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

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

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Nearly all law library staff has encountered or will encounter challenging patron behavior. In this article, the authors develop best practices based on their 2014 online survey of law library staff, follow-up correspondence with several survey respondents, and a review of case law and relevant literature within law librarianship and other fields.
Introduction

¶1 It’s one of those things almost everyone in a law library knows but can’t talk freely about. Patrons—our reason for being here!—sometimes behave in ways that we cannot understand, control, or accept. They can be pushy or loud or threatening. They may solicit legal advice from librarians or other patrons. They sometimes walk away with a chapter of a form set. Unchecked bad behavior by patrons can be a real damper on staff morale. While writing this article about difficult and disruptive patron behavior in law libraries, we encountered many law library staff members who hesitated, or outright refused, to publicly speak about the sometimes-unpleasant behavior of their patrons. This could indicate that law librarians are uncomfortable talking about disruptive patron behavior. It could also indicate that some law library staff are not satisfied with how their institutions handle difficult patron behavior and are uncomfortable talking about this dissatisfaction. Whatever the cause, the discomfort with openly talking about the disruptive behavior of patrons and occasionally dysfunctional policies and procedures of law libraries created and instituted to respond to such behavior assured us that the topic chosen for the first American Association of Law Libraries (AALL) Research Instruction & Patron Services Special Interest Section (RIPS-SIS) Patron Services Committee White Paper was well chosen. We also saw an opportunity to give law librarians who have successfully managed patron behavior a forum to share their ideas and suggestions.

¶2 We began this project in response to a request from the 2013–2014 RIPS-SIS Executive Board to the RIPS-SIS Patron Services Committee, chaired by Jessica
Panella, for a white paper on a patron service issue. We formed a subcommittee in spring 2014 and began work immediately. After discussing several topics and researching professional literature, we chose to focus on best practices for law libraries in responding to difficult, challenging, or disruptive patron behavior. This topic, we believe, applies to a variety of law library settings but lacks adequate law library–specific resources to guide law library professionals.

¶3 To our knowledge, no detailed studies have been published on how difficult or disruptive patron behavior manifests specifically in law libraries. To draw a fuller picture, we surveyed law librarians about their patron challenges and their libraries’ responses. The article begins with a review of the existing professional literature and the applicable case law on library access, which informed the survey design. The article then summarizes the results of our fall 2014 online survey of law library staff and details responses to follow-up interviews with some of that survey’s respondents. The article concludes with recommendations for further study and suggested best practices drawn from this research.

Statement of Problem

¶4 While white papers, most familiar in a business context, typically include a statement of a problem or challenge and conclude with a solution to that problem, we share the view that disruptive patron behavior in law libraries is not a problem in the traditional sense that can be solved in a white paper. However, nearly all law library staff have encountered, and likely will encounter, some measure of challenging patron behavior. To that end, we dub this project a “grey paper,” an attempt to analyze and contend with a fundamentally dynamic phenomenon. We hope this article, no matter what its shade, will serve as a touchstone for future law library staff and management discussions about the kind of patron behavior described here. The insights in this article are not ours but those of our survey respondents as well as those of authors who have written on this topic, within and outside of law librarianship. While this article does not purport to have a single commoditized solution to the challenge of negotiating difficult patron behavior, it does aspire to be part of the solution.

Literature Review

¶5 Libraries exist to be used by their patrons.1 Just as patrons are essential to all types of libraries, so are difficult situations involving patrons common to all types of libraries. The general library literature is replete with descriptions of “problem patrons” and how to manage challenging patron-service scenarios, particularly as they occur in public2 and academic3 settings. The topic has also been addressed in

1. In the Oxford English Dictionary, the first definition of “library” refers to an “organized collection of books for reading or reference, for use by the public or by a specific group.” 1 SHORTER OXFORD ENGLISH DICTIONARY 1585 (5th ed. 2002) (emphasis added).
3. C. Lyn Currie, Difficult Library Patrons in Academe: It’s All in the Eye of the Beholder, 75/76
works dedicated to special libraries, such as medical libraries. While the works cited in this section vary significantly in emphasis and tone, almost all share several unmistakable themes.

**Defining the “Problem”**

There is a distinct lack of consensus about what librarians mean when they discuss encounters with “difficult” or “problem patrons.” Academic librarian Kelly Blessinger suggests that “[a] problem patron could be defined as someone who infringes on others’ enjoyment of the library by displaying behavior that is deemed destructive, criminal, bothersome, offensive, or otherwise inappropriate to the norms of behavior in libraries or society.” Law librarian Georgia Ann Clark defines “problem patrons” as those without a legal background seeking to use the library’s specialized collection. Others define the difficult patron even more broadly: as any library visitor who upsets another visitor or member of the library’s staff. It should perhaps not be surprising that at least two authors discussed in this section cite Justice Potter Stewart’s famous line about obscenity: “I know it when I see it.”

Several authors begin their discussion of this topic by offering a taxonomy of “difficult patron” types. This approach lends itself to glib and sometimes offensive characterizations of library patrons and does little to improve our understanding of how to address difficult patrons as individuals. More helpful are articles that emphasize how libraries should address problematic behaviors, instead of those that rely on assumptions about categories of people. In their review of difficult patron situations in academic libraries, for example, Patience Simmonds and Jane

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5. E.g., Chattoo, *supra* note 2, at 20 (“Defining ‘problem patron’ is the hardest part of the problem.”).
Ingold identify specific service areas or relationships that are conflict triggers and then suggest potential solutions. As Rhea Joyce Rubin points out in her book *Defusing the Angry Patron*, the American Library Association’s guidelines for developing patron-behavior policies include a reminder that policies should not be based either on “an assumption or expectation that certain users might engage in behaviors that could disrupt library service” or “upon appearance or behavior that is merely annoying, or that merely generates negative subjective reactions from others.”

§8 Some librarians approach the “difficult patron” theme by focusing on patron complaints, disputes over library policy, and other situations that lead to uncomfortable conversations between patrons and staff. This approach pushes library staff to “try to distinguish between problem behaviors and library-related problem issues and . . . admit their part in any conflict that arises.” This requires critical thinking about how to deliver library services to meet patrons’ actual needs and preferences, as opposed to what librarians assume or believe those needs and preferences to be. As C. Lyn Currie points out, librarians may experience an encounter with a patron as difficult “simply because [the patron’s] expectations for service are not met by our service provisions.” This may be the case even more frequently in law libraries serving the public, where patrons’ needs and expectations may significantly exceed the services that librarians feel ethically comfortable providing. While patrons who exhibit unacceptable behavior cannot be avoided, library practices that exacerbate patron frustrations can be addressed proactively, and complaints may be a catalyst for positive change.

Creating Policies and Procedures

§9 There is wide consensus among librarians who have tackled this topic that the first step toward effectively managing difficult situations with patrons is to develop policies governing behavior in the library and commit them to writing.

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12. Simmonds & Ingold, supra note 3, at 59–64 (including collection development, interlibrary loan, and course-related library instruction).


15. Simmonds & Ingold, supra note 3, at 64.


17. Id.

18. See infra §§ 25–45 regarding pro se patrons.


20. See WARREN GRAHAM, THE BLACK BELT LIBRARIAN: REAL WORLD SAFETY AND SECURITY 8–12 (2012); WILLIS, supra note 14, at 113–17; Arndt, supra note 11, at 27; Blessinger, supra note 2, at 10; Sharon W. Bullard, Gypsies, Tramps and Rags: Coping with Difficult Patrons, 75/76 REFERENCE LIBR. 245, 247 (2002); Currie, supra note 3, at 51–52; Holt & Holt, supra note 11, passim; Kean & McKoy-Johnson, supra note 3, at 381; Linda A. Morrissett, Developing and Implementing a Patron Behavior Policy, in PATRON BEHAVIOR IN LIBRARIES: A HANDBOOK OF POSITIVE APPROACHES TO NEGATIVE SITUATIONS 135, 136 (Beth McNeil & Denise J. Johnson eds., 1996) [hereinafter PATRON BEHAVIOR IN LIBRARIES]; Sheryl Owens, Proactive Problem Patron Preparedness, 12 LIBR. & ARCHIVAL SECURITY, NO. 2, 1994, at 11, 16; Bruce A. Shuman, Personal Safety in Library Buildings: Levels, Problems, and Solutions, 75/76 REFERENCE LIBR. 67, 79 (2002); Turner & Grotzky, supra note 3, at 256; see also Wright, supra note 8, passim.
Written library policies serve both as reference documents for staff, who may be unsure of how to confront a new or uncomfortable situation, and as neutral authorities to which staff may direct patrons who dispute the library’s approach to a specific issue. Many of these authors agree that policies governing patron rights or behavior should be publicly available or posted within the library.\footnote{10}

\textbf{¶10} No one-size-fits-all approach exists to crafting a patron behavior policy. This is because different types of libraries—public or private, business or academic—operate under the authority of institutions that are themselves subject to specific limitations on how they may constrain visitors’ behavior. For example, public or government libraries created by statute must provide access to their collections in accordance with that statute.\footnote{22} Academic library policies should comport with the codes of student, faculty, and staff conduct that apply to all aspects of campus life.\footnote{23} To ensure that a library’s policy is consistent with the relevant authorities, some librarians recommend having it vetted by legal counsel.\footnote{24} In a 2001 article considering library safety and security measures associated with problematic patron encounters, law librarian Donald Arndt, Jr. describes the legal ramifications of a policy’s limitations on patron access as well as the potential for premises liability claims; he then suggests some questions for librarians to pose to their attorneys or insurers.\footnote{25}

\textbf{¶11} In addition to describing prohibited activities, library policies may include institutional mission statements that establish the context for library rulemaking and priorities.\footnote{26} As Rubin explains, “If a policy conflicts with the library’s philosophy or goals, it is difficult for staff to implement. The library’s mission statement should serve as a preamble to all policies so that the relationship between mission and policy is clear.”\footnote{27} Libraries that wish to limit or prioritize service to specific

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21. See Bullard, \textit{supra} note 20, at 247; Kean & McKoy-Johnson, \textit{supra} note 3, at 381; Owens, \textit{supra} note 20, at 18; Shuman, \textit{supra} note 20, at 79; Turner & Grotzky, \textit{supra} note 3, at 258. Rubin notes that some experts advise staff to show angry patrons the relevant policy as a way of deflecting anger from the staff person; they believe that customers will become less upset if they are directed to the policy that shows they are not being treated unjustly. Others think the opposite is true—that angry patrons become more frustrated when faced with a policy. A way around this is to present the policy as a reflection of the users’ wishes. For example, instead of saying “Our library policy bans cell phone use inside the building,” you might say, “Users have asked us to restrict cell phone use in the library.” Rubin, \textit{supra} note 13, at 100.


23. E.g., Owens, \textit{supra} note 20, at 21.

24. See Rubin, \textit{supra} note 13, at 100 (recommending also that draft policies be reviewed by a library board or community member for legibility); Willis, \textit{supra} note 14, at 114; Arndt, \textit{supra} note 11, at 27; Blessinger, \textit{supra} note 2, at 10; Holt & Holt, \textit{supra} note 11, at 75; see also Katherine Malmquist, \textit{Legal Issues Regarding Library Patrons, in PATRON BEHAVIOR IN LIBRARIES, supra} note 20, at 95 (describing lawsuits contesting library access and patron policies). For more discussion of patron access case law, see infra ¶¶ 46–56.


26. Fitz-Gerald, \textit{supra} note 22, at 44.

\end{flushright}
categories of patrons should say so explicitly in their mission statements. Otherwise, it is difficult to justify serving patrons unequally.

¶12 The literature also offers other, occasionally conflicting, recommendations for drafting patron-behavior policies. In her article “Proactive Problem Patron Preparedness,” librarian Sheryl Owens suggests that while policies “should not (and, in any event, probably cannot) list each and every possible offense,” they “should be worded in such a manner as to be broadly inclusive.” Arndt, however, suggests that “[r]ules should be specific as to behavior not allowed” and that policies may be further developed into a procedural manual for staff, offering specific guidance on enforcement and complaint procedures. Rubin agrees that policies are far less useful without a detailed set of procedures to back them up: “Standardized procedures result in more consistent enforcement by staff . . . such uniformity is necessary to ensure fair enforcement.” She notes further that having an “accepted protocol also makes it easier for staff to uphold policies; instead of worrying about what is fair and what should be done in a given situation, staff members focus on carrying out the accepted procedures that they have been taught.” It is unsurprising, then, that a majority of respondents in a 2009 study of patron aggression in an academic library indicated that library policies should contain specific definitions of prohibited behavior, clear sanctions for violations, and “guidelines for appropriate staff responses to aggressive or violent behavior.” While general language may be convenient from an ex ante position, staff may feel concern when pressed to take action under an ambiguous policy. The issue is not merely one of convenience: case law tells us that valid library conduct policies are narrowly tailored to address specific behaviors, as opposed to naming a class or status of people.

¶13 Several authors also recommend that libraries that already have policies in place should review them regularly to ensure that they are up-to-date and are meeting

28. Fitz-Gerald, supra note 22, at 44. Fitz-Gerald offers the mission statement from the North Dakota Supreme Court Law Library as an example:

The primary purpose of the law library is to support the legal information needs of the North Dakota Supreme Court and the judicial system. The secondary purpose is to support the legislature and administrative agencies of the state. The library’s resources are also available to members of the North Dakota bar and the public. The availability to others is limited to the extent that it does not compromise the library’s primary purpose.


29. Fitz-Gerald, supra note 22, at 46.
30. Owens, supra note 20, at 20. Owens also reminds us that we cannot “assume that everyone knows how to behave.” Id. at 21.
31. Arndt, supra note 11, at 28.
32. RUBIN, supra note 13, at 100.
33. Id.
34. Kean & McKoy-Johnson, supra note 3, at 381.
35. Cf. Holt & Holt, supra note 11, at 75 (“Staff members need to know what they can do, what they can’t do, and what they should do (i.e., the action they ought to take, which can range from a quiet one-on-one conversation to calling police to help handle a disturbance and make an arrest).”).
36. See RUBIN, supra note 13, at 98; see also infra ¶¶ 46–56.
the needs of library staff and patrons.\textsuperscript{37} Rule review should incorporate meaningful staff involvement in the decision-making process; policies are unlikely to succeed without staff and management support.\textsuperscript{38} This review should not only ensure that the library’s rules address current and likely future issues, but also analyze whether existing policies create conflicts that outweigh the potential benefit to the library.\textsuperscript{39}

\textbf{Training}

\textsuperscript{¶}14 In addition to emphasizing the need to create thoughtful library policies, the majority of librarians who have studied difficult patron interactions also stress the importance of staff training.\textsuperscript{40} Staff training is associated with consistent enforcement\textsuperscript{41} and may improve staff morale.\textsuperscript{42} Training should educate staff about what the library’s policies and procedures are, but also why they exist, “both in terms of the law and in consideration of the library’s philosophy and mission statement.”\textsuperscript{43} Justina Osa also suggests that staff training for professional and (inter)personal competencies generally is essential to minimizing the patron frustrations that might otherwise escalate into a confrontation.\textsuperscript{44} For librarians who work with patrons who experience symptoms of mental illness, Jennifer Murray recommends offering targeted training from a mental health professional.\textsuperscript{45} Several other librarians recommend training staff specifically on conflict-management techniques they may use to reduce tensions or safely resolve disputes with an angry or a disruptive patron.\textsuperscript{46} These include simple actions such as expressing empathy

\begin{itemize}
\item \textsuperscript{37} See, e.g., Sarkodie-Mensah, supra note 10, at 166–67; Turner & Grotzky, supra note 3, at 259–60.
\item \textsuperscript{38} Turner & Grotzky, supra note 3, at 256–57.
\item \textsuperscript{39} See \textit{WILLIS}, supra note 14, at 114 (“Ask yourself, ‘What would happen if we didn’t have this rule? Is it creating more hassle than it’s worth?’”).
\item \textsuperscript{40} \textit{Id.} at 118–25; Arndt, supra note 11, at 29–30; Blessinger, supra note 2, at 10; Bullard, supra note 20, at 248; Currie, supra note 3, at 51–52; Curry, supra note 2, at 182; Jackson, supra note 19, at 212–13; Jennifer S. Murray, \textit{Library Psychiatry: Is There a Place for the Mentally Ill in Your Law Library?}, AALL SPECTRUM, Nov. 1999, at 12–13; Simmons & Ingold, supra note 3, at 64–65; Turner & Grotzky, supra note 3, at 261.
\item \textsuperscript{41} See \textit{RUBIN}, supra note 13, at 101.
\item \textsuperscript{42} \textit{Cf.} Osa, \textit{supra} note 9, at 277 (describing how an in-house professional competency training program will improve library services and “individuals on both sides of the reference desk will be happier”).
\item \textsuperscript{43} \textit{RUBIN}, supra note 13, at 101; see also \textit{WILLIS}, supra note 14, at 114 (“If you can’t justify the rule in a clear manner that the average person would understand, the rule needs to be rethought.”).
\item \textsuperscript{44} Osa, \textit{supra} note 9, at 275–76.
\item \textsuperscript{45} Murray, \textit{supra} note 40, at 12. Murray also advises against making amateur diagnoses of patrons who may be mentally ill, and instead taking a critical look at aspects of a library’s services or reference interviews that may be creating barriers to working with mentally ill patrons. \textit{Id.}
\item \textsuperscript{46} See \textit{RUBIN}, supra note 13, at 14–15; Arndt, supra note 11, at 31–34; Curry, supra note 2, at 184; Glenn S. McGuigan, \textit{The Common Sense of Customer Service: Employing Advice from the Trade and Popular Literature of Business to Interactions with Irate Patrons in Libraries}, 75/76 \textit{REFERENCE LIBR.}, 197, 201–03 (2002); Murray; supra note 40, at 11–12; Sarkodie-Mensah, \textit{supra} note 10, at 164–65; Shuman, \textit{supra} note 20, at 80.
\end{itemize}
with a patron’s problem,\(^{47}\) breathing deeply,\(^{48}\) listening attentively,\(^{49}\) staying calm and avoiding overreactions,\(^{50}\) offering an apology (regardless of actual “fault”),\(^{51}\) and focusing on the problem presented rather than on the person.\(^{52}\)

¶15 Closely related to training, “empowering frontline staff” is another common theme in the library literature.\(^{53}\) By giving staff the tools to fix problems without waiting for a supervisor and soliciting meaningful staff input on the substance of new policies or policy changes, a library can ideally prevent patron frustration and staff resentment.\(^{54}\) C. Lyn Currie recommends that decision-making authority “should be extended to the lowest level possible so that staff involved in direct contact with patrons possess the ability to make those decisions that directly affect their operations, their patrons and themselves.”\(^{55}\)

Incident Reporting

¶16 In addition to creating policies and training staff, the most common advice in the library literature is to create and use incident reporting forms or procedures to document difficult patron encounters and the library’s response.\(^{56}\) For the most serious incidents, documenting what happened and how library staff responded may supply important information to security staff or police.\(^{57}\) But creating a written record of all incidents, even those that are relatively minor, has several benefits: allowing staff a cathartic outlet after a trying experience, inspiring examples for


\(^{48}\) Arndt, \textit{supra} note 11, at 31; \textit{see also} Kathy Fescemyer, \textit{Healing After the Unpleasant Outburst: Recovering from Incidents with Angry Library Users}, 75/76 REFERENCE LIBR. 235 (2002).


\(^{50}\) Sarkodie-Mensah, \textit{supra} note 10, at 164; Shuman, \textit{supra} note 46, at 80.

\(^{51}\) \textit{Willis, supra} note 14, at 14; Arndt, \textit{supra} note 11, at 32 (“Even if the library is not at fault, it can make an irate person feel better.”); Rubin, \textit{supra} note 47, at 15.

\(^{52}\) \textit{Willis, supra} note 14, at 14–15; Arndt, \textit{supra} note 11, at 32 (“Once the problem is understood, restate it clearly and concisely, but do not restate the solution offered by the patron. By separating needs from solutions, it becomes possible to identify many more alternatives.”); \textit{see also} Sarkodie-Mensah, \textit{supra} note 10, at 164 (“Resist finding fault with the person making the complaint or accusation.”).


\(^{54}\) \textit{see} Turner & Grotzky, \textit{supra} note 3, at 259 (“Since frontline employees set the tone in libraries, it is important that they believe in and can enforce the policies and procedures that make the library function.”).


\(^{56}\) \textit{see} Shelley E. Mosley, Dennis C. Tucker & Sandra van Winkle, \textit{Crash Course in Dealing with Difficult Library Customers} 113–15 (2014); Rubin, \textit{supra} note 13, at 105; Bullard, \textit{supra} note 20, at 249; Holt & Holt, \textit{supra} note 11, at 76; Jackson, \textit{supra} note 19, at 213; Sarkodie-Mensah, \textit{supra} note 10, at 166.

\(^{57}\) \textit{see} Arndt, \textit{supra} note 11, at 34.
future staff training, and identifying repeat offenders who may require restriction or other special handling.\textsuperscript{58}

¶17 Tracking complaints can make it easier to confirm that patron issues have been responded to appropriately, or signal a need for investigation of potential systemic problems. Rebecca Jackson offers an example:

Constant complaints that students cannot find books on the shelves that should be there could be the result of different underlying problems. One could be that students do not know how to read call numbers correctly; in that case, education is definitely in order. Another reason could be that the books are not shelved correctly. The library will have to explore all of these possible causes, and often the solution may be complicated. However, a solution is required if we want to maintain our users’ satisfaction.\textsuperscript{59}

¶18 Jackson notes another advantage of tracking complaints: they may indicate areas where the library can develop specific procedures for allowing frontline staff to fix patron problems. For example, “Under what circumstances should a fine be waived? When can a faculty member take a periodical out of the library, and for how long? With the proper training, frontline staff should be able to resolve all but the most complex problems.”\textsuperscript{60} Rubin suggests taking a page from the world of sales and creating a “rebuttal file,” a selection of short “scripts” crafted to respond to common complaints.\textsuperscript{61} These are not intended to be read aloud to a patron; instead the process of thinking about the most frequently voiced problems and the best response to each can be useful preparation and allows staff to practice dealing with difficult situations.

Guidance from Other Fields

¶19 Several authors have approached management of difficult patron encounters from a business-world “customer service” perspective.\textsuperscript{62} While many librarians disapprove of analogizing libraries to businesses, Rebecca Jackson argues that both types of organizations depend on the goodwill of the communities to which they cater.\textsuperscript{63} Negative patron encounters may jeopardize a library’s funding or popularity.\textsuperscript{64} Jackson offers several specific tips for improving complaint management in libraries and leveraging complaints for better service.\textsuperscript{65} Rubin similarly describes how a proactive focus on “customer service,” including welcoming behaviors by staff (such as smiling, making eye contact, and avoiding jargon), taking a positive approach to problems (focusing on what a librarian can do for a patron, rather than limitations), hanging useful signage, being mindful about instilling a helpful

\begin{footnotes}
58. See Rubin, supra note 13, at 106; see also Jackson, supra note 19, at 213. Of course, such records must not be used “as a way to track and intimidate certain patrons.” Arndt, supra note 11, at 34.

59. Jackson, supra note 19, at 214.

60. Id. at 213.

61. Rubin, supra note 13, at 104.

62. See id. at 9. See generally Duggan, supra note 53; Jackson, supra note 19; McGuigan, supra note 46.


64. Id. at 209.

65. Id. at 212–14.
\end{footnotes}
attitude among staff, understanding patron expectations, and soliciting patron feedback, can do much to minimize patron anger.\footnote{66}

\¶20 Some librarians have looked further afield for guidance in dealing with difficult patrons. These works include lessons from Zen Buddhism,\footnote{67} nursing,\footnote{68} and psychotherapy.\footnote{69} Librarians have also relied on psychological concepts and insights to better understand the roots of patron hostility and to alleviate the mental burden that unpleasant patron encounters may place on staff.\footnote{70}

**Suggested Applications to Law Librarianship**

\¶21 Most of the literature on managing difficult patron encounters addresses a generalist audience. Some points, however, may speak directly to the experience of law librarians.

\¶22 For example, Ann Curry describes how patrons who are unemployed, “\[h\]aving possibly been ‘battered’ by other bureaucracies . . . may turn quite hostile when facing a seemingly minor defeat in the library, yet another government agency.”\footnote{71} This could easily apply to public patrons using the law library to find assistance in dealing with a confusing or overwhelming legal problem, especially those who have already had contact with the courts. Such patrons may “lack the emotional distance from their problems that an advocate has,” offering excessive detail or taking up disproportionate amounts of staff time.\footnote{72} In any library, a lack of resources or inefficiencies in service may fuel disputes.\footnote{73} So, too, can the physical, economic, or intellectual inaccessibility of vital legal information increase the likelihood of patron frustration and anger. Turner and Grotsky suggest that librarians “should learn to discriminate between the customer from hell and customers who have gone through hell”; they include in the latter group patrons who have “been sent from one desk to another one time too many.”\footnote{74} Librarians should thus seek not to compound the ill feelings patrons, especially pro se litigants, might have accumulated elsewhere.\footnote{75}

\¶23 In the academic context, Currie writes that some librarians may “regard patrons as difficult because they do not conform to [the librarians’] view of how information research ‘should’ be conducted.”\footnote{76} It is easy to see how the same conflict

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\footnote{66} See Rubin, supra note 13, at 9–23.


\footnote{71} Curry, supra note 2, at 185.


\footnote{73} Kean & McKoy-Johnson, supra note 3, at 376, 379.

\footnote{74} Turner & Grotsky, supra note 3, at 260.

\footnote{75} See also infra ¶¶ 25–45 regarding pro se patrons.

\footnote{76} Currie, supra note 3, at 46.
could arise in the law library, where there have been seismic shifts in the tools and methods of legal research over the past two decades. Faculty may disagree with librarians and one another about which formats take precedence in the collection or in student training; students may resist using print sources; librarians may disapprove of students using Google as part of their legal research. Critically examining these potential disagreements may push law librarians to reevaluate their perspectives.

Finally, there is the issue of expectation management. Whenever patron expectations are mismatched with a library’s abilities and priorities, there are grounds for conflict. The general library literature describes dashed patron expectations in a number of contexts (handling of holds or recall notices, fines, etc.).\textsuperscript{77} Academic libraries of all types may face outsized expectations from faculty, who may want the library to purchase books, databases, or other resources beyond its means.\textsuperscript{78} Faculty may also expect librarians to go beyond typical research tasks, perhaps by synthesizing information or assisting with drafting. Law librarians may also encounter pro se patrons seeking legal services beyond what librarians can or are ethically able to provide.\textsuperscript{79} In each case, clear and consistent communication is crucial to modifying patron expectations by providing ample notice of potential problems.

Pro Se Patrons

This section briefly addresses the special case of the pro se patron in the law library. First, a point of nomenclature: although the term “pro se” specifically refers to a person who represents herself in court without counsel, writings in this area (and many law librarians) use this term colloquially to refer to all nonlawyers using the law library. This may include public patrons who have counsel, or who are researching the law in anticipation of future legal action or on behalf of someone else. For purposes of this discussion, we use the definition of “pro se patron” used by Robert Abrams and Donald Dunn: “any library patron, not at the time represented by counsel, who seeks information about a personal legal problem.”\textsuperscript{80} In a 1978 panel discussion hosted by the Michigan Association of Law Libraries, librarian Georgia Ann Clark mused on the definition of a “problem patron.” “I began with the idea that a problem patron is any patron using a law library without having a legal background. These people are problems and have to be dealt with in one way or another. But you deal with them through the perfect reference interview.”\textsuperscript{81} Clark’s remarks focused on handling patrons whose comportment or demands do not fit nicely with a library’s rules—the topic of the previous section. Yet, as many librarians will attest, the “perfect reference inter-

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\textsuperscript{77} See, e.g., Willis, supra note 14, at 17–23.
\textsuperscript{78} See Simmonds & Ingold, supra note 3, at 60, 61–62.
\textsuperscript{79} See infra ¶¶ 25–45.
\textsuperscript{81} Clark, supra note 7, at 53.
"view" remains an aspiration, and working with pro se patrons remains a particular challenge.

¶27 While a significant percentage of pro se litigants are unrepresented because they cannot afford to pay for the services of an attorney, others eschew counsel for a variety of reasons, including mistrust of the legal system or lawyers generally, or confidence in their own capacity to address their legal problems. The available statistics demonstrate, unfortunately, that self-represented litigants tend to fare poorly. This is commonly understood, as evidenced by the aphorism: “He who is his own lawyer has a fool for a client.”

¶28 Pro se patrons are familiar to librarians in public law libraries, as well as those libraries that participate in the federal depository program. Despite the conventional wisdom, no evidence supports the idea that pro se patrons are more likely to be disruptive, angry, or abusive to library staff than anyone else. Yet their status as nonspecialists, confronting and trying to harness a specialized body of knowledge, creates predictable problems for librarians. How should librarians provide helpful reference service without crossing the line into unauthorized practice of law? How can librarians manage patron expectations, which may significantly exceed what the library is prepared (or willing) to offer? How can court or academic law libraries balance service to their “primary” patron communities (judges, law faculty, and students) with service to the public? These questions have significant ramifications for collection development, the allocation of often-scarce resources, and reference practice, which have already been robustly explored in the literature.

¶29 In an oft-cited 1976 article, Robert Begg cautions: “Once you identify a pro se patron, be nice to him; if not, you may have an opportunity to see first hand how effective in court he can be.” While this quip greatly overstates the library’s legal exposure from serving pro se patrons, it sounds the familiar caution to try to prevent

84. M. Frances McNamara, 2,000 FAMOUS LEGAL QUOTATIONS 42 (1967). But see id. at 522 (quoting Plutarch’s Lives: “The good have no need of an advocate.”).
85. C.f. Elizabeth M. McKenzie, Elizabeth Gemellaro & Caroline Walters, Leaving Paradise: Dropping Out of the Federal Depository Library Program, 92 LAW LIBR. J. 305, 309–10, 2000 LAW LIBR. J. 27, ¶¶ 11–16. The authors note that lay researchers, entitled to access by virtue of a library’s depository status, “may be the patron group that generates the most conflict between the various missions our libraries profess.” Id. at 309, ¶ 13.
86. See, e.g., C.C. Kirkwood & Tim Watts, Legal Reference Service: Duties v. Liabilities, LEGAL REFERENCE SERVICES Q., Summer 1983, at 67, 74–75 (describing service to pro se litigants, as “tertiary” patrons, to be “an act of grace which must not interfere with service to primary or secondary patrons.”).
problems rather than deal with the fallout. This section explores how the pro se patron/law library dynamic may create difficult patron encounters, and some proposed ways to mitigate these problems.

Lack of Familiarity

¶30 As Paul Healey points out, the crux of the pro se problem is the popular conflation of legal tools and legal practice.

The tools of the legal profession are legal information and the ability to analyze and use that information in a legal setting. Many people errantly suppose that law school is a process of mastering legal information, when, in fact, legal training is intended to develop and hone legal thinking and analytical skills. The heavy reliance on such thinking and analysis means that much of the practice of law is not visible to outsiders. This, in turn, can lead to the assumption that the only real tools for practicing law are the sources of legal information available in the law library.88

This can lead a layperson to have certain unrealistic expectations of the law library or his ability to identify definitive, concrete answers to legal questions using library materials.89 However, pro se patron’s needs cannot be entirely attributed to a basic lack of information or misunderstanding; some legal domains, such as family law, have become much more complex in recent decades.90

¶31 Pro se patrons are likely to be unaccustomed to doing legal research and are therefore more likely to rely on library staff for guidance.91 Both the potential breadth of the patron’s need (“I don’t know anything! Where do I start?”) and the risk of a patron’s overreliance on the librarian’s reference suggestions make some librarians fearful of serving pro se patrons beyond the mere provision of primary source materials.92 (Several commentators have demonstrated that such concerns are overblown.93)

89. Id. at 131.
91. See Abrams & Dunn, supra note 80, at 48. However, “[i]n the prison library context, many inmates develop significant legal research skills.” Id. at 48 n.7.
92. Id. at 50–51; see also id. at 56 (“The foreseeable reliance of the pro se patron upon law librarian advice opens to door to liability if poor advice results in loss of the pro se litigation which otherwise would have succeeded. In contrast, giving bad research advice to attorneys . . . is far less likely to bear a requisite link to any subsequent injury for the imposition of tort liability.”). Given that, to date, no librarian has been found liable for unauthorized practice of law, several treatments of the topic have relied on hypotheticals. See Gerome Leone, Malpractice Liability of Law Librarian?, 73 LAW LIBR. J. 44 (1980); Robin K. Mills, Reference Service vs. Legal Advice: Is It Possible to Draw the Line?, 72 LAW LIBR. J. 179 (1979).
93. See Abrams & Dunn, supra note 80, at 51–53; Merrilee Harrell, Self-Help Materials in the Law Library: Going a Step Further for the Public Patron, 27 LEGAL REFERENCE SERVICES Q. 283, 296–97 (2008) (describing a 1995 ABA report concluding that “informal help with legal problems” offered by law librarians and others “who are considered to be reliable sources of information” has not generally been considered unauthorized practice of law); Paul D. Healey, Chicken Little at the Reference Desk: The Myth of Librarian Liability, 87 LAW LIBR. J. 515, 530–32 (1995) [hereinafter Healey, Chicken Little]; see also John Cannan, Are Public Law Librarians Immune from Suit? Muddying the Already Murky Waters of Law Librarian Liability, 99 LAW LIBR. J. 7, 2007 LAW LIBR. J. 1 (analyzing several types of public official immunities available to law librarians should the question of librarian liability ever become
While librarians’ concerns about liability for unauthorized practice of law are well known, there is also the matter of harm to the patron from inaccurate legal reference. As Robin K. Mills describes in her 1979 analysis on the topic, while a librarian’s risk of tort liability for providing erroneous legal information is slight, the patron’s risk is not. A patron who believes that her legal fortunes have been negatively impacted by the library is a difficult situation waiting to happen.

The literature is clear that a pro se patron’s lack of familiarity with legal materials and practices creates a double bind for librarians. They may underserve the patron as an act of self-protection, possibly causing the patron to feel frustrated and disappointed. Alternatively, they may overserve the patron, risking an unethical and impractical entanglement with the patron’s legal problem.

Lack of Access

In law libraries that serve multiple discrete patron groups, there may be pressure to devote limited resources to serving the library’s “primary” constituencies. In an academic law library that is also open to the public, this might mean prioritizing the purchase of scholarly monographs or student study aids over legal guides written for laypeople, whose presence in the library is permitted rather than cultivated and valued. Yet law libraries have continued to be destinations for pro se patrons seeking access to primary authorities, and until recently, the availability of these core components of the collection could generally be assumed.

This is no longer the case. Many academic law libraries have cut their print subscriptions to case reporters, digests, statutes, and regulatory materials, as well as Shepard’s and the major treatises now available on WestlawNext or Lexis Advance. A library that relies largely (or exclusively) on digital platforms for its primary sources may be unable to serve pro se patrons as it has in the past. Not only are such resources generally not available to those outside of the law library’s institutional community, they presuppose basic legal knowledge and require user training. In this respect, pro se patrons at American public law libraries are worse off...
than many prison inmates, who may enjoy access to current collections of basic primary sources or access to LexisNexis or Westlaw.99

Suggested Approaches

¶36 The literature offers several commonsense suggestions for anticipating the needs of pro se patrons in the hopes of minimizing potential problems.

¶37 Many authors emphasize the need to manage patron expectations, so as to avoid the perceived formation of an attorney-client relationship, the librarian being ascribed a duty of care, or an outsized disappointment on the patron’s part.100 At a threshold level, this requires library staff to be fully aware of their service limitations.101 As Healey suggests, this can be addressed simply with a verbal disclaimer circumscribing the librarian’s expertise and advisory capacity.102 Other authors suggest posting signs iterating that “librarians provide access to information, not legal advice,” and urging patrons needing legal assistance to consult an attorney.103

¶38 Managing a patron’s expectations can also require keeping firm but subtle control of the reference interview. As Peter Schanck comments, allowing pro se patrons to present a lengthy and detailed description of the legal problem that has brought them to the library may both tempt the librarian to offer inappropriate legal advice and heighten the patron’s expectations for the librarian’s reply: “Listening patiently and attentively to a rambling patron will cause him to expect some very specific kind of aid—aid which can probably not satisfy him short of a direct opinion or advice.”104

¶39 Using prepared guides to the law library’s space, its collection, or frequently asked legal research questions can save staff time and allow patrons to gather information more independently and at their own pace.105 Robin Mills recommends keeping contact information available for patrons for state and local consumer affairs offices, the local courts, and city hall staffers who are well positioned to answer a patron’s question.106 Charles Condon recommends developing a list of local legal services organizations, “perhaps beginning with the American Bar Association’s Lawyer Referral Service which identifies national, state, and local

99. See Jonathan Abel, Ineffective Assistance of Library: The Failings and the Future of Prison Libraries, 101 Geo. L.J. 1171, 1173–74 (2013). We have chosen not to explore the literature on working with patrons in prison law libraries. The unique problems posed by the operation of prison libraries are better addressed in more detail elsewhere.

100. See, e.g., Healey, Chicken Little, supra note 93, at 528.


102. See Healey, Chicken Little, supra note 93, at 528.

103. Condon, supra note 94, at 171; see also Mills, supra note 92, at 192.


105. See, e.g., Abrams & Dunn, supra note 80, at 63–64; Begg, supra note 87, at 32; Condon, supra note 94, at 172; Harrell, supra note 93, at 300.

106. See Mills, supra note 92, at 193; see also A. Cameron Allen, Whom Shall We Serve: Secondary Patrons of the University Law School Library, 66 Law Libr. J. 160, 170 (1973) (recommend- ing keeping a list of state and municipal agencies, as well as local Legal Aid and legal services offices, available for the use of “the poor.”).
programs.” Merrilee Harrell advocates for librarians to create rich, jurisdiction-specific guides on topics of the greatest interest to pro se patrons, preferably online.

¶40 Several authors suggest that libraries build collections of “self-help” materials for nonlawyer patrons, such as those published by Nolo Press. In her article on self-help legal materials, Harrell offers collection development suggestions for libraries seeking to branch out beyond these well-known publishers and points out that state-specific materials, and those addressed to family law, landlord-tenant law, and consumer issues, are often of the greatest use. A document or web-based source listing reputable free online sources for legal information can also be helpful, albeit with a disclaimer indicating that the library does not endorse any particular website. Lee Sims, in a 2004 article encouraging academic law libraries to use their websites to share legal information for pro se patrons, suggests several practical tips for making this information easy to find and use. Offering this information, Sims suggests, is a kind of pro bono service; moreover, “[h]aving a Web site that addresses the needs of the public goes a long way toward helping a significant segment of the population without undue distress on the library.”

¶41 Law librarians can also serve pro se patrons by demonstrating how common finding aids are used. Many law librarians are accomplished in teaching basic legal bibliography and research skills to novice users. Maria Protti writes that the “cooperative philosophy” of librarianship, which emphasizes cooperative practices, sharing government information, and community outreach, is well suited to serving patrons who are underserved by lawyers.

¶42 In addition to knowing what is in (or not in) a library’s print collection, a librarian should be familiar with the free and low-cost legal research resources available online, both to use in individual reference transactions and to prepare useful guides for library patrons. Many law librarians already work with these materials in the course of training law students or attorneys. Librarians can use this knowledge directly when assisting patrons and as allies of attorneys working to expand access to justice.

110. Harrell, supra note 93, at 289.
111. Id. at 173; see also Lee Sims, Academic Law Library Web Sites: A Source of Service to the Pro Se User, 23 LEGAL REFERENCE SERVICES Q., 2004, no. 4, at 1, 21 (describing the use of disclaimers on an academic law library website).
112. Sims, supra note 111, at 20–23.
113. Id. at 24.
114. Maria E. Protti, Dispensing Law at the Front Lines: Ethical Dilemmas in Law Librarianship, LIBR. TRENDS, Fall 1991, at 234, 239.
115. Id.
117. E.g., id. at 485 (describing the work of the Minnesota Association of Law Libraries’ Volunteer Librarians Coalition).
¶43 By working cooperatively with the local bar or law school clinics, law librarians may be able to assist pro se patrons secure representation. Courthouse assistance services may also be available to serve pro se patrons in several jurisdictions. While it is clear that librarians should not give patrons legal advice, Peter Schanck reminds us that it is a good idea to advise pro se patrons to consult an attorney whenever possible.

¶44 The attitude of library staff can also make a significant difference. Some older examinations of pro se patrons take an explicitly adversarial tone. For example, C.C. Kirkwood and Tim Watts’s 1983 article on legal reference suggests making patrons bear “the burdens of persuasion and proof” to show that they are entitled to reference services: “Unless, and until, a patron proves otherwise, he or she should be presumed to be a tertiary patron of the most unstable sort.” The professional literature burgeons with descriptions of pro se patrons as ignorant, grasping, deluded, potential thieves, and likely to confuse reference librarians with legal counsel. Madison Mosley, however, questions the accuracy of this view: “Are reference librarians to believe that a library user when asking a medical question believes the staff to be medical experts? Or when seeking stock quotations believes the library staff to be stock analysts? I think not. Why should it be different with a legal question?” A better approach, Mosley suggests, is that “[t]he pro se litigant who comes to the library must be viewed the same as anyone else using the library’s resources.”

118. Abrams & Dunn, supra note 80, at 64; see also Pamela J. Gregory, Coloring Outside the Lines—The Prince George’s Pro Se Project, TRENDS IN LAW LIBR. MGMT. & TECH., Sept./Oct. 1997, at 1.
120. Schanck, supra note 104, at 64.
121. Kirkwood & Watts, supra note 86, at 75.
122. Begg, supra note 87, at 27 (citing Maurice M. Garcia, Defense Pro Se, 23 U. MIA MI L. REV. 551, 552 (1969)).
123. Allen, supra note 106, at 170 (“[The patron] does not wish to be pointed to a specific set of books. He wants matters explained to him; he wants further material, and that explained to him; he wants to relate a few facts so that material may be applied to facts.”); see also Begg, supra note 87, at 30.
124. See Begg, supra note 87, at 29 (describing “Perry Mason Syndrome,” in which a pro se litigant “believes that he can do it just as well or better than” the attorneys depicted on television); Suzan Herskowitz, “Lawyer-Librarians in Public Law Schools”: Too Many Unanswered Questions, 85 LAW LIBR. J. 205, 205 (1993) (“Pro se patrons, however, will automatically assume that whatever a librarian says is true.”).
125. Begg, supra note 87, at 30 (“The librarian must also be conscious of the possibility of loss by theft by such patrons. Furthermore, pro se patrons are among the most prolific photocopiers in existence and have a tendency to tie up the photocopier for long periods of time.”).
126. See Yvette Brown, From the Reference Desk to the Jail House: Unauthorized Practice of Law and Librarians, 13 LEGAL REFERENCE SERVICES Q., 1994, no. 4, at 31, 32 (“Law library patrons are unaware of some of the fundamental differences between the services of an attorney and the services of a librarian.”); Herskowitz, supra note 124, at 206 (“I assert that [an attorney-client relationship] will arise if lawyer-librarians perform any pro bono work, because the typical pro se patron will assume that there is an attorney-client relationship.”); Kirkwood & Watts, supra note 86, at 74 (“An unsophisticated patron, however, may well view the law librarian sitting behind the reference desk and surrounded by trappings of knowledge, as a source of legal advice.”).
127. Mosley, supra note 93, at 207.
128. Id. at 206.
around” may be repaid for this disservice by a return visit from a patron who is now “in an even more confused, frustrated, and belligerent state of mind.”

¶45 Maria Protti formulates the law librarian’s task as one “to dispense understandable, timely, relevant, complete, and appropriate information.” These standards inform librarians’ ethical obligations, and these obligations do not change from patron to patron. They may help law librarians, however, to analyze and explain their service offerings and limitations to pro se patrons.

Case Law

¶46 The worst outcome from a difficult patron situation is physical violence. The second worst thing might be a lawsuit. A legal challenge to a library’s treatment of a patron can be terribly costly in terms of money, time, and staff morale.

¶47 Library patrons have brought several federal and state cases since the early 1990s that challenged the constitutionality of public library conduct and access rules. While the First Amendment issues that undergird these cases do not apply to private law libraries, they illustrate how well-intentioned policies may be misconstrued or backfire in a difficult patron encounter. Librarians working in public law libraries should be aware of these precedents and all other local laws construing library access.

¶48 The seminal case in this area is Kreimer v. Bureau of Police for the Town of Morristown, in which a homeless man sued his local public library on First Amendment grounds after he was expelled from the library for violating its rules of patron conduct. The library in this case had operated for several years without any written rules. After noting certain recurrent “problem behavior” in the library, the director instituted the use of an incident log describing problems as observed or reported to library staff. Most of the entries in the log described alleged infractions by the plaintiff, Richard Kreimer. Eventually the library’s governing board enacted written rules to govern patron conduct, authorizing the library director to expel patrons in violation.

