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Lee Swepston

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Volume 5, 2013

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The History of the American Bar Association Accreditation Standards for Academic Law Libraries*

Theodora Belniak**

Using materials from the American Bar Association (ABA), such as annual reports and conference reports as well as other periodical materials, this article reviews the standards used to define academic law libraries from the formation of the ABA to the present and discusses the impact of the standards on the law library as an institution.

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* © Theodora Belniak, 2014. This article would not have been written without the patient and sympathetic eyes of Beth Adelman, Director of the Charles B. Sears Law Library. My thanks to Beth and to my collection development comrades-in-arms who inspired me to ask “Why?”

** Head of Collection Management, Charles B. Sears Law Library, SUNY Buffalo Law School, Buffalo, New York.
Introduction

1 A national conversation about legal education has gripped law schools. The stakeholders are varied and have sometimes conflicting perspectives on the role of law schools, and all of them want to be heard and to contribute toward the future vision of legal education. The American Bar Association (ABA) is in the middle of this conversation. As the nationally recognized accrediting agency for law schools, it is responsible for the promulgation of standards used to determine a law school’s status. The ABA is currently conducting one of its comprehensive reviews of accreditation standards, and this year’s revisions have generated heated debate and discussion within academic law schools and their affiliated law libraries.

2 Much of the discussion is happening beyond library walls, but it will have very real impacts on how libraries function in the future. The most immediate impact of changing standards on law libraries is tied to what is now known as Chapter 6 in the ABA’s standards.

3 Chapter 6, which defines the minimum standards required for a law school’s library, has an interesting history. Its current iteration is the product of nearly a hundred years of reflection on the role of the law library in legal education, and its creation shaped the concept of an acceptable academic law library, codified metaphors still used to describe libraries, and fostered the growth of law librarian experts.

4 This article reviews the formation of the original library standard and follows its growth through the years. Through the publications of the ABA, it also reviews past expectations of libraries and how they defined parameters for future growth. It is hoped that this article will help put current conversations about library standards in context.

The Formative Years: 1878–1929

Late Nineteenth-Century Commentary on Law Libraries

[W]hile the profession might be taught by word of mouth, it cannot be practiced to advantage, in any large way, without the power and the opportunity to consult books, and many books. . . . The way to do anything easily is to do it often. The way to know how to handle a book is to handle a great many.1

5 Simeon Baldwin was involved heavily in the standardization of legal education during the late 1800s and early 1900s. He was a founder and president of the American Bar Association, president of the Association of American Law Schools, a respected scholar, and an influential Yale Law School faculty member.2 Baldwin had distinct ideas about how a law library should function and what should be on its shelves.


The root of the law was to be found in books, and Baldwin’s vision encouraged students to immerse themselves in those books. In his 1894 paper read to the ABA’s Section on Legal Education, Baldwin defined a high-quality law library as having the following characteristics:

1. open stacks\(^3\) or (even better) a private library for personal use,\(^4\)
2. unfettered access to volumes\(^5\) with the exception of rare books,\(^6\)
3. multiple copies of high-use items,\(^7\)
4. reprints of course materials,\(^8\)
5. a variety of textbooks from different publishers,\(^9\)
6. a reading room with a high-use collection,\(^10\)
7. private storage space for each student,\(^11\)
8. a straightforward selection and maintenance plan that encompassed the following stages of collection:\(^12\)
   a. Purchase of the digests, reports, and statutes of the State in which the institution is located, then
   b. Purchase of the Supreme Court of the United States reports, then
   c. Purchase of the English common law reports, then
   d. Purchase of the appropriate digests, then
   e. Purchase of textbooks
   If money remains, then the library should purchase:
   a. Irish, Scottish, and Canadian reports,
   b. Constitutional history and Roman law,
   c. comparative jurisprudence
9. room for growth in the stacks,\(^13\)
10. evening library hours,\(^14\) with oversight provided by a law student who receives a tuition waiver.\(^15\)

---

\(^3\) Baldwin, \textit{supra} note 1, at 432. “The ideal law library, then, in this point of view—is the library where there is the freest access to the shelves.”

\(^4\) \textit{Id.} “So far as the Law School library can be assimilated to one’s own private library in these respects, so much the better for every student.”

\(^5\) \textit{Id.} “The happy inability to provide a sufficient force of librarians and librarians’ assistants, . . . left students generally free to rummage the shelves for themselves, each pursuing his reading by an alcove table, heaped, if he cared for them, with twenty books, to be exchanged in ten minutes, perhaps, by his own hand, for twenty others.”

\(^6\) \textit{Id.} at 435. “[W]ith the exception of a few rare volumes or editions, which are seldom consulted, like Chipman’s Vermont Reports, or some ancient Elzevir.”

\(^7\) \textit{Id.} at 433. “Of certain books, several copies must, of course, be kept.”

\(^8\) \textit{Id.} at 434. “There are also, now, few of our schools in which cases are not given out for study, which have been printed and arranged especially for use in instruction.”

\(^9\) \textit{Id.} at 435. “Different editions of the leading text-books are, of course, still desirable . . . .”

\(^10\) \textit{Id.} “[T]he better knowledge we have come to have of the uses of a reading room near but separate from the main collections of the library. Here should be the reports of the Supreme Court of the United States and of the State in which the school is situated, with the leading digests and most-thumbed text-books.”

\(^11\) \textit{Id.} “[G]iving each [student] a desk or drawer of his own, under lock and key, will make him feel almost as much at home as if he were by his study table in his own room.”

\(^12\) \textit{Id.} at 437.

\(^13\) \textit{Id.} at 438.

\(^14\) \textit{Id.}

\(^15\) \textit{Id.}
Interestingly, Baldwin pointed out that periodicals are “dangerous and misleading for the ordinary law student,” and excluded them from his collection plan outlined above.

¶7 Also in 1894, Henry Wade Rogers, chairman of the newly founded Section on Legal Education, provided an overview of some academic law libraries’ holdings.

### Table 1

<table>
<thead>
<tr>
<th>Law Library</th>
<th>Number of Volumes Held</th>
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<tr>
<td>Harvard</td>
<td>33,000</td>
</tr>
<tr>
<td>Columbia</td>
<td>25,000</td>
</tr>
<tr>
<td>Cornell</td>
<td>23,000</td>
</tr>
<tr>
<td>Chicago Law Institute (used by Chicago law schools)</td>
<td>25,000</td>
</tr>
<tr>
<td>Washington, D.C., Department of Justice Library (used by Washington, D.C. law schools)</td>
<td>22,000</td>
</tr>
<tr>
<td>Washington, D.C., Capitol law library (used by Washington, D.C. law schools)</td>
<td>50,000</td>
</tr>
<tr>
<td>University of Michigan</td>
<td>11,000</td>
</tr>
<tr>
<td>University of Pennsylvania</td>
<td>9,000</td>
</tr>
<tr>
<td>Yale</td>
<td>9,000</td>
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¶8 Rogers included a note about Albany Law School’s use of the New York State Law Library and Buffalo Law School’s use of the Eighth Judicial District of New York State’s library, but he did not include volume counts for those libraries.

¶9 Although only a snapshot of what was on the minds of 1890s ABA leadership, the emphasis placed on volume count cannot be ignored. Access, in lieu of ownership, was presented as an acceptable means by which law students could use law books; a physical location owned by the law school was not a priority. Also of note, neither Baldwin nor Rogers mentioned the need for staff or librarians to provide hands-on assistance to the law student. The law student was viewed as capable of navigating the library and its titles, and personal access to the collection was a central focus. These proposals were offered as suggestions, not as standards by which all law school libraries must abide.

16. Id. He says further: “His business is to learn what the law is, rather than what it is going to be; to learn it from the voice of authority and of time, rather than that of the anonymous reviewer or the passing comment of the month; to study the great works and the great cases, rather than the newest ones, or than what somebody says of them.”

17. Baldwin does indeed mention a librarian in his piece, but refers to the lack of one as a result of “happy inability” to provide funding for one. See supra note 5.
Formation of the American Association of Law Schools

¶10 Despite the ABA’s silence on official standards for law schools until the 1920s, discussions surrounding law libraries and standards were ongoing in other arenas. Stemming from an informal invitation to all law schools in the country by the ABA’s Section on Legal Education, fifty-four individuals representing law schools met in Saratoga, New York, in 1901. From this meeting, a separate organization, the Association of American Law Schools (AALS), was conceived.18

¶11 AALS adopted its Articles of Association at the 1901 meeting and began a conversation among its members about standards that should define law schools. A member institution of AALS was subject to the following requirement: “It 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.”19

¶12 Two years later, AALS attempted to enforce its standards by “instruct[ing] [the Executive Committee] ‘to investigate and report whether any members of the Association fall short of the requirements of article sixth of the Articles of Association.’ . . . [This] meant that the schools in the Association were open to more than a paper check relative to their compliance with the standards of the Association; they were subject to inspections.”20 During this time, AALS was responsible for accrediting its member law schools and served as the standard bearer.21

¶13 In 1912, AALS amended its Articles to read as follows: “[A member law school] shall own a law library of not less than 5,000 volumes.”22 This reflected a sharp move away from access toward ownership, and opened the door to the various issues associated with ownership, including funding, space, and stewardship. Again, the emphasis on volume count cannot be ignored, as it was used as proxy to determine fitness of a law school’s library.

Application of Standards

The Association of American Law Schools and the American Bar Association for years, whoever may be to blame, have been playing at cross purposes. Now finally you have come together and it is a magnificent thing, in my opinion, a thing of great promise for the future of legal education.23

18. ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES 89 (1953).
19. Articles of Association, 1900–1901 ASS’N AM. LAW SCH. at [i], [ii] (1900–1901).
20. HARNO, supra note 18, at 94.
23. Minutes of the Nineteenth Annual Meeting, 1921 ASS’N AM. LAW SCH. PROCEEDINGS OF THE ANNUAL MEETING 48, 86 (1921) (comments of Alfred Z. Reed). Although not an attorney, Alfred Z. Reed played a critical role in the early 1900s in legal education. In 1910, an exhaustive report on medical education in the United States was published by the Carnegie Foundation for the Advancement of Teaching. ABRAHAM FLEXNER, MEDICAL EDUCATION IN THE UNITED STATES AND CANADA: A REPORT TO THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING (1910). The report attracted the attention of those in the ABA’s Committee on Legal Education and Admission to the Bar, which worked to secure a similar report. In 1913, the committee reported that the Carnegie Foundation was committed to tackling a study of the legal education structure in the United States. As of 1918, the report had not yet been submitted, and, despite limited distribution of working copies, it wasn’t until 1922 that the full report was presented to legal educators. See Report of the Committee on Legal Education and Admission to the Bar, 36 ANN. REP. A.B.A. 474 (1913), for an initial discussion of the importance of the report.
With a single list of approved law schools before him, a young man will perform pay respect to influential opinion, whatever be the action that his individual circumstances compel him to take.24

¶14 As methods of legal education became more established, the ABA and AALS became more reflective and deliberate. Larger conversations about legal education and the state of the legal profession were taking place, and those conversations informed the standards. The ABA’s newly reorganized Section of Legal Education and Admissions to the Bar25 gave recommendations for altered standards at the Association’s annual meeting in 1921. These recommendations were approved on September 1 of the same year,26 and included the following:

(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)–(b) omitted]
   (c) It shall provide an adequate library available for the use of the students.27

¶15 This access-based standard was quite different from AALS’s existing standard for ownership of a collection no less than 5,000 volumes, and was a potential source of confusion for students interested in pursuing a law degree at an accredited institution. An extract from a 1922 Carnegie Foundation annual report28 reflected the confusion caused by two associations’ classifying law schools by different standards,29 and highlighted AALS’s attempts to remove confusion by passage of a resolution during its 1921 meeting: “It has been moved that this Association do not undertake a classification of law schools, but that it heartily endorse the action of the American Bar Association directing a classification by the Council of Legal Education.”30

¶16 AALS ceded the classification of the U.S. law schools to the ABA, allowing the ABA’s standards to define an accredited and an unaccredited list of law schools. The standards of the two associations were not reconciled, but the ABA was given the lead to define minimum standards for accredited legal educational institutions. After passage of the 1921 standards, the Section on Legal Education was charged

25. 45 ANN. REP. A.B.A. 486 (1922). The section continues to be referred to as the Section on Legal Education, the name that is used throughout this article.
26. Id. at 482.
27. 44 ANN. REP. A.B.A. 656, 687 (1921).
28. REED, supra note 24, at 4.
30. Minutes of the Nineteenth Annual Meeting, supra note 23, at 86.
with the task of classifying law schools throughout the United States. In 1923, the first classification of approved schools was published by the ABA.31

Revision of the ABA Standards in the Late 1920s

A distinguished member of this Association from Richmond told me that in order to have their local law school approved they had to go through the expense of buying 7,500 books to put in their library, although the students had free access at all times to a public library of law across the way. . . . That is what I call an arbitrary ruling. Endowed day law schools no doubt can put in 100,000 books, but let me tell you, gentlemen, there is a great deal of humbug about the law library business.32

¶17 In 1928, the ABA’s Council on Legal Education and Admission to the Bar, the governing body of the Section on Legal Education, developed interpretations for the ABA’s standards. These interpretations fleshed out the very slim standards and gave a clue as to what the council would be looking for during inspections. ¶18 The interpretation for law libraries moved away from the generic adequate access standard, with the council adding the following:

An adequate library shall consist of not less than seventy-five hundred well-selected, usable volumes, not counting obsolete material or broken sets of reports, kept up-to-date and owned and controlled by the law school or university with which it is connected.

A school shall be adequately supported and housed so as to make possible efficient work on the part of both students and faculty.33

¶19 This interpretation was a dramatic alteration to the law school library standard. The previous standard required:

1. Access, and
2. An adequate library.

It consisted of broad strokes and was easily satisfied if the law school was located in a metropolis. Access to a neighboring library, as was common in Buffalo, Chicago, and other large cities, was acceptable, and adequacy was left open to interpretation. ¶20 The Council’s new interpretation laid out the following requirements for law libraries:

1. At a minimum, seventy-five hundred volumes in good condition,
2. Updating services for those volumes,
3. Total ownership by the institution,
4. Adequate support,
5. Housed in a manner that was useful to faculty and students.

¶21 These interpretations had large implications for law schools and law libraries. A large print collection and updating services implied that a collection budget should exist. Adequate support and housing suggested that a steward of some sort

33. Alfred Z. Reed, Review of Legal Education in the United States and Canada for the Year 1928, at 48 (1929).
(such as a librarian) be employed and that the material be located in a building owned by the law school. Although the standard remained as it was written in 1921, the addition of the interpretations created quasi-requirements that were read and treated as extensions of the official standards. The council instructed law libraries, through its interpretations, on what the ABA would expect to see during a site visit.

¶22 The impact on law schools and legal education cannot be understated. The interpretations created a host of new issues for any law school that had been using another’s library: funding, staffing, space, and maintenance had to be factored into the cost of running a law school. No longer could a small law school point to a neighboring institution to satisfy ABA standards. Compliance required a leap in the level of budgetary commitment devoted to the library, an amount of money to which small schools, part-time programs, and night schools might not have had access.

¶23 The interpretations were not welcomed by everyone in the Section. For example, Edward Lee of John Marshall in Illinois suggested that the standard be amended to read, “It shall provide an adequate library available for the use of the students, either owned by the school or made available to the use of the students in a public or other law library of the city.” He offered this alternative amendment because “all law students in Chicago had access to the library of the Chicago Law Institute, which had the required number of books.”

1930–1960: The ABA, Re-Envisioned

The Reorganization of the ABA

¶24 The organizational structure of the nascent ABA influenced the development and application of its standards. “[T]he governing body consisted of the entire membership, operating through a quorum made up of the members present at any Annual Meeting.” Much of the activity and forward movement in the Association was accomplished via lively debate at the annual meetings, and the articulation of its standards was delegated to the Carnegie Foundation until 1935.

¶25 In 1936, the ABA underwent a massive reorganization, including the adoption of a new constitution and new bylaws. The federalization of the ABA was

35. Boyd, supra note 29, at 31. Lee continued to object to the interpretation at annual meetings: “[W]hile it is important for the specialist to have access to great libraries like the Gary and other libraries, the average student rarely goes into them except to study his own text books and case books. [A]fter being nearly four years in college I met a student in my class in the library one afternoon, and he said, ’How do you get out of this place?’ In four years, he had not learned the exit. The case book system now has provided a library in one volume on each subject. The library is not the great future of the law school, it is the teacher.” Proceedings of the Section of Legal Education and Admission to the Bar, 52 Ann. Rep. A.B.A. 605, 617–18 (1929).
36. Edson R. Sunderland, History of the American Bar Association and Its Work 174 (1953). The quorum structure had its own problems, leading many to question the surge in attendance at the 1921 Annual Meeting as an attempt to skew the vote toward a particular outcome. See Boyd, supra note 29, at 35–36.
intended to provide “a means for enabling the Association to speak with an authoritative voice as the representative of the various organized units of the legal profession throughout the country”; in addition, “the cooperation of those units in a nation-wide organization was expected to increase their efficiency and give them a broader sense of professional solidarity and responsibility.”

§26 The organizational changes relevant to the Section on Legal Education were as follows:

1. The House of Delegates was established and was “given all the powers necessary or incidental to the control and administration of the business and affairs of the Association and the determination of its policies and recommendations.”

2. A chain of command and of reporting was put into place: “The officers, Board of Governors, Sections, Committees, agents and employees of the Association, shall be subject to the supervision and direction of the House of Delegates.”

3. The Board of Governors was created and was designated as the Association’s administrative hand, which would have “the power and authority to do and perform all acts and functions which the House of Delegates might do or perform.”

4. Sections were now responsible for reporting to the House of Delegates: “Each Section . . . shall . . . prepare and transmit to the House of Delegates, through the Board of Governors, its written report covering its work for such year and its recommendations, if any.”

5. Each section was still “a largely autonomous organization, with power to adopt and amend by-laws.”

§27 Much of the work that had been accomplished in open sessions during the annual meeting was shifted to smaller section meetings throughout the year. Sections were charged with certain tasks, such as law school inspections and articulating approval standards, and were responsible for providing an annual report of their activities to the Board of Governors, which would then report to the House of Delegates. During this time period, the sections were subservient to the House, which retained power to supervise and direct their activities.

Library Standards, Articulated

The library is traditionally the center of scholarship. There are few if any crafts which use so many books as the law. Access to a neighboring law library has never been treated as adequate for a school. Access is not the equivalent of exposure to books.

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40. Constitution and Bylaws, supra note 38, at 973.
41. Id.
42. Id. at 974.
43. Id. at 979.
44. Sunderland, supra note 36, at 182.
45. One has to wonder at the outrage from Dean Lee of John Marshall in 1929 about the change to the standards, if access was indeed never adequate for approval.
In 1935, the Section on Legal Education took over the publication of the ABA’s standards. The Section used the 1936 publication to explain how the standard for law libraries was applied and to distance itself from its original standard. The Section’s interpretations articulated its vision of a proper law library and introduced overarching tropes that echo still in current standards.

First, the Section discussed the need for appropriate space. The library should have “tables and chairs for use among or close to the books in number sufficient not only to meet student demand but to encourage it,” “the librarian’s quarters should be nearby,” the library should be “clean, neat, lighted and accessible,” and “books should be shelved and arranged so as to stimulate their use.” The interpretation left little doubt as to the vision of the library as a place of quiet study and as the physical seat within the metaphorical heart of the law school.

Second, the Section’s interpretations of “Personnel Equipment of a Standard Law School” mentioned the desirability of a librarian: “The administrative personnel of a school should contemplate . . . a librarian who may, if desired, do teaching or perform other duties.” Although not in the official standards, it was suggested that “the requirement of ‘an adequate library available for . . . use,’ necessarily implies some person in charge of its books.”

Third, a library should have the following items in its collection:

1. the complete National Reporter system,
2. the official opinions of the state where the school is located,
3. the standard digests and law encyclopaedias,
4. English reprints and current reports, and
5. some leading law reviews.

The Section concluded its list with an oddly contradictory statement: “This list designates less than half the contents of the minimum collection, the rest being largely optional.” And, a few paragraphs later: “[The problematic annual expenditure toward a library] seems particularly so because the ordinary student can do pretty adequate work with two or three thousand books of the right selection.”

The Section acknowledged that the ownership of more than half of the prescribed law library collection may be superfluous and that students can perform adequately without those additional titles. These statements reflect a conflict in the standard’s application to law schools, which the Section reconciled through an appeal to the “tradition of scholarship”:

The rather considerable requirement of the standards are justified by the needs of courses in bibliography, by the trend to publication of law reviews, provision for the student who

47. Id. at 7.
48. Id. at 9.
49. Id.
50. Id. at 8. Counter to Baldwin’s advice in the early 1900s, law reviews gained traction in legal education by the 1930s. For a history of law reviews in America, see Michael I. Swygert & Jon W. Bruce, The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews, 36 Hastings L.J. 739 (1984–1985).
52. Id.
delves, the stimulation of the faculty and general considerations. . . . Higher education without books is a contradiction. The possession of a store of books is some guarantee of permanency, dignity, scholarship and ambition in an educational institution. This appeal to the scholarship tradition was not novel. Adopting a Langdellian approach of “library as laboratory,” Simeon Baldwin believed that students would learn the profession by being surrounded by books, and the emphasis on volume count in both the AALS and ABA standards suggests that this perspective was shared by others in the associations. This approach to legal education dictated the tools required by faculty and students, and a “great many” books were necessary to support the curious student or faculty member in need of stimulation.

§33 It is in these interpretations that we see the origins of interrelated philosophies about a library’s role in a law school. First, collections should include materials beyond the basics to support a tradition of scholarship and to stimulate faculty and students. Second, collections and services should reflect the unique culture and needs of the law school. Third, the collection should be curated by a librarian, an acknowledgment of the expertise and skill sets unique to law librarians. Fourth, and finally, the library is not only the physical place for materials to be housed and discovered, but it is also the metaphorical heart of the law school.

The Beginnings of a Checklist

[T]he work of the Section continues to ramify and extend to new fields and[,] . . . while the advances made in the adoption of our standards in the last eighteen years have been phenomenal, our work must go on in that direction with unabated zeal if we are to properly protect the public against the admission of inadequately trained lawyers.

It is a basic principle of legal education that the library is the heart of a law school and is a most important factor in training law students and in providing faculty members with materials for research and study.

§34 The danger of “inadequately trained lawyers” was an unformed threat that encouraged the section to establish itself as a primary commentator on “basic principles of legal education.” Recognizing that the Section’s past guidelines were more “quantitative than qualitative” and that “it was difficult to withhold approval where a school had made formal compliance with qualitative requirements,” the ABA adopted a 1938 standard that allowed for the Section to judge whether a school “possesse[d] reasonably adequate facilities and maintain[ed] a sound educational policy.” Ostensibly, this new standard allowed the Section to withhold approval if an institution was following the letter but not the spirit of the ABA’s standards.

53. Id.
54. For an interesting counterpoint to the library as “the heart of the law school” metaphor that is eerily similar to more current conversations, see Roscoe Pound et al., What Constitutes a Good Legal Education, 7 AM. L. SCH. REV. 887 (1933).
55. Baldwin, supra note 1.
57. AM. BAR ASS’N, STANDARDS OF THE AMERICAN BAR ASSOCIATION FOR LEGAL EDUCATION: FACTORS BEARING ON THE APPROVAL OF LAW SCHOOLS BY THE AMERICAN BAR ASSOCIATION 6 (1940).
58. Id. at 2.
59. For a discussion of why this measure was considered necessary, see H. Claude Horack, The Small Law Library and the Librarian 30 LAW LIBR. J. 6 (1937):
¶35 The Section reworked its guidelines, and “for its own guidance and that of schools applying for approval,” listed factors in a 1940 publication entitled Standards of the American Bar Association for Legal Education: Factors Bearing on the Approval of Law Schools by the American Bar Association. Factors organized under the heading “Library Content and Administration” represented a more definite shift away from the rudimentary standards of the early 1920s.

¶36 The Section reiterated the 1928 standards, and its interpretations added a requirement of “a five-year average expenditure of $1,500.00 per year on library additions . . . with a minimum expenditure of $1,000.00 in any one year.” In lieu of dictating the collection’s contents, the Section recommended consulting an article that contained a book list written by a law librarian.

¶37 After these prefatory comments, the Section listed factors used in the evaluation of a law library:

1. General nature of library and library connection.
2. Average amount expended annually in additions and repairs.
3. Full-time or part-time librarian.
4. Administration of library—
   a. General administration policies.
   b. Average amount expended annually for library administration.
   c. Number of library staff—
      i. Full-time.
      ii. Part-time.
5. Student use of library.
6. Size, content, and usability of library.
7. Cataloging system.
8. Adequacy of physical space.

¶38 The Section did not provide further information or guidance on these factors, but they represented the beginnings of a checklist that a library might use to self-evaluate in preparation for inspection.

¶39 The nascent philosophies underlying the 1930s standards took on a more definite shape in the 1940s through the list of factors. The book collection remained paramount: expenditure and volume requirements served as the base upon which all the remaining factors rested. The role of librarian as expert was acknowledged and underlined through deference to a law librarian publication for definition of the collection’s core contents.

¶40 For the next eighteen years, only minor changes were made to the interpretations of the library standard. In 1951, the expenditure requirement for libraries

In a number of cases, there was strong reason to believe that applicants borrowed books from friends of the school to meet the ordeal of inspection, and some bought up at bargain prices books of little or no value, and many schools had large quantities of worthless material which had been received as gifts.

Id. at 7.
60. Am. Bar Ass’n, supra note 57, at 6.
61. Id. at 6, n.*: “An article by Miss Helen Moylan of Iowa University Law School, entitled ‘Selected List of Books for the Small Law School Library,’ Law Library Journal for November, 1939, page 399, is recommended for consideration in the building of a small law library.”
62. Id. at 6–7.
doubled to $3,000. In 1957, the interpretations notified libraries of a need to increase to ten thousand volumes by 1958–59, to 12,500 volumes by 1960–61, and to 15,000 by the fall of 1963. Also in 1957, the expenditure was increased to $4,000.

Law Library Autonomy

¶41 Although the list of factors outlined in 1940 mentions autonomy and staffing, neither were mentioned within the standards and interpretations. In 1959, the interpretations for the library standard incorporated the importance of an autonomous law library and its staff:

The law library should be administered by the law school as an autonomous unit, free of outside control. Exceptions are permissible only where there is a preponderance of affirmative evidence in a particular school, satisfactory to the Council of the Section, so that the advantages of autonomy can be preserved and economy in administration attained through centralizing the responsibility for acquisition, circulation, cataloguing, ordering, processing, or for payment of books ordered.

Those same interpretations tackled the reporting structure within a library: The law librarian should be appointed on recommendation of the dean after consultation with the law faculty. He should be directly responsible to the dean. When the law library is autonomous, the staff should be administratively and fiscally a part of the law school.

¶42 At the time these interpretations were included, the discussion of autonomy in law libraries was not new. At a roundtable held at the AALS annual meeting in 1936, John Wigmore discussed the perceived importance of almost-total autonomy of the law librarian: “I should be against any control of the librarian by any faculty committee even in a law library. . . .” So did Judson Falknor: “[A] prime requisite for the development of a satisfactory law library is the autonomy of the library administration and the independence of the librarian of unreasonable faculty restrictions.”

¶43 Although the notion of autonomy for the librarian was not novel, the inclusion of autonomy of the library in the interpretations “engendered a good deal of heat and discussion, writing and some intense feelings.” At the annual meeting of AALL in 1960, John Hervey, who was deeply involved with the law library portion of the ABA accreditation process, attempted to explain its inclusion.

66. Id.
¶44 First, Hervey suggested that the autonomy interpretation took root when the ABA came “under attack from the newly created National Commission on Accrediting” in the 1950s. The library standards “[were] and still [are] only an expression of official opinion by ABA of the minimum qualifications which should be exacted by those who seek admission to the bar. . . . The ABA did not then nor has it ever characterized itself as an accrediting association.” Second, according to Hervey, the National Commission on Accrediting assigned the label of accrediting agency to the ABA and, without the power to sanction, the Council of the Section on Legal Education decided to increase its scrutiny of member institutions.

¶45 During inspections of law schools, problems with law libraries’ autonomy came to light. Hervey quoted an unnamed vice-president of a university at a Council meeting in 1957: “[T]he law library continued to be administered by the director of libraries (naming him) to the dissatisfaction of the law dean and faculty. [The vice-president] had only recently issued a ‘directive’ to the director of libraries which he hoped would resolve all difficulties; but if [it] failed, the law school faculty would be given complete autonomy over the law library.”

¶46 At its next meeting in 1957, the Council learned that the directive was unsuccessful and “that inordinate delays have continued in that all continuation materials go to the main library; and that real injury to the law school continues.” The Council responded in favor of autonomy:

sound educational policy requires that the dean and faculty of the law school at the University of . . . be given complete autonomy over the library of the school and that plenary powers in all matters and things respecting the library of the law school be thus vested and that the director of libraries be divested of all existing power and authority over the law library which will in any way interfere with the autonomy of the law school over said library.

After hearing from a second law school in similar straits, the Council decided that it would be simpler to “require complete autonomy over the law library in all approved schools” instead of “spending so much time in dealing with the schools individually.”

¶47 With simplicity of process in mind, law library autonomy was etched into the ABA standards. No small change, as a law school was now able to threaten the loss of accreditation status unless there were visible attempts to provide separation and autonomy from the parent institution. This change to the standards fostered an environment in which an affiliated law library could push for greater administrative autonomy and could fight for larger expenditures that would be invested in separate staff and collections.

70. Proceedings, supra note 69, at 456.
71. For more on the National Commission on Accrediting and accreditation discussions during the 1950s, see The Integrity of the Academic Degree: Statements of Policy by the National Commission of Accrediting and the American Council on Education (1964); Fred O. Pinkham, The Accreditation Problem, 301 Annals Am. Acad. Pol. & Soc. Sci. 65 (1955).
72. Proceedings, supra note 69, at 454.
73. Id. at 457–58.
74. Id. at 458.
75. Id. The university in question remained unnamed in the Council minutes.
76. Id.
Consolidation: The 1970s and 1980s

A Comprehensive Revision, and Its Revisions

¶48 Public hearings and discussions were conducted over two years, and new standards and rules of procedure were published by the Section on Legal Education in 1973. The standards “were drafted to conform to the Criteria for Nationally Recognized Accrediting Agencies and Associations promulgated by the Office of Education, Department of Health, Education and Welfare.”77 The ABA embraced its role as accrediting agency for law schools and reformulated its standards to conform with federal guidelines.

