’t think either of us means to suggest otherwise. I also don’t mean to suggest there aren’t very well-dressed law librarians out there, because there are.
CS and PG: Finally, we’d like to suggest some things that never should have been done in fashion. Please don’t repeat the errors:

- Clip-on ties (although this may be acceptable for a bow tie). Of course, if you are really serious about the bow tie for anything other than weddings, you should learn how to tie one yourself.
- Waffle ties. PG says: I owned two of these back in the 1980s. One was light blue and the other was red. I thought they were cool. I was five. Now I see them cropping up in stores again. This was one of the fads of the 1980s, such as acid-washed denim, that I was sure would never return. I was wrong on both counts. Bottom line, gentlemen: don’t do it. Waffle ties will damage your reputation. Unless you are going to an ’80s theme party.
- Novelty ties. Please don’t give these as gifts. If you must wear novelty ties, try to limit your use of them. Everything in moderation. No one will think the Santa Claus tie is funny after the third time. They probably won’t think it’s funny the first time either.
- Women’s dress coats with very large shoulder pads. Yes, working in a library sometimes involves lifting heavy objects, but if you wear a ladies’ dress coat that augments the perception of your natural upper body strength, people are just more likely to ask you to move large boxes of books with alarming regularity.

We also want to leave you with some advice on things you should do:

- Wear clothes that fit. If something is not quite comfortable in the store, it’s not going to get more comfortable once you leave. Men, spend the money to get your pant legs altered to the right length—they will look better.
- Be conservative in your dress. Whatever your take on professional attire, and whatever region you work in, you’re there to do a job. You can display good taste and fashion sense without drawing needless attention to yourself.
- If you need inspiration or help, turn to style blogs. One of Christine’s favorites is Capitol Hill Style (www.caphillstyle.com).
Proceedings of the 104th Annual Meeting of the American Association of Law Libraries
Held in Philadelphia, Pennsylvania
July 23–25, 2011

General Business Meeting, Monday, July 25, 2011

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General Business Meeting  
July 25, 2011  
Ballroom B  
Pennsylvania Convention Center  
Philadelphia, Pennsylvania

[The General Business Meeting of the American Association of Law Libraries was called to order at 3:45 p.m. at the Pennsylvania Convention Center, Ballroom B, with Joyce Manna Janto, President, presiding.]

Call to Order and Introductions

¶ President Joyce Manna Janto (University of Richmond School of Law Library, Richmond, Virginia): Good afternoon. The Chair is pleased to call to order the 2011 Business Meeting of the American Association of Law Libraries.

¶ As of July 25, 2011, we have, appropriately enough since we are in Philadelphia, 1776 AALL members registered for the 2011 Annual Meeting. (Applause.) The AALL Bylaws, Article IV, Section 3, stipulate that “a quorum for a business meeting of the Association shall consist of fifty members registered at that meeting.” The Chair observes that there is a quorum.

¶ The Chair would now like to introduce those present at the head table, beginning on my left: first, Parliamentarian Jonathan Jacobs, Vice President/President-Elect Darcy Kirk, Treasurer Susan Lewis, Secretary Ruth Hill, and Executive Director Kate Hagan. (Applause.)

Adoption of the Standing Rules

¶ The Rules of Conduct for AALL General Business Meetings are available on the table outside in the hall, and hopefully you have picked up a copy on your way in. In the interest of managing today’s agenda, no member may speak for more than three minutes, and the Chair will limit discussion to no more than ten minutes on any one agenda item. The Chair will announce when the time is completed. If members wish to extend the discussion time beyond the allowed time, a motion to extend the discussion will require passage by a two-thirds majority.

¶ If the Chair hears no objections, these rules will be adopted for this meeting. (No response.) Hearing no objections, these rules are adopted for this 2011 Business Meeting.

Adoption of the Agenda

¶ Copies of today’s agenda and accompanying handouts are available outside the meeting room. The meeting will be recessed no later than 5:30 p.m. unless

1. The minutes of the 2011 General Business Meeting were approved by the AALL Executive Board on Sept. 1, 2011.
extended by a vote of those members present. Are there any changes or additions to the agenda? (No response.) Hearing none, I declare the agenda adopted.

**Approval of Minutes of the 2010 Business Meeting**

¶7 The Chair is pleased to call Secretary Ruth Hill to the podium for the approval of the 2010 Business Meeting minutes and to report on the 2011 election results.

¶8 **Ms. Ruth J. Hill** (Oliver B. Spellman Law Library, Southern University Law Center, Baton Rouge, Louisiana): Thank you, Madam President. The minutes of the 2010 Business Meeting were published in the fall 2010 issue of the *Law Library Journal*, Volume 102, Number 4. Are there any corrections to the minutes? (No response.) If there are no corrections, I move approval of the minutes as published.

¶9 **President Janto:** There is a motion to approve the minutes. Is there a second?

¶10 (Voices): Second.

¶11 **President Janto:** Okay. The motion has been moved and seconded. All in favor please say aye. (Chorus of ayes.) Any opposed? (No response.) Thank you. The minutes are approved.

**Report on Elections**

¶12 **Ms. R. Hill:** Thank you, Madam President. The ballots of AALL’s electronic election of the 2011–2012 officers and Board members were distributed to all voting members on November 2, 2010, returned by December 1, 2010, and tabulated electronically the following day. This schedule is consistent with AALL bylaws.

¶13 The successful candidates were Jean M. Wenger, Vice President/President-Elect; Deborah L. Rusin, Secretary; Kathleen (Katie) Brown and Greg Lambert, members of the Executive Board. Continuing on the Board will be Darcy Kirk, President; Joyce Manna Janto, Past President; Susan Lewis, Treasurer; Lucy Curci-Gonzalez, Diane Rodriguez, Ronald Wheeler, and Donna Williams, members of the Executive Board. A total of 1471 ballots were returned, and none were invalidated.

**Introduction of New Board Members**

¶14 **President Janto:** The Chair declares the following persons duly elected by the membership, and asks them to stand and be recognized: Jean M. Wenger, Vice President/President-Elect; Deborah (Debbie) L. Rusin, Secretary; Kathleen (Katie) Brown and Greg Lambert, members of the Executive Board. (Applause.)

¶15 If there are no objections, the Chair will authorize the Secretary to destroy the ballots of the 2011 election. (No response.) Thank you.
Memorials

¶16 President Janto: We have been informed of the deaths of several members and friends of our Association during the past year. They are Marianne Sidorsky Alcorn, Dorothy V. Alport, Nancy Arnold, Thomas Robert Austin, Earl Borgeson, Gloria F. Chao, Morris Cohen, Barbara Cumming, Alan Diefenbach, Lori Bull Dodds, Dario C. Ferreira, Sondra Giles, Anne Grande, Adrien C. Hinze, William P. Kelly, Tranne Pearce, Susan J. Scoble, Schelle Simcox, Susan Sloma, and William Wleklinski.

¶17 Are there any other members or friends who should be remembered at this time? (No response.) Please stand and join me in a moment of silence as we remember the contributions of these individuals to our personal and professional lives. (A moment of silence was observed by the members.) Thank you. You may be seated.

President’s Report

¶18 I am pleased and honored to speak to you today about my activities during this past year as your President. It was an exciting and busy year where AALL met new challenges and attempted to solve old problems. The Annual Meeting is both the highlight and the swan song of every AALL President. We begin working on the meeting, naming program and local arrangement chairs, before we even take office as Vice President, and with the many challenges and concerns that present themselves to us over the next two years, it is the one constant, the one event that hovers at the edge of our consciousness. Many of us even judge the success of our presidency by how successful our meeting was. So I would like to take the opportunity to thank everyone who helped make this Annual Meeting a success.

¶19 Mark Bernstein and Merle Slyhoff and their Local Arrangements Committee have done a wonderful job of making us feel at home in their city. Even without a theme, Anne Meyers and her Program Committee assembled an outstanding lineup of workshops and programs for our members to choose from.

¶20 I would also like to thank all of the SIS education committees, who showed such creativity in fielding a thoughtful slate of SIS programs throughout the conference day. And I would like to especially thank all of you, our members, who showed your support for and commitment to the premier educational event that is the Annual Meeting by choosing to attend in these challenging economic times.

¶21 I find it very gratifying to note that in a year when our sister organizations have declining attendance, our numbers have grown. As I said in my column in Spectrum,2 one of the best things about being President of AALL is getting to meet people. As your representative, I was able to bring greetings to and share our concerns with many of our sister and allied organizations. Last fall I traveled to the Hague in the Netherlands to attend the IALL (International Association of Law Libraries) Conference. The conference was held at the Peace Palace, and we learned about the work of the International Court of Justice. In the winter I attended the

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AALS (Association of American Law Schools) meeting in San Francisco. While there, I was able to meet with leaders of AALS and share my thoughts about the important place of law librarians and libraries in legal education. I also attended the Midwinter Meeting of ALA (American Library Association) in San Diego. There I attended a meeting called by ALA President Roberta Stevens, which included the president and executive directors of the major library and library education associations. At that meeting, we shared what initiatives we were working on in the coming year.

¶22 Last spring I attended the Annual Meeting of CALL/ACBD (Canadian Association of Law Libraries/L’Association Canadienne des Bibliothèques de Droit). This meeting was held in Calgary and was interesting and informative. It was interesting to note that our neighbors to the north share our issues and concerns.

¶23 The highlight of my year may have been my visit to Santiago, Chile. Due to the efforts of Ellen Schaffer, AALL member and active member of FCIL (Foreign, Comparative, and International Law SIS), I was invited to speak at the First National Conference on Libraries and Judicial Information. Ellen was able not only to convince the organizers of the conference to invite me, the President of AALL, to speak, she was also persuasive enough to convince the U.S. government to pay for the trip. (Applause.) The organizers of the conference were attempting to create a national organization for the law librarians in Chile, and they were interested in hearing about the history and activities of AALL.

¶24 But I did not only bring news of AALL to outside groups; I also had the opportunity to visit many different chapters. I attended the Fall Institute, presented by the members of ALLUNY (Association of Law Libraries of Upstate New York), and the SCALL (Southern California Association of Law Libraries) Spring Institute. I attended an excellent workshop on using social media, sponsored by SANDALL (San Diego Area Law Libraries), and I even managed to prove Thomas Wolfe wrong when I did go home again, to attend the spring banquet of WPLLA (Western Pennsylvania Law Library Association), my original home chapter. Finally, I attended the summer banquet hosted by LLAGNY (Law Library Association of Greater New York). While in New York, I visited a library with no books, and then I visited one with over 400,000 books.

¶25 AALL has been very active in the area of vendor relations this year. In November, Margaret Maes, former AALL President, former Chair of CRIV (Committee on Relations with Information Vendors), and current Executive Director of LIPA (Legal Information Preservation Alliance), was hired as our vendor liaison. Ms. Maes immediately dove into her new position, visiting all of the major vendors to establish lines of communication. She was also very active in helping to plan for the Vendor Colloquium, serving as Vice Chair of the planning committee. She, along with Steven Anderson, the Chair, and the vendor and librarian members of the planning committee, worked long and hard to ensure that the colloquium was a success. The colloquium was held on February 28 and March 1, and opened with a keynote address by Law Librarian of Congress Roberta Shaffer. For two days, librarians, vendors, and library users discussed the state of legal publishing and the needs of legal information users. Out of that colloquium, a working group was formed to draft a document of shared principles for librarians and legal
information vendors. In addition, the working group drafted an action plan to
determine how to accomplish the goals established by the attendees of the
colloquium.

