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Academic Law Libraries and the Crisis in Legal Education*

Genevieve Blake Tung**

Today’s law schools are threatened by declining enrollments and poor job prospects for graduates. Prominent reformers are exposing dysfunctions within the current system and recommending improvements, but many of these proposals misunderstand academic law libraries and their contributions to student and faculty success. This article examines four possible curricular reforms and suggests ways that law librarians can participate in a comprehensive effort to make legal education more useful.

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Introduction

§1 Legal education in the United States faces an uncertain and potentially grim future. The financial crisis that began to unfold in 2007 precipitated a significant decline in the market for many kinds of legal services, exposing vulnerabilities in the prevailing large law firm business model and structural weaknesses in the larger job market.1 Over 15,000 people (almost 6000 of them attorneys) were laid off by large law firms between January 2008 and December 2011.2 These unprecedented

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layoffs, combined with diminished law firm hiring beginning in 2008, glutted the market and raised formidable barriers for newer law school graduates. The problem is not limited to “Big Law”: the economic downturn has affected employment rates throughout the entire legal field. Employment numbers for new attorneys have steadily decreased since 2008; the latest data from the National Association for Law Placement (NALP) indicate that among 2011 graduates who reported their employment status nine months after graduation, only 65.4% held jobs that required bar passage. The percentage for all graduates may be even lower. Recent studies suggest that law firm hiring is unlikely to rebound to pre-2008 levels in the foreseeable future.

§ With the sharp downturn in private firm hiring, all sectors of legal employment have become more competitive. Bureau of Labor Statistics figures project approximately 212,000 job openings for lawyers “due to growth and replacement needs” between 2010 and 2020 (fewer than 22,000 annually), which is only a modest percentage of the average annual number of newly minted J.D.s, at least at current levels of matriculation. Moreover, these estimates do not reflect the possibility that many of the legal jobs created between 2010 and 2020 may not be


4. See Drew Combs, No Place to Hide, AM. LAW., June 1, 2010, at 70, 70 (“The bottom line: Even with their oft-touted lower leverage and lower billing rates, [AmLaw-rated] Second Hundred firms, as a group, were just as vulnerable to the economic downturn as AmLaw 100 firms were.”); Vesselin Mitev, Small Firms and Solos Feel the Financial Squeeze, LAW.COM (Apr. 10, 2009), http://www.law.com/jsp/article.jsp?id=1202429790719&Small_Firms_and_Solos_Feel_the_Financial_Squeeze; Market Trends, NORTHWESTERN SCH. OF LAW, http://www.law.northwestern.edu/career/markettrends/ (last updated Mar. 2012) (“Small-scale layoffs remain part of the new economy and have occurred in firms on almost every substantial legal market.”).


6. Id.


8. See Tamanaha, supra note 3, at 169. Indeed, the robust growth of law firms during most of the last decade may have been a departure from longer-term trends. See Hildebrandt Consulting LLC & Citi Private Bank, 2013 Client Advisory 2 (Jan. 14, 2013), http://hildebrandtconsult.com/uploads/Citi_Hildebrandt_2013_Client_Advisory.pdf (“[Historical data] suggests that, in fact, the boom years (roughly, 2001–2007) were the aberration, and what we are experiencing now is more characteristic of the legal market before the boom years.”).


10. Am. Bar Ass’n, Lawyer Demographics (2012), http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/ lawyer_demographics_2012_revised.authcheck dam.pdf, indicates total J.D. enrollment for the academic year 2011–2012 at 146,288 students. If even only one quarter (36,572) of these students graduate annually, supply will continually outstrip demand.
filled by new graduates, but instead by earlier graduates who happened to be unemployed in 2010. This is not to say that there are “too many” lawyers—there is a great unmet need for affordable legal services in the United States. Unfortunately, this need does not directly translate into legal employment, at least not within established private practices.

One outcome of these patterns has been a rise in the number of new law graduates pursuing solo or small firm practice. Recent figures from NALP show that for law graduates from the class of 2011, 42.9% of private practice jobs were with firms of between two and ten attorneys (an increase of 11.3% since 2008), while the percentage of graduates moving into solo practice has almost doubled in the same time period (rising from 3.3% to 6%). Solo and small firm practice can be extremely challenging for new attorneys, however, and may pose too uncertain of a financial reward to justify a student’s investment of time and resources, or the risk of crushing debt. Paul Campos has suggested that solo and small firm practice are “possibly unsustainable forms of self-employment,” in part because newly minted attorneys “likely have almost no idea what they are doing, because neither the most basic mechanics of practicing law nor any of the aspects of running one’s own small business were covered during the course of their legal education.”

Despite the downturn in the legal market, law schools continued to enroll sizable classes until very recently. However, class sizes for students beginning their studies in the fall of 2012 were dramatically smaller at many schools, and in January 2013, J.D. applications were approaching a thirty-year low. The decrease in incoming tuition dollars has created financial hardship for many law schools and

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12. See Emily A. Spieler, The Paradox of Access to Civil Justice: The “Glut” of New Lawyers and the Persistence of Unmet Need, 44 U. Tol. L. Rev. 365 (2013). This is an issue the legal profession has been facing for many years. See Roger C. Cramton, Delivery of Legal Services to Ordinary Americans, 44 Case W. Res. L. Rev. 531, 541–44 (1994).
14. James Leipold, The Employment Profile for the Law School Class of 2011 May Represent the “Bottom”—Class Faced Brutal Entry-Level Job Market, in NALP, supra note 1, at 1, 3. The most recent ABA statistics indicate that almost half (49%) of all private practitioners worked in solo practice in 2005, a figure that has remained relatively steady for the past twenty-five years, but which does not indicate the relative age or experience level of these practitioners. Am. Bar Ass’n, supra note 10.
15. Campos, supra note 11, at 201–02.
may make it increasingly difficult to maintain the status quo without increasing student tuition and fees. Indeed, the dramatic increase in the cost of legal education has continued apace throughout the economic downturn, while high tuition and increased transparency about employment rates promise to keep enrollments depressed.

§5 There has been widespread negative media coverage of the challenges faced by law students and new graduates, including strong criticism from commentators inside legal academia. The increased visibility of the problem has likely contributed to further downturns in applications and enrollments. Without intervention, some law schools may be forced to downsize or close.

§6 It is a positive sign that some legal academics are publicly exposing inefficiencies and dysfunctions within the current system and devising changes that may preserve and improve legal education. But many of the most prominent reform proposals should be disheartening to academic law librarians: our collections and instructional services are either ignored or grouped ignominiously with vanity building projects, bloated administrative budgets, and other sources of wasteful spending. It is clear that many well-intentioned reformers do not appreciate how libraries contribute to the academic and professional success of law students and faculty, or understand the complexities of how library budgets are being spent.

§7 It is imperative that law librarians participate in the conversation about improving the law school curriculum and outcomes for law graduates. If we do not speak up, we may lose our voice. Many libraries have responded to the current crisis as they have to previous periods of austerity: cutting acquisitions; postponing or cancelling planned renovations, technology upgrades, or program expansions; hiring fewer professional and support staff; and generally trying to do more with less. Many law librarians are also making innovative efforts to maintain high-quality services during this difficult time. Yet students and young alumni who find themselves precariously poised in the new legal marketplace may hold their law schools responsible. Law librarians must demonstrate, to both our schools and our students, that our work is part of the solution, not part of the problem.

19. Id.
23. See Fitchett et al., supra note 22, at 100–08, ¶¶ 27–54 (describing strategies used at the University of North Carolina and the University of Virginia).
Aside from sacrifice and prudence, how can we as librarians be part of an efficient solution for our institutions and the students we serve? In February 2013, the American Association of Law Libraries (AALL) delivered comments to the American Bar Association (ABA) Task Force on the Future of Legal Education, highlighting how law librarians are well positioned to respond to the challenges of the current crisis. The comments focus on law librarians’ skill and expertise in legal research instruction, the need for collaboration with other experiential training programs within the law school, the use of new technologies, and incorporating outcomes assessments into all aspects of the legal curriculum.

These AALL comments come at a crucial time: if academic law librarians do not actively position themselves as part of this necessary reform effort, there is a real risk that our libraries will be an easy target for ruthless budget cuts. Therefore, we should use this crisis to reassert our value and redirect the focus toward how we can help improve the odds for our graduates. This requires us to take an active interest in the law school reform movement and understand the implications of various reform strategies for our law libraries. We should also ensure that we, as law librarians, are indeed living up to the promise of the AALL statement to the ABA. Academic law libraries will need to hold themselves to the same rigorous accounting as their parent institutions in order to thrive in the “new normal.”

The Debate over “Practice-Ready” Training in Law Schools

The law school crisis has opened a new chapter in a long-standing debate about the purpose of law school: should law school be scholarly, academic, and theoretical, or should it be focused on everyday practice skills? Many of the most urgent voices for reform advocate a dramatic overhaul of the traditional scholarly curriculum in favor of experiential learning and cultivating “practice-ready” graduates.

In a recent article, William Henderson describes three interrelated factors that affect a law school’s viability: a critical mass of prospective students, those students’ ability to pay, and attractive professional employment opportunities waiting at the other end. Henderson argues that the last of these three is the most important: when prospective students see that the law holds the promise of an intellectually and financially satisfying future, they will be eager to apply to law

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school. To achieve that future, law schools must train students who are truly competent to counsel and represent clients from day one.

¶12 In this fiercely competitive job market, students should be prepared to provide basic services to clients from the moment they graduate. In the past, “recent graduates of law schools could count on their firms investing in them through a lengthy and exhaustive mentoring process that helped bridge the gap between a law school education and making it possible for them to contribute as productive members of a firm or organization.” Unfortunately, the vast majority of students today cannot expect to receive this kind of investment. For one thing, a large percentage of students are not getting hired at law firms at all. And many students who do secure employment are working for small firms that are less likely to dedicate time and resources to training new employees in-house.

¶13 Even larger firms that have traditionally offered the most extensive professional development opportunities for associates are cutting back. Some clients, aware of the lack of practical skills conferred by law schools, are unwilling to pay for inexperienced junior lawyers to work on their legal matters. Firms today “have less capacity to subsidize the on-the-job training of law graduates that they had been expected to provide, revealing deficiencies in the ability of law schools to adequately prepare a sufficient number of their students to handle legal matters for clients.” Law schools (or at least non-elite law schools) that graduate students without practical skills are likely to see poor employment outcomes for their recent graduates, causing a further decline in the marketability of their degree programs.
Considering the Purpose of Law School

¶14 Many laypeople assume that the goal of law school is the training of lawyers. Others (for example, many law professors) take the view that law schools are primarily places of scholarship, where “the law can be studied and understood as an academic and intellectual pursuit” rather than places of vocational training. These two views of legal education have been positioned in conflict for generations.

¶15 What is now considered the “traditional” approach to law school is rooted in the work of Christopher Columbus Langdell, dean of Harvard Law School from 1870 to 1895. Langdell believed that law was a science that should be studied by focusing on the primary sources of legal doctrine as articulated in appellate judicial opinions, which we know now as the “case method” of instruction. Firm in the conviction that “law is to be learned almost exclusively from the books in which its principles and precedents are recorded, digested, and explained,” Langdell and Harvard president Charles William Eliot praised libraries as the laboratories of legal science. Langdell hired faculty who were academics (rather than practitioners), introduced the Socratic method into his lectures, and advocated the lengthening of the time required to obtain a law degree. After Langdell stepped down from his deanship, his methods quickly spread to other elite law schools, eventually becoming the dominant model in legal education. At the dawn of the twentieth century, the ABA’s Section on Legal Education and the Association of American Law Schools (AALS) worked jointly to create the first accreditation standards for law schools, which hewed closely to the approach favored by elite, university-based institutions (like Harvard Law School) and effectively dismantled alternative legal education models.
¶16 Calls for curricular reform designed to improve the practical training in American law schools were soon heard and have continued intermittently for the past century.45 In 1935, for example, Columbia law professor (and noted “legal realist”) Karl Llewellyn published one of several arguments for more practical and individuated training.46 Llewellyn posited that a purely academic, philosophical, and historical approach to law would leave students unprepared: “I hold that a lawyer’s first job is to be a lawyer. I hold that we must teach him, first of all, to make a legal table or a chair that will stand up without a wobble. Ideals without technique are a mess.”47

¶17 In response to these kinds of critiques, the curriculum has changed in small measures over time. Classes in legal bibliography were encouraged, “grounded in the truth that the case-method school, although it trains a student in the use of cases, gives him little practical assistance in finding them.”48 Legal writing courses were added at some law schools by the mid-twentieth century.49 Clinical legal training was introduced in the 1960s and expanded quickly.50 Clinical coursework developed “an emphasis on community service, using legal clinics to provide pro bono access to legal services for low-income clients,” but often remained at a distance from the “main doctrinal teaching of the law schools.”51 Clinics were not without their critics, either: a 1972 report from the Carnegie Commission on Higher Education criticized the “anti-intellectual tendency” of some clinical teaching and suggested that clinical opportunities might be just one of many modest experiments to improve legal education overall.52 In general, skills and lawyering
courses struggled for acceptance and respect from some faculty colleagues who disfavored their incorporation into “the case method analysis core curriculum.”

§18 At times, this debate has pitted members of the legal academy against one another and against bench and bar. Attorneys have lamented the lack of skills displayed by recent graduates; judges have criticized the preparedness of lawyers as well as the tendency for legal scholarship to bend toward the theoretical and self-referential, rather than contributing useful explanations and commentary on practical doctrinal issues.

§19 One argument for minimizing the time spent on skills training during law school is that real lawyering is best learned by doing, and that no formal training can equal that provided by the profession itself. As David McGowan has pointed out, however, “the premise that schools may not replicate practical learning precisely does not entail that they may be no better than they are.” For schools to eschew this responsibility, they must assume that their graduates will go on to practice under the meaningful supervision of more experienced lawyers who can pre-

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55. See Henry Jackson Darby, *A Criticism of Our Law Schools*, 12 Ill. L. Rev. 342, 342 (1917) (“The law schools fail to train their pupils to do what a lawyer must do before he can safely advise a client, prepare a contract, write a brief, draw a pleading, or try a case—find the law.”); see also Carolyn R. Young & Barbara A. Blanco, *What Students Don’t Know Will Hurt Them: A Frank View from the Field on How to Better Prepare Our Clinic and Externship Students*, 14 Clinical L. Rev. 105, 117–18 (2007). When he was still in private practice and was a bar examiner for Suffolk County, Massachusetts, future Supreme Court Justice Louis Brandeis complained to Dean Langdell that even many Harvard graduates “are but poorly qualified for practice at the bar here according to the standard which has been adopted by the examiners.” Letter from Louis D. Brandeis to Christopher Columbus Langdell, Dec. 30, 1889, *reprinted in 1 Letters of Louis D. Brandeis* 84, 86 (Melvin I. Urofsky & David W. Levy eds., 1971).


57. See id. at 42–46; Brent E. Newton, *Preaching What They Don’t Practice: Why Law Faculties’ Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. Rev. 105, 118–19 (2010); Adam Liptak, *Keep the Briefs Brief, Literary Justices Advise*, N.Y. Times, May 21, 2011, at A12 (quoting Supreme Court Chief Justice John G. Roberts Jr. as saying “What the academy is doing, as far as I can tell, is largely of no use or interest to people who actually practice law.”).

58. See Sullivan et al., *supra* note 39, at 92; see also Albert J. Harno, *Legal Education in the United States* 176 (1953):

From what has already been done successfully by the schools, it seems clear that they can go yet further in the inculcation of practical skills. It is not unlikely that they will be able to go all the way in bridging the gap between law study and the practice, but failing that, then they should frankly acknowledge that some other agency or agencies should step in to finish the task. In that event, clinical training through office apprenticeships or internships in connection with legal aid programs might be required after graduation from law school and before admission to the bar.

prevent new hires from harming their clients and themselves. Unfortunately, this is often not the case.\textsuperscript{60} ¶20 What too often goes unacknowledged in conversations on this topic is the extent to which the prestige of the academic institution correlates to graduates’ need for “practical” training. As the 2007 Carnegie Report pointed out: “Because there is a tacit expectation that recent graduates from the elite schools will receive careful mentoring as part of [the most prestigious law firms’] staff development, the schools pay scant attention to preparing their students for practice.”\textsuperscript{61} The relative importance afforded to practice-oriented skills development is often obliquely related to more impolitic questions about law as a form of higher education, and how law students will go on to use their J.D.s.\textsuperscript{62} Law schools effectively reproduce divisions within the legal profession at large: elite national schools produce students who tend to work for large firms and represent wealthy corporate clients; locally focused or lower-ranked law schools are more likely to graduate students who work for small firms and serve individual clients.\textsuperscript{63} As long as these divisions persist, it does not make sense to pretend that all students are equally likely to end up working for wealthy law firms or securing prestigious clerkships where they will receive meaningful on-the-job training and mentorship.\textsuperscript{64} Yet schools that aspire to elite status may be disinclined to reinforce student perceptions that their programs are narrower than students’ ambitions.

¶21 In 1982, Roger Cramton observed that law schools are arranged hierarchically, preparing different student cohorts for different legal careers.\textsuperscript{65} Yet “[a] con-

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\textsuperscript{60} William R. Trail & William D. Underwood, \textit{The Decline of Professional Legal Training and a Proposal for Its Revitalization in Professional Law Schools}, 48 \textit{Baylor L. Rev.} 201, 225 (1996) (“Close supervision by experienced lawyers will provide a safety net for clients. Supervision will only provide a quality legal education to the new lawyer, however, if the supervisor is interested in educating that lawyer. Such an interest is increasingly uncommon.”).

\textsuperscript{61} \textit{Sullivan et al.}, supra note 39, at 89–90.

\textsuperscript{62} Those who favor a more scholarly model of legal education often focus on the need to instill students with good judgment, discernment, and a broad view of the law suitable for one who may wield significant influence and leadership in the community. In a debate on the necessity of a three-year legal education, Daniel Solove stated: “When we train lawyers, we’re training people who will be shaping our society, and I think it is imperative that their legal education be a robust extension of a liberal arts education, not simply a trade school education.” Laura I. Appleman & Daniel Solove, \textit{Debate Club—Abolish the Third Year of Law School?}, \textit{Legal Affairs} (Sept. 19–23, 2005), http://legalaffairs.org/webexclusive/debateclub_2yr0905.msp. \textit{See also} James Boyd White, \textit{Law Teachers’ Writing}, 91 \textit{Mich. L. Rev.} 1970, 1971 (1993) (“Both lawyers and judges are thus constantly called upon to maintain and reform the central institutions of our society; to do this well is a challenge to every capacity for education and wisdom, for it calls upon every ability that is involved in the creation of sound constitutions, in making wise legislation, in just adjudication.”). The Supreme Court has characterized law school as “the training ground for a large number of our Nation’s leaders.” \textit{Grutter v. Bollinger}, 539 U.S. 306, 332 (2003).

\textsuperscript{63} Randolph N. Jonakait, \textit{The Two Hemispheres of Legal Education and the Rise and Fall of Local Law Schools}, 51 \textit{N.Y.L. Sch. L. Rev.} 863, 877 (2006–2007) (citing \textit{Ronit Donovitz et al., After the JD: First Results of a National Study of Legal Careers} 42 (2004)).

\textsuperscript{64} \textit{Id.} at 886–87 (“[Local law schools’] efforts should not be aimed at getting more students employed by elite law firms. . . . The schools need to focus more on training their students to practice and compete better in the small-firm, personal-client sphere where the majority of their graduates will practice.”).

\textsuperscript{65} Cramton, \textit{supra} note 54, at 324. The generalized division of law practice into two modes (or “hemispheres”) dates back even further, although a 1995 study indicated a trend toward a majority
spiracy of silence tendsto suppress any frank talk about these familiar differences."\(^{66}\)

To best meet the needs of students at all points in the spectrum, legal education should be diverse. Legal education, however,

is tyrannized by a paucity of educational models. . . . [T]heir stated aspirations are limited to the models embodied by a handful of elite schools—whether or not these models have any application to the differing situation of the local and regional law schools that produce over two-thirds of American lawyers.\(^{67}\)

And while many legal skills are crucial for all law students to master, practical skills instruction is most important in schools “that produce lawyers who are unlikely to receive good apprenticeship experiences and must learn on their own.”\(^{68}\) More than thirty years later, these criticisms have not yet been satisfactorily answered by law schools and the ABA.

Curricular Reforms and the Academic Law Library

§22 Today’s most outspoken law school critics have picked up some of these themes—the lack of diversity in legal education models, the outsized influence of elite institutions, and the wide gap between theoretical scholarship and practical hardships—and tied them to the pressing problems of rising tuition and crushing student debt. In the popular and academic press, these critics have suggested sweeping changes, focused on making law school less expensive and more likely to help students attain their professional goals. These can range from increased client-facing experiences to expanded practical skills training to the use of better metrics to assess student competency and pedagogical success.


\(^{66}\) Cramton, supra note 54, at 324.

\(^{67}\) Indeed, the outsized influence of elite law schools continues today, in part because law professors are drawn predominantly from top-tier schools and carry their own experiences of law school into their classrooms. Sullivan et al., supra note 39, at 89 (“[L]egal education is shaped by the practices and attitudes of the elite schools; those practices and attitudes are reinforced through a self-replicating circle of faculty and graduates.”); Jonakait, supra note 63, at 902–03 (“Various commentators have suggested that law school faculties do not set curricular, teaching, and scholarly priorities from an understanding of what their schools’ graduates actually do, or even from the legal profession as a whole. Instead, faculty set a school’s course to satisfy the professors’ priorities, which are extrapolated from their own experiences.”).

\(^{68}\) Cramton, supra note 54, at 325. See also Johnson, supra note 40, at 160; Sullivan et al., supra note 39, at 95 (“[T]he most elite levels of the academy do provide extensive direct mentorship for the small number of academic stars likely to go on to teach law, though the purpose of such mentoring is rarely described (or acknowledged) so explicitly. The problem is that little of this kind of close mentoring is typically available for the great majority of future lawyers.”). These same biases may be the reason that the current crisis in law schools has only recently come to the fore. As Brian Tamanaha points out, “Before the crash . . . graduates who failed to land lawyer jobs almost entirely came from mid- and lower-ranked schools, destined for the lower hemisphere of law jobs. In an elite-focused legal academy and legal profession, to put it frankly, no one cares about these people or those types of jobs. . . . Only when the problem touched elite graduates and the corporate legal market did we pay attention to the phenomenon.” Tamanaha, supra note 3, at 171–72.
Faculty who specialize in teaching lawyering skills, such as clinicians and those who teach courses in pro bono representation, trial advocacy, alternative dispute resolution, contract drafting, and legal writing, have made great progress toward expanding the prominence and importance of their teaching in law schools, improving the synthesis of theory and practice for many students. These classes instruct students in crucial skills that almost every lawyer draws upon: counseling, drafting, negotiation, and so on. Legal research, however, is often not mentioned as a key skill in need of renewed emphasis or rehabilitation. In part, this may be because legal research was a component of orthodox law school curricula long before other skills-based training was widely accepted, and it is already incorporated into most first-year legal writing programs. Too often, though, legal research is assumed to be something straightforward and nonintellectual that can be easily mastered by new law students thanks to next-generation, web-based search tools. Nonlibrarians may also overestimate the information literacy of incoming law students and assume they need only minimal guidance.

Not only is this an incorrect assumption, it fails to account for the links between research skills and the metacognitive processes used in other lawyering tasks, such as factual investigation, development of interdisciplinary expertise, and the management of other document-intensive lawyering processes (such as e-discovery or digital due diligence). Good research habits—developing and documenting a methodical research strategy, paying close attention to detail, evaluating value and reliability, and being efficient with one’s time and resources—carry over into other areas of daily practice.

Some prominent voices in legal education reform, however, seem quite unfamiliar with the value represented by law school libraries and librarians. Kyle McEntee, Patrick Lynch, and Derek Tokaz, leaders of the nonprofit legal education policy organization Law School Transparency, have labeled law libraries as among “the ‘bells and whistles’ of a legal education” that must be eliminated in times of...

69. Some commentators have also tied the slump in legal employment with increased access to free or inexpensive sources of legal materials on the Internet. For example, the New York Times reported that “[m]any of the reasons that law jobs are disappearing are similar to those for disruptions in other knowledge-based professions, namely the growth of the Internet. Research is faster and easier, requiring fewer lawyers, and is being outsourced to less expensive locales, including West Virginia and overseas. In addition, legal forms are now available online and require training well below a lawyer’s to fill them out.” Bronner, supra note 18. This assumes (among other things) that a significant number of legal matters can be resolved by filling out standard forms or consulting unannotated primary sources, and that such materials are easy for nonlawyers to find and navigate online. Law librarians, especially those who routinely work with the public and pro se patrons, may not agree with these assumptions.

70. See Brooke J. Bowman, Researching Across the Curriculum: The Road Must Continue Beyond the First Year, 61 OKLA. L. REV. 503, 525–26 (2008).

71. This could also be framed as “learning for transfer,” the goal of which is to instill skills and understanding that students are then able to apply independently to a host of new situations. Newton, supra note 20, at 91.

72. This awareness has been reflected in AALL’s recent comments to the ABA Task Force on the Future of Legal Education. Wenger & Hagan Letter, supra note 25, at 2 (“Law librarians, like clinical faculty, teach experiential courses that model problem-solving and move law students towards metacognition.”).
budget austerity, along with information technology and career services.\(^\text{73}\) Paul Campos addresses law libraries as beneficiaries of out-of-control spending on needless physical plant improvements. “Law libraries,” he complains, “grow ever-more pharaonic even as the practice of law becomes less book-based, and as, if my own observations are accurate, law students find it less and less necessary or desirable to use these literary labyrinths even as opulent study spaces.”\(^\text{74}\) Campos argues that “[a]s legal practice continues to move away from requiring lawyers to consult books of any sort, the millions of dollars per year that the typical law school expends on maintaining a comprehensive law library could be reduced to a more rational level of expenditure.”\(^\text{75}\)

\(\text{¶} 26\) Campos was likewise dismissive of libraries on his former blog, *Inside the Law School Scam*, riffing that “law library directors . . . are remarkably adept at not noticing that no licensed attorney in the United States has consulted an actual legal book since November 17, 2004.”\(^\text{76}\) He had previously observed that library operating costs (among other things) have “skyrocketed at the typical law school over the course of the last generation,” without citing specific figures.\(^\text{77}\) Similarly, Brian Tamanaha argues that “[t]he entire set of rules relating to the law library must be deleted. These rules require law schools to maintain unnecessarily expensive library collections and a large support staff; the book-on-the-shelf library is virtually obsolete in the electronic information age.”\(^\text{78}\) David Barnhizer has compared law libraries to U.S. steel mills, poised to fall before “far lower cost competitors” who are gaining market share.\(^\text{79}\)

\(\text{¶} 27\) None of these commentators seems to fully appreciate the complexity of the law library budget, particularly the significant cost of electronic information, nor do they seem aware that librarians are also dedicated to preserving and making available material that is not yet available or publicly accessible in electronic form.\(^\text{80}\) Their comments reflect a widespread misunderstanding that high-quality digital

73. McEntee et al., *supra* note 20, at 242.
78. TAMANAH, *supra* note 3, at 173.
80. In the acknowledgments to *Failing Law Schools*, Brian Tamanaha specifically thanks a library staffer “for helping me acquire background material from numerous sources.” TAMANAH, *supra* note 3, at xvi. Tamanaha’s book cites to many older monographs, which are presumably not available in digital format. His critique ignores the costs of professional library staff time, interlibrary loan, and other administrative expenses associated with faculty research support.
legal information is less expensive than it may be in print, and that law libraries are therefore irrelevant. They also disregard law librarians’ roles in teaching students, supporting law faculty and administrators, and in some cases serving the public by providing access to valuable legal information. It is imperative that law librarians take the opportunity to set the record straight. This means educating administrators and faculty about how much things really cost and also emphasizing law librarians’ contributions that go beyond collection development. In particular, we must stress the contributions that law librarians can make to an evolving and improving pedagogy of legal research instruction.

Pedagogical Issues in Law Librarianship

¶28 The ABA requires law schools to provide some legal research instruction. In addition to the introductory work done in first-year research and writing courses, many law schools also offer advanced or specialty research classes to help improve students’ legal research skills and prepare them for practice. These courses are often taught by expert librarians.

¶29 Since the “semantically entrenched” pedagogical debates among law librarians during the late eighties and early nineties, the literature on legal research instruction has moved beyond framing the issue in binary terms and reflects many diverse approaches to improving student learning and retention, including instruction beyond the first year. Many librarians, however, see a continued need to

81. See Cadmus & Kauffman, supra note 22, at 276 (pointing out that electronic information “is often more expensive than its print equivalents.”).
82. Am. Bar Ass’n, 2012–2013 Standards and Rules of Procedure for Approval of Law Schools 19 (2012) (Standard 302(a)(2)) (“A law school shall require that each student receive substantial instruction in . . . legal analysis and reasoning, legal research, problem solving, and oral communication . . .”). Moreover, the ABA’s Model Rules of Professional Conduct require that an attorney provide “competent representation” to her clients, which requires “the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Model Rules of Prof’l Conduct R. 1.1 (2012). This language has generally been interpreted to require attorneys to familiarize themselves with the relevant legal information, via legal research, to ensure competent service to clients. See Ellie Margolis, Surfin’ Safari—Why Competent Lawyers Should Research on the Web, 10 Yale J.L. & Tech. 82, 89–91 (2007) (citing cases).
85. See generally Robert C. Berring & Kathleen Vanden Heuvel, Teaching Advanced Legal Research: Philosophy and Context, 28 Legal Reference Services Q. 53 (2009) (describing an approach to teaching advanced legal research that emphasizes student-generated learning); Callister, supra note 84 (presenting the elements of a pedagogical methodology for teaching legal research, which may be customized to a law school’s goals); Matthew C. Cordon, Beyond Mere Competency: Advanced Legal Research in a Practice-Oriented Curriculum, 55 Baylor L. Rev. 1 (2003) (describing how advanced legal research is taught at Baylor Law School in view of AALL’s recommendations for building core competencies in legal research); Matthew C. Cordon, Task Mastery in Legal Research Instruction, 103 Law Libr. J. 395, 2011 Law Libr. J. 25 (advocating the use of the “task mastery” learning structure and motivational system to improve law students’ legal research education); Aliza B. Kaplan & Kathleen Darvil, Think [and Practice] like a Lawyer: Legal Research for the New Millennials, 8 Legal Comm. &
strengthen or improve the position of legal research in the law school curriculum. Long before the current crisis, there was extensive discussion in the legal and law library literature about the need to improve students’ legal research skills before sending them into the workplace. Several commentators focused on law students’ and new attorneys’ legal research deficiencies as evaluated by legal employers, law librarians, and others who are able to observe such shortcomings in practice.

Although combined legal research and writing programs have grown in stature and importance since they were first introduced, the legal writing component tends to significantly overshadow legal research. In 2010, eighty-five percent of respondents to an ABA survey on law school curricula reported that legal research and writing were offered as part of a combined course in the first year. Among these law schools, roughly eighty percent devote less than one-third of class time to legal research instruction. When offered as a separate course, legal research is typically allocated only one or two credits. Seventy-five percent of respondents to a 2007–2008 survey of 178 academic law librarians reported that librarians served as guest lecturers in legal research and writing classrooms at their law schools, while coteaching arrangements between librarians and writing faculty, or librarian–led first-year research classes, were less common.

Meanwhile, advanced legal research and writing courses for upper-level students have become standard at many schools. Among the academic law librar-

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86. See, e.g., Kaplan & Darvil, supra note 85, at 157–61; Michael J. Lynch, An Impossible Task but Everybody Has to Do It—Teaching Legal Research in Law Schools, 89 LAW LIBR. J. 415, 415–16 (1997).


89. Id. at 61.

90. Id. at 53, fig.25. As a separate course, legal research receives fewer credits than any other course, with the exception of some Introduction to Law or Legal Methods courses. Id.


92. See SURVEY OF LAW SCHOOL CURRICULA, supra note 88, at 74, fig.60 (noting that between 2002 and 2010, thirty-three schools added an advanced legal research course, and seventeen added an upper-level legal research and writing course).
ians responding to the 2007–2008 survey, seventy-six percent indicated that members of their library staff taught upper-level advanced legal research classes. Law librarians already possess the expertise and skill set needed to respond to the call for more practical training in an efficient way.

¶32 Over time, however, the perception of research skills deficiencies has persisted, and the proposed remedy has changed very little: there should be more time spent on legal research instruction with more librarian involvement. Now would be a good time for law librarians to join the rest of the legal academy by critiquing and improving our niche in the curriculum. How are we measuring our success beyond polling law firm librarians (at a time when so few students are likely to work in large to mid-sized firms)? Are we emphasizing the right topics at the right time? Even if we had all the time and resources we could ask for, could we produce students who are competent to address the research challenges they will actually face in today’s legal marketplace? Are we unconsciously biased toward the sources and methods that served us well in the past, certain areas of legal practice, or certain kinds of research? Are we tailoring instruction to emphasize sources that our alumni actually use in practice?

¶33 The readiness and ability to offer training in a key practice skill will be essential to maintaining law librarians’ positions in today’s reform-minded climate. But to the extent that current practices are viewed as complementary to traditional doctrinal classes and methodologies, they may not keep pace with the larger trends in legal education. If the curriculum as a whole moves toward experiential learning, will the traditional legal research class fall out of step? How can academic law libraries address the needs of students and alumni who face unprecedented challenges as they move into practice without an employer’s safety net?

¶34 To use this moment of crisis productively, we should begin by keeping abreast of suggested curricular reforms for law schools as a whole, and understanding how law libraries can provide constructive support to their institutions, however they evolve.

The Potential Impact on Law Libraries of Law School Curricular Reforms

¶35 There is broad consensus that law graduates need more practice-based lawyering skills and better employment outcomes. Each of the alternative models discussed in this section—expanding mandatory experiential learning, adding

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94. See Wenger & Hagan Letter, supra note 25, at 2; see also Cadmus & Kauffman, supra note 22, at 278 (describing how, in the face of significant budget cutbacks, librarians at Yale’s Lillian Goldman Law Library continued to offer introductory, advanced, and specialty research classes, while cutting back in other areas).

95. Cf. Morse, supra note 53, at 253 (“The case method, as modified by materials on social and legislative policy or on law as process, takes away from students’ old learning habits about received doctrine and forces the students to participate actively in law-making and law-finding. All participants in the core curriculum should assist in preparing a student in lawyer competency.” (footnote omitted)).
practitioner faculty, instituting solo practice incubators, and diversifying law school models (by no means an exhaustive list)—attempts to address these issues. One important reality check is, as always, cost: “At a time when students are struggling to pay their loan debt because the cost of legal education has risen faster than salaries for the vast majority of legal positions, improving legal education threatens to be a costly proposition.”96 Practice-oriented programs can be time intensive, require more instructors (and lower student-faculty ratios), and are generally assumed to be more expensive than the large-section classes that have long been the backbone of law school.97 This is one area where existing law library staffs can stand out: as AALL pointed out in its comments to the ABA Task Force on the Future of Legal Education, “[t]here is no cost for taking advantage of the skills that law librarians positioned in law schools already possess.”98 Regardless of which reform models (if any) become popular in the near future, law librarians have an important role to play, because legal research remains one of the core factors determining an attorney’s efficacy in practice.99

Expanding Mandatory Experiential Learning

¶36 Law schools offer many courses under the umbrella designation of a practice skills or lawyering curriculum. These courses “cover a wide range, from research and legal writing in the first year, through trial advocacy and practice negotiation to clinical experience with actual clients.”100 One problem with skills-based and other experiential learning opportunities in law school is that they are not always available to all students, either because they are too resource intensive, or because students simply opt out.101 Only two percent of U.S. law schools require students to take a clinical course, and only about one-third of students avail themselves of the opportunity.102

¶37 Adding or emphasizing experiential learning opportunities in law school speaks directly to the criticism that law students lack the opportunity to appreciate what law is like in real life. The goal of such reforms is to produce graduates who are familiar with the mechanics of client representation and are less dependent on employers for training. One of the most prominent examples of this kind of reformed curriculum is found at the Washington and Lee School of Law, where the third year of law school is now dedicated to mandatory experiential training. Each

96. Flanagan, supra note 50, at 205.
97. Sullivan et al., supra note 39, at 93–94.
99. See MacCrate Report, supra note 45, at 157–63; see also Meyer, supra note 87, at 301, ¶ 9 (describing importance of legal research in a law firm setting); Marjorie Schultz & Sheldon Zedeck, Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admissions Decisions, 36 Law & Soc. Inquiry 620 (2011) (identifying the skills linked to professional competency and analyzing new metrics for evaluating law students).
100. Sullivan et al., supra note 39, at 87.
101. Shah, supra note 3, at 856; see also Sullivan et al., supra note 39, at 88 (“In most schools, this leaves direct preparation for practice entirely up to student initiative.”). Lack of student initiative is not the only barrier: not all faculty members have “the energy and the mindset to begin the iterative process of building a competency-based curriculum.” Henderson, supra note 7, at 505.
semester begins with a two-week skills immersion (one for litigation skills, the other for transactional skills); for the rest of the semester, students take clinical or practicum courses.\textsuperscript{103} The school has been praised for surpassing its own historical benchmarks, and it enjoys relatively robust numbers of new applicants.\textsuperscript{104}

\textsuperscript{¶}38 Such a fundamentally restructured third-year curriculum is likely to consolidate second-year students into larger-scale survey courses (such as evidence, corporations, or trusts) and marginalize smaller seminars and niche courses. Although it is a “skills” course by most measures, a dedicated, stand-alone upper-level legal research course may not fit neatly into an experientially focused curriculum. Students who are enmeshed in a landlord-tenant dispute may be indifferent to learning about sources for international law or trademark searching. Yet at the same time, an experiential curriculum requires students to find and master the law as new problems arise to be solved, as a lawyer would, and therefore is likely to require a greater degree of legal research than would a traditional upper-level survey course.

