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The Effects of Demand-Driven Acquisitions on Law Library Collection Development*

Janet Sinder**

Demand-driven acquisition programs are becoming more common as a method of collection development. This article first discusses traditional collection development practices in academic law libraries and outlines the mechanics and goals of the demand-driven acquisitions model. It then considers the effects of that model on law library collections and collection development practices.

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* © Janet Sinder, 2016. I would like to thank the participants at the Seventh Annual Boulder Conference on Legal Education: Teaching & Scholarship held at the University of Pennsylvania Law School, Philadelphia, Pennsylvania, on July 16–18, 2015, for their review and commentary, as well as the Brooklyn Law School Dean’s Summer Research Stipend Program for supporting my work on this article. Dana Brakman Reiser and Richard Danner provided very helpful comments. My thanks also go to Gilda Chiu, Collection Development and Acquisitions Librarian at the Brooklyn Law School Library, both for introducing me to demand-driven acquisitions and for all her work implementing the program we use at the Brooklyn Law School Library.

** Director of the Library and Associate Professor of Law, Brooklyn Law School, Brooklyn, New York.
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Introduction

¶1 Many academic libraries have begun using demand-driven or patron-driven acquisitions (DDA or PDA).1 In this model of collection development, instead of purchasing materials and then adding records for them to the online catalog, a library adds records for certain items without purchasing them. Payment occurs only if and when the item is used.

¶2 While generally thought of as being used for e-books, similar systems can be used for journal articles2 and print books.3 DDA has been around for almost two decades,4 but it is only recently that the convergence of several factors—the increasing availability of e-books on law topics, a strong and ever-growing preference for electronic materials by users, and closer scrutiny of both library collection budgets and library space—have made this a tool that law libraries, particularly academic law libraries, are likely to consider.

¶3 DDA is not the only way for libraries to purchase e-books. Libraries can purchase e-books directly and place them in their online catalogs. They can also enter into subscription agreements with e-book providers for annual access to a selection of titles.5

¶4 On its surface, a DDA program may seem like a no-lose proposition: users are provided with a choice of many additional books without the library paying for those that are never used. DDA provides more books to users and is “transparent” in the sense that users do not know their use is what triggers the purchase of a book for the library. But it is not a foregone conclusion that DDA is a good development for library collections. Before fully embracing the DDA model, libraries should ask

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1. One can make arguments for either name, but this article uses the term “demand-driven acquisitions” or “DDA.” DDA avoids confusion with other common uses of the acronym PDA, including “personal digital assistant.” See PDA (disambiguation), WIKIPEDIA, https://en.wikipedia.org/wiki/PDA_(disambiguation) [https://perma.cc/F7GH-3CG4].
2. See discussion infra ¶ 43 on pay-per-view models for acquiring individual journal articles.
5. Oxford University Press, for example, offers Oxford Scholarship Online, which for a yearly subscription price provides access to a selected group of e-books. Libraries can choose to subscribe only to books in specific subject areas, including many areas of law. See About, OXFORD SCHOLARSHIP ONLINE, http://www.oxfordscholarship.com/page/85/about [https://perma.cc/3BRV-GYHC].
questions such as these: Are we losing anything by shifting the responsibility for collection development to the users? What will the effects be on our libraries and researchers in the future? And is it possible to implement a DDA program that provides benefits to libraries while minimizing negative effects?

§5 This article begins with a brief discussion of collection development practices in academic law libraries, followed by descriptions of both the mechanics and the goals of DDA programs. It then looks at possible changes to library collections as a result of these programs and suggests ways that librarians can continue to develop their collections in a professional manner while still taking advantage of the quick, easy, and possibly cost-saving aspects of DDA. The article focuses on academic law libraries, which are the most likely users of DDA, but in the long term, DDA will affect all law libraries because law firm and government law libraries frequently rely on academic law libraries to lend them materials that they do not own.6

The Evolution of Collection Development in Academic Law Libraries

§6 Before looking at the specifics of DDA, it is helpful to consider how academic law libraries have traditionally handled collection development, particularly for books. This will make it easier to understand the possible effects of DDA on the collection development process and on the collection itself. Only then can a library decide how it wants to integrate DDA into its collection development activities.

The Goal of Law Library Collection Development

§7 ABA Standard 606 covers library collections and defines the minimum required for an academic law library collection. Standard 606(b) describes the “core collection,” including primary materials such as case law, statutes, regulations, and treaties; finding aids; and “significant secondary works necessary to support the programs of the law school.” Standard 606(c) further mandates:

In addition to the core collection of essential materials, a law library shall also provide a collection that, through ownership or reliable access,
(1) meets the research needs of the law school’s students, satisfies the demands of the law school curriculum, and facilitates the education of its students;
(2) supports the teaching, scholarship, research, and service interests of the faculty;
(3) serves the law school’s special teaching, scholarship, research, and service objectives; and
(4) is complete, current, and in sufficient quantity or with sufficient continuing access to meet faculty and student needs.7

§8 No matter what method or combination of methods a library chooses to use for collection development, it must be sure that its collection will continue to meet the requirements of this standard.

6. There are some nonacademic law libraries that have instituted DDA programs. For example, the New York Law Institute has a DDA e-book program that is available to its member users, which are mainly law firms. See Ellyssa Kroski, E-Books in Law Libraries, in LAW LIBRARIANSHIP IN THE DIGITAL AGE 123, 135–36 (Ellyssa Kroski ed., 2014).
Responsibility for Selecting Library Materials

¶9 Librarians have not always been responsible for selecting books for their collections: "Many bar association librarians recommend books to library committees and need [the committees’] approval to buy—a remnant from the days when lawyers selected books for their private collections . . . ." The same rule applied in academic law libraries: “In the 19th century and the early part of the 20th, almost all book selection was done by the law faculty . . . . Theirs was the decision on what should and should not be in their library, and theirs was the control that made decisions reality.”

¶10 In the late 1950s, the Association of American Law Schools (AALS) conducted an inquiry into the state of law schools, including their libraries; the results of the inquiry were published in 1961. One of the subjects addressed was responsibility for book selection, and “[t]he most frequently mentioned method of choosing books [was] by the librarian under major faculty policies.” However, the report noted:

The extensive reliance on the librarian for book selection is not necessarily an arrangement to exclude other influences on actual decisions. No doubt, few librarians, whatever their formal powers, will fail to see the importance of consulting the faculty collectively and individually, or the importance of aiding in the development of policies for faculty approvals, nor will they fail to recognize the value of specific book recommendations.

¶11 In 1970, Marian Gallagher wrote about the evolution of collection development responsibilities in law libraries. In the article, she describes selection decisions moving from “administrator-patrons” to “chief law librarians” to library staff as libraries grew and developed. Gallagher conducted a limited survey of “libraries of all types and sizes” and found that

[p]ractitioner partners, bar association trustees, and judges apparently are less inclined to give up the authority for final decisions than were law faculty members . . . .

. . . .

Many of our [respondents] volunteered the information that patron-administrators who had relinquished responsibility for collection building still are solicited for advice and that their requests for specific titles are treated as final decisions, the funds being available . . . .

Law libraries apparently have begun to come out of the do-it-yourself era and into the leave-it-to-the-professionals era.

¶12 Thus, as academic law libraries developed through the second half of the twentieth century, book selection slowly, but increasingly, became the responsibility of the librarians, with input from the faculty. As library collections increased in

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9. Id. at 344–45.
11. Id. at 465.
12. Id. at 465–66.
14. Id. at 17–18.
size and complexity, it was more common for the library to control book selection, while still consulting with faculty when necessary, and continuing to accept book recommendations and requests from faculty. There is no reason to doubt that this practice is still the norm in most academic law libraries.

The Art of Collection Development

¶13 The skill required for collection development, particularly in regard to book collections, is not one that law librarians frequently consider. It is, though, one of the most difficult skills for librarians to develop, requiring consideration of a book’s subject, depth of coverage, author(s), and publisher, not to mention cost, relation to other materials already in the collection, and the needs of the library’s users now and in the future. In 1952, William Jeffrey, Jr. provided a description that applies equally well today:

The process of book selection is an incessant game of wits. With varying frequency, the selector is engaged in outguessing the faculty, the students, the curriculum, the publishers, the book dealer, his budget, and in some cases, his fellow librarians. If book selection isn’t the heart of librarianship, it comes pretty close to it. It is not for anyone who dislikes guessing, and it can be lots of fun.

¶14 After discussing the specific criteria to be considered in selecting books and how they apply to various types of law libraries and collections, Jeffrey concluded that

[b]ook selection is a standing invitation to prophecy. It involves the assessment of intangibles, in pursuit of goals which are clear in the abstract but extremely hazy in the particular. . . . [B]ooks . . . display the most tenacious staying power, and will remain to influence the life and work of your successor in the librarian’s chair. If you leave a well-selected lot, he will rise up and call you blessed; if his heritage of books is a collection of antique misfits, no condemnation is more righteously pronounced or more richly deserved.

There is no question that selecting books requires time and familiarity with the library’s collection as well as with authors, publishers, and faculty and student needs.

Library Approval Plans and Selection Profiles

¶15 Collection development is a time-consuming enterprise requiring knowledge and skill, and has become only more complicated as the number of publications has increased and format choices have grown. What William Jeffrey, Jr. found an “incessant game of wits” in 1952 is even more difficult in today’s world, where librarians must consider not only the value of the publication to their patrons, but

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15. In this article, I use the term “books” to also include treatises and monographs (i.e., publications that are not regularly supplemented and do not require a subscription).
18. Id. at 408.
19. Id. at 401.
also the formats those patrons prefer, the permanence of the resource, and the
importance of permanence for their library’s particular users.20

¶16 Two methods that libraries can use to make the collection of books a little
less time-consuming are vendor profiles and approval plans. Libraries frequently
set up profiles with library services companies to receive notifications about books
with certain call numbers or subject headings, from specific publishers, and so
on.21 The librarians continue to select the books, but their selection is streamlined
by using this prefiltering process.

¶17 A step beyond selection profiles are approval plans, where books meeting
specified criteria are automatically sent to the library.22 It is now possible to have
an approval plan for e-books.23 Approval plans require substantial input from
librarians to set up the profile but much less work afterward, as all or most books
that fit the profile are sent automatically to the library. Moving to DDA, where
library users select books for purchase from among those meeting the library’s
profile, seems like the next logical step in the evolution of collection develop-
ment.24

The Mechanics of DDA for E-Books

¶18 How exactly does DDA work? Programs differ based on a number of vari-
ables, but at its core a DDA program for e-books allows a library to add book
records to its catalog without purchasing those books. The records remain in the
catalog at no cost to the library until a user decides to access the book.25 Depending
on how the plan is set up, once a book is accessed, the library is charged either for
a “short-term loan” or for the purchase of the book.26 As noted above, users do not

20. Some libraries may decide that if the resources are available permanently somewhere else
they will rely on those, while others may want to ensure permanence of access within their own col-
lections.

21. An example is the GOBI system used by YBP, which sends libraries slips weekly for books
meeting the library’s profile and for which libraries can place orders electronically. See GOBI’,

22. See Carmelita Pickett et al., E-Approval Plans in Research Libraries, 75 C. & RES. LIR. 218,
219–20 (2014) (reviewing the literature on approval plans, beginning in the 1960s). Libraries can
even have the books processed for them, so that they arrive “shelf-ready” with call number labels and

COMPUTERS LIR., Apr. 2011, at 15.

24. See generally Bob Nardini, Approval Plans and Patron Selection: Two Infrastructures, in
PATRON-DRIVEN ACQUISITIONS: HISTORY AND BEST PRACTICES, supra note 4, at 23 (discussing the move
from book selection by academic researchers to librarian–created approval plans and the possible
reversal of this trend with patron-driven acquisitions).

25. Libraries may pay a small annual fee to have the MARC records for these books customized
for their library catalogs, but there is no charge for individual records. Some e-book vendors may
charge “platform fees” for the use of their systems, but these are also relatively modest and are some-
times waived if the library’s spending meets a minimum threshold each year.

26. Libraries can select different options to determine when a book will be purchased. After
purchase, there are various types of availability, depending on the options offered by the vendor and
chosen by the library. See infra ¶¶ 25–27 for more on these options.
know whether the books they are accessing have already been bought by the library or not—the loan/purchase process is visible only to library staff.

¶19 This section describes the main options available for a DDA program for e-books, but all programs involve contract negotiations between the vendor and the library, making an almost unlimited number of combinations of features possible. Any library entering into a DDA program must make decisions about each variable before the program can be implemented and sign agreements with all the vendors that are part of its DDA program. Libraries must also make adjustments to their acquisitions and cataloging procedures to properly integrate the DDA program.

Selecting Vendors

¶20 To implement a DDA program for e-books, a library signs up to receive records and to purchase books from one or more providers, and creates a collection profile to determine which records will be added to its catalog. Model types include agreements with e-book aggregators such as ProQuest or EBSCO, or with book dealers/library services providers such as YBP or Coutts.

¶21 Part of vendor selection for a DDA program involves considering the variety of e-book formats provided, and what type of software or device is required for reading the books. It may seem tempting to enter into agreements with multiple vendors, but vendors offer different platforms for reading their books on computers, tablets, or e-book readers. They also usually include their own Digital Rights Management (DRM) software (preventing sharing or copying and often limiting printing and downloading) and may require user registration. Vendors may also support formats that work only on certain devices (for example, not every vendor provides Kindle-compatible files). A library using multiple vendors may end up frustrating users, who must install different types of software, register several times

27. This article provides only a brief overview of the mechanics of DDA and factors to be considered when setting up a DDA program. Those interested in a thorough overview may want to consult the NISO Recommended Practice for DDA, which concludes with a set of recommendations. Nat’l Info. Standards Org., NISO RP-20-2014 Demand Driven Acquisition of Monographs (June 24, 2014), http://www.niso.org/publications/rp/rp-20-2014 [https://perma.cc/HD4A-W9FU]; see also Theresa S. Arndt, Getting Started with Demand-Driven Acquisitions for E-Books (2015) (containing a checklist of items that libraries planning to implement DDA should consider).

28. Because this article focuses on the effect of DDA on library collections, these types of issues are not addressed in detail here but are covered in the sources cited supra note 27.


31. Both Coutts (now owned by ProQuest) and YBP (now owned by EBSCO) allow for DDA plans with a variety of e-book aggregators. Libraries still sign agreements with the individual aggregator, but the dealer mediates the service by making records available, providing MARC records for all books fitting the library’s profile, and allowing use of the same or a modified version of the selection profile that the library has for print books. See, e.g., Emily McElroy & Susan Hinken, Pioneering Partnerships: Building a Demand-Driven Consortium eBook Collection, AGAINST THE GRAIN, June 2011, at 34 (providing details on how the Orbis Cascade Alliance set up a DDA program with YBP), Brooklyn Law School Library, which uses YBP for its DDA, chose to use a modified version of its print book selection profile to determine which books are included in the DDA program for e-books. There is a modest charge for these services.
to access the books they need, or find that a particular book cannot be read on their preferred device.

What Books to Include

¶22 An important consideration for libraries is determining how books will be selected for inclusion in the DDA program. For example, will the library individually select books, rely on a selection profile, or simply include all books offered by a particular supplier? Law libraries will almost certainly want to specify subject areas for selection, while university libraries might include all books intended for academic audiences. Libraries can also limit the books by publisher or specify a price limit for included books.

¶23 Libraries should also consider how their use of DDA will affect and be affected by their print book selection process. Will the library continue to purchase print books as before, or will fewer print books be selected? Will the library select e-books for purchase apart from those included in the DDA program? What if users, particularly faculty, have a preference for the book in print—will the library buy a second copy in a different format? Will the system eliminate duplicates from the DDA program, so that a book purchased in print is not also available as an e-book via DDA? Libraries must decide whether they are concerned about the possibility of purchasing two different versions of the same book or whether they believe the benefits of duplicate formats justifies the added cost. The print version is owned (instead of licensed) by the library and is more easily preserved, while the e-book provides ease of access and use.

¶24 In addition to setting up profiles to determine what books are included in its DDA program, a library can delete individual DDA titles from its catalog. Some programs allow libraries to “request DDA” for a book that is available for DDA but has not been included in the library’s profile.

32. Many, but far from all, e-books available from suppliers can be put into a DDA program. Sometimes, if a library wants to make a book available, it must purchase either the print or the electronic version. See Joseph Esposito, Revisiting Demand-Driven Acquisitions, THE SCHOLARLY KITCHEN (Oct. 15, 2014), http://scholarlykitchen.sspnet.org/2014/10/15/revisiting-demand-driven-acquisitions/ [https://perma.cc/UGZ7-N5TD] (noting reasons why publishers might oppose DDA models).

33. The question of whether e-books will eventually be universally accepted as a replacement for print books is still an open one. See, e.g., Alexandra Alter, The Plot Twist: E-Book Sales Slip, and Print Is Far from Dead, N.Y. TIMES, Sept. 23, 2015, at A1.

34. If a library wants to prevent purchase in duplicate formats, there are a variety of methods for doing this. For example, a supplier such as YPB can run an initial de-duplication process between records in a library’s catalog and the e-book records that are going to be in the library’s DDA program. On an ongoing basis, it will not include e-books in the DDA program if the library has purchased the print version from YBP. However, if the print version is purchased after the book is in the DDA profile or from another supplier, the library staff must manually remove the DDA record from its catalog.

Criteria for Triggering Loans and Purchases

\textsection{25} Vendors each have individual criteria for determining when a book is considered to have been “used” and therefore triggers a charge. For example, if a user looks only at the table of contents but not at the text itself, that might not be considered a use. Alternatively, the vendor might allow users five minutes of reading time or viewing of a certain number of pages before a loan or purchase is triggered.\textsection{36}

\textsection{26} Libraries must choose how to set up their purchasing plans, deciding whether they want to purchase a book at the time it is first used or allow one or more short-term loans before purchase. Most publishers allow for short-term loans of anywhere from one day to four weeks, for a percentage of the purchase price.\textsection{37} Libraries can decide whether they prefer a certain number of short-term loans to trigger an automatic purchase or prefer the vendor to send a notification so that the library can determine whether to purchase the book or pay for an additional short-term loan. As an example, a library could allow two short-term loans for seven days each. Upon the third use of the book, the book will automatically be purchased and added to the library’s collection.\textsection{38} After that, the library owns the book and will not be charged further.\textsection{39} Vendors generally do not credit money paid for short-term loans against the purchase price,\textsection{40} so books purchased after the library has paid for one or more short-term loans are more expensive than they would be if purchased

\textsection{36.} See Polanka & Delquié, supra note 4, at 121–23, 125–26 (noting the different criteria that will trigger a loan or purchase from various e-book suppliers).

\textsection{37.} While these loans were originally relatively inexpensive in terms of the percentage of the purchase price charged, a number of publishers soon began to drastically increase those percentages. See Avi Wolfman-Arent, College Libraries Push Back as Publishers Raise Some E-Book Prices, CHRONICLE OF HIGHER EDUC. (June 16, 2014), http://chronicle.com/article/College-Libraries-Push-Back-as/147085/ [https://perma.cc/AA82-GC5B]. Even university presses are charging higher percentages for short-term loans. For example, EBL announced that as of December 1, 2014, the University of Iowa Press would increase the cost of its 28-day loan from 30% of the book price to 100%. Based on these types of increases, libraries with DDA programs can now often disable short-term loans from being triggered if the loan cost is over a certain percentage of the purchase price. E-mail from EBL Support re: Price Changes to Short-Term Loans (Nov. 17, 2014, 5:01 PM EST) (on file with author).

\textsection{38.} Under most of these programs, books are not physically owned by the library, and the data files continue to reside on the publisher’s or supplier’s server. Before entering into an agreement with a supplier, a library should ensure it knows what happens to files of books that have been purchased if the supplier goes out of business or is otherwise unable to continue hosting the book files. Libraries may choose to limit their DDA programs to publishers who participate in digital access preservation programs such as CLOCKSS. For more discussion of these programs, see infra \textsection{70}.

\textsection{39.} There are exceptions to this, such as the EBL nonlinear lending model, which allows a library to purchase e-books with a set number of uses per year. These can be used at any time, including concurrently. See About EBL, EBL EBOOK LIBRARY, http://www.eblib.com/?p=about [https://perma.cc/2A3M-CXXR]. However, if the maximum number of uses is reached before the end of the year, the library must either suspend access to the book for the rest of the year or purchase an additional copy. EBSCO has recently introduced a competing model. See Acquisition Options, EBSCO EBOOKS, https://www.ebscohost.com/ebooks/acquisition-options [https://perma.cc/5T7C-DHCZ].

outright. On the other hand, a library saves money if only one short-term loan is used, and the book is never accessed again.

¶27 Given traditional patterns of book use in academic law libraries, it is possible, and perhaps likely, that a single user, by accessing the book several times during a semester, could trigger multiple short-term loans followed by a purchase. It is typical for faculty researchers as well as students writing journal notes or seminar papers to access the same materials repeatedly, over a long period of time. Knowing this, some libraries might decide to purchase books on the first use as an effort to limit additional loan/purchase charges. Another variable that affects cost and usage is the type of access that is purchased: some licenses permit concurrent use by multiple users; others are more limited, allowing access to the book by only one user at a time.

Access Rules

¶28 Libraries also must decide which users can access their e-books, particularly those in a DDA program, and how that access should be managed. The first question is particularly important for academic law libraries that are part of larger university library systems with shared catalogs. Will the law library allow non–law students or faculty to “purchase” books by accessing them? Or will access be limited to law students, faculty, and staff? Would limitations on access violate circulation agreements with other university libraries? If a similar system is used by the main university library, will law students be prohibited from accessing those DDA books?

41. Most suppliers do not give the standard library discounts to purchases under these programs, which means that a library would likely pay the full price of the e-book in addition to the cost of any short-term loans. The cost of e-books in comparison to print books varies greatly by publisher. Some charge the same list price, while others charge a large (200% or more) premium for e-books. A few anecdotal examples taken from YPB’s GOBI system on August 20, 2015, illustrate the differences: (1) Eileen B. Leonard, Crime, Inequality, and Power (Routledge 2015): Cloth $155; Paper $98.50; EBL Non-Linear Lending DDA $232.00; (2) Miles Jackson, Complicity in International Law (Oxford 2015): Cloth: $98.50; E-book (not DDA) $288; (3) Eric Berkowitz, Boundaries of Desire: A Century of Bad Laws, Good Sex, and Changing Identities (Counterpoint 2015): Cloth $28, EBL Non-Linear Lending DDA $27.44. (YBP GOBI records on file with author).

42. See Arndt, supra note 27, at 68.

43. This situation will be affected by how a library sets up short-term loan periods. If the loan is for fourteen days, multiple uses by a single patron during those fourteen days will not incur additional charges. Libraries can generally choose short-term loan periods of one, seven, fourteen, or twenty-eight days, again depending on the supplier. Each type of short-term loan costs a different percentage of the book price. See C. Derrik Hiatt, The Debate over Short-Term Loan Pricing, Technicalities, Sept./Oct. 2014, at 12, 12, https://wakespace.lib.wfu.edu/handle/10339/39474 [https://perma.cc/DV3P-T565]. The length of the short-term loan is chosen when setting up the DDA program and cannot be changed for individual books. Some publishers will make books part of a DDA program but will not allow short-term loans, so that the first use triggers a purchase of the book. See Nat’l Info. Standards Org., supra note 27, at 10.

44. Most publishers offer options for different types of licenses and base the price of the book on the use permitted. For example, the price for one concurrent user might be the same as the price for the print book, while the cost for allowing up to three concurrent users is some percentage higher. (For EBSCOhost, the cost is “typically 50 percent more.” Michael Kelley, Moving Beyond the NetLibrary Legacy, EBSCO Reshapes Its Ebook Platform, The Digital Shift (May 1, 2012), http://www.thedigitalshift.com/2012/05/ebooks/moving-beyond-the-netlibrary-legacy-ebSCO-reshapes-its-ebook-platform/ [https://perma.cc/NLN8-PVW5].
Many law schools allow alumni to use their library resources, even if alumni cannot check out materials. Those libraries will need to consider whether alumni will be allowed to access e-books, either while in the library or remotely, and if not, consider whether there are certain books that should be purchased in print for the use of alumni.

Libraries must also choose whether they will allow access to these e-books via IP address or will require individual users to register. A library that allows only its own faculty and students to use DDA books must determine how it can do this using the vendor’s registration technology.

Requiring registration for e-books adds an obstacle to access. Some users may not be willing to take the time to register in order to read an e-book: faculty become frustrated with the library when they must register and remember yet another login name and password. They may then request books in print or resent the library for impeding access to books. Students, on the other hand, are more likely to substitute a different, possibly less relevant, source for their research. Both are negative outcomes libraries should consider when selecting how access is controlled.

Goals of a DDA Program

Decisions on the factors described above are likely to be affected by the particular goals that a library has for its DDA program. Libraries must make their decisions based on what they want DDA to do for the library’s collection and why they believe the investment of time in designing the program is worthwhile.

There are a number of reasons why a library might decide to implement a DDA program. It may want to make a large number of e-books available to its users, more than it could ever afford to buy, or it might consider DDA to be a way of saving the time of collection development staff because marginally relevant items do not have to be identified and researched before purchase. The library may intend to continue buying as many or almost as many items as it did previously, while supplementing the collection with additional materials that will not be purchased unless used. Alternatively, the library may decide that with a limited budget it is best to purchase only books that it is sure will circulate at least once, and that the best way to do this is to let users choose books at the point of need. The library could decide not to purchase certain books that it would otherwise have bought and wait until the title is “requested” by being used. This second scenario is closer to the philosophy of “just in time” collecting that has been advocated by some.

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45. Some have argued that this eliminates the traditional role of librarians as experts in collection development, as well as being a bad practice for collection development generally. See Walters, supra note 3, at 205–06, as well as the discussion infra ¶¶ 56–57.

46. See D.R. Jones, Locked Collections: Copyright and the Future of Research Support, 105 LAW LIBR. J. 425, 428–29, 2013 LAW LIBR. J. 24, ¶ 6 (describing the concepts of “just in case” and “just in time” and how they apply to library collections).
Optimizing Decreasing Budgets

¶34 It is no secret that library budgets have been shrinking in recent years; this has certainly affected academic law libraries and can usually be attributed to the recent “crisis in legal education.”47 The number of law students has decreased, law schools are trying to make tuition more affordable, and library budgets have likely remained flat or decreased.48 At the same time, libraries find themselves having to pay higher prices for many materials.49 Cutting serial subscriptions is one way for libraries to deal with curtailed budgets. While many libraries have cut budgets by canceling print materials and relying on databases they already have (e.g., Westlaw, LexisNexis, Bloomberg BNA, HeinOnline, JSTOR), they may also look to see whether they can save money by limiting their purchases of books.

¶35 Even apart from the decrease in law school revenues, many library budgets are coming under stricter scrutiny. The law school administration may believe that with so much legal material available online it should not be necessary to spend as much on library collections.50 The focus on “practice-ready” graduates and the increasing prevalence of the idea that the value of education is determined by its ability to graduate students who can earn large incomes51 may lead some to conclude that libraries should not buy books that are not of practical use to current students or faculty.52

¶36 All librarians should be aware that some of their books never circulate,53 and it is tempting to think that the library could find a way to buy only books that


49. The AALL Price Index for Legal Publications does not cover books that are not supplemented, but prices for supplemented treatises increased 31.6% from 2010 to 2014, and all serials increased 42.5% in that same time period. The Consumer Price Index increased approximately 8% from 2010 to 2014. Am. Ass’n of Law Libraries, AALL Price Index for Legal Publications 2014 (2015), http://www.aallnet.org/mm/Publications/products/pub-price/price-index-2014.html (AALL membership required for access).

50. Even administrators who understand the cost of and need for both print and electronic legal materials can see that their libraries house large collections of books that are no longer being used and are likely to believe that at least some cuts in purchasing are possible.

51. See Frank H. Wu, Reforming Law Schools: A Manifesto, 46 U. TOLEDO L. REV. 417, 419 (2015) (“Almost all who call themselves consumers (and the families paying the bills) demand measures of job placement. They no longer believe, if they ever did, that critical thinking by itself is valuable.”).

52. See Candice Dahl, Primed for Patron-Driven Acquisition: A Look at the Big Picture, 24 J. ELECTRONIC RESOURCES LIBRARIANSHIP 119, 121 (2012) (“Growing cultures of assessment and shrinking budgets on campuses . . . have encouraged ‘bottom-line’ considerations . . . by administrators.”).

will eventually be used.\textsuperscript{54} DDA is one way to approach this issue. Because a book is not purchased from a DDA program until one or more users have looked at it, a library can ensure that it does not spend money for books that will simply sit on the shelf.\textsuperscript{55} Several university library studies have shown that the “cost per use” of a book decreases with a DDA program.\textsuperscript{56} Not only is purchasing more efficient because fewer unused books are bought, but the cost of the time spent by librarians selecting books is saved as well. In some instances, this can mean that fewer librarians are needed or that librarians could devote the time saved to other responsibilities. If a library’s main goal were to cut its budget, it could theoretically shift all or a large proportion of its purchases to DDA and stop buying books that are not being used.\textsuperscript{57}

**Increasing Choice for Users**

\section*{37} Another goal, not mutually exclusive from the desire to decrease unnecessary expenditures, would be to provide users with additional choices at a low price. If a library adds thousands of book records to its catalog—records for many times the number of books it could afford to buy—then its users will have a much wider variety of sources to choose from, at a presumably affordable cost to the library.\textsuperscript{58} This goal comes with a risk that users will take advantage of increased choice to greatly increase library expenditures by accessing large numbers of these books.\textsuperscript{59} One of the challenges of setting up a DDA program is balancing increased choice with budget constraints.

**Decreasing Interlibrary Loan Requests**

\section*{38} Another reason a library may like the idea of a DDA program is that the library believes that users who want a book not in the collection should not need to wait as long as it commonly takes to receive a book via interlibrary loan (ILL). If instead of requesting a book via ILL the patron could immediately have access to

\textsuperscript{54} The Utopian ideal of a library collection would be one that has all the materials users will use, now and in the future, and contains no materials that will never be used. Unfortunately, just like the idea of 100% precision and 100% recall in online search results, this is likely an impossible target. For those unfamiliar with the “precision/recall dichotomy,” it refers to the impossibility of retrieving results where 100% are relevant (precision), and the search has also retrieved 100% of the relevant results (recall). See Michael Buckland & Fredric Gey, The Relationship Between Recall and Precision, 45 J. AM. SOC’Y INFO. SCI. 12, 12 (1994) (“[A] trade-off between Precision and Recall is unavoidable under certain conditions.”).

\textsuperscript{55} See Edward A. Goedeken & Karen Lawson, The Past, Present, and Future of Demand-Driven Acquisitions in Academic Libraries, 76 C. & RES. LIBR. 205, 206 (2015) (citing studies on percentage of books in academic libraries that circulated, and a 2010 study estimating that the cost of maintaining a book on the shelf “could amount to over $140 per volume” over the long term).

\textsuperscript{56} Dewland & See, supra note 3, at 14.

\textsuperscript{57} See id. for a description of this type of program at the University of Arizona. The program is called On Demand Information Delivery (ODID) and used “as the primary acquisition method for both electronic and print content.”

\textsuperscript{58} But see Jean-Mark Sens & Anthony J. Fonseca, A Skeptic’s View of Patron-Driven Acquisitions: Is It Time to Ask the Tough Questions?, 30 TECH. SERVS. Q. 359, 364 (2013) (“The sheer number of titles potentially available as ebooks makes it extremely difficult for researchers who retrieve a large results list to discern what is truly relevant, quality information . . . . ”).

\textsuperscript{59} When DDA programs were first set up, this seemed to be a problem, but more recently libraries have learned how to set parameters to control costs. See Arndt, supra note 27, at 35.
the e-book, it would satisfy patron demand and at the same time decrease the amount of work required by ILL staff to borrow (and return) books (and possibly also decrease the number of ILL staff required). Decreasing ILL requests also lowers the shipping costs incurred by both ILL borrowers and lenders.

¶ 39 Even without a DDA plan, libraries often choose to buy rather than borrow a requested book. With the discounted pricing and fast shipping options available from Amazon and other services, purchasing a book not only can get it to users more quickly, it also avoids having to ask the patron to return the book quickly to the lending library, and has the additional benefit of adding a book to the library’s collection where it can be used by others in the future. Just as these services are used for print books, DDA can work the same way for e-books.

**Increasing Circulation**

¶ 40 A DDA program can also improve circulation statistics. The idea is less that the library will increase its circulation numbers in the aggregate (although with more books to choose from, that is certainly a likely outcome), but that there will be an increase in the percentage of books purchased that actually circulate. 60

¶ 41 Law libraries, though, are known for supplying personalized service to their users, particularly faculty, going above and beyond the level of service that can be provided by large university libraries. 61 This personalized service has meant that books are often purchased for the use of one faculty member, and large circulation numbers have never been considered a requirement for book purchase. 62 Thus, while much of the literature on DDA in general academic libraries includes increasing the number of circulations per book as a goal of the program, 63 that goal may not be as important for academic law libraries.

**Pay-Per-View for Journal Articles**

**Pay-Per-View Defined**

¶ 42 Thus far the discussion has focused on DDA for e-books. Law librarians have also been confronted in recent years with sharp increases in journal costs. 64

60. See Dahl, supra note 52, at 121 (citing numerous studies).

61. See Richard A. Danner, S. Blair Kauffman & John G. Palfrey, The Twenty-first Century Law Library, 101 LAW Libr. J. 143, 152, 2009 LAW Libr. J. 9, ¶ 52 (“The dirty secret is that law school faculty members demand and get far better library services than any other faculty members on campus. And that’s a major reason we have independent law libraries, so we can provide that type of high level service.”) (comment of S. Blair Kauffman).


63. See Dahl, supra note 52, at 121–22.

coupled with increasing interest among their users in journals from disciplines outside of law. Even with access to a larger number of journals through aggregating databases, often available as part of university subscriptions, most law libraries cannot afford to subscribe to every journal from which their users need articles. An alternative to subscriptions that has emerged with the advent of online journals is the ability to purchase individual journal articles. Initially at least, using this as a substitute for journal subscriptions appears to present the same issues as using DDA for e-books.

\[\text{¶}43\] One way to get an article from a journal to which the library does not subscribe is the traditional method of ILL. Another is for the library to purchase the individual article, using either the journal’s website or an aggregator site. With either of these methods, the library first obtains the article and then delivers it to the user. Yet a third method is to allow users to purchase articles directly, using a service such as the Copyright Clearance Center’s Get It Now or Elsevier’s Science Direct. To the user, the transaction is seamless electronic delivery, with the library paying the cost of the article behind the scenes. The second and third methods (library purchase for a patron and direct patron purchase with library funds) are referred to here as Pay-Per-View (PPV), a term that has become common in the general library literature.

\[\text{¶}44\] With PPV, delivery is almost immediate; there are none of the delays inherent in having another library search for and send an article, whether by e-mail, ILLIiad electronic transmission, fax, or U.S. Mail. PPV purchases are triggered only by users’ requests, which means that a library does not need to subscribe to an entire journal or database to obtain individual articles through the commercial market. In addition, services like Science Direct and Get It Now allow patrons to take actions that have immediate budgetary consequences without the library serving as an intermediary.

\[\text{¶}45\] If a library allows patrons to purchase articles without library mediation, from a user perspective the transaction is very similar to direct access to electronic...
journals via a library subscription: researchers find articles via a search in a catalog or discovery service, click on a link to the full text, and download the article. The “reality” of the library’s subscription to a journal (or lack thereof) would become apparent only if a user searched the library’s catalog to see whether the library subscribed to the journal. The same is true for the DDA model for e-books, where users also see no difference between e-books they download that have already been purchased and books for which their use triggers a purchase or short-term loan.

§46 In addition to eliminating the delay inherent in ILL, another advantage of PPV over ILL for many libraries is that it avoids copyright problems under the CONTU guidelines because PPV articles include copyright permissions and royalties. Libraries no longer need to keep track of how many articles they have borrowed from a particular journal and make decisions about whether they can borrow another article or now need to purchase a subscription.

§47 Libraries may now consider whether it is worthwhile to subscribe to marginally relevant journals, since it is easy to set up e-mail alerts for faculty when new issues come out, even for journals to which the library does not subscribe. A library can alert faculty of new journal contents and then purchase articles as needed. Over time the library could determine whether a subscription would be more or less expensive than individual article purchases. Working with faculty to determine the number of articles they found to be of interest in a specific journal would allow a library to make the subscription decision in advance, if it did not want to risk the possibility of spending more on individual article purchases.

§48 This too seems similar to DDA because DDA prevents a library from buying books based only on speculation that they may be used. Instead it allows users to make the decision to use the book before purchase, and also does not factor in the needs of future users.

Are DDA and PPV the Same?

§49 Given this similarity, does PPV have the same effect on collection development as DDA? Initially PPV’s use was only thought of as a replacement for ILL. However, as journal costs continued to increase and library budgets decreased, libraries began canceling subscriptions to expensive journals that they believe are not heavily used. Instead of subscriptions, they rely on purchase options for specific articles that are requested by users.

72. While a search to see whether a library has a specific journal, as opposed to an article, is common among librarians, it is questionable how many nonlibrarian users choose to find materials this way. My suspicion (admittedly based on experiential rather than empirical knowledge) is that the only users who search this way are those who were taught the method by librarians. Perhaps, with changing methods of access to articles and more options for PPV, reference librarians may want to change how they teach users to look for articles.

73. See Brown, supra note 69; see also Nat’l Comm’n on New Technological Uses of Copyrighted Works, supra note 66, at 54–55.

74. See Nat’l Comm’n on New Technological Uses of Copyrighted Works, supra note 66, at 54–55.

75. See generally Brown, supra note 69; Mindy King & Aaron Nichols, Pay-Per-Use Article Delivery at the University of Wisconsin-Stevens Point, Against the Grain, Dec. 2009–Jan. 2010, at 20, 20.

76. See, e.g., Rick L. Fought, Breaking Inertia: Increasing Access to Journals During a Period of Declining Budgets: A Case Study, 102 J. Med. Libr. Ass’n 192 (2014) (describing a pilot program in which the University of Tennessee Health Sciences Library canceled journals and replaced them with “tokens” for article access via Wiley’s PPV service; the token system was invisible to users).
Although DDA and PPV share many characteristics, as discussed below, there are enough substantial differences in their effects on library users that I do not believe they should be considered together. Articles are shorter, and electronic versions can be downloaded and easily stored and printed; journal publishers do not limit printing and downloading of articles by subscribers; and e-journal articles are almost always available in PDF format, with which users are already familiar. E-books, on the other hand, are almost never in PDF format, and many vendors limit the percentage of a book that can be downloaded and printed, even when the library “owns” the title.  

Because libraries rarely allow patrons to check out journal volumes, researchers are accustomed to making photocopies of articles—a format that is almost identical to the PDF they receive of an e-journal article. This allows them either to store the article online or print it and put it in a folder, just as they would if the library owned the print journal. The differing characteristics of e-books and electronic journal articles generally have meant that users, and libraries, appear more comfortable transitioning to electronic journals than to electronic books.  

And while many still advocate for print books for both usability and preservation purposes, no one seems to be lamenting the replacement of print journals with electronic versions. There are a number of reasons for this: (1) As noted above, format issues for academic e-journals are settled. (2) Electronic journals make searching much easier. Gone are the days when users must consult an index to find articles within a journal; you can search a journal database or a web search engine like Google Scholar to easily locate articles on your topic. (3) Once purchased (however purchase is transacted, whether via a database, a journal subscription, or an individual PPV article purchase), users have full rights to download and print the article, and reuse it as frequently as they like; this is not yet the case with e-books. (4) Journals not subscribed to now are more likely than books to be available for purchase in the future. (5) Many users appreciate the ability they have with print books to go back and forth easily between chapters or sections and see multiple parts of the book, or even multiple books, at one time. Because articles are relatively short, users do not seem to need to do this as frequently.  

All of the above point to a conclusion that, despite superficial similarities, librarians should not consider PPV and DDA to be the same when thinking about their use in an overall collection development plan. DDA is likely to have many effects on the library’s collection that do not need to be considered if a library chooses to use PPV for journal articles.

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77. This is not the case when a library actually owns the book rather than purchasing a perpetual license for it. Jones, supra note 46, at 449–50, ¶ 45 (discussing the “Douglas County model” where libraries buy and host e-books files on their own servers).  

78. See Jeff Staiger, How E-Books Are Used: A Literature Review of the E-Book Studies Conducted from 2006 to 2011, 51 REFERENCE & USER SERVS. Q. 355, 359–60 (2012). This article also notes that compared to the “liquidity” of electronic journal articles, users find printing and downloading barriers with e-books to be frustrating. Id. at 359.
Possible Effects of DDA on Law Library Collections

Effect of Selection by Individual Users

¶54 DDA provides advantages to library users and to the library itself. A major advantage for users is that they can choose the books they need rather than being limited to those preselected by librarians. Savvy researchers have always looked beyond the library’s online catalog, often receiving recommendations for new books of interest from colleagues or publishers. The larger universe of book records in the online catalog with a DDA program allows for easier searching, without requiring searches of separate sources like WorldCat and the additional step of asking the library to either buy or borrow the book. This makes it more likely that library users will find the books recommended to them to already be in their library catalog and that a key word search of the catalog will retrieve more relevant books.

¶55 DDA also has the advantage of library preselection of the book records that are added to the catalog, so that users see books only on subjects thought to be appropriate for that library. Books included in the DDA program can be publicized via new books lists or other current awareness programs, again increasing their visibility to researchers. Unless a library chooses a very restrictive approach to its selection profile (e.g., including only books it would have purchased outright if there were no DDA program in place), the system provides researchers with a wider choice of books than previously existed in the library’s catalog and provides this increased choice without the library paying for books that are never used.

¶56 Some, though, argue that a DDA program “is likely to diminish collection quality unless librarians implement safeguards to maintain their central role in book selection.” They believe that allowing collections to grow via DDA will cause a poorly developed collection because the collection will consist of books that have been chosen by individuals interested only in their own immediate research needs. For example, according to William Walters, DDA is likely to cause “at least six problems,” four of which relate to collection development:

- failure to distinguish between students’ immediate desires and their long-term educational needs
- failure to make full use of librarians’ knowledge and expertise
- failure to represent the full range of library stakeholders, such as future students and faculty
- systematic and idiosyncratic biases in selection . . .

79. See Dahl, supra note 52, at 122 (“Many selections made by librarians are necessarily based on speculation and often fall wide of the mark.”). Of course, there is some preselection of books that are included in the DDA profile. Even a very extensive selection of books is limited by publisher, supplier, type (e.g., adult vs. juvenile literature), and other broad categories.


81. See, e.g., Sens & Fonseca, supra note 58, at 365, 369; Walters, supra note 3, at 204–06. Most selection, of course, is done by one or two individuals, but when those individuals are librarians, we presume they have the expertise to consider a wide range of factors.

82. Walters, supra note 3, at 209.
In answer to this, we can note that academic law libraries have always routinely purchased books requested and used by only one faculty member. And some studies show that books chosen via a DDA program are similar to those selected by librarians. However, arguments for maintaining librarian-selectors, at least for some portion of the collection, persist. For example, it has been argued that “the whole basis of the conception of libraries is the altruistic one of sharing resources for the general good at the time of need, be it today or in 20 years’ time.”

Though there is a possibility that collections “developed” by individual users may be skewed toward the specific needs of current users, I believe this outcome can be avoided if libraries follow the suggestions discussed here and in the section on designing an optimal DDA program. In assessing the effect of DDA on its collection, each library must tailor its plan to its purpose and mission. Perhaps a library that considers itself to be a “research collection” needs to spend more time pursuing “balanced” collection development, while a library that is simply trying to serve the research needs of current users can depend more on DDA.

Libraries also must be aware of which books are available through a DDA plan compared to the universe of books available in print and electronically. Many books are not available as e-books. And even if publishers offer an e-book version, they may not make that e-book available for DDA. Thus, libraries that rely too much on DDA for collection development are likely missing out on items that they should be adding to their collections.

Libraries must also ensure that their catalogs contain records only for materials that are still available. Many libraries do this by deleting all DDA records for materials that have not been accessed after a specified length of time.

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84. See, e.g., Lisa Shen et al., Head First into the Patron-Driven Acquisition Pool: A Comparison of Librarian Selections Versus Patron Purchases, 23 J. ELECTRONIC RESOURCES LIBRARIANSHIP 203, 216 (2011).
86. See infra ¶ 82.
87. See Michael Whiteman, Book Burning in the Twenty-first Century: ABA Standard 606 and the Future of Academic Law Libraries as the Smoke Clears, 106 LAW LIBR. J. 11, 32, 2014 LAW LIBR. J. 2, ¶ 65 (“It seems that the ABA Standards are becoming flexible enough to allow different academic law libraries to collect and organize their information in a way that could vary from collection to collection based on the needs of the particular institution.”).
89. See Esposito, supra note 32.
90. This is where a system such as that used by YBP can be very helpful. When book notices are sent for approval, the system indicates (1) what versions of a book are available (e.g., hardcover, paperback, e-book), and (2) whether the e-book is part of a particular vendor’s DDA program. Librarians can then choose which format to purchase, and if there is an e-book that is available for DDA but that has not yet been added to the library’s DDA program, it is possible to “Request DDA” and ask that the record be added to the library’s catalog.
91. See, e.g., Dennis Dillon, Texas Demand-Driven Acquisitions: Controlling Costs in a Large-Scale PDA Program, in PATRON-DRIVEN ACQUISITIONS: HISTORY AND BEST PRACTICES, supra note 4, at 157, 163 (stating that the University of Texas chooses to remove titles “that have received no use over the past twelve to twenty-four months”).
before they become unavailable in any format. This is less of a problem than in the past, as electronic files and Internet-based used book dealers make older books easier to obtain, but it still is possible for a library to find it difficult to purchase an older book in new or as-new condition.  

¶61 Collection development is a difficult skill for librarians to practice well but one they have fought hard for the right to exercise. Rather than abandoning their role in collection development to technology, librarians must find a way to integrate technology into the collection development process. Giving up collection development responsibility impacts not only librarians, but library collections as well.

Effect on Future Researchers

¶62 Librarians must also consider the effect of DDA on future scholars and scholarship. Most libraries have had DDA programs for only a few years, and there is no guarantee that the companies supplying the records and the books will still be around ten, twenty, or fifty years from now.  

¶63 Having records in the catalog for books that have never been purchased and are no longer available via the link in the catalog is another problem that must be faced, and it will likely become more pressing the longer that a library has a DDA program. Libraries do not want users to become frustrated by using a catalog riddled with nonfunctioning links to e-books.  

¶64 To examine how future researchers may be impacted by DDA, it is helpful to consider three possible scenarios: (1) the library ceases having librarians select books and relies solely on a DDA program; (2) librarians continue to select some books, but forgo all “borderline” purchases in favor of a DDA; (3) the library selects and purchases books according to its existing collection development policy but supplements its collection with a DDA plan so users can obtain books that normally would not have been bought. It seems clear that in the first scenario future scholars are likely harmed because the library will have fewer books, and records for books it might have purchased without a DDA program may no longer be in the catalog. In the third scenario, they are not harmed by DDA because the library is likely to have more books than it would have in the past.

¶65 The most interesting, and perhaps most common, scenario is the second one—the library purchases fewer books than it would have, while adding more records to its catalog than it would have. Here there is a balancing act between the direct purchase of those books thought to be essential and less essential books that

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92. Our library has not had good luck purchasing “as new” or “excellent” condition books from used book dealers; most of the time we are forced to return them when they turn out to be heavily highlighted or otherwise marked up.

93. For example, NetLibrary began supplying e-books to libraries in 1999 via an early DDA program. The company declared bankruptcy in 2002 and was acquired by OCLC and later by EBSCO. Polanka & Delquié, supra note 4, at 119–21. It appears that these books and book records are still available to libraries. See Kelley, supra note 44. If the company had not been bought, we cannot know what the situation would be for either the records in library catalogs or the e-books that had been purchased by libraries, although if the company participated in an archival service such as CLOCKSS, the e-books would still be available via that system. See infra ¶ 70.

94. Many vendors send out “delete” files when books are removed from the DDA plan, if those books have not yet been purchased by the library. Libraries must be sure to run these files to delete outdated records for e-books.
are only made available for purchase by users through DDA. While this seems like the perfect solution, and in fact is the one I would recommend, it still requires thoughtful implementation. Just as selection of treatises is difficult and complicated, it is hard to know which books are “essential.” Still, I believe it makes sense to use this model when a library has a decreased budget or if money is repurposed for something that the librarians believe to be more valuable to users, such as additional databases or journal subscriptions.

¶66 There is no right answer to what the best solution is for future scholars, but the question is one that libraries must focus on as they decide whether and how to implement a DDA program.