¶49 The rules specifically circumscribed what should be considered legitimate use of the library and promulgated rules proscribing specific behaviors, such as “annoying” other patrons by being noisy, “unnecessary staring,” or talking to oneself, as well as a rule requiring patron dress and hygiene to “conform to the standard

129. Begg, supra note 87, at 32 (“Here the librarian refers the patron to the court clerk, who in turn refers him to legal aid, and then he is referred to the district attorney’s office, and next to the law school library and so on.”).
130. Id.
131. Protti, supra note 114, at 235.
132. Id. at 236.
133. 958 F.2d 1242 (3d Cir. 1992).
134. Id. at 1246.
135. Id. at 1247. The problem behavior included “theft of property, smoking, use of drugs and alcohol, disruptively loud behavior, intimidation of patrons through staring and following them, and exuding of repulsive odors.” Id.
136. Id.
137. Id.
of the community for public places.” Kreimer contacted the New Jersey chapter of the ACLU, which sent a letter to the library asserting that portions of the policy were unconstitutionally vague and excessively reliant on staff discretion. In response, the library revised its policies to be more specific and concrete, including a rule requiring that patrons “be engaged in activities associated with the use of a public library while in the building. Patrons not engaged in reading, studying, or using library materials shall be required to leave the building.”

¶50 Noncompliant patrons would be asked to leave the library and would risk losing access to the library permanently, Kreimer was subsequently found to be in violation of the rules and ejected accordingly. He then sued the library, complaining that the rules violated his rights under the First and Fourteenth Amendments, as well as the New Jersey Constitution. On cross-motions for summary judgment, the trial court found for Kreimer and ordered that the library rules were “null and void on their face and unenforceable.”

¶51 The Third Circuit reversed. The court began with a painstaking First Amendment forum analysis, concluding that the library constituted a limited public forum: a space intentionally opened by the government to the public for express activity, but only for the specified purposes of reading, studying, and using library materials. As such, the library’s rules would be subject to one of two standards of review: restrictions that do not limit specifically permitted First Amendment activities must be “reasonable and not an effort to suppress expression”; so-called “time, place, and manner” restrictions that limit permissible First Amendment activities must prove to be “narrowly tailored to serve a significant governmental interest and . . . leave open ample alternative channels for communication of information.” In other words, rules that govern patron conduct in the library, such as a prohibition on harassing library patrons or staff, would be subject to the

138. Id. at 1248. The other rules at issue included:
5. Patrons shall respect the rights of other patrons and shall not harass or annoy others through noisy or boisterous activities, by staring at another person with the intent to annoy that person, by following another person about the building with the intent to annoy that person, by playing audio equipment so that others can hear it, by singing or talking to others or in monologues, or by behaving in a manner which reasonably can be expected to disturb other persons.
6. Patrons shall not interfere with the use of the Library by other patrons, or interfere with Library employees’ performance of their duties . . .
9. Patrons shall not be permitted to enter the building without a shirt or other covering of their upper bodies or without shoes or other footwear. Patrons whose bodily hygiene is offensive so as to constitute a nuisance to other persons shall be required to leave the building.

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6. Patrons shall not interfere with the use of the Library by other patrons, or interfere with Library employees’ performance of their duties . . .
9. Patrons shall not be permitted to enter the building without a shirt or other covering of their upper bodies or without shoes or other footwear. Patrons whose bodily hygiene is offensive so as to constitute a nuisance to other persons shall be required to leave the building.

140. Id. at 1250.
141. Id. (noting that because “the appeal concerns only issues of law . . . we are free to enter an order directing summary judgment in favor of the appellant.”).
142. For First Amendment purposes, the scope of permissible restrictions on access depends on the nature of the forum. See Perry Educ. Ass’n v. Perry Local Educators’ Ass’n, 460 U.S. 37 (1983) (adopting forum analysis).
143. Kreimer, 958 F.2d at 1259–60. As a limited public forum, the library was “only obligated to permit the public to exercise rights that are consistent with the nature of the Library and consistent with the government’s intent in designating the Library as a public forum. Other activities need not be tolerated.” Id. at 1262.
144. Id. (internal quotations and citations omitted).
reasonableness standard. Rules that could curtail a patron’s otherwise-legitimate access and use of the library, such as a “hygiene” rule mandating that patrons wear shoes, would be judged more stringently.\footnote{145}{But see Neinast v. Bd. of Trs. of the Columbus Metro. Library, 346 F.3d 585, 591–92 (2003) (indicating that a library regulation mandating that patrons wear shoes in the library did “not directly impact the [patron’s] right to receive information” and was thus subject to a rational basis standard). The court ultimately subjected the rule to heightened scrutiny anyway and found that it passed muster. \textit{Id.} at 592–95.}

\textsection{52} Applying these standards, the court reversed the district court’s determination that the challenged library rules were impermissibly vague, specifically noting drafting points in the rules that enhanced their specificity and restrained the library’s discretion.\footnote{146}{Specifically, with respect to rule 1, the library’s discretion to determine who is making use of library materials “must be exercised in accordance with the criteria in the rules and is thus not unbridled”; the reference to annoying behavior in rule 5 “lists specific behavior that is deemed annoying,” avoiding a problematic subjective standard; the “nuisance” standard in rule 9 “is broad, in our view necessarily so, for it would be impossible to list all the various factual predicates of a nuisance.” \textit{Kreimer}, 958 F.2d at 1267–68.}

\textsection{53} The \textit{Kreimer} court left the Morristown public library with some leeway to exercise discretion within the parameters established by its rules and practices. Its situation contrasts with that of the District of Columbia’s public libraries, which were sued in 2001 for denying access to a homeless patron pursuant to a policy barring patrons with an appearance that is “objectionable (barefooted, bare-chested, body odor, filthy clothing, etc.).”\footnote{147}{Armstrong v. Dist. of Columbia Pub. Libr., 154 F. Supp. 2d 67, 77 (D.D.C. 2001).} The district court found the rule to be vague and overbroad, noting that the term “objectionable appearance” was neither a legal standard nor a specific definition.\footnote{148}{\textit{Id.} at 78.} Evidence in the case demonstrated that the policy was enforced entirely by the ad hoc determinations of library staff and local police, and that there had been no training or written guidance on how the rule was to be applied.\footnote{149}{\textit{Id.} at 78–79.} The library argued that library staff was capable of enforcing this “commonsense” standard, and the use of “etc.” was “not so mysterious as to warrant a finding of vagueness or overbreadth.”\footnote{150}{\textit{Id.} at 79.} The court disagreed, however, concluding that the rule amounted to “an effectively standard-less test whose daily application is governed only by subjective determination.”\footnote{151}{\textit{Id.}}

\textsection{54} Although the case law is unclear as to whether an individual has a protected liberty interest in using public libraries,\footnote{152}{See Mpala v. City of New Haven, No. 3:11CV1724(VLB), 2013 WL 657649, at *3 (D. Conn. Feb. 22, 2013) (citing cases).} it is prudent for libraries that constitute limited public fora to provide due process to those patrons who are denied access. In \textit{Spreadbury v. Bitterroot Public Library}, the plaintiff was served with a written notice banning him from the library and explaining why (in this case, intimidating and threatening staff).\footnote{153}{\textit{Spreadbury v. Bitterroot Pub. Library}, 862 F. Supp. 2d 1054, 1057 (D. Mont. 2012).} He was later offered an opportunity to be heard and submit a
request for reconsideration to have his library privileges reinstated. The court determined that these measures were adequate to protect the plaintiff’s liberty interest while furthering the government’s interest “in maintaining the peaceful character of a library.”

¶55 Case law also illustrates the pitfalls of failing to commit library policies to writing. In Brinkmeier v. City of Freeport, the plaintiff was barred from entering his local public library after allegedly harassing and following a library employee. The record showed that Brinkmeier had been removed from the library pursuant to the library’s “unwritten practice/policy of the library that persons ‘harassing and/or intimidating other library patrons or employees of the library may be precluded from use of the library.’” The court adopted the Third Circuit’s analytical framework from Kreimer but rejected the library’s motion for summary judgment. While the court agreed “that a rule which prohibits disruptive behavior in a public library is at least conceptually inoffensive to the First Amendment . . . the way in which any given rule is worded will have a direct effect on whether its designed purpose is effectuated with the least amount of harm.” In this case, the court found that the unwritten policy was excessively broad (failing to define crucial terms like “harassing” or “intimidating”) and lacked appropriate limitations on disapproved conduct. The court also pointed out that the lack of evidence of any formal or informal procedure for a patron to appeal her denial of library access supported its conclusion that the policy was unreasonable.

¶56 In a footnote, the court pointed out the obvious problems with failing to put library policies in writing: “While the court cannot say than an unwritten rule is per se constitutionally suspect, it at the very least opens the door to justifiable concern. Unwritten rules lend themselves to a myriad of problems, none the least of which is proof of its existence, both temporally and substantively.” The wisdom of the second sentence may apply to any library facing a challenge to its authority to enforce conduct rules against patrons.

154. Id.
155. Id.
156. Brinkmeier v. City of Freeport, No. 93 C 20039, 1993 WL 248201 (N.D. Ill. July 2, 1993). Problems with the plaintiff’s conduct were established by (among other things) “numerous incident reports” maintained by the library. Id. at *2.
157. Id. at *1 (emphasis in original).
158. See id. at *5.
159. Id.
160. Id.
161. Id. at *6.
162. Id. at *5 n.6.
163. It is likewise important for libraries to be aware of not only the content of their formal policies, but how those policies are interpreted or otherwise (mis)applied by staff. See Lu v. Hulme, No. 12-11117-MLW, 2013 WL 1331028 (D. Mass. Mar. 30, 2013). In Lu, the court rejected a library’s motion to dismiss the claims of a homeless patron who allegedly was refused entry to the library on the grounds that “homeless people cannot come in with their belongings.” Id. at *2. The library noted that its policy prohibited the plaintiff from bringing certain items into the library, but the court rejected this defense: “These allegations assert that the actual conduct of the Library’s staff, as opposed to any facially reasonable written policy, violated [the plaintiff’s] First Amendment right to access the Library.” Id. at *7.
Survey Description

§57 While much has been written about managing difficult patron behavior in libraries generally, little of this work has focused on law libraries and their unique challenges. Having identified this need, we sought to better understand how difficult patron situations manifest themselves in law libraries and the extent to which law libraries rely on the policy prescriptions or techniques discussed in the wider library literature. To compile information about the best practices, policies, and procedures law libraries are currently using to manage difficult patron behavior, we created a brief online survey. We were specifically interested in gathering information about the disruptive behavior of all types of patrons (attorneys, judges, students, stakeholders, members of the public, legislators, elected officials, etc.) from all types of law libraries and examining the existing policies and procedures, both formal and informal, that those behaviors might trigger a law library to implement.

§58 The survey was available for completion from September 8, 2014, through October 12, 2014, on SurveyMonkey and accessible via a link we shared with potential respondents. In advance of the survey being available, we formulated a communications strategy to elicit respondents consistently over the month the survey was available online and to reach a wide audience of law librarians by creating multiple ways a law librarian might receive the survey invitation. Our goal for survey distribution was to obtain responses from a large group of law librarians working in different law library settings. We hoped to obtain survey responses from law librarians who were members of AALL and those who are not; law librarians who wrote or created policies about difficult patron behavior and those who implemented them during service interactions; law librarians working in institutions that had formal policies about disruptive patron behavior and those that did not.

§59 Because of the potentially sensitive nature of the survey, respondents completed the survey anonymously. However, respondents were given the option of sharing their contact information at the end of the survey if they were willing to be contacted by one of us for follow-up questions about their institution’s policies or their feelings about the successes or failures of their institution’s policies, procedures, and training in this area.

§60 The survey asked about the type of law library in which the respondent worked, the type and frequency of difficult patron behavior the respondent had witnessed or experienced, the formal or informal nature of the respondent’s
institution’s policies or procedures about difficult patron behavior, the training respondent had been provided on dealing successfully with disruptive patron behavior, and the respondent’s feeling about the training and adequacy of the policy or procedures of his or her institution. The complete survey can be found in the Appendix.

Survey Results

Libraries, Problems, and Problem Frequency

There were 629 replies to the survey, although several of these were incomplete. Based on answers to Question 1, approximately twenty-eight percent of respondents were from private academic libraries, twenty-four percent from public academic libraries, seventeen percent from law firm libraries, thirty percent from public governmental law libraries, and less than one percent from business libraries. (See figure 1.)

Figure 1

Question 1: In what type of library are you currently employed? n=629

Question 2 sought to determine what types of disruptive behavior were encountered by library staff. The top three types of behavior encountered were verbal aggression, excessive or unmanageable requests, and physical aggression, which were each reported by at least sixty percent of respondents. Theft is also a significant problem, reported by almost half of respondents. Figure 2 shows the entire breakdown of disruptive experiences encountered.

165. Two respondents also specified that they worked in membership law libraries.

166. The authors received four responses from staffers of non–law libraries. Three respondents indicated that they worked in public libraries; one worked in a school library. We also received one response from a county archive staffer.
In addition to the ten behaviors listed as options in Question 2, respondents volunteered dozens of other examples of problematic patron conduct. These fell into several broad categories, including poor hygiene or body odor; disruptive or unauthorized use of food, drink, or tobacco; confused, deluded, or erratic behavior consistent with symptoms of mental illness; misuse of library computers; viewing online pornography; soliciting legal advice from lawyers and students using the library; trespassing or loitering; sleeping; stalking or harassment of library staff or other patrons; making excessive requests or monopolizing librarians’ services; racism; and general rudeness. (There were also rare but more serious problems presented: patron lawsuits, attempted abduction, and suicide.)

However, when asked about the estimated frequency with which librarians and their staff encountered disruptive behavior, more than seventy percent of respondents indicated that disruptive behavior was infrequent, very infrequent, or never occurred. Less than six percent indicated that it was very frequent, and approximately twenty-four percent said it was somewhat frequent. (See figure 3.)

When we compare the frequency of disruptive patron behavior by library type, it appears (not surprisingly) that disruptions are far less common in private spaces. While none of the law firm respondents indicated that disruptions occurred very frequently in their libraries, more than ten percent of state, court, county, and federal government library respondents did so. “Somewhat” frequent disruptions were also most commonly reported in government-affiliated law libraries (35%), followed by public academic libraries (25.78%), private academic libraries (17.5%), and law firms (8.89%). Figure 4 illustrates the frequency by library type.
Formal Patron Conduct Policies

Next, the survey sought to determine whether libraries used a formal policy to manage or respond to disruptive or difficult patron behavior. The majority of respondents, more than fifty-seven percent, indicated that their libraries did not use a formal policy to address such behavior.
have a formal policy, although rates varied by library type. According to the survey, public academic libraries had a policy in place more often than private academic libraries. Governmental libraries, however, were less likely to have a formal policy than public academic libraries, even though almost forty-seven percent of respondents from the former indicated that incidents of disruptive or difficult patron behavior occurred very or somewhat frequently. None of the business libraries indicated that they had a formal policy, though only three responses were received from this type of library. Among law firm library staffers surveyed, more than ninety-five percent did not have a formal policy, with only four respondents indicating that their library had such a policy.

Of those respondents whose libraries use a formal policy, eighty-five percent expressed satisfaction with the policy. The survey asked respondents to expand on what makes them satisfied or dissatisfied with their library’s policy if one is in place. We received seventy-four free-format responses, which anecdotally support the importance of several themes.

First, satisfied respondents credited policies that were simple and clear, while unsatisfied respondents complained that their policies were convoluted and confusing. One academic library director shared that her library’s policy worked because “[i]t addresses a general behavior and gives specific actions that we will take.” Two government librarians attributed the effectiveness of their libraries’ policies to being “simple and provid[ing] escalation levels” and “simple and easy to implement. One warning, then referral to higher authority, then they are escorted out by the sheriff.”

By contrast, a respondent who works in an oft-disrupted county law library suggested that the library’s policy did not meet its needs because it “is overly complicated and makes it difficult for staff to enforce conduct rules.” Another government librarian described the library’s policy as being “too convoluted. It involves yellow flags and red flags vaguely based on soccer rules. Basically, the librarian must give a warning, then a yellow flag, then red flag. Sounds simple but in between the lines it is much more complicated. Even following this process and even for the most egregious behavior, the patron is banned for 1 week.” A third government librarian expressed dissatisfaction with a library policy that is “[v]ery convoluted. Consequences for bad behavior are few and far between.”

Policies may also be applied inconsistently if they are general or vague. One law librarian illustrated the problems this could cause at her public law library in a major metropolitan area:

There is much room for discretion, and sometimes patrons who create a disturbance in the library and harass staff are allowed to stay when according to the policy they should be asked to leave immediately. Each time a situation arises, staff seems to have to approach management and ask how they would like to handle it, and the result depends on who the patron is, what they are doing, and how management feels at the moment.

In addition to clarity, several satisfied respondents described how good communications between library staff were instrumental to their success. “In addition to having a clear policy,” wrote one county law library director, “we have worked on setting boundaries as a team and we’ve reviewed [the policy], along with our organization’s fair treatment policy and emergency policy and protocol.” An academic reference librarian and access services supervisor said of her policy:
“I wrote it and consistently speak to my staff of student workers about their concerns regarding their safety.” Some respondents also alluded to the importance of working closely with security personnel. Another academic reference librarian emphasized the importance of ensuring that security officers understand and enforce the library’s policy to avoid misunderstandings: “It took much communication to enlist the support of campus police, who were more tolerant of behaviors that we prohibited.” When such collaboration is lacking, policies may be less robust. For example, as one respondent described their government library’s policy, “[i]t’s somewhat vague regarding remediation of the disruptive behavior. Assessment of the situation is left to the individual staff person on duty, so the assessment and response to situations can vary widely. It was not formed in conjunction with building security.” Or as another respondent put it, “[t]he policy is meaningless if security staff does not enforce it.”

¶72 Communications and training can go hand in hand. In the words of one government librarian:

Our policy is brief, but it must be accompanied by conversation and training—and even drills on occasion. New employees often don’t know until they are deep into a problem that it is nothing new and that there is a way to handle the patron or the situation. Conversation, sharing of stories, participation by the Safety Committee members and law enforcement, etc. all make employees feel safer and more confident, which leads to cooler heads and decision making when emergencies arise.

Good communications also include conveying expectations to patrons. Making conduct policies obvious or accessible can be helpful. An academic electronic services librarian described how her library’s policy is “posted on the website and near the front of the library. It allows us to point at something and helps in trespassing[,] repeat or really bad violators.” Conversely, multiple dissatisfied respondents complained that their libraries’ policies were inaccessible or outdated.

¶73 Several respondents commented that their libraries’ policies were not comprehensive enough to address the problems they faced. One respondent wrote that “[t]he policy is very long and covers a wide range of issues but it seems as if we have to continuously add to it because there are always new issues popping up.” Another complained that the library’s policy needs “more detail regarding consequences for inappropriate behaviors other than inappropriate use of technology.” Policies may be incomplete because they fail to address specific problem behavior, but also if they fail to address repeated bad behavior. “For example,” one respondent offered, “if I catch a guy watching porn multiple times, it seems as if there are no consequences except me ending his session and kicking him out of the library. If there are repeat offenders, something needs to be done about it.” Similarly, another respondent said that in the government library where he or she works, the policy is incomplete because “it ends right after asking the patron to leave the library. If s/he won’t leave? Is the patron allowed back? Under what circumstances?” Of course, as one public services director has reminded us, “[i]t is difficult to create one policy that responds to every situation that may arise in the library.”

¶74 Some respondents praised the rigor of their libraries’ policies, and others expressed disappointment that their policies did not cover all problematic behaviors they faced or were not tough enough. No respondent indicated that he or she believed the library’s policy was excessively harsh or aggressive.
Perhaps most important, these responses indicate that a library’s policy cannot be effective if either library management or staff do not believe in it or are unwilling to lend support. Several respondents wrote that their libraries’ policies were undermined by a lack of support from either the library’s parent institution or its director. For example, one respondent lamented that the policy governing his or her government library “is well written but would be better if management trusted that the front line staff actually knows what is going on and is able to handle the situation.” Another government librarian noted that her library’s policy “is almost impossible to enforce because we require our legal department[s] approval to take action.” One respondent wrote that most staff at his or her government library had “given up” trying to enforce the library’s policy because the director rarely supports the accounts of reference librarians, with the result that “[m]orale here is extremely low because our patrons are abusive and we see no recourse.” By contrast, another government librarian specifically cited the support of administrators as important to her sense of satisfaction with library policies.

Meanwhile, several respondents identified policy enforcement by staff as a problem. Moreover, a lack of clarity about the policy’s terms can exacerbate problems. According to one respondent at a public academic library, “[t]here is considerable disagreement among staff regarding what constitutes an ‘excessive request.’ This results in staff feeling undermined while enforcing the policy.” Student workers appear especially prone to enforcement problems. Another public academic respondent indicated that “our undergraduate student workers . . . tend to be more permissive or timid and evidently do not feel very empowered to enforce the rules or ask for a library professional to deal with situations as they arise,” with the result that it is “not clear to patrons that it is in fact a policy.” (By contrast, one government librarian told us “[o]ur policy meets our needs because we enforce it.”)

On the other hand, policies that grant staff autonomy and flexibility to manage problems were cited favorably. Mariann Sears, Director of Houston’s Harris County Law Library, wrote “[o]ur policies give the library staff the authority to enforce them, including the authority to request that disruptive patrons leave for the day or be banned permanently.” Another satisfied respondent complimented a public academic library’s policy for “empower[ing] staff to nip disruptive behaviors or disruptive patrons in the bud.” Another respondent similarly praised a private academic library’s policy because it “empowers staff to take action. Any staff person can call campus security and request a specific response, e.g., removal of patron, walk-through, ID check.” Another respondent noted that a private academic library policy worked because it “permits flexibility of response on the part of Access Services staff.”

Policy Accessibility

Of those respondents whose libraries had policies, almost forty percent reported that their policies are freely accessible to all staff and patrons and are prominently displayed. (See figure 5.)

Multiple respondents commented that their libraries’ policies were publicized through the library’s website. Another thirty-eight percent said that the libraries’ policies were accessible to all staff and patrons, but not prominently
displayed. Fewer than four percent of respondents said they knew of their institutions’ policies, but neither they nor their patrons had access to them.

**Policy Training**

¶80 In addition, more than seventy-five percent of respondents whose libraries used formal policies indicated that their staff had been trained on the policies’ provisions.  

¶81 A follow-up question asked respondents to describe what, if any, training on their libraries’ policies was available. Eighty-two respondents offered expanded answers to this question.

¶81 A significant number of respondents said that their staff members are “trained” on library policy exclusively or primarily through informal discussion among colleagues, either in meetings or in the course of regular work activities. In some cases, training or other kinds of conversation about handling challenging patrons is spurred by a particularly problematic encounter. One respondent from a public academic library offered an example: “The University requires that all employees (student, staff, and faculty) take anti-harassment and anti-discrimination courses. Locally, our patron policies are reviewed whenever we have an incident.”

¶82 Several other respondents said that, in their libraries, staff learned about conduct and behavior rules primarily by reading existing policy documents. This “self-training” may be reinforced by discussion with a supervisor or by ensuring that employees know whom to contact if they need help.

167. Question 7, n=221. See infra appendix.
Multiple respondents indicated that their libraries conducted formal training or organized discussion of patron conduct policies. For example, one county law librarian reported that her library “did training in boundary setting with representatives of the local mental health board” as well as reviewing its policy and emergency response protocol at least once a year. Marcia Bell, director of the San Francisco Law Library, described a multipronged approach to training at her library, including “[s]taff meetings, role playing, attendance at outside training programs and webinars, [and] handling difficult patron reference materials.” Several other respondents reported that they had received formal training specifically on handling “active shooter” or other emergency scenarios. In some cases, these trainings may be led by a parent institution’s security department.

The responses suggested that, in many libraries, training resources are focused on specific groups of workers rather than staff as a whole. For example, several respondents said that their libraries provide training on conduct policies specifically for new hires. Other respondents indicated that circulation and reference staff were designated to receive training. Others emphasized training for student workers.

At least five respondents reported that they were dissatisfied with the training that they had received. For example, one respondent described a county law library’s training as “very informal, haphazard and inconsistent.” Another government library respondent described the training as “[m]eaningless lectures. Not relevant.” In some of these cases, respondents report dissatisfaction with training tied to poor communication between staff and management, similar to sentiments reflected in Question 6 regarding library policies. For example, one government librarian describes receiving “emails on the process, but no training with us all in a room with the ability to ask questions. Staff feedback by email was discounted. [The] Boss never meets the public by working at circulation/reference desk.”

Even libraries that do not encounter disruptive patrons on a regular basis may struggle with how best to train staff. As one academic librarian in a private institution wrote, “more training is always needed because events are infrequent enough and under stressful conditions,” making it difficult to respond appropriately.

Informal Policies and Practices

In some libraries that have formal policies, there are informal practices used in addition to (or as departures from) the official “rules.” Other libraries have no formal policy but have established routines in place. Question 8 asked respondents whether their libraries used informal procedures to deal with disruptive patrons, with the intention to capture information about how libraries manage difficult situations when they do not have specifically promulgated rules in place or if they use strategies day to day that add to or differ from their formal policies. A slight majority of survey takers answered that their libraries did not have informal policies or procedures in place to handle disruptive or difficult patron behavior. However, the breakdown was almost fifty-fifty, with just over fifty-one percent saying that there was no policy and just under forty-nine percent saying there was an informal policy. When the Question 4 and Question 8 responses are compared, they

168. Question 8, n=517.
show no pattern of libraries having either a formal or informal policy in place. Some libraries have both a formal and informal policy, and some have neither.\textsuperscript{169}

\textsuperscript{¶88} Of the 253 respondents who indicated that their library uses informal procedures, 214 also gave some additional description of their practices. In one public academic library, a respondent reported that “\textit{[w]e have a formal policy statement which is essentially there as a backstop—we can point patrons to it if we need to, we don’t make it prominent and generally don’t refer to it unless someone is being disruptive and claims that ‘well, it doesn’t say that anywhere.’ Otherwise, the system is almost entirely ad hoc and informal; it’s a local joke that ‘we have no rules, only exceptions.’}” On the other hand, some libraries strive to take only formally sanctioned approaches to difficult patrons; as one respondent put it, “[i] informal actions put staff in danger. All staff are to conform to our written process.”

\textsuperscript{¶89} A common scenario emerged: staff would typically begin with a polite request to the patron to cease the problematic behavior, following up with either a consultation or referral to another library staff member, asking the patron to leave, and finally a call to local security services. Or, in the succinct words of one respondent, “Deal with it. Get the director. Then call bailiffs.”

\textsuperscript{¶90} Many respondents indicated that they try initially to resolve disputes with patrons through conversation. This may give library staff a chance to explain the perceived violation or policy issue, such as a librarian’s inability to dispense legal advice. Several specifically emphasized the need to remain calm during these encounters to avoid escalation. Some use a “buddy system” so that individual staff members need not address a problem alone. These conversations can also offer an opportunity to accommodate patrons who may behave unconventionally but are nonthreatening. For example, Mariann Sears, director of Houston’s Harris County Law Library, wrote, “We have several non-violent regular patrons with varying degrees of mental health challenges. For instance, one of our patrons is compelled to clean his work area before he begins his research. We accommodate this patron by providing him with a single disinfecting wipe to clean the area he works at.”

\textsuperscript{¶91} In many libraries, a noncompliant patron may be asked to leave, be barred from returning to the library, or be suspended from receiving certain library services. Several dozen respondents also said that they were to notify a designated person, often someone higher in the library or organizational hierarchy, when difficult patron situations arise. This can pose a problem, however, if and when the designated person is not available to assist. As one public academic library respondent wrote, “[i]t depends on who the patron is, but the general informal policy is to report the person to the Head of Circulation or Public Services. This is not helpful for evening and weekend staff or for when that person is not available.”

\textsuperscript{¶92} More than seventy respondents reported that they can call on local security officers or police in various circumstances, including to help assess a potentially difficult situation, to assist in removing an obstinate rule breaker, or at the first suggestion of aggression or violence. (As one public academic librarian put it, “Call

\textsuperscript{169} Approximately forty-two percent who said yes to having a formal policy also said yes to having an informal policy. Approximately forty-six percent who said no to having a formal policy also said no to having an informal policy.
the cops when things get real.”) A private academic law librarian wrote that staff should call security first if they feel uncomfortable handling a situation: “[w]e ask that the staff (students or professional staff) take care of themselves before anything else—none of us are heroes.” Thirteen respondents also specifically mentioned that they have panic buttons available.

¶93 Nine respondents described using an incident reporting system of some kind to document difficult patron situations. “We have started creating ‘incident reports’ to better track issues,” wrote one reference department director. “In the past we found that it took months for us to realize that we were experiencing a problem patron on a variety of shifts—and then sometimes it was hard to reconstruct how often/recent previous incidents were.”

¶94 Several respondents indicated that their typical practice was to address difficult patrons “on a case-by-case basis” or to rely on their best judgment or discretion. This, unsurprisingly, can lead to inconsistencies. One respondent, who works in a public academic setting, wrote: “we tolerate almost anything until the individual librarian or staff member reaches a point where the behavior is personally disturbing or disruptive to them. All professional[s] and staff members are encouraged to use their own judgment. This means that there is no consistent way to curb disruptive behavior. What one librarian or staff member will tolerate another cannot. Patrons are not put on notice about what behavior is prima facie disruptive and what is not. Welcome to the monkey house. . . . ”

¶95 Several law firm library respondents provided descriptive answers to this question. The survey found that more than ninety-five percent of law firm libraries do not have formal patron behavior policies in place. However, the survey indicated that disruptive patron behavior is rare in firms: more than one-third of law firm respondents indicated that they never encountered such problems, and less than ten percent reported that patron behavior was a problem “somewhat frequently.” Yet when such problems occur, firm library staff must operate under unique constraints. For example, one respondent wrote: “[i]f materials go missing, I send out firm-wide emails asking for people to check their offices and areas for the item, and to send it back or notify me if they find it. Often materials come back anonymously. Unfortunately we have no check out period limitation and there is no way to police the library 24/7. It is always accessible by firm attorneys and staff, regardless of librarian presence.” One library director alerted us to another firm-specific problem: attorneys purchasing their own books or subscriptions without approval from the firm’s chief operations officer or library director: “Do not go ‘rogue’ and decide to start a subscription to Lexis or Westlaw on your own.” While missing materials, in some circumstances, are retrieved from attorney offices, firm library staff may also simply choose to replace them from the publisher. Other firm library staff emphasized the need to keep patron encounters positive, for example:

• “Pacify and/or ignore. Be diplomatic and calm at all costs.”
• “Try to defuse the situation and provide any help possible.”
• “We manage the difficult patrons with humor, research the problem, and we do point out when the patron’s perception is mistaken, with the facts.”
Several respondents indicated that they would refer problems with their patrons (presumably attorneys) to the firm's administrator, managing partner, or human resources department.

General Training

Respondents were also asked whether they had received any training on dealing with difficult patron behavior, regardless of whether their library had relevant policies in place. Almost two-thirds of respondents indicated that they had not received such training. (See figure 6.)

Figure 6

Question 9: Has staff at your library been trained on dealing with difficult patron behavior? n=517

Among the respondents who had received such training, 130 also gave a brief description of what it looked like. Again, as was the case with responses to Question 7 (regarding policy training), many respondents indicated that their training arose primarily through informal discussions among colleagues. Several others relied on consultations, lectures, or workshops arranged by consultants or outside library organizations like AALL or a local chapter or other professional group. Some respondents noted training provided by their institution's Human Resources department as well as specific instruction on how to handle active shooter scenarios and other emergencies. Among libraries that had sought aid from other professionals, social workers were the most commonly referred to.

A few respondents said that their training was largely self-directed; others mentioned that their training was unsatisfactory in some way. One court library respondent commented on the disconnect between the training available, which focuses on law enforcement issues, and the needs of the library:

Since no weapons can be brought into the courthouse, we are not considered to be in any real danger. BUT that does not mean we don’t have problems dealing with the misplaced expectations of patrons. The problem stems from the lack of legal services in this area and the mistaken belief that the law library staff will help them with the actual problem, not just give them books. . . . No one officially addresses that issue of underserved people going off the deep end at us!
Follow-Up Discussion

¶100 Once the survey had closed, we read and synthesized the results. The final question of the initial survey asked respondents whether they would be willing to answer follow-up questions. Eighty-four respondents agreed, and shortly after the close of the survey, we e-mailed these respondents to announce that follow-up questionnaires would be forthcoming.

¶101 We separated the eighty-four respondents into four subgroups: respondents whose libraries had formal policies that they were satisfied with, respondents whose libraries who had formal policies that they were not satisfied with, respondents whose libraries did not have formal policies but did use informal ones, and respondents whose libraries who did not have formal or informal policies. Each of us took all of the respondents for one or more subgroups and contacted that subgroup via e-mail several weeks after the close of the initial survey. The follow-up questions were written after the results of the survey had been collected and synthesized and contained questions crafted to solicit additional information from respondents on key issues. We wrote, edited, and agreed on all follow-up questions and sent each subgroup identical sets.

¶102 The questions were sent to respondents via e-mail. The respondents were asked to respond within three weeks and were also given the option to schedule a phone call with one of us if they preferred answering the questions verbally. Of the eighty-four respondents contacted, twenty returned completed responses to the follow-up questions or were interviewed by phone.

Libraries Without Formal Policies

¶103 In follow-up conversations with respondents whose libraries do not have formal patron policies, we noted several key points, many of which echo the respondents’ initial survey answers. First among these: there is no general consensus that having a formal policy is necessarily beneficial or something they missed.

¶104 Flexibility is an issue discussed by more than one of the respondents in the two subgroups who stated their libraries did not have formal policies. Multiple respondents among the two subgroups without formal policies cited flexibility as a concern. To these respondents, not having a formal policy can be beneficial in that it allows the librarians to be flexible in their approach to patrons exhibiting disruptive behavior. One respondent at a public academic institution stated that not having a formal policy gives his staff flexibility and allows his staff to respond individually to patron quirks. Catherine McGuire of the Maryland State Law Library stated, “We make decisions on a case-by-case basis, based on what aligns best with the Library’s mission. . . . Not having a written [policy] probably helps all the time—gives us constant flexibility. No two interactions are ever exactly the same, after all.” The perceived flexibility created by not having a formal policy may also have positive long-term effects for the library. Dennis Kim-Prieto, reference librarian at

170. The twenty follow-up respondents included thirteen individuals whose libraries had a formal policy and were satisfied, six respondents whose libraries either used an informal policy or no policy, and one respondent whose library had a formal policy and was not satisfied. It should be noted that some respondents communicated that they were not able or willing to answer the follow-up questions due to the sensitive nature of the topic.
Rutgers School of Law, states, “It might be better for the librarians to have a one-size-fits-all policy for removing people, but it wouldn’t help the library’s clients and the library’s relationship with its clients. A bright line rule might be more decisive, but could also end up excluding more people from the library.”

¶105 While more than one respondent commented about the flexibility not adopting a formal policy can bestow, others commented about how adopting a formal policy could be beneficial, especially with regard to improving the consistency with which staff respond to patrons exhibiting challenging or disruptive behavior. Of the follow-up respondents without a formal policy, most stated that staff did not consistently implement the informal policies in place or did not respond consistently to disruptive patron behavior. However, there was a variety of reasons given for the lack of consistency. One librarian posited that the size of the library staff, which includes a large number of student workers, contributes to the inconsistency. Librarians from two different institutions also mentioned library staff personality traits as being a cause of inconsistency. Said one, “There are some of us who are really good at setting limits while there are others of us who, perhaps because of the nature of the profession, we want to help, are not as good at that,” while another librarian commented, “Some people don’t like to enforce policies or be ‘the bad guy.’ Some people don’t like confrontation so they try to avoid it. Some people enforce policies with gusto!” Finally, another librarian suggested the ambiguous nature of disruptive patron behavior itself may be driving the inconsistencies: “Our policies are not consistently followed by staff, because it’s hard to gauge when behavior becomes disruptive.” Beyond just supporting consistency of patron treatment, one respondent at a public academic institution thought having a formal policy could foster equality of patron treatment, stating, “I think we would benefit from a formal policy to help make sure we are all on the same page when it comes to these types of incidents. They can be delicate situations sometimes and it is very critical to treat people equally.” Another respondent from a courthouse library also spoke about the need for equal treatment: “As an attorney-friendly courthouse where pro se [patrons] really feel intimidated, it’s important that we make sure both attorneys and pro se litigants have to avoid disruptive behavior.”

¶106 In addition to flexibility and consistency, another issue that was widely discussed among these respondents was mental illness. Several respondents made comments about a patron who may appear to be exhibiting signs of mental illness and may be engaging in challenging or disruptive behavior. When asked what type of challenging patron behavior their libraries handled especially well or especially poorly, several respondents mentioned patrons exhibiting signs or symptoms of mental illness. One respondent stated, “I think our law library doesn’t handle mentally ill patrons very well, because our staff sometimes either tries to be too helpful or too hands off.” Another respondent expressed a belief that her library excels during interactions with mentally ill patrons who may be engaging in disruptive behavior. Catherine McGuire, head of reference and outreach at the Maryland State Law Library, explained, “We handle phone calls from residents of psychiatric institutions very well, I think. We are fortunate to have a number of very patient and compassionate reference staff, which I think means we do well at listening—the biggest need of these patrons. I think as well, the fact that we are such a cooperative group, very good at backing each other up, that everyone feels supported, which
makes it easier to sit and listen. . . . And we hold regular bi-weekly reference staff meetings where we spend time discussing these patrons, how we handle them, how to handle them going forward, and agreeing on a consistent method.” In contrast, Sue Luddington, assistant law librarian at Washington County Law Library, recognized that patrons with mental illness who exhibit disruptive behavior can be both a challenge and a success for her institution: “We recognize that, even though we don’t have legal advice to give, we can lend an ear and, at a minimum, empathize, and I feel this is something we do well. . . . Of course, at the same time, these are also the same types of interactions that we sometimes don’t handle well, because the social services that the individual really needs simply aren’t available. It is quite disheartening to not have ANY resources to give to someone, and there have been times I’ve felt like we’ve failed a patron by not being able to provide more options.”

Libraries with Formal Policies

¶107 The follow-up responses received from librarians whose institutions use formal policies confirmed many of the virtues described in the literature. Respondents from satisfied policy-using libraries cited clarity, consistency, and good communication as key to their management of patron behavior.

Using Formal Policies

¶108 Many respondents shared copies or links to their patron conduct and access policies. The majority of follow-up respondents indicated that their policies had been updated within the past two years.171 There were two key commonalities among the policies provided. Several libraries incorporate explicit statements about the purpose of the law library and what patrons are expected to use the library for. A typical example is the Harris County (Texas) Law Library rule stating that “[p]atrons shall be engaged in activities associated with the use of a public law library while in the Law Library. Patrons not engaged in reading, studying, or using Law Library materials may be required to leave the Law Library.” And almost all policies included “disruption” clauses: generally stated rules prohibiting patrons from conduct that could reasonably be expected to disturb others.172

¶109 In a university setting, an academic law library can get crowded by undergraduate or other nonlaw students (or unaffiliated users), which can lead to disputes and law student frustration. At Arizona State University (ASU), the Ross-
Blakley Law Library uses both a library code of conduct (describing its expectations for patrons and proscribing certain activities) and a limited access policy that specifies who has access to the library during the academic term and the identification patrons are required to provide. The University of Connecticut’s Thomas J. Meskill Law Library’s policy specifies who may use the law library, including a statement limiting public access to “[a]ttorneys and the general public who are conducting legal research.”

¶110 Multiple public law libraries included citations to the statutes that authorize their operations or govern their conduct.173 The San Francisco Law Library cites to specific sections of the California Penal Code that prohibit specific conduct or empower staff to take particular actions, such as check a patron’s bags. At some public law libraries, like the San Francisco Law Library, “computer use is often a source of bad behavior” according to Director Marcia R. Bell. In addition to its Patron Rules of Conduct, the library has a separate Technology Policy and printed Terms of Use for its computers, printers, and wireless internet network.174

¶111 Not all policy documents are geared toward patrons; some exist for the aid of staff. The California State Library, for example, uses a Patron Behavior/Consequences Matrix that gives staff a quick visual guide of how to respond to fourteen different categories of prohibited patron conduct after one, two, or three occurrences. (The most serious infractions, such as threatening staff or engaging in sexual activity, trigger an immediate patron ban.)

¶112 Multiple respondents spoke favorably about having a formal, written policy to regulate patron conduct, in large part because they could refer patrons to the text as needed. For example, Cheryl Nyberg, of the University of Washington, reported that “[w]hen we need to approach a patron about undesirable conduct, we highlight the section of the Code of Conduct that the patron is violating.” Several other respondents mentioned bringing printed and highlighted copies of their policies with them when intervening with a disruptive patron. As one put it, “When I am confronting anyone, I always like to have backup whether it be a paper or a person. Anytime I approach a disruptive patron, I print out the policy, highlight the violation, then talk with the patron about the policy. . . . The majority of the time, they are very compliant since I have the policy in front of them and they have no room to argue.”

Consistency and Communication

¶113 When asked whether their libraries’ policies were enforced consistently, a plurality of respondents was quick to connect consistent enforcement to good communication among staff (and vice versa).

¶114 Small staffs may have an advantage when it comes to consistency if their size translates to improved communication. As San Francisco Law Library’s Marcia Bell describes, “Our staff is quite small—less than 10 employees—so it is not difficult to maintain procedures. Decisions regarding patron conduct are made by

173. See, e.g., Law Library Rules, supra note 172, at § 1.
management, and staff routinely inform and consult with managers about issues as they arise.”

¶115 ASU’s Leslie Pardo described her library’s success in using incident reporting to get important information to police, when necessary (for example, the time, location, and physical description of a student’s stolen property), and to ensure good communication among public services staff. Similarly, Coral Henning of the Sacramento County Public Law Library described the library’s use of an incident database incorporating photographs from security cameras “so we know who is who. The incident report is emailed to all staff so we are all on the same page.” Similarly, at the Witkin State Law Library of California, Marguerite Beveridge reports that

[w]hen a patron is banned from the library, it is the State Librarian who handles the situation. Once someone is banned from the library, we have a picture of them, pertinent information and we keep these logged in binders at the reference desks. I also make sure that the court security guards have the pictures, information, and punishment received [by the patron]. Communication is vital.

¶116 By contrast, one (anonymous) respondent described how such communications can fall short:

When it comes to threatening [library] workers, it seems as if management does jump on that quickly. They will ban a patron for any kind of threatening conversation and will make sure the rest of the branches know about it. However, when they let staff know about the ban, they don’t really go into detail or provide photos of the person, which makes it difficult to identify the patron if he or she enters another branch.

¶117 Having a formal policy does not guarantee consistency in enforcement. Two respondents pointed out that if some staff members are uncomfortable in an enforcement role, there is a greater likelihood that the policy will not be applied evenly. As Bell points out,

Different employees have different abilities to cope with challenges and stress, which can be challenging for the employee who may feel anxious or threatened when another may not, and there can be differing responses to the same situation. We have materials for staff regarding working with challenging patrons, as well as public service standards and guidelines, and send staff to outside training programs. Nonetheless, it is not always possible for 100% consistency among staff in response to a given situation.

¶118 The same can be said for management. One respondent described how, in her library, the rules may be undermined by a lack of follow-through: “Management rarely ever adheres to the policy of consequences but instead uses a ‘he or she is not hurting anyone’ approach and usually ignores the situation.” By contrast, Marguerite Beverage, principal librarian of the Witkin State Law Library of California, illustrated the importance of keeping staff and managers on the same page. She described “spend[ing] several hours every day, walking through the libraries, watching and talking to patrons. It is imperative that staff believe that management and administration take these situations seriously. Management and administration take the policy very seriously and are always asking about the well-being of staff.”
Efficacy

¶119 When asked about how effective (or not) their libraries’ policies were in addressing patron conflict, the most common sentiment was that even the best policy was incapable of preventing all problems, specifically those in which patrons do not consider themselves bound by the rules or do not care about the library’s norms. (These culprits may also be some of the library’s most important patrons. Joshua LaPorte of the University of Connecticut’s Thomas J. Meskill Law Library reported, “Our policies are very effective at handling public and student patrons, but often fail us when working with faculty.”)