¶49 In comparison to the 1928 standards, the 1973 standards were comprehensive. The entire text of the standards was written anew and reflected the following major changes:

1. A definitive list of titles was included as Annex II and Annex III.
2. Library materials had to be current and complete.
3. Library autonomy or an approximation of autonomy had to be maintained so that “the best possible service is afforded the law school.”78
4. The full-time director of the law library had to be selected by the dean and faculty of the law school.79
5. The librarian had to possess “a sound knowledge of library administration in general and of the particular problems of a law library. If the librarian is not a law school graduate, he should have special training in the field of law library content, use, and administration.”80
6. The library had to have adequately numbered and trained library staff who would be supervised by the director.81

¶50 The new standards absorbed the Section’s interpretations and translated them into prescriptive statements. Now there was no room for doubt about the strength and importance of the interpretations; law libraries had a clear picture of what would be evaluated during an inspection.

¶51 It is important to note that the same themes present in the 1940s iteration were re-envisioned for the 1973 standards; although expressed more definitively, the focus on personnel, services, autonomy, the collection, and the role of the law library director did not change. The 1973 standards strengthened those themes and bolstered the law library’s position within the law school by providing support for autonomy from a central university structure, including expansive language about the number of library staff needed to support the law school, and by acknowledging more completely the education and expertise of the law library director.

78. Id. at 18.
79. Id.
80. Id.
81. Id.
¶52 The 1977 revision of the standards added requirements for a collection development policy, altered the educational background for the law library director, expanded the administrative powers of the faculty, and mentioned collaborative collections.

¶53 The revision also added potent language about the library’s role in section 604, which discussed autonomy:

The law school library must be a responsive and active force within the educational life of the law school. Its effective support of the school’s teaching and research programs requires a direct, continuing and informed relationship with the faculty and administration of the law school.

Although the language differs, the 1977 inclusion of the library’s general role recalls the 1935 interpretations, which positioned the law library (and librarian) as steward to the law school’s scholarly pursuits, and the 1940 interpretations, which labeled the law library as the heart of the law school. Through this revision the ABA attempted to characterize the law library’s mission and to define its larger role within legal education.

The Section’s Interpretations Return

¶54 The revisions from the 1970s generated stakeholder inquiries for interpretations from the Section on Legal Education. In 1978, a consultant on legal education to the ABA sent to the deans of all ABA-accredited law schools a compilation of interpretations generated since the 1973 publication of standards. In 1981, the section’s interpretations were once again included in the official publication of the standards.

¶55 Although the conversations leading to their inclusion have been lost to the passage of time, the interpretations of 1981 highlight the continuing struggles in law school and law library administration. Inadequate collections were still an issue, and some law libraries felt they were not receiving proper financial support from either the law school or the university to address that inadequacy.

82. AM. BAR ASS’N, APPROVAL OF LAW SCHOOLS: AMERICAN BAR ASSOCIATION STANDARDS AND RULES OF PROCEDURE, AS AMENDED 1977, at 17 (1977). From Standard 601(b): “The Dean and the Law Librarian shall maintain a current written plan for implementation of law library support for the law school program as developed in its self-study.”

83. Id. at 19. From Standard 605(a): “The law librarian should have a degree in law or library science and shall have a sound knowledge of library administration and of the particular problems of a law library.”

84. Id. at 18. From Standard 604(a): “The dean, law librarian, and faculty of the law school shall be responsible for determining library policy, including the selection and retention of personnel, the selection of acquisitions, arrangement of materials and provision of reader services.” (Italics indicate responsibilities added in 1977.)

85. Id. at 17. From Standard 602(a)(iii): “All arrangements for such sharing of collections shall be adequate to insure ease of access and availability of the materials when and where needed.”

86. Id. at 18.


89. Id. (Interpretation 2 of Standard 601: “A weakness of a law library collection must be addressed with the degree of financial support commensurate with the need, as required by Standard 601. May, 1978; June, 1978.”).
However, the largest issue to reappear was the question of autonomy or “substantial operating autonomy.”\(^{90}\) Obviously, the attempt by Hervey and his 1950s cohort to solve the problem of autonomy was not wholly successful; the interpretations offered in the 1981 standards helped clarify the Section's definition of sufficient autonomy for the future.

Of the five interpretations of Standard 604, four touched on issues of autonomy:

1. Interpretation 1 clarified that a law library that was part of a centralized university system would be in compliance with ABA standards if “decisions with regard to the law library [were] enlightened by the interests and demands of the law school educational program and not simply made on the basis of rules governing uniform administration of the university library.”\(^{91}\)

2. Interpretations 1 and 3 affirmed that “the dean, law librarian and faculty [were] responsible for the determination of basic law library policies”\(^{92}\) and that if a law school was “not granted adequate administrative autonomy from the university library system, particularly with respect to budgeting, salaries, acquisitions and the employment of library personnel,”\(^{93}\) it would be in violation of the standard.

3. Interpretation 2 emphasized the need for administrative efficiencies despite “centralized university library supervision of the law school library.”\(^{94}\) A law school that suffered administrative inefficiencies because of the central library system could be in violation of the standard.

4. Interpretation 4 reiterated that “[a] law library must have adequate staffing and physical housing of all of the collections of the library to permit its continued development and conformity” with the standard.\(^{95}\)

### The 1990s: The ABA Responds to Outside Pressures

#### The Standards of 1995

In 1994, the Section on Legal Education was tasked with reviewing the accreditation standards, in tandem with the Commission to Study the Substance and Process of the American Bar Association’s Accreditation of American Law Schools.\(^{96}\) The Section’s draft law library standards were sent out for comment, and public hearings on them were held.\(^{97}\)

At the ABA’s annual meeting in 1995, Jose Garcia-Pedrosa, a delegate of the Section on Legal Education, provided a brief introduction to the extensive proposed changes to the law library standards:

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90. Id. at 145 (Interpretation 1 of Standard 604.)
91. Id.
92. Id. (Interpretation 1 of Standard 604).
93. Id. (Interpretation 3 of Standard 604).
94. Id. (Interpretation 2 of Standard 604).
95. Id. (Interpretation 4 of Standard 604).
97. Id.
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.98

This preface provided much-needed context for understanding the breadth of change implemented in 1995. Other factors influenced the retooling of the standards,99 but the Section’s official stance was that the standards needed to be changed to reflect the impact of electronic research and to allow for differentiation across law schools.

¶60 The law library standards were not subject to a complete rewrite, but were heavily revised and reordered. The substantive additions and revisions included the following:

1. Moving all of the requirements related to the law library director to Standard 603, including new language about faculty status: “The law library director shall hold a law faculty appointment.”100 Although the previous standards assumed a close and functional working relationship between the dean and the law library director, the new Section 603(d) ensured that the law library director would stand on an equal footing with the law faculty.

2. Changing the suggested law library director’s educational background in Standard 603 from holding a “law degree or a library science degree” to a “law degree and a degree in library or information science,”101 emphasizing the importance of both degrees. However, this remained a suggestion, not a requirement.

3. Adding Standard 605: “A law library shall provide the appropriate range and depth of reference, bibliographic, and other services to meet the needs of the law school’s teaching, research, and service programs.”102 The standard’s interpretation further defined the requirement: “Appropriate services include having adequate reference services, providing intellectual


99. Although far beyond the scope of this article, a larger national conversation was happening in the mid-1990s about the role of the ABA as accrediting agency and the antitrust implications of its standards. After the denial of accreditation for the Massachusetts School of Law (MSL) in 1994, the ABA was sued under the Sherman Act. The rewritten standards of 1995 are a partial reflection of an antitrust suit settled with the Department of Justice. The literature on this topic is prolific. See, e.g., Andy Portinga, ABA Accreditation of Law Schools: An Antitrust Analysis, 29 U. MICH. J. LEGAL REFORM 635 (1995–1996); Mathew D. Staver & Anita L. Staver, Lifting the Veil: An Exposé on the American Bar Association’s Arbitrary and Capricious Accreditation Process, 49 WAYNE L. REV. 1 (2003–2004).


101. 1995 STANDARDS, supra note 99, at x.

102. Id. at 49.
access (such as indexing, cataloging, and development of search terms and methodologies) to the library’s collection and other information resources, offering interlibrary loan and other forms of document delivery, enhancing the research and bibliographic skills of students, producing library publications, and creating other services to further the law school’s mission.”

The previous version of the standards did not include comparable language. This addition recognized that an organizational structure imposed on legal information could provide substantial benefits to legal researchers. It also highlighted specific roles and expertise expected of library personnel.

4. Redefining the core collection and adding a clause that would allow for “ownership or reliable access” of the required materials “depending on the needs of the library and its clientele.” Standard 602(b) of the 1994 standards mentioned sharing of services and publications, but only for “additional publications and information services reasonably necessary” that were outside of the core collection.

¶61 The standards addressing physical aspects of the law library did not change drastically. But the addition of requirements focused on nontangible items such as services, teaching, and professional backgrounds of employees suggests that expectations for law libraries were shifting. The collection and physical plant were still important, but the attention given to the nontangibles reflects the integration of personnel and services into the ABA’s vision of a law library worthy of accreditation.

The ABA’s Structural Shift

¶62 Having embraced its role as an accrediting agency in the 1970s, the ABA was subject to periodic evaluations by the Department of Education (DOE). In 1999, the ABA’s Board of Governors issued a report outlining the difficulties in adhering to DOE regulations, particularly the “requirement that a nationally recognized accrediting agency, . . . , that is part of a professional association, . . . , must be ‘separate and independent’ from the professional association.” To address the DOE’s concerns, the following changes were made in the procedures surrounding accreditation and standards drafting:

1. The Council of the Section on Legal Education must notify the House of Delegates of any adoption or revision of a standard or rule by filing a report.

2. When the notice of an adoption or revision is placed on the House meeting calendar, “the House shall either agree with the action or refer it back to the Council for reconsideration based on reasons specified by the House.”

103. Id.
104. Id. (Standard 606(b)).
105. Id. at 51 (Interpretation 2 of Standard 606(b)).
108. Id. at 53.
109. Id.
3. The House may refer the issue back to the Council no more than two times.\footnote{110}
4. If the House uses its two referrals back to the council, the council decision after consideration of the second referral is final.\footnote{111}

\footnote{110} The changes were intended to “comply with the Higher Education Act and the DOE regulations while maintaining in some form the historic role the House has played in accreditation decisions.”\footnote{112} These changes bolstered a procedure for the creation of the standards that was far removed from the annual meeting quorums of 1900s, moving the ABA toward a streamlined process for changing the standards and rules related to accreditations.\footnote{113} The Council became a quasi-independent organization within the ABA and was given control over the process of accreditation of law schools.

The Early 2000s: Status Quo

\footnote{116} As with previous iterations, the 1995 Standards were subject to adjustment each succeeding year. In the 2004–05 Standard, the law faculty status of a director was qualified by an exception: if “extraordinary circumstances” existed, then the director did not have to hold faculty status.\footnote{114} This same standard was further clarified in 2006–07: the law faculty appointment was to be held “with security of faculty position.”\footnote{115}

\footnote{115} The other adjustments to the standards reflected much larger conversations taking place in the law librarian community. With the introduction of each new technology there arose confusion and uncertainty over collections and formatting. The availability of specialized databases and shared electronic resources meant that the bubble of information was no longer contained by a library’s square footage. The ABA tried to anticipate the changes wrought by technology by changing its standards language related to collections and format.

\footnote{116} Language about ownership or access for the core collections was pared down to require only that the material be accessible in the law library,\footnote{117} thus allowing libraries to subscribe to electronic materials in lieu of ownership. Interpretation 601–1 of the 2005–06 Standards asserted that cooperative agreements could be taken into account when assessing the collection, but that electronic-only access or access to other libraries did not satisfy the requirement.\footnote{117}

110. \textit{Id.}
111. \textit{Id.}
112. \textit{Id.} at 56.
113. The impact of the changes is summed up well by the same report’s Attachment A, and its headings:
   A. The Council Will Have Final Authority to Revise the Standards and Rules.
   B. The Council Will Have Final Authority to Grant, Deny, or Withdraw Accreditation.
114. These extraordinary circumstances were not elucidated in the interpretations.
115. \textit{Am. Bar Ass’n, Standards and Rules of Procedure for Approval of Law Schools} 41 (2006) (Standard 603(d)).
116. \textit{Am. Bar Ass’n, Standards and Rules of Procedure for Approval of Law Schools} 43 (2005) (Standard 606(a)).
117. \textit{Id.} at 41.
The Section on Legal Education seemed to struggle with interpretations that discussed a single-format library. In 1996, a new interpretation was added:

At present, no single medium (electronic, print, microform, or audio-visual) 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.  

This interpretation was distilled and combined with an interpretation on format from 1996 in 2005–06: “The appropriate mixture of collection formats depends on the needs of the library and clientele. A collection that consists of a single format may violate Standard 606.”

The Present and Future Standards

The 2013 Proposed Changes

The proposed 2013 changes to Chapter 6 reflect the ABA’s larger goals “to more concretely link library performance to the mission of the law school, to require measurements that are more outcome-related and focus on quality instead of quantity, and to alter the Standards to reflect the ways that legal information can be accessed or acquired in the 21st century.”

More specifically, the new standards reach for these goals by making the following substantive changes:

1. The language characterizing the law library as an “active and responsive force” has been replaced by more concrete recommendations for relationship building, services, planning and assessment, and integrating new technology and information where appropriate.
2. The importance of staff knowledge and experience is underscored by the removal of language requiring mere competency and the addition of a requirement of expertise in Standard 604. Expertise is also mentioned in Standard 601(a)(1).
3. The core collection requirements may now be satisfied by ownership or reliable access, and the core collection requirements have been moved out of interpretations to the standards. A definition of reliable access is provided by the new Interpretation 606-2.

119. Am. Bar Ass’n, supra note 114, at 43 (Interpretation 606-2).
4. The law library director need not hold tenure and will “hold appointment as a member of the law faculty with the rights and protections accorded to other members of the full-time faculty under Standard 405.”

Although it’s dangerous to comment on standards that are in flux, it is safe to say that the changes outlined above alter the standards’ overall impact in such a way as to provide very different possible futures for law libraries. Space, collections, staff expertise, and library administration are going to shift under these new standards, and each institution will need to evaluate itself under a new rubric.

**Our Future**

It is obvious that as a means for improving legal education the method of standardization has grave limitations. It operates to encourage not innovation, but imitation of what already exists. It tempts school authorities blindly to follow opinion, rather than to build up their institutions along lines which they sincerely believe are best suited to the conditions that confront them and the ideals that they cherish.122

The ABA Standards for Approval of Law Schools are largely prescriptive. As such, they affect costs, although the degree to which they do so is disputed. Also disputed is how much the Standards constrain law schools from innovation and experimentation. . . . What is not reasonably disputable, however, is that the Standards do not encourage innovation, experimentation, and cost reduction on the part of law schools.123

¶70 The prescient musings of the Carnegie Foundation in 1922 underlined the tension associated with promulgating standards. By their very nature, prescriptive standards tamp down on innovation and experimentation, and this issue resurfaced in 2013 in the draft reports of the ABA’s Task Force on Legal Education.

¶71 The development of the ABA’s library standards prescribed the growth and direction of the law library as an institution. The impacts were multiple, but at its most basic, standardization manufactured an ideal law library that was focused on a core collection, that fostered the growth of the law librarian profession, that positioned itself as the physical manifestation of the metaphorical heart of the law school, and that prioritized conformity over innovation. The standards created duplicate core libraries across the country, and limited variation within accredited institutions with respect to administrative organization and functionality. In respect to its iterations, each new version of the standards built upon previous interpretations and standards. Technology and external economic pressures interrupted that iterative process, beginning in the 1990s.

¶72 When considered in the context of its history, the proposed standards of Chapter 6 reflect a new generation of interruptions. External forces are exerting pressure on the architecture of higher education and on the traditional model of libraries. The proposed changes are the echoes of these tectonic shifts in the educational landscape.

122. Reed, supra note 24, at 9.
Despite resistance, the ABA’s new hybrid model of instituting minimum standards coupled with encouraging innovation represents an opportunity for law librarians and other stakeholders to engage in a dialogue that will shape the future of academic law libraries. At the height of law school standardization in the 1930s, “[t]he possession of a store of books [was evidence] of permanency, dignity, scholarship and ambition in an educational institution.” A more modern reading of this sentiment can now be interpreted against the backdrop of the ABA’s hybrid model, which recognizes and possibly even celebrates the unique culture of each institution. Although rewarding conformity has been the norm throughout the history of law school standardization, the ABA is on the cusp of recognizing that it is in the best interests of each law school to leverage its unique resources. With the full acknowledgment of the expertise of law librarians, law libraries are positioned to be leaders in this move into uncharted territory.

Law Firm Knowledge Management: A Selected Annotated Bibliography

Andrew M. Winston

This selected annotated bibliography covers scholarly research articles on knowledge management in law firms. The annotations are preceded by an introduction highlighting salient themes that emerge in this literature. These include the use and effectiveness of information technology in law firm knowledge management, the human side of knowledge sharing, and lessons for law firm and law school librarians.

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Introduction
Law Firm Knowledge Management

¶1 Knowledge management refers to the strategies, techniques, and tools used by an organization to capture, retain, analyze, organize, improve, and share data, information, and knowledge relating to the operation and administration of its business.¹ Knowledge management in the law firm context involves a firm’s “ability to identify, capture, and leverage the internal knowledge of individuals” at the firm and to combine this knowledge with knowledge derived from vendors and other external sources to “enhance the ability of all law firm staff to create and share knowledge across the firm, to provide excellent client service, and to compete in an increasingly aggressive professional legal services environment.”² In plainer and more intuitive language, knowledge management for law firms means “[w]ho we know, what we know and how we do what we do.”³ Law firm knowledge management is dependent on and intertwined with information technology, but successful knowledge management is not just a technological matter. Other issues, such as information culture and the importance of personal service by knowledge management workers,⁴ ensure that the discipline cannot be reduced solely to the question of which software to purchase.

¶2 Knowledge management in law firms has evolved through three phases.⁵ In the latter part of the twentieth century through the rise of the Internet, knowledge management focused primarily on improving the quality of legal services by creating, gathering, and systematizing knowledge by means of technology and in some cases using professional service lawyers and other knowledge management staff.⁶ In the next phase, continuing through 2008, law firm knowledge management activity grew significantly, corresponding with an increased demand for legal services, higher billing rates, and greater movement of partners and attorney teams among firms.⁷ Developments during this phase focused on supporting and integrating expanding law firms and helping attorneys cope with information overload.⁸ New technologies and services in this phase included enterprise search and more extensive use of searching to mine organizational data, portals, and social media, as well as client-facing initiatives and business development support.⁹ Even

6. Id. at 23.
7. Id.
8. Id.
9. Id.
though firms used knowledge management more during these boom years, the prevalence of hourly billing may have inhibited fulfillment of knowledge management’s efficiency-generating potential.\textsuperscript{10} In the current phase, the demand for legal services no longer exceeds supply, and clients are using their economic leverage to insist on greater efficiency and predictability in pricing for legal services, in some cases through fixed fees and other alternative fee arrangements.\textsuperscript{11} Knowledge management is now focused on how to help attorneys “do more with less.”\textsuperscript{12} Emerging trends in this area are intended to support Lean Six Sigma\textsuperscript{13} programs such as the one launched by Seyfarth Shaw LLP,\textsuperscript{14} legal project management initiatives,\textsuperscript{15} and pricing strategies for legal services.\textsuperscript{16}

\textsuperscript{¶3} Knowledge management in law firms involves a number of tools and services for more effectively managing, sharing, and using knowledge in a variety of areas: the law and how to provide legal services; clients and their businesses and industries; the expertise, skills, and backgrounds of firm attorneys and staff; and referral sources, experts, possible merger candidates or lateral hires, and other third parties. In 2012, a survey of knowledge management in law firms and corporate legal departments conducted by the International Legal Technology Association, identified the following major legal knowledge management tools and services (among others):

- Collections of precedents, model documents, legal research, and legal opinions
- Intranets or portals
- Automated document assembly
- Web 2.0 collaboration tools, such as wikis, blogs, and team sites
- Enterprise search
- Document management systems
- Firm intranets
- Transactional and litigation matter information systems
- Extranets\textsuperscript{17}

\begin{thebibliography}{9}
\footnotesize
\bibitem{10} \textit{Id.}
\bibitem{11} \textit{Id.} at 24.
\bibitem{12} \textit{Id.}
\bibitem{13} “Lean Six Sigma” is a methodology for ongoing process improvement and problem solving within organizations to increase customer satisfaction and profitability. Ronald D. Snee, \textit{Lean Six Sigma—Getting Better All the Time}, 1 INT’L J. LEAN SIX SIGMA 9, 10–11 (2010).
\bibitem{17} 2012 \textit{Knowledge Management Survey Results}, in \textsc{Knowledge Management: Tying the Organization Together} 6, 13 (2012), available at http://read.uberflip.com/i/68817.
\end{thebibliography}
Overview of Annotated Articles

This overview discusses broad themes that emerge in the annotated articles and is followed by a discussion highlighting points of particular interest to librarians in law firms and in law schools. This annotated bibliography is selective in that it covers scholarly, research-based articles in English that focus primarily on law firm knowledge management and were published from 1999 to 2013. The articles are grouped into different categories based on their primary areas of focus. Despite the size of the legal industry in the United States and worldwide, and the nature of law firms as knowledge-driven enterprises, there is relatively little academic research about knowledge management in the law firm context. Nonetheless, both law firm and law school librarians can draw useful lessons about how knowledge management works—and challenges to be overcome in its successful implementation and use—from these empirical studies.

Information Technology

Most of the articles in this bibliography focus on how information technology is used in law firm knowledge management. Apistola and Lodder present a framework for law firms to consider in evaluating whether and to what extent different technology tools (e.g., e-mail, intranets, the Internet, groupware, knowledge systems) might be useful in addressing different aspects of law firms’ knowledge management needs (developing, sharing, and evaluating administrative data, declarative knowledge, procedural knowledge, and analytical knowledge). Lawyers at the South African firms surveyed by Du Plessis and Du Toit generally reported positive attitudes toward the use of information technology for knowledge management and high usage of Internet and intranet applications, but little use of extranets and a surprising level of uncertainty about the knowledge management systems their firms used.

Articles authored or coauthored by Gottschalk focus on firms’ use of technology in knowledge management. In his first article, Gottschalk develops the hypothesis, based on a survey of Norwegian law firms, that a positive relationship exists between information technology use and law firm knowledge management. Further research by Gottschalk indicated that the extent to which law firms use information technology generally has a significant impact on the extent to which they use information technology for knowledge management. In a 2000 article, Gottschalk determined that law firms did not, contrary to expectations, use information technology significantly less than consulting firms in knowledge manage-

18. Many of these articles were authored or coauthored by a single scholar, Dr. Petter Gottschalk of the BI Norwegian Business School.
ment, although law firms made heavier use of databases rather than more general information sources.23

¶7 Gottschalk’s subsequent research addressed more specific research topics. In 2003, Gottschalk and Khandelwal explored a “stages of growth” model (an analytical tool used in organizational and information technology research) for the development of law firm information technology systems in connection with their knowledge management processes. In this model, firms pass from (1) having only “end-user tools” such as e-mail and word processors, to (2) using information technology to identify “who knows what” within the firm, to (3) using information technology to retrieve information stored in documents such as contracts, memos, etc. in the “what they know” phase, to (4) using information technology systems in such a way that the systems themselves help provide solutions—the “how they think” phase.24 The results of the research did not confirm that the Australian law firms studied moved through these stages of growth in the manner hypothesized, although the research did suggest that the number of lawyers and the number of information technology workers tended to predict the stage of information technology knowledge management projects at a firm.25 In 2004, Gottschalk and Khandelwal published the results of research on Norwegian and Australian law firms that provided limited support for the applicability of the stages-of-growth model in the law firm knowledge management context.26

¶8 In 2009, Gottschalk and Karlsen revisited the stages-of-growth model in light of newer research. In an article that first reviews the law firm business model, the role of lawyers as knowledge professionals, and the idea of knowledge organizations, they found that most of the firms surveyed were in the third stage of growth (which centers on the use of technology to afford access to stored precedents, documents, e-mails, and other materials used and generated in law practice).27 Their newer research did not, however, confirm that law firms consistently progress through the stages of growth in order.28

¶9 Gottschalk addressed an area of great interest to lawyers when in 2002 he explored whether client demands were driving law firms’ implementation of information technology in knowledge management, although his research results did not show that client desires had a significant impact on firms’ selection of information technology for knowledge management purposes.29 Clients reported higher levels of satisfaction with firms that could readily receive from and share with

25. Id. at 102–03.
28. Id. at 432.
clients both administrative and substantive information about client matters. As Gottschalk noted in his conclusion, however, client demand for effective use of technology in managing practice knowledge is likely only to increase.

In a 2001 article, Gottschalk explored the use of information technology in “inter-organizational knowledge management,” or knowledge management among law firms that are members of networks in which business is referred and, to an extent, knowledge is shared. A study of Norwegian members of Eurojuris, a network of firms in nineteen European countries that has invested heavily in information technology, showed that member firms were using the network for finding solutions to legal problems, selecting among possible solutions, and evaluating the solutions selected, but not cooperating on cases. In an article the following year, Gottschalk and Khandelwal compared research on interorganizational knowledge transfer based on surveys of Norwegian and Australian firms. While firm cooperation (cooperation among law firms on a national, international, or global level) and knowledge cooperation (sharing administrative, declarative, procedural, and analytical knowledge) predicted the use of information technology in support of such networks in Norway, only knowledge cooperation was such a predictor in Australia.

The Human Side of Knowledge Management

Other articles address interpersonal and behavioral aspects of law firm knowledge management. Topics include the dynamics of knowledge sharing, the importance of firm culture in successful knowledge management, and the attorney behaviors that can arise when a knowledge management system has been introduced into a law firm.

In a 2009 article, Forstenlechner, Lettice, and Bourne stress the importance of exchanging “personal know-how” with peers, identifying it as a “key predictor of fee income” based on their case study of a large global law firm. They conclude that the significance of this form of knowledge transfer was due not to inadequate knowledge management technology but to lawyers’ preference for personal information exchange, noting that, although knowledge management involves, at its core, automation of knowledge processes, “it remains a discipline highly dependent on human interaction.”

30. Id.
31. Id.
33. Id. § 5.
34. Petter Gottschalk & Vijay K. Khandelwal, Inter-Organizational Knowledge Management: A Comparison of Law Firms in Norway and Australia, 42 J. COMPUTER INFO. SYS. (SPECIAL ISSUE) 50, 52 (2002).
35. Id.
36. Id. at 50.
38. Id. at 66. “Personal service from the KM team” was also identified as a key predictor of fee income. Id.
§13 In their research on current information services in a large London law firm, Attfield, Blandford, and Makri found that knowledge management staff served as “intelligent filters.” Their article highlights the importance of backpropagation of information from users about their requirements and preferences in order to enable knowledge management professionals to customize the information provided to their users’ needs.

§14 Brivot considered whether implementation of a centralized knowledge management system that emphasized the collection of attorney work product in a central repository resulted in attorneys losing power within the organization to administrators. Despite lawyers’ fears, the research suggested that attorneys actually gained power as a result of knowledge management, even though the creation and sharing of knowledge in the firm had become more bureaucratized. Significantly, those without social capital could still access valuable knowledge even in the absence of personal relationships with those possessing the knowledge.

§15 Lustri, Miura, and Takahashi studied a knowledge-sharing initiative at a Brazilian law firm. The initiative, which involved three experienced lawyers and three trainee lawyers, was designed to provide the trainees with tacit knowledge about client service, marketing, and the business of law that was held by the more senior attorneys. The authors found that this model developed the desired competencies more quickly than the firm’s conventional training.

§16 Olatokun and Elueze explored knowledge sharing in Nigerian law firms. They learned that associations among lawyers engaged in knowledge sharing, lawyers’ attitudes about their personal contributions to knowledge sharing, and the use of information technology were stronger predictors of knowledge sharing than attorneys’ positive attitudes toward it.

§17 Choo and others studied knowledge management in a large Canadian law firm that had invested significantly in knowledge management strategy, technologies, and processes. They found that the firm’s “information culture”—its “values, norms, and practices with regard to the management and use of information”—was more important to information use outcomes than “information management”—the “application of management principles to the acquisition, organization, control, dissemination, and use of information.”

40. Id. at 643.
41. Marion Brivot, Controls of Knowledge Production, Sharing and Use in Bureaucratized Professional Service Firms, 32 ORG. STUD. 489 (2011).
42. Id. at 503.
44. Id. at 200.
46. Choo et al., supra note 4, at 493.
47. Id. at 491.
48. Id. at 492.
¶18 Brivot and Gendron explored what effect a centralized, precedent-oriented knowledge management system had on the interpersonal dynamics of lawyers in a Paris law firm.49 Rather than resulting in management surveillance of work product (referred to as the “panopticon” model), the authors instead found patterns of mutual surveillance by lawyers within the firm as they accessed and evaluated colleagues’ work, as well as behaviors involving the ostentatious display of work as self-promotion and the hiding of documents in shadow networks outside the official knowledge management system.50

**Effect on Fee Income**

¶19 In 2009, Forstenlechner, Lettice, and Bourne, using the results of an intensive case study of one of the largest multinational law firms in the world, addressed the knowledge management issue that many practitioners might view as central: the effect of knowledge management on law firm revenue.51 This research supported the proposition that knowledge management increases a law firm’s fee income.52 One hopes that other researchers will further explore the financial benefits of knowledge management to law firms.

**Implementation**

¶20 Beaumont explored the complexities of implementing knowledge management in a midsized regional firm in the United Kingdom, detailing the firm’s technological initiatives, new knowledge management support roles, and major achievements after the first year and a half, such as starting precedent repositories and creating platforms for sharing internal knowledge.53

¶21 Research by Hunter, Beaumont, and Lee on Scottish law firms found that while the firms in question used information technology in service of knowledge management, only some of the firms used dedicated personnel to actively manage their knowledge management functions.54 The authors argue that knowledge management functions must be adequately staffed if firms are to effectively convert their tacit knowledge to explicit knowledge, and that the industry’s focus on technology solutions overlooks this element of knowledge management.55

¶22 Fombad, Boon, and Bothma conducted extensive research on the level of knowledge management activity by law firms in Botswana. In one article, the trio detail the results of that research, which determined that knowledge management efforts by those firms—most of which are very small—consisted primarily of using precedent, research, weekly learning reports, records management, and training.

50. *Id.* at 152.
51. Forstenlechner et al., *supra* note 37.
52. *Id.* at 66.
55. *Id.* at 17–18.
junior lawyers; more sophisticated functions like know-how systems or work product databases were much less common. In another article, the authors used the results of their research to propose detailed recommendations for implementing knowledge management, such as picking appropriate technologies, having lawyers invest ten percent of their time taking seminars and communicating with others in the legal community about knowledge management, and rewarding attorneys who perform knowledge management work and crediting them for time spent on it.

*International Aspects*

¶23 Beaverstock’s research on ten London-based international law firms explored knowledge management in the context of expatriation of legal knowledge. The author found that knowledge dissemination and sharing varied geographically depending on the location of the satellite offices. In east Asia, knowledge-transmission was one-way, from the English lawyers to their local colleagues. In Europe and North America, in contrast, knowledge was developed and shared in both directions, with local attorneys sometimes playing an equal role in the management of their offices.

