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From the Editor: The Next Chapter*

James E. Duggan**

¶1 It seemed like a good idea at the time. Janet Sinder, Law Library Journal Editor *Extraordinaire*, was ending her six-year term as editor, and AALL had announced that they were looking for someone to take her place. I had previously worked for Frank Houdekk, who served as *LLJ* Editor for a mind-boggling twelve years, and he seemed to enjoy it. He is my mentor, and this seemed like a good thing to do as a way to honor his mentorship. However, before applying for the position, I thought about what makes a good editor: a strong editing background; a desire to see a writer’s voice come through on the written page; good administrative skills; and infinite patience to read, rewrite, and reread again until an article is the best that it can be, given the ever-present deadlines. I had certainly done some editing and writing before, and believed that becoming *LLJ* editor would be a good way to continue volunteering with AALL.

¶2 So, I applied and subsequently interviewed with a search committee consisting of AALL staff and members at the 2012 AALL Annual Meeting in Boston, Massachusetts. Much to my surprise, I was chosen to become the next editor of *LLJ*. My first assignment was to serve as Assistant Editor from the Fall of 2012 to the Fall of 2013, and “learn the ropes.” One could not ask for a better tutor than Janet. She knows the *Bluebook* like the back of her hand. She loves to edit, and really cares about the articles that appear in *LLJ*. I saw well-written article submissions become outstanding published pieces under her watchful eye and sharpened pencil. Even better, Janet would transform average article drafts into truly remarkable examples of scholarly writing, all the while giving full credit to the individual authors. For an entire year Janet has worked with me, attempting to teach me the ins and outs of journal editing. She has been a great boss, and an even better friend.

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** Director of the Law Library and Associate Professor of Law, Tulane University Law School, New Orleans, Louisiana.
1. Director of the Library and Associate Professor of Law, Brooklyn Law School, Brooklyn, New York.
2. I served in a number of positions at Southern Illinois University School of Law Library, Carbondale, Illinois, from 1988 to 2008.
3. Associate Dean for Academic Affairs and Professor of Law, Southern Illinois University School of Law, Carbondale, Illinois.
It appears that the term of *Law Library Journal* hasn’t always been five years. Editors served anywhere from a single volume and year\(^6\) to multiple years.\(^7\) I can see why someone might wish to serve a shorter term as editor. It is a huge responsibility. Not only is one constantly reviewing new submissions, there are also accepted articles to format, cite-check and edit, and authors to communicate with about rewrites and editorial questions; all while reviewing and proofreading the issue that is going to press shortly. Plus, there is one’s regular job.

I am thankful for the authors who trusted me with their articles in this issue, my first issue without Janet’s helpful advice and support. I’m especially appreciative of my library school classmate and good friend, Mary Whisner,\(^8\) whose long-time column is an *LLJ* institution.\(^9\) I’m also thrilled to welcome Ron Wheeler,\(^10\) who is taking over the “Diversity Dialogues” column. Benjamin Keele,\(^11\) Nick Sexton,\(^12\) and Darla Jackson\(^13\) will also continue their columns. I hope to add other columns as I go on, and continue to produce outstanding “articles in all fields of interest and concern to law librarians and others who work with legal materials.”\(^14\) Please consider submitting your article to *Law Library Journal*.

I’m still learning, however. Pesky things like when to use the en dash rather than the em dash.\(^15\) Why *Law Library Journal* is apparently the only scholarly journal to use uniform citation paragraph numbering.\(^16\) And what to say to colleagues whose article submissions still need work before they are acceptable.\(^17\) I have nineteen more issues to go in my five-year term. What do I hope to accomplish during

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6. Frederick W. Schenk, of the University of Chicago Law Library, served as the first editor of *LLJ* (vol. 1, 1908). *Houdek*, *supra* note 4, at 7A-1. Other editors serving for a single volume include Karl E. Steinmetz (vol. 4, 1911); Bernita Davies (vol. 45, 1952); and Harriet L. French (vol. 47, n.3-48, n.1). *Id.*


9. Mary has written the “Practicing Reference…” column since 1999.

10. Director of the Law Library and Associate Professor of Law, University of San Francisco School of Law, San Francisco, California.


12. Clinical Assistant Professor of Law and Reference/Collection Development Librarian, Kathrine R. Everett Law Library, University of North Carolina School of Law, Chapel Hill, North Carolina. Their column is “Keeping Up with New Legal Titles.”

13. Director, McKusick Law Library, University of South Dakota, Vermillion, South Dakota. Her column is “Thinking About Technology.”


15. I’m still trying to figure that out.

16. In 1999, the *Law Library Journal* and *AALL Spectrum* Editorial Board and Advisory Committee approved article and paragraph numbering for *LLJ*, under the auspices of the Universal Citation Guide (COMM. ON CITATION FORMATS, AALL UNIVERSAL CITATION GUIDE (1999)). Frank G. Houdek, *From the Editor: The Universal Citation Guide*, 92 LAW LIBR. J. 7, 8 (2000). Article and paragraph numbering began with the next article in volume 92: Robert C. Vreeland, *Law Libraries in Hyperspace: A Citation Analysis of World Wide Web Sites*, 92 LAW LIBR. J. 9, 2000 LAW LIBR. J. 1.

17. I hope to get better at this, too.
my tenure as LLJ Editor? I think I will have been successful if Law Library Journal continues to promote “a higher standard and usefulness of law libraries,”18 as it has over the past one hundred and five volumes.

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Book Burning in the Twenty-First Century: ABA Standard 606 and the Future of Academic Law Libraries as the Smoke Clears*

Michael Whiteman**

This article examines the evolving American Bar Association (ABA) Standard 606 and its effects on the collections of academic law libraries. What the twenty-first-century academic law library will look like will depend to a large extent on how the ABA standards respond to the changing realities in the legal academic marketplace. While some are calling for the elimination of the physical academic law library, the more likely outcome is that, in response to the evolving ABA standards and current economic realities, the academic law library will shrink in both physical space and physical holdings, but it will continue to be the center within the law school that helps train and produce the “practice ready” lawyers that are the ostensible goal of current legal education reforms.

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* © Michael Whiteman, 2014. The author would like to thank Professor Lawrence D. Rosenthal for reading over drafts of this article and NKU Chase student Jay Wampler for his research assistance.

** Professor of Law and Associate Dean for Law Library Services & Information Technology, Northern Kentucky University Chase College of Law, Highland Heights, Kentucky.
Introduction

1 The twenty-first century began with a bang as the United States came face to face with terrorism on its shores. A few short years later, the financial bubble burst, and prospects for recent law graduates began to plummet. This jolt, the effects of which continue to this day, has accelerated calls in the twenty-first century for reform of the legal education system in the United States. Beginning with the Carnegie Report1 and carried forward by a frenzy of negative reports in the media on the state of legal education,2 the predictions of the demise of law schools and the current legal education model have continued unabated. In the midst of these discussions, the question of the place and composition of the academic law library becomes very important, given that the law library is a law school’s second-largest cost center after faculty salaries.

2 This article examines the evolving American Bar Association (ABA) Standard 606 and its effects on the collections of academic law libraries. What the twenty-first-century academic law library will look like will depend to a large extent on how the ABA standards respond to the changing realities in the legal academic marketplace. While some are calling for the elimination of the physical academic law library,3 the more likely outcome is that, in response to the evolving ABA standards and current economic realities, the academic law library will shrink in both physical space and physical holdings, but it will continue to be the center within the law school that helps train and produce the “practice ready” lawyers that are the ostensible goal of current legal education reforms.

The Birth of the Academic Law Library

3 Law libraries have played a major role in the legal profession since well before the formation of the formal academic law library. In the early years of the Library of Congress, it had legal materials as part of its main collection. The importance of these materials can be inferred from the fact that in 1832 Congress passed a law that directed the Librarian of Congress to create a separate law library department within the Library of Congress.4 The Supreme Court and attorneys were to use this library until the establishment of a separate Supreme Court library in 1935.5 In areas outside of the District of Columbia, attorneys recognized the need to have a law library available to them. The Social Law Library in Boston opened its doors in 1804 as a resource for the local bar.6 The appearance of bar

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association libraries did not excuse law schools from the need to create their own libraries, as evidenced by the fact that bar association libraries were not always open to non-bar members such as law students. Beyond private law libraries, some states established state and county law libraries. For example, California was an early adopter, in 1891, of the county law library system.

¶4 While there was a definite boom in the creation of law libraries throughout the United States in the 1800s, it was clear that these law libraries were created for the benefit of practicing lawyers and judges, and not for law students. It should then come as no surprise that, as law schools began to proliferate throughout the United States, academic law libraries appeared along with them. The needs of law professors and law students were different from those of the practicing bar, and thus a law library dedicated to the academic needs of these patrons ensured the growth of academic law libraries.

¶5 The first academic law libraries were, in fact, simply the private collections of those judges and attorneys who offered classes in the law. These “law office schools” were spread thinly across the country, and none survives today. One of the earliest was founded by Judge Tapping Reeve in Litchfield, Connecticut, in 1784. Another law office school was established in New Haven, Connecticut, around 1800 by Seth Staples, joined later by Samuel Hitchcock. Their law library became part of the original Yale University Law Library in 1845.

¶6 One of the first major universities to begin a separate college dedicated to the study of law was Harvard University. In 1817, Harvard announced the creation of a law school, along with a promise that the students would have “access to a complete law library.” By 1820 the law library had 584 volumes, and by 1841 it had blossomed to a collection of 6100 volumes.

¶7 In these formative years of law schools, the law libraries were small, and because they were most often established from existing practitioners’ collections, professors felt that they were insufficient for a proper study of the law. Shortly after he arrived at Harvard in 1829, Joseph Story sent a letter to Josiah Quincy (then...
president of Harvard University), complaining, “It is indispensable that the students have ready access to an ample law library which shall of itself afford a complete apparatus for study and consultation. . . . At present the students are compelled to resort to my own private library.”

¶8 Many of the early law schools relied on public law libraries for their faculty and students’ needs. For example, the Union College of Law (later to become the law school at Northwestern University) opened in 1859 with no library facilities. The law students, even ones affiliated with Northwestern, “were expected to make use of the facilities of the Chicago Law Institute, a practitioners’ library, for legal materials.”

¶9 Other schools relied on the general university library. At the University of North Carolina, this was true until the law school’s own law library opened in 1907. In some cases, the law library was just a collection of books in a room, such as that of the University of Kansas Law School. Law schools eventually realized that the academic mission of the school called for a true library with adequate staffing and a dedicated legal collection.

¶10 During the late nineteenth and early twentieth centuries, law schools began to multiply, and the law library flourished as a stand-alone library separate and distinct from the main university library and the bar association and public libraries. It was Christopher Columbus Langdell, dean of Harvard Law School from 1870 to 1895, who paved the way for “promoting the law library to a preeminent place in the research law school.” It is ironic that the decline in the strength of the academic library may well be due to the twenty-first-century backlash against Langdell’s method of studying law through the casebook. As legal education turns toward the training of practice-ready graduates, the emphasis is moving from what the law is to how to practice law. The law library as the center of the academic law school must reassess its role in that light, in addition to adapting to the world of electronic publishing.

The ABA and the Traditional Collections of Academic Law Libraries

¶11 As the idea that a law school needed a dedicated law library took hold, newly established law schools began to include a law library as an integral part of the enterprise. Tensions quickly arose about what type of library a law school should have. Law schools began to differentiate into large, research-oriented institutions and smaller, “bread-and-butter” institutions. The Association of American Law Schools (AALS) weighed in on this distinction in 1952, when it agreed that

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16. Brock, supra note 8, at 343.
17. Id.
19. Although the law school at the University of Kansas began in 1878, it was not until 1905 that the law school opened a true law library. Joyce A. McCray Pearson, A Brief History of the University of Kansas School of Law Library, 51 U. KAN. L. REV. 873, 877 (2003).
20. Brock, supra note 8, at 344.
21. Id.
the law collection should be a research library, not just a “working library” which would solve the run-of-the-mill problems which cross the lawyer’s desk with frequency. New fields of law demand broader searches and deeper analysis, and we are more aware that the older fields also need the same treatment.22

¶12 As law schools proliferated, two bodies, the AALS and the ABA, would have a direct impact on the growth of academic law libraries and the composition of their collections. Early on, the AALS did not set a high bar for member schools with respect to the composition of the law library collection. In 1900, the AALS Articles of Association, article 6, part 4, stated simply that a law school “shall own, or have convenient access to during all regular library hours, a library containing the reports of the State in which the School is located and of the United States Supreme Court.”23 This was not exactly the deep research library envisioned by Langdell.24 Over the first part of the twentieth century, the AALS would continually revisit these articles, placing a greater burden on accredited schools to have much larger collections.25

¶13 The AALS not only called for increasing volume counts, it also recommended that the academic law library move from being a working library—one designed to support practitioners—to one that focused on gathering a research collection.26 As the AALS emphasized the creation of research collections within academic law libraries, the requirements for those collections grew in depth and breadth.27 The AALS was just one of the driving forces that led to the rapid growth of academic law library collections. A second and more important agent in the late twentieth century, and continuing until today, was the ABA.

¶14 “Since 1952, the Council of the Section of Legal Education and Admissions to the Bar (‘the Council’) of the American Bar Association (‘the ABA’) has been approved by the United States Department of Education as the recognized national agency for the accreditation of programs leading to the J.D.”28 As part of its accreditation process, the Council developed a set of standards for academic law libraries that ensured they would increase their collections to the large size currently found in most of these institutions.

22. Id., (quoting ASS’N OF AM. LAW SCH., SPECIAL COMM. ON LAW SCH. ADMIN. & UNIV. RELATIONS, ANATOMY OF MODERN LEGAL EDUCATION 428 (1961)).
24. See Brock, supra note 8, at 343–44.
25. By 1932 article 6 of the association articles called on member law schools to “own a law library of not less than ten thousand volumes.” ASS’N OF AM. LAW SCH., PROCEEDINGS OF THE ANNUAL MEETING 176 (1932) [hereinafter 1932 AALS PROCEEDINGS]. By 1952 section 6–2, subsection 4, called on member law schools “to maintain and administer a working law school library sufficient to support its educational program, such library to contain not less than 20,000 usable volumes.” ASS’N OF AM. LAW SCH., PROCEEDINGS OF THE ANNUAL MEETING 217 (1952). The total volume requirement was dropped in 1962 with the adoption of a standard that required “[a] library adequate for the curriculum and for research.” ASS’N OF AM. LAW SCH., PROCEEDINGS OF THE ANNUAL MEETING 241 (1962).
While the Council has been approved to act as the accrediting body by the Department of Education since 1952, the ABA’s involvement in legal education stretches back to its founding in 1878. At the ABA’s first meeting, it created the Committee on Legal Education and Admissions to the Bar. This committee recommended, among other things, that state and local bar associations suggest a general course of study within law schools and that the course of study be three years, as a qualification for a candidate to sit for the bar exam. These recommendations were not adopted by the ABA, because “law school graduates were a minority among the practitioners and judges attending the meeting.”

By 1893, the committee was re-formed as the Section on Legal Education and Admissions to the Bar. The section continued to push for standards for law schools, but it was not until 1921 that the ABA promulgated its first Standards for Legal Education. The section and the House of Delegates of the ABA adopted the following resolution at the 1921 meeting:

1) The American Bar Association is of the opinion that every candidate for admission to the bar should give evidence of graduation from a law school complying with the following standards:
   a) It shall require as a condition of admission at least two years of study, in a college.
   b) It shall require its students to pursue a course of three years duration if they devote substantially all of their working time to their studies, and a longer course, equivalent in the number of working hours, if they devote only part of their working time to their studies.
   c) It shall provide an adequate library available for the use of the students.
   d) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body.

2) The American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the bar, and that every candidate should be subjected to an examination by public authority to determine his fitness.

3) The Council on Legal Education and Admissions to the Bar is directed to publish from time to time the names of those law schools which comply with the above standards and of those which do not, and to make such publications available, so far as possible, to intending law students.

4) The president of the Association and the Council on Legal Education and Admissions to the Bar are directed to cooperate with the state and local bar associations to urge upon the duly constituted authorities of the several states the adoption of the above requirements for admission to the bar.

5) The Council on Legal Education and Admissions to the Bar is directed to call a Conference on Legal Education, in the name of the American Bar Association, to which the state and local bar associations shall be invited to send delegates, for the purpose of uniting the bodies represented in an effort to create conditions favorable to the adoption of the principles above set forth.

30. Id.
31. Id.
32. Id. at 440.
34. 44 ANN. REP. ABA 19, 38 (1921).
The earliest approved set of guidelines included a call for an adequate library available for the use of the students. In the proceedings of the 1921 meeting, the section commented that “[w]e consider the library facilities of a law school a matter of great importance, and therefore recommend that a law school shall not be deemed competent to educate students for the bar unless it provides an adequate library available for their use.” At this time, the ABA did not set out specific requirements for the collection of the law library, as the AALS had done in 1900, but it is clear from the language of the section that a library was seen as a necessity for any good law school.

The ABA standards underwent a major revision in the early 1970s, culminating in a revised set of standards that were approved by the ABA House of Delegates in February 1973. These revisions provided a clear set of guidelines for law schools that were either seeking accreditation or looking to keep their current accreditation. The standards once again addressed the need for a law library, but this time they prescribed a specific list of those items a law library “shall” contain if the law school wished to be in compliance with the standards.

§18 These standards set the bar fairly high for new law schools, and they ensured that the more established law schools would continue the rapid expansion of their own law library collections. Academic law libraries therefore not only took up a considerable amount of space within a law school, but they also made up the second-largest portion of a law school’s budget.

§20 While law libraries grew to meet the new standards, new technologies were being developed that would have a significant impact on law library collections. The introduction of electronic legal resources would not only transform how lawyers conducted research in the decades that followed, but would also clash with the ABA standards and force a close review of the traditional law library collection.
The Rise of Electronic Legal Resources and Their Impact on Academic Law Library Collections

The Rise of Electronic Legal Resources

21 The printed book has played a valuable part in legal systems that were born out of the common law tradition. As lawyers and judges looked to legal precedents in order to determine arguments for their cases, access to the legal opinions of the past were vitally important. As a result, law libraries necessarily filled first with the printed reports of courts and then with all the commentary that grew up around them.

22 As the number of reported cases exploded in the latter part of the nineteenth century, legal publishers began publishing volumes of court reports at a rapid pace. At the same time, legal publishers were producing more and more commentaries on the law. Statutory law was rising in prominence, and thus the printed codes of the federal government and the fifty states were important to law library collections. As law schools flourished, academic law journals multiplied, adding another body of knowledge for attorneys to use. By the start of the twentieth century, lawyers were no longer limited to looking at case law. Instead there was a tremendous body of law and commentary that filled the academic law library. Recall that, by the early 1930s, the AALS had called on academic law libraries to have a collection that comprised no less than 10,000 volumes.

23 With an ever-growing body of primary and secondary literature available, lawyers began to think of different ways to research the law. As the twentieth century progressed, advances in computing technology did not go unnoticed by the legal profession. “By the 1960s, there was much talk in the legal profession about the geometric rate of increase in the amount of material a lawyer had to scan to do a comprehensive job of legal research.” With this in mind, lawyers began to look at newly emerging technologies as a potential solution to this information overload.

24 Academics were some of the first to put the new technologies to the test, with a pilot digitization project that started at the University of Pittsburgh in the early 1960s. The first major nonacademic foray into harnessing the power of

39. “The growth of court reports during the 19th century had been exponential. In 1810 there were 18 volumes of American reports. The number in 1848 had grown to 800. And less than 40 years later, in 1885, there were nearly 3,800.” Thomas A. Woxland, “Forever Associated with the Practice of Law”: The Early Years of the West Publishing Company, 5 LEGAL REFERENCE SERVICES Q., 1985, no. 1, at 115, 117.
40. 1932 AALS PROCEEDINGS, supra note 25, at 176.
42. Since the rise of the legal publishing industry, lawyers have been decrying the overwhelming amounts of information they must survey. In 1882, J.L. High wrote with exasperation about the ever-increasing number of law reports being produced. “[U]nless some means shall speedily be devised of checking this appalling number of publications, it is perhaps within the bounds of moderation to assert that lawyers now in practice at the bar may live to see the number of volumes of reports in the English-speaking countries exceed twenty thousand.” J.L. High, What Shall Be Done with the Reports?, 16 AM. L. REV. 429, 435 (1882).
43. Harrington, supra note 41, at 544.
computers in the legal research process was undertaken by the Ohio State Bar Association (OSBA). The goal of this group was to create a “nonindexed, full-text, on-line, interactive, computer-assisted legal research service.”44 In essence, the group wanted the electronic equivalent of a law library’s print collection, with the searching capability to look through the whole library at once.

¶25 The OSBA created the Ohio Bar Automated Research (OBAR) nonprofit and partnered with the Dayton-based Data Corporation to begin developing this new research database.45 This early experiment in computer-assisted legal research would eventually lead to the creation of the first mass-market electronic research service, Lexis. In 1969, the Mead Corporation bought Data Corporation, forming Mead Data Central, which eventually produced Lexis and released it to the legal marketplace in 1973.46

¶26 Hot on the heels of the Lexis release came the announcement that the venerable legal publisher West Publishing would release its own electronic legal research system, known as Westlaw. Westlaw went on the market in 1975.47 The creation of Westlaw certainly contributed to the decline of the print law library. The dominant legal publisher had committed to converting its legal content to electronic form and making it accessible to its subscribers. William Harrington, one of the primary architects of computer-assisted legal research, predicted in 1984 that “[p]rint publication will not disappear, but electronic publishing will be the principal way the law profession obtains current information and digs through the world’s archives.”48

¶27 Interestingly enough, Harrington also recognized that while the growth of electronic legal resources would affect the collections of law libraries, it would not eliminate the need for information professionals like librarians. In fact, he believed that libraries and librarians would become more important. The function of a librarian, after all, is not just to act as the custodian of an information warehouse; it is to make information useful, which of course means being able to call it out when it is needed. Already there are professionals who specialize in helping people to select the right electronic library and retrieve information from it. These specialists know what each library contains and how to use the various search protocols to retrieve it. With more and more information being created and stored, finding it and bringing it out becomes an increasingly important specialty. Rather than making librarians obsolete, the development of computer-assisted legal research makes librarians even more valuable.49

¶28 The question of whether print or electronic sources are best for legal research is beyond the scope of this article. It is well established that electronic research has been, and will continue to be, a substantial part of a lawyer’s arsenal.50

44. Id. at 545.
45. Id. at 547–48.
46. Id. at 553.
47. Id.
48. Id. at 555.
49. Id. at 556.
50. As early as 1986, it was recognized that “LEXIS and WESTLAW already have become an integral part of the arsenal of research tools.” Robert C. Berring, Full-Text Databases and Legal Research: Backing into the Future, 1 HIGH TECH L.J. 27, 28 (1986).
This article focuses on how the shift from print to electronic sources affects collection development in academic law libraries.

**The Cost of Keeping Everything in Print**

¶29 Since the turn of the twenty-first century, one of the big decisions facing academic law libraries has been what to do about print primary sources. Three forces are driving this question. The first is the dramatically rising price of these resources,51 the second is the cost of the space used to house them, and the third is their widespread availability in various electronic venues.

¶30 Academic law library acquisition budgets were, as a general rule, flat or declining over the first decade of the twenty-first century. In fact, according to a recent study conducted by the American Association of Law Libraries (AALL), “nearly 60 percent of its respondents have been making do with less for the past several years.”52 Some libraries have seen as much as a fifteen percent cut to their acquisition budgets.53 Thus, the steep increase in the cost of print primary sources has made it more difficult for academic law libraries to develop their collections in areas that are not available electronically. Monographs, for example, are not widely accessible online. If law libraries spend a higher proportion of their shrinking budgets on print primary sources that are duplicated online, they will be forced to cut back on items that are available only in print.

¶31 Library shelf space is another factor in the quandary over print primary sources. In the period from 1998 to 2008, academic law libraries reported a slight decrease in the amount of shelf space available in their libraries. According to the Comprehensive Law Library Statistical Table, published by the ABA, in 1998 law libraries at accredited law schools reported having a median of 39,449 linear feet of shelving capacity; ten years later, that number was 39,289.54

¶32 During this same time period, legal materials continued to be published at a rapid pace. For example, between 1998 and 2008, West published close to two hundred volumes of their *North Eastern Reporter, 2d*, which take up approximately

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51. For example, the per-volume cost of West’s *Federal Reporter* rose from $129 in January 2009 to $269 in January 2013, a more than 100% increase in four short years. E-mail from Darin K. Fox, Director of the Law Library at University of Oklahoma Law Center, to author (Feb. 15, 2013) (on file with author). According to the 2012 *AALL Price Index for Legal Publications*, the cost of materials rose between 2011 and 2012 in most areas. For example, the price of serials increased by 9.91%, reporters by 39.80%, and supplemented treatises by 9.26%. In the meantime, the price of materials in electronic format decreased by 3.17%. *Am. Ass’n of Law Libraries, Price Index for Legal Publications 2012*, http://www.aallnet.org/Documents/Publications/Price-Index/price-index-2012.pdf (available to AALL members only).


54. Am. Bar Ass’n, Section on Legal Education & Admissions to the Bar, Comprehensive Law Library Statistical Table—Data from Fall 1998 Annual Questionnaire (1999) (on file with author); Am. Bar Ass’n, Section on Legal Education & Admissions to the Bar, Comprehensive Law Library Statistical Table—Data from Fall 2008 Annual Questionnaire (2009) [hereinafter Data from Fall 2008 Annual Questionnaire] (on file with author).
thirty-nine linear feet of shelf space. If the rest of the components of West’s National Reporter System grew at a similar rate, that would account for 390 linear feet of shelf space needed just for this one group of publications. Given that academic law libraries, like law firm law libraries, appear more likely to be losing space than gaining it, continuing to acquire resources in print that are available online is bound to cause problems for libraries.

¶33 The third factor in the decision about maintaining print primary sources is that many of them are easily accessible in various locations online. This issue was already being considered as early as 1986, when one of the law library world’s pre-eminent thinkers predicted that “[i]n the law office of the future, the firm computer will provide reporters and digests on-line.” Given the cost of purchasing and housing these resources in print, it seems like a dubious financial decision to spend money on these resources when they can be accessed electronically. Let’s take West’s New York Supplement, 2d Series as an example. This source contains the reported decisions of New York’s appellate courts. The cost of this resource in print rose from $131 per volume in January 2009 to $325 in January 2013, an increase of about 150%. The cases reported in these volumes are also available in no fewer than six fee-based online databases, multiple free online sources including Google Scholar, and the website of the New York appellate courts.

¶34 The three factors discussed above, taken together, reveal that duplicating electronic sources by also acquiring them in print is problematic for academic law libraries. Another problem they face, however, in balancing electronic and print resources in their collections is meeting the standards of their accrediting organizations.

The ABA Standards and the Rise of Digital Information

¶35 The AALS was the first to officially recognize the growing importance of electronic materials when, in 1991, it changed its requirements relating to law libraries. Rather than an exhaustive list of the print publications a law library needed to own, the new AALS regulations included databases as one of the ways in


57. Berring, supra note 50, at 59.


59. See AM. ASS’N OF LAW LIBRARIES, supra note 51.

60. These include Westlaw, LexisNexis, Bloomberg Law, Casemaker, Loislaw, and Fastcase.


which access to materials could be provided. The executive committee’s explanation for these revisions acknowledges directly the technological changes under way in the information world, and it was not long before the ABA made a similar move in the ABA standards.

¶36 After the publication of the fairly rigid standards of the 1970s, the ABA was slow to acknowledge that even academic law libraries were moving steadily toward online-only access for the preponderance of their resources. In 1995, for the first time, the ABA standards for law library collections were changed to reflect the growing importance of online access to legal materials. The 1995 standards finally recognized that print was not the primary format for a collection. Interpretation 1 of Standard 606(a) stated, “The word ‘collection’ includes printed sources, microforms, audiovisual works, and access to electronic formats.” At the same time, the ABA was careful to make it clear that a shift to primarily one medium would not be sufficient to meet the standards (presumably this was aimed at those institutions that wanted to eliminate their print collections). Interpretation 4 of Standard 606(a) stated, “At present, no single publishing medium (electronic, print, microform, audiovisual) provides sufficient access to the breadth and depth of recorded knowledge and information needed to bring a law school into compliance with Standard 606. Consequently, a collection that consists of a single format may violate Standard 606.”

¶37 Prior to the 1995 ABA annual meeting, the Section of Legal Education and Admissions to the Bar had held numerous hearings, which culminated in their asking the ABA House of Delegates to adopt these sweeping changes to the standards. In explaining the reasons for these changes, Jose R. Garcia-Pedrosa (the delegate to the convention from the section) said that the amended standards and interpretations are intended to incorporate into the law library standards the enormous changes that computerization and the electronic revolution have brought about in the manner in which lawyers and law students perform legal research and memorialize and communicate the product thereof, and to lessen the weight of the regulatory hand by requiring that a law library meet various needs of the programs, faculty and students of the law school that library serves, as opposed to being required to meet specific criteria applicable to all law libraries at all law schools.

63. 8.5 Access to Information Resources. Availability of information resources includes ready access to central collections, databases, jointly held special collections, numerous supportive interdisciplinary materials, and any other type of off-site auxiliary resources that may enhance the member school’s ability to meet, and especially exceed, the objectives stated in Bylaw 6-1. This requirement also envisions that the library will provide resources sufficient to ensure reasonable availability by faculty and students, which may require duplication of certain materials. “Ready access” means reasonable access in terms of time and form based upon the type of material and nature of the teaching and research being performed.


64. “The regulations acknowledge the importance of having information resources within the library’s collection as well as having access to information resources through networks, consortia, or other cooperative activities. The approach of the amendments is to allow sufficient flexibility in the regulations for technological and financial changes in library science.” Ass’n of Am. Law Sch., Proceedings of the 1991 Annual Meeting 91 (1991).


66. Id.


It is interesting to note that in the explanation of the proposed revisions, the section felt the need to point out to the delegates “that neither the current Standards nor the proposed amendments of those Standards require, nor even recommend, the number of books or computers that a law school must have.”69

¶38 The standards continued to set forth what types of materials must be present in a law library’s core collection. The list simply moved from the appendix of the standards to the interpretations.70 The essence of what a law library collection should contain remained the same, presumably in recognition that a core collection of legal materials was still necessary for legal research by the faculty and students. The key point to emerge from the new standards was the acknowledgment, as laid out in Interpretation 2 of Standard 606(b), that the format of the core materials depended more on the needs of the library and its patrons than on the materials themselves.71

¶39 This point became the focus of the subsequent revision of the standards as they relate to law libraries, which came about in 2005, after the Council of the Section of Legal Education and Admissions to the Bar sought comments on proposed revisions to various chapters, including chapter 6.72 For the first time, the ABA added the word scholarship to Standard 601(b) and (c), stating that the “resources necessary to support scholarship, especially faculty scholarship, may be different than the resources necessary to satisfy the more general requirement that there be sufficient support of research.”73 This official recognition of the fundamental divide between academic and practical law libraries harkens back to the very beginnings of law schools and their libraries. In the twenty-first century, that divide will be yet another factor affecting the balance of print and electronic resources in academic law libraries.

¶40 The 2005 revision of the standards also made allowance for the increasing reliance on online resources, but the revised Interpretation 601-1 cautioned libraries that “providing electronic access to materials alone would not satisfy the Standard.”74 This revision, coupled with Interpretation 606-2, which retained the statement that “[a] collection that consists of a single format may violate Standard 606,”75 should give pause to academic law libraries planning to move their entire collections online. How much of the collection can be in one format continues to be the parameter that tests the boundaries of these standards.

¶41 The tension about print versus digital collections can be seen in the slight but important revisions to Standard 606 on the content of the collection in that same year.76 The Council specifically revised the standard with an eye toward

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70.  See infra appendix C for the list.
71.  *A.M. Bar Ass’n*, supra note 65, at 51.
73.  Id. at 491.
74.  Id.
76.  While the Council continued to dance around the question of what format the collection must be provided in, it made very few changes to what the core collection should actually include. The only change made was to require only current treaties, international agreements of the United States, and current federal and state regulations. *Report No. 3 of the Section*, supra note 72, at 492. See infra appendix D for Interpretation 606-5.
providing flexibility to libraries “in view of the availability of different formats and the needs of the library’s clientele in the rapidly changing law library environment.”

The Council called this a functionality test, which recognized “a better approach to ensuring sufficient access to needed materials.”

¶42 The previous language of Standard 606, from 2000, was as follows:

Standard 606(a) A law library collection, including printed sources, microforms, audiovisual works, and access to electronic informational resources, shall:

(1) meet the research needs of the law school’s students, satisfy the demands of the law school curriculum, and facilitate the education of its students;
(2) support the teaching, research, and service interests of faculty; and
(3) serve the school’s special teaching, research, and service objectives.

(b) A law library shall provide within the law school’s facilities, through ownership or reliable access, a core collection of essential materials.

¶43 The new language was changed to read:

Standard 606(a) The law library shall provide a core collection of essential materials accessible in the law library.

(b) In addition to the core collection of essential materials, a law library shall also provide a collection that, through ownership or reliable access,

(1) meets the research needs of the law school’s students, satisfies the demands of the law school curriculum, and facilitates the education of its students;
(2) supports the teaching, scholarship, research, and service interests of faculty; and
(3) serves the school’s special teaching, scholarship, research, and service objectives.

¶44 The standards thus finally took into account the reality that digital materials were dramatically affecting the collections of academic law libraries. The changes in the 2005 standards signaled a shift in their requirements: they no longer dictated a specific format for the collection, and they focused on what sorts of content the collection should provide rather than specifying exactly what the collection should contain. In addition, the Council recognized in this revision that law libraries needed not only to ensure sufficient access to necessary materials, but to do so in a cost-effective manner.

¶45 Since 2005, digital information has continued to evolve and expand. While law libraries’ collections have continued to transition from print to electronic, the standards have not changed. The conversation has continued, and in late 2012, the Council approved proposed revisions to the standards regarding law libraries. The proposed changes were announced, and interested individuals were given until May 14, 2013, to submit comments. A hearing on the proposed changes was sched-

77. Report No. 3 of the Section, supra note 72, at 492.
78. Id.
81. Report No. 3 of the Section, supra note 72, at 492.
82. Id.
uled for that same date. The transcript of the hearing does not reveal a ground-swell of opposition to the proposed changes. One witness, Gordon Russell, called for even less stringent language than the already more liberal terms included in the proposed standard. There were a small number of written comments submitted to the committee, which ranged from wholesale support to vehement opposition. In the absence of any strong objection to the proposed changes, there is some hope that the ABA will approve further reform of the standards.