\textsuperscript{¶}39 The answer is not to eliminate upper-level research instruction, but instead to reposition it to take place at the moment of need—in other words, to dismantle traditional advanced or specialized legal research lectures and replace them with workshops, periodic class visits, small-group tutorials, embedded librarian partnerships, and other collaboration with clinical and practicum faculty, preferably multiple times during a term. This approach addresses a perennial criticism of legal research instruction: that it occurs at times dictated by convention or administrative convenience, instead of at the moment that students are actually receptive and can put the information to meaningful use.\textsuperscript{105}

\begin{footnotes}
\textsuperscript{103} Washington and Lee’s New Third Year Reform, \textit{Washington & Lee Sch. of Law}, http://law.wlu.edu/thirdyear (last visited Apr. 23, 2013). The program also requires all third years to do at least forty hours of law-related service and participate in a professionalism program. \textit{Id.} Washington and Lee is not alone in targeting the third year of law school for experimentation. The third year has long been maligned by students, and now by reformers. “The existing reality is that the third year of law school is, at best, a massive underutilization and, at worst, a frivolous waste of time, energy, and money that could be used for more practical training.” Jason M. Dolin, \textit{Opportunity Lost: How Law School Disappoints Law Students, the Public, and the Legal Profession}, 44 \textit{Cal. w. L. Rev.} 219, 252 (2007) (advocating a third year devoted to clinical and practical training).


\textsuperscript{105} A common complaint is that legal research instruction in the first year attempts to cover many subjects that students are wholly unfamiliar with and unprepared to actually use until later in their law school careers. Robert C. Berring & Kathleen Vanden Heuvel, \textit{Legal Research: Should Students Learn It or Wing It?}, 81 \textit{Law Libr. J.} 431, 441 (1989) (“Trying to teach systematic research during the first year is trying to teach the wrong people the wrong material at the wrong time.”); Bowman, supra note 70, at 552 (“Students are not motivated to learn how to research until they do their first summer clerkship and realize the importance of the research skills they learned in their legal research and writing classes. . . . [L]egal research instruction needs to be provided at the ‘time of need.’” (footnotes omitted)); Howland & Lewis, supra note 87, at 389 (quoting a firm librarian who said “Give the first-years the basics and, for example, don’t cover administrative materials until they
As an alternative to offering advanced legal research classes that aim to cover everything, or even specialty courses that address the specific tools of an individual practice area, law librarians could work closely with experiential faculty to provide tailored tutorials at multiple points during a semester, work one-on-one with students (as a law firm librarian might work with an individual associate facing a research issue), and demonstrate how the skills one uses in legal research—organization, planning, efficiency, and so forth—can be applied to other areas of practice, such as factual investigation, working with nonlegal experts, due diligence, or electronic discovery. Rather than struggle to compare various assessment tools to measure students’ mastery of artificial research scenarios (be they “treasure hunts” or more involved hypotheticals), librarians and other faculty could measure student learning by evaluating the quality of their final work product within the larger experiential setting. At the University of Maryland, for example, some upper-level legal research and writing coursework has been developed in collaboration with law school clinical programming, allowing legal research and writing students to learn from active and ongoing legal disputes, rather than constructed hypotheticals. Students appreciate the open-ended nature of the real-life research experience: instead of working on canned problems built around existing splits in case law, students “didn’t know what was out there. You could push a little bit further beyond the cases. . . . [You did] all the research that you could possibly do.”

Henderson has also proposed an incremental approach to transforming the law school curriculum by adding experiential training. His “12% solution” begins with a summer institute between the 2L and 3L years of law school that is created and staffed by the select group of faculty, alumni, and employers drawn from a law school consortium. What can be accomplished during a ten-week summer program for 3L law students is approximately equivalent to 12% of learning in law school. Although the consortium fac-
ulty would be charged with creating the curriculum, in all likelihood it would be [sic] entail simulations, team-based projects, and other forms of experiential learning. . . .

. . . . This process of building and improving a competency-based curriculum will have to unfold over a period of years. With some early successes, the 12% can be expanded to fit the strategic needs of the schools.\textsuperscript{110}

Such a program would be greatly enriched by the participation of law librarians, who could deliver timely, relevant information on specific research issues raised by the legal challenges presented to students.

\textsection{42} There is, naturally, a trade-off: students who learn substantive law “by doing” in experiential classes do not necessarily get the same in-depth exposure as do students who take traditional lectures; similarly, students who learn research skills as they need them will not have the same breadth of perspective on research tools and techniques as do those who take a more traditional legal research class.\textsuperscript{111}

On the other hand, “[s]horter research assignments in advanced legal research, client counseling, evidence, negotiation, pretrial litigation, and trial practice courses model different kinds of research needed for interviewing, drafting, and questioning.”\textsuperscript{112} Brent Newton has suggested using “daily practical exercises, such as simulation exercises concerning negotiation and litigation as well as legal research and writing” in the first year to improve skills and doctrinal knowledge.\textsuperscript{113}

Integrating research training across the curriculum could also help students avoid poor research practices (like falling prey to the search for the “perfect case”) by demonstrating that legal research “is not a one-size fits all process.”\textsuperscript{114} More frequent, relevant exposures to legal research training may also make it clear to law students that librarians are a resource to turn to when confronting a new legal issue and that research is an iterative process that becomes easier with practice.

Adding Practitioner Faculty

\textsection{43} The high salaries and low teaching loads of some tenured faculty are targets for reformers who want to see law schools drastically reduce their tuition.\textsuperscript{115} Faculty members hired for their scholarly acumen are also less likely to have lengthy backgrounds in practice, and they may not be as comfortable with teaching

\begin{footnotes}
\textsuperscript{110} Henderson, supra note 7, at 505–06 (footnotes omitted).
\textsuperscript{111} That said, practicing attorneys do not need to approach legal research as librarians do. See Lynch, supra note 86, at 419–20 (contrasting the “client-centered research” of attorneys with the scholarly approach used by many law librarians). See also Bowman, supra note 70, at 535 (“In the real world, attorneys must find the best authority and understand how the rules of law work, but attorneys must also balance a number of competing interests . . . . Attorneys do not have the time to do the ‘extensive’ research they did during law school . . . . The research is not always ‘complete’ in the real world, or better yet, ‘complete’ has a different definition.” (footnotes omitted)).
\textsuperscript{113} Newton, supra note 20, at 86.
\textsuperscript{114} Diamond, supra note 112, at 84, 85.
\textsuperscript{115} See TAMANAH, supra note 3, at 39–53; Spencer, supra note 27, at 2052 (“[T]raditional law faculty members are expensive . . . , as their salaries account for a large share of a law school’s budget and tend to be impervious to dramatic reductions.” (footnote omitted)).
\end{footnotes}
experiential courses. One proposed solution is to rely more heavily on adjunct faculty drawn from the practicing bar.

¶44 One vision of this approach has been offered by Kyle McEntee, Patrick Lynch, and Derek Tokaz. In their hypothetical “Modular Law School,” a higher proportion of classes are taught by adjunct faculty drawn from the practicing bar. Classes might run for a matter of weeks, rather than the traditional semester, giving students exposure to a greater variety of subjects. Shortening each instructor’s time commitment per class is also intended to make teaching more appealing to potential adjunct faculty with active practices. In the first year, the authors advocate pairing each standard doctrinal course with a “companion writing lab” taught by an adjunct, preferably an “expert practitioner.” It is unlikely, however, that the model puts much value on a librarian’s ability to provide expert services or teach legal research—the authors describe libraries among the student services “not necessary to receive a sound legal education.” Their hypothetical law school “does not have a physical library, relying instead upon electronic access and strategic partnerships with nearby universities and law firms.” Beyond its lack of interest in law libraries, this model poses significant challenges, including quality control and personnel issues. It also contravenes current ABA standards regarding composition of the faculty, as well as AALS bylaws.

116. Spencer, supra note 27, at 2051.
117. Barnhizer, supra note 79, at 306–07; Tim Epstein, Learning to Be a Lawyer from a Lawyer: The Benefits of Adjunct Faculty, DRI TODAY (Jan. 5, 2012), http://dritoday.org/post/Learning-to-be-a-Lawyer-from-a-Lawyer-The-Benefits-of-Adjunct-Faculty.aspx. Two problems with this suggestion are that it relies on low pay and support for adjunct faculty to maintain cost-effectiveness, and it creates (or exacerbates) a stratified and hierarchical environment in the law school. See Newton, supra note 20, at 123–24.
118. McEntee et al., supra note 20, at 232–51.
119. Id. at 235.
120. Id. at 234 (envisioning a “semester” that includes only between eight and eleven class meetings).
121. Id. at 235.
122. Id. at 239–40. It is reasonable to infer that these suggested writing labs would incorporate research training; an alternative configuration proposed in a footnote describes a “generalized introduction to legal writing” as including “library and online research, the Bluebook, and standard legal writing conventions.” Id. at 240 n.30.
123. Id. at 242.
124. Id. No mention is made of the prospective cost of electronic access or who will be responsible for managing data subscriptions and the “strategic partnerships” with nearby firms and universities.
125. Erwin Chemerinsky, dean of the UC Irvine School of Law, has criticized overreliance on adjunct faculty, on the grounds that they are generally not as skilled in teaching as are full-time faculty, and that they are less available to students to provide “the substantial learning that occurs outside of the classroom.” Erwin Chemerinsky, You Get What You Pay For in Legal Education, Nat’l L.J. (ONLINE), July 23, 2012, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202564055135&You_get_what_you_pay_for_in_legal_education (available only to LexisNexis subscribers).
126. McEntee et al., supra note 20, at 247–50 (discussing barriers to their proposal). Current ABA standards require that “A law school shall have a sufficient number of full-time faculty to fulfill the requirements of the Standards and meet the goals of its educational program.” AM. BAR ASS’N, supra note 82, at 29 (Standard 402). Current ABA rules indicate that a ratio of twenty students to each full-time faculty member is presumed to be in compliance with the standard; a ratio of thirty to one is presumed noncompliant. Id. at 31 (Interpretation 402-2).
¶45 There have been other, less drastic visions for increasing practitioner participation in the classroom. David McGowan, for example, has suggested blending academic and practice-oriented perspective by requiring tenured doctrinal faculty to “co-teach one additional two hour course in their chosen field with a practitioner in that field.” 127 Outside of a specific reform-minded framework, many law schools have already begun to use greater numbers of adjunct faculty to offer a wider variety of courses. Librarians who work with a variety of practitioner and traditional doctrinal faculty may be able to reach a larger percentage of the student body, and may reach some students multiple times. The benefits of repeated exposure to legal research techniques and sources at the moment of need allow students to learn the law as a lawyer would and, ideally, come away from repeated research experiences with a higher-level approach that they can then apply to novel situations.

¶46 Law librarians are already well positioned to work with practitioner faculty to incorporate legal research instruction at the point of need. Although part-time faculty who do not spend so many hours on campus may not have as much time to collaborate intensively with library staff, increasing communication between the library and these instructors will help librarians respond proactively to students’ questions and anticipate their research needs. Building relationships with active practitioners may also help academic law librarians gain some critical perspective on gaps between how research is taught in the classroom and how it is used in an attorney’s daily life. 128

¶47 A law school that is more comfortable seeking and drawing on legal expertise within its community may also be able to expand the scope of information it presents to its students. McGowan has suggested incorporating significantly greater instruction on evidentiary record building and factual investigation into the upper-level law school curriculum, including offering classes taught by “people who make . . . their living tracking down facts” and integrating factual investigations into the legal research classroom. 129 Shifting emphasis to cover more factual research would, he argues, draw academic law libraries closer to their counterparts at law firms, where librarians “focus on factual investigation at least as much as on legal work.” 130 Similarly, working closely with practitioners invites librarians to update and expand their teaching of current awareness tools and other nontraditional secondary sources, which may be of great value to graduates working in rapidly developing areas of the law. 131

127. McGowan, supra note 59, at 25. This is not unlike the practice, used by some librarians who teach advanced legal research classes, of bringing in a local firm or public law librarian to give students perspective on what research is like outside of the law school environment.


130. Id. See also Newton, supra note 20, at 96 (“[L]aw schools often fail to appreciate that factual investigation and development is just as or more important of a professional tool for a practicing attorney as legal research.”).

131. See Diamond, supra note 112, at 124 (recommending exposing students to “[t]opical litigation newsletters, verdict reporters, public records and docket files, looseleaf alerts, practice libraries
¶48 For students contemplating solo or small firm practice, business and management skills are invaluable. Law librarians, working with practitioner faculty, can play an important role in educating students on information aspects of practice management, such as the evaluation of information technology and research tools. For example, Debra Moss Curtis works with law librarians as part of her Law Office Management class at Nova Southeastern University’s law school to introduce students to the business end of legal research. Classroom discussion explores how law firm information needs are met, including “the combined physical plant/personnel issue of how legal research will be accomplished.” The law librarians introduce students to the potentially staggering costs of legal research materials and push them to contemplate the limitations and choices they may face in practice as information consumers.

Instituting Solo Practice Incubators

¶49 In 2007, the City University of New York (CUNY) launched its “Incubator for Justice.” This solo practice incubator was designed to train CUNY law graduates in the basic skills of starting and operating their own small firms while simultaneously encouraging their service to underserved legal communities. For eighteen months, the attorneys receive training from more experienced practitioners and enjoy low rents on office space. According to Fred Rooney, one of the project’s creators, “We’re helping lawyers, and we’re providing them with support and professional development skills, but it’s all done with the goal of having them set up practices where access to justice is extremely limited.”

¶50 Since that time, several similar programs have been launched or announced at law schools across the country. In December 2012, the Cleveland-Marshall College of Law announced plans to launch a solo practice incubator, including the creation of office space within its law library. Some of these programs have a clear and other similar resources”). Relying on “traditional legal research avenues (treatises, law reviews, legal encyclopedias, digests, ALR, etc.)” is misguided, because these sources may lag behind current events. Id. at 75.

132. Cf. Jonakait, supra note 63, at 889 (“Local law schools are failing their graduates if they do not offer training in how to use and assess technological advances.”).


134. Id.


136. See id.


138. Id.


140. Sloan, Cleveland Solo Incubator, supra note 139. Unlike many other incubator advocates, Dean Craig Boise “insisted that his school’s incubator is not a response to the job market.” Id.
focus on public interest lawyering (including pro bono and “low bono” services), while others are more hands-off; some integrate formal training in practice management skills, while others offer less structured mentoring, referrals, or other services.141 The University of Maryland’s assistant dean for career development, Dana Morris, made it clear that her school’s efforts were directly tied to making new graduates more successful in tough times: “Looking down the line at the economy, we knew we would have more students looking at going solo, and we were looking for ways to creatively meet that need.”142

¶ 51 Serving novice solo practitioners in this format will challenge many academic law libraries, but may also bring rewards. Attorneys who are thrust into new or unanticipated situations have both a great need for research resources and a great appreciation for how law libraries can assist them.143 In a solo or small firm setting, attorneys are more likely to become generalists, working in areas that they never specifically prepared to address.144 For example, a 2010 law school graduate described his preparation to pursue an unexpected job opportunity with a New Jersey solo practitioner: “‘I spent a week down in the Trenton law library reading about bankruptcy as I hadn’t taken any bankruptcy classes in law school’ he says. ‘I thought it was something I could do, something I was relatively interested in.’”145

When necessity draws young attorneys back to the basics, law librarians are uniquely situated to help.

¶ 52 Research expertise, however, can only go so far without the resources to back it up. Law libraries that seek to serve recent graduates in a solo practice incubator must be prepared to offer free or affordable access to legal materials. In the past, a well-rounded print collection would have done this job well (even if newer graduates required significant help navigating the books). Today, skyrocketing prices of print sources have made maintaining a complete collection unaffordable for many schools, and harder to justify when so much material is duplicated in subscription databases.

¶ 53 Some law schools may choose to provide subscription database access or other research resources to incubator attorneys.146 Alternatively, law librarians

141. See Hanover Research, supra note 139, at 19–36 (describing programs that are either operating or planned).
142. Sloan, Incubators Give Birth, supra note 139. A recent survey of a small number of Boston-area solo practitioners found that many chose to enter solo practice out of economic necessity. Hanover Research, supra note 139, at 47, fig.1.9.
143. See Hanover Research, supra note 139, at 51, fig.1.14.
could route these users to free online resources, subscription databases that are subsidized by local bar associations, subscription tools that are available for on-campus use, or existing print collections. Today’s solo and small firm practitioners use tools that are foreign to many law students, such as Casemaker, Fastcase, and PACER, as well as print practice materials. Choosing to support a solo practice incubator project means that the law library has another constituency to consider in its collection development, a constituency whose needs and preferences do not completely overlap with those of faculty and students. Libraries must also consider the extent to which they are willing and able to serve as a resource for alumni and the local bar, given that the economic downturn has forced many small and solo firms to trim or eliminate their legal publications and subscription research tools. Therefore, it is important that the law library be part of any institutional conversation about building and sustaining a solo practice incubator, to ensure that library resources are adequately supported.

Diversifying Law School Models

¶54 The now-standard three-year J.D. program has been roundly criticized since its inception. Brian Tamanaha traces its historical development in his book Failing Law Schools, and ultimately attributes the adoption of a third year to the efforts of members of the AALS and the ABA who believed firmly in a scholarly, unified vision of legal education and the profession, and who wished to exclude the part-time, urban, or vocationally oriented law schools that drew primarily from immigrants and the working class. These efforts were “waged in the name of quality control but included significant elements of class, ethnic, and religious bias.”

¶55 In a world where legal practice takes many forms, there is no reason why the curricular structure and teaching approaches of all U.S. law schools should march in lockstep. Some of today’s reformers have advocated either making the third year of law school optional, for example by allowing students to sit for state bar exams after two years of study, or by lowering the ABA-mandated minimum
number of hours of classroom instruction.\footnote{154} Under less restrictive regulations, Tamanaha argues, law schools will be free to tailor their offerings to meet the needs of the legal education marketplace: “Many law schools will continue to offer tenure, job security, and research support—others will not. Some degree programs will be two years, others will remain at three, with clinical components; some will be heavily doctrinal, others will be skills oriented.”\footnote{155} What would distinguish such programs from the modified third-year curriculum discussed previously, according to Paul Campos, is cost: “[A]ny meaningful reform in this direction must eliminate the tuition requirement, not merely the third classroom year.”\footnote{156}

\¶56 While allowing third-year students to sit for the bar may have very little impact on law libraries, diversifying law school structures could create an enormous upheaval in every aspect of the academic enterprise. Law schools that chose to stick to the traditional model, including robust support for faculty research, would have less reason to change their practices. Law schools that adopted a less scholarship-intensive model, however, would have very different needs from a library’s perspective: collection development decisions would be driven less by faculty research interests and more by lawyering skills and practice-oriented requirements. Librarians might also find themselves called into service more often as teachers, rather than researchers, as part of a heavily practice-oriented curriculum.

**Broadening the Research Skill Set**

\¶57 One key to a successful reform effort will be measuring and improving outcomes for students, rather than the “inputs” that were once understood to compose a high-quality legal education.\footnote{157} Outcome measurements can include bar passage rates, postgraduation employment data, and measures of new attorneys’ competency in practice. Regardless of whether a law school adopts any of the previously mentioned curricular reforms, or maintains a traditional doctrinal program, this is a good time to reappraise one of the library’s main outputs: whether our conventional approaches to research instruction are a good fit for students’ post-graduation needs. For example, even if a school does not go so far as to mandate an experiential curriculum, it may still make sense for librarians to pursue an expanded and collaborative approach to upper-level research instruction that addresses research questions at the point of need; seeks multiple, reinforcing opportunities for instruction; and includes a more significant focus on transactional and litigation practice materials.\footnote{158}


\footnote{154} Tamanaha, \textit{supra} note 3, at 173.

\footnote{155} \textit{Id.} at 174; see also Newton, \textit{supra} note 20, at 72.

\footnote{156} Campos, \textit{supra} note 11, at 220.

\footnote{157} See Steven C. Bennett, \textit{When Will Law School Change?}, 89 NEB. L. REV. 87, 123–24 (2010) (using law library volume counts as an example of a traditional “input” measurement).

\footnote{158} See, e.g., Kaplan & Darvil, \textit{supra} note 85, at 181–84 (discussing ways to integrate legal research training throughout the curriculum); Spencer, \textit{supra} note 27, at 2060 (suggesting an extension of legal research and writing education past the first year, “featuring more extensive simulation training focused on certain areas such as litigation and transactional skills”).
§58 Academic law librarians spend much of their time in service to faculty members and often engage in certain kinds of legal research that are geared toward comprehensive and in-depth examination of legal topics. This kind of research is not exclusive to the academy; it has much in common with the kind of exhaustive research that a large firm associate might do while preparing an important brief or client memo. But it is not always (if ever) practical for the small firm practitioner handling a routine matter or working for a client on a modest budget. As Karl Llewellyn quipped in 1935, “It is true that the 300-page corporate indenture is a part of today’s life; it does need attention in the law school. But the old homestead is still being mortgaged. That needs attention too.” The “practical” aspect of the training we offer is not self-evident. Merely asserting that more legal research training will help our graduates be more “practice ready” is insufficient; we should instead customize our classes to ensure that students graduate not only able to do basic research, but also to do research in the ways that will best serve their practices and their clients.

§59 A well-funded law school library may offer students access to and training in Westlaw, LexisNexis, Bloomberg Law, HeinOnline, and many other expensive, subscription-based online research tools, which they can subscribe to at relatively favorable rates, in part because database vendors want to facilitate students’ inculcation in the use of their products. But only the largest and wealthiest law firms are able to offer their staff access to the same range of tools (and even then, with a close eye on the running tab). The practices of these firms should be of marginal interest to law school research instructors, because fewer than ten percent of 2011 law graduates secured full-time, long-term positions at firms with more than 250

159. Lynch, supra note 86, at 419.
160. See Bowman, supra note 70, at 535.
161. Llewellyn, supra note 46, at 654.
162. See, e.g., Armond & Nevers, supra note 128, at 591–92, ¶¶ 60–61 (describing how feedback from practitioners led the authors to provide additional instruction on court rules based on their importance in client-centered legal research).
163. See Olufumilayo B. Arewa, Open Access in a Closed Universe: Lexis, Westlaw, Law Schools, and the Legal Information Market, 10 LEWIS & CLARK L. REV. 797, 832 (2006) (describing how LexisNexis and Westlaw have offered generous access to law school users, in part because “[i]t helps them in marketing their services to law firms since the vast majority of graduates leave law school with some exposure, if not facility, with their databases.”); cf. Marilyn R. Walter, Retaking Control over Teaching Research, 43 J. LEGAL EDUC. 569, 580–81 (1993) (noting that firm librarians attribute research weaknesses, in part, to “the habits and attitudes that students develop when CALR is free of charge.”) (citing a study reported on in Howland & Lewis, supra note 87, at 387); see also generally Shawn G. Nevers, Candy, Points, and Highlighters: Why Librarians, Not Vendors, Should Teach CALR to First-Year Students, 99 LAW LIBR. J. 757, 2007 LAW LIBR. J. 46.
164. See Arewa, supra note 163, at 830 (“LexisNexis and Westlaw services are particularly suited to large law firms that bill clients.”); see also Deborah K. Hackerson, Access to Justice Starts in the Library: The Importance of Competent Research Skills and Free/Low-Cost Research Resources, 62 ME. L. REV. 473, 481 (2010) (“Many firms limit, or even prohibit, access to Westlaw and LexisNexis for new attorneys”); Laura K. Justiss, A Survey of Electronic Research Alternatives to LexisNexis and Westlaw in Law Firms, 103 LAW LIBR. J. 71, 73, 2011 LAW LIBR. J. 4, ¶ 9 (describing one firm’s policy to limit the use of Westlaw and LexisNexis, in certain circumstances, in favor of lower-cost alternatives).
attorneys.\textsuperscript{[165]} Yet larger firms (and their practices) wield influence far beyond their proportion,\textsuperscript{[166]} including in our legal research classes.

\textsuperscript{¶60} We should introduce students early on to the most practical research challenges: that they themselves may have to decide what (if any) services they want to subscribe to; how to use the tools available to them through the local bar association; what free or low-cost online sources are the best, and how to appraise them; how to use local or topical practice guides and tools for transactional practice and counseling; where to find reputable forms, dockets, and court rules; how to research people and businesses; and more. Teaching these skills in law school will better prepare students regardless of their ultimate practice destination.

\textsuperscript{¶61} Now, more than ever, a greater percentage of information “beyond the traditional sources of law is considered relevant to the process of legal research.”\textsuperscript{[167]} This requires a rethinking of our traditional “conceptual universe,” emphasizing both a broader and a more systematic approach to attorney research.\textsuperscript{[168]} For example, legal practice may demand that practitioners quickly become familiar with nonlegal information—scientific and medical information, statistical data, or company information—as well as general fact-finding techniques. Thomas Morgan notes that

\begin{quote}
many lawyers like to brag about their ability to learn things “just in time”—just when and what they need to know to complete a narrow task. If a trial lawyer has a case about a dangerous chemical, for example, he will have to learn as much as practical about the chemical. The lawyer often might not have learned such non-legal knowledge before the case, however, and getting educated efficiently and effectively often proves easier said than done.\textsuperscript{[169]}
\end{quote}

To help build such skills, those fortunate enough to be part of a larger university environment should collaborate with non–law library colleagues to train law students to use nonlegal research tools and build competence working with factual investigations and empirical research.

\textsuperscript{¶62} In his recommendation to integrate factual investigations with legal research, David McGowan predicts that such a proposal will not appeal to law librarians.\textsuperscript{[170]} I would argue that rather than displacing the law librarian’s traditional skill set, expanding our view of the legal research curriculum allows librarians to introduce metacognitive aspects of legal research (perhaps even so-called bibliographic skills) into a wider array of law school situations. Increasing students’ general information literacy will serve them well in a dynamic and unpredictable legal information environment. Law librarians add value for their students and patrons not only because of their experience working with legal materials, but also

\begin{enumerate}
\item \textsuperscript{165} Palazzolo, supra note 37.
\item \textsuperscript{167} Richard A. Danner, Contemporary and Future Directions in American Legal Research: Responding to the Threat of the Available, 31 Int’l J. Legal Info. 179, 192 (2003).
\item \textsuperscript{168} See id.
\item \textsuperscript{169} Morgan, supra note 65, at 184–85; see also Bowman, supra note 70, at 552 (describing Millennial law students as “‘just in time’ learners” and citing other sources using the term).
\item \textsuperscript{170} McGowan, supra note 59, at 21.
\end{enumerate}
because they have received general training in research techniques and information organization and retrieval.171

¶63 Finally, sensitizing students to the practical constraints that shape how they research may also open a door to new opportunities in librarian-student cooperation: students who understand how local law libraries can help them save time and money as practitioners may prioritize this practical skill set and form a new appreciation for libraries in their professional practice. Academic law libraries should make sure their doors are open to alumni who may need access to the library’s breadth of resources and their librarians’ expertise.

Conclusion

¶64 More than thirty years ago, Anita Morse argued that for law schools to be optimally successful, “[t]he answer must be an integrated effort of all parts of the legal education community to prepare law students in lawyer competency.”172 As law librarians, we cannot passively watch while legal reform efforts are debated and tested in response to the current crisis. Unless we play a visible and integral part in the reform process, our contributions to student success will be marginalized or ignored by those who do not understand our role and our potential. Part of this process requires ensuring that what we have to offer is what the moment calls for—potentially a new paradigm in legal education—and planning ways to adapt to changes in our institutions that may be out of our control. We should envision our libraries as part of a comprehensive effort to make legal education more useful, attractive, and affordable, and in doing so make other stakeholders aware of what they have to lose by cutting libraries and librarians out of the picture.


Responsibility of International Organizations

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*Foreign Law Guide*

*International Law in the New Age of Globalization*
Conservative Judaism stands at the center of the Jewish ideological spectrum. In that position it strives, sometimes with difficulty, to apply a flexible, modern outlook to an ancient system of binding laws. This bibliography provides law scholars with annotated citations to a selection of important sources related to Jewish law in Conservative Judaism, supplemented by brief explanations of the larger context of the resources.

Introduction

1. Conservative Judaism is an unfortunately named branch of liberal Judaism.1 If Orthodox Judaism stands on one side of the left-right divide of the Jewish community (the right side), Conservative Judaism is firmly on the opposite (left) side. However, if the Jewish community is divided into those who view Jewish law as binding and those who do not, Conservative Judaism (in theory, at least) is firmly on the side of binding law, the same side as Orthodox Judaism. So Conservative Judaism occupies an uncomfortable position, firmly modern and liberal, while still adhering to a binding legal framework, which is a space largely occupied by the nonliberal camp of Orthodox Judaism.

2. This middle space is accompanied by many problems, but despite these problems, the conception of Jewish law offered by the Conservative movement represents an important and comprehensive vision that claims for itself a historical authenticity,2 and that is ideally suited to ensure that the exploration of Jewish law

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1. Internationally, and in Israel, Conservative Judaism is called Masorti, using the Hebrew word for “traditional.”
2. ELLIO T N. DORFF, THE UNFOLDING TRADITION: JEWISH LAW AFTER SINAI 5 (2005) (“Conservative Judaism is an historically authentic form of Judaism—I would say the most historically authentic
in law schools includes a broad spectrum of views alongside the more widely covered Orthodox understanding of Jewish law. In other words, Jewish legal scholarship produced in law schools would be greatly strengthened by substantively confronting the claims of Conservative Judaism about the origin, history, methods, and structure of the Jewish legal system. Indeed, exploration of the full, varied, and broad spectrum of Jewish legal theory and practice is necessary to, in the words of one major scholar of Jewish law from the legal academy, “accurately depict” Jewish legal principles “in a way that is faithful to the Jewish legal system.”3 This effort will necessarily include exploration of Jewish law in both its premodern manifestations (before the development of Orthodox Judaism4) and its modern era legal movements, both Orthodox and non-Orthodox. This bibliography is intended to foster that effort by bringing together in one document Jewish legal sources from what is perhaps the main school of thought of Jewish law that stands outside of Orthodox Judaism, that of Conservative Judaism.

¶3 Jewish law in the Conservative movement is notoriously hard to characterize. This difficulty stems from Conservative Judaism’s position at the ideological center of Judaism. As Elliot Dorff states: “It is always easiest to understand, explain, and have passion for one or the other of the ends of a spectrum, for then one embraces that endpoint consistently, without requiring much thought.”5 He adds that “[i]t is harder to affirm a middle point on any spectrum, for then one must have the maturity, intelligence, psychological security, and wisdom to exercise judgment and to live with inconsistencies.”6

¶4 A clear, recent example of these difficulties and inconsistencies is on display in the Conservative movement’s decisions, called teshuvot,7 on whether to ordain openly gay and lesbian rabbis. Rather than arriving at a single answer to the question, the movement adopted three positions: no,8 no,9 and yes!10 That diametrically opposing positions on this emotionally fraught issue can be both official and

4. Despite common assertions to the contrary, some argue that Orthodox Judaism’s particular understanding of and approach to Jewish law developed not in ancient Israel or Babylonia, but in early modern Europe. See Robert Gordis, Understanding Conservative Judaism 4–5 (1978).
5. DORFF, supra note 2, at 2–3.
6. Id. at 3.
7. The singular of this term is teshuva. Its English plural is responsa, and the English singular is responsum. Teshuvot translates literally as “answers.”
acceptable under Jewish law underscores the difficulty involved in capturing the nature and spirit of Jewish law in Conservative Judaism.\(^\text{11}\)

\(\text{§5}\) Finally, the very nature of Jewish law in Conservative Judaism—to be open to profound change—also contributes to the difficulty in capturing its essence. In Orthodoxy, changes to the law tend to be rare or even nonexistent. A legal decision is fixed, often for generations. Conservative Judaism’s openness to change, in contrast, makes capturing a fixed position of Jewish law more challenging. Further exacerbating the challenge is the lack of an accessible, comprehensive system to effectively track change, such as Shepard’s or KeyCite.

\(\text{§6}\) In sum, there are real difficulties to capturing the nature of law in Conservative Judaism. This bibliography is intended to begin the process of providing resources to overcome these difficulties.

### Historical Development of Conservative Judaism

\(\text{§7}\) Conservative Judaism has its ideological roots in a nineteenth-century intellectual movement called *Wissenschaft des Judentums*, or the “science of Judaism.” This movement sought to study Judaism and Jewish history critically with scientific methods.\(^\text{12}\) A scholar of this movement, Rabbi Zacharias Frankel, who had broken with the Reform movement over what he believed was its excessive rejection of Jewish practices, founded the Jewish Theological Seminary of Breslau in 1854. There he developed his historicist approach to studying Jewish law, called the “positive-historical” school. This approach is the intellectual forebear of Conservative Judaism.\(^\text{13}\)

\(\text{§8}\) The next important step in the development of Conservative Judaism was the 1886 founding of the Jewish Theological Seminary of America in New York. The seminary was established, however, before the development of a united and coherent Conservative movement. Its founders were divided between rabbis who sought

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11. How and why this can happen is discussed *infra* \(\text{§ 13}\). It should be noted, though, that the approval of multiple and conflicting decisions enables rabbis and institutions within Conservative Judaism to follow any of these approved decisions. In the case of ordaining gay and lesbian rabbis, the Jewish Theological Seminary, the flagship American institution that ordains Conservative rabbis, has followed the *teshuva* allowing such ordinations. *See Chancellor-Elect Eisen’s Letter to the Community, Jewish Theological Seminary* (Mar. 26, 2007), http://www.jtsa.edu/Conservative_Judaism/The_Halakhic_Status_of_Homosexual_Behavior/Eisen_Letter--Ordination.xml (“I write to announce that, effective immediately, The Jewish Theological Seminary will accept qualified gay and lesbian students to our rabbinical and cantorial schools.”). This effectively sets the movement’s policy as allowing gay and lesbian ordination, limiting the real-world scope of the opposing approved *teshuva*. Moreover, in 2012, the Committee on Jewish Law and Standards voted to approve guidelines for same-sex marriage ceremonies as well as divorces. *See Elliot N. Dorff et al., Rituals and Documents of Marriage and Divorce for Same-Sex Couples* (approved May 31, 2012), available at http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/same-sex-marriage-and-divorce-appendix.pdf.


to teach an American style of Orthodoxy and more liberal rabbis who rejected the radical reforms of the Reform movement.¹⁴ These two groups were united by the positive-historical school and a view that multiple approaches to Judaism could be legitimate.¹⁵

¶9 The seminary grew rapidly with the arrival and leadership of Solomon Schechter from the University of Cambridge, England,¹⁶ and the huge influx of traditional Eastern European Jews to the United States. These immigrants no longer wished to remain Orthodox, but Reform Judaism seemed too foreign for them.¹⁷ Through the early twentieth century, the Conservative movement established its institutions, and by mid-century it had developed into the largest Jewish movement in the United States.¹⁸

¶10 Following this peak, however, the Conservative movement suffered a slow and gradual decline of numbers and influence in the late twentieth century and early twenty-first century,¹⁹ during which period Reform has seen an increase in numbers, and Orthodoxy increased its ranks and assertiveness.²⁰ Still, the movement remains far from extinction,²¹ and its institutions, aware of the problems, have begun to study and address them.²² Indeed, the future of the Conservative

¹⁴. See Dorff, supra note 13, at 17.
¹⁵. Id. at 18.
¹⁷. Marshall Sklare, Conservative Judaism: An American Religious Movement 23–24, 74 (1955); see also Gillman, supra note 12, at 39. As described by Rabbi David G. Lerner, “American Jews . . . did not choose [Conservative Judaism’s] ideology consciously; they parked in the Conservative synagogue . . . as a convenient rest stop between the Orthodoxy of their parents and the Reform of their children . . . where Bubbe and Zayde felt comfortable and the pleasures of suburbia were paramount.” David G. Lerner, In the Footsteps of Rabbi Akiva, 54 Judaism 178, 178 (2005).
¹⁹. Id.; Jack Wertheimer, Judaism and the Future of Religion in America: The Situation of Conservative Judaism Today, 54 Judaism 131, 131 (2005) (“Whereas fifty years ago, [Conservative Judaism] was the movement preferred by the plurality of American Jews, doubling and then tripling the numbers of its affiliated congregations in little over a decade, it has long ceased growing, and in fact now suffers from an erosion in its membership.”). See also Lerner, supra note 17, at 178 (describing Conservative Judaism as failing to “motivate enough of its members to experience the transformative power of a religious life” and therefore “floundering, lacking direction, and diminishing significantly in number”).
²⁰. Jack Wertheimer, The Outreach Revolution: Platoons of Orthodox Jews Are Transforming American Jewish Life, COMMENTARY, Apr. 2013, at 20, 24 (“This demographic resurgence [in Orthodoxy] has been coupled with a newfound sense of self-confidence, born of a conviction that the Orthodox alone will continue to thrive while the other religious movements of American Judaism are in steep decline . . .”).
²¹. According to the National Jewish Population Survey, 26% (1,077,000) of American Jews consider themselves Conservative (compared to 34% for Reform and 13% for Orthodox), and 31% (656,000) of synagogue members are Conservative (compared to 36% for Reform and 27% for Orthodox). Jonathon Ament, American Jewish Religious Denominations 9 tbl.2, 25 tbl.9 (United Jewish Communities Report Series on the Nat’l Jewish Population Survey 2000–01, Report No. 10, Feb. 2005). See also Noam E. Marans, Denominationalism and Its Discontents, 5 G’VANIM, no. 1, 2009, at 65, 68 (noting that in the mid-twentieth century many wrongly believed, as many now predict for the Conservative movement, that Orthodoxy would disappear).
²². See, e.g., Jack Ukeles & Steven M. Cohen, Draft Strategic Plan for the New USCJ (Jan. 2011), http://www.uscj.org/images/strategic_plan_draft.pdf (draft report of a commission set up to address the problems faced by contemporary Conservative Judaism by reorganizing and repurposing the
movement has become a focus of many of its rabbis and scholars. For example, the entire fall 2005 issue of the journal Judaism was dedicated to articles by Conservative rabbis and thinkers that explore the future of the movement. The following sources offer information about the development of Conservative Judaism.