¶120 Staff at the San Diego Law Library aptly illustrated the value of library rules even when confronted by a patron who has no intention of complying:

[W]e recently had a patron return to the library before a prior suspension (for a conduct violation) had expired. He was asked to leave by security and refused. In this particular instance, the person was unreasonable and clearly wished to push staff to call police to force an arrest for trespass. Staff was required to wait hours for the police to arrive. . . . At times there is no policy that will cover the conduct when a patron refuses by abide by the Library rules. . . . On the plus side, our rules are clear. If a patron refuses to leave when asked[,] they are considered a trespasser and law enforcement will be notified.

In such a case, the rules provide clarity and justification for imposing serious consequences.

¶121 Another advantage of a formal approach: documentation can support a library’s position in case of a dispute or chronically negative situation. In 2014, as Marcia Bell reports, the San Francisco Law Library “obtained 3 year restraining orders against two patrons for threatening conduct, primarily verbal. Compliance with our patron rules policy by staff, incident reports, and the support and leadership of management enabled the library to demonstrate that the restraining orders were reasonable and needed.” In this case, the library’s willingness to enforce its rules is key. In Bell’s words, “I believe the library has moral, ethical, legal, and safety obligations to protect staff and patrons and that rules of conduct and consequences for breaches are essential to ensure that the library is a safe and comfortable place for everyone.”

¶122 Inconsistent enforcement was the most oft-cited corrosive to a formal policy. As Washington’s Cheryl Nyberg puts it, “Not enforcing the Code [of Conduct] with regular patrons leads to situations where they resist an eventual attempt to convince them to comply.” San Francisco’s Bell describes not having meaningful consequences for patron infractions as “a huge mistake.” In her experience, it has been helpful for patrons to know that the library stands by its rules. “It doesn’t mean that they will always follow the rules in the future, but they seem to know it is necessary to be able to use the library to cooperate. If we don’t have consequences, nothing will happen to get patrons to moderate their conduct.” Or as Sacramento County Law Library’s director Coral Henning put it, “The policy is not what helps or hinders a situation[,] it is the consistent enforcement that makes changes in behaviors.”

¶123 At the San Diego Law Library, having policies that are clear but well adapted to patron’s needs has been successful.
[W]e do allow patrons to use cell phones in the library but we do limit that use where it may disrupt the work of others. For that reason, patrons that attempt to talk on cell phones in the close-confines of the computer lab are asked to step out of that area to take their call so that they do not disturb others. The flexibility of this policy lets patrons use their phones in the library, but allows librarians or security to step in and intervene when it is obvious that other library patrons are being disturbed by the phone call.

¶124 Success is not just structural. ASU’s Leslie Pardo noted that some staff are generally better at managing difficult patrons than others, and that this has to do with their level of experience more than anything else. Experience informs judgment, allowing a librarian to tailor her approach to a patron’s infraction based on its severity. Carla Knepper of Texas’s Ellis County Law Library mentioned similarly that years of experience working with the public has been a help, along with keeping calm, having compassion for patrons, and being able to repeat yourself often. She emphasized the role that thoughtful customer service played in avoiding or minimizing problems with patrons.

**Useful Training**

¶125 Follow-up respondents recommended several types and sources of training. These included cultural competency, working with people for whom English is not a first language, conversational skills to diffuse difficult situations, dealing with difficult people in a service environment, and working with difficult personalities within one’s own workplace. Multiple respondents mentioned using role-playing scenarios to build staff skills. Maryann Sears praised her county’s “fantastic” county-wide training and professional development programming, specifically on providing services to the public. She also recalled the tragic shooting deaths of two prosecutors in nearby Kaufman County, Texas, in 2013 as a reminder for why any library, no matter how small, can benefit from training on responding to an active-shooter scenario.175

¶126 ASU’s Leslie Pardo mentioned using resources produced by the American Library Association as well as offering training activities and speakers in-house. Her staff recently attended an in-service training with an outside speaker on identifying mental illness in patrons and knowing how to respond to such patron’s needs. Librarians from other university libraries were able to attend as well.

¶127 Others expressed an interest in integrating wellness programming, such as a mindfulness and stress-reduction program for staff coping with the challenges of public service. San Francisco’s Marcia Bell noted that many existing programs focus on developing or using patron conduct policies, which hold limited interest for libraries that already have policies in place.

**Recommendations for Further Study**

¶128 The goal of the survey was to get a basic understanding of the climate for difficult and disruptive patron behavior within the various types of law libraries and the existence of policies and training for dealing with these patrons and their

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behavior. The population surveyed was not necessarily representative, and there was no control to prevent multiple staff members from the same library answering the survey. Therefore, results may be skewed to overrepresent individual libraries. For more conclusive results and correlations, a more controlled survey would need to be administered using a representative sample of the population. However, some broad observations can be made.

¶129 First, not every library has a formal or informal policy. Even among librarians who have experienced difficult or disruptive behavior within their libraries, there may be no consistent procedure for handling such matters. Within business and law firm libraries, this point may be moot because disruptive behavior is infrequent. Library staff may not be in a position to enforce a policy over the employees who use the library. The existence of a policy may be of no help. Further investigation into correlations between the frequency with which a library serves the public and the existence of a formal policy may be beneficial. For example, public academic libraries were more likely to have a formal policy than private academic libraries. Some private academic libraries are open to the public. Private academic libraries open to the public may be more likely to have a policy than those not open to the public. This survey did not distinguish between the two. This survey also did not investigate whether having a formal patron conduct policy correlates to greater satisfaction or confidence among librarians in dealing with difficult patrons.

¶130 Very few respondents indicated that they have never experienced any type of difficult or disruptive behavior. Difficult behavior does occur on occasion, and it is good to be prepared so that it can be handled as smoothly as possible. Yet fewer than forty percent of respondents said they had been trained to deal with such behavior or incidents. If a policy does not seem appropriate for a library, staff should at least be trained to handle such situations to reduce their impact on the other patrons and the staff. Further inquiry into whether staff who received such training were satisfied with it and felt better able to handle difficult patrons and disruptive situations may be beneficial.

Solutions for Overcoming Challenging Patron Behavior

¶131 As previously stated, disruptive patron behavior is not a problem that can be solved at a discrete point in time within the confines of one article. Such behavior resides outside of the control of library staff and is variable based on library, context, and patron needs. However, we can confidently state that the solutions to the problems of disruptive patron interactions can most nearly be found by providing a library atmosphere of safety for patrons and staff, equality in the staff treatment of all library patrons, consistency and predictability in staff responses accomplished by flexibility not rigidity, and communication and transparency of both policies and service limitations. Based on comments from the survey and follow-up questions, some common themes emerge for best practices in dealing with difficult or disruptive patrons, which are included in lieu of a traditional solution. These are tips and

176. Slightly less than seven percent of all respondents indicated that they have never experienced any kind of disruptive patron behavior.
suggestions that have anecdotally worked for other library staff. Each practice may not be beneficial for all libraries. It is important to evaluate your library and the population you serve. More in-depth studies on various library types and populations served may help determine what indeed works best for managing patron behavior. We hope this study provides a jumping-off point for further inquiry.

Interacting with Patrons

¶132 Here are some suggestions for interacting with patrons.

• Address problematic patron behavior early, before it escalates. A courteous word from a library staff member or a nod to a sign displaying a rule may be all that is needed. In one courthouse librarian’s experience, we have tons of patrons talking on their cell phone in the library who are not disruptive, but at times then they begin to yell at the person they are talking to, thereby becoming disruptive. We should probably address disruptive behavior as it is first beginning, when it first appears minor, rather than waiting until it escalates to become a bad issue.177

• Make sure that patrons who face losing some or all of their library privileges due to behavior problems have some avenue for internal appeal and review. This could mean involving the library’s governing board, a library committee, or dean.

• Keep contact information for local free and low-cost local legal services providers available at all public services desks and in printed handouts for patrons. Consider also posting this information on your library’s website or in a LibGuide. Update the information regularly and include a currency date. It is especially helpful to include information on individual organizations’ intake hours, case-type coverage, and any limitations that patrons will benefit from knowing about ahead of time. Make sure that any information on your website or meant for distribution to patrons is written in easy-to-read language that a layperson can understand.

• Libraries that serve homeless or economically marginalized patrons may also wish to keep current lists of local social service providers, such as food pantries. In Harris County, Texas, patrons whose bodily aromas are disruptive to others are notified of the library’s hygiene policy and receive a bookmark printed with a list of local organizations that provide a place to take a shower and other social services. Consider it an extension of reference services. In the words of one courthouse law librarian, “I always try to send the person on their way with some information or a contact number of a service agency that can help them if we don’t have the resources. I try not to let them leave empty handed.”

• Make sure that patrons feel heard when they voice a complaint. One courthouse librarian described her successful strategy:

I always take the time to listen to the problem or complaint from members of the public (yes, this is very time-consuming). Oftentimes this is really all they want—someone in the courthouse to listen to them and understand. I’m always aware that their view of the situation is what they believe to be the truth, so I operate under that premise.

- Communicate clearly and reinforce positive take-aways from challenging situations. As one county law librarian responded in the survey, “If I have to ask someone to leave because they’re disruptive to other patrons I explain to them why they need to leave, but also that they are welcome to use the library another day when they are less agitated. This usually works.”

- In an academic library, use student orientation sessions as an opportunity to open channels of communication, including how to engage staff to solve problems. One academic librarian reported that “[a]ll students are advised at library orientation that if there are noise problems to come to the circulation desk and staff will handle it.” Knowing where to address complaints, and that such feedback is welcome, may make problems easier to resolve and also improve patron satisfaction.

- Consider posting anonymous patron complaints, and the library’s response, in a public place or online. This demonstrates that the library is responsive and takes patron feedback seriously. For complaints that the library cannot satisfy, it provides an opportunity to explain the library’s rationale or limitations.

- Remember that small amenities can build goodwill and prevent conflict. For example, if some of your library’s reading areas are within easy ear-shot of group study areas, the reference or circulation desk, or the main entrance, consider lending noise-cancelling headphones and offering patrons individually wrapped earplugs.

- If your patrons include students or attorneys who perennially leave their laptops unattended at their desks, consider lending laptop locks.

- Be alert and aware, but take pains not to assume from the start that a particular patron encounter will end poorly. In the words of one courthouse librarian,

> I greet every patron with fresh eyes. (Sometimes I am aware of certain people from information that colleagues in the courthouse give me, but have not had an interaction myself.) That means I don’t judge anyone by first impressions. I try to treat everyone the same—from a judge to a street person. They are all visiting the library because they need help.

- Consistency and equal treatment go hand in hand. Although a law library may prioritize services for its primary patron groups, consistent with its mission, all patrons who are permitted to use the space are entitled to be treated equally with respect to conduct rules. This requires that all staff understand the library’s rules or expectations and that they enforce these rules or expectations consistently for all patrons. To do otherwise invites conflict between favored and disfavored patrons or between disfavored patrons and the library. For example, a public academic law library that prohibits patrons from eating or sleeping, but applies this prohibition only
to public patrons and not to students, makes it less likely that the rule (or any other rule) can actually be enforced against anyone, and it opens the door to hostility from public patrons.

**Policies and Procedures**

§133 Not every library needs a detailed list of proscribed patron conduct, but many libraries find using formal rules to be helpful for patrons and staff. The following suggestions are for libraries that choose to use formal rules and procedures for managing patron behavior.

- Library policies or rules should be simple and clear. Avoid library or legal jargon.
- A written library policy need not spell out the justification for every rule, but staff should be familiar with the reasoning behind the rules they must enforce so that they can explain the rules to patrons with confidence.
- Leave room for policies to change or grow as needed to adapt to new circumstances. Document who is permitted to change or add rules, and the approvals needed. While you do not want to impose sudden changes on your patrons, you also want to preserve the flexibility to address unanticipated problems.  
  
- Many survey respondents indicated that an otherwise useful patron conduct policy may fail if it does not state explicitly how to address repeat offenses. This can create inconsistency when dealing with patrons. In addition to putting this information into your library’s policy, consider creating a one-page “response matrix” for staff that identifies how to respond (or who to call) for the first, second, and third occurrence of a particular rule violation.
- Post your library’s conduct rules on its website. This can put patrons on constructive notice and serve as a go-to location for printing copies should you need to present a patron with documentation of library policy.
- Tailor your signage to the location and problem you want to address. Keep posted rules brief and to the point.
- Signs are not the only way to convey the library’s expectations of patrons. At the Stetson University College of Law Library, the policy covering library visitors is printed on the back of cards detailing the library’s hours. When

178. While this article was being written, we became aware of a county courthouse librarian who was being sued by a patron for denial of access because the patron was not permitted to videotape in the library. As this situation was potentially relevant to the topic of this article, we contacted the librarian who agreed to speak anonymously. When asked what changes, if any, were made after the lawsuit was filed, the librarian stated,

> Whenever we experience particularly troublesome patrons we revisit our use policies to see if they cover types of behavior that we would like to discourage. Recently we amended our use policy to add this provision: Prohibited acts: Record moving or still images and/or audio in any part of the Library or record moving or still images and/or audio of any person in the Library. Photo copies or other equivalent images shall be permitted in accordance with applicable law. This will prevent (we hope) the use of cell phones (primarily) to film or capture audio of anyone or anything in the library, but still allow patrons to use their phones to make a few copies.

In addition to this specific change to the library’s policies, the librarian also contributed several recommendations that have been incorporated within the best practices text.
patrons ask about the library’s hours, this is a great way to share the policy as well. Consider where patrons are likely to focus their attention in the library.

- Sometimes an image may be worth a thousand words. Staff at the San Diego Law Library suggested creating visual handouts that can be given to patrons demonstrating how the library determines that personal items (like luggage or bags) present a hazard. The same technique could be used to illustrate potentially ambiguous concepts like “disruptive behavior.”
- If you serve a patron community whose first language is not English, make sure that your posted patron conduct rules, lending policies, and other signage are available in whatever languages are most often used and that staff know what is being communicated on any non-English signs.
- Some states have laws specifically governing public libraries’ privileges in handling theft or other patron malfeasance. Patrons who flout library rules may find reference to municipal or state laws more persuasive. New Jersey, for example, has a statute specifying that library staff who have probable cause to believe that a patron is deliberately concealing library materials are entitled to detain the patron for a reasonable time.¹⁷⁹

Staff Communications

¶134 Similarly, libraries need to work on staff communications.

- Library staff are entitled to work in an atmosphere free from violence, threatening behavior, harassment, physical or verbal abuse, and sexual misconduct. Just as staff must be familiar with the library’s expectations for patron services, staff should be familiar with their own rights to a healthy and safe workplace, and confident in their ability to set boundaries and protect themselves from inappropriate patron behavior. As one survey respondent described, “In addition to having a clear policy, we have worked on setting boundaries as a team and we’ve reviewed it, along with our organization’s fair treatment policy and emergency policy and protocol.”
- Not every library needs a formal slate of patron policies, but every library needs to have good communication among staff. In the words of Maryland State Law Library’s Catherine McGuire, “I think that the best help in handling challenging patrons comes not so much from having formal policies as in (1) making sure the whole staff understands completely how the library wants these interactions handled; and (2) communicating regularly and openly, across the staff, about how such interactions are going.”
- Dedicate some regular staff meeting time to discussing recent patron issues, how they have been handled, and how you would like them to be handled in the future. This is a great way to ensure that staff feel supported day to day and to build consistency.
- Use staff or departmental retreats to create space to brainstorm and critically review policies, hear from outside speakers, and hold all-staff training sessions.

¹⁷⁹ N.J. STAT. ANN. § 2C:20–15 (West 2015); see also id. § 2C:20–13 (regarding presumption of intent to steal concealed library materials).
Many survey respondents emphasized the importance of letting frontline staff play a role in developing patron conduct policies and entrusting them to resolve many common problems or potentially disruptive scenarios with patrons. Empowering staff may allow problems to be resolved more quickly and may improve staff morale. Frontline staff are also the most likely to know who or what has triggered problems in the past.

- Use your intranet (or another collaborative online tool) to make policies, incident reports, or other important information easy to update and instantly accessible to all staff. For example, a private LibGuide, accessible only to library staff, is an effective way to share library policies and link to outside resources.

- Create a simple incident reporting form and make it easy for staff to access, either in print or online. Include space to record the name of the staffer completing the form, the date and time of the incident, the name (or a description) of each patron involved, a description of the incident, the action taken (or recommendation for action), and whatever follow-up information is appropriate (for example, a police report number, the outcome of an appeal, corrective action taken, etc.). If possible, include a photograph of the patron involved.

- Compile and preserve reported incident information for future use. For example, create an “incident database” that can help libraries identify repeat offenders, share information across shifts, and document patterns of crime or bad behavior that may justify greater security investments.

- Records of prior incidents are a great resource for staff training, especially role-play scenarios.

Security

§135 Libraries also need to be aware of work with local security services.

- Many, many survey respondents linked the success and consistency of their library’s rule enforcement to their relationship with local security services. Building these relationships may take time and effort, but is well worth the investment.

- Make sure that all staff know exactly which security services are available to them (for example, building security, campus police, city police), who to contact for different threat levels, and how they can be reached. Keep the contact information easily visible from every telephone.

- Conduct a security audit of your library’s physical space. This should cover the interior and exterior of your facility and cover security precautions in place (alarms, cameras), escape routes, sight lines, emergency procedures, staff preparedness, system maintenance, training, and so forth. You may wish to hire a security consultant to perform this review. 180

- Many libraries use “panic buttons” to silently alert security of a dangerous situation. A silent alarm can be very useful not only when facing an enraged

180. See Arndt, supra note 11, at 25–27.
or aggressive patron, but also when working with someone who may pose a threat to themselves.\footnote{See also Elie Mystal, \textit{Does Your Law School Need a Panic Button?}, \textit{Above the Law} (Apr. 30, 2013, 10:06 AM), http://abovethelaw.com/2013/04/does-your-law-school-need-a-panic-button/.)}

- Create a staff “code word” for emergencies. Using a code word can allow library staff to discretely share information about a threat or an escalating situation without being provocative or panicking other patrons.

## Training

\footnote{¶136 Libraries should continue to implement and monitor staff training programs.}

- Staff training is an essential part of patron behavior management, regardless of whether a library has a formal patron conduct policy. Training predicates any consistent approach to patrons by staff, and can help staff feel less anxiety and more confidence. Training also allows staff to better resolve novel situations outside the scope of existing rules.

- Do a “training audit” of your staff. What are the patron issues you face most frequently? What kinds of problems do you wish you could handle more gracefully? Have there been any changes to your library policies since your public services staff was last trained? Use this critical appraisal to help refine your search for training opportunities.

- As part of a training audit, consider what constituencies your library serves and whether particular groups are underserved. You may want to see training on cross-cultural interactions.

- If your library employs student workers or relies on volunteers, ensure that they receive significant training opportunities and have input into policy decisions they may be asked to enforce.

- Check out what programs or training may be available from other branches of your institution. Many government organizations and universities offer both mandatory trainings and optional programming that can be helpful to staffers serving the public. If your parent institution has a Human Resources department, see what programs it may offer on developing professionalism and strong communication skills among coworkers.

- Consider partnering with local non-law libraries to arrange for training on perennially important topics like active-shooter response or diffusing angry customers.

- Libraries serving the public may also want to seek out training on nonlegal topics that arise in reference transactions. Sue Luddington, assistant law librarian at Oregon’s Washington County Law Library, described some of the programming available at the city and state level, “such as on public housing assistance and elder abuse. These trainings are certainly helpful and contribute to our ability to serve our patrons with excellence.”

- Do not be afraid to borrow training resources from nonlibrary settings when they serve an identified need within your staff. As one respondent described, “We have found that the very best antidote to difficult patron...
behavior is excellent customer service. We modify formal HR training modules on customer service to comport with the library scenario.”

- Seek expert training on recognizing and serving patrons who demonstrate symptoms of mental illness and identifying local resources. Be mindful that mental illness is not limited to people who are homeless or pro se; law students who are under academic and professional stress can be vulnerable to anxiety, depression, and substance abuse.  

- Use staff meeting time or “in-service” days to brainstorm standard responses to challenging questions (for example, why library staff cannot provide legal advice or assistance such as completing forms). This allows everyone to discuss and understand the reasoning behind a particular practice, and provide consistent responses to patrons.

- Use role-playing exercises, particularly drawn from real scenarios experienced in your library or one like it. In the words of Maryland State Law Library’s Catherine McGuire, “I’m not a big fan of role-playing, but in the case of pressure situations, the more practice[] the better we are at handling such interactions. . . . [P]racticing language to use when situations occur is very helpful—certain sentences become rote, which makes responding under pressure easier.”

- Use your intranet or a LibGuide to store or link to training documentation or videos.

**Information Technology**

¶137 For those with the resources, use information technology expertise to craft functional compromises and sidestep potential points of contention.

- A public academic library might offer PCs dedicated for public legal research, while other libraries set up for student use may offer broader functionality, like word processing or file storage.

- Flat-bed scanners that send documents to a user’s e-mail account or USB drive may help public patrons save time, spare them costly copier fees, and avoid infuriating paper jams.

- Form sets can be tempting targets for theft by attorneys and pro se patrons, especially if they are held in loose-leaf sets. Consider collecting these resources as e-books or on CD-ROM.

- Let technology play some of the policing role instead of staff. At the San Francisco Law Library, for example, the library uses software that governs the amount of time a patron may use library computers daily. According to the director, “the software system enables staff to manage the technology-related issues better and more successfully.” Ensure that patrons are aware of the technical limits in place to avoid unpleasant surprises.

- Use a chat program to allow patrons to anonymously report problems or disturbances. Librarians can respond to a tip about a disruptive patron

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without the tipper needing to physically summon staff. This may encourage patrons who are reticent to complain for fear of hostility from the person who has spurred the complaint.

- Technology can also be a source of friction and patron frustration, as well. If your library charges fees for services, such as printing or faxing, ensure that patrons are notified of these fees before they are incurred (with signage or verbal notification). Consider using print-release software to queue patron print jobs, so that staff may verify the size of the job and collect the fee before printing the document(s).
- Introducing new technology, like scanners in place of photocopiers or digital microform readers, can occasionally confuse patrons. Ensure that all staff are fluent in the use of new hardware and software or are able to do basic troubleshooting for patrons. You may also wish to host short training sessions for regular patron groups (for example, the staff of a law journal).
- If you offer e-mail or chat-based reference services, make it easy for staff to remember to respond promptly. Consider automatically forwarding messages sent to a generic reference e-mail address to a dedicated librarian or keeping the sound on for any computer used for chat reference.
- Keep any of your library’s web content for patrons up to date, and make sure all staff are clear on where to refer patron complaints or notifications of outages.

**Conclusion**

§138 While the institutional setting, location, size, and patron population among law libraries differ, one thing that remains nearly constant across the profession is the presence of disruptive patron behavior. The mission of law libraries may sometimes present unique situations and challenges, but the best ways to deal with challenging patron behavior are fundamentally the same as at non–law libraries. The solutions to the problems of disruptive patron interactions can most nearly be found by creating and maintaining a library environment which is safe for all; serving and treating patrons equally, consistently, and predictability through flexibility not rigidity; and providing communication and transparency of policies and service limitations.

§139 Taking a formal approach can be helpful but is not imperative for success. What is most important is to look analytically at one’s institution; take a proactive approach to prevent escalations from happening, when possible; and prepare one’s staff for how to deal with those situations when they do arise. While librarians cannot control the behavior of library patrons, they can control their responses to those behaviors. That is where libraries, librarians, policymakers, firm managers, stakeholders, trustees, administrators, and government officials should focus their energy and resources.
Appendix

Fall 2014 Survey Questions

1. In what type of library are you currently employed?
   - Academic (private)
   - Academic (public)
   - Law Firm
   - State/Court/County/Federal
   - Business
   - Other (please specify)

2. What disruptive behaviors by patrons have you or members of your staff experienced? (please check all that apply)
   - Excessive or unmanageable requests
   - Verbal aggression toward staff or other patrons
   - Alcohol/drug use
   - Destruction of property
   - Sexual misconduct
   - Physical aggression toward staff or other patrons
   - Theft
   - Bomb threats
   - Threatening behavior
   - Excessive noise
   - None of the above
   - My staff and I have not experienced any disruptive behaviors by patrons
   - Other (please specify)

3. Please estimate how frequently you or your staff encounters the disruptive behavior you selected.
   - Very frequently
   - Somewhat frequently
   - Infrequently
   - Very infrequently
   - Never

4. Do you have a formal policy on managing or responding to disruptive or difficult behavior by patrons?
   - Yes
   - No
5. Which answer best describes how accessible the policy is to staff and patrons?
   - I know a policy exists but neither I nor my patrons have access to it.
   - I know a policy exists and I have access to it but my patrons do not.
   - It is freely accessible to all staff and patrons but it is not prominently displayed.
   - It is freely accessible to all staff and patrons and it is prominently displayed.

6. Are you satisfied with the policy?
   - Yes
   - No

   Why is or isn’t the policy meeting your needs?

7. Has staff been trained on the policy?
   - Yes
   - No

   If yes, please describe this training.

8. Is there an informal policy or procedure in place?
   - Yes
   - No

   If yes, please describe.

9. Has staff at your library been trained on dealing with difficult patron behavior?
   - Yes
   - No

   If yes, please describe this training.

10. We are collecting information about best practices, ethical concerns, unique strategies, successful interventions, unsuccessful procedures, and more. Would you be willing to share your policy with us or communicate with us further on this topic? If so, please provide your contact information.

   Name:
   Title:
   Institution:
   City/Town:
   State:
   E-mail address:
   Phone number:
The Elephant in the Room: Toward a Definition of Grey Legal Literature

Taryn L. Rucinski

This article explores the history, definitions, and characteristics of the category of information resources known as grey literature. By applying this schema to the law, this article will propose a new definition of grey legal literature and apply it to the current lexicon of legal information resources.

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Grey literature: “literature that is not ‘white’ (available and cataloged), and that is not ‘black’ (not available, unknown, or not obtainable)”

Introduction

¶1 If we imagine the universe of legal information resources as a room floating in space—with four walls, a floor and ceiling, a door, and two windows (complete


1. Emblematic of its ephemeral nature, acceptable spellings include both “gray” and “grey,” as both are used interchangeably in the literature. For the purposes of this article, the spelling “grey” is used throughout.

with green and white polka-dot curtains)—then the axiomatic pink elephant is grey literature. This little-understood group of information resources spanning both the hard and soft sciences has a mixed presence within the legal community. It has been overlooked, minimized, and occasionally vilified—when and if it has been acknowledged at all. Labeled junk science, science for hire, corporate publishing, or worse, grey literature has oftentimes been named the chief offender in shoddy scholarship by academics that support higher standards or peer review in all areas of the law. However, despite this negative portrayal, what cannot be disputed is that with the increasing delegalization of the law at the hands of the Internet, grey literature is finding its way at a startling rate into both legal scholarship and judicial opinions.

¶2 But what is grey literature? And is the criticism of it warranted? Or has the legal community broadly painted a valuable group of resources in an undeserving negative light? Like the grey-suited faceless man in the iconic René Magritte painting, *The Son of Man*, grey literature is a mysterious stranger in many legal circles. Despite its somewhat negative association reminiscent of “dull and dismal grey skies,” grey literature refers to a large and amorphous group of resources that is also “grey” for being “uncertain[], vague[], and imprecise[].” This imprecision extends not only to the basic definition of what constitutes grey literature, but also to its value, care, preservation, and publication formats. In addition, this vagueness is complicated by the game-changing presence of the Internet and its ability to make the formerly inaccessible information suddenly accessible. However, despite its ephemeral nature, grey literature is both practical and meaningful, particularly to the legal community.

¶3 Thought of as “literature that ‘falls through the cracks’” or as “little literature,” typical examples of grey information resources include “corporate documents, discussion papers, in-house journals and newsletters, surveys, working papers, technical reports, trade association publications, institutional or association reports and bulletins [as well as] . . . conference proceedings, academic and

4. RENE MAGRITTE, *THE SON OF MAN* (1964); see also C.P. AUGER, *INFORMATION SOURCES IN GREY LITERATURE*, at viii (3d ed. 1994) (likening the negative connotation of “grey” with “men in grey suits”).
6. AUGER, supra note 4, at viii.
9. Dagmar Schmidmaier, *Ask No Questions and You’ll Be Told No Lies: Or How We Can Remove People’s Fear of “Grey Literature”*, 36 Libr. 98, 101 (1986) (citing the 1920 quote of George Mindev-Pouet: “No librarian who takes his job seriously can today deny that careful attention has also to be paid to the ‘little literature’ and the numerous publications not available in normal bookshops, if one hopes to avoid seriously damaging science by neglecting these.”).
government reports.” Others have included in the grey literature category “unpublished manuscripts . . . product catalogs . . . presentations, personal communications, . . . pre-prints, academic courseware, lecture notes, and so on.” More recent investigations have proposed pushing boundaries even further to reflect the changing electronic landscape by adding “websites of universities, major libraries, government agencies, nongovernmental organizations including non-profit research organizations, think-tanks and foundations, professional societies, corporations and advocacy groups . . . [and] documents produced by local governments,” not to mention maps, datasets, blog posts, tweets, and social media updates.

Since grey literature has historically fallen under the purview of the sciences, the legal field has understandably struggled to develop a relationship with it. While explicit references to grey literature in the law are few and far between, tending to appear mostly in the health, intellectual property, and environmental fields, grey literature as a whole represents an almost unquantifiably large group of materials. That being said, unbeknownst to most legal professionals, when the basic characteristics of grey literature are applied to those information resources used by legal scholars, collected by law libraries, and generated through the litigation process, an enormous number qualify as grey literature—handily providing us with our colorful elephant. The question then becomes, what is the relationship between grey literature and the law? Or, put another way, is there such a thing as grey legal literature? And if so, are there lessons to be learned from treating these resources as part of a larger homogenized whole? This article attempts to answer each of these questions in turn.

To come to an understanding of grey literature and its role within the field of law, this article first reviews the history and evolution of grey literature. Next, it examines the term’s current definitions and characteristics. Following an examination of these definitions, this article then analyzes what types of legal materials qualify as grey literature to work toward the articulation of a distinct and separate category of grey literature known as “grey legal literature.” The remaining portion of this article discusses the value of categorizing these resources for the purposes of evaluating, locating, cataloging, and teaching. The article ends with a brief conclusion.

10. Merrigan & McKimmie, supra note 8, at 322; see also Irwin Weintrob, The Role of Grey Literature in the Sciences (2000).
15. Bobick & Berard, supra note 7, at 137.
16. Blog posts, tweets, and other social media updates are sometimes referred to as “grey data.” See Marcus Banks, Blog Posts and Tweets: The Next Frontier for Grey Literature, in Grey Literature in Library and Information Studies, supra note 11, at 218–23.
17. See infra ¶¶ 20–31.
18. Merrigan & McKimmie, supra note 8, at 321 (noting “grey literature may sometimes represent the majority of all information available on a given topic”).
History and Background of Grey Literature

6 Grey literature, as its name implies, has a shadowy if not mysterious past. Even though grey materials have always existed in library collections around the world, the development of a distinct category of “grey literature is a relatively recent phenomenon,”19 with the earliest references appearing as early as the 1920s and 1930s.20 Historically, synonymous terms such as “nonconventional literature,” “ephemeral materials,” “underground literature,” and “small press” represented the same grouping of resources.21 Of note, the term “grey” literature harkens back to the historical color coding of literature; modern remnants of that practice are seen in our current use of the terms “white papers,” “green papers,” and “blue books.”22

Origins of an Old/New Information Resource

7 Eminent scholars have divided the evolution of grey literature into five distinct time periods: years prior to 1979, 1980 to 1990, 1991 to 2000, 2001 to 2005, and 2006 to the present.23 The rise of grey information resources is generally perceived as being derived from the latter years of the twentieth century in response to the information gathering of the Allies24 in the aftermath of the post–World War II atomic era and reports literature.25 After 1945 but prior to 1979, the collection, cataloging, and dissemination of grey materials were ad hoc. Without the benefit of the Internet or rudimentary databases, grey literature was either “housed in ‘dark archives’”26 or limited to the skills, networks, and finding aids of librarians and a few key services including the Engineering Societies Library, U.S. Government Printing Office, National Technical Information Service (NTIS), or interlibrary loan.27 The term “grey literature” debuted at a 1978 conference held in York, England, and organized by the Commission of the European Communities and the British Library Lending Division, thereby ushering in the new field.28

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19. Farace & Schöpfel, supra note 11, at 1 (describing the phenomenon of grey literature).
20. See Schmidmaier, supra note 9, at 101.
22. Auger, supra note 4, at xiii.
26. Bobick & Berard, supra note 7, at 139.
27. Id.
Birth of the Modern Movement

¶8 The 1980s and 1990s witnessed the birth of the modern grey literature movement with the launch of various national and international programs. The now defunct System for Information on Grey Literature (SIGLE), created in 1980,29 was the first multinational interdisciplinary grey literature bibliographic database.30 Originally funded by the Commission of the European Communities until 1985, and then later by the European Association for Grey Literature Exploitation (EAGLE),31 SIGLE was designed to “collect and to make available grey literature produced in the countries of the European Community by the intermediary of an online database.”32 The database was originally formulated as a “multidisciplinary European database, covering science, technology, biomedical science, economics, social science and humanities,” with all records in English33 and employing its own classification codes.34 However, several years later, proposals were made to shift the closed database network to an open access medium, as well as institutional repositories, leading to the discontinuation of SIGLE in 2005,35 creation of the open access repository OpenSIGLE in 2007, followed by its successor OpenGrey in 2011.36

¶9 In 1992, the Grey Literature Network Service (GreyNet) was founded as the first scholarly association dedicated to the study of grey literature.37 Its mission is to facilitate dialog, research, and communication between persons and organisations in the field of grey literature. GreyNet further seeks to identify and distribute information on and about grey literature in networked environments. Its main activities include the International Conference Series on Grey Literature, the creation and maintenance of web-based resources, a moderated Listserv, a combined Distribution List, The Grey Journal (TGJ), as well as curriculum development in the field of grey literature.38

In 1993, GreyNet held its first International Conference on grey literature in Amsterdam, with subsequent global conferences held every two years to the present.39 Moreover, the Grey Journal represents the only currently published scholarly journal dedicated to the field of grey literature.40

32. About OpenGrey, supra note 30.
33. Id.
35. Farace & Schöpfel, supra note 11, at 3.
38. About OpenGrey, supra note 30.
¶10 The new millennium witnessed different challenges for the grey literature community as the years 2001 to 2005 saw the “re-launch” of the Grey Literature Network (U.S. service), a “federally funded research and development project that included five government-sponsored databases” for the housing of technical report information.41 Although the service was discontinued in 2007, the various databases that originally comprised the service “were [later] combined and made freely searchable by the U.S. Department of Energy (DOE). It is currently possible to search the combined search engine at [Science.gov].”43

Grey Literature Today

¶11 From 2006 to the present, the grey literature field has been in a state of transition characterized by definitional changes, preservation challenges, and “new cooperative research initiatives”44 among various groups. These collaborations are exemplified by such projects as OpenGrey and the GreyGuide, a newly launched open resource project between GreyNet International and ISTI-CNR (Pisa, Italy), focused on the sharing and development of “good practices in the field of grey literature.”45 Proponents of grey literature also seek larger acknowledgment of the value of the field in the recently passed Pisa Declaration on Policy Development for Grey Literature Resources, which calls for the “increased recognition of grey literature’s role and value by governments, academics and all stakeholders, particularly its importance for open access to research, open science, innovation, evidence-based policy, and knowledge transfer.”46 Today, the grey literature community continues to explore and challenge conventional norms through its international conference series, now in its seventeenth year, and through its publications in the *Grey Journal.*47

Defining Grey Literature

¶12 According to experts in the field, “‘Grey literature’ (GL) has as many definitions as there are forms of publications.”48 This is true largely because of the ephemeral and changing nature of grey publication types, editions, and formats, as well as to the relative “newness” of the field. In addition, the evolving impact of the Internet since the mid-1990s has only further muddied the definitional waters. Grey literature definitions suffer from a variety of complications. First, “descriptions of Grey litera-
ture are [typically] phrased negatively [as] often GL is defined by contrast to other things,”\(^{49}\) which may or may not be helpful from an analytical perspective. Next, existing definitions earn only dissatisfaction from the grey literature community (comprised largely of library and information science experts). A number of authors express this dissatisfaction in articles and studies that advance new, more adaptive definitions of grey literature.\(^{50}\) Third, some terms considered synonyms of “grey literature”—including “fugitive literature”\(^{51}\) and “reports literature”\(^{52}\)—themselves have mutable definitions and differing connotations. Last, definitions of grey literature vary depending on their underlying focus or perspective: “the nature of the document [itself], the source of the document, and how it has been distributed.”\(^{53}\) No wonder one author conceptualized grey literature very broadly indeed, as “a type of informal communication, which on a scale of formality fits in somewhere between conversation and normal publication.”\(^{54}\)

### Historical Definitions

§13 Grey literature definitions typically are found only in specialty dictionaries, including library and information science\(^{55}\) and scientific dictionaries.\(^{56}\) Standard dictionaries such as the *Oxford English Dictionary* have only recently\(^{57}\) added the term.\(^{58}\) Other definitions are found in the articles of the grey literature community. Here, the scholarship highlights a wealth of different definitional permutations, with authors changing, editing, and deleting as new situations or factors present themselves.\(^{59}\)

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51. Rothstein & Hopewell, *supra* note 13, at 104 (noting that “grey literature and fugitive literature are synonymous terms”).
52. Auger, *supra* note 4, at 7–15; *Use of Reports Literature, supra* note 25.
57. The current definition of grey literature has appeared since 2000.
58. *Grey Literature, Oxford English Dictionary* (3d ed. 2013), *available at* OED Online, http://www.oed.com (last visited Aug. 23, 2015) (the dictionary traces the etymology of the term back to 1975) (defining grey literature as “n. documentary material which is not commercially published or publicly available, such as technical reports or internal business documents.”).
¶14 One of the earliest definitions of grey literature is ascribed to David Wood, a British Library employee, who in 1985 described it as “literature which is not readily available through normal bookselling channels, and therefore difficult to identify and obtain.” Early definitions such as Wood’s were mono-focused; in his, for example, Wood focuses primarily on a lack of access. Other definitions attempted to encompass the entirety of the field, a near-impossible challenge as illustrated by the community’s weak acceptance of them.

¶15 The most widely accepted definition of grey literature was created by the Third International Conference on Grey Literature (Luxembourg, 1997), which the Sixth International Convention (New York City, 2004) expanded to jointly read: “[Grey Literature is] that which is produced on all levels of government, academics, business and industry in print and electronic formats, but which is not controlled by commercial publishers,” i.e. where publishing is not the primary activity of the producing body.” The Twelfth International Conference (Prague, 2010) put forth a new definition of grey literature that moved away from the more economic-driven Luxembourg/New York model; it sought to add four new “attributes to the New York definition,” including the (1) character of the document; (2) the presence of intellectual property protection; (3) a threshold level of quality review; and (4) overall collectability. The new definition was articulated as follows:

Grey literature stands for manifold document types produced on all levels of government, academics, business and industry in print and electronic formats that are protected by intellectual property rights, of sufficient quality to be collected and preserved by library holdings or institutional repositories, but not controlled by commercial publishers i.e., where publishing is not the primary activity of the producing body.

Other definitions of note include that of the U.S. Interagency Grey Literature Working Group: grey literature is “foreign or domestic open source material that usually is available through specialized channels and may not enter normal channels or
systems of publication, distribution, bibliographic control, or acquisition by book-sellers or subscription agents.  

Grey Literature Characteristics

¶16 Despite its various definitions, grey literature has some unifying characteristics. It does not easily fit into defined categories, having “variously [been] described as fugitive, unpublished, invisible, non-conventional, ephemeral, informal, and not commercially available.” It typically is “not controlled by commercial publishers,” “lack[s] . . . bibliographic control,” is “produced in small quantities,” and is “not widely distributed, and not listed in commonly used abstracts and indexes.” Therefore, in many ways, it is more useful to characterize what grey literature is as “specialists in the field generally [tend] . . . to describe grey literature rather than define it.” This is appropriate since it is generally recognized that researchers “can recognize a piece of grey literature when they see it, but it is not easy to write an explanation which covers all the exceptions.”

¶17 Furthermore, functional definitions of grey literature have also emerged whereby, except for books and journal articles, “all documents . . . that appear in widely known, easily accessible electronic databases [can] be considered grey literature [on account that] all are in danger of being overlooked by research synthesists if they rely exclusively on searches of popular electronic databases to identify relevant [information].” By extrapolation, this could come to mean that sources not easily accessible through Internet search engines—such as books—could eventually be considered grey literature.

¶18 Speculation aside, based on the examples and definitions just discussed, certain characteristics of grey literature, once articulated, can provide a useful analytical framework. Below is a list of the most recognizable characteristics.

Q: Who can author grey literature?
A: Anyone. Any individual person, group, organization, nonprofit, or otherwise, including but not limited to academia, governments, and corporations.

Q: What is the content of grey literature?
A: Anything. Any pictorial representation (usually written) of facts, ideas, opinions, thoughts, or sentiments.

65. Dominic J. Farace & Joachim Schöpfel, Channels for Access and Distribution of Grey Literature, in GREY LITERATURE IN LIBRARY AND INFORMATION STUDIES, supra note 11, at 111.
66. Devi Tella, supra note 54, at 5.
68. Bobick & Berard, supra note 7, at 137.
71. Auger, supra note 4, at 4.
72. Bryna Coonin, GREY LITERATURE: AN ANNOTATED BIBLIOGRAPHY (2003) (on file with author) (noting that “virtually everything we read outside of journals and books can be considered grey literature.”).
73. Rothstein & Hopewell, supra note 13, at 105.
Q: What formats can grey literature take?
A: Any print or electronic format, excluding audio and visual images that do not convey information.

Q: Who is the audience for grey literature?
A: Anyone. Any individual person, group, organization, nonprofit, or otherwise, including but not limited to academia, governments, and corporations. Note that the audience of grey literature is normally not the general information-consuming public.

Q: What is the lifecycle of grey literature?
A: From the author’s perspective, grey literature is usually authored for a specific purpose, so its intention is normally short or limited, although the long-term value is largely dependent on the researcher.

Q: Is grey literature subject to normal bibliographic controls?
A: No. Due to its amorphous nature, grey literature is not standardly indexed or abstracted.

Q: How is grey literature distributed?
A: By any means, electronic, print, or otherwise that does not involve normal commercial distribution channels.

Q: How is grey literature located?
A: There is no standard means of locating and identifying grey literature as by its nature it is difficult to find or lacks any means of permanent access.

¶19 As these characteristics illustrate, grey literature is the chameleon of information resources in that it can constitute virtually anything and be written for and by anyone in almost any format. However, in developing a definition of grey literature that applies to legal materials, because of the subject matter, the most helpful features listed here include author, audience, content, and, to a lesser extent, distribution. Therefore, in evaluating whether a distinct category of grey legal literature exists, it is to these characteristics that we should look to find the most guidance.

Toward a Definition of Grey Legal Literature

¶20 Like the playwright Molière, whose character M. Jourdain marveled that for more than forty years he had been speaking prose without knowing it,74 lawyers, judges, law librarians, and law students alike have been using and citing grey literature in all its forms for years without recognizing it. From litigation docu-

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74. JEAN-BAPTISTE POQUELIN (MOLIÈRE), LE BOURGEOIS GENTILHOMME act 2, sc. 4 (1670) (Par ma foi, il y a plus de quarante ans que je dis de la prose, sans que j'en susse rien. (“Good heavens! For more than forty years I have been speaking prose without knowing it.”)), translation courtesy of Marie Stefanini Newman, Director, Pace Law Library).
ments, to administrative materials, to websites and more, the legal field is replete with information resources that justify the creation of a distinct group of grey legal literature that should be considered, if not taught, alongside the traditional primary and secondary legal sources. However, before we can consider the emergence of a distinct information resource group known as grey legal literature, it is helpful to examine the existing role of grey literature in the legal community.

Grey Literature in the Legal Community

Notably, the field of law does not generally recognize the term “grey literature,” much less “grey legal literature.” As of the date of this article, only two known law dictionaries include definitions of grey literature. Even more significant is that virtually all legal research textbooks, guides, study aids, and treatises are also silent on the issue. Furthermore, references to grey literature in legal materials are scarce, with only four reported cases and proportionally few law review articles.