During the past eight years, there has been mounting pressure from outside groups to lower the cost of legal education. The ABA standards are seen as one of the main culprits in keeping costs high. In 2013, the Illinois State Bar Association released a report from a special committee that studied the impact of law school debt on the delivery of legal services. In the report, the special committee “developed a series of recommendations to mitigate the law school debt crisis and transform legal education to focus on educating lawyers for practice at an affordable price.” The special committee recommended reform of the ABA standards,

84. Id.
86. We believe that the changes to Chapter 6 do, as stated by the Standards Review Committee, more concretely link library performance to the mission of the law school, require measurements that are more outcome-related and focus on quality instead of quantity, and alter the Standards to reflect the ways that legal information can be accessed or acquired in the 21st century. The notion of creating bigger and bigger libraries simply to gain bragging rights or some infinitesimal boost in artificial rankings must give way to realistic ways of providing information to faculty and students. The revisions create an atmosphere in which this can be accomplished. Comment of Hank Molinengo, Associate Dean for Administrative Affairs, Professional Lecturer in Law, George Washington University Law School (Feb. 25, 2013), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/201305_comment_ch_6_7_george_washington_university.authcheckdam.pdf.
87. “The deletion again underscores the modern preference for computer databases over books, and enables a law library to satisfy ABA standards by providing only electronic access, thus obviating the need for physical facilities to house books. These revisions undermine the critical responsibility of law libraries to serve students, faculty, and the community at large.” Comment of James W. Ellis, Distinguished Professor of Law, University of New Mexico College of Law, et al. (May 10, 2013), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/201305_comment_ch_6_7_university_new_mexico.authcheckdam.pdf.
88. In an ironic twist, the AALS revised their regulations to bring back the requirement that a law library needs to “possess or have ready access to a physical collection and other information resources . . . .” Bylaws Section 6–8, in ASS’N OF AM. LAW SCH., ASSOCIATION HANDBOOK 65–66 (2013).
90. Id. at 4.
including “allow[ing] law schools to meet the requirements for library collection through digital access.”

¶47 The proposed Standard 606 “reflects the change from an emphasis on ownership of materials to providing reliable access to legal information.” The standards adopted in 2005 stated, “The law library shall provide a core collection of essential materials accessible in the law library.” The proposed standard provides that “The law library shall provide a core collection of essential materials through ownership or reliable access.” It goes on to say that

choice of format and of ownership in the library or a particular means of reliable access for any type of materials in the collection, including the core collection, shall effectively support the law school’s curricular, scholarly, and service programs and objectives, and the role of the library in preparing students for effective, ethical, and responsible participation in the legal profession.

This may be one of the most important shifts in the standard, recognizing as it does that one size does not fit all. This proposed change might well allow academic law libraries to differentiate themselves from one another while staying within the bounds of the standards.

¶48 Furthermore, in the proposed revisions, the list of core titles has been removed from Interpretation 606-5 and included as Standard 606(b). No explanation is provided for this change, and only minor alterations have been made to the list. Proposed Interpretation 606-2 spells out in much more detail than prior versions of the standards exactly what “reliable access” might mean:

> Interpretation 606-2
> Reliable access to information resources may be provided through:
> a) databases to which the library or the parent institution subscribe or own and are likely to continue to subscribe and provide access;
> b) authenticated and credible databases that are available to the public at no charge and are likely to continue to be available to the public at no charge; or
> c) participation in a formal resource-sharing arrangement through which materials are made available, via electronic or physical delivery, to users within a reasonable time period.

These changes, if adopted, would go a long way toward allowing law libraries to shift the bulk of their collection from print to online. The Council was not, however, willing to endorse a strictly online-only academic law library. Proposed Interpretation 606-1 continues to carry the cautionary note from the previous versions of the standards that “[a] collection that consists of a single format may violate Standard 606.”

91. Id. at 5.
93. Id. at 6.
94. Id.
95. See infra appendix E for the list of proposed core titles.
96. Syverud & Currier, supra note 83, at 7–8.
97. Id. at 7.
The question that remains for libraries seeking to invest primarily in electronic resources and eliminate print is exactly how many of the legal materials they need can actually be found online.

Is the Print World Duplicated Online?

If, as some have recommended, the physical academic law library is to be phased out, it must first be established that all the necessary print resources are duplicated online. The debate over whether print should be eliminated in favor of digital materials has been raging for twenty years or more. While much has been, and will likely continue to be, written about the benefits of each format over the other, this article focuses instead on the intersection of digital information and the academic law library collection envisioned by Standard 606. It may well be, as Michelle Wu has suggested, that both formats are still needed—but how much of each? This section investigates this question by examining the digital availability of the required materials set forth in the current ABA Standard 606 and Interpretation 606-5.

The Growth of Digital Information’s Duplication of Print Materials

In 1998, the University of Washington Law Library undertook a study to try to determine what percentage of its print collection was duplicated on Westlaw and Lexis. That study concluded that only 13% of the print collection was duplicated online. The study was based almost exclusively on primary legal materials and academic law journals and excluded treatises and other types of secondary sources. One of the predictions of the study, which directly affects the current state of the academic law library, revolved around those items not found online. The article asks:

[W]hat is in the 87% of the collection that is not duplicated online? Much of what makes this a valuable research library is not duplicated online today and may NEVER be—historical works, foreign legal materials, back runs of periodicals, older editions of treatises, biographies, collections of essays, government reports, and more.

In 2002, Gordon Russell, then director of the St. Thomas University Law Library in Miami, Florida, wrote a response to Penny Hazelton’s article. In his article, Russell took issue with Hazelton’s findings and conclusions and predicted

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101. Id. at 4.
102. Id. at 6.
103. Id. at 7.
the demise of the print library as access to online resources continued to grow. Russell predicted that

[t]he Alexandrian library of the future will be digital, for the masses of our day demand access to society’s cultural riches wherever and whenever they please. If we embrace technology now, our collections, our services, and our stature as a profession will grow in quality and sustainability even as our board feet shelving needs decrease accordingly.\textsuperscript{105}

The truth of the conclusions and predictions of both Hazelton and Russell exists somewhere in the middle, though the evidence is a bit heavier on Russell’s side of the scale.

\textnumero{53} Much of the material Hazelton’s study found to be unavailable online has since been made available. For example, the 1998 study noted that not all the material in the National Reporter System was online.\textsuperscript{106} Today all the cases of the National Reporter System are available on Westlaw, LexisNexis, and Bloomberg Law.\textsuperscript{107} The study found that legal periodicals were not reliably complete for volumes prior to 1994.\textsuperscript{108} This is no longer the case for academic legal periodicals and for many ABA-sponsored legal journals.

\textnumero{54} The online offerings of Westlaw and LexisNexis have expanded greatly over time. In 1992, the Westlaw Database Directory was 140 pages long. In 2000 (shortly after Hazelton’s article appeared), the directory had grown to 700 pages, and by 2007, it had grown to 1150 pages.\textsuperscript{109} The LexisNexis service saw similar growth in its offerings. In 1994, the LexisNexis database directory alphabetical listing ran to 124 pages;\textsuperscript{110} in 1999 that had grown to 231 pages,\textsuperscript{111} and by 2007 it had grown to 401 pages.\textsuperscript{112} In 1994, the LexisNexis database contained about 70 legal periodicals;\textsuperscript{113} this number had grown to more than 650 by 2004.\textsuperscript{114} Similarly, LexisNexis’s inclusion of secondary sources increased across the board. For example, in 1994 it contained only four secondary sources;\textsuperscript{115} by 2004 it had seventy-four.\textsuperscript{116} This growth in resources was seen across the LexisNexis service: in 2004 LexisNexis added 1300 new resources,\textsuperscript{117} and in 2007 it added 1150.\textsuperscript{118} This dramatic increase in online offerings is in line with Russell’s predictions that there would be continued growth in online access to legal materials.

\begin{itemize}
\item \textsuperscript{105} Id. at 30–31.
\item \textsuperscript{106} Hazelton, \textit{supra} note 100, at 8.
\item \textsuperscript{107} See ¶¶ 56–62 infra.
\item \textsuperscript{108} Hazelton, \textit{supra} note 100, at 10.
\item \textsuperscript{109} E-mail from Diana Yund, Law School Product Specialist at Thomson Reuters, to author (Apr. 24, 2013) (on file with author) who reviewed these sources at the Thomson Reuters Corporate Library in Eagan, Minnesota.
\item \textsuperscript{110} \textit{Lexis-Nexis Library Content Alphabetical List Quick Reference} (1994) [hereinafter 1994 \textit{Lexis-Nexis Library Content}]. Special thanks to Patricia J. Carter, Manager of the LexisNexis Technical Library, for gathering older versions of the LexisNexis directories for use in this article.
\item \textsuperscript{111} \textit{Lexis-Nexis Directory of Online Services} (1999).
\item \textsuperscript{112} \textit{Lexis-Nexis Directory of Online Services} (2007).
\item \textsuperscript{113} 1994 \textit{Lexis-Nexis Library Content}, \textit{supra} note 110.
\item \textsuperscript{114} \textit{Lexis-Nexis Directory of Online Services} (2004).
\item \textsuperscript{115} 1994 \textit{Lexis-Nexis Library Content}, \textit{supra} note 110.
\item \textsuperscript{116} \textit{Lexis-Nexis Directory of Online Services} (2004).
\item \textsuperscript{117} Id.
\item \textsuperscript{118} \textit{Lexis-Nexis Directory of Online Services} (2007).
\end{itemize}
How Much of the Core Collection Is Duplicated Online?

§55 In terms of the resources required by ABA Standard 606, how much of the academic law library core collection is actually duplicated online? Hazelton's 1999 article indicated that only 13% of the print collection was duplicated online at that time.119 Since then, however, many of the resources Hazelton identified as valuable to a research library have been made accessible online. How then should the academic law library determine what part of its collection is duplicated online? One useful measure is to look at each piece of ABA Standard Interpretation 606-5120 and determine how much of the material is available online.

1. All reported federal court decisions and reported decisions of the highest appellate court of each state. Available on LexisNexis, Westlaw, and Bloomberg Law, including both current and historical decisions. Current opinions of the overwhelming majority of state and federal courts are also available via the courts' web sites.

2. All federal codes and session laws, and at least one current annotated code for each state. Available on LexisNexis, Westlaw, and Bloomberg Law. Current unannotated versions of the statutes are available on Bloomberg Law as well as the legislatures' web sites.

3. All current published treaties and international agreements of the United States. Available on LexisNexis, Westlaw, and HeinOnline, including both current and historical agreements. Current agreements are also available on the State Department’s web site.

4. All current published regulations (codified and uncodified) of the federal government and the codified regulations of the state in which the law school is located. Available on LexisNexis, Westlaw, and Bloomberg Law. Current regulations of the overwhelming majority of state and federal agencies are also available via the agencies’ web sites.

§56 For the first four items, it is clear that academic law libraries that subscribe to even one of the major databases will have reliable access to all of these resources. Given that almost every academic law library subscribes to at least LexisNexis and Westlaw,121 with more and more subscribing to Bloomberg Law,122 there is already, at minimum, double coverage of these materials.

5. Those federal and state administrative decisions appropriate to the programs of the law school. Available on LexisNexis and Westlaw, including current

119. Hazelton, supra note 100, at 4.
120. See infra appendix D. This section of this article focuses on the current text of the standard and not the proposed revisions to the core collection being considered in the 2013 drafts. Even if the 2013 proposed changes are adopted, the changes in the core collection are so minor that relying on the current core collection descriptions serves as well for this exercise.
121. E-mail from Lori Chester, West Academic Representative, to author (June 3, 2013) [hereinafter Chester e-mail] (on file with author) (confirming that all ABA-approved law schools currently subscribe to Westlaw).
122. As of June 2013, 170 of ABA-approved law schools subscribe to Bloomberg Law. E-mail from Jill Goodkind, Bloomberg Law representative, to author (June 6, 2013) (on file with author).
and many historical decisions. Current decisions for many agencies are also available via the agency’s web site.

6. **U.S. Congressional materials appropriate to the programs of the law school.** Available on LexisNexis and Westlaw, including access to congressional testimony, hearings, committee reports, and committee prints. Both current and historical documents are available. Current (and some past) coverage of these documents is available on the Library of Congress web site at no cost, as well as on many congressional committee web pages.

¶57 For items 5 and 6, once again, academic law libraries that subscribe to even one of the major databases will have reliable access to all of these resources. Given that almost every academic law library subscribes to at least LexisNexis and Westlaw,¹²³ there is already, at minimum, double coverage of these materials. For these two items, careful consideration must be given to the curricular, research, and scholarship needs of the faculty and the school. Because items 5 and 6 are reference materials “appropriate to the programs of the law school,” it will be up to the law library to ascertain what these needs are and to ensure that the online offerings are sufficient to meet them.

7. **Significant secondary works necessary to support the programs of the law school.**

¶58 We now come to the one area of the standards where electronic access becomes more difficult. Many secondary works are available online, but many are not. Most of the heavily used secondary sources can be found on proprietary databases such as Westlaw, LexisNexis, Bloomberg Law, and CCH IntelliConnect. Major secondary sources such as legal encyclopedias, *American Law Reports*, legal periodicals, and loose-leaf services, as well as some of the leading treatises such as *Chisum on Patents* and *Nimmer on Copyright*, can be found online. But there are still many legal treatises that either are not available online, or are items that law faculty prefer to use in print.

¶59 For example, in the 2011 edition of *Recommended Publications for Legal Research*,¹²⁴ there are just over 500 new titles listed. Of those titles, fewer than 5% can be accessed through one of the large legal research databases.¹²⁵ While in the future more of such titles might be made available online, the present reality suggests that many legal treatises are still published exclusively in print. The availability of legal treatises online varies from publisher to publisher, and each school will have to choose whether to provide electronic access whenever possible or whether to acquire these items in print only.

¶60 Item 7 is worded in a way that allows law schools to make decisions based on their individual circumstances. One school might get away with providing many of its treatises online, while another might find its faculty up in arms if the

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¹²³. Chester e-mail, *supra* note 121.
¹²⁵. These data were compiled based on searching these titles in a law library online catalog, and searching Westlaw, LexisNexis, and Bloomberg Law databases to see if any of them were available in an electronic format.
print version of *Corbin on Contracts* is removed from the shelf. Regardless of how much online access a law library provides, if during a sabbatical inspection an ABA inspector hears from law faculty and students that they are not able to effectively conduct their research and scholarship, it is less likely that the law library will be judged to be meeting the requirement expressed in this part of the standard.

8. *Those tools, such as citators and periodical indexes, necessary to identify primary and secondary legal information and update primary legal information.*

%61 It has been a number of years since citators, periodical indexes, or the library catalog have been used in a print format. Shepard’s and KeyCite are used exclusively online, and the advances in periodical indexing make it far more convenient and fruitful to use indexes such as LegalTrac and the Index to Legal Periodicals online than to use their print counterparts. The card catalog of yesteryear has been transformed into a global search engine that provides patrons with access to all of the law library’s print collection, and, increasingly, to its online holdings as well.

%62 Given that seven out of the eight areas of the core collection are accessible in multiple online venues, both fee-based and free, it seems reasonable to conclude that the vast majority of a law library’s collection could be made reliably available online, and the associated print volumes eliminated. Yet Standard 606 still cautions against collections in a single format, most likely due to the secondary works discussed under item 7 of Standard Interpretation 606-5 above. What, then, will the twenty-first-century academic law library look like?

**ABA Standard 606 and the New Model of the Academic Law Library**

%63 If, as the findings above suggest, the majority of legal information to which an academic law library must provide access is available online, to what extent should the twenty-first-century academic law library keep a print collection? Answering this question must, once again, begin with an examination of ABA Standard 606(a–b):

(a) The law library shall provide a core collection of essential materials accessible in the law library.

(b) In addition to the core collection of essential materials, a law library shall also provide a collection that, through ownership or reliable access,

(1) meets the research needs of the law school’s students, satisfies the demands of the law school curriculum, and facilitates the education of its students;

(2) supports the teaching, scholarship, research, and service interests of the faculty; and

(3) serves the law school’s special teaching, scholarship, research, and service objectives.

%64 One factor in determining if a law library needs a print collection is whether the ABA adopts the proposed changes to these standards. If it does so, then academic law libraries will be much freer to transition to a predominantly online environment. As discussed previously, however, adherence to the standards still

precludes an exclusively online environment, as the proposed revisions retain the
warning that a collection that consists of a single format might violate the
standards.127

¶65 Perhaps the bigger challenge will be to satisfy the second part of the stan-
standard, that is, to provide a collection that meets the research needs of the law
school’s students, satisfies the demands of the law school curriculum, and facili-
tates the education of its students; supports the teaching, scholarship, research, and
service interests of faculty; and serves the school’s special teaching, scholarship,
research, and service objectives. It seems that the ABA standards are becoming flex-
ible enough to allow different academic law libraries to collect and organize their
information in a way that could vary from collection to collection based on the
needs of the particular institution.

¶66 In pursuing the goal of training practice-ready graduates, what could
evolve is a return to the old. Recall that in the earliest days of law schools, the law
library was usually not much more than the personal library of one of the founders
or professors of the school.128 If academic law libraries were simply to mimic prac-
titioners’ law libraries, then online-only law libraries could become the rule rather
than the exception throughout the academic world.129 But law school libraries
must conform to the ABA standards, which call for them to support not only the
research of the students and faculty, but their scholarship as well. While some
might dispute the value of scholarship,130 it is clear that the ABA considers it to be
one of the pillars of a law school, and therefore a law library is charged with sup-
porting it.

¶67 Given that the responsibilities of the academic law library differ from those
of the law firm library, how can it move entirely away from print resources? Each
institution must make this decision for itself, but this article proposes a model
whereby an academic institution could create a collection that is primarily online,
while complying with the ABA standards; living within tight collection develop-
ment budgets; and meeting the teaching, research, and scholarship needs of its
faculty and students.

¶68 The idea that academic law libraries would move away from print collec-
tions was explored by AALL in the 2002 report of the Special Committee on the
Future of Law Libraries in the Digital Age. In that report, the committee found that
law librarians recognized that the transition to digital libraries was very real, and
that the hybrid library was the most realistic future for law libraries.131

128. See Brock, supra note 8, at 331.
129. For a short article arguing that the academic law library should follow the lead of law
firms in their collection development goals, see Victoria Trotta, Collection Development in Academic
130. See, e.g., the statement of Chief Justice John Roberts to the 4th Circuit Judicial
Conference: “[W]hen asked about the influence of [law reviews] on Supreme Court opinions, Chief
Justice John G. Roberts Jr. dismissed them as abstract and irrelevant.” Richard Brust, The High Bench
vs. the Ivory Tower: More Law Reviews Give Professors Places to Publish, but Judges Stick Up Their Noses
131. BEYOND THE BOUNDARIES: REPORT OF THE SPECIAL COMMITTEE ON THE FUTURE OF LAW
LIBRARIES IN A DIGITAL AGE 63 (2002), available at http://www.aallnet.org/Archived/Leadership-
Governance/committees/final-report-including-appendices.pdf.
Some of the largest research-oriented law libraries have already begun to embrace this change. For example, in 2010, the Harvard Law Library “revised its collection development policy and made several ‘digital only’ changes to its collections practices.” These changes included canceling subscriptions to lower federal court reporters and state reporters. Both the Yale and Cornell law libraries have followed suit, canceling almost all the print reporters contained in the National Reporter System. This change is certainly in line with what is happening in law firms.

As academic law libraries make the inevitable transition to primarily digital collections, they should consider carefully what parts of their print collections to cancel. Several articles have already addressed this topic, providing advice on criteria to be used in choosing between print and digital information sources. Two key factors law libraries identified in deciding to cancel print resources were cost and efficiency of information retrieval. While these are important considerations, because ABA Standard 606(b) calls for the law library to provide a collection (through ownership or reliable access) that meets and supports the teaching, scholarship, research, and service needs of the faculty and the curriculum, perhaps a more crucial one is the actual use patterns of faculty and students.

Including patrons in the decision-making process will certainly ease the transition from print to digital. Rita Reusch has commented that when making these tough choices, academic law libraries should consider whether to include the faculty in the conversation, perhaps through the library committee (if one exists) at the law school. They should also think about whether to publicize the cancellations or simply wait for faculty, or others, to complain. One thing is certain: if the faculty is not consulted during this process, a law library director will most certainly hear about it during the law school’s next ABA sabbatical inspection.

In 2002, in an excellent piece of analysis, Michael Chiorazzi hypothesized that the twenty-first-century law library could exist with a print collection of 25,000 volumes. This proposition was based in part on the Pareto principle,
which “states that 80% of use (or need) is met by 20% of available resources.” Indeed, Chiorazzi argued that in truth closer to ninety percent of patrons’ needs are met by digital materials, which include primary sources of law, international agreements, and standard secondary sources (including legal periodicals). While this proposal was a bold attempt to whittle down the print collection of the academic law library, the present article’s evaluation, coupled with the evolving nature of the ABA standards, suggests that it is time for a more aggressive elimination of print sources.

The current ABA Standard 606 and the proposed revision to the standard arguably eliminate the need for a collection that retains many of the print sources in Chiorazzi’s hypothetical library. The ability to reliably access virtually all American primary materials online allows the elimination of all print reporters and the majority of state codes and international agreements. Shepard’s in print has been obsolete for well over a decade, and its use is tantamount to malpractice. Legal periodicals are widely distributed online in multiple formats, and some well-respected journals have already made the leap to online-only publication. In fact, some of the larger academic law libraries have begun to cancel their subscriptions to student-edited law reviews in print, as well as to the more expensive journals that are available in online databases subscribed to by a university’s main library. Many of the key legal titles from Thomson Reuters, LexisNexis, CCH, and Bloomberg BNA are accessible via their online portals. The one area where reliable digital access remains elusive, as noted previously, is legal treatises.

The findings presented here constitute strong evidence that the academic law library of the twenty-first century will consist primarily of reliably accessible digital information, with a print collection restricted to the following:

1. The official reports (if any) of the appellate decisions of the school’s home state, or, if there are no official reports, the reporter that publishes the appellate decisions.

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141. Id. at 4.
142. Id. at 5. The 25,000 volumes include the entire National Reporter System, the federal codes and regulations, all state codes, the American Law Reports, digests, legal encyclopedias, Shepard’s, treatises and loose-leaves from prominent publishers, and legal periodicals. Id. at 9.
145. Aiken, Cadmus & Shapiro, supra note 134, at 15.
146. While it is true that publishers are beginning to work with libraries to sell bundles of e-books, this format is still in a developmental stage. Most e-books are popular titles rather than scholarly legal treatises, and some publishers have expressed reluctance to provide cost-effective licensing terms to law libraries. Unlike primary legal materials, serials, and some of the more standard secondary sources, legal treatises remain the one area where print is not yet dead.
2. A copy of the *United States Code Annotated* or the *United States Code Service* and the *United States Statutes at Large*.

3. A copy of the annotated code and session laws for the state in which the school is located.

4. The *Code of Federal Regulations* and the regulatory code for the state in which the school is located.

5. Those significant secondary works necessary to support the programs of the law school. The makeup of this collection of secondary works will have to be tailored to each library, based on the curricular, research, and scholarship needs of the library’s school.

§75 Several articles have been written in the past few years that can give guidance about the types of print sources to retain. One recent study recommended basing part of the “collection of print secondary and practitioner sources on the clinical and experiential learning programs that exist at the school.”147 This would afford “students the opportunity to interact with secondary source materials that they may use in practice in a different way.”148 The same study reported the results of a survey of practitioner research preferences, which indicated a desire for libraries to keep local jurisdiction secondary sources.149 “[T]he goal of the library should be to keep at least some of these materials, so that they may be used in a practical pedagogical setting that could also include legal research instruction.”150

§76 Regardless of the format a library chooses for purchasing and retaining secondary works, these resources are still essential for an academic law library and its patrons. Dick Danner, one of the leading thinkers in the academic law library community, put it best when he wrote of the twenty-first-century legal treatise:

> In the twenty-first century, American lawyers could benefit most from authoritative works on specialized subjects by knowledgeable scholars who are not only able to provide interpretive frameworks for tackling new questions but also conversant with the technologies that lawyers employ for seeking and working with legal information. Twenty-first century Blackstones will be technologically literate legal scholars who understand the relationships between form, content, and structure, and who possess the skills to present legal information in innovative ways appropriate to the formats in which information is now published, identified, and delivered.151

What Do We Do with All the Books Already on the Shelves?

§77 As academic law libraries transition to primarily digital collections, they will face the question of what to do with the older legal materials currently sitting on the shelves. If an academic law library switches to online-only access, will it lose access to older materials? This is a commonly voiced concern,152 but it is something

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148. *Id.* at 430, ¶ 73.

149. *Id.* at 430, ¶ 75.

150. *Id.* at 430, ¶ 74.


152. “The concern is that materials that are not online will disappear from history and won’t be part of our societal knowledge.” Temple, *supra* note 52, at 38–39 (quoting Michelle Wu).
of a red herring. A move to a primarily digital collection is designed to provide better access to legal materials, as “electronic resources in many cases provide superior access to information.”153 But it does not mean that law libraries have to jettison their print collections. What it means is that they will be better able to manage the growth of their print collections in the face of shrinking physical space.154

¶78 Furthermore, because so much of the older primary legal information is now available online, whether or not to keep all the older print materials is a decision each academic law library must answer based on its own space constraints. While it might be reasonable for a law library to maintain older materials from the jurisdiction in which its law school is located (plus federal materials), it might be impossible, financially or physically, to house these collections.

¶79 There is no question that there is still a role for academic law libraries to act as repositories for legal resources, but it is no longer necessary for every academic law library to be such a repository. For example, in the practicing world, an attorney might ask her librarian for a copy of an article, a pleading, or a chapter from a legal treatise, and the attorney might need the material immediately as she prepares for litigation. The firm librarian might first check the library’s online databases; if the information is not available in a database to which the firm subscribes, the librarian might send a request to other librarians via a listserv, or he might check with the local or regional law library (whether that be a state law library, academic law library, or county law library) to locate the material.

¶80 In the academic setting, the process is quite similar. The academic law librarian will check the online databases, then the physical collection, and then either request an interlibrary loan or send a more informal query to a law librarian listserv. The main difference between the academic setting and the law firm setting is that it is rare that the patron in the academic setting needs the information immediately. The academic law library, like the law firm library, does not need to own the print version of all resources that might be requested. Access via an online database, or reliable access from sources outside the library, should be sufficient to provide for the needs of the faculty and students.

¶81 Under the current ABA standards, items in the core collection must be accessible in the law library, although this access may be made available in print or online, with the caveat that the entire core collection cannot be in one format.155 For items outside the core collection, a law library may rely on ownership or reliable access, and the latter may be in the form of membership in a consortium or cooperative arrangement.156 The current ABA Standard Interpretation 606-3 states that

Agreements for the sharing of information resources, except for the core collection, satisfy Standard 606 if:

(1) the agreements are in writing; and

154. See Data from Fall 2008 Annual Questionnaire, supra note 54.
Thus, for example, a law library need not maintain all the current legal periodicals in its print collection, but could subscribe to only a handful of primary academic journals in print and rely on its subscriptions to HeinOnline, Westlaw, LexisNexis, or JSTOR, and on any free online access, for the rest.

§82 If the proposed changes to the ABA standards are adopted, database subscriptions and resource-sharing models like consortia could be used for materials that are included in the core collection. For example, a group like AALL could create a fifty-state consortium of participating law libraries that would act as a lending library for state print annotated codes. Rather than subscribing to all fifty state annotated codes, a law library could subscribe to its own state’s annotated code in print and rely on access to all the other annotated codes via an online database. In the unlikely event that a patron needed access to the print version (or the online access was not available), the consortium could facilitate the interlibrary loan of the physical item, or copy the relevant sections and fax or scan and e-mail them to the requesting law library.

§83 The proposed Interpretation 606-2(c) states that such materials should be “made available, via electronic or physical delivery, to users within a reasonable time period”; so what is a “reasonable” time period? Given that the standards allow for flexibility as long as an academic law library can show that its patrons are well served, if students and faculty are satisfied when the material is available to them within, say, a week’s time, then this should meet the requirement of the interpretation of the standard.

§84 As an academic law library works to transform its collection from primarily print to primarily digital, the collection will only pass muster if, when the ABA inspection team comes calling, it is met with a resounding show of support from the faculty and students. As long as these patrons are reporting that their teaching, research, and scholarship needs are being met by the digital collection, it is likely that Standard 606 will be deemed to have been satisfied.

A Caveat

§85 As mentioned previously, one size does not fit all—each law library must tailor its collection to its own situation. Some libraries, for instance, will see the shift to a primarily digital collection as contrary to their mission. Consider, for example, the scholarship support model, which asserts that “the core purpose of an academic law library is to serve the needs not only of today’s users but also tomorrow’s.” According to this mission, “the library must have an enduring col-

158. A model like this is already being tested for certain primary sources. For example, the Desert States Law Libraries Consortium (made up of academic law libraries from Arizona, Colorado, New Mexico, Nevada, Utah, and Wyoming) “is engaged in an inventory of print primary materials [in the] six states held by member libraries with an eye to last copy commitments and digitizing some subset of [their] holdings down the road.” Reusch, supra note 139, at 561, n.26.
159. Syverud & Currier, supra note 83, at 8.
lection of resources that is accessible and meaningful to both current and future scholars.\textsuperscript{161} Other law libraries might see themselves as having a broader mission than serving the research needs of the school. For example, the law library at the University of Nevada, Las Vegas states:

Our mission is to support the research, instruction, and public services activities of an innovative institution and an engaged group of scholars. As the largest law library in the state, and the only law library in Nevada maintaining comprehensive collections of United States legal materials, the Wiener-Rogers Law Library also serves as a resource and archive for the entire state, providing services and making its collections accessible to researchers across disciplines and to members of the general public.\textsuperscript{162}

\textsuperscript{86} For law libraries that have similar missions, the ABA standards are just one element to be considered in their collection development plans.\textsuperscript{163} For a law library with a statewide or regional mission, having in print all case reporters, the statutes of the fifty states, and other large serial titles might make sense. But the collection of those materials in print would be done for a reason separate and apart from the requirements of the ABA standards. These law libraries would be collecting materials that might have no direct bearing on the curricular, research, and scholarly pursuits of the law school.

\textsuperscript{87} Law libraries must also be sensitive to the preferences of their particular patrons. One school might have a faculty that is particularly wedded to certain print publications. If the library does not listen to these faculty members or cannot persuade them to use the digital version of the materials, then that law library risks running afoul of the ABA standards. In this case the infraction would not be because the library chose digital over print, but because it is not supporting the scholarship, research, and service interests of the law school’s faculty. If unhappy faculty members complain to an ABA sabbatical inspection team, the team could very well find that the law library is in violation of the standard.

\textsuperscript{88} Law libraries can ease the transition to a primarily digital collection by instituting a healthy education campaign along with individualized attention for faculty and students who need extra guidance. While not every faculty member will support the change, as time progresses, budgets continue to shrink, and space in the law library becomes more scarce, they will probably come to realize that digitization is not a choice but rather a necessity for law libraries if they are to meet the challenges of the twenty-first century.

\textsuperscript{161} Id.

\textsuperscript{162} About the Law Library, UNLV William S. Boyd Sch. of Law, http://www.law.unlv.edu/library/about.html (last visited Nov. 8, 2013).

\textsuperscript{163} For an excellent article examining the public mission of the public law school library, see Connie Lenz, The Public Mission of the Public Law School Library, 105 LAW LIBR. J. 31, 2013 LAW LIBR. J. 2.
Conclusion

¶89 “Libraries in the future are going to be mostly digital.”\(^{164}\) This prediction by James G. Milles from 2005 appears to be coming to pass in current law firm libraries,\(^{165}\) and if the findings in this article prove correct, it will be the future of academic law libraries as well. The current and the proposed changes to ABA Standard 606 appear likely to give law libraries greater flexibility in their collection development and design.

¶90 With the cost of print publications soaring, space in academic law libraries shrinking, and the amount of digital information growing, a strong argument can be made that a primarily digital academic law library could pass muster under ABA Standard 606. With the overwhelming majority of the core collection now available online in a reliable and accessible format, it is very possible that an academic law library could support its institution’s scholarship and research needs, satisfy the demands of the law school curriculum, and facilitate the education of its students with a primarily digital law library.

¶91 Given that “the most heavily used research sources—statutes, cases, administrative regulations and rulings, treatises, and even law journals—will be used most exclusively in electronic format,”\(^{166}\) it is not hard to imagine an academic law library subscribing only to its own jurisdiction’s statutes, judicial opinions, administrative regulations, and rulings in print (as well as some federal materials) while maintaining access to other jurisdictions’ materials online. Only those materials that are not found online, or are demanded by specific faculty, would be kept in print.

¶92 It is not unreasonable to believe that, based on the findings in this article, an academic law library in the very near future might meet the requirements of ABA Standard 606 with a collection that is ninety-five percent digital and five percent print. With the gradual change in language over the years, the ABA’s move to its current focus on “reliable access” signifies a fundamental shift for the accrediting body of law schools. With proper planning, an academic law library should be able to undertake a significant shift in its collection. This shift will save the law school money,\(^{167}\) provide broader access to digital materials, and continue to satisfy the needs of the law school’s curriculum, faculty, and students.

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167. Michael Chiorazzi estimated in 2002 that the law library he proposed would drop the average cost of library materials spent per FTE student from a median of $1430 to between $100 and $110. Chiorazzi, *supra* note 140, at 14.
Appendix A

1984 AALS Association Handbook Executive Committee Regulations 8.1

8. Library
8.1 Collection.
   a. The library of a member school should contain at least the following volumes if it is to achieve the very lowest level of adequacy.

   *Publications of or for special use in the state in which the school is located.*
   1. The published reports of decisions of all appellate courts (including lower reports where published).
   2. The best available current statutory compilation. This assumes an annotated edition if one is available.
   3. The session laws.
   4. A state digest and legal encyclopedia, if available.
   5. Shepard’s Citations.
   6. All significant local text books and treatises of current value as well as available Attorney General Reports, State Bar Reports, and Form and Practice Books.