Effect on Permanence of Access

¶67 Two issues affect permanence of access to books purchased through DDA. The first is that the book is almost always licensed, albeit with a “perpetual license,” rather than being truly owned by the library.\(^\text{95}\) Librarians should think about the effect an increased emphasis on licensed e-books will have on the complicated question of “ownership” of electronic resources—that is, whether permanent access or license to a book or journal article confers the same benefits to the library as physical ownership and how access is implemented in various publisher licenses.\(^\text{96}\)

¶68 Most licenses currently prohibit interlibrary loans, and the choices that an academic law library makes on this issue will have an effect not only on peer institutions that might need to borrow a title but on law firm, government, and other law libraries that may be relying on their ability to borrow titles from academic law libraries. As libraries decrease the number of books they purchase because of budget constraints, DDA programs for e-books likewise decrease the ability to borrow books for users from other libraries.\(^\text{97}\) The law library community as a whole should consider the effects of e-book licensing on its users and the effects of all collection development decisions, including DDA.

¶69 The second issue regarding permanence of access is that even if a book record is in the catalog and the e-book was purchased, the link to the book may no longer work because it depends on continuing access to the e-book supplier’s website. If, for example, the publisher or supplier goes out of business, how will this affect access to the e-book?\(^\text{98}\)

¶70 To avoid this potential problem, libraries should negotiate with vendors regarding permanent access to materials if the online provider is no longer in existence. This is where a service like LOCKSS or CLOCKSS can prove useful. LOCKSS stands for “Lots of Copies Keep Stuff Safe.” Developed at Stanford University, LOCKSS is a system that allows libraries to preserve electronic content in the event the publisher’s site is unavailable.\(^\text{99}\) CLOCKSS is “Controlled LOCKSS,” a nonprofit organization that libraries and publishers can join and that preserves electronic

\(^{95}\) See supra ¶ 50 and note 77.


\(^{97}\) See generally Jones, supra note 46.

\(^{98}\) See the discussion of NetLibrary supra note 93.

content if that content is no longer available from a publisher. CLOCKSS “preserves publisher titles in a secure dark archive,” and they are not available until there is a “trigger event such as business failure or a catastrophic occurrence.”

¶71 The question of e-book preservation was recently addressed in a report by the Digital Preservation Coalition. Although this report discusses the questions more than it does proposed solutions, it still serves as a useful introduction to the problems facing e-book preservation. It contains case studies of Portico and HathiTrust, among other organizations involved in digital preservation. E-book publishers are beginning to take preservation seriously and to add their books to archives such as CLOCKSS.

**Effect on the Requirement for a Collection Development Plan**

¶72 The ABA expects libraries to plan for a balanced collection that meets the research needs of students and faculty, and it mandates that each accredited school’s library have a written collection development plan. There is little guidance from the ABA as to what should be included in a collection development plan, however. It is an open question as to whether a collection developed only through individually requested purchases by faculty and students meets the requirement for a collection development plan.

¶73 It could be argued that a library that buys every book (but only those books) requested by faculty or students is meeting its users’ needs, but it is hard to see the difference between that library and one that borrows books only as users request them. This “plan” puts the burden on students and faculty to seek out relevant books and then wait for them to be purchased and shipped to the library. It is unlikely that this plan would meet the requirements of the ABA standards. Whether the immediate response to faculty and student requests via DDA for e-books would compel a different decision by the ABA is unclear. One sticking point is that not all, or perhaps

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100. According to its website, “CLOCKSS is a not-for-profit joint venture between the world’s leading academic publishers and research libraries whose mission is to build a sustainable, geographically distributed dark archive with which to ensure the long-term survival of Web-based scholarly publications for the benefit of the greater global research community.” CLOCKSS, https://www.clockss.org/clockss/Home [https://perma.cc/8N4A-TZGY].


104. “The law library shall formulate and periodically update a written plan for development of the collection.” AM. BAR ASS’N, supra note 7, at 42 (Standard 606(d)). This requirement originated in the 1977 standards. Theodora Belniak, The History of the American Bar Association Accreditation Standards for Academic Law Libraries, 106 LAW LIBR. J. 151 n.82, 2014 LAW LIBR. J. 9 n.82. I was unable to uncover any information about the reason for the added requirement.

105. Interpretation 606-4 states that “Standard 606 is not satisfied solely by arranging for students and faculty to have access to other law libraries within the region.” AM. BAR ASS’N, supra note 7, at 43. Just as requiring students and faculty to use other libraries is not permissible, requiring them to borrow all their books would appear to violate the standards.
even most, books that users would want are likely to be available through the DDA program. Given that limitation, a library would almost certainly need to supplement DDA in some way to meet ABA requirements.

Effect on the Collection Development Process

74 DDA allows libraries to defer some or all of their selection decisions to users and may therefore make selection less time-consuming for the librarians. The arguments for and against this are similar to those regarding approval plans for book purchases. Both require a lot of time to set up and monitor on an ongoing basis, which may or may not be made up for in the time saved in collection development decisions. And even more than approval plans, DDA requires constant oversight by library staff to ensure the collection continues to grow in support of the library’s mission.

75 To maintain a balanced, useful collection, libraries may decide to purchase books they consider to be important for current researchers and those likely to be of use in the future, and allow decisions about more marginal or tangentially relevant items to be purchased only if users choose them from a DDA plan. While eliminating some collection development decisions, a DDA program still requires that a library consider whether and how that program will affect its collection and what it can do to ensure the collection remains a “well-selected lot.”

76 Will DDA change current practice and move collection development not back just to “administrator-patrons” but to all library users? If it does, what will this mean for our collections and our role as librarians? This article does not focus on the effects of DDA on technical services functions, but these are sure to be significant. Not only does DDA affect purchasing and processing of books, it has the potential to completely change the role and responsibilities of collection development and acquisitions librarians as well as staff who order and process books, whether print or electronic. Libraries and librarians worried about these effects must carefully craft their DDA programs to maintain the type of library their institutions require.

Effect on Library Budgets

77 Most of this article has been written with the assumption that a library can design its DDA program to control the budget and, at least in most instances, decrease its spending on books. Unfortunately, though, it can be complicated to know how much money will be spent on a DDA program. Much depends on how frequently books are used by researchers, the cost of those books, and the library’s decisions on duplication of format, number of copies purchased, and so on. A library that uses DDA for casebooks and study guides, as well as other popular titles, is likely to spend much more than one that limits the DDA program to scholarly monographs of interest to faculty and students writing research papers. Decisions on whether users from outside the law school community can access books in the DDA program will also have a significant effect on cost.

106. See Bluh, supra note 22, at 92–93 (arguing that the costs of outsourcing selection and processing may outweigh the time saved by library staff).
107. Jeffrey, supra note 17, at 408.
Libraries that need to control costs may want to start conservatively and adjust their profiles after the program has operated for six to twelve months. Libraries that value increased choice and have fewer spending limits may initially provide for a broader collection accessible to a larger pool of users.

Designing an Optimal DDA Program

The judicious use of DDA for e-books has real potential for allowing law libraries to do more with less. To avoid the main negative consequences discussed above (loss of control over collection development, runaway budgets, privileging the short-term needs of current users over the longer-term needs of scholars and researchers, and lack of reliable permanent access), law librarians must think carefully about how to proceed with these programs.

It may be worthwhile here to briefly describe how we have set up our program at the Brooklyn Law School Library and the effect it has had on the library collection and budget over the past two years. We implemented our program conservatively, in that we did not include titles for DDA if we owned them in print, and we included back files for only the two previous years. We used a modified version of our print book selection profile from YBP but narrowed it to eliminate certain books (e.g., study aids) and did not add e-book titles that cost more than $250. We signed agreements with two aggregators, EBL and EBSCO, with EBL as our preferred provider because of its nonlinear lending option.108

Once the program was implemented, we could see in the GOBI system which book records had been added to our catalog through the DDA program; we did not purchase those titles unless we believed they were “essential” to the collection, either for current or future researchers. This had the immediate effect of substantially decreasing our spending on books. Use of the e-books in the DDA program, though, has been quite low.109 Rather than figuring out ways to contain costs, as we thought we might have to, we are now concentrating on promoting our e-books to students and faculty.

Given our experiences, studies in other libraries, as well as the potential effects on collections discussed above, here are some ways in which I believe law libraries can implement DDA without negatively impacting researchers now or in the future.110

108. See supra note 39 for a description of nonlinear lending.
109. There are many possible factors, alone or in combination, that could be causing this: (1) these titles are ones that never would have been used if purchased, and the library was purchasing books unnecessarily in the past; (2) users do not like e-books but do not make the effort to request the book in print; (3) users no longer use books for research, preferring shorter journal articles; (4) users do not look in our online catalog when researching. Our experience may not be typical for academic law libraries, and things may change as e-books become more accepted. Certainly university libraries have seen much greater use of their e-book collections. See generally Steven B. Carrico et al., What Cost and Usage Data Reveals About E-Book Acquisitions, 59 LIBR. RESOURCES & TECH. SERVS. 102 (2015).
110. None of these ideas are original with me. For other good sources of recommendations for a DDA program, see NAT’L INFO. STANDARDS ORG., supra note 27, at 31–35. See also Karin J. Fulton, The Rise of Patron-Driven Acquisitions: A Literature Review, 51 GA. LIBR. Q., iss. 3, art. 10 (2014), http://digitalcommons.kennesaw.edu/glq/vol51/iss3/10 (summarizing and citing articles on the advantages and disadvantages of DDA programs and how to best set up a program for your library).
Think through your DDA program carefully before signing with vendors. Be sure you understand your goals—the library should have clear goals for whether it wants a program that leans toward “more choice” or “less money spent” or a balance between the two. Monitor and tweak what is in your DDA profile to ensure the collection does not develop contrary to your library’s goals. This should involve looking closely and on an ongoing basis at what is being added to the collection.  

Be sure you understand the rules governing ownership/licensing, lending, and printing. You may want to purchase books either in print or without lending restrictions if they are books that you believe will be of long-term interest to researchers at your library or other libraries you want to support. Consider alumni use of books and whether your license permits them to access e-books when not physically in the library.

Determine the status of purchased books if the DDA vendor goes out of business. Most contracts will guarantee you the rights to the e-book files, but, depending on the format, actually accessing those files without vendor software may be problematic. Perhaps select only vendors who belong to CLOCKSS or another digital preservation program.

Even if you defer most decisions on book purchases to a DDA program, periodically survey the collection to make sure the library is buying the most essential books. Continue to purchase some books directly if you think permanent access is needed for future scholars. It is probably wise to assume DDA books you have purchased (and definitely the records for books that have not been purchased) may not be available from the e-book aggregator fifty (or even twenty) years from now and collect accordingly.

Ensure you buy materials in formats that users want and will use. For example, if you have faculty with a strong preference for print, offer to buy duplicate print copies of books when requested.

Ensure that your collection development processes are set up to deal with books purchased in a variety of ways. If you purchase some books in print, purchase some via DDA, and have others available through a subscription service like Oxford Scholarship Online, you must have processes in place to manage duplication issues and decide when to purchase in a particular format and whether the library should own books in multiple formats.

111. For example, at Brooklyn Law School we noticed that a year or more after our program began, law-related books in the “Dummies” series were being added to our catalog, and we had to request a tweak to our YBP profile to eliminate them.

112. See Sallie Smith, Susanna Leers & Patricia Roncevich, Database Ownership: Myth or Reality?, 103 LAW LIBR. J. 233, 238–42, 2011 LAW LIBR. J. 15 ¶¶ 14–24 (discussing what happened when their library took over hosting of Gale’s U.S. Supreme Court Records and Briefs database).

113. See supra ¶ 70.

114. Given the current nature of technology, it is still risky to assume that an electronic version of a book will be available and usable in fifty years. In our library, if we think a book will have real “staying power,” we purchase a print copy. See also Bird, supra note 85.

115. When the DDA program began at Brooklyn Law School, we informed faculty that if they saw e-books in the catalog but preferred to use the book in print, they should let us know, and we would buy the print version. As far as I am aware, this has not yet happened.
• Do not forget about your DDA profile once it is set up. Continue to monitor what books are being added, which books and what percentage of them are being used, and what effect the program is having on the library’s budget.

**Conclusion**

¶83 DDA offers law librarians a new technology for collection development. It is important for us to implement this technology in ways that enhance rather than impoverish our collections.116 This means ensuring we consider the long-term effects of DDA on current and future researchers—probably by supplementing it with outright purchase of a limited number of print or electronic materials. Libraries must also consider the “unknown unknowns”117 and not rely on a DDA program to alert them to all books, since many books are not available via DDA.

¶84 DDA can be a way to save money on purchases, but the goal for the collection should remain as it always has been for libraries—to satisfy the needs of current users while ensuring that future users will have the materials they need. A DDA program should be seen as just one more tool that allows libraries to do this while managing flat or decreasing budgets. Just as libraries make decisions about whether to cancel individual subscriptions and rely on aggregating databases, decisions about which purchases to defer to a DDA model must be made with an awareness of all the possible effects, both current and future, on the library’s collection.


Where does the phrase “blackletter law” come from? Chasing down its origins uncovers not only a surprising turnabout from blackletter law’s original meaning, but also prompts examination of a previously overlooked subject: the history of the law’s changing appearance on the page. This history ultimately provides a cautionary tale of how appearances have hindered access to the law.

Introduction

§1 It is a legal term of art so ingrained in the psyche that a lawyer uses it without thinking. Practically from the moment of crossing a law school’s threshold,
new law students bump up against that peculiar turn of phrase, “blackletter law,” and quickly internalize its meaning of “basic principles of a subject in the law.” Lawyers long out of law school depend on it as a stock phrase in their practicing vocabulary, all the way up the ranks to U.S. Supreme Court Justices. But where does it come from? For its historic origins, Black’s Law Dictionary provides a succinct summation: “the law printed in books set in Gothic type, which is very bold and black.” From this definition, a conundrum emerges—“blackletter law” intimates Gothic-ness, but no lawyer uses Gothic today. What happened to the original blackletter law? Investigating this disappearing act uncovers not only a surprising turnabout from blackletter law’s original meaning, but also prompts examination of a previously overlooked subject, the history of the law’s changing appearance on the page.

§2 Consider the obvious: a literate person today can read and write without conscious effort, no matter the subject and no matter the level of understanding. While even the literati may dismiss Finnegans Wake as “unreadable,” they would still find the letters on the page decipherable. And while we modern types produce chicken scratch signatures or find ourselves all thumbs when texting with a smartphone, in the main, handwriting is a basic skill acquired in one’s tender years, with typing not too far behind.

§3 Can literate people today read and write this? The change in appearance jars the eyes. Writing in this style by hand would be all but impossible. If reading meant wading through, never mind writing, pages upon pages of densely packed letter shapes like this, one would quit post haste. The look of letter shapes—whether of handwritten, print, or digital origin—either facilitates or impedes a reader’s progress and the production of texts.

§4 When it comes to choosing letter shapes, lawyers today have no shortage of options. No longer constrained by typewriters, lawyers, along with office workers everywhere, can pick from a multitude of fonts that come part and parcel with writing software; they can even design their own. But instead of lawyers being their own font developers, by and large they have stuck to the familiar. In the face of this conservatism, a small but steady stream of practical writing on the law’s visual side,
down to the level of letter shapes, has been percolating over the past decade or so. Even courts are having their say via court rules.

¶5 Whatever the exact recommendations, all of these writings and rules consider it a given that a lawyer’s work should be legible, clear enough for a reader’s easy continuous reading. Even lawyers who do not know a monospace from a serif would endorse the aim of legibility if they gave it any thought. While there is always room for improvement, the principle that the law is and should be as legible as any other subject is shared by lawyers and laypeople alike.

¶6 “Legibility of the law” carries an axiomatic ring to it, but it was not always so. Quite the opposite, in fact. The law’s illegibility to vast swaths of otherwise literate people proved a recurring stumbling block over the ages. It so happens that the letter shapes that proved problematic to read and write sprang from a well of blackletter—variously spelled “black letter” or “black-letter” and what we today call Gothic. Investigating the disappearance of Gothic letter shapes necessarily hinges on understanding the history behind the law’s visual appearance.

¶7 The inconceivability of Gothic forms today for everyday use—save for the occasional diploma or Washington Post masthead—is the product of a signal turn of events centuries ago. During the Middle Ages, Gothic reigned as the dominant letter shape in Europe, including England, birthplace of the common law. The circumstances then were the reverse of the present, with the literate reading Gothic without a moment’s thought. During the Renaissance, Roman letters supplanted Gothic in England. Why? One style of letter form is not intrinsically better than another.


8. See Miles A. Tinker, Legibility of Print (1963), for a classic work on legibility. Tinker defines legibility as “concerned with perceiving letters and words, and with the reading of continuous textual material.” Id. at 7.

9. John Carter & Nicolas Barker, ABC for Book Collectors 115–16 (8th ed. 2004); see also Alexander Lawson, Anatomy of a Typeface 16 (1990) (cautioning that there has not “been agreement concerning the numerous appellations given to the letter form: in addition to black letter, it has been called gothic, text letter, textur, textura, English, and Old English”). How any given hand or type fits within the larger Gothic category is usually open to multiple interpretations as “even paleographers and bibliographers have always found themselves at odds on the matter.” Id.


12. Zachary Lesser, Typographic Nostalgia, Play-Reading, Popularity, and the Meanings of Black Letter, in The Book of the Play: Playwrights, Stationers, and Readers in Early Modern England 103 (Marta Straznicky ed., 2006). However, it has been argued that Roman capital or uppercase letters were superior to Gothic; Gothic capital letters did not have a standardized appearance and were not
“largely a matter of culture and experience.” In brief, English culture changed, the look of English texts changed along with it, and society’s common experience went from reading Gothic to reading Roman letter shapes.

¶8 This course of events is not surprising, even to someone unacquainted with the particulars of paleography and the history of typography. What is surprising is that Gothic persisted in the law in spite of the difficulties it caused for people reading and writing the law. Laypeople and ultimately lawyers themselves shied away from Gothic legal texts, finding them fraught with “terrors” that reduced them to tears of frustration. Likewise, laypeople and lawyers, having relied on the physical production of law by others, found themselves at the mercy of highly trained specialists.

¶9 The persistence of Gothic’s increasingly unintelligible letter shapes hampered access to the law in striking ways. Legal documents sowed confusion both inside and outside the courtroom. With case reports and legal standard-bearers such as Coke upon Littleton appearing in Gothic, aspiring lawyers “were drawn off from the task, and failed in attaining the profession.” Statutes proved inscrutable to England’s subjects gazing on the law that governed them. Legislation that they themselves had drafted confounded lawmakers in Parliament.

¶10 Why did English law retain Gothic letter shapes, even after all other subjects had moved on to Roman letters? Gothic’s trajectory parallels to some extent that of law French, a learned language of lawyers, but that peters out as a false lead. Gothic did not march in lockstep with the more limited scope of law French (used mainly in case reports after it ceased as a spoken language), and Gothic in fact outlasted the use of law French. Instead, Gothic’s resilience lay in the fact that it had come to symbolize the law of England itself. Decoupling the law from its accustomed appearance proved a hard bond to break. Moreover, a range of members in the legal community carried a vested interest in using letter shapes the writing and reading of which they monopolized. When in the mid-nineteenth century Gothic finally conceded the field to Roman, its end licensed not a mere change in fashions but a leveling of the playing field in accessing law. We take it for granted today, but we are all the beneficiaries of the unspoken consensus that emerged: anyone who can read and write can read and write the law.

considered to lend themselves to making Words. Harry Carter, A View of Early Typography: Up to About 1600, at 29, 46, 53 (1969). It has also been argued that Roman was relatively more legible in smaller sizes. Thomas Middleton and Early Modern Textual Culture 202 (Gary Taylor & John Lavagnino eds., 2007).


15. 3 William Blackstone, Commentaries *318.


The first part of this article is descriptive: after introducing concepts from the field of bibliography, it lays out what the law looked like in handwritten and printed form, and offers a short history of each. It then surveys the historical record and gathers the evidence that both lawyers and laity found Gothic literally off-putting to read. The next part explores how Gothic’s associations with English national identity, combined with the vested interests of clerks, printers, and lawyers in Gothic letter shapes, led Gothic to last longest in the legal arena. The article then traces the rise of the modern meaning of blackletter law.

What the Law Looked Like: The Lay of the Land

In considering what the law has looked like over time, it is illuminating to approach works of yesteryear from the perspective of bibliography—“the systematic description and history” of books or, more broadly, texts. The physical aspects of any given text play a role in its overall import, acting as “semiotic codings.” As one literary scholar notes, the choices made by a text’s producers and readers put on permanent display that era’s “economic, social, political and cultural contexts and conventions.” Historic texts that have survived the ravages of time are a wind-fall by which to assess an earlier age and a reference point for gauging the way our own has taken shape.

Turning to legal texts in particular, we discover that they have their own role to play in revealing an era’s culture, both in the law and at large. Although the look of letter shapes is only one factor in a text’s physicality, their appearance also affects a text’s “reception, history and interpretation.” Letter shapes assume even greater importance in the law since legal texts, whether of primary or secondary authority, are in general devoid of anything but words. Taken together, letter shapes in legal texts have played an outsized role in the history of the law that merits separate consideration.

Handwriting

As the law developed in the Middle Ages, so too did handwriting in the law become increasingly distinct and specialized. Gothic was the order of the day, hence Gothic forms governed the different strands of legal handwriting that arose. The
initial impetus for distinct legal hands was practical in that it distinguished one center of medieval government administration from another. Three main bodies existed: the law courts, Chancery, and the Exchequer. The law courts were the common law courts of Common Pleas and King’s (or Queen’s) Bench. Chancery produced charters and writs, while the Exchequer dealt with revenues. Each body developed its own “departmental set hand.” Given these departments’ narrow goals and the medieval reality that only a small number within society could read and write, these set hands did not concern themselves with legibility other than to an insular group. They were all “the products of a more or less self-conscious search for distinctiveness” whose “highly mannered style was completely divorced from the circumstances of everyday life.” The end result was a group of hands nevertheless united by a shared administrative quality to which the literate became accustomed.

¶15 Court and chancery hands proved the most pervasive of the three. Court hand matured into a separate hand, along with the other departmental set hands in the fifteenth century, with the emergence of a class of professional clerks for court business. Despite court hand’s inward-looking origins, its use spread outside the courts for legal documents generally, such as deeds, memoranda, and commonplace books. Using court hand became one of the “immutable requirements of the common law,” and as far back as 1588 a sheriff was fined for producing a writ in a more ordinary hand. For its part, chancery hand was used for “all instruments under the Great Seal, such as the engrossments of royal letters patent and original writs” and in Chancery enrollments.

¶16 Other types of Gothic that played a limited but key role in the look of the law down through the ages were the hands used in Parliament for engrossing and enrolling legislation. The exact names for these hands vary over time and from source to source, but a Gothic quality remained indelible. Clerks used an engross-
ing hand to draw up a copy of a bill after it passed one chamber of Parliament before being sent on its way to another. An “engrossing hand” refers to the action of creating a fresh, clean copy of a document.\textsuperscript{33} The Gothic style of handwriting combined with the action of engrossing created an “engrossed bill.” After an act passed both houses of Parliament, clerks would then produce an “enrolled” version, again in Gothic style.\textsuperscript{34}

\textsection{17} As creatures of the modern age who take pride in our own distinctive scrawls\textsuperscript{35} and would have trouble forging anyone else’s, we assume legal hands looked the way they did because that was the only style of which a person was capable.\textsuperscript{36} Yet just as modern writers mix in \textbf{bold}, \textit{italic}, or ALL CAPITALS within a text to convey various gradations in meaning, people of past eras wrote in different styles depending on the context.\textsuperscript{37} The foremost consideration in writing was for a person to write in the hand appropriate to the context, not in the only hand he could manage.\textsuperscript{38} The choice of a law hand enabled a creator to signal a text’s legal nature. Legal hands, and hence demand for writers skilled in such hands, continued even after the invention of printing. While the exact form of the law’s hands evolved over the centuries, a Gothic quality remained constant and served as a unifying thread over the ages for legal matters.

\textbf{Print}

\textsection{18} One word that is notably absent thus far is “blackletter.” Although blackletter’s meaning would later broaden to designate any form of Gothic, printed or handwritten, it is the invention of printing, coinciding with the changing tastes of
the Renaissance, that first gave rise to the word. When Johannes Gutenberg invented movable type around 1450 in the German city of Mainz, he opted to make the final product of his invention resemble manuscripts—handwritten texts. At that time, manuscripts of volume length appeared in a style of Gothic known as “book hand,” and Gutenberg designed his type accordingly. The final appearance of letter shapes on a printed page, although physically cast in a type foundry worlds away from a scribe’s pen, served as visible proof that print equaled, if it did not surpass, handwriting. Gutenberg’s decision enabled printed books to continue in Gothic form, a reassuring show of continuity for what was otherwise revolutionary technology.

¶19 Meanwhile, in Italy, humanists in the course of rediscovering the classical past “rediscovered” ancient Roman letter shapes. The humanists’ new takes on old styles became known, confusingly enough to us in the present, as *littera antiqua*, rendering Gothic *littera moderna*. As printing took off in the late fifteenth century, humanist works started to appear in *littera antiqua*, today known in English as Roman type.

¶20 The visual clash between Roman and Gothic sparked new phrases to articulate the differences. The particular Gothic type that became prevalent in England was formally known as textura. Yet from about 1600 onward the English commonly referred to Gothic as “blackletter” and Roman as “white letter” from the perception that more black than white appeared on a page and vice versa.

¶21 The turn of the seventeenth century thus brings us to the debut of the word “blackletter.” Unlike the straightforwardly named court hand and its cohorts, the origin of the word “blackletter” lies in its appearance, a tribute to the strong visual impression it makes. Individual letters are “upright, narrow, and angular, standing on crooked feet, and the ascenders are usually decorated with barbs or thorns.” We get some clue to the overall effect of Gothic type from that more technical term, “textura,” a word with Latin origins that refers to the tapestry-like or “woven” appearance of a page. The style of Gothic dominant in England was further straightened and squared for greater economy of space. With letters

40. Lawson, supra note 9, at 19.
42. Id. (“If one holds a late manuscript copy of a given text next to an early printed one, one is likely to doubt that any change at all has taken place, let alone an abrupt or revolutionary one.”). But see David McKitterick, Print, Manuscript and the Search for Order, 1450–1830, at 35–36 (2003) (arguing that although early printing types, along with other features of printed books, were based on manuscript, the early technology of printing imposed certain limitations that led to differences between the two).
43. Clayton, supra note 36, at 136.
46. Theodore Low de Venne, Plain Printing Types 292–93 (Oswald Publ’g Co. 1914) (1899).
47. Philip Gaskell, A New Introduction to Bibliography 17 (1972).
48. Lawson, supra note 9, at 16.
49. Paul Shaw, Black Letter Primer: An Introduction to Gothic Alphabets 26 (1981); see also Morison, supra note 44, at 30 (“undeniable economy”). But see Dane, supra note 45, at 63 (disputing whether blackletter saves space); Report from the Committee upon Temporary Laws, Expired or Expiring, 44 Parliamentary Register 824 n.* (1796) (asserting that statutes switched from black letter to Roman “for the sake of diminishing their bulk, which it does by about one third.”).
fused, joined, and compressed, Gothic’s space-saving measures constructed a picket-fence impression of blackness.50 “Crabbed” is the choice word that detractors would later use to condemn it.51 The common use of abbreviations in texts of this period, including the law, accelerated the visual compression even further.52

¶22 England’s first printing press set up shop in 1476, and as early as 1509 English printers took up Roman.53 By the 1590s, Roman had become the dominant letter shape of England.54 “[T]he arrival of roman as the primary face of composition in English books, and the changes that it brought, are still with us and possess such authority that they are never likely to be entirely displaced.”55 By the 1700s, Roman was no longer “non-Gothic” as it had been initially, but “simply the ‘zero degree’ of typography; and in and of itself of no significance.”56

¶23 Against all odds, Gothic stood its ground in the law, in both handwritten and printed texts. Court hand survived, short of one forcible interruption, until its outlawing in 1731. Even then, “varieties of court hand continued in use among lawyers for wills, deeds and legal papers into the nineteenth century.”57 Case reports and treatises continued in Gothic until at least 1744. Royal proclamations and statutes appeared in Gothic until 1794.58 And in the letter form’s most impressive run, Gothic hands in the parliamentary legislative process lasted until 1849.

Difficulties in Reading the Law

¶24 For a taste of the state of affairs caused by Gothic’s persistence, consider this thwarted reading of a poem, printed in blackletter “to give it an air of antiquity”:

By some accident [a] copy was left in the lodgings of an Irish young gentleman . . . . On his seeing a paper in this character, which his erudition did not enable him to read, he concluded it was some process from [the courts at] Westminster-Hall, and confined himself for fear of an arrest . . . . His acquaintance, after many inquiries for his health, were determined to draw him forth; when at length he disclosed to an intimate the reason of his retirement, and begged him to read the paper. The discovery occasioned no small diversion.59

50. SHAW, supra note 49, at 30; see also Sabrina Alcorn Baron, Red Ink and Black Letter: Reading Early Modern Authority, in THE READER REVEALED 19, 23 (Sabrina Alcorn Baron ed., 2001) (“Black letter evolved to facilitate ligatures [letters joined together], long words, and diphthongs [union of two vowels].”). At least one medieval space-saving device survived the transfer to Roman, only to cause confusion in the present: the turned comma. See Michael G. Collins, M’Culloch and the Turned Comma, 12 GREEN BAG 2D 265, 266–68 (2009) (explaining that the turned comma in the case name of the famous early U.S. Supreme Court case was no accident, but “a poor man’s superscript ‘c’”).
51. See, e.g., 2 JAMES GRANT, LAW AND LAWYERS, OR, SKETCHES AND ILLUSTRATIONS OF LEGAL HISTORY AND BIOGRAPHY 57 (1840).
52. ROSEMARY SASSOON & ALBERTINE GAUR, SIGNS, SYMBOLS AND ICONS: PRE-HISTORY TO THE COMPUTER AGE 36 (1997); see also HUBERT HALL, STUDIES IN ENGLISH OFFICIAL HISTORICAL DOCUMENTS 388–89 (1908).
53. CARTER, supra note 12, at 92.
56. DANE, supra note 45, at 88.
57. DAVID IREDALE & JOHN BARRETT, DISCOVERING LOCAL HISTORY 46 (2003).
58. “Public general Acts were officially printed in Black Letter until the end of the 33rd year of George III in 1793.” EDWARD ROWE MORES, A DISSERTATION UPON ENGLISH TYPOGRAPHICAL FOUNDERS AND FOUNDERIES 76 n.2 (1961).
The reader’s ability to read Gothic had slipped away, but the power of Gothic letter forms as a signal of the law remained and, in this instance, even trumped a text’s actual content.

Handwriting

¶25 While departmental hands may have started out innocently enough for functional purposes of government administration, these specialized hands became more and more stylized “until at last only those who had to write it could read it,” namely clerks. Court hand in particular drew fire for its illegibility to others, flummoxing even judges at times. Historic case reports spanning the reigns from James I to George II reveal scattered but telling references to judges conferring on how to decipher court hand.

¶26 Court hand’s illegibility appears also to have caused problems with the then common practice of transcribing lawyers’ handwritten court reports for wider circulation in print. The phenomenon of errors in transcription troubled lawyers at the time, and it continues to be a vein mined by contemporary legal historians. Strangely though, court hand’s illegibility as a possible contributing factor to transcription errors never seems to make it onto anyone’s list. One lawyer from the mid-seventeenth century bears witness to the perils of transcription, however, from which we can extrapolate. After Sir Harbottle Grimston readied the reports of Sir George Croke for publication, Grimston unburdened himself in a candid preface about, among other things, his trials and tribulations caused by court hand. Indeed, the very problem of reading court hand was what in part prompted Grimston’s effort to convert manuscript to print—“fearing also least after my decease, [the reports] should be obtruded to the publique by an incurious Law-hand.” The obstacles posed by a careless court hand Grimston knew all too well from his own encounters: “I have taken upon me the resolution and task of extracting and extricating these Reports (by the help of better eyes than my own) out of their dark Originals; they being written in so small and close a hand, that I may truly say, they are folia Sybillina . . . .”

60. Frederick Pollock, Origins of the Inns of Court, 48 L.Q. REV. 163, 166 n.2 (1932).
61. Procter v. Clifton (1611) 80 Eng. Rep. 821, 823 (K.B.); 1 Bulst. 126, 128 (“[T]he clerks here never do write their court-hand with a dash . . . .”); Robinson (1648) 82 Eng. Rep. 537 (K.B.); Sty. 69 (“But this exception was over-ruled by the Court, because in the writing of Court-hand, in which hand declarations are written, there are no diphthongs used, and so the word aeris might as well signify brass as ayre.”); Dobson v. Dobson (1734) 94 Eng. Rep. 1028, 1030 (K.B.); Cun. 8, 11 (“But at last the Court ruled it good, by taking the word ipse [as there are no diphthongs in Court hand] in the plural number, and supposing it to agree with the word personae understood.”).
63. See, e.g., JOHN WILLIAM WALLACE, THE REPORTERS ARRANGED AND CHARACTERIZED WITH INCIDENTAL REMARKS 7–12, 20–22 (4th ed. 1882) (attributing errors to a combination of factors: inevitable human error, commercial pressures that dictated haste in production, characteristic lack of proof-reading, transcribers misunderstanding abbreviations and lacking knowledge of law French, and clerks either unskilled or mistakenly “improving” the original).
65. Id. at A3.
someone merely a generation removed from himself, and his own father-in-law at that. One can only imagine the increased potential for error when a transcriber readied court reports for printing over a hundred years later, as sometimes occurred.66

¶ 27 Hostility toward court hand reached high tide during the turmoil of the mid-seventeenth century. Following the English Civil War of the 1640s, the republican suzerainty of the Commonwealth seized the opportunity to institute law reforms. After “several petitions” from “soldiers and country farmers,”67 court hand (along with the use of law French) was abolished outright by an act in 1650 that the radical Rump Parliament unanimously carried.68 The statute spells out the goal of legibility for legal texts, that they “shall be written in an ordinary, usual and legible Hand and Character, and not in any Hand commonly called Court-hand.”69 One law reformer of the day expressed his assent by remarking that court hand “did nothing differ from exorcisticall Characters, save that the former was truly mischievous . . . the latter for the most part but imaginary.”70 This populist victory did not last long, however. With the return of the monarchy in the person of Charles II in 1660, the about-face of the Restoration ensured court hand’s reinstatement.71

¶ 28 The urge to be free of court hand nonetheless remained, and a move to the New World provided an opening. The politically progressive William Penn outlawed court hand when devising his colony. His 1682 Frame of Government for Pennsylvania abolished court hand from the moment of that state’s conception: “That all [p]leadings, [p]rocesses and [r]ecords in [c]ourts, shall be short, and in English, and in an ordinary and plain [c]haracter, that they may be understood, and [j]ustice speedily administred.”72 As one legal historian evocatively puts it, the “grievance” of court hand was “strangled in its birth” in America.73

¶ 29 Court hand continued to stymie those left in England, however. The extent of court hand’s obscurantism is illustrated by the prosecution of a Presbyterian minister, Thomas Rosewell, on trumped up charges of high treason in 1684—a “sensational” trial of the day.74 During the course of Rosewell’s testimony, the Oxford-educated minister showcased his erudition, at one point replying to questions from the lord chief justice of the King’s Bench in Latin. “[T]o the judge’s sneering suggestion that he could not utter another word in that language, he responded in Greek.”75 All his learning served him naught, however, when confronted by court hand. A report of the trial relates that Rosewell was reduced to

66. WALLACE, supra note 63, at 10.
68. BULSTRODE WHITLOCKE, MEMORIALS OF THE ENGLISH AFFAIRS 460 (1682).
69. An Act for Turning the Books of the Law, and all Proces and Proceedings in Courts of Justice, into English (1650), 1 ACTS & ORDS. INTERREGNUM 455 (Eng.).
70. HENRY ROBINSON, CERTAIN CONSIDERATIONS IN ORDER TO A MORE SPEEDY, CHEAP, AND EQUALL DISTRIBUTION OF JUSTICE THROUGHOUT THE NATION, at A2 (1650).
71. BAKER, supra note 29, at 87 n.84.
73. WALLACE, supra note 63, at 21.
75. Id.
asking a clerk of the crown to read aloud for him a passage from a court document “that I cannot so well read, ’tis in Court Hand.”

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[76] The Trial of Thomas Rosewell, a Dissenting Teacher, at the King’s Bench, for High-Treason, November 18, 1684, Mich. 36 Car. II, in 3 A Complete Collection of State Trials, and Proceedings for High-Treason, and Other Crimes and Misdemeanours 909, 950 (2d ed. 1730).

[77] Robert Gardiner, Instructor Clericalis 2 (1693); see also William Greenwell, Young Clerks Remembrancer in Court Hand (1728); John Jarman, A System of the Court-Hands (1723); Thomas Ollyffe, Abbreviations as Used in the Courts of Kings Bench and Common Pleas: Containing More Than Six Hundred Words Properly Abbreviated in the Court Hand, with Their Significations in Words at Length in the Engrossing and Secretary Hands &c. (1715).

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[80] George Farquhar, Love and a Bottle 46 (1699).


[83] 3 Blackstone, supra note 15, at *323.
purpose. Given that “records written in those hands are daily produced in Evidence in the Court of Law,” gentlemen of large property should “not be reduced to the necessity of taking upon trust the declaration of some of the profession, who call every old Deed useless, because they do not understand it.”

This lifeline to the past was reprinted regularly over the next one hundred years.

¶ 34 Gothic-infused law hands persisted in legal practice generally. By the nineteenth century, the distinctions among the original Gothic hands had generally broken down, and people took to describing them altogether as law or legal hand. Charles Dickens memorably captures Gothic’s continued presence in Bleak House, completed in 1853 but set roughly a quarter century earlier in the Court of Chancery. At one point, with his usual scorn for legal practices, Dickens describes a document as “an immense desert of law-hand . . . with here and there a resting-place of a few large letters, to break the awful monotony, and save the traveller from despair.”

¶ 35 One body that repeatedly despaired of ever seeing Gothic’s end was Parliament. It was in Parliament that handwritten Gothic letter forms made their last stand for everyday use. In 1820, one legislator protested against the use of Gothic in bills “which sometimes rendered it extremely difficult to ascertain their precise contents.” In 1836, when the perennial problem resurfaced in parliamentary debates, England’s attorney general is recorded as declaring that he was not alone in being unable to read the old system of writing: “He confessed he was himself sometimes puzzled with that sort of writing, although he had studied it. Indeed, it was known that it had puzzled the printers, themselves, and the printers’ devils.”

This claim would be especially troubling as by that point printers played the critical role of incorporating handwritten amendments into printed bill versions. Nonetheless, it was not until 1849 that Parliament ended its practice of engrossing and enrolling bills in letters that its own legislators found illegible.

Print

¶ 36 Just as it had with handwritten documents, the continued use of Gothic in the law’s printed materials caused escalating problems once Roman became the norm. When it came to statutes, people encountered difficulties understanding the laws that governed them. A biography of John Howard, a prison reformer, relates one of his good works from about 1774. To “obviate” the fact that the acts of Parliament were printed in Gothic, “which from the difficulty of the reading might counteract the humane intentions of the Legislature,” Howard had certain laws relating to prisoners “printed in Roman characters, at his own expence, and sent to

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84. Andrew Wright, Court-hand Restored, at iv (Henry G. Bohn ed. 1864) (1773).
87. 1 Charles Dickens, Bleak House 455 (1853).
88. 2 Parl. Deb., H.C. (2d ser.) (1820) col. 290.
89. 31 Parl. Deb., H.C. (3d ser.) (1836) col. 305.
90. Select Committee on Printing Report, supra note 34, at 2.
the keeper of every county gaol in England.”\textsuperscript{93} Even though the printing of statutes and acts of Parliament in Gothic ceased at the end of 1793, it possibly took some time for this change to go into effect. One legal reformer wrote in 1794: “It is said that our laws are so plain that any person may understand them . . . . How can those understand them who cannot read the black letter?”\textsuperscript{94}

¶37 Gothic also threw up roadblocks for those wishing to study the law. In a letter from 1740, the poet Thomas Gray wrote to a discouraged friend: “Had the Gothic character . . . no ill effect upon your eye? Are you sure, if Coke had been printed by [the famed publishers] Elezvir . . . you should never have taken him up for an hour . . . or drank your tea over him?”\textsuperscript{95} In the 1750s, one parodist could not resist a dig that when it came to studying the law “thousands . . . conceive an unconquerable aversion to the white leaves and the old black letter.”\textsuperscript{96} The early nineteenth-century British politician George Canning chimed in over a generation later, bemoaning Gothic law books in a poem: “Oft condemn’d ’midst gothic tomes to pore . . . th’ indignant mind, Bursts forth from the yoke and wanders unconfin’d.”\textsuperscript{97} Public opinion had coalesced: Gothic was not simply illegible, but also unsightly. From the eighteenth century onward, the word “blackletter” usually appeared paired with a pejorative like “uncouth.”\textsuperscript{98}

¶38 In response to such sentiments, the typeface publishers chose for a legal work became a selling point. For instance, an 1809 edition of \textit{Coke on Littleton} proclaimed itself the first edition to be in only Roman and italic as “an agreeable and useful alteration in the printing; the black letter being generally deemed less pleasing, and more fatiguing to the sight.”\textsuperscript{99} One editor of a work from 1826 stated that “[r]eason and principles are independent of types and paper,” but nevertheless assured customers, “[d]on’t start, reader, at the sight of Littleton’s name; he is not here in the gothic black letter.”\textsuperscript{100} Although by the 1830s Roman had almost entirely supplanted Gothic, even in the law, Gothic left in its wake a generational divide of embittered elders. One author finds the next crop of lawyers soft by comparison: “It was not then necessary that a law book, to be studied, should be wrought up with all the elegance of Scott’s novels. When children, our predecessors had been obliged to eat black broth, or to go hungry; and if they were afterwards too fastidious to read black letter, they must sink into contempt.”\textsuperscript{101}

\begin{thebibliography}{99}
\bibitem{93} \textit{Id.} at 15.
\bibitem{94} \textbf{John Donaldson}, \textit{Sketches of a Plan for an Effectual and General Reformation of Life and Manners} 79 (1794).
\bibitem{95} \textit{John Milton et al.}, \textit{The Poetical Works of Milton, Young, Gray, Beattie, and Collins} 23 (1831).
\bibitem{96} \textit{2 George Coleman, The Connoisseur} 799–800 (1755–1756).
\bibitem{97} \textit{1 Grant, supra} note 51, at 17; \textit{see also} \textbf{1 Edward Lillie Pierce}, \textit{Memoir and Letters of Charles Sumner} 379 (1877–1893) (1838 letter from American lawyer and senator recalling how he felt his "eyesight fail[ed] before [Coke’s] stern black-letter"); \textit{Curiosities of Law Books}, 1840 Dublin Univ. Mag. 315 ("Black letter and law calf, in fact, present obstacles which not even the inquisitive [future Prime Minister Benjamin] D’Israeli ventured to overcome.").
\bibitem{98} \textit{See e.g., Nathan Dane}, \textit{A General Abridgment and Digest of American Law} 225 (1823–1829).
\bibitem{100} \textbf{James Hawkshead}, \textit{An Essay on the Operation in Wills of the Word Issue} 5 (1826).
\bibitem{101} \textbf{George Bliss}, \textit{An Address to the Members of the Bar of the Counties of Hampshire, Franklin and Hampden at their Annual Meeting at Northampton [Mass.], September, 1826}, at 68 (1827).
\end{thebibliography}
In sum, whether dealing with handwriting or print, the ability to read the law up until roughly the mid-nineteenth century required more than mere literacy. To participate fully in every avenue of society, including the law, one had to be proficient in reading Roman types, as well as Gothic type and legal hands. In fact, “there were so many kinds of written word, such a diversity of scripts [and] typefaces . . . that a simple contrast between ‘literacy’ and ‘illiteracy’ fails to register the complexity of the situation.” Even if a person got as far as mastering the reading of Gothic and Roman typefaces in print, that same person could be “quite incapable of deciphering a written document” in different styles of handwriting. These barriers to access excluded “a reader from direct participation in a realm of discourse.”

Why Gothic Persisted Longest in the Law

Given all these troubles, why did English law retain Gothic letter shapes at all, and for so long? Scholarship to date has not recognized this as a question to ask, let alone answer. The history of the law’s appearance on the page has generally fallen into a no man’s land between legal and literary scholars. Legal historians naturally concentrate their energies on the substance of historic works, rendering legal bibliography “something of a pariah in the field of legal history” and paleography a problem to be solved through grit and determination. The language on the page—Latin, law French, and English—has instead garnered all the attention as a hindrance to understanding. Similarly, literary scholars leave legal texts

102. As one author counseled on the topic of “black letters” when teaching children how to read: “It is presumed, that parents would wish their children to be acquainted with every character, in which they may meet with their own language, and not close an English book, in a fit of disappointment, without recognizing their mother tongue.” Mrs. Lovechild [Eleanor Fenn], The Art of Teaching in Sport; Designed as a Prelude to a Set of Toys, for Enabling Ladies to Instill the Rudiments of Spelling, Reading, Grammar, and Arithmetic, Under the Idea of Amusement 27 (1785).

103. Keith Thomas, The Meaning of Literacy in Early Modern England, in The Written Word: Literacy in Transition 97, 99 (Gerd Baumann ed., 1986); see also Margaret W. Ferguson, Dido’s Daughters: Literacy, Gender, and Empire in Early Modern England and France 80 (2003) (commenting that “[d]espite the modern assumption that if one knows how to read, one can read any ‘basic’ text and can, moreover teach oneself to write, the journeys from one kind of reading to another, and from any reading to any writing, seem to have been full of complex stages and obstacles”).

104. Thomas, supra note 103, at 100.


107. David Ibbetson, Legal Printing and Legal Doctrine, 35 Irish Jurist 345, 345 (2000) (describing the field of legal bibliography as “all too commonly left to historians of printing or seen as the preserve of law librarians rather than ‘proper’ scholars”).


largely untouched. In historical analyses of trends in textual appearance, the law is typically only mentioned in passing as one of the certain narrow avenues in which Gothic survived past its expiration date.

¶41 Literary scholars, with their broader research into the means of production, do flag general causes for Gothic’s initial perseverance. Notably, England proved a relative backwater in the technological development of printing. There simply was not a lot of Roman type around for printers to use initially. For a printer to obtain a second (Roman) font in addition to Gothic was expensive, for while there are only twenty-six letters in the alphabet, it usually took more than a hundred characters to make up a font. Even if a printer had different typefaces at his disposal, because of the sheer manpower involved “books rarely changed from black letter to roman (or vice versa) from one edition to the next.” England’s backwardness in typography was to a certain extent self-inflicted. In 1637, the Star Chamber (England’s criminal court of equity) issued a decree imposing various limits on the domestic production of type, including capping the number of type founders to four. But beyond these practical limitations and state control, Gothic’s persistence depended on other factors at play specific to the law.

Gothic’s Symbolism

¶42 “[S]cripts and typefaces often had strong associations with particular genres and functions.” For the law, its script and typeface was Gothic. One need look no further than *Tristram Shandy*, a visually inventive novel by Laurence Sterne published from 1759 to 1767, in which a legal phrase such as “*To wit*” playfully appears in Gothic. Yet pegging the law as Gothic, pure and simple, oversimplifies matters. More practical legal works such as John Cowell’s *The Interpreter* (1607),

111. *See*, e.g., Bland, *supra* note 10, at 93.
115. A Decree of Star Chamber Concerning Printing, at ¶ XXVII (Grolier Club 1884) (1637). By limiting type’s production, “the producers of illicit books could be identified by comparing their typography to specimen sheets stored centrally.” Adrian Johns, *The Nature of the Book: Print and Knowledge in the Making* 72 (1998) (describing conditions during the Restoration era).
116. Hackel, *supra* note 105, at 61. A volume’s size often corresponded to different genres and type. Gothic tended to appear in folios, the largest size, whereas Roman was used for smaller books such as quartos, octavos, and duodecimos. Law books were often printed in folio size. Ian Green, *Print and Protestantism in Early Modern England* 62 (2000). “He was a well read lawyer, and a diligent student, fond of the black letter, and would sometimes remark that an authority read from a heavy folio was entitled to more weight than one from a modern duodecimo.” Lucius Q.C. Elmer, *The Constitution and Government of the Province and State of New Jersey: With Biographical Sketches* 410 (1872) (entry for Richard Stockton [1764–1828]).
for a time the standard law dictionary, and Thomas Powell’s procedural work, *The Attournys Academy* (1623), used Roman and italic without any Gothic at all. Michael Dalton’s *Country Justice*, a work for nonlawyer justices of the peace (1618), similarly lacks any trace of Gothic.