*Lessons for Law Librarians*

**Law Firm Librarians**

¶24 The scholarship on law firm knowledge management provides insights for law librarians in law firms, particularly those who are or would like to become involved in their firms’ knowledge management activities. Several of the case studies discussed in these articles include descriptions of the knowledge management departments or functions of large and mid-sized law firms:

- Forstenlechner, Lettice, and Bourne offer an overview of knowledge management at one of the three largest law firms in the world. This firm had a high ratio of knowledge management staff to attorneys, a high level of investment in knowledge management, and a knowledge management team led by a partner with the title of chief knowledge officer. The firm used a hybrid approach in which the strategic direction and infrastructure for knowledge management are established at the firm level to support knowledge management initiatives at the practice group level.

- Beaumont describes a case study of knowledge management implementation at a regional U.K. law firm that involved the addition of new

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59. *Id.* at 173–74.

60. *Id.* at 173.

61. *Id.* at 173–74.


63. *Id.* at 58.
“Knowledge Fee-earners” embedded in each of the firm’s fifteen practice teams. The initial accomplishments of this knowledge management initiative included precedent banks, the use of consistent cover sheets for firm documents, the implementation of a firm intranet, the development of blogs and wikis for internal knowledge sharing, how-to guides, transaction toolkits, and fee and billing information resources.

- Brivot details a knowledge management system implemented at a large Paris law firm that involved the creation of a searchable database of legal opinions and other documents created by firm attorneys, with a selection categorized as “best practice” documents by a standards committee at the firm.

- Attfield, Blandford, and Makri describe current awareness services at a 900-lawyer law firm with knowledge management staff that includes professional support lawyers, knowledge management executives, paralegals, and researchers.

¶25 Law firm librarians involved in the design and development of knowledge management at their firms will discover in the annotated articles that there is no single path for the evolution of law firm knowledge management. In a series of articles published from 2003 to 2009, Gottschalk proposed that law firm knowledge management follows four stages-of-growth: (1) “end-user tools” or “lawyer-to-technology,” (2) “who-knows-what” or “lawyer-to-lawyer,” (3) “what-they-know” or “lawyer-to-information,” and (4) “how they think” or “lawyer-to-application.” Despite a number of attempts to verify this progression, Gottschalk’s research ultimately did not support the hypothesis that law firms implementing knowledge management necessarily moved through those four stages in order.

¶26 Law librarians should also note the human dynamics explored in several of the articles. Choo and others found that the information culture in the large Canadian law firm they studied had more influence over the use of information than the firm’s information strategies and systems. Brivot and Gendron focused on networks of mutual surveillance among lawyers in a firm with a centralized, precedent-based knowledge management system, in which attorneys scrutinized one another’s work product to evaluate quality, and dark pools of practice materials developed among those who did not wish to share their work product. Law librarians who are a part of or work with their firms’ knowledge management departments can draw on these behavioral insights to help them more effectively promote knowledge management contribution and knowledge sharing, and to access stores of knowledge that may not be part of a firm’s official repositories.

64. Beaumont, supra note 53, at 228.
65. Id. at 230.
66. Brivot, supra note 41, at 495.
67. Attfield et al., supra note 39, at 635–43.
68. See, e.g., Gottschalk & Karlsen, supra note 27, at 437–39.
69. Id. at 432.
70. Choo et al., supra note 4, at 508.
71. Brivot & Gendron, supra note 49, at 149, 152.
Law firm librarians should be particularly interested in the work of Forstenlechner, Lettice, Bourne, and Webb on attorneys’ perceptions of the value of knowledge management. In a survey of lawyers from the top-ten global law firms, researchers found that interviewees believed that knowledge management provided the following benefits: greater efficiency, higher quality, improved risk management, long-term benefits, positive influence on firm culture, improved awareness, and better and faster training. Forstenlechner and a similar group of researchers also found that certain knowledge management predictors had a positive impact on fee income of the case study law firm (one of the three largest firms in the world). The research-based support offered by these articles may be useful to law firm librarians who advocate for (or are obliged to justify) the creation, expansion, or continuation of knowledge management activities in their firms.

Academic Law Librarians

The scholarship on law firm knowledge management will help academic law librarians not only enhance their understanding of private practice and the activities of their law firm counterparts but also find ways to improve the services they deliver within their law schools. The Principles and Standards for Legal Research Competency, approved in July 2013 by the Executive Board of the American Association of Law Libraries, includes a specific reference to “recogniz[ing] the benefits of requesting assistance from knowledgeable individuals, or an institution’s knowledge management system” as a competency to be developed by a successful researcher. As explained above, many of the annotated articles offer detailed depictions of how knowledge management is conducted in law firms. As the legal educators primarily responsible for instructing law students on how to effectively and efficiently locate the information and knowledge needed in the practice of law, law school librarians should explain to students the importance of finding useful, reliable sources of practice know-how within law firms. Law librarians should also make students aware of attorney behaviors associated with attempts to impose systems for the management of that knowledge, such as the mutual surveillance, “showing,” “hiding,” and shadow knowledge economies described by Brivot and Gendron.

Law school librarians might also wish to explore whether these law firm knowledge management articles yield any guidance for academic information professionals who use knowledge management systems or techniques to provide services to their users. For example, the current awareness service for lawyers studied by Attfield and others might be adapted by academic law librarians to provide a similar service for law professors at their institutions. Academic law librarians

72. Ingo Forstenlechner et al., Turning Knowledge into Value in Professional Service Firms, 8 PERFORMANCE MEASUREMENT & METRICS 146, 149 (2007).
73. Forstenlechner et al., supra note 37, at 66.
75. Brivot & Gendron, supra note 49, at 150, 152.
76. Attfield et al., supra note 39.
should also consider whether any lessons for legal research instruction can be learned in the mentor-mentee competency development model evaluated by Lustri and her colleagues.\textsuperscript{77}

**Information Technology and Knowledge Management**

**General**


Based on then-existing literature and on the results of surveys of Dutch law firms conducted by the authors, this article proposes a framework for knowledge management in law firms that combines taxonomies of three elements of law firm knowledge management: knowledge, knowledge processes, and information technology. The taxonomy of lawyer knowledge includes administrative data, declarative knowledge (knowledge of the law), procedural knowledge (know-how), and analytical knowledge (how declarative knowledge applies to a particular set of facts). The taxonomy of knowledge processes includes the development of knowledge, the sharing of knowledge, and the evaluation of knowledge. The taxonomy of information technology includes word processors, databases, Internet applications (such as discussion boards and search engines), intranets, e-mail, groupware, and knowledge-based systems (such as expert systems, neural networks, intelligent agents, and case-based reasoning systems). The authors’ proposed framework is offered as a starting point for evaluating how well various information technology applications support law firm knowledge processes.


This article discusses the results of a survey of information and knowledge management practices at South African law firms. The author also analyzes the results of a survey of South African law firms on the use of information and communication technologies for knowledge management. Survey responses indicated that South African law firms used intranets, document management systems, and electronic communication technologies but had not embraced more sophisticated technologies such as automated document assembly applications and online dispute resolution platforms, nor had they implemented semantic technologies or cloud computing.


This article evaluates how the evolving legal information environment affects the process of legal research and how knowledge management can support or improve legal research. The authors also examine the electronic legal research process and consider the skills that lawyers proficient in print research will need to use electronic resources effectively. This article is useful for its analysis of lawyers’ needs to access various types of information, including primary and secondary sources of legal information, information about clients and their matters, forms and precedents used repeatedly in work for clients, and information about

\textsuperscript{77} Lustri et al., *supra* note 43.
the firm's operations and administration and about its business environment. The article also describes the results of a survey of South African lawyers regarding technology and knowledge management. A high percentage of respondents were willing to use knowledge management to acquire and share information, work remotely, and participate in developing new knowledge. But there was also significant uncertainty about whether knowledge management systems were in use at their organizations as well as some unfamiliarity with extranets. In addition, the survey results indicated that although they were not generally asked to assist in day-to-day legal research, librarians performed important knowledge management functions and “should increasingly take on the challenge of developing or improving on current systems designed for typical KM activities that are aimed at law firm competitiveness, especially with regards to packaging individuals’ knowledge into information products” (p.370).


The author conducted a field study of the largest firm in Norway and a survey of Norwegian firms to learn the use of knowledge management in law firms. Based on the results, he formulated three research hypotheses: (1) a positive relationship exists between firm knowledge and knowledge management, (2) a positive relationship exists between firm culture and knowledge management, and (3) a positive relationship exists between information technology use and knowledge management. Professor Gottschalk is the most prolific author of scholarly research articles regarding knowledge management in the law firm context. This article represents the beginning of a series of studies by him on law firm knowledge management and sets the stage for a subsequent article in the same year regarding the third research hypothesis described above on information technology and law firm knowledge management.


This article analyzes the results of research on Norwegian law firms’ use of information technology in interorganizational knowledge management. Interorganizational knowledge management involves information sharing among members of cooperative associations that include multiple law firms, ranging from formal national and international networks to informal cooperative relationships. The author found that the extent of law firm cooperation and of knowledge cooperation each had a significant effect on the use of information technology in connection with interorganizational knowledge management, although the level of trust among members of the networks did not. This article also compares the interorganizational knowledge management used by law firms with that used by consulting firms. Notwithstanding a perception that consulting firms were far more advanced than law firms in their use of information technology in support of knowledge transfer, survey results showed that consulting firms’ use was only slightly higher than that of law firms.


This article considers predictors of the use of information technology to support knowledge management in law firms, based on a study of the largest law firm
in Norway and a survey of Norwegian firms. The author’s research found that the extent to which firms use information technology generally has a significant impact on their use of information technology for knowledge management. Law firm culture and firm knowledge were identified as potential predictors of information technology support for knowledge management in Norwegian firms. As with much of Gottschalk’s work, the law firms studied are all located in Norway. They do not include any of the large multi-office (or multinational) firms of the sort that would be found in major cities in the United States or Canada, London, or other large legal markets.

“Stages of Growth” of Law Firm Knowledge Management


Gottschalk, along with another professor at the Norwegian School of Management, returns to the stages-of-growth model for examining information technology usage in support of knowledge management at law firms. The article begins with a discussion of the law firm and its ongoing transition from a professional to a corporate business model, lawyers as knowledge workers, and knowledge organizations. The authors refine the stages-of-growth model and provide illustrative examples of the information technology employed in each stage. Stage 1, referred to as “end-user tools” or “lawyer-to-technology,” uses productivity applications, such as word processing, legal databases, spreadsheets, and scheduling, which are available to knowledge workers (p.437). Stage 2, described as “who-knows-what” or “lawyer-to-lawyer,” involves using technology to map and make available firm knowledge like the areas of expertise of its attorneys (pp.437–38). Stage 3, characterized as “lawyer-to-information” or “what-they-know,” captures information—such as agreements and other work product, memos, letters, reports, policies, e-mails, voicemails, and other materials generated in the firm’s operation—from attorneys and others in the firm in databases and other repositories and uses search engines and data mining to access and combine needed information (pp.437, 438). Stage 4, referred to as “lawyer-to-application” or “how they think,” applies advanced tools like artificial intelligence, neural networks, and expert systems in order to solve legal knowledge problems (pp.437, 438–39). Although most of the firms surveyed (all of which are in Norway) are at the third stage of growth, the research did not confirm the stages-of-growth model.


Gottschalk and Khandelwal explore results of a survey on the use of information technology in knowledge management among Australian law firms. The authors describe a four-category or four-stage growth model for the adoption of knowledge management information technology by law firms. The first stage, “tools for end users,” involves information technology tools that are made available to knowledge workers, such as word processing, e-mail, and spreadsheets (p.93). The second stage, “information about who knows what,” is concerned with information about knowledge sources available to the firm, such as intranets with details about the experience and areas of expertise of attorneys within the
firm, and the creation of “a knowledge network” (pp.93–94). The third stage, “information from knowledge workers,” involves the construction of databases of information compiled from knowledge workers and used for searching and data mining and making knowledge accessible via intranets (pp.94–95). The fourth stage, “information systems solving knowledge problems,” concerns the application of advanced technologies such as expert systems and artificial intelligence on knowledge problems (pp.95–96). Of the firms surveyed, most were focused on end-user information technology tools, some were working on storing firm knowledge, and a few were working on storing information about who knows what within the firm or on developing systems to solve knowledge problems. Both the number of lawyers and number of information technology staff members in a firm were major determinants of the stages of knowledge management technology present in the firm.


Gottschalk and Khandelwal again collaborate on research regarding information technology and knowledge management in law firms, analyzing the results of Norwegian law firms based upon the stages-of-growth model. Research results did not entirely validate the model and suggested that refinement and further research would be needed. It was not clear from the results that firms necessarily progressed through the stages in order. The article does, however, provide detailed explication of the stages in the model and the knowledge management and information technology aspects of each.

**Clients as Drivers of Technology Adoption for Knowledge Management**


This article concludes, based on a survey of law firm clients in Norway, that client demands were not driving information technology use by law firms in 2002. At that time, law firms were primarily using only tools such as e-mail, word processing, spreadsheets, and presentation software and making limited use of then-emerging technologies like extranets and expert systems. The research did not suggest that the law firms’ clients were drivers of change regarding law firms’ adoption of knowledge management technology. The author’s research did, however, show increases in client satisfaction when firms had the capacity to electronically code the client information they received and used information technology to transmit information to the client, provide clients with access to information, and provide information to clients regarding cases and administrative matters that could be coded by the client.

**Information Technology and Interorganizational Knowledge Management**


This article analyzes the results of research with respect to Norwegian law firms’ participation in Eurojuris, a network of European law firms that has invested in
information technology for knowledge management. Eurojuris includes offices in 650 locations in nineteen countries, covering a total of 3000 lawyers. In Norway, there are eleven law firms with ninety lawyers in the Eurojuris network. As the author explains, law firms participate in international alliances as a way to generate cross-border business for themselves. The research results indicated that participating lawyers perceived benefits in “three out of five value activities [from their participation in interorganizational knowledge management]: problem-solving, choice, and control and evaluation” (§5). Problem solving involves finding and analyzing relevant law and documents, drafting documents, and locating experts. Choice entails selecting an appropriate solution to a problem from alternatives. Control and evaluation involves measuring and assessing the effectiveness of the solution that is implemented. These results support the proposition that information and communication technologies used in interorganizational networks provide benefits in generating potential answers to problems, choosing among potential solutions, and evaluating the success of the solution chosen. Benefits from information and communication technology were greater at the level of “advanced knowledge” (knowledge enabling effective competition) than at the levels of “core knowledge” (basic knowledge needed to operate in an industry) or “innovative knowledge” (knowledge that enables an organization to lead or transform its industry) (§2). The research also suggested that members of the network were not using the network to cooperate on cases or on administrative support.


This article analyzes information technology use by law firm networks in Norway and Australia. The research indicated that while both the level of cooperation among firms in a network and the level of sharing of administrative, declarative, procedural, and analytical knowledge within a network predicted higher levels of information technology usage in such networks in Norway, only the latter did so in Australia. The level of interorganizational trust proved not to be a significant predictor. In both countries, word-processing systems, e-mail, and legal databases were the primary technologies used. Australian firms appeared to use information technology more than Norwegian ones, particularly e-mail, presentations, other law firms’ web pages on the Internet, library systems, intranets, document systems, and other law firms’ web pages on extranets.

**The Human Side of Knowledge Management**

**Knowledge Sharing**


This article discusses the results of a study of electronic current awareness services in a large London law firm, involving attorneys and the firm’s knowledge management staff. The authors found that the staff acted as “intelligent filters” attuned to the information needs of specific practice teams that helped time-starved fee earners cope with information overload (p.643). The authors suggest
that current awareness services address several design recommendations. The first recommendation is rapid evaluation of information against an individual’s interests by reading information items first, supplementing items with additional relevant information, adding information to specific newsletters, sending specific items to individuals, and storing items in different collections depending on their intended purposes. The second recommendation is to organize information to support different uses, including “known purpose” collections that are limited in scope and duration based on task deadlines and more expansive “future reference” collections supported with browsing and searching tools (p.644). The third recommendation is to employ back-propagation of details about information needs and preferences from users to better understand their requirements, electronically as well as by means of social interaction with users.


This article uses the results of a case study of a business law firm to evaluate whether the use of centralized knowledge management systems in large professional service firms led to a power shift within the organization. The author focused on the Paris office of a large firm that belongs to an international network of lawyers, accountants, and consultants. The Paris office, which employs 250 lawyers, had implemented a significant knowledge management function that included two full-time knowledge management staff members and a searchable database of legal documents and other work product from prior engagements, with some of the documents endorsed by an internal standards committee as “best practice” examples for reuse in response to recurrent client requests (p.495). The author found that despite increased bureaucracy involved in the creation, sharing, and use of knowledge within the firm, attorneys in the firm gained power as a result of the centralized knowledge management system rather than losing control to administrators. In addition, lawyers are now able to access knowledge in the firm even without social capital (such as personal contacts with individuals who have relevant knowledge), which can help foster diversity within the firm. The article includes an extensive discussion of the effects of the knowledge management system on attorney behaviors, such as displays of knowledge within the system intended to advertise expertise within the firm, and withholding knowledge in certain areas of expertise from the system to restrict access to that knowledge to a select group of practitioners in the firm.


This article uses the results of research on Scottish law firms to look at human resource issues related to law firm knowledge management. The article addresses knowledge management within the framework of the development of human capital, tacit knowledge, and human resource management, based on case studies of five law firms ranging in size from more than fifty lawyers to fewer than ten. The authors found that in the area of knowledge management, law firms remain focused on developing human capital, with two of the firms studied having developed knowledge management teams and appointed knowledge managers. All five firms used tools such as databases and document templates to increase
productivity, and each aimed to facilitate the development of social capital, both internally with technology such as intranets and externally with technology such as client-facing extranets. The firms showed less interest in the social and cultural processes that develop tacit knowledge, such as communicating with attorneys in other practice areas and mentoring. The authors argue that human resource managers can contribute to a firm’s knowledge management strategy by helping lawyers develop policies and performance appraisal standards that are aligned with the effective development and sharing of knowledge within the firm.

Lustri, Denise, Irene Miura, and Sérgio Takahashi. “Knowledge Management Model: Practical Application for Competency Development.” The Learning Organization 14, no. 2 (2007): 186–202. This article describes the results of case study research on a knowledge management model used by a Brazilian law firm to help junior attorneys develop law practice competencies. Three lawyers identified as possessing the desired competencies and three trainee lawyers with the potential to develop those competencies participated in the program. Other experienced lawyers attended meetings with program participants. The competency model that served as the basis of the program consisted of a “nucleus” and four “spheres” (pp.194–95). The nucleus involved two series of workshops focused on sharing the vision of the knowledge and competencies to be cultivated. The first sphere consisted of an introductory module on “customer service and relationship[s], service quality standards, presentation techniques, relationship with the media, dissemination of the service areas composing the firm, dissemination of the products/services offered by each area and the characteristics of their target clients” (p.195). An advanced first-sphere module covered “market analysis, organisational analysis, business management, finance, strategic planning, consultancy techniques and skills” (p.195). The second sphere involved biweekly meetings focusing on the transfer of tacit knowledge via individual conversations; creation of a manual of client service standards; and mentees’ observation of mentors at meetings, negotiations, presentations, court appearances, and other activities. The third sphere (not completed at the time of the article) was planned to involve knowledge dissemination by both the three mentors and, after two years, the initial three lawyers who were being trained in the competencies program. The fourth sphere (also not complete at the time of the article) was planned to consist of practical application of the competencies developed, such as client visits, presentations within the firm, and lectures and interviews. The authors found that the model developed the competencies in question more effectively than the conventional training methods used by the firm during the preceding four years.

Olatokun, Wole M., and Isioma N. Elueze. “Analysing Lawyers’ Attitude Towards Knowledge Sharing.” South African Journal of Information Management 14, no. 1 (2012). http://www.sajim.co.za/index.php/SAJIM/article/view/507. This article explores the results of a study of factors that affect the attitudes and behaviors of lawyers with respect to knowledge sharing based on a survey of lawyers in a major city in Nigeria. The authors found that the expected reward from knowledge sharing was not a significant motivator of knowledge-sharing behavior among lawyers. Expected associations among lawyers involved in knowledge sharing and the lawyers’ attitudes about their own contributions were predictors of knowledge-sharing behavior. Although positive attitudes toward knowledge sharing led to positive intentions to engage in it, these positive intentions did not
translate into knowledge-sharing behavior. Use of information technology did contribute to knowledge sharing, although the level of information technology was generally limited to e-mail and mobile telephony.

Perceived Value of Knowledge Management


This article discusses the results of research into the perceptions of the value of knowledge management by lawyers and staff at the top ten global law firms. The authors found that lawyers at those firms strongly supported the proposition that knowledge management adds value to the business of a law firm. The benefits of knowledge management reported by survey respondents included improvements in attorney efficiency; improvements in the quality of work product; better risk management, resulting from the use of more consistently updated and refined know-how; differentiation from competitors and increased productivity; a more collaborative, consistent, and unified firm culture; improved current awareness; and better training for junior lawyers.

The Importance of an “Information Culture”


Authored by seven scholars working in several disciplines at three Canadian universities, this article analyzes the results of a detailed survey of employees at one of Canada's largest law firms, a diversified, multi-office organization offering legal services in a broad range of practice areas. Respondents included lawyers and support and administrative personnel. The research included an analysis of survey responses and interviews with the firm's senior management, including its chief knowledge officer and others, about the firm's knowledge management strategy. The authors' analysis of survey results suggested that this law firm's information culture—as “reflected in the organization's values, norms, and practices with regard to the management and use of information”—plays a greater role in information use outcomes than its high level of information management activities (p.493). The information values held by those in the law firm that played the largest role in information use were those relating to the sharing, proactiveness, transparency, and informality of information. Copies of the survey questions, addressing a broad range of information-related behaviors, were included in the article, offering insight into how researchers conceptualize knowledge management issues in the law firm context.

Attorney Behavior and Incentives


The authors use data from a case study of a French law firm to evaluate the phenomenon of surveillance in a contemporary organization and assess the limits of
the panoptical metaphor in analyzing present-day surveillance. The metaphor of the panopticon, “prevalent in the managerial control literature, is predicated on a hierarchical view of control in which localized and specific targets of surveillance never know whether or not they are actively being watched—thereby leading them to assume they are constantly watched” (p.136). The authors found that after installation of the firm’s knowledge management system, which focused on building a collection of firm attorneys’ legal opinions and other work product, lateral networks of surveillance developed instead of central surveillance by firm leaders. Although some traits of panoptic surveillance were present, fellow lawyers, rather than firm management, generally were the ones who scrutinized the validity and quality of the documents submitted to the knowledge management system. After the system was implemented, attorneys generally complied with the requirement that their documents be included. Lawyers also engaged in “showing off”—playing “games of visibility involving the purposeful self-disclosure of one’s work”—and “hiding”—resisting the knowledge management system by developing unofficial knowledge markets outside of it (p.152). This article is a fascinating study of how lawyers respond to the professional and social incentives involved in a centralized knowledge management system and the layers of complexity that human behavior adds to law firm knowledge management.

Other Areas of Focus

Effect on Fee Income


This article analyzes the results of empirical research on the financial benefits of knowledge management based on an in-depth case study of one of the three largest law firms in the world, in an attempt to discern whether knowledge management provides a competitive advantage. The firm had a well-developed knowledge management function, with knowledge management staffing far above the industry average, and general investment in knowledge management also above the industry average. The results supported the conclusion that some knowledge management factors can partly predict fee income:

- the value perception of knowledge management services based on quality of personal service from the knowledge management team;
- the exchange of personal know-how among peers;
- the quality of counsel and legal opinions;
- the ease of use of know-how systems;
- the use of news and current affairs;
- lawyer commitment; and
- the staffing of the knowledge management function.

The authors note that their research was limited to a single firm and that they analyzed the results using the existing “KM Balanced Scorecard” (a method of performance measurement in an organization being studied) developed for this firm; thus the results may not be completely applicable to other organizations (p.56). The authors’ conclusions were based on “internal surveys on KM services, performance measures, usage data for KM systems and tools and organisational financial data” (p.56).
Implementation


This article details the implementation of knowledge management at a regional full-service law firm in the United Kingdom. The knowledge management initiative began in 2007. Prior to that, the firm’s Information Department employed two information professionals and a part-time, retired attorney who primarily delivered knowledge internally, without a significant strategic approach. The firm hired one professional support lawyer and had possible plans to hire another, although this did not occur until after the knowledge management program was implemented. In addition to its existing Information Department, the firm, with advice from a consultant, introduced a new role, called a knowledge fee earner, in each of its fifteen practice teams (p.228). Knowledge management activities were included in performance appraisals, and some level of contribution to knowledge management became a requirement for promotion within the firm. The fifteen new knowledge fee earners developed a set of eight talking points used to promote the knowledge management initiative within the firm. In addition to staffing and performance appraisal changes, the knowledge management initiative was supported with the firm’s existing document management systems and other technology. After eighteen months, the knowledge management program achieved the following results: development of precedent banks, creation of a standardized cover sheet that can be attached to any document with a single click, implementation of a firm intranet, development of blogs and wikis as platforms for internal knowledge sharing, seamless integration of links to knowledge resources from external providers, development of standardized pitch materials, development of how-to guides on various information topics, creation of “transaction toolkits” that include relevant documents and guidance from an experienced lawyer, and compilation of historical fee and billing data (pp.230–31).


This article describes the results of research on knowledge management in law firms in Botswana. Most law firms in that country are very small by U.S. standards: more than two-thirds consist of one- or two-lawyer practices. The authors found that the state of knowledge management by lawyers in Botswana was limited; the most common knowledge management practices involved the use of precedent, legal research, weekly learning reports, records management, and hiring and training young lawyers. Only one-fifth of the lawyers surveyed maintained know-how systems and information banks or work product repositories. The research also addressed factors that respondents believed contribute to effective knowledge management and those that they believed inhibit it. Most lawyers did not believe that participation in knowledge sharing was essential for promotion. Interestingly, a majority of respondents did not believe that knowledge was viewed as a source of power among lawyers, although the interviewees indicated that “lawyers in Botswana are often not willing to share their expertise, because knowledge is regarded as power and lawyers believe that monopoly of particular information will lead to personal indispensability, job security, influence, and professional respect within the firm” (p.150). Most respondents felt that their
firms lacked the technological infrastructure for effective knowledge management; other perceived obstacles included a small firm size and limited financial resources. The authors recommended that lawyers in Botswana should “consider talking to others in the legal fraternity about knowledge management, attend meetings and workshops on knowledge management, invest time and money in creating bulletins boards, sample skill directories, form alliances with international professional associations and get connected to [a] physical or electronic forum that engages in collaborative thinking” (p.151).


Using the results of the research described in the preceding annotation, the authors present a detailed set of recommendations for Botswana law firms to implement and use knowledge management effectively. The recommendations include the following:

- Picking initiatives within a firm’s “current technology, business processes, funding constraints and cultural readiness” ($7);
- Being prepared to engage in long-term knowledge management projects and learn from mistakes;
- Investing in appropriate technologies, taking into account “people, structure, processes, leadership and techniques before selecting a technological solution” ($7);
- Using the Law Society (the governing body of Botswana law firms) as the “principal institution for facilitating knowledge management in law firms” ($7) by setting up conferences and workshops for lawyers and working with legal academics to facilitate knowledge management in firms;
- In large firms, having knowledge managers keep management informed about initiatives and considering knowledge management as a basic skill to be developed by all lawyers;
- Devoting at least ten percent of lawyers’ time in talking to others in the legal community about and attending seminars on knowledge management, using sample skill directories, forming alliances with international professional organizations, and participating in online or in-person discussion forums;
- Providing and attending professional development sessions on relevant knowledge;
- Rewarding lawyers who devote time to knowledge management, crediting attorney time spent writing documents that are included in knowledge databases, providing personal recognition for lawyer contributions to knowledge management, and exploring ways of billing for value and not hourly;
- Developing and managing knowledge about clients and their industries; and
- Implementing user-friendly interfaces for electronic knowledge management systems that do not require lawyers to undergo significant training.
International Aspects


In this article, the author examines the results of case studies of ten London-based international law firms in the context of cross-border knowledge management and the expatriation of knowledge. British law firms send lawyers to foreign offices to supply them with English common law knowledge resources, and, at the same time, use local lawyers to provide legal services with respect to the laws of their countries. The research indicated that in East Asian offices, the expatriation followed a “multinational” model, with transmission of English law and management of offices by the expatriates (p.173). In Europe and North America, expatriation followed a “transnational” model, with knowledge developed and shared in multiple directions along networks of relationships; expatriates and locals practiced alongside one another and served in management roles (pp.173–74).

Conclusion

¶30 These articles paint a picture of knowledge management as a discipline with enormous potential for making law firms more efficient and effective in providing legal services, although that potential has in some respects not yet been fulfilled. There are, nonetheless, powerful lessons in the existing research for librarians in law firms and in law schools. Those in private practice who work in or are interested in knowledge management are likely well aware that it is the subject of extensive commentary on social media78 and in industry publications.79 The scholarship summarized in this article can serve as an empirical foundation for thoughtful and informed decision making about the implementation, development, maintenance, and modification of knowledge management and provide valuable long-range perspectives that frame and supplement the often more immediate advice and guidance of knowledge management practitioners.

¶31 Academic law librarians can also learn from the law firm knowledge management literature. In their roles as legal research instructors, law school librarians can make students aware of how legal and practice knowledge may be accessible via an electronic knowledge management system in their practice setting. Students should also be alerted to the ways in which practice knowledge may be shared through both formal and informal networks within firms, and consider ways to ensure they have access to critical knowledge resources when they enter practice.


“Whatever Tribal Precedent There May Be”: The (Un)availability of Tribal Law

Bonnie Shucha**

This article explores the costs and benefits of publishing tribal law. It begins by discussing the importance of tribal law and analyzing why tribal law is not widely disseminated. Next it discusses the benefits of making tribal law more accessible, and then it describes publication options for tribes. An appendix lists tribal law collections.

¶1 “Today, in the United States, we have three types of sovereign entities,” explains U.S. Supreme Court Justice Sandra Day O’Connor, “the Federal government, the States, and the Indian tribes. Each of the three sovereigns has its own judicial system, and each plays an important role in the administration of justice in this country.” Yet despite its importance, tribal law, unlike federal and state law, can be very difficult, if not impossible, to locate. For a majority of the 566 federally recognized tribes in the United States today, no law has been published. Where it is available, tribal law is scattered across web sites, databases, and print publications.

¶2 The lack of access to tribal law raises numerous difficulties for both Indians and non-Indians. It is particularly problematic when tribes have concurrent jurisdiction with other sovereign entities. When tribal law is not known, state and federal courts have no choice but to disregard it, along with the tribal norms and values that it represents. Plains Commerce Bank v. Long Family Land and Cattle Co., decided by the U.S. Supreme Court in 2008, illustrates this point. In oral argument, Chief Justice Roberts points out that in addition to applicable federal and state law, the court should also consider “whatever tribal precedent there may be.” Counsel replies, “That’s correct although we have not been able to find precedent.”