   *Publications concerned with Federal Law.*
   1. The reports of decisions of the United States Supreme Court.
   2. One complete annotated edition of federal statutes with service.
   3. Statutes at Large.
   4. A digest of the United States Supreme Court Reports and a digest of all Federal Reports.
   5. Shepard’s United States Citations.

   *General American publications.*
   1. The published reports of decisions of the courts of last resort, prior to the National Reporter System, in at least 19 states in addition to the state in which the school is located.
   2. The National Reporter System complete, including the New York Supplement, provided that if the decisions of the United States Supreme Court included in the Supreme Court Reporter are available in one of the other regular sets of these decisions, the Supreme Court Reporter may be omitted.
   3. The American Digest System.
   4. The American Law Reports (complete with digests, etc.).
   5. Current state statutory compilations for 12 states in addition to the state in which the school is located.
   7. Two hundred significant Anglo-American legal periodical titles.
   8. Index to Legal Periodicals.

9. All American Law Institute Restatements.
10. Texts in each substantive field selected from the Lists of the Association of American Law Schools Libraries Study Project or equivalent bibliographical list.
11. One legal dictionary of recognized worth.
12. One unabridged general dictionary.
13. One general encyclopedia of recognized worth.
15. Shepard’s Citations for all units of the National Reporter System.

*English publications.*
1. English Reports, Full Reprint.
2. Law Reports complete.
4. One general legal digest or encyclopedia.

*Other publications.*
Other set of the loose-leaf or equivalent services in Corporations, Securities, Commercial Law, Labor Law, Trade Regulation, and State and Federal Taxation.

b. All publications referred to in (a) above should be complete from the beginning. If they are provided with a current service, the service should be maintained. Should some volumes of a publication not be immediately available or only at a disproportionately heavy cost, their acquisition may be postponed if the missing materials are likely to become available later at a reasonable price. Their non-acquisition may be excused if in all probability they will remain unprocurable at reasonable prices in the future. In such cases, some other publication of substantially equivalent worth for the collection may be substituted.

c. Duplication. The library shall contain additional sets of more commonly used materials if necessary for efficient use by the faculty and students.
Appendix B

1973 A.B.A. Section of Legal Education & Admissions to the Bar Standards, Chapter VI, Library\(^{169}\)

Library Schedule A

(A school is not required to have a unit in the National Reporter System which duplicates an official set of reports in the collection, e.g., Supreme Court Reporter, California Reporter.)

National Materials—General
- American Digest System
- Corpus Juris and Corpus Juris Secundum
- American Jurisprudence and American Jurisprudence, Second
- Words and Phrases
- Annotated Reports Complete
- Restatements
- Uniform Laws Annotated

Federal Materials
- United State Supreme Court (at least one set, any edition)
- Federal Reporter and Federal Reporter, Second
- Federal Supplement
- Federal Rules Decisions
- Tax Court Reports
- Federal Digest and Modern Federal Digest
- Statutes at Large, current from date of application for approval
- U.S. Code, Annotated
- Code of Federal Regulations
- Administrative Agency Reports for at least those agencies whose work is relevant to courses in the school
- U.S. Code Service
- Attorney General Opinions

State in which the School Is Located
- Official state reports
- Specialized reports whose subject matter is particularly relevant to the educational program of the law school
- Session laws, complete
- Latest code or other statutory compilation
- Attorney General Opinions
- Administrative code or similar publication, if any
- Local digests and encyclopedias, if any
- Form and practice books
- CLE materials

Other States
- National Reporter System, complete Reports prior to the National Reporter System for

\(^{169}\) Report No. 1 of the Section, supra note 38, at 360–61.
(i) all states in the same unit of the National Reporter System as the “local” state;
(ii) another 10 selected states whose case law is significant in the educational program of the school

Specialized reports whose subject matter is particularly relevant to the educational program of the law school

*Texts, Treatises, Loose-leaf Services*

Loose-leaf services for all subjects relevant to the educational program of the school
All generally recognized texts and treatises

*Reviews and Journals*

Publications of the Bar of the State and of the ABA, included in the latter the ABA Journal and section and other publications
All publications by approved law schools in the State, complete
An additional twenty publications of recognized national significance, complete from at least 1940
Specialized journals whose subject matter is particularly relevant to the educational program of the school

*Library Schedule B*

*Federal Materials*
Federal Cases
Board of Tax Appeals
Federal Register

*Other States*
Statutes, in current compilation, of those states whose statutory law is significant in the educational program of the school

*English*
All English Selected Reprints and All England Reports, or Law Reports Complete
English Ruling Cases
British Ruling Cases
Halsbury’s Laws of England
Mews Digest
Appendix C

1995 A.B.A. Standards for Approval of Law Schools and Interpretations, Chapter VI, Library

Interpretation 1 of Standard 606(b):
A law library core collection must include the following:

1. all reported federal court decisions and reported decisions of the highest appellate court of each state,
2. all federal codes and session laws, and at least one current annotated code for each state,
3. all published treatises and international agreements of the United States,
4. all published regulations (codified and uncodified) of the federal government and the codified regulations of the state in which the law school is located,
5. those federal and state administrative decisions appropriate to the programs of the law school,
6. U.S. Congressional materials appropriate to the programs of the law school,
7. significant secondary works necessary to support the programs of the law school, and
8. those tools, such as citators and periodical indexes, necessary to identify primary and secondary legal information and update primary legal information.

Appendix D

2006–07 A.B.A. Standards and Rules of Procedure for Law Schools, Chapter VI, Library\textsuperscript{171}

Interpretation 606-5:
A law library core collection shall include the following:

1. all reported federal court decisions and reported decisions of the highest appellate court of each state,
2. all federal codes and session laws, and at least one current annotated code for each state,
3. all current published treatises and international agreements of the United States,
4. all current published regulations (codified and uncodified) of the federal government and the codified regulations of the state in which the law school is located,
5. those federal and state administrative decisions appropriate to the programs of the law school,
6. U.S. Congressional materials appropriate to the programs of the law school,
7. significant secondary works necessary to support the programs of the law school, and
8. those tools, such as citators and periodical indexes, necessary to identify primary and secondary legal information and update primary legal information.

Appendix E

2013 A.B.A. Proposed Standards for Approval of Law Schools and Interpretations, Chapter VI, Library

Proposed Standard 606(b)

(b) A law library core collection shall include the following:

1. all reported federal court decisions and reported decisions of the highest appellate court of each state and U.S. territory;
2. all federal codes and session laws, and at least one current annotated code for each state and U.S. territory;
3. all current published treaties and international agreements of the United States;
4. all current published regulations (codified and uncodified) of the federal government and the codified regulations of the state or U.S. territory in which the law school is located;
5. those federal and state administrative decisions appropriate to the programs of the law school;
6. U.S. Congressional materials appropriate to the programs of the law school;
7. significant secondary works necessary to support the programs of the law school; and
8. those tools necessary to identify primary and secondary legal information and update primary legal information.

Are You Doing It Backward? Improving Information Literacy Instruction Using the AALL Principles and Standards for Legal Research Competency, Taxonomies, and Backward Design*

Nancy B. Talley**

AALL recently approved Principles and Standards for Legal Research Competency for law students and lawyers that can be used by academic law librarians to design curricula that will help correct deficiencies in law students’ information literacy skills. These principles and standards focus on developing legal professionals’ ability to conduct legal research, use and analyze information, transfer knowledge between subject areas, and reflect on learning experiences. Neither the principles themselves nor the publications on which they are based explain how the principles are to be incorporated into the curriculum. Backward design can be used by librarians to create information literacy instruction, assessments, and activities that facilitate student learning of the principles and standards.

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* © Nancy B. Talley, 2014. I am grateful to my colleagues Anne V. Dalesandro and A. Hays Butler for their insightful comments on the initial draft of this article.
** Reference Librarian and Assistant Professor, Rutgers University School of Law Library, Camden, New Jersey.
Introduction

While incoming law students are clearly intelligent and capable, and have excelled academically at every previous stage of their education, the available data suggest that many incoming students have information literacy deficits that will affect them through their career in law school and on into the practice of law...1

§1 Academic law librarians are in a position to help improve information literacy deficiencies observed in today’s law students. The approval of the Principles and Standards for Legal Research Competency (Research Principles and Standards) by the Executive Board of the American Association of Law Libraries (AALL), in July 2013,2 provides the perfect opportunity for academic law librarians to design information literacy instruction, assessments, and activities tailored to the skills set forth in the Research Principles and Standards. The key to developing and implementing effective information literacy instruction, assessments, and activities is to borrow from the field of education by incorporating taxonomies and backward design into the curriculum design process, because these concepts have been used successfully to facilitate learning for decades.3

§2 Paul D. Callister, a prolific library scholar, has written extensively on legal research instruction.4 Most notably, Callister developed a pedagogy5 for legal research by creating a taxonomy—based, in part, on Bloom’s taxonomy—tailored to legal research instruction, which was meant to help students remember, understand, apply, analyze, and make conclusions about their legal research results.6 In a 2010 article, Callister proposed, as a method for implementing the taxonomy, a list of research competencies that corresponded to the different levels of his taxonomy

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2. AM. ASS’N OF LAW LIBRARIES, PRINCIPLES AND STANDARDS FOR LEGAL RESEARCH COMPETENCY (approved July 11, 2013) [hereinafter RESEARCH PRINCIPLES AND STANDARDS], available at http://www.aallnet.org/Documents/Leadership-Governance/Policies/policy-legalrescompetency.pdf. In July 2013, the Executive Committee of AALL approved the Research Principles and Standards, which had previously been named the AALL Legal Research Competencies and Standards for Law Student Information Literacy (AALL Standards). See AALL Legal Research Competencies and Standards for Law Student Information Literacy, AM. ASS’N OF LAW LIBRARIES (approved July 2012) [hereinafter AALL Legal Research Competencies], http://www.aallnet.org/main-menu/Leadership-Governance/policies/PublicPolicies/policy-lawstu.html. The substantive content is identical in both publications. The primary change between the AALL Standards and the Research Principles and Standards is that AALL expanded the coverage of the latter to include the entire legal profession and not only law students. The Research Principles and Standards are relevant to information literacy instruction, as they provide standards and competencies related to all aspects of information literacy.
5. A pedagogy includes both a theory and a method of implementing the theory. Callister, supra note 3, at 191, ¶ 1.
6. Id. at 199–210, ¶¶ 18–41.
and activities that could be used to improve students’ legal research skills.\textsuperscript{7} The learning activities discussed by Callister are to be used as “motivation” for librarians to develop their own teaching tools incorporating taxonomies.\textsuperscript{8}

\textsection{3} While Callister’s taxonomy can be used in the information literacy context to help librarians select Research Principles and Standards to teach students complex skills such as how to analyze, apply, and make legal conclusions, I believe a more extensive discussion of a method for designing and implementing information literacy instruction, assessments, and activities is needed. Callister’s article is silent on instruction techniques and does not thoroughly explain how each activity develops the skills in the research competencies or what assessment tools should be used in connection with the activities.\textsuperscript{9} Callister welcomes continued development of a pedagogy for library instruction and has acknowledged that an open discussion is necessary to improve legal research instruction; he has also set an example of “borrowing from the field of education.”\textsuperscript{10} Thus, in this article, I expound on Callister’s ideas and explain how instruction, assessments, and activities can be created using backward design to teach students the skills set forth in the Research Principles and Standards.

\textsection{4} Backward design is a well-regarded curriculum design technique used in the field of education that involves a structured, three-step process for creating educational experiences for students.\textsuperscript{11} Backward design inverts the steps of the traditional instruction design process, in which the focus has customarily been on planning activities and selecting textbooks, while academic standards are considered at the end of the educational experience to assess or evaluate students.\textsuperscript{12} Unlike this traditional model, backward design requires instructors to select an academic standard at the beginning of the design process before creating assessments or designing a lesson’s instruction and activities.\textsuperscript{13} With backward design, academic standards, such as the Research Principles and Standards, are at the center of the design process.\textsuperscript{14} Designing a lesson around academic standards, the central premise of backward design, facilitates learning.\textsuperscript{15}

\textsection{5} Using backward design as a method of implementing information literacy instruction is beneficial to librarians because the Research Principles and Standards, as well as influential publications on which they were founded, such as the

\begin{footnotesize}
\textsuperscript{7} Id. at 212–18, \textsection{42}.
\textsuperscript{8} Id. at 218, \textsection{43}.
\textsuperscript{9} Id.
\textsuperscript{10} See id. at 193, \textsection{5}.
\textsuperscript{11} WIGGINS & McTIGHE, supra note 3, at 17–21; FINK, supra note 3, at 63.
\textsuperscript{12} WIGGINS & McTIGHE, supra note 3, at 17; see Vicenç Feliu & Helen Frazer, Outcomes Assessment and Legal Research Pedagogy, 31 Legal Reference Services Q. 2, 184, 184–85 (2012) (“Assessment of learning has been largely a byproduct of course examination and the post-law school Bar examinations.”).
\textsuperscript{13} WIGGINS & McTIGHE, supra note 3, at 17–21.
\textsuperscript{14} Id.
\textsuperscript{15} See KEN BAIN, WHAT THE BEST COLLEGE TEACHERS DO 8, 17, 50–51 (2004); WIGGINS & McTIGHE, supra note 3, at 14–16.
\end{footnotesize}
MacCrate Report\textsuperscript{16} and the Carnegie Report,\textsuperscript{17} do not specify how to implement information literacy instruction in the classroom. Without a method of implementation, even when instructors know what skills should be taught, they may not know how to effectively teach these skills to students.\textsuperscript{18} Instructors who do not know about backward design are apt to focus on learning activities and lecture preparation and not on what skills students should learn;\textsuperscript{19} as a result, their lessons facilitate learning “more by hope than by design.”\textsuperscript{20}

¶ Backward design is also useful for teaching students important information literacy skills because it provides opportunities for students to transfer knowledge to new situations and to engage in metacognition, during which they reflect on their learning experiences—two concepts that are critical to learning and are incorporated into the Research Principles and Standards.\textsuperscript{21} Educators simply do not have sufficient time to teach students all topics, but when students learn how to transfer knowledge, they are able to apply their previous knowledge to new situations, issues, and problems.\textsuperscript{22} Law students and lawyers transfer knowledge routinely, as they are frequently presented with new factual situations that require them to apply their existing knowledge in a new way or under new circumstances. Similarly, law students can learn how to improve their research strategies or legal analysis skills when they are given opportunities to reflect on the effectiveness of their legal research. By using backward design, librarians expose students to many critical components of learning, which will help students learn the information literacy skills set forth in the Research Principles and Standards.

What Is Information Literacy?

\textsuperscript{¶7} Information literacy has been described as a “phrase that is not literally applicable or easily interpretable,” yet it has played an integral role in the lives of Americans since the mid-1970s.\textsuperscript{23} The concept of information literacy was first discussed in 1974: “[P]eople [who are] trained in the application of information

\begin{itemize}
\item \textsuperscript{17} WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).
\item \textsuperscript{18} Dennis Kim-Prieto briefly discussed the fact that the MacCrate Report identifies necessary skills but not how to teach students these skills; he argued that the AALL Standards provide a “baseline” by which to evaluate learning to bridge this gap. Dennis Kim-Prieto, The Road Not Yet Taken: How Law Student Information Literacy Standards Address Identified Issues in Legal Research Education and Training, 103 LAW LIBR. J. 605, 613, 615, 2011 LAW LIBR. J. 37, ¶¶ 16, 21. While the AALL Standards do set forth competencies, which include skills that students should possess, I believe that they do not entirely close the gap between what skills should be taught and how to effectively teach those skills. Thus, I suggest the use of backward design to address this instructional issue.
\item \textsuperscript{19} WIGGINS & MCTIGHE, supra note 3, at 17.
\item \textsuperscript{20} Id. at 15.
\item \textsuperscript{21} Id. at 78, 216; RESEARCH PRINCIPLES AND STANDARDS, supra note 2, at [3–4].
\item \textsuperscript{22} WIGGINS & MCTIGHE, supra note 3, at 78.
\item \textsuperscript{23} Shirley J. Behrens, A Conceptual Analysis and Historical Overview of Information Literacy, 55 C. & RES. LIBR. 309 (1994).
\end{itemize}
resources to their work can be called information literates.”

During the 1970s and 1980s, the definition of information literacy became broader, to include the notion that information literacy was part of lifelong learning and to focus on the idea that information is used to solve problems in the workplace and in life. Technological advances, such as the creation of the computer, also shaped the definition of information literacy, for instance, in drawing a distinction between information literacy and computer literacy. In 1989, the American Library Association (ALA) formulated the definition that is most commonly used today, requiring an information-literate person to be “able to recognize when information is needed and have the ability to locate, evaluate, and use effectively the needed information.”

In 2012, AALL adopted this definition of information literacy.

The most practical means of incorporating information literacy instruction into legal education is to integrate it into doctrinal courses in which librarians collaborate closely with faculty members, as part of a library component to a legal research and writing class or in an advanced legal research course. Librarians should take such integration seriously, because the American Bar Association (ABA) is considering an amendment to its standards for libraries that will expressly designate information literacy instruction as a service that must be provided by academic law librarians.

The History of the Research Principles and Standards

The MacCrate and Carnegie Reports

Long before the creation of the Research Principles and Standards, the legal profession discussed concepts relating to information literacy in the MacCrate Report and the Carnegie Report, two influential publications.

The MacCrate Report was a report from an ABA task force that was charged with “studying and improving the processes by which new members of the profession are prepared for the practice of law.” The MacCrate Report relied on statistical data to provide a historical picture of the legal profession in terms of law firm sizes and types of legal practices. Using these data, the MacCrate Report discussed the importance of certain fundamental skills that new lawyers entering the profession should possess,

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24. Id. at 310.
25. Id. at 310–14.
26. Id. at 311–12.
28. AALL Legal Research Competencies, supra note 2.
30. Am. Bar Ass’n, supra note 16; Sullivan et al., supra note 17.
32. See generally Am. Bar Ass’n, supra note 16.
namely problem solving, legal analysis and reasoning, and legal research. The MacCrate Report is also significant to information literacy because it discussed expanding legal research instruction beyond bibliographic instruction into a more process-oriented model in which students are taught to resolve real-world problems using comprehensive legal research skills, such as the development of research plans and the analysis of legal information.

¶10 Though the Carnegie Report did not expressly address legal research, it has nevertheless influenced information literacy in legal education. The Carnegie Report advocated a fundamental change to legal education in which the case-dialogue method would be balanced by practical and ethical instruction, with the goal of teaching law students how to be lawyers. The Carnegie Report analyzed how students learn, discussed transfer of knowledge from one area to another, and recommended that students reflect on their learning experiences. Specifically, the Carnegie Report argued that one of the main purposes of legal education is to teach students how to transfer knowledge to new situations:

The point of much teaching in law schools is to foster students’ ability to transfer their learning so that they can apply what they have learned in one context to another, different one. Making this aim conscious, so that the instructor actively tests students’ progress in such transfer, is another well-attested contributor to better learning.

The Carnegie Report also asserted that one benefit of the cognitive apprenticeship was that it allowed students to reflect on or think about their “knowledge and performance in relation to models supplied by their teacher.” The MacCrate Report and the Carnegie Report are rooted in educational theory, and the concepts these reports promote are incorporated throughout the Research Principles and Standards.

The Research Principles and Standards

¶11 In 2009 and 2010, members of the Joint Special Interest Section Committee on the Articulation of Law Student Information Literacy Standards created a draft of the AALL Standards, the precursor to the Research Principles and Standards. The Law Student Research Competency Standards Task Force of AALL (AALL Task Force) was charged by AALL with reviewing and applying the draft AALL Standards “to reflect the ever-changing landscape of practice.” In 2011, the AALL Task Force presented a report to the Executive Board of AALL that became the basis for the

33. Id. at 121–98.
34. Id. at 148–50.
35. See generally SULLIVAN ET AL., supra note 17; PRINCIPLES AND STANDARDS, supra note 2, at [1].
36. SULLIVAN ET AL., supra note 17, at 56–59.
37. Id. at 62.
38. Id.
39. Id. at 61.
40. Kim-Prieto, supra note 18, at 609, ¶ 7; AALL Legal Research Competencies, supra note 2.
Research Principles and Standards. In July 2012, AALL’s Executive Board approved the AALL Standards.

¶12 In July 2013, the Executive Board approved the Research Principles and Standards. The Research Principles and Standards continue to highly value information literacy instruction and seek to have librarians incorporate them into many aspects of library instruction, including curriculum design. The Research Principles and Standards comprise five principles: (1) knowing the legal system and legal information sources, (2) gathering information through effective and efficient research strategies, (3) critically evaluating information, (4) applying information effectively to resolve a specific issue or need, and (5) distinguishing between ethical and unethical uses of information and understanding the legal issues related to discovery, use, or application of information. Each Research Principle and Standard includes a list of skills (competencies) that legal professionals should possess to be considered information literate, but AALL does not provide guidance on how to implement the Research Principles and Standards to teach law students and lawyers the necessary information literacy skills.

¶13 The Research Principles and Standards mirror many of the fundamental legal research skills set forth in the MacCrate Report, such as requiring law students to understand state and federal judicial systems and differentiate between secondary and primary sources. The Research Principles and Standards also incorporate some of the more analytical skills included in the MacCrate Report, such as recognizing that an information-literate student can develop a research plan and analyze legal issues and sources.

¶14 In addition to adopting many aspects of the MacCrate Report, the Research Principles and Standards also reflect important concepts discussed in the Carnegie Report. The idea of transfer of knowledge is directly incorporated into Principle IV of the Research Principles and Standards:

C. An information-literate legal professional understands when research has answered all questions posed, and when it provides sufficient background to explain or support a conclusion.

Competencies:

1. Identifies scholarship from other disciplines relevant to resolving a specific issue.
2. Understands how courts or other legal decision-makers have applied materials from other disciplines in the past, and determines when material from these disciplines might be persuasive in resolving a particular issue.

42. AALL Legal Research Competencies, supra note 2.
43. Id.
44. PRINCIPLES AND STANDARDS, supra note 2, at [1].
45. Id. at [3].
46. Id. at [4–10].
47. See Id.
50. Id. at [8] (Principle IV.C).
Metacognition, an equally important concept, is also included in Principle IV of the Research Principles and Standards:

B. An information-literate legal professional modifies initial research strategies as necessary.

   Competencies:

   . . . .

   2. Reflects on the successes or failures of prior strategies for integrating new information into the analysis; and utilizes concepts, theories, and facts from prior research to continue the process.51

By incorporating important aspects of the MacCrate Report and the Carnegie Report into the Research Principles and Standards, AALL recognized the impact that these influential publications have had on information literacy in legal education.

The Need for Information Literacy Instruction

¶15 Results from several studies show that law students do not possess sufficient information literacy skills. In 2012, the ALL-SIS Task Force on Identifying Skills and Knowledge for Legal Practice conducted a survey that provided insight into how seasoned lawyers and judges perceive the legal research skills of law students and new lawyers.52 The responses to the survey suggest a deficiency in those skills:

The young lawyers and law students I have worked with almost never start with secondary sources, which means that they begin case research without understanding either the general principles or the particular catch-phrases of the area they’re working in.

   Their research is case-dominated, and they lose the serendipity of library research as I remember it. A problem is their inability to imagine and find analogous cases or cases representing general principles outside the particular field in which they’re working . . . .

   . . . .

   Most new law school graduates I have worked with are not thorough enough. They find a case they think is on point and then stop. They do not review enough cases and do not make sure the on-point case they found is the current standard. They rarely go to sources beyond case law or statutes unless requested. Legislative history, governmental opinion letter, [and] statute annotations, are good sources of information that they do not typically use.53

¶16 The results from additional studies and surveys suggest similar deficiencies in law students’ and young lawyers’ information literacy skills. A common complaint from judges and lawyers is that law students are not efficient legal researchers.54 Another deficiency observed is a lack of knowledge about the basic structure

51. Id. at [7–8] (Principle IV.B).
53. ALL-SIS TASK FORCE ON IDENTIFYING SKILLS & KNOWLEDGE FOR LEGAL PRACTICE, SURVEY RESULTS (May 2012) (on file with author).
of court systems, as reflected in student externship journals.\textsuperscript{55} One student wrote, “I didn’t know there was a research department in Superior Court.”\textsuperscript{56} Another student’s journal entry states, “I had no idea that \textit{law in motion} [sic] was such a busy part of the court calendar.”\textsuperscript{57} Finally, one student admitted, “I wasn’t really sure about the difference between federal courts and state courts when I got my externship—I just knew that state courts provided parking and federal courts did not.”\textsuperscript{58}

\textsection{17} The results from yet another survey show that new lawyers lack skills necessary to find information, including the ability to use a library catalog:

Most [new associates] do not know how to use a library catalog to find materials. Most of them do not know how to use an index. Most of them do not know the difference between the table of contents and the index. Most of them think that they need to go directly to researching case law online, and are unaware of how secondary resources should be used.\textsuperscript{59}

In addition, many law students do not use fundamental legal resources, such as books, journals, and other secondary sources:

[A] surprising number of respondents infrequently used basic materials like books, journals, and periodical indexes. Almost half of the respondents were unfamiliar with the library catalog. The survey also reveals that despite their lack of research experience and knowledge, students view themselves as adequate if not good researchers.\textsuperscript{60}

Survey results such as these should be a wake-up call for law librarians. Law librarians can help rectify these deficiencies by designing information literacy instruction targeted to the Research Principles and Standards.

\textbf{Callister’s Taxonomy}

\textsection{18} Callister developed his pedagogy for legal research by creating a taxonomy based, in part, on Bloom’s taxonomy.\textsuperscript{61} The categories of a taxonomy build on one

\begin{itemize}
  \item Knowledge—Student provides evidence that he or she “remembers, either by recalling or by recognizing,” some concept he or she has previously experienced.
  \item Comprehension—Student shows evidence that he or she knows what is being communicated and makes some use of the information.
  \item Application—When presented with a new situation, student correctly uses a distinct concept or idea to address the new situation.
  \item Analysis—Student is able to break down communications into their parts and determine how they are organized.
  \item Synthesis—Student shows evidence that he or she is able to use parts to form a whole.
  \item Evaluation—Student “mak[es] judgments about the value, for some purpose, of ideas, works, solutions, methods [and] materials.”
\end{itemize}

another, requiring a student to use the skills in the more elementary categories to master the more complex skills. The categories Callister discusses in formulating his taxonomy include (1) remembering, (2) understanding, (3) applying, (4) analyzing/synthesizing, (5) concluding, and (6) metacognition. Callister’s taxonomy altered Bloom’s taxonomy in two significant ways. It combined Bloom’s “analysis” and “synthesis” categories; and it replaced Bloom’s “evaluation” category with a “concluding” category, to emphasize that law students must learn how to make legal conclusions, and a “metacognition” category, referring to a student’s ability to reflect on the legal research experience. Callister’s inclusion of metacognition is significant because it provides an opportunity for law students to improve their legal research skills by reflecting on their learning experiences and asking questions, such as “Should I have modified my research techniques to better solve the problem?” Callister’s taxonomy should be used by librarians to help them select Research Principles and Standards that teach students complex skills, such as how to analyze and apply information, make legal conclusions, and reflect on learning experiences. Once Research Principles and Standards have been selected, the librarian can then use backward design to develop assessments, instruction, and activities.

The Backward Design Model of Curriculum Design

¶19 Backward design is a curriculum design method that has been used at all levels of education, including law school clinics, to promote student learning. Backward design consists of three phases that must be approached in the following order: (1) identify the desired results by considering academic standards (i.e., Research Principles and Standards), (2) determine what evidence will show that the students have achieved the desired results from the Research Principles and

63. Callister, supra note 3, at 199–212, ¶¶ 18–41.
64. Id. at 205–09, ¶¶ 27–36.
65. Id. at 209, ¶ 37.
66. Id. at 210–12, ¶¶ 39–41.
67. Id. at 210–11, ¶ 39.
68. See Bruce E. Fox & John J. Doherty, Design to Learn, Learn to Design: Using Backward Design for Information Literacy Instruction, 5 COMM. INFO. LITERACY 144 (2012) (discussing the creation of podcasts at the college level to facilitate learning of information literacy skills through backward design); Wallace J. Mlyniec, Where to Begin? Training New Teachers in the Art of Clinical Pedagogy, 18 CLINICAL L. REV. 505 (2012) (discussing using backward design in law school clinics); FINK, supra note 3, at 73–74 (explaining the application of backward design in undergraduate education); Carolyn Grose, Outcomes-Based Education One Course at a Time: My Experiment with Estates and Trusts, 62 J. LEGAL EDUC. 336 (2012) (discussing outcomes-based education in the context of doctrinal courses, which appears to be similar to backward design. However, outcomes-based education does not begin by selecting an academic standard, a critical step in backward design. Rather, in the outcomes-based approach, professors formulate their own desired outcomes.); Margaret Butler, Resource-Based Learning and Course Design: A Brief Theoretical Overview and Practical Suggestions, 104 LAW LIBR. J. 219, 2012 LAW LIBR. J. 19 (touching on the idea of “backward planning” in legal research instruction, but does not follow the steps of backward design in the suggested approach. Butler acknowledges that her article is not based on academic standards, such as the Research Principles and Standards, and she does not explain how activities should be created using her suggested model.).
Standards (i.e., competencies or assessments), and (3) create learning instruction and activities that relate to the specific academic standards. Backward design reverses how instruction has traditionally been designed by identifying academic standards at the beginning of the planning process as the focal point of the entire academic lesson, which is a “much more careful statement of the desired results.”

The second step in the backward design process is to create assessments that are closely aligned with the academic standards to provide students with opportunities to apply what they have learned. The best authentic assessments are realistic, require judgment and innovation, and allow students to practice the subject. Assessments should not simply elicit “easy-to-score responses to simple questions.” Rather, assessments should take various forms, including in-class observations, dialogue, quizzes, exams, research exercises, and peer assessment. Complex research exercises are consistent with the principles of backward design, including the opportunity for self-reflection:

Research related to a factual scenario may involve selecting appropriate secondary sources, choosing the format of selected material, deciding to change course upon hitting a roadblock, demonstrating how to use a good case from one jurisdiction to find similar cases in another, and considering whether you are safe to stop, among many other things. Multifaceted problems naturally test students’ ability to form a coherent plan.

Evaluation tools, such as rubrics, may be created to grade assessments.

The final phase of backward design requires instructors to create engaging and effective learning activities, which may include direct instruction. If direct instruction is used during a lesson, it should provide students with a road map of where the lesson is going and equip them with the knowledge to achieve the outcomes set forth in the academic standards. Instructors must ask themselves, “When should I engage in direct instruction and when not?” Instruction can take many forms and is not limited to presenting lectures. Direct instruction can be most effective if it is “just in time” and not “just in case,” for example, when an instructor intervenes to clarify student understanding during the lesson. Instruction can also take the form of facilitating a learning experience with a follow-up reflection or discussion.

69. WIGGINS & McTIGHE, supra note 3, at 17–21.
70. Id. at 17.
71. Id. at 146, 150, 153–55.
72. Id. at 154.
73. GRANT WIGGINS, EDUCATIVE ASSESSMENT: DESIGNING ASSESSMENTS TO INFORM AND IMPROVE STUDENT PERFORMANCE 21 (1998).
75. Id. at 207.
76. WIGGINS & McTIGHE, supra note 3, at 175–76.
77. Id. at 18–21, 192.
78. Id. at 19.
79. Id. at 245.
80. See id. at 242–43.
81. Id. at 243.
82. Id.
Engaging and effective activities require genuine application to real-world problems with opportunities for students to have hands-on experiences. To be effective, the activities must spark students’ interest and keep their attention throughout the entire educational experience. Instructors can maintain students’ interest with activities that can be applied to a variety of situations. Students must also be provided with prompt feedback throughout the lesson. One critical benefit of designing activities using backward design is that activities in which students apply what they have learned increase their learning and achievement: “Courses that emphasize applying course material, making judgments about value of information and arguments, and synthesizing material into more complex interpretations and relationships are highly related to educational and personal gains.” Using backward design allows librarians to create information literacy assessments, instruction, and activities in manageable steps to ensure that the entire lesson is cohesive and focused on helping students learn important information literacy skills.

Sample Exercises Applying Backward Design, Callister’s Taxonomy, and the Research Principles and Standards

Many librarians may intuitively approach instruction design by considering outcomes or standards before creating assessments, instruction, and activities for students, without realizing that the formal process of backward design exists. However, it is always useful to consider one’s own design strategies and how the instruction design process can be improved by incorporating aspects of backward design.

The following examples apply backward design to help foster students’ information literacy skills. For each, I chose a Research Principle and Standard (or multiple Research Principles and Standards), using Callister’s taxonomy to ensure that my selections teach students the more complex skills of analysis, application, and making legal conclusions. Next, I designed the lesson’s assessments, instruction, and activities, with a focus on creating engaging and effective real-world activities that allow students to develop the skills necessary to transfer knowledge to new situations and reflect on their learning experiences. The examples also include sample assessment techniques and show how feedback can be incorporated into a lesson. These examples are meant solely to provide guidance to librarians on how to design information literacy instruction using backward design. Backward design can be used to develop numerous educational experiences for students that go beyond these limited examples.

83. Id. at 195.
84. Id. at 201–02.
85. Id. at 202.
86. Id. at 206 (quoting National Survey of Student Engagement, Converting Data into Action: Expanding the Boundaries of Institutional Improvement (2003)).
87. Id.
Example 1: Are You a Cost-Efficient Legal Researcher?

Applicable Research Principles and Standards

Principle II: A successful legal researcher gathers information through effective and efficient research strategies.

A. An information-literate legal professional selects appropriate research sources. Corresponding AALL competencies as evidence of desired outcomes:
   1. Identifies and analyzes the appropriate legal issues that need to be researched.
   2. Recognizes the authority or authorities governing particular legal issues.
   3. Knows which print or electronic, primary or secondary, sources contain appropriate and current content on the issue being researched.
   4. Recognizes how tools facilitate research tasks due to content or organization, such as use of controlled vocabulary, synopses, annotations, or headnotes.
   5. Knows how to check the content of sources and validate the completeness and currency of the selected sources.
   6. Supplements or validates preliminary results with additional tools.