¶26 The action plan was disseminated on June 10, with a four-week comment
period. The shared principles and the action plan were presented and adopted by
the Board at their meeting last week. I hope that many of you were able to attend
the CRIV open forum today, where the action plan was addressed.

¶27 As some of you may be aware, there were some negative comments on the
proposed antitrust policy included in the agenda for the summer Board meeting.
The proposed policy was an effort to codify principles that already exist and apply
to AALL. As I predicted in my e-mail to the membership, the policy was not
adopted by the Board. As is the Board’s custom, items of such importance are not
adopted without much study and debate among Board members. During the
Executive Board meeting, we voted not to adopt the antitrust policy as proposed
but to refer the matter to the Board Administration Committee for further study
and redrafting. The Board also asked that the committee adopt an FAQ on the
AALL antitrust issue. The Board will also seek comment from the membership
before a policy is considered or adopted.

¶28 Aside from the colloquium, I had two other presidential initiatives this year.
The first of these was a task force chaired by Merle Slyhoff to investigate the AALL
Price Index. The other members of the task force either chaired the committee or
served on the committee on more than one occasion. Despite what some thought,
the charge of this task force was not to eliminate the Price Index but to determine
ways to improve the product while at the same time making service on the com-
mittee a little less onerous for our volunteers.

¶29 After surveying the membership and talking with current and former
members of the committee, I am pleased to say that the task force accomplished
this mission. Last week they submitted several recommendations to the Board that
will allow AALL to continue to produce a high-quality, useful product while at the
same time easing some of the burden placed on committee members.

¶30 The other task force I appointed was a continuation of work begun under
President Lemann. In 2009, a group of librarians approached the Board to express
their feelings that the Association should be taking a leading role in determining
what would constitute information literacy for law students and what research
skills should be taught in law schools.

¶31 President Lemann appointed a task force to develop a set of law student
research competency principles. These principles were adopted at the spring 2011
Board meeting. I then appointed a task force, chaired by Carol Bredemeyer, to
develop standards with measurable outcomes for legal research instruction.
Members of this task force include librarians not only from the academic sector but
also from the law firm and court settings. The National Conference of Bar
Examiners has expressed a great deal of interest in this work and has asked that we
share our progress with them, as they prepare to develop a national legal research
bar exam.
Recently, the efforts of Past President Barbara Bintliff, who was recorder for NCCUSL's (National Conference of Commissioners on Uniform State Laws) Drafting Committee for Authentication and Preservation of State Electronic Legal Material Act, and Keith Ann Stiversen, who was our Observer to the Drafting Committee, have come to a successful conclusion. These women worked long and hard on this issue, and their efforts were successful.

I would like to especially recognize Barbara for her untiring efforts to represent AALL's position to NCCUSL and the Uniform Law Commission. This month the Uniform Law Commission passed the Uniform Electronic Legal Material Act, a first step in ensuring the authentication and preservation of government information that is born digital. And I need not remind anyone that this law was inspired by the National Summit on Authentication of Digital Legal Information convened in 2007 by AALL President Sally Holterhoff.

I would like to thank these members, and indeed all of the members of AALL committees, special committees, and task forces, who worked so hard for the Association this year. These people worked tirelessly all year long to accomplish their committee charges, to help improve not only the Association, but also their profession. Without their hard work and enthusiasm, AALL would not be the vibrant organization that it is. Our members have also given AALL more than their time. It would be remiss of me not to acknowledge and thank those members who donated to our many scholarship and grant programs. Your generosity allowed others to take a class or attend a meeting that they otherwise would not have been able to.

In 2008 President James Duggan launched his presidential initiative, a redesign of AALLNET. It took almost three years, but last May saw the successful debut of the new and improved AALLNET. Aside from being more visually appealing, the web site is easier to navigate and offers a host of new features that make communications, whether from AALL to members or member to member, easier.

And, finally, another important accomplishment I would like to announce is an agreement between AALL and William S. Hein & Company for Hein to publish the Index to Foreign Legal Periodicals in both print and digital formats. This agreement will add value to the index that will benefit all of its users. We are very pleased this agreement has been reached.

As I complete my year as President, I would like to thank all of those who have helped and supported me throughout the year: my colleagues at the University of Richmond Law Library, the members of the Executive Board, and the staff at Headquarters, and I would like to thank you, the members who entrusted me with the stewardship of the Association. It has been an honor serving as President.

On behalf of AALL, I would like to thank everyone who, through their contributions of their time, expertise, donations, energy, and work, make this Association a dynamic organization, well poised to meet the challenges of law librarians now and in the future. Thank you. (Applause.)
Remarks of the Vice President/President-Elect

¶39 The Chair is now pleased to introduce Vice President/President-Elect Darcy Kirk. (Applause.)

¶40 Ms. Darcy Kirk (University of Connecticut School of Law Library, Hartford, Connecticut): Thank you, Joyce. Before I begin my remarks, I would like to thank Joyce for her assistance this past year, as I transitioned to become first the Vice President and then soon the President. Joyce is counting down, but we won’t say that out loud—(whispers) twenty-three hours. She has been of invaluable help with advice in preventing me from reinventing the wheel on many tasks. So thank you, Joyce.

¶41 I am pleased and honored to speak to you today about my activities during the past year as your Vice President and to outline my plans for the coming year. First let me thank you for your continuing support, especially as I have transitioned to become President. I will be calling upon many of you to assist me as the coming year unfolds.

¶42 And speaking of assistance, my year as Vice President began with a call for volunteers for AALL committees. Like vice presidents before me, I and the Appointments Committee took on the difficult but very important task of selecting new members and vice chairs for AALL committees. I would like to thank those of you who did respond to that call, and I encourage you to volunteer this coming year again if you were not selected for a committee this past year. If you did not volunteer last year, please consider doing so this coming fall.

¶43 This past year we had approximately 185 volunteers for what turned out to be 137 slots. In making the appointments, I focused particularly on those volunteers who had volunteered before and had not yet been selected. Almost all of those volunteers were appointed to a committee. I also maintain a list going forward of those who were not selected for committees, and I continue to use it to fill vacancies or make appointments to new committees or task forces. So it’s in your interest to volunteer for a committee in the fall when Jean is sending out her call.

¶44 I have also been very busy traveling this past year to connect with many members and other library associations. I hope you know by now that the theme of the Annual Meeting in Boston is “Learn, Connect, Grow.” But more about that in a minute.

¶45 I visited two chapters during this past year, MAALL and MALL. The Mid-America Association of Law Libraries meeting was held in Iowa City, Iowa, and the Minnesota Association of Law Libraries meeting was held in Eagan, Minnesota. Both meetings were informative and well organized, and I had wonderful opportunities to connect with old friends, as well as meet law librarians for the first time. Thanks to both groups for treating me so kindly.

¶46 I was also fortunate to represent AALL at the BIALL (British and Irish Association of Law Librarians) meeting, which was held in Newcastle, England, this past June. I enjoyed renewing friendships from the JSI (Joint Study Institute) and meeting new law librarians from both the United Kingdom and other countries.

¶47 This coming year, 2011–2012, I plan to focus on the future of law librarianship and the future of AALL. As such, I have appointed a planning committee, the
Futures Summit Planning Committee, chaired by David Mao, to plan for a summit to be held in conjunction with the fall Executive Board meeting in early November. At that summit we will bring together a small group of members to discuss ways to engage our newer members, how to best communicate with members, and how to meet the needs of our members going forward.

¶48 Today’s new members will soon be the leaders of our profession and our Association. We need to prepare them for that future, and we need to work with them to discover what they need from AALL as they develop in their careers. If you are interested in participating in that summit, please let me know. There will also be many initiatives that I hope will stem from the summit, and I hope that even if you cannot attend, you will be interested in getting involved in this important project going forward.

¶49 Next summer the Annual Meeting will be held in Boston. Did I say that the theme is “Learn, Connect, Grow”? The Annual Meeting Program Committee, ably cochaired by Jonathan Franklin and Anne Matthewman, is already gearing up to receive your proposals, and the Local Arrangements Committee, cochaired by Sue Zago and Kathy Coolidge, looks forward to showing you their wonderful city. Boston is a great city for exploring. The Convention Center is conveniently located in Back Bay, in the heart of the shopping area and historic district.

¶50 Finally, I would like to again thank Joyce, the members of the Executive Board, Kate Hagan and her wonderful staff, and especially my colleagues at the University of Connecticut School of Law Library for their assistance and support this past year, and thank you for the privilege and honor of serving you. See you in Boston. Thank you. (Applause.)

Treasurer’s Report

¶51 President Janto: The Chair is pleased to call Treasurer Susan Lewis to the podium for the Treasurer’s Report.

¶52 Ms. Susan Lewis (Pence Law Library, American University Washington College of Law, Washington, D.C.): Thank you, Madam President. The 2010 fiscal year ended on September 30, 2010, and I would like to present to you a snapshot of the Association’s financial position on that date. You should have picked up a handout on your way in. It’s the Treasurer’s Report that was published in the May issue of AALL Spectrum, and I will refer to that from time to time as I give this report.

¶53 On that handout there are several schedules. Schedule A gives you a summary of the Association’s financial position on September 30, so it’s a snapshot of where we were as of that date. Schedule A shows that assets were up 5% for the Association, to $5,471,550.

¶54 Assets are made up of three primary types of resources. There are current assets, totaling $1,298,353, and those are composed of the General Fund, which is essentially the Association’s checkbook. It’s the operating fund, and that is laid out in more detail in Schedule C, which I will talk about in just a minute. There are

some other short-term accounts in the current assets, such as money market accounts, things that are maybe no more than a few months from maturity, and there are accounts receivable and deposits. Another type of asset that is listed on Schedule A is the property and equipment owned by the Association, and that totals $74,943. And then, finally, there is the investment portfolio, which is laid out in more detail on Schedule D, and it’s composed of three invested funds. They make up about 75% of the total assets of the Association, and these invested funds were up this year by about 7%, to a total of $4,098,254.

¶55 This investment portfolio was composed of three primary vehicles. There is the current reserve fund, which is essentially a contingency savings account used for special projects; there is the Permanent Investment Fund (which we fondly call the PIF), which is the long-term savings or, really, an investment account for the Association; and then there are restricted funds, which are also invested, and they are endowments and Board-restricted funds for particular purposes.

¶56 So those are the assets on Schedule A. Schedule A also lists the current liabilities of the Association, and these liabilities are down slightly, by 2%, to a total of $991,449. Taking the assets and the liabilities together on Schedule A, the Association as of September 30th had total net assets of $4,480,101, up 7%.

¶57 Schedule B on that handout gives you a layout of the Association’s activities for all of its funds in fiscal year 2010. This is kind of a big picture of all of the money of the Association. The total revenues increased by 7%, to a total of $3,785,726. Some of the things included in the Association’s revenues are investment income, which I mentioned a minute ago—this is interest and dividends, and those were up substantially, to $294,509. Again, the stock market has really improved over the last year, and this is reflected here.