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4. See the appendix for collections of tribal law. Note that no two sources are alike in format and content.
Roberts responds, “Well... neither could anybody, right? ... It’s because it’s not published anywhere, right?”

¶3 The unavailability of tribal law is also problematic when tribes have sole jurisdiction over non-Indians. In Montana v. United States, the Supreme Court recognized two circumstances in which non-Indians may be subject to tribal law. First, a tribe may “exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” This issue is of growing concern as tribal casinos attract increasing numbers of patrons to Indian country.

¶4 Second, “a tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.” Although such regulation may be very attractive to tribes, business partners may be justifiably wary of subjecting themselves to unknown tribal laws. One Wisconsin attorney expressed frustration over the lack of access to tribal law. After encouraging a client to do business with a tribe, he was disheartened to find that he was unable to get a copy of the applicable tribal law. This unfamiliarity with tribal law and the tribal judicial system has historically led outsiders to insist that disputes be heard in federal or state court.

¶5 Tribes that do not make their law available are also barred from participation in two recent federal programs that would otherwise grant them increased jurisdiction over crimes occurring in Indian country. The Tribal Law and Order Act of 2010 expands sentencing authority for tribal courts in criminal cases, but the law requires that prior to charging a defendant, the tribal court must first “make publicly available the criminal laws, rules of evidence, and rules of criminal procedure of the tribal government.” The Violence Against Women Reauthorization Act of 2013, which strengthens tribal jurisdiction over non-Indian perpetrators of domestic violence in Indian country, also conditions participation on making tribal criminal laws and procedures publicly available.

8. Id. at 565.
Finally, on a more general level, the lack of knowledge about tribal law can perpetuate misunderstandings and stereotypes about Native Americans. Without access to the law of the tribe, media coverage about native issues may be uninformed and one-sided: “Such a lack of public understanding means that headline Indian law news often confounds and sometimes outrages non-Indians, especially when the political status of tribes is not understood and outcomes appear to reflect unfair racial preferences.”

Each of the difficulties described above would be mitigated by making tribal law more widely accessible.

Why Tribal Law Is Not More Widely Available

Unlike federal and state governments, most tribes have no mandate to publish their laws. There are some notable exceptions, including the Havasupai and the Cheyenne and Arapaho. The Havasupai Tribal Council believes that their people “have a fundamental right to be able to know the laws, to be able to find the law, and to be able to have access to the laws.” To advance this right, they passed a resolution requiring that all current and future legislation be compiled into a code, then published and made available to tribal members. The Cheyenne and Arapaho Tribes have established a constitutional requirement that both the legislature and the court must publish their legal documents. But even when publication is mandatory, tribes have no obligation to widely distribute their laws outside of the tribe.

Without such a mandate, many tribes have chosen not to make their laws publicly available. There are several possible reasons for this. First, and most often cited, is inadequate funding of tribal legal systems. When asked what one of the biggest obstacles facing tribal courts was, Leech Lake Band of Ojibwe Tribal Court Judge Korey Wahwassuck replied, “Money. I think that’s a huge problem.” Congress has also recognized that “tribal justice systems are inadequately funded, and the lack of adequate funding impairs their operation.”

The distribution of laws requires funds for both creation and maintenance of the publication medium (whether print or electronic) as well as the personnel to organize, review, and post the content. Without such funding, tribes may find it difficult to distribute their laws, even if they have the desire to do so. Fortunately, several outside organizations, as described later in this article, have offered to publish legal

15. Const. of the Cheyenne and Arapaho Tribes, art. VI, § 7, art. VIII, § 6 (2006).
16. Carter, supra note 13, at 17, ¶ 32.
18. Aaron Arnold, Interview, Korey Wahwassuck, Associate Judge, Leech Lake Band of Ojibwe Tribal Court, Cass Lake, Minnesota, 2 J. CT. INNOVATION 405, 408 (2009).
content on behalf of tribes. But even with this assistance, tribes must still pay staff to organize, review, and distribute content to those organizations.

¶ 11 Aside from monetary issues, some tribes have affirmatively decided to keep their laws private. There are several possible reasons for this desire for privacy: concern that making law available will subject the tribe to criticism and challenge; worry that opening up tribal culture, especially legal information, to the public will threaten its sacred nature; tribal politics, including concern over causing public embarrassment for tribal members who have been the subject of legal action within the tribe; and belief, although untrue, that publishing in written form will not allow the tribe to change the law in the future. Although these privacy issues are harder to counter than the monetary concerns, tribes should consider the many benefits of publishing their laws before deciding whether to do so.

How Making Tribal Law More Accessible Benefits Tribes and Others

¶ 12 Making tribal law publicly available offers numerous advantages: state and federal judges could consider tribal law in issues of concurrent jurisdiction, tribes could gain increased criminal jurisdiction, non-Indians subject to tribal law would know what exactly they are being held to, and members of the public could better understand a tribe’s rights and perspectives in controversial issues. As Judge Wahwassuck points out, “[t]he misperception that we have ‘no written laws’ or that [Indian country is] a ‘lawless place’ can be corrected through communication and letting people see the process and educating people.”

¶ 13 Broader distribution of tribal law also facilitates idea sharing, both among tribes and between tribal and state governments. Tribal leaders can benefit by studying how other tribes have addressed thorny legal issues through their constitutions, legislation, regulations, and legal opinions. Tribal courts, which have been more open to sharing than tribal legislatures, have already begun to exchange ideas with one another. In her study of tribal law opinions, Professor Nell Jessup Newton of American University Washington College of Law found that tribal judges increasingly refer to the decisions of other tribal courts when seeking

20. Some tribes choose not to share their laws, notes Stockbridge-Munsee Judge David Raasch, because they fear that “someone is going to say, ‘You can’t do that because it violates some statute or some mandatory sentencing rule.’” Aaron Arnold, Interview, David Raasch, Judge, Stockbridge-Munsee Trial Court, Bowler, Wisconsin, 2 J..Ct. Innovation 381, 387–88 (2009).


22. Knapp, supra note 3, at 24; Telephone Interview with Joseph Kubes, Dir. of Strategic Alliances, Thomson Reuters (Dec. 21, 2012).

23. Some tribes falsely believe that their laws will be set in stone if published, according to Richard Monette, University of Wisconsin Law School Professor and faculty advisor for the Great Lakes Indian Law Center. “Law of Indian Tribes” class lecture (Fall 2012) (notes on file with author).


25. Joseph Kubes observes that tribal courts are usually more willing to share their documents than tribal legislatures. Telephone interview with Joseph Kubes, supra note 22.
persuasive authority in a case of first impression. Chief Judge P.J. Herne of the St. Regis Mohawk Tribal Court agrees that the wider availability of tribal materials online makes it easier for judges to look at models from other tribal justice systems.

§14 Collaboration between state and tribal governments is also increasing. “Tribes are becoming steadily more accepted as members of the American family of governments. . . . [S]tate governments recognize the important role that tribal government plays in public affairs, from fish and wildlife management to environmental protection,” observed an experienced tribal law attorney. The sharing of tribal law can help facilitate these relationships by “dispelling ignorance” between states and tribes.

§15 Courts are leading the way with the creation of forums that bring together leaders from both court systems to discuss common challenges. According to Stockbridge-Munsee Trial Court Judge David Raasch, many Wisconsin state judges with whom he has collaborated have shown interest in and have drawn upon tribal law and legal practices, particularly those that relate to problem solving, peacemaking (mediation), and restorative justice. In 2006, leaders from the Minnesota state court and the Leech Lake Band of Ojibwe tribal court partnered to create the country’s first joint-jurisdiction court, the Leech Lake–Cass County Wellness Court. A second joint-jurisdiction court, the Leech Lake–Itasca County Wellness Court, soon followed.

§16 Collaborations between tribes and other branches of state government have also developed. These government-to-government agreements, which have multiplied since the 1990s, regulate state land use and rights-of-way on tribal land, the environment, quality-of-life and cultural issues, and civil jurisdiction. For example, in Wisconsin, a joint agreement signed in 2000 by the Lac Courte Oreilles tribe, the state Department of Natural Resources, and the U.S. Forest Service regulates management of the Chippewa Flowage, one of the state’s largest lakes. In 2004, Wisconsin governor Jim Doyle approved an executive order requiring state agencies to consider tribal needs and consult with tribal governments about state actions affecting tribes.

29. Arnold et al., supra note 24, at 12.
30. Id. at 11–12. As of 2011, at least seventeen states have created tribal-state court forums.
31. Arnold, supra note 20, at 385–86, 389. Judge Raasch also indicated that he would be open to learning from state courts as well. “If they have an idea that works, I’m certainly open to trying anything that works, conventional or unconventional.” Id. at 389.
32. Arnold et al., supra note 24, at 13.
33. Id. at 14.
34. Id. at 15.
35. Id.
These types of initiatives and agreements require close communication and collaboration between state and tribal governments. The exchange of needed information, including applicable tribal law, will be essential to their success. The more tribal courts and legislatures that are willing to make their legal documents available, the more effective these partnerships can become.

How Tribes Can Make Their Law Available

There are two ways that tribes can distribute their laws: self-publishing or contributing content for publication by another organization. Traditionally, tribes that publish legal materials themselves have had to do so in print. Print publication offers a number of advantages, including complete control over the content and quality of the publication and the creation of a document that can be stored for archival purposes. But print publication is very expensive in terms of printing and distribution costs and investment of time; as a result, tribes may not update the materials very often, and they may quickly become outdated. Some publication expenses may be passed on to subscribers, but doing so may mean that only large or specialized law libraries can subscribe. This will limit the accessibility of the law.

The advent of the Internet has made it much easier for tribes to publish their legal content. Many tribes already have a web site that can serve as an inexpensive, freely available publication platform for opinions, legislation, constitutions, and any other legal documents. The electronic format enables easy updating for the tribe and keyword searching of the content for the researcher. And tribes can still retain complete control over the content and quality of the publication.

Publishing on the Internet also has some disadvantages. While the electronic format allows tribes to more easily update content, this can also discourage the retention of older materials for archival purposes. A tribe could choose to preserve the original document intact and then post a second updated document when updates occur, but it is much easier to simply overwrite the old content with the new. Also, while publishing law to a freely available web site certainly makes content more accessible, it does not necessarily make it more findable. Researchers who rarely venture farther than their favorite database, such as Westlaw or LexisNexis, may not realize that they need to go to the tribe’s web site to find their laws. Finally, publication on the Internet still incurs some expense. Although there are no printing costs, tribes will need to devote staff time to organizing and posting content.

The other way that tribes can share their law is by contributing it to an outside organization for inclusion in a tribal law collection. This method saves the cost of printing and distribution and of maintaining content on a web site. Some organizations even offer additional incentives to tribes that are willing to share their content. Also, when a tribe makes its law available as part of a large collection, the researcher can search the law of multiple tribes in one location rather than

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37. Tribal law is a rich source of history. Therefore, it is important that older copies of opinions and superseded constitutions and legislation are maintained as the law changes and evolves. Print publication provides a lasting view of the law that cannot be overwritten.

38. For example, in exchange for their opinions, VersusLaw gives tribal courts a free VersusLaw subscription. See the appendix for more information.
having to look for each tribe’s laws individually. This will save the researcher time and makes the law more findable.

¶22 There are also some downsides to contributing content for outside publication. By offering content to others, tribes give up control over it, although most organizations will likely work with the tribe to ensure that the presentation is satisfactory and will accept changes and remove content at the tribe’s request. In addition, tribes will still incur costs for staff time to organize and send content to the publishing organizations.

¶23 As the appendix illustrates, tribal law collections are published by various organizations, nonprofit and otherwise, each with a slightly different focus. Nonprofits, such as the Native American Rights Fund and the Tribal Law and Policy Institute, offer their collections free on the Internet. This makes the law accessible to all, but perhaps not as findable to those researchers accustomed to using subscription databases like Westlaw and LexisNexis.

¶24 Contributing content to subscription databases has the opposite effect. Researchers who use such databases will be able to easily find and access a tribe’s law. Editorial enhancements, such as Westlaw’s headnotes and key numbering, make the law even easier to locate for the experienced legal researcher. But for those who lack access to these databases, the law is not accessible at all.

¶25 Tribes that wish to make their law publicly available should evaluate each method to determine which is best suited to their needs and budgets. If resources are available, multiple methods could be used to increase control and accessibility.

**Conclusion**

¶26 As a sovereign entity, a tribe has the authority to establish a constitution, to enact and enforce laws, to adjudicate disputes, and to promulgate rules and regulations. In exercising these powers of self-government to establish law, a tribe reinforces its cultural norms and values and protects its sovereign rights. But laws cannot be understood, followed, and applied unless they are made known.

¶27 Making tribal law publicly available benefits both Indians and non-Indians by allowing for greater understanding of and respect for the law of tribes. 39 Such access enables and encourages others—whether state or federal courts or agencies, legal parties and attorneys, or members of the community—to understand, follow, and apply tribal law.

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Appendix

Tribal Law Collections

1. **American Indian Constitutions and Legal Materials**
   a. Publisher: Law Library of Congress
   b. Contents: Links to American Indian legal materials, spanning both nineteenth-century items and constitutions and charters drafted after the 1934 Indian Reorganization Act
   c. Format: Online
   d. Cost: Free

2. **HeinOnline American Indian Law Collection**
   a. Publisher: HeinOnline
   b. Contents: Select tribal constitutions, codes, and charters, 1800s–1980s
   c. Format: Online
   d. Cost: $995 initial subscription, $575 annually thereafter

3. **Indian Affairs: Laws and Treaties**
   a. Publisher: Oklahoma State University Library
   c. Format: Online
   d. Cost: Free

4. **Indian Law Reporter**
   a. Publisher: American Indian Lawyer Training Program
   c. Format: Currently only available in print, but an online version for subscribers is in the works
   d. Cost: $600 annually (print)
   e. Access: For availability at local libraries, see [http://tinyurl.com/curtzql](http://tinyurl.com/curtzql)

5. **Indian Tribal Codes**
   a. Publisher: Marian Gould Gallagher Law Library
   b. Contents: Select tribal codes, charters, and constitutions, 1940s–1988
   c. Format: Microfiche
   d. Cost: unknown
   e. Access: For availability at local libraries, see [http://tinyurl.com/cwk36k6](http://tinyurl.com/cwk36k6)
6. *LexisNexis Native American Law*
   a. Publisher: LexisNexis
   b. Contents: Very select tribal opinions, constitutions, and codes
   c. Format: Online
   d. Cost: depends on subscription plan
   e. Access: by subscription; to see available content, go to http://w3.nexis.com/sources and select “Indigenous Law” from the list of legal topics

7. *LLMC Native American Collection*
   a. Publisher: LLMC (Law Library Microform Consortium)
   c. Format: Microform (full collection) and online (partial collection has select tribal constitutions and codes, 1808–1970)
   d. Cost: unknown
   e. Access:
      i. Microform: for availability at local libraries see http://tinyurl.com/cury99v
      ii. Online: by subscription at http://www.llmc.com

8. *Municode Library: Tribes and Tribal Nations*
   a. Publisher: Municipal Code Corporation
   b. Contents: A few tribal codes, current
   c. Format: Online and print
   d. Cost: Free for online; print available for purchase
   e. Access: http://www.municode.com/Library/Tribes_and_Tribal_Nations

9. *National Indian Law Library*
   a. Publisher: Native American Rights Fund
   b. Contents:
      i. Tribal Law Gateway offers access to more than 170 tribal constitutions and codes, historical and more recent, and links to tribal opinions on other web sites. Copies of constitutions and codes not available on the web site may be obtained by contacting the NILL
      ii. Indian Law Reporter: Tribal Court Cases Index presents a cumulative index of tribal court opinions for all volumes of the ILR
   c. Format: Online
   d. Cost: Free
   e. Access:
10. **Native American Constitution and Law Digitization Project**
   a. Publisher: University of Oklahoma Law Center
   b. Contents: Select tribal constitutions and charters, 1930s–1960s and more recent
   c. Format: Online
   d. Cost: Free
   e. Access: http://thorpe.ou.edu/

11. **Tribal Court Clearinghouse**
   a. Publisher: Tribal Law and Policy Institute
   b. Contents: Court opinions from twenty-four tribes, 1990s–present, with search engine; links to tribal constitutions and codes on other websites; full text opinions made available through a cooperative agreement with VersusLaw
   c. Format: Online
   d. Cost: Free

12. **VersusLaw Tribal Court Database**
   a. Publisher: VersusLaw
   b. Contents: Court opinions from twenty-four tribes, 1990s–present
   c. Format: Online
   d. Cost:
      i. VersusLaw subscription is $39.95 per month per person; free for law schools and participating tribal courts
      1. In exchange for their opinions, VersusLaw gives tribal courts a free VersusLaw subscription so that judges can access other tribes’ opinions besides their own, in addition to U.S. state and federal court opinions
      2. Tribal opinions in VersusLaw database are available through the Tribal Court Clearinghouse website (content is almost identical)

13. **West’s American Tribal Law Reporter**
   a. Publisher: Thomson West
   b. Contents: Select tribal opinions (as well as federal and state opinions on Indian law), 1997–present
   c. Format: Print and online via Westlaw
   d. Cost: print is $247 per volume, $2223 for nine-volume set; online is part of Westlaw subscription plan
   e. Access: For availability at local libraries, see http://tinyurl.com/czzgcf8
14. *Westlaw Native American Law*
   a. Publisher: Westlaw
   b. Contents: Court opinions from twenty-three tribes (including those from *West’s American Tribal Law Reporter*) and codes from twenty-four tribes, 1990s–present
   c. Format: Online
   d. Cost: depends on subscription plan
   e. Access: by subscription; in WestlawNext, enter “Native American Law” into the main search box

15. Self-Publication by Tribes
   a. Some tribes make their opinions, constitutions, codes, and charters available on the Internet. For a list of tribal web sites, see http://www.tribal-institute.org/lists/justice.htm
   b. A small number of tribes publish opinions, constitutions, codes, and charters in print. Consult your local law library to see if it subscribes to these publications
The development of a pedagogy for the teaching of legal research would serve to both improve the quality of research instruction that law students receive and elevate the status of those providing that instruction within the legal academy. Actor network theory, a methodology that originated in the field of science studies to trace relations in the process of group formation, can assist librarians in the development of such a pedagogy and also help them to better understand how to position themselves as the experts best suited to the task of providing that instruction.

Introduction

Reform in law school education seems to be an urgent, though perhaps not imminent, issue. In 1992, a task force created by the American Bar Association’s Section on Legal Education and Admissions to the Bar issued *Legal Education and Professional Development—An Educational Continuum*, which emphasized the need for more skills training in the law school curriculum. The report also identified ten “fundamental lawyering skills,” which included legal research.\(^1\) More recently, in 2007 the Carnegie Foundation for the Advancement of Teaching issued its report, which likewise emphasized the need to integrate more practical skills training into the law school curriculum.\(^2\) The Carnegie report discussed in detail...
why practical skills training is given short shrift by law schools, and it offered ideas on how those skills could be taught to students.3

¶2 There has been no shortage of articles about the impact of online research on the content of legal research courses and on the ways that attorneys do their research.4 Yet it wasn’t until the publication of Paul Callister’s article, Time to Blossom: An Inquiry into Bloom’s Taxonomy as a Hierarchy and Means for Teaching Legal Research Skills, that we had a clear articulation of a theory or method to integrate the practical and the digital into an academic curriculum.5 In his article, Callister argued that librarians are in sore need of a pedagogy, both to guide the legal research instruction they provide to law students and to bolster their efforts to have a more meaningful voice in curriculum reform efforts already under way at law schools.6 Adapting Bloom’s taxonomy of hierarchically ordered learning concepts for legal research instruction, Callister showed how the taxonomy could be used to plan and design legal research classes that equip students with the critical thinking skills necessary to conduct research in the practice of law.7

¶3 In this article, I argue that we need to take a step back; that in order to apply Callister’s pedagogical method, we first need to determine what it is that we will apply that method to. In short, we first need to find out what attorneys need to research and how they go about doing that research. Only then can we design classes that will teach them to do their research more efficiently than they are doing it now.

¶4 In my article, Research in the Wild, I argued from the results of a small pilot study that new attorneys learn how to do legal research from other attorneys, and “that even though a formal apprenticeship period is no longer required for attorneys in the United States, the information networks that exist among attorneys constitute a sort of informal apprenticeship system.”8 That small pilot study gave us a mere glimpse into the world of legal research from an attorney’s point of view.

3. See also Patrick Meyer, Law Firm Legal Research Requirements for New Attorneys, 101 LAW LIBR. J. 297, 2009 LAW LIBR. J. 17; Carolyn R. Young & Barbara A. Blanco, What Students Don’t Know Will Hurt Them: A Frank View from the Field on How to Better Prepare Our Clinic and Externship Students, 14 CLINICAL L. REV. 105, 117 (2007) (presenting the results of a survey of state and federal judges and government lawyers in the Los Angeles and Orange County areas, which found that “quality of research” and “efficiency of research” were among the top eight skills lacking in the externship students they supervised).


6. Id. at 192, ¶ 2; see also 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 (taking Callister’s taxonomy and arguing that resource- or problem-based learning is the best way to put his pedagogical method into practice).

7. Callister, supra note 5, at 199–218, ¶¶ 18–43.

In this article I argue that Actor Network Theory (ANT), a methodology for tracing relations among the constituents of group formation that was developed by sociologists Bruno Latour and Michael Callon among others, can be particularly useful in the context of studying attorneys’ research habits. I will also show that ANT can help librarians understand how to improve their status within law schools and regain their position as the experts best suited to teach legal research.

¶5 The first section of this article outlines the basic tenets of ANT and shows how it has been applied by other researchers. The second section discusses how ANT can be used to study the way in which attorneys conduct research so that law school can better prepare their graduates for this task. The third section discusses how an ANT-based methodology can help librarians understand why their role in teaching legal research has diminished during the past several decades. In sum, I argue that ANT may allow librarians to play an important role in legal education reform. Furthermore, while ANT is of general use, the Latourian concept of the black box could be particularly important in helping librarians better serve their patrons and create a pedagogy for teaching legal research.

What Is Actor Network Theory?

¶6 What makes ANT so interesting and particularly useful in the context of studying attorney research habits, or the habits of any group, is that it acts to clear the playing field of any preconceived notions about the existence of specific networks, groups, or connections; rather, it allows the researcher to find networks or connections as they appear and also in places that he may not have originally thought to look.

¶7 A very quick sketch of the guiding tenets of this methodology looks something like this. First, groups do not exist; we can only perceive group-formation, sets of items that are chained together, that is, attached to each other not by shared membership (an abstract classification) but by specific ties that hold one member of the group to another member. Second, these group formations are the product of actors’ being subject to different agencies emanating from other actors. Every group formation exists because at least one actor is working to make it exist. Third, the pool of actors includes both human and nonhuman objects, with neither being any more capable a priori than the other in the ability to exert agency upon others. People and pencils, clerks and filing forms, are equally potential agents (though the kind of agency they might exercise is not the same).

¶8 This approach departs from the Durkheimian model, which looks first to society or societal institutions to explain why something is the way it is. For Latour, rather than being a ghostly abstraction, society is just another collection of...
networks, an object to be explained rather than a means of explanation. “Group,” “grouping,” and “actor,” he says, are “meaningless” words. Instead, Latour looks for traces of group formations, which are evidenced by the work of actors (whom he sometimes also refers to as actants) who are constantly defining and redefining the boundaries of the group, justifying its existence, and acting as spokespersons for it. Without the work of these actants, there is no group.

¶9 The second tenet of ANT holds that the actors who form these groups are not acting alone in a vacuum but rather are acting under the agencies of other actors; thus, the work of all actors must be mapped out in order to show the existence of the group. For Latour, this means including actors who are not human. An actor is anything that can work a change on some other object—hence a pyromaniac is an actor because he can turn gasoline into a fire, but the fire must be counted as a separate actor as well, for it can burn things that it encounters. Every actor not only affects other actors but also is affected by other actors. Furthermore, how effective an actor is depends on whether it acts as an intermediary or as a mediator. Mediators do their work through translation, by which Latour is referring not to linguistics but to the ability of actors to “transform, translate, distort, and modify the meaning or the elements they are supposed to carry.”

¶10 In translating, the mediator furthers along or increases the success of a particular network. In contrast, an intermediary merely preserves the status quo, “transport[ing] meaning or force without transformation: defining its input is enough to define its outputs.” He offers computers as an example: a computer that is in good working order does nothing more than transport information and knowledge from one place to another or from one actor to another, and is therefore an intermediary “[b]ut if it breaks down, a computer may turn into a horrendously complex mediator,” producing and transforming knowledge rather than merely transporting it. Instead of receiving and presenting an e-mail message, the computer turns the message into gibberish or even bad data that can’t be shown on the screen.

¶11 As this example suggests, the third tenet of ANT reflects the theory’s commitment to objectivity and empiricism. It puts forth the idea that actors include both human and nonhuman entities. Latour acknowledges that it is often difficult to see objects behaving as actors since they are generally stationary and silent, so he outlines certain circumstances in which it is easier to see them acting, such as when they are in the process of being created, when they can be observed at a distance (distance here can be a time distance, a cultural distance, or even a knowledge gap),

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13. Latour defined an actor, or actant, as any entity, human or nonhuman, that is capable of exerting agency upon another actor, or conversely, of being affected through another actant’s actions. Id. at 46–50.
15. Id. at 34.
16. Id. at 39.
17. Id.
18. Id.
19. See Levi & Valverde, supra note 11, at 809.
during what he calls accidents or breakdowns, through consulting archives or other types of historical accounts, and through the use of fictions.20

¶12 Latour originally crafted this theorem to account for the complex and mutual interactions between scientists and the objects they study.21 This science-studies project has applicability far outside of the laboratory or the observatory, though, and Latour and other researchers have used this approach to study other objects of sociological inquiry. In examining the failure of a promising and technologically advanced railway system in France, Latour considered as actors the full system site study that was conducted during the testing phase, along with the individual reports, charts, and the microprocessors that produced the data in the charts, the engineers who worked on the project, and the peculiarities of French bureaucracy.22

¶13 More relevant for our purposes is his study of a major organ of the French judicial system. In his ethnography of the Conseil d’État, France’s highest administrative court, Latour treats the case files, the individual documents that make up the case file, and the body of precedents within the Conseil’s library as entities that are capable of behaving as full-blown actors, along with the conseillers and rapporteurs who investigate, argue, and decide the cases. Even the paper clips holding the files together and the order of the mailboxes that reflect the hierarchy of the conseillers within the Conseil are given agency by Latour and are seen by him as worthy of attention in order to understand France’s system of administrative law.23

¶14 The main reception of Latour in the Anglophone world has understandably been in science studies, though his work has also been used in disciplines far removed from the field of science, such as the study of religion.24 Other scholars have found actor network theory to be useful in the study of natural resources planning,25 urban planning26 and municipal governance,27 judicial decision-making,28 and specific

20. See Latour, supra note 10, at 79–82.
25. Mrill Ingram, Keeping Up with the E. Coli: Considering Human-Nonhuman Relationships in Natural Resources Policy, 50 Nat. Resources J. 389 (2009) (arguing that ANT can provide for a more holistic approach to food safety and natural resources management policies within the United States).
26. Irus Braverman, Governing Certain Things: The Regulation of Street Trees in Four North American Cities, 22 Tul. Env. L.J. 35 (2008) (ANT used to explain the role trees play [as nonhuman actants] in the development of laws, regulations, and guidelines applying to city streets and in regulating the behavior of pedestrians and inhabitants).
policy initiatives. One can get a sense of the utility of ANT in these arenas by looking at one representative case: David Frankford’s work on the Healthcare Financing Administration (HCFA). Frankford used ANT to help shed light on how the HCFA decided to exclude “certain types of testing and treatment for food allergies” from Medicare coverage. He showed how the traditional allergists (those who rely on the immunoglobulin E (IgE) skin test to diagnose an allergy) were able to “out-network”—that is, produce more robust networks with more capacities—than the nontraditional allergists (those who would expand diagnosis of a food allergy beyond a positive skin test and include other symptoms such as headache, vertigo, and asthma). The traditional allergists became the “sole spokespersons” for what constituted an allergy by enrolling both human and nonhuman actants such as skin tests, doctors, doctors’ reports, journal articles, insurers, and even the federal agencies that existed below the HCFA. In contrast, the HCFA challenged the results of the studies offered by the nontraditionalists, not because the studies were less rigorous or objective than those submitted by the traditionalists but because the traditionalists were more successful in enrolling actants to their side.

§15 Even more on point for us is the way in which Mariana Valverde has used ANT to show the role that legal (and nonlegal) terminology, expert evidence, eyewitness testimony, and outdated studies play in judicial decision making by appellate courts in the United States and Canada. Judges have used these means to justify the existence of zoning ordinances that under black letter law would not be allowed to stand, much in the same way the Conseil d’Etat judges studied by Latour used a legal fiction to extend the term of a government contract and thereby avert a situation that would have created the potential for litigation against the government.

§16 Besides showing us the versatility of ANT, these studies reveal what may be its most Promethean aspect: the power to help us set our preconditions aside. ANT does this by not allowing us to make broad judgments, which can reproduce already existing prejudices. Rather than simply presume truth, ANT forces us to follow the networks, to show concretely how specific actors are tied to other specific actors. This approach is particularly useful for law librarians, who must set aside preconceptions if they are to respond effectively to the crisis in legal research pedagogy.

30. Id. at 179.
31. Id. at 178–79.
32. Id. at 249–50.
33. Id. at 250–53.
35. LATOUR, supra note 23, at 54–58.
How Actor Network Theory Can Help Librarians Learn About the Research Needs of Practicing Attorneys

¶17 How would one conduct an ANT-based study that examines how attorneys conduct and learn to conduct research? The first step would be to wipe away preconceived notions, one of which might be that attorneys do (or don’t do) research the way they were taught in law school, in their legal research and writing classes, in their advanced legal research classes, or in the clinical programs available to them. We would also wipe away any notions that the West Digest System does (or does not) play a role in attorneys’ research, or that the researchers should start off with print resources before moving on to electronic ones (or vice versa). It’s not that any of these notions is incorrect; rather, we have no evidence that they are correct.

¶18 Instead, we would look for traces of group formations where we see connections or associations between possible actors, remembering to include among those actors both human and nonhuman entities. If we were to focus on law students, perhaps by looking at students in a first-year legal research and writing class, we might see a large number of connections between the instructors and individual students; among the students themselves; and between students and inanimate objects such as the West digest volumes, sets of annotated codes, secondary sources such as legal encyclopedias or treatises, and of course legal databases such as LexisNexis and Westlaw.

¶19 If we were to focus on a large law firm, we would find connections between attorneys and various documents in the firm’s brief bank, between attorneys and certain practice guides, among attorneys who belong to a particular practice group, and maybe a few between a summer associate and the West digest volumes in the firm library (although this last connection might not exist in the future because of plans to get rid of all the digest volumes).