B. An information-literate legal professional constructs and implements efficient, cost-effective search strategies. Corresponding AALL competencies as evidence of desired outcomes:
   1. Articulates the precise legal issues that need to be researched, whether in the context of:
      a. traditional litigation practice,
      b. regulatory practice, or
      c. transactional practice.
   2. Develops an appropriate research plan for each discrete issue.
   3. Knows how to appropriately use available resources to research and understands the relative advantages of different methods of finding information.
      a. Differentiates among various available online search platforms to employ those that are best suited to the task at hand, and
      b. Understands the operation of both free and subscription search platforms to skillfully craft appropriate search queries.
   4. Identifies the most cost-effective sources, calculating cost of use against time on research.

Explanation of Assessments, Instruction, and Activities

¶25 The librarian should begin the lesson by explaining to the students that the lesson is meant to increase student awareness of how to provide cost-efficient legal services to clients and that each student will be required to use primary and secondary sources to draft a memorandum, summarizing a particular cause of action.

88. Excerpted from Principles and Standards, supra note 2, at [5–6].
89. This lesson is adapted from one designed by Jay Feiman, Distinguished Professor of Law, Rutgers School of Law, Camden, New Jersey. I was involved in presenting the research component of this lesson in Professor Feiman’s business torts class.
within a jurisdiction and keeping track of the time spent on legal research and writing the memorandum. The Librarian and the students should engage in a discussion about primary and secondary sources with a focus on the cost associated with using each type of resource. She should ensure that the students have fundamental knowledge about various primary and secondary sources that will be used during the lesson. The Librarian can gauge the students’ understanding by asking them questions about primary and secondary sources and how they are properly used. During this discussion, she should also provide the students with a billable-hour range for young lawyers in the area as well as a cost breakdown for using the various resources.

¶26 The Librarian should provide the students with a fact pattern that includes a particular cause of action or legal claim (e.g., defamation, negligence, breach of contract, etc.) and tell them that they must use primary and secondary sources (paid databases and the library sources available in the library catalog) to briefly discuss the cause of action in a memorandum. She should require the students to keep track of the amount of time that they spend conducting research and drafting the memorandum. The students should also identify the legal resources that they use to complete the assignment (e.g., cases from restricted-access databases, such as Westlaw, LexisNexis, or Bloomberg Law; secondary sources in the library’s collection; or other sources such as government web sites, etc.).

¶27 When the class reconvenes, the librarian should collect the memoranda (including the information about time spent on the assignment) and lead a discussion about the sources that the students used. The memoranda serve as the summative assessment. Once the students’ memoranda have been graded, the librarian must provide feedback to the students through a conference or e-mail. An ongoing assessment could be to have the students revise their memoranda if their initial versions did not conform to the assignment requirements. Feedback about progress and problems must be provided to the students after each draft. A final aspect of the assignment should be for the librarian to have the students briefly describe (verbally or in writing) how they would change their research plan or strategy if they were presented with a similar problem in the future.

Example 2: How Reliable Is the Authority Supporting Your Pleading?

Applicable Research Principles and Standards

Principle III: A successful legal researcher critically evaluates information.

A. An information-literate legal professional knows that information quality varies.

Corresponding AALL competencies as evidence of desired outcomes:

1. Consistently applies criteria to evaluate the reliability of information, including but not limited to
   a. authority,
   b. credibility,
   c. currency, and
   d. authenticity.

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90. Excerpted from RESEARCH PRINCIPLES AND STANDARDS, supra note 2, at [6–9].
2. Understands that these criteria are relevant for both print and online, and legal and non-legal, sources.

Principle IV: A successful legal researcher applies information effectively to resolve a specific issue or need.

D. An information-literate legal professional applies and integrates research into a persuasive document.

Corresponding AALL competencies as evidence of desired outcomes:

1. Cites authority consistent with locally accepted rules, ensuring that cited references can be located by the reader.
2. Organizes and integrates content, quotations, or forms, and paraphrasing in a manner that supports the argument, brief, analysis, or transaction.
   a. Chooses an appropriate communication format and style for the intended audience; and
   b. Integrates charts, maps, or photos into the document or presentation for maximally persuasive effect, when appropriate.

Explanation of Assessments, Instruction, and Activities

¶ 28 The librarian should begin the lesson by explaining to the students that the focus of the lesson is to teach them how to effectively evaluate sources by having each student draft a complaint to be filed in federal court (select a venue), along with an e-mail or memorandum to the senior attorney discussing the reliability of sources used to draft the complaint. This lesson includes a lecture component in which the librarian should focus on teaching the students how to evaluate sources for reliability of information. During the lecture, the librarian should provide examples of secondary sources and electronic resources that are credible, current, authentic, and written by an author with authority, along with examples of resources that do not meet these criteria.

¶ 29 The librarian should provide the students with a problem ostensibly from a senior attorney, directing the students to draft a complaint to be filed in federal court asserting a civil cause of action, such as civil RICO, employment discrimination, or race discrimination. In drafting the complaint, the students should be required to use both primary and secondary sources to determine the elements of the causes of action and the procedural requirements. The students must communicate their research results to the senior attorney in writing, discussing their research plan, correctly citing the resources used, and explaining how each

91. A thorough discussion of legal research plans can be found in Caroline L. Osborne, The Legal Research Plan: A Comprehensive Examination of the Current Approach (Washington & Lee Legal Studies Paper No. 2012-15, Apr. 2, 2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2033236. The elements of a legal research plan are “(1) identification of legally relevant facts both known and unknown; (2) statement of the legal issue or issues; (3) statement of jurisdiction; (4) identification of useful sources and the order in which they are to be used; (5) identification of search terms.” Id. at 3. For the purposes of this lesson, an effective research plan should reflect the student’s understanding that research should begin with using secondary sources, such as treatises, as a means of finding primary sources, such as statutes or case law. The student’s research plan should also include the use of the court procedural rules and any secondary sources used to help interpret these rules.
resource meets the reliability criteria set forth in the AALL Research Principles and Standards identified above. At the end of the lesson, the students should be required to write a short essay about any confusing aspects of the assignment and how they resolved this confusion or what questions still remain. The complaint, memorandum or e-mail to the senior attorney, and short essay serve as assessments because they allow the librarian to determine each student’s understanding of the material. The librarian must provide feedback about each separate learning activity to the students.

Example 3: What Was the Legislature Thinking in Enacting This Statute?

Applicable AALL Research Principles and Standards

Principle IV: A successful legal researcher applies information effectively to resolve a specific issue or need.

C. An information-literate legal professional understands when research has answered all questions posed, and when it provides sufficient background to explain or support a conclusion.

Corresponding AALL competencies as evidence of desired outcomes:

2. Identifies scholarship from other disciplines relevant to resolving a specific issue.

4. Locates background information to help answer a legal issue or need by using resources such as:
   a. records of constitutional conventions,
   b. legislative histories,
   c. administrative histories,
   d. trial or appellate briefs, or
   e. economic, policy, business-specific, social, psychological, historical, or other inter-disciplinary research.

Explanation of Assessments, Instruction, and Activities

The librarian should begin the lesson by informing the students that the lesson involves teaching them how to find legislative history and having them draft a memorandum making a determination as to whether a court case was correctly decided based on the legislative history of a statute. In the instruction portion of this lesson, the librarian should introduce the students to sources that allow them to find legislative histories, such as Congressional Information Service (CIS), United States Code Congressional and Administrative Code (USCCAN), Westlaw, LexisNexis, HeinOnline, GPO Access, and Congress.gov from the Library of Congress. The students should also be introduced to databases (if available) through which they can access secondary sources such as articles on legal and historical issues.

92. Excerpted from Research Principles and Standards, supra note 2, at [8].
¶31 The students should conduct legal research and select a court opinion in which the judge made a statutory construction argument. Then each student should draft a memorandum making a conclusion as to whether the case was decided correctly or incorrectly based on an analysis of the statute’s legislative history and any relevant secondary articles or publications. The students’ memoranda serve as the assessment tool in this example because they allow the librarian to gauge the students’ comprehension of all aspects of the assignment. Allowing students to produce multiple drafts of the memorandum may be helpful. The librarian must provide feedback to the students about each draft’s strengths and weaknesses.

Conclusion

¶32 Information literacy should be a fundamental component of legal education through library instruction because students need strong information literacy skills when they enter the practice of law. AALL’s commitment to developing information literacy skills was reinforced by their recent approval of the Research Principles and Standards. While the Research Principles and Standards provide guidance on identifying information skills, they do not specify how librarians should teach students these critical skills. This article discusses two important concepts, borrowed from the field of education, that academic law librarians can use to teach students information literacy and improve students’ information literacy deficiencies. Namely, law librarians should use Callister’s taxonomy to select appropriate Research Principles and Standards to develop students’ analytical, research, and reflective skills, and they should use backward design as the method of implementing information literacy instruction, assessments, and activities because its three-step process facilitates learning.

¶33 The examples provided in the final section of this article can be used by librarians to guide the creation of their own information literacy lessons. I am following in Callister’s footsteps by expanding the conversation about library instruction in the information literacy context. As Callister declared, “[i]t is a day for our profession to rise to the challenge of Curriculum 2.0, to demonstrate our ability to collaborate . . . and to invigorate our intellectual roots with new and better scholarship.”

93. Callister, supra note 3, at 218, ¶ 46.
Appendix

Principles and Standards for Legal Research Competency

Principle I: A successful legal researcher possesses fundamental research skills.

Standards:

A. An information-literate legal professional considers the full range of potential sources of information, regardless of type or format.

Competencies:

1. Differentiates between primary and secondary sources, and recognizes how their use and importance vary depending upon the legal problem or issue.
2. Identifies and uses the most effective secondary sources to obtain background information, to gain familiarity with terms of art, and to put primary sources in context.
3. Recognizes differences in the weight of authority among sources and applying that knowledge to the legal research problem.

B. An information-literate legal professional understands the similarities, differences, and interrelationships among and between United States federal, state, and local legal systems.

Competencies:

1. Distinguishes between federal, state, and local systems of government; and understanding the processes and the interrelationships among them on all levels.
2. Knows which legal information is produced, organized, and disseminated across levels and branches of government.
3. Identifies appropriate resources to locate the legislative, regulatory, and judicial law produced by the respective government bodies.
4. Understands and distinguishes between different types of primary law sources, and the weight, reliability, and binding or persuasive authority of each source.

C. An information-literate legal professional understands the structure and interrelationships between and among foreign and international legal systems.

Competencies:

1. Recognizes that there are diverse structural frameworks for the various legal systems within the global community.
2. Recognizes basic similarities, differences, and interrelationships among and between various types of legal regimes, e.g., United States law, foreign law, and international law.
3. Identifies information resources that will increase depth and breadth of knowledge regarding a specific legal system.
4. Recognizes that other countries and supranational organizations may produce, organize, and disseminate their legal information in different ways, and knows how to find the needed information for a particular legal system.

94. PRINCIPLES AND STANDARDS, supra note 2.
Principle II: A successful legal researcher gathers information through effective and efficient research strategies.

Standards:
A. An information-literate legal professional selects appropriate research sources.
   Competencies:
   1. Identifies and analyzes the appropriate legal issues that need to be researched.
   2. Recognizes the authority or authorities governing particular legal issues.
   3. Knows which print or electronic, primary or secondary, sources contain appropriate and current content on the issue being researched.
   4. Recognizes how tools facilitate research tasks due to content or organization, such as use of controlled vocabulary, synopses, annotations, or headnotes.
   5. Knows how to check the content of sources and validate the completeness and currency of the selected sources.
   6. Supplements or validates preliminary results with additional tools.

B. An information-literate legal professional constructs and implements efficient, cost-effective search strategies.
   Competencies:
   1. Articulates the precise legal issues that need to be researched, whether in the context of:
      a. traditional litigation practice,
      b. regulatory practice, or
      c. transactional practice.
   2. Develops an appropriate research plan for each discrete issue.
   3. Knows how to appropriately use available resources to research and understand the relative advantages of different methods of finding information.
      a. Differentiates among various available online search platforms to employ those that are best suited to the task at hand, and
      b. Understands the operation of both free and subscription search platforms to skillfully craft appropriate search queries.
   4. Identifies the most cost-efficient sources, calculating cost of use against time on research.

C. An information-literate legal professional confirms and validates research results, incorporating existing work product and expertise.
   Competencies:
   1. Understands the necessity of validating case holdings through the use of citators such as Shepard's, KeyCite, or other citation-based methods of updating case law.
   2. Analyzes research results using prior knowledge and experience on the topic in particular, as well as one's general knowledge of legal principles.
   3. Recognizes the benefits of requesting assistance from knowledgeable individuals, or an institution's knowledge management system.
   4. Understands when to stop the research process.
D. An information-literate legal professional documents research strategies.

**Competencies:**
1. Records all pertinent information for future reference, such as:
   a. resources and methods used,
   b. information considered, and
   c. reasons for selecting or rejecting various authorities or resources.
2. Understands and utilizing proper citation forms.

**Principle III: A successful legal researcher critically evaluates information.**

**Standards:**
A. An information-literate legal professional knows that information quality varies.

**Competencies:**
1. Consistently applies criteria to evaluate the reliability of information, including but not limited to
   a. Authority,
   b. Credibility;
   c. Currency; and
   d. Authenticity
2. Understands that these criteria are relevant for both print and online, and legal and non-legal, sources.

B. An information-literate legal professional evaluates legal information through cost-benefit analyses.

**Competencies:**
1. Understands that there are costs associated with legal research, regardless of type, publisher, or format.
2. Demonstrates cognizance of the intersection of cost and efficiency in the selection of information format, and exercising professional judgment to choose the best source to serve the research parameters.
3. Understands the costs and benefits of mediated and disintermediated searching, and using this knowledge to revise research strategies when necessary.

C. An information-literate legal professional understands the importance of reviewing information obtained.

**Competencies:**
1. Clarifies or refines the research question as needed.
2. Updates or expands the research.
3. Identifies and addresses any contradictory authority.
Principle IV: A successful legal researcher applies information effectively to resolve a specific issue or need.

Standards:
A. An information-literate legal professional synthesizes research problems in an analytical approach to legal research.

   **Competencies:**
   1. Synthesizes legal doctrine by examining cases similar, but not identical, to cases that are the current focus of research, in order to articulate how courts should apply current authoritative and relevant case law.
   2. Uses research results to craft or support arguments that resolve novel legal issues lacking precedent, when appropriate.

B. An information-literate legal professional modifies initial research strategies as necessary.

   **Competencies:**
   1. Understands research as a recursive process, and expanding or narrowing research queries after discovering unanticipated results.
   2. Reflects on the successes or failures of prior strategies for integrating new information into the analysis; and utilizing concepts, theories, and facts from prior research to continue the process.
   3. Identifies historical sources or scholarship from other disciplines relevant to resolving a specific issue.
   4. Recognizing when specific questions within the larger research problem have not been answered with the information compiled, by either:
      a. Recognizing when the ultimate questions presented have not been fully answered through the research already obtained, or
      b. Realizing when sufficient research has been completed to address the legal issue or information need.

C. An information-literate legal professional understands when research has answered all questions posed, and when it provides sufficient background to explain or support a conclusion.

   **Competencies:**
   1. Identifies unresolved issues and incorporates analogous background as appropriate if research has not clearly resolved all ambiguities or uncertainties within the issue posed.
   2. Identifies scholarship from other disciplines relevant to resolving a specific issue.
   3. Understands how courts or other legal decision-makers have applied materials from other disciplines in the past, and determines when material from these disciplines might be persuasive in resolving a particular issue.
   4. Locates background information to help answer a legal issue or need by using resources such as:
      a. records of constitutional conventions,
      b. legislative histories,
      c. administrative histories,
      d. trial or appellate briefs, or
      e. economic, policy, business-specific, social, psychological, historical, or other inter-disciplinary research.
D. An information-literate legal professional applies and integrates research into a persuasive document.

**Competencies:**
1. Cites authority consistent with locally accepted rules, ensuring that cited references can be located by the reader.
2. Organizes and integrates content, quotations, or forms, and paraphrases in a manner that supports the argument, brief, analysis, or transaction.
   a. Chooses an appropriate communication format and style for the intended audience; and
   b. Integrates charts, maps, or photos into the document or presentation for maximally persuasive effect, when appropriate.

**Principle V:** A successful legal researcher distinguishes between ethical and unethical uses of information, and understands the legal issues associated with the discovery, use, or application of information.

**Standards:**

A. An information-literate legal professional understands and articulates the factors that determine the ethics and legality of information use in conformity with a lawyer’s obligations to the court, the bar, and society.

**Competencies:**
1. Comprehends and complies with laws and organizational (firm, school, court) rules on access to information resources and storage and dissemination of information.
2. Understands intellectual property issues such as licensing, copyright, and fair use of copyrighted material.
3. Accurately articulates privacy, confidentiality, security, diligence, and other ethical issues related to research and practice in accordance with the Model Rules of Professional Conduct, the Model Code of Professional Responsibility, or the prevailing local law governing legal ethics.

B. An information-literate legal professional applies the laws, rules, and other legal authority that govern a lawyer’s use of information in the course of practice.

**Competencies:**
1. Uses citation of sources to respect authors’ intellectual property rights and accurately indicates where the words and ideas of others have been used.
2. Comprehends and complies with license and subscription agreements.

C. An information-literate legal professional understands that research skills are among the set of professional skills that are continuously learned and relearned throughout one’s professional life.

**Competencies:**
1. Understands local requirements for continuous legal education.
2. Affirmatively undertakes training on research platforms as new iterations reach the market.
3. Comprehends that legal research skills, like legal standards, are “moving targets” subject to further refinement and development as the universe of legal knowledge (and legal research tools) expands.
Mentoring, Teaching, and Training the Next Generation of Law Librarians: Past and Present as Prologue to the Future*

Michael G. Chiorazzi**

Professor Chiorazzi received the 2013 AALL Distinguished Lectureship Award and presented his lecture during the American Association of Law Libraries Annual Meeting, held in Seattle, Washington, July 15, 2013. This article is an edited version of that lecture.

¶1 I would like to thank the Awards Committee for this honor. I also thank the association.

¶2 I would also like to thank the person on the programming committee who assigned me an hour-and-fifteen-minute time slot. What were you thinking? There is a reason the fifty-minute class period is the standard. More than fifty minutes is an unconscionable test of the attention span. I promise to end my lecture with plenty of time for questions. I welcome them, but I will also cheerfully leave the dais early if there are none.

¶3 Also, because I recognize that this lecture will be long, please feel free to leave your cell phones on. Play games, text, surf the web. . . . Smoke ’em if you’ve got ’em. I understand. We live in an age where we can simultaneously live in two, or three, universes. Go for it.

¶4 I’ve spent a lot of time thinking about what to talk about today. It is a little daunting to have to give a distinguished lecture. For the first time in my life, I have scripted all my remarks in advance; and as difficult as it is, I will try to stay on script. One of my librarians in the audience, Sarah Gotschall, begged me not to do this. Sorry, Sarah; I am trying hard to be distinguished for the first time in my life and don’t want to just wing it. I’m even wearing a suit to the annual meeting for the first time in over twenty years.

¶5 While having dinner with Dick Danner and Steve Barkan at the Association of American Law Schools meeting in January, I asked them for advice on what to speak about. Dick suggested I talk about the history of librarian education. That was something I’d spent some time researching, and so when I got back home I decided to focus on that history and to let the library literature craft my lecture. All of this is a long way of introducing my topic.

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* © Michael G. Chiorazzi, 2014. I would like to thank Sabrina Davis, law library fellow extraordinaire, for her helpful edits and suggestions on the final version of this article.

** Associate Dean for Information Services, Beverly & James E. Rogers Professor of Law, and Professor of Information Resources and Library Science, University of Arizona, Tucson, Arizona.
Mentoring, Teaching, and Training the Next Generation of Law Librarians: Past and Present as Prologue to the Future

I can think of no better place to give this talk. Seattle is where I became a law librarian. The University of Washington (UW) library school, now known as the iSchool, has been called the cradle of law library directors. The school changed my life. Not a day goes by that I don’t think of my first mentor, Marian Gallagher. Carl Yirka has his Yirka Question.1 I have always had the Marian Question: What would Marian do?

So much of what I have done, or have tried my best to do, in my career has been guided by Marian, as well as the other mentors from whom I have learned. My thesis, simply put, is that, without our mentors, we are nothing.

So today, in my lecture, I will focus on three things: first, the mentoring of law librarians and its increased importance; second, the education of librarians: its history and implications for the future; and third, the similar challenges currently facing both legal education and library education.

As I said, it was here in Seattle, in the fall of 1980, that I began my law librarianship education. An integral part of that education was the first of a series of relationships with mentors and teachers who would help form my professional life.

I want to begin by talking a bit about my personal history, not because of a lack of humility, although I probably could use a little more of that, but rather because I have been the beneficiary of mentoring relationships with law librarians that have shaped my life in a positive way. Any successes I have achieved are the result of their guidance and example. So this is not as much about me as it is about them, and our great profession. I—we—all stand on the shoulders of giants.

We are a young profession—just over one hundred years old—and really, we have only been a mature profession for about sixty years. Many of us here today remember the librarians who helped create this field. I like to think of myself as a third-generation law librarian. I was taught by Marian Gallagher, a second-generation law librarian. She learned from the founders of law librarianship and, through her program at the University of Washington, was instrumental in helping us mature as a profession. AALL’s highest award is named after her. She was diminutive in stature, but gargantuan in the profession.

I could easily spend all of my time talking about Marian and her wit, intelligence, compassion, and sense of humor. She was as remarkable a woman as I have ever known. Within moments of arriving at the University of Washington, I fell under her spell. She loved to laugh. She took her work, but not herself, seriously. The faculty and the bar adored her. She was a favorite after-dinner speaker for the Washington State Bar, and she surrounded herself with a group of remarkable, if somewhat idiosyncratic, librarians who helped her run the UW law library. The entire staff embraced Marian’s students—and they all played a part in our education. Their devotion to Marian, the profession, and the program was clear.

A few months into my time in the law librarianship program, an irrepressible, full-bearded librarian, a lover of Raymond Chandler, baseball, and all things

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Cleveland, Bob Berring, showed up to replace the retiring Marian Gallagher. I could also go on and on about Bob. Those of you newer to the profession have missed one of our great speakers. The association needs to bring him back—now that would be a distinguished lecture.

¶14 A quick story about Bob Berring. I was asked a number of years ago to speak on an AALL panel about the importance of scholarship to the profession. When the annual meeting agenda was published, I saw, much to my dismay, that Bob was scheduled to speak in the same time slot; I knew that meant I wouldn’t be speaking before a large audience. Then, on the day of the panel, while on my way to the room where I was to speak, I discovered that Bob would be speaking in the room next door. They had opened the double doors to that room because there were already so many people inside and no available seating.

¶15 It turned out that my time to speak on my panel coincided with Bob’s in the next room. You could tell when Bob was speaking because there was roar after roar of laughter. The wall that separated the two rooms was literally shaking. I could see the audience looking around and thinking, “What am I doing here? I am missing something really funny next door.” It was only with the greatest difficulty that I didn’t adjourn and head next door to hear Bob. If any of you were in that audience, I want to thank you personally for politely staying during my talk.

¶16 Bob arrived at the University of Washington just in time to coteach Marian’s law library administration class. During that class, I saw something few law librarians can claim to have seen: Bob Berring as the straight man. There was an immediate synergy and affection between Marian and Bob. Classes were always held in Marian’s office, and I was never actually sure when class began or ended. Each class seemed to consist of a series of funny yet insightful stories, essentially an extended conversation. Then Marian would give us homework assignments such as, “You should start reading Law Library Journal—start from volume 1 and work your way forward.” And, unwilling to disappoint, I did it. Granted, there may have been some serious skimming involved, but I can honestly say I looked at every page of LLJ up until 1981!

¶17 In order to graduate, we were required to spend five weeks at another law library doing fieldwork. I chose to work at the Columbia University Law School Library. It was both exciting and terrifying. When I arrived, Francis Gates was two days from retirement. I’ll never forget two things he told me. First, while he was giving me a tour of the library, he pointed to the reference librarians and stated: “The problem with reference is you can’t fire mediocrity.” As if that wasn’t petrifying enough, he then turned and told me, “I like Marian. She always gives you the straight scoop on her students.” All I could think of was, “What did she say about me?” I also got to meet Harry Bittner, who was retired but still working part-time in the law library, and Bob Buckwalter, collection development librarian extraordinaire.

First Convention, First Job

¶18 As part of the law librarianship program, we were expected to go to the AALL Annual Meeting. This was, after all, where we would have our first interviews for jobs and inaugurate our careers. One of the things Marian did was to have us meet her one afternoon at the convention hotel, and we walked around the hotel
and the exhibits while she introduced us to whoever happened by that she knew. This is how I met Albert Brecht, George Grossman, Al Coco, Betty Taylor, Dan Henke, Julius Marke, and Morris Cohen. It was thrilling. And I met Roy Mersky. He just terrified me.2

§19 And then there was the interviewing—that weird carousel of half-hour interviews that happens at the Annual Meeting. Out of that process I was fortunate to get a job offer from Duke, where I would work with two lifelong mentors and friends: Dick Danner and Claire Germain.

§20 Now, for those of you who know me, this is a dangerous part of this lecture. As Roy Mersky pointed out to Dick many years ago, I am a wise ass. But, as tempting as it is to use this opportunity to tease Dick and Claire, I will instead use it as an opportunity to praise them. I take some satisfaction in knowing that this will also make them uncomfortable.

§21 Quite simply, Dick and Claire provided me with the skill set I needed to become a deputy director, and later a director, of a law library. From Claire I learned about collection development, reference, government documents, and, perhaps most important, that the French are infinitely superior to the rest of the planet, they just don’t like to make a fuss about it. From Dick I learned the value of scholarship and staying engaged in the professional literature. I continue to rely on Dick’s guidance. His is one of the great intellects of the profession. John Palfrey, former library director at Harvard, in introducing Dick at a conference, stated that when he began his work at the Harvard Law Library, he knew he needed to better educate himself in law librarianship. He quickly realized all roads led to Duke and Dick Danner.3 For those of you who are new to the profession, a simple piece of advice—you don’t need to read every volume of LLJ, but you should read everything Dick has written.

§22 After seven years under Dick and Claire’s tutelage, I accepted an offer to become the deputy director at the Boston College Law Library. There I had the advantage of working with another marvelous mentor, Sharon Hamby O’Connor. Sharon and I could not have been more different. I’m an evening person; she’s a morning person. She is an introvert; I am an extrovert. She is a planner; I am an experimenter. She believed in nailing down all the details; I was a big picture, “let’s try this and see if it works” kind of person. I loved to teach; she had no interest in teaching. She is a product of the genteel South; I am a product of in-your-face Jersey City, New Jersey. I don’t know if Sharon hired me because I was so much her opposite, but she forced me to look, not just to my strengths, but especially at my weaknesses.

§23 It wasn’t until I started working for Sharon that I became aware of the southern euphemism, “Bless his heart . . . .” For years I thought she just couldn’t say

2. Stories of Professor Mersky abound: see, e.g., Robert Berring, Reflections on Mentors, in Law Librarianship: Historical Perspectives 185 (Laura N. Gasaway & Michael G. Chiorazzi eds., 1996). Bob also talks about Morris Cohen and Marian Gallagher as mentors in his career. As usual, he is spot on.

an unkind word about anyone; only much later did I realize this was the most
damning of phrases from a woman raised in the South. When she said, “Bless his
heart, but he does try,” what she meant was—well, let’s just say that in New Jersey
expletives would have been involved. From Sharon I learned about being prepared
for meetings. She went into every meeting better prepared than everyone else in the
room, especially if she had a particular outcome in mind. She sat back and let the
conversation develop and then had a way of summarizing what had been said in
such a way that, while no one could object to the summary, somehow it was stated
so that it got her exactly the outcome she wanted.

¶24 There have been other mentors in my life, but I will stop here. My library
school education provided a great beginning, but it was a triage of sorts—just
enough to get me going. Without these mentors, my education would have been, at
best, incomplete. This is the reality of becoming educated in the art and science of
law librarianship. No amount of class time alone can produce a professional law
librarian. Practical experience continues to be our most valuable schooling. We
know this to be true not just in librarianship, but also in other professions like law
and medicine.

¶25 We stand on the shoulders of those who have come before us. AALL has
long recognized this and, through the Conference of Newer Law Librarians
(CONELL), the mentoring program, the institutes, and annual programs, has made
great strides in creating mechanisms for mentoring. I like to think our association
has always been about paying it forward. It is our duty, our professional responsibil-
ity. As in all professions, we are deeply interconnected. We cannot succeed without
the help of others.

The Evolution of Library Education

¶26 It is worthwhile for us to step back and look at the history of the education
of librarians if we are to understand the challenges we currently face. The first thing
to realize is that professional library education as we know it—the M.L.S. and its
variants—is really just over sixty years old. I think most of us tend to think of Melvil
Dewey and the birth of the library school in the 1880s as the beginning, but actu-
ally, only in the past sixty years has the graduate degree been the standard for the
professional librarian. Prior to the 1950s, there were several paths to librarianship.
The genesis of the belief that there was a need for formal training, as opposed to
apprenticeships for librarians, occurred in the mid-nineteenth century. Note that I
say training, rather than education. Librarians were mainly viewed as technicians.4

¶27 The year 1853 is viewed by many as the birth date of the American profes-
sion of librarianship. This was the year of the first librarians’ conference in the
United States. Charles Coffin Jewett, librarian of the Smithsonian, was elected

4. For a nice, brief history of library school education, see John V. Richardson Jr., History
of American Library Science: Its Origins and Early Development, in Encyclopedia of Library and
Information Science 3440 (Marcia J. Bates & Mary Niles Maack eds., 3rd ed. 2010).
president of the conference. From that conference came one of the first national calls for professional education of librarians.\(^5\)

\(^{28}\) But a serious move to professional education in librarianship didn’t begin until much later in the nineteenth century. The true birth of the profession took place in 1876. Two important events happened that year that mark it as the starting point of the modern history of librarianship.

\(^{29}\) The first was the publication of the book *Public Libraries in the United States of America: Their History, Condition, and Management*.\(^6\) It offered standards of practice for libraries, such as the following:

> It is clear that the librarian must soon be called upon to assume a distinct position, as something more than a custodian of books, and the scientific scope and value of his office be recognized and estimated in a becoming manner. To meet the demands that will be made on him he should be granted opportunities in instruction for all the departments of library science.\(^7\)

\(^{30}\) The second great event in 1876 was the founding of the American Library Association (ALA), and along with it, the publication of the first issue of *Library Journal*.

\(^{31}\) Subsequently, other events contributed to the development of the profession, such as the founding of the first library school by Dewey in 1887, the Columbia University Library School. His school was the first tangible move in the profession from apprenticeship to formal education. I won’t go into detail about Dewey’s career here, but I highly recommend the book by Wayne A. Wiegand, *Irrepressible Reformer: A Biography of Melvil Dewey* (ALA, 1996). Dewey’s life was a complicated and fascinating one. He was a misogynist and probable anti-Semite. He was accused of corruption and undoubtedly sought personal profit from many of his endeavors. He had his share of enemies.

\(^{32}\) He was also a reformer of the English language. He wanted to simplify spelling to its basic phonetics. His own first name is one example: he shortened *Melville* to *Melvil*. Clearly, he was a complex creature. It is hard to know through the distance of time the real Dewey, but he was hardly an unassuming bookworm spending his hours developing the Dewey Decimal System.

\(^{33}\) Throughout its early years, the ALA advocated for advancement of the profession. In 1905, the ALA’s Committee on Library Training created the first standards for library education.\(^8\) They were relatively minimal, and I think can honestly be described as fairly technical and clerical in nature.

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5. Out of the conference also came the call for a Library Manual, which would include information on: the best organization of the library society, in regards to its officers, laws, funds and general regulations; the best plans for library edifices and the arrangements of the shelves and books, with the requisite architectural drawings; the most approved method of making out and printing catalogues; the most desirable principle to be followed in the selection and purchase of books, as to authors and editions; with lists of such works as are best suited for libraries of various sizes, from 500 to 1,000 volumes.


7. Id.

§34 In 1923, C.C. Williamson produced a report, *Training for Library Service*. It was highly critical of library education and called for educational reform. Because it was produced under the auspices of the Carnegie Foundation, a real force in librarianship at that time—I’m sure you all remember learning about the Carnegie Libraries in library school—its findings and recommendations could not be ignored. The report described the historical forces that were defining library education and emphasized the formal education, rather than technical training, of librarians.

§35 Time marched on, and the profession continued to develop. More library schools opened, and there was an ongoing debate over whether the education of librarians should consist of a bachelor’s degree with a fifth year of librarianship specialization, or a master’s degree. By 1948 there were thirty-six accredited programs: thirteen offered a year of training as part of a bachelor’s degree; another twenty-three offered a year of training after the bachelor’s; and only four offered a master’s degree.10

§36 In 1950, Robert Leigh published a study, *The Public Library in the United States*, under the auspices of the Social Science Research Council and funded by the Carnegie Foundation. It is based on survey data from 1948–49. His chapter 10, “Library Personnel and Training,” is a wonderful snapshot of the state of librarianship and library education immediately after World War II. He questioned whether librarianship as a whole, or what aspects of it, could be considered a profession:

Not that all library work is professional. There are technical positions in the public library for which people need to be especially trained, but which are of a routine nature. There are clerical tasks, such as stenography, typewriting, filing, and the jobs of maintenance, custodianship and transportation, all of which require specialized skills neither peculiar to library work nor of professional character. Two-thirds of the work in the larger public libraries was found in our intensive analysis to be in these nonprofessional categories.11

At the time of the study, only 58% of librarians in the United States even had a bachelor’s degree, and only 40% had a year of professional training.12

§37 After defining a profession,13 Leigh asked:

To what extent is librarianship a profession as defined here? Certainly, some of the specialized library techniques are based upon prolonged intellectual training. But the intellectual content of the training consists of acquaintance with the whole range of knowledge rather than the one or two fields of science or learning usually underlying other professions. Thus, it is frequently stated that librarianship is a specialization in generalism.14

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11. Leigh, supra note 9, at 186.
12. Id. at 194.
13. “The distinction is that a profession possesses specialized, communicable techniques based upon: (1) prolonged intellectual training; (2) a content of training that includes generalizations or principles; (3) the application of the principles in concrete professional practice, a complex process requiring the exercise of disciplined, individual judgment. To put it another way, the specialized methods acquired in professional training always includes something more than rule-of-thumb procedures and routinized skills.” Id. at 187.
14. Id. at 190.
In 1951, the ALA first approved standards for accrediting library education programs. In 1970, the ALA issued its policy statement *Library Education and Personnel Utilization*, which was later revised in 2001–02 and retitled *Library and Information Studies Education and Human Resource Utilization: A Statement of Policy*. I’ll talk more about the 2002 report in a bit.