¶43 As for so-called Gothic printed law books, they in fact tend to use Gothic for the main text and Roman to offset paratextual features such as title pages, prefaces, dedications, running heads, tables of contents, marginal notes, and footnotes. Of these paratextual features, title pages were “the most important marketing tool at the publisher’s disposal”; the habitual choice of typefaces other than Gothic for that prime location presumably made a work more attractive to buyers. Keeping this in mind, a closer look at case reports—Year Books followed by nominate reporters—reveals that they are indeed printed in the iconic blackletter for which they are known, but that the standard front matter of an introductory essay by the publisher or reporter was usually in Roman or even italic.

¶44 Consider the late seventeenth century so-called Vulgate edition of the Year Books, which was “the most ambitious law-printing project even seen in England” and which served as the standard version of the Year Books until the twentieth century. Printed between 1679 and 1680, nearly a century after Roman had become England’s dominant letter shape, this multivolume work is so well known for being a Gothic showpiece that it is occasionally referred to as the Black-Letter Vulgate edition. The title page of the first volume, primarily in law French and some English, is completely lacking in Gothic, as is the short preface written in English. But the main body of the actual reports is solid Gothic in law French, with occasional use of Roman for headings and marginal notes. By the 1670s, printers could have easily had the whole set printed in Roman, but chose to adhere to Gothic.

¶45 Instead of a pat history of Roman making wholesale inroads into the legal sphere, the story is more complicated. By and large, Gothic came to be reserved for the primary law itself in printed matter, in case reports, and in statutes, along with handwritten court and legal documents. This distinction between primary versus secondary authority succeeded because readers at the time were more attuned to

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119. See Bland, *supra* note 10, at 95 (describing how the paratext/main text division operated in late sixteenth century and early seventeenth century literary works); see also Hackel, *supra* note 105, at 94 (providing an additional practical consideration: the “polyphony of the paratexts” arose because the printer “typically composed them after the rest of the text”); Lesser, *supra* note 12, at 103.

120. Hackel, *supra* note 105, at 96.

121. Lesser, *supra* note 12, at 103. But see Ronald B. McKerrow, *Notes on Bibliographical Evidence for Literary Students and Editors of English Works of the Sixteenth and Seventeenth Centuries*, 12 Libr. 213, 307 (1913) (speculating that title pages were not in Gothic because printers seldom possessed larger Gothic type).

122. Anonymous reports of cases from roughly 1268 to 1535. The name derives from the mode of citation to the regnal year. Baker, *supra* note 29, at 179 n.14.

123. Case reports (also known as nominative reporters) by private individuals were published from roughly 1535 until 1865. The name of this category of law reports derives from the later practice of identifying these reports by the author’s name. *Id.* at 181.


126. Both are mainly a mix of Roman and some italic for some proper names.
visual nuance in reading material generally. “[T]he creation of typographical hierarchy by the use of a variety of typeface styles . . . ‘coded’ the lexical text.” 127 A reader read not only the words on the page but also “the bibliographical encoding.” 128 Gothic cued readers to what texts or portions of texts were the law.

¶ 46 Gothic was not only a symbol of the law, but a symbol specifically of English law. Gothic’s relationship with England operated on three levels. First, Gothic was used by the monarch and intervening governments, rendering it the letter form of state authority. Second, Gothic built on already strong cultural associations of typeface with national identity. Third, the Englishness of Gothic complemented and reinforced English law as a homegrown strain of jurisprudence apart from Continental civil law. The law was English and, as England’s most English texts appeared in Gothic, English law was Gothic.

State Authority

¶ 47 Gothic operated as the letter form of state authority in England in both handwriting and print, enabling state authority to separate itself visually from the ruled. 129 The scholar Hilary Jenkinson, in an apt turn of phrase, describes court hand and its brethren as “archaising hands,” for in producing these hands, writers “used them as though they were not current.” 130 The resulting anachronistic look put the weight of the state’s history behind newly written documents. At the summit of court hand users was the king himself. The close affiliation between Gothic and royal authority was such that one defender of the monarchy during the Civil War argued that Charles I should not be reduced to “Carolus Rex written in Court hand, without flesh blood or bones.” 131

¶ 48 Similarly, England’s printed statutes and case reports appeared in Gothic. “As authority was increasingly conveyed via the printed proclamation, or statute” in early modern England, such a text’s typography and form “became identified with authority” instead of “being merely the medium” of authority. 132 The statutes’ ties to state authority also resided in the provenance of their production. Since 1504, it was no less than the “King’s Printer,” appointed by the monarch “to provide official texts for administrators and for the citizenry at large,” who printed statutes and proclamations. 133 Even during the Interregnum, after Charles I’s beheading, “Gothic type remained the norm for proclamations and ordinances.” 134 Although the monarchy was in theory no more, each successive government that replaced it

128. Id.
130. Jenkinson, supra note 26, at 280.
133. Pantzer, supra note 109, at 73; see also John Feather, History of British Publishing 14–15 (1998). From the time of Henry VIII in the early sixteenth century, England’s monarchs used a system of royal patents to control the press. From this patent system, a distinction developed between the production of common law books versus statutes and proclamations. Whereas monarchs were content to delegate common law books such as law reports to a series of private printers, statutes and proclamations remained the concern of the state. Id. at 15.
134. Sharpe, supra note 132, at 51.
attempted to assert its authority through continued use of the same visuals of power, of which Gothic was part and parcel.\textsuperscript{135} For instance, the much derided 1653 Barebones Parliament, the creature of Oliver Cromwell, sought cover under Gothic’s convincing cast when announcing its existence to the world.\textsuperscript{136} While the Restoration restored many things including court hand, when it came to the state’s typeface there was no need; proclamations and statutes continued to flow along in Gothic until 1794.\textsuperscript{137} Gothic acted as a through-line of English state authority for centuries.

\textit{National Identity}

\textsuperscript{¶}49 English law’s association with Gothic grew out of the larger circumstance of England’s unofficial identification with Gothic forms. The association between Gothic and England had practical origins. As humanist thought spread to England, a dichotomy emerged that operated for much of the sixteenth century: letter shapes signaled the language of a text.\textsuperscript{138} Texts written in Latin, the language of Ancient Rome, began to appear in Roman type, and English language texts continued along in Gothic.\textsuperscript{139} From this fact arose the printers’ practice of referring to Gothic type as “English.” Thus, although Roman was used for an English language publication as early as 1555,\textsuperscript{140} “English” denoted Gothic type for more than another century at least. The printer Joseph Moxon’s classic manual on printing from 1683–1684, with its various references to “English” type, bears out this connection.\textsuperscript{141} It is hard to judge how far this technical printers’ term made inroads into the consciousness of society at large. Yet even today Microsoft Word’s Gothic font option is labeled “Old English Text.”\textsuperscript{142}

\textsuperscript{¶}50 The development of different typefaces signaled larger cultural associations.\textsuperscript{143} As the earlier anecdotes about Scottish sheriffs and Irish gentlemen indicate, if you were not English you may not have come across Gothic much at all. One demonstration of how synonymous Gothic had become with English identity is shown by the Scottish reaction to the sight of it in 1637. In that year, Charles I’s infamously tone-deaf Archbishop Laud oversaw the printing of a “crypto-Anglican” prayer book for the Scottish church. The archbishop, who had insisted that England’s 1611 version be in Gothic, arranged for a printer “to repair to Scotland and take with a suitable ‘blacke letter’”—a decision


\textsuperscript{137} Mores, supra note 58, at 76 n.2.

\textsuperscript{138} Id. at 13.

\textsuperscript{139} See, e.g., John Fortescue, A Learned Commendation of the Politique Lawes of Englande (1567) (using Roman for Latin and blackletter for English translation).

\textsuperscript{140} Bland, supra note 10, at 93.


\textsuperscript{143} Galbraith, supra note 54, at 21.
“of great metaphorical significance.” The Scottish opposed the efforts of Charles I to “Laudianize” Scotland, preferring their religious works in “Geneva print,” Roman type so-called because of the influential Bible printed in Geneva. (Scotland’s great reformer, John Knox, had studied in Geneva.) When the order came to read Laud’s new prayer book, printed in telltale blackletter, a riot broke out in Edinburgh. This riot triggered a series of events culminating in the downfall of Charles’s government in Scotland during the Bishops’ War. The printer who had been sent up from England “was forced to flee” back across the border. Eventually though, even in the Church of England, Roman started to predominate over Gothic. By the end of the seventeenth century, it fell to the law to carry on with Gothic as the national typographical standard-bearer.

§51 Gothic’s association with England also resulted in part from its connotations of English tradition, in a kind of self-reinforcing loop. A category of literature that demonstrates the association between Gothic and Englishness is the now defunct genre of blackletter broadside ballads. These ballads were popular works that reached their heyday in the seventeenth century. They consisted of “a single large sheet of paper printed on one side (hence ‘broad-side’) with multiple eye-catching illustrations, a popular tune title, and an alluring poem.” Sung or recited by peddlers or itinerant booksellers on street corners and cheaply printed, these ballads served as light entertainment of the day.

§52 What to make of the ballads’ Gothic mien has been debated over the last century or so. Initially academics concluded from the ballads’ cheap production that Gothic was the letter shape of the lower classes. This conclusion led in turn to the assertion that commoners would have found it easier to read Gothic than Roman. These two points, however, do not account for the fact that large portions of the law concurrently appeared in Gothic for a well-educated audience of lawyers and judges. More recently, some scholars have taken a more nuanced view that there were two audiences for such ballads: the “common people” and, “on the outskirts of the crowd . . . some fine gentleman who sardonically adventured his ears.” According to this line of thought, a ballad’s Gothic appearance

145. Bland, supra note 10, at 94.
147. LESSER, supra note 12, at 107.
148. MANN, supra note 144, at 39.
149. THE BOOK OF COMMON PRAYER was last printed in blackletter in 1706. BARKER, supra note 11, at 250.
150. BARON, supra note 50, at 25; LESSER, supra note 12, at 99.
152. FEATHER, supra note 133, at 58.
153. See generally LESSER, supra note 12, at 102–03.
155. THOMAS, supra note 103, at 99.
156. LESSER, supra note 12, at 103.
157. Id. at 120.
was not dictated by the limited literacy of its audience but used to “evoke the traditional English community.”\textsuperscript{159} This “typographic nostalgia” through an antiquated look fostered “an image of unity.”\textsuperscript{160}

\textsection{53} One “fine gentleman” fitting this profile is John Selden, the lawyer, politician, and legal historian. Selden collected ballads and remarked of them in \textit{Table Talk}: “More solid things do not shew the Complexion of the times so well as Ballads and libells.”\textsuperscript{161} Diarist Samuel Pepys purchased Selden’s collection after his death and continued to gather them.\textsuperscript{162} It is thanks to Pepys, writing in the introduction to his five-volume collection, that we can pinpoint when Gothic disappeared from the ballads: “My collection of ballads . . . the whole continued to the year 1700, when the form till then peculiar thereto, vizt, of the black letter, with pictures, seems (for cheapness sake) wholly laid aside, for that of the white letters, without pictures.”\textsuperscript{163} Roman had become so ubiquitous that printers could no longer afford the overhead of keeping Gothic on hand as well.\textsuperscript{164} As with ecclesiastical works, Gothic disappeared sooner in ballads than in the law. If money indeed explains the typeface’s disappearance, then the law’s retaining of Gothic presumably only made law books all the more costly.

\textit{The Englishness of English Law}

\textsection{54} Further fostering the connections between Gothic and Englishness was the common law’s English origin free apart from foreign influence. Just as England’s law was distinctly English, so was the look of English legal texts.

\textsection{55} Because Continental humanists initiated the shift of having their works published in Roman type, the sight of Roman letters inside a book originally signaled to a reader that its content espoused humanist thought.\textsuperscript{165} Readers across Europe rightfully came to expect a text in Gothic to differ not only visually, but in content. When Roman typeface made its way to England, English printers faced a choice and, for their part, law printers chose to stick with Gothic. The dictates of a domestic market made English printers generally inward-looking: “the Englishness of English publishing is one of its abiding characteristics.”\textsuperscript{166} English law printers felt even less need to consider outside influences: “[T]he uniqueness of the English

\begin{itemize}
  \item \textsuperscript{159} Lesser, \textit{supra} note 12, at 107.
  \item \textsuperscript{160} \textit{Id}.
  \item \textsuperscript{161} John Selden, \textit{Table Talk} 72 (Frederick Pollock ed., Quaritch 1927) (1689).
  \item \textsuperscript{162} Patricia Fumerton, \textit{Digitizing Ephemera and its Discontent: EBBAs Quest To Capture the Protean Broadside Ballad}, in \textit{STUDIES IN EPHEMERA: TEXT AND IMAGE IN EIGHTEENTH CENTURY PRINT} 68 (Kevin Murphy & Sally O’Driscoll eds., 2013).
  \item \textsuperscript{163} 2 Catalogue of the Pepys Library at Magdalene College, Cambridge, at xv (Robert Latham et al. eds., 1994). \textit{But see} Angela McShane, “\textit{Ne Sutor Ultra Crepidam}”: \textit{Political Cobbler and Broadside Ballads in Late Seventeenth-Century England, in BALLADS AND BROADSIDES IN BRITAIN, 1500–1800}, at 207 (Patricia Fumerton & Anita Guerrini eds., 2010) (asserting political white letter ballads coexisted with general blackletter ballads).
  \item \textsuperscript{164} \textit{See Thomas Middleton and Early Modern Textual Culture, supra} note 12, at 202 (noting the likely cost savings for printers of using Roman as it arguably required less ink and was less susceptible to blotting); \textit{see also} Philip Luckombe, \textit{A Concise History of the Origin and Progress of Printing} 238 (1770) (“Neither needs the extinction of Black Letter be much lamented by Printers, on account of the extraordinary quantity of ink which it requires . . . .”).
  \item \textsuperscript{166} Feather, \textit{supra} note 133, at 10–11.
\end{itemize}
common law meant that the Roman law books printed in great quantities on the continent were of little use in England.” 167 English law printers could thus rest easy in their continued use of Gothic given the common law’s limited appeal beyond an English audience.168

¶56 A natural stopping point where Gothic could have ended, but did not, was the demise of law French. The language of the law reports was law French. Nominally of Latin origin, law French was popularly understood to be the product of Norman French conquerors.169 How did the aforementioned printers’ language dichotomy of Roman for Latin and Gothic for English play out when it came to works in law French? One might logically expect that materials in law French would adopt a Roman look on the grounds that French is a Romance language. But law French was a unique English creation, as was the common law, and the vast majority of printers adhered to Gothic forms for it.170 We arrive at the wonderful absurdity, then, that texts in law French were printed in English type.

¶57 It has been said that the “very Englishness of English law” derived from the use of law French.171 But when compared head to head over the centuries, English type proved to be even more English and entrenched than law French. For instance, the outlawing of law French during the Interregnum meant that case reports temporarily had to be in English, yet a majority of reports nonetheless continued to sport a Gothic appearance.172 This typographic loyalty becomes even more remarkable given the wider historical context: first the royal patent system for printing law books collapsed, followed by shoddily produced law reports flooding the marketplace.173 All bets were off, but even printers with no one looking over their shoulders upheld the convention of using Gothic. Printers did not want to print law that did not look like law.

¶58 Because it looked authoritative, Gothic hid a multitude of sins. Gothic type created a veneer of quality that provided cover for otherwise suspect case law, both Year Books and nominate reports, to appear in print. These egregious reports did not go unnoticed during their own era. The lawyer Sir Harbottle Grimston, compiler of the reports of Sir George Croke from 1657, gave vent to his feelings in an oft-quoted passage: “A multitude of flying Reports (whose Authors are as uncertain as the times when taken, and the causes and reasons of the Judgements as

167. Id. at 9.
168. Id. at 10.
169. Baker, supra note 17, at 16. Baker explains that, contrary to received understanding, law French was “not Norman French, but a hybrid dialect with strong Picard and Angevin influences.” Id. at 17.
170. A notable exception is John Rastell’s oft-reprinted 1523 law dictionary most commonly known as Termes de la ley, usually appearing in a double column of Gothic type for English set alongside Roman or italic for law French.
171. Baker, supra note 17, at 7 (quoting F.W. Maitland, Introduction, Year Books 1 & 2 Edward II, at xxxvi (17 Selden Soc’y, 1903)).
173. W.H. Bryson, Law Reports in England from 1603 to 1660, in Law Reporting in Britain 113, 114 (Chantal Stebbings ed., 1995). For a general overview of the breakdown of the English crown’s authority controlling publishing during the Civil War, see Feather, supra note 133, at 41–47.
obscure, as by whom judged) have of late surreptitiously crept forth . . . ."\textsuperscript{174} Yet Grimston is able to pinpoint why both he and the publishers of the “flying Reports” stuck with Gothic:

\[\text{There be certain legal Formalities and Ceremonies peculiarly appropriated & ancienly continued amongst us; so as they seem now to be essentials of the Law itself . . . And such I conceive are the writing of the Orders and Records of Courts, in such peculiar hands, the printing of Law Reports in their proper letter . . . .} \textsuperscript{175}\]

With rare insight, Grimston brings to the fore what was largely an unspoken association between Gothic letters, whether handwritten or printed, and the law.

\section*{Gothic’s Vested Interests}

\textsuperscript{¶59} When law French was definitively outlawed (along with court hand) by statute in 1731, law reports appear to have continued along with Gothic typeface for at least another decade.\textsuperscript{176} It was not until the 1740s that reporters finally started using Roman unreservedly. As late as 1742, when one author accused another of printing a legal treatise in Gothic “in Order to make it appear more authentick,” a work in Gothic still signaled authoritativeness, not anti-quarianism.\textsuperscript{177}

\section*{Gothic’s Vested Interests}

\textsuperscript{¶60} The combination of state authority, Gothic’s ties to England’s native language and its national identity, and English law’s insular history all worked in concert to ensure Gothic’s record-setting persistence in the law. Although counterintuitive, the safeguarding of Gothic for primary law ensured that Gothic endured longer in the legal arena than anywhere else. The literary scholar Sabrina Alcorn Baron discerns a common thread in the majority of texts that held fast in using Gothic—these were “texts issued in the voice of authority, whether divine or civil; texts which instilled obedience, singularity of opinion, and uniformity of action.”\textsuperscript{178} She posits that Gothic “presented familiar patterns and provoked familiar responses . . . guiding readers to responses desirable to church and state.”\textsuperscript{179} The law took Gothic’s authority to a new level to outlast law French and all other genres that used Gothic letter forms.

\begin{thebibliography}{99}
\bibitem{174} The Reports of Sir George Croke, supra note 64, at A2.
\bibitem{175} Id. (emphasis added).
\bibitem{177} The Independant Briton 15 (1742).
\bibitem{178} Baron, supra note 50, at 25.
\bibitem{179} Id. at 28.
\end{thebibliography}
Printers

¶62 Printers were the ones inventive enough to coin the term “blackletter” for Gothic letter forms that clerks had been writing for centuries, and they had their own stake in Gothic’s continuance. Nevertheless, printers were the first to dispense with Gothic letter forms for everyday use when it no longer suited their interests.

¶63 Historically, printing was controlled by the state, largely to prevent the distribution of materials deemed against state interests. One of the state’s means of control was to limit the number of printers by requiring a patent to print. As one literary historian explains: “Patentees were wealthy printers or booksellers—or even gentlemen from outside the trade altogether—to whom the crown granted exclusive rights to key titles, or indeed to whole classes of publication.” The theory underlying the system was that the patentees “would be securely trustworthy by virtue of their gentility and their dependence on royal favor.”

¶64 Given the profitability of law books for patent holders, others sought to secure the right to print them; who had the right to do so was often the subject of protracted litigation. Printers with a patent to print law books used various arguments to fend off competitors, among them being claims that printing law books in Gothic required special skills. There was some truth to this assertion. The printing of law books “was of a highly specialized nature and not suitable for the average printer,” and “many printers studiously avoided” legal printing because of its added headaches. To begin with, there was the matter of language: a printer had to employ a staff able to handle both law French and Latin. Printing a law book also involved special type sorts that had to be cut for lawyers’ customary abbreviations, giving rise to “endless possibilities for compositors’ errors,” compositors being the workers who physically arranged the type for printing a text. Among the most abbreviated of texts in the field of publishing were law abridgments, or digests, which thus required even greater care in printing. Then there was the added burden of handling the law’s substantive complexity. One literary scholar has hypothesized that printers developed a close working relationship with lawyers to ensure quality, from selection of titles to print, to editing works, to proofreading copies hot off the presses—a relationship facilitated by the close physical proximity of their respective customary enclaves in London.

180. Feather, supra note 133, at 14.
182. Id.
184. Eade, supra note 183, at 78.
185. Id. at 18.
186. Bennett, supra note 183, at 77; see also Carter, supra note 12, at 61. For a discussion and table of common abbreviations and contractions, see Baker, supra note 109, at 18–23.
187. Eade, supra note 183, at 78–80. Eade explains: “There was no standardized form or method for shortening words, and consequently the degree of compression varied. Each author or compiler of a legal work, and especially of an abridgement, devised his own contractions . . . .” Id. at 78.
188. Id. at 20, 49.
Gothic type figured among the printers’ protectionist arguments, including in the 1660s litigation over who had the right to print Rolle’s *Abridgment*, one of the early case law digests. Law printers claimed that “the printing of law books required special skill, on account of . . . the use of black-letter characters.” Taking this line of thinking to its logical conclusion, law patentees asserted that “[e]rrors in printing the law . . . might endanger men’s lives and properties.”

Unfortunately, the patent system led to unintended consequences, in particular when it came to the law patent, “perhaps the most consequential of all patents.” Without competition, printers with a patent had insufficient incentive to exert more than minimal effort. “Opponents of patents asserted that patentees produced books of bad quality and charged exorbitant prices for them.” Regarding law books specifically, the complaint became that law printers “could ‘Print the books with bad Impressions, and yet make the Subject pay as dear for them, as for the best.’” The law patentees found their own arguments turned against them: “[H]ow could the laws themselves be trusted?” With the growing breakdown of the patent system and the launch of modern copyright law after the Statute of Anne in 1710, law printing opened up to outsiders. As Gothic type failed to forestall competitors, patentee printers lost any protectionist reason for sticking with Gothic forms. This divergence between Gothic forms and printers’ interests in the early eighteenth century contributed to the shifting of printed texts away from Gothic letter forms earlier than handwritten texts.

Clerks

Clerks, working for the government or lawyers, dominated the writing of law hands and, to a lesser extent, instruction in them. Unlike today, writing of any kind was considered a different skill set and taught separately from reading. Writing “was learned by older children and from a different teacher. It was a delicate task involving the making of quill-pens and the mixing of ink; and it required initiation into one of the many different scripts in vogue.” Clerks took on instruction of others in court hand as that particular style of handwriting “was more or less the exclusive property of the legal profession.” Although lawyers also learned how to write law hands, the “[f]act that the practice of law was centred on the handwritten record” in early modern England ensured that being a clerk flourished as a full-time occupation and separate profession. Clerks also prospered in society more gener-

190. *Id.*
191. *Id.*
193. *Id.*
194. *Id.*
195. *Id.*
196. Thomas, *supra* note 103, at 100.
197. *Id.*
199. Love, *supra* note 37, at 225; *see also* *Id.* at 94 (describing the training required for professional law writers and offering a further distinction between legal clerks and scriveners, i.e., legal copyists “whose professional function was one of drawing up contracts, negotiating loans and performing some simpler legal formalities”).
ally as, during this period, “much everyday writing was of a technical kind, involving legal documents,” necessitating the hiring of someone skilled in writing law hands.\textsuperscript{200}

\textsuperscript{68} It took time and dedication to master the arcane intricacies of the different legal hands. For instance, Arthur Wilson, a playwright and former clerk, took half a year to learn court and chancery hands in 1611.\textsuperscript{201} A parliamentary clerk in the nineteenth century claimed that it took the full seven years of a clerk’s apprenticeship to master an engrossing hand.\textsuperscript{202} An episode in Samuel Pepys’s diary demonstrates how the clerks’ writing monopoly worked in practice. In the summer of 1660, not long after Charles II arrived in London to claim his throne, Pepys recorded the trouble he had to take to get a patent engrossed for his new position in the navy’s administration. Unable to find a writer for hire with “time to get it done in Chancery-hand, I was forced to run all up and down Chancery-lane, and the Six Clerk’s Office [within Chancery] but could find none that could write the hand, that were at leisure.”\textsuperscript{203} This man who was able to write one of the longest diaries in history was at the clerks’ mercy for writing in the style required for a document to have legal effect. The timing of this incident is telling; the Commonwealth’s reforming spirit that had outlawed the related court hand in an effort to prevent such mischiefs was indeed at an end.

\textsuperscript{69} We can infer the strength of the clerks’ stranglehold on the production of legal information in part from how much antipathy they evoked as a body. One of William Shakespeare’s most celebrated lines reveals how long-standing this resentment was. “The first thing we do, let’s kill all the lawyers” appears in a scene in Henry VI, Part II involving court hand.\textsuperscript{204} Set during the mid-fifteenth century and written over a hundred years later, “let’s kill all the lawyers” has been oft-quoted as an indictment of lawyers.\textsuperscript{205} The larger context of the scene is what is relevant here for understanding the perception of clerks in society.

\textsuperscript{70} The scene opens with troublemakers agitating to overthrow the powers that be. After exclaiming against lawyers, they seize on the closest object at hand for their vitriol—a man suspected of being a clerk. After accusing him of being able to write court hand, the crowd’s actions take on the hallmarks of a kangaroo court. The gang leader cross-examines the suspect and gets the witless “defendant” to admit that he can indeed write court hand. This exchange carries a double meaning for the audience to enjoy: it is an inversion of the historic courtroom procedure of

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200. Thomas, supra note 103, at 106. Not surprisingly, men had a lock on the profession. A minor plot point in Charles Dickens’s David Copperfield involves a lawyer’s unorthodox wife training herself in law hand to serve as his clerk. Copperfield compliments the results by exclaiming “[b]ricks and mortar are more like a lady’s hand!” 2 CHARLES DICKENS, DAVID COPPERFIELD 420 (G.P. Putnam 1850).

201. Schulz, supra note 85, at 418.


204. William Shakespeare, The Second Part of King Henry the Sixth act 2, sc. 2.

205. Some lawyers have argued that the line is in fact part of a scene that offers a defense of the rule of law. See, e.g., Judith D. Fischer, Foul Is Fair: What Shakespeare Really Thought About Lawyers, 5 Scribes J. Legal Writing 157, 158 (1995).
\end{flushright}
establishing that an accused criminal is entitled to benefit of clergy. Benefit of clergy was a legal fiction that had arisen originally because of the separate jurisdiction between church and secular courts (i.e., someone who could write presumably belonged to church court jurisdiction). Courts extended “benefit of clergy” to increasing numbers of laypeople over the centuries as a mechanism for increased leniency toward defendants. Here in Henry VI, Shakespeare comically reverses the usual operation of benefit of clergy. Instead of a person reading to get off the hook, the ability to read is exactly what does in our hapless clerk, with his clerkly accoutrements of pen and ink-horn. That clerks would ordinarily be the ones scribbling over parchment to “undo a man” while banking on their own benefit of clergy provokes this topsy-turvy settling of accounts by the illiterate. The honor of being killed first after the “let’s kill all the lawyers” call to arms goes not to a lawyer but a clerk, the true symbol of the law.

¶71 While Henry VI takes place in the fifteenth century, Shakespeare was drawing on unbroken antagonism toward clerks and lawyers for their use of court hand. The early seventeenth-century poet Sir Thomas Overbury echoes Shakespeare with satirical definitions of a clerk and lawyer. Of a “puny-clarke,” Overbury had this to say: “Though you be neuer so much delaid, you must not call his master knaue; that makes him goe beyond himselfe and write a challenge in Court hand; for it may be his owne another day.” Court hand had become an attribute of the bad characters of clerks and lawyers generally.

¶72 Even after court hand’s abolishment by statute in 1731, lawyers were open to ridicule for not understanding their own clerks’ remaining distinctive law hands. Advice to an Attorney’s Clerk from 1796 counsels:

[Y]ou will find a constant source of amusement in making love to the daughter of the attorney with whom you live. As a symbol of your constancy, you may write the first letter on parchment in a strong engrossing hand. If she has been much used to her father’s clerks, you may indulge in the Saxon character, or black letter, as you need not then be in any fear of a discovery from the mother or servants—or perhaps, good man! even from the father himself.

¶73 The hostility directed toward clerks as roadblocks in a legal system continued into the nineteenth century. Charles Dickens, a former lawyer’s clerk himself, paints a pretty picture of the profession in The Pickwick Papers. While a client is waiting to see a barrister, the barrister’s clerk is busy at work copying his master’s hand as “nobody alive except myself can read” it, confiding with relish that clients “are obliged to wait for his opinions, when he has given them, till I have copied ’em, ha-ha-ha!” Clerks garnered resentment for their role as middlemen, whatever the exact style of handwriting at issue.

208. THOMAS OVERTBURY, HIS WIFE, WITH NEW ELEGIES, at [I signature] (London, Edward Griffin 1616). Similarly, Overbury wrote of a “meere Petifogger” lawyer: “Only with this, I will pitch him o’re the Barre, and leaue him; That his fingers itch after a Bribe, euer since his first practising of Court-hand.” Id.
209. ADVICE TO AN ATTORNEY’S CLERK, FREEMASON’S MAG., Mar. 1796, at 182, 183.
Every time law hands came under threat, clerks turned to ready-made arguments to defend their role: law hands better withstood the ravages of time and maintaining law hands ensured perpetual access to the content of written documents. Lawyers, judges, and lawmakers found themselves persuaded by these arguments for a considerable period.\(^{211}\) For instance, a court in the reign of Elizabeth I rejected a writ for being in secretary hand as that more commonplace Gothic hand “would be so worn in a dozen years that no man can read it.”\(^{212}\) A clerk may have indeed used a relatively more forceful method of writing court hand than secretary hand, but which hand lasts longer becomes a moot point once there is no one left who can read the hand. In any case, it was a myth that law hands were consistent enough to guarantee their legibility over time. Despite an abiding Gothic strain over the centuries, their appearance inevitably altered, and older writings became difficult for later generations to decipher.\(^{213}\)

After the invention of printing, why not printed forms? Early twentieth-century archivist Hilary Jenkinson wondered just that and determined “the only reason” to be the vested interest of clerks in forestalling print.\(^{214}\) The competition between clerks and printers for business emerged early in the history of print. As far back as 1618, this rivalry played out over statutes in one notable instance.\(^{215}\) The legal writer Ferdinando Pulton proposed a subject compilation, for which project he needed access to records kept in the Tower of London. To get them, he had to get past two high-ranking government clerks, the clerk of the Parliaments and the Keeper of Records, who were “upset by an amateur poaching on their preserves.”\(^{216}\) They offered various reasons for not cooperating with the printer, including that he lacked “the technical skill to read old records without their assistance.”\(^{217}\) Depending on the stakes then, clerks sometimes conceded the illegibility of older Gothic handwriting. A *Collection of Sundrie Statutes* did eventually see the light of day, but only after higher authorities intervened.\(^{218}\)

The contest between legibility and Gothic came to a head for clerks in the mid-nineteenth century. Gothic styles of engrossing and enrolling hands continued to be used to write up legislation, but legislators no longer found those hands legible. As early as 1705 and regularly from the 1740s, printed copies of bills in Roman were made for legislators to refer to during debates.\(^{219}\) So why did it take until 1849 to produce engrossed and enrolled bills in Roman?

Parliament may have outlawed court hand from the courts in 1731, but it faced an uphill battle to eliminate Gothic from its own proceedings. Parliament first seems to have seriously considered ending Gothic hands for engrossing in the

\(^{211}\) *See, e.g.*, William Atwood, *Argumentum Anti-Normannicum*, at cxlviii–cxlix (1682) ([I]f the more common hands were used in our law writings, they would be the more subject to change . . . . ”).


\(^{214}\) Jenkinson, *supra* note 26, at 290.


\(^{216}\) *Id.* at 494.

\(^{217}\) *Id.*

\(^{218}\) *Id.*

\(^{219}\) Bond, *supra* note 213, at 66.
1820s, nearly one hundred years after the end of court hand in the courts. In 1823, a committee of the House of Commons “was appointed to inquire” into the method of engrossing bills, including “whether the common round hand might not be employed” instead of court hand. But despite the pointlessness of clerks engrossing from a printed text a writing that no one would look at, irrational arguments for court hand still prevailed as faster to write and more legible than the “wretched” mercantile hand that had taken over in the courts.

¶78 In 1836, a Resolution of the House of Commons prompted a committee of the House of Lords to return to the issue on the “expediency of discontinuing the present mode of ingrossing Acts of Parliament in black letter, and of substituting a plain round hand instead.” The committee admitted that a modern hand “would afford greater facility for reading quickly the Acts so written.” However, the committee nevertheless feared that a modern hand “would afford a greater facility of falsifying an Act of Parliament.”

The difficulties in writing and reading Gothic were turned on their heads to become a strength—a view of Gothic letters bordering on encryption. But modern precepts are nevertheless creeping into the discussion. One clerk testifies that “the first merit, of writing, is to be easily read by all” and candidly concedes that “ingrossing hand does not fulfill this condition, inasmuch as some of its characters are obscure and uncertain, even to an experienced eye, as not being distinguishable from each other.” That the House of Lords was more reluctant than the House of Commons to endorse change reflects a tension between the elite and the commoners that underlay the issue of access to the law.

¶79 The first two rounds in this contest went to the clerks, bringing the matter to a standstill for over a decade. Parliament took up the gauntlet again in 1848. A House of Commons report explicitly attributes the failure of the earlier 1836 effort to the fees clerks received for their work, and the tide had clearly turned by this date, with scattered comments on Gothic’s illegibility creating a drum roll for change. The House of Commons finally prevailed on this matter, and statutes thereafter were printed only in Roman. Did previously employed clerks thereafter wind up in the poorhouse? One can only speculate. With the banishment of engrossing hand, the last vestige of Gothic disappeared from everyday use. Legal texts have been legible and the principle that the law should be legible has remained unquestioned ever since.

Lawyers

¶80 In general, lawyers have two avenues for maintaining a monopoly over the law: restricting access to information necessary to practice law and prohibiting the

221. Id. at 68.
222. SELECT COMMITTEE REPORT, supra note 32.
223. Id. at 4.
224. Id. at 10.
225. SELECT COMMITTEE ON PRINTING REPORT, supra note 34, at 8.
226. On top of everything else, the copying introduced errors: “[I]t was no uncommon accident for errors to occur in copying the engrossment from the printed bill.” Public Legislation, 27 LEGAL OBSERVER 503 (1844) (recounting exchange in the House of Commons).
unauthorized practice of law by others. Initially, the prevalence of illiteracy mounted a natural barrier for limiting legal information to lawyers. As more people learned to read through the centuries, however, the literate encroached on lawyers’ previously distinguishing skills. Still, as the literate began to favor Roman over Gothic, an unlooked-for opportunity presented itself for reasserting exclusivity, and lawyers accordingly became proponents of Gothic letter forms. Loyalty to Gothic not only limited access to legal information, but it turned the task of reading and writing these increasingly unfamiliar letter forms into an initiation process akin to taking the bar today.

¶81 During the early days of printing, contrary to what one might expect, some lawyers expressed reluctance to print the law. They feared that laypeople’s increased access to the law would sow confusion—a position that, not surprisingly, reinforced lawyers’ own self-interest. According to one legal historian, “[t]he solution was found in language: elementary books were published in English, whereas purely professional works such as law reports or entries were preserved from vulgar eyes in their original language (law French or Latin).” That a differing choice of letter shapes also dovetailed with this effort to bifurcate readership should not be overlooked.

¶82 Thus, on the one hand, lawyers supported Gothic for their own self-interest. Yet, on the other, lawyers were becoming like any other set of readers who found Gothic off-putting. The appearance of William Blackstone’s Commentaries on the Laws of England drove these two contradictory impulses out into the open. Blackstone originally intended his Commentaries, first published in the 1760s, for “country gentlemen and clergymen who needed an outline knowledge of the legal

227. Lawrence Duncan MacLachlan, Gandy Dancers on the Web: How the Internet Has Raised the Bar on Lawyers’ Professional Responsibility to Research and Know the Law, 13 GEO. J. LEGAL ETHICS 607, 610 (2000) (e.g., requiring an apprenticeship, bar exam passage, or law school attendance).

228. See, e.g., 1 SIR JAMES BURROW, REPORTS OF CASES ADJUDGED IN THE COURT OF KING’S BENCH, SINCE THE DEATH OF LORD RAYMOND, at iv (London, A. Strahan & W. Woodfall 5th ed. 1790). One of the fathers of modern law reporting, Burrow complains in a preface that outlawing court hand had altered “the strong solid compact hand (calculated to last for ages) . . . into a species of handwriting so weak, flimsy, and diffuse that . . . many a modern record will hardly outlive its writer.” Id.

229. See, e.g., Charles Sumner, The Scholar, the Jurist, the Artist, the Philanthropist, in 1 THE WORKS OF CHARLES SUMNER 241, 260 (1870–1883) (describing future U.S. Supreme Court Justice Joseph Story’s tears on first reading blackletter law as his baptism in the law). Curiously, there may have been a period in the transition from Gothic to Roman wherein the difficulty in reading Gothic aided prospective lawyers. A modern study on the effect of different typefaces paradoxically concluded that works that are difficult to read (“disfluent”) force a reader to slow down, improving memory performance later. Connor Diemand-Yauman et al., Fortune Favors the Bold (and the Italized): Effects of Disfluency on Educational Outcomes, 118 COGNITION 111, 114 (2011).


232. See, e.g., ATWOOD, supra note 211, at cxcix (“[S]ome clerks and officers might have a cunning, for their private honour and profit . . . to have as much as they could of our Laws, to be in a kind of mystery to the vulgar, to be the less understood by them . . . but perhaps it would be found, that the Law, being . . . generally more understood, yet not sufficiently, would occasion the more suits.); see also LOVE, supra note 37, at 108–09 (proposing that part of Gothic secretary hand’s appeal had been that it “did not quite so readily yield its meaning to a casual glance” as italic); 163, 226.
Given this intended audience of laypeople, the work was naturally published in Roman. But as the Commentaries quickly became the dominant text for aspiring lawyers, its non-Gothic look exerted an outsized impact on the law’s appearance on the page. Blackstone’s Commentaries is what finally separated lawyers from Gothic, as it removed the need for lawyers themselves to read Gothic.

§83 The historical record does not reveal an explicit decision by William Blackstone to choose Roman over Gothic for his Commentaries. Blackstone’s background in printing, however, makes it reasonable to conclude that he would have considered the matter of typeface and exerted influence over his famous work’s final appearance on the page. Although Blackstone is renowned in legal circles down to the present thanks to his authorship of the Commentaries, he is hailed by literary scholars for his key role in the history of print. By the time Blackstone authored his Commentaries, his days as a printing reformer were over. However, his connection to Oxford’s press ensured that a specially purchased Roman type then available was used for the Commentaries’ first four editions.

§84 That Gothic drove away prospective lawyers is noted by Blackstone himself in his Commentaries—the “barbarous dialect” of law French, “joined to the additional terrors of a Gothic black letter, has occasioned many a student to throw away his Plowden and Littleton, without venturing to attack a page of them.” By contrast, law students willingly attacked a page of Blackstone in Roman, and lawyers could not agree on whether this was good or bad. One camp decried the Commentaries “as intelligible” and Blackstone as an enemy to the profession.


234. Ian Doolittle, William Blackstone: A Biography 40 (2001); see also Martinez, supra note 22, at 57 (arguing that Blackstone’s interest in architectural drawing influenced his groundbreaking visual approach to laying out the law in his Commentaries).


236. Id. at 143, 165 (discussing two of Blackstone’s earlier works noted for their attractive typography).


238. Id. at 108, ¶ 18.

239. 3 BLACKSTONE, supra note 15, at *318.

240. Grant, supra note 51, at 58; see also Letter from Thomas Jefferson to James Madison (Feb. 17, 1826), in 4 Thomas Jefferson, Memoir, Correspondence, andMiscellanies 426, 426 (Thomas Jefferson Randolph ed., 1830) (“[W]hen [Coke’s] black-letter text, and uncouth but cunning learning got out of fashion, and the honeyed Mansfieldism of Blackstone became the students’ horn-book, from that moment, that profession (the nursery of our Congress) began to slide into toryism . . . .”). To forestall criticism, one author of a treatise in Roman type wrote that his work did not necessarily mean that a law student “will be so captivated with the blond beauties of a modern margin that he will never dive into the sombre regions of black letter, where, cob-web bound, the truths of law lie hid.” George Ross, A Treatise on the Law of Vendors and Purchasers of Personal Property, at viii (1811). But law students did stop diving into blackletter, prompting calls throughout the nineteenth
camp were those who shared the sentiments of the lawyer who remarked that “Blackstone’s Commentaries would have saved him seven years labour poring over and delving in black letter.”

Blackstone’s Commentaries ultimately became a staple of the profession and, in so doing, uncoupled the authoritative nature of a legal source from its Gothic typeface even for lawyers. From this point onward, Gothic books fell into the preserve of bibliomaniacs—“black letter dogs.” In finally embracing Roman, lawyers lowered themselves irrevocably to become no different from the general mass of readers.

**Nineteenth-Century Transformation of Blackletter Law’s Meaning**

Just as Gothic, literal blackletter, retreated from the scene in all its forms, “blackletter law” as a figurative phrase arose among lawyers. Given how well understood the phrase is today among lawyers, it is surprising to discover that the present meaning (“basic principles of a subject in the law”) dates back only to the end of the nineteenth-century and in fact represents an about-face from its origins. Lawyers originally employed the phrase “blackletter law” to describe law that was old enough to have been printed or written in Gothic form, sometimes to the point of being arcane. That the phrase underwent semantic change has been acknowledged but never fully explained. Once the law is placed in the larger context of the history of print, however, the missing piece of the puzzle appears. The lawyers’ original meaning of “blackletter law” as obscurely old law became conflated with the printers’ practice of using literal blackletter as a display type, a precursor to bold typeface. These two strands of meaning came together in the 1890s when West Publishing started its Hornbook series and emerged with the meaning with which we are familiar today.

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241. William Tudor, Life of James Otis 10 (1823); see also Grant, supra note 51, at 58 (citing another lawyer who quantified the impact of Blackstone’s Commentaries by a different measure—“it would have saved him the reading of twelve hours in the day”); S.P. Lyman, The Public and Private Life of Daniel Webster 8 (1852) (after switching from Coke to Blackstone, Webster “thenceforth insisted that he lost much time in unravelling black-letter webs and deducing premises, which he found had been clearly unravelled and deduced by others”).

242. Joseph Willard, An Address to The Members of The Bar of Worcester County, Massachusetts, October 2, 1829, at 108 (1830) (“In process of time, black letter, like every other barbarism, gave way to the spirit of change that began to spread, and the publication of Blackstone was considered the commencement of a new era in the study of the law.”).

243. See, e.g., Thomas Frognall Dibdin, The Bibliomania; or, Book-Madness 56 n.45 (1809). Gothic’s slide into obscurity coincided with a rising nationalist chauvinistic trend for blackletter books and the emergence of self-proclaimed bibliomaniacs in the early nineteenth century, a term that could also be turned against them. See, e.g., Joseph Parkes, A History of the Court of Chancery 9 (1828) (“The principles therefore of Chancery reform are not to be sought in the black letter collections of Bibliomaniacs.”).

244. The Wolters Kluwer Bouvier Law Dictionary, supra note 1, at 1547.


246. Depending on the context, the modern meaning of blackletter law can also be a pejorative referring to oversimplification of the law or bluster to cover legal uncertainty. Id.
§87 As Gothic disappeared from everyday use, whether or not a lawyer voluntarily read legal texts in Gothic came to serve a sorting function, setting apart those lawyers drilled in older legal precedents. For example, the thoroughness of U.S. Supreme Court Justice Story’s early training is conveyed by a remark that “he had explored all the black letter law on the subject.”247 A balance with more modern ideas had to be struck, however, or else a lawyer risked turning himself into “a walking edition of black-letter bound in calf.”248 Thus lawyers “who pinned their hopes on ‘black letter law’ were apt to be met in equal measure with admiration for their scholarship and ridicule for bothering.”249 By the late nineteenth century, however, as precedents printed in blackletter receded in time, describing the law or a lawyer as “blackletter” tended more uniformly toward insult and acquired a meaning freestanding from the page.250 Perhaps most famously, Oliver Wendell Holmes disparaged blackletter lawyers in his influential lecture and 1897 essay, The Path of the Law: “For the black-letter man may be the man of the present, but the man of the future is the man of statistics and the master of economics. . . . It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV.”251

§88 Concurrent with the rise of “blackletter law” as a phrase with a meaning apart from a text252 was the diminishment of literal blackletter to a display type. In typography, “display type” refers to type for limited use, largely for emphasis, such as bold or italic, an innovation of print over manuscript.253 Prior to the emergence of bold type in the mid-nineteenth century, however, printers relied on blackletter or italic for this function.254 As a printer’s manual from 1755 explains: “Black Letter . . . is sometimes used with Roman and Italic together, to serve for matter which the Author would particularly enforce to the reader . . . .”255 Texts used blackletter as a display type for well over a hundred years.256 Even after the introduction of a truly

247. 1 Joseph Story, Life and Letters of Joseph Story, Associate Justice of the Supreme Court of the United States, and Dane Professor of Law at Harvard University 117 (William W. Story ed., 1851).
248. Richard Harrington, Address of Richard Harrington to the Graduating Class of the Law Department of the National University 8 (1873).
249. Clapp et al., supra note 245, at 34; see, e.g., 1 Henry Cockburn, Life of Lord Jeffrey 168 (1852) (“A black letter judge agreed with the one; the world admired the other.”).
250. See, e.g., Edward G. Parker, Reminiscences of Rufus Choate: The Great American Advocate 323 (1860) (“The disciple of the black-letter abhors the concrete as nature does a vacuum, and revels in the abstract.”); 2 Story, supra note 247, at 582 (Story’s son as editor expresses the commonly held opinion that one devoted to “the dark ages of Black-Letter learning is apt to engender a bigoted conservatism, excessive submission to precedent, and an unwillingness to extend the boundaries of the law.”).
251. Oliver Wendell Holmes, Jr., The Path of the Law, 10 Harv. L. Rev. 457, 469 (1897).
252. See, e.g., William Forsyth, Hortensius, or, The Advocate: An Historical Essay 101 (1849) (anachronistically describing ancient Roman jurisconsults as having “plumed themselves not a little on their black-letter lore”).
253. Lyons, supra note 39, at 69; Barker, supra note 11, at 250; see also Levenston, supra note 117, at 91–92.
256. Lawson, supra note 9, at 315.
bold typeface, it took some time for printers and society at large to settle on the word “bold.” This lack of consensus left the word “blackletter” to circulate with its bold meaning for roughly another half century, even when the letters in question in a given text were not Gothic.257

¶89 At this crossroads in the history of publishing West’s Hornbook series happened to appear. West’s Hornbooks are one-volume treatises or study aids intended as compact introductions to a given area of law.258 In launching a series of introductory works to the law under the rubric of “hornbooks,” West repurposed the name of a dead genre for a new one.259 Historically, hornbooks had been tools for children learning how to read, in use from the mid-fifteenth century until about 1800.260 Despite its name, a hornbook was a small wooden paddle on which was laid a sheet of paper printed with the alphabet, usually in both Gothic and Roman, along with a short prayer such as the Lord’s Prayer.261 A thin layer of horn, a forerunner to plastic, protectively covered the “book.” From this device, a broader meaning of “hornbook” emerged as any primer for study.262

¶90 At the time West launched a series of study aids for law students, two meanings of the word “blackletter” were current: blackletter as old law and blackletter as bold type. For West, it appears to have been chance that hornbooks originally used Gothic. Yet the earliest entries in the Hornbook series play up the connections to the original appearance of hornbooks visually, through typography. The study aids include the phrase “The Hornbook Series” in Gothic letters at the beginning of a volume. Similarly, one ad in an 1896 Hornbook notes that the series offers “A succinct statement of leading principles in black-letter type.”263 Within ten years, even these small historical visual allusions to Gothic vanished from the Hornbook series.

¶91 By contrast, in the main part of the West hornbooks, the “leading principles” are in bold, followed by commentary. In using bold type within a study aid, West placed itself squarely within the mainstream of educational publishing. For all the different genres that used bold, textbooks were the most influential in spreading its use, and bold became a characteristic of the genre.264 Textbooks used bold to such an extent that “typography influenced teaching methods,” with the existence of the phrase “blackletter law” within the field of law seemingly a case in point.265 In a typographic sense, then, the law was like any other field and the

257. “The use of the word bold... was rather slower to take root than the types themselves.” Twyman, supra note 254, at 140. “[B]lack, fat, heavy, or Clarendon remained the favoured terms throughout the nineteenth century.” Id. at 142.