¶20 Looking outside the law school classroom and law firm setting, we might see connections among a group of recent graduates working at different firms who meet weekly for happy hour, or among the attendees of a mixer being hosted at a county bar association. We might also look at virtual spaces such as electronic mailing lists, where attorneys who have never met each other form connections through posts. One such list, run by the California Appellate Defense Counsel, allows contract attorneys working on criminal appeals throughout the state to post questions about the briefs they are writing, and other attorneys post answers to those questions or upload documents.

¶21 Remembering that inanimate objects can be more easily observed as actors when they are being created or at moments when accidents or breakdowns occur, we may want to observe attorneys when a particular database is offline or during a power outage. We may also want to focus on law students and attorneys during moments of transition, such as when a print tool is replaced by an online database or during the beta stages of development when a tool is first released, such as when WestlawNext or Lexis Advance first appeared in law schools and law firms.
How Actor Network Theory Can Help Librarians Redefine Their Role as the Legal Research Experts Within Law Schools

¶22 We now reach one of the most important points of this article: the potential relations between ANT, law librarians, and legal pedagogical reform. Extrapolating both from other uses of ANT to study administrative and legal systems and our own thought experiment about what an ANT analysis of contemporary legal research might look like, it stands to reason that ANT can also help librarians who wish to strengthen their standing as the recognized authority for teaching legal research within law schools.

¶23 As we have seen, many aspects of Latour’s work help us understand how information flows and where law librarians can intervene—mediators, intermediaries, translators, breakdown, and controversy all play a role in the legal research process. Another Latourian tool is the concept of the black box. Derived from a term used by cyberneticians, the black box refers to something (a machine or a set of commands) that is too difficult to understand or explain; in its place, cyberneticians “draw a little box about which they need to know nothing but its input and output.”

¶24 An example of a black box can be an airplane (note that I am not referring to the airplane’s crash recorder, which is also called a black box). Passengers generally know little about how an airplane works, let alone how to create one; they are content with the knowledge that it transports them from one location to another in a relatively short period of time. If a problem arises, however, then the plane is perceived as a complex assemblage of different parts and substances. We all know the brief horror of unexpected popping or buzzing sounds in an airplane. In such moments, the black box of air travel breaks open and reminds us that we are located 35,000 feet above the surface of the earth, without wings of our own, and with no means of independent breath at such a height.” A black box can also be an established fact, such as the double helix structure of DNA. Latour traces the tortuous road that Francis Crick and James D. Watson traveled to “discover” the structure of DNA—fending off criticism from other scientists and even their lab director and eventually creating a model that is generally accepted today.

¶25 According to Latour, a black box is created through “acts of translation,” in which actors are enrolled in one’s cause. Furthermore, those enrolled actors must be kept under control, otherwise “the assembly of people necessary to turn a claim into a black box will behave unpredictably: they will dissent, they will open it, tinker with it; worse, they will lose interest and drop it altogether.” To see the struggle to create black boxes within the legal academy we need only turn to Duncan Alford’s article The Development of the Skills Curriculum in Law Schools: Lessons for Directors of Academic Law Libraries. In this article, Alford details how legal

36. Latour, supra note 9, at 2–3.
38. Id. at 36–37; Latour, supra note 9, at 1–14.
39. Latour, supra note 9, at 108.
40. Id. at 122.
writing instructors have improved their status within law schools and how they have assumed the responsibility of teaching legal research, an area of instruction that had previously been within “the long-held subject expertise of the librarians.”

¶26 If we were to look at Alford’s argument through the lens of Latour’s work, we would see that the legal writing instructors have been much more successful than librarians in enrolling actors to their side. Two associations for legal writing instructors, the Legal Writing Institute (LWI) and the Association of Legal Writing Directors (ALWD), facilitate communication among members and act as vehicles for member advocacy (especially ALWD). Both organizations publish scholarly journals that are recognized as “substantive” by the rest of the legal academy; legal writing instructors have also proven themselves prolific in producing scholarship for publication in these and other law journals and in books. The two organizations not only encourage their members to improve their status within law schools but also keep them focused on that task. In addition, by producing scholarship on par with the law faculty, members can win over the latter to their side.

¶27 In contrast, academic law librarians make up only a minority of the Association of American Law Libraries (AALL) membership, which includes librarians from firms, government, and special libraries with divergent interests and goals. The AALL therefore cannot be used as effectively to promote the interests of academic law librarians, and the diversity of its membership can produce “dissent,” “tinkering,” and “loss of interest.”

¶28 Although AALL does publish a scholarly journal, the Law Library Journal, and there exist other publications that focus on libraries and research, such as Legal Reference Services Quarterly, librarians’ scholarship tends to focus on “bibliographic scholarship or scholarship dealing with the administration of law libraries,” topics that interest mainly just librarians and, perhaps more important, are not considered to be on par with topics that interest the law faculty. Thus, academic librarians are not able to enroll the rest of the legal academy as actants to their cause.

¶29 The problem librarians now face is that legal writing instructors have constructed a black box that places the teaching of legal research within legal writing programs, and once a black box is created, it becomes difficult (although not impossible) to question. It would appear, however, that the black box is not yet a sure thing, for controversy still exists over who should teach legal research. This brings us to Latour’s definition of controversy, which is, simply put, something that exists when one actor makes a statement and another actor attempts to dispute it. “[T]o create a black box,” Frankford observes, “the fact-builder must make all those potential dissenters assent to the facts.”

42.  Id. at 309.
43.  Id. at 308.
44.  Id.
45.  Id.
46.  Id. at 312.
48.  Alford, supra note 41, at 312.
49.  Latour, supra note 9, at 30–33.
50.  Frankford, supra note 29, at 233.
What librarians must do is increase that controversy and enroll allies to their side, thereby creating their own black boxes. They need to do what Alford has advocated that librarians do: publish scholarly articles that are recognized as substantive by the rest of the legal academy, become more active in organizations such as the American Association of Law Schools and the ABA, and create advocacy organizations that are focused on the interests of academic law librarians.

Scholarship, though, is only one set of actants; pedagogy is another. Adopting a pedagogy such as the one Callister described accomplishes two things. First, it endows students with the cognitive skills to create and implement a research plan that enables them to obtain knowledge in the most cost-effective way. Second, it secures the status of librarians within the law school academy by giving them a teaching methodology that puts legal research classes on a footing with other substantive core classes taught in law schools and by providing them with a subject matter for legal scholarship that is on par with that produced by the rest of the legal academy.

Finally, ANT can help librarians find allies among practicing attorneys, be they novices or experienced attorneys supervising new hires. Attorneys have a vested interest in having law schools provide legal research classes that prepare new graduates for practice. ANT can help librarians determine what topics and skills need to be covered in a legal research class. Carrying out a full-scale ethnography, such as those conducted by Latour, may be infeasible for many librarians, but ANT can still offer librarians valuable lessons in how to observe, how to listen, and how not to let their own preconceived notions get in the way of finding out what attorneys want or need to become more effective legal researchers and problem solvers (two things that are neither mutually exclusive nor overlapping).

Conclusion

ANT can help librarians understand what they need to do to reclaim their status as the legal research experts in the academy and can also help them develop and teach legal research classes that meet the needs of practicing attorneys, reinforcing the librarians’ claim as legal research experts. ANT, in essence, is a simple concept—it merely states that success is more likely to be achieved by those who are able to enroll the support of others, and it further states that such support is obtained more readily by those who are able to see what others actually want, not what they think they want. The legal community has been clamoring for law schools to teach legal research skills for quite a while. It is time that the legal research experts—librarians—reclaim responsibility for this task and do it right.
A Preliminary Legal Bibliography of the Pitcairn Islands, South Pacific Ocean

Michael O. Eshleman

Pitcairn Island has always attracted interest far disproportionate to its size. Settled in 1789 by the Bounty mutineers, Pitcairn has a history far better chronicled than that of most Pacific islands. The 2004 sexual assault trials on the island spurred much academic writing about the island and Britain’s oversight of its last Pacific colony. Legal materials on the island are widely scattered in government reports, books by visitors, journals, and archives. This article describes those sources and identifies others that need to be investigated. The article also provides guidance for beginning legal research on other Pacific island jurisdictions.

Although Pitcairn Island has a long bibliography of writings, much of it simply recycles what has come before. The legal side of its story received little notice until 2004, when the sexual assault trials of seven men (including the mayor) made headlines around the world. The only existing legal bibliography, published before the trials, is one and one-third pages long. Sources of the island’s legal history are scattered around the globe. While the footnotes to my own articles will help those who follow me, an article annotating the sources will be useful to other researchers. I also offer guidance for those researching other Pacific jurisdictions.

Background

The mutineers of the Bounty settled on Pitcairn in 1790. (There had been Polynesians on the island, but they were gone by 1767, when the island was first sighted by Englishmen.) The account of William Bligh, captain of the Bounty, was the first of many books about the mutiny. The one by Sir John Barrow, the chief
administrative officer of the Admiralty—who had access to official papers—is the cornerstone of all later works. The well-illustrated exhibition catalog for the bicentennial commemoration at the National Maritime Museum is an excellent introduction to the subject. The best modern account is by Caroline Alexander. There is also a recent book-length bibliography on the mutiny. Primary source material on the courts-martial resulting from the mutiny can be found in several volumes.

¶3 Most books on Pitcairn look only at the early days of settlement, but a scholarly, more comprehensive book was recently written by Robert W. Kirk. Another book with a good account of the island in the twentieth century is by Spencer Murray, but it is difficult to obtain. An Ohio lawyer, David Silverman, lived on the island in the 1960s and wrote a valuable history and sociology. Sven Wahlroos compiled an extremely useful dictionary of all people and things about the mutiny and the island, and the entries are available online.

¶4 For decades before the sexual assault trials, Britain had neglected law and order on the island, providing neither police nor courts. In 2004, seven men—out of a population of a few dozen—were charged with sixty-four counts under Britain’s Sexual Offenses Act, 1956. The investigation and trials took place under the intense, critical gaze of the press, and the proceedings produced a tremendous

Edward Christian, The Bounty Mutiny 1 (2001). This was published immediately after his return in 1790. Two years later Bligh published a full account of the voyage, including events before the mutiny, in William Bligh, A Voyage to the South Sea, Undertaken by Command of His Majesty for the Purpose of Conveying the Bread-Fruit Tree to the West Indies in His Majesty’s Ship the Bounty, Commanded by Lieutenant William Bligh, Including an Account of the Mutiny on Board Said Ship, and the Subsequent Voyage of Part of the Crew, in the Ship’s Boat, from Tofoa, One of the Friendly Islands, to Timor, a Dutch Settlement in the East Indies (1792), reprinted in William Bligh et al., A Book of the “Bounty” (George Mackaness ed., 1938).


8. E.g., William Bligh & Edward Christian, The Bounty Mutiny (2001); The Court-Martial of the “Bounty” Mutineers (Owen Rutter ed., 1931); Peter Heywood & Nessy Heywood, Innocent on the Bounty: The Court-Martial and Pardon of Midshipman Peter Heywood, in Letters (Donald A. Maxton & Rolf E. Du Rietz eds., 2013); Edward Taggart, A Memoir of the Late Captain Peter Heywood: With Extracts from His Diaries and Correspondence (1832).


amount of law-making and literature. Other legal documents concerning the island are detailed below, beginning with primary sources.

**Primary Sources**

§§ This section discusses the sources for the laws of the island: the constitution, the laws, publication of the laws, case law, and international agreements.

**Constitution**

§ 6 Queen Elizabeth II approved a constitution for Pitcairn on February 10, 2010, by an order-in-council. The constitution appears as an appendix to that order, which was issued by Her Majesty’s Stationery Office as a separate pamphlet. The order was also reprinted in the British government’s Statutory Instruments compilation for 2010 and in the official Pitcairn statute book, described in the next section. The constitution became effective March 4, 2010, by a proclamation issued by the governor.

§ 7 Three law review articles discuss the constitution. One looks at British efforts to frame a new basic law. Another provides a brief introduction to the constitution. A recent article of mine examines the constitution in depth, describes the democracy deficit on Pitcairn, and discusses how legislation in Pitcairn compares with that of other British colonies.

§ 8 The previous basic law of the island was a 1970 order-in-council and instructions issued by the queen to the governor. From 1952 to 1970 Pitcairn was administered by a governor based in Fiji, who looked after both islands. When Fiji gained its independence in 1970, a separate order for Pitcairn was issued. The 1970 order was twice amended—in 2000 and 2002—to alter the judiciary.

§ 9 The 1970 order superseded a 1952 order-in-council. A minor amendment to the 1952 order was made in 1963 to reflect the possibility of a regency. The 1952 order was necessitated by the Western Pacific High Commissioner’s removal from Fiji to Honiara in the British Solomon Islands Protectorate after a court found

24. DUPONT, supra note 2, at 1183.
that the High Commissioner had no authority to make regulations for the islands. The 1952 order made Pitcairn a distinct colony with its own administration.

¶10 The Western Pacific High Commissioner, based in Suva, Fiji, had administered Pitcairn and other far-flung islands from 1898 to 1952. In the mid-nineteenth century, Pacific natives were being pressed into slavery in South America and Australia, and establishment of the High Commission was intended to combat the slavers. The High Commission was created by an order-in-council in 1877 and its powers enlarged under an 1893 order-in-council. Joseph Chamberlain, the British colonial secretary, in 1898 placed Pitcairn under the High Commissioner to facilitate a murder trial.

Post-1952 Laws

¶11 Pitcairn laws are called ordinances and are promulgated by the governor. There is no legislature on the island, and the governor has sole power to make laws. The Island Council has limited power to pass regulations, which would be called local by-laws in Britain.

¶12 An official edition of the Pitcairn laws was published in 2010, compiled by Paul Julian Treadwell. Treadwell, a New Zealand barrister, served as the Legal Adviser to the governor of Pitcairn. I know of no library that owns Treadwell’s volume in print, but it can be downloaded as a PDF or ordered from the Pitcairn government’s web site. The regulations adopted by the Island Council appear in chapter 11 of Treadwell’s book.

25. In re McCoy, W. Pac. High Comm’n Review No. 41 of 1951 (Fiji Sup. Ct., July 14, 1951) (Vaughn, C.J., in chambers). This decision is in the Privy Council Record, described at the text accompanying infra note 46.


27. See, e.g., William T. Wawn, The South Sea Islanders and the Queensland Labour Trade (1893).

28. E.g., Communications of Importance Respecting Outrages Committed on Natives of the South Sea Islands, 1873, [C. (2d series) 244], in 50 P.P. (1873) 51. “P.P.” is Parliamentary Papers and the number in parentheses is the year of the parliamentary session. See also Stephen E. Young, “By Command of Her Majesty”: An Introduction to the Command Papers of the United Kingdom, 92 Law Libr. J. 81 (2000).


31. Laws of Pitcairn, supra note 16.

¶13 That volume supersedes the 1984 edition of the laws,33 which WorldCat indicates no American library owns. It replaced the 1971 edition compiled by Donald A. McLaughlin, an Australian lawyer in the British colonial service in Fiji who was Treadwell’s predecessor as Legal Adviser.34 The Library of Congress, the New York Public Library, and Pacific Union College own copies of McLaughlin’s work as do libraries overseas.

¶14 The 2011 and 1972 volumes have tables that list all the laws enacted for Pitcairn since 1952, when the government was put on a new footing. Those tables include ordinances that have been repealed or are no longer effective, such as the Marriage Validation (Pitcairn) Ordinance of 1953, which affirmed the validity of marriages solemnized on the island when a marriage law was not in place. The Law Library Microfilm Consortium has copies of slip ordinances going back to 1968.35 The University of Hawaii and the New York Public Library have paper copies of some ordinances.36 Pacific Union College also has slip copies of many of them. Recent ordinances appear on the Pitcairn government’s web site. There is no compilation of the session laws.

Pre-1952 Laws

¶15 In 1941, the Western Pacific High Commissioner enacted a code of laws.37 The text was printed in the Western Pacific High Commission Gazette and issued as a booklet by the Fiji government’s official printer. The 1941 laws were drafted by Henry Evans “Harry” Maude, a colonial service officer who went on to become a distinguished historian of the Pacific.38 Maude consulted with the islanders in the drafting, and every adult Pitcairner signed the resulting code.39 Maude’s starting point in drafting was a code proposed by James Scott Neill, a lawyer and colonial officer in Tonga who visited Pitcairn in 1936.40


35. Dupont, supra note 2, at 1207. The film number is LLMC 97-495. As of April 2014, the Consortium has not digitized this film as part of its online collection.

36. Dupont, supra note 2, at 1207.


39. The original copy of the laws, signed by the islanders, is in H.E. Maude’s papers and reprinted in the Privy Council Record, described at the text accompanying infra note 46.

‡16 The previous code was written in 1904 by R.T. Simons, the British consul at Tahiti and the Deputy Western Pacific High Commissioner overseeing Pitcairn. That code replaced one written in 1893 by Captain Eustace Rooke of H.M.S. Champion. Neither of these codes was officially published in any source I have been able to locate. But both were transcribed from the originals in Pitcairn’s official register by the American ethnologist Harry L. Shapiro and published in his 1936 study of Pitcairn.

‡17 The previous code, as it existed in 1884, was transcribed by a visiting naval officer and published in a command paper. A transcription of the laws as they stood in 1878 was made by Algernon F.R. de Horsey, the commander-in-chief of the Royal Navy’s Pacific Station, and published in a report issued by Her Majesty’s Stationery Office.

‡18 Royal Navy officers were the source of most Pitcairn laws in the nineteenth century. Admiral Fairfax Moresby in 1853 proposed amendments to the laws, which the islanders accepted. Those were amendments to the code that Captain Russell Elliott of H.M.S. Fly had drafted in 1838. Neither was officially published. Elliott’s laws were printed in a mid-nineteenth century book by Walter Brodie, an American who was stranded on the island and was able to copy the original during his stay. Both Elliott and Moresby’s laws are in the Privy Council Record, an online collection of documents containing legal documents and “a variety of 19th and 20th century accounts of visits to Pitcairn by various persons, correspondence and other relevant historical documentation.” Maude called Elliott’s code Pitcairn’s first constitution.

### Official Gazette

‡19 The Pitcairn government does not have an official gazette or a systematic publication of official documents. The island does have a monthly newsletter, the *Pitcairn Miscellany*, mainly circulated to overseas supporters of the island. It publishes the fact that new laws have been promulgated but does not publish their texts. Pacific Union College has a collection of the *Miscellany*. The *Western Pacific High Commission Gazette* once published notices related to Pitcairn. While some
libraries, such as those at the Ohio State University and the University of Iowa, own issues of the *Gazette* after it resumed publication following World War II, the libraries at the University of Hawaii and Harvard appear to be the only American ones owning full runs of the *Gazette* from its inception in 1914. I have not been able to examine the pre-war issues of the *Gazette* and their indexes to discover what else related to Pitcairn lies in those pages.

**Case Law**

¶ 20 The Pitcairn judiciary consists of the Magistrate’s Court, the Lands Court, the Supreme Court (the general jurisdiction trial court), and the Court of Appeal.\(^51\) New Zealand judges serve in the Supreme Court and the Court of Appeal and a Pitcairner is the Island Magistrate. A final appeal to the Judicial Committee of the Privy Council in London is possible. Because of questions about the validity of the appointments of the judges of the Court of Appeal, a further order-in-council confirming the appointments was issued in 2012.\(^52\)

¶ 21 There are only six published decisions relating to Pitcairn, and all arise out of the 2004 prosecutions. An attempt to stop the trials from taking place was rejected by the Supreme Court, the Court of Appeal, and the Privy Council.\(^53\) All the defendants were convicted, and those convictions were affirmed by the Court of Appeal and the Privy Council.\(^54\) An eighty-page decision on human rights and constitutional questions in a new, unrelated prosecution was handed down in October 2012 and affirmed in April 2013.\(^55\)

**International Agreements**

¶ 22 A handful of international agreements specifically concern Pitcairn. France and Britain have delineated their maritime boundaries between French Polynesia and Pitcairn.\(^56\) In 2002, Britain and New Zealand concluded a treaty to allow the

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51. Pitcairn Is. Const. art. 43(1) (creating Court of Appeal and Supreme Court); Judicature (Courts) Ordinance, sec. 2 (Pitcairn Is.) (creating Magistrate’s Court), codified in *Laws of Pitcairn*, supra note 16, ch. 2; Lands Court Ordinance, sec. 3 (Pitcairn Is.) (creating Lands Court), codified in *Laws of Pitcairn*, supra note 16, ch. 15.


Pitcairn courts to sit in New Zealand, necessitating legislation in New Zealand to become effective.

**Secondary Sources**

¶23 This section discusses secondary sources: official accounts of the island, general law review articles, legal histories, material on the 2004 trials, the United Nations, and libraries and archives holding material.

**Officials’ Published Accounts**

¶24 Several accounts by visiting naval officers and public officials were published in the nineteenth and twentieth centuries. David Scott, the first governor of Pitcairn to visit the island, includes several pages about his 1973 trip to Pitcairn in his memoir. James Scott Neill also discussed his time on Pitcairn in 1936 in his memoir.

¶25 Neill’s official report, along with that of Dr. Duncan Cook—who was assigned to review the medical condition of the population—was issued by Her Majesty’s Stationery Office. So were the reports by Henry Guy Pilling, assistant to the High Commissioner, who visited for six hours in 1929, and High Commissioner Cedric Rodwell, who visited for seven hours in 1921. R.T. Simons’s scathing account of the islanders was laid before Parliament after his 1904 visit.

¶26 In the nineteenth century, several collections of official letters were laid before Parliament. Some were general reports, and others concerned the relocation of the Pitcairn population to Norfolk Island in 1857. Two reports by visiting naval
officers were printed—those of Captain Bouverie Clark of H.M.S. *Sappho*, who visited in 1882, and that of Admiral de Horsey, who visited in 1878.65

**Legal Histories**

¶27 A short account is in Jerry Dupont’s bibliography, *The Common Law Abroad*.66 Another is in Kenneth O. Roberts-Wray’s magisterial 1966 work on British colonial law.67 Roberts-Wray, a Colonial Office lawyer, was fascinated by the island and had H.E. Maude review the Pitcairn portion of the book before publication. The successor to Roberts-Wray is 2011’s *British Overseas Territories Law*, written by two Foreign and Commonwealth Office lawyers; it has a chapter on Pitcairn and each of the remaining British colonies.68

¶28 Donald A. McLoughlin, who served as legal adviser to the governor of Pitcairn, published a two-part legal history in *Transactions and Proceedings of the Fiji Society*, which appeared in 1969 and 1971.69 A version of these articles was included as a preface to the 1974 official edition of Pitcairn laws.70 The Pitcairn Islands Study Center at Pacific Union College posts the unpaginated text on its web site.71 McLoughlin’s account was strengthened by his access to papers in the official archives in Fiji (more on that below). Andrew Lewis, a professor of comparative legal history at University College London, wrote a chapter on the legal history in a recent book on Pitcairn.72 I wrote two articles that expanded on the story and brought it to the present.73

¶29 A few older works have brief accounts of Pitcairn. The book *South Pacific Islands Legal Systems* is a survey of the laws of the titular jurisdictions. Its Pitcairn chapter is obsolete, considering the vast changes in Pitcairn law since the book was published.74

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66. DUPONT, supra note 2, at 1205.
68. IAN D. HENDRÝ & SUSAN DICKSON, BRITISH OVERSEAS TERRITORIES LAW (2011).
70. DONALD A. MCLOUGHLIN, LAW AND ORDER ON PITCAIRN’S ISLAND: AN ACCOUNT OF THE DEVELOPMENT OF THE SYSTEM OF GOVERNMENT AND LAWS OF PITCAIRN ISLAND FROM 1791 TO 1971, in LAWS OF PITCAIRN, supra note 16.
published in 1993.\textsuperscript{74} Dupont’s book lists a number of nineteenth century surveys of world law that briefly mention Pitcairn, but none of them are particularly helpful.\textsuperscript{75}

Law Reviews

\textsuperscript{76} Prior to my own articles, there were only two American law review articles on Pitcairn. Dan T. Coenen of the University of Georgia Law School reflected on the enactment of the American constitution with events on Pitcairn.\textsuperscript{76} Joseph Bockrath of the Louisiana State University Law Center looked at the islands of Pitcairn and Tristan da Cunha by comparing them to fictional islands such as that in William Golding’s \textit{Lord of the Flies}.\textsuperscript{77} And Curtis E. Pew, now a professor at Hofstra University, wrote an article on the mutiny.\textsuperscript{78}

Material on the 2004 Cases

\textsuperscript{79} The bulk of writing on Pitcairn laws and courts concerns the 2004 trials. Two books discuss those trials. An excellent popular account was written by British journalist Kathy Marks, who was on Pitcairn to cover the trials for London’s \textit{Independent}.\textsuperscript{79} Besides her book and newspaper articles, Marks recently published an article questioning why nobody stopped the attacks.\textsuperscript{80} The other was a collection of academic papers published by the Oxford University Press.\textsuperscript{81} That volume has been reviewed in Scots, Kiwi, American, and English law reviews.\textsuperscript{82}

\textsuperscript{82} Law professors in New Zealand and Britain have written a number of articles on the trials. The first appeared when the charges were laid and discussed

\begin{itemize}
\item \textsuperscript{74} Dhirendra K. Srivastava, \textit{Pitcairn Island, in South Pacific Islands Legal Systems} 252 (Michael A. Ntumy gen. ed., 1993).
\item \textsuperscript{75} \textit{Dupont}, \textit{supra} note 2, at 1206.
\item \textsuperscript{78} Curtis E. Pew, \textit{Mutiny on the Bounty} (ex-Bethia), 31 J. MAR. L. & COM. 609 (2000).
\item \textsuperscript{79} The American edition is \textit{Kathy Marks, Lost Paradise: From Mutiny on the Bounty to a Modern-Day Legacy of Sexual Mayhem, the Dark Secrets of Pitcairn Island Revealed} (2009). It was published in Britain as \textit{Trouble in Paradise: Uncovering the Dark Secrets of Britain’s Most Remote Island} (2008) and in Australia as \textit{Pitcairn: Paradise Lost; Uncovering the Dark Secrets of a South Pacific Fantasy Island} (2008).
\item \textsuperscript{80} Kathy Marks, \textit{When Bystanders Fail}, 35 GRIFFITH REV. 92 (2012).
\end{itemize}
the new court system, how the men could be tried, and the issues of human rights laws. Anthony Angelo, a law professor at Victoria University of Wellington, is the dean of South Pacific legal studies. He wrote several articles on the Pitcairn trials. The first, written with Andrew Townend, suggested that restorative justice was a better solution than criminal prosecutions. Angelo and Fran Wright—now with Australia’s University of New England—looked forward in 2004 to the trials and what they would mean for the island’s future. Angelo and Wright then examined a 2003 ordinance enacted by the governor of Pitcairn to remove the mayor of the island, one of the men charged, and argued it was an illegal bill of attainder. They followed up on the trials and appeals with articles in 2005 and 2006.

¶After the convictions were upheld by the Judicial Committee of the Privy Council in July 2006, Wright analyzed that decision. She also examined the due process problems posed by the trials. So did Stephen George, a law professor at University College London. Helen Power, of the law school at Wales’s University of Glamorgan, looked at publication of the law the men were convicted of violating and their knowledge of the wrongness of their acts. In its law review, University College London published a series of articles that focused on the promulgation of British law on the island, what the law is on Pitcairn, the legality of the British administration of Pitcairn, and the rule of law and Pitcairn. A few pages of an article by Margaret Briggs of the University of Otago addressed the last topic.

Denise Lum examined the prosecutions in light of “cultural practices.”

¶Sue Farran of the University of Dundee has written four articles. The first focused on the due process issues of the trials. The second looked at how the courts addressed a challenge to Britain’s sovereignty over the island that was asserted during the trials. The third evaluated the establishment of the Pitcairn

judiciary in light of European human rights law.\textsuperscript{97} And the last further explored the nature of British dominion over Pitcairn and compared it to the court decisions over the Crown’s exile of the native population of the British Indian Ocean Territory.\textsuperscript{98}

\textbf{United Nations}

\[35\] Because of its status as a non-self-governing territory, Pitcairn is monitored by the United Nations. This is generally done through the General Assembly’s Decolonization Committee, which issues an annual report on the island, usually in the first quarter of the year.\textsuperscript{99} The report is followed by a resolution in the General Assembly.\textsuperscript{100} These documents dating back about twenty years can be found on the U.N.’s documents web site.\textsuperscript{101} In the 1970s, the United Nations pushed for the independence of the island, a topic addressed in an excellent law review article by Robert E. Gorelick.\textsuperscript{102} Details on the Decolonization Committee’s interest in Pitcairn can be found in its reports to the General Assembly.\textsuperscript{103}

\textsuperscript{97} Sue Farran, Conflicts of Laws in Human Rights: Consequences for Colonies, 11 EDINBURGH L. REV. 121 (2007).

\textsuperscript{98} Sue Farran, Prerogative Rights, Human Rights, and Island People: The Pitcairn and Chagos Island Cases, 2007 PUB. L. 414.


\textsuperscript{103} E.g., Report of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, at 101–04, 112,
examination of Pitcairn’s international status was made by Maria Amaomo of the University of Otago, who lived on Pitcairn for two years.104

Libraries and Archives

[§36] The largest collection of materials on Pitcairn is in Napa County, California, at the Pitcairn Islands Study Center at Pacific Union College in Angwin.105 Pacific Union is a Seventh-Day Adventist school. The Pitcairners converted to the Adventist faith in the 1880s, and the church has strong ties to the island. The college’s holdings include the collection of attorney and author David Silverman.106

[§37] The papers of the Western Pacific High Commission are now at the University of Auckland.107 They originally were in the Western Pacific Archives in Suva, Fiji, but in 1978 the British government closed the archives and removed the papers to England; they returned to the region in 2007.108 Searching the “Manuscripts and Archives” catalog of the University of Auckland’s library for “WPHC” will produce PDFs of the typescript inventories.109 Record Groups 23 and 25 contain the primary collections of Pitcairn material.

[§38] The British National Archives (formerly the Public Record Office) at Kew Gardens, London, contains a great deal of material on Pitcairn and has a comprehensive online catalog.110 Most records are found in the record groups for the Colonial Office (department code CO), Foreign Office (FO), and Foreign and Commonwealth Office (FCO). For example, class CO 84, which refers to legislation of Fiji, also contains material on the laws of Pitcairn.


106. Herbert P. Ford, Pitcairn Island Study Center Is Begun at PUC, 154 ADVENTIST REV. & SABBATH HERALD 646 (1977); Pitcairn Island Material Is Donated to PUC, PAC. UNION RECORDER, Nov. 22, 1976, at 7.