By 1978, there were seventy-one library schools in the United States; however, by 2008 that number had shrunk to fifty-seven. These numbers do not include the many school library programs that are unaccredited by the ALA but are accredited by the National Council for Accreditation of Teacher Education. Still, the trend is undeniable.

I think it is fair to say that, by the 1980s, library education was in a real crisis. Schools were closing for many reasons, but for some schools, like Columbia, one was that they couldn’t justify the cost of the education given the low entry salaries in the profession. During the late 1980s, there was the emerging idea of the information school, an attempt by library schools to adapt to the revolution in information technology. Library schools were criticized for trying to do too much with too little. The ALA, as an accrediting organization, was slow to react to the changes. Some would argue they were downright resistant.

The cynical response to the emergence of information science is perhaps best exemplified by a statement from Michael Gorman: “Information Science is library science for men.” But the aggravation with library science was not just the result of the growth of information technology; it was also due to the perception of a continuing disconnect between what students wanted (e.g., positions in school and public libraries, academic libraries, special libraries, etc.) and what the iSchools sought to teach. The impact of the technology revolution was real and apparent to everyone—how best to respond was where people differed. Library schools began moving toward becoming academic departments rather than professional schools, while comparative and interdisciplinary research became all the rage.

In 1994, the revolution began in earnest at the University of California, Berkeley (where else!), when the iSchool withdrew from seeking ALA accreditation, thereby fully embracing the iSchool model. In 1998, the ALA’s Standards of Accreditation were revised to address many of these issues. In 1999, the year after those standards were adopted, my school, the University of Arizona (UA) School of Information Resources and Library Science, lost its accreditation—which, I hasten to add, it regained provisionally in 2000 and in full in 2002.

I think that my own institution’s clash with the ALA and its accreditation standards is a good example of this battle for the soul of library education. Many alumni were upset about the UA program—there was no course on cataloging, school and public library courses were underrepresented, and the faculty were, by and large, nonlibrarians. Not only did most of the faculty not have experience working in a library, a number didn’t even have library school degrees. A few were...

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15. *Swigger, supra* note 9, at 77.
even openly hostile to librarians. “We know better than you” was their clear message.

¶ 44 Other alumni felt that library school was all about getting your ticket punched or your union card. Library school was a professional trade school—all about getting a job, not learning for learning’s sake. Then the alumni were shocked when the school lost its accreditation. They wanted the curriculum changed, not for the school to be shut down. I believe the issues we faced represent the dominant issues all library schools currently face. In truth, it was a small faculty, and they made practical decisions about what they could teach. The loss of accreditation resulted in the university’s increasing the size of the faculty.

¶ 45 In 2000, the KALIPER Report by the Kellogg Foundation and the Association for Library and Information Science Education16 identified six trends (listed below) that are fairly apparent to anyone in the profession. The report was clearly a defense of the current direction being taken by library and information science schools.

- Trend 1—In addition to libraries as institutions and library-specific operations, Library and Information Science (LIS) curricula are addressing broad-based information environments and information problems.
- Trend 2—While LIS curricula continue to incorporate perspectives from other disciplines, a distinct core has taken shape that is predominantly user-centered.
- Trend 3—LIS schools and programs are increasing the investment and infusion of information technology into their curricula.
- Trend 4—LIS schools and programs are experimenting with the structure of specialization within the curriculum.
- Trend 5—LIS schools and programs are offering instruction in different formats to provide students with more flexibility.
- Trend 6—LIS schools and programs are expanding their curricula by offering related degrees at the undergraduate, master’s, and doctoral levels.17

¶ 46 All of these trends address the ongoing concern of who we are and how we should be educated. And they should give us pause. This may be the necessary path for these schools. Whether we agree or not is immaterial; this is where they are heading. We as a profession need to find ways to acknowledge that and deal with these changes. How we do so is open for discussion.

¶ 47 As I mentioned earlier, in 2002, the ALA’s report Library and Information Studies Education and Human Resource Utilization: A Statement of Policy was issued.18 In its preface, it states that the prior “policy document appeared in need of some, but remarkably little revision, given its age. The Library Career Pathways Task

17. Id. at [5–7].
Force updated the statement, incorporating a more current view of librarianship and its partner professions.”  

¶48 Major revisions to the document included the following:

- The substitution of library and information studies for library science, library education, and librarianship, and the inclusion of the title Specialist where the terms Library Assistant/Technical Assistant previously appeared
- The recognition that the library and information studies realm of practice includes several professions at various levels of entry
- The acceptance of support staff as integral contributors to and participants in library professions
- A statement encouraging professional preparation, which would include a broad educational background of study in the humanities, the sciences, and the social sciences, instead of giving preference to a narrowly defined, specialized field of study

¶49 Generally speaking, the report seeks to expand the definition of libraries and librarianship to include media centers, information centers, and all of those iterations:

Throughout this statement, wherever the term “librarianship” is used, it is meant to be read in its broadest sense as encompassing the relevant concepts of information science and documentation; wherever the term “libraries” is used, the term refers to public, academic, corporate, medical and other special libraries; current models of media centers, learning centers, educational resources centers, information, documentation, and referral centers are also assumed. To avoid the necessity of repeating the entire gamut of variations and expansions, the traditional library terminology is employed in its most inclusive meaning.

I’ve thought a lot about the report, but I will leave it to you to come to your own conclusions about its implications. I encourage you to go to the ALA’s web site and read it. One final fascinating bit of information in the report is the library career lattice—the ALA seeks to divide library professions into librarians and specialists. Clearly this is an attempt to recognize the growing roles of other types of professionals in libraries. It also defines the place of paraprofessionals. The ALA, along with the profession, is clearly worried about the loss of professional status and, simultaneously, concerned about how to recognize the increasingly vital role of paraprofessionals or, as the ALA refers to them, associates.

¶50 In the past five years there has been increasing activity surrounding library education, competencies, and future directions. In 2008, the ALA Standards for Accreditation of Master’s Programs in Library and Information Science were revised, and WebJunction, funded by the Bill & Melinda Gates Foundation, produced a

19. Id. at 1 (emphasis added).
22. Id. at 5.
work titled *Competency Index for the Library Field*.\(^{23}\) In 2009, the ALA published a list of core competencies for librarians, which is available on the ALA’s web site.\(^{24}\)

\(^{\S}51\) All of this is happening because university education and its costs are receiving increasing criticism. And library education is not immune—critical reviews of the profession are beginning to be published. One notable review, Richard Cox’s *The Demise of the Library School: Personal Reflections on Professional Education in the Modern Corporate University*, addresses many of the common concerns. In it he states:

The pre-eminent issues facing library schools can be summarized rather easily, although how or whether we deal with them is no easy process, intertwined as they are with matters afflicting the university, as well as what, and how we define the general public good.

First, these schools may be trying to do too many things with too few faculty and resources.

Second, these schools are partially the victim of the corporatization of the university.

And, third, these schools have lost, perhaps completely, a sense of what traditionally attracted students to library schools.\(^{25}\)

While he talks about many issues, the idea of the corporate university dominates. He fears that the focus on marketable skills and the bottom line devalues the liberal arts and education in general.

\(^{\S}52\) Another treatise, Boyd Keith Swigger’s *The MLS Project: An Assessment After Sixty Years*, provides some interesting insights into how librarians might be better credentialed.\(^{26}\) His thesis, simply stated, is that the move to the M.L.S. was based on a desire for increased status and pay, as well as a concern for the quality of librarians and need for educational standards. The M.L.S. movement was a desire to solidify the standing of librarianship as a profession. And, he believes, it has failed. The book is, in many ways, an update of Robert Leigh’s *The Public Library in the United States*. Swigger relies on Leigh’s book heavily in his discussions of the history of the profession and professionalism.

\(^{\S}53\) I believe the economic downturn has done us a favor. It has provided the profession with a “come to Jesus” moment. Inertia is a powerful force, but this economic cataclysm is forcing significant change. We just need to work to manage that change. In the crisis of library education, the battle lines can be drawn in a few ways: theory versus core competencies; practical versus theoretical knowledge; or doctrinal versus interdisciplinary scholarship. Are they professional schools or academic departments? What are their missions?

\(^{\S}54\) The market for librarians is changing in a way I don’t think we yet fully understand. Much less attention has been paid to the library and information

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science market than to the market for law school graduates, and we need to remedy that. Many, but not all, library schools and iSchools are dealing with shrinking enrollment, so they are looking to expanded models of library/information education like certification programs and undergraduate, advanced, and joint degrees.

¶55 One example is the eSociety program at the University of Arizona School of Information Resources and Library Science (SIRLS), which will offer students the opportunity to pursue either a bachelor of arts degree or an undergraduate minor in eSociety. There is a perceived need for this kind of degree. Only time will tell if there is a market for the degree and professional jobs for the program’s graduates. Flavor of the month? I can’t help but wonder what this will sound like in ten years.

¶56 I’m sure you see the parallels between the current crises in legal education and library education. The issues faced by both professions are remarkably similar, although, to date, library schools have not suffered the way law schools are suffering. But that may change, and sooner than we think.

¶57 Here are some of the familiar complaints we are hearing and reading about regarding library and information science education:

- LIS faculty members do not write for the profession and increasingly are people who have not practiced in the profession.
- LIS programs do not teach the skills needed to practice in the profession—there is a disconnect between skills needed in practice and those taught in school.
- LIS education is too expensive; it outpaces inflation—true of all of education, really—and, furthermore, if something isn’t done about the underlying problem of undergraduate education costs, we are really sunk. We need to find and create new revenue streams.
- LIS schools see themselves more as academic departments than as professional schools (and along with that vision comes the lust for the structure of academic departments, with their graduate assistants, fellows, researchers, and PhD students).
- LIS schools do not have the luxury of specializing in a few discrete subject areas like many of the university’s academic departments. They are expected to meet a broad range of needs—and this does not always happen. I think that is one reason Berkeley withdrew from seeking ALA accreditation. It is what caused problems with my own institution’s accred-

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27. Innovations in communication and computational technology are fundamentally changing the ways we create, process, share, manage, and shape knowledge. Indeed, in the first decade of the 21st century, the development of digital and social media tools, such as Facebook, Twitter, blogs, and YouTube, has moved us from a world of connectivity to interconnectivity. eSociety will prepare students for life and work in contemporary society. eSociety students will acquire skills enabling them to work in information management, resource preservation, and successfully leverage social networks to engage in computer-supported collaborative work in museums, libraries, or related environments. Those skills form a strong basis for students to move into Library and Information Science graduate degrees requisite for professional careers in many cultural heritage or other archival institutions.

eSociety: New SIRLS Bachelor of Arts Degree or Undergraduate Minor Degree, UNIV. OF ARIZ. SCH. OF INFO. RES. & LIBRARY SCI., http://sirls.arizona.edu/node/1564 (last visited Nov. 8, 2013).
itation. We see this in law as well, when a school can’t decide if it can afford to focus on developing a world-class torts faculty and ignore contracts. The core courses are still critical.

- LIS schools increasingly rely on adjunct faculty to teach courses, especially skills courses. There are pros and cons to this situation. Using adjuncts contributes to the shrinking of the tenured faculty and the stability that the tenure relationship gives to both the faculty and the institution. But adjuncts are cheaper, are often better equipped to deal with experiential learning, and tend to have the practical experience tenured faculty lack. In the economic context of the corporate university, many administrators view the increased use of adjuncts as not only beneficial but necessary.

- As universities look to limit the number of tenure-track faculty, new staffing models are emerging. One is the growing employment of visiting assistant professors to fill curricular holes and to deal with the Ph.D surplus; another is professors of the practice. In law, clinicians and legal writing faculty—and increasingly, law library directors—are on short- and long-term contracts rather than on the tenure track. As I speak, the ABA is looking to revise its tenure rules.

- LIS faculties push for reduced teaching loads and research sabbaticals to focus more on scholarship. Unfortunately, both library and law schools, in my mind, overvalue the importance of their scholarship—or perhaps more correctly, the types of scholarship they currently produce.

- Increased focus on offering advanced academic degrees—Ph.Ds and new specializations (e.g., in law, LL.M., S.J.D./LL.D., and M.A. programs)—are used as ways to stand out and increase revenue streams.

- No one degree is needed to be an L.I.S. school faculty member. On my own faculty, we have sociologists, M.I.S.s, and computer science Ph.Ds. In law, we are seeing an enormous growth in the Ph.D/J.D.

- LIS schools are too focused on U.S. News and World Report—fortunately, we law school librarians are not concerned about those rankings.

- LIS schools are concerned about changing accreditation standards that seem at odds with the current economic situation and market realities, fearing that these standards lag behind current needs and hinder creativity and innovation. As a result, both the ALA and (especially) the ABA seem to be changing accreditation requirements on a daily basis!

- LIS schools still try to instill educational philosophies and acculturation to the library profession—its values and professional and cultural ethics. I don’t diminish this—I believe it is one of the core requirements for successful programs—but, in my experience, students are critical of these courses—much the way law students hate taking professional ethics courses. I think what they really resent is the implication that they are unethical and need to be told what to do. We need to do it differently, and better.

28. Or, to quote one of my students, who edited my final draft: “Actually, it is because there are no real ethical standards we can adhere to, simply high-minded ideals that are not enforceable and can be overridden by institutional policies. At SIRLS, I also dislike the academic, philosophical basis of the ethics course, which is not applicable to the real world.”
LIS programs now live under the shadow of RCM budgeting. For those of you who don’t know what that is, responsibility centered management is sweeping through the academic world and is perhaps the greatest current threat to library schools and law schools, not to mention the liberal arts.29 This is the eat-what-you-kill school of management. Schools are being told, “You will live on tuition and donations; don’t expect state or institutional support.” Or, to quote a brilliant legislator in my home state of Arizona, “You just go to graduate school to line your pockets.”

Increasingly, LIS schools are looking to cross-listed courses and the offering of undergraduate courses as new revenue streams.30

¶58 There are also some important differences between librarians/LIS school and lawyers/law school:

- Librarians do not self-regulate like lawyers, doctors, accountants—you can’t lose your license to practice librarianship, because there is no licensing. I think this has real implications for how we define ourselves; the practice of law is easier to define than the practice of librarianship.31
- No one competes effectively with law schools—lots of departments do effectively compete with LIS schools (computer science, communications, journalism, management information systems, etc.).
- LIS schools are much more heavily invested in distance education. We could spend a lot of time talking about the benefits and disadvantages of distance learning.

OK, So What Can You Take Away from This?

¶59 To begin at the beginning—we had better make sure we continue to mentor and pay attention to how we do that. One brief example: when I went to my first AALL meeting and interviewed, not one full on-site interview required a job talk. Of the dozens of interviews my fellows have gone on, every interview has required a job talk. In my program, we work with the fellows to develop at least two job talks. Librarians entering the job market need to be prepared for that.

¶60 If you are in the profession, you are by definition a teacher and mentor. If you aren’t, you aren’t a librarian. We—all of you out there—need to pick up the slack. It is why I developed the fellowship program at the University of Arizona Law


30. I hate that term; it devalues education and reduces it to a commodity. When I think “revenue streams,” I think of the words of the great Jerry Jeff Walker, “Pissin’ in the wind, bettin’ on a losing friend / Makin’ the same mistakes we swear we’ll never make again.”

31. See generally Everett C. Hughes et al., PROFESSIONAL EDUCATION IN LAW, IN EDUCATION FOR THE PROFESSIONS OF MEDICINE, LAW, THEOLOGY AND SOCIAL WORK (1973).
Library. It is why my entire library staff plays a role in training and mentoring of our fellows. It is why Penny Hazelton does what she does here in Seattle.

§61 Law firms, it would be wonderful if you provided internship opportunities. Paid ones are preferable, but most schools allow students to do internships for academic credit. It is time consuming, but it is also personally satisfying. When I was at the University of Washington, I did my field work at Columbia University. That experience was invaluable.

§62 The needed skill sets for librarians are expanding—the ALA has correctly identified a real problem. I’m just not sure I agree with their solution, although I must confess I don’t have a better one. I don’t like the parallel class of specialist, but we do need to broaden the range of professions we bring into the library. Personally, I have no problem with calling anyone with a graduate degree who works in my library a librarian. It improves the brand.

§63 I believe the M.L.S. will be around for a while, but we need a broader range of disciplines and skill sets in the library. Both library schools and law schools will survive, if only through inertia and the power of the Yirka question—no one wants to seriously ask “What are we doing that we no longer need to do?” But the economic downturn has actually done us a favor—we need to act, and scarce resources force innovation.

§64 RCM is here to stay; we have to proceed on the assumption that we cannot rely on subsidies, not to mention the current student loan structure. Revenue will define what we can do. There will also be increased growth of specialization and certification tracks—public libraries, archives, school libraries, law, medicine, and so forth.

§65 Finally, as long as employers seek references, students who have personal contact with faculty will have a leg up in the job market, as will those from programs like the University of Washington’s and Arizona’s fellowship programs. Distance learning has an important place in education, but it is overblown in professional education.
It’s All Enumerative: Reconsidering Library of Congress Classification in U.S. Law Libraries

Kristen M. Hallows

Ms. Hallows investigates the widespread use of the Library of Congress Classification system in U.S. law libraries and the difficulties it can present in some circumstances. To address these problems, she proposes that smaller law libraries that do not participate in a bibliographic utility may benefit from an in-house classification scheme.

Introduction

1. At its most basic level, the human impulse to classify emerges from our strong desire to know what to expect. New things that resemble familiar things need little or no further examination. Quite simply, “we know what to expect of a dog or a banana, since they are similar to dogs and bananas we already know.”

2. Classification also provides a means of organization. One of the most fundamental concepts learned in a library and information science program is that we organize to retrieve; therefore, classification is not only helpful but also necessary if we are to benefit from the information we acquire and produce. Further, we may also classify to facilitate browsing and therefore discovery—even in an online environment such as the library catalog, though physical collections are the focus of this article.

3. In an increasingly digital world, classification may seem like a quaint notion from the past. In a database, it is unnecessary to store records using any particular system, as long as those records relevant to a search are displayed or sorted in a useful way. Even with the explosion of electronic material, however, physical collections in law libraries are relied on heavily, especially when online versions are incomplete or even incorrect. Physical collections therefore need a reliable classification system to enable not only the location of specific materials but also the ability to browse within a subject area, which benefits researchers who come to the library with only a certain area of law in mind. Snunith Shoham said that “[b]rowsing is one of the most common ways in which the library user finds the books he borrows” and that “[the browser] goes to that section of the library that he estimates has the highest probability of containing a book or books that his immediate

* © Kristen M. Hallows, 2014. This is a revised version of the winning entry in the student division of the 2013 AALL/LexisNexis Call for Papers competition.
** Research Librarian, Bricker & Eckler LLP, Columbus, Ohio.
1. VANDA BROUGHTON, ESSENTIAL CLASSIFICATION 1 (2004).
2. FUNDAMENTALS OF LIBRARY OF CONGRESS CLASSIFICATION 1–11 (Lori Robare et al. eds., 2008).
interests would make him want to borrow.”³ Beyond simple organization, classification by subject “provide[s] as many other helpful options as possible to suitable substitutes should the patron’s original subject-based retrieval approach be unsuccessful.”⁴

¶4 None of these statements address the considerable challenges involved in classification of materials by subject in any type of library. Most traditional classification schemes are not optimal for every size and specialization; as a result, many libraries have developed their own in-house or “homegrown” classification systems. Alternatively, some may adopt (and subsequently adapt) another library’s in-house scheme.

¶5 Regarding the unique obstacles in choosing a suitable classification system for a law library, Elsie Basset stated:

Sometimes a cataloger of a general collection of books is transferred to a law library and finds that law cataloging requires special study. Sometimes a person without library experience, but with some knowledge of law, is given the task of cataloging, and realizes that legal training should be supplemented by cataloging technique.⁵

For instance, a law library serving the office of a state attorney general is unlike its private and academic counterparts. Its patrons consist of lawyers with diverse practice areas as well as legal interns, forensic scientists, and investigators. These factors combine to increase the complexity of choosing (and using) any one existing classification scheme.

¶6 This article examines why the Library of Congress Classification system (LCC) is so widely used in U.S. law libraries and explores in-house classification systems that are the exception to this rule. It then reports the results of a survey of records produced by the online public access catalogs (OPACs) of two law libraries using in-house schemes in order to determine how select legal works are classified, and compares this information to the classification of these same works by two additional libraries using traditional schemes.

A Brief History of Classification for Legal Materials

¶7 In the process of identifying U.S. law libraries (academic, private, or government) that use in-house classification systems, I found myself wondering why nearly all U.S. law libraries use LCC, and why the law libraries that at one time had an in-house system decided to switch partially or completely to LCC. Before the Library of Congress published Subclass KF, Law of the United States (the first of many subclasses of its main class for law, Class K), in 1969, legal materials were classified under the subject to which they pertained. For example, materials on

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⁵. ELsie BASSET, A CATALOGING MANUAL FOR LAW LIBRARIES 5 (1942).
school law and legislation would be found arranged by jurisdiction under Class L, Education: Subclass LB, Theory and Practice of Education.6

8 Various commentators have referred to the absence of a law schedule as a “strange omission”7 and pointed out that the Library of Congress published its Class K twenty years after the “postwar period of growth in which American law libraries began to feel a serious need to classify their collections.”8 While Class K was conceived as early as 1900, the prevailing opinion was that a classification for law was unnecessary (in addition to the fact that the Library of Congress had insufficient funding and staff to devote to the project).9

9 However, as law libraries grew, law librarians clamored for a workable system for law libraries: “[T]he present lack of a definite classification scheme for materials has made it more and more apparent that a workable and tried scheme should be provided for law librarians.”10 In response, Elizabeth V. Benyon of the University of Chicago Law School Library developed the K schedule, which was first published in 1948. The “Benyon scheme,”11 as it was known, was designed to be used with LCC.12

10 Eventually, library participation in bibliographic utilities such as OCLC strongly encouraged, almost required, “interlibrary cooperation and widespread acceptance of national standards.”13 Understandably, predictability and consistency are valuable to any user of a shared catalog. Ralph Stahlberg, Director of Reference and Research Services at the Los Angeles County Law Library (LACLL), explained that his library decided to switch to LCC “to be in sync with other libraries and to make cataloging easier.” New catalogers already familiar with LCC do not have to be trained on an in-house classification system.14

11 It is reasonable that a desire for uniformity would result in a single classification scheme being used by the vast majority of U.S. law libraries. The influence of the American Association of Law Libraries (AALL) should also be considered. AALL was founded in 1906, and A.J. Small described law classification in his first presidential address as “most important for our consideration.”15 However, it was not until the Library of Congress published its law classification well over a half century later in 1969 that the AALL adopted it as a “standardized subject classification system.”16

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13. Stone & Tam, supra note 8, at 722.
14. E-mail from Ralph Stahlberg, Dir. of Reference and Research Servs., L.A. County Law Library, to author (Feb. 27, 2012) (on file with author).
15. A.J. Small, President’s Address, 1 Law Libr. J. 4, 5 (1908).
The delay appears to have been caused by the inability to agree on author or subject classification.

§12 Certainly, the adoption of LCC was seen as a way to reduce cataloging costs. Moreover, there was an increasingly symbiotic relationship between the Library of Congress and other libraries, which began with the sale of Library of Congress catalog cards, and naturally produced savings in cataloging and card ordering for subscribing libraries. This and other services became so valuable that “[b]y 1968, American research libraries looked to LC to meet more than seventy percent of their current cataloging needs.” LCC is, after all, the classification system used by the “most influential library in the Western World, if not in the world generally.”

§13 Interestingly, LCC has never been nearly as popular outside the United States. In one survey of law libraries in the United Kingdom, more than forty percent of respondents reported using an in-house classification system. Should LCC continue to be the classification system in the United States? Strict adherence to LCC can complicate the effective use of a library’s collection, and it may be appropriate to claim that LCC has become anachronistic in some law libraries. “What we have done before isn’t a particularly rigorous yardstick in terms of classification rules.”

Library of Congress versus In-House Classification

§14 Like the other schemes discussed in this article, LCC is enumerative, which means that every topic that can be used to classify a work is included, or enumerated, in the scheme. Class K is different in that it is first arranged by jurisdiction—not subject—due to contrasts in legal concepts between one country or state and another, since laws “are the true reflections of the social, economic, and cultural tradition.” Though Class K differs in its arrangement, this literary warrant is fundamental, because LCC is based entirely on the Library of Congress collection, “instead of being a classification of knowledge in the abstract.”

§15 Similarly, LCC “is dictated by the organization of the library rather than by theoretical considerations,” and “there are no provisions for subjects not represented in the library.” Furthermore, LCC was originally designed and intended for the exclusive use of the Library of Congress; any issues that other libraries encoun-

17. Foskett, supra note 7, at 332.
19. Foskett, supra note 7, at 332.
24. Foskett, supra note 7, at 325.
25. Id. at 326–27.
ter when using LCC relate directly to this origin. Thus, the smaller the library, the more likely LCC is too detailed for it to use efficiently. For example, the LACLL deliberately made its in-house scheme less specific.26

¶16 Yale Law Library Classification, created in 1939, makes its intended use clear in the introduction:

This classification is designed solely to serve the purposes of the Yale Law School and its Library. It is published primarily for the use of the Yale Law Library staff now and in the future. In its preparation no thought was given to the question whether or not it might be adopted by other libraries. . . .

A general policy was first adopted . . . but this was not followed by a vast scheme in which the relation of each group of books to all the other groups was decided upon in advance. . . .

The basis of procedure was that the classification should serve the Library, rather than that the Library should be bound by a preconceived theoretical classification.27

¶17 From the patron’s perspective, strict adherence to LCC numbers in law libraries that own items on nonlaw subjects (e.g., medicine or criminology) can make locating some items rather inefficient, because works pertaining to a particular subject might be located in different areas of the library. A law library that uses the call numbers assigned by the Library of Congress would catalog diagnostic manuals and drug handbooks in Class R, Medicine, and health law treatises and guides to health care legislation in Class K, Law. Or a law library might own works on human anatomy, which would be classified in Class Q, Science.

¶18 For example, the Ohio Attorney General’s Library (AG Library) owns a considerable number of nonlaw, health-related items such as those described above, which, under LCC, were physically located in different areas throughout the library. The AG Library decided to gather the legal and nonlegal health-related works in one location for easier browsing, and this area was titled Health. This section required an in-house classification scheme.

¶19 Two libraries that have created their own in-house classification schemes, though they are not law libraries, are worth mentioning because of the reasons behind the development of their systems. First, the Bellevue Classification System (BCS) was created by instructor Ann Doyle for the Bellevue Hospital School of Nursing Library in New York in the early 1930s. The BCS is a prime example of the influence of a system’s creator and the era in which it was created. Traditional schemes were eschewed at this library because they “projected nursing as neither a particularly encompassing nor a particularly dynamic knowledge domain.”28 Law is a long-established profession; however, a library’s classification scheme can be used to “construct and promote a distinct viewpoint of [legal] knowledge.”29 If a state attorney general’s collection is considerably different in size and scope compared to, for example, a small private firm’s library, should the same classification system be used in both?

27. FREDERICK C. HICKS, YALE LAW LIBRARY CLASSIFICATION, at vii (prelim. ed. 1939).
29. Id.
The second example not only demonstrates the questioning (and subsequent modification) of a traditional classification system, it also exemplifies the beneficial effect of literary warrant and the connection between subject arrangement and the ability to browse. The traditional scheme at issue is the storied Dewey Decimal Classification (DDC). Barbara Fister described a public library in Darien, Connecticut, that implemented a “Dewey/bookstore mashup,” explained by one of its librarians as follows:

The bookstore-as-destination people come in, wander around, get a stack of books, a cup of coffee, and settle in. The grab-and-go folks take a quick look around and usually hop on a computer or ask an employee, find the item they’re looking for, and leave. Dewey is great for the grab-and-goers, and we didn’t want to lose that. Dewey is not so great for the destination users. Cooking is in technology. Gardening is in arts and recreation. Don’t those two make more sense with each other?30

Substitute LCC for DDC and add a greater sense of urgency, and you might have an adequate description of a law library in terms of its patrons’ typical activities. In this public library, DDC was great for organizing travel books, but put languages on the other side of the library; under the mashup system, both were put together under the title Places.

Similarly, librarians at the AG Library felt that the Health section had become necessary not only because medical jurisprudence, anatomical charts, medical dictionaries, and coding manuals would be located in different parts of the library under LCC, but also because these items were on subjects vastly different from the rest of the collection. More important, the Health section would prominently place all related items in a single location for patrons’ improved access.31

Regarding subject arrangement, consider the sentiment expressed by Charlotte Jennett over a half century ago:

This survey was undertaken chiefly because so many wistful attorneys and law students have presented themselves at the reference desk of a nonclassified law library and asked, “Where do you keep all the material on taxes?” Sometimes the inquiry was about all the material on labor law or workmen’s compensation, but always it was a definite subject approach to law which prompted the questions.32

The patrons may be different, but the questions are basically the same. In the AG Library, a request for “all the material” on health (or medicine) now leads to a single section with its own classification scheme.

31. As a student in Kent State University’s MLIS program completing my practicum in the AG Library, I had the opportunity to assist in the implementation of an in-house classification system for this subject area.
A Survey of Classification Schemes

¶24 In order to discover how a small law library (such as the AG Library) might decide to classify certain law materials, I surveyed how four different libraries classify examples of legal materials. I chose the University of Chicago Law Library and the Los Angeles County Law Library, both of which use in-house classification schemes; Harvard Law Library, which uses LCC; and New York State Library (NYSL), which uses DDC.

¶25 Each library’s online public access catalog (OPAC) was accessed multiple times in February and March 2012. Sixteen legal works published in the United States, the United Kingdom, and Canada in the twentieth and twenty-first centuries representing a range of areas of law were chosen as examples (see Table 1). Next, the most recent schedule possible was obtained for each classification scheme in order to determine how each work was classified. The fact that three of the four schemes discussed use the letter K as a mnemonic notation can be confusing, but every attempt was made to produce a clear analysis.

Classification—Class K, Law (Benyon Scheme)

¶26 To fully understand the Benyon scheme and the reasons it was created, it may be helpful to imagine LCC without Class K or any of its subclasses. At a time when law was subdivided under subject, the Benyon scheme was developed for the purpose of classifying legal materials within a general collection classified according to LCC. Benyon was not intended for an independent law library; there is no allowance for classification of nonlegal materials. The scheme is based on the principles of LCC and is therefore similar in arrangement and terminology. It is also based on the legal system, so the scheme is primarily divided geographically.

¶27 The Benyon scheme was designed to be flexible; thus territories may be classified with the country of origin, and numbers are arranged so that new material can be added. In the published classification, notes are used to indicate University of Chicago preferences. The index is interesting because it contains the numbers for legal materials that appear elsewhere in LCC, and the index is described as a “comprehensive guide to legal materials, wherever they may be

33. In 1983, the University of Chicago Law Library switched to LCC. Classification—Class K, Law (Benyon scheme) is used for older works (before 1983), and LCC is used for newer works (1983 and after). E-mail from Univ. of Chicago Library to author (Mar. 7, 2012) (on file with author).
34. The LAPLL currently uses its version of the Benyon scheme, which was similarly named Class K—Law; however, the library is in the process of converting to LCC. E-mail from Ralph Stahlberg, supra note 14.
35. Harvard Law Library currently uses LCC, but Harvard actually began with two in-house systems. For thirty years, it used a combination of LCC and one of the in-house systems for foreign law. In 2012, Harvard began using LCC exclusively. E-mail from John Hostage, Authorities & Database Integrity Librarian, Harvard Law Sch. Library, to author (Feb. 27, 2012) (on file with author).
36. The NYSL uses DDC; as Melvil Dewey was once the New York state librarian, it is unlikely that the NYSL will ever switch to LCC. E-mail from Allan Raney, N.Y. State Library, to author (Feb. 27, 2012) (on file with author).
Table 1

Selected Legal Works and Corresponding Call Numbers by Library

<table>
<thead>
<tr>
<th>Work</th>
<th>Los Angeles County Law Library (Class K—Law)</th>
<th>University of Chicago Law Library (Benyon scheme)</th>
<th>Harvard Law School Library (Moody scheme/LCC)</th>
<th>Library of Congress (LCC)</th>
<th>New York State Library (DDC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arkansas Legislative Council, <em>The Defense of Insanity: Commitment to and Discharge from State Mental Institutions of Criminal Insane Persons</em>, (1964)</td>
<td>KB9 v.517</td>
<td>K146.3 .A2 v.118</td>
<td>US/ARK 681 F64</td>
<td>JK5174 .A3 118</td>
<td>34.6 4A7285</td>
</tr>
</tbody>
</table>
### Table 1 (Continued)

Selected Legal Works and Corresponding Call Numbers by Library

<table>
<thead>
<tr>
<th>Work</th>
<th>Los Angeles County Law Library (Class K—Law)</th>
<th>University of Chicago Law Library (Benyon scheme)</th>
<th>Harvard Law School Library (Moody scheme/LCC)</th>
<th>Library of Congress (LCC)</th>
<th>New York State Library (DDC)</th>
</tr>
</thead>
</table>

*Note: Editions may vary among libraries.

*The lower case “s” indicates that the item has been removed from the library’s main public floor.

†An accession number sometimes follows the Cutter number.

‡The “XX” preceding the call number is used to distinguish LCC call numbers from Benyon Class K.
classed in the Library of Congress system.” 38 Furthermore, cross-references in the index will guide a user to broader, narrower, and related terms.