76. Compare Peter Groves, A DICTIONARY OF INTELLECTUAL PROPERTY LAW 145 (2011) (grey literature defined as “[d]ocuments produced by government, academia, or business and industry, in print or electronic form, but not published commercially. May include technical reports, standards and specifications, and translations. Difficult to access because of inconsistent methods of publication and dissemination, but potentially fatal to a patent application if the examiner finds it.”), and Nicholas A. Robinson & Taryn L. Rucinski, ENVIRONMENTAL LAW LEXICON, at G10 (1992 & 2015 Supp.) (grey literature defined as “this group of information resources is largely used in the health and environmental fields and refers to informal publications produced by governments, academics, business and industry in print and electronic formats, that is not controlled by commercial publishers. Examples of grey literature include but are not limited to: corporate documents, discussion papers, newsletters, surveys, working papers, technical reports, trade association publications, conference proceedings, and even maps, data sets, websites, blog posts, tweets, and social media updates.”), with BALLENTINE’S LEGAL DICTIONARY/THESAURUS (1995); BLACK’S LAW DICTIONARY (10th ed. 2014); BLACK’S MEDICAL DICTIONARY (Harvey Marcovitch ed., 42d ed. 2009); James J. King, THE ENVIRONMENTAL REGULATORY DICTIONARY (4th ed. 2005).


78. For example, advanced searches conducted on July 1, 2015, on WestlawNext and Lexis Advance, yielded no results for the term “grey legal literature” (WestlawNext) and “grey legal literature” or “grey legal literature” (Lexis Advance). Minimal results were found for the terms “greyy literature” (WestlawNext) and “grey literature” (Lexis Advance). The results for WestlawNext were: Cases (4), Administrative decisions and guidance (5), Secondary sources (80), Briefs (8), Trial court documents (10), Expert materials (48), Proposed & adopted regulations (5). The results for Lexis Advance were: Cases (5), Statutes & legislation (4), Administrative codes & regulations (74), Administrative materials (32), Secondary materials (64), Brief, pleadings & motions (116), Expert witness analysis (12), Directories (7), Legal news (7), Science (6580). Searches with zero results or the response “get documents” on Lexis Advance were omitted.

mentioning the term.\textsuperscript{80} What may be just as telling is that in looking to the field of grey literature as a whole, virtually no articles discuss whether legal documents qualify as grey literature,\textsuperscript{81} instead only discussing issues of law in terms of copyright and access.\textsuperscript{82}

\textsuperscript{80} Moreover, historical references to “grey legal literature” are virtually nonexistent. The term appears to have first been used in the work \textit{Indonesian Law 1949–1989: A Bibliography of Foreign Language Materials with Brief Commentaries on the Law}.\textsuperscript{83} However, the first time grey legal literature was discussed as a distinct category was August 2006, by the Canadian online legal magazine \textit{Slaw},\textsuperscript{84} which dedicated a series of blog posts in a “grey legal literature” theme week led by Michael Lines, law librarian and information coordinator at the Canadian Forum on Civil Justice.\textsuperscript{85} In a series of eleven posts,\textsuperscript{86} the blog provides a basic definition (“infor-
mation produced on all levels of government, academics, business and industry in electronic and print formats not controlled by commercial publishing, i.e. where publishing is not the primary activity of the producing body\(^{87}\) and then proceeds to ask key questions, such as: What constitutes commercial publishing? Is case law a form of grey literature? What about peer-reviewed e-journals? Or legal institute publications?\(^{88}\) As a blog series this discussion is remarkably provocative; however, on review, the posts are incomplete. For that reason, to arrive at a viable definition of grey legal literature, we must look to synthesize all of the above within the context of the field of law.

**Grey Legal Literature’s New Definition**

\(^{23}\) To craft a new definition of grey legal literature, the most important thing to consider is the fundamental nature of the law itself. What is the law? What constitutes the legal community? What groups, actors, and/or individuals are involved? What types of information resources are generated about the law or created as a result of the administration of the law? After taking into consideration these questions, and working off the consensus Prague definition of grey literature,\(^{89}\) a new definition of grey legal literature emerges: *Grey legal literature stands for manifold document types produced on all levels of government, academics, business and industry in print and electronic formats, which inform or are produced by entities affiliated with the law, as part of, or in furtherance of the legislative, executive, and/or judicial administration of the law at the international, federal, state, and/or local level. Grey legal literature is not typically indexed or abstracted but is of sufficient quality to be collected and preserved by government agencies, law libraries, or other interested organizations, but is not controlled by commercial publishers, i.e., where publishing is not the primary activity of the producing body.*\(^{90}\)

\(^{24}\) In comparing the characteristics discussed in \(^{12}\) to \(^{19}\), issues of format, lifecycle, indexing, and research largely remain the same between grey literature and grey legal literature. However, characteristics concerning author, audience, content, and, to a lesser extent, distribution diverge greatly with grey legal literature. The characteristics of grey legal literature may be articulated as follows.

**Q:** Who can author grey legal literature?

**A:** Anyone. Any individual person, group, organization, nonprofit, or otherwise, including but not limited to academia, governments, and corporations. Individuals and organizations within the legal community are typically the authors of grey legal literature.

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87. Lines, *Introducing Slaw’s Theme Week on Grey Literature*, supra note 86.
88. Id.
89. See supra \(^{15}\).
90. See Marzi et al., *supra* note 49.
Q: What is the content of grey legal literature?
A: Anything related to the law or that is produced as a result of the administration of the three branches of government at the international, federal, state, or local level. This includes any pictorial representation (usually written) of facts, ideas, opinions, thoughts, or sentiments.

Q: What formats can grey legal literature take?
A: Any print or electronic format, excluding audio and visual images that do not convey information.

Q: Who is the audience for grey legal literature?
A: Anyone. Generally the legal community, although any individual person, group, organization, nonprofit, or otherwise, including but not limited to academia, governments, industry, and corporations. Note that the audience of grey legal literature is normally not the general information-consuming public.

Q: What is the lifecycle of grey legal literature?
A: From the author’s perspective, grey legal literature is usually authored for a specific purpose so its intention is normally short or limited, although the long-term value is largely dependent on the researcher.

Q: Is grey legal literature subject to normal bibliographic controls?
A: No. Due to its amorphous nature, grey legal literature is not standardly indexed or abstracted. However, grey legal literature often has clearly marked citations.

Q: How is grey legal literature distributed?
A: By any means, electronic, print, or otherwise that does not involve normal commercial distribution channels.

Q: How is grey legal literature located?
A: There is no standard means of locating and identifying grey legal literature as by its nature it is difficult to find or lacks any means of permanent access. However, grey legal literature may be accessible through fee-based subscription databases in limited runs or on an ad hoc basis.

¶25 Practically speaking, the addition of “law” or that which is “legal” provides us with two main categories of grey legal information resources: (1) materials that would typically be labeled as grey literature that either discuss a legal topic or are produced by an entity that is affiliated with the legal community, and (2) materials that are produced as part of the administration of the three branches of government at the international, federal, state, or local level. The first group is the simplest to identify as it relates directly to the guidance provided by the library and information science field. In this context, grey legal literature is grey literature that contains legal subject matter or is produced by an entity affiliated with the law as part of its normal course of business (i.e., law schools, law firms, bar associations
and other professional groups and organizations, legal advocacy groups and non-profits, and international and nongovernmental organizations). The various types of grey legal information that resources may include, but are not limited to, are shown in table 1.

¶26 The second group of grey legal materials is at once more elusive and more relevant to legal scholars. These are information resources that are not included in general discussions of grey literature but that are of particular importance to legal professionals. While not exhaustive, a list of resources produced as part of the legislative, litigation, and regulatory processes that fall within the proposed definition of grey legal literature are shown in table 2.

¶27 However, just as with “regular” grey literature, the types of legal resources listed in tables 1 and 2 reflect a spectrum. This spectrum is directly impacted by technology, ease of access, preservation efforts, and the role of fee-based purveyors of subscription legal information databases.

¶28 For example, at one extreme, hard-to-find state trial court briefs from before the Internet era clearly qualify as grey legal literature while, on the opposite end of the spectrum, U.S. Supreme Court briefs may not, since several print or microfilm series capture this information. Legislative histories are also very much a part of this spectrum. Here, bill text and amendments for individual laws are now readily available on websites such as Congress.gov while references to the Congressional Record and Federal Register can be found on the U.S. Government Publishing Office’s FDsys website. However, reports, transcripts, hearings, and testimony become more difficult to locate as the researcher moves further back in time, requiring access to specialized series, compiled legislative histories, or subscription websites like Westlaw, LexisNexis, HeinOnline, and Bloomberg Law. In some instances, primary law such as local ordinances may also be considered grey legal literature, especially if the only copies are kept on file with the clerk’s office or local library. Access issues, link rot, and the exclusivity (and high cost) of subscription databases may also impact the metes and bounds of this group of resources as it continues to evolve.

The Value of Grey Legal Literature

¶29 To many, the carving out of a new type of legal information resource to add to the legal resource lexicon of primary and secondary sources may be perceived as an empty exercise. After all, in the truest sense, grey literature in any form is a type of secondary source. However, for legal researchers in particular, secondary sources are taught at the law school level as a limited group that is dominated by a handful of commercial publishing houses. These resources span the gamut reflecting a print-heavy lineage of legal encyclopedias, dictionaries, treatises, hornbooks, law journals, legal newspapers, nutshells, and more. But juxtaposed against primary law—constitutions, statutes, regulations, and case law on one side, and the standardized concept of a secondary source on the other—where does that leave the legal field’s “little literature”? Or, for that matter, how should researchers approach

91. See, e.g., U.S. SUPREME COURT REP., LAWYERS’ ED.; LANDMARK BRIEFS AND ARGUMENTS OF THE SUPREME COURT OF THE UNITED STATES.
94. Schmidmaier, supra note 9, at 101.
### Table 1

Types of Grey Legal Information Resources

<table>
<thead>
<tr>
<th>Archives</th>
<th>Client alerts</th>
<th>Legal notices</th>
<th>Reports</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blogs</td>
<td>Conference materials</td>
<td>Logs</td>
<td>Social media</td>
</tr>
<tr>
<td>Bulletins</td>
<td>Conflict alerts</td>
<td>Memoranda</td>
<td>Statistics</td>
</tr>
<tr>
<td>Business records</td>
<td>Correspondence</td>
<td>Minutes &amp; agendas</td>
<td>Surveys</td>
</tr>
<tr>
<td>Bylaws</td>
<td>E-mails &amp; text messages</td>
<td>Model laws</td>
<td>Websites (archived versions)</td>
</tr>
<tr>
<td>CLE materials</td>
<td>Forms (nonstatutory)</td>
<td>Newsletters</td>
<td>Working papers</td>
</tr>
</tbody>
</table>

### Table 2

Materials Produced as Part of the Three Branches of Government

#### Legislative Process

<table>
<thead>
<tr>
<th>Amendments</th>
<th>Bills (text)</th>
<th>Memoranda</th>
<th>Transcripts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill jackets &amp; compiled legislative histories</td>
<td>Hearings</td>
<td>Reports</td>
<td>Voting records</td>
</tr>
</tbody>
</table>

#### Litigation Process

<table>
<thead>
<tr>
<th>Affidavits</th>
<th>Consent decrees</th>
<th>Jury instructions</th>
<th>Slip opinions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awards</td>
<td>Dockets Exhibits</td>
<td>Motions</td>
<td>Transcripts</td>
</tr>
<tr>
<td>Bail determinations</td>
<td>Exhibits</td>
<td>Oral arguments</td>
<td>Unpublished opinions</td>
</tr>
<tr>
<td>Briefs (&amp; amicus curiae)</td>
<td>Expert reports</td>
<td>Petitions</td>
<td>Verdicts</td>
</tr>
<tr>
<td>Complaints</td>
<td>Interrogatories</td>
<td>Settlement agreements</td>
<td>Work product</td>
</tr>
</tbody>
</table>

#### Required by Statute or Regulation

<table>
<thead>
<tr>
<th>Applications</th>
<th>IRS determination orders</th>
<th>Orders</th>
<th>Rulemaking comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comprehensive plans</td>
<td>IRS tax filings</td>
<td>Patents</td>
<td>Rulemaking petitions</td>
</tr>
<tr>
<td>Environmental impact statements &amp; assessments</td>
<td>Letter rulings</td>
<td>Permits</td>
<td>SEC filings</td>
</tr>
</tbody>
</table>

#### Other Documents

<table>
<thead>
<tr>
<th>Inspection documents</th>
<th>Memoranda</th>
<th>Reports</th>
<th>Zoning maps</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arbitration documents</td>
<td>Executive directives</td>
<td>MOUs/IMAs</td>
<td>Reports</td>
</tr>
<tr>
<td>Contracts</td>
<td>Guidance documents</td>
<td>Petitions</td>
<td>Signing statements</td>
</tr>
<tr>
<td>Court rules (nonstatutory)</td>
<td>Medical malpractice</td>
<td>Planning materials</td>
<td>Wills</td>
</tr>
</tbody>
</table>

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a. Types of documents included here would be anything that requires community participation in terms of regulation.

b. *BoBick & Berard, supra* note 7, at 137 (noting that patents are sometimes included in definitions of grey literature).
the law’s reports, forms, administrative materials, and litigation documents? In attempting to answer these questions and others, the creation of a new group of grey legal documents fills this gap admirably.

¶30 Functionally, grouping all of these grey legal resources together almost as a “secondary source—other” category also makes sense because of the particular research strategies that need to be employed to locate them. Instead of the illustrative Google or Westlaw/LexisNexis/Bloomberg legal database search that has become the new norm in the legal field, grey literature requests require an added level of knowledge and skill to locate and retrieve, thus supporting the idea that grey legal literature should be a separate and distinct collection.

¶31 As one colleague recently noted in response to viewing this list, trying to track down the resources enumerated in ¶¶ 23 to 28 constitutes some of the most difficult questions that a researcher might face.95 While much legal research can be represented in some form as a scavenger hunt, the grey legal information resources offered above generally require more complicated research strategies, access to non-traditional libraries or databases, and/or the use of extensive consortium contacts or networks to locate. What is more, even those documents that are readily available online today via the Internet may become lost over time as evidenced by periodic attempts to shut down the National Technical Information Service96 and mismatched court efforts at preserving URLs in court decisions.97 Finally, logistical lessons may also be learned by grouping these materials together with respect to developing unified cataloging, finding aids, and even research guides.

Conclusion

¶32 Whether we categorize our almost primary and our not quite secondary resources as grey legal literature, our existential elephant remains. As the Internet continues to expand and our citations to grey and delegalized materials increase, the relevancy of grey legal literature will become even more important to researchers, practitioners, and students. However, by articulating a distinct definition of grey legal literature, we may offer these future researchers a new tool to add to their research toolbox, which will provide them with a useful framework for legal research instruction, strategy development, and information retrieval. After all, the world of legal information has been historically portrayed as black and white; perhaps what we need now is a new shade of grey.


Zen and the Art of Multitasking: Mindfulness for Law Librarians*

Filippa Marullo Anzalone**

Professor Anzalone explains what mindfulness is and how it can help law librarians thrive in their professional and personal lives. The demands on law librarians are tremendous, and the constant juggling of job responsibilities often leads to depression and burnout. A mindfulness practice can offer relief and perhaps even bring joy to harried law librarians.

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Introduction: A “Day in the Life” Case Study

¶1 Renata considers herself a reasonably intelligent, service-oriented, and adaptable person. She went to a fine undergraduate liberal arts school, a solid law school, and a distinguished library and information graduate school for her master’s degree in library science. Renata thinks of herself as a committed professional who finds joy in the legal research process itself. She feels passionately about teaching law students the ins and outs of legal research, and she gets a kick out of helping others navigate the mysteries of information retrieval at the reference desk.

¶2 Lately, though, Renata is in a slump. She is procrastinating doing even tasks that she found fulfilling in the past. For example, Renata is a faculty liaison and lately some of her usually sociable faculty members have seemed flustered, hurried,

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* © Filippa Marullo Anzalone, 2015. I would like to express my sincere gratitude to Karen Breda, Ashley Krenelka Chase, Xin Chen, Deena Frazier, Helen Lacouture, Michael Mitsukawa, Mary Ann Neary, Lauren Robbins (BC Law ’16), Joan Shear, Kristen Toohey, and Greggory Wahhab for their special assistance in writing this article. You all helped in different and vital ways. Without the support of Dean Vincent Rougeau and the dedication of the entire staff of the Boston College Law Library who kept everything humming while I was on a semester-long sabbatical, the idea would never have come to be. Thank you.

** Professor of Law and Associate Dean for Library and Technology Services, Boston College Law School, Newton, Massachusetts.
and rather discourteous. Their sharp retorts during reference interviews have led Renata to question her own efficacy. Renata is feeling an increasingly unbalanced sense of equanimity; in fact, she is starting to notice that everyone around her seems overly busy and rushed. Even the anxiety levels of the law students in her advanced legal research course are making her feel inadequate to the job. Her mind is always racing with issues from the sublime to the ridiculous. Manifestations of Renata’s stress are becoming more frequent: when on the reference desk, she cannot focus on callers’ questions because she is thinking about whether she has updated her PowerPoint presentation for her lecture on administrative law. Driving to work, she misses her exit because she is wondering whether she has responded to the chair about attending the curriculum committee meeting next Wednesday, or was it Thursday? When a new IT staff member approaches her for advice on how to handle a rude faculty member, Renata gives him only five minutes in the hallway when in the past she would have spent an hour with him in her office. And to top it all off, a 1L who overstay the law library’s closing bell two nights ago is troubled by the security guard’s response, and both parties are turning to Renata to complain and seek validation for their side in the situation since she was the reference librarian on duty that evening.

¶3 Even though Renata should be thinking about an article that she and her manager are planning to write about flipped classrooms, all she can think of is the angry reaction of the usually sweet 1L and the hurt of the security guard whom the student described as “the most ignorant bigot she’d ever had the misfortune to meet.” Renata, who is usually creative in handling such situations, is getting nowhere with a solution that will satisfy both parties to this unfortunate set of circumstances. She is sure that the guard was merely trying to be funny and that the student is taking the guard’s banter personally because she is on edge from the pressure of impending finals and the writing competition looming in the next couple of weeks. Renata cannot focus on her own deadlines, and her mind keeps going back to each complainant’s recitation of events.

¶4 Renata’s mind is going in circles. No wonder she could not concentrate on her last two reference requests. She cannot even remember whether she was supposed to call one of the users back with an answer. It seems to Renata that everyone in the law school—students, faculty, and colleagues—is angry, selfish, or just plain lazy.

¶5 She is starting to hate her job. She wonders why she gave up the practice of law for all of this. Wearily, she remembers how much she used to love being a law librarian. It used to be fun to learn new things about online research; the faculty members were great, and students were always asking her about her career choice because she obviously loved her job. Wait! She just missed a three o’clock technology webinar on using the new class management system. Damn it. She has to get a grip. What is the matter with the law school, the law library, and the entire planet? Why is everything going wrong, and why can’t she summon up whatever it takes to have a clear, functioning mind? She thinks about her law library colleagues at local law firms and the court library. At a recent lunch meeting, they were discussing how their work lives had lately taken on a more frantic tempo with downsized staffs. “Things just seem busier and more crazy in the office,” one law firm librarian
had commented. So maybe all law librarians are experiencing whatever this is. Renata was never this flummoxed with her work. She thinks: what is wrong with me, and what is the matter with everyone and everything?

¶6 Does Renata’s conundrum and state of mind sound vaguely familiar to you? I would wager that it does. Why? It might be because many of us today are living in a state of mindlessness. Librarians especially are prone to the side effects of professional multitasking. We may not have started out as jugglers, but our jobs now demand that we become adept at keeping many balls in the air at once. We are usually thinking about what we just did or what we are supposed to do next. We mull over the past and ruminate about the future. Like Renata, we go from task to task without any real quality time to pause, systematically reflect, or renew ourselves. We cannot be alone with our thoughts because our thoughts are rarely in the moment. If we do corral our thoughts and attempt to focus, we often make judgments and have inner dialogues with ourselves that actually keep us disconnected from the real activity at hand. We cannot quell the incessant chatter of our minds. We have become human automatons who are more comfortable doing than being. We are thankful that others cannot read our minds because they would uncover how messy and undisciplined our minds really are. Like Renata, we develop inferiority complexes because we think we are losing our grip in the fast-paced tempo of the world we have created. We use every available minute to check in with each other via e-mail, texting, and social media. Yet we find it difficult to concentrate on a colleague’s or a friend’s simple story. We are impatient to get to the new assignment, the next thing that we can check off the to-do list. With shortened attention spans and hearts racing, we are off, our thoughts and our lives whirring like hamsters on a wheel.

¶7 Let’s leave Renata for a while and look at some of the reasons for her state of mind. Let’s also explore the concept of mindfulness as a possible solution to Renata’s dissatisfaction and the problems caused by her mindlessness.

What Is Mindlessness?

¶8 For many of us, mindlessness is our default state of mind. We experience mindlessness when we arrive somewhere and forget how we got there. We experience mindlessness when we put a stapler in the refrigerator and a stick of butter on our desks. In mindlessness we are distracted, unaware, and tuned out of what is happening while it is happening. Mindlessness is going through the motions without truly engaging in life. It is a symptom of an unruly or untamed mind.

¶9 The Buddha warned that a “man’s mind may make him a Buddha or make him a beast. Misled by error, one becomes a demon; enlightened, one becomes a Buddha.”¹ According to the Buddha, it is desirable to be on “the path of living each hour of the day in awareness, mind and body always dwelling in the present

moment. The opposite is to live in forgetfulness. If we live in forgetfulness, we do not know that we are alive.”

¶10 An unruly mind can lead to ennui and restlessness. We become distracted and have a hard time facing our own thoughts. Some of us deal with these uncomfortable feelings by escaping reality through frenzied activities or other distractions such as obsessive shopping, abuse of drugs or alcohol, or web surfing. We might criticize others to make ourselves feel better, or we might make hasty judgments about others. An undisciplined mind can make us defensive and cause us to take comments personally. Another telltale symptom of an untamed mind is to notice at a seminar that a presenter’s scarf clashes with her sweater or that her voice is annoyingly nasal, instead of focusing on what the speaker is actually saying. These ways of distracting ourselves from our racing minds also build walls between us. We feel isolated and paranoid. We need help to find our way back to well-being and health. The Buddha is said to have stated, “Whatever an enemy might do to an enemy, or a foe to a foe, the ill-directed mind can do to you even worse.”

¶11 A flabby mind, like an out-of-shape body, requires conditioning. Just as we go to the gym to work out and get healthier, we need to train the undisciplined mind to move from a state of mindlessness to that of awareness or mindfulness. Meditation is a form of exercise or mental conditioning that can help to cultivate the feral mind and free us from the toxicity of harmful thoughts. People frequent health clubs for a variety of reasons, and the same is true of those who meditate. Some people meditate for relaxation and tranquility. Others meditate for religious reasons, and still others meditate to seek answers for questions they have about their lives. With time, a mindfulness practitioner’s motives to meditate may

4. Dealing with anxiety and stress in the fast-paced lives we lead is often cited as a reason to meditate. See Matthew Moore, Anxiety Relief: How to Combat Stress and Anxiety Through Mindfulness Meditation, J. KAN. B. ASS’N, Jan. 2014, at 14. But an important point to remember is that meditation is a “serene encounter” with reality, not an escape from it. See THICH NHAT HANH, THE MIRACLE OF MINDFULNESS: AN INTRODUCTION TO THE PRACTICE OF MINDFULNESS 60 (1987).
5. Although many of the world’s religions have a contemplative or mystical practice, meditation is most often associated with Buddhism. Buddhism originated in the sixth century in what is now modern-day Nepal and India, with Siddhartha Gautama, otherwise known as the Buddha, or the awakened one. For the first half-century after the Buddha’s death, the path to enlightenment was largely an oral tradition; the earliest written information about Buddhism is thought to be contained in the Pali Canons, foundational texts from the first century B.C. Buddhism spread throughout Asia in its early years, and geography largely defines the three main types of Buddhism: Theravada, Mahayana, and Vajrayana. Within each type of Buddhism, other types of Buddhism have developed. For example, Zen and Tibetan Buddhism originated from the Mahayana form of Buddhism. The evolution of Buddhism is a very complicated subject that is beyond the scope of this paper. For an excellent online source of information about Buddhism, see THE BUDDHIST SOCIETY, http://www.thebuddhistssociety.org (last visited Aug. 23, 2015). For a very interesting book about the life of the Buddha, see NHAT HANH, supra note 2. Nhat Hanh recounts the life and teachings of Gautama Buddha over the course of eighty years from various original sources, including the Pali Canons.
6. Insight, which in the Buddhist tradition is known as vipassana or “clear gazing,” comes from a mind that has been primed by “attention, acceptance, and relinquishment.” See MUÈSSE, supra note 3, at 207–08. Insight cannot be coerced or forced. The mind must be ready for enlightenment. There is a Zen story that aptly illustrates what readying the mind for insight means: A venerable professor
Mindfulness does not just happen—it is developed in the same way that most habits are formed. It is a state of mind that is built from training and practice. Mindfulness has been defined in various ways, but the term generally connotes “a deliberate, present-moment, non-judgmental awareness of whatever passes through the five conventional senses and the mind—to simplify: emotions, thoughts, and body sensations.” Being mindful enables us to be both awake and aware; it is having a trained, instead of an untamed or “monkey mind.”

When we are living mindfully, we live our lives fully and do not fritter away precious time like somnambulists. Ideally, because of the awareness that mindfulness brings, we are less apt to waste time in frenetic and meaningless activity. According to Jon Kabat-Zinn, “our ordinary waking state of consciousness is . . . severely limited and limiting, resembling in many respects an extended dream rather than wakefulness.” According to Kabat-Zinn, mindfulness “has to do with examining who we are, with questioning our view of the world and our place in it, and with cultivating some appreciation for the fullness of each moment we are alive. Most of all, it has to do with being in touch.” The practice of mindfulness can help bring clarity of mind, relieve stress, and encourage feelings of compassion and empathy toward others.

Although mindfulness is very often associated with Buddhism, many of the world’s great religious, philosophical, and psychological traditions have a mystical visited a Zen monk to ask him about his teachings. The monk poured the professor some tea and kept pouring even as the cup overflowed with the hot liquid and the professor expressed dismay. Finally, the professor begged the monk to stop pouring, telling the monk that the cup was too full. The monk explained, “A mind that is already full cannot take in anything new. Like this cup, you are full of opinions and preconceptions.” To be enlightened, the professor had to first empty his cup. See MARK EPSTEIN, GOING TO PIECES WITHOUT FALLING APART: A BUDDHIST PERSPECTIVE ON WHOLENESS, at xv (1998) (quoting PAUL REPS, ZEN FLESH, ZEN BONES 5 (1961)).

7. Many years ago, I was introduced to mindfulness and meditation practice at what was then Bingham, Dana & Gould, a large Boston law firm where I was the law library director. Justin Morreale, a productive and busy business partner, gave me a copy of a book that introduced me to meditation: DAVID HARP & NINA S. FELDMAN, THE THREE MINUTE MEDITATOR: 30 SIMPLE WAYS TO UNWIND YOUR MIND ANYWHERE, ANYTIME! (1990).


9. The term “monkey mind” is often used in mindfulness literature to describe the wandering, feral, or unruly mind. See, e.g., Leonard L. Riskin, Further Beyond Reason: Emotions, the Core Concerns, and Mindfulness in Negotiation, 10 NEV. L.J. 289, 324 (2010) (Annual Saltman Lecture).

10. In this section, Kabat-Zinn explains the Buddhist perspective regarding the conventional state of the human mind. He also reminds the reader that yogis and Zen practitioners have “systematically” been exploring mindfulness for thousands of years. Kabat-Zinn writes that mindfulness practice is “beneficial in the West to counterbalance our cultural orientation toward controlling and subduing nature rather than honoring that we are an intimate part of it.” JON KABAT-ZINN, WHEREVER YOU GO, THERE YOU ARE: MINDFULNESS MEDITATION IN EVERYDAY LIFE 3 (1994).

11. Id.
or contemplative set of practices. Embarking on a mindfulness practice does not require adopting a set of beliefs from any particular religious or philosophical tradition. It does not matter what one’s denominational affiliations or spiritual observances are, as “mindfulness is a non-sectarian practice and has little to do with belief, although it has much more to do with how we relate to our beliefs.” In fact, mindfulness training has entered the mainstream. Many businesses have instituted mindfulness training programs. Mindfulness was featured as a *Time* magazine cover story and featured in a 2014 Anderson Cooper segment on *60 Minutes*.

Another useful way to think about mindfulness is as “embracing the process,” which means choosing to focus on the here and now, “this very minute,” rather than on long-term goals or future events. How many of us plan to do something only after we do something else: for instance, after we lose twenty-five pounds, finish a degree, or complete a semester of teaching responsibilities? If we were to instead embrace the process of whatever we are doing, we would be truly living in the moment and fashioning a life that is lived and livable in the here and now. We would not ruminate about past failures or constantly project thoughts into the future. After all, the present moment is really all we have. We might be less apt to take on more than we can handle and less prone to procrastination because mindfulness can help us focus on what we are doing now. In short, a mindful state allows us to trust that the future will take care of itself if we live consciously in the present.

### Some of the Benefits of Mindfulness: Facing the Rigors of the Daily Grind

For most of us, a typical workday and commute has about 600 minutes in it. If we add food shopping and meal preparation, household chores such as laundry and general cleanup, and some type of physical exercise, a normal nonweekend day has about 720 minutes in it. Using just a tiny portion of those daily minutes to

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13. A good example of a business that has embraced mindfulness training for stress reduction, higher performance, and emotional intelligence enhancement is Google. The popular course that was developed by Chade-Meng Tan is entitled *Search Inside Yourself*. Tan’s book describing the Google experience with mindfulness and emotional intelligence training is very readable and engaging, with forewords by Jon Kabat-Zinn and Daniel Goleman. See generally CHADE-MENG TAN, SEARCH INSIDE YOURSELF: THE UNEXPECTED PATH TO ACHIEVING SUCCESS, HAPINESS (AND WORLD PEACE) (2012).
16. This notion about embracing the process is from a conversation that I had with Nancy Madox, R.D. She was explaining the content of a short article that examines why people such as Warren Buffet and first-class athletes are successful in their pursuits. See Colin Robertson, *Why Wildly Successful People Choose to Embrace Boredom*, WILLPOWERED (Feb. 12, 2015), http://www.willpowered.co/learn/embrace-boredom.
17. In a webinar, Dr. Kristin Rousch points out that the present is the current moment; it is not thought about the current moment. The present is comprised of the sensory information received via the five senses and the central nervous system. She also quips, “the present is the space between stimulus and response.” KRISTIN L. ROUSCH, EVERYBODY PRESENT: MINDFULNESS IN THE CLASSROOM (Magna Publications Online Seminar CD-ROM, Apr. 2015).
develop a mindfulness habit could yield amazing benefits for practitioners. That’s right: meditating for just a few minutes a day will potentially lessen anxiety, promote cardiovascular health, boost concentration, sharpen mental acuity, and stimulate creativity.18

¶17 And who among us believes we wouldn’t benefit from reduced anxiety, improved concentration, and higher levels of creativity, especially in facing our many daily professional challenges? The pace of our days is often dizzying at best and overwhelming at worst. Requests for our expertise can be substantial and incessant. In addition to providing reference and research advice, explaining the fine points of various technologies, and delivering a host of bibliographic services, many of us teach, give presentations, write, and have our own work to contend with—work that has deadlines and deliverables, just like that of our users. We law librarians wear many hats19 and function as managers, teachers, consultants, researchers, advisers, and information providers (sometimes all in the space of one day).

¶18 Because we dedicate our professional lives to supporting the research needs of our library users—most of whom face their own pressures—responding to requests with focus and calm is paramount. All users—be they faculty, judges, law professionals, or law students—are better served when we maintain our composure no matter what the circumstances. Serenity not only inspires confidence, it also allows us to listen more effectively. We think more clearly and our cognitive skills work better when we control an unthinking response to a stimulus.20 Moreover, mindfulness seems to cultivate emotional intelligence and “balance, kindness, and compassion.”21 As professionals who are called on to perform a dizzying array of services in the course of a day’s work, we must avoid the inclination to respond reflexively, without adequate reflection.22 It is important that we find ways—both the time and space—in daily routines for professional praxis23 to cope with demanding jobs while staying mentally and physically healthy.

¶19 One of the ways that mindfulness helps us to break out of the cycle of spirit-deadening routine that can lead to mindlessness is by learning to use the impetus of intentionality. To successfully develop the characteristics gleaned from living mind-
fully, we must seek to harness the transformative power of mindfulness by cultivating the motivation or energy necessary to do so.\textsuperscript{24} Such a commitment requires a certain amount of self-discipline, self-love, and a willingness to be silent.\textsuperscript{25}

¶20 Regular meditation helps us to develop mindfulness and to break out of our customary forms of action and reaction. It teaches us to leave space between our experiences and responses so that we can choose how to respond instead of responding without thought. With time, the repetition and the familiarity of calmly concentrating the mind during a meditation session will help to train the mind to focus in all situations, not only while meditating. Meditation is truly like regular exercise to build muscle and strength—it conditions and disciplines the mind. To be serious about developing a mindfulness practice, law librarians need to make room for reflection and to persevere in daily meditation, even when results are not readily apparent. The motivation to keep going, even when the benefits are not instantaneous, is known as intentionality.\textsuperscript{26} Kabat-Zinn warns that some people will resist the idea of setting aside time for themselves, but he advises that taking “time to ‘tune’ your own instrument and restore your energy reserves can hardly be considered selfish. Intelligent would be a more apt description.”\textsuperscript{27}

Your meditation practice will only be as powerful as your motivation to dispel the fog of your own lack of awareness. When you are in this fog, it is hard to remember the importance of practicing mindfulness, and it is hard to locate your attitudinal bearings. Confusion, fatigue, depression, and anxiety are powerful mental states that can undermine your best intentions to practice regularly. . . . That is when your commitment to practice is of greatest value. It keeps you engaged in the process. The momentum of regular practice helps to maintain a certain mental stability and resilience even as you feel under tremendous pressure to get things done, or find yourself going through states of turmoil, confusion, lack of clarity, and procrastination. These are actually some of the most fruitful times to practice—not to get rid of your confusion or your feeling but just to be conscious and accepting of them.\textsuperscript{28}

¶21 The excitement, the intellectual challenges, and the service component of our jobs are the elements that drew many of us to this profession. These characteristics also produce the job’s shadow side—its stresses and burnouts. It is crucial that we have a ready means of confronting the rigors of our chosen career and be able to sustain the joy that drew us to law librarianship. Endeavoring to become more mindful and adopting a more insightful way of proceeding in our professional milieus will help us to be more reflective practitioners and thus better accomplish our specialized obligations as law librarians in whatever parent organi-

\textsuperscript{24} Qualities often attributed to mindfulness include having a beginner’s mind, awareness, a spirit of nonjudgment, compassion, and patience. To have more acceptance, to be nongrasping, to have trust, and to be able to let go are all attitudes that mindfulness engenders.

\textsuperscript{25} In describing the “essence of stillness” needed for mindfulness, Thich Nhat Hanh poetically writes, “Our true mind is silent of all words and all notions, and is so much vaster than limited mental constructs. Only when the ocean is calm can we see the moon reflected in it.” See THICH NHAT HANH, SILENCE: THE POWER OF QUIET IN A WORLD FULL OF NOISE 76–77 (2015).


\textsuperscript{27} Id. at 35.

\textsuperscript{28} Id. at 37.
zation we work. Although it can be exhilarating to be a whirling dervish of activity, with multiple assignments, interesting requests coming in, and our users clamoring for more, we need time to reflect and renew in order to flourish as law librarians. We cannot sustain our performance day after day without trained and focused minds. A mindfulness practice is one avenue toward achieving that clarity.

More on the Benefits of Mindfulness: The Physiological Benefits

¶22 In addition to the professionally transformative benefits of mindfulness, it is also medically and psychologically beneficial, according to a number of encouraging studies.²⁹

¶23 As a species, we have an inbred tendency to leap to judgment. Our cave-dwelling ancestors needed this reactive perception of reality, what we have commonly called the fight or flight response, just to stay alive under the threat of dangerous predators.³⁰ Today, when we perceive a hazard or a disagreeable experience, such as gridlocked traffic, a nasty encounter in our professional or personal lives, or an unremitting deadline, the hormones that triggered the fight or flight response in our ancestors are released to warn the amygdala that danger is perceived. Since we, as thinking humans, can replay these unpleasant incidents in our heads, it is almost impossible to prevent this automatic hormonal response cycle without an intentional ameliorating intervention, such as meditation, for stress relief.

¶24 What our ancestors most likely experienced as an episodic stress response has become a normal state of affairs in a law librarian’s modern, high-tech life. Thus, depression, anxiety, chronic headaches, backaches, arrhythmias, sleep and eating disorders, substance abuse, and digestive disorders have become the new normal. In other words, a reaction that was designed to be episodic in the days of our primitive ancestors is now omnipresent. As a result, many of us live with a constant state of cortisol overload in our bodies.

¶25 Mindfulness-based stress reduction (MBSR) is a type of meditation that Jon Kabat-Zinn and others developed at the University of Massachusetts Medical Center.³¹ Research studies have shown that MBSR can lower levels of stress

29. See, e.g., Carl Fulwiler et al., Mindfulness-Based Interventions for Weight Loss and CVD Risk Management, CURRENt CARDIOVASCULAR RISK REP., Oct. 2015, at 1 (discussing the use of mindfulness as an intervention with patients suffering from obesity and cardiovascular disease); Chidi N. Obasi et al., Advantage of Meditation Over Exercise in Reducing Cold and Flu Illness Is Related to Improved Function and Quality of Life, 7 INFLeUENZA & OTHER RESPIRATORY VIRUSeS 938 (2013) (discussing efficacy of training in meditation in reducing severity of respiratory illness).


31. Kabat-Zinn and others offer an eight-week course entitled the “Mindfulness-Based Stress Reduction (MBSR) Program.” The MSBR website states, “Since its inception, more than 20,000 people have completed our eight-week Mindfulness-Based Stress Reduction Program and learned how to use their innate resources and abilities to respond more effectively to stress, pain, and illness.” History of MBSR, UMass Med. Sch. Ctr. For Mindfulness in Med., Health Care & Soc’y, http://www.umassmed.edu/cfm/stress-reduction/history-of-mbsr/ (last visited Aug. 23, 2015).
hormones. Meditation can alleviate chronic conditions such as hypertension and help to boost the immune system. Meditation has been known to relieve depression, anxiety, ADHD, and the cognitive decline associated with aging. Meditation has also been shown to bring relief to sufferers of ailments such as asthma, psoriasis, and irritable bowel syndrome. MBSR is used to alleviate pain and to help those suffering from the symptoms of debilitating or chronic illnesses.

¶26 Besides the efficacious effects of MBSR in alleviating various ailments and diminishing pain, it has also been shown to have favorable effects on the physiological construction of the brain itself. For example, one of the most well-known studies was completed by a team of Harvard researchers at the Massachusetts General Hospital in Boston. According to the researchers, the study’s results suggest that after only eight weeks, participants in MBSR had structural changes in the gray matter concentrations of the parts of their brain regions associated with learning, memory, self-regulation and perception, and the regulation of emotions. The changes observed via magnetic resonance imaging included a thickening of the cortical gray matter that governs processing and perception. This thickening of the gray matter of the cortex indicates improved functioning in the capacities controlled by this region of the brain. Thus, meditation can literally strengthen the brain’s architecture!

¶27 We have looked at some of the benefits of mindfulness for law librarians and for the brain’s physiology. At this point, let’s look at some simple methods of meditation, which are foundational to a mindfulness practice.

**Getting Started with Meditation**

¶28 One of the most uncomplicated forms of meditation is to simply pay attention to the breath. This is known as breath awareness, and it is a basic way to begin a meditation practice:


33. Meditation has been shown to mitigate many of the health issues listed as well as to improve focus and concentration, diminish loneliness, and increase feelings of empathy toward others. See Dan Harris, 10% Happier: How I Tamed the Voice in My Head, Reduced Stress Without Losing My Edge, and Found Self-Help That Actually Works—A True Story 168 (2014).

34. Dan Harris calls MBSR a “secularized meditation” course. Id. For an article describing some of the research on the benefits of incorporating mindfulness into medical and psychological interventions, see Jon Kabat-Zinn, *Mindfulness-Based Interventions in Context: Past, Present, and Future*, 10 CLINICAL PSYCHOL.: SCI. & PRAC. 144 (2003).

35. There are a number of articles written about this magnetic resonance imaging study. See, e.g., B.K. Holzel et al., *Mindfulness Practice Leads to Increases in Regional Brain Gray Matter Density*, 191 PSYCHIATRY RES.: NEUROIAGING 36 (2011).

36. “Demonstrating morphological increases in regions associated with mental health, the data presented here suggest a plausible underlying neural mechanism, namely, that such increases represent enduring changes in brain structure that could support improved mental functioning.” Id. at 42.

37. For a Ted-X talk by the neuroscientist Dr. Sara Lazar, one of the researchers and authors of the MRI brain study above, see *How Meditation Can Reshape Our Brains*: Sara Lazar at TEDx Cambridge 2011, YouTube (Jan. 23, 2012), https://www.youtube.com/watch?v=m8rRzTtP7Tc.
1. Sit cross-legged on the floor with a pillow or in a chair with your hands on your lap. Make sure that you are comfortable—neither too rigid nor too relaxed.
2. Close your eyes and focus on your breath.
3. Follow the in and out movement of your breath. If you like, count to ten and repeat to create rhythmic cycles of breathing.
4. If you find that your thoughts begin to wander, gently pull your attention back to focus on the breath—without judgment. Continue your count for whatever predetermined length of time you plan to meditate.
5. When you are ready, open your eyes.\textsuperscript{38}

\textsuperscript{29} Besides breath awareness, there are more advanced meditation practices. One of these is known as a body scan meditation. A body scan is usually a guided meditation, and it can be done in a group setting. The person meditating focuses on his or her breath while the leader guides the group through a systematic “scan” of the body’s parts, usually starting with the feet and moving upward. Breath awareness, body scans,\textsuperscript{39} meditating on a passage from an inspirational book or poem, using a mantra,\textsuperscript{40} and meditating on a piece of art are all ways to meditate while sitting still. Some people prefer meditating while in motion; one very popular form is known as walking meditation.\textsuperscript{41} Walking meditation is ideal for those who spend a good part of their day at a desk. Thus, it might be just the form of meditation that would be very well suited to law librarians. Walking meditation can be done anywhere—outside or inside. A meditator can practice walking meditation while barefoot or wearing shoes. Some walking meditators prefer to walk in nature, but others use hallways, city streets, or a labyrinth.\textsuperscript{42} Whatever locus one chooses, it is important to select a place where it is safe to walk and meditate at the same time.

\textsuperscript{38} There are a number of meditation timers, complete with Tibetan bells, gongs, or soft music to help a meditator commence and end a meditation session. See, for example, the online meditation timer at Insight Meditation’s website, \textit{YOUR MEDITATION TIMER}, http://www.yourmeditationtimer.com/timer (last visited Aug. 23, 2015).

\textsuperscript{39} Breath awareness meditations, body scans, and walking meditation are described in the various mindfulness titles. Depending on your bibliographic tastes, there really is something for everyone in the canon of mindfulness literature. There are specialized titles, mass market titles, and the titles that have become the veritable classics in the field. \textit{See, e.g., SCOTT L. ROGERS, MINDFULNESS FOR LAW STUDENTS: USING THE POWER OF MINDFUL AWARENESS TO ACHIEVE BALANCE AND SUCCESS IN LAW SCHOOL} (2009); \textit{see also HARRIS, supra} note 33; \textit{NHAT HANH, supra} note 4. For a bibliography on mindfulness literature, the LibGuide created by lawyer/librarian Jon Cavicchi is an excellent place to start. See Jon Cavicchi, \textit{Mindfulness: Legal Education and Practice}, \textit{UNH LAW: LIBGUIDES} (Apr. 23, 2015), http://law.unh.libguides.com/content.php?pid=632009.

\textsuperscript{40} If you are interested in using a mantra or meditating on a sacred or inspirational passage, I recommend the work of Eknath Easwaran (1910–1999). \textit{See EKNATH EASWARAN, PASSAGE MEDITATION: BRINGING THE DEEP WISDOM OF THE HEART INTO DAILY LIFE} (3d ed. 2008); \textit{EKNATH EASWARAN, STRENGTH IN THE STORM: TRANSFORM STRESS, LIVE IN BALANCE & FIND PEACE OF MIND} (2013); \textit{EKNATH EASWARAN, TAKE YOUR TIME: THE WISDOM OF SLOWING DOWN} (2d ed. 2006).

\textsuperscript{41} For a title that focuses on walking meditation, see \textit{THICH NHAT HANH, GUIDE TO WALKING MEDITATION} (2005).

