American Association of Law Libraries
Law Library Journal Author’s Guide

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

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

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# Table of Contents

**A Tribute to Morris L. Cohen (1927–2010)**

<table>
<thead>
<tr>
<th>Title</th>
<th>Author(s)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction [2012-1]</td>
<td>Fred R. Shapiro</td>
<td>9</td>
</tr>
<tr>
<td>Memories of Morris—and How I Use His <em>BEAL</em> [2012-5]</td>
<td>Jordan D. Luttrell</td>
<td>31</td>
</tr>
<tr>
<td>Morris Cohen and Rare Book School [2012-6]</td>
<td>David Warrington</td>
<td>33</td>
</tr>
<tr>
<td>The End of Scholarly Bibliography: Reconceptualizing Law Librarianship [2012-10]</td>
<td>Robert C. Berring</td>
<td>69</td>
</tr>
</tbody>
</table>
Sharon Hamby O’Connor  
Mary Sarah Bilder  
83

Blackstone and Bibliography: In Memoriam Morris Cohen [2012-12]  
Wilfrid Prest  
99

Booksellers in Court: Approaches to the Legal History of Copyright in England Before 1842 [2012-13]  
James Raven  
115

Practicing Reference . . .  
“That Most Congenial Lawyer/Bibliographer” [2012-14]  
Mary Whisner  
135

Reflections: An Interview with Morris L. Cohen [2012-15]  
Morris L. Cohen  
Bonnie Collier  
149

Morris L. Cohen: A Bibliography of His Works [2012-16]  
Ryan Harrington  
Camilla Tubbs  
165

Review Article

Keeping Up with New Legal Titles [2012-17]  
Creighton J. Miller, Jr.  
Anmmarie Zell  
173
A Tribute to Morris L. Cohen

(1927–2010)

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Introduction*

Fred R. Shapiro**

¶1 Morris L. Cohen, I believe, is a strong contender for being considered the preeminent law librarian of all time. In his career and personality he embodied excellence and breadth of vision, and in so doing he did much to establish law librarianship and the related fields of legal bibliography and legal research instruction as important elements of the world of law and legal education. He was a key figure in the development of two flagship law libraries, Harvard and Yale, as well as being important to the Penn and Buffalo law libraries and indeed to legal scholars around the world.

¶2 When Morris died, the New York Times printed a sizable obituary for him.1 Probably no other law librarian, at least in modern times, has ever been accorded that honor. But that was not the end of it. A few days later the Times printed an editorial hailing him:

Professor Cohen saw law, its study and its practice, as a bountiful, all-encompassing, humanistic field.

....

In an age when the Internet . . . gives many the illusion they are scholarly detectives, the meticulous, old-fashioned research he put into [his] bibliography is almost unfathomable. It yielded a resource that is matchless, brilliant and of eternal value.2

¶3 I once paid homage to Morris at an occasion honoring him by quoting Anthony Burgess’s description of a biography of one of my personal heroes, James Augustus Henry Murray, the original editor of the Oxford English Dictionary. Burgess referred to “this most heartening story of learning, energy, faith, and sheer simple humanity.”3 I don’t think you could do much better than that as a seven-word summation of Morris Cohen: “learning, energy, faith, and sheer simple humanity.”

¶4 This tribute to Morris approaches him from a variety of perspectives. The issue begins with contributions based on remarks delivered at the memorial service held at Yale Law School on May 1, 2011. The participants were law librarian colleagues and coworkers, coauthors, a former Yale student, a friend, and Morris’s son.

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Next are articles inspired by different aspects of Morris’s many interests in librarianship, bibliography, rare books, law, and history. The authors are not only law librarians, but also scholars, a bookdealer, and a federal judge. Concluding the tribute are an oral history and a bibliography of his writings.

¶5 Morris’s personality was so remarkable and his interests so broad that I will not attempt to describe them in this introduction, leaving that to the remarks and essays that follow. For the sake of those not familiar with his life and career, though, I will set forth the basic biographical facts.

¶6 Morris Leo Cohen was born in Brooklyn on November 2, 1927, to Emanuel and Anna (Frank) Cohen. He graduated from the University of Chicago, majoring in anthropology, in 1948, and from Columbia Law School in 1951. After practicing law in small firms for seven years, he received an M.L.S. degree from Pratt Institute in 1959 and went to work as assistant law librarian at Rutgers and Columbia.

¶7 Morris was in succession law library director and professor at the University of Buffalo (1961–1963), the University of Pennsylvania (1963–1971), Harvard (1971–1981), and Yale (1981–1991). He continued as an active professor emeritus at Yale until his death, and donated his unique juvenile jurisprudence collection of law-related children’s books to the law library there in 2009. The online Yale Law Library catalog is named MORRIS in his honor. He also taught courses on rare law books at the Rare Book School at Columbia and the University of Virginia and courses on legal bibliography at several library schools, and he was president of the American Association of Law Libraries in 1970–1971.

¶8 Morris published many books. The best known are his magisterial Bibliography of Early American Law (1998), a six-volume, comprehensive, annotated bibliography of American law up to 1860 that is now commonly known as BEAL or Cohen, and his guides to legal research. The most important of the guides are Legal Research in a Nutshell, which appeared in ten editions from 1968 to 2010 (the last six coauthored with Kent C. Olson), and How to Find the Law, with three editions from 1976 to 1989 (some coauthored with Robert C. Berring and Olson). Some of the other works by him include A Guide to the Early Reports of the Supreme Court of the United States (with Sharon Hamby O’Connor, 1995) and Law: The Art of Justice (1992). He won the Joseph L. Andrews Bibliographical Award for both BEAL and A Guide to the Early Reports of the Supreme Court of the United States, the first person to win that award twice.

¶9 Morris died on December 18, 2010, at the age of eighty-three. He is survived by his wife Gloria, whom he married in 1953, his children Havi and Daniel, his granddaughter Rachel, and several million books, rare and otherwise, at the Yale and Harvard and other libraries and in his extensive personal collection.
Vincent DiMarco**

¶1 At the start, I want to make it perfectly clear that my reminiscences are of Morris L. Cohen, the distinguished law librarian, professor, scholar, and author of a dozen books on the law and legal bibliography. I have strong reason to believe—indeed, I have a belief verging on metaphysical certitude—that this is not the Morris L. Cohen who, according to PaperBackSwap.com, is the author of such works as Strange Amazing Facts About Star Trek, Beverly Hills 90210: Meet the Stars, and Playing the Personals: Dating in the Nineties! The Morris Cohen I remember was a man of great intellectual curiosity and varied interests, to be sure, but I will wager that navigating the contemporary singles’ scene or amassing trivia regarding life in a galaxy far, far away did not much occupy his thoughts.

¶2 I first met Morris in 1967, when I was a beginning graduate student at Penn, aiming to become a medievalist, and he was director of the law library there. My pal Henry Simon, who, like me, had come from Buffalo to do graduate work in Philadelphia, had known the Cohens from their time in what we used to call the Queen City of the Great Lakes—this being while Buffalo’s quarter of a million elm trees were succumbing to Dutch elm disease, its steel mills were closing, and Lake Erie was choking on its pollution—the whole place aglow with what the novelist John Barth, who taught at Buffalo, called the “phosphorescence of decay.”
¶3 While Morris had led the law library at the University of Buffalo, the Cohens had gotten to know Henry’s parents, and it was only natural that Henry see the Cohens again and introduce them to his roommate, now that we had all escaped Buffalo to find salvation on the banks of the Schuylkill. An invitation to the Cohens’ Passover celebration followed—the first of some forty or more this gentile attended, in Philadelphia, Brookline, and then New Haven, as Morris’s career evolved—fortunately for me always within driving distance of Amherst, Massachusetts, where I lived for thirty-five years after graduate school. My special status, decade after decade, in the Cohen home at Pesach, was not lost on Morris’s father, who every year insisted that I, to whom he referred as “the Cardinal,” wear the red yarmulke. A couple of years ago, after Morris’s father had passed on, Morris, himself not in good health but of course leading the seder as always, gave the red yarmulke to me as a gift. As I read the inscription printed on the sweat band within it, I find myself wondering what a certain Ben and Molly Markowe, honored at the Annual Dinner Dance of the Brooklyn Jewish Center on May 1, 1983, would think of the subsequent history of this ecumenical kepah!

¶4 One of my first memories of Morris and Gloria involves building a sukkah in their backyard to commemorate the feast of Sukkoth. To say I was no expert in such matters is understatement expressed in the negative. My friend and I toiled under an unusually hot September sun while besieged by a swarm of bees as multitudinous as those in the carcass of the lion slain by Samson. We worked on, feeling not unlike the carcass of said lion, while Morris leisurely filled us in on the symbolism of the sukkah’s two-and-a-half walls, the meaning of the four plants, etc., etc. At one point, when Gloria kindly asked if I wanted anything to drink, I replied that a couple of beers would be nice. An awkward silence ensued until Morris generously opined, “Vinny has obviously confused the Sukkoth ritual with the Purim celebration, where we are enjoined to drink until we can’t tell the difference between ‘Cursed is Haman’ [arur Haman] and ‘Blessed is Mordechai’ [baruch Mordechai].” Haman, Mordechai, Purim, Sukkoth, the two-and-a-half walls—what did this Buffalo Christian know of such things? And how could I have guessed that some forty years later this same man would stand as witness at my wedding in Montreal?

¶5 In the early 1980s, I completed a book-length bibliography of all the writings on a long and perplexing Middle English poem, The Vision of Piers Plowman. The task was a daunting one—no one really knows much about the author (or authors), and there is even disagreement about how many separate versions there are of the work. And, it must be said, for the three years I worked on it, I was frequently daunted. Very frequently daunted. I had set as my task to track down, read, and comment on the entire corpus of writings on the poem, from 1395 to 1979. But as scores upon scores of entries emerged, the figure of Edward Casaubon, slaving away at his never-to-be-finished Key to All Mythologies in George Eliot’s Middlemarch, loomed specter-like before me and my shoe boxes of index cards. What tolled me back to my true self was Morris—who at that point had already been working for fifteen years on his Bibliography of Early American Law (BEAL)1—and

the model and inspiration he offered, in his cool and unruffled management of a bibliographical project of truly prodigious size and scope (one that by comparison dwarfed my rather puny project), his unwavering commitment and steady application, and his unshakable sense of the value of his undertaking.

§6 In the space I have remaining, allow me to touch on two of Morris’s productions that I believe offer glimpses into his beliefs and principles. The first—which perhaps will surprise those who would naturally think of his magnum opus, BEAL—is his volume Law: The Art of Justice, a lavish collection of reproductions of about fifty works of art, from masterpiece to kitsch, with the law in its various aspects as their theme or subject. Morris, a master of all he surveyed, ranges far and wide, from the iconic representation of Maat, Egyptian goddess of justice, to Mulvaney’s rather pedestrian Trial of a Horse Thief; from Bracton to Warhol, Rubens to Norman Rockwell. His comments on the art are wonderfully concise, sparkingly insightful, and often not a little arresting—how curious, Morris notes with regard to Rubens’s Judgment of Solomon, that Solomon’s violation of the procedures of ancient Jewish law seems to have enhanced his reputation as a wise judge; and isn’t it ironic, he comments regarding Jacques-Louis David’s Death of Socrates, that the Athenian philosopher, a “brilliant and eccentric conservative” who publicly derided democracy, should have become through his trial and death “a hero of free speech, thought, and teaching.” But what comes through to me especially in what Morris has included is an emphasis on the degree to which the law as depicted has been used to serve the interests of the entrenched and powerful against the unorthodox or unpopular (Galileo, Thomas More, John Brown, Sacco and Vanzetti), and especially women (the trials of Phryne, Joan of Arc, Catherine of Aragon). Rather than merely a history of the law in art, Morris has given us a pictorial history of the struggle for justice under the law.

§7 My second insight (if I may call it that) into Morris’s beliefs derives directly from his own musings, delivered in his synagogue in 2005, just after the sixty-fifth anniversary of his own bar mitzvah. His text that day dealt with the curious and unsettling story of Isaac and Rebekah among the Philistines, in which the patriarch, who has passed off his wife as his sister, is subsequently observed by King Abimelech fondling Rebekah. Isaac is berated by the king, who then warns his people not to molest the couple, a protection that allows for Isaac’s later success and prosperity. Morris tries to understand the story in light of source study, historical criticism, and feminist scholarship, the last of which disciplines unsurprisingly denounces Isaac’s oppression of his silent and acquiescent wife. Morris does not aim to defend Isaac from such charges—he grants the flaws and defects in the characterization of the patriarchs. Then, with his characteristic scholarly humility, he admits to finding no complete explanation for the problems the story poses; instead, in an interpretive move that tells us as much about Morris as about the text, he reminds us that the failings of the heroes did not remove them from God’s protection, and that the “moral tangle of their personal lives and their efforts to cope may give us some hope or at least consolation in dealing with the insolubles of our

3. Id. at 18.
4. Id. at 20.
own lives.” Even more: Morris shows himself suspicious of easy answers to difficult questions, and finds a curious satisfaction in the Bible’s portrayal of moral ambiguity. He concludes: “There is often uncertainty even when tensions have been resolved and peace is restored after strife or danger—just as in our world today.”

¶8 Morris Cohen, my friend, inspiration, and academic hero, was able to look calmly at what he called the contradictions and “unvarnished realities” of life and to take strength from them. I believe he was the rarest of species: a wise, generous, decent, and happy man. It is a blessing to have known him.

Kent C. Olson*

¶9 My name is Kent, and I am a Morrisoholic. I haven’t had a drop of Morris for almost five months now. I can’t say it’s getting easier with time, but it’s very heartening being in a room so full of Morrisoholics.

¶10 Let me take you back to the beginning of my Morris addiction. It was 1984. I was a law student at Berkeley, working for Bob Berring, and Morris was desperately looking for some help revising his Legal Research in a Nutshell because he was up against a deadline from his publisher. Dealing with publisher’s deadlines was never really Morris’s strong suit, so he was trawling for warm bodies to see if his chapters needed updating. I fit that bill, and Bob hooked us up.

¶11 At the time, Morris was the librarian here at Yale, he was the former president of the American Association of Law Libraries, and he was author of How to Find the Law. Needless to say, he knew a great deal about legal research, and I knew just a little tiny bit. Nonetheless, I attacked Morris’s text with gusto, moving things around and crossing out whole sections. I’m sure I deserved to be beaten, or at least ignored, but instead Morris did an amazing thing. He treated me like I was his colleague, like we were equals. I don’t think Morris ever looked down on anyone or treated anyone condescendingly. This doesn’t mean he was a pushover or put up with arrogant fools, but he treated everyone he met with respect.

¶12 A few years later, Morris was up against another Nutshell deadline. As I recall, it was a week away, and I happened to be visiting him—in the hospital. And that’s how he took on a coauthor, and why the book is now by Cohen and Olson. It wasn’t just a moment of weakness—it was a moment of hospitalized weakness.

¶13 Legal Research in a Nutshell has changed a bit since the first edition in 1968, but it’s still very much Morris’s book. I may be a little biased, but I’ve always felt that it is Morris’s crowning achievement. I’ve heard that he also wrote some bibliography of old law books for which people use words like “magnum opus” or “magisterial.” For the Nutshell, people use words like “cute.” But the Nutshell unlocked the mysteries of legal research for ordinary people like law students and paralegals and prison inmates. As another Yale professor, Edmund Morgan, once wrote, “To simplify where you know little is easy. To simplify where you know a great deal requires . . . unusual penetration of mind and, above all, sheer nerve.”

¶14 Part of the reason that losing Morris has been hard is that he seemed like both my oldest and my youngest friend. He was a wise counselor and mentor, a

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* Director of Reference, Research and Instruction, University of Virginia Law Library, Charlottesville, Virginia.

Brooklyn version of Obi-Wan Kenobi. If Alec Guinness had been from Brooklyn, I think he would have sounded just like Morris.

¶15 When I heard that Morris had died, I happened to be reading a book about the last speakers of endangered languages. When a language dies, we lose its speakers’ unique ways of viewing and describing the world. People can still learn the language, they can perhaps speak it fluently, but they will never quite understand its nuances the way a native speaker can. And it struck me that I feel this way about Morris—that he was one of the last native speakers of the world of books. I’m not sure anyone will understand, appreciate, and love books quite the way Morris did. Going into a rare book store with him—and he was always going into rare book stores—was a sight to behold.

¶16 At the same time, Morris was also the oldest kid I knew. He was curious about everything and everyone, maybe at times too curious. His friends would often have to talk to him like a four-year-old. “Morris, you can’t ask her that. . . . Because you can’t. . . . Because I said so. . . . Morris, come back here!”

¶17 I knew Morris for almost twenty-five years before I finally learned that he also had a dark side. In 2008, my wife Marsha and I had a wonderful tour of Brooklyn courtesy of Morris and Gloria—we went all over, from Brooklyn Heights, where they lived when they were first married, to Coney Island, and we even stopped by the house where Gloria grew up—and perhaps it was being back in Crown Heights that made Morris confess his criminal past. He told us about the time in high school when he went with some friends to see Billie Holiday. She’d left her gloves sitting on a radiator during a break, and Morris’s friends convinced him to steal one. The sad thing is that he didn’t even keep the glove—we won’t find it in his files with the ivory carvings—but it will always be part of my image of Morris Cohen, scholar, friend, mentor, and petty thief.

¶18 And so we Morrisoholics carry on, one day at a time, drawing strength from each other. We miss him, but we will always remember how much we have been enriched by this wonderful addiction of ours.

Balfour Halévy*

¶19 I met Morris on my first day on the job at the Columbia University Law Library. He was both welcoming and helpful to me—someone who was obviously in need of orientation!

¶20 Typical of his character and throughout the time he was at Columbia, Morris was encouraging to me and to the many others who crossed his path. Morris inspired many law librarians in all types of law libraries: at any AALL meeting he would be greeted by academic librarians, government librarians, law firm librarians—all of whom he had helped.

¶21 Morris was a generous person. We had discussed the possibility of a bibliography of U.S. law, which became BEAL, and I worked on it a bit for three years, maybe doing one one-hundred-thousandth of the work—but even still, when Morris talked or wrote about BEAL, I got mentioned in an overly generous way.

* Professor Emeritus, Osgoode Hall Law School, York University, Toronto, Ontario, Canada.
A setting in which I saw Morris in action over a period of time and that displays many of his talents was AALL's rotating institutes. In the mid-1960s, AALL decided to create a series of rotating institutes for members who lacked formal training. Morris was asked to lead the creation of these institutes. Here, Morris showed many of his strengths. Being very dedicated and effective, he worked hard and recruited like-minded people to help him in the preparation and teaching of the institutes. I do not know of anyone who turned him down.

I taught in the acquisitions institute, and it never occurred to me to say no to his requests. Why? I, like many people, respected, admired, and liked Morris for who he was and for what he did. Morris, through his personality and through his work in law libraries, had created a bevy of friends and admirers who wanted to help him.

I watched Morris teach in the institutes, and, of course, he was a great teacher. His students tended to have a wide range of knowledge and skills, and in class, as well as in one-on-one sessions, he displayed a superb talent at helping students at their appropriate level. Not only was he a great teacher, but he was also a people person. He had an amazing knack for communicating with each person he met in a meaningful and comfortable manner.

Morris had a brilliant career in law librarianship. He worked in, and in all cases improved, several law school libraries, while also helping the growth of the library profession as a whole, especially through AALL. At the same time he produced a quantity of scholarship unequalled by most of us. And, of course, there is BEAL, one of the most important U.S. bibliographies on any subject published in the twentieth century.

Altogether, he was a wonderful man who had a most excellent and creative career.

Lika Miyake*

Of the many things I am proud to call myself, I am very proud to call myself a BEALie. And with being a BEALie came the singular pleasure of being a member of the BEAL family, and of Morris’s family. And that has been a great treasure to me.

Others are much better equipped to tell you about Morris’s considerable impact on legal academia and bibliography and everything else he accomplished professionally. I’d like to talk just a little bit about the considerable impact Morris had on me and on his BEALies.

I met Morris when I was nineteen. I had just returned to Yale to begin my sophomore year, and I signed up for what looked like the most interesting of all the jobs posted at the undergraduate career office. I remember sitting in Morris’s office for an interview and listening to him explain BEAL for the first time. There was this card catalog filled with entries that Morris had examined or was going to examine. There were other cards sitting on his desk, and on bookshelves here and there, and

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I really had no idea what the organizational system was in there, but I had two reactions: one, I was going to get to look over old books and get paid to do so, which really beat washing dishes in the dining hall; and two, this man was slightly crazy to try to fill out and track and organize 14,000 of those cards.

¶30 That was the beginning of almost three years of work on BEAL. I worked with Morris until I graduated from Yale College in 1999, and in that time, I spent many happy hours in that office, chatting over BEAL entries, hearing about the plans for the long-awaited publication, and most important to me, getting to spend time with one of the most incredible people I’ve ever met.

¶31 I’m not sure I’ve ever known anyone as wise and whimsical, as humbly productive, as openhearted and curious, as Morris. Of course we all know the incredibly busy schedule Morris kept—marshaling the titanic project that was BEAL, traveling around the country to conferences and talks and to see family, and dashing about town with Gloria to plays and movies. I remember thinking that this was the kind of grown-up I wanted to be. He had such a full life. And I learned so much, sitting in that sunny, messy office. Morris would tell me about his and Gloria’s most recent trip to Alaska, or recommend the latest play at the Long Wharf Theater, or give me the historical context to some 1790s-era Massachusetts pamphlet I had just reviewed for BEAL. And Morris being Morris, he was equally interested in talking to and learning from me. Now, at the time, there wasn’t much I could really teach him, but I remember having rather involved discussions about things like the Indigo Girls and undergraduate dating rituals, which Morris was just as happy to talk about as the printers in Virginia.

¶32 While I was in that office, I got to know the large and happy BEAL family. BEALies from campuses and entry cards past would drop by to say hello, talk over the progress, open a drawer or two of the BEAL card catalog, and run a finger over the yellowing stacks. I got a sense of how connected everyone was to the project, which is to say that they were all connected to Morris.

¶33 As he had with the legions of BEALies who came before me, Morris welcomed me into his families—both his BEAL one and his real one. Many afternoons, after some BEAL work, we would walk down the street for tea at the Elizabethan Club, and chat for an hour or so. Long after I stopped being his research assistant, after I graduated from college and when I was back for law school, Morris would treat me to lunch at Mor’s so we could catch up, and he and Gloria welcomed me into their home for seders. And Morris naturally became a part of my family. I introduced him to my family members and visiting friends, so that everyone important to me ended up knowing him. I was one of a close-knit group of seven college roommates, and two of them joined me as BEALies before BEAL was published in 1998. When another roommate needed a subject for a biographical project in an undergraduate creative writing class, Morris obliged. He came to our choir concerts and, when one of us joined the undergraduate Korean drumming group, he loved to go to those shows, too, even if he had to turn down his hearing aid while he was there.

¶34 I often think of how incredible and natural that quality was in Morris—to open his heart and his world to people, and how much joy he took in creating communities, and helping and nurturing the people around him. I think of how lucky
I was to know someone so wise and so special in my most formative years. When my roommates and I graduated in 1999, we put together a dinner for our group—which was seven soon-to-be graduates, our families, and Morris and Gloria. It only made sense to have them there.

¶35 I miss Morris very much. Of all the teachers I had at Yale, Morris taught me more about the kind of person I want to be and the kind of life I want to lead than anyone else. And when I think about Morris now, he still is that person I want to be when I grow up. We were all lucky to know Morris. I feel so grateful to have met someone who was at the same time an incredible friend and a true model for me.

Mary Jane Kelsey*

¶36 On Morris’s first official day as librarian of Yale Law School, the staff had a little party for him. I made a really great spice cake, if I do say so myself. As allergic reactions go, Morris’s reaction to the nuts in the cake wasn’t bad—no EpiPen or call to 911. Morris was gracious about it, but after that he left nothing to chance when it came to the pedigree of homemade food. He could have gotten a job as an airport luggage inspector on full alert for nuts instead of explosives. I didn’t know it at the time, but chocolate cake with gooey chocolate frosting would have been the way to impress Morris, a fiend for chocolate in all forms. I am glad I didn’t bump him off that day—not half as glad as he was, I’m sure—or I would have missed some of the most interesting experiences of my career.

¶37 Many of us here today have had the privilege of being coached and guided by a great boss or teacher. But the truly blessed have had a mentor like Morris Cohen. The term guru is overused, I know, but Morris is one of the few people I’ve known who truly deserve the title. A guru is someone who has deep knowledge and wisdom and who shares that knowledge: a teacher. That was Morris through and through. His best teaching was his example. By the time he came to Yale, Morris was perhaps the most influential law librarian in the country, yet he was humble enough to return all phone calls promptly and to help anyone he could regardless of their station. He was humble enough to be a lifelong learner. After Morris retired, a number of us in the library and in the IT department helped him learn computing. It was fun to see the light in his eye that said to me, “Why did I wait so long?” After he got the hang of e-mail, he was tickled to realize that it was like the phone, but much better—no time zones to worry about.

¶38 Somehow, and without much ado, he made us want to do our best. We didn’t want to let him down. Morris was a mensch, but he could drive you crazy, too. When he thought you were capable of more, he pushed. He kept nudging me until I went back to school for a second master’s degree, and he bugged me until I relented and went through the final promotion steps. He did the same for many of us here. Morris didn’t spoil his folks with a lot of praise. When you came up to his

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standards, you’d get another project. That’s how you knew you were on the right track.

¶39 Morris developed a networking algorithm that predated Facebook by decades. Morris called it schmoozing. His favorite venues for a schmooze-fest were lunch at Mory’s or tea at the Elizabethan Club or law school dining hall. Lunching with Morris was a cross between attending a seminar and taking Dennis the Menace out for ice cream.

¶40 A lunch session began with his horrifying habit of leaping across the street without bothering to watch the traffic. He certainly had much more faith in New Haven drivers than I have—I grew up here. Lunch conversation covered a wide array of topics: books, theater, movies (he and Gloria saw them all), politics, religion, management theory, librarianship, life. You had to be on your toes to have lunch with Morris. If you were hungry and wanted to get a morsel in edgewise, it was best to bring along some ammunition. My favorite lunch topic was comparative religion. From Morris I learned that Jews have a holiday in February or March involving really great cookies called hamantashen—the apricot filling is my favorite, in case anyone wants to put me on the list next year. I think Morris already knew that Irishcatholic is one word, but he didn’t know about the feast of St. Blaise. It is celebrated on February 3 by the blessing of the throats with two crossed holy candles. The blessing is said to ward off throat troubles, especially stuck fish bones. He thought it was a great lunch if he learned something new, and he just loved that tidbit.

¶41 His famously eye-popping and often hilarious questions about life revealed the intensely curious, anthropologist Morris who wanted to know all about your clan and how it worked. I always suspected that he was probing to be sure his clan hadn’t overlooked anything, although I’m fairly certain that he thought his extended family was pretty darn savvy. Morris spoke often of his family with affection and pride.

¶42 Morris made connections to half of Yale over lunch or tea and through numerous phone calls. He was connected to the other half through the networks of his colleagues and staff. And we all were connected to each other as members of Morris’s giant hive. So, it was never a surprise when he’d call to ask a matchmaking question for the latest person he was trying to help: Who do you know . . . ? You can fill in the blank with any number of services, information needs, or job leads.

¶43 Morris also invented the concept of the search engine. Morris’s network was Google before there was Google. His M.O. was shameless: he’d ask as many people as he could find, usually as he was passing in the hallway, to research the same question. This was a method he was sure was going to increase his odds of getting a quick turnaround on the answer. Invariably, we’d bump into at least one other colleague in the course of the research or incur the wrath of some soul who had already taken a couple of calls from the law library. I don’t know if Morris ever figured out that we were on to him. I confess to waiting for a second request to see if he really meant it.

¶44 Morris never liked to admit it, but he was a very good manager. I think he was afraid he’d be distracted from scholarship if he got a name for management. Morris’s curiosity about people and new ideas engaged him in areas far flung from
his scholarship. Morris was a natural egalitarian with an open door. He was remarkably tolerant of our perspectives, even those of us who were fairly new to the profession. But he was no pushover. Morris had keen insight into his staff and their opinions. He knew our biases. He once said that a loose-leaf filer will think the most important resources in the library are loose-leaf services. I learned by observing him that his job was to stitch all those opinions and sometimes narrow perspectives into a coherent direction for the library that was both visionary and practical. On the practical side, he knew that if the photocopiers were out of order or we didn’t have enough copies of the *New York Times*, no one would care how many Blackstones we owned. On the visionary side, he imagined a library that would emerge from its then sleepy state to become the best partner Yale Law School could possibly have, and as a consequence become one of the best law libraries in the country.

¶45 From his earliest days at Yale, Morris was a strong advocate for the resources and staffing we needed to win back our greatness. He inspired donors to generously support our collecting and preservation efforts. Morris was determined to revive the neglected rare book collection, create a dedicated space for it in the law library, and bring back our books from Beinecke. He wanted us to give up our crazy, home-grown classification scheme and arrange the collection according to the more precise subject arrangement of the Library of Congress. Morris wanted to find better ways to organize our technical processes. He was one of the very early adopters of new library systems technology; Yale Law Library has been a leader in the field ever since. Eventually, that system grew into the law library’s public catalog. We knew that Morris would never put up with our naming the catalog after him, so Dan Wade and Fred Shapiro cooked up the acronym MORRIS to celebrate Morris’s sixtieth birthday. (I might add that sixty seemed wicked old to me at the time.) MORRIS stands for Multi-access Online Research and Reference Information System.

¶46 We didn’t accomplish all of Morris’s goals during his tenure, but happily, Morris saw the realization of his vision by the time the library renovation was completed. We reclassified and reshelved several hundred thousand volumes. He remarked that it was a wonderful experience to browse the shelves and finally be able to fully appreciate the amazing breadth and depth of the collection. We brought our treasures home from Yale’s Beinecke Rare Book and Manuscript Library to a beautiful new rare book room. Yale Law Library is the great library it is today because of all that Morris set in motion in the 1980s. I take it as a sign of his approval that he entrusted our library with his wonderful collection of juvenile law books.

¶47 I had hoped that Morris would still be around to send me off when I retire. Together we could close the circle of the career he helped me launch. Alas, fate trumped his genes for longevity, and that is not to be. His grace during his illness was an inspiration to me. He continued to visit the library until the very end, and he was as interested in all of us as he had ever been. The stories of Morris and Yale Law Library will always be intertwined. He is no longer present among us, but his presence lingers with all who knew him and learned so much from him. May the memory of Morris Cohen be forever a blessing.
Sharon Hamby O'Connor*

¶48 Let me not repeat what others have described so ably of Morris’s many accomplishments and contributions. I will just share some of my own reflections on Morris as role model and mentor to so many in the law library profession.

¶49 While Morris headed four major law libraries, profoundly influenced the direction of the American Association of Law Libraries, and created works of enduring scholarship, for many of us his influence was personal. Morris loved people, was fascinated with each and every one, wanted to know what made them tick, and then extended himself to help them reach their potential. Without Morris’s advice and counsel, I don’t know if I would have applied to law school, or for the directorship of the Boston College Law Library. I might not have embarked on my current legal history project with Professor Mary Bilder.

¶50 When I retired, and Mary suggested I attempt to locate printed appeals to the Privy Council from the thirteen colonies, Morris was immediately enthusiastic and threw himself into the project as though it were his own. When we discovered that all copies of the six-volume Acts of the Privy Council, Colonial Series were crumbling in the stacks, Morris immediately called Hein, got the publisher to reprint the set, and wrote its introduction. His involvement did not stop there—he would regularly send me e-mails about relevant books and articles he encountered. When a particular issue intrigued him, he would use his own research assistant to ferret out answers to questions. Once he even went with my husband and me to Columbia to search through the rare book stacks with Whitney Bagnall for some long-hidden printed appeals. He was as excited as the rest of us to rediscover them. As late as last fall, I sent Morris a mock-up of how the colonial appeals database will appear when complete, and, never forsaking that mentor role, he got back to me with a suggestion for combining two of the fields to make it easier to use. Needless to say, I took his advice. I am just one of many who profited from this sort of help from Morris.

¶51 When I spoke at an event for Morris at Boston College two years ago, I received comments from George Grossman, formerly law library director at Northwestern and UC Davis, to share on that occasion. I would like to share a portion of them with you today. George wrote:

Morris has been my mentor and friend for over forty years—so I’m very glad to add to a tribute to him. He took a big chance on me in 1966, hiring me right out of law school (with no library degree) to be head of technical services at Penn. For two years he coached me while I started library school part-time.

The two years with Morris gave me a role model. I spent the rest of my career asking “What would Morris do?” Whenever I wrote something, served as a consultant, on a committee, an inspection team, in the back of my mind was the hope to live up to Morris’s standards and to try to win his approval.

¶52 But all the examples, like George’s and mine, of help, encouragement, and advice throughout our profession don’t totally explain the place that Morris had in our hearts. As George went on to say, “It was not all just about high professional achievement. There was also the caring, supportive, personal Morris.” I agree with

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that completely. Morris once sent me a poem that his sister-in-law, the poet Adrienne Rich, had written in her Snapshots of a Daughter-in-Law. A line in the poem begins, “And you, Morris Cohen, dear to me as a brother.”6 Dear to me as a brother. Dear to us. Yes, we respected Morris, we learned from him, we appreciated all he did for us, but that misses that intangible emotion that we all feel but may have trouble defining. Morris was a very special human being. He was “dear to us.” Quite simply, we loved him.

Robert C. Berring*

¶53 Morris told me that I should always begin a speech with an undeniable truth. Here it is: As the final speaker, I realize that Morris would have left this ceremony forty-five minutes ago. If you were sitting with him, he would have passed you a note, in that tiny handwriting, saying, “Heading to bookstore. See you later.”

¶54 I searched for a relevant quotation for today. I think I found one. Delightfully, I found it in the words of one of the greatest thinkers of the twentieth century: Jacob Bronowski. He writes:

By the worldly standards of public life, all scholars in their work are of course oddly virtuous. They do not make wild claims, they do not cheat, they do not try to persuade at any cost, they appeal neither to prejudice nor to authority, they are often frank about their ignorance, their disputes are fairly decorous, they do not confuse what is being argued with race, politics, sex or age, they listen patiently to the young and to the old who both know everything. These are the general virtues of scholarship . . . .7

¶55 Morris was a scholar, a mentor, and a friend. He was mentor to many— I have no exclusive claim on that score, but I can assure you that Morris changed my life. I first met him in 1972. Sharon Hamby O’Connor, who just spoke, was my boss at the Lamont Library at Harvard while I attended Harvard Law School. She noticed that I was a bit adrift, and she thought that I would find Morris inspiring. Sharon set up a meeting between Morris and me.

¶56 Find him inspiring? There he sat in a beautiful, book-lined office, puffing on a pipe, content in the worth of his endeavors, willing to talk to a very naive young student. In those days, my beard was of biblical proportion and my intellectual maturity decidedly undercooked. Yet Morris spoke with me as if I was a person who counted. He entranced me. It became my dream to work for him. Truth be told, I wanted to be him. Six years later, I had the opportunity to work under his direction. It was as fine an experience as I had hoped, but I discovered that no one else could ever be Morris Cohen. He was one of a kind.

¶57 When I came to Harvard as Deputy Director in 1978, Morris told me that he was going to take a leave of absence to work on BEAL. He hoped to finish it up in about two years. He neglected to mention that those two years would fall in the 1990s. Morris was moving toward the thing that he loved: scholarship. In this world

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of search algorithms, Wikipedia, and Google, Morris stands as an inspiration. The very idea of BEAL is preposterous. To think that any one individual could personally examine, and create an accurate bibliographic record for, each law book published in America, or about American law, before 1860 smacks of pure craziness. It is indeed both crazy and pure. But he did it. In the introduction to BEAL, Morris wrote,

The initial goal of the Bibliography was that every book or publication listed in the work would be physically examined, and that descriptions, notes, and index entries would be made on the basis of that examination. Over the years, photocopies and microfacsimiles were gradually accepted as alternative sources. This policy undoubtedly prolonged the preparation. It was not until the last year of the project that some works were included without physical examination, but then only when existence could be verified by direct library contact or through reliable records from a holding library. Less than a thousand of the approximately fourteen thousand entries in the Bibliography have not been examined, and they are so indicated.\(^8\)

\(^{\S}58\) Pause over that statement for a moment. Morris wanted to look at each book personally. He did not want to rely on secondary sources, he wished to create a source. BEAL is a monument. It is a place beyond which a researcher need not go. Subsequent scholars can rely on the work; it carries the imprimatur of Morris Cohen.

\(^{\S}59\) That dedication to traditional scholarship and the values of honesty and integrity personify Morris for me. Challenging, detailed work, real scholarly bibliography—that was his joy. These are values that we now reminisce about in our information conferences. Publishing such a work is an act of bravery. There will be mistakes; there will be corrections. But Morris was large enough of spirit to absorb and accept all new information. He was a true scholar. And there can be no doubt that he created a touchstone that will be used for generations.

\(^{\S}60\) Morris showed me that a librarian could aspire to scholarly distinction. He demonstrated that one could, and should, take joy in his work. Learning substantive material from him was a challenge. One was an apprentice, trailing behind him with legal pad in hand, picking up the morsels that he dropped. That was his real teaching, his life.

\(^{\S}61\) I had the incredible good fortune to coteach a class with Morris. For three years we team-taught legal bibliography to Simmons Library School students. This was not real scholarship for Morris, but it was useful, and it was fun. Morris was a fine teacher for the Simmons students, but he was an amazing teacher for me. He combined a mastery of the subject with a puckish sense of humor. If we had divided a topic, with each of us taking an hour to hold forth, he would sometimes go first and take my topic instead of his. Then he would tell me to lecture on his subject. He said it was good for me. It was.

\(^{\S}62\) I also had the great good fortune to coauthor a few editions of How to Find the Law with Morris. He was an elegant draftsman, far better a writer than I was. My use of slang and popular culture references amused him to no end. Having my name on the same title page as Morris’s is still a honor.

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8. 1 Cohen, supra note 1, at xxii.
People loved Morris. He had a quality that cannot be defined or quantified, at least not yet, that drew people in. Everyone wanted to sit at his table at conferences, everyone wanted to be invited to breakfast with him, everyone wanted his approval of their work. He wore that adulation with a sweetness and modesty that only redoubled our feelings about him. Morris Cohen was a light upon the earth.

We are gathered here today because of our admiration of Morris and our love for him. He touched each of our lives. He will live on through each of us, through our students and friends. Maybe none of us could be Morris Cohen, but each of us was made better by knowing him. Let’s carry on in that spirit.

We will miss you, Morris.
In Praise of Morris L. Cohen’s *Bibliography of Early American Law*

Daniel A. Cohen**

Perhaps more than any other form of scholarship, historical bibliographies regularly force their compilers to confront, and correct, their own errors of omission and commission. Taking the discovery of two small mistakes in *Bibliography of Early American Law* as its point of departure, this article pays tribute to *BEAL* as an exemplar of a scholarly genre that is at once inescapably accountable, limitlessly collaborative, and profoundly democratic.

¶1 In December 1998, shortly after the publication of the *Bibliography of Early American Law* (also known, for short, by its acronym, *BEAL*, or, alternately, by its author’s last name, *Cohen*),¹ I was preparing to visit my parents in New Haven for the holidays and, at the last minute, went to an antiquarian bookshop in Worcester, Massachusetts, to look for a present for my father. I found and purchased two nineteenth-century formbooks, examples of a popular genre of self-help manual designed to provide both lawyers and laypeople with the correct boilerplate for a variety of legal forms—deeds, wills, licenses, and so forth. The earlier volume was the first edition of *Practical Forms*, compiled by Judge Asa Aikens and published in Windsor, Vermont, in 1823.² The second volume was a short *Supplement to Aikens’ Practical Forms*, compiled by Peter T. Washburn and published in Claremont, New Hampshire, in 1847, twenty-four years after Aikens’s original work.³

¶2 I had hurriedly collated the two worn, leather-bound volumes in the bookstore, but when I returned home I became troubled by the residual stub of what appeared to be a flyleaf at the very back of the first volume. The previous page was the index, and that page ended with a series of entries under the general heading “Will.” It now belatedly occurred to me that the missing page might not simply be a blank flyleaf but might actually contain the last few index entries—that is, entries between the letters “W” and “Z.” So I quickly went to my newly received volumes of *BEAL* in order to look up Aikens’s *Practical Forms* and check its collation. I

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2. [Asa Aikens], *Practical Forms; With Notes and References Explanatory of the Law Governing the Cases to Which They Are Applicable* (Windsor, Vt., Simeon Ide 1823).
found the entry in volume 3, Monographs, under the general heading Legal Manuals, and, within that category, under the more specific subcategory of Formbooks. When I examined the collation, I found, as I had feared, that there indeed had been a page 409 torn from my copy, and that, in addition, there had also been some errata printed on the verso of the missing leaf. So, as a result of my carelessness in collating the volume in the store, I had paid far too much for a volume lacking a printed leaf—something that reduces its value, from a collecting standpoint, by considerably more than half.

¶3 In addition, I made two more troubling discoveries in looking up the item in BEAL. First, I found that it listed the title not once but twice. In other words, the 1823 first edition of Aikens’s Practical Forms was listed not only as item 8149, under the heading Legal Manuals/Formbooks, but also as item 9548, under the subsequent heading, Real Property/Conveyancing and Deeds. Now, there was nothing wrong in principle with listing Aikens’s Practical Forms under Real Property/Conveyancing and Deeds, since Aikens did devote a large portion of his volume to real estate forms. Under the conventions governing the Bibliography of Early American Law, however, each item should have been listed only once, and so I had discovered an error in my father’s bibliography. On top of that, as if to add insult to injury, I also noticed that in the second listing of Aikens’s Practical Forms there was a one-digit error in the volume’s collation (a “1” had erroneously been substituted for a “4”), probably a simple transcription error resulting from the process by which thousands of handwritten bibliographic cards, filled out in pencil by dozens of researchers over a period of more than thirty years, had been keyboarded into Hein and Company’s computerized database in preparation for publication.

¶4 I had, thus, with the best of intentions, gone out to buy a holiday gift and, in the process, not only embarrassed myself by committing the cardinal collector’s gaffe of unknowingly purchasing an incomplete book, but also uncovered not one, but two slight errors in my father’s magnum opus. At that point, I considered getting into my car, driving to Worcester, and demanding my money back from the bookseller in order to save myself some wasted money and my father some needless aggravation. But then, as I pondered the awkward situation, it occurred to me that the incident, while exposing a couple of minor errors in the bibliography, actually illuminated a number of its larger strengths.

¶5 First and foremost, bibliographies such as BEAL are inescapably accountable. Indeed, the very essence of almost any published bibliography is its pervasive accountability. Unlike the conventions governing many other types of scholarly production, which allow for countless forms of ambiguity, evasion, qualification, fence sitting, responsibility shifting, and so forth, the compilers of bibliographies are unambiguously accountable for their errors of omission and commission. Either a relevant title or edition is listed or it is not. Either the collation, and other bibliographical details, are accurate or they are not. In fact, the publication of any major historical bibliography is immediately followed by a predictable stream of listings in the catalogs of rare book dealers—and, subsequently, in the catalogs of

4. 3 COHEN, supra note 1, at 69.
5. Id. at 484.
research libraries—describing items, or variants of items, that were not included or accurately described. And certainly a bibliography as sweeping in its scope and coverage as the *Bibliography of Early American Law* would be no exception to that rule. And so, within a matter of weeks after the initial publication of *BEAL*, I noticed the first catalog listing in which a bookdealer triumphantly announced that a particular item was “Not in Cohen,” thereby presumably enhancing the volume’s perceived rarity and market value. In the years since, my father occasionally spotted similar notations in dealers’ catalogs, and they will, no doubt, continue to appear in the years to come.

§6 From that inevitable, ongoing process of addition and correction flows several of the other great virtues of bibliographic scholarship: bibliographies are almost invariably open-ended, limitlessly collaborative, and, hence, profoundly democratic. By necessity, bibliographers must depend on the efforts and knowledge of a broad public of readers and users—librarians, scholars, students, collectors, bookdealers, fellow bibliographers, and other collaborators both formal and informal—in seeking to complete and perfect their work, both before and after initial publication. Their typical stance, then, is not unlike that taken by Asa Aikens in 1823 in a notice inserted at the front of the first edition of *Practical Forms*:

> Some errours have, no doubt, escaped the notice of the Compiler . . . . , but these, if any, will surely be discovered by an enlightened publick: and the publisher will acknowledge it as a favour in any gentleman, to point out any essential errours which may have escaped the notice of the Compiler, and the manner in which they should be corrected.⁶

§7 The open-ended and collaborative nature of the process of compilation is even more evident in a large-scale, long-running, scholarly project such as *BEAL*, which encompassed the labor of dozens of paid researchers and hundreds of additional unpaid (sometimes eager, occasionally grudging) collaborators, at countless libraries, historical societies, and other institutions across the country, over a period of more than three decades. And after all that, my father had already begun working on a revised CD-ROM version of the bibliography, as well as a printed supplement, even before the original six volumes appeared. Such a widely collaborative and seemingly endless enterprise of addition, revision, and correction necessarily requires of the bibliographer both enormous stamina and a significant measure of personal modesty. Indeed, no other form of scholarship, to my knowledge, so regularly and systematically requires an author to confront, and correct, his or her own errors and omissions.

§8 The rigorous methods of historical bibliography—systematic examination, description, and classification—are not only accountable, collaborative, and democratic, they also lie at the heart of most other types of important historical scholarship, whether taking the form of essays, articles, monographs, or broader synthetic studies. Most of the truly innovative and enduringly valuable “classics” of historical scholarship are built on an author’s willingness and ability to examine a body of evidence carefully and thoroughly, to organize it effectively, to describe it clearly and accurately, and to contextualize it appropriately—and to do all of those things

undistracted (and unintimidated) by personal preconceptions, previous interpretations, reigning paradigms, ideological preferences, or methodological fads. As an enormous, comprehensive, systematically organized, and easily accessible grid of a vast number of primary sources in the field of American legal history, Morris L. Cohen’s *Bibliography of Early American Law* not only is a scholarly classic in its own right, but also lays out the evidentiary base—in the case of the CD-ROM edition, literally on a silver platter—for dozens of other classic scholarly essays, articles, dissertations, and monographs yet to be written.

¶9 In that light, a brief tribute to Judge Aikens’s *Practical Forms* contained in a publisher’s advertisement appended to Washburn’s *Supplement to Aikens’ Practical Forms* provides an equally fitting tribute to Cohen’s *Bibliography of Early American Law* more than one hundred and fifty years later:

> We know of no book . . . which costs so little in proportion to the amount of matter it contains. And there are few works extant the compilation of which required a larger amount of labor . . . . We mention these facts as affording just grounds for the popularity of the work in question, and for its claims to continued support. ⁷

¶10 As with the work, so with the man. Here words written by Morris L. Cohen and Meira G. Pimsleur about Miles O. Price, my father’s late mentor in law librarianship at Columbia, apply just as well to Cohen himself: his “life and work, his many professional accomplishments (his modesty notwithstanding), and his willingness to give freely of himself, have made him a model for those who knew him and for future librarians to follow.” ⁸

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⁷. Washburn, *supra* note 3 (appended “Publisher’s Advertisement,” at 2).