108. A.I. Diamond, The Central Archives of Fiji and the Western Pacific High Commission, 1 J. PAC. HIST. 204 (1966); A.I. Diamond, Western Pacific High Commission: Proposed Copying Program, 4 J. PAC. HIST. 175 (1969); C. Guy Powles, Island Governments Must Act to Keep Suva Archives in the Pacific, PAC. ISLANDS MONTHLY, Sept. 1977, at 77; Frank Rogers, Western Pacific and Western Pacific High Commission Archives, ARCHIFACTIONS: BULL. ARCHIVES & RECORDS ASS’N N.Z., Mar. 1986, at 10; B.T. Burne, Letter, W. PACIFIC ARCHIVES, PAC. ISLANDS MONTHLY, Mar. 1979, at 6 (author was head of W.P.A.), and 7 (author was last head of W.P.A.).


¶39 The papers of H.E. Maude contain material on Pitcairn and many other Pacific islands.\textsuperscript{111} They are at the University of Adelaide Library in South Australia, which has indexes online.\textsuperscript{112}

¶40 Documents from the Western Pacific Archives, the British National Archives at Kew Gardens, and other collections were presented to the courts during the 2004 trials, “the whole history of the government of the island since it was occupied in 1790 having been investigated” by the police and lawyers.\textsuperscript{113} An electronic copy of the record was given to me by Professor Stephen Guest. I deposited copies, minus certain information identifying the rape victims, in the Pitcairn Islands Study Center; the Center for Adventist Research at Andrews University in Berrien Springs, Michigan; and the Pacific Collection of the Thomas Hale Hamilton Library of the University of Hawaii, which has placed the collection on the Internet on its “eVols” system under the title “Privy Council Record.”\textsuperscript{114} The library at Lincoln’s Inn in London has a hard copy of this document.

For Future Pacific Research

¶41 The legal systems of Pacific Islands often still rely on colonial laws.\textsuperscript{115} There are several general bibliographies on the Pacific that are useful as a place to begin research.\textsuperscript{116} Jennifer Corrin and Don Paterson’s survey of Pacific law is an excellent starting point.\textsuperscript{117} Jacqueline D. Elliott, librarian for the High Court of Australia (now retired), compiled a monumental legal bibliography of Pacific jurisdictions.\textsuperscript{118}

¶42 Among the small Pacific states, Britain exercised colonial power over Fiji, Kiribati (the former Gilbert Islands), Nauru, Tuvalu (the former Ellice Islands), the Solomon Islands, and—in a condominium with France—Vanuatu (the former New Hebrides Islands). Thus their histories overlap Pitcairn’s. Research on these jurisdictions—and those with a British lineage such as New Guinea and Samoa—should start with Jerry Dupont’s legal bibliography \textit{The Common Law Abroad},

\begin{footnotes}
\footnote{114. \textit{eVols, supra note 46.}}
\footnote{116. \textit{E.g., Clyde Romer Hughes Taylor, A Pacific Bibliography: Printed Matter Relating to the Native Peoples of Polynesia, Melanesia and Micronesia (2d ed. 1965); \ Pacific Island Studies: A Survey of the Literature} (Miles M. Jackson ed., 1986); \textit{John Thawley, Australasia and South Pacific Islands Bibliography} (1997).}}
\footnote{117. \textit{Jennifer Corrin & Don Paterson, Introduction to South Pacific Law} (2d ed. 2007).}}
\footnote{118. \textit{Jacqueline D. Elliott, Pacific Law Bibliography} (2d ed. 1990).}}
which is an excellent guide to legal material on all former British jurisdictions and has a chapter on the Western Pacific High Commission. Researchers of those islands will turn to some of the same sources and archives cited previously. Other archives worth exploring are the Australian Archives in Canberra and the New Zealand Archives. The microfilms of the Australian Joint Copying Project, which copied documents in British archives about Australia and the Pacific Islands, should also be consulted. The Pacific Manuscripts Bureau at the Australian National University has filmed and made available many documents. Because the Royal Navy acted as a Pacific policeman, its records should be examined. The University of Hawaii holds a huge trove of Pacific material, including the archives of the former Trust Territory of the Pacific, which was administered by the United States under the auspices of the United Nations.

The Pacific Islands Legal Information Institute, run by the University of the South Pacific in Fiji, has a good collection of constitutions, laws, and cases on all Pacific jurisdictions. The school’s library has also scanned a number of the British legal instruments that governed the Pacific and placed them online. They also operate the Pacific Law Journal Index, which is a searchable bibliography of Pacific legal topics.

119. DUPONT, supra note 2, at 1181–87.
¶44 The East-West Center in Honolulu monitors news throughout the Pacific, and its online Pacific Islands Report has a deep archive of stories.\(^{130}\) Examination of the Journal of Pacific History—particularly its annual bibliographies of Pacific publications—and Pacific Islands Monthly—which ceased publication in 2000—will prove profitable for nearly all research projects. So will examination of the collections of resources digitized by the National Libraries of Australia and New Zealand, which include decades of newspaper articles.\(^{131}\)

**Conclusion**

¶45 Pitcairn has an unusually well-documented past for the Pacific. This article is intended to give researchers of Pitcairn a start and suggest areas for further exploration. The collections in Napa, Canberra, Auckland, Honolulu, and London are all promising and need to be closely examined. Collections of Seventh-Day Adventist sources may also prove fruitful for researching Pitcairn.\(^{132}\) A thorough examination of the Western Pacific High Commission Gazette also needs to be made. I hope future explorers profit from my map of the known world and someday fill in the blank spots on the charts.

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Keeping Up with New Legal Titles*

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

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

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Reviewed by Julie A. Melton*

1 John Azzolini, a reference librarian at an unnamed, large law firm in New York City, has written a basic and thorough introduction to the field of law firm librarianship. The author suggests that his book be used as a textbook for law librarianship teachers, as an introduction to the field for library school students, or as a refresher for experienced law librarians.

2 The book is divided into seven chapters, and each chapter begins with an abstract and includes keywords. Every chapter also ends with endnotes, lending credence to the author’s writing. The book closes with a substantial references list and an index.

3 Chapter 1 is an introduction. Chapter 2, on tasks, skills, and attributes, illustrates the essential qualities that make law librarians and law libraries different from their public and academic counterparts. It covers a basic overview of a law librarian’s job of providing information to an attorney, which is either analyzed by the attorney or given to the client. The chapter also emphasizes the importance of speed in the delivery of information and touches on being expected to work through lunch breaks and beyond normal business hours.

4 The emphasis on the financial aspects of a law firm is shown through the coverage of billable time and matter numbers. More basic library instruction is provided in the discussion of the importance of “good law,” and the author stresses that librarians always need to provide the most current law. The author then covers

the skills and traits of a good law librarian, such as problem-solving skills, a diverse knowledge base, ability to understand many different law-related documents and publications, and information management skills. He discusses educational requirements and describes the current and rapidly evolving job market, role modifications, and professional group opportunities. He also provides a good explanation of the recent past and current roles of law librarians along with career possibilities in the future and includes web sites and lists of professional organizations.

¶5 Chapter 3 is an introduction to how a law firm works. Again stressing the monetary aspects and the billable hour, the chapter covers the activities of a typical law firm from many angles. This chapter also explains how a law firm may represent clients in a variety of matters and notes that an experienced librarian should be fluent with the appropriate authority structures. However, nothing is mentioned regarding criminal law or family law. The book at times needlessly returns to essential but mundane aspects of law firm operations, such as billable hours and practice groups. Several pages cover outsourcing as a recent trend, and many pages are spent on knowledge management.

¶6 Chapter 4, on the law firm library, stresses the financial aspects of a law firm, emphasizing that the library is often considered a business unit that must continually justify itself. Topics in this chapter include budgeting and finances, cost recovery, and marketing. Chapter 5 focuses on major legal information providers such as Thomson Reuters, Reed Elsevier, and Wolters Kluwer. This chapter does a good job of explaining what these vendors’ services offer and how librarians use them to access knowledge. There is also extensive coverage of the legal publishing market, pricing issues, and relationships with vendors.

¶7 Chapter 6 describes how to obtain and evaluate legal content by authoritativeness, format, context, and currency. The chapter provides detailed descriptions of legal platforms, describes wide content and niche content, and instructs the user on how to evaluate free sources. Chapter 7 concludes the book with information on how law librarians can make themselves indispensable in the event of tough economic times by continually providing immediate and convenient access to information, keeping up with the latest technologies such as mobile devices, staying abreast with Westlaw’s and LexisNexis’s next-generation platforms, and remaining “dynamic and resilient” (p.218).

¶8 This book is, as it purports to be, “for instructors teaching courses on law librarianship and for library school students considering various career paths and seeing law firm work as an interesting possibility” (p.3). As for its claim to be “an excellent source for practicing law librarians to revisit field fundamentals” (p.3), the book is so basic in its instruction that it is really best used as a comprehensive introduction for someone who has very little knowledge of law firms and law firm libraries.

¶9 I concur with the author that this is a book that is aimed at instructors and students. An established law firm library would not need this book on its shelves, but it is very useful as an introduction to the field of law librarianship.

Reviewed by Christine Bowersox*

¶10 *Responding to Corporate Criminal Investigations* is a thorough, well-organized look into the complexities of criminal investigations of corporations. Kirby D. Behre and Morgan J. Miller take readers through the steps by which practitioners of corporate criminal law can best prepare themselves and provide advice to corporations during such investigations. The authors’ backgrounds as a former federal criminal prosecutor and a former counsel to the Securities and Exchange Commission’s Division of Enforcement contribute greatly to the thoroughness of subjects discussed within this publication.

¶11 The treatise begins with an overview of the “responsible corporate officer doctrine,” under which “a prosecutor need not prove any consent or cognizance of noncompliance on the part of the officer to affix liability” (p.3). While this doctrine is not commonly used for prosecution, the book’s opening chapter serves as an example of the extreme means the government will use to pursue accountability of directors and officers in corporate criminal activity.

¶12 The authors describe best practices for document maintenance during an investigation. Creation of a document policy comprising rules for retention, storage, management, review, and production, and procedures to follow upon receipt of a litigation hold notice, maintained alongside IT infrastructure, will place companies in the best position should an inquiry occur. E-discovery is briefly touched on, but not discussed in great detail.

¶13 Corporations must also take great care to protect attorney-client privilege during such investigations. Practices such as labeling privileged documents confidential and implementing a standardized confidentiality protocol greatly increase protection of sensitive information.

¶14 Issuing grand jury subpoenas is one of the most common techniques used in government investigations. Rule 17 of the Federal Rules of Criminal Procedure provides content for the subpoenas and provides language relating to the power to quash or modify subpoenas. There is a great deal of additional information in this book about grand jury subpoenas, including but not limited to the subpoenas’ broad powers, bases for objection, and special issues concerning testimony, immunity, and sanctions for noncompliance. Search warrants are given equally extensive research and viewed as an additional powerful technique of government investigation.

¶15 The authors discuss measures corporations can take to protect themselves before being charged, including the advantages and disadvantages of conducting internal investigations, who is best suited to commence an investigation, and what to do with the findings. Corporate plea agreements also are an integral part of the defense and are covered with this in mind.

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When civil or criminal misconduct has been found, the Department of Justice has engaged in deferred prosecution agreements (DPAs) and nonprosecution agreements (NPAs) and used a corporate monitor to evaluate compliance. Although corporate monitors have been around for only the past decade or so, the authors include a large treatment of this area. There can be serious consequences if a corporation or senior management is noncompliant. Further treatment of DPAs and NPAs is given as well, including contrasts and comparisons between the agreements and the increased use of agreements as a result of the “DOJ’s increased focus on preventing corporate crime” (p.301) and desire to reduce litigation.

The last topic covered is corporate indemnification. The increase of government investigations into corporate activity has resulted in greater exposure for employees. As a result, corporate indemnifications are created with documents that require a company to indemnify employees at all levels. Statutes vary by state, but Delaware’s laws are used by many states as a blueprint for their codes. Thus, Delaware law is discussed heavily in this last chapter.

Overall, this book is an extremely comprehensive study of corporate criminal law, and it gives a thorough and well-researched view on the topic, presented in an organized and approachable manner. While not a page-turner by any means, the book is written in language accessible to researchers who may not be familiar with this area of the law.

This is a book that I highly recommend any private law library add to its collection if it has any involvement with the practice of corporate criminal law. This title could also be useful in an academic law library if corporate criminal law is studied in great detail.


Reviewed by Edward T. Hart*

As a regular customer of both Amazon.com and Amazon.co.uk, I often wonder how much the differences between the two sites are based on the marketing approach to the demands of the customers in their respective countries, the company’s relationships with third-party vendors in the different jurisdictions, and the governing laws of the jurisdictions. At the same time, the company’s policies create uniformity across these and other Amazon sites and make them easy to navigate to make a purchase. You can buy products without being able to read a site’s foreign language. As a customer, I can only begin to comprehend the complex web Amazon has woven around the world that ties together so many ends so seamlessly.

Ian Brown and Christopher T. Marsden, both academics at British institutions, offer a glimpse into the complexity of the online environment today that is behind sites such as Amazon’s, the company’s customers, and the jurisdictions of

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* © Edward T. Hart, 2014. Assistant Dean for the Law Library, University of North Texas-Dallas College of Law, Dallas, Texas.
the company and its customers. In their book *Regulating Code: Good Governance and Better Regulation in the Information Age*, the authors argue that there are better approaches for overseeing the online environment that most of us find ourselves participating in every day. They use the term regulation “in the widest sense to refer to the control of the online environment, whether exercised by code, government, self-regulatory standards, or private actors’ commercial imperatives exercised largely through contract law as terms of use” (p.x). While using examples from earlier periods of the Internet, including the libertarian first age (1993–2002) and the re-regulatory age of the post dot-com bust and 9/11 security concerns (2003–2012), the authors focus on the leading edge of Internet development of the past couple of years and the foreseeable future, with its growth of Internet providers and users and the increasingly interconnected online world of social and other media.

¶22 Using case studies, the authors aim “to identify policies that will encourage both competition and creation of public goods in a balanced public policy that shapes network effects toward social ends” (p.xv). The case studies focus on five areas: privacy and data protection, copyrights, censors, social networking services, and net neutrality and innovation. The authors look carefully at the impact each topic has already had on the development of the Internet and the impact it will continue to have for the foreseeable future. In each area they offer guidance on how to better balance the protections offered to stakeholders and the development of the online environment to the benefit of all. In their case study on copyright, for example, they recognize that giving authors protection over their creations is good for society, but those protections cannot be overly broad and must be adapted to advances in technology. Today it is just too easy to disseminate and make alternative uses of copyrighted materials. A new balance needs to be achieved between owners and users. An example of such a balance can be found in the changing business model of large rights holders, such as music producers. They are moving away from control of copies to new sources of income, such as making music available but linking it to online advertising. While not mentioned in the book, the recent Google Books decision that enables the Internet giant to continue digitizing books and making portions of those books available online, along with providing links to where the book can be purchased, is in the spirit of Brown and Marsden’s vision of good governance and better regulation.

¶23 Reading *Regulating Code* can be a slog because of the complexity of the topic, the many terms of art, and the abbreviations the authors use to condense the material into a relatively short book. Thankfully, a glossary of abbreviations and terms is included. But working your way through the dense content is well worth it, especially for librarians with interests in information access and concerns about the future of the Internet and its content.

Reviewed by Colleen Martinez Skinner*

¶ 24 Acting White?: Rethinking Race in Post-Racial America will not help law students study for an exam or write better essays. However, it will help them navigate the tricky waters of professional interaction while in law school and when they are working in law firms. Many students might overlook this book because it does not appear to have an immediate impact on their grades, but that would be a mistake. Acting White? addresses the problems many African Americans have working in a legal field that is predominantly white.

¶ 25 Devon W. Carbado and Mitu Gulati discuss how law firms want to hire a diverse group of associates yet are also concerned African Americans may be “too black” and create racial tension in the workplace. Instead, the firms hire minorities with more palatable racial identities. At the same time, African American associates want positions in these law firms, so they will “act white.” The authors describe this behavior as “engag[ing] in conduct or activities that are not typically associated with people of their race” (p.43). By acting white, the person affects a “working identity” to fit in a predominantly white workplace (p.26). A working identity is defined by a range of racially associated factors, such as one’s clothing, speech, mannerisms, hairstyle, and social and professional affiliations. A working identity can also include how an associate chooses to represent herself through these factors, how others perceive her, and the racial identity she creates in their minds.

¶ 26 Acting White? focuses on African Americans, but the authors point out that everyone has a working identity of some kind, and it is not limited to race. Men, women, gays, and lesbians all have working identities. Men are expected to behave in a manly way and women are expected to act in a feminine way. The authors also note that working identity is not confined to the work environment. Police stop people, admissions officers look at applicants, and many citizens vote for politicians on the basis of working identity. One portion of Acting White? looks at how Barack Obama, as a presidential hopeful, had to carefully construct his political message in order to appear black enough for African Americans but not too black for white voters. This double bind is used to illustrate how important a working identity is for success.

¶ 27 The authors met at Harvard Law School as first-year law students, and there they initially formed and argued the general idea of this book. Some of the concepts contained in Acting White? have their origins in articles the authors wrote together or separately, but the book is not a series of republished articles. The authors make clear that they have, in some cases, completely disagreed with their previous statements and that later reflection made them realize a book was in order.

¶ 28 Acting White? may not find space next to a legal dictionary in a law firm library, but it does deserve a place on the shelf. It is recommended as an aid to understanding what it is like for minorities and for those of us who affect a working

identity to fit in. This book could also work well as supplementary reading for courses on race and law and education law. It is short (fewer than 200 pages) and is sure to generate discussion in any classroom.

¶29 Law students will like Acting White because it is an easy read and it can help those who need to know how to navigate law firms when identity issues come up. Readers wanting to know how to create a working identity they can live with and not feel as though they are selling out can refer to the authors’ discussion of four stages of racial negotiation. This book has much to offer and is a must for any library.


Reviewed by Justin R. Huckaby*

¶30 In The Tragedy of Religious Freedom, Marc O. DeGirolami explains the delicate nuances of the legal theory of religious liberty and the risks that arise from its application in the sensitive area of the First Amendment’s religion clauses. There are several different theoretical approaches to cases involving the religion clauses. DeGirolami endorses the approach he describes as the method of tragedy and history. This method approaches the pluralistic nature of religion with the understanding that there are many different values at play in cases involving religion and that sacrifices will be made in all cases. Courts should also consider the history surrounding particular religious issues in determining the outcomes of each case.

¶31 In part 1, DeGirolami addresses other approaches to religious liberty, such as comic monism (single-value approaches) and skepticism, through the writings of legal theorists who endorse those approaches. One example he uses is Christopher Eisgruber and Lawrence Sager’s monist approach of attaining the ultimate goal of equality, explained in their book Religious Freedom and the Constitution; another is Winnifred Fallers Sullivan’s skeptic approach, as expressed in her book The Impossibility of Religious Freedom. After explaining these methods, DeGirolami details how each theory fails in its approach to religious liberty.

¶32 In part 2, DeGirolami explains his method of tragedy and history. When dealing with religious liberty, he says, the tragic-historian should consider the clashes between the different values of both the religion and the government being considered in each case. When evaluating each case, the tragic-historian should not dismiss the attempt at reaching an outcome pertaining to religious liberty simply because a particular theory will not satisfy everyone. The tragic-historian must always recognize that his decision will cause loss and sacrifice to the parties involved. Changes to the approach to religious liberty cases should be gradual so as not to upset the current practices and understandings of the community at issue. Finally, the tragic-historian always considers both social and doctrinal history sur-

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rounding the case and similar cases. DeGirolami then applies the method to an existing religion clause case or a situation from which he thinks a case might arise in the future.

¶33 In part 3, DeGirolami explains how the method would be applied in cases from the U.S. Supreme Court’s jurisprudence. For example, he describes how the Court’s free exercise approach of formal neutrality in the face of a generally applicable law would not survive in the tragic-historian’s consideration. In contrast, the Court’s adoption of the ministerial exception is a perfect example of the tragic-historic approach.

¶34 The Tragedy of Religious Freedom would be an excellent addition to an academic law library. However, this book is not intended for the First Amendment novice. The reader must have a working knowledge of the religion clauses and the court cases that have dealt with these issues. Though DeGirolami summarizes the main points of each court case he analyzes, it would be difficult to understand how Employment Division v. Smith is a comic-monist approach to the Free Exercise Clause and Van Orden v. Perry is a tragic-historic approach to the Establishment Clause without some prior knowledge of the cases.


Reviewed by Lynne F. Maxwell*

¶35 M. K. Gandhi, Attorney at Law: The Man Before the Mahatma is a remarkable book and an obvious labor of love on the part of Charles R. DiSalvo, the Woodrow R. Potesta Professor of Law at the West Virginia University College of Law. DiSalvo serendipitously stumbled on his project when, as a Bigelow Fellow at the University of Chicago Law School, he discovered that Mohandas Gandhi, iconic practitioner of peaceful protest, had spent a substantial portion of his early life engaged in the practice of law. Eager to learn more about the ways in which Gandhi’s practice as a lawyer helped shape his later practice of civil disobedience, DiSalvo combed the university’s extensive library, only to find that the book he wanted to read had not yet been written. Thus DiSalvo began his own journey as a Gandhi scholar, painstakingly researching obscure South African newspapers and other sources to piece together the legal historia-biography that culminated in the larger-than-life Mahatma Gandhi, renowned nonviolent spiritual leader of Indian civil disobedience.

¶36 With a comprehensive introduction and eighteen meticulously researched chapters, this book chronicles Gandhi’s life in the law, from his days as a student in London’s Inner Temple through his years of practice in South Africa’s Transvaal and Natal. DiSalvo depicts the young Gandhi as a shy, tongue-tied barrister who can scarcely speak in defense of a client and traces his gradual evolution to a powerful orator who speaks eloquently to and for his “clients,” the masses of Indians

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oppressed by residual colonial British hegemony. According to the author, Gandhi’s learning curve was steep at the beginning, but eventually he became a successful lawyer with a healthy income. For Gandhi, though, success at the bar was not ultimately fulfilling, especially when his quest for justice was regularly stymied by the legal system. Gandhi concluded that he could do more good for his people through nonviolent civil disobedience than he ever could in a court of law, where “justice” prevailed behind closed doors. In the public arena, visibility of the masses proved the case against oppression, and silent conviction, rather than ardent advocacy, triumphed.

¶37 Accompanying the book is a fine set of illustrations depicting the young Gandhi, along with people and places that played formative roles in his burgeoning life as a lawyer. In addition, at the end of the book the author supplies a wonderful chronology that provides a timeline of seminal events in Gandhi’s life before, during, and after his career as a lawyer. This section is particularly useful in helping a reader quickly review the events described in the book as well as those that occur outside the book’s temporal focus. Thus, the Gandhi that readers meet in the book in time becomes the fabled Gandhi that we know through historical study and popular culture. Accordingly, the book’s chronological sequence of events enables the reader to ponder the entirety of Gandhi’s personal and historical accomplishments.

¶38 DiSalvo includes copious notes on his sources, allowing readers to trace the course of his impressive scholarship. These notes—enhanced by a link to the author’s complete notes on his web site—reveal that DiSalvo gleaned much of his material about Gandhi’s legal practice by locating and reading accounts in obscure newspapers and journals. The fact that DiSalvo could assemble all of this material is truly remarkable, considering that “the Man before the Mahatma” was not a prime subject of journalistic interest and only later achieved such notoriety. The sources section provides researchers with crucial bibliographical information. Finally, an extensive index renders the book easily accessible to readers interested in particular aspects of Gandhi’s life as a lawyer.

¶39 M. K. Gandhi, Attorney at Law is an important book for exploring the crucial, formative period of Gandhi’s professional life and fills a significant gap in Gandhi scholarship. This book is essential for all academic law libraries and for academic libraries in general. It does much to flesh out the intellectual and character development of the at-times all-too-ethereal Gandhi, revealing “the Man before the Mahatma.”


Reviewed by Kristina Alayan*

¶40 Breaking Chains: Slavery on Trial in the Oregon Territory traces the evolving relationship between Robin Holmes and Nathaniel Ford—from slave and owner to

legal adversaries. Originally, the Holmes family consisted of Robin, Polly, and their six children. In 1843, Ford sold three of those children (Eliza, 12; Clarisa, 11; and William, 11) to satisfy his debts before taking the 2000-mile journey to Oregon with his own family the following year. Each family gave different accounts of the circumstances that led to the Holmes family joining the Fords on the Oregon Trail. Ten years later, in a habeas corpus case seeking custody of his three children still under the Fords’ control, Robin Holmes explained to the court that his family was promised their freedom if they helped the Fords settle in Oregon.

¶41 Slavery was prohibited in Oregon from its early years as a provisional government to its transition from territorial government to statehood. However, there is evidence to suggest that the ban was selectively enforced, if at all. Moreover, the prohibition proved to be so unsatisfactory to some settlers that a modification was added in 1844. It applied a grace period of three years to any slaves brought to Oregon. This grace period applied to the Holmes family and effectively allowed slavery to exist legally.

¶42 In the event that slaveholders honored the grace period upon its expiration, newly freed slaves risked contending with the exclusion law. R. Gregory Nokes first mentions the vote “to exclude blacks from the Oregon Country” early on in the book (p.31), but he does not fully elaborate on the nature of this law until a later chapter. A movement to eliminate slavery as well as the presence of African Americans developed. The “Lash Law” provided that any black men who did not leave within two years (or women within three) would be subject to severe lashing. Some community members were opposed to the severity of the punishment, and the law was repealed in 1845. A new anti-slavery measure clarified that “the right of one person to the services of another only upon a ‘bona fide’ contract, made and entered into and equally binding on both parties” would be recognized by law (p.49).

¶43 Both the grace period of three years and the new anti-slavery measure did little to help the Holmes family. Depending on the account, Robin Holmes was freed five or six years after he arrived in Oregon. While his wife and youngest child were given their freedom as well, his three other children were not. Nokes suggests that the death of one of his daughters may have “galvanized Robin Holmes into taking action against Ford” (p.72). Nokes describes the trial and ruling across three chapters. The original judge who had been assigned to the case appeared to sympathize with Ford. Nearly fifteen months later, Holmes would learn that a new judge had been assigned to the case. Within a few days of his arrival, Judge Williams issued what would be described as a radical decision in favor of Robin Holmes. In his opinion, Williams dismissed Ford’s claims, asserting that “[d]ifference of color does not destroy parental power and authority in this Territory, and unless voluntarily and legally relinquished petitioner has the same right to his children as respondent has to his” (p.92).

¶44 Nokes takes liberties filling in the gaps that history leaves behind. In the absence of a photograph, he imagines Robin Holmes to be “tall and muscular, possibly obsequious in his behavior toward whites—not unusual for African Americans who wanted to get along—but determined to stand his ground and see justice done” (p.74). Nokes admits that it is “easy to romanticize a possible scene” when
describing Holmes entering the Polk County courthouse for the first time (p.73). For some readers, his speculations and asides may undermine the otherwise objective tone of the text.

¶45 In the acknowledgments, Nokes notes that the story is a personal one for him, and the care with which he pieces together the story of these two families is clear throughout. *Breaking Chains* is well researched, and the author wisely added a timeline and index to help readers more easily track and navigate the material. On occasion, the author jumps forward or back in time to elaborate on a point. If he made these tangents more clear and added a family tree for both the Ford and Holmes families, the narrative would have flowed more seamlessly.

¶46 This book is essential for library collections serving populations with an interest in the Oregon Trail, slavery, or law stories highlighting trials.


Reviewed by Kathleen A. McLeod*

¶47 At first glance, the title to Michael A. Olivas’s volume is slightly misleading. Some may assume, as this reviewer did, that it addresses the recent trend of law school alumni bringing suit against their law schools. Rather, it is an excellent overview of the current status of discrimination law as it applies to those areas unique to the administration of postsecondary educational institutions.

¶48 Olivas’s volume is divided into two parts, the first of which contains a concise history of discrimination and civil rights decisions related to higher education, a statistical analysis of recent U.S. Supreme Court higher education decisions, and a discussion of purposive organizations and their growing influence in postsecondary education litigation.

¶49 The seven chapters in part 2 each focus on a specific category of case law: admissions, tenure, funding (on both the institutional and student organizational levels), race/ethnicity, gender, and religious issues. Unlike most legal treatises, Olivas’s book uses the case study approach to provide detailed factual and procedural information for selected cases, which are mostly trial and intermediate appellate court decisions. Trial court transcripts are used to provide a level of factual information not often included in scholarly legal publications, thus allowing the reader to get a better feel for the parties and their actions. For example, during his discussion of *Clark v. Claremont University Center and Graduate School*, he quotes more than a page of the trial court transcript and provides detailed information on the faculty’s tenure discussion.

¶50 Again deviating from the legal treatise norm, the analysis does not end at the courthouse door, but continues by addressing postdecision practical questions: How has this case affected the landscape of higher education? Have other courts accepted it as precedent? How have the defendant and other institutions changed

* © Kathleen A. McLeod, 2014. Associate Dean for Library and Information Services, Elon University School of Law, Greensboro, North Carolina.

their internal operations and policies in response to the case? And what happened to the parties and their counsel?

¶51 This volume is an excellent introductory text for upper-division law students and others familiar with discrimination or higher education law. The case study format and conversational tone combine to create an easy-to-read, almost storytelling quality without detracting from its scholarly value. The endnotes and complete bibliography, which include numerous references to social science and governmental studies and reports that our patrons often forget, exceed twenty percent of the volume, are easily equivalent to a pathfinder, and provide a starting point for additional in-depth research on this topic and its subdivisions.

¶52 That said, this book has a clear and pronounced point of view. The growing influence of conservative purposive organizations, especially right-wing conservative Christian and anti-immigrant groups, and their use of civil rights anti-discrimination laws to move their agendas through the courts is shaping the law in ways that were neither contemplated nor intended by the original drafters of the legislation. Olivas raises concerns about this growing trend and the groups’ use of the courts to challenge the activities of both public and private colleges and universities. In his conclusion, he predicts that future higher education litigation will be focused primarily on “religious accommodation and racial and gender integration” (p.149) largely because of the purposive organizations’ financial support of these suits.

¶53 Overall, this volume is an excellent introduction to areas of discrimination law that affect postsecondary education. It would be useful for law collections with both extensive and limited holdings in education or discrimination law and those that support graduate programs in educational administration.


Reviewed by Frances M. Brillantine*

¶54 The law does not always keep pace with advancing technology. An example of this delay is the recent rise in charges being filed against minors for sexting—using devices such as smartphones to exchange sexually explicit messages, photos, or videos. Because there is no federal law, and very few state laws, that covers sexting, child pornography and obscenity statutes are used to prosecute these cases. Minors convicted under child pornography laws face the possibility of a felony record and a sex offender designation.

¶55 In Sext Ed: Obscenity versus Free Speech in Our Schools, Joseph O. Oluwole and Preston C. Green III, both professors of education who also hold JDs, argue that consensual sexting among students should be considered free speech and thus protected under the First Amendment. To make their case, Oluwole and Green examine child pornography and obscenity statutes and case law, as well as the case law of student free speech in relation to consensual juvenile sexting.

