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Is This a Profession? Establishing Educational Criteria for Law Librarians*

Elizabeth Caulfield**

This article seeks to encourage discussion that will lead to the standardization of educational criteria for law librarians. The article recounts the history of the debate about educational standards for law librarians, discusses why some law librarians historically had law degrees, and proposes formal educational requirements for law librarians to facilitate the professionalization of law librarianship.

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* © Elizabeth Caulfield, 2014. This is a revised version of the winning entry in the open division of the 2014 AALL/LexisNexis Call for Papers Competition. I wish to thank Uwe Beltz for giving me the inspiration and encouragement to write this article and Joseph D. Lawson, Alan Pannell, Heather Simmons, and Dr. Natalie Tarenko for their thoughtful comments about its style and substance.

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The “essence [of a profession] is that it assumes certain responsibilities for the competence of its members or the quality of its wares. . . .”

Introduction

¶1 In the 2010 film *The King’s Speech*, the character King George VI is nearly undone by the challenge of reading a speech aloud without stuttering. In distress he cries out, “I’m not a king.” While it may not be as vexing as the king’s problem, the law librarianship profession’s lack of interest in establishing educational standards for members is perplexing. If the king was unable to meet the standards of his profession, law librarians have failed even to set such criteria for their field. Having high expectations like the king, why should we not lament the lack of formal educational standards, note the long unresolved historical debate about education, and conclude despairingly that law librarianship is not yet a profession?

¶2 Although the proper education for law librarians has been debated for decades, specific educational criteria have yet to be established. Thus, some law librarians must earn the often costly degree that belongs to another field (the J.D. for attorneys) without the corresponding salary and status that often accompanies that credential, while others find employment in the same libraries without the additional education, but their jobs lack comparable salary or status. This inconsistency can lead to fissures among colleagues in the workplace when some librarians are deemed qualified for professional opportunities and others are not. Entry-level professionals who have yet to enter the workplace may be uncertain about the academic qualifications they must obtain. They may also wonder whether obtaining a law degree is prudent if the price is long-term student loan debt.

¶3 The goal of this article is to encourage discussion that leads to the standardization of educational qualifications for law librarians and the establishment of law librarianship as a distinct profession. Part I recounts the history of the debate regarding educational standards for law librarians. Part II discusses why some law librarians historically had law degrees. Part III proposes formal educational requirements to facilitate the professionalization of law librarianship. Part IV concludes with a call for law librarianship to establish educational criteria. Throughout, the article refers to events in popular culture, namely, movies, to provide milestones in the debate about education for law librarians.

I. Education for Law Librarians: The History of the Debate

Visions of What the Profession Could Be

¶4 More than four score and seven years ago, in 1906 to be exact, the American Association of Law Libraries (AALL) convened for the first time. Law librarians

gathers for a common purpose: to advance “the interests of law libraries.” The organization’s constitution stated, “The object shall be to develop and increase the usefulness and efficiency of the several law libraries.” The same year, Frank B. Gilbert, librarian at the New York State Library, envisioned the professional knowledge needed by the law librarian: “While perhaps it should not be insisted that he have the grasp of legal principles possessed by the well-trained lawyer, he nevertheless should know how those principles are best classified, and where best to find cases illustrating their application.”

At the second meeting in Asheville, N.C., in 1907, A.J. Small, president of the Iowa State Law Library, called for an end to the practice of cashiering librarians based on political favoritism. “Make the librarian’s vocation a profession rather than a mere occupation.” In advocating for merit-based employment, he tasked the librarian with “fit[ting] himself for life work.”

Gilson G. Glasier, librarian at the Wisconsin State Library, published an article in Law Library Journal in 1956, summarizing the first twenty-four annual meetings, as well as describing the Association’s founders. He explained their views about the professionalization of law librarianship throughout the early years of the organization: “They believed that the work of the law librarian should be taken out of the ‘job’ class and out of politics and raised to the level of a profession.”

In his address to the 1909 gathering in Bretton Woods, N.H., Ernest A. Feazel, president of the Cleveland Law Library Association, explained why he believed law librarianship was not perceived by the public as a profession. He quoted from a definition of the word that emphasized the concept of knowledge, then mentioned an anecdote illustrating an employer’s perception that a law librarian position could be filled simply with a human body. From these observations, Feazel concluded, “law librarians themselves are responsible for the way in which their positions are regarded, and until they profess to understand their vocation, to possess special knowledge and attainments and can in other respects make the definition I have quoted descriptive of themselves, they cannot complain.” Thus, as early as the year actress Mary Pickford first appeared in silent motion pictures, the

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7. Id.
10. Id. at 22.
11. Id. As late as 1978, Lester Asheim, the professor of library science at University of North Carolina, Chapel Hill, argued that librarians’ lack of educational standards for themselves had led society to believe that formal education was unnecessary for librarianship. “[N]either the public nor the field itself is convinced that successful achievement in librarianship must be based on the systematic knowledge of doctrine that can only be acquired through the long period of prescribed training,” James M. Donovan, *Order Matters: Typology of Dual-Degreed Law Librarians*, 33 LEGAL REFERENCE SERVICES Q. 1, 4 (2014) (quoting Lester Asheim, *Librarians as Professionals*, 27 LIBR. TRENDS 225, 231 (1978)).
president of the organization created to improve law libraries believed that law librarians should distinguish themselves through knowledge.\(^{12}\)

§8 Feazel advised law librarians to be knowledgeable about “[t]he science of law, library science, and legal bibliography,” but he expressed concern about formal educational opportunities for law librarians, whose numbers were small.\(^{13}\) As a result, he advised “self education.”\(^{14}\) Today’s law librarians may respond to that prescription as then library school student Theodora Belniak did in 2009: “Feazel’s suggestion . . . highlights the vacant space aching for a formal educational program that incorporated library science and the law; and . . . underlines the tenacity and drive of the law librarian of this time period.”\(^{15}\)

§9 At the 1914 meeting in Washington, D.C., E.M.H. Fleming of Indiana, in a discussion on training for law librarians, commented, “I, at least, feel our profession should not be a stepping-stone to the law. The time is here when we must vaunt law librarianship as a permanent profession.”\(^{16}\) “When I told the judge of another neighboring county that [having] a librarian would pay as an investment he was astounded. He had thought merely of the old book custodian type as a means of keeping the library door open. I think we have been modest long enough.”\(^{17}\)

§10 Advancing fifteen years to 1930, Arthur S. McDaniel of the New York City Bar Association proposed that law librarians obtain backgrounds in “languages, history, and government or political science” to establish law librarianship as “a learned profession.”\(^{18}\) In an ideal world, an education in both law and library science “would be excellent if the law library profession offer[ed] sufficient inducement for the candidate to spend four years at college, then three years at law school and finally two years in a library school.”\(^{19}\)

§11 Former president Small at that year’s convention recollected the Association’s first gathering, in which law librarians met “with a single purpose in view—that of making librarianship a profession rather than simply holding a job and the betterment of the institutions which we represented.”\(^{20}\) He commented on the organization’s progress; professional positions were generally now obtained through “merit rather than as political rewards.”\(^{21}\) In an era of fewer employment regulations, such a change may have been true advancement. But by the time law librarianship had gained this modicum of respect, twenty years had passed and

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13. Feazel, supra note 9, at 22–23.
14. Id. at 23.
17. Id. at 44 (remarks of E.M.H. Fleming).
19. Id. at 70.
21. Id.
silent film director D.W. Griffith had made his first sound film, *Abraham Lincoln*.*

¶12 In subsequent decades, the discussion about the professionalization of law librarianship took the form of a debate about whether law librarians should have two degrees, a master of library science and a juris doctor, and whether one degree was preferred over the other.*

Ironically, a review of historical surveys indicates that many law librarians lacked a college education, not to mention advanced degrees, well into the twentieth century.* Thus, the conversation about education led leaders in the field both to appreciate the fact that many law librarians also did not have law library training and to contemplate whether that specialized instruction should be required for employment, in addition or as an alternative to the law degree.*

**From 1906 to the Early 1950s: Specifics Are Left to the Future**

¶13 About the same time that the AALL was established, the New York State Library School in Albany began offering “[l]ectures on ‘the arrangement and use of law libraries’ and ‘law books for a popular library,’” with courses in law librarianship beginning around 1910.* From 1923 to 1925 the program required students to have “studied law and [to be] familiar with legal terms.*

¶14 In 1926, Frederick C. Hicks, law librarian at Columbia University and former AALL president, addressed the AALL annual meeting in Atlantic City. In his remarks, titled “The Widening Scope of Law Librarianship,” he observed that law students and lawyers were beginning to introduce issues involving the social sciences into their legal arguments.* Noting how many “specialties” comprised law

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27. *Id.*

librarianship, he asked, “has not the time come for definite attention on the part of this Association to the problem of training for law librarianship?”

¶15 Hicks noted a new School of Library Service taking shape at Columbia University in combination with the New York State Library School and the school at the New York Public Library. He drew special attention to this training for aspiring librarians because it could lead to a master of science, demonstrating the academic world’s seriousness about librarian training. He advised potential law librarians to take note: “many persons who now feel themselves to be qualified to enter upon a career of law librarianship would not technically be qualified to enter such a school, because they do not already possess a Bachelor’s Degree.” In 1929, Hicks, who had become professor of law and law librarian at Yale Law School, again struck a serious tone at the AALL annual meeting in Washington, D.C. He commented that the librarian must “[n]ot necessarily” be a lawyer “but he must at least be ‘legally minded,’ and whether he holds a law degree or not, he must study law as long as he is a law librarian.”

¶16 New Orleans hosted the AALL’s annual conference in 1932. On April 27, Rosamond Parma, AALL president and law librarian at the University of California at Berkeley, read the report of the Committee on Education for Law Librarianship, which proposed that law librarians know “the lawyer[’s] . . . unique tools and his terminology” and the librarian’s “standardized equipment and methods.” The proportion of each type of knowledge depended on the nature of the law librarian’s work.

¶17 The Committee pondered the ideal amount of formal education versus what is necessary to give “admirable service,” recommending an introduction to both the lawyer’s and the librarian’s “techniques.” An introduction, gained in just one semester, would be inadequate for “a great many positions.” But the group left to future committee members the specifics of an education plan that would work for each type of law librarian.

¶18 In its report, the Committee included the questionnaire on the proper education for law librarians that it had distributed the year before. Librarians from a variety of legal environments (such as law schools, bar associations, and
counties) agreed that “a minimal educational qualification” should be required but differed on what that education should be.40

¶19 President Parma felt “anxious” for the profession to establish law librarianship courses in library schools.41

I think that if some course were to be given in a Library School it would be a distinct recognition of law librarianship. As it is now I think the popular impression is that anyone who has been an unsuccessful practitioner or who is a judge who wishes to retire, or someone who is just out of a job, might very well fill the position of law librarian.42

Thomas S. Dabagh of California’s Legislative Counsel Bureau observed that many successful law librarians had no formal legal education.43

¶20 At the end of 1932, William R. Roalfe, librarian at Duke University School of Law, gave an address titled “Status and Qualifications of Law School Librarians” at the annual meeting of the Association of American Law Schools (AALS). He began with the provocative point that “the librarian is himself the crux of our whole problem.”44

¶21 He encouraged law librarians to nurture “a natural capacity for co-operation” by developing “an intelligent general understanding of the law.”45 After all, he said, the professional law librarian’s work was not “clerical.”46 Roalfe concluded that the librarian “cannot play his real part in the law school organization unless he is both generally and legally trained,” but questioned whether many law librarians would find eight years of formal education feasible.47

¶22 While acknowledging that some law librarians with little formal education provide “first-class service,” he asserted that the average person with academic credentials usually does the best job in any profession that requires “specialized knowledge and attainments.”48 In his view, the AALL “must sooner or later come to grips” with the “problem” of the lack of educational standards for law librarians.49 For the present, “a slightly more modest and yet satisfactory” set of formal qualifications could be established, with “an ideal standard” proposed for the future.50 Whatever proposals organizations like the AALL and the AALS endorsed, their ideas would require review. “Little or nothing can be gained by forcing higher standards on either unwilling individuals or institutions,” he said.51

¶23 Three years later, Dr. Arthur S. Beardsley, law librarian at the University of Washington, delivered the report of the Committee on Education for Law

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40. Id. at 173–74.
41. Id. at 175 (remarks of Rosamond Parma).
42. Id.
43. Id. (remarks of Thomas S. Dabagh shared by Rosamond Parma).
45. Id. at 399.
46. Id.
47. Id. at 399, 401.
48. Id. at 401.
49. Id. at 402.
50. Id. at 401.
51. Id. at 402.
Librarianship at the AALL annual meeting in Denver. He also took the opportunity to offer his own assessment of the situation. “It is my personal view that (1) legal training (as evidenced by a degree in law) is essential and indispensable, and (2) that a general library training is desirable although perhaps not indispensable.” He asked, should not the AALL endorse similar principles?

The Committee agreed with the need to address the education issue but differed on whether to prioritize law or library knowledge. Beardsley closed his remarks by emphasizing the need for both types:

> While we cannot at the present time insist that our employees be either wholly law trained or library trained or both, it is desirable at some future time, probably, to set certain definite standards of training for those who from that time on should come into the law library profession . . . for the time being the Committee believes that a legal education is of primary importance and library training of secondary importance.

After extensive debate about whether to adopt the report, members agreed that the Executive Committee could selectively implement its recommendations.

In March 1936, the Bulletin of the American Library Association (ALA) published Beardsley’s essay “Education for Law Librarianship.” Though writing for a general library audience, he alerted law librarians to a crisis, emphasizing their paltry progress in establishing academic credentials for themselves. In view of the achievements of the general library profession in creating “educational standards” to practice in the profession and “standardiz[ing]” the instruction that students received in library schools, the law library profession had fallen behind.

“[L]aw librarians, although united into a national organization in 1906, have made but little progress toward the attainment of nationally accepted standards of professional service,” Beardsley noted. This lack of progress may have been explained in part by law librarians’ unwillingness to relinquish control to the organization. “In fact they have never empowered this association [the American Association of Law Libraries] to define such standards, although for thirty years the association has met annually to discuss matters of library importance.” The lack of formal education and training standards for law librarians was “professional

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53. Id.
54. Id. at 226.
55. Id. at 229.
56. Id. at 232.
58. Id. at 168–69. It appears that there was some conflict between the views of Beardsley and Asheim regarding how far the general library profession had progressed in establishing educational credentials for the profession by the early to mid-twentieth century. See Asheim’s opinion, supra note 11.
59. Id. at 169.
60. Id.
61. Id.
apathy.”62 As proof of the long road law librarians had been traveling to the promised land of educational standards, he cited proposed curricula for law librarian instruction, which had been promoted as far back as 1910 and 1926 by F.D. Colson and Hicks, respectively.63

¶28 It was fitting that Beardsley penned his article for an ALA publication, for he concluded by asking the organization for its “cooperation” and “assistance” to lift “the law librarians out of the difficulties” they had fallen into.64 If only the ALA would assist these special librarians, he said, “the [entire] profession of librarianship [would] be enhanced in public esteem.”65

¶29 At the 1936 AALL annual meeting, the Committee on Education for Law Librarianship presented its survey and report on the education of law librarians. Beardsley again summarized the report, which described obstacles in establishing an educational program for law librarians. He found “an unwillingness to undertake the responsibility of providing professional training, and an indifference toward the opportunities which such a program might afford.”66 The AALL had “accepted the responsibility” of providing an educational program for law librarians and needed to follow through.67 It was time for law librarians to support the program universally or cease studying the issue, the Committee stated.68

¶30 The survey gauged the interest in education for law librarians, 351 of whom provided responses (a forty percent response rate) from institutions with ten thousand or more volumes in the United States.69 Of those respondents, only five percent had both library and law degrees.70 Moreover, the Committee reported, only fourteen percent had graduated from law school and sixteen percent from “a library course”; forty-three percent had no law training and forty-eight percent had no library training.71

¶31 The Committee had this response to the results:

Law librarians are engaged in serving a professional class, and it would seem that the educational training of law librarians should at least be comparable or equivalent to that of the class whom they serve. . . . Surely some knowledge of the subject matter of law is desirable if the librarian is to successfully interpret that literature of the law which embraces in so large a measure the study and use of statutes, decisions, digests, textbooks, encyclopedia, and periodicals.72

62. Id. at 170.
63. Id. at 176–77.
64. Id. at 177.
65. Id.
67. Id.
68. Id.
69. The Committee did not specify the qualifications that entitled one to be called a law librarian in 1936, but the questionnaire indicates that the Committee placed librarians and library staff other than clerical workers in this category. The questionnaire was designed partly to gather information about the education of “full time members” of the law library staff and specifically stated that this number should include librarians “but not clericals.” Id. at 202, 213–14.
70. Id. at 202.
71. Id.
72. Id. at 210.
The Committee concluded that law librarians should have an education in “library science,” “legal science,” and “the social sciences and the humanities.”

¶32 Beardsley announced that Columbia University would offer a course in law librarianship, upon the AALL’s request. Subsequently, members voted to “endorse[] a program of educational training in some approved school of library service” and “to establish an [educational] institute in connection with the meeting next year.”

¶33 In 1937, the Columbia University School of Library Service began offering a course in law librarianship in alternating summers, a program that continued until 1961. The announcement of the new course in Law Library Journal stated, “This is the first time any accredited library school has found it possible to take a step that has been proposed many times by leading law librarians and others concerned with raising the standards of law librarianship.”

¶34 The dean of the School of Library Service, C.C. Williamson, noted that because the school had “high academic standard[s] for admission to the degree courses,” normally most law librarians would not be eligible to take the class. (Presumably, they would not qualify because they lacked a bachelor’s degree.) But because the course was a unique summer program, the school could relax the admission standards and would not require a background in law. Upon making the announcement to attendees at the AALL annual meeting in New York City, Williamson remarked,

I should not be surprised if the successful law librarians of the future should come largely from a group of men and women who have college training, legal training, and a one-year library school course, including a law library major, followed by an internship in some first class law library.

¶35 The AALL and the Board of Education for Librarianship of the ALA also met in New York City in 1937, the year that Walt Disney introduced the world to a “feature-length animated film” in Technicolor with Snow White and the Seven Dwarfs. The proceedings reveal the prominence of the idea that law librarians needed both law and library degrees, and even that one year of library school was inadequate library training. Participants understood, however, that nine years of higher education was probably unaffordable to many potential law librarians.

73. Id. at 211.
74. Id. at 214.
75. Id. at 222.
76. Cohen, supra note 23, at 309.
77. Columbia University School of Library Service Offers Course in Law Library Service Summer Session, 1937, 30 Law Libr. J. 29, 29 (1937). Although the New York State Library School conducted lectures in law librarianship as early as 1906, these may not have been considered part of the official curriculum.
78. Williamson, supra note 25, at 263.
79. Id.; see also Cohen, supra note 23, at 310.
80. Williamson, supra note 25, at 264.
83. Id.
In 1937 at its annual meeting in Chicago, the AALS amended Article 6 of its Articles of Association to state that by September 1, 1940, member libraries must have “a qualified librarian, whose principal activities are devoted to the development and maintenance of an effective library service.” The Executive Committee pondered the meaning of “qualified librarian.” The lack of clarity was reflected in comments by Herschel W. Arant, dean of The Ohio State University Moritz College of Law:

I don’t know what [“qualified librarian”] means any better than you do, but it is meant to provide library service, of course . . . I don’t think the committee would say that it meant a person who had a formal library course or had had experience. I don’t think it would require that the person must have studied law, but it would require that the person know something about the requirements of a library, I guess, and that they devote the main part of their time to the library. I can’t be any more definite than that.

AALS proceedings do not indicate whether the quality of the law library under Arant’s charge reflected his apathetic attitude about its steward’s education. Instead, Malcolm R. Doubles, dean of the University of Richmond School of Law, agreed that “[i]t is rather an indefinite thing as to what constitutes a qualified librarian.”

In contrast to the puzzled deans, at the 1939 annual meeting in San Francisco, the AALL Committee on Cooperation with the AALS found it possible to define a “qualified law school librarian” as “one whose principal interests and whole time and activities as far as possible are devoted to the library.” The Committee also managed to outline educational requirements for law librarians, although they were not intended to be applied universally.

The Committee agreed that regardless of experience, applicants vying for “head and chief assistant” positions should have a college education and some library instruction. Someone with no experience in a law library should be required to take a year of training in the fundamentals of law and legal bibliography. A professional with two years’ experience in a law library needed only the legal bibliographic training, which might be completed in a summer. Apparently the Committee believed that it was possible for the law librarian of two years who might lack formal legal education to have as much knowledge of the “fundamentals

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85. Proceedings of the Thirty-Fifth Annual Meeting, supra note 84, at 41.
86. Id. (remarks of Herschel W. Arant).
87. Id. (remarks of Malcolm R. Doubles). For more definite ideas about academic law librarians’ work being devoted primarily to the law library, see Frederick C. Hicks’ comments at the Association of American Law Schools’ 34th Annual Meeting in December 1936 in Proceedings of the Round Table on Library Problems, 30 LAW LIBR. J. 1, 20–21 (1937).
89. Id. at 365–66.
90. Id.
91. Id. at 365.
92. Id. at 366.
of law” as the newer law librarian who had submitted to the required year of formal education. This awkward approach to preparing law librarians for their life’s work seems unavoidable, considering the wide variations in educational backgrounds of law librarians at the time.93

¶40 Members voiced concerns about the fate of recommendations that would increase the educational burden.94 Beardsley remarked, “We must educate those who are opposed to raising standards.”95 Laurie H. Riggs, librarian of the Library Company of the Baltimore Bar, agreed that “[t]here is intense opposition to this report on the part of some of the members.”96 In addition, members wondered if small law libraries would be able to afford a law librarian with lofty educational credentials.97 Surprisingly, the AALS had not set educational criteria for law school professors; would that organization approve more ambitious recommendations for law librarians?98 William B. Stern of the Los Angeles County Law Library expressed concern about the Committee’s emphasis on acquiring degrees rather than subject knowledge.99 He asked if the law library profession wished to become a “closed shop.”100

¶41 But there was also a push to vote on the recommendations, as they represented a much-needed “minimum” set of credentials and would apply only to academic law librarians.101 Dabagh opined, “In the future we cannot let the matter of qualifications rest on the vague basis of personality. There must be an arbitrary minimum.”102 In the end, AALL members sent the Committee’s report on qualifications for academic law librarians to the Executive Committee for further study.103

¶42 Also in 1939, the year the film Gone With the Wind introduced mild profanity to American filmgoers,104 Beardsley inaugurated the law librarianship program at the University of Washington.105 Admittance required a law degree.106 Graduates

93. In contemplating an educational program for law librarians in 1936, the AALL’s Committee on Education for Law Librarianship acknowledged this challenge. “[C]ertain difficulties are inherent in any plan of professional training for a class so scattered, and for one whose educational backgrounds are of such a varied character, as are those of law librarians.” Am. Ass’n of L. Libr., supra note 24, at 200.
94. Id. at 371–72.
95. Id. at 372 (remarks of Arthur S. Beardsley).
96. Id. at 372 (remarks of Laurie H. Riggs).
97. Id. at 372 (remarks of Alfred A. Morrison).
98. Id. (remarks of Alfred A. Morrison). See also George Washington University Law Librarian Helen Newman’s remark that only ten AALS members required a college education of law school applicants. Id. at 373–74.
99. Id. at 368–70 (remarks of William B. Stern).
100. Id. at 369. Closed shop is defined as “[a] shop in which the employer, by agreement with a union, employs only union members in good standing.” BLacK’S LAw DIcTIonARY 1504 (9th ed. 2009).
101. Id. at 372 (remarks of Thomas S. Dabagh).
102. Id. at 373.
103. Id. at 374.
106. Id. See also Marian G. Gallagher, The Law Librarianship Course at the University of Washington, 5 J. LEGAL EDUC. 537, 538 (1952–1953). The website that describes the history of the program notes that some entering students had LL.B. degrees. Betty Wilkins, The University of Washington Law Librarianship Program, M.G. GALLAGHER LAW LIBRARY, UNIVERSITY OF WAShINGTON
earned a B.A. in law librarianship until 1953, when the program began awarding master’s degrees.

¶43 In 1946, the AALS again amended its Articles of Association regarding libraries, calling for each member school’s qualified librarian to be employed full-time. But two years later, scholars were still asking whether the academic law librarian was to be “merely a custodian, a watchman, a putter up or taker down of books, or . . . the head of an essential part of the instructional apparatus of the school.”

¶44 In his article, “The Law School Librarian,” Miles O. Price, librarian at Columbia University School of Law, answered that the academic law librarian most assuredly was the latter. He pointed out the importance of the academic law librarian to the professor and the law school at large:

The study of law on the level offered by schools of the Association of American Law Schools is a complex matter of legal principles, economics, political science, sociology, and criminology, and just as the subject matter of teaching and research has expanded far beyond its former boundaries, so has the literature of the law outgrown its former tight categories. It is therefore a practical impossibility for the law teacher in most subjects today to keep up with the material—legal, borderline, and non-legal—required in his specialty, without the assistance of a trained and competent person, interested in that sort of thing, who will collect it, and bring it to his attention.

This person is or should be the law librarian, with a background of general, technical, and legal education enabling him to appreciate the breadth of the problems involved, who knows how to present and use the material once it is on the library shelves. In his triple role of bibliographer, administrator, and teacher he can be of immense service to the faculty, students, and alumni.

¶45 Because of the value that law librarians could bring to law schools, Price noted that law school deans “typically” now required that their law librarians have eight years of formal education. He realized that this demanding educational standard must lead to a rewarding career to entice entrants to the field. A respectable salary was a part of this enticement, and the state of salaries for academic law librarians alarmed him. The academic law librarian also lacked the perks of law teachers: a higher salary for a shorter contract, extra money for teaching in the summers, and time for scholarship.
In 1950, proposed changes in standards for AALS member libraries referred to standards for law school librarians. The Subcommittee on Library Standards of the AALS recommended that the law school librarian “possess the qualifications of and be a member of the law school faculty, whether or not the library be administered as a part of the law school or as a unit of the university libraries. As such, he shall have either a sound knowledge of the practical problems of a law school library, or a legal education, and preferably both.”

A special committee on Revision of Library Standards updated the Subcommittee’s report and made its presentation to the AALS at the annual meeting in 1952. The committee recommended that librarians be made faculty members but proposed that this policy be optional so that schools would not violate association standards if their librarians were not of faculty status. The language regarding preference for both practical “law school library” knowledge and formal “legal education” remained. Member schools voted to approve these revisions to the standards at the end of 1952.

Thus, decades into the life of the AALL, esteemed scholars in and outside the organization championed creating educational standards for law librarians. But no advocates advanced that call for standards to the level of state-mandated requirements.

The Year 1953: A Proposal Dies “Aborning”

In 1953, Twentieth Century Fox Film Corporation presented the first widescreen film made in CinemaScope, the religious drama *The Robe*. That year brought another breakthrough of sorts for American law librarians. Lester Asheim, dean of the University of Chicago Graduate Library School, offered “A Proposed Program of Preparation for Law Librarianship” at the Second Workshop on Law Library Problems of the Chicago Association of Law Libraries. He suggested “three years of general undergraduate work followed by a year of general librarianship training, then a year of regular law school courses with an additional year of [a] mixed diet of courses from both library school and law school.” Asheim’s theory “that a law librarian is primarily a librarian, not a lawyer” was noteworthy because it was formally asserted as the basis for educational criteria for law librarians and because its suggestion that law librarians could be successful with something less than the dual degree made it vulnerable to attack.

119. *Id.* at 41.
120. *Id.* at 171.
121. *Id.* at 50–52.
¶50 Asheim pointed out the historical preference for the J.D. for law librarians, noting the “grudging” acceptance of library education by the AALL in 1935. He believed that to provide good service, law librarians needed to understand attorneys’ and law students’ problems and thinking patterns. A law degree, however, seemed to him unnecessary.

This kind of understanding can best be gained by attending law school and being introduced to law subjects—indeed it may be that it can be gained in no other way than this. But I do not see the necessity for the law librarian to pursue a program all the way to the law degree.

Organization of materials, collection of materials in related fields, and “interlibrary cooperation” require a librarian, “not a lawyer let loose in a room called the library.”

¶51 Asheim believed that under his proposal, status would not elude the law librarian. “It is my belief that [lawyers] will recognize the virtue of expert knowledge in other fields as well, and that they will accord respect to a man who demonstrates his ability even in some field other than law.” “He will be a specialist in law materials, on an equal scholastic and academic footing with the law school graduates whose program he has, in part, shared.”

¶52 Riley Paul Burton, law librarian at the University of Southern California, called Asheim “courageous” for submitting his idea “to a bloodthirsty panel of practicing law librarians,” who volleyed back with “pointed, candid and spirited comments.”

¶53 Bernita J. Davies, law librarian at the University of Illinois, acknowledged that Asheim’s proposal would increase the level of education required of law librarians. But “[e]ven if we agree with Dean Asheim’s premise that our work is primarily that of a librarian rather than lawyer, does it follow that we need only partial training in the law? Is there any reason for believing, as many do, that a law librarian should be a lawyer?” In her view, one year of law school was inadequate to learn how to analyze a legal problem or become efficient at fact-finding, a skill law librarians needed to help patrons. In terms of collecting materials in related fields,
“bibliographical knowledge” was not sufficient.139 The law librarian must know which sources “will be pertinent to and answer the needs of the lawyer or law student; and to know what is related calls for a thorough knowledge of law as well as of the bibliographical aspects of the subjects.”140

¶54 She observed the tide pushing against Asheim’s vision, specifically indications from the AALL Committee on Placement, law school deans, and the AALS of the preference for law librarians with the law degree.141 She argued that the credential brought not only knowledge and respect but also “a feeling of one-ness between the members of the legal profession which is hard for those who have not experienced it to understand.”142

¶55 Asheim asked at the end of his presentation, “What’s wrong with this program?”143 Davies responded, “Nothing, as far as it goes. I hope it will be carried through. If those enrolled enjoy the study of law as much as I have they will not stop with one year.”144

¶56 Asheim had argued that the law librarian should be a librarian and not a lawyer, but Marian Gould Gallagher, associate professor and law librarian of the University of Washington, took a different position. Her university’s law librarianship program started from the premise “that the best law librarian is a lawyer who has acquired the techniques of librarianship.”145 She disagreed with his belief that learning how to classify materials plus taking one year of law training would be sufficient for understanding how to catalog “the whole field of law.”146 Even with bibliographic training, the law librarian would not be equipped “to anticipate intelligently book needs in all fields of the law, and to select materials to the satisfaction of those who can understand and will use them.”147

¶57 Gallagher was more pointed when analyzing how Asheim could have reached his conclusions:

The unfortunate assortment of human dregs heretofore introduced to him by his friends at the University of Chicago Law School may contribute to his assumption that only the mentally deficient aspire to the profession of law librarianship, an assumption which is apparently unaffected by the obvious fact that entrance requirements which admit rejects from Law School must attract also rejects from other fields. He attributes to the University of Chicago Law Faculty an “implicit assumption that the law librarian needn’t be as bright as his patrons to provide them with adequate library service,” but he matches them with an implicit assumption that the law librarian needn’t and shouldn’t be as well educated as his patrons.148

She likened his proposal to “half-a-loaf training” with “no [new] law librarianship courses.”149

139. Id. at 47.
140. Id.
141. Id.
142. Id. at 48.
143. Asheim, supra note 126, at 43.
144. Davies, supra note 136, at 48.
146. Id. at 50.
147. Id.
148. Id.
149. Id. at 50–51.
The next witness against Asheim was Annabelle M. Paulson of the Railroad Retirement Board Library in Chicago. She agreed that the law librarian is more librarian than lawyer but parted ways with him on the essential training for the profession. “[H]is definition of a librarian is limited to someone who has been turned out of a library school.” Yet a library degree was not definitive. “[M]any early law libraries were handled in a more professional way by people without library training than they have been since by people with library degrees.”

Could the aspiring law librarian advance professionally, despite graduating from Asheim’s program? “The question here is will Dean Asheim’s proposed course give a student the benefits of a library degree and still make him a good law librarian.”

Whether the law library was large or small, she believed, a lawyer would find out how to give the best service for the benefit of the lawyers, the intelligent untrained person would carry on the status quo (which in most law libraries is and has been satisfactory) but the library trained person is very apt to come in and commit atrocities.

Similar to Davies, she emphasized understanding the subject of one’s special library. “The more any special librarian knows about his subject field, the better service he can give his patrons.” Since a law librarian never knows too much law, I hesitate to endorse a program that purports to turn out a finished product with one year only.” No, the law librarian will not be expected to write a brief but he will be asked to guide a lawyer’s research or suggest a different approach to a puzzling problem—most of which will not be in subjects covered during the first year of law.” Her admission raises the question of how any law librarian even with a law degree can be prepared to assist patrons when many of the courses in the advanced years of law school are electives, rendering librarians prepared to assist researchers only in the subjects they choose to study.

Paulson proposed that lawyers know better than librarians how to make materials accessible for fellow attorneys.

Please, Dean Asheim, tell your students to wait before they start making improvements. Maybe the old catalog is excellent even if it doesn’t contain any LC cards. Maybe that old subject index over there by the treatises is more useful than those subjects translated into LC headings and scattered through a dictionary catalog. Make your dictionary catalog but keep that old subject index too.

151. Id.
152. Id.
153. Id.
154. Id.
155. Id at 53.
156. Id.
157. Id. at 55.
158. Id. at 54.
159. For another viewpoint, compare Mary Whisner, Law Librarian, J.D. or Not J.D.?, 100 Law Libr. J. 185, 187, 2008 Law Libr. J. 8, ¶ 11, in which Whisner observes that a law librarian with a J.D. can apply the training she receives in learning one legal subject to learn another.
160. Paulson, supra note 150, at 53.
The need for subject knowledge of the law and the unique methods used in running a law library left Paulson unenthusiastic about Asheim’s plan. Under Asheim’s program, she said, students must understand that the first year’s library “training is for general libraries and that in his law library some principles will have to be adapted, some radically changed and some scrapped.”

¶61 Price, “dean” of placement, described the proposal as emanating from Asheim’s belief “that lawyers enter librarianship because they ‘couldn’t make it in law.’” In Price’s estimation, the proposal was better than any educational program then offered to aspiring law librarians, save the training at the University of Washington. But the proposal, in his estimation, still needed work. First, it would not give law librarians the right calling card for the most sought-after jobs. The lawyer, the person who most often hired law librarians, understood the J.D. (or LL.B. as it was then called), and therefore wanted librarians with that education. “That [training] he accepts, with no ifs, ands, and buts as to equivalents. Less than that he discounts.”

¶62 In addition, Asheim’s graduates would not be able to compete with colleagues. The dual degree was no longer “a novelty.” A cycle was at work. The AALS had increased its standards so that its member libraries should have “qualified” librarians who would be “principally” devoted to the library and who would even work full time. Price pointed out that as these standards increased, so, too, did librarians’ expectations of parity, that is, treatment as “member[s] of the law faculty in full standing.” Completing that cycle, employers now expected their librarians to have law degrees.

The result of this [expectation by librarians] in the years since the close of the war has been striking: The schools not only want the LL.B. but they cast a jaundiced eye at the candidate’s law school record. They say, and properly, ‘if this man is to be a member of our faculty, he must measure up.’

¶63 And had anyone noticed, Price wondered, the time commitment involved in Asheim’s program? The schooling would require six as opposed to the eight or nine years needed to acquire both a law and library degree, a savings in time, yet resulting in neither traditional degree. Of course, that was the point of the pro-
pos tal: it was a new invention designed to give the ultimate preparation to the aspi-
rant—to make the student a law librarian, “not a lawyer,” as Asheim stated.173 But
what could one do upon discovering that she could not advance without an actual
law degree? An extra year added to Asheim’s plan would not be adequate to earn the
LL.B.174 Price advised Asheim to “take a careful poll of employers of law librarians,
to learn their preferences and minimum educational requirements . . . these replies
should be carefully checked against salaries paid by those replying. We law librari-
ans are fearful of a lowering of standards, instead of raising, with inevitable lower-
ing of salary and status.”175

¶64 Lastly, on the substantive side, Price objected to the cursory sort of legal
research course he believed that students would receive.176 He worried that under
Asheim’s plan students would be given the sort of legal writing course traditionally
taught during the first year of law school, a course that exposed “that part of the
iceberg [only] visible above the water.”177 “A law librarian . . . subject to the most
searching questions concerning every kind of law book, simply cannot operate that
way, and this sort of course, excellent as it may be for first-year students of legal
writing, is inadequate for law librarians.”178 He proceeded to recommend seven
courses for “Library school subject specialization in law.”179

¶65 Asheim corrected the misperception that he believed law librarians should
not be as educated as their patrons.180 His vision was not for less but for different
education.181 “[I]t is not impossible that good professional education can be
obtained in fields other than the law.”182 He believed that the difference in education
was an asset.183

The admission by Mrs. Davies and Mrs. Paulson that the fully trained lawyer is constantly
coming to the librarian for help with basic reference tools and new approaches to his prob-
lems seems to me to support my belief that the full course of law training does not supply
the kind of approach which is necessary to the law librarian.184

¶66 Legal education provides “something else” that is also of value, but it should not “overshadow” library training.185

What is special about librarianship is that it deals with the literature, the reference materials,
the indexes and the bibliographies, the guides to information and the ways to find it in a way
that the subject courses do not. Every librarian knows how frequently he helps the “experts”
in their own subject fields by bringing the “library approach” to the subject.186

173. Asheim, supra note 126, at 37.
175. Id.
176. Id. at 60–61.
177. Id.
178. Id. at 61.
179. Id. Price’s list consists of courses in “book selection,” “public documents,” “law book
dealers and prices,” “special problems in law cataloging and classifications,” “legal bibliography,”
“advanced legal reference including contacts with allied subjects,” and “law library administration.”
180. Asheim, supra note 126, at 63–64.
181. Id.
182. Id. at 63.
183. Id. at 63–64.
184. Id. at 64.
185. Id.
186. Id.
Speaking in 1957 at a panel discussion titled “The Education of a Law Librarian,” held at the AALL annual meeting in Colorado Springs, William D. Murphy of Kirkland, Fleming, Green, Martin & Ellis called Asheim’s proposal “entirely inadequate.” Nonetheless, it was “still the only proposal that has been set forth so far for a completely separate course of study in law librarianship and which is aimed at the librarian who might enter the field rather than at the lawyer who is not going to practice law.” Panelist Price argued that Asheim believed only “lame ducks” went into law librarianship and called Asheim’s position “nonsensical.”

Morris L. Cohen, law librarian at the University of Buffalo, summed up the reaction to Asheim’s idea by stating that it “died aborning.” In 1963, he wondered if the proposal might then be viewed as “more appropriate,” especially for libraries “who do not need or want the more demanding legal education.” He suggested that finding “the proper balance of law and library science” for law librarians was “a basic problem of law library education.”

After Asheim: Nothing as Decisive

At the Colorado Springs meeting, three librarians joined Murphy on the panel. Harriet French, law librarian of the University of Miami Law School, suggested that the more power an academic law librarian has, the more advisable a formal legal education. In her words, “If the librarian has legal training, then he is in a position to improve the services and perhaps to bring the library up out of the doldrums into the higher class.” But she believed that a law degree was not a guarantee of proficiency or success as a law librarian. The caliber of “intelligence and ability” was a deciding factor. “I think the same level of the [law] class that produces the law teachers should produce the law librarian.”

Julius J. Marke, professor of law and law librarian at NYU School of Law, favored the three degrees for making the librarian “a sophisticated individual capable of coping with the many vicissitudes of law librarianship” rather than being deemed the dreaded “custodian of books.” In his view, the J.D. was necessary to enable librarians to translate factual situations into legal issues, understand the context of a legal problem, select resources, comprehend legal vocabulary, and communicate with colleagues.

188. Id.
189. Id. at 395 (remarks of Miles O. Price).
191. Id.
192. Id. at 308–09.
194. Id.
195. Id. at 362.
196. Id.
197. Id.
198. Id. at 365 (remarks of Julius J. Marke).
199. Id. at 365–67.
Besides commending Asheim’s plan for its focus on the law librarian, Murphy noted that problem of educational criteria for law librarians was “far from being resolved” and that the solution must come “through” the AALL. He hoped that the panel discussion would lead “to eventual crystallization of the Association’s views on this subject.”

Although he asserted that law librarians’ mastery of legal bibliography would not come from “general library training alone,” was it realistic to expect law librarians outside of academia to have formal legal educations? He noted that law firm librarians work with practitioners who already have legal training. The law librarian in that situation follows a “pattern of research . . . set by the lawyer,” rather than assuming the role of instructor or “co-lawyer.”

Murphy regretted having no proposal for the proper education of nonacademic law librarians, and his comments reveal familiar conflicting views on the topic. “[W]e should be able either to show what program will do, or else agree that there is no alternative but to have the three degrees, regardless of the type of law library involved.” “If we tell the managing partners of these firms that the only good law librarian he can get is the one who is also a lawyer, they will go elsewhere for help, for I submit that what they want for their library is a librarian and not another lawyer.” “If, however, we cannot in good conscience recommend any other background for the non–law school librarian but that of a law degree, then we should be able to tell the hiring authority this, based on our own study as an Association. They are reasonable men and will be guided in their ultimate decisions by our efforts.” “[W]e must be realistic in our approach or we will be ignored.”

Price spoke last, with an address titled “The Placement Officer’s Viewpoint.” He estimated that obtaining both degrees cost $8500 and asked, “[i]s it worth it?” He noted that larger law school libraries paid higher salaries and were trending toward librarian staffs with the three degrees. The trend appeared the same in smaller law libraries, which he called “a strong indication of awareness of the value of the three degrees, on the part of both deans and younger librarians.” Of the one hundred law school librarians who responded to his survey, about two-thirds had a legal education, half had a library education, and one-fourth had two degrees. Among those in larger academic law libraries, “nearly half” had both degrees, and most of them had begun their jobs after World War II. He found this
result a “remarkable showing,” which had occurred “[w]ithout certification, civil
service or other artificial compulsion, but purely on the basis of need as evidenced
by consumer demand.”214

¶75 But Price expressed concern about the profession placing too much
emphasis on the law degree.215 He noted that some libraries were moving legal
materials into the larger collection, a reminder that a law library is, after all, a
library.216 He warned that if law librarians failed to value library training along with
legal education, they might find “themselves on the outside, looking in.”217

¶76 Still, he believed that a law librarian’s chances of career success were “so
much better” with both law and library educations.218 “[W]hy gamble?” he asked.219
“You may be as good as you think you are, with your practical experience and noth-
ing else (few of us are), but your prospective employer won’t believe it. He is much
more likely to have a rule of thumb to go by, the good old degrees.”220 As a “place-
ment officer,” Price had “heard the ‘equivalent’ argument rejected so many, so many
times. It’s not what you think, but what your prospective employer thinks.”221 As he
read the tea leaves, having both subject degrees was “a matter of percentages” and
“self interest.”222 In terms of overcoming issues of money and age that might dis-
courage a law librarian from becoming a law student, “[i]t is just a question of how
badly you want the optimum minimum qualifications of your profession.”223

¶77 So in 1957, the American law librarian still had no specifics on formal edu-
cation for entering the profession. By contrast, that year the movie industry
acknowledged the passage of time and embraced technology that would bring
about the film The Incredible Shrinking Man.224

¶78 Law librarians continued the discussion in 1959 at the AALL annual meet-
ing in New York City. The AALL’s lack of progress on the education question
prompted AALL president-elect Frances Farmer, law librarian at the University of
Virginia, to voice her frustration at a panel discussion, “Certification and Educa-
tion of Law Librarians.”

Is it not surprising that a professional organization that can boast of a not inconsequen-
tial list of achievements on the substantive side and that has already observed its fiftieth
anniversary, has not yet established some sort of “official” minimum criteria by which we
determine a person’s qualifications for designation as a member of the profession?225

214. *Id.*
215. *Id.* at 384.
216. *Id.*
217. *Id.*
218. *Id.* at 385
219. *Id.*
220. *Id.*
221. *Id.*
222. *Id.*
223. *Id.* at 386.
1957, at E1.
225. Am. Ass’n of L. Libr., *Proceedings of the Fifty-Second Annual Meeting, Certification and
¶79 The panel gave speakers the opportunity to debate their views on the qualifications of law librarians, especially as related to a national certification program. John Ritchie, dean of Northwestern University School of Law, asked for specifics: who would certify law librarians, which librarians and staff members would be eligible for certification, and what criteria would be used to certify them?226 Would certification be required for employment eligibility?227 He also wondered about formal education versus experience.228 While he found it “ideal” for law librarians to have the three degrees, a certification system requiring each of them raised concerns.229 “It would seem to me this would be an artificial sort of standard to adopt because, after all, what one is concerned with is the ability of the individual to do the job.”230

¶80 He sensed that law librarians were defensive about the need to prove the professional nature of their work:

It seems to me, and I hope I am completely mistaken about this, that I have detected in some of the discussions a certain defensive attitude, a certain feeling that, “By golly, in order to be a profession we have got to establish minimum criteria which others must observe in terms of formal training or on-the-job training, or something of that nature.” You are a profession because of the nature of responsibilities you discharge and the better you discharge those responsibilities, the better you serve your profession. But don't labor under any delusion that you are not recognized as a profession because I assure you, you are, by the lawyers, at least, in this country, and I believe by the citizenry, also.231

Ritchie’s words may be comforting, but are not reflective of current policies at some law schools, which exclude law librarians from attending law faculty meetings and voting on law school curricular or law faculty personnel matters.

The 1960s: Still Talking

¶81 In 1962, as part of a symposium of articles titled “Educating Law Librarians,” Cohen proposed a master’s degree program in law librarianship at Columbia University School of Library Service.232 Unlike Ritchie, Cohen observed that “the existence of a formal educational process has almost become a criterion of a profession’s status.”233 He contrasted his program with that of the University of Washington, noting that his required no law degree for admission.234 From his perspective, “many positions” in a law library could be performed without a legal education or with only a year of attendance at law school.235 Still, “a law degree would be a necessary

226. Id. at 410–12.
227. Id. at 413.
228. Id. at 412.
229. Id. (remarks of John Ritchie).
230. Id.
231. Id. at 414.
235. Id. at 228.
complement to this program” for those seeking positions in academic or more substantial law libraries.236

¶82 As part of the symposium, Stern wrote “A Proposed Program for Law Librarianship,” in which he asked, “What function do law librarians serve?”237 In his view, “[t]he ideal law librarian is all that which a ‘librarian’ is, plus a person skilled in law,” and “capable of doing the legal research which a lawyer would perform.”238 He noted that law librarians provide “bibliographical work” for legal experts like “attorneys, judges . . . and law teachers.”239 As a consequence, many law schools envisioned their law librarians with “the same degree of knowledge as a faculty member.”240 Stern realized that few law librarians met this ideal and thus the pool of librarians with three degrees was so small as to be of questionable value.241

¶83 He suggested that law librarians’ “qualifications” should depend on the work they perform.242 One course of study would apply for the person with the law degree seeking a background in librarianship, while the second course would work for the library graduate who seeks placement in a law library.243 Law graduates would earn a master’s degree in law librarianship and could find employment as “executive law librarians and reference librarians in large law libraries.”244 By contrast, library graduates would earn a certificate in law librarianship or, if coupled with a thesis, “an advanced degree in librarianship.”245 While the latter course would prepare students for technical services or reference work in a law library, it would not prepare them for “executive” work in academic or large law libraries or for positions that require a law degree.246 Thus, scholars like Cohen and Stern in the 1960s advocated for the J.D. for academic law librarians and law librarians seeking management positions.

¶84 Cohen wrapped up the symposium with a list of six endeavors the profession should pursue, including “rotating annual institutes” as introductions to law library topics.247 He asked fellow law librarians to “face the fact that for a long time to come we will have capable and responsive no-degree, one-degree or even two-degree people in our libraries who can benefit from a program of rotating Institutes.”248

236. Id.
238. Id. at 231.
239. Id.
240. Id.
241. Id. at 231–32.
242. Id. at 234–35.
243. Id. at 235.
244. Id. at 235–36.
245. Id. at 236.
246. Id.
248. Id.
If Not Educational Requirements, What About Certification?

¶85 Certifying law librarians was not a new idea: it had been percolating since at least 1935, when Beardsley suggested it in the report of the AALL Committee on Education for Law Librarianship.249 In the Association’s 1962–1963 committee reports, the Committee on Certification described the past year as “relatively dormant” for its group.250 It hoped for collaboration with the Education Committee but had been “disappoint[ed]” in the “response of the membership to repeated requests for views on certification.”251

¶86 Gallagher was one of the certification committee members who was let down by the lethargic response.252 At the 1962 AALL annual meeting in San Francisco, she and other committee members participated in a panel discussion titled, “The Law Librarian—What Manner of Creature?”253 In her address on recruitment, Gallagher asserted that having a qualified person as law librarian was vital for the image of the profession. “[L]aw librarianship positions for which there are no qualified personnel will be filled by unqualified personnel. That won’t blur the image [of the law librarian]. It will mangle it.”254

¶87 Cohen characterized certification as a standard-setting tool that would not produce the educated workforce that law librarianship needed.255 He doubted whether members could agree on standards for evaluating librarians.256 In any case, “quality control” would be managed by the rigors of library schools and law schools and “the market place.”257 “Certification superimposed on this structure is a desirable acceleration of both processes but it is not of itself a solution to anything.”258

¶88 Acknowledging some of Cohen’s reservations, committee chair Arthur Charpentier, librarian of the Association of the Bar of the City of New York, also mentioned the difficulty of attaching quantitative values to the wide array of educational degrees and experience obtained by personnel working in law libraries.259 In addition, if certification was intended to improve the image of law librarians, the profession needed to decide what image it wanted to promote.

It all starts with the image of the law librarian we wish to present and by “we” I mean thoughtful law librarians everywhere. Until we can agree on this, certification is impossible and will, as it already has, serve to confuse all of us as well as the public we wish would take us as professionals.260

251. Id. at 189–90.
252. Id. at 190.
254. Id. at 13 (remarks of Marian Gallagher).
255. Id. at 19 (remarks of Morris L. Cohen).
256. Id.
257. Id.
258. Id.
259. Id. at 23–24 (remarks of Arthur Charpentier).
260. Id. at 24.
He observed incisively that a certification system necessarily meant that some people would never qualify as certified, if the professional image of law librarians was to have meaning. 261

**If Not Certification, What About Institutes?**

¶89 In the summer of 1963, French moderated a panel discussion on AALL rotating institutes. She explained that these sessions would not replace the institutes already held by the AALL or library school courses in law librarianship. 262 Instead they would assist library personnel who lacked “professional standing” because of deficiencies in basic law library education. 263 By aiding this workforce, the level of service in law libraries would rise, in turn “elevat[ing] the image of the law librarian.” 264

¶90 The panelists critiqued Cohen’s outlines for institutes on legal bibliography, book selection and acquisition, and cataloging and classification, as well as Charpentier’s institute on administration. A common concern was avoiding the “‘spoon-feeding’” teaching method, as the outline revealed plans to teach “a great mass of material” in only a few days. 265

¶91 The follow-up discussion illustrated the challenge of setting up an educational program for a workforce of varying levels of skill and knowledge. 266 Cohen emphasized that the institutes would not be continuing education for librarians with library degrees but “beginning law library education.” 267 But panelist Iris J. Wildman opposed excluding from the cataloging institute those people with library degrees who did not know how to apply cataloging rules to different kinds of law libraries. 268 A degree did not mean mastery of all knowledge relevant to one’s job.

¶92 There was also the tricky issue of dividing the law library workforce into one group that would be eligible for informal education and another group that should be encouraged to get formal credentials. The problem was discussed most bluntly by Harry Bitner, law librarian at Yale University, who believed that attendance at the institutes for the library school graduate would be “a waste of time.” 269 “He is going to get something out of that one institute, perhaps, but that isn’t what he needs to really get ahead,” Bitner said. The person with library training but

261. *Id.*
262. *An Experiment in Library Education—The AALL Rotating Institute,* 57 LAW LIRR. J. 28, 28 (1964) (panel discussion).
263. *Id.* at 29 (remarks of Harriet L. French).
264. *Id.*
265. *Id.* at 30 (remarks of Myron Fink) and 46 (remarks of Morris L. Cohen). See also Meira G. Pimsleur’s emphasis on “[l]earning by doing,” *Id.* at 32. The fact that AALL leaders felt compelled to cover a great deal of material in a short time demonstrates the difficulty of attempting to educate a group of people to comparable levels of professional knowledge when they do not start with the same formal background.
266. See Pimsleur’s comments about simultaneously teaching people of different proficiencies, “a new law librarian . . . , an order clerk and a semi-professional.” *Id.* at 32.
267. *Id.* at 49, 56 (remarks of Morris L. Cohen).
268. *Id.* at 55 (remarks of Iris J. Wildman).
269. *Id.* at 55 (remarks of Harry Bitner).
without a legal education “owes it to himself as a professional and as a law librarian to attend a summer course” similar to the one that had long been offered at Columbia.270

¶93 The organization must have reached consensus on student eligibility, for it held the first institute in the summer of 1964 at the University of Missouri, Columbia.271

Now What?