259. It is for this reason that both legal dictionaries, Black’s and Bouvier’s, define blackletter law as synonymous with hornbook law. Black’s Law Dictionary, supra note 3, at 203; The Wolters Kluwer Bouvier Law Dictionary, supra note 1, at 1547.


264. Twyman, supra note 254, at 134–35.

265. Id. at 138.
proximate cause of the modern meaning of blackletter law as basic law is the bold type of West’s Hornbook series, not old Gothic law books. Yet even though publishers used bold in textbooks across the board, lawyers managed to make the phrase “blackletter law” their own, independent of any bibliographic meaning. As lawyers discarded such lawyerly trappings as Gothic books and papers over the course of the nineteenth century, they pinpointed a worthy successor to distinguish themselves from outsiders by taking up the phrase “blackletter law.” In that regard, blackletter law—whatever its meaning at any given moment—maintained its long-held function of setting the law apart from the rest of society.

Conclusion

From its medieval origins to its present-day meaning, “blackletter law” has achieved a feat of metonymic sleight of hand from literal to figurative. The case should not be overstated for the significance of Gothic in the law, as there was some degree of “inevitability” involved in its use. The law did not appear exclusively in Gothic, nor was Gothic used exclusively in the law. Nevertheless, blackletter signified the fullest authority of the law. Despite all the difficulties Gothic prompted as Roman replaced it, Gothic persisted for as long as it did in the law because, in the eye of the beholder, it was the law. Only when elite readers, lawyers, and lawmakers lost the ability to understand what clerks wrote did Roman fully supplant Gothic. Today, the law lacks any sign of Gothic.

This history of how the law has appeared or, more to the point, not appeared, brings home a larger issue of accessibility: how the law looks matters, aside from what it says. Consider how events might have unfolded if the profession of law librarianship had already existed during the transition from Gothic to Roman. It is no accident that when the American Association of Law Libraries first came into existence in 1906, legible handwriting was a requisite skill of a librarian. A law

266. The use of the phrase appears to have been further solidified in the early twentieth century by the influential American Law Institute’s First Restatements’ “black letter statements” of common law. See, e.g., G. Edward White, From the Second Restatements to the Present: The ALI’s Recent History and Current Challenges, 16 Green Bag 2d 305, 306 (2013) (noting that the creators of the Second Restatements criticized the authors of the First for printing the “black letter” of legal subjects without any commentary).

267. The extent to which blackletter law became detached from its literal origins is illustrated by the failure of the phrase “linotype law” to catch on. “Linotype law” contrasted law modern enough to be printed with linotype to aged blackletter law. See, e.g., Book Note, 31 Am. L. Rev. 474, 478 (1897) (reviewing The Lawyers’ Reports Annotated) (“The courts show an increasing tendency to prefer late cases to old ones, linotype law to black letter law, so to say.”); see also 7 Case and Comment n.p. (1900) (Lawyers’ Co-operative Publishing Co. advertisement of their products as linotype law rather than blackletter law). Similarly, a 1924 work on legal research stated that it was organized with “black letter Roman headings.” Donald J. Kiser, Principles and Practice of Legal Research 6 (2d ed. 1924).

268. Lesser, supra note 12, at 105 (“Much of the meaning of black letter may not have been fully conscious to printers and publishers . . . .”).

269. See, e.g., Melvil Dewey, Simplified Library School Rules 78 (Boston, Library Bureau 1898) (“[L]egibility is the main consideration” for learning a “library hand.”) As to the particulars of what made a good “library hand,” history had come full circle—one leading authority postulated that it should be “as near to type as possible.” Library Handwriting, 10 Libr. J. 321, 321 (1885).
librarian these days can have terrible handwriting, but we can all put the history behind “blackletter law” to good use as a cautionary tale when arguing for the modern equivalents of legibility, whether it be supporting format-neutral citation or converting a website to XML format. The one constant in blackletter law’s history is a continuing need to ensure the public’s access to legal information.
Introduction: Setting the Stage for the Emergence of the UCLA Law Library

The UCLA School of Law and its law library, founded in 1949, were born into a time and place of sweeping, dramatic, rapid change—economic and demographic as well as political and cultural changes that are particular hallmarks of southern California from the 1940s through the present. Myriad changes in the wider society left their imprints on the UCLA Law Library in many ways. During its first fifty years, the fledgling law library struggled to cope with rapid, massive growth in the UCLA law student population, with the proliferation of new legal issues of concern to the law school and its faculty and students, with a chronically overcrowded facility, and with state budgetary support that grew ever less reliable as the expansive dreams of the 1960s and the Great Society gave way to conservative reaction and fiscal retrenchment from the late 1960s onward. Such pressures ultimately pushed UCLA’s Law School and Law Library toward de facto privatization of what were originally public institutions.
Demographic and Economic Change in Southern California, 1900 Onward

Explosive demographic growth was a defining characteristic of southern California from the late 1800s onward. Specifically regarding the city of Los Angeles, census data shows that the city’s population doubled from around 50,000 to 102,500 from 1890 to 1900, then tripled to 319,200 by 1910, almost doubled by 1920, more than doubled again by 1930, went over 1.5 million residents by 1940, almost reached 2 million by 1950, and stood near 2.5 million by 1960.1 But the city of Los Angeles proper, vast in territory and population, was only part of a metropolitan area including many populous suburbs. By 1940, Los Angeles County included 2,785,643 inhabitants—forty percent of California’s population—with neighboring Orange, Riverside, and San Bernardino Counties adding some 400,000 more.2 The county’s population exceeded 4 million by 1950, 6 million by 1960, and 9.5 million by 2000.3 Meanwhile, the state’s population similarly surged, from less than 3.5 million in 1920 to almost 7 million in 1940, more than 10.5 million in 1950, 15.7 million in 1960, almost 20 million by 1970, and almost 34 million in 2000.4 Southern California, traditionally overshadowed by San Francisco and northern California politically and demographically throughout the late 1800s, surged from behind to constitute nearly half the state population by 1940, more than half in all subsequent decades.

Together with this skyrocketing demographic growth went spectacular economic growth and change in the Golden State. Southern California experienced an almost continuous real estate boom from the 1870s onward, luring winter-weary middle-class northerners to the orange groves near Pasadena, followed by an oil boom and the arrival of the Hollywood film industry in the early twentieth century. Later, from the 1930s onward, much of the U.S. aviation industry took root in southern California, drawn by year-round good flying weather (and mostly non-union labor); this industry surged especially during World War II, as the American “Arsenal of Democracy” far out-produced all other combatant nations in aircraft and other armaments. Local aviation industry employment rose from around 1000 workers in 1933 to 280,300 relatively well-paid workers by 1943, and fifteen of the twenty-five top aerospace corporations in the United States were located in southern California throughout the later Cold War.5

3. Historical Resident Population, supra note 2.
4. Id.
¶ 4 When the UCLA Law Library (hereinafter “Library”) appeared in the late 1940s, southern California was acutely experiencing two major demographic shifts that affected the entire United States: the baby boom and the rise of the Sunbelt. The postwar baby boom, triggered by unprecedentedly widespread affluence following the end of both World War II and the Great Depression, produced the largest generation in America’s history, one that required massive construction of schools, homes, shopping centers, universities, and other public or private institutions catering to the greatly expanded new American middle class. The Sun Belt phenomenon refers to the gradual gravitation of the U.S. population away from its traditional concentration in the cold, frosty Northeast toward the warm, sunny—and increasingly air-conditioned—Southwest.

¶ 5 One facet of the Sun Belt—large numbers of returning veterans from the end of World War II through the 1950s relocating to California and neighboring states—had a major impact on higher education, including institutions such as the University of California at Los Angeles (UCLA) and its newborn law school. Along with the postwar surge of affluence that banished the Great Depression and increased demand for higher education, the G.I. Bill extended new educational opportunities to former servicemen and servicewomen who might otherwise have had little chance at higher education. At schools such as UCLA and its law school, many students were military veterans throughout the late 1940s and 1950s.

¶ 6 Southern California’s population also diversified significantly both before and after World War II. California saw its greatest, most rapid increase in African American residents ever during the 1940s, when some 338,000 African Americans relocated from the South, many in pursuit of relatively high-paying and nonsegregated wartime factory jobs in California. California from its earliest years also included substantial Latino and Asian American communities; these grew progressively through immigration during the postwar decades.

¶ 7 California’s amazing prewar and postwar demographic and economic growth pressured governmental institutions to keep up with the growth and provide needed services—and raise taxes to do so. This in turn helped trigger much of the political turmoil that California would experience during the Library’s first fifty years.

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Political and Cultural Developments in Postwar California and the United States

One striking political development that coincided with the birth of the UCLA Law School and Library was the postwar Red Scare that flared up as American-Soviet wartime cooperation against Nazi Germany deteriorated into Cold War hostility by the late 1940s and produced panic and paranoia about pro-Soviet spies and sympathizers in America. Republican Senator Joseph McCarthy of Wisconsin is the classic example of this postwar Red-hunting mindset, but there were many others, including California’s own Richard Nixon and many lower-level politicians throughout the state, especially in more conservative and Republican southern California. For California universities, this McCarthyite hysteria led to new anti-Communist loyalty oaths for university faculty and administrators, as well as politically tinged appointments of faculty and administrators—including the first dean of the UCLA Law School.

Postwar conservatism ultimately gave way to more liberal policies during the late 1950s and 1960s. Helping to push this trend was the simple need to cope with surging and unprecedented growth, which led to increasing state and federal governmental involvement in what traditionally had been local matters. The classic symbol of this period in California is the governorship of Edmund “Pat” Brown from 1959 to 1967, when the state supported vast construction projects including highways and freeways, California’s large three-tiered higher education system, and the California Aqueduct, among others.

Another powerful force pushing away from conservatism toward liberalism in the 1950s and 1960s was the civil rights movement. Conservative Commie-hunters, like longtime FBI director J. Edgar Hoover, also tended to be hostile toward civil rights and desegregation. But as McCarthyism faded by the late 1950s and the general American public’s mood shifted toward discomfort, even revulsion, at extreme racist bigotry and segregation, state and federal officials increasingly felt pressure to address racial injustice and inequality through governmental programs. The civil rights movement, in turn, helped to stimulate other movements of the 1960s, such as the radical students’ movement that first surfaced visibly as the Berkeley Free Speech Movement in 1964–1965, followed by an increasingly militant anti–Vietnam War movement.

The growing militancy of these movements, together with resentment over rising taxes for social programs and large infrastructural projects, ultimately triggered a sharp conservative backlash, however, both in California and nationwide. In California’s gubernatorial election of 1966, moderate-liberal Democrat Pat Brown was replaced by Republican Ronald Reagan, who specifically promised to rein in the Berkeley student protesters and the University of California (UC)
officials whom Reagan blamed for allowing the students to run out of control. Later, in 1968, another California Republican, Richard M. Nixon, was elected President based in part on nationwide voter fatigue regarding the sorts of ambitious social programs, desegregation efforts, and militant antiwar protests that characterized Lyndon B. Johnson’s presidency. Governor Reagan and President Nixon were more conservative than those who preceded them, but were relatively moderate compared to what would follow as America’s conservative backlash gained strength from the late 1970s onward.

¶12 Like other institutions in California and the United States, the Library rode this same political seesaw. Its very early life was shaped by the McCarthy era, together with extremely rapid growth. Later, the Library benefited from the expanding state and federal largesse of the Brown and Johnson administrations, while still struggling to cope with continuing rapid growth. Ultimately, the Library suffered from Governor Reagan’s fiscal retrenchment and reining in of the UC budget from 1967 through the 1970s, plus the antitax rebellion embodied in California’s Proposition 13 in 1978, before suffering from general nationwide fiscal retrenchment and conservatism—while still attempting to cope with ongoing growth.

**History of the UCLA Law Library’s Formation, Facility, and Collection**

¶13 The UCLA School of Law first became an official reality on July 18, 1947, when then California governor Earl Warren signed Assembly Bill 1361 into law. AB 1361 appropriated $1 million to build a new public law school at UCLA, then still sometimes known as the “southern campus” of the UC. Assemblyman William Rosenthal of Boyle Heights sponsored the bill to give his constituents and other southern Californians, by then already nearly half the state’s population, an option other than pricey University of Southern California (USC) or remote Stanford and Berkeley. UCLA, founded in 1919, was still a relatively young campus during the late 1940s, with only a few permanent buildings completed but many leftover Quonset huts and other temporary buildings used for military training during World War II. Thus, the state’s and nation’s newest public law school started operations in temporary buildings that previously had been used as military barracks.

¶14 AB 1361 notwithstanding, there was much work to do to suddenly conjure forth both a functioning law school and an adequate law library. Renee Rastorfer has ably recounted many of the practical and political difficulties in selecting both
a dean and a law librarian for the new law school, as well as the unfortunate mismatch of politics and personalities between the new dean, L. Dale Coffman, formerly dean at Vanderbilt Law School, and the first law librarian, Thomas S. Dabagh, who was law librarian for Los Angeles County’s large public law library before joining the new UCLA law faculty. Coffman was a conservative McCarthyite anti-Communist, like several UC regents of the day, while Dabagh remained a progressive New Dealer, like Lawrence Clark Powell, UCLA’s university librarian, with whom Coffman also tussled.\footnote{See generally Rastorfer, supra note 11.} Coffman also was ideologically committed to a law library independent and autonomous from the wider UCLA library system, while both Dabagh and Powell favored an integrated library system of which the Library would be a cooperative component.\footnote{See id. at 358–64, ¶¶ 32–44.}

\footnote{Id. In 1965, overall control of the Library and its budget was restored to the UCLA Main Library. See Brief Early History, supra note 16, at 8–9.} ¶15 Ultimately, after bullying and browbeating Dabagh, Coffman drove him from his position in 1951, and by July 1952 Coffman also achieved direct, autonomous control over the Library.\footnote{Rastorfer, supra note 11, at 367, ¶ 52.} Rastorfer notes that other observers felt Coffman helped drive Dabagh to an early grave.\footnote{Id.} The chickens came home to roost on Coffman, however, when in 1956 he was relieved of his deanship following a mutiny by most of the law faculty and a subsequent investigation by a panel of other UCLA deans into charges that Coffman was “dictatorial, undemocratic, and autocratic” as well as anti-Semitic.\footnote{Id. In 1965, overall control of the Library and its budget was restored to the UCLA Main Library. See Brief Early History, supra note 16, at 8–9.}

¶16 Louis Piacenza, originally Dabagh’s assistant, became acting law librarian in October 1951 before being made permanent in July 1952, and he stayed in that position until his death in March 1967.\footnote{Rastorfer, supra note 11, at 145.} Over those nearly fifteen years, Piacenza got the chance that Dabagh was denied to build the Library into a leading academic law library that vied with much longer-established law schools and libraries for prominence. Coffman was replaced as dean by Professor Richard A. Maxwell of the UCLA law faculty, who remained in his position until 1968 and presided over happier, more harmonious years of institutional growth.

¶17 As Piacenza later recounted, during its first two years of existence (1949–1951), the Library, like the new law school, was housed in temporary buildings and was limited “to the bare necessities for lack of shelf space.”\footnote{Rastorfer, supra note 11, at 8.} But completion of UCLA’s original law building in 1951 gave the Library a permanent home and a chance to grow in earnest.\footnote{Piacenza, supra note 17, at 3.} By December 1957, Piacenza reported that the Library had grown from a modest collection of 21,000 volumes, hastily thrown together before the first class entered, to a collection including 110,000 volumes, adding, “In less than 7 years we’ve become approximately the 15th largest law school

\begin{itemize}
\item\footnote{Law Librarian Louis Piacenza Dies at 66, Docket, May 1, 1967, at 1; Brief Early History, supra note 16, at 8.}
\item\footnote{Piacenza, supra note 17, at 3.}
\item\footnote{Id.; Brief Early History, supra note 16, at 9.}
\end{itemize}
library in the country.’” Piacenza foresaw a future collection growth rate of about 5000 additional volumes per year, with around 1500 annual journal subscriptions, and predicted that the Library’s physical space “should be adequate perhaps for several years” and “could handle 160,000 volumes.”

§18 Yet from the early 1960s to the 1990s, space at UCLA’s law school was continually at a premium, competition for space was intense, and the Library frequently lost in turf wars for both office space and shelf space. Meanwhile, the Library continued to grow: to 128,163 volumes by May 1961 and to more than 143,000 volumes by May 1963, making it the nation’s fourteenth largest law school library.

§19 Meanwhile, the Library’s shortcomings drew mounting criticism. For one, the original UCLA law building had no air conditioning. As the student body grew and facilities became more crowded, students complained about the lack of adequate ventilation in classrooms and the Library. One wit suggested in 1962 that the windowless, unventilated Library could be used by the U.S. space program to prepare astronauts for the oxygen-deprived upper atmosphere, while a graduating student body president, fondly reminiscing about law school, also remembered “gasping for air in the Library.” In October 1962, Piacenza himself wrote to the Docket, UCLA’s law student newspaper, noting chronic Library overcrowding and urging students to conserve space by not using additional desk or chair space for jackets, briefcases, or feet.

§20 Facing this mounting pressure on space and resources, in October 1963 the law school announced “plans for a $2 million expansion and remodeling of the law school building,” including air conditioning, made possible by recent passage of California’s Proposition 1-A providing additional state funds for higher education. At the time, the law school had more than 600 students using facilities designed for a maximum of 550. The recently adopted California state master plan for education anticipated that UCLA Law School’s enrollment would nearly double to 1000 students in coming years. Yet by October 1964, Dean Maxwell had to announce the third postponement of ground-breaking ceremonies for the new wing of the law school, much needed for an anticipated near doubling of the Library’s collection from 155,000 to 300,000 volumes along with the near doubling of the student body. The new wing was finally ready for occupation in January 1967, but it was already insufficient for the relentlessly expanding space needs of the law school and Library.

§21 Nineteen sixty-seven was a watershed year for the UCLA Law School and Library even beyond completion of the new wing and the change of law librarians.

27. Piacenza, supra note 17, at 6; Miscellany of Interest: Law Libr 14th, Docket, May 1963, at 4.
31. Id.
The election of 1966 brought both a new governor and a new political climate in California. Candidate Ronald Reagan made no secret of his hostility to the UC that extended beyond just Berkeley and its student radicals, and he promised, if elected, to slash the UC’s budget by ten percent across the board. Although he never was able to fulfill that promise, Reagan sought and frequently achieved smaller cuts throughout the eight years of his governorship, which stopped the steady rise in the UC budget of Pat Brown’s administration. The law school and Library had faced major difficulties in coping with growth even when they were relatively liberally funded, and things now began to get worse.

¶22 The Library soon felt the double whammy of a still-growing student body and library collection together with reduced funding. For example, between the 1969–1970 and 1970–1971 school years, the UCLA Law School student body abruptly rose by more than 200 students, while the Library had grown to more than 200,000 volumes and was adding $100,000 worth of new books each year—all “in the face of a cut in operating funds.”35 A recent 2.5% budget cut had brought reduced open hours, and the Docket urged Library users to “reshelve their books correctly” since there were not enough staff to do it.36 In October 1971, the Docket warned of further Library strain from reduced funds even as the student body, faculty, clinical programs, and library collections relentlessly expanded.37

¶23 Not only funds were in short supply. Due to a chronic lack of office space in the law school generally, particularly as law student organizations proliferated during the 1960s and 1970s, Library offices were periodically reshuffled and relocated—sometimes inconveniently far from the Library itself. Three of eight conference rooms intended for students’ use were repurposed for Library staff and the Library’s photocopiers. But the Library was more often a victim of territorial aggression, as in August 1973, when the assistant dean for students took over Room 1106 and bounced the Library’s administrative office down the hallway.38

¶24 The steady growth in collections, students, and other patrons also gradually pushed the Library toward opening its stacks for self-service use. From 1951 through 1967, the stacks were primarily closed, with items paged by library staff, to maintain control of the Library’s collection. But Piacenza’s successor, Law Librarian Frederick Smith, gradually opened the collection, starting with legal periodicals.39 This change brought problems that the closed stack system had averted. In November 1976, the Docket reported, “Slasher Strikes Library”—some patron had cut a total of 808 pages out of thirty-six different books, mostly cases related to pending moot court problems at UCLA and other local law schools.40 Dire warn-

34. Kahn, supra note 15. Regarding Brown’s relationship with the University of California and educational planning in California, see Rarick, supra note 12, at 135–53, 292–313.
36. Id. at 3.
38. Brief Early History, supra note 16, at 12–15. Dean Murray Schwartz, reflecting on the competition for office space and the sometimes nasty internal political squabbles that resulted, observed in 1970, “I would say this is the most intractable problem I’ve had since becoming Dean.” Jon Kotler, Student Space Allocation Plan Accepted but Problems Remain, Docket, Mar. 13, 1970, at 1.
nings of potential career consequences to book slashers were duly posted. Nineteen seventy-nine saw further book slashings; some suspected this was due to the chronic unavailability and disrepair of the Library’s overused photocopiers.

The post-1967 combined pressures of inadequate space, a growing student body, and curtailed funding helped to turn another, already simmering problem at the Library into a crisis—non-UCLA patrons. The Library, as a public law library at a public university, was supposed to provide access to practicing attorneys, law students from other schools, even members of the general public, along with UCLA law and nonlaw students and faculty. As early as December 1963, Piacenza had noted the problem of peak congestion in the Library during the holiday break, as law students home from other schools throughout the nation used the Library to prepare for January final exams; given this heavier seasonal use, the Library closed only on Christmas and New Year’s Day.

By 1970, especially after a 2.5% budget cut, the problem was increasingly acute, Library staff began studying the “impact of outside users on the library,” and the Docket warned that further budget cuts might require limits on public access. In April 1974, the newspaper’s editors wondered, “Where do all those people come from who take over the Law Library?”—especially during summer when students were preparing for bar exams—and urged frustrated students to “register complaints and suggestions with the recently formed Library Committee.” By February 1976, that committee proposed that non-UCLA Library users be charged a use fee of $5 per day or $100 per year to deter hordes of practicing attorneys or non-UCLA law students from overfilling the Library, while Law Librarian Smith contacted the Los Angeles County Law Library about keeping its branch offices open evenings and on weekends to reduce pressure at his Library. Later that spring, the Library created a new special reserve area “to relieve the crush of traffic at the main circulation desk,” and that fall the Library restricted weekend use by non-UCLA patrons.

Despite the crackdown on non-UCLA Library users, the overall situation deteriorated through the 1970s. In August 1978, the Docket reported, “Although seating capacity in the Law School library already falls below American Bar Association accreditation standards, four conference rooms in the library’s basement have been converted into faculty offices, further aggravating the space crunch.” The law school commandeered the four conference rooms to make office space for the school’s four legal research and writing instructors. The Docket referred to the 1974 ABA Accreditation Report on UCLA Law School, which stated that an academic law library should have seating for sixty-five percent of the student body. UCLA’s could seat perhaps a third, which was cause for “serious concern,” and it was “imperative

44. Latta, supra note 35, at 1.
that in the near future there be provided either a new Law School building or a major structural addition to the present building.”

Although UCLA administrators were well aware of the space crunch, finding funding for new construction would be difficult: “In post-Proposition 13 California, it is likely that no additional funds will be forthcoming from the State.” Dean William Warren “admitted that the immediate outlook for building funds is grim and will probably remain grim for the next 20 years”; he described the lack of space as “‘maddening’” and noted that faculty were squeezed into the library because “there was simply no other place to put them.”

Law Librarian Smith added that “heavy use of the law library by outsiders exacerbates the space problem,” including local lawyers with small in-house libraries whose staff instead used the Library and “monopoliz[ed] parts of the library collection and the xerox machines”; students from other law schools, including unaccredited schools with substandard or nonexistent libraries; and UCLA undergraduates, including “sorority members who hope to meet a male law student in the library.” Whereas private law schools could bar outsiders, it was “more difficult for a tax-supported school to ban non-students,” although Smith noted that the weekend limited access policy was still in effect, allowing only forty to sixty non-UCLA patrons to use the Library. Moreover, although outside patrons liked to use the Library on Saturday nights and Sunday mornings, budget problems had forced closure of the library at those times, and Smith hoped the new limited hours “would discourage non-students from using the library at all.” He noted that he had been law librarian for eleven years, had lived with “‘Ronald Reagan budgets’” and would “live with the impacts of Proposition 13”—but he admitted that he felt “a bit beleaguered [sic].”

The Library’s funding and space problems would remain severe until the late 1990s. Changes in the nature of legal education, including “growth of clinical [education], smaller class sizes and increased group study;” forced law school building expansions across the nation. The law school particularly needed more space because it had eighteen active student organizations, more than any other law school in the United States, along with its overcrowded library and need for more faculty offices. The outside user problem also remained. In 1985, when Dean Susan W. Prager held a town meeting with law students regarding their issues and concerns, the students again complained about the many non-law students in the Library. Dean Prager replied that “since the library is public, public access cannot be denied,” although access was still “restricted during special times, such as on weekends and during final exams.”

By 1990, as the crowding crisis continued to mount, glimmers of hope also began to appear on the horizon. That October, the Docket, observing that “UCLAW’s library . . . is hopelessly overcrowded,” found possible “relief in sight,” noting that “the Hugh and Hazel Darling Foundation pledged 5 million dollars for renovation and expansion, but that doesn’t come anywhere close to the 20 to 25

50. Id. at 7.
51. Id.
52. Dean Prager Addresses Student Concerns, Docket, Nov. 1985, at 4.
million dollar (or higher) final cost.”

Around the same time, the Library was visited by the Society of College and University Planners at the behest of the California state legislature; a librarian reported that during the visit, the Library “was jam-packed. They’d never seen such a crowded library.”

The Docket noted the rumor circulating that the ABA might pull UCLA Law School’s accreditation for violation of ABA standards such as Standard 604, requiring that a “law library must have adequate staffing and physical housing of all of the collections of the library.” Yet the demonstrated need still did not guarantee that the law school would receive “in excess of 10 million dollars from the state for library expansion”; the Docket concluded, “We probably won’t be able to say anything for sure until construction starts. Until then, be patient with the library, and don’t trip on any books.”

In October 1994, a librarian explained, “The library stacks were built to hold about 275,000 volumes and our current collection is over 430,000 volumes, which is why our present facility is overflowing.”

During the 1980s and 1990s, Dean Prager and her administration pulled together the funding and planning to relieve the chronic pressure on the Library. In March 1993, at another town hall meeting with students, the administration was able to announce that notwithstanding ongoing budget problems and student fee increases, the law school was “moving forward with the law library addition,” explaining, “State sources and private donations are each supposed to pay half of the $30 million cost. So far, $7 million of the needed $15 million in private donations has been raised.”

By April 1993, the Docket hopefully trumpeted, “Coming in 1996: A Darling Library!”—a $25 million project to expand the Library from 42,346 square feet to around 80,000 square feet, to be “named the Hugh and Hazel Darling Law Library after these very generous benefactors.”

Because the new Library would be built around the old Library, ultimately it was necessary to relocate the Library’s collections, staff, and services to the former UCLA Graduate School of Management building, now the Luskin School of Public Affairs. The old UCLA Law Library closed its doors to anyone but construction personnel on June 16, 1995, and the interim Library opened in its temporary, even smaller quarters that August. The temporary facility had only around a third of the shelf space and seating of the old Library, and some materials were left in storage at the construction site, available only by paging.

The official groundbreaking for the new Library occurred in February 1996, with Chancellor Charles Young attending along with former dean William Warren, current dean Susan Prager, former law librarian Fred Smith, and new law librarian Myra Saunders. Warren cheerfully exclaimed, “Susan, this day is for you!” and lauded Prager’s “visionary perseverance in conducting the campaign for a new state of the art library,” even in the face of “many naysayers” along with “declining state

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54. Id.
55. Id.
revenues and a sour state economy.”60 Prager’s fund-raising efforts were “overwhelmingly successful, collecting more than $11 million in private contributions,” including the $5 million from the Hugh and Hazel Darling Foundation, $1 million from the Ahmanson Foundation, and up to half a million dollars apiece from several successful UCLA law alumni. Alumni gave a total of $4.5 million toward the new construction, one-third of that comprising gifts of $25,000 payable over five years and given by many alumni who were not top earners, as Dean Prager proudly observed.61 The new Library would provide a doubling of collections storage space for print and digital resources; more than 300 seats worth of additional study space, “exceeding [ABA] and [AALS] standards”; a computer lab with “more than 100 additional work-stations” plus training facilities; ready access to the law school digital network; a teleconferencing center; improved climate control; easier access for the physically disabled; a “24-hour reading room”; and eighteen new faculty offices.62

¶34 UCLA law students waited eagerly, sometimes impatiently, as work proceeded. In February 1997, the Docket included a photograph of the construction underway and noted that the new facility was “expected to be ready next academic year.”63 That proved overly optimistic, as with earlier major construction at the law school, and student complaints continued. In the fall of 1998, however, the beautiful new Darling Law Library opened its doors to students. The Docket cheerfully observed, “In the old library, our friends would pity us for having to spend hours locked in a dungeon. But now, we can awe our friends with the beauty and grandeur of the library as well as its space and technological advances.”64 The unending struggle for space that had plagued the original UCLA Law Library was finally over for the foreseeable future. The new Library was officially dedicated on January 22, 2000, as part of the law school’s fiftieth anniversary celebrations.65

History of the UCLA Law Library Staff

¶35 When the UCLA School of Law and the Library both began operations in World War II–era former military barracks on the north end of UCLA’s campus in September 1949, the Library had just two full-time employees: Law Librarian Thomas S. Dabagh and Assistant to the Law Librarian Louis Piacenza.66

¶36 Thomas Suren Dabagh received his bachelor’s degree from Berkeley in 1924, followed by law and library degrees also from Berkeley in 1926. After advanced legal study at Columbia, Dabagh became a researcher at California’s Office of Legislative Counsel in Sacramento from 1930 to 1936, then was law librarian at Berkeley’s law school from 1936 to 1939, before serving as the fourth director of the Los Angeles County Law Library—then reportedly the world’s larg-

66. Piacenza, supra note 17, at 3; Brief Early History, supra note 16, at 8.
est public law library—from 1939 to 1949. Dabagh, with extensive and impeccable local, state, and UC credentials, had also served on the Law School Library Committee, helping to plan for the new law school and Library at UCLA.  

¶37 Louis Piacenza was a page at the Columbia Law Library from 1922 to 1930, then was first assistant there from 1930 to 1943, followed by two years in the U.S. Navy during World War II and two years working for a legal publishing house. An expert on Anglo-American legal literature, he started work as principal library assistant, operating the loan (circulation) desk.

¶38 The Library staff grew slowly during its early years. In 1951, when the newly constructed UCLA Law Building was ready for occupation, the Library added a loan desk librarian and attendant, while Dabagh was forced out of his job and Piacenza became acting law librarian in October 1951. In July 1952, Piacenza became permanent law librarian, and the Library added Frances K. Holbrook as head of the newly established Catalog Department and another librarian in the Circulation Department. In fall 1952, when the Library gained administrative autonomy from the UCLA campus library system and so gained control over its own acquisitions, it added an acquisitions librarian along with cataloger Robert J. Faris and three new clerical employees. In April 1953, Helen Carey arrived as budget coordinator and secretary. In February 1954, the Library added its first reference librarian, a task formerly handled by the Circulation Department. Another cataloger and two more clerks joined in 1955.

¶39 By the 1957–1958 school year, the Library had fourteen full-time employees, plus two-and-a-half full-time staff equivalents covering evenings and weekends. The positions listed in 1958 included the law librarian, an acquisitions librarian, a reference librarian, a head of readers’ services (Circulation Department), three loan desk assistants, three catalogers, a serials clerk, a secretary-accounting (budget coordinator), a processing clerk, a general typist, and fourteen part-time general assistants. The acquisitions librarian in 1958 was Dorothy L. Heizer, who wrote columns in the Docket featuring some of the most fun, weird, timely, or otherwise interesting books recently added to the Library’s collection.

¶40 In May 1961, the Docket introduced various library staff members to the wider law school community. Along with Law Librarian Piacenza, Robert Faris was head of Circulation and Reference, while Frances Holbrook remained head of the Catalog Department, joined by Momoko Murakami and Paul Harris. Among others, the article also named the four loan desk assistants who worked directly with students, including Mayme Clayton and B.T. Davis.

¶41 Piacenza achieved significant nationwide professional recognition. In 1961, he was appointed to a two-year term on the executive board of the American Association of Law Libraries (AALL) and was named to the organization’s Committee

68. Piacenza, supra note 17, at 3; Law Librarian Louis Piacenza Dies at 66, supra note 23, at 1.
70. Id. at 9–10.
71. Id. at 10–11.
73. Piacenza, supra note 17, at 7.
on Recruitment and Placement; later, in 1964, he became president of the AALL.\(^{74}\)

At a time when the AALL was even more heavily dominated by schools east of the Rockies than it is today, this was an honor for both Piacenza and the Library, which reportedly “had grown faster than any university [law] library in the country” except Harvard’s.\(^{75}\) But Piacenza also still attended to the details, as with agreeing in 1965 to open the library at 7 A.M. rather than 8 A.M. in response to a student petition.\(^{76}\) The Piacenza era came to a tragically abrupt end when he died of cancer in March 1967 at age 66. The Docket’s obituary noted that since 1949, “Louis Piacenza and the UCLA Law Library have been synonymous terms” and that he had brought the Library to its “position of eminence” as the nation’s twelfth largest law school library.\(^{77}\)

¶42 In the wake of this misfortune, Frances Holbrook became acting librarian until November 1967, when Frederick E. Smith became the next permanent law librarian. Smith, with law and library school degrees from the University of Michigan, had spent the previous seven years working for the University of Michigan Law Library as chief order librarian, reference librarian, and ultimately assistant director. The reorganization of the Library’s leadership saw Holbrook fill the newly created position of assistant law librarian in February 1968.\(^{78}\) Other longtime library staff members remaining in early 1968 included Helen Carey in her traditional role, Momoko Murakami as head of Acquisitions, Robert Faris as head of the Catalog Department joined by Paul Harris, and Mayme Clayton and B.T. Davis.\(^{79}\)

¶43 The last available snapshot of the early Library staff, undated but from the early 1970s,\(^{80}\) lists eight professional librarians and eleven full-time clerical staff members along with forty-five general assistants (the equivalent of 13.77 FTEs). Familiar names include librarian Smith; Momoko Murakami, head of Technical Services (combining the former Catalog and Acquisitions Departments in 1969); Ann Mitchell, who in 1970 transferred from UCLA’s main library to become the Library’s head of Public Services, the renamed combined Circulation and Reference Department; Robert J. Faris, Senior Cataloger; Paul Harris, Assistant to the Law Librarian; Sylvia Merritt, who started as a legal reference librarian in 1965 and was still on the staff in 1983; the ubiquitous Helen Carey; and B.T. Davis. Frances Holbrook retired after twenty years in June 1972; Mayme Clayton had gone on to other things that would make her famous.\(^{81}\)

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75. *Piacenza to Head U.S. Library Unit*, supra note 74, at 2.
¶44 Mayme Clayton and B.T. (Booker T.) Davis were both relatively early African American staff members at the Library. As loan desk assistants, they had the most direct contact with students, and both came to be especially well loved. In 1962, the outgoing law school student body president, musing over good things about UCLA Law School, fondly recalled “B.T. and Mayme in the library who take us by the hand and lead us to the books that we did not know existed.”

¶45 Mayme Agnew Clayton had worked for the USC law library for five years before joining the UCLA Law Library staff in 1957. She developed a strong interest in helping minority law students, and by winter 1969, she had conducted a survey of “how the library could be more effective in meeting problems of Black and Brown students,” then received Frederick Smith’s support in proposing the “addition of a library research and bibliographic skills program to aid students in the development of legal research skills.” Clayton later reached out progressively farther to public interest and minority student programs and organizations at the law school and the wider UCLA campus, including “helping many poverty law programs select libraries, including student legal assistance, the Inmate Legal Assistance Group, the Pico Union Neighborhood Association, the Watts Urban Workshop, and CPC [Community Participation Center].” She also worked with UCLA’s Afro-American Studies Department to establish the university’s African American Studies Center Library. But Clayton “quit in frustration in the early 1970s over the lack of money for . . . [the] new Afro-American Study Center.” For the next three decades, she collected materials herself, amassing the second-largest repository for African American history and culture in the United States—a feat the Los Angeles Times called a “miracle.”

¶46 B.T. Davis joined the Library staff around 1960 after spending “5 ½ years at the Yale Law Library” circulation desk. Davis, like Clayton, came to be known and loved by students for his friendly, cheerful disposition and readiness to help beyond the call of duty. He also was often on duty during the evenings and weekends, creating special bonding opportunities with law students working hard, long, and late in the evening.

82. Davidson, supra note 28, at 5.
85. Law Library Broadens Student Services, Keeps Rat Outlook, DOCKET, Nov. 17, 1969, at 6.
89. Piacenza, supra note 17, at 7.
the Library. A 1968 Docket article observed, “As everyone who frequents the library during the evening knows, ‘B.T.’s’ responsibilities range over keeping order in the Reading Room to finding that elusive cite in a hurry.”

By 1971, Davis was head of the circulation desk, and he spent many more years thereafter helping grateful UCLA law students.

After 1971, the Docket never published another article giving an overview of the Library staff and provided few articles mentioning the Library at all. The Library staff seem to have receded in the awareness of UCLA’s law student community from the 1970s onward, as fewer students developed the sort of close relationships earlier students had with people such as Clayton and Davis. Among other potential factors, the open-stack, self-service system required less close contact and cooperation between students and Library staff; and the later migration of most legal research to computer-based or online platforms by the 1990s extended the self-help approach outside the library’s walls and may have made students’ relationships with librarians even more tenuous.

**History of Library Technology at the UCLA Law Library**

When the Library opened in 1949, it used information technology that had been available from at least the 1920s if not the late 1800s—traditional Melvil Dewey–style card catalogs plus microprint and microforms, along with the more ancient technology of books and other printed materials. So, for example, when the Library in the late 1950s received forty-four tons of appellate briefs submitted in recent California court cases, staff had to sort them all manually before providing access to them in print only. The U.S. Supreme Court already had taken the next step by making briefs filed with that Court available in microprint, although at that point the coverage extended back to only 1938.

In the 1950s, law schools still used cataloging systems that were often different from “normal” university libraries, and there was no single standard system. Some law libraries used a “dual catalog,” including a separate file for authors and titles along with another file using subject headings; some other law libraries provided brief author, subject, and bibliographical information all on the same card, apparently without cross-listings or cross-references. When the Library in April 1958 announced that its cataloging system was complete, it also explained its adoption of the “complete catalog” system, giving “maximum coverage in subject matter, as well as complete bibliographical description,” and using extensive “see also” cross-referencing and cross-listing, with up to nine subject cards (with subject headings in red) related to the main card with the full bibliographic information.

Yet technological change was coming to law libraries and other sorts of libraries. For instance, in 1962, UCLA 3L Richard Scott was appointed “national chairman of American Law Students Association’s Techno-Legal Committee.” Scott held a bachelor’s degree in engineering physics and was employed as a senior com-

puter analyst. Scott’s committee investigated the impact of technology on legal practice, including the “use of computers to index and retrieve statutory law [common-law court opinions were not mentioned], the possible future application of computers to other routine tasks now done by lawyers, evidentiary problems arising from the use of electronic ‘bugging’ devices, and the use of mathematical logic as an aid in patent law research.” The committee was compiling a “techno-legal bibliography” to aid further research and was communicating with other law schools and computer companies. Scott noted that “no law office in the country has adopted computers for legal use yet, but . . . the idea is beginning to take hold.”

¶51 The Library explored a different sort of labor-saving technology during the early 1970s, driven in part by reduced state funding: electronic book security systems to allow self-service open stacks and reduce the need for item- and request-specific paging by circulation desk staff. Such a possibility surfaced by December 1970, following a 2.5% budget cut to already stretched Library staffing and services. The Docket noted that major cost savings ultimately could be realized from opening the closed stacks, but that the upfront costs of installing a new “electronic checking system,” including ten cents per volume worth of materials plus labor costs of processing all the books, would be steep. An electronic security system was installed in 1978; the Docket joked that rather than patrons suffering “Fourth Amendment violations at the main exit,” the new system “drops an anvil on the person absconding with the books.”

¶52 Meanwhile, the budget-starved Library had ongoing problems with an earlier form of technology: photocopiers, which may have appeared after the first major building and library renovation in 1967. The “Xerox machines” originally were installed in the Library foyer, causing noise and traffic-flow problems until 1973, when the Library commandeered a conference room for students in the newly constructed wing of the law school and moved the photocopiers there. But problems remained. In late 1978, in “Some Things They Didn’t Tell You at Orientation,” the Docket editors warned incoming 1Ls: “The copiers in the library are always out of paper, or change, or both. And remember that you can’t take volumes out of the library. Some of us bring small cameras of the sort used in espionage.”

In September 1979, while reporting on further Library budget cuts as well as book slashers who had vandalized expensive legal publications, the Docket noted that the Library had added an additional photocopier, that copies cost only five cents per page, and that Law Librarian Frederick Smith “hope[d] that users will make use of

94. Latta, supra note 35, at 1, 3.
95. Tight University Budget Stunts Law Library Growth, supra note 37, at 3; [Untitled article with photo of first library electronic-magnetic theft detector device], DOCKET, Aug. 31, 1978, at 6. The allusion to “Fourth Amendment violations” indicates that earlier, Library staff manually checked students’ and other patrons’ bags and briefcases upon exiting the library.
these machines, rather than tear pages from books.” The article continued, “Last year alone, over one million copies were made on Law Library machines.”99

¶53 More than a decade later, the Library’s photocopiers still remained a focus of complaint and concern. At a 1990 town hall meeting with Dean Susan Prager to discuss students’ concerns, students complained that only two out of eight Library photocopiers were working. Dean Prager noted that the overused machines made the copy room so hot that repair people would not service them, that she expected to purchase “new, cooler-running copiers soon,” and that the issue would be included in planning for the anticipated Library expansion.100

¶54 In other areas of technology, the Library enjoyed smoother progress as earlier forms of information technology evolved in new, more computer-dependent directions. By April 1980, the Library introduced an OCLC-based Interlibrary Loan Subsystem and acquired an OCLC-designated terminal to allow access to the very earliest digital, online bibliographic databases and connect the Library to “hundreds of academic libraries in the United States.”101 In September 1980, the library announced the addition of a microfilm version of the Legal Resource Index designed to run on a special “COM (computer-output-microfilm) reader” machine provided by the publisher.102

¶55 Digitalization of library information systems gradually continued. In October 1982, the library announced the arrival of the ORION online library information system at UCLA and the Library, initially with a single designated terminal at the reference desk but with the promise of additional terminals. But ORION provided bibliographic information only on books acquired after January 1981 or cataloged after 1977, so finding earlier books still required using traditional card catalogs. The Library urged students to “[s]top by the reference desk and ask to see the system in action. The reference staff is eager to demonstrate its capabilities for you.” Meanwhile, “MELVYL, a prototype automated union catalog for the nine UC campuses, [was] being developed by the University of California’s Division of Library Automation” and could also be accessed at the same terminal.103

¶56 Computerization and digitalization were also starting to revolutionize basic legal research. In 1976 and 1977, UCLA Law School received invitations to receive “sharply reduced” rates on twelve-month LexisNexis subscriptions as a member of EDUCOM Planning Council, an educational consortium creating a prototype network for computer-assisted research that had been “active in advancing the application of computing technology to legal education” since March 1976.104 UCLA Law School formed a committee to investigate computer-assisted

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102. Library Welcome, DOCKET, Sept. 10, 1980, at 1, 23. Notably, as with early LexisNexis or OCLC systems, the business model at the time continued to rely on designated terminals.
research and requested that Law Librarian Smith research the topic.\textsuperscript{105} A Lexis terminal was first installed at the Library in April 1978 and was quickly embraced as “an integral part of the tools of legal research.”\textsuperscript{106} The Library introduced a “well-received” monthly Lexis training program starting in September 1978, teaching batches of up to fifty law students.\textsuperscript{107} By early 1983, Westlaw was also available at the law school, and by late 1984, the law school’s Computer Advisory Group was considering extending Lexis or Westlaw access directly to faculty members’ home or office computers.\textsuperscript{108}

\textsuperscript{¶57} The digital revolution rolled onward through the 1980s and into the 1990s. Showing the Library’s technological (r)evolution by the mid-1990s relative to the still futuristic visions of Richard Scott and his Techno-Legal Committee in 1962, by fall 1995, all library terminals were connected to the LawNet network and thus available for e-mail, word processing, Internet searches, running CD-ROMs, and Westlaw or LexisNexis research. The Library advertised a wide array of wired, computerized, digitalized services to law students, including last-minute research help requested by e-mail and provided by reference librarians, CD-ROMs compatible with Windows- or DOS-based operating systems covering various legal topics, laser printers, computer labs staffed with Westlaw or LexisNexis representatives to assist with searching, and \textit{Rutter Guides} to various areas of California law digitally available through Westlaw.\textsuperscript{109}

\textbf{Conclusion}

\textsuperscript{¶58} UCLA Law Library’s ride on the seesaw, or roller coaster, of postwar American political history, economic and demographic expansion, and cultural and technological change took it through McCarthyism, 1960s liberal reform and increased state and federal government intervention in social problems, economic stagnation of the 1970s, and conservative backlash of the 1970s and 1980s—plus the digital revolution. The McCarthy era helped determine the selection of UCLA Law School’s first dean and the downfall of its first librarian, while Dean Coffman’s own downfall in 1956 came not so long after McCarthy’s more monumental fall in December 1954.\textsuperscript{110} The UCLA Law Building’s first major expansion during the

\textsuperscript{105} Memorandum from Prof. Jon Varat to Curriculum Committee re: Instruction in Computerized Legal Research, May 24, 1977, including Appendix B: Memorandum from Frederick E. Smith to Prof. John [sic] Varat, Feb. 18, 1977, \textit{in} Lexis File, \textit{supra} note 104.


\textsuperscript{108} Memorandum from Fred Smith to Faculty re: Westlaw/Lexis Access, Oct. 26, 1984; Memorandum from Frederick E. Smith to Law School Faculty re: Westlaw Installation, Apr. 27, 1983; Memorandum from Fred Smith to Law School Faculty re: Westlaw Use, May 12, 1983 (all \textit{in} Lexis File, \textit{supra} note 104).


\textsuperscript{110} See Oshinsky, \textit{supra} note 10, at 492.
1960s reflected not only the expansive mood of Governor Brown in California, but also of President Johnson’s Great Society programs on the national stage; like the efforts of the Brown and Johnson administrations, the initial UCLA Law Building expansion proved unable to cope with rising hopes, expectations, and demands or with the proliferation of new issues and causes that emerged as early 1960s liberalism shifted toward late 1960s radicalism. Conservative retrenchment came earlier to California than to most of the United States with Governor Reagan’s election in November 1966, and the Library suffered throughout the 1970s and 1980s with underfunding and inadequate space as the expansive public mood that passed Proposition 1-A in 1963 gave way to the different sort of public mood that passed Proposition 13 in 1978.

¶59 The lesson for the UCLA Law School and Library was that a public law school could no longer count on public funding and had better look elsewhere. Although California taxpayers provided substantial sums for the new Darling Law Library, the reliance on private donors for half the cost of the new construction marked a new trend that would only increase like the UCLA Law School’s rising tuition—less than $1000 per year during the 1980s; more than $45,000 per year by 2014.111 The upshot has been a privatized public law school relying primarily on private funds, like professional schools at other state universities.112

¶60 Thus, the recent history of UCLA’s Law Library reflects a powerful national and global trend since 1980—the rise of neoliberalism, with privatization of formerly public institutions, facilities, and programs, and the atrophy of the public realm.113 Whether this trend will reverse remains to be seen.

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111. Tuition/Fees, UCLA SCH. OF LAW, https://law.ucla.edu/admissions/tuition-fees/ (last visited Feb. 18, 2016) [https://perma.cc/5DEC-N3W6].

112. See, e.g., Anne Ryman, ASU Weighs Severing State Funding to Aid Law School, ARIZ. REPUBLIC (Nov. 2, 2010), http://archive.azcentral.com/arizonarepublic/news/articles/20101102asu-law-school-weighs-private-school-style-tuition.html [https://perma.cc/RD5N-33KZ] (noting the same process having occurred already at Michigan’s and Virginia’s flagship state law schools and being under consideration at UCLA’s Anderson School of Management).

Assisting Rural Domestic Violence Victims:  
The Local Librarian’s Role*

Sara R. Benson**

With proper training, librarians could be ideal partners to combat domestic abuse in rural areas. This article examines the specific needs of domestic violence victims in rural areas where shelters and legal services are often limited, explains the role of unauthorized practice of law policies, and highlights successful library initiatives that model how such programs might work.