¶58 Membership dues are down slightly, by about 1%, to $1,051,948. For the various publications, like the Index to Foreign Legal Periodicals, Spectrum, and Law Library Journal, the revenues were down about 5%, to $584,613. Annual Meeting revenue from our Denver meeting was also down slightly from what we expected, about 2%, to $1,481,464.

¶59 Total expenses for all funds of the Association went down by about 9%, to $3,513,443. And expenses were for things like the publications again, Spectrum, LLJ, the Index to Foreign Legal Periodicals. These expenses increased by about 11% this past year, to a total of $735,977. The cost for the Denver Annual Meeting decreased by about 12%, to $1,294,875. Administrative expenses were down by about 26%, for $569,189.

¶60 Taking all of that into account, we had an increase in net assets for all funds to $272,285, and that’s a substantial increase from the deficit position that we were in last year because of the worldwide financial situation. So the Association’s figures have improved substantially.

¶61 Schedule C breaks out a subset of Schedule B. Schedule C gives you the figures for the General Fund or the operating fund. This is essentially the Association’s day-to-day checkbook. Total revenues for the General Fund decreased a bit, 2%, to $3,262,942. So, for instance, membership dues that are allocated to the General Fund were down by about 1%, to $996,710; Annual Meeting receipts allocated to the General Fund were up by about 6%, to $1,391,121; and the investment
income that’s allocated to the Headquarters’ account was reduced by about 15%. We are putting more investment income into longer term savings and investments. For the General Fund that was about $46,534.

%62 Total expenses for the General Fund also decreased by about 7%, to $3,195,302. Annual Meeting expenses incurred by the General Fund were down about 6%, to $715,672. Executive Board and committee expenses were down by about 21%—there is a real effort to reduce expenses here—for a total of $79,074. Administrative expenses were up slightly, about 4%, to $1,793,502.

%63 So taking all of this into account, revenues and expenses, we had an increase in net assets for the General Operating Fund of $67,640. And, again, that’s an increase from a deficit position last year.

%64 Finally, Schedule D just gives you a picture of the various fund balances for the Association. These are restricted funds to ensure that the endowment monies that have been contributed by members are accounted for and are restricted to their intended purposes. These restricted funds can only be used for certain purposes. All of these funds, though, are set up to ensure that the monies are available to support AALL’s commitment to the strategic directions—which are of course leadership, education, and advocacy—and they all work toward that role in some way.

%65 In conclusion, I just want to sum up by reminding you that the Association has weathered pretty well the recent worldwide financial collapse. Its financial position has improved in the last fiscal year, and the Executive Board and Headquarters staff will continue to maintain efforts to nurture that improvement. Thank you. (Applause.)

%66 **President Janto:** Thank you, Susan. Copies of the Report of the Executive Director and the Government Relations Director are available on the tables as you enter the room. Because of our time constraints, those reports will not be delivered from the podium.

**Marian Gould Gallagher Distinguished Service Award**

%67 At this time I would like to ask Mary Lu Linnane, Chair of this year’s AALL Awards Committee, to please stand and be recognized. (Applause.) I would like to thank her, and all of the members of her committee who worked on this year’s awards program. It is very important for AALL to recognize the work of its members, and this committee makes that possible.

%68 And now we come to a very important part of our meeting—the presentation of AALL’s most prestigious award, the Marian Gould Gallagher Distinguished Service Award. This award is given in recognition of outstanding, extended, and sustained service to law librarianship and to AALL. It is presented to individuals who have completed or are nearing completion of an active professional career. A total of fifty-three current and former members have previously been so honored.

%69 This year, the award honors three members whose careers exemplify outstanding and sustained dedication to AALL and its mission and objectives. The winners of the 2011 Gallagher Award are Laura Gasaway, Frank Houdek, and Kathleen Price. We owe a debt of gratitude to each of these members and colleagues
for their dedication and leadership to the profession. I would now like to recognize each of them for their individual contributions.

Laura Gasaway

¶70 Laura Gasaway, will you please come forward? The name of Laura (Lolly) Gasaway is synonymous in the library world with the word copyright. She is, without a doubt, the preeminent copyright scholar, teacher, and advocate in the country. In addition to her work with both the SLA (Special Libraries Association) and AALL copyright committees, she has served the Association in ways too numerous to mention. She has headed committees, worked on task forces, and led the Association as President. She has been a major force in making AALL the organization it is today. More important, she has served as a teacher, a mentor, and a colleague to many of the law librarians here today. Her influence on the Association and the profession will be felt for years to come, and I am pleased to be the one to present her with this award. (Applause.)

¶71 Ms. Laura N. Gasaway (University of North Carolina School of Law, Chapel Hill, North Carolina): Thank you all so much. I was very surprised and happy when Judy Meadows called me to tell me about this award. I couldn’t go to sleep that night, I was so excited, and I couldn’t wait to tell Anne Klinefelter, who already knew, but I didn’t know that she knew. So I was very excited.

¶72 I am also pleased to be receiving this award along with Frank Houdek and Kathie Price, with whom I have worked for many years, and both of whom I admire tremendously. I am a law librarian, and I continue to so identify, whether I have served as a library director or as an associate dean for academic affairs in my law school, and now as a law teacher.

¶73 My first AALL meeting was in 1969. It was in Houston. At that time there were only four law librarians in Houston, and at age twenty-four I found myself in charge of conference registration as one of those four law librarians. Almost 600 people attended that year, so I guess it’s grown a little bit since 1969. It was an exciting welcome to AALL.

¶74 Working as a law library director, a law teacher, and in AALL has brought me tremendous joy. Law librarianship is a wonderful profession, as you know. It has been a great life, helping young law librarians to develop and grow and go on to do great things. And AALL is an incredible association. The continuing education that it provides readies us for the future but also gives us a chance to reflect on the past. To my delight, AALL has become a significant player in the national library association world and in legislation.

¶75 I am proud to be a law librarian and to call all of you colleagues and friends. Thank you so much for this award. (Applause.)
Frank Houdek

¶76 President Janto: Frank Houdek, will you please come forward? Frank has served AALL for many years in many capacities, as a committee chair, as a speaker at the Annual Meeting, as an Executive Board member, even as President of the Association. But of his many achievements in AALL, perhaps the two things for which Frank will be best remembered are his work to establish the AALL archives and the years Frank served as the editor of Law Library Journal. As a dedicated historian, he has done more than any other to preserve and promote the history of AALL. As the editor of LLJ, Frank introduced new columns and encouraged librarians to stretch their wings as writers. For these, and his many other contributions to AALL, we salute him, and I am happy to be able to present him with this award. (Applause.)

¶77 (Voice): He’s got five pages! (Laughter.)

¶78 Mr. Frank G. Houdek (Southern Illinois University School of Law, Carbondale, Illinois): I haven’t even said anything and you are laughing. I too received a telephone call from Judy Meadows informing me of this award, and, as she will tell you, I was speechless, which is an unusual circumstance for me. I usually can come up with something to say, but I literally could not, so I just basically said, “Well, thanks, and I have something to do.”

¶79 That was about three months ago, and I thought surely between then and now I would come up with something brilliant to say so at least Judy would feel good about that. Unfortunately, the truth of the matter is that I have not. I have wracked my brain to figure out what to say with this opportunity that has been graciously allotted to me to acknowledge this wonderful award—and I kept thinking, “I am always ready to say something.” Usually something percolates and then, “oh, that’s what I should say, that’s how I should go about it,” and it just has not happened. Even waking up last night at 2:30 in the morning, I thought, surely, this is the time when it will come, and it did not. And I finally figured out with the help of Anne Klinefelter a moment before this meeting began what the problem is—the problem is that this award is so significant and important to me that I just cannot adequately articulate my feelings and thoughts about receiving it here today.

¶80 So that all said, I know that there are a few things that I must do, and so I am going to do them, even though it may not be articulate, and even though it may not please our current Law Library Journal editor, Janet Sinder, who would like to see some controversy in her journal. I am going to do what I am going to do.

¶81 First of all, like Lolly, I want to acknowledge the two other recipients, Lolly Gasaway and Kathie Price. I feel a tremendous amount of pride and honor to be joined in the Class of 2011 of Marian Gould Gallagher winners with these two individuals. They are superb librarians, they have represented AALL to the wider
community, they have made contributions that, as Joyce said, will last for many years to come. So if nothing else, I am so pleased to be with this group.

¶82 I am originally from Los Angeles, which means that I must watch the Oscar ceremonies every year. So I know that what you have to do is pull out the list and thank everyone as fast as you can before they start playing the music. Fortunately, I don’t see anyone to play the music here, so maybe I will get through what I next have to do.

¶83 I want to thank the Association and the Awards Committee for honoring me, and I especially want to thank those individuals who took the time out of busy schedules to write on my behalf. I know that’s not an easy thing. Every year I say I am going to write, and most years I do not. So I appreciate that very much.

¶84 Equally important, I really want to thank the institutions that I have worked at for the last thirty-six years and the individuals who were my colleagues in those institutions. Without the support and the effort that they put in, there is no way that I could have done some of the things that Joyce has mentioned and the other things that I have done in my outside professional career. So thank you to the Los Angeles County Law Library, to Lawler Felix & Hall, to the University of Southern California Law Library, and finally to my home for the last twenty-seven years, Southern Illinois University School of Law—I have a great appreciation for the support that they have provided me over that time period.

¶85 There are many, many, many individuals without whose work and support and collegiality there is no way I could have won this award; and, frankly, one of my problems in thinking about this award was how I was going to identify all those folks and wondering whom was I going to forget, because inevitably I would forget someone. So I said to myself, “Do not, do not let yourself go there, do not start pointing to people in the audience and say that person did this, and we did that” and all that sort of thing. So I am going to resist that.

¶86 But, again, I want to emphasize that there is no doubt whatsoever that the only reason I am standing before you today is because of the hard work of these individuals. I was at times the titular head of things, other times I was just part of a group, but, again, without those folks, it just would not have happened.

¶87 In the same respect, I want to acknowledge the AALL Headquarters staff. A number of the things that I have done over my career involved support from Headquarters staff, certainly as Law Library Journal editor and other things, and without that support, I would not have been—I will say successful; you can make your own judgment on that.

¶88 In particular, and here I am going to already violate my rule, I do have to acknowledge Roger Parent, who was Executive Director when I was involved in the Executive Board and then served as President, and there is absolutely no question that it would have been a disaster without Roger. He is not here; he is retired and loving living in Florida, but maybe I will send him a Law Library Journal, and he can see that I have acknowledged him.

¶89 And as long as I have already violated my rule, there are two or three other people that I want to specifically mention. First, Earl Borgeson. You heard his name mentioned a moment ago on the list of memorials. Unfortunately, Earl passed
away last December. In fact, he was one of two former Gallagher Award winners to die in the past year.