This volume advances a new theory about the development of the Conservative movement, arguing that it emerged as a movement truly separate from Orthodoxy and Reform much later than others contend, in the mid-twentieth century rather than the late nineteenth and early twentieth century.


This volume tells the early history of Conservative Judaism, beginning in the 1840s and concluding in 1902. An appendix provides biographical sketches of significant figures in the movement.


After offering a brief history of Conservative Judaism, this study provides analysis of the development and persistence of its contemporary problems, including institutional problems, demographic problems, and theological dilemmas. The authors conclude by offering suggestions to effectively address the issues and dilemmas they describe.


This helpful illustrated history of Conservative Judaism, written for a general audience, begins with its European roots and ends at the close of the twentieth century. The volume concludes with a section suggesting related items for further study.


This volume provides short biographical sketches of figures associated with Conservative Judaism, organized alphabetically by name. Also included are short...
histories of the major institutions of the movement, and an appendix that lists all the leaders of these institutions.


This is one of the classic histories and analyses of Conservative Judaism, written at the movement’s height during the mid-twentieth century. It is not a standard chronological telling, but is instead organized by chapters such as “The Development of the Conservative Synagogue,” “Religious Worship in the Conservative Setting,” “Social Activities and Jewish Education in the Conservative Synagogue,” and “The Conservative Rabbi.” Sklare helpfully relies on statistical information where relevant.


This volume provides a sociodemographic portrait of Conservative Jews and Judaism at the turn of the twenty-first century. It is divided into two main sections—the first examining membership of Conservative synagogues, and the second exploring congregational practices.


This massive two-volume history of the Conservative movement’s flagship institution of higher education comprises topical essays written by historians and religious scholars, some associated with the Jewish Theological Seminary (JTS), and some with other institutions, both Jewish and secular. Essays are organized by theme, rather than as a chronological narrative. Themes include “Internal Affairs” and “JTS and the World of Higher Education.” Examples of topical essays include “Yeshiva Students at JTS,” “By Design: Building the Campus of JTS,” “Building a Great Judaica Library—At What Price,” and “Music at JTS.” An index is included at the end of the second volume.

**Primary Sources of Jewish Law in Conservative Judaism**

‡11 Almost all of the primary sources of Jewish law in Conservative Judaism are the same as the primary sources of Jewish law generally: the Torah, the *Mishna* and other writings of that era, the Talmud, the works of Rashi, the works of Maimonides, and many, many others. Because numerous other works discuss the bibliography of these classic sources, which also form the core sources in Orthodox Judaism’s understanding of Jewish law, this article includes a selection of these bibliographies below, rather than listing the classic sources.


This essential four-volume set is the seminal treatise on both the substance and the sources of Jewish law. Elon’s focus is *Mishpat-ha-Ivri*, the civil law component of the Jewish legal system. Elon details the historical development of Jewish law, addresses many substantive issues in Jewish law, and provides invaluable guides to Jewish law research, including a list of responsa compilations and a subject cross-reference table for the *Shulhan Arukh* and the *Mishneh Torah*.

This article provides an introductory overview of Jewish legal bibliography.


This bibliography provides more than five hundred pages of citations to primary sources (including compilations of responsa).

¶12 While the classic sources of Jewish law serve as primary sources of law in Conservative Judaism, the movement also is guided legally by contemporary sources specific to itself. These sources guide and set legal standards for Conservative Judaism and are essential to discovering and understanding legal positions specific to Conservative Judaism.

¶13 The main source for this information are the teshuvot of the Conservative movement’s Committee on Jewish Law and Standards (CJLS). The web site of the CJLS outlines its structure and procedure.24 In brief, the CJLS is composed of twenty-five voting members, all of whom are Conservative rabbis. There also are six nonvoting members: five lay representatives of Conservative synagogues and one member of the Conservative association of cantors. The CJLS addresses questions of Jewish law posed by members of the Rabbinical Assembly (the professional association of Conservative rabbis) or by other agencies within the Conservative movement. To answer the questions, members of the CJLS research and write teshuva, and then the teshuvot are discussed and voted upon. A teshuva must receive only six votes to be approved by the CJLS. Once approved, a teshuva “represent[s] official halakhic positions of the Conservative movement.”25 While it is possible for two or more conflicting opinions to be approved, this is not common.26 Put differently, once approved, a teshuva becomes a “valid option” that “allows for . . . pluralism so that the spectrum of religious practice within the Conservative community can be expressed together with the legal reasoning which justifies the various validated positions.”27 Dissenting and concurring teshuvot are sometimes published but do not represent an official position of the Conservative movement. Finally, each individual Conservative rabbi has the power, as a mara d’atra, or local legal decisor, “to consider the Committee’s positions but make [his or her] own decisions as conditions warrant.”28 The following teshuva provides more detailed information about the CJLS:


This paper, published with CJLS teshuvot, provides a detailed defense (and

25. Id. The term halakhic is best translated as “Jewish legal.” The term halakhah means “Jewish law.”
26. See DORFF, supra note 13, at 154.
27. See id.
defense) of the structure, procedures, and theological basis for authority of the CJLS, and its unique form of majoritarianism.

¶ 14 The sources listed below publish the CJLS teshuvot and related information. Sources of Conservative teshuvot are generally organized by topic according to the subject structure in the Shulhan Arukh, the sixteenth-century code of Jewish law (as are most Orthodox collections of responsa). The main subjects are Orach Chaim (laws addressing daily religious ritual observance); Yoreh De’ah (laws addressing ritual observances such as kashrut, circumcision, burial, and mourning); Even ha-Ezer (family law); and Hoshen Mishpat (civil laws and criminal laws). The collections are listed chronologically by the date of the included teshuvot rather than alphabetically. Currently, there is no published source for teshuvot from 1971 to 1979. 29

Golinkin, David. An Index of Conservative Responsa and Practical Halakhic Studies, 1917–1990. New York: Rabbinical Assembly, 1992. This helpful index includes all formal published and unpublished CJLS teshuvot, including those of its predecessor committees, back to 1917. Also included are teshuvot of Israel’s version of the CJLS, the Va’ad Ha-Halakhah; teshuvot of the Union for Traditional Judaism; teshuvot of individual rabbis; and practical halakhic studies that have been published in periodicals associated with Conservative Judaism. Entries are listed alphabetically by subject.

Proceedings of the Committee on Jewish Law and Standards of the Conservative Movement, 1927–1970. Edited by David Golinkin. New York: Rabbinical Assembly, 1997. All published teshuvot, called responsa in this work, from 1927 to 1970, are printed in full text in the final volume of this three-volume work. The first volume contains full texts of all published reports of the CJLS (and its predecessor, the Committee on Jewish Law [CJL]). The reports include material such as proceedings and minutes of the meetings of the CJL/CJLS. Also included are written accounts of ideological debates of the CJL/CJLS. The second volume contains documents and responsa related to the agunah problem. 31 The material in the first two volumes is arranged chronologically, while the teshuvot in the third volume are arranged according to the subject order of the Shulhan Arukh.

Proceedings of the Committee on Jewish Law and Standards of the Conservative Movement, 1980–1985. New York: Rabbinical Assembly, 1988. This volume provides the text of teshuvot covering the years 1980 to 1985. Unlike several other collections, the teshuvot are not organized according to the subject

29. E-mail from Gabriel Seed, Secretary to the Comm. on Jewish Law & Standards, Rabbinical Assembly, to author (Jan. 2, 2013, 1:11 P.M.) (on file with author).

30. The Union for Traditional Judaism is an organization that broke off from the Conservative movement and is ideologically positioned between Conservative Judaism and Orthodoxy. See Frequently Asked Questions, UNION FOR TRADITIONAL JUDAISM, http://www.utj.org/faq (last visited May 7, 2013).

31. This problem refers to the halakhic complexities involved when a husband refuses to deliver a Jewish bill of divorce to his wife, a requirement under Jewish law in order to effect a religious divorce. See IRVING A. BREITWITZ, BETWEEN CIVIL AND RELIGIOUS LAW: THE PLIGHT OF THE AGUNAH IN AMERICAN SOCIETY 1 (1993); see also Mayer E. Rabinowitz, Agunot (Abandoned Wives), JEWISH VIRTUAL LIBRARY, http://www.jewishvirtuallibrary.org/jsource/Judaism/agunot.html (last visited May 7, 2013).
areas of the *Shulhan Arukh*, but rather are organized by topic, alphabetically, beginning with “abortion” and ending with “women and Jewish law.” Other topics include divorce, intermarriage, conversion, gambling, and Shabbat.


This volume follows the 1980–1985 volume described above, providing similar coverage for 1986 to 1990.


This volume provides the full text of all *teshuvot* approved by the CJLS from 1980 to 1990. It includes all *teshuvot* from those years organized according to the subject order of the *Shulhan Arukh*, along with a source index and alphabetical subject index.


This volume provides the full text of all *teshuvot* approved by the CJLS from 1991 to 2000. The *teshuvot* are organized according to the subject order of the *Shulhan Arukh*. At the back of the volume is a source index listing every source cited by the *teshuvot* in the volume, along with an alphabetical subject index.


This web site provides access to *teshuvot* issued by the Committee on Jewish Law and Standards between 1981 and the present. The *teshuvot* are organized according to the subject order of the *Shulhan Arukh*, and the titles are searchable through the web site’s search function. Major *teshuvot* from this period include the *teshuvot* on the ordination of women rabbis and the ordination of gay and lesbian rabbis.

¶15 In rare instances, a *teshuva* is adopted as a “standard of the Conservative movement,” or “standard of rabbinic practice,” violation of which can result in dismissal of a rabbi or a synagogue from the movement. For a *teshuva* to be adopted as a standard, it must be approved as a standard by eighty percent of the members of the CJLS present at a regular committee meeting, eighty percent of the entire committee voting by mail, and a majority vote at the Rabbinical Assembly convention.32

¶16 Currently, there are three standards:

1. A Conservative rabbi or cantors may not attend, [or] officiate at, the marriage of a Jew to a non-Jew, even if the ceremony is a purely civil ceremony, and Conservative synagogues may not be used for such weddings, or for the receptions of such weddings.

2. Jews who have been divorced in state law must give . . . or receive . . . a Jewish writ of divorce (a get), [or receive a rabbinic annulment], before being allowed to remarry . . . .

32. Dorff, supra note 13, at 154–55.
3. Jewish identity is defined by being born to a Jewish woman or being . . . converted to Judaism [according to the requirements of Jewish law].

¶17 While teshuvot are the main primary source of law by which the Conservative movement develops its interpretation of Jewish law, building on top of the classic sources of Jewish law stretching back to the Torah, there are two other types of primary sources worth mentioning: policy or doctrinal statements of Conservative Judaism, and Orthodox materials. These, however, are probably better thought of as providing persuasive authority rather than binding authority.

¶18 Periodically, an institution of the Conservative movement publishes a policy or doctrinal statement intended to frame and define the view of Conservative Judaism. These statements are not necessarily, or strictly, legal documents, but they usually reference Jewish law. These documents can be viewed as having persuasive authority in defining how Conservative Judaism understands Jewish law. Because the first one listed, Emet Ve-Emunah, is an official statement of Conservative Judaism, its level of authority may reasonably be considered higher than other policy statements.


This text is intended to be an official statement of the philosophy of Conservative Judaism, and it includes an entire section on Jewish law, describing it as an “indispensable element of traditional Judaism” and “fundamental” to Jewish civilization.


This pamphlet summarizes the philosophy of Conservative Judaism, describing Jewish law as “the basis for all authentic Jewish practice.”

33. Id. at 155 (citations omitted).

34. Even the teshuvot themselves might be described as persuasive authority rather than binding because, as mentioned earlier, each individual Conservative rabbi has the power, as a local legal decisor, to arrive at a legal conclusion that differs with a teshuva. Still, while not necessarily strictly binding, the teshuvot certainly lean in that direction.

35. EMET VE-EMUNAH: STATEMENT OF PRINCIPLES OF CONSERVATIVE JUDAISM 21–25 (1988). The purpose of this landmark statement is described in its foreword:

For almost a century, it could be argued, [a] lack of [a] definition [of Conservative Judaism] was useful since the majority of American Jews wished to be neither Orthodox or Reform, and therefore joined Conservative organizations. But the situation has radically changed. Orthodox, which has been widely considered moribund a few generations ago, has assertively come back to life, and is generally characterized by an aggressive ideology which denies the legitimacy of non-Orthodox approaches to Judaism. On the other hand, the Reform movement is also growing in size and has been seeking to spell out its philosophy. In our day, it is no longer sufficient to define Conservative Judaism by what it is not. It is now clear that our avoidance of self-definition has resulted in a lack of self-confidence on the part of Conservative Jews, who are unable to tell others, let alone themselves, what Conservative Judaism stands for. Our goal, then, was to teach members of Conservative congregations to become Conservative Jews.

Id. at 1.
RESOURCES TO BEGIN THE STUDY OF JEWISH LAW IN CONSERVATIVE JUDAISM


This statement outlines seven core principles of Conservative Judaism, one of which is “Governance of Jewish Life by Halakhah.” This section summarizes the author’s (a former chancellor of the Jewish Theological Seminary) position on the essential nature of Jewish law in Conservative Judaism.

¶19 In 2012, after a decade of work, the Rabbinical Assembly published The Observant Life: The Wisdom of Conservative Judaism for Contemporary Jews, a comprehensive statement of the laws, rules, traditions, and practices of Judaism according to the Conservative movement. While much of the material is drawn from previously issued teshuvot, this important volume will be an indispensable resource to scholars wishing to understand the Conservative movement’s positions on issues ranging from Jewish ritual practice, prayer, and ethics, to interpersonal relations, community standards, sex, and much more.


This volume is organized thematically. For example, the part titled “Walking Humbly with God” provides chapters addressing prayer, Torah study, Shabbat, holidays, and kashrut, among others. The part titled “Acting Justly” addresses citizenship, civic morality, contracts, intellectual property, and more. Chapters are written by leading rabbis and scholars of Conservative Judaism.

¶20 Finally, many Orthodox sources of Jewish law often can be understood as having persuasive authority for Jewish law in Conservative Judaism. While Conservative Judaism has real differences with Orthodoxy in both process and substance, it largely treats Orthodox scholarship and legal decisions—from modern Orthodox rabbis to Hasidic masters—with respect,36 and it commonly uses them as a source of wisdom and guidance (or respectful disagreement), if not binding authority, in its own decision making.37

36. See, e.g., Arnold M. Eisen, The Value of Denominations in Judaism, CONSERVATIVE JUDAISM: A COMMUNITY CONVERSATION (Sept. 14, 2011), http://www.jtsa.edu/prebuilt/blog/denominations.html (“As a Conservative Jew, I am an avowed pluralist. I know there are valid ways other than mine to serve God and Torah faithfully. I often find myself, as a result of that conviction, giving respect to Jews who will not extend it to me in return.

Secondary Sources of Jewish Law in Conservative Judaism

21 Secondary sources are essential for legal scholars beginning to explore Jewish law in Conservative Judaism from the vantage point of the legal academy. Because Jewish law in the Conservative movement exists as a middle ground, open to a sometimes confusing diversity of perspectives lacking clear and easy explanation, and widely ignored by a large percentage of self-identified Conservative Jews, a very rich literature has developed to explore and explain the movement’s understanding and philosophy of Jewish law. This religious legal literature will provide context and background for academic legal scholars, who will then be able to shed light on this topic from the unique scholarly perspective of the legal academy.

22 While many varied approaches to law in Conservative Judaism are explored in this religious secondary literature, several common themes emerge. First is the governance of Jewish life by Jewish law. Although its critics argue that Conservative Judaism is not faithful to Jewish law, an important theme of the secondary religious literature about Jewish law is the centrality of binding law to Conservative Judaism. According to these sources, Jewish law remains, without question, binding upon the Jewish people, and this value is essential in Conservative Judaism.

23 The second theme is the use of a historical method of legal analysis. For Conservative interpreters of Jewish law, the history and historical development of Jewish law over time can influence a contemporary understanding and interpretation of the law. Disagreement over the extent to which a historical understanding

38. As I discussed in an earlier bibliographic article on Jewish law, the line between primary and secondary sources in Jewish law is not always entirely clear. For example, some rabbinical commentaries on the Talmud, which under a common understanding would be considered secondary sources, have such authority that the commentaries themselves serve as a source of law and function as primary sources. David Hollander, Jewish Law for the Law Librarian, 98 Law Libr. J. 219, 233, 2006 Law Libr. J. 13, ¶ 49. For this bibliography, I have listed the policy/doctrinal statements as primary sources, and the treatises in this section as secondary sources. Others may reasonably quibble with this division or distinction.

39. See Dorff, supra note 2, at 3.
40. Id.
41. See Ament, supra note 21, at 30–31 tbl.11 (indicating that only thirty-one percent of Conservative Jews attended synagogue on the Sabbath more than once a month and that only thirty percent of Conservative Jews observed Jewish dietary laws at home).
43. See, e.g., Elliott N. Dorff, For the Love of God and People: A Philosophy of Jewish Law 181 (2007) (“[P]eople have always abided by Jewish laws for many reasons other than enforcement. Therefore, even in a voluntaristic society, where no government officials force Jews to abide by Jewish law, treating Jewish law as fully law makes great sense”); David Golinkin, Halakhah for Our Time: A Conservative Approach to Jewish Law 9 (1991) (“There is general agreement in the Conservative movement that a Jew must observe the halakhah.”); Adam Frank, Conservative or Orthodox? Does the Jewish World Know the Difference? Do We?, C.J. Online, http://www.cjvoices.org/article/conservative-or-orthodox (last visited Apr. 17, 2013) (“Conservative ideology mandates halakhic observance no less than Orthodoxy”). See also Siegel, supra note 13, at xiii (“The observance of Jewish law has been the main aim of the conservative movement since its very beginnings”).
of Jewish law affects legal interpretation is a major source of the diverse streams of thought within Conservative Judaism.45

¶24 A third theme is adherence to the somewhat conflicting principles of “tradition” and “change.” Negotiating between valuing a traditional understanding of Jewish law yet being open to change when warranted is the heart of Conservative Judaism’s approach to the law. According to this view, fidelity to traditional Jewish law is necessary to maintain the integrity and unity of the Jewish people and its divine mission.46 However, development and change within that law is also necessary to prevent that legal tradition from becoming “fossilized”47 or “petrif[ied].”48 Elliot Dorff adds a slightly different shade to the notion of “tradition and change” by understanding “tradition” and “change,” not as in conflict, but as connected values. According to Dorff, because change was embedded into the Jewish legal system even before the time of the rabbis of the Talmud, change itself is a tradition of traditional Judaism.49 Rather than discussing “tradition and change,” Dorff terms this value of Conservative Judaism, “tradition, which includes change.”50

¶25 These three themes—governance by Jewish law, historicism, and “tradition and change”—and the very brief summary of them here, only serve to offer the barest glimpse of the depth and breadth of commentary, theory, and philosophy available in the secondary religious literature on Jewish law in Conservative Judaism. As scholars in the legal academy explore Conservative Judaism’s claims about Jewish law, these works will be an essential launching pad into that scholarship.


Although intended for students, this volume very helpfully provides a clear and succinct explanation of Jewish law within Conservative Judaism, including a summary of four different streams of thought within the Conservative movement, and comparison to Orthodoxy and Reform. Also provided are a summary of the history of Conservative Judaism and its beliefs beyond the legal sphere.


In this work, Rabbi Dorff, a leading Conservative rabbi and member of the CJLS, outlines his own theory of Jewish law. He includes explanations of legal theories to the right (within Orthodox Judaism) and left (within Reform Judaism) of his own, and a short section comparing American and Jewish legal theories. Rabbi Dorff’s views are representative of a major school of thought within the Conservative movement.

45. See Dorff, supra note 13, at 104–44. But see Shai Held, Hadesh Yamenu [Renew Our Days], 54 Judaism 165, 168 (2005) (worrying that the “relentless historicism” of the Conservative approach to Jewish texts “occludes much of the richness and complexity of Torah,” and that the movement “run[s] the risk of celebrating history to the exclusion of theology”).
46. See Golinkin, supra note 43, at 3; see also Siegel, supra note 13, at xiii.
47. Golinkin, supra note 43, at 4.
49. Id. at 206–07.
50. Id. at 207 (emphasis omitted).

This volume is quite helpful for understanding the diversity of views on Jewish law and legal theory within the Conservative movement. Dorff brings together selections of writings from leading Conservative legal thinkers, beginning with the proto-Conservative nineteenth-century theologian Zacharias Frankel and ending with a selection of post-1970 theorists, including Gordon Tucker and Alana Suskin. Dorff introduces each theorist with his own commentary. Also included are comparative Jewish legal theories existing outside the boundaries of Conservative Judaism, including the centrist Orthodoxy of Yeshayahu Leibowitz, the left-leaning Orthodoxy of David Hartman, the right-leaning Reform philosophy of Eugene Borowitz, and others. The volume ends with several *teshuvot* illustrating Conservative legal theories applied to real-life questions, including the ordination of women as rabbis.


This very short volume outlines the role that Jewish law plays within Conservative Judaism, the notion of change and flexibility within Jewish law, and principles that guide Conservative rabbis in their *halakhic* decision making. The volume ends with sample *teshuvot* from the CJLS, and a helpful bibliography for further reading on this topic.


This book offers an introduction to the foundation and beliefs of Conservative Judaism, including an explanation of its understanding of Jewish law.


This important work on Jewish law in Conservative Judaism offers an extended argument that Jewish law has never been a closed system immune to influence either from the nonlegal teachings of Judaism (*aggadah*), or from other influences outside of Judaism, including psychology, new inventions or discoveries, and social needs.


In this volume, one of the Conservative movement’s leading rabbis and legal thinkers outlines his understanding of the Jewish legal system and its processes. Rabbi Roth’s understanding of Jewish law represents one of the major schools of thought among Conservative legal decision makers.


This work opens with an essay by Seymour Siegel on the meaning of Jewish law in Conservative Judaism. Following this overview essay, the volume contains essays on Jewish law written by prominent twentieth-century Conservative thinkers including Louis Ginzberg (writing about Zachariah Frankel), Robert Gordis, Boaz Cohen, and Abraham Joshua Heschel. The book ends with several *teshuvot* intended to illustrate Conservative Judaism’s approach to practical Jewish law.

Although not focused solely on Jewish law, this classic work offers a helpful introduction to Conservative Judaism’s history, ideology, streams of philosophy, and attitude toward Jewish law and other topics. The volume consists of essays by leading mid-twentieth-century thinkers of Conservative Judaism.

*Conservative Judaism*. New York: Rabbinical Assembly and Jewish Theological Seminary of America, 1945–.

*Conservative Judaism* is the scholarly journal of the Conservative rabbinate. Although its scope is not confined to law, Jewish law is commonly addressed in its pages. Project Muse offers searchable, electronic, full-text access beginning with volume 60 (2008).


This index of *Conservative Judaism* contains an author index, subject index, and a supplementary index for book reviews.

**Jewish Law and Conservative Judaism in Israel**

¶26 Although Conservative Judaism is a worldwide religious movement, the United States is its major center. Tiny in comparison by the number of its adherents, the state of Israel is the other major center of scholarship of Conservative Judaism, where it is called *Masorti* Judaism. The community of *Masorti* Jews in Israel maintains its own version of the CJLS, called the *Va’ad Ha-Halakhah*, which issues *teshuvot* that govern Conservative Jews in Israel, and its own rabbinical school, Schechter Rabbinical Seminary. While there are not major theological differences between the community in Israel and that in the United States, there are occasional areas of disagreement, even if they are sometimes temporary. For example, while in the United States, the Conservative movement voted to ordain openly gay and lesbian rabbis in 2006, the Israeli *Masorti* movement refused to follow suit until 2012. 51


This website provides access to *teshuvot*, using the English term “responsa,” of the Israeli Conservative movement equivalent to the CJLS, the *Va’ad Ha-Halakhah*. Although full text is provided only in Hebrew, English summaries of many of the *teshuvot* are included. In addition to these English summaries, a page on this website titled “RESPONSAS IN A MOMENT” provides English *teshuvot*, written by Rabbi David Golinkin, addressing modern ethical issues that were originally published in the Jewish magazine *Moment* in the 1990s.

Teshuvot Va’ad Ha-Halakhah Shel Knesset Ha-Rabbanim Be-Yisrael [Responsa of the Rabbinical Assembly of Israel Law Committee]. Jerusalem: Rabbinical Assembly of Israel, 1986–.

This work is the six-volume print version of the web site described in the preceding entry.


This title is the print version of English teshuvot, written by Rabbi David Golinkin, addressing modern ethical issues that were originally published in the Jewish magazine Moment in the 1990s. This material appears online on the web site “Responsa for Today,” listed above.

Conclusion

¶27 As legal scholars in secular law schools study Jewish law, both on its own terms and to argue that some of its wisdom may help us learn about or even develop American law, it is important that “Jewish law” not be reduced to one particular ideological understanding of it. Academic understanding of specific Jewish legal principles and theories will be better and more broadly understood and, most important, more accurate if the claims of Conservative Judaism about Jewish law are explored alongside the claims of Orthodox Judaism, and any other relevant legal schools of thought within the Jewish world, both historically and today.
Issues and Trends in Collection Development for East Asian Legal Materials*

Jootaek Lee,** Xiaomeng Zhang,*** Keiko Okuhara,† and Evelyn Ma††

The authors delineate the general policy and guidelines for developing foreign and transnational law collections in U.S. law libraries, and they analyze factors that shape East Asian collections, such as law libraries’ preservation and digitization efforts and their related cost-efficiency, and the availability and quality of English translations. The authors then discuss the main sources for Korean, Japanese, and Chinese law.

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* © Jootaek Lee, Xiaomeng Zhang, Keiko Okuhara, and Evelyn Ma, 2013. This article is based on a panel discussion at the Asian Law Interest Group of the Foreign, Comparative, and International Law SIS of the American Association of Law Libraries at its annual meeting in Boston, Massachusetts, held on July 22, 2012.

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Introduction

¶1 The past decade of globalization has thrust East Asian countries such as China, Japan, and South Korea (also called the Republic of Korea) into the forefront of international politics and commercial trade. This has resulted in growing research interest in the interplay of differing legal systems, implementation of the rule of law, and compliance with standards and norms of international law by these countries. However, for academic law libraries confronted with shrinking budgets, shifting research interests, and proliferating print and electronic sources with steeply rising costs, developing foreign law collections of continuing relevance and utility without affecting the scope and integrity of the overall library collection remains a difficult balancing act.

¶2 Conducting legal research relating to East Asian countries increasingly requires proficiency in both English and the vernacular. Acquiring materials in the vernacular, particularly in print, adds associated processing costs and necessitates personnel with appropriate language skills. Subscribing to electronic sources, on the other hand, is often analogous to leasing and generally deprives the library of ownership of the materials as well as the benefit of continued future use. Collaborative interlibrary lending and cooperative collection development programs among libraries and consortia are pragmatic options worth exploring.

¶3 This article will first delineate the general policy and guidelines for developing foreign and transnational law collections in U.S. law libraries. It will then analyze factors that shape East Asian collections, such as the libraries’ preservation and digitization efforts and their related cost-efficiency, and the availability and quality of English translations. Next, print and electronic resources for conducting research in the laws of South Korea, Japan, and China, as well as Hong Kong, Macau, and Taiwan, are comprehensively surveyed. The concluding section explores the pressing issues, current trends, and challenges in developing South Korean, Chinese, and Japanese law collections in an academic law library in the United States.
Collection Development for Foreign and Transnational Law

¶4 Building a foreign law collection in an academic law library is challenging mainly because of the number of jurisdictions it should cover. This is becoming even more apparent as the globalization of legal practice leads legal researchers to work with more foreign legal issues. A good foreign law collection that can satisfy all the scholarly and practical needs of library patrons may be a “luxury confined only to the very largest research libraries.” Even large libraries are experiencing difficulty in collecting foreign legal materials because of their shrinking budgets. Given these constraints, what should a law library consider when collecting foreign legal materials?

¶5 First, the foreign law collection in an American academic law library should be commensurate with the mission of the law school and its law library. According to Standard 606 of the ABA standards for law schools, a law library shall provide a collection that meets the information needs of the law school’s constituency, including the faculty and students. Foreign law collections are typically designed to enhance the library’s ability to offer the law school community high-quality information resources for foreign law research.

¶6 At the same time, under Standard 606 and its interpretations, a foreign law collection is not included in the core collection of essential materials. Thus, the foreign law collection development of a library is not specifically regulated; rather, it is broadly delineated by the collection development standard under which libraries need to satisfy the information needs of the law school’s faculty and students.

¶7 Though there are many decisions that factor into a collection development policy for foreign law materials, libraries must ultimately choose countries of interest and collecting levels for those countries. The depth of a collection is determined by how comprehensively it covers the legal system of a country, such as common law, civil law, or Islamic law, and by the types and purposes of sources collected. Types of sources refer to primary and secondary sources—intensive collections include primary and secondary sources as well as transnational commentary—and purposes of sources can be research, instruction, or guidance and introduction—intensive collections will serve the purpose of in-depth research.

¶8 The Research Libraries Group (RLG) developed a system of collecting levels for libraries to use as a guide in collection development. Levels are numbered from 0 to 5, with higher numbers indicating more complete collections. The following is a sample collecting level description for foreign legal materials:

Level 5—Comprehensive Level: A collection which, so far as is reasonably possible, includes all significant works of recorded knowledge (publications,

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3. See id. at 45.
manuscripts, and other forms) in all applicable languages on a specific jurisdiction or region. The aim is exhaustiveness. Older material is retained for historical research.

Level 4—Research Level: A collection that includes the major published materials about a jurisdiction required for dissertations and independent research, including materials containing research reporting, new findings, scientific experimental results, and other information useful to researchers. It should aim to include all important reference works and a wide selection of specialized monographs, as well as a very extensive collection of journals on a jurisdiction, or a region that includes the jurisdiction, and major indexing and abstracting services in the jurisdiction. Older material is retained for historical research.

The library collects current, modified, and superseded primary sources of law from both civil and common law countries in English. The library also collects case reports from civil law countries.

Level 3—Instructional Support Level: A collection that is adequate to support law school instruction or sustained independent study; that is, adequate to maintain knowledge of a jurisdiction required for limited or generalized purposes, of less than research intensity. It includes a wide range of basic monographs, complete collections of works of more important writers, selections from the works of secondary writers, a selection of representative journals from a region or jurisdiction, and reference tools and fundamental bibliographical apparatus pertaining to a jurisdiction. The library collects current primary sources of law—codes and case reports—in both civil and common law countries in English or in the vernacular if there is no translation available, and there are faculty or librarians who can read the language of a jurisdiction.

Level 2—Basic Information Level: A collection of up-to-date collective works on selected subject areas in English depending on faculty requests. It includes research guides that describe and define the legal system of a jurisdiction and provide references/citations to other sources. The library collects transactional materials relating to a jurisdiction, and it may also collect dictionaries to translate vernacular works of a jurisdiction into English, selected editions or translations of important monographs on a jurisdiction, and handbooks. A basic information collection is not sufficient to support any courses of independent study in the subject area involved. The library selectively collects primary sources of a jurisdiction.

Level 1—Minimal Level: A collection of collective works that provide information on the history and legal system of a jurisdiction. The library collects a limited number of general works in English in major subject areas such as constitutional law, tax law, computer law, copyright law, and so forth.

Level 0—Out-of-Scope: The library does not collect any materials for this jurisdiction.

¶9 Libraries can conserve collection budgets by buying works that compare countries or regions on topics of interest. Most of these collected materials exist in English. Libraries’ collections of foreign law materials should also include collective

### Foreign Law Collection Development Challenges

¶10 Academic law libraries in the United States are increasingly providing access to materials by licensing electronic resources rather than acquiring the print resources. For the first time, e-book sales outnumbered sales of hardcover books in the first quarter of 2012\(^5\) (although law libraries’ buying patterns did not match this trend). Patron-driven acquisition (PDA) for e-books is helping libraries’ collection budgets and is gaining popularity in the United States.\(^6\) PDA allows book records to be placed in a library’s catalog, but the library does not pay to own the e-book unless the book is accessed a specified number of times. Prior to that, the library pays only a “short-term loan” cost each time the e-book is used by a patron.

¶11 However, it may be too early to apply these collection trends to foreign law and transactional law collections; in fact, it is currently quite difficult to do so.\(^7\) While most current primary sources of law are available online,\(^8\) libraries are still acquiring many materials relating to foreign and transnational law in print, because many foreign legal commentaries and historical primary sources are not yet digitized. Even if the materials are available online, libraries need separate subscriptions to foreign law databases such as Westlaw China or LexisNexis JP, which can be costly and contain many materials that academic legal researchers either may not need or need only sporadically.\(^9\) An option such as PDA is also challenging. Not only is PDA in its primitive stages, but PDA negotiation with foreign vendors would be complicated by the different practices and standards of libraries around the world.\(^10\)

¶12 Selecting and buying foreign law materials in print is also difficult because librarians often cannot determine the content of books until they arrive in the United States, and because commentaries and English translations are expensive. Borrowing from libraries overseas is not optimal due to time delays and the cost of

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7. See Rumsey, *supra* note 1, at 47.

8. Free Internet web sites are a good place to find primary law materials and should be considered in developing foreign law collections. Of course, librarians must take into account web sites’ reliability in terms of coverage, authority, currency, accuracy, and usability. If there are reliable primary resources available on web sites, libraries can put links to them in their online catalogs.

9. Mary Rumsey recommends the “just-in-time” method for handling high-cost foreign law databases. This collection method for subscription databases is designed to serve temporary needs of faculty and students and allows law libraries to flexibly start and cancel subscriptions. Rumsey, *supra* note 1, at 46.

10. For more on this topic, see generally *Patron-Driven Acquisitions* (David A. Swords ed., 2011).
shipping. Interlibrary loan for foreign legal materials among libraries within the United States can be problematic as well: because each law school focuses on a different set of countries, overlapping foreign collections are few and far between. Therefore, other forms of access to materials, such as reciprocal arrangements with other U.S. libraries and cooperative collection development, may be the best option for academic libraries that do not have enough money to develop a foreign law collection that meets all of their needs.

¶13 The collection development policy for foreign legal materials will thus reflect a wide variety of factors: the library’s available budget for foreign law materials, the number of foreign law faculty members and their interests, whether the law school has a student-edited foreign and comparative law journal, whether there is space to house the collection, and what decisions are made about the balance between print and electronic resources. Recognizing the problems and difficulties in collecting foreign law materials, libraries should design collection development policies that take into account the uniqueness of a country’s legal resources and research tools.

**Issues Relating to East Asian Law Collection Development**

¶14 East Asian law collection development in academic law libraries in the United States exhibits a few unique features and challenges of its own. This is partly because East Asian countries have not only different legal systems—mostly variations on the civil law system (with the exception of Hong Kong)—but also differing development of their legal publishing industries.