¶94 In 1964, law librarians had made no decision about their formal educational requirements, but they were ready to make certification of law librarians by the AALL a chief topic of discussion at the annual meeting’s closing business session. Charpentier, still chairing the Committee on Certification, outlined the plan. Certification would be optional and would not be required for AALL membership.272 Law librarians could earn certification generally through a combination of education and experience.273 Questions remained about the type and length of experience, quality of library school, and the wisdom of a qualifying examination.274

¶95 At the 1966 AALL annual meeting in Los Angeles, Mary Oliver, chair of the Committee on Certification and law librarian at the University of North Carolina School of Law, presented the Committee’s proposal for certification. A certification board would apply the Committee’s standards in evaluating applicants, and members who were denied certification could appeal.275 Certification would indicate competency in the field of law librarianship, according to AALL standards.276 In response to the question of how the Committee’s standards compared to those of the American Bar Association (ABA) and AALS for law librarianship, Charpentier remarked that finding standards to fit the many libraries that applicants would come from had been “extraordinarily difficult.”277 But the preliminary work was over; the membership adopted the amended report.278

¶96 Applicants could be certified if they had a law degree, library science degree, “and two years of professional library experience”; a law degree and four years of that experience; a library science degree with six years’ experience; or no degree but “[l]ong-term responsible professional library experience and outstanding contribution to the profession.”279 In her 1974 sweeping article of the law library profession,

270. Id. (remarks of Harry Bitner).
273. Id. at 336–38.
274. Id. at 336, 339, and 340–42.
276. Id. at 382.
277. Id. at 382 (remarks of Arthur Charpentier).
278. Id. at 387.
Christine Brock, law librarian at DePaul University Law Library, disapproved of the AALL’s policy of accepting as experience work that preceded formal education. “Neither lawyers nor librarians accept or understand a definition that includes professional experience before a professional degree.”280 In any case, the Association ceased certifying law librarians in the early 1980s, wanting to preserve its tax-exempt status and realizing that the responsibility of certification was beyond its resources.281

¶97 In 1967, Article 6 of the AALS Articles of Association made the following statement under “Approved Association Policy for Library Personnel”:

No library can be adequate if not administered by a full-time librarian whose principal activities are devoted to the development and maintenance of effective library service as part of the law school. The law librarian should have either a sound knowledge of the practical problems of a law school library or a legal education, and preferably both. Ordinarily, he should be made a member of the law school faculty, and, in any event, he should have the status of a faculty member for attendance at faculty meetings dealing with, and for participation in the discussion of, matters of educational policy, including the right to vote on all matters touching upon the law library as to collection, service, or administration.282

But the Association’s Executive Committee Regulations, in its “Library” section, mandated no particular educational requirements for the librarian.283

¶98 In August 1968, the AALS Committee on Libraries in its Proposed Executive Committee Regulations suggested that the law school librarian have “both legal and library education.”284 But the transcript of the Second General Session at the December 29, 1968, AALS annual meeting reveals that members were more comfortable with the proposed regulations on library matters if they took the form of advice rather than directives.285 Carroll W. Weathers, dean of Wake Forest University School of Law, commented,

I would like to say also that it is highly desirable that the librarian be a lawyer, but it is not, in my opinion, essential. There are many schools which have highly competent librarians who are not lawyers. It is something to be looked to, but I do not think it ought to be legislated in this fashion.286

¶99 AALS proceedings show that the 1968 meeting removed any reference to the librarian’s education in Article 6.287 The subject of education of the librarian was transferred to Executive Committee Regulation 8, and the language was more aspirational than mandatory: “The librarian should have both legal and library education and he should have met the certification requirements of the American

280. Brock, supra note 1, at 358.
283. Id. at 204–11.
286. Id. at 170 (remarks of Carroll W. Weathers).
287. Amendment to Articles of Association of American Law Schools, 1968 PROC. ASS’N AM. L. SCH. pt. 2, at 231 (1969). The Approved Association Policy did recommend that “[t]he librarian should be a full, participating member of the faculty.”
Association of Law Libraries.” Despite contrary claims, it does not appear that as of 1968 the AALS had increased or even specified particular educational requirements for members’ librarians.

¶100 At the 1973 panel discussion on the rotating institutes, “Educational Structure of AALL,” Cohen highlighted areas for improvement in supporting the education of members. Among his concerns was the lack of emphasis on the law and its trends, in a profession focused on “the literature of the law” and “assistance to legal research.”

I do not mean to suggest that a full, formal legal education is a prerequisite for the professional law librarian; we have been through that controversial issue many times . . . [but] it seems to me incontrovertible that an active awareness of current legal thinking and legal developments is an essential part of the equipment of law librarians in any position and in any type of law library.

¶101 Marian Boner, AALL president and director of the Texas State Law Library, announced at the 1975 annual meeting that “the ‘rotating institute’ series on basic skills” had become “obsolete.” Consequently, the organization would focus on continuing rather than beginning education for members.

¶102 In the late 1970s, Anita L. Morse, law librarian at the University of Detroit, wrote about the changes in law and library education as the professions evolved. She saw the movement to broaden legal education, advocated by the AALS’s Carrington Report, as an opportunity for law librarianship to improve its educational program as well. Of special note was the M.A. in law, which, coupled with a

289. In 1969, the Joint Committee on Cooperation Between the Association of American Law Schools and the American Association of Law Libraries reported that the AALS in 1968 approved the requirement that the law school librarian “is to have” both educations. Report of the Joint Committee on Cooperation Between the Association of American Law Schools and the American Association of Law Libraries, 1969 Proc. Ass’n Am. L. Sch., pt. 1, § I, at 14. Brock also asserts that the AALS approved the dual-degree requirement for librarians. See Brock, supra note 1, at 350. The Articles printed for the 1970 annual meeting, however, do not mention the librarian’s education; the Executive Committee Regulations, amended through February 1971, again encouraged rather than required the librarian to have both types of education. See Executive Committee Regulations, 1970 Proc. Ass’n of Am. L. Sch. pt. 2, at 301 (1971).
291. Id. at 408.
292. Id.
294. Id. at 354. See Laura N. Gasaway and Steve Margeton, Continuing Education for Law Librarianship, 70 Law Libr. J. 39 (1977), for a history of the AALL’s institute programs and the Education Committee’s plans for developing continuing education programming for members in the late 1970s.
296. Id. at 334–35. The Carrington Report refers to a 1971 study by the AALS Curriculum Study Project Committee chaired by then University of Michigan law professor Paul D. Carrington, Training for the Public Professions of the Law: 1971, A Report to the Association of American Law Schools, September 7, 1971. It proposed a model law school curriculum and advised law schools to reevaluate and, if necessary, adjust their curricula to respond to the needs of the public. Similarly, it encouraged
library science degree, would prepare one for law librarianship while requiring fewer years than the traditional J.D. Morse appreciated “the flexibility” of the Report and wished it had envisioned law librarians in its proposals. But it was 1977, the year of film pyrotechnics and Star Wars. Surely the state of education for law librarians could also evolve.

The End of the Twentieth Century: Appeals Without Action

¶103 In 1988, to aid the ALA in accrediting “graduate library school programs,” a special AALL Educational Policy Committee created Guidelines for Graduate Programs in Law Librarianship. The Guidelines’ Subject Competencies state that “[g]raduate library education for law librarianship must, at a minimum, provide basic competencies in: 1) the Legal System, 2) the Legal Profession and Its Terminology, 3) Literature of the Law, 4) Law and Ethics.” The Guidelines themselves acknowledge that “[i]n-depth knowledge of the law is outside the realm of library education.” Penny Hazelton, law librarian and professor of law at the University of Washington, said that the ALA did not plan to use the guidelines to accredit subject specializations in librarianship but instead “felt that individual organizations [such as the AALL] representing their profession could draft guidelines that would assist administrators and curriculum planning.” Thus, “[b]ecause of the [limited] purposes for which these guidelines were drafted, the committee was able to sidestep the question of whether a law degree is required for the practicing law librarian.” Reading the Guidelines, one notes their general nature and lack of advice on how to acquire the subject competencies if the librarian does not learn them in library school and is not a law graduate.

¶104 By the second half of the twentieth century, commentators could argue that law librarians had made strides in establishing graduate education as a prerequisite to enter the profession, whether in the form of a library science or law

the AALS to reevaluate accreditation standards to ensure that they, too, promoted the public’s interest. In the words of the Report, the model “seeks to make legal education more functional, more individualized, more diversified, and more accessible.” The model curriculum consisted of a standard curriculum, advanced curriculum, and open curriculum. For purposes of this article, the open curriculum is of special interest because its purpose was to provide education about the law to “allied professions,” perhaps such as law librarianship. 1971 PROCEEDINGS OF THE AMERICAN ASS’N OF LAW SCHOOL: PROFESSIONAL EDUCATION PROGRAM 1–3. Morse, supra note 295, at 335. Id. at 336–37. Michael Leech, The Man Behind the Star Wars Robots, CHRISTIAN SCI. MONITOR, Sept. 28, 1977, at 19. 297. Morse, supra note 295, at 335. 298. Id. at 336–37. 299. Michael Leech, The Man Behind the Star Wars Robots, CHRISTIAN SCI. MONITOR, Sept. 28, 1977, at 19. 300. June Lester, The ALA Accreditation Process: Implications for Educational Preparation for Law Librarianship, 81 LAW LIBR. J. 511, 520 (1989) (app.). See also Archived: AALL Guidelines for Graduate Programs in Law Librarianship, AM. ASS’N OF L. LIBR. (Nov. 5, 1998), http://www.aallnet.org/Archived/Advocacy/AALL-Recommended-Guidelines/graduate-guidelines.html. 301. Lester, supra note 300, at 521. 302. Id. 303. Hazelton, supra note 23, at 326. 304. Id. at 327. 305. Id.
degree. Hazelton proposed that law librarians could gain the “competency in the law” needed for practice in a variety of ways other than a J.D.: “some legal training, law library experience, or continuing education.” But she also noted “the increasing complexity of the law,” with its specialized vocabulary. The observation that law librarians are better researchers of the law if they have legal subject knowledge recurs throughout the debate about education for law librarians, and Hazelton acknowledged that changes in the law would require law librarians “to become subject specialists.”

¶105 Judith McAdam, while a student at the University of Toronto, analyzed America’s approach to educating law librarians. She argued that “the more sophisticated and knowledgeable the searcher the better the quality of the resulting research.” In her estimation, the traditional master of library science program fell short of helping library students obtain the AALL’s subject competencies for law librarianship.

The number and type of legal publications available change daily. MLS courses must necessarily focus on the organization and access to these resources as well as the evaluation of comparable publications. Therefore, details of legal vocabulary, legal approaches to problem solving and any discussion of substantive law is by necessity omitted, leaving a large gap in the graduate’s knowledge base.

¶106 She favored the Carrington Report’s proposal of “a shorter MA in law,” which she noted “[m]ost American law schools” had failed to embrace. Not only would this degree require less time and money than the J.D., but coupled with the library degree, it would help professionalize law librarianship by giving law librarians “[t]he bond of similar education and modes of thinking.”

¶107 In 1990, Robert L. Oakley, then director of the Georgetown Law Library, suggested that a formal law degree was unnecessary “for most professional jobs in a law library,” but reference librarians should “be conversant with the language of the law and with the problems and issues about which their clients are inquiring.” Technical services librarians required legal subject matter knowledge as well.
“Many are the catalogers who have wreaked havoc on a collection because they failed to understand the difference between a security and a secured transaction.”

¶108 Oakley conceded that a J.D. was “necessary for some” positions. “[S]ome substantive legal knowledge” would help the librarian “understand the intricacies of reading and interpreting a statute, the means of formulating contrary arguments on a given set of facts, the way in which the law grows and develops as courts grapple with the need to resolve particular disputes.” He proposed that “serious” law librarians take “at least” the first-year set of law school courses. Alternatively, they might take courses with a direct bearing on their field in areas like “copyright, freedom of information, freedom of the press, [and] privacy.”

¶109 James Hambleton, manager of Legal Information Resources at Haynes and Boone in Dallas in 1991, questioned whether law librarians without law training could lead patrons to the right materials. For collection development purposes, could they analyze resources that focus on a subject they knew little about? Could they, merely through library school, become the “‘sophisticated’ use[rs] of legal information” described in the General Competencies of the AALL's Guidelines for Graduate Programs in Law Librarianship? In Hambleton’s estimation, “even in these general competencies a more specialized knowledge of the law is implied.”

¶110 To create the consummate professional, Hambleton favored formal education, which allowed the student to learn “the theory and principles that underlie professional practice, rather than specific skills.” However, law school was not the answer, with its emphasis on legal writing over research. Instead, he advocated the one-year master of legal studies, both to save time and money and to allow the student to focus on the subject competencies for law librarianship.

¶111 Another contributor to the scholarship at this time was Barbara B. Bonney, then a master of library science student. After recounting the high performance expectations for academic law librarians, conflicting opinions about the education needed for law catalogers and firm librarians, and the discrepancy in professional status of male and female law library directors, she appealed for action on the education front. “It seems absurd to continue in professional ambiguity which can only weaken the profession.”

318. Id. at 157.
319. Id. at 161.
320. Id. at 158.
321. Id.
322. Id.
324. Id.
325. Id.
326. Id. at 40.
327. Id. at 37.
328. Id. at 42.
329. Id. at 43.
331. Id. at 132.
Mary Brandt Jensen, law library director of the University of Mississippi in 1998, wrote that on-the-job training without formal education created “gaps” in one’s learning and required too much time. She suggested that the necessary formal education depended on the job expectations and the talents of the other personnel on whom the librarian could rely. While a reasonable premise at first glance, how could one plan an educational agenda based on unknown future job expectations and co-workers?

Jensen believed that advocating dual degrees for all law librarians was too “simple” a solution, but she did note that the law degree would help those involved in “reference, selection of materials for the collection, original subject cataloging and classification and top level administration and policy making.” A formal legal education would benefit reference librarians who were working with patrons with little knowledge of the law (to guide them in the right direction) or with patrons with advanced knowledge (to be able to respond to their sophisticated research requests); it would also help acquisitions librarians who were building a specialized collection or stretching a small budget as well as librarians who were contributing original cataloging. The J.D. would benefit library administrators in several ways: in winning the respect of subordinate J.D. librarians and of the decision makers who allocate resources to the library, in being able to answer the same reference questions posed to library staff, and in advocating for patrons whose work the administrator would understand.

Thus, scholars in the 1990s wished to raise the educational standards for law librarians to include (at the least) a curriculum similar to the first year of studies for a law student. In other news of the decade, actor Martin Landau resurrected horror film star Bela Lugosi in the 1994 movie *Ed Wood*, marking thirty-eight years since Lugosi’s death (and ninety-eight years since the inception of the AALL).

Educational criteria for law librarians remain undefined. The topic came up at a panel discussion titled, “Questioning the Paper Chase: Why Should Law Librarians Obtain a Law Degree?” held during the 2011 AALL annual meeting in Philadelphia. Panelist Stephen Young, senior reference librarian at the law library at the Catholic University of America, believed the discussion was timely because of the dramatic increase in the cost of law school in previous decades. As panelist Robert Nissenbaum, professor of law and director of the law library at Fordham University, noted an AALL Biennial Salary Survey showed that a salary differential between academic reference law librarians with and without the law degree was not nearly great enough to absorb the cost of attending law school.

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333. *Id.* at 15.
334. *Id.*
335. *Id.* at 15–16.
336. *Id.* at 16.
337. *Chronicle of the Cinema*, *supra* note 81, at 450, 850.
339. *Id.*
¶116 The conversation continued in 2012 with Young’s article “The Dual Degree: A Requirement in Search of a Justification.” Young rebutted several arguments in favor of both degrees. One justification for librarians obtaining the law degree is the “empathy factor,” or understanding the law student’s plight under the rigors of law school. 340 Young acknowledged the benefit to the librarian of exposure to the law but questioned whether three years of legal training is necessary to demonstrate this compassion and effectively assist law students. 341 He emphasized the value of library training and argued that patrons rely on law librarians for their expertise in legal bibliography, not legal knowledge. 342 Ashein’s sixty-year-old observations had not grown stale.

¶117 Young explained that a law degree is often not necessary to do some of the substantive work of an upper-level librarian or to advance in law librarianship. First, although the degree is required for many director and upper-management positions, the work of managers is often more administrative and less law related; second, the ABA does not require law library directors in academic institutions to have a J.D.; third, Young’s calculations showed that only a minority of academic law librarian positions are tenure track, demonstrating that many law librarians do not need a degree that is associated with earning tenure. 343

¶118 For these reasons, in addition to the lack of salary increase after earning both degrees, Young proposed that law librarianship endorse the master of studies in law to equip law librarians with a foundation of legal subject knowledge at a cost greatly reduced from the J.D. 344 To further his argument, he noted the declining number of people studying the law, shrinking the supply of candidates from whom law library employers could create a superior staff. 345

II. Why Some Early Law Librarians Had Law Degrees

¶119 For a variety of reasons, some of the first law librarians had law degrees:

1. Early law librarians were often lawyers who already held law degrees. 346 In addition, collections of bar libraries were frequently supplied by the lawyers who used them. “[I]nevitably, the original ‘librarians’ for these collections were the lawyers themselves. They selected their own books, and knew better than anyone else how to use them.” 347

2. The law library and its problems were “unique,” calling for management by law-trained professionals. 348 In 1937, the AALL commented on its lack of

341. Young, supra note 340.
342. Id.
343. Id. at 7–9.
344. Id. at 9–10.
345. Id. at 10.
347. Brock, supra note 1, at 331.
348. Frantz, supra note 25, at 97. Brock asserts that the American law library profession craved distinction from nonlaw librarians and strongly identified with attorneys; she likens their
cooperation with the ALA to advance libraries and librarianship. The AALL indicated that the lack of enthusiasm was part of law librarians’ identity complex: “Even a modicum of cooperation requires immediate acquiescence in the statement that law librarians are librarians.”

3. A legal background was perceived as necessary to teach and to gain status. Roalfe noted that “there is generally a very close relationship between the according of professional status to any given group and the educational standards which it maintains.”

4. In the early decades of law libraries, library administrators’ ignorance about the nature of law librarians’ work led them to assume that anyone could do the job or, at the other extreme, that only someone with a law degree was suitable. Bitner found in 1940 that perhaps the preference for law librarians with the degree came from the fact that it is the credential that law school faculty are familiar with.

5. The need for legal bibliographic knowledge made law librarianship a “dual profession.” To master legal literature, law librarians found that they needed to become subject specialists in law and thus earned law degrees.

condition to “schizophrenia.” Brock, supra note 1, at 325. One also notes the AALL’s early preference for annual meetings scheduled at the same time and place as the ABA’s gathering. Am. Ass’n of L. Libr., Report of the Joint Committee of the American Library Association in Cooperation with the American Association of Law Libraries, 29 Law Libr. J. 40, 41 (1936).


351. William R. Roalfe, The Essentials of an Effective Law School Library Service, 31 Law Libr. J. 335, 349 (1938). See also Bitner’s comments that law librarians must demonstrate that they have earned their status in Bitner, supra note 23, at 52; and French’s remarks about “meet[i]ng the other faculty members on their own ground,” in The Education of a Law Librarian—A Panel, supra note 23, at 361 (remarks of Harriet L. French).

352. Bitner, supra note 23, at 59. See also Hazelton, supra note 23, at 329; Brock, supra note 1, at 353; and The Education of a Law Librarian—A Panel, supra note 23, at 375 (remarks of Miles O. Price), for similar observations. See also Roalfe’s observations about the lack of understanding of the need for law librarians and the professional nature of their work in Roalfe, supra note 351, at 346–47, 349–50. See also Bade, supra note 84, at 43–44. In 1949, Bade, a professor at the University of Minnesota Law School, noted that AALS teacher directories included librarians in the faculty listings. But he questioned whether some of those employees were genuinely librarians with time to carry out library work. He noticed that in the 1948–1949 directory almost all of the one hundred and three law schools designated a person who is in charge of the library, but thirty-two of the librarians taught subjects besides legal research. Furthermore, “[f]our of these are listed as teaching four courses each, and one was listed as teaching seven. What a man!” He believed that under AALS standards of the era it was probably acceptable for a law professor to double as the librarian, as long as teaching consisted of less than half the job.

353. Cohen, supra note 23, at 307. See also Beardsley, supra note 57, at 172, for the view that law librarianship required “more than an acquaintance with legal phrases.” Murphy observed “that legal materials have their own unique qualities and traits that no amount of general training in librarianship is going to clarify”; The Education of a Law Librarian—A Panel, supra note 23, at 372 (remarks of William D. Murphy). Marian Gould Gallagher noted that “[t]he law librarianship program at the University of Washington is built on the premise that the quality of special librarianship is enhanced by subject knowledge in the specialty,” Law Librarianship Training at the University of Washington, 55 Law Libr. J. 216, 216 (1962).
6. Early law librarians felt pressured to become attorneys’ peers. After writing about some of the attitudes toward and experiences of law librarians in the late nineteenth and early twentieth centuries, Brock noted, “It was becoming fairly obvious to serious professionals that the law school faculties would not bring themselves to consider a nonlawyer on an equal intellectual level. Not wishing to remain an outcast, the librarian had little choice but to conform.”

7. Law librarians acquired law degrees to compete with fellow job applicants. At the 1957 AALL Colorado Springs panel discussion on education, Price discussed the findings of his survey of the educational levels of academic law librarians. He concluded that people considering law librarianship should seek the three degrees:

Although there will continue to be exceptions, where demonstrably strong candidates lacking one or both the professional degrees will be appointed to the better positions, the percentage seems to be so stacked against anybody but a genius, that the aspiring librarian entering the field should seriously consider whether or not he is seriously handicapped by not fully equipping himself, as soon as possible, to meet the competition.

III. A Feasible Proposal

¶120 Endorsing the master in legal studies rather than the J.D., along with the master in library science, as qualifications for law librarianship may indicate to some a lack of ambition in educational standards for the profession. The master in legal studies is a program of lesser scope than the J.D., but requiring it would increase the knowledge base of law librarians who have not had formal legal instruction. Endorsement would demonstrate that the profession expects members to meet a threshold of legal subject knowledge, unlike the current state of affairs, which prompted an anonymous survey responder in 2008 to comment, “Librarianship is not even a profession—there is no uniform test of qualifications or knowledge, required certification, nor even uniform experience—but the degrees show an educational baseline.”

Jack McNeill, as head of reference services at Pace University School of Law in 2001, noted, “Unlike the organized bar, medical associations, and other professions that have limited entry, law librarianship is theoretically open to anyone.”

By requiring the two master’s degrees, constituents like

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354. Brock, supra note 1, at 347.
356. Id. Price also advised that if the librarian could manage only one degree, the law degree should take priority, especially for solo academic law librarians. Id. at 386. Note also the competition from dual-degreed World War II veterans entering the field in Brooks, supra note 23, at 524–25, and Brock, supra note 1, at 348. See also Hazelton’s observation in the 1990s that the number of law graduates was outpacing employment opportunities for attorneys, providing law library employers with a ready field of candidates with both degrees, in Hazelton, supra note 23, at 323.
attorneys, judges, and law students would know that the law librarians they interact with every day hold the requisite degrees to practice their profession.

¶121 The second master’s degree would also establish universality of knowledge among law librarians. In his article about the special value of law librarians’ work, McNeill pointed out that “[t]he root word of professional is ‘to profess.’ In making our living, we profess a body of knowledge. Individuals in professional positions should hold that body of knowledge.” A comparable level of knowledge among law librarians would create the “bond” McAdam referred to. With this bond of similar legal knowledge, employers could rely on entry-level law librarians’ abilities to perform tasks related to legal bibliography.

¶122 Librarians so inclined could continue to earn the J.D. rather than the master in legal studies degree and meet the legal subject knowledge requirement. Law librarians who are concerned that advocates aim too low in suggesting the adoption of the master in legal studies might consider that, according to the AALL, two-thirds of law librarians do not have law degrees. The AALL’s adoption of graduate work in legal studies in addition to library science would be a step up from the current recommendation that law librarians have at least a master in library science.

¶123 A search for master’s degree programs in juris, juridical, law, or legal studies offered by U.S. law schools or universities for nonlawyers uncovered fourteen programs (see the appendix). Admittedly, an increase in the number of these programs or more online programming would make requiring the master in legal studies more feasible.

¶124 Today, no enforceable mandate requires the J.D., the master in legal studies, or the master in library science to qualify for law librarianship. What courses do library schools offer future law librarians wishing to gain a foundation of legal

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359. Id. at 8. The definition of *profess* that seems most relevant to this discussion is “have or claim knowledge or skill in (a subject or accomplishment).” *The New Oxford American Dictionary* 1353 (2d ed. 2005).


361. Aspiring academic law librarians would be wise to consider whether a law degree will be necessary to advance at institutions where the law librarians are tenure-track positions and the tenure process requires a J.D.


363. This list does not purport to be complete. In addition, programs designed for concentration in a particular area of law are not included, nor are programs which require a doctorate for admission.

364. One page of the ALA’s website states, “The master’s degree from a program accredited by the American Library Association (or from a master’s level program in library and information studies accredited or recognized by the appropriate national body of another country) is the appropriate professional degree for librarians.” *Becoming a Librarian, Am. Library Ass’n*, http://www.ala.org/educationcareers/careers/paths/librarian (last visited May 4, 2014). Another ALA page lists “a sample of what is often required for librarian job positions,” which may be only a college degree, and acknowledges that “some of the requirements sound confusing!” *What Librarians Need to Know, Am. Library Ass’n*, http://www.ala.org/educationcareers/careers/librarycareersite/whatyouneedlibrarian (last visited May 4, 2014). See also Donovan, *supra* note 11, at 5 (quoting JEAN PREER, *LIBRARY ETHICS* 30 (2008): “the ALA itself has not adopted a consistent stand in defending the master of library science (MLS) as the professional qualification.”).
subject knowledge? Of the fifty-seven ALA-accredited (several on conditional status) master’s programs in library and information studies in the United States and Canada,365 thirty-nine American and seven Canadian programs offer some form of class in law librarianship.366 Thus, forty-six, or about eighty-one percent, of the schools listed demonstrate a commitment to law librarianship. But of those programs that include the subject, thirty-three, or about seventy-two percent, offer only one class,367 and these programs may not offer the class every academic year. Students in one-year library programs who are interested in law librarianship cannot rely on the availability of the class during their enrollment.

¶125 Reliance on library school to gain a foundation of legal subject knowledge raises other issues. Is the instruction adequate for a career in law librarianship? Is the instruction consistent across library schools? How should we address the situation of library school graduates who find employment as law librarians but never imagined entering this special area of librarianship and thus passed over the chance to take a class in legal bibliography?

Factors to Consider in the Debate About Education

¶126 Several factors make resolving the educational debate urgent, including the increasing cost of law school and the lack of salary differential between aca-


367. For U.S. library programs, see ALA-Accredited Graduate Programs in Library Science with Law Library Classes or Joint MLS/JD Classes (By Offerings), Programs with 1 class, supra note 366. (According to the website for the MLIS program at St. Catherine University (formerly College of St. Catherine), the school offers two classes in law librarianship: LIS 7870 Legal Information Sources and LIS 7880 Law Librarianship, Graduate Courses by Program, MLIS: Master of Library and Information Science, ST. CATHERINE UNIVERSITY, http://minerva.skate.edu/Gradcatalog.nsf/courses _web/OpenView (last visited Oct. 11, 2014), so it is not included in the thirty-three programs offering only one class.) A search of the websites of the seven Canadian library school programs that offer a class in law librarianship confirms that each offers only one such class.
demic reference law librarians with and without the law degree. In determining how to move forward and convince leaders of the need for action, these observations should be considered:

1. It is vital that law librarians have legal subject knowledge, although there is debate about how much is necessary and about how they should obtain it.
2. Some law librarians hold positions requiring them to provide legal reference, research, and bibliographic teaching but do not require them to have formal education in those areas.
3. Few alternatives for acquiring legal subject knowledge exist outside of a traditional law school education.
4. Overall, library schools provide inadequate training for law librarianship: the training is limited to one class, is inconsistent across schools, is not evaluated by a governing body that is expert in law library issues, or does not exist.
5. The profession that law librarianship aspires to be is harmed by the lack of standards in credentials and knowledge it requires for its members.


The AALL Biennial Salary Survey & Organizational Characteristics for 2013 documents that reference or research librarians who are employed in academic libraries, hold both library science and law degrees, and have at least sixteen years of professional experience earn about $3,600 more per year than their counterparts with only the library science degree. Am. Ass’n of L. Libr., The AALL Biennial Salary Survey & Organizational Characteristics at S-22 (2013), available at http://www.aallnet.org/main-menu/Publications/salary-survey/pub-salary13.html (online version available only to AALL members). For observations about the discrepancy between the cost of a dual-degree education and paying law librarians for their value, see The Education of a Law Librarian—A Panel, supra note 23, at 384 (remarks of Miles O. Price), and Frantz, supra note 25, at 98.

For an alternative viewpoint about the effect of law school tuition on law librarians, see Donovan, supra note 11, at 36. He observes that economic challenges are not a reason to rethink the dual-degree requirement for “public service academic librarians” because most librarians with J.D.s have careers as attorneys before turning to law librarianship and are presumably better able to pay off student loan debt.


370. Bonney, supra note 23, at 132. Although there are master’s degree programs in legal studies in the United States, a greater number of them or an increase in online programming would make a master’s in legal studies a more realistic option for law librarians to gain legal subject knowledge. Several of the programs listed in the appendix, such as those at Appalachian School of Law, Drexel University School of Law, University of Illinois at Springfield, Kaplan University, and West Virginia University, do offer online coursework.

371. See Hambleton, supra note 23, at 43: “In terms of teaching the subject competencies in law required of practicing law librarians, library schools fail.” See also Brooks, supra note 23, at 534–36.

372. See Earl C. Borgeson’s discussion of how the image of the law librarian is tied to educational requirements and that, without those requirements, recruitment is difficult, in Earl C.
6. Leaders may not feel a sense of urgency to address the problem. In more than one hundred years, the AALL has not called for states to require a particular degree for law librarians, whether it be a master of library science or a J.D. or both. Is there hope for endorsement of the master’s in legal studies?

IV. Conclusion

¶127 In 1909, AALL president Feazel encouraged law librarians to set themselves on a path to distinction by demonstrating that they “possess special knowledge.” Since the early days of law librarianship in the United States, leaders in the field have agreed that law librarians require knowledge of the law and legal bibliography to perform their jobs satisfactorily. But there has been no formal movement to standardize educational criteria for law librarians. As a result, the knowledge of law librarians across the spectrum is inconsistent, and some law librarians are studying for law degrees that may put them in debt for decades.

¶128 Is formalizing a universal set of educational requirements for law librarians too ambitious a goal for a field that aspires to be a profession? The burden on aspiring law librarians that comes from the lack of formal educational standards is not receding. Employment announcements posted to the law-lib electronic mailing list from 1991 through January 2011 show that about sixty-nine percent of the postings for academic law libraries either prefer or require both the master in library science and the J.D. Without an alternate standard, aspiring academic reference librarians may find they have little choice but to be dual degreed.

¶129 At the AALL’s eighth annual meeting in the Catskill Mountains, former association President Small called for law librarianship to keep looking forward.

Pleased as we may be and proud as we are of the splendid progress made through the efforts of the Association, yet we must be vigilant and alive to the new ideas of our members, even though, when advanced, they may appear to be visionary and impracticable. Oft times, so-called visionary ideas may be helpful for good in arriving at a solution of some of the perplexing problems we are here to solve.

¶130 Only we, as law librarians, can decide if unclear educational criteria, inconsistent levels of knowledge, and interminable debt are perplexing problems that a hundred-year-old organization with highly educated members should address. Only we who take pride in the title law librarian can decide if we prefer to


373. Feazel, supra note 9, at 22.

374. Study by Chuck Marcus, faculty services and reference librarian at University of California Hastings College of the Law Library, on file with the author.

be acknowledged, partly through educational standards, not as “‘support staff,’ but [as] an important link in the provision of legal services.”

¶131 At the 1957 panel discussion about education for law librarians, Murphy ended his comments by seeking a unique place for law librarianship in the professions.

If we do propose a workable and intelligent set of standards, based on the premise that the law librarian is neither a general librarian nor a lawyer but a professional entity on his own, we will both satisfy one of our profession’s basic needs and assure the legal world of a supply of good librarians.

A master of legal studies coupled with the master in library science would establish law librarians as scholars of law and library science and prepare them to practice as special librarians in the field of legal bibliography.

¶132 Between 1906 and 2013, the world of cinema matured from the first flickers of light in the nickelodeons that hit Chicago to a film composed eighty percent of computer graphics. Despite the passage of time, the field of law librarianship still lingers in the same place, not having resolved the vexing issues of credentialing. Feazel, not to mention King George VI, has long been at rest. Rather than continue to lament that law librarianship is not a profession, why not prove that it most certainly is by establishing educational criteria exemplifying a law librarian’s special knowledge? As Julius Marke quoted Justice Oliver Wendell Homes in 1957, “Every calling is great when greatly pursued.”

376. McAdam, supra note 23, at 253.
380. The Education of a Law Librarian—A Panel, supra note 23, at 368 (remarks of Julius Marke, quoting Justice Oliver Wendell Holmes, Jr.).
Appendix

Master’s Degree Programs in Juris, Juridical, Law, or Legal Studies
Offered By U.S. Law Schools for Nonlawyers

Juris Master Program:
- Emory University School of Law

Master of Arts in Legal Studies:
- University of Illinois at Springfield

Master of Juridical Studies:
- Washington University School of Law

Master of Legal Studies:
- Appalachian School of Law
- Arizona State University, Sandra Day O’Connor College of Law
- Cleveland-Marshall College of Law
- Drexel University School of Law
- University of Nebraska, Lincoln College of Law
- West Virginia University

Master of Studies in Law
- University of California, Hastings College of the Law
- Washburn University School of Law

Master of Science in Legal Studies:
- Kaplan University
- University of San Diego School of Law

Master of Studies in Law:
- University of Pittsburgh School of Law
The ABA Section on Legal Education Revisions of the Law Library Standards: What Does It All Mean?*

Gordon Russell**

In December 2012, the Council of the American Bar Association’s Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed changes to accreditation standards that affect the law library: all of Chapter 6 (Library and Information Resources); Standard 405(c) in Chapter 4 (The Faculty) on security of position for clinical faculty members as they relate to Standard 603(d); specific standards in Chapter 7 (Facilities, Equipment, and Technology)—Standard 702 (Law Library), Standard 703 (Research and Study Space), and Standard 704 (Technological Capacity); Standard 509 (Consumer Information) as it relates to the law library in Chapter 5 (Admissions and Student Services); and Standard 106(2) (Separate Locations and Branch Campuses). On August 11, 2014 the ABA House of Delegates concurred in all of the proposed standards. Dean Russell examines the changes and provides analysis and suggestions for improvement.

Introduction

¶1 In 2008 the American Bar Association (ABA) Standards Review Committee (SRC) began “a comprehensive review of the ABA Standards for the Approval of Law Schools and the associated Rules of Procedure for the Approval of Law Schools.”1 The SRC was charged with making recommendations to the Council of the ABA Section of Legal Education and Admissions to the Bar, which has the “authority to adopt, revise, amend or repeal Standards, Interpretations and Rules.”2 Under the rules, “[a] decision of the Council . . . shall not become effective until it has been reviewed by the House.”3

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1. The official letter from the ABA to Deans of ABA Law Schools stated: “In September 2008, the Council of the Section of Legal Education and Admissions to the Bar will begin a comprehensive review of the ABA Standards for the Approval of Law Schools and the associated Rules of Procedure for the Approval of Law Schools. The Council will rely on the work of its Standards Review Committee to complete this project, which we expect to take at least the next two academic years.” Memorandum from Randy Hertz, Chair, Council, Section of Legal Education and Admissions to the Bar, Don Polden, Chair, Standards Review Committee, and Hulett H. Askew, Consultant on Legal Education (Aug. 15, 2008) [hereinafter Hertz, Polden & Askew], http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/2008_comprehensive_review_memo_for_web_site.doc.


3. See id.
Though the project was expected to take at least two academic years,\(^4\) the SRC was still working on the project in 2012 and tentatively scheduled meetings through July 2014.\(^5\) However, the SRC eventually put the process on a fast track and, after the October 2012 meeting, sent to the Council the standards it had completed. The SRC continued to send its proposed revisions to the Council as each standard was completed and included an explanation of changes for each chapter.\(^6\) The SRC sent Chapters 1–7 to the Council for consideration, and the Council, after review, approved these chapters for notice and comment.\(^7\)

The Council has approved for notice and comment the following standards that affect the law library: all of Chapter 6 (Library and Information Resources); Standard 405(c) in Chapter 4 (The Faculty) on security of position for clinical faculty members as they relate to Standard 603(d) on the status of the law librarian; specific standards in Chapter 7 (Facilities, Equipment, and Technology)—Standard 702 (Law Library), Standard 703 (Research and Study Space), and Standard 704 (Technological Capacity); Standard 509 (b)(6), on library resources in Chapter 5 (Admissions and Student Services); and Standard 106(2) (Separate Location and Branch Campuses).\(^8\)

\(^4\) See Hertz, Polden & Askew, supra note 1.


\(^7\) “At its meeting held on November 30–December 1, 2012, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed revisions to Chapter 6 (Library and Information Resources) and Chapter 7 (Facilities, Equipment and Technology); “At its meeting held on March 15–16, 2013, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed revisions to Chapter 2 (Organization and Administration) and Chapter 5 (Admissions and Student Services); “At its meeting held on August 8–9, 2013, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed revisions to Chapter 1 [General Purposes and Practices], Chapter 3 [Program of Legal Education], Chapter 4 [The Faculty], Standard 203(b) [Dean], and Standard 603(d) [Director of the Law Library].” Am. Bar Ass’n Section of Legal Educ. & Admissions to the Bar Standards Review Comm., Notice and Comment: Standards and Rules, http://www.americanbar.org/groups/legal_education/resources/notice_and_comment.html (last visited Sept. 18, 2014).

¶4 This article identifies what accreditation objective each standard addresses and provides an opportunity to compare the existing library standards with the revised standards relating to the law library and the status of librarians. The existing language of each standard and revisions are accompanied by a discussion of the change(s) and what impact the change(s) would have on academic law libraries and the law librarians who work in those institutions.

¶5 In the United States accreditation is a self-regulatory process that has “evolved into a form of public accountability providing assurance to those outside the higher education community as well as those inside it that the institution [has] the capacity to offer its programs.” With the passage of the Higher Education Act of 1965, the process morphed and accrediting bodies were “in essence, ‘deputized’ . . . to govern institutional eligibility for federal financial aid funds.” The reauthorization of the Higher Education Act (2008) expanded government authority over the conduct of the accreditation process. The ABA, as a federally recognized accreditor, is required to ensure that its member institutions comply with federal regulations governing accreditation. In a 2011 article, Jay Conison, dean of the Valparaiso School of Law, articulated “five principal types of norms that might be used in law school accreditation systems: (1) process-quality norms, (2) outcome norms, (3) power-allocation norms, (4) self-determination norms, and (5) consumer-protection norms.” Individual norms will be identified with


10. Frank Brush Murray, From Consensus Standards to Evidence of Claims: Assessment and Accreditation in the Case of Teacher Education, NEW DIRECTIONS FOR HIGHER EDUC., Spring 2001, at 49.


12. As an accrediting agency, the ABA Section of Legal Education and Admissions to the Bar is required under 34 C.F.R. § 602.24(f) (2013) to “conduct an effective review and evaluation of the reliability and accuracy of the institution’s assignment of credit hours”; under § 602.16(1)(x), verify that the three-year cohort default rates are within the federal limit; under § 602.17(g), to confirm that institutions have effective procedures in place to ensure that each student enrolled in a distance education class is the same person who participates in and completes the course; and under § 602.24, to confirm that “an institution has transfer of credit policies that (1) [a]re publicly disclosed in accordance with section 668.43(a)(11); and (2) [i]nclude a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education.”

each revised standard. It may be the case, though, that the revised library standard’s prescriptions have less to do with ensuring quality and “providing a sound program of legal education”14 and more to do with serving as “the gateway to the legal profession,”15 thus erecting barriers to affordable legal education.16

§6 Process-quality norms are standards that prescribe the procedural characteristics for achieving the two main purposes of law school education: “educating students and providing students with the opportunity for entrance into the legal profession.”17 Several law library accreditation standards appear to address this latter norm: Standard 601 (General Provisions), Standard 603 (Director of the Law Library), Standard 604 (Personnel), Standard 605 (Services), Standard 606 (Collection), and Standard 703 (Library Facilities) all address operational aspects of the library. These standards relate to the quality of the program of legal education.

§7 If outcome norms are measures of expected outcomes, then a clear example of an outcome norm in the law school accreditation process is the bar passage standard.18 This outcome-based measure is based on external standardized tests and provides a posteducational assessment of the overall success of the educational experience of the students.19 There is a dearth of measurable outcomes in the existing library standards, and this remains true of the revisions.

§8 The closest external outcomes norm for legal analysis, the Multistate Practice Test (MPT),20 provides an opportunity to measure the success of legal analysis and writing programs at law schools:

14.ABA STANDARDS, supra note 2, at ix.
15. Id.
16. The AALL Price Index for Legal Publications, 2013, showed an average price of $315.12 for periodicals, an average increase of 6.66% from 2012; $2,250 for serials (excluding periodicals), an increase of 8.69% from 2012; $7,574.07 for federal and regional reporters, an increase of 5.40% over 2012; $3,928.41 for state, regional, and federal digests, an increase of 2.15% over 2012; $2,082.75 for state and federal codes, an increase of 5.85% over 2012; $5,703.67 for state and federal legal encyclopedias, an increase of 7.95% over 2012; $2,620.98 for looseleaf services, an increase of 28.36% over 2012; and $1,006.94 for titles in electronic format, a decrease of 5.77% over 2012. The price indexes are available online with an AALL password at http://www.aallnet.org/main-menu/Publications/products/pub-price. They are no longer published in print.
17. Conison, supra note 13, at 1528.
18. See ABA STANDARDS, supra note 2, at 18. The current standard requires that law schools demonstrate at least one of the following: that in the previous five years, 75% of its graduates who took the bar passed; that in at least three of the previous five years, 75% of its graduates who took the bar passed; or that in at least three of the previous five years, its first-time bar passage rate was no more than 15 points below the average bar passage rate for ABA-approved schools in the state where its graduates took the bar.
Purpose

The MPT is designed to test an examinee’s ability to use fundamental lawyering skills in a realistic situation. Each test evaluates an examinee’s ability to complete a task that a beginning lawyer should be able to accomplish. . . .

Contents

The materials for each MPT include a File and a Library. The File consists of source documents containing all the facts of the case. The specific assignment the examinee is to complete is described in a memorandum from a supervising attorney. The File might also include transcripts of interviews, depositions, hearings or trials, pleadings, correspondence, client documents, contracts, newspaper articles, medical records, police reports, or lawyer’s notes. Relevant as well as irrelevant facts are included. Facts are sometimes ambiguous, incomplete, or even conflicting. As in practice, a client’s or a supervising attorney’s version of events may be incomplete or unreliable. Examinees are expected to recognize when facts are inconsistent or missing and are expected to identify sources of additional facts.21

§9 Although there is no similar external test on legal research and legal information literacy, the American Association of Law Libraries (AALL) has developed some competency standards that might provide ways to measure the effectiveness of the library and librarians in training students. The AALL Legal Research Competencies and Standards for Law Student Information Literacy provide a framework of legal research skills that a first-year associate should possess,22 Law firms have also provided lists of skill sets that they expect first-year associates to have, and these often include specific legal research skills.23 In July 2012 the National Conference of Bar Examiners released a report that identified the knowledge and skills that newly licensed lawyers should possess.24


¶10 In an attempt to provide academic law libraries with some outcome measures that can be used to evaluate the perceived information literacy of students, the effectiveness of the library’s instruction, and the library services in comparison with other academic law libraries, a set of consortium questions (see Appendix) was designed and made available to law schools as an add-on short survey to accompany the Law School Survey of Student Engagement. The questions attempted to capture student self-evaluation of certain principles identified by the AALL Legal Research Competencies and Standards:

    Principle I: A successful researcher should possess fundamental research skills.
    Principle II: A successful researcher should implement effective, efficient research strategies.
    Principle III: A successful researcher should critically evaluate legal and non-legal information and information sources.
    Principle IV: A successful researcher should apply information effectively to resolve a specific issue or need.
    Principle V: A successful researcher should be able to distinguish between ethical and unethical uses of information and understand the legal issues arising from discovery, use, and application of information.25

¶11 The third type of norm, power allocation, refers to the distribution of power and authority within the organization.26 Power may be allocated within the law school structure in which the library exists or within the larger university structure in which the law school and the law library function.27 Standards related to this norm are used to protect the law school and the law library and should allow the law school to carry out its accreditation mission of “providing a sound legal education” that facilitates “entry into the profession.”28 Several library standards address the relationship of the librarian with other stakeholders in the law school and the university: Standard 602 (Administration), Standard 603 (Director of the Law Library), Standard 604 (Personnel), and some provisions in Standard 606 (Collection).

¶12 All these standards address the distribution of power and authority, but do they ensure the ability of the law school to provide a sound legal education, or do they instead create unnecessary costs and reflect internal scrimmages and turf wars that serve to protect vested interests while increasing the costs of legal education? Does centralizing control of the law library within the law school make sense in a digital world?29 Does the need to ensure that the law school library is supporting the provision of a sound legal education require law school control of the library, or are the standards cited above being used to further ancillary purposes outside the stated goals of law school accreditation?

27. See ABA STANDARDS, supra note 2, at 12 (discussing Standard 210, the Law School University Relationship).
28. Id. at ix.
¶13 The fourth type of norm, self-determination, “govern[s] an institution’s
determination of its own mission, values, goals, and measures of success.”30 Some of
the changes in the library standards require the library to engage in regular planning
and assessment.31 The revised Standard 606(a) requires law libraries to maintain a
core collection, but 606(b) allows them to tailor the rest of the collection to meet the
needs of the law school.32 Finally, consumer-protection norms reflect law school
standards that protect consumers. Standard 509 (Basic Consumer Protection) is an
example of one such standard and previously included “library resources.”33

¶14 In examining the SRC’s revised standards that affect the library approved by
the Council for Notice and Comment, and concurred in by the ABA House of Del-
egates, the SRC seemed to be tinkering within the existing framework of the stan-
dards when a more fundamental review might have been appropriate, given the
changing nature of law libraries and legal information. Dean Donald J. Polden,34
who chaired the SRC when the review started, noted that one of the most signifi-
cant issues facing the SRC concerned the existing library standards’ requirement of
a core collection:

The Standards currently require a law school library to provide a core collection of essen-
tial materials and to make it available for access and use through multiple and appropriate
formats. However, some critics argue that the requirement of a uniform core collection is
costly and unnecessary at a time when there are so many ways of accessing the core store of
legal knowledge. Moreover, they argue that schools should have greater flexibility in mak-
ing legal information available to their users. On the other hand, proponents of the current
requirements argue that the body of stored knowledge in modern American law school
libraries is the envy of many other countries’ programs of legal education and that the law
libraries should continue to maintain a common collection of material and information.35

¶15 Understanding the underlying norms that the standards address in the
accreditation process and charting the previous language of the standards provides
an opportunity to discuss the changes in the library standards.

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30. Conison, supra note 13, at 1531.
31. For example, Proposed Revision 601(a)(3) states that a law school should maintain a library
that “working with the dean and faculty, engages in a regular planning and assessment process,
including written assessment of the effectiveness of the library in achieving its mission and realizing
its established goals.” Am. Bar Ass’n Section of Legal Education and Admissions to the Bar Standards
Review Committee, Chapter 6—Library and Information Resources Clean Copy—Draft (Nov. 21, 2012),
http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions
_to_the_bar/council_reports_and_resolutions/december_2012_council_meeting/2012_december
_chapter6_draft_clean_nov.doc [hereinafter Chapter 6 Clean Copy—Draft (Nov. 21, 2012)].
32. ABA STANDARDS, supra note 2, at 45 (discussing Standard 606(a)).
33. Id. at 39 (discussing standard 509(b)(6)).
34. Donald J. Polden has been dean of the Santa Clara School of Law since 2003 and was chair of
the SRC from 2009 to 2012.
35. Donald J. Polden, Comprehensive Review of American Bar Association Law School Accreditation
### Review of the Revised Standards


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<thead>
<tr>
<th>Previous Language</th>
<th>Revised Standards, August 2014</th>
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<tbody>
<tr>
<td>(a) A law school shall maintain a law library that is an active and responsive force in the educational life of the law school. A law library’s effective support of the school’s teaching, scholarship, research and service programs requires a direct, continuing and informed relationship with the faculty, students and administration of the law school.</td>
<td>(a) A law school shall maintain a law library that:</td>
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<td></td>
<td>(1) provides support through expertise, resources and services adequate to enable the law school to carry out its program of legal education, accomplish its mission, and support scholarship and research;</td>
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<td>(2) develops and maintains a direct, informed, and responsive relationship with the faculty, students, and administration of the law school;</td>
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<td></td>
<td>(3) working with the dean and faculty, engages in a regular planning and assessment process, including written assessment of the effectiveness of the library in achieving its mission and realizing its established goals; and</td>
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<td>(4) remains informed on and implements, as appropriate, technological and other developments affecting the library’s support for the law school’s program of legal education.</td>
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<tr>
<td>(b) A law library shall have sufficient financial resources to support the law school’s teaching, scholarship, research, and service programs. These resources shall be supplied on a consistent basis.</td>
<td>(b) A law school shall provide on a consistent basis sufficient financial resources to the law library to enable it to fulfill its responsibilities of support to the law school and realize its established goals.</td>
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<td>(c) A law school shall keep its library abreast of contemporary technology and adopt it when appropriate.</td>
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16 The existing vague aspirational language that a library should be an “active and responsive force in the educational life of the law school” in the General Provisions section of the library standards has been changed. The revised section 601(a) clearly delineates that the law school shall maintain a law library that supports the educational mission of the law school. The SRC had a general concern with the “opaque requirement that a library be ‘an active and responsive force,’ in the life of the law school.” Standard 601 “now clearly states four basic requirements for the library (provide support, develop a responsive relationship with users, engage in planning and assessment, and implement technology when appropriate)
and one requirement for the law school (provide sufficient financial resources for the library to fulfill its responsibilities).” 37

¶17 In the explanation of the revisions to Chapter 6, the SRC “focused on three primary goals: to more concretely link library performance to the mission of the law school, to require measurements that are outcomes-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.” 38 These goals reflect an attempt to provide process-quality norms that “are based on a view of law school as an educational process and on a strategy for achieving quality-related purposes.” 39 The new language attempts to delineate what a library must do, but the rest of the library standards do not provide outcomes-related measurements that provide meaningful, quality information about the library’s performance as it relates to the mission of the law school.

¶18 Standard 606(a)(1) requires a reviewer to determine that a law school maintains a law library that provides adequate “expertise, resources and services . . . to enable the law school to carry out its program of legal education, accomplish its mission, and support scholarship and research.” This new language creates ambiguity. How do you measure “adequate”? Does “adequate” imply that the library must provide sufficient expertise, resources and services or does it mean that if the library’s expertise, resources and services are barely satisfactory, that they are “adequate”? 40

¶19 The revised standard speaks of expertise. What is meant by “expertise”? Is this simply a matter of educational credentials? Is the standard met if the librarian has an M.L.S.? An M.L.S. and a J.D.? Can one acquire expertise through experience? 41 Does “expertise” require more than educational credentials or years of experience? If more, then what is required? Alvin Goldman provides a definition of what it means to be an expert:

[W]e can say that an expert (in the strong sense) in domain D is someone who possesses an extensive fund of knowledge (true belief) and a set of skills or methods for apt and successful deployment of this knowledge to new questions in the domain. Anyone purporting to be a (cognitive) expert in a given domain will claim to have such a fund and set of methods, and will claim to have true answers to the question(s) under dispute because he has applied his fund and his methods to the question(s). 42

37. Id.
38. Id.
40. The Oxford English Dictionary defines “adequate” as “[f]ully satisfying what is required; quite sufficient, suitable, or acceptable in quality or quantity” or “[s]atisfactory, but worthy of no stronger praise or recommendation; barely reaching an acceptable standard; just good enough.” OXFORD ENGLISH DICTIONARY, http://www.oed.com/view/Entry/2299?rskey=vawl9a&result=1&isAdvanced=false&eid (last visited Sept. 16, 2014); BLACK’S LAW DICTIONARY 42 (8th ed. 2004) defines it as “legally sufficient.”
41. See K. Anders Ericsson, The Influence of Experience and Deliberate Practice on the Development of Superior Expert Performance, in THE CAMBRIDGE HANDBOOK OF EXPERTISE AND EXPERT PERFORMANCE 685, 689, 691 (K. Anders Ericsson et al. eds., 2006). As Erickson states, “Finally, the most compelling evidence for the role of vast experience in expertise comes from investigators who have shown that, even for the most talented individuals, ten years of experience in a domain (ten-year rule) is necessary to become an expert.” At the same time: “many individuals seem satisfied in reaching a merely acceptable level of performance . . . . Once an acceptable level has been reached, they need only to maintain a stable performance, and often do so with minimal effort for years and even decades. For reasons such as these, the length of experience has been frequently found to be a weak correlate of job performance beyond the first two years.”
Thus an expert must know a lot about something and be able to apply that knowledge to new situations. However, this would not seem to be what the standard contemplates since, as Jake Carlson and Ruth Kneale explain, librarians “demonstrate their expertise as information specialists” by “apply[ing] this expertise in ways that will have a direct and deep impact on the research, teaching or other work being done.”43 If this is the expertise contemplated by the standard, then it will be necessary to demonstrate to the accreditors that the library staff is having a direct and deep impact on the “program of legal education.”