¶90 Earl came to the Los Angeles County Law Library when I had been there for less than a year. At that point in my career—and I am using that word fairly loosely—what I envisioned for myself was to work for about thirty years in a nine-to-five job, probably with the L.A. County Law Library, secure a government pension, and go off into the sunset, and that would be that. And I honestly believe that had it not been for Earl’s presence, that is exactly what I would have done. And probably I would have felt happy about it, but I would have missed so much. He was my mentor from day one until the day he passed away. He opened up a whole new world for me, just as many of you in this audience are doing for your own mentees, and that’s probably the most important thing we can do as law librarians—continue our profession in that way. Earl certainly did it for me, and I could talk about him for hours. But I know they are already a little worried about the time I am taking, so I will stop there, but I do want to publicly acknowledge Earl Borgeson.

¶91 The second person I also want to acknowledge, and, again, I will probably be in trouble for doing this because there will be other names that I should mention, is James Duggan. James came to SIU in 1988, his first professional job. I had been Director for about three years, and we hit it off very well, both professionally and personally. We have over the years worked on many, many projects, probably ratcheting ourselves up and getting into more and more trouble doing it, and I really would be remiss if I didn’t acknowledge the professional and personal friendship that I have had with James over these many years.

¶92 The last person I need to mention is my wife, Susan Tulis, who is saying “no, no, no, I don’t think so,” but yes, yes, yes. She is so supportive of me and actually gets me to the places that I need to be and makes so many things happen and, you know, I just don’t want to go beyond that, but, again, I want the world to know that she is extremely important to me and has a lot to do with this award.

¶93 Finally, we are at the conclusion. It says “conclusion” right here. So, in 1992, I became AALL’s first public relations coordinator. Anyone remember that?

¶94 (Voices): Yes.

¶95 Mr. F. Houdek: Yeah, a few people. Okay, you are really old just like me. So one of the things that we did was we developed a whole bunch of stuff, and we came up with slogans like marketing people are supposed to do, and our biggest slogan was “Law Libraries Change Lives.” I know you can’t really see this, but this pin, which I will begin to wear in a moment, says “Law Libraries Change Lives.” We had that on pins and on bookmarks and on all sorts of stuff. When I was thinking about what to say, I came across this pin, and I said, “yeah, yeah, that really works, that is true, law libraries do change lives.” We change the lives of the individuals who come seeking the legal information that we provide and seeking the services that we provide, and that has not changed. That was true in 1992 when we came up with the slogan; it was true in 1984 when Marian Gallagher received the first distinguished service award; it was true in 1906 when A.J. Small and a very small band of individuals formed this Association. I don’t think we should forget that, and whatever
direction you all are going in—and it will be you, it won’t be me—keep that in mind.

¶96 But the other thing about that slogan is, law libraries change lives. They changed my life considerably. Thank you very much. (Applause.)

Kathleen Price

¶97 President Janto: Kathleen Price, will you please come forward? Kathleen (Kathie) Price has long been recognized as an innovator in the law library world. She has served as the law library director at four of our most prestigious schools, as well as serving as the Law Librarian of Congress and a member of the American Law Institute. Kathie has served on countless AALL committees and served as President of the Association. She has also worked tirelessly on the ABA Section of Legal Education Library Committee in order to ensure that high-quality law libraries would retain their rightful place in legal education. Her contributions to the professional literature will continue to inspire us for many years to come. I am honored to present this award to her. (Applause.)

¶98 Ms. M. Kathleen Price (Alexandria, Virginia): Judy Meadows must have the most delightful job in law librarianship, because she brings such joy to members with her news. My comment was to yelp in surprise, not only at receiving the award myself but also because of the company that I was in. As you all know, Lolly and Frank have been fabulous members of the Association.

¶99 Lolly and I share a trait that the young folks in the group may not know about, and we share it with Sally Wiant, with Betty Taylor, with Gail Daly and Suzanne Thorpe. When we graduated from library school, we were fortunate enough to work for institutions that allowed us to be part-time law students. We began our careers as catalogers, and by the time we graduated from law school, we had served in most of the positions in our libraries.

¶100 I was fortunate not only to practice law for two years but then to go to Duke University, where my mentor, Ken Pye, gave me two pieces of information, which I share with you. One is that the key to success is to surround yourself with people who are better than you are and give them the freedom to do their jobs, and the other is, do not lock yourself in your library, but become a part of the larger institution and the profession in which you serve. That advice has served me well over the years and has also served the various mentees who are my pride and joy.

¶101 As you heard, I have been director of a number of different libraries, and I am going to be succeeded at the University of Florida by somebody whose first job was with me at Duke. And, you know, when something like that happens, then you feel this sense of accomplishment that nothing else gives you. I am particularly pleased of course to receive an award that’s named after Marian Gallagher, because
we are coming to the end of the group of people who not only knew Marian, but were influenced by her.

¶102 Marian was, along with Roy Mersky and Morris Cohen and Mike Jacobstein and Harry Bitner, one of those people who provided us with the tools for both teaching and learning about our profession. In addition to that, she had the most fabulous sense of humor of anyone that I know. She was a poker player par excellence, a mother figure to the young women in the profession, and somebody who has left a lasting mark on all of us who knew her. I am sorry that all of us and all of you haven’t had the opportunity to meet her, but I hope that in some of us who have carried on her legacy you have a little bit of the sense of the professional and personal pride that we have in being able to provide service to the profession.

¶103 And I thank you all. One of the things that Judy doesn’t tell you is who nominated you and who wrote letters on your behalf, so I would like to think that all of you are responsible for the honor you have accorded me. Thank you. (Applause.)

2011 Hall of Fame Inductees

¶104 President Janto: Now it’s time to honor some very important members, those who have been inducted into this year’s Hall of Fame. The Hall of Fame was established in 2009 to recognize those members whose contributions to the profession and service to the Association have been significant, substantial, and long-standing. Today it is my honor to induct into the 2011 Hall of Fame class four individuals deserving of this recognition.

¶105 Timothy Coggins. Tim, will you please come forward? (Applause.)
¶106 Nancy Johnson. Nancy, will you please come forward? (Applause.)
¶107 Jacquelyn Jurkins. Jackie, will you please come forward? (Applause.)
¶108 Our fourth honoree, Anne Grande, passed away this past year, so we honor her posthumously with this award. Please join me in a moment of silence in honor of Anne. (A moment of silence was observed by the members.)

President’s Certificates of Appreciation

¶109 Each year, the President has an opportunity to present special certificates of appreciation to people or organizations who have contributed to the Association or the profession in exceptional ways. It is my pleasure this year to present several such certificates. I ask that each recipient come forward when his or her name is called.

¶110 Steven P. Anderson, for his leadership as Chair of the Vendor Colloquium Planning Committee, ensuring its success, and for his many contributions to the profession. (Applause.)
¶111 Suzanne B. Corriell, for her support, assistance, and friendship, without which my year as AALL President would not have been as successful. (Applause.)
¶112 James E. Duggan, for his exemplary leadership, service, and dedication to AALL, and for his tireless efforts to ensure AALLNET as a valuable member service and repository for AALL information in support of the profession and law librarianship. (Applause.)

¶113 Keith Ann Stiverson, for her leadership in representing the interests of AALL as the Observer to the Drafting Committee for Authentication and Preservation of State Electronic Legal Material Act to provide guidance to states on authentication and preservation of state legal materials. (Applause.)

¶114 Daniel J. Freehling, for his long service to the profession and for his dedication as the ABA’s Deputy Consultant on Legal Education since 2006. (Applause.)

¶115 Heidi Letzmann, for her ten years of dedicated service to AALL and its members. (Applause.)

¶116 Vanessa Castillo, for her five years of dedicated service to AALL and its members. (Applause.)

¶117 Hannah Phelps, for her five years of dedicated service to AALL and its members. (Applause.)

¶118 Celeste Smith, for her five years of dedicated service to AALL and its members. (Applause.)

¶119 I also want to thank our exceptional Headquarters staff for all their behind-the-scenes efforts that have helped make this meeting a success. While doing so may be their jobs, they are truly dedicated, and regularly go above and beyond the call of duty to ensure that everything runs smoothly. Will our Headquarters staff members please stand to be recognized? (Applause.)

Introduction and Remarks of Special Guests

¶120 We are delighted to have five special guests from our counterpart law library associations in other countries. At this time I would like to introduce each of them, and invite them to give us a brief greeting from the floor microphones. Cyndi Murphy, President, Canadian Association of Law Libraries.

¶121 Ms. Cyndi Murphy (Stewart McKelvey, Halifax, Nova Scotia): Greetings from the members of the Canadian Association of Law Libraries. I invite you to join us next year in Toronto for our Annual Meeting and Conference being held May 6 to 9 with the theme “Towering Opportunities.” We will be kicking off a year of fiftieth anniversary celebrations. AALL played an important role in that history. It was at the 1962 conference in San Francisco that a group of librarians working in law libraries in Canada formally met to discuss the possibility of forming their own association. Now Toronto is in close geographic proximity to upstate New York, so start thinking now about the possibility of joining us, and check out the details on our new association website, which will be launched in just a few weeks’ time. Thank you.

¶122 President Janto: Thank you, Cyndi. Next I would like to call on Gwenola Neveu, Juriconnexion. Is she not with us? Okay. Next I would like to call on Naish Peterson, National President, Australian Law Librarians’ Association.

¶123 Mr. Naish Peterson (Arnold Bloch Leibler, Melbourne, Australia): Hello, I would like to say thank you to the AALL for the generous invitation to come over
here, and to Wolters Kluwer, for their generous support of the Australian Law Librarians’ Association to help fund my trip. I just want to emphasize a couple of things that we are going to have in our part of the world. In September, our conference, which I would like to invite you all to come along to, is in our national capital, Canberra. We are actually voting on a change of our structure, which will totally alter the makeup of our association. It will no longer be an association, but a company headed by guaranty, and it will be a proper national association instead of splintered state divisions. So we are voting on that in September. Fingers crossed it gets through, because it’s been tremendous hard work to get a constitution up and running for that.

Also, Australia will host the next JSI conference. I really came here for ideas and to see if you are interested in this program continuing, and if you would be interested in coming to Australia if we held it. Currently we are looking at February 2013 as a possible date. So anyone, over the next two days, please come and have a chat with me if you would like. I would like to hear your thoughts. Thank you very much.

President Janto: Thank you. Next I would like to call on Susan Scorey, British and Irish Association of Law Librarians.

Ms. Susan Scorey (College of Law, London, England): Good afternoon, and greetings from the British and Irish Association of Law Librarians. I would like to thank the President and AALL for inviting me to your conference. You have all given me a very warm welcome, which I much appreciate. The sessions have been really interesting, and what has been very good is realizing that the issues we have in Britain are the same very much around the world, in all parts of the world, and that’s been useful to know. I must say though that the weather in Philadelphia is a bit warmer than it is in London at this time, so that’s been interesting.

I would like to extend a warm welcome to our next conference, which takes place in Belfast, Northern Ireland, in June. You may be aware that 2012 is quite an interesting year for Belfast. Nineteen-twelve was the fitting out and maiden voyage of the Titanic. The Titanic was actually built in Belfast. So we are hoping to have one of our evening events in a new exhibition and memorial site that they are building at the moment, and the meal will be in the ballroom, which is going to be a replica of the first-class dining room. As well as an interesting tour, it should be a useful conference. So thank you for your interest.

President Janto: Thank you, Susan. Finally, I would like to call on Jules Winterton, Immediate Past President of the International Association of Law Libraries.