\textsuperscript{42} For an interesting article on the use of a labyrinth in an academic library, see Ian Chant, \textit{Library Labyrinths Pave the Path to Relaxation}, \textit{LIR. J.}, June 2014, at 16.
¶30 The following is a walking meditation that uses a small piece of territory (about ten to twelve feet):

1. With eyes open and focused on a distant neutral point, slowly begin walking.
2. Put each foot down with deliberation (heel, ball of the foot, toes, lift up). Pay attention to the rhythm of how you place your feet down and then lift them up.
3. If your mind wanders, gently bring your thoughts back to the rhythm of your feet, slowly walking and focusing on the distant point.
4. When you are ready, stop and take a deep, cleansing breath.

¶31 Experiment with some of the various methods of meditating; everyone has different preferences and comfort levels. A meditation practice that works for one person might not work as well for another. The important takeaway for beginning meditators is to aim for consistency in a mindfulness practice. In other words, try to meditate, even for a few minutes, on a daily basis.

Letting Go, Listening, and Wishing Others Well

¶32 Law librarianship is a service profession that entails dealing with people—judges, practicing attorneys, scholars, faculty, students, and the public—on a daily basis. Being mindful helps us to listen to our colleagues and users and to be attentive to them. Having a job that includes lots of personal interactions can be both exhilarating and spirit-depleting. Although most of us truly enjoy the synergy of working with others, we sometimes lose control of our schedules because of a client’s emergency, or we might have a less than positive exchange with a library user. Mindfulness offers an antidote to some of the aftershocks and ruminations that result from such negative experiences or encounters. The mindfulness tenet of letting go is an especially useful go-to principle when facing interpersonal challenges.

¶33 Mindfulness enables us to see that we need to relinquish the fiction that we are “in control” of what happens in life. “Mindfulness teaches this fact not as an abstract idea to which we give assent, but as a concrete and clearly demonstrated

43. Although there is no magic number for the ideal time to spend meditating, most of the literature advises to start with sessions of anywhere from five to twenty minutes. The time variable depends on the amount of time one has and the type of meditation being practiced. For example, Dan Harris recommends starting with five-minute basic breathing awareness sessions and increasing “organically,” or not. See Harris, supra note 33, at 228. Professor Scott Rogers gives instructions for a ten-minute body scan meditation. See Rogers, supra note 39, at 102. Of course, some experienced meditators practice for thirty minutes or more at each session. Again, a regular practice, not length of time, is key to initiating a satisfying and beneficial mindfulness practice. Jon Kabat-Zinn offers some critical advice to nascent meditators:

To sustain your commitment and keep your meditation practice fresh over a period of months, years, and decades, it is important to develop your own personal vision that can guide you in your efforts and remind you at critical times of the value of charting such an unusual course in your life. . . . In part, that vision will be molded by your unique life circumstances, by your personal beliefs and values. Another part will develop from your experience of the meditation practice itself, from letting everything become your teacher: your body, your attitudes, your mind, your pain, your joy, other people, your mistakes, your failures, your successes, nature—in short, all your moments.

Kabat-Zinn, supra note 26, at 169–70.
reality.”44 The concept of being awake to what is real, and not allowing the ego to interfere and color our misguided perceptions of reality, is well described in the phrase, “Thought and intellect are good servants—great tools, but poor masters.”45 With mindfulness, we can learn to view unpleasant experiences as teachable moments. Reflections on difficult interactions with users and colleagues are opportunities to depersonalize a situation, remove any ego-driven reactions, and to develop greater compassion for others.

¶34 Mindfulness, then, is the foundation of developing a deeper understanding of others as well as ourselves. This capacity to be aware and to have empathy for others is an innate characteristic of sentient beings and should be a job requirement for anyone who deals with clients or users, as law librarians do, on a daily basis. Also, because our jobs do involve a fair amount of task juggling, we might find that in our busyness, we are habitually not listening carefully enough, both to each other when we are in meetings and when we are interacting with a user. Meditation is a direct means of becoming awakened and seeing with clarity, that is, “seeing things as they are.”46 Through the discipline of meditation, we can tame the overactive “monkey mind” and develop greater acceptance of things as they are—not as we wish them to be. By slowing down and becoming more focused on what is going on in the present moment, we allow ourselves to tune in to what we are doing when we are actually doing it. This sounds so simple and effortless to accomplish. However, I would ask the reader to take note of the attendees at the next conference or workshop you attend. Without judging the audience’s behavior, please notice the number of participants that are checking cell phones, surfing the web, and generally tuning out a colleague’s presentation. When we concentrate fully in the moment, and turn away from distractions, we are better able to listen and really hear our clients and coworkers. With awareness in the present, we can focus on others and not on the ego’s wants and needs.

¶35 Meditation is the path toward developing mindfulness, and it is a remedy for overcoming the clouded, narcissistic self-absorption that the ego promotes. It is the “intentional cultivation of mindful awareness and pure attention—an alert, wakeful presence of mind.”47

¶36 Thus, in addition to being a stress reliever and a path toward greater personal equanimity, mindfulness helps us to relinquish our preconceived notions and empowers us to be less judgmental and more empathic human beings.

¶37 A vital part of maintaining composure is the ability to let go of the illusion of control. When we see with a clearer mind, we are able to regulate our passions more skillfully. A dedicated mindfulness practice can help temper anger effectively and support the desire to simplify our needs and to want less.48 In other words, mindfulness helps us to let go of ego, resentment, and judgment—all emotions that we, as professionals who deal with people on a daily basis, are wont to experience

44. Muesse, supra note 3, at 32.
45. Lama Surya Das, Awakening the Buddha Within 261 (1997).
46. Lama Surya Das writes that we meditate to become enlightened. “Cultivating present, moment-by-moment awareness helps you come home to who you are and always have been.” Id. at 260.
47. Id.
48. Muesse, supra note 3, at 33.
regularly. Letting go is not synonymous with suppressing emotions, however. Rather, when we are mindful, we learn to recognize thoughts and emotions, acknowledge them, and then let them go. An honest mindfulness practitioner does not hide or deny the fact that he or she experienced an emotion. Thich Nhat Hanh explains, “mindfulness is touching, recognizing, greeting, and embracing. It does not fight or suppress.”

¶38 Wishing others good fortune is another hallmark of mindfulness. Just as we learn to be more patient and kind with ourselves as a result of a mindfulness practice, we learn to extend that generosity of spirit to others as we evolve in our practice. One of the most eloquent and simple explanations of this concept begins by explaining the impermanent nature of our existence and the importance of cultivating feelings of loving-kindness toward others.

¶39 Unfortunately, everything we are hoping to have and keep is impermanent. It is not possible to hang on to things. At the same time, it is not possible to avoid unfortunate circumstances. Fortunes are won and lost. Possessions come and go. People get sick and die. All of this is unavoidable. But we think if we do everything correctly, we will acquire and hang on to happiness. This is a myth, and as a result we are disappointed. We live in constant fear—fear of not getting what we want, fear of losing what we have, fear of getting what we do not want, and fear of not being able to escape from what we do not want.

¶40 With loving-kindness, the joy and happiness we aspire for others to have is the joy of freedom from hopes and fears, the joy of freedom from attachments and aversions.

¶41 Many law librarians are perfectionists. We crave order and answers. As dedicated professionals, we try very hard to organize our collections, our staffs, and our lives. We want to serve our users, and we try to keep everyone happy. But these goals are not always possible to achieve. The responsibility for order, for answers, for keeping everyone happy does not rest solely on our singular efforts. Extending open-heartedness to others is part of what is known as liberating the self from narrow views. As we develop in our practice of mindfulness, we naturally come to appreciate that the lives and realities of others are just as precious as our own. Mindfulness encourages us to see beyond ourselves. It helps us to break down barriers between the notion of self and others, and it promotes interconnectedness.

¶42 In addition to meditating for peace, serenity, and insight, there is another meditation practice to wish others to be well. This is known as metta, or the practice of loving-kindness. Metta is a limitless practice; it sets no boundaries around whom we should include in our wishes for well-being and happiness. Metta is a sitting meditation that uses visualization to send loving-kindness out to others. A metta of loving-kindness begins with wishing happiness for oneself; it then wishes happiness for those one loves or holds dear. It next moves on to wish friends

50. Deborah Calloway, Becoming a Joyful Lawyer: Contemplative Training in Non-Distraction, Empathy, and Emotional Wisdom 204 (2012). Professor Calloway writes, “We can express loving-kindness by being gentle, kind, and open. We can engage in gentle looks, gentle words, and gentle actions. We can avoid harsh criticism.” Id. at 205.
51. Nhat Hanh, supra note 4, at 51.
52. Sometimes this group of persons is described as benefactors, such as relatives, mentors, or friends. See Harris, supra note 33, at 235.
loving-kindness and then neutral persons (such as salespeople or clerks with whom we have fleeting relationships). The meditator then wishes happiness for those with whom he or she has difficult relationships; and finally, the metta closes with compassion for all sentient beings.\(^ \text{53}\)

\(^\text{¶43}\) While the words of a metta will reflect an individual’s specific wishes, it should include the intention for happiness, health, safety, and peace for others. Mettas are not feelings; they are aspirations. Practicing loving-kindness does not change one’s feelings instantaneously. The practice may take some time to move a meditator’s feelings—both about self and others. However, by spending time and energy cultivating loving-kindness, by visualizing a real person during the metta, the expression of goodwill might eventually change a practitioner’s feelings toward a particular person. The following is an example for a metta of loving-kindness:

**Metta of Loving-kindness**

May I be happy and healthy. May I live without fear, in calm and peace.

May my (parents) be happy and healthy. May they live without fear, in calm and peace.

May my (spouse or life companion) be happy and healthy. May s/he live without fear, in calm and peace.

May my (children) be happy and healthy. May they live without fear, in calm and peace.

May my (brothers, sisters, aunts, uncles, cousins) be happy and healthy. May they live without fear, in calm and peace.

May my (mentor, professor, or teacher) be happy and healthy. May s/he live without fear, in calm and peace.

May (my friends) be happy and healthy. May they live without fear, in calm and peace.

May my (Starbucks barista, supermarket cashier, or hairdresser) be happy and healthy. May s/he live without fear, in calm and peace.

May (an enemy or a difficult person) be happy and healthy. May s/he live without fear, in calm and peace.

May all sentient beings be happy and healthy. May they live without fear, in calm and peace.\(^ \text{54}\)

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\(^{53}\) As with all of the meditations mentioned in this piece, the reader will be able to find slight variations on a theme depending on the source consulted. For example, BuddhaNet, a website administered by an Australian Buddhist monk and volunteers, offers information about many Buddhist traditions. BuddhaNet describes the groups that a meditator sends a metta to as (1) oneself; (2) a respected, beloved person, such as a spiritual teacher; (3) a dearly beloved, which could be a close family member or friend; (4) a neutral person, somebody you know, but have no special feelings toward; and (5) a hostile person, someone you are currently having difficulty with. See Ven Pannyavaro, *Loving Kindness Meditation*, BUDDHANET, http://www.buddhanet.net/metta_in.htm (last visited Aug. 23, 2015).

\(^{54}\) This metta is modeled on one from Professor Mark Muesse’s lectures on mindfulness. See MUESSE, supra note 3, at 273–75. For some thoughtful lessons on the loving-kindness practice and many other mindfulness practices, see the Insight Meditation Center’s website, INSIGHT MEDITATION CENTER, http://www.insightmeditationcenter.org/ (last visited Aug. 23, 2015).
One of the most essential things to remember while practicing a loving-kindness meditation is to visualize a specific person or group of persons while repeating the metta. Do not forget the harried student, the less-than-polite lawyer, and the abrupt faculty member or colleague in your meditation of loving-kindness.

Conclusion: Back to the Case Study

Now, armed with an understanding about mindfulness, let’s revisit Renata to see where mindfulness could help her. Without a doubt, Renata is in dire need of some inner calm and renewed energy to do her job. Although Renata enthusiastically chose law librarianship as a career, the relentless demands of the job have worn her down. She is in a very deep rut of perceiving only the negative aspects of her career. Renata would be a prime candidate to initiate a mindfulness practice to help her recapture some of the zest and pleasure that she used to feel about her chosen profession.

First, Renata needs to practice a little self-love. She is bombarded with demands and needs a way to fortify herself to meet the quotidian stresses that she deals with on the job. From the facts of the case study, we see that Renata, like many law librarians, handles reference, she teaches, and she even arbitrates disagreements—this time between a student and the law library security guard. A daily dose of mindfulness would help her to maintain her equilibrium in juggling the multiplicity of tasks that she handles. A regular practice of morning meditation would most likely help Renata regain a healthy sense of self and immunize her to some of the hectic pace of her necessary multitasking. Renata would also benefit from letting go of her sense of control. Although she means well and sincerely wants to aid the 1L and the security guard in their disagreement, Renata is merely a bystander to the situation. She could listen to both parties if she has time and if she could do so without getting emotionally involved in the situation, but we see that by becoming embroiled in the disagreement, Renata cannot help herself from trying to make everyone happy and bring about a peaceful accord. Stepping back a little, Renata might see that this is a situation she cannot and should not handle. In addition to the time that Renata needs to recapture and devote to her teaching, and the clarity of mind that she needs on the reference desk, the dean of students might be the more appropriate arbiter in the first place. And once Renata lets go of the problem, the clarity of thinking that mindfulness brings might also help her realize that she cannot ruminate about her inability to have made everything perfect for the student and the guard. Disagreements happen; people do not behave the way we would like them to. We cannot control outcomes due to the actions of others, but mindfulness can help us control our reactions to conflicts and uncomfortable situations such as this.

55. For an interesting article on how bad events tend to overshadow the good events in our lives, see Roy F. Baumeister et al., *Bad Is Stronger Than Good*, 5 REV. GEN. PSYCHOL. 323 (2001).
¶47 Renata is an academic law librarian, but the day-to-day trials that she faces are very similar to the challenges that law librarians face in firms or in court and county libraries. For example, instead of being an arbiter between a student and a security guard in conflict, firm and court librarians are often called on to defuse confrontations between associates or library staff and legal staff. I am not encouraging an attitude of careless disregard, but we have to know what our boundaries should be. Mindlessness can lead to dysfunctional rescuing and the enabling of bad behavior. Mindfulness brings lucidity into the mix.

¶48 A walking meditation at noon or a break in the late afternoon would also be a salubrious way for Renata to take a break as well as a short break from multitasking and other obligations. In addition to the positive effects of just having a brief respite from her work, Renata might also learn to slow down, reflect more, and not set herself up for taking on the frantic pace that so many of us adopt in law libraries without asking ourselves why we are rushing around. Mindfulness always brings us back to the essential rhythm of the breath; breathe in and breathe out, in and out.

¶49 Before Renata goes on reference or before she teaches a class, even a few moments spent setting an intention for the hours ahead will ameliorate her experiences—or her perception of the experiences—while she is on reference or teaching. Finally, Renata might consider an intention of goodwill for the users who have been less than polite or considerate of her by occasionally incorporating a metta of loving-kindness into her mindfulness practice. The loving-kindness meditation strengthens our compassion response for others by sending aspirations of goodwill their way. Even if it feels artificial in the beginning, practicing loving-kindness meditations will eventually affect our attitudes toward the more difficult people we interact with.

¶50 The people we encounter daily in our jobs may be mindlessly going about their lives and, in the process, not being as kind as they could be. By practicing mindfulness, we can stop passing judgment on them and instead develop and eventually model a calm, professional demeanor—instead of the reactive and harried state of mind that currently afflicts Renata.

¶51 Mindfulness is not magic. It will not cure the ills that exist in Renata’s professional (or personal) life, but by slowing down, taking time to develop a mindfulness practice, and being more intentional, Renata will, with patience and in time, get her groove back because “[m]indfulness is the miracle by which we master and restore ourselves.”

¶52 Eventually, once a few law librarians decide that a mindfulness practice is something that they would like to try, we can have mindfulness sessions and meditation breaks at regional and national law library meetings. I look forward to the day when we will be sharing stories about how we are using mindfulness in our workplaces to help each other, our colleagues, and our various library users to cope with their hurried lives and overwhelming responsibilities more gracefully. This is a call to let the conversation begin.

Keeping Up with New Legal Titles

Compiled by Benjamin J. Keele and Nick Sexton

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* The works reviewed in this issue were published in 2014 and 2015. 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 Alison P. Sherwin*

1 As a law student who took her “gentleman’s B” in constitutional law more than ten years ago and breathed a huge sigh of relief from that accomplishment, I have to admit some trepidation toward reviewing a book containing glowing blurbs from, among others, professors Laurence Tribe and Steve Calabresi. Constitutional law is full of inside-baseball jargon and three-part tests. It is not an area of law that a general reader (or a first-year law student) can necessarily understand with ease. How would a book covering such a dense topic, but also intended to reach the general reader, work? With such concerns in mind, I began to read.

2 The Law of the Land: A Grand Tour of Our Constitutional Republic is the third in a series of books about the Constitution that Akhil Reed Amar has written to appeal to more than just the law student or academic. Along with America’s Unwritten Constitution: The Precedents and Principles We Live By, and America’s Constitution: A Biography, The Law of the Land “aims to give general readers a pan-

oramic perspective on the American constitutional project,” with each book doing so “along a different axis” (p.280). Amar organized *The Law of the Land* geographically, and he discusses the significance of twelve states to the constitutional system “with particular attention to some person, case, idea, or event closely associated with that specific state or the broader region of which that state is a part” (p.xi).

¶3 How does the geographic focus hold up? In some chapters, the focus holds up very well. When Amar writes about the role the state of New York has played in the “judicialization of the judiciary” (p.56), that is, how the Supreme Court became dominated by a narrow clique of graduates of elite law schools who served on appellate courts or in the executive branch, or California’s role in shaping Justice Kennedy’s “ideal of equality” in his Supreme Court opinions (p.78), I understood how geographic location shaped the constitutional process. Other effective connections between states and stories include Illinois (President Lincoln) and Florida (*Bush v. Gore*).

¶4 Elsewhere, the geographic focus seems more gimmicky. The chapters on Wyoming (competing interpretations of the Second Amendment throughout history) and New Jersey (the use of state law to protect citizens from unconstitutional federal acts) do not make it as clear why those particular states were vital to those constitutional issues. The sometimes tenuous geographic connections, however, do not make those chapters any less interesting to read.

¶5 Amar largely succeeds at making these constitutional issues accessible to a general readership. Amar has honed his skills in communicating with a broad audience through consulting for *The West Wing* and guest appearances on *The Colbert Report*, efforts that are on display in many chapters of the book. Amar acknowledges that several of the chapters began their lives as lectures, and indeed, his writing is full of humorous asides, baseball references, and interesting footnotes. The chapter on *Tinker v. Des Moines Independent Community School District,* a leading case on free speech in schools, should be required reading for all high school students. In the Texas chapter, which discusses the Twenty-fifth Amendment regarding presidential succession, Amar engages in fanciful speculations about how both the Democratic and Republican parties could have maintained power in the past and could do so again in the upcoming 2016 elections. While these electoral scenarios could have been too intricate to follow, Amar’s analysis is easy to understand.

¶6 However, some chapters and references do make this book slightly beyond the purview of a general reader. The discussions of federalism in the New Jersey chapter and the Second Amendment in the Wyoming chapter require more knowledge of constitutional law than any general reader might have. In addition, a reference to the *Slaughterhouse Cases* (in which the Supreme Court limited the meaning of the Privileges and Immunities Clause in its first interpretation of the Fourteenth Amendment) in an otherwise engaging chapter on Justice Hugo Black of Alabama, without further explanation of that 1873 decision, is frustrating. This general reader knew she had missed an important point and felt the need to locate her long-lost constitutional law textbook (or, worse yet, go to Wikipedia). And the Florida

3. 83 U.S. 36 (1873).
chapter gets bogged down in the technicalities of state election law and, as a result, left this general reader with a headache.

Overall, *The Law of the Land* is a fascinating book. It contains both a preface and a conclusion as well as almost forty pages of endnotes (and a limited number of footnotes). It is well researched without being overwhelming (except to the extent discussed above). It also helpfully contains a copy of the Constitution. All public and academic law libraries should have a copy of this book. They should also, however, have a hornbook on constitutional law available to aid the general reader.


Reviewed by Timothy J. Gallina*

The pages of *Secrecy in the Sunshine Era: The Promise and Failures of U.S. Open Government Laws* are filled with tales of classified documents, closed-door task forces, secret legal memos, concealed trial evidence, and destruction of incriminating files. While that may sound like the plot of a gripping spy novel, author Jason Ross Arnold is describing real actions taken by presidential administrations to circumvent government transparency laws. Arnold’s meticulous research and accessible writing style produce an enlightening examination of the evolution and implications of government secrecy.

The title of the book refers to a series of open government laws passed in the 1970s, including the Federal Advisory Committee Act, the Government in the Sunshine Act, and amendments to the Freedom of Information Act. As Arnold points out in great detail, each of the post-sunshine law administrations, from Reagan to Obama, have utilized an array of techniques to keep government information out of the public eye. Even the most resolute Beltway skeptics may be surprised to learn about some of the secrecy measures revealed by Arnold. Shredding parties? Burn bags? Doctored scientific reports? These are merely a few of the anti-transparency practices uncovered by Arnold in the course of his research.

Arnold, an assistant professor of political science at Virginia Commonwealth University, describes his work as a “comprehensive history of the sunshine era’s dark side, told through a comparative historical analysis of presidential administrations from Reagan-Bush through Obama-Biden’s first term” (p.9). Rather than scrutinize the five administrations in order, Arnold organizes his analysis by theme. He chooses this approach to illustrate the continuity and contrasts between the practices of each administration and to ensure in-depth analysis of significant issues. The emphasis on theme over chronology allows readers to gain a better understanding of the ways in which presidents and their staffs have expanded or diminished the secrecy system established by their sunshine-era predecessors.

¶11 Each successive chapter further illuminates the patterns of behavior that have weakened transparency in our government. After a discussion of the negative effects of undue secrecy and the internal and external forces that have facilitated its growth over the past three decades, Arnold addresses specific secrecy tools that have undermined the impact of the sunshine laws. Arnold evaluates the performance of the administrations in several key issue areas, including openness of presidential task forces (chapter 4), use of secret evidence in court cases (chapter 6), suppression of scientific data (chapters 7 and 8), and efforts to destroy documents (chapter 9). Readers will find a balanced, nonpartisan appraisal of each administration. Arnold gives praise when warranted, but does not hesitate to demonstrate how both Republicans and Democrats have embraced secrecy measures while in control of the White House.

¶12 Drawing on extensive research of government documents, court filings, press reports, and many other relevant materials, Arnold discovers numerous attempts to evade the obligations of the sunshine laws. Prominent examples include the refusal to disclose the memberships of task forces overseen by Vice President Dick Cheney on energy and First Lady Hillary Clinton on health care, the secret Office of Legal Counsel memos on torture, warrantless wiretapping and extrajudicial assassination of U.S. citizens, and the shredding of Iran-Contra documents by Reagan officials. Despite the culture of secrecy that pervades our government, Arnold offers some hope for change by presenting ideas on how to improve transparency, such as public and legislative pressure on our presidents, improved training for information workers, and judicial checks on executive overreach.

¶13 In Secrecy in the Sunshine Era, Arnold has created an intriguing mix of comprehensive research, eye-opening stories, and comparative analysis that should appeal to readers interested in open government, national security, constitutional law, and presidential history. The book would be a worthwhile addition to law library collections.


Reviewed by Loreen Peritz*

¶14 In America’s Bitter Pill: Money, Politics, Backroom Deals, and the Fight to Fix Our Broken Healthcare System, Steven Brill, journalist, lawyer, and founder of Court TV, presents a detailed narrative history of the Affordable Care Act (ACA), also known as Obamacare. If you have followed the media coverage over the past few years, you already know something of the tale: the ridiculously expensive and ultimately ineffective U.S. healthcare delivery system, the ACA bill’s tortured path through lobbyists and demands for congressional pork, and the Obama administration’s inept handling of the new healthcare program once the ACA finally was enacted.

Brill structures his book in four parts. Part 1 begins with Brill relating his own recent experience as a patient in the U.S. healthcare system. As Brill prepared for open heart surgery, and he was “looking up from the gurney” (as he titles chapter 1), he realized he no longer cared what the hospital was going to charge for his care. Brill’s realization provides us with a neat explanation for why it is so difficult to reform healthcare. When we need medical care, we do not want the politicians messing around with some cost-cutting schemes that might affect our ability to get well. Brill next gives us some history of the U.S. healthcare delivery system, and he recites the usual dire statistics to explain why healthcare reform became imperative by the time President Obama was elected in 2008. After thoroughly convincing us of the need for reform, the book really takes off as Brill describes how Obamacare evolved from its inception to the passage of the ACA. In his telling, Brill introduces us to all the key players and relates countless anecdotes about White House staffers, members of Congress, and the ever-present lobbyists. Even readers who followed the Obamacare story closely will learn new details, such as the legislative gymnastics that became necessary when Ted Kennedy died and the Democrats no longer had a filibuster-proof majority in the Senate.

In part 2, Brill provides additional detail as he describes the formation of the Tea Party, the efforts of congressional Republicans to repeal the ACA, the lawsuits filed seeking to have the ACA declared unconstitutional, and the almost 10,000 pages of regulations necessary to implement the new law. Brill humanizes this presentation by sprinkling in anecdotal accounts of patients who became insured only after the passage of the ACA—literally a lifesaving event for many of them. Part 3 of the book is devoted entirely to the shockingly inept rollout of Healthcare.gov, the federal health insurance exchange website designed to allow Americans to purchase healthcare coverage under the ACA. Brill does an excellent job here as he describes all of the things that went wrong with the website, including, most importantly, the fact that no one person was actually in charge of the website launch. Added to this vacuum in leadership, Brill explains that the Obama administration blithely focused on driving as many Americans as possible to the website without giving much thought to the fact that the website was almost entirely nonfunctional. Brill dryly notes that “only three in ten people coming to HealthCare.gov were able to get on at all. And, of the lucky third that did, most were likely to be tossed off because there were so many other bugs” (p.353). Brill concludes this part by telling us about the Silicon Valley white knights who rode in to repair the site, thereby saving Obamacare. It is hard not to become disheartened as you read how efficiently and inexpensively the private sector whiz kids managed the fix. According to team member and Google techie Mikey Dickerson, “I was, like, never worried. . . . It’s just a website. We’re not going to the moon” (p.361).

Finally, in part 4, Brill offers his own conclusions about what the ACA saga really means. In a nutshell, Brill opines that Obamacare has done some real good—millions of people who either had inadequate or no insurance before the passage of the ACA now have health insurance. On the other hand, Brill argues that all the ACA really accomplished was to stuff more people into a system that becomes more expensive to run every year. Brill ends the book by giving his own somewhat dense recommendations on how to drive down healthcare costs. According to Brill,
if hospitals were also insurers, the incentive to keep costs down would be built into the system. Whether this type of integrated delivery system would actually work on a national scale is anybody’s guess, and the truth is that the book would be stronger if Brill had scrapped these policy musings and limited the book to his three-part telling of the Obamacare saga.

¶18 Despite the weakness of part 4, Brill’s book is an excellent resource for any reader wishing to gain a “fly on the wall” perspective on the history of Obamacare, the largest new social program in a generation. Because of its readability, and uniquely detailed presentation of the twists and turns taken in the ACA’s passage, America’s Bitter Pill would be an excellent addition to both law school and general academic library collections.


Reviewed by Katy Stein Badeaux*

¶19 What goals should our laws and policies aim to achieve? How do we determine whether these goals have been reached? In recent decades, cost-benefit analysis has emerged as the fundamental tool used to measure a law’s positive or negative impact. Cost-benefit analysis calculates the methods or plans that will bring the most advantages for the smallest cost, focusing on economic effect. In Happiness and the Law, the authors introduce an alternate model, called well-being analysis, informed by the growing field of hedonics studies. Well-being analysis “compares individuals’ contemporaneous levels of happiness before and after an actual project is completed and then uses that information to make projections regarding future projects” (p. 70). Provocative and well reasoned, Happiness and the Law invites readers to consider the growing body of research on what improves lives and presents a model for how this data can realistically be applied to today’s policy decisions.

¶20 Though basing justifications for difficult policy choices on happiness may seem irrational, well-being analysis attempts to overcome the irrationality that comes with our efforts to forecast future happiness. Happiness and the Law begins with an introduction to hedonic psychology, the study of what makes an experience, or life, pleasant or unpleasant. Early chapters explain some key findings of hedonic psychology, including how often we are wrong about how a future event will make us feel. These predictions are known as “affective forecasting.” Research has demonstrated that though we can often accurately state how a future event may make us feel, we often incorrectly anticipate the intensity or duration of these feelings. Additionally, research in the field has shown that we also fail to anticipate how we are able to adapt to unpleasant events over time. These findings and explanations of the associated neuroscience of hedonic psychology are addressed throughout Daniel Gilbert’s Stumbling on Happiness,4 while Happiness and the Law gives a more concise introduction.


4. DANIEL GILBERT, STUMBLING ON HAPPINESS (2005).
After setting the stage with the foundations of hedonic psychology, the authors introduce well-being analysis, or the application of data on happiness to measure the welfare benefits of a proposed policy. For example, the authors explain how hedonic data can help determine the economic value of clean air. At its most basic, data on the subjective well-being of those in a place with clear skies could be controlled and compared to the well-being of those who live in areas with greater smog. Their new analysis is presented alongside a discussion of cost-benefit analysis—the current dominant method of analysis for evaluating government policy. The authors assert that cost-benefit analysis relies on our predictions of the future: asking how much someone would pay for some benefit, based on his or her guess of how that benefit will affect him or her. Well-being analysis, by contrast, employs individuals’ self-assessments of their subjective well-being (happiness) and compares the consequences of a proposed policy or regulation by comparing the well-being gains and losses of affected parties.

To fully explain the mechanics of the new model, the authors present their well-being analysis of an Environmental Protection Agency (EPA) regulation promulgated to prevent water pollution from pulp and paper mills. Comparing their results with that of the EPA’s actual cost-benefit analysis, the authors explain how their model leads to a different policy decision and the many factors that the traditional cost-benefit analysis fails to take into account, like the welfare cost of lost jobs. The authors are careful to note the limitations of well-being analysis where they exist and answer common critiques of the model.

The second part of Happiness and the Law turns from developing policy and regulation with hedonic analysis to its application to criminal and tort law. First, the authors explore the potential effects of well-being analysis on punishment. Here, hedonic data is used to assess how effectively variations in severity of current punishments actually impose the desired variations. Hedonic research demonstrates that monetary fines have very little effect on long-term well-being, while imprisonment for even a short time has negative effects both during the period of incarceration and for years after release. The authors note that a cost-benefit analysis does not take post-prison harm into account and that this harm may contribute to recidivism.

As civil litigation is largely concerned with determining adequate compensation for a loss, predictions about the magnitude and duration of a party's loss are commonplace. The authors apply their hedonic research to the settlement of civil lawsuits and argue that as an injured plaintiff hedonically adapts over the long course of litigation, he or she will feel adequately compensated by a smaller sum.

The final portion of Happiness and the Law takes a more philosophical turn, exploring the question of what exactly well-being is. The authors explore objective and subjective theories for defining well-being and how they magnify our own biases, judgments, and priorities. Providing their own explanation of well-being—“how good or bad [a person] feels during the aggregated moments of her life” (p.134)—the last chapters explain this view and address common objections to happiness theory as a whole. Though thought-provoking, the final portion of the book may dissatisfy those most interested in the mechanics of the model itself.
Happiness and the Law provides an engaging discussion of a novel, yet practical, model for policy analysis. The authors introduce enjoyable thought experiments for casual readers while providing substantial evidence for the value of well-being analysis and its possibilities for improving not only laws, but lives.


Reviewed by Amy Lipford

Catherine J. Cameron and Lance N. Long attempt to do the seemingly impossible: relay the scientific method behind anecdotal evidence of good writing. To accomplish this end, the authors take the traditional advice that many other legal writing books give and expand on it with science drawn from interdisciplinary studies and law reviews. Uniting existing studies, the authors create a unique book in legal literature that also reaffirms traditional theories on good writing.

While this book does not necessarily share any new ideas about the “how” of legal writing, it certainly fills in large gaps in the legal canon on the “why.” In the simplest terms, the scientific method uses four components: “1) repeatability, 2) open communication (data sharing), 3) objective interpretation (statistical interference), and 4) peer review” to prove a specific hypothesis (p.9). Even when incorporating the scientific elements of writing, this book is highly readable and well paced. In fact, the explanations not only embrace their scientific roots but the underlying philosophy as well, including chapters on deductive reasoning and syllogisms. This adds to the appeal of the book, especially for those less inclined to a scientific read.

The authors suggest this book could be read as part of the first-year legal writing curriculum. Points of explanation show that Cameron and Long endeavored to make the book appeal to other legal scholars. Periodically placed throughout the work are brief exercises that serve as assessments for understanding the previous chapters. The tone of these exercises appears to be targeted for law student use. However, these exercises are rhetorical and serve more as discussion points than as knowledge checks. For new legal writers, it would have been helpful to include an answer key near the end of the book that outlined the basic answer or general advice. The need for discussion further illustrates that this book is intended for classroom use.

Cameron and Long freely admit that even empirical data can have its flaws, and they insist that no study is perfect. Chapter 2 is devoted to the caveats about reading these studies. The authors do their best to focus on what is right about the studies and compare them as much as possible. Long, having written multiple articles on the science of readability in legal writing, is an appropriate messenger. While the book does have an index, it lacks a comprehensive bibliography. In future editions, a list of the cited studies would help the reader quickly identify other areas of interest.

Although the book is composed of seven parts, the majority of the discussion occurs in parts 2, 3, and 4, with topics on what to do before writing and distinguishing between writing legal documents and persuasive documents. Part 7 is nothing more than a succinct list of the top-ten takeaways of the book. Its length is a bit misleading, as it was one of the most useful elements of the work. As the authors mention the value of outlining before writing, it is unsurprising that they follow their own advice while organizing the book.

Overall, Cameron and Long have created a book that is valuable for first-year law students and legal scholars alike. Its insights bring new life into old legal writing wisdom. The book’s well-organized discussions on everything from outlining to the ethics of legal writing make this a great addition to a legal writing collection.


Reviewed by Hunter Whaley*

As our profession comes under fire from budget cuts and questions of necessity, quite a few authors have written in-depth books concerning how law libraries can change and what librarians can do to promote the profession. *Law Librarianship in Academic Libraries: Best Practices* takes a broader view. Yemisi Dina discusses law libraries, what they do, different jobs within them, and the benefits of law libraries. As more law graduates look to alternative legal careers, this book offers an overview of the profession for anyone looking for more information without being bogged down by dense material.

The book’s logical organization begins with what law librarianship is, moves through different departments and services within the library, and ends with how to become involved in the field, leaving the reader with a true sense of how things function. While there are certainly other materials out there that discuss the changing nature of law librarianship and ways to remain relevant, Dina’s approach seems targeted toward someone with little knowledge of libraries and law libraries in particular. The descriptions of positions, duties, functions, and services are enough to get a general sense of each.

Two features make this book especially worth having in your collection: scope and experiences. The first is the global lens Dina uses. Most of the book discusses North American law library practices. However, she also compares these practices to other parts of the world, including the United Kingdom and countries in sub-Saharan Africa. Discussions of other libraries and organizations provide the reader with a sense of the global community and lay out options as to where one may find additional information.

The second notable feature of the book is the anecdotes based on the author’s personal experiences. These experiences, which include identifying and teaching different types of students and creating more collaborative study space in

a library, provide the reader with real-world context. The experiences are overwhelmingly positive and spur the reader to become a law librarian where change and innovation are normal and exciting!

¶37 Unfortunately, one of the drawbacks to the book is its rose-colored view of the world. While Dina talks about the positives of being an academic law librarian, she rarely discusses the negatives. As an introductory source to law librarianship, the book should present the reader with some of the challenges associated with the profession. The other drawback of this material is a lack of careful editing. In places, sources referred to do not have an in-text citation and are not included in the bibliography, and occasionally sentences have missing words.

¶38 Overall, the book is a good introduction to law libraries, and Dina sums up the profession in a very positive way. For those looking for an alternative legal career, this text, despite its occasional editing error, may be the encouraging start they need to take the next step.


Reviewed by Janeen Williams*

¶39 What’s Wrong with Copying? by Abraham Drassinower is a study of copyright law. Drassinower identifies the inadequacies of the current balance model used to analyze copyright infringement. He uses copyright doctrine to support his argument that works are essentially communicative acts and that infringement is wrong because it is a type of compelled speech.

¶40 The book is organized into six chapters, and it also contains an introduction and conclusion. Each chapter is similarly organized. Drassinower begins each chapter by stating a well-established copyright concept. Next, he examines a few cases relevant to that concept. Finally, he notes the deficiencies in the concept by arguing that the current balance model cannot provide an adequate understanding of the basic principles of copyright law.

¶41 The first three chapters of What’s Wrong with Copying? serve two purposes. First, the chapters give the readers background information on current copyright law doctrines. Second, they lay the foundation to support Drassinower’s argument that authors’ works are a form of speech. The book begins with a discussion of the history of copyright law to explain the originality requirement. He starts with an examination of British case law. Next, he analyzes subsequent cases in the United States and Canada. In these earlier chapters, Drassinower explores other copyright doctrines, such as merger and nonuse. He also analyzes the purported rationales for these doctrines.

¶42 Early in the text, Drassinower identifies the current model for copyright infringement as a balancing test. According to Drassinower, “the task of copyright law is none other than the achievement of this optimal balance between creators and users, authors and public domain” (p.3). The courts balance the economic

interests of the authors with the public’s interest in using authored works. Copyright laws that are too lax do not protect the authors’ interests and may deter authors from publishing works. Conversely, laws that are too stringent may stymie the public’s creativity.

¶43 In the fourth chapter, Drassinower makes his proposal for a new model of copyright infringement analysis. Earlier in the book he is critical of current copyright law analysis that emphasizes protecting the economic interests of the author. He asserts that works are a type of speech, so copying and using the author’s work, without prior authorization, is compelled speech. Chapter 4 begins with a quotation from an essay by Immanuel Kant in which Kant states that a book is “a speech to the public” (p.112). Drassinower also begins to answer the question asked in the book’s title. According to him, the wrong in copying does not stem from a person profiting from someone else’s effort. Copying is wrong because it forces another to speak when that person has not chosen to do so.

¶44 This interpretation allows copying’s wrongfulness to become apparent in seemingly opaque situations. Drassinower uses a comparison of published and unpublished works to emphasize this point. According to him, the author should decide whether to publish a work or not. Even if a work has been previously published, publishing a work without the author’s authorization is wrongful. He argues that viewing infringement as compelled speech will have a unifying effect on copyright law. Theories that are similar but treated differently under the current balance test, like pre- and post-publication infringement, would be treated similarly under the compelled speech analysis.

¶45 What’s Wrong with Copying? is not an all-encompassing tome on every aspect on copyright law. For example, the author differentiates fair use from non-use, but the topic is not discussed in depth. It is also important to note that the law is presented in a manner that is intended to support the author’s argument.

¶46 Drassinower’s book is thought-provoking and likely to encourage lively debate. The assertions in the book are well documented. The book contains an extensive thirty-five-page bibliography organized by chapter; it also contains an index. What’s Wrong with Copying? is recommended for academic law libraries and firms that specialize in intellectual property.


Reviewed by Alissa Black-Dorward*

¶47 The principal purpose of The Law of the Executive Branch: Presidential Power is to explore the sources and limits of presidential power. Written by Louis Fisher, the treatise provides an introduction to the powers of the President rooted in historical and legal sources. Fisher also strives to place the categories of presidential powers in a larger framework of overarching principles.

Fisher is well qualified to write this treatise, having spent four decades at the Library of Congress as a specialist in constitutional law and a senior specialist in separation of powers at the Congressional Research Service. He has written numerous books on constitutional law, war powers, executive-legislative relations, and judicial-congressional relations. He has been invited to testify before Congress on topics such as executive spending discretion, state secrets privilege, and executive privilege.

The Law of the Executive Branch: Presidential Power is made up of nine chapters, plus a conclusion. All chapters but one focus on a particular feature of the President’s position, such as election and removal of the President, the powers of the President, the President and Congress, vetoes, foreign affairs and war powers, and the President and the judiciary. Each chapter is split up into subtopics for easy reading and browsing. The book also contains an index of cases and a subject index.

In chapter 1, “Fundamental Concepts,” Fisher sets out concepts that he believes are fundamental to an understanding of presidential power. These concepts make up a framework that connects the categories of presidential powers. These fundamental concepts include overlapping powers, judicial misconceptions, the historical framework, and the separation of powers, amongst others.

Chapters 2 through 9 each address a particular feature or power of the Office of the President. Many of the chapters proceed in a historical fashion, illustrating the change in power over time. This provides an excellent foundation for understanding the nature of presidential power. Each chapter is filled with interesting historical facts and with references to supporting material, including cases, statutes, and secondary sources. The short conclusion emphasizes the historical tone of this book. It argues that the pattern of presidential power, up until World War II, consisted of strong Presidents followed by weak Presidents. Since World War II, Fisher argues, political power has moved steadily toward the President, and federal judges have contributed to this development.

The idea of having a framework of fundamental concepts that connects the rest of the chapters is an excellent one, but the author does not do quite enough with it. The twelve fundamental concepts are interesting and explained well. However, Fisher does not discuss how he came to decide that these were the most fundamental concepts of presidential power. In fact, the introductory paragraph to the chapter does not appear connected to the fundamental concepts at all.

Fisher could also have done a better job of connecting these fundamental concepts with the rest of the book. Some of them, such as “judicial misconceptions” or “evolving powers,” feature more prominently. Others, such as “approaches by lawyers and professors” or “the British Model,” appear less frequently. Regardless, Fisher does not effectively tie together the fundamental concepts with his discussion of presidential powers. He leaves it to the reader to tease out a relationship between the framework of concepts and the features of the presidency.

Despite this, I highly recommend this book to any academic law library as a foundational treatise on presidential power. I would also recommend it to any library in a firm with a practice that touches on the law of the executive branch.

Reviewed by Caitlin Hunter*

¶55 In *The Eternal Criminal Record*, James B. Jacobs argues that criminal records in the United States have become increasingly common, inescapable, and damaging. To support his argument, he gathers extensive statistics and examples to provide a compelling, readable overview of the dilemmas posed by criminal records. The book is nominally organized into four sections on record production, policy concerns, comparative perspectives, and the consequences of criminal records. However, throughout the sections, Jacobs repeatedly circles back to three main themes: how easy it is to get a criminal record, how hard it is to escape one, and how damaging it is to have one.

¶56 Jacobs notes that almost a quarter of Americans have criminal records, stemming from not just convictions, but also acquittals, uncharged arrests, and suspicions. For example, some police departments maintain “contact cards” recording people they stopped but did not arrest. Similarly, school resource officers record students as suspected gang members based on their friends, their outfits, and tips from other students. Inevitably, some of these many records are erroneous. One employment applicant sued a background check company for repeatedly confusing him with a sex offender of the same name, even though the offender had a different birthdate and was first convicted when the applicant was three. Another man spent six months in pretrial detention charged with being a felon in possession of a weapon because his record did not indicate that his felony had been dismissed.

¶57 In addition to being more common, criminal records are also more easily accessed than ever. In the past, gathering criminal records took too much time and money because it required physically traveling to multiple counties to locate and copy widely scattered print records. Gradually, however, governments have implemented new technologies to centralize and share criminal records. Today, governments maintain mandatory sex offender websites, post mug shots to shame drunk drivers, and sell criminal records online for as little as $10 per search. When governments make criminal records even temporarily available, private organizations quickly obtain and disseminate them. Activist groups post mug shots to publicize domestic violence and animal abuse, legitimate companies sell background checks to employers and landlords, and extortionists post mug shots online and then charge the subjects to remove them.

¶58 Widespread access to criminal records is so serious because the consequences of having a criminal record are so severe. Within the criminal justice system, prior convictions and even uncharged arrests may determine whether police stop and arrest someone, how and whether prosecutors charge someone, and how long a judge sends someone to prison. Beyond the criminal justice system, laws prevent people with specified convictions from voting, serving on juries, holding

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elected office and many other public and private jobs, as well as receiving food stamps, student aid, or crime victim’s compensation. Additionally, most employers conduct criminal background checks on applicants, and many reject applicants with any criminal record, including being acquitted of a crime. Jacobs emphasizes that these negative consequences fall disproportionately on African Americans, citing statistics demonstrating that African Americans are more likely to face arrests and convictions and that employers are less likely to hire an African American applicant than a white applicant with the same criminal record.