¶20 Requiring evidence that the library provides adequate resources and services that “enable” the law school to carry out the program of legal education, accomplish the mission of the law school, and support the scholarship and research at the law school is a broad directive. “Enable” contemplates that the law library has the ability or power to allow the law school to carry out the program of legal education and accomplish the law’s school’s mission.44

¶21 That a law school library enables a law school to accomplish its mission seems to put the cart before the horse. “Since academic law libraries exist to support the mission of the law school,”45 the law library’s mission should focus on the provision of information resources, teaching, instruction, and research service that assist the law school in achieving its mission.46 The library may be able to show the resources it provides and the activities it engages in that assist the law school in achieving its mission. It will be more difficult to measure how effective the library is in doing this.

¶22 The law school should maintain a law library that supports scholarship and research. Proof that the library meets this standard may be shown by a list of the programs and resources the library has created to support the faculty and students engaged in scholarship, and surveys of the faculty and students that document how the library is effectively supporting the scholarship and research that they are engaged in. Each academic law library is free to be creative in supporting the scholarship and research being conducted within the law school. This may mean hiring librarians with subject matter skills beyond their library degree. Providing librarians with Bluebook expertise or with scholarly writing or editing skills to support the faculty in completing their scholarship may also increase faculty productivity.

¶23 Efforts to provide “different ways of decentralizing the delivery of services, by embedding librarians in customer groups”47 and creating opportunities to work on projects with the faculty and students may all demonstrate law library support.

44. Black’s Law Dictionary defines “enable” as “[t]o give power to do something; to make able.” BLACK’S LAW DICTIONARY 448 (spec. abr. 8th ed. 2005).
The library must develop programs and support mechanisms if the library is to demonstrate it is supporting the scholarly and research needs of the law school.

¶ 24 Standard 601 focuses on faculty research and scholarship, which is easier to measure than teaching effectiveness. The standards should be designed to allow for a variety of library structures and a variety of librarian skill sets that support the law school’s program of legal education and mission. For example, at a school that uses technology to support teaching, librarians with technological skills and training to support and assist may be better equipped to assist than librarians with other skill sets. A school providing writing across the curriculum skills may look for these skill sets from the library to help train and support students outside the classroom. This may well require sustained or increased budgets to attract and retain highly qualified professionals who can do this work.

¶ 25 Revised Standard 601(a)(2) requires that a law library “develop[] and maintain[] a direct, informed, and responsive relationship with the faculty, students, and administration of the law school.” The change in language is subtle but important. Originally, 601(a) tied “effective support of the school’s teaching, scholarship, research, and service programs” to the “direct, continuing and informed relationships” with the faculty, students, and administration of the law school. The revised language recognizes that a law library is an organic institution that changes over time; as it changes, new programs and services should be established to further a direct, informed, and responsive relationship with law school stakeholders. Accordingly, this provision requires the library to prove it has developed and maintains a direct, informed, and responsive relationship with law school stakeholders. This is an outcome standard and provides an opportunity for the library to develop measurable evaluations such as surveys, focus groups, and statistical reporting of the outreach activities and services it offers to faculty, administrators, and students. The standard also challenges the library to work within the academic law library community to expand beyond the input measurements used to measure a print library and...
develop ways to provide comparative analysis or make use of existing library assessment instruments to provide meaningful qualitative measurements.\textsuperscript{53}

\textsuperscript{53} Finally, this standard also provides an opportunity for libraries to meet the mission and needs of their institutions in unique and different ways. How libraries develop and maintain a direct, informed, and responsive relationship to faculty, students, and administration provides an opportunity for academic law libraries to differentiate themselves and become more than cookie-cutter versions of each other.\textsuperscript{54}

\textsuperscript{54} Revised Standard 606(a)(3) requires the library to engage in regular planning and assessment. The SRC drafted a proposal Planning and Assessment provision to replace Standard 203 (Strategic Planning and Assessment):\textsuperscript{55}

\begin{quote}
Standard 206. Regular Planning and Assessment
The (dean and faculty) (law school) shall engage in regular planning and assessment process, including ongoing written assessment of:
(i) the law school’s effectiveness in achieving its mission and realizing its established goals.
(ii) the financial and other resources expected to be available to the law school;
(iii) trends in applications to law schools generally;
\end{quote}

internal assessment in self-studies, budget projections, collection planning, buying decisions, and for other strategic planning purposes, including preparing for future ABA inspections. Third, the ABA statistics are used for external evaluation and comparative purposes, including determining the school’s ranking by \textit{U.S. News} and other law school directories. . . . Finally, the ABA quality standards and assessment techniques derived from them have implicitly protected the multiple core missions of academic law libraries. Volume-count-based evaluations encourage a library to actively collect and preserve many authoritative print resources, and to own tangible resources that are available to provide wide, equitable access to legal information.

Sarah Hooke Lee, \textit{Preserving Our Heritage: Protecting Law Library Core Missions Through Updated Library Quality Assessment Standards}, 100 \textit{Law Libr. J.} 9, 14, 2008 \textit{Law Libr. J.} \textsuperscript{52}.

\textsuperscript{52} Currently the Law School Survey of Student Engagement (LSSSE) has one question that measures library assistance: “In your experience at your law school, how satisfied are you with each of these areas?” See Bill Henderson, \textit{Benchmarking Law School Performance: Why Law Professors and Deans Should Care}, \textsc{Empirical Legal Studies Blog} (Jan. 24, 2008), http://www.elsblog.org/the_empirical_legal_stud/2008/01/benchmarking-la.html. Robert Detwiler observes that “[s]ince many law students spend an extraordinary amount of time in school and in professional practice conducting legal research, the quality and quantity of exposure to law librarians and their school’s library is a prominent part of the law school experience. The LSSSE staff should investigate the feasibility of adding questions on law libraries and law librarians to the annual survey.” Robert R. Detwiler, Assessing Factors Influencing Student Academic Success in Law School, 91 (Dec. 11, 2011) (unpublished D. Phil. Dissertation, University of Toledo), available at https://etd.ohiolink.edu/ap/0?0:APPLICATION_PROCESS%3DDOWNLOAD_ETD_SUB_DOC_ACCNUM:::F1501_ID:toledo1318730664%2Cinline.

\textsuperscript{53} American academic law libraries, in striving to meet the requirements of the standards, became cookie-cutter versions of each other, relying too heavily on book selection aids to build their collections:

Book selection aides include \textit{Law Books in Print}, begun in 1957 and continuing bound volumes and paper supplements. . . . As a further aid to book selection the AALS in 1967 sponsored a series of 48 pamphlets of \textit{Law Books Recommended for Libraries} in subject areas from Admiralty to Water Law and Foreign and International Law Supplements were issued in 1974. . . . Another aid in book selection[,] the \textit{National Legal Bibliography}, by Peter D. Ward and Margaret A. Goldblatt, was a monthly compilation of current cataloguing of several dozen law libraries.


\textsuperscript{54} ABA \textsc{Standards}, \textit{supra} note 2, at 10 (discussing Standard 203).
(iv) trends in applications, matriculants, attrition, graduation bar passage and job placement for the law school; and,

(v) identification of risks to the educational program and viability of the law school and the manner of addressing the risks.

As part of this process, the law school will include regular ongoing assessment of its institutional effectiveness as required by Standard 305 and regular, ongoing assessment of its effectiveness in carrying out the planning for the law library provided in Standard 601 and Interpretation 601-2 [sic].

When appropriate in light of effectiveness, the school shall revise its plans, goals, or mission. 57

¶28 The SRC did not move forward with this proposal, however; instead it deleted Standard 203 and replaced it with Standard 315 (Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods). 58

¶29 Standard 601(a)(3) requires the library to engage in regular planning and assessment. It would make more sense for the standards to require a general planning and assessment process that all law school departments engage in. It would be appropriate to view “ongoing assessment of the law school’s effectiveness in achieving its mission and realizing established goals” through ongoing assessment of all law school departments. If there is a need to specifically identify library planning, it would be a simple matter to incorporate it within a general provision that the law school shall engage in regular planning and assessment process, including ongoing written assessment. This would be broader than Standard 315, which discusses only “ongoing evaluation of the academic program, learning outcomes, and assessment methods.” 59 It would be better for the SRC to require assessment of all departments of the law school—admissions, career services, or information technology—and not just the library and the program of legal education.

¶30 The ABA has historically recognized the pivotal position of the law library. In 1940 the Council of the Section on Legal Education adopted a statement of factors bearing on the approval of law schools, and section 4 specifically addressed law libraries: “It is a basic principle of legal education that the library is the heart of the


59. Id.
law school and is a most important factor in training law students and in providing faculty members with materials for research and study."\(^{30}\)

¶31 The current standards still reflect what might have been true when the library was the center of the faculty’s and student’s law school world,\(^{61}\) but that centrality is no longer the case. There is a need for a standard to holistically address assessment including the library. Revised Standard 601(a)(3) mandates a separate library planning process whereas it makes more sense to fold library planning within the law school planning process. The law library should be required to determine specific goals and responsibilities relating to the law school’s educational mission and program of legal education; the law library should also be expected to show that these responsibilities and goals are being implemented as part of the law school’s strategic planning. This should also be true for other law school departments.

¶32 While the new Standard 601 is a marked improvement over the former language, perhaps it is time for the SRC to consider simplifying the library standards. Adopting the language used in the Southern Association of Colleges accreditation standards (hereafter SACS), Standard 601 could be restated this way:

(a) The law school shall provide facilities and learning/information resources that are appropriate to support its teaching, research, and service mission.\(^{62}\)
If this language was adopted the revisions could be simplified and the law school could address financial resources and current technology in Standard 206.

¶33 The library is just one of several administrative departments in a law school but is the only one singled out to provide assessment. The assessment cycle has four stages: (1) planning assessment, (2) conducting assessment, (3) reviewing assessment, and (4) implementing actions. Closing the loop on assessment requires collaborative review of the assessment results and consideration of the best alternatives for action plans. The law library should be part of the institutional assessment of the law school along with other law school departments.

**Interpretation 601-1 606-4**

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<thead>
<tr>
<th>Previous Language</th>
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<tr>
<td>Interpretation 601-1</td>
<td>Interpretation 606-4</td>
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<tr>
<td>Cooperative agreements may be considered when determining whether faculty and students have efficient and effective access to the resources necessary to meet the law school’s educational needs. Standard 601 is not satisfied solely by arranging for students and faculty to have access to other law libraries within the region, or by providing electronic access.</td>
<td>Cooperative agreements may be considered when determining whether faculty and students have efficient and effective access to the resources necessary to enable the law school to carry out its program of legal education and accomplish its mission. Standard 601 is not satisfied solely by arranging for students and faculty to have access to other law libraries within the region.</td>
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See Discussion under Interpretation 606-4.

**Standard 602. Administration**

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<td>(a) A law school shall have sufficient administrative autonomy to direct the growth and development of the law library and to control the use of its resources.</td>
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<td>(b) The dean and the director of the law library, in consultation with the faculty of the law school, shall determine library policy.</td>
<td>(b) The director of the law library and the dean, in consultation with the faculty, shall determine library policy.</td>
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<td>(c) The director of the law library and the dean are responsible for the selection and retention of personnel, the provision of library services, and collection development and maintenance.</td>
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<td>(d) The budget for the law library should be determined as part of, and administered in the same manner as, the law school budget.</td>
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¶34 Standard 602 is a power-allocation norm; 602(a) requires that the law school demonstrate it has “sufficient administrative autonomy” to (1) direct and control the growth of the law library and (2) control the use of the library’s resources. Standard 602’s remaining subsections provide some guidance on how to determine whether there is autonomy. Subsection (b) requires that the law school determine library policies; subsection (c) that selection and retention of library staff, provision of library services, collection development and maintenance of the collection be under control of the law school; and subsection (d) that the library budget be part of the law school budgeting process and under control of the law school.

¶35 The changes to the standard are small but significant. Standard 602(b) changes the order of the dean and the library director, specifically, “[t]he dean and the director of the law library” is changed to “[t]he director of the law library and the dean.” This change ensures that the library director determines library policies in consultation with the dean and the faculty, not that the dean in consultation with the library director and the faculty determines law library policies.

¶36 The change in subsection (d) replacing “should” with “shall” mandates that the law library’s budget “be determined as part of, and administered in the same manner as, the law school budget.” SRC’s explanation of changes says these changes are only “for greater clarity.” I agree that the change clarifies how the library budget is determined. “When used in statutes, contracts, or the like, the word ‘shall’ is generally imperative or mandatory.” In contrast, “‘[s]hould’ generally denotes discretion and should not be construed as ‘shall.’” This is more than just a minor change.

¶37 The change to the standard demonstrates what Conison defines as a “power-allocation norm” that allows the law school to “promote core goals or values while partially or wholly shielded from adverse action by other persons or groups that might seek to advance contrary purposes or values.” The shift from a “should” to “shall” mandates that the law library budget be part of the law school budget and under the control of the law school, and protects the law school from encroachments from its parent institution. The dean and faculty control law library spending as part of the law school’s overall budget. This change allows the law school in a time of change to reallocate funds from the library or to the library,

66. See Indep. School Dist. No. 561 Pennington and Marshall Cnty. v. Indep. School Dist. No. 35 & Indep. School Dist. No. 438 Beltrami and Marshall Cnty., 170 N.W.2d 433, 440 (Minn. 1969); see also People v. O’Rourke, 13 P.2d 989, 992 (Cal. Ct. App. 1932) (holding that “[i]n common, or ordinary parlance, and in its ordinary signification, the term ‘shall’ is a word of command, and one which has always, or which must be given a compulsory meaning; as denoting obligation. It has a peremptory meaning, and it is generally imperative or mandatory. It has the invariable significance of excluding the idea of discretion, and has the significance of operating to impose a duty which may be enforced, particularly if public policy is in favor of this meaning, or when addressed to public officials, or where a public interest is involved, or where the public or persons have rights which ought to be exercised or enforced, unless a contrary intent appears; but the context ought to be very strongly persuasive before it is softened into a mere permission”).
67. NORMAN SINGER & J.D. SHAMBIE SINGER, 3 SUTHERLAND STATUTORY CONSTRUCTION § 57:3 (7th ed. 2007).
68. Conison, supra note 13, at 1529.
free from competing interests. The struggle for reallocation of scarce resources remains with the law school and not the main university or the university library system. What is unanswered in this change is whether this power shift is necessary and meets goals the accrediting body should be supporting. As libraries undergo change because of the digital nature of information, does this change provide law schools and their parent institutions with the flexibility they need? Or does it increase the cost of legal education while not benefiting the goal of law school accreditation—assuring education quality, meeting the basic requirements and attributes of a fundamental and sound program of legal education, and holding law schools accountable for the funds taken from students?

¶38 With the development of legal education in the late nineteenth and early twentieth century, the position of the law library became a central issue because it was such a core part of learning the law. The law library was seen as the laboratory of the law school, but should it report to the central university or was it important for the law library to be under the direction of the law school? The current standard reflects the view that the law library is central to the operation of the law school and that the law school should control the library and the library budget. Is this still the case in 2014?69

¶39 The purpose of accreditation is reflected in U.S. Department of Education regulations.70 Title 34, section 602.16 of the Code of Federal Regulations states that an accrediting agency must demonstrate that its standards “are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or program that it accredits.”71 Section 602 further specifies how an agency meets this requirement, including the publication and enforcement of accreditation standards in several areas,72 but none of these are specific to the law library. In a world where primary and secondary legal

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69. Tice, supra note 61.
70. 34 C.F.R. § 602 (2013).
71. 34 C.F.R. § 602.16(a) (2013).
72. 34 C.F.R. § 602.16(a)(1) (2013), which states:
The agency’s accreditation standards effectively address the quality of the institution or program in the following areas:

(i) Success with respect to student achievement in relation to the institution’s mission, which may include different standards for different institutions or programs, as established by the institution, including as appropriate, consideration of State licensing examinations, course completion, and job placement rates.
(ii) Curricula.
(iii) Faculty.
(iv) Facilities, equipment, and supplies.
(v) Fiscal and administrative capacity as appropriate to the specified scale of operation.
(vi) Student support services.
(vii) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.
(viii) Measures of program length and objectives of the degrees or credentials offered.
(ix) Record of student complaints received by or available to, the agency.
(x) Record of compliance with the institution’s program responsibilities under Title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide the agency.
information is available in digital format, it is necessary to show that students have the legal information literacy skills to complete curricular requirements and meet state licensing requirements and the requisite legal research skills expected of a first-year practicing attorney. The library will also need to demonstrate how faculty needs may be met in ways other than by the presence of a physical library within a law school. Do such requirements make sense today, or are these requirements relics of a time when the only way to train law students was through the legal laboratory of the law library?

¶40 More likely, the library as the heart of the law school has reflected the physical manifestation as a place, a place to congregate, socialize, and study. With the development of the casebook and the Harvard casebook method, law schools began building large libraries to meet the research needs of their faculty and to provide law review editors with the sources to cite check. These collections, however, were not used by a majority of law students. It is a sad commentary on law libraries that casebooks were encouraged “mainly in order to lessen competition amongst law students for use of the reports in law libraries and the wear and tear on library copies of reports” and “[u]nquestionably conditions are radically wrong in law schools where the libraries are merely convenient places in which students may read their casebooks rather than [consulting] ‘extremely important teaching aids.’” Often the student learned research skills later, when they entered the practice. This truth was recognized early on:

Law schools, rightly or wrongly, do not attempt to inculcate legal art, the ability to execute legal operations, the power to do legal business, but leave that to be acquired in the office. . . . On the very day that the graduate leaves the school and enters an office (besides being commissioned to check his chief’s trunk or buy theater tickets for his wife), he will probably be requested to look up the law on some technical and undecided point in his own state. There is nothing in his case-books or notes to help him, and he is turned loose in the maze of codes, statute books, compilations and revisions of statutes annotated, of digests, abridgments, treatises, and encyclopedias. After disheartening hours of labor, struggle, and despondence he finds very little or nothing.

Standards that required law libraries to warehouse library collections within the law school make even less sense today. The new emphasis on cross-disciplinary scholarship moves faculty research from the law library to the main university library. Dean Erwin Chemerinsky described the role he envisioned for the new law school at the University of California, Irvine: “My central vision for the law school is that it must be oriented towards preparing law students for practice at the high-

est levels of the profession. This involves both a heavy emphasis on skills and practical experience, and at the same time, a strong interdisciplinary focus."

¶41 The interdisciplinary nature of law and the availability of the core collection in electronic format further alter the nature and role of the law library. Are the needs of the law school faculty and students served by the continued development of a large stand-alone library collection? In a world being reshaped to provide the practice skills needed by law students, where faculty are moving to more interdisciplinary research, requiring skill sets of librarians outside the traditional dual-degreed law librarians (J.D. and a library science degree), there needs to be a more flexible approach to the nature and structure of the law library within the university.

¶42 Shouldn’t the standards be flexible and allow for divergent models to develop? The SRC should be grappling with this difficult question before tweaking the existing language to give less discretion to parent institutions. A law school should differentiate itself based on the institutional mission of the university. A university with strong political science or government departments might be heavy users of legal materials; moving those materials within the main library or providing digital access to the information might better foster interdisciplinary research with the law school.

¶43 Other law schools may see their mission as being centers of teaching excellence; they might want better access to materials traditionally held in the education library and the opportunity to work collaboratively with information technologists and education faculty to improve legal teaching and pedagogy. These radically different law schools are more likely to develop with a more flexible approach than the prescriptive language of Standard 602.

¶44 Faculty and students at a law school focused on teaching students to be effective lawyers in solo practice and small firms will have much different research needs than schools that are interested in interdisciplinary intersections of the law and other subjects. As the academy grapples with ways to cut the cost of legal education, it may be time for the Section on Legal Education to undertake a cost–benefit analysis of the standards to see if there are ways to efficiently cut the cost of legal education while preserving the goals of accreditation. Does control of the law library and the law library budget support, foster, or achieve a sound program of legal education and prepare students to have the core competencies that a first-year associate needs? The SRC was charged with reviewing the standards to ensure they meet the objective of providing a sound program of legal education, preparing students “to become effective members of the legal profession.”

There may be a need to include some type of economic analysis since students with large debt loads may not be able to become effective members of the profession: “In 2010, only 4 law


78. The focus of the review, as directed by the Council in the Memorandum to Deans in 2008, was on “whether the Standards are appropriate and accomplishing their objective of assuring a sound program of legal education that will prepare law school graduates to become effective members of the legal profession.” Hertz, Polden & Askew, supra note 1.
schools had graduates with average debt in excess of $135,000; in 2011, 17 law schools did. This past year 26 law schools surpassed this amount. Before adopting these standards, an economic cost–benefit analysis might provide insight into whether requiring all academic law libraries to build these common collections of stored knowledge furthers the goals of accreditation or serves as a barrier to accreditation.

¶45 As law schools redefine their mission and the skill sets that graduates will need, they may find that a library’s resources, expertise, and even the location of the library collection will be dramatically different from what has been the norm since Charles Eliot’s assertion that the law library is the heart of the law school. Today the law library warehouses books while students sit at tables next to these books and access the same information from their laptops, tablets, and smartphones.

¶46 Law librarians must think about freeing themselves from the traditional brick-and-mortar library, the library information desk, and librarian offices. Using “roving librarians” who are freed from their offices and the reference desk to roam the library; librarians with iPads, tablets, and smartphones unfettered from the physical library to venture out where the students and faculty are—cafeterias, student commons, student dorms, and faculty corridors; and embedded librarians who are physically placed with their core users outside the library because “very often the library is no longer the place to visit but a resource to be consulted.” It is necessary for more flexible standards to provide opportunities to think outside the box and the traditional idea that the library is the heart of the law school.

82. President’s Report for 1872–73, supra note 61.
84. See Meg Upjohn & Deborah Fitchett, Library on Location: Taking Library Services Outside the Library Walls, UC RESEARCH REPOSITORY (2008), http://hdl.handle.net/10092/2516.
Interpretation 602-1

Previous Language

This Standard recognizes that substantial operating autonomy rests with the dean, the director of the law library and the faculty of a law school with regard to the operation of the law school library. The Standards require that decisions that materially affect the law library be enlightened by the needs of the law school educational program. This envisions law library participation in university library decisions that may affect the law library. While the preferred structure for administration of a law school library is one of law school administration, a law school library may be administered as part of a general university library system if the dean, the director of the law library, and faculty are responsible for the determination of basic law library policies.

Revised Standards, August 2014

This Standard envisions law library participation in university library decisions that may affect the law library. While it is preferred that the law school administer the law library, a law library may be administered as part of a university library system if the dean, the director of the law library, and faculty of the law school are responsible for the determination of basic law library policies, priorities and funding requests.

¶47 Interpretation 602-1 prefers that the law library be under the purview of the law school, but it recognizes that a law library may be administered by the main university library system if the law school is “responsible for the determination of basic law library policies, priorities and funding requests.” The language strengthens the law school’s role in administering the law library beyond library policies by including “priorities and funding requests.” The interpretation reflects a power shift to the law school when the preferred law library model is usurped by the parent institution. If a decision is made to have the law library under the main university library system, the new language makes it clear that the law library’s budgeting process and its requests for funding must be under the control of the law school. Maintaining financial control of the library is expanded with the changes to the interpretation. While the explanation from the SRC is that the standard is only being “rewritten for greater clarity,” it would appear that the standard is being changed to ensure greater control of law school funds.

¶48 With the change of “should” to “shall” in Standard 602(2), “[t]he budget for the law library shall be determined as part of, and administered in the same manner as, the law school budget,” the interpretation reinforces the mandatory language of the standard. The change may reflect recent concerns about the autonomy of academic law libraries or it may be just protecting turf. What is meant by “autonomy”? Is it “nothing more and nothing less than placement of the law library under the law school dean”?

¶49 This change maintains control of the law library budget by the law school. At any law school where the general university library administers the law library, the law library budget must be part of the law school budgeting process and subject to law school approval. The committee might have been more honest by including the provision as a subsection of Standard 602:

87. See Chapter 6—Library and Information Resources, supra note 6.
88. Milles, supra note 29.
While it is preferred that the law school administer the law library, a law library may be administered as part of a university library system if the dean, the director of the law library, and faculty of the law school are responsible for the determination of basic law library policies, priorities, and funding requests.

Interpretation 602-1 is more of a standard than an interpretation because of its mandatory nature—it requires that the dean, the law library director, and the faculty determine “basic” policies, priorities, and funding requests for the law library. It may not be clear whether a policy, priority, or funding request is “basic.”

### Standard 603. Director of the Law Library

<table>
<thead>
<tr>
<th>Previous Language</th>
<th>Revised Standards, August 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) A law library shall be administered by a full-time director whose principal responsibility is the management of the law library.</td>
<td>(a) A law school shall have a full-time director of the law library whose principal responsibilities are managing the law library and providing information resources in appropriate formats to faculty and students.</td>
</tr>
<tr>
<td>(b) The selection and retention of the director of the law library shall be determined by the law school.</td>
<td>(b) The selection and retention of the director of the law library shall be determined by the law school.</td>
</tr>
<tr>
<td>(c) A director of a law library should have a law degree and a degree in library or information science and shall have a sound knowledge of and experience in library administration.</td>
<td>(c) A director of a law library shall have appropriate academic qualifications and shall have knowledge of and experience in library administration sufficient to support the program of legal education and to enable the law school to operate in compliance with the Standards.</td>
</tr>
<tr>
<td>(d) Except in extraordinary circumstances, a law library director shall hold a law faculty appointment with security of faculty position.</td>
<td>(d) Except in extraordinary circumstances, a law library director shall hold a law faculty appointment with security of faculty position.</td>
</tr>
</tbody>
</table>

§50 The changes to Standard 603 are significant. The previous language of 603(c) at least provides that the director “should” have a law degree and a library or information science degree. The revised language talks only about “appropriate academic qualifications and experience in library administration.” This is also a power-allocation norm between the law school and the law library. Its effect will be to significantly increase the dean’s power to control the library and possibly shift power to the faculty to select someone more like him- or herself to direct the library. The AALL’s Academic Law Libraries Special Interest Section (ALL-SIS) proposed alternative language for 603(c):

**Except in extraordinary circumstances,** a director of a law library should have a law degree and a degree in library or information science and shall have a sound knowledge of and experience in library administration.  

90. Standard 603 was not part of the package sent to the Council and approved. The SRC reviewed 603 excluding 693(d), which was considered previously (since it relates to security of position) at the April 26–27 meeting, and the proposed language included here is the draft language that came out of the committee. See E-mail from Scott Pagel, Member of the SRC, to Law Library Directors listerv (Lawlibdir) (May 1, 2013, 1:57 PM) (on file with the author).

91. Letter from the Academic Law Libraries Special Interest Section of the American Association of Law Libraries to Donald J. Polden, Chair Standards Review Committee, et al. (Nov. 29, 2010), http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education
In this digital age, where information literacy is critical, the requirement that a library director have both a law degree and a library degree is essential. ALL-SIS went on to say: “We do not believe that it is in the ABA’s interest to loosen the educational requirements for administration of the law library.” Removal of the required training that is part of an advanced degree in librarianship leaves concerns about how the phrase “shall have a sound knowledge of and experience in library administration” will guide the hiring of law library directors.

§51 Individuals without a library degree have been appointed as law library directors and can be justified because the previous standard said that the librarian “should have . . . a degree in library or information sciences.” However, what about the requirement that the person hired “shall have a sound knowledge of and experience in library administration”? In 2008, John Palfrey was appointed vice dean of library and information resources and became a tenured professor of law at Harvard Law School. Palfrey had an A.B. and J.D. from Harvard and an M. Phil. from the University of Cambridge, and he had been a member of the faculty at Harvard since 2003. However, did he have “a sound knowledge of and experience in library administration”? One commentator noted that [t]he appointment violates Standard 603(c) not because John [Palfrey] doesn’t have both a JD and MLS but because he does not have ‘sound knowledge of and experience in library administration.’ Under 603(c), the use of “should” clearly indicates that the dual degree is desirable but optional. However, the use of “shall” means that the “knowledge and experience” clause is a requirement because legal codes, something the drafters of the standards certainly know, use “shall” to express mandatory action. If the standards are “minimum requirements designed, developed, and implemented for the purpose of advancing the basic goal of providing a sound program of legal education” the drafters could have used “should” instead of “shall” in this clause to make sound knowledge of and experience in library administration also desirable but optional.


92. Letter from the Academic Law Libraries Special Interest Section of the American Association of Law Libraries to Donald J. Polden, supra note 91.

93. Id. at 5. As the letter states, The field of law librarianship and library education are dynamic and evolving in tune with changes in education and the information environment. Through career experience and education librarians acquire diverse expertise in research techniques, information literacy, pedagogy, collection development, bibliography, meta-data, digitization, preservation (both electronic and print), budgeting, grant-writing, library metrics, bibliometrics, management theory (including knowledge and information management), employment and labor issues, human–computer interface and web design, vendor relations, management theory (including knowledge and information management), and information technology systems. Trends to appoint non-librarian directors reflect ignorance about the field and the evolving nature of librarianship and the information environment.


Based on these past practices the changes will further erode the need for specific credentials for law library directors. The removal of the term “sound” and requiring only “knowledge and experience in library administration” is now qualified by “appropriate to the stated mission of the law school and enable it to operate in compliance with the Standards and carry out its program of legal education.” This change would seem to be shifting the power to the faculty and the dean and to allow the library to be administered by anyone who understands the mission of the school and is familiar with the library standards.

With no changes to 603(d), the status accorded to law librarians is the same as that for other members of the full-time faculty (see Standard 405. Professional Environment). Will we see the end of law librarians hired with tenure? Will we see the continuation of appointments of faculty without law degrees to head the library?

**Interpretation 603-1**

<table>
<thead>
<tr>
<th>Previous Language</th>
<th>Revised Standards, August 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>The director of the law library is responsible for all aspects for the management of the law library including budgeting, staff, collections, services and facilities.</td>
<td>Having a director of a law library with a law degree and a degree in library or information science is an effective method of assuring that the individual has appropriate qualifications and knowledge of and experience in library administration sufficient to support the program of legal education and to enable the law school to operate in compliance with the Standards. A law school not having a director with these credentials bears the burden of demonstrating that it is in compliance with Standard 603(c).</td>
</tr>
</tbody>
</table>

The changes in Standard 603(a) incorporate the duties of the law librarian and are much more limited than what was contemplated in the previous Interpretation 603-1. The law librarian is now responsible for managing the library and “providing information resources in appropriate formats to faculty and students.” Budgeting and staffing decisions could be handled administratively. The new Interpretation 603-1 is a safe harbor provision now that Standard 603(c) does not require that a library director have a degree in library science. If the library director does have a degree in law and library science, then he or she has the “appropriate qualifications and knowledge of and experience in library administration,” but if the law librarian does not have these credentials, the burden shifts to the law school to demonstrate that the librarian has the requisite knowledge and experience.

Interpretation 603-2

Previous Language
The dean and the faculty of the law school shall select the director of the law library.

Revised Standards, August 2014

¶55 This interpretation was redundant, it just restated in a slightly different form Standard 603(b).

Interpretation 603-3

Previous Language
The granting of faculty appointment to the director of the law library under this Standard normally is a tenure or tenure track appointment. If a director is granted tenure, this tenure is not in the administrative position of director.

Revised Standards, August 2014

¶56 Previous interpretation 603-3 clarified Standard 603(d), but the new language does not require that a library director have tenure or be tenure track. While a library director could be tenured, the librarian under Standard 603(d) should, except under “extraordinary circumstances . . . hold a law faculty appointment with security of position.” However, there is no definition of “faculty appointment” or “security of position.” Would appointment as an adjunct faculty meet the requirements? The term “security of position” may be more closely associated to the security of position afforded legal writing teachers (Standard 405(d)). Librarians, like legal writing instructors, will receive as much security of position as may be necessary to (1) attract and retain a librarian that is well qualified to function in that position. For legal writing instructors the standard “does not preclude short-term contracts” (Interpretation 405-9). Might this become the norm for library directors?

Interpretation 603-4

Previous Language
It is not a violation of Standard 603(a) for the director of the law library also to have other administrative or teaching responsibilities, provided sufficient resources and staff support are available to ensure effective management of the library operations.

Revised Standards, August 2014

¶57 This interpretation addressed the problem that Standard 603(a) required a law school to have a full-time director of the law library whose principal responsibility was the management of the library. The removal of this interpretation means that a law library director who is engaged in other administrative or teaching responsibilities could violate Standard 603. The change circumscribes the law library director’s role as administering the library, determining the appropriate format for information resources and providing them to the faculty and students.
Standard 604. Personnel

Previous Language
The law library shall have a competent staff, sufficient in number to provide appropriate library and informational resource services.

Revised Standards, August 2014
The law library shall have a staff, sufficient in expertise and number to provide the appropriate library and information resources services to the school.

¶58 In its explanation of changes, the SRC states that “[t]he standard has been changed slightly to require a staff with expertise that will support the goals of the library and law school,” but the change from competent staff to “sufficient in expertise and number” raises the bar. Merriam-Webster defines “competent” as “having requisite or adequate ability or qualities” while “expertise” is defined as “special skill or knowledge: the skill or knowledge that an expert has” or in this case the requisite skills to “provide appropriate library and informational resource services to the school.” The standard goes beyond the number of staff and requires a showing that the staff has the expertise necessary to provide appropriate services to the school. This provision may mean that professional librarians will need a library degree and the library director will not.

¶59 This standard will allow library staffing to be less cookie-cutter and focus more on the mission of the law school and how best to provide a library staff with the expertise that will support the needs of the institution. This may mean hiring more librarians with practical legal experience, information literacy skills, technological skills, and so on. It may allow outsourcing services or allowing consortiums to provide virtual reference services.

Interpretation 604-1

Previous Language
Factors relevant to the number of librarians and informational-resource staff needed to meet this Standard include the following: the number of faculty and students, research programs of faculty and students, a dual division program in the school, graduate programs of the school, size and growth rate of the collection, range of services offered by the staff, formal teaching assignments of staff members, and responsibilities for providing informational resource services.

Revised Standards, August 2014
Factors relevant to the number and expertise of librarians and information resource staff needed to meet this Standard include: the number of faculty and students, research programs of faculty and students, whether there is a dual division program in the school, any graduate programs of the school, size and growth rate of the collection, range of services offered by the staff, formal teaching assignments of staff members, and responsibilities for providing information resource services.

¶60 The change incorporates the word “expertise” which was discussed previously. The relevant factors to be considered have not changed, and the rest of the revisions are grammatical housekeeping changes.


**Standard 605. Services**

<table>
<thead>
<tr>
<th>Previous Language</th>
<th>Revised Standards, August 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>A law library shall provide the appropriate range and depth of reference,</td>
<td>A law library shall provide the appropriate range and depth of reference,</td>
</tr>
<tr>
<td>instructional, bibliographic, and other services to meet the needs of the law</td>
<td>instructional, bibliographic, and other services to meet the needs of the law</td>
</tr>
<tr>
<td>school’s teaching, scholarship, research, and service programs.</td>
<td>school’s teaching, scholarship, research, and service programs.</td>
</tr>
</tbody>
</table>

%61 The SRC’s explanation of changes notes, “No changes are recommended for the Standard. The Interpretation has been rewritten to better state how those services can be provided.”99 The ALL-SIS Task Force on ABA Standards Review proposed a change to this standard:

A law library shall provide the appropriate range and depth of reference **support, information literacy skills training** and **research instruction, access to resources**, and bibliographic and other services to meet the needs of the law school’s teaching, scholarship, research, and service programs.100

%62 The ALL-SIS Task Force’s proposed changes focused on reference support, information literacy, training, research instruction and access to resources. The proposal also attempted to eliminate the need for an interpretation and would have allowed libraries to develop mechanisms to assess and measure the competencies enumerated. Law librarians have developed a set of questions to be included with the Law School Survey of Student Engagement. These questions offer a mechanism for providing some statistical comparison with other law libraries through student self-evaluation on a standard survey.101 However, the SRC, in electing not to change the language of the standard, addressed some of the concerns raised by ALL-SIS with changes to Interpretation 605-1.

**Interpretation 605-1**

<table>
<thead>
<tr>
<th>Previous Language</th>
<th>Revised Standards, August 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Appropriate services include</strong> having adequate reference services, providing</td>
<td><strong>Factors relevant to determining whether services are appropriate under Standard 605 include</strong></td>
</tr>
<tr>
<td>access (such as indexing, cataloging, and development of search terms and</td>
<td>the extent to which services enhance the research and bibliographic and information literacy</td>
</tr>
<tr>
<td>methodologies) to the library’s collection and other information resources, offering</td>
<td>skills of students, provide access (such as indexing, cataloging, and development of</td>
</tr>
<tr>
<td>interlibrary loan and other forms of document delivery, enhancing the research and</td>
<td>search terms and methodologies) to the library’s collection and other information resources,</td>
</tr>
<tr>
<td>bibliographic skills of students, producing library publications, and creating</td>
<td>offering interlibrary loan and other forms of document delivery, produce library publications</td>
</tr>
<tr>
<td>other services to further the law school’s mission.</td>
<td>and manage the library’s web site, and create other services to carry out its program of</td>
</tr>
<tr>
<td></td>
<td>legal education and accomplish its mission.</td>
</tr>
</tbody>
</table>


101. The additional library questions appear in the appendix.
¶63 The SRC addressed the proposed changes to the standard by incorporating several ALL-SIS proposals in the laundry list of appropriate services identified in the interpretation, including reference services, faculty research support, and student information literacy skills. The committee also added another item to the list: managing the library’s website.

¶64 Interpretation 605-1 also identifies the purpose of these services: “to enable the law school to carry out its program of legal education and accomplish its mission.” The library services standards encompass process-quality norms and outcomes norms, as can be seen in the expanded list of appropriate services: (1) providing reference services; (2) providing faculty research support; (3) enhancing student research, bibliographic, and information literacy skills; (4) providing access to the library’s collection; (5) offering interlibrary loans and other forms of document delivery; (6) producing library publications; (7) managing the library’s website; and (8) creating other services. It is interesting that the list includes no services supporting faculty teaching or service programs of the law school, both of which are listed in Standard 605. By creating a list of appropriate services, libraries will focus on meeting the requirements of the list to meet Standard 605 rather than thinking outside the list. The list will have the potential to inhibit creativity and opportunity to consider what to stop doing while addressing higher-priority initiatives.\(^\text{102}\) The interpretation constrains librarians from rethinking what the law library is and how to meet the changing needs of the law school.

¶65 The laundry-list approach differs from the SACS approach to library accreditation standards. In the 2012 Principles of Accreditation, SACS 3.8 (Libraries and Other Learning Resources) is composed of only three standards. Standard 3.8.1 and 3.8.2 provide a different approach to assessing the library services.\(^\text{103}\)

¶66 The SACS Resource Manual for the Principles of Accreditation: Foundations for Quality Enhancement provides guidance for each of these standards under Rationale and Notes, Review Questions for Consideration and Documentation.\(^\text{104}\)

**Standard 606. Collection**

**Standard 606(a)**

<table>
<thead>
<tr>
<th>Previous Language</th>
<th>Revised Standards, August 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) The law library shall provide a core collection of essential materials accessible in the law library.</td>
<td>(a) The law library shall provide a core collection of essential materials through ownership or reliable access. The choice of format and of ownership in the library or a particular means of reliable access for any type of material in the collection, including the core collection, shall effectively support the law school’s curricular, scholarly, and service programs and objectives, and the role of the library in preparing students for effective, ethical, and responsible participation in the legal profession.</td>
</tr>
</tbody>
</table>


¶67 The standard maintains the requirement of a core collection. The SRC discussed whether the standards “should continue to list in detail the core collection of essential materials. The library committee had suggested the list was no longer necessary. The Committee decided to continue to include the list.”105 As Polden observes, the debate over mandating a core collection is between those who believe that requiring a core collection is expensive and duplicative versus those that think the core collection requirement distinguishes U.S. law school libraries from all other international legal education programs.106 It is interesting to note that the only librarian on the SRC, Scott Pagel,107 recommended that the core collection requirement be removed.

¶68 Three major changes are proposed in 606(a). First, there is an explicit recognition that the format and method of access to “any type of material in the collection, including the core collection” can be achieved through “ownership or reliable access.” Second, the format and access model of the core collection “shall effectively support the law school’s curricular, scholarly, and service programs and objectives.” Third, the format of the material in the collection “shall effectively support” the “role of the library in preparing effective, ethical and responsible participation in the legal profession.”

¶69 The ALL-SIS task force noted that the current language regarding the format of the core collection was not clear:

The existing requirement of Standard 606(a) of a core collection of essential materials “accessible in the law library” does not recognize this new information environment. The problem is complicated by the language of Interpretation 606-2, which is generally read (if inaccurately) to require a core collection primarily in print.108

¶70 The task force split on a totally electronic core collection: “The majority of the Task Force believes that the core collection should not be entirely in electronic format.” However, “[a] strong minority of the task force believe that the Standards should be format neutral.”109

¶71 The proposed language “links the choices of format and means of access to the needs of the institution.”110 The standard allows the law school to determine whether ownership or “reliable access” is best, providing the law school with more flexibility in times of change. The proposed Interpretation 606-2 offers guidance on “reliable access.” The SRC’s explanation of changes accompanying Interpretation 606-2 stated that it “elaborates on the definition of ‘reliable access’ by providing ways to meet the Standard through ongoing access to databases or participation in a formal resource-sharing arrangement with other libraries.”111

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105. See Minutes Standards Review Committee November 16–17, supra note 8, at 4.
106. Polden, supra note 35.
108. Memorandum from ALL-SIS Task Force on ABA Standards Review, supra note 100, at 5.
109. Id.
110. See Chapter 6—Library and Information Resources, supra note 6.
111. Id.
¶72 Digital formats that provide reliable access allow academic law libraries to offer full and complete access to the collection, including the core materials as defined by the library standards. Faculty and students can remotely access the material via the Internet from their own computers, smartphones, and tablets, freeing the library from physical restraints and integrating it more completely within the law school. Digital collections offer 24/7 access and allow librarians to redefine library space. The library as place takes on new contours in a virtual world. The library must demonstrate that choice of format and ownership versus reliable access “effectively support the law school’s curricular, scholarly and service programs and objectives” as per 606-2.

¶73 The library must demonstrate that the collection supports the curriculum. With digital resources, the library has unique opportunities to support the curriculum. The library can build “just in time” collections, adding records of digital materials and then purchasing access or ownership when a patron requests the title. The library can track and access the development of the collection.

¶74 Usage statistics offer libraries an opportunity to calculate return on investment. Law libraries that subscribe to West Academic’s Digital Study Aids112 receive monthly usage statistics. At the end of the subscription the reports provide statistical information at the macro level such as the total number of students that accessed materials in the collection as well as what materials were accessed and when they were accessed. At the micro level, information about individual usage is available, such as what each patron viewed and for how long. This information can be used by the library to decide whether to renew the service and help the library negotiate the price based on the usage. For libraries that also have the material in print, the digital usage statistics can be compared to circulation information on the same titles. For libraries that do not have the material in print, the usage statistics may be used to make future decisions on print or electronic access to these materials. Under these proposed changes, libraries will be able to redirect spending.

¶75 However, Standard 606(a) requires that the librarians’ “choice of format and means of reliable access . . . shall effectively support . . . the role of the library in preparing students for effective, ethical and responsible participation in the legal profession.” This language mirrors the proposed language in Standard 301(a)113 that a “rigorous academic program” prepares students for “effective, ethical and responsible participation” as a member of the bar. A report from the Global Network of Public Interest Law states that “[a]lthough preparing law students to become effective, ethical lawyers is the announced goal of law schools, the course of study at most U.S. law schools does not necessarily reflect a sequence of courses designed to teach and train students to be lawyers. Instead, U.S. law schools have a heavy emphasis on teaching legal doctrine and legal analysis.”114 It is unclear how

113. Proposed Standard 301: “A law school shall maintain a rigorous academic program that prepares its students, upon graduation, for admission to the bar and for effective, ethical and responsible participation as a member of the legal profession. Minutes Standards Review Committee November 16–17, supra note 8, at 44.
the library will demonstrate that the choice of format and means of reliable access support the role of the library in preparing students for effective, ethical, and responsible participation in the legal profession.

**Interpretation 606-5 Standard 606(b)**

<table>
<thead>
<tr>
<th>Previous Language</th>
<th>Revised Standards, August 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Interpretation 606-5</strong></td>
<td><strong>Standard 606(b)</strong></td>
</tr>
<tr>
<td>A law library core collection shall include the following:</td>
<td>(b) A law library core collection shall include the following:</td>
</tr>
<tr>
<td>(1) all reported federal court decisions and reported decisions of the highest appellate court of each state;</td>
<td>(1) all reported federal court decisions and reported decisions of the highest appellate court of each state and U.S. territory;</td>
</tr>
<tr>
<td>(2) all federal codes and session laws, and at least one current annotated code for each state;</td>
<td>(2) all federal codes and session laws, and at least one current annotated code for each state and U.S. territory;</td>
</tr>
<tr>
<td>(3) all current published treaties and international agreements of the United States;</td>
<td>(3) all current published treaties and international agreements of the United States;</td>
</tr>
<tr>
<td>(4) all current published regulations (codified and uncodified) of the federal government and the codified regulations of the state in which the law school is located;</td>
<td>(4) all current published regulations (codified and uncodified) of the federal government and the codified regulations of the state or U.S. territory in which the law school is located;</td>
</tr>
<tr>
<td>(5) those federal and state administrative decisions appropriate to the programs of the law school;</td>
<td>(5) those federal and state administrative decisions appropriate to the programs of the law school;</td>
</tr>
<tr>
<td>(6) U.S. Congressional materials appropriate to the programs of the law school;</td>
<td>(6) U.S. Congressional materials appropriate to the programs of the law school;</td>
</tr>
<tr>
<td>(7) significant secondary works necessary to support the programs of the law school, and</td>
<td>(7) significant secondary works necessary to support the programs of the law school, and</td>
</tr>
<tr>
<td>(8) those tools, such as citators and periodical indexes, necessary to identify primary and secondary legal information and update primary legal information.</td>
<td>(8) those tools, necessary to identify primary and secondary legal information and update primary legal information.</td>
</tr>
</tbody>
</table>

¶76 The most important change is moving the core collection list from an interpretation to a standard with only minor changes—adding U.S. territories and dropped the direct reference to citators and periodical indexes. SRC maintains the requirement that there is a set of materials that all accredited law libraries must provide access to—a core collection—but has stated that the law school may maintain this collection in a format that best meets its needs and to decide whether to own or provide reliable access to these materials.
### Standard 606(b)(c)

<table>
<thead>
<tr>
<th>Previous Language</th>
<th>Revised Standards, August 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Standard 606(b)</strong></td>
<td><strong>Standard 606(c)</strong></td>
</tr>
<tr>
<td>In addition to the core collection of essential materials, a law library shall also provide a collection that through ownership or reliable access,</td>
<td>In addition to the core collection of essential materials, a law library shall also provide a collection that through ownership or reliable access,</td>
</tr>
<tr>
<td>(1) meets the research needs of the law school’s students, satisfies the demands of the law school curriculum, and facilitates the education of its students;</td>
<td>(1) meets the research needs of the law school’s students, satisfies the demands of the law school curriculum, and facilitates the education of its students;</td>
</tr>
<tr>
<td>(2) supports the teaching, scholarship, research, and service interests of the faculty; and</td>
<td>(2) supports the teaching, scholarship, research, and service interests of the faculty;</td>
</tr>
<tr>
<td>(3) serves the law school’s special teaching, scholarship, research, and service objectives;</td>
<td>(3) serves the law school’s special teaching, scholarship, research, and service objectives; and</td>
</tr>
<tr>
<td>(4) is complete, current and in sufficient quantity or with sufficient continuing access to meet faculty and student needs. [formerly Interpretation 606-1]</td>
<td></td>
</tr>
</tbody>
</table>

¶77 The standard has been renumbered and Interpretation 606-1 has been edited and incorporated within Standard 606(c). This standard provides an example of language stating the collection, regardless of format, must be complete, current, and accessible to faculty and students.

### Standard 606(d)(e)

<table>
<thead>
<tr>
<th>Previous Language</th>
<th>Revised Standards, August 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Standard 606(c)</strong></td>
<td><strong>Standard 606(d)</strong></td>
</tr>
<tr>
<td>A law library shall formulate and periodically update a written plan for development of the collection.</td>
<td>The law library shall formulate and periodically update a written plan for development of the collection.</td>
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</tbody>
</table>

¶78 The standard requires that a law library have a written collection development plan that is periodically updated.

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<thead>
<tr>
<th>Previous Language</th>
<th>Revised Standards, August 2014</th>
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<tbody>
<tr>
<td><strong>Standard 606(d)</strong></td>
<td><strong>Standard 606(e)</strong></td>
</tr>
<tr>
<td>A law library shall provide suitable space and adequate equipment to access and use all information in whatever formats are represented in the collection.</td>
<td>The law library shall provide suitable space and adequate equipment to access and use all information in whatever formats are represented in the collection.</td>
</tr>
</tbody>
</table>

¶79 There is no change in the requirement that the library provides suitable space and adequate equipment to access and use all information in whatever formats represented in the collection.


**Interpretation 606-1 Standard 606(c)(4)**

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<thead>
<tr>
<th>Previous Language</th>
<th>Revised Standards, August 2014</th>
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</thead>
<tbody>
<tr>
<td><strong>Interpretation 606-1</strong></td>
<td><strong>Interpretation 606-1</strong></td>
</tr>
<tr>
<td>All materials necessary to the programs of the law school shall be complete and current and in sufficient quantity or with sufficient access to meet faculty and student needs. The library shall ensure continuing access to all information necessary to the law school’s programs.</td>
<td>(4) is complete, current and in sufficient quantity or with sufficient continuing access to meet faculty and student needs.</td>
</tr>
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</table>

See the discussion in Standard 606(c)(4).

**Interpretation 606-2 606-1**

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<thead>
<tr>
<th>Previous Language</th>
<th>Revised Standards, August 2014</th>
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</thead>
<tbody>
<tr>
<td><strong>Interpretation 606-2</strong></td>
<td><strong>Interpretation 606-1</strong></td>
</tr>
<tr>
<td>The appropriate mixture of collection formats depends on the needs of the library and its clientele. A collection that consists of a single format may violate Standard 606.</td>
<td>The appropriate mixture of collection formats depends on the needs of the law library and the law school. A collection that consists of a single format may violate Standard 606.</td>
</tr>
</tbody>
</table>

§80 The change in this interpretation from “its clientele” to “the law school” clarifies that the appropriate mix of collection formats is a decision of the law library and the law school. The fact that a law school may serve the public, the bar, and its alumni besides its faculty and students influences what the law school determines is the appropriate mix. The standard maintains that a “single format” collection “may violate” the standard. The standard has not changed, allowing a school to show that the single-format collection is appropriate. It is possible under the current standards for a school to develop a curriculum in which one-third of the law school curricular instruction involved non-face-to-face classroom instruction and the contemplated changes to the distance education standards allow schools to offer fifteen hours of distance education classes, making a compelling argument for a single-format collection. A library contemplating an all-digital collection or an all-print collection would have to demonstrate that a single-format collection would not violate the standards.

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115. “Courses in which two-thirds or more of the course instruction consists of regular classroom instruction shall not be treated as ‘distance education.’” ABA Standards, supra note 2, at 26 (discussing Interpretation 306-3).