Mr. Jules Winterton (Institute for Advanced Legal Studies, London, England): Thank you for the opportunity to speak on behalf of the International Association of Law Libraries. I am sorry it’s me again, but this year I am here in place of Petal Kinder, who is the newly elected president of the international association. She is the librarian of the High Court in Australia, and the High Court is sitting right now, so obviously they need their librarian. She extends her greetings and apologies that she can’t be here in person, but I know she would like me to congratulate you on another great conference and also to congratulate your Association on all of your work on behalf of our profession throughout the year.
¶130 She asked me to give you a couple of brief news items. One is that the IALL *International Handbook of Legal Information Management* that’s edited by Dick Danner and me has just been published. Please see me for details. The other advertisement is of course our 2011 conference, which is taking place in early December this year in the Faculty of Law, University of Malaya, in Kuala Lumpur, which is almost as hot as Philadelphia. Please do join us there, and in the following years. In 2012, it is going to be in Toronto. In 2013 we are going to be in Barcelona. Thank you.

¶131 **President Janto:** Thank you, Mr. Winterton.

**Resolution of Appreciation**

¶132 I will ask AALL member James Duggan to come forward to a floor microphone for a Resolution of Appreciation.

¶133 **Mr. James E. Duggan** (Tulane University Law Library, New Orleans, Louisiana): Whereas the 104th Annual Meeting and Conference of the American Association of Law Libraries, held in Philadelphia, Pennsylvania, on July 23 to 26, 2011, was an exceptional educational and networking success;

¶134 And whereas the success of AALL’s 104th Annual Meeting and Conference can be attributed in large part to the contributions of many individuals and entities that gave willingly of their time, energy, resources, and support;

¶135 Therefore, be it resolved that on behalf of AALL and its members, thanks be given to the following who worked throughout the year on Annual Meeting arrangements:

- President Joyce Manna Janto and the AALL Executive Board;
- Merle Slyhoff and Mark Bernstein, Co-Chairs of the Local Arrangements Committee, and its members;
- Anne Meyers, Chair of the Annual Meeting Program Committee, and its members;
- all members of the AALL staff;
- all the speakers, moderators, and program coordinators;
- all those who volunteered their time and assistance; and
- all AALL members, without whom the Annual Meeting would not have been such a success.

¶136 And be it further resolved that on behalf of AALL and its members, thanks be given to our gold-level sponsors, BNA, LexisNexis, and Wolters Kluwer Law & Business, and to all our other corporate contributors who have cosponsored or sponsored an event, service, or publications or otherwise given their support to the Annual Meeting, with special appreciation to all our exhibitors for sponsoring our Opening and Connect 2012 receptions.

¶137 **President Janto:** Do we have a second to the resolution?

¶138 **(Voices):** Second.

¶139 **President Janto:** The resolution has been moved and seconded. All in favor please say aye. (Chorus of ayes.) Any opposed? (No response.) The resolution carries. (Applause.)
Other Resolutions

¶140 We have received no other resolutions. Therefore, we will move on to new business.

New Business

¶141 The Chair has one item of new business. At the recommendation of the Parliamentarian, I would like to request a motion that the Executive Board be authorized to approve the minutes of the Annual Business Meeting prior to their publication in the fall issue of Law Library Journal.

¶142 (Voice): So moved.

¶143 President Janto: Do I have a second?

¶144 (Voices): Second.

¶145 President Janto: Any discussion? (No response.) All in favor say aye. (Chorus of ayes.) Any opposed? (No response.) The motion carries.

¶146 Are there any other items of new business? (No response.) Receiving no requests for new business, we will move on to the next item on the agenda.

Announcements and Adjournment

¶147 Are there any announcements to be made? (No response.) Since there are no announcements, we have concluded all items of the agenda. If there is no objection, the 2011 Business Meeting of the American Association of Law Libraries is now adjourned. (Applause.)

¶148 We hope you will stay for the Members’ Open Forum, which will begin immediately. Suzanne Corriell will serve as the moderator. The forum will last no later than 5:30 p.m.

(WHEREUPON the General Business Meeting was adjourned at 5:10 p.m.)
Appendix A

Report of the Director of the Government Relations Office

Julie M. Strandlie (American Association of Law Libraries, Washington, D.C.): Thank you for this opportunity to provide my first report on the activities and successes of the AALL Government Relations Office (GRO). I am honored to have been selected to lead AALL’s government relations program, commencing April 11, 2011. I look forward to working with the AALL Executive Board, the policy committees, members, chapters, and staff to expand AALL’s influence in information policy development and enactment at all levels of government.

This report includes GRO activities from August 2010 through July 5, 2011; Mary Alice Baish directed the office until January 2011, when she assumed a new position as Assistant Public Printer, Superintendent of Documents, for the Government Printing Office. Thanks go to Advocacy Communications Assistant Emily Feldman for her outstanding service to AALL and the GRO and for contributing to this report.

Federal Public Policy Update

The GRO staff reported in July 2010 that the 111th Congress had made little progress on key information policy priorities, given the focus on the economy, health care, national security, and other urgent matters. Prior to the November 2010 election, Congress did make some progress, enacting three AALL-supported bills: to reduce overclassification of government information; to require that government documents released to the public must be written clearly; and to open the Securities and Exchange Commission’s Freedom of Information Act process.

While Congress acted to extend until May 2011 the USA PATRIOT Act’s expiring provisions (including the “library provision”), Congress did not act on other AALL priority legislation before adjourning in late December.

On the administrative front, however, the Federal Communications Commission (FCC) in December 2010 adopted long-awaited AALL-supported network neutrality regulations. Those regulations are scheduled to go into effect after approval by the Office of Management and Budget (expected in the next few months).

A significantly reconfigured and realigned 112th Congress convened in January 2011, with the Democrats retaining control of the Senate, and the Republicans taking control of the House. Since that time, Congress has taken some steps (both positive and negative) regarding information policy legislation. A few highlights of our federal legislative work are summarized below:

- In April, generally along party lines, the House of Representatives passed (238–174) H.J. Res. 37 to block funding to the FCC to implement the pending net neutrality regulations. The House previously passed a similar provision as part of the FY 2011 appropriations debate. AALL strongly opposes this legislation, along with companion legislation, S.J. Res. 6, currently pending in the Senate. We will continue to oppose this legislation, as net neutrality is one of AALL’s legislative priorities.
Our office continues to work to improve the Freedom of Information Act (FOIA) to expand citizen access to government information. The GRO staff has attended regular meetings with the Office of Government Information Services (OGIS) at the National Archives and Records Administration to discuss how they can improve services and work with federal agencies to better meet the needs of the requester community, including law librarians. OGIS, which opened its doors in September 2009, is charged with mediating FOIA disputes, reviewing FOIA policies and procedures, and tracking agency compliance. AALL strongly supports the Faster FOIA Act to establish a commission to examine FOIA processing delays. Thanks to the bipartisan leadership of Senator Patrick Leahy (D-VT) and Senator John Cornyn (R-TX), the Senate passed the bill by unanimous consent in May. We will work with members of the House to ensure passage in that chamber.

In May, President Joyce Manna Janto submitted testimony on behalf of AALL to the House Committee on Appropriations Subcommittee on Legislative Branch in support of the FY 2012 budget requests of the Library of Congress/Law Library of Congress and the Government Printing Office. President Janto also asked Congress to provide increased access to Congressional Research Service reports. AALL continues to support the Library of Congress’s development of LAW.Gov and its plans for a new, comprehensive digital repository and portal, the “One World Law Library.”

Also in May, Congress passed a four-year extension of the USA PATRIOT Act. While the passage of a four-year extension is disappointing, we are pleased that Senator Leahy introduced a stand-alone bill, S. 1125, to make improvements to Section 215 (the “library provision”) and the National Security Letters provision. Senator Rand Paul (R-KY) is an original cosponsor of this bipartisan bill. We have encouraged AALL members to start educating their members of Congress now about why these PATRIOT Act provisions must be reformed, and we will work closely with members to obtain cosponsors for S. 1125.

In June, AALL, the Medical Library Association, and the Special Libraries Association released a statement congratulating the Environmental Protection Agency (EPA) on the release of their final strategic plan on the EPA National Library Network. The plan comes more than five years after AALL first learned about the agency’s plan to close its libraries. We look forward to working with EPA staff on the implementation of the plan.

Nearly all of AALL’s State Working Groups have completed their state inventories as part of the National Inventory of Legal Materials, and we will share the data with interested parties. In addition, AALL’s Emily Feldman continues to work closely with Emily Carr, Senior Legal Research Specialist at the Law Library of Congress, on the development of the Federal Inventory.

AALL was also instrumental in encouraging GPO and the Administrative Office of the United States Courts to launch a new pilot project to increase access to PACER. Participating libraries will be required to conduct at least one training class for the general public every three months as well as training opportunities for library staff at least once a year. The Library of Congress and the Law Library for San Bernardino County are the first to participate in the
new program, which could eventually include up to fifty libraries. AALL will support the project by working with our members to develop virtual training tools.

- We continue to focus on the preservation of electronic records and staff attend quarterly meetings with Archivist of the United States David Ferriero on a number of important issues, including the need to better preserve federal agency records. According to the National Archives and Records Administration’s 2010 Records Management Self-Assessment, ninety-five percent of federal agencies are at high risk of losing their electronic records. We have met with staff of several members of Congress to express our concerns about the risk to agency records.

State/Local Public Policy Update

Our office collaborates with AALL chapters in support of funding for public law libraries. During the 2011 state legislative sessions, public law libraries were threatened with funding cuts, and even elimination, as state legislatures struggled to pass their own budgets. AALL members and chapters in several affected states (including Texas, Connecticut, and Washington State) contacted their state legislators in support of preserving and funding their state and local law libraries. In Washington State, we worked with the Puget Sound chapter (LLOPS) to identify members who could personally contact the legislators identified as key decision makers. We are pleased to report that while several state law libraries were threatened with extinction this year, it appears that all three will survive, but in some cases with significant funding cuts.

Maintaining state and local funding and support for public law libraries must continue to be an AALL priority for the coming year; as the economy continues to struggle, this next year will present even greater challenges to state and local governments as federal economic stimulus funding winds down. Therefore, we have initiated contacts to expand support for public law libraries by reaching out to other stakeholder groups, including bar associations and Access to Justice (ATJ) Commissions that exist in almost every state. More outreach and coordination is planned; we are encouraging law librarians to get involved in state-based access-to-justice initiatives, especially with their respective ATJ Commissions.

Another upcoming top-priority state legislative issue for AALL members and chapters will be enacting the Uniform Electronic Legal Material Act, which was approved on July 12 by the Uniform Law Commission. AALL strongly supports the nationwide enactment of the model act. A breakout session during the advocacy training session will discuss ways for AALL members and chapters to work with their respective state legislatures and other interested organizations to enact this legislation.

AALL Advocacy Team

Our office looks forward to working with our members and entities to increase opportunities to share expertise at the federal, state, and local levels and, most important, to actively assist elected and government officials in enacting AALL-supported policies. We look forward to shared success in the coming year.
Report of the Executive Director

Highlights

Kate Hagan (American Association of Law Libraries, Chicago, Illinois): This year the staff has worked in partnership with AALL leadership and members to develop additional programs and activities, through which much has been accomplished. AALL was fortunate to have the leadership of President Joyce Manna Janto and Past President Catherine Lemann in charting the course for 2010–2011. In addition, the Executive Board has provided the necessary stewardship to launch these initiatives.