* © Frances M. Brillantine, 2014. Head of Access Services, Catholic University of America Columbus School of Law, Washington, D.C.
Sext Ed is a quick and easy read with brief chapter headings that outline what the authors intend to discuss and hope to prove. Seven short chapters cover the rising prevalence of juvenile sexting, obscenity and child pornography precedents, and the authority of schools to regulate student speech. The notes are detailed and the index, while not extensive, is helpful. The bibliography is disappointing in its brevity. While it cites some useful articles on the subject, it lacks more recent and often-cited works by authors such as Mary G. Leary, Stephen Smith, and Julia Halloran McLaughlin.

Two-thirds of the book is devoted to two appendixes. Appendix A reproduces child pornography and sexting statutes for each state. Appendix B reproduces statutory punishments for felonies and misdemeanors for each state. The authors included the appendixes to demonstrate how state child pornography statutes could be used to charge minors for sexting and how the resulting punishments could do more harm than good. They make this argument convincingly elsewhere in the book and do not need an additional 220 pages to support their claim. A more useful addendum would have been a list of states that have enacted or proposed sexting statutes. In addition, Appendix A is already out of date, as more states are starting to enact statutes specific to sexting.

Oluwole and Green begin their discussion with an analysis of the statistics and research on juvenile sexting, arguing that juvenile sexting is commonplace and in most instances harmless. This chapter also provides a few examples of minors charged with crimes for sexting. These examples are only brief descriptions from online news accounts. The authors do not cite the actual cases or discuss the outcome of any of these cases. This is particularly surprising given that at least one case supports their argument that juvenile consensual sexting should be protected under the First Amendment. In Miller v. Skumanick, the parents of the charged minors claimed that the charges brought against their daughters were a violation of their right to free expression.

Oluwole and Green briefly discuss how the federal Child Pornography Prevention Act could be used to prosecute minors for sexting, then move on to a more comprehensive discussion of obscenity precedents. The authors examine landmark Supreme Court obscenity cases as they relate to free speech, and they illustrate how the precedents set by these cases support their claim that sexting should be protected under the First Amendment. The authors next examine the relationship between child pornography precedents and free speech and why they believe these precedents make it unconstitutional to criminalize consensual juvenile sexting.

Although the title of this book suggests an in-depth discussion of free speech in schools, the authors provide only one brief chapter on this topic. Chapter 6 analyzes the free speech rights of students by examining four Supreme Court cases. This chapter also offers statistics on cell phone usage and texting by students during school hours. The authors acknowledge that the regulation of cell phone usage during class time is sometimes necessary, but they argue that texting outside of class and off-campus should be protected under the First Amendment.

Sext Ed is an interesting read but it fails to live up to its title. The focus of the book is on the decriminalization of juvenile sexting, not obscenity and free speech in schools. In making their arguments, Oluwole and Green oversimplify the issue of juvenile sexting and the potential harm or repercussions that could arise from sexting. Their analysis of child pornography and obscenity precedents is thorough, but their conclusion that these precedents support their argument that sexting should be protected under the First Amendment is not convincing.

The undisputed father of the Law and Economics movement, Ronald Coase, died in 2013 at the age of 102. His seminal article The Problem of Social Cost is the blueprint for what is widely considered among the most significant scholarly developments in American legal studies in the past fifty years. The field has evolved into a huge brand, spawning many books, articles, journals, and specialized academic departments in the nation’s law schools. It is now typical for law students to struggle not only with traditional legal concepts like proximate cause and consideration but also with transaction costs, externalities, and cost-benefit analysis, as this terminology is increasingly one that law professors use to explain complex legal problems. For students newly initiated in legal economic analysis, Francesco Parisi’s Language of Law and Economics: A Dictionary will be an indispensable reference tool.

This dictionary is the first of its kind. The closest standard work is a very distant cousin, The New Palgrave Dictionary of Economics and the Law, which is not a dictionary at all but a hefty three-volume encyclopedia filled with lengthy essays drafted by numerous scholars (including Parisi). It is also a work that may be far too dense for novices. Parisi’s compact text features more than 700 entries, organized in dictionary format, most confined to a single paragraph. There are a number of more encyclopedic entries that are appropriate for such a specialized reference source and the concepts selected for extended treatment. Parisi explains

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10. R.H. Coase, The Problem of Social Cost, 3 J.L. & Econ. 1 (1960). Coase’s ideas were reformulated into what is widely known as the Coase Theorem. As defined by Parisi, the theorem “holds that, regardless of the initial allocation of rights and the choice of remedies for their protection, the market and the free bargaining of parties will lead to their efficient final allocation” (p.47).

not only essential technical terminology but also the role and relevance of significant scholars, specialized journals, professional organizations, and the varied schools of this discipline.

¶64 Parisi is a prolific and accomplished member of the legal academy and the field of economics. He is currently a professor at the University of Minnesota Law School and on the economics faculty at the University of Bologna, Italy. There is no doubt that Parisi is a reliable compiler and interpreter of the most salient terms from the literature. Indeed, the single expert authorship of the book allows for cohesiveness and limits redundancy.

¶65 Parisi provides a tool that makes the unique jargon of law and economics accessible to law students as well as graduate students and professional scholars working outside the field. The entries are clear and appropriately detailed to enable readers to understand a concept and its significance in law and economics scholarship without having to wade through lengthy technical descriptions or consult other entries for reinforcement (related entries, however, are appropriately cross-referenced to allow for expanded inquiry). There are also extensive scholarly references that cover influential scholars and their leading articles as well as an accompanying author index. A second index divides the study of law and economics into twenty-one subjects, such as preferences and choice, theory of market failures, and game theory concepts, that are grouped with a listing of all related terms defined in the dictionary. This information may be especially useful for newcomers to the literature who are trying to piece together the various branches and frameworks of law and economics theory.

¶66 Highly recommended for academic law libraries, The Language of Law and Economics provides a solid introduction to this ubiquitous subdiscipline of legal scholarship and will likely find its way onto numerous law school syllabi as a recommended resource. It will also be of interest to scholars from other fields trying to decode the extensive law and economics literature. Fortunately, the dictionary has already been released in paperback, so its acquisition can fit into virtually any library budget.


Reviewed by Michele Thomas*

¶67 Alzheimer’s disease is a devastating illness—mentally, physically, emotionally, financially, and spiritually—for individuals and their loved ones. According to the Alzheimer’s Association, one in three senior citizens die from Alzheimer’s disease or another dementia. By 2025, a forty-percent increase in the incidence of Alzheimer’s disease in those over age sixty-five is predicted, which will raise the

* © Michele Thomas, 2014. Catalog and Reference Librarian, Assistant Professor of Law Librarianship, University of Arkansas at Little Rock William H. Bowen School of Law, Little Rock, Arkansas.

number of those afflicted to 7.1 million.13 This disease creates a unique set of legal issues for which an increasing number of individuals and families need legal counsel. Alzheimer’s and the Law: Counseling Clients with Dementia and Their Families is a thoughtful, informative, and practical guide for attorneys helping clients coping with Alzheimer’s and related dementias.

¶68 In chapter 1, the authors describe the seven stages of what they call “the Alzheimer’s journey” and the likely issues that arise at each stage. The stages include “memory loss ignored; memory loss masked/denied; unsafe alone; aid needed; assisted living required; nursing home required; and hospice care required/death” (p.4). The authors point out that serving clients with Alzheimer’s disease or their families goes beyond providing legal counsel. For example, if a person needs to move into an assisted living facility, the attorney can help the clients evaluate the assisted living contracts, which are “very similar to apartment leases” (p.13), as well as help evaluate the facility’s licensing, staff-to-patient ratio, staff training, and whether there is a dedicated Alzheimer’s or dementia unit available.

¶69 In chapter 2, the authors describe the special ethical considerations of serving clients with Alzheimer’s disease, while in chapter 3 they discuss federal and state laws affecting advance directives, living wills, powers of attorney, do-not-resuscitate orders, choice of an agent, and programs dealing with physician orders for life-sustaining treatment. Although a terminal illness, Alzheimer’s disease tends to last many years, creating significant financial burdens. Chapters on special-needs trusts, pooled trusts, and government benefits such as Medicare, Medicaid, and Veterans Affairs benefits help address these concerns.

¶70 In chapter 6, the authors discuss guardianships and conservatorships, which may be necessary when estate planning was not done prior to a loss of capacity. Practice pointers, which appear in boxed text throughout the book, provide concise, additional tips. For example, the practice pointer in the guardianship section reads, in part, “An agent under a power of attorney trumps a guardian with respect to the exercise of any powers covered by the power of attorney” (p.232). This helps explain why guardianships are treated as a last resort, used only when the person with Alzheimer’s did not make his or her wishes known prior to the progression of the illness.

¶71 The authors address financial exploitation in chapter 7. In addition to covering the potential for caregiver abuse and common scams targeting senior citizens, they also describe lesser-known dangers, such as an alarming phone scam in which criminals alter their caller IDs to make their calls appear to be from a bank or other legitimate institution.

¶72 Personal-care agreements are described in the final chapter. Because millions of people provide an increasingly demanding amount of personal care for those with Alzheimer’s disease, personal-care agreements are becoming more common. These agreements help to ensure that caregivers are paid for their time and cost investment while also helping to protect the estate from unnecessary expenditures or financial abuse.

13 Id.
¶73 Every chapter except chapter 2 concludes with a section titled “Expert View.” These sections are written as frequently asked questions and provide advice on topics such as mistakes attorneys make when determining capacity and principles for improving communication with a person suffering from Alzheimer’s disease. This book also provides sample forms in appendixes at the end of two chapters and a fourteen-page glossary. While practice information on estate and tax planning, wills, guardianships, financial abuse, and asset protection is available from many sources, this book brings a great deal of information together in one place and supplements it with the additional information necessary to serve the legal needs of those with Alzheimer’s disease and their families.

¶74 This is a book with a heart that should have a home in law libraries and on the shelves of attorneys serving clients with Alzheimer’s disease or their families.


Reviewed by Camilla Tubbs*

¶75 In 2007, after a fifteen-year Freedom of Information Act battle, the National Security Archive received a package of declassified documents (with some redactions) from the Central Intelligence Agency (CIA). In that package was a 693-page file that was so controversial, so explosive, that the CIA had internally coined it “the family jewels.” While some information regarding the domestic-spying program came to light during the “year of intelligence” in 1974, much of the program’s confidential details remained private until the National Security Archive digitized and posted the files online for everyone to explore. Covering the CIA’s wiretapping and illegal domestic surveillance since 1959, the family jewels are a precursor to the modern-day scandals uncovered through WikiLeaks and Edward Snowden’s disclosures.

¶76 In his book, *The Family Jewels: The CIA, Secrecy, and Presidential Power*, John Prados provides a historical context for these documents, which range from handwritten notes to detailed legal memoranda, and fleshes out the story behind them using contemporaneous news accounts, participant memoirs, and congressional hearings. He then links the past failures within the intelligence community to recent revelations of overstepping using a combination of declassified documents, historical facts, and scholarly opinion. Prados is careful to note when pieces are missing from the historical record or when a document was destroyed, thereby leading to his own speculations of what really did or could have happened, and he is equally critical of both Republican and Democratic administrations. But the central premise of his book is clear: “Democracy is protected only by the vigilance that detects abuse and the courage to stand for real principles” (p.318). Without the

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regular release of public records, and the tenacity of those who file Freedom of Information Act requests, intelligence agencies will continuously abuse their power.

¶77 In general, each chapter covers a different type of abuse that festered under secrecy, including excessive domestic surveillance, questionable detention and interrogation practices, targeted assassinations, and overreaching executive powers. While *The Family Jewels* does a nice job of providing new information and an overview of these historic events, each topic is covered in much more detail in other monographs. 15 As such, *The Family Jewels* is a nice complement to any general academic or law school library’s national security collection, and can serve as inspiration for larger research projects. However, the legal researcher might find this work more helpful when used in conjunction with related works in the law and American history. Fortunately, *The Family Jewels* contains over thirty pages of endnotes to assist researchers in finding additional primary and secondary material on each topic, and is a fascinating read.


Reviewed by Cindy Guyer*

¶78 When I saw this book, I was immediately intrigued about who the best law teachers were, how this was determined, and why this was so. As a legal research instructor, I know there are many facets to teaching, compounded by the different learning styles and varied demands of today’s students. Every semester, I try new methods of teaching with the goal of being able to reach all my students. Although this may be an impossible goal, *What the Best Law Teachers Do* will definitely help any law instructor come closer to reaching it.

¶79 This book is the culmination of a four-and-a-half-year project that features twenty-six law teachers who are the “best.” But identifying these teachers was only one of three goals. The other goals were to synthesize their teaching principles and disseminate the gained knowledge.

¶80 Chapter 1 begins with an explanation of the methodology and details of the project’s five phases. This is essential to establish the credibility of the reported results. More than 250 law instructors were nominated. I was impressed by the extensive vetting process, which reduced my admitted skepticism of who were really the “best” teachers. The twenty-six law teachers chosen teach a range of classes,


* © Cindy Guyer, 2014. Law Librarian—Research Services and Adjunct Assistant Professor of Law, Asa V. Call Law Library, University of Southern California Gould School of Law, Los Angeles, California.
including doctrinal, skills, and specialty courses. They also teach in all four tiers of ranked law schools. Their awards and scholarships are discussed, and their works on teaching and learning are listed in one of the book’s appendices.

¶81 Chapter 2 presents working and revised definitions of “exceptional learning,” including its two components of exceptional intellectual development and exceptional personal development. The definitions are the product of the contributions from individuals who nominated law teachers. Chapter 3 goes into great detail on the teachers’ shared personal attributes that make them the best. The teachers are described as thoughtful, authentic, enthusiastic, positive, empathetic, expressive, humble, attentive, responsible, creative, knowledgeable, inspiring, and committed to continuous improvement. I especially appreciated the selected quotes from students that illuminated each of the attributes. An example of being attentive was this student’s comment: “There are a lot of professors who like to hear themselves talk. And [Hiroshi Motomura] is an excellent listener. . . . He goes back to comments that people have said, you know, like, ‘As Max said, he raised this point a couple days ago,’ and so he’s, like, always referencing what students say” (p.63). And here is an example of being positive: “I’ve never seen [Nancy Levit] have a bad day, ever. It was always amazing. She found the positive, and in the most, you know, bummer of circumstances, she would find the positive” (p.52).

¶82 Chapters 4 and 5 focus on the relationships the teachers develop with their students, the nature of the relationships, and the expectations they have of students and themselves. In chapters 6, 7, and 8, the authors report on how the teachers prepare to teach, engage students, provide feedback, and assess the students. Chapter 9 examines the lasting lessons of learning, from both the teachers’ and students’ perspectives.

¶83 What the Best Law Teachers Do is a valuable resource for a wide spectrum of law teachers, from new instructors developing effective teaching methods to seasoned instructors refining their methods to better reach Millennial students. Although this book reports on instructors in law schools specifically, given its focus on teaching it would also be useful to supervising attorneys, judges, and law firm librarians who engage in ongoing training and teaching of law students and associates. Furthermore, the last chapter offers creative ideas for how to use the book, such as starting a book group using listed questions to guide discussions and conducting faculty workshops to focus on a particular attribute or teaching practice. The authors present a comprehensive and enlightening book that answered not only my initial questions about who, how, and why but also the question “what now?”
Directories listing biographical and contact information for attorneys have been a publishing mainstay for more than one hundred years. They are used for marketing, as well as historical and genealogical research. However, technology is changing the way attorneys advertise, and Ms. Whisner looks at the current state of lawyer directories and their usage.

Harry Hartounian: Boy, I wish I could get that excited about nothing.
Navin R. Johnson: Nothing? Are you kidding? Page 73—Johnson, Navin R.! I’m somebody now! Millions of people look at this book every day! This is the kind of spontaneous publicity—your name in print—that makes people. I’m in print! Things are going to start happening to me now.1

¶1 A directory of lawyers: what could be more straightforward? You list lawyers, provide contact information and a brief biography (college, law school, bar membership), and there you go. Simple, right? Well, not so much. In the past, directories prompted serious questions about compliance with ethics rules.2 Now there are fewer restrictions on lawyer advertising, but lawyers still can’t say just anything.3 In recent years, the medium has changed as we’ve moved from the huge volumes of Martindale-Hubbell to the dancing pixels of our laptop screens. Meanwhile, the players in the marketplace are also changing.

¶2 Let’s begin by thinking about the uses of legal directories. Whom do they serve and how? Job applicants use directories to find information about potential employers. They like to learn about the lawyers at a firm and the nature of the

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* © Mary Whisner, 2014. I am grateful to my friend Nancy Unger for commenting on a draft of this column.
2. See, e.g., Report and Announcement of Special Committee on Law Lists, 24 A.B.A. J. 678 (1938) (discussing establishment of a committee to review legal directories for compliance with rules). A new ethical Canon provided that it would be “improper for a lawyer to permit his name to be published after January 1, 1939, in a law list that is not approved by the American Bar Association.” Id. at 678. Time precludes me from digging further into this committee and its work, but I know that the committee existed for some time.
practice. Sometimes they use the biographical information to find a networking connection—such as a lawyer who attended their college or served in the Navy or who does pro bono work for an arts group. Potential clients use directories to find lawyers—sometimes to learn more about someone whose name they’ve been given and sometimes, starting from scratch, to find someone who seems a good match for their needs. Lawyers, for their part, use directories to attract clients and to find out about other lawyers with whom they have dealings. Scholars interested in the legal profession use directories to gain snapshots of lawyers in a community.\(^4\) Genealogists use old directories to confirm that Great-Uncle Ted was indeed a lawyer.

A Bit of History

\(^3\) Originally, *Martindale’s United States Law Directory* and *Hubbell’s Legal Directory* were not intended to be the (nearly) comprehensive directory *Martindale-Hubbell* became. Rather, the directories were meant to provide lawyers and businesspeople with selected contacts in cities across the country.\(^5\) But they grew to offer more comprehensive coverage of the legal profession. The foreword to the first volume after the Martindale Company purchased the publishing rights to *Hubbell’s Legal Directory*\(^6\) proclaimed that the publishers “spared no effort in their endeavor to accurately compile the only complete list of the bar with ratings for legal ability, local standing and other information of importance to the selection of counsel.”\(^7\) By 1950, the directory listed an estimated ninety percent of American lawyers.\(^8\) That year, the American Bar Association voted to cooperate with the company to make the directory more complete and asked state and local bar associa-
tions to make their rosters available. 9 Various bar journals urged members to list in Martindale-Hubbell to make possible a more accurate census of the profession. 10

§4 For many years, the mighty Martindale-Hubbell volumes were the best way to find information about lawyers and law firms. They were both heavy and heavily used. Each year the volume that included our state became worn. 11 The lack of a detailed index system caused a lot of flipping and skimming, and the oil from thousands of fingers darkened the edges of our city’s entries. If you wanted to find lawyers who attended a certain college or practiced maritime law, all you could do was skim. If you weren’t sure what town a lawyer was in, you had to look under likely locations—for example, lawyers in the Seattle area could be listed under Bellevue, Kirkland, or Renton in addition to Seattle. Individuals were listed in the first part of the book; firms that paid for listings had profiles with much more detailed biographies of their lawyers in the second part. You might find a lawyer in the first part, see that he would be listed with a certain firm, then flip back a thousand pages or so to the firm’s listing to find out more about him. 12

§5 Enter the electronic age. In 1990 the Martindale-Hubbell Law Directory was released on CD-ROM, 13 and later the same year it became available on LexisNexis. 14

Now it was easy to answer questions that before would have required hours and hours of tedious scanning. Find the lawyers who were admitted before a certain date? Born in a certain year? Graduated from your law school? Piece of cake. 15

§6 But that was just the beginning of electronic developments that would challenge the prevalence of print. As the Internet blossomed, firms developed an online presence. Once they could present in-depth profiles of their lawyers (complemented by attractive photographs), why should they pay for firm profiles in

9. Id.


15. The existence of the electronic versions eventually changed the print version; 2008 was the last year that information for all lawyers appeared in print. See 1 MARTINDALE-HUBBELL LAW DIRECTORY, at iv (2009) ("Only a limited number of Practice Profiles is now being included in the print directory. Complete Practice Profile listings can be found by searching martindale.com.").
Martindale-Hubbell? Firms began shortening their entries (they were charged by the word) or eliminating them altogether.\textsuperscript{16} Other directories entered the field. West’s Legal Directory on Westlaw competes with Martindale-Hubbell on LexisNexis. Nolo, the well-respected publisher of self-help law books, publishes Nolo’s Lawyer Directory, which directs users to lawyers by asking them to select state, city, and area of law.\textsuperscript{17} The Legal Information Institute and Justia share a directory.\textsuperscript{18} State bar associations often have online directories as well.

\textbf{A Modest Empirical Study}

\textsuperscript{7} I knew from experience that any single directory could have gaps: either it omitted the person I was looking for or it lacked some of the information I wanted. Entries in directories that allow individuals to claim and add to their profiles\textsuperscript{19} vary widely, from providing only a name and address to hosting a full page with photo, education experience, publications, and more. Although I could make some generalizations, I couldn’t yet back them up with solid data. So I decided to try my hand at an empirical study.

\textsuperscript{8} This was a modest little study, using a small sample from one state and comparing just a few data points in a few online directories: the Washington State Bar Association’s directory (pro.wsba.org), Martindale (martindale.com), Findlaw (lawyers.findlaw.com), Avvo (avvo.com), and LinkedIn (linkedin.com).\textsuperscript{20} The data set is about what I could gather in a weekend,\textsuperscript{21} so the sample is too small to generalize the findings with any precision. Nonetheless, I report my study and its results here both for what they can tell us about directories and as a sketch of what a more rigorous study might undertake.

\begin{itemize}
  \item \textsuperscript{17} \textit{Nolo’s Lawyer Directory}, Nolo, http://www.nolo.com/lawyers (last visited Feb. 11, 2014).
  \item \textsuperscript{18} \textit{Justia Lawyer Directory}, Justia, http://www.justia.com/lawyers (last visited Feb. 11, 2014); \textit{Lawyers, Legal Info. Inst.}, http://lawyers.law.cornell.edu/ (last visited Feb. 11, 2014). Lawyers can claim their profiles to add photos and provide information about their experience, areas of practice, and fees (e.g., offering a free consultation).
  \item \textsuperscript{19} Claiming a profile may be considered advertising subject to ethical rules. See, e.g., \textit{When Lawyers “Claim” Online Profile, Rules on Communications, Advertising Apply}, ABA/BNA \textit{Lawyers’ Manual on Professional Conduct, Current Reports} (Nov. 11, 2009) (discussing S.C. Bar Ethics Advisory Comm. Op. 09-10).
  \item \textsuperscript{20} A few years ago I did an even smaller study comparing the WSBA directory with commercial online directories: Martindale-Hubbell on LexisNexis and West’s Legal Directory on Westlaw. See Mary Whisner, \textit{Comparing Legal Directories}, \textit{Gallagher Blogs} (May 23, 2011, 7:45 PM), http://gallagherlawlibrary.blogspot.com/2011/05/comparing-legal-directories.html.
  \item \textsuperscript{21} Namely, Friday, Jan. 31, to Sunday, Feb. 2, 2014. I did manage to watch part of the Super Bowl. I gave copies of my spreadsheets to \textit{Law Library Journal}’s editor; when this column is published I’ll post it on SSRN as an appendix to this essay.
\end{itemize}
The WSBA Directory

¶9 Washington State has a mandatory bar. That is, everyone who is licensed to practice law in the state must belong to the Washington State Bar Association (WSBA). In recent years, WSBA has built a sophisticated online directory. When searching for names, one can opt to include similar sounding names. Users can search for lawyers by city, practice area, or foreign language. It is easy to search for an employment attorney in Seattle who speaks Spanish or someone who practices international law and knows Mandarin. Each attorney’s record shows membership status, date of admission, any disciplinary history, and activity in the association.

¶10 I drew my sample from this database. Since each lawyer has a unique bar number and that field is searchable, I searched for the lawyers whose bar numbers end in 501 (501, 1501, 2501, etc.) or 777 (777, 1777, 2777, etc.). I had no particular reason to choose those numbers: I just wanted a spread of lawyers. Let me emphasize the smallness of the sample—just two out of every thousand lawyers.

¶11 The sample comprised ninety-two current or former members of WSBA. Some directories might not include former members, but I think it’s interesting and useful to have them. Suppose you were trying to track down the lawyer who had drawn up someone’s will or handled some case. Instead of finding no entry at all, you might find that the lawyer had died (as had four lawyers in the sample) and you would know to stop looking. In addition to “deceased,” there are several other alternatives to active status. One lawyer, admitted in 1953, has honorary membership (a nonpracticing status available to lawyers who are active or judicial members for fifty years). Three had “judicial” status. Five have resigned voluntarily; three were suspended for nonpayment of dues; six have inactive status; and one is on disciplinary suspension. That leaves sixty-eight active members in the sample. Half of the lawyers in the sample were admitted in 1993 or earlier and half in 1994 or later. Unsurprisingly, lawyers admitted in the past twenty years are more likely to be active than the older group (see Table 1).

22. E.g., searching for “jon clinch” retrieves John Alfred Clynch. Searching for “hazelton” retrieves Hazelton, Hazelwood, Hauchild, Huguelet, and Hochhalter. The program is not clever enough to retrieve “Penelope” from a search for “penny.”

23. Why not start with where I live and work?

24. It might be an even lower percentage, since there happen not to be people with the bar numbers 34777 or 41501.

25. The WSBA directory did offer contact information—telephone number and either mailing address or e-mail address—for the four people in the sample who were identified as deceased. Although it might be useful to contact the late lawyer’s firm or last employer, I suspect the information remains simply because it has not yet been deleted. When I called one of the decedent’s phone numbers, I heard a recording that the number was no longer in service.


27. I have inactive status, too.

28. I’m using the present tense throughout this discussion, although we all know that status can change. By the time you read this, lawyers who were active could be suspended; lawyers who were inactive could have resumed active status, and so on.

29. The four deceased lawyers were also from the earlier half of the sample: the only lawyer admitted in the 1940s, the only one from the 1960s, and two of the four admitted in the 1950s.
Table 1
Membership Status in WSBA Directory Sample

<table>
<thead>
<tr>
<th></th>
<th>Admitted 1993 and Before (n=46)</th>
<th>Admitted 1994 and Later (n=46)</th>
<th>Total (n=92)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active</td>
<td>27 (59%)</td>
<td>41 (89%)</td>
<td>68 (74%)</td>
</tr>
<tr>
<td>Deceased</td>
<td>4 (9%)</td>
<td>0 (0%)</td>
<td>4 (4%)</td>
</tr>
<tr>
<td>Inactive</td>
<td>2 (4%)</td>
<td>4 (9%)</td>
<td>6 (7%)</td>
</tr>
<tr>
<td>Honorary</td>
<td>1 (2%)</td>
<td>0 (0%)</td>
<td>1 (1%)</td>
</tr>
<tr>
<td>Judicial</td>
<td>3 (7%)</td>
<td>0 (0%)</td>
<td>3 (3%)</td>
</tr>
<tr>
<td>Suspended—nonpayment of fees</td>
<td>3 (7%)</td>
<td>0 (0%)</td>
<td>3 (3%)</td>
</tr>
<tr>
<td>Suspended—discipline</td>
<td>1 (2%)</td>
<td>0 (0%)</td>
<td>1 (1%)</td>
</tr>
<tr>
<td>Voluntarily resigned</td>
<td>5 (11%)</td>
<td>1 (2%)</td>
<td>6 (7%)</td>
</tr>
</tbody>
</table>

¶12 I was surprised at the number of lawyers outside Washington State: twenty-two in the sample, or one-quarter of the living lawyers. And they aren’t just in neighboring states (although five are in Oregon and one in Idaho)—they are scattered among seventeen states. Just over half of the lawyers in the sample listed one or more practice areas: forty-two of those with active status and five of the others. Four listed a foreign language (two Spanish, one German, and one Farsi).

Coverage in Other Directories

¶13 Once I had this sample, my next task was to find those lawyers in the three free legal online directories I’d chosen (Martindale, FindLaw, and Avvo) and LinkedIn. When a lawyer had a distinctive name (e.g., Rand-Scott Coggan or Neda Sedghi), searching was straightforward: either the lawyer was in the database or not. With more common names (e.g., Janet Thomas or John Wilson) it took some digging to determine whether I’d found a match.30

¶14 The results were very uneven. Avvo draws its initial data from bar membership rolls,31 so it has a listing for every lawyer in the sample, active or not.32 Martindale does well, with seventy-four out of the eighty-eight living lawyers. FindLaw’s directory has very sparse coverage: only four of the active members and one judicial member. I found LinkedIn profiles for thirty-nine of the people in the sample.33 See Table 2.

30. For example, when searching for common names in LinkedIn, I’d restrict the industry to law practice or legal services. In legal directories, I made sure that the listed lawyer was admitted the same year as the lawyer in the sample.


32. Some lawyers in the sample had two listings because they were members of two state bars and had been picked up from both sources.

33. LinkedIn is not yet a substitute for directories dedicated to lawyers. Among the lawyers
### Table 2

Status of Lawyers from Sample in All Directories

<table>
<thead>
<tr>
<th></th>
<th>WSBA</th>
<th>Avvo</th>
<th>Martindale</th>
<th>FindLaw</th>
<th>LinkedIn</th>
</tr>
</thead>
<tbody>
<tr>
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<td>68</td>
<td>59</td>
<td>4</td>
<td>34</td>
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<tr>
<td>Total</td>
<td>92</td>
<td>92</td>
<td>74</td>
<td>5</td>
<td>41</td>
</tr>
</tbody>
</table>

Percentage of living lawyers from sample (n=88)

100% 100% 84% 6% 47%

¶15 Now whether someone is listed is only the first question to ask. You also want to know whether the other directories add anything. The WSBA directory is good, but it doesn’t offer pictures, schools attended, experience, or any sort of narrative about the lawyer’s practice. It doesn’t rate lawyers. It’s even spotty on whether it names an employer: it lists employers for only forty-eight of the sixty-eight active members. It turns out that the other directories add a great deal of content for some lawyers but not for others. Some lawyers have a strong online presence, with full profiles in Martindale, Avvo, and LinkedIn. Others have a full profile in one directory but not in the others.

¶16 Focusing on the active members in the sample, I looked at the different types of information each directory provides (see Table 3). FindLaw lists only four lawyers, but for each it includes a picture and lists areas of practice, employer, and law school, giving a better sense of the lawyer than can be gleaned the WSBA entry. Martindale and Avvo have listings for many more lawyers. For some there’s little more information than name and address, but others have full profiles, sometimes with narratives about their practices, major cases, speaking engagements, publications, or awards. I always look for law school attended, not because it is much help to a potential client in evaluating a lawyer but because, as an academic law librarian, I’m often looking for this information to assist law school administrators or students. And, while WSBA does not list this information, commercial directories often do.