116. See Proposed Standard 311(e): “A law school shall not grant a student more than a total of 15 semester-hours (or equivalent quarter hours) toward the J.D. degree for courses qualifying under this Standard,” Id. at 54, 55.
Interpretation 606-2

<table>
<thead>
<tr>
<th>Previous Language</th>
<th>Revised Standards, August 2014</th>
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<tbody>
<tr>
<td>Reliable access to information resources may be provided through:</td>
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<tr>
<td>(a) databases to which the library or the parent institution subscribe or own and are likely to continue to subscribe and provide access,</td>
<td></td>
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<tr>
<td>(b) authenticated and credible databases that are available to the public at no charge and are likely to continue to be available to the public at no charge; or</td>
<td></td>
</tr>
<tr>
<td>(c) participation in a formal resource-sharing arrangement through which materials are made available, via electronic or physical delivery, to users within a reasonable time period.</td>
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</table>

¶81 This new language “elaborates on the definition of reliable access” and recognizes that the library may have access to information it owns or subscribes to or its parent institution owns or has access to from “authenticated and credible” publicly available databases or through resource sharing.

¶82 The question is, what are “authenticated and credible” databases? In July 2011, the National Conference of Commissioners on Uniform State Laws (also known as the Uniform Law Commission) approved the Uniform Electronic Legal Material Act. Section 5 of the Act talks about authentication:

An official publisher of legal material in an electronic record that is designated as official under Section 4 shall authenticate the record. To authenticate an electronic record, the publisher shall provide a method for a user to determine that the record received by the user from the publisher is unaltered from the official record published by the publisher.

The effect of authentication is that the copy is deemed an accurate copy of the original legal material; the burden of contesting the accuracy of the material shifts to the contesting party, who must prove “by a preponderance of the evidence that the legal material is not authentic.” Is the term being used as a term of art—that is, does it require that the record be designated as authenticated?

¶83 Second, what is meant by “credible databases”? Unlike “authenticated,” it is not a term of art, and there are no cases that define it. Should we take the Oxford English Dictionary definition of “credible” (“[w]orthy of belief or confidence; trustworthy, reliable”) and view proprietary databases that the library pays for access to as “credible”?

117. See Chapter 6—Library and Information Resources, supra note 6.
120. Id. § 5.
121. Id. § 6.
Interpretation 606-3

Previous Language

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

1. The agreements are in writing; and
2. The agreements provide faculty and students with the ease of access and availability necessary to support the programs of the law school.

Revised Standards, August 2014

See Proposed Interpretation 606-2(c)

(c) participation in a formal resource-sharing arrangement through which materials are made available, via electronic or physical delivery, to users within a reasonable time period.

¶ 84 Revised Interpretation 606-2(c) uses the term “formal resource-sharing arrangement,” which contemplates some type of written agreement. The reviewer would need to determine if these services are provided to the library’s users “within a reasonable time period,” which is an improvement over “with the ease of access and availability necessary to support the programs of law school.” This new language should encourage law libraries to work together to develop shared collection development agreements.

Interpretation 606-4 606-3

Previous Language

Interpretation 606-4

Off-site storage for non-essential material does not violate the Standards so long as the material is organized and readily accessible in a timely manner.

Revised Standards, August 2014

Interpretation 606-3

Off-site storage for non-essential material does not violate the Standards so long as the material is organized and readily accessible in a timely manner.

¶ 85 There is no change. The ability to store materials in an organized and readily accessible off-site storage facility meets the standards.

Interpretation 606-1 606-4

Previous Language

Interpretation 606-1

Cooperative agreements may be considered when determining whether faculty and students have efficient and effective access to the resources necessary to meet the law school’s educational needs. Standard 601 is not satisfied solely by arranging for students and faculty to have access to other law libraries within the region, or by providing electronic access.

Revised Standards, August 2014

Interpretation 606-4

Cooperative agreements may be considered when determining whether faculty and students have efficient and effective access to the resources necessary to enable the law school to carry out its program of legal education to accomplish its mission. Standard 601 is not satisfied solely by arranging for students and faculty to have access to other law libraries within the region.

¶ 86 The discussion of cooperative agreements has been moved to Interpretation 606-4 with some changes. There is no direct reference to cooperative agreements in Standard 601(1); however, the standard requires that a law school maintain a library that “provides support through . . . resources and services adequate to enable the law school to carry out its program of legal education.” Revised Interpretation 606-4 keeps the language “efficient and effective access to the resources necessary” while Standard 606(a) talks of a “core collection of essential materials through ownership or reliable access.” The retention of this provision in light of the proposed Interpretation 606-2(c) is at best perplexing and at worst an attempt to continue requiring
costly duplication of resources. Proposed Interpretation 602-2(c) uses the term “formal resource-sharing arrangements”:

Reliable access to information resources may be provided through:
(c) participation in a formal resource-sharing arrangement through which materials are made available, via electronic or physical delivery, to users within a reasonable time period.

¶87 Interpretation 606-4 contemplates cooperative agreements involving resources and appears to be addressed in Interpretation 606-2(c). If, however, the real reason for retaining the language in Standard 606-2 is to keep the last sentence—“Standard 606 is not satisfied solely by arranging for students and faculty to have access to other law libraries within the region”—the same goal could be accomplished by adding a section after Interpretation 606-2(c):

Reliable access is not satisfied solely by arranging for students and faculty to have access to other law libraries within the region.

¶88 As law schools grapple with the high cost of legal education, the ability to consider and enter into creative ways to provide students access to legal information is stifled by library standards. Perhaps these standards were designed to protect established law schools and the large law library collections they have invested in over time. In 2005, Drexel University moved to open a law school. It proposed a physical core library collection that included the resources required by the ABA and collections supporting the law school’s special programs, wide access to electronic resources, and an affiliation with Jenkins Law Library two miles from the law school.123 This proposal sparked discussions on law library blogs over whether it amounted to outsourcing the law library and whether it would violate the standards.124 However, as law libraries move to electronic delivery, scanning to pdf, overnight delivery, and access to significant collections at the main university

123. Drexel posted this announcement on its website:
Drexel’s law library will be . . . state-of-the-art. In fact, it will be three-dimensional. First, it will have a “physical core library.” This will include the resources that the American Bar Association requires all law schools to have. It will also include special depth in those areas that will be the focal points of the law school programs—health law, intellectual property, entrepreneurial business, environmental law, elder law, and the like.

Second, Drexel will offer its faculty and students wide access to the thousands of electronic books, records, and services that are now available over the Internet. Because Drexel is a wireless campus, all of these resources will be available to you wherever you are on campus; and otherwise over the Internet.

Third, Drexel will have a unique affiliation with one of the best, most extensive, and oldest law libraries in the country: the Jenkins Law Library. Founded in 1802 and maintained ever since as the law library for the legal profession in Philadelphia, it contains more than 589,000 volumes, including: comprehensive federal and state materials, statutes, regulations and reporters, court records and briefs, treatises, audio and videocassettes, centuries-old rare materials, as well as Internet resources.

Jenkins is fully staffed with professional legal librarians, who will train all law students not only in computerized legal research, but factual investigation techniques as well. The library has two dozen computers and is wireless for those having laptop computers.


124. Id.
library, resource-sharing agreements with other institutions that provide reliable access to significant portions of the “core collection” make sense.

§89 How does Interpretation 606-4 interact with the “reliable access” in Standard 606(a) and Interpretation 606-2(c), which states: “Reliable access to information resources can be provided through: . . . (c) participation in a formal resource-sharing arrangement through which materials are made available, via electronic or physical delivery, to users within a reasonable time”?

§90 Interpretation 606-4 appears to be redundant with the addition of reliable access and the ability to provide resources through resource-sharing agreements. Interpretation 606-2(c) is more specific than Interpretation 606-4 in clarifying how the material is delivered—via “electronic or physical delivery.”

### Interpretation 606-6 Standard 606(d)

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<tr>
<th>Previous Language</th>
<th>Revised Standards, August 2014</th>
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</thead>
<tbody>
<tr>
<td>Interpretation 606-6</td>
<td>Standard 606(d)</td>
</tr>
<tr>
<td>The dean, faculty, and director of the law library should cooperate in formulation of the collection development plan.</td>
<td>The law library shall formulate and periodically update a written plan for development of the collection.</td>
</tr>
</tbody>
</table>

§91 Standard 606(d) requires the library to formulate and update a collection-development plan. This might more appropriately be incorporated in Standard 601(3) or as an interpretation for the regular planning and assessment that the law library is required now to engage in. Interpretation 606-6 removes the requirement that the dean and faculty should cooperate with the library director in the formulation of the plan.

### Interpretation 606-7 Standard 606(e)

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<th>Revised Standards, August 2014</th>
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<tbody>
<tr>
<td>Interpretation 606-7</td>
<td>Standard 606(e)</td>
</tr>
<tr>
<td>This Standard requires the law library to furnish the equipment to print microform and electronic documents and to view and listen to audio-visual materials in the collection.</td>
<td>The law library shall provide suitable space and adequate equipment to access and use all information in whatever formats are represented in the collection.</td>
</tr>
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</table>

§92 This Interpretation was redundant. Standard 606(e) states, “the law library shall provide suitable space and adequate equipment to access and use all information in whatever formats are represented in the collection.” This more generic language provides for technological changes in the library.
In Chapter 7 of the existing standards, Standard 703 dealt with the law library.

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<tr>
<th>Previous Language</th>
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<tr>
<td><strong>Standard 703</strong></td>
<td><strong>Standard 702(a)(2)</strong></td>
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A law library that is suitable and sufficient in size, location, and design in relation to the law school’s programs and enrollment to accommodate the needs of the law school’s students and faculty and the law library’s services, collections, staff, operations, and equipment;

§93 Under the proposed changes, Standard 703 disappears and its language, with some significant changes, is moved to Standard 702(a)(2). The change from “physical facilities for the law library shall be sufficient in size, location, and design” to “A law library that is suitable and sufficient in size, location and design in relation to the law school’s programs and enrollment” would seem to be requiring more than “[a]dequate; of such quality, number, force, or value as is necessary for a given purpose,”125 which is the definition of “sufficient” given in Black’s Law Dictionary. Furthermore, “suitable” is defined as “fit and appropriate for their intended purpose.”126 This, coupled with adding “the needs of” the students and faculty, means that accreditors will be requiring evidence that “the needs of” the law school’s students and faculty and the law library’s services, collections, staff, operations, and equipment are accommodated by the library. I contend that a virtual library could be “suitable and sufficient” if it meets the needs of the law school’s students and faculty and the needs of law library services, collections, staff, operations, and equipment are accommodated by the library. This list of library functions raises an interesting question: should they be kept in-house or can they be outsourced? Ron Friedmann has an answer: “My recommendation to managers is to worry more about finding the best people to do the job—and ‘best’ has lots of different meanings. Don’t worry quite as much about where they work, or whose name is on the paycheck they receive.”127 So, what is the future of law libraries? Can library staffing be reduced; can the move from print to digital reduce the space required for the library; can librarians be integrated throughout the law school; can using virtual reference allow for outsourced support; can using self check and RFD technologies streamline and reduce library staffing needs; can “just in time” e-book collections change the nature of the academic library enterprise? Under Standard 702(a)(2), coupled with the removal of the Interpretation 702-1 below, could a virtual library with a small working print and audiovisual collection that is bar-coded and available for self-checkout be “suitable and sufficient” to meet the needs of law students and faculty?

125. BLACK’S LAW DICTIONARY 1474 (8th ed. 2004).
126. Id. at 1476.
Interpretation 702-1

**Standard 701(b)(8)**

A law library shall have sufficient seating to meet the needs of the law school’s students and faculty.

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¶94 The need to have space in the law library for sufficient seating disappears and the need for sufficient seating for students could be met by space in the library or such space could be anywhere within the law school. Moving the seating requirement out of the traditional confines of the law library and into the law school is in line with what most law schools are doing these days. It relieves the burden of the law library to seat everyone and allows more opportunities for the “planned collision” between students and faculty.

**Standard 701. General Requirements**

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Interpretation 701-1

Inadequate physical facilities are those that have a negative and material effect on the education students receive or fail to provide reasonable access for persons with disabilities. If equal access for persons with disabilities is not readily achievable, the law school shall provide reasonable accommodation to such persons.

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In determining whether technology and technology support comply with this Standard, among the factors to be considered are:

1. the hardware and software resources and infrastructure available to support the teaching, scholarship, research, services and administrative needs of students, faculty and staff of the law school;
2. staff support and space for staff operations and
3. the law school’s financial resources and overall ability to maintain and, as appropriate, adopt new technology.


Interpretation 704-1  Standard 701(b)

Previous Language
Interpretation 704-1

Inadequate technological capacities are those that have a negative and material effect on the education students receive.

Revised Standards, August 2014
Standard 701(b)

A law school is not in compliance with the Standard if its facilities, equipment, technology support have a negative and material effect on the school’s ability to operate in compliance with Standards; or to carry out its program of legal education.

¶95 The SRC’s explanation of changes states that “[c]urrent Standard 704 and current Interpretations 701-1 and 704-1 have been incorporated in proposed Standard 701(b), explaining that in order to violate the requirements of the Standards, the facilities, equipment, technology or technology support must have a ‘negative and material effect on the school’s ability . . . to operate in compliance with the Standards; or . . . carry out its program of legal education.’”

Moreover, “[t]he Council added this modification to the Standards as part of a review process initiated pursuant to an antitrust consent decree with the U.S. Department of Justice, and the norm was designed to adjust power between a law school and its university. Specifically, it was designed to limit the ability of law schools to invoke the ABA Standards as a way to press universities for new or improved law school facilities.”

Interpretation 701-2  Standard 702(a).

Previous Language
Interpretation 701-2

(a) Adequate physical facilities shall include:

(i) suitable class and seminar rooms in sufficient number and size to permit reasonable scheduling of all classes and seminars;

(ii) a law library that is suitable and sufficient in size, location, and design in relation to the law school’s programs and enrollment to accommodate the needs of the law school’s students and faculty and the law library’s services, collections, staff, operations, and equipment;

(iii) suitable space for conducting its professional skills courses and programs, including clinical, pretrial, trial, and appellate programs;

(iv) an office for each full-time faculty member adequate for faculty study and for faculty student conferences, and sufficient office space for part-time faculty members adequate for faculty-student conferences;

Revised Standards, August 2014
Standard 702(a)

(a) The facilities shall include:

(i) suitable class and seminar rooms in sufficient number, functionality, and size to permit reasonable scheduling of all classes, skills offerings, and seminars;

(ii) a law library that is suitable and sufficient in size, location, and design in relation to the law school’s programs and enrollment to accommodate the needs of the law school’s students and faculty and the law library’s services, collections, staff, operations, and equipment;

(iii) suitable and sufficient space for staff providing support services, including student support services, to the program of legal education;

(iv) office space for each full-time faculty members that is suitable for faculty research, class preparation, and faculty-student conferences; and suitable and sufficient space for part-time faculty members to conduct faculty-student conferences;


129. Conison, supra note 13, at 1530 (footnotes omitted).
(4) space for co-curricular, as opposed to extra-curricular, activities as defined by the law school;

(5) suitable space for all staff; and

(6) suitable space for equipment and records in proximity to the individuals and offices served.

(5) facilities and equipment that meet all applicable health, safety, and fire codes;

(6) suitable and sufficient space for equipment and records;

(7) suitable and sufficient space appropriate for conducting any in-house clinical programs in a manner that assures competent and ethical representation of clients and meaningful instruction and supervision of students, including confidential space for (i) client interviewing, (ii) working on and discussing client cases, and (iii) security for client files;

(8) suitable and sufficient space and seating for its students and faculty, on site, for quiet study and research; and

(9) suitable and sufficient space, on site, for group study and other forms of collaborative work.

Standard 702(b)

Previous Language

Revised Standards, August 2014

A law school shall provide reasonable access and accommodation to persons with disabilities, consistent with applicable law.

Standard 703. Research and Study Space

Previous Language

Revised Standards, August 2014

See Standard 702(b)(8) and (9)

A law school shall provide, on site, sufficient quiet study and research seating for its students and faculty. A law school should provide space that is suitable for group study and other forms of collaborative work.

(8) suitable and sufficient space and seating for its students and faculty for quiet study and research; and

(9) suitable and sufficient space for group study and other forms of collaborative work.

§95 Quiet study and research seating and suitable group study space are often found in the library. The standards for research and study space outside the law library were in the current standards and this space could be found anywhere in the facilities while reflecting the mandatory nature of “suitable and sufficient space” within the law school facilities. This space could be in the law library, but it also could be incorporated elsewhere in the law school, allowing schools to redefine where students engage in group study and quiet study in the building. This change redefines the role of the library and provides more opportunities for re-creating the library in the digital world.
Standard 509(b). Consumer Information Required Disclosure

Previous Language
A law shall publicly disclose on its website consumer information in the following categories:

(b) number of full-time and part-time faculty and administrators;

(6) library resources

Revised Standards, August 2014
(b) A law school shall publicly disclose on its website, in the form and manner and for the time frame designated by the Council, the following information:

(4) number of full-time and part-time faculty and administrators;

(5) number of full-time and part-time faculty, professional librarians and administrators;

(6) [DELETED]

¶96 Under Standard 509(b) the requirement that library resources be disclosed is deleted. There is now a requirement to disclose the number of professional librarians but the requirement does not distinguish between full-time and part-time librarians or define “professional librarians,” and nowhere in the library standards is the term “professional librarians” used. It will be necessary for the Council to determine the “form and manner” of the information that law schools are to publicly disclose. To ensure consistency the Council will need to define “professional librarians.”

Interpretation 105-2 Standard 106. Separate Locations and Branch Campuses

Previous Language
The establishment of a Branch campus of an approved law school constitutes the creation of a different law school. Consequently, a Branch campus must have a permanent full-time faculty, an adequate working library, adequate support and administrative staff, and adequate physical facilities and technological capacities. A Branch campus shall apply for provisional approval under the provisions of Standard 102 and Rule 4.

Revised Standards, August 2014
(a) A law school that offers a separate location shall provide:

(b) Library resources and staff that are adequate to support the curriculum offered at the separate location and that are reasonably accessible to the student body at the separate location;

¶97 The interpretation that requires an “adequate working library” has been clarified as a standard that focuses on library resources and staff. First, the resources and staff must be “adequate to support the curriculum offered at the separate location”; second, the resources and staff must be “reasonably accessible to the student body at the separate library.” As previously discussed, the term “adequate” is ambiguous.130 It would also appear that the separate or branch library must support the curriculum, but how a library pursues reasonable access to staff might be met through virtual reference services if those are the services being offered at the main law library.

130. See supra note 40 and accompanying text.
Conclusions

\(\S98\) In describing how university provosts and presidents evaluate the ABA accreditation process, Saul Levmore stated:

it would be unsurprising if university provosts and presidents reported that the accreditation of law schools was no different from that of schools established to certify engineers, doctors, and architects. But by all accounts the comparison suggests that we lawyers win the prize for overregulation. . . . It is only law schools that are constantly burdening their central administrators with regulations. This fact suggests a bureaucracy out of control, instituted by well-meaning people but bogged down by interest groups that have brought about a large number of regulations and standards currently in place.\(^{131}\)

\(\S99\) Prior to these changes, the Accreditation Committee of the ABA Section of Legal Education and Admissions to the Bar had a simple test in assessing the library that belies the extensive library standards: “[t]he gravamen of the test now, as the accreditation committee has applied it, is whether the collection and the library services adequately meet the needs of the school’s faculty and students.”\(^{132}\)

\(\S100\) As noted throughout this article, the library standards remain prescriptive and fail to reflect the changing nature of the physical library in today’s universities. What does this mean for the library department or professional school library? The revised standards will continue to require significant library expenditures to provide a core collection that goes beyond what is needed to adequately meet the needs of the faculty and students.

\(\S101\) John O’Brien, the former chair of the Council of the ABA Section of Legal Education and Admissions to the Bar, stated, “Look at the standards and ask: ‘What is it that the A.B.A. requires that I wouldn’t be doing anyway?’ The answer is precious little, if anything.”\(^{133}\) Despite this statement, the pervasive attitude within the academy is that the A.B.A. requirements have resulted in the escalating cost of legal education. At the New England School of Law, where O’Brien has served as dean for the past twenty-four years, tuition has increased from $22,475 in 2004 to $42,490 in 2012.\(^{134}\)

\(\S102\) At the end of the day, the library standards sent to the Council, approved for Notice and Comment—the proposed revisions to Chapter 6 (Library and Information Sources) and Chapter 7 (Facilities, Equipment, and Technology),\(^{135}\) and


\(^{132}\) Sebert, supra note 9, at 396.


\(^{135}\) See generally Memorandum from Kent D. Syverud & Barry A. Currier, supra note 50.
concurred in by the ABA House of Delegates on August 11, 2014,\textsuperscript{136} have not fundamentally changed from what previously was in place. It is often easier to hack at the branches while failing to strike the root of the problem. After almost four years the SRC sent to the Council only modest changes to the library standards.

\textsection{103} The previous Chapter 6 comprises three standards and thirteen interpretations, and the revised standards approved by the Council comprise six standards and seven interpretations. The SRC reorganized Chapter 6 by integrating several prescriptive interpretations as standards and reducing the number of interpretations. While this reorganization is an important step in moving away from interpretations, this four-year process has not resulted in an overhaul of the library standards that would allow more flexibility in the provision of cost-effective services that the faculty and students need.

\textsection{104} At a time when applications to law school declined,\textsuperscript{137} the Section of Legal Education and Admissions to the Bar engaged in a review of the standards, and the Council voted to accept the changes chapter by chapter. However, it is interesting that the ABA also created the Task Force on the Future of Legal Education “in the summer of 2012, to meet over the next two years and charged [it] with making recommendations to the American Bar Association on how law schools, the ABA, and other groups and organizations can take concrete steps to address issues concerning the economics of legal education and its delivery.”\textsuperscript{138} The task force was not placed under the Section of Legal Education and Admissions to the Bar but under the ABA’s Center for Professional Responsibility. The task force has created two subcommittees, one to examine “the potential for innovation and improvement in how law schools deliver education” and the other to look at “the economics of legal education and its impact on individual graduates and the profession.”\textsuperscript{139}

\textsection{105} The subcommittees have themes to address including the “recognition that there are several models under which accredited law schools can operate to deliver a quality J.D. education.”\textsuperscript{140}

\textsection{106} It is likely that by the time the task force makes recommendations, the SRC and Council will have completed their review of the accreditation standards and the revised standards will have been approved by the ABA’s House of Delegates. It is unfortunate that the SRC’s comprehensive review of the standards will not


\textsuperscript{140} Id.
have the benefit of the task force’s report to provide a framework that might lead to radically rethinking the accreditation standards.

¶107 The declining applicant pool and the poor job market for lawyers are causing both a supply and demand problem whose solution is the subject of articles by a number of scholars.\textsuperscript{141} A more bare-bones set of library standards that more closely mirrors the library standards in the SACS accreditation process, requiring that the institution (1) provide appropriate facilities and resources to support the teaching, research, and service mission; (2) ensure that users have regular and timely instruction in the use of the resources; and (3) provide a sufficient number of appropriately educated or experienced library/information resources staff\textsuperscript{142} if adopted by the ABA might allow for more variations in law school libraries at a lower cost.\textsuperscript{143}


\textsuperscript{142.} Southern Ass’n of Colls. & Schools, supra note 62.

\textsuperscript{143.} There is a general lack of quantitative analysis of the standards. This was noted thirty-five years ago and remains true today: “[T]he rest of the ABA standards have been and continue to be officially justified on the grounds that they improve the quality of legal education. Undoubtedly, they have helped to improve the nation’s schools; nevertheless, the relationships between the number of books, study spaces, and so forth, possessed by a law school and the quality of the legal education provided by it has never really been explored.” Donna Fossum, Law School Accreditation Standards and the Structure of American Legal Education, 1978 Am. B. Found. Res. J. 515, 541 (1978).
Appendix

Law School Survey of Student Engagement
Library Consortium Questions

Law School Student Survey of Student Engagement—Library Questions

1. During the current school year, to what extent has your experience at your law school contributed to your knowledge, skills, and personal development in the following areas?

- Gained an understanding of the complexities of the legal system.
- Gained an awareness of the cost of research.
- Gained an understanding of the content for the legal issues, laws, rules, and other legal authority that govern a lawyer’s use of information in the course of practice.
- Developed the ability to effectively use secondary sources (Legal encyclopedias, ALR, loose-leaf services).
- Developed the ability to select appropriate sources for obtaining required information.
- Developed the ability to design and implement efficient, cost-effective search strategies.
- Developed the ability to critically evaluate the credibility of information sources.
- Developed the ability to modify your initial research strategy based on analysis of preliminary results.
- Developed the ability to determine when research has explained or supported a conclusion.
- Developed the ability to use the results of your research to structure your legal analysis and prepare your work product.

2. During the current academic year, how satisfied were you with your law library’s training and support in the following areas?

- Legal research classes/presentations/programs the Library staff has held.
- Interactions with librarians where legal research skills are addressed (at the reference desk, individual meetings, virtual reference).
- Research guides compiled by Library staff to assist students in legal research.

3. In your experience at your law school during the current school year, about how often have you communicated with a librarian about the following:

- Research/reference questions
- Support for library technologies (i.e., library catalog, computer lab, printers/copiers, etc.)
- Course work help
- Citation/legal writing questions
### Law School Student Survey of Student Engagement – Library Questions

**4.** In your experience at law school, how satisfied are you with each of these library functions?:

<table>
<thead>
<tr>
<th>Library Function</th>
<th>Very Satisfied</th>
<th>Satisfied</th>
<th>Unsatisfied</th>
<th>Very Unsatisfied</th>
<th>Not used</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Library as study space</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>b. Collaborative space availability</td>
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<td>c. Quality of print resources available</td>
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<td>d. Quality of online resources available</td>
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<tr>
<td>e. Hours library is open</td>
<td></td>
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<tr>
<td>f. Hours reference/research assistance is available</td>
<td></td>
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<td></td>
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<tr>
<td>g. Circulation/Reserve services</td>
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<td></td>
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<tr>
<td>h. Interlibrary loan assistance</td>
<td></td>
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</tbody>
</table>
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What About the Majority? Considering the Legal Research Practices of Solo and Small Firm Attorneys*

Joseph D. Lawson**

Solo and small firm practitioners account for the majority of attorneys practicing in the United States. However, they are regularly underrepresented in studies of attorneys’ research practices, which tend to focus on attorneys in larger practice settings. This article reports the results of a local survey in which more than 80 percent of respondents fell into this forgotten demographic. Comparison of the local study with a recent national survey demonstrates that greater consideration of smaller firms could lead to a different understanding of fee-based online resource usage among the demographic, which may have widespread implications for public and academic law libraries, access to justice, and implementation of research competency standards. The research practices of solo and small firm attorneys, as well as the conditions leading to such practices, warrant further study.

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* © Joseph D. Lawson, 2014. This is a revised version of the winning entry in the new member division of the 2014 AALL/LexisNexis Call for Papers Competition. I would like to thank the Fort Bend County Bar Association for being a gracious partner in collecting the data reported in this article. I would also like to thank Emily Lawson, Heather Waltman, and Shanna Pritchett for their editing assistance.

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Solo and small firm practitioners are seemingly everywhere. Examples abound from Atticus Finch in our classic literature\(^1\) to Abraham Lincoln in our history books\(^2\) to the hundreds of thousands who make up the largest segment of the American Bar Association’s (ABA’s) compilation of lawyer demographics.\(^3\) In fact, solo practitioners alone accounted for 49% of all private practice attorneys in the United States as of 2005,\(^4\) and their ranks are expected to swell as employment opportunities in other settings continue to disappear.\(^5\) Nevertheless, attorneys practicing in smaller settings tend to be underrepresented in academic studies.\(^6\) As a result, there is a very real danger of neglecting the interests of a majority of attorneys when policy and curriculum decisions are made based on studies that fail to consider solo and small firm practitioners.

Underrepresentation of solo and small firm practitioners is also a trend in law librarian studies of attorney research practices. Such studies are often based on surveys of law firm librarians, which, although very helpful, provide skewed results that favor the interests of firms large enough to employ law librarians.\(^7\) While a limited number of surveys that include solo and small firm respondents have been reported, their presence is usually overshadowed by attorneys in larger practice settings.\(^8\) Within this context, a task force formed by the Academic Law Library Special Interest Section (ALL-SIS) of the American Association of Law Library (AALL) conducted a survey of practitioners (hereafter National Survey) meant to gain an “understanding of how practicing attorneys conduct legal research.”\(^9\)

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2. John C. Waugh, One Man Great Enough: Abraham Lincoln’s Road to the Civil War 169 (2007) (Lincoln became the senior partner of the two-attorney firm Lincoln & Herndon in 1844).
4. Id.
5. Genevieve Blake Tung, Academic Law Libraries and the Crisis in Legal Education, 105 LAW LIBR. J. 275, 276–77, 2013 LAW LIBR. J. 14 ¶¶ 2–3 (presenting employment statistics that suggest new graduates are entering practice in small firms or going directly into solo practice at increasing rates due to fewer opportunities in other settings).
8. See, e.g., Sanford N. Greenberg, Legal Research Training: Preparing Students for a Rapidly Changing Research Environment, 13 LEGAL WRITING J. LEGAL WRITING INST. 241 (2007) (population sample for survey intended to assess transition from print to electronic sources included only 9.8% solo practitioners but 30.9% from settings with more than 100 attorneys).
ALL-SIS Task Force on Identifying Skills and Knowledge for Legal Practice received survey responses from more than 600 attorneys from a variety of states and practice settings, and produced a clearer picture of attorney research practices than ever before.\footnote{Id. at 4.} Solo practitioners, however, comprised only 13.77% of the sample population,\footnote{See infra section comparing the Local and National Surveys.} so the survey results suffered from the same issues as previous efforts.

\S 3 To determine the usefulness of the National Survey results for informing acquisitions and other policy decisions at the local level, the Fort Bend County Law Library collaborated with the Fort Bend County Bar Association (FBCBA) on a survey to collect comparable data from local bar members (hereafter Local Survey). Survey questions were intended to assess practice setting along with how often three resource formats—print resources, free online resources, and fee-based online resources—were used. To promote a high response rate, the questionnaire was distributed with the annual election ballot. While the short survey could not replicate the depth of information collected in the National Survey, the expectation was that similarity of results regarding frequency of use might suggest that the demographic discrepancy was a distinction without a difference. Eighty-nine attorneys, more than 50% of whom were solo practitioners, responded. Although respondents reported similar usage of print and free online resources, they appeared to use fee-based online resources far less frequently than National Survey respondents. Because the greatest discrepancy occurred in only one resource category, the results of the Local Survey pointed to a unique pattern among solo and small firm practitioners in relation to fee-based resources.

\S 4 This article explores the potential correlation between solo and small firm practitioners and less frequent use of fee-based resources that is suggested by comparison of the Local and National Surveys. The article also considers possible causes for unique practices among this demographic, the implications of such practices for law libraries, and the need for more research. The first section presents the methodology and results of the Local Survey. The next section compares the results of the Local and National Surveys to show a possible relationship between practice setting and fee-based resource usage. The third section discusses potential causes of such a relationship, including a review of arguments that go beyond a mere inability to pay for cost-prohibitive products. The fourth section explores the implications of unique legal research practices among the growing solo and small firm demographic, including the need for access to resources in public law libraries, avenues for law libraries to promote access to justice for low- and middle-income individuals by supporting smaller practices, possible reforms to legal research curricula, and the effect due consideration would have on implementation of legal research competency standards. The fifth section proposes suggestions for further research.
The Local Survey

§5 The purpose of the Local Survey was, at its core, to gather information about the legal research practices of local attorneys to be used in making decisions about acquisitions, programming, and general administration of the Fort Bend County Law Library. The FBCBA periodically conducts surveys of its members concerning their use of the law library and shares the results with the law librarian. In the past, these surveys consisted of open-ended questions soliciting suggestions for collection development or amenities. While past survey results yielded invaluable insight into the felt needs of both current and potential patrons, the ability to compare the data to similar efforts or from year to year was limited. In an effort to standardize some of the data, the law library proposed the addition of structured questions. The FBCBA graciously agreed.

Methodology

§6 To get a clearer picture of the target population, every effort was made to encourage a high rate of participation. The survey was distributed with the annual election ballot via SurveyMonkey to all 650 members of the FBCBA. Polling was open November 6–20, 2013, and several reminders were sent to members encouraging them to complete the ballot and survey. The survey was limited to four multiple-choice and two open-ended questions, and 87 respondents answered all the structured questions. Given the substantially lower participation rates on open-ended questions in the Local Survey and previous FBCBA surveys, the structured questions yielded unprecedented data about the association.

§7 The secondary purpose of the Local Survey was to collect data that could be compared with the results of the National Survey to determine its applicability locally. The questions were modeled after questions in the National Survey, and similar response categories were used. The first question assessed practice setting. Participants were asked to describe their practice using one of five categories: “solo practitioner,” “firm: 2–5,” “firm: 6–10,” “firm: 10+,” and “other (government, in-
The options were skewed toward the likely composition of the local legal community, but still conformed to the categories used by the ABA to measure lawyer demographics as well as the modified scale used in the National Survey. The remaining three questions were modeled after Question 8 of the National Survey, which asked participants to report the frequency with which they used print materials, free online materials and fee-based online materials. To ensure comparability, the same five-category frequency scale was used: “very frequently,” “frequently,” “occasionally,” “rarely,” and “never.”

The Local Survey departed from the National Survey by including examples of free and fee-based online resources. Most notably, Casemaker was included alongside Google as an example of a free online resource. While Casemaker is not free to everyone as Google is, all members of the Texas bar, and by extension all attorneys who participated in the Local Survey, receive free access to the basic product. Because the phrase “free online resource” may reasonably mean free to the survey participant or free to everyone, the decision was made to include Casemaker as an example of a free online resource to avoid confusion that might cause participants to skip the question. While the ambiguity of the term “free” was not addressed in the National Survey, the majority of respondents have free access to either Casemaker or Fastcase, a similar low-cost database that provides a basic version at no cost to members of bar associations in several jurisdictions. As such, respondents in both surveys had the same opportunity to categorize databases to which they have free access as free online resources. Therefore, the inclusion of Casemaker as an example of a free resource is unlikely to affect the comparability of the results of the Local and National Surveys.

Results of Local Survey

The Local Survey yielded both expected and unexpected results. For example, as expected, more than 50% of participants reported solo practices. The next largest segment included attorneys in firms with five or fewer attorneys while firms with more than ten were least represented, also as expected (see table 1).

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18. See infra appendix.
19. ABA Demographics, supra note 3.
21. Id. at 30.
22. See infra appendix.
23. The Texas bar association is one of twenty-three state bar associations that offer free access to a basic version of Casemaker to members. See Bar Association Consortium, Casemaker, http://www.casemaker.us/ProductsStateBarConsortium.aspx (last visited Oct. 14, 2014).
A substantial number of participants (46%) reported using print resources either very frequently (17.24%) or frequently (28.74%), which is consistent with observations of local attorneys using print resources extensively in the law library or carrying personal copies of books throughout the courthouse.

¶10 An unexpected deviation between reported use of free and fee-based online resources was observed. Rather than observing similar rates of usage, as expected, or increased use of fee-based online resources, as reported in the National Survey, local attorneys reported using fee-based online resources significantly less frequently than free online resources. In fact, 42% of participants indicated that they never (23.86%) or rarely (18.18%) used fee-based resources while only 18% provided the same answers for free resources (see table 2).

### Table 2

<table>
<thead>
<tr>
<th>Practice Setting</th>
<th>No. of Respondents</th>
<th>Proportion of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solo Practitioner</td>
<td>44</td>
<td>50.57%</td>
</tr>
<tr>
<td>Firm: 2–5</td>
<td>28</td>
<td>32.18%</td>
</tr>
<tr>
<td>Firm: 6–10</td>
<td>3</td>
<td>3.45%</td>
</tr>
<tr>
<td>Firm: 10+</td>
<td>2</td>
<td>2.3%</td>
</tr>
<tr>
<td>Other (government, in-house counsel, retired, education, etc.)</td>
<td>10</td>
<td>11.49%</td>
</tr>
</tbody>
</table>

### Comparison of Local Survey and National Survey

¶11 A major purpose of the Local Survey was to collect data that could be compared with the results of the National Survey. In June 2013, the ALL-SIS Task Force reported the results of a four-part survey that was completed by 603 practitioners between February 9 and April 18, 2012. The first section was intended to assess

the demographics of respondents, including location of practice, office size, practice setting, and years in practice. Questions concerning the amount of legal research performed by respondents as well as their research practices were included in section two. The third section contained questions about specific resource formats (such as print resources) as well as specific resource types (such as treatises).28 Finally, the questions in section four were intended to gain insight into practitioners’ perceptions of recent law school graduates’ research skills.29 Given the extensive distribution of respondents in terms of geography30 and attorney demographics, the expansive depth and breadth of questions produced invaluable data about the legal research practices of large portions of the U.S. attorney population.

¶12 As shown in figure 1, however, a comparison of the respondents’ demographics with attorney demographics nationwide32 reveals underrepresentation among certain segments of the sample population, which may affect the generalizability of survey results. Specifically, solo practitioners, who make up 49% of U.S. attorneys in private practice, composed only 23.68% of private practice respondents in the National Survey.33 More generally, private practice attorneys were underrepresented by 16.81% when compared with national statistics.34 The combined effect is that solo attorneys accounted for only 13.77% of the total population sampled in the National Survey when they comprise 36.74% of all U.S. attorneys—a 23% discrepancy.35 Small firm practitioners fared somewhat better because of overrepresentation among respondents in private practice; for example, practitioners in firms with 2 to 10 attorneys composed 21% of National Survey respondents while only 15% of attorneys nationwide fall into this category. Otherwise, respondents most often reported employment in midsized and large firms or government entities.36 As a result, the National Survey demographics skewed away from the attorney–patron groups that most often use the Fort Bend County Law Library.

26. Id.
27. Id. at 3.
28. Id. Section 3 begins with question 8, on which three of the four multiple-choice questions in the Local Survey were modeled.
29. Id.
30. Respondents reported practicing in a variety of states, the District of Columbia, Puerto Rico, and international locations. Eleven states were unrepresented, while states with large legal communities, such as California, New York, Illinois, and Texas were well represented. National Survey, supra note 9, at 4.
31. Id. at 5–8.
32. A convenient summary of the American Bar Foundation’s most recent attorney demographic estimates as of 2005 as well as other useful demographic information is available on the ABA’s website. See ABA Demographics, supra note 3.
34. Id. at A-14.
35. For anyone interested in the math, the author derived the percentage of solo attorneys who responded to the National Survey by multiplying the percentage of private practice attorneys who reported being solo practitioners (23.68%) by the percentage who reported being in private practice (58.16%). Thus, 23.68% of 58.16% of $n = 13.77\%$ of $n$. A similar process can be used to find the national demographic percentages. See id. at A-13 to A-14.
36. Id.
Use of print and free online resources was reported at similar rates by Local and National Survey respondents, but fee-based online materials were used far less frequently by Local Survey respondents. As shown in figure 2, use frequency of print resources was almost identical in both surveys, with no category differing by more than 2.5%. While Local Survey respondents generally reported less frequent use of free online materials, the discrepancy for any individual category remained fairly small, and less than 3% of respondents in each survey reported never using these resources, resulting in the more gradual redistribution shown in figure 3.

Figure 1
Comparison of Local Survey, National Survey, and ABA Demographics

Figure 2
Comparison of Print Resource Use
As shown in figure 4, results for use of fee-based online materials yielded the greatest variance. Whereas 67% of respondents reported very frequent (44.3%) or frequent (22.7%) use of fee-based resources in the National Survey, only 40.9% reported the same in the Local Survey. Because occasional use was reported at similar rates in each survey, the discrepancy shifted to the opposite end of the spectrum, with 42.1% of respondents on the Local Survey reporting that they rarely (18.2%) or never (23.9%) used fee-based online materials, while only 17.7% of National Survey respondents reported the same.

The combination of significantly lower rates of fee-based online resource use and significantly higher participation of solo and small firm attorneys in the Local Survey suggests a unique usage pattern among the demographic. The similarity of results in both surveys for other resource categories further indicates that a relationship between resource format and population sampled exists and that the discrepancy is not tied to a general characteristic of the group surveyed. For example, if attorneys in smaller firms simply do less research than those in other settings, one might expect the very frequent and frequent categories to be lower across all resource categories. Similarly, if attorneys in smaller firms struggle with digital literacy, one would expect to see both free and fee-based online resource usage to

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decrease significantly and at similar rates as the number of respondents practicing in smaller firms increases. However, because the greatest discrepancy occurred for only one category when a large number of respondents are solo or small firm practitioners, it is worth investigating possible causes of a relationship between these attorneys and decreased use of fee-based online resources.

**Conditions Affecting Solo and Small Firm Practitioners’ Use of Fee-Based Resources**

¶16 Whether they relate to access to subscription databases in public law libraries or curriculum and support services in academic settings, the efforts of law libraries should take into account the needs of the majority of attorneys. Considering the causes of unique research practices of attorneys in smaller firms is thus important. Data collected about attorneys in other settings is being used to set wide-reaching policy in law libraries, law schools, and other venues.\(^38\) Gaining a better understanding of the nuanced practices of the majority of attorneys regarding the most commonly taught research tools—as well as the conditions that cause such practices—would lead to more informed and balanced decision making.

¶17 When investigating possible causes, law librarians should be cautious about dismissing low usage rates as a purely economic issue and instead consider cost as one of several contributing factors. Limited access based on an inability to pay could easily lead to a “digital divide” between firms that can afford to pay for expensive database subscriptions and those that cannot.\(^39\) This understanding of the issue would mirror the traditional view of the digital divide, which has been defined and researched as “a simple separation between ‘haves’ and ‘have nots’” where “the ‘haves’ have access to computers and the internet and the ‘have nots’ do not.”\(^40\) However, technology has become more widely available, the mere inability to access the tools has become only one of many possible causes studied, which

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38. See National Survey, supra note 9, at 1 (noting “[t]he Task Force was charged with ‘identify[ing] the current and future research skills that law school graduates need to succeed in legal practice’” and that the National Survey would be used to gain “a better understanding of how practicing attorneys conduct legal research”). See also AM. Ass’n OF L. Libr., PRINCIPLES AND STANDARDS FOR LEGAL RESEARCH COMPETENCY 2–3 (2013), http://www.aallnet.org/main-menu/Advocacy/legalresearchcompetency/principlesstds (hereinafter AALL Research Competencies) (results of existing surveys used to support call for reform in legal education and adoption of legal research competency principles by “law schools, CLE providers, bar examiners, paralegal and law office administration associations, law firms, and others”).

39. Hall suggests that the inability of smaller firms to pass legal research costs to clients adversely affects their ability to access expensive databases, which puts them at a disadvantage and “perpetuates the notion that the legal world is run by the ‘haves’ at the expense of the ‘have-nots.’” David Hall, Google, Westlaw, LexisNexis and Open Access: How the Demand for Free Legal Research Will Change the Legal Profession, 26 SYRACUSE SCI. & TECH. L. REP. 53, 72 (2012). See also Michael E. Heintz, Comment, The Digital Divide and Courtroom Technology: Can David Keep Up with Goliath?, 54 FED. COMM. L.J. 567 (2002) (arguing that an inability to pay for software and hardware for courtroom presentations and law practice technology could lead to a “digital divide” and that courts should continue to provide basic technologies to “level the playing field”).

include demographics and skill set. The transformation of the digital divide from a simple economic issue to a multifaceted problem is instructive when considering possible causes of the unique practices of solo and small firm practitioners in relation to fee-based online resources. Although there is evidence that attorneys in smaller settings struggle with the cost of expensive databases, the available literature suggests that the fee is not the only factor. Instead, it is likely one of several, which may include the technical ability of the individual attorney as well as reduced need for expensive databases due to efficiencies of small firm practice, increased experience, and reliance on professional networks. If economic issues are explored exclusively, future research might ignore these other possibilities. Therefore, cost should be considered as just one of several factors that may influence the practices of solo and small firm attorneys throughout their careers.

Economic Issues

¶18 The most obvious obstacle to using fee-based resources is the fee. The costs of database subscriptions can be quite expensive. In large part, this is due to market concentration in favor of just two vendors—Westlaw and Lexis. With a 90% market share in the legal information industry, these companies form a “duopoly,” which can drive up prices. Typically, charges for using these databases are incurred through a combination of hourly, transactional, and flat-rate billing. Under any combination, subscriptions can be cost-prohibitive because fees incurred outside of a flat-rate plan can be unexpectedly large and fixed rates can increase annually with increased usage. One scholar argues that these characteristics make Westlaw and Lexis “particularly suited to large law firms that bill clients.” Because such pricing might be cost-prohibitive for a substantial number of legal information consumers, these vendors have offered limited access products for reduced fees to attorneys in smaller settings. These products are fundamentally different in that they are often severely restricted by jurisdiction or practice area or both, and there is no option to retrieve documents beyond a predetermined set of databases. Additionally even reduced access can be relatively expensive.

¶19 Small firms are not well positioned to pay the high costs of traditional legal database subscriptions. While there are exceptions to every rule, smaller firms

41. Id.
42. See infra section on economic issues.
43. See infra sections on technical ability, efficiencies, and professional networks.
45. Id. at 821.
46. Hall, supra note 39, at 67.
47. Sarah Gotschall, Teaching Cost-Effective Research Skills: Have We Overemphasized Its Importance?, 29 LEGAL REFERENCE SERVICES Q. 149, 155 (2010).
48. Id. at 156–57.
49. Arewa, supra note 44, at 830.
50. Id. at 831.
52. Arewa, supra note 44, at 831.
generally face financial insecurity and issues with cash flow.\(^{53}\) When compared with larger firms, solo and small law firms charge lower rates and generate fewer profits, which results in lower attorney incomes.\(^{54}\) Recent economic conditions seem to be pushing the rates of smaller firms even lower.\(^{55}\) Attorneys in smaller settings are also facing increased competition from nonlawyer alternatives, such as document assembly and legal information websites,\(^{56}\) for the business of their core clients—individuals and small businesses.\(^{57}\) By some estimates, these new competitors may be absorbing millions of dollars each year from the personal legal services market that might otherwise go to solo and small firm practitioners.\(^{58}\) With competition on two fronts, it is easy to imagine that paying fees for expensive database subscriptions feels less like a nibble and more like a bite out of an already small financial pie.

¶20 In addition to reduced income, smaller firms have greater difficulty with cost recovery than other firms. Large firms have traditionally passed some or all of the fee charged by the vendor directly to the client.\(^{59}\) As a result, the actual cost of using the database is shared and only a portion, if any, can be counted as overhead.\(^{60}\) Solo and small firm attorneys face a very different scenario because they rarely have the option to pass along costs to their clients.\(^{61}\) Without the option to recover these costs, the price of legal information must be absorbed.\(^{62}\) Some firms might be able to increase rates charged to all clients to defray costs, but smaller firms have had difficulty maintaining rates through the recent economic downturn.\(^{63}\) Options to recover the costs of online research as part of an award of attorney’s fees following successful litigation—an option smaller firms might use to offset the client’s fee—vary by jurisdiction, and several courts and legislatures discourage the practice.\(^{64}\) As a result, increased overhead from research costs is

\(^{53}\) Leslie C. Levin, *The Ethical World of Solo and Small Law Firm Practitioners*, 41 Hous. L. Rev. 309, 323 (2004) (reporting results of qualitative study of forty-one solo and small firm attorneys; regardless of practice area, many reported that attracting clients and maintaining cash flow “are the biggest challenges of working in a solo or small firm practice”).


\(^{55}\) *Id.* at 119.


\(^{57}\) Herrera, *supra* note 6, at 898–99 (noting that smaller firms are more likely than other firms to represent individuals and small businesses).

\(^{58}\) Herrera, *supra* note 6, at 898.

\(^{59}\) Arewa, *supra* note 44, at 823.

\(^{60}\) *Id.*

\(^{61}\) Hall, *supra* note 39, at 72. It should be noted that all firms, regardless of size, are having trouble passing the costs of legal research on to clients. See Rachel M. Zahorsky, *Firms Wave Goodbye to Billing for Research Costs* (Nov. 14, 2012), http://www.abajournal.com/lawscribbler/article/firms_wave_goodbye_to_billing_for_research_costs/. Nevertheless, the same pressures that force larger firms to bill fewer costs may completely foreclose the possibility for smaller firms.

\(^{62}\) Cary J. Griffith & Vicki C. Krueger, *Recovering Online Legal Research Costs: Best Practices for Enhancing Small Firm Profitability and Service to Clients* 4 (2005) (“online research can be one of the biggest expenses incurred by modern law firms—often second only to personnel costs as the highest overhead item in a small firm’s budget”).

\(^{63}\) See Juergens, *supra* note 54, at 119.

likely to reduce already limited profits for solo and small firm practitioners.\textsuperscript{65} It is no surprise that these attorneys cite cost as an obstacle to acquiring legal information.\textsuperscript{66}

**Technical Ability**

\textsuperscript{\%21} Solo and small firm practitioners who can afford database subscriptions may still need training on the underlying technologies or on new search platforms. As demonstrated by D. Casey Flaherty’s much-discussed audit for technology competency, a large number of attorneys struggle with technology in their practices.\textsuperscript{67} Nelson Miller and Derek Witte suggest that many lawyers are Luddites who actively oppose the use of technology in their practices.\textsuperscript{68} In a study by Leslie Levin, older attorneys reported that they “were not technologically competent” and that their inability to use technology negatively affected their use of fee-based online resources.\textsuperscript{69} Without basic technology skills, the ability to use Internet-based resources is diminished. Nevertheless, a large number of respondents reported at least occasional use of free online resources in both the Local (82\%) and National (87.5\%) Surveys.\textsuperscript{70} Therefore, it is unlikely that a general inability to use technology is a widespread cause of lower usage rates among solo and small firm practitioners.

\textsuperscript{\%22} A lack of training on Westlaw and Lexis might lead to a lack of technical ability that is more prevalent in smaller firms than in other settings. Such a suggestion may be counterintuitive since, as David Hall notes, law schools are graduating “Westlaw addicts” whose free, unlimited access to these products gives them plenty of practice.\textsuperscript{71} However, law school training provides at most a three-year snapshot of the technology as it exists before graduation, and with new products such as WestlawNext and Lexis Advance,\textsuperscript{72} continued training is necessary to maintain technical proficiency.\textsuperscript{73} Solo and small firm attorneys have fewer options than their large firm counterparts in this regard. Genevieve Blake Tung suggests that training and development of attorneys has generally been accomplished through mentorships within a firm.\textsuperscript{74} Many large firms devote substantial resources to training,
including billable-hour credit for the attorney’s time. Smaller firms are not able to devote such resources to training, especially when the firm consists of only one attorney. Training may be available from the database provider. Smaller firms, however, may not have existing accounts, or their accounts may not represent big business, so vendors are unlikely to give them the attention needed for adequate training. On the attorney’s end, using time for training rather than marketing or paid legal work has few immediate incentives. While all of these obstacles could be overcome, they may be sufficient to discourage some solo and small firm attorneys from receiving adequate training, resulting in decreased use of subscription databases.

**Efficiencies of Solo and Small Firm Practice**

Certain efficiencies inherent in solo and small firm work may also contribute to decreased reliance on fee-based online resources. Attorneys in all practice settings become more efficient researchers as they gain more experience and begin to specialize. Between 2006 and 2008, Judith Lihosit interviewed fifteen attorneys to determine how they conduct legal research in practice. Interviewees consistently reported that they became faster researchers as they gained experience. Familiarity with a practice area also results in more efficient research because the attorney needs to consult fewer secondary sources for context and fewer finding tools before discovering the appropriate terms of art. As the need for overview information is reduced and the path to primary source material is shortened, attorneys may find it less necessary to pay for expensive database subscriptions.

However, experience cannot fully displace the need for research tools because experience is only valuable to those who have it. New attorneys lack experience. The attorneys in Lihosit’s study reported extensive use of “legal encyclopedias, treatises, and practice guides” as young associates. As many as 49% of graduates who enter private practice go directly to smaller firms or solo practices, reducing the efficiencies derived from experience. Similarly, attorneys who encounter new areas of law do not have the full benefit of experience on their side. In Lihosit’s study, attorneys who encountered a new area of law turned to “secondary sources, in-house documents, and other attorneys” to gain an understanding of the topic and “locate key cases and key terminology.” Because solo and small firm attorneys are more likely than others to become general practitioners, they are the

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75. Id.
76. Id.
77. Greenberg, supra note 8, at 250.
79. Id. at 170.
80. Id. at 173.
81. Id.
82. Id.
83. Tung, supra note 5, at 277.
84. Lihosit, supra note 78, at 174.
85. Id.
ones most likely to encounter new areas of law throughout their careers. Without the ability to anticipate where their legal work will take them, these attorneys will likely not have taken every law school course needed to prepare them for every topic they will encounter. As a result, continued access to secondary sources and practice materials may in fact be most important to solo and small firm practitioners. Nevertheless, Lihosit suggests that “[a]ttorneys are still learning to do research . . . by using whatever tools are available to them.” If this is true for all attorneys, those in smaller settings would be able to transfer their strategies for finding information outside of fee-based online resources to new practice areas even if the concepts do not easily translate. Assisting attorneys in acquiring legal research agility is a task well suited for law libraries, so it would be useful to learn the extent to which experience is a contributing factor in reducing the need for secondary source research, as Lihosit’s study suggests, and how it affects use of particular resources in different segments of the attorney population.