We tackled a number of projects this year, from the rollout of a new web site to schedule changes for the Annual Meeting. In addition, we began the implementation of a new three-year strategic directions plan for AALL and the expansion of virtual educational programs for members.

This year we also made much progress in the area of vendor relations and in planning for AALL’s future.

AALLNET 2.0

This past May, AALL launched its new and improved web site, a project more than a year in the making. With the new site, members discovered a new layout, easy-to-use navigation, more features and functionality, better search capabilities, and a stronger brand. The new site also includes a new social networking component called My Communities. Members now have the ability to create groups and other communities through our web site. Member groups can communicate via their e-groups, share documents through their resource libraries, post events, and create blogs. All of these added features are key components identified by members in previous surveys and discussions. A special thank you to the AALLNET Strategic Planning Committee members, chaired by Kathie Sullivan, who led this ambitious project to improve members’ AALLNET experience; the project could not have been completed without their efforts.

Vendor Relations

Much progress has been made on the vendor relations front, and we continue to work to foster knowledge and information sharing between law librarians and information vendors. Early this past fall, Margaret (Margie) Maes was named AALL Vendor Liaison. A past AALL president, Margie was able to quickly engage with members and legal publishers and help set the stage for a successful Vendor Colloquium held in late February. With the theme “Creating, Disseminating, Using, and Preserving Legal Information in Challenging Times,” the colloquium was held February 28 to March 1 in Chicago. As a result of this event, a working group was formed, which then drafted the shared principles developed and agreed to at the colloquium as well as an action plan to ensure the principles are enacted. Both documents are now available on the Vendor Colloquium page on AALLNET. In addition, the action plan is being reviewed by the Executive Board so that it can be put into action.
The Committee on Relations with Information Vendors (CRIV) also hosted a round table at this Annual Meeting at which members and information vendors could discuss the plan in more detail. The Vendor Colloquium Planning Committee, chaired by Steven P. Anderson, put in a great deal of time and enthusiasm to guarantee the success of the colloquium. Their efforts are greatly appreciated.

**Electronic Legal Material Act**

With the July 12, 2011, passage of the Electronic Legal Material Act by the Uniform Law Commission, one of AALL’s primary goals has moved forward: to ensure official electronic legal materials will be preserved and authentic copies of the materials will be made available to the public. To that end, AALL has supported efforts of NCCUSL in the drafting of this act. Two AALL members have been instrumental in this effort: Barbara Bintliff served as reporter for the NCCUSL Drafting Committee, and Keith Ann Stiverson was the AALL Observer at the committee’s meetings. The Electronic Legal Material Act provides states with an outcomes-based approach to the authentication and preservation of electronic legal material. The goals of the act are to enable end users to verify the trustworthiness of legal material and to provide a framework for states to preserve legal material in a manner that will ensure permanent access. I would be remiss if I did not thank Mary Alice Baish, AALL’s former Director of Government Relations, for her work on this effort. The act is the culmination of many years of work by many AALL members. Most important, it is a significant achievement for AALL and for law librarianship.

**AALL’s Futures Summit**

Work is already under way at the staff level to provide support for a planned AALL Futures Summit, to be held in early November in Chicago. One of President-Elect Darcy Kirk’s initiatives, the Futures Summit Planning Committee is being chaired by David Mao. The committee will develop the agenda for the summit, designed to create a discussion about the future of law librarianship and AALL. The expected outcome is a blueprint for meeting the challenges of the changing environment in which law librarians work.

**Research Principles Developed**

The Law Student Research Competency Standards Task Force completed its work this year, and the Executive Board adopted the task force’s recommended Student Research Competencies and Information Literacy Principles. As a result of these recommendations, another task force has been appointed to develop specific outcome-based competencies for each principle. Once that work is complete, the research competencies will be shared with other groups, associations, and institutions involved in legal education. It is hoped that these competencies will be implemented in these institutions and be used in the teaching of legal research skills. The task force, chaired by Sally Wise, worked for nearly a year to develop the literacy principles. In addition, the initial work on these principles was done by an ad hoc group of members, led by Dennis Kim-Prieto, who felt this was an important project to help improve student research skills.
More Opportunities Online

An important goal for AALL has been the expansion of virtual learning opportunities for members, and much was accomplished this year to achieve this goal. This past fall, we launched AALL’s very first six-week online management course. The course, which sold out within hours of its announcement, was facilitated by Maureen Sullivan and provided members with live, web-based sessions and online interactive sessions with fellow participants. Our webinar program has also become fully established, offering monthly programs with an average of nearly one hundred participants. We also continue to update archived content on AALL2go for members to access when their schedules allow. At last year’s Annual Meeting, we live-streamed three programs to provide members unable to attend the opportunity to participate in the meeting. This year we are doing the same, and members were able to vote on which programs are live-cast via the web. The programs are also available free to members after the conference, via AALL2go.

Annual Meeting

This year, staff worked closely with the Annual Meeting Review Special Committee, chaired by Kimberly Serna, which was appointed to review all aspects of AALL’s Annual Meeting to ensure it continues to meet the needs of the membership. Research was conducted on trends in association conference attendance and structure by comparing AALL to other related associations. The structure of the Annual Meeting Program Committee (AMPC) and the educational program selection process were evaluated, as well as social networking opportunities and their importance to attendees. As a result of a member survey and the solicitation of responses from discussion group questions, the committee offered recommendations to the Executive Board at the July 2010 Executive Board meeting in Denver. Those recommendations were implemented at this year’s Annual Meeting, including two new exhibit hall receptions in place of the closing banquet, all AALL committee meetings being held on Saturday, the placement of the Diversity Symposium on Sunday, and support for the current structure of the AMPC with encouragement to continue tracking educational programs by the competencies of law librarianship.

We also produced preview and wrap-up, digital-only editions of the Annual Meeting daily paper, AALL Summit News, which were e-mailed to all AALL members in June and August. The volunteer editors provided content and images from the meeting to help those who stayed at home feel like they were part of the conference. These digital editions will again be produced for this year’s meeting.

AALL on the Road

This year, AALL representatives and staff traveled to meetings across the country to meet with other members of related organizations and AALL chapters to discuss the importance of law librarianship and the Association. In April, AALL Representative to the Legal Marketing Association (LMA) Jan Rivers and AALL Director of Membership Marketing and Communications Julia O’Donnell attended the LMA Annual Conference in Orlando. They staffed a booth in the exhibit hall where they talked to LMA members about how law firm librarians and marketing
departments can partner for business intelligence and other research needs. They made a number of contacts with LMA members who are interested in creating programs on the local level with law librarians about how the two departments can work together and create a powerful alliance in their law firms.

In March and April, AALL staff members attended meetings of the Southern California Association of Law Libraries, Northern California Association of Law Libraries, and Southeastern Chapter of the American Association of Law Libraries, where they previewed the new AALLNET, provided information about the Association, and received member feedback about their needs and interests in AALL.

In April, AALL Representative to the Association of Legal Administrators (ALA) Monice Kaczorowski and Julia O’Donnell attended the Association of Legal Administrators Annual Conference in Orlando and also staffed a booth in the exhibit hall where they talked to members about their library and legal research needs. They also educated the legal administrators about the expanding roles that legal information professionals are taking on in law firms. Monice and Julia participated in a speed networking session where they met with small groups of administrators and were able to ask questions about their challenges and discuss how law librarians can add value to their firms.

Membership Report

While America’s economy and the legal market continue to slowly recover from the recession, AALL offers support and resources to members who are both seeking new positions in the profession and looking to learn new skills to advance their careers.

New AALL member Marsha Stacey, Interim Director of the McKusick Law Library at the University of South Dakota School of Law, wrote to us recently and said,

The ALL [Academic Law Libraries] portion of the web site has been very helpful for me as a “newbie” director and teacher of legal resources. And, when the dean asked me to set my salary for next year, I was able to use the 2009 Salary Survey to support my request. I greatly appreciate all the information from AALL!

I’m happy to report that our membership is healthy and growing. We closed out the 2010–2011 membership year with a nearly 94% retention rate, which is excellent among associations, particularly in the current economic climate. Our recruitment rate also grew this year. We ended the year with a 14% growth rate, compared to −0.3% last year. We can attribute this recruitment success to two new initiatives to recruit members through Annual Meeting nonmember registrations (fifty-eight new members) and through a mailing we sent to chapter members and lapsed members (sixty-one new members). The mailing was particularly successful in recruiting law firm librarians. Of the sixty-one who joined, thirty-six were from law firms, five were from academic law libraries, ten were from government institutions, and ten were from other categories.
AALL Staff

AALL has a truly dedicated and resourceful staff. They work hard in support of AALL’s mission, they are member-service orientated, and, most important, they work well together as a team. A lot of AALL’s success can be attributed to their work behind the scenes.

This year, while we were sad to lose two of our fellow staff members, Mary Alice Baish and Hillary Baker, who left to take on new opportunities, we were also fortunate to gain two new staff members. Julie Strandlie joined AALL in April as Director of Government Relations. Julie brings to AALL twelve years of advocacy experience from her work in the ABA Government Relations Office. Amie Shak joined AALL in June as the Marketing and Communications Manager. She brings four years of experience in association publications management. We welcome their addition to the AALL staff team.
Appendix B

Statements of Candidates for 2011–2012 AALL Election

Candidates for Vice President/President-Elect in 2011–2012

Jean M. Wenger

“When I stop having fun, I’ll do something else.” I often share this sentiment as evidence of the great personal and professional satisfaction I derive from law librarianship. Early in my career, colleagues introduced me to AALL. As a result, I encourage students and newer librarians and lawyers to seek out and join a professional association. The experience and benefits are invaluable. Quite simply, I am a more skilled and confident professional because of AALL and its dedicated members and staff.

Members are the heart and soul of AALL. Through my work on the Executive Board, committees, chapters, and special interest sections, your participation has been the constant in the success of the Association. Because of your generous contributions, AALL thrives as a volunteer-driven organization. In response, AALL needs to proactively extend mentoring and support services to members of all experience levels, employment statuses, and professional interests.

I was privileged to chair the Strategic Directions Committee for the past two years. With member input, the Executive Board developed a road map to advance the Association in the directions of leadership, education, and advocacy. Implementation and fulfillment of the new strategic directions will focus AALL leadership and entities on tasks important to the members: strengthening the Association, advancing our educational aspirations, and increasing our influence over legal and government information policies.

Law librarians have new, expanded responsibilities in more diverse environments than ever before in our history. This reality must compel AALL to step outside the box, to anticipate developments, and to promote innovative responses to changes in both information access and provision of services, whether in the private or public sectors. Because AALL members represent such a diversity of library types, areas of concentration, experience levels, and generational identities, leadership must ensure that members can tap into and capitalize on these collective strengths. We must develop customized educational opportunities, a strong network on AALLNET, and clear and consistent intra-communication, especially between entities and membership.