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Introduction

* Rules prohibiting the unauthorized practice of law (UPL) by nonlawyers serve many important purposes: limiting fraudulent activities, protecting the public, protecting the bar, and many more. However, those rules can limit nonlawyers from helping in otherwise useful activities, particularly in the domestic violence arena. For instance, the laws against the UPL have been relaxed in some states,
including Illinois, to allow domestic violence victims who cannot afford a lawyer to be provided with assistance from a knowledgeable and trained layperson or victim advocate. Librarians are ideally suited, especially in rural areas, to serve as advocates, at least within the confines of the library, to domestic violence victims as well. Indeed, with the proper training, librarians could be ideal partners to those combating domestic abuse in rural areas, as many victims of domestic abuse are prevented from working outside the home and may only be permitted by their abuser to access public places, like a library, without punishment. To establish this premise, this article first defines the term “rural” to better provide a context for the surrounding discussion of a specific portion of the domestic violence victim population. Next, the article elaborates on the specific needs of domestic violence victims in rural areas, where shelters and legal services are often limited or absent. The article then explains what UPL policies exist, how these policies apply to librarians, and how some have been relaxed with respect to domestic violence advocates. Next follow some justifications for including librarians among those already serving the domestic violence population. The article concludes with a plea to train more rural librarians to support domestic violence victims.

The Elusive Definition of the Term “Rural”

¶2 The term “rural” is a bit hard to nail down when discussing “rural America.” Indeed, the term is defined in many different ways. Lisa Pruitt, for instance, suggests that it be defined by reference to “numerical measures such as population density and size of population clusters.”1 The U.S. government, when measuring the term for the entire country, uses nine potential definitions based on census data, the Office of Management and Budget’s list of metropolitan areas, and the U.S. Department of Agriculture’s Economic Research Service rural-urban commuting areas.2 Depending on which computation is used, the number of rural American residents in 2000 ranged from 48.8 million to 177 million people.3 Note that the total U.S. population in 2000 was 281,421,906 people.4

¶3 Another way to define U.S. rural areas is by access to resources. “Areas with combined high prevalence and persistence of poverty, low levels of resources for local use, and low levels of investment can be identified as rural without conflicting with more quantitative measures.”5 And yet, even though defining “rural” in terms of population or access to resources is difficult, it is even more challenging to find a singular rural experience in America, as rural culture is heavily influenced by

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3. Id.
regional differences. In our “increasingly spatially integrated national and global society,” with the “blurring of rural-urban spatial boundaries,” many preconceptions and attitudes about rural America are outdated. In addition, the personal experiences of Americans in rural areas are not necessarily homogeneous. For instance, abused women in farming communities may choose to remain with abusive partners because they wish to retain the family farm, demonstrating a strong attachment to the land. Domestic violence in rural Appalachia, in contrast, may trap abused women because of the region’s “particularly virulent and entrenched form of patriarchy, perpetuated by the physical isolation of the communities.”

For purposes of this article, however, the term “rural” must be generalized, as it is too difficult a burden to distinguish between the social and cultural contexts for each individual location in rural America. Here the term “rural” is used in a broad sense to refer to the nonurban portion of the United States, both in terms of low population (using any of the governmental definitions available as discussed above) and cultural differences.

Challenges Faced by Rural Victims of Domestic Abuse

Domestic violence is all too common in U.S. society at large. It is not specific to race, religion, age, or region. “Although chronically underreported,” it is estimated that approximately seven million women experience physical abuse by a “current or former intimate partner each year.” And although men also suffer from domestic abuse, it is far more common for a woman to be victimized in this manner. As such, for ease of reference, the victims are identified as female throughout the remainder of this article. “Domestic abuse” is generally defined as physical or mental abuse directed at a victim by a member of his or her household or a current or former significant other. As noted above, domestic abuse does not occur only in rural areas; however, victims living in rural areas do face unique obstacles.

6. Pruitt, supra note 1, at 394.
9. Id. at 396–97.
10. See U.S. Dep’t Agric., supra note 2; U.S. Census Bureau, supra note 4.
14. Id. (noting that whereas “1 in 5 women . . . has experienced rape in . . . her lifetime,” the numbers are lower for men—“1 in 77”).
to leaving abusive relationships, including isolation and lack of access to community services.

Isolation

%6 Rural America is characterized by vast amounts of land with few people. This means that the individuals living in rural areas may not have ready access to a car, a telephone, the Internet, or even neighbors.\textsuperscript{16} Indeed, Leslie Morgan Steiner, author of \textit{Crazy Love}\textsuperscript{17} and a victim of domestic abuse, explains that her fiancé moved her from New York City to a rural town in New England for the express purpose of isolating her from family and friends in order to begin the cycle of violence.\textsuperscript{18} Steiner’s move from a large city to a small rural town removed her access to friends, family, and neighbors who could hear her scream or see the bruises on her body after the abuse began.\textsuperscript{19} In that case, the move was a calculated one.\textsuperscript{20} On the other hand, women who were born and raised in rural communities are already quite accustomed to the isolation of rural America. However, when violence is added to the isolation, it can be deadly.\textsuperscript{21}

%7 The isolation of rural victims of domestic violence places them in a catch-22 situation. Often their abusers have the sole access to a vehicle.\textsuperscript{22} Abusers quite frequently forbid their victims from working outside the home, which further isolates them and provides the abusers with more financial control.\textsuperscript{23} Thus, these women are unable to leave by car unless their abusers are home or they receive assistance from an outside party (a friend, community member, or family member). However, as noted above, many individuals in rural areas have no helpful neighbors, and about half of them have no local family members. Thus, rural victims of abuse can either flee on foot (which seems foolhardy given the distance between rural communities and sources of help—especially if children are involved) or try to leave when their abusers are home (which seems even less plausible to accomplish in a safe manner).

Lack of Community Services

%8 Rural areas also tend to be impoverished areas. And because they have lower population levels, they have fewer community resources available. For instance, many rural areas have no bus routes available, stranding those without access to a car. Additionally, at least in Illinois, when one “county lacks a public transportation system, it is very likely that adjacent counties lack one also.”\textsuperscript{24} Further, although

\begin{itemize}
\item\textsuperscript{16} Pruitt, \textit{supra} note 1, at 373–74.
\item\textsuperscript{17} Leslie Morgan Steiner, \textit{Crazy Love} (2010).
\item\textsuperscript{19} Id.
\item\textsuperscript{20} That case, sadly, is not an anomaly. See Pruitt, \textit{supra} note 1, at 361 (noting that “batterers may choose to live in the country because it aggravates their victim’s isolation and helplessness.”).
\item\textsuperscript{21} Wendy Boka, Note, \textit{Domestic Violence in Farming Communities: Overcoming the Unique Problems Posed by the Rural Setting}, \textit{9 Drake J. Agric. L.} 389, 392 (2004).
\item\textsuperscript{22} Id. at 396.
\end{itemize}
police officers are technically available, they may not be willing to help domestic violence victims for a variety of reasons, including knowing abusers personally or not knowing the legal requirements in place.²⁵

¶9 Often no local domestic violence shelters exist. According to the National Network to End Domestic Violence, the “largest unmet need” for domestic violence victims from 2014 was “for shelter and housing.”²⁶ It is crucial for victims of domestic violence to have access to a domestic violence shelter.²⁷ To demonstrate, in just one day in 2014, 67,464 victims were served by domestic violence providers nationally. Of those, 36,608 served received some form of emergency or transitional shelter.²⁸ That means that about half of all of those receiving services did so from within a shelter. Sadly, due to low population and funding issues, these shelters are often absent from rural communities. In Illinois, for instance, a state where 74 out of the 102 counties are rural,²⁹ fewer than half of the counties have designated domestic violence shelters.³⁰

¶10 Not only do domestic violence shelters provide necessary safe transitional housing for domestic violence victims, but they often also provide on-site counseling, social work services, legal support services in the form of victim advocates, and sometimes even lawyers or the ability to connect potential clients with local representation.³¹ Victim advocates, although nonlawyers, provide many necessary services to domestic violence victims, including explaining the legal process, engaging in safety planning, providing emotional support and referrals to necessary community services, and attending court hearings.³²

¶11 Finally, lawyers in rural areas are scarce, and legal aid service providers are overwhelmed with potential clientele. Indeed, the American Bar Association has noted the “critical shortage” of lawyers practicing in rural areas.³³ Quite frequently, if a domestic violence victim in a rural area wishes to obtain a civil order of protection from a court, she must do so alone—without the help of a friend, family member, shelter advocate, or lawyer.

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²⁷ Id.
²⁹ SOC. IMPACT RES. CTR., supra note 24, at 4.
³⁰ ICADV’S Membership, ILL. COAL. AGAINST DOMESTIC VIOLENCE, http://www.ilcadv.org/about_i cadv/board_membership.html [https://perma.cc/7S3E-SRQ2] (containing a map of the Illinois counties as well as locations of domestic violence program providers within each county).
¶12 In summary, the issues faced by any domestic violence victim are huge—ranging from mental and physical health issues to economic security issues to legal issues. In rural America, these issues are compounded by the isolation of living in a population-sparse area and a lack of community resources.

The Purpose and Limitations of Unauthorized Practice of Law Rules

¶13 Lawyers work hard to get into law school, graduate from law school, and pass the bar exam. And it is clear that the training provided to lawyers is not learned overnight. Lawyers understand unique relationships between relevant and irrelevant legal research, hierarchy of authority, persuasive techniques, and stylistic skills like legal citation. In an era when more and more one-stop-shop legal websites are emerging (like LegalZoom) and law jobs are fewer and less economically viable than in the past, it seems even more critical for the legal profession to safely guard the rules prohibiting nonlawyers from engaging in the practice of law.

¶14 And yet, there may be some room for nonlawyers, such as librarians, to engage in some amount of legal work for the right reasons, such as a lack of resources for domestic violence victims.

Brief History of the Unauthorized Practice of Law Rules

¶15 Interestingly, the enforcement of UPL rules began around the time of the Great Depression.34 The ABA gives the reason underlying the prohibition as the safety of the public, as otherwise they might unwittingly receive “legal services by unqualified persons.”35 Yet, unsurprisingly, as the job market shrank, lawyers were more interested in protecting their interests in the profession from outsiders.36 While UPL rules are governed by each state individually,37 “lawyer discipline [has become] more uniform as state courts adopted versions of the Model Rules of Professional Conduct (‘Model Rules’), promulgated by the American Bar Association.”38 Even so, because each jurisdiction has its own definition for the practice of law, enforcement remains problematic.39 While most UPL cases are prosecuted by state bars (which are then enforceable in state courts)40 or as misdemeanor crimes,41 more recently, a private cause of action has been recognized in some states.42

¶16 As noted above, with the current state of dwindling job prospects for graduating law students,43 bar associations may be more motivated than ever to

34. Brown, supra note 32, at 288–89.
35. Id. at 290.
36. Id. at 288–89.
38. Id. at 722.
39. Id. at 722–23.
40. Brown, supra note 32, at 290.
41. Id. at 289.
42. Hoppock, supra note 37, at 719.
enforce the UPL rules. The tight job market is also combining with cheap online law websites, like LegalZoom, where clients can obtain a variety of legal services at a much lower cost than hiring a personal attorney.\textsuperscript{44} In this atmosphere, it is understandable that any plea to lessen the UPL rules might be unwelcome; however, rules have already been relaxed for various reasons in some jurisdictions as explained below.

*Unauthorized Practice of Law Issues Specific to Librarians*

\textsuperscript{\S}17 Law librarians, who often have law degrees, comprise the library group most likely to be accused of the UPL.\textsuperscript{45} Although law librarians generally work with lawyers, who understand the law and do not request legal services from librarians, some law librarians work with the general public.\textsuperscript{46} In this capacity, law librarians worry about going too far in assisting pro se patrons such that they might be charged with the UPL.\textsuperscript{47} Although this fear is often unfounded for a variety of reasons, including the fact that no known cases of prosecution of or suits against law librarians exist, some practitioners cite ethics in their advice against providing excessive assistance to patrons.\textsuperscript{48}

*Relaxed Rules for Unauthorized Practice of Law*

\textsuperscript{\S}18 UPL rules have been criticized on many grounds, including the fact that they were drafted to protect lawyers and not clients, that only a few cases involving such charges include “specific allegations of harm,” and that they are less necessary where aggrieved clients have other causes of action they can bring against laypersons acting as attorneys.\textsuperscript{49} For these reasons and others, many advocate for the limited licensing of nonattorneys to permit them to practice some aspects of law.\textsuperscript{50} Indeed, as early as 1995 the ABA recognized the significant number of pro se petitioners and recommended that individual states “take action to resolve the inherent conflict of relying upon nonlawyers to increase the availability of legal assistance.”\textsuperscript{51} Pro se petitioners often represent themselves because they cannot afford or have no access to legal representation; put another way, lawyers cannot meet the practical needs of these low- to middle-income clients.\textsuperscript{52}

\begin{footnotes}
\item[47] Id. at 133–34.
\item[48] Id. at 138–39, 143–44.
\item[50] Blades, *supra* note 44, at 52–53.
\item[51] Brown, *supra* note 32, at 294 (citing Comm’n on Nonlawyer Practice, Am. Bar Ass’n, Nonlawyer Activity in Law-Related Situations 77, 161 (1995)).
\item[52] Blades, *supra* note 44, at 47–49.
\end{footnotes}
¶19 One jurisdiction has already established two new limited licenses for legal practice,53 while others are still researching the possibility of such an outcome.54 In Washington State, nonlawyers may now register with the state bar as either legal technicians or limited practice officers.55 These limited licenses were responses to the growing need for legal representation in Washington, where a 2003 study demonstrated that “more than 80 percent of people . . . with low- or moderate-income experienced a legal need and went without help because they couldn’t afford it or didn’t know where to turn.”56 The “limited practice officer” designation is meant “to authorize certain lay persons to select, prepare and complete legal documents incident to the closing of real estate and personal property transactions and to prescribe the conditions of and limitations upon such activities.”57 The legal technician rules are a bit more complicated, but generally permit a layperson, with adequate training as defined by the bar, to draft documents and assist a client in a specific area of law—most commonly family law.58 However, legal technicians are not permitted to represent clients in court or negotiate on clients’ behalf.59

¶20 For similar reasons, some jurisdictions have relaxed rules for domestic violence lay victim advocates due to the lack of available resources for victims of abuse.60 Although advocates are not lawyers, they do receive a significant amount of training about domestic abuse, confidentiality, court procedures, and legal and emotional issues relating to domestic abuse.61 Advocates are instructed to advise their clients that they are not lawyers.62 In Illinois, for instance, the legislature passed a law permitting advocates to help prepare paperwork for orders of protection and “attend and sit at counsel table and confer with the victim” during domestic violence proceedings (civil and criminal) without being charged with the UPL.63 The law in Illinois permits communications between a victim and an advocate to remain privileged, as they do between an attorney and a client.64 Similarly, in Wisconsin, state law permits advocates to attend court hearings and address the court if the judge permits it.65 In North Dakota, advocates are permitted to do the

55. Limited Licenses, supra note 53.
57. Admission to Practice Rules, Rule 12(a). Limited Practice Rule for Limited Practice Officers, Wash. State Bar Ass’n (eff. date Jan. 1, 2009), http://www.wsba.org/~/media/Files/Licensing_Lawyer%20Conduct/LPO/Part%201%20-%20APR%202012.ashx [https://perma.cc/CK6L-87P8].
59. Id.
60. Brown, supra note 32, at 294–95.
61. Id. at 291.
62. Id. at 292.
64. Id. § 60/227.
same by the court rules,66 and Minnesota permits this representation by case law interpretation.67 Other states may permit advocates to assist in more limited capacities, such as by helping to provide “clerical assistance” to victims when preparing court forms.68 And in Georgia, the state’s statute specifically provides that such assistance with forms and pleadings by advocates “shall not constitute the practice of law.”69 Alternatively, the court may allow a victim advocate or any other person desired by the victim to accompany her to court, as long as he or she is not disruptive to the court proceedings, which presumably includes them remaining silent.70

¶21 Finally, due to the scarcity of lawyers and the immense importance of assisting domestic violence victims with obtaining orders of protection, some states even mandate that court clerks assist victims with the preparation of court documents.71 Due to this mandate, some states requiring clerks to assist victims of domestic violence specifically exempt participating clerks from UPL rules when they comply with this requirement.72

¶22 Thus, in many states, rural librarians who are trained as lay domestic violence advocates would not violate the UPL rules when they assist victims of domestic abuse in their communities.

**Librarians Serving the Domestic Violence Community: Policy and Examples**

¶23 As noted above, services for domestic violence victims in rural America are sparse and sorely needed. However, what makes public librarians a particularly useful ally? And when libraries in rural areas are already underfunded and understaffed,73 is it beneficial to add another responsibility to the duties of the rural librarian? I think the answer is yes, and I hope the remainder of this article will convince you that serving this particular community in rural libraries is a worthwhile and achievable goal. This section first discusses the fit between rural libraries and domestic violence, along with specific services that could be provided to victims of domestic violence, along with specific services that could be provided to victims of domestic violence along with possibilities for funding such programs. Then, I describe some specific case studies on how rural libraries have helped domestic violence victims.

68. See, e.g., HAW. REV. STAT. § 586(d) (2004); LA. REV. STAT. ANN. § 2138 (2015); NEB. REV. STAT. § 42-905(5) (2015); OKLA. STAT. tit. 22, § 60.2(D) (2013).
70. See, e.g., CAL. FAM. CODE § 6303(a)–(b) (2012); OHIO REV. CODE ANN. §§ 3113.31(A)(5), (M) (Westlaw through Files 1 to 50 of the 131st General Assembly (2015–2016) and 2015 State Issues 1 and 2) (permitting a victim advocate to accompany the victim “[i]n all stages of [the domestic violence] proceeding); W. VA. CODE § 48-27-307 (2001).
71. IND. CODE § 34-26-5-3(d) (2009); TENN. CODE ANN. § 36-3-604(a)(2) (Westlaw, through laws from the 2016 Second Reg. Sess., eff. through Feb. 1, 2016); UTAH CODE ANN. §§ 78B-7-105(2) (Westlaw, through 2015 First Special Session).
72. IND. CODE § 34-26-5-3(d) (2009); UTAH CODE ANN. §§ 78B-7-105(3) (Westlaw, through 2015 First Special Session).
The section concludes with a call for additional rural librarians to use the resources of the library to assist domestic violence victims and their children.

**Librarians as Appropriate Advocates for Domestic Violence Victims**

¶24 It may seem like a stretch to ask libraries to provide resources specific to any particular social community, but it is actually more common for libraries to perform community outreach than it seems. For instance, the American Library Association (ALA) understands the unique contribution public libraries can make in their communities. In 2014, the ALA, in collaboration with the Gates Foundation, called for applications from public libraries to win one of ten “18-month, team-based professional development” programs including an $8000 grant to “implement a plan for community engagement.”74 One grant recipient, the Tuscaloosa Public Library, is focusing on literacy plans to transform their community in which twenty-three percent of the adult population is unable to read.75 Another rural community library in Suffolk, Virginia, is reaching more people through a book mobile program.76 Thus, providing outreach services to the community is not a new concept to libraries and librarians.

¶25 And while rural libraries may be struggling for funding, “[c]ontinual budget cuts have reduced legal aid, counseling, court accompaniment, and childcare services for IPV [intimate partner violence] survivors” as well.77 Although a domestic violence abuser may forbid his victim from obtaining work outside the home,78 he may be less restrictive about her decision to visit the local library with the children in tow. Thus, “librarians’ abilities to maximize local resources in the service of high need individuals are more essential than ever,”79 and “[l]ibrarians can help bridge the information gaps faced by survivors, families, advocates, and domestic violence professionals.”80 One of the major needs of victims of domestic violence is access to information about their situation, ways to leave their abusers, legal protections, and local resources available to them.81 Obviously, libraries are an appropriate location to house this information both on computers and in print. Quite often, computers are the primary source of information for domestic violence victims because they have the most up-to-date information about local shelters and resources. Having access to a public computer is particularly important for rural victims because they may not have Internet access at home at all or, if they do, their need for confidentiality is best met at a public computer where cookies cannot be easily tracked by their abusers.


76. Id.


78. See RAPHAEL, supra note 23, and ¶ 7.

79. Westbrook & Gonzalez, supra note 77, at 151.

80. Id. at 137.

81. Id. at 139–41.
In addition, when librarians are trained in domestic abuse awareness, the service they provide to victims of domestic abuse is strengthened. For instance, a well-educated staff can better direct victims to the appropriate resources.82 One of the key things for a library staff person to understand is the numerous barriers facing victims of domestic abuse, particularly the barriers faced by rural victims. If a librarian understands that this may be a victim’s only chance to research her options for leaving an abuser, the librarian will also understand that time is of the essence.83 The librarian could also coordinate resources with local police to drive the victim to a neighboring county where a domestic violence shelter exists.84 The librarian could help further by telephoning the shelter to let its staff know that the victim is traveling to the shelter. If the victim is willing to share some of her details, the librarian can use library computers and printers to help fill out necessary paperwork for the shelter in advance of the victim’s arrival.

Because many victims of domestic violence also have children, it would be very useful to have sufficient programming for children to engage them while the mother discusses her situation with the librarian and other library staff.85

Case Studies: Domestic Violence Services in Libraries from America to England

Rural libraries have already begun providing domestic violence services to the community in a variety of ways. As of 2011, “there were 8,956 public libraries in the United States,” and “almost half of all public libraries were rural libraries (46.8%).”86 Thus, rural libraries, unlike rural domestic violence shelters, are relatively abundant. The services vary, as do the locations, everywhere from rural America to Southeastern England. The following selective case studies highlight the different programs that now exist as examples of how to expand rural domestic violence librarian services.

The Library Liaison Project in Rural Eastern Michigan

In 2003, the ABA Standing Committee on Pro Bono and Public Service, along with the Center for Pro Bono, published a Guide to Pro Bono Legal Services in Rural Areas.87 In that guide, a program developed by Legal Services of Eastern Michigan (LSEM) devoted to outreach for domestic violence programming through eighty-five public libraries in ten rural counties is described.88
LSEM recruited pro bono lawyers from participating areas to train local library staff in what client services LSEM offers and how those services can be accessed via the web site. . . . LSEM also began recruiting pro bono lawyers to conduct community legal education presentations at the local libraries and staff help desks. Finally, LSEM (again, with assistance from . . . pro bono advocates) developed information kiosks at each library site, with informational brochures, pro se materials and forms, and informational materials on recurring legal problems.  

¶30 The libraries also provide on-site pro bono lawyers to help with document preparation and free faxing for all patrons from a $50 stipend per library per year provided by LSEM.  

Although this program is not limited to domestic violence services, it does serve as a model on which a domestic violence–specific program could be developed.

**The Surrey County Council Libraries in England**

¶31 Surrey, in southeastern England, “is the most heavily wooded county in England and 70 per cent of its area is Green Belt.” Although I am not familiar enough with Surrey to directly compare it to rural states in the United States, the preceding description suggests that the two share some elements. I include the Surrey project in an article about rural U.S. libraries because its public libraries have done some extraordinary work for survivors of domestic abuse.

¶32 In 2013, the Surrey County Council Libraries won the prestigious Libraries Change Lives Award for providing outstanding resources and support to women suffering from domestic abuse. The services provided to victims of abuse include

- Information through specialised book stock, covering all aspects of domestic abuse, dispersed across the county for discretion as well as ease of reservation, and dedicated web pages and signposting to other local and national services. Events for residents experiencing domestic abuse, including self-esteem workshops, poetry sessions run with a local survivors support group, and a poetry and art session run with the local youth support group service. A domestic abuse survivors reading group. [E]-book readers and e-book downloading training for refuge residents. Awareness of the services offered to those experiencing or who have experienced domestic abuse and the professionals working with them, forging links between the library service with the police, borough and district councils, Crimestoppers and the Surrey and Sussex Probation Service. Increasing awareness of domestic abuse amongst County Council staff.

¶33 In an interview, Holly Case, Senior Team Officer for Surrey County Council Libraries, describes her idea to create the domestic abuse program. She notes that when she began working at the library in 2011, she was unaware of the extent of the problem with domestic violence, but the more she read, the more she

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89. *Id.* at 46.
90. *Id.* at 46–47.
93. *Id.*
learned about its pervasive nature.\textsuperscript{95} She then checked the catalog of the library and noticed a lack of information about “female genital mutilation, abuse in lesbian, gay, bisexual and transgender relationships, forced marriage,” and more.\textsuperscript{96} She restocked the book catalog and publicized the contents of the collection by distributing posters and leaflets.\textsuperscript{97} She “also wanted to promote the use of the library computers as a free and safe way for survivors to find help, as so many perpetrators monitor online activity.”\textsuperscript{98} The work expanded from there, and the library began “outreach programs specifically for survivors,” including “self-esteem workshops, poetry writing sessions, . . . a reading group and multiple information and advice drop in sessions.”\textsuperscript{99}

\textsuperscript{¶34} The coalition with local service providers and the police is an incredibly important step. And the Surrey County Council Libraries continue to develop their services today.

\textbf{Recommendations}

\textsuperscript{¶35} In an ideal world, the programs described above would be combined into one larger domestic violence–focused rural library initiative. While the Surrey library program focuses exclusively on the domestic violence community and provides outreach, support services, and community collaboration, the program does not include legal services for victims. And while the Eastern Michigan program includes pro bono attorney services and help with faxing forms to court, its very broad focus is not limited to domestic abuse issues. If the two programs were combined, with educational programming, legal services, and community outreach at rural American libraries, it would be an ideal service for domestic violence victims in those areas.

\textsuperscript{¶36} Funding for all public libraries is tight. However, domestic violence–focused providers may be able to harness Violence Against Women Act\textsuperscript{100} federal funding to support this kind of unique programming.

\textsuperscript{¶37} One issue that neither program addresses sufficiently is outreach. It is not as simple as trying to publicize library services for domestic abuse to the entire community. Ideally, the program would wish to reach victims of domestic abuse without necessarily targeting abusers. Otherwise, victims of domestic abuse may have a hard time going to the library with their children to escape. In my view, the best way to publicize the program to victims is through word of mouth via other care providers such as daycare services, schools, OB/GYN offices, psychologists and social workers, and emergency room personnel. When disseminating information about the program, however, it is important to note that the publicity should be discreet and aimed at the abuse victim herself (ideally not in the presence of her spouse, boyfriend, or others). In this manner, victims could be notified of the assistance available at the public library and access it relatively incognito.

\begin{thebibliography}{10}
\bibitem{95} Id.
\bibitem{96} Id.
\bibitem{97} Id.
\bibitem{98} Id.
\bibitem{99} Id.
\end{thebibliography}
Conclusion

¶38 Domestic violence is a serious issue. Victims of abuse in rural America face even more barriers to leaving their abusers, including a lack of economic stability, lack of transportation, isolation, and fewer legal and social resources. Thus, it is important to utilize all available resources, including local public libraries, to assist victims of abuse in rural America. I completely understand that librarians are not generally trained to serve as domestic violence liaisons and might be a bit reluctant to serve in this role. It is also entirely appropriate for public libraries in rural areas to take small steps in the direction of providing greater services to the domestic violence community, such as by holding public information sessions and outreach events.

¶39 However, with a bit of training, extra Violence Against Women Act grant funding, and guidance about why the issue is so very important in their communities, perhaps librarians could lead the way in innovating services to victims in rural areas. I hope that the case studies and recommendations described in this article will provide a useful starting point for trailblazing programs and librarians wishing to learn and do more. I recognize that taking on such a program is no small endeavor. But, as Casey Gwinn would say, I will continue to “Dream Big,”101 and I hope you will, too.

101. CASEY GWINN, DREAM BIG: A SIMPLE, COMPLICATED IDEA TO STOP FAMILY VIOLENCE (2010).
Evolution and Opportunity: Collection Development of Skills-Specific Resources in the Wake of the ABA’s Revised Standards

Lee Sims

The new ABA standards challenge the collection development policies and activities of academic law libraries in many ways. The standards now require law libraries’ collections to support a skills-specific program of study. This article traces the evolution of the current standards and recommends how to acquire a relevant collection of skills-specific secondary sources.

Introduction

In August 2014, after a six-year process of review, the American Bar Association (ABA) instituted new standards governing the conduct, curriculum, and
operations of the law schools that they accredit. These revised standards not only profoundly affect the landscape in which law schools operate, but potentially they also will draw law schools and academic law libraries closer together than they have been over the last century. For law libraries to play the part envisioned by the new revised standards, they will need to engage in a new dialogue with the rest of the law school community. When read as a whole, the revised standards apply as equally well to academic law libraries as they do to law schools.

Among other fundamental changes, the revised standards now require law schools to institute curriculum and program-of-study changes to include skills-based classes. This article focuses on one of those potential changes by addressing how libraries must change their collection development activities to accommodate the revised standards, which necessitate a new emphasis on skills- and practice-oriented materials. This article does not deal with issues regarding the new “core collection” standards. Another author has already begun the conversation considering those standards. There are, of course, many ways in which law libraries can support the new curricular changes—new instruction initiatives, a reimagining of the library’s space, and technological innovation, to name a few. This article mentions but does not explore those possibilities in detail. The totality of potential changes, made in concert and in communication with the law school community at deeper levels than in the past, potentially will better integrate the library with the law school community.

A secondary but vitally important theme that runs through this article is that virtually every revised standard that deals with law schools’ programs of study or curricula has the potential to affect law libraries in some way. This article, while focusing on the potential for synergy between law schools and libraries on collection development in support of curricular matters, also invites law librarians to take a holistic view of the revised standards. Unless and until the contrary is established, it is imperative that law libraries operating in ABA-accredited schools consider all of the revised standards to apply to law libraries and not just to law schools. Indeed, at least one other author has begun the discussion of how these many changes affect law libraries.

Academic law librarians have always envisioned their institutions as an integral part of their law schools—as the “heart of the law school” that Charles Eliot, president of Harvard University, first proposed. Read broadly, the revised standards represent the ABA’s attempt to repurpose both law schools and law libraries. The revised standards present a new opportunity for law libraries to further integrate themselves into the fabric of the law school community.

1. AM. BAR ASS’N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2014–2015 (2014) [hereinafter REVISED STANDARDS]. This article refers to the standards that became effective in August 2014 hereinafter as the revised standards. The article refers to historical standards simply as standards or as standards with a notation to the year they were enacted (e.g., the 2013–2014 standards).


3. Id.

Evolution of the Curricular Ideal

The Curricular Pendulum

Law schools always have had the training of lawyers as their mission.—Patricia Mell

§5 In retrospect, the current curricular changes to the existing ABA standards were predictable, perhaps even inevitable. The revised standards are the product of the natural evolution of the law school curriculum as informed by more than a hundred years of thought about law school programs of study. This article does not review that evolution in any detail; others have done so in significantly more detail. It is best, however, to keep an overview of that process of evolution in mind while focusing on the revised standards in general and the revised standards that address the necessity of a skills-specific curriculum in particular. Probably the best brief overview of the history of legal education, and the development of the legal profession and the ABA, is the seventeen-page summary in chapter 3 of the MacCrate Report. That brief summary focuses primarily on the problems associated with “apprenticeship” or “in-house clerkship” and with the concept of skill-based pedagogy. As we will see, this focus deals with the inherent self-interest of law faculty in rejecting the notion of law school as trade school and their unwillingness to embrace the pedagogy of skills-based learning.

§6 A degree of tension has always existed over how law schools should teach law students how to practice law. Our original system of legal education—largely inherited from the English system—consisted of general education plus an apprenticeship. Aspirants to the bar in the new United States could also attend the Inns of Court in England or study independently. During much of this time, with one limited exception, no real state educational requirements existed for bar members. The apprenticeship model was used through most of the nineteenth century. In fact, only one dedicated law school existed at all during this period. Instead,
students learned the law as part of an undergraduate education or through “reading the law” under the supervision of an experienced practitioner. Apprenticeship remained a feature of the system of legal education for many years to come. “Reading the law” is still a feature in some states. Regardless, apprenticeship has always been associated with the trades or even medieval guilds. After all, blacksmiths, silversmiths, carpenters, or printers generally began and still begin their careers as apprentices.

§7 Just as the American legal system broke away from the English system over time, so did the American system of legal education. Beginning in 1870, through the efforts of Christopher Columbus Langdell, the process began in which the study of law was elevated from a trade to a science. Until now, we have been reluctant to rethink that process and result. Langdell, as dean of Harvard Law School, was at least partially responsible for such innovations as the case or Socratic method of instruction and the teaching of a broad doctrinal curriculum of blackletter law and legal analysis. Langdell was also responsible for much of what is now the common first-year slate of courses. However, it is widely accepted that the president of Harvard University, Charles Eliot, was more likely the seminal innovator, not Langdell. It became accepted that law students would learn to “think like a lawyer” at law school by reading case law and, through those cases, learning blackletter law and legal analysis.

§8 Langdell considered the law library to be the laboratory of the science of the law. He envisioned the law library to be the central core of the law school:

The most essential feature of the School, that which distinguishes it most widely from all other schools of which I have any knowledge, is the library. I do not refer to the mere fact of our having a library, nor even to the more important fact of its being very extensive and complete; I refer rather to the library as an institution, including the relation in which it stands to all the exercises of the School, the influence which it exerts directly and indirectly, and the kind and extent of use that is made of it by teachers and students. Everything else will admit of a substitute, or may be dispensed with; but without the library the School would lose its most important characteristics, and indeed its identity.

§9 Graduates would learn the mechanics of the practice of law while working. It seems clear that the motivation to design the law school curriculum in this manner was to make the law a legitimate object of academic study; in this way, lawyers were elevated from the company of tradesmen and guilds. This was the first swing

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14. Carrington, supra note 6, at 512.
18. Stevens, supra note 6, at 36.
19. For a thought-provoking discussion and ultimately a refutation of the idea that this is the primary function of law school, see Nancy B. Rapoport, Is “Thinking Like a Lawyer” Really What We Want to Teach?, 1 J. ASS’N LEGAL WRITING DIRECTORS 91 (2002).
21. Id. at 100.
of the pendulum: from glorified tradesmen to something more exalted, that is, to a profession; the law school itself took on the mantle of an institution of elite scholars.  

¶10 Although the idea of a formal apprenticeship had been in decline for years, it became even less important in 1920 when the Root Committee determined that “only in law school could an adequate legal education be obtained.”  

Even in 1920 there was disagreement about the practice element of legal education. It was no surprise that when the ABA enacted the first set of standards for the approval of law schools it did not adopt a clinical component, the rough equivalent of a law school–run apprenticeship. Not until 1933 did Jerome Frank make the first call for a clinical program in law school.

¶11 The next major swing of the pendulum took the study of law even further away from the idea of a trade, thereby increasing the tension even further. Through the 1960s and 1970s, the course of study in law schools began to include the possibility of ever more theoretical coursework. Students were still obligated to take the basic doctrinal courses that Langdell proposed—contracts, property, torts, and so forth—but could now fill in their time as upper-class students by taking truly theoretical courses like law and economics, critical race theory, and feminist jurisprudence, to name a few. These courses, still available today, remain grounded in the social sciences. Gradually, the study of law became much more than learning how to merely practice law. The debate over whether these courses are actually relevant to the practice of law continues.

The MacCrate Report

¶12 By the early 1990s, the pendulum had clearly swung too far into the theoretical. It was widely accepted by the legal profession that law students were

24. STEVENS, supra note 6, at 115.
25. Id. at 112–23.
28. Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933). This is not the only early article about the need for clinical instruction, but the early clinician movement is beyond the scope of this article. Frank continued his push for more clinical courses: Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947).
graduating with insufficient knowledge to prepare them for the actual practice of law.\textsuperscript{31} As one commentator put it, “While schools are moving toward pure theory, the firms are moving toward pure commerce, and the middle ground—ethical practice—has been deserted by both.”\textsuperscript{32} Apparently, many law school professors or law school administrators did not hold this view, and their scholarship reflected that position. They continued to produce what many practitioners considered to be irrelevant scholarship that debased the standing of the academy:

Because too few law professors are producing articles or treatises that have direct utility for judges, administrators, legislators, and practitioners, too many important social issues are resolved without the needed input from academic lawyers. The problem is not simply the number of “practical” scholars, but their waning prestige within the academy.\textsuperscript{33}

\textsection{13} From this dissatisfaction with the products (the graduating students) of law schools sprung the MacCrate Report, which clearly defined the problem in its opening pages:

The lament of the practicing bar is a steady refrain: “They can’t draft a contract, they can’t write, they’ve never seen a summons, the professors have never been inside a courtroom.”

Law schools offer the traditional responses: “We teach them how to think, we’re not trade schools, we’re centers of scholarship and learning, practice is best taught by practitioners.”\textsuperscript{34}

\textsection{14} The MacCrate Report then set out a series of suggestions (see below) regarding curricular changes that law schools could make that would address the problem. These suggestions took the form of a “Statement of Fundamental Lawyering Skills and Professional Values.”\textsuperscript{35} The MacCrate Report made recommendations about how the Statement should be used\textsuperscript{36} and how it should not be used.\textsuperscript{37} The report then identified ten specific fundamental lawyering skills\textsuperscript{38} and four specific fundamental values of the profession.\textsuperscript{39}

\textsection{15} The MacCrate Report made this recommendation about how law schools should use the Statement:


32. Edwards, \textit{supra} note 30, at 34.
35. \textit{Id.} at 135.
37. \textit{Id.} at 131–33.
39. \textit{Id.} at 140–41. This article does not deal with the “fundamental values” discussion and recommendations in any detail. Although extremely important, they are not entirely relevant to the focus of this article. The same will hold true of a similar discussion in the Carnegie Report.
Law schools can use the Statement as a focus for examining proposals to modify their curricula to teach skills and values more extensively or differently than they now do. Such modifications might include, for example:

- revisions of conventional courses and teaching methods to more systematically integrate the study of skills and values with the study of substantive law and theory;
- revisions of existing skills courses or programs, or the creation of new ones, to better achieve pedagogical goals;
- development of courses or programs concerned with professionals.  

¶16 Use of the following list of skills could help identify and specifically address any curricular changes:

Skill 1: Problem Solving  
Skill 2: Legal Analysis and Reasoning  
Skill 3: Legal Research  
Skill 4: Factual Investigation  
Skill 5: Communication  
Skill 6: Counseling  
Skill 7: Negotiation  
Skill 8: Litigation and Alternative Dispute-Resolution Procedures  
Skill 9: Organization and Management of Legal Work  
Skill 10: Recognizing and Resolving Ethical Dilemmas

¶17 When reading the skills list, it is vital to consider the rest of the text associated with the list itself; each “skill” is only a subject heading to a multipage discussion of that area of proposed curricular change.

¶18 Ultimately, the MacCrate Report did not require a new curriculum with those changes. In fact, the report specifically said, “The Statement is not, and should not be taken to be, a standard for a law school curriculum.” This made the proposed changes advisory only. So, although the MacCrate Report called for an overall change in law school curriculum from the theoretical to a more practice-oriented course of study, it simply made a series of suggestions, not requirements. As will be seen, the revised standards incorporate the majority of the MacCrate skills directly or in some fashion.

¶19 The MacCrate Report noted, “The empirical data collected by the Task Force suggest that many schools are experimenting with a variety of curricular changes intended, inter alia, to enhance the quality of preparation for legal practice. . . . This is as it should be.” Changes to curricula and courses of study continued. Five years after the MacCrate Report was published, the Association of American Law Schools (AALS) surveyed law school administrations about what kinds of curriculum changes had occurred in the previous ten years. The AALS survey confirmed that

40. Id. at 128 (emphasis added).  
41. Id. at 138–40.  
42. Id. at 131.  
43. Id. at 128.  
44. Deborah Jones Merritt & Jennifer Cihon, New Course Offerings in the Upper Level Curriculum: Report of an AALS Survey, 47 J. LEGAL EDUC. 524 (1997). Unfortunately, by choosing this ten-year period to survey, the AALS was unable to determine what, if any, changes resulted from publication of the MacCrate Report. Admittedly, direct correlation between the MacCrate Report and the changes in curricula might have been difficult at best.
some law school curricula had undergone changes. Different schools appear to have implemented some of the MacCrate Report’s suggestions, including initiating specialty and clinical courses. Some schools made changes in portions of their curricula, though it was impossible to determine whether the changes had resulted directly from the MacCrate Report.

¶20 Ten years after the MacCrate Report was published, it appeared that even more skills-specific curricular changes had occurred. Many conferences were held, and articles were written discussing the importance of revising law school curricula and how best to effectuate the recommendations of the MacCrate Report. It seems clear, however, that, as previously noted, “there is little evidence to believe that the MacCrate Report transformed legal education, or led to sweeping changes when measured by the more ambitious criteria or goals.”

¶21 More than twenty years after the MacCrate Report was issued, the controversy about its content is still alive as shown in the Twenty Years After the MacCrate Report: A Review of the Current State of the Legal Education Continuum and the Challenges Facing the Academy, Bar, and Judiciary, March 20, 2013 (hereinafter Twenty-Year Report). The Twenty-Year Report argues that the MacCrate Report has had a lasting impact on law school curricula in accordance with the report’s suggestions. The Twenty-Year Report acknowledges, however, that problems still exist:

Two decades after the issuance of the MacCrate Report, there is once again a public perception of a problematic gap between legal education and legal practice. In the past couple of years, articles have appeared in various media sources, criticizing law schools for their alleged failure to do enough to prepare students for legal practice, and reporting law firms’ complaints about the quality of legal education.

Regardless of the position taken, it is clear that the MacCrate Report began to swing the pendulum back from theory to practice and toward a middle ground.

The Carnegie Report

¶22 At the turn of the twenty-first century, controversy about the best way to teach law students remained. The inherent tension between theory and practice still existed; the pendulum had not yet moved toward the middle ground. Clinical

45. MacCrate Report, supra note 7, at 128.
47. Id. at 116.
48. Id. at 117.
49. Id. at 146. Engler’s statement was certainly correct in 2001. It is clear, however, that the MacCrate Report heavily influenced the contents of the revised standards. Engler’s statement may need to be reconsidered depending on the effect of the revised standards on curricular change.
51. Id. at 2-3.
52. Id. at 1.
education had become a fact of law school life, but as noted immediately above, questions lingered about law schools’ ability to make students “practice-ready.”

¶23 The Carnegie Report was prepared as an independent study by the Carnegie Foundation. It did not take a fresh look at perceived deficiencies in curriculum. It looked instead at the pedagogy necessary to integrate legal theory, legal practice, and professional legal identity. The Carnegie Report is nothing less than a search for middle ground to relieve the tension between theory and practice. By doing so, its intention was to enhance the legal learning experience and the law school product (i.e., the graduates).

¶24 The Carnegie Report began by noting that law schools should no longer fear the label of trade school. It recognized the past pendulum shift toward a curriculum with a greater emphasis on theory and determined that the shift had occurred in the 1960s and 1970s. The Carnegie Report suggested that both theoretical and practical learning could and should be integrated:

We are convinced that this is a propitious moment for uniting, in a single educational framework, the two sides of legal knowledge: (1) formal knowledge and (2) the experience of practice. We therefore attempt in this report to imagine a more capacious, yet more integrated, legal education.

This (2007) was a “propitious moment” because of the recent developments in educational research. That research supported the inherent value of the concept of apprenticeship. In fact, and in reliance on that research, the authors of the Carnegie Report state:

Learning, then, entails embarking on an effort to gradually grow into the complex abilities of an expert. This is where the idea of apprenticeship enters. Research suggests that learning happens best when an expert is able to model performance in such a way that the learner can imitate the performance while the expert provides feedback to guide the learner in making the activity his or her own. . . . A great contribution of modern cognitive psychology has been to place apprenticeship, so understood, once again at the heart of education.

The authors noted that, in fact, a tradition of apprenticeship was available in law schools, but it was available only to a very few. These were the students who did well

53. “Practice-ready” is a term that cannot be readily defined. See Karen Sloan, Practice Ready? Law Students and Practitioners Disagree, Nat’l L. J. (Mar. 6, 2015) (available to LexisNexis subscribers) (reporting on a BAR/BRI survey of students, practitioners, and law faculty about the readiness of graduating students to practice). Of particular interest are the comments of John Charles Kunich, a professor of law at the University of North Carolina, Charlotte. The survey indicates that seventy-six percent of third-year law students believe that they are ready to practice “right now.” To this, Professor Kunich said:

Students have a very limited experiential basis for self-evaluation at most law schools, including many of the most prestigious institutions. When you never draft or edit, or even see, an actual contract, complaint, will, answer, motion, purchase & sale agreement, or any other real-world legal document during your entire law school experience, it is easy to assume that your excellent grades are an accurate predictor of your readiness for the practice of law. How would you know?

Id.

54. Carnegie Report, supra note 16.
55. Id. at 7, 91.
56. Id. at 7.
57. Id. at 12.
58. Id. at 25–29.
59. Id. at 26.
in the first-year classes, mastered the law school pedagogical model, and moved on to work on law review and ultimately went to work in academia and the judiciary: “As we have noted, law schools provide this kind of experience for the very few law students who find themselves on the track for the bench and legal scholarship.”

¶25 This does not mean that it is necessary to abandon the doctrinal education that is the hallmark of the first year of law school. In fact, the Carnegie Report celebrates what it calls the “signature pedagogy” of law school: the Socratic dialogue or case method initiated by Langdell.\footnote{Id. at 98.}

¶26 The Carnegie Report ends by making a series of observations:

1. Law schools rely too heavily on one form of pedagogy, i.e., their “signature pedagogy,” the case-dialogue method.\footnote{Id. at 23.}
2. The signature pedagogy, when properly used, is a powerful teaching tool, but it fails to prepare students to engage in “the rich complexity of actual situations that involve full-dimensional people.”\footnote{Id. at 186.}
3. Assessment of student learning remains underdeveloped.\footnote{Id. at 187.}
4. Law schools are resistant to change. What change has occurred has been incremental change.\footnote{Id. at 189.}

The ABA Steps In

¶27 As the accrediting body for the vast majority of law schools, the ABA wields considerable power in determining what law schools do and how they do it. The courts of “the vast majority of states” allow only students who have graduated from ABA accredited institutions to sit for bar exams.\footnote{Id. at 190.} As such, the ABA effectively controls the gateway to bar admission. When the ABA undertook the obligation to accredit law schools, it became subject to the federal law that requires it to meet certain standards as an accreditor of higher learning institutions that accept federal financial aid.\footnote{Maccrate Report, supra note 7, at 273 n.1.}

¶28 Revision of the ABA standards has been a constant feature of the law school landscape since 1921. The standards have gone through several revisions since that time, with the most recent coming in 2014.

The Complete Revision of the Standards

¶29 In August 2008, the ABA Standards Review Committee (SRC) initiated a compete revision of the standards. It began by notifying stakeholders about the

60. Id. at 98.
61. Id. at 23.
62. Id. at 186.
63. Id. at 187.
64. Id. at 189.
65. Id. at 190.
67. Russell, supra note 2, at 331, ¶ 5. Russell more completely and convincingly explores the legal basis for the ABA’s status as accreditor.
68. See Preface, in Revised Standards, supra note 1, at vii–ix. This is a usable but short summary of revisions to the standards from 1921 through 2010. See also Standards Archives, supra note 26.
ongoing revision process. The committee began its work by considering the MacCrate Report, the Carnegie Report, and a multitude of law review articles and surveys that criticized, interpreted, and discussed the necessity for curricular change. The SRC then issued a Statement of Principles of Accreditation and Fundamental Goals of a Sound Program of Legal Education and set up a website (Comprehensive Review Archive). During the six years that followed, the SRC met many times, collected input in the form of comments from various stakeholders, considered reports from special committees, and held two open forums during which it took public comments. This archive of drafts, minutes, reports, written comments, and transcripts of testimony bears more than a passing resemblance to a compiled legislative history.

¶30 In addition to the archive, the committee provided two useful tools for divining the intent of the various revisions and showing how they differed from the prior standards. First, the committee made available both the interim redlined


comparison of the old and new standards\textsuperscript{76} and a final redlined comparison.\textsuperscript{77} These documents are similar to those created when legislatures amend statutes. Being able to compare the old and new language side by side is immensely valuable. Second, the committee released a lengthy explanation of the changes\textsuperscript{78} and an overview of changes; both of these comment extensively on why the old standards were changed and what purpose the new language had.\textsuperscript{79} Again, these documents are strongly analogous to a legislative history of a statute or regulation. The purpose of these two features is to help those attempting to understand the changes to determine the committee’s intent and to effect the implementation of the revised standards.

§31 New Revised Rules 16, 17, and 18 control the failure to comply with the terms of the revised standards.\textsuperscript{80} Rule 16(b)(1)–(8) enumerates sanctions for repeated failure to comply with the revised standards. These can include a fine (monetary payment), a refund of tuition to students, censure (public or private), publication of an apology or a corrective statement, a prohibition against initiating new programs for a period of time, probation, or, the ultimate sanction, withdrawal of ABA approval.\textsuperscript{81}

**Reading the Revised Standards**

§32 It is imperative that librarians read the revised standards as a whole. Although chapter 6 most directly governs the operation of academic law libraries, other of the remaining revised standards apply to libraries as well. As Russell aptly points out, several of the newly enacted revised standards outside of chapter 6 apply to libraries specifically; others apply by implication.\textsuperscript{82} But there are other reasons to read the revised standards as a whole.