¶28 Another characteristic of enumerative schemes is the successive narrowing of broad subjects to more specific ones; for this reason, enumerative schemes are sometimes called top-down classifications. 39 Class K (international law) includes constitutions, statutes, court reports, and so on arranged geographically (e.g., the United States is divided into states and territories and then divided further into cities). Two of the three main categories are Anglo-American (United States and Great Britain) and Foreign, which is the result of the worldview of the classification scheme’s creators. Subclasses KA and KB are structured in essentially the same way; they both contain collected works, legal history, and treatises. However, KA is intended to classify general, comparative works (e.g., those concerning the law of more than two countries) rather broadly. Subclass KB is strictly Anglo-American law, and “general and special works” may be arranged by author or by using an alternate subject classification.

¶29 “General and special works” in subclass KB is the area in which three of the seven older items in this survey were classified, and classification by author was chosen over classification by subject. For example, the call number for John Elliott Byrne’s A Manual of Federal Evidence 40 begins with KB539. The number 539 represents authors Byr–Bys. All author surnames may be assigned a number from 20 (A–Aba) to 6831 (Zy–Zz). This allows for the broad classification of items as “general and special works” under Anglo-American law, but closer classification (further specification by subject) is unavailable unless the alternate subject classification is used. Cutter numbers are also used.

¶30 The alternate subject classification is clearly the predecessor of the LACLL’s subclass KB. The LACLL’s adaptation was an expansion; for example, they modified the governmental or administrative regulation category by adding items such as “fire codes” and “Sundays and holidays.” This becomes apparent when comparing the Benyon scheme originally published in 1948 (revised in 1967) with the 1958 version of the LACLL’s Class K—Law.

¶31 Two titles, School Law by Madaline Kinter Remmlein, 41 a book on educational law, and The Constitution and Civil Rights, whose subjects include constitutional law, by Milton R. Konvitz, 42 were classified according to LCC under subclass LB (theory and practice of education) and subclass JC (political theory), respectively. It is not surprising to find works classified under nonlaw subjects, as Benyon specifically stated in a 1947 article that the “non-legal materials in the Law Library are classified according to the Library of Congress system,” 43 not in Class K, Law. What is interesting about this is that of the four libraries surveyed, the University of Chicago is one of two that consider these two items to be nonlegal.

38. Id. at 6.
39. Broughton, supra note 1, at 32.
40. JOHN ELLIOTT BYRNE, A MANUAL OF FEDERAL EVIDENCE (1928).
41. MADALINE KINTER REMMLEIN, SCHOOL LAW (1950).
43. Elizabeth V. Benyon, Class K (Law) at the University of Chicago, 40 LAW LIBR. J. 9, 9 (1947).
Class K—Law (LACLL)

¶32 A not widely known connection between the University of Chicago and the Los Angeles County Law Library is Forrest S. Drummond. He was the law librarian at the University of Chicago, where Elizabeth Benyon developed her scheme, and the LACLL’s version of the Benyon scheme was published after Drummond became its director.44

¶33 The LACLL finished its first adaptation of the University of Chicago’s Benyon scheme in 1951. Probably the most significant difference between the Benyon scheme and Class K—Law is that Class K—Law may be used to classify nonlegal materials.45 The LACLL is an autonomous law library, so its modification of the Benyon scheme is almost completely expected. However, unlike the University of Chicago, the LACLL classifies School Law and The Constitution and Civil Rights as legal works. Another difference is that the most recent version of Class K—Law (2006) has no index. The index contained in the 1958 compilation, however, appears to be virtually identical to the index contained in the Benyon scheme.46 It is not known when or why the index was eliminated. The LACLL’s Class K—Law also appears not to employ notes.

¶34 Like Benyon, Class K—Law is an enumerative scheme in which broad subjects are broken down into more specific topics, and it is also arranged geographically. However, when comparing the two systems, one may note the different uses of class K and subclasses KA and KB, which are both used for U.S. law. Like Benyon, Class K—Law contains comparative materials, but nonlaw materials can also be found there (e.g., criminology). Subclass KA contains primary materials (e.g., constitutions, statutes, court reports, and administrative codes), and subclass KB contains secondary materials (e.g., textbooks, treatises, and periodicals).

¶35 Primary materials may be classified in KB if subject is considered more important than form, and KB does not differentiate among federal, state, or multi-state secondary materials. Jurisdictional arrangement is achieved by the use of location symbols for federal and state jurisdictions. These symbols can be found at the end of the call number, and the scheme has an appendix that lists them. For example, “Tex” is used for the state of Texas.47 For these reasons, Class K—Law may be more flexible than the Benyon scheme.

¶36 There are subtler differences discoverable in the classifier instructions for Class K—Law. For example, the Benyon scheme instructs readers to place a work that discusses the law of two jurisdictions, one of them the United States, under the United States. Conversely, Class K—Law suggests that such a work be placed with the other jurisdiction unless it can be determined that it is meant to be used in the United States. As another example, the Benyon scheme states that works about the

44. Memorandum from Melody Lembke, Associate Law Librarian for Technical Services, University of California, Irvine, School of Law, on Introduction to Class K—Law (no date) (on file with author).
45. Id.
46. LOS ANGELES COUNTY LAW LIBRARY, LOS ANGELES COUNTY LAW LIBRARY CLASSIFICATION SCHEDULE: CLASS K, LAW 69 (1958).
47. Memorandum from Melody Lembke, supra note 44.
laws of more than two countries should be placed in Class K. Class K—Law says they should be placed in a regional number if from the same region; if not, only then should they be classed in K. These are relatively small distinctions, but they can make a significant difference in the way items are classified. The LACLL’s Class K—Law was designed to be less specific than LCC. For very small libraries, which may require even less detail, there is a brief guide for modifying the scheme.

Harvard Law School Jurisdictional Classification

When conducting this survey, I observed that Harvard, which now uses LCC, also uses a different scheme for the older works on my list, which appeared to be one of their in-house classification systems. John Hostage, Authorities and Database Integrity Librarian, explained that this system is in fact the Harvard Law School Jurisdictional Classification. It was informally called the Moody system, which was used for the law of all jurisdictions. As the section for Harvard in Table 1 indicates, it appears to be a relatively straightforward scheme that uses notations such as US, CAN, and UK.

Library of Congress Classification (LCC)

For the sake of comparison, it is worthwhile to consider how the Library of Congress classifies the works sampled in the survey using its own classification system. Because of the University of Chicago’s exclusive use of author surnames to classify works according to the Benyon scheme, the first and most significant comparison is to the LACLL’s Class K—Law. As expected, LCC is a more detailed scheme. A good example of this detail can be found in the way John Elliott Byrne’s *A Manual of Federal Evidence* is classified. The LACLL places this book in a “general works” category under “evidence,” which is a subcategory of “procedural law.” It is also found in a “general” subcategory in LCC, but the journey from specific to general (and back) is longer; one moves from general to evidence to trial to civil procedure to, finally, courts.

Another good example is the level of specificity employed when classifying the law of individual states. *Baldwin’s Ohio Revised Code Annotated* (ORC) is classified simply as “law of Ohio” in the Benyon scheme and in Class K—Law; however, LCC provides a much greater level of detail. The notation for “law of Ohio” is KFO, and even after being classified under “general compilations of statutes,” the notation “A2” is added to the call number, which indicates official editions (with or without annotations) arranged chronologically. The Library of Congress, unlike the University of Chicago, which designed its Class K to fit into LCC, classifies all of these legal works as such (though it has a wealth of other subjects under which to classify them).

48. Id.
51. OHIO REV. CODE ANN. (West 1953–).
Dewey Decimal Classification (DDC)

¶40 Also for the sake of comparison, it is interesting to consider how these legal works are classified by the NYSL, which uses DDC. DDC is an “enumerative scheme with analytico-synthetic features” because it allows for frequently occurring concepts (e.g., the decimal extension 73 indicates the United States). For most people, however, DDC is familiar because of its widespread use in public and school libraries. For some, DDC may suggest juvenility; for others, it may evoke fear. As one patron of the Darien Public Library proclaimed before the “Dewey/bookstore mashup” was implemented, the library was “kind of like a disapproving Mother.”

¶41 Regardless of its cultural associations, this classification system is most useful when it comes to broad or close classification. Depending on the type and size of a library and its collection, materials can be classified as generally or as specifically as desired. Mark A. Rothstein’s *Occupational Safety and Health Law* was given a relatively specific call number by the NYSL: 344.730465, which indicates Social, labor, welfare, health, safety, education, cultural law (344), the United States (73), Public health (04), and Industrial sanitation and safety (65). In a smaller library, the call number could stop, for example, at 344.73. In some instances, the NYSL chose broader classification: the call number for Milton R. Konvitz’s *The Constitution and Civil Rights* is 323.4, which indicates Civil and political rights (323) and Specific civil rights (.4).

¶42 Understandably, works pertaining to laws of states other than New York or countries other than the United States are rare at the NYSL. Luckily, only three of the sixteen legal works in this survey were absent from the library’s OPAC. Of the remaining thirteen, all were classified in the 300s (Social Sciences), but three were not classified as Law (340–349) at all. Two have been mentioned previously: Madaline Kinter Remmlein’s *School Law* was classified under Public policy issues in education (379), and *The Constitution and Civil Rights* by Milton R. Konvitz was classified under Civil and political rights (323). A third, *Administrative Law* by H.W.R. Wade, which concerns administrative law in Great Britain, was classified under Public administration (351).

The Complexities of Subject Arrangement

¶43 One particular work, *The Defense of Insanity: Commitment to and Discharge from State Mental Institutions of Criminally Insane Persons*, is classified differently in each of the four schemes discussed in this paper. This is a government publication prepared by the Research Department of the Arkansas Legislative Council in 1964. It summarizes the insanity laws of many states with a focus on the state of Arkansas. The LACLL broadly classified it as a pamphlet (most likely an unbound volume), and the University of Chicago placed it with works published by the state
of Arkansas. The Library of Congress classified it as State Government under Subclass JK, Political Institutions and Public Administration (US). Finally, the NYSL classified it as Law and, more specifically, Forensic medicine (340.6), also known as “legal medicine” or “medical jurisprudence.” Interestingly, the NYSL is the only one of the four libraries that classified it as a legal work, and this library uses a scheme that would almost never be found in a law library.

¶44 Though the Ohio AG Library was not included in the survey, it offers a number of excellent examples of the complexities of subject arrangement. For example, does Dollar Verdicts: Personal Injury57 belong in the new Health section, or should it be surrounded by items pertaining to wrongful death and comparative negligence? After some consideration, the latter option was chosen. Another example is the American Medical Association’s Guides to the Evaluation of Permanent Impairment.58 This title was also originally shelved with works on wrongful death and comparative negligence, but when the Health section was created, it was marked for inclusion.

¶45 One commentator suggests the placement of “some or all” items in a collection under a different classification scheme as one of several solutions to cross-classification (a work may be classified in more than one category, but it can only be physically located in one place).59 Given the divergent nature of most items in the Health section, this alternative made the most sense for the AG Library.

Conclusion

¶46 The Library of Congress collection was the origin of information for the development of LCC, and the Yale Law Library took a similar approach in developing its in-house classification system in 1939. Over time, valid reasons for the widespread use of Class K in U.S. libraries emerged, including the fact that the standardization of catalog records alone saves time and money and provides predictability for patrons as well as librarians. In using Class K, however, while libraries have not become “bound” by a “preconceived theoretical classification,”60 they have signed on en masse to a classification system based on another library’s collection.

¶47 In his introduction to Yale’s classification, Frederick Hicks asserted that “the classification should serve the Library.”61 It is this condition—when the classification no longer serves the library—that was the impetus of this article. Yale’s confidently solitary stance in the 1930s may not be the most appropriate position today, as some law libraries may prefer to use LCC. Nevertheless, the unquestioning adherence to LCC in today’s law libraries may be limiting the use of some collections that acquire nonlaw items and whose patrons could benefit from at least

60. Hicks, supra note 27, at vii.
61. Id.
partial subject arrangement to bring like items together, as demonstrated by the AG Library. Unless a collection closely resembles that of the Library of Congress, does consistency in catalog records trump patrons’ ease of use? Subject classification is the modus operandi of all four in-house schemes discussed in this article, and while it may be possible to classify a work in a number of different subjects (cross-classification), effective browsing can depend largely on the ability of patrons to locate materials within each subject group. As in the AG Library, skilled librarians can determine the most effective arrangement.

¶48 The Bellevue Classification System and the “Dewey/bookstore mashup” were discussed because they are examples of the creation of an entirely new scheme (in the case of BCS) and the modification of an existing one (in the case of the mashup system). Either undertaking can be daunting, but both have the potential to increase patrons’ use of physical collections simply by making them more straightforward and easier to use. Of the four libraries surveyed, those using the Benyon scheme and DDC classified the same two legal works in nonlaw subject categories. While it is natural to look to the scheme itself for an explanation, the decision to classify an item as a legal work may be more about the library and less about the classification scheme. Classification is inherently subjective, and classifiers have diverse opinions, perspectives, and experiences that inform their cataloguing decisions. The classification scheme is also influenced by its creator’s opinions, perspectives, and experiences. In theory and in practice, two libraries using the same scheme could classify an item differently, which could create a different browsing experience at each library. The adoption of LCC as a veritable national classification scheme for law libraries in the United States, however, virtually eliminated this possibility.

¶49 It is this conformity that may complicate the use of an independent law library whose collection differs from that of the Library of Congress. Literary warrant should be one of the main considerations in choosing or creating a classification scheme if a library is to best meet the needs of its patrons, and it may indicate that an in-house classification scheme is needed for a portion of the collection, or perhaps the entire collection. While the development of a completely new classification system is an undertaking of considerable proportions, it can also be demanding to follow updates and changes implemented by the Library of Congress or the library whose classification scheme has been adopted.

¶50 If the AG Library had had to choose one of the four schemes examined in this article, the LACLL’s Class K—Law would have been most appropriate, because it allows for the classification of nonlaw materials and was meant for a freestanding law library. However, it was not necessary to choose the “lesser evil.” The AG Library does not participate in a bibliographic utility, so the need for standardization of catalog records is not as great. Therefore, the development of an in-house classification scheme was the best course of action for nonlegal subject areas that represent a sizable portion of the collection. The AG Library’s Health section can perhaps serve as an exemplar for similar law libraries looking into different ways to classify library materials.
Keeping Up with New Legal Titles*

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

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** Research and Instructional Services Librarian, Ruth Lilly Law Library, Indiana University Robert H. McKinney School of Law, Indianapolis, Indiana.

*** Clinical Assistant Professor of Law and Reference/Collection Development Librarian, Kathrine R. Everett Law Library, University of North Carolina School of Law, Chapel Hill, North Carolina.
Some of us plan our careers methodically and strategically, making sure that we move from one goal to the next on schedule and without any digressions. Others of us seem to fall into new positions and roles or have them thrust upon us. Anthony Aycock’s book, The Accidental Law Librarian, is for the latter type of person who is preparing for or has already experienced an unexpected or involuntary career transition. Along with its companion blog,¹ this book is an excellent, up-to-date, and readable guide for anyone considering becoming a nonaccidental law library professional.

librarian. It is also a first-rate reference for public, academic, and school librarians not working in a legal setting who might be asked a law-related question.

¶2 Using his own accidental law librarian career as an illustration, Aycock describes various situations that can arise. His book is “the first comprehensive, non-scholarly book on law libraries in 20-plus years” (p.xix), and it is useful for law librarians, law firm administrators, and library trustees who want to know what goes on in a law library. Appendix A includes dozens of actual reference requests that illustrate the very broad (and sometimes unexpected) range of questions a librarian might handle. The other especially valuable focus of this book is its survey of resources currently available, from print materials to online databases (including the latest iterations of LexisNexis and Westlaw), blawgs, and mobile apps. The book is filled with references to resources, but chapter 9, on education and resources, is especially loaded. Including this material might render the book out of date sooner than if it were excluded, but frequent updates to The Accidental Law Librarian blog should help prevent that.

¶3 The author notes that, in graduate school, we probably studied public and school libraries, with little or no mention of law firm libraries. His first job was at a law firm, and, as he says, he did not even know law firms had libraries. This book has satisfyingly thorough and accurate coverage of library work at a private law firm. For those who work in a law firm, the difference in setting requires a different mentality: We are not working for the public good, to nurture the intellect, or to enhance our communities; we are working at a for-profit business.

¶4 In his approach, Aycock manages to be both respectful of the past (even including instructions for filing loose-leaves) and forward-thinking (discussing the library as a means of enhancing a law firm’s knowledge base, visibility, and income). Just as lawyers and law firms have had to shake off the mantle of the law as a gentlemen’s profession, law libraries have become more businesslike in at least two significant ways. First, they have adapted to changes in the economy and technology by developing ways to cut costs, get by in smaller spaces, and recover costs. Second, they play an active role in business development and retention, using their research skills to enhance client development and provide competitive intelligence.

¶5 Whether accidental or intentional, experienced law librarians would benefit from reading this book. There really is always something new to be learned, and this book, written from an outsider’s perspective, is refreshing.


Reviewed by Jonathan Pratter*

¶6 “International law is part of our law,” the U.S. Supreme Court has roundly declared on more than one occasion.2 Suitably nuanced, this statement is true in complex and fascinating ways. Thus the need for Curtis Bradley’s International Law

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in the U.S. Legal System, the first effort at a monographic exposition of the field since Louis Henkin’s Foreign Affairs and the United States Constitution (2d ed. 1996). The author acknowledges Henkin’s influence in the preface, though the tenor of the two books varies drastically on the elemental, thematic question of how porous the U.S. legal system should be to international legal norms. Therefore, the two books may profitably be read together. Both authors emphasize the powerful mediating influence of the U.S. Constitution in articulating the relationship between international law and U.S. law.

¶7 In writing that is a model of clarity and concision, this book deals with treaties, executive agreements, decisions and orders of international institutions, customary international law, extraterritorial application of U.S. law, Alien Tort Statute litigation, sovereign and official immunity, international extradition, war powers, and the law applicable to international terrorism. That is a lot of ground to cover in 331 pages, but Bradley manages admirably to explore the contours and current state of play of each topic in a balanced and nonpartisan way. The book is well suited for the uninitiated, and the thorough references in the footnotes to the cases and the secondary literature make the book a good jumping-off point for further research. Good tables of cases and of legislation, and a thorough index, add to the book’s utility as a work of reference.

¶8 One difficulty is no fault of the author’s—the second edition is already overdue. The book was in press when the Supreme Court decided Kiobel v. Royal Dutch Petroleum Co.,3 which severely limited the reach of the Alien Tort Statute.4 The book makes frequent reference, as it should, to the Restatement (Third) of the Foreign Relations Law of the United States. But discussion of the Restatement (Fourth) is already under way, and tentative drafts will soon be released. Bond v. United States,5 which was argued in November 2013, promises to redesign the architecture of federal power and federalism under the Treaty Clause of the Constitution, and will require the Supreme Court to revisit its decision in the leading but somewhat cryptic case of Missouri v. Holland.6

¶9 There is a criticism that may be laid at Bradley’s feet. The dynamic between international law and municipal law is an ideal topic for comparative treatment. Yet comparative glances in this book are hard to find. Even the uninitiated reader would gain valuable perspective and depth by learning that Germany, in spite of the loudly professed friendliness of its constitution to international law, remains even more firmly in the dualist camp than the United States when it comes to the nitty-gritty of incorporating international agreements into national law.7 Would it not be good to know that, in contrast to what we find in the United States, Article 55 of the French Constitution grants to properly ratified treaties “an authority superior to that of laws” as long as the condition of reciprocity is met?8 This angle

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8. Granted, the meaning of reciprocité here is obscure. See generally Jean Combacau & Serge Sur, Droit International Public 188–98 (10th ed. 2012).
of what may be called comparative international law is even more apropos since Bradley explicitly counts “non-U.S. readers” among his intended audience (p.ix). Nevertheless, this book is an essential component of any library that professes to collect in international law or the constitutional law of foreign relations.


Reviewed by Tina M. Brooks*

¶10 The conventional media analysis is that the Supreme Court is deeply divided on most issues, and existing scholarship tends to focus on explaining the reasons behind those divisions. However, according to *The Puzzle of Unanimity: Consensus on the United States Supreme Court*, an important empirical study on Supreme Court decision making, “a majority of the Court’s decisions every term are unanimous or highly consensual” (p.4). In this study, the authors, all political science professors whose research centers on judicial decision making, investigate why the Supreme Court is able to reach consensus so much of the time. While past studies have focused on whether legal, ideological, or strategic considerations best explain Supreme Court decision making, Corley, Steigerwalt, and Ward theorize that all of those forces and more interact at a complex level in each individual case, and they present a compelling mechanism for empirically measuring those forces.

¶11 The book begins with a substantial and interesting discussion of how the norms of the Supreme Court changed from consensus to dissensus during the Roosevelt Court, an analysis based on the authors’ original investigation of the private papers of Justices William O. Douglas and Harlan Fiske Stone. This chapter describes institutional changes, such as expanded conference discussions and legislation allowing the Court more control over its docket, that strongly influenced the Court toward individual expression by each Justice and a “dissensus revolution” (p.11). Having set up this historical background, the authors then explore why, with so many factors encouraging dissensus, the Court is able to reach consensus so often.

¶12 To explore their theory that there are multiple, concurrent forces influencing unanimous and highly consensual decisions on the Court, the authors examined each case the Supreme Court decided from 1953 to 2004. To test for the forces at play in each case, they developed a list of factors that are indicative of attitudinal, legal, strategic, institutional, and case-specific forces. The inclusion of each of these factors is rationalized and explained in detail. For example, to measure legal certainty, the authors ask whether a case was legally complex, whether there was amicus participation in the case, whether there was conflict among lower courts on the issue, whether there was dissensus in the opinions below on nonideological grounds, and whether the issues involved statutory or constitutional interpretation. Tables demonstrating the coding and summary statistics for each variable are

included. The authors’ findings suggest that unanimous and highly consensual decisions are more likely when legal certainty is high, when the case under review is not a civil liberties case, and when the case is ultimately decided in a liberal direction. They also find that justices are more likely to vote to their ideological preferences when legal certainty is low; when legal certainty is high, it constrains the justices’ ability to vote according to their ideology and leads to a higher probability of consensus.

Finally, the authors ask why, if the Court’s role is to decide the difficult legal questions, are the justices taking on cases where the level of legal certainty, and thus the likelihood of consensus, is high? To answer this question, they examine the cert pool memos from the 1989 term and come to the conclusion that “unanimous cases are those in which the justices believe it is important to clarify the law and issue a final, national ruling on a legal question of great importance, and in which a single, unified answer can be reached” (p.159). The book closes with a discussion of the implications of the findings and suggestions on directions for further research.

The Puzzle of Unanimity is logically organized. The introduction lays out a road map for the rest of the book, and each chapter is clearly titled and contains a conclusion that summarizes the key points from that chapter and sets up the ideas explored in the next. In the second chapter, and more briefly in subsequent chapters at appropriate junctures, the authors present a literature review of existing studies and theories regarding Supreme Court decision making. The variety of sources referenced results in a very rich bibliography for researchers looking for a listing of the most important works on the topic. Additionally, for a book that is relatively short, the index is thorough, and there is also an index of cases referenced.

While the intended audience for this book appears to be fellow scholars of Supreme Court decision making, the accessible writing and detailed explanations of the authors’ methodology make this an excellent addition to an academic law library that has either a basic or an advanced collection on the Supreme Court.


Reviewed by Susan A. Smith*

Some American journalists criticized the Obama administration after Edward Snowden made public some covert operations of the National Security Agency (NSA). The classified documents that Snowden leaked revealed that the NSA has been collecting electronic communications and phone records of U.S. citizens over the past seven years.9 Some legal scholars and politicians view this conduct as an assault on the Fourth Amendment.10 While scholars and politicians spew vitriol, some political scientists with historical knowledge of federal security

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10. Id.
agencies may shrug. Violations of constitutional rights by federal security agencies are not new to our nation’s history.

¶17 I would wager that Mariano-Florentino Cuéllar, author of Governing Security: The Hidden Origins of American Security Agencies, is one of those shrugging political scientists. While the infringement of constitutional rights is not the focus of his book, Cuéllar more than once reminds the reader that the Federal Security Agency (FSA) facilitated the resettlement of Japanese Americans during World War II. While periodically making reference to this civil rights violation, Cuéllar explores the relationship between politics and agency reorganization. Cuéllar describes how two massive federal security agencies were assembled from smaller administrative agencies at separate times in our nation’s history: the FSA during the Roosevelt and Truman administrations and the Department of Homeland Security (DHS) in the first decade of the twenty-first century.

¶18 Most of Cuéllar’s book is devoted to the histories of the FSA and the DHS. Their stories suggest that American presidents define “national security” in the context of their times. For Franklin Roosevelt, national security was not simply the ability to respond militarily to threats of war, but also included domestic resiliency and the ability to respond to national disasters. While advocating for national health insurance, Harry Truman defined national security as the nation’s ability to provide basic necessities in crisis. In stark contrast to Roosevelt and Truman, George W. Bush defined national security without reference to health, education, or welfare. National security was simply the “management of risks from terrorism or geostrategic threats” (p.227). By describing events and paraphrasing political speech, Cuéllar cogently makes the case that “the meaning of ‘security’ is versatile” (p.10).

¶19 The FSA and the DHS were formed in times that, while different from ours in many ways, had some common characteristics. Americans of the 1930s, like Americans of the twenty-first century, faced “financial instability, natural disasters such as Hurricane Katrina, and potential external threats” (p.12). Fear of violence and warfare were driving forces in the development of both agencies. Public support for the FSA grew with the looming threat of World War II, and the DHS was a direct response to the September 11 terrorist attacks. Both Roosevelt and Bush made public assertions that reorganization would create more administrative efficiency and that this efficiency would lead to greater security. Though it was not readily apparent to the general public during the formation of the DHS, its creation, like the creation of the FSA, enabled President Bush to further his domestic agenda. Thus, two massive security agencies with different definitions of national security came into existence and evolved under similar circumstances, in similar ways, and with similar outcomes.

¶20 While the parallels Cuéllar draws in these agencies’ histories are intriguing and his storytelling is engaging, the purpose of this book goes beyond entertainment. Cuéllar uses the origins of the FSA and the DHS to explore two security issues: “how our nation defines the scope of security through statutory enactments and the architecture of the executive branch, and how presidents, White House aides, lawmakers, civil servants, interest groups, and political actors work within the law to secure control over public organizations” (p.12). Cuéllar argues that these
issues are inextricably linked. Their connection is an outgrowth of the malleable meaning of the concept of national security. He concludes that “policymakers mold law by defining security and then seek to command the implementation of that law by securing control over bureaucracies” (p.18). Cuéllar attributes his positions to ideas grounded in organizational theory, political economics, and law.

¶21 Not only does Cuéllar’s background as a professor of law and political science lend authority to his book, references to a multitude of scholars across many fields suggest that the book is a major work on American national security. Each chapter has extensive and annotated footnotes, and the book has a lengthy bibliography. Fortunately for readers, especially readers new to the book’s technical terminology and academic disciplines, an index that organizes concepts as well as laws, people, entities, and events facilitates revisiting passages. Altogether, the book is most likely to appeal to scholars who have a background as diverse as Cuéllar’s; however, parts, if not all, of the text are reasonably accessible to scholars without Cuéllar’s impressive interdisciplinary breadth. While the book may be appealing to students of administrative law, given its eclectic disciplinary approach, it may best belong in a general academic library as opposed to an academic law library.

Gasaway, Laura N. Copyright Questions and Answers for Information Professionals: From the Columns of Against the Grain. West Lafayette, Ind.: Purdue University Press, 2013. 284p. $24.95.

Reviewed by Ashley B. Moye*

¶22 For many information professionals, copyright fascinates and confounds. Copyright is glossed over in many classes, and librarians struggle to find clear answers to questions that arise in their practice. In the early days of one’s career, it is easy to blame youth for our befuddlement, but as years pass it becomes more and more difficult to plead ignorance. I have turned to a number of resources, including books, seminars, and massive online open courses, but all have skimmed over the practical issues of copyright. For many librarians, copyright is simply a hurdle, not a concept to be lingered over, and swift resolutions to imperative questions are invaluable. Copyright Questions and Answers for Information Professionals: From the Columns of Against the Grain, by Laura N. Gasaway, goes a long way in fulfilling that need.

¶23 Gasaway, a recognized expert on copyright, has been wrangling with copyright problems for fifteen years, answering questions from readers in a regular column in Against the Grain, the periodical offshoot of the Charleston Conferences. In her column, she addresses her audience of librarians, publishers, teachers, and authors, clearing the fog and replacing it with clear practicalities, one query at a time.

¶24 In her new offering, these questions and answers have been curated, updated, organized, and reassembled, giving readers access, in a single work, to Gasaway’s experience and expertise that was before scattered throughout her columns. Gasaway

covers all the usual suspects, including fair use rights, library reserves, licensing, inter-library loan, preservation, software, and digitization. Question-and-answer pairings are organized into topical chapters, and the book finishes with an emerging issues chapter that provides current content on timely subjects such as HathiTrust and the first sale doctrine.

¶25 Each chapter features a brief introduction that provides context, but the value of the text lies in Gasaway’s responses to each questioner’s specific needs. While this idiosyncrasy does make the book poorly suited for cover-to-cover reading, it is perfect for quick reference. Other popular copyright texts use the question-and-answer format to show applications of broad concepts, but since the questions posed in this book are wide-ranging and true to life, it effectively provides applicable answers to specific questions. Unfortunately, this also means that when looking for concrete answers, there is no guarantee that guidance for a given question is present between the covers.

¶26 A comprehensive and exhaustive index holds the key to unlocking the precious wisdom inside this book. This is a weakness of the book. While a primarily question-and-answer format leads you to believe that this work would be well suited for novices, specialized vocabulary or specific portions of the Copyright Acts are often indexed instead of the words used by the questioner. Underutilization of cross-references also hinders those without a strong knowledge base, and while excellent term definitions and clear, concise summaries of concepts are repeatedly provided throughout the text, the index does not easily lead a reader to them. Not having comprehensive keyword references may seem to avoid redundancy, but instead it limits usability. Readers will not be approaching this text with exact replicas of existing questions, but instead will need to glean their own answers through a careful reading of answers to similar inquiries. Because the language of the inquiries is not carefully indexed, an e-book version of this work would be invaluable, allowing readers to perform keyword searches and thus work with whatever vocabulary they have in mind.

¶27 While the index and other minor inconsistencies keep Gasaway’s content from shining as brightly as it should, Gasaway deserves great praise for her work’s greatest strength—her ability to strike a balance between handing out specific advice and teaching readers strategies to navigate the treacherous waters around best practices and general guidelines. Guidelines and fair use do not lend themselves to cut-and-dried answers, which is why many copyright texts are full of generalizations. Gasaway, however, brilliantly teaches her lessons through examples, focusing not only on the use of best practices, but also on the importance of careful risk assessment. She reminds readers that copyright is rarely a firm line, unfortunate though it seems. Instead, application of copyright law is often nebulous. Gasaway’s well-balanced advice guides readers in making their own choices, weighing their options, and choosing to leap their copyright hurdles in the way that is most appropriate for them. In this role, Gasaway is truly a master of her craft.

Reviewed by Jason S. Zarin*

¶28 Ruth B. Shipley was the chief of the State Department Passport Office from 1928 until 1955. During her nearly thirty-year tenure, she had, for all practical purposes, sole discretion in determining which American citizens would get a passport and which would be denied. Mrs. Shipley often made her decisions based on arbitrary or discriminatory reasons: for example, the applicant’s political leanings (the leftist musician Paul Robeson was denied a passport to perform in Canada) or her own moral views (a ballet troupe of unchaperoned women was also denied). This is how Jeffrey Kahn begins his account of the history of travel restrictions and the Transportation Security Agency’s (TSA) No Fly List in his book *Mrs. Shipley’s Ghost: The Right to Travel and Terrorist Watchlists*. Despite Mrs. Shipley’s arbitrariness, Kahn points out that at least there was a person responsible for those decisions; under the current No Fly List, there is only a hazy network of agencies working in complete secrecy and behind a shield of national security classification.

¶29 Kahn begins his analysis with several “travel stories” documenting incidents in which American citizens were trapped in foreign countries because they were put on the No Fly List without explanation or justification. Often, innocent people were put on the list based on the most tenuous and unsubstantiated links to terrorism. For example, the English folk singer Cat Stevens, who had changed his name to Yusuf Islam, was on a London-to-Washington flight that was ordered rerouted to Bangor, Maine, where the FBI took him into custody because his name was similar to Youssouf Islam, a person on the terrorist watchlist. The error snowballed: Catherine “Cat” Stevens, the wife of Senator Ted Stevens, ended up on the watchlist as well. These stories illustrate the Kafkaesque, secret bureaucracy individuals face when trying to find out why they were put on the No Fly List and how their names can be removed, as well as the hardships of having one’s travel privileges revoked.

¶30 A significant issue Kahn identifies centers around the multiple agencies and subagencies involved in creating the No Fly List. This multifaceted process, which has no definitive, ultimate authority, makes it difficult to pinpoint who is ultimately responsible for putting a particular person on the No Fly List, and who is the proper government defendant in bringing suit for redress. Kahn explains the procedure in detail (with copious documentation): the Terrorist Screening Center (TSC) (part of the FBI) receives nominations from the National Counter-Terrorism Center and the FBI to place individuals in the Terrorist Screening Database, the main watchlist from which subsidiary lists are created for particular uses by different agencies (such as the TSA’s No Fly List).

¶31 The relationship between the TSC and the TSA is a “strange and shifting hierarchy” (p.159). Internally, it is a relationship in which the TSC delivers a prod-
uct to its customer (the TSA). Externally (such as to citizens requesting redress), the government presents the TSA as the only agency with a redress office accessible to the public, but it may also claim the TSC is an equal decision maker. According to Kahn, the government is aiming to shield the TSC’s work behind a “facade of TSA authority” (p.160).

¶32 Kahn’s central thesis is that citizens have a fundamental right to travel, and this right is more than just a right to walk or drive. It extends to all forms of transportation, including air travel. Kahn compares a denial of the freedom to travel by a commercial airline to a form of jailing or confinement. Indeed, in the case of Americans living in Hawaii, the analogy is apt, because for all practical purposes, a Hawaii resident cannot leave the state except by air travel. The No Fly List is an unconstitutional violation of this fundamental right based on the framework that Kahn builds. Because the No Fly List acts as a prohibition to travel and because confinement within the borders of one’s state (or being stranded outside the borders of the United States) is tantamount to prison, the No Fly List is a punishment that takes away the fundamental civil rights of a listed citizen before he has been convicted of any crime.