Given that law librarians have options for association affiliation to advance their skills, interest, and professional stature, AALL continually needs to evaluate member benefits and services. As members begin to reassess the value of a traditional association in an evolving world of social networking, AALL leadership is

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4. See supra ¶¶ 12–13 for the Secretary’s report on the results of the election.
5. Government Documents/Foreign & International Law Librarian, Cook County Law Library, Chicago, Illinois.
obligated to listen, communicate, and set the agenda for action in order to maintain members’ allegiance and to meet and exceed their expectations.

AALL continues to be the public voice of the legal and information fields on issues affecting all law librarians. We must seek constructive collaboration with library, legal management, and bar associations. Effective communication is crucial to a thriving association and to successful outcomes. AALL must increase its interaction with our counterparts to educate and advocate for recognition of law librarians’ professional status, equitable options for legal information, and free, permanent access to official, authenticated government information.

Members ask, “What can AALL do for me? How will AALL address those issues most important to my career?” If we recognize success in collective action, the answers to these questions will be ours. I will work with the Executive Board, entities, and you—the members—to provide leadership and direction, building on our progress and our potential. I would be honored to serve you as AALL Vice President/President-Elect.

Cornell H. Winston

It is an honor and a privilege to be nominated for the office of Vice President/President-Elect of the American Association of Law Libraries. I have been a member of AALL since 1992 and have benefited enormously from the programs, the Annual Meeting, the networking opportunities, and our publications. While I have changed library types and employers, the one constant has been the resources AALL has provided. I am grateful for what I have learned from my colleagues and friends, but also for the varied opportunities to give back to the Association that has given me so much. As a former member of the Executive Board and the Finance and Budget Committee, I have seen firsthand how AALL works and what our Association does to support law librarians. As members, we may disagree on some issues and look to AALL to address a variety of needs, but the strength of the Association comes from dedicated professionals in the field of law librarianship.

This new decade has continued the paradigm shift for law librarians. We are experiencing what I would call a “new normal.” Many find this new normal fraught with perplexities and new challenges that we have met head on, and we must continue to do so. The strength of law librarians is not in the size of our various collections, or even in our educational degrees, but in our ability to adapt and remain highly successful when faced with new pressures. Each day brings new struggles, yet provides new opportunities to succeed. While some may shrink away from the “new normal,” law librarians face it without hesitation. When faced with new challenges, law librarians are able to succeed in areas that were not even imagined when I joined the Association.

What is AALL’s role in this “new normal”? It is the same role our Association has had for the past 104 years—to maximize the power of the law library community. When working together, we have been able to adapt to new challenges, create change, embrace new roles, and strengthen our individual members. I see the office

6. Law Librarian, United States Attorney’s Office, Central District of California, Los Angeles, California.
of Vice President/President-Elect as being a conduit for our members to function and grow in their positions. While we have a rich history, our Association’s continued success depends on our ability to be a voice in the larger library and legal community in which we work. Through the programs and resources AALL provides, we are equipping one another to face our “new normal.”

I would appreciate the opportunity to be the AALL Vice President/President-Elect at such an exciting time. When I visited chapters as a member of the AALL Executive Board and in speaking with law librarians, I saw what our members have been dealing with on a daily basis, but also what AALL can do to ensure that our future is as bright as our past. I thank you for your support and for the opportunity to serve in this important office.

Candidates for Secretary in 2011–2012

Deborah L. Rusin

I attended my first AALL Annual Meeting in San Antonio, Texas, in 2005. While I was not brand new to AALL, I was certainly newer, having been a member of AALL since December 2002. It was while attending that conference that I was hit over the head—figuratively, that is—and was forever transformed both as a law librarian and as a person. While at the conference, I had the opportunity and pleasure to attend a wonderful program titled, “Room at the Top: Strategy Tips from the Hiring Squad.” I sat in the audience listening to the panel of speakers, hanging on to their every word, thinking to myself, “Yes, that is what I want, that is what I hope to achieve!” It was as if the panel were speaking directly to me—to me alone! At some point, however, I happened to look around the room and was hit over the head—figuratively, that is—for I saw that the room was filled with people. And while it may be a little bit hard to convey exactly the intensity of what I felt at that moment, I realized that it wasn’t just about me. The panel was not speaking to me alone but to the collective whole of law librarians—and I was a part of that collective whole. I was both an individual law librarian and a part of the collective whole of the American Association of Law Libraries, and I was embraced by the collective whole. This was one of the times in my life when I truly felt that I was a part of something big!

From my seat, I saw law firm librarians; academic law librarians; and court, county, and state law librarians. I saw the interwoven fabric of law librarianship as a collective whole. I saw how we all played a valuable role in not only what we each contributed individually as law librarians, but also what we contributed collectively to the profession as a whole. I was a part of the individual fibers (special interest section member, chapter member, committee member) that, woven together, created the collective whole—the American Association of Law Libraries. Alone, no part, whether it be a special interest section, chapter, or committee, was greater or stronger than the interwoven whole of AALL, and we all needed each other!

It was while attending that meeting in San Antonio that I realized that could learn from those who have gone before me, that by becoming involved in the professional organization of AALL, I too might be able to learn more about the value of the collective whole and pass it along to others. By becoming involved, I might one day be a mentor as those on the panel of that 2005 conference have been to me over the years, and maybe I too could one day hit someone over the head—figuratively, that is!

Since 2005, I have grown as an individual and as a law librarian. I have most recently been known to shout from the rafters that being a law librarian is more than just a job to me—more than just a form of subsistence and earning a paycheck. Being a law librarian is my career and a large part of what defines who I am.

I believe strongly in the importance of our professional Association. I believe strongly in the ability of our Association to foster individual and collective growth through networking, Annual Meetings, continuing education seminars, and volunteer opportunities. In fact, I believe so strongly in our Association and sustaining its educational programs and overall healthy existence that for the last two conferences (Washington, D.C., in 2009 and Denver in 2010), I paid to attend these conferences out of my own pocket when, due to the economic downturn, the funds were not available from my institution.

Although there are individual groups, special interest sections, chapters, and committees in AALL, it is important that we recognize and foster individual growth while at the same time working to remain a cohesive unit. We must strive to build consensus and work through our differences. The old cliché “the whole is only as good as the sum of its parts” rings true.

AALL conferences, networking opportunities, continuing education programs, and volunteer opportunities are of value to all members of the professional association, and it would be an honor as well as a privilege to serve you as Secretary of our Association. I thank the Nominations Committee for nominating me to run for Secretary of AALL.

I welcome the opportunity to listen to all members and divisions of AALL, whether they be from a particular special interest section, chapter, or committee. I welcome the opportunity to hear the accolades as well as the concerns and frustrations of the AALL membership and then work to build consensus among the membership. Thank you.

Dennis S. Sears

I am deeply honored to be asked to run for the office of Secretary of the American Association of Law Libraries. Over the years, I have had opportunities to serve in many capacities at the national and regional levels of the Association. With each of those opportunities, I have grown and developed professionally because of the positions I have held and fulfilling the responsibilities that came with those positions. I have also been enriched personally by the associations I enjoyed with many of you. I hope to use my accumulated experience to benefit the Association as its Secretary.

8. Associate Director for Legal Research Instruction, Brigham Young University, Provo, Utah.
To me, AALL is the critical professional organization for law librarians. Within AALL, new law librarians develop and hone their fledgling skills in technical services or public services in all types of law libraries as they embark on a life of service to the legal profession. In addition, AALL provides a forum for law librarians at all experience levels to share ideas and best practices—from law firms to the academy and from the public sector to the corporate legal department. Finally, to the “outside” world, AALL is a tireless advocate of law libraries and law librarians to the legal and law-related professions, striving to instill in them an appreciation of the crucial role that law librarians play in support of those professions. Our roles, as law librarians, are to improve the quality of the legal profession by teaching legal research skills to law students and helping them master those skills, supporting the teaching and research of law professors, and assisting practicing attorneys and sitting judges in their work.

The responsibilities of the Secretary are significant, including taking notes and preparing minutes of the Board meetings, overseeing the election process, and serving on Board committees. My two-year term as secretary/treasurer of the Foreign, Comparative, and International Law Special Interest Section prepared me well to fulfill those responsibilities. However, I believe the most important responsibilities I would have as Secretary and member of the Executive Board would be to listen to the membership of the Association, ensure that the concerns of the membership are conveyed to and understood by the Board, and be able to explain the actions of the Board to the membership—in short, ensure the lines of communication are open to and from the Board.

I am grateful for the professional opportunities that I have enjoyed as a member of AALL to learn and to serve. I look forward to years of continued growth and service in the Association. Thank you for your consideration and support.

Candidates for Executive Board Member in 2011–2012

Kathleen (Katie) Brown

When I was growing up in Maine, my family didn’t have a lot of money to give to others in need, so we gave of ourselves whenever we could. I remember fixing trails at the local park and summer camp, painting windows during the holiday season, and participating in bottle drives for the local food bank. Due to these experiences, volunteering my time and giving back to the community I played and worked in was instilled in me at a very young age. As an undergraduate student, I continued to give back by cofounding an educational theater company, and later, in law school, by assisting with Washington Lawyers for the Arts.

As a new law librarian, I wanted to once again find a way to give back to my new professional community. At my first AALL conference, I worked at the registration desk and quickly discovered wonderful individuals who went out of their way to make me feel comfortable and welcome in my chosen profession. During

9. Assistant Director for Public and Faculty Services, Oklahoma City University Law Library, Oklahoma City, Oklahoma.
my registration shift, every person I met shared their views on the profession and stories and advice based on their own experiences. This initial positive working and learning experience with my fellow law librarians at the Annual Meeting registration booth made me want to become even more involved with AALL. Several opportunities for involvement arose in the fall of 2007, when I took over the lead role of the new AALL Gen X/Gen Y Caucus and was elected to the executive board of the South Florida chapter of AALL, the South Florida Association of Law Libraries (SFALL).

The experience of heading up the Gen X/Gen Y Caucus from 2007 to 2010 made me even more aware of how wonderful law librarians truly are. The membership of the Caucus is more than 200 and still growing. They are from all over the country, from every variety of library, and from every stage in their careers. Due to the diversity of membership, I quickly learned how to communicate the goals for the group set out by its members at the AALL meeting. I learned to really listen to the concerns and questions of the members and try to find proactive ways of solving any issues that arose. Through my experience with the Gen X/Gen Y Caucus, I also discovered that my voice in response to AALL issues was the voice of the Caucus membership. Therefore, it was very important that I was always aware of the accomplishments, wishes, and concerns of the members of the Caucus to ensure I was accurately representing its voice.

I am honored to be placed on this year’s slate of candidates for the office of Executive Board member and, if elected to the position of Board member, I will be a representative of AALL’s membership as a whole. I look forward to communicating with all of you to ensure that I am expressing the many diverse voices present in AALL’s current membership.

Madeline Cohen

Change, like conflict, is inevitable. How we approach and accept that change will inform where we go as a profession. I have always believed that we should embrace change, even if it’s scary. I know that not everyone is in agreement with me. I have been the circuit librarian for just over a year and have ushered in some pretty big policy, service, and personality changes in my library. Has it been easy? No, but I feel that it is my responsibility as a relatively new law librarian and a new director to be a leader in change management, both in my institution and within AALL. The creation of AALL’s Strategic Directions for 2010–2013 sets the stage for positive change within our organization and our profession.