Some solo and small firm attorneys may also benefit from efficiencies attributable to the repetitive nature of their practices. The work of smaller firms has been described as “routine in nature.” This may stem from their representation of clients in personal matters such as divorce, personal injury, and real estate transactions, which can involve many of the same issues and documents from client to client. While calling a practice routine is not very flattering, Luz Herrera suggests that enterprising attorneys may view it “as an asset to serving more clients with fewer resources” through delegation of tasks to support staff, standardization of forms and documents, and use of technology to streamline workflow. They can also use document assembly software to promote efficiency. As attorneys develop in-house repositories of standardized documents, they reduce the need to perform research to complete similar tasks. Without the demand for bespoke solutions from high-paying clients, solo and small firm attorneys may be able to do substantially less research than their large firm counterparts. Herrera provides the example of a solo attorney who combines the efficiencies of routine work into a “virtual law firm” focused on simple family law matters. With the assistance of technology, the attorney can serve a large number of Maryland litigants with similar legal issues “from his Palm Beach Gardens home.” Although few attorneys can make their practices so efficient that they can operate from another state, they may be able to reduce the amount of research required for their practice. For example, an attorney

86. Tung, supra note 5, at 298.
87. Id. (providing example of a young solo attorney who taught himself how to practice bankruptcy law using secondary resources in a county law library to take advantage of a new business opportunity).
88. Lihosit, supra note 78, at 174.
89. Herrera, supra note 6, at 909.
90. Id. at 903.
91. Id.
92. Juergens, supra note 54, at 118.
93. See Lihosit, supra note 78, at 174.
95. Herrera, supra note 6, at 900.
who conducts research on public law library computers to find case law addressing her state’s summary judgment standard will be able to reuse the authority in motions for other clients. While novel legal issues requiring more in-depth research will arise, efficiencies derived from routine work within the attorney’s practice areas may reduce the need to access expensive databases. If the need is adequately reduced, attorneys may be able to conduct a sufficient amount of research using free resources, including free access to print resources and subscription databases at public law libraries as well as databases provided through bar associations.

¶26 Regarding the value of flexible rate plans offered by Westlaw and Lexis, an interesting paradox arises if indeed a substantial number of solo and small firm practitioners can take advantage of efficiencies derived from experience or repetition. Westlaw and Lexis tend to offer discounts by reducing access.96 Quite often, access is limited by subject area, reducing the few secondary sources available to those within the subscriber’s practice area.97 Experience and repetition reduce the need for research within the attorney’s practice area, which would seem to reduce the value of the access granted. Yet as Sarah Gotschall reports, subscriptions for smaller firms often restrict out-of-plan searching.98 Since these attorneys are the most likely to encounter new practice areas throughout their careers and more in-depth research is required for new practice areas, one might imagine access to resources outside of their practice areas would become more valuable over time. As a result, solo and small firm practitioners are met with a scenario in which they give up much of the information they will need to access in exchange for discounts that make access to subscription databases possible. This may explain, at least in part, why these attorneys choose not to access subscription databases even though less expensive options are available.

Effect of Professional Networks

¶27 Practitioners in smaller firms may also have a lessened need to pay for legal information due to their reliance on professional networks. Lihosit’s study focused on the role of advice networks in training attorneys to conduct research.99 Every attorney she interviewed indicated that he or she “had at some point looked to other attorneys for guidance.”100 The advice networks to which the attorneys turned consisted of senior attorneys in a firm, attorneys in shared office space, local attorneys who practice in the same subject area, and even opposing counsel. Attorney networks might also extend through the Internet via e-mail, electronic mailing lists, and document repositories.101 While Lihosit’s study did not involve a representative sample of solo and small firm practitioners, other studies have found that reliance on similar networks, including attorneys from other firms102 and elec-

96. Arewa, supra note 44, at 831.
98. Id.
99. Lihosit, supra note 78, at 172.
100. Id.
101. Id.
tronic mailing lists,\textsuperscript{103} informs other aspects of small firm practice. At the local level, bar associations also help connect attorneys in similar practice areas to facilitate the exchange of information.\textsuperscript{104} As such, Lihosit’s findings that “use of secondary sources is usually supplemented with, or even over time replaced by consultation with in-house document repositories or more experienced attorneys who are part of [an] informal network” is likely to be widely applicable among the respondents in the Local and National Surveys.\textsuperscript{105} As a result, reliance on an advice network may offset the amount of research that needs to be completed with expensive databases. If a young attorney can glean context and terms of art from an experienced attorney, she may be able to bypass extensive secondary source research just as an experienced attorney might. Also, because advice is likely to be most plentiful within an attorney’s specialty,\textsuperscript{106} the paradox in which access to the most useful databases is limited in exchange for discounts that make access possible, may also come into play when attorneys rely on advice networks, making even discounted products less appealing. Ultimately, the extent to which professional networks allow attorneys in smaller firms to practice without incurring the high cost of subscription databases warrants further study.

**Implications for Law Libraries**

\textsuperscript{¶28} The unique research practices of lawyers in small practice settings in relation to fee-based online resources—as well as the underlying causes thereof—have a variety of implications for law libraries.\textsuperscript{107} As is suggested by the title of this article, solo and small firm practitioners make up the majority of practicing attorneys. Private practice attorneys have always comprised about 75\% of all attorneys\textsuperscript{108} and, as of 2005, 69\% of those attorneys practiced in firms that ranged from one to ten attorneys.\textsuperscript{109} As such, 51.75\%\textsuperscript{110} of all attorneys in the United States can be called a solo or small firm practitioner.\textsuperscript{111} There are also indications that the ranks of attorneys in smaller firms are growing.\textsuperscript{112} Therefore, any effort to gain “a better understanding of how practicing attorneys conduct legal research”\textsuperscript{113} should give due consideration to the practices of this growing majority. In doing so, law libraries

\begin{footnotes}
  \item[103] Juergens, supra note 54, at 118 (reporting on electronic mailing lists maintained by state bar association that help connect attorneys in smaller firms).
  \item[105] Lihosit, supra note 78, at 172.
  \item[106] See id.
  \item[107] The implications discussed in this section will focus on public and academic law libraries. As previously noted, law firm librarians tend to be employed in settings that cannot be described as solo or small firm practices. As such, any concern they have for solo and small firm practitioners likely lies beyond the scope of this article.
  \item[108] Herrera, supra note 6, at 888.
  \item[109] ABA Demographics, supra note 3.
  \item[110] 69\% of 75\% of n = 51.75\% of n.
  \item[111] Juergens, supra note 54, at 93 (suggesting that the term “small firm” includes “ten or fewer lawyers”).
  \item[112] Tung, supra note 5, at 276–77.
  \item[113] National Survey, supra note 9, at 1.
\end{footnotes}
would be better positioned to promote access to needed resources, support access to justice for low- and middle-income litigants, develop legal research curricula that prepare all graduates for practice, and properly implement legal research competency standards.

**Providing Access and Support**

¶29 The unique realities facing many solo and small firm practitioners should cement the commitment of public law libraries to providing access to fee-based online resources, which are likely necessary tools for modern practice. There should be little doubt that legal research is important to the practice of law. Richard Danner notes that the purpose of practitioner research is “to find answers to problems” and the manner in which research is conducted “is driven by the nature of the primary source materials and by their sheer bulk.” With an estimated 8.5 million cases published through the end of 2013, the need for complex finding tools and citators is great. Although attorneys in smaller settings may be able to limit their research needs through a variety of strategies, new attorneys, attorneys who venture into new practice areas, and attorneys seeking to stay up-to-date will need access to extensive collections of secondary sources in addition to primary sources. As a result, solo and small firm practitioners will very likely need access to the expensive, high-powered research products offered by Westlaw and Lexis. The truth of the matter is that these vendors control 90% of the legal publishing market. In the case of West, government outsourcing of court document publishing means that, in many jurisdictions, the publisher actually wrote the book—or, at least, published the book—that practitioners will have to use. As the copyright owner for the West Digest System and the headnotes appearing at the

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114. Phebe E. Poydras, *Developing Legal Information Literate Law Students: “That Dog Will Hunt,”* 32 LEGAL REFERENCE SERVICES Q. 183, 185 (2013) (suggesting that a wider view taking into account “as many practice areas as possible” should be adopted by legal research educators when developing legal research curricula).

115. The word “should” is necessitated because some commentators have called into question the importance of legal research in the practice of law. See, e.g., Hardy, supra note 94, at 222 (“legal research may not be all that important”). However, inclusion of legal research as a fundamental lawyering skill in the ABA’s often-cited MacCrate Report as well as evidence of consequences faced by attorneys who fail to properly conduct legal research strongly suggests otherwise. See Yasmin Sokkar Harker, “Information Is Cheap, but Meaning Is Expensive”: Building Analytical Skill into Legal Research Instruction, 105 LAW LIB. J. 79, 81 (2013).


117. Danner discusses an often-cited estimate of 6 million cases through 2000 with “200,000 new cases published annually.” Conservatively, if no new courts were formed and existing courts did not increase their rates of publication, another 2.5 million cases would be added between 2001 and 2013 for a total of 8.5 million. See id. at 181.

118. See supra sections on efficiencies and professional networks.

119. Tung, supra note 5, 298 (“Attorneys who are thrust into new or unanticipated situations have both a great need for research resources and a great appreciation for how law libraries can assist them”); Levin, supra note 53, at 333 (suggesting that solo and small firm practitioners stay up-to-date by doing legal research and reading bar association publications, among other things).

120. Hall, supra note 39, at 54–55.

121. Arewa, supra note 44, at 815 (noting that “West’s reporters [have] achieved quasi-official status for American case law”).
beginning of cases, West did write the book on two of the most important finding tools in American jurisprudence. Now that electronic legal research is ubiquitous, Westlaw and Lexis are likely still the best options for comprehensive research. Hall notes that they are the most reliable resources available and that recent competitors lack many of the tools, such as a citator, required for legal research. Solo and small firm practitioners may find ways to minimize their use of expensive databases, but when the need arises, it is likely critical that they obtain access.

\[30\] Public law libraries, as well as academic law libraries that provide services to alumni and local attorneys, offer the best option for making expensive databases available to solo and small firm practitioners when needed. Public law libraries have long been considered collective institutions that might support the research needs of practitioners, thereby offsetting the overhead associated with building and maintaining a private law library. A recent study of county law library mission statements suggests these institutions remain ready to fulfill this role, with a majority indicating that they “provide access to legal information and research services to the members of the local community.” Similarly, academic law libraries can promote collective cost containment by opening their collections and electronic offerings to local attorneys. Making resources available to a broad range of patrons increases the likelihood that expensive tools will be used frequently enough in the aggregate to justify the cost even though individual use may be infrequent as the result of reliance on experience or professional networks. The expense is spread over a wider pool by channeling the cost through filing fees or other funding mechanisms, thereby lessening the impact on individual practitioners.

\[31\] As discussed above, however, the reason for lower usage rates of fee-based resources among solo and small firm practitioners may not be entirely economic. If, for instance, attorneys in smaller settings need training on new search interfaces, providing mere access will not solve the issue. Nevertheless, public law libraries are well positioned to assist. Whether through point-of-need assistance or through educational opportunities, law librarians can provide continuing training on databases. Librarians can also connect attorneys with appropriate electronic resources when they move into new practice areas, engage in continuing education, or implement current awareness strategies to acquire information that they share with

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122. Hall, supra note 39, at 69.
123. There is some discussion about how important the West Digest System is for legal research. Some argue it is so ubiquitous in law school education that it actually shapes how attorneys think about the law. Others take a different view. See Joseph A. Cluster, The Universe of Thinkable Thoughts Versus the Facts of Empirical Research, 102 LAW LIBR. J. 251 (2010). Perhaps the amount of attention given to the subject, if nothing else, can serve as proof of its significance.
124. Hall, supra note 39, at 55.
125. Id. at 55, 59 (noting Google Scholar does not provide a citator).
128. Tung, supra note 5, at 299 (Tung suggests that offering such services would help practitioners but may affect collection development policies because the local bar may have different information needs than students and faculty).
129. See supra sections on technical ability, efficiencies, and professional networks. Local Survey respondents have free access to Westlaw and Lexis through local public law libraries, which suggests access is not the only issue. See Fort Bend County Libraries, Fort Bend County Law Library (2013), http://www.fortbend.lib.tx.us/branches/ll.html (free access to Westlaw and Lexis).
professional networks. Such services need not be limited to expensive databases. Free and low-cost resources come from a variety of sources, including courts and other government agencies, law schools, bar associations, and several commercial vendors. Bringing these diverse resources together in a usable manner and assisting attorneys in moving between free and fee-based resources are tasks well suited for law librarian expertise.

Access to Justice

§32 Supporting solo and small firm practitioners has positive implications for access to justice. With only one legal aid attorney for every 6,861 low-income Americans, as much as 80% of the civil legal needs for those in the bottom income brackets go unmet. The Legal Service Corporation, a federally funded nonprofit corporation that promotes equal access to justice, reports that its affiliate legal aid organizations “turn away a million eligible prospective clients every year because they lack the capacity and the lawyers to serve [low-income litigants] legal needs.” When considering the unmet legal needs of middle-income Americans, the economics of access to justice look even bleaker. Ronald Staudt and Andrew Medeiros suggest that there are “millions of modest-income people who are not eligible for legal aid [and] cannot afford the fees charged by lawyers.” Juergens notes that middle-income litigants’ needs “are largely left for the market to fill” where a glut of unemployed attorneys “should translate into lower costs and more legal needs being met.” Several commentators have pointed out, however, that despite the presence of both high supply and high demand, there are still unemployed attorneys and unmet legal needs.

§33 Part of the solution to the crisis of unmet legal needs of low- and middle-income people includes services offered by solo and small firm practitioners. Juergens argues that smaller practices are uniquely positioned to assist individuals of modest means because these firms generally charge the lowest rates, are widely distributed geographically, and are consistently the largest segment of attorneys. Solo and small firm practitioners also tend to practice more—and therefore, have more expertise—in areas with which low- and middle-income clients need assistance. Nevertheless, access to an attorney is still cost-prohibitive for many Americans. Juergens argues that one of the best ways solo and small firm practitio-

131. Hackerson, supra note 64, at 475.
132. Staudt & Medeiros, supra note 56, at 696.
133. Id. at 707.
134. Id. at 696.
135. Id.
137. Id. See also Tung, supra note 5, at 277.
138. The solution to such an extensive crisis will likely be multifaceted. Other parts of the solution will include encouraging or mandating pro bono work, increased funding for legal aid, and facilitating pro se representation as appropriate. See Juergens, supra note 54, at 84.
139. Juergens, supra note 54, at 85–87.
140. Herrera, supra note 6, at 906.
ners can reduce their fees is by reducing their overhead. An independent study commissioned by West reveals that “online research can be one of the biggest expenses incurred by modern law firms—often second only to personnel costs as the highest overhead item in a small firm’s budget.” Lowering the cost of legal information thus translates to a reduction in overhead. Market forces, including competition from nonlawyer services, are already pressuring small firms to lower their costs. Because affordability is a major obstacle to hiring an attorney, lower prices allow services to be offered to people whose needs might otherwise go unmet, which could also result in more employment opportunities for unemployed lawyers. Another possibility is that more financial security could translate into more pro bono work by smaller firm attorneys, who are uniquely qualified to address the needs of low- and middle-income clients. Many attorneys begin “law school with a desire to do public interest work,” but succumb to economic pressures either before or shortly after graduation. Reducing the financial uncertainty that plagues many solo and small firm attorneys could very well lead to increased hours spent on pro bono work. Regardless of the fee arrangement, helping smaller firms reduce their overhead would likely result in more needs met for low- and middle-income people.

Law libraries have a variety of options for helping practitioners reduce the costs of accessing legal information. Providing the local bar with access to and training for fee-based online resources is well within the purview of public law libraries as well as academic law libraries that can open their collections. Legal research curricula could be adjusted to better prepare solo and small firm practitioners to conduct research using the tools available to them in practice. The benefits of implementing such measures would likely produce results similar to those realized by the Law School Consortium Project. A joint venture of four law schools, the Law School Consortium Project was designed to promote the formation of professional networks of solo and small firm practitioners and to provide support services to network attorneys who work with low- and middle-income clients and
underserved communities. The support took many forms, from training to discounted malpractice insurance to mentoring. It also included free or discounted access to subscription databases and, at CUNY Law School, the assistance of a dedicated research librarian. As one network attorney who used the law library service observed, “Through help with research [from the CUNY network’s staff librarian] and the ability to discuss cases, through email and directly with other members, I can do things more quickly and thoroughly, thereby saving my clients money and representing them more aggressively.” Access to resources in public law libraries can achieve similar results. In response to an open-ended question, a Local Survey participant pointed out that she “would have no access to paid online legal research” if Westlaw were not available at the law library. “It helps me, as a solo practitioner, hold my own against bigger firms and it helps me do the best job I can for my clients!” she noted. By providing such access, law libraries can play a part in promoting access to justice for low- and middle-income people.

Legal Research Curricula

The best approach to teaching legal research has been the topic of much debate. Tung examined legal research education within the context of the bifurcated debate about law school curriculum. On the traditional side of the debate, some argue for a continuation of the Langdellian model that emphasizes the case method where “libraries [are] the laboratories of legal science.” On the other side, commentators argue for more practical training for future lawyers. While advocates of practicality spurred law schools to develop legal research classes and clinical programs during the twentieth century, law schools continue to devote most of their curricular attention to traditional, academic instruction. Nevertheless, the 2007 Carnegie Report has increased pressure on law schools to provide more practical training by including “‘practical skill’ as one of the three pillars that provide structure to legal education.” David Armond and Shawn Nevers argue that “legal research is certainly more practical than many law school courses, [but] the way it is taught in the academy can be estranged from the way it is currently practiced in the field” and that “[i]n today’s ever-changing legal information environment, a connection to contemporary legal research practice is more important than ever.” Because the majority of attorneys practice in small firms, one of the best ways academic law libraries can make legal research instruction more practical

149. Herrera, supra note 6, at 921.
151. Id. at 1259.
152. Tung, supra note 5, at 281.
153. Id.
154. To show just how practical some think the training should be, Tung provides a quote from “noted ‘legal realist’” and law professor Carl Llewellyn, who said, “I hold that a lawyer’s first job is to be a lawyer. I hold that we must teach him, first of all, to make a legal table or a chair that will stand up without a wobble.” Id. at 282.
155. Id.
156. Harker, supra note 115, at 81.
157. Armond & Nevers, supra note 7, at 575.
is by giving proper consideration to solo and small firm attorneys and developing legal research curricula that would be useful in a variety of practice settings.\textsuperscript{158}

§36 When considering the needs of attorneys in smaller firms, the importance of exposure to a wide range of research tools and strategies for incorporating these tools into an overall research and business plan becomes paramount. Laura Justiss notes that law students receive limited exposure to electronic resources beyond Westlaw and Lexis despite widespread use of alternatives, including free and low-cost tools, in practice.\textsuperscript{159} Assuming the results of the Local Survey hold true for all attorneys practicing in smaller settings,\textsuperscript{160} more than 40% rarely or never access the tools most often covered in law school. Regardless of the reasons for decreased use,\textsuperscript{161} it does a disservice to law students to expose them only to tools they will not use.

§37 A legal research curriculum that takes into account the needs of solo and small firm practitioners can employ two strategies that have already been discussed in the literature for improving overall legal research instruction: cost-effective legal research and legal information literacy. Deborah Hackerson suggests that law students develop a habit of using databases without considering the costs in law school because they have free access to expensive research tools.\textsuperscript{162} She argues that such habits “will not serve them well when they enter the professional law firm environment, where costs matter.”\textsuperscript{163} The need to limit legal research costs is very important for smaller firms because profit margins are tight and costs are not easily passed to clients.\textsuperscript{164} Incorporation of cost-effective strategies, including free and low-cost tools, into legal research coursework would help solo and small firm practitioners discover research tools that fit into their unique business plans.\textsuperscript{165}

\textsuperscript{158} Herrera suggests that law schools should generally give more consideration than they do to the needs of solo and small firm practitioners because of the large number of students who will eventually find work in small practices. Herrera, supra note 6, at 891. Tung notes that a disproportionate number of associates at large, wealthy firms attended elite law schools, so there may be a heightened need to prepare students for small firm practice at local and regional law schools (the majority of law schools) that “are more likely to graduate students who work for small firms and serve individual clients.” Tung, supra note 5, at 284. See also Poydras, supra note 114, at 185 (arguing that law librarians should consider “as many practice areas as possible” when developing legal research curricula).

\textsuperscript{159} Laura K. Justiss, A Survey of Electronic Research Alternatives to LexisNexis and Westlaw in Law Firms, 103 LAW LIBR. J. 71, 2011 LAW LIBR. J. 4, ¶2.

\textsuperscript{160} As noted throughout this article, the largest segment of the attorney population is underrepresented in surveys concerning legal research practices, so further study will be necessary to determine the widespread applicability of the results of the Local Survey. See infra section discussing opportunities for more research

\textsuperscript{161} See supra section on conditions affecting use of fee-based resources.

\textsuperscript{162} Hackerson, supra note 64, at 481. See also Greenberg, supra note 8, at 255 (reporting survey results in which respondents referred to recent graduates’ use of only expensive databases available in law school as an “addiction”).

\textsuperscript{163} Id.

\textsuperscript{164} See supra section on economic issues.

\textsuperscript{165} This is by no means a new idea. For example, Robert Berring of the University of California Berkeley School of Law incorporates free online resources into his legal research coursework. See Hall, supra note 39, at 57. Justiss presents lectures on alternatives to Westlaw and Lexis at SMU School of Law. See Justiss, supra note 160, at 71. Tung recommends teaching about free and low-cost legal research platforms to “better prepare students regardless of their ultimate practice destination.” Tung, supra note 5, at 302.
In contrast, Gotschall argues that too much emphasis is already placed on cost-effective research in legal research classes and that “[s]mall firms and government organizations are less concerned with cost-effective research than large firms.”

Gotschall suggests that law librarian scholarship is largely underpinned by surveys of law firm librarians, which places a disproportionate emphasis on large firms while a majority of attorneys practice in smaller settings. To determine whether cost-effective legal research is as important to a majority of firms, Gotschall surveyed seventy-three law students concerning the importance of cost-effective research to the firms or institutions that employed them for summer clerkships or internships. Survey results suggested that little or no emphasis was placed on cost containment by a majority of organizations and that most reports of high importance came from students who worked at the largest firms. Based on these results, she concluded that smaller firms are less concerned than larger firms about cost-effective research.

Nevertheless, Gotschall’s argument suffers from two key flaws when viewed in the context of the needs of practitioners in smaller firms. First, the sampled population is insufficient to draw general conclusions about small firms. Fewer than 2% of the student respondents reported working with solo practitioners, and approximately 4% reported working in firms with between two and ten attorneys. Thus, while the survey yielded more representative results of the attorney population as a whole than law firm librarian surveys might, it relied on 6% of its sample to represent 51.75% of the total population. Second, Gotschall uses a highly constrained definition of “cost-effective legal research” when arguing that consideration of smaller firms should lead curricula away from the topic. She concludes that “[l]arger firms are more concerned with containing online research costs than smaller firms . . . because of differences in how they are charged for Westlaw and Lexis access,” which includes limited access to out-of-plan documents for smaller firms. This conclusion necessarily assumes that all attorneys are using just two subscription databases and the only cost containment that matters relates to surprise fees from out-of-plan searching. However, subscription to a limited database is an indication that containment of legal research costs matters. Certainly, firms with limited plans, like all firms, will have to look beyond the scope of their restricted access, but when they do, they know beforehand that the price is too high through their primary vendor. When they look for the information, it can likely be left unsaid that wherever the information comes from, its costs need to be contained. As such, it is no surprise that the Local and National Surveys suggest a majority of attorneys rely heavily on free online resources. However, when they

166. Gotschall, supra note 47, at 151–57.
167. Id. at 159.
168. Id. at 153.
169. Id. at 158–59.
170. There is uncertainty about the number of respondents who worked in firms with between two and ten attorneys, stemming from the categories used to report demographics. Presumably, this firm size was reported as “other,” which composed 4.1% of the total sample. Id. at 153.
171. Total number of solo and small firm attorneys is calculated in supra note 110.
172. Gotschall, supra note 47, at 155.
cannot avoid using Westlaw or Lexis (for example, for Shepardizing), solo and small firm attorneys may need to know how to find free access to these high-powered research tools, including access through a public law library.\textsuperscript{173} Therefore, legal research training that is meant to prepare the majority of law students for practice should incorporate cost-effective legal research strategies that give due consideration to free and low-cost tools.\textsuperscript{174}

\textsuperscript{¶40} Legal information literacy\textsuperscript{175} is another concept that might direct changes in legal research curricula to meet the needs of solo and small firm practitioners. Catherine Lemmer describes legal information literacy as “the ability to find, retrieve, analyze, and use legal information.”\textsuperscript{176} Yasmin Sokkar Harker argues that such skills are necessary for modern legal researchers because of the “huge amount and variety of information on the Internet.”\textsuperscript{177} Following the general expansion of the Internet, the amount of legal information available online has grown and is presented through a diverse collection of websites and databases that are maintained by government entities, commercial vendors, and other organizations.\textsuperscript{178} Margolis and Murray argue that changing the focus of instruction to legal information literacy would allow students to critically evaluate available resources and develop a “deeper understanding of electronic research so that skills can be transferred as the research technology continues to evolve and change.”\textsuperscript{179} Given the decentralized nature of available resources, the ability to develop strategies for finding and evaluating resources wherever they are found is clearly a beneficial one for researchers. Use of expensive legal databases, however, can negate the need for extensive evaluation because Westlaw and Lexis are the most reliable sources available to legal researchers.\textsuperscript{180} Nevertheless, there are many occasions when the majority of attorneys will not have access to such authoritative services\textsuperscript{181} and, as shown by the Local and National Surveys, a large number of them will look to free online resources and print resources. When they do, practitioners will encounter a plethora of materials of differing quality accessed through a variety of interfaces. Preparing them to find and critically evaluate all available information, rather than just to

\begin{thebibliography}{99}
\bibitem{173} Telling students about free access to research tools at public law libraries is also a great cross-selling opportunity for academic law libraries to market other AALL institutions.
\bibitem{174} This conclusion is the same as that drawn by Hackerson for students regardless of future practice setting. Hackerson, \textit{supra} note 64, at 484 (arguing students should be exposed to Casemaker, Fastcase, Google Scholar, and other tools before leaving law school).
\bibitem{175} Many authors discuss information literacy in the context of law school. See, e.g., Harker, \textit{supra} note 115, at 85. Poydras refers to this as “legal information literacy,” which is how it will be referred to here. Poydras, \textit{supra} note 114, at 184.
\bibitem{177} Harker, \textit{supra} note 115, at 85.
\bibitem{180} Hall, \textit{supra} note 39, at 55.
\bibitem{181} \textit{See supra} section on conditions affecting usage of fee-based resources.
\end{thebibliography}
use specific tools as they exist before graduation, would better prepare solo and
small firm practitioners as well as all graduates for practice.

Solo and Small Firm Incubators and Related Programs

¶41 Another area in which academic law libraries can support future solo and
small firm practitioners is through the development of programs directly targeting
students who wish to prepare for careers in smaller practices. Several law schools
have started incubator programs where recent graduates begin their solo or small
firm practice with the assistance of the law school.182 Many of these programs offer
office space at reduced rents, access to clinical faculty who serve as mentors, and
training on legal practice technology.183 While one clear purpose of the programs
is “to mak[e] new graduates more successful in tough economic times,” many of
the graduates also serve disadvantaged clients, thereby promoting access to jus-
tice.184 Similar programs geared toward preparing students for practice in small
firms have taken hold. For example, the University of Missouri–Kansas City School
of Law has developed a specialized curriculum for students interested in solo and
small firm practice.185 Arizona State University has announced plans to open a
nonprofit law firm, “modeled after teaching hospitals,” that will “hire about 10
alumni as associates.”186 Tung suggests that law librarians “can play an important
role” in the educational programs and services offered by their parent institu-
tions.187 From offering research support and resources188 to placing incubator office
space inside the law library,189 there is a wide range of options to explore. While
Tung also points out that there are challenges, including adjustments to acquisi-
tions policies to meet the needs of practitioners that “do not completely overlap
with those of faculty and students,”190 supporting such programs would be mutu-
ally beneficial to solo and small firm practitioners as well as academic law libraries
that look to remain relevant in a changing law school environment.

Recommendations for Implementing a Legal Research Competency Policy

¶42 In July 2013, the AALL Executive Board approved Principles and Standards
for Legal Research Competency, a statement of five principles meant to promote
improvement of legal research practices in law schools and throughout the legal

182. Herrera, supra note 6, at 923–28 (describing programs at several law schools).
183. Id.
184. Tung, supra note 5, at 297–98.
185. Herrera, supra note 6, at 926. See also University of Missouri–Kansas City School
186. ASU News, New ASU Alumni Law Group Bridging Gap Between School, Practice (June
187. Tung, supra note 5, at 297–98.
188. Id.
.edu/careerplanning/solopacticeincubator (last visited Oct. 14, 2014) (office space in law library with
“transparent walls” so studying students can observe practice).
190. Tung, supra note 5, at 299.
By developing these standards, AALL has shown a commitment to legal information literacy, which is beneficial for students who go on to practice in a variety of settings. The goal stated in the document is for the legal community to implement the “Principles and Standards in meaningful ways that will result in more competent, effective, and efficient legal research, thus impacting the bottom line and service positively.” While the high-level principles are certainly positive and applicable in any practice setting, many of the specifically enumerated competencies may be implemented differently depending on whether solo and small firm practitioners are taken into account. For example, Principle III reads, “A successful researcher critically evaluates information.” Very few would hesitate to agree. However, Competency III.B.1., which reads, “Understands that there are costs associated with legal research, regardless of type, publisher, or format,” is open to interpretation when implemented. To properly prepare future solo and small firm practitioners to meet this standard, a legal research instructor might focus on exploring inefficiency as one cost of using free online resources and on strategies for minimizing such costs. Alternatively, an instructor’s discussion might lead to a detailed analysis of price structures for out-of-plan searching in Westlaw and Lexis databases, which may or may not be useful depending on the placement of graduates in larger or smaller firms. In a legal research class, where time is limited, implementation of the AALL Research Competencies could greatly influence how well the curriculum prepares students for practice, especially in local and regional law schools (that is, the majority of law schools) that “are more likely to graduate students who work for small firms.” As such, implementation efforts would benefit greatly from adequate consideration of solo and small firm practitioners, who make up a majority of practicing attorneys.

Opportunities for Additional Research

Ultimately there is a need for more research regarding the legal research practices of solo and small firm practitioners. While the National Survey produced a clearer picture of practitioner research than previous efforts, law librarians need to go further. The Local Survey is a step in that direction, but without additional study, it is unclear if its results extend beyond Fort Bend County, Texas. Following the lead of the ALL-SIS Task Force, surveys of attorneys who practice in smaller firms need to be conducted across the country.

191. AALL Research Competencies, supra note 38, at 1–3.
192. Margolis and Murray reviewed the Law Student Research Competency and Information Literacy Principles adopted by AALL in 2011 and noted that through its work on the principles, AALL has devoted more attention to concerns about information literacy than many other groups. Margolis & Murray, supra note 180, at 119–20. The AALL Research Competencies contain many of the same statements as the previously adopted competencies, which shows further commitment to the issue.
193. AALL Research Competencies, supra note 38, at 3.
194. Id. at 7.
195. Id. at 8.
196. Tung, supra note 5, at 284.
¶44 As mentioned, law librarian scholarship concerning legal research habits of practitioners tends to rely on surveys in which solo and small firm attorneys are either absent (such as law firm librarian surveys) or severely underrepresented.\(^\text{197}\) This is not to say that other groups should not be surveyed. Law firm librarians provide very valuable insight into large firm practices. Attorneys working in these settings as well as in midsized firms and government settings make up substantial portions of the attorney population, and many law students will eventually work in those settings. Yet considering only these groups leaves out 51.75% of the total population. By ignoring the majority of attorneys, law librarians risk remaining “estranged from the way [legal research] is currently practiced in the field.”\(^\text{198}\)

¶45 When contemplating future surveys, one must consider both what questions to ask and how to contact potential respondents. A few topics have been suggested above. For instance, one goal might be a better understanding of the reasons behind decreased use of fee-based resources. If cost is the main factor, then cost-effective legal research would be paramount at law schools where graduates tend to work in smaller firms. If solo and small firm practitioners are developing strategies that allow them to rely on free and low-cost resources, law libraries could help communicate these strategies to law students through legal research classes and other law school programs. Contacting solo and small firm practitioners, however, may prove difficult. Ann Juergens’ experience in surveying solo and small firm practitioners can be instructive. She obtained the names of attorneys in smaller firms from her law school’s alumni office and through the Martindale-Hubbell directory, which allows the searcher to filter by firm size.\(^\text{199}\) She was also given referrals to other attorneys in the professional networks of her initial contacts.\(^\text{200}\) Following these strategies or contacting county law librarians, who often know local solo and small firm attorneys and the local bar associations that represent them, can produce potential survey candidates whose participation would ensure a more representative sampling of the national legal community.

**Conclusion**

¶46 The majority of U.S. attorneys (51.75%) are solo or small firm practitioners. Yet sampling of this group is often disproportionately low in law librarian scholarship. As a result, there is a real danger that our understanding of the legal research practices and needs of this group is lacking. The National Survey is a substantial step toward gaining a clearer picture of all attorneys’ research practices, but its population sample is skewed away from private practice attorneys and, specifically, solo practitioners. Based on the comparison of the Local and National Surveys, it appears that solo and small firm practitioners use fee-based online resources at lower rates than attorneys in other practice settings. As law librarians continue

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197. Underrepresentation of solo and small firm practitioners in studies is a trend throughout legal scholarship. See, e.g., Herrera, supra note 6, at 902 (“there is not an abundance of scholarship that focuses on the contemporary solo lawyer”).

198. Armond & Nevers, supra note 7, at 575.

199. Juergens, supra note 54, at 100.

200. Id.
to refine their view of attorney research practices, it will be important to determine whether the results of the Local Survey are representative of the wider population of solo and small firm attorneys as well as the reasons for the divergence. The simplest explanation, that decreased use is solely an economic issue, may be one of many causes, each of which might have implications for law libraries. Whether providing access and training to legal resources, promoting access to justice, developing law school curricula, or implementing research competency standards, consideration of solo and small firm practitioners is warranted. It is this author’s hope that the Local Survey will be the first of many conducted to develop our understanding of the majority of attorneys.
Appendix

Survey Questions

1. Which best describes your practice setting?
   a. Solo Practitioner
   b. Firm: 2–5 attorneys
   c. Firm: 6–10 attorneys
   d. Firm: 10+ attorneys
   e. Other (government, in-house counsel, retired, education, etc.)

2. How frequently do you use print materials for legal research?
   a. Very Frequently
   b. Frequently
   c. Occasionally
   d. Rarely
   e. Never

3. How frequently do you use free online materials (e.g., Google, Casemaker) for legal research?
   a. Very Frequently
   b. Frequently
   c. Occasionally
   d. Rarely
   e. Never

4. How frequently do you use fee-based online materials (e.g., Westlaw, Lexis) for legal research?
   a. Very Frequently
   b. Frequently
   c. Occasionally
   d. Rarely
   e. Never
A Century’s Worth of Access: A Historical Overview of Cataloging in Law Library Journal

Ellen McGrath**

Ms. McGrath surveyed all articles dealing with the topic of cataloging that have appeared in the Law Library Journal since its inception in 1908. The articles have been categorized, placed in chronological order within each category, and briefly summarized.

Introduction

"A century is quite a long time. In terms of the cataloging content of Law Library Journal (LLJ), a lot of ground has been covered from 1908 to 2013. This time period has been marked by a number of changes in law cataloging, but it has also seen a number of themes that have remained constant. This article provides an overview of the articles about cataloging published in LLJ since its inception in 1908. Articles that focus only on classification have been omitted from this survey, although some of the articles included here do touch on classification along with more general cataloging topics. Articles have been grouped into categories and are listed in chronological order within each category. While there are additional articles about cataloging included in the proceedings of the annual meetings in LLJ, only those parts that are entered under a separate and specific title in the table of contents have been included.

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1. This survey covers a few more years than one hundred, however.
The Catalog

\[2\] The first issue of LLJ in 1908 contained an article about the catalog.\(^2\) This is appropriate given that the catalog had become an increasingly important gateway to the growing collections in law libraries. In the early years, the focus on the catalog was couched in terms of its necessity, collections having grown to a size where it was no longer possible for library staff to remember where everything was located.

\[3\] The catalog has taken many forms over the years: book catalog,\(^3\) card (or index) catalog,\(^4\) computer output microfiche catalog,\(^5\) and online catalog. The topics of constructing and maintaining the catalog are therefore very popular. Concerns about the economics and efficiency of providing catalog access have been constant over the past century, just as they are today. The articles that deal with the catalog capture many of the mechanisms of the day, although many of the features have dropped by the wayside in our evolution away from the printed forms of the catalog towards the current online catalog. Discussion of the online catalog continues in the articles listed under the category of Automation.

Overview

\[4\] Articles that treat cataloging from a general, or overview, perspective have been published in LLJ, though not so many in recent history. This is reflected in the titles of some of those early articles:

- A Primer on Law Library Cataloging (1936)
- Law Cataloging as a Specialized Field (1937)
- Contributions of the Columbia University Law School Library to the Field of Law Cataloging (1943)

\[5\] Helen Moylan characterized her primer as “general and elementary."\(^6\) It gave a textbook introduction to the numerous issues of concern to a law cataloger in 1936: catalog cards (including obtaining them, unit/main entry cards, filing them), authority control, latest entry for serials, and a list of subject headings (including variations for law libraries). The convenience of the user was stressed throughout

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the article and the concluding bibliography listed resources on the desk of the law cataloger of that era.

Preparation for law cataloging was covered by Elsie Bassett in her 1937 article, in which she asserts that there will be cataloging in university libraries of both legal and nonlegal titles. “Cataloging is always a good preparation for other branches of library work and especially so in a law library.” She listed sources that law catalogers would find essential in the performance of their work. Subject headings and classification were treated broadly. Variation or customization was revisited, and the term corner mark was used. A corner mark is an addition to the upper-right corner of the catalog card, made to arrange jurisdictional uniform titles such as laws and statutes within the card catalog.

Before long, Bassett’s name was encountered again, this time as the author of Cataloging Manual for Law Libraries, published in 1942 and characterized as “the culmination of three years’ intensive work.” It was lauded as an invaluable tool, along with a number of other cataloging publications issued by the Columbia University Law School library staff.

Pauline Carleton described in great detail an institute on law cataloging that took place at Ohio State University College of Law in September 1951. “The sessions covered the following topics: choice of entry, subject headings, descriptive cataloging, classification and the treatment of non-book material which included simplified cataloging.” Corner marks again received mention here, along with the underlining of pertinent words to facilitate the filing of catalog cards. “A basic point to bear in mind about cataloging is the necessity for consistency.” The A.L.A. Cataloging Rules, published by the American Library Association, were quoted, along with examples of their application to specific legal titles. “Sound judgment on the part of catalogers” was mentioned in relation to the interpretation and application of the cataloging rules to “problems not specifically covered.” Adherence to the rules so as to provide the opportunity to benefit from the work of other libraries was also advocated. The concept of “history cards” for societies and institutions was mentioned briefly as being available from the Library of Congress. The article closed with a list of seven recommendations made at the institute, most of which focused on creating or updating lists to allow law catalogers to perform their work more accurately and efficiently.

Werner Ellinger’s 1962 comments on the basic problems of cataloging and classifying foreign legal materials still hold true today:

8. Id.
10. Alice Daspit Greenburg, Contributions of the Columbia University Law School Library to the Field of Law Cataloging, 36 LAW LIBR. J. 109, 110 (1943).
12. Id. at 56.
14. Carleton, supra note 11, at 58.
15. Id.
16. Id. at 62.
The problems we encounter are not so much problems of cataloging rules as of their proper application to materials written in a foreign technical language and requiring a knowledge of political facts with which the cataloger cannot be expected to be familiar. Most of these difficulties can be overcome by the knowledge and skillful use of reference tools and by keeping abreast of current events abroad.\textsuperscript{17}

\textsuperscript{10} The description of providing access to the collection of the Sea Grant Law Program at the University at Buffalo in 1981 served as a model for dealing with such special collections.\textsuperscript{18} It began as a list of titles created on a word processor and then progressed to full cataloging and classification for most of the collection.

\textsuperscript{11} Sara Galligan’s 1994 article focused on the cataloging of the collections of county law libraries in Minnesota provided by the Minnesota State Law Library.\textsuperscript{19} Perhaps there is no better endorsement of the importance of cataloging than for it to be mandated by state statute, as it was in this case.

\textsuperscript{12} Many, if not all, of the challenges documented in these articles still exist. But today law catalogers can consult resource tools and their colleagues much more quickly and easily via the Internet, e-mail, webinars, blogs, etc. There is no longer the need to wait for the next issue of \textit{LLJ} or the annual meeting of the American Association of Law Libraries (AALL), although those two channels of information sharing among law catalogers remain as valuable as ever, particularly in their ability to capture such information for historical purposes.

Administration

\textsuperscript{13} The November 1952 issue of \textit{LLJ} published three articles on cataloging administration that had been presented at that year’s AALL annual meeting. Miles O. Price addressed the hiring and training of law catalogers, an important topic given their scarcity. He began by defining the members of the staff of a typical, presumably academic, law library cataloging department: the head cataloger, junior catalogers, the shelf-lister, and the typist. He lamented the fact that “the demand for good catalogers at a reasonable salary has arisen so recently that there has been built up no reservoir of experienced law catalogers to draw upon.”\textsuperscript{20} To rectify this, he suggested that general catalogers be hired and then trained in the cataloging of law books. Since subject cataloging is the most difficult part of the process, he suggested that these generalists be drawn from the ranks of descriptive catalogers, because descriptive cataloging rules were “uniform and universal.”\textsuperscript{21} Training for the general cataloger might include a course in legal bibliography as well as each of the first-year law classes.

\textsuperscript{14} Commentators disagreed with some of the basic tenets of Price’s argument. Ellinger stated that general descriptive catalogers were unprepared to catalog law

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\item[21.] \textit{Id.} at 299.
\end{enumerate}
titles, since “even the simplest and clearest rules will have to presuppose a familiarity with legal literature on the part of the cataloger.” Elizabeth Benyon observed that catalogers of all types were in short supply. “[F]or a number of years cataloging procedures have been in a state of flux because of the criticism of traditional techniques. This has proven to be discouraging to prospective catalogers.” William B. Stern agreed with Ellinger about the law background needed for law cataloging and with Benyon about the general cataloger shortage.

¶15 In her article, “Simplified Cataloging,” Elizabeth Benyon set out “to provide an effective catalog through controls which keep the cost of its preparation and maintenance at a minimum.” Although details of the methods by which cataloging is simplified may differ, the basic principles read as though they could have been written today. This statement is a perfect example: “In the face of ever-increasing acquisitions, dwindling budgets, acute space problems, and a somewhat limited supply of catalogers, simplification of cataloging techniques is inevitable.” The commentators agreed in theory that simplified cataloging “is a necessity and a virtue,” but they disagreed on the practical methods of achieving that goal. They are also not shy in expressing their opinions, as evidenced by Ellinger’s observation that “in the course of the history of simplified cataloging many simplifications had to be abandoned and the books treated had to be recataloged as [sic] much greater expense than if they had been cataloged in the regular way from the first.”

¶16 Centralized cataloging was the focus of the third article, written by Ellinger. He explored the feasibility of having it “all done in one place, or by one library, for the benefit of all those participating,” with the Library of Congress (LC) as the natural place for this service to occur. The advantages and disadvantages of such an approach in general, and then as specifically applied to law libraries, were laid out. The latter were based in part on the results of a survey conducted to assess the usage and adequacy of the LC card distribution program among law libraries with collections exceeding 100,000 volumes. Ellinger concluded by recommending that “an advisory committee composed of members of the law library profession should be set up to consider these problems and try to meet them in cooperation with the Library of Congress,” with special attention given to financing and policy concerns. He also debunked the fear that “centralized cataloging would spell the end of the cataloging profession.” The commentators and audience participants recognized the desirability of centralization, but expressed skepticism as to whether it could ever actually occur.

22. *Id.* at 303.
23. *Id.* at 304.
24. *Id.*
26. *Id.* at 317.
27. *Id.* at 325.
28. *Id.* at 324.
30. *Id.* at 334.
31. *Id.*
¶17 In a 1960 article, Helen Snook urged that “cooperative cataloging could provide a useful and practical service to many libraries both large and small.”\textsuperscript{32} Much of the material housed by law libraries was inaccessible. “The hidden treasure can elude both patron and librarian if the collection is not cataloged, or if cataloged, not analyzed.”\textsuperscript{33} Cooperation would avoid the unnecessary and expensive duplication of effort while compensating for the scarcity of law catalogers. The AALL Committee on Cataloging and Classification had been charged in 1957 with exploring the costs and procedures involved in the cataloging of certain legal materials, followed by the production and distribution of catalog cards for them. Unfortunately no action was taken, even though interest “was revived at the Institute held at Grossinger’s in June 1959.”\textsuperscript{34} Snook wanted to rectify this situation by gathering together some of the pros and cons on “the debates and suggestions to date”\textsuperscript{35} so that the issue could be thoroughly discussed at the upcoming 1960 AALL annual meeting. One suggestion, acknowledging that time marches on, recommended not waiting for “the issue of any subject heading list or classification scheme”\textsuperscript{36} in order to start a cooperative cataloging service.

¶18 The topic of cooperative cataloging was revisited by Joseph Vambery in 1967, another active year for articles on cataloging administration. He observed that “cataloging and the use of catalogs will be affected by automation to a great extent.”\textsuperscript{37} Yet it was predicted that this effect would not be felt immediately. There was to be a transition period of approximately five years or so. During that time, law libraries could “prepare and assist a smooth transition to automation and to the complete use of shared cataloging”\textsuperscript{38} in a number of ways. A call was made for “more intensive subject analysis,”\textsuperscript{39} the transformation of catalogs into “dynamic files of records that assist in their own use,”\textsuperscript{40} “uniform international description of each publication,”\textsuperscript{41} and increased cooperation between the Library of Congress and AALL. This projection into the future provided an aspect of optimism and renewed fervor based on the impending changes that automation was expected to bring about.

¶19 The panel on cataloging administration at the 1967 AALL annual meeting provided an excellent synopsis of the primary issues of concern at that time. The stated goal of the session was to “develop an overview of the organization of procedures and the deployment of staff, time and talent to achieve the objectives of bibliographic control in libraries.”\textsuperscript{42} Nancy E. Miller began by outlining the variety of aspects encompassed by the phrase cataloging administration: type of work,
opportunity to combine some ordering and cataloging routines, reference to Project MARC (machine-readable cataloging) and data processing, availability of the KF classification schedule, shared cataloging, filing rules, and documentation.

¶20 Two speakers from the Library of Congress followed, with the first, Robert R. Holmes, describing the Library of Congress’s “provision of a national cataloging service, the backbone of which is the distribution of printed cards”43 and “its provision . . . of basic technical tools for cataloging and classification.”44 He then described the recently established National Program for Acquisitions and Cataloging (NPAC) as “the Shared Cataloging Program.”45 He also discussed the details of the “assembly-line operation”46 at the Library of Congress, including the Descriptive Cataloging Division, the Shared Cataloging Division, and the Subject Cataloging Division. He concluded by vowing to “continue present services on an enlarged scale,”47 with the proviso: “Affecting our ability to provide more catalog copy and the technical tools will be adequate support—both financial support and intellectual support and guidance such as that given by professional associations,”48 in this case, AALL.

¶21 The final paper from the Library of Congress was read by Lewis C. Coffin, but it was written by Paul Reimers about Project MARC. Background on the development of MARC was given, as were specifics on the activities of the pilot project, and “[t]he experiment [was] considered a success.”49 Given our comfortable familiarity with MARC, it is interesting to read early observations about it: “MARC may offer to law libraries a means of bibliographic control for the future. The new format has been designed to be as flexible as possible to serve as an effective vehicle for communicating bibliographic data.”50 Once again, careful planning was strongly advised to take full advantage of this tool for the benefit of law cataloging.

¶22 Despite the “eventual automation of the distribution process,”51 Elizabeth Neal’s 1971 article compared five services that law libraries can consider in their purchase of catalog cards. Quality and cost factors were clearly outlined. All were based in some manner on the Library of Congress card service, which was the first to be evaluated in this article.

¶23 Patricia Piper and Cecilia Hing Ling Kwan presented the results of a cataloging survey they conducted in 1977, which showed “that law libraries are using Library of Congress subject headings and classification more than in the past and that law libraries which are accessing automated databases of bibliographic information are the most likely to be using these L.C. tools.”52 This documented movement of law

43. Id. at 401.
44. Id.
45. Id. at 402.
46. Id. at 403.
47. Id. at 405.
48. Id.
49. Id. at 410.
50. Id. at 411.
libraries away from “their individualistic approach”\(^53\) and toward “conformity with national standards”\(^54\) was projected to pick up as automation and the economic benefits of cooperation further streamlined the cataloging process. The authors confirmed their prediction with a similar survey just four years later in 1981:

A comparison of the results of this survey with one made in 1977 shows a marked increase in the use of standard library tools such as Library of Congress subject headings and classification schedules. Both surveys indicate a higher use of these tools by law libraries that are using automated cataloging systems.\(^55\)


\[\text{¶24}\]

In her 1983 article on the creation of a cataloging procedures manual at Southern Illinois University, Elizabeth Matthews noted that “Although the primary purpose for writing this manual was to aid internal management, the manual and the process of writing it have improved the Library’s service to users.”\(^56\) She discussed the mission statements of her university’s law school and law library and then related both to the objectives of the library’s cataloging unit. Details were related about the content created for the manual, including an organizational chart, job descriptions, flow charts, and narrative descriptions of procedures. Acknowledging the reality that the manual “will never be complete,”\(^57\) it was nonetheless credited with leading to greater staff independence.


\[\text{¶25}\]

Another ten years passed before Joseph Thomas tackled the topic of cataloging reform. In a revised version of a paper presented at the 1991 AALL annual meeting, he related conversations about cataloging reform that were occurring in the general library community:

Most of the arguments for change center on the need to get more information to patrons more quickly. That goal, whether stated explicitly or merely intimated, translates into policies that favor speed over the traditional attributes of good cataloging: accuracy, completeness, and adherence to national cataloging standards.\(^58\)


\[\text{¶26}\]

Thomas captured the tone of the current debates by noting that “the usefulness of the ‘main entry’ concept as a vital element in cataloging has come under increasing attack”\(^59\) and that the “pressure to comply with the standards has increased in recent years.”\(^60\) “This pressure was more a result of the appearance of the Ohio College Library Center (OCLC), the first of the bibliographic utilities on the scene, rather than the Anglo-American Cataloging Rules, Second Edition (AACR2) and, by extension, the Library of Congress Rule Interpretations. The dilemma arose when the Library of Congress was no longer the sole creator of bibliographic records to be used by other libraries. It was at that point that the issue

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53. Id. at 483.
54. Id.
57. Id. at 126.
59. Id. at 100.
60. Id.
of quantity versus quality and associated economic concerns took on new importance. “The key distinction is between accuracy and extent,”61 wrote Thomas, who recommended that accuracy never be sacrificed. The extent of the catalog record should be minimized instead in order to save money. This emphasis on accuracy might be mitigated by a practical willingness to accept the cataloging of other libraries in the bibliographic utilities as they are, thus saving the expense of evaluating and revising them. Original cataloging presented a more difficult area for reform. “Lingering over rules, agonizing over arcane distinctions, and indecision exists here most of all.”62 Concern over unclear cataloging costs was coupled with the need to break from perfection as the goal of cataloging. Ultimately, “if we can streamline the cataloging process and keep the high-quality ideal in mind, perhaps a decent compromise can be hammered out.”63

§27 Outsourcing was the subject of a revised version of a presentation given by Janis Johnston at the 1995 AALL annual meeting. This session was planned in reaction to the recent outsourcing of the entire operation of some law libraries, though Johnston limited her observations to the outsourcing of cataloging functions. Libraries have been outsourcing portions of their work for a long time. It is just “a new name for an old practice.”64 But there is now a “potentially much wider extent of application”65 than in the past. Two successfully outsourced cataloging projects contracted for by the Kresge Library at Notre Dame Law School were described. A tradeoff was necessary in the quality of cataloging overall, but it was more than offset by the “affordable price”66 and quick turnaround time in providing access. Johnston stated that “cataloging has become much more labor-intensive than it ought to be.”67 This translated into being more expensive, since competition for law library dollars has increased significantly and shows no sign of abating. Johnston counseled catalogers to embrace outsourcing when it makes sense, thereby retaining control in “setting the level of acceptable quality.”68 She concluded with this wise advice: “Don’t be intimidated by outsourcing; make it work for you.”69

**Subject Cataloging**

§28 The topic of subject cataloging first appeared in *LLJ* in 1915. J. Oscar Emrich lamented the lack of a catalogue when he “took charge of the Allegheny County Law Library” in 1907.70 He began experimenting with ways to rearrange the text books on the shelves in such a manner that the patrons could find what they

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61. *Id.* at 104.
62. *Id.* at 107.
63. *Id.* at 109.
65. *Id.*
66. *Id.* at 129.
67. *Id.* at 131.
68. *Id.* at 133.
69. *Id.* at 134.
needed without having to “first consult the librarian.”\textsuperscript{71} The criteria used for this project were listed in the form of questions: “First. How elastic is this system? Second. Has it any uniformity or basis? Third. Does this system contain all the necessary main titles?\textsuperscript{72}

¶29 After a false start using “the text book titles or labels as they appeared on the back of the books,”\textsuperscript{73} the American Digest Classification Scheme was created. This system was found to best meet the three criteria put forth as desirable: applicability to general reference works, to text books, and to legal magazine articles, supplemented by a system of cross-references. The inclusion of card examples and an illustration of the filing order, along with the actual list of the main and subtopics made this a very thorough article. Emrich concluded by noting the success of the catalog at increasing “the efficiency of the library by rendering it more easy [sic] to find the law.”\textsuperscript{74}

¶30 In 1931, William Randall contended that subject headings were “the most important single phase of cataloging”\textsuperscript{75} yet “received the least attention.”\textsuperscript{76} He advocated for the development of a list of subject headings for law and indicated that the University of Chicago graduate library school offered fellowships and scholarships to fund such work.