¶15 Academic law libraries in the United States are experiencing an unprecedented and growing demand for Chinese legal materials in both Chinese and English, while at the same time they are confronting an exponential growth of publications on Chinese law in China as well as in the United States. The demand for Korean legal materials is also increasing. In addition to Korea’s long-standing political, military, and economic interdependence with the United States, the recent entry into force of the U.S.-Korea Free Trade Agreement on March 15, 2012, stimulated interest in South Korean laws in the United States. The Office of the U.S. Trade Representative sees the agreement as providing U.S. exporters more opportunities to sell their products and services in South Korea (hereinafter Korea).¹¹

¶16 Japanese law collections in academic law libraries in the United States are also increasingly in demand because of the close political and economic relationship the two countries have had since the end of World War II. As long-standing allies and increasingly interdependent economic partners, Japan and the United States have cooperated to build a strong, multifaceted relationship. A wealth of donated Japanese legal materials has enriched the collections of Japanese law in academic law libraries in the United States. Columbia University Law School,¹²


¹². The Center for Japanese Legal Studies at Columbia was founded in 1980 with financial support from the Fuyo Group (a consortium of leading Japanese companies) and the Japan-U.S. Friendship Commission. The focus of the collection on Japanese law dates to the aftermath of World War II. In 1982, the Toshiba Library for Japanese Legal Research was founded with the donation of
University of Washington Law School, and Washington University Law School all have major Japanese law collections.

Digitization and Preservation

¶17 Another question academic law libraries may face is whether they should preserve or digitize older East Asian legal materials for historical research, in addition to collecting current resources. In the past, libraries in the United States have not made great efforts to preserve foreign law materials unless the library received special funds to support an extensive collection of East Asian legal materials.

¶18 If a library is considering the digitization of East Asian materials, it is crucial that those working on the project understand the content of the materials. For instance, traditional laws of East Asian countries, such as pre-1956 Chinese legal materials and most pre-1948 Korean legal materials, were written vertically and ran from right to left. Scanning materials without this knowledge could literally create unreadable text. Metadata is also essential in making digitized materials accessible and useful. Creating accurate and useful metadata requires strong and accurate skills in the language and the subject of the materials being digitized.

¶19 Organizations like the Center for Research Libraries (CRL) and the Law Library Microform Consortium (LLMC) collaborate to preserve documents from various national jurisdictions. Since the East Asian law collections in the United States were originally built during the print era, East Asian law resources for older case reports or statutes are available to be digitized by consortia such as LLMC. LLMC has preserved, for Korea, country studies from 1981 and 1990 and treaties and agreements from 1921; for Japan, the civil code of 1898 and commercial code of 1899 by different translators; and for China, the civil codes of 1930, 1931, and

the private collection of Jirō Tanaka, Justice of the Supreme Court of Japan from 1964 to 1973. In 2003, the collection was enhanced by a gift of the private collection of Itsuo Sonobe, who served as a Justice of the Supreme Court of Japan from 1989 to 1997. The collection contains approximately 23,000 volumes of books and bound periodicals, more than ninety percent of which are in Japanese. Thanks to Yukino Nakashima at Columbia University for providing information on this subject. See also Toshiba Library for Japanese Legal Research, COLUMBIA LAW SCH., http://www.law.columbia.edu/library/collections/Toshiba (last visited May 1, 2013).

13. The Japanese law collection at the University of Washington had its beginnings in the 1930s and includes a substantial donation of books from the Ministry of Justice in Japan. The library has continued to build on these early foundations with a wide range of subjects related to Japanese law. The collection holds 25,791 volumes in Japanese and 1374 titles in Western languages. Thanks to Rob Britt at the University of Washington for providing information on this subject. See also Rob Britt, Japanese Legal Research at the University of Washington, GALLAGHER LAW LIBRARY, http://lib.law.washington.edu/eald/jlr/jres.html (last visited May 1, 2013).


15. See INSUP TAYLOR & MARTIN M. TAYLOR, WRITING AND LITERACY IN CHINESE, KOREAN AND JAPANESE 102–04 (1995). In Korea, an act to change the direction of writing (한글전용에 관한 법률) was passed on October 9, 1948.


1935; the Chinese constitution of 1918; a country study from 1987; and materials relating to Hong Kong and Tibet.

¶20 East Asian materials are also being preserved by commercial publishers. For example, HeinOnline’s *World Constitutions Illustrated* library, launched in April 2010, includes all the historic and current versions of constitutions; commentaries; scholarly articles; and a bibliography of selected constitutional works of Korea, mainland China, Taiwan, and Japan. Also included are external links to background information. Although HeinOnline has not started to digitize East Asian laws or case reports, the addition of both *Canadian Supreme Court Reports* and *Israel Law Reports* to HeinOnline in 2011 is a sign that digitizing East Asian legislation and judicial decisions is not unthinkable. Both HathiTrust and Google have included primary and secondary legal materials of East Asian countries in their projects. Gale’s *The Making of Modern Law: Foreign, Comparative and International Law, 1600–1926* also contains a small number of legal treatises on laws from East Asian countries.

¶21 The issue of preservation is closely related to cost-efficiency in collection development for East Asian legal materials. Keeping both outdated and current legal materials requires space and staff to maintain them. By ensuring access to materials that are being digitized and made available online, selectors may be able to withdraw those items from the print collection to save space, staff time, and money without losing substantive content. Many libraries may conclude that it is cheaper to borrow from other libraries than to own items that are not frequently used. However, this presumes the existence of a sustainable, comprehensive, reliable, and high-quality print or digital collection that can be borrowed from.

¶22 Another cost-effective preservation solution is for libraries in a region to create a consortium to work together to collect East Asian legal materials and proportionally preserve them among the libraries. Any such consortium agreement should include provisions about where the materials will be housed and how much libraries will pay for borrowing.

Korea

¶23 In Korea, most current laws and government records are primarily digitized and archived by the National Archives of Korea under the Act on the Management of Public Archives and other related acts, enforcement decrees, and rules.18 The National Archives of Korea has issued management guidelines on digitization since 2003. The old official gazette of Korea, *Gwanbo*, has also been digitized by the National Archives of Korea and the National Library of Korea.19 The new official gazette began publication in both print and electronic formats in October 2000. Official gazettes from 1910 to 2000 have been digitized and are available at the gazette’s archive web site, where users can search the full text by keyword, date, and organization.20 Print gazettes trump electronic gazettes when there

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is a conflict between them.\textsuperscript{21} Cases are digitized by the Constitutional Court of Korea and the Supreme Court of Korea. Scholarly books and articles are also digitized by libraries, including the National Assembly Library, if the author gives permission.\textsuperscript{22}

\textsection{24} Other than the Asian Division of the Library of Congress, it seems that there is no U.S. library collecting Korean legal materials for preservation purposes. The Library of Congress has more than 240,000 volumes in Korean, 20,000 volumes in Japanese, 7700 volumes in English, and more than 6300 periodical titles and 250 newspapers dating as far back as the 1920s.\textsuperscript{23} According to its bibliography, however, it does not include many legal materials; there are only about 110 Korean law books in English.\textsuperscript{24} Thus, the most authoritative place collecting Korean materials in the United States may be the Global Legal Information Network (GLIN) of the Law Library of Congress, although the documents are not collected for the purpose of preservation.\textsuperscript{25} The Korean government contributes digitized legal materials to GLIN.\textsuperscript{26} Because the documents originate from the Korean government, and because GLIN tries to preserve both print and born-digital materials, this may be the best platform for preservation of Korean primary legal sources in the United States.

\textit{Japan}

\textsection{25} In Japan, the National Archives\textsuperscript{27} preserves government documents and records from the various ministries and agencies in accordance with the National Archives Act.\textsuperscript{28} Based on this law, the National Archives acquires historical documents from the various ministries and agencies to make them available for public use. The National Archives conducts extensive research on government documents

\begin{itemize}
\item[25.] The GLIN web site (http://www.glin.gov) is currently being revised and has been unavailable for some months.
\item[28.] Kokuritsu Kö bunshokanpō [National Archives Act], Law No. 79 of 1999.
\end{itemize}
and records to determine what is required for appropriate preservation, and records of importance are stipulated under a cabinet resolution of March 30, 2001. Additionally, the Japan Center for Asian Historical Records (JACAR) preserves digitized data from various national institutions. Two well-known digitization projects on Japanese law are worth mentioning here: the Joseph Berry Keenan Digital Collection of the Harvard Law School Library, which provides invaluable information on the Tokyo War Crimes Trial, and the University of Virginia School of Law Library’s digitization of a video of Frank Tavenner’s summation argument in the Tokyo War Crimes trial.

**China**

Efforts to digitize and preserve Chinese legal materials in the greater China area have also expanded in the last few years. For example, the University of Hong Kong has launched more than twenty-five databases with full-text materials in PDF. Among them are the Basic Law Draft History Online, Historical Laws of Hong Kong Online, Hong Kong’s War Crimes Trials Collection, and Hong Kong Government Reports Online (1842–1941); all are valuable resources for researchers interested in Hong Kong legal history, legislative history, and international law. The National Library of China has also launched a digital library that comprises hundreds of thousands of electronic resources online. A few of these items are now available in PDF at the World Digital Library web site, another giant global digitization project.

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31. The institutions are the National Archives, the Diplomatic Record Office of the Ministry of Foreign Affairs, and the Military Archives of the National Institute for Defense Studies of the Japan Defense Agency. See id.

32. Joseph Berry Keenan Digital Collection, [HARVARD LAW SCH. LIBRARY](http://www.law.harvard.edu/library/digital/keenan-digital-collection.html) (last visited May 11, 2013). The collection consists of personal and business correspondence, documents, and memos, as well as newspaper clippings and photographs. The bulk of the papers concern Keenan’s work as chief counsel in the International Prosecution Section of the Supreme Commander for the Allied Powers at the Tokyo War Crimes Trial following World War II.

33. Frank Stacy Tavenner Jr. was born in Woodstock, Virginia, in 1895 and graduated from the University of Virginia School of Law in 1927. He was an assistant chief prosecutor of the Tokyo War Crimes Trial, where on April 16, 1948, he delivered the final summation in the case against twenty-eight Japanese defendants accused of starting an illegal war, atrocities, and crimes against humanity. The collection also includes more than 20,500 original documents donated to the law school by Tavenner’s family in 1978. [The Tokyo War Crimes Trial, VA. LAW.](http://lib.law.virginia.edu/imtfe/person/244) (last visited May 11, 2013).


Although the National Digital Library Project does not focus specifically on legal materials, it is a helpful resource for scholars interested in the imperial legal history of China and the strong influences of Confucian philosophy and moral teachings on Chinese legal development.

**English Translations**

§27 More and more English translations of laws and regulations in Korea, the greater China area, and Japan are made available online or in print by government agencies and commercial vendors. English translations can be very helpful, especially if they are offered through official governmental entities, such as the English translations available in the *Laws and Regulations of the Republic of China* database by the Ministry of Justice of Taiwan.

§28 Many Korean primary sources of law, especially constitutions, codes, decrees, and administrative rules and regulations, are now being translated into English and are available free of charge on the Internet. They are officially translated by the Korean government and government-affiliated institutes. Some good examples are *Statutes of the Republic of Korea* by the Korea Legislation Research Institute (KLRI) and *Korean Laws in English* by the Ministry of Government Legislation. The former web site also provides a legal glossary, which allows users to translate English legal terms—including statute names, type of law, and local government system—into standard Korean legal terms. *A Research Guide and a Bibliography for Korean Legal Resources in English* in Globalex lists English translations of Korean legal materials both in print and online.

§29 One of the objectives of justice system reform in Japan was to provide English translations of Japanese laws, and many have become available since 2004.

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38. For example, the collection includes the *Yongle Encyclopedia*, the largest encyclopedia in pre-modern Chinese history (bound in 11,095 volumes), covering almost all the famous treatises reflecting Confucian philosophy before the fifteenth century. *Yongle Encyclopedia*, [WORLD DIGITAL LIBRARY](http://www.wdl.org/en/item/3019/) (last visited May 2, 2013).


40. Mainly economic, business, and tax-related laws are translated into English.


42. [KOREAN LAWS IN ENGLISH](http://www.moleg.go.kr/english/korLawEng) (last visited May 2, 2013), contains 912 acts and decrees and is searchable by title or full text.

43. [SEARCH FOR STANDARD TERMS](http://elaw.klri.re.kr/eng_service/wordSearch.do) (last visited May 2, 2013).


However, the definitive version is the Japanese text, and there are no official English translations of Japanese laws. The quality of English translation of Japanese laws has been improved by the translation project led by the Ministry of Justice. The Japanese Law Translation web site created by the Ministry of Justice provides bilingual Japanese laws, and the text includes a link to related laws. An online search interface allows users to search the database using either English or Japanese search terms. The display interface can be set to bilingual, bilingual alternating text, English only, or Japanese only. Search results can be printed or downloaded in PDF, Word, plain text, or XML format. The Intellectual Property High Court provides reliable information on Japanese copyright law in English, French, German, Chinese, Korean, and Japanese and includes summaries of cases and publications. Nagoya University cooperated with the Japanese government on the English Translation of Japanese Laws Project, which later merged into the Japanese Law Translation project. Although Nagoya University’s site is no longer updated, it still contains useful information, such as legal dictionaries.

¶30 Another cooperative English translation project is the Transparency of Japanese Law Project. The project “aimed to provide legal information on international transactions in Japan to the overseas community by organizing and translating into English, information which includes: overviews of Japanese law, specific Japanese legislation, doctrines, and case law.” A private firm, Mizuho Securities, created a web site to consolidate research papers and links to English translations of finance-related legislation such as the Foreign Exchange Order, Bank of Japan Act, and Money Lending Business Act as well as more general legislation.

¶31 There are cost-related issues in collecting East Asian legal materials in English. Collecting East Asian legal materials in the vernacular is easier and cheaper than acquiring them in English translation, assuming a library has an East Asian

the Liaison Conference of Ministries and Agencies Concerning Development of an Infrastructure to Promote Translation of Laws into Foreign Languages was established within the Cabinet in January 2005. Since April 2009, the work of translating Japanese laws has been undertaken by the Ministry of Justice, which has been editing the Standard Bilingual Dictionary and translating approximately 440 laws and regulations into English. The Ministry of Justice will continue to translate laws of great interest. About This Site, JAPANESE LAW TRANSLATION, http://www.japaneselawtranslation.go.jp/index/about_this_site/?re=02 (last visited May 2, 2013). The translations are available at JAPANESE LAW TRANSLATION, http://www.japaneselawtranslation.go.jp (last visited May 2, 2013).


47. 日本法令英訳プロジェクト, http://www.kl.i.is.nagoya-u.ac.jp/told/ (last visited May 2, 2013).

48. TRANSPARENCY OF JAPANESE LAW PROJECT, http://www.romeika.jur.kyushu-u.ac.jp/index.html (last visited Apr. 29, 2013). The web site includes many Japanese laws and court decisions in English in the fields of corporate law, goods and services transaction law, financing law, intellectual property law, insolvency law, arbitration law, civil litigation law, and public international law. The project was led by law professors from several universities and was instituted in 2004 by the Ministry of Education, Culture, Science and Technology (MEXT).

law librarian who can select vernacular books. English translations are more expensive because of the extra labor required to make the translation. Furthermore, much of the material is never translated. Looking at Korean law, for example, most cases, partly owing to their status as a secondary legal source, are not officially translated, though there are some exceptions, such as cases from the Korean Constitutional Court\textsuperscript{50} and the Supreme Court.\textsuperscript{51}

\textsuperscript{32} Although it is less expensive to acquire East Asian legal materials in the vernacular, American legal researchers who are not able to read East Asian languages will have difficulty in determining which are the right legal sources to apply in a case. Even if they do find the right materials, they will then be faced with the high cost of translating them into English in order to apply them.

\textsuperscript{33} Another issue related to translations is their quality—how accurately the legal meaning of the text in its original language is rendered into the translated language. The quality of translations provided by different vendors varies. For example, both Westlaw China and ChinaLawInfo are databases offering English translations of Chinese legal materials, but their translations are not identical, even though they use the same vernacular text. For example, when translating the newly amended Criminal Procedure of the People’s Republic of China, Westlaw China translates “立案” to “Opening a Case,” whereas ChinaLawInfo translates it to “Filing a Case.” Similarly, with the same word “询问证人,” Westlaw China’s translation is “Questioning of the Witnesses,” whereas ChinaLawInfo’s translation is “Interviewing Witnesses.”\textsuperscript{52}

\textsuperscript{34} Furthermore, traditional dictionaries may still be necessary. Google Translate or any other automatic translation engine may help to locate a source, but it is not reliable when a user is trying to understand a statute or case, let alone its contextual meaning. If a bilingual law dictionary is not available, a bilingual legal glossary may be helpful. Westlaw China, the Hong Kong Judiciary, and the Taiwan Ministry of Justice all provide bilingual legal glossaries on their web sites. And because mainland China, Hong Kong SAR, and Taiwan have three different legal systems, the same legal term, even in the same language, may have quite different meanings and implications.

\begin{itemize}
\item[50.] The Korean Constitutional Court is the highest authority on the Korean Constitution. Major decisions since 1988 are available in English on the web site of the Korean Constitutional Court and are searchable. \textsc{Constitutional Court of Korea}, http://english.ccourt.go.kr (last visited May 2, 2013). The print version of the Decisions of the Korean Constitutional Court contains cases from 2000 forward.
\item[51.] The Supreme Court of South Korea is the highest authority of the three-tier court system on nonconstitutional matters. Supreme Court cases since 2000 also have been translated and published on the web site of the Supreme Court Library of Korea. \textit{See Guide, Supreme Court Library of Korea}, http://library.scourt.go.kr/Eng/SCD/guide.jsp (last visited May 2, 2013).
\item[52.] Xingshi Susong Fa (刑事诉讼法) [Criminal Procedure Law] (promulgated by the Nat’l People’s Cong. Mar. 14, 2012, effective immediately).
\end{itemize}
Basic Materials and Collecting Trends for East Asia

Korea

Primary Sources

§35 South Korea not only has a civil law system that is heavily influenced by the German legal system, but also follows customary law and sound reasoning. Furthermore, American legal principles have affected Korean law since Korea’s liberation from Japan by American forces in 1945. Topically, Korean law can be broadly organized into public law, private law, and social law. Primary sources of law in Korea are its constitution and acts, treaties, emergency executive orders, emergency financial and economic executive orders, presidential decrees, rules of the national assembly, rules of the Supreme Court, rules of the Constitutional Court, rules of the National Election Commission, ordinances of the prime minister and ministries, enforcement decrees, administrative rules, and municipal ordinances and rules. Excellent summaries and graphics of the Korean legislative system, categories of acts and subordinate statutes, and a hierarchy of authorities are provided by the Korea Legislation Research Institute at its Statutes of the Republic of Korea web site.

§36 Primary sources of law including the amendments to the constitution, proposed amendments to the constitution, acts, treaties, decrees, notices, and important government policies are published daily in the Gwanbo (Official Gazette). The Law Information Service under the Ministry of Government Legislation later compiles and publishes the laws in Daehannimikuk HyunhangBobryungjip (Statutes of Current Korean Laws, 대한민국현행법령집), which consists of fifty volumes arranged by (1) types of law, such as constitutional law, civil law, criminal law, treaties, and administrative law; (2) institutions, such as courts and the National Assembly; and (3) subjects, such as military; education and scholarship; science and technology; customs, commerce, trade, and industry; labor; and so on. Volume 50 provides an alphabetical index and the table of contents of each volume. As of February 2013, there were 1287 acts, 1497 presidential decrees, 46 prime minister decrees, 1107 ministry decrees, and 317 administrative rules.

§37 In Korea, LawnB is the most popular, comprehensive commercial database, containing statutes, decrees, rules and ordinances, cases, and treatises in Korean.

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53. Here and in the section on secondary sources, the focus is on important resources for developing a Korean legal collection in an academic law library that relies mainly on subscription databases and free Internet web sites. For a comprehensive list of resources, including print materials, see Lee, supra note 44; Thomas H. Reynolds & Arturo A. Flores, Korea (Republic of), in FOREIGN LAW: CURRENT SOURCES OF CODES AND BASIC LEGISLATION IN JURISDICTIONS OF THE WORLD (1989–).
54. Public law includes constitutional law, administrative law, criminal law, criminal procedure, and civil procedure; private law includes civil law and commercial law; social law includes labor law, economic law, and social security law.
57. LawnB is a fee-based subscription database that contains approximately 74,000 laws; 150,000 cases; 130,000 administrative documents; 90,000 treatises, articles, and periodicals; 85,000 tax cases;
However, it does not provide English translations. LawnB was acquired by Thomson Reuters on March 30, 2012. Westlaw began providing Korean cases, legislation, and law review and journal articles in English in 2013; the Korea Reports database covers cases from the Supreme Court and appellate and trial courts from 2000, and the Korea Legislation database provides selected legislation including the current constitution provided by the Korean Ministry of Government Legislation.

§38 Korea Legislation Research Institute, a government-funded national policy research institute, provides a free English legal database, Statutes of the Republic of Korea. This database allows researchers to search for constitutions, current statutes, old statutes, decrees, and rules by statute name in English. When users type words in the search box, suggested titles of acts appear under the box. Users can do more advanced searching by type of law, date, and registration number. Under the “Legal Glossary” menu, users can also search for statute names by keyword; search results lead to the text of the statute.

§39 The Ministry of Government Legislation also provides a free English database: Korean Laws in English. As of 2013, the database contains 912 current Korean acts in English and allows search by keyword and title. The National Assembly web site provides, under the “Laws & Bills” heading, English translations of the Constitution of the Republic of Korea, the National Assembly Act, foreigner-related laws, and more than five hundred bills from 2005 to the present. The Constitutional Court of Korea also provides English translations of the Constitution of the Republic of Korea and the Constitutional Court Act.

Secondary Sources

§40 Selecting secondary sources about Korean law is more challenging than selecting primary sources. In addition to the lack of translations into English, most treatises are not yet digitized, which makes it difficult for selectors to see the content before purchasing books.

§41 Scholars’ opinions in treatises, especially majority scholarly opinions on a specific point of law, are persuasive sources of law in Korea. Researchers can search for legal treatises in Korean at the Digital Library web site of the National Assembly

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20,000 lawyers’ information; 4500 corporations’ legal information; and 70,000 legal news articles. See LawnB, http://www.lawnb.com (last visited May 2, 2013).
63. CONSTITUTIONAL COURT OF KOREA, supra note 50.
Major legal publishers in Korean include Bobmunsa (법문사), Sechang Publishing Company (세창출판사), YoungHwa Josetongnam (영화조세통람), Bobnyul Publishing Company (법률출판사), Bobnyulmun-hwawon (법률문화원), Beopjeon Publishing Company (법전출판사), Bobnyul-Sowon (법률서원), LawnB (로앤비), and Samilinfomain (삼일인포마인). The Association for Library Collections and Technical Services of the American Library Association provides the Foreign Book Dealers Directory, which includes Korean book dealers, although most of the dealers do not specifically deal with legal books. Among them, Kyobo Book Center is the largest dealer that provides a website where users can purchase books by credit card and have them shipped to the United States. There are also Internet bookstores such as Yes24 and Interpark Global that ship purchased books to foreign countries; AladinUS has distributors in the United States and ships books by USPS Priority Mail.

While cases are considered secondary sources in Korea, Korean courts give more weight to cases than treatises. Online databases such as LawnB may be preferable for access to Korean cases because of the large number of volumes of printed cases. Because cases are secondary sources, however, most libraries will not want to devote substantial resources to purchasing online databases for cases. If researchers do not have access to online case databases, they can obtain cases on CD and DVD. The most comprehensive collection of full-text cases is on the Bubgoul LX-DVD released by the Supreme Court Library of Korea—it can be purchased from the library. The DVD contains cases from appellate courts and trial courts as well as the Constitutional Court of Korea. Selected Korean Supreme Court cases in English are available for free at the web site of the Supreme Court Library. Users can search and browse cases. Decisions are also organized by subjects like private law, administrative law, taxation, criminal law, and intellectual property.

Journal articles, dissertations, and theses are searchable in the National Assembly Library catalog, or in commercial databases such as KSI, DBpia, and

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66. According to its web site, Kyobo Book Center ships books to foreign customers by FedEx, and it takes two to six days. Unless the book was damaged during shipment, return or exchange is not allowed. U.S. Customs may charge extra import tax on purchased books. [Kyobo Book Center], http://www.kyobobook.co.kr/index.laf (last visited Apr. 30, 2013).
72. Nat’l Assembly Library, supra note 64.
RISS. For articles written in English, please refer to A Research Guide and a Bibliography for Korean Legal Resources in English.

China

Primary Legal Materials

Print Resources

¶44 Mainland China. According to the white paper issued by the State Council Information Office of the People’s Republic of China (P.R.C.) on Nov. 27, 2011, mainland China’s legal system is a socialist system with Chinese characteristics. Primary sources of law include the constitution, legislation (laws passed by the National People’s Congress [N.P.C.] of the P.R.C. and its standing committee), ratified international treaties and agreements, administrative regulations, and department rules. In addition, local governments have passed more than 8600 local laws and regulations. Judicial decisions are not considered primary sources of law, and the principle of stare decisis does not apply in China. But although they are not necessarily binding, higher courts’ decisions tend to have a strong guiding influence over lower courts’ decisions.

¶45 Government agencies and state-owned legal publishers continue to publish laws and judicial decisions in print. For example, all laws passed by the N.P.C. and its standing committee are printed in the Official Gazette of the Standing Committee of National People’s Congress of the People’s Republic China, published by FaZhi Press of China (中国法制出版社), a major state-owned legal publisher under the supervision of N.P.C.’s State Council’s Legal Affairs Office. Similarly, selective cases are printed in the Official Gazette of the Supreme People’s Court of the People’s Republic of China. In 1987, the Foreign Languages Press (外国语出版社) began publishing a compilation of laws of the P.R.C. in English that covers laws back to 1979.

¶46 Hong Kong. The Hong Kong SAR, on the other hand, has a common law system supplemented with local legislation, where both legislation and judicial
decisions are primary sources of law. The Basic Law are also binding in the Hong Kong SAR. The Basic Law is the constitution of the Hong Kong SAR. The power to interpret the Basic Law is vested in the N.P.C. Standing Committee of the P.R.C. The Legislative Council of Hong Kong has legislative power under Article 37 of the Basic Law. The Court of Final Appeal is the court of last resort in Hong Kong. Under Article 9 of the Basic Law, both Chinese and English are official languages of the Hong Kong SAR. The Laws of Hong Kong, published by the Attorney General Office of the Hong Kong SAR, is an official compilation of all the laws passed by the legislature in Hong Kong. It is available in both Chinese and English.

As a region with more than one hundred years of common law tradition, Hong Kong case law reporting is well developed. The first systematic case report was the Hong Kong Law Reports, which covers judicial decisions from 1905 to 1996, published by the Hong Kong Government Printer. The current official law report, The Authorised Hong Kong Law Reports and Digests, covers decisions since 1997. It is published by Sweet and Maxwell Asia and endorsed by the Judiciary of the Hong Kong SAR.

Macau. The Macau SAR has a civil law system strongly influenced by Portuguese legal tradition. It was a colony of Portugal for more than one hundred years before it became a Special Administrative Region of the P.R.C. in 1999. As in Hong Kong, the Basic Law is the constitution of the Macau SAR, and the N.P.C. of the P.R.C. has the power to interpret the Basic Law. According to Article 8 of the Basic Law, laws, decrees, administrative regulations, and other normative acts previously in force remain effective, with certain exceptions. Certain national laws of the P.R.C. listed in the Basic Law also apply in the Macau SAR.

The Court of Final Appeal (Tribunals da RAEM) is the court of last resort in the Macau SAR. Judicial cases are secondary sources in the Macau SAR. The Macau Government Printing Bureau lists all of its publications on its web site, including Boletim Oficial da Região Administrativa Especial de Macau (the official gazette of Macau SAR that covers all the laws, decrees, and administrative regulations), Legislação da RAEM (compiled legislation of Macau SAR from Dec. 20, 2009, to Dec. 31, 2001), major codes, and Colectânea de Jurisprudência do Tribunal de Segunda Instância de Região Administrativa Especial de Macau (collections of judicial decisions by the Court of Final Appeal of Macau SAR). Most publications are available for sale in print or DVD on the Government Printing Bureau’s web site. Most of the post-1999 publications are written in both Chinese and Portuguese.

84. Xianggang JiBen Fa, at Annex III.
86. Aumen JinBen Fa art. 8 (Mac.).
87. Id. at Annex III.
as both are official languages of the Macau SAR under Article 9 of the Basic Law. A few publications covering a single code or law are also available in English.\textsuperscript{88}

\textsection{50} Taiwan. Taiwan is a civil law jurisdiction influenced by Dutch, Japanese, German, Chinese, and more recently, American legal traditions. The primary sources of law in Taiwan include the constitution, laws (passed by the Legislative Yuan and approved by the president), international agreements, and administrative regulations. Judicial decisions are secondary sources of law, and at least in principle, decisions of higher courts do not bind lower courts. Although the Supreme Court is the court of last resort for ordinary matters, justices of the Constitutional Court deal with matters concerning the interpretation of the constitution.\textsuperscript{89} It has the highest power to interpret the constitution, and its decisions are binding.\textsuperscript{90} In addition, there are two other court systems under the supervision of the Judicial Yuan of Taiwan: administrative courts and intellectual property courts.

\textsection{51} The Legislative Yuan of Taiwan publishes its official gazette in print, and it includes laws and regulations passed by the Legislative Yuan.\textsuperscript{91} However, the most widely available publication of Taiwanese laws in the United States is probably the \textit{Liu Fa Quan Shu} (六法全書) by Sanmin Shuju (三民書局), a long-standing commercial publisher in Taipei.\textsuperscript{92} It covers not just the text of major laws, but also interpretations and references to case decisions. There were a few publications covering Taiwanese judicial decisions; however, no current publications seem to be available in print.\textsuperscript{93}

\textbf{Electronic Resources}

\textsection{52} Thanks to the Free Access to Law movement and freedom of information legislation in the greater China area, primary sources of law, including laws and regulations as well as judicial decisions, are freely and widely available in many different databases and government web sites.

\textit{Government Databases of Laws and Regulations}

\textsection{53} Following their respective freedom of information legislation and standards of practice,\textsuperscript{94} governments in the greater China area have made available

\textsuperscript{92} The publication covers six major codes along with other laws: constitution, civil code, civil procedure code, criminal code, criminal procedure code, and administrative laws.
\textsuperscript{93} For a complete list of Taiwanese legal resources, see Taiwan, in Reynolds & Flores, supra note 53; see also Bill McCloy, Taiwan Legal Research at the University of Washington, Gallagher Law Library (Jan. 1999), http://lib.law.washington.edu/eald/trl/tres.html.
online the constitutions, laws, regulations, and judicial decisions on their respective
government web sites. They all have made efforts to provide English translations as well.
English translations are not official, except in the Hong Kong SAR, where English is an official language.

¶54 The N.P.C. of the P.R.C. has launched a database including English translations of laws enacted by the N.P.C. and its standing committee and administrative regulations issued by the State Council.95 The database is browsable under eight categories: constitution and related laws, civil and commercial laws, social law, administrative law, economic law, criminal law, procedural laws, and administrative regulations. Unfortunately, there is no user-friendly search functionality. The Chinese version (中国法律法规信息系统) also includes full text of judicial interpretations, department rules, and local laws and regulations along with materials available in the English interface.96 It is both browsable and searchable with many helpful search options. It provides a citator service across the entire database.

¶55 The Supreme People’s Court of the P.R.C. has published the full text of judicial interpretations, selective decisions, and other documents online since 2010 in Chinese.97 ChinaCourt (中国法院网) has posted the full text of judicial decisions from 1949 to the present, including those of lower courts, on its web site in Chinese.98

¶56 The Hong Kong SAR has established a bilingual database that includes the entire Laws of Hong Kong since 1997, along with other legal documents or information in PDF.99 However, the paper loose-leaf version remains the authoritative version.

¶57 The Hong Kong SAR judiciary makes available decisions of all courts that are “of significance as legal precedents on points of law, practice and procedure of the courts and of public interests” from 1946 to 1948 and since 1966 on its official web site.100 Decisions are in either Chinese or English. Certain judgments originally in Chinese are also translated into English. The database is browsable and search-
able with many user-friendly search features, such as advanced search and a citator. It also provides appeal history for cases. The text, however, is in HTML.

§58 Lack of freedom of information legislation does not prevent the Macau SAR government from making their laws and judicial decisions freely available online to the public. The Government Printing Bureau of Macau SAR has made all the laws, codes, regulations, and official gazette of the Macau SAR available online in PDF.101 It provides a browsable and searchable database. Most of the materials are in Chinese and Portuguese, official languages of the region, but some are translated into English.102 The judiciary web site of Macau SAR has posted judgments of the Court of Final Appeal and Court of Second Instance since 2000 in both Chinese and Portuguese in PDF.103

§59 The Ministry of Justice of Taiwan has also launched a free bilingual database where users can search for the constitution, laws and regulations, judicial decisions of the Supreme Court of Taiwan, and interpretations issued by the Constitutional Court, among other legal documents, in HTML.104 The Chinese version is even more comprehensive than its English counterpart.105 Dates of coverage vary, but some materials go back as far as the 1980s.106

**Legal Information Institutes**

§60 Having adopted the Declaration on Free Access to Law in 2002 with the goal of making public legal information accessible to everyone, and “(t)o cooperate in order to achieve these goals and, in particular, to assist organisations in developing countries to achieve these goals, recognising the reciprocal advantages that all obtain from access to each other’s law,”107 legal information institutes belonging to the Free Access to Law Movement make laws, regulations, judicial decisions, international treaties and agreements, and other primary legal materials available online, free to the public.

§61 The Asian Legal Information Institute (AsianLII), in partnership with the Information Centre of the Legislative Affairs Office of the State Council of the P.R.C. and the Supreme People’s Court, has made the 2004 constitution, certain laws (1949–), and some local laws and regulations in English freely available online. It has also made the Basic Law of Macau SAR, certain statutes of Macau SAR, decisions of the Court of Final Appeal of Macau SAR (2000–), and decisions of the Court of Second

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Instance of Macau SAR (2002–) freely available online.\textsuperscript{108} It includes Taiwan Constitutional Court decisions (1949–) in English and materials available through the Global Legal Information Network (GLIN), another organization affiliated with the legal information institutes. GLIN provides more than 7000 laws and regulations of Taiwan in Chinese with English summaries.

\textsuperscript{¶}62 The Hong Kong Legal Information Institute (HKLII), now part of AsianLII, contains the constitution, laws, regulations, law reform reports and consultation papers, and judicial decisions of all courts and tribunals.\textsuperscript{109} All documents are available in English, with certain recent documents also available in Chinese.

\textsuperscript{¶}63 Two new features of the LII databases are worthy of highlighting: LawCite is a recently launched free legal citator service that allows users to search across all LII databases.\textsuperscript{110} Noteup is another helpful search tool that permits a user to find documents citing a particular case across all LII databases.\textsuperscript{111}

**Secondary Legal Materials**

**Monographs and Series**

\textsuperscript{¶}64 Many major legal publishers in North America and Europe publish monographs and series on Chinese law both in English in print and online. For example, Hart Publishing launched the series China and International Economic Law in 2005. Hein’s Chinese Law Series, launched in 1998, has fourteen titles on Chinese law, including translations of the criminal code, criminal procedure law, and contract law as well as research guides and scholarly works on many specific areas of Chinese law. Brill’s China Legal Development Yearbook Series is a series of annual reports on Chinese law written by leading scholars in English. Taiwan Yearbook of International Law and Affairs, published by the Chinese (Taiwan) Society of International Law, is available on HeinOnline and in print. Halsbury’s Laws of Hong Kong, published by Butterworth Law (Asia), is still the most authoritative encyclopedia of Hong Kong law; it is available in print and online from LexisNexis U.S.

\textsuperscript{¶}65 Chinese publishers also make available many legal treatises in the vernacular or in English. For example, LawPress China (法律出版社), founded in 1954 under the supervision of the Ministry of Justice of the P.R.C., is one of the leading legal publishers in mainland China. It publishes more than 6000 titles per year, including scholarly treatises, law commentaries, bar preparation books, and textbooks.

\textsuperscript{¶}66 In the Hong Kong SAR and Taiwan, almost all international publishers (e.g., OUP, Brill, Kluwer) have established local offices. In addition, major university presses publish scholarly works on laws in the vernacular. The HKU Press has


\textsuperscript{110} LawCite, http://www.asianlii.org/LawCite/ (last updated June 6, 2013).

published a law series that includes scholarly works reflecting the current legal development of Hong Kong, among other publications.

**JOURNALS AND LEGAL NEWSPAPERS**

¶67 There are many journals on Chinese law in English, such as the *Chinese Journal of International Law, Columbia Journal of Asian Law*, and *Frontiers of Law in China*. In addition, *China Law and Practice* is a leading English journal that covers English translations of laws, case digests, and articles on current practice of the entire greater China area. Most journals are available in full text through at least one of the major legal journal article databases such as HeinOnline, LexisNexis, Westlaw, or ABI/Inform.

¶68 There are more than one hundred legal journals in Chinese published by various university presses and other research institutes. The *Chinese Social Science Citation Index (CSSCI)*, maintained by the Nanjing University Chinese Social Sciences Research Evaluation Center, issues an annual ranking of more than 2700 social sciences journals, including law journals. Among them, *China Legal Science* and *Chinese Journal of Law* consistently top the law journal rankings. Under the supervision of the Ministry of Justice, the *Legal Daily* is a leading legal newspaper press group. It is composed of seven legal news publications.