I have had the privilege of serving as a member of the AALL Government Relations Committee, as well as the Chair of the Colorado Association of Law Libraries Government Relations Committee, for the past several years. In that time, I have seen firsthand the importance of transparency and of equal access to government information. As an organization, AALL must continue to focus on promoting permanent public access, ensuring authentication of online legal materials, and preserving government information that resides in the public domain. Additionally, AALL has the responsibility to encourage its members to actively participate in the

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democratic process and ensure that they have the support necessary to keep up with the ever-broadening technology landscape.

Expanding on this concept, I believe that AALL also has a responsibility to continue to be transparent to its members. We have seen the thoughtful and passionate comments regarding the role of special interest sections, vendor relations, dues and fees, and program planning. While we may not all agree, these conversations need to continue if AALL is to remain relevant to its members and an integral part of the legal community. Both the Executive Board and the community of AALL members can benefit from listening to one another.

As the face of the profession begins to change, AALL will be an indispensable resource for newer library professionals. Librarians need to strategically harness institutional knowledge and plan for the future through the succession planning process. The Executive Board sets the standard for leadership and mentoring for AALL, but also has the unique opportunity and privilege to provide the forum and collegial support for members to lead from within.

AALL can and should play a vital role in helping its members manage change and innovate by providing them with multiple avenues for professional development and continuing education. This, of course, goes above and beyond the Annual Meeting and includes increased support for chapter projects, an increased focus on technology and trends, and further promoting the value that librarians and libraries add to our respective institutions.

Although I have been an AALL member for only three years, I have reaped countless rewards from attending the Annual Meeting, serving on committees, actively participating in my local AALL chapter, and meeting some of the most fabulous and talented librarians in the business. It is an absolute honor to be nominated to run for AALL Executive Board member and I want to thank the Nominations Committee for doing so. If elected, I look forward to having the opportunity to give back to such a worthy organization and its members, and to a profession that excites and challenges me every day.

Greg Lambert

First and foremost, I want to start out by saying what a great honor it is to be nominated as a candidate for Executive Board. In my thirteen-plus years as a member of AALL, I’ve had the pleasure of working within state, court, and county law libraries; academic law libraries; private law libraries; and even a stint in a non-profit library consortium. As someone who enjoys taking on new challenges, I have found my career as a law librarian to be extremely challenging, diverse, stimulating, and a lot of fun.

Over the past two years, I’ve taken on the added challenge of blogging about my experiences as a law librarian via Three Geeks and a Law Blog (geeklawblog.com), with a couple of friends from another law firm. Although the idea of blogging about librarianship and technology started off over lunch, I quickly discovered that there was a hunger in the law library community for an outlet to discuss issues that affect our profession. After producing more than five hundred blog

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11. Library & Records Manager, King & Spalding, Houston, Texas.
posts, it is clear that the desire is stronger now than ever. If you’ve ever been in one of my presentations, you know that I’m a fan of “throwing spaghetti on the wall and seeing what sticks.” Between blogging and other social media tools like Twitter, I have had a great outlet in which I can throw a lot of spaghetti, and a lot of peers who help determine which pieces are sticking.

Of course, I’ve been in the spaghetti-throwing business for a long time, and AALL gave me one of my greatest experiences when I was a member of the Special Committee on the Future of Law Libraries in the Digital Age. I had the opportunity to write a couple of chapters in the Beyond the Boundaries book. Many of the members of that special committee still talk about how wonderful the experience was and how much we all learned in the process. Although we all came from different areas of law librarianship, we had a lot to share and a lot to learn from one another.

One of my favorite sayings is that “all problems are communications problems.” I see the AALL Executive Board as a conduit for communications for its members and those in the profession of law librarianship. Whether the topic is vendor relations, inter-organizational relations, Annual Meeting discussions, or the future of the profession, the AALL Executive Board should work to provide a way for AALL members to discuss these issues in a way that is fair, open, and equitable to all sides. If I should get the honor of serving as an AALL Executive Board member, I’ll work to find ways to reduce any communications problems and make sure that everyone has an opportunity to throw their own spaghetti on the wall so that we can all see what sticks.

Sarah K.C. Mauldin

Perhaps the best word to describe me is enthusiastic. If you have met me, you know this is true. I am enthusiastic about many things, including (in no particular order): Atlanta, spy novels, knitting, cats, National League baseball, board games, and many, many others. But the thing I may be most enthusiastic about is my career. I love what I do, and I love going to work. Once I found law librarianship, I knew I had found my calling, and in meeting law librarians, I knew I had found my people. I find value in the connections I have gained from my profession and am energized with each trip to the Annual Meeting.

My first real job in law librarianship was in Las Vegas, Nevada. While Las Vegas is many things, it is not a hotbed of law or law librarians. At the time, you could easily have gathered all of the law librarians in the state in a small room and still have had space left over. As a newcomer to the profession and the place, I longed for community. I found it in AALL, the Private Law Libraries Special Interest Section (PLL-SIS), the Western Pacific Chapter of the American Association of Law Libraries, and NEVLL, the local law librarians group. Without local private firm peers to help me along, I reached out to these groups for advice, mentoring, and companionship. They came through for me in a big way and helped me to jump into law librarianship with both feet. I owe a great deal of my professional success to AALL, PLL-SIS, and all of the chapters I have had the pleasure to be a member of so far. I have already worked on various committees and in many roles for AALL,

12. Head Librarian, Smith, Gambrell & Russell, LLP, Atlanta, Georgia.
special interest sections, and chapters and hope to continue this work for a long
time to come.

I am still a relatively new librarian, having worked as a professional since 2003.
While I have had the opportunity to learn about the history and traditions of the
Association, I am not burdened with many years of experience of “how it’s always
been done.” I am unafraid to ask questions about why we do what we do and why
we do it in that way. I hope to be a voice for newer librarians and private firm
librarians, but that is not all I am. I hope to be a voice for all law librarians who see
ways that the Association can improve and change to be responsive to all law librar-
ians, new and experienced. We must work to provide professional development
that is relevant for librarians at all stages of their careers and to continue to recruit
new members to the Association to keep it vibrant. While much is right about
AALL, it is by no means perfect, and there is so much that needs to be done to keep
it moving in a positive direction.

I am thankful to the Nominations Committee for believing in me enough to
nominate me as an Executive Board candidate. I have received so much from AALL
and I am energized by the prospect of serving you on the Board. I ask for your sup-
port to put my enthusiasm to work for you.
Proceedings of the Members’ Open Forum
Conducted at the 104th Annual Meeting of
the American Association of Law Libraries
Held in Philadelphia, Pennsylvania
Monday Afternoon, July 25, 2011

¶1 Ms. Suzanne Corriell (University of Richmond School of Law Library, Richmond, Virginia): Good afternoon. My name is Suzanne Corriell, and I will be the moderator of the Open Forum for the next few minutes. Yesterday, Dahlia Lithwick reminded us that we can’t turn the Supreme Court into the Thunderdome. Likewise, we have a few rules here. The Open Forum is being documented by our court reporter, who will be providing a transcript for publication in the fall 2011 issue of Law Library Journal. Please identify yourself and your institution when you come to the microphone. Action may not be taken at the Open Forum. Issues may, however, be raised and referred to the President for further action.

¶2 Before we open the floor, we have a few questions that were previously submitted. The first is from Leslie Leach (Skadden, Arps, Slate, Meagher & Flom LLP, Wilmington, Delaware): How can we revisit the way proposals are divided between SISs?

¶3 President Joyce Manna Janto (University of Richmond School of Law Library, Richmond, Virginia): Currently proposals are not allocated between SISs. The only firm rule is that each SIS will be allowed to present their number one program. All other programs are decided upon the merits, not upon who is sponsoring.

¶4 Ms. S. Corriell: Bill Logan (Santa Clara University, Santa Clara, California) has two questions: Has there ever been any consideration of Las Vegas as a conference location? The conference location always seems to be hot, but Las Vegas at least doesn’t have humidity. It does have excellent conference facilities. His second question: Has there been any discussion of adding back the extra day that the conference used to run? The conference schedule is too packed with a crush of conflicting events. Or perhaps the schedule could be rethought, perhaps having the exhibit hall open on days without programs.

¶5 President Janto: Yes to both questions. First of all, yes, we don’t really have the rotation that we used to have, so any city is open to consideration, and, yes, we will look at Las Vegas as a potential convention site. But remember that the Executive Board has already approved sites up through 2017, so it may be a while before we get to Las Vegas. The second question?

¶6 Ms. S. Corriell: The programs.

¶7 President Janto: Yes, we have looked at that every year since we took the day away. Last year when President Lemann appointed the special committee to review the Annual Meeting, that was one of the items that they did look at. They surveyed
the membership, as we survey the membership every year, and right now slightly more people favor not having the extra day than favor the extra day.

¶8 Ms. S. Corriell: The floor is now open for questions or comments. Would you like to make it a Thunderdome? We could.

¶9 Ms. Mary Whisner (University of Washington Gallagher Law Library, Seattle, Washington): I would like to say that I like having the major awards at the Business Meeting. I miss the old luncheons when we were able to recognize the recipients, and I am glad to have the opportunity now.

¶10 President Janto: Thank you.

¶11 Ms. S. Corriell: Anyone else?

¶12 Mr. John Austin (Northern Illinois University College of Law, DeKalb, Illinois): Okay; vendor relations. I would ask that the Board consider broadening the scope of the legal advice it receives. It seems to me that over the years the Board has been given advice about vendor relations and antitrust problems from a perspective that is very, very vendor oriented. Antitrust law can be interpreted in many, many ways, and I certainly respect the legal advice the Board has gotten. However, I think it might be possible that other experts in antitrust law might give advice that is more consumer oriented, and it might be helpful to the Board to have advice from different legal perspectives that would help the Board in its decision making. Thank you.

¶13 President Janto: Thank you, John, for your question. And, yes, the antitrust issue has been referred to the Board Administration Committee for investigation this coming year, and we do intend to look at a broad range of issues and seek comment from many other people. So, yes, we will take your recommendation under advisement.

¶14 Mr. J. Austin: Thank you.

¶15 Ms. S. Corriell: Next, please.

¶16 Ms. Nuchine Nobari (Edwards, Angell, Palmer & Dodge LLP, Boston, Massachusetts): Going back to the question before last: if the Board would consider having the exhibit hall open longer hours, because it is really difficult to squeeze everything—the classes, the seminars, the workshops—all in between 9:00 to 4:00 today, I think it was. Thanks.

¶17 Ms. S. Corriell: Thank you.

¶18 President Janto: I guess the only thing I can say to that is we will ask Paul Rollier, who is the person who is in charge of finding our vendors and the operation of the exhibit hall, to look into this issue and see what we can do. I know one thing we did do was have the exhibit hall open on Saturday for our opening event, so we now have an additional hour-and-a-half time period for people to visit with the vendors that way.

¶19 Ms. S. Corriell: Are there any additional questions? (No response.) Thank you again for attending. The Open Forum is now closed.

(WHEREUPON the proceedings adjourned at 5:20 p.m. on Monday, July 25, 2011.)
2011–2012 Officers, Committees, Chapter Presidents, Special Interest Section Chairs, Representatives, and Executive Staff

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