§33 First, as already noted, the committee’s scheme for the revised standards bears all the hallmarks of a statutory or regulatory scheme: a definitional section,\textsuperscript{83} a preface,\textsuperscript{84} a legitimate body of reports and hearings that constitutes a “legislative...
history,”85 and a body of previous standards that show the evolution of the regulatory scheme.86 These indicia of a statutory or regulatory scheme are always best read as a whole.87 Thus, if we accept that the revised standards represent the will of the SRC and, ultimately, the ABA, each standard, each illustration, and each chapter is part of an overall regulatory regime.

¶34 Second, librarians are now or can be custodians of the best and most vital learning space within the law school. It is true that we need to expand our role and sharpen our focus in this regard,88 but we have taken the first steps in becoming more than book storage and study space. Where the revised standards regulate physical space and technology, they also regulate the library.

¶35 Third, the revised standards distinguish between “full-time faculty members,”89 clinical faculty,90 legal writing faculty,91 and a kind of generic “faculty”92 that logically includes adjunct practice professors and librarians, among others. Thus, the term “faculty” would include librarians teaching legal research courses regardless of their status as adjuncts or as regular “library faculty.”

¶36 Fourth, and most important, the revised standards regulate law schools where librarians are already playing, or will play, more integral parts. Langdell, of course, might not recognize the modern academic law librarian. These days, librarians are everywhere in the law school. They have expanded teaching roles in the classroom and are expanding, or have the potential to expand, the library’s footprint within the school.

¶37 The concept of law librarians as instructors and faculty members has evolved and expanded through the years.93 Librarians are now engaged in much more than traditional bibliographic instruction. Students can find librarians embedded in classes, journal offices, and clinical settings, sharing the teaching load with other, more traditional instructors.94

¶38 This may have its downside. By arguing that all of the revised standards apply to law librarians, then all those who are teaching legal research, or are teaching while embedded in clinics, journal offices, research and writing classes, and seminar classes are, by implication, covered by the new chapter 3 and chapter 4.

¶39 Law librarians acting in teaching roles must be prepared to (1) obtain approval to designate research courses as part of the regular curriculum or have

86. Standards Archives, supra note 26.
89. Revised Standards, supra note 1, at ix.
90. Id. at 29 (Standard 405(c)).
91. Id. (Standard 405(d)).
92. Id. (Standard 405(a)).
93. See Debbie Grey, Legal Reference Services, An Annotated Bibliography, 97 LAW LIBR. J. 537, 549–53, 2005 LAW LIBR. J. 30. This is only a small sampling of the articles written about law librarians in their roles as teachers. The field continues to evolve at a rapid pace. By now, a second bibliography is needed.
them certified as simulations or other skills classes; (2) comply with the law school’s learning outcomes as established in Standard 302; (3) comply with Standard 303 when offering simulation courses; (4) comply with Standard 311 on credit hours when scheduling class sessions; (5) comply with those learning assessment benchmarks that the law school establishes per Standard 314; and (6) participate in the overall evaluation of the law school’s program of study in accordance with Standard 315. Now more than ever do librarians qualify to sit on committees considering those changes brought by the revised standards.

¶40 The librarian is no longer the mere keeper of the books that contain case law—famously, the materials and data that drove Langdell’s concept of the law as science. For years, academic law librarians have endeavored to be the “heart of the law school,” at “the center of the law school.” The revised standards recognize and enhance the law librarian’s position in the law school community and foster librarians’ potential to achieve the Langdellian ideal.

The New Curriculum

¶41 Chapter 3 of the revised standards provides the new program-of-study and curricular components that a law school must consider when reworking its existing body of instruction. Standard 302, Interpretation 302-1, and Standard 303 form the heart of chapter 3. The other provisions of chapter 3 provide guidance on how to provide that program of study and how to provide for those curricular changes mandated thereby. Those revised standards provide that:

1. A law school shall establish, at a minimum, learning outcomes that include competency in professional skills needed for competent and ethical participation as a member of the legal profession.
2. Other professional skills are to be determined by the law school and may include the following:
   a. Interviewing
   b. Counseling
   c. Negotiation
   d. Fact Development/Analysis
   e. Trial Practice
   f. Document Drafting
   g. Conflict Resolution
   h. Organization and Management of Legal Work
   i. Collaboration
   j. Cultural Competency
   k. Self-evaluation

95. ELIOT, supra note 4, at 17.
96. Tice, supra note 23, at 159.
97. Revised Standards, supra note 1, at 15.
98. Id. at 15–17.
99. Id. at 15.
3. To provide these outcomes the law school must (shall) offer a curriculum that requires each student to complete:
   a. One course in professional responsibility;
   b. Two writing courses in which the students are faculty supervised;
   c. Experiential course(s) totaling at least six credit hours. The experiential courses must:
      i. Integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;
      ii. develop the concepts underlying the professional skills at issue;
      iii. provide multiple opportunities for performance; and,
      iv. provide opportunities for self-evaluation and reflection.

¶42 If we look back to the MacCrate Report and the Carnegie Report, we can clearly see the influence of those reports on Revised Standards 302 and 303 and Interpretation 302-1. In fact, the professional skills mentioned in Interpretation 302-1 bear more than a striking resemblance to those mentioned in the MacCrate Report.

¶43 To comply with the revised standards, the law library must provide a collection that seamlessly supports this new curriculum of practice skills. The process of working and consulting with the law school community will help further integrate the library with the rest of the law school.

Mission Statements

Revised Standard 601 as Mission Statement

¶44 In the final analysis, the purpose of the law library is to support the law school’s curriculum. There may be other reasons for any library to exist: to provide legal information for main campus nonlaw students, alumni, the local bar, and the self-represented litigant. However, these are all secondary factors so far as the ABA is concerned. Revised Standard 601100 is the placeholder for any law school library’s actual mission statement:

(a) A law school shall maintain a law library that:
(1) provides support through expertise, resources, and services adequate to enable the law school to carry out its program of legal education, accomplish its mission, and support scholarship and research;
(2) develops and maintains a direct, informed, and responsive relationship with the faculty, students, and administration of the law school;
(3) working with the dean and faculty, engages in a regular planning and assessment process, including written assessment of the effectiveness of the library in achieving its mission and realizing its established goals; and
(4) remains informed on and implements, as appropriate, technological and other developments affecting the library’s support for the law school’s program of legal education.101

100. REVISED STANDARDS, supra note 1, at 39.
101. Id. Subparagraph (b) is omitted. It addresses library funding.
The term “resources” clearly encompasses the collection. The law librarians’ expertise informs the development of that collection, a vital part of the service that the law library is mandated to perform.

Library Mission Statements

“[A]cademic law libraries exist to support the mission of the law school . . . .”

¶ 45 Although Revised Standard 601 is mandatory, most academic law libraries already have an anchor from which they can direct their activities. That benchmark is the library’s mission statement. As Virginia Kelsh states in her comprehensive article about law library mission statements:

Law library staff should refer to the mission statement when formulating library policy, when creating procedural manuals, when constructing new facilities or renovating current ones, when creating new programs and services, when drafting annual library priorities, and when marketing library services to others. Virtually every activity undertaken by the library staff can be benchmarked against the mission statement.  

Kelsh also indicates that the library staff should be able to rely on the mission statement “for guidance in the daily activities of the library, basing collection development and operational decisions on it, using it as a benchmark for performance and a method to evaluate that performance, and revising it as necessary to keep it relevant and vibrant.”

¶ 46 Academic law libraries should take the publication of the revised standards as an opportunity to review and possibly revise their existing mission statements. Whatever changes the law school makes in its mission statement and plan of study should inform that revision. This will require collaboration with faculty and the administration. Such collaboration is clearly anticipated by the revised standards.

Supporting the New Curriculum Through Targeted and Informed Acquisitions

The Revised Standards—An Opportunity to Remake the Library

¶ 47 The academic law library fills a number of roles in today’s law school. The most important role is to support the law school’s primary mission: to educate and prepare students to practice law. One way the law library does this is through maintaining a relevant, varied collection that supports the law school’s curricular goals.

¶ 48 Although this article focuses on collection development, libraries have many other ways to support their schools’ programs of study and curricular goals. For example, librarians teach legal research skills formally in the classroom and less formally in the library. Even in this rapidly evolving field, of course, methods of

103. Kelsh, supra note 102, at 334, ¶ 40.
104. Id. at 333–34, ¶ 39.
105. REVISED STANDARDS, supra note 1, at 39 (Standard 601(a)(4)).
legal research instruction and what should be taught will require new scrutiny in light of the revised standards.\footnote{For example, as already mentioned, librarians teaching any legal research course will have to comply, \textit{inter alia}, with the provisions of Revised Standards 314 and 315 on the assessment of students.}

\S 49 Academic law libraries can, and should, continue a full range of such supportive activities, altering their practices to help further their schools’ compliance with the revised standards. The following list gives a brief, nonexhaustive series of suggested activities, not all of which will apply in every circumstance.

1. Traditional Teaching—The traditional legal research classes in 1L and alternative dispute resolution classes will need to expand to include a module or session dedicated to practice-specific materials such as forms, checklists, and practical resources such as proof of facts, trials, causes of action, and Benders forms of discovery.

2. Practice-Specialized Teaching—Librarians have already been teaching specialized research classes. This may be the time to integrate library services into the school’s program of study by offering a specialized class as an adjunct class to a regular doctrinal class. For example, a one-unit research class that focuses generally on the regulatory process in general or on healthcare or environmental research in particular can supplement a class in healthcare law or environmental law taught by full-time faculty. This would be particularly useful in regulation-intense classes. These can be considered “sidecar” courses—the regular doctrinal course is the main vehicle of learning while the research course carries the valuable skills cargo.

3. Technology—The academic law library has always been the leader in technology in the law school. Many law school IT departments are administered by the director of the library, so this is a natural fit. In those instances, the library can expand its technological offerings in practice labs that offer practice hardware (e.g., desktop computers, scanners, and photocopiers (!)) and practice software (e.g., billing and time-keeping software, an intranet, and knowledge management). Additionally, librarians or the librarian IT person can serve as instructor or as embedded co-instructor in a legal technology class.

4. Embedding—Librarians can become embedded in a variety of law school programs (e.g., journals, clinics, externships, and incubators).\footnote{See Thomas J. Striepe & Mary Talley, \textit{Embedded Librarianship}, in \textit{Law Librarianship in the Digital Age} 13, 21–27 (Ellyssa Kroski ed., 2014); Feliú & Frazer, supra note 94.} This is not just another instructional role to explore; the efficacy of the embedded librarian has already been proven.\footnote{Brittany Kolonay & Gail Mathapo, \textit{Experimenting with Embedding: A Law School Library Embeds Librarians in Clinics and Seminars}, AALL Spectrum, June 2012, at 18.} Later, this article describes the concept of embedding librarians and small collections in programs as a way to bring the collection to the students.

5. The Physical Library Environment—Librarians can add collaborative space to the library. This is how our cohort of millennial students prefers to study. It is possible to have both quiet study and collaborative space in a...
library. Students are developing their use of these collaborative tools in a legal environment. There appears to be at least some evidence that they work better in groups.\textsuperscript{109} The revised standards recognize the importance of being able to work and collaborate in a group.\textsuperscript{110}

The Skills-Specific Collection

\textsuperscript{50} Law librarians will need to engage in a new kind of juggling act. They already keep many collection balls in the air, and the new curriculum adds yet another. Librarians will have to continue to support all other law school needs (e.g., faculty research) as well as the standard toolbox of materials for legal research that libraries have always maintained. Based on Revised Standard 606, we will need to examine and possibly alter our core collection for the usual research conducted by the law school community.

\textsuperscript{51} What follows is a series of suggestions on how law librarians can change the focus of collection development activities to comply with the newly relevant Revised Standard 302 materials. It is best to remember that in addition to our practice specialty—legal research—we will need to collect practice-specific materials in the named 302 skills areas: interviewing, counseling, negotiation, fact development/analysis, trial practice, document drafting, conflict resolution, the organization and management of legal work, collaboration, cultural competency, and self-evaluation.

Determining What to Acquire

\textsuperscript{52} Knowledge is power, and knowing about the law school curriculum and program of study gives the collection development librarian the power to buy the right kinds of practice-specific materials. Librarians will need to study the school’s current curriculum and any proposed changes, engage in a close analysis of the existing collection and plan for expansion of the collection, and, in consultation with various law school stakeholders including faculty, determine what kinds of materials are the “right” kinds of materials.

The Existing Plan of Study and Curriculum

\textsuperscript{53} Even though it is possible, even likely, that change is inevitable, librarians must become familiar with the law school’s existing curriculum and plan of study. Remember, libraries will need to react to each specific school’s new curriculum and program of study. Looking at elements of Revised Standard 302 and Interpretation 302-1 in a vacuum is not advisable. Interpretation 302-1 specifically states that for the “purposes of Standard 302(d), other professional skills are determined by the law school and may include” the listed skills.\textsuperscript{111} Thus, a school can decide not to focus on all of the contents of the Interpretation 302-1 list.

\begin{footnotes}
\footnotetext[110]{Revised Standards, \textit{supra} note 1, at 46 (Standard 702(a)(9)).}
\footnotetext[111]{\textit{Id.} at 16 (Interpretation 302-1).}
\end{footnotes}
The overall curricular emphasis or goals for any single school may not actually change in any significant way or may change only slightly. What may need to change are the details that support that existing or newly altered curriculum. For example, a school that considers its mission to educate a new cadre of public service attorneys may elect to continue to pursue that mission. It may also elect to retain its current system of clinics and externships. Such a school will have to formalize a way to provide six units of experiential learning to support those public service graduates. A similar example might be a school that has always had a tax program or an intellectual property program. Again, that school may decide to continue to pursue that part of its education program. Leaving aside the necessity of providing a diverse program of study, such a school may have to formalize a way to provide six units of experiential learning to support a tax or IP program. Thus, many schools that are already providing experiential learning through clinics, internships, and externships may find that they need only to provide a formal basis for those existing programs to comply with Revised Standard 303.

Other schools may have to engage in more involved change. Consider a situation where a school determines that although it already has the basic structure for the new experiential learning requirements, it does not have sufficient number or type of courses to give all students an opportunity to engage in the kinds of programs offered. Other schools, of course, may find it necessary to build such programs from scratch. At each step along the way of every school’s curricular journey, the library should stand ready to provide program-of-study and curricular-specific support.

Consider How the Existing Plan of Study Fits the Collection

Before embarking on a new collection development initiative, it is important to get a sense of the school’s existing curricular goals and any curricular emphases as they may relate to the collection itself. Knowing what is already available may make the transition less costly and will provide context to any collection development initiative. There are several ways and places to look for clues. Unfortunately, a school’s mission statement and even its strategic plan are likely to be too general to provide much guidance. Collection development librarians will want to consider the following existing resources.

The Current Collection: An existing collection probably already addresses the school’s existing curriculum in the broadest strokes. Taking stock of what has accreted to the collection over time can provide a good starting place. For example, the library of a school that emphasizes criminal law as part of its curriculum will have acquired a great deal of material about criminal law. The process by which this occurs is a natural result of a responsive program of collection development. The acquisitions and reference librarians will be aware of the strengths of the collection. The new collection development goal will be to supplement the existing collection to comply with the revised standards. In this example, the library’s collection may have many resources that address criminal law in general, the theory of punishment, the Model Penal Code, and so forth. What may be necessary is to add materials about criminal litigation—conducting trials, laying evidentiary foundations, and investigating forensic elements.

112. See id. at 16–17 (Standards 303 and 304).
¶58 The librarians’ sense of and accumulated expertise about the contents of a collection will be invaluable. Librarians are usually aware of the general strengths and weaknesses of any collection with which they work frequently. Collection development librarians should review and, if appropriate, retain any materials acquired to support the existing clinical curriculum. They should not ignore the expertise of faculty. Some faculty, especially clinical faculty, may be willing to examine a portion of a collection, *sur l’étagère* as it were, and opine on what might be missing.

¶59 An alternative way to judge the strengths and weaknesses of a collection is through the WorldShare Collection Evaluation tool. This tool allows librarians to use “detailed title information, subject analysis, peer holds and local circulation data” to help make relevant collection decisions. Most librarians adapt easily to using electronic versions of other libraries’ catalogs to see what they have acquired or cancelled.

¶60 *Course Offerings:* Checking a law school’s course offerings follows closely on the heels of the earlier-named strategy of reviewing the existing collection. Examining the course offerings will help pinpoint curricular goals. For example, no academic law library would acquire a significant collection on international taxation if the school did not offer many courses in international taxation. While any school may occasionally offer a basic course about a particular subject, if that course is not a regular part of the course offerings, it is probably not a part of the school’s curricular goals. Librarians must make sure that they are current on course offerings, especially since offerings are likely to change in response to the new curricular requirements. Having a representive or observer on the school’s curricular committee would be invaluable in achieving this goal.

¶61 *Syllabi:* Related to a review of course offerings is an in-depth study of course syllabi. A recent study at East Carolina University points the way to the use of course syllabi in making collection development decisions. The study looked at ninety-eight course syllabi in several disparate subject areas. The librarians made assessments regarding their collection and faculty behavior based on what they learned. Syllabi review is a common feature in undergraduate and main campus libraries. This could be a fruitful area of inquiry if faculty are willing to provide librarians with copies of their usual course syllabi.

¶62 *Full-time Faculty Requests:* A library’s current collection will contain materials acquired because of faculty requests. These can provide evidence of where the full-time faculty research interests lie. Some libraries keep a list of faculty requests.

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116. *Id.* at 158.

If not, it may be possible to recreate such a list from e-mails and faculty biographies. These requests, while relevant to faculty research interests, may relate little to the new materials needed. Still, although they may not the kind of experiential-specific materials the library needs to start collecting, they can indicate the kinds of areas that faculty will be interested in when creating experiential course offerings. Faculty may want to include the practical side of what they already know or have been teaching for years.

**ACTIVE DIALOGUE AND CONSULTATIONS**

§63 Although the collection development techniques discussed above will renew the librarians' familiarity with the collection and the curricular choices the school has made, it is through the individual consultations proposed below that the library can directly become even more integrated with the law school. A dialogue between the library and the community both inside and outside the law school is an effective and vital way to determine the new instructional plans and formulate new collection goals in light of the revised standards. This kind of dialogue is nothing new, and there is a body of literature that discusses the need for input from the library's patrons.\(^\text{118}\) It is more difficult to find literature that specifically discusses the collection development process when new programs are being instituted.

§64 The law school dean and library director are required to consult about many of the library’s activities.\(^\text{119}\) That kind of consultation at the highest levels, however, can never take the place of one-on-one consultations at the instructional level. What follows is a series of suggestions about the need to discuss acquisition issues with both librarians and the nonlibrarians, especially faculty members. The purpose of speaking with members of the law school community both individually and as a group is twofold: first, these proposed discussions can give librarians a better picture of any upcoming curricular changes. This will necessarily promote compliance with Revised Standard 601(a)(4). Second, these stakeholders are true experts in their subject fields and will have opinions about the usefulness of or general preferences for specific titles they will want to access for any proposed new course of study. Thus, librarians should consult with all faculty members of the law school community.

§65 *Practice Faculty:* Determine whether your school is going to initiate or has already set up an office of Professional and Skills Education or a similarly named body.\(^\text{120}\) As the need to comply with Revised Standards 302 and 303 becomes more urgent, schools that do not have such an institutional body may find it necessary to initiate and implement one. One or more faculty members designated as professor of practice would naturally staff such an office. At this time these “practice” faculty, like clinical or legal research and writing faculty, probably hold a “lesser” faculty


\(^{119}\) *Revised Standards*, supra note 1, at 40 (Standard 602(b) and (c)).

status than “regular” faculty. As the deadline for coming into full compliance with Revised Standards 302 and 303 nears, the importance of practice faculty will increase; in short, the position of practice professor may become more prestigious.

¶66 Clinical Faculty: As previously noted, law schools generally responded to the MacCrate and Carnegie Reports by increasing the number of clinics, internships, and externships. Clinical faculty have developed their own genre of scholarship that matches their expertise as scholar-practitioners. Librarians will need to consult with clinical faculty about how they are going to expand the clinical offerings and what practice materials they want their students to use. A review might be appropriate even if there is no plan to expand any clinical program. Clinical faculty are in a unique position to make collection development suggestions—the very nature of the clinical experience (use of the word “experience” here is deliberate) lends itself to a situation in which clinical faculty are intimately familiar with the research and practice tools necessary to implement Revised Standard 302. To put it another way, many clinical faculty literally have one foot in the law school, one foot in practice. It is likely that the revised standards will increase the prestige of clinical faculty and will breathe new resolve into the clinical movement.

¶67 Faculty for Certificate Programs: Many law schools offer certificate programs that train students to become practice-ready in a specialized field. The numbers of these continue to grow. Some certificate programs are part of an advanced degree offering (e.g., an LL.M.); others are not, but they do offer a way to be recognized as being practice-ready in a specific field. Special certificate coordinators and instructors, like clinical faculty, will know the kinds of practice-specific materials necessary to support their classes.

¶68 Research and Writing Faculty: The legal research and writing faculty are often helpful in identifying skills-specific materials. This is especially true if the law school recruits instructors from the active practice bar. Research and writing, of course, continue to be core practice skills. Most libraries already have an exhaustive collection of practice-oriented materials on legal writing and analysis. Regardless, a review of those materials is called for and a plan made for further acquisitions in this critical area should be developed.

¶69 Adjunct Faculty: Often hired from the ranks of the local bar, adjuncts generally teach when regular faculty members are unwilling or unable to teach certain practice-specific courses, often specialized ones. Immersed in practice, most adjuncts can provide the kind of targeted and specialized recommendations for materials commonly used by the local practicing bar.

¶70 Doctrinal Full-time Faculty: Finally, librarians should determine which, if any, regular doctrinal faculty members have plans to incorporate practice materials into their courses. It is possible that experiential-specific instruction will not come in to the basic doctrinal classes at all. Schools may determine that new experiential courses or more formalized versions of older experiential courses will fill their obligation to comply with Revised Standards 302 and 303. They may decide to leave the existing doctrinal courses alone.

¶71 Academic Law Librarians: Librarians will undoubtedly have recommendations for what skill-specific materials are available. Many law librarians have practiced law. Most reference librarians can tell you what the local bar asks for when they come to the reference desk. Librarians may already have contacts with the
bench and bar and can easily identify relevant new skills-specific materials. It is also likely that law librarians at neighboring or local law schools will have recommendations for the same reasons. It is worthwhile consulting with them to get differing views about what materials support a local skill-specific-based experience for students. Such cooperation between law libraries may have the added benefit of helping to reduce duplication.

¶72 Law Firm Librarians: This would be a good time to strengthen ties between academic law libraries and firm, government, and courthouse libraries. Nonacademic law librarians are aware of the materials that their attorneys and patron base use. Academic librarians should be taking advantage of that pool of expertise. The seminal study of Leslie Street and Amanda Runyon amply proves this point. That study details the collection activities and policies of private law libraries. Using this data, Street and Runyon make several recommendations about what academic law libraries should collect. Those sound recommendations are, to some extent, the genesis of this part of this article.

¶73 The Legal Community: Discussions with the wider legal community may bring new depth to an understanding of what are the most effective skills-specific materials to collect. Law firm librarians are generally located in large firms, so studies like that conducted by Street and Runyon do not reach the majority of practitioners. ABA statistics show that the vast majority of private practitioners are either solo or are in small firms. Reaching them to determine their recommendations might require coordination with the state bar association.

A Note on Format Considerations

¶74 Although it may be tempting to rely solely on electronic resources for which there is already budgeting, law school librarians should seriously consider having some print sources available for student use. The revised standards specifically state that having an entire collection in one format is probably a violation of Interpretation 606-1. In the great contest of print versus electronic, it seems clear that electronic has won. Yet Street and Runyon’s study clearly shows the use of print in practice. They also recommend that the collection be in more than one format. A study by Patrick Meyer supports collecting print materials as well, showing that almost fifty-three percent of law firms expect new lawyers to be familiar with and be prepared to use their state’s secondary sources. The same study shows that eighty-six percent of firms agree that secondary source research should be conducted in print format. Not only is it logical to prepare law students to be familiar

121. Street & Runyon, supra note 113.
122. Id. at 429–31, ¶¶ 69–75.
124. REVISED STANDARDS, supra note 1, at 42 (Interpretation 606-1).
127. Patrick Meyer, Law Firm Legal Research Requirements for New Attorneys, 101 LAW LIBR. J. 297, 315 tbl. 3, 2009 LAW LIBR. J. 17. This study focuses on firms that vary in size from twenty-six members to more than 200 members.
128. Id. at 316, ¶ 59.
with print resources, it seems prudent to retain at least one print source in every subject area that is part of a school’s skills-specific curriculum.

¶75 Many vendors want to have their cake and eat it too, so they now offer bundled print resources with a constantly updated electronic resource or a downloadable e-book. Since at least some of the vendors selling those books have not always made it possible for multiple users to consult any single book, purchasing such a bundle and expecting both print and electronic use may not be possible. This model appears to be changing. Now it is possible to bundle these skills-specific monographs with a link to an online version that is either being updated constantly or on a predictable schedule. Westlaw, Lexis Advance, Bloomberg Law, and Wolters Kluwer have online resources with print analogs in the form of monographs, treatises, and loose-leaves.

¶76 Regardless of what sources of information are used—discussions with faculty, syllabi analysis, or collection development review—librarians should keep an eye on two major factors: cost and usage. Most practice books are expensive. When purchasing them, it is imperative to know in advance that they will be incorporated into some part of a skills-related course, either in working on an assignment in a simulation or as a source of reference in preparing practice documents like letters and pleadings. It is always possible that any skills-specific resource will fill more than one role. For example, the same resource can provide research support for a seminar course, a clinical or simulation course, a theoretical course that has a skills-specific component, and for public patron use. Careful examination of each resource will ensure maximum usage and cost effectiveness.

Knowing What Is Available to Acquire

¶77 Experienced collection development librarians are fully aware of what is available and how to cull through the dross to find the skills-specific materials most useful to their own collections. For librarians who are not used to handling collection development, however, some tried and true resources follow.

STATE-SPECIFIC SECONDARY SOURCES

¶78 There has been a revolution in the publication of specialty-specific state secondary sources. These materials are the across-the-board workhorses of large, medium, and small firm practices. Since practitioners experienced in a single state’s procedural and legal landscape write the vast majority of these sources, these materials are invaluable. They contain analysis and local practical knowledge; the usual blackletter law; and citations to relevant case law, regulations, and statutes. Many of these resources are published by small niche publishers with an existing clientele and standing with the local bar. Street and Runyon correctly determined that collecting state-specific material is a part of providing students with the tools necessary to learn how to practice.129 Meyer aptly points out that law firms expect recent graduates to be proficient in using local materials.130 The majority of externship

130. Meyer, supra note 127, at 315 tbl. 3.
problems take place in local settings. The majority of clinical cases probably involve
the application of local law. It seems logical to retain an active local collection.

¶79 Other sources of local skills-specific materials are the state bar association
publications produced to accompany continuing legal education programs. These
are of mixed value at best. Some books contain only an outline or the PowerPoint
slides of a CLE presentation. These can be useless without the context of the actual
CLE presentation. Happily, some state bar associations regularly publish CLE pre-
sentation practice materials that stand on their own.\textsuperscript{131}

**Electronic and Print Sources**

¶80 The vendors of the three “complete” research systems, Westlaw, Lexis
Advance, and Bloomberg Law provide many practice-oriented materials. Lexis
Advance is still featuring Matthew Bender publications, and Bloomberg Law sup-
ports electronic analogs to the excellent Practising Law Institute books sold primar-
ily to practitioners. Resources on all three of the systems include checklists, dockets,
briefs, and practice treatises. Most libraries already subscribe in some way to all
three. The remaining task, then, is to inform students about existing sources and
where and how to locate them within the system. Most libraries now provide links
from their catalogs to the online source. It is also possible to prepare skills-specific
research guides (“practice guides”) with the appropriate links.

¶81 A surprising number of print and electronic practice-oriented materials are
available outside of the major “system” vendors. Some are inexpensive, some not.
Here is a brief, nonexhaustive sampling.

¶82 **Bloomberg BNA:** Subscribers to BNA-ALL receive Bloomberg Law at no
cost. BNA-ALL, with electronic access to its various reporters, is an ideal practice-
specific resource. It provides current awareness tools and a usable archive of court
and agency decisions, regulatory and statutory changes, and specialty-specific and
practice-specific news reports and analysis. Most important, actual human beings
index these services, making a keyword search unnecessary.

¶83 **ALM and Law Journal Press:** Law Journal Press, a “brand” of ALM, allows a
la carte selection of practice treatises. These treatises are bundled with an electronic
counterpart. ALM “brands” cover both national treatises and state-specific
treatises.\textsuperscript{132}

¶84 **Electronic Specialty Research Systems:** A number of these are available. For
example, Special Ed Connection\textsuperscript{133} sold by LRP\textsuperscript{134} is, like BNA-ALL, a current

\textsuperscript{131} For example, the New Jersey Institute of Continuing Legal Education, an arm of the
bar association, publishes the “Practical Skills” set. This is a true stand-alone set that is peri-
 ebusiness/njicle/BooksTreatises/PracticalSkillsSeries.aspx [https://perma.cc/4Q6R-GR3Q]. The New
York State Bar also has an outstanding array of practice-specific volumes that address areas of concern
to practitioners in that state. See generally *Publications*, N.Y. STATE BAR ASS’N, http://www.nysba.org

\textsuperscript{132} Thus, in New Jersey, ALM markets its state-specific practice treatises through the New
Jersey Law Journal brand. In Pennsylvania, it does the same through the Pennsylvania Intelligencer
brand. Nationally, it markets treatises through its Law Journal Press brand. All are bundled. All are
annually updated. Purchase of any single title generally results in a standing order for that title.

\textsuperscript{133} **Special Ed Connection**, http://www.specialedconnection.com/LrpSecStoryTool/splash.jsp

awareness system that also archives relevant case and regulatory law changes. This is an electronic-only resource.

¶85 **IntelliConnect**: This platform is used by CCH to support its exhaustive “reporter” systems, all of which are clearly skills-specific (e.g., the *Standard Federal Tax Reporter*, the *Federal Securities Law Reporter*). These sets are also available in print but require frequent interfile updates, a time-intensive task that not all legal practices can spare.

¶86 **Legal Information Buyer’s Guide and Reference Manual**\(^{135}\): This stand-alone manual is unmatched for general collection development. Its list of treatises is by subject matter. Each entry provides sufficient information to allow a librarian to determine what its value might be in the new curriculum.

¶87 **Vendors Flyers, Lists, General Offerings**: As might be expected, most vendors advertise their practitioner-oriented products. Reviewing the promotion materials that are sent to academic law libraries is burdensome but necessary.

¶88 **Wholesalers**: Most wholesalers like YBP and Hein now indicate in some fashion which books are practice oriented. YBP, for example, marks some of those books as PROF for professional. The system is not perfect, however, and it is often up to the selector to determine which books actually support skills-specific usage.

### Making the Skills Materials Available

#### The Embedded Librarian

¶89 Embedding a librarian is one of the best ways possible to put skills-specific materials into the hands of the expected beneficiaries. Being present in the clinic offices is an excellent way to make sure that students taking skills-specific classes or learning related roles have ready access to the library’s collection development decisions.\(^{136}\) Reference librarians who help staff clinics can handle reference questions while recommending new practice-specific materials. The ideal situation would be to have both a librarian and a set of skills-specific materials in the clinic setting. Maintaining a small specialty-specific collection outside of the library but accessible to students in the same building may not be possible.

¶90 The same is true of externships or any incubators that might be established. Both are usually off-campus, so limiting the librarian’s presence to a reasonable periodic basis might be necessary. The ideal situation would be to have both a librarian and a set of skills-specific materials at the off-campus location; again, maintaining two collections may be beyond most library’s fiscal abilities.\(^{137}\)

¶91 Consider embedding a librarian in the first-year research and writing classes. Having a liaison librarian for each of the sections is another possibility. Building rapport and maintaining frequent contact with students from the beginning will introduce them to the relevant resources and allow them learn how to access those materials.

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Maintaining a presence—whether as an embedded librarian or liaison librarian—allows constant review of the materials chosen, as well as the necessity of updating or replacing old or unworkable materials. A presence also allows librarians to gauge the use and usefulness of those specific materials in those settings.

**Expanding the Librarian’s Role as Instructor**

Librarians can offer to teach a single one-off session in all doctrinal classes that have an experiential component, all seminar classes, and all simulation courses. Teaching on a one-off basis in a seminar appears to enhance the quality of the papers submitted to the instructor. The same effect should hold true in simulation courses. Regardless, doing so will at least alert students to the existence of relevant materials. Of course, the follow-up is to prepare individual course/seminar research guides to hand out during class and post on the library website.

**Changing the Discovery Tool**

Consider repurposing your catalog by adding a practice or skill separate collection. Students would be able to search for specific subjects through a keyword search in a limited set of materials. Curate and maintain as current all links to skills-specific resources that are available only from an online source. Link the bibliographic record for any skills-specific material whether in print or electronic form to the practice pages mentioned in the next paragraph. Place a note in each relevant bibliographic record to alert users that the particular resource is skills oriented. Identifying those resources will be labor intensive and may not be possible in all instances.

Prepare practice pages in addition to more traditional research guides. At least two articles have set out the potential advantages associated with minimizing the catalog as the primary discovery tool and moving to research guides instead.

**Initiating a Skills Practice Area**

Consider setting aside an area of the library to house specialty-specific materials. Many law school libraries, for example, have a specific tax or environmental law section. Instead of simply reorganizing the printed materials, however, consider providing a desktop computer, scanner, relevant research and practice guides, time-keeping software, knowledge management software, and other relevant materials in one place. Locate key print reference and interdisciplinary materials with the standard research materials. To create true skill-specific areas, consider making space for student collaboration. The need to provide sufficient space for student work as a collaborative group is one of the new subject goals in the revised

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standards.\footnote{142} This may also help the law school meet its obligations to provide relevant technology.\footnote{143}

**The Time to Act**

\footnote{144} The ABA expects that full implementation will occur by the 2016–2017 school term.\footnote{144} Regardless of the time line, it is incumbent on libraries to revise collection development policies and begin to consider how best to fill any collection development gaps.

\footnote{148} The revised standards offer academic law libraries and librarians an opportunity to integrate further into the fabric of their law school communities in a way not seen since the time of Langdell. This is too good an opportunity to pass up.

\footnote{142}{Revised Standards, supra note 1, at 46 (Standard 702(a)(9)).}
\footnote{143}{Id. at 42, 46 (Standards 606(e) and 702).}
\footnote{144}{Id.}
# 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 Kathleen Darvil*

¶1 Now in its third edition, New York Legal Research concisely describes the sources of New York State law and the process of conducting research using those sources. The latest edition places greater emphasis on online sources and the online research process than did earlier editions, and it comes complete with screenshots illustrating how to access and search the sources. The book’s targeted audience is readers who are unfamiliar with New York law and legal research. The authors of the text are all academic law librarians in New York.

¶2 The first two chapters focus on the research process, legal analysis, and research techniques for print and online sources. These chapters examine how to effectively manipulate the platforms of Bloomberg Law, Westlaw, Lexis Advance, and Fastcase, as well as a few free platforms, such as Google Scholar and government websites. What I found most valuable in these introductory chapters was the description of how to access New York materials on Westlaw, Google Scholar, and government websites. For example, the book details how to access the “Practitioner Insights for New York” page on Westlaw and also highlights Carmody-Wait, an important multivolume treatise on New York law. When discussing research techniques on Bloomberg Law and Lexis Advance, however, opportunities are missed to describe how to access their New York legal sources. For example, when describing Bloomberg Law’s docket database, the book discusses accessing federal dockets only and leaves out any description of New York state dockets. Also, the section about conducting research on Lexis Advance is a general discussion of how to browse sources by topic or jurisdiction; it does not focus on how to access New York material.

¶3 The next several chapters center on New York secondary and primary sources of law. These chapters highlight unique features of New York law and their

* © Kathleen Darvil, 2016. Access Services/Reference Librarian and Adjunct Professor of Law, Brooklyn Law School, Brooklyn, New York.
sources. They provide a fairly comprehensive discussion of how to identify and use the sources of law to research an issue. For researchers unfamiliar with the New York legal system, it is important to understand New York’s complex, multi-tiered court structure. The book concisely describes the different levels of New York’s court system and illustrates the relationships between the different courts with a chart.

¶4 Another important aspect of New York law is the distinction between consolidated and unconsolidated laws. The book explains in detail the distinction and where to find the statutes, highlighting the main sources of New York’s consolidated and unconsolidated laws: McKinney’s Consolidated Laws of New York Annotated, New York Consolidated Laws Service, McKinney’s Unconsolidated Laws, and CLS Unconsolidated Laws. Included in this discussion is a description of a unique and valuable New York statutory annotation, the Practice Commentaries. Practice Commentaries are written by experts and provide legal analysis of a particular section of New York code. This annotation follows the text of a code and is considered highly persuasive. The last chapters in this section discuss two subjects of particular interest to practitioners: researching New York City law and New York State ethics opinions. These pieces are very valuable because they alert researchers to sources that can be difficult to identify and locate.

¶5 The book’s final chapter is devoted to research strategies and organization, and provides general suggestions on researching a problem. This chapter includes a brief discussion on cost-effective research. It also suggests how to organize research to aid legal analysis. Following the text of the book, the authors include two appendixes. Appendix A describes how to cite to authority in New York using the New York Law Reports Style Manual. This is helpful for practitioners in New York State courts because New York State court judges use this manual when writing opinions. Appendix B is a bibliography of sources for legal research and analysis. A helpful addition would have been an appendix of popular and frequently cited New York secondary sources, listed by subject. New York attorneys and law students are fortunate in that there is a wealth of secondary sources on a variety of New York legal topics, and an appendix organizing the leading texts and treatises by topic would be valuable.

¶6 New York Legal Research provides a solid examination of both the sources of New York law and the legal research process. A picture is worth a thousand words, and embedded within the chapters are screenshots and tables that illuminate the text. When comparing this book with other titles on the subject, New York Legal Research is the only title that focuses its discussion on connecting the sources of law in New York with the practice of conducting legal research. That makes New York Legal Research an essential addition to any law library that supports the study or practice of law in New York. The one weakness I saw in this book, as with the entire Carolina Academic Press state legal research series, is the discussion of federal legal research. While federal law can have implications for state law, the inclusion of federal legal research distracted from the focus on New York legal research and would be better left out of the state law research series.

Reviewed by Francis X. Norton, Jr.*

¶7 Some authors, believing that bigger is better, include extraneous material and other padding to swell their tomes to “proper” scholarly proportions. Fortunately, Thomas Aiello does not. His little jewel is only 169 pages including the index. If you remove the wonderful footnotes and primary source documents, the text is just sixty-three pages long.

¶8 Aiello is an associate professor of history, but he is also a masterful storyteller. Where a law professor might begin a work concerning nonunanimous criminal jury verdicts in Louisiana by citing a statute or a constitutional article, Aiello instead chooses to humanize the topic from his first sentence: “It was a clear, sunny day on December 26, 1967” (p.1). He begins his story with Eugene Frischertz, who was driving a Coca-Cola Bottling Company delivery truck that day. Aiello describes an armed robbery of Frischertz and then shifts the story to Frank Thomas Johnson, who would be arrested for the robbery, tried, and then convicted by a jury of twelve, on a vote of nine to three. Aiello includes the Johnson decisions in an appendix.

¶9 In the next chapter, Aiello gives a brief account of Louisiana’s legal history and early codes. Contrary to popular belief, nonunanimous criminal jury verdicts began during the end of Reconstruction and were not a remnant of Spanish or French law. This is important because the verdicts were used to make criminal convictions easier and to swell the numbers of Louisiana convicts sent off to work at Angola Plantation.

¶10 Aiello continues his story with a large cast of characters, colorful anecdotes, and primary source material. He shows how the Jim Crow forces took back power following the collapse of Reconstruction through the machinations of several constitutional conventions and aided by the reasoning of the judiciary, both state and federal. It is important to remember that nonunanimous criminal jury verdicts are still in use today, in Louisiana and Oregon. They began in Oregon during a time when outsiders and the poor were viewed as threats and in Louisiana when African Americans and the poor were viewed as threats. The examination of how criminal law can be used to control outsiders remains very pertinent today, as Americans wrestle with issues such as immigration, transgender rights, and other complex legalities that involve nonmajority groups.

¶11 I highly recommend this book. It is very well written, concise, and entertaining. Aiello shows how people and their desire for power and authority shaped the law to their own ends. A number of lawyers took the moral high ground, but not enough to stop the spread of Jim Crow segregation. The book seems to be written for the average layman, and yet it is full of the details of government, policy, and law. I am a law librarian who regularly conducts historical Louisiana legal research, and I still learned much from this book, including how Angola began as a private enterprise. It should be included in every law library, academic library, and large public library.


Reviewed by Lisa A. Goodman*

¶12 This newly revised edition of *Federal Legal Research* again serves as the federal accompaniment to Carolina Academic Press’s Legal Research Series, which consists of a number of state-specific legal research texts. Authored by five legal research professors from law schools throughout the country, *Federal Legal Research* provides a succinct, yet thorough, overview of the legal research process. Moreover, it breaks down the various sources of law and systematically describes how to go about finding them both in print and electronically. In addition, the text offers sufficient practice pointers throughout to make it a useful reference for legal researchers of all levels. For example, there are sections in chapter 2 (“Research Techniques”) that discuss cost-effective research, when one might use print versus online resources, and the differences between and relative utilities of natural language versus Boolean searching.

¶13 In its first chapter, “Legal Authority and the Research Process,” the text explains the sources of law and discusses the hierarchy of authority and the differences between primary and secondary authority. It goes on to include a very practical overview of the research process that would benefit law students and laypersons alike. For instance, table 1-1 breaks down the research process into six familiar, digestible steps, such as “1. Gather facts, decide which jurisdiction controls, and generate a list of search terms” (p.6). From there, individual chapters focus on various sources of law, discussing secondary sources, constitutional law, statutory law, legislative history, administrative law, case law, and others. Some of the highlights include an overview of compiling a federal legislative history (in the event that one is not already available for the subject of your research), using digests and headnotes to expand case law research, and an outline of administrative law research.

¶14 In addition to discussing the various sources of law using print resources and the prominent commercial databases Westlaw, Lexis Advance, and Bloomberg Law, the text also looks at using free and lower-cost resources like Google Scholar, Congress.gov, and state legislature and court websites. One of the book’s strongest features is the liberal, though not overdone, inclusion of tables and figures to provide explanatory references and screenshots from the research databases and pictures of print documents. For instance, figure 8-1 contains a handy “Diagram of the Federal Court System.” Additionally, some of the major changes in this revision include screenshots from the revamped Lexis Advance interface. Screenshots for the Westlaw system are exclusively from WestlawNext; there are none from Westlaw Classic, which has now been retired.

¶15 As a legal research instructor, I found another highlight of this text to be its treatment of citators and the procedure for updating legal authority. Albeit brief, chapter 10 is devoted to citators and gives a worthy explanation of their dual purpose and the particular symbols used by KeyCite, Shepard’s, and BCite. This chap-

* © Lisa A. Goodman, 2016. Interim Assistant Dean for the Law Library and Information Technology Services, Paul M. Herbert Law Center, Louisiana State University, Baton Rouge, Louisiana.
ter is particularly skilled at explaining the critical step of updating in the research process, which often appears deceptively simple, yet is frequently challenging for novice researchers to master.

¶16 Overall, the text is logically arranged and an ideal fusion of detail and brevity. I highly recommend it for all libraries whose patrons seek assistance researching legal materials, including law libraries, public libraries, and academic libraries supporting law, legal studies, or paralegal programs. Given its process orientation along with its bibliographic overview of the sources of law, Federal Legal Research would serve as an extremely valuable teaching tool for legal research instructors and an appropriate textbook selection for legal research courses.


¶17 Although the cover and title page indicate this edition of Fundamentals of Legal Research is its tenth, the authors point out that this newest edition might more accurately be considered its fourteenth because “[t]he numbering of editions was reinitiated in 1977 with a change in authorship” (p.v n.1).1 The first edition, written by Ervin H. Pollack and published in 1956, was 295 pages long and cost $5.2 The current edition, obviously, is much longer and more expensive.

¶18 The text starts with a helpful glossary of legal research terms, followed by three thorough and useful preparatory chapters: an introduction to legal research and resources used, a chapter on the process of legal research, and a chapter on communicating research results through writing. The remaining text is arranged in what the authors call “a ‘jurisprudential’ approach to teaching legal research” (p.v), that is, primary sources of law described before secondary. In addition to the expected secondary sources (encyclopedias, periodicals, treatises, uniform laws, and model acts), both editions of the text contain chapters on topical services (loose-leaves), practice materials, public international law, citators, and legal citation. Although most chapters include a discussion of online resources for the particular topic discussed therein, there is also a chapter on electronic legal research.

¶19 As a reference tool, the table of contents is excellent, as is the glossary at the beginning of the book and the appendix on legal research abbreviations. The index is not as complete as it could be (for instance, the entries on Westlaw and LexisNexis do not contain nearly as many listings as there are mentions of the two in the text, and some resources are missing altogether in the index); however, I suspect this is


1. See also Steven M. Barkan, On Describing Legal Research, 80 Mich. L. Rev. 925 (1982), for a truly fascinating history on this and other legal research texts.

a criticism of an automatic indexing system, rather than the authors themselves. Although many chapters are written or revised by different authors, the text reads in a unified voice.

¶20 The Illustrated edition would more precisely be named an abridged edition, as both editions are illustrated with screenshots from electronic databases and scans of pages from print volumes. The Illustrated edition lacks the chapters on “Researching the Law of the United Kingdom,” “Native American Tribal Law,” and “Federal Tax Research,” as well as the appendixes containing the “Table of Legal Abbreviations” (which is one of my favorite things about the unabridged edition) and “Legal Research in Territories of the United States.” In all other respects, the two editions are identical, although the unabridged version costs $18 more (and seems considerably heavier). Therefore, if you are using the text for an advanced legal research class and are not including sections on legal research in the United Kingdom, Native American law, or tax, you can save your students’ wallets and backs by assigning the abridged version. However, as a reference tool, I prefer the unabridged version, as I would very much miss the more specialized chapters and appendixes.

¶21 It should be noted that this textbook would work better in an advanced legal research class, as it is more comprehensive and dense than a typical first-year legal research text. As someone who taught legal research when she accepted the assignment to write this review, but who now works in a law firm, I also note that the coverage of the text is truly legal research and not business research, competitive intelligence, or other types of research that law firm librarians might be expected to do throughout the course of their jobs. Barkan describes the first edition of this work as filling “a need for a relatively brief text that would be understandable to new law students.”3 The current authors describe the text as continuing “a distinguished history as both a teaching tool and a guide to legal research” (p.v). While there is a thought-provoking debate regarding the need for a textbook to teach legal research,4 for those legal research professors who do use textbooks in their classes, this edition seems likely to carry on its predecessors’ history.


Reviewed by Tina M. Brooks*

¶22 Voters’ Verdicts: Citizens, Campaigns, and Institutions in State Supreme Court Elections reports the results of the authors’ empirical studies on the effects of partisanship on state high court elections. They use survey data and controlled experiments to evaluate the influence of partisan and incumbent cues on voter ballots, and, while the results are complex, Chris W. Bonneau and Damon M. Cann

3. Barkan, supra note 1, at 932.
* © Tina M. Brooks, 2016. Electronic Services Librarian, University of Kentucky Law Library, Lexington, Kentucky.
manage to both thoroughly explain and concisely summarize their work in this slim volume.

¶23 The authors begin their work by describing the several different types of judicial elections in which they tested their theories: partisan, where judicial candidates are nominated through party primaries and party is indicated on the ballot; nonpartisan, where the primaries are not affiliated with parties and partisanship is not indicated on the ballot; quasi-partisan, where political parties are involved in nominations but partisanship is not indicated on the ballot; and retention, where judicial candidates are appointed but elections may be held to determine whether the appointed judges retain their seats, and where party is not indicated on the ballot. They then walk the reader through each hypothesis that they tested and include detailed explanations of their statistical analysis, both of the survey data and their experimental results; the appendixes contain additional information about their experimental conditions and the survey from which they drew their data. The authors take care to detail the variations on each election type as well as the impact of those variations on their analysis.

¶24 The data reveals that even when controlling for a variety of other factors, partisanship strongly influences voters’ choices, not only in elections where the candidates’ parties are clearly noted on the ballot, but also in elections where their party is not indicated on the ballot. Even when partisanship ballot cues are absent, voters are apparently still able to determine through ideological campaigning which party each candidate belongs to, and they vote accordingly. In retention elections, where a judge has been appointed and the vote is a simple yes or no as to whether the judge will retain his or her position and where party is not indicated on the ballot, partisanship still has a modest impact on votes. The authors conclude that if legislatures are trying to encourage voters to base their choices on qualifications rather than party by establishing nonpartisan elections, their goal has not been achieved.