Morris L. Cohen: A Reminiscence*

Morris S. Arnold**

This is an edited version of the introductory remarks given at the American Society for Legal History’s panel celebrating the career of Morris L. Cohen at its 2011 annual meeting.

¶1 A speaker to a learned society needs to establish his credentials immediately by showing his familiarity with the most reliable and trusted authorities in his field. So I begin with a quote from that most learned and impeccable of sources—Parade magazine. Yes, I mean the supplement that appears in newspapers throughout the country. To call this publication insipid and banal is, I suppose, greatly to elevate its substance. But a friend recently directed my eye to the following item that appeared in the July 31, 2011, issue and it quite unexpectedly provided a relevant text:

Monty, a certified therapy dog, is on call at the Yale Law Library as part of a pilot program to help ease stress from high-pressure studies. During part of the school year, students can check him out for 30-minute cuddling or Frisbee sessions.1

The notice came outfitted with a picture of an extraordinarily appealing puppy, and, though the image is fuzzy in the extreme, the cognoscenti (which is to say, all of us) cannot fail to discern the outline of the arches of the Yale Law School lurking in the picture’s background.

¶2 Most dedicated formalists would probably see in this article confirmation of their deepest and most specific fears about the therapeutic direction of our law schools’ curricula and the end to real law. Or at least the end to taught, tough law. But never mind that: that thought, if it came to me at all, was completely secondary and collateral. What the piece reminded me of was Morris Cohen, a learned and humane man, to whom we all owe a great debt.

¶3 I first met Morris more than forty years ago in the late sixties when I was a graduate student at Harvard Law School. I believe that he was at Penn then, where I would later teach, but our paths crossed before he came to Harvard because of our mutual interests, and we talked and visited many times thereafter when he assumed his duties at Harvard. We all know his work, especially his monumental bibliography, and what it has meant to our subject, and so I will not rehearse it here. It is the impression that Morris left on me, and I suggest on all those of you who knew him, that is most significant for the present.

** Senior Judge, United States Court of Appeals for the Eighth Circuit, Little Rock, Arkansas.
¶4 Looking back over the intervening years, what humbles me more than a little is that Morris always showed a sincere interest in what I was doing and extended the hand of friendship to my projects. That, I now realize, was no easy thing. When I was twenty-six years old, I had, God only knows how or why, got it in my mind to become a specialist in medieval English history. Other than a working knowledge of Latin and French, and an annoying, earnest enthusiasm that surpassed even that of most graduate students, I did not have the first qualification for that kind of work. I remember Sam Thorne, another former Yale Law School librarian, telling me once, in all graveness, “You know, you have a lifetime of reading ahead of you!” He was right, I did. But Morris never failed to help and to guide me in the right direction. It was a gift for me to be taken seriously when other, less indulgent and nurturing people than Morris would not have. I was too callow to know that I might be a flop, and the extent to which I was not, I owe to the sincere interest of friends like Morris. Morris and I had a great deal in common, not the least being our interest in book collecting. And I always aspired to the breadth of his vision of the law. As Lincoln Caplan, in a recent *New York Times* editorial, put it: “Professor Cohen saw law, its study and its practice, as a bountiful, all-encompassing, humanistic field. . . . [H]e was delighted by nearly all legal writings because they contain important codes to be deciphered about how different eras and societies viewed the role of law.”

¶5 Perhaps it would be right to guess that Morris did not have a direct hand in making Monty, the therapy dog, available at the Yale Law Library. But there is no doubt that Morris’s legacy and example are evident in this humane token, a gesture so appealing that even a curmudgeonly formalist like me could not carp about this creative use of stack space. (Do you suppose the dog has a kennel in the reserve area?) In fact, I’m going to suggest that our circuit librarian consider a similar strategy—I can think of a few judges who might greatly benefit from it.

Memories of Morris—and How I Use His BEAL*

Jordan D. Luttrell**

Mr. Luttrell reminisces about meeting Morris Cohen soon after he began as an antiquarian bookseller, about a subsequent visit to New Haven, and about his own use of Morris’s monumental Bibliography of Early American Law.

¶1 The year was 1979. That March I left the practice of law to devote myself full time to my nascent antiquarian law bookshop. Most propitiously, the American Association of Law Libraries (AALL) met that year in San Francisco. I took just about my entire stock to San Francisco’s Fairmont Hotel (AALL exhibits could then still fit in the grand ballroom of a major hotel), where they barely filled up my eight-by-ten-foot booth.

¶2 Soon after the exhibits opened, a slim, middle-aged man entered my booth and introduced himself. It was Morris! Tyro though I was, I nonetheless recognized the name of the librarian of Harvard Law School. Morris carefully surveyed my books, we chatted a bit, and then he was off.

¶3 Not long afterward, a good many librarians began arriving at my booth, examining my books with some curiosity and interest—traffic was surprisingly much better than I had anticipated. What could explain this? In a word, Morris—who had enthusiastically been telling his colleagues that, “For the first time in twenty-five years, we have an antiquarian bookseller at an AALL Meeting.”

¶4 This gracious gesture says a lot about the Morris I knew for more than thirty years—kind and generous to others without an agenda of his own, eager to share his thoughts and observations and just as eager to listen to yours, never judgmental, yet perceptive, and with an eye toward producing results.

¶5 Perhaps I can single out one other example, among many, of Morris’s kindness and generosity. When selections from Morris’s collection of works on children and the law were on display at Yale’s Beinecke Rare Book and Manuscript Library, I was on business in New York. Would a day trip to New Haven be possible? Morris was enthusiastic, so up to New Haven by train I went—to be met at the station by Morris, driven to the Beinecke for a personal tour of the exhibit, taken to the Elizabethan Club (I still remember the inscribed copy of Ben Jonson’s Works in the vault), and—the ultimate pleasure—invited into Morris’s office, where we were surrounded by and discussing the fabled index cards he had amassed over many years and that ultimately became his Bibliography of Early American Law (BEAL).1

¶6 Morris has indeed left us his *BEAL*, the most extensive bibliography of Anglo-American law ever compiled by a single individual. It premiered at the 1998 AALL Meeting, and it gives me pleasure to say that on that occasion I purchased the copy of the set that its publisher, Hein, had on display there.

¶7 How do I use this treasure? I use it every time I have purchased or am thinking of purchasing an early American law book. Of course, by design, not every early American law book will be found in *BEAL*. Here we see another admirable quality of Morris’s: He was intent not on repeating what others had in his view already done sufficiently (so, for example, session laws and collected statutes are not found in *BEAL*), but rather on adding to our knowledge where gaps needed filling.

¶8 Invariably, my own first stop is the title index in volume 6—after all, I do have a particular work in mind, and its unique title will almost always be found there. Here is where Morris’s arrangement of *BEAL*—by subject—displays his genius. The title index leads me to that part of *BEAL* where Morris has located the work within its applicable subject matter area. There I will find out a great deal: Is my work a first edition? Or an only edition? Or a later edition of some importance? Or, perhaps, the first work of its kind published in this country? How many editions of it were published by Morris’s cutoff date of 1860? How does it compare to other works on the same subject?

¶9 In addition to answers to these manifold questions, *BEAL* will likely tell me considerably more. Here we see Morris’s talent for imagining or anticipating just those inquiries a user will bring to *BEAL*. If there are several works by a particular author, Morris will have provided a summary biography. For each work, Morris will also have invariably given a collation, and likely a note on content and further bibliographical particulars. All of this is backed up by the reassuring certainty that in the great majority of instances, the work in question was personally examined by Morris.

¶10 What of those rare occasions when a work might seem to qualify for inclusion in *BEAL*, but isn’t found there? Recently I had in my stock James Kent’s *A Course of Reading Drawn Up for the Use of the Members of the Mercantile Library Association*, published in 1840, but not in *BEAL*. This work was based largely on Kent’s own library and was not designed for lawyers—though it did have a section on constitutional and commercial law. Should it be in *BEAL*? With a bit of reservation, but mainly with delight, I felt I could say it did. Even more delightfully, a check of the Yale Law Library’s online catalog, aptly named MORRIS, determined that Yale did not possess a copy (and this despite the connection between Kent and Yale, Kent having entered Yale at age fourteen and having called it “the delightful abode of the muses”). You may safely wager where this copy now resides!

¶11 Having *BEAL* to consult is of incalculable value to me—but perhaps its highest value is to remind me of Morris.
In a career dedicated to teaching the art of legal research, Morris Cohen drew on his many interests and passions. Mr. Warrington describes how these enthusiasms led to a course in the curatorship of rare law books that Morris and he fashioned for the University of Virginia’s Rare Book School.

¶1 New acquaintances could not spend more than a few minutes with Morris Cohen without realizing that they were in the presence of a man of many passions. These enthusiasms included, in no particular order, law librarianship, American legal history and bibliography, his family and friends, teaching, travel, conversation, movies, and a good breakfast. All of these were on display in October 1986, when, at Morris’s invitation, Whitney Bagnall and I, both new to our respective positions in special collections at Columbia and Harvard, visited the Yale Law Library. Realizing that the two other large academic law libraries in his vicinity were reinvigorating their programs in special collections, Morris thought that the time was right to talk with sympathetic colleagues about the role of historical materials in legal research and teaching and about the possibilities for cooperative projects with our rare book collections.

¶2 I had been introduced to Morris a few months earlier, but I had not yet had the pleasure of conversing with him at length. Morris found accommodations for Whitney and me in the guest suite at the Yale Law School, and it was quickly apparent that our two days with him would include much more than conversation. In short order, we inspected two rare book collections, one at the library itself, with its seemingly endless shelves of Blackstone, and the other at Morris’s house, where his incomparable collection of law-related children’s books revealed a hitherto unexplored byway of book collecting. We toured the Beinecke Rare Book and Manuscript Library and the Yale Library’s preservation department, and met staff at the law library, including Ann Laeuchli, who was then contemplating a new edition of Eller’s bibliography of Blackstone.1 Morris’s wife, Gloria, joined us for dinner at Mory’s and afterward accompanied us to a movie down the street, appropriately Jim Jarmusch’s Down by Law.2

¶3 At the heart of the visit, though, were the discussions we had on the best ways to encourage scholarly use of the rare materials in our libraries and how to share information on their acquisition, cataloging, preservation, and use. Only

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* David Warrington, 2012.
** Librarian for Special Collections, Harvard Law Library, Cambridge, Massachusetts.
2. DOWN BY LAW (Island Pictures 1986).
later did I learn that the subject matter of these discussions was a passion about which Morris cared deeply; two of the principles that he articulated in his article, *Towards a Philosophy of Law Librarianship*, that “law librarians must know . . . their readers and the work of their readers” and that “law librarians must be teachers of legal bibliography and of the methods of legal research,” are as relevant for fostering effective research into historical materials as they are for facilitating use of current ones.

¶4 Our two days in New Haven led to similar meetings over the next two years at Columbia and Harvard, and at the Library of Congress, the University of Virginia, and York University as Dan Burney, Marsha Trimble, and Balfour Halévy joined the group. Reflecting the rapid development at American law schools of the study of legal history, interest was simultaneously building among members of the American Association for Law Libraries (AALL) for a forum in which to discuss legal history and the collection of rare law books. Morris’s hand was very much in evidence when the Yale Law Library hosted the fall 1988 meeting of the Law Librarians of New England; the enthusiastic response among attendees to a program on New England legal history prompted a petition to the AALL Executive Board to establish a special interest section for legal history and rare books. Now in its twenty-second year, with more than two hundred members, the SIS has a thriving newsletter and web site.4

¶5 In late 1987, Professor Terry Belanger of Columbia University’s School of Library Service invited Morris and me to develop a weeklong course in the curatorship of rare law books for his summer continuing education program, Rare Book School (RBS). Then in its fourth year, RBS offered (and continues to offer) about thirty courses on topics concerning rare books, manuscripts, and other special collections.5 Limited to twelve or fewer students, each course typically runs from 8:30 a.m. to 5 p.m., Monday through Friday, with preparatory readings assigned for those admitted to the class.6

¶6 Morris and I designed our course primarily to attract academic law librarians whose rare book collections were not sufficiently large to require a full-time curator. (The great majority of academic, bar association, and governmental law libraries contain historical materials that should be identified and preserved, and the great majority of these do not have the resources to devote a full-time staff member to their oversight.) But we also wanted the course to appeal to legal historians, rare book collectors, and antiquarian booksellers. The prospectus for the course, Rare Materials in Anglo-American Law, which appeared in the 1989 brochure for RBS, read:

The objective of this course is to acquaint collectors and librarians with the tools and techniques needed to form focused collections of historical materials in Anglo-American law.

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The instructors will pay particular attention to planning collections in light of intended use and availability of materials and funds.

The course will include lectures on the role of legal materials in the development of the common law, and on the terminology, physical make-up, and determinants of rarity of legal books and manuscripts. A substantial part of the course will be devoted to the bibliography of the field: a discussion of the history of the production and distribution of law books, a thorough introduction and evaluation of the principal bibliographies and reference books, and demonstrations of how to use these tools. Laboratory sessions will give students hands-on experience in using some of the basic bibliographical tools and antiquarian book price guides.

After a survey of the history and present state of the collection of rare legal materials by individuals and institutions, the course will conclude with a discussion of strategies and techniques in collection development, emphasizing sources of acquisitions (used and antiquarian booksellers, book fairs, auctions, gifts). 7

This first offering of the course attracted sixteen applicants, all of whom we admitted, since the composition of the class gave us our target audience: eleven librarians, most with part-time responsibility for historical legal materials; a legal historian; an archivist; a collector; and two antiquarian booksellers. Morris and I designed the course to include lectures, show-and-tell sessions of rare books and manuscripts, a field trip to inspect the special collections at the library of the host institution’s law school, and two library exercises that would be discussed in class. The favorable response to this curriculum by our first group of students encouraged us to adopt it as the template for subsequent offerings of the course in 1990 and (after RBS moved to the University of Virginia in 1992) in 1993, 1995, 1998, 2002, 2004, and 2006.

The course covered each of the following topics in a one-and-a-half-hour session:

- the book as physical object
- terminology used in describing and acquiring rare legal materials
- the role of legal materials in the development of Anglo-American law
- an overview of Anglo-American legal bibliography
- the production, distribution, and bibliography of English law books to 1700
- the production, distribution, and bibliography of English law books after 1700
- the production, distribution, and bibliography of American law books
- the antiquarian market for Anglo-American legal materials
- English and American legal manuscripts, including legal ephemera
- strategies and techniques for forming a focused collection (two sessions)
- the physical well-being of rare materials
- techniques of research in legal history

Students made ten-minute presentations on each of the two exercises assigned during the week. The first gave students an opportunity to describe a rare legal

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law book (from a selection that Morris and I had donated to RBS for this purpose) and to research its scholarly and commercial value:

Assume that you are a bookseller who specializes in old and rare law books and that the book that you have chosen is sufficiently valuable that it warrants a full-dress description in your next rare book catalogue. Using the appended samples (drawn from the catalogues of leading dealers in rare law books) as guides, prepare a description that includes:

1. Author, title, and imprint information
2. Appropriate statement of collation or pagination
3. Notice of any typographic features, plates, or maps
4. Description of binding, wrappers, etc.
5. What is discernible about its provenance
6. Condition
7. Bibliographic citations or lack thereof
8. A paragraph about why the book is important [This is the place where the imagination can be given a loose rein; remember that what you say here may convince a buyer that this copy is worth the price you are planning to put on it!]

Finally, make up a price for your book. If you can’t find a price in the standard price guides for your title, look for prices for similar material and extrapolate. You will have ten minutes to show your book to the class, present your description, and defend your price. We then will find out how many of your classmates would be willing to open their pocketbooks!

¶10 This was a popular assignment with our students, as it challenged them to use their newly acquired rare book terminology and their research skills to identify previous owners of the book and to assess its significance. Students assigned a plausible price for their book by using *Bookman’s Price Index, American Book Prices Current*, and other printed price guides; in recent years, students also consulted online antiquarian book price guides. The presentations invariably sparked lively discussion, especially when the class included booksellers.

¶11 In the second exercise, students were asked to formulate a plan for developing a personal or institutional collection of rare legal materials, considering such elements as

1. A statement of purpose of the collection
2. Types of programs supported by the collection (research, exhibits, publications, etc.)
3. Clientele served by the collection (scholars, general public, individual collectors, etc.)
4. Priorities and limitation of the collection
   a. Key primary works in the field
   b. Key reference works in the field
   c. Desired level of collecting to meet program needs
   d. Forms of material collected (books, manuscripts, ephemera, etc.)
   e. Chronological periods collected
   f. Geographical areas collected
   g. Exclusions
5. Procedures affecting collecting policy
   a. Availability of materials (are there dealers, potential donors, etc. in this field?)
   b. Level of funding (acquisitions, care of collections, etc.)
For the librarians in the class, the assignment presented the opportunity to think about how the rare books already in their care could serve as a nucleus for a focused collection that would be useful not only for research but also for teaching and institutional advancement. For booksellers, the exercise provided insight into their customers’ motivations; for book collectors, a plan (with appropriate modifications) for their own collecting. Students presented these policies to the class on the last afternoon of the course.

Morris and I taught the course (after 1993 called Collecting the History of Anglo-American Law) eight times, with a total enrollment of eighty-seven librarians, legal historians, dealers, collectors, and other interested bibliophiles. Morris looked forward to our weeks at RBS, which allowed him to indulge in several of his enthusiasms simultaneously—visiting bookshops, discussing books and bibliography, dining with friends, breakfasting with our students, and above all, teaching. He relished the fact that, as the RBS web site puts it, “Rare Book School employs a widely admired—though rarely imitated—course evaluation system in which attendees write detailed prose accounts of their experience at the school; their comments are then mounted permanently and in their entirety on the school’s website.”

For Morris, teaching was a two-way street, and he made sure that the comments of our students improved future versions of the course.

Morris thought a lot about teaching the history of law, its literature, and its historical methodology; happily he put much of this thought into print. From his article published early in his career as a librarian, to Training Law Librarians in the Use of Rare Legal Materials, which discussed both his course at Yale in research methods in American legal history and our course at Rare Book School, Morris searched for new ways to teach the art of scholarly research in the field. This was a job for someone passionate about the endeavor, and the progress Morris made in crafting new ways of approaching this vast and unwieldy subject is one of his enduring accomplishments.

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Morris Cohen and the Art of Book Collecting*

Michael Widener**

Mr. Widener asserts that Morris Cohen was an artist, that book collecting was his art, and that his masterpiece is the Juvenile Jurisprudence Collection, a collection of law-related children’s books that Cohen donated to the Yale Law Library in 2008. He argues that libraries and individual collectors should emulate this style of collecting, and that the art of collecting is important to law libraries and legal studies.

¶1 Morris Cohen’s eulogists have rightly called him one of the great law librarians of the twentieth century. They have not used the term artist to describe him. I will. Morris Cohen was an artist, and book collecting was his art. His masterpiece is the Juvenile Jurisprudence Collection, which he donated to the Yale Law Library in 2008.

¶2 I describe below his masterpiece and explain why I consider it a work of art. However, my real goal is to hold up the Juvenile Jurisprudence Collection as an example for other collectors to emulate, whether they be libraries or individuals, and to argue why the art of collecting is important to law libraries and legal studies.

¶3 Morris began building a collection of law-related children’s books in 1960, as a hobby he could share with his six-year-old son Dan. Almost fifty years later, when he donated the Juvenile Jurisprudence Collection to the Yale Law Library, it had grown to two hundred volumes. At the time of the gift, Morris said, “It is my hope that students here can study this unique collection and see how our law was, and still is, being disseminated and forming an important part of our children’s civic education.”1

¶4 To my knowledge, there is no other collection like this one in existence. When you look at the list of titles in the collection, you can’t fail to be amazed and delighted at the range of material.2 There are early school textbooks, such as Justice

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** Rare Book Librarian, Lillian Goldman Law Library, Yale Law School, New Haven, Connecticut.
Joseph Story’s *The Constitutional Class Book.* There are moralizing works like *Juvenile Trials for Robbing Orchards, Telling Fibs, and Other Heinous Offences* (described by Morris as “a charming exposition of self-government in the schoolroom”). Some of the books are purely for entertainment, such as *The Quarrel and Lawsuit Between Cock Robin and Jenny Wren* or an account of the trial of Lizzie Borden. There are judicial biographies such as *A Picture Book of Thurgood Marshall.* A number of the items are legal guides written specifically for children, designed to teach young readers about their rights and roles in the legal system, such as a 1979 guide to family court. Morris did not include treatises on law relating to children that were written for adults or the legal profession; all the titles in the collection are written for children.

¶5 So, should we consider the Juvenile Jurisprudence Collection a work of art? ¶6 Yes, we should, with the sanction of the English rare book dealer and bibliographer Colin Franklin. His provocative and contrarian essay, *Book Collecting as One of the Fine Arts,* argued for new paths in book collecting. Bemoaning “the madhouse of obsession,” particularly as regards the perceived value of dust jackets, Franklin wrote that “for a start we could try to distinguish rarity from merit, and perfection from interest.” He comes down strongly on the side of merit and interest. “I wish to advocate imperfection,” he wrote, “Thus gates to delight might be unlocked, we could all scatter among the immense possibilities of books to experience them by choosing, holding and owning.” This describes Morris’s collection and his approach to collecting. Although many of Morris’s law-related children’s books could be classified as antiquarian or rare, many others are new or relatively easy to find. The condition of many of them isn’t pristine, either; they are children’s books, after all, and children can be rough on books. It is the company they kept in their previous lives and the company they keep today that make them special and interesting.

¶7 Franklin’s “golden rule” of book collecting, “listen to the book, not to the bibliographers,” certainly held true for Morris and Dan in seeking out children’s books with legal connections. They had no list to follow; they were completely on their own. Theirs was the thrill of the hunt. It was a work of imagination, of discernment, commitment, risk taking. I seriously doubt whether they had any idea

11. *Id.* at 4.
12. *Id.* at 5.
13. *Id.* at 7.
when they began of exactly where they were headed. Ultimately, it was a labor of love, as is all art.

¶8 Colin Franklin took his inspiration from Lord David Cecil’s 1949 lecture at Oxford University, “Reading as One of the Fine Arts,” which provides some useful definitions. “[T]he artist’s first aim is not truth but delight,” said Cecil. “Even when, like Spenser, he wishes to instruct, he seeks to do so by delighting.”14 In building the Juvenile Jurisprudence Collection, Morris most certainly set out to delight himself and his son. The collection’s secondary purpose, of instructing, only became apparent much later. Morris began to see how the collection could illustrate the formation of popular conceptions of the law and justice through children’s literature. I am reminded of Alan Watson’s argument that “[n]utshells introduce beginners to law. As a result they determine forever the pattern and parameters of the lawyer’s thought.”15

¶9 Cecil goes on to describe the nature of a work of art: “This double impulse—to express the individual vision and to work in a particular medium—actuates every true artist. It is the union of the two that produces the phenomenon that we call a work of art.”16 The Juvenile Jurisprudence Collection is the product of Morris Cohen’s individual vision, expressed in the medium of a book collection.

¶10 I must confess that I admire the Juvenile Jurisprudence Collection in part because it reflects my own quirks as a collection builder, and in part because Morris was kind enough to tolerate and even encourage my quirks. However, I also believe that the collection is a valuable model for other collectors, both institutional and individual.

¶11 First, I want to argue for special collections, not rare collections. The Juvenile Jurisprudence Collection is not, in the strict sense, a collection of rare books, but rather a collection of books that became special when gathered as a collection. The term rare book has overtones of elitism, exclusivity, preciousness. I want our patrons to use our collections, not admire them from afar. I’m uncomfortable with my own job title, rare book librarian, and that of the rare book room where I work, although I have yet to come up with better labels. The term rare book has the advantage of being generally understood, while the term special collection is rather vague.

¶12 Rare also implies expensive. Expensive books are not where the opportunities lie, either for individual collectors or for institutions, even institutions like mine. I doubt that Morris paid three-figure prices for the vast majority of the titles in his collection, even for many of the older titles.

¶13 One reason collections like the Juvenile Jurisprudence Collection are economically viable is that they take fresh new looks at familiar territory. Before Morris Cohen, it doesn’t seem that anyone had given serious thought to mining children’s literature for insights into law. I certainly didn’t. Neither have many bookdealers who specialize in children’s literature, but who have met my inquiries with blank stares. I suspect Morris encountered similar reactions. In fact, I suspect that collec-

tors of children’s books would consider many of the books in the Juvenile Jurisprudence Collection to be among the more dreary and uninteresting examples of the genre, with prices that reflect their unattractiveness. In most contexts, a civics textbook is just another boring civics textbook, no matter how old it is. In a collection like Morris’s, it takes on a whole new aura.

¶ 14 In building his collection, Morris also avoided the typical bias of collecting only antiquarian examples. The collection he donated extends from the eighteenth to the twenty-first century. The majority of the titles we have since added to the collection are recent publications. Today’s collectors would do well to follow this example.

¶ 15 Imaginative collecting is an especially attractive option, I believe, for academic law libraries. In this age of increasingly digital library collections, a special collection like the one Morris built is a way for the library to set itself apart from its peers. Such collections can inspire new scholarship, precisely by not following current fashions in research and teaching. Collections like the Juvenile Jurisprudence Collection reach across disciplinary and literary boundaries, encouraging cross-fertilization. As products of serendipity, they can in turn promote serendipity. If they do nothing more than inspire faculty and students to look at the old and familiar in new ways, they have performed a useful function.

¶ 16 There is another lesson to be learned from the Juvenile Jurisprudence Collection: the importance of sustained effort. Morris and his son Dan spent almost fifty years building this collection. Sustaining a collection-building project over a long period of time is admittedly not easy. Academic libraries, law and otherwise, are littered with collections that were abandoned in midstream when a professor or librarian departed, or lost interest, or lost their institution’s support.

¶ 17 So many fertile, unplowed fields of legal literature still await the determined and enthusiastic collector, even traditional fields such as author collections. For example, a Boston College law student became an avid collector of the nineteenth-century legal author and Harvard law professor Simon Greenleaf, and he did not limit himself to Greenleaf’s legal treatises but also collected Greenleaf’s religious tracts and fiction. Genres such as jury speeches and casebooks could also be worthwhile. I have a hunch that surprising things could be learned from a collection of little law books. Legal poetry is a field I’ve dabbled in, but a serious collector could do much better. Collecting legal ephemera is labor intensive, but the prices are low and the potential is vast, in terms of both supply and research value. Many collections can be started by taking a fresh look at what a library already owns. For the past five years I have been building a collection of law books with illustrations, but the majority of the collection is made up of volumes that the Yale Law Library acquired decades ago.

¶ 18 I seriously doubt that many law librarians have ever thought of themselves as artists, Morris Cohen included. But he had fun and made life fun for others, and there is an art to that. One of the hallmarks of Morris’s career was his determina-

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tion to have fun in his work. His Juvenile Jurisprudence Collection sparkles in large part because he had fun creating it. If his collection does nothing other than inspire his colleagues and disciples to have some fun on the job, it will have been worth the effort.
Cornerstones for Enduring Law Libraries: 
Morris Cohen’s Influence at Yale*

S. Blair Kauffman**

Morris L. Cohen was one of the great scholar-librarians of the twentieth century and will long be remembered for the scholarly contributions he left behind and the many students and librarians he influenced along the way. His contributions as a library administrator may be less well known, but his leadership of the Yale Law Library helped shape it to be one of the premier law libraries of the twenty-first century and stands equal to his scholarship as a memorial to his positive influence.

¶1 Morris Cohen capped a long, illustrious career in law libraries at the Yale Law School, where he directed its library during a critical period and placed in motion programs that helped put Yale’s law library in the premier position it enjoys today. For anyone who wants a sense of Morris and his values, a visit to Yale’s law library is in order, for this is the institution that benefited most from Morris’s decades of experience as one of the great law librarians of the twentieth century.

¶2 Morris came to Yale in 1981, following a succession of ever more prestigious and challenging directorships, beginning at the University of Buffalo, then on to the University of Pennsylvania’s Biddle Law Library, and finally to the Harvard Law Library. He directed the library at Yale Law School for a decade, from 1981 through 1991, and remained an active member of the law school community as a Professorial Lecturer in Law until his death in late 2010. Yale was truly Morris’s home.

¶3 While Morris led some of the best academic law libraries of the twentieth century and was a pivotal director at Yale, he is remembered primarily for his scholarship. Others in this issue have detailed that scholarly work, but Morris was far more than a scholar. He was first and foremost an exceptionally warm, kind, generous, and caring person. He was endlessly curious about people. Clearly, his study of anthropology as an undergraduate at the University of Chicago provided good training for this seemingly natural trait. He wanted to know what drove people, why they did whatever they did. He was always asking questions and was a master of getting others to talk. This made him a great teacher, and Morris truly enjoyed teaching both in and out of the classroom. Long after he retired as library director at Yale, he continued to teach and combine his teaching with his scholarly interests. His last course, which he developed over several years, was Research Methods in

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American Legal History, which he cotaught with John Nann. Morris invited John to join him as coauthor of a book on this topic and raved about how terrific John was as a teacher. This was how Morris worked. He engaged other librarians to follow in his path; his passion for teaching and research was contagious.

¶4 Morris clearly enjoyed the professional identification of librarianship, and he proudly wore the title of law librarian. However, it’s less clear whether Morris enjoyed the day-to-day business of managing libraries. As the law library director at both Harvard and Yale, his administrative style was to hire a trusted deputy and delegate much of administrative work to that person. Certainly his decade at Harvard was one he was ready and happy to abandon by the end. One can assume this was largely due to the stress and burden of overseeing such a huge operation, which distracted him from teaching and scholarship. After another decade as director at Yale, he chose to move out of the director’s chair for good and pursue his teaching and research interests full time. These were his true loves. Nevertheless, Morris accomplished much as a library administrator.

¶5 By the time Morris came to Yale, he had developed a set of principles for law librarianship that helped guide his activities as a library director. He articulated these principles near the start of his tenure at Harvard, while he was serving as president of the American Association of Law Libraries:

1. Law librarians must carry out the policies and purposes of the organization they serve.
2. Law librarians must know those purposes and policies and must also know their readers and the work of their readers.
3. Law librarians must be teachers of legal bibliography and of the methods of legal research.
4. Law librarians must provide access to materials through whatever administrative or bibliographic techniques are necessary to meet their readers’ needs.
5. Law librarians have the primary responsibility for developing and organizing their libraries’ collections and must make conscientious and informed critical judgments in fulfilling that responsibility.
6. Law librarians have a duty to advance their art and their profession in whatever way they can be most effective.

¶6 A decade later, following his experience at Harvard and shortly after taking over the law library directorship at Yale, Morris published a general set of goals to stimulate discussion about where law libraries should be going in the future:

1. Services: “Offer a full range of readers services . . . designed . . . to provide maximum access to the library’s resources, . . . assist users in obtaining any information which may be needed in their work, . . . instruct users in the effective use of the library’s collections and in . . . legal research generally[,] . . . and inform users . . . of the library’s resources . . . .”
2. Collections: “Develop, maintain, and improve research collections of high quality including primary sources, secondary sources,” and finding aids in

1. The book is in progress and has been accepted for publication by Yale University Press.
law and materials from other disciplines as needed by the institution the library serves.

3. Access tools: “Create and maintain records of the library’s holdings, which are adequate: (a) to inform its readers and to facilitate the most effective use of the library’s resources; (b) to support the efficient administration of the library’s collections and services; and (c) to reflect the library’s holdings to those beyond its primary users . . . .”

4. Professional development: “Contribute to the advancement of librarian-ship, information science, bibliography, and legal scholarship: (a) through the development of the library’s own collections and services;” (b) through the evaluation and use of appropriate technology and techniques and participation in library networks and cooperative ventures; (c) “through the encouragement of individual professional activities, [including] writing, teaching and consultation . . . .; and (d) through the support of educational programs, internships, [and] exchanges . . . .”

5. Administration: “Administer the library’s functions and programs . . (a) to provide a humane work atmosphere [supporting] the dignity, well-being, and professional development of all staff members; (b) to assure the effective, convenient, and safe use of [the library’s] facilities and resources; (c) to preserve and protect the library’s . . . resources for future use; and (d) to use its funds and fiscal resources responsibly . . . .”

These principles and goals helped set the guidelines for his accomplishments at Yale.

¶7 When Morris arrived at Yale, he was following some of the most influential law librarians of the twentieth century, including the great Frederick Hicks, who directed the library from 1928 through 1946, and Harry Bitner, who was director from 1958 to 1965. The quirky and eccentric legal historian Samuel Thorne and the multitalented Arthur Charpentier also took turns directing the Yale Law Library, from 1946 to 1956 and from 1967 to 1981, respectively. But the experience
Morris accumulated prior to Yale provided him with a uniquely broad professional perspective, perhaps beyond that of any of his contemporaries, which enabled him to build upon the work of his predecessors to lay the groundwork for the critical changes needed to make it one of the very best law libraries of the twenty-first century.

¶8 The list of notable achievements implemented at the Yale Law Library under Morris’s leadership is long. High on that list are the improvements he brought to library security. When Morris arrived, the library was open twenty-four hours a day, with no security during many of the late-night hours. Morris implemented around-the-clock staffing. During his watch, an automated circulation system was launched and the collection was inventoried. These measures undoubtedly helped stem the loss of books from our priceless collection. Another notable achievement was a staff reorganization that focused more attention on faculty services. He created Yale’s first Faculty Services Librarian position. This led both to the professionalization of access services and to the inauguration of the Yale model of maximum faculty service. Also worth mentioning is Morris’s informal personal administrative style and commitment to service, which made the library a welcoming place and helped pave the way for our current exceptional atmosphere.

¶9 Perhaps of equal importance, Morris viewed the library and its services expansively. He saw the library as playing a critical part in many different aspects of the life of the law school; the university; the law library profession; the legal community; and the scholarly communities of law, history, library science, bibliography, and information science. This broad and ambitious view of the library’s role continues to influence our library today. Morris also changed the self-image of the library’s staff, encouraging them to be more professional and innovative. He hired or promoted people like Fred Shapiro, Dan Wade, and Mary Jane Kelsey, who are among the leaders in their fields.

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9. Dan Wade was hired by Morris to be foreign and international law librarian and is now curator for foreign and international law. In 2006, AALL’s Special Interest Section on Foreign and International Law named an award in Dan’s honor: The Daniel L. Wade FCIL-SIS Outstanding Service Award. Daniel L. Wade FCIL-SIS Outstanding Service Award, FOREIGN, COMPARATIVE & INT’L LAW SPECIAL INTEREST SECTION, http://www.aallnet.org/sis/fcilsis/DanWadeaward.html (last visited Oct. 26, 2011).

10. Mary Jane Kelsey was promoted by Morris to be head of technical services and is now associate librarian for technical services. She is a leading figure in law library technical services and in 2007 was awarded AALL’s most prestigious award for technical services librarians, the Renee D. Chapman Memorial Award for Outstanding Contributions in Technical Services Law Librarianship. Renee D. Chapman Memorial Award for Outstanding Contributions in Technical Services Law Librarianship, TS-SIS: TECHNICAL SERVS. SPECIAL INTEREST SECTION, http://www.aallnet.org/sis/tsssis/awards/chapman/ (last visited Oct. 26, 2011).
As we struggle to articulate the role of libraries in the twenty-first century, Morris’s advice continues to hold. The many positive changes that were implemented at the Yale Law Library after Morris stepped down as director were put in motion by him. Morris agitated for a building renovation program, and pushed to automate library processing, develop the rare book collection, expand the teaching role of librarians, and make the library a more welcoming destination for students. An integrated library system, utilizing Innovative Interfaces, was inaugurated during his tenure, and the resulting online catalog bears his name: MORRIS.

The library was renamed the Lillian Goldman Law Library shortly after Morris’s departure, in recognition of a naming gift that enabled the law school to carry out the library renovation plans he had outlined. A rare book room and climate-controlled stacks were included in this expanded facility, and the rare books Morris saved from the open stacks found a safe and secure home. Student use of the library continued to expand as the library launched the kinds of initiatives for which Morris would have advocated. A new reference and instructional services department was created to emphasize the teaching role of librarians, and new research courses, making full use of Morris’s legal research textbook, were created.  

Yale Law Library’s most recent strategic plan was developed during the last year of Morris’s tenure as Professorial Lecturer in Law and covers the five-year period from 2010 through 2015. The plan maps out the direction for a library firmly rooted in the twenty-first century, but it reflects the principles of law librarianship set out much earlier by Morris. The first two guiding principles in this plan could have been written by Morris and clearly represent his values:

1. We provide excellent service to our patrons.
2. Every employee contributes to unlocking our rich and unique collection.

This emphasis on service and access is fully in line with the goals stated by Morris when he arrived at Yale in 1981. Further, the goals and objectives set out in the strategic plan echo the goals Morris articulated for Yale. The strategic plan’s six goals, with added labels, are set out below:

1. Collections and Access: “Continue to build, disseminate, and make accessible our unparalleled collection.”
2. Services: “Make the library the place where everyone wants to go.”
3. Administration: “Be a creative, flexible, and smart organization in an ever-changing environment.”
4. Instruction: “Continue to develop and improve reference assistance and legal research instruction.”

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11. Two elective legal research courses at Yale, Effective Techniques in Legal Research and Advanced Legal Research, use Morris L. Cohen & Kent C. Olson, Legal Research in a Nutshell (10th ed. 2010) as the text.
13. Id.
14. Compare our first two guiding principles with the first three principles stated in Morris’s article. Cohen, supra note 3, at 196.
5. Professional Development: “Contribute to the larger body of global knowledge.”

6. Good Citizenship: “Increase environmental consciousness and responsibility amongst library staff and patrons.”

Clearly, Morris’s spirit guided the implementation of this plan, and we feel certain he would approve of the strategic initiatives derived from it.

¶14 We continue to develop and promote our collections following methods put in place by Morris. For example, one of the objectives articulated under collection development is to “Continue to develop and publicize what makes us unique.” Morris would be pleased with Yale’s emphasis on improving collections, especially the development of the rare books collection and its promotion through creative exhibits. The unique collection of juvenile jurisprudence books Morris donated to Yale reflects Morris’s interest in the less traveled path to collection building and fits perfectly with the illustrated law book collecting focus Mike Widener has adopted for Yale’s rare book collection. The library’s illustrated book collection is rich and deep with historical materials, but includes contemporary works as well. The exhibit titled “Superheroes in Court! Lawyers, Law and Comic Books,” which was ongoing at the time of Morris’s death, expands the concept of illustrated law books in an unusual direction, intended to pique the curiosity of an audience that might not otherwise be interested in the world of rare books. This imaginative approach is in the spirit of Morris, who enjoyed working with library exhibits throughout his career.

¶15 Similarly, Morris’s interests are reflected in library programs developed to “[m]ake the library the place where everyone wants to go.” One such program is the library’s film series, which is put on in conjunction with law school graduate students. The graduate students are a small group of approximately twenty-five foreign LL.M. students. Librarians work directly with the students at the start of each academic year, when each student picks out a favorite film from his or her home country. The library acquires the film and promotes the program, and the student who chose the film leads a discussion after it’s shown. The film is added to


16. Id.

17. This unusual collection of more than two hundred law-related children’s books was donated by Morris to the Yale Law Library in 2008. The collection is being added to and continues to grow. For a list of the titles in the collection at the time of the gift, see Juvenile Jurisprudence: A Collection of Law-Related Children’s Books (Oct. 2008), http://www.law.yale.edu/documents/pdf/News_&_Events /CohenChildrenBookList.pdf.

18. For example, the collection includes early editions of two of the most heavily illustrated books in legal history, both published by the Flemish jurist Joost de Dambhoudere in the sixteenth century: ENCHRI DI ON RERUM CRIMINALIUM (Louvain, Walther & Bathen 1554) and PRACTI QU E JUDICI AIRE ET CAUSE S CIVILES (Antwerp, Jean Bellere 1572).


the library’s collection for future use. This is a perfect Morris Cohen program, since Morris loved films and always enjoyed discussing them.

¶16 Morris’s strong support for professional development is restated as a goal in our plan to “[b]e a creative, flexible, and smart organization in an ever-changing environment.” A key initiative flowing from this goal is our spotlight series, which enables each library staff member to present a program describing his or her work and how it fits into the larger mission of the organization. This is a pleasant and fascinating method for creating a shared appreciation for the work and interests of each staff member. This program also offers librarians an opportunity to discuss a scholarly project or presentation with an audience of interested colleagues and get feedback in a mutually supportive environment. For example, one month this year we heard Fred Shapiro describe his work in compiling the *Yale Book of Quotations*. The next month we heard Femi Cadmus talk about whether employees have the right to be happy.

¶17 Of course, one of Morris’s great passions was teaching, and this is reflected in the library’s broadly stated goal “to develop and improve reference assistance and legal research instruction.” Morris was directly involved in carrying out this goal by adding to the library’s expanded array of research courses. His course, Research Methods in American Legal History, continues to be taught by John Nann, who, with Camilla Tubbs, is working on a host of other research initiatives launched under the auspices of the reference and instructional services department. These initiatives include a multitude of credit-based research courses taught by librarians, a highly successful outreach initiative to each of the clinical programs, and specialized research workshops and online tutorials, all intended to help students develop their research skills at the points where they may benefit the most. The ever-expanding teaching role of librarians follows Morris’s advice to “instruct users . . . in the effective use of the library’s collections and in . . . legal research generally . . . .”

¶18 Even the library’s green initiative reflects Morris’s values. One of this goal’s stated objectives is to “promote less waste and more recycling and upcycling among library patrons and staff.” Anyone who had the pleasure of dining with Morris knows his favorite course tended to be dessert, but he always wanted to share. One line I heard frequently was, “I cut, and you choose.” What better way to limit waste than to follow Morris’s excellent example set at dessert!

¶19 Morris will live on in our memories and in the scholarly record he left behind. He also lives on through institutions like Yale, where he left his mark. Anyone who wants to know more about Morris Cohen need only visit Yale’s law library. The collections, services, staff, and building all are a reflection of Morris and will continue as enduring markers of his values.

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21. *Id.*
22. In July 2011, Femi presented this talk at AALL’s Middle Managers’ breakfast at the Annual Meeting of the American Association of Law Libraries in Philadelphia.
Birth of a *Nutshell: Morris Cohen in the 1960s* *n

Kent C. Olson **

This article traces the early law library career of Morris L. Cohen, from his position as assistant to Miles O. Price through his first two directorships. It focuses on his involvement in the education of law librarians and his scholarship, particularly the first edition of Legal Research in a Nutshell.

¶1 By the time I met Morris L. Cohen in 1985, he was in his late fifties and just six years away from retirement as the librarian at Yale Law School. He was by then an acknowledged elder statesman of the law library world, a slight figure with a pipe and an insatiable curiosity about the people around him. He was my friend for twenty-five years, first when I worked for him in editing his fourth edition of *Legal Research in a Nutshell* and later when we became coauthors for the final edition of *How to Find the Law* and for later *Nutshell* editions.

¶2 After Morris died, I realized that our friendship was really rather brief compared to the many relationships he nurtured over forty or fifty years. I became curious about this Morris I never knew, the young man who left the practice of law in 1959 to become a full-time law librarian. The 1960s were a remarkably productive time for Morris, as he developed the education initiatives of the American Association of Law Libraries, taught legal bibliography to library school students in Philadelphia and New York, and began work on the *Bibliography of Early American Law* that would be published in 1998 after thirty-four years of effort. In 1968 he also published the first edition of *Legal Research in a Nutshell*, a small book on legal bibliography that soon became a standard text in law schools throughout the country. By the end of the decade he had already left an indelible mark on the field.

¶3 Despite Marian Gallagher’s warning many years ago that “[t]he opening of a new book on legal research is usually an exciting adventure only for the mother of the author,”¹ perhaps the saga leading up to the creation of a new book on legal research has a slightly broader appeal.

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1. Marian G. Gallagher, Book Review, 46 LAW LBR. J. 48, 48 (1953). In fairness to new books on legal research, Gallagher mentioned that they might also be of interest to legal bibliography teachers approaching their first lectures.
Prelude

¶4 Morris graduated from Columbia Law School in 1951, but his attempts to become a labor lawyer representing unions or working for the government were thwarted by his past as an activist during his college years at the University of Chicago. As he explained years later,

[E]very interview, whether with a labor union or a government agency, ended up with the question, “Are you now or have you ever been a member of an organization on the attorney general’s list?” . . . And when I said, “yes,” and started to say, “but” . . . there was no time for the “but.” I would be ushered out of even distinguished, union-representing, labor law firms.2

¶5 Denied access to prestigious law offices, Morris entered the general practice of law in Manhattan with a series of small firms. Over the course of seven years, his office moved from 42nd Street and 6th Avenue, half a block from the New York Public Library, to lower Broadway near the site of the future World Trade Center, and ended up on 25th Street just off Park Avenue.3 He started out working for his uncle and ended up partners with a former state trooper. It was, he said, “a respectable way to make a living, but not really of interest to me.”4

¶6 In 1957, after six years of practice, Morris began to take night classes at the Pratt Institute School of Information and Library Science. For his application, he wrote an autobiographical essay explaining that “the particular and specific tasks” of law practice “did not draw from the best I had to offer, but on lesser stuff.” He had learned in the course of the daily grind of practicing law that he “was interested in the research and the books—in the analysis of the brief and memorandum—in the study and science—in the library and the literature of the law.” He came to realize that “whatever contribution I can make to the law . . . . will be in the sources and literature of the law, and in their organization, development and use, not in the general legal practice.”5

¶7 After his first year of library school, Morris took a job as assistant librarian at the Rutgers School of Law in Newark and spent a difficult year commuting from Brooklyn to a full-time job in Newark and then to night classes at Pratt, stopping on 25th Street along the way to catch up at his practice. The work at Rutgers, however, solidified his interest in law librarianship. He even found time to become involved in professional activities, submitting the first of several book reviews he wrote for Law Library Journal.6

¶8 In 1959 he received his M.L.S. from Pratt and said goodbye to legal practice. As he said in a 1971 profile in the New York Times, “I celebrate the anniversary of my departure from practice—in 1959—as a great emancipation.”7

Working for Mr. Price

¶9 “During that year at Rutgers,” Morris explained in 2007, “my dream job opened up, which was assistant librarian at Columbia Law School, my alma mater. So I applied and got that job. For two years, I was assistant librarian to a man who was near retirement and was the dean of the profession, . . . a man named Miles Price.”

¶10 Miles O. Price had been the librarian at Columbia since 1929 and was the coauthor with Harry Bitner of the leading legal research text of the time, Effective Legal Research. A law school dean conferring an honorary degree on Price in 1954 noted: “He is known throughout the country as the dean of law librarians; his right to that title is unchallenged.” He was the acknowledged successor in that role to Frederick C. Hicks, his predecessor at Columbia.

¶11 Morris succeeded J. Myron Jacobstein as Price’s assistant, and was among a series of influential law librarians who learned their craft working for Price. Previous assistants had included Ervin H. Pollack (1939–1941) and Harry Bitner (1946–1954). Pollack, Bitner, and Jacobstein all went on to successful careers as directors of large academic law libraries, and also wrote major texts on legal research.

¶12 Morris said of Price that “[h]e taught me a great deal. He was my first mentor in law librarianship.” It’s clear from the projects Morris took on in the years after he left Columbia that he was deeply influenced by his mentor. He shared Price’s interests in librarian education and legal bibliography and pursued these interests with enthusiasm and zeal.