¶33 Moreover, if the government can implement a No Fly List for air travel, what prevents it from making similar lists for all forms of transportation? Indeed, there have been terrorist attacks on public trains, and rental vehicles can easily be used as bombs. It is a slippery slope from a No Fly List to a no-travel list.

¶34 Kahn makes a compelling argument, even though he provides little room for compromise. He bolsters his case with a detailed history of the common law regarding the right to travel, a history of the passport documenting the transformation of its use from a request for “safe conduct and assistance” for the traveling citizen abroad to a device for controlling a citizen’s ability to travel, especially during the Red Scare and the postwar period. Kahn provides numerous endnotes and a complete bibliography. Even if the reader disagrees with Kahn’s conclusions, Kahn’s historical research and investigation into the administrative process used for the No Fly List are extremely valuable and well done.

¶35 Mrs. Shipley’s Ghost is one of the few detailed analyses on the right to travel and the TSA. It is recommended for academic libraries or for law firms doing work in civil rights or immigration.


Reviewed by Peter Scott Campbell*

¶36 The Tokyo Rose Case: Treason on Trial tells the story of Iva Ikuko Toguri, a Japanese American woman whose hard luck landed her in one of America’s most famous post–World War II court cases. While visiting family members in Japan, Toguri became trapped there after the attack on Pearl Harbor. Homesick and
fiercely patriotic, she was harassed by Japan’s secret police throughout the war and was nearly imprisoned when she refused to relinquish her American citizenship. Eventually she found work at a Tokyo radio station, where she teamed up with an Australian POW to create a radio show that subverted its propagandistic origin with comedy, deliberate mistakes, and inappropriate tones of voice. However, their efforts at subversion were too subtle, and at the end of the war Toguri was arrested by the American government, and, accused of being the infamous propaganda broadcaster Tokyo Rose, she was tried for treason.

¶37 Author Yasuhide Kawashima spends the first four chapters of the book recounting Toguri’s life and the events that led to her arrest. The rest of the book is a detailed look at the trial. Political pressure on the Truman administration resulted in a case that Kawashima argues should never have been tried.

¶38 While an interesting story in itself, the book also deals with a number of legal issues, most particularly the law of treason. Kawashima gives a brief history of the treatment of treason in the Constitution and the Supreme Court. He also discusses the criteria necessary to prove that a person is guilty of the crime, particularly whether there was any “traitorous intent” (p.5).

¶39 On the one hand, this book is a straightforward narrative of events; but it is also a plea for justice. Toguri was pardoned by President Ford in 1977, but as Kawashima points out, a pardon is not an exoneration. Kawashima sees Toguri’s conviction as a miscarriage of justice and argues for reopening the case to clear her name. Kawashima’s passion is understandable, but his subjectivity sometimes colors how he sees events. For instance, Thomas DeWolfe, one of the prosecutors in the case, had previously written a memo for his bosses recommending against trying the case. Kawashima charges DeWolfe with changing his mind and suggests that there was something wrong with his using arguments during the case that he had previously discounted. It was not DeWolfe’s decision to file charges, and as a Justice Department staff attorney he had little choice but to vigorously prosecute the case. Whatever other ethical lapses DeWolfe and his staff may have engaged in (Kawashima effectively argues that there were many), using arguments he did not believe was not one of them.

¶40 Kawashima is a professor of history at the University of Texas at El Paso who specializes in legal history, and The Tokyo Rose Case showcases well his skills both as a writer and a researcher. There have been other books written about Toguri, but Kawashima puts more emphasis on the legal aspects of the story. He has consulted a number of sources for his research, but unfortunately they are all listed in a bibliographic essay (as is the norm in the Landmark Law Cases and American Society series), so it is practically impossible to tell where any individual piece of information came from. The book does have a very thorough index. I recommend it for academic and public libraries.
The Librarian’s Legal Companion for Licensing Information Resources and Services is the fourth book in an American Library Association series titled The Legal Advisor for Librarians, Educators, and Information Professionals. Tomas A. Lipinski brings an interesting perspective to the topic as a library science professor who holds a J.D., an LL.M., and a Ph.D.

While the book can be read cover to cover, which Lipinski considers “the advanced approach” (p.xix), it can also be used as a reference guide as accessed from its exhaustive table of contents or subject index. The book is divided into three parts: “Before You Read the License: Essential Background Concepts,” “The Range and Nature of Information Resource Licenses That Libraries Encounter,” and “A Licensing Reference Toolkit for Everyday Use.” Lipinski notes that this is not a book about copyright (although copyright is discussed as it intersects with licensing issues), but instead a work meant to dispel fears about licensing and to give librarians the knowledge and confidence to use licenses to their best advantage.

Part 1, “Before You Read the License: Essential Background Concepts,” describes contract law as the legal foundation of licensing. Over nearly two hundred pages, Lipinski begins with the basic concepts of contract law and continues through broader concepts of license agreements and their relationship to copyright, public policy, and library-specific issues, including the first sale doctrine. Nearly all chapters begin with a list of points the reader should understand by the end of the chapter and end with a list of summary points and learning examples, as well as a thorough set of endnotes citing cases, statutes, and secondary sources with clear explanations of the relevance of the citations. This setup is excellent for making sure that librarians with no legal training can understand the concepts presented and for allowing librarians with J.D.s to feel confident in the scholarship presented.

Part 2, “The Range and Nature of Information Resource Licenses That Libraries Encounter,” uses the same basic setup to discuss the breadth of license types from traditional negotiated licenses to common shrink-, click-, and browser-wrap licenses and web site end-user license agreements. Lipinski then introduces newer license forms like open source and Creative Commons, as well as the basics of music and media licensing. Part 2 ends with a discussion of the Uniform Computer Information Transactions Act and implied licenses and their effect on the future of technology licensing in general, and on libraries in particular.

Part 3, “A Licensing Reference Toolkit for Everyday Use,” is the most likely place to start for those using the book as a reference while in a license negotiation. Chapter 14 consists of a glossary, covering terms from arbitration to warranties and disclaimers, with a thorough and documented discussion of each term. Chapter 15 takes four actual library licensing agreements and deconstructs them, with exhaustive notes for every clause. This is followed by an annotated discussion of twenty common license clauses, and a set of questions and answers to consider when evaluating and negotiating any license agreement.

* © Sarah K. C. Mauldin, 2014. Director of Library Services, Smith, Gambrell & Russell, LLP, Atlanta, Georgia.
¶46 The book is thorough, well researched, thoughtfully written, and should be considered for purchase by any library that negotiates license agreements. Its three-part division makes it useful as a practical reference guide, as a manual of key licensing concepts for librarians working to improve their negotiation skills and knowledge, or as a textbook for a library school course on library management or licensing. The style is clear enough to be understood by librarians with no legal training or experience, but is not so basic as to insult the legal training of librarians with a J.D. Lipinski’s book will be a go-to work on my reference shelf, and it will help me to identify issues in license agreements before I send the document to a partner for review and final approval, lessening the work for the attorney and making me look good in the process.


Reviewed by Christine K. Dulaney*

¶47 Rebellion was not on the minds of the extraordinary, first-generation female lawyers portrayed in Jill Norgren’s engaging history, Rebels at the Bar: The Fascinating, Forgotten Stories of America’s First Women Lawyers. For these nineteenth-century women, entering the practice of law was a result of either financial need, an interest in legal work, or a desire for equal professional opportunity. Yet as they worked toward their personal goals, each hit a barrier that prevented further advancement. Denied admission to law school or to the bar, rejected from practicing law in established firms or government offices, ridiculed for attempting to represent clients in court, these women were not deterred. Rather, each chose a unique strategy for creating opportunities best suited to her talents and interests. Individually, they petitioned for legislative changes, litigated, lectured, published, or leveraged various social reform movements of the time. Collectively, the individual actions of these women revolutionized the practice of law by changing perceptions of women as lawyers, opening access to legal education and admission to the bar, enabling eligibility to hold public office, and using the law as an instrument for social reform.

¶48 More than just a biography, Norgren’s book also provides a snapshot of legal history and the professionalization of legal practice in the United States. A renowned legal historian and biographer of Belva Lockwood11, one of the first female lawyers in the U.S., Norgren describes the chaotic state of the law in the early years of nineteenth-century America. Lawyers were not held in the highest esteem, and the practice of law was closed to women. The doctrine of coverture, social conventions against women speaking publicly, as well as belief in the physical and intellectual dominance of men further marginalized women.

¶49 Inspired by the Seneca Falls Declaration of 1848 and primed by social reform movements involving equality, abolition, and temperance, women desired the financial and professional opportunities the practice of law offered.


This first generation of women faced a variety of social and legal barriers when attempting to practice law. Myra Bradwell, after many years of reading law in her husband’s law office, petitioned for membership in the Illinois bar but was denied. Clara Folz was barred from attending Hastings School of Law in San Francisco because it was believed that the rustling of her skirts would distract the male students. Belva Lockwood completed law school but was denied her degree and not admitted to the bar. Even the most highly respected legal minds of the time believed that women were not temperamentally suited for the law, that the public spectacle of a woman arguing in court would diminish respect for women, and that admitting women to the bar would lower the standard of law practice.

However, each of these women found a unique way to overcome these barriers. Norgren highlights three common themes in her description of the slow work of prying open the door to opportunity. First, the stories of these women center on the struggle for equal access to education, professional opportunities, financial stability, and elective office. Bradwell successfully petitioned the Illinois legislature for a special charter that reversed the doctrine of coverture and enabled her to sign contracts, control her own earnings, and ultimately build a nationally recognized publication, *Chicago Law News*, into a tool for advocacy of women’s rights. Folz successfully argued before the California Supreme Court to open the Hastings School of Law to qualified women. Although the financially drained Folz was unable to afford law school, she made it possible for future women to do so. Many women introduced legislation to enable equal access to legal education, and equal opportunities for bar admission.

Second, the importance of relationships is central to the success of these women. Many of the women succeeded because of the assistance or mentoring they received from family or friends, especially male colleagues. Leila Robinson left Boston because of a lack of mentors and client referrals, but in Seattle she found mentors who offered her a position in their practice. Folz’s father provided her with an apprenticeship, while her mother relieved the single mother of many household duties. In turn, these women supported each other and younger women who were trying to break into the profession.

Third, Norgren explores the diverse approaches these women employed to create opportunities and overcome obstacles. The power of these stories lies in the diversity of experiences, talents, and interests of these women. Lavinia Goodell was known for her activism in prison reform. Lockwood lobbied for legislation addressing equal pay and gender discrimination in the federal government. Folz successfully argued before all-male juries and lobbied for the development of a public defender office. From her experiences as a temperance speaker, Catharine McCulloch successfully ran for public office and became the first woman to hold the office of the justice of the peace in Illinois.

Norgren’s thorough footnotes and extensive bibliography attest to the depth of research informing the book. She places the lives of these women in the context of nineteenth-century America, where they attempted to build their practices and institute social and legal reforms. In describing such mundane matters as whether a woman should remove her hat in court, or if women should be lady lawyers or just lawyers, Norgren uncovers the daily tensions these women confronted. Norgren’s
book is an important addition to the scholarship concerning women’s role in the history and development of the legal profession. It is suitable for both law and general academic library collections.


Reviewed by Mary Beth Chappell Lyles*

¶55 In recent years it seems that marriage equality for gays and lesbians has exploded into the American consciousness like few other issues. In the summer of 2013, reading the tea leaves on which way the Supreme Court might rule on the Defense of Marriage Act and Proposition 8 cases filled many a cable news hour. Proponents see marriage equality as a long-denied, basic civil right and the culmination of decades of work by the gay rights movement, while those who oppose it feel that it signals an assault on one of the most primary cultural institutions. Both casual observers and those with an academic interest are likely to ask, how exactly did we get here?

¶56 *Same-Sex Marriage in the United States: The Road to the Supreme Court*, by political science professor Jason Pierceson, provides legal, political, and cultural context for the Supreme Court’s recent gay marriage decisions by tracing the gay rights movement’s campaign for marriage rights all the way back to the 1950s. Pierceson creates a valuable map of a decades-long civil rights movement marked by distinct successes and failures.

¶57 *Same-Sex Marriage in the United States* evaluates both legislative and litigation-based efforts at securing both marriage equality and marriage-like legal protections, such as civil unions. What emerges is the fascinating interplay of two distinct strategies, legislation or litigation, and a complex portrait of how these strategies have played out in different areas with their own political and cultural idiosyncrasies. Pierceson also brings into relief, both explicitly and through implication, the unique power of federalism to hamper progress in an area of civil rights rooted in the family law of individual states.

¶58 Pierceson’s comprehensive exploration of his subject and its attendant nuances are one of the book’s strengths. For example, he takes great care to explore the complicated relationship that the issue of marriage equality has with the wider gay rights movement, a point often overlooked in the mainstream media. He highlights the concern held within the movement that the high-visibility push for gay marriage, and its resulting backlash, comes at the expense of securing other, more attainable, civil rights protections. This is especially important in states where gays and lesbians can still be openly discriminated against in employment and other matters. He also explores the ideological discomfort of radical elements of the gay rights movement toward what is viewed as an irredeemably oppressive institution that cannot be divorced from traditional gender roles.

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The most engaging part of the book falls somewhat outside the scope of the titular subject. In chapter 3, Pierceson compares progress toward gay marriage in the United States with that in other countries, with some surprising revelations. Despite what may be perceived as a conservative and religious culture, several countries in Latin America, including Brazil and Ecuador, have made strides toward marriage equality and gay rights generally that eclipse those in many areas of the United States. While violence toward gays is prevalent in many African countries, Pierceson notes the existence of gay relationships in traditional African culture despite the claim by African traditionalists that African homosexuality is a by-product of colonialism, and he explains that gay rights in South Africa benefited tremendously from the fact that the country enacted a new constitution after the fall of apartheid.

Unlike Michael J. Klarman’s *From the Closet to the Altar*, Pierceson declines to make sweeping predictions of the inevitable triumph of the gay marriage movement. Rather, Pierceson echoes the rationale that support of gay marriage among younger demographics is a positive factor, but asks whether policy will catch up with emerging public opinion in light of very real barriers, especially in states where conservative religion heavily influences political reality.

Though decidedly academic in tone, level of detail, structure, and pace, *Same-Sex Marriage in the United States* remains accessible and an enjoyably informative read. It promises to be a valuable addition to any collection and is recommended, especially for academic institutions that offer programs and courses related to human rights and social justice.


Reviewed by Gregory H. Stoner*

In early and antebellum America, the maritime frontier represented a source of virtually limitless commerce—but also, on occasion, a world apart. With a shipboard labor culture often characterized by violence and brutality, the average workingman on land may have struggled to identify with his seafaring brethren. In *The Republic Afloat: Law, Honor, and Citizenship in Maritime America*, historian Matthew Taylor Raffety explores the complex and nuanced world aboard American merchant vessels in this era. His study is ambitious: it seeks not only to explain how American seamen during this period understood their rights and maritime culture, but also to interpret how this understanding continued to evolve throughout the period as a result of diverse and extensive interactions with emerging American legal structures. The heart of this work centers on Raffety’s primary contention “that the law is far more central to how life and labor operated in the maritime setting than historians have heretofore acknowledged” (p.212). By examining a number of crimes and shipboard incidents that came before federal courts, and utilizing


these cases and extant court records as evidence, Raffety provides a unique window to the past in which these vivid examples demonstrate how mariners made sense of their world, the law, and evolving notions of American citizenship.

¶63 The core of The Republic Afloat is organized thematically into three parts titled “Law,” “Honor,” and “Citizen.” The first part, “Law,” chronicles the evolution and expansion of American law at sea during the early Republic. More important, it explores how a body of federal maritime law, forged by federal jurists and Congress and influenced by seamen, began to take shape and affect life on board. In “Honor,” Raffety, focusing on the 1830s and 1840s, examines how evolving legal structures both bolstered and diminished extralegal means of shipboard authority, as well as the traditional, rigid maritime culture of honor and manhood. Lastly, “Citizen” discusses the relationship between American seafarers and the nation. Seafarers actively sought inclusion and acceptance as Americans during much of the early nineteenth century, and Rafferty explains how individuals such as foreign consuls and American writers embraced their efforts and struggles and used the ideal of the seafarer to help define the nation.

¶64 Throughout his study, Raffety asserts that these noteworthy maritime legal developments had a broader application and relevance than prior scholarship has recognized. For example, various court rulings involving seafarers required answers to questions regarding rights and privileges that in turn extended to other citizens. He successfully makes the case that evolving legal structures served as a foundation for a growing federal authority that would eventually extend to and touch the lives of all Americans.

¶65 Raffety has written an authoritative study that makes a noteworthy contribution to a previously understudied field. Extensive and detailed endnotes shed light on the diverse body of manuscripts and other primary source material consulted, illustrating the groundbreaking nature of his research. Due to the numerous subjects addressed, the book will interest a diverse readership, including historians of labor, law, maritime culture, and citizenship. Published by the well-regarded University of Chicago Press as part of its American Beginnings series, this title will make a valuable addition to many large academic law libraries and general libraries with extensive history collections.


Reviewed by Carey A. Sias*

¶66 “Human beings all long for justice” (p.1), begins Thane Rosenbaum’s Payback: The Case for Revenge. The sentiment echoes throughout our society over news outlets, presidential proclamations, cinema screens, and in courtrooms every day. Upon being wronged, it seems our primary concerns are not to forgive and forget, but to even the score by punishing the wrongdoer. Although they advocate for moral justice, Rosenbaum argues that victims are more interested in retaliation.

Consider an example: in June 2013, a four-story building under demolition collapsed on top of a Philadelphia thrift store, killing six people. After registering initial shock, news reporters and city officials soon turned to the issue of whom to blame and focused on a construction worker who removed a beam seconds before the collapse. Mere hours after Sean Benschop turned himself in to police, Mayor Michael Nutter issued a statement demanding his punishment. No charges had yet been filed, a formal investigation had barely begun, but according to the mayor’s ultimatum, “[j]ustice will only be served if Sean Benschop receives a sentence that buries him in a jailhouse forever, just like his victims were buried on Wednesday.”

In this absence of due process, can justice really be served? Or was the mayor calling instead for revenge on behalf of the victims, their families, and the wounded city of Philadelphia?

After September 11, 2001, President George W. Bush said, “Ours is a nation that does not seek revenge, but we do seek justice” (p.7). Rosenbaum challenges these linguistic acrobatics. Central to his work is the claim that one cannot pursue justice without also seeking vengeance, and citizens must have access to both in order to believe in a morally balanced society. Survivors of each of the above events felt loss, anger, and hatred. Yet leaders pretended impartiality by disguising their natural desire for retribution behind a mask of justice, undermining the emotional satisfaction that victims required.

When bad things happen, we want to hold someone accountable. After laying blame we may inflict punishment, and then the score is even. Yet this process is rarely practiced between individuals; instead, our government controls the justice system through legal procedures to determine guilt and punishment on behalf of citizens. Ostensibly, a judge and jury in a court setting are removed from emotional factors, marking a definitive line between objective justice and passionate, hot-headed vengeance. The judiciary holds a monopoly on the right to administer punishment without the “passion of the avenger” (p.265)—a practice that, Rosenbaum argues, dishonors victims and disserves society as a whole. When the legal system fails to adequately punish wrongdoers, sometimes in part due to violations of procedural rights, citizens’ faith in the punitive power of law erodes. In order to restore the public’s trust, Payback calls on law enforcement and the judiciary “to give victims a truer sense that justice is being done on their behalf—that they, not some abstract legal principle or proclaimed state interest, are the reasons why we have public courtrooms in the first place” (p.264).

Editor, essayist, novelist, and law professor Rosenbaum previously explored citizens’ and courts’ interpretations of justice in The Myth of Moral Justice: Why Our Legal System Fails to Do What’s Right. In Payback, he builds on his work and legal studies with information from a wealth of other disciplines, including religion, linguistics, neuroscience, psychology, philosophy, game theory, folklore, theater,

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cinema studies, and analysis of modern news stories and real-life legal proceedings. Such wide coverage risks overwhelming the average reader, but Rosenbaum’s conversational writing style and talent for smooth transitions between subjects make this work accessible and interesting even to those with little legal background. Writers and scholars will also appreciate the detailed index.

Some of his scientific claims require further investigation. A chapter called “The Science of Mad” addresses comparisons of revenge to food earlier mentioned in the chapter titled “Just Deserts.” Rosenbaum supports metaphors from literature and film such as “revenge is sweet” or “a dish best served cold” (p.83) with neurological studies. Anticipating vengeance activates brain areas related to rewards, decision making, and food cravings; thus, he not only claims that revenge is an innate, biological need, but also that the increase in blood flow to reward centers must “suggest that the mind plays no favorites between vengeance and chocolate. Both receive equal billing in the brain” (p.93). Following a characterization of people who advocate forgiveness as “honor anorexics who push themselves away from the table of just deserts” (p.35), the generalization becomes simplistic and overbearing.

The chapter “Other Cultures and Revenge” explores talionic law, honor killings, and retaliatory practices around the world, primarily to illustrate excessive punishment or unbalanced vengeance. Some proposed objective standards for revenge, “actual moral injury” and “true loss of honor” (p.160), may be subject to individual interpretation and do not adequately consider cultural perceptions. When Rosenbaum quotes another researcher, “[revenge] has to do with the beliefs of the majority, and what people expect me to do” (p.166), this statement clashes with his own tendency to measure such practices against Westerners’ expectations and codes of morality and honor.

As the first chapter states, “The hope of this book is to liberate vengeance from all the silence and hypocrisy that prevents it from openly informing public debate about the deficiencies of the legal system” (p.31). Payback wholeheartedly lends itself to the discussion. Professors may add this to law and liberal arts curricula as a source for debate, and it would make a fine addition to academic or public libraries.


Reviewed by Susanna Leers*

Beware the seductive power of statistics. Lawyers use statistics to provide authority and certainty in cases where evidence is questionable. But mathematical analysis of data is only as good as the analyst and the data. Leila Schneps and Coralie Colmez illustrate how reliance on math can cause miscarriages of justice in Math on Trial: How Numbers Get Used and Abused in the Courtroom. The book is divided into ten chapters, each a study of a particular legal case and how mathe-
matical errors in statistical evidence, or a misunderstanding of statistics, led to wrong conclusions.

¶75 Each chapter’s title names the mathematical fallacy that forms the issue in that particular case study. In chapter 1, “Multiplying Non-Independent Probabilities,” we read about the British case of Sally Clark, a mother of two children who died. Clark was convicted of murdering her children largely due to the testimony of Dr. Roy Meadows, a pediatrician renowned for his work on child abuse. On the witness stand, Dr. Meadows told the jury that there was a 1 in 73 million chance that both children had died naturally—a statistic, as it turned out, that was horribly and tragically incorrect. Clark was jailed for murdering her children. During her three years of imprisonment, her lawyer and husband worked to uncover flaws in the evidence, and the Royal Statistical Society publicly complained about the statistical inaccuracy of Dr. Meadows’ testimony. Eventually Clark was freed and Dr. Meadows was found guilty of professional misconduct in his misuse of statistics and struck from the medical register.

¶76 Ensuing chapters tell more stories of people whose lives were affected by mathematical miscalculations in court cases. Several cases are described in which the prosecution used estimates of probability—that two people could have the same color car (think My Cousin Vinny), the same name, or the same hair color and style—that were not rigorously proven. For example, when a particular nurse took care of several different patients who died unexpectedly, was it proof that she was involved in the deaths or could it simply have been a coincidence? The authors recount how the nurse was first convicted, but then how the conviction was overturned after the court looked more closely at the mathematical evidence. In some of the stories, mathematical evidence was used to justify convictions; in others it was used to convince the court that a conviction was erroneous.

¶77 Some of the cases discussed in the book are well known, but it is interesting to view them through a mathematical lens. Carlo “Charles” Ponzi became infamous for his ability to fool investors with an unsustainable mathematical model; the authors spell out exactly how unsustainable it was. And did you know that the conviction of Alfred Dreyfus was based on flawed probability analysis, “and it took ten years and a team of the greatest mathematicians of the time to convince the world that it was wrong” (p.191)?

¶78 The book ends with a cautionary conclusion that discusses how probability is making a comeback in courtrooms because of DNA evidence. The authors remind us that not all DNA evidence is straightforward, and that lawyers, juries, and expert witnesses need to be aware of this. It is important to understand how statistics work and how probabilities are calculated in order to use the correct techniques to reach meaningful, and just, results. The authors believe that mathematics can and will be useful in fundamental ways for courts of justice, as long as we recognize the errors that can occur and work to exclude mathematical errors from trials. As history has shown us, statistical errors can literally be life-and-death matters. Well-written and insightful, this book would be at home in any true-crime collection, and it should certainly be on the shelves of all law libraries, as it especially resonates for law students, legal scholars, and practicing attorneys interested in criminal law and evidence.

Reviewed by Judy Janes*

¶79 Once again, Richard Susskind offers an interesting and provocative book about the legal profession. Writing to both U.K. and U.S. audiences, he insists the legal profession must change its business model in order to sustain itself in the future marketplace. His book, *Tomorrow’s Lawyers: An Introduction to Your Future*, left me wondering if the profession is ready to accept his theories and to implement such revolutionary changes.

¶80 Susskind provides a glimpse of how he thinks the future will look and acknowledges the difficulties the profession will encounter in changing the culture of the present-day legal industry. He impresses the reader with his knowledge of changing economics and how technology has modernized other sectors more rapidly; then he leaves the reader to analyze his theories about the future.

¶81 The author’s assessment of present-day practice suggests that law lags a generation behind, archaic and sloth-like, in a world where technology drives other services. He suggests we must be driven to provide “more for less” (p.4). He urges the legal profession to follow other industries that have modernized and implemented technological responses to consumer demand for greater efficiencies.

¶82 Over time, Susskind predicts, with retirements of partners and an influx of practitioners from younger generations, a new economic model will evolve. He predicts the profession will seek change, slowly, through three stages: denial, re-sourcing, and disruption. For the most part, the legal industry has been in denial, maintaining the status quo at whatever cost. This approach, while it has worked in the past, did not survive the latest economic crisis, and forced many firms and legal departments to reduce headcount, merge with other firms, or go out of business. The result has been a plummeting job market for new and young associates. This has left law students wondering what the market will look like, and what jobs might be available, when they graduate.

¶83 Susskind is rather optimistic that there is a future for law graduates, but not in traditional roles. He expects new jobs will be created in yet undiscovered areas of practice. As the number of traditional jobs declines, the industry must look for new venues for gainful employment. But this will not happen until it moves beyond denial.

¶84 Why is Susskind so willing to forecast that the future for the legal profession requires drastic changes in the structure of how legal services are delivered? Economics and technology are unavoidable realities. He insists that the new model requires alternative sourcing for portions of what lawyers now do and new venues for future business. Cost-cutting measures require re-sourcing work that can be handled by a non-J.D. workforce, including high-volume, repetitive work; document review; and tasks controlled by checklists. He calls this phase the “disruption” part of the new model (p.40).

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Disruption occurs when the traditional structure, in which lower-paid associates do the work and clients are billed at higher company rates, changes. The alternative plan reduces the strong billing component by young associates and reduces the overall revenue stream of the traditional practice. In effect, the work requires fewer lawyers and more collaboration with nonlawyers to provide services.

So what will tomorrow’s attorneys do if lower-cost work no longer requires lawyers? Susskind insists there is a new market of work simply awaiting discovery. It includes jobs in global accounting and investment firms, new-look law firms, online service providers, management consultant firms, retail, and other nontraditional fields. How will new lawyers be trained to seek these professions? Legal education must be an active participant in preparing law students for this new future!

The author suggests that students be given the opportunity, while in law school, to take courses that expose them to both traditional and new law practice. Law schools must blend collaboration between academics and the practice world, demonstrating and preparing students for paths of employment in various industries, both traditional and nontraditional. He notes that some law schools are already doing this.

The book is very readable and thought-provoking. It implores readers to think deeply about unraveling the long-revered traditions of legal services delivered in the high-end, well-established law offices that present a culture justifying high-end cost recovery. How can the profession transform itself to fit a newer model that is not so lavish, takes meaningful advantage of technology, outsources menial and repetitive tasks at a fraction of the cost, reserves the skilled practitioner for only the most difficult issues, and moves lawyers into new fields of legal service? He suggests a transformation is under way, and with the advent of virtual courts, online guidance systems, automated document assembly and review operations, communities of legal experience, consultations by video conferencing, and more, change will inevitably prevail. This book is appropriate for both academic and law libraries, and would be of interest to readers in public libraries.


Reviewed by Stephanie Ziegler*

Once upon a time in the Old West, a newly married cowboy was killed when a gun accidentally discharged. The cowboy’s widow fought for more than twenty years for the life insurance proceeds that were rightfully hers. Or, once upon a time in the Old West, several people conspired to murder an innocent cigarmaker and defraud insurance companies of thousands of dollars.

What is known is this: in 1879, shortly after his marriage, a young cowboy named John Hillmon set off from Lawrence, Kansas, to scout land for a ranch. Not

* © Stephanie Ziegler, 2014. Reference Librarian, Michael E. Moritz Law Library, Moritz College of Law, The Ohio State University, Columbus, Ohio.
long after, his traveling companion, John Brown, reported that he had shot Hillmon in a freak accident. Tragic though it was, the incident might have been quickly forgotten were it not for the massive life insurance policies Hillmon had taken out shortly before setting off on his journey. Indeed, the policies were so large ($25,000, amounting to over $500,000 in today’s dollars) that Hillmon had to take them out from three separate insurance companies. These companies would eventually band together to fight Sallie Hillmon’s claim that she, as John Hillmon’s widow, was entitled to the money.

¶ Complicating matters further was a piece of evidence from the insurance companies: a letter sent by young cigarmaker Frederick Adolph Walters to his sweetheart. In the letter, Walters wrote of his plan to go west with “a man named Hillmon” who had promised him good wages (p.xx). The insurance companies argued that it was Walters who had been shot at Crooked Creek as part of an insurance fraud scheme. The dispute led to six trials and ultimately the U.S. Supreme Court. It was in the Supreme Court that the love letter brought about the opinion outlining the “intent” exception to the hearsay rule, now known as Federal Rule of Evidence 803(3).

¶ The story of the Hillmon trials has all the hallmarks of a compelling mystery, including hidden pieces of evidence and witnesses changing their testimony. Was John Hillmon accidentally shot by his friend at Crooked Creek, or was he a fraudster who lured an innocent man to his death? Was the cigarmaker’s love letter real? And what of Sallie Hillmon, who spent a lifetime fighting the insurance companies? Was she a grieving widow seeking justice or a cunning party to fraud?

¶ The answer, Marianne Wesson believes, lies (quite literally) in the Oak Hill Cemetery in Lawrence, Kansas. Discover the true identity of the man buried there, the man shot at Crooked Creek, and the mystery will be solved. Thus the story of the Hillmon case is interspersed with Wesson’s efforts to exhume the remains from the Kansas cemetery for DNA testing.

¶ Wesson makes clear that, although she first became interested in the case because of the love letter, it was the alleged widow, Sallie Quinn Hillmon, who came to fascinate her. The question of who Sallie Hillmon was, and what she knew, drives much of the story. Wesson also accents the Hillmon saga with her own imaginings of events surrounding the trials—admittedly fictionalized, though many are inspired by contemporary accounts. Other players in the story are not neglected. I found myself interested in the fate of Alvina Kasten, recipient of the love letter, and was pleased that a genealogist working with Wesson discovered her fate.

¶ A Death at Crooked Creek is a riveting and well-researched account of the intersection of modern forensics and a cold case from the Old West, one that led to a rule of evidence still in use today. A helpful timeline of events and a list of important characters are provided, and the index is thorough and useful. This intriguing true-crime story that made it to the Supreme Court is highly recommended for law, general academic, and public libraries.
There Oughta Be a Law—A Model Law*

Mary Whisner**

Uniform and model laws are frequently proposed to standardize “what the law is or should be” for specific jurisdictions. These model acts can come from national or international drafting organizations, such as the Uniform Law Commission, or from interest groups or associations that want to promote specific policies. Ms. Whisner provides an overview of the various types of model laws that researchers should know about.

§1 I have never drafted a statute, but I think it would be hard to do well. You’d want to learn a lot about the problem you want to address, the groups affected by it, and other approaches that have been tried. You’d want to think carefully about definitions, remedies, and administrative mechanisms. And you’d have to keep your eye out for potential ambiguities and hidden loopholes, as well as ways that the legislation could cause damage that you don’t intend. Facing all of these challenges, I would welcome a law that had already been researched, drafted, and reviewed by people who knew what they were doing—a model law.1 But model laws aren’t just for the convenience of legislators. They also serve the interests of the groups or individuals who draft them. If you are concerned about a problem and think there might be a good legislative solution, then drafting a model law and getting it into the hands of legislators who would advocate for it would be a way to advance your cause.

* © Mary Whisner, 2014. I thank Nancy Unger and Barbara Bintliff for helpful comments on a draft of this piece. A.J. Blechner, Jonathan Germann, Heather Joy, and Sarah Weldon also provided assistance.