¶69 The *Hong Kong Law Journal*, a peer-reviewed journal published by Hong Kong University, is the leading academic law journal in Hong Kong. *Hong Kong Lawyer*, the official journal of the Law Society of Hong Kong, is published by Butterworth (Hong Kong).

¶70 In Taiwan, there are about a hundred journals and law reviews published by academic institutions, government agencies, commercial publishers, and bar associations. The 2011 release of the *Taiwan Social Science Citation Index* includes eight journals across the entire Taiwan area. Among them, *Fair Trade Quarterly* by the Fair Trade Commission of Taiwan, *Chengchi Law Review* by the National Chengchi University College of Law, and *National Taipei University Law Review* top the ranking list. In addition to law reviews and journals published by individual universities and academic institutions, two commercial legal publishers in Taiwan are well-known for their legal publications: 元照出版社 (YuanChou Press) and Sharing Culture Enterprise.

**Commercial Databases**

¶71 For a fee, users may access legislation, administrative regulations, local government laws and regulations, and judicial decisions of all levels of courts of mainland China in ChinaLawInfo, LexisNexis China, and Westlaw China in Chinese, with certain materials translated into English. Similarly, a user may also find laws,

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regulations, and judicial decisions of China in CNKI’s *China Legal Knowledge Database*, mostly in Chinese. In addition, ChinaLawInfo includes databases of laws and regulations of the Hong Kong SAR, the Macau SAR, and Taiwan.

¶72 Thomson Reuters provides Westlaw China, a comprehensive database that covers many primary and secondary legal materials in Chinese with some also in English, including but not limited to statutes, international agreements and treaties, administrative regulations, decrees, department rules, local regulations, cases, journals, practical documents, and news. It boasts a very easy to navigate interface (mimicking Westlaw U.S.) and user-friendly search features such as advanced and basic search, sorting, case headnotes, and a bilingual legal glossary.116

¶73 ChinaLawInfo from the Peking University Legal Information Center117 and CNKI by TongFang118 make law review and journal articles available online in their databases in Chinese. CNKI also includes master’s theses and doctoral dissertations in full text. Although these materials are in Chinese, they are indexed with English keywords, and some have English titles or abstracts. Both vendors also provide English search interfaces. Therefore, non-Chinese speakers are generally able to find articles by searching with English keywords.

¶74 LexisNexis has also launched a comprehensive Chinese law database, LexisNexis China. In addition to providing statutes, regulations, judicial decisions, and other primary and secondary legal materials in full text in Chinese, with English translations of certain materials, it also offers practitioner modules in some major areas of law, such as tax law, corporate law, and employment law.119

Japan

*Primary Sources*

¶75 The Japanese legal system is based on the civil law system, following the model of European legal systems, especially those of Germany and France. Japan established its legal system when imperial rule was restored to Japan in 1868—the Meiji Restoration. The Meiji Constitution was the organic law of the Japanese Empire in effect from 1890 to 1947. After World War II, there was a major legal reform, and the constitution was drawn up under the Allied occupation, with U.S. influence, and includes human rights protections. The current Japanese legal system is a hybrid of continental and American law.

¶76 Since the Freedom of Information Act was passed in May 1999, numerous resources for government information have become available on the web. Even before the legislation was enacted, many government departments began providing their information via the Internet. E-Gov is a portal web site of government information administered by the Ministry of Internal Affairs and Communications.120

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117. *See Our Services, ChinaLawInfo*, http://www.lawinfochina.com/ProductsServices/index_s.htm#aboutus (last visited May 2, 2013).
Government documents can also be searched on the web site of the Government Printing Office.121

§77 The National Diet is the only law-making body in Japan.122 Many bills are drafted by government agencies and submitted through the cabinet and posted on the web site of the House of Councillors.123 Also, Diet members can draft and submit a bill if there are a certain number of cosponsors. The bills since the 142nd Diet Session (1998) can be found on the House of Representatives web site.124 The bills from the ministries and other agencies can be found on the web site of the prime minister and his cabinet, Kankōchō lin ku shū.125

§78 Statutes must be promulgated after they are passed by the legislature. The emperor promulgates them and new legislation is published in Kanpō (Gazette).126 The last five days of Kanpō are available to the general public. Kanpō is updated weekly on the Prime Minister’s Office web site after the legislation has been enacted in the Diet.127 At the web site of the House of Representatives, session laws (Seitei Hōritsu)128 passed by the Diet since 1947 are available, except for the most recent ones.

§79 In April 2001, a consolidated searchable code database Hōrei dēta teikyō shisutemu (Current Law Database) was launched by the Ministry of Internal Affairs and Communications.129 The database is updated every two or three months after enactment of a new law or amendment of a code by the Diet. It includes more than six thousand laws such as the constitution, laws, decrees, edicts, the cabinet office ordinance, orders from the Ministry, and regulations. It is the first database in Japan to provide a consolidated code on the web for the public without a fee.

§80 The Roppō is the most important source for Japanese legislation and regulations. It consists of six fundamental codes: the Constitution (Kenpō), the Civil Code (Minpō), the Code of Civil Procedure (Minji Soshōhō), the Commercial Code (Shōhō), the Criminal Code (Keihō), and the Code of Criminal Procedure

(Keiji Soshōhō). Roppō is an unofficial legal source and various types of Roppō are published by different publishers in various formats such as DVD, CD-ROM, and web products. The Roppō Zensho, 六法全書, published annually by Yūhikaku, is widely used in Japan. Also, there are open access web sites for each code, and the codes are also published in CD-ROM format. Hōrei Zensho, published monthly by Kokuritsu Insatsukyoku, covers laws since 1867 and has a subject and word index.

¶81 Minutes of each Diet chamber and the proceedings of whole plenary sessions and of each committee since 1946 are available at the National Diet Library’s web site, Kokkai Kaigiroku Kensaku Shisutemu. Supreme Court rules can be found on the court’s web site.

**Secondary Sources**

¶82 Judicial power is vested in the Supreme Court and lower courts (high courts, district courts, family courts, and summary courts). Japan’s court system is divided into four tiers. Independence of the judiciary is guaranteed by the constitution. Most judges are virtually lifetime employees of a national government bureaucracy. The judgments of the Supreme Court are considered to be binding on lower courts. The decisions of the high courts are very influential in the lower courts. Judicial decisions, regarded as being important, are compiled and codified.

**Official Case Reports on the Web**

¶83 Except for Supreme Court cases, only a small percentage of judgments are reported; an unreported judgment can be obtained by requesting a copy in person at the record office of each court. Lower court decisions of intellectual property cases and labor law cases have been available since July 1999.

¶84 The case-naming method is different in Japan than in the United States. There is no actual case name system. The name of the court and date of the judg-

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133. The Japanese court system is relatively simple because it is not a federal system. The first tier of courts is the summary court (Kani Saibansho, 簡易裁判所). The second is the district courts (Chihō Saibansho, 地方裁判所), the principal courts of first instance. There are fifty district and family courts with additional branches. There are eight high courts (Kōtō Saibansho, 高等裁判所), as well as the Intellectual Property High Court (Chiteki Zaian Kōtō Saibansho, 知的財産高等裁判所). There is one Supreme Court (Saikō Saibansho, 最高裁判所).
ment are generally used to search a case. Parties’ names are not used if the parties are individuals. Therefore, parties’ names are not queried in searching cases. Names of corporations, though, may be used for the case name.

¶85 Official case reports in Japanese, which have been published since 1947, are available on the Saibanrei Jyōhō web site and are searchable by keyword. Official case reports in Japanese from the Supreme Court and other lower courts from the last three months, as well as case reports from the Intellectual Property High Court from the last month, are also found at the Saikin no Saibanrei web site. English translations of some of the Supreme Court’s judgments can be found on the Supreme Court web site.

¶86 Unofficial case reports are available on the web site of the Aidai Hanrei, which lists well-known and important cases in the field of constitutional law, criminal law, civil law, commercial law, criminal procedure, and civil procedure. You can find copyright case judgments on Mr. Ueno’s web site.

**Official Case Reports in Print**

¶87 Case reports of Taishin’in can be found in *Taishin’in Minji Hanketsuroku* (Criminal) and *Taishin’in Keiji Hanketsuroku* (Criminal), published by Shihō Shō (Ministry of Justice) from 1875 to 1887 and published by Tōkyō Hōgakuin from 1895 to 1921. Later cases are in *Taishin’in Minji Hanreishū* (Civil) from 1922 to 1946 and in *Taishin’in Keiji Hanreishū* (Criminal) from 1922 to 1947. Since 1947, court reports published by the Supreme Court and lower courts have been divided into two categories: civil and criminal cases. *Saikō Saibansho Minji Hanreishū* (Civil) and *Saikō Saibansho Keiji Hanreishū* (Criminal) are published by the Hanrei Chōsakai. These collect cases where different judgments were entered despite similarities between the cases. *Saikō Saibansho Minji Saibanshū* (Civil) and *Saikō Saibansho Keiji Saibanshū* (Criminal) contain cases selected by the members of the courts as reference cases for the future. There are four subject-specific case reporters: Administrative Cases, Family Cases, Intellectual Property Cases, and Labor Cases.

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139. Daishin’in or Taishin’in (Great Court of Judicature) is the Supreme Court under the Constitution of the Empire of Japan.
140. GYOSEE JIKEN SAIBANREISHU (1950–1997).
141. KATEI SAIBAN GEPPÔ (1955–).
143. RODÔ KANKEI MINJI SAIBANREISHU (1950–).
Unofficial Case Reports in Print

§88 Several court report journals are published. Each issue has case interpretation and analysis, the essential elements of the court decisions, and comments. Hanrei Jihō (published by Hanrei Jihōsha) includes important cases and gives key point of judgments. Hanrei Hyōron, a supplement to Hanrei Jihō, is devoted to comment on cases. Hanrei Taimuzu (published by Hanrei Taimuzusha) includes cases of the Supreme Court; administrative cases; labor cases; and civil, commercial, and criminal cases. There is a DVD version, which includes all cases. There are also subject-specific case reports: Hanrei Chihō Jichi (published by Gysō) for administrative cases; Kōtsū Jiko Minji Saibanreishū (published by Gysō) for important civil traffic cases; Junkan Kī’nyū Hōmu Jiyō (published by Kī’nyū Zaisei Jījyō Kenkyūkai) for financial transaction cases; Kī’nyū Shōji Hanrei (published by Keizai Hörei Kenkyūkai) for financial transactions, management, and enterprises cases; Bessatsu Chūō Rōdō Jihō (published by Rōiki) and Rōdō Hanrei (published by SanRō Sōgō Kenkyūjo) for important labor cases, which are selected by the Central Labor Relations Commission and each local commission.

Law Journals

§89 Juristuto, Hōgaku Kyōshitsu, Hōritsu Jihō, and Hōgaku Seminā are all widely read legal magazines. Juristuto (Jurist) (published by Yūhikaku), which is equivalent to the Harvard Law Review, features articles as well as reports on new legislation and notable cases with interpretation and analysis. Hōgaku Kyōshitsu is for law school students and is a companion to Juristuto, with comments on cases by scholars. Hōritsu Jihō (published by Nihon Hyōronsha) has a list of comments on recent cases. Hōgaku Seminā (published by Nihon Hyōronsha) gives descriptions and commentary on cases. Minshōhō Zasshi (published by Yūhikaku) is a leading journal on private law and cases related to civil and commercial codes. NBL (New Business Law) (published by Shōji Hōmu) focuses on the fields of business, property, and credit. Gendai Keijihō (published by Gendai Höritsu Shuppan) covers criminal cases. Legal journals on Japanese law in English are Asian-Pacific Law and Policy Journal (APLJ), Asia-Pacific Journal: Japan Focus,144 Hitotsubashi Journal of Law & Politics (published by Hitotsubashi Daigaku), and Japan Law Journal (published by Survey Japan). For social security law and labor law, the Ōhara Institute145 at Hōsei University provides a database of articles in these fields.

§90 Because of scholarly electronic publishing initiatives in Japan, many universities make their law reviews accessible through academic institutional repository programs. Institutional repositories are reaping both short-term and ongoing benefits for universities and legal scholars around the world. Japanese articles in law reviews that are in institutional repositories are searchable through Google

144. Asia-Pacific Journal: Japan Focus, http://www.japanfocus.org/home (last visited May 1, 2013). This peer-reviewed journal contains in-depth critical analysis of the forces shaping the Asia-Pacific region. It focuses on geopolitics, economics, history, society, culture, international relations, and forces for change in the Asia-Pacific region.

Scholar, and there is a link to them on the CiNII Articles web site.\textsuperscript{146} CiNII Articles, produced by the National Institute of Informatics, provides links to an online catalog of more than 1200 academic institutions in Japan and access to more than twelve million books and journal titles, and it is a gateway to academic articles in the National Diet Library’s \textit{Japanese Periodicals Index Database}.\textsuperscript{147}

\textbf{Legal Publishers}

\textsuperscript{91} Numerous publishers produce law books including treatises, dictionaries, and journals in Japan: Gyōsei (ぎょうせい), Ki’nyū Zaisei Jijyōkai (経済政策事情研究会), Keizai Hōrei Kenkyūkai (経済法令研究会), Keisō Shobō (勤草書房), Gendai jinbunsha (現代人文社), Kōbundō (弘文堂), Sanseido (三省堂), Jiyū Kokuminsha (自由国民社), Shōji Homu (商事法務), Shinzansha (信山社), Junpōsha (旬報社), Iwanami Shoten (岩波書店), Shin Nippon Hōki Shuppan (新日本法規出版), Seibunshō (成文堂), SeirinShoin (青林書院), Dai-Ichi Hōki (第一法規), Tachibana Shobō (立花書房), Nihon Hyōronsha (日本評論社), Hanrei Timuzusha (判例タイムズ社), Hōgaku Shoin (法学書院), Hōritsu Bunkasha (法律文化社), Minjihō Kenkyūkai (民事法研究会), and Yūhikaku (有斐閣). Legal treatises are published by Tōkyō Daigaku Shuppankai (東京大学出版会) and Waseda Daigaku Shuppanbu (早稲田大学出版部). Some legal publishers have started to provide their book catalogs online. Examples include Nihon Hyōronsha, Yūhikaku, Dai-Ichi Hōki, Hanrei Timuzusha, and Shin–Nihon Hōki. Some publishers in Japan distribute CDs containing cases that have been published in print case reports, and they also support online databases similar to Westlaw and LexisNexis. Shin Nihon Hōki Shuppan\textsuperscript{148} and Yūhikaku\textsuperscript{149} make legal e-books available.

\textbf{Newspapers}

\textsuperscript{92} For news, Asahi Shinbun, Mainichi News, Yomiuri News, and Nihon Keizai Shinbun distribute their stories via the web. \textit{Asahi Shinbun} has also had a full-text commercial database for their news since 1986. For English readers, the \textit{Japan Times}, \textit{Nikkei Net}, and \textit{Mainichi Daily News} distribute legal news in English.

\textbf{Subscription Databases}

\textsuperscript{93} Hōko covers current laws, cabinet orders, ministry ordinances, and ministry notices with word, topic, and chronological indexes.\textsuperscript{150} Access to some parts of
the database costs money, but much of it is available for free. Super Hōrei Web
combines current Japanese law compiled by the Ministry of Justice with repealed

It contains more than 12,000 laws, including the constitution, statutes, ministry ordinances, administrative laws, regulations, treaties, decrees, notices, Dajōkkan Fukoku and Dajōkkan Tasshi, and the history of amendments is searche
searchable. The database is connected to LEX/DB, and there is a link to relevant precedent. With a monthly fee, all gazettes (Kanpō) since May 3, 1947 (when the current constitution came into effect) are accessible at the National Printing Bureau’s web site. Dai-Ichi Hōki also publishes the current debate schedule and full-text data of some bills.

¶94 For English translations of Japanese laws, you can subscribe to the print
EHS Law Bulletin Series published by the Eibun Hōreisha. LEX/DB Internet, pro-
duced by TKC, covers case reports since 1894 and is one of the most popular legal
databases in Japan. Based on the case reports of LEX/DB, TKC also produces a legal database called Law Library, which is customized for law school curricula. Dai-Ichi Hōki has a full-text database of decisions published since 1891. It is called D1-Law.com and covers more than 22,000 cases.

¶95 Westlaw Japan and LexisNexisJP provide comprehensive databases, which
include laws and regulations, case reports since 1948, legal commentaries, and
articles. Both databases are all in Japanese. LexisNexisJP has more than 250,000
cases with monthly web updates, and legal information from the legislative, judicial, and executive branches was integrated into LexisNexis as One in 2012. Westlaw Japan covers more than 230,000 cases (as of March 2012) from before World War II, including full-text cases and other value-added editorial enhancements such as accurate and concise abstracts and bylines, as well as applicable legislation.

Conclusion: Opportunities and Challenges

¶96 Globalization and the growth of international trade and commerce have
resulted in growing research interest in the interplay of differing legal systems with
international rules of law and norms of practice. Developing and maintaining an
academic law library collection that can meet the amorphous research needs of its
constituents remain an ongoing challenge for the librarian-selector.

¶97 To meet the need of library users for quick access to a wide array of foreign
legal resources, going digital is often the preferred option for academic law libraries
in the United States. Developing an electronic collection removes the logistical bar-

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152. 太政官布告 (だじょうかんぶこく ), Fukoku laws proclaimed at the beginning of the Meiji Era. Originally, there was no difference between fukoku and tasshi; however, beginning in 1873, “fukoku” was used for laws pertaining to Japanese citizens.
153. 太政官達 (だじょうかんたっし ), Tasshi laws proclaimed at the beginning of the Meiji Era. “Tasshi” was used for laws related to government officers or decrees beginning in 1873.
154. The subscription fee is about $20 per month.
riers and added associated costs of acquiring and processing print legal materials far away from where they are published. Long physical distance means longer delivery times and higher shipping costs, not to mention the difficulty for the librarian-selector in evaluating the utility and quality of the content when making purchase decisions. Additionally, materials in digital formats save researchers time and money—updating existing laws is much faster online. Librarians may be able to take advantage of a free trial of an e-book or database before buying or subscribing.

¶98 Legal materials are widely available in various formats through commercial vendors and free data providers including governments and other nonprofit organizations, such as legal information institutes. Selectors therefore face a daunting task in making wise and selective collection decisions relating to the formats and coverage of materials available for a fee alongside those available in the public domain. Any selection decisions should be tied to an individual library’s mission, user needs, and collection development policy.

¶99 Another approach is to establish an approval plan with a reliable vendor. For example, the University of Michigan Law Library is currently experimenting with an approval plan with the East View Information Service.\textsuperscript{157} With an approval plan service, a vendor will, ideally, go to local bookstores to select materials that fit parameters set by selectors in advance. Once a book arrives, the selector can look at the book and determine whether it fits the library’s approval plan profile. If not, the book can be returned. This approach requires frequent and clear communication between libraries and vendors.

¶100 A few factors may help you narrow your options: First, do you need materials available in PDF of the original image for cite-checking purposes? Second, do you prefer English translations or official vernacular collections? Third, do you prefer a more authoritative governmental web site or a comprehensive commercial database that includes both primary and secondary legal materials and allows a user to search across the entire database? Finally, as of now, print sources are generally still considered the only official authoritative source, so would you prefer a fee-based print source that may require significant staff time for receiving, cataloging, filing, and shelving, or an easy-to-use free e-resource from a government entity?

¶101 While going digital is an inevitable trend that every academic law library needs to embrace, there is still a way to go before foreign law collections in law libraries in the United States can be entirely paperless (if that day ever comes). The proliferation of free and fee-based legal materials and the pros and cons related to acquiring materials of different formats make purchase and subscription decisions a delicate balancing act for librarian-selectors. Rising publishing costs and ever-shrinking collection budgets have certainly made the challenge all the more acute. Incorporating an East Asian component into the foreign law collection in an academic library depends greatly on the research needs of its main constituents, its students and faculty; the existing depth of the collection in those areas; and last but not least, the availability of alternative means of acquisition, collaborative lending, exchange, and collection development.

A Third Place for the Law Library: Integrating Library Services with Academic Support Programs

David C. Walker

This article provides a brief history of the evolution of legal education in America, examining the roles of both law libraries and academic support programs. It then offers suggestions for ways to integrate library services with academic support services.

Introduction

Things change. Though it may seem that American legal education has remained in a perpetual state of Socraticism, it was not always that way. While American legal education has a long history of producing self-learners1 (with law libraries assisting them by providing access to print resources), a trend is afoot to move away from self-learning in law. This trend has been aided by the rise in academic support programs, which serve to guide students through the process of learning by converting information into knowledge. The academic law library as an institution has a place in those programs. After all, law libraries have always been treasuries of legal information. Providing access to legal information is but the first step toward helping students learn the law.

The conversion of information into knowledge is a process of internalization.2 While some students seem to have an innate ability to perform this conversion,
others require guidance to learn to internalize legal information so that it becomes knowledge of the law. The professor of law was the original guide to that process. Early American law professors were usually not much more than lecturers. The next breed of professors were inquisitors, guiding law students through the process of knowledge internalization through questioning. However, neither the lecture nor the inquisition has always been adequate to ensure that law students are able to engage in the internal process of turning legal information into knowledge. Consequently, the academic support professional has arisen as the most recent guide to the process of learning the law. These individuals serve to teach students the process of converting information into knowledge.

¶3 While academic support programs\(^3\) have become more or less standard in law schools during the twenty-first century, they are constantly changing shape. Law librarians can take advantage of this to reinvent and reposition themselves in the legal academy and, in doing so, add new value to legal education. Currently, law librarians guide students through the process of acquiring legal information; working with academic support programs would allow them to take the next step and guide students in converting that information into legal knowledge.

The Evolution of American Legal Education

¶4 Legal education in colonial America required lawyers to be self-learners.\(^4\) Students would devote time simply to reading the law prior to being admitted to practice.\(^5\) One of the main problems readers faced, however, was access to an adequate collection of law books.\(^6\) After all, in order to read the law, one needed access to its sources. Fortunately for some aspiring lawyers, two alternatives to self study existed, and both provided students with access to the sources of law, though neither was without drawbacks.\(^7\) The first alternative was to study at the Inns of Court in England, which was burdensome, as it required transatlantic travel.\(^8\) The second alternative was to serve as apprentice to an attorney.\(^9\)

¶5 Under the apprenticeship system, an apprentice would pay a fee to the attorney for whom he apprenticed.\(^10\) In exchange, the apprentice would have access to the attorney’s library, offering the opportunity for unsupervised study.\(^11\) While

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3. Academic support programs are known by a variety of names and acronyms, including ASPs, academic excellence programs, academic assistance programs, and academic success programs. For clarity, I refer to all such programs as “academic support programs.”


5. Karen S. Beck, One Step at a Time: The Research Value of Law Student Notebooks, 91 LAW LIBR. J. 29, 30 (1999). While the duration of time spent on self study varied, Patrick Henry was admitted to the Virginia bar after just six weeks of reading the Virginia statutes and an English legal treatise. Id.

6. See Klafter, supra note 4, at 311.


9. Id. at 31.

10. See Klafter, supra note 4, at 311.

11. Id.
only a few native law texts existed within the new republic, apprentices often read treatises such as Coke on Littleton and Sir William Blackstone’s Commentaries on the Laws of England, as well as the cases found within any available reporter volumes.\textsuperscript{12} The bulk of early American law students’ time, even while apprenticing, was often spent reading in solitude.\textsuperscript{13} Due to time and economic constraints, many lawyers lacked the incentive to train their apprentices beyond what they needed for the cases at hand.\textsuperscript{14} In some instances apprentices were relegated to performing menial work.\textsuperscript{15} Thus, for many postcolonial law students, the apprenticeship system provided little assistance with their legal education except to allow them access to private libraries.\textsuperscript{16}

\textsection{6} Proprietary law schools, such as the Litchfield Law School in Connecticut, began to emerge in the early years of the republic, affording law students the opportunity to attend lectures and to read from broader collections of legal texts.\textsuperscript{17} The lectures themselves, typically given by a sole professor, provided some direction to students as to what materials they should read.\textsuperscript{18}

\textsection{7} The Litchfield Law School, founded in 1784, was successful for nearly fifty years,\textsuperscript{19} and eventually a number of universities opened their own programs in legal education.\textsuperscript{20} Like the private law schools, these programs, including those at Yale, Harvard, Dartmouth, Columbia, and the University of Maryland, typically consisted of one lecturing professor who would also hold frequent moot courts.\textsuperscript{21} Most of these legal education programs consisted of lectures, relying on the use of treatises and, to some extent, cases.\textsuperscript{22} The University of Maryland’s program employed, along with five other professors of law, Murray Hoffman, whose program was described as essentially one of independent study.\textsuperscript{23}

\textsection{8} Legal education in the United States was revolutionized when Christopher Columbus Langdell introduced the Socratic casebook method at Harvard in 1870.\textsuperscript{24}

\begin{thebibliography}
\bibitem{12} Steve Sheppard, An Introductory History of Law in the Lecture Hall, in \textit{1 The History of Legal Education in the United States: Commentaries and Primary Sources} 11 (Steve Sheppard ed., 1999).
\bibitem{13} See id. at 9.
\bibitem{15} Id. For example, Joseph Story began reading for the law in 1798 under Samuel Sewell, who was then a member of Congress and, as Story expressed, not a very attentive teacher. Sewell did assign readings to Story, such as Blackstone’s Commentaries and Coke on Littleton, before Story took to reading reported cases, and the assigned readings were the majority of the instruction provided. Sheppard, \textit{supra} note 12, at 9. Story’s experience was not atypical. See Klafter, \textit{supra} note 4, at 312.
\bibitem{16} See Sheppard, \textit{supra} note 12, at 9–11.
\bibitem{17} Id. at 13.
\bibitem{18} Id.
\bibitem{20} See id. at 348.
\bibitem{21} Among the earliest university programs in law were those started by the College of William and Mary in Virginia and Transylvania University in Kentucky. Mark L. Jones, Fundamental Dimensions of Law and Legal Education: An Historical Framework—A History of U.S. Legal Education Phase I: From the Founding of the Republic Until the 1860s, 39 J. MARSHALL L. REV. 1041, 1069 (2006).
\bibitem{22} See Sheppard, \textit{supra} note 12, at 13–20.
\bibitem{23} Katcher, \textit{supra} note 19, at 351.
\bibitem{24} Sheppard, \textit{supra} note 12, at 25.
\end{thebibliography}
While cases had been used to help learn the law since the sixteenth century, Langdell’s method relied primarily on his students’ reading of cases, instead of relying on treatises coupled with lectures on black letter law.

Langdell’s theory of legal education was based on his belief that law could be understood as a science. As such, the law library served as the lawyer’s laboratory, and appellate cases published in reporters were the materials with which the lawyer would conduct his experiments. The importance of the law library to Langdell may well have grown from both his fondness for legal research and his position as the librarian of Harvard Law School (which he held while a student). During his tenure, the library was given glowing assessments from the Law School Visiting Committee of the Harvard Overseers. In any event, Langdell’s reliance on primary materials over secondary sources fostered the system of legal education that was to become predominant in American law schools.

Langdell did not lecture students about the meaning of judicial decisions in the larger context of the law. Instead, he asked his students to read cases and to decide for themselves what the cases meant to the law.

In this way, Langdell instituted a new method for “self-learning” in law, which required students to construct the legal forest from the decision trees. This new method was not without its critics, however. His students and colleagues, as well as prominent members of the bar, all criticized Langdell’s method, but Langdell persevered, and his method changed legal education for good. Fifty years after Langdell came to Harvard, the number of university-based American law schools had grown rapidly, and most “emulat[ed] Langdell’s Harvard.” While law school curricula, following the development of American law, have expanded into a num-

\[ \text{References} \]

25. Id. at 24.
26. Id. at 25–26.
28. See Katcher, supra note 19, at 357–58.
32. Weaver, supra note 27, at 526–27.
36. Weaver, supra note 27, at 533–34.
37. See id. at 537–39.
The Birth of the Academic Support Program

¶11 The casebook method, at least as it has been employed in legal education, does not automatically provide a student with an understanding of complex legal doctrine or the ability to apply that doctrine to new situations. Obtaining a legal education is not as easy as reading cases and engaging in classroom dialogue with professors. The cases contained within the casebook provide individual pieces of information that must be synthesized into a larger, complex system of knowledge. Students must be able not only to identify individual legal rules that are gleaned from dissecting case law, but also to arrive at an understanding of how those individual rules work together.

¶12 For example, a student may understand that, in order to prove that a defendant held the requisite intent to commit battery, it must be shown that the defendant either intended the consequences of his conduct or knew with substantial certainty that the consequences would result, but that understanding is not sufficient to demonstrate an overall comprehension of the law of torts. Nor is that understanding enough to demonstrate that the student grasps the law of intentional torts. The student must also recognize the concepts of transferred intent, how intent works in conjunction with the defendant’s conduct, and legal causation. The student must be able to differentiate between battery and assault and between battery and negligence. Finally, the student must be able to apply this understanding of legal concepts to factual situations different from those he encountered in the cases he read.

¶13 Thus, the case method requires students first to be able to dissect judicial opinions and extract relevant information from those opinions. They must then order the individual concepts in a larger structure, usually by using outlines or flowcharts. In some cases, they must commit all of this to memory. Students’ “legal understanding and mastery of principles of law” is then evaluated through the law school exam, where they must be able to spot these issues in factual scenarios,
communicate the relevant legal tests, and explain in detail whether these tests are met and how one would know. 48

¶ 14 The progression from reading cases to demonstrating competence through the vehicle of an exam comes naturally to some students, but for others it takes time and effort to develop and refine the requisite skills. Thus, it is important that students be shown not only what to learn but how to learn it. 49 For many, law school is not easy, and Langdell’s method requires students to look far beyond the assigned cases. In order to defeat “the sink-or-swim mentality of the traditional law school or the hardscrabble attitude of many lawyers,” 50 about thirty years ago law schools began to implement programs to promote success in law school by assisting students who might not otherwise be able to learn and analyze the law.

¶ 15 In response to the fact that some students must make a greater effort to develop the requisite skills for success in law school, academic support programs have expanded in American legal education. 51 While the structures of such programs differ among law schools, 52 the ultimate goal of each of them is to provide support to students who are at risk of not being admitted to the bar (which in some cases may be the result of not being able to complete law school). 53 Some academic support programs aim to increase the retention rate of academically at-risk students, 54 while others focus purely on bar passage rates. 55 Some programs target minority students, some target at-risk students, and some target all first-year students. 56

¶ 16 However, the idea for academic support programs came from outside of the legal academy—the programs began at undergraduate institutions in the late nineteenth century and became more prevalent in the 1930s. 57 These programs focused their attention on students considered to be “academically at risk” and provided support to students in reading and learning skills. 58 In the 1950s and 1960s, some academic support programs shifted their focus from purely academic considerations to the emotional needs of students. 59 At that time, academic support programs also began to target a specific student population, “students of

51. Id. at 275.
52. See id. at 278.
53. Id. at 285–86.
55. Id. at 6.
56. Schulze, supra note 50, at 280.
58. Id.
59. Id.
Other undergraduate program efforts were begun in the 1960s as an attempt to provide academic counseling to struggling undergraduate students. These programs, however, assumed that all students could be supported academically in a similar fashion, an approach that often proved to be less than successful.

¶17 Law schools were somewhat late in adopting academic support programs. In 1968, the ABA Fund for Justice and Education founded the Council of Legal Education Opportunity (CLEO) in order to expand opportunities for minority and low-income students to attend law school. Thirty years later, Congress passed the Higher Education Amendments Act of 1998, creating the Thurgood Marshall Legal Educational Opportunity Program, which has been administered by CLEO ever since. CLEO offers a number of programs, including a six-week Pre-Law Summer Institute in which college graduates attend an on-campus program designed to help them succeed in law school.

¶18 Over time, however, law schools began to initiate academic support programs themselves. A survey of academic support programs published in 2000 reported that of 151 law schools who participated in the study, only fourteen schools did not have any form of an academic support program. “However, of those fourteen schools that said ‘no’ to having an academic support program, six also indicated that they did have a support program or two.” Some of the programs were aimed at students prior to matriculation, often requiring success in the summer as a prerequisite to admission into the J.D. program. Other programs were provided during the first year of law school. Student participation is voluntary in some programs and mandatory in others. However, virtually all programs “provide assistance to academically at-risk students by helping them acquire the skills necessary to compete better with their more proficient peers.” According to the 2000 study, to achieve this goal academic support programs tend to provide one or more of the following services: (1) tutoring and the use of study groups focusing on learning substantive material; (2) academic counseling; (3) mentoring by alumni, faculty, or upper-class students; (4) first-year programs on the fundamentals of studying law and

60. Id.
61. See Schulze, supra note 50, at 274.
62. Id.
63. Id.
67. See Schulze, supra note 50, at 279.
70. Id.
71. Id. at 209.
72. Schmidt & Iijima, supra note 57, at 653.
73. Cabrera & Zeman, supra note 69, at 209.
preparation for law school exams; (5) special classes in the first year of law school that provide more individualized attention to students; (6) summer programs that concentrate on preparing admitted law students for matriculation; 75 (7) preadmission programs that make acceptance into the J.D. program contingent upon the successful completion of the program; (8) orientation programs that provide students with an introduction to the law school experience; (9) bar exam preparation courses; and (10) resource libraries that provide students with a collection of study aids. 76 Some academic support programs employ dedicated academic support faculty or personnel, while others rely on doctrinal or legal writing faculty or upper-class students to provide academic support. 77 No matter the specifics, law school academic support programs continue to develop and refine their missions and services. 78 As a consequence, law libraries should consider how they can provide assistance in expanding and improving these programs.

The Law Library’s Role in American Law Schools

¶19 To those outside of the library profession, the myriad roles of a law library often go unnoticed. The term law library itself can take on a number of meanings. In one sense, a law library is a collection of legal information resources, 79 historically consisting of treatises, statutory codes, case reporters, and perhaps early form books. 80 In the early years of the American Republic, law libraries were typically the private collections of law books owned by individual jurists and practitioners. 81 However, today the layperson’s view of the law library is of a place where legal materials are stored. 82 In the past decade, some librarians have begun to envision the law library as having a dual role as a place (1) where legal materials are stored and (2) where one goes to study. 83 In 2008, Blair Kauffman noted that even students in the digital age flock to the Yale Law Library as a place to engage in individual study and research. “[T]he library is what holds the students to the law school. They spend more time in the libraries than they do in the classrooms. They may be in the classroom three hours a day; they may be in the library six to ten hours a day.” 84 Richard Danner has explained that law libraries are what architects would refer to as a “third place.” 85 In discussing the renovation of Duke’s law

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75. These programs usually consist of classes that teach both study skills and substantive law. Cabrera & Zeman, supra note 69, at 209–10.
76. Id.
77. See Schulze, supra note 50, at 281.
78. Id. at 277.
84. Id. at 145, ¶ 11.
85. Id. at 144, ¶ 9. Blair Kauffman quoted Danner in explaining the “third place” as “[w]here
library, Danner noted, “The new library is an open, naturally lighted, pleasant space; the students come to it: they use the carrels, they use the table seating, and they’re all over the place, on all floors. And that is what we want.”

¶20 That people go to a law library to study the law (even with their own casebooks in hand) is really a result of the fact that libraries are places where legal materials, which were at one time essential to the study of law, are kept. However, libraries offer more than just their collections and space.

¶21 From the perspective of the modern professional law librarian, a law library can be viewed not just as a collection of information containers (books, databases, etc.), but also as a collection of services offered by information professionals well versed in the language of the law. Many of these services are unique to librarians; others are not. Among the unique services are the roles that tie librarians directly to the library as both a collection and a place—the services of the librarian as caretaker. The American Association of Law Libraries (AALL) identifies the following as tasks of law librarians: researching, analyzing, and evaluating the quality, accuracy, and validity of sources; teaching and training; writing; managing; and procuring and classifying library materials. Librarians acquire information assets (collection development), house and organize those assets (technical services), and provide a system by which those assets can be used by the library’s patrons (circulation). Librarians also assist patrons by facilitating access to the collected information assets (reference and research). Librarians may also instruct patrons on how to access and use the information assets (teaching). In fact, AALL has divided the specialized abilities of what have been identified as core competencies for law librarians into six different “specialized competencies”: (1) library management; (2) reference, research, and client services; (3) collection development; (4) cataloging; (5) information technology; and (6) teaching.

¶22 Two of these specialties deal directly with services to the library’s constituencies: reference, research, and client services, and teaching. Both of these specialties place the academic law librarian in the role of educator when dealing with law

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86. Id. at 145, ¶ 11.
88. See Barring, supra note 82, at 1402–03.
94. A duty that during the nineteenth and early twentieth centuries was reserved for the law school faculty. See Brock, supra note 81, at 345.
students. While law librarians’ service as teachers is obviously related to the law school’s educational role, so too is their provision of reference service. Academic law librarians are expected to train students to find legal information on their own, thus preparing them for the practice of law.

§23 When it comes to teaching, law librarians have become increasingly more integrated into law school curricula. The concept of the law librarian as law professor arose in the post–World War II era as a result of the trend of hiring dual-degree librarians. In 1952, the Association of American Law Schools (AALS) recommended that law librarians be integrated into the faculty. Faculty status ultimately led to teaching responsibilities for law librarians, and teaching expectations gradually became more standard. A 1955 survey indicated that at least forty-nine law school librarians spent from a “minimal amount” to one-third of their time teaching.