¶13 Shortly after Price’s death in 1968, Morris paid tribute to his late mentor in Law Library Journal. His deep respect was shown in his conclusion: “He set the standards that guided the profession in his generation, the generation that follows, and perhaps generations to come.” The accolades were not, however, without reservation. Morris noted that “Mr. Price was a dry lecturer and made little attempt to

8. Reflections, supra note 2, at 153, ¶ 38.
11. Lawrence H. Schmehl, Who’s Who in Law Libraries: Frederick C. Hicks, Librarian of the Yale Law School Library, 37 Law Libr. J. 16, 19 (1944) (“Picture a quiet gentleman of Napoleonic stature but minus the pomp, imbued with human interest and understanding, and with a kindly nature. Think of him also as a lover of the arts, and as a person possessed of an overwhelming zeal for learning and progress. There you have a true likeness of the Dean of Law Librarians—Professor Frederick Charles Hicks.”). Price was among those who considered Hicks the dean of law librarians. See Miles O. Price, A New Edition by the Dean of Law Librarians, 3 Legist, no. 2, 1942, at 23 (reviewing Frederick C. Hicks, MATERIALS AND METHODS OF LEGAL RESEARCH (3d rev. ed. 1942)). For a modern overview of Hicks’s career and influence, see Stacy Etheredge, Frederick C. Hicks: The Dean of Law Librarians, 98 Law Libr. J. 349, 2006 Law Libr. J. 18.
12. Reflections, supra note 2, at 153, ¶ 38.
14. Id. at 20.
glamorize or dramatize his materials,” and that “[t]he personality of Miles O. Price was a mass of inconsistencies and contradictions that made him at once a challenge to the understanding and a fascination to those who knew him well.”

¶14 The Miles O. Price entry in the 1978 Dictionary of American Library Biography, which Morris cowrote with his former Columbia colleague Meira G. Pimsleur, explained a bit more about the differences between the two men. Unlike his left-leaning, Brooklyn-born associate librarian, Price “prided himself on his Midwestern heritage and the traditional values associated with it. That background, and his personal struggle for education and advancement, developed lifelong attitudes that were an unusual mixture of political conservatism and pragmatic liberalism.” Ten years after Price’s death, the admiration and fondness were now less equivocal: “His frequently gruff manner and raspy voice only briefly concealed from new acquaintances his warm personality and charm. He had a keen and often self-deprecating wit, a sharp and quick intelligence, and a deep sense of personal and professional pride.”

¶15 Morris’s relationship with Miles Price was clearly a complicated one. Even decades after Price’s death, Morris referred to him not only as “Mr. Price” but as “the formidable Mr. Price.” Price’s letters to Morris were signed “MOP,” but Morris’s replies were always addressed to “Mr. Price.” To some extent this may simply reflect a more formal time and Morris’s respect for his mentor, but he never became a last-name man himself—he was never “the formidable Mr. Cohen.” Despite differences in personal style and philosophy, there was nonetheless a significant and lasting bond between the two men.

¶16 During Morris’s two years at Columbia, the law school was in the process of moving from Kent Hall to its current home in Jerome Greene Hall. Morris learned about how law school buildings were planned and built, a knowledge that he would call on in every subsequent position he held. He also continued to contribute book reviews to Law Library Journal, publishing seven reviews covering topics ranging from diplomatic practice to oil and gas law. He became involved as well in professional activities. He represented AALL on the American Standards

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15. Id. at 17.
16. Id. at 20.
18. Id. at 415. The dictionary entry also quotes a wonderful line from Price’s 1930–1931 report as Columbia law librarian: “It has been my effort . . . to use rules as guides, rather than as straitjackets, and to give patrons what they want with a minimum of fuss and a maximum of speed and common-sense.” Id. at 414.
 Association’s Committee Z39, working for standards in library work and documentation, and was elected Vice President of the Law Library Association of Greater New York.

¶17 Miles Price had officially retired in 1959, but he remained at the Columbia Law Library until 1961. Morris applied for his position, but when Columbia offered to let him run the library as associate librarian, he decided instead to accept an offer to be the law librarian at the University of Buffalo.

**Buffalo and the Education of Law Librarians**

¶18 Morris took up his first position as law librarian at a very small school, with a faculty of eleven professors. There was plenty of opportunity for growth. Morris increased the capacity of the library by twenty percent, filled major gaps in the collection, and taught a legal bibliography course for law students.

¶19 Morris’s most significant contributions while at Buffalo, however, were as the 1961–1962 chair of the AALL Education Committee. His committee consisted of three veteran librarians from the New York area: Arthur Charpentier, a future Yale law librarian then at the Association of the Bar of the City of New York; Vincent E. Fiordalisi, a Rutgers professor and law librarian who had been Morris’s supervisor just three years earlier; and Julius Marke of New York University.

¶20 The committee was small and very active. For the August 1962 *Law Library Journal*, Morris organized and edited a symposium on educating law librarians. Contributors to the symposium included Earl C. Borgeson, Marian Gould Gallagher, J. Myron Jacobstein, and Miles O. Price. In one of his own three contributions, Morris wrote that developing an adequate supply of qualified law librarians

will require improving the quality and number of recruits, increasing the formal educational opportunities for law librarians and improving the quality of that education, and providing better on-the-job training and continuing professional education. . . . The level of education throughout the *entire* structure of our profession is the measure of our achievement. We can look with pride at the highly educated and capable leaders of the profession, but we cannot ignore the hundreds who cannot or do not come to conventions, who have never heard of the *Law Library Journal*, and whose librarianship is neither informed nor intelligent. Our failures are of quantity as well as quality.

¶21 Morris also wrote a conclusion to the symposium that proposed several concrete steps that the profession could take to create better informed and more highly skilled law librarians. These included preparation of a compact one-volume handbook of law librarianship, an M.L.S. program with specialization in

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law librarianship, additional law librarianship courses in library schools, a rotating series of one-week annual institutes, advanced training in foreign legal bibliography, and the creation of law library internships in law schools. He concluded: “These recommendations may sound like a big order, but they are both possible and necessary. We know where we’ve been and how far we’ve come. Now we must face up to where we are going.” These would be strong words from a leader of the profession, let alone someone just three years out of library school.

¶22 AALL had been holding biennial summer institutes since 1953. The first weeklong institute was held under the direction of Miles Price, “the moving spirit in law library education,” and covered a full gamut of topics: legal bibliography, acquisitions, cataloging, and law library administration. Morris followed in Price’s footsteps but raised the bar by proposing a series of annual institutes on each topic separately. In 1962–1963, he prepared outlines for three of the institutes: basic legal bibliography; book selection and acquisition; and organization of materials, including cataloging, classification, and shelving in a law library. Arthur Charpentier prepared the fourth outline, on law library administration.

¶23 These institute outlines were critiqued by a panel at the 1963 annual meeting, and the first rotating institute, on legal research, was held at the University of Missouri in 1964. It had thirty-seven students and a faculty of four (Morris, Harry Bitner, Marian Gould Gallagher, and Mortimer Schwartz). This was followed by a 1965 institute at Yale on selection and acquisition, and subsequent institutes each year. After a decade, Morris reported that attendance had grown to 126 students, and the faculty from four to twenty instructors.

Philadelphia and Library Schools

¶24 In the summer of 1963, Morris received offers to become law librarian at both Stanford University and the University of Pennsylvania. He chose Penn because it was at the time the stronger law school and because it was considerably closer to Brooklyn, where his aging parents lived and which he “always thought . . . was the cultural center of the universe.”

¶25 The greater part of Morris’s efforts at Penn were devoted to building the library, which, as he explained years later, “was badly neglected. Anything that I did would bring it up. That is, there was no place to go but up with that library.” He spearheaded renovations, built the staff, and rejuvenated the library’s acquisitions, but he was also involved in several scholarly enterprises, including an article on the

27. Id. at 240.
29. An Experiment in Library Education—The AALL Rotating Institute, 57 LAW LBR. J. 28 (1964).
32. Reflections, supra note 2, at 155, ¶ 59.
biblical law against usury33 and book reviews for Library Quarterly and Law Library Journal.

¶26 In late 1963, Morris began work on the bibliography that would occupy much of his attention until its publication in 1998. In a January 1964 letter to Miles Price, Morris reported that his friend Balfour Halévy, who had succeeded him first at Columbia and then at Buffalo, had visited for a week and that the two “had fun visiting local libraries and preparing our projected Bibliography of American Law up to 1860.”34 In a letter the following month, he noted that he had received a research grant from Penn for the bibliography and had two students creating records on index cards, and concluded that “[i]t all sounds terribly ambitious at this point but I hope we can carry it out.”35

¶27 In 1965, Morris contributed a chapter on administrative law to the new edition of How to Find the Law, and wrote an article for the Buffalo Law Review surveying the sorry state of state regulatory publication and urging the states to follow the federal model.36 He also worked closely with the student author of a University of Pennsylvania Law Review comment on selective publication of court decisions, one of the earliest discussions of this growing phenomenon.37

¶28 The AALL Education Committee Morris chaired in 1962 had recognized the need for more in-depth courses and programs in library schools. Morris met with the dean of the Columbia University Library School, developed a proposed curriculum for law library education as an area of specialization, and outlined his proposal in the 1962 symposium.38 In Philadelphia he was able to start putting his ideas into practice.

¶29 Early in 1964, he was asked to take over the course on law librarianship at the Drexel Institute of Technology’s Graduate School of Library Science, which Erwin Surrency of the Temple University School of Law had taught in 1962. As Morris wrote to Miles Price, “I’ve wanted to give such a course since I got involved in this Education Committee work.”39

¶30 Another opportunity to teach presented itself in 1965. Miles Price had been teaching a course on legal bibliography at the Columbia University Library School every other summer since 1937. By the 1950s, the course had become “a sine qua non to success in the field for the younger generation of aspiring law librarians.”40 The course was taken over by Julius Marke in 1963, and by Morris two years later.

¶31 A glimpse of Morris’s relationship with his Columbia students can be found in the transcript of an assembly talk he gave in 1966. He expressed concern that increasing specialization in libraries would lead to a narrow parochialism and a loss


of humanity. “I am a law librarian. Yet I like to consider myself broadly literate, reasonably cultured, in love with the physical book, and devoted to my readers and their needs,” he said, and urged the students to “remain as broad in outlook, as humane in approach, as affectionate to your materials, and as devoted to your users, as the librarians of an earlier time.” He sent them into the world with the admonition: “A moribund library and a hot blooded librarian cannot co-exist. I urge therefore that you never let your work, or your associates, or your library, quench the fire which I hope you will carry out of this place . . . .”

“A Truncated Manual”

¶32 To supplement the readings he assigned his Drexel law librarianship students from Price and Bitner’s Effective Legal Research, Morris prepared mimeographed materials that provided a concise outline of the topic. These teaching materials formed the basis of Legal Bibliography Briefed, a 135-page text that was published as volume 1, number 2 of the Drexel Library Quarterly in April 1965.

¶33 The book’s dedication recognized Morris’s debt to his mentor and simply read, “To M.O.P.” In the introduction, Morris cited Effective Legal Research, Pollack’s Fundamentals of Legal Research, and Roalfe’s How to Find the Law as bibliographical texts that “offer a fuller educational experience than this condensed guide,” and posed the question: “Why then another publication of this kind in legal bibliography? Why a truncated manual, without apparent new technique or approach? The burden of justification is heavy on one who offers so thin an addition to the already rich literature.” He explained that his abbreviated text was designed to offer students “a brief introduction to the main themes” and “to give general librarians and legal researchers who lack law training such an introduction.”

¶34 The legal research field was indeed dominated at the time by the three respected works that Morris cited in his introduction. Effective Legal Research was viewed as the standard of the era and the successor to Frederick C. Hicks’s Materials and Methods of Legal Research, the “authoritative masterpiece of legal research and bibliography.” Hicks’s work hadn’t been updated since 1942, but it still served as the benchmark, and its tables of sources continued to be valued by librarians. Morris expressed similar sentiments about Effective Legal Research: “The book advanced the scholarly approach to the teaching of legal research which was begun by Frederick C. Hicks . . . . It remains an invaluable friend to law librarians and a model for the many authors of successor works.” Price and Bitner’s 1962 “Student Edition Revised” was “in somewhat more simplified form” than the first edition and lacked the larger work’s historical material and bibliographical appendixes, but even the abridged work was nearly five hundred pages.

43. Etheredge, supra note 11, at 356, ¶ 21.
§35 *Fundamentals of Legal Research*, by Ervin Pollack of the Ohio State University, was first published in 1956. Like *Legal Bibliography Briefed*, it was dedicated “[t]o my friend and teacher, Miles O. Price.” *Fundamentals* began life as a fairly small book of 295 pages, with a purpose similar to that expressed in Morris’s introduction. One reviewer wrote:

> The value of standard works like [Hicks and Price & Bitner] is uncontested, but while these books are indispensable for the training of law librarians, they often transcend in their amplitude and profundity the scope of the law school curriculum. Mr. Pollack’s apparent objective was to produce a textbook on legal bibliography, which is tailored to the needs of the law student and does not, through its bulkiness, discourage him at the start. The average law student enters the course in legal bibliography with scant understanding of its importance and with practically no enthusiasm.⁴⁶

By its 1962 second edition, however, *Fundamentals* had swelled to 575 pages and was no longer a concise alternative to the standard texts.

§36 *How to Find the Law* dated all the way back to 1931⁴⁷ and was the successor to *Brief Making and the Use of Law Books*,⁴⁸ which was published in four editions between 1906 and 1924. For several editions *How to Find the Law* was edited by staffers at West Publishing and was not a particularly illustrious or readable tome, although the fourth edition in 1949 included chapters by several reputable authors, including contributions from Elizabeth Finley of Covington & Burling on administrative law and legislative history, Samuel E. Thorne of Yale’s law library on statutory construction and precedent, and Arthur H. Pulling of Harvard on English law.⁴⁹ It remained, however, a cumbersome and overly detailed work until it was rejuvenated in 1957 when William Roalfe of Northwestern University became the first law librarian to be its editor. The fifth edition was completely remade into a concise, 207-page introductory guide for law students with contributions from several leading librarians and scholars including Earl C. Borgeson (digests), Marian Gould Gallagher (legal encyclopedias), and Julius J. Marke (statutes and related materials).⁵⁰ One prescient reviewer wrote: “The recent trend of getting law into ‘nutshell-type’ volumes has caught up with legal bibliography.”⁵¹ Roalfe also edited a sixth edition in 1965, about a hundred pages longer than his fifth edition. As noted earlier, it included a chapter on administrative and executive publications by a newcomer to the enterprise, Morris L. Cohen.

§37 These were the standard texts, but Morris’s book was hardly the first “concise” guide to legal research. In 1909, John C. Townes, Dean of the University of Texas School of Law, published a short book titled *Law Books and How to Use Them*. Townes focused on topics like the elements of a case and analysis of precedent rather than research, and the discussion of resources is restricted to a three-page appendix. Nonetheless, a review of the time felt that he told “in a clear, simple and

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⁴⁷. Fred A. Eldean, HOW TO FIND THE LAW (1931).
interesting style, those things which ordinarily the student finds out only by many questions or by groping about in the library.”

¶38 In 1923, the same year that Hicks published the first edition of his Materials and Methods, Frank Hall Childs, an Illinois lawyer and treatise author, wrote a short, 119-page volume entitled Where and How to Find the Law: A Guide to the Use of the Law Library. The Childs text was well reviewed as a succinct guide for both law students and lawyers.

¶39 The years immediately after World War II saw several contributions to the truncated-manual literature. As part of a General Practice series designed as refreshers for lawyers returning from the armed forces, the American Bar Association and the Practising Law Institute published a concise Legal Research by Sidney B. Hill, librarian of the Association of the Bar of the City of New York, and Carroll C. Moreland, Morris’s predecessor at the University of Pennsylvania. It’s a small book, with just forty-two pages of text followed by appendixes containing abbreviations and a subject listing of treatises. It did little more than describe the available resources, but it was recognized as a “truly excellent summary of American law books.”

¶40 Around the same time as Hill and Moreland’s publication, Hobart Coffey, law librarian at the University of Michigan, published a fifty-page pamphlet, Legal Materials and Their Use in the Preparation of a Case (1946). It appeared in a second edition in 1948 under a less cumbersome title, Guide to Legal Materials. Coffey noted that his aims were to present in brief compass the bare essential a student or lawyer needs to know about the materials which he must use in his profession. The job might have been done more thoroughly in four or five hundred pages, but my experience has been that students and lawyers will not bother to read, much less study, a long work on legal bibliography. The longer works, excellent and valuable as some of them are, seem to be of more use to the scholar and the librarian than to the persons for whom they were presumably written.

Coffey’s work was cited a decade later as a “masterly pamphlet,” in contrast to other short works that were “superficial, inaccurate and even dangerous in the hand of the neophyte.”


53. See, e.g., Book Review, 28 DICK. L. REV. 30, 30 (1923) (“It would be for every student of law, and indeed for every lawyer, one of his most valued possessions.”). The volume was published in “revised” editions well into the 1950s, but the later editions are startling examples of cursory and careless updating. Many pages are completely unchanged from the 1923 edition thirty years earlier. The 1952 edition includes a four-line paragraph about the Federal Register and no mention at all of the Code of Federal Regulations, while the Central Law Journal, which ceased in 1927, is still listed as a “leading legal periodical.” FRANK HALL CHILDS, WHERE AND HOW TO FIND THE LAW 63, 64 (REV. ED. 1952).


55. HOBART COFFEY, GUIDE TO LEGAL MATERIALS 5 (1948).

These very short pamphlets could do little more than list and briefly describe the available resources. A few somewhat longer works also merit mention. Rebecca Laurens Love Notz’s *Legal Bibliography and Legal Research* was published in a second edition in 1947 and a third edition in 1952.\(^{57}\) The author was a legal analyst in the Library of Congress’s legislative reference division and taught legal bibliography at the Washington College of Law of American University. Her book was considered by many to be the go-to source for federal resources,\(^{58}\) and Notz was listed among the first rank of legal bibliographers as late as 1972.\(^{59}\)

Also in 1947, M. Ray Doubles, Dean of the University of Richmond Law School, and Frances Farmer, Librarian of the University of Virginia School of Law, published *Manual of Legal Bibliography*, complete with a foreword by Miles O. Price. According to the authors’ preface, their aim was not to duplicate the “excellent and comprehensive treatments . . . of materials necessary to legal research” but to concentrate “upon the methods of search.”\(^{60}\) A reviewer at the time thought parts of the book went into greater detail than needed, but that their first two chapters were “a masterpiece of brevity and clarity which every law student should read at the beginning of his course.”\(^{61}\)

In 1950, two Brooklyn Law School professors, Benjamin Feld and Joseph Crea, published a small volume entitled *A Practical Guide to Legal Research*. Erwin C. Surrency took over as lead author in 1959 with the renamed *A Guide to Legal Research*, and issued a “supplemented edition” in 1966. Each edition was just over one hundred pages, and employed what it called a “unique approach” of discussing research methods in separate chapters for federal and state law.\(^{62}\) The book attempted to fill “a need felt by many teachers of legal research for a small and concise manual,”\(^{63}\) and it has some useful and interesting features, such as the emphasis in the opening chapter, “The Facts Are First,” on a thorough knowledge of the facts of a specific case.

By the time that *Legal Bibliography Briefed* appeared in 1965, its only contemporary competition was Surrency’s volume. It is therefore a bit ironic that Morris’s new work was lauded in a review of a different book by Surrency, *Research in Pennsylvania Law*: “For those who need more information on law books in general, but are repelled by extensive texts, Morris Cohen, Biddle Law Librarian of the University of Pennsylvania, has just published an excellent, concise manual.”\(^{64}\)

\(^{57}\) Although the “second edition” was published in 1947, I have been unable to find any reference in the literature or WorldCat to a first edition.

\(^{58}\) See, e.g., Harriet French, Book Review, 11 *Miami L.Q.* 317, 317 (1957) (noting that the book “remains the outstanding source of information in the field of federal legal bibliography but, unfortunately, it has not been kept up to date”).


\(^{63}\) *Id.*

\(^{64}\) *Id.*
LEGAL BIBLIOGRAPHY BRIEFLY was also reviewed more fully in Law Library Journal by Balfour Halévy: “For the first time, there is available a simple and short text suitable for teaching first year law students an introductory legal bibliography course. The author is to be praised for his courage in ruthlessly shortening and simplifying the areas he has covered,” he wrote. “Multiple copies should be in most law libraries.” Halévy’s only quibbles with the text were that the chapter on citators was too short and that the closing chapter on foreign legal materials attempted too much and could have been omitted.

To the Nutshell and Beyond

Morris hardly rested on the laurels of his small text on legal research; he continued to press on with his Bibliography of Early American Law and other scholarly enterprises. He made significant bibliographical contributions to Law and the Social Role of Science (1967) and Law Books Recommended for Libraries (1967–1970). The latter project was an Association of American Law Schools endeavor to identify core titles for law libraries in several dozen subject areas, and found Morris working once again for his mentor, project director Miles O. Price. Morris served on the advisory committee and contributed to the Biography and Legal History sections of the publication.

Throughout the 1960s, Morris was involved in spreading access to legal knowledge beyond the law school, as the activist spirit that cost him opportunities in the McCarthy era was finally able to flourish. In 1966 he edited Your Right to Dissent in a Time of Crisis, a pamphlet for the Academic Freedom Committee of the American Civil Liberties Union, Greater Philadelphia branch. He was involved in creating a code of rights for Philadelphia high school students, and wrote an article on the regulation of school libraries for the Yearbook of School Law.

Perhaps the most significant of Morris’s interests in public access to legal information was in the rights of prisoners. He visited prisons in Pennsylvania, and in 1968 he published an article, Reading Law in Prison, about the wide gap between standards for prison libraries and actual practices. As an appendix to the article, he provided a Suggested Minimum Law Collection for Prison Libraries. “Perhaps nowhere more than in prison is the right to read the law so eagerly sought and so thoroughly repressed,” he wrote. “One cannot help but feel that a change in this situation would aid both the prisoner and the prison—and perhaps ultimately society as a whole.”

Morris also continued his ongoing work to enhance the legal community’s own research skills. In 1965 he surveyed five hundred lawyers using the Philadel-

66. Id. The problematic chapter on foreign law materials was dropped from the first edition of Legal Research in a Nutshell, but it reappeared substantially unchanged in the 1971 second edition.
67. Price served as director for two years (1964–1966) before turning the reins over to Harry Bitner.
70. Id. at 26.
phia Bar Association Library, in an attempt to get a better sense of how lawyers actually performed legal research. His survey formed the basis of his participation in a 1968 joint meeting of American Bar Association committees on electronic data retrieval and the economics of law practice. What he learned was that very few lawyers actually knew how to do research:

> Concern over the technology of the future seems in a way premature when many lawyers have not learned how to use adequately the technology of today. The money wasted by otherwise hard-headed lawyers on unused and ill-used law books would be a professional scandal if lawyers were aware of their ignorance and gullibility. . . . [M]ost lawyers do very little research and too many do virtually none at all.  

¶50 Meanwhile, Morris was now the author of a legal research text, but its reach within the law school community was limited. Issues of the *Drexel Library Quarterly* did not have the widest possible distribution. That would change in 1968, however, when Drexel agreed to let the material appear, in a slightly expanded and revised format, as part of the West Publishing Company’s new Nutshell Series.

¶51 The concept of a “nutshell” as a concise encapsulation dates back at least to Marcus Tullius Cicero. Pliny the Elder wrote in his *Natural History* that Cicero reported that “Homer’s *Iliad* was copied on to a scrap of parchment which could fit into a nutshell.” This led to numerous parodies in the seventeenth and eighteenth centuries under titles such as *Homer in a Nutshell* or *The Iliad in a Nutshell*, and by the middle of the nineteenth century the concept was in use for topics ranging from baptism to New York City.

¶52 In legal publishing, Great Britain’s Sweet and Maxwell had a series of *Nutshells* going back to Marston Garsia’s *Roman Law in a Nutshell* in 1921. Garsia, a London barrister, had a corner on the market at first, producing three more *Nutshells* within two years (*Constitutional Law and Legal History*, *Criminal Law*, and *Real Property Law and Conveyancing*). The Sweet and Maxwell *Nutshells* continue today, but in both size and range their scale is smaller than their American counterparts. Most British *Nutshells* are well under two hundred pages, and there are just eighteen current titles in the series (compared to some 165 titles in the West series). The Sweet and Maxwell books are joined by about a dozen *Nutcases* summarizing the most important cases in an area of law.

¶53 In the United States, the nutshell concept was popularized by W. Barton Leach’s famous 1938 article, *Perpetuities in a Nutshell*. In the first footnote of his article, Leach credited a House of Lords decision as his source for the term: “Lord Thurlow undertook to put the Rule in Shelley’s Case in a nutshell. ‘But’, said Lord

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72. *The Elder Pliny on the Human Animal* 77 (Mary Beagon trans., 2005). The commentary notes that the reference is probably from Cicero’s “lost work on wonders,” *Admiranda*. Id. at 268, 145. This Homeric legacy was echoed at Penn by one of Morris’s legal bibliography students who “typed her term paper on onion skin and enclosed it in a walnut shell. Mr. Cohen gave her an A.” Shenker, *supra* note 7.
Macnaghten, ‘it is one thing to put a case like Shelley’s in a nutshell and another thing to keep it there.’

¶54 West’s Nutshell Series was launched in 1964 with Jurisdiction in a Nutshell: State and Federal by Albert A. Ehrenzweig and David W. Louisell, both professors at the University of California, Berkeley. Ehrenzweig also published Conflicts in a Nutshell the following year. These early Nutshells were the same size as later volumes, but it took a few years for West to standardize the format. The cover of the first volume was beige, and the second a pale blue. Only with the 1968 appearance of Legal Research in a Nutshell and Oval A. Phipps’s Titles in a Nutshell was the series given a standard green cover with a line drawing of half of a walnut shell; this would in turn be replaced in late 1973 by the more familiar multicolor design with an abstract pentagonal nutshell that would last until another redesign in 2009.

¶55 Legal Research in a Nutshell, dedicated “to the long-suffering law students who may be introduced to legal research through these pages,” soon found its audience. By the time of a survey of legal research instruction in 1975, the Nutshell was used in more law schools than any other legal research text. It was also the first legal research text cited by the Supreme Court, appearing, as “Cohen: Legal Research,” in a proposed list of twenty basic legal resources to be included in a prison law library. The Nutshell continues to be a required text in federal and state prison libraries.

¶56 By the close of the 1960s, Morris had become a leader in his chosen profession. Many further achievements would lie ahead, including the 1970–1971 presidency of the American Association of Law Libraries, his 1971 departure from

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74. Leach, supra note 73, at 638 n.* (quoting Van Grutten v. Foxwell, [1897] A.C. 658, 671 (Eng.)).


76. MORRIS L. COHEN, LEGAL RESEARCH IN A NUTSHELL, at vi–vii (1968).


Philadelphia to become the librarian at Harvard Law School, the editorship of How to Find the Law, and eventually the publication of Bibliography of Early American Law. I’d like to remember the 1960s, though, with one final story of the fiery young Morris.

¶57 In 1966, Morris’s friends J. Myron Jacobstein and Roy M. Mersky published one of their early collaborative efforts, a 249-page volume titled Water Law Bibliography 1847–1965. One reviewer called the work a valuable tool, but noted facetiously that “[w]riting a book review for a bibliography is akin to a literary criticism of the telephone directory.” This did not sit well with Morris, and in his review of Water Law Bibliography he wrote that “there are many who appreciate neither the significance of the bibliographer’s labors nor the value of his product.” He rose to Jacobstein and Mersky’s defense, arguing that bibliography “requires skill in research and investigation, in discrimination and distinction, in evaluation and analysis, in organization and description—in short, true scholarship.” He was, of course, writing about his own work as well. He was, in short, a true scholar.

83. Id. at 1498.
The death of Professor Morris L. Cohen raises the question of the future of scholarly bibliography. Has the information revolution with its digitization of data and its facile search engines transformed what once was a respected aspect of scholarship into a pursuit so specialized as to be seen as an antiquarian endeavor? In conjunction with this query, the history and status of law librarians is critically examined.

An Encounter with the Past

When I went to work at the Harvard Law Library as Deputy Director in the fall of 1978, Morris, then the Law Library Director, gave me a tour of the Langdell...
Library. This was a tour of the old incarnation of Langdell Hall, before the rebirth of the facility as a modern entity. An honest assessment would have been that the library was a shambles. There were pockets of stacks tucked in unlikely places, with many a surprise to be found therein. The technical services area contained tables filled with stacks of books, years' worth of volumes that had never been processed. There were diversions everywhere. The library exemplified the challenges of a universe of information built of paper.

¶3 On the level where the bound volumes of Supreme Court records and briefs were shelved, there was a set of offices. This was the domain of emeritus faculty, along with the inimitable Professor Charles Donahue, who relished having a corner office in the oldest area of the stacks. We paused by one open door, and Morris took the opportunity to introduce me to Professor Sam Thorne. Professor Thorne had taken emeritus status at that point, but he was still at work. Other than his pleasant, if distracted, good manners, three things struck me about Professor Thorne. One was that he only read by natural light. He told me that when the sun no longer provided sufficient illumination, it was time to stop reading. There is something very pleasing about this thought, and it seemed to fit with Thorne's subject matter quite well. The second thing that impressed me was that he was spending his retirement years working on his masterful translation of Bracton. Seeing someone devoting his life to working through these ancient, puzzling volumes impressed me to no end. There was an intellectual purity to the endeavor. I was still naive about scholarship in 1978, and I found it amazing that a man would devote much of his adult life to working with such ancient materials, to bringing them under control. The third thing that amazed me: Morris informed me that Thorne was a former law librarian.

¶4 Though I had looked into the history of law librarians a bit, I had never heard that Thorne had served as one of our own. He did not define himself as a law librarian. Indeed, Morris counseled me that I should never mention it to him. For this reason, Thorne stands astride both of my areas of inquiry in this essay. His work for the Selden Society over the years, carefully studying and annotating the Yearbooks and his work in the field of legal history as the translator of Bracton are

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1. Charles Donahue epitomized the world of scholarship discussed in this essay. He was not confident of the library's ability to catalog material to his standards, so he maintained his own card catalog in his office. He currently holds the Paul Freund Chair at Harvard Law School.


4. Though almost a decade has passed since I left the directorship of the law library at Berkeley to assume the position of Interim Dean and from there moved into a full-time faculty position, I will always consider myself a member of the profession of law librarianship.

5. Thorne's New York Times obituary, cited supra note 2, makes no mention of his having served as a law librarian. It is noted in the dagger footnote of his earlier writings and is noted in passing in some assessments of his work, but Thorne did not identify himself as a librarian. Morris Cohen's observation aside, I never heard of it. It is not noted in his festschrift. See ON THE LAWS AND CUSTOMS OF ENGLAND; ESSAYS IN HONOR OF SAMUEL E. THORNE (Morris S. Arnold et al. eds., 1981).

6. Thorne's work translating Bracton has been much celebrated. “Occasionally we get lawyers who, like Maitland, bridge the gap between authority and evidence. None has done so with greater or easier eminence than Professor Samuel E. Thorne.” DeLloyd J. Guth, Samuel E. Thorne and Legal History in Law Schools, 80 Mich. L. Rev. 765, 767 (1982).
examples of the careful bibliographic scholarship that was once the crown jewel of academic librarianship in general and law librarianship in particular.7 Seeing him sitting in his office that day in 1978, I was looking at the embodiment of traditional scholarship. The fact that Thorne had served both Northwestern and Yale as law librarian impressed me as well.

5 The scene was made more remarkable by the presence of Morris Cohen. Morris resembled Thorne on both counts. His work on the Bibliography of Early American Law (BEAL)8 represents the apex of the bibliographic scholar in the law. Like Thorne, Morris was carrying out detailed, meticulous work. Each of them elevated the scholarly enterprise. Morris was also a law librarian who was viewed by the world as a public intellectual, a scholar of note and gravitas.9 In one striking way, though, Morris Cohen and Sam Thorne were quite different. The former was renowned as a scholar-librarian; the latter had decoupled his status as a scholar from his work as a librarian. More on that point later.

6 Standing in the same physical space with these two giants was a privilege the likes of which I fear will not be repeated. The age of the scholarly bibliographer is gone, and at the same time the role of the scholar-librarian is under siege.

A Meditation upon Librarianship

7 Librarians traditionally performed four functions. First, they gathered materials. Second, they created records of the materials that were so gathered. As a part of this process they developed schemes for organizing information so that it could be retrieved. Third, they physically arranged and preserved the materials. Fourth, they distributed the materials to those who needed them. The importance of each function has varied over time. The third one, the design of shelving schemes that led researchers to serendipitous discovery, has waned as the stacks have become less and less the locus of research. Early in my career, I would shake my head in wonder when researchers exclaimed that they had gone into the stacks looking for one book and, by incredible good fortune, had found an even better book. I wanted to tell them that generations of the best minds in the field had labored to design a shelving pattern that would achieve just this end. This function is now filled by Google's algorithms, in a process even more mysterious to the user. The fourth function, which centers on circulating materials and providing reference service, is in the midst of profound change but will be put aside for the purposes of this essay. It is the first two functions that have special relevance here.

7. A listing of Thorne’s publications can be found in ON THE LAWS AND CUSTOMS OF ENGLAND, supra note 5, at 397.
Acquiring Information

¶8 For millennia, the major challenge for librarians lay in gathering and preserving material. Libraries predate the printing press, and for centuries possessing manuscripts was an end, a powerful end, in itself. Legal information was no exception. The publication of legal materials was scattershot. Even after the development of mass printing and the growth of what we conceive of as the modern library, collecting legal materials was a challenge of the first order. The great librarians were book hunters. Explorer librarians like Eldon Revare James of Harvard traveled the world to find foreign legal materials. Relationships with publishers throughout the United States and Europe were crucial to great research libraries. Simply possessing legal monographs or state attorneys general reports, to say nothing of foreign gazettes, was the name of the game. Those boxes of unprocessed books that I saw at the Harvard Law Library had to some extent achieved their purpose: they were there. Once obtained they could be processed when resources became available.

¶9 As the methods of the Industrial Revolution were applied to the production of books, gathering together materials from the common law world became less and less difficult. Foreign materials remained the province of the great research library, but the publication stream grew more and more straightforward. Impassioned concern about the overabundance of legal materials took center stage. Futurists began to realize that simply housing all of these objects would be practically impossible.

¶10 As the twentieth century wore on, a new technology offered a solution to this problem. If one could not possess the information, perhaps one could possess a microform copy of it. Though touted as the solution to all collection problems, especially those related to storage, microform materials were very hard to love. Nor did they truly solve the problem. Innovators like the Law Library Microform Consortium, the brainchild of the irrepressible Jerry Dupont, could make microfiche of public documents as palatable as possible, but one can make only the most ragged of purses from a true sow’s ear. The thought of information that I need being accessible only through the daunting portal of a surly, never-quite-working-smoothly microfiche reader still gives me the shivers.


11. For a marvelous appreciation of a forgotten law librarian, see Roscoe Pound’s memorial to Professor James. Roscoe Pound, Eldon Revare James: An Appreciation, 42 LAW LIBR. J. 76 (1949). James was a law school dean and an adviser to the Prince of Siam before becoming a law librarian. He not only served as President of AALL in 1934–1935, he is quite likely the only law librarian to hold Siam’s Order of the White Elephant. A tribute from Dean Pound, one of the preeminent legal scholars of the time, speaks volumes.

12. Microform, produced in the media of microfilm and microfiche, was once hailed as a solution to the problem of storing ever-expanding collections of three-dimensional objects. The rise and fall of microform materials is most entertainingly told in NICHOLSON BAKER, DOUBLE FOLD: LIBRARIES AND THE ASSAULT ON PAPER (2001). Baker felt that books and, especially, newspapers were being thoughtlessly thrown away. For all its failings, microform material is still held in large quantities by great research collections.
The twentieth century also brought interdisciplinary materials into the collections of law libraries. No longer did the challenge lie in finding legal texts, it now lay in knowing how to choose texts from other fields that might be relevant to research. Serving current faculty was daunting enough; divining what future faculty members might require called for a combination of subject expertise and prophecy. The acquisitions librarian with a keen eye and an unerring sense of where legal research was headed emerged as hero. Budgets were always limited; choices were tough. In choosing what would enter the collection and therefore be held as a speculative part of law’s intellectual heritage, librarians played a crucial role. Though they might resist the idea that they served as arbiters of taste and quality, in a world of limited resources, it had to be so. This model, built for information that existed in a three-dimensional format, persisted until almost the end of the twentieth century.

Acquiring the right materials was the golden fleece for many years. If gathering material and holding it is the principal purpose of the enterprise, the library with the most volumes wins. In the 1980s I worked in law libraries that obsessed over volume count the same way that a law school dean in 2011 obsesses over the data points that feed into the U.S. News & World Report rankings. In a world of books and serials in the form of paper and microform, bigger was undeniably better.

The last decades of the twentieth century witnessed the rapid evolution of a new trend: information no longer appeared only in paper format. Like all good revolutions, the digital revolution grew from the bottom up. As those born before 1980 came to terms with information in digital form, those born after that date grew up with it. The older generation can learn to use a smartphone or an iPad, we can read blogs and hook up our RSS feeds, but we are not of that world. Current law students and those coming up the pipeline behind them are. Members of the new generation do not hate information that is on paper, but to them paper is just another tool, one best avoided if possible. Any type of information they want to read or use is out there in the cloud. It comes directly to a snazzy device that can be held in one hand. A building that is filled with books holds little appeal: the stacks can be creepy, the organization scheme mysterious, and the needed item not on the shelf.

None of this is meant to imply that acquisitions librarians are no longer needed. We still live in the shadow of the world of print. The choice of what database subscriptions to buy or which materials to license remains crucial. But it is not the same. As more and more information, in a growing variety of formats, is free or is marketed directly to the user, the librarian’s role as arbiter gets smaller and smaller. Even if the acquisitions function remains important, it is no longer how the profession can define itself.

13. I use 1980 as the line of demarcation, borrowing it from John Palfrey & Urs Gasser, Born Digital 1 (2008). It is a soft boundary with exceptions on both sides, especially when one thinks globally.
Organizing Information

Systems for organizing information must be designed with the user in mind, but sometimes overlooked is that the objectives and principles that undergird these systems represent a hypostatization of users’ needs. The specifications . . . that are embodied in these objectives and principles have been developed and refined over a period of 150 years. . . . [T]hey are more stringent than can be imagined by most users . . . 14

¶15 Elaine Svenonius here writes in defense of carefully designed systems for organizing information. The methods that she discusses involve mediated information. For purposes of this article, mediated information is information that has been processed by a human intermediary who sorts, tags, and brings order to a mass of data. The data being organized does not have to be in the form of books or databases. Once a sufficient quantity of anything accumulates to the point that it cannot be retained and sorted in one person’s memory, a system is needed. The systems that librarians have developed have an underlying intellectual structure based on decades of careful thought about how people use information.

¶16 In the world of three-dimensional information, the organizing function of librarians was central. How can one make sense of all that one possesses? The great minds of librarianship were devoted to designing organizational schemes that kept the growing store of books and periodicals under control. Great figures like Sir Anthony Panizzi, Melvil Dewey, and Seymour Lubetzky strode across this stage. Consider the chutzpah underpinning the assumption that one could design a subject structure that provided a preexisting location for every book on every possible subject. Precoordinated universal systems of organization represented categorization and classification at the highest level.

¶17 But efforts to organize information with care and precision in the predigital world could themselves add a layer of complexity to an already complicated structure. Think of the massive cataloging systems developed in the twentieth century. As the volume of information continued to grow, systems of control were stretched. Librarians sailed between the Scylla of accreted information and the Charybdis of organizing systems that had become so complex as to be nearly useless. When I taught graduate students at the School of Library and Information Studies at Berkeley in the mid-1980s, we spent several sessions coming to grips with the intricacies of the Library of Congress Subject Headings. If using such a tool is the province of graduate study, then that tool is no longer of use to the average library user. Only the initiates had a chance of successfully understanding the system. There was too much information, and the technical standards for navigating it were too high.

¶18 Then, just when the whole enterprise was reaching the redline, technology came to the rescue. But the price of that rescue was the end of any hope of control by librarians. Organization now resides in a black box. The algorithms used by Google, Westlaw, and LexisNexis to connect the researcher with desired information are proprietary. Neither users nor librarians can evaluate them even if they

want to. Furthermore, these new systems are not the products of enterprises devoted to determining through reflection objectively transparent, universal principles of thought. The parameters now used to judge the success of systems are speed and ease of use. The driving force is profit.

¶19 There is no point in lamenting this development. The battle is over and mediation of information by librarians lost. When we teach Advanced Legal Research here at Berkeley Law School, we view it as a victory if we can persuade our students of the value of using indexes instead of Boolean searching. Our victories are fewer and fewer. Should we take comfort in the fact that WestlawNext and Lexis Advance may signal the demise of Boolean searching? If so, it is cold comfort.

The Great Scholarly Bibliographers

¶20 In a sense, the great bibliographic projects also were efforts at control. If a trusted eye examined an item and described it with care, it would be forever part of the known world of information. The elevation of a work into the authoritative canon via the judgment of a scholar is a lovely distillation of the old world of cognitive authority. Each item in BEAL is a brick in a great structure, one that may need amending or supplementing but which need not be replaced. There will never be a BEAL 2.0. The work has been done, and done to strict standards. Morris Cohen took care to describe exactly what he did and how he did it. The process is transparent, but more important, it was undertaken with care by a single, trustworthy individual.

¶21 In legal research, students are taught to trust nothing. No fact should go unverified, no assertion be made without a footnote. If one wants to say that the sun rises in the east in a law review article, one had best drop a footnote to back up the statement. Nothing should be taken on faith. But with a tool like BEAL, the researcher does that very thing. Like finding a statement of positive law, once one has checked BEAL, there is no need to push beyond it. Experts may find problems with it, as Daniel Cohen so eloquently described, but all changes will be minor repairs to the great work. Like the Dude, a tool like BEAL abides.

¶22 The same reasoning explains Professor Thorne’s work. Once his translation of Bracton was complete, in a format that showed both the original and his translation on facing pages, the work was done. Researchers trust him and they trust his work. There may be disputes about bits and pieces, but the work is done. It too abides.

¶23 The current debate about Google Books and the use of metadata in the Google Books Library Project underscores how radically ideas about intellectual authority are changing. Books no longer have to exist in three dimensions. They can be scanned into digital form or simply produced that way in the first place. The algorithms behind the major search engines (as well as those of Westlaw and

16. THE BIG LEBOWSKI (Gramercy Pictures 1998), a movie by the Coen Brothers, is referenced several times in this essay. One cannot explain the Dude; one must watch the movie.
LexisNexis) operate in the ether. There is a system organizing the information, but it works behind the scenes and is the product of commercial enterprises. Can we trust these commercial enterprises as much as we trusted Morris Cohen, Samuel Thorne, and scholarly bibliographers like them?17

¶24 The mediated world where a bibliographer organized the works of the past, or a cataloger made contemporary works available by ordering them into comprehensible bits saved from the maelstrom of data, is gone. Libraries still produce catalogs, but they are digital, and they are searched by keywords and Boolean strings. Simply searching by author is an advanced search in many systems. Nor is today’s researcher content merely to find information on where to access the desired item—he wants the item itself delivered to his computer with the click of a mouse. The days of the double or triple look-up that led one from one source to another are past. Embedded links are no longer novel; they are expected.

¶25 The modern researcher will not tolerate double look-ups, nor will he bow his head to an organizational scheme thoughtfully crafted by librarians. The irony is that this researcher is still using information that has been highly manipulated, but because the vendors have designed systems with simple, straightforward front ends, he will never notice. In this world, what one does not notice does not exist. The bubble thus created around the user may be seen as labor-saving assistance or as sinister manipulation. It may be a great convenience to have Amazon recommend books to me, but isn’t it a bit troubling that it can do so?18

¶26 The inevitable conclusion is that the careful, methodical work of great bibliographers is a vocation being consigned to the past. It was tied to the three-dimensional object, and it solved the problems and challenges of the era of the book. Trusting an authoritative mind has given way to the use of a great search engine. In that sense, BEAL stands as one of the last of its class. Like Sam Thorne’s belief in reading only by natural light, the authoritative bibliography has become a shining artifact of history.

**Law Librarians as Scholars**

¶27 While I worked at the Harvard Law Library, the university hired a new director of the university libraries. The previous director, Douglas Bryant, had been a librarian. It was his bad luck to serve in years of tough budgets and campus revolution.19 Nineteen seventy-eight was not a good time to be an administrator of any

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17. The growing ability of commercial vendors to design systems that grow and customize search results based on the identity of the researcher represents a new set of concerns that lie beyond the scope of this essay.


19. One of my most vivid memories of working as a student employee in the library was the day that Mr. Bryant put out a call for volunteers to surround the Union Catalog to prevent it from being destroyed by rioting students, who correctly viewed it as the heart of Harvard’s intellectual treasure. Before you dismiss my thoughts about catalogs, keep in mind that I volunteered that day. I was prepared to defend the Harvard Union Catalog with my life.
type in a university. Bryant was replaced by Oscar Handlin, an eminent historian.\textsuperscript{20} Professor Handlin called a meeting of all Harvard librarians.

\textsuperscript{28} At that time Harvard’s many libraries were decentralized, following the Harvard model of “every tub on its own bottom.” Handlin, as university librarian, floated above the structure, but his power was vague. Harvard College had its own librarian; though she reported to Handlin, she had some autonomy. The law library was very much a part of the law school. Libraries affiliated with powerful parts of the university, such as law and business, had the power of their parent divisions behind them. But weak or strong, independence was jealously guarded. This sort of general conclave was unusual.

\textsuperscript{29} Handlin made two points that I remember vividly. One was that he was not a librarian and, though he was an avid library user, he knew nothing about how the materials that he used reached him. Thus it was our job to instruct him. He told us that his reputation would not be based on his performance as University Librarian; he would be remembered, if at all, as a historian. The ball was in our court as far as the library was concerned. I found this line refreshingly honest and full of potential. How well it worked out is a topic for another day.

\textsuperscript{30} A second point made by Professor Handlin that day, though, is relevant here. He cautioned us that he did not see where the next generation of scholar-librarians would come from. Libraries were becoming mechanized and routinized to such a degree that there was no room for scholars. His image of the great librarian was someone known outside of librarianship as a scholar of renown. Handlin’s model librarian was one who produced works recognized as important by the academy. These scholars could do important work that mattered to the academy within the scope of being a librarian. Handlin noted that there were members of his generation who qualified (I thought of Morris), but he worried: where were the apprentices in training?

\textsuperscript{31} Handlin’s remarks struck home for me that day, and they still resonate. The best work done by law librarians today is mainly channeled into writing about legal research and legal information.\textsuperscript{21} This is well and good, but it is limiting. The teaching of legal research has never taken center stage in the world of legal education. Most programs are taught by adjuncts and lecturers, and librarians are lucky to play a part. Even in those cases where they do play a direct role, involvement in the legal research program is not a path to glory. In many law schools, the librarians and the legal research instructors scramble for position at the foot of the law school table. All of this is wrong-headed, and I have, in the past, fulminated at the undervaluing of legal research instruction.\textsuperscript{22}


\textsuperscript{21} Nancy P. Johnson, Should You Use a Textbook to Teach Legal Research?, 103 Law Libr. J. 415, 2011 Law Libr. J. 26, provides a fascinating history of law librarians writing legal research textbooks. Her footnotes are an excellent guide to further research in this area.