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See Kevin O’Keefe, Has LinkedIn Buried Other Legal Directories?, REAL LAWYERS HAVE BLOGS (Feb. 27, 2013), http://kevin.lexblog.com/2013/02/27/has-linkedin-buried-other-legal-directories/ (“Has LinkedIn made legal directories irrelevant? I don’t think so. Sites covering a vertical industry, such as the law, can offer value if done well.”).  
34. This includes twelve lawyers in solo practice.
Martindale and Avvo both offer what many public patrons ask for: ratings. Martindale-Hubbell has provided ratings for more than a century, but in recent years the publisher has introduced client reviews and added a numerical component to the peer reviews. Where before an attorney might get “av” (indicating very high legal ability and very high recommendations), now one gets, say, AV and 5.0/5.0 or BV and 4.4/5.0. Not everyone is rated: in the sample, thirteen of the fifty-nine lawyers who had Martindale listings also had peer ratings. Only four had client ratings—variously, 3.8, 4.0, 4.8, and 5.0 out of 5.0. Avvo bases its ratings on data such as bar discipline, professional awards, lawyers’ web sites, and information that lawyers supply; it factors in peer ratings but not client ratings. When Avvo lacks sufficient information for a rating, it adds “Attention” or “No Concern” to the profile. Avvo posts attorney endorsements and client comments with numerical ratings. Four lawyers in the sample had at least one client review and eleven had at least one lawyer endorsement.

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35. See Lin, supra note 16.
37. Id. One lawyer in the sample had “! Attention” in the rating area; he had a disciplinary suspension in 2007. Twenty (many of the ones new to practice) were marked “no concern.” Oddly, one was marked “no concern” in his Washington profile and 7.0 in his Oregon profile. It appears that lawyers who stay in practice for 10 years or more and don’t get into trouble get a 6.5.
38. Most of the comments seem relevant and helpful to someone deciding whether to engage a lawyer. An exception was this endorsement: “Any client that calls to inquire of the possibility of hiring me but their case is in Snohomish County, I refer them to Mr. Swanson.” Apart from the odd syntax, that sounds good, until you notice that the endorser is in Oklahoma—a very unlikely place to hear from potential clients in Snohomish County, Washington. Richard W. Swanson, Avvo, http://www.avvo.com/attorneys/98204-wa-richard-swanson-4228.html (last visited Feb. 16, 2014).
Corporate Counsel

§18 Recently a professor at my school who was trying to help students interested in corporate law careers wanted to find alumni who were in-house counsel. After searching the LexisNexis Law Directory—All Corporate Legal Department Listings (Martindale-Hubbell on LexisNexis), Directory of Corporate Counsel (an Aspen publication available on Westlaw, CORP-DIR), and West Legal Directory—Corporate Counsel (WLD-CORPCO), I created a spreadsheet of about two hundred alumni with their profiles. Although I won’t parse out the differences among the directories here, I will say that the directories provided different coverage. After I showed the spreadsheet to several administrators, one mentioned that one of the lawyers listed had taken a job with a different corporation the previous month. That update illustrates one limitation of any directory: none will ever be completely up-to-date.

§19 A bigger limitation is that directories generally include only the information that the subjects provide. Lawyers have to tell the bar association their names and addresses, but they don’t have to say much more; as a result, the WSBA directory doesn’t always include practice areas or employers, and the coverage in commercial directories is uneven. Lawyers in private practice and law firms have incentives to have good profiles so that clients can find them and hire them. Others don’t have those incentives. Public defenders, legal services attorneys, government agency attorneys, lawyers who don’t practice: for most of them, it just isn’t important to claim a profile in a directory, fill in their credentials, and add a photo that makes them look at once warm and professional. This same dynamic may limit corporate counsel listings. Years ago, when I was playing around with rival directories, I noticed that very few lawyers were listed in a legal department that I knew was quite large, and I pointed out this discrepancy to someone I knew in the department. The acquaintance said that it was fine not to have the lawyers listed: everyone inside the company who needed them knew how to find them; the only outsiders who would look for them were headhunters trying to hire them away. I had naively thought that everyone would want the directories to be complete and accurate, but this comment showed otherwise.

Continuing Change

§20 In August 2013, LexisNexis and Internet Brands announced a joint venture, “bringing together the strengths of the LexisNexis Martindale-Hubbell internet marketing solutions business, including the leading Lawyers.com consumer website, with Internet Brands’ leading online marketing services for lawyers through its Nolo legal division.”39 Two months later, LexisNexis laid off two hundred and five employees, chiefly in the Martindale-Hubbell and Lawyers.com units—but LexisNexis’s CEO said that “the joint venture is committed” to those brands.40 There was some speculation that Martindale-Hubbell was dead or would change

dramatically, but the reports of its demise are probably premature. The joint venture plans to continue publishing the print directories with the same title, to maintain the martindale.com site, and to keep the directories on LexisNexis.

**Parting Words**

¶ 21 I would advise anyone using a legal directory not to stop with just one directory. Using more than one will often garner useful information, such as the lawyer’s education and employment history, client or peer evaluations, or a photo. If you don’t find much, then you’ve at least learned that this is a lawyer who doesn’t want to bother claiming a profile. You can’t tell whether it’s because the lawyer doesn’t need the business, doesn’t like the technology, or doesn’t know about the directories, but it’s a little more information than you had before.

¶ 22 Lawyer directories are important tools for librarians, lawyers, and consumers. Because of their long history, their importance to the legal profession, and the shifts caused by changes in technology and business, they are ripe for investigation. My research is just a beginning. I invite others to pursue the topic further, perhaps by looking at larger samples and adding other directories to the mix.

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42. E-mail from Joe Ewaskiw, Senior Manager, Public Relations, Internet Brands, to author (Jan. 16, 2014, 6:06 PM PST) (on file with author). There has been a change of name. The directories on lexis.com are now called “LexisNexis Law Directories.” The name “Martindale-Hubbell” is still in Lexis Advance’s list of sources, but the U.S. directory is missing (it includes Canadian, International, and U.S. Government Attorney listings).

43. Research in different aspects of legal directories fits within the AALL Research Agenda:

- “The history of legal publishing, including publishing histories of . . . publishing firms, and histories of legal publications in particular jurisdictions or subject areas”
- “Bibliographies of legal publications of particular states or foreign jurisdictions”


There is plenty to investigate. Just because I’ve made a small start doesn’t mean I own this topic. I’d love to learn what others can find out.
Despite other scholars’ suggestions that law librarianship and the American Association of Law Libraries lack diversity, Mr. Wheeler examines numerical and anecdotal data indicating that efforts to promote racial and ethnic diversity within AALL and the profession are beginning to show positive results.

While our professional literature is rife with commentary about the lack of racial and ethnic diversity in law librarianship and in the American Association of Law Libraries (AALL),¹ the assumption seems to be not only that law librarianship and AALL are not diverse but that “over the last forty years, there has been little noticeable change in levels of diversity among members of the profession.”² However, this assertion runs counter to my perceptions of AALL and of the profession. In fact, I experience AALL as an organization that has continued to grow increasingly more racially and ethnically diverse, especially over the past decade. Therefore, I think it will be instructive to look more closely at AALL and to examine some of the numerical and anecdotal data available to get a clearer picture of the association’s current racial and ethnic diversity.³

For me, AALL is the correct focal point for this type of inquiry. After all, AALL is the premier association serving the profession of law librarianship. I know of no other organization that has a larger membership of law librarians and others committed to serving the interests of the profession of law librarianship. Focusing on AALL is therefore likely to yield information that can be extrapolated to the larger profession. Moreover, the association has data, albeit limited, that can aid this type of examination.

** Director of the Dorraine Zief Law Library and Associate Professor of Law, University of San Francisco School of Law, San Francisco, California.

2. Thurston, supra note 1, at 360, ¶ 3.
3. Because Thurston’s article is the most recent examination of diversity in law librarianship available and it contains the most current data, I refer to it often. My intent is not to prove anything about Thurston’s conclusions. Instead, I intend to offer a different interpretation of some of the current data.
AALL Diversity Committee Survey

¶ 3 In May 2011, the AALL Diversity Committee, of which I was a member, conducted an online survey of the AALL membership regarding diversity. To my knowledge, this survey was the first of its kind to be done in AALL history. In her piece on diversity, Alyssa Thurston refers to this survey and concludes that the numbers of racial and ethnic minorities in AALL were “difficult to glean from the survey.” While I agree with her assessment, a more thorough mining of the survey data does reveal useful insights about the makeup of AALL that her article leaves unexplored. Some may argue that the survey may have been flawed in some way, and its results might therefore be characterized as less than scientifically or statistically sound. Nevertheless, the survey numbers are the numbers that we have to work with, and these numbers have never before been thoroughly and earnestly scrutinized.

¶ 4 Let’s look at some of these numbers. AALL has approximately 5000 members. The 2011 Diversity Committee online survey received only 767 responses, yielding a return rate of approximately 15%. Although relatively low, given the survey size this return rate should yield data that can be considered statistically accurate. Thurston rightly asserts that 29% of those responding, or 223 people, reported being a member of an underrepresented community. For the purposes of this survey, however, the underrepresented community included the differently abled or physically challenged and the LGBTQ community. In order to isolate race and ethnicity it is necessary to dig deeper. The survey later asked respondents

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4. The survey was the brainchild of 2011 Diversity Committee Chair Prano Amjadi, director of public services at the Santa Clara University Heafey Law Library, Santa Clara, California.
5. I checked this fact with AALL Executive Director Kate Hagan, who also knows of no other previous surveys.
6. Thurston, supra note 1, at 363–64, ¶ 10.
10. See, e.g., Susan E. Wyse, What Is a Good Response Rate for a Random Survey Sample?, Snap Surveys (Mar. 29, 2012), http://www.snapsurveys.com/blog/good-response-rate-random-survey-sample/ (asserting that a survey of a population of 5000 needs only 357 responses, or a 7% response rate, to have a 95% confidence level and a 5% margin of error); Donna, Survey Response Rates, Surveygizmo (Jan. 28, 2010), http://www.surveygizmo.com/survey-blog/survey-response-rates/ (asserting that a 10–15% response rate on an external survey is average); Am. Acad. of Political & Soc. Sci., The Nonresponse Challenge to Surveys and Statistics, Social Science Space (May 7, 2013), http://www.socialsciencespace.com/2013/05/the-nonresponse-challenge-to-surveys-and-statistics/ (arguing that “high rates of nonresponse do not necessarily translate into bias.”).
11. AALL Diversity Survey Results 2011, supra note 9.
which communities they identified with, and 250, or 32%, identified with one of the many communities listed.\textsuperscript{12} From that group, 229, or 30%, of respondents chose an identification with one (or more) of the racial or ethnic categories listed.\textsuperscript{13} That percentage comes quite close to the 2010 census data calculation that 27.6% of the United States population comprises people of color.\textsuperscript{14} While 229 members comprise only 4.5% of AALL, we should be able to draw somewhat accurate conclusions about the makeup of the overall membership by comparing this number to the number of survey respondents, a somewhat random sampling, as opposed to the overall number of AALL members.

**Believing the Numbers**

\textsuperscript{5} While it would be erroneous to draw definitive conclusions about the racial and ethnic makeup of AALL from these numbers, I reject the notion that the numbers are entirely meaningless. I think it is safe to presume that the survey results have some similarity to the demographics of the larger membership. Many will disagree with me on this point. Some will argue that the numbers overestimate the racial and ethnic makeup of AALL because people of color are likely to have responded in higher numbers than others. With this argument I cannot entirely agree. My experience as a person of color working on diversity issues within AALL has been that even people of color may lack concern over diversity issues. I would estimate that the percentage of people of color who engage with the diversity committee, attend diversity events and programs, and invest their time on diversity issues is comparable to that of the overall membership. Thus, many people of color are likely not to have responded to the survey.

\textsuperscript{6} Second, comparing the survey numbers with the demographic data reported in the annual AALL directory seems to support this conclusion. In the 2013–2014 AALL membership directory, 319 people identified themselves as minorities.\textsuperscript{15} This number is 27.6% larger than the 250 survey respondents who identified themselves as underrepresented, which appears counterintuitive. The directory number is pulled from membership data gathered in response to one check box on the AALL membership application. It reads, “I am a member of an ethnic minority group and would like to be included in the Minority Librarians Directory.”\textsuperscript{16} By design then, the directory number excludes LGBTQ members, differently abled members, and those who do not define themselves as minorities or who prefer not to respond to such questions.\textsuperscript{17} Yet the number of people responding affirmatively to the application

\textsuperscript{12} This figure could be misleading, however, because respondents were able to choose more than one category.

\textsuperscript{13} AALL Diversity Survey Results 2011, supra note 9. The racial and ethnic categories listed were American Indian or Alaskan Native, Black or African American, East Asian, Hawaiian or Pacific Islander, Hispanic or Latina/o, Middle Eastern, Mixed Race, South Asian, and Other.\textsuperscript{14} Karen R. Humes et al., Overview of Race and Hispanic Origin: 2010, 2010 CENSUS BRIEFS, Mar. 2011, at 4 tbl.1 (Mar. 2011), available at http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf.


\textsuperscript{17} See BRIDGETT A. KING, THE EFFECT ON STATE POLICY OF INDIVIDUAL VOTE DECISIONS OF AFRICAN AMERICANS IN PRESIDENTIAL AND MIDTERM ELECTIONS, 1996 TO 2008 (2012) (unpublished Ph.D.
query exceeds the number of Diversity Committee survey respondents who identified with a list of underrepresented groups that included even nonracial categories. My point here is that the survey is more likely to have underreported rather than overestimated the minority population in AALL.

**Other Numbers from AALL**

¶7 There are other indications that progress is being made and that the level of diversity within AALL has increased over the years. If we accept the numbers in Thurston’s article, we can even see progress there. Thurston reports that in 1993 the percentage of minorities in law librarianship was 8.9%. 18 She cites the 1999 AALL salary survey as indicating a 12% racially nonwhite identification among AALL professional members. 19 That same survey in 2005 reported that 14.7% of law librarians were nonwhite. 20 These numbers demonstrate steady progress toward increasing racial and ethnic diversity.

¶8 Another indicator is the AALL membership directory’s listing of minority law librarians. For the sake of simplicity, let’s assume a membership of 5000. The 2011–2012 directory numbers indicate that 280, or 5.6%, of the AALL membership reported minority status. 21 The 2013–2014 directory numbers indicate that 319, or 6.4%, of the AALL membership reported minority status. 22 So even without including the Diversity Committee survey, there is indeed evidence of progress. 23

**Numbers from ALISE**

¶9 Recent data from many library schools suggest that librarianship is a quickly diversifying profession even though discussions of this trend are absent from the academic literature. In fact, the literature suggests the opposite. Thurston reports that library and information science programs “struggle with diversity issues” 24 and that the numbers of minorities in graduate library and law library programs are low, 25 based on data from the Association for Library and Information Science Education (ALISE). 26 Yet a closer look at the data compiled by ALISE reveals that racial minorities are graduating from many library schools in significant and noteworthy numbers. Thurston points out that “minorities composed only 25% of
applicants and 18.8% of those admitted for the 2006–07 academic year” to the University of Washington Information School’s law librarianship program. Yet with only 27.6% of the U.S. population identifying as people of color, those percentages seem right on target to soon mirror the racial and ethnic demographics of the country.

¶10 Moreover, many library and information science schools have similarly good statistics. Here is a randomly selected and geographically diverse sampling of the data. In 2010–2011, 20% of the University of North Texas School of Information’s graduates earning master’s LIS degrees were ethnic and racial minorities, 30% of the University of Michigan School of Information’s graduates earning master’s LIS degrees were ethnic and racial minorities, 24% of the Graduate School at Valdosta State University’s graduates earning master’s LIS degrees were racial and ethnic minorities, and 27% of the San Jose State University School of Library and Information Science’s graduates earning master’s LIS degrees were racial and ethnic minorities. Although diversity varies widely from school to school, these numbers suggest to me that progress is being made.

Anecdotal Observations

¶11 Even anecdotal observations point to an ever more racially diverse AALL membership. Take our very recent AALL Executive Board election results as an example. The winners of the election for 2014 included an African American woman and an openly gay man. The tradition of diversity among the AALL leadership cannot be characterized as merely intermittent. As I pointed out in a previous installment of Diversity Dialogues, the AALL Executive Board has included at least one person of color and one LGBTQ person for the past thirteen years.

¶12 Consider another of my observations. Back in 2001, when I attended the Conference of Newer Law Librarians (CONELL) as a new law librarian, I recall being one of only a couple of people of color in attendance. More recently I attended CONELL in 2013 as a speaker, and I noticed far greater numbers of people of color participating. In 2012 and 2013 there were no fewer than ten visually identifiable people of color attending CONELL, or about 10% of those attending.

27. Id. at 368, ¶ 27.
28. Humes et al., supra note 14, at 4 tbl.1 (sum of all nonwhite percentages of total population listed for 2010).
29. ASS’N FOR LIBRARY & INFO. SCI. EDUC., LIBRARY AND INFORMATION SCIENCE EDUCATION STATISTICAL REPORT 2012 at 123, 123–30 tbl.II-3-c-2-LIS.
30. Id. The totals for the fifty-six ALA Accredited Library Schools listed revealed that overall 13.6% of the master’s LIS degrees awarded in 2010–2011 went to ethnic and racial minorities.
33. I confirmed these observations with Jocelyn Kennedy, Associate Law Librarian for Library Services at the University of Connecticut School of Law Library, Hartford, Connecticut, who served on the CONELL Committee from 2008 to 2012 and who shared with me the 2011 and 2012 CONELL membership rosters.
One final anecdotal observation is the product of my own less-than-scientific tabulations over the years. In 2003, I served on the search committee for a new law library director at the University of New Mexico, and I became interested in the number of people of color in academic law library directorships nationally. I called several people and accumulated a list through observation, inquiry, and reference. At that time there were about twelve academic law library directors of color in the United States. Today, the number is about twenty-one. I really do think that these anecdotal observations point to real progress.

Importance

Let me here mention, briefly, why these small and often anecdotal demonstrations of progress toward racial and ethnic diversity are important. Several articles have been written about the importance of racial diversity in law librarianship. Themes such as serving diverse populations, the changing demographic of the United States, multicultural curricula, and library collections for diverse populations appear regularly in the professional literature. This is ground that has perhaps been sufficiently covered. I would therefore like to point out one of the less frequently discussed benefits of racial and ethnic diversity in our profession.

Diversity begets diversity. Racial homogeneity enforces homogeneity in ways that have nothing to do with intentional bias. Over 85 percent of Americans, for example, get their jobs through acquaintance contacts. [Therefore] racially homogeneous friendship networks can segregate people out of important networks, and thus out of important opportunities. The lesson to be learned here for law librarians is that even seemingly small efforts at diversifying our profession can yield larger results in the long term.

This idea is demonstrated by the example I offered earlier concerning the number of academic law library directors of color. For years the small number of minority law librarians coupled with the relatively homogeneous group of aca-

34. Using this measure admittedly overlooks significant portions of our profession, including law firm librarians; private and other corporate law librarians; and state, county, court, city, federal government, and other agency law librarians. Nevertheless, academic law librarians are the population with whom I am most familiar and whose demographics I continue to monitor.

35. Although I cannot recall all of their names, law library directors of color worked at the following law schools in 2003: Florida A&M, Stetson, John Marshall–Chicago, Duquesne, Howard, Texas Tech, Villanova, Kansas, Hawaii, Texas Southern, North Carolina Central, and Southern.


Academic directors served to enforce the status quo. But as the numbers of minority middle managers increased, people of color became a part of social and professional networks that provided more connections and more opportunities.

¶17 Here is an example from my own professional life. Before I moved to Atlanta to work as the associate director at the Georgia State University College of Law Library (GSU) in 2006, I had been quite active in professional associations, I knew lots of people, and I felt relatively well connected in the profession. However, it wasn’t until I began working for Nancy Johnson at GSU that I became part of her much larger and longer-established network of both academic law library directors and other long-time members of our profession.39 Although Ms. Johnson had an extremely diverse group of friends and professional acquaintances, and her commitment to diversity in the profession is undeniable, her largely white network of law librarians with twenty to thirty years of experience was far vaster than any network that I had access to at the time.40 Although I like to think my own talent and charisma weighed heavily in my career trajectory, the ability to begin conversations by saying “I work for Nancy Johnson” clearly opened doors and facilitated entry into circles that otherwise might have been more difficult to penetrate. It is a mistake, therefore, to discount the importance of even small numerical gains or seemingly insignificant efforts to increase racial and ethnic diversity in our profession.

Conclusion

¶18 Efforts to promote racial and ethnic diversity within AALL, in the profession of law librarianship, and in library and information science schools are beginning to show positive results. There are numerous sources of racial and ethnic data, none of which are completely thorough and reliable, but they do show slow and steady progress, in my opinion. That does not mean that success is ours with regard to diversity. It also does not mean that our work is done. It does mean, however, that the time, effort, energy, and money that we continue to invest in diversifying our profession has not been wasted. It does mean that our profession is beginning to look demographically more and more like the larger population of the United States. It also means that continued efforts are needed. Most of all, though, it means that we can be proud of our efforts. On a personal note, it means that we are a profession that I am proud to be a part of.

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40. Nancy P. Johnson has taught, developed, and mentored countless librarians of color over the years. Her many accomplishments and efforts that helped diversify the profession of law librarianship are detailed in a letter nominating her for the 2014 AALS Section on Law Libraries and Legal Information Award (on file with author).
Memorial: Gail Hartzell (1946–2013)*

 ¶1 Gail Hartzell, Associate Professor of Law Librarianship Emerita of Valparaiso University Law School, passed away on October 21, 2013, at age sixty-seven, from complications following open heart surgery.

 ¶2 Gail’s first library job at Walsh College (now Walsh University) in North Canton, Ohio, followed her graduation from Kent State University in 1968. Her work as a library assistant involved serials, and her aptitude for technical services soon became apparent. Her director described her to me as “a genius at serials.” Gail’s husband, Tom, recalls that it was at this first library job that she discovered her love for libraries and library work. Walsh College was an early adopter of the Online Computer Library Center (OCLC), and Gail has the distinction of being one of the first librarians to use OCLC throughout her library career.

 ¶3 I met Gail in 1991 when Valparaiso University Law School hired her as interlibrary loan manager and cataloging assistant. Her commitment to doing an exceptional job soon became apparent. She was the definition of multitasking—working full time, raising three teenage sons with Tom, and studying to complete her master’s in library science from Indiana University. Taking classes for her graduate degree involved many hours of commuting, often at night, to South Bend, to Indianapolis, and finally for one semester to Bloomington, Indiana (360 miles round trip) several times a week. When not on the road, Gail spent her evenings and weekends studying and completing assignments.

 ¶4 Soon after obtaining her master’s in 1992, Gail became director of the Davenport College (now Davenport University) library, in Merrillville, Indiana. In 2001, Valparaiso University Law School hired Gail as acquisitions librarian, and later she became their acquisitions and serials librarian. Along with successfully taking the library through the many changes in law publishing over the years, Gail helped at the reference desk and informally, in her office. Students appreciated her patience, encouragement, and interest when they asked for help with legal research assignments.

 ¶5 As soon as Gail entered the law library community, she joined the American Association of Law Libraries (AALL), the Chicago Association of Law Libraries (CALL), and the Ohio Regional Association of Law Libraries and immediately volunteered for CALL committees. Her enthusiastic and consistent support of CALL through committee work and as a board member, from her first year and into her retirement, is a model for the kind of commitment that keeps volunteer-run organizations strong. According to one committee chair, Gail was the first to volunteer for a task, and there was no need to follow up with her. You knew the task would be handled.

At various times she served as coeditor for the CALL Bulletin and cochair of the Bulletin Committee, and she cochaired the Membership Committee and the Committee on Relations with Information Vendors (CRIV). Following years of outstanding service to CALL, Gail was elected director for their board for 2009–2011. She was well qualified to chair the Special Task Force Committee to investigate and make recommendations for the future of the Bulletin in 2011–12.

Her work with the Bulletin led to her joining the AALL Council of Newsletter Editors (CONE) and serving as cochair in 2007–08. In addition, she served on the AALL Price Index for Legal Publications Committee and the AALL ALL-SIS CONALL/Mentoring Committee. She was also a member of Beta Phi Mu, the American Library Association, and the Association of American Law Schools.

In 2013 Gail was awarded CALL’s Outstanding Lifetime Achievement Award. Unfortunately, poor health prevented her from personally receiving the award at the annual business meeting, but it was important to her, and much appreciated.

Gail took a professional interest in the changes prevalent in law publishing and acquisitions, as well as in the relationship between vendor and librarian, which was expressed through her work with CRIV. She had the patience and the insight to untangle the problems that sometimes happen when dealing with law publications. We were fortunate to work with a colleague who was interested and enthusiastic about her work, who was willing to communicate about the aspects that affect others in the law school, who was approachable, and who had a ready smile and a sense of humor. For more than ten years our library staff greatly benefited from having Gail as a colleague. I was also privileged to count her as a warm and generous friend, as did many who knew her.

Gail is survived by her husband of 45 years, Thomas; sons Dale (Amanda), Kevin (Molly), and Keith (Gwendolyn), eight grandchildren (to whom she was devoted), a sister, and many nieces and nephews.—Naomi Goodman

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1. Technical Services Librarian (retired) and Associate Professor of Law Librarianship Emerita, Valparaiso University Law Library, Valparaiso, Indiana.
Memorial: José Federico (Fico) Rodríguez (1922–2013)

A Warm, Loving Man

¶1 José Federico Rodríguez, of Athens, Georgia, passed away on August 19, 2013, at his residence on St. Simons Island, Georgia. Fico, as he was known to friends, was born in Caibarién, Cuba, on December 14, 1922, and graduated from the University of Havana with a Doctorate of Law degree in 1945. He and his wife and four children came to the United States in 1961 as exiles from Fidel Castro’s Cuba. In 1966, he received a Master of Library Science degree and accepted a position at the University of Georgia (UGA) Law Library, where he worked until his retirement in 1990.

¶2 Mr. Rodríguez is survived by his wife, Antonia; daughters, Adriana (and husband, John Bumgartner), Rocío (and husband, Larry Karp), and Laura (and husband, Randy Humphreys); son, José (and wife, Carol Unger); and nine grandchildren.

¶3 Fico was an avid reader who also loved American movies and baseball. When he came to the United States, he initially wanted to earn a doctorate in Spanish literature, but instead he enrolled in library school and came to work at the UGA Law Library. When he arrived, the library was housed on the second floor of the original law school building, and he was often teased that his office later became a men’s restroom. In the early 1960s the Georgia General Assembly appropriated funds for an addition to the law school that ultimately became the law library, classrooms, and professor’s offices. One million dollars was allocated to increase the library’s holdings, and Fico helped choose and organize the new materials in the expanded space.

¶4 In 1979, the library was enlarged again with an annex to store the growing collection of state and international documents. A large microfilm collection and LexisNexis and Westlaw terminals were also housed in the new building. During the years that Fico served as the Public Services Librarian, the UGA Law Library became one of the largest in the Southeast.

¶5 Beyond his expertise as a law librarian, Fico was a warm, loving man and is remembered fondly by his colleagues in the law library and law school. He was always sensitive to minorities and to foreign students whose native tongue was not English. They knew that they could count on him to offer a listening ear and any help that he could provide.

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In the late 1980s, shelf space in the library was at a premium, and summers were spent rearranging books to keep the subject matter together. One summer, Fico hired two undergraduates from southern Georgia to assist in the effort, and he could often be found running around the library looking for “his boys.” In conversation he would say, “are you familiar to?” when asking whether you knew a certain person. His office shared a light switch with the office directly behind it. He and Martha Hampton, who worked in the other office, developed a method of letting each other know when to turn off the light for the day. The shared light switch was the source of many laughs among library staff.

From 1985 until he retired in 1990 I worked very closely with him and ultimately succeeded him as Public Services Librarian. Although I had graduated from law school and become a member of the Georgia bar, he pushed me to expand my knowledge of library practices and to take on increasing amounts of work. Not only was he a very capable supervisor, but he became a close friend. We stayed in touch even after he moved to St. Simons Island, and I visited him there just a few months before his death.

Fico was an amazing man who was able to make the transition from being a lawyer in Cuba and fighting for Cuba’s independence to moving to a different country with a different language and customs and establishing a new career as a law librarian. He did all of this with grace and kindness. His children grew up in Athens and became professionals who contribute to the communities where they live. His legacy will live on in his children and the many students whose lives he touched in his years as Public Services Librarian at the UGA Law Library.—Sally Curtis Askew

The Heart of the UGA Law Library

Fico Rodríguez was the heart of the UGA Law Library. The definition of a gentleman, he was dedicated to the library, the faculty, and, most of all, the students. He frequently spoke of his respect for the students and their accomplishments and of how privileged he felt to know and assist them. But he showed that respect to the library staff as well. Coming from someone with Fico’s generosity, intelligence, kindness, and good will, that respect was an honor. We loved him for it.

Most of what I remember about him is personal. One day I was working on the catalog, and he came up to me and said, “I always say that if you want to know if something looks nice, you should ask a pretty girl. Which one of these do you think looks best?” When I met his wife, Toni, she looked at me and said, “You are the one with the beautiful blue eyes.”

After moving to Georgetown, I always tried to see him whenever I came home for a visit. One day I invited him to lunch, and at the end we politely tussled over the check. Fico looked at me and said, “Beautiful Vivian, you know I am a

1. Reference/Public Services Librarian (retired), Alexander Campbell King Law Library, University of Georgia School of Law, Athens, Georgia.

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Cuban. It hurts me when you argue with me like this.” I let him pay the check, of course. And when my younger sister was working as a student assistant, he said to her one day, “Your mother must be a most beautiful lady to have to such beautiful daughters.” Whenever he said something like that, it felt like a warm hug. My mother’s response was modest: “I never want to meet him and disappoint him!” But they did meet, and neither was disappointed.—*Vivian Campbell*

**He Was a Joy to Work For**

¶12 What can I say about Fico? When I moved from Philly to Georgia, both he and Toni welcomed me like a long-lost daughter, not least because his favorite baseball team while growing up in Cuba was the Philadelphia Athletics. When my mom visited, they had a great time discussing baseball. I really enjoyed some of our Spanglish discussions about property concepts in American and Cuban law. One day when we were discussing some legal issue in Spanish, he made me laugh when he said, still in Spanish, “let's have lunch at 'el Bulldog Room.”’ He was a joy to work for and he always had time for people.—*Margaret M.R. Durkin*

**An Amazing Man**

¶13 My recollection of Fico is as a warm, caring man who always went out of his way to accommodate me in my work involving the library. He was always on the lookout on my behalf for anything having to do with family law and criminal law. He also never failed to ask after my wife and my son, Benji. He always referred to him as the “little one” long after Benji was no longer small. And he often asked me questions about my Jewish faith and our religious practices. He was an inquisitive, bright, caring man who was a dear friend. I admired and respected him and miss him.—*Paul M. Kurtz*

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