§24 Today law librarians are involved in a variety of instructional roles, the most prevalent of which is legal research instruction. Other librarians teach legal writing or doctrinal courses. In many cases, law librarians have credentials equal to those of members of the law school faculty. Accordingly, law librarians should take on law school instructional roles wherever they can. Law librarians are no longer mere “janitor-librarians”; they play an essential role in the training of law students and serve as an integral part of the educational life of American law schools.

A Place for the Law Library in Academic Support Programs

§25 Law libraries can offer assistance to academic support programs in various ways; three of these are discussed below. First, in the law library’s role as a collection of information containers, academic support programs can benefit from working with the library in the arena of collection development. Second, in the

96. See id.
99. See, e.g., Feliú & Frazer, supra note 93, at 556.
100. Brock, supra note 81, at 348.
101. Id. at 350.
103. Slinger & Slinger, supra note 87, at 393–94.
107. See Brock, supra note 81, at 349.
108. See id. at 347.
109. See id. at 396–99.
library’s role as a place, it can function as an academic resource center. Finally, in the library’s role as a collection of services offered by information professionals well versed in the language of the law, law librarians can participate directly in academic support.

**Academic Support Programs and Libraries as Collections**

¶26 One aspect of many academic support programs is the development of resource libraries, which provide students with a collection of study aids. The contemporary catalogs of most academic legal publishers are replete with study aids, including hornbooks; nutshells; subject outlines; flowcharts; DVDs and CDs of recorded legal subject lectures; flash cards; and question and answer books, which provide sample multiple choice, short answer, and essay questions along with sample answers or explanations. As experts in collection development, law librarians can assist academic support programs by identifying available resources and acquiring, organizing, and providing access to them.

¶27 Some might object to the acquisition of such study materials, believing that law students should not rely on these resources, or that even if it is proper for law students to use such resources, law libraries should leave it to students to acquire their own copies of them. However, it can be argued that libraries should collect such resources either as part of their traditional collection development plan or because ABA standards may be interpreted as requiring the library to do so.

¶28 Most legal study guides typically provide the black letter law. Such black letter law would historically have been found in legal treatises and is similar to what students learned before Langdell’s casebook method became part of the legal education landscape. Hornbooks were created in response to the casebook method, which never gave law students answers but, instead, set them adrift on an endless sea of possible legal outcomes. Hornbooks, which are usually written by one or two professors who are subject authorities, focus on helping law students understand the law in a simple, straightforward manner. Over time, hornbooks have become staples of legal research and are often used as secondary legal authority. For example, William Prosser’s *The Law of Torts* has evolved from being a mere study aid that explains what the law is into an outline of what the law should be.110 As hornbooks became more complicated, West Publishing Company started issuing its well-known Nutshell series, which provided explanations of the law in a simpler format than hornbooks. It is now common to find treatises, hornbooks, and nutshells within the walls of the academic law library, all of which are used by law students to help them with their studies. It is therefore not a departure from the norm to suggest that academic law libraries should collect other types of study aids.

¶29 Even if the pragmatism of collecting such materials is not convincing, it could be argued that adding such materials to a library’s collection is a requirement for accreditation. Standard 601(a) of the ABA Standards and Rules of Procedure for the Accreditation of Law Schools requires a law school to “maintain a law library

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that is an active and responsive force in the educational life of the law school.”\textsuperscript{111} Interpretation 303-3 provides that “[a] law school shall provide the academic support necessary to assure each student a satisfactory opportunity to complete the program.”\textsuperscript{112} This interpretation also implies an obligation for a law school to create and maintain a formal academic support program. Thus, assuming that a formal academic support program has been implemented at a law school, the law library is essentially obligated to acquire resources to meet the demands of the program. The law library should work with the law school’s academic support professionals to build a collection that reflects the needs of the academic support program. Even if no formal academic support program has been adopted by the law school, it would be beneficial for the law library to determine what types of academic support resources might benefit its students.

§30 Creating an academic support resource library is not as easy as randomly picking titles from a publisher’s catalog, however. Different students learn in different ways,\textsuperscript{113} so a resource library should be varied enough to meet the needs of each type of learner. Collection development librarians should work in conjunction with law school academic support professionals to identify and acquire the relevant resources for a diverse user group. If a law school does not have a formal academic support program, librarians may find it useful to survey student requests or consult with academic support professionals from other institutions.

§31 If they have not already done so, law libraries should create and maintain an exam database that provides access to past exams. Exam databases are immensely beneficial to academic support programs, as they provide examples of students applying their legal knowledge to hypotheticals and other exam questions.

§32 Other considerations for the implementation of a resource library involve the organization of and access to the available material. Some academic support materials are only available in electronic format. For electronic formats, a law library should provide a variety of access points, including through the law library’s integrated library system and from its web site or electronic research guides.

§33 With print study guides, there are two basic ways in which materials can be organized: physically shelved in the main collection based on their Library of Congress call number, or organized as a single collection in a separate location, just as reference materials are typically separated from the main collection. While the former method is simpler, there are benefits to creating a special location for study guides. Having a special collection for academic support materials makes it easier for students to locate materials specific to their educational needs. It requires less effort on the students’ part to discern which materials are geared toward their educational needs versus materials that are research oriented. As an added bonus, a separate study aids collection helps other library users more easily determine that these materials should not be cited in legal briefs and academic papers.

\textsuperscript{112} Id. at 22.
\textsuperscript{113} See generally MARTHA M. PETERS & DON PETERS, JURIS TYPES: LEARNING LAW THROUGH SELF-UNDERSTANDING (2007).
Academic Support Programs and Libraries as Places

¶34 The Litchfield Law School was located in a one-room building—the classroom and the library were not separate.114 While the law school’s layout was most likely the result of pragmatic and economic considerations, it illustrates how closely tied learning is to the library in legal education. Although over the years the law library has gradually become a place separate from the rest of the law school, there is a great benefit in closing that gap. If students use the law library as a place to study (a third place), then law schools may do well to install academic support professionals in the library.

¶35 Most law libraries hold more than just rows of book stacks. They have tables and chairs to facilitate use of the collection, separate rooms for group study, and distinct sections to better engage users with particular library services, such as reference and circulation. They often have computer labs and lounges. In some instances, law libraries even have coffee bars. Libraries have these things because library users use libraries for particular purposes—to work, to study, to learn. If libraries are centers for learning, it makes sense to have academic support professionals become a part of the library, not only to make them more readily accessible, but also to encourage students to utilize their services.

¶36 Integrating the physical aspects of academic support programs and law libraries may be one of the most challenging ways to bring the two departments together, depending as it does upon the configuration of building space. However, there are a number of possible ways to bring the two bodies physically closer.

¶37 The ideal way to integrate the two departments in a single physical location would be to provide a separate wing of the library exclusively for academic support programs. In this wing, the library could house academic support staff offices; provide a specific location for the academic support resource collection; and offer separate rooms for a writing lab, an academic support classroom (where academic support professionals can hold classes and workshops), group study rooms, and rooms for student tutoring or mentoring. Unless the law library has a spare wing to allocate to the academic support program, the costs associated with this option likely make it economically infeasible. However, where a law school is considering renovating the library building or erecting a new building, it should consider including a separate wing for the academic support program.

¶38 A less dramatic approach would be to use existing space in the library for academic support initiatives or to make minor architectural renovations in cases where physical and economic resources are at the law school’s disposal. Thus, instead of creating a separate wing for academic support programs, bringing one or more features of academic support into the library could serve the law school and its students well. For example, academic support faculty offices might be relocated to the library, or group study rooms could be used as tutoring spaces or a writing lab. An even easier idea would be for the law library to provide space in which academic support faculty could hold regular office hours.

¶39 By whatever means, law schools should work toward ending the practice of keeping law libraries separate from academic support programs. It may be prudent to begin slowly, perhaps by asking academic support faculty to hold office hours in the library before making them a permanent fixture.

¶40 A final way to bring academic support into the library space is not to renovate the building or relocate the personnel but rather to reconsider the role of the law librarian. In some cases, a “physical” integration of academic support into the law library could be accomplished by assigning to law librarians the additional responsibility of academic support. In this way, everyone can stay put. This brings us to the final role libraries and librarians can play in academic support programs.

Academic Support Programs and Libraries as Collections of Services

¶41 Law libraries in their role as a collection of services can be valuable to academic support programs through law librarians themselves. Law librarians possess many of the skills needed to provide academic support to law students. Academic support services are widely process based; that is, the proper role of the academic support professional is to help students develop skills to succeed in law school, which requires students to become competent self-learners in the study of law. The services of the contemporary public services librarian employed in a law school are also often process based. When providing reference service to a student, a good librarian not only helps the student uncover the information sought but, in doing so, teaches the student the process of uncovering that information.

¶42 At its core, the study of law requires that students do three things: (1) acquire legal knowledge; (2) internalize legal knowledge; and (3) apply legal knowledge. The process of acquiring knowledge begins as soon as students read cases or assigned readings for their law school classes. After acquiring the “initial bite” of knowledge from their readings, students’ knowledge is then refined in class through lectures, discussions, and the Socratic method. However, if the refinement of knowledge does not occur in class, students must seek other ways to refine their knowledge, whether through reading secondary source materials (typically in the form of treatises, hornbooks, and study aids), interacting with other students (typically through study groups), or interacting one-on-one with their professors during office hours. Refinement of knowledge also occurs through the process of exam preparation. Much of the refinement process also occurs outside of the classroom when students prepare course outlines, flowcharts, and other study aids.

115. Ellen Yankiver Suni, Academic Support at the Crossroads: From Minority Retention to Bar Prep and Beyond—Will Academic Support Change Legal Education or Itself Be Fundamentally Changed?, 73 UMKC L. Rev. 497, 500–01 (2004). Academic support professionals are sometimes referred to as “guides on the side.” Id. at 500.


117. See DENNIS J. TONSING, 1000 DAYS TO THE BAR BUT THE PRACTICE OF LAW BEGINS NOW 12–13 (2d ed. 2010).

118. Id. at 39.

119. Id. at 72.
As knowledge is acquired, it must also be internalized. Course outlines, case briefs, and class notes are tools often used by students to help them recall information. Recorded lectures and flash cards are other tools used by students to internalize information. If students do not actively seek to internalize the knowledge they have acquired, that knowledge will be lost.

The application of knowledge occurs in a number of ways. Most noticeably, students will apply the knowledge they have acquired and internalized in a law school exam. However, most students also need to apply the knowledge they have acquired and internalized on the bar examination. This process of legal education closely matches the lawyering process, where lawyers acquire knowledge through primary and secondary sources of legal information, refine their knowledge through careful deliberation, and apply that knowledge to a client’s specific legal problem. At the core of each stage of the process, the law student is engaged in the art of legal analysis.

It is important to note that legal education, at least since Langdell, is inextricably intertwined with the sources of legal authority (or the “oracles of law,” as Oliver Wendell Holmes Jr. referred to them). Although the bulk of the study of law continues to rely principally on case law, statutes, regulations, and secondary sources are increasingly important. Professional law librarians should be recognized as experts on the sources of legal authority, as they are typically asked to find, organize, deconstruct, and interpret legal authorities. A law librarian’s job also quite often involves the ability to conduct legal analysis. The art of legal research generally requires complex legal analysis.

Many academic law librarians (those with law degrees) are products of the very types of institutions that employ them—law schools. Of course, possessing a particular skill set does not necessarily mean that one can pass that skill set along to others. However, many law librarians are indeed capable of passing along the skill sets they acquired in law school and, in some cases, legal practice. Two of the most important skills that most contemporary law librarians possess are reference service and teaching. Both of these skills suggest that law librarians are able to help law students succeed in law school. If a law librarian can teach a student a legal process such as conducting legal research on an individual basis, a law librarian should be able to use the same skills to teach other process-based practices, such as reading and briefing cases, outlining courses, time management, and exam taking.

I am not suggesting that law librarians teach the substance of the law or legal doctrine to law students, but rather that they expand the ways they help students develop the skills essential to the process of learning the law. Nor am I suggesting that law librarians replace academic support faculty. Instead, I am proposing that law librarians can either supplement the efforts of existing academic support faculty or fill in the gaps where no formal law school academic support program is in place. Based on the skill sets they developed in law school and the particular skill sets utilized in their day-to-day work, many law librarians are just as, if not better, suited to

121. I am also not suggesting that law librarians are not competent to teach legal doctrine.
providing academic support to law students as upper-class law students, who may be formally or informally providing the same support.

¶48 Assuming that law librarians are sufficiently qualified to provide academic support, there is still the question of what type of academic support they should provide. The answer depends on the nature of a law school’s academic support program, but the role of the law librarian in providing academic support mirrors other roles of the law librarian, including teaching and offering one-on-one mentoring. Thus, law librarians may be well equipped to provide academic support in the form of academic counseling or classroom teaching. In both cases, they are engaged in teaching the process-based skills that law students need in order to succeed in law school. Whether in a classroom setting or on an individual basis, law librarians can pass along the following skills: (1) how to read cases, statutes, and other sources of legal information; (2) how to dissect sources of legal information; (3) how to organize the legal information obtained into devices such as course outlines and flowcharts; and (4) how to manage time. Law librarians can also help students enhance their legal writing and exam-taking skills.

¶49 Integrating the law librarian into the academic support program is a win-win situation. Academic support programs receive additional sources of support. Law librarians reap the rewards of helping students develop more process-based skills, and of becoming even more relevant to their institutions. Law students gain greater access to more resources to help them succeed in their academic endeavors. This is not an exhaustive list. Law librarians should continue to assess their skills and propose new ways in which they can provide value to their libraries and institutions.

Conclusion

¶50 Just as law libraries are a “third place” in the law school, academic support is a “third place” for law libraries. In the first place, they serve as repositories of information, and their entrances are gateways to worlds of knowledge. In the second place, law libraries help seekers navigate the labyrinth of information in their quest for knowledge. In a third place, such as in strengthening academic support programs, the law library can be a place where the piers of cognitive bridges are built and reinforced.

¶51 Though the integration of the academic support program and the law library cannot occur overnight, law libraries that do integrate would be continuing their traditional legal education focus of supporting the self-learner in law. In this third place, law libraries can reinvent themselves and add more value to law schools and those served by legal education institutions.
Keeping Up with New Legal Titles*

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

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* The books reviewed in this issue were published in 2012 and 2013. If you would like to review books for “Keeping Up with New Legal Titles,” please send an e-mail to bkeele@indiana.edu and nsexton@email.unc.edu.

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¶1 Attorneys represent clients in their courtrooms. Students and scholars study their decisions. Colleagues in lower courts follow their precedents. By all accounts, federal judges hold a tremendous amount of power. Theories abound surrounding judicial opinion making—legalism, realism, and the economics of law are just a few. In The Behavior of Federal Judges: A Theoretical and Empirical Study of Rational Choice, scholars Lee Epstein and William Landes and Judge Richard Posner reveal the results of an extensive study into federal judicial decisions—an effort to understand the many motives that influence judges’ thinking. Looking at decisions from all levels of the federal judiciary, group dynamics, and individual influences, each chapter of this book builds to a thorough study of judicial decision making.

¶2 While statistical analysis is not everyone’s favorite read, the book is intended to be useful not only to academics, but also to attorneys and law students seeking to better understand judges. Thus, it is meant to be approachable even by those with no background in statistics. This goal notwithstanding, these are not beginner’s statistics; the pages are filled with complicated equations, ever-changing dependent and independent variables, and a statistical vocabulary best suited to someone well versed in the subject. As a novice statistical researcher, I often found myself a little overwhelmed by the content. However, the authors do stay true to their intent by providing straightforward explanations of their findings and many charts and tables describing their results. Even as a novice, I found I could understand their results without a full understanding of their process.

¶3 Perhaps the best tools in this book are those features that sandwich the main content. The book begins with two introductions, a general introduction that introduces the subject, and a technical introduction that highlights and defines key statistical terms to be used throughout the text. These two introductions provide sufficient context to prepare the reader for the analysis that follows. For those readers planning to conduct their own studies of judicial decision making, this book provides a wealth of helpful resources. Throughout the book the authors refer to several preceding studies that examined various aspects of judicial decision making and demonstrate how their study differs from and improves upon what has come before; many of these previous studies resulted in databases of judicial statistics.

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that the authors identify and at times correct. In addition, several chapters are accompanied by extremely helpful appendices, providing further information on the content of the chapter and identifying resources for supplemental research. The book concludes with a thorough index. In essence, this book provides not only a wealth of interesting research and results, but also the data and resources a reader would need to expand this research further.

¶4 All three authors are well known in the study of law, particularly in the analysis of judicial decision making and the interplay of law and economics. As they make clear in their first chapter, and indeed throughout the entire book, their study fits within and builds upon the empirical literature on judicial decision making that has come before. Theirs is not a novel genre of research, but rather an extension and expansion of previous studies. The authors reference several of these studies throughout the book, drawing on data compiled by previous scholars to help further their research. This constant reference to and incorporation of previous works in the field leaves the reader confident that this book appropriately adds to and fits in with other works in this area.

¶5 While I found this book to be an interesting read, I cannot claim that it is a page-turner you will not be able to put down. Rather, each chapter reads like its own empirical research project, heavy and dense, but also rich with data and fascinating conclusions about various aspects of decision making at multiple levels of the federal judiciary. This book would be a great asset for any law library, but especially for academic libraries serving scholars whose research focuses on courts and the process of and influences on judicial decision making. The research conducted here has bearing on not only the scholarly work of academics, but also the study and practice of law. The analysis described will certainly inspire further research in this field and influence the future study of judicial decision making.


Reviewed by Susan Gualtier*

¶6 Seeing Justice Done: The Age of Spectacular Capital Punishment in France begins with a description of a horrific and infamous crime: in the winter of 1386, in the French town of Falaise, an intruder entered a man’s home, discovered an infant lying in a crib, and, starving after the brutal winter, began eating the child, taking bites directly out of its face. Having thus set the tenor of his narrative, author Paul Friedland goes on to describe the details of the perpetrator’s sentencing and execution, which amounted to the usual punishment for one convicted of homicide: being dragged through the streets of Falaise before being hanged at the place of justice. The punch line? The murderer in the story was not a human being, but a sow owned by a neighboring townsperson.

¶7 Although the sentencing and punishment of animals was not uncommon during the fourteenth century, and although no written evidence of the incident

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* © Susan Gualtier, 2013. Foreign, Comparative, and International Law Librarian, Paul M. Hebert Law Center Library, Louisiana State University, Baton Rouge, Louisiana.
exists beyond a very brief description contained in a receipt of payment to the Falaise executioner, historians have changed and embellished the details of the story so much, particularly in regard to the public nature of the execution and who was compelled to watch it, that the Sow of Falaise has become the stuff of historical legend. The result, Friedland argues, is a historical anecdote that makes sense within the framework of our modern understanding of capital punishment as a deterrent to similar crimes: the pig was given a human mask and dressed as a young boy before being executed before the entire town, including a number of pigs who would presumably be discouraged from committing similar homicides, as well as the father of the murdered child and the owner of the murderous pig, as a lesson regarding their apparently negligent behavior.

While the legend of the Sow of Falaise may be equal parts fascinating and repellent, it cannot be denied that Friedland knows how to pique his readers’ interest. The use of such a sensational anecdote to tease out the intricacies of how historical narratives develop is what Seeing Justice Done is all about. Friedland argues that “past penal practices . . . have informed our understanding of the theory and practice of punishment in the present” (p.15), and he aims to elucidate how we went from the medieval practice of public execution, through varying theories regarding restitution, atonement, and deterrence as the purposes behind capital punishment, and finally arrived at the relatively invisible system of capital punishment that exists today.

Friedland is a historian of early modern France. By his own admission, he is not a legal historian, and only parts of the book discuss the law of capital punishment itself. In his introduction, Friedland specifically directs those readers with a particular interest in legal history to chapters 1 and 2, which describe the development of the French legal system from the fall of the Roman Empire through the Middle Ages, and chapter 10, which discusses the Revolutionary penal code of 1791 and its effects on the law and theory of capital punishment in France. The rest of the book, Friedland suggests, will appeal more to nonlegal scholars interested in “the ritual and spectacle of executions and the ways in which people watched them” (p.17). These directions, however, might be considered misleading. While it is unlikely that most scholars will turn to this book for an overview of the development of the early French legal system, those interested in the topic of public executions will find that chapters 3 through 9 are essential to an understanding of what would amount to the black letter law of capital punishment, and that the legal history provided in chapters 1 and 2 merely sets the reader up to understand the theory behind capital punishment in France in the Middle Ages, which is when Friedland’s real discussion begins. Like the tale of the Sow of Falaise, the stories told in chapters 3 through 9 are both sensational and remarkably illustrative of historical developments in the theory of capital punishment. While they cannot strictly be considered a legal history, they give the reader the details of the social, political, and philosophical context in which various types of executions took place—the types of details that are essential to any study of legal history.

Although Friedland is not a legal historian, the chapters that do focus on the law and on legal development do not appear to be any less thoroughly researched than the rest of the book. In these chapters, Friedland relies primarily
on the work of previous legal scholars and historians, taking care to identify all sides of any relevant historical debates and to provide a balanced view of the historical development of the laws and philosophies surrounding capital punishment. He is less concerned with the details of how changes in the law occurred than in the fact that they did, and his personal interpretations of the laws themselves are limited, for the most part, to observations regarding the changing nature of the theory behind capital punishment. Legal historians, especially those with expertise in the areas of medieval, canon, or Roman law, will certainly read Friedland’s accounts of legal development in Europe with a critical eye. However, the student or lay reader who has turned to the book with the aim of understanding the history of public executions will find that Friedland’s legal history is relatively accessible, and that it offers just enough explanation of the changing laws to allow them to comprehend the chapters that describe specific historical practices in capital punishment.

Seeing Justice Done is easily read from cover to cover. Its relatively informal tone should appeal to a wide variety of readers, including students, historians, and legal scholars. At the same time, it is dense with information, pulling liberally from philosophy, theology, political science, and law. Some background in world legal systems will certainly assist the reader in understanding and evaluating the first several chapters. While not the most authoritative work on French legal history, Seeing Justice Done would be a worthwhile addition to any academic law library or other library seeking to enhance its legal history collection and to provide its users with a unique and educational book selection on what is a fascinating, if somewhat morbid, topic. It is highly recommended.


Reviewed by Judy Davis*

“Talent borrows, genius steals.” This bold assertion credited to Oscar Wilde not only holds true today, but is a central tenet of Carolyn Guertin’s book, Digital Prohibition: Piracy and Authorship in New Media Art. Guertin does not use the word “prohibition” lightly, comparing as she does today’s copyright laws to the ill-fated attempt to keep America dry during the 1920s. While arguably the Eighteenth Amendment was put forth by well-meaning teetotalers, digital prohibition is about corporate power, according to Guertin. Specifically, she argues that big business has co-opted and distorted intellectual property rights to such an extent that a set of laws originally intended to foster creativity and reward authors and creators now stifles creativity and hampers our ability to read, hear, teach, and even use media.

For example, the Sonny Bono Copyright Term Extension Act is also called the “Mickey Mouse Act” because Disney fought hard to keep that character from going out of copyright. Ironically, Guertin notes that Disney built its repertoire on

* © Judy Davis, 2013. Law Librarian—Head of Access Services, Asa V. Call Law Library, University of Southern California Gould School of Law, Los Angeles, California.

a base of borrowed and remixed material, such as the Brothers Grimm fairy tales and Steamboat Bill, a Buster Keaton character. Current laws, however, tend to prohibit such adaptations and, according to the author, jeopardize the future of art and culture.

¶14 In addition to addressing problems with the present state of copyright law, the book covers the politics of authorship, and the idea that authorship has moved from a solitary to a composite process. Disney is just one of many examples Guertin cites to support her contention that the idea of a solitary genius, creating in a vacuum, has always been illusory, and that the digital age makes this even more obvious. She distinguishes various ways that modern artists remix existing work, including remakes, surveillance art (just as cloak-and-dagger as it sounds), archiving as an aesthetic form, and hacktivism (activism through hacking).

¶15 A surprisingly entertaining aspect of this book is the wide array of digital art the author discusses. For example, Alonzo Mosley, a librarian from Florida, gave the world a thoughtful and well-edited archive when he created 100 Movies, 100 Quotes, 100 Numbers, a nine-minute YouTube video composed of brief clips from famous movies, in which the actors speak the numbers 100 to 1 in reverse order.2

¶16 A hacktivist project called Amazon Noir set out to steal Amazon’s “Search Inside” books by retrieving all 150,000 of them, fifty words at a time. Using four servers around the world, the hacktivists downloaded and reconstructed the books, paragraph by paragraph, as a protest against the criminalization of downloading. Other examples range from a game modification called Grand Theft Bicycle to remixes of the work of artists like Michelangelo and Leonardo da Vinci.

¶17 The last section of the book provides an illuminating discussion of piracy and copyright issues in the context of China and Pakistan, two major hubs of pirated digital resources. Due to the political and economic climate in these countries, pirated works are often the only kind of media available. Guertin describes a process called “productive mistranslation,” whereby artists absorb existing media and then re-see them and shape them into fresh compositions. This shift in focus from the end product to the creative process itself permeates many of her discussions throughout the book.

¶18 Guertin herself borrows from the theories of several experts. Some of the masters she cites include Michel Foucault, Antonio Negri, Michael Hardt, and Homi Bhabha. By incorporating existing theory and adding her own impressions, she produces an innovative, yet well-grounded, remix that addresses the intersection of current law and future trends in digital media and art.

¶19 The book is divided into three parts: the aesthetics of appropriation, authorship, and creative cannibalism and digital anthropophagy. It contains a useful index and bibliography. Illustrations, especially for a work that focuses so heavily on art, are somewhat scarce. More of them, in larger, higher-definition format, would add greatly to the book. Alas, it is likely that the very prohibitions the author laments could be behind the dearth of images included in this work. Digital

2. Alonzo Mosley, 100 Movies, 100 Quotes, 100 Numbers, YouTube (uploaded Feb. 19, 2004), http://www.youtube.com/watch?v=FExqG6LdWHU.
Prohibition would be a good addition for general academic libraries and law school libraries.


Reviewed by Kelly Leong*

¶20 In the second edition of *The Librarian’s Copyright Companion*, James S. Heller and his coauthors offer a strong opinion on copyright in libraries while providing examples and practical advice for library staff and management. Heller, director of the Wolf Law Library at William and Mary Law School, has published a number of works focusing on copyright and its relationship to libraries. Coauthors Paul Hellyer and Benjamin Keele are both academic reference librarians.

¶21 The authors open the book with a discussion of a copyright notice’s stern language requiring permission to copy any part of the material. They are quick to point out that despite the content of the notice, they can reprint the text for purposes of criticism, an exception to copyright granted by fair use. The chosen example illustrates the general tone of the entire book. Along with educating librarians about general copyright principles as they relate to libraries, the book maintains a strong position of advocacy. The authors advocate building a working knowledge of copyright that will allow librarians to confidently and effectively exercise appropriate copyright exceptions, including fair use and the exceptions outlined in section 108.3

¶22 The book’s first chapters contain an examination of basic copyright principles, including an efficient review of infringement liability. With each subsequent chapter, the copyright discussion builds upon basic concepts and becomes more nuanced, focusing on exceptions that most closely relate to libraries, including fair use (chapter 4) and section 108, also known as the library exception (chapter 5). The book then flows into the functional and practical aspects of copyright, including licensing (chapter 7), digital information (chapter 6), and audiovisual works (chapter 8). The analysis of copyright constitutes approximately half of the book. The remainder contains incredibly helpful appendixes, which include selected statutory language, links to online resources, professional library association best practices and guidelines, a table of cases, and a most useful index.

¶23 The text itself contains examples and explanations in every chapter. For example, the authors provide excellent explanations of copyright issues related to licensing by analyzing two different real-world licensing agreements for library materials. Each contract provision is critically evaluated, and the authors identify strong and weak provisions and make recommendations for improvements. Throughout the book, the authors focus on exercising the statutorily protected rights available to libraries.

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¶24 As an addition to a library collection, this text provides an advanced perspective on copyright issues libraries currently face, and it will resonate with librarians who have a working knowledge of copyright. It moves beyond publications by professional library associations and online resources with a high level of issue analysis, while still incorporating those resources to provide a comprehensive overview of current issues and policies. As copyright issues related to libraries continue to evolve, it is likely this text will see additional updates in the future. The ease of reading, wealth of knowledge, and inclusion of relevant primary and secondary materials make this concise text an indispensable addition to library reference collections.


Reviewed by Hugh J. Treacy*

¶25 Within contract law, boilerplate is a fact of life that many of us take for granted. We are faced with boilerplate language when we park in airport lots, rent an apartment, buy a home, purchase an automobile, add or upgrade software on our personal computers, or sign a new cell phone contract. From cradle to grave we encounter boilerplate and we accept it, usually unread, at our own peril. Fortunately, in Margaret Jane Radin’s Boilerplate: The Fine Print, Vanishing Rights, and the Rule of Law, we now have a thoughtfully crafted work of scholarship that will challenge readers to achieve new understandings of contract law within our print and electronic boilerplate world.

¶26 As Radin explains, a traditional contract involves a bargained-for exchange where one party values the item more than the cost to acquire it. The other party values the purchase price more than the item to be sold. Both parties bargain and agree to terms that are mutually beneficial. Both parties also retain the right to sue in court in the event of a breach.

¶27 Radin argues that boilerplate changes the playing field of contract law. Its use degrades the normative concept of consent, in which parties to a contract voluntarily relinquish something in exchange for something they value more. Another problem with form contracts containing boilerplate is the likelihood that language altering or restructuring the rights of users of products and services may also undermine the rights of users granted by state legislatures, a concept termed “democratic degradation” by the author (p.16) and the subject of an entire chapter. Throughout the book, Radin refers to these problems with boilerplate as “rights deletion schemes” (p.155). She argues that some regulation of boilerplate in contract law is needed. The absence of regulation would mean our society no longer lives under the rule of law. Yet, if boilerplate terms were outlawed, commercial transactions would be seriously disrupted.

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4. Boilerplate may be defined as “[f]ixed or standardized contractual language that the proposing party often views as relatively nonnegotiable.” Black’s Law Dictionary 198 (9th ed. 2009).
§28 Improvements to traditional oversight methods to distinguish between relatively benign boilerplate and terms that overreach may help. Radin promotes an idea proposed by Robert Hillman, chief reporter for the American Law Institute project *Principles of the Law of Software Contracts*, suggesting that boilerplate terms be made reasonably accessible online to contracting parties before they are bound by those terms. Hillman hopes or believes that making terms readily available will encourage interested persons or firms to read them.⁵ Firms might see this electronic disclosure as a best practice.⁶ Courts may also find that terms readily available on the web constitute adequate consent by the parties involved.

§29 Not everyone agrees. Radin cites Omri Ben-Shahar, who advocates that one should not read boilerplate terms because it is too difficult and time-consuming. As an economic analyst, he believes it is more cost-effective to accept onerous terms in exchange for a less expensive product. Recipients do not want the “best” legal terms, just those that are worth what they are paying.⁷

§30 Radin offers several private reform ideas to address boilerplate issues, including the use of watchdog advocacy groups to monitor and publicize boilerplate containing acceptable or unacceptable terms. Her most significant solution, however, is to classify boilerplate rights deletions within the umbrella of tort law. Fraud or misrepresentation and breach of warranty all stand in both tort and contract law. So, too, does malpractice by accountants, physicians, and attorneys, all of whom have contractual relationships with their clients. Narrower in scope, according to the author, would be a new tort category called “intentional deprivation of basic legal rights” (p.211). Boilerplate that attempts to cancel basic rights such as redress of grievances, and that creates problematic consent based on ignorance and large-scale distribution, would qualify for this tort. Courts would apply a high level of scrutiny to such language and find the offending party liable. Boilerplate language could be invalidated in toto and background contract law would take effect.

§31 Radin also cites our national patchwork of regulatory controls as a less effective restraint on offending boilerplate. Merely striking certain clauses or ameliorating adhesion contract language would increase the patchwork, not lessen it. Other solutions she sees include the use of rating agencies; limitation of boilerplate to certain terms agreed upon and advanced through industry associations or after consultation with government agencies; or the use of black, white, and gray lists, each of which would alert the public to degrees of objectionable language or acceptable terms that would be approved by a regulatory body. The author’s thoughtful recommendations involving nongovernmental organizations, legislators, regulators, judges, and scholars in her afterword should bear close scrutiny by readers.

§32 For readers who are not contract scholars, this theoretical scholarship should not be confused with a basic text on boilerplate. However, it is a groundbreaking work on a topic that is not extensively discussed elsewhere. This thoughtful, well-written title would be an excellent addition to the collection of every academic law library.

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6. See id. at 115 (Summary Overview to § 2.02).

Reviewed by Deborah L. Heller*

¶33 *Injustice on Appeal* provides a fascinating glimpse into the generally unknown crisis gripping the U.S. Courts of Appeals. William M. Richman and William L. Reynolds delve into the evolution of the courts of appeals from their very beginnings to the present day behemoth that must handle a growing number of cases without adding judges. The book charts the change from a traditional appellate court system into the current two-tiered appellate triage scheme, which essentially forces the courts of appeals to act as certiorari-oriented courts.

¶34 The preface provides an introduction to what the book will discuss and sets forth the authority of the authors in this field. Richman and Reynolds have been writing articles about the courts of appeals for more than thirty years. Their scholarship has delved into the nonprecedential status of unpublished opinions, the limited publication system, the bureaucracy of the appellate justice system, the demise of the “Learned Hand” tradition (full consideration of cases, described in more detail below), and the new certiorari courts. This vast body of work provides the reader with a sense that the authors have researched the U.S. Courts of Appeals extensively.

¶35 The entire book revolves around the discussion of *appellate triage* (p. 7), a phrase coined by the authors to denote the methodology the courts of appeals use to decide which track a case will take. One track involves the complete Learned Hand treatment that the courts of appeals were originally intended to provide. This consists of oral argument before a three-judge panel already prepared on the facts of the case, as well as an opinion carefully crafted for publication. The other track provides much of the matter under discussion in the book. On this track, cases receive far less attention from the judges; in fact, the only time a judge will ever look at the case is to provide a final sign-off on the conclusion arrived at by staff attorneys. This track is unfortunately where the vast majority of cases are assigned; furthermore, it is also the track upon which most pro se defendants are placed.

¶36 This second track is how the courts have chosen to handle their burgeoning caseload. Rather than adding judges, a logical step when there are more cases, the courts created a new pool of workers—staff attorneys—to manage the vast majority of cases. These staff attorneys read the briefs and formulate a decision that in many cases the judge merely signs. Opinions are not published and thus no real precedent is created. The problem of unpublished opinions is discussed at length in the book. There is also a discussion of the arguments against unpublished opinions that culminated in the adoption of Federal Rule of Appellate Procedure 32.1, which disallows prohibitions or restrictions on citing to federal judicial decisions or orders designated as unpublished.

¶37 Richman and Reynolds argue that the courts of appeals have turned into certiorari courts because there is no longer the right of mandatory review by a judicial panel. With the two-track system currently in effect, courts of appeals are essentially choosing which cases they would like to hear. This is an interesting development, given that Congress has only provided the Supreme Court with the power to act as a certiorari court.

¶38 This book is perfect for an academic law library because it provides fascinating insight into the workings of the U.S. Courts of Appeals. Law firms with attorneys who practice in the courts of appeals will also find it interesting. The book is not only informative, but also enjoyable and easy to read.


Reviewed by Stephanie A. Huffnagle*

¶39 In the introduction to Legal Education in the Digital Age, editor Edward Rubin asserts that the casebook and traditional legal education curriculum have run their course. He encourages the legal education community to embrace change and outlines possibilities for the future of legal education. The chapters that follow echo Rubin’s call for adaptation and transformation and urge a new legal education norm that would place ideas such as collaboration, interactivity, and experiential learning at the forefront.

¶40 The book is divided into three main parts. Chapters in the first part discuss different means of producing digital materials for the law school classroom and examine the role of copyright law in such production. Ronald Collins and David Skover reiterate the idea of the Langdellian casebook as “antiquated” (p.13). They propose self-designed e-books, called “Conceptions Course Books” (p.16), as the new medium for legal education material. Matthew Bodie then offers his take on open source course books. He outlines what he sees as the flaws of the current casebook market and identifies what it would take to have a successful open source casebook model. Finally, Anthony Reese looks at how copyright will impact the course book of the future. He surmises that copyright minimally inhibits the electronic casebook because primary sources of law are generally not protected by copyright, and he offers suggestions as to how authors can use that to their advantage to create and disseminate digital casebooks.

¶41 Chapters in the second part of the book focus on how digital materials will affect the law school classroom and the law library. Lawrence Cunningham outlines the origins of the Langdellian casebook, documents its various appearances over time, and summarizes what he sees as the trade-offs and opportunities of a digital casebook. John Palfrey hones in on the law student as a digital native and his or her method of learning. He outlines a set of five principles according to which a new “smarter” casebook could be created (pp.115–21). Included in this framework is a discussion of the essential teaching role law librarians play in the digital age.