\textsuperscript{22} Robert C. Berring & Kathleen Vanden Heuvel, Legal Research: Should Students Learn It or Wing It?, 81 Law Libr. J. 431 (1989), is a fine example of my fulminating on this topic.
¶32 Recent curricular reforms of the first year of legal education have, if anything, emphasized writing skills and problem solving over systematic legal research training. Much legal research training of American law students falls by default to the employees of Westlaw and LexisNexis, who bring the motivation of profit, to say nothing of prizes and 24/7 help lines, to the enterprise.

¶33 Legal information offers a better opportunity for librarians to make a mark. The move to open access to information and the nested questions of information policy are at the cutting edge of the law in 2012. Law librarians are players in this game. Richard Danner of Duke has been at the forefront of the issue via the Durham Statement and his thoughtful writing. But even Professor Danner’s scholarship is only on the periphery of the world outside of librarianship.

¶34 John Palfrey, Director of the Harvard Law Library, is a player in the world beyond libraries, but is he a librarian? Just as Oscar Handlin was brought in to run the Harvard University Libraries with no library experience, Professor Palfrey came to the rescue of the Harvard Law Library in 2009. Unlike Handlin, Palfrey is a young scholar who works in a field closely related to the world of libraries. He is a scholar of intellectual property, a former head of Harvard’s Berkman Center for Internet & Society, who earned his tenured position at Harvard Law School on the basis of work done there. His experience, combined with his boundless energy and personal charisma, makes Palfrey the right person at the right place at the right time. He is involved with the very issues of information and access to it that sit at the center of the discussion. But will his work be identified as that of a law librarian? Is he more Sam Thorne or Morris Cohen? Or is he neither? One thing seems certain—he is not a librarian who morphed into being a recognized scholar. Perhaps he is a scholar who came to save law librarianship.23

The Tao of Law Librarians: A Delayed Response to Professor White

¶35 Law librarians belong to a conflicted profession. The relation between those who work in law firm, corporate, county, or court libraries and their colleagues in academic law libraries has never been a simple one, and this can be reflected in our feelings about the importance of the scholar-librarian to the profession.

23. In November of 2011, as this article entered the final stages of the editing process, John Palfrey announced that he was resigning his position as Law Librarian, Vice Dean and Professor of Law at Harvard Law School in order to become Headmaster at Phillips Academy. Press release, Palfrey Appointed as the Head of School at Phillips Academy Andover, HARV. LAW SCH., http://www.law.harvard.edu/news/2011/11/14_john-palfrey.html. Though his motives for the decision are most likely complex, his move is coincidental with a reorganization of the Harvard University Library system which appears to pull the law library into the structure of the university library in a way unknown in the past. Libraries Announce New Organizational Structure, HARV. MAG., Sept. 28, 2011, http://harvardmagazine.com/2011/09/new-harvard-library-structure#.TsmKfYKRsFk. Professor Palfrey’s decision is a personal loss for the profession. If the Harvard reorganization lessens the potential for the Harvard Law Library to play a leadership role in the evolution of law librarianship, the loss is also an institutional one. In any case, I wished to use this eleventh hour footnote to acknowledge that the future of academic law librarianship will not be found in Cambridge, Massachusetts.
This, though, is not the place to set out a careful brief for maintaining a united profession. It seems obvious to me that academic law librarians need the innovation and reality-based dynamism of private law libraries, and that private law librarians, and law librarians from all other sectors of the profession, need the leadership and prestige of the academic members. Here, though, I want to address a different issue, partly to determine whether we have, or need, scholar-librarians today, and partly to redress the misimpression of law librarianship that the future researcher might glean from the literature.

I began with an anecdote about Sam Thorne, the esteemed legal historian who sailed away from law librarianship without looking back. But Thorne’s predecessor at the helm of the Yale Law Library, Frederick Hicks, managed to make his name as a scholar without abandoning his identity as a librarian. Hicks’s classic work, *Men and Books Famous in the Law,* still sits on my desk. (His other works are a little further away on a shelf.) He was a scholar-librarian who wrote about legal research but who made a reputation that penetrated the wider universe of legal scholarship. Morris Cohen and a handful of his contemporaries did the same. Who will inherit the mantle?

To date we lack a full history of law librarianship. We have *Law Librarianship: Historical Perspectives,* but that is a book written by law librarians for law librarians. The individually authored chapters present a great deal of information, but with no overarching narrative. Frank Houdek has traced the history of law librarianship for years, but his careful scholarship has stayed largely within the realm of law librarianship.

Probably the most influential article written about the history of law librarians, and certainly the one with the most powerful access to the general law school world, was G. Edward White’s effort, *Law Librarians,* in *Green Bag* in 2007. *Green Bag* circulates among a wide range of influential readers, and Professor White is a scholar of the first order. Personally I am a great fan of his award-winning work. But despite my love of *Green Bag* and my respect for Professor White, the article appalled me.

When White went in search of the essential nature of law librarians, he initially identified two prevalent stereotypes. One was the sentinel, the figure who maintains control of the environment. For his example he drew upon the old chestnut, Marian the librarian from Meredith Wilson’s *The Music Man.* For his second

27. Professor White is a much honored author. Among many honors his books have received is the Coif Triennial Book Award, and he has been short-listed for a Pulitzer. His impressive accomplishments are set out on his web page. G. Edward White, V.A. Law, http://www.law.virginia.edu/lawweb/faculty.nsf/PrFM/Peb/gew. His books Oliver Wendell Holmes, Jr. (2006), *Patterns of American Legal Thought* (1978), and *The American Judicial Tradition: Profiles of Leading American Judges* (1976) sit on my shelf.
28. I am also on the Board of Advisers of the *Green Bag,* and have held that position since its first issue. Its editor, Professor Ross Davies of George Mason Law School, is one of my culture heroes.
stereotype he chose the character of Inspector Javert from *Les Miserables*, with Javert cast as protector of the purity and integrity of an institution. While I could happily spend time dissecting these examples, I shall let them stand as markers for where the piece was headed.

¶41 As the real-life analogue for Marian the librarian as well as for Inspector Javert, White chose the indomitable Professor Frances Farmer, longtime Director at the University of Virginia Law Library. While Farmer was a true original, whose forceful personality I had the opportunity to observe firsthand as a young professional, she was never the intellectual leader of the profession. Nevertheless, White put forward Farmer as the model of the law librarian who really was a librarian first and foremost.

¶42 Though White described the evolution of the Harvard Law Library in some detail, and despite his discussion of the increasing responsibilities assumed by law librarians during the explosive change in legal education that began in the 1970s, he never turned to the idea of librarians as scholars. He noted no librarians who made a scholarly mark in the late twentieth century. There is no mention of Morris Cohen, Richard Danner, Tom Reynolds, Sharon Hamby O’Connor, Fred Shapiro, or any of another dozen names that pop into my mind, to say nothing of the preceding generation: Frederick Hicks, Arthur Pulling, William Roalfe, or Miles Price.

¶43 The only possible exception noted is Professor Roy Mersky, pictured in the article astride a horse. There can be no debate that Mersky was one of the most important figures in twentieth-century law librarianship. But his claim to fame is based on his consummate skills as a manager and his writings on legal research, not on his reputation as a scholar. Consider the issue of *Law Library Journal* that you hold in your hands, or that now appears on your screen, and the praises from within and without librarianship for Morris Cohen. White’s statement that “it is very rare these days to find a librarian who combines running a library with teaching and scholarship, as Mersky has” shows very little knowledge of the profession. White must not have looked very hard. Was there nothing to find? Or have we kept it hidden?

¶44 When it came to discussing those who have had notable careers as legal academics while also working in the field of librarianship, White mentioned only Preble Stolz and Sam Thorne. He dismissed Thorne’s scholarship in legal history as being so obscurantist that Thorne was forced to enter the legal academy through
the backdoor of law librarianship.\textsuperscript{31} He makes mention of Stolz’s work on the California courts\textsuperscript{32} as justification for his being viewed as a legitimate scholar.\textsuperscript{33}

¶45 These are startlingly inapt examples. Stolz’s role as a law library director resembled Oscar Handlin’s appointment at Harvard. He was an academic who was drafted into watching the law library after the director left precipitously. He served until a real director was found. The law library at Berkeley was in such a sorry state in 1981 that each finalist for the position withdrew his or her name from the search. Thus poor Professor Stolz had to endure two years as acting director. And endure is the right word—he intensely disliked the job. Since in 1982 it was my good fortune to replace Stolz as director (under a new dean with a new commitment to supporting the library), I can personally testify that he would never have wanted to be called a law librarian.\textsuperscript{34}

¶46 Sam Thorne became a scholar by leaving librarianship behind. Though for a different reason than Stolz, he did not want the world to think of him as a law librarian either. This is the section where White could have discussed Morris Cohen and those like him. Instead he chose two almost bizarre examples.

¶47 Further cementing my bewilderment with the article, White wrote, “By the 1970s, the era of the non-lawyer librarian had passed, and the era of the Thornes and Stolzes was winding down.”\textsuperscript{35} To borrow a phrase from \textit{The Simpsons} character Apu, I am not sure where to begin in telling you what is wrong with that sentence. Thorne had abandoned his vision of himself as a librarian by 1951. Stolz was acting director at Berkeley from 1980 to 1982. One situation resolved long before 1970; one does not occur until a decade after that date. The two gentlemen have little in common. Nor is the issue of nonlawyer librarians one that is at all settled.

¶48 White’s article so annoyed me that I decided that I was incapable of writing a reasoned response. In the past I have been intemperate on occasion. Though it may seem hard to believe, one could be embarrassed by what one did even before the advent of YouTube. But it is time to say something.

\textbf{The Plea}

¶49 We must face the sad fact that the best scholarship in the field of library science was premised on the book. The organizational systems, the great bibliographies, the resplendent collections of material: each may have reached the end of its utility at the end of the twentieth century.

\begin{footnotes}
\footnote{31. “Thorne’s scholarly focus, research in the English yearbooks of the medieval period, was regarded as sufficiently obscurantist by the early twentieth-century law teaching market that he began his career as a librarian, and only later evolved into the role of full-time faculty member, scholar, and progenitor of English legal historians at American law schools.” \textit{Id.} at 91. Besides getting the time period wrong, this sentence manages to offend an entire carload of individuals working in a variety of fields. But perhaps I am too obscurantist.}

\footnote{32. \textit{See, e.g.}, \textit{Preble Stolz, Judging Judges: The Investigation of Rose Bird and the California Supreme Court} (1981).}

\footnote{33. White, \textit{supra} note 26, at 91.}

\footnote{34. Full disclosure: he was also one of my law school professors. His antipathy to the law library profession is not a matter subject to dispute.}

\footnote{35. White, \textit{supra} note 26, at 95.}
\end{footnotes}
If academic law librarianship loses its future Morris Cohens, if there are no librarians in the field who produce work that burns with that gemlike flame of elegance, much will be lost. The field has done a poor job of promoting its own. The egalitarian nature of the librarian bends us toward leveling, not stratifying. How else could a sophisticated academic like White end up with Sam Thorne and Preble Stolz as our intellectual exemplars? Yet we need leaders. If law librarianship does not have a major presence in the scholarly world, if there are no law librarians who are viewed by those outside the field of information science as leading lights, the profession as we know it may be entering its endgame. There is an old expression used by the air force: For every one up in the sky there are ten on the ground. Law librarianship needs a few up there in the sky.

The catch is that no one will make it into orbit doing what Morris Cohen did. Information in a tangible format is fading fast, and those who work with it are in danger of slipping across the border into the land of the antiquarian. Morris would gladly have assumed the moniker of antiquarian, but in the era of printed books, there was special honor in such work. That is no longer the case. In 2007, White found Thorne’s work “obscurantist.” What will they say in 2017?

Librarianship in general and law librarianship in particular must find a new identity, a new way of projecting its image. Perhaps the solution is to employ the model of John Palfrey. Professor Palfrey embraced his role as library director. He entered into the profession with enthusiasm and purpose. He does not have a library degree, but neither did Frederick Hicks. Law librarianship has evolved in the past. The rise of the tenure-track law library director in the late twentieth century and the rise of the dual-degree “lawyer-librarian” can serve as examples. If this is the case, the profession must unite behind young scholars who can lead academic law libraries. Rather than holding them at arm’s length, the profession should embrace them. The battles over the role of libraries and legal information will continue over the next decade. Law librarianship will need champions. Such men and women will not be found in the stacks, or writing bibliographies. They may not have library degrees. Other segments of the profession may find them startlingly novel. But they may just save the day. One can only hope.
Between the later seventeenth century and American independence, appeals from colonial high courts were taken to the Privy Council in England. These appeals are the precursors of today’s appeals to the U.S. Supreme Court. Their legal and policy issues can be reconstructed from the outcome of the appeals, the briefs of crown law officers, related Privy Council documents, and handwritten notations on these materials. This article describes Appeals to the Privy Council Before American Independence, an annotated digital catalogue of appeals from the thirteen colonies with links and digital images providing access to this material, now compiled from a variety of repositories.

¶1 For more than two centuries, an important source of American constitutional law has been missing. Between the later seventeenth century and American independence, appeals from colonial high courts were taken to the Privy Council in England. These appeals are the precursors of today’s appeals to the U.S. Supreme Court.
Court. No one, however, has ever published reports of the Privy Council appeals or even a comprehensive, accessible list of cases. Although the Privy Council never wrote explanatory opinions in appeals, the legal and policy issues can be reconstructed from the outcome of the appeals, the briefs of crown law officers, related Privy Council documents, and handwritten notations on these materials. *Appeals to the Privy Council Before American Independence* will be an annotated digital catalogue of appeals from the thirteen colonies from 1696 to 1776, with links and digital images providing access to this rich array of material. When the catalogue is launched in 2012, scholars, lawyers, and the general public will be able to better understand the transatlantic contours of colonial American law.

¶2 This issue of *Law Library Journal* commemorating Morris L. Cohen is a particularly appropriate location for a description of this catalogue, since Morris was a key player in its creation. Without his personal support, advice, and encouragement, the project would never have gotten off the ground. Indeed, but for a feeling of obligation to Morris’s memory and indefatigable spirit for undertaking and completing overwhelming projects, we might not be nearing the end ourselves. In honor of Morris, this article has two purposes. It serves as a permanent place to describe the annotated digital catalogue, explain the difficulties and decisions involved in its development, and propose its significance for future scholarship. It also records Morris’s important contributions and insights, especially noting his belief—one we share—that the preservation of historical documentation and the future of public access lie in collaborative teams of librarians, traditional scholars, and information technology specialists.

¶3 We begin with a brief description of the Privy Council and its relation to the colonies, with a summary look at the appeals process itself. We then outline the problem that lack of access to appeals documentation has presented for scholars, how the annotated digital catalogue will address that issue, and the benefits it may hold for future scholarship in a digital world. We close with a tribute to Morris—without whom there would have been no beginning and no catalogue.

**The Privy Council and the Appeals Process**

¶4 Over many centuries, the Privy Council of England evolved from the monarch’s most trusted inner circle into a formal body of advisers, counseling the sovereign on administrative, legislative, and judicial matters. By the dawn of the eighteenth century, its power was waning as the power of Parliament ascended. Nonetheless, the Council and related subsidiary bodies continued to have responsibility for the administration of the growing number of English colonies. The boundaries of the Council’s jurisdiction varied, depending on the particular constitutional structure of each colony and the vagaries of contemporary politics in England.¹

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¹. See Mary Sarah Bilder, *English Settlement and Local Governance*, in 1 *The Cambridge History of Law in America* 63, 88–90 (Michael Grossberg & Christopher Tomlins eds., 2008) (discussing the role of the Privy Council in the American colonies). See also the items listed in the book’s accompanying bibliography. *Id.* at 602, 608–09.
§5 By this time, the constitutional relationship of colonial law to the laws of England had been settled at a workable level. (*Settled* may be too fixed a term, the relationship remaining one of evolution and negotiation for as long as colonization lasted.) Colonial laws were subject to the repugnancy principle. A law could diverge for reasons of colonial circumstance from the laws of England, but it could not be *repugnant* to them. Of course, what repugnancy meant in any specific context was a legal and political decision.

§6 In an effort to ensure compatibility between English and colonial law, the charters of most colonies required that colonial legislation be sent to the Privy Council for review. The Council could disallow a law; approximately 8563 were sent for review and 469 (5.5%) disallowed.2 James Madison, among others, wanted the new American government to have a similar power over state laws. Review and disallowance, however, vanished from American constitutional law when the Philadelphia Constitutional Convention rejected such proposals.3

§7 A second method of Privy Council oversight involved review of the decisions of the highest court in each colony. At the end of the seventeenth century, a shifting subset of the Council, usually including the Chief Justice of King’s Bench or Common Pleas, heard appeals argued by leading English counsel, often the Attorney General or Solicitor General, who in their professional lives also took on cases of private litigants.4 This principle of review would find life in the United States after independence in the appellate powers of the Supreme Court.

§8 Scholars have attempted to study these appeals. The most-studied appeals have been the few that involved the Privy Council’s decision to invalidate directly the acts of a legislature. The remaining appeals usually provided relief from alleged arbitrary or procedural error in colonial courts. In 1950, Joseph H. Smith published the most exhaustive study of the appellate process, *Appeals to the Privy Council from the American Plantations*.5 A handful of other scholars in the nineteenth and twentieth centuries addressed the topic,6 and a growing number show renewed interest today.7

§9 Thanks to this scholarship, an outline of the appellate process emerged, including its early ambiguities. As England first grappled with an appeal procedure for the colonies, there was a lack of precision about what constituted an appeal.

Thus, arriving at a precise count of appeals is difficult. An appeal might not be from a final decision of a colonial high court adjudging a case between private litigants—it might be a petition of complaint or request for assistance in obtaining justice, rather than an “appeal” in the strictly legal sense. Cross appeals, revivals, and confusion over the proper body holding appellate jurisdiction further complicate attempts to count these cases.\(^8\) Scholars differ on their precise number due to these vagaries in definition and to differing spans of years. From the thirteen colonies, Arthur Schlesinger notes 265 cases from 1680 through 1780;\(^9\) Joseph Smith documents 231 appeals from 1696 to the Revolution.\(^10\)

\(\S\) 10 The appeals procedure was administered by the Council, though there were inevitable exceptions to the procedural norms. Appeals from the colonies usually were admitted if they involved at least a specified minimum monetary amount (though ecclesiastical and seizure cases required no minimum), were requested promptly from a final judicial decision, and included proper security by the appellant in case of affirmance. If an appeal was denied in the colony by its highest judicial authority, the appellant could petition the Council to be heard. If the appeal was admitted, an order of reference to the Committee for Hearing Appeals from the Plantations (a body variously named over the years) would issue with notice to the respondent.

\(\S\) 11 Usual practice called for the colonial court to send to England sealed copies of the proceedings. The Committee of the Council then set a date for a hearing at which counsel for the parties were heard. Following the hearing, the Committee would submit its report to the full Council for confirmation. An Order in Council would issue with the result, and a copy would be sent with instruction to the colony in which the appeal arose. Cases not pursued by the appellant within twelve months could be dismissed for nonprosecution.

\(\S\) 12 To shepherd this process along, litigants usually engaged agents, often solicitors in England. The agents prepared the draft of the case to be submitted, engaged counsel to be heard as advocates before the Committee, saw to the printing and filing of the printed case, and attended the Council as the matter made its way to conclusion. A few surviving bills of costs enumerate the many steps from petition to Order in Council.


\(^9\) Schlesinger, supra note 6, at 446.

\(^10\) Smith, supra note 5, at 667–71 (total resulting from adding figures in tables 1–5).
Of course, delays arose—hearings were postponed, extensions granted, proceedings lost at sea—but the general outline of the process was followed, sometimes with advice from administrative bodies such as the Lords Commissioners for Trade and Plantations (commonly known as the Board of Trade). From this lengthy and expensive procedure, many types of documents resulted: petitions of appeal and petitions for leave to appeal, orders of reference, committee reports, Attorney General and Solicitor General opinions, Board of Trade representations, printed cases, Orders in Council, formal entries in the Privy Council’s Register, as well as private and public correspondence.

Strikingly, this long list of documentation does not include formal opinions of the Privy Council. After the Committee’s report, only an Order in Council would be issued. The lack of formal written explanations of reasoning was not uncommon in the courts of England or the colonies at this time. Case reports were usually compiled after the fact from the work of reporters who wrote up the reasoning given by judges from the bench _seriatim_ or from informal memoranda provided by judges. For the Privy Council’s appellate process, no reporters or judges filled this function.

The Problem of the Privy Council and American Law

In 1814, George Chalmers explained the difficulty raised by colonial appeals decided by the Privy Council: “[Because] appeals from our foreign dominions lay to the king in his council,” instead of to the courts, almost no reports of cases had been written and materials were not “accessible to research.” Chalmers understood this problem better than most. Though Scottish by birth, he had practiced law in Maryland, and then returned to London, where he served as a chief clerk to the Privy Council for nearly four decades. Acutely aware of the mass of unpublished papers bearing on the transatlantic relationship, Chalmers realized that William Blackstone did not cover law related to the colonies in his _Commentaries on the Laws of England_ precisely because of its inaccessibility.

Similarly, Ephraim Kirby, one of the first American law reporters, noted the problem presented by unpublished reports of legal cases in his 1789 volume of Connecticut court cases. In not preserving and publishing “proper histories,” “the principles of their decisions were soon forgot, or misunderstood, or erroneously reported from memory.”

Fortunately, the legal arguments made by counsel in the appeals do appear in the _printed cases_, documents that today we would think of as briefs. Precisely

11. Schlesinger reports that the average length of time from first appearance at the Privy Council to issuance of an Order in Council was twenty-two months. Schlesinger, _supra_ note 6, at 447–48.
12. 1 _GEORGE CHALMERS, OPINIONS OF EMINENT LAWYERS_, at i (Burt Franklin 1971) (1814).
14. 1 _CHALMERS, supra_ note 12, at i.
when a printed case became a customary or required component for the hearing of an appeal before the Council has yet to be determined. In 1731, a requirement that the printed case be signed by counsel went into effect. In 1774, too late to have an impact in the thirteen colonies, they were required to be delivered to the Privy Council office one week before the hearing. Supplementing arguments from these printed cases are insights to be gleaned from the reports of the Committee for Hearing Appeals and from documents requested by that Committee.

Study of the appeals has been impeded by the lack of easy access to the printed cases and related documents, scattered as they are in multiple repositories on both sides of the Atlantic and catalogued in a variety of manners. For over two centuries, not only the legal principles but the very appeals themselves have often been forgotten. Chalmers did not possess the means to publish the records of the appeals. He noted, however, that if such information had been available, Blackstone could have sketched the boundaries of colonial law with “an inquisitive spirit, and a liberal hand.”

Attempting to solve the problem Chalmers identified by creating the annotated digital catalogue of appeals has presented many challenges. First, no comprehensive list of appeals from the thirteen colonies existed. Each action of the Council was recorded by its clerk in the Council’s Register, which is preserved in The National Archives at Kew (TNA). When we began the project, the Register had not been digitized and thus could only be consulted at TNA. To construct a list in the United States meant using instead Acts of the Privy Council, Colonial Series (APC), a six-volume summary of Council actions related to the colonies compiled from the Council’s Register in the early twentieth century. Unfortunately, the APC volumes were literally crumbling in the stacks, victims of the acidic paper of the period.

In addition, funding for the project was uncertain. Time, travel to locate and photograph relevant documents, and ultimate publication were all at issue. The choice of rendering the results as a print or a digital product was looming as digital bibliographic and documentary works were just coming into prominence. In a world where analytical law review publications still remain the coin of the realm, devoting so much time to a project that did not fit neatly into standard scholarly categories defied conventional wisdom.

With the publication of a reprint of the APC and the generous support of the Ames Foundation, some of these challenges were overcome. As time passed, the decision to create a digital product became an easy one. The option to add material

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18. 1 Chalmers, supra note 12, at i.
19. In 2011, Robert C. Palmer, Cullen Professor of History and Law at the University of Houston, completed digitization of the Privy Council’s Register for our relevant span of years and began digitization of the miscellaneous Privy Council documents at TNA classified as PC1. All are now or will soon be available at Anglo-American Legal Tradition, http://aalt.law.uh.edu (last visited Oct. 24, 2011).
in the future and the ability to share it instantaneously on a worldwide basis were decisive factors.

The Catalogue: Its Description of Appeals

\[\text{\textsection 22} \]
At present, no consistent name has been applied to the genre of digital lists with linked sources. We decided to call this project an *annotated digital catalogue*. The core of the database is a *catalogue*—a simple list. *Digital* describes both the technology and the flexibility of access. *Annotated* emphasizes the substantive editorial comments as well as the links to other databases.

\[\text{\textsection 23} \]
The annotated digital catalogue provides the following information for each appeal:

- the colony from which the case was appealed;
- full and short name of the appeal as compiled from the *APC* entry;
- references to its entries in the *APC* with links to the *APC* entries;
- references to entries in the Privy Council’s *Register* with TNA request number (PC2) for the *Register* and links to the *Register* online at *Anglo-American Legal Tradition* (http://aalt.law.uh.edu);
- the names and dates of lower court actions as given in the *APC*;
- the names of participants and their status, occupation, and relationships if known;
- vessel names if any; and
- the subject matter and disposition of the case if given.

\[\text{\textsection 24} \]
Because the Privy Council’s *Register*, with its fuller entries, was only available at TNA at the time of our initial compilation, we relied on the *APC*, still the most useful finding aid for the *Register*, as the core resource in creating the catalogue. As a consequence, any errors of the *APC* editors will reappear in the catalogue. Furthermore, the sketchy nature of the material in the *APC* often obscures the real issue in an appeal. What appears to be an action to recover a debt is really an issue of currency valuation; what looks to be just another family dispute in fact questions the validity of a statute regarding inheritance. Nonetheless, this is a start for scholars who will want to delve deeper into each case.

The Catalogue: Its Printed Cases and Related Privy Council Documentation

\[\text{\textsection 25} \]
To the description of each appeal, the catalogue adds links to its appearance in the *Register* and the *APC*. Beyond that, the search for records to date has been restricted to a quest for printed cases and miscellaneous Privy Council documents at TNA. Images for these are provided, though they should not be presumed to exhaust the documentation that exists for any particular appeal.\textsuperscript{20}

\textsuperscript{20} Related documents can be identified through both print and online collections. An important Internet resource is *BRITISH HISTORY ONLINE*, http://www.british-history.ac.uk (last visited Oct. 24, 2011). It includes the Journals of the Board of Trade and Plantations, 1704–1782 and the Calendar of State Papers, Colonial. The Calendar of State Papers, Colonial is also available by subscription through ProQuest’s Colonial State Papers. This ProQuest database also includes TNA collection CO1
¶26 The printed cases are perhaps the most important digital annotations to the catalogue. They are instantly recognizable as ancestors of modern Supreme Court briefs. Each begins with the facts of the appeal and concludes with the legal reasons each side advanced in its own cause. The oft-reappearing names of the crown counsel who were engaged convey a small, elite, and intellectually exciting world of transatlantic legal argument. The printed cases bring the appeals to life.

¶27 The printed cases also emphasize the importance of lawyers’ arguments in understanding court decisions. Early Supreme Court reporters initially included these arguments before summarizing the Supreme Court’s decision. Today, we focus exclusively on the decision, but the printed cases for the appeals remind us of an earlier focus on lawyers’ arguments rather than on judges’ reasoning. Our notion of what count as constitutional law sources is based on a later fixation on published opinions that does not work well for eighteenth-century transatlantic legal sources.

¶28 The number of printed cases prepared for each appeal and the manner in which they were distributed remain a mystery. Roscoe Pound suggests that fifty copies of these cases were produced for each appeal, but we have been unable to locate his source.21 Smith disputes this number, contending that “it became customary for the parties to distribute printed ‘cases’ to the Lord President and those law lords likely to attend at the hearing.”22 Paul Leicester Ford, referring to similar appeals for prize cases, states that “only enough of these briefs were printed to give the Commissioners and the opposing advocates each a copy; and this probably limited the edition to a dozen or fifteen copies . . . .”23 To date, the greatest number of copies found of a single printed case is seventeen, for the respondent’s printed case in a 1765 appeal from Pennsylvania.24 This number, however, is a significant outlier. For only two other appeals have we located as many as four copies of a printed case—*Philips v. Savage* (Massachusetts 1734) and *Rolfe v. the Proprietors of Bow* (New Hampshire 1762).

¶29 At present, the annotated digital catalogue contains printed cases for fifty-five different appeals, some with multiple copies, totaling 155 individual documents, the earliest dating from the late 1720s.25 For many appeals, the printed cases for both the appellant and respondent have been located. In others, the papers of only one party have been found. Many include handwritten notations and underlining, some attributable and others a mystery. All have a similar look and feel,
mirroring not only each other but also appeals of this era presented to the Lords Commissioners for Hearing Prize Appeals and to the House of Lords.

¶30 For each appeal for which a printed case has been located and viewed, information as to the holding library or libraries is provided with a link to its images if (1) the copy contains manuscript notes, (2) it is the only copy of the case located, or (3) it is one of several copies located, none with manuscript notes.

¶31 The largest collection of printed cases is in the Hardwicke Papers at the British Library, many with the notes of Charles Yorke, counsel on many of the appeals. In the United States, a substantial collection exists at the Law Library of Congress in the collection of Sir George Lee, with a smaller number at the Columbia University Law Library. Additional printed cases are scattered about England and the United States in various repositories.

¶32 In attempting to locate printed cases, we first relied on the masterful job Joseph Smith had done in recording those cases found in his research in the 1940s. Printed manuscript guides were gold mines of information. Newer sources, such as electronic databases, online catalogues of historical societies and major research libraries, and the online English Short Title Catalogue, were searched. Tips from librarians sometimes led to other collections where material had not yet been catalogued. Some printed cases turned up in unexpected locations, such as the Wisconsin Historical Society, having likely come into the hands of antiquarian dealers or collectors at some point in the past.

¶33 A possible source of additional printed cases may be the papers of Privy Council members attending hearings of appeals as well as papers of counsel on the appeals. As a first step, the archive entries for counsel in the Oxford Dictionary of National Biography were checked if they covered the years in question and if the description of the holdings held out some hope of success. The librarian at Lincoln’s Inn reported that, though the library does hold some papers of counsel, no printed cases are within their collection. Charles Yorke’s copies of his cases are, of course, in the Hardwicke collection. Sadly, the papers of Alexander Forrester, who is second in number only to Yorke as counsel on the signed cases located so far, do not seem to have survived.

¶34 We believe more printed cases remain extant. Their unusual nature has contributed to their “disappearance.” In American archives, they may be overlooked because they appear to be English materials. For example, at the American Antiquarian Society, one uncatalogued appeal found serendipitously in the Society’s collection of British broadsides had not been given cataloguing priority

26. The printed cases at Columbia were brought to this country by William Samuel Johnson, agent for Connecticut, following his protracted stay in England dealing with the land dispute between the Mohegans and landowners in the colony.
27. Smith, supra note 5.
since it was not regarded as American. In English archives, they relate to the Privy Council’s colonial, rather than its domestic, jurisdiction. In family or personal papers, their printed nature may make them seem not particularly special, because they are not in the actual handwriting of an ancestor. Collectors may also not realize that they have scholarly value. We hope this catalogue of digital images can grow with new discoveries. A significant advantage of its digital format is that new material can be easily added without owners’ having to relinquish possession of their copies.

¶35 Beyond printed cases, we have found manuscript versions of printed cases for a few appeals. To date, we have located no manuscript materials that appear to have been circulated to the Council in the manner of the printed cases—but if ever such materials are located, they can be added to the catalogue.

¶36 In addition to the printed cases, related Privy Council documents have survived and are held at TNA. The Privy Council’s Register is in excellent condition, but miscellaneous documents such as petitions, committee reports, and other instruments are experiencing the ravages of time, as most have passed their 250th birthday. Indeed, during just the life span of this project, some of the Privy Council documents usable initially in the TNA reading room were moved to the Conservation Division for use only under supervision due to their fragile condition. The digitization of the miscellaneous Privy Council documents (referenced as PC1 at TNA) and their presence on the Anglo-American Legal Tradition web site will enable images of these documents to be linked from the annotated digital catalogue when it appears on the Ames Foundation web site.

Looking Forward

New Scholarship

¶37 A hundred years ago, the editors of the APC took marginal interest in the specifics of appeals from the colonies, declining to document them in detail. “Considerations of space” led them to compress “the numerous colonial appeals.” The APC editors went on to explain their rationale: “Most of these are of no biographical or legal interest and to have given in full the complicated details of the family broils and commercial vicissitudes of the forgotten, or the record of the orders for hearing, postponements, partial hearings and further postponements, would have been neither advantageous nor possible.”

¶38 Today, the appeals may contribute to a number of ongoing scholarly efforts. On both sides of the Atlantic, historians and legal scholars have redrawn the lines of seventeenth- and eighteenth-century history. Atlantic history—accounts that encompass the transatlantic world as its participants saw it, undivided by later

30. Examples include Finney v. Byrne (Delaware 1774) (draft of the appellant’s case) (on file with the American Philosophical Society); Freebody v. Cook (Rhode Island 1754) (draft of the respondent’s case) (on file with the Manuscript Division, Library of Congress); and Kennedy v. Fowles (New York 1742) (draft of the appellant’s case) (on file with the New York State Library).

political divisions—dominates what was once colonial American history. The Privy Council appeals reveal this transatlantic world. Scholars revisiting the subjects of older imperial history have brought renewed focus to the implications of having different political systems to govern territories distant or overseas. At the same time, international scholars, particularly of Australia, Canada, New Zealand, and Africa, have focused on relationships between settlers and indigenous populations and the ways in which settler colonialism displaced and governed. Within American legal history, there is new interest in the early development of constitutionalism, the history of judicial review, and the role of the judiciary. Indeed, the history of the Privy Council appeals plays a prominent role in an amicus curiae brief recently filed in the U.S. Supreme Court.

The annotated digital catalogue will help scholars explore what the global law of the colonial world was like by contributing to the larger international effort to uncover the record of appeals within the colonies of the British Empire. The Division of Law at Macquarie University has an excellent site reproducing the “surviving records held in London of all the unreported appeals from the Australian colonies” to the Privy Council’s judicial committees prior to 1850. Additional projects will permit national boundaries to fall away as cross-comparisons become possible when scholars focusing on a variety of jurisdictions post their findings on the web. As more sources become available, scholars may be able to sketch the ways in which a small group of men in London governed vast and diverse areas and


33. See, e.g., Lauren Benton, A SEARCH FOR SOVEREIGNTY (2009); Ken MacMillan, SOVEREIGNTY AND POSSESSION IN THE ENGLISH NEW WORLD (2006); NEGOTIATED EMPIRES (Christine Daniels & Michael V. Kennedy eds., 2002); Christopher Tomlins, FREEDOM BOUND (2010); Craig Yirush, SETTLERS, LIBERTY, AND EMPIRE (2011).

34. The vast contemporary scholarship is too broad to even begin to list here. For an interesting blog on the subject, see SETTLER COLONIAL STUDIES BLOG, http://settlercolonialstudies.org (last visited Oct. 24, 2011).

35. See generally LA CROIX, supra note 3; YIRUSH, supra note 33.


peoples; what the world looked like from their perspective; and how their decisions related to race, ethnicity, gender, economics, politics, and countless factors yet to be discovered. Scholars will gain a firmer grasp on the ways in which the appeals (and review and disallowance) altered the lives of people in the many colonies around the world.  

¶40 In particular, we hope the project will interest and excite scholars of the Caribbean. Our searching uncovered many printed cases from the Caribbean colonies, such as Jamaica and Barbados, as well as correspondence from mainland colonies discussing the importance of the Caribbean appeals.  

¶41 The history of the Caribbean appeals and the relationship to slavery and to slave societies remain relatively unexplored. Moreover, surprisingly few accounts of colonial history have sought to link the political and legal history of the Caribbean and the mainland colonies.

Digital Resources

¶41 This project also offers one model for documentary scholarship in the digital age. When Morris Cohen began his work on the Bibliography of Early American Law (BEAL) more than forty years ago, the image of the solitary scholar at work was the norm. One person could aspire to find and organize the subject matter, and carefully catalogue and arrange the information according to standard bibliographic conventions. Choices for reader access to the material were often limited to a set of standard options: sections, lists, indexes. To deal with the static nature of the print product, BEAL includes eight separate indexes to ensure multiple points of access. The addition of a CD-ROM version was designed to offer even more options for the user.

¶42 Today, a successful web-based project requires similar substantial thought about the user interface and significant technical skill with electronic data manipulation to accommodate flexibly the many search strategies and interests of potential users. Ideally, at the same time, the digital format should retain the significant and often overlooked advantages of the book: a permanent, reusable, sequential organization of material. Thus, in this catalogue, the descriptions of each appeal can be printed out so that users can create their own “book” version of the appeals.

¶43 In the past, the bibliographer served as the eyes of the scholar, describing each item in detail to aid those who would otherwise have to travel to view an item, obtain a photocopy, or, if they were lucky, arrange an interlibrary loan. Unlike a traditional bibliography, the annotated digital catalogue focuses on the content of the documents. The documents as artifacts—their size and watermarks, for example—are not described, though they may be evident to the careful viewer. But the


catalogue adds value in a new way by arranging the items and documentary images in a flexible and searchable format and by linking them to other related material.

The Goal

§44 More than anything, the annotated digital catalogue of appeals is a foundation for study. It aims to provide a comprehensive list of Privy Council appeals, arranged in a consistent and careful manner, reminiscent of the methods of old-fashioned bibliographies, to enable scholars to apply their skills of discovery and analysis to the data. Within that framework, it adds its own bibliographic contribution—unearthed printed cases and related Privy Council documents with their citations and images available through a single interface. With the catalogue, scholars, sitting at their desks, can accelerate the efforts for which the project was undertaken—the illumination of the colonial world.

The Colonial Appeals Enterprise and Morris L. Cohen

§45 This project required the diverse skills of many people. We have had the happy experience of being part of a collaborative team—historians, librarians, information technologists. We were extraordinarily lucky to have the support of the Ames Foundation and the incredible commitment to the project of its Vice President, Charles Donahue. His participation is an example of the importance of the sharing of skill sets in enabling a project to flourish. The technical support for the web presence from the staff of the Digital Lab and the Harvard Innovation Laboratory in the Harvard Law Library, thanks to its director, John Palfrey, enables us to share the results with the world at the user’s convenience. Knowledge of colonial law and the appeals process, technical expertise and creativity with database design and web sites, and basic bibliographic expertise of the many librarians involved combined to make this project possible.

§46 On a more personal note, we want to share the extent and the importance of Morris Cohen’s role as an inspiring member of this collaborative team. He was there for us from the beginning. When the idea of focusing on colonial appeals first crystallized, we needed sage advice and immediately turned to Morris. He knew about appeals to the Privy Council, of course, as he knew about most everything that we ever mentioned to him. He had, however, never really thought much about where the documents related to those appeals might be. Given his insatiable curiosity, Morris immediately wanted to know. He embodied the sort of “inquisitive spirit” for this undertaking that George Chalmers had noted.

§47 The Privy Council problem fit neatly into earlier problems that had intrigued him. As with the Guide to the Early Reports of the Supreme Court of the United States, an annotated digital catalogue with images of documents would help scholars illuminate the “jurisprudential core” of colonial law.42 Of course, Morris found all early legal documents fascinating, and the printed cases presented a type of early legal publishing that he had not previously investigated. They fascinated

42. COHEN & O’CONNOR, supra note 15, at xi.
him in part because their importance reminded him of his earlier pleas for the preservation of lawyers’ papers as historically significant documents. Not surprisingly, creating a comprehensive catalogue with the location of extant printed cases appealed to the man who had spent years on BEAL.

¶48 As we faced challenges, Morris repeatedly came to the rescue. When the difficulty of working with the crumbling volumes of the original APC became apparent, Morris called William S. Hein and Co. and asked the publisher to reprint the set, agreeing in return to write the introduction for the reprinted edition.43 When a particular issue intrigued him, he would use his own research assistants to delve into the lives of counsel arguing the appeals, to search the Calendar of State Papers, Colonial, or to ferret out answers to specific vexing questions. He would regularly send us e-mails about relevant books and articles he encountered. Through his wide network of colleagues, he put us in touch with librarians and historians in the United States and England who could help further the project. He even joined us at the law library at Columbia to search the rare book stacks with Whitney Bagnall, at the time the Head of Special Collections, for some long-hidden printed cases; Morris was as excited as the rest of us when they resurfaced. As late as November 2010, he continued to act as our mentor, providing helpful feedback on a mock-up of the user interface to the annotated digital catalogue.

¶49 We wish that he could have known of Robert Palmer’s recent digitization of the miscellaneous Privy Council documents for the Anglo-American Legal Tradition web site. Morris had encouraged us to capture as many of those documents as possible, since time was rendering them more and more fragile. He would have breathed easier knowing that all of those Privy Council documents, not just the ones related to colonial appeals, are “safe.”

¶50 As we near a launch date, we miss Morris in so many ways. Who else has the breadth and depth of knowledge, both historical and bibliographic, to help with the myriad decisions yet to be made? Things, large and small, we would love to ask him we now have to decide on our own. Should we include some particular set of facts, names, relationships—or not? In addition to the web site, should there be a print component to the project? Related questions continue to arise: Are peripheral documents (such as a newly uncovered broadside by a participant in one of the last cases appealed to the Council) worthy of acquisition by a law library? Why would a single volume of 1772 appeals to the House of Lords (similar in look and feel to appeals to the Privy Council) suddenly appear on eBay? So many interesting questions remain—some that Morris would have been able to answer and some that no one can answer yet.

¶51 Above all, throughout this process we were bolstered by Morris’s conviction that providing access to and awareness of the material would in the end be worthwhile. As months turned into years, Morris’s faith in the importance of such scholarship kept us going.

¶52 As we look forward to the new world of digital bibliography and collaborative teams, we carry Morris with us. He was devoted to organizing, cataloguing, and

preserving the past—but always for exciting future uses. He was above all a delightful and generous collaborator. His enthusiasm swept away the anxieties and doubts of any daunting project. When the annotated digital catalogue of “American” appeals to the Privy Council finally launches in 2012, Morris will be there with us.
Blackstone and Bibliography: In Memoriam Morris Cohen

Wilfrid Prest**

This paper tells the story of a triangular relationship that linked an Australian academic; the late Morris L. Cohen, librarian of Yale Law School; and Sir William Blackstone, author of Commentaries on the Laws of England (1765–1769).

¶1 In the momentous month of November 1989, as the Berlin Wall fell and the tanks rolled into Tiananmen Square, I was working at Yale’s Beinecke Rare Book and Manuscript Library on the papers of two eighteenth-century English judges, Sir William Lee and Sir John Eardley-Wilmot. Although then, as now, I identified myself as a mere historian, albeit one interested in lawyers and legal institutions, I recall almost no contact with Yale’s history faculty while I was in New Haven. But I did find myself quite frequently walking round the corner from the Beinecke to the law school. It must have been there, or quite possibly in the sociable setting of Mory’s, the unofficial university faculty club, that John Langbein1 added significantly to the courtesies and hospitality I already owed him by introducing me to Morris Cohen.

¶2 I have three abiding memories of our initial meeting. First, and most important, Morris’s cheerful, friendly, outgoing, relaxed, and unassuming manner; unsurprisingly, given these personal characteristics, Morris seemed to be on good terms with everyone, then and later. Second, Dublin imprints: having correctly inferred from some naive remark of mine that I was ignorant of even the rudiments of eighteenth-century bibliography, Morris proceeded to explain to me, as we walked down the street, something of how the workings of English copyright law had once supported a thriving Irish printing and bookselling trade, producing cheaper and often poorer copies of works originally published in London, for sale both in England and throughout the Anglosphere. Third, Blackstone, because Morris then or a few days later took me on a conducted tour of the rare book holdings in the Lillian Goldman Law Library, not least the remarkable Magrane Coxe collection of successive English and American editions of Commentaries on the Laws of England, whose serried ranks evidently functioned rather as trophies or status symbols than as aids to scholarship. Except in the most general sense, I knew little of Blackstone or his work, and I certainly had no previous understanding of

* © Wilfrid Prest, 2012. I am grateful to John Gordan III, Joe Luttrell, David Warrington, Mike Widener, and fellow members of the New Oxford Blackstone project for support and assistance of various kinds.

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1. John H. Langbein is Sterling Professor of Law and Legal History at Yale Law School.
the extraordinary influence and iconic standing to which such a massive bibliographical hoard bore witness.

¶3 In all honesty, I cannot claim that this revelation immediately fired my close interest in the author who stood behind and was in some senses obscured by all those multiple volumes. Yet, perhaps at some subconscious level, it influenced an uncharacteristically ready response a few years later, when Michael Lobban unexpectedly invited me to choose a subject whose life I should like to write from among the bloc of later eighteenth-century lawyers and judges he had recently been assigned for what eventually became the *Oxford Dictionary of National Biography.* So when Morris and I next met, I had already begun drafting a 6500-word memoir of Blackstone at the National Humanities Center (NHC) in North Carolina, whence I flew to Seattle for the 1998 annual meeting of the American Society for Legal History. It was delightful to discover at the opening reception that Morris remembered me, as I did him, and to learn of his joy at the recent publication of his six-volume *Bibliography of Early American Law*, for which he was busy distributing publisher’s fliers. While I cannot remember in detail what he had to say about my embryonic Blackstone project, his reaction was certainly encouraging. On my return to the NHC, Alan Tuttle and Eliza Robinson gave me some inkling of the high regard in which Morris was held by his fellow academic librarians.

¶4 By late 1999, when we found ourselves back in Adelaide, I had decided, or allowed myself to be persuaded, that a full-scale biography of Blackstone was both feasible and desirable, notwithstanding the apparent lack of family, personal, or professional papers, and the uncertain status of a life history on which Ian Doolittle had been working for some considerable time, and which he would eventually self-publish in 2001. This determination survived distraction by the literally once-in-a-century opportunity to compile a multiauthor historical encyclopedia of South Australia, and the failure of my first application for funding support to the Australian Research Council. News that a second attempt had got over the line came in September 2001, just after the attack on the twin towers but before we embarked (rather nervously) for Princeton, where I was due to spend a year as visiting fellow in the Law and Public Affairs Program (LAPA) of the Woodrow Wilson School. Despite the grim shadow cast by those awful events, academic life seemed to continue pretty much as usual, apart from the occasional anthrax scare, and early the next year I was able to give at Yale the same paper on Blackstone as architect that I had delivered in December to Princeton’s LAPA seminar.

¶5 Morris was very much in evidence on this occasion, and I still have some notes of his interventions and comments, scribbled on a photocopy, which he had thrust into my hands, of Eileen Harris’s 1992 *Art Libraries Journal* article on pre-1800 English architectural books. In particular, he wondered whether there were

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5. A revised and expanded version of this talk was later published as Wilfrid Prest, *Blackstone as Architect: Constructing the Commentaries*, 15 *Yale J.L. & Hum.* 103 (2003).
any surviving cartoons or caricatures of Blackstone, and suggested that I should investigate the holdings of Yale’s Mellon Center for British Art. He also wanted to be assured that I would be examining Blackstone’s entire oeuvre, and not focusing solely on the Commentaries. We discussed the elusiveness of various Blackstone manuscripts, notably the volume of poems and translations that had evidently vanished from Berkeley’s Boalt Hall library at some point between 1969 and the turn of the century, as well as the recipe book of Lady Blackstone, possibly still in the hands of descendants. I undertook to send Morris further information about the last recorded mention of the latter, while also noting for my own benefit that he would make an ideal invited guest at a future Australian and New Zealand Law and History Conference, following in the footsteps of such North American luminaries as Stan Katz and John Beattie. (Alas, this was not to be.)