¶31 William B. Stern described the state of law subject headings in the proceedings of the 1952 AALL annual meeting recorded in \textit{LLJ}. His article goes into great detail concerning the differences between subject and classed catalogs and between dictionary and divided catalogs, the issue of the appropriate number of subject headings assigned, the use of a library’s own local subject authority file versus use of the Library of Congress’s, modifications in the use of Library of Congress subject headings (LCSH) and the associated compilation of local lists of subject headings, and the necessity of keeping lists current. He characterized the process of subject cataloging as both complex and endless, but concluded with the recommendation that a special list of legal subject headings “could be compiled in a cooperative effort between the American Association of Law Libraries and the Library of Congress.”\textsuperscript{77}

¶32 In a 1964 article, Ellinger described how the “growing demand for a separate list of Library of Congress subject headings in their special field of interest”\textsuperscript{78} led the AALL Committee on Cataloging and Classification to compile such a list.\textsuperscript{79} All too quickly the challenge of keeping this list up-to-date arose. AALL proposed a maintenance project, which the Council on Library Resources accepted. The

\begin{footnotesize}
\begin{itemize}
\item[71.] Id.
\item[72.] Id. at 32.
\item[73.] Id.
\item[74.] Id. at 45.
\item[76.] Id.
\item[79.] \textit{Subject Headings for the Literature of Law and International Law} (AALL, Publications Ser. no. 6, 1963), cited in Ellinger, supra note 78.
\end{itemize}
\end{footnotesize}
Compos-O-Line camera was chosen as the appropriate tool to use in updating the list.

¶33 The year 1975 was a banner year for subject cataloging in LLJ, marked by three articles on the topic, all either authored or included comments by Peter Enyingi. The first described the Los Angeles County Law Library’s local modifications to the use of LCSH and gave a detailed account of that library’s project to reestablish its local subject authority file.80 Modifications to the LCSH had been very common in law libraries, although it was acknowledged that this deviation was costly and difficult to document and maintain as headings were constantly being added and changed. As a result, all three articles mentioned the idea that law subject headings should be standardized and that law libraries should work with the Library of Congress to make the legal subject headings in LCSH most useful to them. The Subcommittee on Subject Cataloging was established in 1973 to further this goal. A survey was also undertaken that year to gauge the state of LCSH usage and modification among law libraries listed in the AALL directory.81

¶34 Then, at the 1975 AALL annual meeting in Los Angeles, Enyingi moderated a panel discussion entitled “What Lies Ahead for Legal Subject Headings,” and its full content was captured as an article in LLJ.82 Panelist Edward J. Blume called for cooperation between law libraries and the Library of Congress in standardizing subject headings to ensure that law catalogers could utilize LCSH without any need for modification. Morris Cohen, another panelist, made a very strong case for cooperation and standardization on the grounds of economy and optimal service to academic law library users. Jack Ellenberger, representing the perspective of the private law firm library, recommended using new technology to make law library catalogs “more efficient, compact, and accessible.”83

¶35 Ellen Sandmeyer’s 1977 article recapped some of the activities of 1975 and compared subject access provided through automation, with a focus on free text searching, Boolean logic, and relevance ranked searching. She demonstrated “that for maximum subject access, each bibliographic record should contain searchable title, index terms and abstract fields.”84 She recommended LCSH be used for subject terms since they are more detailed than the ones used in periodical literature indexing.

¶36 After this flurry of articles in the 1970s, there was a long gap in LLJ’s treatment of subject cataloging. It was not until 2006 that another article appeared, with Monica Martens describing the supplemental thesaurus to LCSH developed by the National Indian Law Library.85 It is interesting to note that her approach is to use

83. Id. at 448.
85. Monica Martens, Creating a Supplemental Thesaurus to LCSH for a Specialized Collection: The Experience of the National Indian Law Library, 98 LAW LIBR. J. 287, 2006 LAW LIBR. J. 16.
LCSH as is and then supplement it as necessary rather than to modify LCSH, as was the method described so frequently in the early LLJ articles on subject cataloging. Standardization and sharing were emphasized by Martens.

Rules

¶37 This handful of articles reflects only those published in LLJ on the topic of cataloging rules. Numerous conversations on these important subjects were conducted among law catalogers in many other venues over the years. In 1942, Lena Keller, chairman of the AALL’s new Committee on Cataloging, presented the Committee’s preliminary report in response to the preliminary American second edition of the ALA Catalog Rules.86 Feedback on the recommendations in the report was requested from every law library in AALL. The Committee focused on the issues of main entry and uniform titles, but asked especially for input on two items: “Should administrative tribunals be included under form heading Reports? Should Court rules, etc. be made a form heading under jurisdiction?”87

¶38 In a lengthy 1955 article, the AALL Committee on Cataloging submitted “a comprehensive proposal for the revision of the A.L.A. rules of entry for materials of primary importance to law libraries and of related rules that affect the usefulness of the cataloging code for law libraries in general.”88 The specific recommendations, examples, and comments revealed a detailed picture of the cataloging rules at that time, along with a suggested blueprint for their future revision. Many of the recommendations regarding entry and uniform title persist to this day in the current cataloging rules as listed in both AACR2 and Resource Description and Access (RDA).

¶39 The impending implementation of AACR2 provided ample fodder for discussion at sessions during the 1978 and 1979 AALL annual meetings, three of which were captured in LLJ. The first was a panel that focused on “the rules based on an examination of the unpublished draft”89 by the co-moderators, Phyllis Marion and Cecilia Kwan. The program covered “a brief history of the development of AACR 2[,] . . . the general format of the rules and . . . some details about the rules themselves[,] . . . the rules for handling law materials[,] . . . [and] the administrative repercussions of the changes.”90

¶40 Marion repeated some of the same information in her contribution to another 1978 program, entitled “Planning for a Change.” She also added to her extensive remarks on AACR2 the news that the Library of Congress would be making substantial changes in its subject heading practice and that it is conducting a “study of machine shelflisting.”91 All of these major changes were projected to

86. Lena Keller, What Changes Shall Be Proposed to the ALA Committee Pending Publication of the Catalog Rules in Final Form?, 35 LAW LIBR. J. 165, 165 (1942).
87. Id. at 166.
90. Id.
91. Phyllis C. Marion, AACR 2, 71 LAW LIBR. J. 673, 675 (1978).
converge on January 2, 1980, also known as “Day 1.” On that day, the Library of Congress would “start to build a new catalog, using AACR2, the revised subject headings, the 19th edition of Dewey, and perhaps, a new shelflisting device. The new online catalog would be independent of the existing catalog.”

Marion then outlined the variety of possible approaches available to law libraries faced with the incompatibility issues they would need to address in their catalogs because of this veritable avalanche of change. She concluded with a plug for adherence to standards (within reason) and accountability (both fiscal and productivity).

¶41 During the final panel, “Implications of the AACR2 for Law Libraries,” held during the 1979 AALL annual meeting, it became evident that “Day 1” had been pushed back one year to 1981. The first speaker, Al Lewis, gave his take on the effect of AACR2 on public service law librarians. Although he characterized the new code in general as “an improvement,” he warned that certain changes would cause public service law librarians “to have as much trouble guessing at [the] main entry under the new rules as they did under the old.” Colleen Raker focused her attention on “the alternative of continuing the card catalog after 1981, the techniques for integrating AACR2 entries and the new subject headings into existing catalogs and the effect this approach [would] have on technical services.” Catalog card examples served to illustrate the former, followed by a list of other issues to “be aware of”: serial entry changes, acquisition orders, shelflisting problems, filing problems, work-flow problems, and additional costs involved. Looking ahead to the implementation of AACR2, Joe Rosenthal identified several factors:

   1. Relationship of the law library to other libraries, either, for example, to the general library system of a college or university or to other law libraries participating in a law library network.

   2. The dependence or independence of the law library on receipt and utilization of catalog data from the Library of Congress, and

   3. Utilization of services provided by technical processing data utilities and which particular data utility is providing or will provide those services.

Rosenthal closed with some interesting speculation about how a library might obtain “an online access system of its own,” suggestions which have come to fruition since then.

¶42 It has been thirty-four years since LLJ has published a an article focusing on the cataloging rules. Perhaps it is time to remedy that. A new code, RDA, was implemented in 2013, and it represents a significant departure from AACR2. While RDA has been a popular topic among all catalogers, including law catalogers, for a number of years now, bringing that conversation to LLJ might better engage the attention of non–technical services law librarians.

92. Id. at 676.
94. Id. at 690.
95. Id. at 695.
96. Id. at 701.
97. Id. at 704.
Automation

¶43 The 1970 AALL annual meeting provided a panel on MARC’s value to law libraries. Riemers began by describing MARC’s development from a pilot project to the revision of the format into what became known as MARC II. The subscription service provided “records on tape [that] are being used to support projects in acquisitions, in catalog maintenance, and in current awareness. Catalogs are being produced from the tape, both in card and in book form.”98 The next speaker, Robert C. Miller, outlined the use of the MARC tapes in conjunction with the integrated system created locally and in use at the University of Chicago. He closed with a plea for standardization and recognition of the fact that commercial services are “probably going to be the answer to how MARC can best be used for law libraries.”99 Frederick E. Smith took the cue and focused on “commercial exploitation of MARC,” which he defined as “exploitation of MARC through an intermediary, outside the utilizing library, and to which the utilizing library usually pays a fee.”100 He then described the various commercial services in existence, including two that are nonprofit: NELINET (New England Library Information Network) and OCLC, which “had 54 members in February 1970, all academic libraries.”101 He noted that among these entities, along with a number of for-profit companies, “the greatest emphasis seem[ed] to be on producing hard copy of what is on the MARC tapes.”102 Smith indicated that this could be accomplished in a variety of other ways to meet the needs as first mentioned by Riemers. The importance of retrospective conversion of existing bibliographic data into the MARC format was mentioned only fleetingly. The prediction that automation would be increasingly economical for all libraries closed this article on an optimistic note.

¶44 Elizabeth Matthews’s paper on the relatively new process of cataloging on OCLC was based on a presentation she made at the 1976 AALL annual meeting. She provided specific information on costs and on the actual mechanics of working at “the cathode ray tube-video-type screen and typewriter-like keyboard,”103 and reported on the work flow and resultant receipt of catalog cards at the Southern Illinois University School of Law, which had been established in 1972. She spoke highly of the ability of OCLC cataloging to minimize “the rate of rise of cataloging cost”104 and cited other advantages the system offered, including “conversion of current cataloging data to machine readable form, access to local information of over 600 libraries constantly updated, transfer of catalog records to a national standard format, more efficient utilization of staff time, and the potential for collection building for maximum effectiveness by access to information on other library holdings.”105

99. Id. at 514.
100. Id. at 515.
101. Id. at 516.
102. Id. at 518.
104. Id. at 36.
105. Id. at 38.
The next article in this category, also by Matthews, reported the results of a survey she conducted concerning the use of “computerized cataloging” in academic law libraries. Her results, which she presented to the OCLC Special Interest Section during the 1978 AALL annual meeting, included the following findings:

- 65% of respondents either used or planned to use computers for processing
- 97% indicated “a preference for computerized cataloging”
- 75% “agreed with the quality” of the bibliographic records
- 80% showed “the average number of books processed had increased”
- 72% reported classification as the area requiring the most frequent changes in records (according to Matthews, “the overwhelming majority are classifying by the Library of Congress system”)
- 65% were engaged in reclassification projects
- 67% used on-the-job training for staff members

Matthews’s closing observation has certainly been proven true of the bibliographic utilities over time: “Contributions to the database by law librarians will increase the total of legal items described, thereby making the network a tool of greater value than previously to the law community.”

Christian Boissonnas reported the results of a 1977 study “to determine the costs of cataloging and editing OCLC records at the Cornell Law Library.” He acknowledged up front that “[q]uality is a concept that means different things to different institutions.” He demonstrated through the study that Cornell Law Library encountered the need for record modification most often in terms of missing classification numbers, “the format of cataloging, or tagging problems.” As could be expected, “a lot more work [was] necessary with OCLC member records than with [Library of Congress] records.” He concluded with a caution to OCLC that low-quality records may generate more of the same, thereby leaving “the ultimate usefulness of the database . . . open to question.” It is interesting to note that the same concern is often expressed about OCLC member records today.

At about the same time, Kent Schriefer and Linnea Christiani conducted a similar study of the Research Libraries’ Information Network (RLIN) record use and quality at the law school library at the University of California, Berkeley. This article provided considerable detail about the flow of materials in terms of searching and cataloging on RLIN. It also included illustrations of worksheets for both copy and original cataloging. Emphasis was placed on the fact that “the Law Library has minimized the time between searches and created input priorities by imprint

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107. Id. at 667.
109. Id. at 80.
110. Id. at 82.
111. Id. at 83.
112. Id. at 85.
date,”113 in order to avoid costly duplication of effort with other RLIN member law libraries. This article also reported types of errors or standard deviations that required revision or upgrading in RLIN records. It ended on an upbeat note, observing that “the goal of high quality shared cataloging among law libraries seems realizable.”114

¶48 Melanie Niermann Norten and Donna Hirst looked at law library cataloging as provided by OCLC and RLIN in a 1980 article: “[i]n 1978 the law library at the University of Iowa began a year long study ... A comparison of manual and automated cataloging was made and two major automated cataloging systems, OCLC . . . and RLIN . . . , were investigated.”115 Staffing shortages and increasing backlogs were given as justification for a reexamination of the manual cataloging process. These problems, along with the impending implementation of AACR2, “a new [Library of Congress] subject headings list and revised American Library Association filing rules,”116 added to the need for a more efficient method of cataloging. Norten and Hirst carefully evaluated the functions of searching, cataloging and classification, and card production in manual versus automated approaches. They then focused on the vital statistics (size, content, growth rate, quality control, hit rate, and cost) of OCLC versus RLIN. Not surprisingly, they concluded that their library “should automate its cataloging processes.”117 They further recommended that RLIN “would best serve the present and future needs of the library.”118

¶49 An article about a 1980 AALL annual meeting panel entitled “Cost-Effective Participation in a Bibliographic Utility by a Small Library” was published by LLJ in 1980.119 It contrasts with the two preceding articles, which focused on the use of a bibliographic utility in large academic law libraries. In the overview segment, Margaret Maes Axtmann defined basic terminology, described three utilities (Western Library Network, RLIN, and OCLC), and provided a selected bibliography. Jacqueline Paul presented the consortium method of participating in OCLC as “a cost efficient arrangement”120 that resulted in the quick elimination of cataloging backlogs for the member libraries in the group. Roberta Walters reported on the Alameda County Law Library’s membership in RLIN and its efforts to minimize the cost of that participation as much as possible.

¶50 In a 1986 article, Matthews described a project undertaken at the Southern Illinois University School of Law Library, where the “goal was to have a consolidated OCLC archival magnetic tape that included the entire bibliographic record of our collection.”121 This “de-duped” tape allowed for the creation of a computer

114. Id. at 512.
116. Id.
117. Id. at 120.
118. Id.
120. Id. at 912.
121. Elizabeth W. Matthews, Quality Control for Archival Tapes, 78 LAW LIBR. J. 711, 711 (1986).
output microform catalog “to view in printed form what was on the tape.”122 This access made cleanup of the records possible, thus setting the stage “in the future for a quality on-line catalog.”123

¶51 In a related 1987 article, Chizuko Kawamoto detailed the method of file analysis conducted at the law library of the California State Library in preparation for retrospective conversion, with the ultimate objective of creating an online catalog. The lengthy list of manual files Kawamoto identified for analysis served as enough justification for automation: “five public catalogs, eight shelflists, a serials/continuations check-in file, an order file, three authority files, a circulation file, a missing titles file, and a withdrawn titles file.”124 The attempt to categorize the titles ran up against the usual challenge in which legal materials encompass hybrid types more numerous than those represented by the MARC file formats. Librarians involved in such conversions should “first spend some time, during the planning stage, discovering those odd practices of the past and devising solutions to the problems,” Kawamoto suggested.125 Following her own advice, she listed eleven problems to be addressed during the conversion of data in her library.

¶52 Matthews revisited the topic of archival tapes in 1988, this time in the form of “a survey of academic law library OCLC users regarding institutional uses of OCLC archival tapes, physical maintenance of the tapes, uses of the tapes in projects, and maintenance of data bases.”126 The survey also sought to determine the prevalence of online catalogs, and while only 18% of respondents had such a catalog, most of the rest were planning for one in the not too distant future. The closing sentence summarized it well: “The on-line catalog is only as good as the bibliographic data furnished, and it depends on the archival MARC records for a vital data base.”

¶53 Johnston also conducted a survey in 1988, focusing on automation via a local system instead of a bibliographic utility.

[T]wenty-four academic law libraries using the NOTIS [Northwestern Online Total Integrated System] system . . . were asked to comment on their relationship with the main library in using NOTIS, their relationship with NOTIS, Inc., their reactions to the implementation of various NOTIS modules, their overall assessment of the system, and concerns for the future development of the NOTIS system.127

The results of the survey were mixed and left the impression that installation of NOTIS in conjunction with the main library was simply a means for these law libraries to obtain any local integrated system, rather than a vote of confidence in

122. Id. at 716.
123. Id. at 718.
125. Id. at 462.
the specific system of NOTIS. The author did note, however, that “law libraries’ use of NOTIS is in its early stages.”  

¶ 54 With local automated system implementations on the rise, Jo Calk “provide[d] a brief description of the elements of the USMARC format and examples of vendor specifications employing USMARC format” in a paper based on a presentation at the 1989 AALL annual meeting. “The MARC II format, as implemented by the Library of Congress, is called the USMARC format,” Calk explained.  

The author provided a basic introduction to the USMARC formats for bibliographic and authority data, accompanied by helpful charts, a glossary, and a bibliography.

¶ 55 Leonette Williams’s 1994 article presented a creative solution to the University of Southern California Law Library’s (USC) implementation of an Innovative Interfaces’ Innovacq local system. Concerns included “staffing, completion of the conversion before the law school began a large remodeling and building project, and our lack of essential bibliographic records in machine-readable format for our continuations.” With the cooperation of the University of California at Davis Law Library, USC created specifications for Innovative Interfaces’ staff to apply to the Davis Innovacq records. Those records then served as the basis for the Innovacq system installed at USC. This approach was successful since it allowed USC to automate its acquisitions and serials check-in operations relatively rapidly and within its prescribed timeframe. Nonetheless, the author closed on an appropriately cautionary note: “Each library must consider its own expectations for automation in terms of available time, resources, personnel, and bibliographic records.”

¶ 56 Julie Thomas began her 1997 article with a provocative and persistent question: “Is the cataloger going the way of the dinosaur?” She then described a study “undertaken to measure the extent to which the original cataloging created by the Drake University Law Library was subsequently used in OCLC and to identify the types of libraries most likely to use these records.” The results revealed that “[t]otal usage for Drake-input original cataloging . . . was sixty-three percent,” thus justifying the “expensive, time-consuming activity” of original cataloging, and presumably by extension, the value of the cataloger as well.

¶ 57 In her 2006 article, Nancy Babb compared “the intra-catalog resource of subject headings to the extra-catalog resources of bibliography, and [highlighted] the difference between these two seemingly intimately related resources.” The

128. Id. at 535.
130. Id. at 684.
132. Id. at 174.
134. Id. at 33.
135. Id. at 36.
136. Id. at 32.
study was framed within the context of online access, since “more and more research now begins on the World Wide Web.” The conclusion stated that subject headings or “[a]uto-bibliography [was] not bibliography, but it can be an effective tool in support of the research process and, not insignificantly, the continued advancement of scholarship, including the production of scholarly bibliography.”

This validated the interconnected nature of the technical and public services sides of librarianship, despite the numerous changes in use of the vast variety of research resources available today.

In her 2010 article, Georgia Briscoe delivered some bad news about online catalogs: “quality control of the metadata in online law library catalogs was shown to be lacking . . . academic law reference librarians determined that the errors would affect their ability to answer reference questions accurately and efficiently.” She described a number of reasons for this situation and expressed the hope “that the research reported here would spur libraries to make the best decisions in the continual cost-benefit analysis for keeping the library online catalog as accurate as possible.” In his 2011 article, Robert Richards reported the results of a survey on the use of non-MARC metadata in AALL libraries. He identified “a possible need within the law library community for more education on how to foster metadata interoperability in the emerging digital environment.” These relatively recent articles provided important advice as law libraries look ahead to their next-generation, web-scale management systems.

Authority Control

Authority control was discussed mostly in the context of automation. The topic was first addressed in the report of a panel held during the 1980 AALL annual meeting in St. Louis. Diane Hillmann referred to AACR2 as “the great leveler” and added this cautionary note: “[W]e must have some way to make sure that we are not creating split files, or if we have decided to live with split files, of maintaining links between those files.” The presentations provided detailed views of the authority control subsystems of the RLIN, WLN, and University of Toronto Library Automated Systems bibliographic utilities as they existed then. Later, in 1989, two articles also based on AALL conference papers appeared. Michele Dalehite explained that “vendor-supplied authority control serves as a tool to aid the catalogers in maintaining authority data. It does not eliminate authority work.” In her article, Alva Stone relayed the Florida State University experience with its online authority file. She described the savings in staff time and effort associated with

138. Id. at 479.
140. Id.
142. Authority Control or the Key to Survival in the Eighties, 73 LAW LIBR. J. 929, 929 (1980).
contracting “with a commercial vendor to execute automated authority processing on the library’s machine-readable bibliographic records.”\footnote{144} In addition, she observed that “[l]ibrary patrons benefit from the catalog cross-references that are generated from the machine-readable authority records, and the vendor’s corrections of most of the inaccuracies or inconsistencies on bibliographic headings also help to achieve a more ‘user friendly’ catalog.”\footnote{145}

\section*{Microforms}

\footnote{\p@\textsection 60 A microform symposium issue of \textit{LLJ} published in 1983 included the topic of cataloging microforms. Hillmann covered this process using RLIN as the bibliographic utility, while Adrienne deVergie focused on OCLC usage for this format. “RLIN has developed some useful solutions to the problem of cataloging microforms,”\footnote{146} Hillmann reported. The RLIN enhancements made it easier for catalogers to identify microform records during the search process. And if no microform record existed, it was “relatively simple” to create one from an existing RLIN hardcopy record.\footnote{147} In addition, the “flexibility of the RLIN system allow[ed] considerable local variation in the handling of microforms.”\footnote{148}

\footnote{\p@\textsection 61 In her OCLC article, deVergie stated:

The implementation of AACR2 in January 1981 caused considerable controversy regarding the treatment of microreproductions. . . . OCLC encourages member libraries to input microreproductions according to the official policy on microform cataloging of the Library of Congress (LC). . . . [T]he policy applies AACR2 in determining the choice and form of access points but emphasizes data relating to the original item in the descriptive cataloging and gives data relating to the reproduction in a secondary position (that is, in a note). . . . Because of the contradictions between AACR2’s Chapter 11 and LC’s policy and the resulting database inconsistencies, the burden is upon catalogers to set up strict standards for the original cataloging of microforms and, time and staff permitting, to edit the inconsistent member records to conform to these standards.\footnote{149}}

OCLC does not provide a method to home in quickly on microform records while searching, but it does facilitate rapid cataloging of microform by deriving from print records, as RLIN does. Linda Cross’s article in 1985 showed that not much had changed regarding searches of microform records on OCLC. In order to mitigate the problem of duplication, Cross said that she “kept an account in table form of the microfiche serial records located for the session laws” in the hope that “this listing could be valuable to other law libraries.”\footnote{150}}
Electronic Resources

¶62 Given the integral role of Lexis and Westlaw in legal research, it comes as no surprise that law librarians were the first to consider and then experiment with putting bibliographic records in their catalogs to represent remote, full-text legal databases. The cataloging of these full-text legal databases inspired six articles in the pages of LLJ from 1984 to 2000. Marion introduced the concept in 1984 with the question: “if your library has prided itself on the library catalog being an almost complete finding tool to your collection, shouldn’t you add your on-line data base titles to that tool?”151 While she answered her question with a resounding yes, she also discussed the challenges associated with the endeavor. “On-line texts, in effect, have the characteristics of super looseleaf services; that is, they have an infinite capacity for change.”152 Fortunately, law librarians have “more experience dealing with this kind of change than most of our colleagues because of our long acquaintance with looseleaf publications.”153

¶63 William Benemann’s 1987 article turned Marion’s concept into reality: The “Golden Gate University Law Library has adopted a policy of including in its public card catalog full cataloging for items found on WESTLAW and/or LEXIS.”154 Unfortunately there was a void when it came to standards for cataloging such titles. While guidelines for the cataloging of machine-readable data files (MRDFs) were under development, it was a slow process that “concentrate[d] solely on data files such as stacks of punched cards, computer tapes, and discs,”155 and not on remote-access, full-text databases that had no physicality. So Golden Gate decided to model its approach after the Library of Congress’s guidelines in use for the cataloging of microforms. Specifics concerning the local handling of five different permutations of online and other formats of the same content were detailed, accompanied by examples of catalog cards for each. The problem of catalog maintenance on these rapidly changing files was addressed, as was the issue of referring all users to these legal databases, access to which was limited to those covered under the law library’s contract. This latter was justified by “the need to inform our primary patrons of the existence of this material.”156 With a touch of foreshadowing, Benemann concluded with a recommendation: “Impetus toward a national standard could be provided by the data base producers themselves.”157

¶64 Also in 1987, the Law Program Committee (LPC) of the Research Libraries Group (RLG) explored the possibility of a cooperative project involving two law libraries and two database vendors.158 The University at Buffalo Law Library

152. Id. at 150.
153. Id.
155. Id. at 55.
156. Id. at 64.
157. Id. at 65.
volunteered to catalog the Lexis files\textsuperscript{159} and the University of Minnesota Law Library would catalog the Westlaw files. In a 1990 article, Gail Daly described the project and focused on the Westlaw effort at Minnesota. The proposal of national standards for cataloging computer files, along with RLG’s commitment to the development of “set processing”\textsuperscript{160} (or batch load capability), laid the groundwork for the Buffalo–Minnesota initiative. A subcommittee of the LPC was formed and “charged with establishing communication with appropriate RLG committees, preparing and recommending standards for cataloging the databases, identifying the nature and scope of the project, and addressing the issue of maintaining the active databases once the initial project was completed.”\textsuperscript{161} Staff at Minnesota and Buffalo and the members of the LPC subcommittee collaborated to achieve consistency in certain areas, agreeing (1) to use the monographic MARC format rather than the serial format (despite the dynamic nature of the files), (2) to catalog the files independently of their “hard-copy equivalents,” (3) to provide “specific phrasing of various cataloging notes,”\textsuperscript{162} and (4) to use the LCSH subdivision “Data bases.” The active participation of Mead Data Central (Lexis) and West Publishing Company (Westlaw) was emphasized as critical in making the project a reality.

\section*{¶65}

Stating that “[l]ibrarians can no longer treat these full-text computer files differently from any other research material,”\textsuperscript{163} Matthews undertook a parallel, independent effort to catalog the Lexis files, which she described in her 1990 article. She began by using catalog cards until the draft revision of the cataloging rules for computer files\textsuperscript{164} was released in 1987; at that point she began to input the records into OCLC. Matthews ended up establishing many of the same cataloging decisions for this project as those followed in the RLG project described by Daly.

\section*{¶66}

Daly wrote her first article while the work was still in its initial phase, but she revisited it in 1995, explaining that the “passage of time” as well as the RLIN Law Program Committee (LPC) project’s failure led her “to reconsider the wisdom of this approach for providing access to database files.”\textsuperscript{165} Daly presented a long list of factors that accounted for the project’s demise, including changing and expanding databases, which had “become so large that it [was] virtually impossible . . . to remain current with system changes and database contents.”\textsuperscript{166} At the same time, she declared her belief that “[t]he failure of law library projects to provide such

\begin{footnotes}

\begin{footnote}{159} For details about this part of the project, see Ellen McGrath, \textit{Cataloging Legal Databases Available Through LEXIS, Cataloging & Classification Q.}, 1992 no. 1, at 3; ELLen MCGRAth, \textit{GuidELines For CaTalogING THe FiLes av aiLabLe THrougH Lexis} (Am. Ass’n of L. Libr., Occasional Papers Ser. no. 11, 1992).

\begin{footnote}{160} Daly, \textit{supra} note 158, at 333.

\begin{footnote}{161} Id. at 334.

\begin{footnote}{162} Id. at 337.


\begin{footnote}{164} \textsc{Chapter 9 Computer Files: Draft Revision} (1987).


\begin{footnote}{166} Id. at 193.

\end{footnotes}\end{footnotes}\begin{footnotes}\end{footnotes}\end{footnotes}\end{footnotes}
information through traditional bibliographic means” should not stop librarians “from exploring other methods.”

Despite the fact that “[o]rganizing access to remote electronic resources could be the greatest challenge faced by modern cataloging,” Hope Breeze returned to the topic five years later and encouraged catalogers to once again tackle it, though now her focus was on all types of such remote resources, not only the Lexis and Westlaw databases. She also referred to the LPC project’s failure and acknowledged that

The answer is clearly to compromise between providing catalog access to all resources and providing none, and striking this balance by careful planning. This planning should include clear reasons for cataloging these materials, a policy for what categories are to be included, guidelines for record content, and strategies for maintaining accurate data. Above all, it should be predicated on providing access to resources that meet the collection mission of the library.

Karen Selden also addressed the topic in 2000 in an article “light on theory and heavy on practical ideas and examples for librarians to use as they approach the prospect of cataloging Internet resources.” She related the University of Colorado Law Library’s activities, which included “forming policies, providing access to Internet resources, choosing which bibliographic record to use, enhancing catalog access, selecting Internet resources for inclusion in the catalog, considering OPAC display parameters, and verifying links to cataloged Internet resources.”

Selden listed “three options for providing access to Internet resources”:

1. “through subject-oriented Web pages,”
2. “directly from the bibliographic record retrieved during an OPAC search,” and
3. “a combination of these two methods, using the first option for some resources, and the second for others.”

These options, along with their many pros and cons, were further described by Georgia Briscoe, Karen Selden, and Cheryl Rae Nyberg in an article based on a presentation they gave at the 2002 AALL annual meeting. They advocated a combined approach for providing access to internet resources. “Patrons need access to electronic resources, and librarians will provide that access as well as they can—and when in doubt, librarians will probably provide as many access points as possible,” they wrote.

167. Id. at 201.
169. Id. at 97, ¶ 20.
171. Id. at 440, ¶ 3.
172. Id. at 443, ¶ 12.
173. Id.
174. Id. at 443, ¶ 13.
175. Id. at 444, ¶ 14.
177. Id. at 173, ¶ 80.
Conclusion

¶70 Although the number of LLJ articles about cataloging is relatively small over the past 105 years, there are some valuable cataloging bibliographies published in 1968, 1975, and 1991. In addition, the “Centennial Feature” in the fall 2008 issue of LLJ provided recommended reading lists from the various AALL special interest sections, including ones from the Online Bibliographic Services (OBS) and Technical Services (TS), the two most likely to deal with cataloging issues.

¶71 These articles represent small snapshots of the status of these cataloging issues and their effect on the law library community. Unfortunately they exist in relative isolation, with little or no follow-up within LLJ as to the further development or resolution of these issues. While it is likely that in some cases, the conversation continued in venues other than LLJ (such as general cataloging journals, newsletters, and later on through e-mail and blogs), it is regrettable that it was not captured in these pages for the convenience of having it all recorded in the same place. The pages of Technical Services Law Librarian (TSLL), the official publication of the Technical Services and Online Bibliographic Services Special Interest Sections of the AALL, present another venue in which law catalogers can pose questions about their cataloging conundrums and receive expert advice from colleagues. Since its first issue in 1975, TSLL has been an outlet for briefer topical pieces. It publishes two regular columns that deal with cataloging, “Description and Entry” and “Subject Headings,” as well as various other special columns and conference reports. A law cataloger cannot function properly without keeping up with each quarterly issue of TSLL, but it is unlikely that other types of law librarians read it on a regular basis.

¶72 I am as guilty as the next law cataloger in my failure to publish on cataloging topics within the pages of LLJ. But as the pace of change has accelerated over the years, law catalogers find themselves with less and less time to reflect upon the nature of their work, let alone to research and publish in a peer-reviewed journal such as LLJ. Sadly it is our profession’s historical record that bears this loss.


179. Online Bibliographic Services SIS [AALL Special Interest Section Recommended Reading Lists], 100 Law Libr. J. 736, 2008 Law Libr. J. 38; Technical Services SIS, Cataloging and Classification [AALL Special Interest Section Recommended Reading Lists], 100 Law Libr. J. 751, 752, 2008 Law Libr. J. 42.
Information Literacy Learning Outcomes Among Undergraduate Law Students in Two African Universities

Vicki Lawal** and Peter Underwood***

This article examines the peculiar structure of legal information resources and the distinctive ways in which such resources are evaluated and used by undergraduate law students of the University of Cape Town, South Africa, and University of Jos, Nigeria.

Introduction

¶1 Advances in information and communication technology and the speed with which information is made accessible often make it difficult to critically evaluate information sources.¹ For educational institutions, the challenge of providing basic twenty-first century information competencies to individuals has become central to the learning process and has made colleges and universities the appropriate venues for instilling and developing the necessary graduate attributes

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through information literacy (IL). IL is a well-established principle in user education, and in the past few decades its basic elements have become an important tool in various contexts. Mark Hepworth defines IL as the collection of “thinking processes, interpersonal skills, the use of tools and learning of norms and methods associated with interaction and the creation of data, information and knowledge.”

Applying the concept of “use” to these terms suggests the importance of the ability to evaluate, manipulate, and analyze accessed information; it also emphasizes the need to develop problem solving skills. As indicated by the shift from teacher-centered to student-centered learning, current research efforts in IL are of paramount importance in educational philosophy and have provided insights into student learning and the development of various teaching models that define its use and application. Also central to IL research is the emphasis on the development of critical thinking and independent learning skills aimed at preparing students for self-directed lifelong learning.

This article is based on a comparative research study of the IL skills of undergraduate law students at the University of Cape Town, South Africa, and University of Jos, Nigeria. Outcomes from the study reveal the difficulties encountered by students in conducting legal research and emphasized the importance of recognizing the unique information structure of legal resources when integrating IL into the curricula of legal education in higher education institutions.

Information Literacy and the Undergraduate Curriculum

IL plays an important role in the curricula and educational mission of higher education institutions. The challenges faced by undergraduate students in using resources efficiently have necessitated the integration of IL instruction into the curriculum; a variety of instructional approaches, such as course-related library instruction, course-integrated projects, online tutorials, and stand-alone courses, aim to equip students with a conceptual and intellectual framework for

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6. Vicki Ladi Lawal, Aspects of Information Literacy with Regard to the Use of Legal Resources: Case Study of Third Year Undergraduate Law Students of the University of Cape Town, South Africa and University of Jos, Nigeria (2009) (unpublished M.Phil. dissertation, University of Cape Town) (on file with the University of Cape Town Library).
information seeking. Some of the IL components incorporated in these approaches include critical thinking skills, the ability to formulate questions, reason logically, and analyze and evaluate information effectively for problem solving. Ann Grafstein proposes a discipline-based approach to IL, finding that subject-specific courses encourage the development of higher-order thinking skills. Margaret Sallen notes that the information structure of every discipline is strictly related to the complex nature of its resources; as a result, users must have a “linguistic knowledge” of the discipline so that they can transfer acquired skills to novel situations. Thus, the peculiarity of every subject discipline is dictated by its course content and curriculum structure, which in turn influence the design of an effective model for IL instruction.

In the discipline of law, studies indicate that the content, mode of teaching, and assessment strategies of the legal education curriculum must be designed in ways that foster critical thinking and problem-solving skills so that graduates are prepared for the changing legal workplace. Examples of such studies include a study by Natalie Cuffe and Christine Bruce on the information and information technology used by law students in four Australian universities. The study pointed to the need for a curriculum model that inculcates skills training and problem-solving skills in the curricula of legal research training and legal education. Susie Andretta’s work on a credit-bearing class of undergraduate law students provided a detailed explanation of the development of IL at the University of North London. A study by Jackie Davies and Cathie Jackson at Cardiff University also analyzed the challenges of integrating IL with legal research, information technology, and other legal skills training into a coherent module. Similarly, Rosemary Kuhn’s study, aimed at designing and assessing the feasibility of an active learning approach to a legal research module at the University of KwaZulu-Natal, provided a comprehensive theoretical and practical framework for developing IL in legal education in

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South Africa. All these studies have made significant contributions to an understanding of the importance of IL in the legal education system.

**Theoretical Framework**

¶6 The theoretical framework that anchored the present study is the Association of College and Research Libraries (ACRL) Information Literacy Competency Standards for Higher Education 2000. The ACRL Standards emphasize IL as the foundation for lifelong learning in all disciplines, environments, and levels of education, enabling learners to master content, become more self-directed, and assume greater control over their own learning. The Standards have been used as a baseline for implementing IL concepts into the curriculum of higher education in various countries. The broad scope of the Standards provided a framework for understanding information literacy processes among undergraduate law students of the two institutions being studied and provided a means of assessing the students’ learning outcomes.

**Research Methodology and Methods**

¶7 Methodological considerations for the study combined the attributes of both qualitative and quantitative methods to obtain the desired outcomes. An instrumental case study method was used to provide better insight into the institutions under study. The study population was limited to third-year undergraduate law students of the University of Cape Town (UCT), South Africa, and the University of Jos (UJ), Nigeria, who were considered suitable for determining the appropriate year to integrate information literacy into the curriculum.

¶8 The sampling method for the study involved obtaining a complete list of registered third-year undergraduate students at both universities and drawing a random sample of 100 students from each institution. The research instrument used in a study by Natalie Cuffe was adopted since that study also sought to determine law students’ awareness of legal resources and to test their IL skills. Critical changes, however, were made to the questionnaire to adapt it to the legal systems of South Africa and Nigeria. At the University of Cape Town, 150 questionnaires were administered, and 44 students (29%) responded. At the University of Jos, 150 surveys were administered and 92 students (61%) responded.

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Research Questions and Objectives

¶9 The main objective of the study was to investigate the implications of integrating IL into the curriculum of legal education and to reinforce the importance of legal research as a key aspect of legal education in the two institutions. The following research questions framed the study:

1. Does the structure of legal information provide special problems for the retrieval of information?
2. How can the level of students’ awareness in accessing and retrieving legal resources be evaluated?
3. How are they able to use accessed information for problem solving?
4. What is the students’ perception of the importance of information literacy?

Discussion and Analysis of Findings

¶10 The analysis below presents the results of findings on the research questions of the study.

Demographic Information

¶11 In comparing the two data sets, differences were noted particularly with the demographic compositions, as analyzed in the tables that follow.

¶12 As shown in table 1, compared to UCT respondents, UJ respondents included more undergraduate students in the older age categories, that is, ages 26 to 29 and ages 30 and above, which may suggest that some of the UJ respondents are working while studying to obtain their qualification.

Does the Structure of Legal Information Provide Special Problems for the Retrieval of Information?

¶13 Several writers have commented that the structure of legal information often influences the way its users obtain information. Legal materials make a strong distinction between primary and secondary sources: using these sources has often

<table>
<thead>
<tr>
<th>Age Group</th>
<th>University of Cape Town (n = 44)</th>
<th>University of Jos (n = 92)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>Under 20</td>
<td>0</td>
<td>1 (2%)</td>
</tr>
<tr>
<td>20–25</td>
<td>13 (30%)</td>
<td>27 (61%)</td>
</tr>
<tr>
<td>26–29</td>
<td>1 (2%)</td>
<td>1 (2%)</td>
</tr>
<tr>
<td>30 and above</td>
<td>1 (2%)</td>
<td>0</td>
</tr>
<tr>
<td>No response</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
presented a major challenge to the researcher in terms of understanding the complex system in which they are variously organized in any particular area of law. In answering this question, respondents were requested to indicate if they had received training on the use of legal information sources.

The organization and format of legal information is reflected in how it is taught and understood by the user and enables the contextualization of a legal issue within a conceptual framework for the purpose of addressing a case at hand. Table 2 shows that 91% of students at UCT received legal research training compared to 41% of the students at UJ.

Table 2

<table>
<thead>
<tr>
<th>Legal Research Training</th>
<th>University of Cape Town (n = 44)</th>
<th>University of Jos (n = 92)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>40 (91%)</td>
<td>38 (41%)</td>
</tr>
<tr>
<td>No</td>
<td>0</td>
<td>28 (30%)</td>
</tr>
<tr>
<td>No response</td>
<td>4 (9%)</td>
<td>11 (12%)</td>
</tr>
<tr>
<td>Don’t know</td>
<td>0</td>
<td>16 (17%)</td>
</tr>
</tbody>
</table>

These findings indicate that it is important in legal education that the unique information structure of the various formats of legal information resources are taken into consideration in developing an appropriate pedagogical model for integrating legal research skills in the curricula. The integration of IL instruction in the legal education curricula will help address issues of deficiency in legal research skills.

How Can Students’ Level of Awareness in Accessing and Retrieving Information Resources Be Evaluated?

The usage of information resources is presumably associated with the level of awareness of those resources. This research question focused on students’ awareness of the nature and forms of legal information resources and on the training they received to use those resources. Results from both institutions are shown in tables 3 and 4.

Respondents from UCT, where training is compulsory, reported receiving training in a number of areas. The highest proportion of students were trained by taking a library tour (89%), followed by those trained in researching case law (84%) and researching legislation, secondary sources, and use of databases (80%). This response reflects how the integration of credit-earning IL skills training at UCT has encouraged student learning experiences.

At UJ, where training is not compulsory, respondents painted a different picture. As shown in Table 4, the highest proportion of students were trained in using the library catalog (27%), legal citation (27%), researching case law (25%), and researching secondary sources and legal reasoning and writing (22%). Notably, the majority of respondents (63%) reported receiving no training in researching case law.

<table>
<thead>
<tr>
<th>Type of Training (n = 92)</th>
<th>Yes</th>
<th>No</th>
<th>No Training at All</th>
<th>Don’t Know</th>
<th>No Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law library tour</td>
<td>21 (23%)</td>
<td>6 (7%)</td>
<td>10 (11%)</td>
<td>11 (12%)</td>
<td>44 (48%)</td>
</tr>
<tr>
<td>Using the library catalog</td>
<td>25 (27%)</td>
<td>4 (4%)</td>
<td>6 (7%)</td>
<td>3 (3%)</td>
<td>54 (57%)</td>
</tr>
<tr>
<td>Researching case law</td>
<td>23 (25%)</td>
<td>5 (5%)</td>
<td>58 (63%)</td>
<td>0</td>
<td>6 (7%)</td>
</tr>
<tr>
<td>Researching legislation</td>
<td>14 (15%)</td>
<td>12 (13%)</td>
<td>7 (8%)</td>
<td>0</td>
<td>59 (64%)</td>
</tr>
<tr>
<td>How to use databases</td>
<td>3 (3%)</td>
<td>16 (17%)</td>
<td>9 (10%)</td>
<td>11 (12%)</td>
<td>53 (58%)</td>
</tr>
<tr>
<td>How to use the internet</td>
<td>10 (11%)</td>
<td>13 (14%)</td>
<td>9 (10%)</td>
<td>14 (15%)</td>
<td>46 (50%)</td>
</tr>
<tr>
<td>Legal citation</td>
<td>25 (27%)</td>
<td>2 (2%)</td>
<td>7 (8%)</td>
<td>9 (10%)</td>
<td>49 (53%)</td>
</tr>
<tr>
<td>Researching secondary sources</td>
<td>20 (22%)</td>
<td>6 (7%)</td>
<td>6 (7%)</td>
<td>8 (9%)</td>
<td>52 (57%)</td>
</tr>
<tr>
<td>Researching laws from overseas jurisdictions</td>
<td>7 (8%)</td>
<td>15 (16%)</td>
<td>8 (9%)</td>
<td>0</td>
<td>62 (67%)</td>
</tr>
<tr>
<td>Legal reasoning and writing</td>
<td>20 (22%)</td>
<td>6 (7%)</td>
<td>5 (5%)</td>
<td>8 (9%)</td>
<td>53 (58%)</td>
</tr>
</tbody>
</table>
An evaluation of these findings suggests that the nature of legal research training received has a commensurate impact on student’s level of awareness and IL skills. The degree of their awareness determines by implication their ability to access, retrieve, and interpret various forms of legal information, thereby helping them to develop critical thinking and evaluative skills. The methods of teaching (lectures, demonstration, or hands-on) and assessment strategies are significant in enabling the student to learn to see connections between the discipline and its information sources, thereby encouraging the development of higher-order thinking skills.

How Successful Are Students in Using Information for Problem Solving?

This question aimed at investigating the success rate of students in using legal information for problem solving. Respondents were asked to rate their level of success in using common research tools and performing a variety of legal research activities involving both print and electronic resources. The results for UCT students are presented in table 5 and for UJ students in table 6.

Results from the analysis of responses in tables 5 and 6 indicate higher success rates with basic applications such as using word processors (17%) and e-mail (15%) and downloading information (25%) than with more cerebral processes such as using South African sources (7%) and evaluating legal information (11%). Similarly, the UCT responses to finding legislative history and debate (second reading speeches) in Hansard (0) indicated a lack of awareness of the material or of its importance in legal research.

Analysis of the UJ students’ responses in table 6 shows a similar pattern with UCT but indicates lower success rates in the more technical aspects of legal research, such as listing key words (15% for UJ vs. 25% for UCT), finding treaties

<table>
<thead>
<tr>
<th>Table 5</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Degree of Success in Using Information Technology: UCT Students</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Task Analysis (n = 44)</th>
<th>Always Successful</th>
<th>Usually Successful</th>
<th>Seldom Successful</th>
<th>Not Used at All</th>
<th>No Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Using South African sources</td>
<td>3 (7%)</td>
<td>16 (36%)</td>
<td>6 (14%)</td>
<td>14 (32%)</td>
<td>5 (11%)</td>
</tr>
<tr>
<td>Using case citators</td>
<td>13 (30%)</td>
<td>24 (55%)</td>
<td>1 (2%)</td>
<td>1 (2%)</td>
<td>5 (11%)</td>
</tr>
<tr>
<td>Using library catalog</td>
<td>14 (32%)</td>
<td>23 (52%)</td>
<td>2 (6%)</td>
<td>4 (9%)</td>
<td>1 (2%)</td>
</tr>
<tr>
<td>Evaluating legal information</td>
<td>5 (11%)</td>
<td>25 (57%)</td>
<td>4 (9%)</td>
<td>6 (14%)</td>
<td>4 (9%)</td>
</tr>
<tr>
<td>Listing keywords for research</td>
<td>11 (25%)</td>
<td>20 (45%)</td>
<td>7 (16%)</td>
<td>2 (6%)</td>
<td>4 (9%)</td>
</tr>
<tr>
<td>Finding second reading speeches in Hansard</td>
<td>0</td>
<td>6 (14%)</td>
<td>4 (9%)</td>
<td>11 (25%)</td>
<td>23 (52%)</td>
</tr>
<tr>
<td>Finding treaties relating to South Africa</td>
<td>9 (20%)</td>
<td>16 (36%)</td>
<td>4 (9%)</td>
<td>7 (16%)</td>
<td>8 (18%)</td>
</tr>
<tr>
<td>Using databases of cases</td>
<td>10 (23%)</td>
<td>11 (25%)</td>
<td>5 (11%)</td>
<td>8 (18%)</td>
<td>10 (23%)</td>
</tr>
</tbody>
</table>
relating to a country (8% for UJ vs. 20% for UCT), and using databases (12% for UJ versus 23% for UCT). This analysis further underscores the importance for integrating IL instruction with the process of training in legal research at the University of Jos.

What Is the Students’ Perception of the Importance of Information Literacy?

¶24 The objective of this research question was to enable the researcher to assess respondents’ understanding of the importance of assuming responsibility for their own learning through IL instruction.

¶25 As shown in table 7, 75% of UCT respondents and 57% of UJ respondents place a high value on legal research. Responses to this question also suggest the need to foster collaboration between librarians and teaching faculty in improving access to legal information and establishing a context for promoting IL and lifelong learning.

¶26 Within the questionnaire, the category that appears central for a comparative analysis of the data with respect to IL instruction is the question that sought to determine the years in which legal research training occurred. Table 8 shows the timing and frequency of legal research training for years 1, 2, and 3 for each group of students. The greatest proportion of UCT students (39%) received training in all three years of their studies, followed by 18% for those who received training only in year 3, and 14% in either year 1 or years 1 and 2. Among UJ students, the greatest proportion (21%) received training in years 1 and 2, 20% in years 1 and 4, and 17%
in year 1. It is also interesting to note that 13% of the UJ respondents received “no training at all” in legal research.

¶27 The analysis shows that 9% of the UJ respondents have had legal research training in year 3 only compared to 18% in UCT and that 41% of the UJ respondents received at least two years of legal research training. Although the percentage in UCT in year 1, 2, & 3 is higher, the analysis does not provide sufficient evidence to conclude that legal research training frequency has a significant effect on academic performance: more data may be needed to make any conclusive statement about this relationship.

¶28 Respondents were also asked about their preferred timing and positioning of legal research training within the law curriculum. This question was aimed at determining their perception of the importance of legal research training in legal education. Respondents were at liberty to make more than one choice from the options, which were not arranged in any particular order.

¶29 As shown in table 9, only 25% of UCT respondents preferred IL as a separate first-year course, while 25% wanted it as an elective course. Thirty-nine percent preferred that it be integrated within one subject in each year and 50% said they would like to see it integrated with another first-year subject. The lowest percentage recorded was 2% for those who wanted it included as a separate final-year subject.

### Table 7

<table>
<thead>
<tr>
<th>Degree of Importance</th>
<th>University of Cape Town (n = 44)</th>
<th>University of Jos (n = 92)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very important</td>
<td>33 (75%)</td>
<td>52 (57%)</td>
</tr>
<tr>
<td>Moderately important</td>
<td>7 (16%)</td>
<td>4 (4%)</td>
</tr>
<tr>
<td>No response</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Don’t know</td>
<td>4 (9%)</td>
<td>36 (39%)</td>
</tr>
</tbody>
</table>

### Table 8

<table>
<thead>
<tr>
<th>Year</th>
<th>University of Cape Town (n = 44)</th>
<th>University of Jos (n = 92)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes (n = 44)</td>
<td>No (n = 44)</td>
</tr>
<tr>
<td>Year 1</td>
<td>6 (14%) 38 (86%)</td>
<td>16 (17%) 76 (83%)</td>
</tr>
<tr>
<td>Year 1, 2</td>
<td>6 (14%) 38 (86%)</td>
<td>20 (21%) 72 (78%)</td>
</tr>
<tr>
<td>Year 1, 2, 3</td>
<td>17 (39%) 27 (61%)</td>
<td>0</td>
</tr>
<tr>
<td>Year 3</td>
<td>8 (18%) 36 (82%)</td>
<td>8 (9%) 84 (91%)</td>
</tr>
<tr>
<td>Year 1, 4</td>
<td>2 (4%) 42 (94%)</td>
<td>19 (20%) 73 (79%)</td>
</tr>
<tr>
<td>No training at all</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>No response</td>
<td>5 (11%) 39 (89%)</td>
<td>18 (20%) 74 (80%)</td>
</tr>
</tbody>
</table>
For UJ students, the greatest proportion preferred it as an elective course (42%) and 43% as integrated with another first-year subject. Compared to UCT students, a lower percentage (42%) preferred its inclusion as a separate final-year subject, perhaps because of the amount of accumulated course work during the final year.