Gregory Silverman also looks at legal education from the perspective of law students, whom he describes as members of “the Games Generation”—those who grew up playing video games (p.142). He suggests that a solution to the current concerns over legal education is incorporating video games into the law school curriculum.

¶42 The last chapter in this section may be of particular interest to law librarians. While the other authors discuss law school in general, Penny Hazelton focuses her analysis specifically on the law library. She talks about the relationship between the law student and the law library and how it will be affected by digital technologies. She first considers the impact of the digital age on a law library’s physical space. She notes that law students use the space for numerous purposes, many of which have nothing to do with the physical collections. According to Hazelton, the “decidedly academic purpose” of the law library and other “intangible factors” ensure that students will continue to use it in the future (p.161). She also sees a continuation and even growth of library services in the digital age. She argues that virtual services will expand, face-to-face interactions will continue, and law librarians’ expertise in legal research will remain highly valuable.

¶43 The largest portion of this chapter is devoted to a discussion of a library’s physical collection. Hazelton argues that the law library has an essential place even in “a future of the all-digital kind” (p.166). She discusses several issues surrounding digital collections, such as pricing models and a lack of standardization, and outlines various opportunities those challenges present. Her discussion illuminates the unique position law librarians are in, being able to proactively shape how digital collections are created, managed, and disseminated. Hazelton concludes that as long as law librarians remain aware of what their users need, they will continue to be relevant.

¶44 The last section of this book examines the possible effects of the digital revolution on the existing law school curriculum. David Vladeck argues that the traditional curriculum, including the use of the Langdellian casebook, does not properly prepare law students for practice. He opines that a digital course book would solve some of the current criticisms of law school education by allowing for flexibility and adaptability, collaboration among students, integration of skills training, and a better understanding of the legal profession by students. Rubin’s contribution in this section reiterates his opinion expressed in the book’s introduction: the printed casebook is “obsolete” and current legal education methods are outdated (p.200). According to Rubin, digital legal education materials, which he suggests do not generally fall prey to any potential negative effects of technology, will remedy archaic teaching methods by expanding the curriculum and making instruction more interactive, among other positive results. Peggy Cooper Davis outlines the evolution of legal education texts. She reviews the history, purpose, and content of the treatise, incarnations of the casebook (casebook, cases and materials, cases and problems), and simulation models of teaching in the context of progressive education theories.

¶45 Overall, the chapters are well written and thoughtful. The book sections and chapters follow a logical arrangement. The authors are established in their fields, and they provide an authoritative view on the subject matter. As a whole,
however, the contributions do not present a new twist on the existing rhetoric of the state of legal education. While the authors endeavor to provide concrete solutions to tackling legal education in the digital age, they fall a bit short of offering any novel or uniquely innovative approaches for actually processing and managing the impact of the digital revolution. The general conversation throughout the book is the same one that the legal education community has been having and continues to have about the impending changes that are coming to legal education.

¶46 This book is most appropriate for an academic law library that does not already have an extensive collection of books on the current and future state of legal education. It provides a good introduction and some thought-provoking ideas for those who may be unfamiliar with the shifting trends in legal education in the context of technology and the digital age.


Reviewed by Jennifer Laws*

¶47 David Scheffer’s memoir records his firsthand experiences as the primary U.S. representative in the processes of building five war crimes tribunals between 1993 and 2006: the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the Extraordinary Chambers in the Court of Cambodia, and the International Criminal Court. Scheffer was a senior advisor to Madeleine Albright (then U.S. ambassador to the United Nations) from 1993 to 1996. In 1997, when Albright became Secretary of State, Scheffer became the first U.S. Ambassador-at-Large for War Crimes Issues. He frames “the tribunal era, launched in 1993” as a unique time of developing an infrastructure to “end the presumption of impunity for atrocity crimes” (p.4).

¶48 Because the author relies on his personal notebooks as well as declassified State Department cables, he is able to describe in extensive (at times, even tedious) detail the roles played by specific individuals, organizations, and governments involved with the five tribunals, providing a remarkable historical record for the researcher. The combination of detailed, firsthand accounts of the negotiations for the tribunals with Scheffer’s unflinching descriptions of atrocity crimes makes for compelling reading. That he bore witness to the suffering, mutilation, and destruction caused by these atrocity crimes lends tremendous credibility to his perspective and retelling of events.

¶49 The detailed descriptions of negotiations and strategy, especially in part 2 concerning the Rome Statute and the establishment of the International Criminal Court, are slow reading. Scheffer is not afraid to use diplomatic jargon, which could be a problem for a reader new to the subject. Scheffer’s firsthand narratives, however, are not always about the challenges of his war crimes work. He sprinkles the text with fascinating accounts of other diplomatic experiences, such as Albright’s

* © Jennifer Laws, 2013. Law Librarian, University of New Mexico School of Law, Albuquerque, New Mexico.
seizing control of meetings with all-male groups of diplomats with “her theater of misperceptions”: serving coffee herself and reminding the “anointed” men that she used to be a “housewife” (pp.8–9).

¶50 Scheffer writes to preserve his own record of events, to make clear his role in both successes and failures, and to answer his critics, past, present, and future. He discusses some fairly minor points, such as the difference between indicators of genocide and precursors of genocide, in more detail than they may warrant. Scheffer’s focus on the lexicon can be excused when the book is viewed in its entirety as a historical document created by someone with a truly unique perspective. Chapter 14, his “Postscript on Law, Crimes, and Impunity,” delves into substantive discussion of the law of war, international criminal law, humanitarian law, and (his term) atrocity law. Scheffer argues very convincingly that “the lexicon matters” (p.431) because the obsession with labeling atrocity crimes with an exact legal label (such as genocide or war crimes) can slow or stop the implementation of an effective response to the crime being committed. His faith in the power of accountability to deter atrocity crimes is striking, in the face of the many frustrations and disappointments he recounts. No one, including Scheffer, has been able to supply a definitive answer to the question, “Do the tribunals work?” His memoir, however, is an essential historical record that will help others to arrive at an answer.

¶51 The main body of the text is divided into four parts, grouping chapters roughly chronologically. The appendix contains a comparison table of the five tribunals discussed in the book. For each tribunal, the table summarizes personal jurisdiction, subject-matter jurisdiction, temporal jurisdiction, and territorial jurisdiction. The appendix would be useful for the researcher wishing to compare two or more of the tribunals and particularly for one attempting to put the International Criminal Court into context.

¶52 The endnotes for each chapter are extensive and, combined with Scheffer’s bibliography, provide an excellent starting point for students of the war crimes tribunals. His list for further reading, updated with a search for newer monographs and articles, could quickly yield bibliographies for histories of the atrocities prosecuted by these tribunals; the structure, practice, and jurisprudence of the tribunals themselves; atrocity law; atrocities and the quest for justice; and other memoirs from the Clinton era that contain additional perspectives on the atrocities and the tribunals. The indexing is comprehensive and enhances the book’s value to the researcher.

¶53 Academic law libraries that collect in the areas of human rights and international law should include Scheffer’s memoir in their collections. Any library that owns Carla Del Ponte’s Madame Prosecutor8 or Richard Goldstone’s For Humanity9 should consider this title for purchase as well. All the Missing Souls would also be a valuable addition to libraries that collect other notable memoirs from the Clinton era, such as Albright’s Madam Secretary10 or Richard Holbrooke’s To End a War.11

11. RICHARD HOLBROOKE, TO END A WAR (1998).

Reviewed by Elizabeth Caulfield*

¶54 In *Lincoln’s Code: The Laws of War in American History*, John Fabian Witt examines a paradox about military affairs: whether “the conduct of war can be constrained by law” (p.1). The United States’ failure at times to practice the noble ideals set out in the laws of war prompts the question of whether war can be tempered by law. The difficulty lies in the competing desires for humanitarianism (the ethical principle espoused by the laws of war theory) and justice (fighting for a just cause).

¶55 A law professor at Yale, author of two other books surveying American law and history, and a 2010 Guggenheim Foundation fellow in the areas of social sciences and law, Witt seems well qualified to lead the reader through the history of America’s relationship with the laws of war doctrine. He paves the way to the book’s main discussion, the development of the theory of military necessity under Abraham Lincoln, by documenting America’s early experiences with the laws of war. Two schools of thought on the limitations of waging war had emerged by the time of the American Revolution. Renaissance theologian Francisco de Vitoria proposed that warriors of a just cause could use virtually any tactic to achieve their aims. Eighteenth-century jurist Emmerich de Vattel argued that, regardless of the righteousness of the cause, the conduct of war should meet certain humanitarian standards in the spirit of civility.

¶56 The thirteen colonies fighting the American War of Independence adopted the humanitarian position. One of Witt’s intriguing observations about this conflict is that it went relatively well for the revolutionaries and thus they escaped the quandary of how to proceed if unable to win a war according to the new, gentlemanly standards.

¶57 Witt advances the narrative by describing how a young and independent America shaped the laws of war to its benefit in the years before the Civil War. His discussion of the Mexican-American War provides context for the hard decisions awaiting Lincoln two decades later, when America reached its existential crisis. Witt demonstrates how the innovation of the military commission—the legal proceeding for trying Mexican guerillas for breaches of the laws of war—was the genesis of the idea of withholding immunity from combatants for killing during war. With the Civil War’s arrival, this intersection of criminal law and the laws of war required Lincoln to decide whether Southern secessionists, privateers, and guerillas were enemies entitled to protections under the laws of war or treasonous criminals. Witt calls Lincoln’s initial legal strategy in prosecuting the Civil War a “mixed theory” because the President invoked the laws of war when doing so benefited the Union and, at times, relied on criminal law when it did not (p.151).

¶58 *Lincoln’s Code* could also be called Lincoln’s Choice. Unlike his predecessors, Lincoln could not avoid making choices that sometimes put fighting for a just
cause before honoring eighteenth-century notions of humanitarianism. The imperative to preserve the Union reconciled him to the policy of freeing slaves in the Confederacy under the doctrine of military necessity. While Witt describes this choice as the right one and a decision that helped the Union prevail, the choice led to suffering on both sides. In issuing the Emancipation Proclamation, Lincoln chose to rely on the laws of war theory in which the means are judged by the justness of the cause rather than by whether they are lawful under specific rules.

¶59 Lincoln’s Code refers to General Orders No. 100, written by professor Francis Lieber and issued by the U.S. War Department in the spring of 1863. In response to Lincoln’s emancipation policy, the Confederacy vowed to treat slaves that became Union soldiers as criminals or sell them back into slavery. Lincoln countered with Lieber’s Instructions for the Government of Armies of the United States in the Field. In support of emancipation, the code prohibited placing soldiers outside the legal protection of the laws of war because of “color” (p.243). Thus, although Lincoln’s emancipation strategy emphasized just ends over adherence to particular means, rules that attempted to provide for both civility and military necessity were instrumental in helping him achieve those ends.

¶60 Lincoln’s choices to save the Union and demand equal treatment of soldiers came at the price of humanitarian crises, as some former slaves who became Union soldiers were mistreated by the Confederacy, and prisoner of war exchanges stopped, leading to the deaths of soldiers who languished in prison camps. That revelation is a key lesson Witt’s book teaches about the ruthlessness of war. However, Witt’s extensive research reveals that Lincoln’s code has been a continuing inspiration for the laws of war because of the careful balance it attempted to achieve between humanitarianism and justice.

¶61 Because of the huge number of books on Lincoln, one can surely find additional worthwhile reading on Lincoln’s application of the laws of war. Act of Justice: Lincoln’s Emancipation Proclamation and the Law of War by Burrus M. Carnahan is one option. But the discriminating buyer might note that Witt’s book is broader in scope, providing an exposition of America’s experience with the laws of war from the eighteenth to the twentieth century.

¶62 Besides photographs, sketches, an index, and more than seventy pages of notes and illustration credits, the book provides a link to a 120-page bibliography, which is maintained at the Yale Law School Lillian Goldman Law Library’s web site. The book’s appendix consists of Lieber’s Instructions for the Government of Armies of the United States in the Field. Lincoln’s Code is essential reading for scholars of international, humanitarian, and national security law; the laws of war; and American history.
Some Guidance About Federal Agencies and Guidance*

Mary Whisner**

The federal administrative system is complex and contains ambiguities about what counts as an “agency,” and there is an amorphous border between regulations and guidance. The body of guidance documents (or nonlegislative rules) is growing, both in volume and in importance, and legal researchers should be aware of this important source of authority, as well as its unclear status.

¶1 Imagine a stranger to the ways of the law walking down the aisle where the Code of Federal Regulations is shelved. Look with this stranger at the volumes: uniform height, uniform color (or colors—a portion of the set still wears last year’s fashion). Take a few volumes off the shelf and see the systematic numbering (whole numbers and decimals, parts and sections), the standard font, the pages of orderly text. See how the titles are numbered to an even fifty, just like the states in the union and the stars on the flag. What’s that over there? Why, it’s the Federal Register, printing new and proposed rules, in issue after issue, all the same to outward appearances. Would it be any surprise if the visitor concluded that everything about federal regulations was just as orderly and consistent as the books on the shelf?

¶2 Oh, my, would that conclusion be wrong! Although I hypothesized a naive visitor with only a superficial exposure to the materials, even a more experienced researcher might be surprised at the extent of the inconsistency and ambiguity in the federal regulatory world.

What Is an Agency?

¶3 Everyone can name many federal agencies from day-to-day experience. We send our taxes to the IRS, we take off our shoes and belts for the TSA, we hope never to be arrested by the FBI or the DEA, and one day we plan to retire and get monthly payments from the SSA. That’s five agencies right there. Or is it? Maybe we should say it’s just four, since the FBI and the DEA are both part of the Department of Justice. And yet people think of them as two agencies. Their agents

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* © Mary Whisner, 2013. I am grateful to Grace Feldman, Sallie Sanford, Nancy Unger, and Kathryn Watts, who commented on drafts of this piece. Nancy, as she has often done, helped smooth out some rough phrasing. Kathryn shared her expertise on administrative law. Any mistakes remaining are all mine.

even have different windbreakers. More formally, we can find support for counting them as two in the Administrative Procedure Act, which says that “agency” means “each authority of the government of the United States, whether or not it is within or subject to review by another agency.”

¶4 How many agencies are there altogether? This turns out to be a tough question:

Every list of agencies in government publications is different. For example, FOIA.gov lists 78 independent executive agencies and 174 components of the executive departments as units that comply with the Freedom of Information Act requirements imposed on every federal agency. This appears to be on the conservative end of the range of possible agency definitions. The United States Government Manual lists 96 independent executive units and 220 components of the executive departments. An even more inclusive listing comes from USA.gov, which lists 137 independent executive agencies and 268 units in the Cabinet.

¶5 However many there are, federal agencies come in a variety of shapes and sizes. There are the fifteen executive departments—the ones headed up by a secretary (or, in the case of Justice, the attorney general). These are also called “cabinet departments,” but the President may include in cabinet meetings other executives, such as the administrators of the EPA and the Small Business Administration. Even leaving aside the Department of Defense, with more than 770,000 employees, some executive departments are very large: Treasury, Justice, and Agriculture each have more than 100,000 employees. Homeland Security (the newest executive department) has more than 190,000 employees, and Veterans Affairs has more than 310,000. On the other hand, some executive agencies are just a fraction as big: Labor (16,300), Energy (16,400), and the smallest, Housing and Urban Development (9760). Think of it this way: Veterans Affairs has more employees than the population of Pittsburgh, while the employees of both Labor and Energy could easily fit in the stadium where the Pittsburgh Pirates play.


2. DAVID E. LEWIS & JENNIFER L. SELIN, ADMIN. CONF. OF THE UNITED STATES, SOURCEBOOK OF UNITED STATES EXECUTIVE AGENCIES 15 (2012), available at http://www.acus.gov/publication/sourcebook-united-states-executive-agencies (footnotes omitted). I found the Sourcebook fascinating and useful—as you might guess after you see how many times I cite it—and I recommend it to anyone who would like an overview of federal administrative structure.

3. Id. at 5–6.

4. See The Cabinet, WHITE HOUSE, http://www.whitehouse.gov/administration/cabinet (last visited May 14, 2013) (listing the following as having “the status of Cabinet-rank”: White House Chief of Staff, Acting Administrator of the Environmental Protection Agency, Deputy Director of the Office of Management and Budget, United States Trade Representative, Ambassador to the United Nations, Chairman of the Council of Economic Advisers, and Administrator of the Small Business Administration). See also LEWIS & SELIN, supra note 2, at 39.

5. LEWIS & SELIN, supra note 2, at 36–38.


7. Pittsburgh’s stadium seats 38,362. Maury Brown, Ballpark Seating Capacities, BIZ OF BASEBALL
Within the executive departments are subunits that are called by different names, including administration, agency, and bureau. Some of the bureaus have so much autonomy that scholars say that their parent departments should be thought of as “holding companies of a number of distinct agencies rather than one large agency.” For example, the U.S. Geological Survey, the Bureau of Indian Affairs, and the National Park Service are all within the Department of the Interior but are to a large extent separate agencies. In fact, when the department was created in 1849, it was nicknamed the “Department of Everything Else,” because its portfolio included such a variety of programs that did not fit within existing agencies.

Just as the departments’ subunits can have different labels, so can their heads. Table 1 includes a quick sample, drawn from the 2012 edition of the United States Government Manual. In this limited sample, we can see the following labels for subunits: Administration, Agency, Bureau, Centers, Commission, Institute, Institutes, Office, Service, Services, Survey. The titles for heads include Administrator, Assistant Secretary, Chairman, Chief, Commissioner, Comptroller, Director, Under Secretary, Under Secretary and Administrator, and Under Secretary and Director. The titles of the bosses don’t always match the titles of the subunits: for instance, there are “commissioners” who don’t serve on “commissions” and “administrators” who don’t lead “administrations.”

In addition to the executive departments, the federal bureaucracy includes independent agencies. I always thought of these as simply agencies that aren’t part of an executive department. But most scholars focus on ways that the agency is insulated from presidential control. For example, the FBI is within the Department of Justice, but its director is appointed for a ten-year term and can’t be fired (except for cause) by the attorney general or the President, so it has some protection from political whim. Typically (but not always), independent agencies are multimember boards and commissions.

A table in the Sourcebook of United States Executive
Table 1
Federal Agency Subunits and the Names of Subunit Administrators

<table>
<thead>
<tr>
<th>Executive Department</th>
<th>Subunit</th>
<th>Head of Subunit</th>
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<tbody>
<tr>
<td>Agriculture</td>
<td>Animal and Plant Inspection Service Administrator</td>
<td>Chief</td>
</tr>
<tr>
<td></td>
<td>Forest Service Chief</td>
<td></td>
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<tr>
<td>Commerce</td>
<td>Bureau of Industry and Security Under Secretary</td>
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<tr>
<td></td>
<td>Economic Development Administration Assistant Secretary</td>
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<tr>
<td></td>
<td>Economic and Statistics Administration Under Secretary</td>
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<td></td>
<td>National Oceanic and Atmospheric Administration Under Secretary</td>
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<td></td>
<td>National Institute of Standards and Technology Under Secretary and Director</td>
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<tr>
<td></td>
<td>National Technical Information Service Administration Director</td>
<td></td>
</tr>
<tr>
<td></td>
<td>United States Patent and Trademark Office Under Secretary and Director</td>
<td></td>
</tr>
<tr>
<td>Energy</td>
<td>Office of the American Recovery and Reinvestment Act Director</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Federal Energy Regulatory Commission Chairman</td>
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<tr>
<td>Health and Human Services</td>
<td>Administration on Aging Assistant Secretary</td>
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<td></td>
<td>Centers for Disease Control and Prevention Director</td>
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<td></td>
<td>Centers for Medicare and Medicaid Services Administrator</td>
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<td></td>
<td>Food and Drug Administration Commissioner</td>
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<td></td>
<td>National Institutes of Health Director</td>
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<tr>
<td>Homeland Security</td>
<td>Federal Emergency Management Agency Administrator</td>
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<tr>
<td></td>
<td>United States Citizenship and Immigration Services Director</td>
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<tr>
<td></td>
<td>Transportation Security Administration Administrator</td>
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<tr>
<td>Interior</td>
<td>National Park Service Director</td>
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<td></td>
<td>United States Geological Survey Director</td>
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<td></td>
<td>Office of Surface Mining Reclamation and Enforcement Director</td>
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<td></td>
<td>Bureau of Indian Affairs Director</td>
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<tr>
<td>Treasury</td>
<td>Office of the Comptroller of the Currency Comptroller</td>
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<tr>
<td></td>
<td>Bureau of Engraving Director</td>
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<tr>
<td></td>
<td>Internal Revenue Service Commissioner</td>
<td></td>
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</tbody>
</table>

Agencies lists sixty-six of these, indicating which ones are outside any executive department (almost all of them), which have explicit statutory protections against dismissal without cause, which have staggered terms, and so on.¹⁷ These commissions include several that are frequently in business headlines (e.g., the Federal

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¹⁷. Lewis & Selin, supra note 2, at 52–53 tbl.4.
SOME GUIDANCE ABOUT FEDERAL AGENCIES AND GUIDANCE

Reserve Board and the SEC) and half a dozen that regulate the workplace (e.g., the EEOC and the NLRB). There are some that provide services to millions of Americans (e.g., Legal Services Corporation, United States Postal Service, Tennessee Valley Authority) and some that appear to have fairly narrow charges (e.g., Harry S Truman Scholarship Foundation).  

¶9 You might wonder why, for instance, OSHA is within the Department of Labor but the Social Security Administration is independent, or why the National Oceanic and Atmospheric Administration is within the Department of Commerce but the Environmental Protection Agency is independent. Don’t read too much into it. The Sourcebook authors observe: “There is no fundamental constitutional or management principle guiding which agencies are departments and which agencies are sub-department bureaus or independent agencies. The status and location of agencies is the subject of political determination.”  

¶10 The Executive Office of the President includes small but important offices such as the Council of Economic Advisers and the Office of Management and Budget—and, of course, the real-life counterparts of the characters many of us followed on The West Wing. “Independent administrations,” headed by individuals rather than boards, range in size from the very small (Office of Navajo and Hopi Relocation, 41 employees) to the very large (Social Security Administration, 67,000). Other entities include government corporations and government-sponsored enterprises as well as certain nonprofits and regional agencies.

¶11 In this quick tour of federal agencies, we’ve seen a few examples of ambiguity. An agency could be a freestanding body, a subunit of a larger body, or an executive department. An independent agency could be one outside any executive department, one whose top people enjoy some job security, or one with a certain structure (a multiperson commission). The federal government isn’t even sure how many “agencies” it has—at any rate, there are at least three different lists enumerating them. Which brings us to regulations issued by those agencies.

What Is a Regulation? What Is Guidance?

¶12 Agencies often issue regulations under authority delegated to them by Congress. Before 1935, regulations were published in pamphlets and sometimes on
single sheets of paper. They weren’t required to be in any set form.25 Characterizing the situation as “chaos,” Erwin Griswold lamented in 1934: “An attempt to compile a complete collection of these administrative rules would be an almost insuperable task for the private lawyer. It seems likely that there is no law library in this country, public or private, which has them all.”26 He proposed “an official publication, analogous to the Statutes at Large, in which all rules and regulations shall be systematically and uniformly published.”27 And, with the passage of the Federal Register Act the next year, that’s what we got.28

¶13 The Federal Register Act defines “document” as “any Presidential proclamation or Executive order and any order, regulation, rule, certificate, code of fair competition, license, notice, or similar instrument issued, prescribed, or promulgated by a Federal agency.”29 The next section requires the publication of all proclamations and executive orders with general effect and “such documents or classes of documents as the President shall determine from time to time have general applicability and legal effect.”30

¶14 Some cases have tested when regulations must be published to have legal effect. For example, in Borak v. Biddle, an attorney who was discharged from the Immigration and Naturalization Service after nine and a half months disputed the

25. “By statute, the head of each department is authorized to prescribe regulations not inconsistent with law for the government of his department . . . . Such regulations need not be in any set form, or in writing, and they have the force of law.” State ex rel. Kaser v. Leonard, 102 P.2d 197 (Or. 1940) (quoting 65 C.J. United States § 33, at 1272 (1933)).


27. Id. at 205. The publication of regulations was so haphazard that in Panama Refining Co. v. Ryan, 293 U.S. 388 (1935), and United States v. Smith, 293 U.S. 633 (1934) (appeal dismissed), companies were prosecuted for violations of regulations that had been withdrawn and were not in effect, but the prosecutors weren’t aware of this. During oral argument, Justice “Brandeis asked Assistant Attorney General Harold Stephens, ‘Is there any way by which to find out what is in these executive orders when they are issued?’ An embarrassed Stephens confessed that no general government publication carried the orders and that they would be ‘rather difficult’ to obtain . . . .” MELOVIN I. UROFSKY, LOUIS D. BRANDEIS: A LIFE 700 (2009). Griswold had sent his article to Brandeis, “who no doubt had it in mind when he grilled Stephens.” Id.

These cases are often referred to as the “Hot Oil” cases (because the regulation involved quotas on oil production and sale). Another nickname is the “Hip Pocket Law” cases, suggesting the image of an order being carried in some administrator’s pocket. See Urban A. Lavery, “The Federal Register”—Official Publication for Administrative Regulations, etc.: Its Historical Background—And Its Present-Day Meaning for the Practicing Lawyer, 7 F.R.D. 625, 635–36 (1948).


Before publishing his law review article (Griswold, supra note 26), Griswold, then at the Department of Justice, had served on a government committee that recommended something like the Federal Register in October 1934. James H. Ronald, Publication of Federal Administrative Legislation, 7 GEO. WASH. L. REV. 52, 64 & n.44 (1938). President Roosevelt rejected the proposal “with a notation that he did not want a government newspaper.” Id. at 66.


action because he had successfully completed his six-month probationary period. The government countered that the Civil Service Commission had lengthened the probationary period to one year, after he was hired but before he was fired. The government’s argument failed because the rule with the six-month period was published in the *Federal Register*, but the order lengthening the time was not. On the other hand, courts rejected several taxpayers’ arguments that the Internal Revenue Service could not enforce tax laws against them because of the failure to publish Treasury Department Orders (TDOs) delegating certain functions to it.

¶15 The Administrative Procedure Act spells out requirements for agencies to follow when creating rules and regulations. A “rule” is

the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing . . . .

¶16 When agencies adopt rules, they must publish a notice of proposed rule making and give interested parties an opportunity to comment. But the requirements don’t apply “to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.” And that exception can be enormous.

31. 141 F.2d 278 (D.C. Cir. 1944).
32. *Id.* at 280.
33. See, e.g., United States v. Saunders, 951 F.2d 1065, 1068 (9th Cir. 1991) (delegation orders not required to be published because they “simply effected a shifting of responsibilities wholly internal to the Treasury Department”); Lonsdale v. United States, 919 F.2d 1440, 1445–46 (10th Cir. 1990) (Federal Register Act and Administrative Procedure Act do not require publication of TDOs); United States v. McCall, 727 F. Supp. 1252, 1254 (N.D. Ind. 1990) (rules of agency organization and procedure not required to be published; defendant not adversely affected by failure to publish particular rule).
36. It is not always clear when Congress has granted agencies the authority to make rules with the force of law. See Thomas W. Merrill & Kathryn Tongue Watts, Agency Rules with the Force of Law: The Original Convention, 116 Harvard L. Rev. 467, 470 (2002): “An unarticulated assumption took hold sometime after the 1970s that virtually every agency is free to make policy in any mode it chooses, including legislative rules, interpretive rules, policy statements, or adjudication. . . . [But the recent Supreme Court case of United States v. Mead Corp.] makes clear that agencies act with the force of law only if Congress intended to delegate authority to them to so act.” Merrill and Watts argue that facially ambiguous grants of authority can often be resolved by looking at whether Congress specified that violation of a rule would subject someone to a sanction. *Id.* at 472.
38. *Id.* § 553(b)(3)(A). Using the word “interpretive” is more common today, but Congress used “interpretative” in the statute:

APA § 553(b) and (d) use the word “interpretative” rather than “interpretive,” the usage this Court would ordinarily employ. After all, does anyone “interpretate” anything? Both the statutory usage and this Court’s own curiosity sent it back to the books. Webster’s *Third New International Dictionary* was of little help: It listed both “interpretative” and “interpretive” without differentiation, and it included “interpretate” as an archaic version of “interpret.” However, Fowler’s *Modern English Usage* was (not surprisingly) much better on the subject: It said “interpretative, not
The Centers for Medicare and Medicaid Services claims that it issues thousands of new or revised guidance documents annually, with “perhaps most” of the 37,000 documents on its website constituting guidance documents. Its guidance manuals for plans participating in the Medicare Prescription Drug Program total over 884 pages, with additional manual chapters forthcoming, as compared to the 106 pages of regulations in the Code of Federal Regulations governing the plans’ conduct. Between 1996 and 1999, the Occupational Safety and Health Administration of the Department of Labor (OSHA) issued over three thousand guidance documents whereas the entire Department of Labor, including OSHA, issued only twenty “significant” rules subject to review by the Office of Management and Budget (OMB).

¶17 Not long ago, someone asked me about the phrase “subregulatory guidance.” She had seen it in a blog post, thought it was a perfect description for all of these “non-rule rules,” and wondered whether it was in common use. I did some searches and discovered that it has been growing in popularity as a term for the massive body of guidance documents. I found occurrences in law review articles, federal cases, and the Federal Register. But its use is not yet widespread. It is more common to speak of “administrative guidance,” “guidance documents,” or simply “guidance.” An even more common term is “nonlegislative rules”—rules that are not binding on a large class of people or entities. Agencies may announce these rules “through agency manuals, advisory notices, internal guidance to agency field inspectors, and letters from government officials to regulated entities.”

¶18 Many cases have challenged the use of guidance documents, asserting that they were sufficiently regulatory to require the use of notice-and-comment rule making. For example, to enforce the Toxic Substances Control Act, the EPA pro-

interpretive, is the right form” because “-ive adjectives are normally formed on the Latin [past participle] stem, i.e., here interpretat-.” In deference to both Fowler and the statute itself, this opinion will consistently employ “interpretative.”

Am. Med. Ass’n v. United States, 688 F. Supp. 358, 361 n.4 (N.D. Ill. 1988). Bryan Garner observes that “interpretive has gained ground in the last 50 years—so much so that it’s about five times as common in print as interpretative. . . . Refight an old fight, if you like, and stick to interpretive. But interpretive has already taken hold.” BRYAN A. GARNER, GARNER’S MODERN AMERICAN USAGE 476 (3d ed. 2009).


41. Westlaw searches run in the JLR database on May 16, 2013: “sub-regulatory guidance”: 39 documents “non-legislative rule”: 300 documents

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The oldest relevant hit for “nonlegislative rule” was from 1967: Developments in the Law, Deceptive Advertising, 80 HARV. L. REV. 1005, 1093 (1967).

43. Mantel, supra note 39, at 351.
mulgated two regulations concerning the cleanup and removal of PCBs, and then issued the PCB Risk Assessment Review Guidance Document explaining the risk assessment techniques that applicants should use.\footnote{45} When a prospective applicant challenged the guidance document, the D.C. Circuit held that it was a legislative rule and the agency should have used notice and comment.\footnote{46} A substantial literature discusses this category of material and whether more procedural safeguards should be imposed.\footnote{47} Without going into details (partly out of consideration for your reading patience and partly because I haven’t mastered the details myself), I’ll summarize. In the cases, sometimes the agency wins and sometimes the challenger wins.\footnote{48} The articles discuss values that are in tension: on the one hand, it is efficient for an agency to adopt guidance without the extra procedure, and it is helpful for those regulated to have access to guidance; on the other hand, guidance has such a big impact that fairness and democracy support more transparency and input.\footnote{49}

\footnote{46. \textit{Id.} at 385.}


\footnote{48. \textit{See generally} Williams, \textit{ supra note 44}. The litigation “is considered notoriously difficult. . . . [I]t turns out to be maddeningly hard to devise a test that reliably determines which rules are legislative in nature and which are not.” David L. Franklin, \textit{Legislative Rules, Nonlegislative Rules, and the Perils of the Short Cut}, 120 YALE L.J. 276, 278 (2010).}

\footnote{49. \textit{See, e.g.,} Johnson, \textit{ supra note 47}, at 700–03; Seidenfeld, \textit{ supra note 47}, at 340–44.}

\footnote{50. “Though the controversies over regulatory review began in earnest during the Reagan administration, the technique began even earlier in different forms. The Ford administration issued the first executive order requiring benefit-cost analysis of regulations. The order instructed the OMB director to analyze the inflationary effect of rules. The Carter administration retained this order, helping to institutionalize the regulatory review.” Connor Raso, \textit{Introductory Comment [Symposium: Reflections on Executive Order 13,422]}, 25 YALE J. ON REG. 77, 77 n.3 (2008).}

\footnote{51. Exec. Order No. 12,866, 3 C.F.R. 638 (1994).}
another agency’s actions or plans or raised novel legal or policy issues. President George W. Bush amended the executive order twice, first shifting some responsibilities away from the Vice President and next adding “significant guidance documents” to the regulatory actions that OMB would review. Ten days after taking office, President Obama revoked the two orders by President Bush and ordered the director of OMB and other agency heads to “promptly rescind any orders, rules, regulations, guidelines, or policies implementing or enforcing” them.

In January 2007 (concurrent with the second executive order by President Bush), OMB issued a Bulletin for Agency Good Guidance Practices. The bulletin orders agencies to establish written procedures for the approval of significant guidance documents. Each document is to include the word “guidance” (or an equivalent), name the agency or office issuing the document, give the date of issuance, cite the statute or regulation it is interpreting, and so on. The bulletin orders agencies to post on their web sites all current guidance documents and to provide means for the public to comment on them. The OMB bulletin appears to be a rule “of agency organization, procedure, or practice.” Although the introduction to the bulletin cites one of the revoked executive orders, the bulletin doesn’t appear to rely on it. The bulletin is still on the OMB’s web site and—as far as I can tell—has not been rescinded, so I assume it is still in effect.

Conclusion

The federal administrative system is complex, and within that complexity lie ambiguities you might not expect. First are ambiguities about what counts as an “agency,” along with an assortment of names for the agencies and their administrators. Second, there is the borderland between regulations and guidance. You might have been taught that agencies do their legal work through regulation and adjudication, but the body of guidance documents (or nonlegislative rules) is growing, both in volume and in importance. Astute legal researchers should become aware of this important source of authority, as well as its unclear status.

52. Id. at 641–42.
57. Id. at 3440.
58. Id. Metadata!
59. 5 U.S.C. § 553 (2006). However, the bulletin states that “[i]t is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies or other entities, its officers or employees, or any other person.” 72 Fed. Reg. at 3440.
60. 72 Fed. Reg. at 3433 n.12.
62. Legal research texts have not all caught up with the boom in guidance. For a notable exception, see Morris L. Cohen & Kent C. Olson, Legal Research in a Nutshell 279–82 (10th ed. 2010).
Thinking About Technology . . .

Lawyers Can’t Be Luddites Anymore: Do Law Librarians Have a Role in Helping Lawyers Adjust to the New Ethics Rules Involving Technology?

Darla W. Jackson**

In August 2012, the American Bar Association, recognizing the influence of technology, amended the Model Rules of Professional Conduct. These changes to the standards of professional conduct require attorneys to have some basic technological competence. Ms. Jackson focuses on specific areas in which law librarians may find opportunities to share both newly developed and well-established technological expertise with attorneys.

§1 Technology affects almost every aspect of the practice of law.¹ In August 2012, the American Bar Association (ABA) House of Delegates, recognizing the influence of technology, voted to amend the ABA Model Rules of Professional Conduct.² While only one state, Delaware, has (as of April 2013) incorporated these changes into its state rules,³ legal professionals have begun to comment on how the rule changes may affect lawyers in every area and size of practice.⁴ Even those attorneys who have expressed the sentiment that they did not go to law school to learn about technology will “need to know enough [about technology] to be sure they’re not overlooking important issues.”⁵ One solo practitioner and technology consultant has commented that once attorneys have developed enough knowledge to identify important issues, they may “need a colleague or expert they


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5. Id.
can rely on” to provide additional assistance.6 In light of the sometimes expressed opinion that law libraries and librarians are increasingly unnecessary,7 firm, academic, and governmental law librarians can make themselves uniquely valuable by developing knowledge and skills in the area of technology that will transform them into those experts on which attorneys can rely to ensure the technological competence required by the new rules. In this column, I focus on some specific areas where law librarians can find opportunities to share their newly developed and well-established expertise, including computer-assisted legal research (CALR), e-discovery, courtroom technology, and measures to ensure the maintenance of confidentiality.