¶6 Finally, Morris provided me with photocopies of catalog entries for two items from the Lillian Goldman Law Library: John Dryden’s translation of Juvenal’s Satires,7 and the 1738 edition of An Historical View of the Court of Exchequer.8 Each volume contains Blackstone’s bookplate. As I wrote to Morris some years later, “I have several times blessed you subsequently for alerting me to the potential importance of such material, which is now very widely scattered, but invaluable for its insights on Blackstone’s intellectual formation, especially where (as with your 1697 Tonson edition of Dryden’s satires of Juvenal), a date is included.”9

Blackstone as Bibliophile

¶7 Books, the law, and lawyers have long gone together. But Blackstone was a lawyer-bibliophile on an unusually heroic scale. Indeed, the extent and intensity of his multiple involvements with books and the book trade are not easily paralleled. First, as author: Besides the four volumes of Commentaries on the Laws of England, which have never been out of print since their first appearance between 1765 and 1769, Blackstone wrote at least another twenty-five works published during his lifetime, together with numerous essays and papers, legal opinions, two volumes of case notes published as law reports after his death, and various other manuscripts, some of which have subsequently appeared in print, while others still await the press, and yet others have now disappeared from view. We shall never know the full tally of even his printed writings, since many were anonymous, ephemeral fliers, pamphlets, and squibs, dashed off at short notice to sway opinion on current issues of academic politics in the college common rooms of mid-eighteenth-century Oxford.10 In addition to his single-author productions, Blackstone was a formida-

9. E-mail from author to Morris Cohen, Apr. 23, 2006 (on file with author).
bly learned editor; the modern numbering of Magna Carta by chapters dates from his edition, which for the first time clearly distinguished King John’s 1215 charter from subsequent reissues. According to the leading modern authority, Blackstone’s *Great Charter* “is a classic, and even now requires very little amendment.”¹¹ In his early twenties he produced a series of “Cursory Observations on Shakespear, with a particular View to Sr T.H.’s Emendations,” in the form of notes commenting on or correcting Thomas Hanmer’s 1745 edition of the plays; toward the end of his life he supplied a further 140 Shakespearean annotations to George Steevens, most of which were published posthumously in Edmund Malone’s 1780 *Supplement* to the 1778 edition of the plays by Samuel Johnson and George Steevens.¹² While still a pupil at London’s Charterhouse School, Blackstone’s own verses on the poet Milton earned him a silver medal. An anonymous verse essay presenting “a Poetical View, of the several Religions, that have prevailed in the World,” has only recently been recognized as his first published work. *The Pantheon*¹³ was issued by Robert Dodsley, whose imprint then enjoyed a literary stature comparable to that of Faber today; but, according to Blackstone’s friend Richard Graves, “being on a serious subject, and coming out precisely at the time of some of Gray’s Odes, it was less noticed than it deserved.”¹⁴

¶8 As a collector and connoisseur of books, Blackstone was no less energetic and versatile. The full extent and contents of his collection will never be known, since the two auctions in which his books were sold off many years after his death included books from other collectors, and the sale catalogs fail to distinguish between them. Nevertheless he evidently began to build what would become a very large personal library while still a schoolboy. The poet Edward Young’s *Love of Fame, the Universal Passion*,¹⁵ a moralizing work more popular in its own day than ever since, is the first volume he is known to have possessed. Blackstone’s copy, now in the library of Balliol College, Oxford, bears his distinctive bookplate or label, and a Latin inscription (possibly in his own handwriting) which records it as a gift in 1736 from William Salisbury, of the Charterhouse (“Donum V. R. Guil. Salisbury A. M. ex Aede Carthus. 1736”).

¶9 Salisbury, a clergyman like Young, managed to combine his pastoral duties in Buckinghamshire with the post of preacher at the Charterhouse, where Blackstone (recently orphaned by the death of his mother) may well have come to his attention as an exceptionally promising pupil. Balliol College seems to have acquired this volume in the late nineteenth century, together with nearly a hundred other books, after the dissolution of New Inn Hall, a small medieval noncollegiate foundation which both Blackstone and his son James had served as principal. While not all the New Inn Hall books still bear inscriptions, annotations, or book-

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12. *Arthur Sherbo, Shakespeare’s Midwives* 72–73, 85 (1992) (stating that eighty-nine of these notes were used in Malone’s edition); *see also* Thomas Edlyne Tomlins, *Corrections of Shakespeare’s Text, by Sir William Blackstone, &c.*, 1 *Shakespeare Soc’y’s Papers* 96 (1844). The notes transmitted to Malone via Steevens are now in the Folger Shakespeare Library: MS 2089 W.b. 51 (12).
plates positively linking them with Blackstone père, the majority do appear to have come from his personal library. A few of these had evidently been handed down from previous family members, like the copy of Laurence Echard’s The Gazeteer’s or Newsman’s Interpreter,\textsuperscript{16} which, according to the ownership signatures, descended to Blackstone from his uncle Richard Bigg, as did his copy of Robert Sanderson’s philosophy textbook Logicae Artis Compendium.\textsuperscript{17}

¶10 But the young Blackstone also actively hunted after old books; indeed, most items in the collection now at Balliol had been published before the collector himself was born, even if it is possible in only a minority of cases to date the acquisition of particular volumes to a particular year. Thus, in late 1738 and newly arrived at Pembroke College, Oxford, Blackstone noted in a flyleaf inscription that he had received a book of Sixty Sermons Preached on Several Occasions by George Smalridge, bishop of Bristol,\textsuperscript{18} as a gift from his uncle Dr. Thomas Bethell. We may also confidently assume that the printed volume of Oxford University statutes that bears his bookplate and occasional holograph annotations came into his possession when he matriculated that same year.

¶11 Some twenty-four books from the former New Inn Hall collection can be confidently identified as acquisitions made during Blackstone’s undergraduate years at Pembroke. Sermons and religious treatises (particularly works of controversial or dogmatic theology) form the largest subject group. General literature is represented by Milton’s Paradise Regained, bound up with the Small Tractate of Education, to Mr Hartlib,\textsuperscript{19} the third edition of Henry Felton’s influential Dissertation on Reading the Classics, and Forming a Just Style,\textsuperscript{20} and a volume of Lettres Choisis de Messieurs de l’Académie Française, sur Toutes Sortes des Sujets.\textsuperscript{21} Among the minority of recently published or contemporary works were Ephraim Chambers’s two-volume Cyclopaedia\textsuperscript{22} and successive annual volumes of the Gentleman’s Magazine from 1739. Law books are conspicuous by their absence. Indeed, the earliest datable legal acquisition is The Law French Dictionary Alphabetically Digested: Very Useful for All Young Students in the Common Laws of England,\textsuperscript{23} which bears a flyleaf signature “Will. Blackstone 1745,” and hence could well have been acquired after its owner moved into London lodgings near the Middle Temple in January 1746 (New Style).\textsuperscript{24} It may be that most of his common law texts were kept in

\begin{itemize}
\item \textsuperscript{16} Laurence Echard, The Gazeteer’s or Newsman’s Interpreter (London, J. Nicholson 1704).
\item \textsuperscript{17} Robert Sanderson, Logicae Artis Compendium (8th ed., Oxford, H. Hall 1672).
\item \textsuperscript{18} George Smalridge, Sixty Sermons Preach’d on Several Occasions (2d ed., London, W. & J. Innys 1727).
\item \textsuperscript{19} John Milton, Paradise Regain’d (7th corrected ed., London, Jacob Tonson 1730).
\item \textsuperscript{20} Henry Felton, A Dissertation on Reading the Classics, and Forming a Just Style (3d ed., London, J. Bowyer 1723).
\item \textsuperscript{21} Charles Perreau et al., Lettres Choisis de Messieurs de l’Académie Française, sur Toutes Sortes des Sujets (Paris, J.B. Coignard 1708).
\item \textsuperscript{22} Ephraim Chambers, Cyclopaedia (London, D. Midwinter 1741).
\item \textsuperscript{24} Until 1752, when England adopted the Gregorian calendar, which dated each year from January 1 (“New Style”), the year was reckoned to begin on March 25, so an ownership inscription “1745” could have been made at any point during the period from March 25, 1745, to March 24, 1746.
\end{itemize}
London as a working library after his final departure from Oxford in the early 1760s, although the Balliol collection does include William Nelson’s *The Office and Authority of a Justice of Peace* and *The Statutes at Large Made for the Preservation of Game*, both acquired in 1747, as well as a 1683 edition of *The Compleat Solicitor*, which apparently came into Blackstone’s possession from a previous owner at some point after 1760.

¶12 After Balliol, the Codrington Library of All Souls College has the largest single holding of Blackstone’s former books. This seems entirely appropriate. As a junior fellow of All Souls from 1743, Blackstone was responsible for fitting out the interior of the great shell designed by Nicholas Hawksmoor, which had stood empty since the mid-1730s; thus he commissioned the elaborate plasterwork ceiling, the gallery, and the bookcases that still line its walls (not to mention procuring from London mahogany stepladders, desks, miscellaneous ornamental “bustoes,” and other statuary). With the interior work completed in 1750, he drafted an innovative set of library regulations, as books were transferred from the old to the new library and shelved according to a subject classification of his own devising. While Blackstone had to surrender his fellowship when he married in 1761, his house at Wallingford was only thirteen miles downstream from Oxford, and he retained close ties with a small band of college friends for the rest of his life. His will, drafted in October 1778, bequeathed to “All Souls College in Oxford” a carefully enumerated list of treasures:

> my old manuscript Registrum Brevium, two antient manuscript Reports of Cases in the Starchamber, and another antient manuscript Treatise concerning ecclesiastical Courts; together with my old and curious Edition of Lyttelton’s Tenures, printed by Lettou and Machlinia, and the Old Abridgment of the Statutes bound up therewith; another edition of Littleton printed by Tailleur at Roan; my old Edition of the Book of Entries; all Editions of the Statutes, in whatever Size or Language, printed previous to the Year 1660, and all the works of Mr Fryinne, which I have already collected, or shall hereafter collect, such of the said printed Books excepted as shall be in the Library of the said College at the time of my decease . . . .

¶13 All these works (with the possible exception of the “old Edition of the Book of Entries”) may still be consulted in the Codrington Library, together with a set of ten sixteenth-century printed yearbooks for the reign of Henry VI, several sixteenth-century collections of statutes, and John Rastell’s compilation of law reports from Edward III’s reign published by Richard Tottel, each bearing Blackstone’s bookplate. Toward the contents of his working law library, Blackstone displayed no sentimental attachment whatever, prescribing that any books deemed “meerly professional,” and which did not become the inheritance of the eldest of his sons to embrace a career at the bar, were to be sold to augment the cash value

of his estate. The old books, and the works of William Prynne, were an entirely different matter.

¶14 A close and expert interest in the history of books and printing is amply displayed by the detailed annotations penned in Blackstone’s distinctive hand on vacant pages of his incunabula. These include references to standard contemporary sources such as Middleton’s Dissertation Concerning the Origin of Printing in England30 and Ames’s Typographical Antiquities,31 as well as typographical comparisons. Thus his copy of the Old Abridgment includes a holograph note which records that Brasenose College library holds a volume of medieval statutes at large lacking both date and printer’s name, “but ye Letter much resembles that used in this Book. A Copy of the same is now penes me [in my possession].”32 A similar resemblance is recorded between the type used for his Nova Statuta and that of “the Edition of Lyttleton’s Tenures by Lettou & Machlinia, only something better cut.”33 Indeed, Blackstone was sufficiently versed in the history of the book to engage during the 1760s in a learned Latin correspondence with the Dutch antiquary, bibliophile, and lawyer Gerard Meerman, to whom he supplied notes on the antiquity of printing at Oxford. Meerman in turn used Blackstone as a sounding board for his theories about the diffusion of printing from the Netherlands to England, and explicitly acknowledged the latter’s assistance in his treatise on the origins of typography published in 1765.34 Blackstone’s collection of 129 works attributed to or associated with William (“Marginal”) Prynne, the prolific mid-seventeenth-century Puritan controversialist, antiquary, political activist, and scholar who ended his career as keeper of the records in the Tower of London, has recently been the subject of an authoritative essay by Ian Doolittle.35 Doolittle provides no single straightforward explanation as to why Blackstone built such a comprehensive collection of Prynne’s writings; he does however suggest that, besides presenting a significant bibliographical challenge, Blackstone may have felt some admiration for Prynne’s energy and resourcefulness, qualities both men shared, notwithstanding their other large differences. That Jeremy Bentham, of all people, may also have had some interest in collecting Prynne scarcely simplifies the picture, even if adding to some intriguing parallels in the outlook of the former Oxford teacher and his pupil turned obsessive critic.36

32. Abbreviamentum Statutorum (London, c. 1482) (notes) (Codrington Library, All Souls College, Oxford, shelfmark I.9.1 (2)). Blackstone appears to have acquired his copy by 1765. See 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 229 (1765).
34. Prest, supra note 10, at 286. Eleven letters exchanged between Blackstone and Meerman from 1761 to 1768 are held in the Museum Mermanno-Westreenianum at the Hague, Meerman Archives 257/051-071; an article based on this correspondence is being prepared by Dr. Sabina Flanagan and myself.
¶15 Besides the All Souls and Balliol collections, a few books formerly owned by Blackstone are now to be found in North American libraries. Because catalogs do not consistently provide details of ownership marks or other evidence for the provenance of individual volumes, locating such material is inevitably a somewhat haphazard process. However, in addition to the two volumes at Yale noted above (to which have recently been added a copy of the fourth edition of John Locke’s *Essay Concerning Human Understanding* bearing Blackstone’s bookplate37), there are three former Blackstone items in the Free Library of Philadelphia38 and eight at the Folger Shakespeare Library,39 plus individual titles at UCLA,40 Wichita State University,41 and, possibly, the Library of Congress.42 No doubt more are held by private collectors and dealers.43 The apparent lack of such material in British libraries outside Oxford may well reflect differences in cataloging practices, and also in Blackstone’s relative status, on the two sides of the Atlantic.

¶16 Subscription lists provide an additional source of information about bibliographical acquisitions, reinforcing the existing impression of Blackstone as a dedicated and eclectic but knowledgeable collector. His first recorded appearance is as the “Mr Blackstone of Pembroke Coll: Oxon,” who put his name down for a volume of sermons by Thomas Bisse in 1740; the objects of his subsequent subscriptions included a book of Thomas Warton’s poetry, George Ballard’s *Memoirs of celebrated British ladies*, a translation of Guiccardini’s *History of Italy*, Charles Viner’s multivolume *Abridgment of Law and Equity*, Thomas Newton’s finely printed edition of *Paradise Lost*, Richard Burn’s *Ecclesiastical Law*, Danby Pickering’s


40. *Reports of Cases determined in the Court of King’s Bench... Trin. 12 Geo. I to Trin. 7 Geo. II* (London, H. Lintot 1744). The association copy of this work formerly listed in the Harvard Law Library catalog turns out to have been a ghost; I am grateful to David Warrington for this information.


43. Meyer Boswell Books, Inc., currently holds copies of *Richard Zouche, Quaestionum Juris Civilis Centuria* (London, Miles Flesher 1682), and William Rastell, *A Collection of Entrees* (London, John Streater, James Flesher & Henry Twyford 1670), each with a Blackstone bookplate, as had all forty-four volumes of *The Modern Part of an Universall History* (London, for Samuel Richardson et al. 1759–66), which previously passed through the firm’s hands. (private communication on file with author).
Statutes at Large, and William Lillington Lewis’s two-volume translation of the “Thebaid” of Statius, published by Oxford University Press in 1767.\textsuperscript{44} ¶17 The last item listed brings us conveniently to the next point. Blackstone not only wrote and collected books: he also published them. The story of his rescue of Oxford University’s printing house from disorder, moribundity, and worse has been well told by two historians of the press,\textsuperscript{45} and there is neither need nor space to repeat it here. What must be emphasized, however, is that his efforts to analyze the causes of the problems afflicting the press and the best means of overcoming them led Blackstone to acquire a thorough working knowledge of letterpress book production. As the first “delegate” (in modern parlance, board member) appointed to oversee the operations of Oxford University’s printing house since the early eighteenth century who did not also head a university college, Blackstone’s nomination in 1755 by a party of youthful reformers represented their deliberate challenge to the status quo upheld by a small coterie of senior academics. Since the latter had in effect abandoned control of the university’s press to its employees, Blackstone’s credibility depended on mastering the technicalities of the printer’s craft. As he put it, “without a competent knowledge of the constitution of the press in general, and the university press in particular, I presumed it would be impossible to understand the causes of its present decline, so as to prepare the way for a speedy and lasting restorative.”\textsuperscript{46} He therefore enlisted the Oxford bookseller Daniel Prince, who had been brought up in the trade, and two leading London printer-publishers, James Bettenham and Samuel Richardson (better known to us as a novelist), who assisted in producing a memorandum for his fellow delegates that advocated an entirely new method, of Blackstone’s own invention, for fixing the prices for all types of printing at the Oxford press.\textsuperscript{47} While we should scarcely be surprised that this highly complex and narrowly focused document failed to win the intended audience’s attention, let alone support, it shows that Blackstone had not only grasped the details but was fascinated by them. The economics and technology of printing and publishing, as well as the legal basis of Oxford University’s printing privileges, remained abiding interests for the rest of his life.\textsuperscript{48} Having been specifically authorized by the delegates to print The Great Charter at the university press, Blackstone expressed justified pride in the graceful typography (“typorum Elegantia”) of that volume.\textsuperscript{49} Much later, and long after leaving Oxford, he recalled in some detail the

\textsuperscript{44} These details were derived from Avero Publications’ Biography Database, 1660–1830 (1998) (originally on CD, now available online at www.ancestry.com).


\textsuperscript{46} Letter from William Blackstone to the Reverend Doctor Randolph (May 21, 1757), \textit{reprinted in} Philip, supra note 45, at 45, 45.

\textsuperscript{47} William Blackstone, \textit{Some Thoughts on the Oxford Press} (Mar. 25, 1756), \textit{reprinted in} Philip, supra note 45, at 22.

\textsuperscript{48} See Tariq A. Baloch, \textit{Law Booksellers and Printers as Agents of Unchange}, 66 \textit{Cambridge L.J.}, 389, 407–08 (2007), for the suggestion that Blackstone’s knowledge of the rights granted to both universities by royal charter emboldened him to print his \textit{Commentaries} at Oxford, rather than giving the work to Strahan and Woodfall, who held the patent for printing law books.

\textsuperscript{49} Letter from William Blackstone to Gerard Meerman, Apr. 25, 1762 (manuscript in Museum Meermanno-Westreenianum, the Hague, Meerman Archives 257/59).
“great Plan for publishing an intire edition of all the Classics in an elegant manner and at a very cheap Rate for the benefit of Students, and also to provide constant Stock Work for the Employment of our Compositors and Pressmen,” which he had persuaded his colleagues to adopt in 1760.

¶18 As it happened, this scheme, like many academic projects, foundered on the pursuit of the best at the expense of the merely good. The delegates were persuaded to embark upon an enlarged venture involving the collation of every available manuscript of Cicero—much against Blackstone’s better judgment, as he later claimed: “forseeing, what soon after happened, that the extensiveness of such a Search, in respect to an Author so voluminous as Cicero, would soon abate the ardour of the most able and persevering Editors, and at best protract the Edition till a very distant Period, if not intirely defeat it.” All that remained in the end was a font of specially purchased type: “And I believe the Letter provided for it was first used in the 4to. Edition of my Commentaries, A. D. 1765,” produced at the Clarendon Press as a private venture, as were the succeeding three editions.

Morris Cohen on Blackstone

¶19 By February 2007, my biography of Blackstone was nearing the home stretch. The aim all along had been to concentrate on recovering the life of the author of Commentaries on the Laws of England, without getting bogged down in the voluminous literature on his great book. Yet I remained uneasily aware that to focus on Blackstone without paying close attention to the Commentaries might seem no less misguided an enterprise than the proverbial Hamlet without the Prince of Denmark. Unable to supply the deficiency myself, one obvious solution was to invite the assistance of others, via a workshop on Blackstone’s life, thought, and influence, the papers from which might conceivably provide the makings of a reasonably coherent volume of essays.

¶20 Morris responded enthusiastically to my initial call for papers. “What a great conference!” he began, “I should love to attend and would be delighted to give a paper if one of the following topics seems worthy.” He proceeded to enumerate no less than three possibilities: “Blackstone in America,” “Bibliography of Blackstone,” and “Blackstone in the Hands of the Pirates,” the latter envisaged as “a study of the pirated editions of Blackstone’s Commentaries and the Irish and American publishing pirates who issued them.” So far as I was concerned, any, or indeed all three, would have been entirely welcome. But I had already received Mike Hoeflich’s proposal to speak on Blackstone in America, and the prospect of hearing the master bibliographer of early American law on the subject of Blackstone bibliography was irresistible. So we agreed that Morris would discuss the general

51. Id. at 156.
52. Id.
54. E-mail from Morris Cohen to author, Feb. 19, 2007 (on file with author).
problems of preparing a bibliography of Blackstone, with particular reference to Eller’s 1938 compilation, and the extensive revision of that work being undertaken by Ann Laeuchli, also formerly of the Yale Law Library. There was a slight hiccup the following month, when another paper offer of a bibliographical nature initiated a three-cornered e-mail flurry; Morris now displayed an incisive if courteous firmness which I had not previously encountered, and of which I was glad not to be the object. With this contretemps satisfactorily resolved, our agreeable exchanges turned to practical questions of flights and accommodation.

¶21 Unfortunately for all concerned, in September Morris received news of what he termed “health problems.” While at first hopeful that he and his wife would still be able to undertake the long flights to and from Australia, in early November he decided that the safer course was to withdraw. Although “very sad to have to take this step,” he fully intended to “put [his] paper in shape in any case on the chance that a publication results from the conference . . . .” A draft duly arrived in Adelaide some days before the symposium opened; besides being distributed in hard copy, it was also read to an appreciative audience by his former colleague, the late Roy Mersky, in the conference’s final session. Morris continued to supply corrections and amendments during the next eight months or so; in September 2008 we had a final discussion of outstanding points over coffee in the Yale Law School cafeteria, after he had picked me up at the station and before another convivial lunch at Mory’s. Throughout the production process, despite what must have been considerable medical distractions (of which he never spoke), not to mention trying editorial demands, Morris seemed always to retain his familiar cheerful equanimity.

¶22 His essay was published in July 2009, as one of two chapters on sources for the study of Blackstone and his work. Blackstone’s copious and diverse output, in print and manuscript, and especially the numerous editions of the Commentaries, with associated abridgments, adaptations, translations, and other variants, pose considerable problems for bibliographers and scholars in general. Morris told the story of previous attempts to capture Blackstone, bibliographically speaking, before providing a masterly survey of the various resources that list, describe, and in some cases reproduce his writings, both printed and manuscript. One reviewer has characterized this piece as “a thorough, enlightening treatment . . . [and] a road-map for understanding the evolution of Blackstone as [a] subject of legal and historical research and for conducting further research.” It was a privilege to work with Morris in preparing for the press what has sadly proven to be his final work of

57. For information on Ann Laeuchli’s revision, see Morris Cohen, **Bibliography, in Blackstone and His Commentaries, supra** note 35, at 217, 221.
58. E-mail from Morris Cohen to author, Nov. 8, 2007 (on file with author).
59. Cohen, supra note 57.
scholarship; it is a source of great personal satisfaction that he had the chance to see and approve of the whole collection in its published form.61

The New Blackstone

¶23 Toward the end of the nineteenth century, in the introduction to his until recently very rare edition of the Commentaries, William G. Hammond claimed that: “No writer, who has yet appeared, can be placed in comparison with Blackstone for his influence on the law of the mother country, or her American offspring, to say nothing of commonwealths on both sides of the Pacific . . . .”62 Nevertheless, Hammond went on, most currently available editions of the Commentaries were seriously flawed, because based upon the ninth edition of 1783. As editor of the ninth edition (which was also the first posthumous edition, following Blackstone’s death in 1780) Richard Burn had asserted his intention “to preserve the author’s text intire,” and further claimed that any alterations “since the publication of the last edition, were made by the author himself, as may appear from a corrected copy in his own handwriting” (supposedly on view at the office of the publisher Thomas Cadell in the Strand). Burn claimed he had only noted statutory changes to the law, which “together with some few other necessary observations, in order to prevent confusion, are inserted separate and distinct at the bottom of the page.”63 But Hammond was skeptical: “Any one familiar with Blackstone’s style, and that of his annotator, may be pardoned for sometimes doubting the self-restraint of the latter . . . .”64

¶24 Hence Hammond’s own edition, published more than a century later, was printed from the eighth edition’s (1778) text, the last for which the author himself was wholly responsible. In this way Hammond sought to provide readers with what were literally Blackstone’s last words, for the Commentaries underwent considerable authorial amendment in the fifteen years following the appearance of the first volume in November 1765 (some thirteen years after the inaugural course of lectures from which the printed book derived). Blackstone seems always to have found it difficult to leave his own prose alone, while the comments and suggestions of various “learned friends” ensured that the second edition of the first volume, which appeared just a year later (in November 1766), incorporates more than eight pages of corrections. As already noted, the first four editions were self-published at Oxford’s Clarendon Press (as with his previous Analysis of the Laws of England, and The Great Charter). Blackstone then sold his copyright to the trio of printer-booksellers Cadell,

61. E-mail from Morris Cohen to author, Aug. 5, 2009 (on file with author) (“Many thanks for the book which just arrived here. You’ve done a magnificent job—it is a beautiful piece of work. It makes me even more disappointed at not being able to be there, but even more grateful to have been part of the venture.”).


64. Hammond, supra note 62, at xvi.
Prince, and Strahan in 1772 for the very considerable sum of £2000. But he made further substantial changes to the fifth edition, which came out that same year, and again to the eighth edition six years later.\textsuperscript{65} Indeed, each successive edition of the \textit{Commentaries} published during his lifetime incorporates additions and deletions that reflect judicial decisions, parliamentary legislation, and the evolution of the author’s own thinking about the law, as well as stylistic rephrasing in the interests of clarity and exactness of expression.\textsuperscript{66}

\textsuperscript{¶}25 Hammond made use of student labor to undertake the huge task of noting citations of the \textit{Commentaries} in U.S. federal and state law reports. It seems probable (despite editorial silence on this specific point) that his students were also employed in the almost equally challenging work of collating nearly two thousand pages from each of Blackstone’s nine successive editions and identifying differences between one edition and the next. Notwithstanding Hammond’s claim that this process involved “careful and minute examination of the text,” doubts have been expressed about the accuracy and comprehensiveness of what purports to be a comprehensive listing of authorial changes. These are given via footnotes, as are the citations to American cases, which occasionally results in a rather cluttered page. Nevertheless, since no other variorum edition is at present available, the historian, lawyer, or other scholar who today wishes to ascertain Blackstone’s final position on any particular point has no alternative but to consult Hammond. And so long as Blackstone’s \textit{Commentaries} continue to be cited as an authority in courts throughout the common law Anglosphere, establishing what exactly was Blackstone’s last word is no entirely trivial or merely antiquarian undertaking.

\textsuperscript{¶}26 Nor is there a more satisfactory modern edition of the \textit{Commentaries}. The most readily available version and de facto contemporary standard remains the facsimile of the first edition published by the University of Chicago Press more than thirty years ago.\textsuperscript{67} This text reproduces the original typography (including elegant but now unfamiliar font characters, particularly the long letter “s”), punctuation, and other distinctive eighteenth-century printing usages. Readers must also struggle with Blackstone’s cryptic bibliographical footnote citations, as well as the maxims, quotations, tags, and individual words in Latin, Greek, and French, and the classical and other historical references that grace his pages.

\textsuperscript{¶}27 Distinguished modern scholars provided introductions to each of the Chicago facsimile volumes, but the few pages allotted were sufficient only for brief overviews touching lightly on some leading themes. An entirely new edition by Wayne Morrison published at the beginning of the present century did seek to

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\textsuperscript{65} The marked-up copy of the seventh (1775) edition on which Blackstone wrote in the changes for the eighth edition is now among the ex–New Inn Hall books in the Balliol College library (shelfmark 1550 i 21).


tackle some of these problems.\(^{68}\) This version is based on the text of the ninth edition, rendered in a modern typeface, with Latin and Greek passages translated into current English, and an extensive general introduction of nearly one hundred pages discussing the *Commentaries* in terms of the work’s structure and contribution to the historical development of common law jurisprudence. Yet Morrison’s Blackstone is unfortunately available only in a clothbound format, at a price that puts it well out of the reach of most students, and possibly not a few libraries. Moreover, Blackstone’s prose, long regarded as one of the work’s main glories and strengths, has been recast into a modernized English, thereby losing touch with its author’s carefully crafted language. The decision to present Blackstone’s words in a form supposedly more compatible with modern sensibilities raises problems of authenticity (for it is difficult to be confident that such a version manages to capture every shade of meaning found in the original), besides rendering Morrison’s text of little or no value to anyone concerned with literary and linguistic aspects of the *Commentaries*.

¶28 These various considerations gradually led me to conclude that, rather than seeking to reprint Hammond’s 1890 text (as originally envisaged in 2005, and discussed with Ian Doolittle, John Langbein, and other participants at the Adelaide Blackstone symposium two years later), a totally new edition was called for. When it became clear that this view was not mine alone, it seemed sensible to start looking for scholars who might be able and willing to act as editors of the individual volumes of the *Commentaries*, since the potential complexity and scale of the whole task were well beyond my own capacities.

¶29 Fortunately, it proved not only quite possible but surprisingly easy to persuade four exceptionally well qualified individuals—David Lemmings, Simon Stern, Tom Gallanis, and Ruth Paley—that this was something worth doing, and that they were the right people to do it. A further vote of confidence was provided by the willingness of John Baker, Paul Brand, Joshua Getzler, John Langbein, and Steve Sheppard to act as an informal advisory board to this new Blackstone editorial project, with myself in the role of general editor. As is rapidly becoming the norm for modern scholarship, our preliminary negotiations were conducted largely by e-mail, although most of us subsequently met face-to-face in July 2009, following the British Legal History conference. Thanks to the good offices of Paul Brand, and the generous hospitality of All Souls College, we were able to spend a day conferring on basic questions of aims and means; it seemed only appropriate that these productive discussions took place in the Wharton Building, a structure whose completion in the 1740s owed a good deal to Blackstone’s diligent attention.

¶30 We decided that the project should seek to provide an accessible version of the *Commentaries*, available in both conventional hard-copy (cloth and paperback) and digital formats, using the first edition as copy text, and presenting authorial changes to subsequent editions as an appendix to each hard-copy volume, and as hypertext in the digital version. Foreign-language passages and words will be preserved but accompanied by an English translation, nominate report citations con-
verted into *English Reports* equivalents, references to statutes and treatises unpacked, proper nouns and allusions likely to puzzle modern readers clarified by annotation. It was also agreed that the editorial introductions to each volume would be of substantial length (12,000–15,000 words), providing general guidance for the reader by placing the intellectual content of each volume in its broad historical context and discussing the distinctive nature of Blackstone’s synthesis, with reference to both antecedents and influence (although attempting to include references to all cases in which Blackstone has been cited is beyond the scope of the project). A general editor’s introduction to the first volume will give an account of the genesis of the *Commentaries*, the work’s initial reception, and its subsequent worldwide impact over the past two-and-a-half centuries. Each volume will have its own index, with a consolidated index for all four volumes supplementing Blackstone’s original index.

¶31 Despite the invited attendance of a representative from Oxford University Press (OUP) for part of this meeting and Blackstone’s own close associations with OUP, we determined to seek expressions of interest from a number of British and American academic presses. In the end, perhaps not unsurprisingly, OUP’s response to our letter of proposal seemed the most compelling, particularly in relation to the place of an accessibly priced paperback and the online edition within an overall publishing model, as well as in terms of design and technical support. After Alex Flach as Commissioning Editor had gained positive reports from three referees and the approval of OUP’s delegates in November 2009, contracts were prepared and signed over the next few months. Once this protracted process was complete, work began on keyboarding the first edition. By the time of our next editorial meeting in July 2011, digital files of all nine first editions had been produced and close working relations established with an interdisciplinary group at Monash University, whose software package “Factotum” promises to offer a flexible and convenient means for identifying and extracting differences between successive editions, once any remaining anomalies in the digitization of text files have been eliminated. Meanwhile each volume editor has prepared an annotated draft chapter for circulation and discussion, in the light of which the general editor is currently compiling a style manual, with the aim of ensuring so far as possible consistency in such matters as abbreviations, annotations, and bibliographical citations across all four volumes. We are still hopeful of meeting our target publication date of 2015, with final copy submitted by late 2014, just twenty-five years since Morris Cohen showed me around the Yale Blackstone collection.

69. The support of the William Nelson Cromwell Foundation toward digitization costs and other preliminary expenses is gratefully acknowledged.
Historical consideration of the development of publication copyright and other legal intervention in the English book trade extends beyond the wording of legislation, proclamations, and civil and common case law to their effectiveness and enforcement. This article argues that study of a broader history of legal controls and permissions affecting printing and publication in England before the Copyright Act of 1842 highlights the circumventions, misapplications, and misconceptions that sometimes masked underlying continuities and enabled commercial interests and political initiatives to develop despite the word of law.

¶1 The history of publication copyright and of legal intervention in the English book trade is extensive (and not without controversy), but it might yet benefit from consideration of one cautionary idea: that it was individual action within market contexts that tested both state and guild policing and attempts at trade protection by sections of the trade. It is a mistake to consider legislation, proclamations, and civil and common law cases only in the abstract, without considering how effectively these declarations of law were actually enforced and policed, or indeed how they were avoided, misinterpreted, and semirealized. The often notorious history of the law in relation to copyright and the book trade generally is self-evidently the history of individuals creating, appealing, and challenging it. It is also a history of the change from rights in material objects (the manuscript and the printed book as physical entity) to rights in “texts.”

¶2 Morris Cohen’s approach to legal history remained skeptical of theory. During our correspondence about certain empirical challenges in British and American archives, he alluded to Andrew Scull’s perceptive review of a new translation of Foucault’s *History of Madness*. Scull wrote:

[M]uch of [Foucault’s] account of the internal workings and logic of the institutions of confinement, an account on which he lavishes attention, is drawn from their printed rules and regulations. But it would be deeply naïve to assume that such documents bear close...
relationship to the realities of life in these places, or provide a reliable guide to their quotidian logic.¹

¶3 In the same way, many histories of publishing and bookselling in England and in Britain have been preoccupied by official and legal descriptions of what was intended to be done, of what officialdom or interested parties hoped would happen, without necessarily inquiring into what actually happened. If, though, we look at resulting action in detail, we might discover a rather different history of the law and the book trade in the age of print. This approach demands a major commitment to the archives. As Morris wrote: “Confidence in your research product is a result of confidence generally in your research skills.” He also warned that: “For many researchers it can be just as difficult to know when to stop researching as it is to know where to begin.”² In honor of his pragmatism, there follows an interim report.

¶4 English legal intervention in the book trade was multivalent. The book—manuscript, but especially print—was both a risky and a providential object to church and state. Risky because of what it might promote (and therefore in need of restriction); providential because of the fiscal advantages that might derive from taxation of this consumer product (and of its constituent materials and by-products—notably the later taxation of commercial advertising). All required regulation. For related reasons, those working in the trade might require either direct or indirect policing, as might the distribution and export of their goods, and the increasing value of literary properties inevitably resulted in increased literary boundary disputes and recourse to the civil courts by various aggrieved or proactive private parties. The book trade advanced as a trade in controversy, in ideas, in practical advice, and in entertainment. The trade brought fortunes to some of its promoters and craftsmen and to others financial and personal disaster. To all, trade brought an increase in precautionary and punitive regulation by government and church, abetted by the property interests of leading booksellers, printers, and stationers.

¶5 More generally, all manufacturing and trade operated within particular legal, political, and fiscal constraints, and early modern and eighteenth-century government eagerly taxed many consumer goods. Perhaps no product more than books and print, at least after 1557³ and before 1774, was so subject to attempted state observation, protection, and the price fixing that developed from them. This, as I have argued in the past⁴ and as William St Clair has more forcefully suggested,⁵ even encouraged the rationing of supply to the market.

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The economy in general was, nevertheless, subject to heavy government interference in attempts to regulate and control production. Of necessity, the government regularly exploited commercial resources for its own, largely war-led, needs. At the same time, recurrent political upheaval affected the economy variously. Manufacture, distribution, and custom in the book trades were all affected by action, first, of the Crown, and then, to a much greater extent, of Parliament and the courts. As organized revenue collection supported the waging of war, many, often desperate, attempts were made to collect levies and duties. These affected the book industry and its customers in various ways. New methods to raise revenue certainly impinged on book business activity, even if not with the force of the later Stamp Acts. Customs rates, for example, included duties on the importation of books as part of the regulation of overseas trade and shipping.

Many regulations also affected the internal economy. By the end of the seventeenth century, there was generally a decline in official regulation of traditional industries, but enforced labor under the Statute of Artificers (1563) continued, and Settlement Acts were passed, beginning in 1662, to control migration and labor mobility. A high degree of control was attempted. Clearly, the book trade did not exist in anything like a free market—government maintained the general framework in which production and labor operated.

By the late seventeenth century, the state extracted unprecedented per capita monies, with much of the change imposed after 1660 and in response to the demands of war (including the hearth tax of 1660–1689, and then, from 1693, the land tax). If this had continued without any compensating relief, the wealth and income of the propertied could hardly have sustained the consumer spending of the late years of this period. In fact, though, the most taxed were soon to benefit from the new investment opportunities in government interest on bonds and annuities. At the same time, the new fiscal regime also ensured greater protectionism when customs tariffs became part of broader economic and political policy rather than simple revenue devices.

The Navigation Acts, dating from 1651, but given greatest force by those of 1660, 1663, 1673, and 1696, affected all trades, including the book and stationery trades. These acts discriminated against foreign interests generally and against Dutch interests specifically, insisting that imports from Europe had to arrive in an English ship or in a ship of the exporting country, with all colonial trade reserved to English and colonial ships. European goods were to be dispatched to the colonies only via England, and certain colonial products could only be exported to England. The Navigation Acts did not, however, apply to Scotland until the Act of Union of 1707 (when, also significantly for book trade development, free trade was guaranteed between England and Scotland). This closed colonial system was designed to benefit all citizens of the empire and to encourage both colonial and metropolitan initiatives. By 1700, ships built in New England undertook most of the carrying trade from the northeastern U.S. and the Chesapeake to England and southern Europe. Under the same system, the transatlantic book trade was advanced by London booksellers and merchants, and, tentatively, by a few New England importers.
¶10 Another general point explains the inflection of the first legal interventions into the book trade in the age of print. England—and indeed Scotland—were largely bit players in European commerce before 1700, and importation was crucial to the book trade. Most of the earliest printers in England, such as Wynkyn de Worde and Julian Notary, imported in large and increasing quantities. Late fifteenth- and sixteenth-century English book collections (especially royal ones) attest to the exporting prowess of Paris, Venice, Cologne, and other European printing centers. A telling statistic is that books printed in England account for no more than four percent of titles recorded in surviving book collection and library lists from before 1550. The “Latin trade,” as the importation of foreign books was generally known, required secure credit arrangements—and the merchants funneled almost everything through London, where custom rolls list some ninety-eight aliens importing books between 1492 and 1535.

¶11 So, although histories of the Tudor book trade draw attention to licensing, patents, book burnings, and seizures of men and materials (and to amputations and hangings), the more important early legal intervention concerned, first, the encouragement of aliens and then, in reversal of this, a form of domestic protectionism. Aliens dominated the early sixteenth-century English book trade (as indeed they did in so many other trades of the period). Some two-thirds of all known bookmakers and traders in England between 1476 and 1535 are believed to have been foreign-born. Foreign printers and merchants such as Henry Frankenberg (who first appears as an importer of books in 1477) and Bernard van Stondo (importing heavily from 1480) benefited from a critical proviso excluding the London book trade from the 1484 Act that prohibited importation by foreign merchants. Exemption from the 1484 Act encouraged not only the settlement of book-trading foreigners in England, but also the Continental production of books in English type, especially by the printing houses of the Low Countries. Continental classics, educational texts, and especially French printed liturgical works, flooded the London market.


7. Margaret Lane Ford, Importation of Printed Books into England and Scotland, in 3 Cambridge History of the Book, supra note 6, at 179, 183. Of surviving early modern libraries, that of Samuel Harsnett, now held at Essex University Library, comprises a majority of foreign-printed books.


¶12 It is therefore imperative, as a first observation, to note the legal encouragement to the foreign printer and book merchant that was so vital to the development of the English trade. It is also—like so much of what follows—an area of interest fraught with archival difficulty. Tracing a single St. Paul’s Churchyard Parisian printer-bookseller, for example, cost weeks of searching and resulted in only the tiniest amendment to the conclusions of David Shaw and Peter Blayney, which themselves are miracles of what one can do with the most meager evidence. Lotte Hellinga's catalog of British Library books printed in England in the fifteenth century provides much new material colophon and imprint evidence, but, pace Cohen, the devil remains as much in archival, contextual details as in physical and analytical bibliography.

¶13 The second observation, following from the first, is to note how the withdrawal in 1534 of the proviso protecting book trade aliens encouraged a fresh generation of native English printers and stationers. Various impositions against foreigners included, in the early sixteenth century, double subsidies and an Act of 1523 that attempted to allow only two foreign workmen per establishment and forbade the employment of non-English-born apprentices. In 1529, foreigners not already trading were banned from setting up business, and after 1534 only wholesale purchase of foreign books was allowed—a measure designed chiefly to prevent the importation of heretical books but also serving to protect indigenous bookmen and women.

¶14 As a result, it seems, a new group of English printers flourished, effectively reorganizing London publishing; but, again, what happened on the ground does not seem to accord exactly with parliamentary or Privy Council intent. The 1529 and 1534 measures did not immediately dim the foreign presence. Richard Grafton, for example, memorably wrote to Thomas Cromwell from Paris in 1538 complaining that the Stationers’ Company was harassing François Regnault (Francis Reynault) and asking Cromwell to protect him. And foreign workers continued as an important presence at several establishments, notably that of John Day.

¶15 Much has been made in book trade histories of the development of legal intervention to uphold trade by protection and privilege. The Crown extended trade protection by direct patronage of the press, most notably exercised through the grant and sale of royal privileges and patents to printers, booksellers, financing publishers, and writers. Although privileges served primarily as economic and legal


instruments, the Crown’s conferral of them has often been associated with a pervasive system of censorship, most notably in older historical accounts, such as that of Frederick Siebert. This, however, is to misunderstand the role of royal patronage as a crucial determinant of property-holding in the book trade. From the appointments of King’s Printer developed a further system of royal privileges and grants of patent, dating, it seems, from 1510. Patents, as issued under Letters Patent, notably for the Great Bible in 1539, were a later development. In Scotland (a foreign realm until 1603), James IV awarded the first royal patent in 1507, the year that printing began in Edinburgh, and Scottish governments granted patents to booksellers for fixed periods, developing a form of limited copyright in Scotland during the next two centuries. This needs to be stressed, because that development underscored Scottish discomfort with notions of perpetual copyright, recurrent in a series of highly personalized legal challenges in England and an issue that was to haunt the eighteenth-century English—and British—book trade.

The bestowal of privileges benefited publishers rather than authors, but it also naturally had the effect of restricting certain types of publication. As shrewdly argued by Jason McElligott, what was essentially a mechanism of commercial control might also be considered as part of the state’s policing of the book trade, if sometimes more incidental than deliberate. Even so, recent interpretations of early modern censorship as essentially impromptu and reactive (interpretations that have convincingly replaced older histories of omnipresent state censorship) should not disguise the ability of early modern government to repress press freedom. But what is also clear about the extension of privileges by the Crown (by Patents under Privy Seal, proclamations, and even orally) is that it created lucrative rights as well as obvious targets for resistance and challenge by rival printers and booksellers. If a bookseller found his privilege violated, he could appeal to the Privy Council. Here again, archival ferreting pays dividends, and Maureen Bell’s completion of D.F. McKenzie’s calendar of relevant state papers, together with Alison Shell and Alison Emblow’s index to the Stationers’ Company court books, open new windows into what actually happened when rights were contested.

A canon passed by the English Convocation in 1532 reiterated and expanded the terms of Henry VIII’s proclamations against specific forbidden

21. See Ferguson, supra note 3, at 52–53 and appendixes listing known privileges granted.
25. As Cyndia Clegg has also noted, the words license and privilege are used interchangeably in patent rolls and other official documents. Cyndia Susan Clegg, Press Censorship in Elizabethan England 9–14 (1997).
books in 1529 and 1530, and reemphasized the need for licensing. In 1556, a decree of Mary’s Archbishop of Canterbury, Cardinal Pole, deliberately reinvoked the 1515 decree of Pope Leo X attempting to impose preprint licensing. Just as notoriously, a proclamation of 1538 had banned the import of English books from abroad, and also forbade printing in England without the licensed privilege to print or, where appropriate, advertising the name of the translator. A further proclamation of July 1546 required the printer of “any maner of englishe boke, balet or playe” to declare his name and that of the author, together with date of printing on the copy. The ecclesiastical courts intervened to prevent “misorder and abusion” as soon as printing boosted the range and volume of books. Church courts ordered the public burning of certain Lutheran books in London in the 1520s, and brutal proclamations of 1529–1530 forbade the printing of Lollard texts. Ecclesiastical courts also arraigned individual booksellers, resulting in many dozens of cases under Henry, Edward, and Mary. Royal and government policing of the trade advanced sharply in 1538 with a proclamation charging the Privy Council, or a delegated committee, with the prepublication approval of all books. In 1542 (the year that the Stationers first applied to the king for incorporation) came the proclamation requiring the imprint of publication details, but the general requirements instituted four years earlier were also maintained, more or less intact, during the turmoil of the reigns of Edward and Mary. It was the Privy Council that effectively determined prosecutions in this period and ensured that many successful printers and publishers passed through the portals of judicial chambers and prisons.

¶18 The broader point is that by the late sixteenth century, the divorce between certain leading publishers and printers relates to another development: under state-delivered protection of their 1557 charter, members of the Stationers’ Company came, notoriously, to invest and deal in the ownership of the copyright to publication. This was no uncontested affair, especially within the Company, where jealousy over the most lucrative rights was rife. All the time, distinctions sharpened between owners of the rights to publications, those who printed or sold books for the copyright holders, and those whose stock-in-trade escaped the reach of the authorities.

¶19 Official, government interests became enmeshed with private proprietary and business concerns, critically determining the actual practice of enforcement. The 1557 charter of incorporation and successive ordinances, injunctions, and decrees granted Company officers authority to search and seize unauthorized books (just as the Crown had earlier sanctioned product searches by the Goldsmiths and the Pewterers). Under legal protection refined and extended by numerous

28. I am particularly grateful to Ian Gadd for guidance on this point.
injunctions, the members of the Company succeeded (after late sixteenth-century disputes with particular patentees) in operating a London-based trading cartel.