¶25 Bonneau and Cann also find that, contrary to prior studies, the status of a candidate as an incumbent was not a significant predictor of voter choice, even when the voter did not have information regarding the candidate’s party affiliation. The electorate does not seem to be interpreting prior judicial experience as an indication of a better judicial candidate.

¶26 The authors conclude their work with recommendations regarding where future scholarship on election influences should focus. They suggest investigating the impact of state public campaign financing programs on elections, the effects of spending by independent interest groups and by types of interest groups, and the long-term impact of elections on the legitimacy of the court system.

¶27 Ultimately, this is a work of empirical political science rather than legal analysis. However, a scholar of election law may find its data and conclusions informative for legal analysis or policy recommendations. The authors do give a brief background of relevant U.S. Supreme Court rulings in the introduction, in addition to descriptions of the types of judicial elections, to set the stage for how their analysis was conducted. The introduction serves as a nice primer on the current state of judicial elections in the United States. Overall, the work is well organized, and each chapter is thoughtfully summarized before moving on to the next. The authors cite
other related studies extensively; this title would be an excellent bibliography for related political science scholarship. I recommend *Voters’ Verdicts* to libraries with robust political science or election law collections.


*Reviewed by Clare Gaynor Willis*

¶28 It seems highly unlikely that a law library would decide not to collect a book by a U.S. Supreme Court Justice, especially one on a topic as important as the influence of foreign and international law on U.S. law. I hope, therefore, that I can convince my fellow librarians to read this book, share it with others, and start a dialogue about how the message of this book could affect our work. Justice Stephen Breyer’s main message is that foreign and international law cannot be ignored in the United States. He argues that foreign and international law can help guide domestic law and, at the very least, is inescapable in an increasingly global and interconnected world. Finally, Justice Breyer argues that Americans must engage with foreign and international law because doing so will advance the rule of law abroad.

¶29 Breyer chooses strong examples and provides excellent introductions and summaries. By mentioning (although not actually naming) the popular vacation rental site Airbnb and discussing personal and domestic issues like child custody, he convinces readers that foreign and international law touches the lives of ordinary Americans. This keeps international law from seeming like the exclusive purview of diplomats. With the exception of a very lengthy discussion of the politics leading up to the *Steel Seizure* case, his explanations of cases and legal concepts are concise and clear. Justice Breyer aims to reach a general audience. It was also refreshing and helpful to see him discuss both famous and lesser-known cases. By using this approach, he engages readers quickly by discussing famous cases like *Korematsu v. United States* while offering them the opportunity to learn about lesser-known cases such as *United States v. Curtiss-Wright Export Corp.* and *Ex parte Quirin*. The approach keeps the topic of foreign and international law from seeming like something that only the most exceptional cases apply.

¶30 The one distraction in Breyer’s otherwise very readable book is his decision to wait until page 236 to fully acknowledge and confront the arguments against considering foreign and international law. Although the introduction warns that he will wait until later in the book, and he alludes to the arguments several times, these references threaten to distract from his argument as readers wonder when he will address the argument head-on. When he finally does fully discuss and rebut the arguments against considering foreign and international law, Breyer explains his decision:

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6. 323 U.S. 214 (1944) (upholding the constitutionality of President Roosevelt’s executive order sending Japanese-Americans to internment camps).
7. 299 U.S. 304 (1936) (holding that the President has broad authority to conduct foreign affairs).
8. 317 U.S. 1 (1942) (holding that a U.S. military tribunal has jurisdiction in cases against unlawful combatants).
To put such anxieties [such as the concern that considering foreign law threatens American sovereignty] in perspective is largely my reason for not addressing them earlier. My hope is that the cases I’ve now discussed suggest that the critics’ concerns about judicial references to foreign law are beside the point. Their fears don’t much resonate when one understands the way in which foreign law and practices are actually considered (p.244).

I did not find this explanation effective after the fact.

31 Breyer does an admirable job of arguing for America’s continued role as a standard bearer for the rule of law without ever edging into cultural chauvinism. For example, Breyer quotes Judge Henry Friendly in *IIT v. Cornfeld*, who opined that if “our anti-fraud laws are stricter than Luxembourg’s, that country will surely not be offended by their application,”9 and dismisses Judge Friendly’s conclusion. Rather, Breyer argues that judges should give due consideration to the policies and goals behind foreign law instead of assuming that the American approach can do no harm. Later, in his section about the rule of law, he argues that the United States is a model for the rule of law not because the Supreme Court is always correct, but because even wrong or unpopular decisions do not lead to bloodshed.

32 Ultimately, Breyer leaves librarians with an interesting challenge. He very effectively argues that judges must understand foreign and international law. Then, when he discusses how they will learn about such law, Breyer suggests that amicus briefs and scholarship will guide judges. As a librarian who teaches law students how to research foreign and international law, I hoped that he would discuss more about what sources are the most helpful. In a time of limited budgets, it is difficult to spend money on expensive foreign sources. If our law students are expected to become the attorneys who write those briefs, then we must find a way to teach them how to research this law. Furthermore, the law professors who write the scholarship on which Breyer depends need a collection that supports their work and librarians who can help with foreign and international research.

33 Breyer also discusses the importance of interactions between American judges, lawyers, law professors, and law students and their foreign counterparts. Academic law librarians have an excellent opportunity to facilitate those interactions because law schools gather students and faculty from around the world.

34 I hope that librarians will do more than just collect this book because it is written by a Supreme Court Justice. I hope that Justice Breyer’s book will inspire librarians to find creative ways to teach, research, and collect foreign and international law.


Reviewed by Gregory H. Stoner

35 In late December 1946, the death of Georgia governor-elect Eugene Talmadge initiated a unique struggle for political power in which three men asserted a right to the office. In the days and months that followed, a contentious

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9. 619 F.2d 909, 921 (2d Cir. 1980).

battle between these men and their supporters thrust the state into turmoil and drew the attention of the entire nation. In *The Three Governors Controversy: Skull-duggery, Machinations, and the Decline of Georgia’s Progressive Politics*, Charles S. Bullock III, Scott E. Buchanan, and Ronald Keith Gaddie not only explore this fascinating episode but delve deep into the history of electoral politics in Georgia, the political career of Eugene Talmadge, and the burgeoning progressive movement. Examining and interpreting various primary sources, Bullock, Buchanan, and Gaddie provide readers with a comprehensive view of Jim Crow Georgia and illustrate how the events surrounding this election and its resolution effectively marginalized progressive politics in the state for years to come.

¶36 The biographies of four individuals, each of whom held a claim to the office of governor, are intertwined and largely serve as the core of this study: Eugene Talmadge, a three-time governor of Georgia and the 1946 governor-elect; Ellis Arnall, the sitting governor; Herman Talmadge, the son of Eugene and chosen successor of the Talmadge political machine; and Melvin Thompson, the first and sitting lieutenant governor. The first two chapters of the book explore Eugene Talmadge’s rise to power, his influence in shaping state political factions, and the importance of the county unit system in state elections and the development of rural and urban forces. Successive chapters chronicle the 1946 Democratic primary and general election and examine how Talmadge won an election using an army of supporters, an array of political machinations, and a campaign platform largely focused on the maintenance of the white primary. Lastly, Bullock, Buchanan, and Gaddie explore the attempted legislative resolution to the controversy, the state supreme court ruling naming Thompson acting governor, and Herman Talmadge’s subsequent rise to power on the state and national political scenes.

¶37 While many of the various issues and subjects discussed in this work have previously been the subject of independent scholarly examination, *The Three Governors Controversy* is an ambitious and successful effort seeking to provide a broader understanding and a more complete picture of these fascinating events. This narrative, examining the gubernatorial controversy, the preceding campaign, and the overall social and political picture in postwar Georgia, allows readers to better comprehend these interconnected developments and their impact on one another. Extensive notes illustrate the diverse scope of resources consulted, particularly firsthand accounts and sources such as newspaper articles. All three authors are professors and noteworthy scholars who have previously published other works focusing on Georgia and southern political history.

¶38 Touching on a number of subjects, this study will be of interest to a diverse audience, including historians of law, elections, politics, and social issues. *The Three Governors Controversy* would be a noteworthy addition to academic and law libraries throughout the country, particularly those with collections in political and social history.

Reviewed by Danielle A. Becker*

¶39 At the Virginia State Convention, June 24, 1788, Patrick Henry asserted:

A bill of rights may be summed up in a few words. What do they tell us?—That our rights are reserved. Why not say so? Is it because it will consume too much paper? Gentlemen's reasoning against a bill of rights does not satisfy me. Without saying which has the right side, it remains doubtful (p.348).

Neil H. Cogan’s second edition of *The Complete Bill of Rights: The Drafts, Debates, Sources, and Origins* is a fascinating exploration of the words, debates, discussion, and source materials that later became the Bill of Rights.

¶40 The book begins with a preface that interprets the significance of the Bill of Rights, quoting James Madison, who said it represents “the great rights of mankind” (p.lxiii). Given how many interpretations are explored every year, at the federal, state, and local levels, Cogan sets out to offer “the most complete, accurate, and accessible set of texts available” (*id.*) to provide a backbone for these interpretations. Cogan also explains the methodology of the collection, which is limited to the materials that were produced by members of the First Congress and materials that would have been available to them or were commonplace. He also provides the researcher with a listing of the sources entitled “Abbreviations of Sources” after the preface. Citations and footnotes are incorporated throughout each chapter.

¶41 The organization of the chapters provides a road map to the material, making it easier for the researcher to find the information quickly in the chapter. Each chapter begins with the heading “Texts,” which includes subheadings such as “Drafts in First Congress,” “Proposals from State Conventions,” and “State Constitutions and Laws; Colonial Charters and Laws.” Those materials are straightforward and easily recognized by their succinct headings and simple formatting. Next comes the heading “Other Texts,” which includes relevant texts such as excerpts from the English Bill of Rights (1689). Then the chapter delves into covering “Discussion of Drafts and Proposals” with subheadings including “The First Congress,” “State Conventions,” “Newspapers and Pamphlets,” and “Letters and Diaries.” A final “Discussion of Rights” section ends the chapter with “Treatises” and “Case Law.”

¶42 The most interesting sections in each chapter are the transcriptions of the discussions had both at the State Conventions and in the First Congress, as well as the selections from “Newspapers and Pamphlets.” One example is a discussion between Henry and Madison regarding Amendment III: Quartering of Soldiers’ Clauses:

Mr. Henry . . . .

One of our first complaints, under the former government, was the quartering of troops upon us. This was one of the principal reasons for dissolving the connection with Great Britain. Here we may have troops in time of peace. They may be billeted in any manner—to tyrannize, oppress, and crush us.*

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Mr. Madison . . .

He says that one ground of complaint, at the beginning of the revolution, was, that a standing army was quartered upon us. This was not the whole complaint. We complained because it was done without the local authority of this country—without the consent of the people of America (p.322).

This exchange gives the researcher access to the discussions that accompanied the writing of the Bill of Rights and its clauses. The “Newspapers and Pamphlets” sections include contemporary articles that portray the opinions of the media and selections from the general public. These materials provide the researcher with valuable insight that can further enrich an understanding of this fundamental text.

¶43 Consider the immortal importance of the Bill of Rights with this quotation taken from a letter written by Thomas Jefferson to James Madison on December 20, 1787: “Let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference” (p.1063).

¶44 Ultimately, this book would fit nicely in academic law libraries (or other academic libraries) and public libraries. It is a repository (in one volume) of the basic texts that researchers need to interpret and critically analyze the Bill of Rights. It will satisfy both the serious researcher with its dense content and the casual reader with its ease of use and readability.


Reviewed by Jennifer L. Laws*

¶45 The “Nation of Rights” described by Laura F. Edwards in *A Legal History of the Civil War and Reconstruction: A Nation of Rights* is remarkable for its broad rhetoric about rights (perhaps best represented in Abraham Lincoln’s description of the United States as “conceived in liberty and dedicated to the proposition that all men are created equal”) and for its extraordinarily narrow legal interpretation and application of those rights. Edwards takes the reader from the halls of the U.S. Congress to Civil War battlefields and the postwar fields of Granville County, North Carolina, in an effort to shed light on what the U.S. Civil War and Reconstruction did to the relationship between Americans and the law, including their perceptions of their rights, their governing bodies, and the law as a whole.

¶46 Though the legal interpretation of rights after the Civil War continued for many decades along the granular, hyper-individual lines of earlier precedent, the war-changed popular perception of rights as tied to a broader and more generous definition of the public good could not be undone. The author’s analysis of the dramatic legal changes that came about transcends the focus on federal policy typical of Civil War legal history and reaches for a kind of synthesis that is a welcome addition to the historical literature of the Civil War and Reconstruction. As Edwards states in her introduction, “This book argues that historians have tended to underestimate the extent of change because they have not brought legal history

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into dialogue with the scholarship of other historical fields”—fields that focus on class, race, and gender (p.7).

¶47 The book is organized roughly chronologically, with the first three chapters devoted to the Civil War and the second three devoted to Reconstruction. When Edwards examines legal change during the war years, she emphasizes how wartime policies in both the Union and the Confederacy increased federal power and altered the way Americans perceived and related to the law and legal institutions. Edwards demonstrates that the changes brought by Reconstruction “unsettled the nation’s entire legal order” (p.13). Her analysis emphasizes that change flowed from both the top down and from the bottom up, in complicated ways. The real excitement of Edwards’s analysis emerges in chapters 5 (“The Possibilities of Rights”) and 6 (“The Power of Law and the Limits of Rights”). In these two final chapters, her synthesis of ideas from newer historical work and fields beyond legal history really shines.

¶48 As a reader I found the structure of the book challenging. Perhaps due to its origins in her essay on the same topic for The Cambridge History of Law in America, the structure is minimal, with only six chapters. Within the main text’s relatively short length of 176 pages, Edwards demands much from the reader. New historical constructions abound, and legal analysis is enmeshed with discussions of social and economic changes. The reader must take time to process new information following each page or two. Proportionally huge quantities of useful information appear in this book, and it is not a title that most will read from cover to cover. Additional chapter or subchapter divisions could assist the student reader (in particular) to prioritize and pace his or her efforts.

¶49 Edwards provides students of legal history with excellent historiographical context for their research. Her introduction includes a five-page section placing her work in the context of the historiography of the Civil War and Reconstruction. By doing so, she makes her work accessible and understandable to new students of the legal history of the era. The author also includes a thirteen-page bibliographic essay following her conclusion. In it she provides a high level of detail about the sources she used in her work, placing them into the historiographical context provided in the introduction. These two sections, combined with her fourteen-page bibliography, provide a wealth of material for researchers to pursue specific areas in greater depth.

¶50 Edwards deftly incorporates historical information about the impacts of the legal changes of this era on many segments of the U.S. population. Moving beyond a traditional emphasis on the social categories of white and black, the author provides valuable context about the impacts of the era’s legal changes on women in general (both black and white), workers in the expanding industrial sector, and Native Americans. Edwards also offers her readers an alternative to the dominant North-South “axis” of the historiography of Reconstruction. Traditionally the changes wrought by Reconstruction have been framed by a North-South structure, one limited to the eastern part of the United States and largely focused on the former Confederacy and the status of African Americans. Newer work has begun to incorporate the fuller picture of the Republican vision of the United States, including policies related to westward expansion in the dynamic of Reconstruction, recognizing them each as elements of a single vision of “national unity” (p.92). Examining national attitudes and laws about property rights and measures that might
have improved the economic status of recently freed slaves becomes far more complete when the denial of property rights of Native Americans in the West is considered at the same time.

§51 The brevity of Edwards’s book has at least one notable consequence: only a small number of case studies of individual Americans’ or communities’ participation with these dynamics of legal change appear in her book. The quotes from a petition from African American citizens of Lincoln County, Tennessee, in 1865 to the Freedman’s Bureau, and the description of Bella Newton’s 1869 litigation in defense of her family and a changed social order, tease the reader with the wealth of case studies that may exist in primary source documents. Linking individual or small community stories to the powerful currents of change described in Edwards’s book would more powerfully connect the reader to her ideas.

§52 Edwards’s book leads the reader from the nineteenth century into the twentieth, tracing how the tension between war-changed perceptions of rights and the hyper-individual judicial interpretation of rights profoundly altered the law of the United States and Americans’ perceptions of it. Stephen C. Neff’s book Justice in Blue and Gray: A Legal History of the Civil War (2010) takes the reader on a journey from the legal warfare issues of the Civil War to the legal issues of the War on Terror. I am not surprised that Edwards makes no reference to Neff’s work. A Legal History of the Civil War and Reconstruction stands on its own and merits inclusion in any collection that already contains Neff’s book. Any library that collects in the areas of legal history, constitutional history, or civil rights would be well served by the addition of this title.


Reviewed by Andrew Dorchak

§53 The multiple authors of Magna Carta and the Rule of Law offer an erudite, historical overview of Magna Carta’s influence throughout the world over eight centuries. The authors identify five common themes: the ability of a written document to bind everyone (including the sovereign) to the law of the land, the “dynamism and adaptability” of Magna Carta, the myth of Magna Carta, “resilience in the face of varying treatment,” and the “enduring relevance and persuasiveness” of Magna Carta to the rule of law (pp.14–16). Several chapters note the role of Edward Coke (and William Blackstone), who worked to associate Magna Carta, rather more specifically than historical accuracy might dictate, to concepts such as habeas corpus and due process. In addition to such advocacy, the authors discuss alternative sources of legal concepts often attributed to Magna Carta, such as an 1199 reference to habeas corpus, the English Bill of Rights, and the Fourth Lateran Council’s ban on trial by ordeal.

§54 The multitude of cases cited in the book treat Magna Carta in various ways: reverential, inspirational, vague, dismissive, and irrelevant. Chapters 5 and 10 describe the “largely symbolic” role of Magna Carta in helping to inspire the Con-
stitution and Bill of Rights in the United States and fifty of fifty-three Common-
wealth countries. The U.S. Supreme Court cited Magna Carta seventy-one times
from 1960 to 2000, reflecting its “expansive view of civil rights and liberties” (p.116).
At least three U.S. Supreme Court cases since 2008 have mentioned Magna Carta.

¶55 Magna Carta’s inspiration of due process and fundamental rights under the
ancient law still resonates today in international law, with scholars advocating for
important procedural rules to supplement the international legal regime that deals
with modern issues such as drone strikes, atrocities, and refugees. Nicholas
Vincent’s 2012 book Magna Carta: A Very Short Introduction covers many of the
same topics, for example, the lack of terms such as habeas corpus and due process
in Magna Carta. Vincent’s book might be an easier read for those with fewer specific
rule of law concerns. Vincent notes that materials in libraries and archives offer the
potential for novel scholarship on Magna Carta, in addition to the new historical
information that scholars have produced of late. The authors here seem to take up
that challenge in chapters 11 and 12.

¶56 Chapter 11 offers an in-depth and possibly novel analysis of the relation-
ship of Magna Carta to ius commune, the body of civil law and canon law that
existed in 1215. Magna Carta negotiators may have borrowed legal terminology
from ius commune as a means of political posturing, trying to win favor with Pope
Innocent III. Intriguingly, it seems unclear to which side (King John or the barons)
belonged the primary posturers. Of course, King John had already performed the
ultimate political posturing in 1213—giving homage and fealty to the pope and
“acknowledging that he held England as a papal fief” (p.25). Not surprisingly, the
pope would see fit to declare Magna Carta null and void on August 24, 1215, two
months after the agreement had been reached. The modern reader might have
trouble imagining the role of the church in thirteenth-century society.

¶57 Chapter 12 covers the Charter of the Forest and the “several hundred sepa-
rate acts” of Parliament that “embedded the Charter so deeply in the law of the land
that its formalistic repeal in 1971 was anticlimactic” (p.312). The Charter of the
Forest evolved over centuries from a way for the ruler to maximize revenue (with
occasional pushback from his subjects) to a modern-day mixed-use approach, with
input from a variety of stakeholders, including Parliament, conservation groups,
recreational users, and even some international treaties.

¶58 Reading this book in its entirety may be a challenge for those unfamiliar
with the subject. However, the chapters and reader aids, including thirteen appen-
dixes, function quite well both as a cohesive whole and as individual starting points
for researchers with a narrower focus. This book is highly recommended for aca-
demic law libraries and large academic libraries.

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10. For an in-depth treatment of religion, rule of law, and Magna Carta, see Magna Carta,

Reviewed by Austin Martin Williams*

¶59 Jonathan D. McDowell wrote *From Law School to Lawyer: Tools, Procedures, and Steps to Grow Your Practice* hoping to provide aspiring attorneys with insights into developing their own law practices and navigating their first civil cases. In presenting his lessons and tips, McDowell focuses primarily on concepts and skills not covered in a typical law school curriculum.

¶60 McDowell organizes the book based on the path one would take from passing the bar exam to practicing law. The book begins with several chapters covering the nonlegal side of practicing law, such as the business aspects of starting a law firm, marketing the firm, and building a client base. The book follows these foundational chapters with several chapters on practice and procedure, covering topics such as pleadings, electronic filing, discovery, mediation, and appeals. McDowell then wraps up the book by discussing the personal toll practicing law can take on individuals, including frank discussions on alcoholism and depression. Constant themes throughout the book are the importance of having a desire to succeed, professionalism, and the fundamental skills of research and writing.

¶61 While the book is relatively short, McDowell maximizes every square inch of its 214 pages. He uses tables, figures, screenshots, and sample documents to help readers visualize and comprehend his strategies and techniques. He also effectively uses various bolded paragraphs to emphasize or provide examples of points addressed in the surrounding text. While the book is not heavily footnoted, McDowell does provide some references to additional books that elaborate on topics discussed in the text. He also does an excellent job of referring to the specific rules of the Federal Rules of Civil Procedure when discussing pretrial matters.

¶62 As a legal research instructor, I was delighted to see McDowell discuss the research methods and tools he uses, as well as the importance he places on legal writing. On several occasions he is able to take concepts discussed in research and writing classes and provide readers with concrete examples of how these concepts fit into the practice of law. For instance, McDowell discusses how researching jury instructions and statutory law can assist an attorney with preparing a well-rounded complaint. He also advocates for using “form interrogatory” books from the law library to help with drafting interrogatory and deposition questions. In addition, he encourages attorneys to always look up the rules of procedure and court rules, no matter their level of experience or familiarity with these sources. Furthermore, he encourages attorneys to finish court filings early to allow time to properly review their arguments and fix grammatical errors. While not meant to be a legal research and writing textbook, *From Law School to Lawyer* does illustrate how to employ some of the research and writing skills taught in law school.

¶63 Although I am quite fond of this book, I believe it falls just short of being truly first class. *From Law School to Lawyer* is very limited in its target audience. Only recent or soon-to-be graduates who want to both start their own firms and

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work as litigators will get the most out of reading this book. In addition, while McDowell discusses pretrial matters at length, he does not provide his strategies for trial, such as opening statements and cross examinations. Considering the excellent insights the author provides on pretrial matters, it would have been useful to hear his trial methods. Moreover, I would have liked for the book to have included information on handling the day-to-day operations of running a law firm, such as managing overhead costs, time keeping, computer software, staff, and the other nuts-and-bolts items not included in most law school curriculums.

¶64 Despite the book’s limited audience and narrow scope, I recommend that academic law libraries add this book to their collections. The topics the author covers are well worth the price. While most beneficial for third-year students and recent graduates, I could also see clinical, trial practice, and advanced legal research and writing courses incorporating the chapters on pretrial matters into their course readings.


Reviewed by Edward T. Hart*

¶65 On October 6, 2015, the European Court of Justice handed down its decision in the case of Schrems v. Data Protection Commissioner.11 The court ruled that member states of the European Union could regulate the transfer of data about their citizens collected by Internet firms across national borders. The case was brought by Max Schrems, an Austrian graduate law student, who sought to have Facebook held accountable for the data that it not only retained about him but also moved from servers located in Austria to servers in the United States.

¶66 After growing concern about the relatively slack data protection offered under U.S. law, Schrems asked Facebook for a record of the data the company held about him. Schrems was sent a disc with 1200 pages of records about every transaction he carried out on his Facebook account since its establishment in 2008, including data he had deleted. He had deliberately deleted messages exchanged on Facebook with a friend about her illness, and those messages were no longer visible in his account. But they still existed in Facebook’s servers in the United States. Facebook argued that it was protecting the freedom of speech by requiring all parties to any exchange on the site to delete those exchanges before the data would be scrubbed. No data could be deleted by just one party. This case highlights a primary difference in the approaches America and Europe take in the ongoing conflict between freedom of speech and the right of privacy. That topic is at the center of Jon Mills’s book Privacy in the New Media Age.

¶67 Mills focuses his book on the inherent conflict between the rights of speech and privacy, and how this conflict is resolved depends much on the media in question and the jurisdiction. “[H]ow do these traditional issues apply with the advent

* © Edward T. Hart, 2016. Assistant Dean for the Law Library, University of North Texas-Dallas College of Law, Dallas, Texas.
of the Internet-based new media, and is the current law adequate to deal with the new realities? (p.93)? The well-established legal structures of the past developed ways to balance these rights in the age of print and broadcast media, but those ways are not making much progress on the slippery slope of the infinite Internet.

For example, an action for defamation for something published in a book was relatively easy to define because the medium was fixed and the jurisdictions were more or less identifiable by where the book was published, distributed, or sold. Expectations by all parties were limited, geographically speaking. Defamation posted on the Internet, on the other hand, can be harder to pin down. Something published on the Internet could be accessible anywhere in the world. While the author is subject to the jurisdiction where he or she resides or posted the content, the author is most likely beyond the reach of nearly every other jurisdiction in the world where the defamatory content might be viewed.

To evaluate any situation where speech and privacy are in conflict, Mills suggests eight questions that need to be answered to truly weigh the potential harm to either side: (1) Where did the intrusion occur? (2) Who owns or controls the information? (3) How did the media obtain the information? (4) Is the information true, false, or an opinion? (5) Is the published information private and intrusive in nature? (6) How was the information actually disclosed? (7) Who was the target of the disclosure? (8) What is the intent of the target and of the media? Mills carefully analyzes these questions. Historical situations involving each of these questions are discussed in light of the developed case law before taking the leap into what the courts are confronting today and will have to address in future cases.

Privacy in the New Media Age, while a slim volume, is packed with an in-depth discussion reviewing the history of freedom of speech and its interplay with privacy. The book presents the reader with questions to help respect and handle these two rights in the electronic age. While Mills does not provide direct answers, he offers us approaches that warrant further consideration. This book is recommended for any readers with the slightest concern about how their data is treated by Internet service providers. The book is also a great launching point for further research for those who seek to answer some of the questions Mills raises in his thoughtful volume.


Reviewed by Jonathan Pratter*

The prima facie implausible thesis of this book is that a small group of conservative legal scholars including such figures as Eric Posner, Jack Goldsmith, Adrian Vermeule, and John Yoo has steered U.S. policy with respect to international law in a dangerous and destructive way that has done serious harm to the position of the United States in the international legal system. “Although many academic arguments have little to no impact on our daily lives, the new skepticism about international law has directly changed American foreign relations since 9/11” (p.8).

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One of the author’s targets did, as a government lawyer, provide advice on the content of international law, authorizing conduct that probably violated both domestic and international law, and badly damaging the standing of the United States in the world community. That nasty episode in the history of U.S. practice in international law has been fully aired in both the press and the scholarly literature. This book adds nothing to it. The author fails to distinguish between that situation and the academic expression of views on controversial topics, which raises a big question: what else would the author do with academic views he condemns and considers dangerous, other than to counter them with arguments of his own?

¶72 The author is right to take his antagonists to task for their crude reductionism. They deploy rational choice theory and game theory to demonstrate, they think, that international law is incapable of regulating the conduct of states that instead is, and ought to be, the product of the calculation of their rational self-interest. In chapters 3 and 4, the author meets his opponents on their own ground in an effort to show that self-interest is consistent with acting according to international law. This work has already been done. The other camp might well respond: “Always? In hard cases? If not, then self-interest should trump.”

¶73 In chapter 5, the subject is the international law on the use of armed force. The conclusion is that the conduct of the United States has been fully congruent with that law, which is supposed to count against the skeptics. They could respond that the United States is quite prepared to observe the rules of international law when they suit its purpose. The views of the author’s antagonists have been the subject of cogent critique for a decade. Better analysis of their views that does not take part in distasteful ad hominem attacks is available elsewhere.


Reviewed by Thomas Drueke*

¶74 In the introduction to the first Whole Earth Catalog in 1968, technologist and writer Stewart Brand declared that “[w]e are as gods and might as well get good at it,” inviting readers to use technology and information as self-empowering personal tools to shape their localities, infrastructures, and societies in deliberate and direct ways. Nearly fifty years later, after staggering advancements in computing and network technology and vast changes in the economics of information, Brand’s technolibertarian optimism remains alluring: reliable networks, ubiquitous computing power, robust programming paradigms, readily available swaths of data, and low overhead allow citizens to master and shape the world in unprecedented ways,

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from the trivial to the transformative. But Brand’s hyperbolic call to cybernetic arms has gained a darkly prescient and, perhaps, more literal meaning. Along with do-it-yourself enthusiasts, progressive back-to-the-landers, and counterculture entrepreneurs, America’s power elite took up (and co-opted, some believe) the Promethean mantle of technological empowerment.

¶75 According to Frank Pasquale’s *The Black Box Society: The Secret Algorithms That Control Finance and Information*, these elite actors—corporations, government agencies, and their revolving door of personnel—have certainly gotten good at bringing their godlike computational power (and economies of planetary scale) to bear on the world. Titanic firms like Google, Apple, and Amazon; financial giants like Citigroup; and many government agencies deploy data, networks, and a phalanx of complex algorithms (in the name of profit and comparative advantage for the former two clubs, surveillance and control, and perhaps profit, for the latter) while simultaneously shaping the essential information infrastructure of our daily lives. Internet and data titans provide ordered access to information through search indexes and ranking algorithms; they quantify and analyze our every datum to provide targeted marketing and personalized search results. They profile us based on our digital footprints and sell (or lose) this potentially sensitive information to data brokers with questionable scruples.

¶76 The behemoths of finance engineer essential investment securities; they influence (read: game) crucial index rates and standards; they manipulate markets through high-frequency algorithmic trading. Their algorithms largely determine our online reputations, our abilities to obtain credit and successfully invest our income, and even the fundamental ways we organize and access information; they “control[] essential junctions of an emerging economic order” (p.90). And thanks to a combination of technological complexity, political and legal systems “colonized by the logic of secrecy” (p.2), and outright obfuscation, Pasquale argues, these powerful algorithms—as well as the data they use and the decisions, processes, and biases they encode—are opaque to the general public. They are unintelligible black boxes.

¶77 By carefully breaking down “the business practices of leading Internet and finance companies, focusing on their use of proprietary reputation, search, and finance technologies” (p.14), Pasquale pulls off an amazing feat of explanation, simultaneously and seamlessly explaining how and why black boxes exist, as well as what they can control and what happens when society entrusts black box technology with consequential decisions and hands immense power to the black box firms of Silicon Valley and Wall Street. Pasquale shows how the black boxes are created through the interaction of economic power, technological complexity, and scale; laws that promote commercial secrecy like trade secret protections, encryption, and obfuscation; and a weak, captured regulatory state with no real enforcement power. He also vividly depicts the social and economic consequences and risks of trusting inscrutable computer programs with consequential decisions that affect millions of people every day. Pasquale compiled stories of people claiming unfair treatment by black box companies, including instances of racial discrimination, financial fraud, and commercial malfeasance that were seemingly generated or facilitated by algorithms. However, these claims, Pasquale argues, are impossible to confidently assess without knowledge of the cloaked algorithms, the inputs (data
provenance and accuracy), the outputs (data and predictions), or the intermediate decisions used to reach those particular predictions.

¶78 Pasquale also convincingly demonstrates why the black boxes need to be inspected, showing how biases and inaccuracies can become embedded in algorithms. Pasquale’s explanations give readers ample reason to be skeptical of decisions or factual assertions generated by proprietary algorithms. He importantly points out that data are not inherently neutral or objective; they can be based on biased sources. Data can also be corrupted, of unknown or untrustworthy provenance, or just impossible to meaningfully generalize. Scientific methodologies are commonly misapplied to social situations, producing predictions of dubious value. All of these factors can combine to create some potentially shoddy algorithmic outputs.

¶79 Pasquale’s masterful explanation is evenhanded and never tendentious, but is coupled throughout with impassioned and well-reasoned arguments for opening the black boxes and making the algorithms intelligible in the name of corporate accountability. The closing chapters offer proposals for building a transparent and intelligible society: regulating important information and finance infrastructure like public utilities, individual data rights, data provenance standards, data use regulation, and hiring private-sector expertise to oversee complex regulatory compliance. He makes a strong case for a paradigm shift in our fundamental information economy, suggesting intriguing public alternatives to private information and finance infrastructures, and new ways for these important industries to better further the public good. *The Black Box Society* is a first-rate work of synthesis, combining ideas from law and economics, interpretive social science, science studies, and the philosophy of technology into an essential study of the political economy of information.


Reviewed by Mark Popielarski*

¶80 Concerns regarding carbon emissions and their potential impact on global temperatures, the ecosystem, and the planet’s continued habitability have spurred a significant increase in efforts by politicians, diplomats, business entities, and activists to tackle this issue through many different approaches, including treaties, statutes, regulations, and public education. *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* explores how environmentalists may use a country’s domestic court system to change existing laws or influence policy decisions. While this approach is not commonly used in most countries where other mechanisms provide more effective approaches for changing domestic climate-related laws, Jacqueline Peel and Hari M. Osofsky focus their research and discussion on two major fossil fuel and carbon-producing countries that have witnessed significant efforts to alter existing laws through litigation: the United States and Australia.

¶81 Promoting their central thesis that climate-oriented litigation could be a powerful tool for reducing carbon emissions attributable to these two countries, the authors employ a case study approach in which they interview various environmental advocates, supply data and statistical information, and explore the legal history of such efforts to provide the necessary context for the current state of climate litigation and suggest a framework for newer, more effective approaches regarding legal actions brought by concerned citizens.

¶82 Beyond using litigation as a vehicle for direct pro-regulatory climate efforts, the authors explore the secondary impact that even unsuccessful court action may produce in changing corporate behavior to avoid the costs and bad publicity associated with such actions. The litigation may also alter public opinion and encourage government actors to adopt new legislative and regulatory solutions.

¶83 Peel and Osofsky do an excellent job of providing the necessary factual and legal information needed to understand the various aspects of this complex topic. Whether the reader possesses only a basic knowledge of the subject or is well versed, this book should provide considerable insight. While Climate Change Litigation provides information, theories, and strategies designed to assist those seeking to use the court system as a vehicle for reducing carbon emissions, attorneys, advocacy groups, and other stakeholders positioned on the opposite side of such efforts also will find this book to be a useful resource for generating legal strategies and preparing for potential future legal actions.


Reviewed by Amanda Zerangue*

¶84 One thing that scholars, publishing industry groups, and libraries can agree on is that scholarly communications are in flux. Some of the players, particularly the publishing industries, perceive clear threats to scholarly communications from institutional repositories, open access, and the Internet. In direct contrast, others view these very same things as opportunities. In Scholarly Communications: A History from Content as King to Content as Kingmaker, John Regazzi traces the development and evolution of scholarly communications, demonstrating that constant change has always been the norm in this field.

¶85 Regazzi is uniquely positioned to trace the development and evolution of scholarly communications. His career spans more than forty years in the electronic information services and scholarly publishing industries, with most years spent at Reed Elsevier, including many years as CEO of Elsevier, Inc. Regazzi now lectures and directs the Scholarly Communications and Information Innovation Lab at Long Island University.

¶86 Regazzi explores the current dynamic landscape of scholarly communications by addressing three overarching themes: how the fundamental value of scholarly content has evolved, how publishing industries and other businesses that gener-

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* © Amanda Zerangue, 2016. Graduate Library Assistant, University of North Texas, Denton, Texas.
ate and distribute scholarly content must think differently about creating value and
profits in the new digital age, and how researchers will benefit from new forms of
scholarly content and communications. The book is divided into ten chapters, each
of which addresses a separate component of scholarly communications—from a
historical analysis of the first scientific journal to an exploration of open access prin-
ciples and data sharing. While the book is cohesive when read in its entirety, each
chapter can serve as a discrete standalone lesson in scholarly communications.

¶87 The beginning chapters set the stage for the examination of scholarly com-
munications as both a flow of scholarship and a business. Regazzi provides straight-
forward and understandable explanations for very complex processes, including the
scholarly research process, formal and informal communication, scholarly publish-
ing, peer review, and the complexities associated with coupling traditional journal
publishing with significant technological advances. By tracing the development of
scholarly content and understanding the current state of affairs, this book creates a
foundation for “evaluating the efficacy and impact of rapid technology open-
source-based changes in scholarly communication as well as the development of
the genre itself” (p.19).

¶88 The last half of the book is particularly interesting as it addresses how new
and emerging technologies have become the major driver for change in academic
publishing. Traditional scholarly publishing, dissemination, and access have per-
manently changed, and now open access publishing, institutional repositories, and
big data research is at the forefront of scholarly communications discussions.

¶89 The book appears well researched; each chapter includes an extensive list of
references, with the author relying primarily on scholarly articles. This book would
be a helpful addition to an academic library or academic law library collection, as
well as a teaching tool for faculty and students in a library and information science
program. It is easy to read and understand; Regazzi does good job of providing
interesting historical background information and avoids coming across as didac-
tic. Regazzi is neither an advocate for nor opponent of open access, and his neutral
and unbiased delivery makes this book a credible resource for anyone interested in
learning about scholarly communications. Additionally, it provides a comprehen-
sive theoretical and historical framework for understanding the current issues and
trends in scholarly communications and how they apply to researchers, publishers,
and librarians.

$32.95.

*Reviewed by Stephanie Ziegler*

¶90 Left to our own devices, without the restraints of law and government, are
we humans basically self-interested or group-minded? Do we revert to a *Lord of the
Flies* mentality when out from under the watchful eye of authority? Or are we
inherently generous and selfless? Are we *just*?

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University, Columbus, Ohio.
¶91 *Pirates, Prisoners, and Lepers: Lessons from Life Outside the Law* attempts to answer these age-old questions through historical examples, modern parallels, and social science experiments. The result is an exciting, fast-paced journey through history, following abandoned lepers and shipwrecked sailors (who lived without law by accident), and hippies and pirates (who lived without law on purpose). But the book does not just relate fascinating stories; it uses these stories to examine how we might create a more justice-oriented society and, in particular, improve our criminal justice system.

¶92 The book is extremely well structured. It opens with two real-life vignettes from very recent history, as ordinary American parents come to blows over such trivialities as a preschool graduation and a T-ball game. So is this the fate of humanity? Reverting to senseless violence at the slightest provocation? Or are we better than that? Perhaps we are, as the next chapter provides examples of people organizing and behaving selflessly, even rescuing themselves and others, under the most adverse circumstances. One example is quite well known in popular culture: the Andes airplane crash of 1972 (made even more famous by the movie *Alive*15) and one example perhaps less well-known: the exile of Hawaiian lepers to the island of Molokai in 1866.

¶93 In both cases, when presented with the choice to behave in a self-interested way or for the good of the group, people chose the latter, which ultimately led to the survival of that group as a whole. But just as the reader begins to feel warm and fuzzy, the authors come back with more examples of the darker side of human nature. Sometimes, despite a group acting with the best and noblest of intentions, one or more people manage to ruin a good plan or to make an already bad situation worse.

¶94 Humanity’s selfishness and lack of group cohesiveness can lead to material losses (the failure of a hippie commune meant to be a “utopian community” of “voluntary cooperation” [p.33]) and the very literal loss of life (several cases of shipwrecked sailors who died due to the hubris and lack of organization of their leaders and fellows). One of the latter tales is especially interesting, a perfect experiment that played out accidentally in real life: two different ships wrecked on the same island several months apart, but neither knew of the existence of the other. One of the groups dwindled to three survivors, but the other group thrived and even managed to save themselves.

¶95 Yet few of these tales are treated in a simplistic, binary manner. As the book progresses, we revisit past stories again and again, depth and nuance added each time as ideas of the necessity of punishment, justice, and credible and trusted leadership are explored. Interspersed are the results of social science experiments involving children as young as three and four years old, who, as it turns out, have some very nuanced and sophisticated notions of justice and punishment, and have the ability to make distinctions between morals and conventions, and between purposeful acts and accidental ones.

¶96 As a more complex picture is painted of the need (and the human instinct) for justice, the book concludes with five proposals so that we might live in a more just society, suggestions gleaned from the historical lessons we just learned. *Pirates,*
Prisoners, and Lepers effectively makes the complexities of criminal justice ideals accessible through captivating stories and excellent research. (In fact, I have found myself recommending the book to family and friends in both legal and nonlegal fields!) I would highly recommend this entertaining and enlightening book for law, general academic, and public libraries.


Reviewed by Joel Fishman*

¶97 Edward Coke (1552–1634) was an important figure in English legal history. He served first as a barrister, then as speaker of the House of Commons, attorney general for Queen Elizabeth I, chief judge of King James I’s Courts of Common Pleas (1606–1613) and the King’s Bench (1613–1616), and later as an opponent of King Charles I in the Parliaments of 1626 and 1628. Coke’s authorship of twelve volumes of *Reports* and his four volumes of the *Institutes of the Laws of England* created landmark publications to his contemporaries and later users.

¶98 In the introduction, David Chan Smith takes issue with many historians’ views of Coke’s position, arguing that Coke was “preoccupied with the abuse of legal power by private individuals” (p.7), and “reframes [his] early career and jurisprudence within contexts outside of the traditional battle between liberty and prerogative” (p.13). Smith follows Coke’s career through the four decades of the 1580s to 1610s as litigation increased in the common law courts. Smith argues that Coke’s role as attorney general was an important development in securing law reform and safeguarding priorities of the Elizabethan war-state. Coke strengthened the interpretation of the treason law that supported a strong monarch and royal authority. Later, as judge, he showed his concern for the delegation of royal authority to the commission of the sewers involving the use of drainage and eminent domain in the Fens in 1609. Coke’s *Reports* were a reaction to poor court reporting and a method to provide “a framework of rules and principles to restrain his fellow lawyers” (p.57).

¶99 Seventeenth-century historiography concentrated on legal history of the common law and the ecclesiastical history of the English church’s battle against the Roman Catholic papacy. Coke’s history was a defense of the common law and its relationship to the monarch. Coke viewed William I’s role in the Norman Conquest as carrying over Anglo-Saxon laws and introducing new laws. Coke identified with the statutory law that the English kings helped to develop. In addition, Coke attempted to counter popish arguments against the Elizabethan religious settlement. English writers tried to distinguish between spiritual and temporal jurisdiction, church jurisprudence, and resistance.

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¶100 In chapter 5, Smith deals with Coke’s arguments on method and reason in the law to counter the contemporary view of the law’s uncertainty. Coke supported written memory over oral memory. He argued that “artificial reason responded to the frailty of memory and human reason, and the hermeneutic challenge the lawyer faced” (p.154). Coke’s writings in his Reports and Institutes were to establish the common law as “certain and sure.” Coke’s well-known comments in Bonham’s Case (1610) did not mean that the common law courts would strike down a statute; “[r]ather, the judges would construe a statute’s meaning and make it consistent with their ideas of reason” (p.174).

¶101 In chapter 6, Smith discusses Coke’s role in fighting the King’s Court of High Commission. Coke supported the monarch and did not want the king to serve as a judge by himself because of his ability to make mistakes for which there were no remedy. Coke also opposed church courts as alien to England and supportive of the papacy, which was a usurpation of the authority from the king and the law. Coke supported the High Commission, but wanted to limit its power to only religious-related prosecutions and was against its use of temporal punishments that fell outside of the statutory law.

¶102 Smith presents the judicial controversy between Coke and Lord Egerton over the common law versus chancery jurisdiction in the early seventeenth century that Smith sees as jurisdictions in a “judicial clash [that] involved two incompatible solutions to the challenges of a growing and interdependent legal system” (p.214). Smith describes the interdependency between both courts that Coke felt should show “the pre-eminence of the common law as the king’s law,” while Lord Egerton saw the “Chancery as the forum where the king’s justice-giving might reach its fullest expression” (p.248).

¶103 In the final chapter, Smith discusses the principle of delegation of power: “God had delegated power to the king, who in turn assigned it to others in order to protect his people” (p.250). Following Henry of Bracton’s view of the king’s power that included a concept of moral kingship, Coke saw the king as the fountain of justice, who had to be protected against those who would misuse the legal power.

¶104 Smith’s conclusion highlights the events of 1616, when James I dismissed Coke from his judgeship of the Court of King’s Bench. The dismissal was based on the report of the archbishop of Canterbury’s support of Chancery, the judges’ failure to comply with the king’s determination in the Case of Commendams (1616), and James’s view that the “common law jurisprudence and its ideas of artificial reason [are] obscurities that contributed to the problem of uncertainty and served the judges’ turn to extend their influence over the system” (p.284).

¶105 Smith has presented a highly influential volume on Edward Coke’s jurisprudence up to the time of his dismissal by King James I from the Court of King’s Bench. His knowledge of Coke’s writings and jurisprudence, based on his use of both manuscript and published primary sources, will make this work a definitive study of Coke’s early life. This book is recommended for all collections of English legal history.

Reviewed by Ashley Ahlbrand*

¶106 Two-year versus three-year programs. Experiential learning versus lecture. Online versus hybrid versus face-to-face instruction. Keeping up with the developments and challenges facing U.S. law schools can be tough enough, but in *Rethinking the Law School: Education, Research, Outreach and Governance*, Carel Stolker, Rector Magnificus and President of Leiden University, takes on a much more daunting task: an examination of the state of legal education across the world.

¶107 The book begins generally, with initial overviews of legal education in specific regions of the world, the modern state of the university at large, and a discussion of whether and how law schools fit into the university’s academic and research agenda. The author compares the research of legal scholars to research in other disciplines, both addressing criticisms that such scholarship is pseudo-law and praising legal scholarship for its natural predilection toward interdisciplinary study.

¶108 The book picks up steam in chapter 4, discussing the education of law students. Common problems are addressed, such as whether it is better to treat law as a profession or an academic discipline. Indeed, the author notes that the dissatisfaction constituents often feel toward legal education is circular; to prove this, the author includes excerpts from a 1931 Dutch publication that complains about the lack of practical education, the dearth of faculty-student interaction, and the tendency of students to seek the “easy A.” On this particular topic, the author concludes that there is still a place for both practical and doctrinal education in law school and that the two must go hand-in-hand to graduate successful jurists. The author proposes that what we need is a true study of legal education. With Ph.D.s awarded in other disciplines of law, why have we yet to see a doctoral program in legal education?

¶109 Chapter 5 ventures into discussion of pedagogy, a timely read to supplement the ABA’s new Standard 302 on learning outcomes.16 As the author notes, professors tend to focus on the delivery end of teaching and learning rather than focusing on learning and the student. At this point, the author delves into a discussion of learning styles and methods of teaching, such as case dialogue, role play, and the like, concluding that law schools have for too long relied on one method of teaching to the exclusion of variety. This chapter emphasizes the need for teachers of law to make teaching a more significant focus. After all, “it looks as if the institutions of higher education prefer producing dead papers, read by almost nobody, over educating living students” (pp.184–85). (The author notes that this statement is somewhat exaggerated, and goes on to emphasize the equal importance of research in a later chapter.) For this shift to happen, however, the administration must give teaching equal emphasis, support, and encouragement.

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Lest I give the erroneous impression that Stolker would do away with legal scholarship in favor of total devotion to the teaching of law, the sixth chapter discusses the importance of legal scholarship, describing our need for its creativity and close monitoring and critique of developments in the law. The author divides legal scholarship into three perspectives: analytical, empirical, and normative; describes the pros and cons of each; and notes the trends in legal research throughout the world (e.g., while in the United States we are seeing a rise in empirical legal research, scholars in Europe tend toward doctrinal legal research). The discussion of legal research changes somewhat in chapter 7, focusing on how legal research is produced, comparing law journals to journals in other disciplines, and comparing the often confounding concept of the student-run law journal in U.S. law schools to the systems in other countries, which range from peer-reviewed to student-run with heavy scholarly oversight. Stolker notes and encourages the move toward open access to legal scholarship, stating that only through such a move can we hope to make law a truly global discipline. (This is the portion of the book where law librarians factor the most as well, with Stolker praising the work of academic law librarians in authoring the Durham Statement on Open Access to Legal Scholarship.17) The book concludes with a look at the governance of law schools and how to encourage and foster creativity in legal education and scholarship.