Observations from a general analysis of the data show that less than the expected response rate was obtained in both cases, particularly at the University of Cape Town. In the case of University of Jos, even though a larger response rate was obtained, the analysis of the questions recorded a low output of respondents’ views.

### Implications of Findings and Recommendations

The theoretical and practical implications of the findings of the study are central to the core issues of IL within the context of higher education and, specifically, as it relates to the teaching of legal research and its integration to the curriculum. Of primary importance is the need for educational reform in student learning: specifically, the responsibility of the two institutions for creating a relevant structure for developing IL and lifelong learning abilities. Other studies have provided evidence that the design of the curriculum is a determining factor in implementing IL programs and should be made in accordance with the recommendations of the adopted ACRL literacy standards to achieve the set educational objectives.
¶33 In the case of legal research, the integration of IL within a disciplinary context helps promote an attitude of critical inquiry in the learning process; such process-oriented pedagogies as problem-based, resource-based, and web-based learning approaches can be used as vehicles for IL instruction in the legal education system. These methods have been used in different contexts and help students to think critically and analytically within the specified context. By being taught the conceptual models for handling information through an integrated and incremental approach during their legal training, students are provided with a broad context for understanding the different forms, sources, and structures of information, which also ensures the transferability of acquired skills to the workplace. This study suggests that IL be integrated in a consistent and progressive manner into the mainstream of the curriculum of legal education.

¶34 Issues of determining outcome assessment and evaluation have constituted a problem in most higher education institutions, particularly in developing countries where IL standards are not yet set. Diana Rosenberg observes that in some African countries, even though there seems to be general agreement that the integration of IL courses into the curriculum in ways that are assessable and credit-bearing is necessary for success, feedback from students and implementation efforts do not always seem to reflect the real picture due to lack of IL standards. To address problems of IL education in Africa, there is a need for the development of a continental or regional approach to IL standards, as is the case with the United States, the United Kingdom, and Australia.

¶35 Policy implications that have emerged from the study include the following:

- the need to address IL as an educational objective in the academic curricula;
- the need for an adequate and sustained financial base for the implementation of IL programs, especially in terms of staff recruitment and infrastructure development; and
- the need to highlight the role of the information professional in encouraging and stimulating the development and implementation of various IL programs through advocacy.

¶36 All these issues point to the importance of developing an institution-wide policy that recognizes the value of IL in legal education. At the University of Jos, IL initiatives have remained on the margins of the educational process because of limited support by government and stakeholders in higher education. In contrast, Peter Underwood has noted that in South Africa, the promulgation of the National Plan for Higher Education by the Ministry of Education in 2001 demonstrates the government’s awareness of the strategic role of IL in ensuring outcome-based edu-

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25. *Id.*
This support further buttresses the view that the implementation of IL requires all stakeholders in higher education and government to help establish a system that effectively integrates IL concepts in the higher education institutions. Christine Bruce has also noted that international, national, and institutional policies and guidelines are vital in supporting and directing the adoption of IL education.

Outcomes from the study also emphasize the importance of collaborative execution of IL programs in the learning process. The imperatives of the digital information age have implications for the perceived roles and responsibilities of academic librarians in helping academic faculty incorporate elements of IL in instructional programs to enhance student learning experiences. The responsibility for IL in legal education must therefore be shared within strategic partnerships at various levels, including curriculum design, policy development, staff development, and classroom teaching.

Conclusion

The research findings from this study suggest important factors in IL education that could inform policy and practice within the context of higher education in Africa. These findings emphasize the need for benchmarks to guide the placement of legal IL in the curriculum of legal education, specifically in Nigeria. Even though the findings of the study are limited to a set of comparative case studies, it is hoped that they provide some evidence of the current understanding of the phenomenon in similar contexts and contribute to an understanding of the relationship between IL and learning in the legal field.


29. Charles B.M. Lungu, An Analysis of Information Literacy Related Programmes at the Copperbelt University, in User Information Literacy: Case Studies from University Library Programmes in SCANUL-ECS Region 203 (Elizabeth Kiondo & Jangawe Msuya eds., 2005).

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 and 2014. 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 Austin Martin Williams*

¶1 Where the Law Is: An Introduction to Advanced Legal Research ushered in its fourth edition in 2013. The new edition covers the same topics as the third edition but also discusses new research platforms introduced since 2009: Bloomberg Law, Lexis Advance, and WestlawNext. Although the authors address these new systems, their primary focus remains on Westlaw Classic, LEXIS, and print materials.

¶2 Where the Law Is provides commentary on background information, methods of accessing and utilizing the resources, and updating. As a legal research instructor, I appreciated the introductory chapter’s significant coverage of both developing a research plan and strategies for employing full-text searching on online research platforms. Subsequent chapters focus on the different methods researchers can use to locate a given type of resource and what those methods add to the overall research project. The final chapter outlines some of the research con-
cepts discussed throughout the book and provides friendly reminders for tackling a research problem.

¶3 The authors begin by detailing what the book is, what it is not, and the target audience. Readers should be aware that this book covers legal research only, not every type of research that attorneys might do throughout the course of their jobs, such as current awareness, public records, and business research. The target audience for this book is upper-level law students, so instructors should be mindful of the depth of content in this book. This book would be overwhelming for my first-year legal research students, as well as those who do not have a firm foundation in legal research. Depending on a school’s research curriculum, this book may even exceed the depth of some advanced classes.

¶4 In only 255 pages, the authors cover all the topics research instructors would expect to teach in a legal research course, such as statutes, cases, administrative law, and traditional secondary sources. The authors also include materials that basic classes typically omit because of time constraints, such as looseleaf services, court rules, legal ethics, municipal law, and overviews of foreign and international law. While the authors focus on federal law, they do provide reliable strategies for working with state materials. Unlike some legal research books, there is no chapter dedicated to citator services; however, the authors discuss the updating process for each source individually. The authors even touch on a few occasions when Shepard’s in print remains the best or only method for updating a given source. I jumped for joy when I saw “Selected Legal Research Guides for Each of the Fifty States” located in the appendix. With a mix of monographs, articles, and online research guides, these selected guides are a valuable resource for librarians, students, and practicing attorneys.

¶5 While the book is packed with useful information, some of which I plan on incorporating into my own research class, I found the organization to be quite perplexing. Opinions differ among my colleagues on how to structure our research classes, but the guiding principle is to divide the class between primary and secondary sources. I find this method makes it far easier for students to differentiate between the two types of legal authorities. Where the Law Is jumps back and forth between primary and secondary sources, covering law reviews between statutes and cases, as well as covering treatises, form books, and jury instructions between cases and administrative law. While most instructors will assign the chapters as needed, and the process of research itself is a free-flowing experience, the switching between primary and secondary sources can add unnecessary confusion, especially for students used to progressing linearly through a textbook.

¶6 The design also took away from what is otherwise a solid resource. For example, the book is devoid of any images. While screen captures of online systems are often out-of-date by publication time, a few document scans or examples of online platforms would still be helpful. There are some tables, but they look more like numbered list of resources, or mini-bibliographies, instead of the traditional columns and rows that are often best for conveying tabular information. The use of “above” and “below” to describe the location of sections and tables also left me a little lost at times. The terms sometimes refer to information on the same page, but they could also refer to text several pages before or after the reference. While these
references would work well for reading an electronic resource, they do not work to best advantage in print.

¶7 The book makes up for the sometimes frustrating arrangement with a wealth of information. For those who do not mind the organization and lack of images, and also plan on supplementing the materials with nonlegal research instruction, this book would be worthwhile for an advanced legal research class. It could also be especially useful for instructors or as a general reference for academic and nonacademic law librarians. I plan on reading over the book again before my class in the fall and incorporating some of the information into my curriculum. Now that the newer research systems are more established, I would expect significantly more discussion of them in a fifth edition. Nevertheless, the fourth edition still holds tremendous value and does an excellent job of conveying the core principles of advanced legal research.


Reviewed by Sherry Leysen*

¶8 Broken, unhealthy, feverish, pathological, and dysfunctional—if these were symptoms of the latest seasonal influenza, I would be running to the nearest health care center to procure a vaccine. Upon arrival, I would learn what this chronic flu is called: the American illness, for which there is currently no definitive cure, but rather a series of proposed treatments by twenty-six noted authorities in the fields of law and economics.

¶9 In *The American Illness: Essays on the Rule of Law*, editor F.H. Buckley brings together a venerable chicken soup of twenty-three essays (three authored by Buckley), each of which attempts to identify maladies in the efficiency and effectiveness of the U.S. legal system. In his introductory essay, “The Rule of Law in America,” Buckley works to define exactly what the rule of law means, and asks whether a decline in the rule of law has led to America’s economic decline. The essays attempt to answer that question. Whether the decline is from too many regulations or penalties, too much litigation or intervention, or too little accountability and adherence to legal norms, throughout the compilation the authors identify a variety of specific problems and inefficiencies and recommend solutions to keep the U.S. competitive.

¶10 *The American Illness* is logically arranged in ten parts. Following the introduction, Buckley bookends the essays with two pieces of his own, setting the stage with “An Exceptional Nation?” Discussing U.S. policies and trends concerning free trade and protectionism, familial and economic immigrants, tax burdens and breaks, government spending and public debt, and the role of human capital, he asserts that further departing from the rule of law will only magnify America’s disadvantages in these particular areas. In the final piece, “Reversing,” Buckley discusses the potential for change through the legislature and the courts, weaving in many of the points raised by the book’s contributors.

* © Sherry Leysen, 2014. Faculty Services Librarian, Rinker Law Library, Chapman University Fowler School of Law, Orange, California.
The remaining pieces—the contributions of twenty-five scholars—are arranged topically. “Empirical Evidence” includes four essays that take a close look at litigation in America, with the authors’ assertions buttressed with data. Among the four essays in “Civil Procedure” are two that focus on discovery reforms. A noteworthy discussion of “regulation by litigation” (p.287), explained through the tobacco settlements of the late 1990s, appears in one of the three “Tort Law” essays. “Exit from Undesirable Laws” (p.337) is the subject of one of the four “Contract Law” essays. Both “Corporate and Securities Law” and “Criminal Law” include one essay each. An interesting discussion of Sarbanes-Oxley appears in the former, while the rise of the corporation as criminal and “overcriminalization” (p.417) are the focus of the latter. Within “How Nations Grow (or Don’t)” are three essays, one of which presents a thought-provoking look at China’s economic growth and its state-centric model, offering a juxtaposition to the other pieces. The compilation is especially strong in essays discussing the interplay of regulation and litigation, as well as those comparing American and Canadian civil procedure and tort law, and American and British contract law.

Collectively, the essays in *The American Illness* will be of interest to law and economics scholars as well as others who wish to contribute to the conversation and debate. Individual essays will appeal to scholars of many disciplines, especially those concerned with product liability, class actions, securities, and regulatory law. Comparative scholars will be pleased to find that many essays examine and compare the laws of other nations. To that end, while the index is complete enough to lead readers to the essays’ central ideas, the inclusion of additional entry points or cross-references would have been welcomed. Each piece is supported with notes, while figures and tables appear in many of the essays that rely on quantitative data.

*The American Illness* is sure to generate discussion. Readers may find the ideas presented to be contagious and worth spreading, while others may feel compelled to propose their own alternative remedies in response. *The American Illness* would make an excellent addition to law school and general academic library collections, especially those with a law and economics focus.


Reviewed by Shannon L. Kemen*  

*Law and the Modern Condition: Literary and Historical Perspectives* is a collection of nine essays discussing legal principles as presented in works of classic and modern literature. Some of the literature reviewed in these essays include works by William Shakespeare, Herman Melville, Franz Kafka, and other notable modern authors.

The collection is divided into three main categories of literature: essays concerning canonical texts; essays dealing specifically with lawyers, law, and scriveners; and essays based on twenty-first-century fiction. Each of these three categories
contains in itself three essays, which explore the evolution of the law over time and across the cultures of their respective groupings. In addition to the division into categories, Law and the Modern Condition also includes a table of contents and a subject index. Each essay is well documented and includes explanatory footnotes that point researchers to additional scholarly materials available on the topic covered.

¶16 The overall organization and presentation of this collection make it extremely easy to read from cover to cover. Even readers who may be unfamiliar with the particular work of fiction being addressed should find sufficient background information to understand the discussion of law as applied to the fictional work being examined. Conversely, it should be noted that this book may not provide new information or insight for avid scholars of law and literature, as its essays were previously published in various law reviews and journals prior to their publication here.

¶17 Despite the essays’ previous publications, the convenience of capturing such a diverse assortment of scholarship about law and literature in one work makes this title a good choice for many libraries. In particular, it would make an excellent addition to most academic law libraries. While Law and the Modern Condition is best suited to support a class focused on the intersection of law and literature, the various legal subjects and types of fiction covered would also support law school classes and library collections focusing on gender or national security (as covered in its essays on canonical texts and the twenty-first century, respectively). The book would also fit more broadly in an academic library’s collection as a general source discussing the effect of laws on society.

¶18 While an enjoyable and easy read, Law and the Modern Condition would not benefit the general collection of a law firm, county, or other special library. However, if such libraries provide recreational, law-oriented materials for their members, then the numerous legal subjects and fictional works covered by this title make it an ideal choice for a wide audience of readers.


Reviewed by Sarah Dowson*

¶19 In 1958, economist Milton Freidman’s recommendation that Congress initiate federal loans for higher education was enacted and, several permutations of the law later, we had federal guarantees of all private and public loans.

¶20 What? Milton Friedman, the Capitalism and Freedom economist whose ideas led to the glorification of unfettered capitalism and disparagement of regulation, whose 1958 recommendation led to government sponsoring of nondischargeable debt, which led to the ballooning of a private debt collection industry and, indirectly, a huge higher education industry with sometimes questionable results for graduates? How ironic! But I digress.

What is the lawyer bubble? Too many law school graduates and not enough jobs for them. Borrowing money is too easy, and getting a job is too difficult. Today there is a lawyer for every 265 Americans—more than twice the per capita number as in 1970—but there won’t be legal jobs for more than half of them, according to the Bureau of Labor Statistics. In three sections of The Lawyer Bubble: A Profession in Crisis, Stephen J. Harper chronicles the inflation of the bubble, enumerates the shortcomings of some big law firms, and suggests ways to bring the supply and demand for attorneys into better balance. All guidance and career counselors who advise students and job seekers should have this book to share with those considering a career in law.

Before 1890, the few aspiring attorneys there were read the law, apprenticed, and then “passed the bar” in an oral exam before other attorneys. But, after that, the case method of study enabled large numbers of students to learn legal principles in a classroom. Law school enrollments kept increasing. Law schools gradually became profit centers, as students could easily get loans. As of 2010, the federal government has been issuing most students loans. Because these loans cannot be discharged in bankruptcy, law schools have no risk in expanding and accepting more applicants.

In 1987, U.S. News & World Report started ranking law schools. The rankings led to increased competition among students to gain admission to highly rated schools. Harper notes that law schools have an interest in puffing up their ratings to attract more applicants. Also, he says, employment data after graduation can be masked, as some figures may apply to graduates who are working part time, working for the law school itself, or working in occupations not requiring a law degree. In short, the U.S. News & World Report rankings give biased information about the schools, which can lead to false expectations of graduates’ employment prospects.

Law firms have gotten bigger: the largest firm in 1960 had 169 attorneys, but now there are about 22 firms with more than 1,000 attorneys. For the past thirty years, law firms have increasingly pursued a business model of profit to the detriment of time-honored values such as collegiality, community, and mentoring. Also, the small cases and disputes that train attorneys to handle clients and courtroom appearances have disappeared in favor of large cases that create profits for equity partners. But the large cases do not provide training to associates to help them advance and eventually become the experienced attorneys who will keep the firm together in future years.

Harper reviews the history of law firm billing, which used to consist of set fees for certain services but has evolved into widespread adoption of hourly billing—the more hours billed, the more profit. The founding of American Lawyer in 1978 brought another big change: for the first time, articles were published on the internal workings of law firms, and attorneys could learn what their counterparts were earning. As a consequence, lawyers started to be less loyal to their firms and more prone to moving. Managing partners sought more lateral hires who could bring in desirable clients.

Regarding the profits that firms reported, American Lawyer could not verify data that firms supplied; a report from a major bank indicated firms were publicly overstating their profits. Just as the U.S. News & World Report rankings were all-important to law school deans to attract students, so the annual AmLaw 100 ranking
now challenged firms to achieve a favorable ranking to attract and keep star partners and rainmakers.

¶27 Harper examines attorney dissatisfaction and relates much of it to practices of big law firms: armies of associates working long hours for relatively few equity partners. More salaried lawyers per equity partner means the equity partners make more money. Average equity partner profits for the top fifty firms in the AmLaw 100 went from $300,000 in 1985 to $1.6 million in 2011.

¶28 Harper also dissects the missteps and eventual implosion of several once-profitable firms whose managers were deluded by the chimerical benefits of size, profit, lateral hires, and mergers. Rainmakers jealously guarding against training anyone else to work with their clients and failing to encourage younger attorneys to interact with younger members of the client base destabilized firms in the long run.

¶29 Greed is not entirely to blame for the recent mania for profits and size. In recent years the demand for high-end services influenced firms to specialize to better handle disparate markets. Clients may be all around the globe, and clients may move. Legal recruiters, too, are interested in making a living and influencing lateral hiring.

¶30 In his third section, Harper makes no bones about it: the only cure for U.S. News & World Report rankings is to ignore them. He discusses ways to rein in the current unsustainable, profit-centered boom, such as fostering a better work–life balance at law firms and transitioning older partners into other employment to make room for promotions of younger associates and partners.

¶31 Prospective law students must do adequate research to learn whether the profession is a good fit for them. Harper tells some tragic stories of attorneys who have committed suicide because they were not suited to a legal career. But as a person who describes the practice of law as an excellent fit for himself, he also gives many examples of attorneys who have chosen the right path and pursued happy, productive, and worthwhile careers. For example, a retired commodities trader obtained a law degree and found great satisfaction defending those accused of crimes, in one instance getting a compliment from a client in jail that his conversations with the attorney were the first time anyone had spoken to him as a human being.

¶32 Finally, lending reform is crucial. The most important lesson from the book for me is that until law schools become accountable for students’ unpaid loans, they will have no incentive to bring the supply of attorneys into better balance with demand. In other words, bankrupt law graduates should be able to recover a portion of their worthless educational loans from the law schools themselves. And isn’t accountability the very soul and substance of responsible capitalism? In Capitalism and Freedom, Friedman concludes that government intervention often has the opposite effect of its original intention. What do you say, Milton?

*Reviewed by Scott Childs*

§33 *Law Librarianship in the Digital Age*, edited by Ellyssa Kroski of the New York Law Institute, is a sweeping survey of modern law librarianship, with twenty-eight chapters grouped into eight broadly described parts addressing every conceivable relevant topic concerning law librarianship. The contributors include some of the most well-respected law librarians in the profession. Although more than half of the authors are academic law librarians, fifteen of them currently work in law firm, corporate, or government libraries, providing a rich and diverse perspective on the exhaustive collection of professional issues addressed in the book.

§34 Each chapter, running about fifteen to twenty pages in length, begins with basic concepts and ends with a conclusion, a section describing sources for further reading, and endnotes supporting the text of the chapter. Some chapters are very practical in nature, for example, discussing best practices for integrating and configuring cloud-based services into library operations, or identifying a list of current awareness sources to help law librarians stay abreast of the mobile device industry. Other chapters are somewhat less instructional and more contemplative, such as one on digitization and another on the future of law librarianship. Overall, the book strikes a good balance between practice and theory. A number of the chapters are coauthored by librarians from different types of libraries, adding to the viewpoints offered.

§35 In the first part of the book, “Major Introductory Concepts,” six chapters address somewhat random law librarianship topics. The first chapter, “Law Librarianship 2.0,” sets the tone for the book by providing a brief history and description of law librarianship. The chapter closes by identifying several new challenges facing law librarianship and the importance of adapting to these challenges.

§36 Other chapters in the first part address managerial issues, including how the data collected from patrons can be used as a valuable resource to inform decisions concerning collections, reference, teaching, and other services. Another chapter focuses more broadly on law library management across library types, covering familiar areas such as strategic planning, space planning, budgeting, collections, metrics, staff management, and disaster planning.

§37 The remaining chapters in the first part of the book address open access, copyright, and embedded librarianship. The chapter on embedded librarianship describes it not as a new concept but as one that is used differently in law firms and law schools. Another chapter develops an understanding of copyright law as it applies to the access and use of digital information. Current awareness in copyright is especially critical as courts apply the law to new digital applications. The importance of open access to legal information is discussed in another chapter, highlighting growth opportunities for law libraries.

* © Scott Childs, 2014. Associate Dean for Library and Technology Services and Associate Professor of Law, University of Tennessee College of Law, Knoxville, Tennessee.
The second part of the book, “Technologies,” is the largest and perhaps most interesting, since law librarians are continually evaluating new technologies to determine how their libraries might improve either legal information services or access for patrons.

The chapters in this part address issues related to law library digitization projects, e-books in law libraries, tablet and mobile device management, law library websites, web-scale discovery and federated searching, cloud computing and management, and finally, the use of social media. These chapters provide a useful mix of practical suggestions and discussions of emerging trends and future developments within these technologies.

The third part of the book, “Reference Services,” begins by addressing reference services in law libraries generally, including a word about how to assess the services. This foundational chapter is followed by chapters on legal research basics, issues surrounding the plethora of online information sources, and the searching within major legal databases.

The fourth part of the book, “Instruction,” is relatively short and includes only two chapters. The first chapter addresses current trends in library instruction and discusses how teaching techniques have expanded using technology. The second chapter discusses issues such as the library’s role in investigating, implementing, and supporting the use of learning-based technologies, as well as the use of collaborative technologies in legal education. This part may be the weakest one in the book. One wishes it would instead emphasize the importance of finding more opportunities for both informal and formal teaching. For example, well-trained law librarians in law schools could play broader instructional roles in academic support or other typically understaffed areas. Seeking greater instructional opportunities, both within the library and the wider institution, will add value and enhance librarians’ reputations among patrons.

The fifth part of the book, “Technical Services,” provides a good overview of traditional issues such as acquisitions, serials, and cataloging cast in a modern light. Collection development is also examined with an eye toward the digital future. But the most interesting chapter in this part discusses electronic resources management (ERM) components and functionality, as well as the related challenging issues of user authentication, accessibility, statistics, and reporting. ERM is a rapidly developing area for libraries seeking to increase cohesive access to various information formats, and this chapter provides a great foundation.

The sixth part of the book, “Knowledge Management,” discusses some of the emerging skills required of all law librarians, but particularly firm librarians, in the post-recession practice of law. Stepping beyond simply finding information, knowledge management involves assisting in the appropriate dissemination and use of the information in the organization. This work requires a high level of integration into the law firm, but draws on abilities and skills that law librarians have already mastered. Expanded roles for librarians might also include developing systems to support knowledge management. A separate chapter in this part of the book discusses intranets and their retooling for the future.

The seventh part of the book, “Marketing,” begins with a chapter discussing relationship marketing theory and includes an analysis of digital age marketing
trends and tools. A second chapter provides an excellent primer on competitive intelligence (CI) and its role in the post-recession law firm. Beyond explaining CI and why it is critical to law firms, the authors explain how to establish a CI program, how librarians might be involved, and the future trends of these programs.

¶45 The eighth part of the book, “Professional Development and the Future,” includes two important chapters. The first describes how to benefit from professional organizations, conferences, and publications. The critical skills necessary to benefit from professional development opportunities are rarely discussed in a formal way in law librarianship literature, making this one of the more unusual chapters in the book.

¶46 The subject of the final chapter could be a dissertation topic: the future of law librarianship. Together, a firm librarian and academic librarian do a fine job of looking at the big picture of librarians’ roles within their organizations. How can law librarians go wrong by adopting new technologies in ways that better serve patrons and organizations? The chapter gracefully addresses this question with insight and intelligence.

¶47 This book would clearly serve as an excellent text for a law librarianship course at the graduate school level. The scope of issues covered is exhaustive but addressed in a manageable way. Although many of the chapters begin with introductory material or basic concepts, most chapters provide a developing discussion of more complex issues within each topic. The “further reading” references at the end of each chapter also support the value of this text in a graduate-level course.

¶48 Beyond its value as a textbook, this book is an extremely important resource for any law librarian or library, adding tremendously to the body of law librarianship literature. Almost every law library is grappling with the wide-ranging issues addressed in the book. This is particularly true of the “Technologies” part of the book. Because every librarian or law library has potential in these areas, the book will be an important source of information for years to come.


Reviewed by Shannon L. Malcolm*

¶49 Patent misuse is an affirmative defense to infringement that allows accused infringers to allege that notwithstanding any infringement, the patentee has abused its monopoly rights and that the abuse of the patent is such that equity will not permit its enforcement. In many cases the abuse takes the form of anticompetitive behavior by the patentee. Thus, patent misuse and antitrust law have developed as parallel doctrines, more or less distinct over time. Although some even contend the two doctrines are coextensive and that modern antitrust mechanisms render patent misuse superfluous, it has never been wholly subsumed by antitrust law, and for good reason. Patent Misuse and Antitrust Law: Empirical, Doctrinal and Policy Perspectives presents these concepts in a concise format enlivened by empirical data.

from a comprehensive analysis of decided cases and commentary by scholars and practitioners. It is a thorough study of a fascinating area of law that is more relevant than ever, yet too often poorly understood, if not completely overlooked. Both the subject of the discourse and the freshness of its presentation are overdue.

¶50 Daryl Lim begins with an excellent outline of the book’s structure in his introduction. He then proceeds through a discussion of the complementary nature of patent misuse and antitrust law as instruments for balancing the fundamental tension between two sometimes antithetical policies: one to encourage innovation via the constitutional mandate for patentees’ limited monopolies in their inventions, and the other to protect competitors and consumers from patentees who overstep the bounds of those limited monopolies. The struggles of judges and legislators to optimize this balancing act provide a compelling and engaging way to explain the empirical trends of jurisprudence over the years. This holistic understanding of the conundrum, along with the candid insights of veterans of the system, makes Patent Misuse and Antitrust Law appealing to both practitioners and academics—and even to students, who may wonder why everything has to be so complicated in the first place.

¶51 Having established the context, Lim explores the history of patent misuse from its earliest application in 1917, explaining its evolution alongside antitrust law’s growth from the Sherman Act in 1890. Just what constitutes misuse and how courts have applied the doctrine have differed over time and before different tribunals, and Lim rightly emphasizes that misuse remains inexactly defined and inconsistently applied after nearly a century of evolution. Its protean nature stems from its roots in equity and from uncertainty about the boundaries between patent misuse and violations of antitrust law.

¶52 After thoroughly explaining the law’s evolution over time as it was molded to fit changing conditions and policies, Lim turns to exactly what constitutes patent misuse. It might have been better to present this material before the history. Lim’s dilemma is that patent misuse today is not what it was in 1917, and it has been many other things in the interim. However, presenting what activity can be and has been at various times construed as misuse, with the caveat that the doctrine has not remained stable, and then giving its history might confuse readers less. As it is, I found myself on several occasions having to pause in my reading of the history to educate myself about some complex nuance presented to the reader without explanation, only to find that nuance clearly explained in the following chapter. The history is illuminating nonetheless, especially its perspicacious notes about the influence of the Federal Circuit in recent decades and that court’s treatment of patents as property rights upon which others must not trespass—in contrast to the U.S. Supreme Court’s own view of patents as privileges, which, if abused, are subject to rules of liability akin to those applied in tort.

¶53 Following the history and definitions, Lim explains the manifestations of patent misuse: licensing misuse via tying; extensions beyond the duration of the

1. Although Lim’s interviewees are identified by name, he wisely presents their individual remarks anonymously to encourage participation and candor.
grant or the scope of its subject matter; improper restrictions or royalties imposed on licensees; and bad faith, including fraudulent prosecution of patents, vexatious litigation, and abuse of judicial and regulatory processes. The forms of patent misuse and their elements are followed by discussions of the doctrine’s proper application, its likely future evolution, and the best ways to address its perceived deficiencies. This discussion does a good job of differentiating the distinct role of patent misuse from antitrust law, since the antitrust statutes do not reach some of the activities proscribed by patent misuse doctrine.

¶54 Lim also posits that perhaps courts developed patent misuse rather than simply invoking existing antitrust laws out of reluctance to assign treble damages and a recorded felony to patentees for anticompetitive behavior, thinking criminal sanctions too severe for cases of licenses beyond the life of a patent, tying, or other acts less egregious than price fixing. This theory is persuasive, and it is supported today by the common use of consent decrees rather than trials in the overwhelming majority of cases brought by both the U.S. Department of Justice’s Antitrust Division and the Federal Trade Commission’s (FTC) Bureau of Competition. As evidence that perhaps Section 5 of the Federal Trade Commission Act should get more use, Lim points out a study finding that only 2% of private plaintiffs bringing suit under antitrust laws prevail (and in some 60% of private antitrust cases, defendants eliminated all claims under Section 2 of the Sherman Act in pretrial motions), but he otherwise gives the FTC’s role short shrift. Readers unfamiliar with the topic might be led to believe the FTC more passive than it actually is in addressing patent misuse; although, technically speaking, the FTC does not invoke patent misuse as an affirmative defense, its actions nevertheless often reflect a motivation to remedy the inappropriate use of patents independently of antitrust concerns.

¶55 Nevertheless, Lim has done a superb job collecting data about the federal courts’ treatment of patent misuse. Expanding on work originally done for his master’s thesis from Stanford University in 2009, he examines 368 cases substantively addressing patent misuse that were decided between January 1, 1953, and December 31, 2012. After identifying the universe of relevant cases, Lim coded them for quantitative analysis and then interviewed six judges, three governmental officials, five lawyers in private practice, and six academics about his findings and about the intersection between patent misuse and antitrust law generally. Lim even provides access to his quantitative data online at a companion website.

¶56 Several trends emerge from the data. The Federal Circuit’s holding in Windsurfing that anticompetitive effects are critical to any finding of misuse has been

cited by more courts than any other leading precedent, affirming its success in establishing a consistent approach to patent misuse largely favorable to patentees. Patent misuse most commonly arises in relation to semiconductors, electronics, chemicals, and biopharmaceuticals, reflecting the dependence of those industries on licensing and interoperable standards (in the case of semiconductors and electronics) and the prevalence of pay-for-delay actions (in the case of biopharmaceuticals). Patentees across all industries are increasingly successful at defeating allegations of patent misuse.

¶57 Illegal tying and vexatious litigation represent the forms of misuse most commonly alleged, but allegations of improper licensing restrictions and royalties are declining significantly to reflect the Federal Circuit’s application of the rule of reason and its deference to patentees and their licensees to arrange payments as they please. This trend may be partly a result of the increasing complexity of patents and their integration in sophisticated technologies. Courts may be hesitant to second-guess arrangements deemed efficient for simplifying transactions between sophisticated parties. Despite these trends in decided cases, Lim’s interviewees, particularly the judges, expressed enthusiasm for patent misuse as an equitable remedy and had no qualms about finding misuse under appropriate circumstances to achieve just outcomes. In fact, many interviewees expressed concern that misuse, when asserted, is commonly argued inadequately, and data from Lim’s review of the cases supports this possibility.

¶58 All the quantitative analysis includes wonderful graphs, but the monochromatic presentation makes them difficult to read when many values are presented at once and the patterns used to distinguish them blur into a jumble. Too often I found myself squinting at pie graphs and mumbling things like, “Wait, is it the portion filled with the checkerboard or the diagonal stripes that represents cases in which plaintiffs displayed bad faith?” I realize printing in color dramatically increases the costs of publishing, so I was exasperated to discover the online graphs from the book’s companion website replicated the maddening monochromatic patterns instead of presenting clearer graphs in color.

¶59 Aside from this gripe, the appendices and online data are wonderful for those who want to review, attempt to replicate, and otherwise explore Lim’s methods and his data (both of which are sound and withstand rigorous scrutiny after accounting for the intrinsic limitations Lim himself acknowledges, such as the lack of available data about settled cases). Both a PDF file of Lim’s graphs and an Excel file of the underlying data are available online. Access to the data enables readers to rearrange them in new ways, create pivot tables, and integrate them with software like QlikView and Tableau, all while drawing their own conclusions about what events in case law, legislation, or otherwise might account for this or that spike, dip, or other change in trends across time.

¶60 Unfortunately, the book also has too many typographical errors and awkwardly constructed sentences; it could have stood more thorough editing. All in all, though, Patent Misuse and Antitrust Law is an excellent analysis of an understudied area of law bound to become increasingly important as watershed controversies and reforms continue to buffet patent law. Those of us focusing on the intersection of these specialties welcome more work in this vein from Lim and his colleagues.
Corporations or firms with significant practices dedicated to patents and antitrust law should consider adding this book to their collections. Likewise, academic libraries serving faculty with strong interests in the topics (especially faculty keen on empirical studies) would benefit from adding the book to their collections; it could even make a solid textbook for a seminar. The book will be most appealing to specialists, which makes it less attractive for collections not serving specialists if space or funds are a concern.


Reviewed by Karen Breda*

§61 With the emergence of neurolaw, neuroethics, and neuroeconomics, there has been an explosion of scholarly and popular interest in how neuroscience affects our understanding of human decision making, free will and determinism, and the corresponding impact on legal and moral theory. In their timely book, Minds, Brains, and Law: The Conceptual Foundations of Law and Neuroscience, Michael S. Pardo and Dennis Patterson explore the relationship between the mind, the brain, and jurisprudence from a conceptual standpoint. They go on to critically rethink legal arguments in favor of applying neuroscience to evidence, criminal law, and theories of punishment.

§62 After a brief introduction, Minds, Brains, and Law presents three chapters that discuss the philosophical issues to be considered and the methodological framework applied throughout the book; three concepts of the mind: Cartesian Dualism, the neuro-reductionist conception, and the Aristotelian conception; and the current scholarship concerning ways in which neuroscience can transform jurisprudence and moral judgment.

§63 The authors explain that logical conceptions of the mind, consciousness, knowledge, and memory are necessary before neuroscience can inform legal theory. The classic concept is that the mind is immaterial (or spiritual or supernatural, if you will) and is in causal interaction with the body. This concept, articulated by René Descartes, is known as Cartesian Dualism. This classical concept has been largely rejected by contemporary neuroscientists and neurolegalists as implausible. The neuro-reductionist concept that the mind is the brain is the conceptualization favored by contemporary scientists and legal scholars. However, the authors point out that neuro-reductionism is hampered by the fallacy of confusing the part for the whole. The authors argue that there is more behind a person’s being and behavior than just the brain and its neural activity—that culture, individual experience, and a plethora of other factors work together with the brain to make up a person’s mind and consciousness. The authors advocate an Aristotelian concept that the mind is an array of emotional and rational abilities manifested in thought, feeling, and action.

* © Karen Breda, 2014. Legal Information Librarian and Lecturer in Law, Boston College Law Library, Newton, Massachusetts.
¶64 The authors go on to discuss the complex relationships between law and morality and ways in which emotion affects moral and economic judgments. For example, the book includes a fascinating discussion of functional magnetic resonance imaging studies of persons presented with moral dilemmas and economic choices and then goes on to challenge assumptions about emotional versus rational choices. The discussion raises complex normative questions.

¶65 Readers who are unfamiliar with the concepts and vocabulary of legal and moral theory may find these first four chapters somewhat intimidating. However, the authors describe the concepts and illustrate the issues so well that by the end of the fourth chapter, a reader entirely new to the study of neurolaw will have gained a strong grasp of its philosophical foundations.

¶66 The next three chapters of the book build on these foundational chapters by applying the concepts to arguments in favor of integrating neuroscience into law in the areas of brain-based lie detection, adjudication of guilt, the insanity defense, and the constitutional limitations upon the government’s use of neuroscientific evidence. The book ends with a critical evaluation of neuroscientific arguments for reforming punishment theories. As they have done throughout the book, the authors make an excellent case that there is more to human behavior and legal theory than brain states determined by external factors. In response to arguments that retribution is unjustified given claims of hard determinism, the authors ask us to imagine an open-minded group of policymakers tasked with designing a just system of criminal punishment. Those policymakers could evaluate options, conduct a cost-benefit analysis, and then choose a course of action, or they could simply wait for their neurons to make the determination for them.

¶67 The book features a comprehensive neurolaw bibliography nearly twenty pages in length, a table of cases and cited legal authorities, and an index. There is far more to Minds, Brains, and Law than can be summarized in this short review. It is a valuable resource for policymakers and scholars in criminal law, constitutional law, and penal theory. I highly recommend this book for all academic law libraries for its in-depth philosophical discussion of neuroscience and legal theory.


Reviewed by Charles D. Wilson*

¶68 In The Law of Ancient Athens, David D. Phillips collects in one place the fragmentary evidence of the substantive and procedural law of ancient Athens. The book covers archaic and classical Athens from the first known trial in about 636 BCE to the dissolution of the democracy in 322 BCE. The book is intended for “the widest possible readership, from specialists to those who come to the book with no knowledge of the subject” (p.v).
The author provides a useful introduction that gives some historical context, outlines the surviving sources on Athenian law, and explains the organization of the text. Little is known about how the ancient Athenians organized their law, so the author has chosen to group the material into substantive categories. The Athenians did not make a distinction between substantive and procedural law, so procedure is embedded throughout the book. Sections cover homicide; wounding, battery, and hubris; sexual offenses; defamation; marriage and dowry; children and citizenship; estates and epiklêroi (female heirs); damage; theft; contracts and commerce; impiety (a category of religious offenses); and treason, subversion, bribery, and apatê tou dêmou (deceiving the people).

Some of the sections shed light on the legal tribulations of famous Athenians. Both the philosopher Socrates and the dramatist Aeschylus were tried for impiety. Aeschylus was acquitted while Socrates, more famously, was convicted. The section on impiety provides details on the charges, context, procedures, and outcomes of these trials. Speeches given, or ghostwritten, by famous Athenians have disproportionately survived. In many cases cited in the book, the litigants’ speeches have survived but the text of the law at issue and outcome of the trial have been lost.

Each chapter includes its own introduction and selected bibliography and sets out in chronological order the sources that shed light upon the subject. For example, the chapter on homicide includes sources such as surviving archeological inscriptions and quotations from Plutarch, Demosthenes, and Aristotle. For each source, the author gives a citation, provides some context, notes any limitations on the reliability or authenticity of the source, and explains any problematic or disputed translations.

The complexity of Athenian law and procedure means that more context is necessary than with other reference works. Unless they are already well versed in the subject matter, researchers using this book will need to read the introduction before going on to research the subject that interests them. One challenge presented by the book is the use of Greek terms, especially the similar terms for the many different legal procedures and actions that were available to ancient Athenian litigants. These terms are defined in the text, but their complexity makes it hard for a generalist to distinguish one procedure from another.

This book is designed to fill a specific gap in the available literature by making Athenian law available, in English, in one resource. The author has added a great deal of value to the original sources by collecting them, editing them, and carefully citing and annotating each text. This book was clearly drafted with other academics in mind. It would be a valuable resource in an academic law library or general academic library.

Reviewed by Francis X. Norton, Jr.*

¶74 The central theme of this book is that deregulation, which began with the election of Ronald Reagan as U.S. President, led to the recent financial meltdown. The loosening of strictures upon corporate governance and the financial sector has allowed a small group of elites, namely top CEOs, to gain excessive power and influence, which enabled them to push legislation and policies that loosen government control even further, in an endless circle that benefits only the elites and hurts shareholders, the American people, and the world economy. The elites, freed from personal liability and any oversight, recklessly gambled with their companies' futures and lost, but were bailed out by the government, without any personal consequences. Indeed, the elites made giant fortunes at the expense of their own companies.

¶75 Unlike some articles on the crises, Ramirez takes great pains to show that racism pervades our economy and political system, and that this fundamentally helped to create the financial meltdown. He begins with an examination of the untapped human potential, explains how the system is stacked against people of color, and reveals that people of color were the victims of the very subprime mortgages that elites bundled into securities and sold to unwitting investors around the world.

¶76 Ramirez argues for some sort of economic rule of law that would spur human capital maximization. This is necessary to counter the power of the elites. However, Ramirez is short on the specifics of his plan. Also, his argument is undercut by his constant refrain that the New Deal policies worked perfectly to keep the economy running smoothly for sixty years, until they were dismantled. If those policies did work so well, then all that is necessary for effective fiscal reform is to reinstate them. Also, Ramirez never states how his plan could actually be enacted, given that the elites control Congress, the Federal Reserve, and the judiciary.

¶77 Ramirez teaches business organizations and securities litigation at the Loyola University Chicago School of Law. He has published numerous articles and has extensive professional experience working for the government and for a private law firm. He clearly has expertise in these areas. When I received the book, I had high hopes for what it held.

¶78 Although it is full of facts, it desperately needed a strong editor. The book reads as if several law review articles were randomly cut up and then pasted together. Some paragraphs seem to be just a jumble of unrelated sentences. The book contains hundreds of endnotes. It should instead have footnotes, with all of the tangential material removed from the text and shifted to footnotes. To my reading, the prose was choppy and rambling, with constant repetition of its central themes. These issues prevent me from recommending this book.


*Reviewed by James G. Durham*

¶79 A biographical sketch of Deborah Rhode on the Stanford University website describes the author as the Ernest W. McFarland Professor of Law and as director of the Center on the Legal Profession at Stanford Law School. The sketch also reveals that Rhode is the most frequently cited legal ethics scholar. She is the author, coauthor, or editor of more than 20 books and more than 250 articles on topics such as leadership, gender, legal ethics, and access to justice. Rhode writes on leadership topics and serves as a leader of lawyers in her professional life.

¶80 *Lawyers as Leaders*, Rhode’s latest monograph, can be divided into five broad sections: an introduction to leadership studies and theories, a discussion of ethical conduct and leadership scandals, an argument for the importance of diversity in the workplace and in leadership positions, a discussion of special leadership issues in law firms, and an inspired vision of lawyers as leaders for social change. The first section, on leadership studies, is most useful for law students, new associates, and attorneys who are new to management. For example, Rhode discusses how competencies can be honed through education and deliberative processes.

¶81 The subsequent chapters may be particularly meaningful for experienced attorneys. Rhode’s guidance and anecdotes light the way for effective and ethical leadership in law firms, legal organizations, government, and the community. For example, chapters 5 and 6 discuss influences on ethical conduct and alternative approaches to crisis management, with case studies of political scandals and Watergate.

¶82 Chapter 7 provides historical context for diversity in leadership. Rhode suggests ways to foster diversity through mentoring and networks. She makes a strong case for diversity as key to recruitment of top talent and as a source of fresh perspectives in decision making. The careers of Marian Wright Adelman, Hillary Rodham Clinton, Ruth Bader Ginsburg, Barack Obama, and Sandra Day O’Connor illustrate the challenges and successes of lawyers from historically underrepresented groups.

¶83 Chapter 8 describes law firm leadership styles to emulate as well as leadership failures to avoid. Rhode shows how a lack of financial controls and strategic planning can spell disaster for even the largest and most highly respected firms. These stories of excess are countered by an alternative vision in chapters 9 and 10, which emphasizes the lawyer as an agent of social change. Rhode carefully balances her idealism with a recognition of social realities, monetary practicalities, and political savvy. She focuses on collaborative leadership and the “soft power” of negotiation.

¶84 Rhode’s voice is eloquent, authoritative, balanced, and infused with a dedication to community service. Throughout *Lawyers as Leaders*, Rhode’s extensive
experience is evident in the wisdom of her comments. For example, she describes the “leadership paradox” as “the frequent disconnect between the qualities that enable individuals to attain positions of power and the qualities that are necessary to perform effectively once they get there. Successful leadership requires subordinating interests in personal achievement in order to create the conditions for achievement by others” (p.203). Similar philosophical gems are scattered throughout the book.

¶85 Lawyers as Leaders also displays an academic’s attention to detail and accuracy. The text is supplemented by seventy-eight pages of endnotes that can also serve as a reading list for further research. An eleven-page index provides precise access to keywords and names. A one-page table of contents at the front of the volume provides sufficient access; a delineation of subsections would make the table even more useful. Law librarians will appreciate named acknowledgments of the Stanford Law Library staff, who provided research assistance during the project.

¶86 This book is recommended for academic and major law libraries, law firms with rigorous associate development programs, and lawyers who wish to step into positions of leadership within the profession.


Reviewed by Susan Azyndar*

¶87 As a prominent lesbian legal theorist for many years, Ruthann Robson has consistently confronted questions of hierarchy, sexuality, and democracy. In Dressing Constitutionally: Hierarchy, Sexuality, and Democracy from Our Hairstyles to Our Shoes, Robson explores these concepts through a variety of intersections between law and clothing. Her central thesis is twofold: “the Constitution cabins, channels, and constrains” our sartorial choices, even as our “attire reflects the Constitution” (p.7). Hierarchy, sexuality, and democracy underlie this relationship and our thinking about it. The book aims to elucidate the “doctrinal incoherence” and “interpretive slovenliness” underlying judicial reasoning (p.3).

¶88 Each chapter examines a constellation of legal concerns, including professional dress, undress, and the labor and economics of clothing production. The first chapter, “Dressing Historically,” traces the relationship between clothing and the law through history, beginning with Tudor sumptuary laws. The remaining chapters present a wide range of legal topics. For example, in the chapter entitled “Dressing Barely,” Robson addresses strip searches, indecent exposure, obscenity, and nudism. Legal concepts addressed include separation of powers, federalism, First Amendment rights, the Slavery Clauses, due process, equal protection, the Commerce Clause, and the Confrontation Clause. As you can see, this book covers a lot of ground.

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Robson’s nuanced readings often draw attention to inconsistencies in reasoning, demonstrating the merit in examining these diverse cases and topics together. For instance, in the chapter “Dressing Religiously,” Robson fruitfully draws together school discipline, Title VII, and criminal cases to illustrate judicial inconsistencies. While courts seem reluctant to make judgments about religious sincerity because of the Establishment Clause, in many of these cases courts willingly investigate and draw conclusions about religious beliefs. A Florida court looked to expert testimony on Islam regarding whether Muslim women could be veiled in driver’s license photos—rather than relying on the religious beliefs of the license applicant herself. Alongside cases involving body modification and beards, Robson crafts a compelling argument that constitutional doctrine vis-à-vis clothing lacks consistency and rigor.

Robson less effectively explores the three main themes identified in the subtitle. The introduction devotes one paragraph to each topic. The case readings shift among these themes, sometimes addressing only one, sometimes two, sometimes all three. The lack of clarity is perhaps most apparent with regard to hierarchy, which at various moments implicates race, sex, class, and employment status. The book never explains this term with specificity or depth, and as a result, these different forms of hierarchy seem interchangeable. The words hierarchy, sexuality, and democracy do not appear in the index, further suggesting a missed opportunity to elaborate these concepts.

In a similar vein, the chapters’ conclusions do not often successfully tie the diverse concepts together. The book as a whole also lacks such a culmination: a discussion of no-sweat procurement policies ends with a link back to the Tudor sumptuary laws of the first chapter and a mere recitation of the claim that “our sartorial choices are inextricably linked with the Constitution” (p.180). In the end, Robson marshals substantial and convincing evidence that the intersection of the Constitution and clothing presents interesting and challenging moments. The reader is less sure what to make of those moments. Robson offers no assessment of how courts should determine the value of this wide range of matters, nor does she elucidate what new light this analysis sheds on her three primary themes of hierarchy, sexuality, and democracy.

Despite these shortcomings, this book represents a valuable addition to academic libraries, law and general alike. Robson effectively exposes the “interpretive slovenliness” in cases dealing with apparel, and she does so with clear, engaging prose, supported by extensive research.


Reviewed by Wilhelmina Randtke

* Without Copyrights: Piracy, Publishing, and the Public Domain* is as much about literary history as it is about legal history. Law, or lack of copyright law, drives
literary commerce and literary content. Social norms in publishing that predate copyright stretch into the modern world.

¶94 The history begins in a publishing landscape that is without copyright: the historical United States publishing market for foreign books. Until 1891, U.S. copyright could be held only by a U.S. citizen or resident. In a world without copyright, “trade courtesy” or an informal agreement between publishers not to cut into one another’s business governed (p.18). Spoo lays out numerous examples of U.S. publishers making large payments to foreign authors, publishing notices in trade journals indicating that a book was now claimed, and printing authorized editions. Publishers enforced trade courtesy through social and business interactions. Violators were punished by posting a shaming announcement in a trade journal, selling reprints of the violator’s claimed books, or price gouging to keep the offending publisher from making profits on the reprint.

¶95 Even after the 1891 Chance Act removed the citizenship or residency requirement, realities of business prevented foreign authors from obtaining U.S. copyright protection. Under U.S. law, books had to be published first in the United States to have copyright protection. In a less connected world, foreign authors could not easily arrange printing and sale of a U.S. edition. Improved global communications slowly eased the situation. The manufacturing clause persisted until the 1980s.

¶96 Art changed to fit the law. Agents advised a new introduction and numerous edits throughout a book to give a color of copyright to the “new” American edition. Spoo extensively cites correspondence between agents, authors, and publishers discussing what changes to make, all motivated by a desire for U.S. copyright protection. Through it all, traces of trade courtesy lingered. Publishers who respected the authorized edition held off for reasons having as much to do with social norms as with fear of a lawsuit.

¶97 Colorful literary history tends to find James Joyce. Because of formalities of copyright law at the time, Joyce’s *Ulysses* almost immediately went into the public domain in the United States after publication in Europe in 1922. The lost copyright was soon noticed by pirate publisher Samuel Roth, who found material to reprint by looking through published works and Copyright Office filings to check for errors or omissions in the required formalities. Interestingly, and a sign that trade courtesy was not dead, Roth at first offered to pay Joyce for permission to reprint *Ulysses*. Roth did not get permission, reprinted anyway, and then mailed a check to Joyce’s European publisher. Joyce and publisher retaliated by mailing out letters to magazines and newspapers, urging them not to carry ads for Roth’s books, and to booksellers, urging them not to sell Roth’s books. In 1927, a protest against Roth, signed by 160 writers, was published. Joyce sued Roth for unauthorized use of his name. In a settlement, Roth agreed not to use Joyce’s name. Shamming, as under trade courtesy, was the chosen method of punishment.

¶98 And the shaming worked. In 1934, Random House issued an authorized American edition of *Ulysses*. The key to that victory was Random House’s success in navigating U.S. obscenity law and legally achieving Joyce’s desire for an unaltered, legal U.S. edition. Roth’s shaming had been so effective that no unauthorized editions were released. Random House remained the sole U.S. publisher of this public domain work.
Copyright in *Ulysses* was restored in 1996, when the United States retroactively granted copyright to foreign works that had not met the manufacturing requirement.

¶99 *Without Copyrights* will interest readers of literary history and those concerned with how social norms interact with copyright law. Extensive citation to primary sources shows how legal concerns affected literature in the past. Tracing trade courtesy from the 1800s to 1996 shows the strength of norms and exposes the nonlegal forces that shape the publishing industry in the United States today. That aspect, showing how history affects modern behavior, takes *Without Copyright* from academic to practical. For someone thinking about the good and bad of present law, or wondering what effect a change might have, the in-depth research into how publishers and authors acted in the past under different laws is valuable. Law is the backdrop, while reaction to the law and behavior are the subjects.

¶100 The chronological organization of *Without Copyrights*, and the focus on strong personalities in publishing, make this a fast read that unfolds like a story. It is meant to be read straight through. At the same time, this is an extensively cited work that would make a solid addition to an academic library or academic law library collection.


Reviewed by Genevieve Nicholson*

¶101 In his preface to *Hollow Justice: A History of Indigenous Claims in the United States*, David E. Wilkins points to one criticism of federal Indian law—its failure to recognize “the roles that history, morality, justice, and humanity should be contributing [to the way law was understood and practiced in relation to Native peoples] but were not”—and proposes a solution:

One way to possibly instill some of the missing dimensions in the organized chaos that is federal Indian law would be to take one specific sub-area and critically examine the vocabulary, doctrines, and institutions that might contribute to deepening our understanding of what actually transpired between Native peoples and the U.S.” (p.xiv).

With *Hollow Justice*, Wilkins takes the sub-area of claims, removes it from a strict legal context, and performs a thorough examination. This comprehensive treatment of indigenous claims is the first of its kind.

¶102 The first two chapters of *Hollow Justice* describe the federal government’s early struggles with claims against it. Chapter 1 provides background information on the relationship between American Indian nations and the United States government, the events from which indigenous claims against the federal government arose, and attempts by indigenous peoples to seek redress in the federal Court of Claims. Chapter 2, on the other hand, deals with Indian depredations: claims by whites against the United States for harm caused by American Indians. Wilkins’s discussion of specific tribes’ experiences with the claims process conveys, quite convincingly, the exasperation felt by the indigenous population, but he also acknowledges the frustration felt by white claimants and individuals within the government.