Jacobs does not suggest sweeping solutions but instead emphasizes carefully considering a variety of approaches. To this end, he describes the approach taken by European countries such as Spain, which treats criminal convictions as private and places heavy emphasis on rights to privacy, honor, and dignity. However, he expresses skepticism that privatizing criminal records is desirable or practical in the United States, where free speech protections are stronger and private organizations and governments routinely distribute even expunged criminal records. Instead, he suggests creating certificates and databases to recognize rehabilitated offenders. Likewise, Jacobs highlights “Ban the Box” campaigns in which government and private employers voluntarily wait to check an applicant’s criminal record until after selecting the applicant. However, he rejects laws banning employers from considering criminal records as unfair both to applicants with no criminal convictions and to employers who need to screen out unreliable candidates.

Jacob’s nuanced overview of criminal records policies makes The Eternal Criminal Record a strong fit for academic law libraries and of interest to public law libraries. The book is an obvious choice for law schools involved in expungement clinics and other rehabilitative programs. Additionally, law students more generally will benefit from its thoughtful analysis of the competing interests underlying criminal records. However, its greatest value is likely to professors and students writing their own articles and research papers. Because of the topic’s breadth, Jacobs provides a broad overview, with many citations to prior research and more questions than answers. As a result, the book is an excellent starting point for further research. Finally, the book may interest public patrons who want to understand the context behind their personal struggles. Overall, The Eternal Criminal Record’s readability and breadth make it useful for a variety of readers.


Reviewed by Laura E. Ray*

How did you celebrate the 300th anniversary of the accession of King George I? The Ames Foundation celebrated with the publication of its website Appeals to the Privy Council from the American Colonies: An Annotated Digital
Catalogue, complemented by a print volume available from William S. Hein & Co. and in PDF on HeinOnline. The compilers for both projects, Sharon Hamby O’Connor and Mary Sarah Bilder, assisted by Charles Donahue, Jr., have extensive backgrounds in American legal history. They have done an impressive job organizing and indexing the reports, as well as providing links to information on, and images of, available printed cases (a printed case is a summary of facts and legal arguments, which several historians view as the precursor to a brief), and other related documents. The website is part of the Ames Foundation’s eseries, and was recognized as a Legal Website of the Month in 2014 by the American Association of Law Libraries Online Bibliographic Services Special Interest Section. The print volume was a co-recipient of the 2015 AALL Joseph L. Andrews Award, which recognizes significant print and online contributions to legal literature. The website and print volume provide easy access to a wealth of data for historians and legal researchers interested in British-American colonial legal history.

Though in the eighteenth century the power of the restored Privy Council paled in comparison to what it held before the English Civil War, the Privy Council continued to exercise appellate jurisdiction over the highest courts in British colonies. Appeals to the Privy Council from the American Colonies: An Annotated Digital Catalogue is a compilation of 257 reports on appeals from the thirteen colonies that became the United States, approximately one-third of the more than 800 cases heard from the Americas. Each report concerns a dispute or related disputes documented in the Acts of the Privy Council, Colonial Series (APC), and includes the colony from which the case was appealed; full and short names of the appeal; references and links to all APC entries on the appeal; references to Privy Council registers’ entries, with each entry’s National Archives request number (PC 2) and links to images on the Anglo-American Legal Tradition (AALT) website; any APC-provided reference to entries in the Calendar of State Papers, Colonial: America and the West Indies, 1680–1700; any APC-provided names and dates of lower court actions; participant names; any vessel names; any provided subject matter and disposition of the case; and applicable information from Joseph Smith’s Appeals to the Privy Council from the American Plantations (1950). Some reports also include related documents’ National Archives entries (PC 1) with links to images on the AALT website. A very interesting feature is that fifty-four appeals include links to information or images on a printed case.

The website and print volume include a good introduction to the content of the Digital Catalogue, how to use the Digital Catalogue, report markers, how to search the website, and how to view images. The compilers wisely remind users to consider terminology and spelling conventions of the time when searching the website, and the need to use additional archival collections, like colonial court records, for comprehensive research. The website supports Boolean searching,
truncated searching, and field searching. The website and print volume also include several “Useful Lists” finding aids, such as “Case Names Long” and “All Printed Cases,” as well as a list of abbreviations, a bibliography, and a memorandum on “Opportunities for Further Research.” Three useful lists that may evolve to full Digital Catalogue entries relate to Canadian appeals and Caribbean appeals.

\(\text{¶64}\) The compilers of the Digital Catalogue envision it as an ongoing project that will be periodically supplemented with additional materials. They are particularly interested in printed cases and encourage persons to contact the Ames Foundation with information on materials for possible inclusion. It is significant that the Digital Catalogue website appears as one of two useful links on the Judicial Committee of the Privy Council’s History page.\(^6\) What higher recognition could one seek?


\(\text{¶65}\) Law, Environmental Illness and Uncertainty: The Contested Governance of Health is a study of how the medical condition of multiple chemical sensitivities (MCS) is specifically addressed by Australian courts and professional institutions. The author, an anthropologist, takes particular care to identify the human element and its influence on scientific and intellectual conventions popularly regarded as unbiased.

\(\text{¶66}\) Tarryn Phillips begins this study by briefly reviewing how scientific consensus is affected by political maneuvering within the scientific community, as well as by the results of the scientific method, and examines the psychological biases that sometimes induce scientists to resist new ideas that might undermine established scientific theories. These themes continue as the author moves on to the law of medical tort: policy analysts will recognize the economic considerations that sometimes discourage business entities and local governments from recognizing new forms of workplace injury, while legal professionals will be familiar with how trial costs influence litigation strategies.

\(\text{¶67}\) While the work’s primary focus is on the ongoing conflict in Australia over MCS, there are also several interesting discussions of how the court system influenced the scientific consensus over subjects such as asbestos and DNA matching. Most of these digressions are short but well researched, and are excellent at illustrating concepts necessary for understanding the personal and professional problems facing MCS plaintiffs and their witnesses. This is most likely deliberate; these digressions provide succinct examples where context would be helpful, while remaining short enough that they do not interrupt the narrative Phillips obviously wishes readers to follow. Legal experts reading this book might particularly appreciate the

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\(^6\) History, Judicial Committee of the Privy Council (2015), https://www.jcpc.uk/about/history.html.

\(^*\) © Dan Donahue, 2015. International and Foreign Law Librarian, O’Quinn Law Library, University of Houston Law Center, Houston, Texas.
references accompanying these digressions; legal professionals unfamiliar with anthropological studies of the law might be more interested in the anthropological view of established sciences employed in the courtroom than in how Australian courts currently treat legally unrecognized medical diagnoses. This book can definitely serve as a guide to sources of further information on these topics.

¶68 The primary subjects of Phillips’s case studies are plaintiffs and expert witnesses called by plaintiffs. The studies of expert witnesses offer insights that, while interesting from an anthropological perspective, are specific to medical opinions of MCS and do not translate into insights about expert witnesses generally. Readers looking to these studies for legally relevant conclusions will find more in the studies of plaintiffs, while laypersons and new plaintiffs’ lawyers might find this book useful as a warning regarding how factors external to a trial might influence or even curtail litigation.

¶69 Overall, Law, Environmental Illness and Uncertainty is as much a call for public action as it is a study of MCS that illustrates that law can and does affect science. This book seems to be primarily written for nonlawyers in fields related to medical workplace torts and to serve as an introduction to the legal system for policy experts (or perhaps voters) who might become involved in the debate over potential legal recognition of MCS. Still, legal professionals taking up this book are in for a good read. Legal readers unfamiliar with anthropology will find an excellent introduction to the field, one perhaps made more comfortable by familiarity with the legal institutions this book studies. Ultimately, this book is both short enough and sufficiently well researched to be worth the time of any reader curious about the relationship between litigation and science.


Reviewed by Kimberly Mattioli*

¶70 On any given day, it is possible to find stories in the press that highlight the tension between privacy and free speech. For instance, the Internet was flooded with commentary in May 2015 when news broke that Josh Duggar, the eldest son of the family made famous by the reality show 19 Kids and Counting, had molested five underage girls. The statute of limitations had expired on any criminal charges, but as a result of his actions being made public, Duggar resigned from his job and left his home in the D.C.-metro area. Another consequence was that most of his victims were immediately identifiable from the police report. Was it proper for the media to publish this report? Do the victims’ privacy rights outweigh the media’s right to freedom of speech, or is it the other way around? Are the standards different for Duggar since he is a celebrity? What about the fact that Duggar was a minor when the show started and did not choose to become a public figure?

¶71 These are the types of questions that Mark Tunick addresses in Balancing Privacy and Free Speech: Unwanted Attention in the Age of Social Media. The issues

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Tunick discusses are interesting and timely—so timely, in fact, that the Duggar scandal was just one of several relevant stories that arose during the time it took me to read the book. With what Tunick refers to as “the democratization of the media” (p.2), anyone with a smartphone can take a picture or a video and upload it to the Internet. Social media sites allow the material to spread like wildfire, and the consequences for those affected can be swift and harsh. Tunick takes issue with the idea that these types of situations are inevitable in the age of the Internet and social media. Even with the prevalence of the Internet in our everyday lives, he believes “we still can have a legitimate interest in controlling the extent to which information about us is disseminated” (p.7).

¶72 From the outset, it is clear that Tunick does not agree with the way U.S. courts have ruled in many cases that address privacy issues. His objection is an ethical one, not a legal one, and this distinction is important to keep in mind when reading the book. Chapter 2 discusses the normative value of privacy, explaining that a lack of privacy is “objectively harmful” to humans (p.41). Chapter 3 discusses privacy concerns, including the plain view doctrine, which he would modify to increase the circumstances under which people should have a reasonable expectation of privacy. Chapter 4 is dedicated to the societal value of free speech. Tunick believes that U.S. courts should give less deference to free speech, pointing out that even newsworthy material can be made available without publishing certain images or identifying certain people. In chapter 5, Tunick proposes a balancing test based on the philosophy of utilitarianism. Readers who do not have a background in philosophy may find this chapter hard to follow, but the takeaway is that our society should balance privacy against free speech, instead of assuming that either is an inviolable right. Tunick mentions that this type of balancing test necessarily brings about the problem of judges inserting their subjective beliefs into their decisions—a serious problem that, I believe, he does not sufficiently address.

¶73 Tunick does a good job of making his point that it is not always appropriate to publish certain stories online. However, what is appropriate and what is legal are two different things, and U.S. courts have generally chosen not to hold people legally responsible for publishing images or stories on the Internet. Tunick advocates for policy change in chapter 7 by discussing what he believes would be suitable remedies for publicly violating a person’s privacy. He discusses who could be held legally responsible—the person who uploaded the information, the website that hosted it, or the search engine that linked to it. He then mentions that the market may also be able to fix the privacy problem outside of the legal system by putting up a paywall on information or having people pay to have information about themselves removed from the Internet. He does not address the obvious concern that this would allow only wealthy individuals to control what is written about them on the Internet.

¶74 Tunick is not a lawyer or a legal scholar, and this is not a law book. Rather, this is a book about ethics, privacy, and our right to be left alone. The discussion of case law is mostly contained in one chapter, with the rest of the book focusing mainly on emphasizing the value of privacy and making normative arguments about current policy. This is not the book for someone who wants to learn about current law—Tunick spends a lot of time discussing what he thinks the law should
be and less time discussing what it actually is. An ideal audience for this book would perhaps be undergraduate journalism or philosophy students who are interested in ethical issues. As such, this book would be better suited for a general academic library collection than for a law library. Law students looking for an involved discussion of the current state of privacy law, free speech law, or a detailed suggestion for policy reform will want to look elsewhere.


Reviewed by Patty Alvayay*

¶75 As a technical services librarian, I dreaded the thought of reading a book titled *Rethinking Library Technical Services: Redefining Our Profession for the Future*. Books of this nature often come across as a defense of the existence of technical services instead of a critical discussion of what technical services ought to be and how we should shape that future. However, I was pleasantly surprised that this book focuses much more on the latter than the former and that it presents progressive ideas for what technical services could be.

¶76 For example, the chart on page xi showing the configuration of technical services at individual libraries provides good insight into how libraries are changing technical services to fit their individual needs and goals. Michel Luesebrink’s chapter, “Restructuring Monograph Acquisitions in Academic Libraries,” is particularly insightful about the academic library’s transition from a library-centric approach to a user-centric approach regarding acquisitions. I would also recommend this chapter for library directors wanting to restructure the duties of acquisitions librarians to include demand-driven methodologies. While each chapter centers on a different topic relating to technical services, they are all worth a read, and I would recommend this book to any technical services librarians whose positions are focused on a specific skill but who are looking to step outside of that skill. I also recommend the book to library directors interested in gaining a better understanding of technical services or who want to reconfigure the department to better fit the library’s overall mission.

¶77 Another useful aspect of the book is that in several chapters the authors bring up the skills a technical services librarian should have in today’s library environment. These skills are sometimes overlooked in entry-level job postings, such as being able to effectively manage an integrated library system, having basic knowledge of old cataloging standards to “manipulate legacy data” (p.149), and possessing a basic understanding of programming. In Amy Weiss’s chapter, “Breaking Up Is Hard to Do,” she points out that “rather than vanishing, technical services work has melded into other parts of the library and beyond” (p.148), and that a “technical services librarian could be working in special collections, access services, technology, or a hybrid department” (p.149). Weiss illustrates that while an autonomous technical services department may not be the future of a library organization, the skills of a technical services librarian will always be needed.

Rethinking Library Technical Services, however, is not a detailed manual on how to change your technical services department. Most chapters focus on a single issue, ranging from linked data to acquisitions to ever-changing cataloging standards, providing details on how certain changes can make your technical services department more effective. Of course, every library has a different departmental structure, and some of these ideas may not be feasible for bureaucratic or budgetary reasons. Also, a couple of the chapters may be difficult for those not well versed in current events in the technical services world. However, the book offers good examples of what libraries have done with their technical services departments, conveys the truth of the statement “that librarians [today], technical services librarians in particular, are standing on shifting sands” (p.10), and emphasizes that following old standards can be detrimental to the library as a whole.


Reviewed by Miriam A. Murphy*  

Nancy Woloch has created an in-depth study of the development and decline of sex-specific protective labor laws in the United States over the passage of a century. Her central thesis is that while initially viewed as beneficial to women, protective labor laws were later viewed as discriminatory and in competition with the newer concept of labor equality for women. As with any evolving area of the law, changes do not occur in a smooth progression, with one event following neatly on the heels of its predecessor. Woloch does a remarkable job of pulling a wide array of disparate events together to form a single narrative supporting her central theme.

Each chapter starts with a photo and quotation from a woman affected by the labor situation of the time. Advocates for change, such as Florence Kelley of the National Consumers’ League and Alice Paul of the National Women’s Party, are followed in depth through their careers. The stories of many other leaders, including Louis D. Brandeis, Felix Frankfurter, and Eleanor Roosevelt, are also told, providing a rich historical texture. The clear descriptions of the motivations of participants have the feel of modern news reports. Woloch carefully interweaves the human stories of the participants with the intricate trail of legal and social progress. This personalization helps give the recital of legislation and litigation a narrative style that steeps the reader in the history and mindset of the moment.

Woloch explores judicial and legislative successes and failures. The protectionist movement started with the goal of limiting work hours and improving conditions for all workers. Reformers promoted sex-specific legislation for two reasons. The first was pragmatic, assuming easier legislative approval; the second was to use women’s protections as an “entering wedge” on which rights for all workers could be built. Pivotal cases focused on the tension between labor interference and protectionist health law in state labor legislation. The cornerstone arguments

for the sex distinctions are reviewed for their immediate and long-term impacts. Judicial recognition of the “common knowledge” or “fact” that women as future mothers need to preserve their strength was a remarkable development in which social concepts, rather than legal precedents, helped form legal opinion. During the peak era between 1908 and 1923, as many as nineteen states passed labor laws protecting the health of women by regulating maximum hours and night shift work.

¶ 82 By necessity, Woloch has a very narrow view of history, focusing on women’s labor issues and only peripherally mentioning the suffragette movement and the Equal Rights Amendment as they affected protectionist laws. The major tension in the book is introduced with the conflict between protection laws as promoted by the Women’s Bureau and the newer concept of women’s rights to equality as promoted by the National Woman’s Party. The growth of the equal rights movement is shown with small glimpses of various advocacy groups gradually building to a crescendo in the 1960s.

¶ 83 Woloch recognizes that the passage of the Fair Labor Standards Act and the National Labor Relations Act had little impact on the status of most women workers. The reasons for this, and the repercussions from courts determining that women were exempt from federal minimum wage coverage and that existing state protectionist laws preempted the newer federal laws, are exhaustively explained. The pace of the book accelerates at this point, with World War II and the 1950s receiving less intense scrutiny due to the status quo of the legal situation.

¶ 84 The final chapters are rapidly paced explorations of change. They cover the defense of women workers’ rights from the Equal Pay Act of 1963 to the Pregnancy Discrimination Act of 1978 and the Family and Medical Leave Act. The irony of Virginia congressman Howard W. Smith adding discrimination based on sex to Title VII of the Civil Rights Act of 1964 in hopes of stopping passage of the bill, and then seeing the law enacted with the language included, is a great story.

¶ 85 The legal developments profiled start with background to provide context, followed by the progress of that issue through time. Every chapter is so rich with commentary that each is worthy of expansion into a separate treatise. The overlapping time periods required by this format give the reader the feeling of riding waves, moving forward and backward in time to follow each story. Two steps forward, one step back, paralleling the jerky, grinding progress of the protectionist movement itself. Woloch consistently provides context while returning to the central thesis of the book and reminding the reader where in the legal construct a particular development stands.

¶ 86 Woloch has done extensive research, providing not only supporting texts from the time, but also including perspectives of past and present experts (such as Ruth Bader Ginsburg) on each issue. The extensive use of acronyms and the use of endnotes rather than footnotes are sometimes disruptive, forcing the reader to stop and refer to other parts of the text on a regular basis to get clarification. Due to the almost encyclopedic concentration of information, this is not a book for the casual reader, but one for the serious scholar or person seeking detailed application of the sex-based labor protection viewpoint to history. This text is highly recommended for any university or academic law library.

 Reviewed by Matthew E. Braun*

Article IV of the U.S. Constitution states, in part, that

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

§87 True to constitutional form, this article, containing what is popularly known as the Full Faith and Credit Clause in section 1, and the Privileges and Immunities Clause (also known as the Comity Clause) in section 2, has spawned a labyrinth of federal and state jurisprudence characterized by its relative unpredictability.

§88 In *Unifying the Nation: Article IV of the United States Constitution*, Joseph F. Zimmerman, a professor of political science, illustrates the germination of the principles embodied in these two clauses, from the Magna Carta and other origins in the Middle Ages to various colonial statutes, to Article IV of the Articles of Confederation, through consideration in select Federalist Papers, and details the struggles that courts have experienced for more than 200 years in reconciling federal and state legislation with the clauses.

§89 Chapters 1 through 3 primarily address the Full Faith and Credit Clause, with Zimmerman exploring the first sentence of the clause’s unifying effect in, as Chief Justice Harlan F. Stone of the U.S. Supreme Court put in 1943, “[altering] the status of the several states as independent foreign sovereignties, each free to ignore rights and obligations created under the laws established by the judicial proceedings of the others, by making each an integral part of a single nation, in which rights judicially established in any part are given nation-wide application” (p.26).

§90 Zimmerman then looks at the practical application of such a concept through the legal treatment of same-sex marriage, civil unions, divorce, child support, adoption, and guardianship. It is here that Zimmerman begins to summarize federal and state court decisions one after the other, much like a casebook, albeit with holdings only and not the full text of opinions. From the rather wide variance shown among state courts in rendering final judgments on the issues listed above, Zimmerman clarifies the limitations of the Full Faith and Credit Clause as a unifying construct, as currently espoused, mainly due to (1) Congress’s unwillingness, per the clause’s second sentence, to proactively clarify and detail the clause’s application beyond select areas such as child support, violence against women, and

* © Matthew E. Braun, 2015. Head of Electronic Resources and Computer Services, University of Iowa Law Library, Iowa City, Iowa.
defense of marriage; and (2) the resulting role of the U.S. Supreme Court as a reactionary legislator, establishing a tenuous body of common law through a series of conflict-of-laws decisions. In other words, Zimmerman contends that the clause’s first sentence dwarfs that of the second, and contravenes the hope, championed by James Madison, that Congress, while sensitive to the tenants of federalism, “would act as a “disinterred and dispassionate umpire” among the states, using the full faith and credit obligation to create a coordinated judicial system for the protection and enforcement of . . . rights” (p.26, quoting Charles M. Yablom).

§91 Chapters 4 through 7 shift the focus to the Privileges and Immunities Clause, where considerations relate to the private, individual rights of citizens, similar to many of the Constitution’s amendments, and not to the rights of the states or other legal entities such as corporations. Here, Zimmerman summarizes a litany of court decisions in areas as wide-ranging as taxation, the acquisition and possession of property, contracts, higher education, fishing and hunting, boat moorage, welfare benefits, the holding of political office, the sale of intoxicating liquors, professional licensing, and interscholastic athletic contests.

§92 Perhaps reminiscent of the materials in a first-year constitutional law course, the summaries, while concise, may be somewhat challenging to absorb. This is due to the sheer number of summaries, the complexity of the varying fact patterns, shifts between legal claims on state statutes and a myriad of local laws and ordinances, and the intersection of claims involving the Privileges and Immunities Clause, the Commerce Clause of Article I and its reflective Dormant Commerce Clause (prohibiting state discrimination of interstate commerce), and, most notably, the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Characteristic of these decisions is a court’s analysis of whether a law implicates the “equality of privileges and immunities between citizens of different states” (p.139) and, if so, whether the implication is “reasonable in effect and based on a substantial justification other than the fact of nonresidence” (p.96).

§93 Indeed, the cases that Zimmerman chooses collectively emphasize a tradition of judicial limiting of the Privileges and Immunities Clause. However, absent specific language in the clause inviting congressional intervention, as with the second sentence of the Full Faith and Credit Clause, and possibly accounting for the more general, amorphous nature of Privileges and Immunities Clause and its somewhat strained pre-1789 development, Zimmerman, contrary to his views on the Full Faith and Credit Clause, seems at ease with the historical and contemporary application of the Privileges and Immunities Clause’s unifying principles, which have been solely accomplished through judicial means.

§94 Chapter 8 effectively summarizes the work as a whole and includes Zimmerman’s most forceful statement: “The recent failure of Congress—except in child-support cases, violence against women, and the Defense of Marriage Act of 1996—to employ its delegated full faith and credit powers fully to mandate in other than general terms the effect provision of the clause is deplorable, and led to the U.S. Supreme Court constructing a new common law relative to one of Congress’s constitutional responsibilities” (p.160).

§95 Zimmerman argues that if Congress were to act properly in this regard it would, in addition to removing a constitutional malady, “reduce the workload of U.S. courts, particularly the Supreme Court, in determining the effects of acts,
records, and proceedings” (p.164). Whatever limitations, however valid or invalid, that have been placed upon the Full Faith and Credit Clause and the Privileges and Immunities Clause, Zimmerman concludes that they, “supplemented by the constitutional grant of diversity of citizenship jurisdiction to U.S. courts, . . . generally have been successful in unifying the fifty states, the District of Columbia, and territories into one nation” (p.165).

¶96 Unifying the Nation is a clearly written, extensively researched account of the development and application of two of the U.S. Constitution’s key principles for the operation of the country’s federal system. The chapters are tightly focused, and Zimmerman generally follows a chronological format that effectively illustrates the progression of the legal maxims within both clauses, from conception through fruition.

¶97 Two aspects of the book could perhaps be improved. First, chapter 8 offers a roadmap to the contents of the book and concise, yet detailed, descriptions of the two clauses, and while these serve an important purpose in tying the work together, some iteration of this content would be helpful to the reader closer to the beginning of the book. Second, while the endnotes and bibliography are thorough in their coverage, extending to a combined thirty-six pages, the index totals only four pages and could be expanded with additional entries to make the book a stronger quick-reference tool, especially after a careful first reading of the entire work.

¶98 This book is an important addition to any academic law library and any academic, court, or public library that has an appreciable constituency of legal or political science researchers. Few monographs on the U.S. Constitution focus exclusively, yet coordinately, on the Full Faith and Credit Clause and the Privileges and Immunities Clause, and the extensive notes and bibliography in Unifying the Nation help to provide an excellent wide-scale view into this relatively narrow area of constitutional study. The midrange length and depth of the book is not likely to intimidate, confuse, or sidetrack postgraduate and professional researchers and, in turn, helps to provide a source that could certainly spur study and scholarship.
Ms. Whisner looks at the concept of precedent in the case law arena and discusses how to handle cases from parallel and lower courts, including unpublished decisions. She offers tips to help make decisions when using precedent, including consulting secondary sources and key numbers.

The apparent professional certainty regarding precedent may make it surprising for a current or former law student to discover that legal scholars have long acknowledged that the meaning and operation of precedent within our legal system are actually dimly understood and under-studied.¹

1. We all work with cases all the time.² Indeed, we have many powerful tools for finding cases: full-text searching with different interfaces from different providers, annotated statutes, digests, and a wide variety of secondary sources. Once we find cases, we can print them out or put them in electronic folders, annotating and highlighting them with pencil and ink or with clicks and taps. We know how to work with cases. But recently I’ve explored the field of precedent and found marshy spots instead of firm ground. In this column, I’ll walk you around and show you some of the interesting spots I’ve explored.

* © Mary Whisner, 2015. I am grateful to Mary Hotchkiss and David Ziff for helpful comments on a draft.


2. I write as someone steeped in U.S. law, but nearly any legal researcher would need access to cases. Cases are just as important in other common-law countries, of course. And cases are a source of international law. Statute of the International Court of Justice art. 38(1), June 26, 1945, 59 Stat. 1031, 1060 (including judicial decisions as means of determining rules of international law). But see id. art. 59, 59 Stat. at 1062 (stating that decisions of the I.C.J. have “no binding force” except between the parties in the dispute adjudicated). Even in civil law systems, it is important to be able to find and use precedent. See, e.g., John O. Haley, The Role of Courts in “Making” Law in Japan: The Communitarian Conservatism of Japanese Judges, 22 Pac. Rim L. & Pol’y J. 491, 491 (2013) (“Despite some scholarly dissension as to the theory of judicial precedent as a source of law, adherence to judicial precedent is well-established in law and practice, touching nearly all fields of Japanese law.”).
A Very Basic Picture

2 A precedent is a written opinion that states one or more legal rules used in solving that dispute; these rules might then be used to solve a later dispute. An advocate cites precedents to a court to support a position, hoping that the court will rule in favor of the advocate’s client. In turn, a court cites precedents to justify its ruling, explaining to litigants, higher courts, the public, and history how it reached the result it did.

3 Precedents are not created equal, varying in weight and relevance. A case’s authority depends on the deciding court’s place in the judicial hierarchy, as viewed from the court where the later case is being heard. If you have a case in a state trial court, then you look for precedents from that state’s highest court and intermediate appellate court as well as the U.S. Supreme Court. Such precedents are said to be binding on the lower court. All other precedents are said to be nonbinding or (merely) persuasive.

4 I think people easily grasp this idea of having to follow the rules laid down by courts that are higher up. It’s like a military hierarchy or an organizational chart at work. But it’s harder to figure out what to do with precedents from courts at the same level. Does one division of a court of appeals have to follow precedent set by another? Does it try to if it can? For that matter, is an appellate court bound by its own precedent? This is a class of questions served well by the West Key Number System. It’s hard to construct a good full-text search because thousands of cases use words like “court,” “opinion,” and “precedent.” But the Courts topic leads us to the cases we need (see figure 1). You may also find helpful secondary sources for your jurisdiction.

3. In the United States, judges write their opinions, but “[t]his practice provides a stark contrast to the English tradition, in which appellate judges historically issued the majority of their judgments orally from the bench at the conclusion of oral argument.” Suzanne Ehrenberg, Embracing the Writing-Centered Legal Process, 89 IOWA L. REV. 1159, 1162–63 (2004).

4. Determining what rules a case creates is not always simple. See Adam N. Steinman, To Say What the Law Is: Rules, Results, and the Dangers of Inferential Stare Decisis, 99 Va. L. Rev. 1738, 1744–46 (2013). The central question in Steinman’s article is: “Does stare decisis obligate future courts to follow the explicit rules stated by the precedent-setting court in its opinion? Or is the obligation an implicit one, where future courts must infer a justification for the precedent-setting decision that reconciles the result with decisions going forward?” Id. at 1740. He argues for the former.

5. Mathilde Cohen, When Judges Have Reasons Not to Give Reasons: A Comparative Law Approach, 72 Wash. & Lee L. Rev. 483, 486–88 (2015) (footnotes omitted): Judicial reason-giving has not, however, always been considered so clearly desirable. Reason-giving is a typically modern idea. There have been historical moments when it was deemed valuable not to give reasons. . . . To this day, reason-giving is discouraged or even prohibited in a number of decision-making contexts, such as those involving juries, voters, clemency decisions, or national-security affairs.

6. For federal courts’ use of state precedents, see Federal Courts > XV. State or Federal Laws as Rules of Decision; Erie Doctrine > k3006-k3010 Sources of Authority. You might also find useful headnotes under Appeal and Error > XII. Briefs > k761 Points and Arguments. And for state courts’ deference (or not) to lower federal courts, see Amanda Frost, Inferiority Complex: Should State Courts Follow Lower Federal Court Precedent on the Meaning of Federal Law?, 68 Vand. L. Rev. 53 (2015).

7. For Washington State (the jurisdiction about which I get the most questions), see Mark DeForrest, In the Groove or in a Rut? Resolving Conflicts Between the Divisions of the Washington State Court of Appeals at the Trial Court Level, 48 Gonz. L. Rev. 431 (2013); Kelly Kunsch, Stare Decisis—Everything You Never Realized You Need to Know, 52 Wash. St. B. News, Oct. 1998, at 31.
This summer a student needed information about precedent in Indiana courts. In addition to using the Key Number approach, we found something useful in an encyclopedia. 7 IND. LAW ENCYC. Courts § 37 (West, Westlaw, updated July 2015) (citing Lakes v. Grange Mut. Cas. Ins. Co., 944 N.E.2d 509 (Ind. Ct. App. 2011), vacated, 964 N.E.2d 796 (Ind. 2012)). The case the encyclopedia cited for the proposition that Indiana courts do not recognize horizontal stare decisis had not turned up in our Key Number search because it had no headnotes. But the PDF of the published version does include Courts k90(2). When I checked with Westlaw, I learned that the headnotes had been removed when the Indiana Supreme Court vacated the court of appeals case. E-mail from Lori Hedstrom, Nat’l Manager, Librarian Relations, Thomson Reuters, to author (Aug. 7, 2015, 6:09 am CST) (on file with author). It’s interesting, because one might still want to be able to locate that case. It could be cited for the stare decisis proposition (which the higher court didn’t address) with the history “vacated on other grounds.” Or one could cite the case it cites—In re C.F., 911 N.E.2d 657, 658 (Ind. Ct. App. 2009) (“This Court is respectful of the decisions of other panels . . . . Indiana does not, however, recognize horizontal stare decisis. Thus, each panel of this Court has coequal authority on an issue and considers any previous decisions by other panels but is not bound by those decisions.”). (This one does have searchable Key Numbers.) A West editor plans to replace the vacated case with In re C.F. E-mail from Lori Hedstrom, Nat’l Manager, Librarian Relations, Thomson Reuters, to author (Aug. 12, 2015, 5:34 AM CST) (on file with author).
Relevance is much harder to diagram than a court hierarchy. You’d like a clear statement of a rule, applied to facts very much like the facts in your case. But “likeness” is notoriously vague. While it seems clear to you that the facts of your case line up quite nicely with precedent A, your opposing counsel might find precedents B and C with facts that are also arguably like yours. And then you have the challenge of explaining how A is a great fit while distinguishing the other two cases from yours.

A brief writer would love to have nothing but cases from higher courts in the correct jurisdiction—that is, binding precedents—that are highly relevant, unambiguous, and favorable to the client’s position. Instead, what the researcher sometimes finds are binding cases that might apply, binding cases that seem to apply but are unfavorable, cases that are binding but aren’t particularly relevant, and cases that seem to fit but are not binding. And so advocates and judges sometimes turn to precedent that is far afield (either geographically or topically), looking for something that can provide guidance. Legal writers must apply analysis and rhetorical skills in choosing which precedents to cite and how to weave them into an argument. Advocates may also leave the realm of precedent far behind, citing encyclopedias, treatises, and law review articles.

Nonlegal Sources

To provide facts, color, or flair, lawyers and judges can cite newspapers, Wikipedia, or rock lyrics, as well as works of literature. A more powerful reason is that the nonlegal reference can “anchor an argument in shared experience, common sense and general human values.” In the absence of precedent determining the result, reference to a novel, a movie, or a folk tale could make one outcome seem reasonable and fair.

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8. One author spins out a hypothetical about luggage lost on an overnight ferry. One precedent is about luggage lost on an overnight train; another is about luggage lost in a hotel. Is the ferry cabin more like a hotel room or a train car? Dan Hunter, *Reason Is Too Large*, 50 EMORY L.J. 1197, 1206–10 (2001).

9. See Alex Kozinski, *Who Gives a Hoot About Legal Scholarship?*, 37 HOUS. L. REV. 295, 307 (2000): Modern courts can be innovative, but judges are reluctant to pick ideas entirely out of thin air. It’s always much safer to follow some precedent, preferably an opinion by a prestigious court or at least a well-known judge. But, alas, there is a point in the development of any legal doctrine where there is no judicial precedent; some court has to be the first. That is a very uncomfortable position for a judge to be in: You write an opinion and have nothing to cite. Paradoxically, opinions are not supposed to be a matter of opinion; they are supposed to reflect the law, and this means at least someone out there who does law is supposed to agree with you.


13. E-mail from Professor David Ziff, Univ. of Wash. Sch. of Law, to author (Aug. 30, 2015, 5:05 PM PST) (on file with the author).
One Saturday afternoon, I pursued my curiosity about literary citations in briefs. I searched in WestlawNext’s Briefs database, looking for famous authors’ names to appear within 100 words after “authorities”—that is, trying to find items listed in a brief’s table of authorities. (Of course, this search could miss some relevant briefs, for instance, if there were a lot of cases and statutes between the table of authorities heading and the literary references.) It won’t be much of a surprise that William Shakespeare has been cited often, with 126 documents. I did a tally of the plays, finding that Hamlet was the most frequently cited (the phrase “doth protest too much” alone appeared in 17 briefs). See table 1. Mark Twain is fairly well represented, but you have to weed out citations where “Mark Twain” is part of the case name—e.g., Mark Twain Kansas City Bank v. Kroh Brothers Development Co. One brief manages to cite both the movie Casablanca and The Complete Calvin and Hobbes. I don’t know about the merits of the case, but I think I’d enjoy having coffee with that lawyer.

When to cite nonlegal sources is a question of judgment and taste. Surely you shouldn’t squander scarce space in your brief on Shakespeare if you haven’t handled your substantive argument with all the binding, relevant authority you can muster. And always think of your audience: there might be some judicial readers who don’t find references to comic strips—even the amazing “Calvin and Hobbes”—at all helpful or amusing. But it’s up to the writer.

Rules Against Citing Unpublished Opinions

In a world where litigants can cite Dr. Seuss, it might seem odd that courts prohibit citing certain cases that they themselves decided. But it’s true: the federal

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15. “The lady doth protest too much, methinks” is spoken by the Queen in Hamlet, act III, sc. i.


18. Search in WestlawNext Briefs, June 27, 2015: authorities +100 “dr seuss” % “dr seuss enter!” (This search eliminates the cases involving Dr. Seuss Enterprises.) Result: sixteen documents. Fans of Dr. Seuss might be interested in the symposium Exploring Civil Society Through the Writings of Dr. Seuss, 58 N.Y.L. SCH. L. REV. 495–705 (2013–2014). (I don’t know why the editors needed to use the trademark sign, but they did.)


If one does not think of the nonbinding opinions as “precedents,” but merely as the recorded thoughts of sapient scholars, the common law tradition is that they can be cited as persuasive tools, just as the thoughts of Coke or Lewis Carroll, of Yogi Berra or Jonathan Swift, are so frequently cited in briefs and opinions.

See Shady Records, Inc. v. Source Enters., Inc., 371 F. Supp. 2d 394, 398 n.1 (S.D.N.Y. 2005) (Lynch, J.): As the Court has frequently had occasion to remark, a district court must seek enlightenment as to the law where it finds it. If it is permissible to cite and to treat as persuasive authority the writings of law students in student-edited journals, the considered opinion of a panel of appellate judges
courts and many state courts have rules limiting the citation of unpublished opinions. They simply declare that some decisions are not precedent. In some jurisdic-

<table>
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<tr>
<th>Title of Play</th>
<th>Times Cited</th>
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<td>Hamlet</td>
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<td>Romeo and Juliet</td>
<td>18</td>
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<td>Macbeth</td>
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<td>The Merchant of Venice</td>
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<td>Othello</td>
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<td>Julius Caesar</td>
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<td>Henry V</td>
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<td>Measure for Measure</td>
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<td>Henry IV Part 2</td>
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<td>The Comedy of Errors</td>
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<td>Henry VI Part 2</td>
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<td>A Midsummer Night's Dream</td>
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<td>Much Ado About Nothing</td>
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<td>The Tempest</td>
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<td>Antony and Cleopatra</td>
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<td>Henry IV Part 1</td>
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<td>Henry VI Part 1</td>
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<td>King John</td>
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<td>King Lear</td>
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<td>Richard II</td>
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<td>The Taming of the Shrew</td>
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<td>Titus Andronicus</td>
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<td>Twelfth Night</td>
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20. See Melissa M. Serfass & Jessie Wallace Cranford, Federal and State Court Rules Governing Publication and Citation of Opinions: An Update, 6 J. APP. PRAC. & PROCESS 349 (2004) (providing chart of publication and citation rules in federal and state jurisdictions). I wish I had a more current survey of the states, but I don’t. You can take my word for it that many states still have rules forbidding citation of unpublished opinions. Or you can run a search. For instance, in WestlawNext, Statutes & Court Rules, on Aug. 5, 2015, I searched for: cited citation citable citing /s unpublished and found many such rules. See, e.g., WIS. STAT. ANN. § 809.23(3) (West, Westlaw through 015 Act 20, published 05/21/2015):
tions, litigants may even be sanctioned for citing an unpublished opinion.\(^21\) To be fair, there are characteristics of unpublished decisions that might make citing them riskier than citing Dr. Seuss:

The word of a federal Court of Appeals will not be treated as a law review article or newspaper column, no matter how many admonitions from the appellate court that its unpublished opinions have no precedential authority. Every judge and lawyer in America has internalized the hierarchical nature of our justice system; the word of a federal Court of Appeals, even unpublished, will not be treated the same as the word of a legal scholar or newspaper columnist.\(^22\)

\(^{21}\) Access to unpublished decisions used to be very limited. When I first heard (in the 1980s) about rules against citing unpublished opinions, people were concerned about potential unfairness. Institutional litigants such as government agencies would have access to the opinions in their own areas. Wealthy law firms would have access on LexisNexis and Westlaw. But low-budget law practices and pro se litigants wouldn’t.\(^23\) Now the economics have changed. Many public law libraries

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\(^{21}\) An unpublished opinion may not be cited in any court of this state as precedent or authority, except to support a claim of claim preclusion, issue preclusion, or the law of the case, and except as provided in par. (b).

\(^{22}\) In addition to the purposes specified in par. (a), an unpublished opinion issued on or after July 1, 2009, that is authored by a member of a three-judge panel or by a single judge under s. 752.31(2) may be cited for its persuasive value. A per curiam opinion, memorandum opinion, summary disposition order, or other order is not an authored opinion for purposes of this subsection. Because an unpublished opinion cited for its persuasive value is not precedent, it is not binding on any court of this state. A court need not distinguish or otherwise discuss an unpublished opinion and a party has no duty to research or cite it.


\(^{22}\) Patrick J. Schiltz, The Citation of Unpublished Opinions in the Federal Courts of Appeals, 74 Fordham L. Rev. 23, 42 (2005). Schiltz also suggests that the judges who write opinions they declare not to have precedential value would be affected by the possibility of their being cited. Id. at 41. “As one judge wrote, ‘Shakespearian sonnets, advertising jingles and newspaper columns are not, and cannot be mistaken for, expressions of the law of the circuit. Thus, there is no risk that they will be given weight far disproportionate to their intrinsic value.’” Id. (citing Letter from Alex Kozinski, Circuit Judge, U.S. Court of Appeals for the Ninth Circuit, to Samuel A. Alito, Jr., Chair, Advisory Comm. on Appellate Rules 4 (Jan. 16, 2004), available at http://www.secretjustice.org/pdf_files/Comments/03-AP169.pdf (Comment 03-AP-169)).


The equal access inequity exists to some extent now. It exists, for example, in the access that some law firms, because of their location, have to such sources as legislative history, legislative reports, and Congressional hearings. These sources are not readily available in some areas of the country where they don’t have a large library which stocks or keeps these things. Some lawyers cannot afford access to electronic retrieval systems. Other law firms do. I’m not so sure that unequal access doesn’t already exist, so that it is not the big factor that it sounds like on its face.
provide access to LexisNexis or Westlaw. By virtue of their bar memberships, most lawyers have access to Fastcase or Casemaker. And many cases are available on free websites. In fact, getting an electronic copy of an unpublished opinion is generally easier than putting hands on an official print reporter.

¶12 The literature on unpublished decisions is vast. I only got a sense of how vast when I set out to update a couple of footnotes in Fundamentals of Legal Research. The prior edition discussed the issue in two places, with long string citations that overlapped but didn’t entirely duplicate each other.24 I thought I should update the footnotes and consolidate the discussion. The problem was that the more I looked, the more I found. I created a spreadsheet listing scores of articles and posted it on SSRN.25 That enabled me to streamline the footnotes, citing Joseph Gerken’s excellent overview,26 a couple of other works with overviews, and—for the readers who really want to explore the issue—my bibliography on SSRN.27

¶13 The controversy over case publication is of long standing. At the turn of the last century, bar committees decried the growth in reports but didn’t agree on the remedy. For instance, in 1903, a majority of the Committee on Law Reporting and Digesting recommended that not all opinions be published.28 In 1916, the Special Committee on Reports and Digests recommended that all opinions of each state’s court of last resort be published, as well as all written federal court of appeals opinions and those district court cases that weren’t appealed.29 This committee’s report was accompanied by a summary of correspondence, showing the views of lawyers who responded, along with constitutional or statutory provisions about case publication.30 A range of views was expressed. For example, “Too Many Cases”:

- Alabama: “Lawyers want every case they win reported whether it involves any new point or not. They present every point involved whether new or not, and complain on rehearing if it is not discussed. . . . The court ought to be the judge of the decisions to be published at length.”31

Jaffe mentioned a Tenth Circuit rule that mitigated the access problem by offering a $5 subscription to an index of its published opinions. Id. Judge Patricia M. Wald commented that her clerks often could locate unpublished opinions from her own court. Id. See also Hangley, supra note 19, at 647:

[All] circuits should release their opinions for publication in Lexis, Westlaw, and other internet carriers. The growth of the law cannot help but be stunted if the great majority of decisionmaking is occult. Worse yet, the present system in some circuits invites “organized litigants”—government agencies or special interest groups, by way of example—to build archives of the unpublished opinions and gain an unfair advantage.

24. Steven M. Barkan et al., Fundamentals of Legal Research 35 nn.7–8, 57 n.23 (9th ed. 2009) (chapters on court reports and federal court reports).
30. Id. at 626–56.
31. Id. at 626.
• Alaska: “We have too much case law in this country. The average lawyer, instead of doing the original thinking for reasons upon which to base his contention, is so desirous of winning his suit he spends the greater portion of his time looking for some similar case in the hope that it may be accepted as precedent.”

• Arkansas: “In this state there are no serious defects, except the failure of the court to exercise its discretion as to which opinions shall be published.”

And, in contrast:

• Delaware: “All opinions should be reported.”

• Washington: “The increasing number of decisions is one of the phenomena indicating the complexity of modern life. It is yet to be demonstrated that we cannot get along better by use of reports containing all the decisions of courts of last resort than by attempting to dam the stream at its source. A partial remedy would be to persuade the courts to cease writing essays when they decide cases.”

¶14 In 2006, the Federal Rules of Appellate Procedure were amended to require circuits to allow citation of unpublished opinions issued after January 1, 2007—but the rule is still not “anything goes.” The circuits can still restrict citation to earlier cases and may designate that unpublished opinions will not have precedential value. And there are the states. But even though state appellate courts handle almost five times as many cases as the federal courts of appeals, the bulk of the law review articles are about publication and citation rules in federal courts. So it goes.