**Model Rule 1.1 and the Modified Comment**

¶2 While Model Rule 1.1 regarding attorney competence remains unchanged, the modification of Comment 8 to the rule makes it clear that lawyers authorized to practice in a state adopting the new language have an affirmative obligation to acquire and maintain an awareness and understanding of developments in technology. The modified comment provides:

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.8

¶3 Christopher Popper, a Delaware attorney, suggests that, based on Delaware’s adoption of the new language in the comment:

[A] Delaware lawyer is now compelled to at least consider implementing certain types of technology, and whether the benefits of such technology outweigh the risks. One form of technology in that category would be legal research resources. . . . Research done exclusively through hard copies . . . is an extinct exercise in the legal profession. The benefits of cutting edge legal research resources clearly outweigh the apparent lack of any risks associated with this type of technology.9

**Legal Research**

¶4 Both experienced practitioners and librarians often lament the fact that when using keyword searches, inexperienced legal researchers frequently locate statutory provisions but fail to look at surrounding provisions. Thus, less experienced researchers run the risk of failing to understand the context of their results. They may even incorrectly interpret a provision because they do not identify

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6. *Id.* at 28.
9. Popper, *supra* note 1, at 2. The draft of the rules made changes to what had been Comment 6, but due to later, unrelated, modifications to Rule 1.1, it was redesignated as Comment 8. Popper’s article refers to the changes as being to Comment 6.
important definitional sections. This risk exists despite efforts by legal information vendors to improve the browsing and table of contents functions, which have traditionally been available in print and make it easier for users to develop contextual understanding.

§5 Other risks associated with various electronic legal research systems have also been written about. Even the benefits of using electronic citators, which are more current than their print equivalent, have some associated risks. While librarians might not all agree about the degree of risk associated with CALR, most law librarian scholarship discusses the risks and attempts to provide suggestions to assist researchers in minimizing them.

§6 Notwithstanding that there may be some “risks” associated with “cutting edge” CALR systems, law librarians have often focused on the recognition of both technology-based and print legal research skills as required competencies, and they have recommended including research skills on the bar exam. While legal research is still not being formally tested, there has been some progress made, and a job analysis survey conducted for the National Conference of Bar Examiners indicates that research methodology knowledge and electronic research skills were highly significant for newly licensed lawyers. Perhaps the modification of the ethics rules concerning technology will contribute to the endeavor to recognize the use of CALR resources as a required competency. Because law librarians are increasingly seen as knowledgeable experts in the area of CALR use, we should anticipate that we will serve as the colleagues on whom attorneys rely to assist with CALR. The rules modification should thus be seen as an opportunity to increase the prestige and value of the law librarian profession.

E-discovery

§7 Electronic data discovery (EDD), a term often used synonymously with the term e-discovery, is another area often mentioned in recent discussions of technological

12. See, e.g., Alan Wolf & Lynn Wishart, A Tale of Legal Research: Shepard’s and KeyCite Are Flawed (or Maybe It’s You), N.Y. ST. B.A. J., Sept. 2003, at 24, 30 (discussing how using a table of authorities can assist in overcoming the risk of relying on citatory information).
13. See, e.g., id. at 28.
15. Id.
17. One e-discovery provider suggests the following meaning of the synonymously used terms: “e-Discovery, ED, Electronic Discovery, EDD, ESI, Electronic Data Discovery—whatever you call it, it’s all the same. Whether it’s packaged as a product, service, solution or a confusing combination of the three, quite simply put, Electronic Discovery is the collection, preparation, review and distribution of electronically stored information including emails, web pages, word processing files, databases or other ephemeral data that is stored electronically.” E-nough Already, XACT DATA DISCOVERY, http://www.xactdatadiscovery.com/services/electronic-discovery/ (last visited May 14, 2013).
changes affecting both the practice of law and the evolving ethical rules. Because evidentiary materials are increasingly born digital, e-discovery continues to be an area of growth. Predictive coding is a quickly developing subject in the e-discovery discussions. Predictive coding “is the use of computer algorithms and machine learning to conduct the review of electronically stored information (ESI).”

The use of predictive coding has itself been the topic of ethical debate. Howard Sklar, senior corporate counsel at Recommind, Inc., a leader in predictive coding services, anticipates that the use of predictive coding will become an ethical obligation. Jim Calloway, a noted authority on law practice management and technology and the director of the Oklahoma Bar Association’s Management Assistance Program, suggests that while some anticipate that predictive coding will become an ethical obligation, others predict “ethical and malpractice horrors ahead for any lawyer who dared ‘outsource’ their duties to machines or non-lawyers.” Yet Calloway doesn’t “really see predictive coding becoming an ethical requirement” because predictive coding will “gain . . . more acceptance as a business requirement long before ethics rule-making bodies have a chance to consider it.”

The debate regarding predictive coding centers on the benefits and risks of the process. The benefits and goals of predictive coding are “accurate, cost-effective and expedited document review.” The cost-effective nature of predictive coding is one of the factors that must also be considered. In determining whether the use of predictive coding is consistent with the requirement of Rule 1.5 that an attorney charge a reasonable fee and not collect an unreasonable amount for expenses, its cost-effective nature would certainly weigh in favor of its use. However, while it

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22. Id.


24. This is similar to the factors that an attorney must consider when determining whether the outsourcing of document review is consistent with the ethical requirements of Rule 1.5. See Danielle S. Fitzpatrick & Elizabeth Jones, Outsourcing Document Review: Pros, Cons and Ethical Considerations, BUS. TORTS & RICO NEWS, Spring 2012, at 15.
may be cost-effective, even advocates acknowledge that predictive coding may not always be inexpensive or result in cost savings.25

§10 Predictive coding is also not without risks. It retains significant potential for human error because the “process is only as good as the input criteria, and a missed keyword or key concept could lead to entire categories of relevant or privileged documents being inadvertently missed.”26 Although the potential for human error is also present in a manual review, there is the perception that a manual review permits a greater degree of understanding and control by the reviewing attorneys,27 thereby reducing the risk that complete categories of relevant documents will not be properly identified. Under the rules of civil procedure, there is also the risk of sanctions for failing to produce electronic information,28 and manual review may be less likely to result in the disclosure of privileged information. Thus, there is room to question whether the use of predictive coding meets the requirement that reasonable steps be taken to protect against the disclosure of privileged material and to rectify errors in compliance with Federal Rule of Evidence 50229 and the newly modified Rule 1.6, which is discussed in more detail below.

§11 So how can law librarians use their skills to help minimize the risk and maximize the benefit for those attorneys who, under the new rules, must undertake or at least consider the use of predictive coding? In 2007, a contributor to the Law Librarian Blog suggested e-discovery “is an area ripe for lawyer-librarian or corporation-information specialist collaboration and increasing the value of librarianship in the parent institution. Who knows how to mine data better than librarians?”30 While document review is an area of e-discovery in which law librarians initially participated, predictive coding offers new opportunities, particularly in light of the developing ethical standards regarding technology.

§12 Randy Diamond, who teaches an e-discovery class and serves as the director of the University of Missouri Law Library, suggests that work in the area of predictive coding fits well with the law librarian skill set. “As librarians we have our own knowledge base . . . with Westlaw and Lexis. We have been teaching for years about the lack of precision and recall and the difficulty in terms of identifying what the keywords are to find the most relevant documents.”31 Diamond noted that Michael Arkfeld, a leader and author in the area of e-discovery, when asked about the need to teach students the technological aspects of electronic discovery, responded: “How does a student or attorney understand a defensible search unless they under-

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27. Id.
29. Hutz, supra note 23.
31. Randy Diamond & Darla Jackson, If You Offer It & Market It, They Will Come: Legal Practice Technology Instruction in a Variety of Formats, presentation at the CALI Conference in San Diego, California, June 22, 2012 (video on file with author).
stand the pros and cons of keyword, concept, and predictive coding search techniques?"

¶3 As experienced instructors and searchers, law librarians have the opportunity to play a vital role in assisting students and attorneys with developing the knowledge necessary to construct “defensible” searches. In addition, law librarians have a role supporting e-discovery and predictive coding: they can evaluate e-discovery software, develop and organize e-discovery and predictive coding precedents, and monitor predictive coding developments and best practices. This monitoring of developments and best practices by law librarians is particularly important in making attorneys aware of the risks and benefits of technology use, as required by the developing ethical rules in the e-discovery arena. Because “[c]ompanies are beginning to treat eDiscovery in a proactive rather than a reactive manner” and “[i]nformation managers, law librarians, corporate knowledge managers and record management professionals have an important role to play on the eDiscovery team,” many professional associations, such as the Special Libraries Association, have begun to offer training. Similarly, in response to the expressed desire of its members, the American Association of Law Libraries scheduled programming during its 2013 annual meeting that addressed EDD.

Courtroom Technology

¶4 Even absent the new language in the rules of professional conduct about risks and benefits, some have reasoned that the requirement in Model Rule 1.1 that a lawyer maintain an awareness of changes in the law and its practice establishes a competency obligation for the use of courtroom technology, since use of this technology has become the standard. The comments to Rule 1.1 regarding thorough-

32. Id. Because senior attorneys, who have the experience with the subject matter of the case, are tasked with establishing the seed set on which the predictive coding process operates, it is particularly essential that they, who may not necessarily have had the experience with electronic legal research that junior associates have had, develop an understanding of the pros and cons of various search strategies. The [predictive coding] process is decidedly different from human linear review, where an army of junior attorneys, paralegals, and/or contract attorneys review documents in cases about which they know little or nothing. In predictive coding, seed sets are reviewed by a small group of counsel with detailed command of the facts and issues. Predictive coding software takes the work product from these senior reviewers and ‘trains’ itself to identify responsive documents.


ness and preparation can also be used as support for this position.\textsuperscript{38} Notwithstanding, there are some unresolved questions and risks associated with the use of courtroom technology that must be considered. It is certainly not unusual for users of technology to experience technical problems. In such cases, should attorneys have the ability to undertake repair or be adequately prepared with a backup to meet their ethical obligations?\textsuperscript{39} Even if using expensive courtroom technology increases the likelihood of the successful presentation of evidence, is the acquisition, maintenance, and use of such equipment consistent with the duty to keep fees reasonable under Rule 1.5?

\S 15 Law librarians have traditionally been early adopters of technology. Despite the advent of information technology departments in academic, court, and firm environments, it is likely that law librarians will continue to be asked to support technology.\textsuperscript{40} At least in the academic arena, this familiarity with technology has resulted in law librarians’ being included in the group of instructors teaching law practice management and other practical skills courses. These courses typically include some instruction on the use of courtroom technology, a topic that other law faculty often prefer not to teach.\textsuperscript{41} Thus, the law librarians teaching these classes have a unique opportunity to assist students in learning about the various courtroom technology systems.

\S 16 Because each courtroom may have a different system, there is no guarantee that new lawyers who have received such training will end up practicing in a courtroom with a familiar system. Therefore it may be advisable instead to adapt already familiar technology to courtroom uses. For example, the iPad can be used with Apple TV, a projector, and several applications to create an inexpensive, adaptable, and highly functional mobile system for courtroom presentations.\textsuperscript{42} Many state bar associations have established law office management and technology sections and have also begun to offer practice management assistance programs (PMAPs), which provide instruction on technology use. PMAP staff serve the entire bar, but often focus much of their attention on solo practitioners and small firm attorneys\textsuperscript{43} to whom law librarian assistance may not be available. However, the limited staff resources and the growing number of solo and small firm attorneys may make it difficult for PMAPs to effectively provide the necessary assistance.

\S 17 Firm, court, and academic law librarians may thus find opportunities to share their knowledge of courtroom technology by partnering with PMAP staff.\textsuperscript{44} In states without PMAP programs, law librarian groups can fill the void. After all,

\begin{itemize}
\item \textsuperscript{38} Id.
\item \textsuperscript{39} Id.
\item \textsuperscript{40} Carol Watson & Larry Reeves, Technology Management Trends in Law Schools, 103 \textit{Law Libr. J.} 441, 453, 2011 \textit{Law Libr. J.} 27, \S 32.
\item \textsuperscript{44} Id. There are PMAPs in more than twenty state bars and law societies in the United States and Canada.
\end{itemize}
law librarians are already familiar with teaching cost-effective research and have frequently offered continuing legal education programs to state bar organizations. Law librarians could similarly use their technology knowledge to teach cost-effective courtroom technology.

**Model Rules 1.6 and 4.4**

¶18 Model Rule 1.6, which deals with the confidentiality of information, has undergone some change as well. The modified Rule 1.6 now includes subsection (c), which states: “A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of or unauthorized access to, information relating to the representation of a client.” Comment 18 to Rule 1.6 has also been modified and sets forth the factors to consider in determining whether a lawyer has made reasonable efforts to prevent unauthorized access to or disclosure of confidential information. The ABA Commission on Ethics 20/20 report accompanying the technology-related changes to the Model Rules suggests that the change to Rule 1.6(c) was intended to clarify that lawyers have an ethical obligation not only not to reveal confidential information but to make reasonable efforts to prevent disclosure, such as might occur if the lawyer’s network was “hacked” by a third party.

45. **Model Rules of Prof’l Conduct** R. 1.6(7)(c) (2012).

46. Comment 18, as modified, provides, in pertinent part:

The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer’s efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer’s ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule.

Id. cmt.18.

47. The report provides:

The proposal identifies three types of problems that can lead to the unintended disclosure of confidential information. First, information can be inadvertently disclosed, such as when an email is sent to the wrong person. Second, information can be accessed without authority, such as when a third party “hacks” into a law firm’s network or a lawyer’s email account. Third, information can be disclosed when employees or other personnel release it without authority, such as when an employee posts confidential information on the Internet. Rule 1.6(c) is intended to make clear that lawyers have an ethical obligation to make reasonable efforts to prevent these types of disclosures, such as by using reasonably available administrative, technical, and physical safeguards.


Interestingly, at least one white paper has indicated that law firms are increasingly targeted by cyber criminals and that firms are even more at risk for breach than financial institutions. **PricewaterhouseCoopers, Safeguarding Your Firm from Cyber Attacks** 3 (2012), **available at** http://www.pwc.com/us/en/law-firms/assets/pwc-safeguarding-your-firm-from-cyber-attacks.pdf. In reaction, some malpractice insurers have begun to offer cyber liability and data breach endorsements to their policy holders. E.g., **OOMIC’s Cyber Liability and Data Breach Endorsement, Okla. Attorneys Mutual Ins. Co.** (Feb. 21, 2013), http://oamic.com/oamics-cyber-liability-and-data-breach-endorsement.
Many law librarians are familiar with security measures, including protective software, and have experience working with software licensing and vendor services. This experience would certainly facilitate their evaluation and procurement of security measures designed to prevent unauthorized access and the resultant disclosures that are intended to be addressed by the new language of Rule 1.6 and comment 18.

¶19 Similarly, Rule 4.4 and comment 2 to that rule have been amended to provide for further protections for confidential information maintained as ESI. As modified, Rule 4.4(b) provides: “A lawyer who receives a document or electronically stored information relating to the representation of the lawyer’s client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.”48 Comment 2 then emphasizes the inclusion of metadata as confidential information.49

¶20 If law librarians have the requisite skill set and are “better” at mining data, including the metadata specifically addressed in the change to comment 2 to Rule 4.4, it is logical to assume that they would also likely possess knowledge of tools to remove or “scrub”50 the data that the changes are designed to address. The ABA Commission on Ethics 20/20 acknowledged that the modified rules and comments do not “resolve [the] more controversial question: whether a lawyer should be permitted to look at metadata in the absence of consent or court authority to do so.”51 As ethical standards continue to develop in the face of technology changes, law librarians can provide assistance by monitoring comments and legal authority.

Conclusion

¶21 While Delaware is currently the only state that has adopted the changes to the Model Rules of Professional Conduct, lawyers, and the law librarians who support them, must act in anticipation of the changes. In the tightening business of

49. Paragraph (b) recognizes that lawyers sometimes receive a document or electronically stored information that was mistakenly sent or produced by opposing parties or their lawyers. A document or electronically stored information is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a document or electronically stored information was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the document or electronically stored information, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document or electronically stored information has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document or electronically stored information that the lawyer knows or reasonably should know may have been inappropriately obtained by the sending person. For purposes of this Rule, “document or electronically stored information” includes, in addition to paper documents, email and other forms of electronically stored information, including embedded data (commonly referred to as “metadata”), that is subject to being read or put into readable form. Metadata in electronic documents creates an obligation under this Rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer.

Id. cmt.2.
50. Popper, supra note 1, at 5.
51. ABA REPORT, supra note 47, at 6.
law, it is essential that attorneys “act now, if not to anticipate technological rules, then to match the experience and expectations of . . . technologically competent clients, associates, or staff.” Law librarians have the necessary knowledge, skills, and experience to assist legal practitioners in complying with their evolving ethical obligations and meeting the expectations of clients. Law librarians must seize this opportunity to add value within the structure of their firms, institutions, and professional organizations.

Ms. Gabriel highlights selected readings on culture, diversity, organizational culture, leadership, conflict management, and racial microaggressions that can help create a framework in which to discuss diversity and diversity issues.

Introduction

¶1 Much of my writing for this column has been influenced by my own experiences and observations. Having worked in a variety of library settings as a student and as a professional librarian, many of the reflections I have shared were born from those experiences. But I would be remiss if I did not say that what I have written about also developed out of my own curiosity as to how diversity and issues surrounding it have affected my career, and the options—or restrictions—I may have faced. My interest has also stemmed from my belief that diversity questions affect society as a whole. Law librarianship is no different from a multitude of other professional careers such as law, education, or librarianship more generally, where stereotypical roles based on gender, culture, or race have led to a profession that struggles with diversity issues. But personal experience based on years of observation is different from scholarly research. Scholars in a multitude of fields have examined diversity objectively, discussing the pros and cons of changing cultural and societal stereotypes. Their work can be valuable in understanding more about what issues affect diversity in a variety of situations.

¶2 For this column, I have gathered some of the more interesting sources that have helped me focus and organize my thoughts. My goal is to share a selection of readings that may be helpful to anyone wanting to learn more about diversity and how it relates to our profession. The readings are meant to provoke thought and
reflection about what an organization is, how leadership is viewed, and how we experience culture and identity in our work lives. Many of the readings articulate what a reader may have merely labeled “personal observations” in the way I did before finding some of the literature, and it is fascinating to me that there are social scientists and other scholars who are studying human behavior in such a concerted way, trying to find better ways for us to increase our workplace effectiveness or increase diversity. At the most basic level, they investigate how we can ultimately interact in a more positive way with one another as human beings.

There can be little doubt that the struggle of discussing diversity and how to achieve it in all facets of society is a multilayered issue that is not easily resolved. Issues surrounding diversity touch upon factors that do not exist solely within the realm of a particular library setting, but can be carried into one and can escalate into discord if not properly identified, and if affirmative steps are not taken to understand the source of conflict. I hope the readings set out here can help readers understand some of the complexity that is at play when considering how to address diversity issues.

Culture, Organizational Culture, and Diversity

Narrowing down the readings that discuss culture and diversity generally is a difficult challenge given the enormous amount of scholarship across fields. The idea that each workplace has a distinct culture one must acclimate to was discussed in an earlier column. However, some of the following readings are intended to help one focus quickly on some of the overarching issues surrounding culture and diversity. Others focus specifically on organizational culture as it exists within libraries, and the particular challenges that face them. Readers are encouraged to peruse the following works keeping a specific law library setting in mind—doing so may trigger some interesting observations about the nature of cultural competency in an organization.


The Center for Creative Leadership specializes in education for leadership development. The Ideas into Action Guidebook series has provided several titles that may be of interest to librarians moving into new organizations or management, and a concrete advantage is their brevity. This particular title discusses cultural adaptability, and how assessing one’s ability to adapt to different cultural situations can help the individual interact more effectively with colleagues. In this book, Deal and Prince provide a cultural adaptability worksheet and succinctly lay out how one can develop cultural adaptability: examine your cultural foundations, expect to encounter cultural differences, educate yourself about different cultures, experience cross-cultural interactions and learn from them (p.12). One useful feature is their charts explaining “cultural dimensions.” In them, the authors set out a cultural characteristic and illustrate two extremes at each end. They then ask readers to identify where they may fall along that continuum to get a sense of how they may perceive themselves or others.

Gender issues were a subject of research long before the topic of diversity entered the workplace. In this article, the authors discuss how common stereotypes of gender can operate, and how the library setting, even though dominated by women, is not immune to work-related pressures based on gender role assumptions. There is an examination of how gender roles and an individual’s self-concept may lead to a stronger identification for men with their workplace; women may feel constrained by expectations that they play a more nurturing role in the family. There is also a discussion of how gender stereotypes are “intimately connected” with leadership styles, as well as how those stereotypes “influence the way we interpret and evaluate [leaders’] behaviors” (p.132). Moreover, even though women hold leadership roles in libraries, “supervisors do not necessarily value that style of leadership equally for men and women... masculine leadership attributes may still hold high value in supervisors’ assessment of performance” (p.133). The authors end with thoughts on how to prevent conflict and minimize the negative impact of gender role stereotypes by outlining several cornerstones for an organization in controlling the work environment: “[E]stablish the organizational culture, be proactive in hiring/recruiting, demand effective leadership, institute effective and on-going training, and demonstrate corrective action when necessary” (p.137).


Howland’s article remains one of the pieces a reader can return to again and again to be reminded of the difficult issues that can arise when working in a diverse environment. While acknowledging “the challenges of working in a multicultural environment are as countless as the varied demographics and dynamics of work environments themselves” (p.109), she nonetheless sets out six topics that merit deeper examination: (1) fluctuating power dynamics, (2) merging a diversity of opinions and approaches, (3) overcoming a perceived lack of empathy, (4) tokenism: reality or perception, (5) holding everyone throughout the organization accountable for achieving a positive multicultural environment, and (6) turning challenges into opportunities. Howland expands each topic, relates it to her own experience, and provides suggestions on how challenges can be confronted and overcome in a library.


The international focus of this article may be of use to those who want to develop an understanding of how diversity is approached outside of the United States. The authors review the literature surrounding diversity management and find it decidedly lacking in the international sphere—dominated by U.S.-focused research. One of their most interesting observations is that in the United States, concerns regarding diversity originally rose out of equal employment opportunity law, where the aim is to “predominantly reduce the negative effects of exclusions, whereas diversity management predominantly promotes the positive effects of inclusion” (p.39). The authors go on to discuss other limitations in the research, including lack of diverse individuals conducting the research and a heavy
emphasis on Western cultural norms. The article ends with a list of heavily cited research articles for further reading. By laying out the historical approach toward diversity research in the United States and other Western nations, and calling it into question while arguing for a more expansive multilayered approach, this article makes for fascinating reading.


If readers are seeking one article to refer to for basic information on organizational diversity, as well as references for further reading, there are few sources better than Kreitz's article. In addition to providing basic definitions regarding diversity, and explaining organizational frames and the role of human resources, she also lists academic library best practices and discusses how diversity benefits a library and its larger institution. Kreitz provides a selected annotated bibliography, which covers a wealth of topics within organizational diversity and management, along with an extensive additional bibliography.


This article discusses cultural competence and the need for librarians to apply it to interactions with the communities they serve. Although the author focuses on how librarians interact with users, she outlines the theoretical background behind cultural competence and how it has developed in the fields of health, psychology, social work, and education. She maintains that there are commonalities, including that cultural competence requires “abilities of empathy, respect, understanding, patience and nonjudgmental attitudes” (p.189). Furthermore, cultural competence is necessary not only to improve services that a library offers, but “to improve interpersonal relationships among diversity groups” (id.). The author then posits a conceptual framework for the library profession to consider: that developing cultural competence is necessary in the library profession in order to “effectively reach those who would benefit the most from library services” (p.200).


Smith distinguishes organizations that aim for diversity from those who take the additional step of becoming “culturally conscious.” The difference is that even if an organization is diverse, it may not be welcoming to those from diverse backgrounds if the organizational culture is repressive, or if the institution does not have structures in place to recognize new or opposing viewpoints. Specifically examining libraries, she notes that to achieve a culturally conscious organization, libraries need to remember that it “requires competency in matters of cultural pluralism that are not intuitive and must be learned, like any other essential skill” (p.143). Furthermore, “cultural competency is distinguished from diversity by methods in which an organization or individual develops skills and policies for effective intercultural interactions in the workplace” (p.144). A particular strength of this article is that it outlines the characteristics of cultural consciousness in an organization and defines four distinct states that an organization may be operating within in relation to cultural consciousness. Smith emphasizes that by failing to understand how cultural competency must be an integral step in
making a library truly diverse, the organization sets itself up for continuing failure at achieving any type of long-term institutional change.

**Leadership**

¶5 Understanding the characteristics that make an effective leader can be useful information no matter where you stand in an organization. It can help you determine the stability of the organization and consider the effectiveness of different types of leaders within a specific work environment. Finally, when considering diversity issues, much of the success of an integrated workplace relies heavily upon an organization’s leaders, so it is worth knowing what makes a capable one.


Ancona and her colleagues from the MIT Sloan School of Management have laid out an impressive structure in which to think about leadership. The authors believe that there is a concrete difference between an “incomplete” and an “incompetent” leader. The “complete leader” is a myth, given that no one individual can be expected to excel at all the tasks that may be expected of an effective leader, and trying to become a complete leader can often lead to disarray within a company. Instead, drawing upon years of experience and research, the authors state that effective leadership consists of four capabilities: “**sensemaking** (understanding the context in which a company and people operate), **relating** (building relationships within and across organizations), **visioning** (creating a compelling picture of the future), and **inventing** (developing new ways to achieve the vision)” (p.94). By understanding which of the capabilities they might excel at, leaders can assess how to increase their effectiveness in other areas, or, more likely, hire individuals who excel in their weakest areas. The authors discuss each of the capabilities, give examples of how to cultivate them, and describe how each can improve an organization. There is also a sidebar explaining how to assess whether one is weak in any of the specific capabilities. Perhaps the most intriguing part of the article is that, when read in conjunction with articles that discuss increasing diversity, it can be argued that the four capabilities are also a framework for training a leader to be more open to diversity and cultural competency.


Kreitz’s article echoes the basic premise of the preceding article: that leaders do not have to excel at everything in order to be effective. Through a small study, Kreitz sought to discover whether there were emotional intelligence traits common among library directors and members of their senior management teams, and whether certain characteristics overlapped between the groups. Even with a limited sample, Kreitz was able to determine that library directors often had a vision for the library that they were able to articulate, and they were also politically astute within their workplace, could motivate people, and could marshal outside resources for assistance. On the other hand, senior managers placed a premium on being able to handle other staff members, coordinate consensus building, lead teams, and work as a facilitator for specific teams. Characteristics that both groups shared in common included the ability to listen and delegate,
personal integrity, good interpersonal skills, and the ability to assess their own strengths and weaknesses. While Kreitz maintains that further research is needed, she believes that reviewing the list of characteristics can help librarians examine their own traits and determine which ones they should exhibit if interested in advancing in an organization.


This brief article concerns itself with the results of an AALL survey about leadership. It is illuminating for the differing perspectives of long-term librarians (those with ten or more years of experience) versus emergent ones (those with five years or less). Mackoff’s piece addresses the observations of librarians asked to reflect on their ideas of leadership. Both groups found common ground in what they thought were “deterrents to leadership: position, personality and perception” (p.473). When asked to discuss the traits that would make an effective leader, each group gave numerous responses, leading Mackoff to observe that the “large number of definitions of leadership is linked to a clear overall pattern in both groups—the lack of distinction between the skills and actions of a manager as contrasted with those of a leader” (p.480). However, Mackoff is able to draw several conclusions from the data, one being that it would be helpful to define what it means to be a leader in a law library in a way that would negate the effect of the deterrents to leadership. The author suggests that perhaps future training on leadership “should build on a foundation of management skills and focus on a strengths-based approach” (p.481).

**Conflict Management**

Understanding how to work within an organization that may have difficulty dealing with diversity issues comes down to whether or not managers understand the issues and are willing to deal with difficult topics directly. Reading about how to manage conflict within an organization, or understanding how to address the problem in a practical way, led to the sources listed here. With law libraries dealing with increasing internal pressures (shrinking budget and staff) as well as external ones (economic factors affecting the organization as a whole), knowing how to categorize conflicts within a workplace may help an employee recognize that there are ways to manage conflict effectively to benefit the organization.


Though this short piece was written more than twenty years ago, much of the practical advice given here is still relevant to today’s librarian. Compared to several more theoretical readings, the authors distill the issues surrounding conflicts in academic libraries and lay them out succinctly, discussing the costs, benefits, and sources of conflicts that may arise within them. They move on to discuss five responses to conflict and end by offering techniques for effective problem solving. While an early piece addressing conflict management in libraries, the article outlines the major tenets still observed by those studying conflict management today.

Payne builds upon the premises put forward by Kathman and Kathman, and starts by using the founders of Google to illustrate how conflict is used in a positive way when it pits teams of engineers against each other to develop ideas. Payne goes on to describe what he argues are four approaches to managing conflict: traditionalist, behaviorist, solutionist, and interactionist. Each approach has its own way of managing conflict, depending on how much a manager chooses to engage conflict head on, with each approach operating from different assumptions. While acknowledging that the solutionist and interactionist approaches can be successful, Payne states that a fifth approach may be developing: “[W]hat appears to be emerging is a belief that managers do not have to actively manipulate inputs in the conflict management framework; instead, this effort can be shifted to employees” (p.10). While ultimately deciding that further research is needed to determine if a fifth approach is truly emerging, Payne ends with the observation that having employees work on dealing with conflict management may free up managers to focus on harnessing conflict to make improvements throughout an organization.


Plocharczyk does a solid job of laying out the literature on organizational conflict. Discussing conflict dynamics, conflict theories, and conflict management styles, she also addresses the benefits of managed conflict and how it interacts with emotional intelligence. Along with a reference list, she includes an annotated bibliography of some of the major literature in the field, with extensive descriptions of each source. This article is highly recommended for those who seek to utilize conflict in a positive way within their organizations.

**Racial Microaggression**

‡7 Racial microaggression is defined as “brief and commonplace daily verbal, behavioral and environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory or negative racial slights and insults” toward people of color. Derald Wing Sue, a psychologist who teaches at Columbia University, has studied microaggression as it applies to different groups and has written extensively on the topic. While only two works are included here, readers are encouraged to seek out his other work for more information on how racial microaggressions affect minority groups.

‡8 Although the readings listed here do not address the field of librarianship, in the context of understanding what members of minority groups may experience every day, they are strongly recommended for outlining the nuances of repeated interactions that may, over time, have a profound effect on an individual.

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3. According to Payne, a traditionalist assumes conflict can and should be eliminated; a behaviorist assumes conflict is destructive but cannot be fully eliminated; a solutionist assumes conflict arises naturally but can generate positive changes when properly managed; and an interactionist assumes managers should actively increase functional conflict while decreasing dysfunctional conflict.


Aimed at informing white therapists who deal with minority populations, the article tackles the difficult concept of racism in society, and explores how unintentional inherited or cultural biases of therapists may nonetheless affect the way they may treat minority patients. Microaggressions are “brief, everyday exchanges that send denigrating messages to people of color because they belong to a racial minority group” (p.273). They “are often unconsciously delivered in the form of subtle snubs or dismissive looks, gestures or tones . . . so pervasive and automatic in daily conversations that they are often dismissed as being innocent and innocuous” (*id.*). The authors identify three types of microaggressions: microassault, microinsult, and microinvalidation.\(^5\) Part of the difficulty of addressing these problems has to do with the fact that the “power of racial microaggressions lies in their invisibility to the perpetrator, and oftentimes, the recipient” (p.275) who may be left with the “nagging question of whether it really happened” (*id.*). One of the most unsettling realizations is that even when microaggressions are unrecognized by either party, there is still enormous potential for long-term harm, especially to a person of color and his or her concept of identity. The authors proceed to outline nine major themes as the basis of microaggressions, and four major psychological dilemmas that may be present for both the perpetrator and the recipient. While the authors examine the issues surrounding racial microaggressions and the implications for clinical practice, this categorization and description of the phenomena of microaggressions is critical reading for understanding the complications that may lie at the heart of the difficulties in achieving true diversity within our profession.


This article focuses on a study dealing with microaggressions in the classroom. It recounts the observations of students, who discussed difficulties in the classroom with other students and instructors and their reactions to them. It would not be far-fetched to imagine that these same reactions from students in the classroom apply to their interactions with reference librarians or other library personnel in a difficult situation. The authors conclude with recommendations on how educators can improve their ability to facilitate difficult conversations in the classroom. Many of these recommendations could apply to librarians as well.

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5. “A microassault is an explicit racial derogation characterized primarily by a verbal or nonverbal attack meant to hurt the intended victim through name-calling, avoidant behavior, or purposeful discriminatory actions. . . . A microinsult is characterized by communications that convey rudeness and insensitivity and demean a person’s racial heritage or identity. . . . Microinvalidations are characterized by communications that exclude, negate, or nullify the psychological thoughts, feelings, or experiential reality of a person of color.” *Id.* at 274.
Ms. Maxwell lists some of her management-related resolutions as she moves into her new position as a library director.

¶1 This is not the column I intended to write. You might recall that last issue’s column focused on the role of law library leaders in creating “great” workplaces for all library staff members.¹ In composing that column, I deliberately equivocated by employing the terms manager and administrator, as though they are interchangeable with the preferred notion of “leader.” In fact, I do not think that these terms are even remotely synonymous, and I had planned to explain at greater length why the distinction is critical. That column is on hold until the next issue of Law Library Journal, however, because a more pressing leadership concern has unexpectedly taken precedence in my reflections. To wit, I have recently been appointed Director of the Law Library at West Virginia University College of Law, assuming my new position in the spring. While this is clearly a momentous development for my new staff and me, how might it be significant to you, as readers of this column? Read on, and I hope the answer will become clear, as I attempt to make sense of my new directorial responsibilities and provide some ideas to you, as you exercise your own library leadership role.

¶2 There are many emotions attending the assumption of a major law library leadership position—stark terror being foremost among them—but the one that I want to remain paramount is loyalty to, and responsibility for, the library staff. I can already perceive the peculiar tension inherent in the library director’s multiple roles as library leader, librarian, faculty member, and participant in the law school’s administrative team. Of necessity, there will be competing interests and conflicting demands, but, I keep reminding myself, the library director is uniquely positioned in her knowledge of the library’s role in the law school, its contribution to the critical mission of legal education, and, principally, in the director’s ability to advocate for the library and its staff. I am writing this particular column because I want to

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make certain that I (and you) remember the nature of this gargantuan commitment, especially as it pertains to the library staff.

¶ 3 What, then, can I promise my new staff? How will we work together to craft the healthy, productive, enjoyable workplace and working relationships that we all crave? Here are some of my resolutions—I am committing them to writing so that they are public, and I can be held accountable when I fall short, which, invariably, I will. I am recording these resolutions so that in the press of daily duties I do not forget what I deem to be most precious about the law library—its people. That is not to gainsay the reality that tough, sometimes unpopular decisions will inevitably present challenges. It is to say, however, that I—and hopefully readers, library leaders themselves—will remember to take into account the needs of our first constituency, the library staff.

¶ 4 First, I resolve to listen. As seasoned members of an organization, we are all familiar with the divisive effects of complaining, particularly when concerns are not directly communicated to the supervisor who can take them into account and resolve them accordingly. As a library leader, I will listen to your suggestions and complaints. I am not afraid to hear what you have to say and to capitalize on your wisdom and experience, especially since it pertains to an institution that is new to me. Likewise, you need not fear me—I will not receive your comments as a threat. After all, we are all in this together. I want to benefit from the collective wisdom. While undoubtedly we will not always agree in the end, we should discuss issues, and I will certainly listen to your insights.

¶ 5 Second, I resolve to communicate with you. You can rely upon me to share information with you, be it information about library budget and space, or information about law school initiatives, such as curricular developments. Again, we are all in this together, so it certainly benefits us all to have a sense of the big picture. As I have learned from Vicenç Feliú, my director at Villanova University School of Law, weekly meetings are indispensable vehicles for optimal communication in the law library environment. Even absent a formal agenda, meetings can be beneficial by gathering the library team in one place and sharing details of the projects each team member is pursuing. Weekly meetings also afford the opportunity for us to enjoy each other’s company and simply have fun together. Accordingly, I promise to present the occasion for us to meet, and I will share any information I have gleaned.

¶ 6 Third, I resolve to protect you from potential abuse. I realize that, as seasoned library workers dedicated to providing excellent service, at times you have been stretched beyond temporal and professional limits. We are all familiar with the phenomenon of unreasonable requests for assistance—for example, the new faculty member who calls at 4:30 on a Friday afternoon, demanding that we provide copies of ninety-five law review articles immediately because he wants to read them over the weekend. (Yes, this really happened to me!) I promise to educate the faculty about the nature of reasonable research requests and the manner in which these can and will be accommodated. We can work together to train research and administrative assistants to provide such basic services to the faculty when warranted. I will support your judgment if and when you are asked to perform work
that exceeds the scope of your position and duties. In short, I will do my best to ensure that your boundaries are protected.

¶7 Finally, I resolve to respect your world. Like an anthropologist conducting ethnographic research, I will inhabit your world and learn about it from you. I vow to attempt to understand our library and institution, along with their histories, rather than making immediate, wholesale, uninformed changes just for the sake of marking territory. Once I have become better acculturated, we will work together to fashion our own library of the future. Have I mentioned that we are all in this together?

¶8 Perhaps this amorphous agenda is overly ambitious—indeed, impossible to implement—but, at the very least, I want to attempt to articulate my priorities as I am coming into the country of a new position in a law library and law school new to me. Now, having pondered the points enumerated here and having formed my resolve, I am fully confident that my—our—new library home will be anything but terra incognita. Brave new world, I’m ready for you, if you’re ready for me!