¶103 The next three chapters focus on the Indian Claims Commission. Chapter 3 details the events that led to the eventual passage of the Indian Claims Commission Act. Chapter 4 highlights issues with the act’s implementation. Chapter 5 reviews the successes, failures, and overarching problems the Commission saw in its thirty-two years of operations. In this set of chapters, Wilkins synthesizes a great deal of material and presents it in a manner that is both insightful and highly readable.

¶104 The final three chapters cover the post-Commission period and consider the present and future of indigenous claims. In chapters 6 and 7, Wilkins examines two major claims settlements: the Maine Indian Claims Settlement Act of 1980 and the recent Cobell trust fund litigation and settlement. These chapters integrate historical information, appropriate legal context, and valuable commentary for an accessible treatment of these complex matters. Chapter 8 contemplates a comprehensive research program for the study of indigenous claims and suggests research topics, problems that should be addressed, and questions that should be answered. By reiterating issues addressed throughout the book and proposing new ways to approach them, Wilkins reveals not only the richness of this field of study, but also the lack of scholarship to date.

¶105 Hollow Justice is not a treatise on the law of indigenous claims, nor is it a legal practice guide to the claims process. Instead, it is just what its title proclaims: a history of indigenous claims in the United States. Its broad scope provides a perspective that I believe would benefit attorneys and law students, and therefore I recommend this title for private firm, government, and academic law libraries whose patrons practice or study Indian or administrative law. I also recommend Hollow Justice for academic library collections in American history, American Indian studies, and political science. Although the text could use another round of copyediting, the distraction caused by minor errors only slightly detracts from what is an otherwise masterful work on an important and interesting subject.


Reviewed by Catherine A. Deane*

¶106 What initially drew me to this book was Lyonette Louis-Jacques’s name on the cover. When I hit a brick wall with my research, I often send an e-mail to Louis-Jacques at the University of Chicago. Her responses are always timely and thoughtful, reflecting deep knowledge of foreign, comparative, and international law (FCIL) research sources and the literature on FCIL librarianship. Louis-Jacques has also prepared numerous online research guides on FCIL topics. In this book, readers benefit from her expertise because she provides the bibliography (p.xxix) that supports each chapter.

¶107 Anthony S. Winer is the author of all other aspects of this book, but names retired librarian Mary Ann E. Archer as an additional author for her “general inspiration, guidance and friendship” during the process of writing the book (p.xxix).

In addition to this title, Winer has written two other books on legal research, including the detailed, albeit slightly dated *A Basic Course in Public International Law Research*, which he coauthored with Archer.

¶108 This concise and easy-to-read text assumes no knowledge on the part of the reader, making it accessible to neophytes. However, he quickly moves from basic concepts such as the difference between foreign law and international law in Chapter 1 to detailed, but still brief, explanations of the fundamental aspects of public international law in chapters 4, 5, 6, and 8. Following each explanation of substantive law, he guides the reader through effective processes for conducting research in that area.

¶109 This book is essentially a self-guided course integrating public international law and international legal information literacy. Roughly one-third the length of his first book on public international law research, the new book provides more context, and the chapter review questions test the reader’s recollection of factual details regarding the substantive law and the relevant research tools and reference texts. For law students with international law research tasks and practitioners seeking to acquire basic competency in public international law research, this makes an excellent reference.

¶110 Given the increasing importance of public international law to U.S. legal practice, I also believe this book to be of great value to all law librarians (and at $35 I recommend every law librarian purchase a desk copy), especially the new breed of entry-level FCIL librarians who yearn for a training manual. No doubt I will read and reread this text until its dog-eared pages fall apart in my hands. While I maintain my loyalty to Marci Hoffman and Mary Rumsey’s *International and Foreign Legal Research: A Coursebook* for making it easy for me to learn how to find the law, I am now also indebted to Winer, Archer, and Louis-Jacques for helping me contextualize my growing knowledge of research sources and methods by connecting them to the historical evolution of international law.

¶111 *International Law Legal Research* is particularly good at explaining treaties and customary international law and the related research processes in a useful and memorable way. For those teaching a course on international legal research who wish to use it as a textbook, Winer provides detailed sample answers in the teacher’s manual with citations to the relevant pages in the text. If the instructor would prefer not to require students to buy the book, the format and review questions could still be used to structure the course.

¶112 Although it is beyond the scope of this book, the one thing I would wish for is a current website or blog with practical legal research exercises that map onto international legal information literacy concepts, which would challenge students to work with the listed research tools and references to accomplish a short research task. It would be great to see something similar to a Center for Computer-Assisted Legal Instruction (CALI) quiz that maps onto a widely used substantive law casebook, or a

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password-protected teacher’s website that provides practical exercises similar to those in Winer’s Basic Course.

¶113 Notwithstanding my desire for a source of short international law research exercises that are always current, no doubt Winer is ahead of me in his thinking about legal research instruction. If many students learn by doing research rather than by reading about it, then many students learn best when they are doing something beyond the busy work of completing short, disconnected research exercises. The purpose of this book is to support those who need to complete public international law research for moot court, for scholarly research, or to handle a client’s legal problem, and it is an excellent resource for those situations. As the first volume in the Carolina Academic Press International Legal Research Series, it sets a high bar for clarity, brevity, and utility. I am excited to see what other offerings may follow.


Reviewed by Erin Schlicht*

¶114 Family lawyers often encounter expert witnesses on mental health topics. As an experienced family lawyer noted, “We have seen a noticeable increase in the use of mental health experts in family law court proceedings over the past 50 years.”¹¹ Consequently, these lawyers need resources and guides to help them navigate through these areas of their practice.

¶115 In How to Examine Mental Health Experts: A Family Lawyer’s Handbook of Issues and Strategies, John A. Zervopoulos advances the theme from his 2009 book, Confronting Mental Health Evidence: A Practical Guide to Reliability and Experts in Family Law,¹² by giving lawyers the tools for addressing and analyzing mental health experts’ work and testimony. The book is designed as a quick reference source that will help the reader learn to conduct effective direct and cross-examination of experts and to sharpen legal arguments to the court. The guide encourages lawyers to analyze issues surrounding mental health evidence through both a legal and psychological perspective. Zervopoulos recommends viewing these perspectives separately and jointly to first gauge the admissibility and quality of the expert testimony from the legal perspective, and then to test the subject matter of expert testimony in light of professional ethics, psychology literature, and practice guidelines from the psychology perspective.

¶116 Another approach used in this book to address working with mental health testimony is the PLAN (Psychology Law Analysis) Model. The PLAN Model is a four-step, case-based model that allows the user to organize, critique, and use


mental health evidence and materials in their cases. The four steps are as follows: determine the expert’s qualifications to testify; determine whether the expert’s methods conform to relevant professional standards; evaluate the empirical and logical connections between the data arising from the expert’s methods and the expert’s conclusions; and evaluate the connection between the expert’s conclusions and the proffered expert opinion. Used together, these approaches help lawyers understand how to apply evidence standards like Daubert and Frye to mental health testimony.

¶ 117 This guide uses a straightforward approach to present the material, which spans a wide range of topics, including experts relying on experts, psychological tests, relevance of research, testability and error rates, and evaluation reports. The topics are categorized according to how each relates to the four steps in the PLAN Model.

¶ 118 Within each chapter, the approach to the issue is broken down into three steps: spot, analyze, and address. Each chapter begins with a hypothetical example that is used to walk the reader through the analysis and application. This structure makes each chapter accessible and user-friendly. The book includes an appendix that lists relevant Internet sources for mental health ethical codes and guidelines. There is also a fairly detailed index that includes useful cross-references. This book would be a good addition to any law library, especially court or law firm libraries that support family law litigators.
Librarians must learn how to use databases on a regular basis. The databases may be new, or they may be well-established ones that librarians haven’t used before. Ms. Whisner examines Fastcase, an online system that recently entered into a cooperative agreement with HeinOnline, and discovers some lessons about how she learns new databases.

1 This column is about two things: the process of learning a new online system and Fastcase, the system I tried out. I want to talk about both topics because they are so intertwined: throughout my learning about Fastcase I was thinking about how I was learning, and how I approached learning affected what I learned. I’m not writing about my process just because I’m self-absorbed. Metacognition—knowledge about one’s own learning strengths and weaknesses, orchestrating one’s own learning, and reflecting on one’s performance—is important to learning.¹ My reflections might be useful to others.

² Fastcase was founded in 1999, more than twenty years after the giants of Westlaw and LexisNexis.² I didn’t know much about it during its early years, but by last year, I had certainly heard of it. I’d stopped by its booth in the AALL annual meeting exhibit hall a couple of times. I’d heard Ed Walters, Fastcase’s CEO, on at

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¹ See, e.g., JOHN D. BRANSTORF ET AL., COMM. ON DEVELOPMENTS IN THE SCIENCE OF LEARNING, NAT’L RESEARCH COUNCIL, HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL 97 (expanded ed. 2000), available at http://www.nap.edu/catalog.php?record_id=9853. Prof. Jane Winn alerted me to this book when we were meeting with her RA to improve exercises she’d given her Contracts students. I downloaded it to my iPad right away (but I haven’t read it all yet). I love it that the National Academies Press offers free PDFs of thousands of books and reports. Take a look: there are reports on incarceration, climate change, urban planning, and many other topics of interest to legal scholars.

least two panels. But there’s a big difference between being aware of a service and actually knowing how to use it. To understand it better, I would need to use it.

But my library doesn’t subscribe, and my state bar association is not among the twenty-five that provide Fastcase access to their members. So I asked for a trial and, on May 1, 2013, a Fastcase representative generously set me up with thirty days of access. It took me thirteen days to get around to logging in for the first time. And then I was busy with other projects and my trial period ran out. That summer I was excited by the announcement of a partnership between Fastcase and HeinOnline.

Time passed. In March 2014, I asked for another trial. I thought that committing myself to write about Fastcase here would motivate me to explore. But time passed and I didn’t do enough with it, so I had to ask for yet another trial.

Learning New Research Systems

This is more than a tale of procrastination. To explain, let me step back a moment to talk about my experience learning new legal research systems or interfaces. Over many years, I have observed myself (and others) learning new interfaces. On one end of a spectrum is the barest exposure: yes, I’ve heard of that system and seen someone use it; if pressed, I could dig up my password and give it a try. On the other end: I feel comfortable going into that system; I know what’s there and how to find it; I can get what I need and I can explain to others how they can use it.

First, watching is just a start. I do learn when I watch a demonstration or see screenshots flash by in a PowerPoint presentation, but that alone doesn’t make me familiar with a service, any more than being a passenger in cars for sixteen years made me a competent driver. At some point, you have to take the wheel yourself. That’s why a hands-on class is usually more effective than a demo or lecture. I especially like being in a room with several colleagues and a knowledgeable trainer.


who not only walks us through some searches but allows us to try out our own searches and ask questions about why the system acts the way it does.

§6 Second, it takes multiple exposures. Feeling confident with a new system comes after the initial training and a good bit of practice. It’s possible to practice by making up searches, even goofy ones, but it’s better to have some research needs. For example, I became comfortable using WestlawNext by using it to gather information for real questions I had to answer. It took a little effort to set aside Westlaw Classic, which I knew I could use quickly and effectively, in order to search using the new interface, but that was the way to become skillful. I became familiar with folders and other features of WestlawNext and Lexis Advance by using each one for my columns.6

§7 Third, preparing to teach a system—or even explaining it on the fly at the reference desk—really helps me learn it myself. I have gotten better at BNA TaxCore and CheckPoint each time I’ve spoken about them. Preparing for guest presentations in Penny Hazelton’s Advanced Legal Research class made me explore features of Lexis Advance, WestlawNext, and Bloomberg Law more deeply than I would have on my own. And since law students come in with WestlawNext or Lexis Advance already open on their laptops, I have been able to practice showing them how to get what they need.

§8 My slowness to dig in to Fastcase illustrates the flip side of this experience. The conditions that have helped me learn new systems in the past simply weren’t present. My library doesn’t subscribe to Fastcase, so my colleagues and I didn’t have a rep coming in to teach us. (Even if we did subscribe, Fastcase probably doesn’t have the national network of trainers we see from Bloomberg Law, LexisNexis, Westlaw, and some other systems.) While I was open to using Fastcase for research projects that came up, the projects that came my way weren’t appropriate for Fastcase. In the past couple of months, professors asked me to help them find a Mexican case about genetically modified corn, material contracts attached to EDGAR filings, an FDA policy that’s not in the Code of Federal Regulations, the legislative history of a Washington State statute, statistics on murder prosecutions, and the French position on audiovisual materials in foreign trade. During this same period, I showed law students how to use Bloomberg Law to find dockets, how to use HeinOnline to find compiled federal legislative histories, and how to print cases from Lexis Advance. Interesting questions, but not ones where Fastcase would be much help, since it focuses on U.S. cases and statutes. I showed some people how to search for cases and statutes, but I couldn’t use Fastcase searches since they didn’t have access.

§9 Other things can get in the way of learning a new system. We are busy with other work of all sorts. We get distracted.7 And life happens: a friend was in the hospital so I left work one afternoon to go see her; our car had a flat, so I had to...
take the morning off to get a new tire; someone suggested we have lunch and I said “Sure!” And so a generous thirty-day trial can slip by.  

**Trial Searches, Documentation, More Searches**

¶10 And yet I did get a chance to try it out, so I now know it better than I did before. I did my first searches when I was hanging out in my living room, watching streaming videos. Since *The West Wing* was on, I tried searching for *donna moss*. Just typing in those two words yielded 642 cases, and I learned that searching for two adjacent words doesn’t necessarily get the phrase. (The first case had a Donna Talbot and a Kevin Moss.) Searching for *donna w/2 moss* yielded a much more manageable twelve cases. Thinking about Lady Edith’s editor and lover in *Downton Abbey*, I wondered whether there were cases about lunacy as a ground for (or defense against) divorce. My search, (*lunacy or insanity*) w/3 *divorce*, pulled up some cases. A sidebar under “Suggested Results” listed some articles from HeinOnline. The first was more than forty years old but highly relevant. Since my curiosity stemmed from a drama set in the 1920s, the age of the article was no drawback.

¶11 Some other trial questions came up because of other things I was working on. When we were interviewing some job applicants, I searched for “interview questions” and then used the feature that allows searching within results to look for employment or hiring or employer. I used this search to practice navigation, choosing to highlight all terms (rather than just one) and clicking “previous term,” “next term,” “previous case,” “next case.” I liked “Jump to the most relevant paragraph,” but I was puzzled that the system’s algorithm picked out some paragraphs that didn’t have the phrase “interview questions.” I noticed that Bad Law Bot—a feature that picks out adverse history—flagged some cases whose only negative history is a denial of cert. I suppose that a denial of cert. can be bad, but by itself it’s not very bad.

¶12 In addition to experimenting with whatever questions came to me, I also looked at Fastcase’s documentation. I’m probably not alone in finding that trying out the system is more effective than simply reading a guide. For example, before I searched for *donna moss*, I might have read the following passage in the *Complete User Guide*: “Fastcase uses an ‘implied AND’ operator. This means that if there are multiple words in your search query and you do not specify a Boolean operator to connect them, Fastcase will treat your search as if you had placed an ‘AND’ between each term.” But trying out the search and finding hundreds of cases was what really taught me that to search for a phrase I’d need quotations or a proximity connector. I enjoyed the video tutorials on the support page. A couple have narrations;

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8. Not to mention an editor’s submission deadline.
10. James H. Hardisty, *Insanity as a Divorce Defense*, 12 J. Fam. L. 1 (1972–73). I was startled, because the author is a long-time faculty member—retiring this spring—from where I work.
11. FASTCASE QUICK REFERENCE GUIDE (2014 ed.) (a one-page PDF) and COMPLETE FASTCASE USER GUIDE (2013 ed.) (a thirty-page PDF) are available at http://www.fastcase.com/support/.
the others have screen captures with text labels (and pleasant classical music in the background). They are all clear, and they do the trick.

¶13 Let’s return to playing around with searches. One of our professors had a new article about the ethical rules for tax lawyers, so I tried that as a search: ethics tax lawyers. (This was using the default search: Boolean, with an implied AND.) The first case took a very long time to load. I wondered whether it was the system or my connection. And then the case finally came up and it was huge: 987 pages! And it turned out that the case wasn’t predominantly about the ethics of tax lawyers (a 987-page case can have those three words in many places without having them very close to each other). Broad as this search was, the Suggested Results sidebar listed journal articles from HeinOnline that were clearly about tax lawyer ethics. I tried the same search as a natural language search and found almost a million results (938,981, to be precise). This presents an interesting contrast with natural language searching on LexisNexis and Westlaw, which limit the natural language results to, say, the 100 most relevant cases. It’s more like the searching in Lexis Advance and WestlawNext.

¶14 A more precise Boolean search, ethic* w/5 tax w/2 (lawyer OR attorney), retrieved a much more manageable set: ten cases, plus three more identified through Forecite. Forecite is a feature that identifies potentially relevant cases that don’t satisfy the original search query but are frequently cited by the cases that do satisfy it. The example Fastcase gives for this is that when you search for “Miranda doctrine” you won’t find Miranda v. Arizona because it doesn’t use that phrase—but of course you’d want to know about that case. It will show up in Forecite because cases that do use the phrase “Miranda doctrine” cite Miranda. With my practice search, the three cases found by Forecite were indeed about tax lawyer ethics. The next day, I tried adding an asterisk to “lawyer” and “attorney” and found twenty-two cases, not ten. I had assumed that the system automatically searched for plurals, but I was wrong. This might be something to highlight in the documentation—or to reprogram.

¶15 During my searches, I played with the different ways to sort results. The default is relevance, with a percentage score displayed in the margin. For example, searching for “confrontation clause” w/15 hearsay produces more than 7,400 results. The top case, with a relevance score of one hundred percent, is Crawford v. Washington, 541 U.S. 36 (2004). The second case is Crawford v. Washington, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), with a score of seventy-seven percent. Two quick comments: (1) Fastcase’s programmers ought to figure out a way to tell that those two cases are the same case. (2) It’s odd that two copies of the same case get such different relevance scores. Okay, back to sorting. You can also sort by case name, an option I haven’t seen in other systems. It might be handy to look at a list like Aaron v. State, Abdullah v. Groose, Abedi v. Smith, and so on. For one thing, the tables of

13. Michael Hatfield, Committee Opinions and Treasury Regulation: Tax Lawyer Ethics, 1965–1985, 14 FLA. TAX REV. 675–735 (2014), available at http://ssrn.com/abstract=2432217. (I know it’s available on SSRN because I posted it—which is why it was on my mind when I was trying to think up a topic to research on Fastcase.)
15. Walters, supra note 3.
cases in briefs are generally arranged in alphabetical order by case name, so this sort could make it easier to see whether a search yields all the cases cited in a brief and vice versa. There are still some bugs in the system. When I sorted the results from the “confrontation clause” search by case name, the first one was United States v. Dinkins, 691 F.3d 358 (4th Cir. 2012); presumably there’s some hidden code that is making it alphabetize early. That case is followed by a case name that begins with numerals. But then there are twelve cases where the citation was coded as part of the case name, so it appears that the case name begins with a numeral. So there’s a little cleanup to do. (This isn’t an indictment. I’ve never used a database that didn’t need cleanup.) You can also search by decision date. In the “Authority Check” column, you can sort by the number of times a case has been cited, either within the results or in the entire database.

¶16 Fastcase’s most distinctive feature is its “interactive timeline.” In a very clever use of two-dimensional space, the timeline displays cases showing relevance, date, and influence (citations by other cases in the search and citations in the database overall). Each case is represented by an olive-green circle. A gold or light green circle within that circle indicates how frequently the case has been cited, either in the database (light green) or in these results (Forecite). The horizontal axis shows years, so that cases decided later are to the right of earlier cases. The vertical axis shows relevance, so cases that Fastcase scores as more relevant are closer to the top of the screen. If you hover your mouse over one of the circles, a box displays the case name, a passage with the search terms, and a citation count. (Crawford v. Washington has been cited 9098 times in the database and 3481 times in the search results.) See figure 1.

¶17 If—as in this search—there are so many results that the display looks a little like a crazy bubble bath, you can choose to show a different number of results—say, 10, 100, 250, 500, 1000, and so on. You can also sort results in different ways. For example, figure 2 shows just 10 cases from the “confrontation clause” search, sorted by cites in these results. I’m not sure why Crawford v. Washington isn’t at the top of the chart, with its relevance score of one hundred percent. (Even the second version of Crawford scored seventy-seven percent, much higher than the top of the timeline here.)

¶18 With a click, you can switch the vertical axis from relevance to court level (Supreme Court, courts of appeals, district courts and bankruptcy courts, state courts). See figure 3.

¶19 Fastcase got some good ink when the ABA Journal’s cover story on visualizing the law showed Fastcase’s interactive timeline as an example. When Helen Anderson, one of our legal writing professors, saw that article she asked if anyone was familiar with the tools described, and I offered to show her Fastcase. Sitting down with her at a computer was really helpful for me. It included some teaching, some collaborative learning, and—perhaps most important—research questions

**Figure 1**

Interactive timeline for “confrontation clause” w/15 hearsay, showing 1000 results. Pop-up has details about Crawford v. Washington. The 1000 results are the ones with the most citations in the results list.

**Figure 2**

Interactive timeline for “confrontation clause” w/15 hearsay, showing 10 results. Pop-up has details about Crawford v. Washington.
informed by someone familiar with the subjects. We searched for cases related to two of her students’ major assignments, a brief they’d just completed and a memo they’d written a few months ago. Helen knew the relevant cases and saw that the Fastcase searches found them. The ones Fastcase ranked as highly relevant were indeed highly relevant. We weren’t sure how useful the interactive timeline would be. Would it help a researcher find the most influential cases and focus on them? Maybe. Helen commented that she already knew to look for the Supreme Court cases and to follow threads back to the cases that seem to be cited a lot, but this visual display could get people there faster. The timeline’s display grouping all state cases together wasn’t useful. The students’ memo assignment had involved a state law question. Within Washington, for instance, it would be good to know whether a case was from the Washington Supreme Court or the Washington Court of Appeals. Maybe Fastcase could also indicate which cases are unpublished. Showing the influence of a case within the database (the size of the outer circle) and within the search results (the inner circle) is useful. You can quickly spot the cases that matter within the universe of cases with your terms.

**Figure 3**

Interactive timeline for “confrontation clause” w/15 hearsay, showing the 250 most relevant results grouped by court. Supreme Court cases are across the top; their big circles indicate that they are cited frequently. Federal appellate cases and district court cases are in the next two tiers. And state cases are lined up across the bottom.
Coverage

As you’d guess from its name, Fastcase’s strength is in case law. It has the full run of United States Supreme Court cases and federal appellate and district court cases since 1924; for about half the states coverage begins in the 1950s, and others go back to the 1800s. But it also has state and federal statutes and regulations. Some of this content is within Fastcase and can be searched just as the cases can. Other content is external: for example, in the menu of administrative codes, a number of them link to separate state sites. Fastcase has statutes for most states, but links to Mississippi’s site. State attorney general opinions and court rules are generally outside the site. So searching is limited, but still it’s useful to have the links. For newspapers, Fastcase links to NewsLibrary.com (Newsbank), which allows searching but then charges for full articles. For federal filings, there’s a link to Justia. Access to legal forms is via US Legal Forms. Since I advocate searching secondary sources for almost any project, the partnership with HeinOnline for access to law review articles is great. I’d like to see more developed content notes for each database so that you could see coverage for a given state at a glance and find out whether unpublished opinions are included (they are, at least for Washington).

Conclusion

I expected to like Fastcase, and I did. Playing around with searches enabled me to see features (and some glitches) that I wouldn’t have seen in a quick demonstration while standing in an exhibit hall. My trial of Fastcase also reinforced some lessons about how I learn to use new databases. It can be hard to fit learning into an already full work life. Adding an incentive (like the need to write a column) can improve focus, but even then I have to carve out time. Being able to discuss the system with someone helps, too.

I now have some good basic knowledge about Fastcase, but I am still far from an expert. Looking at the screen, I see there are links I haven’t even clicked on, notably “My Library.” Moving to an expert level would require hundreds more searches, trying to solve actual research puzzles.

19. These include Alabama, Arkansas, Connecticut, Idaho, Kansas, Maine, Massachusetts, Michigan, Mississippi, Nebraska, North Dakota, Ohio, Rhode Island, Vermont, and Wyoming. The Code of Federal Regulations is searchable within Fastcase, but Fastcase links to FDSys for the Federal Register.
20. It is also building an archive. For most states, at least a couple of years of superseded codes are available.
Mr. Wheeler looks at the concept of stereotype threat and discusses ways to confront and combat it in a diverse society. He proposes some simple solutions within the American Association of Law Libraries (AALL) and the law librarianship profession to help diminish the effects of this psychological barrier.

Introduction

The importance of diversity in law librarianship has been discussed in previous installments of Diversity Dialogues. Efforts being made toward achieving more diversity and efforts to measure our progress have also been considered. However, we have not yet taken a step back to examine some of the phenomena that exist in a diverse society. We have not yet pondered the ways in which living in a diverse society may require effort. The fact of diversity and the historical context that brought us to this place as a society combine to create pressures and stresses that affect many of our daily lives. One of these stresses is called stereotype threat. I would like, therefore, to scrutinize the concept of stereotype threat both to better understand its effects and to figure out how best to deal with it in our personal and professional lives.

Definition

What is this stereotype threat? Stereotype threat is the concern one feels about confirming a negative stereotype about one’s ability-stigmatized group. It is the psychological barrier that “occurs whenever one fears confirming a negative expectation about one’s group or role, and it often results in decrements in performance.” It is rooted in identity contingencies or “the things [we all] have to...
deal with in a situation because [we] have a given social identity, because [we] are old, young, gay, a white male, a woman, black, Latino, politically conservative or liberal, diagnosed with bipolar disorder, a cancer patient, and so on.” Stereotype threat can affect all of us. Its victims know no particular race, age, nationality, color, gender, or sexual orientation. It is a universal phenomenon that can at times affect each one of us. Stereotype threat cues psychological responses and “also prompts more subtle changes in how one processes information.” It can affect academic performance, job performance, social interaction, and athletic ability. Claude M. Steele’s 2010 book *Whistling Vivaldi* was one of the first mainstream examinations of stereotype threat written for the nonpsychologist. Since that time, there have been numerous writings that examine both how and why stereotype threat manifests itself in various contexts. These examinations help to illuminate and define it more clearly. Let’s consider a few of these examples.

**Examples**

¶3 An experiment first run by Steele revealed how “being surrounded by male test-takers can lead women to do worse on a math test.” The experiment involved men and women with proven math abilities who were given math tests for different purposes and in different contexts. The pressure the women felt not to confirm or reinforce the stereotype that men are innately better at math led them to underperform on these tests. The same women outperformed men on similar tests in sex-segregated or other environments.

¶4 An experiment involving race provides us with another example. Craemer and Orey conducted an experiment of black undergraduate students and presented the results in 2010. In preparation for the experiment, the students were polled to ensure that they did, indeed, have a black identification, pro-black political opinions, and some level of political participation. The students were then surveyed using civics questions and questions regarding their own recent political activities. The questions were designed to test both general knowledge and memory. At the beginning of each survey, participants were presented “with either a picture of an all-white research team, a picture of an all-black research team or with no picture.” The result was that the students answered significantly fewer questions

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5. **Claude M. Steele, Whistling Vivaldi and Other Clues to How Stereotypes Affect Us** 3 (2010).
7. See generally Steele, supra note 5.
8. Id.
9. See Inzlicht & Schmader, supra note 6, at 34; Steele, supra note 5, at 40 (for an in-depth discussion of this experiment).
11. Id. at 1.
12. Id. at 12.
13. Id.
correctly when the research team was all white compared to when it was all black or when no picture was presented at all.14

¶ 5 Similar experiments have been conducted on racially mixed groups of men and women with equivalent athletic abilities playing golf. These experiments revealed that “natural athletic ability represents a negative stereotype about white athletes, and when made salient in a sports performance context, induces the self-doubt theorized to drive” stereotype threat, self-handicapping behavior, and underperformance.15 The threatening stereotype that whites are somehow less athletically able than people of color caused underperformance by the white athletes.

¶ 6 I include these real-world examples not to prove the validity or accuracy of the tests conducted, but to illustrate the concept of stereotype threat and how the research has shown that it can affect performance in numerous contexts. Indeed, stereotype threat can explain many well-known phenomena in our society. Steele looked at grade records at the University of Michigan in the late 1980s. He studied the psychology of black students attending college in a majority-white environment where there were very few blacks and where black students felt pressure to perform, to fit in, and to prove their academic worth. He discovered black student underperformance across the curriculum, “everywhere from English to math to psychology.”16 He asserts that this phenomenon of underperformance “happens to more groups than just blacks. It happens to Latinos, Native Americans, and to women in advanced college math classes, law schools, medical schools, and business schools.”17

¶ 7 Other research has uncovered the effects of stereotype threat on workplace performance.18 This “research on stereotype threat has shown that societal stereotypes can have a negative effect” on feelings and behavior, “making it difficult for an employee to perform.”19 Moreover, “stereotype threat can raise stress, deplete mental resources, and undermine performance. It can erode people’s sense of comfort, belonging, and trust, as well as lower their career aspirations.”20

¶ 8 The most alarming facet of stereotype threat is that it has no relationship to the existence of malice, rancor, malevolence, hostility or the lack thereof. It exists without regard to intent. “It can occur regardless of the objective prejudice in an environment. The mere possibility that one could be seen negatively can prove threatening.”21 Furthermore, “it can depress cognitive functioning and emotional well-being especially when chronic and experienced in a domain, like school or work, where outcomes have material and symbolic consequences.”22

14. Id. at 1.
16. Steele, supra note 5, at 22.
17. Id.
19. Id. at 25.
20. INZLICHT & SCHMAER, supra note 6, at 281.
21. Id.
22. Id. at 281–82.
Application to Libraries

¶9 Although no studies of stereotype threat yet appear in the library literature, one can easily extrapolate this phenomenon to the library context. Whether in library schools where students may be impacted, in libraries where library employees may be impacted, or in librarians’ interactions with patrons, the issue of stereotype threat is likely to be a factor throughout the library profession.

¶10 Given the far-reaching scope of stereotype threat in all facets of higher education, we can almost certainly infer that it is also present in library and information science schools. Library school attendance rates and the graduation rates of people of color are surely affected. Unwillingness to apply to library school, underperformance on the Graduate Record Examinations, underperformance in library school classrooms, and a general lack of confidence in the ability to be a part of our profession may all be attributable in part to stereotype threat. Thus, discussions of diversity in our profession that do not factor in stereotype threat almost certainly overestimate other factors. Perhaps we have been too quick to fault our efforts to achieve diversity as being insufficient? We may need to look at ways to mitigate stereotype threat as a means to achieving greater diversity.

¶11 Although I have no memories of feeling stereotype threat in library school, I do recall those feelings being present for me in law school at the University of Michigan in the late 1980s. Not only were most of my classmates white, many came from relative economic privilege and held degrees from Ivy League or other elite institutions. I distinctly remember the paralyzing fear I felt in every class, which stemmed in part from my acute awareness that I was the only son of a Detroit autoworker at my law school. Even the few other black students I found were children of doctors and lawyers. The feeling that I could never compete, that others expected me to fail academically, and that my race and economic background made me somehow less-than was crippling. I recall the extreme effort it took to banish those thoughts of inferiority from my head enough to get down to the business of studying. I have experienced these things firsthand.

¶12 In the employment context, the effects of stereotype threat are well documented. Given the comparatively small percentage of minority law librarians

23. STEELE, supra note 5, at 22; see also JOSHUA ARONSON, IMPROVING ACADEMIC ACHIEVEMENT: IMPACT OF PSYCHOLOGICAL FACTORS ON EDUCATION (J. Aronson ed. 2002); Joshua Aronson et al., Stereotype Threat and the Academic Underperformance of Minorities and Women, in PREJUDICE: THE TARGET’S PERSPECTIVE (J.K. Swim ed. 1998).

24. For acceptance and graduation rates of people of color from library schools, see ASS’N FOR LIBRARY & INFO. SCI. EDUC., LIBRARY AND INFORMATION SCIENCE EDUCATION STATISTICAL REPORT 2012.


26. I clearly recall a conversation with two white classmates (who were children of lawyers) expressing some dismay that I had attended a “state school” for my undergraduate education. I later learned that racial minorities, especially those from state schools, were assumed to be affirmative action admits and therefore somehow less deserving of admission.

27. I recall befriending the Puerto Rican daughter of a New York City taxi driver and feeling relief and a sense of connection for the first time in law school.

28. See, e.g., Robertson & Kulik, supra note 18; Mara Cadinu et al., Stereotype Threat: The Effect of Expectancy on Performance, 33 EUR. J. SOC. PSYCHOL. 267 (2003); Beth Chung-Harrera & M.J. Lankau,
working in our profession today, stereotype threat certainly affects minority job performance in law libraries. As living proof, in the academic law library context, I personally struggle with the constant fear of confirming the stereotype that blacks are inarticulate and are therefore poor writers. This struggle persists even as I write this piece for the Law Library Journal. Working in a majority white profession, on a majority white library staff, and with majority white patrons can take its toll on law librarians of color in all the ways that the literature on stereotype threat suggests. Hence, the existence of underperformance or the fear of underperformance, no matter one’s position in a law library, is not at all surprising.

Solutions

¶13 There are concrete ways that employers, teachers, and others can reduce the effects of stereotype threat. Actively pursuing these remedies can help our employees, students, and library patrons succeed and thrive in our increasingly diverse world. One of the best ways to reduce stereotype threat is with role models. Exposure “to role models who disconfirm the stereotype through their competence” provides a tangible and undeniable diametric that contradicts the stereotypical and threatening psychological belief. In the library professional context, mentors from stereotyped groups who serve as role models for students or librarians early in their careers serve exactly this purpose. Through the AALL mentor program and similar programs at the chapter level, we can all help to combat stereotype threat and improve minority and other out-group achievement in library schools and in entry-level employment situations.

¶14 Fortunately for me, the presence of role models of color was evident throughout my career. These role models have most certainly helped me to feel competent and deserving of a place in our profession. Carol Avery Nicholson and her numerous achievements in our profession, including being the first African American president of AALL, is just one example. Also, hearing of the outstanding achievements of Alan Holoch through the Social Responsibilities Special Interest Section Standing Committee on Lesbian and Gay Issues gave me confidence that I could succeed in this profession as an openly gay man.

¶15 The existence of active and visible role models within our profession and in AALL is sometimes just not enough. Sometimes when struggling with the effects of stereotype threat one needs more. A phone call, an e-mail, or a conversation with a...
mentor can sometimes be the most effective remedy for stereotype threat. However, for people of color or others in need of mentoring, it can sometimes be difficult to connect with mentors who share a common background and a common understanding of stereotype-driven pressures. In addition to the AALL Mentoring Program and its user-driven Mentor Match resource, there are other ways for law librarians to secure meaningful mentors. Attending caucus or Special Interest Section (SIS) meetings are great ways to meet active and engaged law librarians from across the country. Caucuses focusing on the unique needs of black law librarians, Asian American law librarians, Jewish law librarians, Latino law librarians, and students all exist within AALL. Additionally, SISs that focus on possible group identifications may also be good places to meet and connect with possible mentors. SISs like Gen X/Gen Y and Social Responsibilities, the latter of which houses the Standing Committee on Lesbian and Gay Issues, are two such places that come to mind. Establishing mentoring relationships does not have to be a formal process. Meeting people, establishing a rapport, and then following up with a friendly e-mail can help cultivate mentor-like relationships.

¶ 16 Another way to combat stereotype threat is to openly discuss performance gaps wherever they may exist. Through open and frank discussion and dialogue, we can frame the issue of performance gaps in a way that acknowledges social realities and at the same time resists stereotyping. We can “encourage people to see performance gaps between groups as [a product of] social realities rather than genetic factors.” In this way we can help our students, employees, and others get past the psychological barriers imposed by stereotyping and more effectively focus on performance. In the library employment context, supervisors having frank and open conversations about underperformance that encourage employees, offer training or other ways of improving, and emphasize confidence in the employee’s ability is one simple example of how to frame such discussions.

¶ 17 “Having people call to mind an alternative, positively stereotyped identity that they hold” is yet another way to negate stereotype threat. Most of us have multiple identities and multiple ways in which see ourselves in relation to others. We exist as a part of numerous simultaneous group identities that correspond to identity groups imposed by society, by culture, and by ourselves. I’ve seen this strategy used with underperforming law students as part of the Academic Support Program at the University of San Francisco School of Law. One example is reminding students that although they may have done poorly on an exam, they are still part of an elite group of high-achieving college graduates that earned acceptance to a highly competitive professional school program. In spite of any one grade on a test, or any negative stereotype, they are still extremely bright and accomplished students capable of greatness. Suggesting that they focus on a positive identifica-


36. INZLICHT & SCHMADER, supra note 6, at 282.
tion can often erode the effects of any negative identification. This technique can be used in both library school and library employment contexts.

**Conclusion**

§18 Although stereotype threat is a pervasive component of living in a diverse society, there are ways to confront and combat it. Knowing it exists and knowing its characteristics goes a long way toward aiding both those who feel it and those who witness its effects. Simple and easily implemented solutions, many of which exist within AALL or within our profession more generally, can help diminish stereotype threat and eliminate this barrier to improved diversity in law librarianship.
Memorial: Harva Sheeler (1934–2013)

Obituary*

¶1 Harva Lee Young was born in Miami, Florida, and considered herself to be one of the few native Floridians of her generation, despite spending much of her young adult and college years in Maine. She received her B.A. degree in 1955 from the University of Maine in Orono. After college, she became an analyst at the Central Intelligence Agency, where she met her future husband, Walter Sheeler. Harva received her M.S.L.S. degree from Catholic University of America in 1972 and was elected to Beta Phi Mu. Harva became the reference librarian and manager of the Virginian Collection at Fairfax County Public Library in Fairfax, Virginia. In 1978, she received the A. Heath Onthank (Fairfax County, Virginia) award for creation and management of the annual Virginia Legislative Information Service and was the 1979 Facts on File national award winner for this service. Her name appears in the acknowledgments of many authors of Virginia and Fairfax County historical works.

¶2 Harva joined Jones Day in 1979 as library manager of the Washington, D.C., office. She was appointed coordinator of firm libraries in 1994, a position she held until 2001. Thereafter she continued to assist with international office library collection development. She was quite active in the American Association of Law Libraries (AALL), serving as secretary of its Private Law Libraries Special Interest Section, and she was active in the Law Librarians’ Society of Washington, D.C., as well, serving on its board of directors. Harva was the local arrangements chair for the 1986 AALL annual conference held in Washington, D.C., participated as a speaker in the 1988 Practising Law Institute program Managing the Law Library, and co-presented two programs at other AALL annual meetings.

¶3 Harva is survived by her daughters, Kate Sheeler of Washington, D.C., and Rebecca McGhee of Vienna, VA; and her son, Charles Sheeler, her daughter-in-law, Faith Klareich, and her granddaughter, Jennie Sheeler, all of New Market, MD.

Harva, We Miss You

¶4 Harva and I met in February 1987, shortly after I joined Jones Day as the first New York office librarian. The New York library had the opportunity to obtain duplicate sets of resources in the Washington, D.C., office where Harva was the library manager. Traveling from New York to D.C. was an easy day trip, so I flew there to meet Harva, look at the titles, and get some training in the “Jones Day way” of law librarianship. I admired Harva’s professionalism, sense of humor, organizational

skills, industry and resource knowledge, tenacity, and contacts, as well as her dedication to staff and lawyers. Harva was a sharing colleague, and soon thereafter, despite a noticeable age difference, we realized how alike we were. During the ensuing years, we worked together on a number of firm-wide committees and librarian task forces and developed the first Jones Day online catalog.

¶ 5 There were some unique qualities about Harva. Despite many entreaties from colleagues over the years, she refused to discuss her work at the CIA, honoring the confidentiality pledge. Harva was a coffee fiend and had a cup of coffee at hand any time of the day or evening, always with cream, never milk. The Jones Day library managers who attended AALL meetings would take the coffee packets (no decaf) from their in-room coffee brewers and give them to her. Harva enjoyed dining, especially cheeseburgers for lunch at the Old Ebbitt Grill in Washington. When at an AALL conference, she made sure to research where one could get the best burger in the vicinity of the convention center. She had a few special interests outside the office, such as science fiction, classic movies, and opera. She also liked historical PBS television series, and my videophile ex-husband taped both of PBS’s *I Claudius* series for her. She never forgot him. If you were Harva’s friend, she was incredibly loyal, sometimes to her own detriment. It was difficult to change Harva’s mind, but once in a while she would budge. She frequently brought gifts from her worldwide travels, notably pottery. She volunteered for nearly two decades on Israeli archeological digs in which her daughter Kate was involved; her job at the digs was to sort and catalog pottery shards. She was on the highway driving to the office before 6:30 a.m. to avoid the HOV lane requirement and often stayed late in the office to avoid the travel restrictions in the opposite direction.

¶ 6 One thing Harva and I had in common was that we both were short and had difficulty finding appropriate work attire. Harva consistently reminded people that until I joined the Jones Day librarian group, she was the shortest female. I do not recall when this tradition started, but whether at a Jones Day library managers meeting in Cleveland or an AALL conference, we found time to visit a local department store that had a section with petite-size clothing. We favored Dillard’s because it was in neither of our home cities. Harva’s clothes had to be in her color palette: green, tan, brown, or orange. She had a wardrobe of Ferragamo shoes, which I envied, with my orthotic-accommodating footwear requirements.

¶ 7 Past and present Jones Day librarians compare the experience of working at this firm to that of a cousins club. There is an embedded history and culture, and the bonds of being a Jones Day librarian remain. Harva’s relationships with many former Jones Day librarians, staff, and vendors in the United States and Europe are part of her legacy. After her retirement in 2010, we remained close, spoke on the telephone, e-mailed, visited, and shared stories of life’s ups and downs. She was a great source of commentary and advice.

¶ 8 Harva and I last saw each other in the fall of 2012 when she was in New York City to attend a few opera performances at Lincoln Center. We planned to see each other in March 2014 because she was looking forward to attending a wedding in New York City. After it became known in the fall of 2013 that Harva was gravely ill, I thought considerably about how our relationship had changed during twenty-seven years. It began as professional collegiality and evolved into a friendship of...
equals and one of deep affection. There was not much that we did not share about our work and personal lives, and we were each other’s honest critics. So many share the sentiment, “Harva, we miss you,” and I add one of her comments, “Okay?”—Martha Goldman

Simply the Best

I worked for Harva at Jones Day in Washington, D.C., from 1997 to 2006 as international librarian, a position she created in response to research requests from lawyers located in firm offices outside the United States. But I don’t want to focus on Harva as a law librarian. To those who knew her and were lucky enough to work with her, she was simply the best. Her main concern, always, was to make sure that her attorneys and staff had the resources they needed to do their job. She loved finding the answer to a question. I’d like to remember the Harva who was a fan of science fiction and, more specifically, Star Trek; the Harva of wicked wit, who found the humor in a situation, especially if the joke was on her; the compassionate Harva, who became a friend as well as an employer; the loyal Harva, who fought for her staff and supported her family and friends; and the Harva of a thousand wonderful anecdotes. This is the Harva I will miss most. I was so lucky she was in my life.—Gloria Miccioli

She Had a Tall Presence

I first “met” Harva in 1992, early in my career at West Publishing as a sales representative. I had picked up an inbound telephone call, and at the time I didn’t know my life was going to change forever. I was young and wet behind the ears, and Harva showed me the ropes. At first, Harva was all business. Even over the telephone, I could tell she had a tall presence, and I was happy to try harder on every call to make sure she had top-notch service. Soon, she began to share with me that quick-witted, day-making sense of humor that many people enjoyed. Most important, Harva taught me that a true partnership is built on deep respect by both parties. A couple of years later, I was honored to meet this legend in person, at an AALL annual conference. I was working at the West Publishing booth in the exhibit hall, and Harva stopped by. She read my name tag, and before I could look down and read her tag, she said, “Ann Lloyd, do you want to take a quick break?” (She actually called it a “BHB,” or “bad habit break,” since we both were smokers then.) It was at that point I knew I was not merely standing in the presence of a business partner, I was standing by a friend. And I miss her very much.—Ann Lloyd

   * © Gloria Miccioli, 2014.

   ** © Ann Lloyd, 2014.

Harva Was One of a Kind*

¶11 Harva hired me in 1996 as library manager for the Jones Day office in Pittsburgh. Although she was my boss for only four of my twenty-eight-year career as a law librarian, without a doubt she became the most influential person in my professional life. Harva was one of a kind. I towered over her physically, but her larger-than-life personality always had me looking up to her. Harva exuded professionalism. She always dressed impeccably, wearing her Ferragamo shoes. Harva lived and breathed her job. She worked the hours of an attorney and loved it, and made us love it. Harva was a wonderful listener and at the end of the day, always gave me sound advice in difficult situations. She made me proud to work for Jones Day and, more important, proud to be a law librarian. I admired the relationships Harva developed with vendors and how adroitly she leveraged those relationships for all of her librarians. When my husband’s career took us to Birmingham, Alabama, in 2000, I left Jones Day and became a library director with a different law firm. I took with me institutional knowledge of how to set up systems à la Jones Day, and with a better understanding of how to develop two-sided relationships with vendors. I also left Jones Day with a new swagger that Harva and the amazing cadre of Jones Day librarians instilled in me. Harva could be tough, but the Harva I came to know and love was hilarious, brilliant, and oh, so kind.—Kathryn Kerchof 4

I Was Fortunate to Know and Admire Harva**

¶12 I met Harva around 1995. I was not her account representative but knew of her through colleagues. She came to the Matthew Bender booth at AALL with a complaint about our billing procedures, not long after we had begun offering annual service in July 1993. The system had some imperfections, to say the least. Several years later, I became Harva’s LexisNexis Matthew Bender print representative and it was a pleasure to serve her in this capacity from 1999 to 2010. She was demanding and always clear in her opinions and expectations, but she appreciated good service. Over the years, I heard about Harva’s travels and family and grew to treasure her as a friend. The signs and photos she posted in her office always made me laugh, particularly the Joan Crawford one. When I considered and later enrolled in library school, she was unfailingly encouraging and supportive and never failed to ask about my progress. She shared stories of her early days as a student and librarian, with a favorite story about her class in cataloging. Once when Jones Day was divesting itself of extra volumes and she asked about potential good homes for them, I connected her with a member of the Arlington Bar Association, who was delighted to facilitate the firm’s gift to their library. After I introduced them on the telephone, they quickly left me behind as they began speaking Hebrew. I watched

* © Kathryn Kerchof, 2014.
** © Karen Oesterle, 2014.

4. Retired Library Services Manager, Jones Day (Pittsburgh office), Roanoke, Virginia.
fondly as yet another of Harva’s hundreds of connections was begun. I was fortunate to know and admire Harva, and I continue to miss her.—Karen Oesterle

A Loyal Colleague and a Great Friend*

¶13 I was the Jones Day Cleveland office librarian from 1976 until 1993, when I accepted a position as director of new matter services at Jones Day. Although I retired in 2007, Harva and I remained friends after I left the law library world and thereafter. Harva joined the Washington, D.C., office of Jones Day in 1979, a time of growth for law librarianship and of changes and growth in the legal profession. Building the Washington office library collection was the first of many challenges she would undertake in her career with Jones Day. I first “met” Harva over the telephone, and we were longtime, long-distance Jones Day colleagues and friends. She was always gracious in helping me obtain information from government offices, and I was grateful to have a colleague within Jones Day. We did not meet in person until the AALL meeting in St. Louis in 1980. Each of us had formed a mental picture of the other that was the complete opposite of reality. We both put aside our imagined images and spent time getting to know each other. St. Louis was the first of many AALL meetings where Harva and I had a chance to discuss common problems and eventually become friends.

¶14 Harva was a “builder” and was happiest when she had a new project. The 1980s were a time of expansion for Jones Day. Harva and I worked together in developing libraries in offices where Jones Day had merged with other firms. The merger with Surrey & Morse required Harva to combine two libraries in Washington and help to develop a library collection in New York. She was instrumental in getting our first interoffice catalog off the ground. She was always willing to help a colleague get information from Washington.

¶15 Harva was intelligent, an intrepid traveler, and a great conversationalist. She was fun to talk to and would never be described as dull. She was a loyal colleague and a great friend. She will be missed.—Sharon R. McIntyre

We Were the Best of Friends**

¶16 I can remember like yesterday my first conversation with my friend Harva. I had just acquired the Jones Day account as an inside sales representative with West Publishing, and I could see that Harva had quite the sizeable library. I was kind of a take-charge guy, but when Harva answered the phone I could tell within seconds that she was the boss and that I had better listen closely. I’m sure I was calling to sell her something, but it was not going to happen that day. She made it clear to me that some things had to be cleaned up on her account before she opened up the wallet.

5. Librarian, Wyckoff, New Jersey.
* © Sharon R. McIntyre, 2014.
6. Retired Library Services Manager and Coordinator, Jones Day (Cleveland office), Rocky River, Ohio.
** © Dean B. Gisselman, 2014.
She wanted to develop a trusting relationship before she was willing to listen to me sell my wares. Over the next few weeks she would talk, I would listen, and once she felt I was worthy, the personal relationship began. We were the best of friends and spoke often, not always about business—in fact, mostly just to talk and see how things were going. A year or so later I was going to Washington, D.C., for a trade show, so I called Harva immediately, and she was excited to meet me in person. I was equally excited to meet her, this person I had developed this great relationship with—the woman with the gravelly voice. I had no idea what she looked like, but she told me she would be at the booth first thing in the morning at 7:00 a.m. I got to the booth at about 6:00 a.m. after four cups of coffee, not wanting to miss her, and was on the lookout for “The Voice.” Out of the corner of my eye I saw a short woman coming toward the booth. Once she spoke, I knew it was Harva. She walked up and said let’s go have a cup of coffee and talk. We had a fabulous time together for an hour or so, then came back to the booth, and she spent a sizable sum on book purchases.

¶17 Our relationship was never all about business because it was always personal. We talked about religion, family, and the politics of the workplace. I loved Harva, and she will always be my friend. Harva will live forever because I will always remember her and talk to people about her and tell stories about her. Harva will always be in my heart, remembered for the great person she was. After all, she is in charge.—Dean B. Gisselman

A Consummate Professional Librarian*

¶18 To work with Harva Sheeler for more than twenty years was to be in the presence of a consummate professional librarian. During her career at Jones Day, she built a library almost from scratch, integrated the collections after a merger, twice moved the library to new buildings, and oversaw the expansion of the collection in the 1990s and then the downsizing of the print collection as the firm turned more to online sources. Along the way, Harva saw the demise of the card catalog and the introduction of an online catalog. As the firm grew in size and assumed a global presence, she supervised the development of the overseas Jones Day office libraries. Through it all, she stayed active in local and national law library associations.

¶19 There was extremely little turnover in the Washington, D.C., library staff because of the work environment she created. Harva stressed that we worked for the lawyers and insisted that we provide first-class service. To ensure that goal was met, she constantly developed forms so that all staff were following the same procedures. Her more than thirty years as library manager of the Jones Day Washington office were more than a job to her.—Jill Long

A Force of Nature*

¶20 Harva Sheeler was, as anyone who ever met her can attest, a force of nature. When I was appointed as Jones Day’s first library partner in 2004, Harva, Joan Jarosek (who would later become our first firm-wide library director), and Jo Ann Fisher (who is serving as our interim firm-wide library director because of Joan’s recent retirement) sent me a plant for my office.

¶21 In hindsight, I’m pretty sure that the plant was actually a thinly veiled message. It said, in effect: “We welcome you, but just in case you get any bright ideas, remember that we’ve got about sixty-five years’ experience among the three of us, Sonny Boy.”

¶22 I promptly killed the plant by overwatering it. (No message was intended by me, however.) Fortunately, Harva—who had been my resident library manager in Jones Day’s Washington, D.C., office since I joined the firm in 1992—was more nurturing toward me than I had been toward her plant. Of all of my very helpful colleagues in the various Jones Day libraries, Harva stood out: she had an opinion about nearly everything that touched the work of the libraries, and she wasn’t afraid to express it.

¶23 Also to my good fortune, Harva’s opinions were earned through experience and sound judgment. And she was the key that unlocked the door to understanding not only what librarians did, but what librarians could do for our law firm. As we have moved from a space-based to a service-based definition of library services, I realize that anything that I have been able to accomplish as the partner-level leader of the Jones Day libraries is directly traceable to many of those early, opinionated conversations with Harva.

¶24 Harva was born in 1934, the same year that my own mother had been born. My work with Harva as library partner started only a few months after I lost my mother, also to a cancer that started in her lungs. Just as I continue to miss my own mother, I continue to miss Harva, who was—certainly when it came to matters of law libraries—as much of a mentor and guide to me as a parent ought to be. I was not alone in having this relationship with Harva: for a little lady who could speak Hebrew, she was unquestionably the mother superior of law libraries.—Greg Castanias

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