¶20 We should also note that a commercial history of the Marian press, based on examination of surviving materials and of what we know of imports, rests uneasily with a legal-historical account that simply equates the banishing and burning of Protestants with the subjugation of booksellers. If, as has been claimed, the reign of Mary set back English printing,32 it was only certain types of printing. John Cawood, the Queen’s Printer, and various others were encouraged to produce the required Catholic primers, books of hours, and manuals of prayer, while the trade in imported Continental books necessarily advanced (even if the new regime might have trusted too naively to market forces).33 The departure of alien printers also eased the incorporation of the Stationers.

¶21 While the confrontation between individual printer-booksellers and the state created celebrated cases and martyrs, another, more obviously commercial battle played out between the Company and those holding privileges from the Crown. Printers and booksellers were as disappointed as the most reformist Protestants by the failure of Elizabeth to reverse Marian directives. The new government upheld constraints on book production, although once again, the terrifying commandment of the legislation of 1559 might have been a little more hit and miss in effect than its authors intended. It required all new books to be submitted, before publication, for scrutiny to the Queen, six members of the Privy Council, the chancellor of one of the universities, or an ecclesiastical judge above the rank of archdeacon in whose jurisdiction the book was to be printed. Licensing and publication details were to appear on every book, but imprints certainly do not conform to this—perhaps, but only perhaps, because it was thought that the information was required only on the original manuscript.34

¶22 The 1559 edict became the foundation text for all subsequent pre–Civil War regulation of the book trade. The Privy Council noted that commerce was the begetter of sedition and irreligion: it was “a great abuse in the printers of bokes, which for covetousnes cheifly regard not what they print, so thei may have gaine, whereby arriseth great dysorder by publicatyon of unfrutefull, vayne and infamous bokes and papers . . . .”35 Three ecclesiastical commissioners for London were to sanction pamphlets, plays, and ballads. Under even more stringent regulations of 1566, violators were to surrender illegal publications for destruction or damasking (the obliteration by ink of the text of printed paper to allow its reuse). Miscreants

31. Referring to the reign of Queen Mary.
34. See SIEBERT, supra note 20, at 57.
35. Injunctions Given by Her Maiestie, 1559, reprinted in H.S. BENNETT, ENGLISH BOOKS AND READERS 1558 TO 1603, at 57 (1965).
were liable to three months’ imprisonment and a fine of twenty shillings for each unlawful title.36

¶23 A succession of proclamations chronicle Elizabethan state intervention and the assistance given to increasingly restrictive business practices within the trade.37 After Elizabeth confirmed the Stationers’ charter in November 1559, further decrees safeguarded against laxness by the Company in prosecuting unwelcome literature by establishing further ecclesiastical licensing. But such licensing, starting with an injunction of February 1560, was not—and could never be—fully carried out. It was certainly not in the Company’s economic interests to prohibit everything that worried State and Church, especially given what is now recognized as the general undercapacity of the printing trade. Injunctions issued between 1569 and 1588 increased the Crown’s reliance on the policing services of the Stationers’ Company, whose wardens were now further authorized to inspect ships’ cargoes.38 Beginning in 1576, the Crown charged the Company with gathering weekly reports of what every printer was printing, the number of presses operating, and the number of apprentices employed.39 Searches of printing houses and at docksides accompanied the repeated (if sometimes modest) burning of books in Stationers’ Hall. This was government-inspired containment far beyond that encountered by scribal copyists in earlier and more limited markets (however modest the output in relation to the overall number of printing presses). Nevertheless, foreign-printed books conveyed by passengers and in cargoes continued to arrive in their thousands. At his trial in 1585, Thomas Alfield alone admitted to importing “ffyve or syx hundred” of Cardinal Allen’s True Sincere and Modest Defence of English Catholiques that Suffer for Their Faith.40

¶24 Of course, the risks to business, liberty, limb, and life were real and constraining, and the prosecution and resistance of booksellers generated glorious legends. The searches and customs seizures continued under the early Stuarts. The Stationers, by sanction of their charter, continued “to make search whenever it shall please them in any place, shop, house . . . or building of any printer, binder or bookseller within our Kingdoms of England.” Government, however, sought further coercion, and in September 1623 James reissued the 1586 printing injunctions, confirming the Company’s right to search, the prepublication licensing arrangements, and the penalties for illegal book publication and circulation. A year later, a further edict extended the penalties and threats of imprisonment.41

36. Thought to be an Order-in-Council signed by Archbishop Parker and six other members of High Commission, reprinted in J.R. TANNER, TUDOR CONSTITUTIONAL DOCUMENTS 245–47 (2d ed. 1930); see also SIEBERT, supra note 20, at 58–59.


39. SIEBERT, supra note 20, at 84. Almost all reports are lost and no complete weekly report survives (and thus the Company’s fidelity to this order cannot be measured).

40. ROSTENBERG, supra note 38, at 38–39.

¶25 Toward the end of the period of personal rule by Charles I, a 1637 Star Chamber decree “concerning printing” endorsed all the ordinances, injunctions, and decrees from the edict of 1559, conferring rights to Company officers to search and seize unauthorized books, restrict the number of presses as well as typefounders, and prohibit all printing outside London save for a single press at each university.42 The 1637 decree also confirmed instructions for the licensing of books before their entry at Stationers’ Hall, and it banned the importation of books already under privilege or entered in the register.43 Parliament ensured the abolition of Star Chamber and High Commission in 1641, but two years later an ordinance restored the authority of the Stationers’ Company and a regulating Act of 1649 attempted to re-create the Company’s 1637 powers and limit the number of printing houses to twenty-five. As a consequence of these and earlier limitations, the productive capacity of the English press probably changed little before 1642 (and indeed, if the use of the presses had been maximized, overcapacity would have resulted). In fact, limitations on the number of printing houses do not appear to have been watertight or constant, and petitions to set up presses were received from would-be printers at least during the 1630s.44

¶26 This account (pleading Cohenist pragmatics) will largely pass over the parliamentary renewals of the Printing Act (or Licensing Laws) of 1662,45 which were supplemented by occasional directives from the Privy Council and the Archbishop of Canterbury. As is very well documented, these acts lasted, with interruptions, until 1695, while the creation of a Licenser (superseding the Stationers’ Company as a de facto censor) did not effectively outlive the appointment of the licenser, Roger L’Estrange, who served from 1663 until the Revolution of 1688.46 Thereafter, existing legislation against libel and blasphemy offered ministers and judges last-resort controls that were also capable of extension during times of political crisis. What should be stressed, however, is “last resort.” The impression is one of chaos and inconsistency in the policing of certain types of publication (notably engraved prints). Much remained beyond the effective reach of the law.

¶27 The general sense of chaos is again evident in the Licensing Law period. The financial crisis faced by the Stationers’ Company in the mid-1690s highlighted concern about the abuse of power by the Stationers, who were pursuing purely private commercial advantage through their copyright privileges (royal, parliamentary, or by their own charter as litigated by Chancery, the principal equity court, and sometimes by the equity side of the Court of Exchequer). Significantly, the Stationers never fully used the common law courts to enforce copyrights before

42. A Decree of Starre-Chamber, Concerning Printing, Made the Eleventh Day of July last past, 1637, available in the Plume Library, Maldon, pamph. 615 (STC 7757).
43. Roberts, supra note 41, at 141.
45. 14 Car. 2, c. 33 (1662).
the 1710 Copyright Act. The expiration in 1691 of an agreement under which the Stationers’ Company effectively paid off Oxford University to protect its most lucrative monopolies greatly exacerbated the Company’s financial plight, and in late 1695 it was forced to elect to its governing body Thomas Guy, one of the richest booksellers in London but a long-time adversary. The crisis served to heighten concern about the exploitation of patents at the very time that Parliament was discussing alternative general licensing arrangements. Certainly, the ultimate failure to agree on alternatives—with no sense at the time that this legislative pause was to be permanent—had little to do with any advocacy for liberty of the press.

¶28 Attempts to control the number of presses were also largely ineffective (and but one expression of the changing patronage and economics of the manufacture and circulation of books). There were murky dealings here. Some of the Company’s seizures or purchases of equipment of deceased printers and stationers might well be interpreted as a redistributive exercise, cutting down on the number of overall printing houses and even creating lines of financial obligation that ensured cheaper printing rates offered to grand publishing booksellers. Heavy-handedness was frequent. In 1673, fourteen illegal printers were summoned to the table of the Stationers’ Company “to give an Account upon what Tearmes they keep their seuer-all printing-houses.” Financial self-interest fueled most of the wardens’ searches and confiscations of books and presses. They, and their associates in the elected livery, were able to sell their seized booty at good prices. It is also striking to discover that the jurors who found printer John Twyn guilty of high treason included Richard Royston, loyalist and leading Stationer, and the printer Thomas Roycroft.

¶29 L’Estrange, the licensor, worked actively to suppress nonconformist and radical printing and publishing, but the Stationers seemed only interested in bringing to book those infringing their own monopolies, whether by seizing and restricting presses or by impounding the publications. Prepublication censorship continued—as when Archbishop Sheldon moved against The Protestant Almanack
in late 1667—but Royston forewarned many pressmen. Seized books were conveyed to the Archbishop of Canterbury, the Bishop of London, or one of the Secretaries of State for them to consider appropriate action. At the same time, the Company brought indictments in the London Quarter Sessions against unlicensed printers and proceedings in the equity Court of Chancery against those deemed to have broken the Company’s patents or challenged the almanac and other printing monopolies operating as the “English Stock” and under which Company members were paid successive dividends. McKenzie and Bell’s calendar of state papers and the Journal of the House of Commons attest to the numerous (often desperate) investigations and seizures, in which servants were often used as the main informants and witnesses. The investigations were, nonetheless, disorganized, with multiple examinations and seizures of “scandalous matter” and materials “obnoxious to the law.” Resistance to L’Estrange was proclaimed to be “illegal, unjustifiable and uncivil.”

¶30 Commercial tensions increased even after L’Estrange argued in 1667 that the Stationers were actually encouraging clandestine printing. Mr Crackfart (as L’Estrange was dubbed) was not entirely wrong (and a letter from the King to the Stationers noted that L’Estrange’s “appointment had proved ineffectual through the opposition of several members of the company”). Surviving Company accounts reveal numerous payments to forewarn printers not to print various publications known to be dubious. The accounts also record frequent litigation and robustly celebratory dinners held after the searches.

¶31 The manipulators of the law, Royston and fellow bookseller Samuel Mearne, so engaged in Company policing, were also important entrepreneurs in their own right. As a result, many printers and booksellers must have regarded their industry as unfair and wanting in natural justice. Royston, for example, seized Richard Allein’s popular but nonconformist and unlicensed Vindication of Godliness, but instead of destroying the impression, he bound the sheets and put the book on sale. Such seized books could, of course, attract high prices exactly because of their notoriety and apparent unrepeatability. Cutthroat, murky, and highly volatile, this book trade was not always an attractive industry in which to be a player, and use of and appeals to the law were often arbitrary and inconsistent.

¶32 A related question concerned attempted control over the peddlers of small books known as “chapmen” and the “mercuries” or sellers and distributors of newspapers and cheap print (who were mostly women). Despite assumptions of the effectiveness of the law as an instrument of control, Paula McDowell, in her revealing study of women in the late seventeenth- and early eighteenth-century book trades, has recovered numerous examples of female hawkers, mercuries, and other sellers of print who were taken into custody and questioned, but who mostly offered successfully evasive testimony. Like Elizabeth Calvert before her, the pamphlet matriarch Elizabeth Nutt and her daughters, and many others besides,

54. 2 McKenzie & Bell, supra note 26, at 127.
55. 1 id. at 617.
adopted resourceful strategies (and petitions) to avoid the harshest penalties. Such evidence also suggests a period of raised profiles for women in the book trades, something that seems to have diminished after about 1730.\footnote{See Paula McDowell, The Women of Grub Street: Press, Politics, and Gender in the London Literary Marketplace, 1678–1730, at 63–118 (1998).}

§33 Such is the extensive preamble to eighteenth-century legal contestation of copyright. For the richest in the trade, business decisions continued largely to turn on the ways in which publishing operated as an investment opportunity and in which booksellers were able to protect their literary property rights. Such protection, at least in terms of extending copyright claims into perpetuity, ostensibly depended on appeal to common law, and then later on interpretation of statute law. We can, however, be misled by adhering too closely to a history of the successful challenges to the leading booksellers’ defense of perpetual copyright as this developed in the first half of the eighteenth century. Rather, the history of all challenges—successful and unsuccessful—is evidence of the mounting, market-led pressure against property-holding syndicates.

§34 The value of copyright shares manifestly depended on their remaining exclusive rights to publish. The 1662 (and successive) licensing laws have been characterized as typical of the “ill-drafted legislation in which royal order was restored,”\footnote{Treadwell, supra note 49, at 5.} but, by comparison, the 1710 Copyright Act created even more confusion. Confusion, however, can easily be exploited by those with the greatest economic clout. “The Act for the Encouragement of Learned Men to Compose and Write Useful Books” attempted to give a fourteen-year term of protection to all books registered with the Stationers’ Company and an additional fourteen-year term if the author was still living at the expiry of the first term.\footnote{8 Ann. c. 19 (1710).} The Act attempted to invoke authorial rights, and actually questioned the validity of common law claims to perpetual copyright by the booksellers. In response, they, far more than authors, submitted testing injunctions in subsequent decades. Using more appeals to the law to restrain and control competition than in most other industries of the period, the wealthier booksellers made their objections vociferously. Immediately following the midcentury technical expiration of rights to older works and works first protected under the 1710 statute, the booksellers’ associations also seemed successful in arguing that the Act’s spirit sanctioned perpetual copyright under common law.

§35 Recently, H. Tomás Gómez-Arostegui has pieced together an unreported Chancery case of Jacob Tonson [Sr] v. John Baker, almost certainly the first copyright suit brought under the 1710 statute. Although this remarkable detective work was undertaken to demonstrate the relevance of copyright history today, it also serves to reiterate booksellers’ arguments that a copyright, quite independent of any statutory support, had been recognized by common law before 1710. The parliamentary havoc of the contemporaneous Sacheverell trial (also the subject of the publications disputed in Tonson v. Baker) seems to have contributed to the hasty and muddled
wording of the 1710 Act in which, for example (unnoticed at the time), penalties under the statute were available only at law and not in equity.\textsuperscript{60}

\textsection{36} Notably, from midcentury, challenges to the Copyright Act are also evidence of the \textit{successful} reprinting of titles in the teeth of the opposition of leading London booksellers. More important than the appeals to law in the defense of copyright claims was the simple exertion of leading booksellers’ own commercial authority. The larger point is that increased publication of much popular and practical literature resulted from the courting of new readerships and the extension of retailing and distribution. The establishment of London and then country commercial circulating libraries and of book clubs also furthered the market for books, creating new interest and demand that might be supplied by enterprising newcomers to the book trades.

\textsection{37} The focus of post-1710 copyright history has been on the upheavals of the challenges by Alexander and John Donaldson, Thomas Carnan, and John Bell, who infuriated many of the associations built up through the London closed copyright auctions, still central to the trade in the 1760s. It can, however, be contended that this struggle and the 1774 Lords ruling reversing the infamous 1768 \textit{Becket v. Donaldson} restraining injunction have gained an importance in histories of the trade quite in excess of their true worth. The ruling in 1768 by King’s Bench, followed by an injunction of the Court of Chancery against the Donaldsons in November 1772, derived from action brought by the publishing bookseller Thomas Becket against the Donaldsons’ cheap Edinburgh edition of James Thomson’s \textit{The Seasons}, which Becket claimed as his own property. It has been asserted in almost every history of the book trade of this period that leading publishing booksellers maintained prices, and hence the primary determinant of access to new literature, by the successful assertion of their property rights. According to Richard Altick, “[T]he consequences [of the 1774 decision] to the mass reading public are almost incalculable.”\textsuperscript{61}

\textsection{38} William St Clair has reinforced Altick’s thesis by arguing that 1774 represented a turning point in literary and intellectual history. This, however, is to oversimplify the history of publishing in the eighteenth century (and in the case of St Clair, to build structures on as-yet-unproven conclusions about comparative print runs and pricing during the eighteenth century\textsuperscript{62}). We need to review the history of reprinting with care. Too much attention has probably been paid to the struggles over poetic and dramatic anthologies, always cited as the main evidence that the Lords’ decision in 1774 transformed publishing. The most important feature of St Clair’s argument concerns the subjects (the “old canon”) of the reprinted

\textsuperscript{60} See Gómez-Arostegui, supra note 47, at 1318.

\textsuperscript{61} Richard D. Altick, \textit{The English Common Reader} 54 (1957).

\textsuperscript{62} William St Clair, \textit{The Political Economy of Reading}, Times Literary Supp., May 12, 2006, at 14. St Clair, for example, chooses \textit{Robinson Crusoe} to illustrate “the effects on print runs of the 1774 decisions,” but he lists only six pre-1774 editions, whereas the \textit{English Short-Title Catalogue} lists more than a dozen full editions before 1773 (including a 1766 edition at least published as the “13th”), dozens more abridgments and epitomes, and, altogether, entries for eighty-five separate items published before 1775 with “\textit{Robinson Crusoe}” in their titles. William St Clair, \textit{The Reading Nation in the Romantic Period} 507–08 (2004).
cheap literature of the late eighteenth and early nineteenth centuries, but his investigation is largely limited to imaginative literature. Scholarly, scientific, political, and technical writing all rest uneasily with the contours of a study (like others\textsuperscript{63}) that places so much emphasis on the 1774 Donaldson verdict. The new writing presented in the avalanche of magazines and periodicals in the second half of the eighteenth century, for example, seems to belong to a rather different history.

\textsuperscript{¶}39 The history of the publication of law books follows yet another trajectory, in which authors of new legal works faced a publishing/bookselling community that before 1774 prospered from the reprint of old books (with concomitant advantage taken by Dublin, usually piratical, printers).\textsuperscript{64} It has also been claimed that change in substantive law itself was halted as a result of the booksellers’ de facto monopoly from 1710 to 1774 (and that afterward the Law Patent became enfeebled and virtually unenforceable), even if this argument adheres rather uncritically to the traditional emphasis on the 1774 watershed.\textsuperscript{65}

\textsuperscript{¶}40 In fact, changes before the 1774 pronouncement and continuities after it suggest less a “watershed” than simply a point of reference in a much longer and more complex course of development. It is true that in terms of legal rulings, the assault on the publishing domination of the leading booksellers’ associations was finally successful only in 1774 (after the House of Lords ruling on Donaldson \textit{v. Becket}). In terms of actual arrangements, however, cheap reprinting had flourished for several decades, and, on the other hand, the framework for the protection of sale and investment in rights to new works remained intact in the final decades of the century, after Donaldson’s supposed victory. Leading booksellers’ de facto extended copyright continued as securely as ever. Competition increased, certainly, but the advance of new cheap editions was in addition to, not in substitution for, major publishing undertakings by booksellers’ associations. Clarified rather than undermined by the earlier legal battles, copyright trading brought new riches to those with the skill to favor the right authors and publications.\textsuperscript{66}

\textsuperscript{¶}41 Decades before Donaldson, various legal cases exploited the simplicity of the 1710 Act, sometimes with apparently surprising victories against groups of booksellers. One such case was John Gay’s triumphs in 1729 and 1737 to have unauthorized copies of his Polly outlawed “in perpetuity.” It was a saga fueled by political patronage and intrigue, and it provided encouragement for reliance on the common law argument for eternal copyright.\textsuperscript{67} That such confrontations did not extinguish protective associations of copyright-owning booksellers should caution us against misinterpreting the effects of the 1774 decision.

\textsuperscript{63} Notably, \textsc{John Feather}, \textsc{Publishing, Piracy and Politics: An Historical Study of Copyright in Britain} (1994).

\textsuperscript{64} See Daniel J. Hulsebosch, \textsc{An Empire of Law: Chancellor Kent and the Revolution in Books in the Early Republic}, 60 \textsc{Ala. L. Rev.} 377, 394–97 (2009).

\textsuperscript{65} See Tariq A. Baloch, \textsc{Law Booksellers and Printers as Agents of Unchange}, 66 \textsc{Cambridge L.J.} 389 (2007).

\textsuperscript{66} For the legal developments largely arising from the poor drafting of the 1710 Act, see \textsc{Ronan Deazley}, \textsc{On the Origin of the Right to Copy} (2004).

\textsuperscript{67} See Adam Budd, \textsc{Old Monopoly}, \textsc{Times Literary Supp.}, July 15, 2005, at 24, 24 (reviewing Deazley, supra note 66).
¶42 As suggested earlier, this history and controversy over copyright also requires us to think about national and legal boundaries. The main challenge identified by leading London booksellers involved Irish and Scottish reprints, particularly of novels and miscellanies. A 1739 Act to prohibit imported books and a 1759 letter from London to country booksellers, offering to exchange imported reprints either for the London original or for cost price, and also threatening the appointment of “riding officers” to inspect and harry miscreant booksellers, are generally cited as evidence of the booksellers’ impotence to counter piracies and circulation outside London.68 Despite vociferous anti-Irish protests from the London trade at midcentury, however, Dublin reprints were never directly imported in sufficient numbers to pose, by themselves, a decisive challenge to the London booksellers. Much more problematic was the Scottish-Irish book trade, where eminent Edinburgh booksellers traded with leading London booksellers, but also brought in Irish reprints for export and even gave advice to Irish booksellers on the best methods of smuggling illegal reprints.69

¶43 Direct Scottish competition in England proved more complicated and potent. It was possible to argue—as leading Edinburgh and Glasgow booksellers did—that many Scottish reprints were legally published under the terms of the 1710 Act. Certainly, Scots booksellers insisted that the law (enacted, of course, by a newly British parliament) determined what they could reprint and also how they might defend themselves in any prosecutions brought against them by the London trade. If a title had not been registered at Stationers’ Hall or if its copyright had lapsed, then in their interpretation of the 1710 Act they saw no reason not to reprint—a resolution enthusiastically supported by the Scottish Court of Session in 1751.70 Thus Gavin Hamilton and Charles Elliot of Edinburgh punctiliously registered works at Stationers’ Hall, and also, like other leading Scots booksellers such as John Balfour and William Creech, reprinted London titles that they regarded as fair game.71 The costs and likely ineffectiveness of prosecution seemed, with a few notable exceptions in the 1770s and 1780s, to have deterred actions against the reprinting efforts of the Edinburgh and Glasgow presses. As Warren McDougall has argued, the Scots, supported by the decision of the Court of Session, were reprinting some twenty-five years before the 1774 House of Lords ruling in England.72 As Tom Bonnell has detailed, much of St Clair’s “old canon” was reprinted for most of the century before 1774.73


72. McDougall, supra note 69, at 155.

¶44 More detail could be given, but the point, again, is that individual actions were key. From the Strand, John and Alexander Donaldson—the heroes or villains of the accepted story—continued the practice of many Scottish booksellers and sold reprints of popular books whose copyright they considered lapsed under the 1710 Act or whose title had never been entered at Stationers’ Hall. John Donaldson’s catalog of 1762 described his shop at 195 Strand as “known by the name of, The Only Shop for CHEAP BOOKS.” The brothers had boasted of reprints “from thirty to fifty per cent under the usual London price.” The long-running battles over literary property rights confirmed, of course, the rising potential of the market. The reprinting of proven titles at cheaper prices (and mostly by Scottish presses) rejuvenated demand and almost certainly contributed to advancing provincial and female custom.

¶45 At first, new ventures were led by challenging Scottish and London-based booksellers like Kincaid, Creech, and the Donaldsons, but after the 1774 ruling, astute publishers like John Bell and Joseph Wenman launched important series of popular publications, taking advantage of the embarrassment caused to many existing booksellers’ associations. The much more competitive market that resulted, however, probably aided rather than prevented the regrouping and even greater assertiveness of copyright owners. This ensured the continuation of familiar methods of sharing and protecting the financing of publication. Eventually the developments, assisted in part by the challenge to copyright, promoted what John Murray called the “simple publisher”74: that is, the bookseller, risking all (and often failing) and acting on his own in negotiations with the author and the rest of the trade.

¶46 In the 1780s, the same dislocation undermined the existing system of sharing publication of large new works between many London booksellers, successor collaborations proving rather different associations from the large syndicates operating at the height of the monopoly period. Nevertheless, what Boswell called “honorary copyright” and Graham Pollard branded “de facto copyright” did continue under a system of shared printing rights in a book (or “sharebook system”) still dependent on assertions based on the economic and organizational superiority of its member booksellers. And those booksellers, who earlier defended their associations by appeal to the 1710 Copyright Act, actually relied on custom and consensual practice as much as appeals to common law, property rights, and author agreements.75

¶47 In such ways, the sharebook system survived and developed, but syndicates had to take into account increased competition. The efforts of many booksellers, based on novel promotional techniques, advertising, and more adventurous retail and distribution, continued to modify the organization of booksellers’ associations, and all book publishing responded to the changed market and marketing activities.

Donaldson’s victory unsettled expectations in ways that might now seem surprising. In 1774, Murray had to write a reassuring, and indeed reproving, letter to William Creech in Edinburgh. Creech, John Balfour, and others with lucrative connections to the London trade needed reassurance that their forty-four-volume edition of the *British Poets*, actually begun in 1773 before the Lords ruling, but now entirely legal in London, would not sour trading relations. By contrast, Murray remained anxious that unless reprinting continued with confidence, those who had sought to protect untenable copyright would successfully seek redress.

¶48 The wider issue is that clarification of the legal settlement reduced risk. The law (whether common law or the reinterpreted statute of Anne) could be used to threaten even without being applied. After 1774, challenging booksellers were freer to reprint, just as the syndicates could continue to protect their interests beyond the statutory terms. In effect, the greater risk was now transferred from those involved primarily in reprinting to the established publishing booksellers—the difference being that the greater economic power of the associations lessened their risk. Trusting to reputation and wealth within the trade had always afforded such protection—for example, in the 1750s Robert Dodsley chose not to register any of his publications at Stationers’ Hall, including some of his most potentially valuable copyrights.

¶49 At the close of what is, perhaps, a pause rather than a stop to research in the archives, one further conclusion might be offered about the copyright debate. In many ways, the 1840s marked a clearer transition from one age of bookselling to the next. The industrial, mass production of books accelerated after the mid-nineteenth century, before which the older practices remained visible. More tellingly, the struggles over copyright and taxation in the 1840s, the culmination of many decades of dispute and protest, encouraged, once again, passionate argument about the future of publishing and bookselling.

¶50 As with earlier encounters between booksellers and authority, what we read of the legislative enactments and judicial pronouncements of the first half of the nineteenth century does not always correspond to the reality of the outcome. Contradictory rights and principles were also at issue. Campaigns on behalf of authors’ rights proved inimical to the campaign for cheap books. Behind each crusade (that for copyright reform and that against the taxation of knowledge) were lobbying publishers, whose protest in one cause or the other (it was difficult to combine both) masked their own commercial interests. Furthermore, by the mid-nineteenth century, many of the parties also looked to markets and publishers outside Britain, whether as authors and booksellers attempting to stem cheap foreign imports or as authors and booksellers seeking to improve their lot by greatly increased reprinting and sales abroad.

¶51 In many respects, the results of mid-nineteenth-century copyright legislation were more far-reaching than those of the eighteenth century, despite the furor


over the decisions concerning copyright in 1768 and 1774. After five years’ debate, the Copyright Act of 1842 offered legislative protection of copyright for either the life of the author plus seven years, or forty-two years from the date of publication, whichever was greater. The 1842 Act replaced an 1814 Act (itself following a period of stagnation since the climactic events of 1774) with its term of twenty-eight years or the term of the author’s life if this was longer. As Catherine Seville has argued, Donaldson v. Becket created discontinuity rather than resolution in long-term arguments about copyright. The 1774 ruling did not resolve the justification for copyright, and by confirming its governance by statute, extended the problem of how copyright issues were to respond to social and cultural change.

§52 To a limited extent, authors did benefit from the further legislative control. The 1842 Act, as steered successfully through Parliament by Viscount Mahon, assured certain protection to the families of the most successful authors. A highly select group of writers were now able to demand impressive sums from publishers. In many ways, the 1842 debate was more important than the result, given the relative modesty of the actual change. In the longer perspective, it has been argued that the 1842 Act proved more important for offering foundations for the later 1911 Copyright Act and even for the acts of 1956 and 1988.

§53 By the beginning of the nineteenth century, publishing and bookselling operated under a legislative oversight that was slight by Continental standards. The political and legal constraints of many other European governments effectively erected barriers to the social extension of knowledge and education. In the 1790s, the government had attempted to control the press through the Seditious Societies Act, requiring the compulsory registration of printing presses, press-makers, and typefounders, but not attempting to revive the idea of the licensing of publication itself. In the English book trade, prosecution for sedition and libel presented the greatest danger to the reckless or the inattentive. The 1792 Libel Act enabled greater license for newspaper proprietors and writers, but such acts, amid antirevolutionary fervor, offered little encouragement to wider press freedom. Governments revived the libel laws in 1809–10 and again after 1815, although they were rarely used after 1824. In 1819, the Seditious and Blasphemous Libels Act did place limitations on the Attorney General’s privileges in prosecutions against the press, but its punishment of banishment lasted until repeal in 1830. The law, however, began recognizing a reality. The outpouring of publications during the trial of Queen Caroline in 1820 and 1822 included many that openly flouted the libel and blasphemy laws, yet very few prosecutions were brought. Later, the prosecutions for libel of Alexander of The Morning Journal in 1829 and of William Cobbett in 1831 were deemed exceptional. In 1843, the passage of Lord Campbell’s Libel Act

80. For Mahon’s role, see James J. Barnes, Authors, Publishers and Politicians 121–27 (1974).
81. See Seville, supra note 79, at 210–18.
82. 39 Geo. 3, c. 79 (1799).
acknowledged the notion of a defense based on publication for public benefit. In actions against a newspaper for libel, the Act allowed a defendant the plea of publication without malice and the opportunity to pay money into court as amends. The Act also accepted that defendants might plead that publication proceeded without their consent or knowledge.

\[54\] Such a history further illuminates the agency of individuals, and of their motivation, resilience, and effectiveness, within the context of market exigencies. Presses seem to have worked below capacity until the second half of the seventeenth century; thereafter, surging demand created new market conditions and fully active printing houses and publishing firms. Publishing histories seem prone to the imposition of grand schemes to explain changes in productivity or textual content. Of particular and continuing interest is the intervention of the law and the assertiveness of guilds or property-owning groups in determining transitional moments in the book industry. Parliamentary legislation assumes the appearance of finality, but the reality of the interpretation of statute or compliance with it is often quite a different matter. Law, especially common law, is tested by individuals, frequently with dramatic outcomes that seem to define moments of change—and particularly commercial change. Sometimes, however, what an individual claims (especially if coupled with an opportunity for publicity) masks continuing challenges and resistances. This is particularly so when the reporting or celebration of a particular legal case or event (by an individual or by government) is assigned legendary status. This creates huge difficulties for historians in their task of trying to understand what actually happened rather than what an authority or a determined individual wanted to make it appear to have happened.

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84. 6 & 7 Vict., c. 96 (1843).
“That Most Congenial Lawyer/Bibliographer”

Mary Whisner**

Ms. Whisner delves into Morris L. Cohen’s Bibliography of Early American Law, demonstrating how much information it contains that will be interesting and useful for law librarians.

¶1 Morris Cohen, generous in crediting the work of others, called J.G. Marvin, whose Legal Bibliography was published in 1847, “that most congenial lawyer/bibliographer.”1 I never met John Gage Marvin, of course, but I think Morris Cohen himself could have given him a run in any congeniality competition. And so I apply to him the label he gave to his nineteenth-century intellectual forebear.2

¶2 Cohen’s Bibliography of Early American Law (BEAL) “represents the apex of the bibliographic scholar in the law.”3 I knew that. I knew he had spent more than thirty years at work on it. And I knew that BEAL stood at the ready on a shelf in our reference area, six hefty volumes with a supplement that’s nearly as big. But, frankly, I had never spent time with it until I decided to write about it for this issue of Law Library Journal.

¶3 How do you make the acquaintance of such a mammoth work? The author’s own introduction4 is a good place to start. He explains the bibliography’s purposes, its scope, and its organization. From there, you can use BEAL for your research. Or, if you don’t have an immediate research need, you can sit down and browse, as I did.

© Mary Whisner, 2012. Once again, I am grateful to my friend Nancy Unger (an actual historian, not just an interested reader as I am) for commenting on a draft.

** Reference Librarian, Marian Gould Gallagher Law Library, University of Washington School of Law, Seattle, Washington. Mary Whisner has been writing the “Practicing Reference” column for Law Library Journal since 1999. Her tribute to Morris Cohen’s Bibliography of Early American Law marks her fiftieth column.

2. Like Cohen, Marvin was for a time Harvard Law School’s librarian. 1 COHEN, supra note 1, at 248 (entry 1815).
4. 1 COHEN, supra note 1, at xvii. The introduction is repeated at the beginning of each volume. The appendixes listing abbreviations used for the locations of the works examined and for works cited are also included in each volume. This is a convenience for a user interested in the subject covered in one volume; there’s no need to tote another volume or two to be able to refer to the front and back matter.
As the introduction explains, the bibliography presents information about a wide variety of works related to U.S. law, whether published in America or abroad, and works on foreign and international law if published here, from the earliest colonial times through 1860. One of Cohen’s goals was “to broaden the concept of legal and law-related literature by including categories of material not usually present in law bibliographies,” and so BEAL includes sermons and self-help manuals as well as American editions of Blackstone’s *Commentaries on the Laws of England*. Many of the works included are quite short—broadsides, pamphlets, and so on—while others are substantial treatises.

The basic unit is the bibliographic entry, identified with a number, that gives the author, title, publication information, and so on, and often includes notes by Cohen and the staff who assisted him. The entries are presented by subject, first within monographs and then within trials and special proceedings. Thus, you can go to page 165 of volume 1 to start reading about works on admiralty and maritime law, or, if you want to find works on the trials of military offenses, you can go to volume 4, page 731. In addition to this access by broad subject area, BEAL offers access by eight (count ‘em, eight!) indexes: author, title, subject, jurisdiction, parties (for litigation-related material), place and publisher, chronological, and language.

Browsing gave me an impressionistic view of three centuries of American law, legal publishing, and society. It also revealed little surprises tucked among the dry, matter-of-fact entries. You might not think that a textbook could have much of an impact on national events, but take a look at this note that ties the Revolutionary generation to the Civil War:

William Rawle (1759–1836), a Philadelphia lawyer who previously had held loyalist sympathies, was appointed United States Attorney for Pennsylvania in 1791. He also served as counsel for the Bank of the United States and as a member of the Pennsylvania legislature.

This work [*A View of the Constitution of the United States of America*], suggesting that Rawle believed the states had the right to secede from the Union, was used as a textbook for many years at West Point and other schools throughout the country. It is therefore generally considered to have influenced subsequent leaders and supporters of the Confederacy, although in fact Rawle opposed secession.

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5. *Id.* at xxii.
6. *Id.* at xvii–xviii. Cohen is the author of *BEAL*, but it is the work of many. His acknowledgments list eight people who worked on it full-time for some period, and thirty-eight people who worked on it part-time. *Id.* at xiv–xv.
7. Some non-English works were intended for European or Latin American audiences. For example, Story’s *Commentaries on the Constitution* was published in French (Paris) and in Spanish (Buenos Aires). *Id.* at 568–69 (entries 2918–2919). Others were meant for Americans whose first language was not English. For instance, the proceedings of the 1787 Pennsylvania constitutional convention were published in English and German editions, *id.* at 558 (entries 2885–2886), and those of the 1849 California constitutional convention were published in both English and Spanish, *id.* at 592 (entries 2998–2999).

I did a quick tally of the entries in the language index, and from least common to most common, the languages were Algonquian (1 entry); Italian (4 entries); Latin (6 entries); Dutch (11 entries); Spanish (1½ pages); German (1¼ pages); French (5 pages). 5 *id.* at 1031–44.
8. 1 *id.* at 560.
¶7 Not all of the interesting nuggets were as historically significant as that. For instance, I was struck by the elaborate titles that used to be the style. Nowadays almost any title fits easily on a line, even if a subtitle is included: *International Taxation: Corporate and Individual;*9 *Climate Change: A Reader;*10 *Asylum Denied: A Refugee’s Struggle for Safety in America.*11 Contrast this title by Joseph Chitty, from 1836:

> A practical treatise on bills of exchange, checks on bankers, promissory notes, bankers’ cash notes, and bank notes . . . 8th American from the 8th London edition [1833], newly modelled, and greatly enlarged and improved; and with references to the law of Scotland, France, and America; and new chapters on agents, partners, consideration, stamps, requisites, loss, times of presentment, non-payment, protest and notice, evidence, bankruptcy, forgery, larceny, embezzlement, and false pretences; and an appendix of precedents. Containing the American notes of former editions, by Judge Story, E. D. Ingraham, and Thos. Huntington, esqs. To which are now added, the cases decided in the courts of the United States, and of the several states, to the present time, and the decisions of all the English courts in 1833 and ’34.12

¶8 Sometimes, the title told an amazing story:

> Sketches of the life of William Stuart, the first and most celebrated counterfeiter of Connecticut; comprising startling details of daring feats performed by himself—perils by sea and land—frequent arrests and imprisonment—blowing out of jail with powder—failure of escape after he had led his cowardly associates out of the horrible pit, in Simsbury, into the prison yard, &c. As given by himself.13

Cohen observes that throughout the text the author “confesses and repents of his crimes, and warns of the dangers of vice and crime.” So this 1854 memoir must have been quite morally uplifting and couldn’t have been taken as a thrilling adventure tale. Or perhaps the author wanted his book to be thrilling enough to sell well, while expressing enough repentance to satisfy the righteous.

¶9 The authors are as much fun to browse as the titles. There were plenty of works by Georges, Johns, and Josephs, but I enjoyed the names that you just wouldn’t see on a class roster today, so I started listing the ones that were particularly appealing: Theodoric Bland, Estwick Evans, Ezekiel Forman Chambers, Lysander Spooner, Erastus Cornelius Benedict, Mordecai M’Kinney, Jabez Delano Hammond, Peletiah Webster. These were all in the early parts of volume 1. Later I skimmed the author index14 and found even more: Ventura de Arquellada, Kazlitt Arvine, Orestes Augustus Brownson, Ebenezer Devotion, Lucius Quintius Cincinnatus Elmer, Michel René Hilliard d’Auberteuil, Theophilus Parsons (two!), Marmaduke Blake Sampson, Cornelius van Bijenkershoeck, Zephaniah Swift. The richness of the names makes me want to stand on a stage and declaim.

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10. CLIMATE CHANGE: A READER (William H. Rodgers, Jr., et al. eds., 2011).
12. 1 COHEN, supra note 1, at 455 (entry 2531).
13. Id. at 951 (entry 4173).
14. 6 id. at 3–161.
BEAL’s author index also presents a parade of pseudonyms. Many have classical origins: Agonistes, Agrestis, Brutus, Cincinnatus, Indus Britannicus, Probus, Publicola, Publius. A whole string of pseudonyms were built on the Greek root for “loving”: Philadelphus, Philalethes, Philandros, Philanthropos, Philo-Caroliensis, Philodemos, Philodicaios, Philo-Dicaios, Philoeunomos, Philo-Keithius, Philopatriae, Philopolites. The classical references don’t mean much to me or, I’m sure, to most readers today, but educated men in the eighteenth and nineteenth centuries had studied Greek and Latin and would have recognized the allusions. Of course, Madison, Jefferson, and their contemporaries wouldn’t have known what to make of a pseudonym like “Wonkette,”15 so we’re even.

Even more of the pseudonyms describe the purported author: An American, An American Citizen, An American recently returned from Europe, A citizen, A citizen of Massachusetts, A citizen of New York, A friend, A friend of truth, and of honorable peace, A friend to the constitutional rights of the citizen, A gentleman of the bar, and so on. A gentleman of the bar was particularly prolific, and that made me notice something I didn’t find in the author index: many women. Fewer than three dozen appear in an index that’s over 150 pages long. It’s not surprising, but it’s a good reminder of the constraints on women through most of American history.

It is little surprise that a bibliography covering this period would include writings by the men who were active during the Revolutionary War, created the Constitution, and led the new nation: Thomas Paine, Benjamin Franklin, James Madison, Thomas Jefferson, John Adams, Alexander Hamilton, John Jay, and others. And, as you’d expect, there are many entries for the famous legal authors of the period: William Blackstone (whose Commentaries on the Laws of England was a mainstay of early American lawyers and was published in many U.S. editions16), James Kent, John Marshall, Joseph Story, Daniel Webster. BEAL also includes works by philosophers and political theorists, such as John Locke, Montesquieu, Jean Jacques Rousseau, and Jeremy Bentham.

But BEAL has much more than just founding fathers, eminent jurists, and philosophers. Flipping through the author index, one also finds many names familiar from other periods of U.S. history: presidents (John Quincy Adams, Millard Fillmore, William Henry Harrison, Andrew Jackson), abolitionists (Frederick Douglass, William Lloyd Garrison, Angelina and Sarah Grimké), women’s rights advocates (Elizabeth Cady Stanton). Sometimes, these historical figures appear for a reason unrelated to their most famous roles—for instance, Abraham Lincoln is in the bibliography not for his time as President (remember, BEAL’s coverage ends


16. 2 Cohen, supra note 1, at 218–31 (entries 5310–5352).
in 1860, just before he took office) or for his law practice, but because he was one of the commissioners reporting to the Illinois governor on canal claims in 1853.17

¶14 The bibliography also records legal documents that were incidental to historical events. For instance, when he was bringing Anglo-American settlers to what is now Texas, Stephen F. Austin edited a translation of Mexican laws for their use.18 The colony used a printed form as a permit to settle.19 Sam Houston, another figure in early Texas history, also appears in the bibliography. In 1859, he gave an impassioned speech in the Senate urging the removal of the judge of the federal court in Texas.20 Cohen quotes Houston’s conclusion: “I insist that we be relieved from this judicial monster . . . .”21

¶15 Houston is also in BEAL for an incident in 1832, long before he moved to Texas. Offended by Representative William Stanbery, he struck the congressman on a street in Washington, D.C. Houston’s subsequent trial for contempt of Congress “raised novel questions in American law and congressional procedure.”22 President James K. Polk visited the House to argue that that body lacked constitutional authority to punish an offense not committed there.23 Houston’s counsel was Francis Scott Key, a historical figure I had mentally left forever in 1812 under the rockets’ red glare, wondering if the flag was still flying over Fort McHenry.24

¶16 After Austin and Houston, it’s natural to think of Dallas, the reporter of the first four volumes of United States Reports (1790–1806). BEAL’s author index lists three men named Dallas: Alexander Dallas, Alexander James Dallas, and George Mifflin Dallas. Rather, the index lists two men, one of them twice: Alexander Dallas and Alexander James Dallas are one and the same. (The title page of 1 U.S. credits A.J. Dallas, Esquire.) In 1795, Dallas opposed the Jay Treaty that set the terms of the peace with Britain.25 And as a U.S. Attorney in 1802, he issued an opinion denying the vote to Tories who had been loyal to Britain during the war.26 George Mifflin

17. 3 id. at 891 (entry 10961).
18. 2 id. at 206 (entries 5280–5281).
19. 3 id. at 858 (entry 10866). For more on Austin, see Eugene C. Barker, Austin, Stephen Fuller, in HANDBOOK TEX. ONLINE, http://www.tshaonline.org/handbook (last visited Nov. 2, 2011) (site published by the Texas State Historical Association).
20. 5 COHEN, supra note 1, at 119 (entries 14543–14544). The speech was separately published in two editions, twenty-eight pages and one hundred pages.
22. 5 COHEN, supra note 1, at 141. Material related to United States v. Houston is in id. at 141–43 (entries 14605–14612).
23. Id. at 143 (entry 14612).
24. Key also shows up in BEAL prosecuting a doctor charged with allegedly inciting slaves to revolt (the doctor was acquitted). 4 COHEN, supra note 1, at 705. For more on Houston, see Thomas H. Krenke, Houston, Samuel, in HANDBOOK TEX. ONLINE, supra note 19. The United States v. Houston trial resulted in a reprimand by the House. 5 COHEN, supra note 1, at 141.
25. See 2 COHEN, supra note 1, at 948 (entry 7677), 951 (entry 7689).
26. 1 id. at 406 (entry 2352). Dallas served as Pennsylvania’s secretary of the commonwealth in the 1790s. Later he was Secretary of the Treasury (1814–16), succeeding Albert Gallatin, and also served as Acting Secretary of War (March–December 1815), then, briefly, as Secretary of State (1815). John K. Alexander, Dallas, Alexander James, in 6 AMERICAN NATIONAL BIOGRAPHY 30, 30–31 (John A. Garraty & Mark C. Carnes eds., 1999).
Dallas was Alexander’s son and, like his father, a lawyer and politician. He was Vice President in the Polk Administration and minister to Britain under Pierce and Buchanan.\textsuperscript{27}

\section{17} Dallas is just the first of the reporters whose names are preserved in Supreme Court citations.\textsuperscript{28} Cohen’s biographical notes in BEAL show that several of these men had quite distinguished careers, in addition to the roles that put their names on United States Reports and in millions of citations.\textsuperscript{29} William Cranch, who was the reporter from 1801 to 1815, was later Chief Justice of the United States Circuit Court of the District of Columbia; he is credited with preparing Code of Laws for the District of Columbia in 1816.\textsuperscript{30} He was also a nephew of John Adams.\textsuperscript{31} Henry Wheaton, who was the reporter from 1816 to 1827, served as a diplomat for the next twenty years (1827–1846) and wrote two important treatises on international law.\textsuperscript{32} Wheaton also made it into BEAL as a plaintiff, when he sued his successor, Richard Peters, for republishing his reports (albeit without his commentary).\textsuperscript{33} John W. Wallace was a legal scholar, a librarian, and a Master in Chancery, in addition to serving as reporter.\textsuperscript{34} He took reporting so seriously that he wrote a book about English and American reporters with, as he said in the subtitle, “occasional remarks upon their respective merits.”\textsuperscript{35}

\begin{thebibliography}{99}
\bibitem{27} Phyllis F. Field, \textit{Dallas, George Mifflin, in 6 American National Biography}, \textit{supra} note 26, at 31, 33. Field concludes her portrait of Dallas: “Remarkable in none of his achievements, he represented the honorable norm for public servants of his generation.”

\begin{itemize}
\item Lest you think that there’s no connection between the Philadelphia lawyers named Dallas and the city in Texas and that I was merely making a pun when I transitioned from Austin and Houston to Dallas: “The origin of the name Dallas [Texas] is unknown. Candidates include George Mifflin Dallas, vice president of the United States, 1845–49; his brother, Commodore Alexander J. Dallas, United States Navy; and Joseph Dallas, who settled near the new town in 1843.” Jackie McElhaney & Michael V. Hazel, \textit{Dallas, TX}, \textit{Handbook Tex. Online}, \textit{supra} note 19.
\item The list is Dallas, Cranch, Wheaton, Peters, Howard, Black, Wallace. \textit{The Bluebook: A Uniform System of Citation} 215 tbl.T1.1 (19th ed. 2010).
\item While you can piece together information from the bibliographic notes, as I did, you can learn much more about the reporters’ lives in Gerald T. Dunne, \textit{Early Court Reporters}, 1976 Y.B. Sup. Ct. Hist. Soc’y 61.
\item \textit{3 Cohen, supra} note 1, at 692 (entry 10307). Cranch apparently handled appeals from the commissioner of patents, because a treatise and a compilation of patent laws both included his decisions. See 2 \textit{id}. at 780 (entry 7116), 791 (entry 7161).
\item 1 id. at 291 (entry 1965).
\item \textit{2 id}. at 807–11 (entries 7201–7211). \textit{Elements of International Law} went through six editions between 1836 and 1855 and was translated into French, Spanish, and Italian. \textit{History of the Law of Nations in Europe and America} was first published in French (1841), then in an enlarged edition in English (1842), and in Italian (1859). \textit{Id.}
\item 4 id. at 143 (entries 11538–11539). \textit{See also} Dunne, \textit{supra} note 29, at 64–65. The case went to the Supreme Court, which held that a reporter could not have a copyright in the opinions of the Court, so Wheaton lost his case against Peters. Wheaton v. Peters, 33 U.S. (8 Pet.) 591 (1834). Peters’s summary of the arguments of counsel is so extensive that the opinion of the court does not begin until page 654.
\item 1 Cohen, \textit{supra} note 1, at 243.
\item \textit{Id.} at 243–44 (entries 1796–1798). Although the first edition of \textit{The Reporters} (1844) was just seventy-seven pages, the third (1855) was 424 pages. \textit{Id.} I took a look at this because Bob Berring recommended it, Robert C. Berring, \textit{How to Be a Great Reference Librarian}, \textit{Legal Reference Services Q.}, Spring 1984, at 17, 22–23, but I’ve never tried to read the whole thing. Wallace also published a lecture decrying the lack of uniformity in state commercial law. 1 Cohen, \textit{supra} note 1, at 437 (entry
\end{itemize}
\end{thebibliography}
§18 While BEAL covers some works by the reporters, it does not cover the reports themselves, since it is limited to “the monographic and trial literature of American law . . ..”36 For coverage of the early reports of Supreme Court cases, we have a bibliography Morris Cohen prepared with Sharon Hamby O’Connor.37 Bibliographies of nominative reporters in American states were among the projects Cohen listed for future bibliographers.38

§19 When you’re beachcombing, it’s a delight to come across a particularly nice shell or piece of glass. When I was browsing in BEAL, I took a similar pleasure in finding literary figures. Washington Irving wrote (or might have written) A Plea for Authors and the Rights of Literary Property.39 Letters from Victor Hugo and Alexis de Tocqueville were included in one of the American Anti-Slavery Society’s publications.40 Daniel Defoe wrote tracts criticizing the British government’s treatment of people in Carolina.41 Samuel Johnson’s ninety-one-page work, Taxation No Tyranny: An Answer to the Resolutions and Address of the American Congress, went through four editions in 1775.42 Half a century later, an essay he’d written about imprisonment for debt was printed as an appendix to The Debtor’s Prison: A Tale of a Revolutionary Soldier (1835).43 Nathaniel Hawthorne wrote a biography of Franklin Pierce for his campaign; Cohen opines that “its quality is better than usual for the genre.”44 After her influential novel, Uncle Tom’s Cabin (1852), Harriet Beecher Stowe published a book of “documentary sources underlying and substantiating the fictional incidents and slave conditions” it described.45 Key to Uncle Tom’s Cabin went through two American editions, at least five in London, and one in Leipzig.46

§20 People from other fields also pop up in BEAL. For instance, Charles Bulfinch, the influential Boston architect who designed the Capitol in Washington, D.C., is in BEAL for his reports on penitentiaries.47 Why would Joseph Priestley, the man who discovered oxygen, be in a legal bibliography? Because he was interested in much more than oxygen (just as Benjamin Franklin was interested in much more than electricity). In 1769, Priestley wrote The Present State of Liberty in Great Britain and Her Colonies.48 A 1773 collection by Thomas Paine included Priestley’s Remarks

2463).