If you are looking to examine global trends in legal education, this book is a great asset, whether you seek to read it all or to focus on a specific chapter. Read as a whole, the book starts out a bit slow, concentrating on the place of the law school in the university and discussing challenges that face modern universities today. It really picks up speed once you get to chapter 4 and all subsequent chapters; it is at this point that Stolker begins to focus on individual aspects of law school and legal education, from pedagogy to scholarship to governance and fostering creativity. While none of the topics addressed are particularly new (greater importance placed on research than teaching, inflexibility of teaching styles, treating students as consumers or stakeholders), seeing these familiar topics discussed on a global scale, noting both our similarities and our differences, provides a unique and fascinating perspective. By comparing and contrasting legal education in nations around the world, and by understanding the values placed on legal education in legal systems other than our own, we may find ourselves better able to appreciate, embrace, and pass on the values of our own institutions to the students who will take these ideals into the world.


Reviewed by Kristen M. Hallows*

Why can lawful actions be viewed as dubious while extralegal steps are heartily endorsed? This is precisely what Philip A. Wallach sets out to determine in his introduction to and survey of the divergence of law and legitimacy in times of crisis.


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Although the 2008 financial crisis wrapped its arms around the world, Wallach’s subject is crisis response in the United States and, more specifically, the responders themselves: the Federal Reserve, the Department of the Treasury, and the Federal Deposit Insurance Corporation (FDIC). Schmitt’s challenge is plucked out of its national security framework and applied to financial crises in the second chapter. The third chapter begins a breathtaking chronological analysis punctuated by brief detours of historical or legal significance; the result is a nearly omnipresent view that only hindsight can bring, and Wallach executes it masterfully. Readers will encounter the missed opportunity, the preventable demise, and Cadmean victory: all the ingredients of a scintillating biography or memoir.

Throughout, Wallach signals actions that escaped scrutiny as well as those that were subjected to intense criticism, which is particularly helpful for readers whose chosen news sources may have presented a slanted or overly generalized view or who may have missed some of the events that fell below the radar, such as the use of the recondite Exchange Stabilization Fund to guarantee investments in money market mutual funds.

The fourth chapter is devoted to the notorious Troubled Asset Relief Program (TARP). Many readers will easily recall the two main criticisms of TARP, which were its ineffectiveness at mitigating the foreclosure crisis and the unknow-ability of recipient banks’ uses of taxpayer money. Certain topics are reserved for later chapters, but these thirty-nine pages will take you deeper than you thought possible into an imbroglio of special purpose vehicles, fluid legal boundaries, and pure politics. Legal gymnastics that escaped protestation did so because they were largely successful, while those that were less fruitful found themselves eviscerated by incensed commentators of all backgrounds.

Special attention is paid to the Obama years in the fifth chapter, as impending doom was less of a possibility, yet trust had been deeply eroded. Legality and legitimacy posed a continuing challenge, especially as they pertained to government aid extended to Chrysler and General Motors. Wallach is quick to provide the benefit of the doubt and sorely needed perspective, but he is also swift to point out irregularities and partisanship. Notably, he uses the AIG bonuses to illustrate “both the limitations and the usefulness of the rule of law” (p.138). Wallach explores the difficult-to-define but largely feared concept of bank nationalization, and he delves into another area of great concern to the public: foreclosure relief. In short, the Treasury’s efforts to assist homeowners were generally viewed as failures; perhaps most hair-raising is the government’s likely diminished capacity to combat future crises.

An excellent example of constraint brought about by loss of legitimacy was the short career of the Public-Private Investment Program, an actual troubled-asset relief program devised in 2009 that aroused an apoplectic response. Wallach effectively exposes the crippling death spiral that can ensue when democratic legitimacy...
is anything short of robust in the face of a financial meltdown (illegitimacy begets inefficacy, which creates more illegitimacy).

¶118 The sixth chapter begins by illuminating the legitimizing effect of honest accountability. Interestingly, TARP's most vocal critics—Neil Barofsky, Elizabeth Warren, and others—did not bring the scathing reproof that some may have expected. Wallach next investigates two major points of contention: the “backdoor bailouts” and the actual cost of the crisis responses. Once again, Wallach does not hesitate to identify illogical or imbalanced bombast, which is perhaps the most refreshing aspect of his book.

¶119 They say you never step in the same river twice, and the Dodd-Frank Wall Street Reform and Consumer Protection Act aimed to ensure this for the American public. Rather than evaluate the law itself, Wallach focuses on two distinct impacts: limitation of power and prevention of “too big to fail.” In his analysis of the Orderly Liquidation Authority, meant to accomplish the latter objective, Wallach again summarizes the central dilemma, which I will paraphrase here: a rigid solution in line with the rule of law may inspire feelings of security during halcyon years, but it will be speedily sidestepped in times of crisis; on the other hand, a more flexible rule can appear vulnerable to caprice and consequently fail to summon anything but the appearance of illegitimacy.

¶120 To the Edge: Legality, Legitimacy, and the Responses to the 2008 Financial Crisis adds something new and valuable to the discussion of one of the most reverberating events in recent history. Wallach explores the evolution of his own thinking, and he suggests a number of approaches for maximizing legitimacy, including the enduring cultivation of public trust and the slightly Panglossian establishment of an emergency fund referred to as the “accountable slush fund.” For a reader with an appropriate level of interest, this book would make fine airplane reading. Its accessibility does not threaten its authoritativeness; for this reason, it is also recommended for corporate, law, and public libraries.


Reviewed by Wilhelmina Randtke*

¶121 In recent decades, copyright law has become a bigger issue because of real-world events. How Music Got Free: The End of an Industry, the Turn of the Century, and the Patient Zero of Piracy is not about law, but instead is about recent history that impacts copyright law, specifically, the birth and proliferation of online music sharing starting in the 1990s. Stephen Witt is a hedge fund manager turned journalist with no formal training in law who left finance to research and write a history of file sharing. The writing is in the new journalism style, with a focus on personalities. The book follows the lives of three main characters from 1995 to the present: a German sound engineer who developed the mp3 format, the CEO of Universal Music Group (UMG), and a factory worker at a plant where music CDs

were pressed. Through these characters the book gives a history of music file sharing and how technology reshaped the commercial music industry.

¶122 In contrast to the enthusiasm and excitement with which music and the key characters are treated, the tone of the book is ambivalent toward copyright law. Copyright law is accepted as a fact of life. There is little mulling about injustice, nor advocating for change, nor even descriptions of what the law is.

¶123 Witt’s financial background is apparent in drawing out the story of the mp3 format. In 1995, the international standards body that determined best formats declared a different format superior for sound compression. Politics and business deals had steered the decade-long competition more so than technical perfection. The mp3 format had consistently scored highest in sound tests. Funding would be discontinued in the next fiscal year, and the mp3 research team spent the remaining year releasing software for mp3 players and compressors to encourage industry adoption before the project was to be disbanded. In 1995, it became technologically possible to share music files online. The mp3 was adopted first by file sharers, then by industry in response to demand for portable mp3 players. Witt follows engineer Karlheinz Brandenburg, who drew revenues off patents on licensed mp3 players and ultimately became wealthy and politically savvy.

¶124 By interviewing file sharers and through intense primary research, Witt explores the culture of file sharing in the 1990s and particularly “The Scene” culture of top-level warez groups (these groups were secretive, with selective membership criteria and specific technological requirements for ripping files—that is, copying files from CDs to the hard drive of a computer). He located a secret database of text files accompanying Scene releases since 1982. By tracing the history of the file-sharing community, Witt discovered that, while a copy of a song might be downloaded from numerous places, the original file tended to have the same source in one of only a handful of top-level Scene groups.

¶125 In particular, Witt portrays Dell Glover as a driving force in the music industry, the “patient zero” of piracy. In 1995, Glover was a computer hobbyist with a high school education doing manual labor at a CD pressing plant, which was acquired by UMG, in rural North Carolina. He participated in file sharing and began a side business selling bootlegged DVDs of movies from the trunk of his car. Because of his job at the plant, he was contacted by a file-sharing group that specialized in sharing prerelease music. The group tracked release dates and schedules, and when CDs would likely be pressed. Glover got requests for specific prerelease CDs, smuggled the CDs home, then ripped mp3s for the group. In some cases, these prerelease leaks resulted in UMG changing release dates or even canceling an album release.

¶126 The story of record company CEO Doug Morris is a rehash of the better known history of file sharing. Morris managed UMG from 1995 until 2011, during a time when it was arguably the most successful music publisher in the United States. Through Morris’s story, Witt glosses on the history of Napster, the music industry’s lawsuits against file sharers, and the financial impact of file sharing on the industry. This material can be researched elsewhere. In this book it gives context to the technological and cultural history of file sharing.
Witt draws on extensive primary research. He read court documents in file-sharing prosecutions, researched news articles, and then went further. He interviewed the sound engineers who developed the mp3. He interviewed Morris and shadowed him in his current job at Sony as he previewed a new artist. He interviewed file sharers. He interviewed former workers at the North Carolina CD plant. He interviewed Glover, who had been prosecuted for file sharing and so could talk. Because of the nature of the research, sources may have required anonymity. Citations are often sketchy and may refer to examinations of privately held files or to interviews with file sharers in general.

How Music Got Free is a good addition to an academic law library collection. The material here cannot be found elsewhere, and it is relevant to research regarding why copyright became more prominent in the 1990s, the historical forces that shaped the law, and how the law is applied. It is a fast-paced read, and law libraries with popular or leisure reading collections will benefit from having a copy on the shelves.
The legal profession often requires extensive data for everything from simple statistical questions to large-scale empirical research projects. Ms. Whisner discusses some of her favorite sources for finding and evaluating statistics.

I have no data yet. It is a capital mistake to theorize before one has data. Insensibly one begins to twist facts to suit theories, instead of theories to suit facts.—Sherlock Holmes

“Data! data! data!” he cried impatiently. “I can’t make bricks without clay.”—Sherlock Holmes

For the rational study of the law the black-letter man may be the man of the present, but the man of the future is the man of statistics and the master of economics.—Oliver Wendell Holmes, Jr.

‡1 I’ve heard law students and lawyers joke that they chose law because they’re no good at math. But, like both Holmeses, legal professionals often hunger for data. Numbers help us understand the world and can inform policy arguments. And so
we reference librarians are often asked to find statistics. I am not talking here about huge datasets needed for some types of empirical legal research. I just want to discuss the garden-variety, apparently simple questions we get, like “How many African American men are in prison?” or “How much money is spent on global health?” I’d like to share some of my favorite sources and reflect on some of the challenges of finding and evaluating statistics.

**Legal Profession**

Recently I was asked whether it’s true that most lawyers are in solo or small-firm practice. I was happy to have a good source handy: the American Bar Association’s Lawyer Demographics page (a one-page fact sheet). The page gives the percentage of lawyers in private practice who practice in different sizes of firm. I did just a little arithmetic to give the percentage of lawyers overall:

- 75% of lawyers are in private practice.
- 49% of lawyers who are in private practice are in solo practice. Therefore, 36.8% of all lawyers are in solo practice.
- 14% of lawyers who are in private practice are in firms of 2–5 lawyers. Therefore, 10.5% of all lawyers are in firms of 2–5 lawyers.
- 6% of lawyers who are in private practice are in firms of 6–10 lawyers. Therefore, 4.5% of all lawyers are in firms of 6–10 lawyers.
- 69% of lawyers who are in private practice are solo or in firms of 10 lawyers or fewer. Therefore, 51.8% of all lawyers are in small or solo practice.

I was careful to point out that the numbers were from 2005 and that it was possible that proportions had changed since the Great Recession and the downturn in the market for lawyers. But I also noted that the percentage of practitioners in solo edition is #6 in Books > Business & Money > Skills > Communications. That is consistent with my own experience (I read it and I’ve seen it in airport bookstores). *Made to Stick* was even discussed in this journal: Jean M. Holcomb, *Got Ideas?*, 100 Law Libr. J. 587, 2008 Law Libr. J. 28.

The attempt to quantify fame illustrates the point: sometimes anecdotal information (“I’ve read about this experiment twice, so it’s famous”) is more meaningful than statistics (e.g., citation counts or best seller lists). Using it can also be quicker and easier than carefully compiling numbers.


practice has held steady for a long time—49% in 1980, 45% in 1991, 48% in 2000, and 49% in 2005—despite ups and downs in the economy.

§3 I’ve used this fact sheet (or its previous editions) for years. Even though I’m aware of it, it sometimes takes me a couple of clicks to remember where it is. In case you need this path: From the ABA’s home page, go to “Resources for Lawyers,” then choose “Legal Profession Statistics,” where you’ll find this fact sheet and many other valuable sources. Also worth looking at is the Diversity Resources page, which links to the National Database on Judicial Diversity in State Courts.

§4 Because I thought the requestor would be especially interested in our state, I made a table with the corresponding numbers from The Lawyer Statistical Report, which has detailed state-by-state data. I love this book of data, produced by the American Bar Foundation, and wish only that they could crunch the numbers faster so we could have more current information.

§5 For more on the legal profession, check out NALP’s research projects and publications. NALP started out as the National Association for Law Placement but more often goes by its acronym. Its researchers are following trends in the profession, such as diversity, recruitment, and professional development. Many reports are free online; more substantial reports can be purchased from the NALP online bookstore. But that’s not all: there’s a separate website for the NALP Foundation, which funds a lot of research, notably the “After the JD” project, an ambitious longitudinal study of 5000 law graduates during the first ten years of their careers.

Bibliometrics

§6 Some data requests are bibliometric—that is, they call for information about publication or citation patterns. Over the years, one of our professors has asked us


13. NALP, http://www.nalp.org/research (last visited Jan. 23, 2016) (“NALP is the premier resource for information on legal employment and recruiting. Analysis of data sources such as the Employment Report and Salary Survey, the Associate Salary Survey, the NALP Directory of Legal Employers, and others allows NALP to provide comprehensive information on a variety of topics.”).

14. NALP FOUND., http://www.nalpfoundation.org/ (last visited Jan. 23, 2016). For what it’s worth, I didn’t notice the separate Foundation website—with its separate bookstore—until I’d been looking around the NALP website for some time.

to give him counts of the number of cases citing a particular statute or law review articles using a given word in the title. Another asked for a decade-by-decade count of “cost-benefit” or “benefit-cost” in law review titles. Running searches like these is not hard, but we should be careful in explaining the results. For example, my colleague who did the “cost-benefit” search explained to the professor that an article published in November 1949 can be retrieved in a HeinOnline search limited to 1950–1959, because the journal date is coded as 1949–1950. She also noted that the HeinOnline searches picked up articles from a few foreign journals, but coverage of foreign journals is not comprehensive. Still, the numbers she found gave a sense of the snowballing interest in cost-benefit analysis in law journals, from 36 articles in the 1950s, to 383 in the 1960s, to 3126 in the 1970s and so on to 11,999 in 2000–2009.

¶7 Of course a category of bibliometric data that academics are very interested in is citation patterns—in particular, citations to their own work. As individuals scramble for tenure and merit raises and law schools scramble for boosts in their rankings, people are looking for metrics—something more easily quantifiable than “This article was interesting, original, and useful.” And they turn to citation counts and downloads.

¶8 The numbers are illustrative, but often need explaining. For instance, one professor wondered why Westlaw showed several citations to one of her papers while SSRN showed none. Why did SSRN miss them? I explained that SSRN’s algorithm for counting citing references looks only at references that are in a list at the end of a paper—a format that is common in many disciplines, but not law, which uses footnotes. SSRN’s system also counts only citing references in papers that are posted on SSRN, and authors who cite you might not post there. KeyCite and Shepard’s reflect only citing references that appear in journals, cases, and treatises that are on Westlaw and LexisNexis, respectively, and so will miss citations in other works. HeinOnline Author Profiles pick up citations in works that are on HeinOnline, but they can undercount if the author has published under different names (e.g., with and without a middle initial, or “Bill” and “William”). If an author is cited by papers outside law—for example, philosophy, political science, or public health—then those citations won’t be picked up by Westlaw and LexisNexis. Citations to coauthored works might be missed when a second or third author is subsumed under “et al.” And so on. Because of all these complexities, when we have been asked to look for works citing a professor who is up for tenure, we try multiple sources: Web of Science, KeyCite, Shepard’s, Google Scholar, Google Books, SSRN. Trying to be thorough (albeit short of absolutely comprehensive) takes a lot of work. For some purposes, it is better to use a simple (but incomplete) measure. For instance, it is easy to find out which of our professors who post on SSRN have the most downloads, and that can

18. If an author writes to Hein, the staff can unite the records for the different names.
19. See The Bluebook: A Uniform System of Citation R. 15.1(b), at 150 (20th ed. 2015).
be informative, even if we are aware that other readers are getting articles from other platforms (or even from print journals!).

Statistical Gaps

§9 Sometimes the statistics a researcher wants just haven’t been compiled. In the last two years, public outcry has called attention to the deaths of people of color at the hands of (or while in the custody of) police.20 These deaths “raised two closely related questions: How many people are killed by police every year, and how many people are shot by police each year? People who wanted to know—from reporters to FBI Director James Comey—seemed surprised to learn that there are no reliable statistics to answer [those questions].”21 Journalists and nonprofits have moved to gather better data. The Guardian, a British newspaper with strong coverage of the United States and elsewhere, created The Counted, a database of people killed by the police in 2015 (and going forward); it combines Guardian reporting with “verified crowdsourced information.”22 At the same time, the Washington Post began counting fatal shootings by police.23 The project revealed how inadequate the government statistics were:

The Post documented well more than twice as many fatal shootings this year as the average annual tally reported by the FBI over the past decade. The FBI and the federal Bureau of Justice Statistics now acknowledge that their data collection has been deeply flawed. FBI Director James B. Comey called his agency’s database “unacceptable.”

Both agencies have launched efforts to create new systems for documenting fatalities.24

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As early as 2009, the Cato Institute had begun collecting information about police misconduct, including nonfatal incidents. National Police Misconduct Reporting Project, CATO INST., http://www.policemisconduct.net/ (last visited Jan. 24, 2016). The set of misconduct incidents is larger than the sets of fatalities compiled by the Guardian and the Post. But note that not all fatalities are misconduct.
Expertise and Hidden Assumptions

¶10 Few of us—reference librarians or legal researchers—have serious backgrounds in statistical analysis. And so we often must rely on the expertise of the demographers, economists, sociologists, and others who compile and disseminate statistics; at the same time, we should maintain a healthy skepticism. For instance, we can accept that the professional statisticians at the Bureau of Justice Statistics know their business, but also be aware that, because of limited reporting from local law enforcement and other factors, their statistics are necessarily incomplete: they have only the data they have.\(^{25}\) As we provide our patrons with statistics (or help them look themselves), we should be aware of how the statistics might be incomplete or somehow skewed. Are all law enforcement agencies participating in a data collection project? Do they follow the same definitions when they categorize their data? How big was the sample used in a survey? How was it generated? How many people responded?\(^{26}\)

¶11 We might also try to think about what was asked and why, understanding that the statistical reports that are presented as neutral are built on definitions and assumptions that are far from neutral. One vivid way to see this is by looking at the history of race in the census, from the constitutional reckoning that counted enslaved people (at the discounted rate of 3/5) in determining congressional representation\(^{27}\) to today. Races have always been counted in the United States (but not everywhere\(^{28}\)), but they have been counted in different ways, and the counting has shaped policy and society.

Education and Current Awareness

¶12 If you don’t feel prepared to be an intelligent consumer of statistics, you might read about the topic. Don’t worry: it doesn’t take higher math to improve your statistical literacy. For instance, generations of readers have benefited from Darrell Huff’s very accessible book, *How to Lie with Statistics*.\(^{29}\) More recently, Joel

\(^{25}\) Another significant limitation worth noting is the underreporting of many crimes, such as rape, child abuse, and domestic violence.

\(^{26}\) For the broader issue of interpreting popular reports of health studies, see Jeff Leek, *Finally, a Formula for Decoding Health News*, FIVE THIRTY EIGHT (Mar. 17, 2014), http://fivethirtyeight.com/features/a-formula-for-decoding-health-news/ [https://perma.cc/QJ4E-ZE8N ] (suggesting that, in addition to other factors, readers consider whether a study was a randomized, controlled trial and whether it had at least hundreds of patients).

\(^{27}\) U.S. CONST. art. I, § 3.


Ethnoracial counting is widespread but not universal; it is a choice, and we want to understand what goes into the choosing. . . . Race, ethnicity, nationality, ancestry, indigenous people, and tribal status are among the various terms that appear in censuses that measure group membership based on descent. The actual term race itself is not common; it is found in only thirteen censuses around the world—eleven of them former slaveholding countries.

As well as being an academic, Prewitt served as director of the United States Bureau of the Census from October 1998 to January 2001. I highly recommend this book.

\(^{29}\) Darrell Huff, *How to Lie with Statistics* (1954), and various reprint editions. See also Darrell Huff, *How to Take a Chance* (1959) (probability). I read these when I was in high school—so I can vouch for their accessibility—and their basic lessons have stayed with me.
Best, a professor of sociology and criminal justice, has published several works for the general reader.\textsuperscript{30} (I’m sure there are other books in this vein: these are just ones I can recommend from my own reading.)

\textsuperscript{13} Statistics can also become part of current awareness reading (or skimming). Last fall I subscribed to \textit{The Economics Daily}\textsuperscript{31} from the Bureau of Labor Statistics and enjoy taking a quick look at it in my e-mail. The editors mix the topics, for instance, highlighting employment in breweries\textsuperscript{32} or pet-related industries\textsuperscript{33} in addition to the Producer Price Index, the unemployment rate, and other standard measures you might expect. I was happy to pass along to our career services staff the prediction that legal employment will increase 5.1\% by 2024.\textsuperscript{34}

\textsuperscript{14} Some other interesting statistical sources you might follow, with their Twitter handles, include:

- Brookings Institute, http://www.brookings.edu/ (@Brookingsinst)
- TRACfed, http://tracfed.syr.edu/ (@TRACReports)
- United States Census Bureau, http://census.gov/ (@uscensusbureau)

\section*{Conclusion}

\textsuperscript{15} Even if we aren’t primarily “numbers people,” we use and help others find statistics. Whether it’s an infographic a friend posts on Facebook or a claim made by a presidential candidate, we should be able to evaluate it. Does the data come from a reliable source? Is it presented in its proper context? Are there potential gaps? Is it consistent with data from other sources? With a little self-education, we can enrich our own understanding and better serve our users.

\begin{itemize}
\item \textsuperscript{30} \textsc{JoeL best}, \textit{Damned Lies and Statistics: Untangling numbers from the Media, Politicians, and Activists} (2d ed. 2012); \textsc{JoeL best}, \textit{More Damned Lies and Statistics: How Numbers Confuse Public Issues} (2004); \textsc{JoeL best}, \textit{Stat-Spotting: A Field Guide To Identifying Dubious Data} (updated and expanded ed. 2013).
\end{itemize}
About Microaggressions

Ronald Wheeler

Professor Wheeler discusses the concepts of microaggressions (including microassaults, microinsults, and microinvalidations) specifically against LGBT individuals, and proposes some solutions for preventing microaggressions from occurring within one’s organization.

Definitions

1 Marginalized populations in our society commonly experience microaggressions. They are a fact of daily life, showing up in contexts such as families, workplaces, and neighborhoods. AALL members have even written about their impact.1 The most commonly used definition found throughout the literature defines microaggressions as “brief and commonplace daily verbal, behavioral, or environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative . . . slights and insults toward the target person or group.”2 However, also true is that microaggressions are experienced by members of oppressed groups3 differently,4 they negatively impact performance in the workplace,5 they can contribute to physical and mental problems,6 and they can

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3. For the purposes of this essay, I am choosing not to define the phrase “oppressed group” so that all readers may imagine themselves as targets.


evidence illegal discrimination and lead to employer liability. Given the pervasiveness and impact of microaggressions, I therefore consider them important enough to warrant discussion here as part of our Diversity Dialogues series.

I will structure my discussion in a meandering and somewhat unorthodox way. Most of the literature on microaggressions in the workplace focuses on race and racially motivated microaggressions. Nevertheless, a growing body of research addresses microaggressions targeting women and LGBT people. Because discussion of race can be especially emotionally fraught, and because I have not yet discussed LGBT issues in this series, I will frame this discussion using the literature on both race and sexual orientation. I will focus my personal anecdotes using my experiences as a black gay man touching on issues of race and sexual orientation. However, when I move to discussing illegal discrimination, I will again rely on the more robust body of literature on racial microaggressions as there is no federal legislation that protects LGBT people from employment discrimination.

Types of Microaggressions

The modern evolution of antidiscrimination law combined with other social and political developments have caused contemporary forms of discrimination to become “subtler than the overtly prejudiced behaviors of the past.” Subtlety makes these contemporary microaggressions easy to dismiss as unimportant or insignificant. It can also allow perpetrators to label targets as hypersensitive or somehow neurotic. Several types of microaggressions are identified in the literature, and it can be helpful to label them and explore them in the context of some personal anecdotes and examples. No matter what the type, microaggressions can be used as evidence of illegal discrimination, and if severe and pervasive, they “may rise to the level of harassment under certain circumstances.”

7. See, e.g., Fujimoto, supra note 5, at 137–42 (discussing the Stray Remarks Doctrine); King et al., supra note 2, at 57–58, 60 (discussing how the article will describe “ways in which judges may weigh evidence of microaggressions in line with extant laws and decisions” and asserting that “reports of microassaults, or frequent experiences of microinvalidations and microinsults, will support disparate treatment claims”).


10. King et al., supra note 2, at 55.

11. John M. Robinson, The New Face of Exclusion: Microaggressions, State Mag., Nov. 2015, at 6, 6 (quoting a letter from the U.S. State Department chief diversity officer warning that microaggressions may count as harassment).
Microassaults

¶4 “The first and most overt form of microaggression is microassault.” Microassaults are “attacks meant to harm the victim”; thus they are fairly easy to identify. Most of us are used to thinking about these types of attacks because they are similar to traditional forms of overt discrimination that we have all witnessed, read about, or at least heard about. Although it is difficult for many of us to imagine facing this form of attack at work, it certainly does happen.

¶5 Growing up in Detroit in the 1970s and 1980s, I was extremely lucky to have remained somewhat sheltered from much of the racism that permeated our existence at the time. My father worked for Ford Motor Company in the famous River Rouge Complex located in Dearborn, Michigan. Our home in Detroit was situated just a few blocks from Detroit’s border with Dearborn, which was convenient for my father’s daily commute. It was also a source of stress for my parents. Dearborn is infamous for its segregationist policies. Its notorious mayor, Orville Hubbard, was mayor from 1942 to 1978. His popularity and consistent reelection are attributed to his dedication to the campaign promise to “keep the niggers out.”

¶6 Although my parents feared that my sister and I might be harmed if we rode our bikes into Dearborn, and my father tells of repeated harassment by the Dearborn police as he drove to and from work daily, I really did not experience any overt attacks that I can recall until law school in Ann Arbor, Michigan. I recall with surprising clarity that during my first year of law school, as I strolled through campus with friends one evening, a car full of white men drove by, and as they passed someone yelled the words, “nigger faggot.” Although this incident did not happen in the employment context, I relay it here for a couple of reasons. First, because it is one of the few terrible and trauma-provoking examples from my personal life that I clearly recall. But second, because it happened on a university campus while I was in law school. Admittedly, this happened in 1988, but when I speak with students of color and queer students today, it becomes clear to me that these things still happen. Surprisingly, what has stayed with me for all of these years is the overwhelming fear and helplessness that I felt that night. I recall being
overwhelmed by terror and the realization that if that car stopped, I could be
killed or severely injured. I also recall feeling surprise and chagrin that this could
happen in liberal Ann Arbor, the Berkeley of the Midwest. I remember that my
fear developed later into anger, which I carried around with me to classes and
elsewhere. So when I attempted to engage in conversations concerning race in my
law school classes and when well-meaning yet insensitive comments were made, I
became unable to respond or to engage. I became overwhelmed. This incident
definitely impacted my academic performance at the time in negative ways.

¶ 7 In 1988, there was no one on my law school faculty with whom I could
comfortably speak about these issues. I was a pariah even among other LGBT stu-
dents for being “too out.” The one black professor at Michigan Law School at that
time, Sallyanne Payton, was either visiting another law school or on sabbatical, and
there were no LGBT law professors or people writing, teaching, or thinking about
LGBT issues. In my opinion, these facts helped to sustain a culture where an inci-
dent like this could happen. The young men who yelled insults at me that night had
every reason to believe that they would not face consequences if they were caught
or if I told someone. There was no precedents of the university caring about, investi-
gating, or punishing what we now call hate crimes. If there had been an organi-
zational culture in existence at the university where a student would have been
expelled for incidents such as these, would this incident still have occurred? I ask
this question because creating and sustaining a culture that either tolerates or con-
demns these kinds of microassaults is everyone’s responsibility.

Microinsults

¶ 8 The second type of microaggression are called microinsults. These “include
behaviors that are insensitive, rude, or inconsiderate of a person’s identity.” Microinsults are especially difficult for people to understand because “they tend to
be subtle in nature and may be unconscious and unintentional, but [they] none-
theless demean the target or their group.” An example used in some of the litera-
ture is telling a racial minority that they are a “credit to your race.”

¶ 9 An odd type of microinsult used to happen to me fairly often when I was
younger. It occurred in various contexts and revolved around shaking hands. I would
be introduced to someone, a work superior or a professor or some other authority
figure, and that person would interact with me differently than with my white col-
leagues. When introduced to the others, the authority figure would say “hello Robert”
or “hello Greg” and shake their hands in the normal way. However, when introduced
to me, the authority figure would say “hey Ron” or “hey Ron my man,” and then
begin an elaborate and unorthodox hand-shaking ritual involving twisting out of a
traditional handshake and into what I presume was considered a black handshake.
While I felt clear that the authority figure meant well and was trying to demonstrate

18. King et al., supra note 2, at 56.
19. Id.
20. Id.
21. Id.
22. See John Baugh, Out of the Mouths of Slaves: African American Language and Edu-
cational Malpractice 79–85 (1999) for a robust discussion of the black power handshake and its
significance.
coolness, compassion, or liberalism, I always felt singled out, insulted, and belittled. It seemed to me that he felt I somehow required more than a normal hello and a traditional handshake to communicate a warm welcome. The person committing the microaggression probably thought he was building a relationship with me; however, the message I received was that I am not as professional as my white colleagues. Often, when a microaggression occurs, the person who commits the act does not realize she is actually being offensive—in fact, she may think she is giving a compliment or building a relationship. Though the intent was not to hurt my feelings, the impact was that I felt stereotyped, misunderstood, and marginalized.

Microinvalidations

¶10 The third category of microaggressions are called microinvalidations. Microinvalidations “are characterized by behavior that minimizes the psychological thoughts, feelings, or experiences of targets.” Like microinsults, microinvalidations are subtle and often unintentional. They are sometimes labeled “interpersonal discrimination,” “incivility,” or “microinequalities,” and they can be either verbal or nonverbal.

¶11 One example of a microinvalidation from my personal life happened to me recently. I was on vacation, and I was with a couple of fairly new acquaintances. We were walking through an inner city park when we encountered a group of people that my new friends knew. I was introduced, and I began chatting with the people whom I had just met. At one point, one of the women in the group asked, “I see you’re wearing a wedding ring, is your wife here with you?” I responded with, “I have a husband not a wife, but he is not with me on this trip.” She was clearly embarrassed. Her previously radiant smile turned to a look of embarrassment and discomfort, and she said, “Oh?” Then someone changed the subject, and we all pretended that my husband had never been mentioned.

¶12 People have asked me why this incident in particular is so upsetting to me. What I felt most at that moment was put on the spot. I felt singled out on a really nice day with really nice friends. I felt unfairly and without any warning forced to make a really difficult choice. I could choose to swallow my pride, to grin and bear it, to simply answer “no,” and to become invisible and closeted and irrelevant. That choice, for me, has psychological consequences.

23. King et al., supra note 2, at 56.
24. Id.
25. Id.
26. It is important to note that asking this question itself minimizes my experience, implies that I am hypersensitive and histrionic, and suggests that I am somehow overreacting.
27. There are many well-documented psychological consequences of either staying silent or speaking up. See, e.g., Nadal et al., supra note 6, at 22 (discussing the behavioral, cognitive, and emotional reactions to microaggressions and their impact on targets).
28. I recently realized that my numerous and ongoing LGBT involvements, from student activism to grassroots organizing, fund-raising, nonprofit work, AIDS direct action, and AIDS services provision are not chronicled in a publicly available place. Readers may contact me directly for more information.
29. See Steven Seidman et al., Beyond the Closet? The Changing Social Meaning of Homosexuality in the United States, 2 Sexualities 9, 12–19 (1999) for a detailed discussion of the origin, evolution, and meaning of “coming out of the closet”.
aspect of my life and to remain out and proud and positive, which necessitates pushing back against those who would, intentionally or unintentionally, render me invisible as a gay man. So, failing to address the incorrect assertion that I am married to a woman would belie all of that work as well as the ongoing work I do to maintain positive self-esteem and a positive sense of self. That is why, although I knew it would make everyone uncomfortable, it would make me look hostile and confrontational, and it would possibly cause a well-meaning and friendly woman some embarrassment, I chose to answer in the way that I did.

Sexual Orientation in Particular

¶13 Modern researchers have created a taxonomy “to identify and demonstrate the specific types of microaggressions that affect LGBT individuals.”\(^{30}\) As one might guess, microaggressions manifest themselves differently when targeting sexual orientation and gender identity. Heterosexism, defined as “marginalizing LGBT persons while praising and normalizing heterosexual people,”\(^{31}\) plays a huge role and is more subtle in contemporary society, yet nonetheless it is harmful.\(^{32}\) Moreover, its impacts “may cause even more psychological distress in LGBT women and LGBT people of color.”\(^{33}\)

¶14 The taxonomy created by Nadal and his colleagues has seven categories: (1) the use of heterosexist terminology, (2) the endorsement of heteronormative or gender-conforming culture/behaviors, (3) the assumption of universal LGBT experience, (4) exoticization, (5) discomfort/disapproval of LGBT experience, (6) denial of societal heterosexism/transphobia, (7) assumption of sexual pathology/abnormality.\(^{34}\) These categories really resonate with me, so I will share a couple of anecdotes about how some have impacted me personally.\(^{35}\)

Assuming a Universal LGBT Experience

¶15 The third category, the assumption of universal LGBT experience, is one that I used to experience fairly regularly. I would be at a work event or meeting with a social component during which people were casually discussing spouses and home life. At some point I would mention my husband, thus outing myself and asserting my gayness.\(^{36}\) For some, however, my opening the door to my sexual orientation publicly signals an openness to be questioned about anything related to or assumed to relate to gay life.\(^{37}\) So, the next question to me would sometimes be, “So, which gay clubs do you like to go out to?” When I was living in San Francisco and visiting another city, the question might be, “You probably live in the Castro, right?” There are other even more bizarre and presumptuous questions that people

30. Nadal et al., supra note 6, at 23.
31. Id. at 22.
32. Id. at 25.
33. Id. at 23.
34. Id. at 23–24.
35. The wedding ring anecdote discussed in ¶ 11 is an example of a microaggression that falls into categories 1 and 2 of this taxonomy.
36. This is, of course, an overstatement because I am fairly certain that most people experience me as a gay man in the world.
37. This is, in itself, absurd because there is no monolithic gay life.
have asked me over the years. As I’m sure readers can see, these questions presume that all gay men love and frequent gay clubs and that all gay men in San Francisco live in the Castro neighborhood. These types of comments provoke all types of emotions for me, including sadness, anger, and frustration. They make me feel as if no matter what I say or do, no matter what degrees I earn or what professional accomplishments I achieve, I will always be first and foremost a dance club frequenter and a resident of the Castro. It’s not that I don’t want to be perceived as gay. That is not the issue. The issue is that although I want to be out to the world, I also want to be perceived as and recognized for all that I am, and not just a stereotype or preconception. To help illustrate, one would almost never, in the same context, ask a person “so which straight clubs do you like to go to?” Right?

Disapproval of the LGBT Experience

¶16 The fifth category, discomfort/disapproval of the LGBT experience, manifests itself in numerous ways. The most poignant example for me is experienced by my lesbian friends who are parents. It is really rather shocking the extent to which people will scowl, make disapproving statements, use disapproving and defensive body language, and even ask disrespectful and intrusive questions to lesbian couples who are parents. Questions like “Who is the mom?” or “She’s really your daughter and not hers, right?” or even “How did that work?” Honestly, it sounds insane, but you just can’t make this stuff up! After considering these examples, it is hopefully clear how intrusive, disrespectful, and maddening these kinds of questions would be and how it might cause stress, anxiety, anger, and frustration for lesbian parents and other LGBT parents. I recently saw a short video titled “Straight Parents Answer Questions that Gay Parents Always Get Asked” that is not only hilarious but perfectly illustrates the absurdity of the situations gay parents are constantly forced to navigate.

Assuming Gay Pathology or Abnormality

¶17 The seventh category, the assumption of gay pathology/abnormality, is one that really angers me in a way that very few other things do. For approximately thirty years, gay men have been banned by the FDA from giving blood. This fact has enraged me more and more over the years, and it impacts my life directly. I have a relatively rare blood type, and I sometimes think about people like me, especially children, who may need blood and find that their blood type is difficult to find. People like me should give blood, and we should also be encouraged to give blood. Yet I have been prevented from doing so for thirty years in spite of my HIV negative status, in spite of whether or not I was or am sexually active, in spite of the advancement of HIV detection and testing methods, and in spite of the subjective nature of

38. Although I do love dance clubs of all types, the reality of middle age has taken its toll, and sadly I have no idea where most gay clubs are, even in my current hometown of Boston.
39. In fact, the opposite is true in my case. To illustrate my point: a very long time ago my father once asked me, in a sincere desire to know and to learn, why I had to be so obviously gay? My reply was that I would be a failure as a gay man if no one knew I was gay. What would be the point?
the term “gay.” It really makes no rational or scientific sense to me. It may have at one time in history, but it certainly does not now.

¶18 Astonishingly, in 2015, the FDA announced that it would be lifting the so-called gay blood ban by changing its recommendations. When I heard this news I was elated, and I felt vindicated, but only briefly. The FDA did change its recommendation, but it now recommends that men who have sex with men be prevented from giving blood for twelve months after sexual contact with another man. Gay men, or any men for that matter, who have had sex with other men in the past year continue to be ineligible to give blood. The message to me seems clear. You can be straight or you can be celibate, but you cannot be gay and give blood because gay blood is tainted. This message reinforces stereotypes and misconceptions about pathology, it legitimizes irrational fears about LGBT people that fuel violence, it ignores good science, and it just does not make good sense from the public health perspective of maximizing reserves of usable blood. “Donations [of blood] should be considered on an individual basis . . . as some gay men—like some heterosexual men and women—are at far greater risk of H.I.V. infection than others.”

Solutions

¶19 So now that I’ve described a form of discrimination that is usually unintentional, occurs in many contexts, and has a negative impact on the recipient, how do we prevent microaggressions from occurring? There is no panacea here, but I can offer a few suggestions for both individual and organizations, particularly related to LGBT microaggressions. The first, which you are already participating in if you’ve read this far, is to learn more about microaggressions. Having a deeper understanding of microaggressions, including what constitutes a microaggression, makes you less likely to commit one. Second, do not make assumptions about anyone’s race, sexual orientation, or gender identity. This seems like an easy thing to do, but often we ascribe a gender or a race to students, patrons, colleagues, and others unconsciously and without giving it any real thought. When we say things like “How may I help you, sir?” or we refer to someone we don’t know using gender pronouns such as “he” or “she,” we’ve made our uninformed presumptions. Granted, it’s hard to use gender-neutral language all of the time, but by removing gender from our conversations (unless someone has self-identified with a gender), we may avoid inadvertently calling someone by a pronoun that the person doesn’t identify with.

¶20 Organizations can also take steps to ensure their environments are built so that microaggressions are less likely to occur. One suggestion is that “[o]rganizations should review their stated policies in light of the vision, mission, and values


43. Assumptions made about race are more complex, and I am not advocating eliminating race from our conversations.
of the organization to ensure there is no disconnect, as inconsistencies may send confusing messages to employees.” For instance, if your organization has a policy that protects people from harassment on the basis of sexual orientation but does not include LGBT topics in the sexual harassment training, a mixed message is sent to employees. Relatedly, if your organization has a policy that protects people from racial discrimination but does not include race as a topic in employee antidiscrimination or other employee training, another mixed message is being sent. Providing training to employees related to race, sexual orientation, and gender identity can only be helpful. As an example, studies have shown that when employees receive training about gender transitions, sensitivity and understanding is increased toward transgender employees. Finally, if there are rules or policies in place that would prevent a microaggression from occurring, make sure everyone within the organization has a clear understanding of what the policy is and how it is enforced. For instance, if employees can change their names to align with their gender, all offices (i.e., human resources and technology services) should be informed of how to process the change so the individuals don’t have to repeatedly explain themselves.

**Conclusion**

¶21 The point of this essay is not to make people too nervous to talk to their colleagues or make us all afraid that we’re constantly offending the people around us. Rather, it is to make us aware that even though we’ve come a long way since the civil rights movement in the 1960s and blatant discrimination occurs less often, subtle forms of discrimination occur every day. As librarians, if we collectively address microaggressions through our own actions, our libraries and our greater organizations will not only be more welcoming to colleagues, but to students and other patrons as well.

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Making Management Work . . .

Bartleby in the Law Library: Passive Aggression at Work

Lynne F. Maxwell

Professor Maxwell uses Herman Melville’s classic short story, “Bartleby the Scrivener: A Story of Wall Street,” to illustrate how employees’ passive aggressiveness can bring down an entire library staff and poison the workplace. She offers some suggestions for dealing with the Bartlebys of the library, including documentation and remediation, and ultimately, termination.

Introduction

¶1 Where’s Bartleby? Doubtless, you have encountered him among your law library staff, even though you might not be able to identify him by name. The non-English majors among us will probably wonder who Bartleby is, while literary scholars among our company will experience the rare joy of recognition afforded by employing their literary expertise outside of the academy. So, who is Bartleby? He is the protagonist (perhaps) of the eponymous short story, Bartleby, the Scrivener: A Story of Wall Street, by Herman Melville.¹ Why is he significant to law library leaders? Bartleby matters because you very likely work with him, or one of his progeny. The fictional Bartleby is renowned for his standard refrain, “I would prefer not to,” when asked by his supervisor to perform customary workplace tasks. Thus, he is overtly insubordinate, subversively so. While you may not work with a colleague or supervisee who bluntly admits that he or she “would prefer not to,” I am willing to wager that you can point to instances in which an employee’s behavior broadcasts this message with clarion force—repeatedly. This person, my friends, is your Bartleby, and if you are already able to name him, you have made the first step toward solving your management dilemma. And you really do need to solve the problem expeditiously or your very real Bartleby will poison your workplace as perniciously as the fictional Bartleby did his employer’s law office.

Who’s Bartleby? The Identification Conundrum

¶2 How to identify a Bartleby must be learned. Employees who are imbued with a “normal” work ethic—that is, who would never question that they need to
come to work, arrive on time, and work throughout the day—will initially find Bartleby to be an anomaly. In fact, they may very well allow Bartleby to manipulate them into performing work for him. After all, isn’t it good to be kind and helpful to a coworker? Most definitely not, when that coworker is Bartleby! He will permeate boundaries and enlist sympathy for alleged illnesses and infirmities. He will bend the truth and make excuses whenever necessary to exert control over those around him.

¶3 When given assignments demanding concrete work product in a timely manner, he may claim illness or other extenuating circumstances when asked to present evidence of actual work. If he completes the assignment at all, he will hastily assemble an inferior work product that will arrive sometime after the last minute. This will happen not just once or twice but will persist as long as Bartleby can continue to perform nonperformance. For, you see, this failure to act is indeed a form of action, passive aggression, and Bartleby knows it. He knows that naïve, nice people—supervisors included—will not know how to address unconventional, insubordinate behavior, and he will continue to test boundaries. He “would prefer not to,” and will control and undermine his colleagues and department.

¶4 When you act to hold him accountable for his behavior and failure to perform, he will proclaim himself a victim of a conspiracy, and he will seek allies everywhere. In particular, he will ferret out the weak links (i.e., trusting people) in your department and beyond, persuading them that he is being unjustly persecuted by those above him in the law library and law school administrative chain. He will befriend law students and law school employees in departments outside of the library. These people, just like the more innocent law library members, will serve as allies in an internecine war against YOU. And your time and your staff’s time will be sapped in attempts to contain him. Do you recognize him now? Will you know him when you see him? Be confident in your own judgment. If you feel like you are being manipulated, you probably are.

Passive Aggression: Pattern and Practice

¶5 Once you have identified the pattern of passive aggression, it will be readily apparent to you in each future instance, which will enable you to predict and label Bartleby’s behavior. There is a psychiatric diagnostic category for this sort of behavior—or, at least there was, until the American Psychiatric Association (APA) eliminated it, unwisely in my opinion. In previous iterations of the APA’s Diagnostic and Statistical Manual of Mental Disorders, commonly known as the DSM, there existed a psychiatric diagnostic category known as passive-aggressive personality disorder. Mosby’s Medical Dictionary describes passive-aggressive personality disorder as “a DSM-IV psychiatric disorder characterized by the indirect expression of resistance to occupational or social demands.” Moreover, according to the Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health, passive-aggressive personality disorder is

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a personality disorder whose essential features are resistance to the demands of others that is expressed indirectly under the cover of obstructionism, procrastination, stubbornness, dawdling, forgetfulness, and intentional inefficiency combined with negative, defeatist attitudes. . . . Such people are manipulative and attempt to make themselves dependent on others; they are often pessimistic and resentful but do not realize that their ineffective behavior is the source of their problems.4

%6 The diagnosis applies to a patient when four of the following seven diagnostic criteria are met:

1. Passive resistance to routine social or occupational obligations;
2. Complains of being misunderstood or underappreciated;
3. Complains of personal misfortune;
4. Sullenness or belligerence (argumentative);
5. Highly critical of authority;
6. Alternates between hostile defiance and contrition;
7. Resents or is envious of those perceived as being more fortunate.5

Bartleby in a nutshell, right? So now that you know him, what can you do?

Bartleby and Beyond: Disabling Enabling

¶7 The good news is that, as a library leader, you cannot be responsible for performing psychotherapy on your problem employee. In fact, personality disorders are notoriously difficult to treat, so even seasoned psychotherapists with long-term client sessions are often hard-pressed to “cure” patients who receive the difficult diagnosis. Your job, rather, is to run a productive, efficient library staffed by reasonably happy employees. Bartleby, unfortunately, will make it impossible for you to do that job, and the longer you tolerate his problematic behavior, the more time it will take to correct the dynamics of the library. My harsh recommendation, then, is to terminate the employee as soon as possible to stave off additional damage and wasted time. Thus, as soon as you recognize that Bartleby is on your payroll, begin the grueling process of documentation. Document the problematic behavior each time it occurs, and place it in Bartleby’s personnel file, making sure that he receives a copy.

¶8 You will also need to work with the law school administration and Human Resources to ascertain the requirements for termination. These will vary according to the nature of the institution (public or private), as well as the employee designation (exempt, nonexempt, faculty). Tragically for you, this can become a full-time job, so be prepared to make this sacrifice for the benefit of your organization. Eventually, with much diligence and pain, you will succeed in building a critical mass of documentation and will be able to proceed with the termination, following the legal advice you are given by HR. The culmination of this process is ugly for all involved: your staff, you, and Bartleby. Nonetheless, in the end, this is the best course of action, and you owe it to your staff and library to ameliorate the sad situation. Finally, let the healing begin—and it will, immediately.

¶9 “Ah, Bartleby! Ah, humanity!”6

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6. Melville, supra note 1, at 149.
Erratum

In Timothy G. Kearley’s article, From Rome to the Restatement: S.P. Scott, Fred Blume, Clyde Pharr, and Roman Law in Early Twentieth-Century America (108 LAW LIBR. J. 55, 2016 LAW LIBR. J. 3), footnote 132 contained an incorrect date. The corrected footnote appears below.

132. There is confusion over the year of Pharr’s birth. Most sources give it as 1885. See, e.g., Biographical Dictionary of North American Classicists 498 (Ward W. Briggs, ed. 1994) and In Memoriam, Clyde Pharr (2001) (unpublished Report of the Memorial Resolution Committee for Clyde Pharr, University of Texas, Austin) available at www.utexas.edu/faculty/council/200-2001/memorial/scanned/pharr.pdf (last visited Aug. 24, 2015). However, public records, such as the Social Security Death Index and passport and draft board records have it as 1883. See FamilySearch at https://familysearch.org (last visited Aug. 24, 2015). Also stating 1883 is: 1 History of the Class, 1906 Yale College 259 (1906), available at https://archive.org/details/historyofclass01yale, which is likely to have obtained its information directly from Pharr. Therefore, I have chosen the earlier year.
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