32. Id.

33. Id. at 627.

34. Id. at 630.

35. Id. at 655–56. Sure there are a lot of cases. Deal with it.

36. See 16AA Charles Alan Wright et al., Federal Practice and Procedure: Jurisdiction § 3978.10 (4th ed., West, Westlaw, updated July 2015) (footnote omitted): Practitioners should note Rule 32.1’s limitations. It does not prescribe rules for determining when a decision should be published. It does not require courts to permit citation of unpublished opinions issued prior to 2007. And it does not prescribe the precedential value, if any, of unpublished opinions. Circuits take varying approaches to all these questions, and practitioners should be sure to consult the local rules of the relevant circuit.


38. I think that law reviews publish more pieces on federal topics than on state topics, but I don’t have a good citation to support that claim. Authors who want a national audience will find it easier to write on a federal topic than to do the heavy lifting of examining the conflicting laws of all the states. Focusing on one state’s law is unlikely to score a placement in a top-tier journal and the benefits that come with it (e.g., tenure, favor with the dean, merit raises). Citation by courts and other scholars is probably more likely with a federal topic as well.

One critic charged that law review selection practices “reflect the interests of third-year law students looking forward to federal circuit court clerkships and practice in corporate law firms.” James Lindgren, An Author’s Manifesto, 61 U. Chi. L. Rev. 527, 533 (1994). In a survey of student notes, civil procedure and federal courts “attracted the second-most notes among elite students,” but the non-elite journals surveyed had only one civil procedure note and none on federal courts. Andrew
Cases of First Impression

¶15 Has law become more settled? I came to this question in a roundabout way starting with a study by two student authors addressing the apparent declining use of law reviews by judges.\textsuperscript{39} Thinking that secondary sources would be most useful to judges who faced new issues, they searched for citations to “L. Rev.” or “L.J.” in cases that also used the phrase “first impression.” It turned that there was a correlation: “first impression” cases were more likely to cite journal articles than other cases were. (It’s still a minority, but it’s a larger minority. For example, 1.5% to 3.0% of state court cases cited legal scholarship, but 5.6% to 11.4% of state cases with the phrase “first impression” did so.\textsuperscript{40}) The authors stated the one “objective reason that law reviews are apparently experiencing a decline in judicial citation is equally straightforward: the law is increasingly settled.”\textsuperscript{41}

¶16 Some time after reading that, I wondered: is it true? Like the authors, I thought that “first impression” might be a good proxy for the extent that the law is settled. I ran a series of searches combining case /5 “first impression” with date ranges. This search is both over- and underinclusive. It’s overinclusive because judges sometimes use the phrase in other contexts.\textsuperscript{42} Sometimes they are saying that the case is not one of first impression.\textsuperscript{43} The search is underinclusive because it misses phrases like “This is an issue of first impression”; “This is a question of first impression”; and “This case presents a novel question”—as well as other ways judges might express the concept.\textsuperscript{44} But imperfect as the search is, I thought it was a good way to see whether cases of first impression might be more or less common than in the past. Even with a very imperfect search, the pattern is dramatic: the number of cases rose gradually throughout the nineteenth and early twentieth

Yaphe, Taking Note of Notes: Student Legal Scholarship in Theory and Practice, 62 J. Legal Educ. 259, 282 (2012). Yaphe doesn’t distinguish between federal civil procedure and state civil procedure, but I suspect the notes were on federal civil procedure. See also James W. Paulsen, An Uninformed System of Citation, 105 Harv. L. Rev. 1780, 1788 (1992) (reviewing The Bluebook: A Uniform System of Citation (15th ed. 1991)) (“Basically, The Bluebook suffers from a bad case of federal parochialism—a pervasive belief that state courts simply are not important.”).

40. Id. at 1225–26.
41. Id. at 1196.
42. See, e.g., Landry v. Seattle, P. A. & W. Ry. Co., 171 P. 231, 232 (Wash. 1918) (“Whereupon the judge, after more mature consideration, came to the conclusion that his first impression of the case was wrong . . . . ”).
43. See, e.g., UnionBanCal Corp. & Subsidiaries v. U.S., 113 Fed. Cl. 117, 129–30 (2013) (“And this is neither a hard case nor one of first impression.”); Aetna Life Ins. Co. v. Daniel, 33 S.W.2d 424, 425 (Mo. Ct. App. 1930) (“If this were a case of first impression, we should be inclined to still hold to that view, but, upon a reconsideration of this case, we have concluded that the holdings of the Supreme Court, by which we are bound, establish the rule in this state that a suit in equity to cancel a life insurance policy cannot be maintained by the company after the death of the insured.”).
44. See, e.g., People v. Laursen, 99 Cal. Rptr. 841, 845 (Cal. Ct. App.), vacated, 501 P.2d 1145 (Cal. 1972) (“Aside from the decision in this case on the former appeal this combination or (sic) circumstances is unique and creates a problem of first impression.”); Dunn v. Slemens, 165 S.W.2d 203, 205 (Tex. Civ. App. 1942) (“We find no cases in Texas that interpret section 22 of article 6573a, Vernon’s Annotated Civil Statutes, on the precise question here involved . . . . ”).
centuries and then started climbing in the 1930s and 1940s. The curve drops off a bit from the 1990s to the first decade of this century, but there were still more than 4000 cases in that last decade (see figure 2).

Figure 2

Occurrences of “Case” Within Five Words of “First Impression” in U.S. Courts, by Decade

¶17 I looked through most of the 364 “first impression” cases from 2013, recording notes in a spreadsheet. I thought that I might sort by state and federal courts (are these cases more common in some jurisdictions?). I pasted in sentences so I could look at whether the cases were truly cases of first impression. But I lost steam and didn’t get through them all.

¶18 I did see enough to address the hypothesis that cases described as cases of first impression will tend to be interesting cases. In the sample, it appeared, to the

45. One factor in the steep rise might be an increase in cases overall. It might be interesting to look at “first impression” cases as a percentage of the cases reported in each time period.

46. For an overly optimistic prediction of the law becoming settled, see Edward P. White, Changed Conditions in the Practice of Law, 12 Am. Law. 52, 53 (1904): “The development of the law moreover tends to render litigation unnecessary. Almost every question that arises has already been decided. The results of repeated decisions have been embodied in codes. When some new disorder arises, the legislature promptly regulates the matter by statute.”

47. Searches in WestlawNext All Cases (state and federal), following the pattern: case /5 “first impression” & da(aft1930) & da(bef1941). Searches performed May 3 and 4, 2015.
contrary, that many cases of first impression address narrow questions that are pretty darn dry. Here are a few examples:

- “The instant case presents a question of first impression as to the treatment of a Chapter 13 plan modification to surrender the debtor’s principal residence to the holder of a claim secured only by a security interest in the residence.”
- “This case raises a question of first impression in this circuit as to whether a retroactively conferred benefit during the course of employment constitutes a ‘benefit attributable to service’ and so an ‘accrued benefit’ for purposes of ERISA’s anti-cutback rule.”
- “This is a case of first impression involving an excess insurer’s attempt to recover from a primary insurer the amount contributed from an excess policy to resolve a claim where the primary insurer has allegedly failed to settle the claim within its policy limits in bad faith.”
- “The motion currently before the Court in this case presents an issue of first impression but little practical significance: when multiple witnesses are designated as corporate representatives pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, must a request to review and sign the deposition transcript be made on behalf of each witness, or does a single request satisfy the notice requirement of Rule 30(e)?”

¶19 These issues are interesting to the parties and maybe to people who practice in those specialty areas. Maybe I could even find something interesting there if I took the trouble to read the cases carefully and figure out the puzzles presented. But their charm doesn’t leap off the page. On the other hand, some of the cases do pique my interest (and would probably interest others too). For example:

- “[W]hether a child can have a legal mother and two legal fathers appears to be a case of first impression in Illinois.”
- “This case, apparently one of first impression, involves the application of New York’s unlawful surveillance statute (see Penal Law § 250.45) to the prosecution of a defendant accused of video recording his sexual activities without the knowledge or consent of the other participants.”
- “This case presents an issue of first impression for this court—whether law enforcement owes a duty of care to fleeing suspects.”

Pondering what it means to be a case of first impression, I had this startling thought: instead of wondering why there are so many cases of first impression, why don’t we ask why there aren’t more? Think about it. If the law is clear, there shouldn’t be much of a dispute. Both sides will read the relevant statutes and cases and know how it should turn out. So they shouldn’t reach an appellate court. But of course, there are disputes and they do reach appellate courts. In some sense, every case presents a combination of facts and legal issues that hasn’t been seen before: a case of first impression. Courts, however, reserve that label for cases that are “new” in a more significant way.

Two Dallas lawyers looked “for a practical meaning of the phrase ‘first impression’” by surveying its use by Texas appellate courts for a twenty-month period. Eliminating cases that used the phrase incidentally, they found that “the phrase signals certain types of argument, but does not preview the structure of the argument itself.” They also found (while acknowledging the smallness of their sample) that use of the phrase correlated with a higher reversal rate. That makes some sense. Maybe it makes it easier to say the lower court got it wrong if you also say that available precedent didn’t answer the question.

Conclusion

Starting with a very basic characterization of precedent, I have taken you on a selective tour of the neighborhood. One puzzle is how to handle cases that come from parallel courts or even lower courts. I offered tips for using Key Numbers and secondary sources to answer those questions. While in a system that calls on lawyers and judges to cite judicial precedent, we saw that they also cite secondary sources and nonlegal materials. And then we ventured into the confusing area of unpublished decisions. Are they precedents or aren’t they? Why should we be able to cite Dr. Seuss but not a court decision? Finally, we stopped for a look at cases of first impression. Despite the accumulation of precedent, the use of the label “case of first impression” has soared—but the border between “cases of first impression” and regular cases isn’t clear. Any of these areas could be explored in more depth than I have done. And there are doubtless many other areas in the land of precedent that are ripe for exploration. I plan to go on looking around. Will you? Get your compass and knapsack ready.

56. Id. at 276.
57. Id. at 294.
Proceedings of the 108th Annual Meeting of the
American Association of Law Libraries
Held in Philadelphia, Pennsylvania
July 18–21, 2015

General Business Meeting, Monday, July 20, 2015

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[The General Business Meeting of the American Association of Law Libraries was called to order at 3:17 P.M. at the Philadelphia Convention Center, Grand Ballroom B, with Holly M. Riccio, President, presiding.]

Call to Order and Introductions

¶1 President Holly M. Riccio (O’Melveny & Myers, LLP, San Francisco, California): Good afternoon. I’m Holly Riccio, and as Association president and chair of the 2015 Business Meeting of the American Association of Law Libraries, I am pleased to call this meeting to order. As of today, July 20, 2015, we have 1452 attendees registered for the 2015 Annual Meeting. The AALL bylaws, article V, section 3, stipulate that a quorum for a business meeting of the Association shall consist of fifty members registered at that meeting. The chair observes there is a quorum.

¶2 The chair would now like to introduce those present at the head table, beginning on my right: Parliamentarian Jonathan M. Jacobs, Vice President/President-Elect Keith Ann Stiverson, Treasurer Gail Warren, and Secretary Kathy Coolidge.

Adoption of the Standing Rules

¶3 The Rules of Conduct for the AALL General Business Meeting are available on the table as you enter the room today. In the interest of managing today’s agenda, no member may speak for more than three minutes, and the discussion is limited to no more than ten minutes on any one agenda item. The chair will announce when the time is completed. If members wish to extend the discussion beyond the allowed time, a motion to extend discussion will require passage by a two-thirds majority. If there are no objections, these rules will be adopted for this meeting. (No response.) Hearing no objections, these rules are adopted for the 2015 Business Meeting.

Adoption of the Agenda

¶4 Copies of today’s agenda and accompanying handouts are also available outside this meeting room. The meeting will be recessed no later than 4:30 P.M., unless extended by a vote of those members present. Are there any changes or additions to the agenda? (No response.) Hearing none, the chair declares the agenda adopted.
President’s Report and Year in Review

¶5 The next item on the agenda is the president’s report. I am pleased to report to you on my year as AALL president. Before I begin, however, I would like to thank the Executive Board for their support and dedication, in particular Steve Anderson for his continued guidance, and Keith Ann Stiverson for her commitment to the many changes and initiatives that we put into motion, and of course our Executive Director Kate Hagan, and her amazing and talented staff, but, most importantly, I want to thank all of you. We are very fortunate to have so many talented members who share their energy and their time in so many ways with this association.

¶6 Last year, for those of you who were here and remember, I closed my vice president’s report with the following quote: “No one can whistle a symphony. It takes a whole orchestra to play it.” What AALL has accomplished over the past year would not have been possible without all of you, the AALL orchestra. So please join me now as I share some of the highlights of this past year’s symphonic undertaking, and give you a bit of an overture for our future.

¶7 As you might know, this was the second year of the 2013–2016 Strategic Directions. Its main goal areas—authority, advocacy and education—always guide our initiatives and our undertakings. With this in mind, I decided that the focus of the fall retreat for the AALL Executive Board would be to take a closer look at the Association’s programs, initiatives, and priorities, to ensure that we are providing just the right balance of opportunities and resources to members. We reviewed our core values and our principles and then compared them to what we are currently offering. Taking the time to conduct this comprehensive review was the first critical step to ensuring that members are prepared to serve as key contributors within their institutions and in the greater legal information field. I would like to take some time to highlight some of the many ideas that became a reality as a result of that retreat.

¶8 Recently we embarked on a comprehensive association-wide branding initiative. This project will allow AALL to create compelling and effective communications to clearly articulate the role of law librarians in today’s legal society. Some of the AALL SISs have already tackled name changes this year, and many of our affiliated associations have also gone through their own rebranding experiences, so be on the lookout for more information about this coming in the fall.

¶9 Earlier this year AALL secured funding for members to take advantage of our monthly webinars at no cost. This is being made possible through a partnership with Wolters Kluwer, which is now sponsoring these e-learning opportunities. Since this change took effect, attendance at monthly webinars has increased exponentially, showing that this added member benefit is already proving its value. And because education is such a hallmark of our association, it made perfect sense to appoint a special committee that is going to take a look at all of our educational offerings, with an eye toward being more strategic and providing appropriate educational opportunities throughout a law librarian’s career. Going forward, this group will help establish a set of criteria for developing and selecting educational content in all formats, identifying content that could be repurposed, used in other
ways, and developing more opportunities to collaborate with other legal professional associations.

¶10 Ever since the AALL Executive Board decided to take a deeper look at our Annual Meeting, the Annual Meeting Program Committee, or AMPC, has kept stepping up its game right along the way. This year the AMPC took it one step further, focusing on making the committee even more strategic and more forward-thinking. They were also looking to align our processes with current best practices in conference education development and delivery. To that end, they created six Content Area Teams, and they were put in place and charged with identifying the five must-have programs that reflected their specific content areas. Next year these teams will officially be a part of the AMPC, increasing the number of members on that committee from nine to forty-eight.

¶11 If you've followed a favorite magazine for any length of time, chances are its look, its feel, and its content have shifted and changed over the years. Well, AALL Spectrum is no different, and this key publication for the Association will be going through its own extreme makeover. The redesigned magazine will be published bimonthly, it will have an increased page count, and will be available in print, digital, and PDF formats. We’ve also established an AALL Spectrum Editorial Board, to focus on developing, soliciting, and curating timely relevant content.

¶12 The strategic directions that I mentioned earlier not only guide the work of the Association, but they really create a structure, a system of checks and balances that allows each new AALL president to pursue a certain number of ideas and initiatives of their own while still maintaining the Association’s consistency and continuity from year to year. So while I have shepherded through some initiatives of my own as AALL president, there were also many things put into motion way before me that I continued to build upon. In January, for instance, AALL released a research-based study designed to aid legal information professionals in communicating the return on investment that they deliver to the organizations that they serve. The report identified twenty best practices, including actions librarians can take to enhance their visibility among their decision-makers, strategies for communicating quantitative measures, and methods for communicating qualitative measures. Now we are starting to devote time and effort to applying these findings, to identifying concrete strategies and specific examples for our members to draw from when communicating the value that they provide in their organization. To that end, efforts are underway to produce a digital white paper that will contain real-world examples across library types.

¶13 One of the benefits of AALL membership is the ability to volunteer and gain leadership experience. I have seen firsthand how many amazing volunteers this association gets each year and how often there are not enough volunteer opportunities at the committee level to accommodate them all. This challenge, combined with the fact that our committee structure had not been looked at with a critical eye since about 2007, led to the creation of the Committee Review Task Force, appointed by then president Steve Anderson. The AALL Executive Board voted last fall to approve the task force’s recommendations, resulting in a smaller core set of committees to address ongoing association needs. At the same time, the board created new award juries, featuring one-year appointments, which will
expand the pool of volunteer opportunities for our members. Additionally, the report called for a needs-based approach to committee assignments, allowing members to come together on an ad hoc basis to complete specific tasks that are aligned with the Association’s goals and needs.

¶14 Last year, the Access to Justice Special Committee, also appointed under Steve Anderson, issued a white paper for circulation to the legal community that described strategies and programs to foster access to justice. This white paper served as the basis and inspiration for a very exciting opportunity for AALL this year. ABA President William Hubbard established the Commission on the Future of Legal Services to improve the delivery of, and access to, legal services. The Commission published an Issues Paper, requesting that key stakeholders submit written comments, which AALL did. The Commission also held hearings at the ABA Midyear Meeting in Houston in February, and I was honored to attend on behalf of AALL and testify, focusing my remarks on libraries’ integral role in expanding access to justice for all individuals and communities. The culminating event for this Commission was the invitation-only National Summit on Innovation in Legal Services, which took place at Stanford Law School in May. The two-day event was jam-packed with inspiring speakers and breakout sessions organized around the Issues Paper. Now, that Commission is going to begin its work on creating and prioritizing action items to implement change in the legal profession. Judging from what I experienced in my breakout session and the reports from the other sessions, there are definitely possibilities for AALL to partner with the ABA on some of these newly identified opportunities to provide better access to justice.

¶15 This year we also worked to promote AALL’s public policy and advocacy goals, including increasing access to government information, striving for a balance in copyright law, protecting the privacy of library users, and upholding access to justice. Thanks to your support, we celebrated several advocacy successes this year, including the USA Freedom Act, which ends the bulk collection of Americans’ communication records, and the adoption of new net neutrality rules that will ensure law libraries can provide equal access to legal information on the Internet. AALL members will be discussing the new rules at tomorrow’s hot topic program, “Net Neutrality and Law Librarians: It’s a Good Thing.” At the state level, our members and chapters continued to advocate for the Uniform Electronic Legal Material Act, which has been adopted in twelve states so far, including right here in the state of Pennsylvania. In March, AALL hosted another successful Lobby Day in Washington, D.C. Participants met with the staffs of their representatives and senators to discuss key legislation affecting law librarians. AALL members who could not attend Lobby Day in person participated virtually by sending nearly 200 messages to congressional offices via our Legislative Action Center. In addition to trainings we conducted at chapter meetings, and here at this Annual Meeting, we also held quarterly online advocacy trainings on topics ranging from what to expect in the 114th Congress to how law librarians can impact the budgets of key agencies.

¶16 I am very pleased to end my report with some information about a new initiative that the Association is undertaking and one that is very near and dear to me. Business skills are critical to success in any profession, and our profession is no exception. Law librarians aspiring to assume director-level positions or increased
leadership roles within their organizations need to be business savvy and possess a strong command of business concepts, finance, marketing, communications, strategic planning, negotiations, and innovation, to name a few. To meet this need, a task force, chaired by Katie Brown, was appointed to develop such an educational program. The result is the AALL Business Skills Clinic, and it will be a two-day intensive educational experience held in Chicago from October 16th to 17th.

¶17 More than a year ago now I selected the theme, “The Power of Connection,” for this Annual Meeting, but it has served as so much more than that. Time and again, in visits to chapters, other association meetings, in casual conversations with members and e-mail communications that I have had, I have had the opportunity to experience it firsthand. I am so exhilarated and honored to have had the opportunity to spend the year connecting with all of the amazing, talented, motivated, and energized members of AALL and the professional community at large. So to come full circle, an orchestra is made up of musicians who connect with one another and, in doing so, they create something so much greater than the sum of their individual parts. So when we, as AALL members, give of our time and talents, sharing them with our fellow information professionals, we too become such a powerful force. Thank you all so much for letting me serve as your president this year. What an honor it has been to lead this association, playing the role of orchestra conductor, if you will, and empowering members to accomplish great things for AALL and for the profession.

¶18 The chair now requests that incoming AALL president, Keith Ann Stiverson, come to the podium to share with you her plans for her year ahead. Keith Ann, the floor is yours. (Applause.)

**Vice President’s Report and Goals**

¶19 Ms. Keith Ann Stiverson (IIT Chicago-Kent College of Law, Chicago, Illinois): Thank you, Holly. And before I begin my remarks, let’s give Holly a hand. (Applause.) She has really been critical to everything the board did this year. I look forward to serving as your president in the coming year. AALL has always been a main focus of my professional life, and I appreciate the many opportunities it has given me to grow leadership skills.

¶20 When I made the decision to run for office, I remember it was kind of awkward to write this long statement, but the way I started was “AALL has always been my professional organization of choice, and I want you to feel the same way about it that I do.” I still feel that way, and there is no excuse for you not to be involved. I am a phone call or an e-mail away, right? So I expect to hear from you and I expect you to help me this year, as we help our organization stay strong and grow membership. Associations are losing members as professional development funds are cut and as new organizations spring up with offerings that are new.

¶21 I think that those of you who are here would agree that this has been a phenomenal meeting and there really have been wonderful programs. This has been a great chance to expand your skills, but you can play a bigger role because this past year, you will recall that you were asked to choose topics that were must-have programming, and some of the Association’s best leaders volunteered their
time and their skills to shape the programs that you said you needed, and you will have that opportunity again this year. Holly already mentioned it, but I want to mention it too that one of the major projects underway is to look at all of the Association’s educational offerings and be sure that our members are getting all the educational offerings they need throughout their career. This has long been a complaint of some, and of course this is a great time to look at that too. Ron Wheeler, our incoming vice president, is leading that effort, and I look forward to the task force recommendations. If there were a lot of time here, I would give you every one of their names, but you can look them up because you are librarians, and tell people how you feel about our educational offerings and what we ought to do. We need everybody’s voice in this.

¶ 22 Carol Watson, the 2015 program chair, made a great deal of headway this year in revamping the Annual Meeting. She has really been a wonder. We will build on that strong foundation in the year ahead with June Liebert, who is the 2016 program chair. June is a wonder too. She is the firm-wide librarian at Sidley now, but June has also been an academic law library director, she has been a law school CIO, and she has brought experience throughout the legal community and a lot of ideas. She and Carol have put together a great team, and they are all going to be working together to help you. And now that there are forty-eight or fifty people on the team, how can we miss, right? We will end up with too many, if anything. But do them a favor, please, complete your evaluations. When there is a call for must-have programming, please take part. You have got to do it. You have got to contribute. We need your ideas. I hope you will remember that.

¶ 23 I also want to say something about the rebranding. I know some people have stopped me in the hall to talk about the rebranding, and they have said, “Well, what’s our name going to be?” We have no idea what our name is going to be. This is a project to look at the Association, think about the future, and the real question we are asking ourselves is, what do we want our reputation to be? That’s a different question than deciding if we are libraries or librarians or what our name will be. So please think of it in those terms. This is much more than renaming; it is really refo-cusing on our future, and I hope all of you will take part in this. It’s important to have your views.

¶ 24 AALL’s advocacy work is very important to me, as you know. I was never on the Executive Board before, but I was always on the Government Relations or the Copyright Committee, and this year we are going to focus our policy priorities for the 114th Congress and (this will sound familiar to you) permanent public access to government information and copyright. Let’s hope that the Congress will finally look at the copyright law and we will have a chance to see that revamped. At the state level we are, of course, going to continue to advocate for the Uniform Electronic Legal Material Act, and let me thank all of you who have helped with that effort, but we have only got twelve states. We need twenty or so. So let’s work in the other states where we can get this passed. Also at the state level, we will continue to support government law libraries facing drastic cuts or attempts to close them.

¶ 25 This is an exciting time to be a law librarian, but for many of us, new responsibilities such as marketing, managing social media, harnessing big data, in addition to all the other things we are doing, has increased the need to collaborate
for success, and I hope we can work together toward common goals. One of the things that interests me is seeing all of us work together across library types because we all have something to offer one another. Our working worlds are very different now, and I have been around a long time, and this is so different that I can’t even describe it very well to you, but the skills we need are really the same regardless of the type of library we are in. I really believe that strongly and I hope that we can bring people together regardless of type of library.

¶ 26 One last thing I want to mention is the theme for the Annual Meeting next year in Chicago. How great is it going to be in Chicago again? The theme is “Make It New—Create the Future,” and [referring to the screen] I don’t know if you recognize that salmon-colored guy in the picture. That’s the Picasso statue, one of the many pieces of outdoor sculpture in Chicago that you can enjoy if you come to the meeting next year. The theme serves as a call to arms for all of us, I think, as we reshape our jobs and our lives in the working world. “Make It New,” some of you will remember, was the rallying cry of the modernists, who in the first decade of the last century preached a gospel of breaking down everything, taking literature, music, art, and just throwing it all on the ground and starting over. I mean, they were radicals who changed our culture. “Make It New” is also a way to describe the birth of Chicago. You will recall that the beautiful Chicago we have now really started with a terrible fire in the 1870s, so “Make It New” was my first idea, but I have to say it didn’t seem sufficient for what we have to do, so I talked to Steve Lastres, one of the AMPC leaders, and he said, “You know, that’s not quite enough. What we have to do is create the future, we have to own this, we have to embrace the transformation.” And of course he was right. So it’s “Make It New—Create the Future,” and I hope that will help us think hard about the programs for next year but also how we can work together.

¶ 27 You know, we started out as a bunch of librarians who networked about our resources, you can borrow this and I’ll borrow that. Now it’s really more about the skills that we all share that we can share with one another. I hope to see you in Chicago next year, and in the meantime, remember, I am only a phone call or an e-mail away, so you have no excuse for not getting in touch with me and telling me what you’re thinking, good or bad, and let’s look forward to our future together. Thanks. (Applause.)

Treasurer’s Report

¶ 28 President Riccio: Thank you very much, Keith Ann. The chair now requests that Treasurer Gail Warren come to the podium for her report.

¶ 29 Ms. Gail Warren (Virginia State Law Library, Richmond, Virginia): Good afternoon. Thank you, Madam President. I am very happy to be with you today to share a summary of our association’s financial statements for the 2014 fiscal year, which ended on September 30, 2014. My remarks today are culled from the treasurer’s report, which appeared in the May 2015 issue of AALL Spectrum.¹ If you

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would like to follow along, I hope many of you picked up the copies of this report which were available on the tables adjacent to the ballroom entrance.

¶30 In February 2015, the AALL Finance and Budget Committee met in Chicago to review our financial statements, listen and respond to presentations by representatives from our audit firm and investment advisors, consider funding requests, begin the budgeting process for 2015–2016, and review the proposed budget guidelines for 2015–2016. Members of the AALL Finance and Budget Committee were pleased to hear the conclusions of Legacy Professionals LLP, an independent audit firm. In their report, dated February 25, 2015, they rendered an opinion that the Association’s financial statements “present fairly, in all material respects, the financial position of the American Association of Law Libraries as of September 30, 2014 and 2013, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.” The *AALL Spectrum* article also provides brief explanations for four charts summarizing the data presented in the Legacy Professionals’ audit of our financial statements.

¶31 During the February meeting, we met with a representative of Chevy Chase Trust to review and discuss the performance of the funds in the Association’s investment portfolio. This portfolio, which represents the greatest percentage of our association’s assets, is composed of three investment funds, the Permanent Investment Fund or the PIF, the Restricted Endowment Fund or the REF, and the Current Reserve Fund or the CRF. Figure 1, which you see on either side of me, clearly illustrates the importance of these investments to our association’s long-term financial well-being. One of the goals during this portion of our meeting with Chevy Chase Trust was to ensure continued compliance with the Association’s investment policy goals. That is, we seek to balance the possibility of increased gains with a desire to avoid substantial risk to principal. With strong returns and stable gains in the market, by the end of the 2013–2014 year, income from our investment portfolio was $330,613, a substantial increase over last year’s income of $182,151. The Association’s total assets on September 30, 2014, was valued at $6,892,070, with a little over $5 million of that in investments.

¶32 Before considering the assets I mentioned, let’s look a little closer at the Association’s fund balances, for a different kind of financial picture. Of the four fund balances depicted, and as a corollary to the Association’s investments, the greatest percentage of our funds falls within investment funds. The PIF is the largest fund within our investment portfolio, and it is invested in a variety of managed equities and fixed income instruments, such as mutual funds and corporate bonds, all invested pursuant to the Association’s Permanent Investment Fund Policy. The basis for the REF is all monies set aside from contributions to seven endowed funds, such as the Scholarship Fund, the AALL and Thomson Reuters-George A. Strait Minority Scholarship Endowment, the LexisNexis/John R. Johnson Memorial Scholarship Endowment, and other similar endowments. Like the PIF, this fund is invested in a variety of equities and fixed-income instruments. The third fund, the CRF, serves as a short-term reserve for investing cash available from our operations, essentially the Association’s short-term savings account. Additional funds are main-
tained in a donor-restricted fund category such as the donations we receive for grants.

¶ 33 Now let’s turn to the sources of our revenue. Three activities remain the primary source of association revenue and funding for association programs and activities, membership dues, the Annual Meeting registrations and fees, and revenue from the *Index to Foreign Legal Periodicals*. The total revenue of $3,935,133 received from all sources in 2014 was $18,949 less than that received in 2013. Figure 3 illustrates how each of these three primary sources of revenue performed in 2014 as compared to the 2013 fiscal year. Membership dues remained flat, reported at $1,019,125, up a little from the previous years’ total but not as high as the total in 2012. Revenue from the Annual Meeting continued a downward trend, probably the most significant factor in our total reduced revenue in 2014. Fortunately, the continuing strong performance of the *Index to Foreign Legal Periodicals* provided a stable revenue stream to offset dues and declining Annual Meeting revenue. Despite lower revenues, however, by the end of the 2014 fiscal year our net assets reflected an increase of approximately two percent, for a grand total of $5,883,917.

¶ 34 The fourth figure that appeared in the *AALL Spectrum* article compares categories of association expenses versus the revenue generated by the same activity. The Association’s general fund, essentially the Association’s checking account, covers all expenses related to the daily operation of AALL, including rent, salaries, expenses related to the administration of committees, grants and scholarships, professional development, and all association publications. Cost-cutting measures implemented by association staff in 2013 continue to reduce overall expenses, particularly those for the Annual Meeting. The costs related to scholarships, grants and contributions, all important member benefits, were up by 4.8%. Balancing expenses against declining revenue provided the AALL Executive Board an opportunity during the 2014 fiscal year to take a closer look at a number of activities and consider alternative strategies.

¶ 35 So what is the takeaway from today’s treasurer’s report? The demographics and expectations of our association’s members are changing, everything from the preferred format and content of educational offerings and publications to the nature and level of commitment for volunteer activities. Revenue from memberships and annual meetings is not likely to increase. However, this trend does not mean we face a financially unsure future. This is a time of transition for our association, warranting a review of everything we do and how each activity benefits the individual member, as well as our ability to provide the requisite funding.

¶ 36 Some years ago the AALL’s Special Committee on the Future of Law Libraries in the Digital Age was charged with envisioning the future of law libraries. The committee invited members to share their thoughts about meeting the challenges of the future. Victoria K. Trotta, Associate Dean of the Ross-Blakely Law Library, Arizona State University, stated, “We have to keep our eye on the ball, identifying patron groups, analyzing their current information and research needs, and designing and delivering programs and services that are responsive to those groups and their needs.” In 2002 this concept permeated this discussion across all types of law libraries as the best way to successfully navigate an uncertain future. Thirteen years later, her comments serve as a reminder that prioritizing what is core to AALL’s members and essential for meeting their educational and professional
development needs provides a balanced approach to the allocation of our financial resources and ensures our continued viability.

¶37 If you have questions about the information presented in the *AALL Spectrum* article or my report today, please feel free to speak with Paula Davidson or me. In conclusion, I would like to acknowledge the contributions of Finance Director Paula Davidson and Executive Director Kate Hagan, and all the members of the Executive Board’s Finance and Budget Committee. Their commitment and attention to shifting financial trends keep our association well grounded for a healthy financial future. Thank you. (*Applause.*)

¶38 **President Riccio:** Thank you very much, Gail. The chair now requests that Secretary Kathy Coolidge come to the podium to report on the 2014 election results.

### Secretary’s Report on Elections

¶39 **Ms. Katherine. K. Coolidge** (Belchertown, Massachusetts): Thank you, Holly. Good afternoon. First I would like to thank all members who volunteered to stand for office in 2014 and all who will stand for office in this year’s election. This association cannot run without you and with your volunteer and leadership. I ask all members to honor our colleagues by voting when ballots become available in October 2015, a month ahead of our past practice. Please be part of the process. The ballots for AALL’s election of the Officers and Executive Board members were distributed to all voting members on November 3, 2014, returned by December 2, 2014, and tabulated electronically the following day. This schedule is consistent with the bylaws.

¶40 The successful candidates were Ronald E. Wheeler, Jr., President-Elect; Emily Florio and Mary Eileen Matuszak, members of the Executive Board. Continuing on the board will be Keith Ann Stiverson, President; Holly Riccio, Past President; Gail Warren, Treasurer; myself as secretary; John Adkins, Femi Cadmus, Ken Hirsh, and Donna Nixon, members of the Executive Board. 1324 ballots were returned, and none were invalidated. I would now like to introduce the candidates for the 2015 election. For Vice President/President-Elect, Gregory Lambert and Diane Rodriguez; for Treasurer, Elaine Knecht and Jean Willis; for members of the Executive Board, Pauline Aranas, Madeline Cohen, Mary Jenkins, and Meg Kribble. Would all the 2015 candidates please stand to be recognized? (*Applause.*) That concludes my report. Thank you very much.

### Introduction of New Board Members

¶41 **President Riccio:** Thank you, Kathy. The chair declares the following persons duly elected by the membership and asks them to stand and be recognized: Ronald E. Wheeler, Jr., President-Elect; Emily Florio and Mary Eileen Matuszak, members of the Executive Board. (*Applause.*) If there are no objections, the chair will authorize the secretary to destroy the ballots of the 2014 election.
President Riccio: The chair would now like to honor some of our colleagues, and recognize them for their accomplishments. First, it’s time to honor some very important members, those who have been inducted into this year’s AALL Hall of Fame. The Hall of Fame was established in 2009 to recognize those members whose contributions to the profession and service to the Association have been significant, substantial, and long-standing. Today it is my honor to induct into the 2015 Hall of Fame four individuals deserving of this recognition.

Ann T. Fessenden retired in April 2015 after serving as circuit librarian for the U.S. Court of Appeals for the Eighth Circuit in St. Louis since 1984. She previously served as technical services librarian at the University of Mississippi Law Library in University, Mississippi, from 1978 to 1984, and also as co-acting law librarian in 1982. Ann has an exemplary record of distinguished service to the Association. Her many leadership positions have included AALL President and Executive Board member, Executive Board member of the State, Court and County SIS, and president of the Mid-America Association of Law Libraries.

During her tenure as AALL President, Ann oversaw and created a number of initiatives, including the Leadership Academy, which continues to develop and mentor new leaders within the Association and the profession. Ann has also significantly contributed to the law library profession with her work at the federal circuit court. She has chaired the Circuit Librarians Advisory Committee; served as a member on the Court Compensation Study Working Group, and the Joint Advisory Council, and the Appellate Advisory Council; and served as secretary/treasurer and treasurer for the Eighth Circuit Historical Society. Ann’s induction into the Hall of Fame recognizes her leadership, her professional contributions, and her tireless efforts on behalf of the Association and the law librarianship profession. Ann, will you please come forward to accept this award? (Applause.)

James S. (Jim) Heller is director of the law library, professor of law, and professor of public policy at William and Mary Law School in Williamsburg, Virginia. Jim has a well-deserved reputation as an outstanding scholar and teacher. He has published numerous works in the area of copyright law in professional journals, and he is the recipient of both the Law Library Journal and AALL Spectrum Article of the Year Awards. He is also a sought-after speaker on topics of copyright law and law library administration. Jim began his involvement in AALL around 1980 as a member of the AALL Copyright Committee. He went on to serve as a member and as chair on several committees, including the Copyright Committee, the Program Committee for the 1995 Annual Meeting, and, most recently, the LexisNexis Call for Papers Committee.

During his term as AALL president, Jim led the Executive Board and the membership to adopt bylaw revisions regarding the categories and rights of membership. Jim has also served as president of the Virginia Association of Law Libraries and as president of the Southeastern Chapter of the American Association of Law Libraries (SEAALL). In 2004 he received the Service to SEAALL Award. Jim is a credit to our profession and richly deserves to be inducted into the AALL Hall of Fame. Jim, will you please come forward to accept your award? (Applause.)
Phyllis Marion, associate dean for library and information resources and professor of law at California Western School of Law in San Diego, is highly regarded for her exceptional mentorship, teaching, and expertise in all aspects of technical services and law library administration. Phyllis has achieved many “firsts” within our association. She served as the first chair of the Technical Services SIS in 1979 and guided that SIS through its development and organization for two years. In 1992, the TS-SIS recognized and honored Phyllis by selecting her as the inaugural recipient of the Renee D. Chapman Memorial Award for Outstanding Contributions to Technical Services Law Librarianship. In addition to serving as TS-SIS chair and as Executive Board member, Phyllis has chaired or served as a member of several AALL committees, special task forces, and has also served as an AALL representative twice. At the chapter level, she served as president of the Minnesota Association of Law Libraries and was honored as a recipient of that chapter’s Law Librarianship Award. She is a frequent speaker at AALL programs, institutes, and workshops.

For a substantial portion of her career, Phyllis exerted a strong influence on the national development of cataloging rules for legal publications, and her early publications on law cataloging helped guide law librarians through the intricacies of the national cataloging rules established at that time. Phyllis recently announced that she will step down from her administrative duties this year as associate dean and will phase into full retirement at the end of the 2015–2016 academic year. Her induction into the Hall of Fame is a capstone to a long, distinguished career. Phyllis, will you please come forward to accept your award? (Applause.)

Victoria K. (Tory) Trotta, associate dean for the Ross-Blakley Law Library at Arizona State University Sandra Day O’Connor College of Law in Tempe, Arizona, has built an exemplary reputation as an outstanding leader, administrator, and educator. Tory’s professional experience includes technical services, public services, and administrative positions in all three library types. Her career is also marked by her extraordinary service to our association. She has served as AALL president, Executive Board member, chair of both the Academic Law Libraries SIS and the Private Law Libraries SIS, and Executive Board member of the Phoenix Area Association of Law Libraries. She is also a recipient of the Arizona Association of Law Libraries Distinguished Service Award. Tory’s knowledge, experience, eloquence, wisdom, and wit make her a popular speaker, presenter, panelist, teacher, and program moderator for numerous AALL, professional, and bar association programs.

Among her significant accomplishments as AALL president, Tory spearheaded a set of strategic directions to guide the membership and coordinated the educational summit in 2005, which led to fundamental changes in the Association’s approach to programming. Beyond association activities, Tory has chaired the Arizona Depository Library Council, was appointed a member of the Federal Depository Library Council, and currently serves on the Executive Board of the Legal Information Preservation Alliance. For her enthusiastic and tireless commitment to furthering the work of law librarians, Tory is being inducted into the AALL Hall of Fame. Tory, will you please come forward to accept your award? (Applause.)
Additionally, three of this year’s Marian Gould Gallagher recipients will be inducted into the Hall of Fame and will be recognized tomorrow at the association lunch. They are Penny Hazleton, Sally Holterhoff, and Sally Wiant. Our fourth Gallagher recipient, Tim Coggins, was inducted into the Hall of Fame in 2011.

President’s Certificates of Appreciation

President Riccio: Each year the president has an opportunity to present special Certificates of Appreciation to people or organizations who have contributed to the Association or to the profession in exceptional ways over the year. I am so happy that I can count on their leadership and direction, so it’s my pleasure to present several such certificates here today. The chair asks that each recipient come forward when his or her name is called.

Kathleen (Katie) Brown, for her dedication and exemplary leadership as chair of the Business Skills Education Task Force and for her many contributions to AALL and the profession. (Applause.)

Carol Watson, for her dedication and exemplary leadership as the chair of the 2015 Annual Meeting Program Committee, ensuring the success of educational programming at this 108th Annual Meeting, and for her many contributions to AALL and the profession. (Applause.)

Margaret K. (Margie) Maes, for her five years of dedicated and exemplary service as AALL vendor liaison and for her many contributions to AALL and the profession. (Applause.)

Carol Avery Nicholson, for her three years of dedicated and exemplary service as editor of the AALL Price Index for Legal Publications and for her many contributions to AALL and the profession. Carol is not here at this meeting, but I will make sure to get her certificate to her, and let’s give her a round of applause. (Applause.)

Cheryl Smith and the entire O’Melveny & Myers library staff, for their support, assistance, and friendship, without which my year as AALL president would not have been as successful. (Applause.)

The late Ruth Hill, for her exemplary leadership, service, and dedication to AALL, her commitment as a mentor and friend to all law librarians and for her many contributions to the profession. Accepting this on her behalf is her husband, Charles Peters. (Audience stands and applauds.)

Mr. Charles Peters: “This is the day the Lord has made; let us rejoice and be glad.” I use that passage of scripture because as enthusiastic as Ruth was about AALL, she was equally enthusiastic about our mission, our ministry we had in Los Angeles for the sick and shut-in, and for this and many other reasons I rejoice in her dedication to both organizations. I’m also rejoicing because of the generosity of you, who donated $2500 to the George Strait Minority Scholarship, because we know a mind is a terrible thing to waste, so for this I say thank you, and I know that Ruth is thanking you also. On a personal nature, after Ruth passed I received a phone call from an organization that specializes in organ transplant and they said that they couldn’t use her heart but would I consent to using some of her bone tissue and skin, and I said of course, because I’m the recipient of bone tissue. So I
know that someplace in Baton Rouge someone is walking around with part of Ruth, and even though Ruth isn’t here with us today, she is still with us someplace in Baton Rouge, and for this I know that I can rejoice because when you have someone that is dedicated and does something, the world can rejoice for a person like that, and I am just so happy that she was a part of my life, and for this I rejoice. Thank you. (Applause.)

President Riccio: The chair also wants to recognize all of our exceptional staff members for their behind-the-scenes efforts that have helped to make this meeting a success. While doing so may be their jobs, they are also truly dedicated and regularly go above and beyond to make sure everything runs smoothly. They are truly remarkable individuals. Will the AALL staff members please stand so we can recognize you? (Applause.)

Memorials

It is now time to recognize and acknowledge our colleagues who have died this past year. They were members and friends of our association: Marie Canada, Sylvia E. Castano, Joan Cochet, Christine Harvan, Ruth Hill, Nancy Johnson, Martha Keister, June Kim, Brad LeMarr, Paul Lomio, Carol Elaine Meyer-Keener, Cathryn A. O’Neill, Pedro Padilla-Rosa, and Marie Wallace. Are there any other members or friends we should remember at this time? Please stand and join me in a moment of silence as we remember the contributions of these individuals to our personal and our professional lives. (Audience stands for a moment of silence.) Thank you. You may be seated.

Introduction and Remarks of Special Guests

We are delighted to have in attendance today several special guests from our counterpart law library associations in other countries. At this time the chair would like to introduce each of them and invite them to give us a brief greeting from one of the microphones throughout the room. First, I would like to ask Kim Nayyer, CALL Delegate, from the Canadian Association of Law Libraries, to come and greet us.

Ms. Kim Nayver (Priestly Law Library, Victoria, British Columbia, Canada): Hello, and thank you to AALL for welcoming me to represent CALL/ACBD, that’s the Canadian Association of Law Libraries/L’Association Canadienne des Bibliotheques de Droit, and our president, Connie Crosby, who is not able to be here. CALL has its annual conference in May, and this year it took place in Moncton, New Brunswick, and we were pleased to welcome members of AALL as participants, speakers, and representatives.

A highlight of this year’s program was a plenary panel on the future of legal publishing and another was the keynote talk by the Canadian Bar Association past president, Fred Headon. Fred spoke about the CBA Legal Futures Initiative and its resulting forward-thinking report on the future of the legal profession. That report was produced with wide consultation from the profession, including library and
information professionals. Our next conference will be in lovely Vancouver, B.C., in mid-May 2016, and we would love to see as many of you as can come. So we would love to have you join us, and thank you once again for the opportunity to speak.