36. 1 COHEN, supra note 1, at xvii.
38. Cohen, Compiling, supra note 1, at 138.
39. 2 COHEN, supra note 1, at 777 (entry 7107). The pamphlet says only that it was written by “an American.” It has been attributed to Washington Irving and to Grenville A. Sackett. Id.
40. 3 id. at 594 (entry 9946).
41. 1 id. at 724 (entries 3452–3453).
42. 2 id. at 608 (entry 6597).
43. Id. at 170 (entry 5170).
44. 1 id. at 323 (entry 2075).
45. 3 id. at 609.
46. Id.
47. 1 id. at 973 (entries 4243–4244).
48. 2 id. at 644 (entries 6724–6725).
on Blackstone.\textsuperscript{49} A minister, Priestley also wrote about biblical law.\textsuperscript{50} (There are remarkably few typos in \textit{BEAL}, considering its size, but “Priestley” seems to have been a problem, showing up as “Priestly” several times in the notes.\textsuperscript{51})

\textsuperscript{¶21} Some famous inventors appear in \textit{BEAL} because of intellectual property disputes: Isaac Singer (sewing machine patent),\textsuperscript{52} Charles Goodyear (vulcanized rubber patent),\textsuperscript{53} Samuel Colt (revolver patent),\textsuperscript{54} Robert Fulton (monopoly to operate steamboat),\textsuperscript{55} Samuel F.B. Morse and his telegraph show up under both civil trials and special proceedings.\textsuperscript{56} Perhaps there should have been even more. A note by the material for \textit{Morse v. O’Reilly} advises: “For related cases see: Special Proceedings/Intellectual Property/Morse, Samuel F. B.; Trials/Civil/Intellectual Property/Morse et al. v. Smith; and Trials/Civil/Intellectual Property/Smith v. Downing.”\textsuperscript{57} This cross reference is the only time \textit{BEAL} let me down. Despite my best attempts—looking under the headings I was directed to, using the party index, and full-text searching—I never did find anything about \textit{Morse v. Smith} or \textit{Smith v. Downing}.

\textsuperscript{¶22} Ministers are also represented in the bibliography. Toward the end of the period covered, they were outspoken on slavery, both for and against.\textsuperscript{58} And near the beginning of that period, Increase and Cotton Mather were outspoken on many issues of morality and proper conduct. Cohen reports that “Increase and Cotton Mather, distinguished Boston ministers,” contributed to the witchcraft hysteria in Salem in 1692.\textsuperscript{59} But Increase Mather also “issued the first public criticism in New England against the Salem witchcraft trials.”\textsuperscript{60}
gave to condemned pirates were published in 1704 ("Faithful warnings to prevent fearful judgments"), 1724, and 1726. Here’s the title from a booklet with two of Cotton Mather’s sermons on murder:

The sad effects of sin. A true relation of the murder committed by David Wallis, on his companion Benjamin Stolwood: on Saturday night, the first of August, 1713. With his carriage [sic] after condemnation; his confession and dying speech at the place of execution, &c. To which are added. The sermons preached at the lecture in Boston, in his hearing, after his condemnation; and on the day of his execution, being Sept. 24, 1713.

You might expect ministers to preach against murder and piracy. But Cotton Mather also weighed in on commercial law: Cohen calls his Lex Mercatoria a “sermon on business ethics.” And Cotton Mather’s essay Proposals to Lawyers (originally one of his Essays to Do Good) was published separately around 1812, long after his death.

¶23 Today some writers, bloggers, and other commentators are sharply critical of law and the legal profession. That sentiment is hardly new. For instance, in 1822, interested readers might find


The title page named the author only as “a lover of improvement.” In 1829, Lorenzo Dow, whom BEAL describes as “an eccentric, itinerant preacher,” wrote a seventy-one-page book, Omnifarious Law Exemplified: How to Curse and Swear, Lie, Cheat and Kill; According to Law!

¶24 Long before Nolo published its first book helping nonlawyers, there was Isaac Ridler Butts, a Boston printer who compiled and published, between 1846 and 1860, works aimed at, variously, businessmen, creditors and debtors, landlords and tenants, merchants and common carriers, sailors and fishermen, and executors and administrators. And Butts was far from the only producer of do-it-yourself law

Invisible World (1692), which Mather approved of in an introduction, thus straddling one of the most troublesome moral issues in New England Puritan history. Increase Mather’s ambivalence about the witchcraft trials did nothing to harm his career during his lifetime but greatly damaged his later reputation.

Michael G. Hall, Mather, Increase, in 14 American National Biography, supra note 26, at 686, 688.

61. 4 Cohen, supra note 1, at 901 (entry 13923).
62. 1 id. at 921 (entry 4089).
64. 1 Cohen, supra note 1, at 921 (entry 4090).
65. Id. at 429 (entry 2429). Mather also wrote about bills of credit. Id. at 461 (entry 2550).
66. 3 id. at 192 (entry 8515). The publisher was Joseph Dix, father of the social reformer Dorothea Dix.
67. 1 id. at 29 (entry 1081).
68. Id. at 6 (entry 1005).
70. 3 Cohen, supra note 1, at 76–82 (entries 8169–8188).
books. There were also, for instance, *The Seaman’s Manual* (1830),71 *The Banker’s Common-Place Book* (1851),72 *The Merchant’s and Shipmaster’s Assistant* (1822),73 and *The American Trader’s Compendium* (1811).74 A law professor from the University of Pennsylvania wrote *Popular Lectures on Commercial Law: Written for the Use of Merchants and Business Men* (1856).75 A book from 1858 was aimed at women:

*Every woman her own lawyer. A private guide in all matters of law, of essential interest to women . . . containing the laws of the different states relative to marriage and divorce, property in marriage, guardians and wards, rights in property of a wife, rights of widows, arrest of females for debt, alimony, bigamy, voluntary separations, discarded wives, suits by and against married women, breach of promise, deserted wives, clandestine marriages, adultery, dower, illegitimate children, step-fathers and step-children, slander, minors, medical maltreatment, just causes for leaving a husband, a wife’s support, property in trust, transfer of property, deeds of gift, annuities, pretences in courtship, etc., etc., etc.*76

Because of the book’s viewpoint, Cohen speculates that it “may have been written by a woman under a pseudonym.” He goes on:

> A section on the limitations of the liability of husbands for their wives’ debts ends with this sentence: “Justice does not recognize a husband’s right to play the brute, the sordid miser, nor the despot to his wife, who is, in law, his equal.” Which equality, of course, the text does not bear out.77

I love it that Cohen quoted the author’s lofty (and hopeful) sentence, and that he added his own dry comment about the state of the law in 1858.

¶25 Unless you’re fixated on footnotes, you probably didn’t notice that these examples of self-help law books came from two separate volumes of *BEAL*. Butts’s works were grouped in volume 3 under Legal Manuals/Legal Manuals for Laymen. *Every Woman Her Own Lawyer* was also in volume 3, but under Women. The others were in volume 1, under three different subjects: Admiralty and Maritime Law, Banks and Banking, and Commercial Law. You could make an argument that they all should have been under Legal Manuals/Legal Manuals for Laymen—or that Butts’s books, like the others, should have been listed under their subjects. It’s hard—or impossible—to come up with a perfect classification scheme because works can often fit comfortably in two or more places.78

¶26 Cohen said that it was a difficult decision to arrange the entries in *BEAL* primarily by subject, rather than alphabetically by author or chronologically by year.79 He based that decision on consultation with legal historians and law librarians and judged that indexes could serve the needs of researchers who wanted to

71. 1 id. at 169 (entry 1571).
72. Id. at 201 (entry 1657).
73. Id. at 421–23 (entries 2396–2404).
74. Id. at 429 (entry 2430).
75. Id. at 432 (entry 2445).
76. 3 id. at 920 (entry 11076).
77. Id.
79. 1 Cohen, *supra* note 1, at xxiii; Cohen, *Compiling*, *supra* note 1, at 132.
see how works fit together in other ways. As a browser and a dabbler, I appreciated the subject arrangement. Sometimes there were odd temporal juxtapositions (when a work from the seventeenth century was close to one from the nineteenth), but I wasn’t bothered by them—I just reminded myself to look at the dates as I browsed. I also availed myself of the indexes when a question occurred to me, for example, turning to the author index to find more works by an author I stumbled across while browsing a subject.

¶27 I love BEAL’s short biographical and historical notes. Because of the subject arrangement, choices had to be made: If author A wrote in three or four subject areas, do you add a biographical note in each place? If so, do you add the same note, or do you adapt it to the context? Cohen chose to provide biographical notes for only some works, and they vary.

¶28 For example, when I was skimming the constitutional law section, I noticed a speech by Judah Philip Benjamin in San Francisco in 1860.\(^80\) I wondered whether this was the same Judah P. Benjamin I remembered seeing in a portrait in New Orleans. If so, what was he doing in California? That entry lacked a biographical note, so I looked for one elsewhere.\(^81\) The section on Civil Trials/Real Property had several entries for documents related to *Castillero v. United States*, including one with a note about Benjamin: “Judah Philip Benjamin (1811–1884) was an attorney who represented California settlers who made claims under Spanish land titles in 1847. He later became Attorney-General of the Confederacy.”\(^82\) Under Monographs/General Works/Digests/Louisiana, there’s a longer note, attached to the digest of Louisiana decisions Benjamin compiled:

> Benjamin (1811–1884) practiced law in New Orleans beginning [sic] in 1832. He later served in the United States Senate from 1852 to 1861, and as Attorney General and Secretary of State of the Confederacy. He fled to England after the Civil War and had a successful legal career there.\(^83\)

So sometimes you see a biographical note and sometimes you don’t, and when you do, it might tell only part of the story.\(^84\)

¶29 I first encountered Abel Brewster under Banking, where he has three books about his invention to make it hard to counterfeit bank bills.\(^85\) A note informed me: “Abel Brewster (1776–?) began his career as an engineer in a Connecticut silversmith business and later became an inventor and builder.”\(^86\) How interesting! It

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80. 1 COHEN, supra note 1, at 530 (entry 2792).
81. When I searched for “Benjamin, Judah” in BEAL on HeinOnline, I got hits in volumes 2, 4, and 6, but not the entry in volume 1 where I started. Out of curiosity, I looked at the text version of entry 2792 and saw the name was rendered: “BENjAMIN, Judah Philip.” That looks a little funny, but shouldn’t have stopped the search. I don’t know what the glitch was. The lesson is to use the indexes as well as full-text searching.
82. 4 COHEN, supra note 1, at 211 (entry 11732).
83. 2 id. at 287 (entry 5536).
84. For an admiring portrait of Benjamin, see Laurie H. Riggs, *The Strange Career of Judah P. Benjamin*, 36 LAW LIBR. J. 57 (1943). “[T]he only two injuries suffered by Benjamin at the hands of the Northerners, of which he spoke with anything like bitterness, was [sic] that they burned his law books and drank his Madeira.” Id. at 63.
85. 1 COHEN, supra note 1, at 205 (entries 1669–1671).
86. Id. (entry 1669).
makes sense that a silversmith would know about engraving bank notes and thus have works listed under Banking. I was a little surprised to meet Mr. Brewster again under Jurisprudence, where he had two editions of *Free man’s companion; a new and original work, consisting of numerous moral, political and philosophical views, examples and explanations, tending to illustrate the general cause of truth, justice, virtue, liberty, and human improvement.*\(^87\) It’s less obvious why a silversmith would write about all of that, but this time, there’s a longer biographical note:

> Abel Brewster, born in Connecticut in 1776, was engaged in the watch, jewelry, and silversmith business when, in 1806, he began a campaign to prevent the counterfeiting and passing of counterfeit bank bills. This led to his prosecution for libel by one George Murray in the United States Circuit Court. That was decided in his favor. Those events and his continuing attacks on the legal profession are more fully described in his 1832 pamphlet, *A brief memoir of Abel Brewster.*

> This collection of short essays reflects his wide-ranging interest in law and his aversion to lawyers.\(^88\)

\(\text{¶30}\) The memoir appears under another category, Biographies, and this time there is no biographical information, other than to say that Brewster “defends himself against those he claimed attempted to ‘defame, defraud, persecute and ruin’ him, by thwarting his efforts to patent a device to prevent the counterfeiting of bank bills.”\(^89\) If *BEAL* had been arranged by author, all of this information would have been in one place—but a researcher wanting to read everything about banking, say, would have had a lot more work to do. It wasn’t so hard to use the author index to find the three locations where Brewster’s works were listed.

\(\text{¶31}\) Brewster wasn’t the only author with an eclectic career. There was Jesse Chickering, “a statistician, a Unitarian minister, and a physician,” who wrote a tract on immigration.\(^90\) Pierre Armand Dufau, “a French economist and publicist who taught blind children and later directed an institute for the education of the blind,” produced a six-volume compilation of constitutions from Europe and the Americas.\(^91\) William Jones was “a talented linguist and Oriental scholar, who turned to the bar to improve his livelihood.”\(^92\) Jacob Bailey Moore (1797–1853) was “a writer, printer, publisher, bookseller, librarian and government clerk” in New Hampshire, New York, Washington, D.C., and San Francisco.\(^93\) I could go on, but I’ll rest with one more improbable résumé: William “Thornton (1759–1838), a man of varied occupations and talents (architect, poet, magistrate, and race-horse breeder), who was also a Quaker and a militia captain, drafted a constitution for his dream of a united North and South America.”\(^94\)

\(\text{¶32}\) Welcome navigational aids in this sea of citations are the scope notes at the beginning of each category. They suggest other categories where one might find

\(^{87}\) 2 *id.* at 987 (entries 7804–7805).

\(^{88}\) *Id.* at 986.

\(^{89}\) 1 *id.* at 280 (entry 1936).

\(^{90}\) *Id.* at 395 (entry 2317).

\(^{91}\) *Id.* at 516–17 (entries 2748–2749).

\(^{92}\) *Id.* at 426.

\(^{93}\) *Id.* at 475 (entry 2610). Here was another of *BEAL’s* rare typos: the note referred to the author as “Bailey” rather than “Moore.”

\(^{94}\) *Id.* at 525 (entry 2778).
relevant material. For instance, the scope note for Slavery and African Americans (within Monographs) refers researchers to Monographs/Constitutional Law/General Works; Monographs/Territorial Problems/States and Territories; Civil Trials/Slavery; and Criminal Trials/Obstruction of Justice among others.

¶33 When BEAL was first published, it was possible to acquire it in CD-ROM as well as in print. My library bought only the print, but as of August 2011, BEAL is available on HeinOnline (in Spinelli’s Law Librarian’s Reference Shelf, to which we subscribe). I began my browsing in print, hauling thick volumes from work to home, home to Starbucks, and so on. Flipping through a book, I took notes on my iPad. When I found BEAL on HeinOnline, I used both, browsing in a print volume while searching in HeinOnline. Later I downloaded PDFs of some sections to my iPad, so I always had the author index with me, as well as selected topical sections, and I jumped between the PDFs and live HeinOnline. Finding an app that allows me to annotate PDFs made note taking even easier. Moving to the writing phase, I had had before me handwritten notes, notes on my iPad, PDFs on the iPad, HeinOnline, and Word on both my laptop at home and my desktop computer at work. I think Morris Cohen would have appreciated the ways I used different technologies to explore his great work. He began his project in 1964, when the bulk of data collection had to be done manually (although he and his team sent off their five-by-eight-inch note cards to the publisher to be entered into a computer file).95 Years later, when BEAL was finally published, Cohen’s “major regret” was “over the unavailability of computer support in the early years and [his] failure to utilize that technology when it did become a realistic option in the late seventies.”96 He was enthusiastic about the ways that new technology could aid researchers. While not claiming that technology would create new insights into history, he certainly valued the use of technology in research. “Although the nature of historical evidence has not changed, our access to it has certainly broadened, deepened, and been made faster.”97

¶34 Now that I have explored BEAL in different ways—browsing, using the indexes, full-text searching—I have a much better sense of the riches it holds. And that will make me more likely to use it in my work, both doing research myself and helping library users to do their research. It really is an impressive work, by a most congenial lawyer/bibliographer.

95. Cohen, Compiling, supra note 1, at 135, 138 n.1.
96. 1 COHEN, supra note 1, at xxii.
Reflections: An Interview with Morris L. Cohen*

In December 2007, Bonnie Collier, then the Associate Librarian of Administration at Yale’s Lillian Goldman Law Library, interviewed Morris Cohen as part of a series of interviews with Yale Law School faculty called “Reflections.” This is an edited version of that interview.

¶1 Bonnie Collier: We’ve agreed to begin with a biographical conversation for the first part of the interview and then move on to an informal conversation.

¶2 Morris Cohen: Well, I guess if I’m beginning with my pre-Yale life, I will begin in Brooklyn, where I grew up. Brooklyn is, for most of its citizens, part of their very being. It’s at the center of their being. It’s a devotion that you never lose. Brooklyn was, at once, at least in the 1930s when I grew up there, cosmopolitan in its interests, certainly in its education. And while cosmopolitan, it was also provincial. That is, we were the center of the universe. Going across the bridge to Manhattan was like going to a foreign country. So it was a funny combination of things.

¶3 I can recall my main interest as a kid was sports. Participatory sports, although I wasn’t a very good athlete. I liked to participate in almost all the sports that were part of our seasonal cycle: stickball, street hockey, stoopball, and in summer camp, which was another center of my world, I played all the traditional sports.

¶4 And spectator sports. Although living within a short walk of Ebbets Field, which was the home of the Brooklyn Dodgers, I was a New York Giants fan. That was difficult at times. We would go to Ebbets Field to see the Dodgers, and I would stand up in the wrong half of the seventh inning as the visiting team fan.

¶5 That came about in a strange way. My brother and I had polio in the big epidemic in 1932. To help us recuperate, during the winter they sent us down to Florida, and we lived in a boarding house across the street from the New York Giants training camp. Every morning we would go across the street and collect autographs. And that’s how, at age five, I became a New York Giants fan.

¶6 My other interests were books and reading. I loved my books. I read through all the boys’ series: Bomba the Jungle Boy, Baseball Joe Around the World, Tom Swift. And who were the brothers who were detectives? There was a male counterpart to Nancy Drew.

¶7 Bonnie Collier: The Hardy Boys?

¶8 Morris Cohen: The Hardy Boys. Thank you very much. We were also very big movie fans. I remember one Saturday afternoon going with my brother and my aunt at three o’clock to a triple feature: Greta Garbo in Camille; a film about the

building of a tunnel underneath the Atlantic with huge doors to prevent fire from going to the wrong side of the tunnel—and of course, the villain gets caught in the doors when they close; and the third was something like the Ritz Brothers—one of those comic groups. I think that was the triple feature. Well, we went at three o’clock, and we didn’t get home till eight o’clock. My parents were frantic. But that was movies then—there were double features and triple features in those days.

¶9 Occasionally we would go to the theater. The WPA, a New Deal agency, put on public theater. The first show I went to, I remember, was The Emperor Had No Clothes, and there were clowns who came down the aisles before the play began, throwing big puffy woolen balls. They threw one toward me, and I caught it and threw it back. That was my first introduction to theater.

¶10 And we also had school and summer camps. I remember all the names and personalities of my teachers through the eight grades of P.S. 161, which counted among its distinguished alumni Norman Mailer.

¶11 Bonnie Collier: He was older than you.

¶12 Morris Cohen: Yes—maybe four years older. He was in my brother’s class, and my brother was four years older than me.

¶13 When I graduated P.S. 161, I went to Boys’ High School—a nondistricted public high school in Brooklyn that was academically very high. It taught Latin, Greek, and Hebrew. I think at that time it was the only public high school that did that. I didn’t take Hebrew, because I went to Hebrew school after school. I didn’t take Greek, but I did take Latin, and that was a very formative experience.

¶14 The Latin group was separate from the others. We had Saturnalia parties with ice cream brought in by our Latin teacher, who was a man from Jamaica. A very stern disciplinarian, but a very good teacher. We each had Latin names, and when I wrote on the blackboard, I’d write “Haec scribit Mauritius Cohen”—this is written by Morris Cohen.

¶15 In sports, I was not good enough to make teams. But I was the manager of the soccer team. I had tried out for the soccer team, but I didn’t make it because there was an unfortunate accident: I didn’t wear my glasses when I played, and the captain of the team was somehow pushed onto the ground, and I kicked at the ball but I kicked the captain of the team by mistake. So they made me manager.

¶16 I was also manager of the track team. And the track team had a number of African American members who were big jazz fans. They sort of adopted me as their mascot and took me to these small nightclubs on 52nd Street in Manhattan, where we would hear Billie Holiday and Coleman Hawkins and other stars of the New York scene. They also smoked a very strange, sweet cigarette which they wouldn’t let me smoke. And it wasn’t until years later that I realized what it was. My parents would have been pleased that they didn’t let me smoke it.

¶17 From Boys’ High School I went to the University of Chicago. I had intended to go to Harvard where my brother had gone, but I flunked the German college entrance board. My second choice was the University of Chicago, which was fortunate because I think I was much happier at Chicago than I would have been at Harvard. Chicago was in the last years of the Robert Maynard Hutchins period, the great educational reformer. He was not a legal reformer, but he was the Dean of the Yale Law School.

¶18 Bonnie Collier: Right. At age twenty-six or something.
Morris Cohen: And then he became president of Chicago I think at age thirty. It was a very exciting time. Chicago, like Brooklyn, was very ethnocentric, or egocentric, or whatever. We thought we were the center of the intellectual universe. I was involved in a lot of undergraduate activity—intramural football again, strangely . . . my dire attempts at participation. I had a New York jazz program on the student radio station—Radio Midway. It was in the pre-high-tech days. Wires ran from radiator to radiator in dormitories and that’s the way Radio Midway was transmitted. I had a friend who had a New Orleans Dixieland jazz program, and we would verbally attack each other’s music.

I was also heavily involved in left-wing politics. I was president of American Youth for Democracy (AYD), which was a front organization on the left. It was the time that the left was trying to maintain close relations with the Soviet Union.

Bonnie Collier: What year was this?

Morris Cohen: As the Cold War was sort of beginning to freeze up. I was in Chicago from 1945 to 1948, right after World War II. Relations with the Soviet Union were beginning to cool, and the left focused on trying to maintain the World War II alliance. But then the Soviets took over in Poland, they took over in Czechoslovakia, and the fall of Czechoslovakia to the Soviet regime cooled my interest in the left. I disengaged from AYD, and pursued more academic interests.

I majored in anthropology. I was an authority, a minor undergraduate authority, on the Chukchi reindeer herders of northeastern Siberia, and I wrote an honors thesis on them for graduation. Then I used the Chukchi for term papers even in law school. I was still writing about Chukchi social control at Columbia Law School. It wasn’t until perhaps sixty years later that I ran into the Chukchi again when we would visit my granddaughter in Alaska. People from Anchorage and other parts of Alaska were beginning to go over to Siberia and bring back postcards, photographs of the Chukchi. So I would buy picture postcards with the Chukchi reindeer herders. That sort of bridged the sixty years between college and grown-up life.

After graduating from the University of Chicago, I didn’t know what to do. I thought about law as the queen of the social sciences. It was the social science that seemed to offer maximum flexibility for a career. I applied to Columbia Law School, got accepted, and the first year of law school was a horror for me. I hated it. The faculty were almost all very senior people who talked too softly for me, with a hearing problem, to hear. I found it incredibly dull after the excitement in Chicago.

The second and third years were different. There were younger faculty, all of whom I guess are now deceased—but they were then the younger faculty—Herb Wechsler, Walter Gellhorn, Paul Hays—they were the stars at that time. And I did much better. I was a mediocre student in the first year of law school, but I was a pretty good student in the second and third years. I decided I wanted to be a labor lawyer on the union side or with a government agency.

But then as I graduated law school, it was the McCarthy period, the reign of political terror that Senator Joe McCarthy had put the country under.

Bonnie Collier: This was around 1953?

Morris Cohen: Earlier. 1951. I was in law school from 1948 to 1951. I came out looking for a job. I would have interviews, and every interview, whether with a labor union or a government agency, ended up with the question, “Are you now or
have you ever been a member of an organization on the attorney general’s list?” That was a list of subversive organizations. And when I said, “yes,” and started to say, “but . . .”—to explain Czechoslovakia and how I disengaged—there was no time for the “but.” I would be ushered out of even distinguished, union-representing, labor law firms.

¶29 Bonnie Collier: Did you run into anti-Semitism?

¶30 Morris Cohen: Not that I was aware of. I knew there were very few Jews in the graduating class who went to big law firms on Wall Street, but there were some. I think the anti-Semitism in the big law firms was beginning to diminish, or maybe those who were hired were tokens. But quite a few of my graduating class went to the big firms. In my interviews, I never felt that was an issue because they seemed to be interested in me until the final question was asked and the wrong answer was given.

¶31 So during the next seven years I was engaged in the practice of law in Manhattan in small law firms. It was a respectable way to make a living, but not really of interest to me. During the last segment of the seven-year period I had a law partner—a very different sort of man than myself. He was older. He was a former state trooper, and consequently we represented the New York State Troopers Benevolent Association. This was a labor union, or as much of a labor union as you could get in a quasi-military organization like the state troopers.

¶32 It wasn’t easy, because organizers of the Benevolent Association, if they worked on Jones Beach or Long Island, would then be shipped up to Watertown, New York, or Buffalo, four hundred miles from their families. So it was not easy representing them.

¶33 In any case, I decided on another career. It was either going to be law teaching, which I didn’t think I was intellectually qualified for, or law librarianship, which I did have an interest in, and I thought I could handle. That seemed more attractive to me.

¶34 I began to go to library school at Pratt Institute at night. For one year I was practicing law, going to Pratt at night, and really liking library school. People don’t always like library school, but I loved library school. And then I told my partner that I thought this was what I wanted to do, and we ended amicably.

¶35 The second year of this beginning in law librarianship I took a job at Rutgers in Newark, New Jersey. That was a horrendous year. It was a year that solidified my interest in law librarianship, but it was a very hard year. I had four lives: I had married Gloria, whom I had met on a double date while I was in law school. We now had two children and lived in an apartment in Brooklyn. The family was my first life. The second life was the law office, which I was still involved in. I would stop at the law office going into work at Rutgers or coming home from work at Rutgers.

¶36 My third life was my full-time job at Rutgers, which was interesting. It wasn’t a very high-quality library, but it introduced me to being a librarian. I was assistant librarian, and the head librarian was a faculty member, not a trained librarian.

¶37 The fourth life was Pratt Institute, where I took night courses. So I would leave the house at seven in the morning, stop at the law firm, go on the PATH tubes
to New Jersey to spend my eight hours, come back, maybe stop and sign some papers at the law office, go back to Brooklyn to Pratt, and then get home by 10:30 and go to bed. It was difficult, but it convinced me that being a librarian was what I wanted to do.

\[38\] During that year at Rutgers, my dream job opened up, which was assistant librarian at Columbia Law School, my alma mater. So I applied and got that job. For two years, I was assistant librarian to a man who was near retirement and was the dean of the profession, at least in the eastern part of the United States—a man named Miles Price. He taught me a great deal. He was my first mentor in law librarianship. He showed me how a major law school operated, how a major law library operated from the inside, how a law school building was planned and built.

\[39\] They were building a new building across the street from Kent Hall. Kent Hall was a McKim, Mead and White building. They were great architects, and it was a great building. But they were building a new modern building across Amsterdam Avenue. Mr. Price sent me to the University of Chicago, which had just completed a new law school building, and I was to see whether there were any mistakes made in the Chicago building. I came back with a list of five fundamental mistakes that had been made in the law library of the University of Chicago Law School.

\[40\] **Bonnie Collier:** Did the librarians there tell you what they thought the mistakes were?

\[41\] **Morris Cohen:** Yes—they had great complaints. And of these five issues I brought back, each one of the five was already incorporated in the Columbia building. So as Chicago was correcting its five, Columbia then had to face the correction of these same five mistakes. They were not huge mistakes, so they could be corrected, but it was interesting to me to see the lack of communication between librarians and architects in buildings. That was not an issue here in the Yale Law School building.

\[42\] **Bonnie Collier:** I hope not.

\[43\] **Morris Cohen:** But it does remind me that in virtually every library I’ve worked in—five law school libraries—building planning and execution of those plans was part of the job. Librarians always seem to be rebuilding, renovating, doing, undoing.

\[44\] At Columbia, I also learned how to run a first-rate public service operation. I didn’t have much to do with technical services. I could see the beginning of how difficult library staffs can be—personnel relations within the library staff.

\[45\] Finally Mr. Price retired after a couple of false starts. He retired, and I wanted his job, although I had only been there two years. They were not about to give it to me.

\[46\] The library at Columbia was controlled by the university librarian. This has been always been an issue in law librarianship—to whom does the law librarian report? Does he report to the university librarian or does she report to the dean of the law school? Law librarians favor reporting to the dean of the law school, which is where the money is and where your clientele is. If you’re good at it, you can get the support of the law faculty. The law faculty is not of great interest to the university librarian, who has to worry about many other libraries.
¶47 At Columbia, unfortunately, the university librarian controlled the law library job. He thought that I did not have the experience, which, granted, I didn’t have, but there was no other candidate. There was no other good candidate for the job, strangely, although it was one of the major law libraries in the country.

¶48 They decided they would make me associate librarian to run the library. There was not going to be any librarian. They wouldn’t give me the title of law librarian. I would have a salary of $9,000 a year, and I would be associate librarian. But second to none. There would be no librarian above me. I would have the responsibility, but not the title.

¶49 I had two offers from other law schools at that time, from Buffalo and from Wayne State in Detroit. So I said thank you, but no thank you to being second to none. I wanted to be first, even in a smaller pond. So we moved to Buffalo. Buffalo was a very small law school at that time, underfunded.

¶50 **Bonnie Collier**: Cold.

¶51 **Morris Cohen**: It was cold and snowy, yes. But it was very exciting for us. It was our first house, with the two little kids. We loved being able to let the kids run in and out of the house without having to take them down in the elevator. We had our first dog, a lovely, slow-witted Dachshund.

¶52 Buffalo was a very exciting city culturally. The Budapest String Quartet was in residence there. There was first-rate community theater. There was a foreign film house. There was a lot going on. And Niagara Falls was nearby. Niagara Falls meant that you had an endless stream of foreigners coming to Buffalo. Foreigners, particularly from Asia, but from Europe as well, come to see Niagara Falls. And the local citizens were recruited to entertain the foreign visitors. So we would sometimes take the visitors to dinner and then to the falls. Our little kids knew Niagara Falls from both sides, the American side and the Canadian side. And they were also exposed to people from France, Hungary, Italy, Japan, wherever. So Buffalo, a provincial city, was for us a cosmopolitan city with all these foreign visitors.

¶53 You could actually select by country, occupation, gender, what sort of visitors you wanted to entertain. You could choose Hungarian law librarians or you could choose Japanese computer scientists, whatever you wanted.

¶54 **Bonnie Collier**: So this was an unexpected benefit.

¶55 **Morris Cohen**: Yes. Well, after two years at Buffalo they assumed that I would be leaving. There were not great challenges there. It was right before the merger with the state university, and we heard rumors of the merger with the state university and the promise of big money. So I did some planning for what the library would look like when millions of dollars were thrust into the library budget, which is what happened after I left.

¶56 I had two job offers again, this time from Penn and Stanford. We chose Penn, and we moved to Philadelphia.

¶57 **Bonnie Collier**: What were the reasons for choosing Penn and not Stanford?

¶58 **Morris Cohen**: Well, to be closer to Brooklyn. My parents were in Brooklyn, they were getting on in years, and we knew that part of the country. We had traveled with the kids a lot, so we knew California and the southwest as tourists. At that time Penn was a little stronger than Stanford. Now Stanford is I think a stronger
law school, but at that time Penn was very close to the first rank of schools. In my last year at Buffalo I also got a phone call from Columbia, finally offering me the job with the faculty position. But I turned it down, for reasons that are too complicated to go into, and went to Penn.

¶59 I stayed at Penn for eight years. That was from 1963 to 1971, during the protest years. It was a very exciting place. The library was badly neglected. Anything that I did would bring it up. That is, there was no place to go but up with that library. And there was money made available to build the staff, to do some renovations, to reactivate the library acquisitions program.

¶60 It was a very exciting time. It was close to the big leagues—we considered it the big leagues. It was close enough to New York that I could get into New York. We like theater. I began teaching at the Columbia Library School one afternoon a week. So we would go into New York on Thursday afternoon, I would teach a course in law librarianship at the library school, Gloria would meet me, we’d go to the theater. I don’t know what happened to the kids. I guess we got a babysitter or something.

¶61 I also was teaching at the library school at Drexel. So my life was not only the law library. It was also this new activity of teaching in library schools. And I began two scholarly projects, one of which you’re familiar with—the Bibliography of Early American Law (BEAL), which I spent thirty years working on. That began in 1964.

¶62 Bonnie Collier: At Penn.

¶63 Morris Cohen: At Penn. It was an attempt to record all published literature relating to law, either about American law wherever it was published or about law in general if it was published in the United States. In the 1990s, when I was here, it was finally published in six volumes.

¶64 Bonnie Collier: In 1964 did you conceive of it as a long-term project or was it going to be shorter?

¶65 Morris Cohen: It was going to be a five-year project. And then a ten-year project. Whenever I was asked I would always say, “We’re about two years away from completion.” That was the standard answer in the ’60s, in the ’70s, in the ’80s. It was still two years away from completion. I really have to thank the National Endowment for the Humanities and the hundreds of research assistants who worked on BEAL for finally getting the thing completed.

¶66 My other project was writing Legal Research in a Nutshell, this little teaching text on legal research, which was first published in 1964, the same year that I begin BEAL. That has gone through nine editions. The last edition, which I did not do any work on, but which still carries my name, just came out this past year.

¶67 After about eight years at Penn, I was in New Orleans at the Association of American Law Schools meeting and Derek Bok, who was then the Dean of the Harvard Law School, came over and said, “We’re looking for a librarian. Would you be interested?” He also said, “You’re Morris Cohen—you’re the guy that had a beard before everybody else did.” That was my introduction to him in New Orleans.

¶68 So I ended up going to Harvard, which I think was a mistake for me. Harvard and I were not a particularly good fit. I spent ten years there. It was a large, rich, very alienating legal community, I felt. It had a terrible faculty-student ratio, which resulted in the faculty members closing their office doors, because if they left
their doors open they would be swamped with students and be unable to get their research done. Students were very competitive among themselves, very anxious for attention, which you could only get by high achievement, by making law review.

¶ 69 It was also politically split at that time. The faculty was split into three groups—a left, a right, and a center. The left wing and the right wing were, you could say, bitter opponents. For that ten-year period there were very few faculty appointments made. The faculty appointment process in a large institution like that has to be a continuous process, but because one-third of the faculty would oppose almost any candidate who was proposed, you couldn’t appoint somebody whom one-third of the faculty opposed. If the person was on the left, the right would be in opposition and vice versa. It was only in a couple of instances that somebody was sufficiently centrist that they could pass muster from both of the extremes.

¶ 70 I continued to work on BEAL. Harvard is a very rich institution, so there were some satisfactions. You had satisfactions from the great rare book collection, from a distinguished faculty. But I wasn’t a skilled administrator. That was not my interest. My interests were in being part of the educational process, which was not easy to do there, and books, and building a collection. But that collection built itself. At that time, the acquisitions policy was very broadly stated, and we bought a huge amount of American and foreign material. But I was sort of outside that machine. I was the head of the machine, but I didn’t really feel that I was part of it.

¶ 71 Bonnie Collier: Developing the rare book collection, was that a satisfying part?

¶ 72 Morris Cohen: In a way, I knew that collection. I worked, through BEAL, with the collection, but I never had the time to really devote to it. I got more satisfaction from my experience in building the rare book collections at little Buffalo, where I started a small rare book collection, and at Penn, which had a good but modest rare book collection. I was able to spend time with those collections. At Harvard, there was this incredible rare book collection, maybe the best in the world, but I never had the time to really give it attention. We had a rare book librarian, we had a manuscripts librarian, and I was always running around doing other things.

¶ 73 In any event, it was not a happy period for me professionally. There were pluses—Harvard is an incredible university. There were a lot of things that you can enjoy in Boston and Cambridge and at Harvard, but I was restless. By the end of ten years, I was ready to go.

¶ 74 What had happened was I had hired an associate librarian who became a close friend and who was a very good administrator—Bob Berring, who just retired a year or two ago as librarian at Boalt Hall at the University of California, Berkeley. During a sabbatical, I stayed on the premises to work on BEAL, and I watched what he did with that library, and I realized that a skilled administrator like him could really do something.

¶ 75 Another negative aspect of the job was that the dean at that time had grown up as a poor boy in the Bronx. He had a different view of money than his successor did, who grew up in a wealthy family. My dean for the ten-year period that I was there saw money as something to be guarded, to be preserved. I would submit my
budget every year, and I would get a standard increase in the budget, but big money to make radical changes was never there. My successor got a new dean, this boy from a wealthy family, so he had the money to do very dramatic things with that library.

¶76 But I take responsibility for the fact that I was not the man for that job. I would walk through Pound Hall, the building housing the faculty dining room. A huge portrait of Oliver Wendell Holmes hung there. Every day I would go to the faculty dining room and pass Oliver Wendell Holmes looking down, and I could hear him saying, “Cohen, what did you do with my library today?”

¶77 I began to consider other careers, and one possibility was to be librarian of a liberal arts college. I went on interviews to a couple of places, and then Harry Wellington approached me. Arthur Charpentier, the librarian at Yale, was retiring. Arthur Charpentier had also been an associate dean for the last few years of his librarianship, so the library had been somewhat neglected. Wellington, the dean, was looking for a new librarian and approached me.

¶78 I was sort of doubtful. Another Ivy League law school, is this what I wanted to do? More of the same? And he said to me, “Cohen, you ran Harvard for ten years and survived. You can run this library with one arm tied behind your back.” Well, that wasn’t the case, but when I investigated it, I discovered the Yale Law School was very much like the Penn Law School in size, faculty-student ratio, informality, collegial atmosphere. So I said, “Okay, let’s go to New Haven.”

¶79 Bonnie Collier: Let me stick in one question here about Harvard—1970 to 1980?


¶81 Bonnie Collier: Those were also years of antiwar protests and student uprisings. What was happening at Harvard, and how was the law school affected?

¶82 Morris Cohen: The left at Harvard was active in the antiwar movement. There was not labor organizing at Harvard as there was here at Yale when I came here. It was basically a conservative institution, despite a one-third radical segment on the faculty.

¶83 My best recollection of an incident was when I was walking some fat cats, some alumni donors, from one part of the law school to another. I was showing them the different segments of the library. It was basically a library tour for these wealthy alumni. And one of them asked me, “These antiwar protests, are they going on in the law school?” Obviously, he was a conservative. He was concerned about radicalism and antiwar protests. I said, “No, that’s really in the college. We don’t have much of that in the law school.” And as I walked around the building, there was like a conga line of ten law students—I knew they were law students—with tin cans and sticks banging, chanting “Ho, Ho, Ho Chi Minh, Ho, Ho, Ho Chi Minh.”

¶84 Bonnie Collier: So he got his answer.

¶85 Morris Cohen: He got sort of an answer. But the law school was not a major center. There was more political activity at Penn than there was there. I remember at Penn being at sit-ins, reading radical poetry at sit-ins, being much more involved than in the ten years at Harvard.
Bonnie Collier: Now, when Wellington approached you about coming to Yale, was the tonal quality in the difference between the two law schools part of what made your decision?

Morris Cohen: It was a big part of it. Because my initial reaction was, did I want to do this again? I mean, I had at that time been maybe twenty-five years in law librarianship, most of it at Penn, Harvard, Columbia—Ivy League places. But when I saw what it was—I mean, he didn’t do the persuading. I guess I sort of did the persuading myself for coming here and seeing what it was, talking to some faculty.

The statistics, the atmosphere, the pizza in the reading room. I mean, I had kicked the pizza out of the reading room at Harvard, but here I was seeing it again. That was a sign of the informality. The place sort of sold itself to me by what I could see. Open doors, faculty-student relations, lots of students calling faculty by first names, faculty teaching with a sweater and not with a jacket and a tie.

Bonnie Collier: And the doors were open rather than closed.

Morris Cohen: Yes. You could just feel the difference in the place.

Bonnie Collier: What about the library?

Morris Cohen: Well, the library was in somewhat sad shape at that point. It had been neglected because Charpentier, who was a great guy, a very effective administrator, had spent most of his time being associate dean. He was the right arm of Wellington.

The building was in bad shape, neglected. On the staff, most of the people had been there for a long time, and to some extent were not aware of the stuff that was going on in information technology. It was the beginning of computers coming into libraries.

Bonnie Collier: Did you have the idea that the library was well supported financially?

Morris Cohen: I didn’t sense that. Harry Wellington raised money for me. Up to that time, I don’t know. I don’t think Charpentier could give it his attention. He was a close friend of mine, but I don’t think he could give the library all the attention that it needed. And keep in mind, compared to Harvard, the budget, even under the stringent dean’s regime, was still huge compared to Yale. But Harry raised money. He raised about four million dollars. We did some physical renovation.

I would say that Yale Law Library was sort of like Penn when I came to Penn. It could only go up. It was not that hard to make radical changes with the support of the dean. And I had the support of the dean in a way that I didn’t have at Harvard.

Bonnie Collier: One of the things that you’re known for in the library world is making the Yale Law Library a more sophisticated place. The impression of it when you first came was that since the Yale Law School was a live-in law school, students would wander out of their rooms at 3 a.m. in their pajamas, browse through the library, grab a book, and bring it back to their room. You made changes in the security and the circulation systems.

Morris Cohen: Well, the library was open twenty-four hours a day with no security. And even during the working day, the normal working hours of the library
staff, there was no security control. There were two doors open, and books went out as students went out. Sometimes they came back, sometimes they didn’t.

¶99 Circulation and reference were run out of one unit with Gene Coakley, formerly on the library staff, in charge of that operation. Gene Coakley was primarily a book finder and deliverer to the faculty. The faculty was ever grateful. They loved Gene Coakley because they would call up and get a book delivered to their office. But there was no real circulation control.

¶100 One of the things I did was crack down on the twenty-four-hour unsecured library. I got the food out of the library. The Law Journal people were very understanding. They said, we understand we can’t have food in the library, but what are we going to feed the cite checkers? (The people who checked footnotes in the articles.) They were traditionally brought pizza because they worked through the night.

¶101 I was able to hire, with Harry’s support, a full-time associate librarian, which Charpentier did not have. So I hired first Wes Daniels, who had worked with me at Harvard. Then Ann Laeuchli came here for nine years. And that took a lot of the administrative burden off me, stuff that I was not good at and which I didn’t like doing.

¶102 I continued working on BEAL, as you know. You were one of the star research people working on the bibliography. Kathleen Cleaver, when she was a student, was another one. But we had this endless flow of remarkable bibliographers who didn’t realize they were bibliographers when they came to the job.

¶103 Bonnie Collier: You taught us all.

¶104 Morris Cohen: But some of the older people in the library retired and younger people, people like Mary Jane Kelsey, Jo-Anne Giammattei, rose in the ranks. Mary Jane’s leadership in bringing the computer age into technical services was remarkable. We computerized the catalog, we computerized acquisitions—“we” meaning Mary Jane and her colleagues. I hired Fred Shapiro in public services. Dan Wade in foreign and international law. Margaret Chisholm.