1. Maybe my assumption that models would be welcome is not universally held. One author advises drafters to “start with a draft prepared by someone else when there is good reason to do so, but start from scratch whenever you can.” TOBIAS A. DORSEY, LEGISLATIVE DRAFTER’S DESKBOOK 198 (2006). I have not found any book or article advising legislators to look for and use model legislation or offering suggestions on how to review and modify model legislation with which they are presented. LAWRENCE E. FILSON & SANDRA L. STROKOFF, THE LEGISLATIVE DRAFTER’S DESK REFERENCE 108–14 (2d ed. 2008) has a section headed “Using models,” but it is not about model legislation in the sense I’m using the term; instead, it discusses, for example, using one federal grant program as a model when drafting a new federal grant program. Dorsey, Filson, and Stroffoff all gained their drafting experience in the Office of Legislative Council of the U.S. House of Representatives—that is, a place where they have probably seldom encountered model state legislation. Perhaps drafting guides written by people with experience in the state legislatures would discuss model laws.
A few organizations are noted for their work drafting model legislation. The most visible is the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), founded in 1892. It has produced hundreds of model laws, many widely adopted in the states. The Uniform Law Commission distinguishes between “uniform laws” and “model acts”: a uniform law “seeks to establish the same law on a subject among the various jurisdictions,” while a model act’s “principal purposes can be substantially achieved even if the act is not adopted in its entirety by every state.” Once uniform laws are approved, Commissioners are obligated to “endeavor to procure consideration by the legislature of the state, unless the commissioners consider the act inappropriate for enactment in their state.” The paradigmatic example of a uniform law is the Uniform Commercial Code, which smooths business transactions across state lines; parts of it have been adopted in all U.S. jurisdictions. Another example is the Uniform Child Custody Jurisdiction and Enforcement Act—which is meant to remove the incentives for parents fighting over custody to shift their kids from state to state to try to work the court system to their advantage. Not all of the

2. The name “National Conference of Commissioners on Uniform State Laws” is a mouthful. Some people refer to the organization by its initials, NCCUSL, but even “nuh-Kews’ll” doesn’t really roll off the tongue. Several years ago, the commissioners recognized this problem and changed NCCUSL’s constitution to include the alternative name “the Uniform Law Commission.” Nat’l Conference of Comm’rs on Unif. State Laws, Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings of the Hundred and Sixteenth Annual Conference 168 (2007); Nat’l Conference of Comm’rs on Unif. State Laws, Constitution, art. 1 [hereinafter NCCUSL Const.], http://uniformlaws.org/Narrative.aspx?title=Constitution (last visited Nov. 8, 2013).

3. “In its history, the Conference has promulgated well over three hundred uniform or model acts . . . .” Nim Razook, Uniform Private Laws, National Conference of Commissioners for [sic] Uniform State Laws Signaling and Federal Preemption, 38 Am. Bus. L.J. 41, 45 (2000). Razook observes that it is difficult to come up with a precise number, among other reasons because of uncertainty about whether to count separately each article of a code like the U.C.C., and whether to count revised acts. Id. at 45 n.16. He provides a chronological listing of acts through 1999 in an appendix. Id. at 82–97.


6. The U.C.C., a joint project of the Uniform Law Commission and the American Law Institute, has been adopted throughout the United States. For example, articles 3 and 4 (Negotiable Instruments and Bank Deposits and Collections) have been adopted in fifty-two jurisdictions. Unif. Law Comm’n Guide, supra note 3, at 9. The Guide counts adoptions in fifty-three jurisdictions: fifty states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Id. at 1. The holdout for articles 3 and 4 is New York, id. at 33, and yet New Yorkers seem to be able to conduct business with the rest of us. There must be a story there, but I won’t pursue this particular digression here.

7. See Unif. Child Custody Jurisdiction & Enforcement Act § 101 Cmt., 9 U.L.A. 657 (1999). This uniform act has been adopted in fifty-one jurisdictions. Unif. Law Comm’n Guide, supra note 3, at 8. The two jurisdictions that have not adopted it are Massachusetts and Puerto Rico. Id. at 33.
uniform laws have been embraced by the states (or the District of Columbia, Puerto Rico, or the Virgin Islands). Here are some of the least popular uniform laws, as of 2012: Uniform Assignment of Rents Act (2005), three adoptions; Uniform Certificate of Title Act (2005, 2006), zero adoptions; Uniform Computer Information Transaction Act (UCITA) (1999, 2000, 2002), two adoptions; Uniform Estate Tax Apportionment Act (2003), six adoptions; Uniform Guardianship and Protective Proceedings Act (1997), four adoptions.8 So having “uniform” in its name does not indicate that a law has been uniformly adopted. Several model laws have not been adopted at all, despite having been around for a decade or more.9

¶

3 The Uniform Law Commission can fairly be characterized as mainstream, part of the establishment. It has always had close ties to the American Bar Association.10 All of the commissioners are attorneys, in most states appointed by governors.11 They include judges, law professors, lawyers in private practice, and government lawyers.12 An index entry in 1965 was “National Conference of Commissioners on Uniform State Laws, members of not revolutionaries.”13 While still not revolutionaries, the commissioners today are working on new issues. Recent model legislation includes the Uniform Asset-Freezing Orders Act (2012),14 the Uniform Deployed Parents Custody and Visitation Act (2012),15 the Uniform Electronic Legal Material Act (2011),16 and the Uniform Prevention of and Remedies for Human Trafficking Act (2013).17

8. Unif. Law Comm’n Guide, supra note 3, at 7, 11, 15, 16. (I didn’t list any of the laws proposed in the past couple of years because the legislatures wouldn’t have had time to adopt them yet.)


10. See Walter P. Armstrong, Jr., A CENTURY OF SERVICE: A CENTENNIAL HISTORY OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 11 (1991) (founding meeting of NCCUSL held in conjunction with ABA meeting); NCCUSL Const., supra note 2, art. 7 (“The President shall also cause an annual written report to be made to the House of Delegates of the American Bar Association upon the work and recommendations of the Conference during the preceding year. The President shall file for the records of the American Bar Association copies of Uniform Acts finally approved and recommended by the Conference for enactment by the several States.”).

11. NCCUSL FAQ, supra note 4.

12. To get a quick sample, I chose a recent law (the Uniform Debt Management Services Act (2011)), and searched for information about the members of the drafting committee. The eleven men, from seven states and the District of Columbia, included a bankruptcy court judge (who chaired the committee), two law professors (one was the reporter for the project), six very experienced lawyers (admitted dates ranged from 1943 to 1968), a government attorney, and the president of the board of the National Consumer Law Center. I think this committee was unusual (for this century) in having only men, but I would guess that it was typical in having a judge, several lawyers in private practice, and a couple of academics.


¶4 The Uniform Law Commission is also in the mainstream of legal research. That is, its proposed laws, along with commentary and supporting material, are easy to find. *Uniform Laws Annotated* is a standard source in print and on Westlaw. It looks and feels like the annotated statutory codes we’re used to. It enables researchers to find case law from different jurisdictions interpreting the uniform laws and model acts promulgated by the Uniform Law Commission. Researchers may also follow the work of the commission through its published annual proceedings.

¶5 The American Law Institute (ALI), founded in 1923, is likewise a part of the legal establishment. Its members are “eminent judges, lawyers, and law professors from all areas of the United States and from many foreign countries, selected on the basis of professional achievement and demonstrated interest in improving the law.” Perhaps best known for its restatements, the ALI also produces model legislation. Projects have included:

- Code of Criminal Procedure (1924–30)
- Contribution Among Tortfeasors Act (with Uniform Law Commission) (1936–39) (later: Uniform Contribution Among Tortfeasors Act)
- Model Code of Evidence (1939–42)
- Model Code of Pre-Arraignment Procedure (1963–75)
- Model Land Development Code (1960, 1965–76)
- Model Penal Code (1950–62)
- Model Penal Code: Sentencing (1999–)
- Model Penal Code: Sexual Assault and Related Offenses (2012–)
- Model Penal Code Commentaries (1976–85)
- Uniform Commercial Code (with Uniform Law Commission) (1942–52)

18. *Uniform Laws Annotated* was published by Edward Thompson Company beginning in 1922 and by West Publishing and its successors since 1969. *Armstrong*, *supra* note 9, at 138. Researchers who think of uniform laws as laws might be surprised to find the resource listed under secondary sources in Westlaw Classic and WestlawNext—but of course the uniform laws and model acts are not laws at all until they are adopted by a legislature.

19. The title since 1920 has been *Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings of the . . . Annual Conference*. HeinOnline offers a library with material from the National Conference of Commissioners of Uniform State Laws:

This provides access to the full text of all Model Acts drafted, recommended or endorsed by the Conference. It includes the NCCUSL—Archive Publications, Handbook of the NCCUSL and Proceedings of the Annual Conference Meeting, 1st–119th Conference (1891–2010) are all available transcripts of the Proceedings of each Annual Meeting, as well as the transcripts of the discussions in the Committee of the whole of each Uniform and Model Act. Also included are the approved ‘successive drafts’ of each Uniform and Model Act.


• Youth Correction Authority Act/Program (1938–40, 1944–51)
• Youth Court Act (1938–41)21

§6 The ALI projects done in conjunction with the Uniform Law Commission are easy to research: the text, notes about adoption, and annotations are in Uniform Laws Annotated. Others are separately published. For example, the Model Land Development Code was published in 1975, with the full title A Model Land Development Code: Proposed Official Draft, Complete Text and Commentary: Submitted by the Council to the Members of the American Law Institute for Discussion at the Fifty-Second Annual Meeting on May 20, 21, 22, and 23, 1975. To my knowledge, there isn’t a single source (like Uniform Laws Annotated) that lists adopting jurisdictions and judicial interpretations for these individual model laws. Instead, we can learn about the model laws’ influence through secondary sources. For instance, a treatise on land use informs me that the Model Land Development Code has had its greatest effect in influencing states’ regional growth controls.22 ALI’s drafts and the proceedings of its governing bodies (the council and the membership) are widely available to researchers, in print and online.23

§7 The ALI’s approach is cautious and measured. According to its own style manual, “it has avoided ‘novel social legislation.’ Codifications such as the Uniform Commercial Code, the Model Penal Code, and the Federal Securities Code have built upon, rationalized, and synthesized previous legislation in these areas rather than proposing legislation in fields where it had not previously existed.”24 A few years ago, the ALI addressed the hot-button issue of the death penalty, but it did so in its usual scholarly, process-filled manner. You can read the resolutions, transcripts of discussions, and background papers in a 114-page report.25 The result was a motion passed by the membership and approved by the ALI Council: “For reasons stated in Part V of the Council’s report to the membership, the Institute withdraws Section 210.6 of the Model Penal Code in light of the current intractable institutional and structural obstacles to ensuring a minimally adequate system for administering capital punishment.”26 The resolution only takes capital punishment out of the Model Penal Code, without, say, denouncing it as immoral or calling for states

26. Roberta Cooper Ramo, President’s Letter: Capital Punishment and Other Matters, ALI REP., Fall 2009, at 1.
to abandon it.\textsuperscript{27} It could be that such a measured position will be more influential than something more heated.\textsuperscript{28}

\textsuperscript{8} The American Bar Association (ABA) also proposes model laws. The Business Law Section developed the Model Business Corporation Act and the Model Nonprofit Corporation Act, which are published as separate works—and rather hefty works, at that.\textsuperscript{29} Other laws from the ABA are harder to find and research. For example, the ABA approved the Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings in August 2011,\textsuperscript{30} but the only copy of the act I found on the ABA's web site still cautions: "This Act has not been approved by the ABA House of Delegates, nor by the Section of Litigation and should not be construed as ABA Policy."\textsuperscript{31} The ABA’s Model Act Governing Assisted Reproductive Technology, approved in 2008, was published in the \textit{Family Law Quarterly}.\textsuperscript{32} The ABA has other model laws, but I have not found a list of all of them.

\textsuperscript{9} The Council of State Governments does not draft or advocate for model laws of its own. Instead, its Committee on Suggested State Legislation reviews legislation for inclusion in an annual publication and on a web site that is updated several times a year.\textsuperscript{33} Among other things, the committee considers whether the

\begin{verbatim}
27. Different possibilities were debated:
Three possible alternatives were at issue at today’s meeting: (1) Withdraw Section 210.6 without comment—the Council’s position; (2) Withdraw Section 210.6 with a comment from the Steiker Report and the ultimate phrase: ‘the Institute calls for the rejection of capital punishment as a penal option’—the Leahy amendment; and (3) A compromise of the two proposals—Withdraw Section 210.6 with a comment, but without the ultimate phrase—the Garner amendment to the Leahy amendment.”


“In essence, the body split the baby in half: it . . . rejected an explicit call for the abolition of capital punishment, but it also adopted the language from our report recognizing ‘current intractable institutional and structural obstacles to ensuring a minimally adequate system for administering capital punishment.’” Carol S. Steiker & Jordan M. Steiker, \textit{Special Feature: No More Tinkering: The American Law Institute and the Death Penalty Provisions of the Model Penal Code}, \textsc{89 Tex. L. Rev.} 353, 360 (2010).

28. For discussion of the likely influence of the ALI resolution, see Steiker & Steiker, \textit{supra} note 27, at 364–65.


32. \textit{American Bar Association Model Act Governing Assisted Reproductive Technology} (February 2008), \textsc{42 Fam. L.Q.} 171 (2008).

\end{verbatim}
issue addressed by the model law is significant nationally or regionally and sufficiently complex “that a bill drafter would benefit from having a comprehensive draft available.” A recent volume includes laws on autonomous vehicles (Florida), brew pubs (Illinois), adoption agencies (allowing religious organizations to refuse placement if it would violate its religious principles) (Virginia), fracking (Texas), electronic communications by jurors (California), and sexting and cyberbullying (Nevada).

¶10 The Uniform Law Commission, the ALI, the ABA, and the Council of State Governments all have wide-reaching interests: virtually anything that can be addressed by legislation. Organizations with more focused substantive interests often propose model laws too. For instance, the Animal Legal Defense Fund offers a Model Animal Protection Laws Collection. The National Council of Examiners for Engineering and Surveying recently revised its model law for engineering and surveying licensing boards. The National Alliance for Public Charter Schools publishes a model law and also has an interactive tool for comparing existing state laws with the provisions of the model. AARP’s web site has model bills on payday loans, check cashing, homeowner associations, and accessory dwelling units. And the Specialty Equipment Market Association, a trade association for companies and individuals that “make, buy, sell and use all kinds of specialty parts and accessories to make vehicles more attractive, more unique, more convenient, faster, safer, more fun and even like new again,” offers four model bills (for state or local government) related to custom automobiles.

34. Id.
35. Id. at 14, 19, 21, 43, 57, 94.
Doctors also take an interest in legislation. The American Medical Association (AMA) has model laws on

- Physician-led health-care teams
- Corporate practice of medicine
- Obesity (includes Competitive School Food and Beverage Act, Healthy Schools Act, and Menu Labeling Act)
- The patient-physician relationship
- Public safety (includes Prohibit the Shackling of Pregnant Prisoners Act and Prohibit Minors Access to Indoor Tanning Act)
- Truth in advertising (Health Care Professional Transparency Act)

I have not seen any of these model bills, though, because they may only be viewed by AMA members. I can only speculate about why the organization would not want everyone to see its proposals. Perhaps leaders are concerned that others would modify the bills (to physicians’ disadvantage) and then present them to legislators as AMA bills. Or perhaps they want to get them to legislators before potential opponents can create rival bills.

You don’t have to have an organization behind you to propose a model law. The pages of law reviews include model laws drafted by lawyers, academics, and

49. See id.
50. See id.
52. There was an option to create an account, and I did, but my nonmember account did not allow me to access the legislative advocacy resources.
There was even a model law crafted by students in an eighth-grade social studies class.\textsuperscript{56} Although I was familiar with the work of the Uniform Law Commission and the ALI—and I knew that professional associations, public interest groups, and individual scholars propose model laws—until quite recently, I was unaware of another major player in the field. The American Legislative Exchange Council (ALEC) was founded in 1973 as a “nonpartisan membership association for conservative state lawmakers who shared a common belief in limited government, free markets, federalism, and individual liberty.”\textsuperscript{57} ALEC’s task forces “actively solicit more input from private sector members, seizing upon ALEC’s long-time philosophy that the private sector should be an ally rather than an adversary in developing sound public policy.”\textsuperscript{58} The task forces have produced hundreds of model bills on a wide range of topics.\textsuperscript{59} According to ALEC, “Each year, close to 1,000 bills, based at least in part on ALEC Model Legislation, are introduced in the states. Of these, an average of 20 percent become law.”\textsuperscript{60} The Center for Media and Democracy counted 466 bills introduced in 2013—at least one in each state—of which 84 passed.\textsuperscript{61}

ALEC has become controversial for reasons of both substance and procedure. Some critics disagree with the legislative solutions ALEC favors, such as “stand your ground” laws, “right to work” laws, and tort reform proposals.\textsuperscript{62} And much criticism is aimed at the way ALEC works. Although ALEC says that it is bipartisan, only a few of the thousand or so legislators who belong are Democrats.\textsuperscript{63} Many large corporations are members and pay handsomely for the access that membership gives them to the legislators.\textsuperscript{64} ALEC did not make its model laws

\begin{itemize}
\item \textsuperscript{56} See James Maguire, “Everyone Does It to Everyone”: An Epidemic of Bullying and the Legislation of Transgression in American Schools, 16 NEW CRIM. L. REV. 413, 428–29 (2013).
\item \textsuperscript{57} History, AM. LEGIS. EXCH. COUNCIL, http://www.alec.org/about-alec/history/ (last visited Nov. 8, 2013).
\item \textsuperscript{58} Id.
\item \textsuperscript{59} Id.
\item \textsuperscript{60} Id.
\item \textsuperscript{62} Id. See also Ellen Dannin, Privatizing Government Services in the Era of ALEC and the Great Recession, 43 U. TOL. L. REV. 503 (2011) (discussing ALEC bills on education and public-sector collective bargaining); Andrew N. Ireland Moore, Comment, Caging Animal Advocates’ Political Freedoms: The Unconstitutionality of the Animal and Ecological Terrorism Act, 11 ANIMAL L. 255 (2005).
\item \textsuperscript{64} Dues for legislators are $100 for two years. Membership Application, AM. LEGIS. EXCH. COUNCIL, available at http://www.alec.org/wp-content/uploads/Legislative-Membership.pdf (last visited Nov. 8, 2013). Basic dues for a corporation start at $7000; private members pay extra for membership on
publicly available until the Center for Media and Democracy obtained and posted more than 800 bills and resolutions.65 Now ALEC’s own web site has a searchable list of model measures.66 But ALEC still wants to protect many of its communications: it stamps documents with a disclaimer stating that documents sent to legislators are not subject to public records laws.67 Some critics have urged the IRS to withdraw ALEC’s tax-exempt status, alleging that ALEC’s activities include lobbying.68 Defenders compare ALEC to the National Conference of State Legislatures, which takes donations from large corporations.69

¶15 There are many other model and uniform laws (and creators of model legislation) that I haven’t had a chance to explore, including the *Uniform Building Code*70 and the *Manual on Uniform Traffic Control Devices*.71 Did you know that the United States Department of Commerce created the widely adopted Standard State Zoning Enabling Act in the 1920s?72 And there are international models too—for instance, the UNCTAD Model Law on Cross-Border Insolvency.73 So I can’t pretend to have covered the field. But I hope I’ve offered a helpful survey of the model laws and some of the major organizations that draft and promote them.

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70. Apparently the *Uniform Building Code*, published for years by the International Conference of Building Officials, has been superseded by the *International Building Code*, published by the International Code Council. See About ICC, INT’L CODE COUNCIL, http://www.iccsafe.org/AboutICC/Pages/default.aspx (last visited Nov. 8, 2013). Even mentioning something that I don’t want to discuss starts me down a path.


72. See STUART MECK & KENNETH PEARLMAN, OHIO PLANNING AND ZONING LAW § 3:3 (2013).

There are other types of diversity beyond race, ethnicity, and sexual orientation. Mr. Wheeler discusses various ways to experience different types of diversity in law librarianship.

1 A fair amount of attention has been given to the topic of diversity within the pages of Law Library Journal over the years. The topic is considered so important that it is the focus of a regular feature in the journal, the feature for which I write this piece. This concern over issues of diversity within the legal profession, within the profession of librarianship generally, within law librarianship more specifically, and within the American Association of Law Libraries (AALL) is both valuable and laudable. Nevertheless, the discussions I am most familiar with tend to revolve around what we as an association have not achieved, what we have not done, and why we need to do more. While these types of discussions are essential, I would like to consider the diversity issue from a different angle. I would like to examine the ways we are a diverse association and what we have achieved thus far.

2 When I joined AALL back in 2001, I immediately began to survey the landscape with respect to the racial, ethnic, sexual orientation, and gender identity makeup of the membership. Back then I relied mainly on my uninformed observations and subjective assessments. I was curious, as an African American gay man, to see whether there were others like me involved in the association. Here are some of my impressions. That year AALL had just elected its first African American president. There were other members serving on the AALL Executive Board that...
year who also identified themselves as being from historically underrepresented
groups. The Social Responsibilities Special Interest Section (SR-SIS) Standing
Committee on Lesbian and Gay Issues (SCLGI) was highly visible at the Conference
of Newer Law Librarians (CONELL) Marketplace and was, in fact, one of the very
first organizations I encountered during my CONELL experience. The 2001 AALL
Diversity Symposium was devoted to “diversity issues that commonly arise in the
workplace.” It was titled Effective Communication in a Diverse Society. The
Minority Leadership Development Award (MLDA) had just been created and was
awarded the following year to its inaugural recipients. The 2001–2002 AALL
Directory and Handbook contained 193 law librarians who self-identified as minor-
ities. Most important, I saw people of color, lesbians, gay men, and individuals
representing other kinds of diversity at every reception, facilitating or speaking on
program panels, chairing committees, and serving in leadership roles in special
interest sections.

Since then I have been actively involved with various diversity efforts within
AALL. I have thought a lot about diversity in our association, and I am intimately
acquainted with our progress on racial, ethnic, and sexual orientation issues.
However, there are numerous kinds of diversity, beyond race, ethnicity, and sexual
orientation, that enrich and enliven our association and serve to make us all better
law librarians. These other types of diversity, although they are often overlooked
or ignored, have been a source of wisdom, compassion, enlightenment, and profes-
sional development throughout my career. So I would like to spend a little time
discussing these other ways of experiencing diversity.

We all know that AALL is made up of a variety of members, including informa-
tion vendors, librarians from many different types of libraries, and information

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4. Cosette T. Sun, then Director of the Alameda County Law Library, and James E. Duggan,
then Director of Information Technology and Professor at Southern Illinois University, both served
on the Executive Board in 2001–2002. Each year since 2001, racial, ethnic, and sexual orientation
diversity have been represented on the AALL Executive Board.

5. Iris Lee, Diversity (Report of the Diversity Committee), American Association of Law Libraries
Reports of Chapters, Special Interest Sections, Committees, and Representatives 2000–2001, 93 LAW LIBR.

6. The inaugural recipients of the MLDA in 2002 were Tanya Brown, then Head Librarian
at Spiegel & McDermid in Washington, D.C., and Donna Nixon, then Reference Librarian at the
Kathrine W. Everett Law Library, University of North Carolina at Chapel Hill. See Anne McDonald,
Diversity (Report of the Diversity Committee), American Association of Law Libraries Reports of
Chapters, Special Interest Sections, Committees, and Representatives 2001–2002, 94 LAW LIBR. J. 725, 779
(2002).


8. I served on the AALL Diversity Committee in 2006–07, and I chaired the committee in
2007–08. I served as the AALL Executive Board liaison to the Diversity Committee from 2010 to 2013,
and I have moderated or spoken at two AALL Diversity Symposia. I have been an active member of
the SR-SIS Standing Committee on Lesbian and Gay Issues, and I was the inaugural recipient of their
Alan Holoch Memorial Grant in 2002. I was involved with the SR-SIS planning group that drafted
the 2002 AALL Resolution on Constitutional Amendments Defining Marriage, and I read the resolu-
tion to the attendees of the 2002 AALL Business Meeting. I am a member of the AALL Black Law
Librarians Caucus and the AALL Latino Caucus.

9. My intention is not to minimize or discount the importance of race, ethnicity, and sexual
orientation. Rather, I hope to discuss these important topics in subsequent installments of Diversity
Dialogues.
professionals working in corporations, nonprofits, government, and other organizations not necessarily related to libraries. One thing that has fascinated me over the years is the wide diversity in both career choices made and career goals pursued by AALL members. The daily work life of a knowledge manager at a large, fast-paced law firm is completely different and requires many different skill sets from my work as an academic law library director and professor. Likewise, the motivation and skills necessary to excel as a foreign and international law librarian can differ greatly from those possessed by state, county, or court law librarians passionate about access to justice for the underserved. I recently met a law librarian who works in development prospecting for a large private university; her talents and skills serve the financial needs of her entire university—she does not work in libraries at all. Contrast that with librarians who are information vendors or information product developers. The factors that drive individuals toward such radically different career paths are intriguing to me. These facets of diversity exist within AALL, and they fuel the collective wisdom of our profession. They are part of what makes our association successful because they facilitate mutual learning, and they demonstrate to all that law librarians’ skills and expertise are invaluable to many different types of organizations in countless ways.

I have benefited from AALL’s rich diversity in both career goals and career paths. Discussing my law school’s information needs with a law librarian managing the needs of a boutique law firm specializing in energy or intellectual property has helped me to learn and grow as a researcher and as a library manager. Learning which information resources are crucial for a specialized practice area helps me to better serve professors and other academic patrons researching in that area. In the same way, when law librarians serving judges or practicing attorneys share their experiences, it helps me to teach students skills relevant to real-world legal practice. In the academic world, librarians who choose to continue in their specialties rather than becoming managers or administrators, such as career reference librarians, help me to stay current with new and changing legal resources and cutting-edge teaching methods. Career catalogers help me to understand the new discovery tools available and how they interact with the traditional online library catalog. Keeping current in these areas would be almost impossible for me due to the numerous other time-consuming responsibilities I juggle as an academic director. Thus, the diversity of career choice present within AALL has been a significant factor in my professional development.

Members of AALL have a vast assortment of professional interests that they explore in multifarious ways at our annual meetings. This exploration has served to broaden and deepen the content and enhance members’ experiences of the annual meeting. For example, when I was a very new law librarian charged with teaching legal research courses in my law school, I knew I needed help and guidance. It was not hard to find AALL members who had devoted their careers to innovative legal research instruction. These are people for whom teaching is a passion; people who spend a significant portion of their professional energy improving their teaching skills. Their insights helped me to succeed as a legal research teacher.

Another example is law librarians who are passionate about writing. For the past several years, I have attended an AALL Annual Meeting program called the
AALL/LexisNexis Call for Papers. This program features the winners of the AALL/LexisNexis Call for Papers competition discussing their papers and their writing process. The audience is typically filled with law librarians who write or who aspire to write; they are passionate about writing, sharing their insights, pitfalls, quirks, and successes. As a pretenure academic director who is required to publish, these programs have both educated and inspired me. They illuminate the fact that people write because they have something to say, and that the drive to write transcends library type, title, degrees earned, or employment-related publishing requirements. Moreover, these programs illustrate the reality that any of us, regardless of employer or job title, may have something to share with our professional peers.

One final example of a specialized interest or aptitude found within our association is that for technology. Technology-inspired law librarians span every library type, age, and gender. They have interests that range from mobile research technologies, to law firm knowledge management and cyber-security technologies, to cloud-computing solutions, to technology applications that aid self-represented litigants. I have witnessed how these law librarians have infused our profession with their passion for technology. Alas, I am one of the least technologically savvy law librarians ever, so I am constantly learning from others about how technology applications can be used to help me do my work faster and better and have more fun doing it.

Perhaps the most visible manifestation of the interest in technology within AALL is the Cool Tools Café sponsored by the Computing Services Special Interest Section (CS-SIS). This demonstration of great gadgets, apps, software, and other innovative uses of technology has become one of the most popular programs at the AALL Annual Meeting. Its popularity can be explained by its almost universal usefulness. Folks with deep technology knowledge and experience get to show off their expertise, and those who know little about technology get to learn and experience new and innovative gadgets and applications. Some of the items demonstrated at the 2013 AALL Annual Meeting were Prezi (a web-based presentation tool), Vuvox (a web-based tool for creating media-rich collages), augmented-reality image-recognition apps like Google Goggles, cloud-based storage solutions, RSS readers, screen-casting software, and more. These Cool Tools programs are the perfect manifestation of the wide diversity in technology knowledge and experience within AALL working for the benefit of all.

A type of diversity that is hard to describe accurately, but that most certainly influences the services we provide to our patrons, is something I will call socio-anthropological diversity. By this I mean the rich diversity of life experiences that we bring to our jobs. It includes familiarity with regional or even international social customs, speech patterns and accents, differences in demeanor and comportment, styles of dress, religious practices, and familiarity with various subcultures.

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11. For example, there are subcultures that can influence dress, comportment, interests, and affinity. By subcultures I mean affinity groups such as goths, steampunk enthusiasts, gays, cowboys and ranchers, the transgendered, the homeless, hipsters, hip-hop fans, members of certain religious
It can also include ethnic factors. Some law librarians, due to their life experience or their place of residence, have had more exposure to certain subcultures than others. I have found it extremely helpful to learn from all types of law librarians about their experiences dealing with patrons from various subcultures.

¶11 One particularly interesting example involves mentally ill library patrons. Amy Hale-Janeke has a wealth of experience working with this population and has done several presentations on the topic. While working at public law school libraries at the University of New Mexico and Georgia State University, I encountered a number of patrons with untreated mental illnesses. Admittedly, I felt uncomfortable and ill equipped to give them the service they deserved. However, drawing on insights gleaned from Ms. Hale-Janeke, I was able to provide better service and be an example to other law librarians of how we can engage and ultimately serve patrons with untreated mental illnesses.

¶12 A less widely applicable example from my professional life involves dealing with the ranchers (real-life cowboys and cowgirls) who came into the law library at the University of New Mexico. Being a somewhat sheltered city dweller, I had never encountered this subculture. Ranchers would come into the library covered in desert dust, occasionally with cattle manure on their boots, and sometimes even sporting guns in their holsters. As an inexperienced newer librarian, I am afraid my surprise and dismay sometimes showed on my face. However, I worked with exceptional librarians who talked with me about cattle ranching and the often unmet legal needs of ranchers who sometimes drove for hours to use our law library. Working with law librarians familiar with the region and the realities of life on New Mexico ranches helped me to establish empathy, build respect, and develop a strong and sincere motivation to help these delightful and often inspiring patrons.

¶13 One final example deals in part with race and ethnicity but also with culture and subculture. While working in New Mexico I served many Native American pro se patrons, attorneys, and students from numerous tribes and Pueblos. Before moving to Albuquerque, I had had very little exposure to Native American people and their often rich, ancient, and storied cultures and histories. Working with librarians familiar with Native cultures and with exceptionally talented Native law

groups, the tattooed and pierced, the blind, the deaf, others that are differently abled, etc. Library patrons belonging to any of these groups may present a style of dress or a comportment that is unfamiliar and even startling to librarians who have not encountered it before.

12. Ms. Hale-Janeke, Head of Reference Services at the U.S. Court of Appeals Fifth Circuit Library in New Orleans, Louisiana, has many years of experience working in public law libraries and dealing with all types of patrons. I have twice seen her present on the topic of serving mentally ill law library patrons using specialized strategies and techniques.

13. Only once did I encounter a rancher who entered the library with a holstered gun. I was completely unprepared for that interaction. Carrying an unconcealed firearm is legal in New Mexico, although prohibited on university property. See N.M. STAT. ANN., 3-7-2 to 3-7-3 (West, Westlaw through 2012 legislation).

14. New Mexico does not have a system of county law libraries. The University of New Mexico School of Law Library is one of the only resources available to residents of that state seeking to do legal research.

15. There are twenty-two federally recognized tribes in New Mexico and nineteen of them are Pueblos. See generally New Mexico’s 22 Tribes and the Indian Affairs Department, N.M. INDIAN AFFAIRS DEP’T, http://www.iad.state.nm.us/history.html (last visited Nov. 8, 2013).
students inspired me to learn more about the populations I was there to serve. These same librarians helped me to understand that seemingly simple legal issues can become extremely complex when federal Indian law and tribal law must be taken into consideration. Law librarians with this kind of diverse professional expertise and cultural exposure are a part of what makes our association great.16

¶14 Another fascinating aspect of diversity that enlivens and enriches our association has to do with work style or work predisposition. Some might even call it personality type.17 In the workplace, these differences manifest themselves in somewhat familiar ways.18 In the larger context of AALL, work style differences can take very particular and useful forms. Consider attendee behavior during AALL programs. There are those who immediately have their hands up to ask questions as soon as questions are taken. Often these same individuals can be seen asking questions in almost every program that they attend. These people presumably learn by asking questions. On the other end of the spectrum, there are others who never ask questions. These people can be seen sitting quietly and thinking deeply about programming content with looks of concentration on their faces. Still others learn by taking copious notes. These various types of people are all trying to get the most out of the programming content. They just do it in very different ways. We need all of these types within AALL.

¶15 Another example involving personality type or work style can be seen in the tasks or committees for which AALL members volunteer. People who tend to be very detail oriented and who are often more introverted volunteer for committees like the Bylaws Committee or the Copyright Committee. These committees are likely to involve reading, analyzing, interpreting, and revising text. People who are more focused on the big picture, less detail oriented, and often extroverted go for committees like CONELL, Placement, or Local Arrangements. They do so because these committees involve more face-to-face, interpersonal interactions. As a big-picture sort of person, I know this has been true in my own professional life. The diversity of work styles represented in AALL’s membership delivers the variety of volunteer types needed to sustain our association.

¶16 These examples only scratch the surface of the countless ways in which AALL membership contains meaningful diversity. My hope is that they illustrate the point that a broader and deeper definition of diversity, one that encompasses

16. For example, early in my career, David Selden at the National Indian Law Library was touted as an excellent resource in the area of Indian and tribal law. Faye Hadley, then at the University of Tulsa, was famous in New Mexico for her expertise in Indian and tribal law research. She later went on to help found the AALL Native Peoples Law Caucus. Sherri Thomas, a law librarian at the University of New Mexico, has become an Indian and tribal law expert and scholar who both teaches and writes in these doctrinal areas.

17. See generally MBTI Basics, The Myers-Briggs Foundation, http://www.myersbriggs.org/my-mbti-personality-type/mbti-basics/ (last visited Dec. 22, 2013) (The Myers-Briggs Type Indicator (MBTI) is often used to help individuals discover or better understand personality type as it relates to work and career.).

more than race, ethnicity, sexual orientation, and gender identity, is instructive in examining the effects of diversity on librarianship and on AALL. Without a doubt, more limited definitions of diversity are important in certain contexts. Indeed, racial diversity has profound and desirable consequences that exceed the scope of this column.\textsuperscript{19} Yet the ways in which the diversity we possess tailors our skills and helps us to better serve our patrons is both fascinating and instructive. Diversity is a quality or condition to which we all contribute, regardless of race, ethnicity, sexual orientation, or gender identity. My hope is that we can keep in mind the flavors and spices that we all bring to the mix of our association and how these ingredients combine to form a stew that is nourishing to all types of law libraries and legal information seekers.

\textsuperscript{19} A discussion of racial diversity and its consequences for our profession will be the topic of a forthcoming installment of \textit{Diversity Dialogues}. 