¶65 President Riccio: Thank you very much. Next is Karen Palmer, president of the British and Irish Association of Law Librarians.

¶66 Ms. Karen Palmer (Simmons & Simmons LLP, London, England): I’m honored to be here representing the British and Irish Association of Law Librarians. Thank you for extending the kind invitation to attend the 108th Annual Meeting and Conference of the American Association of Law Libraries in the beautiful city of Philadelphia and also for the opportunity to speak to you all today. I bring greetings and best wishes from the BIALL Officers Council and the BIALL membership to the AALL president, Executive Board, conference organizers, members, and attendees here. We have just held our annual conference in Brighton, and it was sunny, but I look forward to welcoming and connecting with AALL members again at the next BIALL conference in June 2016.

¶67 We will be holding this conference at the Doubletree Hilton in Dublin, Ireland. The dates for your diaries are the 9th to the 11th of June 2016. We will be launching a call for papers for the conference later in the summer, and please do consider submitting a paper. We would love to welcome you there, not only as attendees, but also to present a paper. Thank you all.

¶68 President Riccio: Thank you. Next I would like to call upon Anne Paton, President, New Zealand Law Librarians’ Association.

¶69 Ms. Anne Paton (DLA Piper, Auckland, New Zealand): Thank you, American Association of Law Libraries, for your generous invitation to participate in your Annual Meeting. Greetings from your New Zealand colleagues. The conference theme, “Power of Connection,” is the very reason I’m here, despite the long distance and the long travel time. I’m a strong believer in the power of connection and collaboration. We are stronger as individual professionals and stronger as associations by those means. New Zealand law librarians have also looked to the United Kingdom, Australia, the United States, and Canada for legal precedent, and our New Zealand Law Librarians’ Association similarly looks to those countries’ fellow associations for guidance and inspiration and professional activities. As a longtime personal member of the American, Australian, and British Associations, I have benefited hugely from reading of the challenges and opportunities that you experience. New Zealand is a microcosm of all that you experience here. We have the same professional issues, and the same delights.

¶70 I am pleased to have invited the other presidents from the other associations to our conference in Auckland this year in September. It’s entitled “Magna Data: From the Magna Carta to Big Data,” celebrating the 800th anniversary of the Magna Carta and the 25th anniversary of the New Zealand Bill of Rights Act. Plans for the 2016 conference will be revealed in due course. In the meantime, please do get in touch with me via the NZLLA website, which I am sure you can find as librarians, as someone remarked before, or by LinkedIn. If there is anything I can help you with, legal information, such as requests to do with New Zealand, or for tourist information for trips visiting New Zealand, I’d be happy to help (everyone
wants to come to New Zealand apparently!). And I’d like to once again offer my thanks for inviting me here to this wonderful meeting.

¶71 President Riccio: Thank you. Next is Karen Rowe-Nurse, National President, Australian Law Librarians’ Association.

¶72 Ms. Karen Rowe-Nurse (University of Notre Dame, Sydney, Australia): Thank you. I too am delighted to be here representing our Australian Association of Librarians, and we do send our greetings. I was going to say “g’day” in a very broad Australian accent but I was assured no one would get the joke, so I won’t. I would particularly like to thank Holly Riccio for her kind invitation as president and also Jean Willis, who many of you know; she has been looking after me beautifully while I have been here.

¶73 We would love to have any of our American, British, Irish, New Zealand, and Canadian associates come and visit us in Australia. It is a long way, twenty-six hours on the plane to New York, but you can do it. If I can do it, anyone can do it. Our conference will be in Melbourne in late August in 2016. It’s a great city. It has many similarities to Philadelphia and possibly Chicago, although the weather I can assure you doesn’t get quite that cold, and in September you certainly won’t be feeling the humidity that we have felt today and the last couple of days. We would love to see you. I will repeat what Anne has said, if anybody needs a hand with Australian law, send an e-mail through to the president, I can throw it out to our e-mail list, and I can guarantee you will have an answer within a couple of hours. They are pretty cool. So thank you, and I appreciate the opportunity to be here and to meet so many of you. It’s been an absolute delight.

¶74 President Riccio: Thank you. Next I would like to call on Jeroen Vervliet, President, International Association of Law Libraries.

¶75 Mr. Jeroen Vervliet (The Peace Palace, The Hague, The Netherlands): Good afternoon, ladies and gentlemen. Allow me first to express my thanks to Holly Riccio for the invitation and to Kimberly Rundle for all administrative efforts. It is an honor to participate in this highly interesting program of this year’s AALL meeting. I feel connected and enjoy it. I am speaking on behalf of the International Association of Law Libraries, and it has as objectives to study, teach, and exchange views on foreign, comparative, and international law, on the relationship between the national jurisdiction and the outside neighboring transboundary world and the field in which international law governs. Last year we had our annual meeting in Argentina, touching very much on human rights during and after the dictatorship, and, Holly, we tried to learn the tango. This year’s annual course, 20 to 24 September, is on the “German Legal Tradition in Times of Internationalization and Beyond.” It has cultural elements as well. We will go to the Library of Parliament and have a city tour. Of course, we will commence with the Nuremberg Trials. That is in the educational part. And we will proceed to the legal issues of the unification between West Germany and the East German Democratic Republic, and we will have a speaker on the leading role of Germany in the European Union. I fear that the speaker will have to rewrite her talk after the recent history of the euro crisis. I welcome you, and I have a flier, which I’ll leave at the back of the room, for I am going to leave very soon to go to a very interesting talk (for me) the Rare Book Cataloging Roundtable. If you cannot make it this year to Berlin, try July 31 until August
3, 2016, in Oxford. The theme is “Common Law in an International Perspective.” But for now, we are all enjoying AALL’s challenging programs. Thank you very much.

¶76 President Riccio: The chair would now like to ask, if there are no objections, if we can extend the meeting beyond the original meeting time for another ten minutes.

¶77 Mr. Mark E. Estes (Bernard E. Witkin Alameda County Law Library, Oakland, California): Fifteen minutes!

¶78 President Riccio: Fifteen minutes. Are there any objections to extend for fifteen minutes? Okay. Thank you very much. We will extend until 4:45 P.M. now.

Resolution of Appreciation

¶79 The chair will now ask member Scott Bailey to come forward to the floor to the microphone for a Resolution of Appreciation.

¶80 Mr. Scott D. Bailey (Squire Patton Boggs LLP, Washington, D.C.): Thank you, Holly. Whereas, the 108th Annual Meeting and Conference of the American Association of Law Libraries held in Philadelphia, Pennsylvania, on July 18–21, 2015, was an exceptional educational and networking success;

¶81 And whereas the success of AALL’s 108th Annual Meeting and Conference can be attributed in large part to the contributions of many individuals and entities that gave willingly of their time, energy, resources, and support;

¶82 Therefore, be it resolved that on behalf of AALL and its members, thanks be given to the following who worked throughout the year on Annual Meeting arrangements:

- President Holly M. Riccio and the AALL Executive Board;
- Kathy M. Coon and Jill M. Poretta, co-chairs of the Local Arrangements Committee and its members;
- Carol Watson, chair of the Annual Meeting Program Committee and its members;
- all members of the AALL staff;
- all the speakers, moderators, and program coordinators;
- all those who volunteered their time and assistance;
- and all AALL members, without whom the Annual Meeting would not have been such a success.

¶83 And be it further resolved that, on behalf of AALL and to its members, thanks be given to our Gold level sponsors, Bloomberg BNA, LexisNexis, Thomson Reuters, and Wolters Kluwer; and all other corporate contributors who have cosponsored our meetings or sponsored an event, service, or publication or otherwise given their support to the Annual Meeting.

¶84 President Riccio: Thank you, Scott. Do we have a second to the resolution?

¶85 Mr. Lawrence R. Meyer (Law Library for San Bernardino County, San Bernardino, California): Second.
President Riccio: All those in favor, say “aye.” (Chorus of Ayes) The motion is adopted. Thank you.

Other Resolutions

We have one additional resolution to come before us today, copies of which were made available with the materials as you entered the room. The chair would like to recognize Taryn Rucinski to present the resolution.

Ms. Taryn L. Rucinski (U.S. Court of Appeals for the Second Circuit, New York, New York): Chair Riccio, Executive Board, members of the Association, thank you so much for this opportunity. My name is Taryn Rucinski, and today I am here to represent the drafters of the sustainability resolution that you see before you today. We represent the SR-SIS Environmental Task Force, the Environmental Libraries Caucus, and the Animal Law Caucus.

President Riccio: At this point can you please read the resolution? We will have time for discussion afterwards.

Ms. Rucinski: Okay. The proposed language is as follows: “Whereas, the American Association of Law Libraries (AALL) exists, among other reasons, to enhance the value of law libraries to the public, the legal community, and the world; and

Whereas, AALL has a Social Responsibilities Special Interest Section, which addresses issues of social responsibility, environmental awareness, and sustainability that are of concern to all AALL members; and

Whereas, other professional organizations such as the American Bar Association and the American Library Association have enacted resolutions, task forces, and programs promoting environmentally responsible publishing, energy efficiency, and sustainability; and

Whereas, law library leaders have a mandate to ensure future access to economical library services; and

Whereas, law libraries that demonstrate good stewardship of the resources entrusted to them can build their base of support in their communities which leads to sustainable funding; and

Whereas, the scientific community has clearly communicated that current trends in climate change are of great concern to all; and

Whereas, the people who work in our libraries and access services in our facilities deserve a healthy environment in which to do so; and

Whereas, law libraries that demonstrate leadership in making sustainable decisions that help to positively address climate change, respect natural resources and create healthy indoor and outdoor environments will stabilize and reduce their long-term energy costs, increase the support for the library in their community; and reveal new sources of funding;

Therefore Be It Resolved that the AALL on behalf of its members recognizes the important role law libraries can play in larger community conversations about resiliency, climate change, and a sustainable future; and
Therefore Be It Further Resolved, that the AALL strongly encourages its membership, and itself, to be proactive in applying sustainable thinking in the areas of their facilities, operations, policy, technology, programming, and partnerships.

President Riccio: Thank you. Do we have a second to this resolution?


President Riccio: There is a second. It has been moved and seconded that the printed resolution be adopted. Is there any discussion? If so, please come forward to a microphone and state your name before speaking.

Ms. Rucinski: Taryn Rucinski, U.S. Court of Appeals for the Second Circuit.

President Riccio: Please go ahead.

Ms. Rucinski: Thank you. Environmental degradation is arguably the most important issue facing our world today. The resolution before you is our opportunity as an organization to do what small piece we can in order to help our communities. As law librarians, communities are a foundational concept to what we are. It’s who we serve. Article II of our bylaws explicitly engages us to serve the public and the communities that we belong to. Pope Francis, in his recent encyclical, charged each of us to be better stewards of our libraries, our communities, and our neighbors. To me the resolution before you truly speaks to what we can do as an organization today. I am not going to belabor this, but as a final note, I am very proud to announce that the American Library Association passed its own resolution last week on sustainable libraries and many other sustainability resolutions have passed amongst our colleague organizations, including the ABA, the New York Library Association, and many others. Thank you for this opportunity, and I encourage each of you to consider the resolution before you today. Thank you very much.

President Riccio: Thank you. Is there any other discussion? Seeing none, I would like to call the question. The question is the vote on the resolution as printed. All those in favor of adopting the resolution as printed say “aye.” (Aye.) Those opposed say “Nay.” (Nay.) The motion carries. The resolution will now move forward to the entire AALL membership for a final vote via AALLNET.

New Business

The next item that we have is the answer and PIN for the Mobile Games’ Business Meeting question. The answer to “when is the inaugural AALL Business Skills Clinic” is October 16 and 17, 2015, and the PIN is 1015. The drawing for the winner will be held tomorrow at 10:30 A.M. in the exhibit hall, and I want to wish good luck to everyone who has participated in the game. Are there any other items of new business?

Ms. Barbara A. Bintliff (Tarlton Law Library, University of Texas Jamail Center for Legal Research, Austin, Texas): I am Barbara Bintliff at the University of Texas at Austin. I would like to ask that there be some discussion on the future of Law Library Journal. I understand that there has been action on the part of the
Executive Board, and I would like to have some transparency in the decision making that has been done.

¶109 President Riccio: I have been advised by our parliamentarian that there would have to be a motion for us to discuss that.

¶110 Ms. Bintliff: I move that the assembly here discuss the future of the Law Library Journal. I move that the Law Library Journal be continued as a print publication of the American Association of Law Libraries.

¶111 President Riccio: That is out of order because it’s doing the same thing.

¶112 Ms. Bintliff: As what?

¶113 President Riccio: Because you are saying continue. If the motion isn’t adopted, it will still continue.

¶114 Ms. Bintliff: That is not the understanding of a great number of members.

¶115 President Riccio: Well, that is not the case.

¶116 Ms. Bintliff: Then may I move that the president explain the action of the Executive Board (as we understand it) to create an electronic-only Law Library Journal?

¶117 President Riccio: (to parliamentarian) Would you respond?

¶118 Mr. Jonathan M. Jacobs (Parliamentarian, Philadelphia, Pennsylvania): It would not be an actual motion, but you may respond to a question.

¶119 President Riccio: I will respond to the question by saying that the Executive Board, at its meeting here prior to this Annual Meeting, has gone ahead and is going to be establishing a task force that will be looking at Law Library Journal and all of the options that we have for whatever we do in the future, whether it be print, or electronic, and they will look at everything, but we have not made a decision. We will have a task force look into all the details to make sure that we have the right information, and make the right decision, and the decision-makers and the stakeholders that need to be involved will be involved in that process.

¶120 Ms. Bintliff: Thank you then. I withdraw the motion.

¶121 President Riccio: Thank you.

Announcements and Adjournment

¶122 Are there any additional items of new business? Receiving no more requests for new business, we will move to the next item on the agenda. Are there any announcements to be made? Seeing that there are no announcements, we have completed all of the items on the agenda, and as there is no further business, the 2015 Business Meeting of the American Association of Law Libraries is now adjourned. We hope that you will stay for the Members’ Open Forum, which will begin immediately. Carol Bredemeyer will serve as the moderator. The forum will now last no later than 4:45 P.M.

(WHEREUPON the meeting was adjourned at 4:42 P.M.)
Appendix A

Report of the Director of the Government Relations Office

Ms. Emily Feltren (American Association of Law Libraries, Washington, D.C.): AALL is committed to influencing information policy issues affecting law libraries, ranging from the creation and dissemination of government information to copyright to the privacy of library users. AALL’s Government Relations Office (GRO) staff in Washington, D.C. consults on a regular basis with AALL’s three policy committees—Copyright, Digital Access to Legal Information, and Government Relations—and, as appropriate, with the President, Executive Director, and Executive Board. AALL members and chapters also play an active role in supporting AALL’s advocacy efforts.

Thanks to the support of the membership, the 2014–2015 association year was a particularly successful one for AALL’s advocacy program. Read on for highlights and to learn how you can be involved.

Federal Priorities

AALL’s federal public policy priorities (http://bit.ly/policypriorities114) fall into five distinct categories: access to government information, access to justice (ATJ), balance in copyright law between rights holders and users, commitment to openness, and protection of privacy. With the input and assistance of our members, the GRO engaged in advocacy on this diverse set of policy issues.

Access to Government Information—Shortly after last year’s Annual Meeting, AALL began working with the Administrative Office of the U.S. Courts (AOUSC) and members of Congress to address the disappearance of records from PACER. GRO staff spoke with AOUSC staff to express AALL’s concerns; organized a response from the open government community; and worked with several congressional offices to share information and encourage oversight. We were pleased when the records were restored, but continue to advocate for greater access to court information and to bring more transparency to the AOUSC.

Thanks in part to the many stories submitted by AALL members about the importance of indexes to the Federal Register and Code of Federal Regulations, AALL stopped the Federal Register Modernization Act (H.R. 4195) from progressing in the Senate. This bill, which passed the House of Representatives in July, would have eliminated the government’s requirement to print and produce indexes to these resources.

Access to Justice (ATJ)—AALL President Holly M. Riccio addressed the American Bar Association’s Commission on the Future of Legal Services at a hearing in February 2015 and participated in their invitation-only summit at Stanford Law School in May. She discussed law libraries’ integral role in expanding ATJ for all individuals and communities. AALL also supported the funding request of the Legal Services Corporation in fiscal years 2015 and 2016.

Balance in Copyright Law Between Rights Holders and Users—Throughout the association year, AALL participated in the discussion about what Register of Copyrights Maria Pallante has termed “The Next Great Copyright Act.” With input from
the Copyright Committee, AALL responded to the Copyright Office’s legislative proposal on orphan works, expressing concerns that the good faith diligent search and notice of use requirements would be too burdensome for law libraries.

**Commitment to Openness**—We continued to advocate for reforms to the Freedom of Information Act that would increase transparency and improve access to materials released under the law. We celebrated when the Federal Communications Commission adopted strict new rules that protect net neutrality by reclassifying the Internet as a public utility, as AALL recommended in our July 2014 comments.

**Protection of Privacy**—After years of advocating for greater patron privacy, AALL applauded the enactment of the USA FREEDOM Act (H.R. 2048), which ends the bulk collection of Americans’ phone records. Under the legislation, all significant constructions or interpretations of law by the Foreign Intelligence Surveillance Act court must be made public.

**State Priorities**

Thanks to the advocacy efforts of AALL members and chapter members, the Uniform Electronic Legal Material Act (UELMA) was adopted in three states during the association year, bringing the total number of enactments to twelve: California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Minnesota, Nevada, North Dakota, Oregon, and Pennsylvania. The GRO provided direct assistance to members and chapters looking for support in areas such as government law library funding, preservation of government information, and the elimination of print resources.

**AALL’s Advocacy Team**

AALL members served as dedicated advocates for the profession in a variety of ways, including contacting their members of Congress via our Action Center, testifying in support of UELMA, and responding to threats to government law library funding.

The GRO trained hundreds of AALL members and chapter members to effectively communicate with and influence decision makers. Training activities included our successful Lobby Day in D.C., which brought members to Capitol Hill for meetings with their members of Congress; in-person trainings at chapter meetings and the Annual Meeting; and quarterly online trainings that taught members the skills needed to respond to current policy issues.

By participating in AALL’s advocacy activities and speaking out on issues impacting the profession, AALL members made a difference for law librarianship. To learn more about our policy work and to join AALL’s Advocacy Team, please visit www.aallnet.org/gro.

**Report of the Executive Director**

**Ms. Kate Hagan** (American Association of Law Libraries, Chicago, Illinois): AALL undertook a number of priorities this Association year, as we worked to implement the goals outlined in the 2013–2016 Strategic Plan. We are coming up on the last year of this plan, and most of the plan objectives have been met or are in process.
Under the goal area of Authority, AALL has instituted an AALL branding initiative. When done well, our brand should serve as a filter for making decisions about who we are as an organization and the work to develop programs in support of the brand. This project will help us to more clearly articulate the importance of our members and of AALL to the legal community and the public. The profession has faced significant change in recent years, and it is imperative for us to reinforce that AALL and its members are the recognized authority in all aspects of legal information.

The project has two phases: Brand Strategy Development and Creative Development and Implementation. Currently, we are in the Brand Strategy Development phase. This phase began with research about AALL and its members and stakeholders. It includes interviews with stakeholders, a member survey, and a session with the Executive Board, council chairs, and representatives from each of the three library-type SISs. In addition, past member surveys, readership surveys, conference surveys, and an environmental scan were reviewed. As a result of this research, a brand strategy has been developed that includes brand values, brand value proposition, brand positioning, and brand personality that will be used as a guide to develop an overall messaging and visual identity for AALL. This will be used to more effectively position AALL and its members as the authority in all aspects of legal information.

Under the goal areas of Authority and Education, AALL is working on an AALL Spectrum redesign. The redesigned AALL Spectrum will be issued bi-monthly in both print and digital formats. In addition, a new editorial board has been appointed to develop, identify, and curate articles about current and emerging trends and practices in the profession that will support members in their work as legal information professionals.

The content for the magazine will relate to five content areas, which reinforce AALL’s strategic plan and overall education program. These areas include: business skills, education and research, leadership, technology, and member and Association news.

Members named to the inaugural editorial board are: Kendal Bergman, Daniel Campbell, Bret Christensen, Rebecca Brady Mattson, Jean O’Grady, and Thomas Sneed. Catherine Lemmer, AALL Spectrum’s editorial director, will serve as chair. AALL Spectrum’s redesign will debut with the 2015 September/October issue.

Under the goal area of Education, an Education Program Review Special Committee was appointed. The charge for the special committee is to develop a framework for AALL’s continuing education programs to meet the needs of members throughout their careers.

The special committee is chaired by President-Elect Ron Wheeler. The committee’s goals are to:

- Focus on AALL’s core education and learning management needs
- Review AALL’s education offerings in terms of relevance and identify critical education voids
- Establish a set of criteria for the development/selection of content that can be applied to all AALL education (Annual Meeting, webinars, standalone programs, publications, etc.)
• Identify content that can be repurposed for greater access and learning integration or expanded through collaborations and specialized programming
• Recommend career development and new member education initiatives, including a possible track structured to expand CONELL, and further develop leadership, management, and business skills training
• Explore the value and feasibility of certifications and certificate offerings for member education

Members of the special committee include: Marcia Burris, Emily Florio, Greg Lambert, and Gail Warren. They plan to complete their work in the fall and provide recommendations to the Executive Board.

A Business Skills Education Task Force was also appointed this year. The charge of the task force is to provide business skills education for law librarians aspiring to assume director-level positions or increased leadership roles by giving them the knowledge to allow them to be business-savvy and possess a strong mastery of an array of business concepts.

The result of their work is our first-ever Business Skills Clinic, which will be held in Chicago, October 16–17, 2015. Topics include:

• Managerial Finance
• Human Resources
• Marketing and Communications
• Performance Measures
• Negotiations
• Strategic Planning

The special committee is chaired by Kathleen Brown, and members include Alex Berrio Matamoros, Elaine M. Egan, Mark E. Estes, Antoni Stosh Jonjak, and Jason R. Sowards.

Under the goal area of Authority, we are working on implementation of The Economic Value of Law Libraries report. In addition to programs at this Annual Meeting, we are working to develop a digital publication to include case studies and other articles, which will provide members with more information and action plans to assist them in implementing the recommendations in the report. We hope to have the publication available to members early this fall.

We also continue to collaborate and work with other legal and library-related groups to expand our role and to communicate the value of law librarians and libraries. This year, AALL was represented at seventeen chapter meetings and institutes. This provided an opportunity for us to learn more about those chapters and for the chapter members to learn more about AALL. In addition, we attended and exhibited at the meetings of the International Legal Technology Association (ILTA), the Legal Marketing Association (LMA), the Association of Legal Administrators (ALA), and the National Association of Law Placement (NALP).

AALL was also represented at the American Library Association’s annual and mid-year meetings, the American Bar Association Section of Legal Education and Admission to the Bar’s quarterly meetings, the Association of American Law Schools’ annual meeting, the British and Irish Association of Law Librarians’ annual meeting, and the Special Libraries Association’s annual meeting.
We continue to ramp up our public relations efforts to communicate to the media and other outlets about the important role of legal information professionals. We regularly issue press releases about our advocacy efforts, member awards, publications, and other AALL activities.

With the use of mobile devices steadily increasing every year, our focus has been on updating the AALL website and *My Communities* so they are responsive. This means they will automatically adjust to the user’s screen, whether it’s on a desktop, tablet, or smartphone. The website is one of our biggest marketing tools, so it’s important that we are able to reach members and nonmembers regardless of what type of device they’re using. Work on the AALL website has spanned several months, and we’re excited to be nearing its completion. An updated website will be launched very soon, while an updated *My Communities* was released just a few weeks ago.

We’ve also continued to make several additions and improvements to the website this past year, and I’d like to highlight the most notable ones. First, the member search capabilities were improved. Restrictions hindering the search were lifted, and broader searches, such as searching only by first or last name, position title, employer type, location, and minority status, can now be performed. Additionally, we launched a new polling feature on the website’s main page. This gives members a quick and easy opportunity to weigh in on a variety of issues every two weeks.

To ensure we’re putting the best of the Annual Meeting & Conference at your fingertips, we launched a new conference mobile app this year. This new app improves your capabilities of browsing the entire schedule, bookmarking favorite sessions, and locating sessions and exhibitor booths. In addition, there are now opportunities to network with your fellow attendees. The best part is that there is no need to download and install anything from an app store. Everything is accessible through a browser, and it provides a better, more consistent user experience across all platforms—desktops, tablets, and smartphones.

Members were again challenged economically this past year with lower budgets and the struggle for funding for professional development. AALL continues its commitment to offering support and resources to members who are seeking new positions in the profession and looking to learn new skills to advance their careers.

While AALL continues to maintain a healthy membership, we have noticed an overall decline in membership levels. The 2014–2015 membership year closed with a total of 4499 members, which is four percent lower than our total for the prior year. Many of the members who did not renew have recently retired or taken jobs outside of law librarianship. We are also experiencing lower numbers in members new to the profession. This is in part due to a reduced number of positions that are now available in many of our members’ workplaces. We closed the 2014–2015 membership year with a ninety-one percent retention rate, while the current average renewal rate for membership organizations is eighty-five percent.

AALL continues to have a very enthusiastic and talented staff team, and they work very hard to support AALL and its members. You should never hesitate to contact a member of the AALL staff. We are all dedicated to serving our members and to making AALL the recognized authority in all aspects of legal information.
It has also been very rewarding to work with the AALL Executive Board this past year. They rolled up their sleeves to move forward the important initiatives outlined in this report. They are dedicated to the profession and to AALL and its members.
Appendix B

Statements of Candidates for 2013–2014 AALL Election

Statements of Candidates for Vice President/President-Elect in 2013–2014

Carol Bredemeyer*

The winner of this election will assume the presidency of AALL during the last year of the recently adopted strategic plan and will help to guide the transition to the next plan. It’s difficult to envision what the legal profession and our professional lives might look like in three or six years, but I am certain it will be different. Change is a constant in all of our work lives.

AALL needs to continue the good work we do, such as the advocacy of the Government Relations Office and our educational programming, while looking for new opportunities to showcase what law librarians can do if given opportunity and institutional support. We will need to continue to explore new educational opportunities both in content and delivery. We will also need to strengthen our partnerships with allied organizations both in the library and legal professions.

Early in my career, I found that professional activity in AALL and its chapters was rewarding and that it also provided contacts for finding the information our patrons needed. Having a leadership role in AALL as an SIS chair, a chapter president, and a committee chair gave me the confidence to take on leadership roles on campus. I served two terms as president of the NKU Faculty Senate and just finished serving on a search committee for a vice president.

We must also work to serve the newer generation of digital natives while continuing to serve the needs of an earlier generation of researchers, who are often the decision-makers in our organizations.

We as librarians and as an association must continue to be forward-thinking and proactive. Librarianship is a profession where we are continually learning and adapting. We must regularly review what we do to make sure that what was important last year or five years ago is still important today; if not, we should stop doing it or change the way we do it to be relevant for the times. AALL must look at its strategic plan and allocation of financial resources to make sure that we are spending our money on what we have said is important to us as an association.

AALL has given me much professional development and fulfillment. It would be a privilege to serve as your president and help guide the Association to meet its priorities.

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* Assistant Director for Faculty Services, Salmon P. Chase College of Law Library, Northern Kentucky University, Highland Heights, Kentucky.
Keith Ann Stiverson*

The American Association of Law Libraries has always been my professional organization of choice, and I want you to feel the same way about it that I do.

When I was a new law librarian in a government library, AALL drafted a statement of support and testified on behalf of my library’s appropriation request. When I was a librarian new to academia, I turned to AALL for mentors and for a better understanding of how budgets work. When I needed to write a successful grant proposal, it was colleagues in AALL who helped me perfect it. Even when I left law librarianship briefly to be an associate at a law firm, it was law firm librarians from AALL who gave me tips about adjusting to the career change.

Now, at a time when our future is unpredictable and accepted wisdom fails, we need to combine our skills and talents more than ever if we are going to meet the challenges and opportunities that face us. I think we can do this best through our association and through the collaborative relationships we already have and that we can form by reaching out to one another and to professionals in other fields. I do not mean to imply that AALL needs no improvement, but I believe that the improvements will come only from a more engaged membership than we now have.

I am honored to be a candidate for vice president/president-elect because I believe that AALL can continue to serve us well for the foreseeable future if we all do our share. But AALL needs us, so I am asking you to join me, to become more engaged in AALL, and to make your voice heard.

If elected, I hope to focus energy on the following:

• increasing educational opportunities for our members via technology, which would be especially helpful for disadvantaged members who are unemployed or underemployed;
• increasing engagement by increasing transparency: I believe that many members have disengaged from the Association partly because they are not well informed about its achievements;
• growing our membership: I believe that AALL can attract new law librarians through a variety of organizations; and
• promoting law librarians as legal educators who should help shape the new educational initiatives that emphasize practical skills.

I am grateful for the leadership opportunities I have had in AALL during my career, and I would welcome the chance to serve you and to help secure a better future for our association and its members.

* Director of the Law Library and Senior Lecturer, IIT Chicago-Kent College of Law, Chicago, Illinois.
Candidates for Secretary in 2013–2014

Katherine K. Coolidge*

I accepted the nomination to stand for the office of Secretary of the AALL Executive Board because I believe I will make valuable contributions to our Association and to our profession. It is very easy for me to stand out at my firm where I am the only person who performs my function and where I research and deliver necessary information for my attorneys to succeed. But it is not easy to stand out among the members of AALL where I am one among many more talented and impressive colleagues. So what makes my candidacy worthy of your vote?

I have a strong volunteer ethic, and I excel at serving on nonprofit boards. I am organized, creative, thoughtful, and productive. I have a passion to lead and to contribute to my profession and community. I will bring to the AALL Executive Board the perspective of a solo law librarian as well as that of a licensed attorney. As a solo law librarian I will bring the abilities of a business manager. I conduct all aspects of legal research, and I manage the business of information resources for my firm. I have performed most of the roles in which you serve your institutions. I understand and can represent your viewpoints in our profession. As a licensed attorney, I can share the thoughts of the clients whom many of us serve. I cannot predict all the challenges that our profession will face in the next three years, but I stand ready to address them and to work collaboratively with the Board and AALL membership to find solutions and promote our value.

It may be rare that a solo law librarian has the opportunity to serve on the board of a national association. Many solo law librarians are not afforded the support of their firms to serve at the national level. I am fortunate that my firm values and supports my contributions to professional associations and community boards. My firm is confident that I will not shortchange either my firm or the boards on which I serve.

In the interest of brevity, I will not elaborate further on my experience. Rather, I leave it to you to read my curriculum vitae. My education and experience include qualifications suitable for service on the AALL Executive Board.

I am honored to have been nominated. I will be grateful if you grant me the opportunity to serve you.

Sarah K.C. Mauldin*

Although perhaps an understatement, I may best be described as enthusiastic. If you have met me, you know this is true. I am enthusiastic about many things, including, in no particular order: Atlanta, spy novels, knitting, cats, baseball, the Big 12, board games, and on and on. But the thing I may be most enthusiastic about is my career. I love what I do, and I love going to work. Once I discovered law librarianship, I knew I had found my calling, and on first meeting law librarians, I knew I had found my people. I find great value in the connections I have gained from my profession and am energized with each trip to the Annual Meeting.

* Law Librarian, Bulkley, Richardson and Gellers, LLP, Amherst, Boston & Springfield, Massachusetts.

* Director of Library Services, Smith, Gambrell & Russell, LLP, Atlanta, Georgia.
When I started my first “real job” in Las Vegas, I longed for community. I found it in AALL, PLL, and chapter membership. I owe a great deal of my professional success to AALL, PLL, and all of the chapters I have joined. I have a proven track record of service in many roles within AALL, my Special Interest Sections (PLL, LISP, and RIPS), and my chapters (ALLA, SEAALL, and WestPac) and hope to continue this work throughout my career.

I have just passed the ten-year mark as a law librarian and twelve years of association membership. While I have had the opportunity to learn about the history and traditions of the Association, I am not burdened with many years of experience with “how it’s always been done.” I am unafraid to ask questions about why we do what we do and why we do it in that way. I hope to be a voice for newer librarians and private firm librarians, but also to be a voice for all law librarians who see ways that the Association can improve and change to be responsive to all members, new and experienced. We must work to provide professional development that is relevant for librarians at all stages of their careers and to encourage members to contribute their time and talents to AALL to realize the many benefits of membership for themselves as well as for those who come after them. I hope to set that example.

I am thankful to the Nominations Committee for nominating me for secretary. I have received so much from AALL, and I am energized by the prospect of serving you on the board. I ask for your support to put my enthusiasm to work for you.

**Candidates for Executive Board Member in 2013–2014**

**John W. Adkins**

When I was asked to run for the AALL Executive Board, despite all my initial reservations, I said yes. I have a story about the importance of saying yes.

For twenty-five years I worked in academic law libraries as a student worker, full-time staff member, and as a librarian. Academic law librarianship was my reason for being—that’s all I knew, and I loved it.

And then one day, the clouds parted and the sun seemed brighter. An inner voice told me to take a deep breath and let go of everything I knew as a law librarian. It told me that I needed to apply for the director job opening at the San Diego County Public Law Library.

Every bone and fiber in my body screamed, “Noooo!” I experienced a powerful internal change. It was visceral. I was not expecting it; I struggled against it; and I suspect that in the end, it was not completely my choice. I felt that no one would care as much as I did about leading San Diego’s public law library and, as a San Diegan, I worried about its future funding and lack of public awareness.

And so I said yes to that inner voice and applied on the last day possible.

Because I said yes, I am now the director. I am so privileged to have this job. Life works in mysterious ways: I have found my passion in a venerable institution.

* Director of Libraries, San Diego Law Library, San Diego, California.
But for all the positives, there remain the hard facts of public law library administration. We have hit a crossroads in public law librarianship here in California and around the country. Courts are closing for lack of funds while at the same time judges are granting waivers of the fees we need to provide services not only to the bench and bar but also the poor, indigent, and uninformed.

In California we are fighting back by crafting legislation proposing new uses for preexisting court revenue streams. This is change. This is advocacy. This is politics. This is hard.

Nobody told us how to do this in library school or law school. But as the thought-leaders of this generation of public law librarians, we have had to wake up, hear the call, and accept the charge to figure out how to make the inspiration and the dream become the pragmatic choice of hardboiled legislators. Let me repeat, this is change, and this is hard.

But we are making a difference in the California public law library system. Decisions made by our association members in the next few years will drive the direction of legal information professionals for years to come.

A vote for me is a vote for the silent and marginalized voices in our profession who don’t quite know where they fit in. In my two terms as SANDALL president, my focus was building the working knowledge, social conscience, and future thinking of our local law librarians. The national association seemed so far removed from my daily struggles.

Now I recognize the value of having someone like me on the AALL Executive Board. I am like others who wonder about the value of their time and effort in working for both pragmatic and flexible change in law libraries—changes that affect not only what we do, but how we do it. This is a cultural change of great proportions—in some respects like my own journey going from a dyed-in-the-wool academic to a crusader for public access to justice.

I believe we have to adapt and change to survive. I have done that and can help others do the same. Seeing what’s coming is half the battle; knowing how we act or react to what’s coming will decide our futures. I am eager to share what I know about the power of positive choices and the importance of saying yes. But most of all, I want people to know this is change—and we can do it.

Thank you for reading, and please refer to my LinkedIn profile or contact me directly if you have any questions about my candidacy. It would be my pleasure to hear from you.

Miriam D. Childs*

I’ve been a law librarian for ten years, and I have seen the legal profession change tremendously in the past decade. The first change that I recognize as one of the most far-reaching is the rapid switching over from print to electronic information, with the preservation issues born-digital information presents. The second is the skyrocketing cost of legal information due to continuing vendor consolidation. These changes seem only to have benefited vendors and their shareholders. In the meantime, law librarians struggle with reduced or standstill budgets while other libraries are left to become shadows of their former selves.

* Associate Director/Head of Technical Services, Law Library of Louisiana, New Orleans, Louisiana.
The legal publishing industry won’t change until it absolutely must; the cost of legal information won’t decrease; and the cost of hiring an attorney will continue to rise. Law librarians can do little about those factors, and it’s easy to feel helpless about the fast pace of change. I believe one way to cope is for law librarians to shift their focus toward acting as bridges to help people underserved by the legal system. In other words, law librarians should see themselves as bridges between attorneys and the legal system on one side and the layperson on the other. Attorneys are unreachable to many people mainly due to their fees but also due to case overload. Services that provide legal assistance to those with low incomes are either overwhelmed or underfunded. There’s also the segment of the population that makes too much income for those services but still can’t afford an attorney. All of the above represent situations in which librarians can become bridges.

Law librarians are prohibited from giving the legal advice so many people desperately need. But we can provide a lot of information and assistance that can give people a leg up when they have legal problems. Law librarians should aggressively market themselves as bridges to help people find their way to the other side of their legal problems. Becoming an effective bridge requires a focus on community outreach and involvement. I foresee a day when attorneys refer potential clients to law librarians rather than the other way around. If elected to the Executive Board, I will make it my priority to assist libraries in developing the type of outreach that can change lives and bring more justice into their respective communities.

Tina Dumas*

I joined AALL (way back when) because I knew that the Association would help me develop valuable skills that would help my career. Along the way, I’ve been able to connect with many people who were willing to share their professional and personal lives with me. I’ve found informal mentors, ILL benefactors, friends, and sometimes just a willing listener (even to my librarian jokes).

Our association is great at making and enhancing connections. How we connect to each other within our (employer) organizations and with other associations is a vital part of what we do and is one of our greatest strengths as information professionals. Our membership is diverse, and yet we find ways to move our profession forward by sharing our similar experiences and learning from each other. The past few years have presented financial challenges for many of our organizations, and I’ve witnessed our members coming together to share solutions and support each other. We are developing leaders and exceeding goals by connecting via formal educational programs, networking events, and informal contacts.

I know that law librarians are also great at embracing technology. We’re using many more means of communication to connect with each other and share our knowledge, including blogs, webinars, other social media, and even in-person “meetups” (I think those used to be called happy hours).

I’m honored to be nominated for a position on the Executive Board, and I hope that I can serve AALL by helping to enhance the connections that we already have with each other and by making new connections with other organizations, ultimately

* Reference Librarian, Nixon Peabody LLP, San Francisco, California.
moving our profession and ourselves “Beyond Boundaries.” And the next time you and I connect in person, ask me about the chicken that walked into the library.

**Donna Nixon**

In 1971, Durham, North Carolina, public schools were under a court order to desegregate. The KKK and the civil rights community were at odds. The potential for violence was high. The AFL-CIO hired Bill Riddick to arrange a problem-solving meeting of community leaders from both sides, a “charrette.” Two leaders on opposing sides, Ann Atwater, a black civil rights leader, and C.P. Ellis, a KKK Exalted Cyclops, emerged in the ten days of meetings to build bridges that averted violence. The friendship and alliance Atwater and Ellis built lasted the rest of their lives.

I am a disappointment to some in my university community—I don’t root for or against any home teams. Finding ways to help everyone win holds much more appeal for me. Win-wins like the one forged in 1971 Durham are the opportunities I seek. I am very fortunate to be part of this large AALL community of smart, talented people working together to help one another serve diverse constituencies. I am deeply committed to this association because of its emphasis on working together to make our law libraries and organizations stronger: academic; firm; government; private; and library content, service, and technology providers. Competition and conflict have their place in spurring meaningful change, but unhealthy conflict hurts us all.

Certainly, we don’t have conflicts as frightening as those in 1971 Durham. But things are changing so rapidly in the law library field that new conflicts are emerging, especially surrounding e-content and legal education. I seek to help our association remain a model of how to get things done—together, despite our differences. In fact, it is our differences, our variety of talents and viewpoints, that make this association rich. We have many challenges and opportunities facing us, but we also have a wealth of human and technological resources to help us succeed. In particular, we face a great challenge in navigating the transition from use of mostly static, print resources to working more with electronic and multimedia information sources. We also face many economic and advocacy challenges.

Today I received my ten-year AALL pin. In my fifteen years with the Association, our profession has evolved rapidly. What I have gained most from AALL and the law library profession during those years is a focus on increased flexibility, creativity, advocacy, and cooperation. What I hope to contribute as a member of the Executive Board are:

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3. The 2014 AALL Annual Meeting theme, in case you had forgotten.

* Electronic Resources Librarian and Clinical Assistant Professor of Law, Kathrine R. Everett Law Library, University of North Carolina at Chapel Hill, Chapel Hill, North Carolina.
• Attention to forging alliances with one another for mutual benefit
• Openness to ideas to help enrich our membership
• Providing both a listening ear and a voice for members
• Seeking creative ways to provide members professional education that will target their specific levels of need and specialization.

I would be much honored to serve on AALL’s Executive Board. Thank you for considering my candidacy.
Ms. Carol Bredemeyer (Chase College of Law Library, Northern Kentucky University, Highland Heights, Kentucky): There were two questions submitted in advance which I will read and which Holly has agreed to answer. The first question is, “Why was the decision made to change the conference app?”

President Riccio: Thank you. Although I cannot speak to all of the technology behind that, I know that last year we looked through the information and comments that we got on the app. Obviously as technology continues to change and the AALL staff looked at different options, they did take into account the things people wanted to do last year that were not available, and went ahead and made a different selection for the app this year that had a lot of features and functionality that people were looking for. I’m sure that next year when people get their surveys and want to put information about this app, that we will take that into account again and review it and see if there is something else better out there that we can use in the future.

Ms. Bredemeyer: Thank you. The second question is, “What is the process of being nominated or self-nominating to serve on the Executive Board?”

President Riccio: Thank you. Anybody can self-nominate, and anyone can nominate anyone else for the Executive Board. The call will go out to all membership, letting everyone know who to send that information to, and we are also working on an improved process with the availability of a form that people can fill out and attach or link to background information along with their nomination in order to help the committee know what the nominee’s background is. I have also been advised to say that self-nomination is known as “volunteering.”

Ms. Bredemeyer: Okay. Any other comments? Please move to a microphone if you would like to comment. Dick Danner?

Mr. Richard A. Danner (J. Michael Goodson Law Library, Duke University School of Law, Durham, North Carolina): Thank you. I just have one question, and it’s kind of in reply to the question that Professor Bintliff asked. I’m puzzled as to why the idea that there is going to be a task force to look at Law Library Journal had to be teased out at this point in the meeting. Why wasn’t that announced to the members as part of the president’s report or in some other forum in this meeting beforehand?

President Riccio: When the board met here, we had an item on our agenda to take a look at Law Library Journal, and that was something when we met in the fall, we looked at everything that the Association did, we looked at funding, we
looked at member time, we looked at a whole picture of everything, and throughout the year the staff has been helping the Executive Board, providing them with information about different services that we have provided, and we were going to look at that at the board meeting, we had some information, but during the discussion, as often happens in Executive Board meetings, we realized that we needed a little bit more and wanted to move it to a task force. So it was just purely a process that I don’t think is out of order.

¶8 **Mr. Danner:** No, I don’t think it is out of order either, as you know. However, I find it puzzling that you didn’t announce the fact that the task force was going to be created.

¶9 **President Riccio:** We always wait until the minutes have been finalized in order to announce everything. So that hasn’t happened yet. That will happen after this meeting. So there is a formal process with which we announce these things and put them out. So that’s the answer to that. Just so everyone knows, we are actually out of time at 4:45 P.M., and this is as long as we have extended, so it’s my understanding that we have to end now. We don’t have any more time.

¶10 **Mr. Estes:** Move to extend the time.

¶11 **Mr. Jacobs:** We can’t, because the business meeting is over.

¶12 **Mr. Estes:** This is Mark Estes. I am from the Alameda County Law Library. Why can’t we manage to schedule this meeting to run to five o’clock? This is an important event for the Association. We need to schedule this time. If it ends earlier next year, the following years, that’s fine, but we need to have the time to have the discussion that we will not be able to have now.

¶13 **President Riccio:** I’m sure that Keith Ann and the staff will take that under consideration. Thank you, Mark.

¶14 **Ms. Janet Sinder** (Brooklyn Law School Library, Brooklyn, New York): I just want to echo what Mark has said. I find it concerning that we had the meeting and then the Members’ Open Forum scheduled to go from 3:15 to 4:30. The meeting wasn’t even over until 4:40, which gives the members five minutes for the Open Forum—actually no time for the Open Forum because of the questions that were submitted in advance.

¶15 **Ms. Bredemeyer:** Thank you all for your participation.

(WHEREUPON the Member’s Open Forum was adjourned at 4:49 P.M.)
2015–2016 Officers and Executive Board, Committees and Juries, Special Committees and Task Forces, Chapter Presidents, Special Interest Section Chairs, Representatives, and Executive Staff

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