¶105 So there was a revitalization of the library staff. We had a remarkable rare book collection that had been somewhat neglected over the years. And Harvey Hull moved from cataloging into that. Now we have a great rare book specialist that Blair has brought in. Under Wellington we did a modest physical renovation of public service space at the center of the reading room. And also some work down in technical services. But the big renovation, of course, came after me.

¶106 Bonnie Collier: The carrels in the reading room, those millions and millions of carrels and carrel walls, were they there when you came?

¶107 Morris Cohen: No, that was me.

¶108 Bonnie Collier: That was you?

¶109 Morris Cohen: That was me, unfortunately. Right. I guess it was all long tables and then we put in carrels and it was too much, I think.

¶110 Bonnie Collier: The students loved it.

¶111 Morris Cohen: Yes. And they made their home there. Family pictures were put up, personal belongings left there. Each carrel became the office for a student. But we didn’t have enough to go around, so the first-year students sort of had to
encroach or squat on the second- or third-year students’ carrels. That was not a happy situation.

¶112 Bonnie Collier: During this time, shortly after you came, there was the beginning of labor unrest on campus. The big strike of 1984.

¶113 Morris Cohen: And the library was affected. There was vandalism to the card catalog, which the union members on the library staff denied that they had anything to do with. I believed them. I think there were undergraduates—not even law students—who had crazy notions of how to win a strike, who came in and dumped card catalog drawers. And the people, the union members on the library staff who had laboriously filed those cards alphabetically, were furious at this.

¶114 The law school was a better place to be during that strike and the subsequent strikes because it was very supportive of the union, or at least neutral. There were tensions, I guess, between workers—I don’t think any of the union people on the library staff worked during the strike, but some of the secretarial or administrative staff did—so there were tensions in the law school. But not particularly in the library staff.

¶115 We had one situation where a library support staff member was harassing a cleaning woman who worked during the strike. He would follow her when she left the building for the bus stop, yelling at her that she was scabbing, until she had her two very muscular sons meet him one night and persuade him to let their mother alone. He came in about three days later, still with the marks of that encounter.

¶116 But within the library, well, I guess there were tensions. The union people resented the fact that the professional staff kept the library running during the strike. After the strike was settled, there were tensions over the grievance procedure as the shop stewards in the library began to feel their way—we both felt our way—under the new regime of labor relations. But overall I think it’s been remarkably good.

¶117 I mean, here at the law school there were faculty members walking the picket line. Even if we didn’t walk the picket line, we would stop and chat with the pickets to sort of keep normal relations.

¶118 Bonnie Collier: And classes were off campus.

¶119 Morris Cohen: Mostly off campus or in the York Square Cinema. Or in various other public locations that they could find.

¶120 Bonnie Collier: Was there any suggestion that the library should close or not provide service?

¶121 Morris Cohen: I don’t remember that. I don’t remember that proposal. It’s quite possible. I’d be surprised if somebody didn’t suggest it, but I never remember it being an issue that we discussed in any seriousness.

¶122 But I guess the big thing that happened during my period was computerization. That is, the fact that technical services went into the information age, that Lexis and Westlaw came into the library in a serious way. The library staff became more involved in teaching legal research. We tried to beef up our contribution to the first-year curriculum, particularly the small group program, by participating as instructors of legal research.
Bonnie Collier: My sense is that students were happier and more willing to go along with automation than the staff. That if anybody had to be dragged along it was staff and not students.

Morris Cohen: Right. But the staff was in transition at that point. Some of the older people were retiring, and newer people, who were very computer oriented, were coming in. So the head of reference retired, the head of technical services retired. Mary Jane Kelsey, whom I’ve mentioned, was very actively involved in the computerization. And Fred Shapiro on the public services side.

You’re right. But it was, in a way, fortunate that these people were retiring in the normal course of events.

Bonnie Collier: And legal research itself was changing. And you were revising your legal research Nutshell.

Morris Cohen: Well, the Nutshell was being revised regularly. How to Find the Law, the other, bigger teaching book, was revised. BEAL continued. BEAL had an office because I had grants from the National Endowment for the Humanities. I was able to fund help more substantially than I had with just faculty research funds. So those things continued.

Bonnie Collier: And you were also involved in the first phase of the second big library renovation. The planning stages?

Morris Cohen: Yes, but in a very preliminary sort of way. And then my retirement was coming. I guess we drew up preliminary statements of needs. The architects came in, they seemed much more responsive to what we wanted, but architects usually at the beginning of the process are very responsive. It’s only later, when other interests come into play, that library interests get demoted. I don’t know whether that happened here. I think the renovation was remarkably successful. But in the initial phases I remember preparing statements of needs. I have no idea how my successors viewed those—as too conservative?

For a period throughout my career I had been a consultant to other law schools on building matters, because very early in my career I had been involved in several building projects. But by the time I came to Yale, I don’t think I was at the cutting edge any more of what library planning was in the information age. So it may have been fortunate that I was only at the very beginning of that planning period. And then Diana Vincent-Daviss came on after me.

And after Diana died tragically, shortly after coming, and Blair came in, that was another interesting transition from one librarian to another where the old librarian—me—stays on the premises. Diana had been a close friend of mine. And she seemed to put me at arm’s length when she came in as if fearing that I would mess with the library, which I had no intention of doing. I had a very full plate in retirement. But we had almost no relationship during the short time that she was librarian.

When Blair came in, relations were completely different. We had very close relations, although I still didn’t mess with the library—he didn’t expect me to mess with the library. Occasionally he would ask me something about how was this done, or how should this be done, but that was rather unusual. Diana never asked me anything about the library during the time that she served. So I learned something about how transitions can occur.
¶133 Bonnie Collier: I had reason to read a survey that you had commissioned, a survey among students about how they liked the library, what they would change, and what they would like to see happen. One of the big issues was smoking in the library.

¶134 Morris Cohen: I don’t remember that.

¶135 Bonnie Collier: But that, actually, was the issue around which this survey seemed to swirl. Smoking was the big thing, which to us now is kind of a surprise. Smoking and food.

¶136 Morris Cohen: Food I remember always being an issue.

¶137 Bonnie Collier: Yes. And also the need for students to be in the reading room. And of course, that need comes partly out of using the books in the reading room, which they’re not really doing anymore. The books in the reading room are sort of irrelevant. In fact, the books are kind of wallpaper.

¶138 Morris Cohen: Not for me. I still go in and use the books. I was in there yesterday. I do, almost every day, get in the reading room in order to look at a paper book.

¶139 Bonnie Collier: Was there pressure on you to make sure that the students who wanted to be in the reading room could always be in the reading room?

¶140 Morris Cohen: For a while you could request access and sign in. But I don’t recall a huge uproar when we cut out the twenty-four-hour access. The Law Journal was an issue, and the Law Journal got their special privileges, over our objection. They went to the dean and got access after hours. But I don’t remember a huge uproar from the rest of the student body.

¶141 Bonnie Collier: You were talking before about the transitions and Diana.

¶142 Morris Cohen: Yes, that sort of brings me to retirement. After ten years—it was ten years in 1991—I had been in librarianship about thirty-five years at that point. That was enough. And I began to think seriously of retirement, and my determination was not to become inactive.

¶143 I wanted to stay in the law school. The law school is very supportive of retired faculty, and I was retired faculty. I kept an office, kept a hand in the community, got secretarial support to a limited extent. I remained on the faculty, could go to faculty meetings, eat in the faculty dining room when there was one.

¶144 My father had died at age 100, and I think he died of boredom. He stopped reading the New York Times because he couldn’t deal with the violence and the war and everything else that was in the paper.

¶145 I was not going to be bored—I had too many things I was interested in. We travel three times a year to Alaska where we have a granddaughter. We go to Jerusalem, where we have friends, once a year. And usually we tack on to the Jerusalem trip a stop in a European city—Paris or somewhere in Italy or wherever. So I was able to continue to be in the law school community and to have an active life. I didn’t want a retirement that had me at home reading the New York Times and walking around the block. I had the gym, I had the whole law school community, I had the Elizabethan Club.

¶146 I owe a lot to the deans of the law school. Harry, for hiring me in the first place and supporting me with the money that he raised for the library. Guido Calabresi for many things, one of them being the Elizabethan Club, which is an
undergraduate club to which some faculty and administrators are privileged to belong, which serves tea every day at four o’clock, and has a great Shakespeare collection.

¶147 That’s an interesting thing that was different at Yale than at Harvard. There were many places at Yale where the faculty and students met. That is, in the law school they met easily in the halls because of the favorable faculty-student ratio. But at Yale they met in the Elizabethan Club, which was a place that students and faculty belonged. Mory’s—I eat at Mory’s frequently—has faculty and students. At the gym, you run on a treadmill and next to you is a student or you’re surrounded by students. There are just many places—even when the faculty dining room was set up, there were faculty members who preferred eating in the regular dining room with students. And you wouldn’t see that at Harvard. There were not institutions where faculty and students met so easily.

¶148 Bonnie Collier: There’s a suggestion that—and I don’t know if this is really true—but that automation and digitization is going to be the cause of the end of the scholar-librarian. Now maybe the scholar-librarian will disappear for other reasons, but do you see that happening?

¶149 Morris Cohen: I think reading and books will survive. And I don’t know that there were a lot of scholar-librarians to begin with. From when I entered the profession in 1958, there were not a lot. There were a few, there have always been a few, and I think there will always be a few because the profession attracts different sorts of people. Today it attracts techies, it attracts administrative people, but it also attracts people who have scholarly interests.

¶150 What was appealing to me about the profession was this variety. That is, I could do scholarship, I could do some teaching, I could do some administration—I didn’t mind doing a little administration, it was when I had to do a lot that I really had a problem with it. I don’t think the scholar-librarian will disappear because I don’t think there are a lot of them now. Even some of the best librarians are not scholar-librarians.

¶151 Terry Martin is I think a superb librarian. He’s the man who succeeded me at Harvard. And he has done marvelous things there that I could never do. But he’s not a scholar-librarian. He’s intellectual, he has intellectual interests, but he’s not interested in writing and publishing. And there are other people like that.

¶152 A scholar-librarian is somebody like Bob Berring at Boalt Hall who has taught a variety of different subjects, who has published in a variety of different fields. But there ain’t a lot of them around.

¶153 Bonnie Collier: Has the computer been good for libraries? In your heart of hearts do you think it has been the best thing?

¶154 Morris Cohen: There’s no question that it’s been a remarkable thing. I realize that card catalogs had certain information we no longer have, but a lot of that we’re now getting into the computer. We can do things in terms of bibliographic searching that we could never do in the card catalog. There’s no question that so much research is done more effectively. There are dangers, there are risks, there is superficial searching that a lot of students do on the computer. But I think it’s been an enormous plus.
¶155 And the rare book rooms flourish. I think the book, in one form or another, will continue to be very much a part of law librarianship, legal education, the practice of law, whatever.

¶156 **Bonnie Collier:** Well, on that positive note, I think we’ll close. Thank you very much.
Morris L. Cohen: A Bibliography of His Works

Compiled by Ryan Harrington** and Camilla Tubbs***

The authors present a bibliography of published works by Morris L. Cohen. Works are listed in chronological order under each type of publication.

Morris L. Cohen was one of the greatest bibliographers of our time. His work spans decades and documents centuries of legal material. However, Morris kept very modest and incomplete records of his own work. Compiling his bibliography required intense investigation within both print and electronic sources and uncovered various errors, omissions, and incomplete documentation. The compilation process gave the authors an even deeper appreciation of Morris's accomplishment in publishing the Bibliography of Early American Law. As Morris knew all too well, any effort to compile a bibliography of someone so prolific is bound to have a few errors. The authors apologize in advance for these errors and hope we have avoided the most egregious ones. We have omitted translations of his works and presentations that did not result in transcribed speeches or collections. In some instances, we have only listed the first edition of Morris's books. Please excuse us if in doing so we omitted coauthors who were instrumental in subsequent editions.

Books


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Law and Science: A Selected Bibliography. Cambridge, Mass.: Harvard University, 1978. (With others.)


Edited Books


Book Chapters


**Articles**


“A Bibliography of Early Reports of the Supreme Court of the United States.” Legal Reference Services Quarterly 1 (Summer/Fall 1982): 43–144. (With Sharon Hamby.)


**Book Reviews**


**Collections**


**Videorecording**

Keeping Up with New Legal Titles*

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

Contents

Just Words: Lillian Hellman, Mary McCarthy, and the Failure of Public Conversation in America ....................................................... 175
Publicity Rights and Image: Exploitation and Legal Control ......................... 176
Learning Outside the Box: A Handbook for Law Students Who Learn Differently ................................................................. 177
Carbon Trading Law and Practice ..................................................... 179
Clarence Darrow: Attorney for the Damned ........................................... 181
The Last Battle of the Civil War: United States Versus Lee, 1861–1883 .......... 182
Giving It All Away: The Story of William W. Cook and His Michigan Law Quadrangle ............................................................. 184
Friends at the Bar: A Quaker View of Law, Conflict Resolution, and Legal Reform ....................................................................... 185
Tongue-Tied America: Reviving the Art of Verbal Persuasion .................... 187

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Just Words: Lillian Hellman, Mary McCarthy, and the Failure of Public Conversation in America ....................................................... 175

* © Creighton J. Miller, Jr., and Annmarie Zell, 2012. 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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Learning Outside the Box: A Handbook for Law Students
Who Learn Differently............................................................. 177

Edward T. Hart
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University of Florida
Gainesville, Florida
The Last Battle of the Civil War: United States Versus Lee, 1861–1883........ 182

June Kim
Senior Reference Librarian
Hugh & Hazel Darling Law Library
UCLA School of Law
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Friends at the Bar: A Quaker View of Law, Conflict Resolution,
and Legal Reform.................................................................185

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Instructional Services Librarian
George Mason University Law Library
Arlington, Virginia
Carbon Trading Law and Practice...............................................179

Mark W. Podvia
Associate Law Librarian and Archivist
H. Laddie Montague, Jr. Law Library
Dickinson School of Law
Pennsylvania State University
Carlisle, Pennsylvania
Giving It All Away: The Story of William W. Cook and His
Michigan Law Quadrangle.......................................................184

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Publicity Rights and Image: Exploitation and Legal Control..................176
When critic and author Mary McCarthy appeared on television’s *Dick Cavett Show* in early 1980, she seized upon Cavett’s invitation to comment on “over-praised writers” (p.41), famously saying of author and playwright Lillian Hellman that “every word she writes is a lie, including ‘and’ and ‘the’” (id.). Hellman responded with a suit for libel—a suit that provides the central focus for Alan Ackerman’s new book, *Just Words: Lillian Hellman, Mary McCarthy, and the Failure of Public Conversation in America*. Ackerman—an associate professor of English at the University of Toronto, the author of two other scholarly books,1 and the editor of the academic journal *Modern Drama*—posits that Hellman’s lawsuit “arose not from rational deliberation but from an excess of passion, which is only to say that it was typical of American public expression, illustrating the degree to which intemperate, highly personal, and potentially defamatory language is woven into our discourse” (p.36). Certainly, emotion seems to have been the primary motivation for the lawsuit, but this represents a rather narrow premise to support an entire book. Thankfully, Ackerman’s work segues from this basic theme into entertaining and informative discussions that should appeal to McCarthy and Hellman devotees alike and to readers interested more generally in First Amendment issues.

By 1980, both Hellman and McCarthy enjoyed well-established literary reputations. McCarthy, author of the 1963 autobiographical novel *The Group*, was seen as a stickler for the facts, willing even to expose her own failings in the pursuit of accuracy. On the other hand, Hellman was an embellisher extraordinaire, to put it politely, known to have fabricated the portrayal of herself as an anti-Nazi smuggler in her own ostensibly autobiographical story, *Julia*.2 The two writers were sepa-

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2. LILLIAN HEllMAN, JULIA, IN PENTIMENTO 99 (1973).
rated by politics, as well: McCarthy was “a liberal anticommunist” (p.11), Hellman a Soviet sympathizer once targeted by the House Un-American Activities Committee. Thus, though McCarthy and Hellman had no direct personal relationship to speak of, no one should have been surprised to learn that the two were decidedly less than fond of one another. Hellman’s lawsuit highlighted these philosophical and ideological differences, setting the stage for a momentous legal clash between two strong personalities.

¶3 Ackerman’s book tells the story of this clash and positions it within a broader social context. Chapter 1, “Libel and Life-Writing,” presents the background to Hellman’s lawsuit and addresses concepts important to the American law of libel, such as the difference between facts and opinion and public versus private personae. In chapter 2, “Language Lessons,” Ackerman describes Hellman’s and McCarthy’s formative years, supplementing his discussion with an extended digression on the history of teaching Latin and the classics in American schools. Chapter 3, “Words of Love,” expands Ackerman’s discussion of the First Amendment to touch upon such topics as censorship, privacy rights, and women’s reproductive freedom. Chapter 4, “Choice Words and Political Dramas,” explores the ideological divide between Hellman and McCarthy, with particular reference to their stances on communism. In chapter 5, “Criticism versus Libel,” Ackerman examines other questionable allegations of defamation, both real and fictional, concluding with contemporary controversies over ambiguous truth-telling, such as James Frey’s dubious 2003 memoir, A Million Little Pieces.

¶4 Understanding Ackerman’s sympathies for Lillian Hellman, a proven liar, is difficult, especially as the most obvious possible motives for her lawsuit include petty rivalry and an overblown concern for her own personal and literary legacies. However, a defamation lawsuit ends when its plaintiff dies. Thus, Hellman’s suit came to an unsatisfactory conclusion upon her death in 1984, and readers can only speculate how Ackerman’s book might have differed had the case been resolved by the courts. Regardless, Just Words serves as a worthy exploration of the conflicts created when issues of free speech, publicity, and privacy intersect. The book will make a welcome addition to both general academic and law school libraries.


Reviewed by Deborah Schander

¶5 When Michael Douglas asked Catherine Zeta Jones to marry him, the two actors probably did not expect their wedding to be anything other than a joyful occasion. But when a freelance photographer snuck into the ceremony, their happy day also became the focal point for a landmark U.K. privacy case. This decision, together with other cases from various countries, forms a body of law that protects rights in publicity. Many scholarly works have addressed this area of law, but most of them are narrow in focus, investigating either the commercial implications of publicity or the theoretical basis for publicity rights. However, with Publicity Rights

and Image: Exploitation and Legal Control, Gillian Black combines these approaches to explore how the two issues intersect in various Western jurisdictions.

¶6 As Black points out, trying to compare publicity practice across a number of very different jurisdictions is no easy task. U.S. theories on the subject have been evolving since the late nineteenth century, while the U.K.’s treatment is not quite fifteen years old. Tossing in laws from Germany, France, Canada, and elsewhere adds further complexity. Nor are current practices always tied solely to jurisdictional lines. Yet Publicity Rights and Image tries to cover each of the many variations in one slim volume composed of three basic parts: the first presents an introduction to the general legal theories involved; the second explores why this area of law needs further development; and the third focuses on the future of publicity. This third and final part, in particular, supports one of the book’s principal goals, “to provide a comprehensive picture of what publicity rights should look like, rather than what they do look like in any one jurisdiction” (p.196).

¶7 Black certainly provides a strong introduction to this area of law, but her choices regarding scope of coverage cause some confusion. In the acknowledgments, she asserts that the text—a revised and expanded version of her Ph.D. thesis on Scottish publicity law—is now “a wider, a-jurisdictional review” (p.vii), but Publicity Rights and Image remains decidedly U.K. focused. Applicable laws from France, Germany, and the United States receive reasonable review, while Canada and a few other European countries are briefly mentioned. Ultimately, however, readers can only guess why these countries were selected and others left out. Also unexplained is the book’s appendix, a single photographic reproduction of a historical advertisement, which is barely referenced in a book that contains no other historical images or visual examples.

¶8 Despite such oddities, the remainder of the book’s content is quite useful. Publicity Rights and Image condenses a complicated area of law into an easy-to-understand primer and presents a strong argument that the topic needs further attention from scholars and policy makers—after all, publicity law impacts privacy, property rights, the economy, and more. Supplementing its cogent analysis, the book includes comprehensive tables of cases and legislation, an extensive bibliography, and a detailed index with strong coverage of alternative terms.

¶9 Black, a solicitor and lecturer in commercial law at the University of Edinburgh School of Law, has made a valuable contribution to the study of publicity law and rights. Her book’s subject matter is probably too narrowly focused for use in law school survey courses, but Publicity Rights and Image could prove particularly effective in upper-level seminar classes. It is recommended for selection by all academic law libraries and by law firm libraries supporting attorneys who practice in the area.


Reviewed by Barbara Glennan

¶10 In Learning Outside the Box: A Handbook for Law Students Who Learn Differently, author Leah M. Christensen presents law school learning strategies tai-
lored for students who “tend[] to think ‘outside the box’” (p.xi). For Christensen, a professor at Thomas Jefferson School of Law, this group includes a wide range of law students, from those with “diagnosed or undiagnosed learning disabilities” to those who “process information differently than the norm” or simply “need a new approach to law school” (id.). Christensen offers her book to each of these groups as “a learning guide” (p.xii) with empirically grounded strategies derived from her own research and the work of other authors on legal pedagogy, and she asserts that there are “statistical correlations between [the] learning strategies and law school GPAs” (id.).

¶11 Christensen’s text is divided into two basic parts: the first designed to introduce students to law school in general, the second to present strategies for mastering critical law school activities. Early chapters in part 1 describe the unique qualities and challenges found in law school and explain how students can determine their personal learning styles and adapt them for success in law study. A significant portion of the remainder of this part is dedicated to introducing learning strategies appropriate for basic tasks like reading legal materials, briefing cases, and preparing for class. One chapter describes in detail the process involved in obtaining accommodations for learning disabilities and lists the accommodations that students can expect to receive in a law school environment.

¶12 Part 1 ends with a chapter that presents transcripts of interviews conducted with three students—two with disability diagnoses (ADD and ADHD) and one self-described as a “different learner.” While one of these students praises her school’s willingness to work with her to accommodate her disability, another reports she was ostracized by classmates who learned of her accommodations. Information like this, even when it is not particularly encouraging, may give student readers who have had their own negative encounters something they can relate to, something to demonstrate that their experience is not unique. Additionally, each of the interviewed students was asked: “What do you wish you had known before law school?” (p.106) and “What advice would you give to other law students who have . . . disabilities (or who simply think outside of the box)?” (id.). The answers to these questions may help motivate readers to take a proactive approach to managing their disabilities or learning styles, perhaps by applying some of the techniques described in the book.

¶13 In part 2, Christensen details specific strategies that apply to writing, researching, outlining, and test taking in law school. The chapter on writing provides separate formulas for law students to follow when crafting legal arguments and when completing legal writing assignments, complete with annotated examples demonstrating use of the formulas. This chapter also explains the importance of clear and recognizable organization and highlights specific writing challenges that may cause problems for “different learners.” Subsequent chapters cover both legal research and outlining in a similarly concise and easy-to-follow fashion. Christensen ends her book by focusing on exams. First, she describes how to approach essay exams, covering effective issue spotting and proper legal analysis and offering examples of both well-written and not-so-well-written exam answers. She also lays out the purposes underlying these exams and explains the qualities that professors look for when grading essays. The final chapter addresses multiple-
choice exams, describing the kinds of multiple-choice questions a law student might encounter and listing general strategies relevant to multiple-choice exams and specific strategies appropriate for each type of question.

¶ 14 Learning Outside the Box provides a concise map to the tricky terrain of law school success while simultaneously offering practical and emotional support to readers with nontraditional learning styles. The book will benefit both prospective law students and those current students who see a “mismatch between how law professors teach . . . and the way in which [the students] learn” (p.19). These readers may find it most useful simply to skim the text initially and then reread pertinent sections later as the content becomes applicable to their studies. In addition to students, law school faculty members, administrators, and staff responsible for counseling law students should also become familiar with this text. The book is recommended for all law school libraries.


Reviewed by Melanie Oberlin

¶ 15 Carbon Trading Law and Practice, from U.S. environmental law attorney Scott Deatherage, is a timely work on the emerging use of carbon markets as a mechanism for limiting greenhouse gas (GHG) emissions. Although the 2009 Copenhagen climate talks did not produce a binding international agreement on GHG emissions, and the U.S. Congress has to date failed to enact national cap-and-trade legislation, prospects remain strong for the future regulation of GHGs and for “the use of market-based systems as a means of regulating emissions” (p.xxvi). Indeed, markets for trading carbon offsets already exist, most notably in the European Union but also in various U.S. states and regions and elsewhere in the world. Literature on the law governing these markets is badly needed, and Deatherage’s book helps to fill this gap.

¶ 16 Deatherage’s knowledge and experience are evident throughout this wide-ranging work, as is his enthusiasm for market-based approaches to pollution reduction. The book opens with a primer on climate science and on the international consensus regarding global climate change; early chapters also address the basics of emissions trading and of carbon cap-and-trade regimes. The book then proceeds to more advanced topics: the international law on GHG emissions; the regulation of the EU’s emissions trading market; and the various legal regimes governing other, smaller carbon markets, including those in the United States. For each of the specific markets he discusses, Deatherage outlines the precise emissions regulated and the emission sources covered; identifies the regulating agencies; lists the carbon cap; explains the procedures for permitting, trading, banking, and borrowing credits and the rules on offsets; and describes the relative competitiveness of the market. Deatherage then examines U.S. law in greater depth, and the final third of the text discusses the practical aspects of developing and operating projects that produce carbon credits, including topics such as cost-benefit analysis and project incentives, the purchase and sale of carbon credits, and emissions accounting. In this last part
of the book, Deatherage’s personal experience with carbon projects adds particular value to the analysis.

¶17 Deatherage divides his examination of the developing U.S. law on GHG emissions into four chapters that separately address state laws, the courts, the EPA, and Congress. The chapter on the EPA is particularly timely because 2011 marked both the implementation date for new GHG emissions reporting requirements\(^4\) and the beginning of the phase-in process for regulations directly limiting GHG emissions.\(^5\) These EPA rules are traditional command-and-control regulations, not the market-based, cap-and-trade approach favored by industry. However, Deatherage’s chapter on Congress analyzes in detail a 2010 bill that would have implemented cap-and-trade.\(^6\) Though the bill failed to pass, future legislation will likely retain many aspects of this proposal, and Deatherage’s analysis should remain valuable in the years to come. His chapter on the courts is similarly helpful, providing brief overviews of the high-profile cases that are “play[ing] a significant role in the evolution of climate change law” (p.100).

¶18 Deatherage does not presume that readers have extensive background knowledge of environmental regulation, climate change, GHGs, or emissions trading concepts. Accordingly, the material in *Carbon Trading Law and Practice* is laid out with care and presented in a step-by-step process through clearly labeled chapters, headings, and subheadings. A detailed table of contents, an index, and a list of acronyms and abbreviations support the text. The book also has its faults, however, and future editions would benefit from better editing and from additional bibliographic tools, specifically a glossary; a bibliography; a more comprehensive list of acronyms (the existing list is incomplete); and tables of cases, statutes, and treaties.

¶19 Other existing titles—even other Oxford University Press titles\(^7\)—also address the regulation of carbon markets, but *Carbon Trading Law and Practice* is more up-to-date and includes more practical advice than these earlier works. Libraries can expect the publication of additional books and, eventually, a standard treatise on this topic, but for now, Deatherage’s work will prove useful for students and scholars, carbon trading advocates, and others working with developing carbon markets. As such, *Carbon Trading Law and Practice* is an essential purchase for those academic law libraries that collect in the areas of energy or environmental law and for any firm or business engaged in or seriously contemplating engaging in the purchase and sale of carbon offsets. Because of the book’s high cost and because the law in the area is so unsettled, the work is not recommended for other libraries.

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\(^{6}\) Clean Energy Jobs and American Power Act, S. 1733, 111th Cong. (as reported by S. Comm. on Env’t and Pub. Works, Feb. 2, 2010).

\(^{7}\) See, e.g., *LEGAL ASPECTS OF CARBON TRADING* (David Freestone & Charlotte Streck eds., 2009).

**Reviewed by Nick Sexton**

¶20 If Clarence Darrow is known at all by the general public today, it is probably because of the character portrayed by Spencer Tracy in *Inherit the Wind*, the 1960 film about the Scopes trial.\(^8\) Tracy’s character was actually named Henry Drummond, but anyone familiar with what is sometimes called the Monkey Trial knows that Tracy was playing Darrow. Central both to the film and to Darrow’s continuing legacy is the infamous 1925 trial itself, in which Darrow defended twenty-four-year-old high school science teacher John Scopes against a charge of violating a Tennessee law that prohibited the teaching of human evolution in the public schools. Despite common misperceptions, the resolution of the case was not a clear win for Darrow. As John A. Farrell describes it in his new biography, *Clarence Darrow: Attorney for the Damned*, both sides asked the jury “to return a guilty verdict, so that the case could move on to higher courts” (p.397). When it got to the Tennessee Supreme Court, however, the justices overturned the conviction on a technicality.\(^9\) Was this a win for Darrow? Not quite. He and the American Civil Liberties Union wanted to argue the unconstitutionality of the Tennessee law in the U.S. Supreme Court, but the Tennessee Supreme Court, having witnessed the embarrassing circus that engulfed the town of Dayton during the original trial, gave Darrow nothing to appeal.

¶21 Farrell’s book rightly spends one of its longest chapters on the Scopes trial. But the case, though it revived Darrow’s reputation in the eyes of the public, was heard closer to the end of his career than to the beginning, and it is better known for courtroom theater—namely, Darrow’s gambit in putting opposing counsel William Jennings Bryan on the stand and their ensuing verbal jousting over the issue of the Bible’s infallibility—than for reasons having anything much to do with law. Darrow’s reputation as a defense attorney who took on unpopular clients and causes was established long before Scopes, a point Farrell demonstrates by examining several of Darrow’s other cases.

¶22 Farrell presents a comprehensive portrait of Clarence Darrow throughout the book. Born in 1857, the fifth of eight children, Darrow attended Allegheny College and the University of Michigan’s Law Department, but did not graduate from either school. He then studied law at a Youngstown, Ohio, firm and practiced in the state before moving to Chicago, where he first made his name as a corporate attorney and later as the “the attorney for the damned” (p.6), an expression coined by Darrow’s journalist friend Lincoln Steffens.\(^10\) Darrow’s first marriage, in 1880, to Jessie Ohl produced his only offspring, Paul, to whom Darrow remained close throughout life. His second marriage in 1903 to Ruby Hamerstrom confounded Darrow’s friends, who considered Ruby “his intellectual inferior” (p.124), but the marriage endured until his death in 1938, despite Darrow’s various infidelities.

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8. *Inherit the Wind* (United Artists 1960).
¶23 “The damned,” Darrow’s clients, ranged from minors who were charged with murder—he considered it a victory when he won them life sentences instead of death—to what most people, inside the legal profession or out, would consider lost causes: Patrick Prendergast, who shot and killed the mayor of Chicago and became one of the few clients Darrow could not save from execution; socialist union leader Eugene V. Debs; various other union officials, whose cases made Darrow the chief representative of America’s growing labor movement; wives who killed their husbands; husbands who killed their wives; and Nathan Leopold and Richard Loeb, two rich, well-educated teenagers who murdered fourteen-year-old Bobby Franks. One of Darrow’s saddest cases, and a heartrending reminder of America’s racial history, was that of Dr. Ossian Sweet and his family, African Americans who moved into a white Detroit neighborhood and found themselves facing murder charges when their armed defense of the family home against a stone-throwing mob left one of their assailants dead. The first trial, overseen by future Supreme Court Justice Frank Murphy, resulted in a mistrial. The second, once again featuring Darrow and Judge Murphy, ended with a verdict of not guilty—a bittersweet victory for the family, as Dr. Sweet’s wife likely contracted tuberculosis while incarcerated. She later died from the disease, as did their baby girl.

¶24 Farrell’s work is a complete, modern biography of a preeminent figure in twentieth-century jurisprudence, one who played significant roles in the leading cases of his day. As such it should be owned by both public libraries and law libraries. The book is neither sharply critical nor a hagiography; it does a good job telling the stories of Darrow’s cases and giving readers the information needed to understand the circumstances of his times. Farrell draws Darrow with a fair hand, laying out the facts and letting readers reach their own conclusions about the man’s personal and professional life. Extensive citations are presented in numbered endnotes at the back of the book. Because individual notes often include stacked references that apply to several paragraphs of text, matching a quote with its source can be difficult; in some instances, endnote comments do not seem to relate to the paragraphs to which they are tagged. These issues are disconcerting, but hardly fatal to the book’s purpose. Overall, Clarence Darrow: Attorney for the Damned is a readable, entertaining, and informative volume.


¶25 Well-timed to coincide with the start of commemorations for the 150th anniversary of the U.S. Civil War, Anthony J. Gaughan’s The Last Battle of the Civil War: United States Versus Lee, 1861–1883 is a legal history of the northern Virginia estate owned by Mary Custis Lee, wife of Robert E. Lee, that is known today as Arlington National Cemetery. The Custis family bought the property in 1778, and the Arlington estate passed through the family, reaching Mary Lee in 1857. She held it under a life estate, to revert upon her death to her eldest son, George Washington Custis Lee. In 1861, with the outbreak of hostilities, the Lee family withdrew from Arlington for the more protective surroundings of their second home at Ravensworth
in Fairfax County. Arlington was quickly seized by federal troops in order to deny its high ground to Confederate forces, who might otherwise have used it as a base from which to attack Washington, D.C. The property remained under federal control throughout the war, and the government eventually claimed permanent ownership under title acquired at a tax sale in 1864. The postwar legal battle over the legitimacy of this sale forms the heart of Gaughan’s book.

¶26 Though his book’s subtitle focuses on the U.S. Supreme Court’s decision in United States v. Lee, Gaughan charts an interesting and informative path to this destination. He explores well beyond the litigation itself to examine the social and political dynamics connecting Arlington, the Lee family, and various federal wartime measures related to Confederate property. In a highly readable account, Gaughan carefully explains each of the contexts in which the Lee case arose: first, the historical significance of the property, from its connections with George Washington to the establishment of Washington, D.C., and Arlington’s geographical dominance over the District; second, the saga of congressional efforts to raise funds for the war effort and punish secessionists; third, the legal consequences entailed by court review of wartime legislation; and fourth, Lee’s role as a stalking horse for a strategy intended to rein in the federal courts’ powers of judicial review.

¶27 Gaughan diligently recounts the struggles of the Lee family to gain compensation for their lost estate in the decades following the war, presenting their efforts as a kind of litmus test for measuring the acidity of North-South relations. Shortly after the death of Robert E. Lee in 1870, Senator Thomas McCreeery sought to establish an investigation into the status of Arlington, with the express hope of helping Mary Lee achieve redress. The joint resolution he proposed went down in a blaze of criticism and a vote of 54–4 against. The North still wanted to punish former Confederate leaders, especially those the northern public blamed for betraying oaths of loyalty to the Constitution. By the time of the Supreme Court’s 1882 decision in Lee, Congress’s stance had softened, and the Senate Judiciary Committee managed to negotiate the terms of a just compensation with the Lee family. Corresponding to a growing rapprochement between the North and South, Lee had come to be viewed in a warmer light as a man of strong principle.

¶28 Gaughan’s own background gives a unique spin to his tale. He is an attorney with a J.D. from Harvard and a historian with a Ph.D. from the University of Wisconsin–Madison. He is also a decorated military officer who completed assignments as a staff officer in Iraq. He currently works in private practice in Madison, Wisconsin, and serves in the Navy Reserves. Though this is his first book, he has already moved on to his next, about the trial of the Watergate burglars.

¶29 The Last Battle of the Civil War nicely highlights the role that Arlington has played in our national history. As a recovering history graduate student, this reviewer, for one, appreciated the work Gaughan undertook in researching and drafting the book. Evidence of his efforts is listed in the acknowledgments and is visible in the quality of his footnotes and his bibliography. He went to the original

sources, not to reprints and secondary materials. While the book will certainly be welcomed by legal historians and students of the Civil War, Gaughan’s easy style may also appeal to casual readers with an interest in Lee, Arlington, or the Civil War. Published by a respectable university press, the book is a good addition for academic law libraries and for general academic libraries that serve students of history.


*Reviewed by Mark W. Podvia*

¶30 With its Collegiate Gothic design, the University of Michigan’s Law Quadrangle is among the most impressive and beloved structures on any American university campus. Completed between 1924 and 1933, the buildings (along with a sizable sum in support of legal research) were the gift of New York lawyer William W. Cook. In *Giving It All Away: The Story of William W. Cook and His Michigan Law Quadrangle*, Margaret A. Leary, the recently retired director of the University of Michigan Law Library, describes Cook’s life and his role as the University of Michigan Law School’s greatest benefactor.

¶31 William Cook was born in 1858, in Hillsdale, Michigan. He received his undergraduate degree from the University of Michigan in 1880, and an LL.B. from Michigan’s Law Department in 1882. Moving to New York City, he represented the Mackay Company—Western Union’s major competitor—and invested heavily in the telegraph and cable industry, investments that produced a sizable fortune. Highly regarded in his field, Cook also authored several important works on trusts and on corporation law. By 1910, he had recognized the need for private support of public education and decided to leave his fortune to his alma mater.

¶32 Cook was often contradictory in his actions. A believer in the education of women, he built a women’s dormitory for the university, yet he opposed the choice of a woman to manage the quadrangle’s first building, the Lawyers Club. He gave his personal fortune to support Michigan’s law school, yet he never visited the campus after graduating and declined all offers of honorary degrees. Cook was an anti-Semite and a believer in Anglo-Saxon supremacy—views regrettably common among those of his generation—yet he never attempted to force his views on the law school.

¶33 Leary’s interest in Cook as a subject dates to her first few months working at Michigan, when she realized that “nobody knew anything about [him].”13 Brilliantly researched, her work extends beyond Cook’s life to describe the era in which he lived. The “Great Blizzard” that struck New York City in 1888, the architecture of Cook’s Manhattan town house and Port Chester estate, his efforts to woo Ida Olmstead, his cottage at Blooming Grove Hunting and Fishing Club, his opposition to federal efforts to nationalize the telegraph and cable industry—each is

described in depth and detail. Leary’s central account, however, is the story behind the building of the Law Quadrangle, a tale that is, to a great extent, one of good fortune. If Cook’s nine-year marriage had produced children, his fortune might have gone to them, not to the law school. If the university leadership had not included men of foresight such as presidents Harry Hutchins and Marion Burton, less tactful advances might have driven Cook to donate elsewhere. Had architect Philip Sawyer not survived Cook, the Gothic design of the law quad might have been jeopardized. Had Cook not died when he did, the effects of the Great Depression might have rendered his donation insufficient to complete the project. Had the university not ultimately been victorious in protracted litigation over the Cook estate, funds might not have been adequate to construct the buildings that Cook envisioned.

¶34 Leary ends Giving It All Away—a book that will interest educators and historians alike and one that belongs in every academic law library—by describing what ultimately became of the major players in her story. She covers not only the key individuals, but also the fate of buildings and institutions, like the Mackay Company, the Lawyers Club, and Cook’s various homes. The final product is an eminently readable and, for the most part, lavishly illustrated book, though Giving It All Away would have profited from more photographs of the law quadrangle, allowing those who have not visited the University of Michigan’s Ann Arbor campus to better appreciate Cook’s magnificent gift.


Reviewed by June Kim

¶35 For those who have only a passing familiarity with the Religious Society of Friends (known colloquially as the Quakers), a book about the group’s views on the law, lawyering, and conflict resolution might seem sedate. The Quakers are famous for pacifism and for devotion to truth and integrity—characteristics that do not exactly suggest conflict or high drama. What distinguishes the Quakers from other pacifist groups, however, is their choice not to withdraw from society but to assert their religious principles within the broader world. Because of this involvement, relations between the Quakers and the English and American legal establishments have often been fraught with tension. Friends at the Bar: A Quaker View of Law, Conflict Resolution, and Legal Reform, authored by Quaker lawyer Nancy Black Sagafi-nejad, presents an overview of this often contentious history and explores the potential for using traditional Quaker principles and dispute resolution practices as a springboard for modern legal reform.

¶36 Friends at the Bar is clearly laid out and straightforward in structure, with six chapters arranged in two basic parts. In part 1, Sagafi-nejad ably introduces the Friends, their beliefs, and their history. Chapter 1 describes the “primary Quaker testimonies [of] harmony or peace, community, simplicity, and equality with truth-telling infusing all” (p.12). As Sagafi-nejad notes, “These testimonies together with the belief that there is that of God, the Light or Inward Spirit in every person form
the wellspring of Quaker activism” (p.13). Chapter 2 addresses the early history of the Society in England, where Quaker beliefs often placed the Friends at loggerheads with legal authorities. Because of their interpretation of scripture and their efforts “to tell the truth at all times” (p.30), Quakers refused to swear oaths. As one might expect, this position made it impossible for English Quakers to hold magisterial office, work as legal counsel, prosecute claims against others, or defend themselves against criminal prosecutions. Chapter 3 follows the Friends to America and particularly to Pennsylvania, the “holy experiment” (p.47), in the 1680s. Because William Penn was able to establish laws amenable to his fellow Quakers, the group’s experience with the institutions of law in Pennsylvania was considerably better than it was in England or in the other American colonies, “where officials deported, imprisoned, maimed, and even killed” Quakers (p.64).

¶37 With part 2 of the book, Sagafi-nejad’s focus shifts to the modern day. Chapter 4 addresses the experience of Quakers as parties in court, and its examination of landmark Supreme Court cases through the prism of the Quaker testimonies proves quite illuminating. Readers find, for instance, that the black armbands worn by the Quaker students involved in Tinker v. Des Moines Independent Community School District,14 represent a “silent witness of the peace testimony” (p.76). Similarly, in Hirabayashi v. United States,15 Quaker Gordon Kiyoshi Hirabayashi’s violation of a curfew on Japanese Americans invokes the testimony of equality—“the belief that all persons are interconnected by God’s light and by each other as members of the world community” (p.79).

¶38 Sagafi-nejad submits that her “main task” in Friends at the Bar is to convey the results of a 1991 survey she conducted to assess “the views of 100 Quaker lawyers on practicing law as they also practice their faith” (p.1), and she presents this information in chapter 5. The survey results provide a wealth of demographic data on Quaker lawyers, detailing, for instance, the environments in which they worked (most commonly solo practices or small firms) and the relative popularity of various practice areas (litigation was least popular). More notably, however, Sagafi-nejad found that “[s]ixty-two percent of respondents experienced tensions or conflicts as practicing Quakers and lawyers” (p.174). She concludes that the “lawyers who appear to be the most content and comfortable . . . are those who have deliberately limited [their] cases to ones that were less likely to conflict with their Quaker faith” (id.). Sagafi-nejad suggests that truth-telling is at the heart of much of this tension, noting “how difficult it is to maintain a primary focus on truthfulness while practicing a profession that, more than occasionally nowadays, calls for the practitioner to engage in some dissimulation, chicanery, or outright deception” (p.156).

¶39 In response, the book’s final chapter (chapter 6) outlines comprehensive legal reforms that might help minimize the imbalance between zealous advocacy and truth-telling and equality. Throughout their history, Friends have taken to heart the scriptural admonition against “going to law” (p.178), developing instead alternative methods for resolving disputes. Sagafi-nejad examines this long Quaker

15. 320 U.S. 81 (1943).
tradition of mediation and arbitration and submits that non-Quaker lawyers and clients could also benefit from increased use of such practices.

¶40 Friends at the Bar would make a valuable addition to the collections of academic law libraries, especially those with extensive holdings in the areas of religion and the law or legal reform. Though a relatively expensive purchase, Friends at the Bar is one of only a handful of monographs to address the Quakers’ relationship with the law.16 As such, it will enhance collections that include the other works and help fill in those that do not. In addition to the substantive content, patrons will appreciate the text’s extensive notes section, glossary, bibliography, and highly useful, thirteen-page index.


Reviewed by Matthew R. Steinke

¶41 Tongue-Tied America: Reviving the Art of Verbal Persuasion, from law professors Robert N. Sayler and Molly Bishop Shadel, opens with the basic premise that “[t]oo many Americans are ill-at-ease with public speaking” (p.1). Although the book was written largely with attorneys and law students in mind, its message extends well beyond the courtroom. Sayler and Shadel believe that competence with verbal persuasion is a critical life skill, important not only when giving presentations but for all manner of oral communication, both formal and informal. In Tongue-Tied America, they carefully explain the need for effective verbal persuasion and instruct readers from various backgrounds how to become more proficient in this skill.

¶42 The authors have written a comprehensive, yet compact, guide to persuasive rhetoric. The book first offers readers a foundation in classical principles of rhetoric and an introduction to various formats for speaking. The focus shifts in the book’s second part to the actual preparation and delivery of speeches. The third part applies principles developed in the preceding sections to real-world situations, addressing such topics as the use of persuasive rhetoric in the courtroom and the importance of rhetoric in presidential campaigns. In its final part, the book examines great historical speeches, including selections from Winston Churchill, Abraham Lincoln, Ronald Reagan, and Martin Luther King, Jr.

¶43 The use of illustrations drawn from contemporary and historical speeches is one of Tongue-Tied America’s principal strengths. In addition to the famous orations discussed in the final part of the book, the authors present familiar speeches throughout the text as examples of both good and bad rhetoric. For example, Sayler and Shadel praise the content of Senator John Kerry’s acceptance speech at the 2004 Democratic National Convention, but criticize its delivery: “The speech turned into a power struggle, with the audience trying to participate through applauding, and Senator Kerry plowing on ahead without waiting for them to catch up” (p.72). The

authors contrast this approach to Barack Obama’s masterful interaction with his audience during the “Yes We Can” speech delivered after his loss in the 2008 New Hampshire primary. Though President Obama’s rhetoric receives generally high marks from the authors, a June 15, 2010, Oval Office address on the BP oil spill is presented as a possible example of “stray[ing] too far from the inspirational epide-ictic and into the pure, colorless, deliberative mode of speech” (p.34). Real-world examples such as these help bring life to the dry rhetorical principles that the authors discuss.

¶44 Tongue-Tied America is focused primarily on formal presentations, but the book also makes a compelling case for the importance of persuasive rhetoric in informal office interactions. The authors caution against becoming too reliant on written communication in today’s world of text messaging and e-mail. Regular use of verbal communication in the workplace can help limit misunderstandings, foster personal connections with coworkers and supervisors, and improve general presentation skills. Given these benefits, finding opportunities to practice the techniques of verbal persuasion should be an everyday exercise.

¶45 Throughout Tongue-Tied America, Sayler and Shadel employ a straightforward writing style that is easy to understand. Their book is also clearly organized; each of the four parts is separated into compact chapters and subparts. The main text is supplemented by four appendixes: a suggested curriculum for a public speaking course, a quick history of rhetoric, an analysis of the relationship between poverty and communication skills, and a set of suggestions for high school and college debate programs. Overall, the book makes for a quick and entertaining read.

¶46 As law professors at the University of Virginia, where they teach a variety of courses on oral advocacy and rhetoric, both Sayler and Shadel are well qualified to write this book; indeed, their expertise and passion for their subject are evident throughout the pages of Tongue-Tied America. However, the potential audience for the book is much broader than just the legal community. Relatively few of the book’s pages are devoted to oral communication within the confines of law practice. While legal professionals will certainly find the book helpful, the lessons offered by Sayler and Shadel should appeal to anyone seeking to become more comfortable with public speaking. Thus, Tongue-Tied America would be an excellent selection for all law school libraries, undergraduate academic libraries, and large public libraries.